

BEFORE THE EMPLOYEE RELATIONS COMMISSION  
OF THE COUNTY OF LOS ANGELES  
SHERI E. ROSS, HEARING OFFICER

IN THE MATTER OF )  
THE ASSOCIATION FOR LOS ANGELES )  
DEPUTY SHERIFFS (ALADS), ) UFC 010-13  
 ) &  
CHARGING PARTY, ) UFC 001-17  
 ) (CONSOLIDATED)  
V. )  
 )  
COUNTY OF LOS ANGELES )  
SHERIFF'S DEPARTMENT, )  
 )  
RESPONDENT. )  
\_\_\_\_\_ )

TRANSCRIPT OF PROCEEDINGS

LOS ANGELES, CALIFORNIA

MONDAY, MAY 7, 2018

REPORTED BY:

DAWN YOUNG,  
HEARING REPORTER  
JOB NO.: 18-ERCO89

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OF THE COUNTY OF LOS ANGELES COUNTY  
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RESPONDENT. )  
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TRANSCRIPT OF PROCEEDINGS, TAKEN AT  
500 TEMPLE AVENUE, LOS ANGELES, CALIFORNIA,  
ROOM 372, BEGINNING AT 10:10 A.M., ON MONDAY,  
MAY 7, 2018, HEARD BEFORE SHERI E. ROSS,  
HEARING OFFICER, REPORTED BY DAWN YOUNG,  
HEARING REPORTER.

APPEARANCES:

FOR THE CHARGING PARTY: PUBLIC SAFETY LABOR GROUP  
ATTORNEYS AT LAW  
BY: WILL AITCHISON  
3021 NE BROADWAY STREET  
PORTLAND, OREGON 97232  
(866) 486-5556  
WILL@PSLGLAWYERS.COM

FOR THE RESPONDENT: LIEBERT, CASSIDY, WHITMORE  
ATTORNEYS AT LAW  
BY: ALEXANDER Y. WONG  
6033 WEST CENTURY BOULEVARD  
5TH FLOOR  
LOS ANGELES, CALIFORNIA 90045  
(310) 981-3014  
AWONG@LCWLEGAL.COM

ALSO PRESENT: GREGORY NELSON  
REBECCA BUENO  
DEREK HSIEH

I N D E X

<u>CHARGING PARTY'S WITNESSES:</u>	<u>DIRECT</u>	<u>CROSS</u>	<u>REDIRECT</u>	<u>RECROSS</u>
REBECCA BUENO	39	44		
DEREK HSIEH	53			

E X H I B I T S

<u>CHARGING PARTY'S EXHIBITS:</u>	<u>MARKED FOR IDENTIFICATION</u>	<u>RECEIVED IN EVIDENCE</u>
A-01 - 2005-2008 MOU	12	12
A-02 - 2015-2018 MOU	12	12
A-03 - UFC COMPLAINT 01-17	12	12
A-04 - UFC COMPLAINT 01-17 AMENDED	12	12
A-05 - DEPARTMENT TO ALADS CHANGES IN GUIDELINES 16-09-08	12	12

I N D E X

E X H I B I T S (CONTINUED)

<u>CHARGING PARTY'S EXHIBITS:</u>	<u>MARKED FOR IDENTIFICATION</u>	<u>RECEIVED IN EVIDENCE</u>
A-06 - 2016 PROPOSED GUIDELINE CHANGES	12	12
A-07 - DEMAND TO BARGAIN 16-09-13	12	12
A-08 - MEET AND CONFER 16-11-29	12	12
A-09 - FOLLOW-UP DEMAND 16-11-30	12	12
A-10 - DEPARTMENT'S EXPLANATION RE: BARGAINING 16-12-09	12	12
A-11 - NOTICE OF INTENT 6-12-19	12	12
A-12 - FINAL LEGISLATIVE WORD VERSION OF GUIDELINES 16-12-19	12	12
A-13 - CONFIRMATION OF IMPLEMENTATION 17-01-14	12	12
A-14 - UFC FILED 3-14-13	12	12
A-15 - LETTER TO STEVE REMIGE 1-14-13	12	12
A-16 - PROPOSED CHANGES TO GUIDELINES 13-01-30	12	12

I N D E X

E X H I B I T S (CONTINUED)

<u>CHARGING PARTY'S EXHIBITS:</u>	<u>MARKED FOR IDENTIFICATION</u>	<u>RECEIVED IN EVIDENCE</u>
A-17 - PATRICK MATHERS EMAIL 1-30-13	12	12
A-18 - STEVE REMIGE LETTER 13-01-13	12	12
A-19 - DANIEL LOPEZ LETTER 2-11-13	12	12
A-20 - STEVE REMIGE LETTER 2-11-13	12	12
A-21 - CCJC EXCERPTS SECTION 7.7	12	12
A-22 - MEETING NOTES 13-08-22	12	12
A-23 - GUIDELINES 13-02-17	12	12
A-24 - CORE VALUES	12	12
A-25 - REMIGE TO LOPEZ 13-07-18	12	12
A-26 - MEETING NOTES ALADS 12-08-22	12	12
A-27 - REMIGE TO LOPEZ INFORMATION REQUEST	12	12
A-28 - NOTES OF MEETING DEPARTMENTS 6-11-29	12	12
A-29 - REQUESTS FOR BARGAINING INFO 17-01-09	12	12

I N D E X

E X H I B I T S (CONTINUED)

<u>CHARGING PARTY'S EXHIBITS:</u>	<u>MARKED FOR IDENTIFICATION</u>	<u>RECEIVED IN EVIDENCE</u>
A-30 - NOTICE OF FILING UFC 17-01-18	12	12
A-31 - MOTION TO DISMISS UFC 01-17	12	12
A-32 - ANSWER UFC 01-17	12	12

E X H I B I T S

<u>RESPONDENT'S EXHIBITS:</u>	<u>MARKED FOR IDENTIFICATION</u>	<u>RECEIVED IN EVIDENCE</u>
1 - GUIDELINES FOR DISCIPLINE DATED 9-28-12	13	13
2 - LETTER FROM LOPEZ TO REMIGE DATED 1/14/13	13	13
3 - MMP PROVISIONS 2013	13	13
4 - EMAIL STRING LOPEZ TO REMIGE DATED 1/30/13	13	13

I N D E X

E X H I B I T S (CONTINUED)

<u>RESPONDENT'S</u> <u>EXHIBITS:</u>	<u>MARKED FOR</u> <u>IDENTIFICATION</u>	<u>RECEIVED</u> <u>IN EVIDENCE</u>
5 - LETTER FROM LOPEZ TO REMIGE DATED 2/11/13	13	13
6 - LETTER FROM REMIGE TO LOPEZ DATED 2/13/13	13	13
7 - LETTER FROM LOPEZ TO REMIGE DATED 2/14/13	13	13
8 - GUIDELINES FOR DISCIPLINE DATED 2/20/13	13	13
9 - DEPARTMENT'S NOTES FROM 8/22/13 MEETING	13	13
10 - GUIDELINES FOR DISCIPLINE DATED 8/1/14	13	13
11 - LETTER FROM LOPEZ TO HSIEH DATED 9/8/16	13	13
12 - EXCERPT OF CHANGES DATED 8/11/16	13	13
13 - POLICY MANUAL PROVISIONS SELECT 2017	13	13

I N D E X

E X H I B I T S (CONTINUED)

<u>RESPONDENT'S</u> <u>EXHIBITS:</u>	<u>MARKED FOR</u> <u>IDENTIFICATION</u>	<u>RECEIVED</u> <u>IN EVIDENCE</u>
14 - LETTER TO BUENO TO LOPEZ DATED 9/13/16	13	13
15 - LETTER FROM LOPEZ TO BUENO DATED 12/9/16	13	13
16 - LETTER FROM LOPEZ TO BUENO DATED 12/19/16	13	13
17 - GUIDELINES FOR DISCIPLINE DATED 1/1/17	13	13
18 - UFC 010-13 FILED 3/14/13	13	13
19 - MOTION OF BILL OF PARTICULARS FILED 8/22/17	13	13
20 - AMENDED UFC 001-17 FILED 7/27/17	13	13
21 - ANSWER TO UFC 001-17 FILED 9/27/17	13	13
22 - MOTION TO DISMISS FILED 8/17/17	13	13

1 LOS ANGELES, CALIFORNIA; MONDAY, MAY 7, 2018

2 10:10 A.M.

3  
4  
5 HEARING OFFICER ROSS: GOOD MORNING.

6 MY NAME IS SHERI ROSS. I'M THE HEARING OFFICER  
7 TODAY. TODAY IS MAY 7, 2018. IT IS 10:10 A.M.

8 AND THIS IS THE HEARING IN THE MATTER OF TWO  
9 CASES. ASSOCIATION FOR LOS ANGELES DEPUTY SHERIFF'S  
10 VERSUS LOS ANGELES COUNTY SHERIFF'S DEPARTMENT,  
11 UFC-010-13 AND 001-17.

12 THE FIRST CASE WAS FILED ON 3/14/13. AND IT  
13 ALLEGES THAT THE L.A. COUNTY SHERIFF'S DEPARTMENT HAS  
14 ENGAGED IN AND IS ENGAGING IN UNFAIR EMPLOYEE RELATIONS  
15 PRACTICES WITHIN THE MEANING OF SECTION 12,  
16 SUBSECTION A-1, A-2 AND A-3 OF THE COMMISSION'S RULES AND  
17 REGULATIONS.

18 THE SECOND CASE WAS FILED 1/26/17. IT ALLEGES  
19 THAT THE LOS ANGELES COUNTY SHERIFF'S DEPARTMENT HAS  
20 ENGAGED IN AND IS ENGAGING IN UNFAIR EMPLOYEE RELATION  
21 PRACTICES WITHIN THE MEANING OF SECTION 12, SUBSECTION  
22 A-1 AND A-2 AND A-3 OF THE COMMISSION'S RULES AND  
23 REGULATIONS.

24 PLEASE STATE YOUR APPEARANCES FOR THE RECORD.

25 MR. AITCHISON: WILL AITCHISON ON BEHALF OF

1 ALADS.

2 HEARING OFFICER ROSS: AND WITH YOU.

3 MR. HSIEH: DEREK HSIEH.

4 HEARING OFFICER ROSS: SPELL THE NAME, PLEASE.

5 MR. HSIEH: SURE. FIRST NAME IS, D-E-R-E-K.

6 LAST NAME IS SPELLED, H-S-I-E-H. AND I AM THE EXECUTIVE  
7 DIRECTOR FOR THE ASSOCIATION OF LOS ANGELES COUNTY DEPUTY  
8 SHERIFFS.

9 MR. THIBODEAUX: MICHAEL THIBODEAUX. COMMON  
10 SPELLING FOR THE FIRST NAME. LAST NAME IS SPELLED,  
11 T-H-I-B-O-D-E-A-U-X. I'M A DEPUTY SHERIFF FOR THE  
12 LOS ANGELES COUNTY SHERIFF'S DEPARTMENT. I'M HERE ON THE  
13 BEHALF OF ALADS.

14 MS. BUENO: I AM REBECCA BUENO. FIRST NAME,  
15 R-E-B-E-C-C-A. LAST NAME B AS IN "BOY," U-E-N-O. AND  
16 I'M A LABOR RELATIONS SPECIALIST AT ALADS.

17 HEARING OFFICER ROSS: AND AT THE COUNTY'S  
18 TABLE.

19 MR. AITCHISON: GOOD MORNING. ALEX WONG ON  
20 BEHALF OF THE LOS ANGELES SHERIFF'S DEPARTMENT. AND WITH  
21 ME --

22 MR. NELSON: GREG NELSON WITH L.A. COUNTY  
23 SHERIFF'S DEPARTMENT.

24 HEARING OFFICER ROSS: YOU ARE GOING TO HAVE TO  
25 SPEAK UP SO DAWN CAN HEAR YOU CLEARLY.

1 MR. NELSON: YES, MA'AM.

2 HEARING OFFICER ROSS: I SEE THAT YOU HAVE  
3 EXCHANGED EXHIBITS.

4 DO YOU HAVE ANY STIPULATIONS YOU WOULD LIKE TO  
5 OFFER WITH REGARD TO THESE EXHIBITS?

6 MR. AITCHISON: I DO. I WOULD LIKE TO PURPOSE  
7 THAT ALL OF THE EXHIBITS IN BOTH BINDERS BE ADMITTED,  
8 SUBJECT TO ANY OBJECTIONS AS TO RELEVANCE OR ARGUMENTS AS  
9 TO THE WEIGHT THAT THE PARTIES MAY WISH TO LATER MAKE.

10 MR. WONG: THE DEPARTMENT WILL AGREE TO THAT.

11 HEARING OFFICER ROSS: OKAY. SO I'M LOOKING AT  
12 SOMETHING LABELED -- IT IS NOT LABELED. THE BIG BINDER  
13 I'M THINKING IS THE ALADS EXHIBITS.

14 MR. AITCHISON: IT IS.

15 HEARING OFFICER ROSS: THESE ARE EXHIBITS A-1  
16 THROUGH A-32. AND THOSE ARE ADMITTED.

17  
18 (CHARGING PARTY'S EXHIBITS A-1 THROUGH  
19 A-32 WERE MARKED FOR IDENTIFICATION BY  
20 THE HEARING OFFICER AND RECEIVED IN  
21 EVIDENCE.)

22  
23 AND THE OTHER BINDER IS THE SHERIFF'S DEPARTMENT  
24 EXHIBITS 1 THROUGH 26. AND THOSE ARE ADMITTED AS WELL.

25 YOU WILL PROVIDE US WITH AN EXHIBIT LIST IF WE

1 ARE HERE ANOTHER DAY, CORRECT?

2

3 (RESPONDENT'S EXHIBITS 1 THROUGH 26  
4 WERE MARKED FOR IDENTIFICATION BY THE  
5 HEARING OFFICER AND RECEIVED IN  
6 EVIDENCE.)

7

8 MR. WONG: YEAH. EVEN IF WE ARE NOT HERE  
9 ANOTHER DAY, I WILL MAKE SURE I E-MAIL IT TO THE PARTIES  
10 AND THE HEARING OFFICER.

11 HEARING OFFICER ROSS: DID YOU HAVE ANY FACTUAL  
12 STIPULATIONS THAT YOU WOULD LIKE TO OFFER AT THIS TIME?

13 MR. WONG: WE, DO NOT.

14 MR. AITCHISON: NOT AT THIS TIME.

15 HEARING OFFICER ROSS: OKAY. SINCE I HAVEN'T  
16 SEEN ANY OF YOU BEFORE, I WOULD LIKE TO LET YOU KNOW I DO  
17 TAKE GOOD TESTIMONY FROM BAD TESTIMONY.

18 I WOULD LIKE PEOPLE TO TURN OFF THEIR CELL  
19 PHONES OR PUT THEM ON VIBRATE.

20 IF YOU HAVE AN OBJECTION, PLEASE STATE IT AND  
21 I'LL HEAR THE OTHER SIDE ABOUT THAT OBJECTION. I'M NOT  
22 INTERESTED IN A WHOLE LOT OF THE ARGUMENT BACK AND FORTH.  
23 I WILL RULE ON THE OBJECTION.

24 I TEND TO ALLOW EVIDENCE IN IF IT IS NOT GOING  
25 TO TAKE A LONG TIME, RATHER THAN HEAR A LOT OF ARGUMENT

1 OKAY.

2 SO WOULD YOU LIKE TO MAKE AN OPENING -- NO.  
3 WOULD YOU LIKE TO MAKE AN OPENING STATEMENT? SORRY.

4 MR. AITCHISON: I WOULD. AND MAY I STAND TO DO  
5 THAT? I DO BETTER STANDING.

6 HEARING OFFICER ROSS: ABSOLUTELY.

7 MR. AITCHISON: IT IS LIKE GOING TO A MOVIE.  
8 YOU WANT POPCORN?

9 HEARING OFFICER ROSS: YOU MAY BEGIN.

10 MR. AITCHISON: THANK YOU. I WAS JUST GOING TO  
11 SAY AS AN INTRODUCTION, WE HAVE TWO UFC'S HERE. THEY  
12 BOTH RAISE ACTUALLY THE SAME ISSUE.

13 YOU OUGHT TO BE AWARE OF THE FACT THAT THESE  
14 ISSUES ARE RAISED IN A SERIES OF OTHER PENDING UFC'S.  
15 THEY ARE PENDING BEFORE ERCOM AT VARIOUS STAGES.

16 THE ONE THAT I THINK ALEX AND I PROBABLY WANT TO  
17 CALL YOUR ATTENTION TO THE MOST IS THE ONE THAT IS  
18 LABELED 11-13. THIS IS A CASE THAT HAS ALREADY BEEN  
19 HEARD AND IS PENDING A RECOMMENDED ORDER FROM THE HEARING  
20 OFFICER. WE DON'T HAVE THAT.

21 I WOULD ASSUME THAT WHOEVER WINS THAT CASE,  
22 BEFORE THE HEARING OFFICER, IS GOING TO WANT TO  
23 SUPPLEMENT THE RECORD TO PROVIDE THAT TO YOU. AND  
24 WHOEVER LOSES IS GOING TO OBJECT TO THAT YOU ARE GOING TO  
25 LET IT IN AND DECIDE.

1           IN ANY CASE, YOU SHOULD KNOW THERE IS ANOTHER  
2 CASE OUT THERE, 11-13, THAT IS SORT OF DEALING WITH MANY  
3 OF SAME ISSUES. THESE ARE BOTH UNILATERAL CHANGE CASES.

4           SO THESE ARE CASES WHERE THE M.O.U. DOESN'T  
5 CONTROL. AND INSTEAD WHAT YOU HAVE IS A STANDARD TAX  
6 DOCTRINE TYPE CASE OF CONTINUING DUTY TO BARGAIN CASE.

7           THAT IS THAT THE COUNTY -- OUR ALLEGATION IS --  
8 MADE UNILATERAL CHANGES IN THE TOPICS MANDATORY FOR  
9 COLLECTIVE BARGAINING WITHOUT DISCHARGING ITS OBLIGATIONS  
10 TO COLLECTIVELY BARGAIN, TO MEET AND CONFER FOR  
11 MITIGATION AND GO THROUGH THE FACT FINDING PROCESS WITH  
12 ALADS. THESE ARE KIND OF THE STANDARD OLD GARDEN VARIETY  
13 UNILATERAL CHANGE CASES.

14           WHAT IS THE UNDERLINED MANDATORY SUBJECT OF  
15 BARGAINING? THESE CHANGES DO THREE THINGS. AT LEAST THE  
16 MORE COMPLETE SET OF CHANGES, WHICH ARE THE ONES IN THE  
17 LATER CASE. THE 1-17 CASE IS THE CASE THAT ACTUALLY HAS  
18 ALL THE ISSUES PRESENT IN THEM. THESE ARE THREE CHANGES  
19 THAT DEAL WITH DISCIPLINE. THESE ARE CHANGES IN  
20 DISCIPLINE PROCEDURES. THESE ARE CHANGES IN DISCIPLINARY  
21 STANDARDS AND THESE ARE CHANGES IN DISCIPLINARY  
22 PENALTIES.

23           THE SECOND OF THE TWO CASES, THE EARLIER CASE,  
24 THE 1013 CASE DOESN'T PROCEDURE IN IT. IT JUST HAS  
25 STANDARDS AND PENALTIES, BUT IT IS THE OVERLAP THERE THAT

1 IS THE REASON THEY WERE CONSOLIDATED BY ERCOM. I WILL  
2 GET BACK TO THAT. YOU WILL LATER HEAR US TAKE THE  
3 POSITION THAT WE THINK THE LAW IS VERY SUBTLE ON THIS.  
4 THAT DISCIPLINARY STANDARD AND DISCIPLINARY PROCEDURES  
5 AND DISCIPLINARY PENALTIES ARE MANDATORY SUBJECTS FOR  
6 COLLECTIVE BARGAINING.

7 OKAY. SO LET'S LOOK AT THE BIGGER OF THE CASES  
8 FIRST, WHICH IS 1-17. I SUSPECT THAT THIS IS THE ONE WE  
9 WILL BE SPENDING THE MOST TIME ON IN THIS HEARING,  
10 BECAUSE THERE ARE A MULTITUDE OF CHANGES. THERE ARE  
11 LITERALLY, NOT FIGURATIVELY, OVER 100 CHANGES TO SOME  
12 ASPECT OF THE DISCIPLINARY PROCESS THAT WERE BROUGHT  
13 ABOUT BY THE FACTS IN 1-17. THIS ALL STARTS IN SEPTEMBER  
14 OF '19 -- OR EXCUSE ME -- 2016.

15 THE SHERIFF'S DEPARTMENT SENDS TO ALADS A NOTICE  
16 THAT INTENDS TO CHANGE ITS DISCIPLINARY GUIDELINES. NOW  
17 THIS IS THE FIRST OF MANY TIMES YOU ARE GOING TO HEAR A  
18 LOT OF VERNACULAR IN THIS CASE.

19 DISCIPLINARY GUIDELINES GOES BY A LOT OF  
20 DIFFERENT NAMES. SOMETIMES THE DISCIPLINARY HANDBOOK.  
21 SOMETIMES PEOPLE OFTEN -- PEOPLE WILL REFER TO IT AS TO  
22 BAIL SCHEDULE. WHAT IT IS IS A PORTION OF THE SHERIFF'S  
23 DEPARTMENT MANUAL OF POLICIES AND PROCEDURES, WHICH YOU  
24 WILL HEAR US REFER TO IT AS THE MANUAL OR M.P.P. THERE  
25 IS A PORTION OF IT THAT DEALS WITH MANY, NOT ALL

1 DISCIPLINARY ISSUES. AND IT IS CALLED VARIOUS -- BY  
2 THOSE THREE NAMES.

3 THERE ARE THESE THREE DIFFERENT ASPECTS TO THE  
4 GUIDELINES. IT SETS SOME OF THE DISCIPLINARY PROCEDURES  
5 IN PLACE IN THE SHERIFF'S DEPARTMENT. IT SETS SOME, NOT  
6 ALL, OF THE SUBSTANTIATIVE STANDARDS FOR DISCIPLINE.  
7 WHAT IS IT A DEPUTY CAN BE DISCIPLINED FOR. AND IT ALSO  
8 SETS THE RECOMMENDED PUNISHMENT. THAT IS THE BAIL  
9 SCHEDULE PORTION OF IT.

10 AND THAT DRAFT GUIDELINE IN 1-17 CHANGES ALL  
11 THREE OF THOSE TOPICS. AND IN MANY DIFFERENT WAYS.

12 WHAT YOU NEED TO BE AWARE OF IS THAT THE  
13 OVERRIDING THEME OF THE CHANGES, THESE HUNDREDS OF  
14 CHANGES THAT YOU WILL SEE IN THE GUIDELINES, THE  
15 OVERRIDING THEME IS THAT ALADS MEMBERS WILL BE SUBJECT TO  
16 MORE DISCIPLINE, MORE FREQUENTLY.

17 FOR EXAMPLE, WHEN YOU GET TO THE BAIL SCHEDULE  
18 AND YOU SEE THE DIFFERENCES IN THE RECOMMENDED  
19 PUNISHMENT, YOU WILL SEE 45 CHANGES TO THE BAIL SCHEDULE.  
20 ALL 45 INCREASE THE PUNISHMENT LEVELS FOR ALADS' MEMBERS.  
21 THAT IS THE DIRECTION. THAT IS THE VECTOR OF THE CHANGES  
22 IN THESE CASES. HOW ARE THE CHANGES MADE?

23 THE PROCEDURAL CHANGE THAT YOU SEE TO THE  
24 GUIDELINES CONCERNS ANY OF A NUMBER OF THINGS. IT  
25 CONCERNS WHEN WHAT ARE KNOWN AS PREDISPOSITION SETTLEMENT

1           AGREEMENT ARE AUTHORIZED.

2                       BECAUSE WE ARE IN A LAW ENFORCEMENT AGENCY, YOU  
3           ARE GOING TO SEE EVERY ACRONYM YOU NEVER WANTED TO SEE.  
4           THIS IS GOING TO BE THE FIRST OF THEM, P.D.S.A.

5                       THERE ARE CHANGES IN THE GUIDELINES FOR WHEN  
6           SOMETHING THAT IS KNOWN AS THE EDUCATION-BASED DISCIPLINE  
7           PROCESS IS TO BE USED. IT IS SORT OF AN ALTERNATIVE TO  
8           STANDARD DISCIPLINE. IT IS NOT REALLY THE FULL-FLEDGED  
9           SORT OF THING YOU SEE IN MANY LAW ENFORCEMENT AGENCIES  
10          WHERE THERE IS NO PUNISHMENT OR RATHER WHERE THERE IS  
11          PUNISHMENT, BUT EDUCATION IS COMPONENT TO THAT. THERE IS  
12          CHANGES IN THAT. THAT IS THE E.B.D. SYSTEM THAT YOU WILL  
13          HEAR US REFER TO.

14                      THERE ARE CHANGES -- AGAIN THESE ARE ALL  
15          PROCEDURAL CHANGES. THERE ARE CHANGES AS TO WHEN  
16          SOMETHING THAT IS KNOWN OR SOME PEOPLE KNOWN AS  
17          CONSTITUTIONAL POLICING ADVISERS OR THESE CIVILIANS AT  
18          THE SHERIFF'S OFFICE STAFF --

19  
20                      (INTERRUPTION IN THE PROCEEDINGS.)

21  
22                      MR. AITCHISON: THERE ARE CHANGES TO WHEN THESE  
23          CONSTITUTIONAL POLICING ADVISERS ARE INVOLVED IN THIS THE  
24          SYSTEM, WHAT THEY CAN DO AND WHAT THEIR AUTHORITY IS.  
25          AGAIN, ANOTHER PROCEDURAL CHANGE.

1           THERE ARE CHANGES IN THE CONTENT OF WRITTEN  
2 REPRIMAND. WHAT IS ON A WRITTEN REPRIMAND. THAT IS  
3 IMPORTANT FOR A LAW ENFORCEMENT OFFICER THAT THAT  
4 REPRIMAND FOLLOWS HIM. IT FOLLOWS HIM THROUGH THE  
5 PROMOTION AND ASSIGNMENT PROCESS, AND POTENTIALLY A  
6 SUBJECT TO DISCLOSURE AND IN SOME CIRCUMSTANCES IN COURT.

7           THERE ARE CHANGES IN WHETHER OR NOT THE, C.P.A.,  
8 CONSTITUTIONAL POLICING ADVISER, AND ANOTHER GROUP THAT  
9 IS CALLED THE CASE REVIEW PANEL. ARE INVOLVED IN DECIDING  
10 WHETHER THE DISCIPLINE IS OUTSIDE THE BAIL SCHEDULE. SO  
11 ALL OF -- THIS IS SOME OF THEM. OKAY. ALL THESE CHANGES  
12 ARE IN DISCIPLINARY PROCEDURE. THERE ARE SUBSTANTIVE  
13 CHANGES. HOW CAN I DISCIPLINE THEM? "LET ME COUNT THE  
14 WAYS." WE WILL BORROW FROM ELIZABETH BARRETT BROWNING  
15 JUST A BIT.

16           SO THERE IS CHANGES AS TO WHEN AND UNDER WHAT  
17 CIRCUMSTANCES OFF DUTY CONDUCT IS SUBJECT TO DISCIPLINE  
18 AND THE FACTORS TO BE TAKEN INTO ACCOUNT BY THE  
19 DEPARTMENT TO DECIDE WHETHER ANY DISCIPLINE IS  
20 APPROPRIATE IN THE FIRST PLACE. THERE ARE THESE  
21 SUBSTANTIVE CHANGES.

22           AND THEN THERE ALL SORTS OF CHANGES TO THE BAIL  
23 SCHEDULE ITSELF. THIS IS JUST A CLIP FROM THE BAIL  
24 SCHEDULE. THE BAIL SCHEDULE ACTUALLY HAS, I THINK THE  
25 COUNT IS 12 PAGES OF DIFFERENT CHANGES. AND YOU SEE WHEN

1 YOU LOOK AT IT YOU CAN SEE EACH ONE HAS A SECTION NUMBER.  
2 THAT IS THE SECTION OF THE MANUAL POLICY OF PROCEDURES.  
3 AND TYPE OF VIOLATION. THIS ONE SAYS "GENERAL BEHAVIOR."  
4 IT IS VERY LOVINGLY, BY THE WAY, PRINTED IN 4.5 TYPE, SO  
5 YOU MAY NEED SOME SORT OF --

6 HEARING OFFICER ROSS: MAGNIFYING GLASS, YES.

7 MR. AITCHISON: THERE ARE SPECIFIC VIOLATIONS.  
8 INAPPROPRIATE INVOLVEMENT, AN OFF-DUTY NEIGHBORHOOD ISSUE  
9 OR DECEITFUL BUSINESS TRANSACTION. AND THERE ON THE  
10 RIGHT SIDE YOU WILL SEE THE CHANGES IN THE DISCIPLINE.  
11 SO THE FIRST ONE GOES FROM W.R., WRITTEN REPRIMAND TO  
12 THREE DAYS. IT GOES TO WRITTEN REPRIMAND TO TEN DAYS.  
13 THE PUNISHMENT ON THE HIGH END INCREASE.

14 AND YOU WILL SEE DIFFERENT TYPES OF WAYS, WHEN  
15 YOU LOOK THROUGH BAIL SCHEDULE WHERE THE PUNISHMENTS ARE  
16 INCREASED. SOMETIMES THEY ARE INCREASED ON THE HIGH END  
17 LIKE THIS. SOMETIMES THEY ARE INCREASED ON THE LOW END  
18 WHERE THE MINIMUM DISCIPLINE IS SOMETIMES INCREASED.  
19 SOMETIMES THEY ARE MOVED FROM A RANGE LIKE THAT TO ONE  
20 ALTERNATIVE AND THAT IS DISCHARGE. THE MOVE IS SOME SORT  
21 OF RANGE. ALL THREE CHANGES. THOSE ARE THE THREE TYPES  
22 OF CHANGES THAT YOU SEE IN 01-17.

23 NOW, AS I'VE MENTIONED, THERE IS 45 CHANGES TO  
24 THE BAIL SCHEDULE ALONE. EVERY ONE OF THEM INCREASES  
25 DISCIPLINE IN ONE OF THE THREE WAYS I JUST DESCRIBED.

1                   WHY IS THE BAIL SCHEDULE IMPORTANT? IT IS  
2                   IMPORTANT BECAUSE IT IS WHAT COMMANDER'S, WHO ARE  
3                   PRIMARILY RESPONSIBLE FOR DISCIPLINE, DISCIPLINARY  
4                   DECISIONS UP TO 15 DAYS OFF, SO WRITTEN REPRIMAND SHORT  
5                   OF SUSPENSION. IT IS WHAT COMMANDERS REFER TO. IT IS  
6                   WHAT THE DEPARTMENT'S COMMAND STAFF, THE CHIEFS REFER TO.

7                   WHEN DISCIPLINE IS IMPOSED AND AN ALADS MEMBER  
8                   WANTS TO CHALLENGE IT, IT GOES THROUGH A GRIEVANCE  
9                   PROCEDURE WHERE, AGAIN, YOU HAVE CAPTAINS AND CHIEFS AND  
10                  THE LIKE INVOLVED. THAT IS CONSIDERED IN THAT PROCESS,  
11                  UP TO AND INCLUDING. IT IS CONSIDERED BY ARBITRATORS WHO  
12                  ARE ADJUDICATING LOWER LEVELS OF DISCIPLINE. UNDER THE  
13                  COUNTY SYSTEM, I'M SURE YOU KNOW THERE IS A THRESHOLD OF  
14                  FIVE DAYS, YOU HAVE AN ARBITRATION. MORE THAN FIVE DAYS,  
15                  YOU HAVE CIVIL SERVICE.

16                  SO ARBITRATORS CONSIDER THE BAIL SCHEDULE, CIVIL  
17                  SERVICE DOES. AND OF COURSE, THE BAIL SCHEDULE IS  
18                  IMPORTANT BECAUSE OF THE UNUSUAL WAY THE DISCIPLINE IS  
19                  TREATED UNDER THE BAIL SCHEDULE -- EXCUSE ME --  
20                  DISCHARGE.

21                  DISCHARGE CANNOT BE MITIGATED UNDER THE BAIL  
22                  SCHEDULE, NO MATTER WHAT THE MITIGATING CIRCUMSTANCES  
23                  ARE. IF THE PENALTY FOR SOMETHING IS DISCHARGE THAT IS  
24                  THE WAY IT IS GOING TO END UP.

25                  NOW, HOW DOES THE BAIL SCHEDULE -- HOW DOES IT

1 ACTUALLY INFLUENCE BEHAVIOR? BECAUSE THESE ARE  
2 RECOMMENDATIONS; RIGHT? AND YOU ARE GOING TO SEE WHEN WE  
3 GO THROUGH THAT THAT THERE IS A LOT OF CONFLICTS IN WHAT  
4 THE BAIL SCHEDULE HAS TO SAY, EVEN INTERNAL CONFLICTS,  
5 INTERNAL CONFLICTS WITH THE GUIDELINES ITSELF.

6 BEYOND THAT, WHAT WE HAVE DONE IS GO BACK TO  
7 2013 AND LOOK THROUGH ALADS' FILES. REBECCA BUENO WILL  
8 TESTIFY TO THOSE. WE LOOK THROUGH ALADS' FILES TO SEE  
9 THE CASES THAT ALADS HAD OF THE DISCIPLINE, FROM 2013  
10 WHEN THE FIRST OF THESE CASES APPLIED. AND WE ENDED UP  
11 WITH SOMEWHERE AROUND 638, IS MY RECOLLECTION, OF  
12 DISCIPLINARY CASES THAT ALADS HAD PROCESSED. IN HOW MANY  
13 OF THEM DID THE DEPARTMENT VARY FROM THE BAIL SCHEDULE,  
14 LESS THAN 20, LESS THAN TWO PERCENTAGE. AND SO THE BAIL  
15 SCHEDULE BECOMES THE REALITY OF DISCIPLINE. THERE IS NOT  
16 MUCH VARIATION ON EITHER END WITHOUT MUCH CONSIDERATION  
17 OF MITIGATING AND AGGRAVATING FACTORS. AND THAT IS WHY,  
18 TO US, BAIL SCHEDULE IS SO IMPORTANT.

19 SO WHAT HAPPENS? WE GET THIS NOTICE SAYING WE  
20 ARE GOING IMPLEMENT THOSE. I THINK THE DEPARTMENT GAVE  
21 ALADS, IF I REMEMBER RIGHT, SOMETHING LIKE TEN DAYS TO  
22 RESPOND. AND YOU WILL SEE THEM -- I'M NOT KIDDING --  
23 MASSIVE SET OF CHANGES.

24 FOUR DAYS AFTER GETTING THE CHANGES, ALADS SENDS  
25 A DEMAND BARGAIN. A MEETING IS EVENTUALLY SET UP FOR

1 NOVEMBER 29TH. AND THE MEETING BECOMES CRITICALLY  
2 IMPORTANT IN THIS WHOLE PROCESS. WE HAVE SEVERAL PEOPLE  
3 FROM ALADS, DEREK HSIEH, WHO YOU HAVE MET. THERE IS  
4 REBECCA BUENO, WHO YOU HAVE MET. RON HERNANDEZ IS NOT  
5 HERE. PRESIDENT OF ALADS IS UP IN SACRAMENTO TODAY FOR  
6 POLICE BUSINESS. MIKE THIBODEAUX, WHO YOU HAVE MET.  
7 ANTHONY SPATOLA, HE WON'T BE HERE. HE IS A DEFENSE REP  
8 FOR ALADS. HE IS OUT THERE IN THE FIELD REPRESENTING  
9 ALADS IN DISCIPLINARY CASES.

10 FOR THE COUNTY, THE MOST IMPORTANT PLAYERS HERE  
11 ARE JOHN ROBERTS, WHO IS, I THINK, NOW RETIRED, WHO IS  
12 THE CAPTAIN OF INTERNAL AFFAIRS AND DAN LOPEZ. DAN LOPEZ  
13 IS IN GREG NELSON'S SHOP. THAT IS CALLED BOLRAX  
14 (PHONETIC). AND I AM NOT GOING TO TRY TO UNWRAP THAT  
15 ACRONYM FOR YOU. ESSENTIALLY IT IS A LABOR RELATION.

16 DAN LOPEZ IS THE LIEUTENANT. AND HE IS OFTEN  
17 THE PRIMARY POINT OF CONTACT WITH ALADS ON LABOR RELATION  
18 ISSUES. THEY ARE THE TWO THAT IS -- IF NOT EVERYTHING,  
19 VIRTUALLY EVERYTHING, ON BEHALF OF THE COUNTY IN THIS  
20 MEETING.

21 THIS MEETING LASTS TWO HOURS. IT GOES OFF THE  
22 RAILS AT AN HOUR AND 45 MINUTES, WITH VERY DETAILED NOTES  
23 OF THAT MEETING. FOR THE FIRST HOUR AND 45 MINUTES, IS  
24 A -- THERE IS A REAL HEALTHY EXCHANGE THIS IS GOING ON  
25 PRIMARILY BETWEEN DEREK HSIEH AND JOHN ROBERTS. WHERE

1 YOU SEE THE STUFF THAT YOU WOULD EXPECT TO SEE IN  
2 BARGAINING GOING ON. QUESTIONS BEING ASKED. QUESTIONS  
3 BEING ANSWERED OR PLACEHOLDERS. WE, YOU KNOW, WILL GET  
4 BACK TO YOU ON THAT. THAT SORT OF THING.

5 THEY HAVE JUST SCRATCHED THE SURFACE OF THE  
6 GUIDELINES AT AN HOUR AND 45 MINUTES. THEY HAVE TALKED  
7 ABOUT THINGS LIKE EDUCATION-BASED DISCIPLINE AND THE LIKE  
8 AND THE ROLE OF CONSTITUTIONAL POLICING OFFICER -- EXCUSE  
9 ME -- ADVISERS.

10 AND AT THE POINT, LIEUTENANT LOPEZ BECOMES  
11 VISIBLY UNCOMFORTABLE WITH CONTINUING THE MEETING. THERE  
12 ARE SIGNS THAT HE IS DONE WITH THE MEETING. AND HE DOES  
13 MORE THAN THAT. HE CALLS FOR A CAUCUS. HE COMES BACK  
14 AFTER A VERY SHORT CAUCUS AND SAYS THAT WE ARE NOT  
15 BARGAINING. THIS IS NOT NEGOTIATION. THIS A MANAGEMENT  
16 RIGHT. WE ARE HERE TO LISTEN TO YOU. WE ARE HERE TO  
17 EXPLAIN TO YOU, BUT ALL OF THIS IS A MANAGEMENT RIGHT AND  
18 WE ARE NOT BARGAINING OVER IT. HE WAS VERY BLUNT ABOUT  
19 IT.

20 ALADS, AND YOU WILL HEAR TESTIMONY, FROM  
21 MR. HSIEH, ALADS IS TOTALLY TAKEN ABACK BY THIS. THEY  
22 THOUGHT THAT WHAT IS GOING ON IS BARGAINING. AND ALADS  
23 TAKES CAUCUS AND MAKES THE DECISION WE ARE FINISHED. IF  
24 YOU ARE NOT GOING TO BARGAIN, WHAT ARE WE DOING. WE NEED  
25 TO EXAMINE OUR OPTIONS WITH RESPECT TO ERCOM. WE NEED A

1 THIRD PARTY IN THESE PROCEEDINGS WHO WILL DEFINE THE  
2 RIGHTS AND OBLIGATIONS OF THE PARTIES. AND THE MEETING  
3 ENDS. THE MEETING ENDS WITHIN TEN MINUTE -- AGAIN, WITH  
4 LIEUTENANT LOPEZ TAKING CAUCUS.

5 THE NEXT DAY REBECCA BUENO SENDS  
6 LIEUTENANT LOPEZ A MESSAGE SAYING DID YOU REALLY MEAN IT?  
7 I'M TRANSLATING. SHE DIDN'T SAY ANYTHING LIKE THAT. AND  
8 A LITTLE WHILE LATER LIEUTENANT LOPEZ WRITES BACK AND  
9 SAYS, YEAH, I MEANT IT. WE ARE NOT BARGAINING. THIS IS  
10 A MANAGEMENT RIGHT WE ARE GOING TO IMPLEMENT ON  
11 JANUARY 1. IF YOU WANT TO IMPACT BARGAINING -- HE NEVER  
12 DEFINES WHAT THAT IS -- YOU WANT TO DO IMPACT BARGAINING  
13 AFTER JANUARY 1, OKAY. WE WILL DO IMPACT BARGAINING. WE  
14 ARE NOT GOING TO BARGAIN OVER ANY ASPECTS OF THE  
15 DECISION. WITH DISCIPLINARY CHANGES LIKE THIS THERE IS  
16 VIRTUALLY NO IMPACT BARGAINING TO BE DONE, RIGHT? THE  
17 CHANGES ARE IN THE SYSTEM. THOSE ARE THE DECISIONS.  
18 THAT IS WHAT ALADS WANTS TO BARGAIN OVER. ALADS'  
19 RESPONSE IS TO FILE THIS UNFAIR COMPLAINT BY THE END OF  
20 JANUARY OF 2017.

21 SO THAT IS WHAT LEADS US TO THIS. THERE IS A  
22 LITTLE BIT OF POST FILING BACK AND FORTH. THE COMPLAINT  
23 IN THIS CASE WAS FILED BY GREEN AND SHINEE. UNTIL  
24 DICK SHINEE RETIRED THEY WERE ALADS' PRIMARY LAWYERS. IT  
25 IS A MODEL OF BREVITY.

1           ALEX'S FIRM, LIEBERT CASSIDY, FILED A MOTION TO  
2 DISMISS THE COMPLAINT SAYING YOU MAY BE TRYING TO  
3 IDEALIZE BREVITY A LITTLE BIT TOO MUCH AND SO THE  
4 COMPLAINT SHOULD BE DISMISSED.

5           THAT IS THE POINT IN TIME WHICH I GET BROUGHT IN  
6 AND WE FILE AN AMENDED COMPLAINT. AND THE AMENDED  
7 COMPLAINT HAS PAGES OF SPECIFIC ALLEGATIONS AS TO WHAT IS  
8 MANDATORY FOR BARGAINING AND WHAT THE DEPARTMENT DID AND  
9 DIDN'T DO. THAT AMENDED COMPLAINT IS NOW BEING ANSWERED  
10 BY THE COUNTY. WE ARE THERE AND THAT IS THE FIRST OF THE  
11 CASES.

12           SECOND OF THE CASES IS MUCH QUICKER. AND THIS  
13 GOES BACK TO 2013. AND THIS ALL HAPPENS IN A MONTH. IN  
14 2013, JANUARY 14TH, LIEUTENANT LOPEZ -- SAME  
15 LIEUTENANT LOPEZ SENDS ALADS, DIFFERENT ALADS, INSTEAD OF  
16 DEREK HSIEH BEING THE DIRECTOR, THERE IS A GUY NAMED  
17 STEVE REMIGE. LIEUTENANT LOPEZ SENDS STEVE REMIGE A  
18 LETTER SAYING, HEY, WE GOT SOME CHANGES TO THE  
19 GUIDELINES. WE WANT TO LET YOU KNOW. OUR INTENTION IS  
20 THAT WE ARE GOING TO IMPLEMENT THESE AND LET US KNOW IF  
21 YOU HAVE ANY OBJECTIONS.

22           AND LIEUTENANT LOPEZ, IN HIS COVER LETTER, MAKES  
23 A REPRESENTATION. HE SAYS THAT THE CHANGES TO THE  
24 GUIDELINES THAT WE HAVE, ALL OF THEM EXCEPT ONE, ARE THE  
25 PRODUCT OF RECOMMENDATIONS MADE BY SOMETHING CALLED THE

1 CITIZEN'S COMMISSION ON JAIL VIOLENCE. I THINK IT IS  
2 INEVITABLE THAT ANYBODY IN LOS ANGELES HAS BEEN EXPOSED  
3 TO WHAT THE CITIZEN'S COMMISSION WAS. IT WAS LOOKING AT  
4 IMPROPER USE OF FORCE BY MEMBERS OF THE SHERIFF'S  
5 DEPARTMENT IN THE JAIL AND ALSO LOOKING AT ISSUES ON  
6 INMATE-ON-INMATE VIOLENCE IN THE JAIL. IT IS IN A WAKE  
7 OF LAWSUITS FILED BY THE A.C.L.U. AND OTHERS. IT WAS A  
8 HORRIBLE SITUATION. THE RECOMMENDATIONS ARE MANY. AND  
9 THIS IS A COMMISSION THAT IS APPOINTED BY THE BOARD OF  
10 COMMISSIONERS.

11 THE COMMISSIONER ACTUALLY COMES UP WITH A REPORT  
12 THAT IS OVER 200 PAGES LONG. AND LIEUTENANT LOPEZ IS  
13 SAYING THE CHANGES WE ARE MAKING, WITH THE EXCEPTION OF  
14 ONE, ARE FROM THE CITIZEN'S COMMISSION ON JAIL VIOLENCE.  
15 THAT, BY THE WAY, TURNED OUT TO BE INACCURATE. THE  
16 MAJORITY OF CHANGES, IN THIS SET OF CHANGES IN 2013,  
17 AREN'T TO BE FOUND IN THE RECOMMENDATION OF THE CITIZEN'S  
18 COMMISSION. AND REBECCA BUENO WILL TESTIFY TO THAT A  
19 LITTLE BIT LATER.

20 SO ON THIS ONE YOU HAVE KIND OF A CONFUSING  
21 PROCESS THAT HAPPENS, AFTER JANUARY 14, WHEN ALADS GETS  
22 THIS NOTICE FROM LIEUTENANT LOPEZ.

23 BECAUSE THE NEXT THING THAT HAPPENS IS A PHONE  
24 CONVERSATION ON JANUARY 30TH. WE DON'T HAVE, BY THE WAY,  
25 MR. REMIGE AS WITNESS. HE IS OUT OF STATE AND UNABLE TO

1 GET IN TOUCH WITH HIM. WE ARE AT A BIT OF A DISADVANTAGE  
2 HERE IN THAT WE ARE RELYING ON THE DOCUMENTS.

3 WE A HAVE PHONE CONVERSATION THAT OCCURS ON  
4 JANUARY 30 BETWEEN LIEUTENANT LOPEZ -- WE GOT ONE MORE  
5 HUMAN BEING YOU NEED TO KNOW THE NAME OF, SERGEANT  
6 PAT MATHERS, WHO IS A SERGEANT IN BOLRAX, AND MR. REMIGE.  
7 AND THAT CONVERSATION IS DOCUMENTED BY SERGEANT MATHERS  
8 THE SAME DAY.

9 AND IN HIS LETTER TO REMIGE, HE SAYS YOU TOLD US  
10 YOU WOULD AGREE WITH EVERYTHING THAT WE ARE PURPOSING AND  
11 I'M JUST -- I JUST WANT TO CONFIRM THAT. THAT IS THE  
12 TRANSLATION. OKAY. THAT IS BASICALLY THAT. ALADS HAS  
13 NO PROBLEM WITH THIS, YOU TOLD US THAT. HE INVITED -- IS  
14 WHAT I THINK OF AS A CONFIRMING LETTER, SOMETHING BACK  
15 FROM REMIGE SAYING GO AHEAD AND IMPLEMENT. THAT IS NEVER  
16 SENT. THE CONFIRMING LETTER ISN'T SENT.

17 THEN THE NEXT THING THAT HAPPENED ON  
18 FEBRUARY 11, 2013, BEFORE THE SUB CHANGES HAVE BEEN  
19 IMPLEMENTED, ON FEBRUARY 11TH, THE DEPARTMENT SENDS A  
20 LETTER TO ALADS, LOPEZ TO REMIGE, SAYING HERE ARE TWO  
21 MORE CHANGES. AND THESE AREN'T CHANGES TO THE ORIGINAL  
22 THAT IS OUT THERE, THE DOCUMENT, THE GUIDELINES THAT ARE  
23 CURRENTLY IN EFFECT. THESE ARE CHANGES TO THE CHANGES  
24 THAT WERE BEING MADE. OKAY. SO LOPEZ IS SAYING WE GOT  
25 TWO CHANGES TO THE CHANGE.

1                   REMIGE RESPONDS TWO DAYS LATER, ON  
2                   FEBRUARY 13TH, SAYING WE WANT TO MEET AND CONFER OVER THE  
3                   WHOLE THING. WE ARE ASSERTING OUR BARGAINING RIGHTS.  
4                   SEND -- WHAT IS CALLED IN L.A. COUNTY VENULAR -- A CEASE  
5                   AND DESIST LETTER. WE WANT TO BARGAIN. THAT IS ON  
6                   FEBRUARY 13.

7                   LOPEZ RESPONDS ON FEBRUARY 14TH SAYING -- NOT  
8                   GOING TO BE SURPRISE TO YOU NOW. MANAGEMENT RIGHT. WE  
9                   ARE GOING TO DO WHAT WE ARE GOING TO DO AND WE ARE GOING  
10                  TO DO IT ON FEBRUARY 17. WE ARE NOT GOING TO GO AHEAD  
11                  AND IMPLEMENT. AND YOU TOLD US WE COULD. HAVEN'T  
12                  IMPLEMENTED YET. WE ARE GOING TO. BECAUSE WE THINK YOU  
13                  TOLD US WE COULD, WE ARE GOING AHEAD AND DOING IT. THAT  
14                  IS THE MESSAGE OF THE LETTER, EVEN THOUGH YOU HAVE A  
15                  DEMAND TO BARGAIN. AND THE FACT THAT THOSE CHANGES ARE  
16                  IMPLEMENTED -- THERE IS CONFLICTING DATES ON THIS --  
17                  EITHER ON FEBRUARY 17TH OR FEBRUARY 20, 2013.

18                  WHAT CHANGED? WHAT ARE THE CHANGES HERE? THERE  
19                  WAS -- THIS CONTAINED ONLY TEN CHANGES TO THE BAIL  
20                  SCHEDULE PORTION OF THE GUIDELINES. AND WHEN I SAY "TEN"  
21                  IT REALLY DEPENDS ON YOUR COUNT. WITH ALL THESE THINGS  
22                  THERE IS TEN. EVERY SINGLE ONE OF THEM MOVED TOWARDS  
23                  MORE DISCIPLINE FOR ALADS' MEMBERS.

24                  SO YOU'RE SITTING ON A CASE WHERE WE HAVE 55  
25                  CHANGES, SO ON TWO OCCASIONS THE BAIL SCHEDULE, 55 OUT OF

1 55 RESULT IN MORE DISCIPLINE FOR ALADS' MEMBERS.

2 LESS THAN HALF OF THE CHANGES ACTUALLY HAVE BEEN  
3 FOUND IN THE CITIZEN COMMISSION REPORT AND ALADS RESPONDS  
4 BY FILING THE U.F.C.

5 NOW, THERE IS A PROCEDURAL PROBLEM WITH 1013.  
6 THE PROCEDURAL PROBLEM IS THAT THE COUNTY NEVER ANSWERED  
7 THE U.F.C. AND THAT BRINGS UP THE COMMISSION'S RULE  
8 6.06(F). I'M SURE EVERYBODY IN THIS ROOMS KNOWS THIS SAYS  
9 THAT IF AN EMPLOYER FAILS TO ANSWER THE ALLEGATION IN THE  
10 COMPLAINT THEY ARE DEEMED ADMITTED.

11 SO I JUST WANT TO SUMMARIZE VERY QUICKLY. WHY  
12 DO WE THINK -- WHAT ARE WE GOING TO HEAR FROM OUR  
13 WITNESSES AS TO WHY BARGAINING IS IMPORTANT ABOUT THESE  
14 THREE THINGS, STANDARDS, PROCEDURE AND PENALTIES FOR  
15 DISCIPLINE.

16 AND WE THINK BARGAINING IS IMPORTANT -- YOU WILL  
17 HEAR THIS ALL FROM MR. HSIEH -- FOR MANY REASONS. IT IS  
18 IMPORTANT, BRINGS INTO THE DISCUSSION FROM THE  
19 PROSPECTIVE OF RANK AND FILE. AND ONLY FOR AN  
20 ORGANIZATIONAL STANDPOINT THAT IS AVAILABLE. IT IS AN  
21 ADDITIONAL VETTING PROCESS.

22 YOU FIND, PARTICULARLY IN THE CHANGES IN 2017,  
23 THE DEPARTMENT ADMITTED IN THAT MEETING -- WHATEVER THAT  
24 SECTION WAS ON NOVEMBER 29, ADMITTED THAT IT MADE SOME  
25 MISTAKES. WENT AHEAD AND IMPLEMENTED THE MISTAKES.

1 THE BARGAINING, YOU KNOW, IS A VETTING PROCESS  
2 THAT HELPS THAT. BARGAINING INVOLVES COMPROMISE.  
3 COMPROMISE CAN BE FOR THE COMMON GOOD. IN FACT, THAT IS  
4 KIND OF A BASIC PRINCIPLE ON WHY WE BARGAIN. IT PRESENTS  
5 FACTS THAT MIGHT NOT BE CONSIDERED. CHALLENGES  
6 ASSUMPTIONS THAT EITHER SIDE MIGHT BE MAKING. AND IT  
7 BRINGS IN A DIFFERENT PROSPECTIVE TO THE ENTIRE  
8 DISCUSSION. ONE THAT CAN PROVIDE A SOLUTION THAT IS  
9 ACTUALLY IN THE BEST INTEREST OF THE EMPLOYER AND  
10 EMPLOYEES.

11 SO THESE U.F.C.'S SAY THAT CHANGES AND THE  
12 DIFFERENT ASPECTS OF THE DISCIPLINARY PROCESS ARE  
13 MANDATORY FOR BARGAINING.

14 I ASSUME, ALEX, WE WILL BE WRITING BRIEFS AS  
15 OPPOSED TO CLOSING?

16 MR. WONG: YES.

17 MR. AITCHISON: AND YOU WILL SEE THEN IN OUR  
18 BRIEF THAT WE THINK THAT IS SET LAW. WE THINK THAT ERCOM  
19 HAS DECIDED THAT DISCIPLINE IS A MANDATORY SUBJECT OF  
20 BARGAINING.

21 AS, YOU KNOW, THE CALIFORNIA SUPREME COURT HAS  
22 SAID THAT THE COUNTY'S LABOR ORDINANCE HAS TO BE  
23 CONSTRUED CONSISTENTLY WITH THE MEYERS-MILIAS BROWN ACT.  
24 AND, THEREFORE, CALPER'S DECISIONS ARE VERY IMPORTANT.

25 CALPERS HAS DECIDED FOREVER AND EVER THAT

1 DISCIPLINE IS A MANDATORY SUBJECT OF BARGAINING. THE  
2 NATIONAL LABOR RELATION BOARD HAS HELD THE SAME THING AND  
3 STATE LABOR BOARDS HAD HELD THAT ACROSS THE COUNTY.

4 THERE ARE CASES, BY THE WAY, ABOUT -- YOU KNOW,  
5 WE GOT THIS IS BAIL SCHEDULE. SOMETIMES I THINK IT  
6 ASSUMES THAT THIS IS THE DISCIPLINARY MATRIX. IT USED TO  
7 BE ALL THE RAGE IN LAW ENFORCEMENT. YOU KNOW IN 1980,  
8 1990, YOU SEE ALL THESE PEOPLE GO TO THE BAIL SCHEDULE.  
9 NOW THEY ARE GOING AWAY FROM IT.

10 LABOR BOARDS, I HAVEN'T FOUND A DECISION FROM  
11 CALIFORNIA. I FOUND FROM A LOT OF DIFFERENT PLACES,  
12 PENNSYLVANIA, FOR EXAMPLE, SAYING THAT GOING TO OR AWAY  
13 FOR A DISCIPLINARY MATRIX IS A MANDATORY SUBJECT TO  
14 BARGAINING. YOU'LL SEE LAWS FROM US THAT -- WE THINK  
15 THAT IS A SEPARATE ISSUE.

16 WHAT ARE WE LOOKING FOR HERE? THE MOST  
17 IMPORTANT THING FOR US, TO BE BLUNT, WE WANT THE RULES  
18 SET FOR THE FUTURE. WE WANT AN ORDER FROM ERCOM THAT  
19 HOLD THAT CHANGES IN THE DISCIPLINE, STANDARDS,  
20 PROCEDURES AND PENALTIES ARE MANDATORY FOR BARGAINING.  
21 AND WE THINK WE NEED THIS SETTLED. I THINK WE HAVE GOT  
22 SEVEN OF THESE CASES PENDING RIGHT NOW WITH THAT DEALING  
23 WITH THAT FUNDAMENTAL ISSUES, BECAUSE OF THE UNILATERAL  
24 CHANGE OF SITUATION. WE ARE LOOKING FOR THE RESTORATION  
25 OF THE STATUS QUO ANTE.

1 SO WE ARE LOOKING FOR ANY DISCIPLINE THAT WAS  
2 IMPOSED OUTSIDE OF THE PAST PRACTICE THAT HAS TO BE  
3 RECONSIDERED BY THE DEPARTMENT. AND IT IS EASY TO  
4 IDENTIFY.

5 WE ARE LOOKING FOR POSTING. IN THIS DAY AND AGE  
6 WITH ELECTRONIC POSTING IN THE COUNTY E-MAIL SYSTEM.

7 AND THEN, OF COURSE, THE CATCHALL OF WHAT OTHER  
8 RELIEF MAY BE APPROPRIATE UNDER THE CIRCUMSTANCES.

9 THANK YOU FOR BEARING WITH ME FOR THE RELATIVELY  
10 LONG OPENING.

11 HEARING OFFICER ROSS: THANK YOU. WOULD YOU  
12 LIKE TO RETRIEVE YOUR THUMB DRIVE?

13 MR. AITCHISON: OH, YEAH. THANK YOU.

14 HEARING OFFICER ROSS: DID YOU INTEND TO MAKE AN  
15 OPENING STATEMENT NOW OR WOULD YOU LIKE TO RESERVE?

16 MR. WONG: I THINK WE WILL RESERVE RIGHT NOW.

17 HEARING OFFICER ROSS: SO YOUR FIRST WITNESS IS?

18 MR. WONG: I AM SORRY. I DIDN'T MEAN TO  
19 INTERRUPT. I JUST WANTED TO ADDRESS THE ONE ISSUE THE  
20 DEPARTMENT'S FAILURE TO ANSWER 2013 U.F.C., I DISAGREE.  
21 I THINK YOU GOT AN EMAIL FROM THE PARTIES SEVERAL MONTHS  
22 AGO.

23 HEARING OFFICER ROSS: I DID.

24 MR. WONG: THERE WAS AN ISSUE THAT WE HAD FILED  
25 A MOTION FOR BILL OF PARTICULARS IN THAT CASE. WE DID

1 NOT ANSWER BECAUSE WE HAVEN'T RECEIVED THE RULING ON THE  
2 BILL OF PARTICULARS.

3 I THINK, RATHER THAN CONCEDED THAT THE  
4 DEPARTMENT WAIVED OR CONCEDED THE ALLEGATIONS OF THAT  
5 UNFAIR, I THINK IS PURSUANT TO GET A RULING ON THAT BILL  
6 OF PARTICULARS. TO THE EXTENT THAT THEY EITHER PROVIDE  
7 PARTICULARS ABOUT THE CHARGE OR THEY WITHDRAW THE CHARGE,  
8 THEN THE DEPARTMENT WOULD HAVE AN OPPORTUNITY TO FILE AN  
9 ANSWER AS TO THAT PARTICULAR CHARGE.

10 HEARING OFFICER ROSS: OKAY. DID YOU WANT TO  
11 SAY SOMETHING BEFORE?

12 MR. AITCHISON: YEAH. I THINK THE COMMISSION'S  
13 RULES ARE VERY CLEAR HERE. CERTAINLY THE COUNTY HAD THE  
14 RIGHT TO FILE A MOTION FOR THE BILL OF PARTICULARS AND  
15 THEY DID. I THINK THEY SHOULD TEED THAT ISSUE UP  
16 SPECIFICALLY WITH YOU, OR FAILING TO BRING IT UP WITH THE  
17 HEARING OFFICER, SHOULD HAVE BROUGHT IT UP WITH THE  
18 COMMISSION. BUT I DON'T THINK THAT THE FILING OF A  
19 BILL -- MOTION FOR A BILL OF PARTICULAR LIMITS -- CAN'T  
20 GET THE WORDS OUT -- SOME ARCHAIC PROCEDURE.

21 I DON'T THINK THAT A MOTION FOR A BILL OF  
22 PARTICULAR IN ANYWAY STAYS OR ABSOLVES THE COUNTY OF ITS  
23 OBLIGATION UNDER 6.06(F) TO FILE A TIMELY ANSWER.

24 MR. WONG: OBVIOUSLY, THE DEPARTMENT WOULD  
25 VEHEMENTLY DISAGREE WITH THAT. THERE IS INSUFFICIENT

1 INFORMATION IN THE UNDERLINE CHARGE, THEN THE DEPARTMENT  
2 IS FRANKLY UNABLE TO ANSWER THE PARTICULAR ALLEGATION OF  
3 THE CHARGE.

4 MR. AITCHISON: CAN I SAY ONE MORE THING?

5 HEARING OFFICER ROSS: YES.

6 MR. AITCHISON: ALSO I NEGLECTED TO ADDRESS THE  
7 ISSUE OF THE ADEQUACY OF THE COMPLAINT. BECAUSE JUST  
8 LIKE THE MOTION FOR THE BILL OF PARTICULARS. WE ARE NOT  
9 IN A CODE PLEADING ENVIRONMENT. WE ARE NOT JUST IN A  
10 NOTICE. WE ARE IN A NOTICE -- NOTICE PLEADING  
11 ENVIRONMENT EVERYBODY KNEW WHEN THE CHARGE SAID  
12 "UNILATERAL IMPLEMENT" THE CHANGES OF THE GUIDELINE.  
13 EVERYBODY KNEW WHAT THOSE CHANGES WERE.

14 AND THAT -- THIS AGAIN PERTAINS TO THE 2013  
15 CHARGES. YOU WILL SEE WHEN YOU GET TO THE EXHIBIT IT IS  
16 A PAGE AND A HALF OF CHANGES THAT ARE FORMATTED AND  
17 MARKED TEXT FORM. THE DEPARTMENT REALLY CANNOT BE HEARD  
18 OR CLAIM CONVINCINGLY THAT THEY DIDN'T KNOW WHAT THE  
19 U.F.C. WAS ABOUT.

20 HEARING OFFICER ROSS: OKAY.

21 MR. WONG: WHAT --

22 HEARING OFFICER ROSS: IS THERE SOMETHING ELSE  
23 YOU WANTED TO ADD? SHOULD I JUST LET IT GO ON?

24 MR. WONG: I JUST WANTED TO ADD, WITH RESPECT TO  
25 THE 2017 U.F.C., IT WAS BASICALLY THE IDENTICAL CHARGE.

1 AND AT THAT TIME WE MOVED TO DISMISS THE CHARGE, AS  
2 MR. AITCHISON HAD MENTIONED IN HIS OPENING.

3 HE WIDELY, AND I THINK FAIRLY UNDERSTOOD THE  
4 CHARGE AS PRESENTED TO ERCOM ADEQUATELY STATED. ON THAT  
5 BASIS HE AGREED TO -- HE DID AGREE TO -- ALADS DID AGREE  
6 TO AMEND THE CHARGE AND PROVIDE US WHAT I FEEL IS A MUCH  
7 MORE SPECIFIC AND REASONABLE CHARGE.

8 I THINK IT ONLY MAKES SENSE THAT GIVEN THAT THEY  
9 CONCEDED THAT 2017 IS INADEQUATELY STATED, I THINK IT IS  
10 FAIR FOR THEM TO ALSO ACCEPT THE 2013 CHARGE AS SIMPLY  
11 SUFFICIENT.

12 MR. AITCHISON: MAY I BRIEFLY RESPOND?

13 HEARING OFFICER ROSS: YES. JUST WHAT I SAID I  
14 DIDN'T WANT, BUT GO AHEAD.

15 MR. AITCHISON: I KNOW. WHEN I SAW THE MOTION  
16 TO DISMISS, IT WASN'T WHAT I THOUGHT WHAT DICK SHINEE  
17 FILED WAS INADEQUATE UNDER THE COUNTY LABOR OR ERCOM'S  
18 RULES. I ACTUALLY THOUGHT IT WAS ADEQUATE. IT IS JUST  
19 SIMPLY A DIFFERENT WAY OF DOING BUSINESS.

20 AND WHEN I SAW THE COUNTY'S MOTION TO DISMISS, I  
21 SAID TO THE COUNTY IT WASN'T AN AGREEMENT THAT I REACHED  
22 OR REACHED OUT TO THE COUNTY, HEY, I'M JUST GOING TO  
23 AMEND THAT AND LAY EVERYTHING OUT. IT IS JUST A  
24 DIFFERENT WAY OF WRITING THESE COMPLAINTS. THAT IS IT.

25 HEARING OFFICER ROSS: ALL RIGHT. I AM NOT

1 GOING TO GRANT A MOTION TO DISMISS AT THIS TIME.

2 I DO THINK THE AMENDED COMPLAINT IN THE 2017  
3 FILING FILLED OUT A LOT OF INFORMATION FROM THE FIRST  
4 COMPLAINT, PERHAPS NOT LINE BY LINE. AND I DON'T KNOW  
5 WHY AN AMENDED COMPLAINT WASN'T FILED. I DON'T KNOW WHY  
6 AN ANSWER WASN'T FILED. I GAVE YOU BOTH THE OPPORTUNITY  
7 TO DO THAT. I WILL RULE ON THAT IN MY DECISION.

8 WE GOING TO PROCEED ON BOTH MATTERS.

9 MR. WONG: THAT IS FINE. I JUST WANT TO PUT IT  
10 ON THE RECORD. I UNDERSTOOD FROM YOUR E-MAIL THE PARTIES  
11 DID -- I MEAN, THE DEPARTMENT DID ANSWER THE 2017 CHARGE.

12 HEARING OFFICER ROSS: I KNOW. I HAVE THAT.

13 MR. WONG: OKAY. AND THE ONLY REASON WE  
14 EXPECTED A RULING ON THE MOTION OF BILL PARTICULARS IN  
15 THE 2013 MATTER, THAT IS WHY THERE IS NO ANSWER.

16 HEARING OFFICER ROSS: OKAY. WANT TO PROCEED?

17 MR. WONG: I WOULD LIKE TO MAKE A MOTION TO  
18 EXCLUDE ANYONE ELSE WHO WILL BE TESTIFYING.

19 HEARING OFFICER ROSS: I WAS WAITING FOR THAT.

20 MR. WONG: I MEAN, WHO IS NOT AN ALADS'  
21 REPRESENTATIVE.

22 MR. HSIEH: I'M AN ALADS REPRESENTATIVE.

23 MR. WONG: WELL, THE ONE ALADS' REPRESENTATIVE  
24 THAT WILL BE IN THE CASE. IF IT IS GOING TO DEREK HSIEH  
25 THROUGHOUT THE CASE, THEN I WOULD ALSO ASK THAT MS. BUENO

1 BE EXCLUDED AS WELL.

2 MR. AITCHISON: OKAY. I THINK THAT --

3 HEARING OFFICER ROSS: YOU MAY WANT TO CHANGE  
4 THE ORDER.

5 MR. AITCHISON: I'M GOING TO CALL REBECCA BUENO  
6 FIRST.

7 HEARING OFFICER ROSS: I'M SURE YOU WILL BE MUCH  
8 COOLER OUTSIDE.

9 MR. AITCHISON: DON'T GO FAR.

10 HEARING OFFICER ROSS: RAISE YOUR RIGHT HAND.

11

12 REBECCA BUENO,

13 CALLED AS A WITNESS AND HAVING BEEN FIRST DULY SWORN BY  
14 THE HEARING OFFICER, WAS EXAMINED AND TESTIFIED AS  
15 FOLLOWS:

16

17 HEARING OFFICER ROSS: PLEASE STATE AND SPELL  
18 YOUR NAME.

19 THE WITNESS: REBECCA BUENO, R-E-B-E-C-C-A.  
20 LAST NAME IS, B-U-E-N-O.

21 HEARING OFFICER ROSS: AND YOUR EMPLOYER.

22 THE WITNESS: ALADS. IT IS THE ASSOCIATION FOR  
23 LOS ANGELES DEPUTY SHERIFFS.

24 HEARING OFFICER ROSS: YOUR TITLE.

25 THE WITNESS: LABOR RELATIONS SPECIALIST.

1 HEARING OFFICER ROSS: OKAY. AS YOU'RE  
2 TESTIFYING, IF YOU WOULD PLEASE SPEAK UP, SLOWLY, SO THE  
3 REPORTER CAN GET EVERYTHING THAT YOU HAVE TO SAY.

4 AND WHEN YOU MENTION A NAME, THE FIRST TIME YOU  
5 STATE IT, IF YOU WOULD SPELL IT FOR US. THAT WOULD BE  
6 VERY APPRECIATED.

7 THE WITNESS: SURE.

8 HEARING OFFICER ROSS: THANK YOU.

9  
10 DIRECT EXAMINATION

11  
12 BY MR. AITCHISON:

13 Q GOOD MORNING, MS. BUENO.

14 A GOOD MORNING.

15 Q WE HAVE ALREADY LEARNED WHAT YOUR JOB TITLE IS.  
16 WHAT ARE YOUR JOB DUTIES?

17 A I DO MIDTERM BARGAINING FOR ALADS ASSOCIATION  
18 FOR LOS ANGELES DEPUTY SHERIFFS. I CONDUCT MEET AND  
19 CONFERS. I PROVIDE FOLLOW-UP LETTERS TO THE MEET AND  
20 CONFERS. AND I DO A VARIETY OF DUTIES HAVING TO DO WITH  
21 LABOR RELATIONS.

22 Q SO WHENEVER ALADS IS INVOLVED IN A CHANGE  
23 DURING -- WHILE THE M.O.U. IS IN EFFECT OF SCHEDULE  
24 CHANGES OR WHATEVER IT MIGHT BE, YOUR PRIMARY  
25 RESPONSIBILITY IS HANDLING THAT FOR ALADS?

1 A CORRECT.

2 Q DO YOU HAVE ACCESS TO ALADS' FILES ON BARGAINING  
3 ISSUES?

4 A YES.

5 Q HAVE YOU REVIEWED THE ALADS' FILES IN UFC 10-13?

6 A YES.

7 Q AND I WANT TO DRAW YOUR ATTENTION FIRST TO  
8 EXHIBIT A-15.

9 WILL YOU TAKE A LOOK AT THAT?

10 A YES.

11 Q AND JUST SHORTCUTTING THIS A LITTLE BIT.  
12 EXHIBIT A-15 IS THE LETTER FROM LIEUTENANT LOPEZ ON  
13 JANUARY 14TH, 2013, ANNOUNCING THE 2013 CHANGES IN THE  
14 GUIDELINES, RIGHT?

15 A YES.

16 Q I WANT TO DRAW YOUR ATTENTION TO THE LAST TWO  
17 SENTENCES IN THAT LETTER. YOU SEE WHERE LIEUTENANT LOPEZ  
18 WROTE:

19 "THE ATTACH CHARGES SUMMARIZE -- THE  
20 CHART SUMMARIZES THE CHANGES ALL BUT  
21 THE LAST PROVISIONS WERE  
22 RECOMMENDATION FROM THE C.C.J.V."

23 A YES.

24 Q WHAT IS C.C.J.V.?

25 A CITIZEN'S COMMISSION ON JAIL VIOLENCE.

1 Q AND IF YOU TURN THE PAGE -- TURN TO THE NEXT  
2 EXHIBIT, EXHIBIT A-16.

3 DO YOU SEE THE ATTACHMENT HERE THAT CONTAINS THE  
4 CHARGE THAT LIEUTENANT LOPEZ WAS REFERRING TO?

5 A YES.

6 Q AND IF YOU LOOK AT THE SECOND PAGE, THE LAST  
7 ITEM LIEUTENANT LOPEZ WAS REFERRING TO, DO YOU TAKE THAT  
8 TO BE THE PROFESSIONAL CONDUCT CORE VALUES CHANGES?

9 A YES.

10 Q ALL RIGHT. SO WE HAVE THIS LETTER FROM  
11 LIEUTENANT LOPEZ SAYING ALL BUT THE CORE VALUES CHANGE  
12 WAS THE PRODUCT OF RECOMMENDATIONS FROM THE C.C.J.V.

13 HAVE YOU READ THE RECOMMENDATIONS FROM THE  
14 C.C.J.V.?

15 A YES.

16 Q AND IS THAT A LONG DOCUMENT?

17 A YES. IT IS OVER 200 PAGES LONG.

18 Q WERE YOU ABLE TO -- AND TURN TO EXHIBIT A-21.

19 WERE YOU ABLE TO ISOLATE THE CHANGES TO THE  
20 GUIDELINES THAT, IN FACT, WERE RECOMMENDED BY THE  
21 C.C.J.V.?

22 A YES.

23 Q AND IS EXHIBIT A-21 -- IT IS TITLED "EXCERPT  
24 FROM REPORT OF CITIZEN'S COMMISSION ON JAIL VIOLENCE."

25 AND IS THAT WHAT THIS IS?

1 A YES.

2 Q IS THIS THE SECTION OF THE REPORT OF THE  
3 C.C.J.V. THAT DEALS WITH THE PURPOSED CHANGES THROUGH THE  
4 GUIDELINES?

5 A YES. IT IS THE ONLY SECTION, 7.7.

6 Q AND THIS IS THE EXACT TEXT?

7 A IT IS.

8 Q OKAY. AND THEN THE FOLLOWING PAGE WE SEE A  
9 TABLE "THE C.C.J.V. RECOMMENDATIONS VERSUS THE 2013  
10 GUIDELINE CHANGES."

11 WOULD YOU PLEASE TELL THE HEARING OFFICER WHAT  
12 THIS TABLE DOES? WHAT DOES THIS COMMUNICATES.

13 A SO WHAT THIS TABLE IS IS ALL THE CHANGES THAT  
14 WERE MADE TO THE 2013 GUIDELINES, VERSUS WHETHER THEY  
15 WERE RECOMMENDED BY THE C.C.J.V. FOR SORT OR NOT. AND  
16 THAT IS WHAT THE LAST COLUMN IS, WHETHER YES OR NO WAS  
17 RECOMMENDED OR NOT.

18 Q SO WHEN YOU LOOK LIKE AT THE THIRD ENTRY THAT  
19 SAYS:

20 "NO. VIOLATING THE FORCE PREVENTION  
21 POLICY."

22 THE SECOND COLUMN TELL US WHAT WAS IN THE  
23 ATTACHMENT TO LIEUTENANT LOPEZ' LETTER. WHAT THE CHANGES  
24 TO THE GUIDELINES WERE.

25 AND THAT "NO," MEANS WHAT?

1           A        THAT IT WAS NOT IN THE RECOMMENDATION BY THE  
2           C.C.J.V.

3           Q        WERE THE MAJORITY OF THE PURPOSED CHANGES TO THE  
4           GUIDELINE, WERE THEY CONTAINED IN THE C.C.J.V.  
5           RECOMMENDATION?

6           A        NO.   ACTUALLY QUITE A FEW OF THEM WERE.

7           Q        BUT THE MAJORITY WERE NOT?

8           A        MAJORITY WERE NOT.

9           Q        OKAY.   ONE OTHER AREA I WOULD LIKE YOU TO FOCUS  
10          ON FOR A MOMENT.

11                   DOES ALADS KEEP RECORDS OF DISCIPLINARY CASES  
12          INVOLVING ALADS' MEMBERS?

13          A        YES.

14          Q        AND PRIOR TO THIS HEARING AND THE PREPARATION  
15          FOR THIS HEARING, DID ALADS STAFF UNDER YOUR SUPERVISION,  
16          CONDUCT A REVIEW OF THE CHARGES AND PUNISHMENTS IN  
17          DISCIPLINARY CASES?

18                   HEARING OFFICER ROSS:   FOR WHAT PERIOD OF TIME?

19                   THE WITNESS:   FROM 2013 TO THE PRESENT.

20          BY MR. AITCHISON:

21          Q        AND 2013 WAS PICKED BECAUSE?

22          A        WELL, FIRST THAT IS HOW FAR BACK WE HAD, BECAUSE  
23          2013 IS WHEN THE RECOMMENDATIONS WERE MADE.

24          Q        AND DO YOU RECALL HOW MANY FILES YOU AND YOUR  
25          STAFF ACTUALLY REVIEWED?

1 A YES. IT WAS 638.

2 Q AND HOW MANY TIMES SINCE 2013, IN THOSE 638  
3 CASES, DID THE DISCIPLINE THAT WAS EVENTUALLY IMPOSED  
4 FALL OUTSIDE THE GUIDELINE?

5 A EIGHTEEN.

6 MR. AITCHISON: THANK YOU. NO FURTHER  
7 QUESTIONS.

8 HEARING OFFICER ROSS: ANY CROSS?

9 MR. WONG: YES.

10

11 CROSS-EXAMINATION

12

13 BY MR. WONG:

14 Q MS. BUENO, YOU'RE FAMILIAR WITH THE DISCIPLINE  
15 AND EDUCATION GUIDE THAT IS ATTACHED TO THE GUIDELINES  
16 FOR DISCIPLINE?

17 A UM --

18 Q LET ME DIRECT YOUR ATTENTION TO, FOR EXAMPLE,  
19 THE YELLOW BINDER. LET ME DIRECT YOUR ATTENTION TO  
20 EXHIBIT 1.

21 WELL, FIRST, HOW LONG HAVE YOU BEEN A LABOR  
22 REPRESENTATIVE FOR ALADS?

23 A APPROXIMATELY THREE YEARS.

24 Q SO GOING BACK TO 2015?

25 A LABOR SPECIFICALLY?

1 Q YES. LET ME ASK THE BROADER QUESTION.

2 HOW LONG HAVE YOU WORKED FOR ALADS?

3 A SINCE 2014, JUNE 2014.

4 Q THANK YOU.

5 A NO PROBLEM.

6 Q NOW, ARE YOU GENERALLY FAMILIAR WITH DOCUMENTS  
7 OF THIS TYPE THAT ARE INCLUDED AS EXHIBIT 1 BEFORE YOU?

8 A YES.

9 Q CAN YOU TELLS WHAT THIS IS? WHAT IS YOUR  
10 GENERAL UNDERSTANDING OF WHAT THIS DOCUMENT IS?

11 A THIS LOOKS TO BE WHAT WILL CALLED THE BAIL  
12 SCHEDULE, THE GUIDELINES FOR DISCIPLINE.

13 Q OKAY. AND ON THE LATTER HALF, I GUESS BEGINNING  
14 ON PAGE 26 AND CONTINUING THROUGH THE END, CAN YOU TELL  
15 US WHAT THAT PORTION OF THAT DOCUMENT IS?

16 A YES. THIS IS SPECIFICALLY WHAT THEY CALL THE  
17 BAIL SCHEDULE. IT LISTS THE RANGE OF DISCIPLINE FOR  
18 POLICY VIOLATIONS.

19 Q OKAY. AND SO THESE PAGES, THE DISCIPLINE AND  
20 EDUCATION GUIDE, YOU WOULD AGREE THAT THIS DIDN'T EXHAUST  
21 OR LIST EVERY SINGLE POSSIBLE ACT THAT COULD BE  
22 DISCIPLINE, CORRECT?

23 A I DON'T KNOW. UM -- I DON'T THINK -- KNOW IF I  
24 AGREE ON GENERAL BEHAVIOR ON THERE. AND I THINK THE  
25 DEPARTMENT TENDS TO USE GENERAL BEHAVIOR FOR -- CAN USE

1 GENERAL BEHAVIOR FOR MOST ANYTHING.

2 Q OKAY. BUT YOU WOULD AGREE THAT THE GUIDE LISTS  
3 EXAMPLES OF SPECIFIC VIOLATIONS OF MANUAL AND POLICIES  
4 PROCEDURE PROVISIONS, CORRECT?

5 A SURE. THIS SPECIFIC LIST, YEAH. THIS SPECIFIC  
6 LIST, I AGREE.

7 Q AND THESE ARE MERELY THE EXAMPLES OF CONDUCT  
8 THAT COULD BE VIEWED AS VIOLATING THE ENTITY, CORRECT?

9 A YES.

10 MR. AITCHISON: MS. ROSS, I DON'T KNOW HOW LONG  
11 ARE WE GOING TO GO ON THIS, BUT THIS IS ALL BEYOND THE  
12 SCOPE OF MY DIRECT. MR. WONG CAN CALL MS. BUENO AS A  
13 WITNESS AND SHE CAN TESTIFY AS TO THE CONTENTS.

14 HEARING OFFICER ROSS: DID YOU WANT TO BE HEARD?

15 MR. WONG: WELL, I MEAN, SHE TESTIFIED TO WHAT  
16 THE PURPOSED CHANGES ARE THAT WERE PROPOSED BY THE  
17 DEPARTMENT. I THINK SHE SHOULD -- I THINK THE DEPARTMENT  
18 SHOULD BE ABLE TO QUESTION HER AS TO WHAT SHE THINKS THE  
19 CHANGES ACTUALLY WERE.

20 HEARING OFFICER ROSS: I'M GOING TO ALLOW THE  
21 TESTIMONY.

22 OBJECTION OVERRULED.

23 BY MR. WONG:

24 Q NOW, THE POLICY SET FORTH IN THE M.P.P., YOU  
25 WOULD AGREE THEY ARE GENERALLY BROADER OR THEY ARE

1 BROADER THAN THE SPECIFIC VIOLATIONS IDENTIFIED IN THE  
2 DISCIPLINE AND EDUCATION GUIDE, CORRECT?

3 A I'M SORRY.

4 Q THE POLICIES THAT WOULD BE SET FORTH IN THE  
5 MANUAL OF POLICY AND PROCEDURES, THOSE WOULD BE BROADER  
6 THAN THE SPECIFIC VIOLATION THAT ARE REFLECTED IN THE  
7 DISCIPLINE AND EDUCATION PART, CORRECT?

8 A SOMETIMES.

9 Q AND AN EMPLOYEE COULD BE DISCIPLINED FOR A  
10 VIOLATION OF THE PROVISION OF THE M.P.P. REGARDLESS OF  
11 WHETHER THAT VIOLATION IS SPECIFICALLY SET FORTH IN THE  
12 GUIDELINES FOR DISCIPLINE, CORRECT?

13 A I'M NOT SURE. I DON'T THINK I EVER SEEN THAT  
14 HAPPEN.

15 Q OKAY. WOULD YOU AGREE THAT AS A GENERAL MATTER  
16 IT WOULD BE IMPRACTICAL TO IDENTIFY EVER SINGLE --  
17 IDENTIFY, IN WRITING, EVERY SINGLE SPECIFIC ACT THAT  
18 COULD POSSIBLY RESULT IN DISCIPLINE?

19 A DO I THINK IT IS IMPRACTICAL TO DO SO?

20 Q YES.

21 A I SUPPOSE, YES.

22 Q NOW, THE GUIDELINES, THEY DON'T EXPAND THE  
23 GROUNDS FOR EMPLOYEE DISCIPLINE BEYOND WHAT IS ALREADY  
24 CONTAINED WITHIN THE MANUL OF POLICY AND PROCEDURE,  
25 CORRECT?

1           A       I DON'T UNDERSTAND.  THE MANUAL AND POLICY OF  
2           PROCEDURE DIDN'T LIST DISCIPLINE.  IT DOESN'T LIST THE  
3           GUIDELINES FOR DISCIPLINE.

4           Q       SO THE MANUAL DOESN'T SPECIFY RANGES FOR  
5           DISCIPLINE OR TYPES OF DISCIPLINE THAT CAN RESULT FROM  
6           VIOLATION OF THE M.P.P.

7                    IS THAT WHAT YOU'RE SAYING?

8           A       YOU'RE SAYING THAT THE M.P.P. DOES NOT CONTAIN  
9           THE DISCIPLINE FOR WHATEVER POLICY VIOLATION?

10          Q       YES.

11          A       IT DOES NOT.

12          Q       AND ANY -- I GUESS ANY SPECIFIC VIOLATION  
13          CONTAINED WITHIN THE DISCIPLINE AND EDUCATION GUIDE THAT  
14          WOULD REFER BACK TO THE M.P.P., THE UNDERLINED M.P.P.

15                    WOULD YOU AGREE WITH THAT?

16          A       YOU MEAN HERE WHERE IT SAYS THE M.P.P. IN THE  
17          SECTION?

18          Q       YES.

19          A       YES.

20          Q       AND SO THAT REFERS TO THE UNDERLINED DEPARTMENT  
21          POLICY AND PROCEDURE, CORRECT?

22          A       YES.

23          Q       SO THE GUIDELINES THEMSELVES THEY DON'T CREATE  
24          ANY BASIS FOR DISCIPLINE FOR SPECIFIC VIOLATIONS THAT  
25          DON'T FALL UNDER THE M.P.P. PROVISION, CORRECT?

1 A I'M NOT SURE I UNDERSTAND YOUR QUESTION.

2 Q ULTIMATELY FOR ANY SPECIFIC VIOLATION THAT IS  
3 LISTED IN THE -- FOR ANY SPECIFIC VIOLATION LISTED IN THE  
4 DISCIPLINE AND EDUCATION GUIDE, THE VIOLATION -- IT GOES  
5 FOR THE VIOLATION OF THE M.P.P., CORRECT?

6 A HERE? LIKE FOR EXAMPLE, HERE? WHAT YOU'RE  
7 SAYING, DOES IT GO TO SOMETHING IN THE M.P.P.?

8 Q YES.

9 A YES.

10 Q NOW, ALL THE --

11 LOOKING AT THE CHART ON A-21 IN THE ALADS'  
12 BINDER.

13 A OKAY.

14 Q LOOKING AT THE SECOND PAGE OF THAT DOCUMENT  
15 THERE IS A CHART THERE.

16 DID YOU PREPARE THIS CHART?

17 A I DID NOT.

18 Q DO YOU KNOW WHO PREPARED IT?

19 A I DO NOT.

20 Q THIS CHART LISTS SPECIFIC ISSUES AND THEN  
21 PURPOSED CHANGES TO THE GUIDELINES, CORRECT?

22 A UH-HUH. YES.

23 Q NOW, THE --

24 SO THE FAILURE TO REPORT USE OF FORCE THAT  
25 REFERS TO CHANGES IN THE DISCIPLINE AND EDUCATION GUIDE,

1 CORRECT?

2 A FROM 2013?

3 Q YES.

4 A YES.

5 Q AND AGAIN THAT WOULD HAVE FALLEN UNDER AN  
6 EXISTING M.P.P. PROVISION?

7 A I DON'T KNOW ABOUT AT THE TIME.

8 Q OKAY. FAIR ENOUGH.

9 BUT GENERALLY SPEAKING, BASED ON YOUR  
10 UNDERSTANDING OF HOW THE DISCIPLINE AND EDUCATION GUIDE  
11 WORKS, ANYTHING THAT WOULD BE LISTED HERE IS GENERALLY  
12 SUPPOSED TO REFER BACK TO THE M.P.P. PROVISION, CORRECT?

13 A I COULDN'T TELL YOU ABOUT ALL OF THEM. I DON'T  
14 KNOW WHAT ALL THE M.P.P. PROVISIONS ARE. I DON'T KNOW.  
15 I DON'T KNOW. THE M.P.P. IS A HUGE DOCUMENT.

16 Q OKAY. AND NOW YOU TESTIFIED THAT YOU REVIEWED  
17 ALADS' DISCIPLINE RECORDS GOING BACK TO 2013, CORRECT?

18 A YES.

19 Q DID YOU LOOK BACK TO WHAT MONTH IN 2013 OR WHAT  
20 DATE IN 2013?

21 A AS FAR AS I RECALL, IT WAS JANUARY 1ST.

22 Q JANUARY 1ST, 2013?

23 A YES.

24 Q AND WERE RECORDS AVAILABLE GOING BACK FURTHER  
25 THAN 2013?

1 A OF DISCIPLINARY RECORDS?

2 Q YES.

3 A YES.

4 Q BUT YOU DID NOT REVIEW THOSE?

5 A NO.

6 Q AND YOU INDICATED THAT IN 638 CASES THAT YOU  
7 REVIEWED GOING BACK THROUGH 2013, ONLY 18 OF THOSE CASES  
8 FELL OUTSIDE OF THE GUIDELINES?

9 A YES. CORRECT.

10 Q AND HOW DID YOU DETERMINE WHETHER OR NOT  
11 SOMETHING FELL OUTSIDE THE GUIDELINES?

12 A WE LOOKED AT THE GUIDELINES FOR DISCIPLINE AT  
13 THE TIME. WE HAD TWO GUIDELINES FOR DISCIPLINE. AND  
14 WHAT WE DID IS WE LOOKED AT ALL OUR LETTERS OF INTENT.  
15 WE LOOKED AT ANY SETTLEMENT AGREEMENTS THAT WERE INCLUDED  
16 UNDER THAT FILE, WITH THAT FILE, AND COMPARED IT TO THE  
17 BAIL SCHEDULE, THE GUIDELINES FOR DISCIPLINE BAIL  
18 SCHEDULE AT THE TIME.

19 Q AND DID YOU ACCOUNT FOR -- STRIKE THAT.

20 SO YOU WERE NOT EMPLOYED BY ALADS WHEN THE 2013  
21 CHANGES TO THE GUIDELINE WERE PURPOSED, CORRECT?

22 A I WAS NOT.

23 Q AND SO YOU HAVE NO PERSONAL KNOWLEDGE ABOUT  
24 ANYTHING THAT HAPPENED IN 2013 THAT LEAD TO THE CHANGES  
25 OF THE GUIDELINE?



1 HEARING OFFICER ROSS: STATE YOUR NAME AND SPELL  
2 IT.

3 THE WITNESS: MY FIRST NAME IS DEREK, D-E-R-E-K.  
4 MAY LAST NAME -- I PRONOUNCE IT HSIEH. IT IS SPELLED,  
5 H-S-I-E-H.

6 HEARING OFFICER ROSS: AND YOUR EMPLOYER IS?

7 THE WITNESS: THE ASSOCIATION OF LOS ANGELES  
8 COUNTY DEPUTY SHERIFF'S.

9 HEARING OFFICER ROSS: YOUR JOB TITLE.

10 THE WITNESS: EXECUTIVE DIRECTOR.

11 HEARING OFFICER ROSS: THANK YOU. WHEN YOU'RE  
12 TESTIFYING, PLEASE KEEP YOUR VOICE UP AND SPELL NAMES  
13 EACH TIME YOU USE THEM THE FIRST TIME.

14 THE WITNESS: ALL RIGHT.

15 HEARING OFFICER ROSS: THANK YOU.

16

17 DIRECT EXAMINATION

18

19 BY MR. AITCHISON:

20 Q GOOD MORNING, MR. HSIEH.

21 A GOOD MORNING.

22 Q HOW LONG HAVE YOU WORKED FOR ALADS?

23 A SINCE DECEMBER 2014.

24 Q AND HAVE YOU HAD MORE THAN ONE JOB TITLE?

25 A I HAVE. PRIOR TO BEING THE EXECUTIVE DIRECTOR I

1 WAS THE ASSISTANT EXECUTIVE DIRECTOR.

2 Q WHEN DID YOU BECOME EXECUTIVE DIRECTOR?

3 A NOVEMBER 2015.

4 Q WHAT WAS YOUR PREVIOUS EMPLOYMENT?

5 A PRIOR TO THAT I WAS EMPLOYED BY THE ANCHORAGE  
6 POLICE DEPARTMENT IN ANCHORAGE, ALASKA.

7 Q IN WHAT CAPACITY?

8 A I RETIRED FROM THE ANCHORAGE POLICE DEPARTMENT  
9 AS A SERGEANT.

10 Q ANY SPECIAL ASSIGNMENTS OVER THE COURSE OF YOUR  
11 CAREER?

12 A YEAH. I SPENT JUST UNDER 21 YEARS WITH THE  
13 ANCHORAGE POLICE DEPARTMENT. I WAS ASSIGNED PATROL  
14 OFFICER, FIELD TRAINING OFFICER.

15 I WORKED A NUMBER OF INSTRUCTOR POSITIONS. I  
16 SERVED AS AN AIDE TO THE CHIEF OF POLICE, WHERE I  
17 DEVELOPED POLICY AND PROCEDURES FOR THE POLICE  
18 DEPARTMENT.

19 SERVED ON A MAJOR CRIME SCENE TEAM AND K-9  
20 HANDLER PRIOR TO MY PROMOTION TO SERGEANT.

21 Q SO AT A.P.D. YOU WERE INVOLVED IN THE  
22 DEVELOPMENT AND DRAFTING OF POLICY AND PROCEDURES?

23 A YES, I WAS.

24 Q WHAT IS YOUR EDUCATIONAL BACKGROUND?

25 A I HAVE AN UNDERGRADUATE TRAINING, BUSINESS

1 ECONOMICS AND ACCOUNTING.

2 I HAVE A MASTER'S IN BUSINESS ADMINISTRATION,  
3 M.B.A.

4 AND I HAVE COMPLETED SUBSEQUENT COURSEWORK AND  
5 CERTIFICATE FROM CORNELL, I.O.R., WHICH IS INDUSTRIAL  
6 RELATIONS, COLLECTIVE BARGAINING.

7 I JUST RECEIVED A CERTIFICATE FROM DUKE  
8 UNIVERSITY IN HUMAN RESOURCES MANAGEMENT. AND THIS WOULD  
9 BE MY S.H.R.M. CERTIFICATE, SOCIETY OF HUMAN RESOURCE  
10 MANAGEMENT CERTIFICATE.

11 Q DID YOU HOLD ANY UNION POSITIONS IN ANCHORAGE?

12 A YES. WHILE WITH ANCHORAGE POLICE DEPARTMENT I  
13 HELD A NUMBER OF UNION POSITIONS. THE LAST POSITION I  
14 HELD WAS UNION PRESIDENT FOR SIX YEARS.

15 AND PRIOR TO THAT I WAS A MEMBER OF SEVERAL  
16 COMMITTEES, INCLUDING NEGOTIATIONS AND BARGAINING, SERVED  
17 AS A SHOP STEWARD AND OTHER ACTIVITIES WITH THE UNION AND  
18 COVERING ABOUT 18 YEARS OF MY TIME THERE.

19 Q AND DESCRIBE ALADS FOR US, WHO DOES ALADS  
20 REPRESENT AND HOW MANY PEOPLE?

21 A SURE. THE ASSOCIATION FOR LOS ANGELES COUNTY  
22 DEPUTY SHERIFF'S IS THE BARGAINING REPRESENTATIVE FOR THE  
23 DEPUTY SHERIFFS AND DISTRICT ATTORNEY INVESTIGATORS.

