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THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM THE ADMINISTRATIVE LAW COURT
Deborah Brooks Durden, Administrative Law Judge

Case No. ALJ-30-0489-AP

E. Shawn Sorrell.....Appellant,

vs.

South Carolina Department of Public Safety.....Respondent.

RECORD ON APPEAL
VOLUME 1 OF 2

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SC Court of Appeals

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STATE OF SOUTH CAROLINA
ADMINISTRATIVE LAW COURT

E. Shawn Sorrell,

Appellant,

vs.

South Carolina Department of Public Safety,

Respondent.

Docket No. 11-ALJ-30-0489-AP

ORDER

APPEARANCES: John A. O'Leary, Esquire, for Appellant
Vance J. Bettis, Esquire, for Respondent

This matter is before the Administrative Law Court (ALC or Court) pursuant to the appeal of E. Shawn Sorrell (Sorrell or Appellant) from a decision of the State Employee Grievance Committee (Committee), dated August 26, 2011, which upheld Respondent South Carolina Department of Public Safety's (DPS or Respondent) decision to terminate Sorrell's employment as a law enforcement officer with the DPS's Bureau of Protective Services. On September 23, 2011, Appellant filed this appeal with the Court. For the following reasons, the Committee's decision is affirmed.

STATEMENT OF THE CASE

Sorrell was employed by the Department as a law enforcement officer in the Bureau of Protective Services. He was terminated effective July 12, 2010 due to improper conduct stemming from his arrest of three persons for disorderly conduct on March 28, 2010 outside the South Carolina Lottery Commission's headquarters in downtown Columbia. Appellant grieved his termination pursuant to the State Employee Grievance Procedure Act, S.C. Code Ann. § 8-17-310 (Supp. 2011) et seq. His grievance was denied by DPS and he appealed to the Committee pursuant to S.C. Code Ann. §§ 8-17-330 and 340 (Supp. 2011).

On March 22, 2011, the Committee Attorney held a hearing concerning Appellant's objections to certain documents submitted by DPS for inclusion in the file that was to be provided to the Committee members in advance of the hearing on the merits of the grievance

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July 12, 2012

SC ADMIN. LAW COURT

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appeal. In a written ruling entered on April 12, 2011, the Committee Attorney sustained Appellant's objections and ruled that those documents to which objections had been sustained were not to be included in the materials provided to the Committee members.

On June 27, 2011 and August 8, 2011 the committee conducted a hearing on the merits. The Committee issued its written Final Decision on August 26, 2011 upholding DPS's decision to terminate Appellant's employment. This appeal followed.

ISSUES

1. Did the procedure employed by the Employee Grievance Committee violate the Appellant's right to due process?
2. Was there substantial evidence to support the Committee's decision to terminate Appellant's employment?

STANDARD OF REVIEW

This case is before the Administrative Law Court pursuant to S.C. Code Ann. § 1-23-600(D) (Supp. 2011). Accordingly, the Administrative Procedures Act's standard of review governs this appeal. See S.C. Code Ann. §§ 1-23-600(E), 1-23-380 (Supp. 2011); see also Byerly Hosp. v. S.C. State Health & Human Servs. Fin. Comm'n, 319 S.C. 225, 229, 460 S.E.2d 383, 385 (1995). The standard used by appellate bodies, including the ALC, to review agency decisions is provided by S.C. Code Ann. § 1-23-380(5) (Supp. 2011). This section provides:

The court may not substitute its judgment for the judgment of the agency as to the weight of the evidence on questions of fact. The court may affirm the decision of the agency or remand the case for further proceedings. The court may reverse or modify the decision [of the agency] if substantial rights of the appellant have been prejudiced because the administrative findings, inferences, conclusions, or decisions are:

- (a) in violation of constitutional or statutory provisions;
- (b) in excess of the statutory authority of the agency;
- (c) made upon unlawful procedure;
- (d) affected by other error of law;
- (e) clearly erroneous in view of the reliable, probative, and substantial evidence on the whole record; or
- (f) arbitrary or capricious or characterized by abuse of discretion or clearly unwarranted exercise of discretion.

S.C. Code Ann. § 1-23-380(5) (Supp. 2011).

A decision is supported by "substantial evidence" when the record as a whole allows reasonable minds to reach the same conclusion reached by the agency. Bilton v. Best Western Royal Motor Lodge, 282 S.C. 634, 321 S.E.2d 63 (Ct. App. 1984). Substantial evidence is not a mere scintilla of evidence, nor the evidence viewed blindly from one side of the case, but is evidence that, considering the record as a whole, would allow reasonable minds to reach the conclusion the agency reached in order to justify its action. Hargrove v. Titan Textile Co., 360 S.C. 276, 289, 599 S.E.2d 604, 611 (Ct. App. 2004). The fact that the record, when considered as a whole, presents the possibility of drawing two inconsistent conclusions from the evidence does not prevent the agency's finding from being supported by substantial evidence. Waters v. S.C. Land Res. Conservation Comm'n, 321 S.C. 219, 467 S.E.2d 913 (1996); Grant v. S.C. Coastal Council, 319 S.C. 348, 461 S.E.2d 388 (1995).

An abuse of discretion occurs when a decision is based upon an error of law, such as application of the wrong legal principle; or, when based upon factual conclusions, the ruling is without evidentiary support; or when the judge is vested with discretion, but the ruling reveals no discretion was exercised; or when the ruling does not fall within the range of permissible decisions applicable in a particular case. Ex Parte Capital U-Drive-It, Inc., 369 S.C. 1, 5, 630 S.E.2d 464, 467 (2006). A decision is arbitrary or capricious when no rational basis for the conclusion exists, when it is based on one's will and not upon any course of reasoning and exercise of judgment. Converse Power Corp. v. S.C. Dep't of Health & Envtl. Control, 350 S.C. 39, 564 S.E.2d 341 (Ct. App. 2002); Deese v. S.C. State Bd. of Dentistry, 286 S.C. 182, 184-85, 332 S.E.2d 539, 541 (Ct. App. 1985). A decision may be arbitrary or capricious when it is made at one's pleasure without adequate determining principles, or is governed by no fixed rules or principles. Deese, 286 S.C. at 184-85, 332 S.E.2d at 341. Non-uniform, inconsistent, or selective application of authority can indicate arbitrariness. See Mungo v. Smith, 289 S.C. 560, 571, 347 S.E.2d 514, 521 (Ct. App. 1986).

DISCUSSION

Due Process

Appellant contends that his due process rights were violated by the procedures adopted by the State Human Resources Director in which documents were submitted by the parties to the Committee Attorney prior to the parties having an opportunity to obtain a ruling as to the admissibility of the documents.

Prior to the hearing on the merits the Committee Attorney conducted a hearing at which the admissibility of the challenged documents was considered. The Committee Attorney ruled in favor of Appellant on the challenged documents and excluded them from the materials to be made available to the committee members as Committee Exhibit 1. The record reflects that at the outset of the June 27, 2011 hearing on the merits it was disclosed to the parties that Herbert Cooper (Cooper), the Committee Chairman, had inadvertently reviewed some of the documents that were originally submitted by DPS and subsequently ruled inadmissible. The parties were invited to raise any objections to Cooper continuing to preside as chairman or to consider the evidence and deliberate as a committee member. Appellant's attorney explicitly waived any objection to Cooper's continued service on the Committee in spite of his inadvertent exposure to the inadmissible documents. Therefore, because this issue was waived by the Appellant and not raised before the Committee, it is not preserved for appellate review by this Court. Lee County Sch. Dist. Bd. of Trustees v. MLD Charter School Academy Planning Committee, 371 S.C. 561, 641 S.E.2d 24 (2007); Brown v. S.C. Dep't of Health and Envtl. Control, 348 S.C. 507, 560 S.E.2d 410 (2002).

Even assuming that this issue had been properly preserved for review, I do not find that the procedures utilized by the Committee violated Appellant's right to due process. The process utilized by the Committee comports with the process set forth by statute:

If the State Human Resources Director determines that the action is grievable, he shall forward the appeal and documents...to the designated committee panel and to the committee attorney for a hearing[.]...the documents transmitted by the State Human Resources Director to the designated committee panel and committee attorney must be marked into evidence as "Committee Exhibit F" during the committee chairman's opening statement at the beginning of the hearing unless excluded by the committee attorney based on a prior objection raised by either party.

S.C. Code Ann. § 8-17-350 (Supp. 2011). Because the record reflects that the statutory process was followed, a challenge to that process is essentially a challenge to the facial constitutionality of the statute. This tribunal has no authority to pass upon the constitutionality of a statute or regulation. Video Gaming Consultants, Inc. v. S.C. Dep't of Revenue, 342 S.C. 34, 38, 535 S.E.2d 642, 644 (2000).

Moreover, the requirements of procedural due process which apply in a hearing affecting an individual's property or liberty interest generally include adequate notice, the opportunity to

be heard at a meaningful time and in a meaningful manner, the right to introduce evidence, the right to confront and cross-examine witnesses whose testimony is used to establish facts, and the right to judicial review. Sloan v. S.C. Bd. of Physical Therapy Exam'rs, 370 S.C. 452, 636 S.E.2d 598 (2006). See also Moore v. Moore, 376 S.C. 467, 657 S.E.2d 743 (2008) (procedural due process requires adequate notice; adequate opportunity for a hearing; the right to introduce evidence; and the right to confront and cross-examine witnesses). Due process is flexible and calls for such procedural protections as the particular situation demands. Sloan, 370 S.C. at 484, 636 S.E.2d at 615. Having reviewed the record, the Court finds that Appellant was not denied due process. He was provided with advance notice of the hearing; he was represented by counsel who participated fully in the pre-hearing conference and hearing; he was given the opportunity to present evidence, to cross-examine witnesses, and respond to all issues raised during the hearing; he fully participated at all stages of the hearing process and vigorously advocated his position; he received the Committee's written order outlining its decision and reasoning. Accordingly, Appellant's contention that the procedure utilized by the Committee violated his due process rights is without merit.

Substantial Evidence Supporting Committee's Factual Findings and Conclusions

Appellant argues that the Committee's conclusion that his arrest of three individuals on March 28, 2010 was unlawful and improper constitutes an error. The Committee's finding that Sorrell made the March 28 arrests without probable cause and that his conduct with respect to the arrests was improper is the primary underpinning of the decision upholding DPS's employment termination. Appellant challenges the findings on two grounds. First, he argues that the committee erred in concluding that the actions of the three subjects did not constitute Disorderly Conduct under the law. Second, Appellant argues that there is no support for the finding that he lacked probable cause to make valid arrests.

It is important to note that the record contains conflicting testimony and evidence concerning the March 28 incident. This Court cannot re-weigh the facts and can only overturn the Committee's factual findings if there is no substantial evidence in the record to support them. See S.C. Code Ann. § 1-23-380(5) (Supp. 2011). In applying the substantial evidence rule, the factual findings of the administrative agency are presumed to be correct. Rodney v. Michelin Tire Co., 320 S.C. 515, 466 S.E.2d 357 (1996), citing Kearse v. State Health and Human Services Finance Comm'n, 318 S.C. 198, 456 S.E.2d 892 (1995). Furthermore, the reviewing

court is prohibited from substituting its judgment for that of the agency as to the weight of the evidence on questions of fact. Grant v. South Carolina Coastal Council, 319 S.C. 348, 461 S.E.2d 388 (1995), citing Gibson v. Florence Country Club, 282 S.C. 384, 318 S.E.2d 365 (1984). The party challenging an agency action has the burden of proving convincingly that the agency's decision is unsupported by substantial evidence. Waters, supra, citing Hamm v. AT&T, 302 S.C. 210, 394 S.E.2d 842 (1994).

Appellant contends that the Committee erred in concluding that the actions of the three individuals Sorrell arrested did not constitute Disorderly Conduct under State v. Perkins, 306 S.C. 353, 412 S.E.2d 85 (1991). (holding it unlawful to arrest someone for Disorderly Conduct "for voicing an objection to a police officer where no 'fighting words' are used.") Indeed, he maintains that Perkins is irrelevant because the subjects were not arrested for what they said, but for their boisterous conduct that preceded Sorrell's interaction with them. There is substantial evidence in the record to support the Committee's conclusion that Sorrell arrested the three individuals because he perceived one of them to be uncooperative with his instructions, not because of any loud or boisterous behavior. There is ample evidence in the record to support the finding that the arrest was not motivated by loud or boisterous behavior but instead by Sorrell's perception that Samantha Swanson (Swanson) was disrespectful to him, and that Sorrell's behavior toward the three individuals was improper and abusive, including:

- 1) The testimony of Swanson and Matthew Keith (Keith) that the three were not behaving boisterously when throwing water balloons before being apprehended by Sorrell;
- 2) The testimony of Mark A. Keel (Keel) that a videotape of the incident that showed the three individuals picking up the balloon pieces after the water balloons were thrown to avoid littering;
- 3) The testimony of Swanson and Keith that Sorrell kicked Swanson's legs so hard that the impact was heard and pulled on her sweatshirt with such force that it bent her neck backwards;
- 4) Investigator C. Lee Carter, III's (Carter) testimony that the videotape showed Swanson's feet were already approximately shoulder-width apart before Sorrell kicked them further apart;

- 5) Officer K.A. Rogerson's (Rogerson) testimony that the demeanor of the three individuals was not consistent with Appellant's report and that it was Appellant who escalated the situation;
- 6) Corporal Marvin E. Harris' (Harris) testimony that Sorrell told him that the reason all three individuals were arrested was because Swanson was "disobedient to him;"
- 7) Keel's testimony that he considered the arrests to be "over the top;"
- 8) Carter's testimony that Appellant acknowledged that his primary concern on March 28 was with Swanson's "attitude problem in giving him lip;"
- 9) Sorrell's statement to Harris that all three individuals were arrested because of Swanson's "lip" and attitude;
- 10) Security Guard Brenard Malone's testimony that Sorrell stated "they were all going to be arrested because of the way the female was acting," and that the three were arrested for lack of cooperation.

Appellant next contends that there is no support for the Committee's conclusion that Sorrell lacked probable cause to arrest the three individuals for Disorderly Conduct, arguing that the incident report prepared by Sorrell shows probable cause on its face. This argument ignores the fact that the Committee was confronted with conflicting evidence and testimony. In executing its duty as fact-finder the committee was free to disbelieve Sorrell's report and to credit the testimony of Swanson, Keith and Charles Spaht, Jr. (Spaht) that they were neither loud nor boisterous. Sorrell's account was discredited by Malone's and Rogerson's testimony that Appellant's account of what he had confronted with the three young people did not square with what either of them observed on the scene and the overwhelming evidence that the arrest was primarily motivated by the fact that Sorrell took offense at Swanson's attitude and not by a good faith belief that the three individuals had been boisterous.

Public Disorderly Conduct is a statutory crime that requires proof, as relevant here, that the person was "found on any highway or at any public gathering in a grossly intoxicated condition or otherwise conducting himself in a disorderly or boisterous manner." S.C. Code Ann. § 16-17-530 (2003). "Probable cause" is defined as "a good faith belief that a person is guilty of a crime when this belief rests on such grounds as would induce an ordinarily prudent and cautious man, under the circumstances, to believe likewise[,]" and "is determined as of the time of the arrest, based on the facts and circumstances — objectively measured—known to the

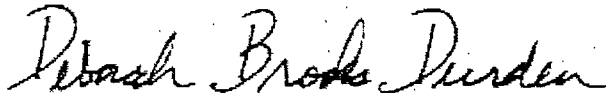
arresting officer." There is substantial evidence in the record to support the Committee's conclusion that an ordinarily prudent person would not have a good faith belief that the three individuals were disorderly or boisterous. Therefore, the substantial evidence in the record supports the finding that Sorrell lacked probable cause to make the arrests for Disorderly Conduct.

The substantial evidence in the record supports the State Employee Grievance Committee's determination upholding DPS's decision to dismiss Appellant from employment for improper conduct.

ORDER

For all the foregoing reasons, the decision of the Respondent to terminate Appellant's employment is hereby **AFFIRMED**.

AND IT IS SO ORDERED.



Deborah Brooks Durden
Administrative Law Judge

July 12, 2012
Columbia, South Carolina

CERTIFICATE OF SERVICE

I, Robin E. Coleman, hereby certify that I have this date served this Order upon all parties to this cause by depositing a copy hereof, in the United States mail, postage paid, in the Interagency Mail Service, or by electronic mail to the address provided by the party(ies) and/or their attorney(s).



Robin E. Coleman
Judicial Aide to Deborah Brooks Durden

July 12, 2012
Columbia, South Carolina

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July 12, 2012

SC ADMIN. LAW COURT

STATE OF SOUTH CAROLINA
ADMINISTRATIVE LAW COURT

E. Shawn Sorrell,

Appellant,

vs.

South Carolina Department of Public
Safety,

Respondent.

NOTICE OF ASSIGNMENT
(Appeal)

DOCKET NO. 11-ALJ-30-0489-AP

NOTICE IS GIVEN that a notice of appeal seeking review of agency action was filed on September 23, 2011. In accordance with S.C. Code Ann. § 1-23-570 (Supp. 2010), the **Honorable Deborah Brooks Durden**, Administrative Law Judge, has been assigned to preside in this appeal. The Administrative Law Judge may be contacted by mail at 1205 Pendleton Street, Suite 224, Columbia, South Carolina 29201, and by telephone at (803) 734-0550.

Rules of Procedure governing matters before the Court may be obtained from the Clerk of Court or on the Court's website, www.scalc.net.

The parties are directed to the relevant provisions of the Rules of Procedure for deadlines for perfecting the appeal and briefing the issues on appeal.

This the twenty-sixth day of September, 2011.

Ralph King Anderson, III
Chief Administrative Law Judge

By: Jana E. Shealy
Jana E. Shealy, Clerk
Edgar A. Brown Building
1205 Pendleton Street, Suite 224
Columbia, South Carolina 29201



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SC ADMIN. LAW COURT

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STATE OF SOUTH CAROLINA
ADMINISTRATIVE LAW COURT

Deborah Brooks Durden
Deborah Brooks Durden
SC Administrative Law Judge
Date *12/15/11*

E. Shawn Sorrell,

Appellant,

vs.

South Carolina Department of Public Safety,

Respondent.

MOTION FOR ENLARGEMENT
OF TIME

DOCKET NO. 11-ALJ-30-0489-AP

To: The Honorable Deborah Brooks Durden, Administrative Law Judge

Pursuant to the Rules of Procedure for the Administrative Law Court, the South Carolina Office of Human Resources ("OHR") respectfully moves for an enlargement of time in which to file a Record on Appeal in the captioned matter, and in support thereof states as follows:

1. The Notice of Assignment was filed on September 26, 2011.
2. Appellant has provided OHR with a transcript of testimony taken during the evidentiary hearing as required by Rule 35 of the Rules of Procedure for the Administrative Law Court. However, the transcript of a motions hearing was inadvertently not included, and the parties have indicated that the inclusion of the additional transcript is necessary for the Record on Appeal. Therefore, OHR, by and through its undersigned counsel, respectfully requests an enlargement of time in which to allow Appellant to provide OHR with a transcript of the motions hearing below.
3. OHR requests a thirty (30) day extension from today's due date in order to file the Record on Appeal.

WHEREFORE, the South Carolina Office of Human Resources respectfully request a thirty (30) day enlargement of time until **January 11, 2012** in which to file the Record on Appeal.

Molly R. Crum
Molly R. Crum
Assistant General Counsel
South Carolina Budget and Control Board
P.O. Box 11608
Columbia, SC 29211
(803) 737-1116

December 12, 2011

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SC ADMIN. LAW COURT

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DEC 12 2011

SC ADMIN. LAW COURT

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STATE OF SOUTH CAROLINA
ADMINISTRATIVE LAW COURT

GRANTED

Deborah Brooks Durden 11/9/11
Deborah Brooks Durden
SC Administrative Law Judge

E. Shawn Sorrell,

Appellant,

vs.

South Carolina Department of Public Safety,

Respondent.

MOTION FOR ENLARGEMENT
OF TIME

DOCKET NO. 11-ALJ-30-0489-AP

To: The Honorable Deborah Brooks Durden, Administrative Law Judge

Pursuant to the Rules of Procedure for the Administrative Law Court, the South Carolina Office of Human Resources ("OHR") respectfully moves for an enlargement of time in which to file a Record on Appeal in the captioned matter, and in support thereof states as follows:

1. The Notice of Assignment was filed on September 26, 2011.
2. Appellant has not provided OHR with a transcript of testimony taken during the hearing as required by Rule 35 of the Rules of Procedure for the Administrative Law Court. However, Appellant's counsel has indicated that transcript will be provided in the near future. Inclusion of the transcript is necessary for the Record on Appeal; therefore, OHR, by and through its undersigned counsel, respectfully requests an enlargement of time in which to allow Appellant to provide OHR with a transcript of the hearing below.
3. OHR has not filed a prior motion for enlargement of time in this matter.
4. OHR requests a thirty (30) day extension from the due date, making the Record on Appeal due on December 12, 2011.

WHEREFORE, the South Carolina Office of Human Resources respectfully request a thirty (30) day enlargement of time until December 12, 2011 in which to file the Record on Appeal.

CERTIFICATE OF SERVICE

This is to certify that the undersigned has this date served this order in the above entitled action upon all parties to this cause by depositing a copy hereto, in the United States mail, postage paid, or in the emergency Mail Service addressed to the party(ies) or their attorney(s).

This 9th day of November 2011
By: Robin E. Crum
Judicial Law Clerk

Molly R. Crum
Molly R. Crum
Assistant General Counsel
South Carolina Budget and Control Board
P.O. Box 11608
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OFFICE OF HUMAN RESOURCES

November 8, 2011

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NOV 08 2011

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SC ADMIN. LAW COURT

SC ADMIN. LAW COURT

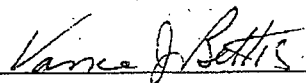
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CERTIFICATE OF SERVICE

This is to certify that I have this date caused to be served a copy of the foregoing Notice of Appearance and Substitution of Counsel on Counsel for Appellant by deposit in the United States Mail, First Class postage prepaid, addressed to:

John A. O'Leary, Esquire
714 Calhoun Street
Columbia, SC 29201

Counsel for Appellant



VANCE J. BETTIS

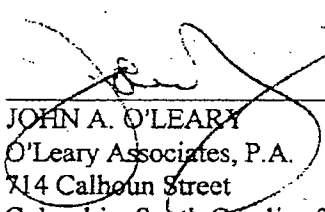
October 21, 2011

REQUEST FOR TRANSCRIPT OF RECORD

I, John A. O'Leary, request the Transcript of the Record for the case of E. Shawn Sorrell v. South Carolina Department of Public Safety. The hearing in this matter was held on June 27, 2011 and August 8, 2011, at the South Carolina Budget & Control Board in front of the State Employee Grievance Committee.

I understand that I am responsible for all costs associated with the preparation of this transcript pursuant to Rule 32 of the Rules of Procedure for the Administrative Law Court.

Respectfully Submitted,



JOHN A. O'LEARY
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Columbia, South Carolina 29201
803-779-5556

Columbia, South Carolina
September 23, 2011

State Employee Grievance Committee

FINAL DECISION

APPELLANT'S NAME: E. Shawn Sorrell
JOB CLASSIFICATION: Lance Corporal
AGENCY: South Carolina Department of Public Safety
DATE OF HEARING: June 27, 2011 and August 8, 2011
NATURE OF CASE: Termination

Based on documentary evidence and testimony presented at the hearing of E. Shawn Sorrell v. S.C. Department of Public Safety (SCDPS) held in Columbia, South Carolina, on June 27, 2011, and August 8, 2011, the State Employee Grievance Committee (Committee) finds:

FINDINGS OF FACT

1. Mr. E. Shawn Sorrell (Appellant) was employed with SCDPS as a Bureau of Protective Services (BPS) Officer from June 2, 2000, until his termination on July 12, 2010. This appeal involves the termination of Appellant's employment for Improper Conduct violating SCDPS Policy #400.08, Disciplinary Action Policy. (Committee Exhibit #1, p. 6.)
2. Appellant's most recent Employee Performance Management System (EPMS) evaluation for the review period of July 17, 2010, reflects a rating of "Meets Performance Requirements." (Committee Exhibit #1, p. 10.)
3. During his employment with SCDPS, Appellant's disciplinary history included a counseling session in November 2003 for Improper Conduct; a Level II reprimand in July 2004 for Improper Conduct and Insubordination; and a Level II reprimand in August 2004 for Willful Violation of Rules, Regulations or Policy. (Committee Exhibit #1, p. 87.) In addition, on April 11, 2008, Appellant was required to participate in a Law Enforcement Assistance Program to address his overly aggressive and antagonistic behavior when dealing with individuals encountered during the performance of his job duties. (Committee Exhibit #1, p. 110.)
4. Appellant was assigned to work at the South Carolina Lottery Commission Building (Lottery Commission) on Main Street in Columbia, South Carolina from 5:30 p.m. March 27, 2010, to 5:00 a.m. March 28, 2010. At approximately 2:30 a.m., Appellant observed three individuals throwing something outside of the Lottery Commission. Appellant approached the

individuals- one female and two males- and determined they had been throwing water balloons outside of the Lottery Commission. All three individuals were subsequently arrested for Disorderly Conduct. The three individuals were later identified as Mr. Charles Spaht, Jr. (Mr. Spaht), Mr. Matthew Keith (Mr. Keith), and Ms. Samantha Swanson (Ms. Swanson). (Committee Exhibit #1, pp. 21 and 35.)

5. On April 15, 2010, Mr. Spaht father, Mr. Charles Spaht, Sr., sent an e-mail to Mr. Sam Berkheimer of the Richland County Sheriff's Department requesting his assistance in determining which agency had arrested his son on March 28, 2010. Mr. Spaht's father included his son's description of the arrest in this e-mail, which Mr. Berkheimer forwarded to Mr. Mark Keel, SCDPS Director¹ on April 19, 2010. (Committee Exhibit #1, pp. 39 - 43.)
6. On April 19, 2010, Mr. Benjamin F. Thomas, III, Chief Investigator with the SCDPS Office of Professional Responsibility (OPR), advised Mr. Spaht's father via e-mail that "[t]he arresting officer in this case works for the [BPS] which is under the umbrella of the [SCDPS]." Mr. Thomas further advised Mr. Spaht's father that his office conducted the Internal Affairs investigations for SCDPS, and that as a result of his complaint an investigation would begin relating to Appellant's conduct on the night of the subject incident. (Committee Exhibit #1, p. 38.)
7. On July 12, 2010, Appellant was notified by letter from Mr. Keel that his employment with SCDPS was being terminated for Improper Conduct, effective at the close of business July 12, 2010. According to Mr. Keel's letter, an investigation conducted by OPR revealed that Appellant had arrested three individuals for disorderly conduct on March 28, 2010, where there was no probable cause to do so. The OPR Investigation found that the arrest was based on two of the individuals arrested having tossed water balloons at a friend as part of a practical joke. Mr. Keel stated that all three individuals complained that Appellant was overly aggressive and threatening in manner and that Appellant kicked Ms. Swanson's legs apart while searching her after accusing her of being uncooperative. Appellant also indicated to another officer that he arrested the three individuals because the female was disobedient and did not spread her feet apart when he initiated the search. Mr. Keel asserted that Appellant "intimidated, threatened, and bullied these individuals for engaging in what was basically a harmless practical joke among friends." Appellant's actions were viewed by SCDPS "as an abuse of authority which constitute[d] improper conduct." (Committee Exhibit #1, p. 13.)

¹ Mr. Keel was the Director of SCDPS at the time of Appellant's suspension, but he is no longer employed by SCDPS.

8. According to Appellant, while on duty at the Lottery Commission he noticed the video camera screens located inside the building showed what appeared to be people throwing bottles outside of the building. After quickly exiting the building, he heard a female shriek, "don't hit me, don't hurt me" and also heard a male voice say, "hit her, get her." These three individuals were later identified as Mr. Spaht, Mr. Keith, and Ms. Swanson. Appellant told all three to stop and ordered them to place their hands on the wall. Appellant stated Ms. Swanson was non-compliant and he had to tell her three or four times to place her hands on the wall. Mr. Spaht and Mr. Keith were cooperative and followed his request. Appellant further stated that he instructed Ms. Swanson to stand in a proper search position similar to Mr. Spaht and Mr. Keith. Appellant inserted his foot between Ms. Swanson's feet and instructed her to stand with her legs apart. He placed his foot on the inside of her foot and slid his foot along with hers as she widened her stance in an attempt to have her comply with his instructions. Appellant said that the projectiles that appeared to be bottles on the video screen were actually water balloons.
9. Appellant questioned Mr. Spaht, Mr. Keith, and Ms. Swanson separately. While questioning them, Appellant asked that they sit on the ground, but Ms. Swanson refused to do so. Mr. Spaht and Mr. Keith stated that she had undergone tailbone surgery and could not sit on the ground. The statements from all three were consistent and indicated that they had been throwing water balloons as part of a practical joke.
10. Corporal M. E. Harris (Corporal Harris) later arrived to provide back-up support, at which point Appellant stated the reason the three individuals were going to jail was because Ms. Swanson was uncooperative and all three were engaged in Disorderly Conduct. Appellant subsequently arrested all three individuals and transported them to jail with the assistance of other officers. In an affidavit provided to the OPR Investigator assigned to the investigate the complaint regarding the March 28, 2010 incident, Mr. C. Lee Carter, III (Investigator Carter), Appellant stated that when he advised Corporal Harris that all three individuals were going to jail because the female was uncooperative, he did not mean he arrested the males because of her conduct. According to Appellant, he was "summarizing and attempting to tell the story to [Corporal Harris] within hearing distance of the suspects. All three were engaged in Disorderly Conduct[;] therefore[,] all were arrested." (Committee Exhibit #1, p. 77-)
11. Appellant stated that he could have reprimanded the individuals and let them go; his job, however, was to document the event and let the judge decide what action to take. Appellant stated to Investigator Carter that he may have exercised his discretion not to arrest them if everyone had been cooperative; he was trained, however, that if "one goes, they all go." (Committee Exhibit

#1, pp. 60, 67 and 80.) Appellant stated he had probable-cause-to-arrest the three individuals based on their loud and boisterous behavior. He further stated that Ms. Swanson could have been further assaulted by Mr. Spaht and Mr. Keith if he had let them go, but he felt that by arresting all three they would be safe and secure.

12. Appellant contends the arrest of the three individuals was investigated only because Mr. Spaht's father is a current or former FBI agent and that he complained about his son's arrest. Appellant further contends if there had been any impropriety on his part, his chain of command would have questioned the validity of the arrests sometime shortly after March 28, 2010. Appellant contends that his arrest of the three individuals meets the standards and definition of probable cause based upon his law enforcement training. Appellant denies being overly aggressive, threatening, intimidating or that he bullied or abused his authority. (Committee Exhibit #1, p. 5.)
13. Mr. Brenard Malone, the Lottery Commission security guard on duty the morning of the incident, testified that he witnessed Appellant's interactions with Ms. Swanson and stated Appellant did not hurt or harm her.
14. Ms. Swanson stated that while Appellant was searching her he kicked her ankles apart, placed his hands on her back and hip, choked her while pulling on her clothing, and called her a "smart butt." She also stated that she tried to comply to the best of her ability with Appellant's instructions. Mr. Keith testified that Appellant placed a lot of force on Ms. Swanson's hoodie during the arrest and enjoyed arresting all three of them. He further stated that they were just talking normally before Appellant approached them outside the Lottery Commission.
15. As part of his investigation, Investigator Carter talked to witnesses, Appellant, complainants, and reviewed the security camera video from March 28, 2010. Investigator Carter's review of the video revealed that Ms. Swanson's feet were about shoulder width apart before Appellant approached her. Appellant could be seen using his foot to forcibly move Ms. Swanson's feet further apart. (Committee Exhibit #1, p. 60.)
16. Corporal Harris stated that Appellant told him the reason the three individuals were being arrested was because the female would not follow his directions and was being disobedient. (Committee Exhibit #1, pp. 66, 76 and 77.) Corporal Harris told Investigator Carter that he thought Appellant's arresting all three subjects was a little excessive.
17. Officer K. A. Rogerson, a BPS Officer who provided back-up support to Appellant, testified he thought Appellant was being overly assertive while dealing with the three individuals but did not know the entire situation. He

further testified that the arrest was unnecessary based on what he saw and that he was embarrassed by Appellant's behavior.

18. Mr. Keel testified that after performing a review of the case he determined that the arrests by Appellant were improper. Appellant had no probable cause to make the arrests in this situation and abused his authority and discretion. ~~Furthermore, Appellant's conduct during the arrests was improper, including his focus on Ms. Swanson and his unprofessional comments. Mr. Keel stated his staff was aware of his expectations that all officers operate in a professional manner and treat people like they or their children would want to be treated. He testified that he talked with Appellant for 2 ½ hours while reviewing the case and determined the facts did not support making an arrest or even issuing a citation.~~ Mr. Keel's decision to terminate Appellant was based on Appellant's improper conduct on March 28, 2011, along with Appellant's past behavior.

19. SCDPS's Chief of Public Services, Mr. Zachary Wise (Chief Wise), testified that the Incident Report prepared by Appellant for the Disorderly Conduct charge possessed the correct wording to avert any suspicions of an improper arrest arising during review by a supervisor. Upon inspection of the situation, however, Chief Wise stated there was no probable cause for an arrest based on disorderly conduct and the arrests should never have been made. He further stated the arrests demonstrated an abuse of power by Appellant. Chief Wise stated that Appellant's comments about Ms. Swanson were improper and Appellant should have searched her prior to placing her in a BPS vehicle. Chief Wise noted that Appellant had previously demonstrated aggressive behavior during the performance of his duties. Even though attempts were made to correct such behavior, Chief Wise felt it would continue in the future. Therefore, Chief Wise supported the decision to terminate Appellant.

20. Section 16-17-530 of the South Carolina Code of Laws states that:

Any person who shall (a) be found on any highway or at any public place or public gathering in a grossly intoxicated condition or otherwise conducting himself in a disorderly or boisterous manner, (b) use obscene or profane language on any highway or at any public place or gathering or in hearing distance of any schoolhouse or church or (c) while under the influence or feigning to be under the influence of intoxicating liquor, without just cause or excuse, discharge any gun, pistol or other firearm while upon or within fifty yards of any public road or highway, except upon his own premises, shall be deemed guilty of a misdemeanor and upon conviction shall be fined not more than one hundred dollars or be imprisoned for not more than thirty days.

(Agency Exhibit #1, p.1.)

21. SCDPS's Disciplinary Action Policy #400.08 states that disciplinary actions imposed for unacceptable conduct should generally be progressive in nature, with consideration given to the severity of the conduct and the employee's past record. It further states that SCDPS reserves the right to impose any type of disciplinary action for any offense as it deems appropriate, including termination from employment for a first offense. (Committee Exhibit #1, pp. 127 -135.)

STATEMENTS OF POLICY AND CONCLUSIONS OF LAW

The State Employee Grievance Procedure Act (Grievance Act) creates the Grievance Committee as a quasi-judicial review body that conducts hearings of certain specified state employee grievance appeals. S.C. CODE ANN. § 8-17-340. In addition, the Grievance Act provides:

(E) The committee may sustain, reject, or modify a grievance hearing decision of an agency as follows:

- (1) In cases involving actual or threatened abuse, neglect, or exploitation, to include those terms as they may be defined in § 43-35-10 or 20-7-490, of a patient, client, or inmate by an employee, the agency's decision must be given greater deference and may not be altered or overruled by the committee, unless the covered employee establishes that:
 - (a) The agency's finding that the covered employee abused, neglected, or exploited or threatened to abuse, neglect, or exploit a patient, client, or inmate is clearly erroneous in view of reliable, probative, and substantial evidence;
 - (b) The agency's disciplinary action was not within its established personnel policies, procedures, and regulations; or
 - (c) The agency's action was arbitrary and capricious.
- (2) In all other cases, the committee may not alter or overrule an agency's decision, unless the covered employee establishes that the agency's decision is one or more of the following and prejudices substantial rights of the covered employee:

- (a) in violation of constitutional or statutory provisions;
- (b) in excess of the statutory authority of the agency;
- (c) made upon unlawful procedure;
- (d) affected by other error of law;
- (e) clearly erroneous in view of the reliable, probative, and substantial evidence on the whole record; or
- (f) arbitrary or capricious or characterized by abuse of discretion or clearly unwarranted exercise of discretion.

S.C. CODE ANN. § 8-17-340.

This case is governed by § 8-17-340(E)(2), which establishes that Appellant has the burden of proof to demonstrate that the decision to discipline him was wrong for the reasons articulated.

Based on the record and testimony presented at the hearing, the Committee found substantial evidence to support SCDPS's decision to terminate Appellant. "Substantial evidence' is something less than the weight of the evidence; it is evidence which, considering the record as a whole, would allow reasonable minds, to reach the conclusion that the administrative agency reached in order to justify its action." *Todd's Ice Cream, Inc. v. South Carolina Employment Security Commission*, 281 S.C. 254, 258, 315 S.E.2d 373, 375 (Ct. App. 1984).

On April 19, 2010, SCDPS received a complaint alleging misconduct by Appellant during the March 28, 2010 incident at the Lottery Commission. Subsequently, OPR began an investigation into the matter. At the conclusion of the investigation, SCDPS found that Appellant acted improperly during the arrest of three individuals for Disorderly Conduct. The arrest occurred when two of the individuals had tossed water balloons at a third individual as part of a practical joke. In addition, SCDPS contends that Appellant indicated to Corporal Harris that they were arrested because Ms. Swanson was not completely cooperative with Appellant. SCDPS further contends Appellant abused his authority by dealing with the individuals in an overly aggressive and hostile manner, which constitutes Improper Conduct. Appellant's employment record reflects a history of acting in a rude and overly aggressive manner while performing his duties.

A review of all of the evidence submitted at the hearing indicates that Appellant's actions on March 28, 2010, were inconsistent with the accepted conduct for a BPS officer. A review of the incident by Appellant's superiors found that Mr. Spaht's, Mr. Keith's, and Ms. Swanson's actions did not constitute Disorderly Conduct under the law, because there is no evidence the individuals were intoxicated or used fighting words when talking with Appellant *State v. Perkins*, 306 S.C. 353, 354-355, 412 S.E.2d 385, 386 (1991) (recognizing that the "State may not punish a person for voicing an objection to a police

officer where no 'fighting words' are used," because "[t]he freedom of individuals verbally to oppose or challenge police action without thereby risking arrest is one of the principal characteristics by which we distinguish a free nation from a police state"). The extent of the loud and boisterous behavior is questionable and, based on the Appellant's own statements to Corporal Harris, the Committee finds the arrests were based primarily on Appellant's perception that Ms. Swanson was not complying with his directives rather than the individuals behaving in a loud or boisterous manner. While the Committee found Mr. Keith's and Ms. Swanson's testimony less than totally credible, the evidence presented by SCDPS supported SCDPS determination that Appellant acted inappropriately. Even after determining the episode involved water balloons and what was considered a harmless practical joke among friends, Appellant searched the individuals and arrested all three. Appellant has a history of incidents in which he conducted himself in a rude and aggressive manner. Despite Appellant having completed mandatory counseling through the Department's Employee Assistance Program, Appellant again abused his position as a law enforcement officer.

The Committee also finds that SCDPS carefully considered the appropriate disciplinary action described in its Disciplinary Action Policy when deciding to terminate Appellant. Based on Appellant's disciplinary history, which included previous incidents of Improper Conduct and Appellant's failure to avoid Improper Conduct- despite receiving assistance from the Law Enforcement Assistance Program- SCDPS made the decision to terminate Appellant for this latest occurrence of Improper Conduct. According to SCDPS Progressive Discipline Policy, SCDPS reserves the right to impose any type of disciplinary action for any offense it deems appropriate, including termination from employment for a first offense. The Committee concludes that SCDPS's decision to terminate Appellant was appropriate and consistent with its established policy guidelines.

As to Appellant's contention that an investigation would not have been conducted had Mr. Spaht's father not been a law enforcement officer, the Committee finds Appellant failed to provide sufficient evidence to support this theory. Furthermore, even if the investigation was initiated because Mr. Spaht's father was in law enforcement, this relationship does not alter the findings of the investigation or the determination that Appellant's behavior constituted Improper Conduct.

DECISION

The Committee finds Appellant failed to establish that SCDPS's decision prejudiced his substantial rights and met one or more of the elements contained in S.C. CODE ANN. § 8-17-340(E)(2). Therefore, the Committee upholds the decision of SCDPS to terminate Appellant and denies the relief sought.

For the Committee:

Herbert Cooper
Ande

Date:

8/26/2011

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CURTIS M. LOFTIS, JR.
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April 12, 2011

VIA FACSIMILE

Ms. Rachel Erwin
Assistant General Counsel
S.C. Department of Public Safety
Post Office Box 1993
Blythewood, South Carolina 29016

Mr. John O'Leary
Attorney at Law
714 Calhoun Street
Columbia, South Carolina 29201

Re: E. Shawn Sorrell v. South Carolina Department of Public Safety

Dear Ms. Erwin and Mr. O'Leary:

This letter is in response to Mr. O'Leary's objection to the inclusion of several documents in the above-referenced appeal file.

Mr. Ganjehsani has ruled upon the above mentioned objections. Pursuant to S.C. Code Ann. § 8-17-340, a covered employee must establish why the agency's decision should be overruled. Proceedings before the State Grievance Committee are governed by the State Administrative Procedures Act. S.C. Code Ann. § 8-17-330 (Supp. 2009). Proceedings in contested cases under the Administrative Procedures Act are governed by the South Carolina Rules of Evidence. S.C. Code Ann. § 1-23-310 (Supp. 2008).

Mr. Ganjehsani's ruling is enclosed.

Should either party have any questions concerning this ruling please contact this office prior to the hearing.

Sincerely,

Heather Keever

Human Resources Consultant
Alternative Dispute Resolution Program

cc: Ms. Malissa Burnette (via facsimile)

Attachments

STATE EMPLOYEE GRIEVANCE COMMITTEE

RULING ON OBJECTIONS

APPELLANT'S NAME: E. Shawn Sorrell
JOB CLASSIFICATION: Lance Corporal
AGENCY: South Carolina Department of Public Safety
NATURE OF CASE: Termination

By letter dated November 17, 2010, Appellant E. Shawn Sorrell ("Appellant") asserted an objection to several documents¹ ("Documents") that the South Carolina Department of Public Safety ("DPS") intended to provide the State Employee Grievance Committee ("Committee") at the beginning of the hearing in this matter.² Appellant offered no reason(s) in support of his objection. By letter dated December 3, 2010, DPS outlined its opposition to the exclusion of the Documents.

Appellant's objections were initially overruled³ for failing to identify with specificity any evidentiary ground(s) upon which the Documents should be withheld from the Committee.⁴ Appellant subsequently submitted specific objections to the Documents in writing by letter dated February 23, 2011.⁵ At Appellant's request, a hearing was held on March 22, 2011, at which time Appellant's counsel and DPS's counsel articulated their respective positions. After considering the parties' arguments, I find as follows:

(1) Page 24

Appellant contends that this page contains affidavit testimony constituting hearsay and information that is otherwise irrelevant to this case, which DPS denies. I find that the subject matter contained therein is relevant and overrule the

¹ Proposed Committee Exhibit No. I at pp. 24, 29, 30, 47-49, 51-58, 64-65, 75, 82-98, and 107-109.

² See S.C. CODE ANN. § 8-17-350 ("The documents transmitted by the State Human Resources Director to the designated committee panel and committee attorney must be marked into evidence as 'Committee Exhibit I' during the committee chairman's opening statement at the beginning of the hearing unless excluded by the committee attorney based on a prior objection raised by either party.")

³ See Ruling on Objection dated February 3, 2011.

⁴ See S.C. CODE ANN. §§ 1-23-330 (declaring that "the rules of evidence as applied in civil cases in the court of common pleas shall be followed" in contested cases under the South Carolina Administrative Procedures Act) and 8-17-330 (confirming that "provisions of the State Administrative Procedures Act apply in proceedings before the State Employee Grievance Committee").

⁵ Appellant asserted an objection to Page 50 of proposed Committee Exhibit I for the first time in this letter, which also omitted any reference to two documents (Pages 57 and 107) previously objected to in the November 17, 2010 letter. Pages 50, 57, and 107 are all addressed herein.

objection on this ground. However, I sustain the objection as to hearsay.⁶ Although Appellant confined his objections to this page, it is apparent that the investigative report in which this page appears includes additional references to affidavit testimony from other individuals on pages 23 and 25-28. Consequently, Pages 23-28 shall be excluded from the documents provided to the Committee as part of Committee Exhibit I. This ruling does not preclude DPS from attempting to introduce the report or the substance of the information contained therein through witness testimony or other means at the hearing.⁷

(2) Pages 29-30

Appellant contends these pages are irrelevant because they pertain to complaints about him that are not before the Committee and also constitute hearsay. DPS counters that its terminating Appellant was based in part on his "history of improper behavior." I find that these pages are relevant for the reasons articulated by DPS and overrule the objection on this ground.⁸ However, I sustain the objection as to hearsay to the extent that these pages are not self-authenticating⁹ and purport to recite facts underlying the incidents described by DPS as "improper behavior." Accordingly, Pages 29-30 shall be excluded from Committee Exhibit I. Notwithstanding this determination, DPS may attempt to introduce evidence of the existence of prior complaints about Appellant or his improper behavior and any resulting action taken by DPS through appropriate testimony and documentary evidence at the hearing.¹⁰

⁶ See Ex parte Floyd, 367 S.C. 56, 64, 624 S.E.2d 649, 653 (2006) (observing that affidavits "generally constitute inadmissible hearsay, with some exceptions, although they may become admissible in whole or part when a proper foundation is laid by a witness's testimony").

⁷ Id.

⁸ Contrary to Appellant's position, the South Carolina Supreme Court has deemed such evidence relevant in the context of proceedings before the Committee. See South Carolina Department of Mental Health v. Moore, 295 S.C. 42, 46, 367 S.E.2d 27, 29 (1988) (affirming circuit court's reversal of Committee's "clearly erroneous" decision to reinstate terminated employee whose "disciplinary and performance deficiencies were thoroughly documented," including agency's issuance of written warnings for deficient performance and inappropriate behavior over the course of several months prior to employee's termination).

⁹ See State v. Anderson, 386 S.C. 120, 127, 687 S.E.2d 35, 38 (2009) (recognizing prior case law holding that the proponent of the evidence "offered under the public records exception or the business record exception" to the prohibition against hearsay "must still comply with authentication requirements").

¹⁰ See S.C. CODE ANN. § 19-5-510 (providing that "[a] record of an act, condition or event shall, insofar as relevant, be competent evidence if the custodian or other qualified witness testifies to its identity and the mode of its preparation, and if it was made in the regular course of business, at or near the time of the act, condition or event and if, in the opinion of the court, the sources of information, method and time of preparation were such as to justify its admission"); Rule 803(6), SCRE (setting forth hearsay exception for business records); Rule 803(8), SCRE (containing hearsay exception for public records).

(3) Pages 47-58, 64-65

Appellant contends that these pages contain affidavit testimony constituting hearsay. DPS argues that these pages contain information that it relied upon in reaching its decision to terminate Appellant. Although DPS may be able to introduce evidence of the substance of the information contained in the affidavits (or potentially the affidavits themselves, in whole or in part) through witness testimony or other means, I find that the affidavits constitute hearsay and that Appellant is within his rights to object to their admission without a proper foundation first being laid.¹¹ Accordingly, Pages 47-58 and 64-65 shall be excluded from Committee Exhibit I.

(4) Page 75

Appellant objects to the inclusion of this page on grounds including hearsay and lack of relevance, due to the incident in question taking place after the March 28, 2010 occurrence referred to by DPS as the "primary incident" associated with Appellant's termination. DPS responds by stating that this page was part of its investigation of Appellant and should therefore be admitted. I find that Appellant's remarks are relevant,¹² inasmuch as DPS noted in its July 9, 2010 termination notice that Appellant had a history of "conducting [him]self in a rude and aggressive manner."¹³ However, I find that the page is not self-authenticating and contains hearsay, thereby requiring its exclusion from Committee Exhibit I. Nevertheless, DPS will be permitted to attempt to introduce this document at the hearing upon a proper evidentiary showing.

(5) Pages 82-86

Appellant contends that this page contains hearsay and is otherwise irrelevant to this case. DPS disputes these assertions and contends that the document is part of its investigative file regarding Appellant. I find that the subject matter contained therein is relevant and overrule the objection on this ground. However, I find that the document is not self-authenticating and sustain the objection as to hearsay; Pages 82-86 shall be excluded from Committee Exhibit I accordingly. Notwithstanding this ruling, DPS indicates that it intends to elicit testimony at the hearing from a former employee of the Criminal Justice Academy regarding the incident referenced in these pages. If so, DPS will be

¹¹ See discussion and authority cited in footnotes at Paragraph (1), *supra*.

¹² The fact that the conduct set forth in this document occurred after the "primary incident" does not necessarily render it irrelevant. See Connor v. City of Forest Acres, 363 S.C. 460, 473, 611 S.E.2d 905, 912 (2005) (observing that "evidence of events occurring after [an] [e]mployee's initial termination date," including during the public employee grievance process itself, may be relevant in certain circumstances).

¹³ See proposed Committee Exhibit I at Page 13.

permitted to attempt to introduce these pages or the substance of the information contained therein through such testimony or other appropriate means.

(6) Page 87

Appellant contends this page is irrelevant and prejudicial, which DPS denies. I find this document is relevant and not unfairly prejudicial, inasmuch as it inventories Appellant's disciplinary history and the description of each violation is reasonably limited in scope. Accordingly, Appellant's objection is denied on the grounds stated.

(7) Pages 88-98

Appellant objects to the inclusion of these pages on the grounds that they contain hearsay, are irrelevant, and include conclusory opinions. DPS argues that the documents are relevant because they pertain to Appellant's disciplinary history and are necessary to rebut Appellant's claim of retaliatory discharge. I find that the pages are relevant but deem them inadmissible to the extent they are not self-authenticating and contain subjective opinions, judgments, or conclusions.¹⁴ Consequently, Pages 88-98 shall be excluded from Committee Exhibit I. However, DPS shall be afforded an opportunity to introduce redacted versions of these documents or the substance of the information contained therein upon proper authentication at the hearing, in accordance with the applicable Rules of Evidence¹⁵ or the Uniform Business Records as Evidence Act.¹⁶

(8) Pages 107-109

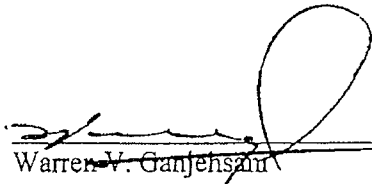
Appellant objects to the inclusion of these pages on the grounds that they are irrelevant, constitute hearsay, and are prejudicial, all of which DPS denies. I find that these documents are relevant and not unfairly prejudicial, inasmuch as they are the core instruments by which DPS memorialized Appellant's disciplinary violations. Despite the relevance of these documents, they are not self-authenticating and Appellant's hearsay objection therefore must be sustained. Accordingly, Pages 107-109 shall be excluded from Committee Exhibit I, but

¹⁴ See Rule 803(6), SCRE (providing that "subjective opinions and judgments found in business records are not admissible"); Rule 803(8), SCRE (providing that "investigative notes involving opinions, judgments, or conclusions are not admissible" under public records exception to hearsay prohibition); South Carolina Department of Motor Vehicles v. McCarson, 391 S.C. 136, 705 S.E.2d 425 (2011) (rejecting agency's argument that officer's incident report containing another officer's observations of driver's allegedly "erratic" driving was admissible under Rule 803(6) or 803(8), SCRE).

¹⁵ Rule 803(6) and 803(8), SCRE.

¹⁶ S.C. CODE ANN. § 19-5-510.

DPS shall be afforded an opportunity to have such documentation admitted into evidence at the hearing through a records custodian or other appropriate witness.¹⁷


Warren V. Ganjehsani
Committee Attorney

April 12, 2011

¹⁷ See discussion and authorities cited in footnotes at Paragraph (7), *supra*.

NIKKI R. HALEY, CHAIR
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March 3, 2011

Mr. John A O' Leary
Attorney at Law
714 Calhoun Street
Columbia, South Carolina 29201.

Re: E. Shawn Sorrell v. South Carolina Department of Public Safety (SCDPS)

Dear Mr. O'Leary:

This letter is in response to your two letters, both dated February 23, 2011, and received by this office on February 24, 2011, regarding the above-referenced appeal. Your letters included concerns regarding the process for the submission of documents to the State Employee Grievance Committee panel assigned to hear Mr. Sorrell's appeal prior to the day of the hearing.

You also state in one of your letters that you had requested, in earlier correspondence, that the specific regulations, rules, policies or procedures be provided to your office to "show the authority for such a procedure currently utilized." This office has received no such request. I do recall that, during a telephone conversation, I informed you that I would be happy to provide you with the information. At the conclusion of the conversation, you indicated that you would stop by my office the next day on your way to Rock Hill, South Carolina. Unfortunately, as you indicated during a subsequent telephone conversation, you were unable to stop by my office to obtain the information.

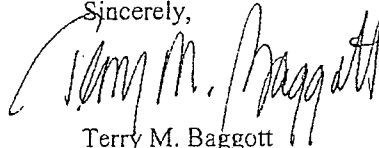
This information, however, is available on our web site which is accessible to the public. Specifically, Section 8-17-350 of the S.C. Code of Laws states in part: "[t]he State Human Resources Director shall notify committee members, the committee attorney, and the parties concerned of the date, time and place of hearings. The documents transmitted by the State Human Resources Director to the designated committee panel and committee attorney must be marked into evidence as "Committee Exhibit I" during the committee chairman's opening statement at the beginning of the hearing unless excluded by the committee attorney based on a prior objection raised by either party." [Emphasis added.] Also, section 19-718.07 (D)(1) of the State Human Resources Regulations states in part that: "[t]hose documents submitted by both parties will be provided by OHR to committee members prior to the hearings and considered to be the record during the hearing and marked into evidence as Committee Exhibit I." [Emphasis added.] In addition, section 19-718.07 (D)(3)(a-b) states in part that: "[t]he State Human Resources Director shall arrange for the reproduction of records, reports, and documentation timely submitted by both parties and make this information available, prior to the date of the hearing, to the designated Committee panel...the documents transmitted...to the designated Committee panel and Committee Attorney must be marked into evidence at the beginning of the hearing unless excluded by the Committee Attorney based on a prior objection raised by either party." [Emphasis added.]

Mr. John A. O'Leary
March 3, 2011
Page Two

In accordance with both statute and the State Human Resources Regulations, the documents submitted by both parties are provided to the Committee panel by this office prior to the date of the scheduled hearing. Parties to an appeal are notified that these documents will be provided to the Committee panel prior to the hearing in the letter advising them of the date, time, and place of the hearing. Specifically, my letter of October 11, 2010, to Ms. Malissa Burnette, your co-legal counsel, and Ms. Teresa Kitchens, SCDPS Human Resources Administrator, stated that "[a]ll documents submitted concerning this appeal...will be forwarded to the Committee for review approximately one week prior to the hearing date." This same letter, of which you were sent a copy, also advised that "[a]ll objections raised by either party to these documents before transmittal to the Committee, including objections to any polygraph examination results, must be made to this office prior to that time. This time frame, however, will not preclude appropriate evidentiary objections from being raised by either party at the hearing."

I hope this information has cleared up any confusion that may exist regarding this office's responsibilities in providing documents to the State Employee Grievance Committee. If you have any questions or concerns please contact me at 803-896-5003.

Sincerely,



Terry M. Baggott
Managing Partner
Alternative Dispute Resolution Program

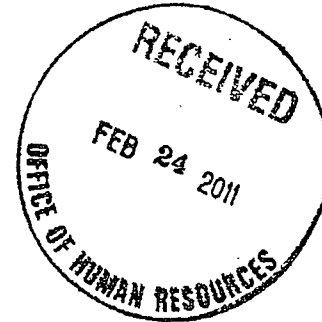
c: Ms. Malissa Burnette
Ms. Rachel Erwin

00033

O'LEARY ASSOCIATES, P.A.

JOHN A. O'LEARY, ATTORNEY

Katie O'Leary Fayssoux (of Counsel)



February 23, 2011

Heather Keever
State Budget & Control Board
Office of Human Resources
8301 Parklane Road, Suite 220
Columbia, SC 29223

RE: Edwin S. Sorrell vs. SCDPS

Dear Ms. Keever:

Our office received on 02/17/11 a letter from the Department of Public Safety, Rachel Erwin, Attorney. In her correspondence she objects to a hearing on a motion to reconsider as she feels it would be futile. It's possible that counsel for SCDPS has insider information as to the impartiality of the hearing officer. Mrs. Ervin states that a motion to reconsider is limited to the argument presented at the time the original motion was made, period. At no time have we had the opportunity to present before the Board or Hearing Officer for the purposes of making a record the motions to which she is referring. Ms. Ervin states clearly that we cannot present new argument; however, no argument have ever been presented. We do not consider a request to submit relevant objections a hearing in any shape or form. There is no Rule of Evidence that I have ever seen that allows this procedure to take place other than before this Board.

It is our intention to build a proper record for this and challenge the system utilized by the Board. The fact of the matter is that, over the years, objections were made, documents were then withheld and arguments were made at the time the hearing was scheduled. At no time has counsel for Mr. Sorrell ever had the opportunity to present or make a record for the exclusion of the documents. All documents which have been presented to the Board, regardless of any objections, we feel, are improper since no foundation for any of those documents has ever, at any time, been laid.

Heather Keever
State Budget & Control Board
February 23, 2011
Page Two

Possibly, the intent of the SCDPS is to place as many documents before the Board as possible in an attempt to confuse the Board with issues that are totally irrelevant for the basis for the termination. The policy and procedure utilized by the State in this case is not only unfair and prejudicial, but contrary to any rules of evidence. Basic due process would require the opportunity to be heard and to build a record for subsequent appeal.

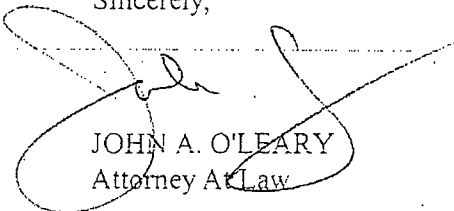
Several issues also arise as to the authority for the procedure that is being utilized in this particular case. It is critical to note that the sole purpose of the Budget & Control Board, in these instances, is to at least give the appearance of an impartial and fair hearing. "Hearing" is the key word - we have not a hearing nor any opportunity to present any arguments before the Board or Hearing Officer.

In earlier correspondence we have requested that the specific regulations, rules, policies, or procedures be provided to our office to show the authority for such procedure currently utilized. I understand the position of the Department in wishing to uphold a termination which has apparently also has resulted in third-party litigation due to the alleged actions of the officer. The crowing point in the correspondence from the Department of Public Safety is: "at the time of the original objections were made Mr. O'Leary provided no basis for objections and as such would be unable to provide new arguments." The bottom line is; we've never had an opportunity to argue. There is nothing that says you argue strictly on paper. The Rule of Evidence recognizing 103(a)(1) recognizes that some objections are apparent.

Unfortunately, no record has been made to serve as the basis for an appeal; however, if this is the policy that the Budget and Control Board wishes to pursue; it removes even the appearance of "basic fairness". We will forward to the Department of Public Safety, the reasons for the objection. All of which are apparent.

Thank you for your time and attention to this matter. I would appreciate a response to be given to allow us to take proper action with the courts.

Sincerely,



JOHN A. O'LEARY
Attorney At Law

JAO/ffk

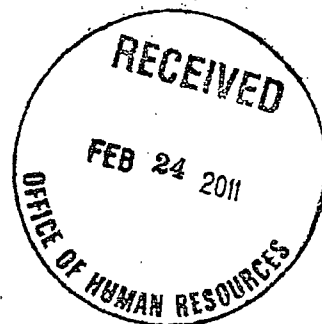
cc: Malissa Burnette, Esquire
Shawn Sorrell

00035

O'LEARY ASSOCIATES, P.A.

JOHN A. O'LEARY, ATTORNEY

Katie O'Leary Fayssoux (of Counsel)



February 23, 2011

Joseph Miller
State Budget & Control Board
Office of Human Resources
8301 Parklane Road, Suite 220
Columbia, SC 29223

RE: Edwin S. Sorrell vs. SCDPS
Detail Response to 11/17/2011 Correspondence and
Response to 02/17/2011 Correspondence from Counsel, SCDPS

Dear Ms. Erwin:

The purpose of this correspondence is to provide the reasons for the objections to the pages previously submitted although counsel is fully aware of the objections since all are apparent on their face.

Each of the documents on their face exhibit the underlying basis for the objection. It is unfortunate that apparently there is not, in this instance, a forum to actually argue those points. To conduct a unilateral decision-making process, absent any record being made, I feel, is a violation of equal protection and due process since, in the past, this procedure has not been followed and clearly there is no ability to present to a "fair and impartial" Board or hearing officer oral arguments.

If your goal is simply to uphold any termination, then it is clear that no action should be taken by the Board; however, if the purpose of the Board is to provide basic due process, or even the appearance of due process, it is imperative that an opportunity be allowed to all parties to present their objections in a proper forum with a proper record being made for purposes of an appeal. This simply doesn't exist in this case or in the Board policy. All evidence given to the Board is admitted absent any foundation.

The objections are as follows and all are self-explanatory:

Joseph Miller
State Budget & Control Board
February 23, 2011
Page Two

- Page 24:** To allow Affidavits by parties simply denies basic protection. That is simply, the right to cross-examine a witness. In this case where there is a resume of the Affidavit is not only improper but constitutes double-hearsay since neither the person who wrote the report is before the Board nor the Affiant referenced.
- Page 29:** Reference is made to prior complaints which are beyond the scope of the charges and irrelevant to the case. In addition, the facts stated as to the prior complaints constitutes hearsay since the parties that supposedly made these complaints which are irrelevant are not before the Board.
- Page 30:** References irrelevant matters with regard to other files and/or complaints. Clearly, this is irrelevant to the charges before the Board.
- Pages 47-52:** References an Affidavit which constitutes hearsay and deprives a person the right to cross-examine witnesses. With reference to the Affidavit of Mr. Charles Spatt, it has come to our attention that litigation has been filed against the Department of Public Safety by Mr. Spatt and all parties, even the Department of Public Safety, should have the opportunity to cross-examine. Additional grounds are hearsay, prejudicial and self-serving.
- Page 53-56:** References an Affidavit of Matthew Keith is hearsay and denies the opportunity to cross-examine and violates due process.
- Page 58:** References an Affidavit of Samantha Swanson constitutes hearsay and denies the opportunity to cross-examine and violates due process.
- Page 64-65:** References an Affidavit of Officer Rogerson constitutes hearsay and denies the opportunity to cross-examine and violates due process.
- Page 75:** References an interview by Investigator Lee Carter of a third party regarding irrelevant issues which took place subsequent to the incident for which Mr. Sorrell has been charged and constitutes hearsay and denies the opportunity to cross-examine and violates due process. The documents show it was an interview at the Massella Law Firm which is a party with a vested interest in this matter since, it is our understanding that this firm has brought a civil law suit in this matter on behalf of persons legally arrested by Mr. Sorrell.

Joseph Miller
State Budget & Control Board
February 23, 2011
Page Three

- Page 82:** References a complaint and investigative file from Investigator Lee Carter and is irrelevant, immaterial, and prejudicial and such document constitutes hearsay and denies the opportunity to cross-examine and violates due process.
- Page 83:** References an irrelevant statement and constitutes hearsay and denies the opportunity to cross-examine and violates due process.
- Page 84-86:** This affidavit is likewise irrelevant and constitutes hearsay and denies the opportunity to cross-examine and violates due process.
- Page 87:** Irrelevant and prejudicial
- Page 88-90:** Investigative report of Investigator Phil Grimes is irrelevant, has no proper foundation, and constitutes hearsay and denies the opportunity to cross-examine as to the authenticity and accuracy and credibility of the witnesses and violates due process. Further, the report follows with a conclusion which is contrary to concept that the Board has to make a decision and it is allowing the investigator to substitute his opinion for that of the Board assuming the Board has not already been influenced.
- Page 91:** This document is a conclusion, is irrelevant and immaterial to the charge before the Board.
- Page 92-98:** These documents reference totally irrelevant and immaterial events not before the Board nor are they the basis for the termination of Officer Sorrell. These documents are highly prejudicial, constitutes hearsay, and denies the opportunity to cross-examine violating due process of Mr. Sorrell.
- Page 108:** This document is irrelevant, immaterial, prejudicial and constitutes hearsay and denies the opportunity to cross-examine and violates due process.
- Page 109:** This document is irrelevant, immaterial, prejudicial and constitutes hearsay and denies the opportunity to cross-examine and violates due process.

The above are explanations with reference to some of the arguments that would be made had an actual hearing taken place on the pages references in the 11/17/2010 letter.

Joseph Miller
State Budget & Control Board
February 23, 2011
Page Four

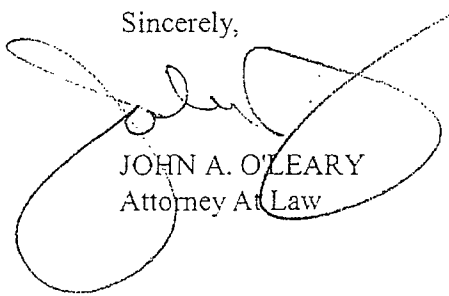
The bottom line is that the entire process of documents being submitted to a Board prior to any evidentiary basis is contrary to any rule of evidence. This Board, if it is to be an administrative hearing Board, should follow the rules of evidence by laying a proper foundation for any documents that are admitted. It appears that the Board has adopted a hybrid policy with reference to evidence. I know of no precedent in which a finder of fact is submitted documents prior to the date of the hearing.

Objections set forth above, and (Rule 103(a)(1)), the basis for all these objections and grounds are apparent from the context. The actions taken by allowing this evidence in, absent any type of hearing and denying a record to be made for objections prior to submission to the Board constitutes denial of substantial rights guaranteed by South Carolina authority. The time to object is at the time of the hearing.

It is absolutely astounding that under the concept of "saving time", documents absent any foundation are forwarded to the triers of fact. The majority of those documents consist of hearsay and are allowed into evidence well before the actual date of the hearing. Unfortunately, Mr. Sorrell as other state employees, has vested numerous years and toil into his job. The whole purpose of the Budget and Control Board hearing is to allow an employee the opportunity for a fair and impartial hearing. The procedures utilized in the interest of "saving time" totally ignores any of the basic rules of evidence or fairness.

In spite of the argument made by the State that this is part of the hearing, there is absolutely no authority to allow this procedure to be utilized. It creates a hybrid policy which totally ignores basic rights of employees. If in fact the purpose of the hearing is to simply make the employee feel that he or she has received a fair and impartial hearing prior to the termination and ending of their career, then they certainly do not achieve this objective. By a procedure such as this, with no record, no hearing, and submission of evidence absent any foundation, is inconsistent with due process, even in our State.

Sincerely,



JOHN A. O'LEARY
Attorney At Law

JAO/ffk

cc: Malissa Burnette, Esquire
Shawn Sorrell

00039



**S. C. DEPARTMENT
OF PUBLIC SAFETY**

OFFICE OF GENERAL COUNSEL

P.O. Box 1993, Blythewood, S.C. 29016; (803) 896-7965, Fax: 896-7967

February 17, 2011

Via Fax No. (803) 896-5050

Ms. Heather Keever
State Budget and Control Board
Office of Human Resources
8301 Parklane Road, Suite A220
Columbia, SC 29223

Re: E. Shawn Sorrell vs. S. C. Department of Public Safety
Response to Ruling on Objections

Dear Ms. Keever:

Please accept this correspondence as a response to Mr. O'Leary's correspondence dated February 14, 2011 objecting to the February 3, 2011 ruling by the Committee Attorney on his objections and requesting a reconsideration of that ruling.

The Department believes the ruling of the Committee Attorney should stand. By correspondence dated November 17, 2010, Mr. O'Leary objected to 37 pages in the committee exhibit. Such correspondence is in essence a Motion for Exclusion. However, Mr. O'Leary offered no basis to support his objection to any of the 37 pages. It is a fundamental rule in contested matters that the moving party bears the burden. Mr. O'Leary has failed in meeting that burden by not providing the Committee Attorney with any basis to support his objection. The Department responded in writing to Mr. O'Leary's objection and provided a written basis supporting the reasons it believed the documents should be included. The Department believes its response provides ample support for why the pages should be included in the committee exhibit.

The Department believes a hearing on the Motion to Reconsider would be futile. When arguing a Motion to Reconsider, a party is limited to the argument presented at the time the original motion was made and cannot present new arguments. At the time the original objections were made, Mr. O'Leary provided no basis for his objections and as such would be unable to provide new arguments at the time of a Motion to Reconsider.

Page Two
February 17, 2011

Should you have any questions, you may contact me at (803) 896-9664. In my absence, please contact our Paralegal, Randi Runkles, at (803) 896-7965. Thank you for your attention to this matter. With kind regards, I am

Yours very truly,



Rachel D. Erwin
Assistant General Counsel

RDE/tr

cc: Mr. John O'Leary, Esq.
Via Fax No. (803) 252-7515

Ms. M. Malissa Burnett, Esq
Via Fax No. (803) 404-6902

Ms. Teresa Kitchens, HR

00041

O'LEARY ASSOCIATES, P.A.

JOHN A. O'LEARY, ATTORNEY

Katie O'Leary Fayssoux (of Counsel)



February 14, 2011

Terry M. Baggott
SC State Budget & Control Board
Office of Human Resources
8301 Parklane Road, Suite A-220
Columbia, SC 29223

RE: Edwin Shawn Sorrell

Dear Mr. Baggott:

As per our conversations of February 10th and 11th concerning my client, E. Shawn Sorrell, this is a request for a hearing for reconsideration of the February 3, 2011 decision by Committee Attorney Warren V. Ganichsan as to the objections properly filed in this case. Over the past several years, I have filed numerous objections on other cases and, in each instance, the materials were simply not passed on to the Board, but rather held by the Committee Attorney and distributed only after arguments before the attorney and a ruling at that time.

In this instance, the procedure utilized by Mr. Ganichsani, I feel, is improper and contrary to basic due process. Further, it would be our request that a new Board be empaneled which has not received the materials.

The irony of his ruling is that all the documents that have been forwarded have been forwarded without a proper foundation. The Rules of Evidence referenced by Mr. Ganichsani; however, I know of no rule that allows a unilateral decision absent a hearing with a proper record being made and foundation being laid. In addition, I would request an evidentiary hearing be held prior to the next

714 Calhoun Street
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Fax: 803-252-7515
www.olearylawsco.com

Terry M. Baggott
SC State Budget & Control Board
Office of Human Resources
February 14, 2011
Page Two

scheduled Board for Mr. Sorrell. It is unquestionable that the documents that have been forwarded have been done contrary to any rules of evidence and have seriously prejudiced the rights of Mr. Sorrell.

I appreciate your attention to this matter. Thank you for allowing me to discuss this with you.

Sincerely,

JOHN A. O'LEARY
Attorney At Law

JAO/ffk

cc: Mr. Joseph C. Miller
Alternative Dispute Resolution Program
SC State Budget & Control Board
8301 Parklane Road, Suite A-220
Columbia, South Carolina 29223

Ms. Heather Keaver, Human Resources Consultant
Alternative Dispute Resolution Program
SC State Budget & Control Board
8301 Parklane Road, Suite A-220
Columbia, South Carolina 29223

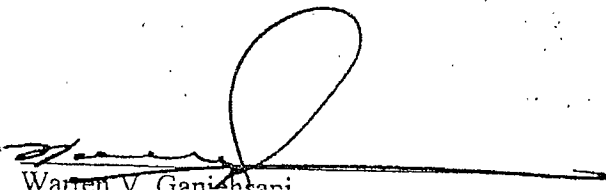
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RULING ON OBJECTION

APPELLANT'S NAME: E. Shawn Sorrell
JOB CLASSIFICATION: Lance Corporal
AGENCY: South Carolina Department of Public Safety
NATURE OF CASE: Termination

By letter dated November 17, 2010, counsel for Appellant E. Shawn Sorrell ("Appellant") asserted an objection to the inclusion of several documents¹ ("Documents") in Committee Exhibit No. 1. Appellant offered no reason(s) in support of his objection. By letter dated December 3, 2010, counsel for the South Carolina Department of Public Safety ("DPS") opposed exclusion of the Documents and offered various arguments in favor of the Documents remaining in the record.

Appellant's objection fails to identify with specificity any ground(s) upon which the Documents should be withheld from Committee Exhibit No. 1. An objection "must be on a specific ground"² in order "to bring into focus the precise nature of the alleged error so it can be reasonably understood by the trial judge."³ Appellant's objection does not meet this minimum threshold and is therefore OVERRULED.


Warren V. Ganjehsani
Committee Attorney

February 3, 2011

¹ Proposed Committee Exhibit No. 1 at pp. 24, 29, 30, 47-49, 51-58, 64-65, 75, 82-98, and 107-109.

² State v. New, 338 S.C. 313, 318, 526 S.E.2d 237, 239 (Ct. App. 1999).

³ State v. Holliday, 333 S.C. 332, 338, 509 S.E.2d 280, 283 (Ct. App. 1998).

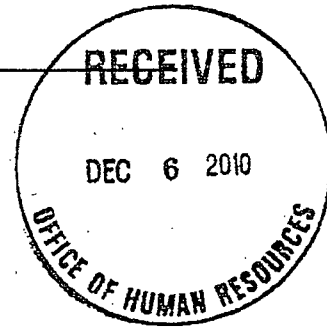


**S. C. DEPARTMENT
OF PUBLIC SAFETY**

OFFICE OF GENERAL COUNSEL

P.O. Box 1993, Blythewood, S.C. 29016: (803) 896-7965, Fax: 896-7967

December 3, 2010



Via Fax No. (803) 896-5050
ORIGINAL VIA MAIL

Ms. Heather Kever
State Budget and Control Board
Office of Human Resources
8301 Parklane Road, Suite A220
Columbia, SC 29223

Re: E. Shawn Sorrell vs. S. C. Department of Public Safety
Objections to Documentation

Dear Ms. Kever:

Please accept this correspondence as a response to Mr. O'Leary's correspondence dated November 17, 2010 objecting to certain pages in the committee exhibit. The Department notes that the Plaintiff has failed to state a reason for removing these pages from the Committee Exhibit and believes the Plaintiff should list a reason for insisting that these pages be removed. The Department believes the listed pages should remain a part of the Committee Exhibit for the reasons stated below.

Page 24 This page is a part of the synopsis of the investigation which provides information related to the complaint against the employee. These materials are part of the Department's investigation of the employee's misconduct and are therefore relevant to the proceedings before the committee.

Page 29 This page is a part of the synopsis of the investigation which provides information related to the complaint against the employee. These materials are part of the Department's investigation of the employee's misconduct and are therefore relevant to the proceedings before the committee. Additionally, this page contains information regarding a similar incident with the employee in the past which resulted in the Department requiring the employee to attend counseling. This incident is referenced in the termination letter and was taken into consideration by the Department in imposing the discipline in this case.

Page 30 This page is part of the synopsis of the OPR investigation of this matter. This page contains information regarding past OPR-investigations involving the same employee. The Department believes these pages are relevant. Part of the plaintiff's contention is that he was terminated unlawfully for reporting violations in the past to the Department. The Department disputes this contention and asserts that these violations are evidence that the Department's decision to terminate the plaintiff was not out of retaliation for filing complaints, but based on the primary incident which took place on March 28, 2010 and his history of improper behavior.

00045

Page Two
December 3, 2010

Pages 47-58 These pages are part of the OPR investigation into the complaint against the plaintiff. These pages contain the affidavits of the 3 individuals who were involved in the incident with the plaintiff on March 28, 2010. They contain information as to what these individuals say happened that evening and are relevant and vital to the Department's ability to demonstrate that the plaintiff's behavior on that evening was improper. It was information the Department relied on in taking the disciplinary action in this case and therefore needs to remain a part of the Committee Exhibit.

Pages 64-65 These pages are a part of the OPR investigation in this matter and are a transcription of the affidavit of an officer who responded to provide assistance to the plaintiff on the evening of March 28, 2010. These pages contain information which demonstrate that the plaintiff's action on the evening on March 28, 2010 were improper and therefore shows the Department's decision to terminate was proper.

Page 75 This page contains information obtained by the Department as part of its investigation into the allegations against the plaintiff.

Page 82-86 These pages contain information regarding a similar incident with the employee in the past which resulted in the Department requiring the employee to attend counseling. This incident is referenced in the termination letter and was taken into consideration by the Department in imposing the discipline in this case. Additionally, the plaintiff has subpoenaed Mr. Mike Lanier formerly with the CJA. The Department believes his testimony will relate to this incident and therefore these pages are necessary for the Department to address matters the plaintiff raises in respect to this incident. Additionally, part of the plaintiff's contention is that he was terminated unlawfully for reporting violations in the past to the Department. The Department disputes this contention and asserts that these violations are evidence that the Department's decision to terminate the plaintiff was not out of retaliation for filing complaints, but based on the primary incident which took place on March 28, 2010 and his history of improper behavior.

Page 87 This page contains information relating to the plaintiff's disciplinary history and is therefore relevant to the hearing. It is information the Department provided in response to the Board's request for information relating to the plaintiff's appeal. Additionally, part of the plaintiff's contention is that he was terminated unlawfully for reporting violations in the past to the Department. The Department disputes this contention and asserts that these violations are evidence that the Department's decision to terminate the plaintiff was not out of retaliation for filing complaints, but based on the primary incident which took place on March 28, 2010 and his history of improper behavior.

Pages 88 This page contains information relating to the plaintiff's disciplinary history and is therefore relevant to the hearing. It is information the Department provided in response to the Board's request for information relating to the plaintiff's appeal. Additionally, part of the plaintiff's contention is that he was terminated unlawfully for reporting violations in the past to the Department. The Department disputes this contention and asserts that these violations are evidence that the Department's decision to terminate the plaintiff was not out of retaliation for filing complaints, but based on the primary incident which took place on March 28, 2010 and his history of improper behavior.

Page Three
December 3, 2010

Page 89-91 These pages contain information relating to the plaintiff's disciplinary history and is therefore relevant to the hearing. It is information the Department provided in response to the Board's request for information relating to the plaintiff's appeal. Additionally, part of the plaintiff's contention is that he was terminated unlawfully for reporting violations in the past to the Department. The Department disputes this contention and asserts that these violations are evidence that the Department's decision to terminate the plaintiff was not out of retaliation for filing complaints, but based on the primary incident which took place on March 28, 2010 and his history of improper behavior.

Page 92-98 These pages contain information relating to the plaintiff's disciplinary history and is therefore relevant to the hearing. It is information the Department provided in response to the Board's request for information relating to the plaintiff's appeal. Additionally, part of the plaintiff's contention is that he was terminated unlawfully for reporting violations in the past to the Department. The Department disputes this contention and asserts that these violations are evidence that the Department's decision to terminate the plaintiff was not out of retaliation for filing complaints, but based on the primary incident which took place on March 28, 2010 and his history of improper behavior.

Page 107 This page contains information relating to the plaintiff's disciplinary history and is therefore relevant to the hearing. It is information the Department provided in response to the Board's request for information relating to the plaintiff's appeal. Additionally, part of the plaintiff's contention is that he was terminated unlawfully for reporting violations in the past to the Department. The Department disputes this contention and asserts that these violations are evidence that the Department's decision to terminate the plaintiff was not out of retaliation for filing complaints, but based on the primary incident which took place on March 28, 2010 and his history of improper behavior.

Page 108 This page contains information relating to the plaintiff's disciplinary history and is therefore relevant to the hearing. It is information the Department provided in response to the Board's request for information relating to the plaintiff's appeal. Additionally, part of the plaintiff's contention is that he was terminated unlawfully for reporting violations in the past to the Department. The Department disputes this contention and asserts that these violations are evidence that the Department's decision to terminate the plaintiff was not out of retaliation for filing complaints, but based on the primary incident which took place on March 28, 2010 and his history of improper behavior.

Page 109 This page contains information relating to the plaintiff's disciplinary history and is therefore relevant to the hearing. It is information the Department provided in response to the Board's request for information relating to the plaintiff's appeal. Additionally, part of the plaintiff's contention is that he was terminated unlawfully for reporting violations in the past to the Department. The Department disputes this contention and asserts that these violations are evidence that the Department's decision to terminate the plaintiff was not out of retaliation for filing complaints, but based on the primary incident which took place on March 28, 2010 and his history of improper behavior.

00047

Page Four
December 3, 2010

Should you have any questions, you may contact me at (803) 896-9664. In my absence, please contact our Paralegal, Randi Runkles, at (803) 896-7965. Thank you for your attention to this matter. With kind regards, I am

Yours very truly,



Rachel D. Erwin
Assistant General Counsel

RDE/rr

cc: Mr. John O'Leary, Esq.
Via Fax No. (803) 252-7515

Ms. M. Malissa Burnett, Esq.
Via Fax No. (803) 404-6902

Ms. Teresa Kitchens, HR

O'LEARY ASSOCIATES, P.A.

JOHN A. O'LEARY, ATTORNEY

Katie O'Leary Fayssoux (of Counsel)

November 17, 2010

Via Fax and Mail

Joseph Miller
State Budget & Control Board
Office of Human Resources
8301 Parklane Road, Suite 220
Columbia, SC 29223
Fax: 803-896-5050

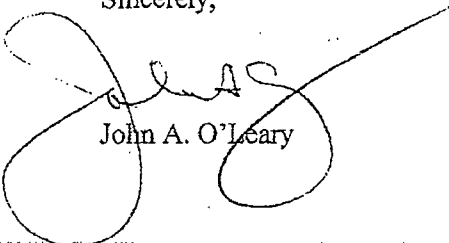
RE: E. Shawn Sorrell v. SCDPS
Appeal Hearing: December 2, 2010
State Employee Grievance Committee
Objections to Committee Packet

Dear Mr. Miller:

Pursuant to the upcoming Appeal Hearing for Mr. Sorrell on December 2, 2010, please be advised that we object to the following pages included in the committee package prepared by SCDPS: Pages 24, 29, 30, 47, 48, 49, 51, 52, 53, 54, 55, 56, 57, 58, 64, 65, 75, 82, 83, 84, 85, 86, 87, 88, 89, 90, 91, 92, 93, 94, 95, 96, 97, 98, 107, 108 and 109.

If you have any questions or if we may be of assistance, please do not hesitate to call.

Sincerely,



John A. O'Leary

JAO/mkm

cc: Teresa Kitchens, DPS
Malissa Burnette, Esquire
E. Shawn Sorrell

NIKKI R. HALEY, CHAIR
GOVERNOR

CURTIS M. LOFTIS, JR.
STATE TREASURER

RICHARD ECKSTROM, CPA
COMPTROLLER GENERAL



SC BUDGET AND CONTROL BOARD

Human Resources Division
Samuel L. Wilkins
DIRECTOR

803-896-5300
FAX 803-896-5050

HUGH K. LEATHERMAN, SR.
CHAIRMAN, SENATE FINANCE
COMMITTEE

W. BRIAN WHITE
CHAIRMAN, HOUSE WAYS AND MEANS
COMMITTEE

ELEANOR KITZMAN
EXECUTIVE DIRECTOR

July 25, 2011

Mr. John A. O'Leary
Attorney at Law
714 Calhoun Street
Columbia, South Carolina 29201

Re: E. Shawn Sorrell v. South Carolina Department of Public Safety (DPS)

Dear Mr. O'Leary:

This letter is in reference to my letter to you dated July 21, 2011, which stated that the above-referenced hearing has been rescheduled for August 8, 2011 at 9:00 a.m., 8301 Parklane Road, Suite A220, 3rd floor hearing room, Columbia, South Carolina. Please be advised that the hearing begins at 11:00 a.m., August 8, 2011, and not 9:00 a.m. This change in time is due to you notifying this office that you have a court hearing on August 8, 2011, at 8:30 a.m. Also, as stated in my July 21, 2011 letter to you, the parties involved must notify their respective witnesses of the rescheduled date of the hearing.

By copy of this letter, we are notifying Ms. Rachel Erwin, Assistant General Counsel, of the above.

Please call if you have any questions.

Sincerely,

Joseph C. Miller
Alternative Dispute Resolution Program

c: Ms. Rachel Erwin

NIKKI R. HALEY, CHAIR
GOVERNOR

CURTIS M. LOFTIS, JR.
STATE TREASURER

RICHARD ECKSTROM, CPA
COMPTROLLER GENERAL



SC BUDGET AND CONTROL BOARD

Human Resources Division
Samuel L. Wilkins
DIRECTOR

803-896-5300
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HUGH K. LEATHERMAN, SR.
CHAIRMAN, SENATE FINANCE
COMMITTEE

W. BRIAN WHITE
CHAIRMAN, HOUSE WAYS AND MEANS
COMMITTEE

ELEANOR KITZMAN
EXECUTIVE DIRECTOR

July 21, 2011

Mr. John A. O'Leary
Attorney at Law
714 Calhoun Street
Columbia, South Carolina 29201

Re: E. Shawn Sorrell v. South Carolina Department of Public Safety (DPS)

Dear Mr. O'Leary:

This letter is in reference to my letter to you dated July 6, 2011, which stated that the above-referenced hearing has been rescheduled for August 8, 2011 at 11:00 a.m., 8301 Parklane Road, Suite A220, 3rd floor hearing room, Columbia, South Carolina. Please be advised that the hearing begins at 9:00 a.m., August 8, 2011, and not 11:00 a.m. Also, as stated in my July 6, 2011 letter to you, the parties involved must notify their respective witnesses of the rescheduled date of the hearing.

By copy of this letter, we are notifying Ms. Rachel Erwin, Assistant General Counsel, of the above.

Please call if you have any questions.

Sincerely,

Joseph C. Miller
Alternative Dispute Resolution Program

c: Ms. Rachel Erwin

NIKKI R. HALEY, CHAIR
GOVERNOR

CURTIS M. LOFTIS, JR.
STATE TREASURER

RICHARD ECKSTROM, CPA
COMPTROLLER GENERAL



SC BUDGET AND CONTROL BOARD

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Samuel L. Wilkins
DIRECTOR

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FAX 803-896-5050

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CHAIRMAN, SENATE FINANCE
COMMITTEE

W. BRIAN WHITE
CHAIRMAN, HOUSE WAYS AND MEANS
COMMITTEE

ELEANOR KITZMAN
EXECUTIVE DIRECTOR

July 6, 2011

Mr. John A. O'Leary
Attorney at Law
714 Calhoun Street
Columbia, South Carolina 29201

Re: E. Shawn Sorrell v. South Carolina Department of Public Safety (DPS)

Dear Mr. O'Leary:

This letter is to inform you that the second day for the above-referenced hearing has been rescheduled for August 8, 2011 at 11:00 a.m., 8301 Parklane Road, Suite A220, 3rd floor hearing room, Columbia, South Carolina. Please be advised that the parties involved must notify their respective witnesses of the rescheduled date of the hearing.

By copy of this letter, we are notifying Ms. Rachel Erwin, Assistant General Counsel, of the above.

Please call if you have any questions.

Sincerely,

Joseph C. Miller
Alternative Dispute Resolution Program

c: Ms. Rachel Erwin

NIKKI R. HALEY, CHAIR
GOVERNOR

CURTIS M. LOFTIS, JR.
STATE TREASURER

RICHARD ECKSTROM, CPA
COMPTROLLER GENERAL



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COMMITTEE

DANIEL T. COOPER
CHAIRMAN, HOUSE WAYS AND MEANS
COMMITTEE

ELEANOR KITZMAN
EXECUTIVE DIRECTOR

May 12, 2011

Mr. John A. O'Leary
Attorney at Law
714 Calhoun Street
Columbia, South Carolina 29201

Re: E. Shawn Sorrell v. South Carolina Department of Public Safety (DPS)

Dear Mr. O'Leary:

This letter is to inform you that the above-referenced hearing has been rescheduled for **June 27, 2011 at 9:00 a.m., 8301 Parklane Road, 3rd floor hearing room, Columbia, South Carolina.** Please be advised that the parties involved must notify their respective witnesses of the rescheduled date of the hearing.

By copy of this letter, we are notifying Ms. Rachel Erwin, Assistant General Counsel, of the above.

Please call if you have any questions.

Sincerely,

Joseph C. Miller
Alternative Dispute Resolution Program

c: Ms. Rachel Erwin



**S. C. DEPARTMENT
OF PUBLIC SAFETY**

OFFICE OF GENERAL COUNSEL

P.O. Box 1993, Blythewood, S.C. 29016: (803) 896-7965, Fax: 896-7967

April 13, 2011

Via Fax No. (803) 896-5050

Ms. Heather Keever
State Budget and Control Board
Office of Human Resources
8301 Parklane Road, Suite A220
Columbia, SC 29223

Re: E. Shawn Sorrell vs. S. C. Department of Public Safety

Dear Ms. Keever:

Please accept this correspondence as a request for a continuance in the Grievance Hearing that is scheduled for tomorrow. The Department received Mr. Ganjehsani's ruling on Mr. O'Leary's objections. Based on the ruling, the Department anticipates it will most likely need to request to subpoena additional witness(es) and will need time to have the subpoenas served before the hearing in order to introduce certain excluded documentation. Additionally, Mr. Keel, our Director, has advised that the Senate Finance Committee will be meeting on Thursday and with the current budget situation it is imperative that he be present for those hearings. Likewise, Mr. Keel strongly believes that is imperative for him to be present for the entire hearing in the above referenced grievance. For these reasons, the Department respectfully requests a continuance in the above referenced matter.

Should you have any questions, you may contact me at (803) 896-9664. In my absence, please contact our Paralegal, Randi Runkles, at (803) 896-7965. Thank you for your attention to this matter. With kind regards, I am

Yours very truly,

Rachel D. Erwin
Assistant General Counsel

RDE/tr

cc: Mr. John O'Leary, Esq.
Via Fax No. (803) 252-7515

Ms. M. Malissa Burnett, Esq
Via Fax No. (803) 404-6902

Ms. Teresa Kitchens, HR

00054

NICKI R. HALEY, CHAIR
GOVERNOR

CURTIS M. LOFTIS, JR.
STATE TREASURER

RICHARD ECKSTROM, CPA
COMPTROLLER GENERAL



SC BUDGET AND CONTROL BOARD

Office of Human Resources
Samuel L. Wilkins
DIRECTOR

803-896-5300
FAX 803-896-5050

HUGH K. LEATHERMAN, SR.
CHAIRMAN, SENATE FINANCE
COMMITTEE

DANIEL T. COOPER
CHAIRMAN, HOUSE WAYS AND MEANS
COMMITTEE

ELEANOR KITZMAN
EXECUTIVE DIRECTOR

March 2, 2011

Via Facsimile

Ms. M. Malissa Burnette
Callison & Tighe
Post Office Box 1390
Columbia, South Carolina 29202

Re: E. Shawn Sorrell v. South Carolina Department of Public Safety (SCDPS)

Dear Ms. Burnette:

This letter is to inform you that a hearing will take place on **March 22, 2011 at 9:30 a.m., 8301 Parklane Road, Suite A220, 3rd floor hearing room, Columbia, South Carolina**, to address objections raised by your co-legal counsel, Mr. John A O'Leary, regarding the above-referenced appeal. This hearing will be limited to the objections raised by Mr. O'Leary to specific pages contained in the record.

The hearing before the State Employee Grievance Committee for the above-referenced appeal has been scheduled for **April 14, 2011 at 9:00 a.m., 8301 Parklane Road, Suite A220, 3rd floor hearing room, Columbia, South Carolina**. Please be advised that the parties involved must notify their respective witnesses of the rescheduled date of the hearing.

By copy of this letter, we are notifying Ms. Rachel Erwin, SCDPS Assistant General Counsel, of the above.

Please call if you have any questions.

Sincerely,

Joseph C. Miller
Alternative Dispute Resolution Program

c: Ms. Rachel Erwin
Mr. John A. O'Leary

NIKKI R. HALEY, CHAIR
GOVERNOR

CURTIS M. LOFTIS, JR.
STATE TREASURER

RICHARD ECKSTROM, CPA
COMPTROLLER GENERAL



SC BUDGET AND CONTROL BOARD

Office of Human Resources
Samuel L. Wilkins
DIRECTOR

803-896-5300
FAX 803-896-5050

HUGH K. LEATHERMAN, SR.
CHAIRMAN, SENATE FINANCE
COMMITTEE

DANIEL T. COOPER
CHAIRMAN, HOUSE WAYS AND MEANS
COMMITTEE

ELEANOR KITZMAN
EXECUTIVE DIRECTOR

February 8, 2011

Ms. M. Malissa Burnette
Callison, Tighe & Robinson, LLC
Post Office Box 1390
Columbia, South Carolina 29202-1390

Re: E. Shawn Sorrell v. South Carolina Department of Public Safety (DPS)

Dear Ms. Burnette:

This letter is in reference to my letter to you dated February 8, 2011, which stated that the above-referenced hearing has been rescheduled for March 22, 2011 at 11:00 a.m., 8301 Parklane Road, Suite A220, 3rd floor hearing room, Columbia, South Carolina. Please be advised that the hearing begins at 9:00 a.m., March 22, 2011, and not 11:00 a.m. Also, as stated in my February 8, 2011 letter to you, the parties involved must notify their respective witnesses of the rescheduled date of the hearing.

By copy of this letter, we are notifying Ms. Rachel Erwin, Assistant General Counsel, of the above.

Please call if you have any questions.

Sincerely,

Joseph C. Miller
Alternative Dispute Resolution Program

c: Ms. Rachel Erwin

NIKKI R. HALEY, CHAIR
GOVERNOR

CURTIS M. LOFTIS, JR.
STATE TREASURER

RICHARD ECKSTROM, CPA
COMPTROLLER GENERAL



SC BUDGET AND CONTROL BOARD

Office of Human Resources
Samuel L. Wilkins
DIRECTOR

803-896-5300
FAX 803-896-5050

HUGH K. LEATHERMAN, SR.
CHAIRMAN, SENATE FINANCE
COMMITTEE

DANIEL T. COOPER
CHAIRMAN, HOUSE WAYS AND MEANS
COMMITTEE

ELEANOR KITZMAN
EXECUTIVE DIRECTOR

February 8, 2011

Ms. M. Malissa Burnette
Callison, Tighe & Robinson, LLC
Post Office Box 1390
Columbia, South Carolina 29202-1390

Re: E. Shawn Sorrell v. South Carolina Department of Public Safety (DPS)

Dear Ms. Burnette:

This letter is to inform you that the above-referenced hearing has been rescheduled for March 22, 2011 at 11:00 a.m., 8301 Parklane Road, Suite A220, 3rd floor hearing room, Columbia, South Carolina. Please be advised that the parties involved must notify their respective witnesses of the rescheduled date of the hearing.

By copy of this letter, we are notifying Ms. Rachel Erwin, Assistant General Counsel, of the above.

Please call if you have any questions.

Sincerely,

Joseph C. Miller
Alternative Dispute Resolution Program

c: Ms. Rachel Erwin

Miller, Joseph

From: Malissa Burnette [mmburnette@mindspring.com]
Sent: Monday, February 07, 2011 4:28 PM
To: Miller, Joseph
Cc: oleary_email@yahoo.com; monica.mcgee25@yahoo.com; esorrell@sc.rr.com
Subject: Request for continuance: E. Shawn Sorrell vs. SC DPS

Dear Mr. Miller:

Thank you for taking my call.

As I mentioned, I have just learned that one of the witnesses we subpoenaed, Shearn Mitchell, is unavailable for the hearing scheduled for tomorrow, and for that reason we respectfully request a brief continuance of the hearing. We make this request only after consultation among co-counsel and our client, after which it was determined that Ms. Mitchell may be a crucial witness, depending upon how the case develops at the hearing. Therefore, we make this request only after considerable discussion and weighing the benefits of going forward even without the witness.

Mr. O'Leary's assistant received the email below from counsel for the SC Criminal Justice Academy this afternoon, notifying her that Ms. Mitchell has taken ill with the flu (including vomiting), and is out of work. I certainly do not want to require this lady to attend the hearing tomorrow (or to expose others to a possibly contagious disease.) We acted on this information as quickly as possible, including consulting our client, before making contact with you.

Thank you for your consideration of this request. I may be reached via email or by phone this afternoon at 237-4757.

Malissa

M. Malissa Burnette, Esquire
Certified Specialist in Employment and Labor Law
Certified Federal Court Mediator
Callison, Tighe & Robinson, LLC
1812 Lincoln Street (29201); P.O. Box 1390
Columbia, SC 29202-1390
803-404-6900 (O) 803-404-6901 (Fax)
mmburnette@callisontighe.com

----- Forwarded Message -----

From: "Duncan, Brandy" <BDuncan@sccja.sc.gov>
To: Monica McGee <monica.mcgee25@yahoo.com>
Sent: Mon, February 7, 2011 2:08:44 PM
Subject: Shearn Mitchell for Tomorrow's Hearing

Monica,

I wanted to give you a heads up regarding Shearn Mitchell. She has caught the flu and is out sick today. She tells me she has been vomiting, etc... If Mr. O'Leary still wants her to show up tomorrow, you may want to see if they have a private room she can wait in until he is ready for her testimony. Also, if she is still having issues with vomiting tomorrow, then you may want to see that she has some sort of container nearby just in case.