24 CURRENTLY, I BELIEVE, THAT THERE IS  
25 APPROXIMATELY 7900 MEMBERS WITHIN THE BARGAINING UNITS.

1 IN ADDITION, WE HAVE SOME ASSOCIATE MEMBERS OF DIFFERENT  
2 CATEGORIES, BUT WE DON'T PROVIDE PRIMARY REPRESENTATION  
3 TO THEM.

4 FOR THE DISTRICT ATTORNEY INVESTIGATORS, WE  
5 REPRESENT DISTRICT ATTORNEY INVESTIGATORS. AND I THINK  
6 THE TITLE IS CALLED "SENIOR DISTRICT ATTORNEY  
7 INVESTIGATORS," WITHIN THE DEPUTY SHERIFF RANKS.

8 WE REPRESENT EVERYBODY WITH THE TITLE OF DEPUTY  
9 SHERIFF GENERALIST AND THAT WOULD BE REFERRED TO AS  
10 BONUS I AND BONUS II. IT IS ESSENTIALLY THE SAME  
11 CLASSIFICATION, BUT IT IS KIND OF AN INTERNAL PROMOTION  
12 FOR DEPUTY SHERIFF'S BASED ON SKILL OR EXPERIENCE.

13 WE PROVIDE ALL MANNER OF LABOR AND HUMAN  
14 RESOURCE SERVICES TO THE DEPUTY SHERIFFS IN THE  
15 EMPLOYMENT AND LABOR SETTING WITHIN L.A. COUNTY.

16 Q IN YOUR ROLE WITH ALADS, HAVE COME TO BE  
17 FAMILIAR WITH THE DAY-TO-DAY CONCERNS, WORK-LIKE CONCERNS  
18 OF ALADS' MEMBERS?

19 A OH, YES. I REPORT TO AN ELECTIVE BOARD OF  
20 DIRECTORS. WE HAVE FREQUENT COMMUNICATION WITH OUR  
21 MEMBERS. I DO PERSONALLY ON A NUMBER OF MATTERS.

22 AND WE DO HAVE AN INTERNET SITE AND THROUGH  
23 OTHER SOCIAL MEETINGS AND CONTACTS, SO I HAVE A LOT OF  
24 OPPORTUNITY TO HEAR CONCERNS OF DEPUTY SHERIFFS AND  
25 DISTRICT ATTORNEY INVESTIGATORS.

1 Q DESCRIBE FOR US THE REPRESENTATION SYSTEM THAT  
2 ALADS HAS IN THEIR VARIOUS UNITS IN THE SHERIFF'S  
3 DEPARTMENT.

4 A OH, YEAH. SO WE HAVE WHAT WE REFER TO AS UNIT  
5 REPRESENTATIVES OR UNIT REPS. AND THESE ARE DEPUTY  
6 SHERIFFS OR DISTRICT ATTORNEY INVESTIGATORS WHO WORK IN  
7 THE UNITS. THEY ARE NOT ANY RELEASE TIME OR ANYTHING TO  
8 THE ORGANIZATION. THEY, ONCE A MONTH, OR POTENTIALLY  
9 LESS FREQUENTLY COME TO ALADS. WE WILL HAVE A MEETING,  
10 DISCUSS TOPICS OF IMPORTANCE AMONGST MEMBERS OF THE  
11 BARGAINING UNIT FIELD CORE SO TO SPEAK.

12 Q HOW MANY OF THEM ARE THERE?

13 A I DON'T KNOW THE EXACT NUMBER. I AM THINKING  
14 AROUND, SOMEWHERE AROUND 60 OR 70 TOTAL ACTIVE.

15 Q DO YOU ALSO DO RIDE ALONGS?

16 A I DO. I CONDUCT -- I PERSONALLY GO ON RIDE  
17 ALONGS WITH PATROL UNITS, ACCOMPANY DEPUTY SHERIFFS IN  
18 THE CUSTODY SETTING, ATTEND UNIT MEETINGS FREQUENTLY. I  
19 ALSO VISIT SPECIALIZED UNITS WITHIN THE SHERIFF'S  
20 DEPARTMENT.

21 Q USING THE RUBRIC THAT IS FOUND IN THE COUNTY'S  
22 LABOR ORDINANCE, LABOR, HOURS AND OTHER TERMS OF  
23 CONDITIONS OF EMPLOYMENT, WHAT ARE THE MOST IMPORTANT  
24 WORKPLACE CONCERNS FOR ALADS' MEMBERS?

25 A WAGES OF COURSE. AND THEN RIGHT AFTER THAT IS

1 DISCIPLINE.

2 AND FOR MANY DEPUTIES, I WOULD SAY DISCIPLINE OR  
3 THE DISCIPLINE PROCESS. THEY WILL FREQUENTLY ARTICULATE  
4 IT IS MORE IMPORTANT TO WAGES. I SUSPECT THEY WOULD  
5 PROBABLY BE OF EQUAL BALANCE.

6 Q AND WHAT CONCERNS DO YOU HEAR FROM DEPUTIES  
7 ABOUT DISCIPLINE?

8 A SENSE OF FAIRNESS. THEY USE THAT TERM  
9 "FAIRNESS" IN A VERY GENERAL SENSE. I THINK THEY ARE  
10 CONCERNED -- I KNOW THEM TO BE CONCERNED ABOUT  
11 IRREGULARITIES IN THE DISCIPLINE PROCESS. WHO GETS  
12 DISCIPLINE FOR WHAT. THE CONSISTENCY OF DISCIPLINE DOWN  
13 THE CHANGE OF COMMAND.

14 OF COURSE, POLITICAL MOTIVATION AND THINGS LIKE  
15 THAT THAT ARE NOT INCONSISTENT WITH OTHER POLICE AGENCIES  
16 TODAY. THAT IS NOT A SECRET.

17 THE DEPUTIES ARE VERY CONCERNED, AND THE  
18 SHERIFF'S DEPARTMENT HAS BEEN SCRUTINIZED BY A NUMBER OF  
19 GROUPS, ABOUT THE FAIR AMOUNT OF DISCIPLINE AMONG OTHER  
20 THINGS.

21 Q ARE DEPUTIES ALSO CONCERNED ABOUT THE PROCEDURES  
22 USED TO IMPOSE DISCIPLINE?

23 A YES. ABSOLUTELY.

24 ONE OF THE BIGGEST CONCERNS RELATIVE TO  
25 DISCIPLINE IS THE PROCEDURE AND HAVING AN OPPORTUNITY TO

1 VOICE WHAT THEY THINK IS IMPORTANT IN CONSIDERATION OF  
2 THEIR DISCIPLINE TO THE ACTUAL DECISION MAKER. AND  
3 SOMETIMES IN THE SHERIFF'S DEPARTMENT THE DEPUTIES HAVE A  
4 SENSE THAT THAT IS VERY ALLUSIVE.

5 Q ALSO ARE DEPUTIES CONCERNED WITH THE LEVEL OF  
6 PUNISHMENT THAT THEY SEE BEING METED OUT BY THE  
7 DEPARTMENT FOR DISCIPLINE?

8 A YES. DEPUTY SHERIFF'S, PARTICULARLY IN THE  
9 CUSTODY AND PATROL SETTING, FEEL THAT DISCIPLINE HAS  
10 INCREASED DRAMATICALLY WITHIN THE SHERIFF'S DEPARTMENT  
11 AND IS USED AS A SUBSTITUTE TO OTHER LEADERSHIP TOOLS TO  
12 MODIFY ORGANIZATIONAL BEHAVIOR.

13 Q WHAT OTHER LEADERSHIP TOOLS ARE AVAILABLE?

14 YOU HAVE BEEN A S.H.R.M., YOU HAVE BEEN TO  
15 CORNEL, YOU ACTED AS AN AIDE TO THE POLICE CHIEF, WHAT  
16 OTHER LEADERSHIP TOOLS ARE AVAILABLE TO THE LAW  
17 ENFORCEMENT EMPLOYER OTHER THAN PUNISHMENT WHEN YOU ARE  
18 LOOKING AT BEHAVIOR THAT DOES NOT COMPORT TO THE  
19 DEPARTMENT'S RULES?

20 A AND SO THE PRIMARY COMPONENT OF LEADERSHIP OF  
21 COURSE IS PRESENCE, AND WITH PRESENCE COMES  
22 COMMUNICATION.

23 SO ONE OF THE TOOLS OF A LAW ENFORCEMENT AGENCY  
24 THAT CAN USED TO MODIFY ORGANIZATIONAL BEHAVIOR, AND  
25 FRANKLY IMPROVE PERFORMANCE AND INCREASE LEADER PRESENCE

1 IS SUPERVISORY CONTACT AND CONTACT WITH COMMAND OFFICERS  
2 ABOVE. SHOWING UP ON CALLS IN A PATROL SETTING. JUST  
3 ESSENTIALLY BEING PRESENT IN THE DAY-TO-DAY ACTIVITY. OF  
4 COURSE, IN ADDITION TO THAT TRAINING.

5 THIS IS WIDELY RECOGNIZED AS STIMULATING  
6 ORGANIZATIONAL PERFORMANCE AND MODIFYING EMPLOYMENT  
7 BEHAVIOR. WHETHER IT BE LAW ENFORCEMENT SPECIFIC  
8 BEHAVIOR OR EVEN OTHER FORMS OF EDUCATION AND TRAINING  
9 THAT ALTER THE MINDSET OF PEOPLE IN THE ORGANIZATION TO  
10 THE BENEFIT OF ALL.

11 Q AND BEYOND THOSE TWO, ARE THERE TOOLS THAT ARE  
12 AVAILABLE WHEN YOU HAVE A DEPUTY WHO HAS ACTUALLY  
13 VIOLATED A RULE? ARE THERE TOOLS AVAILABLE TO A LAW  
14 ENFORCEMENT EMPLOYER OTHER THAN PUNISHMENT?

15 A YEAH. ABSOLUTELY. TRAINING WOULD BE ONE OF THE  
16 FIRST THINGS YOU WOULD CONSIDER. THE OTHER THING THAT  
17 COULD -- AND I SAY A "TRAINING," THAT WOULD BE A FORMAL  
18 SENSE OF TRAINING.

19 THERE IS ALSO OBSERVATION, MENTOR AND COACHING.  
20 PROPER USE OF EVALUATION AND GOAL SETTING STRATEGIES WITH  
21 EMPLOYEES. THESE THINGS ARE NOT REALLY SECRET TO ANY  
22 TYPE OF ORGANIZATION. THEY WORK WELL ANYWHERE.

23 Q I'M GOING TO WALK YOU THROUGH JUST A FEW OF THE  
24 EXHIBITS VERY QUICKLY.

25 IF YOU CAN TURN TO THE LARGE BENDER. LET'S

1 START WITH EXHIBIT A-1.

2 A SURE.

3 Q WAS ALADS A PARTY TO A MEMORANDUM OF AGREEMENT  
4 WITH LOS ANGELES COUNTY IN 2012 AND 2013?

5 A YES.

6 Q NOW, THE DATES ON EXHIBIT 1 REFLECT AN M.O.U.  
7 DURATION OF 2005 TO 2008.

8 IS THIS THE M.O.U. THAT WAS IN EFFECT IN 2012  
9 AND 2013?

10 A YES. WITH EXTENSION.

11 Q SO IT HAD BEEN EXTENDED ON VARIOUS OCCASION?

12 A YES.

13 Q NOW, TURN TO EXHIBIT A-2.

14 MR. AITCHISON: ALEX, WE ARE GOING TO FIND  
15 SOMEWAY OTHER THAN THE PAPER TO PUT THESE M.O.U.'S IN,  
16 HOWEVER A FLASH DRIVE.

17 BY MR. AITCHISON:

18 Q WAS ALADS PARTY TO AN M.O.U. WITH THE COUNTY IN  
19 THE DURATION OF 2015 TO 2018?

20 A YES.

21 Q AND THIS IS IT?

22 A YES.

23 Q AND EXHIBIT A-3.

24 A OKAY.

25 Q IS THIS THE 2017 U.F.C. FILED BY ALADS OVER THE

1 2017 CHANGES TO THE GUIDELINES?

2 A YES.

3 Q AND THEN EXHIBIT A-4.

4 IS EXHIBIT A-4 THE AMENDED U.F.C. COMPLAINT  
5 FILED BY ALADS THAT PROVIDED MORE SPECIFICS ABOUT THE  
6 2017 U.F.C.?

7 A YES.

8 Q WE'VE ALREADY HEARD THAT THE 2000 -- THAT THESE  
9 CASES WERE ABOUT THE CHANGES TO THE GUIDELINES. LET'S  
10 DEFINE SOME TERMS UP FRONT.

11 WHAT IS THE MANUAL OF POLICY AND PROCEDURES?

12 A THE MANUAL OF POLICY AND PROCEDURES IS A TERM  
13 THAT IS SPECIFICALLY USED, BUT IT INCLUDES A GENERAL BODY  
14 OF DOCUMENTS THAT THE SHERIFF'S DEPARTMENT GENERATES AND  
15 MAINTAINS THAT PRESCRIBE POLICY AND PROCEDURES OF VARIOUS  
16 TYPES.

17 I KNOW THERE TO BE SUBUNIT POLICY AND PROCEDURES  
18 AND KIND OF AN APPENDIX THAT MAY SPROUT OUT, BUT IT IS  
19 THE MAIN BODY OF REGULATION FOR THE ORGANIZATION.

20 Q AND WHAT ARE THE GUIDELINES FOR DISCIPLINE?

21 A THE GUIDELINES FOR DISCIPLINE I BELIEVE ARE A  
22 SUBSET OF THAT THAT SIT INSIDE OF THE M.P.P.

23 Q OKAY. AND WOULD YOU PLEASE TURN TO EXHIBIT A-5.

24 A OKAY.

25 Q FOR THE PURPOSES OF MY NEXT SET OF QUESTIONS,

1 AND UNTIL I INSTRUCT YOU OTHERWISE, WOULD YOU ASSUME WE  
2 ARE TALKING ABOUT THE 2017 CHANGES TO THE GUIDELINE.

3 A OKAY.

4 Q SO LOOKING AT EXHIBIT A-5, WHEN DID ALADS  
5 RECEIVE NOTICE FROM THE DEPARTMENT THAT IT WAS INTENDING  
6 TO CHANGE THE DISCIPLINARY GUIDELINES?

7 A I'M ASSUMING SEPTEMBER 8TH OR SHORTLY  
8 THEREAFTER.

9 Q OKAY. AND WAS IT THROUGH EXHIBIT A-5 THAT ALADS  
10 RECEIVED THIS NOTICE?

11 A YES.

12 Q AND THE FIRST PAGE IS A COVER LETTER FROM  
13 LIEUTENANT LOPEZ. IT APPEARS TO SAY THAT IT IS GIVING  
14 ALADS 20 DAYS TO DECIDE WHICH WAY IT WANTS TO GO ON THE  
15 CHANGES, WHEN I LOOK AT THE LAST PARAGRAPH.

16 IS IT COMMON IN THESE SORT OF LETTERS FROM THE  
17 DEPARTMENT THAT THE DEPARTMENT IS PUTTING THE TIMEFRAME  
18 ON ALADS' RESPONSE?

19 A THEY HAVE STARTED DOING THAT, YEAH, DEADLINING.

20 Q AND THEN AS WE TURN THE PAGES AND WE SEE THE  
21 START OF THE GUIDELINES, WE SEE TEXT THAT IS OUTLINED IN  
22 YELLOW.

23 A UH-HUH.

24 Q WHO DID THAT OUTLINING, ALADS OR THE DEPARTMENT?

25 A I BELIEVE THE DEPARTMENT PROVIDED THE DOCUMENT

1 IN THIS WAY.

2 Q SO YOUR ASSUMPTION IS THE YELLOW TEXT IS NEW  
3 TEXT?

4 A YES. I'M SORRY. I WAS -- YEAH. THIS IS THE  
5 WAY WE RECEIVED THIS DOCUMENT. THE DEPARTMENT USES A  
6 COUPLE OF DIFFERENT STYLES.

7 FOR LACK OF A BETTER TERM, STRIKE OUT  
8 MODIFICATION TO THE POLICIES. THIS IS THE LESS FREQUENT  
9 WAY THEY DO IT, BUT THIS IS ONE OF THE WAYS THEY DO IT  
10 TOO.

11 Q ALL RIGHT. I WANT TO WALK YOU THROUGH SOME OF  
12 THE ISSUES IN THE GUIDELINE. NOT ALL OF THEM. I WILL  
13 SAVE SOME FOR JUST ARGUMENT. LET'S WALK THROUGH SOME OF  
14 THEM.

15 LET'S START ON WHAT IS LABELED ON THE BOTTOM  
16 RIGHT OF THE PAGE, PAGE 4 OF 43.

17 A OKAY.

18 Q "NON-DISCIPLINARY ACTION."

19 AND WE SEE THE GUIDELINES DISTINGUISHING HERE  
20 BETWEEN PROGRESSIVE AND -- EXCUSE ME -- DISTINGUISHING  
21 BETWEEN NON-DISCIPLINARY ACTIONS AND DISCIPLINARY  
22 ACTIONS, NO CHANGED PURPOSED IN THIS SECTION OF THE  
23 GUIDELINES, RIGHT?

24 A CORRECT.

25 Q AND NON-DISCIPLINARY ACTION WOULD BE THINGS LIKE

1 COUNSELING AND ALIKE, I WOULD ASSUME?

2 A YES.

3 Q NOW, LET'S TURN TO PAGE 5 AND PAGE 6. WE SEE ON  
4 PAGE 5 AND PAGE 6 ANOTHER DISTINCTION DRAWN BY THE  
5 GUIDELINE. THIS ONE BETWEEN PROGRESSIVE DISCIPLINE, THE  
6 TOP OF PAGE 5 AND NON-PROGRESSIVE DISCIPLINE THE BOTTOM  
7 OF THE PAGE 5.

8 WHAT IS YOUR UNDERSTANDING OF THE DISTINCTION  
9 BETWEEN PROGRESSIVE AND NON-PROGRESSIVE DISCIPLINE?

10 A WELL, MY UNDERSTANDING OF PROGRESSIVE  
11 DISCIPLINE, AND WITHOUT RESPECT TO THE POLICY, IS  
12 PROGRESSIVE DISCIPLINE IS THE EMPLOYER USES A PREVIOUS  
13 DISCIPLINE RELATING TO THE SIMILAR CONDUCT THAT MAY OCCUR  
14 LATER THAT THE EMPLOYER WANTS TO THEN READDRESS THROUGH  
15 THE DISCIPLINE PROCESS.

16 SOMETIMES PEOPLE SAY IT IS THE STAIR STEPPING.  
17 FOR EXAMPLE, YOU GOT A REPRIMAND AND REPRIMAND ESCALATES  
18 TO A DAY OFF.

19 NON-PROGRESSIVE DISCIPLINE WOULD BE POTENTIALLY  
20 THAT DISCIPLINE WHERE THERE WAS NO STAIR STEPPING THAT  
21 THE EMPLOYER ENGAGED. FROM A PUNISHMENT STANDPOINT A  
22 EMPLOYER HAS A FIXED LEVEL, USUALLY VERY HIGH OR  
23 TERMINATION LEVEL.

24 Q NOW, I WANT TO FOCUS ON, IN PARTICULAR, THE  
25 LANGUAGE ON THE TOP OF PAGE 6 WHICH FALLS UNDER THE

1 NON-PROGRESSIVE DISCIPLINE SECTION OF THIS GUIDELINE.

2 SO ON THE PREVIOUS PAGES -- THE PREVIOUS PAGE,  
3 IN FACT, IF YOU GO BACK TO THE LAST PARAGRAPH ON PAGE 5,  
4 YOU WILL SEE EXAMPLES OF BEHAVIOR THAT THE DEPARTMENT HAS  
5 LINED OUT WHERE NON-PROGRESSIVE DISCIPLINE WOULD BE  
6 APPROPRIATE, FRATERNIZATION, DRUG USAGE, DISHONESTY THAT  
7 LIST OF ISSUES.

8 THEN TURN TO THE TOP OF PAGE 6 AND WE SEE SOME  
9 CHANGES IDENTIFIED BY THE DEPARTMENT. WHEREIN THE PAST  
10 THE LANGUAGE SAID:

11 "THESE ACCOUNTS MAY RESULT IN  
12 RELATIVELY HARSH DISCIPLINE EVEN  
13 DISCHARGE WITHOUT PROGRESSIVE  
14 DISCIPLINE."

15 THE NEW LANGUAGE SAYS:

16 "THESE ACTS SHALL RESULT IN MORE  
17 SERIOUS LEVELS OF DISCIPLINE."

18 AND ADDS LANGUAGE THAT SAYS:

19 "WITHOUT THE NECESSITY OF EMPLOYING  
20 ANY STAGES OF PROGRESSIVE DISCIPLINE."

21 WAS ALADS CONCERNED WITH THAT CHANGE?

22 A UM, YES. I MEAN, I THINK THE KEY CHANGE IS  
23 IN -- I DON'T EVEN WANT TO EVEN SAY TONE, BECAUSE IT  
24 ADHERES TO PROMULGATE. "SHALL" IS CLEARLY A DIRECTIVE  
25 WHEREAS "MAY" IS DISCRETIONARY. AND THEN OBVIOUSLY THE

1 OTHER LANGUAGE IN THAT SENTENCE MODIFIES IT MORE.

2 SO JUST BY READING THE -- WHAT I WOULD DESCRIBE  
3 AS THE NEW SENTENCE WITH THE CHANGES, VERY CLEARLY THE  
4 DEPARTMENT IS MOVING TO MUCH MORE SIGNIFICANT DISCIPLINE  
5 AND LESS CONSIDERATION OF PROGRESSIVE DISCIPLINE THAT MAY  
6 HAVE BEEN DISCRETIONARY IN THE PAST.

7 Q AND LET'S GO BACK TO THE LIST ON PAGE 5, THE  
8 LAST PARAGRAPH ON PAGE 5. I WANT TO ISOLATE ONE OF THESE  
9 ACTS OF BEHAVIOR. THAT UNDER THE NEW RULES THAT SHALL  
10 RESULT IN NON-PROGRESSIVE DISCIPLINE.

11 AND THAT ACT I WANT TO FOCUS ON IS THE SECOND  
12 LINE "INSUBORDINATION," INSUBORDINATE BEHAVIOR.

13 A OKAY.

14 Q IN YOUR JUDGMENT, GIVEN YOUR TRAINING, WOULD  
15 INSUBORDINATION POTENTIALLY BE A WONDERFUL PLACE FOR  
16 PROGRESSIVE DISCIPLINE?

17 A YES.

18 Q HOW SO?

19 A WELL, INSUBORDINATION CAN COME IN MANY FORMS.  
20 WHEN AN ORGANIZATION PROVIDES -- AND I FREQUENTLY USE  
21 SOCKS OR UNIFORM EXAMPLES. MANY TIMES ORGANIZATIONS WILL  
22 HAVE DIRECTIVES ABOUT UNIFORM STANDARDS. TO WEAR BLACK  
23 OR BLUE OR GREEN SOCKS WITH THE UNIFORM. AND IT IS NOT  
24 UNCOMMON TO SEE THAT DIRECTIVE NOT ENFORCED.

25 THEN YOU WILL HEAR SUPERVISORS SAY, HEY, WE NEED

1 TO ADHERE TO UNIFORM STANDARDS; WE ARE HAVING AN  
2 INSPECTION. THE NEXT DAY, FOR EXAMPLE, THE DEPUTY  
3 SHERIFF WILL SHOW UP WITH THE WRONG COLOR SOCKS ON. WE  
4 WOULD NOT EXPECT THAT TO BE AN OFFENSE OR TERMINATION  
5 BASED ON INSUBORDINATION FOR A NUMBERS OF REASONS.

6 AND THAT WOULD BE A CASE WHERE COUNSELING OR  
7 OTHER TYPE OF CORRECTION ACTION WOULD BE FAR MORE  
8 APPROPRIATE.

9 Q IT WOULD BE A CASE FOR PROGRESSIVE DISCIPLINE?

10 A YES.

11 Q ALL RIGHT. LET'S LOOK AT PAGE 6 AND LOOK AT A  
12 NEW SECTION "UNACCEPTABLE OFF-THE-JOB CONDUCT."

13 IN THIS SECTION WE SEE A COUPLE OF CHANGES. ONE  
14 ADDING THE WORD "CONDUCT." I WANT TO FOCUS ON THE SECOND  
15 OF THE CHANGES WHERE THE DEPARTMENT ANNOUNCES THAT AN  
16 EMPLOYEE COULD BE SUBJECT TO DISCIPLINE WHERE THE  
17 EMPLOYEE'S OFF-THE-JOB CONDUCT IS RELATED TO AND IMPACTS  
18 THE DEPARTMENT'S OLD LANGUAGE "OPERATION," NEW LANGUAGE,  
19 "REPUTATION," DID THAT CONCERN YOU?

20 A YES.

21 Q WHY SO?

22 A WELL, OPERATIONS, I THINK WE GENERALLY  
23 UNDERSTAND WHAT THAT MEANS. THAT MEANS WHEN THE AGENCY  
24 IS DELIVERING THE LAW ENFORCEMENT PRODUCT THAT WOULD BE  
25 PART OF THE OPERATIONS, WHETHER IT BE COMMUNICATIONS OR

1 ANYTHING LIKE THAT. THAT IS PRETTY CLEAR THAT IS THE  
2 DEPUTY'S JOB.

3 WHEN IT COMES TO REPUTATION THAT BECOMES MUCH  
4 MORE VAGUE. IT COULD IMPACT ASPECTS OF THE DEPUTY'S  
5 OFF-DUTY LIFE RELATING TO THEIR PERSONAL COMMUNICATION  
6 THAT THEY ELECT TO HAVE, YOU KNOW, POLITICAL INVOLVEMENT.

7 THE OTHER ISSUE THAT IS ALWAYS REALLY TROUBLING  
8 IS FREQUENTLY THE DEPARTMENT -- THE DEPARTMENT WILL MAKE  
9 AN INTERNAL ASSESSMENT OF EMPLOYEE'S CONDUCT BY WHAT THEY  
10 THINK THAT THE PUBLIC PERCEIVES IT AS, WHEN THEY ACTUALLY  
11 HAVEN'T GONE OUT. IF REPUTATION IS WHAT THEY ARE  
12 CONCERNED ABOUT THEY ACTUALLY GO OUT AND ENGAGE THE  
13 PUBLIC AND FIND OUT WHAT THE TRUE IMPACT IS.

14 SO IT IS VERY SUBJECTIVE. AND PROSPECTIVE  
15 MATTERS A LOT. AND, OF COURSE, IT IMPACTS OFF-DUTY LIFE  
16 POTENTIALLY SIGNIFICANTLY.

17 Q WOULD IT BE POSSIBLE UNDER THIS CHANGE FOR THE  
18 DEPARTMENT TO DISCIPLINE A DEPUTY FOR PERFECTLY  
19 PERMISSIBLE CONDUCT OFF DUTY THAT HAD NO IMPACT ON THE  
20 DEPARTMENT'S REPUTATION, WAS LAWFUL, WAS EVEN  
21 CONSTITUTIONALLY PROTECTIVE, BUT HAD A NEGATIVE IMPACT ON  
22 THE DEPARTMENT'S REPUTATION?

23 MR. WONG: OBJECTION. CALLS FOR SPECULATION.  
24 INCOMPLETE HYPOTHETICAL.

25 HEARING OFFICER ROSS: OVERRULED.

1 I UNDERSTAND THIS IS THE WITNESSES' OPINION.

2 THE WITNESS: I MEAN, I CAN ANSWER THE QUESTION  
3 AND OFFER AN EXAMPLE. YES, IT CAN.

4 THERE WAS A CASE THAT WAS RECENTLY -- WELL, SOME  
5 MONTHS AGO, INVOLVED WHEREIN A DEPUTY SHERIFF WAS  
6 ARRESTED BY HIS OWN AGENCY, LOS ANGELES COUNTY DEPUTY  
7 SHERIFF'S, FOR DOMESTIC VIOLENCE INCIDENT. IT TURNED OUT  
8 THAT IT WAS A POOR DECISION OF DEPUTIES IN THE FIELD TO  
9 MAKE THE ARREST.

10 AND THE DEPARTMENT ENDED UP CONDUCTING A  
11 SUBSEQUENT INVESTIGATION AT THE DIRECTION OF THE DISTRICT  
12 ATTORNEY'S OFFICE. ALL CHARGES WERE DISMISSED.

13 IT TURNED OUT THEY ARRESTED THE WRONG PERSON.  
14 VERY, VERY CLEAR EVIDENCE. THERE WAS TAPE RECORDED  
15 CONVERSATIONS AND THINGS LIKE THAT WHERE THERE WAS NO  
16 DISPUTE WAS AVAILABLE.

17 THE DEPARTMENT ELECTED TO DISCIPLINE THIS DEPUTY  
18 SHERIFF BECAUSE HE HAD BEEN ARRESTED IN HIS OWN HOME BY  
19 OUR OWN DEPUTIES, AND THEN TAKEN TO THE PATROL CAR WHERE  
20 THE NEIGHBORS AND MEMBERS OF THE PUBLIC COULD SEE HIM.  
21 AND THAT HURT THE DEPARTMENT'S REPUTATION. EVEN THOUGH  
22 THE ARREST WAS LATER ON DETERMINED TO BE, NOT ONLY THE  
23 TERM "UNLAWFUL," BUT INAPPROPRIATE.

24 IN SOME CASES A DEPUTY, A MEMBER COULD ACTUALLY  
25 BE INVOLVED IN SOMETHING THAT IS COMPLETELY OUTSIDE THEIR

1 CONTROL AND THE DEPARTMENT CAN DETERMINE THAT IT DAMAGED  
2 THEIR REPUTATION.

3 BY MR. AITCHISON:

4 Q OKAY. CAN YOU TURN TO PAGE 7.

5 A I'M SORRY. I WAS GOING TO TAB 7. NOT SO FAST.

6 Q NO. NOT SO FAST. WE WILL BE HERE AWHILE  
7 LONGER.

8 AT THE TOP OF PAGE 7 THERE IS A LIST OF FACTORS  
9 AS TO WHETHER DISCIPLINE IS APPROPRIATE, WHETHER ANY  
10 DISCIPLINE IS APPROPRIATE. WE HAVE A NEWCOMER TO THIS  
11 LIST "HARM TO PUBLIC TRUST."

12 DID THAT CONCERN ALADS?

13 A YES. FOR MANY OF THE SAME REASONS. WE KIND OF  
14 DISCUSSED THAT IN REPUTATION. PUBLIC TRUST, I THINK, IS  
15 SIMILAR IN CONTEXT TO REPUTATION. REPUTATION IS PROBABLY  
16 MORE BROAD, BUT SAME CATEGORY.

17 Q WHEN YOU SAY "SAME CATEGORY," DO YOU FIND "HARM  
18 TO PUBLIC TRUST," IS THAT A TERM THAT -- FIRST OF ALL, IS  
19 IT DEFINED ANYWHERE IN THE GUIDELINES?

20 A NO.

21 Q DO YOU FIND THAT TERM TO BE VAGUE OR SPECIFIC?  
22 WHERE ON THE CONTINUUM?

23 A IT IS VERY VAGUE.

24 AND ONCE AGAIN IN THE CASE WITH A -- I'M USING  
25 DEPUTIES PRIMARILY AS AN EXAMPLE. AS A DEPUTY, IT COULD

1 BE COMMANDERS WHO DETERMINE THE HARM TO THE PUBLIC TRUST,  
2 RATHER THAN THE DEPARTMENT ACTUALLY CLEARING THE PUBLIC  
3 TO SEE IF THERE IS HARM TO THE PUBLIC TRUST.

4 IT IS A VERY SUBJECTIVE EVALUATION. AND THE  
5 PROSPECTIVE OF THE PERSON THAT MAKES THAT DETERMINATION  
6 IS ACTUALLY NOT A MEMBER OF THE PUBLIC AND WOULD HAVE  
7 ACCESS TO MORE INFORMATION THAN THE PUBLIC MIGHT AROUND  
8 THE EVENT.

9 THOSE KIND OF TERMS WITHOUT VERY CLEAR RULES AND  
10 THINGS AROUND IT COULD BE VERY VAGUE, MISINTERPRETED AND  
11 MISUNDERSTOOD.

12 Q ALL RIGHT. LET'S LOOK AT SECTION G ALSO ON THAT  
13 PAGE. NOW, WE ARE GETTING INTO P.D.S.A., PREDISPOSITION  
14 SETTLEMENT AGREEMENTS.

15 HOW DO THEY WORK IN THE SHERIFF'S DEPARTMENT?

16 A THE PREDISPOSITION SETTLEMENT AGREEMENT IS WHERE  
17 A DEPUTY SHERIFF WILL ENTER INTO A REIGN PRIOR TO THE  
18 DISPOSITION OF THE CASE BEING FINALIZED.

19 Q AND WHAT HAPPENS?

20 A THE DEPUTY WOULD AGREE TO SOME LEVEL OF  
21 DISCIPLINE OR TRAINING AND THAT WOULD RESOLVE THE MATTER.

22 Q ALL RIGHT. NOW, LET'S FOCUS ON THE SECOND  
23 PARAGRAPH IN SECTION G.

24 A YES.

25 Q WHERE WE HAVE A CHANGE FROM OLD LANGUAGE THAT

1       SAYS:

2               "FOUNDED CASES WHICH ARE NOT  
3               SUITABLE FOR P.D.S.A."

4               WE HAVE A CHANGE TO NEW LANGUAGE SAYING:

5               "P.D.S.A.'S ARE NOT AUTHORIZED IN  
6               THE FOLLOWING SITUATIONS."

7               AND THEN THERE IS A LIST.

8               DID THIS CONCERN ALADS?

9               A     YES.

10              Q     WHY?

11              A     UM, AND I'M SORRY. AS YOU WERE GIVING THE  
12              QUESTION I GOT CAUGHT UP, FOR EXAMPLE, ON ITEM NUMBER II  
13              IN THE SECOND SENTENCE THAT SAYS:

14                     "CASES IN WHICH INVESTIGATIONS  
15                     REQUIRED TO ASCERTAIN ALL THE FACTS."

16                     THE -- THAT ACTUALLY ESSENTIALLY IS EVERY  
17              PREDISPOSITION CASE, BECAUSE THE INVESTIGATION, I GUESS,  
18              IS NOT COMPLETE AT THAT TIME, BECAUSE THERE HADN'T BEEN A  
19              DISPOSITION.

20                     AND SO IT GREATLY RESTRICTS THE TYPE OF CASES  
21              AND ULTIMATELY THE NUMBER OF CASES IN THIS TYPE OF  
22              SETTLEMENT AGREEMENT THAT CAN OCCUR.

23              Q     AND DOES ALADS, IN GENERAL, SUPPORT P.D.S.A.?

24              A     ALADS AND ALADS' MEMBERS UTILIZE THESE PROGRAMS.

25              Q     NOW, LOOK AT THE THIRD PARAGRAPH OF SECTION G.

1 WE HAVE A NEW REQUIREMENT THAT THE P.D.S.A. CAN ONLY BE  
2 ENTERED INTO AND SAYS:

3 "REQUIRED: CONFERRING WITH A  
4 CONSTITUTIONAL POLICING ADVISER."

5 WHO IS THAT?

6 A I BELIEVE IT MAY BE JUST ONE PERSON NOW.  
7 FORMERLY THERE WERE TWO I THINK.

8 CONSTITUTIONAL POLICING ADVISER THEY ARE  
9 EMPLOYEES OF THE SHERIFF'S DEPARTMENT. I THINK IN BOTH  
10 CASES THEY ARE ATTORNEYS THAT WORK -- I THINK -- I  
11 BELIEVE DIRECTLY FOR THE OFFICE OF THE SHERIFF AND  
12 PROVIDE ADVICE ON A NUMBER OF TOPICS.

13 Q SO THE ADDING THE C.P.A. INTO THE LIST OF  
14 INDIVIDUALS WHO HAVE TO BE CONSULTED WITH BEFORE A  
15 P.D.S.A. IS ENTERED INTO, DID THAT CONCERN ALADS?

16 A YEAH. IT CHANGES THINGS DRAMATICALLY. AND  
17 FRANKLY IT PROVIDES A CHILLING AFFECT ON UNIT-LEVEL  
18 COMMANDERS BEING ABLE TO RESOLVE THESE MATTERS AT THE  
19 LOWER LEVEL WITH THE EMPLOYEES DIRECTLY IN AN EXPEDITIOUS  
20 MANNER.

21 Q AND CAN YOU TURN TO PAGE 8. UNDER THE HEADING  
22 OF "SECTION H; WRITTEN REPRIMANDS," WE SEE OLD LANGUAGE  
23 THAT SUGGESTED THAT WRITTEN REPRIMANDS CONTAIN A LIST OF  
24 VARIOUS PIECES OF INFORMATION DOCUMENTING MISCONDUCT AND  
25 EVERYTHING LIKE THAT TO A NEW REQUIREMENT THAT THE

1 WRITTEN REPRIMAND SHALL CONTAIN THIS LIST OF INFORMATION.

2 AND DID THAT CONCERN ALADS?

3 A WELL, YEAH. THAT IS OBVIOUSLY A CHANGE, MAJOR  
4 CHANGE FROM ADVISER LANGUAGE TO A DIRECTIVE THAT ALL FIVE  
5 CATEGORIES OF INFORMATION TO BE INCLUDED IN THE WRITTEN  
6 REPRIMAND. SO THAT IS SOMETHING WE WOULD WANT TO TALK  
7 ABOUT AND UNDERSTAND PARTICULARLY IN THE ERA OF POLICE  
8 DOCUMENTATION AND THINGS LIKE THAT BEING LEAKED OR  
9 OTHERWISE LEAKED ABOUT EMPLOYEES.

10 Q DO WRITTEN REPRIMANDS FOLLOW A DEPUTY THROUGHOUT  
11 HER OR HIS CAREER?

12 A I BELIEVE SO. I'M NOT AWARE OF ANY PURGING OF  
13 DOCUMENTATION WITHING THE SHERIFF'S DEPARTMENT RELATING  
14 TO A DEPUTY.

15 Q ARE WRITTEN REPRIMANDS CONSIDERED BY THE  
16 EMPLOYER IN MAKING TRANSFER AND PROMOTION DECISIONS?

17 A THEY CAN BE.

18 Q ARE THEY POTENTIALLY DISCLOSABLE IN COURT?

19 A YES.

20 Q ALL RIGHT. LET'S TURN TO PAGE 10.

21 MR. AITCHISON: AND, MS. ROSS AND MR. WONG, I AM  
22 NOT GOING THROUGH ALL THE CHANGES HERE.

23 HEARING OFFICER ROSS: THAT IS A GOOD THING.

24 BY MR. AITCHISON:

25 Q I WANT YOU TO LOOK AT THE DELETED LANGUAGE ON

1 THE TOP OF PAGE 10 AND LOOK AT THE CHANGE LANGUAGE. I  
2 WANTED TO GIVE YOU JUST A SECOND TO READ THAT.

3 A OKAY.

4 Q DID THIS CONCERN YOU?

5 A YES.

6 Q WHY?

7 A WELL, FRANKLY, I'M NOT SURE I UNDERSTAND THE  
8 CHANGE. EVERY SINGLE TIME I READ IT I COME AWAY WITH A  
9 SLIGHTLY DIFFERENT UNDERSTANDING OF IT.

10 FIRST OF ALL, IT IS NOT CLEAR TO ME AS TO WHAT  
11 IT MEANS. BUT WHAT I TAKING AWAY FROM IT, I BELIEVE THE  
12 INTENT OF THE CHANGE IS THAT IT WILL RESULT IN EVERY  
13 CHARGE BEING LISTED ON THE DOCUMENT AS OPPOSED TO BEFORE  
14 THERE WAS AN IDEA THAT THEY WOULDN'T DO THAT. SOMETIMES  
15 WE REFER TO IT AS STACKING CHARGES AND THINGS LIKE THAT.

16 BUT IT IS NOT -- AND MAYBE IT IS JUST MY  
17 DIFFICULTY IN READING. IT IS NOT WRITTEN IN A WAY THAT I  
18 COMPLETELY UNDERSTAND WHAT IT MEANS. THAT WOULD BE  
19 SOMETHING, YOU KNOW, WE WOULD HOPE TO CLARIFY.

20 Q OKAY. LET'S LOOK AT THE BOTTOM OF PAGE 10.  
21 "MANAGEMENT'S ROLE."

22 A OKAY.

23 Q HERE WE HAVE A LIST THAT TELL US BEFORE  
24 DISCIPLINE IS CONSIDERED THE FOLLOWING POINTS SHALL BE  
25 FOLLOWED BY MANAGEMENT. AND WE GO FROM THE BOTTOM OF

1 PAGE 10 TO THE TOP OF PAGE 11. AND THE SECOND CHANGE  
2 THAT WE SEE IS THAT WHERE MANAGEMENT'S ROLE IN THE PAST  
3 WAS TO VERIFY INFORMATION. NOW IT IS TO VERIFY  
4 INFORMATION TO THE EXTENT POSSIBLE.

5 DID THAT CONCERN ALADS?

6 A YES.

7 Q WHY?

8 A WELL, MANAGEMENT IS THE PRINCIPAL AND USUALLY  
9 SOLE INVESTIGATOR OF EMPLOYEE CONDUCT OR PERFORMANCE,  
10 ECTERA.

11 AND IT IS USUALLY THE UNION'S POSITION OR THE  
12 EMPLOYEE'S POSITION THAT THEY RECEIVE THE INFORMATION  
13 WELL AFTER THE FACT. AND THEY ESSENTIALLY WORK FROM THE  
14 EMPLOYER'S DOCUMENTS.

15 IF THE EMPLOYER DOESN'T MAKE AN EFFORT TO SEEK  
16 OUT ALL THE INFORMATION AND VERIFY THAT THEY DO, WE  
17 HAVE -- WE ARE LIKELY DEALING WITH A FILE THAT IS  
18 INCOMPLETE.

19 WE HOPE THAT THE EMPLOYER WOULD ALWAYS SEEK TO  
20 VERIFY ALL INFORMATION. AND, FRANKLY, CONDUCT AN  
21 INVESTIGATION OF FACT FINDING TO THE HIGHEST POSSIBLE  
22 STANDARDS. AND A LAW ENFORCEMENT AGENCY SHOULD BE WELL  
23 EQUIPPED TO DO THAT.

24 YOU SEE LANGUAGE LIKE THAT. IT IS SIGNALING  
25 THAT THE DEPARTMENT DOESN'T WANT TO HOLD ITSELF TO HIGH

1 THE STANDARD WHEN IT COMES TO THIS. WHETHER IT BE  
2 INFORMATION THAT WOULD BE OF BENEFIT OR DETRIMENT TO THE  
3 EMPLOYEE. WE DON'T CARE. WE JUST WANT THE INVESTIGATION  
4 COMPLETE.

5 Q THE TOP OF PAGE 11 WE HAVE A CONTINUATION OF  
6 CHECKLIST THAT MANAGEMENT IS SUPPOSED TO HAVE TAKEN INTO  
7 ACCOUNT IN IMPOSING DISCIPLINE.

8 WE HAVE THE ADDITION TO THAT PHRASE AGAIN "HARM  
9 TO PUBLIC TRUST."

10 SAME CONCERNS AS BEFORE?

11 A IT IS. WHAT IT COMES DOWN TO IT WE JUST -- I  
12 WILL JUST GIVE YOU AN EXAMPLE OF DEPUTY SHERIFF'S THAT  
13 ARE INVOLVED IN EXACTLY THE SAME CONDUCT WHETHER IT IS ON  
14 OR OFF DUTY.

15 IN ONE CASE, MAYBE BECAUSE OF THE TIME OF DAY OR  
16 SOME OTHER REASON MEDIA BECOMES AWARE OF IT. AND THEN WE  
17 HAVE ANOTHER DEPUTY THAT DOES EXACTLY THE SAME THING, BUT  
18 IT IS NOT IN THE MEDIA. WE WOULD THINK THAT THE TWO  
19 ISSUES WOULD BE APPROACHED SIMILARLY BECAUSE THE CONDUCT  
20 IS IDENTICAL. BUT WHEN YOU PUT SOMETHING LIKE THAT IN  
21 THERE, IT GOES INTO THIS DEAL WHERE LIKE IT IS IN THE  
22 NEWSPAPER THEN IT IS WORSE THAN YOU THOUGHT. AND THE  
23 ORGANIZATION MAY HAVE A SENSE OF THAT AND RESPECT THAT  
24 IDEA.

25 FROM A STANDPOINT OF MODIFYING EMPLOYEE BEHAVIOR

1 OR CHANGE TO THE ORGANIZATION THAT IS NOT A GOOD WAY TO  
2 EMPHASIZE WHAT IS IMPORTANT.

3 Q PAGE 11 ALSO IN SECTION ONE OF THE GUIDELINE  
4 HERE, WHAT WE SEE IS THE ADDITION TO TWO NEW BODIES TO  
5 DISCIPLINARY PROCESS IN THE LAST SENTENCE OF THAT  
6 PARAGRAPH. SO THE MANAGER CAN MEET OUT DISCIPLINE AFTER  
7 OR WITH A CONCURRENCE OF THE MANAGER'S DIVISION CHIEF.

8 AND THEN THERE IS LANGUAGE -- I CAN READ IT BOTH  
9 WAYS. EITHER REQUIRES THE BUYOFF FROM A CONSTITUTIONAL  
10 POLICING ADVISER AND THE CASE REVIEW PANEL OR AT LEAST  
11 REQUIRES THEIR INPUT. I THINK LANGUAGE COULD FAIRLY BE  
12 READ ANYWAY.

13 DID THE EDITION OF THESE TWO NEW BODIES INTO  
14 THIS PROCESS CONCERN ALADS?

15 A YES.

16 Q WHY?

17 A WELL, ONE OF THE ISSUES THAT WE ARE FACING WITH  
18 DISCIPLINE IN THE SHERIFF'S DEPARTMENT THAT WE MAY HAVE  
19 MENTIONED EARLIER, WE ARE TRYING TO FIGURE OUT WHO THE  
20 DECISION MAKER IS FOR THE DISCIPLINE. SO THAT IN AN  
21 EFFORT TO MITIGATE DISCIPLINE, WE CAN PRESENT THE CASE OR  
22 PROVIDE MITIGATING INFORMATION TO THE DECISION MAKER.

23 EVERY SINGLE TIME YOU ADD A COMMITTEE OR BODY TO  
24 THAT IT MAKES THE DUE PROCESS CONSIDERATION THAT MUCH  
25 MORE CHALLENGING. THAT IS WHAT I SEE THERE.

1 Q LET'S TURN TO PAGE 12 AND LET'S TALK FOR A BIT  
2 ABOUT EDUCATION BASED DISCIPLINE.

3 A UH-HUH.

4 Q WHAT IS THIS? WHAT IS E.B.D.?

5 A GENERAL SPEAKING E.B.D. IS WHERE THE DEPARTMENT  
6 HAS A RECOGNIZED PROGRAM WHERE IT SUBSTITUTES SOME AMOUNT  
7 OF PUNISHMENT FOR EDUCATION. WHAT THEY REFER TO IS  
8 EDUCATION BASED DISCIPLINE. THAT WOULD GENERALLY BE LIKE  
9 A CLASS FOR EXAMPLE.

10 Q JUST GIVE US AN EXAMPLE OF HOW MIGHT THIS WORK.

11 A YEAH. SO IN VERY BROAD GENERAL TERMS IT WOULD  
12 BE SAY WE HAD A DEPUTY SHERIFF THAT WAS INVOLVED IN  
13 SOMETHING -- I'M TRYING TO -- CARS ARE UNIQUE. I WILL  
14 JUST USE A VEHICLE FOR EXAMPLE. THEY WERE INVOLVED IN AN  
15 ISSUE WITH THEIR VEHICLE. RATHER THAN RECEIVING A  
16 TWO-DAY SUSPENSION THEY WOULD RECEIVE ONE DAY OF  
17 SUSPENSION AND ONE DAY OF TRAINING OR EDUCATION BASED  
18 DISCIPLINE OR POTENTIALLY NO SUSPENSION AND TWO DAYS OF  
19 TRAINING. AND THE PROGRAM KIND OF GROWS FROM THERE.

20 Q AND IN ALADS' JUDGMENT IS E.B.D. A POSITIVE  
21 THING TO HAVE AS AN ALTERNATIVE?

22 A YES. THE DEPUTIES EMBRACE IT.

23 Q YOU HAD THE OPPORTUNITY TO REVIEW THE CHANGES IN  
24 THE GUIDELINE TO THE E.B.D. SYSTEM.

25 A YES.

1 Q I WOULD LIKE YOU TO FOCUS ON THE FOURTH  
2 PARAGRAPH OF SECTION A. THE ONE THAT STARTS:

3 "E.B.D. IS AN OPTION --"

4 WHERE WE APPEAR TO SEE A CHANGE THAT LIMITS  
5 E.B.D. TO SUSPENSIONS OF TEN DAYS OR LESS.

6 IS THAT A CHANGE FROM THE PRIOR PRACTICE?

7 A YES.

8 Q HOW SO?

9 A UM, I BELIEVE THE E.B.D. WAS AVAILABLE FOR  
10 PEOPLE UP TO 15-DAYS SUSPENSION.

11 Q SO THIS WOULD LIMIT THE ABILITY OF E.B.D.'S --  
12 IT WOULD REDUCE THE TYPES OF CIRCUMSTANCES THAT --

13 A YES. JUST NUMERICALLY IT REDUCES IT BY A THIRD.

14 Q DID THAT CONCERN ALADS?

15 A YES.

16 Q WHY?

17 A WELL, E.B.D. ALLOWS THE DEPUTY TO ACCEPT  
18 RESPONSIBILITY FOR SETTLEMENT OF THE DISCIPLINE. OF  
19 COURSE, WE ARE INTERESTED IN TRAINING. THEREFORE, THAT  
20 IS GOOD TO MODIFY BEHAVIOR AND IMPROVE FURTHER  
21 PERFORMANCE.

22 IT LESSENS THE DEPUTY'S IMPACT AS FAR AS THE  
23 PUNISHMENT, THE NUMBER OF DAYS OFF, THE PROPERTY LOSS  
24 ASSOCIATED WITH THAT.

25 FOR THOSE REASONS, IT IS AN IMPORTANT ASPECT OF

1 THE DISCIPLINE PROCESS AND PROCEDURE WITHIN THE  
2 DEPARTMENT.

3 Q NOW, LET'S LOOK JUST BELOW THAT IN THE SAME  
4 PARAGRAPH. WHERE WE SEE LANGUAGE THAT SAYS:

5 "WHETHER OR NOT E.B.D. IS UTILIZED,  
6 ALL DISCIPLINE IS DOCUMENTED."

7 AND IN THE NEW LANGUAGE:

8 "BY RECORDING THE ORIGINAL INTENDED  
9 NUMBER OF SUSPENSION DAYS FOR PURPOSES  
10 OF FUTURE PROGRESSIVE DISCIPLINE."

11 DID THAT CONCERN ALADS?

12 A YES.

13 Q WHY?

14 A WELL, THE INTENDED NUMBER OF DAYS OF DISCIPLINE  
15 THAT IS FIRST INCLUDED IN THE DOCUMENT SHOULD NOT BE USED  
16 FOR PROGRESSIVE DISCIPLINE. THE ULTIMATE RESULT OF  
17 DISCIPLINE SHOULD BE USED FOR PROGRESSIVE DISCIPLINE.  
18 FROM A DUE PROCESS STANDPOINT THAT DOESN'T HOLD. IT IS  
19 ALSO A MAJOR CHANGE.

20 Q ALL RIGHT. NOW, LOOK AT THE TOP OF PAGE 13. WE  
21 ARE STILL IN E.B.D. AT THE TOP OF 13 PARAGRAPH, AND IN  
22 THE THIRD PARAGRAPH, SECOND FULL PARAGRAPH ON THE PAGE,  
23 WE SEE LANGUAGE THAT USED TO READ:

24 "THE UNIT COMMANDER SHALL OFFER  
25 E.B.D. TO EMPLOYEES THROUGH THE E.B.D.

1 PROPOSAL."

2 INSTEAD IT SAYS "MAY."

3 DID THAT CONCERN ALADS?

4 A YEAH. THAT IS A MAJOR CHANGE. THE PRIOR POLICY  
5 PROMULGATED THAT E.B.D. IS TO BE OFFERED TO EMPLOYEES.  
6 IT IS ALSO ON PAGE 14, ET CETERA. NOW IT IS SUBJECTIVE  
7 APPARENTLY TO THE UNIT COMMANDER.

8 Q LOOK AT THE LAST SENTENCE. THE NEW SENTENCE IN  
9 THAT PARAGRAPH:

10 "E.B.T. SHALL NOT BE OFFERED FOR  
11 SECOND AND SUBSEQUENT VIOLATIONS OF  
12 MANUAL SECTIONS FOR WHICH THE EMPLOYEE  
13 HAS PREVIOUSLY RECEIVED E.B.D."

14 CONCERNED ABOUT THAT FROM ALADS' STANDPOINT?

15 A YEAH. THAT IS A MAJOR CHANGE. I THINK IT IS  
16 IMPORTANT TO NOTE THAT EVEN WITH E.B.D. THERE CAN BE A  
17 PROFIT OR LOSS PUNISHMENT STILL ASSOCIATED WITH FIRST AND  
18 SECOND OR ANY SUBSEQUENT OFFENSE.

19 WHAT THIS DOES IS IT COMPLETELY LIMITS THE  
20 OPPORTUNITY OR A TRAINING COMPONENT OF A SECOND OFFENSE.

21 Q IN YOUR UNDERSTANDING OF THIS CHANGE, WOULD THIS  
22 MEAN, FOR EXAMPLE, THAT A DEPUTY THAT RECEIVED E.B.D. 10  
23 YEARS AGO IN AN ISSUE, WOULD NOT BE ELIGIBLE FOR E.B.D.  
24 IF THEY COMMITTED A SIMILAR TYPE OF OFFENSE TEN YEARS  
25 LATER, EVEN THOUGH THE TRAINING HAD COMPLETELY CHANGED OR

1 BEEN UPDATED?

2 A I DON'T SEE WHY THAT WOULD BE THE CASE. I'M NOT  
3 AWARE THAT THE SHERIFF'S DEPARTMENT IS USING ANY PURGING  
4 WHEN IT COMES TO DISCIPLINE.

5 Q OKAY. LET'S TURN TO PAGE 15 NOW.

6 A I AM SORRY. WHAT PAGE?

7 Q YEAH. YOU GOT IT.

8 A OKAY.

9 Q DOES THIS TABLE, THE CHANGES REFLECTED IN THIS  
10 TABLE, DOES THIS CONTAIN THE TWO CHANGES, THE TWO  
11 REDUCTIONS IN THE AVAILABILITY OF E.B.D. THAT WE HAVE  
12 DISCUSSED ELIMINATING ONLY TO SUSPENSIONS UP TO TEN DAYS  
13 AND PROHIBITING IT FOR SECOND AND THIRD VIOLATIONS?

14 IS THAT WHAT IS REFLECTED IN THIS TABLE?

15 A YES.

16 Q NOW, LET'S LOOK ALSO ON PAGE 15.

17 DO YOU SEE AN ENTIRE SECTION DELETED IN THE  
18 MIDDLE CONCERNING THE EMPLOYER GIVING THE EMPLOYEE A  
19 LETTER OF INTENT? A LETTER OF INTENT BEING THIS SORT OF  
20 DISCIPLINE I'M THINKING OF IMPOSING BEFORE ENTERING INTO  
21 THE E.B.D. PROCESS.

22 DID THE DELETION OF THIS LANGUAGE CONCERN ALADS?

23 A YES, IT DID.

24 Q WHY?

25 A WELL, THE BULLET THAT STRUCK OUT WHERE THE

1 DEPARTMENT IS REQUIRING COMMANDERS TO ENSURE YET THAT THE  
2 EMPLOYEE HAS RIGHT TO FILE A GRIEVANCE IF THEY CHOOSE.

3 AND ITEM NUMBER TWO: THE INFORMATION MENTIONED  
4 TO THE EMPLOYEE TO CONSIDER THIS EXISTS -- DISCUSSING IT  
5 WITH HIS OR HER REPRESENTATIVE IF HE OR SHE CHOOSES TO.  
6 THAT IS A CHANGE IN PROCESS.

7 Q ALL RIGHT. I'M GOING TO SKIP THE REST OF THE  
8 E.B.D. LANGUAGE. IT GOES ON ANOTHER EIGHT PAGES OF  
9 CHANGES. WE WILL ADDRESS THOSE LATER.

10 NOW, INSTEAD I WANT TO FOCUS YOU ON SECTION FOUR  
11 OF THE GUIDELINE?

12 A PAGE?

13 Q I'M SORRY. PAGE 24.

14 A OH, OKAY.

15 Q I WANT TO FOCUS YOU ON SECTION A, THE  
16 INTRODUCTION TO SECTION A.

17 A YES.

18 Q YOU WILL SEE THE LANGUAGE CHANGE HERE. IN THE  
19 PAST THE LANGUAGE SAID:

20 "ALL VIOLATIONS OF POLICY RELATE TO  
21 ONE OR MORE OF THESE SIX BEHAVIORAL  
22 DESCRIPTIONS."

23 AND THEN THERE IS A LIST OF THEM. PROBLEM  
24 SOLVING SKILLS AND THAT SORT OF STUFF.

25 THE NEW LANGUAGE SAYS:

1 "ALL VIOLATIONS OF POLICY RELATE TO  
2 ONE OR MORE OF THESE CATEGORIES OF  
3 BEHAVIORAL REMEDIES."

4 DO YOU UNDERSTAND THAT?

5 A NO.

6 Q AND IS THAT OF CONCERN TO ALADS WHEN THESE  
7 DISCIPLINARY RULES HAVE POTENTIALLY MULTIPLE  
8 INTERPRETATIONS?

9 A YES.

10 Q WHY?

11 A WELL, IT DOESN'T SEND A CLEAR COMMUNICATION TO  
12 THE EMPLOYEES THAT THE POLICY IS DIRECTED TO CHANGE --  
13 THEORETICALLY CHANGE BEHAVIOR.

14 AND THEN IT ALSO DOESN'T PROVIDE A CLEAR MESSAGE  
15 TO SUPERVISORS AND OTHER MEMBERS OF THE CHANGE OF COMMAND  
16 TO THEN ENFORCE THE POLICY AND REGULATION.

17 AND, OF COURSE, THERE IS DOWNSTREAM EFFECTS WHEN  
18 YOU GO INTO A DUE PROCESS SETTING IF THE LANGUAGE IS -- I  
19 THINK IN THIS CASE, I THINK THERE ARE JUST MISTAKES  
20 THERE, RIGHT. YOU DON'T WANT THAT.

21 Q ALL RIGHT. NOW, I WANT TO FOCUS ON SOMETHING WE  
22 ARE GOING TO SPEND A BIT OF TIME ON.

23 A UH-HUH.

24 Q BOTTOM OF PAGE 24 YOU SEE E.B.D. AND PROGRESSIVE  
25 DISCIPLINE. THIS HARKENS BACK TO THE E.D.B SYSTEM.

1                   AND STATES THAT E.B.D. CAN ONLY BE OFFERED, ONLY  
2 APPLIES TO LEVEL I AND LEVEL II VIOLATIONS.

3                   DO YOU SEE THAT LANGUAGE?

4           A        I DO.

5           Q        LET'S KIND OF PUT A PLACEHOLDER THERE AND TURN  
6 TO PAGE 42.

7           A        OKAY.

8           Q        THIS IS ALL NEW. THIS CONCEPT OF LEVELS OF  
9 DISCIPLINE, DID LEVELS OF DISCIPLINE EXISTS IN THE  
10 DEPARTMENT'S DISCIPLINARY GUIDE? THAT PHRASE OR THAT  
11 CONCEPT LIKE IT, DID IT EXIST BEFORE THESE CHANGES?

12          A        NOT THAT I'M AWARE OF.

13          Q        ALL RIGHT. WALK US THROUGH WHAT THESE CHANGES  
14 ARE.

15          A        WELL, ON PAGE 42, THE DEPARTMENT HAS OUTLINED  
16 LEVELS OF DISCIPLINE ONE THROUGH FIVE, AND THEN ATTEMPTED  
17 TO, I GUESS, CATEGORIZE CONDUCT WITHIN THESE BANDS.

18          Q        THE BANDS HAVE, IF WE LOOK AT THE PARENTHESES  
19 AFTER THE FIRST FOUR LEVELS, I, II, AND III AND IV, THE  
20 BANDS HAVE SUSPENSION RANGES, CORRECT?

21          A        RIGHT. RIGHT.

22          Q        SO IF I UNDERSTAND WHAT THE DEPARTMENT IS DOING  
23 HERE, PUTTING TOGETHER THE E.B.D.'S AND THE NEW LEVELS  
24 PIECE --

25          A        YES.

1 Q -- IS IT ACCURATE TO SAY THAT THE DEPARTMENT IS  
2 LIMITING E.B.D. ONLY TO LEVELS I AND II?

3 A YES.

4 Q AND LOOKING AT THE DESCRIPTION, FOR EXAMPLE OF  
5 LEVEL III, SOMETHING WHERE E.B.D. WOULD NOT BE ALLOWED  
6 ANYMORE.

7 THE DESCRIPTION GIVEN BY THE DEPARTMENT OF THE  
8 CONDUCT THAT WOULD GET YOU IN LEVEL III IS CONDUCT WHICH  
9 WAS NEGLIGENT AND THEN A WHOLE BUNCH OF "AND/ORS."

10 A UH-HUH.

11 Q SO THAT TELL US THAT NEGLIGENT CONDUCT IS  
12 LEVEL III CONDUCT.

13 WAS E.B.D. AVAILABLE FOR NEGLIGENT CONDUCT  
14 BEFORE THESE CHANGES?

15 A YES.

16 Q AND THIS WOULD MAKE IT, IF I UNDERSTAND THIS,  
17 OFF-LIMITS, RIGHT?

18 A YES.

19 Q ALL RIGHT. NOW, WE ARE GOING TO POP AROUND HERE  
20 A LITTLE BIT. I WANTED TO WARN EVERYBODY THAT THIS IS A  
21 VERY COMPLICATED DOCUMENT. LET'S GO TO PAGE 27.

22 WE NOW HAVE THIS NEW CONCEPT OF LEVELS OF  
23 DISCIPLINE. AND I WANT TO SEE HOW THIS PLAYS OUT. SO  
24 HERE WE HAVE THE DISCIPLINE AND EDUCATION GUIDELINE.

25 IS THAT WHAT WE REFER TO AS THE BAIL SCHEDULE?

1 A YES.

2 Q AND, FIRST OF ALL, ON THE BAIL SCHEDULE, DO YOU  
3 SEE ANY INDICATION OF THE INCORPORATION OF LEVELS OF  
4 DISCIPLINE, THIS NEW CONCEPT?

5 A I DO NOT SEE A REFERENCE TO THAT.

6 Q OKAY. AND LET'S LOOK AT THE FIRST ITEM ON THIS  
7 LIST. "VIOLATING THE DEPARTMENT'S CORE VALUES."

8 WHAT ARE THE DEPARTMENT'S CORE VALUES?

9 A THE DEPARTMENT HAS ADOPTED -- WELL, THERE ARE  
10 CORE VALUES THAT THEY ADOPTED. KIND OF INSPIRATIONAL  
11 MESSAGES TO THE EMPLOYEES THAT YOU FREQUENTLY SEE. I  
12 SOMETIMES JOKE THAT IT IS SOMETIMES LIKE THOSE POSTERS  
13 YOU SEE IN THE OFFICE OR THINGS LIKE THAT. I DON'T MEAN  
14 TO DEMEAN THE CONCEPT OF PROMOTING CORE VALUES. IT IS  
15 NOT UNCOMMON TO SEE THINGS LIKE THAT.

16 Q AND IF WE LOOK AT THE DISCIPLINARY RANGE HERE  
17 "WRITTEN REPRIMAND TO DISCHARGE."

18 A RIGHT.

19 Q AND LET'S GO BACK TO PAGE 42.

20 A OKAY.

21 Q SO KEEPING IN MIND THE VIOLATION OF CORE VALUES  
22 GETS YOU ANYTHING FROM A WRITTEN REPRIMAND TO A  
23 DISCHARGE, WOULD THAT MAKE CORE VALUES VIOLATIONS A  
24 LEVEL I OFFENSE?

25 A NO.

1 Q WHY NOT IF CAN YOU GET A WRITTEN REPRIMAND?

2 A BECAUSE YOU COULD ALSO BE TERMINATED.

3 Q WHAT ABOUT LEVEL II?

4 A SAME PROBLEM.

5 Q ALL THE WAY --

6 CAN WE TELL FROM THE DOCUMENTS THAT THE  
7 DEPARTMENT PROVIDED YOU -- WHICH LEVEL OF DISCIPLINE  
8 WOULD BE APPROPRIATE FOR A CORE VALUES VIOLATION?

9 A NOT BASED ON THE LEVEL OF DISCIPLINE GUIDELINE  
10 ON 42.

11 Q IS THERE ANY DESCRIPTION AS TO WHERE YOU HAVE AN  
12 OFFENSE -- LET'S TAKE CORE VALUES. I KNOW THIS OCCURS  
13 WITH OTHER OFFENSES IN THE BAIL SCHEDULE.

14 A RIGHT.

15 Q I'M JUST USING CORE VALUES AS AN EXAMPLE.

16 WHERE YOU HAVE AN OFFENSE WHERE THE PUNISHMENT  
17 RANGE COULD PUT YOU IN MULTIPLE LEVELS OF DISCIPLINE, IS  
18 THERE ANY DESCRIPTION OF WHAT MOVES THE CASE FROM SAY  
19 LEVEL I TO NOW THEY ARE IN LEVEL IV?

20 IS THERE ANY DESCRIPTION OF THAT NEW LANGUAGE?

21 A I DID NOT SEE ANYTHING LIKE THAT.

22 Q ALL RIGHT. NOW, LET'S GO BACK TO PAGE 25. WE  
23 WILL BE COMING BACK TO THE BAIL SCHEDULE AND THE LEVEL OF  
24 DISCIPLINE IN JUST A MOMENT. I WANT TO GET SPECIFIC ON A  
25 COUPLE OF ISSUES.

1 SO PAGE 25 HAS A SECTION ON "CORRECTIVE ACTION  
2 FOR PREVENTABLE MOTOR VEHICLE ACCIDENTS." AND I WANT YOU  
3 TO LOOK AT THE THIRD PARAGRAPH IN SECTION D. THERE IS A  
4 POINT SYSTEM THAT THE DEPARTMENT USES. YOU GET ONE POINT  
5 FOR A LEVEL I COLLISION AND II POINTS FOR A LEVEL II  
6 COLLISION. YOU SEE THAT IMMEDIATELY ABOVE WE SAW NO  
7 LANGUAGE.

8 WHEREIN THE PAST THE POINTS CAN LEAD TO AN  
9 EMPLOYEE BEING ASSIGNED TO A NON DRIVING ASSIGNMENT. THE  
10 NEW LANGUAGE SAYS:

11 "THE POINTS AS WELL AS THE CULMINATE  
12 TOTAL OF COLLISIONS AND/OR VEHICLE  
13 INCIDENTS CAN LEAD TO A NON DRIVING  
14 ASSIGNMENT."

15 DID THAT CONCERN ALADS?

16 A YEAH. THAT IS A CHANGE IN THE CALCULATIONS, SO  
17 TO SPEAK, THAT THE DEPARTMENT REVIEWS TO MAKE THOSE  
18 DETERMINATIONS AS FAR AS NON DRIVING ASSIGNMENTS.

19 Q COULD A NON DRIVING ASSIGNMENT HAVE A  
20 SIGNIFICANT IMPACT ON THE WORK LIFE OF A DEPUTY?

21 A YES.

22 Q HOW SO?

23 A WELL, FIRST OF ALL, IT COULD RESULT IN A  
24 GEOGRAPHIC ASSIGNMENT. I'LL REFER TO A HOME STATION. SO  
25 IF A DEPUTY SHERIFF LIVES UP IN PALMDALE, LANCASTER AND

1 IS A PATROL DEPUTY AND IS ASSIGNED TO A NON DRIVING  
2 ASSIGNMENT SOMEWHERE DONE THE CITY CORE THAT IS OBVIOUSLY  
3 A MAJOR CHANGE.

4 THE CHANGE IN WORKING CONDITIONS BECAUSE THEY  
5 COULD BE WORKING, FOR EXAMPLE, THE JAIL. IT ALSO CHANGES  
6 THE COMMUTE. IT COULD CHANGE THE SCHEDULE. COULD CHANGE  
7 A LOT OF ASPECTS TO THE DEPUTY'S LIFE. IT COULD IMPACT  
8 OVERTIME OPPORTUNITIES, ET CETERA.

9 Q AND I NOTICE IN THIS NEW LANGUAGE, IN THE THIRD  
10 PARAGRAPH OF SECTION B, I NOTICE A NEW PHRASE. WHEREIN  
11 THE PAST THE POLICY USED THE WORDS OR WORD "COLLISION."  
12 AND NOW IT IS USING THE PHRASE "COLLISIONS AND/OR VEHICLE  
13 INCIDENTS."

14 A RIGHT.

15 Q DOES THE DEPARTMENT DEFINE WHAT A VEHICLE  
16 INCIDENT IS IN THIS POLICY?

17 A NO. I DON'T BELIEVE -- I DON'T BELIEVE SO.

18 Q DOES THAT PHRASE HAVE A COMMON MEANING IN LAW  
19 ENFORCEMENT "A VEHICLE INCIDENT"?

20 A I WOULDN'T SAY A COMMON. I'M NOT ACTUALLY SURE  
21 WHAT A VEHICLE INCIDENT IS FROM THAT STANDPOINT. I CAN  
22 GUESS, BUT I DON'T KNOW.

23 Q NOW, WE ARE ABOUT TO MOVE INTO THE BAIL SCHEDULE  
24 ITSELF, BUT BEFORE WE DO, LET'S LOOK AT THE INTRODUCTION  
25 TO THE BAIL SCHEDULE. AND THAT IS IN SUBSECTION E ON THE

1 SAME PAGE, ON PAGE 25.

2 YOU'LL SEE AN INTRODUCTION, A TWO-PARAGRAPH  
3 INTRODUCTION. LAST PARAGRAPH ON PAGE 25 INTRODUCES THIS  
4 CONCEPT OF LEVEL OF DISCIPLINE. AND APPLIES THEM TO THE  
5 BAIL SCHEDULE. ON THE FOLLOWING PAGE YOU'LL SEE A  
6 SPECIAL NOTE THAT THE DEPARTMENT HAS APPENDED.

7 WAS ALADS CONCERNED WITH THIS NEW LANGUAGE THAT  
8 WE SEE ON PAGE 25 AND 26?

9 A YES.

10 Q WHY?

11 A IT IS NOT -- THE LANGUAGE IS NOT PRECISE ENOUGH  
12 FOR ME TO UNDERSTAND CLEARLY. BUT I BELIEVE WHAT IT IS  
13 DOING IS REFERRING TO THE DISCIPLINE LEVELS AND THEN  
14 WITHIN THE STANDARD RANGE AND THEN TALKING ABOUT  
15 AGGRATING AND MITIGATING FACTORS.

16 Q ALL RIGHT. WHEN WE LOOK AT PAGE, 26 THE SPECIAL  
17 NOTE, WE ACTUALLY SEE THE WORDS "AGGRAVATING" AND  
18 "MITIGATING FACTORS" WRITTEN OUT THERE.

19 A I'M SORRY. WHICH PAGE ARE YOU ON?

20 Q PAGE 26.

21 A YES.

22 Q DID THE DEPARTMENT DEFINE THOSE? WHAT ARE  
23 AGGRAVATING AND WHAT ARE MITIGATING FACTORS?

24 A NO.

25 Q AND DID THAT CONCERN ALADS?

1 A YES.

2 Q WHY.

3 A WELL, I MEAN, FROM OUR KIND OF WORK WHERE WE ARE  
4 GOING TO ATTEMPT TO UNDERSTAND THE DISCIPLINE AND  
5 MITIGATE IT WE WOULD WANT TO KNOW WHAT THE STANDARDS ARE  
6 USED SO WE KNOW INFORMATION IS USED FOR DUE PROCESS.

7 FROM AN ORGANIZATIONAL STANDPOINT, THOSE MEMBERS  
8 WHO ARE IMPACTED BY THE POLICY SHOULD KNOW PRECISELY WHAT  
9 THAT IS SO YOU CAN HOLD THEM ACCOUNTABLE TO KNOW WHAT THE  
10 STANDARDS ARE. THEY NEED TO BE CLEAR WHAT THAT IS.

11 OF COURSE, ONCE AGAIN, GOING TO THOSE  
12 SUPERVISORS AND COMMANDERS WHO ARE ACTUALLY --  
13 ESSENTIALLY, ADJUDICATE THE POLICY, THE DISCIPLINE  
14 THROUGH THE POLICY, THEY WOULD NEED TO KNOW.

15 Q NOW, BACK TO PAGE 25 AND THE FIRST PARAGRAPH OF  
16 SECTION EIGHT THERE IS NEW LANGUAGE THAT READS:

17 "THE FOLLOWING CAUSES FOR  
18 DISCIPLINARY ACTION FOLLOWING LISTS OF  
19 CAUSES IS REPRESENTATIVE ONLY AND NOT  
20 ALL INCLUSIVE."

21 DID THAT PHRASE CONCERN ALADS?

22 A YEAH. WHAT IT IS DOING IS IT IS JUST CREATING  
23 AN UNLIMITED UNIVERSE, I ASSUME, OF POSSIBILITY OF  
24 DISCIPLINE WITHOUT EXPLANATION. IT IS NOT PRECISE ENOUGH  
25 TO PROVIDE INSTRUCTION TO OUR MEMBERS OR TO OUR

1 DEPARTMENT AS A WHOLE.

2 Q CAN A DISCIPLINARY CODE LIST EVERY POSSIBLE  
3 OFFENSE AN EMPLOYEE CAN COMMIT?

4 A NO.

5 Q SHOULD IT, IN YOUR JUDGMENT, ASPIRE TO LIST AS  
6 MANY AS POSSIBLE?

7 A YES.

8 Q WHY?

9 A SO THAT THE STANDARDS ARE CLEAR.

10 AND, ONCE AGAIN, THE COMMUNICATION NEEDS TO BE  
11 THREE WAYS, TO THE EMPLOYEE, TO THE SUPERVISOR AND THE  
12 FOLKS INVOLVED IN THE DUE PROCESS.

13 Q ALL RIGHT. NOW, THE LAST PARAGRAPH ON PAGE 25  
14 REFERS US TO THE LEVEL OF DISCIPLINE, SO LET'S REVISIT  
15 THOSE. THEY ARE ON PAGE 42.

16 A RIGHT.

17 Q AND IF I UNDERSTAND THE WAY YOU DESCRIBE THIS IS  
18 THESE LEVELS OF DISCIPLINE SHOW US DISCIPLINE IN  
19 INCREASING SEVERITY. LEVEL II IS GOING TO BE HIGHER THAN  
20 LEVEL I AND VIS A VERSA.

21 A YES.

22 Q AND WE SEE RANGES FOR EACH ONE OF THEM. SO FOR  
23 EXAMPLE, LEVEL I IS WRITTEN REPRIMAND TO FIVE DAYS.

24 A YES.

25 Q AND LEVEL II, IF I SEE IT RIGHT, IS SIX TO TEN

1 DAYS.

2 A YES.

3 Q ALL RIGHT. NOW, TURN THE PAGE.

4 A OKAY.

5 Q IS THIS A TABLE THAT THE DEPARTMENT PREPARED  
6 THAT CAPTURED THOSE RANGES, SO LEVEL I WRITTEN REPRIMAND  
7 TO FIVE DAYS, ET CETERA?

8 A YES. YES.

9 Q ALL RIGHT. AND WE SEE THREE COLUMNS ON THAT  
10 TABLE.

11 WHAT IS YOUR UNDERSTANDING OF THOSE COLUMNS?

12 A THAT WITHIN -- I'LL JUST PICK DISCIPLINE  
13 LEVEL II, FOR EXAMPLE, THAT THE PRESUMPTIVE PENALTY WOULD  
14 BE A EIGHT-DAY SUSPENSION. AND IF THERE WERE AGGRAVATING  
15 FACTORS IT COULD GO TO TEN. AND IF THERE WAS MITIGATING  
16 FACTORS IT COULD TO SIX OR WOULD BE SIX I GUESS.

17 Q DID THIS NOTION OF A PRESUMPTIVE PENALTY EXIST  
18 BEFORE THESE CHANGES TO THE GUIDELINE?

19 A NO. BECAUSE THEY DIDN'T HAVE THESE LEVELS.  
20 THEY HAD THE BAIL SCHEDULE, BUT THEY DIDN'T HAVE IT LIKE  
21 THIS.

22 Q ARE THERE DIFFICULTIES, JUST PROCEDURAL  
23 DIFFICULTY WITH HOW THE CHANGES -- EXCUSE ME -- HOW THESE  
24 DISCIPLINARY LEVELS INTEGRATE WITH AND ARE CONSISTENT OR  
25 CONFLICT WITH THE BAIL SCHEDULE?

1 A YES.

2 Q OKAY. AND LET'S --

3 A DIFFICULTIES.

4 Q LET'S WALK THROUGH THESE. LET'S JUST WALK

5 THROUGH AN EXAMPLE OR TWO.

6 A OKAY.

7 Q JUST GO BACK ONE PAGE. GO BACK TO PAGE 41.

8 A ALL RIGHT.

9 Q LET'S LOOK AT THE END OF THE BAIL SCHEDULE.

10 OKAY.

11 A OKAY.

12 Q ARE YOU WITH ME ON PAGE 41?

13 A I AM.

14 Q AND LOOK AT THE FIRST ENTRY ON PAGE 41. WE CAN

15 BE PICKING ANY NUMBER OF ENTRIES HERE.

16 A YES.

17 Q DO YOU SEE THAT?

18 A YES.

19 Q DO YOU SEE THE PENALTY LEVEL OVER THERE?

20 A YES.

21 Q AND IS ONE TO 15 DAYS?

22 A YES.

23 Q NOW, TURN THE PAGE TO PAGE 42.

24 A OKAY.

25 Q WHAT LEVEL WOULD THAT BE UNDER THE LEVELS OF

1 DISCIPLINE, A ONE TO 15 DAY SUSPENSION?

2 A WELL, IT WOULD FIT INTO LEVELS I, II AND III.  
3 AND IS NOT A LEVEL I, BECAUSE IT DOESN'T SAY A WRITTEN  
4 REPRIMAND AVAILABLE, SO IT IS NOT TECHNICALLY A LEVEL I.

5 Q IS IT CLEAR WHETHER IT WOULD BE LEVEL I, II OR  
6 III?

7 A NO.

8 Q DOES THAT LACK OF A CORRELATION BETWEEN THE BAIL  
9 SCHEDULE AND THE LEVEL OF DISCIPLINE POSE A PROBLEM FOR  
10 ALADS?

11 A YES.

12 Q WHY.

13 A IT IS JUST NOT CLEAR. ONCE AGAIN, I GO BACK TO  
14 THE COMMUNICATIONS ASPECT. IT IS NOT CLEAR FOR THE  
15 USERS, FOR THE SUBJECTS AND FOR THE PEOPLE INVOLVED IN  
16 THE PROCESS. THAT IS SOMETHING THAT NEEDS TO BE  
17 CLARIFIED.

18 Q IS IT TROUBLESOME THAT AN OFFENSE LISTED IN A  
19 BAIL SCHEDULE COULD SUBJECT A DEPUTY TO THREE DIFFERENT  
20 LEVELS OF PUNISHMENT RANGES? IS THAT TROUBLING TO ALADS?

21 A YES. IT IS TROUBLING AND FRANKLY CONFUSING.

22 Q ALL RIGHT. LET'S LOOK AT PAGE 41. WHILE WE ARE  
23 JUST LOOKING AT PAGE 41, LET'S LOOK AT THE ENTRY FOR  
24 "VEHICLE OPERATION AND TACTIC." IT IS THE LAST ENTRY ON  
25 PAGE 41.

1 A RIGHT.

2 Q AND YOU SEE THE PUNISHMENT RANGE THERE?

3 A YES.

4 Q WRITTEN REPRIMAND TO THREE DAYS?

5 A YES.

6 Q OKAY. NOW, LET'S GO TO PAGE 42.

7 WHERE WOULD THAT BE ON THE LEVEL OF DISCIPLINE?

8 A IT WOULD BE ON THE BOTTOM HALF OF LEVEL I, I  
9 PRESUME.

10 Q BUT WHEN WE LOOK AT THE TABLE THAT IS ON  
11 PAGE 43, WE SEE THE PRESUMPTIVE DISCIPLINE FOR A LEVEL I  
12 VIOLATION IS WHAT?

13 A THREE-DAY SUSPENSION.

14 Q SO IF I UNDERSTAND THIS, THE PRESUMPTIVE  
15 PENALTY, WITHOUT CONSIDERING MITIGATION OR AGGRAVATION,  
16 THE PRESUMPTIVE PENALTY FOR THIS OFFENSE IS A THREE-DAY  
17 SUSPENSION, WHICH IS AT THE TOP OF THE RANGE THAT IS  
18 CONTAINED IN THE BAIL SCHEDULE ITSELF?

19 A YES.

20 Q SO EVEN --

21 HEARING OFFICER ROSS: CAN WE STOP FOR A SECOND?

22 MR. AITCHISON: YEAH.

23 HEARING OFFICER ROSS: FIRST OF ALL, WOULD YOU  
24 EXPLAIN TO ME WHAT FAILURE TO CLEAR AN INTERSECTION LANE  
25 BY LANE IS?

1 THE WITNESS: YES. I'M NOT A DEPUTY SHERIFF. I  
2 WILL GIVE YOU MY BEST DESCRIPTION. I THINK I AM PROBABLY  
3 99 PERCENT OF THE WAY THERE.

4 WHEN YOU ARE GOING THROUGH AN INTERSECTION  
5 AGAINST THE PATROL SIGNAL OR SOME OTHER TRAFFIC CONTROL  
6 DEVICE, IT IS THE RESPONSIBILITY OF THE POLICE VEHICLE  
7 OPERATOR TO ADVANCE LANE BY LANE, OPPOSED TO ALL THE WAY  
8 THROUGH.

9 HEARING OFFICER ROSS: OKAY. AND I'M SURE THEY  
10 WILL CORRECT THAT IF THAT IS NOT ACCURATE.

11 WOULD THIS BE A GOOD TIME TO TAKE A BREAK OR DO  
12 YOU HAVE LIKE FIVE MINUTES MORE TESTIMONY THAT WE CAN  
13 TAKE A BREAK AT 12:30, SINCE I RUDELY INTERRUPTED YOUR  
14 TRAIN OF THOUGHT.

15 MR. AITCHISON: NO. I'M TRYING TO SEE WHERE THE  
16 NEXT NATURAL -- WE CAN BREAK HERE.

17 HEARING OFFICER ROSS: OKAY.

18 MR. AITCHISON: YEAH.

19 HEARING OFFICER ROSS: WHY DON'T WE GO OFF THE  
20 RECORD AND TAKE A LUNCH BREAK.

21 OFF THE RECORD.

22

23 (LUNCH RECESS.)

24

25 HEARING OFFICER ROSS: BACK ON THE RECORD.

1           IN AN OFF-THE-RECORD DISCUSSION, THE PARTIES  
2           INFORMED ME THAT THEY, IN THE MIDST OF SOME DISCUSSION,  
3           MAY RESOLVE THESE MATTERS.

4           THEY THINK IT WILL TAKE THE AFTERNOON TO HAVE  
5           CONCLUSION. SO I'M GOING TO CLOSE THE RECORD TODAY AND  
6           ALLOW THE REPORTER TO LEAVE.

7           I WILL STAY FOR THE REST OF THE DAY SO THAT I  
8           KNOW IF A CONCLUSION HAS BEEN REACHED OR NOT. AND I CAN  
9           TELL THE REPORTING AGENCY AND ERCOM IF WE ARE COMING BACK  
10          TOMORROW OR NOT.

11          AND IF A RESOLUTION IS REACHED TODAY, WE WILL  
12          SET ANOTHER DATE FOR HEARING SO THAT THERE IS A  
13          MOTIVATION TO GET IT DONE.

14          DOES THAT REFLECT THE OFF-THE-RECORD DISCUSSION?  
15          DID YOU WANT TO ADD SOMETHING OR CHANGE SOMETHING?

16          MR. AITCHISON: NOTHING FOR OUR SIDE.

17          MR. WONG: YEAH. THAT IS FINE.

18          HEARING OFFICER ROSS: OFF THE RECORD.

19  
20          (PROCEEDING ADJOURNED AT 2:49 A.M.)  
21  
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REPORTER'S CERTIFICATE

I, DAWN YOUNG, HEARING REPORTER, DO HEREBY  
CERTIFY:

THAT THE FOREGOING TRANSCRIPT OF PROCEEDING WAS  
TAKEN BEFORE ME ON MAY 7, 2018, AT THE TIME AND PLACE  
THEREIN SET FORTH, WAS TAKEN DOWN BY ME IN SHORTHAND, AND  
THEREAFTER TRANSCRIBED INTO TYPEWRITING UNDER MY  
DIRECTION AND SUPERVISION;

AND I HEREBY CERTIFY THAT THE FOREGOING  
TRANSCRIPT OF PROCEEDINGS IS A FULL, TRUE AND CORRECT  
TRANSCRIPT OF MY SHORTHAND NOTES SO TAKEN.

I FURTHER CERTIFY THAT I AM NEITHER COUNSEL FOR  
NOR RELATED TO ANY PARTY TO SAID ACTION, NOR IN ANYWISE  
INTERESTED IN THE OUTCOME THEREOF.

IN WITNESS THEREOF, I HAVE HEREUNTO SUBSCRIBED  
MY NAME THIS 18TH DAY OF MAY, 2018.

\_\_\_\_\_  
DAWN YOUNG,  
HEARING REPORTER

BEFORE THE EMPLOYEE RELATIONS COMMISSION  
OF THE COUNTY OF LOS ANGELES  
SHERI E. ROSS, HEARING OFFICER

IN THE MATTER OF )  
THE ASSOCIATION FOR LOS ANGELES )  
DEPUTY SHERIFFS (ALADS), )  
 )  
 ) CHARGING PARTY, )  
 )  
 ) V. ) UFC 010-13  
 ) &  
 ) COUNTY OF LOS ANGELES ) UFC 001-17  
 ) (CONSOLIDATED)  
 ) SHERIFF'S DEPARTMENT, )  
 )  
 ) RESPONDENT. )  
 )  
 )

---

TRANSCRIPT OF PROCEEDINGS

LOS ANGELES, CALIFORNIA

TUESDAY, MAY 8, 2018

REPORTED BY:

JOYCE SILVERMAN,  
HEARING REPORTER  
JOB NO.: 18-ERC093

BEFORE THE EMPLOYEE RELATIONS COMMISSION  
OF THE COUNTY OF LOS ANGELES  
SHERI E. ROSS, HEARING OFFICER

IN THE MATTER OF )  
THE ASSOCIATION FOR LOS ANGELES )  
DEPUTY SHERIFFS (ALADS), )  
 )  
CHARGING PARTY, )  
 ) UFC 010-13  
V. ) &  
 ) UFC 001-17  
COUNTY OF LOS ANGELES ) (CONSOLIDATED)  
SHERIFF'S DEPARTMENT, )  
 )  
RESPONDENT. )  
 )

---

TRANSCRIPT OF PROCEEDINGS TAKEN  
AT 500 WEST TEMPLE STREET, 372 KENNETH  
HAHN HALL OF ADMINISTRATION, LOS ANGELES,  
CALIFORNIA, COMMENCING AT 10:19 A.M.  
ON TUESDAY, MAY 8, 2018, HEARD BEFORE  
SHERI E. ROSS, HEARING OFFICER, REPORTED  
BY JOYCE SILVERMAN, HEARING REPORTER.

APPEARANCES:

FOR THE CHARGING PARTY: PUBLIC SAFETY LABOR GROUP  
ATTORNEYS AT LAW  
BY: WILL AITCHISON  
3021 NE BROADWAY STREET  
PORTLAND, OREGON 97232  
(866) 486-5556  
WILL@PSLGLAWYERS.COM

FOR THE RESPONDENT: LIEBERT, CASSIDY, WHITMORE  
ATTORNEYS AT LAW  
BY: ALEXANDER Y. WONG  
6033 WEST CENTURY BOULEVARD  
5TH FLOOR  
LOS ANGELES, CALIFORNIA 90045  
(310) 981-2014  
AWONG@LCWLEGAL.COM

ALSO PRESENT: GREGORY NELSON  
REBECCA BUENO

I N D E X

OPENING STATEMENT

	<u>PAGE</u>	<u>LINE</u>
MR. WONG	95	19

UNION

WITNESS:

	<u>DIRECT</u>	<u>CROSS</u>	<u>REDIRECT</u>	<u>RECROSS</u>
DEREK HSIEH	7	38	82 92	85

DEPARTMENT

WITNESS:

JOHN ROBERTS	103	134
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E X H I B I T S

(NONE)

1 LOS ANGELES, CALIFORNIA; TUESDAY, MAY 8, 2018

2 10:19 A.M.

3  
4  
5 HEARING OFFICER ROSS: TODAY IS DAY TWO, MAY 8TH,  
6 2018. IT'S 10:19 A.M. AND THIS IS A HEARING IN THE MATTER OF  
7 ALADS VERSUS THE COUNTY OF LOS ANGELES, UFC 010-13 AND 001-17.

8 WOULD YOU PLEASE STATE YOUR APPEARANCES?

9 MR. AITCHISON: WILL AITCHISON ON BEHALF OF ALADS.

10 MR. WONG: ALEX WONG ON BEHALF OF THE LOS ANGELES  
11 SHERIFF'S DEPARTMENT.

12 HEARING OFFICER ROSS: BEFORE WE TURN TO YOUR  
13 TESTIMONY, YESTERDAY AFTER I DENIED YOUR MOTION FOR A BILL OF  
14 PARTICULARS, TECHNICALLY AN ANSWER IS DUE. WOULD YOU PLEASE  
15 STATE YOUR ANSWER FOR THE RECORD SO THAT WE HAVE IT?

16 MR. WONG: YES. THE DEPARTMENT DENIES GENERALLY AND  
17 SPECIFICALLY THE ALLEGATIONS IN THE CHARGE AND ASSERTS THE  
18 AFFIRMATIVE DEFENSES OF -- PLEASE BEAR WITH ME.

19 HEARING OFFICER ROSS: ARE THEY GOING TO BE THE SAME  
20 AS THE SECOND CASE?

21 MR. WONG: YEAH, THE SAME AFFIRMATIVE DEFENSES AS IN  
22 THE 001-17.

23 HEARING OFFICER ROSS: OKAY. PERFECT.

24 MR. WONG: THANK YOU.

25 HEARING OFFICER ROSS: THANK YOU. ALL RIGHT.

1 MR. AITCHISON: AND I'VE ALREADY NOTED THOSE. OUR  
2 BELIEF IS THE ANSWER IS UNTIMELY.

3 HEARING OFFICER ROSS: YES.

4 MR. AITCHISON: OKAY.

5 THE WITNESS: DO YOU NEED TO SWEAR ME IN?

6 HEARING OFFICER ROSS: NO. YOU UNDERSTAND YOU'RE  
7 STILL UNDER OATH?

8 THE WITNESS: YES, MA'AM.

9 HEARING OFFICER ROSS: WOULD YOU STATE YOUR NAME AGAIN  
10 FOR THE REPORTER?

11 THE WITNESS: YES. MY FIRST NAME IS DEREK, D-E-R-E-K,  
12 AND MY LAST NAME, IT'S PRONOUNCED "SURE," BUT IT'S SPELLED  
13 H-S-I-E-H.

14  
15 DEREK HSIEH,  
16 PRODUCED AS A WITNESS BY AND ON BEHALF OF THE UNION, AND HAVING  
17 BEEN PREVIOUSLY DULY SWORN BY THE HEARING OFFICER, WAS EXAMINED  
18 AND TESTIFIED AS FOLLOWS:

19  
20 HEARING OFFICER ROSS: SO WE WERE GOING THROUGH AN  
21 EXHIBIT WHEN YOU WERE RUDELY INTERRUPTED FOR LUNCH YESTERDAY.

22 MR. AITCHISON: YES, WE WERE.

23 ///

24 ///

25 ///

DIRECT EXAMINATION

BY MR. AITCHISON:

Q AND, MR. HSIEH, WE LEFT OFF AT A POINT OF SUMMARY, AND THE SUMMARY WAS WITH RESPECT TO THE BAIL SCHEDULE ITSELF.

DID ALADS ATTEMPT TO ISOLATE ALL OF THE CHANGES IN THE BAIL SCHEDULE INTO A SINGLE DOCUMENT, JUST THE CHANGED PORTION?

A OH, YES. YES, WE DID.

Q AND WILL YOU LOOK AT EXHIBIT A-6?

A OKAY. YES.

Q IS THAT WHAT THIS DOCUMENT IS?

A YES. (LAUGHTER.)

Q AND -- GO AHEAD.

A NO. IT'S JUST BECAUSE OF THE LENGTH OF THE NOTEBOOK AND THE TYPE, IT'S HARD TO READ, BUT I'M GOOD. IT'S OUR OWN EXHIBIT.

Q AND IF I UNDERSTOOD YOUR TESTIMONY CORRECTLY, EVERY ONE OF THESE CHANGES INCREASES DISCIPLINE EITHER AT THE LOWER END OR THE HIGHER END OF THE BAIL SCHEDULE. IS THAT RIGHT?

A YES.

Q ALL RIGHT. NOW, DID THAT CONCERN ALADS?

A YES.

1 Q WHY?

2 A WELL, I MEAN -- WELL, FIRST OF ALL, THIS IS  
3 DRAMATIC, I MEAN THE NUMBER OF CATEGORIES THAT ARE IMPACTED  
4 HERE. AS YOU MOVE THROUGH THE VARIOUS ROWS OF THIS TABLE,  
5 THERE'S A LOT OF THEM AND SO CLEARLY THE DEPARTMENT WAS LOOKING  
6 FOR A DRAMATIC INCREASE IN DISCIPLINE.

7 ON AN INDIVIDUAL BASIS, EVERY SINGLE ONE OF  
8 THESE INCREASES OF SUSPENSIONS OR OTHER FORMS OF DISCIPLINE CAN  
9 BE VERY MEANINGFUL FOR THE DEPUTIES IN A NUMBER OF WAYS.