If Mr. O'Leary would rather she not testify, please let me know and I can call her to let her know to stay home. If Mr. O'Leary would rather seek a continuance, please also let me know that and I can call her to let her know to stay home. I will have my cell phone with me all night, so you or Mr. O'Leary can reach me there if needed. I have instructed Ms. Mitchell to show up for the hearing unless instructed otherwise.

Thanks,

Brandy A. Duncan
General Counsel
S.C. Criminal Justice Academy
5400 Broad River Road
Columbia, South Carolina 29212
(803) 896-7414 (Office)
(803) 608-9738 (Work Cell)
(803) 896-8347 (Fax)

Notice of Confidentiality: The information contained in this e-mail may be legally privileged and/or confidential. If is intended only for the use of the individual(s) or entity named. If the reader of this message is not the intended recipient, you are hereby notified that any dissemination, distribution, copying, or use of the information contained in this e-mail or the e-mail itself is strictly prohibited. If you have received this e-mail in error, please notify me immediately by telephone at one of the numbers listed above, delete the original e-mail, and return any printed copies of the e-mail to me at the address listed above via the United States Postal Service. Thank you.

MARK SANFORD, CHAIRMAN
GOVERNOR

CONVERSE A. CHELLIS, III, CPA
STATE TREASURER

RICHARD ECKSTROM, CPA
COMPTROLLER GENERAL



SC BUDGET AND CONTROL BOARD

Office of Human Resources
Samuel L. Wilkins
DIRECTOR

803-896-5300
FAX 803-896-5050

HUGH K. LEATHERMAN, SR.
CHAIRMAN, SENATE FINANCE
COMMITTEE

DANIEL T. COOPER
CHAIRMAN, HOUSE WAYS AND MEANS
COMMITTEE

FRANK W. FUSCO
EXECUTIVE DIRECTOR

November 29, 2010

Mr. John A. O'Leary
Attorney at Law
714 Calhoun Street
Columbia, South Carolina 29201

Re: E. Shawn Sorrell v. South Carolina Department of Public Safety (DPS)

Dear Mr. O'Leary:

This letter is to inform you that the above-referenced hearing has been rescheduled for February 8, 2011 at 9:00 a.m., 8301 Parklane Road, 3rd floor hearing room, Columbia, South Carolina. Please be advised that the parties involved must notify their respective witnesses of the rescheduled date of the hearing.

By copy of this letter, we are notifying Ms. Rachel Erwin, Assistant General Counsel for the agency, of the above.

Please call if you have any questions.

Sincerely,

Joseph C. Miller
Alternative Dispute Resolution Program

c: Ms. Rachel Erwin

M. Malissa Burnette, Esq.

Certified Specialist In Employment & Labor Law
Certified Federal Court Mediator

803-404-8900

mmburnette@callisontighe.com

CALLISON  TIGHE

November 23, 2010

VIA FACSIMILE TRANSMISSION ONLY
(803) 896-5050

Ms. Heather Keever
SC Budget & Control Board
Office of Human Resources
8301 Parklane Road
Columbia, South Carolina 29223

RE: E. Shawn Sorrell v. SC Dept. Of Public Safety
Request for Continuance
Our File No.: 14003.001

Dear Ms. Keever:

I, along with attorney John O'Leary, represent Mr. Shawn Sorrell in his appeal of the decision to terminate him from his employment with the Department of Public Safety. A hearing is currently scheduled for December 2, 2010. Subsequent to the scheduling of the hearing in this matter, I learned that I would need to undergo shoulder surgery that is necessitated by injuries I sustained in an accident on February 26th of this year. Physical therapy has not been effective, and my surgeon's recommendation is immediate surgical repair. Unfortunately, his schedule and the pre-operative testing conflict with the hearing date.

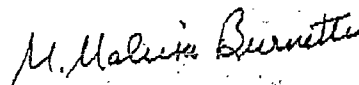
I therefore respectfully request a continuance of the hearing currently set for December 2, 2010, and also request protection through January 17, 2011.

Letter to Ms. Kever
November 23, 2010
Page Two

Thank you for your consideration of this request, and I apologize for any inconvenience.

With best regards,

Sincerely,



M. Malissa Burnette

MMB

cc: John O'Leary, Esq. (Fax 252-7515)
Rachel Erwin, Esq. (Fax 896-7967)
Mr. E. Shawn Sorrell

O'LEARY ASSOCIATES, P.A.

JOHN A. O'LEARY, ATTORNEY

Katie O'Leary Fayssoux (of Counsel)

November 23, 2010

Via Fax and Mail

Joseph Miller
State Budget & Control Board
Office of Human Resources
8301 Parklane Road, Suite 220
Columbia, SC 29223
Fax: 803-896-5050

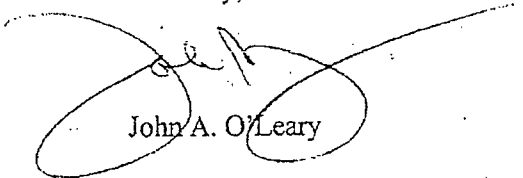
RE: E. Shawn Sorrell v. SCDPS
Appeal Hearing: December 2, 2010
State Employee Grievance Committee
Request for Continuance

Dear Mr. Miller:

This is to respectfully request a continuance of the Appeal Hearing for Mr. Sorrell on December 2, 2010. My co-counsel Malissa Burnette is having surgery at that time and is not able to attend the hearing. Please contact my office to reschedule the hearing.

If you have any questions or if we may be of assistance, please do not hesitate to call.

Sincerely,



John A. O'Leary

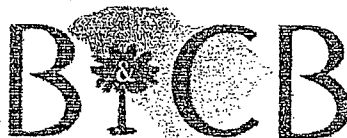
JAO/mkm

cc: Teresa Kitchens, DPS- -896-7984
Malissa Burnette, Esquire - 404-6901
Rachel Erwin - 896-7967
E. Shawn Sorrell

NIKKI R. HALEY, CHAIR
GOVERNOR

CURTIS M. LOFTIS, JR.
STATE TREASURER

RICHARD ECKSTROM, CPA
COMPTROLLER GENERAL



SC BUDGET AND CONTROL BOARD

Office of Human Resources
Samuel L. Wilkins
DIRECTOR

803-896-5300
FAX 803-896-5050

HUGH K. LEATHERMAN, SR.
CHAIRMAN, SENATE FINANCE
COMMITTEE

DANIEL T. COOPER
CHAIRMAN, HOUSE WAYS AND MEANS
COMMITTEE

ELEANOR KITZMAN
EXECUTIVE DIRECTOR

March 25, 2011

VIA FACSIMILE

Ms. M. Malissa Burnette
Attorney at Law
Callison Tighe & Robinson, LLC
Post Office Box 1390
Columbia, South Carolina 29202

Ms. Rachel D. Erwin
Assistant General Counsel
S.C. Department of Public Safety
Post Office Box 1993
Blythewood, South Carolina 29016

Re: E. Shawn Sorrell v. South Carolina Department of Public Safety

Dear Ms. Burnette and Ms. Erwin:

This letter is in response to Attorney Reynolds H. Blankenship, Jr.'s ("Counsel") request that he be allowed to appear before the State Employee Grievance Committee ("Committee") at the April 14, 2011 hearing ("Hearing") in the above referenced matter while his clients Ms. Samantha Swanson, Mr. Matthew Keith, and Mr. Charles Spaht are testifying as witnesses. The attorneys for both Appellant E. Shawn Sorrell and the South Carolina Department of Public Safety have objected to Counsel's presence at the Hearing.

Section 19-718.07(E)(2) of the State Human Resources Regulations provides that "[i]f the hearing is held in executive session, only the designated Committee panel, the parties involved in a hearing, the Committee Attorney, and persons approved by the designated Committee Chairman may attend." (Emphasis added.) In addition, Section 8-17-340 (D) of the S.C. Code of Laws provides that "[t]he parties are bound by the decisions of the committee chairman or a designee or the committee attorney insofar as these hearings are concerned."

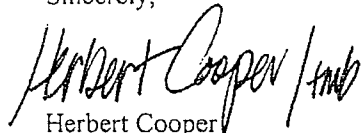
The State Administrative Procedures Act ("State APA") is silent on the issue of whether a non-party witness is entitled to counsel when summoned to appear before an administrative body or agency. *See* S.C. CODE ANN. § 1-23-310, *et seq.* In the absence of any applicable provision within the State APA, the Federal Administrative Procedure Act ("Federal APA") is looked to for guidance. *See* 5 U.S.C.A. § 500, *et seq.*

Ms. M. Malissa Burnette
Ms. Rachel D. Erwin
March 25, 2011
Page Two

The Federal APA provides that "[a] person compelled to appear in person before an agency or representative thereof is entitled to be accompanied, represented, and advised by counsel or, if permitted by the agency, by other qualified representative." 5 U.S.C.A. § 555(b). The Federal APA's granting the right to representation under such circumstances constitutes persuasive authority for permitting Counsel's presence at the Hearing.

The Committee Chairman therefore approves Counsel to attend the portion of the Hearing during which his clients are testifying. The Committee Attorney will permit Counsel to raise appropriate objections at that time, but Counsel shall not be allowed to cross-examine any individual testifying before the Committee. See S.C. CODE ANN. § 1-23-330(3) and S.C. CODE ANN. § 1-23-310(5)

Sincerely,

A handwritten signature in black ink, appearing to read "Herbert Cooper", followed by a vertical line and the letters "hbc".

Herbert Cooper
Chairman
State Employee Grievance Committee

c: Mr. Reynolds H. Blankenship, Jr.
Mr. John A. O'Leary
Mr. Warren Ganjehsani

M. Malissa Burnette, Esq.
Certified Specialist in Employment & Labor Law
Certified Federal Court Mediator
803-404-6900
mmburnette@callisontighe.com

CALLISON  TIGHE

March 8, 2011

VIA FACSIMILE (896-5050)
AND FIRST CLASS MAIL

Ms. Heather Keever
SC Budget & Control Board
Office of Human Resources
8301 Parklane Road - Suite A220
Columbia, South Carolina 29223

RE: E. Shawn Sorrell v. SC Dept. Of Public Safety
Our File No.: 14003.001

Dear Ms. Keever:

I, along with attorney John O'Leary, represent Mr. Shawn Sorrell in his appeal of the decision to terminate him from his employment with the Department of Public Safety. This letter addresses the issue of whether or not Reynolds Blankenship should be permitted to attend the grievance hearing currently scheduled for April 14, 2011. The grievance will be a closed hearing. We oppose Mr. Blankenship's request.

I have received the February 17th letter written to you by attorney Reynolds H. Blankenship, who represents the three individuals who were arrested by our client on March 28, 2010. Mr. Blankenship refers to a claim that his clients have against the Department of Public Safety "and Officer E. Shawn Sorrell." However, neither Mr. Sorrell, Mr. O'Leary nor I have ever been served with or received any notice whatsoever of any claims by these individuals. Furthermore, we have never had any communication with Mr. Blankenship until I received a copy of his letter to you. While Mr. Blankenship may have been discussing his threatened cases with the Department, he has never contacted me or Mr. O'Leary, and we have been given no notice of the type of claim(s) he believes his clients might have against Mr. Sorrell.

I called Mr. Blankenship on February 18 and told him that we would be opposing his request to attend the hearing. At that time he informed me that his clients had not actually filed any type of claim or lawsuit. He did not describe the nature of any claim(s) his clients may have against Mr. Sorrell.

Letter to Ms. Keever
March 8, 2011
Page Two

Should every witness who imagines that he or she "might" have a claim be permitted to bring a lawyer to a party's grievance hearing? We believe the answer is "no." The grievance hearing should not be disrupted at the expense of the grievant's right to be heard in a full and fair manner.

It is our position that Mr. Sorrell has a right to proceed with his grievance hearing without interference from Mr. Blankenship, and we oppose his attempt to be present or to limit the presentation of evidence at the hearing. Mr. Sorrell has a right to fully present his grievance without the impediment or restriction of the threatened or imagined claims of witnesses who may or may not ever actually file an action against him. To allow the attendance and participation of attorneys of one or more witnesses who "might" file a claim against a party, would be to permit the intimidation of the grievant and limit his right to fully try his case without interruption and without unreasonable limitation.

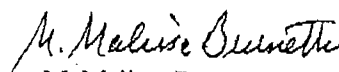
We believe that Mr. Blankenship desires to improperly utilize the hearing for pre-litigation discovery for his own clients' unspecified claims. Furthermore, any objections he may raise could be an attempt to limit evidence for improper purposes outside the scope of this hearing. It is our position that Mr. Sorrell can present evidence and cross examine witnesses to the extent that evidence and testimony is relevant to his case, regardless of whether or not it has any relationship to the as-yet unnamed claims Mr. Blankenship's clients may or may not have against Mr. Sorrell.

The parameters of Mr. Sorrell's grievance should not be dictated by the potential claims of witnesses. Mr. Sorrell has a right to fully present his claims without such ambiguous restrictions.

For the record, we have no intention of questioning Mr. Blankenship's clients regarding any matter subject to the attorney-client privilege. Thank you for your consideration of this matter.

With best regards,

Sincerely,


M. Malissa Burnette

MMB

cc: John O'Leary, Esq. (Fax 252-7515)
Rachel D. Erwin, Esq. (Fax 896-7967)
Mr. E. Shawn Sorrell

00067



**S. C. DEPARTMENT
OF PUBLIC SAFETY**

OFFICE OF GENERAL COUNSEL

P.O. Box 1993, Blythewood, S.C. 29016: (803) 896-7965, Fax: 896-7967

March 7, 2011

Via Fax No. (803) 896-5050

Ms. Heather Keever
State Budget and Control Board
Office of Human Resources
8301 Parklane Road, Suite A220
Columbia, SC 29223

Re: ~~E. Shawn Sorrell vs. S. C. Department of Public Safety~~
Response to Mr. Blankenship's Request to attend Hearing

Dear Ms. Keever:

Please accept this correspondence as a response to Mr. Blankenship's letter of February 17, 2011 in which he requested that he be allowed to attend the above referenced hearing during the testimony of his clients.

The Department of Public Safety is opposed to this request. The Department believes allowing this request would provide Mr. Blankenship with an opportunity for pre-litigation discovery in his action against the Department. Furthermore, the Department does not intend to address any damages Mr. Blankenship's clients may have suffered as a result of this incident and certainly does not intend to inquire into privileged communications between Mr. Blankenship and his clients.

Should you have any questions, you may contact me at (803) 896-9664. In my absence, please contact our Paralegal, Randi Runkles, at (803) 896-7965. Thank you for your attention to this matter. With kind regards, I am

Yours very truly,

Rachel D. Erwin
Assistant General Counsel

cc: Mr. John O'Leary, Esq.
Via Fax No. (803) 252-7515

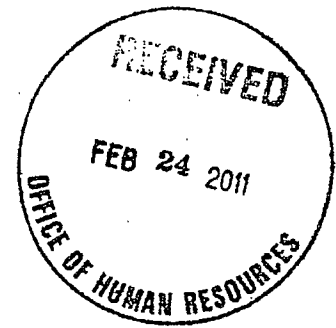
Ms. M. Malissa Burnett, Esq.
Via Fax No. (803) 404-6902

Ms. Teresa Kitchens, HR

MASELLA LAW FIRM, P.A.

Reply to Columbia Office

February 23, 2011



ROBERT M.P. MASELLA
ALSO LICENSED IN GEORGIA

S. PRENTISS COUNTS

REYNOLDS H. BLANKENSHIP, JR.

917 CALHOUN STREET
COLUMBIA, SC 29201
(803) 748-9990

1045 WEST OAKLAND AVENUE
ROCK HILL, SC 29732
(803) 980-4400

FACSIMILE
(803) 748-9948

Ms. Heather Keever
State Budget and Control Board
Office of Human Resources
8301 Parklane Road, Ste A220
Columbia, SC 29223

Re: E. Shawn Sorrell v. SCDPS

Dear Ms. Keever:

Please let me follow up on and clarify my letter of February 17, 2011. I do not request to attend the entire grievance hearing. I request to be present only while my clients are testifying. I apologize if I failed to make that clear.

With kindest regards,

A handwritten signature in dark ink, appearing to read "Reynolds H. Blankenship, Jr.".

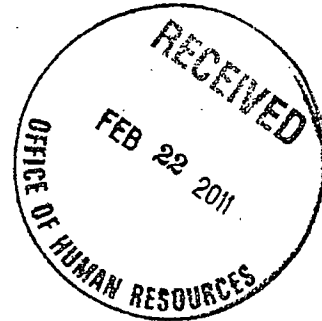
Reynolds H. Blankenship, Jr.

cc: Ms. Rachel D. Erwin
Mr. William H. Davidson, II
Mr. John O'Leary
Ms. Malissa Burnette

00069

M. Malissa Burnette, Esq.
Certified Specialist in Employment & Labor Law
Certified Federal Court Mediator
803-404-6900
mmburnette@callisontighe.com

CALLISON  TIGHE



February 18, 2011

Ms. Heather Keever
SC Budget & Control Board
Office of Human Resources
8301 Parklane Road
Suite A220
Columbia, South Carolina 29223

RE: E. Shawn Sorrell v. SC Dept. Of Public Safety
Our File No.: 14003.001

Dear Ms. Keever:

I, along with attorney John O'Leary, represent Mr. Shawn Sorrell in his appeal of the decision to terminate him from his employment with the Department of Public Safety. A hearing is currently scheduled for March 22, 2011.

Today I received a copy of a letter written to you by attorney Reynolds H. Blankenship, who represents the three individuals who were arrested by our client on March 28, 2010. Mr. Blankenship refers to a claim that his clients have against the Department of Public Safety "and Officer E. Shawn Sorrell." However, neither Mr. Sorrell nor his attorneys have ever been served with or received any notice whatsoever of any claims by these individuals. Furthermore, we have never had any communication with Mr. Blankenship until I received a copy of his letter to you today. I did call Mr. Blankenship this morning and told him that we would be opposing his request to attend the hearing.

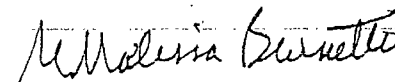
It is our position that Mr. Sorrell has a right to proceed with his grievance hearing without interference from Mr. Blankenship, and we oppose his attempt to be present, or to limit the presentation of evidence, at the hearing.

Letter to Ms. Keever
February 18, 2011
Page Two

Thank you for your consideration of this matter.

With best regards,

Sincerely,


M. Malissa Burnette

MMB

cc: John O'Leary, Esq.
Rachel D. Erwin, Esq.
Mr. E. Shawn Sorrell
Reynolds H. Blankenship, Jr., Esq.
William H. Davidson, II, Esq.

00071

MASELLA LAW FIRM, P.A.

Reply to Columbia Office

ROBERT M.P. MASELLA
ALSO LICENSED IN GEORGIA

February 17, 2011

S. PRENTISS COUNTS

REYNOLDS H. BLANKENSHIP, JR.

917 CALHOUN STREET
COLUMBIA, SC 29201
(803) 748-9990

1045 WEST OAKLAND AVENUE
ROCK HILL, SC 29732
(803) 980-4400

FACSIMILE
(803) 748-9948

Ms. Heather Kever
State Budget and Control Board
Office of Human Resources
8301 Parklane Road, Ste A220
Columbia, SC 29223

Re: E. Shawn Sorrell v. SCDPS

Dear Ms. Kever:

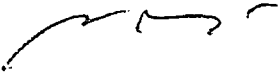
I represent Samantha Swanson, Matthew Keith, and Charles Spaht on a claim against the Department of Public Safety and Officer E. Shawn Sorrell concerning an arrest by Officer Sorrell on or about March 28, 2010. I have been negotiating this claim with Will Davidson, counsel for the Department, for the past several months.

Since these negotiations have begun, SCDPS Assistant General Counsel Rachel Erwin has subpoenaed my clients to appear and testify at a grievance hearing between Mr. Sorrell and the Department. I do not have any problem with my clients testifying to the circumstances surrounding their encounter with Ms. Sorrell.

I do have concerns over my clients' attending without my presence. I cannot expect the Department or Mr. Sorrell to protect my clients from improper questioning into privileged attorney-client communications and protected work product. Further, I have concerns over the Department or Mr. Sorrell attempting to use this grievance hearing as an improper attempt at pre-litigation discovery in our separate matter. For example, questions completely unrelated to the grievance, such as my clients' damages, would be improper.

I therefore request authority to attend the grievance hearing, and a pre-hearing determination that the parties to the grievance shall limit their questioning of my clients to the relevant facts. I appreciate your consideration of this request.

With kindest regards,


Reynolds H. Blankenship, Jr.

cc: Ms. Rachel D. Erwin
Mr. William H. Davidson, II
Mr. John O'Leary
Ms. Malissa Burnette



00072



**S. C. DEPARTMENT
OF PUBLIC SAFETY**

OFFICE OF GENERAL COUNSEL

P.O. Box 1993, Blythewood, S.C. 29016; (803) 896-7965, Fax: 896-7967

February 17, 2011

Reynolds H. Blankenship, Jr., Esq.
Masella Law Firm
917 Calhoun Street
Columbia, SC 29201

Re: E. Shawn Sorrell vs. S. C. Department of Public Safety

Dear Mr. Blankenship:

Please be advised that I am writing in response to your letter of February 11, 2011 in which you notified me of your intention to appear and attend the above referenced hearing. As we discussed earlier, I am not in a position to make a decision on this matter. You need to direct your request to Ms. Heather Keever with the Budget and Control Board. Ms. Keever may be reached at State Budget and Control Board, Office of Human Resources, 8301 Parklane Road, Suite A220, Columbia, SC 29223; 737-0944.

However, I will note that given the parameters you set forth in your letter, I would object to you appearing at the hearing.

Should you have any questions, I may be reached at (803) 896-9664. If you are unable to reach me, you may contact Randi Runkles, our Paralegal, at (803) 896-7965. Thank you for your attention to this matter. With kind regards, I am

Yours very truly,

Rachel D. Erwin

Rachel D. Erwin
Assistant General Counsel

RDE/rr

cc: William Davidson, Esq.
John O'Leary, Esq.
Malissa Burnette, Esq.



00073

James Randall Davis
Patrick J. Frawley
Jeff M. Anderson
John J. McCauley
Carey M. Ayer
John F. Fisher
Judith Callison Fisher
Lissa Lee Smith
Ryan M. Wingsrd
A. Jawitte Doolay

*American Board of Trial Advocates
Certified Circuit Court Mediator



DAVIS, FRAWLEY, ANDERSON,
MCCAULEY, AYER,
FISHER & SMITH, LLC

ATTORNEYS AND COUNSELORS AT LAW

E-mail: pat@oldcourthouse.com

June 24, 2011

Of Counsel
Robert K. Bouknight
George S. Nicholson, Jr.

Francis G. Jones
(1919 - 1963)
Hubert E. Long
(1921 - 2000)

Since 1961

VIA FACSIMILE ONLY

Terry Baggott
S.C. Budget and Control Board
Office of Human Resources
Fax No. 896-5050

Re: *Swanson, Spaht, and Keith v. Sorrell and the South Carolina Department of
Public Safety;*
CA No.: 2011-CP-40-1562; IRF Claim No.: 67008; Our File No.: 25712.05.

Dear Mr. Baggott:

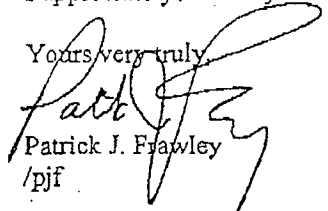
Thank you for your letter of today's date, offering your distinction between my status as an attorney representing Shawn Sorrell in a civil suit unrelated to his grievance hearing, who has requested and been denied permission to attend Monday's hearing, from the status of an attorney representing the three witnesses testifying against Mr. Sorrell in Monday's hearing, who are Plaintiffs in the civil suit unrelated to Mr. Sorrell's grievance hearing. I *am not* representing Mr. Sorrell in his grievance matter, and would not be there to offer any assistance to nor consultation with Mr. Sorrell or his counsel; I *am* the attorney defending the civil suit, in which Mr. Blankenship is the Plaintiffs' attorney.

I also understand from John O'Leary that the father of one of the witnesses—Mr. Spaht, a current or former FBI agent—will be attending the hearing. What will constitute your "persuasive authority for permitting" that?

It doesn't matter; I have other things I can be doing on Monday, and the integrity of your process will be preserved. When you have to resort to citing Federal statutes as "persuasive authority" supporting your letting the Plaintiffs' attorney attend and observe while denying me the same courtesy, your rationale is strained and inconsistent.

I appreciate your and your Committee's courtesy. Have a nice hearing.

Yours very truly,


Patrick J. Frawley
/pjf

MR. BAGGOTT

Re: *Swanson, Spaht, and Keith v. Sorrell and the South Carolina Department of
Public Safety;*

CA No.: 2011-CP-40-1562; IRF Claim No.: 67008; Our File No.: 25712.05.

June 24, 2011

Page Two.

cc: John A. O'Leary, Esquire

M. Malissa Burnette, Esquire

Rachel D. Erwin, Esquire

Mr. Robert B. Cummings
South Carolina Insurance Reserve Fund

NIKKI R. HALEY, CHAIR
GOVERNOR

CURTIS M. LOFTIS, JR.
STATE TREASURER

RICHARD ECKSTROM, CPA
COMPTROLLER GENERAL



SC BUDGET AND CONTROL BOARD

Human Resources Division
Samuel L. Wilkins
DIRECTOR

803-896-5300
FAX 803-896-5050

HUGH K. LEATHERMAN, SR.
CHAIRMAN, SENATE FINANCE
COMMITTEE

DANIEL T. COOPER
CHAIRMAN, HOUSE WAYS AND MEANS
COMMITTEE

ELEANOR KITZMAN
EXECUTIVE DIRECTOR

June 24, 2011

Via Facsimile Only

Mr. Patrick Frawley
Davis, Frawley, Anderson, McCauley, Ayer, Fisher & Smith
Post Office Box 489
Lexington, South Carolina 29071-0489

Re: E. Shawn Sorrell v. South Carolina Department of Public Safety (SCDPS)

Dear Mr. Frawley:

This letter is in response to your letter dated June 23, 2011, regarding the above-referenced appeal pending before the State Employee Grievance Committee. In your letter you state that you have been informed that Mr. Reynolds Blankenship Jr., the attorney representing three witnesses in Mr. Sorrell's hearing before the State Employee Grievance Committee ("Hearing"), will be permitted to attend the Hearing.

Mr. Blankenship requested, and was granted, permission to attend the portion of the Hearing in which his clients will be testifying. As was explained to Mr. Blankenship at the time his request was granted, the State Administrative Procedures Act ("State APA") is silent on the issue of whether a non-party witness is entitled to counsel when summoned to appear before an administrative body or agency. *See S.C. CODE ANN. § 1-23-310, et. seq.* In the absence of any applicable provision within the State APA, the Federal Administrative Procedure Act ("Federal APA") is looked to for guidance. *See 5 U.S.C.A. § 500, et. seq.*

The Federal APA provides that "[a] person compelled to appear in person before an agency or representative thereof is entitled to be accompanied, represented, and advised by counsel or, if permitted by the agency, by other qualified representative." 5 U.S.C.A. § 550(b). The Federal APA's granting the right to representation under such circumstances constitutes persuasive authority for permitting Mr. Blankenship's presence at the Hearing.

Your request differs from Mr. Blankenship's, however, in that you are not representing a witness at the Hearing but rather a party, Mr. Sorrell. The State Human Resources Regulations specifically addresses the number of representatives allowed for each party at a hearing before the State Employee Grievance Committee. Section 19-718-07(B) states that "[n]o

Mr. Patrick Frawley

June 24, 2011

Page 2

more than three representatives, including legal counsel and the covered employee, may be designated by either party to be present during Committee hearings." As Mr. Sorrell has already designated two attorneys who will be attending the Hearing as his representatives, he is not permitted to have a third attend. As was stated in my June 23, 2011 letter to you, Mr. Sorrell may request a public hearing prior to the vote by the Committee to go into executive session. If the hearing is not held in executive session you would then be permitted to attend. As I advised you previously, I would suggest that you contact Mr. Sorrell's legal counsels to ask if they are seeking a public hearing in accordance with the Freedom of Information Act.

I hope this clarifies why Mr. Blankenship's request to attend the Hearing was granted.

Sincerely,

Terry M. Baggott/hnk

Terry M. Baggott
Managing Partner
Alternative Dispute Resolution

cc: Ms. M. Malissa Burnette
Mr. John A. O'Leary
Ms. Rachel D. Erwin

00077

James Randall Davis
Patrick J. Frawley
Jeff M. Anderson
John J. McCauley *
Carey M. Ayer
John F. Fisher
Judith Callison Fisher
Lisa Lee Smith †
Ryan M. Wingard
A. Jewette Dooley

* American Board of Trial Advocates
† Certified Circuit Court Mediator



DAVIS, FRAWLEY, ANDERSON,
MCCAULEY, AYER,
FISHER & SMITH, LLC

ATTORNEYS AND COUNSELORS AT LAW

E-mail: pat@oldcourthouse.com

June 23, 2011

Of Counsel
Robert K. Bouknight
George S. Nicholson, Jr.

Francis G. Jones
(1919 - 1968)

Hubert E. Long
(1921 - 2000)

Since 1961

VIA FACSIMILE ONLY

Terry Baggott
S.C. Budget and Control Board
Office of Human Resources
Fax No. 896-5050

Re: *Swanson, Spaht, and Keith v. Sorrell and the South Carolina Department of Public Safety*;
CA No.: 2011-CP-40-1562; IRF Claim No.: 67008; Our File No.: 25712.05.

Dear Mr. Baggott:

Thank you for your quick response to my June 22 request to be allowed to attend and observe the June 27, 2011 appeal pending before the State Employee Grievance Committee. In making my request to attend, I was not aware that the hearing was in executive session; and given that, I certainly understand the need to limit those in attendance.

I have been told by the attorney for one of the co-Defendants in the lawsuit in which I am defending Mr. Sorrell, hat Reginald Blankenship, the attorney representing Ms. Swanson, Mr. Spaht, and Mr. Keith as Plaintiffs in the suit, was also planning on attending the hearing on Monday. I understand and assume, based on the content of your letter explaining to me why I cannot attend, that Mr. Blankenship's request to attend—whether made in advance and in writing, as my request was made, or at the time of the hearing and verbally as everyone is entering the hearing room—will be similarly denied.

Perhaps the attorney for our co-Defendant is misinformed about Mr. Blankenship attending the hearing; but in the event that he is not misinformed, and if I am mistaken in that assumption and Mr. Blankenship will be allowed to attend my client's grievance hearing while I am not, I would appreciate you or someone from your office explaining to me why.

Thank you once again for your response.

Yours very truly,

Patrick J. Frawley

MR. BAGGOTT

Re: *Swanson, Spaht, and Keith v. Sorrell and the South Carolina Department of Public Safety;*

CA No.: 2011-CP-40-1562; IRF Claim No.: 67008; Our File No.: 25712.05.

June 23, 2011

Page Two.

cc: John A. O'Leary, Esquire

M. Malissa Burnette, Esquire

Rachel D. Erwin, Esquire

Mr. Robert B. Cummings
South Carolina Insurance Reserve Fund

NIKKI R. HALEY, CHAIR
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STATE TREASURER

RICHARD ECKSTROM, CPA
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SC BUDGET AND CONTROL BOARD

Human Resources Division
Samuel L. Wilkins
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FAX 803-896-5050

June 23, 2011

HUGH K. LEATHERMAN, SR.
CHAIRMAN, SENATE FINANCE
COMMITTEE

DANIEL T. COOPER
CHAIRMAN, HOUSE WAYS AND MEANS
COMMITTEE

ELEANOR KITZMAN
EXECUTIVE DIRECTOR

Via Facsimile Only

Mr. Patrick J. Frawley
Attorney at Law
Davis, Frawley, Anderson, McCauley, Ayer, Fisher & Smith
Post Office Box 489
Lexington, South Carolina 29071-0489

Re: E. Shawn Sorrell v. South Carolina Department of Public Safety (SCDPS)

Dear Mr. Frawley:

This letter is in response to your letter dated June 22, 2011, regarding the above referenced appeal pending before the State Employee Grievance Committee. In your letter you indicate that you have been appointed by the Insurance Reserve Fund to represent Mr. Sorrell in a civil lawsuit brought by three witnesses who are scheduled to testify in Mr. Sorrell's appeal hearing that is scheduled for Monday, June 27, 2011. Your letter also includes a request that you and your paralegal be allowed to observe the hearing "to judge [the three witnesses] testimony."

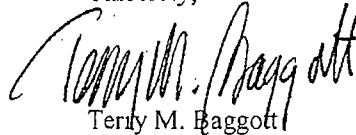
Section 19-718.07 (B) of the State Human Resources Regulations states that: "[n]o more than three representatives, including legal counsel and the covered employee, may be designated by either party to be present during Committee hearings." Further, section 19-718.07 (E) states that: "[a]ll hearings before the State Employee Grievance Committee shall be in executive session unless the employee requests a public hearing in accordance with the Freedom of Information Act prior to the designated Committee panel voting to go into executive session. If the hearing is held in executive session, only the designated Committee panel, the parties involved in a hearing, the Committee Attorney and persons approved by the designated Committee Chairman may attend."

As indicated in the State Human Resources Regulations, no more than three representatives may be designated by either party to be present during the Committee hearing. The appeal record on file with this office indicates that Mr. Sorrell is represented in his appeal before the Committee by two legal counsels, Ms. Malissa Burnette and Mr. John O'Leary. Mr. Sorrell and his legal counsels would constitute the maximum number of representatives allowed at the Committee hearing in accordance with the State Human Resources Regulations. If, however, Mr. Sorrell and his legal counsels were to request a public hearing prior to the Committee vote to go into executive session, other persons may attend the hearing. Since I am unable to grant your request based on the State Human Resources Regulations, I would suggest that you contact Mr. Sorrell's legal counsels to ask if they are seeking a public hearing in

Mr. Patrick J. Frawley
June 23, 2011
Page Two

accordance with the Freedom of Information Act. If Mr. Sorrell's legal counsels request a public hearing, then anyone, including you and your paralegal, may attend the Committee hearing.

Sincerely,

A handwritten signature in cursive script, appearing to read "Terily M. Baggott", is written over a horizontal line.

Terily M. Baggott
Managing Partner
Alternative Dispute Resolution Program

c: Ms. M. Malissa Burnette (with attachment)
Mr. John A. O'Leary (with attachment)
Ms. Rachel D. Erwin (with attachment)

00081

James Randall Davis
Patrick J. Frawley
Jeff M. Anderson
John J. McCauley *
Carey M. Ayer
John F. Fisher
Judith Callison Fisher
Lisa Lee Smith †
Ryan M. Wingard
A. Jewille Doolay

*American Board of Trial Advocates
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(1919 - 1968)

Hubert E. Long
(1921 - 2000)

Since 1961

June 22, 2011

VIA FACSIMILE ONLY

Terry Baggott
S.C. Budget and Control Board
Office of Human Resources
8301 Parklane Road, Suite A-220
Columbia SC 29223
Fax No. 896-5050

Re: *Swanson, Spaht, and Keith v. Sorrell and the South Carolina Department of
Public Safety;*
CA No.: 2011-CP-40-1562; IRF Claim No.: 67008; Our File No.: 25712.05.

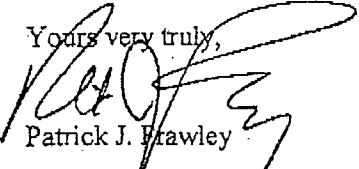
Dear Mr. Baggott:

My name is Pat Frawley, and I am the attorney appointed by the Insurance Reserve Fund to represent Shawn Sorrell in a civil lawsuit brought by Samantha Swanson, Charles Spaht, and Matthew Keith against him and the South Carolina Department of Public Safety. Since they will be testifying during Mr. Sorrell's grievance hearing, I would like to observe the hearing to judge their testimony. I will not be participating in the hearing; I will only be present to observe.

Therefore, I respectfully request that my paralegal, Rachelle Brown, and I be allowed to observe the grievance hearing on Monday, June 27, 2011. You are welcome to reply to us via email at pat@oldcourthouse.com or by telephone at (803) 359-2512.

Thank you for your consideration and response.

Yours very truly,


Patrick J. Frawley

cc: Mr. Robert B. Cummings, South Carolina Insurance Reserve Fund
William H. Davidson, II, Esquire

EDWIN S. SORRELL,
Plaintiff,
vs.
SCDPS,
Defendant.

AUDIO RECORDING

TRANSCRIPTION

RECORDING
DATED: March 22, 2011

COPY

TRANSCRIBED BY: LORA L. McDANIEL,
Registered Professional Reporter

A. WILLIAM ROBERTS, JR. & ASSOCIATES

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Audio Transcription - March 22, 2011

2

1 COMMITTEE ATTORNEY: We're here today
2 pursuant to evidentiary matter. Mr. O'Leary
3 representing Mr. Sorrell. Mr. Sorrell. And Ms.
4 Erwin with DPS. Mr. O'Leary has asked for this
5 hearing for the purpose of raising some objections to
6 some of the documents that have been submitted in
7 proposed exhibit number 1.

8 Both sides have agreed to the issues in
9 writing; however, Mr. O'Leary asked for a hearing, so
10 he will get one.

11 Before I get started, Mr. O'Leary, we just
12 need to state for the record, you sent a letter to
13 DPS -- I'm sorry, to OHR -- February 23rd, third
14 sentence of which reads: It's possible that Counsel
15 for DPS has inside information as to the impartiality
16 of the hearing officer.

17 I just want to make clear that you're not
18 suggesting by that sentence that myself or Ms. Erwin
19 are somehow --

20 MR. O'LEARY: For the record, no.

21 COMMITTEE ATTORNEY: -- engineering
22 anything adverse to your client.

23 MR. O'LEARY: It was worded that way. No,
24 I have no problem with the impartiality of the
25 hearing officer. I actually got -- I think I wrote

1 that the way I think Rachel worded her letter. I
2 withdraw that.

3 My only argument today this is in response
4 to November 17th letter of 2010 where I listed the
5 pages of the exhibits that were -- that we objected
6 to. I did not put specifics. I did follow-up with
7 specifics to them in a letter dated the 23rd of
8 February 2011. And the misunderstanding comes, in
9 fact -- in the past, I had just written these
10 objections, just the numbers and then we argued those
11 at the day of the hearing. The old hearing officer,
12 I can't think who it was --

13 COMMITTEE ATTORNEY: Roland?

14 MS. ERWIN: Roland.

15 MR. O'LEARY: No, it was before Roland.

16 In fact, I still have him on a case in the Supreme
17 Court. The way he had done it was you objected, pull
18 them out, then you go in and you argue those that day
19 before they went. Now that was actually prior to the
20 electronic transmissions, I think. And that's
21 probably maybe the difference here. I would just
22 like to be heard on these pages.

23 These pages, I thought, all stood out
24 clearly as hearsay. And I just did not put
25 specifics, but I did in the February 23rd letter. I

Audio Transcription - March 22, 2011

4

1 tried to take each of them one-by-one and went
2 through them. And I spelled them out page-by-page in
3 the two correspondence.

4 And whatever y'all want me to do, I will
5 do in terms of going through them. I was advised now
6 the procedure is the board, whichever board is to be
7 assigned, they look at this material electronically.

8 COMMITTEE ATTORNEY: Yeah, the letter that
9 OHR sends to you-all states that the committee is
10 provided a copy of the documents, approximately, one
11 week before the hearing. And so, for that reason,
12 whatever procedure may have been utilized in the
13 past -- I mean, I don't have any problem personally
14 showing up the day of the hearing and just keeping
15 the committee outside while we discuss these things.

16 The problem is, it creates two issues;
17 number one, the documents, even if the documents
18 weren't provided ahead of time, the fact that they
19 are assembled and put into PDF format as a practical
20 matter makes it difficult, if there were documents
21 that I would determine to be not appropriate for the
22 committee to review. We then have something that is
23 a crafted product that then has to be parsed out. It
24 just sort of creates delays.

25 MR. O'LEARY: I understand.

1 COMMITTEE ATTORNEY: I'm not trying to be
2 pedantic in making the ruling that I did,
3 Mr. O'Leary. It's just that, obviously, it sort of
4 renders the objections not all that meaningful if
5 there's no grounds for them. Whether I would sustain
6 them or overrule them, it doesn't really give --
7 doesn't really give you much to appeal if you were to
8 ultimately take these up, if there's no articulation
9 of your position and no rationale by me.

10 When I issue written rulings, which I've
11 done, I believe, in the case with both of y'all
12 before, I try to at least explain myself. So,
13 obviously, reasonable minds can disagree as to the
14 wisdom of my ruling. At least, there's grounds if
15 somebody were to want to pursue these to the ALC or
16 so forth.

17 MR. O'LEARY: I was advised by, I think,
18 Terry Bagget, that the board really hasn't seen any
19 of this stuff. When you say copies, when I think of
20 copies, I don't think of electronic; I just don't. I
21 think of pages.

22 COMMITTEE ATTORNEY: What happens, the
23 board has access to an on-line library from which
24 they can view it. To my knowledge there's no paper
25 transmittal of the record to any of the committee

Audio Transcription - March 22, 2011

6

1 members. It's there if they want to look at it. I
2 couldn't honestly tell you how many have looked at it
3 before the hearing. I think that varies.

4 With that being said, Mr. O'Leary, I'll
5 let you --

6 MR. O'LEARY: I would ask that, if you
7 want to take these page-by-page and look at them and
8 get a specific ruling. I thought that some of them
9 were pretty obvious. Page 24 was my first objection.
10 And that reference, page 24 in the hand-out materials
11 for the board, just summarizes affidavits and
12 obviously hearsay. That was my first objection, and
13 I put that in. It says: To allow affidavit simply
14 denies basic simply right to cross-examine the
15 witness.

16 And referencing a sworn affidavit in a
17 resume form, I think, is unfair. And that was the
18 basis of page 24.

19 ~~And they are all similarly spelled out, my~~
20 objections to the specific pages that correspond to
21 the original letter of November 17th. And I don't
22 know if you want to do them one-by-one.

23 COMMITTEE ATTORNEY: Let me -- I know
24 Ms. Erwin has already articulated to some -- a great
25 detail DPS's position on these. My initial

1 impression, though, is, you know, if there's material
2 in these documents that is potentially objectionable
3 on whatever grounds, how do you get past the fact
4 that DPS, this is the record of how DPS approached
5 this -- I'm not talking about any specific document.
6 But, obviously, you know, in life, an administrative
7 process is generally -- a great many decisions are
8 based on hearsay, on, you know, things that are
9 not -- that don't pass evidentiary muster in a court
10 of law. As a practical matter, that information is
11 relied upon by agencies in making their decision.

12 How is the agency in a position to present
13 its case, to present its case in the absence of some
14 of this material coming in? For instance, if the
15 agency says, okay, this is our record, this is what
16 we relied on in terminating him, isn't it enough to
17 simply say, well, the information in there is hearsay
18 and I think the agency should not have relied on that
19 because of it, rather than a wholesale exclusion of
20 the document entirely?

21 MR. O'LEARY: My only argument about that
22 is my understanding is that the hearing itself here
23 in front of this board, they follow the Rules of
24 Evidence. And the Rules of Evidence would exclude
25 hearsay unless you follow it in certain exceptions.

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1 I think that's where you're sort of hitting the rub
2 here between the agency and administrative law versus
3 everything else.

4 However, I do think it's that important
5 that you keep -- you keep the hearsay out. The
6 department has the opportunity to present that, if
7 it's relevant, while most of the hearsay stuff that
8 we've objected to is not even relevant. Like it may
9 deal with other instances.

10 In this case, he was terminated for making
11 a determination he felt which was probable cause to
12 make an arrest. And there were three subjects -- I'm
13 sure you know the facts. Three subjects involved.
14 It arose out of that instance.

15 I think it's important that you restrict
16 the evidence in the case to the incident which he's
17 terminated for; otherwise, you're basically punishing
18 somebody or terminating; in this case, based upon
19 other instances for which he was not terminated. I
20 don't think that's the purpose here.

21 I think the purpose is to challenge -- my
22 purpose is to challenge the judgement of the agency
23 for that particular incident.

24 MS. ERWIN: Part of my letter or response
25 is written prior to John putting anything in writing.

1 as far as what the basis of the objections were.
2 Since we've got the hearsay noted, I'll note, too,
3 the individuals referenced in these affidavits, every
4 one of those individuals has been subpoenaed by
5 Mr. O'Leary. We've subpoenaed the ones that are
6 available. There's one witness that is unavailable,
7 which I think would meet the requirements. He's in
8 California. He's beyond the subpoena power.

9 MR. O'LEARY: Who is that? Which one is
10 that.

11 MS. ERWIN: Spatt. I can mail him
12 subpoenas all day long. There's no way I can enforce
13 that.

14 Also, I would note that -- I know we
15 haven't got to that yet. Johns's reference to other
16 instances. The termination letter is clear; the
17 termination was this incident as well as prior
18 instances where he has acted in that manner. I think
19 all that is relevant.

20 It's also noted, I think for the record,
21 that they have subpoenaed witnesses to testify to
22 those instances. I mean, they have no knowledge
23 whatsoever of the latest incident that triggered
24 this.

25 I mean, so I think once we get to that, we

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1 can note that is part of the record. Again, it's
2 part of what the department relied on in making its
3 decision. It's part of the disciplinary history and
4 it's part of what was referenced in the termination
5 letter. I think for that reason those instances are
6 relevant.

7 MR. O'LEARY: There are some people that
8 are subpoenaed that don't have any personal knowledge
9 of this incident. The only reason I put them down
10 because of the Rules you got to notice these people
11 so many days before. I did that. That doesn't mean
12 you're going to use them.

13 I subpoenaed them for the sole purpose of
14 possibly having to counteract something that was
15 admitted that I thought was irrelevant. Otherwise,
16 if the document is admitted has nothing to do with
17 this particular case, it's from an earlier incident,
18 if I hadn't subpoenaed him, I don't have any way to
19 offset that.

20 COMMITTEE ATTORNEY: I understand.

21 MR. O'LEARY: I don't necessarily use
22 them. Let me tell you one story real quick. I was
23 grieved by a witness who I did that exact thing to
24 years ago, probably when you were in law school.
25 What happened was I had a senator who was going to

1 testify to an incident, subpoenaed him. The Rules of
2 the Board say, you have to be there to be sworn in,
3 which is another issue. So he shows up. He's upset
4 because he has to show up, and we never used him.
5 Never used him because I got what I wanted taken out,
6 and I never had to. He filed a grievance on me.

7 MS. ERWIN: That goes back to my original
8 objection when there's no grounds originally. Now
9 that we're, you know, past our time lines, you know,
10 we don't have the position to go back and subpoena
11 people that we otherwise could have subpoenaed had
12 the ruling been done, I mean, in the manner that the
13 board prescribed. It had been done like the letter
14 suggests, we're going to be having this hearing. We
15 would have our time line to add those people to the
16 witness list. Now those time lines have already
17 gone. That's the department's position, too.
18 Because procedure hasn't been followed, we're kind of
19 stuck in a position of, if your ruling is, this has
20 to come out, then we have to get the people here if
21 we can rely on the documents we relied on in making
22 the decision in the disciplinary process.

23 MR. O'LEARY: My only response to that,
24 you as the hearing officer under the board has
25 authority in the interest of a court of justice --

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1 what was Sonny's name?

2 COMMITTEE ATTORNEY: Sonny Jones.

3 MR. O'LEARY: Sonny Jones. In a case
4 that's in the Supreme Court, Sonny Jones, after we
5 had two hearings and won both of them, there were
6 motions for reconsideration. They were denied. And
7 then four months later on his own, in the interest of
8 justice, he reopened, brought new witnesses that were
9 never even originally listed.

10 What I'm saying is that, based on past
11 practice, the hearing officer has the option under --
12 to waive the time lines. That's what I'm saying. I
13 don't necessarily think he can waive it after the
14 thing is concluded.

15 COMMITTEE ATTORNEY: That's a case
16 currently in the Supreme Court?

17 MR. O'LEARY: Yeah, I'll send you the
18 brief.

19 COMMITTEE ATTORNEY: I'd be very much
20 interested.

21 MR. O'LEARY: It's beyond comprehension.
22 We have whole second trial with new witnesses that
23 never were listed.

24 COMMITTEE ATTORNEY: Since we're making
25 this aside, there's a case, Bradley versus Shack,

1 that specifically addresses the scope of what my
2 authority is as the committee attorney. It, I think,
3 very clearly comes down on the side of discouraging
4 me from going rogue, so to speak.

5 I try to -- I try to avoid the type of
6 situation that came up in the Bradley case. It is
7 not my intent to -- it is not my intent to ever go
8 beyond the bounds of what I think the Rules allow for
9 which, in part, is why I made the ruling the way I
10 did previously.

11 MS. ERWIN: What was that case about?

12 MR. O'LEARY: That must be after Sonny.

13 COMMITTEE ATTORNEY: It was a case, I want
14 to say -- I probably got it somewhere. The committee
15 attorney, as I recall, basically made the decision to
16 reopen a case that the committee had already decided
17 and issued a -- issued his own ruling, of sorts. If
18 you'll give me a minute.

19 MR. O'LEARY: Was it Sonny?

20 COMMITTEE ATTORNEY: I don't recall who.

21 MS. ERWIN: I'm just trying to get idea of
22 what the parameters were.

23 COMMITTEE ATTORNEY: I mean, I can't
24 compel anyone to do anything. I don't have subpoena
25 power. I don't have contempt power. I don't

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1 consider myself to have equitable powers either,
2 although I've had attorneys rather forcefully try to
3 suggest otherwise; not you, Mr. O'Leary. Anyway that
4 being said --

5 MR. O'LEARY: Just in the interest of the
6 justice, that was the way it was in the case we just
7 wrote the brief on.

8 COMMITTEE ATTORNEY: Actually, the way
9 that the regs are written, as I read them, in terms
10 of, for instance, witnesses show up on the day of the
11 hearing that weren't previously disclosed, it
12 actually says that the chairman is the one, the
13 committee chairman has to make the determination
14 whether or not that witness can testify in the
15 interest of justice.

16 As a practical matter, I'll make a
17 recommendation to the chair on record. The chair is
18 free to accept or reject it. I haven't had them
19 ~~reject it yet. Even something like that, which to my~~
20 way of thinking would be something that would be a
21 matter for the attorney to decide. I can't even
22 decide that under a strict interpretation of the
23 Rules.

24 In any event, I don't want to talk in
25 generalities any more than is necessary. I think

1 it's important. We keep coming back to this issue
2 of -- I mean, there's two ways that any document can
3 be dealt with. It can be wholesale excluded ahead of
4 time or you can -- it can be included, you know, for
5 one limited purpose such as, well, if it is a record
6 of the agency.

7 You can ask for -- if there's hearsay
8 embedded within that document, you can certainly ask
9 for a limiting instruction so that the committee will
10 disregard the substance of what's in there, if it is
11 on hearsay grounds. I just want to -- and we've done
12 that in the past.

13 Obviously, a document can come in for one
14 purpose, but not for another. Obviously, opinions
15 can vary as to what the practical effect of what a
16 limiting instruction is. I guess my overriding
17 concern at this point is -- I'm not going to make a
18 ruling today. My ruling will be, hopefully,
19 sufficiently detailed enough so that even, even if
20 anyone disagrees with me, it will be pretty clear
21 where I stand and pretty clear from your standpoints
22 what to do at that juncture.

23 The documents are undisputably records of
24 the agency. Now, the problem is, if something is
25 wholly irrelevant -- and I shouldn't say that. Many

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1 of the documents are obviously agency records.

2 I will tell you, by way of example, a
3 document that I have had no problem excluding in the
4 past is where somebody wanted to put in an arrest
5 record of a witness. Not a party. Well, that's a
6 pretty obvious issue for me to decide. You can't put
7 in an arrest record to attack a witness's
8 credibility. That's the kind of thing I would
9 exclude. That is not an agency record. That's
10 something the appellant wanted to put in.

11 I'm really struggling with this issue of a
12 wholesale exclusion of something that is in an
13 agency's record that the agency relied upon, even if
14 it's a synopsis of other records and it's cumulative.
15 Obviously if it's cumulative, that's a little bit
16 different.

17 Y'all, to your credit, in the past have
18 agreed in another matter that cumulative documents
19 could be kept out. You know, but, for instance, an
20 OPR report. Well, an OPR report is necessarily going
21 to be cumulative because that's the -- I'm not
22 referring to any particular one in general -- it's
23 going to have accumulated information in it. It's
24 also very potentially going to have hearsay in it.

25 How do you keep out something that the

1 agency relied upon, even if it's embedded with
2 hearsay? Is it not enough -- I'll just pose the
3 question to you. Is it not enough to simply instruct
4 the committee -- and I realize this may be a tedious
5 process to undertake -- to disregard the following
6 information in that document because it's hearsay?
7 That the committee can consider it in evaluating the
8 agency's conduct or in the agency's -- the
9 appropriateness of the agency's investigation and the
10 ultimate discipline. And that the committee, if they
11 find the agency relied on too much hearsay, then
12 that's something they can consider in determining,
13 you know, the justness of their decision.

14 MR. O'LEARY: My only response to that is,
15 using that example, okay, about the OPR report, it
16 puts undue emphasis on the report. They've got the
17 ability to get the testimony of the investigating
18 officer. And just like in a criminal case, you can't
19 put the officer's report in. The officer can testify
20 to what he concluded in the report as a result of his
21 investigation.

22 You can't put in accident reports even
23 though that would be, for example, in the agency's
24 file, too. I think what it does, it takes a witness
25 and allows into evidence the basis for his

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1 determination to be reviewed after they're
2 deliberating this thing.

3 I think the reason for keeping that out is
4 it unduly emphasizes that report. He can testify.
5 In every case we've had the OPR investigator testify.

6 The other thing that is important, when
7 you mention like the witness shows up the day of the
8 hearing and, you know, it's technically the decision
9 of the hearing -- of the chairman, that's the dilemma
10 you run into when we don't have the actual board
11 here, because technically everything is through the
12 chairman, and you're sort of advisor to the board.
13 That kind of makes this hybrid a little more
14 difficult to deal with.

15 I would think that allowing just across
16 the board all of these -- all this information that
17 is irrelevant to this case, and is highly prejudicial
18 because it's saying, well, they got all these other
19 things even though he wasn't disciplined for it;
20 therefore, you know, we should uphold the agency.

21 This one is a little different. This is
22 going to be an issue of law and probable cause.

23 COMMITTEE ATTORNEY: If it's progressive
24 discipline, though, how is past conduct not relevant?

25 MR. O'LEARY: 'Cause this wasn't

1 progressive discipline in this case.

2 COMMITTEE ATTORNEY: What does the
3 agency --

4 MS. ERWIN: I think the disciplinary
5 letter is clear, you know. He had this incident,
6 which was totally -- I mean, and it's not just a
7 question of whether the arrest was valid. It was the
8 way the whole situation was handled.

9 I mean, it was just not whether there
10 should've been arrest or not arrest, but how the
11 individuals were treated.

12 The fact that there has been similar
13 conduct in the past. That's in the termination
14 letter. Specifically the CJ incident, if you look at
15 the disciplinary log that's provided, I mean, there
16 have been other instances. That's something the
17 department looks at in evaluating the situation. I
18 mean, you know, what steps have you taken in the
19 past, you know, to try to work with the individual?
20 What other instances have happened? Did they take
21 disciplinary action in those instances or some other
22 thing? With the CJ thing, he was referred to a
23 LEAP-type program.

24 I mean, there are other ways, you know, of
25 trying to address the behavior. Ultimately, you

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1 know, you have one instance too many. I think the
2 disciplinary letter makes it clear. This was not
3 just solely because of this incident. It was this
4 incident with the fact of looking at the behavior in
5 the past. I can go back and refer you to that
6 letter.

7 MR. O'LEARY: That's why I subpoenaed like
8 -- was it Mike Lanier? Was subpoenaed from the
9 academy because of that other incident which involved
10 somebody with a threat at the academy coming in to
11 kill somebody the very day that the Virginia Tech
12 thing went down. They thought he overreacted for
13 whatever reason; the agency didn't but they did.

14 It's really difficult in these cases
15 because you really end up trying -- putting before
16 the board more than one incident, you know. That
17 is -- I think it's very, very hard to do. It's hard
18 for the board to be fair in that.

19 Are you really firing him because of the
20 previous thing he may have had bad judgment on, or is
21 it this one? Obviously it's your decision as to
22 what's in or out. I don't think you should allow the
23 records to be a complete hodgepodge of hearsay on
24 irrelevant matter. That's the only thing I can
25 really say to you.

1 I honestly thought that it was critical
2 for decision-making process because of the technical
3 rules of the board with reference to the chairman,
4 that the board be there. That's why I didn't think
5 you could really rule on these until we got -- the
6 ultimate decision had to be the board. Maybe I'm
7 wrong in that.

8 COMMITTEE ATTORNEY: Well, let me give you
9 an example of the kind of thing that I recently
10 determined that I could not rule on. An employee
11 stated something happened, that there was some
12 assurance given by a superior. There was a document
13 that the employee signed, in which the employee
14 essentially waived any condition, any oral promise to
15 the contrary. So there's a conflict between the
16 employee's articulated position and a document that
17 disavows that position. That's a conflict that I did
18 not feel like I could resolve.

19 The fact that somebody signed something is
20 not dispositive; I mean, if it's signed under duress,
21 if there were attendant circumstances, so forth and
22 so on. In that instance, my ruling was this is
23 not -- the agency asked that the document dispose of
24 the issue. I said, no, the document does not dispose
25 of the issue. That's something that only the

22

1 committee can resolve.

2 MS. ERWIN: In that instance, the employee
3 was allowed, I guess, to be called as a witness to
4 dispute or whatever?

5 COMMITTEE ATTORNEY: Well, that case has
6 not been heard on the merits.

7 MS. ERWIN: I guess that's what they're
8 asking.

9 COMMITTEE ATTORNEY: The employee is going
10 to be allowed to argue their position. The agency is
11 going to be allowed to rebut that testimony with the
12 document. That was what I felt to be an evidentiary
13 conflict.

14 I wouldn't have had this hearing today,
15 Mr. O'Leary, if I didn't think I could rule on these
16 issues. Honestly, I don't have a problem with the
17 fact that you asked for a hearing. I can either
18 resolve these by letter brief, by formal brief, or by
19 hearing, but I'm not prepared to rule today.

20 I know we've sort of talked in
21 generalities a lot. I think it's important because,
22 obviously, you have some concerns with the process
23 itself and specifically with how it relates to this
24 case. I want you to be heard on this.

25 MR. O'LEARY: Let me put on the record

1 what I was concerned about. It's not your
2 impartiality. Don't get me wrong. That's not it at
3 all.

4 COMMITTEE ATTORNEY: I got you.

5 MR. O'LEARY: When you put into a letter,
6 I don't necessarily consider that an evidentiary
7 hearing issue. You got to have some kind of -- be
8 able to present your position to the hearing officer
9 and to the board.

10 And when they're not all assembled at
11 one point, I think that does kind of create -- it
12 creates a problem on building the proper record. I
13 thought that the ones that I objected to in these
14 letters were, on their face, obvious from the pages
15 where it says affidavit of, and you don't have the
16 witness necessarily there. I think that was hearsay.

17 I'd just like to have the opportunity,
18 which I did today, to be able to say to you that my
19 reasons are set forth in that letter. I don't think
20 I waived --

21 COMMITTEE ATTORNEY: You have not waived
22 your grounds.

23 MR. O'LEARY: Because they haven't seen
24 the things. I actually thought that this stuff had
25 already gone out to the board. And Terry cleared

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1 that up for me.

2 COMMITTEE ATTORNEY: Okay. Again, I am
3 not a creature of the administrative process other
4 than in my function here. So as somebody who's in
5 circuit court primarily, it is a bit of a different
6 bird, you know. And I know Terry, OHR, has already
7 articulated its position about the process. I don't
8 want to weigh in too much on that.

9 You're certainly free to raise these
10 objections before the full board, if you so choose,
11 at the time they're offered. The problem is, if
12 Committee Exhibit 1 is already available to them and
13 it's got what you deem to be objectionable documents
14 in it, you can't really unring the bell at that point
15 because they're in front of you and they may or may
16 not have already looked at them. The record has
17 already been compiled.

18 Now the way the reg reads, it says, you
19 can raise -- those documents marked as Committee
20 Exhibit 1 will be the record unless there's a prior
21 objection made. I believe OHR's position prior
22 objection is before the hearing. Once it's marked --
23 you guys have been through this before. Committee
24 Exhibit 1 is marked into evidence before the first
25 witness is called.

1 MR. O'LEARY: Sonny, for example, let's
2 say you have 120 pages of exhibits or whatever. What
3 he would do, we would do one-by-one these pages. And
4 he'd either rule on them or not. So he would say
5 page 20 is excluded, page 30 is excluded, page 40 is
6 excluded or whatever.

7 COMMITTEE ATTORNEY: In front of the
8 committee?

9 MR. O'LEARY: Yes.

10 MS. ERWIN: Since I've been involved in
11 this process, all that was done prior. Like the
12 letter from the board indicated. You're mailed the
13 committee exhibits. It's your responsibility to look
14 at it. And then the objections, if there are any,
15 are made prior, as you've indicated, to that going
16 out so that, when that committee exhibit comes out,
17 what you have -- and the way we've done it in the
18 past, if there's an objection, you'll get to page 32,
19 it's like blank because there's been some sort of
20 ruling that has to be redacted. Then you have a
21 blank 32, blank 38 or blank 40, whatever. So that
22 you don't renumber what we already have. We just
23 substitute that page out.

24 MR. O'LEARY: Eliminate those pages out.

25 MS. ERWIN: Roland is the only other

1 person I've dealt with. That's the way that was
2 dealt with. It was done prior to that going out.

3 COMMITTEE ATTORNEY: What difference does
4 it make, Mr. O'Leary, if I'm making the ruling in
5 front of the board or just amongst us?

6 MR. O'LEARY: Let me say this. I don't
7 have any problem with that. The way the regs are
8 written, I don't know if it's your authority or the
9 chairman has to make that ruling.

10 COMMITTEE ATTORNEY: That may have been an
11 ill-timed example. The issue of belatedly disclosed
12 witnesses, the way I read the regs --

13 MR. O'LEARY: Yeah, that one is different.

14 COMMITTEE ATTORNEY: That is something the
15 chairman has the authority to do. In terms of
16 evidentiary rulings, that is solely within my
17 discretion to make.

18 MR. O'LEARY: Let me tell you, the other
19 thing I want to point out just for the record, on
20 this letter I wrote back in November, I just listed
21 the pages. The closest example to that, in federal
22 court, when you're picking a jury. You send to the
23 judge I object to jurors 48, 49, 50, 51, 52. Then
24 they have the hearing as to why. They either exclude
25 them or don't exclude or allow them or don't.

1 I thought I properly was protecting the
2 record by doing that. I would have the opportunity
3 to build a physical record before, like we're doing
4 today, before yourself or whoever was doing the
5 hearing, the hearing officer.

6 COMMITTEE ATTORNEY: Let me just make one
7 thing clear. I'm not into shell games. If at any
8 point in any case in the future you want an
9 evidentiary hearing, just ask for one. You'll get
10 it. You don't have to -- you don't have to
11 articulate in writing these issues, if you would
12 rather argue it in person.

13 The concern, I think the concern that OHR
14 has -- and I don't work for OHR. I'm part of this
15 process, too. Whatever issues need to be resolved to
16 get the process to run as smoothly as it can when
17 we've actually impaneled the committee, that's my
18 problem. It's my problem. And to the extent that we
19 can dispose of any of these issues so we don't have
20 to consume the morning of the hearing when we got the
21 committee sitting here, let's do it.

22 I've had multiple prehearings before the
23 committee. I've had prehearings that have lasted as
24 long as the hearings themselves. I've actually had
25 witnesses brought in for proffers in prehearing.

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1 You're not limited as to what you can, in terms of
2 building a record, do even before the committee is
3 empanelled.

4 I guess part of this -- part of this is
5 your concern that somehow my earlier ruling was
6 dispositive of the evidence of those documents either
7 coming in or out. It was not. You could have
8 renewed those same objections or I should say
9 articulated those same objections on the day of the
10 hearing. It's just, as a practical matter, it would
11 have been much more difficult --

12 MR. O'LEARY: To unring the bell.

13 COMMITTEE ATTORNEY: To unring the bell
14 and also it would have been awfully time consuming.
15 OHR tries very much, especially when you have
16 committee members that come from agencies outside of
17 Columbia to minimize their time away from their jobs.
18 I'm considered more expendable in terms of my time
19 than they.

20 MS. ERWIN: That would be my preference,
21 just from a practical matter. If we're going to have
22 a hearing, I just think it's a waste of time for the
23 committee members and then the other witnesses
24 because you have to have everybody here, and
25 everybody is on hold for an hour or two.

1 COMMITTEE ATTORNEY: If you have to
2 subpoena witnesses because you're not sure if the
3 documents are coming in, I'm with you. It's
4 unfortunate you got grieved because who amongst us
5 hasn't been there?

6 MR. O'LEARY: Seriously. I couldn't
7 believe it. I'm thinking, the Rule put me into that
8 position. Obviously, I wouldn't have brought the guy
9 the first day.

10 MS. ERWIN: The way I've always had it,
11 they said, look, we swear everybody in. When they
12 come in, they get sworn in then. I'm not aware of
13 anything -- I'm not saying that. I'm just saying --

14 COMMITTEE ATTORNEY: They don't have to be
15 sworn en masse; that's, again, an expedient.

16 MR. O'LEARY: That is a real -- from our
17 standpoint, that is when we get these people mad at
18 us more than anything else. Why are you keeping me
19 here? Why do I have to be here when it's a three-day
20 hearing. I have to be there with everybody on Monday or
21 something. It was one of the state senators. I'll
22 tell you, I had to write the thing to the board. It
23 upset me, tell you the truth. I thought: What the
24 heck am I going to do?

25 COMMITTEE ATTORNEY: I'm not aware of

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1 anything that compels a witness to be here at the
2 start of the hearing as long as they're sworn before
3 they testify. I think the concern that OHR has,
4 obviously, it's a fluid process. You never know when
5 you're going to need someone. Sometimes you usually
6 end up bringing more people than you ever call or
7 you certainly -- all of us.

8 MR. O'LEARY: Read Sonny Jones' opinions.
9 That was a strict rule. The Rule is this: If they
10 ain't there on that Monday or whatever day it is,
11 they aren't there to be sworn in with the group,
12 they're not testifying, unless it's from the state.
13 And then in the interest of justice, he would let
14 them in. That's the basis. I'll send you a copy of
15 that brief.

16 MS. ERWIN: I would like to see a copy.

17 MR. O'LEARY: It's the most screwed-up
18 hearing I've ever done.

19 ~~COMMITTEE ATTORNEY: I can tell you that's~~
20 not way it's happened since I've been here. Without
21 any incident and any reaction from anyone, we've had
22 witnesses that were not here at the opening and were
23 sworn in. I mean, you don't have to do that in
24 circuit court. Maybe I'm going to eat crow here.
25 I'm not aware of any reg that requires all the

1 witnesses to be present at the outset.

2 MS. ERWIN: I've told witnesses before
3 we've got scheduling. You've got officers coming off
4 midnights. I'm going like, look, there is no way you
5 will be reached, you know, the first hour or two of
6 the hearing. Call me when you wake up, and I'll tell
7 you where we are and tell you whether you need to get
8 down here or not.

9 MR. O'LEARY: Fifteen years ago he
10 wouldn't be able to testify. Knowing the way the
11 board was run at that point. The attorney running
12 the board happened to be Sonny. That's the way it
13 was handled. I got burned more than once on that.

14 In this case, seeing the board -- again,
15 when I think of copy, I think of papers. The board
16 hasn't seen these documents. I already asked you to
17 reconsider my detailed positions on each of those
18 pages. That's all I'm asking you to do.

19 COMMITTEE ATTORNEY: Okay. You want to
20 expand upon any of the grounds you've gotten in your
21 written --

22 MR. O'LEARY: There was one, was it 84?
23 Number -- page 84. Apparently I didn't catch this.
24 I think my client did.

25 MS. ERWIN: You have 82 through 86.

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1 MR. O'LEARY: Yeah. Was it page 84?
2 There was a document that wasn't signed. I thought
3 it was hearsay.

4 MR. SORRELL: 83, sir.

5 MR. O'LEARY: 83. We didn't see any
6 officer's signatures on that. But I've already
7 objected on the grounds it was hearsay. I didn't
8 notice that there was nothing -- it was a signature
9 missing.

10 MS. ERWIN: A supervisor's signature is on
11 it. I mean, I don't think that's one where --

12 MR. O'LEARY: The officer's signature. I
13 don't know who. The officer took the statement, I
14 would guess, would be the one objection went to.
15 Page 83.

16 The rest of the objections were spelled
17 out in the documents that I submitted. And I do
18 appreciate you allowing us to come in and explain it.
19 I think the administrative process is such a hybrid,
20 it's really important that it be consistent. It is
21 consistent as long as you have the one hearing
22 officer.

23 COMMITTEE ATTORNEY: Right.

24 MR. O'LEARY: Problem comes when you mix
25 them. I'm just saying.

1 COMMITTEE ATTORNEY: They go to the sweet
2 by and by as in the case of my predecessor.

3 MR. O'LEARY: That's just a
4 misunderstanding is the way I think of it.

5 You know that was right in front of my
6 office he got stopped.

7 COMMITTEE ATTORNEY: I did not know that.

8 MR. O'LEARY: Misunderstanding.

9 MS. ERWIN: On our part, I think our
10 position is done with the exception of, like I said,
11 I mean, now depending on your rulings, it could put
12 us in a position of having to swing people we
13 otherwise haven't. I think most instances can be
14 addressed through witnesses who are. But I'm just
15 saying --

16 MR. O'LEARY: We plan on using -- one of
17 the things we didn't object to, I think is in here,
18 is the video. Are you going to introduce the video
19 or are we going to introduce the video?

20 MS. ERWIN: I think the video was
21 submitted as part --

22 MR. O'LEARY: It was. I saw a copy that
23 shows the thing. I just want to make sure.

24 COMMITTEE ATTORNEY: I have not reviewed
25 that video.

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1 MS. ERWIN: It's part of the committee
2 exhibit. It would be in there unless it's excluded.
3 So it's in as far as publishing it.

4 MR. O'LEARY: There's no objection to
5 that. It shows the thing here in one of the pages.
6 Somebody Xeroxed it, put it in here. That's it. My
7 objections are set forth.

8 Let me do this. Can I submit to you this
9 afternoon the DVD to make sure it's the same as that
10 one?

11 MS. ERWIN: I think the copy we provided
12 came with the OPR. I'd have to go back and look at
13 that.

14 MR. O'LEARY: I haven't got it with me to
15 look at, but I'm sure it's the same; had to come from
16 y'all.

17 MS. ERWIN: I mean, I don't have a copy of
18 it. I mean --

19 ~~COMMITTEE ATTORNEY: How long is it? Does~~
20 anybody know?

21 MR. SORRELL: Seven or eight minutes.

22 MR. O'LEARY: It's not long.

23 MR. SORRELL: Very short video.

24 MR. O'LEARY: I can give the runner a
25 copy. It's in the office.

1 COMMITTEE ATTORNEY: You want me to
2 compare it to --

3 MR. O'LEARY: I just want to make sure
4 it's the same one we're talking about; the one that's
5 photographed in here.

6 COMMITTEE ATTORNEY: You got it? Take a
7 break.

8 (End of audio recording titled Opening
9 Statement, and beginning of audio recording titled
10 Continued Oral Arguments.)

11 COMMITTEE ATTORNEY: For the record, we're
12 now evaluating the DVD of an incident to confirm that
13 it is the incident in question. Or is the same.
14 Mr. O'Leary.

15 MR. O'LEARY: It's the same. My client
16 has to look at it. We want to make sure it's the
17 same DVD or whatever that's recognized in the
18 evidence.

19 (Video played.)

20 MR. O'LEARY: Eight minutes, so it's
21 probably the same one. Can you see okay from there?

22 MR. SORRELL: That's where it begins.

23 MR. O'LEARY: We believe that's the same
24 one; time is approximately what we thought.

25 MR. SORRELL: Is it appropriate that we

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1 watch the whole thing?

2 MR. O'LEARY: You can watch the whole
3 thing, if you want. I think it's the same.

4 COMMITTEE ATTORNEY: You're certainly free
5 to, if you want to, Mr. Sorrell.

6 MR. SORRELL: I'm asking is it appropriate
7 in this forum for you to review this?

8 MR. O'LEARY: He isn't the decision maker.
9 He's the judge --

10 COMMITTEE ATTORNEY: My purpose, unless
11 you want to explain --

12 MR. O'LEARY: That's fine. We don't need
13 to watch it.

14 COMMITTEE ATTORNEY: We're just trying to
15 determine, Mr. Sorrell, if this is an authentic copy
16 of what was captured by the camera.

17 MR. SORRELL: I'll agree it is.

18 MR. O'LEARY: Again, for the record, I'll
19 request those evaluations, which we only have one
20 year of the eleven years that he was in. We asked
21 for those. I'll send a letter to human affairs, to
22 Terry.

23 COMMITTEE ATTORNEY: What is it you're
24 asking for, Mr. O'Leary?

25 MS. ERWIN: Employee evaluations.

1 MR. O'LEARY: I want to ask human affairs
2 for his employee evaluations. We thought they were
3 important.

4 COMMITTEE ATTORNEY: How many years back?

5 MR. O'LEARY: Ten. He's only been
6 there --

7 MS. ERWIN: I don't mind providing it.
8 I'll be honest, I don't think it's necessarily
9 relevant.

10 COMMITTEE ATTORNEY: Now is the time to
11 tell me what you think.

12 MS. ERWIN: He's certainly entitled to it,
13 but, I mean, the evaluations, you know, employees are
14 disciplined, and they may have a perfect, you know,
15 EPMS record. Unless it's a performance, i.e., you're
16 not doing the job function, I don't see where, you
17 know, eleven years' worth --

18 MR. O'LEARY: For the purpose of using my
19 client, testimony of my client, he would be asked how
20 many years he's been there. Did you receive
21 evaluation every year? How were you ranked in those
22 years, exceptional or whatever? I may not introduce
23 them. I do want to have them physically present.

24 The reason I say that, they're saying he
25 had prior problems with the department. Those prior

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1 problems, if it's important to them, the prior good
2 years during those same times, I think, are very
3 relevant to us.

4 MS. ERWIN: I guess my only response --

5 COMMITTEE ATTORNEY: Do I need to make a
6 ruling on this --

7 MR. O'LEARY: No, not really, just want to
8 tell you what we're using them for.

9 COMMITTEE ATTORNEY: -- before they're
10 even produced? I mean, discovery is one thing.

11 MS. ERWIN: Right. I guess my position
12 is, again, your employee evaluation is separate from
13 the discipline. Unless you're disciplined because
14 you're not doing what your job is, i.e., you're a
15 trooper, you're not going down the road patrolling.
16 You could be showing up for work, not doing whatever,
17 it doesn't mean -- that's not going to be noted in an
18 evaluation. It's noted in the disciplinary record.

19 MR. O'LEARY: There's a section on
20 judgement, isn't there?

21 COMMITTEE ATTORNEY: Here's the thing. I
22 mean, is it your intent to offer these documents into
23 the Committee Exhibit 1?

24 MR. O'LEARY: No.

25 COMMITTEE ATTORNEY: Okay.

1 MR. O'LEARY: No.

2 COMMITTEE ATTORNEY: Well, then I don't
3 need to make a ruling on that. My rulings are
4 limited to what's going to be, at least at this
5 juncture, what's going to be in Committee Exhibit 1.
6 Y'all are certainly free to renew this issue
7 depending on what use to which you want them.

8 MR. O'LEARY: I haven't seen them. I'm
9 assuming they're good.

10 COMMITTEE ATTORNEY: You haven't seen
11 them. You don't know what you're going to do. I'll
12 make a ruling at the hearing, if y'all want to renew
13 this issue then.

14 MS. ERWIN: That's fine.

15 MR. O'LEARY: That's fine.

16 COMMITTEE ATTORNEY: You don't have any
17 problem providing them?

18 MS. ERWIN: No.

19 COMMITTEE ATTORNEY: I try not to get
20 involved in discovery.

21 MR. O'LEARY: You're good. Terry gets
22 them.

23 COMMITTEE ATTORNEY: We will be back on
24 this matter on April 13th at 9:00. And I will make a
25 ruling sufficiently ahead of that date so that -- at

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1 least more than a week. I guess I'll have to make it
2 probably ten days before the hearing date so that
3 whatever has to be compiled, if it's different than
4 what's already been compiled, can be worked through.
5 If that raises the specter of y'all doing things
6 differently, then that would give you time to react.

7 MR. O'LEARY: This is all tape recorded.
8 This will be part of the same record.

9 COMMITTEE ATTORNEY: The committee doesn't
10 have access to any of this. Yeah, it's all part of
11 the record.

12 MR. SORRELL: Actually, April 14th.

13 COMMITTEE ATTORNEY: April 14th.

14 Everybody got that?

15 MS. ERWIN: It's a Friday, right?

16 MR. SORRELL: Thursday.

17 MR. O'LEARY: If it was the 13th and a
18 Friday, I ain't coming.

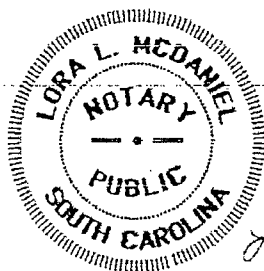
19 (The audio recording ended.)
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CERTIFICATE OF REPORTER

I, Lora McDaniel, Registered Professional Reporter and Notary Public for the State of South Carolina at Large, do hereby certify that the foregoing audio transcription was produced to the best of my ability and may include inaudible sections.

I further certify that I am neither related to, nor counsel for, any party to the cause pending or interested in the events thereof.

Witness my hand, I have hereunto affixed my official seal this 5th day of December, 2011 at Charleston, Charleston County, South Carolina.



Lora McDaniel

Lora L. McDaniel,
Registered Professional Reporter
My Commission expires:
September 18, 2016

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reason - subpoenaed (6)

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1 APPEAL OF TERMINATION HEARING
2 EDWIN SHAWN SORRELL
3 SOUTH CAROLINA DEPARTMENT OF PUBLIC SAFETY

4 COPY

5 TAPE TRANSCRIPTION OF PROCEEDINGS
6
7

8 BEFORE: STATE EMPLOYEE GRIEVANCE COMMITTEE

9 DATE: JUNE 27, 2011

10 TIME: 9:00 AM

11 LOCATION: South Carolina Office of Human Resources
12 8301 Parklane Road, Suite A220
Columbia, SC

13 REPORTED BY: MARIA D. DEMPSEY, Registered
14 Professional Reporter
15
16
17
18

19
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23 ALSO PRESENT:

24 State Employee Grievance Committee:

25 Committee Attorney: Warren Ganjehsani

Chairman: Herbert Cooper, Department of
TransportationGerald Murphy, State Accident Fund
Lesia Kudelka, Labor, Licensing & Regulation
Xena Hampton, Department of Mental Health
Rita Teal, South Carolina State UniversityCommittee Assistant: Joseph Miller, State
Human Resources Division

1 MR. COOPER: All right. This is the
2 hearing of the appeal of termination instituted by
3 E. Shawn Sorrell against the South Carolina
4 Department of Public Safety being held in Columbia,
5 South Carolina, this 27th day of June 2011. A
6 record is being made of the hearing.

7 For the record, my name is Herbert
8 Cooper for the Department of Transportation.

9 And other members of the State Employee
10 Grievance Committee present today are Gerald Murphy,
11 the State Accident Fund; Lesia Kudelka, Labor,
12 Licensing & Regulation; Xena Hampton, Department of
13 Mental Health; and Rita Teal, the South Carolina
14 State University. The committee attorney is Warren
15 Ganjehsani with the attorney general's office.

16 State Employee Grievance and Appeals
17 Regulation 19-718.07 E.7 provides that each party
18 shall provide to the secretary a list of
19 representatives and witnesses at the beginning of
20 the hearing.

21 At this time the secretary will accept
22 representatives and witness list from both parties.
23 List to Gerald, please. The appellant is
24 represented by M. Malissa Burnette, attorney at law
25 and John A. O'Leary, attorney at law. The employee

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1 agency is represented by Rachel Erwin, assistant
2 general counsel.

3 Your attention is called to the fact
4 that this hearing will be conducted as informally as
5 is compatible with an equitable presentation of both
6 sides of the case and in compliance with the
7 Administrative Procedures Act.

8 I am the presiding officer of this
9 committee and it is my duty to take whatever action
10 is necessary to ensure an equitable, orderly, and
11 expeditious hearing. We will be bound by the rules
12 of evidence. The committee attorney, she'll
13 determine the order and relevance of the testimony
14 and the appearance of witnesses, and she'll rule on
15 all motions and all objections.

16 The human resources division has
17 furnished to the members of the committee a copy of
18 records, reports, and documentation of the early
19 ~~proceedings on the grievance. These documents were~~
20 provided to the human resources division and by the
21 agency and the appellant. These documents will be
22 considered by the committee as a record on appeal
23 during this hearing and according to 8-17-350 of the
24 State Employee Grievance Procedure Act will now be
25 marked into evidence as Committee Exhibit Number 1.

1 MS. BURNETTE: Mr. Chairman, may I
2 confirm that that is the corrected version of
3 Committee Exhibit 1?

4 MR. COOPER: It is.

5 MS. BURNETTE: Thank you.

6 MR. GANJEHSANI: And Ms. Burnette, once
7 Mr. Cooper finishes with his presentation, there is
8 a matter relating to that very issue that I'll need
9 to address, after the witnesses, at this board.

10 MS. BURNETTE: Thank you.

11 MR. COOPER: The appellant and the
12 agency may, if they so desire, make an opening
13 statement before the presentation of their case --
14 cases. Then the appellant may call and examine
15 witnesses from the appellant list of witnesses.

16 After the appellant is finished, the
17 agency may present its case. Each side will be
18 given the opportunity at the appropriate time to ask
19 questions of the witness. The presiding officer,

20 any member of the committee, or the committee
21 attorney may direct questions to any party or
22 witness at any time during the proceedings.

23 Before closing the hearing, the
24 presiding officer will allow both parties to present
25 a brief summary or a closing statement if they so

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1 desire. The appellant will have the option of
2 closing first or last.

3 I wish to point out that only testimony
4 in evidence pertinent to the grounds on which the
5 appeal is based or pertinent to the charges on which
6 the agency's action is based will be allowed.
7 Testimony or evidence which is repetitive or
8 cumulative will not be permitted.

9 Are there any questions by either party?

10 MS. BURNETTE: No.

11 MR. COOPER: Witnesses are asked --

12 witnesses are asked not to discuss this case either
13 before or after testifying until they are excused.
14 This is not intended to preclude the parties from
15 entering into discussion with their respective
16 witnesses.

17 Does any witness not understand this?

18 Okay. Witnesses are to remain available
19 after testifying until they are excused by the
20 presiding officer. After the opening statement,
21 witnesses may not remain in the hearing room except
22 when called to testify. Witnesses will be asked to
23 testify under oath, and at the time the secretary
24 will determine which witnesses on the parties list
25 are present and administer the oath to all those

1 witnesses..

2 THE SECRETARY: I'm going to read both
3 of these lists and some of you are on both of them,
4 but go ahead and signify that you're here. E. Shawn
5 Sorrell.

6 MR. SORRELL: Here, sir.

7 THE SECRETARY: John O'Leary.

8 MR. O'LEARY: Here.

9 MR. MURPHY: Here.

10 THE SECRETARY: Bernard Malone.

11 MR. GANJEHSANI: That's that witness I
12 told you he hasn't shown up yet.

13 THE SECRETARY: Okay. Corporal Larry
14 Walker?

15 MR. WALKER: Here.

16 THE SECRETARY: Chief Zackary Wise.

17 MR. WISE: Here.

18 THE SECRETARY: Investigator Lee Carter.

19 MR. LEE: Here.

20 THE SECRETARY: Charles William Spaht.

21 Excuse me S-P-A-H-T.

22 MR. GANJEHSANI: He's not here. He's
23 from out of state.

24 THE SECRETARY: Okay. Charles W. Spaht.
25 Samantha Swanson.

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1 MS. SWANSON: Here.

2 THE SECRETARY: Matthew Keith.

3 MR. KEITH: Here.

4 THE SECRETARY: Sharon Mitchell.

5 MS. MITCHELL: Here.

6 THE SECRETARY: Mike Lanier.

7 Teresa Kitchens.

8 MS. KITCHENS: Here.

9 THE SECRETARY: Joel Lumpkin.

10 Jack Wise.

11 MR. WISE: Here.

12 THE SECRETARY: Allen Curtis.

13 MR. CURTIS: Here.

14 THE SECRETARY: John Hancock.

15 MR. HANCOCK: Yes, sir.

16 THE SECRETARY: Lee Carter.

17 MR. CARTER: Here.

18 THE SECRETARY: Samantha Swanson.

19 MS. SWANSON: Here.

20 THE SECRETARY: Matthew Keith.

21 MR. KEITH: Here.

22 THE SECRETARY: Officer KA Bolderson

23 (sic).

24 MR. ROGERSON: Rogerson. Here.

25 THE SECRETARY: Corporal ME Harris.

1 MR. HARRIS: Here, sir.

2 THE SECRETARY: Terry Kitchens.

3 MS. KITCHENS: Here.

4 THE SECRETARY: Mark A. Keel.

5 MR. KEEL: Here.

6 THE SECRETARY: And Charles W. Spaht,
7 Jr., S-P-A-H-T. Spaht. I'm sorry. Charles Spaht.

8 MR. GANJEHSANI: He's not here.

9 THE SECRETARY: Anyone here that name I
10 didn't call? Okay. I'll administer the oath. So
11 if all witnesses would please stand, raise their
12 right hand. And do you swear or affirm that the
13 testimony you will give today is whole -- is the
14 whole truth and nothing but the truth?

15 THE WITNESSES: Yes.

16 THE SECRETARY: Thank you.

17 MR. COOPER: The appellant, the agency
18 witnesses, or anyone else related to the case are
19 not to discuss the case with any member of the State
20 Employee Grievance Committee before, during, or
21 after the hearing until the final decision is
22 reached and the matter is no longer pending before
23 the committee.

24 The matter is still considered to be
25 pending before the committee during the time

10

1 involved in a request for reconsideration of the
2 committee's decision or until the time has passed
3 for an appeal to the administrative law clerk.

4 The only time the case is to be
5 discussed is during the formal hearing procedures.
6 After hearing this appeal, the committee will report
7 its finding and decision in writing to the employee,
8 and the employee and agency within 20 calendar days
9 of the conclusion of the hearing.

10 The decision shall be final in terms of
11 administrative review. Assisting the committee is
12 Joseph Miller, State Human Resources Division. The
13 requirement that written public notice of the time,
14 date, place, and agenda for this hearing has been
15 met.

16 And pursuant to the Freedom of
17 Information Act, in order for this committee to go
18 into executive session to hear the appeal, we must
19 ~~take a vote in open session of this intent and the~~
20 reason why. I will now entertain a motion that this
21 committee go into executive session.

22 THE SECRETARY: Mr. Chairman, I move
23 that the committee go into executive session to hear
24 the appeal of termination instituted by E. Shawn
25 Sorrell against the South Carolina Department of

1 Public Safety, and to receive any necessary legal
2 advice from the committee attorney.

3 MR. COOPER: Do we have motions that are
4 second? All in favor of the motion say Aye.

5 THE COMMITTEE: Aye.

6 MR. COOPER: At this time we're going to
7 excuse all but the two parties involved and other
8 authorized persons.

9 (A recess transpired.)

10 MR. GANJEHSANI: Good morning, everyone.
11 Before we get started, it came to my attention this
12 morning that Mr. Cooper, our chairperson today
13 inadvertently reviewed the old version of the
14 Committee Exhibit 1, including some documents that
15 were subsequently redacted. I wanted to bring that
16 to y'all's attention.

17 Obviously, if either party feels like
18 Mr. Cooper, having seen those materials is in any
19 way going to affect his ability to either preside
20 over this as chair or to consider the evidence and
21 deliberate as a committee member, I would like to
22 hear y'all's thoughts on that, if any. And you can
23 take a minute to confirm if you'd like.

24 MS. ERWIN: We have no issue, I'll go
25 ahead and state that for the record.

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1 MS. BURNETTE: We have no objection.

2 MR. GANJEHSANI: Okay. The record will

3 reflect now that both parties are agreeable to

4 Mr. Cooper pertaining to service. Thank you,

5 everyone.

6 (A recess transpired.)

7 MR. COOPER: I want to notify the

8 attorneys that y'all are responsible for getting

9 your witnesses when they're called to testify. And

10 verify that only the three representatives for each

11 side, including the appellant and the attorneys may

12 remain in the room.

13 Before each witness begins to testify, I

14 want to ask that they state their full name and

15 speak very clearly so they're picked up by the

16 microphone in the room.

17 All right. At this time we will ask for

18 opening statements.

19 MS. BURNETTE: May it please the

20 committee. As mentioned, I'm Malissa Burnette. I

21 practice law here in Columbia, and along with John

22 O'Leary, we represent Shawn Sorrell. And

23 Mr. Sorrell is a 20-year Army veteran who received

24 18 medals during his career in the military and

25 many, many other awards, 25 or 30 other awards.

1 Then after that he decided he would like
2 to continue serving his country and his state, and
3 he came to the department here and served another 10
4 years. And during that term of service, he just
5 wanted to do his job. He is sort of on the side of
6 straight and narrow, and that's his personality, I
7 think that's his look too. But that's what they do
8 here. That's what they do at the department. And
9 he always tried to do everything right.

10 It could be that some people kind of
11 resented that. He was kind of a stickler for
12 detail. He's a stickler for following the book and
13 following policy and following the rules, and that's
14 exactly what he did.

15 Now, on the evening of March 28th, 2010,
16 Mr. Sorrell was assigned to the Lottery Commission,
17 and that's the building downtown, overnight, and he
18 was inside and he could see outside on some cameras.
19 And he saw that there were three adults outside
20 causing a commotion.

21 Now, downtown is no longer the abandoned
22 place it used to be. You know, Columbia is working
23 on it a little bit. And there are apartments down
24 there, other buildings, condominiums down there,
25 people live there, trying sleep in the middle of

14

1 night. There are hotels down there. So it's not,
2 you know, just a business area anymore where nobody
3 is in the middle of the night.

4 And Mr. Sorrell saw that there was a
5 commotion going on outside of the lottery building,
6 and that there were three people throwing things and
7 shouting. So he ran down and did his job to check
8 it out, and he conducted himself in a professional
9 manner. People were disorderly. He charged them
10 with disorderly conduct, all three of them, and this
11 report was filed, and he'll explain more about what
12 happened that night.

13 He did all of the paperwork as would be
14 expected of him. And his normal, his chain of
15 command would have reviewed that paperwork. Nobody
16 had anything to say about it.

17 Well, there was one problem. Later on,
18 somebody's daddy filed a complaint. The daddy of
19 ~~one of these three people who were arrested. Only~~
20 then was there a problem because did anybody in his
21 chain of command complain before then or come to him
22 and say, Sorrell, you shouldn't that have filed that
23 report or you shouldn't have arrested these people
24 or you shouldn't have done this or you shouldn't
25 have done that or you shouldn't have done it that

1 way. Nobody said anything. Nobody said anything
2 before then.

3 Only after somebody's daddy complained.
4 And only then the department started doing an
5 investigation, second guessing and questioning
6 everything he did and how he did it. Only then,
7 after somebody's daddy complained, and this daddy
8 was somehow connected to the FBI, retired or current
9 agent, we don't know quite, but somehow connected to
10 the FBI. So he had some pull or knew somebody.
11 Suddenly everybody was all, you know, going to
12 second guess Shawn Sorrell trying to do his job.

13 But before that time when his chain of
14 command reviewed his reports, they didn't have any
15 questions about how he did his job. And the
16 officers who were there after the arrest was made
17 and the three people arrested was transported and so
18 forth, they didn't report him and say he shouldn't
19 have done it this way or that way or he did
20 something wrong. They didn't do that. They come
21 and complain about it only after the daddy
22 complained.

23 Okay. So all these people who are going
24 to come and testify, did they come and report him
25 before? No. Only after the daddy complained. You

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1 need to ask yourselves why. Okay. So that was
2 March 28th, 2010 when these arrests were made.

3 In early June, Shawn Sorrell still
4 receives a performance evaluation. All things
5 marked meets and exceeds. Okay. July 12th,
6 terminated. Terminated for the arrests that are
7 made. Not suspended, not warned, not counseled.
8 He's terminated for improper conduct. They said he
9 didn't have probable cause to make this arrest.
10 They're second guessing. They're second guessing
11 what happened. Didn't have probable cause.

12 Now, this is Mr. Sorrell. He's had
13 three -- maybe three disciplinary actions in a
14 10-year career. The most recent one being way back
15 in 2004 or 2005 all the way to 2010. Okay. And
16 they couldn't just reprimand him or suspend him and
17 say don't do it that way again. No. They fire him.
18 They say there's no probable cause to arrest.

19 And then it starts building up saying
20 that he even hurt one of these people. But we
21 haven't yet seen any signs of injury. There's a big
22 dispute about what really happened now and the whole
23 thing is just kind of blown up.

24 But we think what really happened is
25 that justice was not allowed to run its course. The

1 department intervened only when somebody's father
2 called. Now, I don't fault somebody for being a
3 parent and wanting to intervene on behalf of a
4 child. I've probably done it several times myself.
5 I know I have. But it's the department's job to let
6 justice run its course, to let the right thing
7 happen in the right way. Let the procedures take
8 care of themselves. That's what the judicial system
9 is for.

10 If the charges weren't good, that would
11 take care of itself. If there was no probable
12 cause, let the judicial system determine that. Not
13 to have the department intervene because somebody
14 from the FBI called and said, hey, y'all shouldn't
15 arrested my son and his friends. Okay. Isn't that
16 what the system is for?

17 Let the case be decided on its merits.
18 No, the department stopped it. The department
19 intervened. And Mr. Sorrell still just trying to do
20 his job, he's the one who's going to pay. Not be
21 reprimanded, not be suspended, but he's going to pay
22 with his job. He was fired. Why didn't the
23 department just do its job and do the right thing?
24 Thank you.

25 MS. ERWIN: Thank you. Mr. Chairman, I

18

1 believe what you've heard on behalf of Mr. Sorrell
2 is a overstatement and oversimplification of the
3 issues that you're going to hear today.

4 On March 28th, 2010, there was an
5 incident at the Lottery Commission. The department
6 is going to present witnesses for you that are going
7 to establish that Mr. Sorrell made an arrest of not
8 one, not two, but three individuals that evening,
9 which was not legally supported by the facts of the
10 case. An unlawful arrest.

11 But I ask you to look carefully -- and
12 we'll refer to the documentation when we get the
13 witnesses on the witness stand -- at the termination
14 letter. It wasn't as if that were not enough,
15 arrested three individuals that you have no legal
16 basis to arrest. Was not the sole reason identified
17 in the termination letter for the basis of that.

18 If you look carefully at that letter,
19 you'll note it was the manner in which he affected
20 the arrest, even. The overly aggressive manner in
21 which he dealt with those three individuals. He was
22 threatening to them, basically trying to intimidate
23 and bully them. That not the manner in which you
24 conduct even a lawful arrest.

25 If any of them violated the law, you

1 take them into custody, but there's no reason to
2 ever exert yourself just so you can show I'm the
3 boss and I'm the one that's going to be in charge
4 and you're going to do it my way. And that's the
5 manner in which he conducted himself.

6 And also the fact that once you listen
7 to the witnesses, it is established that the driving
8 force that we keep hearing from the statements of
9 individuals, even from Mr. Sorrell for the basis of
10 the arrest was, they just didn't do what he wanted
11 them to do. That's never a reason to take someone's
12 liberties away from them to effect an arrest. It
13 has to be based solely on the fact that they have
14 violated a law, and it's a requirement to make an
15 arrest. But if you look at the information from the
16 witnesses, I believe that's going to be clearly
17 established.

18 And then the final thing that I want you
19 to take from that letter is that this was a buildup.
20 It wasn't the first time that he's acted in this
21 manner, overly aggressive. The department sought to
22 intervene, tried to work with him as his attorneys
23 are pleading, asking for something lesser, which
24 again, I know you know as panel members is not a
25 proper standard for this committee.

20

1 It's not would you have done
2 differently, would you have thought a lesser
3 sanction would have been merited or not. It's
4 whether or not what the department chose to do
5 within the realm of the statute, within the realm of
6 our policy, and I believe you're going to hear from
7 several witness who will establish that it was.