10 Q BUT EVEN WITH THESE CHANGES YOU STILL HAVE THE  
11 ABILITY -- UNDER THIS NEW CONCEPT OF LEVELS OF DISCIPLINE, YOU  
12 STILL HAVE THE ABILITY FOR MITIGATION OR AGGRAVATION. DIDN'T  
13 THAT SOLVE YOUR CONCERNS ABOUT THE INCREASE IN THE BAIL  
14 SCHEDULE?

15 A NO. I WOULD ACTUALLY SAY IT'S WORSE. I MEAN  
16 THERE WAS ALWAYS THE ABILITY TO MITIGATE DISCIPLINE PREVIOUSLY.  
17 I THINK IT GOES WITHOUT SAYING IT'S PART OF THE DUE PROCESS  
18 WITH THE -- AND I DON'T HAVE THE --

19 Q COME BACK TWO PAGES IN THE DOCUMENT --

20 A OH, OKAY.

21 Q -- TO THE END --

22 A IT'S RIGHT HERE.

23 Q NOT IN THE DOCUMENT, IN THE NOTEBOOK TO THE END  
24 OF --

25 A YEAH, AND SO --

1 Q HANG ON A SECOND. TO THE END OF EXHIBIT A-5  
2 COME TO PAGE 43 --

3 A YEAH.

4 Q -- ON EXHIBIT A-5.

5 A SO, FIRST OF ALL, THE MITIGATION THAT IS  
6 OFFERED IN THE NEW -- OR PROPOSED IN THE NEW POLICY IS LIMITED,  
7 ALL RIGHT, WHICH CURRENTLY DIDN'T EXIST. SO EVEN WITH  
8 MITIGATION, WHAT THEY'RE DESCRIBING AS MITIGATION, IT'S VERY  
9 LIMITED.

10 THE OTHER THING IS WHEN YOU GO TO THE POLICY,  
11 IT DOESN'T OUTLINE OR IN ANY WAY CHARACTERIZE WHAT MITIGATION  
12 IS REQUIRED FOR THIS, AND SO IT'S UNCLEAR AS TO WHAT THAT WOULD  
13 EVEN BE.

14 Q LET'S TURN BACK ONE PAGE. LET'S TAKE A LEVEL 3  
15 OFFENSE AND LET'S TAKE THE ONE -- WE'VE USED THIS EXAMPLE  
16 BEFORE. I KNOW WE COULD USE OTHERS BUT LET'S USE IT AGAIN.

17 A UH-HUH.

18 Q LET'S TAKE AN ACT OF SIMPLE NEGLIGENCE. YOU  
19 TESTIFIED YESTERDAY SIMPLE NEGLIGENCE WOULD FALL UNDER A LEVEL  
20 3 --

21 A RIGHT.

22 Q -- WHICH WOULD BE AN 11- TO 15-DAY SUSPENSION.  
23 WHAT'S THE RANGE OF BEHAVIOR THAT COULD AMOUNT TO SIMPLE  
24 NEGLIGENCE, BEHAVIOR BY A DEPUTY?

25 A OH, WELL, IT'S REALLY DRAMATIC. I MEAN

1 NEGLIGENCE COULD BE SOMETHING AS SIMPLE AS YOU HAVE YOUR  
2 PORTABLE AUDIO TAPE-RECORDER AND YOU FORGET TO PUT BATTERIES IN  
3 IT AND THAT LATER IN THE SHIFT BECOMES AN ISSUE. IT COULD BE  
4 MUCH, MUCH MORE THAN THAT. SO IT'S A VERY DRAMATIC RANGE OF  
5 ACTUAL CONDUCT.

6 AND THEN THERE'S A LOT OF REASONS AROUND IT.  
7 MAYBE YOU NEVER KEEP BATTERIES IN YOUR TAPE-RECORDER AND  
8 EVERYBODY KNOWS THAT NO ONE CARES. THEN ON THE ONE DAY WHERE  
9 YOU NEED YOUR AUDIO RECORDER IT'S NOT FUNCTIONING BECAUSE YOU  
10 DON'T HAVE THE BATTERIES IN IT. THAT COULD BE CONSTRUED AS  
11 NEGLIGENCE.

12 Q AND IN YOUR READING OF THE TABLE WOULD BE THAT  
13 SOMEONE FORGETTING TO PUT BATTERIES IN THEIR AUDIO RECORDING  
14 DEVICE ON ONE OCCASION WOULD PUT YOU IN A LEVEL 3?

15 A WELL, IT WOULD BE NEGLIGENT IF YOU WERE TOLD  
16 THAT YOU WERE SUPPOSED TO HAVE A FUNCTIONING AUDIO RECORDING  
17 DEVICE WITH YOU WHILE YOU'RE SAY IN UNIFORM, YES.

18 Q AND THAT WOULD SUBJECT YOU TO A MINIMUM PENALTY  
19 AFTER MITIGATION OF WHAT?

20 A IT'S 3 DAYS BY THE TABLE.

21 Q SO 3 DAYS FOR A LEVEL 3?

22 A I'M SORRY.

23 MR. WONG: OBJECTION. CALLS FOR SPECULATION.

24 THE WITNESS: I'M SORRY. IT'S 11 DAYS WITH  
25 MITIGATION. IT'S ON THE TABLE.

1 MR. AITCHISON: WE'RE JUST READING THE DOCUMENT.

2 MR. WONG: I DON'T SEE --

3 HEARING OFFICER ROSS: THE OBJECTION IS OVERRULED.

4 THE WITNESS: YEAH, I'M SORRY. I SAID 3 DAYS OF  
5 DISCIPLINE. IT'S A LEVEL 3 WITH 11 DAYS' SUSPENSION.

6 BY MR. AITCHISON:

7 Q SO IS IT YOUR TESTIMONY THEN THAT THE  
8 COMBINATION OF THE BAIL SCHEDULE AND IN PARTICULAR THE LEVELS  
9 OF DISCIPLINE ACTUALLY NARROWS THE DEPARTMENT'S ABILITY TO  
10 CONSIDER MITIGATING CIRCUMSTANCES?

11 MR. WONG: OBJECTION. (INAUDIBLE.)

12 HEARING OFFICER ROSS: SUSTAINED.

13 THE REPORTER: I'M SORRY. I DIDN'T HEAR YOUR  
14 OBJECTION.

15 MR. WONG: LEADING.

16 BY MR. AITCHISON:

17 Q OKAY. THE BAIL SCHEDULE WITH THE WAY IT WORKS  
18 WITH THE LEVELS OF DISCIPLINE, DOES IT LIMIT THE DEPARTMENT'S  
19 ABILITY TO MITIGATE PENALTIES?

20 A YES. IT'S A VERY CLEAR NARROWING OF THE  
21 ABILITY TO MITIGATE DISCIPLINE WITHIN THE VARIOUS LEVELS.

22 Q NOW, WE DON'T NEED TO ACTUALLY REFER TO THE  
23 BAIL SCHEDULE, BUT THERE'S A LOT OF TIMES THE LENGTH OF THE  
24 SUSPENSION IS INCREASED TO 20 OR 30 DAYS. WHAT DOES A DAY MEAN  
25 FOR THE PURPOSES OF THE DEPARTMENT'S DISCIPLINARY DECISIONS?

1           A           THE DAY IS USUALLY GOING TO BE AN 8-HOUR BLOCK.  
2           I'M GOING TO SAY NOT ALWAYS, BUT I'M ASSUMING 99 PERCENT OF THE  
3           TIME IT'S 8 HOURS. BUT A DAY IS GOING TO BE A WORKDAY, SO A  
4           20-DAY SUSPENSION IS A WORK MONTH AND ANYTHING BEYOND THAT WILL  
5           BE MORE THAN A WORK MONTH.

6           Q           SO A 30-DAY SUSPENSION IS ROUGHLY?

7           A           SIX WEEKS.

8           Q           SIX WEEKS OFF?

9           A           UH-HUH.

10          Q           OKAY. DO SUSPENSIONS OF THAT LENGTH HAVE  
11          IMPLICATIONS ON A DEPUTY'S RETIREMENT?

12          A           YES.

13          Q           HOW?

14          A           WELL --

15          HEARING OFFICER ROSS: COULD YOU GO BACK AND SPECIFY  
16          WHAT LENGTH YOU'RE SPEAKING OF --

17          MR. AITCHISON: OH, SURE.

18          HEARING OFFICER ROSS: -- SPECIFICALLY?

19          MR. AITCHISON: LET'S TAKE A 30-DAY SUSPENSION.

20          HEARING OFFICER ROSS: THANK YOU.

21          BY MR. AITCHISON:

22          Q           WELL, LET ME MAKE IT MORE BROAD. WOULD A  
23          SUSPENSION OF ANY LENGTH POTENTIALLY HAVE AN IMPACT ON A  
24          DEPUTY'S RETIREMENT?

25          A           YES.

1 Q HOW SO?

2 A THE DEPUTY'S RETIREMENT IS CALCULATED GENERALLY  
3 ON THEIR FINAL YEAR OF EMPLOYMENT PRIOR TO EARNING THEIR  
4 PENSION, SO ANY SUSPENSION THAT'S INCURRED IN THAT YEAR WILL  
5 REDUCE THEIR PENSIONABLE EARNINGS.

6 I'LL JUST KIND OF USE ROUND NUMBERS. IF A  
7 DEPUTY WORKS 2,080 HOURS IN A YEAR, THAT'S PENSIONABLE.  
8 OBVIOUSLY AN 8-HOUR DEDUCTION WILL BE SOME PERCENTAGE OF THAT.  
9 WHEN YOU START TO GET AROUND A MONTH, THAT'S GOING TO BE AN  
10 8.5 PERCENT REDUCTION IN THE PENSIONABLE BENEFIT.

11 THE WAY THE DEPUTY SHERIFFS' RETIREMENT SYSTEM  
12 WORKS HERE, THEY USE KIND OF -- I'LL USE THE GENERAL TERM  
13 "BASE PAY," BUT THEY RECEIVE A RELATIVELY HIGH PERCENTAGE OF  
14 THAT BASE PAY IN THEIR PENSION, IN MOST CASES APPROACHING 90  
15 PERCENT.

16 I'LL JUST USE KIND OF A STRAIGHT LINE. IF WE  
17 HAD A DEPUTY WHO WAS PENSIONING OFF THEIR FINAL YEAR OF SALARY  
18 AND THEY HAD A ONE-MONTH SUSPENSION, IT WOULD BE 90 PERCENT OF  
19 AN 8.5 PERCENT REDUCTION IN THEIR LIFETIME BENEFIT FOR THE  
20 PENSION.

21 Q THAT SOUNDS ALMOST AS IF THE DEPUTY CONTINUES  
22 TO SERVE THE SUSPENSION FOR THE REST OF THEIR LIFE AFTER  
23 THEY'RE RETIRED?

24 A THAT'S EXACTLY RIGHT, AND I'LL JUST USE THE  
25 90 PERCENT FORMULA. YOU WOULD ESSENTIALLY SERVE 90 PERCENT OF

1 THAT SUSPENSION IN EVERY YEAR THEREAFTER. AND IN THE CASE OF A  
2 PENSION WHERE THERE ARE SURVIVOR BENEFITS, YOUR SURVIVOR COULD  
3 AS WELL.

4 Q LET'S TALK ABOUT ALTERNATIVES, THE SORT OF  
5 THINGS YOU MIGHT TALK ABOUT IN BARGAINING HAD BARGAINING  
6 ACTUALLY OCCURRED --

7 A RIGHT.

8 Q -- OVER THIS ISSUE. ARE THERE ALTERNATIVES  
9 THAT WOULD NOT RESULT IN AN IMPACT ON PENSION?

10 A YES, THERE ARE.

11 Q WHAT WOULD THEY BE?

12 A SO, FOR EXAMPLE, LET'S SAY WE HAD A DEPUTY  
13 SHERIFF AND I'LL JUST USE -- EVERY CASE IS UNIQUE AS IT ALWAYS  
14 IS IN DISCIPLINE. BUT IF WE HAD A DEPUTY WHO WAS IN THEIR SAY  
15 30TH YEAR OF EMPLOYMENT AND ENDED UP WITH A 3-DAY SUSPENSION, A  
16 SIX-WEEK SUSPENSION AND ALL ASPECTS OF THE SUSPENSION INDICATED  
17 THAT THE DEPUTY SHOULD BE SUSPENDED FOR THAT TIME, WE COULD  
18 HAVE THE DEPUTY INSTEAD OF TAKING THE PUNISHMENT OUT OF THEIR  
19 DAY-TO-DAY EARNINGS THEY COULD CASH IN THAT AMOUNT OF LEAVE AND  
20 FORFEIT IT TO THE EMPLOYER AND THEREFORE HAVE THE EXACT SAME  
21 PUNISHMENT WITHOUT THE PENSION IMPACT.

22 THE DEPARTMENT WOULD ALSO HAVE THE BENEFIT OF  
23 HAVING THE EMPLOYEE AVAILABLE FOR WORK, WHICH, IN A DEPARTMENT  
24 WITH THE STAFFING CRISIS THAT WE HAVE AT THE SHERIFF'S  
25 DEPARTMENT, WOULD BE VERY BENEFICIAL.

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Q NOW --

A THAT'S ONE CONCEPT.

Q ONE ALTERNATIVE --

A YES.

Q -- YOU'D NORMALLY DISCUSS IN BARGAINING?

A YES. WE WOULD TRY TO.

Q NOW, I WANT TO TAKE YOU BACK TO EXHIBIT A-5.  
TAKE A LOOK AT THOSE, THE FIRST PAGE --

A I'M SORRY.

Q -- OF EXHIBIT A-5.

A OH, OKAY. YES.

Q THIS IS LIEUTENANT LOPEZ' LETTER TO ALADS WITH  
ATTACHED CHANGES TO THE DISCIPLINARY GUIDELINES. I WANT TO  
DRAW YOUR ATTENTION TO THE SECOND PARAGRAPH OF THAT. WILL YOU  
TAKE A LOOK AT IT?

A YES.

Q DID YOU CONSTRUE THAT TO BE A STATEMENT BY  
LIEUTENANT LOPEZ THAT THE DEPARTMENT WAS NOT WILLING TO  
NEGOTIATE OVER THESE CHANGES BUT WAS ONLY WILLING TO DISCUSS  
THEM?

MR. WONG: OBJECTION. LEADING.

HEARING OFFICER ROSS: SUSTAINED. COULDN'T YOU JUST  
ASK HIM HOW HE CONSTRUED THIS PARAGRAPH?

MR. AITCHISON: OKAY.

///

1 BY MR. AITCHISON:

2 Q HOW DID YOU CONSTRUE THE PARAGRAPH?

3 A YEAH. THE PARAGRAPH IS AN INVITATION TO MEET  
4 AND CONFER, MEET AND NEGOTIATE, MEET AND DISCUSS. SO, NO, I  
5 DIDN'T TAKE ANY SUBTLE MEANING OR ANY DIMINISHMENT OF THE  
6 COUNTY'S WILLINGNESS TO MEET AND NEGOTIATE ON THIS TOPIC WITH  
7 US.

8 Q TURN TO EXHIBIT A-7.

9 A UH-HUH.

10 Q WHAT IS EXHIBIT A-7?

11 A A-7 IS A LETTER FROM ALADS, OUR ORGANIZATION,  
12 ON SEPTEMBER 13TH TO LIEUTENANT LOPEZ.

13 Q AND IN LOOKING AT THE FIRST PARAGRAPH, WHAT DID  
14 ALADS DEMAND TO DO OVER THE CHANGES IN THE GUIDELINES?

15 A DEMAND THAT MANAGEMENT CEASE AND DESIST  
16 IMPLEMENTATION, THAT THE PARTIES MEET AND CONFER ON THE  
17 SUBJECT.

18 Q AS A RESULT OF THE SEPTEMBER 13TH DEMAND TO  
19 BARGAIN, WAS A BARGAINING SESSION SET UP?

20 A YES, IT WAS.

21 Q TURN TO EXHIBIT A-8.

22 A YOU KNOW WHAT, I DON'T HAVE AN A-8.

23 Q YOU DON'T?

24 A OH, I'M SORRY. I DO. IT'S AT THE BOTTOM.

25 Q ARE THESE ALADS MEETING NOTES --

1           A           THEY ARE.

2           Q           -- OF THE MEET AND CONFER SESSION?

3                        AND DO WE HAVE THE PARTICIPANTS LISTED AT THE  
4 TOP OF THE PAGE?

5           A           YES.

6           Q           AND WE SEE ON THE RIGHT SIDE REPRESENTING  
7 MANAGEMENT JOHN -- AND IT APPEARS TO BE A MISSPELLING --  
8 ROBERTS.   WHAT WAS HIS STATUS?

9           A           I BELIEVE HE WAS THE COMMANDER FOR THE INTERNAL  
10 AFFAIRS BUREAU OR UNIT.

11          Q           AND THEN WE SEE DANIEL LOPEZ AND THIS IS THE  
12 SAME NAME WE'VE SEEN SEVERAL TIMES.   WE HAVEN'T SAID WHAT IT IS  
13 HE DOES.   WHAT DOES HE DO?

14          A           HE WORKED FOR CAPTAIN NELSON IN BOLRAC AND WAS  
15 OUR PRINCIPAL CONTACT FOR LABOR RELATIONS ISSUES WITH THE  
16 LOS ANGELES COUNTY SHERIFF'S DEPARTMENT.

17          Q           AND DO YOU SEE FROM THE FIRST PAGE WHAT TIME  
18 THE MEET AND CONFER SESSION STARTS?

19          A           YES, 10:40 A.M.

20          Q           AND DID AT SOME POINT IN THE MEET AND CONFER  
21 SESSION DID THINGS SWITCH ONTO A DIFFERENT TRACK?

22          A           YES.

23          Q           OKAY.   BEFORE WE HAVE THAT SWITCH, JUST  
24 GENERALLY DESCRIBE WHAT WAS GOING ON IN THE MEET AND CONFER  
25 SESSION?

1           A           WE WERE DISCUSSING THE POLICY THROUGH THE PAGES  
2           KIND OF -- I DON'T WANT TO SAY -- CHRONOLOGICALLY IS NOT THE  
3           RIGHT WORD WHEN YOU'RE GOING FROM THE FRONT OF THE DOCUMENT TO  
4           THE BACK, BUT IN THE ORDER OF THE DOCUMENT.

5                       THERE WAS ALSO SOME DISCUSSIONS ABOUT GENERAL  
6           ISSUES RELATING TO THE POLICY ITSELF, THE DEPARTMENT'S GOALS,  
7           KIND OF AN EXAMINATION OF WHY WE WERE LOOKING AT POLICY CHANGES  
8           AND THINGS LIKE THAT.

9           Q           HAD YOU GOTTEN -- BEFORE WE HAD THIS CHANGE IN  
10          THE MEETING, HAD YOU GOTTEN TO THE SPECIFICS OF THINGS LIKE THE  
11          BAIL SCHEDULE AND LEVELS OF DISCIPLINE?

12          A           WE HAD TOUCHED ON IT A LITTLE BIT, BUT WE  
13          HADN'T DUG DOWN DEEP INTO IT.

14          Q           OKAY. AND THEN WHAT HAPPENED TO CHANGE THE  
15          MEETING?

16                      HEARING OFFICER ROSS: YOU CAN TELL US WITHOUT LOOKING  
17          AT --

18                      THE WITNESS: OH, OKAY. YEAH, AT SOME POINT  
19          LIEUTENANT LOPEZ STARTED TO FEEL LIKE THE MEETING NEEDED TO  
20          ACCELERATE AND HE ACTUALLY GAVE ME SOME -- I ACTUALLY LOOKED  
21          OVER AT HIM AND HE KIND OF WENT LIKE THIS (INDICATING) LIKE HE  
22          WANTED TO HURRY THROUGH.

23                      HEARING OFFICER ROSS: OKAY. WHAT WAS THIS MOTION  
24          THAT YOU WERE JUST MAKING?

25                      THE WITNESS: OH, I'M SORRY. KIND OF LIKE THE

1 CIRCULAR MOTION THAT PEOPLE MAKE WITH THEIR HANDS TO KIND OF  
2 HURRY THINGS UP AND ALONG.

3 HEARING OFFICER ROSS: THANK YOU.

4 THE WITNESS: IT'S A COMMON GESTURE THAT I PERCEIVED  
5 TO BE HURRY THINGS UP OR WALK OR MOVE FORWARD.

6 BY MR. AITCHISON:

7 Q WHO WAS TALKING AT THE TIME WHEN HE WAS DOING  
8 THAT?

9 A MYSELF AND CAPTAIN ROBERTS.

10 Q WAS THE DISCUSSION UP UNTIL THAT POINT  
11 PRIMARILY BETWEEN YOU AND CAPTAIN ROBERTS?

12 A YES.

13 Q AND THEN WHAT HAPPENS AFTER LIEUTENANT LOPEZ  
14 APPEARS TO BE TRYING TO HURRY THE MEETING ALONG?

15 A THEY CALL FOR A MANAGEMENT CAUCUS.

16 Q OKAY. AND DO WE SEE THAT REFLECTED IN THE  
17 MINUTES?

18 A YES.

19 Q IF I CAN DRAW YOUR ATTENTION TO PAGE 11 OF THE  
20 MINUTES?

21 A YES. THERE WAS A CAUCUS REQUESTED BY  
22 MANAGEMENT AT 13:25, WHICH IS 1:25 P.M.

23 Q AND ABOVE IT WE SEE A NUMBER OF BACK-AND-FORTHS  
24 BETWEEN J.R. AND D.H. WHO ARE THOSE PEOPLE?

25 A D.H. IS MYSELF AND J.R. IS JOHN -- I BELIEVE

1 JOHN ROBERTS.

2 Q AND THEN WE HAVE SEEMINGLY IN THE MIDDLE OF A  
3 SENTENCE BY J.R. WE HAVE D.L. SAYING:

4 "WE ARE GOING TO TAKE  
5 A CAUCUS."

6 WHO IS D.L.?

7 A DAN LOPEZ.

8 Q OKAY.

9 A LIEUTENANT DAN LOPEZ.

10 Q AND WHEN WE LOOK AT THE -- DO WE SEE A TIME  
11 STAMP THERE ON HOW LONG THE CAUCUS LASTED?

12 A YES.

13 Q AND HOW LONG?

14 A FIVE MINUTES.

15 Q AND WHAT HAPPENED WHEN YOU CAME BACK -- WHEN  
16 THEY CAME BACK FROM THE CAUCUS?

17 A LIEUTENANT LOPEZ BASICALLY SAID THAT THEY WERE  
18 THERE TO ANSWER QUESTIONS BUT THAT THIS WAS NOT NEGOTIATION AND  
19 THEY PLANNED ON IMPLEMENTING THE POLICY.

20 Q WHAT WAS ALADS' REACTION TO THAT?

21 A I STATED THAT I FELT THAT THIS WAS A MANDATORY  
22 SUBJECT OF BARGAINING AND THAT WE SHOULD CONTINUE TO MOVE  
23 FORWARD.

24 Q WHAT HAPPENS NEXT?

25 A WE CALL FOR A CAUCUS, MEANING ALADS DOES.

1 Q AND THAT IS THE CAUCUS WE SEE ON PAGE 12,  
2 REFLECTED ON PAGE 12?

3 A YES.

4 Q NOW, IMMEDIATELY ABOVE THAT WE SEE THE NOTES OF  
5 YOU MAKING A COMMENT:

6 "IS IT THE DEPARTMENT'S  
7 UNDERSTANDING THAT THIS IS NOT  
8 A NEGOTIATION SESSION?"  
9 AND LIEUTENANT LOPEZ ANSWERING:

10 "IT IS THE DEPARTMENT'S  
11 RIGHT TO IMPOSE DISCIPLINE."  
12 HOW DID YOU CONSTRUE THAT?

13 A THAT LIEUTENANT LOPEZ ON BEHALF OF THE  
14 DEPARTMENT FELT THAT THE POLICY WAS NOT AVAILABLE FOR  
15 NEGOTIATIONS AND THAT THEY HAD THE RIGHT TO IMPOSE IT.

16 Q WHAT DID ALADS DO AT THAT POINT?

17 A WE CALLED THE CAUCUS.

18 Q AND HOW DID THE SESSION END?

19 A WELL, WE CAME BACK IN A SHORT TIME LATER AND I  
20 REQUESTED THAT WE END THE NEGOTIATIONS SESSION.

21 Q WHY?

22 A BECAUSE ONE OF THE PARTIES WAS NOT NEGOTIATING  
23 AND SAID THAT THEY WOULDN'T AND THAT CREATES ESSENTIALLY A  
24 MAJOR CONFLICT IN A COUPLE OF DIFFERENT WAYS.

25 Q UP UNTIL THE TIME LIEUTENANT LOPEZ RETURNS FROM

1 THE CAUCUS HE INITIATED AND INDICATES THAT THE DEPARTMENT IS  
2 NOT WILLING TO NEGOTIATE, DID YOU THINK YOU WERE IN A MEET AND  
3 CONFER SESSION?

4 A I DID.

5 Q AND WHY DIDN'T --

6 AFTER YOU COME BACK AND THE DEPARTMENT SAYS  
7 WE'RE NOT WILLING TO BARGAIN, YOU USED THE WORD OR USED THE  
8 PHRASE "IT WOULD BE DISINGENUOUS TO CONTINUE THIS MEETING" IN  
9 THE MINUTES.

10 A RIGHT.

11 Q WHY?

12 A WELL, THE REASON I USED THAT WORD -- AND IT'S  
13 NOT A WORD I WOULD USE CALMLY. IT'S KIND OF AN EMOTIONAL  
14 REACTION. I MEAN OBVIOUSLY WE NEED SOMEONE TO RESOLVE THE  
15 ISSUE, WHETHER IT'S A SUBJECT THAT NEEDS TO BE NEGOTIATED OR  
16 NOT.

17 THE OTHER THING IS FOR ME PERSONALLY IF I'M IN  
18 A NEGOTIATION WITH A PARTY OR A PERSON, WHETHER IT'S ON BEHALF  
19 OF MYSELF OR OTHERS, I COME TO IT WITH A HEART THAT I'M THERE  
20 TO TRULY NEGOTIATE AND FIND A SOLUTION THAT'S MUTUALLY  
21 BENEFICIAL. I APPROACH ALL THINGS LIKE THAT.

22 SO WHEN I'M CONFRONTED WITH THE IDEA THAT WE  
23 ARE NOT TRULY THERE TO NEGOTIATE, THAT WE'RE THERE TO DO  
24 SOMETHING ELSE -- WHICH I DON'T KNOW IF IT'S TO WASTE TIME OR  
25 WHATEVER IT IS -- THAT'S A DISRUPTION. IT'S MORE THAN JUST THE

1 SCOPE OF THE LOSS. TO ME IT'S PERSONAL, FRANKLY, NOT IN AN  
2 ANGRY SENSE, BUT I DON'T ENGAGE IN CONVERSATIONS WHERE THE  
3 UNDERLYING ASSUMPTIONS ABOUT WHAT WE'RE TRYING TO ACHIEVE ARE  
4 FALSE.

5 Q OKAY. THE SESSION ENDS. TURN THE PAGE TO  
6 EXHIBIT A-9. WHAT HAPPENS NEXT?

7 A REBECCA SENDS A LETTER ON BEHALF OF ALADS IN  
8 FOLLOW UP TO THE MEETING TO CLARIFY THE DEPARTMENT'S POSITION.

9 Q IN EXHIBIT A-10, WAS THE CLARIFICATION  
10 RECEIVED?

11 A YES.

12 Q AND JUST IN SUMMARY, WHAT DID LIEUTENANT LOPEZ  
13 TELL ALADS IN EXHIBIT A-10?

14 A THAT THE DEPARTMENT'S POSITION WAS THAT OR  
15 IS --

16 MR. WONG: OBJECTION. THE DOCUMENT SPEAKS FOR ITSELF.

17 HEARING OFFICER ROSS: THE DOCUMENT DOES SPEAK FOR  
18 ITSELF.

19 MR. AITCHISON: OKAY.

20 BY MR. AITCHISON:

21 Q IN THE LETTER, LIEUTENANT LOPEZ STATES -- IF I  
22 CAN REFER TO PAGE 2 OF THE LETTER. LIEUTENANT LOPEZ STATES  
23 THAT -- HANG ON ONE SECOND. LIEUTENANT LOPEZ STATES THAT THE  
24 DEPARTMENT -- I'M LOOKING AT THE LARGE PARAGRAPH THAT IS THE  
25 LAST LARGE PARAGRAPH ON PAGE 2.

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LIEUTENANT LOPEZ SAYS:

"IF YOUR ASSOCIATION IS DESIROUS, MANAGEMENT IS MORE THAN WILLING TO RECONVENE TO CONTINUE OUR DISCUSSIONS."

DID ALADS AGREE TO CONTINUE THE DISCUSSIONS?

A NO.

Q WHY NOT?

A WELL, BECAUSE THE CONVERSATION THAT ALADS FELT THAT THE DEPARTMENT AND ALADS NEEDED TO HAVE WOULD BE A NEGOTIATION AND NOT A DISCUSSION. AND SO THE LETTER DOES SPEAK FOR ITSELF, BUT THE TONE AND THE POSITION OF THE DEPARTMENT WAS NOT CONSISTENT WITH ALADS' VIEW OF WHAT NEEDED TO OCCUR.

Q OKAY. THEN WOULD YOU PLEASE TURN TO EXHIBIT A-11?

A UH-HUH.

Q AND IN PARTICULAR I WOULD LIKE YOU TO LOOK AT THE TOP OF PAGE 2 OF EXHIBIT A-11.

A OKAY.

Q IS THIS THE LETTER WHERE THE DEPARTMENT ANNOUNCES ITS INTENT TO IMPLEMENT THE CHANGES?

A YES.

Q AND LOOK AT THE FIRST FULL PARAGRAPH ON PAGE 2. THIS IS WHERE LIEUTENANT LOPEZ SAYS:

"MANAGEMENT NOW INTENDS

1 TO PUBLISH AND IMPLEMENT THE  
2 GUIDELINES IN THE NEAR FUTURE."

3 DID YOU UNDERSTAND WHAT "NEAR FUTURE" MEANT?  
4 DID YOU KNOW WHAT THAT TERM MEANT?

5 A NOT PRECISELY, BUT I WOULD EXPECT THAT THAT  
6 MEANT DAYS OR WEEKS POTENTIALLY.

7 Q AND THEN IN THE LAST PARAGRAPH, LIEUTENANT  
8 LOPEZ SAID:

9 "SHOULD YOUR ASSOCIATION" --  
10 EXCUSE ME.

11 "AFTER THE GUIDELINES FOR  
12 DISCIPLINE HANDBOOK HAS BEEN PUBLISHED,  
13 SHOULD YOUR ASSOCIATION WISH TO  
14 SCHEDULE AN IMPACT BARGAINING SESSION  
15 TO DISCUSS THE PRACTICAL EFFECTS OF  
16 THESE REVISIONS ON YOUR MEMBERS,  
17 CONTACT ME."

18 DID ALADS TAKE LIEUTENANT LOPEZ UP ON THIS  
19 OFFER TO MEET POST IMPLEMENTATION TO DISCUSS ONLY IMPACT?

20 A NO.

21 Q WHY NOT?

22 A WELL, WE DON'T NEGOTIATE ABOUT THE IMPACTS OR  
23 ANY OTHER ASPECT OF THE DEPARTMENTAL DECISION AFTER  
24 IMPLEMENTATION.

25 Q YOUR UNDERSTANDING IS THAT IMPACT BARGAINING

1 PRECEDES IMPLEMENTATION?

2 A YES.

3 Q OKAY. AND AT ANY TIME SINCE HE CALLED THE  
4 CAUCUS IN THE NOVEMBER 29TH MEETING, DID LIEUTENANT LOPEZ  
5 INDICATE THAT THE DEPARTMENT WAS WILLING TO BARGAIN OVER ANY OF  
6 THE DECISIONS REFLECTED IN THE CHANGES TO THE GUIDELINES?

7 A NO.

8 Q AND WHAT WAS ALADS -- AND WE KNOW THE  
9 GUIDELINES WERE, IN FACT, IMPLEMENTED LIKE THE DOCUMENTS DO  
10 SPEAK FOR THEMSELVES AS OF JANUARY 1. WHAT WAS ALADS'  
11 RESPONSE?

12 A TO FILE AN UNFAIR LABOR CHARGE.

13 Q ALL RIGHT. NOW, LET'S GO BACK TO 2013.

14 A OKAY.

15 Q AND LET'S LOOK AT EXHIBIT A-14. EXHIBIT A-14  
16 IS THE 2013 UFC COMPLAINT. HAVE YOU LOOKED AT ALADS' FILES  
17 WITH RESPECT TO THIS COMPLAINT?

18 A YES.

19 Q OKAY. AND LET'S START WITH EXHIBIT A-15, THEN.  
20 WHEN DOES THIS EVENT START?

21 A THIS EVENT STARTS IT LOOKS LIKE JANUARY 14 OR  
22 15 OF 2013.

23 Q AND THIS IS A LETTER TO STEVE REMIGE?

24 A YES.

25 Q WHAT WAS HIS ROLE?

1           A           STEVE REMIGE WAS THE FORMER EXECUTIVE DIRECTOR  
2 FOR ALADS PRIOR TO MY ARRIVAL.

3           HEARING OFFICER ROSS:    THAT'S R-E-M-I-G-E.

4           THE REPORTER:    THANK YOU.

5 BY MR. AITCHISON:

6           Q           DOES HE REMAIN IN CALIFORNIA AT THIS POINT?

7           A           I DON'T BELIEVE SO.

8           Q           AND HAS ALADS ATTEMPTED TO CONTACT HIM WITH  
9 RESPECT TO THIS HEARING?

10          A           YES, WE HAVE.

11          Q           AND WERE YOU SUCCESSFUL?

12          A           I THINK WE CONTACTED -- I THINK WE WERE ABLE  
13 TO CONTACT HIM. I DON'T THINK WE WERE ABLE TO HAVE  
14 CONVERSATIONS.

15          Q           OKAY.

16          MR. AITCHISON:   AND I'LL ADDRESS THE HEARING OFFICER  
17 AND MR. WONG. THESE DOCUMENTS I THINK FALL UNDER THE SAME  
18 CATEGORY OF THEY ALL SPEAK FOR THEMSELVES I MEAN AS TO WHAT  
19 HAPPENED AND THE BACK AND FORTH BETWEEN THE PARTIES. IS THERE  
20 ANY NEED FOR ME TO SET THE STAGE FOR THEM WHEN WE'RE GOING TO  
21 BE BRIEFING?

22                        I'M HAPPY TO HAVE DEREK TESTIFY THAT THIS IS  
23 WHAT HAPPENED, BUT HE WASN'T THERE BACK THEN AND HE'S JUST  
24 GOING TO BE EXPLAINING THE FLOW OF DOCUMENTS. I'M HAPPY TO DO  
25 IT, BUT --

1 MR. WONG: I MEAN I THINK -- I THINK TESTIMONY WOULD  
2 BE MORE APPROPRIATE EVEN IF IT'S HEARSAY AS OPPOSED TO JUST  
3 ASSERTING THAT THE DOCUMENTS ESTABLISH THE FACTS. THAT'S MY  
4 THOUGHT.

5 MR. AITCHISON: OKAY.

6 HEARING OFFICER ROSS: OKAY. IF YOU PREFER IT, THEN  
7 WE'LL HAVE HEARSAY TESTIMONY.

8 MR. AITCHISON: OKAY.

9 BY MR. AITCHISON:

10 Q ALL RIGHT. SO IN EXHIBIT A-15 IT APPEARS THE  
11 DEPARTMENT IS ANNOUNCING CHANGES TO THE GUIDELINES?

12 A YES.

13 Q AND IN PARTICULAR IF WE LOOK AT THE LAST  
14 SENTENCE IN THE LARGE PARAGRAPH, THIS IS WHERE LIEUTENANT LOPEZ  
15 IS INDICATING:

16 "ALL BUT THE LAST OF THE  
17 CHANGES IN THE GUIDELINES WERE  
18 RECOMMENDATIONS FROM THE CITIZENS  
19 COMMISSION ON JAIL VIOLENCE."

20 A CORRECT.

21 Q OKAY. AND THE NEXT EXHIBIT, EXHIBIT A-16.

22 A YES.

23 Q ARE THESE THE CHANGES IN THE BAIL SCHEDULE THAT  
24 CAME ALONG WITH LIEUTENANT LOPEZ' JANUARY 14TH MEETING -- OR  
25 LETTER TO YOU?

1           A           YES, I BELIEVE SO.

2           Q           OKAY. THEN EXHIBIT A-17, WHAT'S THAT?

3           A           EXHIBIT 17 IS AN E-MAIL FROM PATRICK MATHERS,  
4           THAT'S M-A-T-H-E-R-S, WHO I BELIEVE AT THE TIME WAS A SERGEANT  
5           WITH THE SHERIFF'S DEPARTMENT TO MS. EVEL ZAMUDIO,  
6           Z-A-M-U-D-I-O.

7           THE REPORTER: AND THE FIRST NAME, SIR?

8           THE WITNESS: EVEL, E-V-E-L.

9           THE REPORTER: THANK YOU.

10          BY MR. AITCHISON:

11          Q           AND WHAT IS THE LETTER ATTEMPTING TO DO?

12          HEARING OFFICER ROSS: BUT BEFORE YOU DO THAT, DO YOU  
13          KNOW WHO EVEL ZAMUDIO IS AND WHAT POSITION SHE HELD AT THAT  
14          TIME?

15          THE WITNESS: I DO GENERALLY. I DON'T KNOW PRECISELY  
16          HER POSITION TITLE, BUT SHE IS AN ADMINISTRATIVE STAFF MEMBER  
17          AT THE ASSOCIATION FOR LOS ANGELES COUNTY DEPUTY SHERIFFS AND  
18          MANAGES LABOR CORRESPONDENCE BETWEEN ALADS AND THE SHERIFF'S  
19          DEPARTMENT.

20          HEARING OFFICER ROSS: THANK YOU.

21          BY MR. AITCHISON:

22          Q           AND SERGEANT MATHERS, WOULD HE HAVE BEEN IN  
23          CAPTAIN NELSON'S -- EXCUSE ME -- COMMANDER NELSON'S AND  
24          LIEUTENANT LOPEZ' SHOP IN THE SHERIFF'S DEPARTMENT?

25          A           YES. I DON'T KNOW WHO WAS PRESENT AT THAT

1 TIME, BUT IT WOULD BE THAT SAME SHOP BACK THEN.

2 Q OKAY. AND WHAT'S HE SAYING? WHAT'S SERGEANT  
3 MATHERS SAYING IN THIS E-MAIL?

4 A HE'S PARAPHRASING A CONVERSATION THAT HE  
5 APPARENTLY HAD WITH MR. REMIGE WHERE HE IS RELAYING -- "HE"  
6 MEANING MATHERS IS RELAYING THAT REMIGE IS NOT OPPOSED TO THE  
7 PROPOSED GUIDELINES FOR DISCIPLINE CHANGES THAT WERE OUTLINED  
8 IN THE JANUARY 14 LETTER, AND IT INDICATED THAT ALADS WOULD BE  
9 SENDING A FOLLOW-UP LETTER TO CONFIRM THAT, MEANING MATHERS  
10 STATED THAT REMIGE HAD SAID THAT IN THE CONVERSATION.

11 Q BASED ON YOUR REVIEW OF THE CORRESPONDENCE, DID  
12 MR. REMIGE OR ANYBODY AT ALADS SEND ANY CONFIRMATION OF THE  
13 CONVERSATION TO THE DEPARTMENT?

14 A NO, NOT THAT I'M AWARE OF.

15 Q SO THAT IS JANUARY 30. DO YOU HAVE ANY WAY  
16 INDEPENDENTLY OF KNOWING IF SERGEANT MATHERS IS ACCURATELY  
17 RECONSTRUCTING THE CONVERSATION HERE?

18 A I HAVE NO WAY TO KNOW.

19 Q OKAY. SO THAT'S JANUARY 30, 2013. SOMETHING  
20 NEXT HAPPENS LESS THAN TWO WEEKS LATER, EXHIBIT A-18. WHAT IS  
21 THAT THAT OCCURS?

22 A THIS IS A LETTER TO STEVE REMIGE FROM DANIEL --  
23 LIEUTENANT DANIEL LOPEZ DISCUSSING THE CHANGES -- DISCUSSING  
24 CHANGES TO THE GUIDELINES FOR DISCIPLINE AND ADVISING ALADS  
25 THAT THERE WERE TWO ADDITIONAL MODIFICATIONS TO THE GUIDELINES

1 FOR DISCIPLINE THAT HAD BEEN OUTLINED IN THE PREVIOUS LETTER OF  
2 JANUARY 14TH.

3 Q WHEN WE LOOK AT THE LAST PARAGRAPH THERE, WE  
4 SEE LIEUTENANT LOPEZ SAYING ON FEBRUARY 11TH:

5 "THE DEPARTMENT INTENDS TO  
6 PUBLISH THE GUIDELINES ON FEBRUARY  
7 17TH."

8 DOES "PUBLISH" MEAN IMPLEMENT IN DEPARTMENT  
9 LINGO?

10 A YES, GENERALLY.

11 Q OKAY. ALL RIGHT. SO FEBRUARY 11TH WE HAVE THE  
12 DEPARTMENT SAYING TWO MORE CHANGES TO THE GUIDELINES. TWO DAYS  
13 LATER ALADS RESPONDS. HOW DOES IT RESPOND? THAT'S EXHIBIT  
14 A-19.

15 A YEAH. SO ON FEBRUARY 13TH ALADS SENDS A LETTER  
16 TO DANIEL LOPEZ -- AND IT'S STEVE REMIGE'S SIGNATURE -- IN  
17 RESPONSE TO PREVIOUS CORRESPONDENCE FROM JANUARY 14TH AND ALADS  
18 DEMANDED THAT:

19 "MANAGEMENT CEASE AND DESIST AND  
20 THAT THE PROPOSED CHANGES SHALL NOT BE  
21 IMPLEMENTED UNTIL THE PARTIES HAVE MET."

22 Q AND IN THIS LETTER MR. REMIGE IS REFERRING TO  
23 THE JANUARY 14TH LETTER FROM LIEUTENANT LOPEZ. IS THAT THE  
24 LETTER THAT ORIGINALLY ANNOUNCED THE DIFFERENT CHANGES TO THE  
25 BAIL SCHEDULE?

1           A           YES, THAT WOULD BE THE, YEAH, THE JANUARY 14TH  
2 LETTER WHICH IS UNDER TAB A-15.

3           Q           SO WE HAVE ON FEBRUARY 13TH, FOUR DAYS PRIOR  
4 TO IMPLEMENTATION, ALADS DEMANDING TO MEET AND CONFER OR --  
5 EXCUSE ME -- DEMANDING THAT THERE BE A MEET AND CONFER AND A  
6 CEASE AND DESIST.

7                       NEXT EXHIBIT, EXHIBIT A-20. HOW DOES THE  
8 DEPARTMENT RESPOND?

9           A           OKAY. THE NEXT DAY THE DEPARTMENT -- AND THIS  
10 WOULD BE DANIEL LOPEZ' LETTER SIGNED BY HIM TO STEVE REMIGE IN  
11 RESPONSE TO THE PRECEDING DAY'S LETTER AND LIEUTENANT LOPEZ  
12 STATES:

13                       "I SPOKE WITH YOU ON THE  
14 TELEPHONE" --  
15 I'M SORRY.

16                       "ON JANUARY 30TH, 2013, I  
17 SPOKE WITH YOU ON THE TELEPHONE  
18 AND YOU STATED THAT ALADS HAD NO  
19 OBJECTIONS TO THE CHANGES. BASED  
20 ON THIS CONVERSATION" --

21 THE REPORTER: CAN YOU SLOW DOWN A LITTLE BIT, PLEASE?

22 THE WITNESS: OH, I APOLOGIZE. I APOLOGIZE. LET ME  
23 START AGAIN AND I'LL GO SLOWER.

24 THE REPORTER: THANK YOU.

25 THE WITNESS: "ON JANUARY 30TH, 2013, I

1 SPOKE WITH YOU ON THE TELEPHONE  
2 AND YOU STATED THAT ALADS HAD NO  
3 OBJECTIONS TO THE CHANGES. BASED  
4 ON THIS CONVERSATION, THE DEPARTMENT  
5 MOVED FORWARD WITH THE IMPLEMENTATION  
6 OF THE CHANGES."

7 BY MR. AITCHISON:

8 Q OKAY. CONTINUE.

9 A "WE WILL BE MORE THAN WILLING TO  
10 MEET WITH YOUR ASSOCIATION TO DISCUSS  
11 THE PRACTICAL CONSEQUENCES OF THESE  
12 CHANGES FOR YOUR BARGAINING UNIT  
13 MEMBERS. AS IT STANDS NOW, HOWEVER,  
14 THE DEPARTMENT FEELS THESE CHANGES  
15 TO THE GUIDELINES FOR DISCIPLINE ARE  
16 MANAGEMENT'S RIGHT AND IT INTENDS TO  
17 PUBLISH THE CHANGES ON FEBRUARY 17TH,  
18 2013."

19 Q OKAY. SO IN THE PASSAGE YOU JUST READ,  
20 LIEUTENANT LOPEZ SAYS BOTH THAT THE DEPARTMENT MOVED FORWARD  
21 WITH THE IMPLEMENTATION OF THE CHANGES AND ALSO THAT THE  
22 DEPARTMENT INTENDS TO PUBLISH THE CHANGES IN THE FUTURE ON  
23 FEBRUARY 17TH.

24 A YES.

25 Q DO YOU UNDERSTAND HOW THOSE TWO SENTENCES CAN

1 BE RECONCILED?

2 A I DON'T KNOW PRECISELY. I COULD GUESS.

3 Q WELL, WE DON'T NEED TO GUESS.

4 A NO.

5 MR. AITCHISON: ANOTHER COLLOQUY, IF I COULD, WITH YOU  
6 AND MR. WONG? IN THE OPENING STATEMENT, WE SET OUT WHAT REMEDY  
7 WE WERE SEEKING. WE'VE ALSO INCLUDED IT IN THE AMENDED CHARGE  
8 IN 117.

9 IS THERE ANY REASON ANYBODY WANTS THIS WITNESS  
10 TO TESTIFY AS TO WHAT REMEDY WE'RE SEEKING?

11 MR. WONG: YEAH, I THINK IT'S -

12 MR. AITCHISON: NORMALLY, I WOULDN'T DO THAT.

13 MR. WONG: YEAH, I THINK -- I THINK WE WOULD  
14 APPRECIATE SOME TESTIMONY COMING FROM THE UNION AS TO WHAT IT  
15 IS THEY DESIRE.

16 HEARING OFFICER ROSS: OKAY.

17 MR. WONG: AND WHY.

18 MR. AITCHISON: OKAY.

19 BY MR. AITCHISON:

20 Q SO I'M GOING TO -- WELL, LET ME ASK YOU A BROAD  
21 QUESTION.

22 A UH-HUH.

23 Q WHAT REMEDIES IS ALADS LOOKING FOR IN THESE  
24 CONSOLIDATED CASES?

25 A A NUMBER OF THINGS. WE WOULD LIKE THAT THE

1 DEPARTMENT REVERT BACK TO THE STATUS QUO PRIOR TO  
2 IMPLEMENTATION, AND ACTUALLY I GUESS THAT'S A GENERAL DEMAND.  
3 SPECIFICALLY TO THAT, THAT THE POLICY IN PLACE PRIOR TO THE  
4 DEPARTMENT NOT MEETING ITS OBLIGATION TO BARGAIN WOULD BE  
5 MAINTAINED; THAT THE PARTIES -- IF THE DEPARTMENT DESIRED TO  
6 CHANGE THE POLICY THAT THE PARTIES WOULD MEET AND CONFER OVER  
7 THOSE CHANGES; AND THAT ALL DISCIPLINE THAT HAS BEEN IMPOSED IN  
8 THE INTERVENING TIME WOULD BE RESTORED BACK TO WHAT IT SHOULD  
9 BE BASED ON THE PREVIOUS POLICY.

10 MR. AITCHISON: SO LET ME -- MAY I APPROACH THE  
11 BLACKBOARD, THE GREASEBOARD HERE FOR A MOMENT?

12 HEARING OFFICER ROSS: THE WHITEBOARD? SURE.

13 MR. AITCHISON: THE WHITEBOARD.

14 BY MR. AITCHISON:

15 Q SO LET ME GIVE YOU AN EXAMPLE HERE AND TELL US  
16 HOW THIS WOULD WORK. SO LET'S SAY THAT WE'LL CALL IT OLD AND  
17 NEW GUIDELINES.

18 LET'S SAY THAT UNDER THE OLD GUIDELINES, WHICH  
19 I WILL SHADE WITH HORIZONTAL LINES, THE MAXIMUM PUNISHMENT WAS  
20 5 DAYS TO 20 DAYS, AND UNDER THE NEW GUIDELINES, WHICH I WILL  
21 LEAVE UNSHADED, THE MAXIMUM PUNISHMENT GOES TO 30 DAYS. YOU  
22 WITH ME --

23 A YES.

24 Q -- ON THIS SCENARIO?

25 A YES.

1           Q           NOW WE KNOW THAT NONE OF THE MINIMUM  
2 PUNISHMENTS DROPPED AT ALL. EVERYTHING INCREASED. SO WE HAVE  
3 THE AMOUNT OF ADDITIONAL PUNISHMENT AVAILABLE UNDER THE NEW  
4 GUIDELINES.

5                       IS THIS THE AMOUNT, THE UNSHADED AMOUNT, THE  
6 AMOUNT OF INCREMENTAL ADDITIONAL PUNISHMENT THAT YOU ARE  
7 TALKING ABOUT WHEN YOU'RE TALKING ABOUT UNDO THE DISCIPLINE AS  
8 A RESULT OF THE CHANGED GUIDELINES?

9           A           YES.

10          Q           SO YOU'RE NOT TALKING ABOUT LET'S GO BACK AND  
11 UNDO THE 5 TO 20 DAYS --

12          A           NO.

13          Q           -- THAT WOULD HAVE BEEN PERMISSIBLE?

14          A           NO, ASSUMING THAT THE FINDINGS IN THE  
15 DISCIPLINE SUPPORT THAT UNDER THE PREVIOUS POLICY. THERE MAY  
16 HAVE BEEN SOME CHANGES TO THE POLICY THAT ARE MINOR. I DON'T  
17 THINK THAT THAT'S GENERALLY THE CASE.

18          Q           WHERE IS IT ON THE CONTINUUM OF EASY TO  
19 DIFFICULT TO IDENTIFY WHICH EMPLOYEES WOULD BE IN THAT UNSHADED  
20 ADDITIONAL INCREMENTAL DISCIPLINE PORTION?

21          A           I MEAN IT WOULD TAKE WORK FOR BOTH THE  
22 DEPARTMENT AND ALADS TO DO THAT. WE'RE COMMITTED TO IT.

23                       AS FAR AS EASY, IT IS JUST A MATTER OF PULLING  
24 THE DISCIPLINE CASES AND LOOKING AT THE CHARGES AND THEN  
25 BALANCING THEM AGAINST THE TITLES IN THE POLICY WHERE THE

1 DISCIPLINE INCREASED WITH THE DEPARTMENT'S UNILATERAL  
2 IMPLEMENTATION.

3 Q OKAY.

4 MR. AITCHISON: THANK YOU. I HAVE NO FURTHER  
5 QUESTIONS.

6 MR. WONG: COULD WE TAKE --

7 HEARING OFFICER ROSS: WOULD YOU LIKE SOME TIME OUT?

8 MR. WONG: YEAH.

9 HEARING OFFICER ROSS: TEN MINUTES?

10 MR. WONG: IF WE COULD TAKE TEN MINUTES, THAT WOULD BE  
11 GREAT.

12 HEARING OFFICER ROSS: OKAY. LET'S GO OFF THE RECORD  
13 TEN MINUTES.

14  
15 (RECESS.)

16  
17 HEARING OFFICER ROSS: OKAY. SO ARE YOU READY FOR  
18 CROSS?

19 MR. WONG: YES. THANK YOU.

20 HEARING OFFICER ROSS: YOU'RE WELCOME.

21 ///

22 ///

23 ///

24 ///

25 ///

1 CROSS-EXAMINATION

2  
3 BY MR. WONG:

4 Q GOOD LATE MORNING, MR. HSIEH.

5 NOW, EARLIER YOU TESTIFIED THAT THE GUIDELINES  
6 FOR DISCIPLINE, THEY'RE A SUBSET OF THE M.P.P. WAS THAT A  
7 CORRECT SUMMARY OF YOUR TESTIMONY?

8 A YES, THAT'S MY UNDERSTANDING. I'M NOT CERTAIN  
9 HOW IT FITS IN THERE, BUT YES.

10 Q OH, OKAY. SO YOUR UNDERSTANDING IS THAT THE --  
11 WELL, YOU'VE SEEN THE M.P.P. BEFORE; CORRECT?

12 A I HAVE NOT.

13 Q OH, YOU HAVE NOT?

14 A IF MAY I JUST ELABORATE? IT MAY HELP.

15 NOT BEING A MEMBER OF THE SHERIFF'S DEPARTMENT,  
16 I DON'T HAVE ACCESS TO THE SAME THINGS THAT DEPUTIES DO. MY  
17 INTERACTION WITH THE M.P.P. OR THE POLICIES IS USUALLY  
18 INCREMENTAL FOR THAT POLICY ITSELF, AND SO I JUST GET THE  
19 DOCUMENTS AND THINGS LIKE THAT. SO, THE CONSTRUCT OF IT, WHAT  
20 UNITS HAVE, WHAT SUBSETS OF IT AND THINGS LIKE THAT, I DON'T  
21 KNOW.

22 Q OKAY. THANK YOU.

23 NOW, THE PROVISIONS FROM THE M.P.P. THAT YOU  
24 HAVE SEEN, THOSE ARE TYPICALLY IDENTIFIED BY A SECTION NUMBER;  
25 CORRECT?

1           A           IT HAS SOME SORT OF NUMERIC THING ON THE TOP.  
2           I DON'T RECALL. IF WE HAD A SAMPLE ONE, I COULD LOOK AT IT.

3           Q           OKAY.

4           A           YEAH, THERE IS SOME SORT OF NUMERIC USUALLY  
5           ASSOCIATED WITH THAT.

6           Q           OKAY. COULD I DIRECT YOUR ATTENTION TO TAB 3  
7           IN THE YELLOW BINDER? THAT'S DEPARTMENT'S EXHIBIT 3.

8           A           SURE.

9           Q           HAVE YOU SEEN A DOCUMENT -- HAVE YOU SEEN A  
10          DOCUMENT LIKE THIS BEFORE?

11          A           YES.

12          Q           AND WOULD THIS BE AN M.P.P. PROVISION?

13          A           I BELIEVE SO.

14          Q           OKAY. AND SO TYPICALLY FOR THE M.P.P.  
15          REVISIONS THAT YOU'VE SEEN, IS IT CORRECT THAT THEY'VE ALL HAD  
16          THIS SECTION NUMBER AT THE TOP, 3 DASH OR SOME NUMBER DASH  
17          SOMETHING, SLASH 030.10, SOMETHING TO THAT EFFECT?

18          A           I THINK A FAIR ANSWER IS I BELIEVE MOST OF THE  
19          TIME THEY DO. SOMETIMES WE'LL RECEIVE KIND OF A STRIKEOUT  
20          VERSION WITH CHANGES AND IT MAY OR MAY NOT. BUT WHAT I'M  
21          LOOKING AT HERE IS NOT UNCOMMON.

22          Q           OKAY.

23          A           NO.

24          Q           THE GUIDELINES FOR DISCIPLINE THAT YOU'VE SEEN,  
25          THOSE ARE NOT IDENTIFIED BY AN M.P.P. SECTION NUMBER. WOULD

1 THAT BE FAIR TO SAY?

2 A I DON'T KNOW THE ANSWER TO THAT. LET ME TAKE A  
3 PEEK. NO, I DON'T SEE THAT TYPE OF -- I DON'T KNOW WHAT YOU'D  
4 CALL THAT.

5 Q AN M.P.P. SECTION NUMBER?

6 A YEAH, I DON'T SEE THAT TYPE OF SECTION NUMBER  
7 ON THIS DOCUMENT.

8 Q OH, OKAY. SO IS IT FAIR TO SAY YOU DON'T  
9 ACTUALLY KNOW WHETHER THE GUIDELINES FOR DISCIPLINE ARE, IN  
10 FACT, PART OF THE M.P.P., THE MANUAL OF POLICIES AND  
11 PROCEDURES?

12 A OKAY. SO, YEAH, SPECIFICALLY, NO, I DON'T IF  
13 IT'S AN M.P.P. MY CONCEPT RATHER THAN REFERRING SPECIFICALLY  
14 TO THE M.P.P. -- AND I BROUGHT IT UP WHEN I WAS FIRST ASKED --  
15 IS UNITS WILL HAVE THEIR OWN SUBSETS OF RULES AND REGULATIONS.  
16 THE CONCEPT OF THE M.P.P. IS IT'S THE GOVERNING DOCUMENTS FOR  
17 THE DEPARTMENT'S OPERATIONS, IT'S ADMINISTRATIVE FUNCTIONS,  
18 ET CETERA. SO WHETHER THIS DOCUMENT SITS INSIDE THE TECHNICAL  
19 M.P.P., I DON'T KNOW THE ANSWER TO THAT.

20 Q OKAY. THANK YOU.

21 A NO.

22 Q NOW, LET'S TURN TO -- WHY DON'T WE TAKE A LOOK  
23 AT EXHIBIT 1, DEPARTMENT'S EXHIBIT 1. HAVE YOU SEEN A DOCUMENT  
24 LIKE THIS BEFORE?

25 A YES.

1 Q AND THIS WOULD BE THE GUIDELINES, THE SUM  
2 VERSION OF THE GUIDELINES FOR DISCIPLINE; CORRECT?

3 A YES. I DON'T KNOW IF WE HAD THIS IN OR IF --  
4 BUT, YEAH, IT LOOKS LIKE IT'S A SIMILAR DOCUMENT TO WHAT WE'VE  
5 BEEN TALKING ABOUT.

6 Q AND I'LL REPRESENT THAT THIS IS THE SEPTEMBER  
7 28TH, 2012, VERSION OF THE GUIDELINES FOR DISCIPLINE.

8 A ALL RIGHT.

9 Q BUT AT THE BACK -- AT THE BACK OF EACH OF THESE  
10 GUIDELINES FOR DISCIPLINE THAT YOU HAVE SEEN THERE WILL BE A  
11 DISCIPLINE AND EDUCATION GUIDE; CORRECT? IT WOULD BE THAT  
12 TABLE?

13 A DO YOU WANT TO REFER ME TO A QUICK PAGE?

14 Q OH, YEAH. IN THIS DOCUMENT, IT WOULD BE PAGE  
15 27.

16 A OH, OKAY. YES, THAT'S THE TABLE OF DISCIPLINE  
17 AND EDUCATION GUIDE.

18 Q OKAY. NOW, THAT DISCIPLINE AND EDUCATION  
19 GUIDE, THAT DOES NOT EXHAUSTIVELY LIST EVERY SINGLE POSSIBLE  
20 ACT THAT COULD RESULT IN DISCIPLINE. WOULD THAT BE FAIR TO  
21 SAY?

22 A NO.

23 Q IT'S NOT FAIR TO SAY?

24 A NO. I'M SORRY. NO, IT DOESN'T. I THINK YOUR  
25 QUESTION WAS DOES IT AND SO MY ANSWER IS, NO, IT DOES NOT LIST

1 EVERY POSSIBLE ACT.

2 Q AND THE GUIDE, IT MERELY LISTS EXAMPLES OF  
3 SPECIFIC VIOLATIONS. WOULD THAT BE CORRECT?

4 A THE GUIDE LISTS SPECIFIC POLICY SECTIONS AND  
5 THEN WITHIN THOSE POLICIES EACH ONE WILL HAVE MUCH GREATER  
6 DETAIL.

7 Q OKAY. SO --

8 A AND I DON'T KNOW IF I ANSWERED YOUR QUESTION  
9 FAIRLY.

10 Q YEAH.

11 A DO YOU WANT ME TO DO IT AGAIN?

12 Q LET ME ASK IT A DIFFERENT WAY.

13 A OKAY.

14 Q THANK YOU.

15 SO THE GUIDE WILL LIST OUT EXAMPLES OF SPECIFIC  
16 VIOLATIONS --

17 A OKAY.

18 Q -- OF CERTAIN M.P.P. PROVISIONS. WOULD THAT BE  
19 CORRECT?

20 A YES. AND WE'RE REFERRING FUNCTIONALLY TO THE  
21 THIRD COLUMN, THE SPECIFIC VIOLATIONS; RIGHT?

22 Q YES.

23 A YES.

24 Q OKAY. AND IT WOULD BE FAIR TO SAY THAT THE  
25 POLICIES THAT ARE SET FORTH IN THE MANUAL OF POLICIES AND

1 PROCEDURES, THOSE ARE BROADER THAN THE SPECIFIC VIOLATIONS THAT  
2 WOULD BE IDENTIFIED IN THE DISCIPLINE AND EDUCATION GUIDE;  
3 CORRECT?

4 A NO. I BELIEVE THAT ACTUALLY THE POLICY, WHICH  
5 WOULD BE KIND OF OUTLINED IN SECTION -- I'M SORRY -- IN THE  
6 FIRST COLUMN THAT HAS THE SECTION, I SUSPECT THAT THOSE  
7 GENERALLY WILL GO INTO MUCH GREATER DETAIL THAN THE SPECIFIC  
8 VIOLATION BECAUSE NORMALLY THESE POLICIES ARE GOING TO BE  
9 MULTIPLE PAGES LONG SO IT WILL HAVE SOME SPECIFICITY TO IT, BUT  
10 I DON'T KNOW IF THAT'S A FAIR CONCLUSION FOR EVERY SINGLE  
11 CATEGORY.

12 Q SO THE M.P.P. PROVISION ITSELF THAT WILL BE  
13 MORE DETAILED THAN THE INDIVIDUAL SPECIFIC VIOLATION THAT'S  
14 LISTED?

15 A I BELIEVE IT CAN BE. I THINK THE FAIREST WAY  
16 TO DO THAT WOULD BE TO ADDRESS ONE AND HAVE AN EXAMPLE. BUT  
17 NORMALLY, NORMALLY I THINK THAT THAT WOULD BE THE CASE.

18 Q OKAY.

19 A BUT WITHOUT A SPECIFIC EXAMPLE, I COULDN'T  
20 DEFINITELY SAY THIS ONE, THAT ONE. BUT IT'S MY ASSUMPTION  
21 BECAUSE THE SECTIONS THAT YOU SEE IDENTIFIED IN THE FIRST  
22 COLUMN USUALLY GO TO A POLICY THAT WILL HAVE MORE DETAIL.  
23 SOMETIMES IT WILL HAVE A DISCUSSION AND OTHER BODY TO IT, BUT  
24 USUALLY MORE DETAIL.

25 Q NOW, WOULD IT BE FAIR TO SAY THAT AN EMPLOYEE

1           COULD BE DISCIPLINED FOR A VIOLATION OF A PROVISION WITHIN THE  
2           MANUAL OF POLICIES AND PROCEDURES REGARDLESS OF WHETHER THERE'S  
3           A SPECIFIC VIOLATION IDENTIFIED IN THIS DISCIPLINE AND  
4           EDUCATION GUIDE?

5           A            THAT COULD OCCUR THAT THEY COULD BE  
6           DISCIPLINED, BUT WHEN DISCIPLINE IS IMPOSED THE DEPARTMENT WILL  
7           LIST A POLICY OR A SECTION VIOLATION AND REFERENCE IT TO WHAT  
8           YOU WOULD SEE ON THE FIRST COLUMN UNDER "SECTION."

9           Q            OH, OKAY.

10          A            I'M NOT AWARE THAT A MEMBER WOULD BE  
11          DISCIPLINED FOR SOMETHING THAT'S NOT COVERED UNDER SOME SORT OF  
12          DEPARTMENTAL REGULATION, GUIDELINE OR TRAINING, AND I THINK YOU  
13          COULD ARGUE THAT IF THERE WASN'T SOME SORT OF GUIDELINE,  
14          REGULATION OR TRAINING IT WOULDN'T BE FAIR TO DISCIPLINE. I  
15          DON'T KNOW IF I GOT YOUR QUESTION RIGHT --

16          Q            YEAH.

17          A            -- AS FAR AS --

18          Q            SO A PARTICULAR ACTION BY A DEPARTMENT MEMBER,  
19          IT'S NOT GOING TO RESULT IN DISCIPLINE UNLESS THERE'S AN  
20          APPLICABLE M.P.P. PROVISION. WOULD THAT BE FAIR TO SAY?

21          A            GENERALLY, YES.

22          Q            OKAY.

23          A            SOME OF THE M.P.P. PROVISIONS CAN BE BROAD AND  
24          SO THEN IT COULD POTENTIALLY BE BROUGHT IN THERE. BUT, YEAH,  
25          YOU'RE NOT GOING TO GET DISCIPLINED FOR BREAKING THE RULES

1 UNLESS THERE'S A RULE THAT WAS BROKEN.

2 Q GOT IT. AND, AGAIN, THE SPECIFIC VIOLATIONS  
3 THAT ARE UNDER THE GUIDE, THOSE REFER TO VIOLATIONS OF THE  
4 M.P.P. PROVISIONS THAT ARE LISTED ON THE LEFT-HAND COLUMN UNDER  
5 "SECTION"; CORRECT?

6 A I BELIEVE THAT TO BE CORRECT.

7 Q OKAY. NOW, TURNING TO -- WELL, TURNING TO  
8 NOTHING.

9 SO ALADS, WITH RESPECT TO THE 2016/2017 CHANGES  
10 TO THE GUIDELINES --

11 A IS THERE A --

12 Q NO.

13 A OH, OKAY.

14 Q I'M NOT REFERRING TO A DOCUMENT. I'M SORRY  
15 ABOUT THAT.

16 BUT ALADS DID MEET WITH THE DEPARTMENT ON  
17 NOVEMBER 29TH, 2016; CORRECT?

18 A OH, OKAY. YES. GOING BACK TO THIS ONE, YES.

19 Q NOW, AT THE TIME YOU HAD PREVIOUSLY TESTIFIED  
20 THAT YOU ENDED THE MEETING BECAUSE THE DEPARTMENT WAS NOT  
21 WILLING TO NEGOTIATE AND THE DEPARTMENT DIDN'T FEEL THAT THIS  
22 WAS A MANDATORY SUBJECT OF BARGAINING; CORRECT?

23 A I DON'T KNOW WHAT THEY FELT, BUT I THINK THE  
24 WAY YOU FIRST STARTED THE QUESTION, THAT THE REASON WE ENDED IT  
25 WAS ACCURATE, BECAUSE THE DEPARTMENT WASN'T THERE IN GOOD FAITH

1 TO NEGOTIATE THE POLICY.

2 Q OKAY. BUT AT THE TIME, EVEN IF THE DEPARTMENT  
3 WAS NOT WILLING TO NEGOTIATE THE DECISION TO IMPLEMENT THE  
4 CHANGES, ALADS HAD THE OPPORTUNITY TO NEGOTIATE THE IMPACTS OF  
5 THE PROPOSED CHANGES; CORRECT?

6 A I DON'T KNOW WHAT WAS IN THE DEPARTMENT'S MIND  
7 AT THAT TIME. AT THE TIME OF THE MEETING, THEY WERE CLEAR THAT  
8 THEY HAD NO INTENTION TO NEGOTIATE AND SO THAT'S WHY WE  
9 DISCONTINUED THE MEETING.

10 Q OKAY. NOW, SUBSEQUENT TO THE MEETING IN  
11 CORRESPONDENCE FROM THE DEPARTMENT, ISN'T IT CORRECT THAT THE  
12 DEPARTMENT NOTIFIED ALADS OF ITS WILLINGNESS TO NEGOTIATE THE  
13 IMPACTS?

14 A DO YOU WANT TO CATCH ME UP ON WHICH LETTER  
15 YOU'RE TALKING ABOUT?

16 Q LET'S GO TO THE DECEMBER 9TH, 2016, LETTER.  
17 THAT'S EXHIBIT A-10.

18 A OKAY. AND MAYBE JUST DRILL ME DOWN INTO A  
19 PARAGRAPH --

20 Q YEAH.

21 A -- THAT YOU'RE LOOKING AT?

22 Q SO ON THE SECOND PAGE, THE SECOND PARAGRAPH,  
23 THE LAST SENTENCE AND THEN CONTINUING ON TO THE FIRST SENTENCE  
24 IN THE NEXT PARAGRAPH, LIEUTENANT LOPEZ, HE WROTE:

25 "AT THIS POINT, ALTHOUGH

1 MANAGEMENT WAS MORE THAN WILLING  
2 TO CONTINUE DISCUSSING THE PRACTICAL  
3 IMPACT TO YOUR MEMBERS, YOUR  
4 ASSOCIATION OPTED TO END THE MEETING.  
5 IF YOUR ASSOCIATION IS DESIROUS,  
6 MANAGEMENT IS MORE THAN WILLING TO  
7 RECONVENE TO CONTINUE OUR DISCUSSIONS  
8 REGARDING REVISIONS TO THE GUIDELINES  
9 FOR DISCIPLINE AS WELL AS HEAR YOUR  
10 SUGGESTIONS AND DISCUSS THE PRACTICAL  
11 IMPACT TO YOUR MEMBERS."

12 DO YOU SEE THAT?

13 A I DO.

14 Q AND SO IT'S FAIR -- IT WOULD BE FAIR TO  
15 CHARACTERIZE THIS AS AN OFFER TO NEGOTIATE THE PRACTICAL IMPACT  
16 TO YOUR MEMBERS?

17 A I MEAN I THINK THE LETTER SPEAKS FOR ITSELF.

18 Q OKAY.

19 A AND I THINK THAT WAS -- I DON'T KNOW WHAT WAS  
20 IN -- I MEAN I HATE TO PUT IT IN THESE TERMS. I DON'T KNOW  
21 WHAT WAS IN THE DEPARTMENT'S HEART, SO TO SPEAK, BUT I THINK  
22 THE DOCUMENT SPEAKS FOR ITSELF.

23 Q WELL, WHAT WAS YOUR UNDERSTANDING OF THOSE TWO  
24 SENTENCES THAT I HAD JUST READ?

25 A WITHIN THE CONTEXT OF WHAT HAD HAPPENED, I'M

1 NOT CERTAIN. I MEAN ALADS' POSITION IS THE DEPARTMENT HAS AN  
2 OBLIGATION TO NEGOTIATE OVER THE ENTIRE DECISION TO CHANGE THE  
3 DISCIPLINE PROCESS, THE STRUCTURE, AND THEN GIVEN THE VAST  
4 NUMBER OF CHANGES WITHIN THE DISCIPLINE MATRIX, THE ENTIRETY OF  
5 IT.

6 Q NOW ALADS NEVER -- WELL, LET'S GO TO EXHIBIT  
7 A-11. NOW, THIS EXHIBIT, THIS IS THE DECEMBER 19TH, 2016,  
8 LETTER FROM LIEUTENANT LOPEZ TO MS. BUENO.

9 A I BELIEVE I MAY -- IS YOUR -- I HAVE DECEMBER  
10 19TH. DID YOU SAY --

11 Q DECEMBER 19TH.

12 A OH, OKAY. I'M SORRY.

13 Q YEAH.

14 A GO AHEAD.

15 Q NOW, AGAIN, IN THIS LETTER IN THE LAST  
16 PARAGRAPH, ISN'T IT FAIR TO SAY THAT THE DEPARTMENT AGAIN  
17 OFFERED TO DISCUSS THE PRACTICAL EFFECTS OF THE REVISIONS?

18 A NO, I WOULDN'T CHARACTERIZE THAT. ONCE AGAIN,  
19 I THINK THE LETTER SPEAKS FOR ITSELF WHAT THE DEPARTMENT IS  
20 OFFERING AND I DON'T KNOW HOW ONE WOULD DO THIS.

21 THEY'RE OFFERING TO -- AND I'M JUST  
22 PARAPHRASING HERE -- TO MEET AND DISCUSS, BUT THEY'RE SAYING  
23 THAT THEY'RE NOT OPEN TO ANY CHANGES AND THAT THEY HAVE  
24 ALREADY -- THIS CONVERSATION WOULD OCCUR POST IMPLEMENTATION.

25 Q WAS ALADS --

1           A           I MEAN, LOOK, I'M NOT AN EXPERT IN THE LAW,  
2 BUT THIS IS KIND OF A LOGIC -- THERE ARE SOME LOGIC ISSUES FOR  
3 ME HERE.

4           Q           OKAY. NOW, WAS ALADS NOT INTERESTED IN  
5 DISCUSSING THE IMPACTS?

6           A           ALADS IS INTERESTED IN DISCUSSING THE ENTIRE  
7 BODY OF THE POLICY, THE DECISION, AND I HAVE KIND OF RUN DOWN,  
8 YOU KNOW, THE TOTALITY. WE'VE SPENT A COUPLE OF DAYS COVERING  
9 IT.

10                    I THINK WHAT WOULD BE FAIR TO SAY IS ALADS IS  
11 NOT INTERESTED IN HAVING -- AND I'LL PUT THE COURTESY QUOTES IN  
12 THE AIR (INDICATING) -- NEGOTIATIONS ABOUT ANYTHING AFTER A  
13 POLICY HAS ALREADY BEEN IMPLEMENTED WHEN THE OTHER PARTY IS  
14 STATING THAT THEY DON'T -- THEY'RE NOT GOING TO MAKE ANY  
15 CHANGES. THAT'S NOT AN EFFORT FOR GOOD-FAITH BARGAINING AT ANY  
16 LEVEL. BUT, YOU KNOW WHAT, I THINK ONCE AGAIN THE DOCUMENT  
17 SPEAKS FOR ITSELF.

18           Q           OKAY. WELL, ISN'T IT FAIR TO SAY THAT IN THE  
19 DECEMBER 9TH LETTER FROM LIEUTENANT LOPEZ THAT HE HAD  
20 OFFERED --

21           A           I'M SORRY. THE TAB FOR THAT ONE IS JUST ONE  
22 BACK?

23           Q           YEAH, ONE BACK.

24           A           I'LL GET THERE. I'LL GET THERE.

25           Q           A-10.

1           A       SORRY.

2           Q       SO I MEAN HERE HE SAYS:

3                   "MANAGEMENT" --

4                   AND I'M REFERRING TO THE THIRD PARAGRAPH ON THE  
5 SECOND PAGE.   HERE HE SAID:

6                   "MANAGEMENT IS MORE THAN  
7                   WILLING TO RECONVENE TO CONTINUE  
8                   OUR DISCUSSIONS REGARDING REVISIONS  
9                   TO THE GUIDELINES FOR DISCIPLINE  
10                  AS WELL AS HEAR YOUR SUGGESTIONS  
11                  AND DISCUSS THE PRACTICAL IMPACT  
12                  TO YOUR MEMBERS."

13                  I MEAN THIS -- THIS WAS BEFORE IMPLEMENTATION;  
14 CORRECT?

15           A       YES.

16           Q       OKAY.   AND AT ANY POINT AFTER THIS LETTER BUT  
17 BEFORE IMPLEMENTATION DID ALADS REACH OUT TO THE DEPARTMENT AND  
18 SAY, YES, LET'S TALK ABOUT THE IMPACTS?

19           A       I'M SORRY.   DID --

20           Q       DID ALADS REACH OUT TO THE DEPARTMENT AND  
21 REQUEST AN OPPORTUNITY TO DISCUSS THE IMPACTS?

22           A       NO.   ALADS HAD MADE A CLEAR REQUEST TO  
23 NEGOTIATE, MEET AND CONFER OVER THE POLICY AND DURING THAT  
24 MEETING THE DEPARTMENT SAID THAT IT FELT IT HAD NO OBLIGATION  
25 TO NEGOTIATE.

1 Q OKAY. CHANGING GEARS HERE, NOW ON DIRECT YOU  
2 TESTIFIED ABOUT A CASE INVOLVING A DEPUTY WHO WAS MISTAKENLY  
3 ARRESTED FOR DOMESTIC VIOLENCE BUT THEN HE WAS STILL  
4 DISCIPLINED BECAUSE HIS ARREST TOOK PLACE IN PUBLIC. DID YOU  
5 TESTIFY ABOUT THAT CASE?

6 A YEAH. AND THE ARREST DIDN'T TAKE PLACE IN  
7 PUBLIC. WHAT HAD HAPPENED WAS, HE WAS ARRESTED AT HIS HOME AND  
8 THEN WAS TAKEN OUT IN FRONT, AND THEY FELT THAT BECAUSE IT WAS  
9 UNDER THE VIEW OF THE NEIGHBORS OR WHATEVER, AND ADDITIONALLY  
10 IT WAS A CONCERN THAT BECAUSE HE WAS BOOKED AT A FACILITY THAT  
11 IT HAD PROVIDED SOME NEGATIVE CONSEQUENCE FOR THE DEPARTMENT,  
12 YES.

13 Q AND WHEN DID THIS -- WHEN DID THIS CASE TAKE  
14 PLACE?

15 A I DON'T HAVE THE EXACT DATE. IT'S PROBABLY  
16 ABOUT WITHIN THE LAST YEAR OR SO.

17 Q DID THE INVOLVED DEPUTY APPEAL OR GRIEVE HIS  
18 DISCIPLINE?

19 A HE DID. THAT'S WHY I BECAME AWARE OF IT.

20 Q AND IS THAT CASE STILL -- IS HIS CASE STILL  
21 PENDING?

22 A I DON'T KNOW THE STATUS OF HIS CASE. I  
23 PARTICIPATED IN THE STEP 1 GRIEVANCE HEARING WHICH IS NOT  
24 COMMON, BUT LONG STORY IT WAS BECAUSE IT WAS A STAFF MEMBER AND  
25 THAT'S THE ONLY REASON I BECAME AWARE OF IT. IT WAS AN ODD

1 CASE.

2 BUT THE COMMANDER AT THAT TIME SAID HE HAD --  
3 AND I'M SORRY. I USE THE TERM "COMMANDER" UNIVERSALLY BUT IT  
4 WAS THE CAPTAIN AT THAT TIME SAID HE HAD NO LATITUDE SO THE  
5 ISSUE PROGRESSED, BUT I DON'T KNOW THE FINAL OUTCOME.

6 Q OKAY. NOW, WHY DON'T WE TURN TO EXHIBIT A-5,  
7 AND JUST GOING TO THE GUIDELINES AT THE BACK OF THE DOCUMENT.

8 A SURE.

9 Q NOW, TURNING TO PAGE 7 OF THE PROPOSED  
10 GUIDELINES AND WITH RESPECT TO THE PREDISPOSITION SETTLEMENT  
11 AGREEMENTS, YOU TESTIFIED THAT YOU FELT -- AND PLEASE CORRECT  
12 ME IF I GOT YOUR TESTIMONY WRONG, BUT YOU TESTIFIED SOMETHING  
13 TO THE EFFECT THAT YOU FELT THAT THE LANGUAGE REGARDING THE  
14 PREDISPOSITION SETTLEMENT AGREEMENTS APPEARED TO PRECLUDE THE  
15 USE OF P.D.S.A.'S FOR ALL CASES BECAUSE IN YOUR VIEW -- AND  
16 SPECIFICALLY REFERENCING THE SECOND PARAGRAPH -- IN YOUR VIEW  
17 AN INVESTIGATION IS REQUIRED IN EVERY CASE TO ASCERTAIN ALL OF  
18 THE FACTS CONCERNING THE MISCONDUCT. DO YOU RECALL THAT  
19 TESTIMONY?

20 A I THINK THAT YOUR QUESTION MAY HAVE BLURRED TWO  
21 DIFFERENT ISSUES TOGETHER.

22 Q OKAY.

23 A I THINK YOU WERE SPEAKING TO BULLET NUMBER 2,  
24 CASES IN WHICH THE INVESTIGATION IS REQUIRED TO ASCERTAIN ALL  
25 THE FACTS.

1 Q YES.

2 A YEAH, AND I THINK MY TESTIMONY OR WHAT I'D  
3 HOPED TO SAY WAS THAT I WOULD HOPE THAT IN EVERY CASE THAT THE  
4 DEPARTMENT WOULD ATTEMPT TO ASCERTAIN ALL OF THE FACTS, BOTH  
5 THOSE THAT WOULD ASSIST IN MITIGATION OR THOSE THAT WOULD  
6 AGGRAVATE.

7 Q OKAY.

8 A AND I HOPE I DIDN'T SAY THAT IN A WAY THAT WAS  
9 CONFUSING. BUT WHEN I SEE SOMETHING LIKE THAT, I THINK LAW  
10 ENFORCEMENT AGENCIES SHOULD ALWAYS ATTEMPT TO ASCERTAIN ALL OF  
11 THE FACTS IN ANYTHING THAT COULD RESULT IN DISCIPLINE, NOT JUST  
12 FOR PURPOSES OF DISCIPLINE BUT TO ASSESS TRAINING AND THE  
13 OTHER NEEDS OF THAT AGENCY, AND THAT'S WHAT I WAS TRYING TO  
14 CONVEY.

15 Q OH, OKAY. NOW, WOULD AN INVESTIGATION STILL BE  
16 REQUIRED WHERE AN EMPLOYEE READILY ACKNOWLEDGES HIS OR HER  
17 ERROR?

18 A YES.

19 Q AND WHY WOULD THAT BE?

20 A FOR THE SAME REASON. IF I UNDERSTAND YOUR  
21 QUESTION, IF AN EMPLOYEE READILY ACKNOWLEDGES HIS OR HER ERROR,  
22 SHOULD THE DEPARTMENT CONDUCT AN INVESTIGATION?

23 Q YEAH.

24 A YES.

25 Q IS THERE A NEED FOR FURTHER INVESTIGATION?

1           A           YES, THERE IS.

2           Q           AND WHY? WHY IS THAT?

3           A           THERE'S AN ORGANIZATIONAL NEED. I MEAN THE  
4 PURPOSE OF THE INVESTIGATION IN MY MIND IS NOT SIMPLY FOR  
5 BACKUP FOR PUNISHMENT.

6                       THE ORGANIZATION HAS A NEED TO UNDERSTAND IF  
7 THERE WAS ADEQUATE TRAINING, ADEQUATE SUPERVISION AND ANY OTHER  
8 ISSUES ASSOCIATED WITH IT BECAUSE -- AND I'LL USE THE HARSH  
9 WORD OF "FAILURE." PARTICULARLY IN LAW ENFORCEMENT WHEN THE  
10 DEPUTY OR POLICE OFFICER, QUOTE, "FAILS," IT'S NOT JUST THEM  
11 THAT ARE FAILING. THE ORGANIZATION HAS A CERTAIN  
12 RESPONSIBILITY AROUND THAT AS WELL, AND THE INVESTIGATION CAN  
13 HELP THE AGENCY UNDERSTAND HOW TO CORRECT IT OR MITIGATE IT IN  
14 THE FUTURE BEYOND THAT ONE INDIVIDUAL.

15                      SO IF YOU'RE ASKING ME, I THINK, YES, THERE  
16 SHOULD ALWAYS BE AN INVESTIGATION AND FRANKLY THAT APPLIES TO  
17 ANY EMPLOYER.

18           Q           NOW, YESTERDAY DID YOU TESTIFY THAT IT'S YOUR  
19 BELIEF THAT THIS REVISED LANGUAGE PRECLUDED THE USE OF  
20 P.D.S.A.'S IN ALL CASES?

21           A           I DON'T RECALL THAT. I THINK IT GREATLY LIMITS  
22 P.D.S.A.'S.

23           Q           OKAY. BUT --

24           A           BUT I BELIEVE THE QUESTION I HAD ENGAGED  
25 CERTAIN ASPECTS OF THE CHANGES AND SO GREATLY LIMITS IT. AND

1 THEN ALSO IF YOU GO TO PARAGRAPH 3, BECAUSE THERE'S A CLEAR  
2 INDICATION THAT NOW THE CONSTITUTIONAL POLICING ADVISOR AND THE  
3 I.A.B. CAPTAIN I THINK THERE'S, YOU KNOW, A CHILLING EFFECT ON  
4 THE USAGE.

5 Q OKAY. WELL, LET'S GO TO THAT, THE  
6 CONSTITUTIONAL POLICING ADVISORS. THE ADDED LANGUAGE SIMPLY  
7 REQUIRES THAT THE CONSTITUTIONAL POLICING ADVISORS BE CONFERRED  
8 WITH; CORRECT?

9 A YES.

10 Q OKAY. IT DOES NOT REQUIRE THEIR CONCURRENCE;  
11 RIGHT?

12 A CORRECT.

13 Q OKAY.

14 A THE CONSTITUTIONAL POLICING ADVISORS IT'S MY  
15 UNDERSTANDING REPORT DIRECTLY TO THE SHERIFF. SO ANYTIME A  
16 COMMANDER'S DECISION TO PROVIDE AN EMPLOYEE WITH SOME SORT OF  
17 SETTLEMENT OR A RESULT THAT MIGHT APPEAR FAVORABLE TO THE  
18 DEPUTY HAS TO BE THEN SCRUTINIZED BY PEOPLE HIGHER UP IN THE  
19 CHAIN OF COMMAND.

20 YOU KNOW, WHAT GETS WATCHED OR WHAT GETS  
21 MEASURED IMPACTS THE WAY MANAGEMENT RESPONDS TO CERTAIN TYPES  
22 OF BEHAVIOR. NOW, I'M NOT SAYING THAT'S WRONG. IT'S JUST AN  
23 EFFECT THAT ALWAYS HAPPENS.

24 Q NOW, YOU ALSO MENTIONED THE INVOLVEMENT OF THE  
25 I.A.B. CAPTAIN AND YOU BELIEVE THAT WOULD HAVE A CHILLING

1 EFFECT?

2 A IT COULD, YES. I THINK THE I.A.B. CAPTAIN IS  
3 PROBABLY MUCH LESS OMINOUS THAN THE CONSTITUTIONAL POLICING  
4 ADVISOR, BUT I DON'T REALLY KNOW. I HAVEN'T -- THAT'S AN  
5 INTERNAL ISSUE.

6 Q BUT ISN'T IT CORRECT THAT UNDER THE PRIOR, THE  
7 OLD VERSION OF THE GUIDELINES -- AND I'D LIKE TO DIRECT YOU TO  
8 THE NEXT PAGE -- ISN'T IT CORRECT THAT THE I.A.B. CAPTAIN  
9 ALWAYS HAD TO BE CONTACTED AND HAD TO CONCUR WITH THE PROPOSED  
10 SETTLEMENT AGREEMENT? AND I WOULD LIKE YOU TO LOOK  
11 SPECIFICALLY AT THE STRICKEN -- AT THE LAST SENTENCE OF THAT  
12 PARAGRAPH.

13 A UH-HUH. YES.

14 Q OKAY. SO THE INVOLVEMENT OR THE REQUIREMENT  
15 OF CONCURRENCE OF THE I.A.B. CAPTAIN, THAT IS NOTHING NEW;  
16 CORRECT?

17 A IT DOESN'T APPEAR TO BE.

18 Q OKAY. TURNING TO PAGE 8 UNDER "WRITTEN  
19 REPRIMAND" --

20 A OKAY.

21 Q -- UNDER ITEM H, "APPROPRIATE DISCIPLINE," AND  
22 SUB-ITEM 1, "WRITTEN REPRIMAND."

23 A UH-HUH.

24 Q NOW, YOU HAD INDICATED THAT YOU HAD SOME  
25 CONCERNS ABOUT THE CHANGE HERE THAT'S -- I GUESS CHANGING THE

1 CONTENTS OF THE WRITTEN REPRIMAND FROM SUGGESTED CONTENTS TO  
2 REQUIRED CONTENTS?

3 A YES.

4 Q NOW, YOU WOULD AGREE THAT UNIFORMITY IN THE  
5 CONTENTS OF A WRITTEN REPRIMAND, THAT WOULD ACTUALLY BE A GOOD  
6 THING; WOULDN'T YOU?

7 A I THINK SOME ASPECTS OF UNIFORMITY ARE ALWAYS  
8 A GOOD THING.

9 I THINK WHAT IS HERE IS THAT THE INFORMATION  
10 THAT'S DOCUMENTED ON A WRITTEN REPRIMAND WOULD MOST LIKELY BE  
11 DEROGATORY IN NATURE. AND I THINK WHEN WE DISCUSSED THIS  
12 YESTERDAY WE WERE CONCERNED ABOUT DISCLOSURES AND SECONDARY  
13 CONCERNS ASSOCIATED WITH THAT, ET CETERA.

14 Q OKAY.

15 A BUT ONCE AGAIN THIS WASN'T SOMETHING THAT WE  
16 HAD AN OPPORTUNITY TO ADEQUATELY DRILL DOWN ON IN THE CUTOFF  
17 MEETING THAT WE HAD INITIALLY. THIS WOULD BE A TOPIC THAT WE  
18 WOULD WANT TO FLUSH OUT IN GREATER DETAIL THROUGH THE  
19 BARGAINING PROCESS.

20 Q NOW, WOULDN'T YOU AGREE THAT MORE CONCRETE  
21 GUIDANCE TO SUPERVISORS OR MANAGERS WHO ARE ISSUING WRITTEN  
22 REPRIMANDS, THAT WOULD BE A GOOD THING?

23 A I AGREE THAT ADDITIONAL GUIDANCE TO SUPERVISORS  
24 AND MANAGERS IS GENERALLY A GOOD THING.

25 Q OKAY. AND NOW LET'S GO TO THESE SPECIFIC

1 ITEMS.

2 A OKAY.

3 Q SO UNDER THE REVISED LANGUAGE IT STATES:

4 "THE WRITTEN REPRIMAND SHALL, ONE,  
5 DESCRIBE OR DOCUMENT THE MISCONDUCT  
6 AND ITS LACK OF ACCEPTABILITY."

7 WOULDNT'T YOU AGREE THAT IT MAKES SENSE THAT A  
8 WRITTEN REPRIMAND CONTAIN THE DESCRIPTION OF THE MISCONDUCT AND  
9 WHY THAT CONDUCT IS NOT ACCEPTABLE?

10 A GENERALLY IT WOULD.

11 Q OKAY. AND LOOKING AT ITEM 2, WOULDNT'T YOU  
12 AGREE THAT IT WOULD BE APPROPRIATE FOR A WRITTEN REPRIMAND TO  
13 IDENTIFY PREVIOUS COUNSELING OR DISCIPLINE?

14 A IN SOME CASES YES AND IN SOME CASES NO. MY  
15 CONCERN AROUND THIS WOULD BE ON HOW STALE THE PREVIOUS  
16 COUNSELING WAS, AND I WOULD WANT TO ENSURE THE STALENESS AS  
17 ONE ISSUE. RELEVANCE IS ANOTHER TOPIC THAT'S ALWAYS AVAILABLE,  
18 AND THEN THIRDLY IF THE EMPLOYEE WAS MADE AWARE OF THE  
19 COUNSELING, ET CETERA, MEANING IT WOULD NEED TO BE PROPERLY  
20 DOCUMENTED.

21 SO, FOR EXAMPLE, IT'S NOT UNCOMMON IN LAW  
22 ENFORCEMENT FOR A SUPERVISOR TO MAKE I'LL CALL IT AN  
23 ON-THE-SPOT CORRECTION, "HEY, YOUR BOOTS AREN'T SHINY." AND  
24 THEN MAYBE THE DEPUTY SHINES THEIR BOOTS OR REPAIRS THEM OR  
25 WHATNOT. AND THEN SOMETIME LATER A REPRIMAND OF ANOTHER TYPE

1 OR AN EVALUATION IS THEN MADE AND THEN THAT ON-THE-SPOT  
2 CORRECTION IS REFERENCED.

3 THOSE ARE THE KIND OF THINGS -- AND, BY THE  
4 WAY, WE'RE TALKING ABOUT THE LOWEST LEVEL OF DISCIPLINE THAT'S  
5 COVERED IN THIS THING AS OPPOSED TO THE HIGHEST LEVEL. BUT THE  
6 CONCEPTS OF FAIR ADMINISTRATION HOLDS TRUE AND SO THAT'S REALLY  
7 WHAT WE'RE LOOKING FOR IN THESE TYPES OF DOCUMENTS. SOMETIMES  
8 PEOPLE MAY NOT PAY ATTENTION TO WRITTEN REPRIMANDS BUT THEY CAN  
9 BE EXTREMELY IMPORTANT, PARTICULARLY WITH THE INCLUSION OF  
10 STUFF THAT'S STALE OR INAPPROPRIATELY ADMINISTERED EVEN AT THE  
11 COUNSELING LEVEL.

12 Q OKAY. NOW, ONE OF THE PURPOSES OF A WRITTEN  
13 REPRIMAND IS TO PROVIDE THE EMPLOYEE WITH GUIDANCE REGARDING  
14 EXPECTATIONS FOR FUTURE PERFORMANCE OR CONDUCT?

15 A YES.

16 Q OKAY. AND YOU WOULD AGREE THAT A WRITTEN  
17 REPRIMAND SHOULD ALSO IDENTIFY POTENTIAL DISCIPLINARY  
18 CONSEQUENCES FOR REPETITION OF THE MISCONDUCT OR A LACK OF  
19 IMPROVEMENT?

20 A IF YOU'RE ASKING MY OPINION, THE ANSWER IS  
21 "NO."

22 Q OKAY. AND --

23 A LET ME JUST CLARIFY THAT A LITTLE BIT. I THINK  
24 IT'S NOT UNCOMMON TO SAY THAT, YOU KNOW, SOMETHING ALONG THE  
25 LINES OF FURTHER INCIDENTS COULD RESULT IN INCREASED

1 DISCIPLINE.

2 ONE OF THE DESIRES OF ANY FORMAL PROCESS IS TO  
3 IMPROVE THE EMPLOYEE'S PERFORMANCE, AND SO MY HABIT IS TO  
4 ALWAYS TRY TO LEAVE ON AN UP NOTE EVEN IN A WRITTEN REPRIMAND,  
5 BUT THAT'S MY LITTLE QUIBBLE.

6 AND I DIDN'T MEAN TO DRILL DOWN INTO THE  
7 DETAILS, BUT A WRITTEN REPRIMAND CAN BE SOMETHING THAT'S REALLY  
8 WEIGHTY TO SOMEBODY. I MEAN WE THINK OF IT AS NOT A LOT OF  
9 DISCIPLINE IN THIS CONTEXT BECAUSE IT DOESN'T INVOLVE A  
10 SUSPENSION OR A DAY OFF, BUT FOR A PERSON WHO IS VERY CAREFULLY  
11 SELECTED AND TRAINED AND IS VERY PRIDEFUL LIKE MANY PEOPLE IN  
12 LAW ENFORCEMENT, A WRITTEN REPRIMAND COULD CARRY A LOT OF  
13 EMOTIONAL WEIGHT AND SO THEREFORE I THINK THEY NEED TO BE  
14 HANDLED VERY CAREFULLY.