8 This was wasn't the first incidence
9 where Mr. Sorrell overreacted, acted in this
10 threatening, bullying manner. It's the culmination,
11 and it just reached the point where the department
12 had no choice. There was no avenue left for the
13 department, nowhere else to place him where we could
14 avoid having another confrontation and another
15 unlawful arrest, another incidence in which he
16 overreacts, acts in this threatening and bullying
17 manner.

18 Again, it's a culmination of prior
19 incidences the department saw that -- you're going
20 to hear from supervisors who will say, you know,
21 we've tried to move him from this assignment to this
22 assignment to kind of avoid conflicts and so forth.
23 Nothing worked. Nothing would work and the
24 department simply can't tolerate allowing someone to
25 remain employed who's escalated to the point that it

1 got to on March 28th when you actually effect three
2 arrests that were not proper, and again demonstrate,
3 even after the counselor the department tried to
4 refer to, that you're not going to work on the
5 manner in which you interact with people in these
6 situations.

7 Arrests can be anxious things, you know,
8 people or the interaction with people; but you have
9 to be the one in control. And when you make a
10 decision to arrest just because the driving force is
11 they're not doing what you want to do, that's an
12 abuse of power. And that is something that the
13 department simply cannot tolerate and can't allow
14 someone who is going to continue to conduct
15 themselves in that manner to remain employed.

16 I ask you to carefully listen to the
17 testimony of the witnesses and listen carefully to
18 all the information in the documentation that's
19 submitted. Thank you.

20 MR. COOPER: All right. Thank you.
21 First witness.

22 MS. BURNETTE: Mr. Chairman, since we
23 will be calling Mr. O'Leary as a witness later on,
24 we're going to ask that he not be present during the
25 testimony of Mr. Sorrell. I think that would be

22

1 appropriate. He is listed as a representative and
2 as a witness.

3 MR. COOPER: Before we start, I just
4 want to ask you to state your full name and also
5 remind you to speak clearly so you're picked up by
6 the microphones that are in the room.

7 MR. SORRELL: Yes, sir.

8 MR. COOPER: And I also want to advise
9 you that the red binder on the table in front of you
10 contains information that may be referred to during
11 questioning, and each page is numbered in the upper
12 right-hand corner.

13 MR. SORRELL: My name is Edwin Shawn
14 Sorrell.

15 MS. BURNETTE: May I proceed,
16 Mr. Chairman? Thank you.

17 E. SHAWN SORRELL
18 being first duly sworn, testified as follows:

19 DIRECT EXAMINATION

20 BY MS. BURNETTE:

21 Q. All right. Mr. Sorrell, please give the
22 committee a little background on your military
23 career and your education, please.

24 A. My professional military career started
25 out in 1979. I've got a total of 20 years services

1 in the United States Army. I was a 95 Bravo which
2 is a military police officer for 20 years of that.
3 I was also subqualified as an 11 Hotel heavy
4 anti-armor missile crewman, and also graduated
5 special force of military eight-man (phonetic)
6 course.

7 Q. Did you receive training on the issue of
8 arresting -- on arrests?

9 Did you receive any training on that?

10 A. Yes, ma'am. In the early part of 1979,
11 Fort McClellan, Alabama, I received all of my formal
12 military training at the military police school
13 based there at Fort McClellan, Alabama. They teach
14 technically the same thing except on a federal level
15 of law enforcement.

16 Q. Did you serve as a military police
17 officer?

18 A. Yes, ma'am. For 19 years and 17 months
19 or so. They don't include the first three months of
20 training until you're certified. So almost 20
21 years.

22 Q. All right. And what sort of education
23 did you have in terms of post high school?

24 A. I have an associate in technology from
25 Pierce County, Richland -- or excuse me -- Pierce

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1 County in Fort Lewis, Washington.

2 I am finishing my bachelor's degree. I
3 have only my internship left now with South Carolina
4 Youth Challenge with the Army -- or excuse me --
5 with the Army National Guard here in South Carolina.

6 Q. Where are you getting your bachelor's
7 degree?

8 A. The Limestone College here based
9 locally.

10 Q. And what is your subject?

11 A. Social work.

12 Q. Okay. And are you working this summer?

13 A. Yes, ma'am. I am doing my internship,
14 again with the South Carolina Youth Challenge.

15 Q. All right. And what is it going to take
16 to complete your bachelor's degree?

17 A. Four hundred hours of working with 16-
18 to 18-year-old adolescents who are at-risk children.
19 ~~The South Carolina Youth Program is a 17-month~~
20 program designed to turn around some of the younger
21 at-risk children. And I've been accepted as an
22 intern to work this program.

23 Q. Did you receive any awards or metals
24 while you were in the military?

25 A. Yes, ma'am. I -- I received technically

1 18 metals. And when I refer to a medal, a medal is
2 something someone refers you to or refers to someone
3 else for approval. And that's the -- when it says
4 medal behind it, 18 and 20 years, and numerous other
5 awards as far as letters of appreciated (sic), got
6 stacks of those, but anything from a Meritorious
7 Service Medal, Army Good Conduct Medal, six award
8 Army Commendation Medals, Army Achievement Medals,
9 Humanitarian Service Medal, Army Defense Medal.

10 I've got a substantial amount. Not
11 highly decorated, but they're enough for me.

12 Q. And do you have family here?

13 A. Yes, ma'am, I do.

14 Q. Okay. Who are your family members?

15 A. My wife Tighe (phonetic) and my son and
16 daughter, Shawn and Sara.

17 Q. Okay. And when did you begin your
18 career at the Department of Public Service?

19 A. In June 2nd of 2000, I was offered a
20 position with the Bureau of Protective Services in
21 Columbia.

22 Q. All right. What was the position?

23 A. As a beginning officer. Officer.

24 Q. All right. And would you describe your
25 career at the Department of Public Safety.

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1 A. My 10 years with the Department of
2 Public Safety, I always got meets and exceeds on
3 everything I was evaluated for, every time that I
4 was reviewed. Only in about my third year of
5 working with the Bureau of Protective Services, I
6 filed several complaints to my supervisor. And
7 those complaints were not kept confidential.

8 Complaints such as an individual viewing
9 pornography on the National Private Information
10 Center computer. I asked the individual several
11 times do not do that, it's inappropriate in the
12 workplace.

13 And what happened was the supervisor,
14 when I reported it to him, and for the record his
15 name was Corporal Schmidt, he accused me of being
16 gay because I did not like pornographic materials in
17 the workplace.

18 And from then on I was isolated in the
19 workplace. And there became problems because every
20 time somebody turned something in, it was always me.
21 Noble Officer Sorrell must have went OPR again. And
22 all I was trying to do and what I was obligated to
23 do by policy and by the rules and ethics is do the
24 right thing.

25 Our departmental policy in the

1 Department of Public Safety and in the Bureau of
2 Protective Services, you are obligated and you will
3 be punished if you do not report wrongdoing. Every
4 time I reported wrongdoing, it just got me deeper
5 and deeper in.

6 I love the job. The Bureau of
7 Protective Services is an outstanding career field.
8 Five years I worked with the South Carolina State
9 House in a park-like setting, walking around on the
10 grounds ensuring the safety of the building, the
11 property, the people, tourists. It was a wonderful
12 job.

13 But I had to deal, 14 years, every time
14 something went wrong and I reported it, something
15 would happen negatively to me. And you'll see
16 during these proceedings some of those things.

17 Q. All right. And were there times when
18 the department actually administered discipline
19 toward you?

20 A. Yes, ma'am. There were -- officially
21 there are two letters of reprimand in my file over
22 10 years. On Page 137 of your manual here, they'll
23 refer to counseling statements. Counseling
24 statements are not a formal type of discipline. So
25 there are several counseling statements. They're

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1 simply a recording of my supervisor and I had a
2 conversation about certain things.

3 It should be noted the two letters of
4 reprimand were the investigation was initiated by
5 the individual whom I reported for the gross abuse
6 of the computer system by looking at porn. So when
7 I filed the complaint on him, he was disciplined and
8 then subsequently filed a complaint on me.

9 In his complaint he alleged that there
10 was racial disparity in my arrest record and that I
11 had verbally abused one of our fellow co-workers.
12 It was unsustained. My numbers -- when they looked
13 at my numbers and the numbers of one other
14 individual he complained of, there was no
15 discrepancy in my arrest record. There were no
16 unequal -- it was fair and equal across the board.

17 The one thing they did give me a letter
18 of reprimand for was because I had made some
19 negative comments to a fellow officer. And there
20 again, rise my morals and values. If you were a
21 substandard officer and I report you to my
22 supervisor and he does nothing, I still have the
23 obligation and duty to correct that officer for what
24 he was doing improperly. But that's the first
25 letter of reprimand.

1 The other letter of reprimand was
2 because I was sworn to secrecy about that letter of
3 reprimand that I'm sorry I talked about it because I
4 was upset about it and I talked about it with a
5 friend of mine. And then they asked him. Did you
6 talk about it? And I said yes. And so both of
7 those were appropriate.

8 But two letters of reprimand in a
9 10-year career and a Level 1 or 2 letter of
10 reprimand are simply huge or minor offenses, and
11 that's the per -- logically in the manual that you
12 have before you.

13 Q. All right. Mr. Sorrell would you turn
14 to Page 87 of the Committee Exhibit?

15 A. Yes, ma'am.

16 Q. Can we get that on the screen?

17 A. Page 87.

18 Q. This would be marked 87 in the
19 right-hand corner because of the?

20 MR. GANJEHSANI: Because of the
21 redactions and inconsistent sequencing --

22 MS. BURNETTE: You have to hunt for it a
23 little bit.

24 MR. GANJEHSANI: If you can rotate it
25 around. Can you expand it up?

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1 BY MS. BURNETTE:

2 Q. Mr. Sorrell, would you describe what
3 this appears to be.

4 A. Yes, ma'am. The disciplinary action
5 log. The first one is the counseling -- a
6 counseling statement that was included on that
7 disciplinary log. That is -- should not be on that
8 form.

9 Q. Why should it not be on that form?

10 A. Well, it's Page 131 of your manual
11 rules; clearly identify that counseling statements
12 are not a formal type of discipline. So for it to
13 be included on the disciplinary action log is
14 incorrect.

15 The other two entries there are the
16 letters of reprimand that I just described, and in
17 that order, the first one or the I berated a fellow
18 police officer. And the second one for talking
19 about that, the first one.

20 Q. What's the most recent action against
21 you on this chart?

22 A. I can't -- my eyes aren't good enough to
23 read, but I think it's '04 or somewhere through in
24 that.

25 Q. And what year were you terminated?

1 A. In 2010.

2 Q. All right. Now, would you take us to
3 the year 2010 and what were your assignments during
4 that year?

5 Were you still working at the State
6 House or what were you --

7 A. No, ma'am. I had worked at the South
8 Carolina Criminal Justice Academy for several years.
9 And after that they -- with our positions we kind of
10 flip-flopped, you know, and it's not you're either
11 here or there. You're one night you'll be at the
12 State House, one night you'll be at the South
13 Carolina Educational (sic) Lottery, one night you'll
14 be at CJA one night.

15 And sometimes they're broken up where
16 you only do these two. Sometimes you do all four.
17 Wherever they need you, technically, is where you
18 go. Some are set assignments and some you rotate
19 back and forth.

20 Q. All right. And were you assigned to the
21 Lottery during the evening of -- I believe it was
22 March 28th, 2010?

23 A. Yes, ma'am, I was.

24 Q. Okay. And what was the -- what were the
25 hours you went to work?

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1 A. From 1800 to -- 1730 to 0530.

2 Q. Would you state that in English, please?

3 A. 5:50 in the evening -- I'm sorry. 5:30
4 in the evening, 5:30 in the morning, 12-hour shifts.

5 Q. Okay. And what were your duties during
6 that period of time.

7 A. To provide support for the South
8 Carolina Educational Lottery. The South Carolina
9 Educational Lottery is located on the fourth floor
10 of the building in the downtown area, but they also
11 have a lobby which faces directly to the street on
12 Main Street, North Main.

13 In that lobby they've got a television
14 where they do the drawings for the lottery and the
15 entire studio is on the bottom floor. So, you know,
16 it equals you check the computers systems, you go
17 downstairs, you check the lobby, you check the
18 studio. It's split between those two. But
19 ~~technically a room, being sitting patrol.~~

20 Q. Okay. Would you please describe what
21 else is in the area there on North Main Street.

22 A. Yes, ma'am. There is directly adjacent
23 to the Lottery Commission, as you're looking at the
24 lottery, you have Chick-fil-A, a little bread shop,
25 a couple of little stores. But directly above

1 Chick-fil-A there's an older style motel, has I
2 think 60 or 70 rooms, but they are directly adjacent
3 to.

4 Across the street behind is a modern-day
5 apartment complex where they -- I think they have 70
6 apartments there. On the right side of the Lottery,
7 there is a upscale men's clothier, who by the way
8 had recently had all of their windows broken out
9 across the front.

10 And it should be noted also that the
11 Educational Lottery, the front of it had been broken
12 and is still broken to date. Someone had kicked in
13 the glass, but they just never repaired it. And
14 it's just a steel-reinforced glass. It had been
15 broken in the past few months.

16 Q. Was anyone on duty with you that night?

17 A. No, ma'am, not at that location. At
18 other locations, yes, but I was by myself at the
19 Lottery Commission. There's a security guard who is
20 in charge of the building, but we specifically have
21 the contract for Educational Lottery.

22 Q. Who was the security guard?

23 A. His name was Mr. Malone. I'm not sure
24 of his first name.

25 Q. All right. And do you watch -- can you

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1 physically see outside or do you watch at camera?

2 How do you monitor the building?

3 A. No, ma'am. We have a series of cameras
4 in our office. Our office is, you know, extremely
5 small, similar to a closet-type thing with a window
6 in front. But you've got a computer bank on the
7 left, and you've got a series of camera systems that
8 show views, different views of the computer room,
9 outside. All, you know, it's a very good visual of
10 the entire Lottery Commission.

11 Q. And were there any events that caught
12 your attention that night?

13 A. Yes, ma'am. I -- I had recently walked
14 the building. You go out, and again, it's a, you
15 know, probably five, 8,000 square feet, and you just
16 go out, check the doors, check the computer room,
17 make sure it's not overheating, things like that.

18 And as I returned to my office, I opened
19 ~~the door and as I was sitting down, I was diligently~~
20 checking the cameras because in the past few weeks,
21 Ranger, the clothier store had been broken -- both
22 of his windows had been knocked out. The Lottery
23 Commission has been broken, the front door to the
24 lobby.

25 So I was diligently watching, hoping

1 that I would be the one that finds these guys out
2 there busting out the windows of the front of the
3 building.

4 Q. And did you see anybody?

5 A. Yes. Well, what happened, when I sat
6 down and I glanced up at the cameras, what I saw was
7 an immediate splash of liquid. I didn't see the
8 projectile, I didn't know what form it was coming
9 in. Just all of the sudden, spots that just became
10 instantly -- it appeared to be a small explosion and
11 then liquid everywhere. So it did look like
12 something had burst on the ground. That's what I
13 initially saw on the camera.

14 As I exited my door to go down to
15 investigate, I called on the radio and I asked if
16 there was anybody in the -- anyone in the location,
17 anyone, you know, in the area that could respond
18 because I thought someone was throwing bottles at
19 the building. It appeared to be, and that's what I
20 said on the radio, it appears somebody's throwing
21 bottles at the building.

22 As I went down the elevator, Mr. Malone
23 was sitting at the desk and I didn't have time to
24 discuss anything with him. I was headed out the
25 front door to see what's going on in the front of

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1 the building.

2 Q. Let me ask you one thing. When you're
3 monitoring these video cameras, do you have sound as
4 well?

5 A. No, ma'am.

6 Q. Okay.

7 A. There's no sound to these. All you can
8 see is the images. As I went through the lobby,
9 Mr. Malone obviously was alarmed at me running
10 through the lobby out the front door. As I stepped
11 out of the front door, I immediately heard to my
12 right an extremely shrill feminine shriek. It
13 wasn't a -- it wasn't a scream as in help, help. It
14 was simply a shriek. And I heard the words, don't
15 hit me, don't hurt me, several other words to these
16 effects.

17 As I turned to my right, there are
18 several monolithic stones between the front door of
19 the Lottery Commission and where the lobby is. I
20 want to say there's probably four or five of these
21 huge, monolithic pillars, if you will. I'm a noble
22 police officer and I don't believe in running into a
23 gunfight.

24 So when I heard what I heard, I stepped
25 behind the first one. Made a left-right study what

1 can I see, and then I rapidly moved forward, did the
2 same thing, checking left and right to see what I
3 can see.

4 Q. What time is this, Mr. Sorrell?

5 A. 2:30, 2:35 in the morning. This is on a
6 Saturday night, early Sunday morning, 0235, to be
7 specific, on my police report.

8 As I was making my approach to the
9 disturbance, I heard another individual yelling hit
10 her, get her, something to these effects. I
11 specifically heard hit her, maybe get her. There's
12 just a continual flow of verbiage back and forth. I
13 recall some, you know, just a loud and boisterous
14 argument. But I did hear, hit her. She's yelling,
15 don't hit me, don't hurt me.

16 As I progressed through to the third,
17 fourth, or fifth -- and all of this sounds like it
18 took a long time. It really didn't. I stepped,
19 checked, step, checked, step, checked, and I was
20 about making my approach to the area of the
21 disturbance, I see an individual on the left as I
22 peered around. I looked to the right and I saw the
23 young lady in the corner. And then as I stepped out
24 fully exposing myself, there's another individual in
25 the center.

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1 And I'll describe the scene as I fully
2 exposed to myself to the scene. I have a Caucasian
3 female, very petite, wearing a -- what I call a --
4 back years ago they called them body gloves.
5 Extremely tight formfitting from top all the way
6 down to the bottom.

7 She's backed into the corner on my far
8 right. She has her hands up in a defensive posture.
9 She has the look of fear on her face. I looked to
10 my left center of the three individuals. There's an
11 individual with his arm cocked back and there's an
12 object in his hand. It was orange in color.
13 Appeared to be a balloon. He froze in that
14 position. The individual on my left, same thing,
15 froze in that position.

16 When I came from behind the pillar to
17 stop all of the action that was going on, she's
18 screaming, he's prepared to throw at her, he's
19 yelling, hit her, get her. I yell one word in a
20 loud boisterous manner, stop. Had my hand up.
21 Stop. All three locked up where they were at.

22 Still hands uprisen in the air, and in a
23 defensive posture, scared, fear on their face.
24 Individual with an orange object, appeared to be a
25 balloon, and the other individual.

1 I ordered the individual in the middle,
2 drop it. He leans down, drops it. It hits the
3 ground and rolls into the street where it burst.
4 Once it rolled down the sidewalk and dropped off, it
5 burst. I ordered at that time, all three turn
6 around, place your hands on the wall. I have three
7 individuals. I'm outnumbered three to one.

8 What I had at the time is I've got a
9 victim of a crime. She was being assaulted in the
10 corner. I have an assailant, I have a victim. He's
11 trying to hurt her.

12 So when I advised them to turn around,
13 put your hands on the wall, I considered her a
14 victim. I didn't know she was a part of anything.
15 I thought she was a victim of an assault. The two
16 males turned around and assumed a search position on
17 the wall. Very cooperative, very fast. They
18 flipped around and just hit the wall.

19 ~~I remember it kind of surprising me~~
20 because they were in an extremely disadvantaged
21 position. When they dropped on the wall, their
22 hands and arms were wider than shoulder width apart.
23 Their feet were wider than shoulder width apart.
24 They really -- they were in were about the best
25 ~~search position you can ever ask them to be in. And~~

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1 I remember just -- wow.

2 As I looked at her, she's standing,
3 looking right at me and she did not comply with the
4 turn around place your hands on the wall. Even as a
5 victim, I'm still going to check you for weapons to
6 make sure that you don't have a means to harm me.
7 Put your hands on the wall, ma'am. Three or four
8 times, still not in compliance.

9 It was at that time I observed
10 Mr. Malone out of the corner of my right eye.
11 Mr. Malone followed me out of the building, and I
12 should say at great personal risk he didn't have to,
13 that's not his job. He was there to protect the
14 building. But when he saw me running through,
15 whether it was curiosity or devotion to duty, he did
16 come to back me up, and I appreciate that. But I
17 saw him on the corner of my eye.

18 At that time, I got to thinking to
19 myself, well, maybe she's thinks I'm a security
20 guard. Maybe she doesn't realize I'm a police
21 officer. Maybe she's looking at him, maybe she
22 glanced at him, saw a security guard. So I
23 reiterated to her, ma'am, you do realize I'm a
24 police officer? Badge, gun, patches, vest, you
25 know, all of that stuff on you, full uniform, very

1 hard to confuse me with a security guard, but I
2 chose to make sure she was aware that I was a police
3 officer. Still in noncompliance.

4 After three to four times, numerous
5 coaxings of turn around, she still refused. The
6 both of the individuals were in an extremely
7 disadvantaged position. So I made my approach first
8 and foremost towards her. She was the biggest
9 threat, she's not complying. I think she's a
10 victim, I don't know what she is, but she's not
11 compliant. So I approached her.

12 As I approached her, she saw me take a
13 couple of steps and she turned around and placed her
14 hands on the wall as I made my approach. Placed my
15 hand on her shoulder and I put my left -- my right
16 foot down on her left ankle, and I asked, ma'am,
17 spread your feet. Ma'am, spread your feet. Again,
18 non-compliant. Standing at a normal height, hands
19 ~~just placed against the wall, not in a disadvantaged~~
20 position.

21 My police training from federal to the
22 state of South Carolina, those hands are shoulder
23 width or more apart, feet are shoulder width apart,
24 more than. You are inclined against the wall.
25 You're not just merely standing by the way with your

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1 hands on it. It's not the way to put a person in a
2 proper search procedure.

3 She again failed to comply. She'd move
4 her foot a little, I'd move mine. She moved it a
5 little, I'd move mine. When it was clear and
6 obvious that we're just not going to get her to
7 comply, I advised her -- I stepped back and advised
8 or asked all of the individuals, does anybody have a
9 weapon on them? Anything that can harm you or I?
10 The two individuals on the left, the males, said no.
11 Do you mind if I check all three? Excuse me, the
12 two males. I know when I was looking at them, they
13 shook their heads, said no problem. I wasn't
14 looking at her, so I don't know if she agreed to the
15 search or not. It was only a search for weapons to
16 ensure our safety.

17 I checked all three. Neither of the
18 gentlemen had anything on them. When I approached
19 ~~the young lady, I advised her the tightness of the~~
20 outfit she was wearing, I'm not touching her, you
21 know, I'm sorry, you know, we're going to check only
22 the hoody because formfitting as it was, I didn't
23 see how she could have concealed anything in there
24 anyway.

25 I reached up, checked the hoody with my

1 hands. Mr. Malone was standing on the right. Prior
2 to me ever touching the hoody, she makes a comment,
3 you're hurting me. And I looked at Mr. Malone to
4 confirm, did you hear that? And I don't, you know,
5 recall if he nodded back or I just glanced at him
6 to, you know, why did you -- you know, I just -- I
7 checked the hoody. But prior to touching her is
8 when she said, don't hurt me. I went ahead, checked
9 it, stepped back.

10 A few moments later, my backup arrived
11 and that was ~~Mr. Rogerson~~, you'll see him later. As
12 Mr. Rogerson arrived, I began on my left to my right
13 and took one of them, I believe I started with
14 Mr. Keith, I brought him back first. Asked
15 Mr. Keith, you know, what's going on. I was doing
16 an investigation on what's happening here. You
17 know, here's what I've seen so far. I need to know
18 what's happening. Asked him what's happening. He
19 gave me a story that was, well, I came from Atlanta.
20 We were putting some water balloons out here. We
21 wanted to throw balloons at him and all. Well, I
22 stepped him to the side.

23 And I need to back -- just make one
24 clarification here also. Although I referred to
25 something as a water balloon. It's a balloon as far

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1 as I'm concerned. Is there water in it? I didn't
2 know 'til the time that the individual dropped the
3 water balloon or dropped the balloon and allowed it
4 to roll into the street. And when it burst, I
5 assumed it was water. There was no color to it,
6 there was no -- I did not go over and smell the
7 contents to see what was in it. So it was an
8 assumption. Something could have been in there
9 other.

10 And we've known many cases in law
11 enforcement where individuals use bleach and they
12 throw bleach in someone's eyes and blind them.
13 There's been cases where the water balloons are
14 frozen and used as a weapon. Even in the prison
15 system are inmates, fill them with urine and blood
16 and throw them on the correctional officers.

17 So, you know, before I get too far into
18 this misdemeanor offense that I witnessed, we need
19 to think about the severity. We're thinking a
20 little simple water balloon attack. It could have
21 been bleach to blind someone, blood to infect them
22 with a life-ending disease, things such as this.

23 I'll refer back to when I pulled
24 Mr. Keith off the wall, asked him, what are y'all
25 doing? We're throwing balloons, we're throwing

1 water balloons. Her friend was coming from Atlanta,
2 we were going to surprise him. Pulled the other
3 individual off the wall, got him, same thing.

4 Now, during this process I also asked
5 Mr. Keith and Mr. Spaht, is there any reason why
6 this person is so belligerent, so uncooperative?

7 No. I don't know. Neither one of them gave me any
8 indication as to why she's refusing to comply, why
9 she seems not to fully comprehend. She's not
10 understanding what's going on.

11 As I brought Ms. Swanson up and I asked
12 her the same questions that I asked the other two
13 individuals, both of those individuals said nothing.
14 Ms. Swanson gave the same, similar story, he came
15 from Atlanta, we're just out here, we wanted to
16 throw water balloons at him.

17 Well, I said, all right. You two sit
18 down. Young lady, can you sit down? She again
19 refused. I'm not -- I'm not doing it. Again, why
20 are you being uncooperative? Why are you not
21 complying? I'm asking you to sit down where I can
22 make a decision and figure out what's going on here.

23 At this time, both of the individuals,
24 wait a minute, wait, officer, she just had tailbone
25 surgery. And? Well, she can't sit down. She, you.

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1 know, she he had tailbone surgery.

2 When they advised me that she had had
3 surgery, I automatically assumed any time you have a
4 surgery, most of the time they're going to give you
5 some kind of pain medication. If someone cut on
6 you, generally they'll give you something for pain.
7 So I assumed she might be on something, utilizing
8 something that's affecting her comprehension. I did
9 not allow her to sit down -- or I did not require
10 her to sit down. She said she can't sit, I didn't
11 make her sit down.

12 It was at this time, taking in the
13 totality of the circumstances, they had been
14 disruptive to the neighborhood. They had disturbed
15 the tranquility of the morning. They're loud,
16 they're boisterous, they're in a public area. You
17 are assaulting an individual, you're screaming for
18 help. What else am I to do?

19 ~~I had a few choices that I can make that~~
20 evening. I can make one, I could have just done as,
21 you know, the director of Public Safety mentioned to
22 me during a meeting, could have just chewed them out
23 and let them go. That's not my job. I'm not a
24 judge, I'm not a jury, I'm not the totality of the
25 judicial system. I don't chew out people.

1 My job is simply to document and report
2 that a violation has occurred. And then when that
3 individual goes into the judicial system, that judge
4 will ask me for my side, ask them for their side,
5 and then he'll make a decision. I don't just -- I'm
6 not a disciplinarian. That's not my job as a law
7 enforcement officer. If a law enforcement officer
8 out there is doing that, that's improper. You
9 simply document and report that a crime has
10 occurred.

11 Q. Mr. Sorrell, based upon all of your
12 training, did you feel that you had probable cause
13 to make an arrest?

14 A. Absolutely. I had probable cause to
15 make an arrest not only for public disorderly
16 conduct, but for assault on the individual. They
17 were disruptive in several ways. When they were
18 throwing the balloons, they left residue all over
19 the sidewalk. And I'm not a petty person. I'm not
20 going to charge you for public disorderly conduct,
21 you with assault, you with littering. I'm going to
22 get all of you by writing two or three separate
23 charges.

24 What they were doing fully was a
25 violation of a misdemeanor, which is public

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1 disorderly conduct. You were loud and boisterous in
2 a public area. You were acting in an otherwise
3 disorderly manner. Simply if you read it out of the
4 statute. I don't know the whole, you know, I can't
5 word it verbatim, but it's real close to what I just
6 said.

7 The situation was as I described. I had
8 several decisions to make. Chew them out, let them
9 go down the road. That's not an option with me.

10 The second option was to cite them on a
11 summons, fill out the paperwork, write them a
12 ticket, rip it out the book, hand it to them and let
13 them walk on down the road. They can come to court
14 later.

15 I'll explain why that was not an option
16 to me either. You have a young lady in an extremely
17 provocative, thought provoking outfit who is being
18 assaulted by an individual, being instigated by
19 another individual. All of that, to a young rookie
20 officer and everybody says, ah, well, that's my
21 friend. Some people would just say, well, okay, I
22 believe you. Not me. I've got 30 years in law
23 enforcement.

24 I've gone in to bar fights where they
25 were trying to kill each other. But the minute the

1 police show up, that's my friend. That's my friend,
2 we just playing around. We weren't really trying to
3 kill each other. Well, what do you do? You still
4 arrest those individuals for the violation that you
5 observed. I'm not here to determine if that is your
6 friend or if it's not your friend. How do you prove
7 that? You can't.

8 Also there was a vulnerability issue
9 with that young female. She was incoherent to the
10 point she wasn't following verbal instruction. Had
11 a disagreement with everything you said, she argued
12 with. Is that because your friends are these -- you
13 know, it just didn't all add up. Well, of course,
14 writing them a ticket, letting them walk on down the
15 road wasn't an option with me either.

16 The third option is I can make a
17 custodial arrest of these three individuals. By
18 taking a custodial arrest process, I would take
19 ~~those three individuals into custody. I would take~~
20 them to Alvin Glenn, they will be booked, they will
21 be safe, they will be secure, she will not be
22 injured later. They will all be treated fair and
23 equally across the board.

24 If I had just said, chew them out, let
25 them go and something happens to that individual,

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1 who, you know, I should have reasonably thought
2 because they told me, she just had surgery, and she
3 gets hit by a bus later on, the transference of
4 liability would have come back on me, my department,
5 everybody in the food chain, from the time I said,
6 you're free to go and she walks down the road, and
7 one of them individuals continues to assault her,
8 transference of liability again comes back to me and
9 my department.

10 That being said, I made a custodial
11 arrest. I placed all three on the wall, and said
12 Mr. Keith, you're under arrest for public disorderly
13 conduct. Do you understand? Yes, I do. We
14 handcuffed the individual. We put the second
15 individual. Same thing, Mr. Spaht, you are under
16 arrest for public disorderly conduct.

17 When you relieve an individual of
18 freedom, you have to do two things for you to make a
19 ~~lawful arrest. One, tell them, you're under arrest.~~
20 And two, tell them why. It's not Cops TV where they
21 throw you into the back of the car and when they
22 feel like it, they'll go over there and tell you,
23 well, you're going to jail. That's not the way we
24 do law enforcement.

25 First, you're under arrest. Second,

1 why. And then you do what you have to do.

2 We took the individuals inside the
3 Lottery Commission and I preferred to do the
4 paperwork right there. Took me about five minutes
5 per ticket. I can do it right there. When we get
6 to the jail, booking process, very simple. They sit
7 them down, they process them, hand them the ticket
8 and we're out. So it's a very, very friendly
9 system.

10 I wrote all three of the tickets there.
11 During that process, several of them asked things,
12 you know, can you give us a break? No, we're way
13 past break time. Break time was -- is if I had got
14 three cooperative individuals out on that street
15 that night. Absolutely, the outcome would have been
16 different.

17 I didn't arrest the individuals because
18 they didn't comply. I arrested the individuals
19 because there was a misdemeanor offense committed in

20 my presence. How can you not have probable cause,
21 describing everything that I described today?

22 The individual -- Miss -- the young
23 female -- I forget her name off the top of my
24 head -- the young lady was crying even in the -- as
25 she stood there waiting to be transported and she

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1 leaned over and she tried to rub on one of the other
2 individuals. And I had my younger officer there,
3 Mr. Rogerson. I asked him can you fix this? The
4 female was not searched.

5 Now, here's the problem. I didn't
6 search her except for the hoody. When she came
7 inside, she had a small pouch on the front of her
8 jump -- her outfit that Officer Rogerson saw a bulge
9 in her pocket and asked her what's in there. I was
10 a little tiffed at myself because I was so careful
11 not wanting to violate anything with this young lady
12 that I missed cell phone and keys in a pouch, right
13 there where that I clearly should have seen, but I
14 was being careful and I made a mistake.

15 Could have cost myself and everybody
16 else their lives because I missed that cell phone
17 and those keys. Could have very well been a small
18 pocket gun, anything else. So sometimes when
19 someone's a little wise, you know, he was angry.
20 You know, wasn't really angry at you. I'm sitting
21 there -- well, I made a mistake because I didn't see
22 it.

23 After I cited them, explained to
24 everybody, my corporal came in. Corporal asked me
25 what's going on. I tried to explain to him without

1 being in front of the three people -- I don't want
2 to go over this again. If you really wanted to know
3 what was happening, you're at the State House,
4 Officer Rogerson got there in -- within minutes of
5 me calling, he was at the State House. If you
6 really wanted to know what was going on, he should
7 have shown up too. Wouldn't have been a problem for
8 him to have come. He has a video camera in his car.
9 He has an audio mike on his belt.

10 And I several years ago -- and I have to
11 include this -- I made a traffic stop on a South
12 Carolina state employee. She refused to open her
13 window and she attempted to run over one of my
14 supervisors with her car. I was operating a vehicle
15 that had no video camera and it had no voice mike in
16 that car. We finally resolved it because I extra --
17 extradited her from the car. When she was trying to
18 run over somebody, she accidentally hit the button,
19 ~~opened the doors and I removed her from the vehicle.~~

20 That particular case, she was charged
21 with no driver's license. It was suspended for no
22 insurance. The reason I'm telling you this is
23 because the Bureau of Protective Services does not
24 have the same equipment as the South Carolina
25 Highway Patrol or the South Carolina Transport

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1 Police.

2 Only after my case, in which we needed a
3 video camera to document evidence, did they install
4 some video cameras and some audio mikes. This was,
5 I believe -- and I believe at the direction of
6 Mr. Keel. He wanted to review the video is what I
7 was told at the time, and there was no video to show
8 the evidence on what happened. We have since then,
9 while I was there, all supervisors were issued a car
10 with a video camera and with a voice mike.

11 The reason I bring this up, had I been
12 properly equipped with all the tools to do my job
13 and I had a patrol vehicle with a video camera in it
14 and an audio mike that I could have hit the button,
15 everything that was said that night would be on the
16 tape, and all we'd have to do is pull the DVD out
17 and play it to completely exonerate me of all
18 charges.

19 ~~As it stands, I was not properly~~
20 equipped with that car, with that audio mike, had
21 I -- we've seen in the past three years or so,
22 millions -- not -- sorry, millions, not right -- a
23 lot of videos from the Department of Public Safety
24 that shows wrongdoing on the part of the department.
25 But those cameras and those voice mikes are there to

1 protect the citizen and the officer.

2 So why was I not afforded the same
3 equipment that any other officer could have been in
4 the Bureau of Protective Services. After my traffic
5 stop they equipped all the supervisors. But then
6 the supervisor doesn't show up. And he'll be here
7 to testify today, and I want somebody to ask him why
8 did you tell the individuals they could file a
9 complaint?

10 My supervisor, the night that I made
11 this arrest made a comment loudly that, well, they
12 can file a complaint if they want to. But no one
13 did.

14 After we transported these individuals,
15 my supervisor placed the female in his car because
16 he had a video camera and he had a voice mike. He
17 wanted to protect himself and he had the tools to
18 protect himself. So he placed that female in that
19 ~~car with the video camera and a voice mike to~~
20 protect him. There was no such protection for me
21 out on the scene. Even the car that Officer
22 Rogerson -- and you'll see here today, Officer
23 Rogerson's car was not equipped with a video camera
24 or a voice mike either.

25 So we're performing law enforcement

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1 duties with not all the tools that you should have.
2 South Carolina Highway Patrol has all those tools.
3 South Carolina Transport Police has all those tools.
4 But I didn't get those tools to protect my career
5 and my family.

6 Mr. -- Corporal Harris transported the
7 female down to the jail. I transported both of the
8 males all the way to the jail. The individuals,
9 very, very cooperative. And as you'll read in my
10 report, very short and sweet. Both individuals,
11 male, I didn't have to put that in the report, both
12 males were extremely cooperative. I want to put the
13 truth in there. They were extremely cooperative.
14 She was not. But they all violated the same law.
15 So how do I charge her and not charge them? Oh,
16 yeah, it can be done. But is it fair? Is it
17 equitable? Is it equal across the board?

18 Federal law enforcement training that I
19 ~~received, you don't charge one that you don't charge~~
20 them all. If you're going to let them all go, let
21 them all go. But you don't charge her just because
22 she was uncooperative. And that's the thing that
23 the department contends, that I arrested all of them
24 because she was uncooperative. No. I arrested all
25 of them because they all violated the law.

1 When we arrived at Alvin Glenn, when we
2 were in booking process, we walked into the jail.
3 The booking procedure, hopefully none of y'all have
4 ever seen the booking procedure. I'll describe it
5 very briefly. They have what they have a sally
6 port, which is a secure area. You drive your car
7 in, they shut all the gates down. That way if an
8 individual escapes out of the car, he still isn't
9 going to escape completely.

10 I'm parked in the sally port. Took my
11 two individuals out. The corporal, again, opened
12 the car door, let her out, he disappears. He had
13 to. On his behalf, he can't come down there and
14 just stay for a couple hours in the jail. You know,
15 he dropped her and he was gone.

16 I took them all in to booking. One of
17 the jailers came out, and the first thing they tell
18 you to do when you walk in, they tell to you sit
19 down. And once again, I'm going to get -- I assume,
20 here she goes again, she's not going to cooperate,
21 she can't sit down. So I told the jailer, ma'am,
22 she can't sit down. She's got a problem with -- and
23 I don't think the use of the word tailbone. I used
24 it in this hearing because I have to, but that's not
25 my preference a word to describe the lower spinal

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1 column. I would normally refer to that as your butt
2 or your back or your backside, you know.

3 Referring to somebody's tail, that just
4 doesn't hit right with me. So I expressed myself to
5 the booking agent, she's got a problem with her
6 butt. She can't sit down. And the minute I said
7 she can't sit down, she sat down, was cooperative,
8 didn't have a problem in the world. No signs of
9 duress, no complaints of injury, no disagreement
10 with anything.

11 The only thing -- and they have reviewed
12 the audio tape and the video on the corporal's car,
13 the only thing she was concerned with was someone
14 searching her.

15 I want to back up just a second to tell
16 you why I think that she was concerned. She was
17 never searched. I am the only individual and
18 Mr. Rogerson with the cell phone and the keys, that
19 noticed there was something. I checked the hoody,
20 there was nothing. Mr. Rogerson saw the keys, the
21 bulge and the cell phone. It is normal procedure,
22 and we've done it over and over for 10 years.

23 We have a female that we need searched,
24 we hit the button on the radio and say, City of
25 Columbia, do you got anybody, can you roll me a

1 female back? We work very well with University of
2 South Carolina. We get the phone, say USC, if you
3 got a female that can come by here and search this
4 female. Well, that wasn't done.

5 We violated departmental policy by
6 placing an unsearched female in the front right seat
7 with my corporal and transported her to jail.
8 Whether she disposed of evidence when she was
9 rubbing on the other individual, whether she
10 disposed of evidence in the car, whether she had
11 anything else, we'll never know because the
12 property -- it just wasn't done properly.

13 And you'll hear today, I like procedure.
14 If you're going to do it, do it right. And it
15 wasn't done right that night. And that pretty much
16 concludes the entire duration of what happened,
17 other than after I finished booking I went back to
18 the Lottery Commission, went in and finished my
19 paperwork.

20 With our particular department, and I
21 don't know if the policy is the same now as it was,
22 you don't go home until you finish that report. You
23 have to finish the report. You can't save it for
24 two or three days. Some police departments, you got
25 48 hours, 72 hours. You know, they don't want to

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1 work overtime so you simply fill out the forms and
2 you can submit them at a later time.

3 That report was filled out that morning
4 and transmitted. It's got to be reviewed by a
5 corporal, sergeant, lieutenant. It goes all the way
6 up the chain, and I still to this day don't know who
7 in the food chain reviewed that report.

8 That report went all the way up, and
9 even Chief Wise has knowledge of the arrest, and
10 there was no issue. No one came to me several
11 months. This was no issue until, as my attorney
12 just described, due process.

13 Q. Mr. Sorrell, at any time during your
14 contact with the three individuals, did you curse at
15 them?

16 A. No, ma'am.

17 Q. Did you ever use any kind of force such
18 as kicking or hurting any of the individuals?

19 A. No, ma'am.

20 Q. Did you bully any of them?

21 A. No, ma'am.

22 Q. Did you do anything other than act in a
23 professional manner as you were trained?

24 A. No, ma'am. You're right. I did not --
25 one of our witnesses, Mr. Malone, as I described the

1 security guard from earlier, Mr. Malone has
2 submitted an affidavit in which he testifies there
3 was no kicking, there was no snatching, there was no
4 profanity, there was no nothing.

5 So clearly, I had probable cause. And
6 clearly through a witness, the only witness there
7 saw everything and he testifies there is no grounds,
8 nothing to substantiate any of their claims of
9 angry, boisterous, any of this.

10 Q. Have you ever been fired from a job
11 before?

12 A. No, ma'am.

13 Q. And do you receive or had you received,
14 in the department, regular performance evaluations?

15 A. Yes, ma'am.

16 Q. Okay. And would you turn to what has
17 been marked as Page 111 in the Committee Exhibit 1,
18 111, 112, all the way through to 114, 115. So it's
19 111 through 115.

20 A. Yes, ma'am.

21 Q. And would you identify that.

22 A. That is my last -- that is my close-out
23 from the Department of Public Safety through BPS.

24 Q. All right. And what is the -- is
25 that -- that's your Employee Performance Management

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1 System Evaluation?

2 A. Yes, ma'am.

3 Q. And what date were you evaluated?

4 A. That was on June the 4th of 2010.

5 Q. All right. And how were you rated on
6 this evaluation?

7 A. Meets or exceeds. Mostly I see it
8 exceeds job duty, success. Some exceeds, some
9 meets.

10 Q. All right. And if you'll look on Page
11 115, what is the overall rating?

12 A. 2.3.

13 Q. Okay. If you look at the scale at the
14 top of that page, meets performs requirements ranges
15 from 1.5 to 2.4; is that correct?

16 A. Yes, ma'am.

17 Q. So it's a very high meets?

18 A. High meets, yes, ma'am.

19 Q. All right.

20 A. I agree with that.

21 Q. And in the past, have you ever received
22 anything less than a meets?

23 A. No, ma'am. Only the past 10 evaluations
24 I've had meets and exceeds. And it should be noted
25 in the first three years of my employment with the

1 Bureau of Public Service, I've received a lot of
2 exceeds, exceeds, exceeds, more exceeds than meets
3 or a disproportionate. But after 2004, when I filed
4 a couple of complaints on the things that had been
5 occurring, most of them now level to a meets or
6 exceeds.

7 What I'm trying to say, the first two or
8 three, if you look at those and compare those to the
9 last seven meets or exceeds, the first three are
10 outstanding, very peaced-taled (phonetic) very, very
11 positive descriptions of my jobs. How I know the
12 regulations, how I know the law.

13 So it was clearly the first three years,
14 and then the last seven you can tell a little bit of
15 difference in the evaluations, but they're still
16 meets and exceeds or higher.

17 Q. Okay. Now, Mr. Sorrell, this June 2010
18 evaluation came after the March arrest, correct?

19 A. Yes, ma'am.

20 Q. And between March and June, and you had
21 turned in your report which was reviewed by your
22 chain of command as you testified, did you learn
23 that there was any kind of problem with these
24 arrests?

25 A. Yes, ma'am, I did. I was informed that

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1 there was a investigation beginning. Someone had
2 filed a complaint, and that they were now going to
3 investigate the incident.

4 Q. All right. Was that mentioned to you
5 when you were evaluated in June?

6 Was that reflected on this performance
7 evaluation?

8 A. No, ma'am, absolutely not.

9 Q. All right. Well, tell us about what you
10 found out about this investigation.

11 A. Well, if you'll refer to Page 39 in your
12 pamphlet, you'll see a series of e-mails. An
13 individual by the name of Charles Spaht. Charles
14 Spaht is the father of one of the individuals that
15 were throwing the balloons, one of the individuals
16 who violated the law.

17 The Junior, I'll refer to the Junior and
18 the Senior to try to keep it separate. The Junior
19 ~~Mr. Spaht was the individual holding the balloon~~
20 that was assaulting the individual with. The Junior
21 Mr. Spaht is not a young guy. And I failed to
22 disclose this. He's a 30-year-old man. He's not a
23 17, 18-year-old kid throwing water balloons. He's a
24 30-year-old man.

25 And you have two 20-something-year-old

1 other individuals or in their 20s somewhere, and I
2 can't recall exactly, but I recalled when I -- how
3 old are you? Thirty. Thirty years old should be
4 making better decisions.

5 But these two pages are details that
6 came from Mr. Senior Spaht. On some of the blocks
7 you'll notice, and I'm not sure which one, he refers
8 to himself as a retired FBI agent. And I've seen
9 somewhere his signature block. On one of the --
10 it's not, I don't believe, on these two. I believe
11 it was something later on that will refer to him as
12 retired.

13 But these two documents, I'll summarize
14 what they are. It's where the Senior Mr. Spaht
15 e-mailed Sam Bellinger over at the Richland County
16 Sheriff's Department. I don't know Sam Bellinger,
17 never met him before, never looked him up, don't
18 care who he is. He's a representative of the
19 Richland County Sheriff's Department is all I know.
20 The FBI retired guy, father of one of the
21 individuals e-mailed him for some information. At
22 the bottom of Page 39, you'll notice, you know, Sam,
23 you know, as you imagine, I can't thank you enough.
24 My son just e-mailed. I think I mentioned that
25 embedded with the Macedonian Organized Crime

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1 Department. I'm seven hours ahead of you. Thanks
2 again, brother.

3 This describes to me as a law
4 enforcement officer, as a prudent individual,
5 there's some type of intimacy between that FBI guy
6 and this Sam Bellinger over at the Richland County
7 Sheriff's Department. Thanks again, brother.

8 Brother as in law enforcement. We normally don't
9 refer thanks again, brother, if there's not some
10 type of intimacy between us, meaning a bond.

11 Well, it goes on to Mr. Bellinger over
12 at the Richland County Sheriff's Department who
13 e-mails the director of public safety, Mark, here's
14 the complaint we talked about. So what we've got is
15 a trail that leads directly from the father of an
16 FBI agent to Richland County Sheriff's Department to
17 the Department of Public Safety director to the
18 investigation division of Department of Public
19 Safety.

20 That to me is inappropriate. And why
21 I'm going to say is inappropriate because the father
22 of the FBI agent had a copy of the ticket. All the
23 individuals were given a copy of the ticket. My
24 name, my identification, lance corporal as far as my
25 rank, and my number 3027, which is clearly on all

1 three of those tickets.

2 This FBI guy didn't have to get in touch
3 with Richland County to get in touch with my
4 director. Didn't have to do any of that. All he
5 had to do is ask his son, look at the ticket, give
6 me the name of the guy that took you to jail. Look
7 at the top of the form where it says Department of
8 Public Safety, and it gives street address, all of
9 that.

10 Right at the beginning he had everything
11 he needed to call me to talk to me, ask me the
12 circumstances surrounding his son's arrest. I would
13 not have minded in the least, and I do it all the
14 time. If an individual calls me and says, officer,
15 can I talk to you about, you know, my son was down
16 there and he did this. Not a problem, sir. Tell
17 him the truth, tell him what happened.

18 This looks very bad. And when I say
19 looks very bad, y'all all understand exactly what
20 I'm saying here. When it goes from the daddy of an
21 FBI agent all the way through this food chain, it
22 looks very, very bad. It looks like an FBI agent,
23 whether he's currently an FBI agent or whether he's
24 retired, it's still inappropriate for him to contact
25 through this chain the way he did in an attempt to

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1 influence.

2 Simply put, it's obstruction of justice.

3 And it is a crime for you to attempt to obstruct
4 justice. Whether intentional or accidentally, he
5 obstructed justice. He started the wheel rolling.

6 Wasn't a violation. I asked my chief,
7 when I went to meet him once I found out there was
8 an investigation. I went and asked him, Chief, did
9 you have a have problem with this arrest? No,
10 didn't, sure didn't. Didn't have a problem with
11 that arrest, even at the step one, step two
12 grievance. I again asked my chief, Chief, it's 0235
13 in the morning. I'm going to go over to your house
14 and throw water balloons. Would you want someone to
15 come and arrest someone who comes to your home at
16 2:35 in the morning throwing water balloons at your
17 property? Would you want them arrested? And the
18 answer the chief gave me was yes, I would want you

19 to.

20 You'll hear many comments today about
21 rude and aggressive behavior. You don't have any
22 evidence of rude or aggressive behavior. I am an
23 aggressive law enforcement officer. And I don't
24 want you to look at me, wow, he's really aggressive.
25 When I say aggressive law enforcement officer, I

1 can't do work for 12 hours and not see a crime or a
2 violation of law.

3 On your ride in here this morning, I
4 will always guarantee you that every one of you
5 board members saw a crime, a violation, traffic.
6 You saw a crime. I'm the kind of guy that's going
7 to right that crime. I'm going stop that car and
8 I'm going to do the right thing. I'm not just going
9 to let it go and go on down the road like I didn't
10 see it: Sometimes working for the Bureau of
11 Protective Services as short as we were of people,
12 that's sometimes is what happens. But that doesn't
13 happen with me.

14 MR. GANJEHSANI: Ms. Burnette, I know
15 your witness wants to tell a story, but we're
16 straying well into a narrative.

17 MS. BURNETTE: Okay.

18 MR. GANJEHSANI: And less of a direct
19 examination. So if you can try to corral this.

20 Thank you.

21 BY MS. BURNETTE:

22 Q. All right. I thought there for a while
23 that it was actually quicker to let him tell a story
24 and I think you've about told your story, haven't
25 you, Mr. Sorrell, about what happened?

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1 A. Yes.

2 Q. Mr. Sorrell, what are you asking the
3 committee to do after they review all the facts and
4 circumstances of your case?

5 What kind of relief are you asking for?

6 A. Very, very simple request. I want this
7 panel to look at the legality of the issue. Did I
8 or did I not have probable cause to make that
9 arrest? And if did I have probable cause to make
10 that arrest, everything else is a moot point because
11 all of the other things in the disciplinary arena,
12 to include the termination letter -- and I want you
13 to look at the termination letter.

14 In that termination letter it says it is
15 a fact that two of the individuals were throwing
16 water balloons at the above location. So even the
17 director of Public Safety and the department
18 acknowledges that they did what I said they did.
19 And if they were doing that at 0230 in the morning,
20 then it was a violation of South Carolina State
21 Code.

22 I simply want you to look at the facts
23 of this, reinstate me to my position, award me my
24 backpay and allowances, pay my attorneys' fees. I'm
25 not mad at anybody. I really think that somebody

1 made a mistake in the Department of Public Safety.
2 I really do believe they made a mistake when they
3 terminated me in this fashion.

4 MS. BURNETTE: Thank you. Please answer
5 any questions the panel members may have or a
6 counsel member.

7 THE WITNESS: Yes, ma'am.

8 MR. COOPER: Would it be all right to
9 take a short break?

10 MS. ERWIN: That's fine.

11 MR. COOPER: We're going to take about a
12 five, ten-minute break. Let's come back at 11 --
13 11:30, about a five-minute break.

14 (A recess transpired.)

15 MS. ERWIN: Thank you, Mr. Chairman.

16 CROSS-EXAMINATION

17 BY MS. ERWIN:

18 Q. Mr. Sorrell, in reference to the March
19 incident at the Lottery Commission, your testimony
20 was you were on -- excuse me -- at your duty station
21 inside the building and observed something going on
22 in the camera outside, correct?

23 A. Yes, ma'am.

24 Q. Okay. But I believe your testimony was
25 that you heard nothing until you actually got out

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1 the bottom floor door and started to turn around the
2 building?

3 A. Yes, ma'am.

4 Q. Okay. So there was nothing -- whatever
5 was going on was not loud enough that you heard it
6 from inside the building in your station?

7 A. To describe there, we're on the fourth
8 floor, and there would be no way I could hear
9 something on the fourth floor.

10 Q. And when you got outside, I believe your
11 testimony was you heard one person shriek and then
12 you saw the individuals holding water balloons,
13 correct?

14 A. No, ma'am, not exactly. According to my
15 testimony, I heard her shrieking words, don't hit
16 me, don't hurt me. The other guy yelling, get her,
17 run at her, you know, these things. The only one I
18 did not hear loudly and boisterously was Mr. Spaht.
19 ~~Mr. Spaht was the individual with the balloon.~~

20 Q. So your testimony is you heard two
21 individuals making statements, but the third
22 individual was not doing anything, you said, to
23 constitute being loud and boisterous?

24 A. He was not loud and boisterous.

25 Q. Okay. But yet, by the time the

1 evening's all over, he was still arrested for public
2 disorderly conduct, which requires that he be loud
3 and boisterous.

4 A. Yes, ma'am.

5 Q. Okay. You stated also that you had
6 issues with Ms. Swanson being cooperative, and I
7 would direct you to the affidavit on -- this is Page
8 76 numbered. I'm not sure what page it will be
9 actually within your document.

10 Okay. When you got out of the building,
11 you saw the three individuals. I think your
12 testimony was you directed them to approach the
13 wall, spread their feet and hands out and face up
14 against the wall, and you said all three individuals
15 did that; correct?

16 A. Yes, ma'am.

17 Q. Okay. When you walked down and
18 approached the individuals, what order were they in
19 or where was Ms. Swanson in relation to the two
20 males that she was with?

21 A. The both of the males, it was Mr. Keith,
22 Mr. Spaht, and Ms. Swanson.

23 Q. So she was the furthest away from where
24 you came out?

25 A. Yes, ma'am, in the corner.

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1 Q. Okay. And that's the individual, I
2 think you said you approached first because you
3 believe she was not being cooperative?

4 A. Yes, ma'am.

5 Q. Okay. Look at -- and I believe you
6 stated too that your belief was you were fearful
7 because you thought she had something to hide, but
8 then I think later on your testimony was she has a
9 full body tight suit on that you could see there was
10 nothing that was hidden up under that, and I think
11 in the middle of the beginning -- middle of the
12 first paragraph, you stated that you walk up to her,
13 she was not, as you indicated, to your satisfaction
14 being fully compliant, but the statement you make
15 was you chose to disengage and you continued and
16 moved on to the other two individuals?

17 A. Ma'am, I'm a little confused. You ran
18 on with that so long that I did not --

19 Q. You stated you got up to her and you
20 were concerned about her, but yet your testimony was
21 earlier, not concerned enough that you went ahead
22 and conducted the search or called someone to
23 conduct the search, and that even though she was
24 being uncooperative, you tried to indicate there was
25 some sort of belief on your part that she was some

1 sort of threat to you, but then in your affidavit
2 that you provided and you spoke to the investigator,
3 you said despite all that, despite all the concerns
4 that you would I guess like the committee to
5 appreciate that you felt were happening that
6 evening, you left her to go deal with the other
7 individuals?

8 You stated in your statement, realizing
9 that she was not going to fully comply, I chose to
10 disengage and continue with the investigation. At
11 that point you moved to begin dealing on with
12 Mr. Swanson -- I mean, excuse me, Mr. Keith and
13 Mr. Spaht?

14 A. Again ma'am, we were trying to talk over
15 each other. Could you please restate just --

16 Q. You're dealing with her, and what you
17 want the committee to believe is she's a threat, you
18 believe she's got something to hide because she was
19 ~~just being so uncooperative, but your next statement~~
20 is you choose to leave this individual who's being
21 so uncooperative and then you move on and deal with
22 the other people.

23 You don't finish addressing the issue,
24 you're not -- there was no testimony that you called
25 anyone else out there to assist with searching, but

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1 your statement is you want us to believe she was a
2 threat, but then I'm going to turn my back as a law
3 enforcement officer, this person I believe is a
4 threat to me and move on to deal with something
5 else.

6 MR. COOPER: I think -- I think the
7 appellant is confused as to what your question is.

8 BY MS. ERWIN:

9 Q. My question is, his statement is he
10 believes she's a threat, that there's something
11 there, but then is it not his -- according to his
12 statement he gave the investigator, is it not a fact
13 that he says, despite that, I'm going to choose to
14 walk away and I'm dealing with someone else?

15 A. Well, I can clarify that very easily
16 because what are you -- you have done the best you
17 can to get her in the proper search procedure. I
18 can't beat her and make her do anything more than
19 ~~what she's willing to do. And when she met the~~
20 minimum standard that I felt, she is not going
21 to cooperate, can't do anything about that, I backed
22 up. But one thing you spoke, I never turned my back
23 on any one of them.

24 There's two situations, contact and
25 cover officer. I had no cover officer, I had no --

1 I was both at that time. So I backed up where I
2 could clearly see all three of them, even though she
3 was the bigger threat because I hadn't patted her
4 down completely. I had backed up where I could see
5 all three and await backup.

6 Q. But I mean, at no time during the
7 evening up until the point where she was transported
8 by your supervisor to jail, you never made a -- an
9 effort to, I think as you indicated, call a female
10 officer to conduct the search?

11 A. I never did, no.

12 Q. No, okay. You also stated that once
13 you -- once you got to the jail, you made a -- in
14 your statement on Page 76, also that you asked the
15 security -- or excuse me -- the jailer to search
16 Ms. Swanson; is that correct?

17 A. Yes, ma'am.

18 Q. Okay. Did you -- there was nothing in
19 your statement saying that she had not been searched
20 earlier, is there?

21 A. I don't recall if I wrote it in here or
22 not, ma'am.

23 Q. Okay. And when your supervisor asked
24 you -- I'll again ask you to refer to Page 8 in
25 the -- Page 8 on the original statement right after

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1 your affidavit, there's the summary of the -- your
2 statement that you made to Investigator Carter where
3 you indicated that you did advise your supervisor
4 that the three individuals were arrested because she
5 was being uncooperative.

6 A. Yes, ma'am, I did make that statement to
7 my supervisor.

8 Q. And let me go -- direct you a little
9 bit. As far as the complaint that was filed, I
10 believe your statement is you felt there was some
11 sort of I guess conspiracy or something -- that was
12 not right because the father of one of the
13 individuals arrested contacted the Richland County
14 Sheriff's Department, correct?

15 A. Conspiracy is the wrong word. Collusion
16 I believe is a better word than that.

17 Q. But you felt it was improper because he
18 contacted someone there?

19 A. Absolutely.

20 Q. But when the individuals that evening
21 were arrested, they were served with a citation,
22 correct?

23 A. Yes.

24 Q. Uniform traffic citation?

25 A. Yes, ma'am.

1 Q. And the uniform traffic citation is
2 going to have a field where you put the date, the
3 individual's name, if there's a vehicle involved, as
4 with a traffic stop, the information for the
5 vehicle, your name as an officer, but there's
6 nothing that indicates the agency.

7 A. No, ma'am. At the top of that document,
8 there's -- and I don't to -- I believe there's a --
9 at the top of it -- can I have the -- I may have...

10 Q. Well, the uniform traffic citations are
11 issued by the South Carolina Department of Public
12 Safety, but they're issued for every law enforcement
13 agency in the state, correct?

14 A. Ma'am, I'm not sure on that citation.
15 If the address -- I know my name, my badge number,
16 and my rank are on the bottom right.

17 Q. Right. Your name is on there, but
18 unless he knows that you work for the South Carolina
19 Department of Public Safety, he's going to have to
20 contact someone, correct, to determine which agency
21 you're employed with?

22 If he wants to file a complaint, he's
23 got to know who he needs to complain with?

24 A. I'd have to look back at the citation.
25 When we submit them to the court, they

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1 automatically, they know. We don't write Department
2 of Public Safety on them. When I turn in my tickets
3 to the court, they notify us. So I'm not positive
4 on that.

5 Q. But the fact is, the father of one of
6 the individuals believed that something improper had
7 happened and chose to make a complaint and
8 ultimately that did reach the correct agency,
9 correct?

10 A. Yes.

11 Q. Okay. And as a matter of fact, I
12 believe you have pointed the committee to the
13 e-mails, there was some sort of I guess inference
14 earlier that there was a long period of time between
15 the time of the arrest when the complaint was made,
16 but in fact, this incident happened March the 28th,
17 and his complaint was actually received by the
18 department, according to the e-mails you identified,
19 on April the 17th; is that correct?

20 A. Sure. I'm not looking at the dates.

21 Q. Okay. I apologize because my thing is
22 the original numbering.

23 A. Page 39.

24 Q. Yeah.

25 A. The date is April 19th. So it would

1 have been.

2 Q. Roughly a couple weeks?

3 A. You're talking 20 days plus, close
4 enough.

5 Q. About 20 days so...

6 And as the e-mails indicate though, he
7 was spending a good portion of that time, I believe,
8 trying to locate the agency he needed to complain
9 to. I mean, you read that he's talking about
10 Richland County, which agency is this, he's asking
11 for assistance?

12 A. Yes, ma'am. You got two, the director
13 of public safety, on April 19, with the e-mail and
14 so forth.

15 Q. But again, we go back, you said you came
16 out, you had three individuals you were dealing
17 with, two you said were making remarks, but one was
18 doing nothing that you said was constituted being
19 loud and boisterous.

20 A. The loud and boisterous part, ma'am, is
21 not applicable to Mr. Spaht.

22 Q. Okay.

23 A. The part of the law that is applicable
24 to Mr. Spaht is that he was acting in an otherwise
25 disorderly conduct that's -- I believe it's Item B

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1 in the code, found upon a public highway or public
2 roadway in a grossly intoxicated manner or...

3 Q. But there's no -- you didn't testify
4 that any of the individuals that night, once you got
5 outside, were intoxicated.

6 A. No, ma'am.

7 Q. I believe you testified you believe
8 Ms. Swanson maybe -- your indication was maybe some
9 medication was causing her to not comprehend what
10 you were asking, but no indication they were under
11 the influence of alcohol.

12 A. No. To clarify my testimony, Mr. Keith
13 had a slight odor on alcohol on his breath, but it
14 was not grossly intoxicated. I am not alleging that
15 any one of the three individuals were grossly
16 intoxicated.

17 Q. And you had gone in earlier -- your
18 attorney had asked you about some of the
19 disciplinary history you've had, and I believe you
20 indicated that the last kind of discipline you've
21 had was in '04, and that there was nothing that the
22 department had taken as far as any sort of action
23 based on your conduct until this incident in 2010,
24 correct?

25 A. No disciplinary action, right.

1 Q. Okay. Right, but I'm going to ask you
2 to -- and I apologize because I didn't get a number,
3 I didn't know how this was going to turn out. It
4 was Page 110 in the old?

5 MR. GANJEHSANI: Seventy-five.

6 BY MS. ERWIN:

7 Q. Seventy-five. Back in April of 2008 --

8 MR. GANJEHSANI: The red book,
9 Mr. Sorrell. I mean the red binder right there,
10 that has it too. That a might be easier for you.

11 BY MS. ERWIN:

12 Q. In 2008, there was an incident at the
13 Criminal Justice Academy where you were working that
14 where you attempted to make a charge against an
15 individual, and the department as a result of that
16 chose to refer you to counseling to try to address
17 what they perceived was inappropriate behavior; is
18 that correct?

19 A. Not -- excuse me, not entirely, ma'am.

20 Q. I guess what is your contention as far
21 as what happened with that evening?

22 Were you in fact referred to the
23 Employee Assistance Program --

24 A. Yes.

25 Q. -- and then asked to attend counseling?

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1 A. Yes, ma'am, I was.

2 Q. And it was based on what the department
3 indicated in the notification, was on several
4 occasions you had displayed overaggressive and
5 antagonistic behavior when dealing with individuals
6 you encounter. And a result of that, they referred
7 you to counseling; is that correct?

8 A. Yes, ma'am.

9 Q. Okay. And then this was approximately
10 right at two years prior to the incident in 2010
11 that we're dealing with at the Lottery Commission,
12 correct?

13 A. Yes, ma'am.

14 MS. ERWIN: That's all I have,
15 Mr. Chairman.

16 MR. COOPER: Thank you very much. Do
17 you have any follow-up?

18 MS. BURNETTE: No, I do not.

19 THE COURT: Any of the panel members
20 have any questions of this witness?

21 MR. GANJEHSANI: I have one question in
22 regard to what you just testified to. You were
23 referred to a counseling session. How long was that
24 and what did it consist of?

25 THE WITNESS: May I approach to answer

1 your question? On this specific form, when I was
2 served this form by my director -- excuse me, by my
3 chief, I went to South Carolina Department of Public
4 Safety Human Resources, Teresa Kitchens. And she
5 can testify to that, that I brought this to her and
6 I sat down with her, and I said, I want to see -- on
7 several occasions you had displayed overly
8 aggressive and antagonistic behavior.

9 Can you please provide documentation of
10 that?

11 If there were any such allegations of
12 misconduct as described in this letter, then they
13 should have some type of paperwork to back it up.
14 And they did not at the time have that paperwork.

15 I also, specifically, while on
16 assignment at the Criminal Justice Academy, we were
17 prepared to take the subject into custody. I wanted
18 to explain that briefly. On Friday, the day
19 Mr. Maxwell of -- a student at the Criminal Justice
20 Academy, he was terminated from the academy because
21 he failed to meet the standard. The Northern
22 Illinois University, on February 14th is the date of
23 that, February 14th, '08, there were six individuals
24 killed and 21 injured in the fourth deadliest US
25 attack on a university. That was on Friday.

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1 This individual made terroristic threats
2 of violence against the academy. He made comments,
3 I will come back and kill everybody here, things
4 such as that. When I came to work on Sunday, I was
5 told there was an individual in the academy who had
6 made terroristic threats of violence against the
7 academy.

8 What do you do?

9 The immediate response to any situation,
10 we've got a potential threat, we've got an armed
11 gunman on the campus, I called for backup. I locked
12 down the academy. I went from door to door to door
13 locking down the academy.

14 I have my phone record -- Mike Lanier
15 (phonetic), you'll see him today, where I contacted
16 Mike Lanier. He was in charge of the academy. And
17 I told him, I'm locking down -- I didn't ask for
18 permission. I advised him I'm locking down the
19 academy and I'm doing an active search for this
20 individual who has made threats.

21 I locked down the academy. I took two
22 individuals who knew him by sight and said, stay
23 behind me, we're looking for him. Let's go find
24 him.

25 I take things very seriously. I'm not

1 just going say, well, we'll worry about it when I
2 hear shots. What I needed to do -- these guys were
3 all killed or injured on Friday, the day he was
4 discharged from the academy. I sent this e-mail.
5 Here's another situation. When I sent this e-mail,
6 it embarrassed the Criminal Justice Academy because
7 they failed to notify Ms. Sharon Mitchell who was
8 out in the lobby. They failed to notify us that a
9 guy had made terroristic threats to come back and
10 kill everybody at the academy.

11 Once again, I filed a police report. A
12 police report -- and y'all can have copies of these.
13 I detailed everything. He came back, he was on the
14 campus. I saw him on camera. I saw him come on
15 campus, saw him leave campus. And I called and told
16 everybody everything's fine. He came back, he left,
17 no harm, no foul, we're good.

18 But when I wrote this letter condemning
19 the Criminal Justice Academy for their failure to
20 notify the Bureau of Protective Services of this
21 threat, within several days, that's when I got this
22 counseling. I protested the counseling. Again, as
23 I said, I went to Teresa Kitchens, tried, she
24 refused. She said, they're sending you, you gotta
25 go.

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1 As a disabled veteran, I have free
2 access to any one of the clinics. I again, Teresa
3 Kitchens, I asked, may I go -- if you want me to go
4 in for a psycho evaluation or counseling, do you
5 mind if I go to a military guy? Schedule the
6 appointment, I'll go there. Refused to allow me to
7 do that.

8 And the final answer to your question,
9 I'm sorry to beat around the bush, I just want to
10 make sure that we really know what the brass tacks
11 are here. I complained that you risked my life and
12 the life of others by not notifying us about a
13 potential threat, and I'm the one that gets sent to
14 counseling? There's no factual information why I
15 should have gone at all.

16 However, I went to the counseling. It
17 was for a period of one year. It was on duty, they
18 gave me a car, they paid for the gas, I'm drawing a
19 paycheck. If you want to send me to counseling to
20 improve my disposition, as one of my supervisors
21 made a comment, it's probably just to improve your,
22 you know, your disposition. Why not?

23 I learned an incredible amount while I
24 was there. My field of study is social work. Group
25 session, counselor, all of the people in the

1 department that were being sent there on a regular
2 basis, I got to sit there and learn a whole lot. In
3 addition to me being there for improvement, I also
4 gained a lot of knowledge in reference to my career
5 field.

6 MR. COOPER: Thank you.

7 THE WITNESS: Yes, sir.

8 MS. ERWIN: Does anybody have any
9 further questions of this witness?

10 Well, you can be excused. I'm sure
11 you're not leaving the room. So I guess be there.

12 It's 12 o'clock. Your next witness?

13 MS. BURNETTE: Mr. Malone. He was not
14 here earlier, but Malone, he was the security guard
15 at the Lottery Commission. I understand he is here
16 now, and I expect he would be very brief. It might
17 be appropriate to take him at this time if we could.

18 MR. COOPER: Well, how brief do you
19 anticipate?

20 MS. BURNETTE: I have only, you know, a
21 handful of questions for him, just about what
22 happened at the Lottery Commission.

23 MR. COOPER: All right. Does anybody
24 have an objection?

25 MR. GANJEHSANI: Well, Ms. Erwin, do you

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1 have any sense of how much time you would spend on
2 this witness? I'm not going to hold you to it.

3 MS. ERWIN: I don't think it would be
4 too terribly long.

5 MR. COOPER: Well, why don't we do one
6 more witness and then we'll break for lunch at that
7 time.

8 (A recess transpired.)

9 MR. COOPER: Back on the record. Okay
10 Mr. Malone, you were not present during the opening
11 statements, so I'm going to -- when the oath was
12 administered so I'm going read you the following
13 statement and then you'll be given the oath by the
14 secretary.

15 The witness is asked not to discuss this
16 case either before or after testifying until they
17 are excused. This is intended to preclude the
18 parties from entering in discussion with the
19 respective witness.

20 Do you understand this?

21 MR. MALONE: Yes, sir.

22 MR. COOPER: You are to remain available
23 after testifying until you're excused by the
24 presiding officer, and that would be me.

25 MR. MALONE: Yes, sir.

1 MR. COOPER: After the -- you're not to
2 remain in the hearing room unless you're called to
3 testify, and you'll be testifying under oath. At
4 this time, the secretary will administer the oath to
5 you.

6 THE SECRETARY: Mr. Malone, if you'd
7 please raise your right hand. Do you swear or
8 affirm that the testimony you will give today is the
9 whole truth and nothing but the truth?

10 THE WITNESS: Yes, sir.

11 THE SECRETARY: Thank you.

12 MR. COOPER: All right. And just to
13 reiterate, anyone related to this case is not to
14 discuss this case with any member of the State
15 Employee Grievance Committee before, during, or
16 after the hearing until the final decision is
17 reached and the matter is no longer pending before
18 the committee.

19 ~~The matter is still considered to be~~
20 pending before the committee during the time
21 involved in the request for reconsideration of the
22 committee's decision or until the time has passed or
23 an appeal to the administrative law clerk.

24 The only time this case is to be
25 discussed is during the formal hearing procedures.

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1 All right. Would you -- before your testimony, we
2 need you to state your full name, please.

3 THE WITNESS: Bernard Marshawn
4 (phonetic) Malone.

5 MR. COOPER: And I just want to remind
6 to you speak clearly to be picked up by the
7 microphones in the room.

8 THE WITNESS: Okay.

9 MR. COOPER: And advise you that the red
10 binder on the desk contains information that may be
11 referred to during your questioning and that each
12 page is numbered in the upper right-hand corner.

13 THE WITNESS: Okay.

14 BERNARD MALONE
15 being first duly sworn, testified as follows:

16 DIRECT EXAMINATION

17 BY MS. BURNETTE:

18 Q. Mr. Malone, my name is Malissa Burnette.

19 A. Yes, ma'am.

20 Q. I'm a lawyer. I'm Mr. Sorrell's lawyer.
21 You and I have never met, have we?

22 A. No, ma'am.

23 Q. Okay. Where do you live?

24 A. 44-A Holland Avenue.

25 Q. Are you currently employed?

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1 A. No.

2 Q. Okay. Do you remember working as a
3 security guard at the Lottery Commission in
4 March 2010?

5 A. Yes, ma'am.

6 Q. How long did you work there?

7 A. Out there, probably about a month or
8 two.

9 Q. Do you remember working one night when
10 Mr. Sorrell was assigned there?

11 A. I remember that clearly.

12 Q. Okay. Had you ever met with Mr. Sorrell
13 before that night?

14 A. I do believe a couple times working that
15 stand.

16 Q. Okay. And have you ever worked with him
17 after that night?

18 A. I don't think so.

19 Q. Okay. Was that about the last time you
20 saw him?

21 A. Yes, ma'am.

22 Q. And do you remember what happened that
23 night?

24 A. Yes, ma'am.

25 Q. Okay. What happened?

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1 A. Pretty much I see him coming downstairs
2 and he was going out the door. So I think he got on
3 the radio, said something, so I followed him on the
4 system and I seen kids out there, they was throwing
5 balloons, real loud. It was like probably two
6 o'clock in the morning or something like that and --

7 Q. Did you hear what they were saying or
8 did you hear them being loud?

9 A. Yes. You can hear them as you go out
10 the door. Pretty much he told them to get up
11 against the wall, gave them a direct command, and
12 moved them all away from each other so none of them
13 won't be, you know, beside each other, so just in
14 case they have drugs or anything on them, they can't
15 pass them to each other.

16 Q. Okay. And would you describe how many
17 people there were involved?

18 A. Three.

19 Q. Okay. And males or females?

20 A. Two boys and one girl.

21 Q. Okay. And were all of them cooperative
22 or not cooperative; do you recall?

23 A. Not all of them was cooperative.

24 Q. Okay. Tell me about that.

25 A. Pretty much the female, she pretty much

1 had a excuse for just about every direct order that
2 he gave her. Other one, I think he's like 30 years
3 old, and he was talking about how his father works
4 for the FBI and trying to bribe him pretty much to
5 let him go. He was real nasty too.

6 It was probably the other little --
7 well, not little, but the other young man, he was
8 kind of -- he wasn't really that -- he wasn't really
9 saying that much. That was the only one that wasn't
10 really saying that much, but the other two was the
11 main two that was just staying stuff, like doing --
12 like he gave them direct orders, you know, to sit
13 down.

14 She said she couldn't do it because she
15 was saying about her tailbone or something like that
16 hurts. Then he asked her to spread her legs and she
17 acted like she didn't want to do that. Like she
18 just pretty much -- like she didn't follow no direct
19 orders.

20 Q. And did you see Mr. Sorrell try to get
21 her to comply with his orders?

22 A. He asked her nicely and asked her again
23 and, you know, she acted like she wouldn't really
24 want to do it, like she just -- I didn't just
25 understand why.

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1 Q. Did he conduct any type of pat down or
2 search on any of the three?

3 A. Oh, he searched all three of them. The
4 female, he didn't do a complete search on her. The
5 only thing she had on was a tight hoody, and because
6 he didn't want to reach nothing in her pockets,
7 nothing like that, so he just pretty just put his
8 hand in the back of her hoody to see if she had
9 anything in there and that was it.

10 Q. Did he jerk it or any manner --

11 A. No, ma'am.

12 Q. -- harm her when he did that?

13 A. No, ma'am.

14 Q. Okay. And did she make any comments
15 about him hurting her or anything like that?

16 A. Well, she was saying he was hurting her,
17 but to me, I don't think he was hurting her at all.
18 The hoody was already tight on her, so she probably
19 assumed that because when he reached in there and,

20 you know, you reach in there feeling around. I
21 mean, I'm sure if somebody -- the hoody will
22 probably slide back or whatever, like the front part
23 of it. But as far as hurting her, no.

24 Q. Okay. Did you see Mr. Sorrell kick or
25 shove or hurt anybody?

1 A. No, no. He just nudged her legs open.
2 Not enough to hurt nobody, nothing like that,
3 because like she wouldn't comply.

4 Q. Did you see him jerk anybody or shove
5 anybody or snatch anybody?

6 A. No.

7 Q. Did he curse at anybody?

8 A. No, ma'am, not that I know of.

9 Q. Did he injure any of the three?

10 A. No, ma'am.

11 Q. All right. Now, have you and I ever
12 talked before just now?

13 A. No, ma'am.

14 Q. Okay. Now, do you have any relationship
15 with Mr. Sorrell other than having worked with
16 him --

17 A. No, ma'am.

18 Q. -- over at the Lottery Commission?

19 Okay... And do you have any reason not to
20 be telling the truth here today?

21 A. Why would I lie?

22 MS. BURNETTE: I have no further
23 questions. Answer any questions she may have.

24 THE WITNESS: Okay.

25 CROSS-EXAMINATION

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1 BY MS. ERWIN:

2 Q. Mr. Malone, you indicated that had you
3 followed Mr. Sorrell outside of the building because
4 you saw him leaving, but up until the point I guess
5 that you reached the outside of the building, you
6 couldn't hear any disturbance from inside where you
7 were?

8 A. Once you got further out, like going
9 out, you can hear the noise.

10 Q. But you have to get outside the building
11 before you --

12 A. Yes.

13 Q. -- you heard anything? Okay. I think
14 you said --

15 MS. ERWIN: And I apologize, if we can
16 get to the original Page 70 and from 71 off here.
17 I'm not sure what page that is in our new exhibit.

18 MR. GANJEHSANI: Seventy?

19 MS. ERWIN: Seventy.

20 MR. GANJEHSANI: Fifty-one.

21 BY MS. ERWIN:

22 Q. If you'll look, Mr. Malone, this red
23 book in front of you, it's got a copy of that. It
24 might be a little clearer for you to -- the red.
25 You've got a copy.

1 MR. COOPER: What page are we on now?

2 MS. ERWIN: Seventy. Yeah, right,
3 right. This is the beginning.

4 BY MS. ERWIN:

5 Q. This is a copy, and I believe you
6 indicated you've got a copy in front of you of the
7 statement you provided to our investigator who spoke
8 to you. You indicated that, on Page 71 of your
9 statement I think, when Mr. Sorrell approached
10 Ms. Swanson, her feet were shoulder width apart,
11 correct?

12 When she was leaning up against the
13 wall, her feet was shoulder width apart.

14 You also indicated, I think on Page 71,
15 if you look at about the first, second, third,
16 fourth, the beginning of the fourth line, the fifth
17 line, you said that Sorrell stated they were all
18 going to be arrested because of the way the female
19 was acting.

20 A. That's right, and the male.

21 Q. And you indicated further about four
22 lines down, they asked if they could get a warning,
23 and Mr. Sorrell indicated no because he tried, but
24 they would not cooperate, correct?

25 A. Yes. He tried to, you know, cooperate

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1 with them because he told them that he's going to
2 let them off. He said, I was starting to let you
3 off with a warning, but the thing is when he seen
4 how much they would comply, and the young fellow
5 talking about his dad works for the FBI, and I don't
6 know why reacted -- but that's the one that tried to
7 bribe him, the guy of being arrested.

8 Q. But Mr. Sorrell's response was because
9 they were not being cooperative with him, he was
10 escalating it to a custodial arrest?

11 A. Yes.

12 Q. Okay. You also indicated at the -- near
13 the bottom of your statement that the female acted a
14 little bit worried and I believe your statement was
15 almost kind of panicky. That she was scared and
16 nervous about being arrested.

17 A. Yeah.

18 Q. And she asked specifically what it was
19 he wanted her to do. She made -- you said she made
20 comments about asking him, you know -- I mean, she
21 was nervous, kind of making responses. So she --
22 you gave an impression she was unsure about what she
23 was being asked to do?

24 A. She acted like she was unsure being -- I
25 mean being asked what to do. But to me, you've been

1 giving her direct orders, telling her what to do.

2 If the other two could comply, why -- you know, then
3 why couldn't she?

4 Q. But she was given you signs of being
5 that she wasn't quite understanding what you're
6 saying?

7 MS. BURNETTE: Object to the form of the
8 question.

9 BY MS. ERWIN:

10 Q. Okay. She -- or you said she indicated
11 that she was scared or she was unsure of what she
12 was supposed to be doing?

13 A. You can say that. But the thing is, if
14 you ask me if -- I mean, if anybody getting
15 arrested, I'm sure everybody knows if the police
16 tell you to put your hands behind your back or
17 anything else, you should comply. I mean, it don't
18 take a rocket scientist to figure that out.

19 ~~Q. And you indicated you had not worked~~
20 with Mr. Sorrell prior to that. Prior to that, were
21 you employed with the Department of Corrections?

22 A. Yes, ma'am.

23 Q. Okay. And what was the basis for your
24 leaving the Department of Corrections?

25 A. Pretty much I found out I had my cell

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1 phone on me, and I informed them I had my cell phone
2 on me because I didn't want them to think I was
3 bringing it in for an inmate or, you know, trying to
4 sneak stuff in. And when I informed them, pretty
5 much they flipped everything around and trying to
6 say I was bringing in drugs and they explained to
7 me.

8 Q. Okay. But you were terminated for
9 violating policy, in essence, is what it was with
10 the Department of Corrections?

11 A. Yeah, they said contraband, which was my
12 own cell phone.

13 MS. ERWIN: That's all I have,
14 Mr. Chairman.

15 MR. COOPER: Thank you. Do you have any
16 other questions for the witness?

17 Do any of the panel members have any
18 questions for the witness?

19 ~~Is there any objection if this witness~~
20 is excused from these proceedings?

21 MS. ERWIN: None.

22 MS. BURNETTE: No.

23 MR. COOPER: Thank you, Mr. Malone.

24 You're excused.

25 THE WITNESS: Thank you.

1 MS. BURNETTE: Thank you, Mr. Malone.

2 THE WITNESS: You're welcome.

3 (A recess transpired.)

4 MR. COOPER: We're back on the record
5 now. We've heard from two witnesses and feel at
6 this time it's time to break for lunch. And if
7 agreeable to everyone -- it's 12:20 right now -- if
8 we can be back here, does 1:30 give everyone enough
9 time or would anyone like to come quicker?

10 MR. GANJEHSANI: 1:15.

11 MR. COOPER: 1:15?

12 MR. GANJEHSANI: That's enough.

13 MR. COOPER: All right. Let's do 1:15.
14 And at our first break we all came back a little bit
15 late so let's try to be punctual, please.

16 MR. GANJEHSANI: That's my fault, thank
17 you. Let's not name names.

18 MR. COOPER: All right. So we'll --
19 let's see everybody back here at 1:15. Thank you.

20 (A luncheon recess transpired.)

21 MR. COOPER: I don't know if you were
22 here when I mentioned this before, but just want to
23 remind you to speak clearly so the microphones can
24 pick up your testimony and advise you that the
25 binder on the desk is -- may be referred to during

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1 the questioning and pages are numbered at the right
2 corner.

3 Would you please state your full name?

4 MR. O'LEARY: My name is John Allen
5 O'Leary.

6 MS. BURNETTE: Thank you, Mr. Chairman.

7 JOHN A. O'LEARY

8 being first duly sworn, testified as follows:

9 DIRECT EXAMINATION

10 BY MS. BURNETTE:

11 Q. Mr. O'Leary, are you an attorney?

12 A. Yes, I am.

13 Q. All right. Would you please explain
14 your education and experience for the panel, please?

15 A. Well, briefly, I went to -- I graduated
16 from the Citadel and graduated from law school,
17 University of Detroit and then Northwestern
18 University of Chicago in master's. I took the
19 master's program, I didn't complete the thesis in

20 criminal law. That essentially is my educational
21 background. I'm a member of the Bar Association in
22 South Carolina, Florida, and Michigan.

23 Q. What year did you finish law school?

24 A. About 300 years ago. I graduated in
25 '69. It's scary.

1 Q. And have you experience with criminal
2 justice in particular?

3 A. Yeah. My main background is in
4 employment, I worked at the Criminal Justice Academy
5 for approximately 15 years. I taught criminal law,
6 the laws of arrest, probable cause, and those things
7 to the officers along with another -- an ex-FBI
8 agent named Jim Curdy (phonetic) that did the search
9 and seizure portion.

10 And I taught for probably -- by the time
11 I was there, I probably taught 12 to 13 of the
12 years. I was director for like five years and at
13 one point I was being the director and also teaching
14 and then I stopped that. I taught it for years. I
15 taught at the law school at USC. Taught at the
16 University of Windsor, Ontario.

17 And I've been a guest lecturer for IACP,
18 chiefs of police. The FBI academy, the FBI sessions
19 that they put on for state and law -- the FBI
20 academy graduates, which is basically local officers
21 going to Quantico. For the National Sheriffs'
22 Association.

23 I've been involved in training forever.
24 In fact, it was my first love. I left the state in
25 '88. But I've been practicing law ever since that

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1 time.

2 Q. Have you been qualified by courts to
3 testify as an expert witness in court?

4 A. Yes. I've testified several hundred
5 times on various issues for both the state and for a
6 defendant, depends on -- not in criminal cases, but
7 basically civil cases. Giving opinions as to the
8 laws of arrest, search and seizure, high-speed
9 chases, excessive force and the whole gamut.
10 Handcuffing, stun guns, nightsticks, things of that
11 nature.

12 Q. Approximately how many times do you
13 believe that you've testified as an expert?

14 A. It's been over a couple hundred, but I
15 just, you know, after a while you sort of just don't
16 keep track anymore, you just do analyze the case. A
17 lot of times you get hired to look at a civil case
18 and you give an opinion and then it never comes to
19 court. Either the case gets dropped or they settle
20 it, so you never really reach the court stage. But
21 I've testified in federal courts in numerous
22 districts throughout the United States and in
23 most -- several states.

24 MS. BURNETTE: Mr. Chairman and the
25 panel, we offer Mr. O'Leary as an expert witness in

1 this case on the issue in the laws of arrest. It
2 would be if there's no objection.

3 MR. COOPER: Ms. Erwin?

4 MS. ERWIN: No objection.

5 MR. COOPER: The witness is qualified as
6 an expert in the field, Ms. Burnette.

7 MS. BURNETTE: Thank you.

8 BY MS. BURNETTE:

9 Q. Mr. O'Leary, have you reviewed the
10 documents that are before the panel and reviewed the
11 events contained therein regarding March 28th, 2010?

12 A. I have. I reviewed all the documents, I
13 think, that have been provided to the committee and
14 probably even more than those documents. But the
15 events of March -- of early morning 2:30 in the
16 morning, the 28th, the issue came down to -- and my
17 understanding is that Mr. Sorrell was terminated
18 because it was a lack of probable cause.

19 Probable cause, the old cases that they
20 still teach, 1964 Beck versus Ohio, says essentially
21 it's facts and circumstances which would lead a
22 reasonable person to believe that a crime has been
23 committed.

24 Now, in this case, the officer's duty --
25 he's involved with a misdemeanor. He sees in his

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1 presence what he believes is a public disorderly
2 conduct under the statute; the time of day, the
3 boisterous conduct, the loud conduct, the throwing
4 the balloons in an area that is both residential and
5 commercial. But at 2:30 in the morning, the
6 residence is -- the noise would obviously be a
7 factor and that would be a consideration he took
8 into.

9 And he saw -- used his own physical
10 observations that he heard noise, boisterous noise.
11 He saw what appeared to be throwing, running around
12 and throwing whatever at the wall or at each other,
13 and at that point he got involved.

14 I think, in my opinion, that would be
15 under the statute that says -- he charged under
16 16-17-530 and it basically says it can either be
17 grossly intoxicated, which is one section, or
18 conducting himself in a disorderly or boisterous
19 manner. That's what the ordinance statute says.

20 Now, the problem you run into in the
21 laws of arrest -- I apologize, I got kind of a cold
22 here -- is that the officer has the -- makes the
23 determination of what to do, whether he's going to
24 write him a ticket or whether he's going to take him
25 to jail. But the underlying premise of either the

1 arrest or a courtesy summons, which is basically the
2 ticket, is left with the officer based upon how he
3 feels at that particular time, what he observes.

4 In this case, he observed three people.
5 He observed non-cooperation. He observed -- at one
6 point I read that there was some references made to
7 the one boy's father being an FBI agent, and the
8 fact that the female wasn't cooperating, that he
9 took that into account. And he made a
10 determination, one, that a crime had, in fact, been
11 committed. And then he made a determination that he
12 will arrest them for that crime and issue a citation
13 when they get to the jail. And that's essentially
14 what happened here.

15 The time of day was critical, I think.
16 The fact that it's the middle of the night. He
17 observes, he hears it's loud, and there was nothing
18 that I saw that would indicate that he did anything
19 other than, you know, proper procedure.

20 Now, officers were taught at the academy
21 both -- I think Mr. Keel was probably there too --
22 that officers when they're making an arrest are
23 taught, in the mechanics of making arrests, either
24 handcuffing and taken into custody, to use forceful
25 language, to use a strong voice. I mean, probably

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1 the old police stories and things like that, that
2 you see on TV, where the one girl had the squeaky
3 voice when she was a police officer, and that was
4 sort of the subject of the joke.

5 You use forceful language. You make a
6 determination. He did that. He saw what he thought
7 was a crime taking place. He had facts and
8 circumstances which he observed that led him to
9 believe that that was public disorderly conduct.
10 And he made the determination to make -- to take
11 them into custody, take them to jail. They were
12 processed, and then I think two out of the three
13 were let out early the next morning.

14 It's a minor offense in the sense that
15 it's a misdemeanor, but it's a misdemeanor. But
16 there's laws of arrest for a misdemeanor and for
17 felonies, but probable cause is the same for both.

18 The difference with the misdemeanor is
19 that officers basically are at the scene. They see
20 it, they hear it, they touch it, they smell it.
21 Like walks up to a car, smells marijuana. I mean,
22 that's a sense thing.

23 And in hearing, he heard the noise. He
24 saw the people. He saw the balloon. He saw them
25 running around, doing whatever at 2:30 in the

1 morning. He made a determination, and rightfully
2 so, that it was disorderly conduct. Now, whether
3 you take them into custody or you write them a
4 ticket to let them go is a whole separate issue.

5 But the underlying premise of this
6 termination is that he didn't have probable cause to
7 do that. This case was a ticket written where he
8 wrote a ticket and it's signed public safety, it's a
9 public safety ticket. Job says Department of Public
10 Safety. He wrote the violation out and it was
11 served upon the people either at the jail or on the
12 way to the jail, and they were properly processed
13 out under a bonding situation early the next
14 morning.

15 The other person, the man from out of
16 state had to wait like a day or so, and most likely
17 because he was from out of state. The court could
18 have issued a PR bond, but they didn't because
19 probably being another state, is my guess. And
20 that's essentially what I saw.

21 MS. BURNETTE: Nothing further. Answer
22 any questions the panel or counsel may have.

23 CROSS-EXAMINATION

24 BY MS. ERWIN:

25 Q. Mr. O'Leary, the statute again in

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1 question which Mr. Sorrell charged the three
2 individuals is 16-17-530, correct?

3 A. Yes, it is.

4 Q. Okay. And it provides that basically a
5 person who is on the highway or any public place in
6 a grossly intoxicated condition, which you said your
7 understanding of the facts is it's not applicable?

8 A. No, that's not applicable. It's the or
9 otherwise --

10 Q. Or otherwise conducting himself in
11 disorderly conduct.

12 A. Two sections.

13 Q. And in particular says boisterous manner
14 or uses obscene or profane language within hearing
15 distance of any school or church or is guilty of,
16 basically, the offense of public disorderly conduct.

17 So there's no question that we're
18 talking about, there's no gross intoxication,
19 there's no profanity being used.

20 Your contention is that the conduct was
21 disorderly or boisterous?

22 A. I think, you know, if you look at the
23 age, the one man was surprisingly 30. Thirty years
24 old at the time of this in 2010. They're out there
25 at 2:30 in the morning, a residential area and an

1 isolated area downtown, yelling and throwing water
2 balloons and running around the street.

3 Now, the officer, I think, had an
4 obligation to check out what was going on, which he
5 did, and then he made a determination that they were
6 in violation of the disorderly or boisterous
7 section.

8 Q. But there was -- there was no one else
9 present on the street, from your understanding of
10 the facts, other than the three individuals having
11 the water balloon fight and Mr. Sorrell.

12 A. I don't know of anybody else other than
13 officers --

14 Q. That responded subsequent to his
15 notification.

16 A. From the location. And again, I'm not
17 that familiar with the downtown area because I don't
18 really walk down there at all. But basically
19 there's that motel is right across the street too.

20 So there's motel rooms, there's apartments and
21 condos across the street where I think one of the
22 subjects was living. And the issue of the
23 profanity. No, there was no profanity, but you
24 don't need profanity.

25 Q. Right, but your conduct has to be so

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1 loud and so unruly that it draws unwanted attention
2 other than just -- just because you hear somebody on
3 the street at 2:30 in the morning doesn't mean that
4 that's loud and boisterous behavior.

5 A. Well, it could be. I mean, if some --
6 but this case, he actually got more than the
7 voice -- the loud voices and the yelling and running
8 around. You got the throwing stuff at each other,
9 which he doesn't know at the time what it is.

10 Now, whether I would have written that
11 ticket or whatever, that's a whole separate issue.
12 The issue is what did he think at the time. And
13 Beck, basically, the case is saying that they come
14 on all the time saying it's a reasonable man test,
15 and what would a reasonable person think.

16 This officer thought something was going
17 on. They were loud and boisterous in a residential
18 area, the time of day, they were uncooperative to
19 some extent in terms of once he approached them. He
20 was courteous to them, as everything I saw. He did
21 not use excessive force in anything that I observed.

22 Q. But your understanding is, again,
23 officers are taught to apply the reasonable man
24 standard. And so what we've -- from the facts
25 that's given, the decision to arrest was made after

1 he had conducted his investigation and determined
2 that, in fact, this was a water balloon fight
3 between three individuals?

4 A. Yeah, but he had already observed what
5 he thought was disorderly conduct at that point.

6 Q. But again, we go back to the standard.
7 You said officers are taught that what would a
8 reasonable man do. And so you're -- what you're
9 trying to tell us is that a reasonable officer
10 trained from the academy, after determining that
11 we've got a water balloon fight between three
12 individuals is going to determine that that
13 constitutes...

14 A. It could. I mean, if I took 10 officers
15 today just right out of the academy, whatever, and
16 gave them the same facts, scenario, I mean, could
17 easily -- you can come up with like five and five or
18 eight and two or whatever. I mean, everybody's not
19 going to perceive things the same way.

20 But in this case, the officer obviously,
21 from being inside the building, he observed on
22 the -- I guess the AV systems, he observed what he
23 thought was something going on outside the building,
24 and he had a duty to investigate. He did. He saw
25 in progress what he thought was disorderly conduct.

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1 And he made the -- and that's the way he treated it.

2 Q. But again, the decision to make the
3 arrest was not -- that decision was not made until
4 his investigation was completed.

5 A. I can't tell you when he made that
6 decision, to be honest with you. I just say, you
7 know, all I know is that they were up against the
8 wall at that point, the time he put the handcuffs
9 on. The die had been cast at that point because
10 they're under arrest and they're not going anyplace.
11 Once you put cuffs on somebody, you can't unarrest
12 them.

13 MS. ERWIN: I just want to introduce a
14 copy of the statute.

15 MR. COOPER: That's fine. If you'll
16 mark that Agency Exhibit Number 1.

17 BY MS. ERWIN:

18 Q. But base -- okay.

19 A. What I'm trying to say is the ultimate
20 decision as to what to do is up to the individual
21 officer and what he perceives to be or not to be a
22 violation of the law. And I think he made a
23 reasonable determination.

24 Would I have done that? I don't know, I
25 wasn't there. But I think based on the time and

1 what he observed, I think it was a reasonable
2 decision. He used probable cause.

3 Q. But the mere fact that the individual
4 who is I guess having some sort of encounter with a
5 law enforcement officer, their questioning of
6 anything that's happening, that conduct in and of
7 itself does not constitute being loud and boisterous
8 behavior, correct?

9 A. Just asking him questions?

10 Q. Right.

11 A. No, no.

12 Q. I mean, I was specifically referring to
13 what the case of --

14 A. No, I'm not saying that.

15 Q. Norwell versus City of Ohio (sic), that
16 was a Supreme Court case where they determined that
17 basically merely because he verbally and negatively
18 protested the officer's treatment, is not being
19 sufficient to rise to the level of the --

20 A. That's not what I'm saying. I think he
21 made a decision as to -- at the point where he saw
22 them and he put him up against the wall.

23 The thing that happens on a lot of these
24 cases, they're all fact-based and individual.
25 There's no set formula for every situation. That's

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1 the problem officers have all the time.