15 Q OKAY. NOW, SHOULDN'T -- DO YOU DISAGREE THAT  
16 A WRITTEN REPRIMAND SHOULD ALSO INCLUDE THE EMPLOYEE'S REASONS  
17 FOR HIS OR HER ACTIONS TO THE EXTENT THAT THEY HAVE BEEN  
18 SHARED?

19 A I THINK THAT WOULD HAVE TO BE ADDRESSED ON A  
20 CASE-BY-CASE ISSUE. I'M NOT -- I'M NOT EXACTLY SURE WHAT THAT  
21 MEANS.

22 Q OKAY.

23 A I THINK IN SOME CASES THAT'S FINE. I THINK IN  
24 OTHER CASES IT COULD BE CHALLENGING. I DON'T KNOW.

25 Q OKAY.

1           A           SO, FOR EXAMPLE, LET'S SAY WE HAD AN EMPLOYEE  
2           THAT RECEIVED A WRITTEN REPRIMAND FOR BEING TARDY AND THE  
3           REASON FOR IT WAS RELATED TO A MEDICAL ISSUE OR SOMETHING THAT  
4           WAS PERSONAL IN NATURE.

5                    I THINK IN THAT CASE THE EMPLOYER WOULD BE MUCH  
6           BETTER OFF NOT STATING THE REASON IF IT'S JUST SIMPLY THAT THE  
7           EMPLOYEE WAS TARDY AND IN THIS CASE IT WAS NOT EXCUSED AND  
8           THEREFORE THEY RECEIVED A WRITTEN REPRIMAND. I'M USING THAT AS  
9           AN EXAMPLE. IN THAT CASE, ME, AS AN EMPLOYER, I WOULD NOT  
10          INCLUDE THOSE OTHER DETAILS.

11                   I THINK IN OTHER CASES IF AN EMPLOYEE SAY HAD  
12          RECEIVED A WRITTEN REPRIMAND FOR NOT WEARING THEIR SEATBELT  
13          ROLLING UP ON A CALL AND THEN THEY SAID, "WELL, I WAS TRAINED  
14          THAT WAY" OR SOMETHING LIKE THAT, I THINK THE EMPLOYER MIGHT  
15          INCLUDE THAT BECAUSE IT MAY HAVE ACTUALLY MITIGATED THE  
16          DISCIPLINE DOWN FROM A HIGHER LEVEL AND I THINK IN THAT CASE IT  
17          WOULD POTENTIALLY BE APPROPRIATE. SO I THINK IT'S VERY  
18          SITUATION-DEPENDENT.

19                    I THINK THIS JUST GOES TO THE GREATER QUESTION.  
20          IF YOU'RE ASKING ME ABOUT WAYS TO IMPROVE THE POLICY, WE NEVER  
21          HAD AN OPPORTUNITY TO DISCUSS THAT.

22                    Q           OKAY. NOW, I WOULD LIKE TO DIRECT YOUR  
23          ATTENTION TO PAGE 25. I'M SORRY. OH, YES, 25. NOW, UNDER  
24          ITEM E --

25                    A           I'M SORRY. HOLD ON, PLEASE. I'M SORRY. I'M

1           READY.

2                   Q           THIS FIRST PARAGRAPH, THAT LANGUAGE IS NOT  
3           ACTUALLY NEW; CORRECT?

4                   HEARING OFFICER ROSS:   UNDER D?   IS THAT WHAT YOU'RE  
5           REFERENCING?

6                   MR. WONG:   E, UNDER ITEM E.

7                   HEARING OFFICER ROSS:   UNDER E?

8                   MR. WONG:   YEAH.

9                   HEARING OFFICER ROSS:   OKAY.

10           BY MR. WONG:

11                   Q           AND FOR COMPARISON PURPOSES, I WOULD LIKE TO  
12           DIRECT YOUR ATTENTION TO EXHIBIT 1 IN THE DEPARTMENT'S BINDER.  
13           I'M SORRY.

14                   A           OH, I'M SORRY.   GOT IT.   EXHIBIT 1.

15                   HEARING OFFICER ROSS:   AND IS IT THE SAME PAGE, PAGE  
16           25?

17                   MR. WONG:   THIS ONE IS PAGE 26.

18                   HEARING OFFICER ROSS:   THANK YOU.

19                   MR. AITCHISON:   THE QUESTION WAS?

20           BY MR. WONG:

21                   Q           THE QUESTION WAS, THIS LANGUAGE, THIS  
22           HIGHLIGHTED LANGUAGE IN EXHIBIT A-5, THAT FIRST PARAGRAPH,  
23           THAT'S NOT ACTUALLY NEW?   THAT'S NOT A NEW INSERTION?   IS THAT  
24           CORRECT?

25                   MR. AITCHISON:   OBJECTION.   THAT MISSTATES WHAT THE

1 DOCUMENTS ARE. THE FIRST SENTENCE -- THE FIRST PARAGRAPH IN E  
2 IS NOT NEW.

3 MR. WONG: NO.

4 MR. AITCHISON: THE SECOND PARAGRAPH IS ENTIRELY NEW.

5 MR. WONG: NO, THE FIRST PARAGRAPH IS WHAT I WAS  
6 REFERRING TO.

7 MR. AITCHISON: OH, I'M SORRY. OKAY, OKAY.

8 THE WITNESS: HE STOLE MY ANSWER. BUT I THINK MORE  
9 IMPORTANTLY WHEN WE RECEIVE A DOCUMENT LIKE THIS FROM THE  
10 SHERIFF'S DEPARTMENT -- AND I BELIEVE WHAT WE'RE LOOKING AT IN  
11 A-5 IS WHAT WE RECEIVE FROM THE DEPARTMENT -- I TAKE THE  
12 DEPARTMENT ON FACE VALUE THAT THE HIGHLIGHTED ASPECTS ARE NEW  
13 OR CHANGES BECAUSE FRANKLY TO GET IN AND QUESTION THAT THERE'S  
14 SOME SORT OF -- I DON'T WANT TO USE THE WORD "INTEGRITY."  
15 THAT'S NOT FAIR, BUT A MISTAKE OR SOME OTHER REASON WHY THE  
16 DEPARTMENT WOULD IDENTIFY SOMETHING AS A CHANGE WHEN IT'S NOT  
17 OR SOMETHING THAT IS UNCHANGED WHEN IN FACT IT IS, IS FRANKLY  
18 NOT WHERE I GO. AND SO FOR THE PURPOSES OF WHAT I THOUGHT TO  
19 BE A NEGOTIATION SESSION I COULD TELL YOU THAT I WOULD HAVE  
20 CONSIDERED THE HIGHLIGHTED AREA TO BE NEW.

21 BUT SPECIFICALLY TO YOUR QUESTION WITHOUT DOING  
22 A READ -- YOU KNOW, A SIDE-BY-SIDE, IT APPEARS THAT IT'S  
23 SIMILAR. IT LOOKS LIKE THEY MAY HAVE CHANGED THE TITLE. THE  
24 SECOND PARAGRAPH IS ADDED THAT REFERENCES 42. SO, TO ANSWER  
25 YOUR QUESTION, IT APPEARS THAT MOST OF OR POTENTIALLY ALL OF

1 THAT FIRST PARAGRAPH EXISTED IN THE PREVIOUS ONE, BUT THE  
2 DEPARTMENT INDICATED TO THE UNION THAT IT WAS A CHANGE OR NEW.  
3 THAT'S THE HIGHLIGHTING.

4 Q WELL, IT WAS A REVISION, CORRECT? THAT'S THE  
5 IMPRESSION YOU GOT BASED ON THE FACT THAT IT IS HIGHLIGHTED?

6 A YES.

7 Q OKAY.

8 A I THINK WE DISCUSSED THAT YESTERDAY. MY  
9 UNDERSTANDING OF THE WAY THE STRIKEOUT IS DONE ON THIS ONE IS  
10 HIGHLIGHTED IS NEW LANGUAGE AND STRIKEOUT WAS EXISTING LANGUAGE  
11 THAT'S NOW REPLACED.

12 SOMETIMES WHAT WILL HAPPEN IS THAT THEY MOVE A  
13 BODY TO ANOTHER PLACE. IT WILL SHOW UP AS NEW LANGUAGE WHEN IN  
14 FACT IT'S A REVISION IN ITS LOCATION.

15 Q OKAY.

16 A BUT THOSE ARE ALL THINGS THAT GET FLUSHED OUT  
17 AS WE GO THROUGH THE DOCUMENT IN DETAIL IN THE BARGAINING  
18 PROCESS.

19 Q OKAY. AND SO TURNING TO THE NEXT PAGE, ON BOTH  
20 OF THESE DOCUMENTS, BOTH EXHIBITS 1 AND -- DEPARTMENT'S EXHIBIT  
21 1 AS WELL AS EXHIBIT A-5, THAT SPECIAL NOTE, AT LEAST THE FIRST  
22 PARAGRAPH, THAT DOESN'T APPEAR TO BE ANYTHING NEW. IS THAT  
23 CORRECT?

24 A I DID NOT DO A SIDE-BY-SIDE, BUT IT LOOKED  
25 VERY SIMILAR. I MEAN THE ONLY THING THAT JUMPS OUT AT ME IS

1            THAT IT LOOKS LIKE THERE IS AN EXTRA SPACE AFTER THE N, BUT I  
2            DIDN'T --

3            Q            AND IT LOOKS -- LOOKING AT THE LAST LINE, IT  
4            SAYS:

5                            "DOWNWARD OR UPWARD ADJUSTMENTS  
6                            TO THE DISCIPLINE."

7                            IT LOOKS LIKE THEY ADDED THE WORDS "TO THE  
8            DISCIPLINE."

9            A            YEAH. AND SO I MEAN THIS IS ONE OF THE THINGS  
10           THAT -- YOU KNOW, I HATE TO KEEP HARPING BACK. THIS IS  
11           SOMETHING THAT WE NEED TO GET FERRETED OUT, BECAUSE IF YOU ADD  
12           A WORD TO A SENTENCE OR TAKE ONE OUT OR CHANGE THE PUNCTUATION  
13           YOU CAN DRAMATICALLY CHANGE THE MEANING, AND THOSE ARE THE  
14           THINGS THAT WE WOULD FLUSH OUT IN THE PROCESS.

15                            I MEAN ALADS MEETS AND CONFERS ON SCORES OF  
16           TOPICS, VERY FEW OF THIS MAGNITUDE, BUT SCORES OF TOPICS AND SO  
17           WE ARE ABLE TO DO THAT IN THE PROCESS.

18           Q            OKAY. AND NOW LOOKING AT THE NEXT LINE OF  
19           THIS --

20           A            OH, I'M SORRY. I LOST YOU ON THE QUESTION. IT  
21           SOUNDS LIKE THEY WERE NOT THE SAME BASED ON YOUR READING.

22           Q            YEAH, IT APPEARS THAT THEY JUST ADDED --

23           A            OKAY. SO I'LL ADOPT THAT AS MY ANSWER, THEY'RE  
24           NOT THE SAME.

25           Q            OKAY. BUT THEY ADDED -- IT APPEARS THEY JUST

1           ADDED THE WORDS "TO THE DISCIPLINE" TO THE END OF THAT  
2           PARAGRAPH?

3           A           YEAH. I MEAN, YOU KNOW, THAT'S AN ISSUE  
4           BECAUSE THEY SHOW THE WHOLE THING AS NEW. YOU'RE OBVIOUSLY NOT  
5           TESTIFYING, BUT THE WAY YOU ASKED THE QUESTION IT MADE ME THINK  
6           THAT -- ANYWAY, IT'S SOMETHING THAT NEEDS TO GET FLUSHED OUT  
7           BECAUSE IT'S A LITTLE CONFUSING --

8           Q           OKAY.

9           A           -- AS TO WHAT IS NEW AND WHAT'S NEW AND IS THE  
10          MEANING NEW. I DON'T KNOW.

11          Q           OKAY. NOW, IT APPEARS THAT -- SO MOVING TO THE  
12          NEXT LINE, THE EXCEPTION TO THIS SPECIAL NOTE REGARDING  
13          AGGRAVATING AND MITIGATING FACTORS. IT APPEARS AT LEAST IN THE  
14          2012 VERSION THERE WAS NO WAY TO ADJUST A PENALTY OF DISCHARGE  
15          ONLY; CORRECT?

16          A           SECTIONS WHICH INDICATE A PENALTY OF DISCHARGE  
17          ONLY MAY NOT BE ADJUSTED.

18          Q           BUT IN THE 2017 OR 2016/2017 REVISION, IT  
19          APPEARS THE DEPARTMENT ADDED THAT IT COULD BE ADJUSTED WITH THE  
20          APPROVAL OF THE CASE REVIEW PANEL AND/OR THE SHERIFF. IS THAT  
21          YOUR READING OF THAT SECTION?

22          A           IT IS. I MEAN I HATE TO USE THAT EXPRESSION  
23          BECAUSE WE'RE USING IT A LOT. I THINK THE DOCUMENTS SPEAK FOR  
24          THEMSELVES.

25                        BUT IT'S MY UNDERSTANDING THAT THE CASE REVIEW

1 PANEL SETS THE DISCIPLINE, SO I'M NOT SURE WHO WOULD GO BACK --  
2 AND I MEAN I HATE TO LOOK AT COMMANDER NELSON, BUT I THINK FOR  
3 A DISCIPLINE LEVEL THAT'S DISCHARGE, I THINK IT IS THE CASE  
4 REVIEW PANEL AND THE SHERIFF THAT ACTUALLY SET THAT DISCIPLINE,  
5 BUT I'M NOT CERTAIN. SO IT'S KIND OF CONFUSING TO ME AS TO  
6 WHAT THAT ACTUALLY MEANS.

7 Q OKAY, OKAY. BUT AT LEAST WITH RESPECT TO THE  
8 REVISED LANGUAGE IT APPEARS THAT -- THERE APPEARS TO BE SOME  
9 WAY TO ADJUST A DISCHARGE-ONLY OFFENSE; CORRECT?

10 A SO, TO ANSWER YOUR QUESTION, BASED ON MY  
11 UNDERSTANDING THE ANSWER IS "NO" BECAUSE YOU'RE ACTUALLY  
12 APPEALING BACK TO THE SAME BODY THAT DECIDED THE DISCIPLINE. I  
13 DON'T UNDERSTAND.

14 AND THE OTHER THING IS, I'M NOT SURE WHO THIS  
15 IS. I DON'T MEAN TO QUIBBLE WITH YOU ON THE LANGUAGE, BUT MY  
16 UNDERSTANDING OF THE PROCESS, THIS DOESN'T MAKE SENSE. IT'S  
17 KIND OF LIKE IF DAD SAYS YOU'RE NOT GOING OUT TONIGHT, YOU  
18 COULD GO OUT IF DAD SAYS YES. WELL, THAT'S KIND OF THE LOGIC  
19 HERE BASED ON MY UNDERSTANDING OF HOW THAT LEVEL OF DISCIPLINE  
20 IS DECIDED.

21 I'M SORRY TO BE DIFFICULT ON THAT ONE BUT IT'S  
22 JUST -- AND, ONCE AGAIN, THAT WOULD BE A QUESTION THAT WE COULD  
23 KIND OF FERRET OUT IN THE PROCESS. AND IF I MISUNDERSTAND  
24 THAT, I WOULD BE HAPPY TO GET THE RIGHT INFO.

25 Q OKAY. NOW, TURNING TO THE NEXT PAGE, LET'S

1 FOCUS FOR NOW ON EXHIBIT A-5. LET'S LOOK AT THE DISCIPLINE AND  
2 EDUCATION GUIDE.

3 A OKAY.

4 Q AND YOU TESTIFIED ON DIRECT THAT THE DISCIPLINE  
5 AND EDUCATION GUIDE DOESN'T MAKE ANY REFERENCE TO THE LEVELS OF  
6 DISCIPLINE THAT WERE APPARENTLY NEWLY ADDED IN THIS REVISION OF  
7 THE GUIDELINES. IS THAT A FAIR STATEMENT?

8 A YEAH, I DON'T SEE THAT.

9 Q OKAY. AND WHEN I'M REFERRING TO THE LEVELS OF  
10 DISCIPLINE I'M REFERRING TO PAGE --

11 A 43?

12 Q 42.

13 A OH, YEAH.

14 Q 42 OF THE DOCUMENT.

15 A RIGHT.

16 Q NOW, IF SOMETHING HAS A RANGE -- TAKING, FOR  
17 EXAMPLE, LET'S JUST LOOK AT "SAFETY OF FIREARMS." THAT'S THE  
18 SECOND ITEM ON PAGE 27. THAT'S SECTION 3-01/025.45. AND  
19 LOOKING AT THE SPECIFIC VIOLATION OF "UNABLE TO/DID NOT  
20 EXERCISE REASONABLE CARE AND/OR CONTROL OF A FIREARM DUE TO  
21 INTOXICATION," THAT HAS A PENALTY -- I'M SORRY -- DISCIPLINARY  
22 OPTIONS OF 15 DAYS TO DISCHARGE.

23 WOULDNT'T THE REASONABLE INTERPRETATION OF THAT  
24 PARTICULAR VIOLATION BE THAT IT COULD CONSTITUTE ANYTHING  
25 BETWEEN A LEVEL 1, 2 -- OH, I'M SORRY, LEVEL --

1 A 3 TO 5.

2 Q LEVEL 3 TO 5?

3 A YEAH, I THINK IT'S A LEVEL 3, A LEVEL 4 AND A  
4 LEVEL 5 ALL AT THE SAME TIME.

5 Q OKAY.

6 A I THINK THAT'S KIND OF THE -- THAT'S PRECISELY  
7 THE --

8 Q OKAY. YOU'VE ANSWERED THE QUESTION. THANK  
9 YOU.

10 A OKAY. I THINK IT WOULD BE OKAY IF IT WAS THE  
11 MULTIPLE LEVELS. THE PROBLEM GETS IN IS WHEN WE START TO -- IF  
12 IT'S MITIGATED YOU WOULDN'T KNOW WHICH LEVEL TO MITIGATE IT.  
13 ANYWAY --

14 Q WELL, WOULDN'T THE MITIGATION BE BASED ON AT  
15 WHAT LEVEL THEY -- THE SEVERITY OF THE INITIAL DISCIPLINE, NOT  
16 THE --

17 A WHAT WE WOULD HOPE IS THAT --

18 Q I'M SORRY.

19 THE REPORTER: CAN YOU GIVE HIM ONE SECOND TO FINISH?  
20 WE'RE CUTTING OFF THE QUESTION.

21 THE WITNESS: OH, I'M SORRY.

22 THE REPORTER: THANK YOU. THANK YOU.

23 BY MR. WONG:

24 Q WOULDN'T THE MITIGATION BE BASED ON THE INITIAL  
25 DISCIPLINE, INTENDED DISCIPLINE, WITHOUT CONSIDERING THE

1 MITIGATING OR AGGRAVATING FACTORS?

2 SO, FOR EXAMPLE, IF IT'S WITHIN -- IF THE  
3 INITIAL BASIS WOULD BE SAY A 3-DAY SUSPENSION THEN THAT WOULD  
4 STILL BE A LEVEL 1 DISCIPLINE, CORRECT, BECAUSE IT'S 1 TO 5  
5 DAYS?

6 A NO, BECAUSE I THINK IN THE EXAMPLE THAT WE'RE  
7 TALKING ABOUT IT'S 15 DAYS TO DISCHARGE, AND SO I DO AGREE WITH  
8 YOU THAT EACH CASE SHOULD BE HANDLED UNIQUELY AND INDIVIDUALLY  
9 WITHIN THE JUST CAUSE ASPECT OF THAT.

10 BUT WHAT I WAS TRYING TO HIGHLIGHT IS THE  
11 LEVELS CONFUSE THINGS BECAUSE IN THE CASE OF THE ONE THAT YOU  
12 BROUGHT UP, THE SAFETY OF FIREARMS, 15 DAYS TO DISCHARGE,  
13 BECAUSE IT ENDS UP IN THREE LEVELS OF DISCIPLINE, LET'S SAY --  
14 AND I DON'T KNOW HOW A PERSON WOULD MAKE THIS DECISION, BUT  
15 LET'S SAY THERE'S A HEARING OFFICER OR SOME MEMBER OF THE  
16 DEPARTMENT THAT SITS ON A PANEL THAT'S TRYING TO DECIDE WHAT  
17 SHOULD BE A FACTOR AND THEY DECIDE THAT, YES, THIS WOULD BE  
18 ELIGIBLE FOR MITIGATION FOR WHATEVER REASON. THEY WOULDN'T  
19 KNOW IF THAT MITIGATION MEANS AN 11-DAY SUSPENSION OR A 16-DAY  
20 SUSPENSION BECAUSE THEY DON'T KNOW WHAT LEVEL IT FALLS INTO  
21 BECAUSE THE DISCIPLINE RANGE, THE DISCIPLINE OPTIONS THAT'S  
22 OUTLINED IN THE FOURTH COLUMN, PUTS THE VIOLATION INTO THE  
23 THREE LEVELS SIMULTANEOUSLY. THAT WAS THE PART THAT I THINK I  
24 DIDN'T QUITE GET.

25 Q WHY DON'T WE TURN TO -- LET'S GO TO THE 2013

1 CHANGES TO THE GUIDELINES.

2 A COULD YOU JUST THROW ME A TAB --

3 Q YES.

4 A -- AND I'LL JUMP TO IT?

5 Q LET ME FIND THAT.

6 A MAY I OFFER --

7 Q A-16.

8 A I HAVE A-23. OKAY. LET ME TAKE A LOOK AT  
9 A-16. AH, GOT IT. I WENT TO A-16.

10 Q AND THESE ARE THE PROPOSED CHANGES TO THE  
11 GUIDELINES FOR DISCIPLINE?

12 A UH-HUH.

13 Q THESE ARE THE ONES THAT WERE ATTACHED TO THE  
14 JANUARY 14, 2013, LETTER FROM LIEUTENANT LOPEZ TO MR. REMIGE.  
15 IS THAT CORRECT?

16 A THAT'S MY UNDERSTANDING, YES.

17 Q OKAY. NOW, IS IT YOUR UNDERSTANDING THAT ALL  
18 OF THE NEW -- ALL OF THESE SPECIFIC -- ALL OF THESE VIOLATIONS  
19 THAT ARE SET OUT IN THIS TABLE, THEY WOULD HAVE -- THEY WOULD  
20 BE VIOLATIONS THAT FELL UNDER EXISTING M.P.P. PROVISIONS;  
21 CORRECT?

22 A I'M SORRY. THE QUESTION ONE MORE TIME? I  
23 THINK I --

24 Q THE VIOLATIONS THAT ARE LAID OUT HERE, THESE  
25 WOULD FALL UNDER -- YOUR UNDERSTANDING IS THAT THESE WOULD FALL

1 UNDER SOME EXISTING MANUAL OF POLICIES AND PROCEDURES  
2 PROVISION; CORRECT?

3 A THE BEST WAY FOR ME TO ANSWER THAT, THAT WOULD  
4 BE MY ASSUMPTION. UNLIKE THE OTHER TABLE, IT DOESN'T HAVE IN  
5 THE FIRST COLUMN THE LISTING OF THE M.P.P. SECTION, SO I DON'T  
6 KNOW. BUT THAT WOULD BE MY ASSUMPTION THAT THEY WOULD  
7 CORRESPOND TO AN M.P.P. OF SOME TYPE.

8 Q OKAY. SO LET'S MAKE IT EASIER. LET'S COMPARE  
9 THIS CHART, EXHIBIT A-16. LET'S TURN TO EXHIBIT A-8 AND -- I'M  
10 SORRY.

11 HEARING OFFICER ROSS: A-8?

12 BY MR. WONG:

13 Q NOT A-8.

14 A OH.

15 Q DEPARTMENT'S EXHIBIT 8.

16 A OKAY.

17 HEARING OFFICER ROSS: THANK YOU. IT'S EASIER TO  
18 COMPARE TWO NOTEBOOKS THAN TO FLIP BACK AND FORTH.

19 MR. WONG: I AGREE.

20 BY MR. WONG:

21 Q AND SO THIS IS -- I'LL REPRESENT THAT THIS IS  
22 THE FEBRUARY 20TH, 2013, VERSION OF THE GUIDELINES FOR  
23 DISCIPLINE.

24 A OKAY.

25 Q AND TURN TO PAGE 36 OF THAT DOCUMENT.

1           A           OKAY.

2           Q           AND SO THAT'S THE -- PAGE 36 IS PART OF THE  
3 DISCIPLINE AND EDUCATION GUIDE FOR THIS VERSION OF THE  
4 GUIDELINES; CORRECT?

5           A           YES.

6           Q           OKAY. AND THE FAILURE TO REPORT A USE OF  
7 FORCE --

8           A           HANG ON. LET ME -- OKAY. AT THE TOP, "USE OF  
9 FORCE REPORTING"?

10          Q           YES.

11          A           YEP.

12          Q           SO IN THE PROPOSED CHANGE TO THE GUIDELINES FOR  
13 DISCIPLINE ON A-16 THAT FIRST VIOLATION OF "FAILURE TO REPORT  
14 USE OF FORCE," THAT WOULD FALL UNDER M.P.P. SECTION  
15 3-10/100.00, WHICH IS THE USE OF FORCE REPORTING AND REVIEW  
16 PROCEDURES PROVISION; CORRECT?

17          A           YES, IT LOOKS LIKE IT.

18          Q           OKAY.

19          A           HANG ON. "FAILURE TO REPORT USE OF FORCE."  
20 OKAY.

21          Q           OKAY. AND --

22                 MR. AITCHISON: ALEX, I JUST SIMPLY DON'T UNDERSTAND  
23 SOMETHING. WHEN WE'RE LOOKING AT EXHIBIT -- DEPARTMENT'S  
24 EXHIBIT 8 AND WE SEE THE DATE OF FEBRUARY 17TH, THAT'S THE  
25 IMPLEMENTATION DATE.

1 MR. WONG: YES.

2 MR. AITCHISON: IS THIS POST-IMPLEMENTATION OR  
3 PRE-IMPLEMENTATION?

4 MR. WONG: YOU KNOW, ACTUALLY --

5 HEARING OFFICER ROSS: DO YOU WANT TO GO OFF THE  
6 RECORD?

7 MR. WONG: YEAH, LET'S GO OFF THE RECORD.

8 HEARING OFFICER ROSS: OKAY.

9

10 (DISCUSSION OFF THE RECORD.)

11

12 HEARING OFFICER ROSS: BACK ON THE RECORD.

13 SO THE ANSWER WAS THAT THIS WAS THE  
14 POST-IMPLEMENTATION VERSION.

15 THE WITNESS: DEPARTMENT'S 8.

16 HEARING OFFICER ROSS: CORRECT.

17 MR. WONG: THANK YOU.

18 BY MR. WONG:

19 Q SO LOOKING AT A-16, MOVING DOWN TO THE  
20 "VIOLATING THE FORCE PREVENTION POLICY," THAT ALSO FALLS UNDER  
21 THE SECTION 3-10/100.00, THE USE OF FORCE REPORTING AND REVIEW  
22 PROCEDURES. IS THAT CORRECT?

23 A I'M SORRY. VIOLATING THE FORCE PREVENTION  
24 POLICY, YOU'RE ASKING ME IF IT GOES WHERE?

25 Q IF IT FALLS UNDER 3 -- UNDER M.P.P. SECTION

1 3-10/100.00?

2 A IT LOOKS LIKE IT.

3 Q OKAY. AND MOVING DOWN ON EXHIBIT A-16, "USE OF  
4 UNREASONABLE FORCE," THAT WOULD FALL UNDER --

5 A USE OF UNREASONABLE FORCE?

6 Q YEAH, THAT WOULD FALL UNDER "UNREASONABLE  
7 FORCE" ON PAGE 35?

8 A I THINK IF YOU'RE ASKING ME DOES IT LOOK LIKE  
9 THE DEPARTMENT MADE THE CHANGES THAT IT SAID IT WAS GOING TO, I  
10 THINK THE ANSWER IS IT APPEARS THAT THEY DID IF THIS IS THE  
11 POST-IMPLEMENTATION DOCUMENT.

12 Q OKAY. BUT MORE TO MY POINT --

13 A OH, OKAY.

14 Q -- IS THAT EACH OF THESE VIOLATIONS THAT ARE  
15 SET FORTH IN A-16, THOSE REFERENCE SPECIFIC M.P.P. PROVISIONS;  
16 CORRECT?

17 A THE LANGUAGE IS THE SAME AS THIS DOCUMENT THAT  
18 THEN REFERENCES --

19 HEARING OFFICER ROSS: DON'T TELL ME "THIS DOCUMENT."

20 THE WITNESS: OH, I'M SORRY. YEAH. THE TABLE THAT WE  
21 SEE THAT WAS ATTACHED TO THE LETTER THAT WE SEE IN A-16 VERY  
22 CLEARLY CORRESPONDS TO LANGUAGE THAT WE SEE IN DEPARTMENT 8,  
23 WHICH THEN LISTS THE M.P.P. SECTION IN DEPARTMENT 8 IN THE  
24 FIRST COLUMN SECTION WHICH IS CONSISTENT TO THE VERSION THAT  
25 WE'RE TALKING ABOUT FROM THE 2016/2017 CHANGE.

1 BY MR. WONG:

2 Q OKAY. NOW, GENERALLY SPEAKING, ONE OF ALADS'  
3 MAJOR CONCERNS WITH THE REVISIONS TO THE GUIDELINES FOR  
4 DISCIPLINE IS THE INCREASE IN POSSIBLE PENALTIES FOR THE  
5 SPECIFIC VIOLATIONS; CORRECT?

6 A YES.

7 Q AS SET FORTH IN THE DISCIPLINE AND EDUCATION  
8 GUIDE?

9 A YES. I THINK UNIVERSALLY THAT WE CAN SAY THAT  
10 YOU'RE POINTING TO THE DOCUMENT FROM 2012 OR '13 AND SO, YES,  
11 AT THAT TIME, AND THEN FOR THE SUBSEQUENT ONE AS WELL AS THE  
12 PROCEDURAL CHANGES AND EVERYTHING ELSE THAT WE'VE BEEN TALKING  
13 ABOUT.

14 Q OKAY. BUT SPECIFICALLY WITH RESPECT TO THE  
15 CHANGES ON THE DISCIPLINE AND EDUCATION GUIDE, ONE OF THE MAJOR  
16 CONCERNS IS THE INCREASING OF PENALTIES; CORRECT?

17 A YES, CHANGES.

18 Q OKAY. NOW, THE DEPARTMENT HAS ALWAYS HAD THE  
19 ABILITY TO IMPOSE HARSHER DISCIPLINE EVEN UNDER THE OLD  
20 GUIDELINES BASED ON AGGRAVATING FACTORS. WOULDN'T YOU AGREE  
21 WITH THAT?

22 A COULD THEY IMPOSE A HARSHER PENALTY UNDER  
23 THE --

24 Q THEY COULD IMPOSE HARSHER PENALTIES THAN  
25 SPECIFIED UNDER THE DISCIPLINARY OPTIONS BASED ON AGGRAVATING

1 FACTORS; CORRECT?

2 A NO. I BELIEVE WHAT YOU WOULD SEE IS -- AND I  
3 MEAN I'M LOOKING AT THE 2013 GUIDE IN DEPARTMENT 8 AND I'LL  
4 JUST USE AN EXAMPLE; RIGHT? LET ME JUST PICK ONE.

5 Q AND JUST TO CLARIFY, DEPARTMENT 8 IS THE -- OH,  
6 I'M SORRY. OH, YEAH, THIS IS THE 2013.

7 A I DON'T THINK IT MATTERS WHICH ONE IT IS.

8 Q YEAH.

9 A BUT YOU ASKED FOR MY UNDERSTANDING --

10 Q YES.

11 A -- OF THE WAY THIS WOULD WORK AND I'LL USE JUST  
12 THE SECOND CALLED "FAILURE TO REPORT WITNESSED FORCE, 5 TO 15  
13 DAYS." I WOULD ASSUME THAT THE 15 DAYS IS THE WORST PENALTY  
14 THAT YOU WOULD GET FOR THAT AND THAT THE LESSER PENALTY WOULD  
15 BE 5 AND THAT MITIGATION AND AGGRAVATION WOULD FIT IN THAT  
16 RANGE.

17 Q WELL, STAYING WITH DEPARTMENT'S EXHIBIT 8,  
18 LET'S TURN TO PAGE 27, THE SPECIAL NOTE.

19 A OKAY.

20 Q NOW, THE SPECIAL NOTE, IT PROVIDES, QUOTE:

21 "DISCIPLINE IS EXPECTED TO  
22 REMAIN WITHIN THE STANDARD RANGE  
23 IN MOST INSTANCES. IN THE EVENT  
24 CIRCUMSTANCES WARRANT AN UPWARD  
25 OR DOWNWARD ADJUSTMENT TO A

1 PENALTY MORE OR LESS THAN THE  
2 STANDARD RANGE, THE AGGRAVATING  
3 AND MITIGATING FACTORS MUST  
4 PROPERLY ADDRESS AND REFLECT  
5 THE REASON OR REASONS FOR THE  
6 DOWNWARD OR UPWARD ADJUSTMENT."

7 SO, BASED ON THIS LANGUAGE, WOULDN'T YOU AGREE  
8 THAT AGGRAVATING OR MITIGATING FACTORS WOULD BRING THE LEVEL OF  
9 DISCIPLINE OUTSIDE THE RANGES THAT ARE EXPRESSED IN THE  
10 DISCIPLINE AND EDUCATION GUIDE?

11 A I WOULD NOT.

12 Q YOU WOULD NOT?

13 A NO. THE DISCIPLINE GUIDE IS WHAT THE  
14 DEPARTMENT USES, I ASSUME, TO PROVIDE GUIDANCE TO THE STAFF  
15 AND TO THE COMMANDERS WHO DO DISCIPLINE. I MEAN I HAVEN'T  
16 BEEN THROUGH THEIR TRAINING ON THIS, BUT I'M ASSUMING THAT  
17 THAT'S WHY THEY HAVE THE RANGE IN THERE IS TO PROVIDE THAT  
18 GUIDANCE.

19 Q OKAY.

20 A BUT VERY CLEARLY IN THE 2016/2017 ON PAGE I  
21 THINK IT'S 43 OF THE DOCUMENT IT VERY CONCISELY KIND OF  
22 REINFORCES THAT THE RANGE IS ACTUALLY EVEN NARROWER WITHIN THAT  
23 BAND.

24 Q WELL, LET'S SEE. LET'S LOOK AT THE 2017  
25 VERSION.

1           A           OKAY.

2           Q           THAT IS AT -- WHERE IS IT? LET'S LOOK AT  
3 EXHIBIT A --

4           HEARING OFFICER ROSS: 12?

5           THE WITNESS: THANK YOU.

6           MR. WONG: YEAH, A-12.

7 BY MR. WONG:

8           Q           AND SPECIFICALLY PAGE 43, "LEVELS OF DISCIPLINE  
9 TABLE." DO YOU KNOW HOW THE DEPARTMENT UTILIZES THIS CHART,  
10 THIS TABLE?

11          A           I DO NOT.

12          Q           OKAY.

13          A           I JUST TAKE IT FOR FACE VALUE.

14          Q           OKAY.

15          HEARING OFFICER ROSS: LET ME INTERRUPT YOU FOR A  
16 MOMENT.

17          MR. WONG: SURE.

18          HEARING OFFICER ROSS: I DON'T THINK YOU'RE GOING TO  
19 BE FINISHED WITH YOUR CROSS-EXAMINATION IN A COUPLE OF MINUTES.  
20 WOULD THAT BE A GOOD ASSUMPTION?

21          MR. WONG: I THINK, YEAH, IT MIGHT BE A LITTLE BIT  
22 LONGER.

23          HEARING OFFICER ROSS: WOULD IT BE OKAY TO TAKE A  
24 LUNCH BREAK NOW?

25          MR. WONG: ABSOLUTELY.

1 HEARING OFFICER ROSS: WILL AN HOUR BE ADEQUATE TODAY  
2 OR DO WE NEED MORE TIME?

3 MR. AITCHISON: AN HOUR IS FINE HERE.

4 MR. NELSON: I THINK A LITTLE MORE TIME WOULD BE GOOD.

5 MR. WONG: YEAH, IF WE COULD HAVE SAY AN HOUR AND 15,  
6 AN HOUR AND 30 AGAIN?

7 HEARING OFFICER ROSS: LET'S BE BACK IN AN HOUR AND  
8 15.

9 MR. WONG: OKAY.

10 HEARING OFFICER ROSS: OKAY? SO MY REAL CLOCK SAYS  
11 IT'S 12:26, SO LET'S COME BACK AT 1:45.

12 MR. AITCHISON: GOT IT.

13 MR. WONG: OKAY.

14 HEARING OFFICER ROSS: OKAY?

15 MR. WONG: THANK YOU.

16 HEARING OFFICER ROSS: THANK YOU. OFF THE RECORD.

17

18 (LUNCH RECESS.)

19

20 HEARING OFFICER ROSS: BACK ON THE RECORD.

21 BY MR. WONG:

22 Q NOW, AFTER A DEPUTY HAS BEEN DISCIPLINED, HE OR  
23 SHE HAS DUE PROCESS RIGHTS; CORRECT?

24 A YES.

25 Q AND THE DEPUTY CAN GRIEVE THE DISCIPLINE OR

1           THEY CAN APPEAL IT THROUGH THE CIVIL SERVICE COMMISSION?

2           A           IN SOME CASES, YES, AND IN OTHER CASES THERE  
3           COULD BE ANOTHER PROCESS.

4           Q           OKAY.

5           A           BUT GENERALLY SPEAKING THERE IS A PROCESS.

6           Q           AND THROUGH THAT PROCESS, TO THE EXTENT THAT  
7           THERE'S ANY UNFAIRNESS IN THE LEVEL OF DISCIPLINE THAT'S BEEN  
8           METED OUT, THAT PROCESS COULD RESULT IN AN ADJUSTMENT TO THE  
9           IMPOSED DISCIPLINE; CORRECT?

10          A           CORRECT.

11          Q           AND THOSE DUE PROCESS RIGHTS, THOSE EXISTED  
12          PRIOR TO ANY OF THE CHANGES IN THE DISCIPLINARY GUIDELINES;  
13          CORRECT?

14          A           CORRECT.

15          Q           THEY EXISTED AFTER THE CHANGES IN THE  
16          DISCIPLINARY GUIDELINES; CORRECT?

17          A           CORRECT.

18          Q           OKAY. NOW, IN ADDITION TO DEPARTMENT  
19          DISCIPLINE AS A MEANS OF CHANGING OR MODIFYING A DEPUTY'S  
20          BEHAVIOR, THE DEPARTMENT DOES PROVIDE TRAINING TO ITS DEPUTIES;  
21          CORRECT?

22          A           YOU MEAN TO MODIFY THEIR BEHAVIOR?

23          Q           YES.

24          A           YES. THE DEPARTMENT DOES PROVIDE SOME  
25          TRAINING.

1 Q AND IT ALSO PROVIDES DIFFERENT ALTERNATIVES TO  
2 DISCIPLINE? OH, STRIKE THAT.

3 MR. WONG: LET'S SEE. LET ME MAKE SURE I GOT  
4 EVERYTHING.

5 HEARING OFFICER ROSS: OH, DON'T TELL ME I COULD HAVE  
6 HELD YOU TILL LUNCH TO FINISH?

7 MR. WONG: WELL, I DID HAVE OTHER QUESTIONS THAT I  
8 OPTED NOT TO --

9 HEARING OFFICER ROSS: OKAY. SO WE SHORT-CIRCUITED  
10 SOMETHING?

11 MR. WONG: YES, WE DID.

12 HEARING OFFICER ROSS: OKAY.

13 MR. AITCHISON: ARE WE DONE? MY TURN?

14 MR. WONG: NOTHING FURTHER.

15 HEARING OFFICER ROSS: OKAY. REDIRECT?

16 MR. AITCHISON: YEAH, JUST A COUPLE OF QUESTIONS.

17  
18 REDIRECT EXAMINATION

19  
20 BY MR. AITCHISON:

21 Q MR. HSIEH, YOU WERE ASKED SOME QUESTIONS ON  
22 CROSS-EXAMINATION ABOUT WHAT WORDS IN THE GUIDELINES MEANT AND  
23 HOW DIFFERENT SECTIONS OF THE GUIDELINES RELATED TO EACH OTHER.  
24 WHAT IN YOUR JUDGMENT WOULD BE A WONDERFUL PLACE TO HAVE THAT  
25 SORT OF DISCUSSION IN THE FIRST INSTANCE?

1           A           DURING THE NEGOTIATIONS OR MEET AND CONFER  
2           PROCESS.

3           Q           WHY?

4           A           WELL, FIRST OF ALL, THERE'S A GIVE AND TAKE.  
5           THE PARTIES HAVE AN OPPORTUNITY TO BRING IN OTHER RESOURCES, TO  
6           REQUEST SUBJECT MATTER EXPERTS, TO COMPARE THAT SECTION WITH  
7           OTHER POLICIES THAT MAY BE IMPACTED OR INDICATED AND BASICALLY  
8           TO BRING ALL OF THE RESOURCES FRANKLY TO BOTH ORGANIZATIONS TO  
9           THE PROBLEM-SOLVING SETTING, WHICH NEGOTIATIONS IS  
10          FUNDAMENTALLY PROBLEM-SOLVING.

11          Q           YOU'VE BEEN INVOLVED IN NEGOTIATIONS A NUMBER  
12          OF TIMES OVER THE YEARS?

13          A           I HAVE.

14          Q           CAN NEGOTIATIONS BRING NEW FACTS TO THE FORE  
15          THAT PRODUCE A DIFFERENT SOLUTION?

16          A           ABSOLUTELY.

17          Q           AND CAN NEGOTIATIONS EXAMINE ASSUMPTIONS THAT  
18          BOTH PARTIES ARE MAKING THAT MAY OR MAY NOT BE COMPLETELY BORN  
19          OUT BY THE FACTS?

20          A           YES.

21          Q           CAN NEGOTIATIONS PRODUCE A RESULT THAT IS IN  
22          THE MUTUAL BEST INTEREST OF BOTH SIDES?

23          A           ABSOLUTELY.

24          Q           AND I GUESS TWO MORE QUESTIONS. MR. WONG  
25          ASKED YOU A FEW QUESTIONS ABOUT MITIGATION. WHY DO CHANGES --

1 IF THERE IS THIS ABILITY TO MITIGATE, WHETHER CIRCUMSCRIBED OR  
2 NOT BY THE LEVELS OF DISCIPLINE, THIS NEW CONCEPT, IF THERE IS  
3 THIS ABILITY TO MITIGATE, WHY DO CHANGES IN THE BAIL SCHEDULE  
4 MATTER?

5 A WELL, BECAUSE WHILE THERE MIGHT BE SOME  
6 MITIGATION WITHIN THAT GUIDELINE, OUR RESEARCH AT ALADS OF THE  
7 CASES THAT WE'VE HAD OVER THE LAST FEW YEARS INDICATE THAT  
8 VERY, VERY FEW CASES DO THEY ACTUALLY GO OUTSIDE THE BAIL  
9 SCHEDULE. I THINK THE RESULT WAS APPROXIMATELY 2 PERCENT, AND  
10 SO THE GUIDELINES FOR DISCIPLINE ARE GUIDELINES AND THEY ARE  
11 FOLLOWED.

12 Q ALL RIGHT. AND LAST QUESTION, YOU WERE ASKED  
13 SOME QUESTIONS ABOUT THE M.P.P. PROVISION ON SAFETY OF  
14 FIREARMS. DO YOU REMEMBER THOSE QUESTIONS?

15 A YES.

16 Q AND YOU WERE ASKED WHERE WOULD THIS FALL --  
17 GIVEN THE BAIL SCHEDULE FOR THAT, WHERE WOULD THIS FALL IN THE  
18 LEVELS OF DISCIPLINE AND YOU SAID 3, 4 OR 5. DO YOU REMEMBER  
19 THAT DIALOGUE WITH MR. WONG?

20 A YEAH. I THINK IT WAS, YEAH, 3, 4 OR 5.

21 Q AND YOU STARTED TO SAY SOMETHING. YOU WERE  
22 VOLUNTEERING IT. SHAME ON YOU. BUT YOU STARTED TO SAY  
23 SOMETHING THAT STARTED WITH, "THAT'S PRECISELY THE PROBLEM,"  
24 AND MR. WONG, AS HE SHOULD HAVE, CUT YOU OFF. COULD YOU FINISH  
25 IT?



1           A           YES, BECAUSE THE MEETING CAME TO A CONCLUSION.

2           Q           AND THE MEETING CAME TO A CONCLUSION BECAUSE

3           YOU CONCLUDED THAT THE MEETING SHOULD END; CORRECT?

4           A           YES.

5           Q           BUT AT NO TIME DID THE DEPARTMENT INDICATE TO

6           YOU THAT IT WAS NOT WILLING TO LISTEN TO ANY QUESTIONS THAT YOU

7           MIGHT HAVE?

8           A           ACTUALLY, THAT'S PRECISELY WHAT THEY DID WHEN

9           LIEUTENANT LOPEZ GAVE ME THE HAND GESTURE -- AND I'LL KIND OF

10          ENUNCIATE IT AGAIN, THAT "GO FAST" OR "MOVE FORWARD" THING

11          (INDICATING).

12                    THEY TOOK A CAUCUS AND CAME BACK AND INDICATED

13          THAT THEY WEREN'T NEGOTIATING AND WE WERE -- AND THAT BASICALLY

14          STOPPED THE MEETING, BECAUSE THE PURPOSE OF MY QUESTIONS AND

15          THE CONVERSATION WE WERE HAVING WAS IN THE SPIRIT OF

16          NEGOTIATIONS, AND I THINK I'VE KIND OF COVERED MY SENSE OF THAT

17          BEFORE.

18          Q           DID ALADS MAKE ANY PROPOSALS FOR CHANGES TO THE

19          GUIDELINES?

20          A           I DON'T RECALL SPECIFICALLY THAT WE MADE

21          PROPOSALS. I THINK WE WERE SEEKING CLARIFICATION AND GATHERING

22          INFORMATION AT THAT POINT.

23          Q           OKAY.

24          A           FOR A --

25          Q           GO ON.

1           A           FOR A POLICY OF THIS MAGNITUDE, IT WOULD BE A  
2           PROCESS WHERE NORMALLY WE WOULD SET OUT TO GATHER INFORMATION  
3           FIRST AND THEN OFFER SOME PROPOSALS OR IDEAS SECONDARILY.

4           Q           OKAY. SO YOU WERE SEEKING CLARIFICATION AT  
5           THIS NOVEMBER 29TH MEETING; CORRECT?

6           A           AS WELL AS TRYING TO UNDERSTANDING WHAT THE  
7           DEPARTMENT WAS DOING OVERALL, YES.

8           Q           NOW, ASIDE FROM THE DIFFERENCE IN PERCEPTION  
9           BETWEEN ALADS AND THE DEPARTMENT WHETHER YOU'RE MEETING AND  
10          CONSULTING VERSUS NEGOTIATING, THE DEPARTMENT NEVER SAID THAT  
11          IT WAS NOT GOING TO BE RECEPTIVE TO ANYTHING THAT ALADS  
12          PROPOSED; DID IT?

13          A           ARE YOU REFERRING TO THE MEETING ON THE 29TH?

14          Q           YES.

15          A           YEAH, I THINK THE FACT THAT THEIR LEAD  
16          NEGOTIATOR CAME BACK AND SAID THAT THEY WEREN'T NEGOTIATING IS  
17          A CLEAR INDICATION OF THAT, AND I DON'T HAVE -- I COULD REFRESH  
18          MY MEMORY WITH THE NOTES, BUT I THINK HE ADDED TO THAT.

19          Q           OKAY. BUT THE FACT THAT THE DEPARTMENT  
20          CONSIDERED IT TO BE A MANAGEMENT RIGHT TO MAKE THE CHANGES,  
21          THAT DOES NOT NECESSARILY MEAN THAT THE DEPARTMENT WILL NOT  
22          CONSIDER ALADS' CONCERNS WITH RESPECT TO THE CHANGES; CORRECT?

23          A           I GUESS AT THAT LEVEL THAT WOULD BE CORRECT.

24          Q           AND AT ANY POINT DURING THAT MEETING DID THE  
25          DEPARTMENT REFUSE TO PROVIDE YOU CLARIFICATION FOR WHATEVER

1 QUESTIONS THAT YOU DID HAVE REGARDING THE GUIDELINES?

2 A THEY WERE UNABLE TO PROVIDE CLARIFICATION FOR A  
3 COUPLE OF THE QUESTIONS AT LEAST.

4 Q BUT THEM BEING UNABLE TO PROVIDE CLARIFICATION,  
5 YOU'D AGREE THAT'S NOT THE SAME AS THEM REFUSING TO PROVIDE  
6 CLARIFICATION?

7 A NO, I GUESS THAT IS NOT THE SAME.

8 Q OKAY. AND AT ANY POINT DID THE DEPARTMENT  
9 REFUSE TO PROVIDE CLARIFICATION?

10 A THEY REFUSED TO CONDUCT THE MEETING ON THE  
11 TERMS OF A NEGOTIATION.

12 Q AT ANY POINT DID THE DEPARTMENT REFUSE TO  
13 PROVIDE CLARIFICATION?

14 A NO.

15 Q AND AT ANY POINT DURING THE MEETING DID THE  
16 DEPARTMENT REFUSE TO ANSWER ANY OF ALADS' QUESTIONS REGARDING  
17 THE PROPOSED CHANGES?

18 A THERE WERE A FEW PLACES THAT I RECALL WHERE  
19 THEY DIDN'T RESPOND SPECIFICALLY TO QUESTIONS, BUT THAT WASN'T  
20 THE GENERAL TONE.

21 Q I'M NOT SURE I UNDERSTAND WHAT YOU MEAN. WHAT  
22 DO YOU MEAN BY THE --

23 A YEAH, LIEUTENANT LOPEZ HURRIED US THROUGH SOME  
24 AREAS WHEN WE WERE DISCUSSING IT, AND THAT'S RIGHT BEFORE THEY  
25 TOOK THE BREAK.

1 Q OKAY. AND YOU'RE AWARE THAT THE DEPARTMENT MET  
2 WITH OTHER ASSOCIATIONS REGARDING THESE PROPOSED CHANGES?

3 A I BECAME AWARE OF THAT AFTER THE FACT.

4 Q AND IN FACT ISN'T IT TRUE THAT THE DEPARTMENT  
5 MET WITH THE PROFESSIONAL PEACE OFFICERS ASSOCIATION REGARDING  
6 THE PROPOSED CHANGES?

7 A I'M GOING TO ASSUME THAT BECAUSE THEY MENTIONED  
8 IT IN A LETTER.

9 Q OKAY.

10 A YEAH.

11 Q AND IN THEIR LETTER THEY ALSO INDICATED THAT  
12 THEY HAD MADE SOME CHANGES TO THE GUIDELINES BASED UPON THOSE  
13 DISCUSSIONS WITH THE P.P.O.A.; RIGHT?

14 A WHICH LETTER? I SEE YOU'RE --

15 Q YEAH, LET'S LOOK AT -- LET ME HAVE YOU TAKE A  
16 LOOK AT EXHIBIT A-11.

17 A OKAY.

18 Q SO IN THE SECOND PARAGRAPH OF THAT LETTER --  
19 IT'S THE DECEMBER 19TH, 2016, LETTER -- LIEUTENANT LOPEZ  
20 INDICATES THAT:

21 "SUBSEQUENT TO THE LETTER" --

22 AND IT APPEARS HE'S REFERRING TO THE DECEMBER  
23 9TH, 2016 LETTER. HE INDICATES:

24 -- "WE MET WITH THE PROFESSIONAL  
25 PEACE OFFICERS ASSOCIATION (P.P.O.A.)

1 TO ANSWER THEIR QUESTIONS AND/OR  
2 CONCERNS WITH THE GUIDELINES  
3 HANDBOOK. P.P.O.A. SUGGESTED  
4 ADDITIONAL LANGUAGE BE INCLUDED  
5 IN SECTION 3."  
6 AND HE EXPLAINS WHERE THE ADDITIONAL REVISIONS  
7 ARE.

8 BUT, FIRST, DO YOU HAVE ANY REASON TO BELIEVE  
9 THAT THIS MEETING WITH THE P.P.O.A. DID NOT TAKE PLACE?

10 A I HAVE NO KNOWLEDGE ABOUT THE MEETING, BUT I  
11 DON'T BELIEVE THAT IT DIDN'T TAKE PLACE.

12 Q OKAY. AND BASED ON THAT, IT APPEARED THAT THE  
13 DEPARTMENT CONSIDERED THEIR CONCERNS, "THEIR" BEING P.P.O.A.'S.  
14 THEY CONSIDERED P.P.O.A.'S CONCERNS AND MADE SOME OR INSERTED  
15 SOME ADDITIONAL LANGUAGE IN THE FINAL GUIDELINES. IS THAT  
16 CORRECT?

17 A YEAH, I HAVE NO IDEA WHAT HAPPENED IN THAT  
18 MEETING OR HOW MANY CONCERNS OR ISSUES THAT P.P.O.A. BROUGHT  
19 UP, BUT I SEE WHAT PARAGRAPH 2 SAYS.

20 Q OKAY. ALL RIGHT. LET'S TURN TO EXHIBIT A-5.  
21 THAT'S THE PROPOSED REVISIONS TO THE GUIDELINES. AND  
22 SPECIFICALLY LET'S LOOK AT PAGE 43, WHICH WAS THE LEVEL OF  
23 DISCIPLINE TABLE.

24 A YEAH, I'M SORRY.

25 Q A-5.

1           A           OKAY.  YEAH, GOT IT.

2           Q           DID YOU -- DID YOU EVER ASK THE DEPARTMENT HOW  
3 THIS LEVELS OF DISCIPLINE TABLE IS SUPPOSED TO BE USED BY  
4 MANAGERS?

5           A           YEAH, WE NEVER GOT TO THAT.

6           Q           OKAY.  BUT YOU'D AGREE THAT YOU CERTAINLY HAD  
7 THE OPTION OF ASKING THAT QUESTION DURING THIS NOVEMBER 29TH  
8 MEETING WITH THE DEPARTMENT?

9           A           WHAT I SAID WAS WE STARTED AT THE BEGINNING OF  
10 THE MANUAL AND WORKED OUR WAY THIS WAY.  THIS IS AT THE END,  
11 SO I DON'T KNOW AT WHAT POINT.  BUT, YOU KNOW, CLEARLY AFTER  
12 LIEUTENANT LOPEZ CALLED FOR THE BREAK AND CAME BACK, THAT WAS  
13 GOING TO BE THE END OF THE MEETING.

14          Q           OKAY.  WELL, JUST BECAUSE HE CAME BACK AND SAID  
15 THAT THIS IS NOT A NEGOTIATION, THAT DIDN'T MEAN THAT YOU COULD  
16 NOT CONTINUE TO ASK QUESTIONS AND GET CLARIFICATION REGARDING  
17 THOSE CHANGES?

18          A           YEAH, FROM MY PERSPECTIVE, ONCE THAT ISSUE WAS  
19 RAISED AND THAT WAS THE STATED POSITION OF THE COUNTY, IT WOULD  
20 HAVE BEEN DISINGENUOUS TO CONTINUE TO MEET.

21          Q           BECAUSE YOU ASSUMED THAT THE DEPARTMENT WOULD  
22 NOT BE WILLING TO MAKE ANY MODIFICATIONS TO THE PROPOSED  
23 CHANGES?

24          A           NO, I DIDN'T ASSUME THAT THE COUNTY WOULDN'T BE  
25 WILLING TO MAKE MODIFICATIONS.  WE, ALADS, BELIEVED THAT THE

1 POLICY, THE DECISION TO IMPLEMENT THE POLICY AND EVERYTHING  
2 ABOUT IT WAS A MANDATORY SUBJECT OF BARGAINING AND TO CONTINUE  
3 FORWARD WOULD BE DISINGENUOUS AND SO WE NEEDED TO GET A  
4 RESOLUTION TO THAT QUESTION.

5 Q OKAY.

6 MR. WONG: NOTHING FURTHER.

7 MR. AITCHISON: A COUPLE OF MORE QUESTIONS.

8  
9 FURTHER REDIRECT EXAMINATION

10  
11 BY MR. AITCHISON:

12 Q POLICY CHANGES OF THIS MAGNITUDE, 43 PAGES OF A  
13 POLICY THAT HAS ON THE AVERAGE MULTIPLE CHANGES EACH PAGE, HOW  
14 LONG DID YOU THINK THE MEET AND CONFER PROCESS WAS GOING TO  
15 TAKE?

16 A I DIDN'T REALLY HAVE AN ESTIMATE OF HOW LONG IT  
17 WOULD TAKE, BUT FOR SOMETHING WITH AS MANY CHANGES AS THIS,  
18 THAT'S AS IMPORTANT AS IT IS TO THE MEMBERS AND IMPACTS THEIR  
19 WORK LIFE IN SO MANY WAYS, THIS WOULD BE SOMETHING THAT WOULD  
20 BE SPREAD OUT OVER POTENTIALLY I DON'T WANT TO CALL IT DAYS BUT  
21 A FAIR NUMBER OF HOURS.

22 I MEAN EVEN IN THIS PROCEEDING WE'VE SPENT A  
23 LOT OF TIME TALKING ABOUT IT. AND SO YOU EXPAND THAT TO  
24 ACTUALLY GETTING INTO PROBLEM-SOLVING AND GETTING INTO THE  
25 DEPTHS OF IT, IT'S GOING TO BE MEASURED IN A FAIR NUMBER OF

1 DAYS AND MEETINGS.

2 Q NOW, HAD THE MEETING NOT HAD ITS ABRUPT END,  
3 WAS IT YOUR INTENTION TO GET INTO THE LINE-BY-LINE CHANGES IN  
4 THE BAIL SCHEDULE?

5 A YES.

6 Q AND WHAT WOULD YOU HAVE ASKED THE DEPARTMENT  
7 WITH RESPECT TO ALL OF THOSE CHANGES?

8 A WELL, WE WOULD HAVE GONE THROUGH THE DETAILS  
9 OF WERE THE PREVIOUS LEVELS OF DISCIPLINE INADEQUATE TO, YOU  
10 KNOW, CONTROL THE WORKFORCE OR INFLUENCE THE WORKFORCE IN THE  
11 WAY THE DEPARTMENT WANTED TO. WE WOULD HAVE TRIED TO GET DATA  
12 ABOUT THAT, AND ALSO TO UNDERSTAND THE OBJECTIVES OF THE  
13 DEPARTMENT INDIVIDUALLY AND BY CATEGORY WITHIN THE OUTLINE  
14 ITSELF.

15 Q NOW, I UNDERSTAND YOU TO BE SAYING THAT WHEN  
16 LIEUTENANT LOPEZ ANNOUNCED THIS ISN'T BARGAINING, WE'RE NOT  
17 GOING TO NEGOTIATE THIS, THIS IS A MANAGEMENT RIGHT, I  
18 UNDERSTAND YOU TO SAY THAT CHANGED THINGS FOR ALADS?

19 A RIGHT.

20 Q HAVE YOU BEEN IN THAT SORT OF SITUATION BEFORE  
21 IN LOS ANGELES COUNTY WHERE SOMEWHERE IN THE MEET AND CONFER  
22 PROCESS SOMEBODY REPRESENTING THE SHERIFF'S DEPARTMENT  
23 ANNOUNCES THIS ISN'T BARGAINING?

24 A NO, IT'S NEVER HAPPENED TO ME BEFORE IN ANY  
25 CIRCUMSTANCE.

1 Q DOES A DISCUSSION OF POLICY CHANGES CHANGE IN  
2 TENOR AND CONTENT IF A MEETING IS BARGAINING VERSUS SIMPLY  
3 DISCUSSING?

4 A YES.

5 Q HOW SO?

6 A WELL, IN BARGAINING THERE'S OBLIGATIONS OF THE  
7 PARTY TO ACT IN GOOD FAITH, TO PROVIDE INFORMATION AND BE UP  
8 FRONT ABOUT IT AND TO REASONABLY CONSIDER THE OTHER GROUP'S  
9 IDEAS, THOUGHTS AND QUESTIONS.

10 AND I THINK MAYBE THIS IS A FAULT OF MINE, BUT  
11 I THINK OF BARGAINING AS ALMOST HOLISTICALLY. I MEAN IT IS  
12 JUST A FAIR PROCESS WHERE THE PARTIES ARE MEETING ON SOME  
13 ASPECT OF EVEN GROUND. WHEN SOMEBODY SAYS THAT WE ARE NOT HERE  
14 TO NEGOTIATE AND WE ARE NOT COMING IN THAT SPIRIT, THAT  
15 CHANGES, FRANKLY, ALL THAT BALANCE AND SO IT'S DRAMATICALLY  
16 DIFFERENT.

17 MR. AITCHISON: THANK YOU. NO FURTHER QUESTIONS.

18 MR. WONG: NOTHING FURTHER.

19 HEARING OFFICER ROSS: THANK YOU. YOU'RE EXCUSED.

20 THE WITNESS: THANK YOU.

21 HEARING OFFICER ROSS: JUST LEAVE WHILE THE GOING'S  
22 GOOD.

23 MR. AITCHISON: AND ALADS RESTS.

24 MR. WONG: CAN WE TAKE A QUICK BREAK BEFORE MY  
25 OPENING?

1 HEARING OFFICER ROSS: CERTAINLY. HOW QUICK IS  
2 "QUICK"?

3 MR. NELSON: FIVE MINUTES?

4 MR. WONG: FIVE MINUTES, YEAH.

5 HEARING OFFICER ROSS: OKAY.

6

7 (RECESS.)

8

9 HEARING OFFICER ROSS: BACK ON THE RECORD.

10 MR. WONG: THE DEPARTMENT, I GUESS WE'LL MAKE OUR  
11 OPENING STATEMENT.

12 HEARING OFFICER ROSS: OKAY. DID YOU WANT TO SHUT THE  
13 DOOR?

14 MR. WONG: SURE.

15 THE REPORTER: I'LL GET IT.

16 HEARING OFFICER ROSS: NO POWERPOINT, HUH?

17 MR. WONG: NO.

18

19 OPENING STATEMENT

20

21 MR. WONG: GOOD AFTERNOON. THE FACTS OF THIS  
22 CONSOLIDATED CASE ARE STRAIGHTFORWARD. ALADS CONTENDS THAT  
23 THE DEPARTMENT COMMITTED AN UNFAIR PRACTICE BY UNILATERALLY  
24 IMPLEMENTING CHANGES TO THE DEPARTMENT'S GUIDELINES FOR  
25 DISCIPLINE HANDBOOK, WHICH ALADS CONTENDS IS A MANDATORY

1 SUBJECT OF BARGAINING. THE FACTS AND EVIDENCE WILL SHOW THE  
2 OPPOSITE.

3 THE EVIDENCE WILL DEMONSTRATE THAT THE CHANGES  
4 TO THE DEPARTMENT'S GUIDELINES FOR DISCIPLINE ARE NOT MATTERS  
5 WITHIN THE SCOPE OF REPRESENTATION BECAUSE THE CHANGES HAD  
6 NEITHER A SIGNIFICANT NOR ADVERSE EFFECT ON WAGES, HOURS OR  
7 WORKING CONDITIONS OF DEPUTY SHERIFF PERSONNEL.

8 FIRST, IT'S IMPORTANT FOR THE HEARING OFFICER  
9 TO UNDERSTAND WHAT THE GUIDELINES FOR DISCIPLINE HANDBOOK IS  
10 AND IS NOT. THE GUIDELINES FOR DISCIPLINE HANDBOOK, WHICH HAS  
11 BEEN USED BY THE DEPARTMENT FOR DECADES, MORE THAN 20 OR 30  
12 YEARS EVEN, IT EXPRESSLY STATES ITS SPECIFIC PURPOSE AND  
13 INTENT.

14 IT SERVES AS A GUIDE TO ASSIST SUPERVISORS,  
15 MANAGERS AND EXECUTIVES IN DECIDING WHEN AND HOW TO IMPOSE  
16 DISCIPLINE. IT SETS FORTH THE GENERAL PRACTICES AND POLICIES  
17 THAT THE DEPARTMENT WILL FOLLOW AND THE PROCEDURAL REQUIREMENTS  
18 THAT SHOULD BE MET IN ORDER TO PROPERLY IMPOSE DISCIPLINE.

19 NOW, IMPORTANTLY, THE HANDBOOK, WHICH IN ITS  
20 CURRENT FORM IS ONLY 42 PAGES, IT DOES NOT ESTABLISH THE  
21 GROUNDS OR SERVE AS THE BASIS FOR EMPLOYEE DISCIPLINE. THE  
22 ACTUAL GROUNDS FOR DISCIPLINE ARE SET FORTH IN THE DEPARTMENT'S  
23 MANUAL OF POLICIES AND PROCEDURES. THAT'S ABBREVIATED AS THE  
24 M.P.P.

25 NOW, ONLY VIOLATIONS OF THE M.P.P. CAN RESULT

1 IN EMPLOYEE DISCIPLINE, ALTHOUGH THE HANDBOOK CONTAINS A  
2 SECTION CALLED THE DISCIPLINE AND EDUCATION GUIDE, SOMETIMES  
3 REFERRED TO AS THE "BAIL SCHEDULE," WHICH IS BROKEN DOWN BY  
4 M.P.P. SECTIONS WHICH IDENTIFIES EXAMPLES OF SPECIFIC  
5 VIOLATIONS OF THE BROADER M.P.P. PROVISIONS AND EXPRESSES  
6 RANGES OF THE DISCIPLINARY OPTIONS FOR THOSE SPECIFIC  
7 VIOLATIONS.

8 THE DISCIPLINE AND EDUCATION GUIDE SPECIFICALLY  
9 PROVIDES, AND I'LL QUOTE:

10 "THE LIST OF CAUSES FOR DISCIPLINARY  
11 ACTION IS REPRESENTATIVE ONLY AND NOT  
12 ALL-INCLUSIVE." END QUOTE.

13 AND IT ALSO PROVIDES THAT THE LIST OF  
14 DISCIPLINARY ACTIONS IS INTENDED AS A GUIDE ONLY AND SHOULD NOT  
15 BE IMPOSED AUTOMATICALLY IN RELATION TO ACTUAL INFRACTIONS.

16 THE GUIDE ALSO RECOGNIZES THAT -- AND HERE IS  
17 ANOTHER QUOTE:

18 "IT IS IMPRACTICAL TO ESTABLISH A  
19 SET OF DISCIPLINARY ACTIONS WHICH CAN BE  
20 APPLIED AUTOMATICALLY TO EVERY OFFENSE  
21 AND EVERY EMPLOYEE."

22 NOW, WHILE THE DISCIPLINE IN THE GUIDE IS  
23 GENERALLY EXPECTED TO RANGE WITHIN THE STANDARD RANGE IN MOST  
24 INSTANCES, THE DISCIPLINARY OPTIONS ARE NOT SET IN STONE AND  
25 THE DEPARTMENT MANAGERS CAN CONSIDER BOTH AGGRAVATING AND

1 MITIGATING FACTORS IN DEVIATING FROM THOSE STANDARD RANGES.

2 THE ONE EXCEPTION TO THIS IS WHERE A SPECIFIC  
3 VIOLATION CALLS FOR DISCHARGE ONLY, IN WHICH CASE THE LEVEL OF  
4 DISCIPLINE MAY NOT BE ADJUSTED WITHOUT THE APPROVAL OF THE CASE  
5 REVIEW PANEL OR THE SHERIFF.

6 NOW, THE CHANGES TO THE GUIDELINES, INCLUDING  
7 THE REVISIONS TO THE DISCIPLINE AND EDUCATION GUIDE, THOSE WERE  
8 NOT WITHIN THE SCOPE OF REPRESENTATION AND THEY WERE NOT  
9 SUBJECT TO NEGOTIATION BECAUSE THE CHANGES DID NOT HAVE A  
10 SIGNIFICANT AND ADVERSE EFFECT ON WAGES, HOURS OR WORKING  
11 CONDITIONS. THE CHANGES DID NOT ESTABLISH NEW GROUNDS FOR  
12 DISCIPLINE THAT WERE NOT PREVIOUSLY AVAILABLE TO MANAGEMENT,  
13 NOR DID THEY RESULT IN ANY OTHER SUBSTANTIVE CHANGE IN EMPLOYEE  
14 DISCIPLINE.

15 INSTEAD, THE DEPARTMENT MERELY CARVED OUT AND  
16 EXPRESSLY IDENTIFIED SPECIFIC VIOLATIONS FROM THE MORE GENERAL  
17 VIOLATIONS OR THE MORE GENERAL M.P.P. PROVISIONS. BECAUSE THE  
18 NEW SPECIFIC VIOLATIONS WERE ALREADY ENCOMPASSED WITHIN THE  
19 MORE GENERAL VIOLATIONS, THE DEPARTMENT'S CHANGES HAD NO  
20 IMPACT, LET ALONE A SIGNIFICANT AND ADVERSE IMPACT, ON EMPLOYEE  
21 WORKING CONDITIONS.

22 AND WHILE THE REVISED GUIDELINES ESTABLISHED  
23 STANDARD RANGES FOR THE NEW SPECIFIC VIOLATIONS THAT WERE  
24 CARVED OUT OF THE MORE GENERAL VIOLATIONS, MOST OF THOSE NEW  
25 STANDARD RANGES ARE CONSISTENT WITH THE STANDARD RANGE THAT

1 EXISTED UNDER THE MORE GENERAL VIOLATION. ACCORDINGLY, THE  
2 DEPARTMENT'S ACTIONS RESULTED IN NO CHANGES TO THE EXISTING  
3 POLICY.

4 ADDITIONALLY, THE DEPARTMENT ALWAYS HAD THE  
5 ABILITY TO CONSIDER AGGRAVATING FACTORS IN IMPOSING HARSHER  
6 DISCIPLINE THAN WHAT WAS CONTAINED IN THE DISCIPLINE AND  
7 EDUCATION GUIDE.

8 ACCORDINGLY, ALADS WILL BE UNABLE TO SHOW ANY  
9 ACTUAL CHANGE MUCH LESS A SIGNIFICANT AND ADVERSE CHANGE TO  
10 DEPUTY WAGES, HOURS OR WORKING CONDITIONS THAT RESULTED FROM  
11 THE CHANGES TO THE GUIDELINES FOR DISCIPLINE AT ISSUE HERE.

12 WITH RESPECT TO THE 2013 CHANGES TO THE  
13 GUIDELINES, THE EVIDENCE WILL SHOW THAT THEY RESULTED IN PART  
14 FROM A LAWSUIT FILED BY THE A.C.L.U. WHICH ACCUSED THE  
15 DEPARTMENT OF UNREASONABLE AND/OR UNNECESSARY FORCE IN THE  
16 JAILS, NEGATIVE PRESS RELATED TO JAIL MISMANAGEMENT AND  
17 PERSONNEL MISCONDUCT, THE U.S. ATTORNEY GENERAL AND A GRAND  
18 JURY INVESTIGATION AND PRESSURE FROM ALL SOURCES AS WELL AS  
19 RECOMMENDATIONS FROM A CITIZENS COMMISSION ON JAIL VIOLENCE.

20 THE DEPARTMENT'S DECISION TO MAKE THE CHANGES  
21 WAS NOT SUBJECT TO NEGOTIATION BECAUSE IT WAS THE RESULT OF THE  
22 IMPLEMENTATION OF A FUNDAMENTAL MANAGERIAL OR POLICY DECISION  
23 TO REDUCE THE NUMBER OF FORCE INCIDENTS COMMITTED BY DEPARTMENT  
24 PERSONNEL AND TO COMBAT THE PRACTICE OF INTIMIDATION AND  
25 RETALIATION OF INMATES -- AGAINST INMATES BY DEPARTMENT

1 PERSONNEL.

2 ALADS CANNOT SHOW THAT THE DEPARTMENT'S RIGHT  
3 TO MANAGE ITS OPERATIONS AND PROTECT INMATES FROM VIOLENCE,  
4 INTIMIDATION AND RETALIATION WHILE UNDER THE DEPARTMENT'S  
5 CUSTODY AND CARE ARE OUTWEIGHED BY ALADS' DESIRE TO NEGOTIATE.

6 SIMILARLY, THE 2017 CHANGES WERE MADE TO  
7 PROVIDE ADDITIONAL CLARITY TO ENSURE GREATER CONSISTENCY AND  
8 UNIFORMITY IN DISCIPLINE AND AS WELL AS TO ADDRESS SPECIFIC  
9 CONCERNS REGARDING DISHONESTY, D.U.I.'S AND OTHER  
10 ALCOHOL-RELATED INCIDENTS, DOMESTIC VIOLENCE INVOLVING  
11 DEPARTMENT EMPLOYEES AND OTHER SPECIFIC AREAS.

12 THE EVIDENCE WILL FURTHER SHOW THAT THE  
13 DEPARTMENT OFFERED TO BARGAIN THE PRACTICAL IMPACTS OF THE  
14 CHANGES UPON ALADS MEMBERS BUT ALADS FAILED TO TAKE THE  
15 DEPARTMENT UP ON ITS MULTIPLE OFFERS. SO, PRIOR TO  
16 IMPLEMENTATION OF THE 2013 CHANGES TO THE GUIDELINES, THE  
17 DEPARTMENT NOTIFIED ALADS OF THE PROPOSED CHANGES ON  
18 JANUARY 14TH, 2013.

19 INITIALLY ON JANUARY 30TH ALADS ADVISED THAT  
20 THEY HAD NO OBJECTIONS TO THE PROPOSED CHANGES. ON FEBRUARY  
21 13TH ALADS THEREAFTER MADE AN ABOUT-FACE AND DEMANDED AN  
22 OPPORTUNITY TO MEET LESS THAN A WEEK PRIOR TO THE PLANNED  
23 IMPLEMENTATION ON FEBRUARY 17TH.

24 ON FEBRUARY 14TH THE DEPARTMENT NOTIFIED ALADS  
25 THAT IT BELIEVED IT HAD A MANAGEMENT RIGHT TO IMPLEMENT THE

1 CHANGES. NEVERTHELESS, THE DEPARTMENT MADE IT CLEAR THAT THEY  
2 WOULD BE MORE THAN WILLING TO MEET WITH THE ASSOCIATION TO  
3 DISCUSS THE PRACTICAL CONSEQUENCES OF THE CHANGES FOR ALADS  
4 MEMBERS. RATHER THAN REQUEST IMPACT BARGAINING, ALADS FILED  
5 UFC 010-113 [SIC] ON MARCH 14TH, 2013.

6 NOW, WITH RESPECT TO THE 2017 CHANGES, THE  
7 DEPARTMENT FIRST NOTIFIED ALADS OF THE PROPOSED CHANGES ON  
8 SEPTEMBER 8TH, 2016. THE DEPARTMENT THEREAFTER MET WITH ALADS  
9 ON NOVEMBER 29TH. DURING THAT MEETING, THE DEPARTMENT MADE ITS  
10 POSITION CLEAR THAT IT HAD A MANAGEMENT RIGHT TO IMPLEMENT THE  
11 CHANGES, BUT AT THAT MEETING THE DEPARTMENT WAS NEVERTHELESS  
12 WILLING TO HEAR OUT ALADS' CONCERNS, ANSWER ANY QUESTIONS AND  
13 PROVIDE CLARIFICATION REGARDING THE CHANGES.

14 UPON LEARNING OF THE DEPARTMENT'S POSITION THAT  
15 IT DID NOT FEEL THAT IT HAD TO NEGOTIATE THE CHANGES, ALADS  
16 EXECUTIVE DIRECTOR, DEREK HSIEH, CHOSE TO END THE MEETING  
17 RATHER THAN CONTINUE THE DIALOGUE.

18 SUBSEQUENTLY THE DEPARTMENT TWICE ADVISED  
19 ALADS, ONCE ON DECEMBER 9TH AND THEN AGAIN ON DECEMBER 19TH,  
20 THAT IT WAS GOING TO MEET TO CONTINUE DISCUSSING THE PRACTICAL  
21 IMPACT OF THE CHANGES UPON ALADS MEMBERS. ALADS NEVER  
22 REQUESTED IMPACT BARGAINING BEFORE IT ULTIMATELY FILED UFC  
23 001-17.

24 BASED UPON THE FACTS AND EVIDENCE, ALADS CANNOT  
25 DEMONSTRATE THAT THE DEPARTMENT OWED A DUTY TO NEGOTIATE THE

1 CHANGES TO THE GUIDELINES OR THAT THE DEPARTMENT REFUSED TO  
2 BARGAIN THE EFFECTS OF THE DEPARTMENT'S NON-NEGOTIABLE  
3 DECISION. FOR THESE REASONS, THE DEPARTMENT RESPECTFULLY  
4 REQUESTS THAT THE HEARING OFFICER FIND IN THE DEPARTMENT'S  
5 FAVOR. THANK YOU.

6 HEARING OFFICER ROSS: YOU'RE WELCOME. WOULD YOU LIKE  
7 TO PROCEED WITH A WITNESS?

8 MR. WONG: YES, WE WILL CALL OUR FIRST WITNESS. IT'S  
9 CAPTAIN JOHN ROBERTS.

10 HEARING OFFICER ROSS: WOULD YOU LIKE TO TAKE A  
11 FIVE-MINUTE BREAK?

12 THE REPORTER: YES, PLEASE.

13 HEARING OFFICER ROSS: OKAY.

14  
15 (RECESS.)

16  
17 HEARING OFFICER ROSS: BACK ON THE RECORD.

18 PLEASE RAISE YOUR RIGHT HAND.

19  
20 JOHN ROBERTS,

21 PRODUCED AS A WITNESS BY AND ON BEHALF OF THE DEPARTMENT, AND  
22 HAVING BEEN FIRST DULY SWORN BY THE HEARING OFFICER, WAS  
23 EXAMINED AND TESTIFIED AS FOLLOWS:

24  
25 HEARING OFFICER ROSS: PLEASE STATE AND SPELL YOUR

1 NAME .

2 THE WITNESS: IT'S JOHN ROBERTS. THE LAST NAME IS  
3 R-O-B-E-R-T-S.

4 HEARING OFFICER ROSS: AND YOU'RE EMPLOYED BY THE  
5 COUNTY?

6 THE WITNESS: CORRECT.

7 HEARING OFFICER ROSS: WHICH DEPARTMENT?

8 THE WITNESS: L.A. COUNTY SHERIFF'S DEPARTMENT.

9 HEARING OFFICER ROSS: AND YOUR JOB TITLE?

10 THE WITNESS: CAPTAIN.

11 HEARING OFFICER ROSS: THANK YOU.

12

13 DIRECT EXAMINATION

14

15 BY MR. WONG:

16 Q GOOD AFTERNOON, CAPTAIN.

17 A GOOD AFTERNOON.

18 Q HOW LONG HAVE YOU BEEN EMPLOYED BY THE  
19 SHERIFF'S DEPARTMENT?

20 A TWENTY-NINE YEARS.

21 Q SO YOU'RE A CAPTAIN. WHAT'S YOUR CURRENT  
22 ASSIGNMENT?

23 A I AM CURRENTLY AT OPERATION SAFE STREETS  
24 BUREAU.

25 HEARING OFFICER ROSS: I'M SORRY. OPERATION --

1 THE WITNESS: OPERATION SAFE STREETS BUREAU. IT'S A  
2 GANG UNIT.

3 BY MR. WONG:

4 Q AND WHAT WAS YOUR RANK AND ASSIGNMENT IN  
5 NOVEMBER 2016?

6 A I WAS THE CAPTAIN OF THE INTERNAL AFFAIRS  
7 BUREAU.

8 Q AND HOW LONG WERE YOU CAPTAIN OF INTERNAL  
9 AFFAIRS?

10 A THIRTEEN MONTHS.

11 Q OKAY. THIRTEEN MONTHS ENDING WHEN?

12 A I ENDED IN APRIL OF 2017 WHERE I WENT TO  
13 INTERNAL CRIMINAL INVESTIGATIONS BUREAU AND I WAS THE CAPTAIN  
14 THERE FOR A YEAR.

15 Q OKAY. CAN YOU DESCRIBE YOUR GENERAL JOB  
16 RESPONSIBILITIES AS I.A.B. CAPTAIN, INTERNAL AFFAIRS BUREAU  
17 CAPTAIN?

18 A YEAH, THE I.A.B. CAPTAIN IS GOING TO BE -- I  
19 SUPERVISE TEAMS OF INVESTIGATORS, I.A.B. INVESTIGATORS WHO ARE  
20 SERGEANTS AND PROFESSIONAL STAFF. I BASICALLY REVIEW OR  
21 APPROVE ADMINISTRATIVE INVESTIGATIONS AND DEPUTY-INVOLVED  
22 SHOOTINGS. THAT'S THE MAIN, MAIN FUNCTION.

23 Q OKAY. ARE YOU FAMILIAR WITH THE DEPARTMENT'S  
24 MANUAL OF POLICIES AND PROCEDURES?

25 A YES.

1 Q COULD YOU PLEASE TELL US WHAT THAT IS?

2 A THE M.P.P. TAKES EXISTING MANUALS AND ORDERS  
3 THAT ARE DEPARTMENTAL IN SCOPE.

4 Q DOES THE M.P.P. CONTAIN STANDARDS FOR DEPUTY  
5 CONDUCT?

6 A YES.

7 Q CAN EMPLOYEES BE DISCIPLINED FOR VIOLATING  
8 PROVISIONS OF THE M.P.P.?

9 A YES.

10 Q DOES THE M.P.P. SPECIFICALLY IDENTIFY EVERY  
11 SINGLE ACT THAT COULD RESULT IN DISCIPLINE?

12 A NO.

13 Q ARE YOU FAMILIAR WITH THE DEPARTMENT'S  
14 GUIDELINES FOR DISCIPLINE?

15 A YES.

16 Q OKAY. AND WHAT IS THE GUIDELINES FOR  
17 DISCIPLINE?

18 A IT'S CALLED THE HANDBOOK, THE GUIDELINES FOR  
19 DISCIPLINE HANDBOOK. IT ESTABLISHES THE REQUIREMENTS TO IMPOSE  
20 DISCIPLINE ON EMPLOYEES.

21 Q THE GUIDELINES FOR DISCIPLINE, WAS THAT PART OF  
22 THE M.P.P.?

23 A NO.

24 Q TO YOUR KNOWLEDGE, HOW LONG HAS THE DEPARTMENT  
25 UTILIZED THE GUIDELINES FOR DISCIPLINE?

1 A MORE THAN 20 YEARS.

2 Q AND WHAT IS THE PURPOSE OF THE HANDBOOK?

3 A IT'S A -- IT'S A GUIDE FOR SUPERVISORS,  
4 MANAGERS AND EXECUTIVES TO SHOW THEM HOW AND WHEN TO IMPOSE  
5 DISCIPLINE.

6 Q OKAY. DOES THE HANDBOOK ITSELF CONTAIN A  
7 STATEMENT OF ITS PURPOSE?

8 A YES, IT DOES.

9 Q CAN YOU PLEASE TURN TO THE YELLOW BINDER IN  
10 FRONT OF YOU, THE YELLOW COVER? LET'S JUST LOOK AT  
11 DEPARTMENT'S EXHIBIT 1 AND LET'S LOOK AT PAGE 2.

12 A OKAY.

13 Q AND THIS "PURPOSE AND INTENT" SECTION, DOES  
14 THAT EXPLAIN THE PURPOSE AND INTENT OF THE HANDBOOK?

15 A YES.

16 Q OKAY. HAVE YOU HEARD THE TERM "DISCIPLINE AND  
17 EDUCATION GUIDE"?

18 A YES.

19 Q AND WHAT IS THAT?

20 A WELL, IT'S CALLED A "BAIL SCHEDULE" AND WHAT  
21 THE GUIDE IS IS IT SHOWS THE M.P.P. SECTION, THE MANUAL OF  
22 POLICY AND PROCEDURES SECTION, WITH THE TITLE OF WHAT THE  
23 VIOLATION MIGHT BE THAT'S IN THE M.P.P. SECTION AND THE  
24 CORRESPONDING RANGE OF POSSIBLE DISCIPLINE FOR VIOLATING THAT  
25 SECTION.

1 Q NOW, HOW IS THAT DISCIPLINE AND EDUCATION GUIDE  
2 INTENDED TO BE USED?

3 A IT'S TO BE USED AS A REFERENCE FOR THOSE WHO  
4 ARE DECISION-MAKERS.

5 Q NOW, YOU MENTIONED -- WELL, LET'S TURN TO PAGE  
6 27 IN EXHIBIT 1.

7 A OKAY.

8 Q IS THIS THE DISCIPLINE AND EDUCATION GUIDE?

9 A YES.

10 Q NOW, CAN YOU TELL US WHAT INFORMATION IS  
11 REFLECTED IN THE FIRST COLUMN ON THE LEFT?

12 A THAT'S THE SECTION THAT'S THE MANUAL OF POLICY  
13 AND PROCEDURES SECTION.

14 Q AND WHAT DOES THE NEXT COLUMN, "TYPE OF  
15 VIOLATION," WHAT DOES THAT REFER TO?

16 A IT'S GOING TO BE THE TITLE.

17 Q THE TITLE OF?

18 A THE TITLE OF THE MANUAL OF POLICY AND  
19 PROCEDURES SECTION.

20 Q OKAY. AND WHAT DOES THE "SPECIFIC VIOLATION"  
21 COLUMN REFER TO?

22 A IT'S GOING TO BE A DROP-DOWN ITEM FROM THE TYPE  
23 OF VIOLATION IN MORE SPECIFIC DETAIL.

24 Q OKAY. AND WHAT INFORMATION IS CONTAINED IN THE  
25 NEXT COLUMN, THE "DISCIPLINARY OPTIONS" COLUMN?

1           A           THAT'S GOING TO BE THE RANGE OF DISCIPLINE THAT  
2 CAN BE IMPOSED.

3           Q           DOES THE GUIDE CONTAIN AN EXHAUSTIVE OR  
4 ALL-INCLUSIVE LIST OF EVERY TYPE OF SPECIFIC VIOLATION THAT  
5 COULD RESULT IN DISCIPLINE?

6           A           NO.

7           Q           IF A SPECIFIC ACTION THAT VIOLATES A PROVISION  
8 OF THE M.P.P. IS NOT LISTED AS A SPECIFIC VIOLATION IN THIS  
9 GUIDE, COULD DEPUTIES STILL BE DISCIPLINED FOR ENGAGING IN THAT  
10 ACTION?

11          A           YES. THERE'S A COUPLE OF SECTIONS THAT ARE  
12 ALL-ENCOMPASSING.

13          Q           THE GUIDELINES THEMSELVES, DO THEY EXPAND THE  
14 GROUNDS FOR EMPLOYEE DISCIPLINE FROM WHAT'S ALREADY CONTAINED  
15 WITHIN THE M.P.P.?

16          A           NO.

17          Q           OKAY. NOW, LOOKING AT THE "DISCIPLINARY  
18 OPTIONS" COLUMN, ARE THOSE DISCIPLINARY OPTIONS, ARE THOSE  
19 RIGID?

20          A           NO, THEY ARE NOT RIGID. THERE'S ONLY A FEW OF  
21 THEM THAT ARE RIGID AND THAT WOULD BE THE ONES LIKE PERJURY AND  
22 FRATERNIZATION IN WHICH IT IS DISCHARGE ONLY.

23          Q           OKAY. DOES DEPARTMENT MANAGEMENT HAVE ANY  
24 ABILITY TO DEVIATE FROM THE RANGES THAT ARE SET FORTH IN THE  
25 GUIDE?

1           A           YES, THEY DO. THIS IS JUST A GUIDE FOR THE  
2           DECISION-MAKERS. THE DIVISION CHIEF DOES HAVE THE RIGHT TO GO  
3           LOWER OR HIGHER. SO THERE IS FLEXIBILITY, BUT IT HAS TO BE AT  
4           THE CHIEF LEVEL.

5           Q           OKAY. AND WHAT ABOUT FOR DISCHARGE? WHAT  
6           ABOUT FOR A VIOLATION WHERE THE DISCIPLINARY OPTION IS  
7           DISCHARGE ONLY? CAN THE DEPARTMENT DEVIATE FROM THAT, THAT  
8           OPTION?

9           A           THEY CAN. IT'S RARE. IT'S GOT TO BE AT THE  
10          DIRECTION OF THE SHERIFF OR THE CASE REVIEW PANEL WHO HEARD IT  
11          ORIGINALLY AT CASE REVIEW.

12          Q           NOW, WHY DON'T WE TURN TO THE EXHIBITS LISTED  
13          IN THE BIG BINDER, THE WHITE COVER. CAN YOU PLEASE TURN TO  
14          EXHIBIT A-5?

15          A           OKAY.

16          Q           AND LET'S TURN TO THE PAGE AFTER THIS COVER  
17          LETTER.

18          A           ALL RIGHT.

19          Q           HAVE YOU SEEN THIS DOCUMENT BEFORE?

20          A           YES.

21          Q           AND COULD YOU TELL US WHAT IT IS?

22          A           IT'S THE COVER SHEET FOR THE GUIDELINES FOR  
23          DISCIPLINE HANDBOOK.

24          Q           OKAY. AND BASED ON YOUR REVIEW OF THIS, CAN  
25          YOU TELL WHEN THIS -- WHAT VERSION OF THIS HANDBOOK -- WHEN IT

1 WAS CREATED?

2 A YES. IT WAS REVISED ON AUGUST 11TH OF 2016.

3 Q NOW, ARE YOU AWARE OF ANY CHANGES TO THE  
4 GUIDELINES THAT THE DEPARTMENT IMPLEMENTED IN EARLY 2017?

5 A YES.

6 Q AND COULD YOU PROVIDE A BACKGROUND OF HOW THOSE  
7 SPECIFIC CHANGES CAME ABOUT?

8 A YES. IN 2015 I WAS -- I WAS PART OF A  
9 COMMITTEE TO REVIEW AND REVISE THE GUIDELINES FOR DISCIPLINE  
10 HANDBOOK, AND IT WAS CHAIRED OUT OF THE PROFESSIONAL STANDARDS  
11 DIVISION.

12 Q OKAY. WHAT WAS THE DEPARTMENT'S MOTIVATION FOR  
13 THE PROPOSED CHANGES TO THE GUIDELINES THAT THIS COMMITTEE WAS  
14 WORKING ON?

15 A WELL, IT WAS MY UNDERSTANDING THAT THE  
16 MOTIVATION WAS THAT IT WAS ACCOUNTABILITY, SPECIFICALLY IN  
17 CERTAIN AREAS THAT HAD TO DO WITH ALCOHOL-RELATED INCIDENTS ON  
18 OR OFF DUTY AND DISHONESTY. THOSE WERE THE MAIN TWO FOCUSES OF  
19 THE GROUP.

20 Q OKAY. AND HAD THERE BEEN AN INCREASE IN  
21 ALCOHOL-RELATED INCIDENTS INVOLVING DEPUTIES I GUESS PREDATING  
22 THE CHANGES THAT WERE MADE?

23 A THERE HAD BEEN AN INCREASE. FROM 2012 THERE  
24 WAS APPROXIMATELY 40. IT DROPPED DOWN IN 2013, I BELIEVE, TO  
25 20, AND THEN THE NEXT TWO YEARS IT WAS GOING UP IN THE 30'S,

1 IN THE LOW 30'S BOTH YEARS, SO THERE WAS AN INCREASE IN  
2 D.U.I.'S.

3 AND SPECIFICALLY WHAT WAS CONCERNING WAS THE  
4 FACT THAT A LOT OF THE CURRENT EMPLOYEES OF ALL RANKS WHO WERE  
5 RELIEVED OF DUTY, IT WAS AVERAGING ABOUT 16 TO 18 PER MONTH  
6 THAT WERE RELIEVED OF DUTY FOR A D.U.I. VIOLATION. THE  
7 MAJORITY OF THEM WERE A SECOND OFFENSE D.U.I., AND A SECOND  
8 OFFENSE D.U.I. IS AN AUTOMATIC DISCHARGE. SO IT WAS VERY  
9 CONCERNING THAT THE SAME PEOPLE THAT HAD A D.U.I., A LOT OF  
10 THEM WERE DOING IT AGAIN.

11 Q OKAY. NOW, YOU ALSO MENTIONED THAT THE OTHER  
12 AREA THAT WAS TO BE ADDRESSED BY THESE CHANGES INVOLVED  
13 DISHONESTY. WHY DID THE DEPARTMENT FEEL IT WAS NECESSARY TO  
14 ADDRESS DISHONESTY?

15 A DISHONESTY IS A MAJOR ISSUE WITH PUBLIC TRUST.  
16 IF YOU HAVE A -- ANY POSITION ON THE DEPARTMENT YOU SEE ARE  
17 TESTIFYING IN COURT -- CIVIL COURT, FEDERAL COURT, YOU KNOW,  
18 STATE COURT, WHATEVER IT IS -- AND THEY'RE FALSIFYING THEIR  
19 TESTIMONY POSSIBLY PUTTING SOMEBODY WHO'S INNOCENT AWAY IN  
20 PRISON, IT'S UNACCEPTABLE. SO THAT WAS A MAJOR CONCERN ON  
21 ANYTHING THAT THEY'RE LYING ON AS FAR AS TRUST FOR THE PUBLIC  
22 AND EVEN TRUST WITH A NEW ORGANIZATION THAT THEY COULD THEN NOT  
23 BE TRUSTED.

24 Q OKAY. NOW, THE SPECIFIC REVISIONS THAT THE  
25 DEPARTMENT MADE, ARE YOU FAMILIAR WITH THOSE CHANGES?

1           A           YES.

2           Q           NOW, LOOKING AT THE SAME EXHIBIT THAT WE'RE  
3 ALREADY ON, EXHIBIT A-5, CAN YOU SEE FLIPPING THROUGH THERE A  
4 BUNCH OF ITEMS HIGHLIGHTED IN YELLOW?

5           A           YES.

6           Q           OKAY. WHAT DOES THAT -- WHAT DOES THAT  
7 REFLECT?

8           A           REVISIONS.

9           Q           NOW, TURNING TO PAGE 7 OF THIS DOCUMENT UNDER  
10 "PREDISPOSITION SETTLEMENT AGREEMENTS" YOU SEE A NUMBER OF  
11 CHANGES THAT WERE MADE. AFTER THESE CHANGES WERE MADE, HAS THE  
12 DEPARTMENT CONTINUED TO USE PREDISPOSITION SETTLEMENT  
13 AGREEMENTS?

14          A           YES.

15          Q           NOW, LOOKING AT THE THIRD PARAGRAPH, THERE IS  
16 AN ADDITION THAT RELATES TO THE CONSTITUTIONAL POLICING  
17 ADVISOR.