2 Q. But the conduct has to be such that it's
3 creating such a disturbance that that officer
4 believes is being disorderly enough, and I think
5 you've read -- you referenced the fact that this was
6 a quasi residential, quasi business area, but from
7 your understanding, you've reviewed I think the
8 information that's been submitted, documentation,
9 there's no evidence that Richland County responded
10 that evening, is there?

11 A. No, Richland County responded but --

12 Q. The city of Columbia didn't respond,
13 correct?

14 A. The kids are probably better off that
15 the city of Columbia didn't respond.

16 Q. But I mean there's no evidence that the
17 two primary law enforcement agencies that have
18 jurisdiction responded and there's no evidence that
19 there were complaints from any residents or any of
20 the people in the area.

21 A. No, I don't know of any complaints, but
22 I know that if he's down there as a law enforcement
23 officer to protect that business and that -- I guess
24 the Lottery Commission, I mean, he has law
25 enforcement powers throughout the state. You don't

1 need the city of Columbia.

2 Q. But I mean, my point is, no one else
3 complained or there were no calls to 911 that was
4 dispatched to officers within that area who would
5 normally -- they're not going to --

6 A. No, not that I know of.

7 Q. If an individual has complained about
8 something happening within his neighborhood, they're
9 not going to call the Bureau of Protective Services,
10 they're going to call 911 and get either Richland
11 County or the city of Columbia.

12 A. That's true. It's just chance that he
13 happened to be -- that that happened to be the
14 building that y'all -- that they had the Bureau of
15 Protective Services in it.

16 Q. But none of those other agencies
17 responded?

18 A. Not that I know of, no, no.

19 MS. ERWIN: I don't have anything
20 further.

21 MS. BURNETTE: Nothing further.

22 THE WITNESS: Thank you. I appreciate
23 that.

24 MR. COOPER: Wait, some of the panel
25 members --

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1 THE WITNESS: Oh, sorry.

2 MR. COOPER: I have one question.

3 THE WITNESS: Yes, sir.

4 MR. COOPER: I didn't understand when
5 you said you'd take 10 officers from the academy --

6 THE WITNESS: If I gave them that fact
7 scenario of this case and say, what would you do,
8 almost like a, you know, simulated training thing,
9 they wouldn't all do the same thing. Okay.

10 MR. COOPER: And did I understand your
11 testimony correctly that what Officer Sorrell did
12 was -- as far as a probable cause was correct?

13 THE WITNESS: He had probable cause.

14 MR. COOPER: And he could have either
15 written a ticket or --

16 THE WITNESS: Taken them to jail.

17 MR. COOPER: -- take them to jail, and
18 in your belief either one would have been correct?

19 THE WITNESS: Yeah, they are. There's
20 no -- there's no right to a courtesy summons. I
21 mean, like he stopped me for speeding today. If for
22 whatever I say to the officer he perceives, instead
23 of writing me the ticket, he could take me to jail.
24 It doesn't happen very often, but you could do that.

25 In this case, a courtesy summons was

1 issued ultimately to hook in the jurisdiction of the
2 court system. And I checked the court system out
3 and this case apparently was dismissed. I don't
4 know what happened to it. Disposed of it. It was
5 just dismissed. He never went to court, he never
6 called the court.

7 MR. COOPER: But in your opinion as an
8 expert witness, either writing a ticket or taking
9 them to jail would have been a correct situation
10 based on having been there and been involved it; is
11 that what you're saying?

12 THE WITNESS: It normally is, with
13 exception like DUI, you can't just write a guy
14 charging him with DUI, a ticket, let him go. You
15 have to -- in that case, you have to take them in
16 custody. But in normal situations and in the city
17 of Columbia, for example, five points, kids yelling
18 in the street, you know, jump -- raising -- blowing
19 horns and jumping around, they'll go to jail. That
20 would be under this statute and they'll go to jail.

21 And that is a decision that is left to
22 the discretion, really, of the arresting officer.
23 The question is, did he have fundamental underlying
24 probable cause to do either, write the ticket or to
25 take them to jail.

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1 MR. GANJEHSANI: Ms. Erwin, can you give
2 me the case cite for that case you mentioned?

3 MS. ERWIN: I'm sorry, it's 414 US 14.

4 MR. GANJEHSANI: 414 US 14. Thank you.

5 RECROSS-EXAMINATION

6 BY MS. ERWIN:

7 Q. Just I have one follow-up question.
8 Mr. O'Leary, you've referenced -- I guess your
9 testimony is limited -- the fact of the probable
10 cause for the charge, but, in fact, Mr. Sorrell's
11 termination was based on the fact of the unlawful
12 charge in the department standpoint, the manner in
13 which he treated the individuals, and also what the
14 department considers is an abuse of authority on his
15 part.

16 A. The only comment I can give you on that
17 is that I didn't see anything that would constitute
18 excessive force. Using a strong voice is taught.

19 Q. Well, not excessive force, just overly
20 aggressive and threatening.

21 A. I think any officer that's in a uniform,
22 an average person with common sense is going to be a
23 little threatened by any officer, especially when
24 you know you've just been caught doing something
25 that may be improper.

1 And clearly, these were not teenagers,
2 one guy's 30 years old. They're out there at 2:30
3 in the morning. That is -- any officer in and of
4 himself by the uniform, by the voice, they take
5 command of the situation and that is exactly what he
6 did in this case.

7 And that's what they're taught. I don't
8 know any other way to tell you. If you have
9 officers out there that are indecisive and hemming
10 and hawing, don't use, you know, forceful speaking
11 to a person -- the tone of your voice -- I mean like
12 now, I'm probably talking too loud, I'll tell you if
13 you can get a handle on that -- but, you know, the
14 truth is, your voice is important. I mean, the
15 strength of your voice, you know, the steadiness of
16 your voice, the consistency.

17 Q. But we're not talking, I mean --

18 A. But that's all the things to be
19 considered. That's part of the whole facts and
20 circumstances surrounding any incident that an
21 officer runs into.

22 MS. ERWIN: That's all I have.

23 MR. COOPER: Any further questions? Can
24 this party -- and I'll ask both parties if this
25 witness can be dismissed?

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1 THE WITNESS: She won't excuse me. No,
2 I'm just kidding.

3 MS. BURNETTE: He may not be excused
4 from the table. He may be excused as a witness.

5 MR. COOPER: Excused from these
6 proceedings.

7 THE WITNESS: Yes.

8 MS. BURNETTE: Thank you.

9 MR. COOPER: Then the witness is
10 excused.

11 THE WITNESS: Thank you.

12 MR. COOPER: Thank you.

13 MS. BURNETTE: The appellant rests.

14 MR. COOPER: Would you like to call your
15 first witness?

16 MS. ERWIN: Can I have just a moment?

17 MR. COOPER: Yes.

18 MS. ERWIN: Mr. Chairman, if I can, I
19 think I'm going to go ahead and start with the two

20 individuals that were there that evening that we
21 have here today, Ms. Swanson and Mr. Keith. I guess
22 we can start with Ms. Swanson first.

23 And then I believe she has her attorney
24 present who is representing her in her action
25 against Mr. Sorrell and the department. We had

1 requested him being granted permission to sit in on
2 the proceedings.

3 (A recess transpired.)

4 MR. COOPER: Ms. Swanson, would you
5 please state your full name.

6 MS. SWANSON: Samantha Ariana Swanson.

7 MR. COOPER: And I'm going to ask you to
8 speak clearly to ensure you're picked up -- your
9 voice is picked up by the microphones that are
10 hanging from the ceiling. And advise you also that
11 the binder in front of you contains information that
12 may be referred to during questioning, and each page
13 is numbered in the upper right-hand corner.

14 MS. SWANSON: Okay.

15 MS. ERWIN: Thank, you Mr. Chairman.

16 SAMANTHA A. SWANSON

17 being first duly sworn, testified as follows:

18 DIRECT EXAMINATION

19 BY MS. ERWIN:

20 Q. Ms. Swanson, my name is Rachel Erwin.
21 I'm one of the attorneys with the Department of
22 Public Safety. I want to show you three pages, I
23 believe it is, of a document and see if you can
24 identify this for me?

25 A. Yes, ma'am. This is my affidavit.

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1 Q. Okay. When did you complete that
2 affidavit?

3 A. May 3rd, the date.

4 Q. Was that in response to an investigation
5 that you were -- were you contacted by this agency?

6 A. Yes.

7 MS. ERWIN: Mr. Chairman, at this time
8 I'd like to mark these three pages and then I won't
9 have to blot it out, so that these can be placed in
10 the exhibits.

11 MR. GANJEHSANI: Any objection from --

12 MR. O'LEARY: No objection.

13 MR. GANJEHSANI: So marked.

14 MR. COOPER: And that is Agency Exhibit
15 Number 2?

16 MR. GANJEHSANI: Two, yes, sir.

17 MR. COOPER: Ms. Swanson, can I ask you
18 to speak up a little bit louder?

19 THE WITNESS: Yes, sir. I'm just kind
20 of nervous.

21 MR. GANJEHSANI: We understand.

22 BY MS. ERWIN:

23 Q. Ms. Swanson, can you just please relate
24 briefly for the committee how you came to have
25 interaction with Mr. Sorrell and what was happening

1 that evening that you happened to come in contact
2 with him the evening of March 28th?

3 A. Okay. Yeah. Basically, I'll refer back
4 to that when I get a second. Me and two of my
5 friends, Charlie and Matt -- Charlie was coming into
6 town from Atlanta and wanted to surprise him. And
7 the way we were planning on doing that was by very
8 peacefully throwing some water balloons onto the
9 ground. When I say throwing, I mean more like
10 tossing because we didn't want to get him wet or
11 soak each other outside.

12 We didn't want to get him wet. We
13 didn't want to get even his car really wet because
14 it can leave water stains. We just sort of wanted
15 to say like, hey, you know, just a quick surprise,
16 like that.

17 And before we can even manage to do
18 that, he had sort of already realized that we had
19 water balloons and so that wasn't a surprise at all,

20 and we ended up just sort of dropping them on the
21 ground to break them rather than keeping water
22 balloons in our possession that could leak or break.

23 And as we were in the process of doing
24 that Officer Sorrell came from our left when we were
25 outside -- out front of the CBR -- CBRE building,

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1 and he told us to -- to put our hands against the
2 wall and spread our legs, and all three of us did
3 that. And he came up to me first while my hands
4 were against the wall and my legs were spread, and
5 he -- and he said -- he put his hand on -- I
6 remember he put his hand on my lower back and my
7 hip, which I thought was kind of odd and -- but he
8 began kicking my ankles that were already spread
9 apart and he said -- he said something to the effect
10 of, you don't want to cooperate. He said -- he
11 said, all right, smart butt, you don't want to
12 cooperate, and he began kicking my legs to kind of
13 force them further apart, I suppose.

14 And then he -- I'm not sure if it was at
15 that time or a little bit later, but he said he
16 could raise our fine to a felony for me not
17 cooperating despite the fact that I had thought I
18 was in full compliance. And then he went to Charlie
19 and then he went to Matt.

20 Q. Okay. And during the time, I guess,
21 that y'all were throwing the water balloons or you
22 said like tossing them, were you or Charlie or
23 Mr. Spaht, were any of y'all terrified, scared?

24 I mean did you think that either of the
25 other two individuals were hurting you or were going

1 to hurt you?

2 MR. O'LEARY: Objection as leading.

3 MR. GANJEHSANI: Sustained. If you can
4 rephrase that, Ms. Erwin.

5 BY MS. ERWIN:

6 Q. Were you fearful that evening when the
7 water balloons were being tossed?

8 A. Well, not during when Officer Sorrell
9 wasn't there, when the water balloons actually had
10 been --

11 Q. When it was you and your two friends you
12 weren't --

13 A. When Officer Sorrell had arrived?

14 Q. That's right.

15 A. Okay. Yes.

16 Q. But before that?

17 A. Before then, absolutely not.

18 Q. Okay. And when you said when he came
19 out he gave you the directions to spread your legs
20 and put your arms against the wall?

21 A. Right, yes, ma'am.

22 Q. You said all three of you complied?

23 A. Yes, ma'am.

24 Q. Okay. And you said that when he came
25 out, I believe you said he was on your left or came

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1 out --

2 A. I think -- I think he ran up from our
3 left, yes, ma'am.

4 Q. Okay. But you were the first person, I
5 think, that you said he approached?

6 A. First person he went to, yes. I was on
7 the right. There's videotape of it, but I was on
8 the Atlanta Bread Company wall and I was on the far
9 right near the South Carolina Lottery.

10 Q. So you were the furthest away from where
11 he came out?

12 A. Yes, ma'am.

13 Q. And while y'all were out throwing the
14 water balloons, I mean were y'all yelling, were you
15 screaming? Were your voices raised?

16 A. No, ma'am, not at all. We were very
17 conscious of the fact that -- that there could be --
18 Matt, my friend, lives in one of the buildings, and
19 we can hear the sound level all the time. So we

20 were very conscious of the fact, you know, what
21 would be too loud and what, you know. We did --
22 definitely did not raise our voices or make any kind
23 of noise that could be disturbing other people.

24 Q. Okay. When Officer Sorrell approached
25 you, you said he put his hand on -- I guess on your

1 lower back and was reaching at the top of your
2 shirt?

3 When he came up to you or asking you
4 about -- you said he made a remark to you about, are
5 you not listening, smart butt, or something, spread
6 your legs across, you said you couldn't sit and your
7 lower back and --

8 A. When he did that, he put his left hand
9 on my lower back, his right hand on my hip because
10 he began kicking my ankles apart. So I guess he
11 needed like a stability to do that because my -- you
12 know, my body was against the wall. My hands were
13 against the wall and my legs were spread, so...

14 Q. You couldn't brace yourself?

15 A. Yeah, exactly.

16 Q. Did he at some point pull on the hoody
17 that you were wearing?

18 A. Yes, ma'am. He told me that after he
19 went to Charlie and then went to Matt. He came back

20 to me and said, because you're a female, I can only
21 search your hoody. He said, I'll have a female
22 officer search you, the rest of you later.

23 And he grabbed my hood, which was off of
24 my head, grabbed it and pulled it straight back.
25 And it choked me the way he was doing it, and he

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1 held it for a minute and then let it go.

2 Q. And did you say anything to him when he
3 was doing that?

4 A. No, ma'am, not then because when he was
5 kicking my ankles, the only thing I had said was --
6 was you're hurting me. That was all I said, period.
7 And then he said, you know, I can raise your fine to
8 a felony. So that gave me the indication that I
9 should probably not speak.

10 Q. So you -- but, in other words, when he
11 was doing something that was hurting you, you let
12 him know and then you said his reaction was to say,
13 no, I can bump your fine up to a felony, so you said
14 what? You didn't feel like you can make another
15 comment?

16 A. No, ma'am.

17 Q. Okay. Did he make -- did y'all ask for
18 a reduction in the charges or did you ask why you
19 were being arrested?

20 A. Well, I -- after that point I pretty
21 much didn't speak unless I was spoken to, other than
22 one time when I asked if I could stand. I had just
23 had an injury and he wanted to us sit on the
24 concrete. And that was the only time that I really
25 spoke to him after that.

1 But my friend Charlie who is -- was also
2 arrested, while we were standing in the building and
3 he was -- Officer Sorrell was filing the paperwork
4 or filling out the paperwork out, Charlie asked
5 him --

6 MR. O'LEARY: Objection. Hearsay. It's
7 improper testimony.

8 MR. GANJEHSANI: Ms. Erwin, I just
9 didn't know if you wanted to rephrase or respond?

10 MS. ERWIN: Well, he's here. I mean, I
11 think we can -- well, I'm sorry, Mr. Keith is here
12 so we can -- I think he can comment as well.

13 BY MS. ERWIN:

14 Q. Ms. Swanson --

15 MR. GANJEHSANI: I'll sustain the
16 objection.

17 BY MS. ERWIN:

18 Q. -- did you -- when you were transported,
19 who transported you?

20 A. Another officer. I'm not...

21 Q. Okay. And did Mr. Sorrell make a
22 comment to you about video being in the car?

23 A. Yes. He said -- before I got into the
24 car and I was handcuffed, Officer Sorrell and the
25 other officer were escorting me to the passenger

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1 side of the car, and he said, okay, this officer has
2 audio and video surveillance, so you best not act
3 out again. Yes, ma'am.

4 Q. Okay. And when you were in the
5 building, you indicated, I guess, that you were
6 placed under arrest and you were escorted into the
7 building and he was completing paperwork?

8 A. Into the CBRE building, yes.

9 Q. Okay. And where were you placed when
10 you were put in the building as far as the other
11 individuals?

12 A. I was right next to Matt, who was to my
13 right. It was Matt -- or well, it was me and then
14 Matt and then there was an officer to our immediate
15 right. And then Charlie was on the other side of
16 the lobby pretty much by himself, standing by
17 himself.

18 Q. Okay. And did you at some point lay
19 your head against the shoulder of one of those
20 individuals?

21 A. Yes, ma'am. I began to cry really hard.
22 I've never been arrested before, I've never had any
23 run-in like that. So I put my face against Matt's
24 shirt because I couldn't reach my own shoulders with
25 my hands behind my back.

1 Q. And what was Mr. Sorrell's response when
2 you did that?

3 A. Officer Sorrell, when he realized it,
4 said to officer to the right of us to separate us,
5 but the officer to the right of us hadn't
6 immediately done that, so...

7 Q. So I mean, you were I guess wiping your
8 eye on his shoulder and he wanted you to --

9 A. To stop, yes.

10 Q. When you were outside, and I believe you
11 indicated your feet were spread apart and he was
12 kicking your feet, did you at any point ask him what
13 he wanted you to do?

14 Did you ever express to him the fact
15 that you weren't clear about what it was he wanted
16 you to do that you were not already doing?

17 A. Not that time, no. I tried to do
18 everything he told me to do, and then when he
19 questioned me later, because he took all of us
20 individually and questioned us -- when he questioned
21 me later, he asked why -- why I hadn't complied or
22 why I hadn't gotten smart and I told him that I -- you
23 know, I didn't understand exactly what he meant. I
24 tried to comply to the best of my ability, you know,
25 and as far as I understood and...

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1 Q. I believe you said in your statement you
2 said you thought you were -- you said you apologized
3 and said you thought you had spread your legs and
4 you were really afraid?

5 A. Yeah, I did tell him I was afraid and
6 nervous.

7 Q. Okay. You said he approached you,
8 pulled on your hood, did the other stuff and then
9 kind of went to the other two individuals and
10 questioned you individually.

11 Did he ask y'all to sit down?

12 How did he ask you to remain when he was
13 doing the questioning of each person individually?

14 A. I was the first one who was questioned
15 and we went to my -- he asked if he could have my ID
16 and I had to go to my car. And then I gave him my
17 ID and I just went back to the wall is where I went.
18 Yes, ma'am.

19 Q. Okay. And when he placed you under
20 arrest, what did he tell you when he placed you
21 under arrest?

22 A. He came over to me and said in a very
23 pleased way, he said -- he said, you, ma'am, are
24 under arrest and you're going to jail.

25 Q. And when you say in a pleased way, what

1 do you mean?

2 A. Very excited. Like it was a very bad
3 time for me, you know, it was very, you know, sad.
4 And then it just seemed like he was getting pleasure
5 in it.

6 Q. Okay. You said -- and let me ask you to
7 clarify what you meant. In your statement you said
8 and you indicated earlier when you were transported
9 that Officer Sorrell made a comment about the
10 officer who was transporting --

11 MR. O'LEARY: Objection. Leading.

12 MR. GANJEHSANI: I'm going to let
13 Ms. Erwin finish. I wasn't sure where she was
14 going.

15 BY MS. ERWIN:

16 Q. You stated that Mr. Sorrell made a
17 comment to not act out because the officer who
18 transported you had a video in your car.

19 Okay. You said in your -- or wrote in
20 your affidavit, in retrospect, I felt that Officer
21 Sorrell was trying to embarrass me by insinuating to
22 the officer who was transporting me that I wasn't
23 well-behaved.

24 A. Yes, ma'am.

25 Q. Can you -- I mean, explain what you

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1 mean.

2 MR. GANJEHSANI: That's fine. I
3 withhold the objection. Just continue, ma'am.

4 THE WITNESS: Okay. I -- what I meant
5 by that is I had complied and, you know, like I at
6 no point was disrespectful with Officer Sorrell. I
7 wouldn't be, I wouldn't be disrespectful with
8 anybody. And to say that, you know, that somebody
9 has audio and video surveillance is to suggest that
10 I could be heard and seen at all times, and that,
11 you know, that I'd better not pull anything or
12 something.

13 And I wouldn't, and I would expect any
14 civilized person wouldn't. And to insinuate I
15 would, I feel like it makes me seem a little less
16 civilized and less well-behaved and perhaps would
17 give the police officer bias.

18 BY MS. ERWIN:

19 Q. And did you -- once you got to the jail,
20 did Officer Sorrell make a comment to the jailer
21 about searching you or anything about making sure
22 you were searched?

23 A. Can you elaborate a little?

24 Q. When you were being booked into the
25 detention center, did Mr. -- did Mr. -- Officer

1 Sorrell make any comment about the fact that you
2 needed to be searched, as you recall?

3 A. No.

4 Q. Okay. You stated in your affidavit on
5 the second page that Officer Sorrell made a comment
6 that evening about getting paid for every head he
7 brings in; do you remember that?

8 A. Yes, ma'am.

9 Q. And who was that comment made to?

10 A. It was made to another officer who
11 was -- I assume he had booked somebody else or
12 someone else in the search.

13 Q. So another officer there with someone
14 and Mr. Sorrell made that comment to them?

15 A. Yes, ma'am.

16 Q. Did he make a comment to anyone at the
17 detention center about the fact that you had an
18 injury, I believe?

19 A. Yes, ma'am.

20 Q. Okay. And what was that?

21 A. I was sitting in the chair and I was
22 sitting with Matt and Charlie, and I wasn't speaking
23 or saying anything, and Officer Sorrell said, this
24 one, and he gestured to me, said, this one here, you
25 know, said she hurt her butt or something and --

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1 because I had injured my tailbone.

2 And he said that he would -- he had been
3 in Vietnam and he was shot in the stomach twice, and
4 if someone or an officer had told him to sit, you
5 know, with bullets in his stomach he would have sat.
6 And that's the comment that he made.

7 Q. And I believe you stated in your
8 affidavit that you were the only female that was in
9 the area at the time?

10 A. Yes, ma'am.

11 Q. Okay. And you said that you felt --
12 excuse me -- in retrospect, I honestly feel that
13 Officer Sorrell was intentionally mentioning my
14 private areas in another attempt to embarrass me or
15 draw attention of a sexual nature.

16 A. Yes, ma'am.

17 Q. Is that -- so that was the perception or
18 the way?

19 A. Yes, ma'am.

20 Q. Okay. He mentioned that the whole
21 incident started in the area outside of the
22 apartment where one of your friends lived, that
23 there's a living area. Did at any time when y'all
24 were out there, prior to Mr. Mr. Sorrell arriving,
25 were there any complaints?

1 Did anybody open up a window, yell,
2 scream?

3 A. No, ma'am.

4 Q. Did anyone from the Richland County
5 Sheriff's Office respond?

6 A. After Officer Sorrell, I'm not extremely
7 sure. I know I got transported.

8 Q. By another officer?

9 A. By another officer, yes, ma'am.

10 Q. But you aren't aware of anyone, I guess
11 in the apartments or business areas in that area at
12 the time, filing a complaint about the noise that
13 y'all created that evening?

14 A. No, ma'am, not at all. We were out
15 there for -- for possibly three or four minutes
16 before it happened. I don't even -- I don't even
17 think there would have been time for anybody to
18 phone, bother, really.

19 Q. Okay. And again, I mean, were you
20 screaming, were you yelling?

21 A. No, ma'am, no.

22 Q. Were you making any comments to each
23 other or anything that was --

24 A. We were speaking in a lower volume than
25 you and I are speaking now, and so no. No, ma'am,

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1 no loud noises and, you know, when the balloons
2 burst, I picked up all the -- all the debris because
3 I didn't -- I don't like to litter. And, you know,
4 I think it's disrespectful to the community, as
5 would be making a lot of noise at night.

6 Q. And as far as your memory, when Officer
7 Sorrell came out and gave you direction, did
8 everyone comply with what he was asking?

9 A. Yes, ma'am.

10 MS. ERWIN: Okay. That's all I have,
11 Mr. Chairman.

12 CROSS-EXAMINATION

13 BY MR. O'LEARY:

14 Q. Samantha, I'm not sure where you want me
15 to stand when I ask these questions. But in any
16 event, that night, your friend that has the
17 apartment is who?

18 A. Matthew Keith.

19 Q. Is Matthew Keith.

20 A. Yes.

21 Q. And your other friend was coming in from
22 Atlanta, correct?

23 A. Yes, sir.

24 Q. And you got -- you met him at a gas
25 station or something as they got off of the freeway;

1 is that correct.

2 A. Yes, sir.

3 Q. And you drove back and you parked on
4 Main Street?

5 A. Yes.

6 Q. Okay. And what time, about 2:30 in the
7 morning?

8 A. I think it was a little bit earlier than
9 that. It was about -- I couldn't give you a --

10 Q. That's okay. And all of a sudden, you
11 were going to greet him and throw balloons at him or
12 something at 2:30 in the morning, isn't this a great
13 -- what you were going to do?

14 A. No, not throw balloons at Charlie. No,
15 sir.

16 Q. Well, why did you have the balloons?

17 A. Just kind of as a way, you know, to sort
18 of -- I hadn't seen him in years and to kind of say,
19 you know, hi, in kind of a big way and confetti

20 would have gotten all over the place, it would have
21 been impossible to pick it up or something. And
22 just sort of like a hi, you know, kind of way and to
23 break them at his -- at his feet, and that was it.

24 Q. So y'all parked the car and you left the
25 bag of these water balloons or whatever someplace

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1 near a post or a pillar in the front of the
2 building, correct?

3 A. Yes, sir.

4 Q. And when you got out of the car you then
5 took the balloons and what did you do, start
6 throwing them?

7 A. No, sir. We got out of the car -- the
8 reason that we didn't keep the bag with us, because
9 the balloons began to leak and so it would have
10 leaked all over the place. And when we got out of
11 the car, we went over to the bag of balloons and
12 Charlie realized what it was and he realized they
13 were balloons, and so we just picked them up and
14 debated even, you know, bursting them onto the
15 ground because we just wanted to get rid of them.
16 And we ended up doing that. We had bursted --

17 Q. Do you recall, as Officer Sorrell came
18 to -- towards you, at that point, somebody was
19 trying to throw one at you and you're yelling
20 something at that point, don't you, in the video?
21 You don't recall that?

22 A. No, sir.

23 Q. He wasn't going to throw one at you and
24 you were trying to duck away from it?

25 A. No, that never happened.

1 Q. You didn't see that on the video?

2 A. That was not on the video.

3 Q. Okay.

4 A. Because it didn't happen.

5 Q. It didn't happen. So nobody -- you just
6 got the balloons and you're just throwing them on
7 the ground to get the water out, in a low tone. You
8 got a low tone voice, you're talking, and you're
9 just dumping the balloons on the ground and then he
10 comes up, correct?

11 Is that what you're saying?

12 A. Yes.

13 Q. There was no yelling or screaming or
14 running around?

15 A. No, sir.

16 Q. Did you walk or did you run around?

17 A. Walking.

18 Q. You never ran at all?

19 A. It's possible that when the balloon

20 broke, to get the pieces and then run to get the
21 pieces so that the littering or, you know --

22 Q. You didn't want to litter?

23 A. Yeah. Yes, sir.

24 Q. You were concerned about all the noise
25 in the neighborhood too because there's apartments

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1 there too; isn't that true?

2 A. I was concerned with not making noise,
3 yes, sir.

4 Q. How old are you?

5 A. I'm 23.

6 Q. And how old is the man coming from in
7 Atlanta, 30?

8 A. Just turned 30, yes, sir.

9 Q. And did you go to Carolina? Did you
10 graduate from college?

11 A. Not -- not USC.

12 Q. Okay. Ultimately, he told you to put
13 your hands up against the wall, correct?

14 A. Yes, sir.

15 Q. And you did?

16 A. Yes, sir.

17 Q. And you're saying you complied totally
18 with him?

19 A. Yes, sir.

20 Q. Okay. And he had a problem with you not
21 having your legs, your feet, far enough apart,
22 correct?

23 A. Yes, sir.

24 Q. And you said he came up behind and
25 grabbed your hoody that you had on?

1 A. Yes, sir.

2 Q. And did you see him -- he was patting
3 for weapons? Did you know that's what he was doing?

4 A. I don't recall being patted. It was a
5 quick with his --

6 Q. But you're a female so -- but he patted
7 your hoody to see if there was anything in it?

8 A. When he searched my hoody, he did not
9 pat it. He pulled it straight back, and I suppose
10 he looked in it. It was not patted.

11 Q. Did you see him pat down the other two
12 men that were up against the wall?

13 A. I didn't turn my head to look because I
14 was worried that he might see that as like a
15 disobedience thing or something because, you know,
16 my hands are against the wall, my head was pretty
17 straight on, and I was afraid to do that.

18 Q. And at this point, how many balloons did
19 you have left?

20 A. I believe we had like two, probably, in
21 a bag left.

22 Q. Two left. And you picked up all the
23 trash and everything?

24 A. Yes, sir.

25 Q. Okay. And you did that in between each

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1 time somebody threw one?

2 A. Yes, sir. I believe there was like a
3 total of five. And so it was three balloons, that I
4 can tell you.

5 Q. Well, ultimately, you got arrested and
6 went to Richland County detention center, correct?

7 A. I went to Allen (sic) S. Glenn.

8 Q. Yes, it's the Richland County detention
9 center.

10 A. Yes.

11 Q. You got a ticket and you were supposed
12 to appear in court on April -- the incident was
13 March 28th of 2010. You were supposed to be in
14 court on 4/21/2010. Let me show a copy. Is that
15 correct?

16 A. Yes, sir.

17 Q. You bonded out the next morning,
18 correct?

19 A. Yes, sir.

20 Q. Did you go to an attorney right away?

21 A. Mostly right away. About -- yeah,
22 actually, yes, I'd say right away.

23 Q. And that was Bob Masella?

24 A. Yes, sir.

25 Q. Okay. And Bob -- this gentleman here I

1 think is one of the attorneys with Bob, correct?

2 A. Yes, sir.

3 Q. And did Bob help you write any reports
4 or anything at that point?

5 A. No.

6 Q. And what did Bob do?

7 Did he go to court with you to get your
8 friend out the next day?

9 A. No, sir.

10 Q. Now, your friend was kept in jail
11 because what, he was out of state and didn't have
12 the money?

13 A. Yes.

14 Q. Did your friend tell you he was scared
15 to call his dad because he was an FBI agent?

16 A. No, sir.

17 Q. Do you recall your friend, while you
18 were on the street being patted down or sitting on
19 the curb or sitting in the building, talking about
20 his dad being an FBI agent?

21 A. No, sir.

22 Q. You don't recall that at all?

23 A. No. No, sir. I don't think there was
24 much talk of -- I mean, to the best of my
25 recollection. He asked us about our appearances

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1 when we were in the building and -- but there was a
2 period that I wasn't even there, you know, next to
3 Charlie and Matt. So not to my recollection, no
4 sir.

5 Q. But you were separated from the boys,
6 from the men, and you were transported separately --

7 A. Yes.

8 Q. -- to the detention center and the men
9 were transported separately?

10 A. Yes.

11 Q. You're aware that's the procedure to do
12 with women being transported?

13 A. No, sir.

14 Q. Okay. Did a female officer pat you down
15 on the street?

16 A. No, sir.

17 Q. Did somebody pat you down when you got
18 to the Alvin S. Glenn detention center?

19 A. Yes, sir.

20 Q. Okay. Do you know that's standard
21 protocol?

22 A. No, sir.

23 Q. And you were handcuffed, correct?

24 A. He may have uncuffed me.

25 Q. But you were handcuffed in the car?

1 A. Yes, sir.

2 Q. And transported in the car?

3 A. Yes, sir.

4 Q. And you're aware that there is a video
5 camera in the car to basically protect the females
6 or anybody in the car with being transported by the
7 police; that's what the camera is there for?

8 A. Yes, sir.

9 Q. And that's what he told you, that
10 there's a camera in there.

11 A. He told me there was a camera in there,
12 but not in the way of, you know, in a way to protect
13 my rights, he didn't say, you know.

14 Q. But your rights --

15 A. Or elaborate on that.

16 Q. Let me ask you this: When you get to
17 the jail, you then get searched, you get put into a
18 jail cell and then you go to the judge and get
19 bonded out, correct?

20 A. Yes, sir.

21 Q. You go right to an attorney. Do you
22 ultimately go to that attorney and bring a civil
23 lawsuit against the department and Mr. Sorrell?

24 A. Yes, sir.

25 Q. Let me show you a copy of that lawsuit.

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1 Is that the lawsuit that y'all filed?

2 A. Yes, sir.

3 MR. O'LEARY: I'd like to introduce
4 this. Do you have any problems? Let me show you
5 this, get one copy -- I'll give you two copies. I
6 had two together.

7 BY MR. O'LEARY:

8 Q. Let me ask you this before we go into
9 the lawsuit a little. You got a ticket. Did you
10 ever go to court for this ticket?

11 A. No, sir.

12 Q. Whatever happened to this ticket?

13 A. I believe it was -- because the -- I
14 think the Department of Public Safety ruled it as
15 a -- and I could be misspeaking here, so...

16 Q. That's fine.

17 A. But like as a wrongful arrest kind of
18 deal. Like shouldn't have been arrested.

19 Q. So they said it was wrongful, so they on
20 their own, not the court dismissed it? Is that
21 correct?

22 A. I believe so.

23 Q. Okay.

24 A. Yes, sir.

25 MR. O'LEARY: There's just a copy of the

1 ticket.

2 MS. ERWIN: No objection.

3 BY MR. O'LEARY:

4 Q. So did you ever go to the Richland
5 County Magistrate's Court ever?

6 A. No, sir.

7 Q. And to the best of your knowledge, it's
8 been disposed of?

9 A. Yes.

10 MR. O'LEARY: That's number two.

11 BY MR. O'LEARY:

12 Q. Now, you were aware though, that one of
13 boys -- the guy from Atlanta, his dad was an FBI
14 agent or is an FBI agent, retired?

15 A. Retired, yes, sir.

16 Q. Okay. Did you ever talk to him or his
17 dad after this was over?

18 A. I talked to Charlie because he's my
19 friend, but never his father, no.

20 Q. Okay. Now, just a couple more
21 questions. You gave statements here and you said,
22 well, he referenced your butt; isn't that true?

23 Isn't that what you said?

24 A. Yes, sir.

25 Q. Your tailbone is part of your butt,

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1 isn't it?

2 A. Well, it's above my butt. It's not my
3 butt, it could be referred to as a tailbone.

4 Q. But you basically said you'd hurt your
5 back, your whatever, the back area, correct?

6 A. Yes, sir.

7 Q. And that offended you?

8 A. Being referred to as my butt, yes.

9 Q. It did. Nobody's ever said that to you
10 before?

11 A. No one's ever said I hurt my butt in a
12 room full of men, no, sir.

13 Q. In a room full of men. They were all
14 men at the jail, correct?

15 A. Yes, sir.

16 Q. Okay. And whose idea was this thing to
17 throw the balloons and you welcome a friend by
18 throwing things?

19 Was it yours?

20 A. It was a collective between Matt and I.
21 It was just kind of something that came up. We had
22 balloons left over from Matt's birthday, and it was
23 just...

24 Q. ...Couldn't you have blown the balloons up
25 and not put water in them?

1 A. I suppose we could have blown them up,
2 but then they wouldn't have really -- then they
3 would have been like very small balloons, just, you
4 know...

5 Q. But you agree with me though, when
6 you're on the street, you're throwing the balloons,
7 it's the middle of the night, 2:30 in the morning,
8 correct?

9 A. I don't believe --

10 Q. 2:30 to 2:45, something like that,
11 correct?

12 A. I think it was earlier in the night.

13 Q. Okay.

14 A. Yes, sir.

15 Q. And you're talking, you're not yelling,
16 correct?

17 A. Yes, sir.

18 Q. Are the boys talking loud at all?

19 A. No, sir.

20 Q. They are not, in your opinion?

21 A. No. No, sir, they were not talking
22 loud.

23 Q. And at no time did either of the guys
24 try to throw one at each other or run around?

25 A. No, sir.

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1 Q. You never saw that?

2 A. No, sir.

3 Q. And when you talked to the officer, when
4 he asked you to sit on the ground, you said you
5 couldn't because you had a problem with your rear
6 area, your back area?

7 A. Well, I asked him if I could stand
8 because I had injured my tailbone, and he seemed to
9 nod yes. He didn't say anything. He just seemed to
10 go, you know, so that he could go on with -- with
11 what he was doing.

12 Q. But you were handcuffed and then at one
13 point you went over or walked over or something and
14 put your head on your friend's shoulder, correct?

15 A. I was -- while I was standing next to
16 Matt, and this was later on while I was standing
17 next to Matt, he was already --

18 Q. But you're aware that the officers are
19 supposed to keep subjects apart from each other; are
20 you aware of that?

21 A. I wasn't aware because I was standing so
22 close to Matt, we were touching anyway.

23 Q. And you're aware that an officer had a
24 right to pat you down for weapons when he first
25 approached you?

1 A. Yes, sir.

2 Q. And he didn't really pat you down, he
3 just looked in your hoody?

4 A. He never, at any point, patted me down.
5 He just pulled my hoody back. And I don't -- you
6 know, he's behind me, I don't know what he did at
7 that point.

8 Q. He didn't pat you down because you're a
9 female, correct?

10 A. I assume.

11 Q. He patted the guys down; did you see
12 that?

13 A. I'm not -- no.

14 Q. Now, when you're picking up all this
15 residue of the balloons, what did you do with that
16 stuff?

17 Did you have it in your hand or what
18 when you got arrested?

19 A. We put it back into the bag. I gave it
20 to -- when I picked it up, I gave it right to Matt,
21 and Matt put it back in the bag that we had.

22 Q. As each one was broken, you went and
23 retrieved it and picked it up. Would that be on the
24 video?

25 A. Yeah, I believe so, yes.

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1 Q. It would. Okay. And you're saying that
2 on the video there would be no running around by the
3 boys or you hiding, trying to avoid being hit by a
4 balloon?

5 A. I was never the target of a balloon,
6 Charlie was never the target of a balloon, and Matt
7 was never the target of a balloon, and we would have
8 not been throwing them at each other at any point,
9 no, sir.

10 Q. Were you aware that this officer thought
11 that they were trying to hit you with something when
12 he approached you?

13 A. He never made any mention of that. In
14 fact, he never made any mention of that, and he
15 never asked either.

16 Q. You didn't notice a lot of other people
17 running down on Main Street at 2:30 in the morning
18 throwing balloons, did you?

19 A. No sir.

20 Q. Okay. Ma'am, let me ask you this: Have
21 you been deposed in this case, the civil action yet?

22 A. I'm sorry?

23 Q. You brought a civil complaint. This is
24 what I just showed you, Number 1 here. And you're
25 suing Mr. Keel's department and you're suing this

1 officer, correct.

2 A. Yes, sir.

3 Q. And it's a suit for what? Money?

4 A. For yes, some type of mitigation for
5 what happened.

6 Q. And you think it was totally proper what
7 you guys were doing?

8 A. I think that what Officer Sorrell did,
9 based on what we were doing, was improper.

10 Q. And you said that he used a forceful
11 voice on you out there on the street?

12 A. Yes, sir.

13 Q. He's pretty strong, isn't he? He's got
14 his tough voice, strong voice.

15 A. Yes, sir.

16 Q. And you didn't even listen to that, did
17 you?

18 A. What? I'm sorry?

19 Q. You didn't follow his commands with his
20 voice when he told you to move your legs, did you?

21 A. No, absolutely not, I followed
22 everything Officer Sorrell said.

23 Q. You didn't sit down, did you, when he
24 asked you to sit down?

25 A. He gestured to go sit and I asked him if

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1 I could stand. I asked him a question.

2 Q. Did the guys ask that?

3 A. Their tailbones weren't injured, so I
4 would assume that.

5 Q. Did he have any way of knowing that you
6 really had an injury or if you've ever had an
7 injury?

8 A. I suppose not.

9 Q. You indicated in your report -- I'm
10 sorry about that -- that you took pictures of your
11 ankles because they were black and blue.

12 A. Yes, sir.

13 Q. Where are those pictures?

14 A. They got lost on my cell phone.

15 Q. You had them on your cell phone. They
16 got erased, didn't they?

17 A. Yes.

18 Q. You erased them. So you don't have any
19 pictures?

20 A. They got erased, yes, sir.

21 Q. When did you erase them?

22 A. I didn't intentionally erase them. My
23 hard drive got totally swiped when I dropped hand
24 sanitizer onto my cell phone.

25 Q. Okay. Who typed this affidavit?

1 Where did you do this affidavit dated
2 May 10 -- or May 3rd?

3 A. Can I see that?

4 Q. Yeah. See, this is -- it's dated May
5 3rd. Did you do that?

6 A. Yes, sir, this is my affidavit.

7 Q. Where did you do that affidavit?

8 A. On my computer.

9 Q. At home? Did you send a copy of that to
10 Mr. Masella?

11 A. Oh, my --

12 Q. Yeah, the civil attorney?

13 A. Yes, I believe so.

14 Q. Did you go over the affidavit before you
15 submitted the affidavit?

16 A. No, sir.

17 Q. Who did you talk to about this
18 affidavit?

19 A. I didn't talk to anybody about the
20 affidavit.

21 Q. You wrote this solely on your own?

22 A. Yes, sir.

23 Q. Okay. And where was the notary? Did
24 you get it notarized?

25 A. I believe I got it notarized -- I think

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1 Heidi in their office, their secretary.

2 Q. In the law office?

3 A. I could be wrong about that.

4 Q. Because you dated it May 3rd, but it's
5 not notarized May 3rd.

6 A. Okay. Yes, sir.

7 Q. So it's a different day you took it and
8 you went to Mr. Bob Masalla's office, the man that
9 brought the civil lawsuit here for you?

10 A. Yes, sir.

11 Q. And did he make any changes on it or
12 anything?

13 A. No, sir.

14 Q. Okay. And then you -- what did you do
15 with it?

16 A. What did I do with my affidavit?

17 Q. Yeah, what did you do?

18 Did you send it to somebody?

19 A. I left it with him to send, I suppose.

20 MR. O'LEARY: Okay. No further
21 questions.

22 THE WITNESS: Thank God.

23 MR. COOPER: Do you have any questions
24 of this witness?

25 REDIRECT EXAMINATION

1 BY MS. ERWIN:

2 Q. Ms. Swanson, let me just ask you
3 briefly. Mr. O'Leary has asked you whether or not
4 you like immediately went into an attorney's office
5 and you indicated, I think, you went to an
6 attorney's office because you had been charged,
7 correct?

8 A. Yes, sir -- yes, ma'am, I'm sorry.

9 Q. Did you -- was it immediately that the
10 lawsuit was filed against the agency?

11 A. Pretty immediately, yes, ma'am, I
12 believe.

13 Q. Let me see. I think Mr. O'Leary has it.

14 MR. O'LEARY: It's over there.

15 MS. ERWIN: A copy.

16 MR. O'LEARY: It's over there.

17 BY MS. ERWIN:

18 Q. This happened, I believe it was like
19 March of 2010?

20 A. Yes, ma'am.

21 Q. Okay. And what is the date that's
22 stamped on the affidavit?

23 A. March -- is that 8th? 8th, 2011.

24 Q. Right. So it was actually filed the
25 next year?

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1 A. Yes, ma'am.

2 MS. ERWIN: Okay. I don't have anything
3 further.

4 RECROSS-EXAMINATION

5 BY MR. O'LEARY

6 Q. Just one last question. The lawsuit
7 that was filed was filed by the attorney, correct?

8 A. Yes, sir.

9 Q. And it was his decision to file it
10 approximately a year later, correct?

11 A. I believe so.

12 Q. But you've been preparing for this from
13 the very beginning, from the date you were arrested?

14 A. No. No, sir. The whole reason I sought
15 a lawyer was because I'd been arrested and because I
16 was afraid of what that meant for my record. My --
17 you know, and that's why I sought a lawyer. And
18 then it became something else, which is when I got
19 turned over to Mr. Blankenship.

20 Q. In the same law office?

21 A. In the same law office, but later, much
22 later.

23 Q. Did you ever get any document that shows
24 that this charge has been expunged from your arrest
25 record?

1 A. Yes.

2 Q. You did?

3 A. Yes.

4 Q. Do you know who actually dismissed the
5 charges?

6 A. I believe the Department of Public
7 Safety, I believe.

8 Q. Do you know what judge was involved, if
9 there was one?

10 A. I don't know.

11 MR. O'LEARY: Okay. I have no further
12 questions. Thank you.

13 MS. ERWIN: Nothing further.

14 MR. COOPER: Any of the committee
15 members have any questions?

16 THE VOICE 1: I have one question just
17 to make sure I'm clear of the time frame. So from
18 the time he told you to get on the wall, there was
19 ~~never any discussion any time about -- there was --~~

20 you never said no?

21 You did immediately -- the first time he
22 asked you, you immediately --

23 THE WITNESS: Yes, ma'am. Of course.
24 Yes, ma'am.

25 THE VOICE 1: Okay. Thank you.

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1 MR. COOPER: Questions? I have no
2 questions. Can this witness be excused from these
3 proceedings?

4 MS. ERWIN: Yes.

5 MR. COOPER: Noting for the record that
6 this witness is excused. Thank you.

7 THE WITNESS: Thank you.

8 MS. ERWIN: And we'll need Mr. Keith
9 next.

10 (A recess transpired.)

11 MR. COOPER: Mr. Keith, I would like for
12 you -- to remind you to speak clearly so the
13 microphones can pick up your voice and your
14 testimony. And I also want to advise you that the
15 binder on the desk in front of you contains
16 information that may be referred to during this
17 procedure, and that each page is numbered in the
18 upper right-hand corner.

19 Now, would you please state your full
20 name?

21 MR. KEITH: My name full name is Matthew
22 Copeland Keith.

23 MS. ERWIN: Thank you, Mr. Chairman.

24 MATTHEW C. KEITH

25 being first duly sworn, testified as follows:

DIRECT EXAMINATION

BY MS. ERWIN:

Q. Mr. Keith, did you happen to have an encounter with Mr. -- Officer Sorrell back in March of 2010?

A. I did.

Q. Okay. And as a result of that encounter with him, were you arrested?

A. Yes, ma'am.

Q. Okay. And did you subsequently prepare a statement or more specifically an affidavit relating the facts that transpired that evening?

A. Yes, ma'am.

Q. I'm going to show you a document, see if you can identify that.

A. That would be my affidavit.

Q. And that's the one you completed?

A. Yes.

MS. ERWIN: Mr. Chairman, if I may, I'd like to mark this.

MR. COOPER: Okay. Yes, mark it Agency Exhibit 3.

BY MS. ERWIN:

Q. Mr. Keith, if you can, can you just generally tell us what was going on the evening of

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1 back on March 27th, early morning of the 28th, in
2 which you had one encounter with Mr. Sorrell?

3 A. Yes, ma'am. I was with my friends who
4 made the -- and she had a friend from out of town
5 that lived in Atlanta, and it just kind of spur of
6 the moment sort of thing. But he decided to come
7 down and visit, and we thought that it would be fun
8 to kind of surprise him. Just, you know, do
9 something off the cuff to make him have a good time.

10 So we bought some water balloons. And
11 the idea wasn't, you know, to throw it at anything
12 in particular. It was just to throw it at the
13 ground and just kind of surprise him with the
14 balloon bursting. He arrived on Main Street, which
15 is just right across from where I was living at the
16 time. We got out and we just started throwing a few
17 balloons at the ground. Tossing is probably more of
18 an appropriate word.

19 And shortly after we threw I think three
20 or four balloons, we were in the process of picking
21 up the pieces off the ground, Officer Sorrell came
22 from the right and was yelling, you know, go against
23 the wall, you know, get your hands on the wall and
24 spread your legs.

25 Then I guess following that he

1 immediately went to Samantha, who was the furthest,
2 actually, from him and basically accused her of not
3 following directions, even though she was following
4 them as the rest of us had; and proceeded to kick
5 her feet apart with a lot of force to the point
6 where I was immediately, you know, concerned and
7 turned my head because I could hear it.

8 And, you know, she informed him that she
9 was being hurt and that -- that the process was
10 hurting her, and Sorrell's response was basically,
11 stop giving me backtalk, backtalk. You know, stop
12 giving me lip.