18          A           YES.

19          Q           DOES THE CONSTITUTIONAL POLICING ADVISOR HAVE  
20 TO CONCUR WITH THE DECISION TO ENTER INTO A PREDISPOSITION  
21 SETTLEMENT AGREEMENT?

22          A           ON THIS REVISION, YES.

23          Q           THEY HAVE TO CONCUR?

24          A           CONCUR? YES, THEY HAVE TO CONCUR.

25          Q           SO THEY HAVE TO AGREE TO THE -- THEY HAVE TO

1 AGREE TO THE P.D.S.A.?

2 A CORRECT.

3 MR. AITCHISON: OBJECTION. ASKED AND ANSWERED. OH,  
4 NEVER MIND.

5 BY MR. WONG:

6 Q IS THERE A DIFFERENCE BETWEEN "CONFERRING" AND  
7 "CONCURRING"?

8 A YEAH, I MEAN CONFERRING WITH THEM WOULD BE WHAT  
9 THEIR RECOMMENDATION IS.

10 Q OKAY.

11 A CONCURRING REQUIRES -- WELL, ACTUALLY, YOU  
12 KNOW WHAT, IT IS -- WELL, IT SAYS CONFERRING, YEAH. IT IS  
13 CONFERRING. THERE'S A DIFFERENCE BETWEEN THAT AND CONCURRENCE.  
14 CONCURRENCE WOULD BE THROUGH ME.

15 Q OKAY.

16 A AS THE I.A.B. CAPTAIN, THEY HAVE TO HAVE MY  
17 CONCURRENCE. BUT CONFERRING, YOU'RE CORRECT. IT'S NOT  
18 CONFERRING THROUGH THEM. I MISSPOKE ON THAT. BUT THAT IS NOT  
19 REQUIRED THAT THEY HAVE THE CONCURRENCE OF THE C.P.A., THE  
20 CONSTITUTIONAL POLICING ADVISOR, BUT THAT THEY DO CONFER WITH  
21 TO GET THE RECOMMENDATION FROM HER OR ONE OF THEM. SO I  
22 MISSPOKE ORIGINALLY, YES.

23 Q SO THE C.P.A. JUST MAKES A RECOMMENDATION;  
24 CORRECT?

25 A CORRECT.

1 Q ALL RIGHT.

2 A CORRECT.

3 Q AND WHAT IS THE PURPOSE OF CONFERRING WITH THE  
4 C.P.A.?

5 A WELL, THE REASON WHY YOU HAVE THE C.P.A. AND  
6 ALSO THE I.A.B. CAPTAIN IS THAT YOU HAVE THE ENTIRE DEPARTMENT  
7 AND P.D.S.A.'S ARE BEING DONE THROUGHOUT FROM PATROL TO CUSTODY  
8 OR FROM WHEREVER AND YOU WANT TO BE CONSISTENT AND EQUITABLE  
9 THROUGHOUT.

10 SO IF IT'S FUNNELED THROUGH THE I.A.B. CAPTAIN  
11 AND ALSO THROUGH THE C.P.A., THEN YOU CAN SEE WHERE THE TRENDS  
12 ARE AND MAKE SURE THAT THEY'RE -- I MEAN WHAT THE DISCIPLINE IS  
13 FOR CERTAIN OFFENSES, AND YOU WANT TO MAKE SURE THAT IT'S THE  
14 SAME NO MATTER WHERE THE PERSON WORKS. IF A DEPUTY WORKS AT  
15 CENTURY STATION, YOU WANT IT TO BE THE SAME AS A DEPUTY WHO  
16 WORKS AT COMPTON COURT. AND SO THAT WAS ONE OF THE REASONS, IS  
17 AS THE GUARDIANS OF THAT, TO MAKE SURE THAT THAT'S FAIR ACROSS  
18 THE BOARD.

19 IN ADDITION TO YOUR QUESTION, AS WELL AS THE  
20 C.P.A., IT'S IMPORTANT THAT WE DO HAVE HER OPINION. FOR  
21 INSTANCE, (INAUDIBLE), FOR INSTANCE, IT WOULD BE HER OPINION ON  
22 IT AND HER RECOMMENDATIONS OF WHAT SHE BELIEVES BASED ON THE  
23 CASE.

24 THE REPORTER: AND THE NAME, SIR?

25 HEARING OFFICER ROSS: I'M SORRY. I MISSED THE NAME.

1 THE WITNESS: I'M SORRY. IT'S DIANA TERAN.

2 HEARING OFFICER ROSS: AND WOULD YOU SPELL THE LAST  
3 NAME?

4 THE WITNESS: IT'S T-E-R-A-N.

5 HEARING OFFICER ROSS: THANK YOU.

6 BY MR. WONG:

7 Q AND I SEE UNDER THAT SAME PARAGRAPH IT  
8 REFERENCES "CONCURRENCE OF THE I.A.B. CAPTAIN." PRIOR TO THAT  
9 ADDITION, WOULD THE I.A.B. CAPTAIN HAVE TO CONCUR IN THE  
10 DECISION?

11 A YES.

12 Q AND WOULD THAT BE REFLECTED AT THE STRIKEOUT AT  
13 THE END OF THAT PARAGRAPH ON THE NEXT PAGE?

14 A ARE YOU LOOKING AT PAGE 8 ON THE SAME ONE?

15 Q YEAH, PAGE 8 ON THE SAME ONE.

16 A YES, YES.

17 Q SO WOULD IT BE FAIR TO SAY THAT CONCURRENCE OF  
18 THE I.A.B. CAPTAIN, IT WAS SIMPLY MOVED FROM THE END OF THE  
19 PARAGRAPH UP TO THE FRONT?

20 A CORRECT.

21 Q OKAY. LET'S TURN TO PAGE 10. AND LOOKING AT  
22 SECTION J, "DETERMINING DISCIPLINE WHEN MULTIPLE VIOLATIONS  
23 OCCUR," WHAT WAS THE PURPOSE OF THIS CHANGE?

24 A THAT WAS JUST TO CLARIFY TO THE INDIVIDUAL WHO  
25 IS PREPARING THE DISPOSITION WORKSHEET FOR THE ADMINISTRATIVE

1 INVESTIGATION THAT EACH -- EACH VIOLATION NEEDS TO BE LISTED  
2 INDIVIDUALLY, SEPARATELY. SO THIS IS MORE OF JUST AN  
3 INFORMATIONAL THING FOR THOSE PREPARING THE DISPOSITION  
4 WORKSHEET.

5 Q DID THIS CHANGE IN LANGUAGE HERE, DID THAT HAVE  
6 ANY SUBSTANTIVE IMPACT ON THE IMPOSITION OF DISCIPLINE AGAINST  
7 DEPUTIES?

8 A NO.

9 Q NOW, LOOKING AT SECTION L, "MANAGEMENT'S ROLE,"  
10 ALSO ON PAGE 10.

11 A OKAY.

12 Q WHAT WAS THE PURPOSE OF ADDING THAT LANGUAGE  
13 TO ITEM 2, "VERIFY INFORMATION" AND THE ADDITION IS "TO THE  
14 EXTENT POSSIBLE"? WHY WAS THAT ADDED?

15 A WELL, NOT ALL INFORMATION CAN BE COMPLETELY  
16 VERIFIED AND MOSTLY IF YOU'RE ON A TIMETABLE WITH THE ONE-YEAR  
17 STATUTE ON THE SWORN INVESTIGATION. SO LET'S JUST SAY THAT  
18 DURING THAT TIME PERIOD YOU HAVE FOR THE INVESTIGATION WE  
19 VERIFY IT TO THE BEST WE CAN.

20 Q IS IT ALWAYS POSSIBLE TO COMPLETELY VERIFY ALL  
21 INFORMATION?

22 A NO.

23 Q OKAY. GOING ON TO THE NEXT -- WELL, THAT'S  
24 OKAY.

25 SO ITEM 4 IS ALSO UNDER SECTION L. IT SAYS:

1 "ANALYZE FACTS THOROUGHLY AND  
2 OBJECTIVELY. YOU SHOULD CONSIDER" --  
3 AND THEN IT LISTS SEVERAL ITEMS IDENTIFIED AS  
4 ITEM A THROUGH I ONTO THE NEXT PAGE.

5 ITEM I, "OTHER FACTORS," THERE'S AN ASTERISK  
6 AND BELOW IT IT SEEMS TO CORRESPOND TO THE STATEMENT AFTER IT.  
7 FOR EXAMPLE:

8 "A MANAGER MAY CONSIDER THE  
9 FOLLOWING ISSUES RESULTING FROM  
10 AN EMPLOYEE'S ACTIONS OR OMISSIONS."  
11 AND THEN THERE WERE FOUR ITEMS AND ONE ITEM WAS  
12 STRICKEN.

13 WERE THOSE ITEMS THERE LISTED UNDER "OTHER  
14 FACTORS," WERE THOSE THE ONLY OTHER FACTORS THAT A MANAGER  
15 COULD CONSIDER OUTSIDE OF, YOU KNOW, THAT TOP LIST?

16 A NO.

17 Q AND I SEE THAT ITEM H WAS ADDED, "HARM TO  
18 PUBLIC TRUST." IS HARM TO PUBLIC TRUST SOMETHING THAT MANAGERS  
19 COULD HAVE PREVIOUSLY CONSIDERED AS AN "OTHER FACTOR"?

20 A YES.

21 Q NOW, TURNING TO PAGE 11 WE SEE SECTION 2,  
22 "LEVELS OF DISCIPLINE," AND THAT CONTINUES ON TO PAGE 12. WHAT  
23 WAS THE PURPOSE OF ADDING IN THIS SECTION ON LEVELS OF  
24 DISCIPLINE?

25 A THAT WAS ADDED, THAT WHOLE -- AS FAR AS THE

1 LEVELS, THERE'S FIVE LEVELS AND ALSO THE TABLE TO MAKE IT  
2 EASIER FOR, YOU KNOW, CAPTAINS, UNIT COMMANDERS, I MEAN ANY  
3 DIRECTORS AND ABOVE TO BE ABLE TO FIGURE OUT WHAT IS THE  
4 APPROPRIATE LEVEL OF DISCIPLINE FOR THIS SPECIFIC CASE. AND  
5 ALSO IT MAKES IT MORE, LIKE I SAID BEFORE, MORE EQUITABLE  
6 ACROSS THE BOARD IS THE INTENT BY USING THIS.

7 Q OKAY. AND THIS REFERENCES FOUR OF THE  
8 GUIDELINES. OOPS, SORRY, PAGES 42 AND 43. LET'S LOOK AT PAGE  
9 42.

10 A YES.

11 Q NOW, WHAT IS THIS, LEVELS OF DISCIPLINE  
12 CHART/TABLE?

13 A WELL, LEVELS OF DISCIPLINE IS GOING TO BE THE  
14 SEVERITY OF THE OFFENSE OR OFFENSES.

15 LEVEL 1 IS GOING TO BE, LIKE I SAID, IT'S A  
16 WRITTEN REPRIMAND TO 5 DAYS; LEVEL 2, 6 TO 10; LEVEL 3, 11 TO  
17 15; AND, YOU KNOW, LEVEL 4, FROM THERE UPWARD OF 15 TO 16 DAYS  
18 TO A DEMOTION OR DISCHARGE.

19 LEVEL 5 ARE THE CASES LIKE I SAID EARLIER SUCH  
20 AS PERJURY AND FRATERNIZATION THAT ARE GOING TO BE DISCHARGE  
21 AND IS THE ONLY, THE ONLY DISCIPLINE THAT'S AVAILABLE FOR  
22 THOSE.

23 Q OKAY.

24 A I COULD PROBABLY GIVE YOU AN EXAMPLE, IF IT  
25 HELPS --

1 Q YEAH.

2 A -- AS FAR AS THE LEVELS AND THE DISCIPLINE, HOW  
3 IT'S USED ON AN EVERYDAY BASIS, YOU KNOW.

4 FOR INSTANCE, IF YOU HAVE AN EMPLOYEE WHO USED  
5 DISCOURTESY OR PROFANITY TOWARDS A MEMBER OF THE PUBLIC, THE  
6 BAIL SCHEDULE AS WE CALL IT SHOWS WRITTEN REPRIMAND TO 10 DAYS.  
7 SO IT'S GOING TO FALL BETWEEN A LEVEL 1, A LEVEL 1 AND A LEVEL  
8 2 BECAUSE IT'S TO 10 DAYS.

9 SO THE CAPTAIN IS GOING TO FIGURE OUT, WELL,  
10 WHERE IS IT? WHAT'S THE SEVERITY OF IT? SO LET'S SAY THAT HE  
11 DETERMINES THAT IT'S A LEVEL 1 LEVEL OF DISCIPLINE --

12 Q WELL, LET ME STOP YOU. SO HOW WOULD THE -- HOW  
13 WOULD THE CAPTAIN DECIDE WHETHER IT FALLS INTO LEVEL 1 OR LEVEL  
14 2?

15 A IT DEPENDS. YOU'D HAVE TO READ THESE PARTS  
16 HERE AS FAR AS THE SEVERITY OF IT.

17 Q THE SEVERITY OF THE DESCRIPTION?

18 A THE DESCRIPTION. CORRECT, SORRY. FROM THE  
19 DESCRIPTIONS IN THE LEVELS OF DISCIPLINE, LOOK AT THAT AS A  
20 GUIDE AND DETERMINE IF IT SHOULD START OUT AS A LEVEL 1 OR 2  
21 BASED ON THE GUIDE.

22 Q OKAY.

23 A BUT FROM THERE, AFTER LET'S SAY YOU'VE  
24 DETERMINED IT'S A LEVEL 1, THEN YOU GO TO YOUR TABLE. AND FOR  
25 A LEVEL 1, IT'S A WRITTEN REPRIMAND TO 5 DAYS AND YOU'RE GOING

1 TO DETERMINE THEN BASED ON MITIGATING AND AGGRAVATING FACTORS  
2 WHERE IT'S GOING TO FALL IN THAT RANGE OF DISCIPLINE. BUT  
3 ULTIMATELY THEN YOU'RE GOING TO COME UP WITH THAT, LET'S SAY,  
4 2-DAY DISCIPLINE.

5 Q OKAY. NOW, COULD AGGRAVATING AND MITIGATING  
6 FACTORS, COULD THAT CAUSE DISCIPLINE TO FALL OUTSIDE OF THE  
7 STANDARD RANGES?

8 A IT DEFINITELY COULD. I MEAN IF YOU HAVE A  
9 LEVEL 1 BUT YOU HAVE MAJOR AGGRAVATING FACTORS, IT COULD FALL  
10 OUT OF IT, BUT THAT'S GOING TO BE UP TO THE CHIEF TO MAKE THAT  
11 DETERMINATION IF YOU'RE GOING TO GO OUTSIDE OF THE RANGE. THE  
12 CAPTAIN CAN'T MAKE THAT DETERMINATION ON HIS OWN.

13 Q OKAY.

14 A IT'S RARE FOR MY EXPERIENCE THAT WE GO OUTSIDE  
15 OF THE RANGES THAT ARE IN THIS GUIDE.

16 Q LET'S LOOK AT -- GO TO PAGE 2 -- OH, I'M SORRY  
17 -- PAGE 12, THE NEXT PAGE.

18 A 12?

19 HEARING OFFICER ROSS: PAGE 12?

20 MR. WONG: PAGE 12.

21 THE WITNESS: OF A-5?

22 MR. WONG: OF A-5, YES. AND NOT THE NEXT PAGE, PAGE  
23 12.

24 HEARING OFFICER ROSS: OKAY. THANK YOU. I'M  
25 CONFUSED.

1 BY MR. WONG:

2 Q A-5.

3 A OKAY. PAGE 12, YES.

4 Q AND UNDER SECTION 3, "EDUCATION-BASED  
5 DISCIPLINE." NOW I SEE IN THE FOURTH PARAGRAPH, THE LAST  
6 SENTENCE STATES:

7 "WHETHER OR NOT E.B.D. IS  
8 UTILIZED, ALL DISCIPLINE IS DOCUMENTED  
9 BY RECORDING THE ORIGINALLY INTENDED  
10 NUMBER OF SUSPENSION DAYS FOR PURPOSES  
11 OF FUTURE PROGRESSIVE DISCIPLINE."

12 AND THE ADDITIONS TO THAT SECTION WERE:

13 "BY RECORDING THE ORIGINALLY" --

14 I'M SORRY. THE SPECIFIC LANGUAGE THAT WAS  
15 ADDED TO THAT SENTENCE WAS:

16 "BY RECORDING THE ORIGINALLY  
17 INTENDED NUMBER OF SUSPENSION DAYS."

18 AS WELL AS THE WORD "FUTURE."

19 PRIOR TO THE ADDITION OF THAT LANGUAGE, WAS  
20 DISCIPLINE DOCUMENTED BY RECORDING THE ORIGINALLY INTENDED  
21 NUMBER OF SUSPENSION DAYS EVEN WHEN E.B.D. WAS UTILIZED?

22 A IT'S ALWAYS BEEN THAT WAY. ONCE AGAIN, IF YOU  
23 DO A 10-DAY, A 10-DAY DISCIPLINE, A 10-DAY SUSPENSION AND YOU  
24 HAVE 5 DAYS OF THAT E.B.D., IN THE P.R.M.S. OR THE OLD P.P.I.  
25 IT'S STILL GOING TO SHOW 10 DAYS.

1 Q OKAY. SO --

2 A IT DIDN'T CHANGE.

3 Q YOU SAID DID NOT CHANGE?

4 A DID NOT CHANGE. IT'S THE SAME AS IT WAS PRIOR.  
5 IT'S JUST NOW IN HERE.

6 Q OKAY.

7 A THE GUIDELINE.

8 Q LET'S TURN TO PAGE 13, THE NEXT PAGE. AND  
9 UNDER SECTION B, WHICH IS "E.B.D. DEFINITIONS," WHAT WAS THE  
10 PURPOSE BEHIND THESE ADDITIONS?

11 A THE ADDITIONS ARE THERE TO BE ABLE TO GIVE --  
12 IT'S INFORMATIONAL FOR THOSE WHO ARE INVOLVED IN THE PROCESS SO  
13 THAT THEY UNDERSTAND WHERE THEY CAN GO TO GET THE E.B.D.  
14 CLASSES. IT ACTUALLY HAS THE WEBSITE ON HERE.

15 IT WAS MADE FOR TYPICALLY THE UNIT COMMANDERS  
16 AND LIKE THE TRAINING SERGEANT AT THE UNIT SO WHEN THEY SET IT  
17 UP FOR THE EMPLOYEE THEY KNOW WHERE TO GO AND WHAT THEY CAN DO  
18 TO GET THE MENU OF CLASSES THAT ARE AVAILABLE. IT'S  
19 INFORMATIONAL.

20 Q LET'S JUMP AHEAD TO PAGE 25 AND SPECIFICALLY  
21 SECTION E, "USE OF DISCIPLINE AND EDUCATION GUIDE." DO YOU SEE  
22 THAT?

23 A YES.

24 Q NOW, I SEE THAT THE WHOLE SECTION IS  
25 HIGHLIGHTED. DID ANY OF THIS LANGUAGE EXIST IN PRIOR VERSIONS

1 OF THE GUIDELINES?

2 A I BELIEVE THE -- NO, IT MUST NOT HAVE BEEN  
3 ALTHOUGH -- NO.

4 Q WELL, LET ME --

5 A IT'S HIGHLIGHTED. NO. THAT COULD BE ONE FROM  
6 THE PREVIOUS ONE BUT ON THE FIRST -- ON THE FIRST PARAGRAPH OF  
7 THE E.

8 Q WELL, LET ME --

9 A I'M NOT POSITIVE.

10 Q OKAY. LET ME DIRECT YOU TO -- YOU CAN OPEN UP  
11 THE YELLOW BINDER TO EXHIBIT 1 AND GO TO PAGE 26 OF THAT  
12 DOCUMENT.

13 A OKAY.

14 Q SO, FIRST, ACTUALLY, CAN YOU TELL WHICH --  
15 LOOKING AT EXHIBIT 1, CAN YOU TELL US WHAT VERSION OF THE  
16 GUIDELINES THIS WOULD BE?

17 A IN THE ONE HERE, THIS WOULD BE BEFORE THE 2016.  
18 THE 2014, I BELIEVE --

19 Q OKAY.

20 A -- WAS THE ADDITION.

21 Q WELL, I SEE ON THE BOTTOM OF THE PAGE THERE'S A  
22 FOOTER AND IT SAYS "9/28" --

23 A 2012.

24 Q -- "2012."

25 A YES.

1 Q WAS THERE A VERSION OF THE GUIDELINES IN EFFECT  
2 IN SEPTEMBER OF 2012?

3 A YES.

4 Q OKAY. SO COMPARING THE LANGUAGE ON PAGE  
5 26 OF EXHIBIT 1 TO THE HIGHLIGHTED LANGUAGE IN EXHIBIT A-5, WAS  
6 ANY OF THE LANGUAGE IN EXHIBIT A-5, DID THAT PREVIOUSLY EXIST?

7 A THE FIRST PARAGRAPH DID, YES.

8 Q OKAY. AND SO IN THERE, IN THE 2016 REVISIONS,  
9 THERE'S A SENTENCE ADDED:

10 "IN CASES WHERE THE DISCIPLINE  
11 GUIDELINES INVOLVES A WIDE RANGE FROM  
12 LOWER TO HIGHER, REFER TO LEVELS OF  
13 DISCIPLINE ON PAGE 42 AND FOLLOWING."

14 A CORRECT.

15 Q AND WHAT WAS THE PURPOSE OF THAT ADDITION?

16 A WELL, BECAUSE THAT WAS THE -- WE ADDED THE  
17 LEVELS OF DISCIPLINE ON PAGE 42 SO YOU WANT TO REFERENCE IT  
18 HERE.

19 Q OKAY. AND TURNING TO PAGE 26, THAT "SPECIAL  
20 NOTE," WAS ANY OF THIS HIGHLIGHTED LANGUAGE NEWLY ADDED?

21 A NOT THE FIRST PARAGRAPH BUT IN THE SECOND  
22 PARAGRAPH THERE WAS A DIFFERENCE.

23 Q OKAY.

24 A THERE WAS A CHANGE.

25 Q OKAY. AND IT APPEARS THAT THE CHANGE WITH

1 RESPECT TO THE SECOND PARAGRAPH IN REGARDS TO THE 2012 VERSION,  
2 IT APPEARS THAT THE SECTIONS WHICH INDICATED PENALTY OF  
3 DISCHARGE ONLY, THEY COULD NOT BE ADJUSTED AT ALL. IS THAT  
4 CORRECT?

5 A THAT'S CORRECT.

6 Q WHEREAS IN THE 2016 VERSION, WELL, WHAT'S THE  
7 DIFFERENCE?

8 A WELL, THEY CAN BE ADJUSTED WITH THE APPROVAL OF  
9 THE SHERIFF AND/OR THE CASE REVIEW PANEL WHO HEARD THE CASE  
10 ORIGINALLY.

11 Q LET'S TURN TO -- SORRY FOR JUMPING AROUND.  
12 LET'S TURN ALL THE WAY BACK TO PAGE 43 IN EXHIBIT A-5, AND THIS  
13 IS THE LEVELS OF DISCIPLINE TABLE.

14 A YES.

15 Q WHEN CONSIDERING AGGRAVATING AND MITIGATING  
16 FACTORS, IS THE DEPARTMENT LIMITED -- WELL, I GUESS FOR LEVELS  
17 1 THROUGH 4, IS THE DEPARTMENT LIMITED IN ONLY DEVIATING BY TWO  
18 DAYS UP OR DOWN?

19 A NO.

20 Q AND THE SAME FOR LEVEL 4? IS THE DEPARTMENT  
21 LIMITED TO ONLY DEVIATING BY 5 DAYS ON A LEVEL 4?

22 A NO.

23 Q OR ACTUALLY I'M SORRY, 5 DAYS UP AND 9 DAYS  
24 DOWN. OKAY.

25 SO THE DEPARTMENT'S NOT LIMITED IN HOW MUCH IT

1 CAN MITIGATE OR INCREASE OR DECREASE THE PENALTY?

2 A NO.

3 Q NOW, LET'S GO TO THE DISCIPLINE AND EDUCATION  
4 GUIDE. LET'S GO TO PAGE 27, AND LOOKING AT THE CHANGES TO  
5 THE --

6 FIRST, DID THE DEPARTMENT MAKE CHANGES TO THE  
7 DISCIPLINE AND EDUCATION GUIDE?

8 A YES.

9 Q AND IN EACH CASE WHERE A NEW SPECIFIC VIOLATION  
10 WAS ADDED DID THE NEW SPECIFIC VIOLATION FALL UNDER AN EXISTING  
11 M.P.P. PROVISION?

12 A YES.

13 Q SO LET'S JUST GO LOOK AT THEM ONE AT A TIME OR  
14 A COUPLE OF THEM.

15 SO, FOR EXAMPLE, LOOKING ON PAGE 27 I SEE  
16 "INAPPROPRIATE INVOLVEMENT IN OFF-DUTY NEIGHBORHOOD/BUSINESS  
17 DISPUTES." THERE WAS A CHANGE THERE; CORRECT?

18 A CORRECT.

19 Q OKAY. AND INAPPROPRIATE INVOLVEMENT IN  
20 OFF-DUTY NEIGHBORHOOD/BUSINESS DISPUTES, WHAT M.P.P. SECTION  
21 WOULD THAT FALL UNDER?

22 A GENERAL BEHAVIOR, 3-01/000.05.

23 Q AND WOULD THAT BE THE SAME FOR DECEITFUL  
24 BUSINESS TRANSACTIONS?

25 A YES.

1 Q OKAY. AND TURN TO THE NEXT PAGE, OFF-DUTY  
2 DRIVING. LOOKING AT PAGE 28, I SEE THERE'S A NEWLY ADDED  
3 SPECIFIC VIOLATION OF "OFF-DUTY DRIVING UNDER THE INFLUENCE AND  
4 POSSESSION AND/OR CONTROL OF A FIREARM." THAT IMPOSES A --  
5 WELL, THAT HAS A DISCIPLINARY OPTION OF 20 TO 25 DAYS. WHAT  
6 M.P.P. SECTION WOULD THAT FALL UNDER?

7 A OBEDIENCE TO LAWS, REGULATIONS AND ORDERS.

8 Q AND WOULD THAT BE 3-01/030.10?

9 A CORRECT.

10 Q AND TAKING THAT OFF-DUTY DRIVING UNDER THE  
11 INFLUENCE AND POSSESSION AND/OR CONTROL OF A FIREARM, THAT'S  
12 JUST AN ADDITIONAL -- WOULD IT BE FAIR TO CHARACTERIZE THAT AS  
13 JUST AN ADDITIONAL EXAMPLE OF A VIOLATION OF THE OBEDIENCE TO  
14 LAWS, REGULATIONS AND ORDERS M.P.P. PROVISION?

15 A YES.

16 Q AND, ACTUALLY, LET'S TAKE A LOOK AT -- COULD I  
17 HAVE YOU OPEN THE YELLOW-COVERED BINDER AND TURN TO  
18 DEPARTMENT'S EXHIBIT 13?

19 A OKAY.

20 Q DO YOU RECOGNIZE WHAT THESE -- WHAT THESE  
21 PROVISIONS ARE?

22 A THEY ARE M.P.P. SECTIONS.

23 Q AND EARLIER WE TALKED ABOUT THE GENERAL  
24 BEHAVIOR M.P.P. SECTION AND I THINK THAT WAS ON PAGE 26 OF THE  
25 DISCIPLINE GUIDE.

1           A           YES.

2           Q           AND DOES THAT REFER TO THIS LANGUAGE HERE,  
3 3-01/030.05, GENERAL BEHAVIOR?

4           A           YES.

5           Q           OKAY.  AND WHEN WE'RE TALKING ABOUT THE  
6 OFF-DUTY DRIVING UNDER THE INFLUENCE AND POSSESSION OF AND/OR  
7 CONTROL OF A FIREARM UNDER OBEDIENCE TO LAWS, REGULATIONS AND  
8 ORDERS, DOES THAT REFER TO THE SECTION HERE ON EXHIBIT 13,  
9 3-01/030.10?

10          A           YES.

11          Q           AND TO THE BEST OF YOUR KNOWLEDGE -- FLIPPING  
12 THROUGH THIS, TO THE BEST OF YOUR KNOWLEDGE, ARE THESE THE  
13 M.P.P. PROVISIONS THAT ARE REFLECTED IN THE DISCIPLINE AND  
14 EDUCATION GUIDE?

15          A           YES.

16          Q           OR AT LEAST SOME OF THEM?

17          A           YES, SOME OF THEM.

18          Q           OKAY.

19                 HEARING OFFICER ROSS:  WHICH REVISION OF THE M.P.P. IS  
20 THIS?  IT ISN'T LISTED IN A LETTER OR A COVER SHEET.

21                 MR. WONG:  YEAH, AND I'LL REPRESENT THAT I'VE  
22 RECEIVED -- THESE ARE THE 2017, THE VERSIONS THAT WERE IN  
23 EFFECT ON JANUARY 1ST, 2017, THAT I RECEIVED FROM LAURIE  
24 DOUGLAS, THE --

25                 ///

1 BY MR. WONG:

2 Q WHAT'S HER TITLE?

3 A SHE IS THE -- WHAT DO YOU CALL HER? SHE'S IN  
4 THE RISK MANAGEMENT BUREAU AND SHE DOES THE -- SHE'S LIKE THE  
5 CUSTODIAN OF RECORDS FOR THE -- FOR OUR MANUAL OF POLICY AND  
6 PROCEDURES.

7 HEARING OFFICER ROSS: OKAY.

8 MR. WONG: OKAY. WELL, I DON'T THINK WE NEED TO GO  
9 THROUGH EVERY SINGLE CHANGE AND REFER BACK TO THE M.P.P.  
10 PROVISION THAT'S LISTED IN EXHIBIT 13 UNLESS YOU WOULD LIKE ME  
11 TO, WILL?

12 MR. AITCHISON: I ACTUALLY THOUGHT YOU HAD THAT  
13 COVERED 20 MINUTES AGO. I THOUGHT YOU'D ASKED HIM THE SAME  
14 QUESTIONS AND ANSWERS THEN --

15 MR. WONG: WELL, I JUST WANTED TO --

16 MR. AITCHISON: -- WHETHER EVERYTHING IN THE BAIL  
17 SCHEDULE REFERRED TO AN M.P.P. SO FROM MY STANDPOINT, NO, YOU  
18 DON'T.

19 MR. WONG: OKAY.

20 BY MR. WONG:

21 Q SO THE DISCIPLINE AND EDUCATION GUIDE, IT  
22 REFLECTS SEVERAL CHANGES. IT PROVIDES, WELL, SEVERAL CHANGES  
23 TO -- SEVERAL ADDITIONAL EXAMPLES OF SPECIFIC VIOLATIONS OF  
24 M.P.P. SECTIONS.

25 DID ANY OF THE PROPOSED CHANGES TO THE

1 GUIDELINES CREATE ANY NEW BASES FOR DEPUTY DISCIPLINE THAT DID  
2 NOT ALREADY EXIST IN THE M.P.P.?

3 A NO.

4 Q NOW, DID THE DEPARTMENT MEET WITH ALADS  
5 REGARDING THE PROPOSED CHANGES REFLECTED IN THIS DOCUMENT?

6 A YES.

7 Q DID YOU ATTEND THE MEETING BETWEEN ALADS AND  
8 THE DEPARTMENT?

9 A YES.

10 Q AND WAS THE DEPARTMENT ABLE TO COME TO A FULL  
11 AGREEMENT REGARDING THE CHANGES?

12 A AT THAT TIME, NO.

13 Q OKAY. WHAT WAS THE DEPARTMENT'S POSITION WITH  
14 RESPECT TO WHETHER IT HAD A DUTY TO NEGOTIATE THE CHANGES TO  
15 THE DISCIPLINARY GUIDELINES?

16 A IT WAS MY UNDERSTANDING AT THE TIME THAT I WAS  
17 THERE TO PROVIDE AN EXPLANATION OF THE CHANGES AND TO GET INPUT  
18 FROM ALADS OF ANY ISSUES THAT THEY HAD.

19 I WAS NOT THERE TO NEGOTIATE. I DON'T HAVE THE  
20 AUTHORITY AS THE CAPTAIN OF I.A.B. TO NEGOTIATE AT THAT TIME AS  
21 FAR AS FOR THE DEPARTMENT, SO THAT WAS MY UNDERSTANDING AT THAT  
22 TIME.

23 Q DID THE DEPARTMENT BELIEVE THAT THE CHANGES  
24 WERE A MANAGEMENT RIGHT?

25 A A MANAGEMENT RIGHT, YES.

1 Q NOW, EVEN THOUGH THE DEPARTMENT BELIEVED THAT  
2 THE CHANGES TO THE GUIDELINES WERE A MANAGEMENT RIGHT, WAS THE  
3 DEPARTMENT READY AND WILLING TO DISCUSS THE IMPACT OF THE  
4 PROPOSED CHANGES?

5 A YES.

6 Q AT ANY TIME DURING THAT MEETING BETWEEN THE  
7 DEPARTMENT AND ALADS DID YOU OR ANYONE FROM THE DEPARTMENT  
8 PREVENT ALADS FROM ASKING QUESTIONS ABOUT THE CHANGES?

9 A NO.

10 Q COULD YOU TELL US HOW THAT MEETING ENDED?

11 A THE EXECUTIVE DIRECTOR OF ALADS HAD REQUESTED  
12 THAT THE MEETING BE ENDED.

13 Q DID THE DEPARTMENT MEET WITH ANY OTHER  
14 ASSOCIATIONS TO DISCUSS THE PROPOSED CHANGES?

15 A YES, WE DID. I WAS ONE OF THE ONES THAT WAS  
16 THERE. I MET WITH P.P.O.A., THE PRESIDENT OF P.P.O.A. AND THE  
17 EXECUTIVE DIRECTOR OF P.P.O.A. REGARDING THE REVISIONS TO THE  
18 HANDBOOK.

19 Q OKAY. AND, P.P.O.A., COULD YOU TELL US WHAT  
20 THAT IS?

21 A THAT'S THE PROFESSIONAL PEACE OFFICERS  
22 ASSOCIATION.

23 Q OKAY. AND IN RESPONSE TO THAT MEETING WITH  
24 P.P.O.A., DID THE DEPARTMENT MAKE ANY REVISIONS TO THE PROPOSED  
25 CHANGES?

1           A           YES, WE DID. I LISTENED TO ALL OF THEIR INPUT.  
2 I GAVE THEM AN OVERVIEW OF WHAT THE REVISIONS WERE AND WHY, AND  
3 THEN I ASKED THEM IF THEY HAD ANY REVISIONS THAT THEY WANTED TO  
4 BE SEEN DONE.

5                   THEY HAD TWO. AND THE TWO THEY HAD WERE  
6 REASONABLE. I SAID I CAN'T TELL YOU FOR SURE RIGHT NOW. I  
7 HAVE TO TAKE IT BACK TO MY CHIEF AND TO SEE IF SHE WILL APPROVE  
8 IT. I THOUGHT IT WAS A REASONABLE ADDITION IN THE WORDING  
9 UNDER E.B.D. AND THE CHIEF AGREED AND IT WAS REVISED.

10           Q           TO YOUR KNOWLEDGE, DID ALADS EVER REQUEST AN  
11 OPPORTUNITY TO BARGAIN THE EFFECTS OF THE CHANGES BEFORE THE  
12 DEPARTMENT IMPLEMENTED THE GUIDELINES?

13           A           I'M SORRY. TO BARGAIN?

14           Q           THE EFFECTS OR THE IMPACTS OF THE CHANGES  
15 BEFORE IMPLEMENTATION OF THESE CHANGES?

16           A           NOT THAT I'M AWARE OF.

17           Q           DID ALADS REQUEST CLARIFICATION REGARDING ANY  
18 OF THE PROVISIONS IN THE PROPOSED CHANGES?

19           A           CLARIFICATION ON?

20           Q           DID THEY ASK TO HAVE THE DEPARTMENT CLARIFY  
21 WHAT SOME OF THE CHANGES MEANT?

22           A           YOU MEAN AFTER I SPOKE TO THEM OR AT THE TIME  
23 THAT --

24           Q           I'M SORRY. GOING BACK TO THE MEETING --

25           A           THE MEETING I HAD WITH THEM?

1 Q YES.

2 A YEAH, THEY ASKED. YEAH, I EXPLAINED TO THEM  
3 THE REASONS WHY THEY WERE DONE AND THE REASONS WHY THE  
4 REVISIONS WERE MADE. AND I DIDN'T GET INTO EVERY SINGLE ONE OF  
5 THEM, BUT, YOU KNOW, WE TALKED ABOUT THE DRIVING UNDER THE  
6 INFLUENCE AND ALSO THE FIRST ONE. IT WAS AN OFF-DUTY INCIDENT  
7 AT THE NEIGHBOR OR A BUSINESS DISPUTE, BUT THAT AS FAR AS WE'D  
8 GOTTEN. I WAS THERE FOR PROBABLY AN HOUR AND A HALF OR SO IN  
9 THE MEETING AND THAT'S AS FAR AS WE GOT, I BELIEVE, WITH THE  
10 GUIDELINES.

11 Q OKAY. AT ANY TIME DID ANYONE FROM THE  
12 DEPARTMENT PREVENT ALADS FROM EXPRESSING ANY CONCERNS THAT THEY  
13 HAD ABOUT THE CHANGES?

14 A NO, THEY EXPRESSED THEIR CONCERNS.

15 Q DID YOU OR ANYONE FROM THE DEPARTMENT PREVENT  
16 THEM FROM EXPRESSING THEIR CONCERNS?

17 A NO. I TOLD THEM AT THE END AS WELL THAT I WAS  
18 THERE TO LISTEN TO THEIR INPUT, WHICH IS WHAT I WAS THERE FOR,  
19 AND I BELIEVE I DID SAY THAT I WAS NOT THERE TO -- THAT I HAD  
20 THE AUTHORITY TO NEGOTIATE, BUT I WAS THERE TO LISTEN TO THEIR  
21 INPUT AND TO TAKE THAT BACK TO MY CHIEF TO SEE IF WE COULD  
22 IMPLEMENT THE CHANGES IF THERE WERE ANY.

23 Q OKAY.

24 MR. WONG: THAT'S ALL I HAVE.

25 HEARING OFFICER ROSS: WOULD YOU LIKE A BREAK?

1 MR. AITCHISON: I'M SORRY?

2 HEARING OFFICER ROSS: WOULD YOU LIKE A BREAK BEFORE  
3 YOU BEGIN YOUR CROSS?

4 MR. AITCHISON: NO.

5 HEARING OFFICER ROSS: OKAY.

6

7

CROSS-EXAMINATION

8

9 BY MR. AITCHISON:

10 Q CAPTAIN, GOOD AFTERNOON. MY NAME IS WILL  
11 AITCHISON. I'M HERE REPRESENTING ALADS.

12 A YES.

13 Q I HAVE A FEW QUESTIONS FOR YOU.

14 A SURE.

15 Q BACK IN 2016 WHEN YOU WERE I.A.B. CAPTAIN, WHAT  
16 RESPONSIBILITY DID YOU HAVE OVER NEGOTIATIONS OR COLLECTIVE  
17 BARGAINING FOR THE DEPARTMENT?

18 A NONE.

19 Q THAT WAS TRUE WHEN YOU WERE IN THE MEET AND  
20 CONFER SESSION ON NOVEMBER 29TH?

21 A CORRECT.

22 Q YOU TESTIFIED AT THE OUTSET THAT THE PURPOSE OF  
23 THE GUIDELINES IS TO ESTABLISH, AND I'M USING THE WORD THAT YOU  
24 USED --

25 A OKAY.

1 Q -- THE REQUIREMENT TO IMPOSE DISCIPLINE. WHAT  
2 DID YOU MEAN BY THAT PHRASE, "REQUIREMENT TO IMPOSE  
3 DISCIPLINE"?

4 A THE REQUIREMENT WOULD BE THAT IF IT'S THIS  
5 SPECIFIC SECTION THAT'S VIOLATED BY AN EMPLOYEE, THEN THESE ARE  
6 THE REQUIREMENTS AS FAR AS THE DISCIPLINE THAT CAN BE IMPOSED.  
7 THAT WAY, FOR EXAMPLE, IF YOU HAVE A D.U.I., AN OFF-DUTY  
8 D.U.I., AND SAY THE DISCIPLINE IS 15 DAYS, YOU CAN'T GIVE THEM  
9 5 DAYS FOR THAT.

10 SO THIS IS A REQUIREMENT, SO YOU CAN'T GO THAT  
11 LOW. I MEAN THE CHIEF CAN GO A LITTLE BIT LOWER, WHICH THEY  
12 HAVE IN THE PAST, BUT THOSE ARE THE REQUIREMENTS OVERALL FOR  
13 THE DEPARTMENT.

14 Q OKAY. I DON'T -- AND MAYBE WE NEED TO GET  
15 SOMETHING IDENTIFIED WE HAVEN'T HAD IDENTIFIED YET. WHO  
16 IMPOSES DISCIPLINE IN THE DEPARTMENT, WHAT RANK?

17 A WHO IMPOSES IT?

18 Q YEAH.

19 A WELL, ACTUALLY AS THE DECISION-MAKER?

20 Q YES.

21 A WELL, IT DEPENDS ON HOW MUCH DISCIPLINE IT IS.

22 Q TAKE US THROUGH THAT.

23 A CAPTAIN TO 15 DAYS.

24 Q CAPTAIN UP TO 15 DAYS?

25 A UP TO 15 DAYS. A WRITTEN REPRIMAND TO 15 DAYS,

1 THE CAPTAIN OF THAT UNIT CAN IMPOSE THAT DISCIPLINE. ANYTHING  
2 HIGHER THAN THAT, 16 DAYS OR ABOVE, IS GOING TO REQUIRE THE  
3 CHIEF AND ALSO THE CASE REVIEW, FROM 16 TO DISCHARGE AND ALSO  
4 TO REDUCTION IN RANK AND DEMOTION.

5 Q OKAY. WHAT ABOUT DISCHARGE?

6 A DISCHARGE, CASE REVIEW PANEL. THE CHIEF HAS  
7 GOT TO BRING IT TO THAT THREE-PERSON PANEL AND THAT'S THE PANEL  
8 THAT MAKES THAT DETERMINATION AS FAR AS IF IT'S GOING TO HOLD  
9 UP OR NOT FOR DISCHARGE.

10 Q WHAT ABOUT THE SHERIFF?

11 HEARING OFFICER ROSS: I'M SORRY. WHAT ABOUT WHAT?

12 THE REPORTER: THE SHERIFF.

13 MR. AITCHISON: THE SHERIFF.

14 THE WITNESS: THE SHERIFF IS NOT PART OF THE CASE  
15 REVIEW PANEL. THE HIGHEST RANK IS THE UNDERSHERIFF.

16 BY MR. AITCHISON:

17 Q SO THE SHERIFF DOESN'T MAKE DISCIPLINARY  
18 DECISIONS?

19 A IS HE PART OF IT? IS HE PART OF THE GROUP?  
20 YES, HE DOES MAKE DISCIPLINARY. I'M SURE HE DOES.

21 Q AND WHEN YOU SAY, "I'M SURE HE DOES" --

22 A WELL, HE'S NOT IN THE --

23 Q -- DO YOU KNOW THAT?

24 A HE'S NOT IN THE ROOM WHEN I AM IN THERE IN THE  
25 CASE REVIEW, SO HE'S NOT PART OF THE CASE REVIEW PANEL. I'M

1 TRYING TO ANSWER YOUR QUESTION THE BEST I CAN. I DON'T WANT TO  
2 JUST PUT INFORMATION OUT THERE THAT MIGHT NOT BE TRUE.

3 Q AND I TOTALLY UNDERSTAND THAT. I'M JUST  
4 CONFUSED BECAUSE YOU'RE THE CAPTAIN OF I.A.B. AND IF I  
5 UNDERSTAND YOU CORRECTLY, YOU DON'T KNOW WHETHER THE SHERIFF  
6 ACTUALLY MAKES DISCIPLINARY DECISIONS?

7 A OKAY. HE DOES MAKE --

8 Q IS THAT RIGHT?

9 A WELL, HE DOES MAKE DISCIPLINARY DECISIONS  
10 THROUGH THE UNDERSHERIFF. AND IF HE TALKS TO THE SHERIFF ABOUT  
11 IT THEN, YES, HE WILL MAKE THE DECISION. HE CAN BE PART OF IT  
12 AS FAR AS THAT DECISION, YES.

13 Q OKAY.

14 A SO I GUESS MY ANSWER TO YOU IS DOES THE SHERIFF  
15 MAKE DETERMINATIONS ON SOME OF THE DISCIPLINE? YES.

16 Q ALL RIGHT. AND YOU'VE INTRODUCED ANOTHER NEW  
17 PERSON, AN UNDERSHERIFF. WHERE'S THE UNDERSHERIFF IN RELATION  
18 TO THE CHIEFS?

19 A HE'S ABOVE THEM BY TWO RANKS.

20 Q OKAY. AND WHO'S BETWEEN THE UNDERSHERIFF AND  
21 THE CHIEFS?

22 A ASSISTANT SHERIFFS.

23 Q SO THEY MAKE DECISIONS ON DISCIPLINE?

24 A YES, THEY DO.

25 Q SO WE HAVE CHIEFS WHO MAKE DECISIONS ON

1 DISCIPLINE, ASSISTANT SHERIFFS WHO DO, UNDERSHERIFFS WHO DO AND  
2 THE SHERIFF WHO DOES?

3 A YES.

4 Q AND THOSE ARE ALL IN THE SERIOUS CASES?

5 A YES. SO THAT WOULD BE FOR 16 DAYS OR MORE,  
6 YES.

7 Q DO ALL FOUR OF THOSE RANKS PARTICIPATE IN EVERY  
8 ONE OF THE DISCIPLINARY DECISIONS ON THE SERIOUS CASES?

9 A DIFFERENT ONES, BUT, YES, THEY DO.

10 Q NO, IN EVERY ONE OF THEM?

11 A WELL, YOU'RE GOING TO HAVE A THREE-PERSON  
12 PANEL; OKAY?

13 Q AND WHO IS ON THAT PANEL, WHAT RANK?

14 A IT'S GOING TO BE THE UNDERSHERIFF AND THE  
15 ASSISTANT SHERIFFS AND YOU'VE GOT --

16 HEARING OFFICER ROSS: AND THE WHAT?

17 THE WITNESS: ASSISTANT SHERIFF. I'M SORRY.

18 HEARING OFFICER ROSS: THANK YOU.

19 THE WITNESS: AND THERE ARE, WELL, BOBBY DENHAM, EDDIE  
20 RIVERO AND HARRINGTON, SO YOU HAVE THREE OF THEM.

21 BY MR. AITCHISON:

22 Q THREE OF WHO?

23 A ASSISTANT SHERIFFS. YOU HAVE THREE OF THEM.

24 Q OKAY.

25 A NOW JILL SERRANO ALSO IS AS WELL, BUT I'VE

1 NEVER SEEN HER SIT ON A CASE REVIEW PANEL.

2 Q SO LET'S STOP FOR JUST A MOMENT. IF YOU DON'T  
3 USE NAMES RIGHT NOW, THAT WILL HELP US; OKAY? RANKS ARE ALL I  
4 CARE ABOUT --

5 A OKAY.

6 Q -- SO YOU KNOW; OKAY?

7 SO WE'VE GOT THREE ASSISTANT SHERIFFS?

8 A THERE'S FOUR TOTAL ON THE DEPARTMENT.

9 Q FOUR.

10 A THERE'S FOUR ASSISTANT SHERIFFS AND ONE  
11 UNDERSHERIFF AND THE PANEL IS A THREE-PERSON PANEL.

12 Q ALL RIGHT. OKAY. LET'S SAY WE'VE GOT  
13 SOMETHING THAT IS A D.U.I.; OKAY?

14 A OKAY.

15 Q SO THIS POTENTIALLY PUTS US ABOVE 15 DAYS;  
16 RIGHT?

17 A MAYBE, MAYBE NOT.

18 Q OKAY. PERFECT CASE, THEN. HOW DO WE KNOW  
19 WHETHER OR NOT IT GOES BEYOND THE COMMANDER LEVEL?

20 A ABOVE THE CAPTAIN LEVEL.

21 Q THE CAPTAIN.

22 A NOT THE COMMANDER LEVEL.

23 Q SORRY. ABOVE THE CAPTAIN LEVEL. WHERE IS THAT  
24 WRITTEN DOWN?

25 A WHERE IS IT WRITTEN DOWN?

1 Q YES.

2 A AS FAR AS IF IT'S 16 DAYS OR MORE AND IT GOES  
3 TO CASE REVIEW?

4 Q OKAY. BAD QUESTION ON MY PART. I'M SORRY.

5 A THAT'S OKAY.

6 Q FOR A D.U.I., YOUR RANGE TAKES YOU BOTH ABOVE  
7 AND BELOW THE 15-DAY THRESHOLD?

8 A IT DEPENDS ON THE ENHANCEMENTS. I GUESS IF YOU  
9 WANT TO MAKE IT THAT WAY, IT'S AN EASIER WAY TO SAY THAT.

10 Q BUT IT COULD GO ABOVE AND BELOW?

11 A IT COULD, YES.

12 Q WHO MAKES THAT DECISION AS TO WHEN THAT  
13 PARTICULAR CASE, WHEN THE INITIAL DECISION ON DISCIPLINE IS  
14 MADE AT THE CAPTAIN LEVEL VERSUS SOMEPLACE ELSE?

15 A WELL, IT STARTS WITH THE CAPTAIN; CORRECT? AND  
16 LET'S SAY IT'S JUST A STRAIGHT D.U.I., FIRST OFFENSE, NO  
17 AGGRAVATING FACTORS TO IT; OKAY? NO WEAPON ON HIM. HE'S  
18 COOPERATIVE WITH THE C.H.P., FOR INSTANCE, AND IT'S JUST A  
19 15-DAYER. HE'S STILL GOING TO TALK TO HIS COMMANDER AND HIS  
20 CHIEF TO CONFER WITH THEM IF THEY ARE ALSO AGREEABLE TO THAT.  
21 AND THEN IF IT'S 15 DAYS IS ALL YOU'RE GOING TO GIVE THEN THE  
22 CAPTAIN CAN IMPOSE THAT 15 DAYS.

23 HOWEVER, IF YOU HAVE A D.U.I., FOR INSTANCE,  
24 AND HE HAS HIS WEAPON ON HIM, WELL, THAT'S GOING TO BE 20 TO 25  
25 DAYS. THAT IT TAKES IT OUT OF THE HANDS OF THAT CAPTAIN AND

1 PUTS IT ON THAT CHIEF IF HE'S GOING TO -- YOU KNOW, IF HE WANTS  
2 TO GO 20 TO 25 DAYS DEPENDING ON THE AGGRAVATING/MITIGATING  
3 FACTORS.

4 THEN FROM THERE THEY HAVE TO GO TO CASE REVIEW.  
5 THE CASE REVIEW PANEL CAN ARGUE THAT CASE AND THEN THE CASE  
6 REVIEW PANEL MAKES THE DETERMINATION WHAT THE DISCIPLINE IS  
7 GOING TO BE.

8 Q ALL RIGHT. SO LET'S SEPARATE THAT, THEN.  
9 LET'S TAKE THE ONES THAT STAY WITH THE CAPTAIN FOR A MOMENT;  
10 OKAY?

11 A OKAY.

12 Q THE CAPTAIN, DOES THE CAPTAIN GET A COMPLETED  
13 I.A. FILE?

14 A YES. ABSOLUTELY, YEAH. IF IT'S DONE IN HOUSE  
15 IT'S A UNIT LEVEL OR INTERNAL AFFAIRS DOES THE CASE.

16 Q OKAY. THE INVESTIGATION COULD BE AT THE UNIT  
17 LEVEL AS OPPOSED TO I.A.?

18 A YES.

19 Q ALL RIGHT. SO, IN ANY CASE, THERE'S A  
20 COMPLETED INVESTIGATORY FILE; CORRECT?

21 A CORRECT.

22 Q AND IT GOES TO THE CAPTAIN?

23 A CORRECT.

24 Q AND THE CAPTAIN THEN MAKES THE DECISION AS TO  
25 WHAT THE DISCIPLINE IS GOING TO BE?

1 A YES.

2 Q DOES THE DEPUTY HAVE THE RIGHT TO APPEAR BEFORE  
3 THE CAPTAIN PRIOR TO THE CAPTAIN'S DECISION?

4 A AT THAT TIME, NO.

5 Q DOES ALADS HAVE THE RIGHT TO APPEAR BEFORE THE  
6 CAPTAIN?

7 A NO.

8 MR. WONG: OBJECTION. I THINK WE'RE GETTING WELL  
9 BEYOND THE SCOPE OF DIRECT.

10 HEARING OFFICER ROSS: IT WOULDN'T BE THE FIRST TIME.  
11 I'M GOING TO ALLOW THE QUESTION.

12 MR. WONG: OKAY.

13 MR. AITCHISON: I THINK THAT WAS MY FIRST OBJECTION.

14 MR. WONG: IT WAS.

15 MR. AITCHISON: OKAY.

16 BY MR. AITCHISON:

17 Q AND DO EITHER THE DEPUTY OR ALADS HAVE ACCESS  
18 TO THE CAPTAIN TO INFLUENCE WHETHER OR NOT THIS IS A CASE  
19 THAT THE CAPTAIN IS GOING TO SEND TO THE CHIEF OR KEEP WITH  
20 HERSELF?

21 A NO.

22 Q OKAY. SO WE'RE IN A LOWER-LEVEL CASE, 15 DAYS  
23 OR BELOW. THE CAPTAIN MAKES THE DISCIPLINARY DECISION.

24 A OKAY.

25 Q DOES THAT GET REVIEWED BY ANYBODY AFTER THE

1 DECISION IS MADE?

2 A YES.

3 Q WHO?

4 A BY THE COMMANDER AND THE CHIEF OF THAT  
5 DIVISION.

6 Q IS THE DECISION FINAL BEFORE THE REVIEW OR ONLY  
7 AFTER THE REVIEW?

8 A AFTER THE REVIEW.

9 Q ALL RIGHT. NOW, LET'S GO WITH THE MORE SERIOUS  
10 CASES. I THINK YOU SAID THEY WILL GO INTO THE CASE REVIEW  
11 PANEL; CORRECT?

12 A CORRECT.

13 Q AUTOMATICALLY?

14 A IF IT'S 16 DAYS OR MORE, YES, AUTOMATICALLY IT  
15 DOES.

16 Q EVERY ONE OF THEM DOES?

17 A EVERY ONE.

18 Q AND THE CASE REVIEW PANEL, DOES IT MAKE A  
19 DECISION OR A RECOMMENDATION?

20 A DECISION.

21 Q AND IS THAT THE FINAL DISCIPLINARY DECISION?

22 A YES.

23 Q HOW WOULD SOMETHING GET TO THE ASSISTANT  
24 SHERIFFS OR THE UNDERSHERIFF?

25 A THEY'RE PART OF THE PANEL. IT'S GOT TO BE

1 16 DAYS OR MORE, IT GOES TO THE PANEL.

2 Q OKAY.

3 A AND THAT'S WHAT THE PANEL CONSISTS OF IS THAT  
4 RANK.

5 Q AND THEN HOW WOULD SOMETHING EVER GET TO THE  
6 SHERIFF?

7 A WELL, FOR INSTANCE, HE HAS TO SIGN OFF ON IT.  
8 HE DOESN'T SIGN THE DISPOSITION WORKSHEET. IT'S GOING TO BE  
9 TAKEN TO HIM FROM THE UNDERSHERIFF TO SIGN OFF ON THAT  
10 DISCHARGE.

11 Q ALL RIGHT. SO IT'S NOT -- THE CONSULTATION  
12 WITH THE SHERIFF IS NOT DURING THE PENDENCY OF THE CASE REVIEW  
13 PANEL?

14 A NO, IT'S NOT.

15 Q DO EITHER ALADS OR THE DEPUTY HAVE THE RIGHT TO  
16 APPEAR BEFORE THE CASE REVIEW PANEL?

17 A NO.

18 Q ALL RIGHT. I WOULD ASSUME INTERNAL AFFAIRS  
19 KEEPS RECORDS OF THE NUMBER OF SUSTAINED CHARGES FOR EACH OF  
20 THE DIFFERENT PROVISIONS OF THE M.P.P.?

21 A YES.

22 Q IS THAT RIGHT?

23 A CORRECT.

24 Q AND ARE THOSE RECORDS KEPT ASSOCIATED WITH THE  
25 DEPUTY'S NAME?

1           A           YES.

2           Q           OR ARE THEY KEPT -- OR ARE THEY ALSO KEPT ON AN  
3           AGGREGATE BASIS?

4           A           NO.  THEY ARE KEPT UNDER THE DEPUTY'S NAME.  
5           YOU HAVE TO PULL IT OUT IF YOU WANT TO DO SPECIFIC SECTIONS,  
6           YES.

7           Q           SO LET ME GET AT THIS ANOTHER WAY.  WOULD I.A.  
8           HAVE THE ABILITY TO SAY, OKAY, LET'S PULL ALL OF THE  
9           DISCIPLINARY CASES THAT INVOLVE THE M.P.P. PROVISION ON GENERAL  
10          BEHAVIOR?

11          A           WELL, GENERAL BEHAVIOR ONLY?  WELL, THAT  
12          DEPENDS.  IT DEPENDS ON WHERE IT IS LISTED ON THE CHARGE IN  
13          OUR P.R.M.S.  IT ISN'T AS SIMPLE AS YOU WOULD THINK IT WOULD  
14          BE.  IT'S NOT -- IT WOULD BE IDEAL IF YOU COULD DO IT THAT WAY.

15                       WE'VE TRIED TO GO THROUGH THAT BEFORE IN  
16          DIFFERENT ARENAS AND DIFFERENT REASONS, BUT UNFORTUNATELY IT  
17          DOESN'T WORK THAT WAY ALWAYS.  IT'S NOT 100 PERCENT ACCURATE  
18          THE WAY THAT P.R.M.S. AND THE PRIOR P.P.I. IS.  THAT SYSTEM  
19          DOES NOT WORK THAT WAY, THAT YOU CAN JUST TYPE IN THIS SECTION  
20          AND THEN IT TELLS YOU, OKAY, THESE ARE ALL HOW MANY YOU HAD AND  
21          THERE'S A TIME PERIOD, THIS YEAR, THIS YEAR.  UNFORTUNATELY IT  
22          DOESN'T DO IT THAT EASILY.  SOME OF IT REQUIRES ACTUALLY GOING  
23          THROUGH IT AND LOOKING AT EVERY ONE OF THEM THAT HAVE GENERAL  
24          BEHAVIOR MAYBE AND THEN PULLING OUT THE SECTION THAT YOU WANT  
25          TO LOOK AT --

1 Q WOULD YOU BE ABLE TO TO --

2 A -- IF THAT MAKES SENSE?

3 Q OH, YES, IT DOES.

4 WOULD YOU BE ABLE TO LOOK THROUGH THEM  
5 ELECTRONICALLY?

6 A EACH CASE, YES.

7 Q YOU MENTIONED THAT CHIEFS CAN DEVIATE A BIT. I  
8 THINK THAT WAS YOUR PHRASE. FORGIVE ME IF I'M MISREPRESENTING  
9 THAT. A BIT FROM WHAT'S LISTED IN THE BAIL SCHEDULE. WHAT DID  
10 THAT QUALIFY OR MEAN TO YOU?

11 A WELL, BECAUSE IT'S VERY UNUSUAL. IT'S VERY  
12 UNUSUAL FOR THE CHIEF TO -- TO -- THEY HAVE. THEY'VE LOWERED  
13 IT. I'VE SEEN THEM DO IT, BUT IT'S VERY UNUSUAL TO DO, AND IF  
14 THEY DO IT THEY DO IT I THINK I SAID A LITTLE BIT. IT'S MINOR.  
15 IT'S A MINOR DEVIATION FROM THE RANGE. BUT I'M TALKING  
16 ANECDOTALLY FROM MY EXPERIENCE.

17 Q RIGHT. YOU DON'T KNOW THIS, BUT EARLIER WE  
18 HAVE HAD TESTIMONY FROM ALADS THAT ALADS REVIEWED ITS  
19 DISCIPLINARY FILES OVER THE LAST FIVE YEARS AND FOUND THAT IN  
20 ONLY 2 PERCENT OF CASES WAS THE EVENTUAL DISCIPLINE OUTSIDE OF  
21 THE GUIDELINES. IS THAT A NUMBER THAT SEEMS LIKE A PRETTY  
22 ACCURATE ESTIMATE?

23 A IT SOUNDS ACCURATE.

24 Q WOULD YOU TAKE A LOOK IN THE LARGE BINDER AT  
25 EXHIBIT A-5?

1           A           OKAY.

2           Q           AND, IN PARTICULAR, LET'S TAKE A LOOK AT PAGE  
3 2. MR. WONG ASKED YOU A QUESTION EARLY ON ABOUT WHEN THIS  
4 DOCUMENT WAS GENERATED AND YOU LOOKED AT -- ACTUALLY, I'M  
5 SORRY. THERE'S TWO PAGE 2'S IN THIS EXHIBIT. I WANT THE PAGE  
6 THAT IS RIGHT AFTER THE LETTER FROM DAN LOPEZ, SO THE COVER  
7 SHEET.

8           A           THE COVER SHEET? YES.

9           Q           GOT IT?

10          A           YES.

11          Q           OKAY. MR. WONG ASKED YOU A QUESTION ABOUT WHEN  
12 THIS DOCUMENT WAS REVISED AND YOU TESTIFIED IT WAS REVISED ON  
13 APRIL 11TH, 2016.

14          A           AUGUST. I THINK IT WAS AUGUST 11.

15                   HEARING OFFICER ROSS: AUGUST.

16                   MR. AITCHISON: YEAH, AUGUST, APRIL. THEY BOTH START  
17 WITH "A." THAT'S HOW I DID THAT.

18 BY MR. AITCHISON:

19          Q           SO WERE THESE CHANGES IN EFFECT AS OF AUGUST  
20 11TH, 2016?

21          A           NO.

22          Q           WHY IS THE WORD "REVISED" USED, THEN?

23          A           THAT'S WHEN IT WAS REVISED AND IT WAS PUBLISHED  
24 ON JANUARY 1ST, 2017. SO IT WAS REVISED IN AUGUST. THAT'S  
25 WHEN IT WAS REVISED. AND THEN THEY WANTED TO WAIT -- "THEY,"

1 THE UPPER ECHELON, WANTED TO WAIT UNTIL JANUARY 1ST OF THE NEW  
2 YEAR TO IMPLEMENT IT.

3 Q I SEE. SO "PUBLISHED" MEANS IMPLEMENTED?

4 A CORRECT.

5 Q "REVISED" DOESN'T MEAN IMPLEMENTED?

6 A NO, IT DOESN'T.

7 Q OH, OKAY. GOT IT.

8 NOW, YOU'VE MENTIONED THAT YOU WERE A  
9 PARTICIPANT IN A COMMITTEE THAT STARTED THIS WHOLE PROCESS  
10 GOING IN 2015. WERE YOU A LIEUTENANT IN 2015?

11 A YES.

12 Q AND ISN'T IT ACCURATE TO SAY THAT THIS  
13 COMMITTEE WAS MADE UP OF 11 LIEUTENANTS?

14 A I BELIEVE IT WAS 11 OR 12 LIEUTENANTS AND I  
15 BELIEVE ONE CAPTAIN AS WELL.

16 Q AND WHEN DID THIS COMMITTEE START MEETING IN  
17 2015?

18 A I COULDN'T GIVE YOU THE EXACT MONTH WHEN IT  
19 STARTED. I WOULD BE GUESSING.

20 Q DID YOU MEET FOR MONTHS?

21 A YES.

22 Q AND WERE THERE DIFFERENT DRAFTS THAT WERE  
23 CREATED OVER TIME?

24 A THERE WERE DRAFTS OF THIS, YES, MADE.

25 Q AND WHY WAS ALADS NOT A PART OF THAT COMMITTEE?

1           A           THE REASON WHY, I DO NOT KNOW.

2           Q           ALL RIGHT. NOW, YOU'VE MENTIONED THAT ONE OF  
3 THE TWO MOTIVATING -- OR YOU SAID THERE WERE TWO MOTIVATING  
4 FORCES BEHIND THIS EFFORT AT REVISION, AND ONE WAS DEALING WITH  
5 DRINKING AND DRIVING AND THE OTHER WAS DEALING WITH DISHONESTY.  
6 IS THAT A FAIR CHARACTERIZATION?

7           A           THIS IS MY UNDERSTANDING OF IT, NOT THE SHERIFF  
8 OR THE UNDERSHERIFF, THEIR SPECIFIC INTENT, BUT THIS IS MY  
9 UNDERSTANDING OF THE INTENT, YES. IT WAS ALCOHOL, ALCOHOL AND  
10 HONESTY.

11          Q           AND I DON'T WANT TO FOCUS ON THE ALCOHOL RIGHT  
12 NOW, BUT I DO WANT TO FOCUS ON THE DISHONESTY. ARE YOU AWARE  
13 OF THE FACT THAT THE DISCIPLINARY GUIDELINES WERE ALSO CHANGED  
14 IN 2013?

15          A           IN '13 I WASN'T PART OF THAT, NO.

16          Q           WOULD IT SURPRISE YOU TO LEARN THAT THE BULK OF  
17 THE CHANGES IN 2013 ADDRESS RULES DEALING WITH DISHONESTY?

18          A           I HONESTLY DON'T KNOW. I DID NOT LOOK AT THE  
19 DIFFERENCE BETWEEN '12 AND '16.

20          Q           SO IN THE DELIBERATIONS OF THIS 11-PERSON  
21 COMMITTEE, IT DIDN'T COME TO YOUR ATTENTION THAT THE 2013  
22 REVISIONS MADE ONLY THREE YEARS BEFORE DEALT EXTENSIVELY WITH  
23 THE ISSUE OF DISHONESTY?

24          A           NO.

25          Q           I WANT TO GET INTO JUST A FEW OF THE DETAILS

1 MR. WONG REVIEWED WITH YOU IN EXHIBIT A-5. WILL YOU TAKE A  
2 LOOK AT PAGE 10?

3 A OKAY.

4 Q AND IN PARTICULAR SUBSECTION J. YOU RECALL  
5 YOUR TESTIMONY THAT THE LISTING OF ALL OF THE M.P.P. PROVISIONS  
6 ON THE DISPOSITION SHEET DIDN'T HAVE A -- I THINK YOUR PHRASE  
7 WAS A SUBSTANTIVE IMPACT ON ALADS MEMBERS? DO YOU RECALL THAT  
8 TESTIMONY?

9 A WELL, I DIDN'T SAY THAT EXACTLY.

10 Q OKAY. WHAT DID YOU SAY?

11 A I DIDN'T SAY THAT EXACTLY. IT CAN IN SOME  
12 REGARDS IF YOU HAVE SEVERAL ENUMERATED LISTINGS OF VIOLATIONS,  
13 AND LET'S SAY YOU HAVE EIGHT OF THEM --

14 Q UH-HUH.

15 A -- BUT OUT OF THE EIGHT FOUR ARE FOUNDED AND  
16 FOUR ARE UNFOUNDED. SO I GUESS IF YOU DID SAY IF YOU HAVE  
17 EIGHT OF THEM, INSTEAD OF LISTING ONE THAT IS FOUNDED THEN YOU  
18 HAVE MORE THAT ARE FOUNDED, THEN I GUESS IT COULD MAKE A  
19 DIFFERENCE.

20 Q AND WHAT WOULD THE SUBSTANTIVE IMPACT BE LATER  
21 ON IN THE CAREER OF AN ALADS MEMBER?

22 A WELL, FOR ANY MEMBER WHAT IT COULD DO IS IF  
23 THEY HAVE MORE DISCIPLINE, THAT CAN AFFECT CERTAIN THINGS, YES.

24 Q OKAY. AND WHAT ARE THE CERTAIN THINGS IT CAN  
25 AFFECT?

1           A           WELL, IT CAN AFFECT THEIR MOVEMENT TO A COVETED  
2 POSITION. IT COULD AFFECT THEIR PROMOTION.

3           Q           WE HAVEN'T HEARD THE PHRASE "COVETED PROVISION"  
4 [SIC] IN THESE PROCEEDINGS YET. WHAT IS THAT?

5           A           A COVETED POSITION BY THE DEPARTMENT. THAT IS,  
6 A COVETED POSITION COULD BE A BONUS POSITION SUCH AS A TACTICAL  
7 HELICOPTER -- OR AN OBSERVER, FOR INSTANCE, IS A COVETED  
8 POSITION.

9           Q           SO IT COULD BE A POSITION WITH ADDITIONAL PAY  
10 ASSOCIATED WITH IT?

11          A           IT COULD IF IT'S A BONUS POSITION, YES.

12          Q           AND WHAT DOES THAT PHRASE, "COVETED POSITION,"  
13 MEAN IF IT'S NOT ASSOCIATED WITH A BONUS POSITION?

14          A           WELL, IT MEANS IT'S A SOUGHT AFTER -- I GUESS  
15 YOU COULD SAY IT'S A SPECIALIZED -- IT WOULD BE A SPECIALIZED  
16 POSITION. TYPICALLY THEY'RE ALL GOING TO BE MORE MONEY, EVEN  
17 YOUR DEPUTY TO DEPUTY ON THE OBSERVER POSITION, AERO, FOR  
18 INSTANCE; RIGHT? WELL, THEY'RE STILL GOING TO GET -- THEY'RE  
19 GOING TO GET FLIGHT PAY SO THERE IS AN INCENTIVE BECAUSE OF THE  
20 ADDITIONAL MONEY, BUT IT'S STILL A DEPUTY SHERIFF GENERALIST  
21 POSITION.

22          Q           I TAKE IT, THEN, IN MAKING DECISIONS AS TO  
23 WHETHER DEPUTIES GET THESE ASSIGNMENTS, THESE COVETED  
24 POSITIONS, THE DEPARTMENT WILL CONSIDER THE DISCIPLINARY RECORD  
25 OF THE EMPLOYEE; CORRECT?

1           A           WELL, IT'S TRUE. YOU CAN'T MAKE APPOINTMENT  
2 FOR A CERTAIN AMOUNT OF TIME IF YOU HAVE A CERTAIN AMOUNT OF  
3 DAYS OR MORE, YES.

4           Q           YEAH, LET'S TALK -- WE HAVEN'T COVERED THAT  
5 YET. THE DEPARTMENT HAS AT LEAST TWO THAT I CAN THINK OF  
6 AUTOMATIC BANS WHERE IF YOU HAVE DISCIPLINE AT ANY LEVEL OR  
7 CERTAIN LEVELS IT IMPACTS YOUR ABILITY TO PROMOTE AND IT ALSO  
8 IMPACTS YOUR ABILITY TO GET COVETED POSITIONS. LET'S TAKE THE  
9 PROMOTE FIRST.

10          A           OKAY.

11          Q           WHAT IS THE IMPACT OF DISCIPLINE ON ELIGIBILITY  
12 FOR PROMOTION?

13          A           THERE IS. I'M NOT HONESTLY SURE OFFHAND HOW  
14 MANY DAYS IT IS OR HOW MANY YEARS IT IS, BUT THERE IS A  
15 SPECIFIC AMOUNT OF TIME IF YOU HAVE DISCIPLINE.

16                   IT COULD BE, LET'S SAY -- I DON'T WANT TO  
17 GUESS, BUT I BELIEVE IT'S 5 OR OVER 5 DAYS THAT COULD AFFECT  
18 YOUR ABILITY TO PROMOTE FOR TWO YEARS TO BE ON THE ELIGIBILITY  
19 LIST.

20          Q           SO YOU JUST SIMPLY COULDN'T BE ON THE --  
21 WHATEVER THE NUMBERS ARE, AND I REALIZE YOU'RE NOT SURE OF THE  
22 NUMBERS. WHATEVER THE NUMBERS ARE, YOU JUST COULDN'T BE ON THE  
23 ELIGIBILITY LIST?

24          A           FROM MY UNDERSTANDING, YES.

25          Q           OKAY. AND IS THE SAME THING TRUE WITH RESPECT

1 TO ASSIGNMENTS TO COVETED POSITIONS?

2 A YES. FROM MY UNDERSTANDING THAT'S CORRECT,  
3 YES.

4 Q AND BACK TO SECTION J, I JUST WANT TO MAKE SURE  
5 HOW THE PROCESS WORKS. SO YOU HAVE A SET OF FACTS, WHATEVER  
6 THE SET OF FACTS ARE. LET'S SAY IT'S A -- LET'S MAKE IT AN  
7 OFF-DUTY NEIGHBORHOOD FRACAS, OKAY, THAT THE DEPUTY IS INVOLVED  
8 IN IN SOME WAY OR ANOTHER.

9 A OKAY.

10 Q AND YOU'RE FILLING OUT THE DISPOSITION SHEET.  
11 DOES SOMEONE GO THROUGH THE M.P.P. AND FIND EVERY POSSIBLE  
12 CHARGE THAT COULD FIT THOSE FACTS AND PUT THEM ON THE  
13 DISPOSITION SHEET?

14 A NO, I WOULDN'T -- I WOULDN'T -- I WOULDN'T  
15 CHARACTERIZE IT THAT WAY IN ESSENTIALLY GOING THROUGH EVERY  
16 SINGLE POSSIBLE CRIME LIKE YOU WOULD A SUSPECT; CORRECT? YOU  
17 DON'T LOOK AT IT THAT WAY. IT DEPENDS ON THE INDIVIDUAL, THE  
18 UNIT WHO'S DOING IT.

19 HOWEVER, TYPICALLY THROUGHOUT THE DEPARTMENT  
20 THEY'RE GOING TO GO TO THE MORE SERIOUS OFFENSES AND LIST THOSE  
21 BUT NOT NECESSARILY LIST EVERY SINGLE -- BECAUSE SOME OF THEM  
22 ARE INCLUSIVE.

23 Q THE REASON I ASKED YOU IS -- AND PLEASE LOOK AT  
24 THE FIRST HIGHLIGHTED SENTENCE IN SECTION J, NOT THE DELETED  
25 LANGUAGE BUT THE FIRST HIGHLIGHTED SENTENCE?

1           A        OKAY.

2           Q        WHAT I WANT TO KEY ON IS IT SAYS:

3                    "EACH M.P.P. SECTION VIOLATED  
4                    BY A SINGLE ACT OR A SINGLE CATEGORY  
5                    OF BEHAVIOR SHALL BE LISTED IN THE  
6                    DISPOSITION WORKSHEET."

7           A        UH-HUH.

8           Q        DOESN'T THAT MANDATE THE SORT OF M.P.P. BY  
9           M.P.P. REVIEW THAT I JUST DESCRIBED?

10          A        NO, IT DOESN'T BECAUSE A LOT OF THE THINGS THAT  
11          OCCUR OUT THERE IN REALITY IS THAT THEY'RE NOT -- THEY'RE NOT  
12          LISTED. THEY'RE NOT PART OF THE DROP-DOWN MENU, SO YOU CAN'T  
13          LIST EVERY SINGLE THING.

14                    SO THINGS ARE A CATCHALL -- GENERAL BEHAVIOR,  
15          PERFORMANCE TO STANDARDS. THEN WE ALSO ADDED TWO OTHER  
16          SECTIONS IN THERE WHERE IF IT DOESN'T FIT IN ANYTHING AT ALL  
17          USE THIS, WHICH IS REPRIMAND TO DISCHARGE.

18                    SO THAT'S WHY YOU CAN'T REALLY PUT IT NICE AND  
19          NEAT LIKE EVERY TIME AS FAR AS THE CHARGES GO. SO I UNDERSTAND  
20          WHAT YOU'RE SAYING ON THAT, BUT THAT DOESN'T SPECIFICALLY  
21          RELATE TO ALL THE CASES.

22          Q        IN THE CONTEXT OF THE DISCIPLINARY GUIDELINES,  
23          IS THE WORD "SHALL" USED IN A MANDATORY SENSE SUCH AS IT MEANS  
24          "MUST"?

25          A        SHALL DOES, YES.

1 Q OKAY. BOTTOM OF THE PAGE, YOU HAD A DIALOGUE  
2 WITH MR. WONG ABOUT THE ADDITION OF THESE WORDS:

3 "VERIFY INFORMATION TO THE  
4 EXTENT POSSIBLE."

5 AND YOU TESTIFIED THAT IT WAS NOT ALWAYS  
6 POSSIBLE TO VERIFY INFORMATION. YOU'RE NOT SUGGESTING THAT THE  
7 DEPARTMENT WOULD EVER BASE DISCIPLINARY ACTION ON UNVERIFIED  
8 INFORMATION; ARE YOU?

9 A OF COURSE NOT.

10 Q LET'S SKIP SOME OF THIS.

11 OKAY. NOW, WE'VE COME TO SOMETHING THAT I  
12 THINK WE NEED SOME CLARITY ON AND IT'S ON PAGE 42. THIS WHOLE  
13 CONCEPT OF LEVELS OF DISCIPLINE, THIS WAS NEW WITH THE 2017  
14 IMPLEMENTATION; CORRECT?

15 A CORRECT.

16 Q IS THERE ANY DESCRIPTION IN ANY DEPARTMENT  
17 MANUAL OF LEVELS OF DISCIPLINE OTHER THAN WHAT WE'RE LOOKING AT  
18 IN THE GUIDELINES?

19 A OH, YOU MEAN IN THE M.P.P.? NO. IT'S JUST IN  
20 THE GUIDELINES, CORRECT.

21 Q ALL RIGHT. NOW, WHEN WE LOOK AT -- AND LET'S  
22 TAKE THIS AS AN EXAMPLE. LET'S TAKE A LEVEL 3, OKAY, RIGHT IN  
23 THE MIDDLE OF THE PACK HERE, AN 11- TO 15-DAY SUSPENSION AND  
24 THEN THERE'S SOME DESCRIPTIONS OF THE CONDUCT. HOW DOES THAT  
25 11- TO 15-DAY RANGE RELATE TO WHAT'S ON PAGE 43, THE TABLE THAT

1 IS ON PAGE 43 FOR A LEVEL 3?

2 A ALL RIGHT. IT'S 11 TO 15 DAYS, AND THEN THERE  
3 IT JUST GIVES YOU IN THE TABLE THE PRESUMPTIVE PENALTY AND THE  
4 MITIGATED AND THE AGGRAVATED PENALTY.

5 Q OKAY. AND WHAT DOES "PRESUMPTIVE PENALTY"  
6 MEAN?

7 A IT'S TO PRESUME A PENALTY FOR THAT BEHAVIOR.  
8 SO IT MEANS THAT IT'S PRESUMPTIVE IF THERE'S NO MITIGATING OR  
9 AGGRAVATING FACTORS AND THAT IS GOING TO BE YOUR PRESUMPTIVE  
10 PENALTY FOR THAT VIOLATION.

11 Q IF THERE ARE AGGRAVATING FACTORS, THEN YOU CAN  
12 GO UP TO THE 15?

13 A YES.

14 Q CAN YOU GO UP TO 18?

15 A ABOUT 2 PERCENT OF THE TIME. 2 PERCENT OF THE  
16 TIME; RIGHT?

17 Q OKAY. SO THAT'S WHAT YOU'RE TALKING ABOUT, THE  
18 2 PERCENT OUT OF THE RANGE?

19 A THAT'S WHAT I'M TALKING ABOUT.

20 Q SO WHEN WE'RE LOOKING AT PAGE 43, WE'RE LOOKING  
21 AT THE 98 PERCENT OF THE TIME?

22 A CORRECT.

23 Q ALL RIGHT. NOW, LET'S GO BACK TO PAGE 42 AND  
24 LOOK AT LEVEL 3.

25 A OKAY.

1 Q AND LET'S LOOK AT THE CONDUCT; OKAY? AND THIS  
2 STARTS OFF:

3 "CONDUCT WHICH WAS NEGLIGENT  
4 AND/OR EXHIBITED A SIGNIFICANT DISREGARD  
5 FOR THE PUBLIC OR COUNTY EMPLOYEES  
6 AND/OR SIGNIFICANTLY DISRUPTED UNIT OR  
7 DEPARTMENT OPERATIONS AND/OR HARM THE  
8 PUBLIC TRUST."

9 WHAT DO THOSE "AND/OR'S" MEAN? LET'S TAKE THE  
10 FIRST ONE:

11 "CONDUCT WHICH WAS NEGLIGENT  
12 AND/OR EXHIBITED A SIGNIFICANT DISREGARD  
13 FOR THE PUBLIC OR COUNTY EMPLOYEES."

14 WOULD CONDUCT THAT WASN'T NEGLIGENT BUT  
15 EXHIBITED A SIGNIFICANT DISREGARD FOR PUBLIC OR COUNTY  
16 EMPLOYEES BE IN LEVEL 3 BECAUSE OF THE "OR"?

17 A IF IT'S NEGLIGENT, THEN IT COULD DEPENDING ON  
18 WHAT THE CIRCUMSTANCES ARE. OR IF IT EXHIBITED A SIGNIFICANT  
19 DISREGARD FOR THE PUBLIC OR THE COUNTY EMPLOYEE ALONE, STANDING  
20 ALONE, THEN, YES, IT COULD BE A LEVEL 3.

21 Q SO EITHER OF THE CONCEPTS ON EITHER SIDE OF THE  
22 AND/OR'S COULD INDEPENDENTLY BE A BASIS FOR A LEVEL 3. IS THAT  
23 CORRECT?

24 A BASED ON THE WAY IT'S WRITTEN, YES.

25 Q I'M SORRY. I DIDN'T QUITE PICK THAT UP.

1           A           OH, I SAID BASED ON THE WAY THAT IT'S WRITTEN,  
2           YES.

3           Q           BASED ON THE WAY THE LEVELS OF DISCIPLINE ARE  
4           WRITTEN?

5           A           CORRECT.

6           Q           DO THE LEVELS OF DISCIPLINE, WERE THEY INTENDED  
7           TO HAVE AN INFORMATIONAL VALUE TO ALADS MEMBERS?

8           A           IT ALL IS, YES. THE ENTIRE GUIDELINES FOR  
9           DISCIPLINE IS AN EDUCATIONAL GUIDELINE FOR ALL MEMBERS OF THE  
10          DEPARTMENT.

11          Q           ALL RIGHT. AND ALADS MEMBERS WOULD BE ENTITLED  
12          TO RELY ON THE WAY THESE THINGS ARE WRITTEN; CORRECT?

13          A           YES, THEY WOULD.

14          Q           OKAY. SO IF I UNDERSTAND WHAT YOU'VE JUST  
15          SAID, CONDUCT THAT IS NEGLIGENT AND NOTHING MORE WOULD PUT US  
16          IN LEVEL 3?

17          A           WELL, YOU SAID THE 2, JUST THE 2 YOU'RE TALKING  
18          ABOUT. LET'S READ THE WHOLE -- LET'S READ THROUGH THE WHOLE  
19          THING. IT SAYS:

20                        "CONDUCT WHICH IS NEGLIGENT" --

21                        RIGHT?

22          Q           OKAY.

23          A           -- "OR EXHIBITED DISREGARD FOR  
24                        THE PUBLIC OR COUNTY EMPLOYEES AND/OR" --  
25                        SO YOU HAVE TO GO THROUGH THE ENTIRE THING.

1 YOU CAN'T JUST BREAK IT APART FOR ONE AND NOTHING ELSE AFTER  
2 THE REST OF THE ENTIRE PARAGRAPH. THAT'S WHAT YOU'RE TELLING  
3 ME, I THINK?

4 Q NO, I'M ASKING YOU BECAUSE YOU'RE THE ONE WHO  
5 PARTICIPATED IN DRAFTING THIS.

6 WHEN I READ "AND/OR" AND I READ THE "OR" PART  
7 OF "AND/OR," I THINK EITHER HALVES OF THE "OR" STAND  
8 INDEPENDENTLY. DON'T YOU READ "AND/OR" THAT WAY?

9 A WELL, IF IT'S -- IF IT'S TWO DIFFERENT  
10 SITUATIONS, IF IT'S TWO DIFFERENT -- IF YOU HAVE CONDUCT THAT  
11 IS NEGLIGENT AND THAT EXHIBITED A SIGNIFICANT DISREGARD FOR  
12 THE PUBLIC OR A COUNTY EMPLOYEE, YEAH, FOR THOSE TWO, IT IS  
13 AND/OR, BUT THEN YOU HAVE MORE INVOLVED TO BE ABLE TO -- TO BE  
14 ABLE TO LOOK AT AS A DECISION-MAKER TO MAKE A DECISION WHERE  
15 THIS FITS.

16 THE SIMPLE WAY TO PUT THIS -- I MEAN I CAN'T  
17 PUT IT ANY EASIER THAN THIS. THIS SPECIFICALLY IS WHEN YOU  
18 HAVE -- A LOT OF TIMES WHEN YOU HAVE A PERFORMANCE TO STANDARDS  
19 WE HAVE A WRITTEN REPRIMAND TO DISCHARGE. WHERE ARE WE GOING  
20 TO PUT IT; OKAY? WHERE ARE WE GOING TO PUT IT? ARE WE GOING  
21 TO PUT IT AT A WRITTEN REPRIMAND OR ARE WE GOING TO DISCHARGE  
22 THE PERSON?

23 WELL, LET'S LOOK AT THE LEVELS OF DISCIPLINE.  
24 LET'S TRY TO FIGURE OUT WHERE THIS ACT FITS IN. AND THEN WE'RE  
25 GOING TO LOOK AT THE TABLE AND DETERMINE FROM THERE WHAT IS THE

1 BEST DISCIPLINE TO IMPOSE FOR THAT EMPLOYEE.

2 MY UNDERSTANDING OF THIS, THE REASON WHY THIS  
3 WAS DONE AND THE WORDING THAT IS DONE HERE IS TO TRY, LIKE I  
4 SAID BEFORE, TO MAKE IT TO WHERE IT'S FAIR AND THE DISCIPLINE  
5 IS THE SAME AS YOU CAN POSSIBLY GET WITH AN 18,000-PERSON  
6 DEPARTMENT THROUGHOUT THE ENTIRE COUNTY; OKAY?

7 YOU HAVE ALL OF THESE DIFFERENT UNITS  
8 THROUGHOUT THE ENTIRE DEPARTMENT, ALL OF THESE DIFFERENT  
9 COMMANDS, AND YOU'RE TRYING TO MAKE IT TO WHERE AT LEAST LET'S  
10 BE -- LET'S BE SOMEWHAT REASONABLE AND SOMEWHAT CLOSE WITH OUR  
11 DISCIPLINE. IT'S NOT FAIR TO DISCIPLINE ONE EMPLOYEE ONE WAY  
12 FOR THE SAME THING AS THE OTHER ONE WHO GETS MUCH MORE TIME.  
13 NONE OF US AGREED THAT WAS FAIR.

14 SO I'M NOT REALLY GETTING YOUR POINT AS FAR AS  
15 THE "AND" AND THE "OR." TO ME IT'S THE ENTIRE WORDING OF A  
16 LEVEL 3.

17 Q OKAY. AND I WANT TO GET TO THE OTHER THINGS  
18 YOU JUST SAID IN THAT ANSWER.

19 A SURE.

20 Q BUT I DO WANT TO GET BACK TO A LEVEL 3 AND THE  
21 "AND/OR."

22 HEARING OFFICER ROSS: CAN WE GO OFF THE RECORD FOR A  
23 SECOND?

24 MR. AITCHISON: SURE.

25 ///

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(DISCUSSION OFF THE RECORD.)

HEARING OFFICER ROSS: BACK ON THE RECORD.

BY MR. AITCHISON:

Q ALL RIGHT. AND I'M REALLY TRYING TO WRAP MY HEAD AROUND THIS.

A OKAY.

Q LET'S MOVE AWAY FROM NEGLIGENCE AND LET'S MOVE AWAY FROM SIGNIFICANT DISREGARD FOR THE PUBLIC; OKAY?

A OKAY.

Q LET'S LOOK AT:

"SIGNIFICANTLY DISRUPTED UNIT  
OR DEPARTMENT OPERATIONS."

WELL, THAT ONE'S GOT AN "OR" IN IT, TOO. NO, THAT'S OKAY.

"SIGNIFICANTLY DISRUPTED UNIT  
OR DEPARTMENT OPERATIONS."

A UH-HUH.

Q YOU SEE THAT PHRASE; RIGHT?

A SURE.

Q WHAT CONDUCT THAT SIGNIFICANTLY DISRUPTED UNIT OR DEPARTMENT OPERATIONS THAT DID NOT MEET ANY OF THE OTHER DEFINITIONS IN LEVEL 3 SUPPORT A LEVEL 3 CHARGE?

A WELL, THAT IS GOING TO BE WHEN SOMEBODY IS COMPLETELY A MALCONTENT. IT COULD BE ANY RANK, ANY POSITION,

1 AND THAT IS GOING TO BE WHERE LET'S SAY THEY'RE INSUBORDINATE.  
2 THEY'RE INSUBORDINATE TOWARD THEIR SERGEANT OR THEIR LIEUTENANT  
3 AND THAT IS DISRUPTIVE.

4 LET'S SAY THAT YOU'VE TALKED TO THE PERSON,  
5 YOU'VE COUNSELED THE PERSON, AND THEY HAVE -- THEY HAVE  
6 BASICALLY DISRUPTED YOUR UNIT BY BEING A MALCONTENT. WELL,  
7 THAT IS SOMEWHERE WHERE IF IT'S INSUBORDINATION THEN WHERE  
8 THEY COULD LEAD INTO THAT LEVEL 3. SO THAT IS AN EXAMPLE OF  
9 WHERE THAT -- TO ME THAT IS AN EXAMPLE OF WHERE THAT WOULD FIT  
10 IN.

11 Q OKAY. I THINK I ASKED A BAD QUESTION THERE.  
12 LET ME TAKE ANOTHER SHOT AT IT.

13 A OKAY.

14 Q LET'S TAKE YOUR INSUBORDINATION EXAMPLE.

15 A OKAY.

16 Q AND I UNDERSTAND YOU'RE SAYING INSUBORDINATION  
17 FALLS UNDER THIS SIGNIFICANTLY DISRUPTED UNIT. I TOTALLY GET  
18 THAT; OKAY?

19 A OKAY.

20 Q ALL RIGHT. SO LET'S TAKE YOUR INSUBORDINATION  
21 EXAMPLE.

22 A OKAY.

23 Q WOULD THE INSUBORDINATION HAVE TO BE, IN  
24 ADDITION TO BEING INSUBORDINATE, NEGLIGENT, EXHIBITING A  
25 SIGNIFICANT DISREGARD FOR THE PUBLIC OR COUNTY EMPLOYEES OR

1 HARMING THE PUBLIC TRUST IN ORDER TO BE A LEVEL 3 OR WOULD  
2 INSUBORDINATION BE A LEVEL 3 ALONE?

3 A IT COULD BE A LEVEL 3 ALONE. I GUESS YOU'RE  
4 GOING BACK AND FORTH ON THIS. THE REALLY SIMPLE WAY FOR ME TO  
5 ANSWER THIS QUESTION AND EXPLAIN IT TO YOU IS PROBABLY THIS  
6 WAY.

7 THE WAY I READ IT, I READ IT THAT EVERY SINGLE  
8 ONE BEFORE THE AND/OR AND AFTER THE AND/OR COULD BE ON THEIR  
9 OWN OR THEY COULD BE IN CONJUNCTION WITH THE OTHER ONE OR ONE  
10 OF THE OTHERS. THAT'S HOW I READ IT. THAT'S HOW I INTERPRET  
11 IT.

12 Q OKAY.

13 A IF THAT MAKES SENSE?

14 Q IT MAKES SENSE. I UNDERSTAND.

15 A OKAY.

16 Q IS NEGLIGENCE LISTED ANYWHERE ELSE IN THESE  
17 LEVELS OTHER THAN LEVEL 3?

18 A NEGLIGENCE, I DO NOT BELIEVE SO. I'D HAVE TO  
19 READ IT AGAIN. NO.

20 MR. AITCHISON: I'M DONE WITH AND/OR.

21 HEARING OFFICER ROSS: OKAY. SO HERE'S MY PROPOSAL,  
22 THAT WE GO OFF THE RECORD, VISIT THE EXECUTIVE DIRECTOR AND  
23 FIND A DAY THAT WE CAN CONTINUE.

24 MR. AITCHISON: GREAT.

25 MR. WONG: OKAY.

1 HEARING OFFICER ROSS: WOULD THAT BE OKAY? SO LET'S  
2 GO OFF THE RECORD FOR TODAY.

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4 (PROCEEDINGS ADJOURNED AT 3:51 P.M.)  
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HEARING REPORTER'S CERTIFICATE

I, JOYCE SILVERMAN, HEARING REPORTER IN AND FOR THE STATE OF CALIFORNIA, DO HEREBY CERTIFY:

THAT THE FOREGOING TRANSCRIPT OF PROCEEDINGS WAS TAKEN BEFORE ME AT THE TIME AND PLACE SET FORTH, THAT THE TESTIMONY AND PROCEEDINGS WERE REPORTED STENOGRAPHICALLY BY ME AND LATER TRANSCRIBED BY COMPUTER-AIDED TRANSCRIPTION UNDER MY DIRECTION AND SUPERVISION, THAT THE FOREGOING IS A TRUE RECORD OF THE TESTIMONY AND PROCEEDINGS TAKEN AT THAT TIME.

I FURTHER CERTIFY THAT I AM IN NO WAY INTERESTED IN THE OUTCOME OF SAID ACTION.

I HAVE HEREUNTO SUBSCRIBED MY NAME THIS 20TH DAY OF MAY, 2018.

---

JOYCE SILVERMAN  
HEARING REPORTER

BEFORE THE EMPLOYEE RELATIONS COMMISSION  
OF THE COUNTY OF LOS ANGELES  
SHERI E. ROSS, HEARING OFFICER

IN THE MATTER OF )  
THE ASSOCIATION FOR LOS ANGELES )  
DEPUTY SHERIFFS (ALADS), )  
 )  
 ) CHARGING PARTY, )  
 )  
 ) V. ) UFC 010-13  
 ) &  
 ) COUNTY OF LOS ANGELES ) UFC 001-17  
 ) (CONSOLIDATED)  
 ) SHERIFF'S DEPARTMENT, )  
 )  
 )  
 ) RESPONDENT. )  
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 )

---

TRANSCRIPT OF PROCEEDINGS

LOS ANGELES, CALIFORNIA

FRIDAY, JUNE 8, 2018

REPORTED BY:

JOYCE SILVERMAN,  
HEARING REPORTER  
JOB NO.: 18-ERC115

BEFORE THE EMPLOYEE RELATIONS COMMISSION  
OF THE COUNTY OF LOS ANGELES  
SHERI E. ROSS, HEARING OFFICER

IN THE MATTER OF )  
THE ASSOCIATION FOR LOS ANGELES )  
DEPUTY SHERIFFS (ALADS), )  
 )  
CHARGING PARTY, )  
 ) UFC 010-13  
V. ) &  
 ) UFC 001-17  
COUNTY OF LOS ANGELES ) (CONSOLIDATED)  
SHERIFF'S DEPARTMENT, )  
 )  
RESPONDENT. )  
 )

---

TRANSCRIPT OF PROCEEDINGS TAKEN  
AT 500 WEST TEMPLE STREET, 374-A KENNETH  
HAHN HALL OF ADMINISTRATION, LOS ANGELES,  
CALIFORNIA, COMMENCING AT 9:25 A.M. ON  
FRIDAY, JUNE 8, 2018, HEARD BEFORE  
SHERI E. ROSS, HEARING OFFICER, REPORTED  
BY JOYCE SILVERMAN, HEARING REPORTER.

APPEARANCES:

FOR THE CHARGING PARTY: PUBLIC SAFETY LABOR GROUP  
ATTORNEYS AT LAW  
BY: WILL AITCHISON  
3021 NE BROADWAY STREET  
PORTLAND, OREGON 97232  
(866) 486-5556  
WILL@PSLGLAWYERS.COM

FOR THE RESPONDENT: LIEBERT, CASSIDY, WHITMORE  
ATTORNEYS AT LAW  
BY: ALEXANDER Y. WONG  
6033 WEST CENTURY BOULEVARD  
5TH FLOOR  
LOS ANGELES, CALIFORNIA 90045  
(310) 981-2014  
AWONG@LCWLEGAL.COM

ALSO PRESENT: GREGORY NELSON  
DEREK HSIEH  
REBECCA BUENO

I N D E X

DEPARTMENT'S  
WITNESSES:

	<u>DIRECT</u>	<u>CROSS</u>	<u>REDIRECT</u>	<u>RECROSS</u>
JOHN ROBERTS (RESUMED)		7	30	40
NEAL TYLER	44	85	124	
GREGORY NELSON	134	159		
GREGORY NELSON (REBUTTAL)	177			

UNION'S  
WITNESS:

REBECCA BUENO	174			
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E X H I B I T S

<u>DEPARTMENT'S:</u>	<u>MARKED FOR IDENTIFICATION</u>	<u>RECEIVED IN EVIDENCE</u>
23 - EXCERPT FROM CITIZENS' COMMISSION ON JAIL VIOLENCE REPORT, CHAPTER 7	144	144
1 TO 23 - (NOT RE-IDENTIFIED)		144
<u>UNION'S:</u>		
A-1 TO A-32 - (NOT RE-IDENTIFIED)		144
A-33 - "ASSESSING THE RISE IN UNINTENDED DISCHARGES FROM THE SHERIFF'S DEPARTMENT'S CONVERSION TO A NEW HANDGUN" OFFICE OF INSPECTOR GENERAL, COUNTY OF LOS ANGELES, DECEMBER 2015	169	172

1 LOS ANGELES, CALIFORNIA; FRIDAY, JUNE 8, 2018

2 9:25 A.M.

3  
4  
5 HEARING OFFICER ROSS: GOOD MORNING. THIS IS THE  
6 THIRD DAY OF THE HEARING IN THE MATTER OF ALADS V. L.A. COUNTY  
7 SHERIFF'S DEPARTMENT, UFC 10-13 AND 1-17.

8 WILL COUNSEL PLEASE STATE THEIR APPEARANCE FOR  
9 THE RECORD?

10 MR. WONG: YES. ALEX WONG ON BEHALF OF THE  
11 DEPARTMENT, AND SITTING WITH ME IS COMMANDER GREG NELSON.

12 HEARING OFFICER ROSS: THANK YOU.

13 MR. AITCHISON: WILL AITCHISON FOR ALADS.

14 HEARING OFFICER ROSS: AND RETURNING ARE?

15 MS. BUENO: REBECCA BUENO WITH ALADS.

16 MR. HSIEH: AND DEREK HSIEH, ALADS.

17 HEARING OFFICER ROSS: THANK YOU.

18 OKAY. SO WHERE ARE WE? WHO'S READY TO  
19 PROCEED?

20 MR. AITCHISON: WE ARE IN THE MIDDLE OF THE COUNTY'S  
21 FIRST WITNESS, CAPTAIN JOHN ROBERTS, AND WE ARE IN THE MIDDLE  
22 OF CROSS-EXAMINATION OF THAT WITNESS.

23 HEARING OFFICER ROSS: I THINK I SAW HIM.

24 MR. WONG: YES. I WILL GO GET HIM.

25 HEARING OFFICER ROSS: OKAY.



1 CROSS-EXAMINATION (RESUMED)

2  
3 BY MR. AITCHISON:

4 Q GOOD MORNING, CAPTAIN.

5 A GOOD MORNING.

6 Q I ACTUALLY HAVE ONLY A FEW QUESTIONS FOR YOU,  
7 AND THAT WORD "FEW" IS NOT A LAWYER'S FEW. IT'S A REAL, LIVE  
8 FEW QUESTIONS THAT I HAVE FOR YOU.

9 A SURE.

10 Q WOULD YOU OPEN THE LARGE EXHIBIT BINDER TO  
11 EXHIBIT A-5?

12 HEARING OFFICER ROSS: AND I DON'T KNOW IF YOU ALL CAN  
13 HEAR THAT FAN BUT IT'S QUITE LOUD, SO IF YOU WOULD TRY TO GO  
14 OVER THE FAN, THAT WOULD BE GREAT.

15 THE WITNESS: OKAY.

16 MR. AITCHISON: I ACTUALLY DON'T HEAR IT.

17 THE REPORTER: I CAN HEAR IT AS CLEAR AS A BELL.

18 MR. WONG: YEAH.

19 MR. AITCHISON: THAT'S FUNNY.

20 MR. WONG: I CAN HEAR IT, BUT SHE'S ALSO RIGHT UNDER  
21 IT.

22 MR. AITCHISON: OH, IS IT THAT ONE (INDICATING)?

23 HEARING OFFICER ROSS: YEAH, THAT'S WHY I MENTIONED  
24 IT. IT'S RIGHT HERE --

25 MR. AITCHISON: OH, OKAY.

1 HEARING OFFICER ROSS: -- IN THIS ONE (INDICATING),  
2 AND I WANT TO MAKE SURE JOYCE GETS EVERYTHING.

3 MR. AITCHISON: CAN WE SHED COATS? I KNOW WE'RE ALL  
4 IN LIKE --

5 HEARING OFFICER ROSS: YOU CAN SHED COATS. JUST AS  
6 LONG AS YOU SPEAK UP, I'M GOOD.

7 THE REPORTER: IT IS WARM IN HERE.

8 MR. AITCHISON: AND IT'S GETTING WARM OUT THERE.

9 THE WITNESS: JUST A LITTLE BIT.

10 HEARING OFFICER ROSS: AND THEY HAVEN'T TURNED THE AIR  
11 OFF YET AFTER THE WEEKEND.

12 MR. AITCHISON: WELL, WE KNOW WHAT HAPPENS WHEN WE ASK  
13 THEM TO TURN THE HEAT DOWN.

14 HEARING OFFICER ROSS: WE DO.

15 BY MR. AITCHISON:

16 Q OKAY. CAPTAIN, YOU WITH ME?

17 A YES.

18 Q COULD YOU TURN TO PAGE 42 AND 43, THE LAST TWO  
19 PAGES OF EXHIBIT A-5?

20 A OKAY.

21 Q WE'VE HAD THE OPPORTUNITY TO GET A TRANSCRIPT  
22 PREPARED AND LOOKED OVER THE TRANSCRIPT, AND THERE ARE A COUPLE  
23 OF AREAS THAT I THINK WARRANT SOME CLARIFICATION HERE.

24 A OKAY.

25 Q AND ONE DEALS WITH THE ISSUE OF THE LEVELS OF

1 DISCIPLINE AND HOW THIS RELATES TO THE MITIGATION/AGGRAVATION  
2 PROCESS, AND I JUST WANT TO MAKE SURE WE'VE GOT A CLEAR  
3 UNDERSTANDING OF THIS.

4 SO LET'S TAKE A LEVEL 3 OFFENSE AS AN EXAMPLE  
5 HERE. WE SEE ON PAGE 42 WHAT THE CRITERIA ARE FOR A LEVEL 3  
6 OFFENSE, WHAT IS IT THAT MAKES SOMETHING A LEVEL 3 OFFENSE;  
7 RIGHT? WHAT ARE THE FACTORS THAT MAKE IT A LEVEL 3?

8 A YES.

9 Q OKAY. AND WE ALSO SEE A PUNISHMENT RANGE OF 11  
10 TO 15 DAYS; CORRECT?

11 A CORRECT.

12 Q AND THEN WE TURN THE PAGE TO THE TABLE, AND  
13 WHEN WE LOOK AT LEVEL 3 WE SEE A PRESUMPTIVE PENALTY OF 13  
14 DAYS; RIGHT?

15 A CORRECT.

16 Q AND DOES THAT MEAN THAT ABSENT ANY AGGRAVATING  
17 OR MITIGATING FACTORS THE PENALTY IS GOING TO BE 13 DAYS?

18 A NO.

19 Q OKAY.

20 A IT DOESN'T MEAN THAT SPECIFICALLY, NO.  
21 TYPICALLY IF YOU HAVE NO MITIGATING OR AGGRAVATING FACTORS,  
22 THAT'S WHERE THE PRESUMPTIVE COMES IN.

23 HOWEVER, IT COULD STILL BE 11 DAYS DEPENDING ON  
24 WHAT THE -- AT THAT LEVEL WHAT THE CAPTAIN BELIEVES IS CORRECT.  
25 HE MIGHT GIVE 11 DAYS, FOR INSTANCE. THE CHIEF MIGHT BUMP IT

1 UP TO THE 13 DAYS. IT'S NOT AUTOMATICALLY GOING TO BE A  
2 13-DAY.

3 Q BUT YOU USED THE WORD "TYPICALLY." YOU'D  
4 EXPECT IT TO BE 13 DAYS BUT IT COULD MOVE EITHER WAY EVEN  
5 WITHOUT MITIGATING OR AGGRAVATING FACTORS?

6 A IT COULD MOVE, YES. IT COULD MOVE UP OR DOWN.

7 Q BUT YOU WOULD EXPECT IN A PREDOMINATE NUMBER OF  
8 CASES IT WOULD BE IN THE MIDDLE. IT WOULD BE THE PRESUMPTIVE  
9 PENALTY. IS THAT RIGHT?

10 A NOT NECESSARILY, NO. THIS WAS PUT INTO PLACE  
11 -- IF I COULD EXPLAIN? THIS WAS PUT INTO PLACE TO MAKE IT TO  
12 WHERE IT WOULD BE EASIER FOR CAPTAINS AND ABOVE TO BE ABLE TO  
13 DISPENSE DISCIPLINE FOR EMPLOYEES WHERE IT WOULD HOPEFULLY BE  
14 CONSISTENT THROUGHOUT THE DEPARTMENT, SO IT'S A GUIDELINE FOR  
15 THAT REASON.

16 SO THAT'S WHY IT WAS ADDED. THAT'S WHY THE  
17 LEVELS WERE ADDED AND THAT'S WHY THE TABLE WAS ADDED, SO THAT  
18 ONCE THEY HAD A DISCIPLINE THEY FELT WAS APPROPRIATE THEY COULD  
19 THEN LOOK, OKAY, LOOK AT THE LEVEL. DOES IT FIT INTO THAT,  
20 THAT LEVEL 3? AND THEN LOOK OVER AT THE TABLE AND LOOK AT  
21 WHEREVER YOU'RE AT WITH THAT BECAUSE YOU COULD HAVE MAYBE ONE  
22 MITIGATING FACTOR. MAYBE IT'S NOT A MAJOR MITIGATING FACTOR  
23 AND THEY DECIDE TO KEEP IT AT 11 STILL. I MEAN YOU HAVE --  
24 I'M SORRY -- MAYBE YOU HAVE ONE AGGRAVATING FACTOR AND THEN  
25 KEEP IT AT 12 DAYS.

1 SO IT'S NOT SPECIFIC. IT'S NOT SUPER RIGID I  
2 GUESS YOU COULD SAY. IT ISN'T GOING TO BE THE ONLY WAY IT CAN  
3 BE DONE.

4 Q OKAY. AND WHERE I'M TOTALLY STUMBLING HERE IS  
5 WHAT DID YOU -- AND YOU WERE A PART OF THE COMMITTEE THAT  
6 CREATED THIS -- WHAT DID YOU MEAN BY THE WORD "PRESUMPTIVE"?

7 A I'M NOT THE ONE THAT PERSONALLY DID THAT. I  
8 MEAN I WAS ON THE COMMITTEE, YES.

9 Q WHAT'S YOUR UNDERSTANDING AS TO WHAT THE  
10 DEPARTMENT MEANS BY THE WORD "PRESUMPTIVE"?

11 A WHAT IT SAYS IN THE DISCIPLINE, THE GUIDELINES  
12 FOR DISCIPLINE, IS THAT IF IT'S NOT -- IF THERE'S NO  
13 AGGRAVATING OR MITIGATING FACTORS IT'S PRESUMPTIVE.

14 Q OKAY.

15 A THAT'S WHAT IT SAYS.

16 Q AND SO THAT IN THE CASE OF A LEVEL 3 WOULD BE  
17 13?

18 A CORRECT. ACCORDING TO THE TABLE; RIGHT.

19 Q OKAY. AND MITIGATING FACTORS WOULD GET YOU  
20 POTENTIALLY DOWN TO 11?

21 A YES.

22 Q COULD THEY GET YOU TO 5?

23 A IT WOULD TAKE IT OUT OF THAT LEVEL 3  
24 DISCIPLINE. IT DEPENDS ON WHAT THE BAIL SCHEDULE IS FOR THAT  
25 SPECIFIC VIOLATION OF THE MANUAL OF POLICY AND PROCEDURES.

1                   SO SOME ARE NOT GOING TO BE 5 DAYS.  THEY'RE  
2 GOING TO BE AT LEAST -- MAYBE AT LEAST 10 DAYS, FOR INSTANCE.  
3 SO EVEN IF LET'S SAY THE MINIMUM FOR THAT OFFENSE IS 10 DAYS,  
4 IT'S NOT GOING TO GET DOWN TO 5.

5           Q           THE MINIMUM ON THE BAIL SCHEDULE?

6           A           ON THE BAIL SCHEDULE.

7           Q           NOT ON THE LEVELS OF DISCIPLINE?

8           A           CORRECT.

9           Q           OKAY.  SO YOU'RE NEVER GOING TO GO BELOW THE  
10 MINIMUM OR ABOVE THE MAXIMUM ON THE BAIL SCHEDULE?

11          A           NO, SOMETIMES YOU CAN.  YOU CAN.  YOU CAN.

12          Q           OKAY.

13          A           IT'S A GUIDELINE.  IT'S A GUIDELINE, SO YOU CAN  
14 GO BELOW AND YOU CAN GO ABOVE, NOT AT THE CAPTAIN LEVEL BUT THE  
15 CHIEF LEVEL.  THE CHIEF CAN DO THAT.

16                   IF THE CHIEF BELIEVES IN THIS SPECIFIC CASE --  
17 THEY TAKE IT CASE BY CASE -- THAT IT SHOULD, AND LET'S SAY IT'S  
18 A 10-DAY TO 15-DAY DISCIPLINE AND THAT CHIEF BELIEVES IT'S A  
19 5-DAY, THE CHIEF CAN GO BELOW.

20          Q           ALL RIGHT.  THE CAPTAIN DOESN'T HAVE THE  
21 DISCRETION, THEN, TO DEVIATE FROM THE BAIL SCHEDULE?

22          A           CORRECT.

23          Q           I ASSUME WHEN THE COMMITTEE DID ITS WORK HERE  
24 IT FIGURED OUT WHAT THE HISTORY OF DISCIPLINE WAS FOR  
25 PARTICULAR OFFENSES.  YOU REVIEWED I.A. RECORDS TO DETERMINE

1 WHAT PUNISHMENTS HAD BEEN GIVEN. DID YOU HAVE THAT INFORMATION  
2 AVAILABLE?

3 A JUST FOR THE -- NO, NOT FOR ALL OF THEM. THE  
4 MAIN FOCUS WAS, YEAH, THE ALCOHOL RELATED LIKE DRIVING UNDER  
5 THE INFLUENCE. THAT, YES. THAT WE LOOKED AT AS FAR AS OVER  
6 THE PAST, I BELIEVE FROM 2012 TO THAT CURRENT DATE, AND HOW  
7 MANY WERE BEING ARRESTED FOR D.U.I., HOW MANY WERE SECOND  
8 OFFENSES. THAT WAS LOOKED AT. THE REST OF THEM? WE DIDN'T  
9 LOOK AT EVERY SINGLE ONE OF THEM, NO.

10 Q WELL, YOU TESTIFIED EARLIER THAT THE TWO  
11 PRIMARY DRIVERS BEHIND THESE CHANGES WERE ALCOHOL OFFENSES AND  
12 INTEGRITY OR DISHONESTY OFFENSES. DO YOU REMEMBER THAT?

13 A THAT'S CORRECT.

14 Q IN FACT, NOT ALL THE CHANGES IN THE BAIL  
15 SCHEDULE ARE RELATED TO ALCOHOL OR INTEGRITY OFFENSES; ARE  
16 THEY?

17 A I WOULD ESTIMATE PROBABLY 90 OR 90 PERCENT ARE  
18 THAT, ARE EITHER ALCOHOL, NARCOTICS ON OR OFF DUTY, PERSONAL  
19 VEHICLE OR COUNTY VEHICLE OR SOME WAY TO DO WITH DISHONESTY.  
20 ALSO A COUPLE OF THEM ARE GOING TO BE LIKE TESTIFYING OR MAKING  
21 A STATEMENT IN AN ADMINISTRATIVE INVESTIGATION OR IN A CRIMINAL  
22 INVESTIGATION.

23 AND THEN THERE'S UNINTENTIONAL DISCHARGES,  
24 UNINTENTIONAL. ANOTHER ONE IS GOING TO BE A NEIGHBOR DISPUTE  
25 OR A BUSINESS TRANSACTION. SO THAT TELLS ME, I WOULD SAY, YOU

1 KNOW, OVER 90 PERCENT ARE DISHONESTY OR HAVING TO DO WITH  
2 ALCOHOL-RELATED INCIDENTS.

3 Q WELL, LET'S TAKE A LOOK AT THEM. LET'S START  
4 ON PAGE 27.

5 A SURE.

6 Q AND I THINK YOU TESTIFIED AS TO THE FIRST ONE  
7 HERE, "INAPPROPRIATE INVOLVEMENT IN OFF-DUTY NEIGHBORHOOD OR  
8 BUSINESS DISPUTES." DOES THAT DEAL WITH ALCOHOL?

9 A IT COULD. NOT SPECIFICALLY, BUT IT COULD, YES.

10 Q WELL, ANY OFFENSE COULD DEAL WITH ALCOHOL;  
11 RIGHT?

12 A YES, IT'S TRUE.

13 Q OKAY.

14 A IT HAD TO BE MORE ANECDOTALLY, THEN, IN  
15 LOOKING AT THAT AND LOOKING AT THE FACT THAT THE PEOPLE ON THE  
16 COMMITTEE WHO HAVE DEALT WITH IT AND UP HAVE SEEN THAT CASES  
17 INVOLVING SOMETIMES NEIGHBOR DISPUTES ARE ALCOHOL RELATED.

18 BUT TO ANSWER YOUR QUESTION, AS FAR AS GOING  
19 BACK AND LOOKING AT ALL OF THOSE CASES, THAT WAS NOT DONE BY  
20 THE COMMITTEE.

21 Q YOU DIDN'T DO THAT? YOU DIDN'T LOOK AT WHAT  
22 PUNISHMENT HAD BEEN GIVEN IN THE PAST?

23 A NO.

24 Q DID YOU MAKE ANY ATTEMPT EVEN WITH THE ALCOHOL  
25 CASES TO DETERMINE WHETHER OR NOT THE PUNISHMENT METED OUT IN

1 THE PAST HAD WORKED?

2 A WHAT WE LOOKED AT WAS HOW MANY EMPLOYEES WHO  
3 HAD ONE DRIVING UNDER THE INFLUENCE HAD THEN REPEATED THE  
4 OFFENSE, AND THERE WERE SEVERAL THAT WERE DOING A SECOND  
5 OFFENSE.

6 SO THE FIRST OFFENSE IS NOT GOING TO BE AN  
7 AUTOMATIC DISCHARGE. HOWEVER, THE SECOND OFFENSE IS AN  
8 AUTOMATIC DISCHARGE, AND AT THE TIME WE WERE AVERAGING BETWEEN  
9 16 AND 18 EMPLOYEES AT DIFFERENT RANKS THAT WERE RELIEVED OF  
10 DUTY BECAUSE IT WAS THEIR SECOND OFFENSE. SO THAT WAS LOOKED  
11 AT.

12 Q OKAY. I THINK YOU MAY HAVE MISUNDERSTOOD MY  
13 QUESTION.

14 A OKAY.

15 Q THERE'S A RANGE OF OPTIONS THAT AN EMPLOYER HAS  
16 TO DEAL WITH EMPLOYEE MISCONDUCT. ONLY ONE OF THOSE OPTIONS IS  
17 DISCIPLINE. WOULD YOU AGREE WITH THAT?

18 A YEAH, ONE OF THE OPTIONS IS DISCIPLINE. I  
19 AGREE.

20 Q YEAH, AND THERE'S OTHERS. THERE'S RETRAINING,  
21 FOR EXAMPLE; CORRECT?

22 A I AGREE.

23 Q AND THERE MIGHT BE INVOLVEMENT IN SOME SORT OF  
24 TREATMENT PROGRAM. THAT WOULD BE ANOTHER?

25 A WELL, THAT WE DO. THAT WE DO. THAT ISN'T

1 UNCOMMON TO DO THAT ON A D.U.I., FOR INSTANCE.

2 Q SO MY POINT IS A DIFFERENT ONE. MY POINT IS  
3 WHEN YOU'RE LOOKING AT THE HISTORY THAT THE COMMITTEE HAD ON  
4 ALCOHOL-RELATED OFFENSES, DID YOU MAKE ANY DETERMINATION AS TO  
5 WHETHER THESE OTHER MODALITIES FOR DEALING WITH THE PROBLEM HAD  
6 NOT WORKED?

7 A WELL, WE BELIEVE BASED ON THE FACT, ONCE AGAIN,  
8 OF HOW MANY PEOPLE WERE OFFENDING AND HOW MANY WERE -- NO. TO  
9 ANSWER YOUR QUESTION, NO.

10 BUT I'LL FURTHER THAT. WE WERE LOOKING AT,  
11 AGAIN, LIKE I SAID, HOW MANY PEOPLE WERE GETTING INVOLVED IN  
12 D.U.I.'S AND HOW MANY WERE REPEAT OFFENSES AND THE SIGNIFICANCE  
13 OF THAT FOR THE DEPARTMENT AS A LAW ENFORCEMENT OFFICER TO BE  
14 INVOLVED IN A D.U.I. ARREST.

15 I'LL TELL YOU WHY, ALSO. BECAUSE IN -- I  
16 TALKED ABOUT THIS LAST TIME IS THAT OTHER OFFENSES THAT YOU'RE  
17 INVOLVED IN AS A PEACE OFFICER, NOT AS A PROFESSIONAL STAFF,  
18 BUT AS A PEACE OFFICER YOU CANNOT CARRY A WEAPON EITHER FOR A  
19 STATE OR A FEDERAL LAW DEPENDING ON WHICH IT IS, WHICH CHARGE  
20 IT IS; FOR INSTANCE, A SIMPLY BATTERY. IF YOU ARE ARRESTED  
21 FOR BATTERY AND CONVICTED, YOU CAN NO LONGER CAN CARRY A WEAPON  
22 FOR TEN YEARS. THAT PERSON IS DISCHARGED. DOMESTIC VIOLENCE,  
23 MISDEMEANOR CHILD ABUSE, THESE ARE SOME OF THEM.

24 SO THE ISSUE WITH ALCOHOL ON THE DEPARTMENT HAS  
25 BEEN A PROBLEM FOR MANY YEARS, AND I THINK THAT THE DISCIPLINE,

1 THE WAY IT WAS REWORDED, IT WAS MORE SPECIFIC BECAUSE BEFORE IT  
2 WAS JUST IF YOU'RE INVOLVED IN A D.U.I. AND YOU HAD A GUN ON  
3 YOU, THERE WAS NO SPECIFIC CHARGE FOR THAT. WELL, THEN WE MADE  
4 A SPECIFIC CHARGE FOR THAT.

5 Q OKAY.

6 A THERE WAS A -- DO YOU KNOW WHAT I MEAN? I WANT  
7 TO BE ABLE TO -- AND I KNOW I'M GOING OFF A LITTLE BIT, BUT I  
8 WANTED TO EXPLAIN THAT.

9 Q YEAH. I WANT TO GET BACK TO WHAT THE QUESTION  
10 WAS.

11 YOU HAVE THESE DIFFERENT MODALITIES FOR DEALING  
12 WITH A PROBLEM. IN THIS CASE, IT'S AN ALCOHOL PROBLEM ALTHOUGH  
13 IT COULD BE OTHER PROBLEMS. WE'LL GO THROUGH OTHER RULES.  
14 YOU'LL SEE THERE ARE OTHER PROBLEMS.

15 YOU HAVE THESE DIFFERENT MODALITIES. WHEN  
16 YOU'RE RECOMMENDING INCREASING THE BAIL SCHEDULE FOR  
17 ALCOHOL-RELATED OFFENSES, ONE WOULD THINK THAT THE COMMITTEE  
18 DOING THAT HAD THE RAW DATA TO INDICATE WHETHER OR NOT THESE  
19 OTHER MODALITIES WERE MORE OR LESS EFFECTIVE THAN DISCIPLINE  
20 IN DEALING WITH THE PROBLEM. BUT IT SOUNDS FROM YOUR TESTIMONY  
21 LIKE YOUR COMMITTEE DIDN'T HAVE THAT INFORMATION. IS THAT  
22 CORRECT?

23 A I WOULDN'T PHRASE IT THAT WAY. I WOULDN'T SAY  
24 DIDN'T HAVE IT OR DIDN'T PULL THAT INFORMATION OUT. WE DID  
25 NOT FEEL THAT WAS NECESSARY BASED ON THE WAY THAT IT WAS

1 REWRITTEN.

2 I GET BACK TO THE FACT THAT IT WAS MORE CLEAR  
3 AS FAR AS IF YOU WERE A D.U.I. AND YOU HAD A GUN ON YOU, YOU  
4 HAD YOUR WEAPON ON YOU, THAT WAS AN ADDITIONAL ENHANCEMENT. IF  
5 YOU WERE A D.U.I., YOU HAD A GUN ON YOU AND YOU WERE  
6 BELLIGERENT AND UNCOOPERATIVE TOWARD THE LAW ENFORCEMENT  
7 OFFICER WHO ARRESTED YOU, THAT WAS AN ENHANCEMENT.

8 BEFORE THAT IT WASN'T IN THERE SPECIFICALLY,  
9 AND IT WASN'T THERE SPECIFICALLY IF IT WAS OFF DUTY, ON DUTY,  
10 MORE SPECIFIC AS FAR AS A COUNTY VEHICLE, SO THAT WAS ALL ADDED  
11 TO MAKE IT REALLY CLEAR.

12 ONCE AGAIN I WANT TO MAKE THE POINT THE REASON  
13 WHY AND THE MINDSET BEHIND THAT WAS THAT IT ONCE AGAIN WOULD BE  
14 MORE CONSISTENT THROUGHOUT THE DEPARTMENT AS FAR AS THAT  
15 CHARGE, THAT VIOLATION. IT'S MORE SPECIFIC, THEN. I THINK IT  
16 IS. I THINK IF YOU HAVE A D.U.I. AND YOU HAVE A GUN, IT'S 25  
17 DAYS. IT MAKES IT REALLY CLEAR WHERE, YOU KNOW, YOU HAVE ONE  
18 DIVISION DOING IT ONE WAY, ANOTHER DIVISION DOING IT ANOTHER  
19 WAY, AND THAT WAS THE MINDSET BEHIND THAT.

20 Q OKAY. AND I THINK WE'RE TALKING PAST EACH  
21 OTHER. LET ME GIVE YOU A DIFFERENT EXAMPLE THAT IS BEYOND  
22 ALCOHOL.

23 A OKAY.

24 Q TAKE A LOOK AT PAGE 35.

25 A OKAY.

1 Q YOU SEE THE FIRST CHANGE HERE, WHICH IS  
2 "CARELESS OR NEGLIGENT HANDLING OF A WEAPON"; CORRECT?

3 A CORRECT.

4 Q THAT IS NOT AN ALCOHOL-RELATED OFFENSE;  
5 CORRECT?

6 A NO. NOT THE FIRST ONE, NO.

7 Q OKAY. WHEN YOU SAY "THE FIRST ONE," THE ONE  
8 IMMEDIATELY UNDERNEATH IT --

9 A IS ALCOHOL RELATED.

10 Q -- IS ALCOHOL RELATED? I'M FOCUSING ON THE  
11 FIRST ONE NOW.

12 A OKAY.

13 Q ALL OF MY QUESTIONS ARE FOCUSING ON THE FIRST  
14 ONE.

15 A OKAY.

16 Q YOU WOULD AGREE WITH ME, WOULDN'T YOU, THAT IF  
17 YOU HAVE A DEPUTY WHO HAS CARELESSLY OR NEGLIGENTLY HANDLED  
18 THEIR WEAPON THAT RETRAINING IS A POSSIBLE WAY OF DEALING WITH  
19 THAT?

20 A NO. THEY'RE GOING TO -- THIS IS MY OPINION.  
21 YOU'RE TALKING ABOUT MY OPINION HERE THOUGH?

22 Q YEAH.

23 A I MEAN YOU'RE --

24 Q YOU'RE THE ONE OFFERED BY THE COUNTY AS A  
25 WITNESS.

1           A           OKAY. MY OPINION IS THAT THERE SHOULD BE SOME  
2 DISCIPLINE. I BELIEVE FOR NEGLIGENTLY DISCHARGING YOUR  
3 FIREARM, FOR A.D.'ING IT, ABSOLUTELY.

4           HEARING OFFICER ROSS: FOR WHAT?

5           THE REPORTER: A.D.

6           THE WITNESS: A.D. OR ACCIDENTALLY DISCHARGING. WE  
7 CALL IT UNINTENTIONAL DISCHARGE OF A FIREARM. THAT'S BASED ON  
8 MY EXPERIENCE IN THE MARINE CORPS, IN THE MILITARY, THAT IF  
9 YOU'RE GOING TO HAVE THAT WEAPON ON YOU ON OR OFF DUTY AND YOU  
10 DISCHARGE THAT THING NEGLIGENTLY -- IT DEPENDS ON THE SEVERITY  
11 OF IT -- IT COULD BE FROM A 1-DAY SUSPENSION AND THEN SOME  
12 ADDITIONAL TRAINING. IF IT'S SEVERE, YOU SHOOT SOMEBODY WHEN  
13 YOU DO IT, THEN THAT'S GOING TO RAISE IT UP.

14 BY MR. AITCHISON:

15           Q           RIGHT. NOT ALL A.D.'S RESULT IN SOMEONE BEING  
16 SHOT, THOUGH; RIGHT?

17           A           NO, BUT THEY CAN.

18           Q           I UNDERSTAND THEY CAN.

19           A           THEY DO AND I'VE SEEN IT WHERE THEY HAVE, YOU  
20 KNOW, THEY'VE SHOT INTO THE RADIO CAR AND THEY'VE CAUSED DAMAGE  
21 TO THE RADIO CAR.

22                       IT'S A SERIOUS -- IT'S A SERIOUS PROBLEM I  
23 THINK AS FAR AS IF YOU DON'T HAVE -- IF YOU'RE A POLICE OFFICER  
24 AND YOU CANNOT CARRY YOUR WEAPON AROUND WITHOUT DISCHARGING  
25 THAT THING UNINTENTIONALLY. I DO AGREE WITH YOU THAT TRAINING

1 IS IMPORTANT, YES, ABSOLUTELY.

2 Q AND I UNDERSTAND YOUR POINT. YOU THINK SOME  
3 DISCIPLINE IS APPROPRIATE IN EVERY SINGLE ONE OF THESE CASES;  
4 RIGHT?

5 A I DO, YES.

6 Q WOULD YOU ALSO AGREE THAT IN AT LEAST SOME OF  
7 THE CASES RETRAINING IS A VALUABLE TOOL?

8 A I WOULD SAY IN ALL CASES NO MATTER HOW SLIGHT  
9 IT IS OR CARELESS OR NEGLIGENT, EVERY SINGLE PERSON UNDER MY  
10 COMMAND WOULD GO TO TRAINING NO MATTER IF IT WAS A 1-DAY OR A  
11 20-DAY SUSPENSION.

12 Q OKAY. AND WOULD YOU ALSO AGREE THAT IN  
13 DECIDING UPON THE EVENTUAL SANCTION, THE CAPTAIN -- OR IT MIGHT  
14 BE THE CHIEF, DEPENDING -- WOULD WEIGH THOSE TWO OPTIONS,  
15 RETRAINING, DISCIPLINE, AND THAT YOU MIGHT HAVE AN INCIDENT  
16 THAT CALLS FOR -- THAT SCREAMS OUT A LITTLE BIT MORE FOR  
17 RETRAINING AND YOU MIGHT HAVE AN INCIDENT THAT SCREAMS OUT A  
18 LITTLE BIT MORE FOR DISCIPLINE, THAT THERE WOULD BE A PUSH AND  
19 PULL BETWEEN THOSE TWO FACTORS?

20 A WELL, THE OTHER FACTOR WOULD BE THE SEVERITY OF  
21 THE ISSUE BEING --

22 Q RIGHT. BUT LET'S STICK WITH MY TWO. WOULD YOU  
23 AGREE THAT THERE WOULD BE A PUSH AND PULL, THAT RETRAINING  
24 MIGHT BE A COMPONENT OF IT, DISCIPLINE MIGHT BE A COMPONENT OF  
25 IT?

1           A           NO.  THEY'RE BOTH COMPONENTS.  THEY'RE NOT A  
2           PUSH AND PULL.  IT'S BOTH.  YOU KNOW, NO MATTER WHAT THE  
3           DISCIPLINE IS, LIKE I SAID EARLIER, YOU WOULD STILL DO THE  
4           TRAINING.

5           Q           OKAY.  AND WHEN THE COMMITTEE CONSIDERED THIS  
6           RULE CHANGE, DID THE COMMITTEE HAVE ANY FACTS AT ITS DISPOSAL  
7           AS TO HOW FREQUENTLY RETRAINING SOLVED THE UNDERLYING  
8           BEHAVIORAL PROBLEM?

9           A           NO.

10          Q           DID YOU ASK FOR THAT --

11          A           NO.

12          Q           -- THAT INFORMATION?

13                   HEARING OFFICER ROSS:  COULD YOU WAIT UNTIL HE  
14                   FINISHES THE QUESTION TO ANSWER?

15                   THE WITNESS:  YES.

16                   HEARING OFFICER ROSS:  THANK YOU.

17                   THE WITNESS:  SORRY.

18                   BY MR. AITCHISON:

19           Q           ALL RIGHT.  AND WHILE WE'RE ON PAGE 35, THIS IS  
20           ONE OF THESE OFFENSES AND WE'LL LOOK THROUGH A FEW OTHERS.  
21           THERE'S MANY OTHERS THAT AREN'T RELATED TO ALCOHOL AND AREN'T  
22           RELATED TO HONESTY.

23                               NOW, THIS IS ONE WHERE THE BAIL SCHEDULE WAS  
24           INCREASED FROM 1 TO 5 DAYS TO 1 TO 20 DAYS; CORRECT?

25           A           CORRECT.

1 Q WHY?

2 A BECAUSE OF THE -- WELL, THE REASON WHY IT WAS,  
3 THE COMMITTEE BELIEVED THAT IT CAN BE A VERY SERIOUS CASE OF  
4 CARELESSNESS AND NEGLIGENCE AND THAT 5 DAYS WAS NOT ENOUGH  
5 BASED ON THE FACT THAT IF YOU SHOT SOMEBODY, IF YOU FIRED IT  
6 CLOSE TO ANOTHER PERSON, IF YOU FIRED INTO A VEHICLE, 5 DAYS  
7 WAS NOT A SUFFICIENT AMOUNT OF DISCIPLINE AND YOU WANT TO WIDEN  
8 THAT RANGE DEPENDING ON HOW SEVERE -- THE SEVERITY OF THAT  
9 INCIDENT.

10 Q OKAY. AND DID THE COMMITTEE IN MAKING THAT  
11 JUDGMENT REVIEW ANY INTERNAL AFFAIRS FILES WHERE THERE WERE  
12 SUSTAINED COMPLAINTS FOR THE VIOLATION OF THIS RULE?

13 A NO.

14 Q SO YOU'RE DOING THIS ON THE BASIS OF YOUR  
15 COLLECTIVE EXPERIENCE, I TAKE IT?

16 A EXPERIENCE AND ALSO THE NUMBER OF UNINTENTIONAL  
17 DISCHARGES THAT HAD OCCURRED IN THE LAST FEW YEARS. I CAN'T  
18 REMEMBER THE EXACT AMOUNT, BUT HOW MANY THERE WERE AND THAT  
19 ALSO WEIGHED INTO THE DECISION.

20 Q DID THE COMMITTEE HAVE INFORMATION AS TO  
21 WHETHER THERE WAS ANY RECIDIVISM OF A VIOLATION OF THIS RULE ON  
22 MULTIPLE OCCASIONS BY EMPLOYEES WHO HAD ACTUALLY BEEN RETRAINED  
23 AFTER THE FIRST OFFENSE?

24 A NO.

25 Q DID YOU NOT THINK THAT WOULD BE IMPORTANT?

1           A           DID I THINK IT WOULD BE IMPORTANT --

2           Q           YEAH.

3           A           -- PERSONALLY?

4           Q           YES.

5           A           I DON'T THINK THE FACT THAT THEY HAD BEEN  
6           RETRAINED MADE A DIFFERENCE TO ME AS FAR AS MY DISCIPLINE WOULD  
7           GO AS A CAPTAIN. I MEAN I LOOK AT THE -- I LOOK AT THE  
8           INCIDENT AND BASED ON THE SEVERITY OF IT IS HOW I WOULD BASE MY  
9           DISCIPLINE.

10          Q           OKAY. WE'RE TALKING PAST EACH OTHER AGAIN.  
11                        SO PRETEND I'M A DISCIPLINARY DECISION-MAKER  
12           HERE. I GET TO WRITE THESE RULES; ALL RIGHT? AND I KNOW THAT  
13           IN THE PAST WHEN WE HAVE HAD A CARELESS HANDLING OF WEAPONS  
14           THAT HAS RESULTED IN AN A.D. OR AN N.D. I KNOW THAT SOMETIMES  
15           WE HAVE DISCIPLINED EMPLOYEES, SOMETIMES WE'VE RETRAINED  
16           EMPLOYEES AND SOMETIMES WE HAVE DONE BOTH. I KNOW THESE THINGS.

17                        IT WOULD SEEM TO ME THAT WHAT I WOULD WANT TO  
18           KNOW IN REWRITING THIS RULE IS WHICH OF THOSE TWO WORKED  
19           BETTER? DID DISCIPLINING EMPLOYEES WORK BETTER OR DID  
20           RETRAINING THEM WORK BETTER?

21                        MY QUESTIONS ARE GETTING AT THAT ISSUE, AND IT  
22           SOUNDS TO ME LIKE THE COMMITTEE HAD NO HARD DATA THAT WOULD  
23           ANSWER THAT QUESTION. IS THAT CORRECT?

24          A           THAT IS CORRECT. THAT WAS NOT. THAT WAS NOT  
25           LOOKED AT. AND ONCE AGAIN THE REASON, THE REASON BEING WAS

1 THAT -- AND I'LL SAY IT AGAIN. WE LOOKED AT IT AS FAR AS  
2 EVERY ONE OF THOSE CASES ON A CASE-BY-CASE BASIS. AND I WILL  
3 REPEAT IT AGAIN. IT WAS BASED ON THE SEVERITY OF THE ISSUE AND  
4 THE INCIDENT. AND THEY'RE ALL GOING TO BE RETRAINED WHEN  
5 ANYBODY IS CARELESS WITH THEIR FIREARM AND FIRES A WEAPON  
6 INTENTIONALLY.

7 Q AND BY MY COUNT -- AND I COULD BE WRONG --  
8 THERE ARE 45 CHANGES TO THE BAIL SCHEDULE HERE. EVERY ONE OF  
9 THEM RESULTED IN INCREASED DISCIPLINE EITHER AT THE LOW END OR  
10 THE TOP END OR BOTH. WHY?

11 A WHY WERE THEY ADDED?

12 Q WHY WAS THERE A 45-TO-ZERO COUNT ON WHETHER  
13 DISCIPLINE UNDER THE BAIL SCHEDULE WAS INCREASED OR DECREASED?

14 A WELL, BECAUSE THOSE AREAS -- LIKE I JUST SAID,  
15 FOR INSTANCE, THE FIRST ONE HERE WE TALKED ABOUT ON PAGE 35,  
16 THE 1 TO 5 DAYS WAS NOT ENOUGH TIME BASED ON A LOT OF THE  
17 SEVERITY OF SOME OF THE INCIDENTS.

18 AND THEN A LOT OF THE OTHER ISSUES -- OR A LOT  
19 OF THE OTHER SUBSECTIONS OF THE POLICY WHERE WE ADDED THEM,  
20 LIKE THE D.U.I., FOR INSTANCE, AND THE FIREARM, THAT WAS ADDED,  
21 AND SO YOU HAVE TO KIND OF GO THROUGH EACH ONE OF THEM TO  
22 EXPLAIN WHY THEY WERE, WHY THEY WERE ADDED, BUT THEY WERE  
23 INCREASED.

24 Q DID THE COMMITTEE HAVE ANY DISCUSSIONS LOOKING  
25 THROUGH THESE THAT STARTED OFF WITH WORDS TO THE EFFECT OF:

1 MAYBE THESE SANCTIONS ARE TOO HIGH? WHY DON'T WE REDUCE THESE  
2 SANCTIONS?

3 A THERE WAS DISCUSSION IN THE GROUP AS FAR AS  
4 KEEPING SOME OF THEM THE SAME, ADDING TO THEM A LITTLE BIT  
5 MORE, ADDING TO THEM MUCH MORE. IT WAS A DIVERSE GROUP OF  
6 PEOPLE IN THAT GROUP THAT FELT DIFFERENTLY ON THE DIFFERENT  
7 TOPICS.

8 Q OKAY. YOU'VE JUST LISTED THREE OPTIONS:  
9 KEEPING THE SANCTIONS THE SAME, INCREASING THEM A LITTLE MORE,  
10 INCREASING THEM A LOT MORE. NOT ON YOUR LIST WAS DECREASING  
11 THE BAIL SCHEDULE, SO I TAKE IT THERE WAS NO DISCUSSION OF  
12 THAT?

13 A THAT'S CORRECT.

14 Q OKAY. AND THEN ONE OTHER THING WHILE WE ARE  
15 LOOKING ON PAGE 35 AT THIS CARELESS, NEGLIGENT HANDLING OF A  
16 WEAPON.

17 WOULD YOU AGREE WITH ME THAT THERE'S ANOTHER  
18 EFFECT HERE FROM THE CHANGE IN THE BAIL SCHEDULE? WHAT IT DOES  
19 IS TO TAKE, POTENTIALLY TAKE, A VIOLATION OF THIS RULE OUT OF  
20 THE CAPTAIN'S HANDS AND POTENTIALLY PUT IT BEFORE THE CASE  
21 REVIEW PANEL. AND THE REASON I SAY THAT IS WE HEARD FROM YOU  
22 LAST TIME THAT THE MAGIC DIVIDING LINE IS 15 DAYS. MORE THAN  
23 15 DAYS IT GOES TO THE CASE REVIEW PANEL, 15 DAYS OR LESS IT  
24 STARTS WITH THE CAPTAIN AND IS POTENTIALLY SUBJECT TO REVIEW BY  
25 THE CHIEF.

1 SO HERE WHEN YOU'RE INCREASING THE BAIL  
2 SCHEDULE FROM 1 TO 5 DAYS, IT'S CAPTAIN TERRITORY; FROM 1 TO 20  
3 DAYS, MAYBE CAPTAIN, MAYBE CASE REVIEW PANEL. THAT IS AN  
4 EFFECT OF THIS CHANGE; RIGHT?

5 A TRUE.

6 Q OKAY. NOW, ONE OTHER AREA THAT YOU TESTIFIED  
7 TO WAS, YOU SAID THAT TO YOUR KNOWLEDGE ALADS DID NOT DEMAND  
8 TO BARGAIN THE IMPACT OF THE CHANGES IN THE BAIL SCHEDULE AND  
9 THE -- AND THE LEVELS OF DISCIPLINE. DO YOU REMEMBER THAT  
10 TESTIMONY?

11 A I TALKED ABOUT THAT FACTOR DURING MY MEETING  
12 WITH ALADS, THAT THEY DIDN'T WANT TO NEGOTIATE THE DISCIPLINE,  
13 THE BAIL SCHEDULE, AND MY UNDERSTANDING AT THE TIME WAS WAS  
14 THAT IT WAS A MEET AND CONSULT. IT WAS NOT A BARGAINING --  
15 IT WAS NOT CONSIDERED BARGAINING AT THAT TIME, NOT A MEET AND  
16 CONFER.

17 Q YOU DID NOT GET THAT UNDERSTANDING FROM ALADS,  
18 DID YOU, THAT IT WAS A MEET AND CONSULT?

19 A NO, I DID NOT FROM ALADS.

20 Q OKAY. AND WHO DID YOU GET THAT UNDERSTANDING  
21 FROM?

22 A I GOT THAT FROM LIEUTENANT DAN LOPEZ FROM  
23 BOLRAC.

24 Q PRIOR TO THE MEETING?

25 A CORRECT.

1 Q AND I THINK YOU TESTIFIED LAST TIME THAT THE  
2 DEPARTMENT BELIEVES THAT ALL OF THESE CHANGES ARE A MANAGEMENT  
3 RIGHT; CORRECT?

4 A CORRECT.

5 Q AND IS THAT WHY LIEUTENANT LOPEZ SAID TO YOU  
6 THIS IS A MEET AND CONSULT AND NOT A MEET AND CONFER?

7 A CORRECT.

8 Q OKAY. THE TESTIMONY THAT I WAS REFERRING TO --  
9 AND I CAN FIND IT AND QUOTE IT IF YOU WANT. BUT IF YOU CAN  
10 ACCEPT MY REPRESENTATION, YOU TESTIFIED IN RESPONSE TO A  
11 QUESTION FROM MR. WONG THAT ALADS DID NOT DEMAND TO MEET AND  
12 CONFER, DID NOT DEMAND TO BARGAIN OVER THE IMPACT OF THE  
13 CHANGES, AND I THOUGHT THAT TESTIMONY WAS MISTAKEN. YOU KNEW  
14 YOU -- THAT ALADS WANTED TO BARGAIN OVER THESE CHANGES;  
15 CORRECT?

16 A NO, I DID NOT KNOW THAT. WHEN I WALKED INTO  
17 THAT ROOM THAT DAY, I DID NOT KNOW THAT ALADS WANTED TO  
18 BARGAIN, NO.

19 Q RIGHT. YOU HADN'T COMMUNICATED WITH ALADS WHEN  
20 YOU WALKED INTO THAT ROOM ABOUT THIS ISSUE; HAD YOU?

21 A NO.

22 Q OKAY. SO ALL YOU KNEW ABOUT WHAT ALADS WANTED  
23 TO DO YOU KNEW FROM LIEUTENANT LOPEZ; CORRECT?

24 A CORRECT. MY UNDERSTANDING AT THE TIME WAS THAT  
25 WE WERE GOING TO GO IN THERE LIKE I DID WITH PPOA AND LISTEN TO

1 ALADS' RECOMMENDATIONS AND INPUT TO THIS, THE CHANGES IN THE  
2 GUIDELINES FOR DISCIPLINE. I COULD THEN TAKE THOSE  
3 RECOMMENDATIONS BACK TO MY CHIEF AND TALK ABOUT IF THAT'S  
4 APPROPRIATE OR NOT, AND THAT WAS MY UNDERSTANDING WHEN I WENT  
5 INTO THAT ROOM THAT DAY.

6 Q WHEN YOU LEFT THAT ROOM THAT DAY, YOU HAD A  
7 CLEAR UNDERSTANDING ALADS WANTED TO BARGAIN OVER THESE ISSUES;  
8 DIDN'T YOU?

9 A CORRECT.

10 MR. AITCHISON: HANG ON JUST ONE SECOND. THANK YOU.  
11 I THINK WE'VE JUST REDEFINED "FEW" AGAIN AND I HAVE NO OTHER  
12 QUESTIONS.

13 HEARING OFFICER ROSS: OKAY. VERY EXCITING.

14 ANY REDIRECT?

15 MR. WONG: YEAH, I HAVE SOME. I'M NOT GOING TO DEFINE  
16 THAT.

17 HEARING OFFICER ROSS: DID YOU NEED A BREAK BECAUSE  
18 YOU WERE CAUGHT OFF GUARD?

19 MR. WONG: WELL, LET'S SEE. I'LL JUST GO TO SOME  
20 QUESTIONS NOW AND THEN WE CAN TAKE A QUICK BREAK JUST TO MAKE  
21 SURE I'VE ASKED EVERYTHING.

22 HEARING OFFICER ROSS: OKAY.

23 ///

24 ///

25 ///

REDIRECT EXAMINATION

1  
2  
3 BY MR. WONG:

4 Q NOW, YOU'D MENTIONED IN RESPONSE TO  
5 MR. AITCHISON'S QUESTIONS THAT PREVIOUSLY IN THE BAIL SCHEDULE  
6 THERE WAS NO SPECIFIC CHARGE, FOR EXAMPLE, FOR A D.U.I. WITH  
7 A GUN WHILE BEING BELLIGERENT TO THE ARRESTING OFFICER;  
8 CORRECT?

9 A CORRECT.

10 Q NOW, EVEN THOUGH THAT PARTICULAR ENTRY WAS NOT  
11 PREVIOUSLY IN THE GUIDELINES, WOULD A DEPUTY HAVE FACED --  
12 COULD A DEPUTY HAVE BEEN DISCIPLINED MORE SEVERELY FOR ENGAGING  
13 IN THOSE THREE ACTIONS ALL IN THE SAME -- ALL WITH RESPECT TO  
14 THE SAME INCIDENT?

15 A YES. BASED ON THE SEVERITY, IT COULD HAVE BEEN  
16 DISCHARGE FOR THAT.

17 Q OKAY. SO EVEN THOUGH IT WASN'T SPECIFICALLY  
18 IN THE GUIDELINES, THE DEPUTY STILL WOULD HAVE BEEN DISCIPLINED  
19 MORE SEVERELY FOR ENGAGING IN ALL OF THOSE ACTIONS?

20 A YEAH. BECAUSE OF THE ENHANCEMENT, YES.

21 Q NOW, I BELIEVE YOU TESTIFIED --  
22 HEARING OFFICER ROSS: THOSE ARE NOT WORKING. IT'S  
23 JUST A PROP.

24 THE REPORTER: OH, HE'S GOT IT ON.

25 HEARING OFFICER ROSS: OH, OKAY.

1 THE WITNESS: YEAH, MINE HERE IS ON.

2 HEARING OFFICER ROSS: OKAY.

3 MR. AITCHISON: DOES IT MATTER?

4 THE REPORTER: IT JUST MAKES IT SOUND MORE MUMBLY,  
5 ACTUALLY.

6 HEARING OFFICER ROSS: NO, NO. I JUST THOUGHT --

7 MR. HSIEH: IT WORKS OUT IN THE AUDIENCE BUT I DON'T  
8 THINK IT WORKS HERE.

9 THE WITNESS: I WON'T WORRY ABOUT IT, THEN.

10 HEARING OFFICER ROSS: YEAH.

11 THE WITNESS: I WILL SPEAK A LITTLE BIT LOUDER FOR  
12 YOU. NO PROBLEM.

13 HEARING OFFICER ROSS: DON'T WORRY ABOUT THAT.

14 THE WITNESS: ALL RIGHT.

15 HEARING OFFICER ROSS: SORRY.

16 BY MR. WONG:

17 Q OKAY. TURNING BACK TO EXHIBIT 5 IN THE BIG  
18 BINDER AND GOING SPECIFICALLY TO THE LEVELS OF DISCIPLINE ON  
19 PAGE 42 AND 43.

20 A OKAY.

21 Q NOW, ON SOMETHING THAT'S, FOR EXAMPLE, A LEVEL  
22 3, WHICH INDICATES THAT IT WOULD FALL WITHIN 11 TO 15 DAYS OF  
23 SUSPENSION, ON A LEVEL 3 CAN DISCIPLINE GO HIGHER THAN 15 DAYS  
24 OR LOWER THAN 11 DAYS WITH THE CONSIDERATION OF MITIGATING  
25 FACTORS?

1           A           THEY CAN, YES.

2           Q           SO IF YOU'LL LOOK AT THE NEXT PAGE, PAGE 43,  
3 WHICH IS THE CHART. WHEN IT SAYS "DISCIPLINE, LEVEL 3" AND YOU  
4 HAVE THE PRESUMPTIVE PENALTY OF 13 AND THEN THE MITIGATED OF 11  
5 AND THE AGGRAVATED OF 15, WITH THE MITIGATING AND AGGRAVATING  
6 FACTORS YOU ARE NOT LIMITED TO JUST 11 TO 15 DAYS. IS THAT  
7 CORRECT?

8           A           NO.

9           Q           SO YOU CAN STILL FALL TO 10 OR 9 DAYS WITH  
10 SUFFICIENT MITIGATING FACTORS?

11          A           CORRECT.

12          Q           OKAY. NOW, IF YOU COULD TURN TO PAGE 26?

13                   OH, ACTUALLY, LET ME ASK YOU THIS. YOU HAD  
14 EARLIER TESTIFIED THAT THE CAPTAIN DOES NOT HAVE THE -- THE  
15 CAPTAIN DOESN'T HAVE THE DISCRETION TO DEVIATE FROM THE BAIL  
16 SCHEDULE?

17          A           NO, THE CAPTAIN DOES NOT.

18          Q           IF YOU COULD PLEASE TURN TO PAGE 26 AND THERE'S  
19 THE SPECIAL NOTE AND IT SAYS:

20                   "DISCIPLINE IS EXPECTED TO  
21                   REMAIN WITHIN THE STANDARD RANGE  
22                   IN MOST INSTANCES. IN THE EVENT  
23                   CIRCUMSTANCES WARRANT AN UPWARD  
24                   OR DOWNWARD ADJUSTMENT FROM THE  
25                   STANDARD RANGE, THE AGGRAVATING

1 AND MITIGATING FACTORS MUST PROPERLY  
2 ADDRESS AND REFLECT THE REASONS FOR  
3 THE DOWNWARD OR UPWARD ADJUSTMENT  
4 TO THE DISCIPLINE."

5 THAT SPECIAL NOTE, THAT DOESN'T -- THERE'S NO  
6 INDICATION THERE THAT A CAPTAIN CANNOT CONSIDER AGGRAVATING AND  
7 MITIGATING -- OR MITIGATING FACTORS TO DEVIATE FROM THE  
8 STANDARD RANGES; CORRECT?

9 A NOT ON THAT PAGE, NO.

10 Q OKAY. ALL RIGHT. NOW, DURING THE LAST DAY OF  
11 HEARING YOU WERE ASKED ON CROSS-EXAMINATION REGARDING A  
12 HYPOTHETICAL WHERE A DEPUTY FORGETS TO PUT BATTERIES IN HIS  
13 DIGITAL AUDIO RECORDER. DO YOU RECALL THAT? DO YOU RECALL  
14 THAT HYPOTHETICAL?

15 A NO, I DON'T.

16 Q OH, YOU DON'T? OKAY. MAYBE THAT WASN'T ASKED  
17 TO YOU SPECIFICALLY, BUT LET'S ACTUALLY GO BACK TO PAGE 42, THE  
18 LEVELS OF DISCIPLINE.

19 NOW, I DO BELIEVE YOU WERE QUESTIONED, YOU WERE  
20 ASKED ABOUT -- LOOKING SPECIFICALLY AT THE LANGUAGE IN LEVEL 3,  
21 WHICH WAS CONDUCT WHICH WAS NEGLIGENT, DO YOU RECALL BEING  
22 QUESTIONED ABOUT NEGLIGENCE BEING IN LEVEL 3?

23 A YES.

24 Q OKAY. NOW, WOULD AN ACT THAT MIGHT FALL WITHIN  
25 THE DEFINITION OF NEGLIGENCE -- WELL, SORRY. LET ME START

1 OVER.

2 SO BATTERIES IN A -- FAILING TO PUT BATTERIES  
3 IN A TAPE RECORDER, I THINK THERE WAS PREVIOUSLY A SUGGESTION  
4 FROM OPPOSING COUNSEL THAT THAT KIND OF CONDUCT COULD  
5 CONSTITUTE NEGLIGENCE. DO YOU BELIEVE THAT FAILING TO PUT  
6 BATTERIES IN A RECORDER MIGHT ALSO FIT WITHIN OTHER LEVELS OF  
7 DISCIPLINE?

8 A YES, IT COULD.

9 Q WHERE MIGHT THAT FALL?

10 A IT COULD BE LEVEL 1 NECESSARILY. IT COULD FIT  
11 IN THAT.

12 Q OKAY. NOW, SOMETHING THAT MIGHT FALL WITHIN  
13 THE DEFINITION OF NEGLIGENCE BUT STILL ALSO MEETS THE CRITERIA  
14 FOR A LEVEL 1 IN TERMS OF ITS IMPACT, IS THERE A REQUIREMENT  
15 THAT THAT PARTICULAR ACT OF MISCONDUCT BE CHARGED AT A LEVEL 3  
16 RESULTING IN POTENTIALLY 11 TO 15 DAYS?

17 A NO, ABSOLUTELY NOT. IT DEPENDS ON THE SEVERITY  
18 OF IT AND IT DEPENDS ON THE PAST RECORD. IF THERE WERE THE  
19 SAME OFFENSES IN THE PAST AND THE PERSON HAD CONTINUOUSLY  
20 VIOLATED THAT, THAT'S GOING TO MAKE IT -- MOVE IT UP AS WELL IN  
21 DISCIPLINE.

22 Q OKAY.

23 MR. WONG: COULD WE TAKE A FIVE-MINUTE BREAK?

24 HEARING OFFICER ROSS: ABSOLUTELY.

25 MR. WONG: ALL RIGHT. THANK YOU.

1 THE REPORTER: MAY WE HAVE TEN?

2 HEARING OFFICER ROSS: YES. DO YOU WANT TEN?

3 THE REPORTER: YES, PLEASE.

4 HEARING OFFICER ROSS: SOLD. SOLD TO THE HIGHEST  
5 BIDDER.

6 THE REPORTER: THANK YOU.

7 HEARING OFFICER ROSS: OFF THE RECORD.

8

9 (RECESS.)

10

11 HEARING OFFICER ROSS: BACK ON THE RECORD.

12 BY MR. WONG:

13 Q CAPTAIN ROBERTS, COULD I HAVE YOU PLEASE TURN  
14 TO PAGE 11 IN EXHIBIT 5, A-5? AND I JUST WANTED TO CLARIFY.  
15 SO LOOKING AT THE LAST SENTENCE IN THAT BIG PARAGRAPH IN THE  
16 MIDDLE OF THE PAGE. IT STARTS WITH, "THE MANAGER MAY IMPOSE  
17 DISCIPLINE."

18 HEARING OFFICER ROSS: OKAY. WAIT. I'M NOT WITH YOU.

19 MR. WONG: OH.

20 HEARING OFFICER ROSS: OH, I AM WITH YOU NOW. SORRY.

21 THE WITNESS: PAGE 11?

22 BY MR. WONG:

23 Q PAGE 11.

24 A OKAY.

25 Q IN THE APPROXIMATE MIDDLE OF THE PAGE THERE IS

1 A SECTION THAT DISCUSSES MITIGATING AND AGGRAVATING  
2 CIRCUMSTANCES.

3 A YES.

4 Q DO YOU SEE THAT?

5 A YES.

6 Q AND I THINK YOU HAD EARLIER SAID THAT THE  
7 CAPTAIN CAN'T DEVIATE, CAN'T GO OUTSIDE THE STANDARD RANGES.  
8 WAS THAT YOUR PRIOR TESTIMONY?

9 A YES.

10 Q OKAY. BUT --

11 MR. AITCHISON: I'M SORRY, ALEX. DID YOU SAY "CAN'T"  
12 OR "CAN"?

13 MR. WONG: CANNOT, CANNOT.

14 MR. AITCHISON: CANNOT. OKAY.

15 BY MR. WONG:

16 Q BUT YOU SAID THAT THE CHIEF COULD. WAS THAT  
17 WHAT YOU SAID?

18 A YES. THAT WAS MY TESTIMONY, YES.

19 Q THE CHIEF CAN?

20 A YES.

21 Q AND WOULD THAT BE REFLECTED HERE IN THIS  
22 PARAGRAPH, THE LAST SENTENCE:

23 "THE MANAGER MAY IMPOSE  
24 DISCIPLINE OUT OF THE STANDARD  
25 RANGE WITH THE CONCURRENCE" --

1           A           YES, OF HIS OR HER DIVISION CHIEF. CORRECT.

2           Q           ALL RIGHT. NOW, ANOTHER THING I WANTED TO ASK  
3 YOU ABOUT WAS, COULD YOU PLEASE TURN TO PAGE 7 ON EXHIBIT A-5?

4                        SO, LOOKING AT THE PREDISPOSITION SETTLEMENT  
5 AGREEMENTS, THE THIRD PARAGRAPH DOWN THERE'S A CHANGE WHERE IT  
6 ADDS:

7                                "A P.D.S.A. REQUIRES" --

8                                AND THEN IT LISTS I GUESS FOUR DIFFERENT --

9 WELL:

10                               -- "CONFERRING WITH THE  
11 CONSTITUTIONAL POLICING ADVISOR."

12                               DO YOU SEE THAT?

13           A           YES.

14           Q           TO YOUR KNOWLEDGE, IS THAT STILL -- IS THAT A  
15 REQUIREMENT AS TO ALL CASES IN TERMS OF THE DEPARTMENT'S  
16 PRACTICES TODAY?

17           A           NO.

18           Q           WHAT IS THE CURRENT PRACTICE?

19           A           THE CURRENT PRACTICE IS THAT ONLY CONFER WITH  
20 THE C.P.A. IN CASES THAT ARE MONITORED BY THE C.P.A.

21           Q           OKAY. NOW, COULD YOU OPEN THE YELLOW BINDER  
22 AND TURN TO TAB 17?

23           A           OKAY.

24           Q           COULD YOU TELL US WHAT THIS DOCUMENT IS?

25           A           IT'S THE GUIDELINES FOR DISCIPLINE HANDBOOK.

1 Q AND CAN WE TELL -- DO YOU KNOW WHEN THIS  
2 PARTICULAR VERSION WAS PUT INTO EFFECT?

3 A JANUARY 1ST, 2017.

4 Q OKAY. AND THEN I SEE ON THE BOTTOM, THE LAST  
5 LINE ON THE PAGE HAS ANOTHER DATE. DO YOU KNOW WHAT THAT DATE  
6 IS?

7 A REVISED JANUARY 24TH, 2017.

8 Q SO WOULD IT BE FAIR TO SAY THAT THIS VERSION  
9 WAS PUT INTO PLACE ON JANUARY 24TH, 2017?

10 A CORRECT.

11 Q NOW, IF YOU WOULD TURN TO PAGE 7 OF  
12 THAT DOCUMENT?

13 A YES.

14 Q NOW, THIS APPEARS TO BE A SLIGHTLY REVISED  
15 VERSION OF THE PARAGRAPH THAT WE HAVE JUST LOOKED AT REGARDING  
16 CONFERRING WITH THE CONSTITUTIONAL POLICING ADVISOR.

17 HEARING OFFICER ROSS: IS THAT IN A-5? IS THAT WHAT  
18 YOUR REFERENCE IS?

19 MR. WONG: YEAH, IT'S A REFERENCE TO THE ORIGINAL IN  
20 A-5.

21 HEARING OFFICER ROSS: OKAY.

22 MR. WONG: BUT I'M STILL LOOKING AT PAGE 7 IN EXHIBIT  
23 17.

24 HEARING OFFICER ROSS: OKAY.

25 ///

1 BY MR. WONG:

2 Q AND SO THIS, THIS DOCUMENT, THIS VERSION,  
3 STATES:

4 "ALSO A P.D.S.A. REQUIRES  
5 CONFERRING WITH A CONSTITUTIONAL  
6 POLICING ADVISOR ONLY ON  
7 INVESTIGATIONS BEING MONITORED  
8 BY A CONSTITUTIONAL POLICING  
9 ADVISOR."

10 TO YOUR KNOWLEDGE, IS THAT THE CURRENT PRACTICE  
11 WITHIN THE DEPARTMENT?

12 A YES.

13 Q OKAY. AND DO YOU KNOW IF ANY OTHER CHANGES  
14 WERE MADE BETWEEN THE PRIOR VERSION IN EXHIBIT A-5, THIS  
15 LEGISLATIVE VERSION WITH THE HIGHLIGHTS AND THIS VERSION THAT  
16 WAS IMPLEMENTED ON JANUARY 24TH, 2017?

17 A YEAH, THAT WAS THE ONLY CHANGE.

18 Q OKAY.

19 MR. WONG: ALL RIGHT. I HAVE NO FURTHER QUESTIONS.

20 HEARING OFFICER ROSS: ANY CROSS?

21 MR. AITCHISON: YEAH, JUST BRIEFLY.

22 ///

23 ///

24 ///

25 ///



1 HAVE BEEN 2015.

2 Q AND YOU FINISHED. THE RECOMMENDATIONS CAME OUT  
3 OF THE COMMITTEE IN 2016; CORRECT?

4 A 2016. CORRECT.

5 Q OKAY. AND HERE WE HAVE A REPORT ON UNINTENDED  
6 DISCHARGES WHICH ARE EITHER ACCIDENTAL OR NEGLIGENT DISCHARGES;  
7 RIGHT?

8 A CORRECT.

9 Q WE HAVE A REPORT FROM THE OFFICE OF INSPECTOR  
10 GENERAL, DECEMBER 2015, RIGHT IN THE MIDDLE OF WHEN YOUR  
11 COMMITTEE IS MEETING TO TALK ABOUT THESE RULES. IS THAT THE  
12 TIMING?

13 A I'M NOT SURE IF WE'D ALREADY CONCLUDED BY THEN  
14 IN DECEMBER OF 2015 WITH THE COMMITTEE ITSELF. THE COMMITTEE  
15 ONLY LASTED SO LONG AND THEN IT WENT FROM THERE TO -- THE  
16 COMMITTEE CONCLUDED AND THEN IT WENT UP THE CHAIN FROM THERE,  
17 SO HONESTLY I DON'T KNOW WHAT MONTH IN 2015 WE STOPPED MEETING  
18 FOR THAT COMMITTEE.

19 Q OKAY. AND CAN YOU TELL US WHAT THE OFFICE OF  
20 INSPECTOR GENERAL IS FOR LOS ANGELES COUNTY?

21 A SURE. THEY'RE A WATCHDOG, AN OVERSIGHT FOR THE  
22 SHERIFF'S DEPARTMENT.

23 Q AND WITHOUT REGARD TO WHETHER YOU'VE READ THIS  
24 REPORT, DID YOU KNOW THAT THEY WERE LOOKING INTO THE ISSUE OF  
25 UNINTENDED DISCHARGES?

1           A           I DIDN'T KNOW THEIR SCOPE OF THAT. NO, I  
2 DIDN'T KNOW AT THAT TIME.

3           Q           AND ARE YOU AWARE OF THE FACT THAT THE OFFICE  
4 OF INSPECTOR GENERAL ENDED UP CONCLUDING THAT THE PROBLEM WITH  
5 UNINTENDED DISCHARGES, THE PRIMARY PROBLEM, WAS A LACK OF  
6 DEPARTMENT TRAINING?

7           A           NO, I DIDN'T KNOW THAT AT THE TIME.

8           MR. AITCHISON: THANK YOU. I DON'T HAVE ANY FURTHER  
9 QUESTIONS. OH, ACTUALLY, JUST ONE. NO, I DON'T. NO FURTHER  
10 QUESTIONS.

11          MR. WONG: NOTHING FURTHER.

12          HEARING OFFICER ROSS: YOU GET TO ESCAPE AND GO TO  
13 YOUR WIFE'S RETIREMENT FESTIVITIES.

14          THE WITNESS: YES. THANK YOU.

15          HEARING OFFICER ROSS: THANK YOU VERY MUCH FOR YOUR  
16 TIME WITH US.

17          THE WITNESS: ALL RIGHT.

18          MR. WONG: THANK YOU.

19          MR. AITCHISON: GOOD TO MEET YOU.

20          THE WITNESS: YOU, TOO.

21          HEARING OFFICER ROSS: OFF THE RECORD.

22

23                       (RECESS.)

24

25          HEARING OFFICER ROSS: BACK ON THE RECORD.

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PLEASE RAISE YOUR RIGHT HAND.

NEAL TYLER,

PRODUCED AS A WITNESS BY AND ON BEHALF OF THE DEPARTMENT, AND  
HAVING BEEN FIRST DULY SWORN BY THE HEARING OFFICER, WAS  
EXAMINED AND TESTIFIED AS FOLLOWS:

HEARING OFFICER ROSS: PLEASE STATE AND SPELL YOUR  
NAME.

THE WITNESS: NEAL TYLER, N-E-A-L T-Y-L-E-R.

HEARING OFFICER ROSS: AND YOU'RE EMPLOYED BY THE  
COUNTY?

THE WITNESS: I WAS EMPLOYED BY THE COUNTY UNTIL MY  
RETIREMENT IN MARCH OF 2017, BUT I'M STILL ASSOCIATED WITH THE  
COUNTY AS A RESERVE DEPUTY SHERIFF.

HEARING OFFICER ROSS: CONGRATULATIONS.

THE WITNESS: OH, THANK YOU.

HEARING OFFICER ROSS: YOU PROBABLY CAN'T HEAR IT,  
BUT THERE IS A FAN OVER HERE THAT MAKES IT HARD FOR US TO HEAR  
YOU, SO IF YOU WOULD KEEP YOUR VOICE UP, THAT WOULD BE VERY  
MUCH APPRECIATED. AND THE FIRST TIME THAT YOU MENTION ANY  
NAMES, IF YOU WOULD SPELL THEM FOR US, THAT WOULD BE TERRIFIC,  
ALSO.

THE WITNESS: OKAY.

HEARING OFFICER ROSS: OKAY?

1 THE WITNESS: THANK YOU.

2 HEARING OFFICER ROSS: THANK YOU.

3 YOUR WITNESS.

4 MR. WONG: ALL RIGHT.

5

6 DIRECT EXAMINATION

7

8 BY MR. WONG:

9 Q GOOD MORNING.

10 A HI.

11 Q SO, MR. TYLER, WERE YOU PREVIOUSLY EMPLOYED BY  
12 THE LOS ANGELES SHERIFF'S DEPARTMENT?

13 A YES, I WAS.

14 Q AND HOW MANY YEARS DID YOU WORK FOR THE  
15 SHERIFF'S DEPARTMENT?

16 A BETWEEN 1975 AND 19 -- I'M SORRY -- 2017 WITH A  
17 BREAK IN SERVICE OF A YEAR AND A HALF.

18 Q AND YOU EARLIER INDICATED THAT YOU RETIRED IN  
19 MARCH 2017?

20 A YES, I DID.

21 THE REPORTER: SIR, IF I COULD ASK YOU TO MOVE THAT  
22 AWAY BECAUSE THAT'S ACTUALLY WORKING AND IT'S MUFFLING YOU, SO  
23 I'M NOT HEARING YOU AS WELL AS I COULD.

24 THE WITNESS: I'M SORRY. OKAY.

25 HEARING OFFICER ROSS: SO IGNORE IT.

1 THE WITNESS: OKAY.

2 THE REPORTER: THANK YOU. YOU WOULD HAVE NO WAY OF  
3 KNOWING THAT.

4 THE WITNESS: THAT'S GOOD FOR ME.

5 BY MR. WONG:

6 Q AT WHAT RANK DID YOU RETIRE?

7 A I WAS PERFORMING THE DUTIES OF THE  
8 UNDERSHERIFF.

9 Q NOW, COULD YOU PROVIDE A HISTORY OF YOUR RANK  
10 AND ASSIGNMENTS WITH THE SHERIFF'S DEPARTMENT SAY GOING BACK  
11 FIVE YEARS PRIOR TO YOUR RETIREMENT?

12 A SURE. FIVE YEARS PRIOR TO MY FIRST RETIREMENT  
13 IN 2012 I WAS A DIVISION CHIEF AND I OVERSAW WHAT WE CALLED  
14 FIELD OPERATIONS REGION I, WHICH IS THE NORTHERNMOST EIGHT  
15 SHERIFF STATIONS IN THE SHERIFF'S DEPARTMENT.

16 I RETIRED IN JULY OF 2012 AND I BECAME A  
17 RESERVE DEPUTY FOR THAT INTERIM YEAR AND A HALF BELIEVING THAT  
18 WOULD BE THE REST OF MY CAREER, AND I WAS SURPRISED TO BE ASKED  
19 BACK BY THE INTERIM SHERIFF WHO WAS APPOINTED BY THE BOARD IN  
20 2014 AND SERVE AS HIS INTERIM UNDERSHERIFF FOR THE TEN-MONTH  
21 PERIOD BEFORE THE ELECTION THAT WOULD DETERMINE WHO THE NEXT  
22 SHERIFF WOULD BE.

23 IN NOVEMBER OF 2014 THE SHERIFF ELECT, JIM  
24 MC DONNELL, WHO HAD BEEN ELECTED EARLIER THAT MONTH, ASKED ME  
25 IF I WOULD STICK AROUND, AS HE PUT IT, "FOR A FEW MONTHS" AND

1           HELP ORIENT HIM TO THE SHERIFF'S DEPARTMENT. I UNDERSTOOD THAT  
2           I WAS WORKING IN A TEMPORARY CAPACITY FOR HIM AND BELIEVED I  
3           COULD BE ASKED TO VACATE THE POSITION FOR HIS FINAL OFFICIAL  
4           CHOICE AT ANY MOMENT.

5                         BUT THAT FEW MONTHS LASTED FOR TWO YEARS AND  
6           THREE MONTHS. HE DECIDED TO HAVE ME STICK AROUND FOR THAT  
7           LONG TO HELP HIM RUN THE DEPARTMENT, AND SO I DID UNTIL HE WAS  
8           READY TO MAKE THE TRANSITION TO HIS OWN PERSONALLY-SELECTED  
9           MANAGEMENT TEAM, AND I RETIRED IN MARCH OF 2017 FOR THAT  
10          REASON.

11                        Q           ALL RIGHT. THANK YOU.

12                                 NOW, ARE YOU AWARE OF ANY CHANGES -- WELL,  
13          FIRST, ARE YOU FAMILIAR WITH A DOCUMENT KNOWN AS THE GUIDELINES  
14          FOR DISCIPLINE HANDBOOK?

15                        A           YES, I AM.

16                        Q           ARE YOU AWARE OF ANY CHANGES TO THE GUIDELINES  
17          THAT THE DEPARTMENT IMPLEMENTED IN EARLY 2017?

18                        A           YES, I AM.

19                        Q           HOW DID YOU BECOME AWARE OF THE CHANGES TO THE  
20          GUIDELINES?

21                        A           WELL, GENERALLY I'M AWARE THAT THE GUIDELINES  
22          HAD BEEN CHANGED MULTIPLE TIMES OVER THE COURSE OF MY CAREER  
23          SINCE THEY WERE FIRST CREATED.

24                                 IN PARTICULAR WITH RESPECT TO THE 2017 CHANGES,  
25          I WAS AWARE THAT THEY WERE IN NEED OF REVISION BECAUSE THEY

1 WERE DIFFICULT TO UNDERSTAND IN MANY RESPECTS AND THAT THERE  
2 WERE THINGS HAPPENING, CIRCUMSTANCES AND EVENTS THAT CAUSED US  
3 TO HAVE TO REEVALUATE WHETHER WE INCORPORATED ALL OF THE  
4 SHERIFF'S DIRECTIVES AND TRAINING BULLETINS AND BRIEFINGS AND  
5 OTHER FORMS OF DOCUMENTATION IN ONE CENTRAL LOCATION, WHICH WE  
6 HADN'T.

7 AT THE SAME TIME, THE DIVISION CHIEFS EXPRESSED  
8 THEIR -- AND THERE ARE 14 DIVISION CHIEFS IN THE SHERIFF'S  
9 DEPARTMENT NOW. IT'S A LARGE AGENCY, OF COURSE. THEY  
10 EXPRESSED THEIR CONCERN ABOUT THE GUIDELINES BY FORMING A  
11 COMMITTEE OF LIEUTENANTS TO ASSESS THE GUIDELINES FOR  
12 DISCIPLINE DOCUMENT WHICH WAS INDEPENDENT OF ANYTHING THAT I  
13 CAME UP WITH AND CREATED THIS COMMITTEE. SO I BECAME AWARE  
14 THAT THE COMMITTEE WAS IN EXISTENCE AND WAS ALSO WORKING ON  
15 REVISIONS.

16 Q OKAY. SO YOU MENTIONED THAT THAT COMMITTEE  
17 WORKED ON REVISIONS INDEPENDENT OF REVISIONS THAT YOU MADE?

18 A YES.

19 Q SO DID YOU PLAY A ROLE IN THE REVISIONS THAT  
20 WERE EVENTUALLY IMPLEMENTED IN 2017?

21 A I DID.

22 Q OKAY. AND SO WHAT SPECIFICALLY WAS YOUR ROLE  
23 IN MAKING THOSE REVISIONS?

24 A WELL, AS THE INTERIM UNDERSHERIFF I WAS  
25 ACCOUNTABLE FOR ADMINISTERING THIS DISCIPLINE SYSTEM AND

1 PARTICULARLY THE HIGHEST LEVELS OF DISCIPLINE WHICH BASICALLY  
2 WE VIEW AS 16 SUSPENSION DAYS AND HIGHER. I WAS DIRECTLY  
3 INVOLVED IN THOSE DECISIONS.

4 WE ALL RELIED ON THE GUIDELINES FOR DISCIPLINE  
5 DOCUMENT FOR GUIDANCE AND MEMORY RECOLLECTION ABOUT THE  
6 DETAILED PROCEDURES CONCERNING DISCIPLINE ADMINISTRATION, THE  
7 COMPARATIVELY NEW FEATURE CALLED "EDUCATION-BASED DISCIPLINE,"  
8 WHICH IS EXTREMELY COMPLEX BUT ALSO A GOOD IDEA TO GO AHEAD AND  
9 FOLLOW ALL THE RULES ABOUT. AND I ALSO KNEW THAT IF THE  
10 SHERIFF WAS GOING TO PUT HIS NAME ON A NEW VERSION OF THIS  
11 DOCUMENT I WANTED IT TO BE ACCURATE AND GRAMMATICAL AND READ  
12 WELL AND BE UNDERSTANDABLE AND NOT BE AMBIGUOUS.

13 SO I FELT THAT I HAD A ROLE IN ASSESSING WHAT  
14 THE COMMITTEE HAD DONE AND THEN ALSO MAKING SURE THINGS THAT  
15 THEY HADN'T ADDRESSED GOT ADDRESSED. THAT'S WHY I BECAME  
16 INVOLVED.

17 Q NOW, COULD YOU -- WHAT WAS THE DEPARTMENT'S  
18 PRIMARY MOTIVATION FOR THE PROPOSED CHANGES THAT ARE REFLECTED  
19 IN THE GUIDELINES?

20 A WELL, THERE WERE A LOT OF CIRCUMSTANCES AND  
21 EVENTS THAT WERE OCCURRING IN THE LATE 2000'S AND EARLY  
22 20-TEENS WHICH LED A LOT OF PEOPLE IN THE DEPARTMENT TO  
23 UNDERSTAND WE NEED TO REVISE A LOT OF THINGS, ONE OF WHICH WAS  
24 THE SERIOUSLY IMPAIRED LEVEL OF PUBLIC TRUST IN THE SHERIFF'S  
25 DEPARTMENT THAT FOLLOWED A LOT OF REVELATIONS ABOUT TOP

1 LEADERSHIP DECISION-MAKING THAT APPEARED TO BE BASED ON  
2 SELF-INTEREST AND IT WAS CORRUPTED BY FAVORITISM AND CONCERNS  
3 LIKE THAT INCLUDING FAVORITISM IN HOW THE DISCIPLINE WAS  
4 ADMINISTERED.

5 ANOTHER FACTOR IN THAT TIME PERIOD WAS THE FACT  
6 THAT WE WERE -- I'M SORRY. A COMMISSION WAS PUT TOGETHER  
7 CALLED THE "CITIZENS' COMMISSION ON JAIL VIOLENCE" IN RESPONSE  
8 TO THE REVELATIONS OR DISCOVERIES ABOUT A NUMBER OF DIFFERENT  
9 INSTANCES THAT SEEMED WIDESPREAD OF USE OF UNAUTHORIZED FORCE  
10 IN OUR JAIL SYSTEM.

11 THAT COMMISSION CAME UP WITH 60 RECOMMENDATIONS  
12 WHICH THEN SHERIFF BACA AGREED TO ALL OF. EACH RECOMMENDATION  
13 HAD TO BE ASSESSED FOR HOW TO IMPLEMENT IT, AND MANY OF THOSE  
14 RECOMMENDATIONS INVOLVED ACCOUNTABILITY FOR MISCONDUCT WHICH  
15 ALSO LEADS US INTO THE DISCUSSION OF WHAT DISCIPLINE WE USE IN  
16 ORDER TO BE ACCOUNTABLE FOR MISCONDUCT.

17 SO BECAUSE OF THE C.C.J.V. RECOMMENDATIONS WITH  
18 WHICH WE AGREED AND NEW PROCEDURES AND NEW -- I GUESS MANY NEW  
19 PROCEDURES ABOUT THOSE AGREED-UPON RECOMMENDATIONS, WE HAD TO  
20 LOOK AT REVISING THE GUIDELINES.

21 OTHER FACTORS WERE FEDERAL CASE LAW ABOUT PEACE  
22 OFFICERS' CREDIBILITY ON THE WITNESS STAND, IF THEY'VE  
23 COMMITTED DISHONESTY OFFENSES OR CERTAIN OTHER KINDS OF  
24 OFFENSES. THIS WAS BROUGHT TO US BY MEANS OF A FEDERAL SUPREME  
25 COURT DECISION CALLED BRADY V. MARYLAND, AND IT IS OF

1 INCREASING IMPORTANCE TO LAW ENFORCEMENT TO CONSIDER THE  
2 IMPACTS OF THAT CASE LAW ON A LOT OF PERSONNEL FACTORS, IN  
3 PARTICULAR DISCIPLINE AND MISCONDUCT AND THE FACT THAT WE CAN'T  
4 RESPOND TO THE DISHONESTY ON THE PART OF SWORN PEACE OFFICERS  
5 IN THE SPOTTY, SPORADIC MANNER IN WHICH WE HAD DONE IN THE PAST  
6 AND CONTINUE TO EXPECT IT TO BE OVERLOOKED BY THE COURT SYSTEM  
7 IN ASSESSING THE VALUE OF OUR OFFICERS AS WITNESSES UNDER OATH  
8 IN A SUBSEQUENT CASE. SO WE HAVE TO ATTEND TO THE CONCERNS  
9 ABOUT WHAT WE CALL THE BRADY DECISION.

10 ANOTHER FACTOR WAS THE ELECTION OF A NEW  
11 SHERIFF WHO HAD MADE CAMPAIGN PROMISES ABOUT RAISING THE LEVEL  
12 OF PROFESSIONALISM AND RAISING THE LEVEL OF PUBLIC TRUST FOR  
13 THE SHERIFF'S DEPARTMENT. HE'S THE FIRST SHERIFF WHO BECAME  
14 DIRECTLY INVOLVED IN THE DISCIPLINE PROCESS TO THE EXTENT THAT  
15 HE DID BECAUSE HE VIEWED HIMSELF AS ACCOUNTABLE FOR THE WHOLE  
16 THING.

17 THEREFORE, HE INSTRUCTED ME THAT HE INTENDED TO  
18 HAVE AN ACTIVE ROLE IN THE DECISIONS ABOUT DISCIPLINE  
19 SUSPENSION DAYS AND HIGHER. SO HIS TAKING AN ACTIVE ROLE IN  
20 THAT AFFECTED HOW WE CREATED THE PROCEDURES OR REVISED THE  
21 PROCEDURES THAT ARE CONTAINED IN THE DOCUMENT CALLED THE  
22 GUIDELINES FOR DISCIPLINE.

23 SO THOSE ARE SOME OF THE MOTIVATIONS FOR  
24 LOOKING AT THE DOCUMENT AND ASSESSING IT, WHICH LED ME TO  
25 UNDERSTAND THAT THE LIEUTENANTS PROBABLY HAVE SOME GOOD IDEAS

1           HERE .

2                               BUT IN ADDITION TO THEIR IDEAS, THERE WERE  
3 OTHER THINGS WRONG WITH THIS THING, LIKE PARTS OF IT THAT I  
4 COULDN'T UNDERSTAND THAT I THOUGHT NEEDED TO BE CHANGED OR  
5 FIXED.

6                   Q           OKAY. DO YOU KNOW IF -- DO YOU KNOW IF  
7 ALCOHOL-RELATED INCIDENTS WERE AN ISSUE THAT PROMPTED ANY OF  
8 THESE CHANGES?

9                   A           I DO. THEY WERE.

10                   Q           AND HAD THERE BEEN AN INCREASE IN D.U.I.'S AND  
11 OTHER ALCOHOL-RELATED INCIDENTS INVOLVING DEPUTIES AROUND THIS  
12 TIME?

13                   A           THE SHERIFF'S DEPARTMENT FIRST STARTED  
14 TALKING -- THE MAJOR EXECUTIVES, ONE OF WHOM WAS ME AS THE  
15 DIVISION CHIEF -- ABOUT DRUNK DRIVING ARRESTS AND OTHER ALCOHOL  
16 ABUSES AND IT WAS ON THE PART OF OUR EMPLOYEES IN THE MID  
17 2000'S. I DON'T RECALL EXACTLY HOW MANY TIMES, HOW MANY  
18 DISCUSSIONS WE HAD ABOUT IT, BUT IT HAD BEEN A TOPIC OF  
19 INCREASING CONCERN WHILE SHERIFF BACA WAS STILL WITH US.

20                               DURING THE TIME PERIOD THAT WE BECAME  
21 CONCERNED, WE STARTED DOING STATISTICAL RUNS ON HOW MANY DRUNK  
22 DRIVING ARRESTS HAVE WE SUFFERED AT THE HANDS OF OUR EMPLOYEES  
23 EACH YEAR, AND I DON'T RECALL THE TRENDS. I KNOW THAT THEY  
24 WENT UP. THEY'D OCCASIONALLY GO DOWN. BUT OUR DEPARTMENT IS  
25 GIGANTIC AND THERE WERE A LARGE NUMBER OF THEM AND THEY WERE

1 BEGINNING TO GET MORE AND MORE PUBLICALLY DISCUSSED. AND  
2 BESIDES THAT FACT, WE WERE CONCERNED ABOUT OUR EMPLOYEES'  
3 SAFETY AND WELFARE.

4 SO THERE WAS DECISION-MAKING DONE ABOUT ALCOHOL  
5 ABUSE FACTORS AND HOW THEY RELATE TO DISCIPLINE BEFORE EVEN  
6 SHERIFF MC DONNELL WAS THE SHERIFF, AND THEY CONTINUED THROUGH  
7 HIS TERM BECAUSE WE TRIED TO BE CONSISTENT AND CLEAR ABOUT OUR  
8 RULES CONCERNING ALCOHOL ABUSE AND HOW WE'RE GOING TO DEAL WITH  
9 IT IN TERMS OF MISCONDUCT.

10 Q OKAY.

11 A I'M SORRY. THAT WAS A LONG ANSWER. I DON'T  
12 KNOW THAT THERE'S BEEN A SOLID TREND EITHER WAY. I BELIEVE IT  
13 FLUCTUATES.

14 Q OKAY. WAS ADDRESSING ALCOHOL-RELATED  
15 INCIDENTS, WAS THAT ONE OF THE MOTIVATIONS FOR THESE CHANGES  
16 THAT WERE PUT INTO EFFECT IN 2017?

17 A YES. IT WAS ONE OF MANY.

18 Q OKAY. AND WERE THERE ANY OTHER -- WERE THERE  
19 ANY OTHER ISSUES SPECIFICALLY THAT MANAGEMENT WANTED TO  
20 ADDRESS --

21 A YES.

22 Q -- IN MAKING THESE CHANGES?

23 A YES.

24 Q WHAT WERE THOSE?

25 A WELL, I'VE MENTIONED ONE, AND THAT'S HONESTY,

1 VIOLATIONS OF TRUST. HONESTY VIOLATIONS WERE OF SEVERE  
2 CONCERN. IT SHOULD HAVE BEEN FOREVER AND OBVIOUSLY WERE OF  
3 GREAT CONCERN WHEN SHERIFF PITCHESS WAS THE SHERIFF WHEN I  
4 BEGAN.

5 BUT OUR INCONSISTENT APPLICATION OF OUR OWN  
6 STANDARDS OVER TIME WAS BEGINNING TO BITE US BY BECOMING MORE  
7 PUBLICALLY KNOWN, AND IT WAS NECESSARY TO BE CONCERNED ABOUT  
8 EVERYBODY'S CLEAR UNDERSTANDING ABOUT THE PRICE OF DISHONESTY,  
9 ESPECIALLY HIGH-LEVEL DISHONESTY WHERE YOU ARE EITHER UNDER  
10 OATH OR WHETHER YOU ARE ORDERED TO TELL THE TRUTH AND  
11 CIRCUMSTANCES LIKE THAT. SO THE WHOLE CATEGORY OF  
12 DISHONESTY/MISCONDUCT GOT PROMOTED TO FIRST ORDER, FIRST BIG  
13 ORDER OF CONCERN.

14 OBVIOUSLY THE SAFETY OF INMATES IN THE JAIL  
15 BOTH FROM EACH OTHER, FROM SUICIDE AND ALSO FROM THE POTENTIAL  
16 THAT DEPUTIES MIGHT USE ON RARE OCCASION EXCESS FORCE AGAINST  
17 PRISONERS WAS ANOTHER BIG FACTOR THAT WE INCORPORATED INTO OUR  
18 ASSESSMENT IN THE GUIDELINES FOR DISCIPLINE ESPECIALLY BECAUSE  
19 OF THAT COMMISSION I TALKED ABOUT, THAT JAIL VIOLENCE  
20 COMMISSION.

21 WE'VE WIDENED THE NUMBER OF AUTHORIZED WEAPONS  
22 THAT DEPUTIES ARE ALLOWED TO CARRY FROM THE DAYS WHEN I WAS A  
23 DEPUTY AND WE ONLY HAD ONE. AND BECAUSE OF THAT FACT AND FOR  
24 OTHER REASONS I KNOW LITTLE ABOUT, WE HAD A RASH OF WHAT WE NOW  
25 CALL UNINTENTIONAL DISCHARGES MEANING PEOPLE SHOT A ROUND OFF

1 ON THEIR GUN THAT THEY DIDN'T INTEND TO SHOOT AND EITHER HIT  
2 THEMSELVES OR SOMETHING ELSE THAT WAS SCARY. AND SO WE WERE  
3 CONCERNED ABOUT THE FACT THAT WE HAD NOT BEEN CONSISTENT OR OF  
4 A COMMON MIND ABOUT HOW SERIOUS THAT IS AND THEN HOW TO DECIDE  
5 HOW SERIOUS EACH INDIVIDUAL INCIDENT IS BECAUSE THEY'RE NOT ALL  
6 IDENTICAL.

7 WE MADE OBSERVATIONS ABOUT SPECIFIC GUIDELINES,  
8 SPECIFIC STATEMENTS IN THE BACK OF THE BOOK WHERE THAT LARGE  
9 TABLE IS THAT'S LANDSCAPED AND HAS ALL THE INSTRUCTIONS ABOUT  
10 CONSIDER THIS RANGE AND NORMALLY IS THERE LIKE, FOR INSTANCE,  
11 DECEITFUL BUSINESS PRACTICES HAD A VERY SMALL RANGE WHICH  
12 SEEMED ABSURD SINCE DECEITFUL IS A FUNCTION OF HONESTY AND  
13 DISHONESTY.

14 THERE'S ANOTHER SECTION IN THERE ABOUT  
15 MISAPPROPRIATION OF PROPERTY, AND I BELIEVE THAT THE PEOPLE WHO  
16 WROTE THAT, WHENEVER THEY DID, IN THE GUIDELINES FOR DISCIPLINE  
17 FOR IT WERE THINKING ABOUT TAKING COUNTY PENCILS HOME OR COUNTY  
18 TOWELS, WHICH HAS BEEN A COMMONLY JOKED ABOUT CONCERN FOR MY  
19 ENTIRE CAREER SINCE NEARLY EVERYBODY IN THE DEPARTMENT HAD A  
20 COUNTY TOWEL THAT SAID "L.A. COUNTY JAIL" SOMEWHERE IN HIS  
21 PERSONAL POSSESSION.

22 BUT THAT SECTION ALSO COVERS WIDESPREAD THEFT  
23 OF COUNTY PROPERTY AND THE GUIDELINES RANGED AT THE TIME WE  
24 NOTICED IT SOMETHING LIKE 1 TO 5 DAYS OFF. WE DON'T GIVE  
25 PEOPLE 5 DAYS OFF FOR THEFT. WE DISCHARGE THEM. SO WE

1 RECOGNIZED THAT THE RANGE FOR MISAPPROPRIATION OF PROPERTY WAS  
2 IMPROPERLY LABELED.

3 I REMEMBER HEARING SOMETHING ABOUT A CONCERN  
4 WITH RESPECT TO BUSINESSES OR NEIGHBORHOOD DISPUTES AND I'VE  
5 SAID DECEITFUL BUSINESS PRACTICES. THERE MAY BE OTHERS. I'M  
6 THINKING OF THE ONES I RECALL MORE SPECIFICALLY.