13 Following -- following that he took us
14 all aside. Actually, I'm sorry, he proceeded to
15 search us after that, and he couldn't search
16 Samantha because she's a female and he's a male
17 officer, but he said the one thing that he could do
18 was search her hood. So he proceeded to grab her
19 hood and pulled it back like forcefully to the point
20 where like her neck was -- was bending backwards.

21 But following that, took us all aside
22 individually for questioning. If I remember
23 correctly, I was the first one. He basically asked
24 us what we were there for and, you know, told him
25 politely that we just had a friend coming into town.

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1 We wanted to do something to surprise him.

2 You know, no ill intent was involved.

3 We had tried to keep our voices down, pick up the
4 pieces plastic and all that. The only other
5 question I can remember him asking after that was
6 whether or not we had been drinking, to which I
7 replied no.

8 And then I guess following that we were
9 taken into the CBRE building, which is located right
10 next to where we were throwing the water balloons
11 and we were being -- waited for custody. And
12 Sorrell asked -- well, I guess he made a series of
13 comments throughout the night, which was concerning
14 to me particularly because he seemed to vilify
15 Samantha. And I do remember like at several
16 points -- Charlie was the other male with us, asked
17 him, you know, is there any way that you can --

18 MR. O'LEARY: Objection.

19 THE WITNESS: I'm sorry, would you
20 like --

21 MS. ERWIN: You're fine.

22 MR. GANJEHSANI: The pause is because
23 I'm supposed to be ruling and I'm thinking.
24 Ms. Erwin, do you want to respond? I mean, it's
25 going to be hearsay unless there's some way that we

1 can --

2 MS. ERWIN: Well, it's hearsay, but I'm
3 going to say for all intents and purposes, it should
4 be allowed to come in. Anything in relation to
5 Mr. Spaht should be allowed to come in as an
6 exception here, so because he's an unavailable
7 witness. He's outside the subpoena power of this
8 agency and outside the subpoena power of this
9 department. He's an out-of-state witness.
10 There's no -- no recourse to be able to require his
11 presence here today.

12 MR. GANJEHSANI: Mr. O'Leary?

13 MR. O'LEARY: I've never seen that as an
14 exception. In fact, it is hearsay and the witness
15 is a -- was a party to the civil lawsuit, which was
16 subpoenaed to be here. The fact he isn't here, I
17 can't help that. It shouldn't be allowed as an
18 excuse to allow impermissible evidence.

19 MR. GANJEHSANI: Is there an affidavit
20 from the unavailable witness, Mr. O'Leary?

21 MR. O'LEARY: I objected to the
22 affidavit on the grounds that we can't cross-examine
23 him.

24 MR. GANJEHSANI: I understand. I'm
25 going to explore this a little bit further. Do the

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1 parties wish the panel be dismissed while we explore
2 this or does it matter that --

3 MR. O'LEARY: It's whatever is easiest
4 for you.

5 MR. GANJEHSANI: Well, here's my
6 concern: I understand that the witness is out of
7 state, therefore the witness cannot be compelled to
8 appear. However, there is documentation reflecting
9 what this witness -- what this witness observed.

10 I realize had there been a deposition,
11 the deposition could have come in, provided that you
12 had been given an opportunity to cross-examine the
13 deponent at that time.

14 I guess what I'm trying to struggle
15 with -- what I'm trying to balance is the fact that
16 there's an unavailable witness and the parties are
17 equally hamstrung, maybe the agency more so, in
18 trying to get in what this witness observed.

19 I realize you can't cross-examine an
20 affidavit but, you know, what is the remedy? Is
21 there one? I guess it's the witness is unavailable,
22 it is hearsay, but there is documentation that
23 reflects what the unavailable witness observed that
24 night. The problem with that is, is it's a document
25 that cannot be cross-examined.

1 Do you have any thoughts on that,
2 Ms. Erwin? I'm struggling because I want the -- I
3 want the committee to be able to hear, to the extent
4 that they can, what this unavailable witness
5 observed. The problem is it can't -- it doesn't
6 come in through a witness just because he's
7 unavailable. It doesn't make it not hearsay.

8 MS. ERWIN: I'm not saying it's not
9 hearsay, I'm just saying there are exceptions to
10 hearsay.

11 MR. O'LEARY: There's no exception.
12 Even if you had a deposition, it would have to be de
13 bene esse, especially for preparation for trial. I
14 mean, that's not in this case.

15 MR. GANJEHSANI: Well, I mean, it
16 doesn't have to be, I mean, if the deponent -- if
17 the deposition is taken. But the key is that you
18 have an opportunity to cross-examine and then if the
19 witness does become unavailable, even if it wasn't
20 taken specifically de bene esse, it can come in
21 under certain circumstances. But yeah, I understand
22 that.

23 I mean, we're sort of going around. It
24 is hearsay, I'm going to have to sustain the
25 objection on the grounds of hearsay. I don't

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1 find -- I don't find one of the exceptions
2 applicable.

3 What I guess bothers me in this case is
4 that there is something in the record that was a
5 statement made under oath, but it was not a
6 statement given at a time that the appellant had an
7 opportunity to cross-examine the affiant.

8 And so I'm trying to -- I'm trying to do
9 what I can given the odd circumstances that we have,
10 but I'm going to have to sustain the objection.

11 BY MS. ERWIN:

12 Q. Mr. Keith, let me ask you. You said
13 that when Mr. Sorrell came out of the building he
14 immediately approached Ms. Swanson first, who was
15 the furthest away, and I believe your specific
16 comment was that throughout the whole evening you
17 felt that he was trying to vilify her.

18 Can you elaborate exactly on what you
19 mean by that?

20 What was he doing?

21 What were the things that were happening
22 that made you develop that perception?

23 A. Before I answer that, just for my own
24 clarification, am I not allowed to mention Mr. Spaht
25 from this point forward? I'm just trying to figure

1 out how to give you the most accurate account from
2 my recollection.

3 MR. GANJEHSANI: Mr. Keith, and I
4 appreciate -- I appreciate you asking for that
5 clarification. You're entitled to attempt to answer
6 truthfully. If the manner on which your answer is
7 not in conformity with the rules of evidence, that's
8 not your fault. That's something for the lawyers
9 and me to hash out. So just try and answer.

10 If at any time either Mr. O'Leary or
11 myself interrupt you, that means we've got a --
12 we've got to do a little bit more work to see if
13 there's a way you can answer that. So thank you for
14 asking.

15 THE WITNESS: Well, there was a moment
16 during the evening where it was asked specifically
17 if he could go easy on us because, you know, we
18 didn't mean any harm from what we were doing and,
19 you know, we felt that we had been polite,
20 cooperative, and if there's any way that we could
21 not be taken to jail. And his response was, that
22 option went out the window when your girl started
23 giving me lip.

24 And he continuously kind of referred to
25 her in that language. She was never, you know,

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1 Samantha or the woman, it was always your girl or
2 that girl. And there were -- there were other
3 instances like that, that occurred later on, and I'm
4 skipping ahead a little bit chronologically. But
5 when we actually got to the jailhouse, there is
6 moments when he was talking to other officers, and
7 would say things along the lines of, you know, this
8 girl's been particularly difficult throughout the
9 night or would bring attention to like certain
10 things that he thought was -- was impolite.

11 For example, there was -- there was a
12 moment while we were waiting to be taken into the
13 building, where he asked if we would all sit down on
14 the pavement. And Samantha had previously received
15 an injury to her tailbone, so it was painful for her
16 to sit down on hard surfaces, especially, you know,
17 if you're going to be squatting on the ground.
18 There's not an armrest or anything like that.

19 So she just asked politely, I remember
20 her saying, sir, and everything, you know, I have an
21 injury to my tailbone, it hurts me to sit down. Is
22 it all right if I stand up? And he just said
23 that -- I'm not actually quite sure he responded.
24 He just -- he didn't seem as though that was a
25 problem or anything.

1 But when we got to the jailhouse he was
2 talking to one of the other officers and was just
3 complaining about how she refused to sit down. And
4 one of the things that he said was that he recalled
5 that he had been shot in the stomach, I believe was
6 his claim, that he had been shot in the stomach
7 several times and that if an officer had asked him
8 to sit down on the floor, he would have done it
9 without question.

10 So just kind of comments like that were
11 made throughout the night that indicated that
12 Samantha was particularly unruly and that it was
13 because of her behavior, for some strange reason,
14 that we were brought into custody.

15 Q. And did you make a request that you be
16 allowed to be, I guess, issued a summons as opposed
17 to being taken to jail?

18 A. I didn't use that particular language,
19 but I -- you know, I did just ask if there was some
20 sort of -- if there's any alternative to being put
21 in jail and having to go through that whole process.

22 Q. And what was Mr. Sorrell's response?

23 A. As I said earlier, he said that that
24 option went out the window when your girl started
25 giving us lip.

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1 Q. Okay. And you said again that -- in
2 your statement, that he chose to approach her first
3 and that struck you as odd. Why do you believe that
4 approaching her first was -- as opposed to
5 approaching you or Mr. Spaht was an odd thing to do?

6 A. Well, for two reasons. I mean, one is
7 just simply the fact that, you know, she is much
8 smaller than the rest of us. She is -- you know,
9 she's a lady, and it just seems strange when you're
10 apprehending a group of people that you would go to
11 who is probably the weakest member of the group.

12 But that wasn't actually what was in my
13 affidavit. The reason why I thought it was strange
14 is the area that we were arrested, there's kind of a
15 sidewalk and then there's an indentation and then
16 there's this kind of -- kind of a wall. And the way
17 that we were up against the wall is -- I believe was
18 like me, then Charlie, then Samantha. So the person
19 who would have been closest to him was either me or
20 Charlie, depending on who was furthest away, I can't
21 remember.

22 But Samantha was all the way back at the
23 wall. So what that basically meant is that he had
24 to make a deliberate choice when he got to where we
25 were located to go straight towards her, which it

1 just seemed like he went out of his way to go to her
2 from the beginning. That just struck me as odd. I
3 don't know if that's particularly the wrong way.

4 Q. And you had indicated -- you don't
5 remember your particular words, you didn't make a
6 plea to I guess have something other than a
7 custodial arrest. Do you recall Mr. Sorrell making
8 a comment that if he got any more backtalking that
9 he could raise the charge a felony charge?

10 A. Yes. I believe that was before we
11 actually went into the building. When he first came
12 up to us -- and then -- sorry if some of these
13 details are a lot spotty because it's been a while,
14 but one of the first things that I remember him
15 saying when we were standing against the wall was he
16 accused us of malicious intent to destroy property.

17 Those were one of the first things that
18 he said to us because he had against the wall and he
19 was, you know, just trying to -- I'm not sure what
20 he was doing.

21 But he accused us of being there with
22 the intent to destroy property. And following, you
23 know, going to Samantha and kicking her legs apart
24 and accusing her of backtalk, he said something
25 along the lines of, if I hear any more backtalk, I

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1 can easily raise this to a felony.

2 Q. Okay. And you said when he was -- when
3 Mr. Sorrell was still with Ms. Swanson, I think you
4 indicated when he began to kick her feet or
5 whatever, you could actually hear it?

6 A. Right.

7 Q. Before you saw it?

8 A. I heard it before I saw it.

9 Q. Okay. And I think you indicated when he
10 pulled on her hoody, that it was forcibly enough,
11 that I believe in your statement --

12 MR. O'LEARY: Objection.

13 MS. ERWIN: -- you were worried.

14 MR. O'LEARY: She is leading. She's
15 leading. I'm trying not to make objections, but...

16 BY MS. ERWIN:

17 Q. In your affidavit you said that --
18 excuse me -- he began -- he pulled on her hoody and
19 pulled what was obviously an excessive amount of

20 force. This position was held for 10 to 15 seconds.

21 It was clear it was pressing against her neck and I
22 began to grow worried.

23 A. Yes, ma'am.

24 Q. So I mean, it was enough that it caused
25 you concern for her from where you were?

1 A. Right. I was already concerned when he
2 started kicking her feet but, you know, she's in a
3 position where all of her weight is on her hands so
4 her entire body is, you know, going towards this
5 particular direction, and then he's pulling on it in
6 the exact opposite. So even though her body is at
7 this kind of angle, you know, her neck is being
8 pulled back in the exact opposite, opposite
9 direction. I mean, you could tell that there was
10 strain and that it was really being pulled tightly
11 against the neck.

12 Q. Okay. And did he notify you before you
13 went inside the building or once you got inside that
14 you were being arrested?

15 A. It was before we got inside the
16 building.

17 Q. And how did he -- what did he say when
18 he told you that you were being arrested?

19 A. He basically went down a line. He only
20 had two sets of handcuffs. I can't remember if he
21 started with Samantha or Charlie, but he basically
22 came up and said like, you, sir, now, are now under
23 arrest. And then would go up to Samantha and say,
24 and you, ma'am, are under arrest. And then he came
25 up to me at the very end and was like, and you, sir,

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1 and then like there's a kind of pause, are also
2 under arrest.

3 And it seemed to me kind of a very
4 dramatic -- you know, it wasn't a simple just under
5 arrest and then put the handcuffs on. I don't know,
6 it seemed dragged out and like I got the sensation
7 or the impression that he was enjoying the act of
8 arresting us.

9 Q. Okay. And I believe in the second page
10 of your statement, your characterization was it was
11 in a voice and tone, gave the impression of
12 a superhero confronting a villain.

13 MR. O'LEARY: Objection.

14 THE WITNESS: Yes, yes.

15 MR. GANJEHSANI: I mean, she's reading
16 from an affidavit. I mean, I understand the basis
17 of the objection Mr. O'Leary. I just think that
18 she's trying to push this along. The alternative is
19 that she puts it in front of him and his
20 recollection is refreshed and he says it to us
21 anyway.

22 So the objection is technically
23 sustained, but I don't fault Ms. Erwin for trying to
24 speed this along.

25 BY MS. ERWIN:

1 Q. Thank you. Mr. Keith, you actually, I
2 think resided in one of apartments --

3 A. Yes, ma'am.

4 Q. -- in the area.

5 Okay. So you're familiar with the area,
6 you're familiar with the traffic and stuff?

7 A. Yes.

8 Q. Were there any other individuals out
9 when y'all -- on the street that evening?

10 A. No, not at the moment of the arrest. I
11 think I might remember someone walking outside of
12 the building once we were actually inside, but at
13 the moment the streets were empty.

14 Q. Did the windows in the apartments open
15 up?

16 A. No. I lived on the 11th floor. So I
17 don't know if it's different for some of the lower
18 floors. But none of those windows opened up.

19 Q. Did anyone come out of the building and
20 complain about noise, that you were making noise?

21 A. No. You know, because I lived up in the
22 11th floor and, you know, there's always a lot of
23 stuff going on downtown, I'm very well aware of how
24 much noise is too much noise. I mean, if I'm up in
25 my apartment and someone comes by and their car is

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1 playing music a little bit too loud, you know,
2 frequently I can hear it. So I know exactly how
3 much noise would be an excessive amount of noise.
4 And we were being more than respectful for the hour
5 that it was.

6 Q. And the tone and I guess level of your
7 voice compared to how you're speaking today, how
8 would you characterize it, higher, lower, stronger?

9 A. I would think it was much different.

10 Q. Did you ask Mr. Sorrell about what the
11 definition of public disorderly conduct was?

12 A. Yes, ma'am.

13 Q. And what was his response?

14 A. His response was basically that any --
15 any sort of action that's not orderly, and I guess
16 by extension aimed as public, would be public
17 disorderly conduct. Which gave me the impression it
18 was basically up to the discretion of the individual
19 officer. So if an officer sees something, says,
20 well this isn't orderly by my individual perception,
21 then it's therefore disorderly conduct and worthy of
22 arresting someone for it.

23 MS. ERWIN: I don't have anything
24 further.

25 CROSS-EXAMINATION

1 BY MR. O'LEARY:

2 Q. Just a couple questions. How long have
3 you lived at those apartments there?

4 A. I've lived there -- let me try and put
5 an actual year on it. I would say mid 2009. Ever
6 since my junior year in college.

7 Q. Are you working now or are you still at
8 school?

9 A. I just graduated, so I'm looking for
10 employment.

11 Q. Okay. Now, the 11th floor, you said a
12 lot of times you can even hear noise on the 11th
13 floor.

14 A. Uh-huh.

15 Q. So it's pretty -- noise is -- it's sort
16 of like a canyon effect and the noise could be heard
17 higher up, correct?

18 A. I wouldn't say that you would hear -- I
19 mean, are you trying to imply that noise is
20 amplified?

21 Q. No, you said you could hear it on the
22 11th floor. What about the people on the second and
23 third floor, could they hear it a lot easier?

24 A. I would assume that they would probably
25 hear it a little bit easier.

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1 Q. Okay. Now, on this particular night
2 y'all went to meet your friend as he got off the
3 freeway, it's my understanding, correct?

4 A. Uh-huh.

5 Q. You drove back. Whose idea was it for
6 the balloons?

7 A. It was probably mostly my idea. I mean,
8 it was a joint decision between me and Samantha.

9 Q. And how old are you?

10 A. I'm 21.

11 Q. Twenty-one. And where are you from,
12 Columbia?

13 A. I'm a military kid, so I don't really --
14 I don't know -- really know what to tell you. My
15 parents live in Greenville. I don't know if that
16 helps at all.

17 Q. Now, this particular night, I noticed
18 that -- so you park, you get out and then who got
19 the balloons first?

20 A. I believe Samantha was the first person
21 who got the balloons.

22 Q. And did she throw it or what did she do
23 with it?

24 A. Just kind of tossed it --

25 Q. Tossed it. And at that point, did you

1 start running around or did your friends start
2 running around at all?

3 A. No.

4 Q. What did she toss it at?

5 A. Just the ground.

6 Q. Would you agree with me that if our
7 client saw that balloon, he wouldn't know what was
8 in that balloon? Would you agree with that?

9 A. No.

10 Q. You wouldn't?

11 A. No.

12 Q. Well, could there be something other
13 than water in there?

14 A. I suppose that in theory something other
15 than water being there, but I wouldn't -- I don't
16 understand what would give anyone the impression
17 that a water balloon would be filled with anything
18 else.

19 Q. Okay. Do you think there's a lot of
20 people out there throwing balloons at 2:30 in the
21 morning?

22 A. I wouldn't know, but probably not.

23 Q. Probably not. Probably this is a unique
24 situation, correct?

25 A. I suppose so.

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1 Q. Okay. And you're like 20 years old, at
2 the time, your friend is like almost 30, correct?

3 And would you agree with me that our
4 client didn't know her name, Samantha, at the time?

5 A. Yes.

6 Q. Okay. So is there something wrong with
7 saying ma'am, calling her ma'am?

8 Are you implying to the panel there was
9 something wrong with that?

10 A. I never used the word ma'am. And to be
11 honest, I don't know remember him using ma'am. No,
12 it's not the language that I remember.

13 Q. What was the word he used?

14 A. Words along the lines of your girl. It
15 was usually girl, but the objection that I have
16 isn't the word girl, it's the implication that she
17 belonged to us. Like she -- like she was either one
18 of our girlfriends or just someone that was a party
19 to us. It was never just the lady or the
20 individual. It was always your girl.

21 Q. Was she with you?

22 A. What do you mean?

23 Q. Well, she came with you, correct?

24 A. Right.

25 Q. She stayed -- was at your apartment,

1 correct?

2 A. No, she wasn't staying in my apartment.

3 Q. But when this all -- when it all
4 happened, she came over and put her head on your
5 shoulder and tried to wipe her eyes on your
6 shoulder?

7 A. Right.

8 Q. Okay. And you said at the time of the
9 arrest, he said, you, sir, are under arrest. And
10 you, ma'am, are under arrest?

11 A. I don't remember --

12 Q. I think you just testified to that. Is
13 there something wrong with that?

14 A. I don't remember if he said ma'am at
15 that particular moment. But when I say that I
16 object to his language, that's not exactly what I
17 meant.

18 Q. What, you object to the tone of voice?

19 A. The tone and like I said, the
20 implication, like the actual wording. There's a
21 difference between calling someone a lady and
22 calling someone your lady. You know, the
23 implication was that she was a third party or that
24 she wasn't as important than the rest of us or that
25 she belonged to one of us.

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1 Q. Oh, okay, okay. That's how you
2 interpreted that. Okay. That hurt your feelings or
3 what?

4 A. It bothered me, yes.

5 Q. It did bother you, okay. Did going to
6 jail bother you too?

7 A. Yes.

8 Q. You were handcuffed, correct?

9 A. Uh-huh.

10 Q. You were taken to the Richland County
11 detention center, correct?

12 A. Yes.

13 Q. You bonded out the next morning,
14 correct?

15 And then you went to Mr. Masella's
16 office to represent you?

17 A. I didn't specifically. Samantha did.

18 Q. Samantha did?

19 A. Yes.

20 Q. And did you go and write a statement for
21 Mr. Masalla at some point?

22 A. Yes.

23 Q. And you're a party to the lawsuit that's
24 been brought?

25 A. Uh-huh.

1 Q. Okay. And for this, for your being
2 arrested, you're trying to get money, correct?

3 A. I am trying to receive compensation,
4 yes.

5 Q. Compensation. You think the -- you said
6 that the officer was wrong when he approached you by
7 going to her first?

8 A. It struck me as odd.

9 Q: Are you trained in techniques?

10 A. No.

11 Q. If the furthest one away from an officer
12 as he approaches, isn't it possible the furthest
13 away would be the one that would run?

14 A. Well, no, because she was in a corner.

15 Q. Okay. That's what you thought? You're
16 familiar with that corner area?

17 A. I knew she was in a corner.

18 Q: Is it a dark corner?

19 A. Yes.

20 Q. Do you think he would like to see what
21 she's doing in that dark corner?

22 A. I don't -- I don't know. I mean, would
23 it be dark for 2 AM at night? Yes.. But was it dark
24 in the sense that she was shrouded in shadows? No.
25 There are -- there were streetlights. It would have

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1 been darker than where I was standing.

2 Q. And the officer, when he put you up
3 against the wall, he patted you down for weapons,
4 correct?

5 A. Yes.

6 Q. And you're here, you're the first one to
7 the left or right?

8 A. I believe that I was the furthest to the
9 left.

10 Q. And she's the furthest to the opposite
11 side?

12 A. Right.

13 Q. So in between is the other man?

14 A. Uh-huh.

15 Q. Okay. And you're saying you saw him
16 pull the hood back?

17 A. Uh-huh.

18 Q. Okay. And you're looking back while
19 you're up against the wall?

20 A. Yeah, I did have my head turned.

21 Q. Was there something improper with him
22 patting down that hood?

23 A. Well, it wasn't the patting down, it was
24 the pulling.

25 Q. That's, in your opinion, that was -- how

1 do you think he's going to get the hood back without
2 pulling it?

3 A. Well, you might want to pull the hood
4 back so you can look inside of it, but there's a
5 difference between pulling it back so far that you
6 can see inside and pulling it back to the point
7 where the cloth is stretching and her neck is being
8 pulled back.

9 Q. Who told you to say that, the lawyer?

10 A. No. That is what I saw.

11 Q. That's what you saw.

12 A. That's what I --

13 Q. So you're the expert in how you're
14 supposed to pat people down and how to search them,
15 correct?

16 A. I know enough about hoodies to know that
17 if you pull on it hard enough that it's painful.

18 Q. Did you comply and sit on the curb for
19 him?

20 A. It wasn't the curb, but I did sit down.

21 Q. Sat down. She wouldn't sit down, did
22 she?

23 A. No. After asking for permission, she
24 did not sit down. --

25 Q. Did he know -- he never knew her, did

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1 he?

2 A. Knew her?

3 Q. Didn't know her before that incident,
4 did he?

5 A. No.

6 Q. Okay. So he doesn't know if she's got
7 an injury or not --

8 A. Right.

9 Q. -- correct?

10 She hasn't been patted down at that
11 point, has she?

12 A. That was after she had been patted down,
13 yes.

14 Q. But he only patted the hoody. He didn't
15 pat the rest of her or search the rest of her --

16 A. Right.

17 Q. -- because she's a female, correct?

18 A. Yes.

19 Q. And I think you said that.

20 A. Yeah.

21 Q. Okay. So that now you think he might
22 give more attention to the subject, if there's three
23 of them, that one of them hasn't been searched?

24 You think he might give more attention
25 to that person? If you were an officer?

1 A. I'm not sure what you're asking, so...

2 Q. I'm saying, if you got three people, two
3 of whom have been searched, and the third one you
4 don't know if they have a weapon or not, do you
5 think you'd pay more attention to that third one?

6 A. I suppose I would, yes.

7 Q. Now, when did you write this statement
8 for your lawyer?

9 A. I can't give you an exact date, but it
10 would have been within the few days following the
11 arrest.

12 Q. Do you recall when y'all were sitting
13 there and she didn't sit down, that the other man
14 said his dad was an FBI agent?

15 A. That's never anything that would have
16 been said on the scene.

17 Q. Did you ever hear him say he was an FBI
18 agent to this officer?

19 A. No.

20 Q. You never heard that?

21 A. I don't recall hearing that.

22 Q. You don't recall. You didn't hear that
23 at the scene or at the jail?

24 A. No. The first memory I have of actually
25 knowing that was afterwards, when we were in the

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1 process of writing our affidavits.

2 Q. In the attorney's office?

3 A. No.

4 Q. You were aware -- you never went to
5 court on that ticket you got, did you?

6 A. No.

7 Q. And did you ever call and find out what
8 happened to that ticket?

9 A. We received a letter saying that it was
10 a nolle pros.

11 Q. And who was the letter from?

12 A. I don't actually recall the individual.

13 Q. So you were supposed to go to court on
14 the 21st of April but y'all never went, correct?

15 A. Correct.

16 Q. It was dropped because of somebody at
17 DPS?

18 A. I believe so.

19 Q. And are you aware of any calls that were
20 made to DPS by your friend's father from the bureau?

21 A. No.

22 Q. Did you talk to your friend about what
23 his dad did?

24 A. No. I mostly know Charlie by
25 association. He's more Samantha's friend than he is

1 mine. So I don't actually have a lot of -- I don't
2 really speak with him very often. So I don't really
3 know anything in regards to what his dad does other
4 than the fact that he is in the FBI or was.

5 Q. And you were transported from the scene
6 by this officer, correct?

7 A. Yes.

8 Q. And taken to Richland County detention
9 center, booked in, and got out the next morning?

10 A. Yes, sir.

11 Q. Okay. Now, you're telling me that you
12 didn't run around at all or throw any of these water
13 balloons?

14 A. I did toss him the water balloons, yes.

15 Q. You tossed the water balloons as he's
16 coming towards you?

17 A. I don't think that any were tossed as he
18 was coming towards us, but he came from behind, so I
19 don't actually know -- like I don't know -- all I

20 know is the direction he was coming from. So I
21 don't know how far off he was, I don't know where he
22 actually came from.

23 And I would like to say just for the
24 record, that the only people that threw water
25 balloons were me and Samantha. Charlie had one in

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1 his hand because I'd offered him one because it was
2 the last one, I thought he might want to throw one.
3 But actually, at the end of the day, the only people
4 that threw them were me and Samantha.

5 Q. But he had one in his hands when this
6 officer --

7 A. Right.

8 Q. -- came up?

9 Okay. Do you recall that -- trying to
10 tease Samantha or the other man about throwing one
11 at him?

12 A. No.

13 Q. Do you recall that this officer, when he
14 first approached, Samantha was trying to avoid being
15 hit by a water balloon?

16 A. No. We weren't throwing them at each
17 other.

18 Q. You weren't throwing them at each other?

19 A. Right. No one wanted to get wet.

20 Q. So this is like the celebration of his
21 arrival here at Columbia?

22 A. Yeah. It was just -- I mean, it was
23 literally just something like -- just something
24 small because he was coming and he wasn't going to
25 be able to be there for long. I don't know if he

1 had to work the next day, but he was coming at a
2 late hour and he would have to go home the next day.
3 So we were just trying to make the event
4 interesting.

5 And so when we had the water balloons,
6 it was literally just a matter of we thought we can
7 throw one at his feet and he'd be like, whoa, what
8 was that? You know, and he would be a little bit
9 surprised and then --

10 Q. So if you were throwing them at his
11 feet, you were going to throw them at him; is that
12 what you're saying?

13 A. I guess maybe in his direction. All I
14 can tell you for certain is that the intention was
15 never to get anyone wet. The intention was never to
16 throw it at any building. It was never to throw it
17 at any car or any person. It wasn't -- it was never
18 intended to have a target. All it was intended to
19 have is the element of surprise.

20 Q. Well, let me ask you this: As this
21 officer is approaching you, you got three people,
22 unidentified people in the middle of the night, two
23 adult males and one adult female throwing these
24 balloons.

25 Do you think it might be a little

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1 unusual?

2 A. I think that he might -- I mean, I can't
3 really say whether or not he would think it was
4 unusual. I don't know.

5 Q. You're a Carolina student doing this at
6 2:30 in the morning?

7 A. Yes.

8 Q. Was she a student too?

9 A. No.

10 MR. O'LEARY: No further questions.

11 Thank you.

12 MS. ERWIN: Nothing further.

13 MR. COOPER: Any of the panel members
14 have questions for this witness?

15 THE VOICE 1: One question. You were
16 talking about when the officer was kicking her and
17 you said you could hear it?

18 THE WITNESS: Uh-huh.

19 THE VOICE 1: What do you mean by
20 kicking?

21 THE WITNESS: Again, I could kind of
22 demonstrate because it wasn't kicking in this sort
23 of sense like you would kick a soccer ball, but her
24 legs were spread like this. And so the action was
25 kind of a side-sweeping movement, just to kind of

1 get them further apart.

2 I think that was his goal, but I
3 describe it as kicking because of -- because of the
4 force. You know, I was looking straight ahead at
5 the wall because that's what I was instructed to do.
6 And then also then I just heard, you know, this loud
7 kind of thump, thump, thump, thump. And you know,
8 like, there's no mistaking that sound that someone's
9 being hit right now. So I turned and I looked and
10 he was -- and he was kicking her feet.

11 THE VOICE 1: Okay. Thank you.

12 MR. COOPER: Any further questions? Can
13 this witness be excused?

14 MS. ERWIN: Yes, sir.

15 MR. O'LEARY: Yeah, no problem.

16 MR. COOPER: Okay. We'll note for the
17 record this witness is excused.

18 MS. ERWIN: Can we take just a brief
19 break?

20 MR. COOPER: Yeah, we'll take a five to
21 seven-minute break. And you want to get the witness
22 up at the same time?

23 MS. ERWIN: Well, I just want to go to
24 make sure because we had -- I wasn't sure how soon.
25 We had some officers that we had on the list who

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1 were testifying.

2 MR. COOPER: We'll take a five to
3 seven-minute break and come back.

4 (A recess transpired.)

5 MR. COOPER: I'd like to remind you to
6 speak clearly to make sure you're picked up by the
7 microphones. And also advise you that the binder on
8 the table in front of you contains information that
9 may be referred to during the questioning. The page
10 is numbered in the upper right-hand corner.

11 And I'd like to ask you to state your
12 full name, please.

13 MR. CARTER: CL Carter, III.

14 C. LEE CARTER, III

15 being first duly sworn, testified as follows:

16 DIRECT EXAMINATION

17 BY MS. ERWIN:

18 Q. And Mr. Carter, if you can just briefly
19 state what your position is with the department.

20 A. I am an internal affairs investigator
21 with the Department of Public Safety's Office of
22 Professional Responsibility.

23 Q. And did you -- were you asked to conduct
24 an investigation into the incident with Mr. Sorrell
25 that occurred outside the Lottery Commission back in

1 March of 2010?

2 A. Yes, I was.

3 Q. And how did the department receive that
4 complaint?

5 A. The three complainants, through their
6 attorney, contacted either our office directly or
7 the director's office, I don't recall which, when
8 that was. And the case file -- a case file number
9 was generated and it was assigned to me.

10 Q. Is it uncommon for complaints to be
11 lodged by a parent or someone associated with an
12 individual?

13 A. No, it's not.

14 Q. Okay. And does the department
15 distinguish or make any difference how to handle a
16 complaint based on how the complaint is filed?

17 A. No, we do not.

18 Q. And if you can relate to us what your
19 procedure is and basically how you conducted the
20 investigation. What did you do?

21 A. Sat down with Ms. Swanson and Mr. Keith.
22 Mr. Spaht worked or lived out of state and had to
23 speak with him by telephone. They were the first
24 points of contact. They were interviewed, their
25 comments were recorded. The questions I asked were

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1 answered. And then I went through a process of
2 contacting the witnesses.

3 Q. And did you review the -- or let me ask
4 you: Did you obtain a copy of a video from the
5 Lottery Commission that evening?

6 A. Okay. I got the copy of the video.

7 Q. Right.

8 A. Yes, I did, but it was not from the
9 Lottery Commission that evening.

10 Q. Okay.

11 A. But I did get a copy of the video.

12 Q. Right, a video of what happened that
13 evening?

14 A. Yes, yes.

15 Q. Okay. And did you review that?

16 A. Yes, I did.

17 Q. Okay. And what did you observe from
18 your review of the video?

19 A. You could see all three of the
20 complainants on the video and this was a -- I'm not
21 sure of the correct term, but it's -- there's no
22 sound, it's night, the camera is considerable -- or
23 appears to be a considerable distance away from the
24 area where the three folks were, and it was not a
25 smooth video. It was more like a -- almost a stop

1 action, one frame at a time type video. But you
2 could see them clearly.

3 And after it was pointed out, you could
4 see the water balloons after they had popped and the
5 water went across the paved area. And Officer
6 Sorrell came to the scene. And my memory doesn't
7 serve me exactly which ones of the three
8 complainants could be seen on video, but I'm almost
9 positive Ms. Swanson, you could see her reasonably
10 well.

11 Q. And could you ascertain, I guess during
12 the interview, how the three complainants were
13 positioned as far as what you observed on the video?

14 Did you see them leaning against the
15 wall?

16 A. Yes, they were leaning -- excuse me --
17 leaning against the wall.

18 Q. Okay. Did you see any of them running
19 around on video?

20 A. After Sorrell arrived?

21 Q. Right. Or prior to him arriving, were
22 they running?

23 Were they walking?

24 Were they -- what was the behavior that
25 you could observe? I realize that you indicated

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1 there's no sounds.

2 A. Right. There was movement. It's
3 opinion only as to what it was. I didn't see any
4 running or violence or anything like that, but there
5 was movement. They weren't standing still.

6 Q. And you indicated that I guess at one
7 point you did observe the three individuals leaning
8 against the wall. Were they all leaning I guess in
9 the same position or were they different as far as
10 how they were standing at that point?

11 A. Well, like I said earlier without -- I'd
12 have to read that memo concerning the review of the
13 video, but I remember Ms. Swanson particularly, she
14 was standing with her feet spread approximately
15 shoulder width apart, leaning against the wall. And
16 the other two were apparently beside her. They were
17 in the same general area.

18 Q. I'll ask to you refer -- I think what
19 you're asking about, Page 21 in the Committee
20 Exhibit. Is that the report you're referring to?

21 A. That's the report, yes. Look, it's a
22 Page 60.

23 Q. Wait a minute. Your numbers are a
24 little bit different than theirs because of some
25 changes that were made. Can you tell me what the

1 date is on that?

2 A. The date of the memo is March 20th,
3 2010.

4 Q. Okay. And what does it say?

5 A. Security camera video review.

6 Q. And what was your synopsis or your
7 observations that you would put in to reference to
8 your review of the videotape?

9 A. The video showed -- and I'm reading from
10 my memo that's in the report -- the video showed
11 someone placing a package near the door of the
12 Lottery Commission and approximately four minutes
13 later three subjects are popping the water balloons
14 and water was seen on the sidewalk. And I described
15 it as horsing around on the scene until Officer
16 Sorrell arrived. They were moved out of the
17 camera's range and reporting in a few moments later.

18 Q. Okay. But your observation was, I
19 think, once Officer Sorrell arrived they -- their
20 conduct changed? I mean, they --

21 A. That's correct.

22 Q. Did you observe Mr. Sorrell when he
23 approached the three individuals once they were
24 against the wall?

25 A. Could I see?

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1 Q. Right.

2 A. Yes, I could. His campaign hat kind of
3 made him stand out.

4 Q. Did he take any action as far as any of
5 those three individuals while they were leaning up
6 against the wall?

7 A. In the bottom paragraph, after I met
8 with Ms. Swanson and Mr. Keith, Ms. Swanson pointed
9 out she was there, she could point out who she was,
10 who the other two figures were, and she told me that
11 she was standing against the wall with her hands
12 apparently in the air and her feet were about
13 shoulder width apart. And that you could see
14 Officer Sorrell use his foot to forcibly move them
15 further apart.

16 Q. Okay. Did you have a chance to speak
17 with Mr. Sorrell during the investigation?

18 Or let me ask you this: When an
19 investigation is being conducted, you said your
20 complaint is received or something is done to alert
21 the department?

22 A. Right.

23 Q. Is the employee notified that an
24 investigation is being conducted?

25 A. Yes, they are.

1 Q. And how is that done?

2 A. Letter. A letter is sent from our
3 office to the employee.

4 Q. Okay. So they know that something's
5 being looked at. And is it always the employee that
6 you contact first or are they the last that you
7 contact?

8 How are the investigations conducted?

9 A. Usually the employee is the last one.

10 Q. Okay. And was that what transpired in
11 this case?

12 A. To the best of my recollection, yes.

13 Q. Okay. So you did, I guess, an interview
14 with Mr. Sorrell?

15 A. That's correct.

16 Q. Did you ask him questions?

17 Does he come in and just a write a
18 statement?

19 Explain to us kind of how the interview
20 process sort of works.

21 A. Well, we have a lot of material to
22 cover. The three complainants made multiple
23 allegations, and I've been doing this long enough to
24 know if I don't make notes I'll forget something.
25 So I made a list of notes of points that we had to

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1 cover during the interview.

2 Q. Okay.

3 A. But most of what I wanted covered was
4 answered when Mr. Sorrell told me his side of the
5 story.

6 Q. Okay. And basically, what did
7 Mr. Sorrell relate to you that evening?

8 A. Basically, that the three subjects were
9 boisterous and engaged in disorderly conduct and
10 were arrested, as they should have been.

11 Q. Okay. Did Mr. Sorrell have an
12 opportunity to write his statement?

13 A. Yes, he did. He wanted to leave --
14 didn't want to handwrite it, and wanted to leave and
15 prepare it and bring it back the next day. But I
16 got a laptop computer for him from our ITO
17 department and allowed him to sit in our interview
18 room and type it himself.

19 Q. Okay. And was anyone else present when
20 you were conducting the interview?

21 A. For the first part of it, the
22 investigator William Haus (phonetic) did sit in, but
23 he had to leave prior to the conclusion of the
24 interview.

25 Q. Okay. Mr. Sorrell was allowed an

1 opportunity to -- was there a limit on how much time
2 he could take to do this?

3 A. Not at all.

4 Q. What was his demeanor during the
5 interview process?

6 A. He wasn't combative, I wouldn't call it
7 that, but I had some difficulty in getting answers
8 to my basic questions.

9 Q. And what, for example? Give us an
10 example of what you're talking about.

11 A. One thing that sticks out in my mind is
12 the complainants all or a couple of them mentioned
13 they were threatened with felony disorderly conduct.
14 I never heard of such a charge. And this was a part
15 of the time when Investigator Haus was in the
16 interview room, and we simply asked, where is felony
17 disorderly conduct found in the South Carolina Code
18 of Laws? And we never could -- we just went round
19 and round in a circle without getting a straight
20 answer, but eventually we were told that he looked
21 it up online someplace and had heard about it.

22 Q. Okay. When Mr. Sorrell was relating to
23 you the events that happened that evening, what did
24 he indicate to you was the primary focus as far as
25 the problem that had occurred that evening or the

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1 problem with the individuals that evening?

2 A. I'm not sure I'm following.

3 Q. What was the gist of his synopsis as far
4 as what -- what had happened and why the arrest had
5 actually transpired?

6 A. The female, Ms. Swanson, I don't
7 remember the exact term, disobedient, or had failed
8 to comply and this resulted in the arrest or
9 arrests. Plural.

10 Q. And let me ask you to refer to the next
11 to the last paragraph on Page 79 of your synopsis.

12 A. The next to the last paragraph?

13 Q. Right. Says, if you can read the
14 statement, says Officer Sorrell was asked about the
15 claim?

16 MR. COOPER: Before you answer that, can
17 we find that first?

18 MS. ERWIN: I'm sorry. It's 79. It's
19 79 in the original, I'm sorry. Next page, Page 204.

20 MR. GANJEHSANI: Sixty for you. Sixty
21 out of 120.

22 THE WITNESS: Is it 79?

23 MS. ERWIN: I'm sorry.

24 MR. GANJEHSANI: There we go.

25 BY MS. ERWIN:

1 Q. Sixty in this document. Theirs is --
2 the numbers are the same, but the last paragraph
3 where it says, Officer Sorrell was asked about the
4 claim, he was primarily concerned.

5 What does it indicate his response was?

6 A. Okay. Last paragraph or next to last?

7 Q. Next to last paragraph in the middle of
8 the -- Officer Sorrell was asked about the claim.
9 Towards the middle of this paragraph.

10 A. Okay. I see it now. Officer Sorrell
11 was asked about the claim. He was primarily
12 concerned with Ms. Swanson's attitude problem, and
13 quote, giving him lip, unquote. Officer Sorrell
14 agreed and called it a good characterization. And
15 good characterization is in quotes.

16 Q. So the primary focus was not what they
17 were doing or the conduct but --

18 MR. O'LEARY: Objection. Leading.

19 BY MS. ERWIN:

20 Q. Did he indicate that he was primarily
21 concerned with their conduct that evening as far as
22 throwing the water balloons?

23 A. No. The Swanson's attitude problem in
24 giving him lip was the main issue.

25 Q. Okay. And I believe you asked Officer

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1 Sorrell if it was necessary to engage in a physical
2 encounter with Ms. Swanson and he indicated to you
3 there was no physical encounter?

4 A. That's correct.

5 Q. Did you observe a physical encounter on
6 the tape?

7 A. No, I did not.

8 Q. As far as him approaching her at the
9 wall?

10 A. His foot made contact with her foot.

11 Q. Okay.

12 A. No, I was -- when you said physical
13 encounter, I was thinking of an altercation of
14 force.

15 Q. Right.

16 A. Which never -- did not occur.

17 Q. Okay. And you said you observed
18 Ms. Swanson on the video, her feet appeared to be
19 shoulder width apart?

20 A. That's correct.

21 Q. Okay. Did you ask -- I believe you said
22 Mr. Sorrell had asked you or made a response to you
23 about a possible felony charge that you were
24 unfamiliar with. Did he talk to you about what
25 disorderly conduct was during the interview?

1 A. I can't remember if it's what he said or
2 what the complainant said. One of the complainants
3 said was anything the officer deems inappropriate.

4 Q. Did Mr. Sorrell ever indicate to you
5 that his discretion was swayed basically by the fact
6 that the individuals were not being cooperative with
7 him that evening?

8 A. It was Ms. Swanson not being
9 cooperative, not the other two men.

10 Q. But he indicated that that -- did he
11 indicate to you that that played a role in his
12 decision-making process that evening as far as an
13 arrest or not an arrest?

14 MR. O'LEARY: Objection, leading.

15 MR. GANJEHSANI: Overruled.

16 THE WITNESS: As we discussed earlier,
17 Ms. Swanson's attitude problem in giving him lip.

18 BY MS. ERWIN:

19 Q. Okay. Turn to page -- yeah, the same
20 document you're in, Page 3 of 4 of your internal
21 report.

22 A. Okay.

23 Q. It says, I think he indicated he told
24 them disorderly conduct, second paragraph, is
25 disruptive behavior, conduct that's not orderly?

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1 A. Okay. The first paragraph where I
2 stated, in my opinion, Officer Sorrell memorized
3 information from a Website and adopted it as his
4 definition. We were talking about disorderly
5 conduct. And he was asked if there was any such
6 thing as a felony disorderly conduct, and he said
7 yes, and the charge can be elevated to a felony.

8 Q. Okay. Third paragraph of that same page
9 you are -- in your summary you've indicated that the
10 behavior of the three individuals -- and it's in
11 quotes -- disturbing the tranquility. Was that
12 terminology that Mr. Sorrell used to characterize
13 their behavior?

14 A. Tell me where that is.

15 Q. Third paragraph.

16 A. Yes. Okay. It's in quotes. That's
17 what he said. That's not my words.

18 Q. Okay. Go down two more -- two more
19 lines. Again, I was asking you this earlier. It
20 says, he did advise. This is Mr. Sorrell?

21 A. Uh-huh.

22 Q. He may have exercised officer discretion
23 if anyone had been cooperative?

24 A. If everyone had been cooperative.

25 Q. Right. Okay. And I think you said your

1 review was the only -- or the only indication, the
2 statement was before that anyone was being
3 uncooperative was Ms. Swanson?

4 A. Correct.

5 Q. But here everyone is characterized as
6 been uncooperative?

7 A. Let's see. However he, Officer Sorrell,
8 did advise Investigator Carter that he may have
9 exercised officer discretion if everyone had been
10 cooperative. Investigator Haus asked Officer
11 Sorrell if it was fair for the two men to be
12 arrested even though they cooperated. Officer
13 Sorrell responded by stating that he was trained if,
14 quote, if one goes, they all go, unquote.

15 Q. And did Mr. Sorrell also confirm with
16 you the statement given to Corporal Harris, his
17 corporal that evening, that all three were, in fact,
18 arrested because Swanson was disobedient and not
19 cooperative?

20 A. Did Corporal Harris confirm that?

21 Q. Did Officer Sorrell confirm that
22 statement that was indicated in --

23 A. I stated -- well, in the memo, Officer
24 Sorrell was asked about him telling Corporal Harris
25 that all three were arrested because Swanson was,

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1 quote, disobedient, unquote, and would not
2 cooperate. Officer Sorrell said this statement was
3 true and explained that he gave Corporal Harris an
4 abbreviated version of what happened.

5 Q. Mr. Carter, let me ask you: Did you,
6 previous to this occasion, have a chance to -- or
7 were you asked to conduct an interview or
8 investigation, I'm sorry, in reference to an
9 incident with Mr. Sorrell regarding a incident at
10 the Criminal Justice Academy?

11 A. I was not asked to conduct an
12 investigation into that allegation. The information
13 was brought to the attention in my office during the
14 course of this investigation.

15 Q. Okay.

16 A. And it was -- documentation was
17 obtained, copied, and included in this report.

18 Q. Okay. And what were the -- basically,
19 the facts of that situation?

20 A. An academy student complained, if I
21 remember correctly, through the chain of command at
22 the Criminal Justice Academy about an encounter he
23 had with Officer Sorrell while he was on duty at the
24 academy.

25 Q. And if you can just generally tell us, I

1 mean, what the nature of the complaint was.

2 A. The student was threatened with arrest
3 and threatened not to be -- not to be allowed to
4 graduate if he didn't do exactly what Officer
5 Sorrell told him to do.

6 Q. And did you determine what exactly it
7 was that the individual had not done?

8 A. I'd have to look at this, but it was
9 something to the extent that he was told to come
10 into a building or get out of a building, something
11 along those lines.

12 Q. Okay. And is that a possible
13 requirement for CJA, as far as restrictions on where
14 students can be?

15 A. No. The CJA policies, I don't know if I
16 would be qualified to answer those type things, but
17 this situation, it all boils down to the young man
18 not doing exactly what Officer Sorrell wanted him to
19 do, and he was threatened with arrest and failure
20 from the academy.

21 Q. Okay. And did you determine whether or
22 not in fact the academy ever took any action against
23 that officer?

24 A. No, I did not. I don't know if the
25 academy did anything.

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1 Q. Okay.

2 A. The Department of Public Safety took
3 some action, but what, if anything, the academy did
4 I do not know.

5 Q. Okay.

6 A. It's from the April 26th activity report
7 that I wrote. Talks about a meeting I had with
8 Captain AJ Curtis of the Bureau of Protective
9 Services where he provided copies of the Criminal
10 Justice Academy complaint on Officer Sorrell of
11 February 2008.

12 MS. ERWIN: Okay. At this time, I'd
13 like to mark this page and have this entered in.

14 MR. O'LEARY: No objection.

15 MR. COOPER: Agency Exhibit Number 4, is
16 that what you said?

17 MR. GANJEHSANI: Yes.

18 BY MS. ERWIN:

19 Q. Okay. Mr. Carter, if you can look at
20 that and I'll give you a chance to look at it, but
21 kind of give us a summary of what that incident
22 involved and what you determined based on your
23 review.

24 A. Okay.

25 Q. If you can just -- if you've had a