7 Q OKAY. NOW, WHY DON'T WE GO AND LOOK THROUGH  
8 THESE SPECIFIC CHANGES THAT WERE MADE.

9 A SURE.

10 Q COULD YOU TURN TO IN THE BIG BINDER, THE WHITE  
11 COVER, TAB A-5?

12 A OKAY.

13 Q AND LET'S LOOK AT PAGE 7. I SEE THERE ARE  
14 A NUMBER OF CHANGES WITH RESPECT TO THE LANGUAGE ON  
15 PREDISPOSITION SETTLEMENT AGREEMENTS.

16 A I SEE THAT.

17 Q DO YOU KNOW, COULD YOU TELL US GENERALLY WHAT  
18 THE REASONS WERE FOR A LOT OF THESE CHANGES?

19 A WELL, THERE ARE THREE CATEGORIES OF REASONS.  
20 ONE, THE LIEUTENANTS' COMMITTEE THAT HAD WORKED FOR THE  
21 DIVISION CHIEFS SUBMITTED FINALLY TO ME A DOCUMENT THAT HAD  
22 YELLOW HIGHLIGHTINGS WHERE THEY SUGGESTED WORDING CHANGES OR  
23 PROCEDURAL CHANGES WITH RESPECT TO E.B.D., EDUCATION-BASED  
24 DISCIPLINE, AND WITH RESPECT TO THEIR RECOMMENDATIONS ABOUT AN  
25 ADDITIONAL TABLE THAT THEY WANTED US TO CONSIDER INCORPORATING.

1 THAT'S ONE CATEGORY.

2 NUMBER TWO IS WHEN I READ THIS THING FOR THE  
3 FIRST TIME IN MY CAREER IN A VERY DETAILED FASHION AND TRIED TO  
4 MAKE IT MAKE SENSE, I DISCOVERED A LOT OF GRAMMATICAL ERRORS,  
5 A LOT OF SENTENCES THAT DIDN'T SEEM TO MAKE SENSE, A LOT OF  
6 MISPLACED INFORMATION, INFORMATION THAT REFERRED TO SOMETHING  
7 THAT THE READER HADN'T READ YET IF HE WAS READING IT FOR THE  
8 FIRST TIME THAT'S ON A SUBSEQUENT PAGE.

9 SO IN TRYING TO MAKE SENSE OF THEIR COMMITTEE  
10 WORK, I FELT THAT THIS WHOLE THING NEEDED A GOOD GOING-OVER BY  
11 SOMEBODY WHO HAD SOME SKILL IN POLICY AND PROCEDURE WRITING,  
12 AND I HAVE SOME EXPERIENCE IN THAT SO I WENT AHEAD AND DID IT.  
13 SO THAT'S THE SECOND CATEGORY OF CHANGES, JUST MECHANICAL ONES  
14 TO MAKE THE DARN THING MORE UNDERSTANDABLE BY A BRAND NEW  
15 LIEUTENANT OR CAPTAIN JUST COMING INTO HIS RANK WHO RELIES ON  
16 THIS FOR UNDERSTANDING WHAT THE RULES ARE.

17 AND THE THIRD CATEGORY IS THAT AS I STATED  
18 EARLIER ESPECIALLY WITH ALL THE CHANGE OCCURRING IN THE  
19 DEPARTMENT BETWEEN THE EARLY 2000'S -- I'M SORRY -- THE LATE  
20 2000'S AND 2016, THERE HAD BEEN A LOT OF DIRECTION FROM THE  
21 SHERIFF OR A NUMBER OF BRIEFING MEMOS OR TRAINING BULLETINS OR  
22 POLICY STATEMENTS OR AGREEMENTS WITH THE CITIZENS' COMMISSION  
23 ON JAIL VIOLENCE THAT HAD BEEN DOCUMENTED IN KIND OF A  
24 HODGEPODGE OF MEMOS AND E-MAILS AND WORD OF MOUTH AND PRACTICES  
25 THAT WE ADOPTED OR THE SHERIFF TELLS ME THIS IS WHAT WE'RE

1 GOING TO DO AND THEY WEREN'T DOCUMENTED IN ONE PLACE.

2 SO THIS WAS AN OPPORTUNITY FOR ME TO PUT INTO  
3 ONE PLACE ALL THE THINGS THAT WE WERE ACTUALLY DOING IN  
4 OPERATION SO THAT EVERYBODY COULD UNDERSTAND NOT ONLY WHAT THE  
5 PRACTICE IS OR HOW WE APPLY A GUIDELINE BUT ALSO UNDERSTAND  
6 WHERE TO FIND IT AND NOT BE LOOKING FOR A MEMO SOMEBODY WROTE  
7 IN 2014 OR 2011.

8 SO THOSE THREE CATEGORIES OF CHANGES ARE ALL  
9 REFLECTED IN THIS YELLOW HIGHLIGHTED MATERIAL AND I CAN ANSWER  
10 ANYTHING MORE SPECIFICALLY IF I REMEMBER IT.

11 Q AND WHEN YOU'RE REFERRING TO THE "YELLOW  
12 HIGHLIGHTED MATERIAL," WOULD THAT APPLY GENERALLY THROUGHOUT  
13 THIS DOCUMENT?

14 A YES, IF THIS IS THE DOCUMENT THAT I SAW  
15 EARLIER. IS THIS THE LEGISLATIVE VERSION OF THE -- AT THE TIME  
16 THE LAST AND BEST DRAFT OF OUR CHANGES? IT LOOKS LIKE IT TO  
17 ME, BUT I JUST WANT TO MAKE SURE WE'RE ALL ON THE SAME  
18 WAVELENGTH HERE.

19 IT HAS THE RIGHT DATE ON THE COVER. IT LOOKS  
20 LIKE WHAT I BELIEVE I LAST SAW, BUT WHEN I RELEASED IT TO THE  
21 EXECUTIVE PLANNING COUNCIL AND TO EMPLOYEE RELATIONS OR TO  
22 GREG NELSON'S UNIT IN ORDER TO CONTINUE THE REVIEW OF MY WORK  
23 AND TO DISCUSS IT WITH ALADS AND TO FINALLY AGREE ON IT SO WE  
24 COULD PUBLISH IT.

25 Q OKAY.

1           A           AND IF IT IS, SURE, I CAN HELP YOU WITH  
2           WHATEVER I REMEMBER.

3           Q           OKAY. AND I'LL REPRESENT TO YOU THAT THIS IS A  
4           DRAFT VERSION OF THE DOCUMENT THAT WAS PROVIDED TO ALADS.

5           A           OKAY, OKAY.

6           Q           SO SPECIFICALLY WITH RESPECT TO PREDISPOSITION  
7           SETTLEMENT AGREEMENTS --

8           A           YES.

9           Q           WELL, DOES THE DEPARTMENT CONTINUE TO USE  
10          PREDISPOSITION SETTLEMENT AGREEMENTS?

11          A           AS FAR AS I KNOW, YES. THEY DID UNTIL I WAS  
12          RETIRED IN MARCH OF 2017 OR WE DID.

13          Q           SO LET'S JUST LOOK AT THAT FIRST PARAGRAPH ON  
14          SUBSECTION G.

15                   HEARING OFFICER ROSS: WE'RE TALKING ABOUT PAGE 7?

16                   MR. WONG: PAGE 7, YES.

17                   HEARING OFFICER ROSS: THANK YOU.

18          BY MR. WONG:

19          Q           DO YOU KNOW THE PURPOSE BEHIND ALL OF THOSE  
20          CHANGES?

21          A           OH, BOY. WELL, I CAN TELL YOU THAT IN THE  
22          FIRST SENTENCE WHERE IT HAD SAID "A PREDISPOSITION SETTLEMENT  
23          AGREEMENT IS AN ALTERNATIVE TO A FULL INVESTIGATION WHEN  
24          CONDITIONS ARE RIGHT" DIDN'T STRIKE ME AS THE BEST WAY TO WORD  
25          IT, SO I CHANGED IT TO "CAN BE AN ALTERNATIVE." AND THEN

1 INSTEAD OF SAYING "WHEN CONDITIONS ARE RIGHT, SUCH AS," WHICH  
2 WAS A LITTLE BIT AMBIGUOUS, I WROTE TO CLARIFY WHAT WE WERE  
3 APPROVING AND WHAT WE WEREN'T IN LIMITED CIRCUMSTANCES SUCH AS,  
4 AND THEN I PUT MY OWN LIST WHICH I FELT WAS EITHER BETTER  
5 SYNTAX OR CLEARER WORDING.

6 I'M NOT SAYING I'M THE GREATEST WRITER IN THE  
7 WORLD, BUT I'M ACCOUNTABLE FOR THESE CHANGES AND MANY OF THEM  
8 ARE ME JUST TRYING TO MAKE THE MESSAGE CLEARER TO WHOEVER THE  
9 READER IS GOING TO BE IN 2020.

10 Q OKAY.

11 A DID I COVER --

12 Q YEAH.

13 A I MEAN THERE'S A LOT OF CHANGES HERE. I DON'T  
14 KNOW IF YOU WANT ME TO DO EACH ONE?

15 Q NO, I'M NOT GOING TO --

16 A AND, AGAIN, I'M NOT SURE I REMEMBER WHICH ONES  
17 I DID AND WHICH ONES THE COMMITTEE RECOMMENDED.

18 Q OKAY. WHY DON'T WE -- OH, LOOKING ABOVE THE  
19 HEADING G THERE, YOU'LL SEE THERE'S A CHANGE UNDER THE  
20 PRECEDING SECTION WHERE IT LOOKS LIKE THEY ADDED A BULLET POINT  
21 5, "HARM TO PUBLIC TRUST." DO YOU SEE THAT?

22 A I DO.

23 Q AND SO THAT IS UNDER THE LIST OF I GUESS  
24 FACTORS THAT -- FACTORS THAT SHOULD BE -- THAT CAN BE  
25 CONSIDERED IN DETERMINING WHETHER DISCIPLINE IS APPROPRIATE.

1 IS THAT CORRECT?

2 A CORRECT.

3 Q NOW, DO YOU KNOW WHY THAT SECTION, THAT FIFTH  
4 BULLET POINT WAS ADDED?

5 A WELL, I BELIEVE THAT THAT SECTION 5 HAD BEEN  
6 THERE BEFORE, IF I REMEMBER RIGHT, AND IT HAD SAID "HARM TO  
7 PUBLIC SERVICE." I ASKED A NUMBER OF PEOPLE WHAT DO WE MEAN BY  
8 THAT?

9 BASICALLY WE'RE TALKING ABOUT HARM TO THE  
10 PUBLIC TRUST. AN INDIVIDUAL ACT OF MISCONDUCT DOESN'T  
11 NECESSARILY HARM THE PUBLIC SERVICE BECAUSE 17,999 OTHER  
12 MEMBERS ARE DOING GOOD POLICE WORK. BUT AN INDIVIDUAL ACT OF  
13 MISCONDUCT CAN HARM THE PUBLIC TRUST IF IT BECOMES SOMETHING  
14 THAT IS CHEWED UP BY THE MEDIA, THAT IS VERY CONTROVERSIAL AND,  
15 YOU KNOW, IN THE VERNACULAR "BLACKENS THE EYES OF LAW  
16 ENFORCEMENT."

17 SO I HAD SEEN IN THE LIEUTENANTS'  
18 RECOMMENDATION PACKET AT ONE POINT THAT THEY HAD USED THE TERM  
19 "HARM TO PUBLIC SERVICE OR TRUST." I LIKED THE WORD "TRUST"  
20 BETTER, SO I PUT IT IN THERE IN PLACE OF "SERVICE" BECAUSE I  
21 THOUGHT IT WAS CLEARER ABOUT THE FACTOR THAT SHOULD BE  
22 CONSIDERED WHEN WE'RE ASSESSING THE LEVEL OF DISCIPLINE.

23 Q OKAY. NOW, PRIOR TO THE ADDITION OF THIS  
24 BULLET POINT 5, WAS HARM TO PUBLIC TRUST SOMETHING THAT THE  
25 DEPARTMENT CONSIDERED IN MAKING THEIR DISCIPLINARY

1 DETERMINATIONS?

2 A ABSOLUTELY.

3 Q OKAY. WHY DON'T WE JUMP OVER TO PAGE 10? AND  
4 THERE'S A -- THE FIRST PARAGRAPH IN SECTION J, WHICH IS  
5 "DETERMINING DISCIPLINE WHEN MULTIPLE VIOLATIONS OCCUR," IT  
6 LOOKS LIKE THERE'S A LOT OF -- THERE IS A HUGE CHUNK OF  
7 LANGUAGE STRICKEN AND A NEW CHUNK OF LANGUAGE WAS ADDED IN  
8 THERE. DO YOU KNOW -- DO YOU KNOW WHAT THE PURPOSE OF THAT  
9 CHANGE WAS?

10 A I DO.

11 Q AND WHAT WAS IT?

12 A LET ME JUST FINISH READING THE YELLOW PART.

13 Q OH, SORRY.

14 A AMONG OTHER THINGS, THE SHERIFF AND THEREFORE  
15 I, THE UNDERSHERIFF, ARE ACCOUNTABLE FOR AS I'VE SAID  
16 ADMINISTERING THE DISCIPLINE SYSTEM, AND PART OF THAT  
17 ACCOUNTABILITY EXTENDS TO DEFENDING OUR DECISIONS IN WHAT WE  
18 CALL THE CIVIL SERVICE ARENA.

19 WE HAVE TO -- AND I'M GLAD FOR IT -- EXPLAIN TO  
20 OUTSIDE ENTITIES WHEN THERE'S A COMPLAINT ON THE PART OF THE  
21 SUBJECT OF THE DISCIPLINE WHY WE MADE THE DECISION AND DEFEND  
22 OUR DECISION AS VALID AND RATIONAL AND FAIR TO THE EMPLOYEE AS  
23 WELL AS TO THE PUBLIC TRUST.

24 SO THROUGH SAD EXPERIENCE WE'VE LEARNED THAT  
25 THIS BUSINESS OF CHARGING ONLY ONE SECTION FOR A GIVEN PROVEN

1 VIOLATION DOESN'T WORK IN THE CIVIL SERVICE ARENA AND THAT WE  
2 ADOPTED THE PRACTICE MANY YEARS AGO WITHOUT REGARD TO THIS  
3 ADMONITION HERE AS A GUIDELINE.

4 BY THE WAY, I'LL STATE AGAIN, THIS DOCUMENT IS  
5 NOT DEPARTMENT POLICY PER SE. IT'S NOT PART OF OUR MANUAL OF  
6 POLICY AND PROCEDURES. IT'S CALLED "THE GUIDELINES FOR  
7 DISCIPLINE" BECAUSE IT LAYS OUT PROCEDURES AND GUIDELINES IN  
8 MANY CASES THAT THERE CAN BE EXCEPTIONS TO.

9 SO OVER TIME IT WAS DETERMINED BY THE COUNTY  
10 COUNSEL ATTORNEYS WHO DEFEND US IN THE CIVIL SERVICE ARENA WITH  
11 RESPECT TO OUR DISCIPLINE PROPOSALS THAT IT BEHOOVES US TO HAVE  
12 MORE THAN ONE MANUAL SECTION LISTED IF MORE THAN ONE MANUAL  
13 SECTION IS VIOLATED BY A GIVEN ACT OF CONDUCT AND FREQUENTLY --  
14 WELL, FOR DRUNK DRIVING, FOR INSTANCE, YOU CAN CALL THAT A LOT  
15 OF DIFFERENT MANUAL SECTIONS AND WITHOUT STRETCHING. IT'S A  
16 GENERAL BEHAVIOR CONSIDERATION. IT'S AN OBEDIENCE TO LAWS  
17 CONSIDERATION. IT'S A PERFORMANCE TO STANDARDS CONSIDERATION.  
18 IT'S A VEHICLE OPERATIONAL PROCEDURE CONSIDERATION. AND THESE  
19 ARE ALL DIFFERENT PARTS OF OUR MANUAL.

20 SO BECAUSE OUR OPPOSING ATTORNEYS WERE SO  
21 SKILLED AT WHITTILING AWAY -- AS THEY'RE SUPPOSED TO DO -- OUR  
22 RATIONALE FOR USING A GIVEN MANUAL SECTION AS OUR JUSTIFICATION  
23 FOR ADMINISTERING DISCIPLINE, IT BECAME OBVIOUS THAT WE SHOULD  
24 BE MORE CAREFUL TO PROPERLY USE OUR POLICY AND PROCEDURES  
25 MANUAL TO ACCOUNT FOR WHY WE FEEL THE DISCIPLINE IS NECESSARY

1 IN AN INSTANT CASE.

2 SO I'LL STATE AGAIN SHORTLY THAT WE'D ADOPTED  
3 THE PRACTICE OF DOING THAT LONG BEFORE THIS DOCUMENT WAS  
4 REVISED.

5 Q AND WHEN YOU SAY YOU'D "ADOPTED THE PRACTICE OF  
6 DOING THAT" --

7 A "DOING THAT" MEANING CHARGING MULTIPLE MANUAL  
8 SECTIONS WHEN SOMEONE HAD COMMITTED, YOU KNOW, SOME KIND OF  
9 MISCONDUCT.

10 Q OKAY. SO DID THIS CHANGE IN -- CHANGE  
11 REFLECTED IN THE GUIDELINES, DID THAT ACTUALLY REPRESENT A  
12 CHANGE IN THE DEPARTMENT'S ACTUAL PRACTICE AT THIS SPECIFIC  
13 TIME?

14 A NO. BY THE TIME THIS WAS DONE I WAS  
15 DOCUMENTING WHAT WE'D BEEN DOING ON ADVICE OF COUNSEL FOR SOME  
16 NUMBER OF YEARS. I DON'T KNOW HOW LONG.

17 Q OKAY. LET'S GO DOWN, GO DOWN ON THE PAGE.  
18 WE'RE STILL ON PAGE 10 IN EXHIBIT A-5. UNDER THE HEADING L,  
19 "MANAGEMENT'S ROLE," YOU SEE THERE WAS AN ADDITION ON ITEM 2  
20 AND IT SAYS:

21 "BEFORE ANY POTENTIAL  
22 DISCIPLINARY ACTION IS CONSIDERED,  
23 THE FOLLOWING POINTS SHALL BE  
24 FOLLOWED."

25 AND ON ITEM 2, IT'S ORIGINALLY STATED "VERIFY

1 INFORMATION," BUT THEN IT APPEARS THAT IT WAS REVISED TO STATE  
2 "VERIFY INFORMATION TO THE EXTENT POSSIBLE." WHAT WAS THE  
3 PURPOSE OF THAT CHANGE?

4 A I BELIEVE I MADE THAT CHANGE BECAUSE IN READING  
5 THE INFORMATION IN THIS SECTION AND THINKING THROUGH HOW THESE  
6 ENUMERATED POINTS INFORM THE READER ABOUT HOW TO CONSIDER  
7 DISCIPLINARY ACTION, I RECOGNIZED THAT VERIFYING INFORMATION IS  
8 NOT ALWAYS POSSIBLE TO A 100 PERCENT DEGREE.

9 IF THERE'S SOME DOUBT AS TO WHETHER THE  
10 EMPLOYEE COMMITTED AN ACT BUT THERE WAS A LOT OF EVIDENCE THAT  
11 HE DID AND WE'RE TRYING TO VERIFY THE INFORMATION TO THE NTH  
12 DEGREE, TO THE TUNE OF 100 PERCENT CERTAINTY, WE MAY NOT BE  
13 ABLE TO DO IT.

14 OUR STANDARD IN THESE MATTERS IS PREPONDERANCE  
15 OF EVIDENCE, SO I FELT THAT BY ADDING THE WORDS "TO THE EXTENT  
16 POSSIBLE" WE WERE GIVING BETTER, MORE REALISTIC GUIDANCE TO THE  
17 READER -- IN THIS CASE, THE DIVISION CHIEF OR CAPTAIN -- WHO  
18 MAY BE IN THE SITUATION OF ASSESSING DISCIPLINE WHICH IS JUST  
19 MORE ACCURATE AS TO WHAT WE CAN EXPECT THEM TO DO.

20 Q OKAY. AND MOVING DOWN TO ITEM 4 ON THAT LIST,  
21 IT STATES:

22 "ANALYZE FACTS THOROUGHLY AND  
23 OBJECTIVELY. YOU SHOULD CONSIDER" --  
24 AND THEN IT LISTS SEVERAL ITEMS, A THROUGH I.  
25 SO IF YOU CONTINUE ONTO PAGE 11, I THINK YOU

1 PROBABLY ADDRESSED THIS EARLIER, BUT IT LOOKS LIKE ITEM H WAS  
2 ADDED, "HARM TO PUBLIC TRUST." WHAT WAS THE -- WHY WAS THAT  
3 ADDED?

4 A IF I REMEMBER RIGHT, THE LIEUTENANTS -- I'M  
5 NOT SURE ABOUT THIS. I BELIEVE THAT HARM TO PUBLIC SERVICE  
6 HAD BEEN IN THIS LIST SOMEWHERE OR THEY ADDED IT. I CAN'T  
7 RECALL NOW. OH, I THINK I KNOW WHAT HAPPENED. I THINK THEY  
8 ADDED D, SUBSECTION D. THEY RECOMMENDED THAT WE ADD "THE HARM  
9 TO PUBLIC SERVICE," AND THE VERSION I GOT HAD THAT HIGHLIGHTED,  
10 I THINK.

11 BECAUSE I HAD ALREADY REWORDED IT AS "PUBLIC  
12 TRUST" EARLIER AND BECAUSE I KNEW THAT I ALWAYS AND THE  
13 DIVISION CHIEFS I KNEW OF ALWAYS CONSIDERED THE HARM TO PUBLIC  
14 TRUST OR THE EFFECT ON THE PUBLIC TRUST OF A PIECE OF  
15 MISCONDUCT THAT IT SHOULD BE A FIRST ORDER OF CONSIDERATION.

16 SO INSTEAD OF HAVING IT AS A SUBSECTION UNDER  
17 D INDICATING THAT IT'S A SUBSIDIARY CONSIDERATION, I MADE THE  
18 DECISION TO PUT IT UNDER THE ENUMERATED LIST OF ITEMS A  
19 THROUGH G AND I ADDED AN H THAT SAYS "HARM TO PUBLIC TRUST"  
20 BECAUSE IT IS AN IMPORTANT CONSIDERATION IN MAKING DISCIPLINE  
21 DECISIONS.

22 I MEAN THERE ARE DISCIPLINE DECISIONS THAT  
23 DON'T INVOLVE HARM TO PUBLIC TRUST OR AT LEAST A SIGNIFICANT  
24 ONE ALL THE TIME. THE BULK OF OUR DISCIPLINE DOES NOT. IT'S  
25 PEOPLE MAKING HONEST MISTAKES THAT WE CORRECT THEM WITH

1 LOW-LEVEL DISCIPLINE FOR.

2 THE ATTENTION-GETTERS, OF COURSE, ARE THE  
3 DISCHARGES AND THE HIGH-LEVEL THINGS, WHICH ARE A SMALL  
4 PERCENTAGE OF THE TOTAL AMOUNT OF DISCIPLINE THAT WE IMPOSE.  
5 SO THAT'S THE REASON THAT THAT HARM TO PUBLIC TRUST WAS MOVED  
6 FROM D TO H.

7 Q NOW, MOVING DOWN ON PAGE 11, YOU SEE THERE'S A  
8 NEW SECTION THAT WAS ADDED, SECTION ROMAN NUMERAL II, "LEVELS  
9 OF DISCIPLINE"?

10 A YES.

11 Q THAT CONTINUES ON TO PAGE 12. WHAT WAS THE  
12 PURPOSE OF ADDING THIS SECTION ON LEVELS OF DISCIPLINE?

13 A THE PURPOSE OF ADDING THAT SECTION IS BECAUSE I  
14 RECOGNIZED THAT A PERSON READING THIS BOOK FOR THE FIRST TIME,  
15 WHETHER IT'S A SERGEANT STUDYING FOR A PROMOTIONAL TEST OR A  
16 LIEUTENANT'S FIRST INVOLVEMENT IN THE DISCIPLINE PROCESS OR A  
17 BRAND NEW CAPTAIN WHO'S BEEN SHELTERED FROM THIS TO AN EXTENT  
18 AND THEY'RE ACTUALLY READING THIS MANUAL, THERE WERE REFERENCES  
19 TO THINGS IN PART III ABOUT EDUCATION-BASED DISCIPLINE. THERE  
20 WERE VAGUE REFERENCES MADE AS THOUGH THE READER SHOULD ALREADY  
21 KNOW WHAT THAT'S ABOUT, BUT THERE WAS NO PREVIOUS EXPLANATION  
22 IN PART I ABOUT THINGS SUCH AS ACTION, MENU ITEMS AND  
23 BEHAVIORAL CATEGORIES AND SOME OTHER THINGS THAT I DON'T  
24 REMEMBER.

25 AND I RECOGNIZED THAT A READER DOING THIS FOR

1 THE FIRST TIME WOULD STOP RIGHT HERE -- I'M SORRY, WOULD STOP  
2 RIGHT AT PART III AND BE COMPLETELY CONFUSED BECAUSE IT WAS  
3 WRITTEN AS THOUGH THE READER ALREADY KNEW ALL KINDS OF THINGS  
4 ABOUT PRECEDING MATTERS THAT HAD NEVER BEEN EXPLAINED IN THE  
5 BOOK.

6 SO I DECIDED THAT WE SHOULD PUT IN A  
7 HOUSEKEEPING PART II. AND WHEN I HAD THIS THING REVIEWED BY A  
8 NUMBER OF PEOPLE, NOBODY OBJECTED. IT SIMPLY SAID, HEY, IF YOU  
9 LOOK AT PART 4 YOU'LL SEE WHAT YOU'VE BEEN WAITING FOR, A TABLE  
10 THAT TELLS YOU WHAT THE ACTUAL GUIDELINES FOR DISCIPLINE ARE.  
11 SO WHEN YOU SEE REFERENCES TO THAT FROM NOW ON, REST ASSURED  
12 IT'S IN THE BACK OF THE BOOK. IT'S THE FIRST PLACE IT'S EVEN  
13 REALLY MENTIONED IN THERE AS FAR AS I CAN RECALL.

14 AND THE SAME THING ABOUT DETERMINING THE  
15 APPROPRIATE LEVEL OF DISCIPLINE. BECAUSE THE COMMITTEE HAD  
16 RECOMMENDED WHAT'S IN THIS BOOK NOW AS THE LAST PAGE I BELIEVE,  
17 AND THAT'S THIS SCHEMATIC OF LEVELS OF DISCIPLINE --

18 Q DID YOU SAY THE LAST PAGE HERE?

19 A I'M SORRY. THE LAST PAGE OF THE DOCUMENT I'M  
20 LOOKING AT IN EXHIBIT A-5 ON PAGE 43 OF 43. IT'S CALLED THE  
21 "LEVEL OF DISCIPLINE TABLE." THIS WAS THEIR PRODUCT. THIS WAS  
22 THEIR CONTRIBUTION TO IMPROVING THE GUIDELINES.

23 THE PRECEDING PAGE, PAGE 42, EXPLAINS IN  
24 VERBIAGE THE LEVELS OF DISCIPLINE THAT THEY THOUGHT WOULD BE  
25 HELPFUL IN GUIDING MANAGERS TOWARD BETTER, MORE CONSISTENT

1 DECISIONS FROM MANAGER TO MANAGER AND FROM MANAGERS OVER TIME  
2 WITH THEMSELVES.

3 IT'S HARD TO REMEMBER WHAT YOU DID IN 2002 IF  
4 YOU'RE A CHIEF IN 2007 BECAUSE YOU DO HAVE A LOT OF CASES  
5 COMING AT YOU. SO HAVING THESE GUIDELINES MAKES SENSE FOR  
6 MAKING THE RULES AND THE PROCEDURES CLEAR AND THEN FOR ENSURING  
7 SOME DEGREE OF CONSISTENCY AMONG 14 DIVISION CHIEFS AND UP TO  
8 80 UNIT COMMANDERS.

9 SO BECAUSE THE COMMITTEE HAD DONE THIS WORK AND  
10 IT WASN'T CLEAR THAT THEY HAD DECIDED WHERE THEY WANTED TO  
11 PLACE IT INSIDE THIS DOCUMENT, IT FELL TO SOMEONE, AND I  
12 ACCEPTED THE RESPONSIBILITY BECAUSE I KNEW MY NAME OR MY  
13 SHERIFF'S NAME WAS GOING ON IT AND FIGURING OUT WHERE TO PUT  
14 IT.

15 SO I FIGURED PUTTING IT AT THE BACK WITH THE  
16 TABLE MAKES SENSE, BUT THERE SHOULD BE A REFERENCE TO IT BEFORE  
17 YOU GET TO THE TABLE AND GO, OH, WHAT'S THIS ABOUT? SO I PUT  
18 THAT EXPLANATION IN PART 2-B HERE. AND THAT'S THE REASON WHY  
19 PART III -- I'M SORRY -- PART II, "LEVELS OF DISCIPLINE," IS SO  
20 SHORT. I WAS JUST TRYING TO TELL THE READER, PARTICULARLY A  
21 READER THAT HASN'T LOOKED AT THIS FOR A WHILE OR A FIRST-TIME  
22 READER, DON'T WORRY, WHEN YOU START READING THESE TERMS IN PART  
23 III THEY'LL BE EXPLAINED ON THIS PAGE OR I'LL EXPLAIN THEM  
24 HERE, AND THAT'S THAT.

25 Q OKAY.

1 THE WITNESS: AM I TALKING LOUD ENOUGH OKAY?

2 THE REPORTER: OH, FINE. THANK YOU.

3 THE WITNESS: OKAY.

4 BY MR. WONG:

5 Q LET'S MOVE OVER TO PAGE 12, THE SECTION ROMAN  
6 NUMERAL III, "EDUCATION-BASED DISCIPLINE."

7 A I SEE IT.

8 Q NOW, IF YOU WILL LOOK AT THE FOURTH PARAGRAPH  
9 IT STATES -- THE LAST SENTENCE IN THE FOURTH PARAGRAPH IT  
10 STATES:

11 "WHETHER OR NOT E.B.D.  
12 IS UTILIZED, ALL DISCIPLINE  
13 IS DOCUMENTED BY RECORDING THE  
14 ORIGINALLY INTENDED NUMBER OF  
15 SUSPENSION DAYS FOR PURPOSES OF  
16 FUTURE PROGRESSIVE DISCIPLINE."

17 NOW, DO YOU KNOW IF PRIOR TO THE ADDITION OF  
18 THE HIGHLIGHTED LANGUAGE DISCIPLINE WAS DOCUMENTED BY RECORDING  
19 THE ORIGINALLY-INTENDED NUMBER OF DAYS?

20 A YES, IT WAS.

21 Q OKAY.

22 A IT WAS SUPPOSED TO BE.

23 Q SO DID THAT HIGHLIGHT, DID THAT ACTUALLY  
24 REFLECT ANY KIND OF CHANGE IN THE DEPARTMENT'S PRACTICES?

25 A IT CLARIFIES WHAT IT MEANS BY "ALL DISCIPLINE

1 IS DOCUMENTED." I DON'T EVEN KNOW IF I DID THAT OR THE  
2 COMMITTEE DID IT, BUT IT'S JUST A POINT OF CLARIFICATION ABOUT  
3 HOW E.B.D. IS TO WORK.

4 Q OKAY.

5 A WELL, IF YOU GET 15 DAYS OFF AND YOU'RE  
6 AUTHORIZED TO SERVE 10 TO 15 OF THEM AS IN EDUCATION, WE DO NOT  
7 REMOVE THE 15 DAYS OFF FROM YOUR RECORD. IT STILL STANDS AS  
8 YOUR HAVING SERVED IT. YOU SERVED IT IN A MUCH LESS PAINFUL  
9 WAY WITHOUT GIVING UP YOUR MONEY AND DOING SOMETHING  
10 PRODUCTIVE, BUT YOU STILL HAD A 15-DAY SUSPENSION, AND THAT  
11 PRACTICE HAD BEEN IN PLACE SINCE E.B.D. WAS CREATED IN THE LATE  
12 2000'S.

13 Q OKAY. LET'S TURN TO PAGE 13 UNDER SUBHEADING B  
14 OF THE E.B.D. DEFINITIONS.

15 A I SEE THAT.

16 Q NOW, THERE'S A LOT OF HIGHLIGHTED LANGUAGE.  
17 WHAT WAS THE PURPOSE OF THOSE ADDITIONS?

18 A IT WAS TO BETTER EXPLAIN WHAT THE PREVIOUS  
19 VERSION OF THIS DOCUMENT HADN'T EXPLAINED AND THAT IS THE  
20 ACTION ITEM MENUS AND THE BEHAVIORAL REMEDY CATEGORIES WHICH  
21 WERE THINGS I KNEW VERY LITTLE ABOUT. BUT WHEN I READ THIS  
22 THING IN THE ABSENCE OF ANY PRIOR KNOWLEDGE I WAS COMPLETELY  
23 CONFUSED ABOUT WHAT THEY WERE INTENDED TO GUIDE US TOWARD,  
24 WHICH IS ANOTHER ONE OF THOSE TRICKY TECHNICAL WRITING  
25 MECHANICAL CHANGES.

1                   SO I ASKED A LOT OF QUESTIONS OF PEOPLE WHO  
2 WORKED IN THE UNITS WHERE WE ADMINISTERED THE EDUCATION-BASED  
3 DISCIPLINE COURSES, AND I CAME TO UNDERSTAND WHAT AN ACTION  
4 ITEM MENU IS BETTER THAN I EVER DID AS A CHIEF BY TALKING WITH  
5 THEM AND I TRIED TO CONVERT THAT INTO ENGLISH IN WRITING SO  
6 OTHER PEOPLE WOULDN'T BE CONFUSED AS I WAS.

7                   A           OKAY.

8                   Q           I MEAN BE CONFUSED AS I HAD BEEN.

9                   Q           ALL RIGHT. IF YOU COULD MOVE TO PAGE 14 UNDER  
10 "INDEPENDENT STUDY," THERE ARE SEVERAL STRIKE-OUTS AND  
11 ADDITIONS. DO YOU KNOW WHAT WAS BEHIND THOSE CHANGES?

12                  A           RIGHT OFF THE BAT I'LL TELL YOU, AS FAR I CAN  
13 TELL THEY WERE ALL ABOUT PRECISION IN LANGUAGE, ABOUT MAKING IT  
14 CLEARER, THE MESSAGE CLEARER ABOUT WHAT THE SECTION IS TRYING  
15 TO CONVEY. I JUST FELT THAT IT WAS WORDED MORE TIGHTLY, I  
16 GUESS.

17                                AGAIN, TO THE EXTENT I MADE THESE CHANGES, I  
18 BELIEVE I MAY HAVE MADE ALL THESE CHANGES BECAUSE THEY LOOK  
19 LIKE NOTHING THE COMMITTEE WAS ACCOUNTABLE FOR. THEY WEREN'T  
20 TOLD, HEY, REVISE THIS SO IT READS BETTER. AS I SAID, I KNEW  
21 THE SHERIFF'S NAME WAS GOING TO GO ON THIS AND I WANTED IT TO  
22 BE CLEARER A DOCUMENT.

23                                SO, AS FAR AS I KNOW, EVERY ONE OF THESE IS  
24 JUST TO CLARIFY WHAT THE RULES ARE THAT WE'RE ALREADY GOING BY  
25 OR SUPPOSED TO BE IF PEOPLE CAN FOLLOW THE RIGHT SPIRIT OF THE

1           LAW GIVEN THAT THIS MANUAL IS KIND OF RAGGED IN TERMS OF ITS  
2           ABILITY TO COMMUNICATE CLEARLY.

3           Q           OKAY.

4           A           AND IN SOME CASES THAT MAKES A BIG DIFFERENCE,  
5           BECAUSE IF YOU SAY "YOU SHOULD DO THIS" OR "YOU SHALL DO THIS,"  
6           IT'S A WORLD OF DIFFERENCE IN THE SHERIFF'S DEPARTMENT AS IT  
7           WOULD BE ANYWHERE.

8                        MOST POLICY MANUALS ARE POORLY WRITTEN IF THEY  
9           SAY "A COMMANDER SHOULD ALWAYS DO THIS" IF IT'S INTENDED THAT  
10          THEY ALWAYS DO IT, SO YOU SHOULD SAY "THEY SHALL." AND I SEE  
11          THE WORD "SHALL" HERE WHERE IT HAD SAID "CAN." WELL, IT'S  
12          EXPECTED THAT THE CAPTAIN ASSIGNED CREDIT FOR E.B.D. ON THIS  
13          BASIS, AND IF WE SAY "HE CAN" THAT IMPLIES THAT HE CAN OR HE  
14          CAN'T. IT'S UP TO HIM. SO I SIMPLY WROTE "SHALL AUTHORIZE"  
15          INSTEAD OF "CAN ASSIGN" --

16          Q           OKAY.

17          A           -- IF YOU WANT THE DEPUTIES TO GET CREDIT IN  
18          EVERY CASE FROM EVERY CAPTAIN WHENEVER THEY GO THROUGH AN  
19          E.B.D. COURSE.

20          Q           OKAY.

21          A           AND IT SHOULDN'T BE WISHY-WASHY, AMBIGUOUS  
22          WORDING.

23          Q           AND TO YOUR KNOWLEDGE, WERE THESE CHANGES  
24          SIMPLY REFLECTING THE DEPARTMENT'S ACTUAL PRACTICE?

25          A           WELL, I HOPE SO BECAUSE ONCE AN EMPLOYEE GOES

1 THROUGH E.B.D. AND SUCCEEDS IN THE EDUCATION -- FOR INSTANCE,  
2 THIS IS ABOUT INDEPENDENT STUDY AND PREPARING A PAPER -- HE  
3 SHOULD BE CREDITED FOR IT. SO IT'S JUST TO CLARIFY THAT WE  
4 EXPECT THIS TO HAPPEN IN EVERY CASE. WHEN AN EMPLOYEE DOES  
5 THAT MUCH WORK ON AN INDEPENDENT STUDY PROJECT, HE SHOULD GET  
6 THE CREDIT.

7 Q OKAY.

8 A I DON'T SEE ANYTHING THERE THAT CHANGES A THING  
9 EXCEPT HOW CLEAR THIS PASSAGE IS.

10 Q OKAY.

11 A THAT WAS THE ONLY INTENT I HAD, ANYWAY.

12 Q AND IF YOU COULD TURN TO PAGE 15 UNDER  
13 SUBSECTION C, "E.B.D. IN LIEU OF SUSPENSIONS"? YOU SEE THAT  
14 THERE'S A TABLE THERE UNDER THE -- LET'S SEE -- I GUESS NOT  
15 INCLUDING THE HEADING THE FIFTH -- I'M SORRY -- THE FOURTH  
16 ENTRY IS AN ASTERISK AND IT STATES:

17 "E.B.D. SHALL NOT BE OFFERED  
18 FOR THE SECOND AND SUBSEQUENT  
19 VIOLATIONS OF MANUAL SECTIONS FOR  
20 WHICH THE EMPLOYEE HAS PREVIOUSLY  
21 RECEIVED E.B.D."

22 (CELL PHONE INTERRUPTION.)

23  
24  
25 THE WITNESS: IS SEE THAT.

1 MR. WONG: SORRY.

2 BY MR. WONG:

3 Q PREVIOUSLY WOULD E.B.D. -- COULD E.B.D. BE  
4 OFFERED FOR SECOND AND SUBSEQUENT VIOLATIONS OF THE MANUAL  
5 SECTIONS?

6 A TO THE BEST OF MY RECOLLECTION, WHEN I WAS A  
7 DIVISION CHIEF I UNDERSTOOD THE RULES TO BE THAT IF A PERSON  
8 VIOLATED THE SAME KIND OF THING A SECOND TIME, E.B.D. WAS NOT  
9 AN OPTION. I DON'T REMEMBER EVER SEEING THAT IN PRINT. I JUST  
10 UNDERSTOOD THAT TO BE THE WAY E.B.D. WORKED.

11 Q OKAY. SO --

12 A SO, AS FAR AS I KNOW, I DON'T REMEMBER WHETHER  
13 I PUT THAT IN OR SOMEBODY ELSE DID. I HONESTLY DON'T. BUT I  
14 VIEW THAT AS NOT A CHANGE FROM WHAT WE'D BEEN DOING.

15 Q OKAY.

16 A NOW, I'M NOT SAYING NO CHIEF EVER TRIED IT OR  
17 GOT AWAY WITH IT. I'M JUST SAYING MY UNDERSTANDING WAS THAT  
18 WAS NOT WHAT WE WERE SUPPOSED TO BE DOING TO MAKE E.B.D. AN  
19 ACCOUNTABLE, RESPONSIBLE WAY OF CREATING AN ALTERNATIVE TO  
20 DISCIPLINE.

21 Q OKAY. NOW, WHY DON'T WE FAST-FORWARD TO --  
22 LET'S SEE. WHY DON'T WE JUMP OVER TO PAGE 25? NOW, LOOKING AT  
23 THE USE -- THE SECTION, "THE USE OF DISCIPLINE AND EDUCATION  
24 GUIDE."

25 A I SEE THAT.

1 Q NOW, I SEE THAT THAT LANGUAGE IS HIGHLIGHTED,  
2 BUT DID THAT LANGUAGE PREVIOUSLY EXIST IN OTHER VERSIONS OF THE  
3 GUIDELINES?

4 A I BELIEVE IT DID. IN FACT, I'M SURE IT DID. I  
5 KNOW THE NEXT ONES DID. AND I THINK IT WAS IN PART III AND I  
6 DON'T KNOW WHY. I GUESS IT'S HIGHLIGHTED BECAUSE IT WAS MOVED.  
7 I DON'T REMEMBER THAT I'M THE ONE THAT MOVED IT OR IF THE  
8 COMMITTEE RECOMMENDED THAT IT BE CLOSER TO THE TABLE, WHICH IS  
9 WHAT IT'S DOING HERE RIGHT IN FRONT OF THE TABLE. I JUST DON'T  
10 REMEMBER. BUT I KNOW THAT WORDING, THAT LANGUAGE, WAS IN THE  
11 PREVIOUS VERSION OF THE GUIDELINES FOR DISCIPLINE, AT LEAST I  
12 REMEMBER SEEING IT.

13 Q OKAY.

14 A IT TELLS YOU HOW TO USE THE LANDSCAPE TABLE  
15 WHICH IS CALLED "THE DISCIPLINE AND EDUCATION GUIDE," SO THEY  
16 PROBABLY JUST THOUGHT LET'S PUT IT NEAR THE TABLE.

17 Q OKAY. AND JUST LOOKING AT THAT FIRST  
18 PARAGRAPH, DOES THAT ACCURATELY REFLECT HOW THE DISCIPLINE AND  
19 EDUCATION GUIDE IS INTENDED BY THE DEPARTMENT TO BE USED?

20 A YES. THAT'S WHY IT'S CALLED A GUIDE INSTEAD OF  
21 A BIBLE, A RULE, A POLICY STATEMENT.

22 Q OKAY.

23 A I MEAN SEVERAL -- THERE ARE TWO PLACES THAT  
24 I'M AWARE OF THAT SPECIFICALLY REFER TO A MANAGER'S I'LL SAY  
25 RESPONSIBILITY TO ASSESS THE DISCIPLINE -- I'M SORRY -- ASSESS

1 THE CONDUCT AGAINST THE GUIDELINE, AND IF THEY FEEL THE  
2 GUIDELINE IS INCORRECT IT TELLS THE PROCEDURE THAT THEY CAN USE  
3 TO RECOMMEND OR ENGINEER A CHANGE TO OUTSIDE THE GUIDELINES.

4 MR. AITCHISON: MS. HEARING OFFICER, I OBJECT TO THIS  
5 TESTIMONY. REPEATEDLY THIS WITNESS HAS ANSWERED WHAT MR. WONG  
6 HAS POSED AS A "YES" OR "NO" QUESTION BY ANSWERING THE QUESTION  
7 AND THEN ENGAGING IN AN EXPOSITION AND THAT'S INAPPROPRIATE.

8 IF MR. WONG WANTS TO FOLLOW UP WITH A WHY OR  
9 WHATEVER, BUT THIS WITNESS SHOULD BE INSTRUCTED TO ANSWER THE  
10 QUESTION THAT IS ASKED BY COUNSEL.

11 HEARING OFFICER ROSS: MR. TYLER, I KNOW YOU'RE FILLED  
12 WITH INFORMATION THAT YOU THINK WOULD BE HELPFUL TO US, BUT IF  
13 YOU WOULD LISTEN JUST TO THE QUESTION --

14 THE WITNESS: I'M SORRY.

15 HEARING OFFICER ROSS: -- AND ASK AND ANSWER JUST THAT  
16 QUESTION. I'M QUITE SURE THAT HE'LL FOLLOW UP IF HE WANTS MORE  
17 INFORMATION.

18 THE WITNESS: OKAY. I'M SORRY.

19 MR. WONG: NO PROBLEM.

20 BY MR. WONG:

21 Q SO YOU INDICATED THAT THE MANAGERS HAVE A DUTY  
22 TO ASSESS THE CONDUCT. IS THAT CORRECT?

23 A YES.

24 Q COULD YOU EXPLAIN WHAT YOU MEAN BY THAT?

25 A I CAN EXPLAIN IT BEST BY REFERRING TO THIS BOOK

1 ON PAGE 25, THE FIRST PARAGRAPH OF SECTION E, AND ADD THAT WE  
2 EXPECT MANAGERS TO ASSESS THE CONDUCT AGAINST THE PRESCRIBED  
3 GUIDELINES AND DETERMINE WHETHER THEY SEEM PROPER AND FAIR, AND  
4 IF THEY THINK THEY ARE NOT, THEY ARE RESPONSIBLE FOR GOING  
5 OUTSIDE THE GUIDELINES ACCORDING TO THE PROCEDURES SET OUT IN  
6 THE BOOK.

7 Q OKAY. AND YOU INDICATED THAT YOU KNEW OF AT  
8 LEAST TWO PLACES IN THE GUIDELINES THAT SPECIFICALLY GIVE  
9 MANAGERS THIS MANDATE. COULD YOU TURN TO PAGE 10, 10 OF THE  
10 GUIDELINES?

11 A YES.

12 Q AND UNDER SUBSECTION L, "MANAGEMENT'S ROLE,"  
13 CAN YOU REVIEW THAT SECTION?

14 A I HAVE.

15 Q OKAY. AND THAT SECTION CONTINUES ONTO PAGE 11.

16 A I DID.

17 Q YOU'VE READ THAT WHOLE SECTION?

18 A YES.

19 Q IS THAT ONE OF THE AREAS THAT YOU WERE -- ONE  
20 OF THE SECTIONS YOU WERE REFERRING TO?

21 A YES.

22 Q OKAY. AND DOES THAT ACCURATELY -- THIS SECTION  
23 HERE IS SECTION L. DOES THAT ACCURATELY REFLECT THE  
24 EXPECTATIONS THAT THE DEPARTMENT HAS OF MANAGERS IN ASSESSING  
25 DISCIPLINE?

1 A YES.

2 Q AND WHY DON'T WE TURN TO PAGE 26?

3

4 (CELL PHONE INTERRUPTION.)

5

6 HEARING OFFICER ROSS: SORRY. I THOUGHT IT WAS OFF.

7 NOW IT IS.

8 BY MR. WONG:

9 Q NOW, LOOKING AT THAT SPECIAL NOTE AND  
10 SPECIFICALLY THE FIRST PARAGRAPH OF THAT SPECIAL NOTE, WOULD  
11 THAT BE ONE OF THE OTHER AREAS THAT YOU WERE REFERRING TO  
12 PREVIOUSLY WHERE MANAGEMENT IS EXPECTED TO ASSESS THE CONDUCT  
13 IN LOOKING AT THE GUIDE?

14 A YES.

15 Q OKAY. NOW, WHY DON'T WE JUMP AHEAD TO PAGE 42,  
16 "THE LEVELS OF DISCIPLINE." I THINK YOU HAD ORIGINALLY  
17 REFERRED TO THIS SECTION.

18 A I'M SORRY. 42?

19 Q 42, YES. COULD YOU TELL US WHAT THE PURPOSE OF  
20 THIS SECTION IS?

21 A TO THE BEST OF MY ABILITY TO RELATE WHAT THE  
22 COMMITTEE PERSONNEL TOLD ME --

23 THE REPORTER: SIR, COULD YOU RAISE YOUR VOICE?

24 THE WITNESS: I'M SORRY.

25 THE REPORTER: YOUR VOICE IS DROPPING A BIT.

1 THE WITNESS: I'M SORRY.

2 THE REPORTER: THANK YOU.

3 THE WITNESS: TO THE BEST OF MY ABILITY TO RECALL WHAT  
4 I WAS TOLD BY THE COMMITTEE PEOPLE THAT PUT THIS LEVEL SYSTEM  
5 TOGETHER.

6 THEY WERE TRYING TO IMPROVE OUR ABILITY TO BE  
7 CONSISTENT FROM ONE CHIEF TO ANOTHER, FROM ONE DIVISION OF THE  
8 DEPARTMENT TO ANOTHER BY GIVING ADDITIONAL GUIDANCE THAT HAD  
9 NOT BEEN GIVEN BEFORE FOR GUIDELINES WHICH HAD A VERY WIDE  
10 RANGE, FROM WRITTEN REPRIMAND TO DISCHARGE, FOR INSTANCE, SO  
11 THAT IT WOULD BE POSSIBLE FOR INDIVIDUAL CHIEFS WHO DON'T TALK  
12 TO EACH OTHER EVERY DAY AND WHO OVERSEE DIFFERENT PARTS OF THE  
13 DEPARTMENT TO COME CLOSER TO CONSISTENT DECISIONS THAT ARE  
14 FAIRER TO THE EMPLOYEES IF THEY HAD THIS GUIDANCE.

15 Q OKAY. NOW, TURNING TO PAGE 43, THE LEVELS OF  
16 DISCIPLINE TABLE, COULD YOU TELL US WHAT THE PURPOSE OF THAT  
17 TABLE WAS?

18 A BECAUSE THIS DOCUMENT HAS FOR YEARS AND THE  
19 DEPARTMENT'S POLICY FOR YEARS HAS RECOGNIZED THAT A GIVEN SET  
20 OF FACTS CAN BE MORE SERIOUS OR LESS SERIOUS BASED ON WHAT WE  
21 CALLED AGGRAVATING OR MITIGATING FACTORS, IT'S BASICALLY AN  
22 ACKNOWLEDGEMENT OR ANOTHER GUIDE AS TO HOW THE DISCOVERY OF  
23 THOSE FACTORS -- WHETHER AGGRAVATING OR MITIGATING -- MIGHT  
24 AFFECT THE AMOUNT OF DISCIPLINE IN SUSPENSION CASES.

25 Q OKAY. NOW, WHEN CONSIDERING AGGRAVATING OR

1 MITIGATING FACTORS, IS THE DEPARTMENT LIMITED TO -- SO, FOR  
2 EXAMPLE, LIKE ON A LEVEL 2, WHICH I UNDERSTAND GOES FROM A  
3 6-DAY TO A 10-DAY SUSPENSION, WHEN CONSIDERING MITIGATING AND  
4 AGGRAVATING FACTORS IS THE DEPARTMENT LIMITED TO ONLY DEVIATING  
5 BY 2 DAYS ON EITHER SIDE STARTING AT 8 AND GOING DOWN TO 6 OR  
6 GOING UP TO 10?

7 A NO. YOU MEAN INDIVIDUAL DECISION-MAKERS?

8 Q YES, INDIVIDUAL DECISION-MAKERS.

9 A NO, THEY'RE NOT.

10 Q AND WHY NOT?

11 A WELL, AS I'VE SAID, THIS IS NOT A POLICY  
12 STATEMENT. THIS IS A GUIDE TO HELP A LARGE NUMBER OF DIVERSE  
13 MANAGERS COME CLOSER TOGETHER IN THEIR DISCIPLINE DECISIONS,  
14 AND TO THE EXTENT POSSIBLE, ANYWAY, WE TRY AND VIEW EACH CASE  
15 ON ITS OWN MERITS AND ITS OWN FACTORS, AND THAT CAN CAUSE  
16 WIDER SWINGS IN THE DISCIPLINE LEVELS THAN THIS TABLE  
17 ACKNOWLEDGES.

18 BUT IT'S AN ATTEMPT BECAUSE THERE ARE FIVE  
19 LEVELS OF SERIOUSNESS IN THE DESCRIPTIONS ON PAGE 42 TO HELP  
20 THE DECISION-MAKER, WHO IS OPERATING ON HIS OWN WITHOUT  
21 KNOWLEDGE OF WHAT THE PREVIOUS DECISIONS IN OTHER DIVISIONS  
22 HAVE BEEN LIKE, TO COME CLOSER TO THE LEVELS OF DISCIPLINE  
23 THAT OTHER DEPUTIES ARE GETTING FOR A GIVEN OFFENSE INSTEAD  
24 OF HAVING THE DISCIPLINE WIDELY VARY FROM DIVISION TO  
25 ANOTHER.

1 Q OKAY. NOW, MOVING ON. DID THE DEPARTMENT  
2 MAKE ANY CHANGES SPECIFICALLY TO THE DISCIPLINE AND EDUCATION  
3 GUIDE?

4 A YES, THERE WERE CHANGES MADE.

5 Q OKAY. AND THAT'S THE --

6 HEARING OFFICER ROSS: BEFORE WE EMBARK UPON THE BAIL  
7 SCHEDULE, HOW MUCH LONGER DO YOU ANTICIPATE YOUR DIRECT TO BE?  
8 AND THE REASON I'M ASKING IS WOULD THIS BE A GOOD TIME TO TAKE  
9 A LUNCH BREAK?

10 MR. WONG: I ACTUALLY WASN'T PLANNING ON GOING LINE BY  
11 LINE.

12 HEARING OFFICER ROSS: OKAY.

13 MR. WONG: AND I DON'T THINK I WILL HAVE THAT MUCH  
14 MORE ON DIRECT.

15 HEARING OFFICER ROSS: OKAY. THAT'S FINE.

16 MR. WONG: SO I SUPPOSE IF WE WANTED TO BREAK, WE  
17 COULD. EITHER WAY I DON'T THINK IT'S GOING TO MAKE OR BREAK  
18 US.

19 HEARING OFFICER ROSS: OKAY, JOYCE, IT'S UP TO YOU.  
20 WHEN WOULD YOU LIKE A BREAK?

21 THE REPORTER: WHATEVER YOU'D LIKE TO DO. I MEAN I  
22 DON'T WANT TO WAIT ANOTHER HOUR, BUT --

23 HEARING OFFICER ROSS: OKAY. IF IT'S GOING TO BE LIKE  
24 MAYBE 30 MINUTES OR LESS FOR DIRECT --

25 MR. WONG: IT SHOULD BE.

1 HEARING OFFICER ROSS: -- YOU CAN CONTINUE AND  
2 COMPLETE THE DIRECT.

3 MR. WONG: OKAY.

4 HEARING OFFICER ROSS: OKAY?

5 BY MR. WONG:

6 Q NOW, IN THE DISCIPLINE AND EDUCATION GUIDE,  
7 LET'S TURN TO PAGE 28 OF THE GUIDE. SO I SEE THAT THERE ARE  
8 WHAT APPEAR TO BE TWO BRAND-NEW ENTRIES IN THE GUIDE. ONE IS  
9 OFF-DUTY DRIVING UNDER THE INFLUENCE AND POSSESSION AND/OR  
10 CONTROL OF A FIREARM.

11 SO IN THAT CASE WHERE THERE'S A NEW SPECIFIC  
12 VIOLATION THAT WAS ADDED, DID THAT NEW SPECIFIC VIOLATION FALL  
13 UNDER AN EXISTING SECTION OF THE MANUAL OF POLICIES AND  
14 PROCEDURES?

15 A ALL OF THESE PHRASES THAT ARE LISTED ARE MEANT  
16 TO BE EXAMPLES OF WAYS THAT ONE MANUAL SECTION CAN BE VIOLATED.  
17 THAT MANUAL SECTION IS OBEDIENCE TO LAWS, REGULATIONS AND  
18 ORDERS.

19 THIS TABLE HAS BEEN CHANGED MULTIPLE TIMES OVER  
20 THE DECADE AND A HALF THIS THING HAS EXISTED BECAUSE WE KEEP  
21 COMING UP WITH NEW CIRCUMSTANCES THAT WE WISH TO PROVIDE  
22 GUIDANCE FOR.

23 THERE'S NOTHING NEW ABOUT DEPUTIES BEING UNDER  
24 THE INFLUENCE OF ALCOHOL WHILE DRIVING AND WHILE CARRYING THEIR  
25 GUN. THE ONLY THING THAT'S NEW IS THAT WE ACTUALLY STATED IN

1           HERE THAT'S ONE OF THE KINDS OF CONCERNS WE HAVE AND THAT THE  
2           POSSESSION OF A FIREARM WORSENS THAT OFFENSE, SO WE SIMPLY  
3           ADDED THAT.

4                       THERE IS NOTHING -- AGAIN, THERE IS NOTHING NEW  
5           ABOUT THE CONDUCT AND NOTHING NEW ABOUT OUR UNDERSTANDING THAT  
6           IT'S WORSE WITH A FIREARM AND THEREFORE GIVING MORE DISCIPLINE.  
7           IT WAS JUST AN ATTEMPT TO CLARIFY AND TO MAKE THE DECISIONS IN  
8           THE FUTURE MORE CONSISTENT FOR DIFFERENT INDIVIDUALS IN  
9           DIFFERENT PARTS OF THE DEPARTMENT WHO COMMITTED THE SAME KIND  
10          OF OFFENSE.

11                   Q           OKAY. SO TO YOUR KNOWLEDGE DID -- AND FEEL  
12          FREE TO FLIP THROUGH THE ENTIRE DISCIPLINE AND EDUCATION GUIDE.  
13          BUT DID ANY OF THE CHANGES TO THE GUIDELINES AND SPECIFICALLY  
14          IN THE DISCIPLINE AND EDUCATION GUIDE, DID ANY OF THOSE CHANGES  
15          CREATE ANY NEW BASES FOR DEPUTY DISCIPLINE THAT PREVIOUSLY  
16          DIDN'T -- DIDN'T -- I'M SORRY -- THAT DIDN'T ALREADY EXIST IN  
17          THE M.P.P.?

18                   A           TO THE BEST OF MY KNOWLEDGE, NO. THE MANUAL  
19          SECTIONS LISTED ARE THE SAME AS THOSE IN PREVIOUS EDITIONS OF  
20          THIS GUIDE, AND THE ONLY THINGS THAT ARE ADDITIONAL ARE WRITTEN  
21          ACKNOWLEDGMENT THAT THERE ARE OTHER FORMS OF CONDUCT THAT MIGHT  
22          VIOLATE A GIVEN SECTION.

23                   Q           OKAY. LET ME ASK YOU. SO WHAT IS THE PURPOSE  
24          OF THESE GUIDELINES? OR LET ME ASK -- ASK IT THIS WAY. WHO IS  
25          THE TARGET AUDIENCE FOR THIS GUIDELINES FOR DISCIPLINE

1 HANDBOOK?

2 A I HAVEN'T THOUGHT THAT THROUGH CAREFULLY, BUT I  
3 BELIEVE IT'S LOGICAL TO PRESUME IT'S ANYBODY WHO IS INTERESTED  
4 BUT PRIMARILY DEPARTMENT MANAGERS WHO ARE ACCOUNTABLE FOR  
5 ADMINISTERING DISCIPLINE.

6 Q OKAY.

7 MR. WONG: COULD WE TAKE JUST A TWO-MINUTE BREAK?

8 HEARING OFFICER ROSS: ABSOLUTELY. OFF THE RECORD.

9

10 (RECESS.)

11

12 HEARING OFFICER ROSS: BACK ON THE RECORD.

13 MR. WONG: NOTHING FURTHER ON DIRECT.

14 HEARING OFFICER ROSS: ALL RIGHT.

15 I'M IMAGINING THAT YOUR CROSS-EXAMINATION WILL  
16 BE MORE THAN 15 MINUTES. WOULD THAT BE A GOOD GUESS?

17 MR. AITCHISON: YES.

18 HEARING OFFICER ROSS: OKAY. I WOULD LIKE TO TAKE A  
19 LUNCH BREAK NOW, THEN. LET'S COME BACK IN AN HOUR.

20 MR. AITCHISON: THAT'S GREAT.

21 AND, ALEX, WOULD IT BE POSSIBLE TO HAVE YOUR  
22 NEXT WITNESS READY TO GO --

23 MR. WONG: YES.

24 MR. AITCHISON: -- SAY AT 1:30?

25 MR. WONG: YES.

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MR. AITCHISON: GREAT.

HEARING OFFICER ROSS: PERFECT. THANK YOU.

(LUNCH RECESS.)

HEARING OFFICER ROSS: BACK ON THE RECORD.

MR. AITCHISON: THANK YOU.

CROSS-EXAMINATION

BY MR. AITCHISON:

Q GOOD AFTERNOON, MR. TYLER.

A HI.

Q MY NAME IS WILL AITCHISON AND I'M REPRESENTING  
ALADS.

A GOOD TO MEET YOU.

Q GOOD TO MEET YOU.

I TRIED TO ISOLATE WHAT YOU TESTIFIED TO AS TO  
THE IMPETUS BEHIND THE 2017 CHANGES IN THE DISCIPLINARY  
GUIDELINES, AND I THOUGHT I HEARD YOU SAY THERE WERE FOUR  
OVERRIDING FACTORS THAT SET THE LIEUTENANTS' COMMITTEE AND YOU  
ON YOUR MISSION.

I THOUGHT THE FOUR I HEARD WERE: A RESPONSE  
TO THE CITIZENS' COMMISSION ON JAIL VIOLENCE RECOMMENDATIONS;  
CONCERNS WITH COMPLIANCE WITH THE SUPREME COURT'S DECISION IN

1 BRADY V. MARYLAND; THE PERCEPTION OF A NEED TO DEAL WITH DRUNK  
2 DRIVING OFFENSES; AND I DON'T KNOW IF I WANT TO SAY "PROMISES"  
3 OR THINGS THAT THE SHERIFF HAD SAID WHILE CAMPAIGNING ABOUT THE  
4 NEED TO BRING A GREATER DEGREE OF INTEGRITY TO THE SHERIFF'S  
5 DEPARTMENT, PARTICULARLY THE HIGHER LEVELS OF THE SHERIFF'S  
6 DEPARTMENT.

7 WAS THERE ANYTHING ELSE?

8 A WELL, I'D MENTIONED ONE OTHER FACTOR THAT HAD  
9 TO DO WITH THE IMPAIRMENT OF THE PUBLIC TRUST THAT WE HAD  
10 SUFFERED --

11 Q OKAY.

12 A -- OVER THE LAST PART OF THE 2000'S AND EARLY  
13 2010'S.

14 Q IMPAIRMENT OF PUBLIC TRUST. SO WE HAVE A LIST  
15 OF FIVE HERE; RIGHT?

16 A RIGHT. AND I ACTUALLY LISTED SEVERAL DIFFERENT  
17 SPECIFIC KINDS OF CONDUCT THAT WERE ON THE SHERIFF'S  
18 DEPARTMENT'S RADAR MORE INTENTLY THAN THEY HAD POSSIBLY BEEN IN  
19 THE PAST.

20 Q RIGHT. THE DRUNK DRIVING --

21 A AND THE ALCOHOL ABUSE WAS ONE AND HONESTY AND  
22 SUCH.

23 Q RIGHT.

24 A SO THERE WERE TWO LISTS, TWO DIFFERENT LISTS IN  
25 MY HEAD, BUT MAYBE THAT'S JUST THE WAY I THOUGHT OF THEM.

1 Q I THINK I MAY HAVE PUT THEM TOGETHER FOR YOU,  
2 YEAH.

3 A THAT'S OKAY.

4 Q OKAY.

5 A BUT EVERYTHING YOU HAVE MENTIONED I DID  
6 MENTION.

7 Q OKAY. SO LET'S START WITH THE FIRST OF THEM,  
8 THE CITIZENS' COMMISSION ON JAIL VIOLENCE. MR. TYLER, WILL YOU  
9 PLEASE TURN TO EXHIBIT 15 IN THE BIG BOOK?

10 A OKAY.

11 Q I KNOW YOU DIDN'T TESTIFY TO THIS AND SO I'M  
12 GOING TO MAKE A REPRESENTATION TO YOU ABOUT WHAT THIS IS AND  
13 MR. WONG WILL CORRECT ME IF I'M WRONG.

14 A I'M SORRY. DID YOU SAY 15?

15 Q 15.

16 A OKAY.

17 Q IT IS A LETTER FROM DAN LOPEZ.

18 A YES, I'VE FOUND IT. YES, I'M ON THE RIGHT  
19 PAGE.

20 Q OKAY. THE REPRESENTATION I'M GOING TO MAKE TO  
21 YOU IS THAT IN 2013 THROUGH THE COMBINATION OF EXHIBIT 15 AND  
22 16 THAT THERE WERE CHANGES IN THE BAIL SCHEDULE MADE BY THE  
23 DEPARTMENT. AND I'M GOING TO QUOTE NOW FROM EXHIBIT 15:

24 "THAT WERE MADE IN RESPONSE  
25 TO RECOMMENDATIONS FROM THE CITIZENS'

1 COMMISSION ON JAIL VIOLENCE AND  
2 ARE SPECIFICALLY RELATED TO  
3 FALSE STATEMENTS, FALSE REPORTS,  
4 RETALIATION AGAINST INMATES AND  
5 PROFESSIONAL CONDUCT."

6 DO YOU RECALL THAT THERE WERE 2013 CHANGES, NOT  
7 2017 CHANGES IN THE BAIL SCHEDULE THAT WERE THE PRODUCT OF THE  
8 C.C.J.V.'S RECOMMENDATIONS?

9 A NOT SPECIFICALLY BECAUSE I WAS NOT ACTUALLY  
10 WORKING IN 2013 OR THE LATTER PART OF 2012. BUT I DID KNOW  
11 THAT WE HAD AGREED WITH THEIR RECOMMENDATIONS, AND IT'S LOGICAL  
12 TO PRESUME THAT THERE WERE SOME DIRECT CHANGES IN WHAT'S CALLED  
13 THE "BAIL SCHEDULE" -- WHICH IS AMBIGUOUSLY CALLED -- OR THE  
14 GUIDELINES FOR DISCIPLINE OR THE GUIDELINES FOR DISCIPLINE AND  
15 EDUCATION. IT'S GOT MORE THAN ONE TITLE.

16 SO I'M NOT SURPRISED ABOUT THAT. BUT THERE  
17 WERE SUBSEQUENT CHANGES MADE ABOUT SUBSEQUENT CONVERSATIONS  
18 WITH THEIR MONITOR, SUBSEQUENT DISCUSSIONS WITH THEIR C.C.J.V.  
19 MONITOR.

20 Q ALL RIGHT. WILL YOU POINT TO US, THEN, TO THE  
21 2017 CHANGES THAT WERE PRODUCED BY THE C.C.J.V.'S  
22 RECOMMENDATIONS OR THE RECOMMENDATIONS OF THE MONITOR THAT WERE  
23 NOT MADE IN 2013?

24 A I DON'T KNOW IF I CAN.

25 Q IF YOU CAN'T, THAT'S FINE.

1           A           I THINK --

2           Q           I DON'T WANT YOU TO GUESS.

3           A           NO.    THE ONE THAT'S FLOATING AROUND IN MY HEAD  
4           THAT I -- GOSH, THERE'S ONE ABOUT OUR ACCOUNTABILITY OR A  
5           STEPPED-UP ACCOUNTABILITY FOR USE OF EXCESS FORCE AND THE  
6           ATTENDANT CONCERNS OF REPORTED FORCE.

7                        I KNOW THAT THERE WERE SOME INITIAL CHANGES  
8           MADE TO -- OR AT LEAST I BELIEVE THAT THERE WERE SOME INITIAL  
9           CHANGES MADE SHORTLY AFTER THE RECOMMENDATIONS CAME OUT AS IN  
10          2013 AS THIS DOCUMENT INDICATES, BUT THAT BECAUSE WE AGREED TO  
11          ALLOW A MONITOR FROM THEIR GROUP TO CONTINUE TO OVERSEE OUR  
12          ADMINISTRATION OF THOSE FAIRLY COMPLICATED RECOMMENDATIONS THAT  
13          REQUIRED A LOT OF CHANGE IN HOW WE DID THINGS, THAT IN THESE  
14          PERIODIC DISCUSSIONS WITH THE C.C.J.V. MONITOR THAT SOME  
15          ADDITIONAL TWEAKS OR MODIFICATIONS TO THE GUIDELINES HAD THEN  
16          BECOME NECESSARY.  AND I WAS NOT INVOLVED IN THOSE DISCUSSIONS  
17          SO --

18                  Q           WELL, A SIMPLE QUESTION, THEN.  CAN YOU POINT  
19          TO US ANYTHING IN THE 2017 CHANGES THAT IS THE PRODUCT OF THE  
20          C.C.J.V. MONITOR'S RECOMMENDATIONS?

21                  A           DO YOU MEAN THE CHANGES TO THE DISCIPLINE AND  
22          EDUCATION GUIDE?

23                  Q           YES.

24                  A           OKAY.  I DON'T BELIEVE I CAN.

25                  Q           OKAY.

1           A           I DON'T KNOW WHICH CHANGES WERE INSPIRED BY  
2           THEIR INPUT.

3           Q           ALL RIGHT. THE SECOND THING YOU LISTED WAS THE  
4           NEED TO COMPLY WITH BRADY V. MARYLAND. AND YOU WOULD AGREE  
5           WITH ME THE BRADY RULE INVOLVES THE POTENTIAL DISCLOSURE OF LAW  
6           ENFORCEMENT DISCIPLINARY RECORDS IN A CRIMINAL CASE AS PART OF  
7           THE PROSECUTION'S OBLIGATION TO DISCLOSE POTENTIALLY  
8           EXCULPATORY INFORMATION?

9           A           YES.

10          Q           OKAY.

11          A           YES.

12          Q           ARE YOU AWARE OF THE FACT THAT BRADY WAS  
13          DECIDED 55 YEARS AGO?

14          A           I'M AWARE IT WAS DECIDED IN I BELIEVE '61. IS  
15          THAT THE DATE?

16          Q           1963.

17          A           '53 [SIC]? OKAY. I DIDN'T RECALL THE DATE. I  
18          KNOW THAT THAT OCCURRED AND THEN THERE WAS SUBSEQUENT CASE LAW  
19          ABOUT IT WHICH HAS AFFECTED US SINCE THEN.

20          Q           IS THERE ANYTHING IN EXHIBIT A-5, WHICH IS THE  
21          2017 CHANGES THAT WE'RE TALKING ABOUT, IS THERE ANYTHING THAT  
22          EVEN USES THE WORD "BRADY"?

23          A           NOT THAT I REMEMBER, NO.

24          Q           THE THIRD THING THAT YOU CITED WAS A CONCERN  
25          ABOUT DRUNK DRIVING. I JUST WANT TO MAKE SURE I UNDERSTOOD

1 YOUR TESTIMONY. YOU DID NOT RECALL WHAT THE TREND WAS WITH  
2 RESPECT TO THE FREQUENCY OF REPETITIVE DRUNK DRIVING, WHETHER  
3 IT WAS GOING UP OR GOING DOWN? YOU JUST DON'T RECALL WHAT THAT  
4 WAS, IF THERE WAS ONE?

5 A I BELIEVE THAT THERE WAS NOT A LONG-TERM TREND  
6 OTHER THAN IF YOU GO BACK FAR ENOUGH THERE HAD BEEN MORE THAN  
7 THERE WERE IN THE '20'S, '30'S AND '40'S BECAUSE THERE ARE MORE  
8 PEOPLE ON THE DEPARTMENT. BUT I'M NOT AWARE OF, FOR INSTANCE,  
9 A TEN-YEAR TREND. I BELIEVE THE NUMBERS FLUCTUATED BUT I DO  
10 NOT HAVE THE NUMBERS IN MY HEAD.

11 Q NOW, LOOKING AT EXHIBIT A-5 AND IN PARTICULAR  
12 THE --

13 LET'S CLEAN UP SOMETHING ELSE, IF WE MIGHT, ON  
14 PAGE 25, SUBSECTION E.

15 HEARING OFFICER ROSS: ARE WE TALKING ABOUT A-5?

16 MR. AITCHISON: A-5.

17 HEARING OFFICER ROSS: THANK YOU.

18 MR. AITCHISON: YES.

19 BY MR. AITCHISON:

20 Q MR. TYLER, YOU REMEMBER TESTIFYING ON DIRECT  
21 THAT THIS LANGUAGE HAD APPEARED IN PREVIOUS VERSIONS OF THE  
22 DISCIPLINARY HANDBOOK?

23 HEARING OFFICER ROSS: ARE WE TALKING ABOUT E?

24 MR. AITCHISON: E, YES.

25 HEARING OFFICER ROSS: THANK YOU.

1 THE WITNESS: THAT'S MY RECOLLECTION.

2 BY MR. AITCHISON:

3 Q MR. TYLER, THAT CAN'T BE TRUE, CAN IT, BECAUSE  
4 IF YOU'LL LOOK AT THE LAST PARAGRAPH ON PAGE 25 IT REFERS TO  
5 THE LEVELS OF DISCIPLINE WHICH DID NOT EXIST BEFORE 2017;  
6 CORRECT?

7 A THAT'S CORRECT. THAT SECOND PARAGRAPH I SHOULD  
8 NOT HAVE TESTIFIED THAT WAY TO BECAUSE I DON'T BELIEVE THAT WAS  
9 IN THERE NOW THAT YOU POINT IT OUT. I REMEMBERED THE FIRST  
10 PARAGRAPH BUT NOT THE SECOND.

11 Q LET'S LOOK NOW AT THE BAIL SCHEDULE ITSELF  
12 STARTING ON PAGE 27. WOULD YOU AGREE WITH ME, MR. TYLER, THAT  
13 AN EMPLOYER THAT IS FACING NON-COMPLIANCE WITH ITS RULES ON THE  
14 PART OF AN EMPLOYEE HAS A VARIETY OF OPTIONS AS TO HOW TO DEAL  
15 WITH THAT NON-COMPLIANCE?

16 A YES.

17 Q ONE OF THOSE OPTIONS COULD BE DISCIPLINE;  
18 CORRECT?

19 A CORRECT.

20 Q ONE OF THOSE OPTIONS COULD BE RETRAINING;  
21 CORRECT?

22 A CORRECT.

23 Q AND ONE OF THOSE OPTIONS MIGHT BE SUPERVISORY  
24 INTERVENTION IN THE FORM OF A COMMAND COUNSELING OR WHATEVER  
25 THE PHRASE IS USED IN THE SHERIFF'S DEPARTMENT?

1 A CORRECT.

2 Q ANOTHER OF THE OPTIONS MIGHT BE PUTTING THE  
3 EMPLOYEE, PUTTING THE DEPUTY WITH, FOR EXAMPLE, SOMEONE IN A  
4 MENTORSHIP ROLE WITH RESPECT TO PARTICULAR ISSUES; CORRECT?

5 A CORRECT.

6 Q HERE WE HAVE THE DISCIPLINARY COMPONENT;  
7 CORRECT?

8 A CORRECT.

9 Q BEFORE YOU SIGNED -- YOU SIGNED OFF ON THESE  
10 RECOMMENDATIONS; RIGHT?

11 A I DON'T REMEMBER IF I SIGNED ANY PARTICULAR  
12 DOCUMENT, BUT I WAS PART OF THE DEVELOPMENT OF THIS THING.

13 Q AND YOU SUPPORTED THESE CHANGES?

14 A YES.

15 Q OKAY. WHAT ANALYSIS DID YOU OR ANYBODY  
16 ASSOCIATED WITH THIS PROJECT DO OF WHETHER THE ALTERNATIVES TO  
17 DISCIPLINARY ACTION MIGHT BE MORE EFFECTIVE THAN SIMPLY  
18 INCREASING PUNISHMENT?

19 A THE ANALYSIS I DID WAS BEING IN THE SHERIFF'S  
20 DEPARTMENT FOR 42 YEARS AND WATCHING HOW WE ATTEMPTED TO USE  
21 THOSE OTHER METHODS WITH VARYING DEGREES OF SUCCESS, SEEING THE  
22 DEPARTMENT EMPLOY MENTORING ON A VERY SYSTEMATIC BASIS FROM THE  
23 YEAR 2000 -- I'M SORRY -- 1996 AND ON IN A PERFORMANCE  
24 MENTORING PROGRAM AND SEEING WHICH THINGS WORKED IN A LONG-TERM  
25 MANNER AND WHICH THINGS DIDN'T WORK SO WELL.

1                   NOW, THERE WAS NO SYSTEMATIC ANALYSIS IN TERMS  
2 OF A REPORT OR SOME STATISTICAL ANALYSIS THAT I DID, BUT I'M  
3 GENERALLY FAMILIAR WITH THE FACT THAT WE'VE TRIED EVERY OPTION  
4 THAT YOU LISTED IN VARYING DEGREES WHENEVER THERE'S AN  
5 OPPORTUNITY TO DO SO AND WE SEE A PERSON MAKING SHORTSIGHTED  
6 DECISIONS OR NOT UNDERSTANDING THE RULES.

7                   AND DISCIPLINE IS SOMETIMES NECESSARY RIGHT  
8 OUT OF THE GATE IF IT'S AN OFFENSE THAT IS SERIOUS ENOUGH AND  
9 AT OTHER TIMES IT'S NOT NECESSARY IF WE HAVE DONE COUNSELING  
10 AND MENTORING AND RETRAINING AND FOCUSED SUPERVISORY  
11 ATTENTION.

12                 Q           NOW, I UNDERSTAND EVERYTHING THAT YOU HAVE  
13 JUST SAID AND I AGREE WITH IT. BUT IT IS STRIKING THAT EVERY  
14 SINGLE CHANGE IMPLEMENTED WITH RESPECT TO THE BAIL SCHEDULE  
15 INCREASES PENALTIES EITHER AT THE LOWER END OR AT THE HIGHER  
16 END, AND THERE IS NO DISCUSSION IN THIS ENTIRE DOCUMENT, THE  
17 GUIDELINES, OF THE EXPANDED CONSIDERATION OF RETRAINING OR  
18 SUPERVISORY INTERVENTION OR COUNSELING OR WHATEVER IT MIGHT BE.  
19 WHY?

20                 A           THE FIRST REASON I CAN THINK OF IS THAT THERE  
21 WAS A MASSIVE QUALITATIVE SEA-CHANGE IN OUR ADMINISTRATION  
22 OF DISCIPLINE ENGINEERED AT SHERIFF BACA'S DIRECTION IN THE  
23 MID 2000'S CALLED "EDUCATION-BASED DISCIPLINE" AND, TO USE A  
24 METAPHOR, THE PENDULUM SWUNG VERY, VERY FAR TOWARD HIS INTEREST  
25 IN EMPHASIZING EDUCATION OVER DISCIPLINE.

1                   THERE'S A LARGE CHUNK OF THIS DOCUMENT THAT  
2 DIDN'T USED TO EXIST. IT'S ONLY AS NEW AS ABOUT 2007 ABOUT  
3 E.B.D. AS WE CALL IT, AND I'D SAY THAT THE DEPARTMENT HAD GIVEN  
4 AN UNPRECEDENTED AMOUNT OF ATTENTION TO EDUCATION OVER THE PAST  
5 I'LL SAY TEN YEARS, ANYWAY.

6                   SO TO IMPLY THAT WE WEREN'T MINDFUL OF THAT  
7 COMPONENT BECAUSE WE RAISED THE DISCIPLINE IN THESE CATEGORIES  
8 WHERE WE WERE CONCERNED ABOUT THE PUBLIC TRUST AND  
9 ACCOUNTABILITY MISSES THE FACT THAT HISTORICALLY WITH THAT  
10 PROGRAM AND WITH OUR OTHER PROGRAM CALLED "PERFORMANCE  
11 MENTORING" WE HAD TAKEN LARGE STRIDES -- AND THEY ARE STILL  
12 USING THOSE APPROACHES TODAY -- TOWARD MAKING DISCIPLINE LESS  
13 PAINFUL, ESPECIALLY FINANCIALLY, TO THE PEOPLE WHO MAKE  
14 MISTAKES WHEN WE CAN.

15                   Q           SO I ASSUME, THEN, THAT BEFORE SUPPORTING THE  
16 INCREASE IN ALL OF THESE PENALTIES UNDER THE BAIL SCHEDULE YOU  
17 HAD DONE OR HAD SOMEBODY DO AT YOUR DIRECTION SOME SORT OF  
18 STATISTICAL ANALYSIS OF WHETHER THESE ALTERNATIVES TO  
19 DISCIPLINE WERE MORE EFFECTIVE IN CONTROLLING THE CONDUCT THAN  
20 DISCIPLINE?

21                   A           I'M NOT AWARE OF A STATISTICAL ANALYSIS ABOUT  
22 THE EFFECT OF E.B.D. OR PERFORMANCE MENTORING. I'M GENERALLY  
23 AWARE, THOUGH, THAT WE USE THEM AS MUCH AS POSSIBLE AND IF WE  
24 SEE THEY'RE WORKING -- DISCIPLINE DOESN'T OCCUR OR DOESN'T  
25 RECUR OR IS NECESSARY IN SMALLER DOSES -- FOR PEOPLE WHO ARE

1 MAKING MISTAKES OR BAD DECISIONS, BUT I JUST DON'T HAVE A  
2 STATISTICAL ANALYSIS ABOUT IT.

3 Q DID ANYBODY IN THE DEPARTMENT DO THAT  
4 STATISTICAL ANALYSIS TO YOUR KNOWLEDGE?

5 A NOT THAT I'M AWARE OF.

6 Q AND IN FACT THESE --

7 Q YOU KNOW, I TAKE THAT BACK. I BELIEVE, YES,  
8 THERE HAVE BEEN SOME STUDIES. I DON'T KNOW IF YOU'D CREDIT  
9 THEM WITH THE TERM "STATISTICAL ANALYSIS," BUT THERE HAVE BEEN  
10 STUDIES DONE BY WHAT WE CALL OUR RISK MANAGEMENT BUREAU WHO  
11 ADMINISTERS THE PERFORMANCE MENTORING PROGRAM AND REPORTS ON  
12 ITS LEVEL OF EFFECTIVENESS OVER THE YEARS.

13 PERFORMANCE MENTORING HAS NOTHING TO DO WITH  
14 DISCIPLINE. IT'S SOMETHING THAT WE DO FOR PEOPLE THAT ARE  
15 OBSERVED TO BE LOWER-LEVEL PERFORMERS OR PEOPLE WHO ARE MORE  
16 FREQUENTLY ERRANT THAN OTHERS AND WHO SEEM TO BE IN NEED OF  
17 MENTORING. AND THAT PROGRAM HAS HELPED A NUMBER OF PEOPLE  
18 CHANGE THEIR DECISION-MAKING SUCH THAT THEY WEREN'T AFFECTED BY  
19 THE GUIDELINES FOR DISCIPLINE IN SUBSEQUENT STAGES OF THEIR  
20 CAREER.

21 I KNOW THERE ARE REPORTS LIKE THAT. I JUST  
22 DON'T KNOW IF THEY QUALIFY AS STATISTICAL ANALYSES.

23 Q YOU ARE AWARE, OF COURSE, THAT THESE 2017  
24 CHANGES TO THE GUIDELINES CUT BACK ON THE AVAILABILITY OF  
25 E.B.D.?

1           A           I KNOW THERE ARE CERTAIN WAYS IN WHICH THEY  
2 ARE CUT BACK, THE AVAILABILITY IS CUT BACK, YES. I RECALL  
3 THAT.

4           Q           WELL, THEY'RE CUT BACK. E.B.D., WHICH IS AN  
5 ALTERNATIVE TO SIMPLY DISCIPLINE -- WELL, LET'S TAKE A LOOK AT  
6 PAGE 12 OF THIS DOCUMENT.

7           A           OKAY.

8           Q           ACTUALLY, I THINK THE MORE HELPFUL PAGE IS PAGE  
9 15 WHICH IS THE TABLE.

10          A           OKAY.

11          Q           SO E.B.D. IN THE PAST WAS AVAILABLE FOR  
12 OFFENSES THAT IN THE -- THE TOTAL NUMBER OF SUSPENSION DAYS  
13 THAT WOULD BE IMPOSED WAS AVAILABLE UP TO A 15-DAY SUSPENSION;  
14 CORRECT?

15          A           I SEE THAT, YES.

16          Q           OKAY. AND UNDER THESE CHANGES IT'S REDUCED,  
17 ONLY AVAILABLE UP TO A 10-DAY SUSPENSION; CORRECT?

18          A           I SEE THAT.

19          Q           OKAY. BY THE WAY, IS THERE A MISTAKE HERE? IF  
20 YOU'LL LOOK AT THAT LINE THAT NOW SAYS 6 TO 10 DAYS AND YOU SEE  
21 MINIMUM CREDITS WHERE IT SAYS 6 TO 15 CREDITS, SHOULDN'T THAT  
22 BE 6 TO 10 CREDITS?

23          A           PROBABLY.

24          Q           OKAY.

25          A           I DON'T KNOW. I AM NOT FAMILIAR WITH THIS

1 TABLE OR ITS GENESIS. I'VE JUST NEVER BEEN THAT KNOWLEDGEABLE  
2 ABOUT THE DETAILS OF E.B.D. SO I THINK YOU'RE PROBABLY RIGHT  
3 ABOUT THAT, BUT I CAN'T SWEAR TO IT.

4 Q ALL RIGHT. AND IF I'M READING THE TABLE  
5 CORRECTLY, THE NEXT ROW, THE ONE THAT SAYS 11 TO 30 DAYS --

6 A RIGHT. I SEE THAT.

7 Q -- EXPLICITLY SAYS:

8 "NO E.B.D. PROGRAMS FOR WHAT  
9 WOULD HAVE BEEN AN 11- TO 15-DAY  
10 SUSPENSION."

11 ALTHOUGH E.B.D. COULD BE USED FOR THE FIRST 10  
12 DAYS OF THE SUSPENSION WITH THE APPROVAL OF THE CHIEF. IS THAT  
13 THE WAY THAT WORKS?

14 A YES.

15 Q ALL RIGHT.

16 A I BELIEVE YOU'VE STATED IT CORRECTLY.

17 Q ALL RIGHT. AND, BY THE WAY, WHEN YOU'VE GOT  
18 SOMETHING THAT IS IN THE DEPARTMENT'S MANUAL OR WHEN YOU HAVE  
19 THESE GUIDELINES FOR DISCIPLINE, DO EMPLOYEES HAVE THE RIGHT TO  
20 RELY ON THE WORDS THAT ARE USED BY THE DEPARTMENT IN THESE  
21 DOCUMENTS, THESE SORTS OF DOCUMENTS?

22 A AS MUCH AS MANAGERS DO, YES.

23 Q OKAY. AND EMPLOYEES, I ASSUME, HAVE -- YOU  
24 WOULD ASSUME THAT EMPLOYEES READING THESE WOULD USE THEIR  
25 COMMON UNDERSTANDING AS TO WHAT THE WORDS ARE IN THESE

1 POLICIES?

2 A YES.

3 Q AND TO YOU, THE WORD "SHALL" MEANS MUST;  
4 CORRECT?

5 A YES.

6 Q AND IN THIS POLICY, IF SHALL IS USED, THAT  
7 MEANS SOMETHING MUST OCCUR; CORRECT?

8 A YES.

9 Q SO LET'S TAKE A LOOK AT PAGE 10, SECTION J.  
10 YOU TESTIFIED A BIT IN DIRECT ABOUT THIS. THIS IS THE ONE WITH  
11 I THINK OF IT AS STACKING CHARGES. YOU PROBABLY WOULD USE A  
12 DIFFERENT PHRASE TO DESCRIBE IT, BUT LET'S WORK THROUGH THIS  
13 NEW LANGUAGE THAT WAS WRITTEN HERE.

14 AND THE FIRST SENTENCE OF THE NEW LANGUAGE  
15 SAYS:

16 "EACH M.P.P. SECTION VIOLATED  
17 BY A SINGLE ACT OR SINGLE CATEGORY  
18 OF BEHAVIOR SHALL BE LISTED IN THE  
19 DISPOSITION WORKSHEET AS A SINGLE  
20 ENUMERATED CHARGE."

21 DOES THAT MEAN TO YOU THAT THERE'S AN  
22 OBLIGATION ON THE PART OF SUPERVISORS WHEN THERE IS A GIVEN  
23 FACT PATTERN THAT IMPLICATES MORE THAN ONE PROVISION OF THE  
24 M.P.P. THAT EACH ONE OF THOSE SECTIONS WILL BE SEPARATELY  
25 LISTED?

1 A THAT'S WHAT THE SENTENCE INDICATES TO ME.

2 Q NOW, LET'S LOOK AT THE LAST SENTENCE. IT  
3 READS:

4 "IN GENERAL, HIGHER NUMBERS  
5 OF SEPARATE ENUMERATED CHARGES  
6 SHALL BE CONSIDERED FOR HIGHER  
7 DISCIPLINE."

8 DOES THAT MEAN THE MORE CHARGES THAT ARE  
9 LISTED, THE HIGHER THE DISCIPLINE IN GENERAL I THINK THE PHRASE  
10 IS?

11 A IN GENERAL, YES.

12 Q OKAY. AND YOU COULD HAVE -- UNDER THIS SYSTEM,  
13 THIS NEW SYSTEM, YOU COULD HAVE POTENTIALLY OVER A DOZEN  
14 PROVISIONS OF THE M.P.P. IMPLICATED BY THE SAME BEHAVIOR;  
15 CORRECT?

16 A POTENTIALLY, YES.

17 Q ALL RIGHT. AND IN THE PAST, LET'S LOOK AT THE  
18 LANGUAGE THAT IS STRUCK OUT HERE. THE FIRST SENTENCE THAT IS  
19 STRUCK OUT:

20 "IF THE ADDITIONAL VIOLATIONS  
21 ONLY AMOUNT TO LESSER-INCLUDED  
22 OFFENSES THEY SHOULD NOT BE USED  
23 IN THE DISPOSITION."

24 DOES "SHOULD NOT" MEAN THE SAME THING AS SHALL  
25 TO YOU?

1           A           POTENTIALLY, DEPENDING ON HOW THE PERSON  
2 INTERPRETS IT. BUT YOU CAN ARGUE "SHOULD" IS JUST ADVICE AND  
3 NOT DIRECTION.

4           Q           THE PRACTICE BEFORE, THOUGH, WAS THAT  
5 LESSER-INCLUDED OFFENSES WOULD NOT BE INCLUDED. IF YOU TOOK  
6 THE MAIN CHARGE, LESSER INCLUDED WOULD NOT BE INCLUDED;  
7 CORRECT?

8           A           WELL, I HATE THE TERM "LESSER INCLUDED," BUT I  
9 GUESS I'M GOING TO HAVE TO SAY I UNDERSTAND WHAT YOU'RE SAYING  
10 AND THAT'S WHAT THAT MEANT TO CONVEY.

11          Q           AND THAT'S WHAT THE PRACTICE WAS; CORRECT?

12          A           THE "LESSER INCLUDED" BEING AN IMPRECISE TERM,  
13 YES, THAT WAS THE PRACTICE FOR A WHILE DURING MY BEING A  
14 CAPTAIN AND COMMANDER.

15          Q           ALL RIGHT. BY THE WAY, DO YOU BELIEVE THAT  
16 DISCIPLINARY RULES ARE MORE EFFECTIVE IF RANK-AND-FILE  
17 EMPLOYEES BUY INTO THEM, BUY INTO THE PURPOSES BEHIND THEM?

18          A           JUST GENERALLY, YES.

19          Q           OKAY. AND DO YOU AGREE THAT RANK-AND-FILE  
20 EMPLOYEES WILL HAVE MORE OF AN OWNERSHIP INTEREST OVER  
21 DISCIPLINARY RULES IF THEY ARE INVOLVED IN THE DEVELOPMENT OF  
22 THOSE RULES?

23          A           POTENTIALLY THAT COULD BE HELPFUL.

24          Q           WELL, I'M GOING TO ASK ANOTHER ONE OF THESE  
25 QUESTIONS THAT I SHOULDN'T. WHY, THEN, DID THE SHERIFF'S

1 DEPARTMENT NOT INVOLVE ALADS IN THE DEVELOPMENT OF THESE  
2 CHANGED RULES?

3 MR. WONG: OBJECTION. I THINK IT LACKS FOUNDATION.

4 HEARING OFFICER ROSS: OVERRULED. YOU MAY ANSWER THE  
5 QUESTION.

6 THE WITNESS: AS I'VE STATED EARLIER, MY INTENTION  
7 AND HOPE WAS THAT AFTER I HAD DONE MY MODIFICATIONS TO THIS  
8 DOCUMENT, WHICH I'VE SINCE LEARNED WITHOUT YOUR HELP BUT ALSO  
9 WITH YOUR HELP THEY ARE NOT ALL PERFECTLY WORDED MYSELF, I WAS  
10 PRESUMING THAT MANY PEOPLE WOULD REVIEW MY GRAMMATICAL CHANGES  
11 AS WELL AS I KNOW REVIEWED WHAT'S BEING CALLED THE BAIL  
12 SCHEDULE. AND I ALWAYS WELCOME ALADS' INPUT ON SUCH THINGS.  
13 IF DEREK COMES TO ME AND SAYS, BOY, DID YOU WRITE A SCREWED UP  
14 THING HERE, I ALWAYS PAID ATTENTION WHEN DEREK TOLD ME AND HIS  
15 PREDECESSORS.

16 SO I'M NOT AWARE THAT THEY DIDN'T HAVE AN  
17 OPPORTUNITY TO COMMENT ON THE CHANGES THAT WERE MADE. I  
18 BELIEVED THEY WERE BEING GIVEN THAT OPPORTUNITY IN THE MANY  
19 MONTHS IT TOOK FROM THE TIME I FINISHED MY WORK ON THIS TO THE  
20 TIME IT WAS ULTIMATELY APPROVED.

21 BY MR. AITCHISON:

22 Q DO YOU BELIEVE THAT THE ABILITY TO COMMENT IS  
23 THE EQUIVALENT OF THE ABILITY TO MEET AND CONFER OVER THE  
24 CHANGES?

25 A I THINK THE OPERATIVE CONSIDERATION IN MY MIND

1 IS NO MATTER WHAT YOU CALL THE OPPORTUNITY, WHETHER IT'S MEET  
2 AND CONFER OR COMMENTING OR MEETING TO COMMENT OR JUST HAVING  
3 A DISCUSSION ABOUT IT OR A PHONE CALL OR AN E-MAIL, IT'S  
4 WHETHER WE'RE WILLING TO LISTEN, WHICH I CAN TELL YOU I ALWAYS  
5 WAS BECAUSE THE UNION HAS HELPED ME REVISE SHORTSIGHTED  
6 PASSAGES I'VE WRITTEN ON MULTIPLE OCCASIONS THAT I CAN CITE  
7 HERE, IF YOU WANT, WHICH I DON'T THINK YOU DO. BUT I VALUE  
8 THE UNION'S INPUT, AND IF RIGHT NOW DEREK CAN SHOW ME 20 THINGS  
9 WRONG WITH THE WAY I WROTE THIS I WOULD SAY, GOSH, GREAT,  
10 THANKS.

11 Q BUT ARE YOU AWARE OF THE FACT THAT THE  
12 SHERIFF'S DEPARTMENT REFUSED TO MEET AND CONFER WITH ALADS  
13 ABOUT THESE CHANGES?

14 A I'M NOT.

15 Q OKAY. YOU SPOKE A LITTLE BIT ABOUT UNINTENDED  
16 DISCHARGES AND HOW THE NEW RULES AFFECT UNINTENDED DISCHARGES.  
17 ARE YOU AWARE OF A DOCUMENT PREPARED BY THE INSPECTOR GENERAL  
18 IN DECEMBER 2015 CALLED "ASSESSING THE RISE IN UNINTENDED  
19 DISCHARGES FOLLOWING THE SHERIFF'S DEPARTMENT'S CONVERSION TO A  
20 NEW HANDGUN"?

21 A I REMEMBER THEIR INTEREST IN THE PROBLEM AND I  
22 REMEMBER THAT THEY HAD SAID THAT THEY WERE GOING TO HELP US  
23 ASSESS IT OR ANALYZE IT, BUT I DON'T REMEMBER THE SPECIFIC  
24 REPORT.

25 Q WERE YOU A SHERIFF'S DEPARTMENT -- I THINK YOU

1 WERE A SHERIFF'S DEPARTMENT EMPLOYEE IN DECEMBER OF 2015;  
2 CORRECT?

3 A I WAS.

4 Q AND DO YOU HAVE A RECOLLECTION THAT THE  
5 RECOMMENDATION OF THE INSPECTOR GENERAL OR THE CONCLUSION OF  
6 THE INSPECTOR GENERAL WAS THAT THE PROBLEM WITH UNINTENDED  
7 DISCHARGES, THE MAJOR PROBLEM, WAS A LACK OF APPROPRIATE  
8 TRAINING BY THE SHERIFF'S DEPARTMENT?

9 A I DON'T RECALL THAT, BUT I AM NOT SURPRISED.

10 Q BY THE WAY, YOU WERE A DEPUTY SHERIFF I ASSUME  
11 LONG AGO?

12 A YES.

13 Q WOULD YOU AGREE WITH ME THAT DISCIPLINE IS AN  
14 IMPORTANT WORKING CONDITION FOR DEPUTY SHERIFFS?

15 A WELL, GOSH, I NEVER THOUGHT OF IT AS A WORKING  
16 CONDITION WHEN I WAS A DEPUTY. I KNEW I MIGHT BE DISCIPLINED  
17 IF I MADE A SUFFICIENTLY LARGE MISTAKE AND I MADE PLENTY, BUT I  
18 WAS NEVER DISCIPLINED. I WAS COUNSELED AND MENTORED AND  
19 WHATEVER.

20 Q WELL --

21 A SO I DIDN'T THINK ABOUT IT THAT MUCH.

22 A WITHOUT REGARD TO WHETHER YOU THOUGHT ABOUT IT,  
23 I MEAN LOOKING AT IT NOW UNDERSTANDING THE VARIETY OF WORKING  
24 CONDITIONS THAT DEPUTIES HAVE, IS DISCIPLINE AN IMPORTANT ONE  
25 FOR THEM?

1 MR. WONG: OBJECTION. CALLS FOR SPECULATION.

2 MR. AITCHISON: I'LL WITHDRAW. I'LL WITHDRAW.

3 HEARING OFFICER ROSS: YES.

4 MR. AITCHISON: THAT'S FINE.

5 HEARING OFFICER ROSS: IT WOULD JUST BE THIS  
6 INDIVIDUAL'S OPINION. I DON'T THINK HE'S AN EXPERT IN WORKING  
7 CONDITIONS AS A LEGAL TERM OF ART.

8 MR. AITCHISON: OKAY. WELL, I TRIED.

9 HEARING OFFICER ROSS: YES, AND YOU GET POINTS FOR  
10 THAT.

11 BY MR. AITCHISON:

12 Q TURN TO PAGE 7, IF YOU COULD, OF EXHIBIT A-5,  
13 PREDISPOSITION SETTLEMENT AGREEMENTS OR AS THEY'RE CALLED  
14 "P.D.S.A'S."

15 I BELIEVE IN ANSWER TO QUESTIONS ASKED BY  
16 MR. WONG YOU SAID BASICALLY THERE WERE THREE REASONS FOR THE  
17 CHANGES HERE. THE FIRST YOU CITED WAS THAT THE LIEUTENANTS'  
18 COMMITTEE HAD RECOMMENDED SOME CHANGES. THE SECOND WAS WHEN  
19 YOU WENT THROUGH IT YOU THOUGHT THERE WERE GRAMMATICAL AND  
20 STRUCTURAL PROBLEMS AND YOU THOUGHT IT NEEDED TO BE FIXED. AND  
21 THE THIRD WAS THAT THESE CHANGES CAME OUT IN PART AS A RESULT  
22 OF THE C.C.J.V. RECOMMENDATIONS. DO YOU REMEMBER THAT  
23 TESTIMONY?

24 MR. WONG: AND I'M JUST GOING TO MAKE A MINOR  
25 OBJECTION. I THINK THAT MISSTATES HIS PRIOR TESTIMONY BECAUSE

1 HE TESTIFIED, I THINK, THAT THAT APPLIED TO ALL THE CHANGES IN  
2 THE DOCUMENT.

3 MR. AITCHISON: ACTUALLY, WELL --

4 HEARING OFFICER ROSS: OKAY. CAN WE START THAT  
5 QUESTION AFRESH --

6 MR. AITCHISON: SURE.

7 HEARING OFFICER ROSS: -- WITHOUT REFERENCE TO WHAT HE  
8 TESTIFIED TO EARLIER?

9 MR. AITCHISON: SURE.

10 HEARING OFFICER ROSS: THANK YOU.

11 BY MR. AITCHISON:

12 Q WERE THERE THREE REASONS FOR THESE CHANGES TO  
13 THE P.D.S.A. SECTIONS OF THE DISCIPLINARY GUIDELINES: THE  
14 SUGGESTIONS OF THE LIEUTENANTS' COMMITTEE THAT THEY BE CHANGED;  
15 YOUR OWN INPUT BECAUSE OF YOUR CONCERNS ABOUT UNDERSTANDABILITY  
16 IN THE LANGUAGE, THE GRAMMATICAL NATURE OF THE LANGUAGE; AND  
17 THE C.C.J.V. RECOMMENDATIONS?

18 A WELL, THE THIRD IDENTIFIED CATEGORY IS MISSING  
19 SOME OF WHAT I BELIEVE I HAD EARLIER TESTIFIED INFLUENCED THE  
20 CHANGES HERE.

21 IT WAS NOT JUST THE C.C.J.V.'S RECOMMENDATIONS  
22 AND SUBSEQUENT MONITOR'S INPUT, BUT IT WAS ALSO THE PRACTICES  
23 THAT WE HAD ALREADY ADOPTED OR DIRECTION FROM THREE SHERIFFS  
24 OVER THE COURSE OF THE TIME PERIOD INVOLVED HERE AND BRIEFING  
25 MEMOS AND DIRECTIONAL MEMOS FROM VARIOUS EXECUTIVES WHO WERE

1 AT THE TIME EMPOWERED TO PUT THEM OUT, AND THEY WEREN'T  
2 FINDABLE OR EASILY USABLE IN THE FORM OF A RAGTAG BUNCH OF  
3 STUFF.

4 SO THAT AS WELL AS THE C.C.J.V. IS WHAT ENDED  
5 UP AS INPUT THROUGHOUT THE WHOLE DOCUMENT AND WOULD ALSO INFORM  
6 SOME OF THE CHANGES HIGHLIGHTED IN SECTION G.

7 Q AND, MR. TYLER, I'M JUST WONDERING HOW THE  
8 C.C.J.V. COULD HAVE ANY IMPACT GIVEN THAT IN THE 205 PAGES OF  
9 THE C.C.J.V.'S RECOMMENDATIONS THERE IS NOT ONE REFERENCE TO  
10 P.D.S.A.'S?

11 A I'M SORRY. TO WHAT?

12 Q TO PREDISPOSITION SETTLEMENT AGREEMENTS.

13 A OH, OKAY, OKAY. I SEE. I'M SORRY. WAS THAT A  
14 QUESTION?

15 Q YES.

16 A OKAY.

17 Q I'M WONDERING HOW IT COULD BE THE CASE --

18 A ALL RIGHT.

19 Q -- THAT C.C.J.V. INFLUENCED THIS WHEN THERE'S  
20 NOT ONE REFERENCE IN THE 205-PAGE REPORT TO P.D.S.A.'S?

21 A DO YOU WISH ME TO EXPLAIN?

22 Q YEAH.

23 A OKAY. AFTER THE C.C.J.V. PUBLISHED THEIR  
24 REPORT, WHICH HAD SOME CUT-AND-DRIED 60 OR SO RECOMMENDATIONS,  
25 MANY OF WHICH WERE EXTREMELY GENERAL LIKE BE MORE ACCOUNTABLE

1 FOR THE USE OF EXCESS FORCE IN THE JAILS OR WHATEVER, THERE  
2 WERE MANY, MANY MEETINGS BETWEEN THE MANAGERS OF THE SHERIFF'S  
3 DEPARTMENT AND THE MONITOR THAT THE C.C.J.V. AND THE DEPARTMENT  
4 AGREED WOULD BE OUR OVERSIGHT PERSON TO MAKE SURE THAT WE  
5 FOLLOWED THROUGH ON MAKING THOSE GENERAL RECOMMENDATIONS COME  
6 TRUE.

7 THAT MONITOR AND VARIOUS DEPARTMENT PERSONNEL  
8 MET ON MANY OCCASIONS TO FLUSH OUT THE DETAILS OF WHAT  
9 PROCEDURES, WHAT SAFEGUARDS, WHAT THINGS WE HAD TO BUY,  
10 ET CETERA, ET CETERA, ET CETERA, WOULD MAKE IT SO THAT A  
11 GENERAL RECOMMENDATION LIKE BE MORE ACCOUNTABLE FOR EXCESS  
12 FORCE COULD COME TO PASS.

13 THE DEVIL BEING IN THOSE DETAILS, SOMETIMES --  
14 AND I CAN'T CITE YOU AN EXAMPLE. I'M TELLING YOU WHAT I WAS  
15 TOLD ABOUT THE INFLUENCE OF THE C.C.J.V. AND THE SUBSEQUENT  
16 AGREEMENTS WITH THE MONITOR ON HOW WE WERE GOING TO DO THIS AT  
17 A MORE DETAILED LEVEL INFLUENCED SOME OF THE INFORMATION IN  
18 HERE. I'M SORRY I CAN'T REMEMBER SPECIFICALLY WHICH.

19 I BELIEVE THAT I'M LOOKING AT ONE HERE THAT  
20 AROSE FROM THAT CIRCUMSTANCE FROM THIS PERSON, WHOSE NAME IS  
21 RICHARD (INAUDIBLE), DISCUSSING HIS UNDERSTANDING OF THE  
22 C.C.J.V.'S EXPECTATION ABOUT RECOMMENDATION X AND HOW WE MIGHT  
23 ACHIEVE IT TALKING WITH OUR REPRESENTATIVE, WHOEVER IT WAS,  
24 THAT HAS TO DO WITH THE CASES INVOLVING ALLEGATIONS OF  
25 UNREASONABLE FORCE OR DISHONESTY BECAUSE THAT IS AN ADDITION TO

1 THIS PARAGRAPH.

2 I CAN'T RECALL EXACTLY WHO WROTE THAT IN THERE,  
3 WHETHER IT WAS ME OR SOMEONE ELSE OR WHETHER I WAS TOLD, HEY,  
4 WE'VE AGREED TO THIS AND WE'D BETTER PUT IT HERE. I'M SORRY I  
5 CAN'T REMEMBER THAT, BUT THAT'S AN EXAMPLE OF SOMETHING THAT  
6 STEMMED NOT FROM THE C.C.J.V. REPORT SPECIFICALLY BUT FROM THE  
7 FACT THAT AFTER THE REPORT WAS OVER WE KNEW WE WERE GOING TO BE  
8 CHECKED FOR COMPLIANCE WITH THOSE AGREED-UPON RECOMMENDATIONS  
9 FOR A PERIOD OF -- WELL, THEY'RE STILL DOING IT. WE'RE STILL  
10 UNDER THE WATCHFUL EYE OF A MONITOR WHO'S ACCOUNTABLE FOR  
11 ASSESSING OUR COMPLIANCE WITH C.C.J.V. RECOMMENDATIONS TO WHICH  
12 WE AGREED.

13 THE REPORTER: EXCUSE ME. SIR, COULD YOU REPEAT THAT  
14 NAME, RICHARD --

15 THE WITNESS: I'M SORRY. RICHARD DROOYAN. EVEN I  
16 CAN'T REMEMBER IT. IT'S D-R-O-O-Y-A-N.

17 THE REPORTER: THANK YOU.

18 THE WITNESS: I APOLOGIZE FOR NOT SPELLING THAT.  
19 THAT'S A BAD NAME.

20 BY MR. AITCHISON:

21 Q OKAY. SO, IF I UNDERSTOOD YOU, NO SPECIFIC  
22 RECOLLECTION OF WHAT THE RECOMMENDATIONS WERE FROM THE MONITOR  
23 OR HOW THEY CAME INTO THIS DRAFT; CORRECT?

24 A NOT REALLY. I MEAN, YOU KNOW, I TALKED TO MANY  
25 PEOPLE ABOUT INDIVIDUAL PASSAGES IN THIS WHILE I WAS DOING THE

1 TECHNICAL WRITING TO MAKE SURE I HAD IT RIGHT, AND THERE WERE  
2 PEOPLE WHO HAD MORE DIRECT KNOWLEDGE OF THOSE CONVERSATIONS  
3 THAN I DID.

4 Q ALL RIGHT. SO LET'S NOW TALK A LITTLE BIT  
5 ABOUT THE BAIL SCHEDULE ITSELF, THE RANGES IN THE BAIL  
6 SCHEDULE.

7 FIRST OF ALL, WHAT IS YOUR UNDERSTANDING AS TO  
8 HOW THE RANGES IN THE BAIL SCHEDULE RELATE TO THE NEW LEVELS OF  
9 DISCIPLINE ON PAGE 42 AND 43?

10 A THIS IS WHERE I'LL SAY I HOPE I CAN TESTIFY  
11 CAPABLY AND HELPFULLY FOR YOU, BUT I FEEL LIKE SAYING, GOSH,  
12 I DID MY BEST. AND THIS IS WHERE IF DEREK OR ANYONE AT ALADS  
13 HAS ADDITIONAL INPUT, NO MATTER HOW THIS HEARING TURNS OUT,  
14 EVEN THOUGH I'M NOT AN OPERATIVE MEMBER ANYMORE, I VALUE IT  
15 BECAUSE I DIDN'T RECEIVE MUCH FEEDBACK ABOUT THIS, AND I DIDN'T  
16 PRESUME THAT MEANT THAT I DID A PERFECT JOB, EITHER.

17 BUT THE COMMITTEE, WHICH HAD DISBANDED LONG  
18 PRIOR, HAD SUBMITTED THIS WORK, AND I UNDERSTOOD THIS TO BE  
19 POTENTIALLY VALUABLE AS IT RELATES TO THIS THING THAT WE'RE  
20 CALLING THE BAIL SCHEDULE -- BUT WHOSE CORRECT TITLE IS  
21 "DISCIPLINE AND EDUCATION GUIDE" -- TO HELP IN PARTICULAR WITH  
22 RANGES OF DISCIPLINE IN THE GUIDELINES THAT ARE VERY WIDE AND  
23 THAT THESE LEVELS, THESE DESCRIPTIONS OF VARIOUS CATEGORIES OF  
24 INCREASINGLY SERIOUS MISCONDUCT, WOULD HELP A DECISION-MAKER  
25 WHEN HE'S FACED WITH DECIDING THE DISCIPLINE FOR AN OFFENSE

1 WHERE THE GUIDELINE IS WRITTEN REPRIMAND TO DISCHARGE, WHICH IS  
2 THE WIDEST POSSIBLE RANGE. AND I FOUND THEM AT LEAST  
3 POTENTIALLY USABLE AS WELL AS THIS TABLE ON PAGE 43 AND THE  
4 WRITTEN DESCRIPTIONS ON PAGE 42.

5 I KNEW THE COMMITTEE INTENDED TO BE HELPFUL AND  
6 TO GIVE ADDITIONAL GUIDANCE, AND I DECIDED THAT THEY COULD BE  
7 USED IN THE GUIDELINES IN CONJUNCTION WITH THIS TABLE  
8 SPECIFICALLY FOR THE MANUAL SECTIONS THAT HAVE EXTREMELY WIDE  
9 RANGES.

10 Q WELL, OKAY. LET'S TAKE AN EXAMPLE. I THINK  
11 THIS MAY HELP US.

12 A OKAY.

13 Q LOOK AT PAGE 35. DO YOU SEE THE FIRST  
14 HIGHLIGHTED CHANGE ON PAGE 35, "CARELESS, NEGLIGENT HANDLING  
15 OF A WEAPON RESULTING IN DISCHARGE OF THE WEAPON"?

16 A YEAH, THE FIRST HIGHLIGHTED CHANGE. YES, I SEE  
17 IT.

18 Q OKAY. AND IT USED TO BE 1 TO 5 DAYS?

19 HEARING OFFICER ROSS: OKAY. WAIT A SECOND BECAUSE  
20 I'M NOT SEEING IT. I'M LOOKING AT PAGE 35. OH, IT'S PART OF  
21 THE WAY DOWN THE PAGE?

22 MR. AITCHISON: YES.

23 HEARING OFFICER ROSS: OKAY. GOT IT.

24 MR. AITCHISON: AND YOURS IS HIGHLIGHTED IN YELLOW;  
25 RIGHT?

1 HEARING OFFICER ROSS: YES.

2 MR. AITCHISON: OKAY.

3 HEARING OFFICER ROSS: BUT WHEN YOU SAID "FIRST," I  
4 DIDN'T HEAR "HIGHLIGHTED" AFTER THAT.

5 MR. AITCHISON: OKAY.

6 HEARING OFFICER ROSS: YOU MIGHT HAVE SAID IT AND I  
7 JUST WASN'T LISTENING.

8 MR. AITCHISON: OKAY.

9 BY MR. AITCHISON:

10 Q YOU SEE THAT FIRST HIGHLIGHTED CHANGE?

11 A I DO.

12 Q OKAY. SO THE PUNISHMENT USED TO BE 1 TO 5  
13 DAYS?

14 A RIGHT.

15 Q THAT RANGE?

16 A CORRECT.

17 Q THAT PUNISHMENT OF 1 TO 5 DAYS, HAD THE LEVELS  
18 OF DISCIPLINE EXISTED AT THAT TIME, THAT WOULD HAVE BEEN A  
19 LEVEL 1 OFFENSE; CORRECT?

20 A LET ME GO BACK TO --

21 Q HOLD YOUR FINGER THERE AND GO TO PAGE 42.

22 A OKAY. RIGHT. YES, I SEE THAT.

23 Q SO THAT WOULD HAVE BEEN A LEVEL 1 OFFENSE  
24 BEFORE?

25 A CORRECT.

1 Q NOW, WITH THE CHANGE TO 1 TO 20 DAYS, IT COULD  
2 BE A LEVEL 1, A LEVEL 2, A LEVEL 3 OR A LEVEL 4 OFFENSE;  
3 CORRECT?

4 A YES.

5 Q OKAY. WHO UNDER THIS NEW SYSTEM MAKES THE  
6 DECISION AS TO WHICH LEVEL APPLIES?

7 A WELL, DEPENDING ON WHICH LEVEL, THE UNIT  
8 COMMANDER, NORMALLY A CAPTAIN OR A DIRECTOR, FEELS THE FACTS  
9 RATE OR MERIT OR CORRESPOND TO. IT COULD EITHER BE THAT  
10 CAPTAIN, HIS COMMANDER AND HIS DIVISION CHIEF OR EVERY ONE OF  
11 THOSE PEOPLE PLUS THE ASSISTANT SHERIFFS, THE UNDERSHERIFF AND  
12 THE SHERIFF.

13 SO IT DEPENDS ON WHAT THE INITIAL  
14 RECOMMENDATION IS. IT DEPENDS ON THE REVIEW BY THE DIVISION  
15 CHIEF AS TO WHETHER HE AGREES WITH THE CAPTAIN THAT IT IS ONLY  
16 A 5-DAY SUSPENSION OR IT HAS GOT TO BE 10 TO 15 DAYS. AND  
17 IT'S A FAIRLY COMPLEX, INTRICATE PROCEDURE, BUT IT'S DESIGNED  
18 TO HAVE THE MOST LEVELS OF REVIEW FOR THE MOST SERIOUS  
19 DISCIPLINE.

20 Q SO, IF I UNDERSTAND --  
21 HEARING OFFICER ROSS: MAY I ASK --  
22 BY MR. AITCHISON:

23 Q -- THE ANSWER TO MY QUESTION WAS --  
24 HEARING OFFICER ROSS: MAY I ASK A QUESTION?  
25 MR. AITCHISON: SURE.

1 HEARING OFFICER ROSS: THANK YOU.

2 LET'S SAY A CAPTAIN DECIDES THAT THIS  
3 POTENTIALLY LEVEL 1 TO 4 CONDUCT IS A LEVEL 2. THAT WOULD JUST  
4 BE AND NOBODY WOULD EVER CALL HIM ON IT, HIM OR HER ON IT, AND  
5 SAY, NO, THAT'S A LEVEL 4? IS THAT --

6 THE WITNESS: ONE OF THE TRICKY PARTS OF OUR BUSINESS  
7 IS WHAT A UNIT COMMANDER DECIDES ABOUT DISCIPLINE IS REVIEWED  
8 BY TWO LEVELS ABOVE HIM.

9 HEARING OFFICER ROSS: ALWAYS?

10 THE WITNESS: YES. EVERY PIECE OF DISCIPLINE IS  
11 REVIEWED.

12 HEARING OFFICER ROSS: OKAY. THAT WAS THE PIECE I WAS  
13 MISSING.

14 THE WITNESS: RIGHT.

15 HEARING OFFICER ROSS: THANK YOU.

16 THE WITNESS: FOR ALL 600 OR SO MISCONDUCT CASES A  
17 YEAR, WHETHER THEY'RE FOUNDED OR NOT FOUNDED, ONCE THE UNIT  
18 COMMANDER PUTS HIS SIGNATURE ON IT, IT ALSO HAS TO BE SIGNED,  
19 THEREFORE, HOPEFULLY READ AND REVIEWED BY A DIVISION CHIEF AND  
20 NORMALLY --

21 HEARING OFFICER ROSS: THANK YOU.

22 THE WITNESS: -- HE HAS HIS COMMANDERS DO IT, TOO. SO  
23 IF A CAPTAIN --

24 HEARING OFFICER ROSS: OKAY.

25 THE WITNESS: I'M SORRY.

1 HEARING OFFICER ROSS: THAT ANSWERS MY QUESTION.

2 THE WITNESS: I'M SORRY.

3 MR. AITCHISON: OKAY.

4 BY MR. AITCHISON:

5 Q SO LET'S FOLLOW UP ON THE QUESTION THAT MS.  
6 ROSS ASKED.

7 SO LET'S SAY THIS COMMANDER DETERMINES THAT  
8 THIS IS A LEVEL 2, WHATEVER THIS NEGLIGENT HANDLING OF A WEAPON  
9 RESULTING IN A DISCHARGE, IT SAYS THIS IS A LEVEL 2; OKAY?  
10 AND SO WE'VE NOW MOVED FROM WHAT WAS IN THE BAIL SCHEDULE A  
11 POSSIBLE 1- TO 20-DAY SUSPENSION. HAVE WE NOW MOVED TO A  
12 POTENTIAL 6- TO 10-DAY SUSPENSION?

13 A I GUESS I'M GOING TO SAY YES. THAT'S WHAT THE  
14 USE OF THIS TABLE WOULD -- THAT'S THE MANNER IN WHICH THIS  
15 TABLE WOULD HELP A CAPTAIN BE GUIDED TOWARD A LOGICAL INCREASE  
16 IN THE DISCIPLINE IF THE CONDUCT WAS MORE SERIOUS THAN A LEVEL  
17 1.

18 Q DID YOU MEAN TO SAY THAT, THAT THE LEVELS OF  
19 DISCIPLINE ALLOW A COMMANDER TO CONSIDER AN INCREASE IN  
20 DISCIPLINE?

21 A WELL, NO, THAT'S NOT WHAT I MEANT TO SAY.

22 Q OKAY.

23 A MAYBE I MISUNDERSTOOD THE QUESTION.

24 Q OKAY.

25 A SO WHY DON'T YOU ASK IT AGAIN?

1 Q I'M JUST TRYING TO FIGURE OUT THE MECHANICS  
2 HERE. YOU'VE GOT A CASE THAT COMES IN THAT INVOLVES A  
3 NEGLIGENT DISCHARGE; OKAY?

4 A OKAY.

5 Q SO WE LOOK AT THE BAIL SCHEDULE AND WE SEE 1 TO  
6 20 DAYS.

7 A RIGHT.

8 Q IT SOUNDS LIKE YOU'RE SAYING THAT GOES TO A  
9 CAPTAIN AND THE CAPTAIN DECIDES IN OUR HYPOTHETICAL HERE THIS  
10 IS A LEVEL 2.

11 A OKAY, OKAY.

12 Q SO MY QUESTION TO YOU IS, DOES THIS MEAN THAT  
13 WE HAVE NOW GONE FROM A PUNISHMENT RANGE OF 1 TO 20 DAYS TO ON  
14 PAGE 42 OUR PUNISHMENT RANGE IS NOW 6 TO 10 DAYS?

15 A THAT'S WHAT IT SHOULD MEAN TO THE CAPTAIN IF  
16 HE'S READING THIS TABLE AND DECIDING TO USE THAT GUIDANCE, YES.  
17 HE'D BE GUIDED TOWARD THE NUMBER 6, 7, 8, 9 OR 10 INSTEAD OF 1  
18 THROUGH 5 OR 11 THROUGH 20.

19 Q OKAY. AND THEN IF THAT CAPTAIN LOOKS AT PAGE  
20 43; ALL RIGHT?

21 A CORRECT.

22 Q AND THE CAPTAIN LOOKS AT THE MIDDLE COLUMN AND  
23 SEES THE PHRASE "PRESUMPTIVE PENALTY" AND THEN LOOKS AT THE  
24 LEFT COLUMN THAT SAYS "MITIGATED PENALTY" AND THE RIGHT COLUMN  
25 THAT SAYS "AGGRAVATED PENALTY," WHAT DOES THAT TELL THE

1 CAPTAIN?

2 A NORMALLY, THE APPROPRIATE DISCIPLINE WHERE  
3 THERE'S A BIG RANGE CAN FAIRLY GENERALLY SAFELY BE VIEWED AS  
4 MIDRANGE IS WHERE YOU START. SO BETWEEN 1 AND 20, IT WOULD BE  
5 10.

6 BUT IF YOU'RE GUIDED TO LEVEL 2, BETWEEN 6 AND  
7 10 WOULD BE 8 MIDRANGE IF HE'S AT 8 AND HE THINKS, WELL, GEE, 8  
8 SOUNDS FAIR FOR A LEVEL 2 IN THIS PARTICULAR UNINTENTIONAL  
9 DISCHARGE CASE.

10 HOWEVER, THERE ARE AGGRAVATORS THAT I THINK  
11 MAKE IT WORSE OR HOWEVER THERE ARE MITIGATORS THAT I THINK  
12 DON'T MAKE IT AS BAD AND I JUST DON'T FEEL 8 FEELS RIGHT. THEN  
13 HE'S GUIDED TOWARD, WELL, THEN, MAKE IT 6 IF IT'S A MITIGATED  
14 SITUATION OR MAKE IT 10 IF YOU THINK IT'S MORE SERIOUS THAN  
15 MIDRANGE, THE AVERAGE LEVEL-2 OFFENSE.

16 Q COULD THE CAPTAIN GO TO 1?

17 A THE CAPTAIN IS AUTHORIZED AND EXPECTED TO  
18 ASSESS LEVEL 1 AND 2 HIMSELF. HE'S THE FIRST GUY. HE GETS THE  
19 CASE. HE DECIDES IT'S FOUNDED. HE'S THE ONE WHO'S ACCOUNTABLE  
20 FOR SAYING THIS IS REALLY NEGLIGENT OR THIS IS SEVERELY  
21 NEGLIGENT OR THIS IS, YOU KNOW, LESS SERIOUS NEGLIGENCE THAN  
22 I'VE SEEN IN MANY OTHER CASES.

23 Q OKAY.

24 A HE HAS TO PICK THE LEVEL.

25 Q OKAY. I USED -- I SHORTCUT SOMETHING I

1           SHOULDN'T HAVE.

2                   A           OKAY.

3                   Q           I DIDN'T MEAN CAN THE CAPTAIN GO TO LEVEL 1.

4                   A           OH, OKAY.

5                   Q           I UNDERSTAND IN THIS SCENARIO THE CAPTAIN MAKES  
6 THE DECISION INITIALLY --

7                   A           OKAY.

8                   Q           -- WHAT LEVEL IT IS.

9                   A           ALL RIGHT. I SEE.

10                  Q           CAN THE CAPTAIN GO TO -- ONCE THE CAPTAIN HAS  
11 DETERMINED THIS IS A LEVEL 2 OFFENSE, CAN THE CAPTAIN IMPOSE A  
12 1-DAY SUSPENSION?

13                  A           AS I'VE STATED EARLIER, THERE ARE TWO PLACES  
14 WHERE THERE ARE PROVISIONS FOR THE DIVISION CHIEF TO APPROVE  
15 EXCEPTIONAL DISCIPLINE OUTSIDE THE NORMAL GUIDELINES. NOW, IN  
16 THIS -- YOU KNOW, THIS IS NEW STUFF, SO YOU'RE BRINGING UP  
17 ISSUES THAT I HAVEN'T HAD TO MAKE A DECISION ABOUT IT.

18                                BUT WHAT MAKES SENSE TO ME IS, IF HE THINKS  
19 IT'S A LEVEL 2, HE OUGHT TO BE AT 6. BUT IF HE DECIDES THAT  
20 IT'S JUST NOT RIGHT, EVEN THOUGH I CAN SEE LEVEL 2 DESCRIBES  
21 IT, I THINK THE MITIGATORS ARE WORTH MORE THAN 2 DAYS, THEN ALL  
22 HE HAS TO DO IS RECOMMEND THAT ON HIS DISPOSITION LETTER WHICH  
23 GOES TO HIS COMMANDER AND HIS CHIEF.

24                                IF THEY CONCUR THAT THE MITIGATORS ARE MORE  
25 SUFFICIENT THAN TO GET BELOW 2 DAYS LOWER THAN THE MIDRANGE, HE

1 CAN GO DOWN TO 1 SUSPENSION DAY IF HIS DIVISION CHIEF CONCURS  
2 WITH IT. THERE IS THAT CHECK AND BALANCE ON THE CAPTAIN'S  
3 JUDGMENT FOR THESE LEVEL SUSPENSIONS.

4 Q ALL RIGHT.

5 A BUT HE CAN DO IT BECAUSE THE EXCEPTION RULES  
6 ARE STATED IN THE DOCUMENT WE'RE TALKING ABOUT.

7 Q DO YOU KNOW WHO JOHN ROBERTS IS?

8 A YES, I DO.

9 Q OKAY.

10 HEARING OFFICER ROSS: I'M SORRY. JOHN WHO?

11 MR. AITCHISON: JOHN ROBERTS.

12 HEARING OFFICER ROSS: THANK YOU.

13 BY MR. AITCHISON:

14 Q I'LL REPRESENT TO YOU THAT CAPTAIN ROBERTS  
15 TESTIFIED THAT CAPTAINS -- APPARENTLY THERE HAD BEEN AN  
16 ANALYSIS DONE -- GO OUTSIDE THE RANGES ONLY TWO PERCENT OF THE  
17 TIME. DOES THAT JIBE WITH YOUR RECOLLECTION?

18 A I'VE NEVER HEARD THAT STATISTIC. I DON'T KNOW  
19 WHERE HE GOT IT. I DON'T KNOW WHAT SORT OF STUDY OR WHAT  
20 DURATION OF TIME IT WAS OVER.

21 Q OKAY.

22 A BUT I KNOW IT'S NOT UNHEARD OF. IN FACT, I'VE  
23 DONE IT AS BOTH THE CHIEF AND AS A CAPTAIN. SO I DON'T KNOW  
24 HOW OFTEN.

25 Q ALL RIGHT. IF YOU DON'T KNOW HOW OFTEN, YOU

1 DON'T.

2 LET'S LOOK AT PAGE 33 AND THERE'S JUST ONE  
3 AREA, ONE LAST AREA I WANT TO QUESTION YOU ABOUT. YOU  
4 TESTIFIED THAT THERE'S NOTHING IN THIS BAIL SCHEDULE, IN THE  
5 CHANGES IN THE BAIL SCHEDULE THAT RESULTED IN I THINK THE  
6 PHRASE MR. WONG USED WAS "A NEW BASIS FOR DISCIPLINE." DO YOU  
7 REMEMBER THAT TESTIMONY?

8 A I DO.

9 Q OKAY.

10 A I SAID TO THE BEST OF MY KNOWLEDGE THERE IS  
11 NONE THAT I RECALL.

12 Q OKAY. AND I JUST WANT TO PICK ONE PAGE HERE.  
13 I COULD PICK OTHERS, BUT I JUST WANT TO PICK ONE.

14 SO ON PAGE 33 LOOK AT THE HIGHLIGHT IN THE  
15 MIDDLE OF THE PAGE UNDER THE -- THAT USED TO BE UNDER THE  
16 HEADING "FALSE STATEMENTS" BUT NOW IS UNDER THE HEADING  
17 "DISHONESTY, FALSE STATEMENTS, HONESTY POLICY." DO YOU SEE  
18 THAT?

19 A I DO, YES.

20 Q AND DO YOU SEE THAT THE FORMER OFFENSE THAT WAS  
21 BROKEN OUT, THE FIRST ONE LISTED IS "LYING TO A SUPERVISOR."  
22 DO YOU SEE THAT?

23 A I SEE THAT.

24 Q AND YOU SEE THAT WAS STRUCK OUT?

25 A CORRECT.

1 Q AND THEN YOU SEE WHAT WAS ADDED WAS "MAKING  
2 FALSE OR MISLEADING STATEMENTS TO A SUPERVISOR." DO YOU SEE  
3 THAT?

4 A I DO.

5 Q WOULD YOU AGREE WITH ME THAT THERE IS A  
6 DIFFERENCE BETWEEN THE LYING AND MAKING MISLEADING STATEMENTS?

7 A IT DEPENDS. BUT THERE COULD BE, YES.

8 Q THERE COULD BE?

9 A YES.

10 Q AND WOULD YOU ALSO AGREE WITH ME THAT THIS  
11 RULE, POLICY 3.01/040.70 AND 69 IN THE PAST DID NOT PROHIBIT  
12 MAKING MISLEADING STATEMENTS?

13 A NO, I CAN'T AGREE WITH THAT.

14 Q OKAY. LET'S COME DOWN TO THE  
15 SECOND-TO-THE-LAST ENTRY ON THE PAGE WHERE THIS IS THE POLICY  
16 3.01/040.75, THE ONE WHERE THE WORD "DISHONESTY" IS ADDED TO  
17 THE TITLE.

18 A YES.

19 Q AND DO YOU SEE WHERE THE OLD RULE SAID:

20 "KNOWINGLY GIVING UNTRUTHFUL

21 OR MISLEADING STATEMENTS DURING

22 INTERNAL INVESTIGATIONS."

23 DO YOU SEE HOW THAT WAS REPLACED WITH THE  
24 DELETION OF THE WORD "KNOWINGLY" AND INSTEAD THE NEW LANGUAGE  
25 SAYS:

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"MAKING FALSE OR MISLEADING  
STATEMENTS DURING AN ADMINISTRATIVE  
INVESTIGATION."

DO YOU SEE THAT?

A I DO.

Q WOULD YOU AGREE WITH ME THAT KNOWINGLY MAKING  
A MISLEADING STATEMENT IS A VERY DIFFERENT PROPOSITION THAN  
SIMPLY MAKING A MISLEADING STATEMENT?

A I DO.

Q OKAY. AND THEN LOOK AT THE BOTTOM OF THE PAGE,  
THE LAST ENTRY, "OBSTRUCTING AN INVESTIGATION." DO YOU SEE  
WHERE THE OLD RULE SAID:

"KNOWINGLY GIVING UNTRUTHFUL  
OR MISLEADING STATEMENTS DURING A  
CRIMINAL INVESTIGATION."

AND THE NEW RULE AGAIN TAKES THE WORD  
"KNOWINGLY" OUT AND SIMPLY USES THE WORD "FALSE." DO YOU SEE  
THAT?

A I DO.

Q YOU WOULD AGREE WITH ME THAT I COULD MAKE A  
FALSE STATEMENT WITHOUT ANY INTENT TO MISLEAD YOU?

A I DO.

Q AND IT COULD BE A FALSE STATEMENT THAT WAS MADE  
IN ALL HONESTY ON MY PART?

A CORRECT.

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Q OKAY.

MR. AITCHISON: JUST ONE SECOND.

HEARING OFFICER ROSS: WHILE YOU ARE CONFERRING, COULD I HAVE YOU CLARIFY? YOU'VE REFERENCED "DEREK" A NUMBER OF TIMES IN YOUR TESTIMONY. WHO IS "DEREK" FOR PURPOSES OF THE RECORD?

THE WITNESS: DEREK IS SITTING TO MY LEFT AND HIS LAST NAME --

HEARING OFFICER ROSS: I UNDERSTAND THAT.

THE WITNESS: OKAY.

HEARING OFFICER ROSS: BUT IF SOMEBODY IS READING THE RECORD.

THE WITNESS: I'M SORRY. IT'S --

MR. HSIEH: DEREK HSIEH.

THE WITNESS: EXECUTIVE DIRECTOR OF ALADS, DEREK HSIEH.

HEARING OFFICER ROSS: THANK YOU. THANK YOU.

MR. AITCHISON: THANK YOU. I HAVE NO FURTHER QUESTIONS. THANK YOU.

MR. WONG: OKAY.

HEARING OFFICER ROSS: ANY REDIRECT?

MR. WONG: YES, I HAVE SOME.

///  
///  
///

1 REDIRECT EXAMINATION

2  
3 BY MR. WONG:

4 Q NOW, FOLLOWING UP ON THE LAST QUESTIONS THAT  
5 MR. AITCHISON ASKED YOU REGARDING THESE CHANGES ON PAGE 33 OF  
6 THE DISCIPLINE AND EDUCATION GUIDE. NOW, PRIOR TO THESE --  
7 LET'S LOOK AT THE FIRST -- THE FIRST SECTION THAT WAS REVISED  
8 TO "DISHONESTY/FALSE STATEMENTS, HONESTY POLICY."

9 NOW, SO WITH THESE CHANGES THERE'S THE ADDITION  
10 OF "MAKING FALSE OR MISLEADING STATEMENTS TO A SUPERVISOR";  
11 CORRECT?

12 A I'M SORRY. WHAT WAS THE QUESTION?

13 Q SO MAKING FALSE OR MISLEADING STATEMENTS TO A  
14 SUPERVISOR WAS ADDED TO THE GUIDE AT THIS POINT?

15 A I SEE THAT, YES.

16 Q OKAY. PRIOR TO THE ADDITION OF THIS LANGUAGE  
17 IN THE DISCIPLINE AND EDUCATION GUIDE, HAD DEPUTIES BEEN  
18 DISCIPLINED FOR MAKING FALSE OR MISLEADING STATEMENTS TO  
19 SUPERVISORS?

20 A YES, THEY HAD.

21 Q OKAY. AND LET'S SEE. GOING TO THE NEXT  
22 CHANGE -- WELL, THE NEXT HIGHLIGHTED CHANGE WHICH WAS CHANGED  
23 FROM "LYING UNDER OATH" TO "MAKING FALSE STATEMENTS UNDER  
24 OATH." DO YOU SEE THAT?

25 A I DO.

1 Q PRIOR TO THIS CHANGE, WERE DEPUTIES DISCIPLINED  
2 FOR MAKING FALSE STATEMENTS UNDER OATH?

3 A YES, THEY HAD BEEN FOR YEARS BEFORE THIS POLICY  
4 WAS CHANGED OR BEFORE THIS BAIL SCHEDULE WAS CHANGED.

5 Q AND I'LL ASK THE SAME QUESTION OF THE NEXT  
6 CHANGE UNDER SECTION 3-01/040.75. SO PRIOR TO THE CHANGES IN  
7 THE GUIDELINES, WAS MAKING FALSE OR MISLEADING STATEMENTS  
8 DURING AN ADMINISTRATIVE INVESTIGATION, WAS THAT SOMETHING THAT  
9 DEPUTIES WOULD BE DISCIPLINED FOR?

10 A YES, IT HAD BEEN IN THE PAST.

11 Q OKAY. AND THE SAME QUESTION FOR THE NEXT  
12 HIGHLIGHTED CHANGE, "MAKING FALSE OR MISLEADING STATEMENTS  
13 DURING A CRIMINAL INVESTIGATION."

14 WERE DEPUTIES DISCIPLINED FOR -- ACTUALLY, WERE  
15 THEY DISCHARGED FOR MAKING FALSE OR MISLEADING STATEMENTS  
16 DURING CRIMINAL INVESTIGATIONS?

17 A THERE HAVE BEEN INSTANCES IN WHICH DEPUTIES  
18 WERE DISCHARGED FOR THAT OFFENSE BEFORE THESE GUIDELINES OR THE  
19 HONESTY POLICY WAS CHANGED.

20 Q OKAY. AND THE SAME QUESTION FOR "FAILURE TO  
21 PROVIDE A STATEMENT AS A WITNESS DURING A CRIMINAL  
22 INVESTIGATION." WAS THAT SOMETHING THAT DEPUTIES WOULD BE  
23 DISCIPLINED FOR PRIOR TO THESE CHANGES?

24 A THAT HAS ALSO HAPPENED BEFORE THESE CHANGES HAD  
25 OCCURRED.

1 Q OKAY. LET'S TURN TO PAGE 10 IN THE GUIDE, THE  
2 SAME EXHIBIT.

3 NOW, MR. AITCHISON ON CROSS ASKED YOU ABOUT THE  
4 -- AND LOOKING AT HEADING J, WHICH IS "DETERMINING DISCIPLINE  
5 WHEN MULTIPLE VIOLATIONS OCCUR," HE HAD ASKED YOU ABOUT THE  
6 LAST SENTENCE IN THAT HIGHLIGHTED LANGUAGE THERE:

7 "IN GENERAL, HIGHER NUMBERS  
8 OF SEPARATE ENUMERATED CHARGES  
9 SHALL BE CONSIDERED FOR HIGHER  
10 LEVELS OF DISCIPLINE."

11 DOES THAT LANGUAGE REQUIRE THAT HIGHER  
12 DISCIPLINE BE IMPOSED SIMPLY BECAUSE THERE ARE HIGHER NUMBERS  
13 OF SEPARATE ENUMERATED CHARGES?

14 A NO. IT SAYS "IN GENERAL ... BE CONSIDERED."

15 Q OKAY.

16 A IT DOESN'T REQUIRE ANYTHING EXCEPT  
17 CONSIDERATION IN GENERAL --

18 Q OKAY.

19 A -- WHICH MEANS THERE ARE EXCEPTIONS.

20 Q AND WHAT IS YOUR -- WHAT IS CONSIDERED --  
21 WHAT IS YOUR INTERPRETATION OF A REQUIREMENT THAT THEY BE  
22 CONSIDERED FOR SOMETHING, CONSIDERED FOR HIGHER LEVELS OF  
23 DISCIPLINE?

24 A WELL, WHEN YOU'RE LOOKING AT WHAT WE CALL A  
25 DISPOSITION WORKSHEET, WHICH IS THE SUMMARY OF THE FACTS THAT

1 LEAD TO A FOUNDED FINDING, AND YOU ARE THINKING THROUGH HOW  
2 MANY MISTAKES DID THIS PERSON MAKE, HOW SERIOUS ARE THEY, YOU  
3 SHOULD -- SHALL CONSIDER THE MANUAL SECTIONS THAT PERSON IS  
4 DETERMINED TO HAVE VIOLATED.

5 AS YOU DO THAT, YOU'RE THINKING ABOUT THOSE  
6 FACTORS -- CULPABILITY AND DEGREE OF INVOLVEMENT AND PAST  
7 PERFORMANCE AND HARM TO PUBLIC TRUST AND ALL THOSE OTHER  
8 ENUMERATED THINGS -- AND TRYING TO COME UP WITH A FAIR  
9 DISCIPLINE LEVEL WITH ALL OF THESE FACTORS BEING CONSIDERED  
10 INCLUDING THE NUMBER OF MANUAL SECTIONS AND THEIR NATURE. HOW  
11 SERIOUS ARE THEY? MISAPPROPRIATION OF PROPERTY COULD BE OF  
12 MINISCULE IMPORTANCE OR OF SEVERE IMPORTANCE. IN FACT, SO  
13 COULD USE OF EXCESS FORCE DEPENDING ON THE INJURY LEVEL.

14 SO THESE ARE ALL THINGS THAT FACTOR INTO IT,  
15 AND THE NUMBER OF SEPARATE ENUMERATED CHARGES SHOULD BE  
16 CONSIDERED AS A FACTOR BECAUSE IT HELPS REMIND THE EXECUTIVE  
17 WHAT MATTERS ABOUT THIS MISCONDUCT AND WHAT DOESN'T MATTER AS  
18 MUCH.

19 Q OKAY. NOW, LET'S SEE. TURNING TO PAGE 25, ON  
20 CROSS-EXAMINATION YOU WERE ASKED ABOUT THE HIGHLIGHTED SECTION  
21 E, "USE OF DISCIPLINE AND EDUCATION GUIDE," AND YOU TESTIFIED  
22 THAT THE SECOND PARAGRAPH THERE WAS NEW LANGUAGE THAT WAS JUST  
23 ADDED TO THE GUIDELINES; CORRECT?

24 A I BELIEVE I TESTIFIED CORRECTLY UNDER CROSS  
25 THAT THAT SECOND PARAGRAPH WAS PROBABLY NOT IN THE VERSION

1 THAT PRECEDED THIS BECAUSE I BELIEVE THAT IS THE WORK OF THE  
2 LIEUTENANTS' COMMITTEE.

3 Q BUT THE OTHER LANGUAGE IN THE FIRST PARAGRAPH,  
4 THE PARAGRAPH THAT BEGINS WITH "THE FOLLOWING LIST OF CAUSES,"  
5 TO YOUR RECOLLECTION, THAT PARAGRAPH, THAT LANGUAGE PREVIOUSLY  
6 EXISTED IN THE GUIDELINES?

7 A THAT IS MY RECOLLECTION, THAT THAT PARAGRAPH'S  
8 VERBIAGE WAS IN THE PRECEDING VERSION OR VERSIONS.

9 Q OKAY. NOW, COULD I HAVE YOU TURN IN THE YELLOW  
10 BINDER --

11 MR. AITCHISON: WE'LL SO STIPULATE, BY THE WAY.

12 MR. WONG: OH, OKAY. ALL RIGHT. JUST FOR REFERENCE,  
13 I WAS GOING TO DIRECT HIM TO PAGE 25 IN EXHIBIT 10 IN THE  
14 DEPARTMENT'S BINDER.

15  
16 (PAUSE IN THE PROCEEDINGS.)

17  
18 MR. WONG: I THINK THAT'S IT. I HAVE NO FURTHER  
19 QUESTIONS.

20 HEARING OFFICER ROSS: ANY RECROSS?

21 MR. AITCHISON: NO RECROSS.

22 HEARING OFFICER ROSS: THANK YOU VERY MUCH FOR COMING  
23 IN TODAY. I HOPE YOU HAVE AN EASY COMMUTE HOME.

24 THE WITNESS: THANK YOU. THANK YOU FOR YOUR TOLERANCE  
25 OF MY WORDINESS.

1 HEARING OFFICER ROSS: IT WAS INTERESTING.

2 THE WITNESS: THANKS.

3 MR. WONG: SO WE HAVE OUR NEXT WITNESS AND IT'S GOING  
4 TO BE COMMANDER NELSON, BUT CAN WE HAVE A 20-MINUTE BREAK JUST  
5 TO --

6 HEARING OFFICER ROSS: YES, YOU MAY.

7 MR. AITCHISON: HUH?

8 HEARING OFFICER ROSS: A 20-MINUTE BREAK.

9 MR. WONG: THANK YOU.

10 MR. AITCHISON: HOW LONG WILL HE BE ON DIRECT?

11 MR. WONG: ON DIRECT, I DON'T THINK IT SHOULD BE -- I  
12 MEAN IT SHOULDN'T BE LONGER THAN MR. TYLER.

13

14 (RECESS.)

15

16 HEARING OFFICER ROSS: BACK ON THE RECORD.

17 SO, I DON'T KNOW IF YOU'RE GOING TO WRITE A  
18 BRIEF OR DO A CLOSING ARGUMENT ON THE RECORD, BUT I WOULD LIKE  
19 YOU TO KNOW IN ADVANCE THAT I WOULD LIKE FROM EACH OF YOU A  
20 CONCISE STATEMENT OF WHAT YOUR POSITION IS.

21 FROM THE DEPARTMENT, I WOULD LIKE TO KNOW IN  
22 PARTICULAR WHY YOU SHOULDN'T BE DEFAULTED ON THE FIRST CASE.

23 AND FROM ALADS, I WOULD LIKE TO KNOW IF I DID  
24 DEFAULT THEM, HOW WOULD I KNOW EXACTLY WHAT CONDUCT THEY SHOULD  
25 BE CONSTRUED AS HAVING VIOLATED --

1 MR. AITCHISON: I DON'T KNOW WHAT --

2 HEARING OFFICER ROSS: -- IN THE 2013 CASE?

3 MR. AITCHISON: RIGHT.

4 HEARING OFFICER ROSS: BECAUSE THERE'S NOT MUCH  
5 SPECIFICITY THERE.

6 MR. AITCHISON: RIGHT.

7 HEARING OFFICER ROSS: SO MY QUESTION TO YOU IS IF I  
8 FOUND FOR YOU, HOW WOULD I KNOW WHAT CONDUCT TO FIND FOR YOU  
9 ON?

10 MR. AITCHISON: OKAY.

11 HEARING OFFICER ROSS: THEN, OF COURSE, I WOULD EXPECT  
12 YOU BOTH TO BE ADDRESSING WHY THIS CONDUCT IS OR IS NOT SUBJECT  
13 FOR NEGOTIATION. AND I WOULD LIKE YOU TO KEEP IN MIND THAT I  
14 HAVE LIMITED ACCESS TO A LAW LIBRARY, SO IF YOU ARE GOING TO BE  
15 CITING CASES THAT ARE NOT EASILY ACCESSIBLE TO ME ON A  
16 SIGNIFICANT ISSUE -- I DON'T MEAN BURDEN OF PROOF OR ANY OF  
17 THAT BASIC STUFF -- PLEASE, IF YOU WOULD GIVE ME A COPY OF THE  
18 CASE ON A P.D.F. I WOULD REALLY APPRECIATE THAT.

19 MR. AITCHISON: DO YOU WANT PAPER COPIES?

20 HEARING OFFICER ROSS: OKAY. AND HERE'S THE LAST  
21 THING. SINCE NOBODY IS HERE IN THE OFFICE, I DON'T EXACTLY  
22 KNOW WHAT THEIR POLICY IS ON PAPER OR P.D.F. I PERSONALLY  
23 WOULD RATHER HAVE A P.D.F. OF EVERYTHING.

24 SO WHAT I'M GOING TO DO IS ADVISE THE  
25 EXECUTIVE DIRECTOR THAT THIS IS WHAT I'M TELLING YOU TO

1 PROVIDE. AND IF SHE REQUIRES SOMETHING DIFFERENT, SHE NEEDS TO  
2 INFORM YOU.

3 MR. AITCHISON: GOOD.

4 MR. WONG: OKAY.

5 HEARING OFFICER ROSS: OKAY?

6 MR. WONG: AND SO WHEN YOU SAY YOU'D LIKE A P.D.F. OF  
7 EVERYTHING, WOULD YOU LIKE A P.D.F. OF ALL THE EXHIBITS AS  
8 WELL?

9 HEARING OFFICER ROSS: NO, NO, NO, NO.

10 MR. WONG: JUST ON THE CASES?

11 HEARING OFFICER ROSS: I WANT A P.D.F. OF YOUR BRIEF.

12 MR. WONG: OKAY.

13 HEARING OFFICER ROSS: AND IF YOU'RE GOING TO GIVE ME  
14 CASES, GIVE ME A P.D.F. OF THE CASES.

15 MR. WONG: OKAY.

16 MR. AITCHISON: ALL RIGHT.

17 HEARING OFFICER ROSS: AND YOU CAN GIVE ME INDIVIDUAL  
18 FILES OF INDIVIDUAL CASES. IT DOESN'T HAVE TO BE ONE MASS  
19 FILE.

20 MR. AITCHISON: OKAY.

21 HEARING OFFICER ROSS: BUT I DON'T NEED PAPER FOR  
22 THAT.

23 MR. WONG: OKAY.

24 HEARING OFFICER ROSS: OKAY? AS FAR AS THE EXHIBITS  
25 GO, I WILL LEAVE THE COPY WITH THE COMMISSION OF BOTH OF YOUR

1 EXHIBIT BOOKS AND I WILL TAKE A COPY WITH ME. MY PERSONAL  
2 HABIT IS TO SCAN IT AND KEEP IT UNTIL THE CASE IS FINAL AND  
3 DESTROY IT AND I SHRED THE ORIGINALS, BUT THAT'S JUST MY  
4 PERSONAL --

5 MR. AITCHISON: IF YOU WANT, WE'RE HAPPY TO GIVE YOU A  
6 P.D.F. OF ALL THE EXHIBITS AND YOU CAN JUST LEAVE YOUR BINDERS  
7 BACK.

8 HEARING OFFICER ROSS: NO, THAT'S OKAY.

9 MR. AITCHISON: OKAY.

10 HEARING OFFICER ROSS: BECAUSE I'VE WRITTEN IN SOME OF  
11 THEM.

12 MR. AITCHISON: OKAY.

13 HEARING OFFICER ROSS: SO I APPRECIATE THE OFFER, BUT  
14 NO THANK YOU.

15 MR. AITCHISON: OKAY.

16 HEARING OFFICER ROSS: OKAY. SO LET'S GO OFF THE  
17 RECORD.

18

19 (RECESS.)

20

21 HEARING OFFICER ROSS: BACK ON THE RECORD.

22 OKAY. ARE YOU GOING TO STAND? PLEASE RAISE  
23 YOUR RIGHT HAND.

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GREGORY NELSON,

PRODUCED AS A WITNESS BY AND ON BEHALF OF THE DEPARTMENT, AND  
HAVING BEEN FIRST DULY SWORN BY THE HEARING OFFICER, WAS  
EXAMINED AND TESTIFIED AS FOLLOWS:

HEARING OFFICER ROSS: PLEASE STATE AND SPELL YOUR  
NAME.

THE WITNESS: GREGORY NELSON, N-E-L-S-O-N.

THE REPORTER: AND NICE AND LOUD, SIR, PLEASE. IT'S  
GETTING LATE.

THE WITNESS: YES, MA'AM.

THE REPORTER: THANK YOU.

HEARING OFFICER ROSS: YOU'RE EMPLOYED BY THE COUNTY,  
IS SEE?

THE WITNESS: YES, MA'AM.

HEARING OFFICER ROSS: AND YOUR JOB TITLE?

THE WITNESS: I'M A COMMANDER FOR THE SHERIFF'S  
DEPARTMENT.

HEARING OFFICER ROSS: OKAY. PLEASE DO KEEP YOUR  
VOICE UP AND SPELL NAMES THE FIRST TIME YOU MENTION THEM.

THE WITNESS: YES, MA'AM.

HEARING OFFICER ROSS: THANK YOU.

THE WITNESS: I'LL TRY TO REMEMBER THAT.

HEARING OFFICER ROSS: YOUR WITNESS.

MR. WONG: OKAY.



1 RELATIONS AND COMPLIANCE FOR ABOUT FOUR MONTHS, AND THEN I CAME  
2 BACK TO THE BUREAU OF LABOR RELATIONS AND COMPLIANCE IN APRIL  
3 OF 2013 AND I WAS THE CAPTAIN THERE FOR FIVE YEARS.

4 Q OKAY. NOW, WHAT IS THE -- WHAT DOES THE BUREAU  
5 OF LABOR RELATIONS AND COMPLIANCE, WHAT ARE THEY RESPONSIBLE  
6 FOR?

7 A THEY HAVE FOUR DIFFERENT UNITS: THE COVETED  
8 TESTING UNIT, WHICH ADMINISTERS AND TRACKS AND MONITORS ALL OF  
9 THE COVETED TESTING THROUGHOUT THE DEPARTMENT; THE EQUITY  
10 COMPLIANCE UNIT, WHICH DEALS WITH PRIMARILY D.F.E.H. AND  
11 E.E.O.C. COMPLAINTS; THE INTAKE SPECIALIST UNIT, WHICH DEALS  
12 WITH ALL POLICY OF EQUALITY VIOLATIONS -- REPORTING, TRACKING,  
13 ASSESSMENT; AND THEN THE EMPLOYEE RELATIONS UNIT WHICH IS LIKE  
14 THE LEAD NEGOTIATOR OR THE LIAISON BETWEEN ALL THE BARGAINING  
15 UNITS OF THE COUNTY WITH THE DEPARTMENT. WE TRACK ALL  
16 GRIEVANCES AND FACILITATE THE GRIEVANCE PROCESSES FOR THE  
17 ENTIRE DEPARTMENT AND PROVIDE EMPLOYEE RELATIONS/LABOR  
18 RELATIONS ADVICE TO ALL THE DEPARTMENTS -- THE UNITS ON THE  
19 DEPARTMENT.

20 Q OKAY. NOW, WHEN YOU WERE CAPTAIN OVER THE  
21 BUREAU OF LABOR RELATIONS AND -- I'M SORRY.

22 SO WHEN YOU WERE CAPTAIN OF BOLRAC, COULD YOU  
23 PROVIDE A GENERAL OVERVIEW OF WHAT YOUR RESPONSIBILITIES WERE  
24 IN THAT UNIT?

25 A ESSENTIALLY MANAGING THE FOUR UNITS THAT I JUST

1           ENUMERATED.

2                   Q           OKAY.

3                   A           YEAH.

4                   Q           AND --

5                   HEARING OFFICER ROSS:    COULD YOU USE YOUR "COMMAND  
6           VOICE"?

7                   THE WITNESS:    YES, MA'AM.

8                   HEARING OFFICER ROSS:    I KNOW YOU HAVE ONE.

9                   THE WITNESS:    YES, MA'AM.

10                  THE REPORTER:    I AGREE.    THANK YOU.

11                  BY MR. WONG:

12                   Q           AND WHEN YOU WERE THE LIEUTENANT FOR THE  
13           EMPLOYEE RELATIONS UNIT, COULD YOU PROVIDE A GENERAL OVERVIEW  
14           OF YOUR RESPONSIBILITIES THEN?

15                   A           WELL, I WAS OVER THE EMPLOYEE RELATIONS UNIT  
16           WHICH AGAIN WE HANDLED THE -- WE WERE THE LIAISON BETWEEN ALL  
17           THE BARGAINING UNITS THAT THE DEPARTMENT DEALT WITH AND SO WE  
18           DEALT WITH THE PROFESSIONAL STAFF UNIONS AS WELL AS THE SWORN  
19           UNIONS, ALADS AND PPOA, ON ALL KINDS OF LABOR AND EMPLOYMENT  
20           LAW ISSUES.

21                   Q           OKAY.    NOW, EVEN THOUGH YOU ARE THE COMMANDER  
22           OVER -- WAS IT CUSTODY?

23                   A           COURT SERVICES.

24                   Q           COURT SERVICES.    AND DO YOU CONTINUE TO HAVE  
25           ANY RESPONSIBILITIES WITH RESPECT TO EMPLOYEE RELATIONS

1 MATTERS?

2 A WELL, I'M JUST TYING UP LOOSE ENDS AND STRINGS  
3 AND I DO PROVIDE SOME CONTINUED ASSISTANCE WITH THEM. IT'S A  
4 PRETTY HUGE LEARNING CURVE AND I WAS THERE FOR ABOUT 12 YEARS,  
5 SO I'M STILL INVOLVED.

6 Q OKAY. AND DO YOU CONTINUE TO HAVE ACCESS TO  
7 THE DEPARTMENT'S FILES WITH RESPECT TO EMPLOYEE RELATIONS  
8 MATTERS?

9 A YES.

10 Q NOW, ARE YOU FAMILIAR WITH THE DEPARTMENT'S  
11 GUIDELINES FOR DISCIPLINE?

12 A I AM.

13 Q AND ARE YOU ALSO FAMILIAR WITH THE DISCIPLINE  
14 AND EDUCATION GUIDE THAT'S PART OF THE GUIDELINES FOR  
15 DISCIPLINE?

16 A AS A PORTION OF THE GUIDELINES?

17 Q YES.

18 A YES.

19 Q OKAY. NOW, ARE THE DISCIPLINARY OPTIONS THAT  
20 ARE SET FORTH IN THAT GUIDE, ARE THOSE CONSIDERED TO BE, WELL,  
21 RIGID?

22 A THE DEPARTMENT WANTS CONSISTENCY. HOWEVER,  
23 THEY ARE GUIDELINES. THEY ARE MEANT TO ASSIST THE MANAGERS IN  
24 ASSESSING DISCIPLINE SO THAT THEY ARE -- THERE IS -- WHEN YOU  
25 SAY THEY'RE "RIGID," THEY'RE NOT SET IN STONE. WE LIKE PEOPLE

1 TO TRY TO -- I MEAN THE INTENT IS TO HAVE CONSISTENT AND FAIR  
2 APPLICATION OF DISCIPLINE ACROSS THE DEPARTMENT, BUT THERE IS  
3 ROOM FOR GOING OUTSIDE THE GUIDELINES.

4 Q SO THE DEPARTMENT MANAGEMENT DOES HAVE THE  
5 ABILITY TO DEVIATE FROM THE RANGES THAT ARE SPECIFIED IN THE  
6 DISCIPLINE AND EDUCATION GUIDE?

7 A THEY DO.

8 Q OKAY. AND DOES THE GUIDE CONTAIN AN EXHAUSTIVE  
9 OR ALL-INCLUSIVE LIST OF EVERY TYPE OF SPECIFIC VIOLATION THAT  
10 COULD RESULT IN DISCIPLINE FOR A DEPUTY SHERIFF?

11 A IT DOES NOT.

12 Q AND CAN --

13 A IT WOULD BE IMPOSSIBLE.

14 Q OKAY. IS IT POSSIBLE FOR THERE TO BE -- IS IT  
15 POSSIBLE FOR A DEPUTY TO ENGAGE IN CONDUCT THAT WOULD VIOLATE A  
16 PROVISION IN THE MANUAL OF POLICIES AND PROCEDURES WHERE THE  
17 CONDUCT IS NOT LISTED OUT IN THE DISCIPLINE AND EDUCATION  
18 GUIDE?

19 A YES.

20 Q OKAY. AND IF A DEPUTY DOES ENGAGE IN THAT, IN  
21 SOME SORT OF CONDUCT THAT VIOLATES AN M.P.P. PROVISION BUT  
22 IT'S NOT -- IT'S NOT LISTED IN THE DISCIPLINE AND EDUCATION  
23 GUIDE, CAN THAT DEPUTY STILL BE DISCIPLINED FOR ENGAGING IN  
24 THAT ACTION?

25 A YES.

1 Q OKAY. AND DO THE GUIDELINES THEMSELVES -- OR  
2 I'M SORRY. DO THE SPECIFIC VIOLATIONS THAT ARE LISTED ON THE  
3 DISCIPLINE AND EDUCATION GUIDE, DO THOSE GUIDELINES --

4 A AND I NEED TO GO BACK ON THAT --

5 Q I'M SORRY.

6 A -- THAT LAST ANSWER.

7 Q OKAY.

8 Q SOME M.P.P. PROVISIONS WHICH ARE IN THE  
9 GUIDELINES LIKE OBEDIENCE TO LAWS, REGULATIONS AND ORDERS ARE  
10 EXTREMELY BROAD AND I GUESS YOU COULD ARGUE THAT PRETTY MUCH  
11 EVERYTHING THAT WE DO ON THE DEPARTMENT COULD CONCEIVABLY FALL  
12 IN THERE. SO, IN THAT SENSE, THEY'RE KIND OF IN THE  
13 GUIDELINES.

14 ANALOGOUS BEHAVIOR OR THAT SPECIFIC ACT  
15 PER SE OR MAYBE AN OBSCURE MANUAL PROVISION THAT SOMEBODY MIGHT  
16 HAVE VIOLATED MAY NOT BE ENUMERATED IN THE GUIDELINES, BUT  
17 IT COULD FALL UNDER A BROADER SECTION LIKE SOMETHING AS BROAD  
18 AS OBEDIENCE TO LAWS, REGULATIONS AND ORDERS. THAT'S PRETTY  
19 BROAD.

20 Q SO THERE ARE SOME CERTAIN ITEMS THAT MIGHT BE  
21 CONSIDERED TO BE CATCHALLS?

22 A CORRECT.

23 Q AND DO THE -- NOW, ANYTIME THERE'S AN ENTRY  
24 THAT'S ADDED TO THE DISCIPLINE AND EDUCATION GUIDE, DOES THAT  
25 EXPAND THE GROUNDS FOR EMPLOYEE DISCIPLINE FROM WHAT'S

1 CONTAINED, ALREADY CONTAINED IN THE MANUAL OF POLICIES AND  
2 PROCEDURES?

3 A COULD YOU EXPLAIN THAT? ASK THAT AGAIN,  
4 PLEASE?

5 Q YES. WELL, LET ME ASK IT THIS WAY.

6 A OKAY.

7 Q DOES THE DISCIPLINE AND EDUCATION GUIDE THAT  
8 LISTS THE VERY SPECIFIC VIOLATIONS AND THE RANGES OF  
9 DISCIPLINE, DOES THAT GUIDE ITSELF, DOES THAT EXPAND THE  
10 GROUNDS FOR EMPLOYEE DISCIPLINE VERSUS WHAT IS ALREADY IN THE  
11 M.P.P.?

12 A I DON'T BELIEVE SO, NO. IT'S JUST A GUIDELINE,  
13 SO IT'S -- IT'S -- THE MANUAL SECTIONS ARE WHAT THEY ARE AND  
14 ADDITIONS TO THE GUIDELINES WOULD BE -- WELL, THEY WOULD BE  
15 GUIDELINES. THEY WOULD BE ILLUSTRATIVE OR PROVIDE ANALOGIES OF  
16 BEHAVIOR WHICH IS ALREADY ENUMERATED OR THE POLICIES THAT ARE  
17 ALREADY ENUMERATED ELSEWHERE LIKE IN THE MANUAL OF POLICY AND  
18 PROCEDURES.

19 Q OKAY. THANK YOU.

20 A YEAH.

21 Q NOW, ARE YOU AWARE OF ANY CHANGES THAT THE  
22 DEPARTMENT MADE TO THE GUIDELINES THAT WERE IMPLEMENTED IN  
23 EARLY 2013?

24 A YES.

25 Q OKAY. COULD YOU TELL ME GENERALLY WHAT THE

1 REVISIONS WERE THAT THE DEPARTMENT MADE?

2 A I WOULD LIKE TO REFER TO THESE. IT'S BEEN A  
3 LOT OF YEARS. I'D LIKE TO REFER TO THE DOCUMENT.

4 Q YEAH. COULD I REFER YOU TO TAB 2 IN THE  
5 DEPARTMENT'S BINDER? IT'S THE YELLOW COVER.

6 FIRST, LET ME ASK YOU. COULD YOU TELL ME WHAT  
7 THIS DOCUMENT IS?

8 A THIS IS A NOTICE FROM THE EMPLOYEE RELATIONS  
9 UNIT TO ALADS ADVISING THAT THERE WERE GOING TO BE SOME  
10 MODIFICATIONS TO THE -- PROPOSED MODIFICATIONS TO THE  
11 GUIDELINES FOR DISCIPLINE.

12 Q OKAY. AND THE PROPOSED CHANGES, WERE THOSE  
13 REFLECTED IN THE THIRD PAGE OF THAT --

14 A THE THIRD AND FOURTH PAGE OF THIS LETTER OR THE  
15 ATTACHMENTS TO THE LETTER INDICATE THE CHANGES.

16 Q OKAY. NOW, THESE CHANGES, COULD YOU -- WELL,  
17 WHAT WAS THE DEPARTMENT'S MOTIVATION FOR THESE PROPOSED  
18 CHANGES?

19 A WELL, AGAIN, THERE WAS A WINDOW OF TIME HERE  
20 RIGHT AROUND THIS TIME THAT I WAS ON A SPECIAL ASSIGNMENT  
21 HOWEVER DEALT WITH THESE ISSUES A LOT. WITH THE COMMISSION ON  
22 JAIL VIOLENCE, THERE WERE SOME SPECIAL MONITORS THAT WERE  
23 ASSIGNED AND WE WERE WORKING WITH THEM.

24 A NUMBER OF RECOMMENDATIONS WERE MADE FOR  
25 CHANGES AND I MEAN IN A VERY BROAD SWATH. WE HAD MANY, MANY

1 CUSTODY DIVISION MANUAL CHANGES. THEY WERE LOOKING AT THE  
2 GUIDELINES FOR DISCIPLINE, THE USE OF FORCE POLICY. I MEAN  
3 THERE WAS -- THERE WAS A PLETHORA OF THINGS GOING ON.

4 WE HAD THE COMMISSION ON JAIL VIOLENCE. WE HAD  
5 AN A.C.L.U. LAWSUIT. WE HAD THE FEDERAL GOVERNMENT, I THINK  
6 THE F.B.I. AND THE DEPARTMENT OF JUSTICE LOOKING INTO US AND  
7 OUR ISSUES GOING ON IN THE JAILS, SO THERE WERE THESE CHANGES.  
8 I BELIEVE OR IF I RECALL CORRECTLY, THESE CHANGES WERE DERIVED  
9 FROM ALL OF THAT INTEREST IN WORK AND MANDATES AND DIRECTIVES  
10 FROM VARIOUS SOURCES --

11 Q OKAY.

12 A -- RELATING TO LITIGATION, ET CETERA.

13 Q NOW, YOU MENTIONED THE CITIZENS' COMMISSION ON  
14 JAIL VIOLENCE?

15 A YES.

16 Q WHAT WAS THAT GROUP EXACTLY?

17 A WELL, AFTER, THERE WAS -- YOU KNOW, AGAIN,  
18 THERE WAS -- AND I'M NOT PRECISE ON THE TIMING, BUT THERE WAS  
19 SOME VARIOUS COMPLAINTS ABOUT ABUSE OF INMATES AND USES OF  
20 FORCE IN THE JAILS AND JAIL VIOLENCE BY THE STAFF. A  
21 COMMISSION WAS EMPANELED TO LOOK INTO THAT, THOSE ISSUES.

22 AGAIN, WE ALSO HAD AN A.C.L.U. LAWSUIT. I  
23 THINK IT WAS THE (INAUDIBLE) MATTER.

24 THE REPORTER: I'M SORRY. WHICH MATTER?

25 THE WITNESS: ROSAS. I APOLOGIZE. R-O-S-A-S, I

1 BELIEVE.

2 THE REPORTER: THANK YOU.

3 THE WITNESS: VERSUS I THINK -- I CAN'T REMEMBER THE  
4 ACTUAL CASE NAME, BUT THERE WAS A NUMBER OF DIFFERENT THINGS  
5 GOING ON AND INVESTIGATIONS ONGOING AND THEY EMPANELED THAT  
6 COMMISSION TO LOOK AT A LOT OF THESE ISSUES.

7 MR. WONG: OKAY. NOW, I WOULD LIKE TO MARK THIS AS  
8 DEPARTMENT'S EXHIBIT 23, WHICH IS A -- AND I'LL REPRESENT THAT  
9 THIS IS AN EXCERPT FROM THE REPORT OF THE CITIZENS' COMMISSION  
10 ON JAIL VIOLENCE. AND I'LL REPRESENT THAT THIS IS JUST  
11 CHAPTER 7, WHICH IS PAGES 143 THROUGH 176 OF A MUCH LARGER  
12 DOCUMENT.

13 HEARING OFFICER ROSS: OKAY. LET ME TAKE ADVANTAGE OF  
14 THIS MOMENT IN TIME TO REMIND YOU THAT NONE OF YOUR EXHIBITS  
15 HAVE BEEN ADMITTED.

16 MR. WONG: I THINK WE'D STIPULATED.

17 MR. AITCHISON: WE BOTH STIPULATED --

18 HEARING OFFICER ROSS: DID WE?

19 MR. AITCHISON: -- THEY CAN ALL COME IN.

20 HEARING OFFICER ROSS: OKAY. FINE.

21 MR. WONG: THANK YOU.

22 HEARING OFFICER ROSS: THANK YOU.

23 MR. AITCHISON: INCLUDING THIS ONE, THE NEW ONE.

24 HEARING OFFICER ROSS: OKAY.

25 THE REPORTER: THIS ONE IS IN?

1 MR. AITCHISON: I SAID INCLUDING THE NEW ONE, WHATEVER  
2 THIS NEW ONE IS NUMBERED.

3 HEARING OFFICER ROSS: EXHIBIT 23. IT'S JUST MARKED  
4 NOW.

5  
6 (DEPARTMENT'S EXHIBIT 23 WAS MARKED  
7 FOR IDENTIFICATION BY THE HEARING OFFICER.)

8  
9 HEARING OFFICER ROSS: AND I WAS JUST TAKING ADVANTAGE  
10 OF THIS NEW EXHIBIT TO MENTION THAT I HAVE NO RECORD OF  
11 ANYTHING BEING ADMITTED.

12 BUT IF YOU'RE REPRESENTING THAT YOU'LL  
13 STIPULATE THAT ALL EXHIBITS FROM UNION A-1 THROUGH A-32 AND NOW  
14 FROM THE DEPARTMENT 1 THROUGH 23 ARE ADMITTED, I WILL ADMIT  
15 THOSE TO THE RECORD. THANK YOU.

16 MR. AITCHISON: OKAY.

17 MR. WONG: THANK YOU.

18  
19 (UNION EXHIBITS A-1 THROUGH A-32  
20 AND DEPARTMENT EXHIBITS 1 THROUGH 23 WERE  
21 RECEIVED IN EVIDENCE BY THE HEARING OFFICER.)

22  
23 MR. WONG: NOW THAT WE'VE STIPULATED TO THE  
24 ADMISSIBILITY, THEN I GUESS I'M NOT GOING TO BOTHER TO  
25 INTERROGATE --

1 HEARING OFFICER ROSS: AUTHENTICATE IT?

2 MR. WONG: YEAH.

3 HEARING OFFICER ROSS: PERFECT.

4 BY MR. WONG:

5 Q OH, ACTUALLY, JUST FOR THE RECORD, THOUGH, IS  
6 THIS THE REPORT THAT THE DEPARTMENT TOOK INTO CONSIDERATION IN  
7 MAKING THESE CHANGES THAT YOU'VE PREVIOUSLY DISCUSSED?

8 A I THINK PRIMARILY IT IS, YES. AND THIS IS  
9 JUST ONE EXCERPT THERE. I MEAN YOU'VE PUT IN THE DISCIPLINE  
10 EXCERPT, BUT I MEAN USE OF FORCE AND THE OTHER SECTIONS, I MEAN  
11 THERE WAS A PLETHORA OF AGAIN CHANGES AND THINGS THAT THE  
12 DEPARTMENT PROCEEDED ON BECAUSE OF THE COMMISSION'S FINDINGS --

13 Q OKAY. THANK YOU.

14 A -- OR IN TANDEM WITH THE COMMISSION'S FINDINGS.

15 Q NOW, LOOKING AT THE -- GOING BACK TO EXHIBIT 2  
16 AND SPECIFICALLY THE PROPOSED CHANGES TO THE ATTACHMENT.

17 A YES.

18 Q DID EACH OF THESE VIOLATIONS THAT ARE LISTED IN  
19 THAT LEFT-MOST COLUMN, WOULD EACH OF THOSE HAVE CORRESPONDED TO  
20 AN EXISTING M.P.P. PROVISION?

21 A YES, I WOULD SAY SO.

22 Q AND LET ME HAVE YOU TURN TO -- LET'S SEE. NO,  
23 STRIKE THAT.

24 NOW, DID THESE PROPOSED CHANGES THAT ARE SET  
25 FORTH IN EXHIBIT 2, DID THOSE CREATE ANY NEW BASES FOR DEPUTY

1 DISCIPLINE THAT DID NOT PREVIOUSLY EXIST IN THE M.P.P.?

2 A I DON'T -- WERE THERE ANY -- I'M SORRY. COULD  
3 YOU REPEAT THE QUESTION?

4 Q WERE ANY OF THESE CHANGES, DID THEY CREATE ANY  
5 NEW GROUNDS FOR DISCIPLINE THAT DIDN'T PREVIOUSLY EXIST?

6 A NO, NO NEW GROUNDS. I MEAN THERE'S -- I MEAN  
7 AT THE VERY END THE VIOLATING THE INMATE ANTI-RETALIATION  
8 POLICY, THAT POLICY WAS CRAFTED AS A RESULT OF ALL OF THIS.  
9 HOWEVER, THE BEHAVIORS I BELIEVE WERE ENCOMPASSED IN PRIOR --  
10 YOU KNOW, CONDUCT TOWARD OTHERS, PERFORMANCE TO STANDARDS OR  
11 PERFORMANCE TO DUTY, OTHER THINGS COULD -- WOULD TOUCH ON I  
12 THINK ON THAT BEHAVIOR, BUT THIS IS A NEW POLICY. SO I GUESS  
13 THAT'S A "YES" AND "NO" FOR THAT VERY LAST ONE. BUT I MEAN THE  
14 BEHAVIORS THERE WOULD HAVE BEEN ENCOMPASSED IN OTHER POLICY  
15 SECTIONS.

16 Q OKAY.

17 A SO I DON'T BELIEVE THERE'S ANY NEW -- NEW  
18 BASES.

19 Q OKAY.

20 A YES.

21 Q NOW, DID THE DEPARTMENT NOTIFY ALADS ABOUT  
22 THESE PROPOSED CHANGES?

23 A YES.

24 Q OKAY. AND I GATHER THAT WOULD BE -- THE  
25 NOTIFICATION WOULD HAVE -- IS THAT WHAT IS REFLECTED IN THE

1 LETTER THAT'S IN FRONT OF THOSE EXHIBITS, EXHIBIT 2?

2 A THAT'S CORRECT, ALTHOUGH I THINK THAT'S JUST  
3 ONE THING OF PERHAPS OTHER NOTIFICATIONS AS WELL.

4 DURING THIS TIME WE WERE -- GOSH, WE WERE  
5 REACHING OUT TO THE UNION WITH MULTIPLE, MULTIPLE CHANGES OF  
6 THE CUSTODY DIVISION MANUAL. WE CONTEMPLATED CHANGES TO THE  
7 GUIDELINES, OTHER POLICIES, YOU KNOW, POLICIES THAT LIVED  
8 ELSEWHERE. WE WERE SENDING THINGS OVER I THINK ON A WEEKLY  
9 BASIS DURING THIS TIME PERIOD.

10 SO FOR THESE PARTICULAR GUIDELINE CHANGES, YES,  
11 BUT THERE COULD HAVE BEEN -- THERE MAY HAVE BEEN OTHER THINGS  
12 SWIRLING BECAUSE THERE WAS A MASSIVE AMOUNT OF STUFF GOING ON  
13 DURING THIS TIME PERIOD.

14 Q DO YOU KNOW HOW ALADS INITIALLY RESPONDED TO  
15 THESE PROPOSED CHANGES?

16 A MY UNDERSTANDING IS INITIALLY THE THEN SERGEANT  
17 OF THE EMPLOYEE RELATIONS UNIT HAD GOTTEN A CORRESPONDENCE OR  
18 AN E-MAIL FROM THE THEN EXECUTIVE DIRECTOR OF ALADS, STEVE  
19 REMIGE, WHO'D INDICATED THAT HE DIDN'T HAVE AN ISSUE WITH THE  
20 CHANGES INITIALLY.

21 Q OKAY. NOW, WHY DON'T YOU TURN TO TAB 4,  
22 EXHIBIT 4?

23 A YES.

24 Q HAVE YOU SEEN THIS E-MAIL BEFORE?

25 A I HAVE.

1 Q OKAY. AND DOES THIS REFRESH YOUR RECOLLECTION  
2 AS TO HOW ALADS INITIALLY RESPONDED TO THE PROPOSED CHANGES?

3 A I'M SORRY. WHAT IS IT?

4 Q DOES THIS REFRESH YOUR RECOLLECTION AS TO HOW  
5 ALADS HAD INITIALLY RESPONDED TO THE PROPOSED CHANGES?

6 A YES. I BELIEVE THAT WAS THE MANNER THAT PAT  
7 MATHERS HAD -- I'M SORRY -- PAT -- YEAH, PATRICK MATHERS HAD  
8 REACHED OUT AND THAT WAS THE RESPONSE HE GOT FROM ALADS.

9 Q OKAY. AND, ACTUALLY, JUST TO CLARIFY, IT  
10 APPEARS THAT THE NAME PATRICK MATHERS IS ON THE TOP OF THE PAGE  
11 BUT IT LOOKS LIKE THE E-MAIL --

12 A OH, I'M SORRY. DAN LOPEZ, YEAH.

13 Q OKAY.

14 A I THOUGHT IT WAS PAT MATHERS.

15 Q AND THEN DO YOU KNOW AFTER THE DEPARTMENT SENT  
16 OUT THAT INITIAL NOTICE REGARDING THESE SPECIFIC CHANGES, DO  
17 YOU KNOW IF THE DEPARTMENT MADE ANY ADDITIONAL PROPOSED  
18 CHANGES?

19 A THEY DID.

20 Q OKAY. AND WOULD THAT BE -- COULD YOU PLEASE  
21 TURN TO EXHIBIT 5?

22 A YES.

23 Q SO WHAT IS THIS? WHAT IS THIS LETTER?

24 A THIS IS THE EMPLOYEE RELATIONS LIEUTENANT,  
25 DAN LOPEZ, NOTICING MR. REMIGE THAT THERE WAS A COUPLE OF

1           ADDITIONAL TWEAKS THAT WERE MADE TO THE GUIDELINES FOR  
2           DISCIPLINE.

3                   Q           OKAY.  NOW, I THINK WE HAVE PREVIOUSLY SEEN  
4           THAT --

5                                COULD YOU TURN TO EXHIBIT 6, PLEASE?

6                   A           YES.

7                   Q           SO, BASED ON THIS DOCUMENT, IT APPEARS THAT  
8           ALADS HAD A CHANGE OF HEART?

9                   A           IS THAT A QUESTION?

10                  Q           YEAH.

11                  A           IT APPEARS SO, YES.

12                  Q           OKAY.  AND DO YOU KNOW IF THE DEPARTMENT  
13           RESPONDED TO THIS, THIS LETTER?

14                  A           THEY DID.

15                  Q           AND CAN YOU PLEASE TURN TO EXHIBIT 7?

16                  A           THAT EXHIBIT WOULD BE THE DEPARTMENT'S RESPONSE  
17           TO MR. REMIGE.

18                  Q           OKAY.  AND WHAT WAS THE DEPARTMENT'S POSITION  
19           WITH RESPECT TO WHETHER THE CHANGES, THE PROPOSED CHANGES AT  
20           ISSUE, WERE SUBJECT TO NEGOTIATION?

21                  A           THE DEPARTMENT'S STANCE AS FAR AS I KNOW IS --  
22           WELL, SINCE I'VE BEEN AT EMPLOYEE RELATIONS AND THEN AS CAPTAIN  
23           OF BOLRAC WAS THAT THE GUIDELINES FOR DISCIPLINE WERE  
24           MANAGEMENT'S RIGHT.  THEY WERE INTENDED FOR THE MANAGERS, TO  
25           GUIDE THE MANAGERS, AND THAT WE DID NOT NEGOTIATE THEM,

1           ALTHOUGH WE WOULD MEET WITH THE UNIONS TO DISCUSS -- YOU KNOW,  
2           TO TALK ABOUT IMPACT AND TO DISCUSS THEIR CONCERNS OR  
3           SUGGESTIONS.

4                   Q           OKAY.  NOW, WAS THE DEPARTMENT WILLING TO  
5           DISCUSS THE IMPACTS OF THESE PROPOSED CHANGES?

6                   A           YES.

7                   Q           OKAY.

8                   A           IN FACT, I THINK WE DID IT LATER, AT A LATER  
9           TIME.

10                  Q           OKAY.  NOW, THE END OF THE FIRST PARAGRAPH IN  
11           EXHIBIT 7 STATES:

12                               "AS IT STANDS NOW, HOWEVER,  
13                               THE DEPARTMENT FEELS THESE CHANGES  
14                               TO THE GUIDELINES FOR DISCIPLINE  
15                               ARE MANAGEMENT'S RIGHT AND IT  
16                               INTENDS TO PUBLISH THE CHANGES  
17                               ON FEBRUARY 17TH, 2013."

18                               DID THE DEPARTMENT GO AHEAD AND PUBLISH THE  
19           CHANGES?

20                  A           THEY DID PUBLISH THE CHANGES, YES.

21                  Q           OKAY.  WAS THERE ANY REASON WHY THE DEPARTMENT  
22           FELT THAT IT WAS NECESSARY TO IMPLEMENT THE CHANGES AT THAT  
23           TIME?

24                  A           WELL, AGAIN, THERE WAS A LOT OF PRESSURE, A LOT  
25           OF THINGS, A LOT OF MOVING PARTS AT THAT TIME WITH THE

1 LAWSUITS, WITH THE COMMISSION AND THE MONITORS DEALING WITH THE  
2 DEPARTMENT AND THE DEPARTMENT'S RESPONSES TO WHAT WAS GOING ON  
3 IN THE JAILS.

4 THERE WAS CLEARLY, I RECALL, A SENSE OF  
5 URGENCY IN IMPLEMENTING THESE CHANGES AND PUSHING OUT THE --  
6 THE -- NOT JUST THE GUIDELINES FOR DISCIPLINE BUT SPECIAL  
7 POLICY CHANGES IN THE CUSTODY DIVISION MANUAL AND USE OF FORCE  
8 POLICY, ET CETERA.

9 Q OKAY.

10 A AND I KNOW THAT THE EXECUTIVES AT THE TIME, MY  
11 RECOLLECTION WAS THAT WE COULD NOT -- WE COULD NOT -- WE SHOULD  
12 NOT DELAY THE IMPLEMENTATION OF THE CHANGES.

13 Q OKAY. NOW, I SEE IN EXHIBIT 7, THE LAST LINE  
14 IT STATES:

15 "IF YOU WOULD STILL LIKE TO  
16 MEET REGARDING THIS ISSUE, PLEASE  
17 CALL ME WITHOUT DELAY."

18 AND IT PROVIDES A PHONE NUMBER.

19 DO YOU KNOW IF SUBSEQUENT TO THIS LETTER BUT  
20 PRIOR TO THE FILING OF THE PRESENT UNFAIR CHARGE ALADS MADE AN  
21 ATTEMPT TO SET UP A MEETING TO DISCUSS THE PRACTICAL  
22 CONSEQUENCES OF THE CHANGES?

23 A AH --

24 MR. AITCHISON: YOU MEAN AFTER THE UNILATERAL  
25 IMPLEMENTATION OR BEFORE? I'M NOT SURE.

1 MR. WONG: NO. MY QUESTION WAS --

2 THE WITNESS: BEFORE, I THINK.

3 HEARING OFFICER ROSS: THE QUESTION IS AFTER THE  
4 LETTER.

5 MR. AITCHISON: OH, SO WE -- OKAY.

6 HEARING OFFICER ROSS: LET'S JUST GET AN ANSWER TO  
7 AFTER THE LETTER WAS ISSUED --

8 MR. AITCHISON: OKAY.

9 HEARING OFFICER ROSS: -- WAS THERE A RESPONSE FROM  
10 ALADS, TO YOUR KNOWLEDGE?

11 BY MR. WONG:

12 Q TO YOUR KNOWLEDGE?

13 A TO MY KNOWLEDGE WE DID MEET A NUMBER OF MONTHS  
14 LATER. AT THIS PARTICULAR TIME, RIGHT AFTER THIS LETTER WAS  
15 SENT, I -- I -- I DON'T RECALL. I'D HAVE TO GO LOOK AT THE  
16 TRACKER FILE OR SOMETHING, BUT I DON'T BELIEVE SO, BUT I DON'T  
17 RECALL.

18 Q OKAY.

19 A I KNOW THAT SUBSEQUENTLY WE DID MEET AND  
20 DISCUSS THESE THINGS, IF MY RECOLLECTION -- IF MY RECOLLECTION  
21 IS CORRECT.

22 Q OKAY. WELL, LET'S TURN TO EXHIBIT 9.

23 A OKAY.

24 Q DOES THIS REFRESH YOUR RECOLLECTION AS TO  
25 WHETHER THE DEPARTMENT EVENTUALLY DID MEET WITH ALADS?

1           A           YES, THIS INDICATES TO ME THAT WE DID MEET WITH  
2 ALADS.

3           Q           OKAY.

4           A           AND TOOK NOTES ON THE MEETING.

5           Q           AND DO YOU KNOW APPROXIMATELY -- CAN YOU TELL  
6 WHEN THIS MEETING TOOK PLACE?

7           A           WELL, IT INDICATES AUGUST 22ND OF 2013.

8           Q           OKAY.

9           A           AND MY E.R. LIEUTENANT AND E.R. SERGEANT WERE  
10 PRESENT AND CHIEF -- WELL, I'M NOT SURE IF HE WAS A CHIEF AT  
11 THE TIME OR A COMMANDER ALONG WITH MR. REMIGE.

12          Q           NOW, DOES THE COUNTY DISTINGUISH BETWEEN  
13 NEGOTIATIONS AND MEETING AND CONFERRING?

14          A           YES.

15          Q           AND WHAT IS THAT DISTINCTION?

16          A           IT'S ENUMERATED IN THE EMPLOYEE RELATIONS  
17 ORDINANCE, WHICH I'LL REFER TO AS THE E.R.O.

18                       THE E.R.O. INDICATES THAT THE TERMS "MEET AND  
19 CONSULT" AND "MEET AND CONFER" ARE SYNONYMOUS AND THEY'RE  
20 ESSENTIALLY MEET AND CONSULT. NEGOTIATIONS ARE NOT THAT, SO  
21 THEY DISTINGUISH THEM.

22          Q           OKAY.

23          A           NEGOTIATIONS WOULD BE FOR, YOU KNOW, SUBJECTS  
24 OF MANDATORY BARGAINING BETWEEN THE COUNTY AND THE BARGAINING  
25 UNITS.

1 Q AND, AGAIN, THE DEPARTMENT DID NOT VIEW THESE  
2 CHANGES AS A MANDATORY SUBJECT OF BARGAINING?

3 A CORRECT.

4 Q OKAY.

5 A WHEN YOU SAY "THESE CHANGES," YOU MEAN THE  
6 GUIDELINES FOR DISCIPLINE?

7 Q I MEAN CHANGES TO THE GUIDELINES FOR  
8 DISCIPLINE?

9 A YES.

10 Q THANK YOU.

11 NOW, EARLIER IN THE CASE, ALADS INTRODUCED SOME  
12 TESTIMONY REGARDING SOME RESEARCH THAT IT HAD DONE REGARDING  
13 THE AMOUNT OF CASES IN WHICH THE DISCIPLINE THAT WAS IMPOSED  
14 DEVIATED FROM THE STANDARD RANGES SET FORTH IN THE DISCIPLINE  
15 AND EDUCATION GUIDE. DO YOU RECALL THAT TESTIMONY?

16 A YES.

17 Q OKAY. AND I THINK THIS MAY BE INCORRECT, BUT  
18 I THINK THE NUMBER WAS SOMETHING IN THE RANGE OF MAYBE TWO  
19 PERCENT OR SOMETHING TO THAT EFFECT. DO YOU RECALL THAT  
20 TESTIMONY?

21 A I RECALL HEARING TWO PERCENT.

22 Q OKAY.

23 A YES.

24 Q DID YOU OR HAS THE DEPARTMENT LOOKED INTO THAT  
25 NUMBER TO DETERMINE HOW FREQUENTLY BASED ON THE DEPARTMENT'S

1 OWN RECORDS THE IMPOSED DISCIPLINE HAS DEVIATED FROM THE  
2 STANDARD RANGES SET FORTH IN THE GUIDELINES?

3 A WELL, I RECALL WHAT I HEARD I THINK FROM  
4 MS. BUENO WAS 18 INSTANCES SINCE 2013, I BELIEVE.

5 I DID DO SOME FOLLOW UP WITH THE CONSTITUTIONAL  
6 POLICING ADVISORS, AND WE HAVE NOT HAD AN OPPORTUNITY TO DO AN  
7 EXHAUSTIVE SEARCH, JUST A PRELIMINARY ONE AT THIS POINT. THERE  
8 ARE SOME TECHNICAL ISSUES. BUT I DID. I DID FIND OTHER --  
9 I THINK SOMETHING -- NUMBERS NOT CONSISTENT WITH MS. BUENO'S  
10 NUMBER.

11 Q WHAT WERE THE NUMBERS THAT -- WELL, WERE THERE  
12 SPECIFIC CASES THAT THE DEPARTMENT LOOKED INTO?

13 A THERE WERE SOME. I THINK THERE WERE -- ABOUT  
14 HALF OF THEM THEY CAME UP WITH WERE LIKE THE USE OF FORCE,  
15 REPORTING THE USE OF FORCE, THINGS OF THAT NATURE, AND THEN  
16 SOME OTHER MISCELLANEOUS.

17 AND OF THOSE USE OF FORCE CASES OR REPORTING  
18 THE USE OF FORCE CASES THERE WAS ABOUT 21 DEVIATIONS SINCE  
19 2013, ABOUT 21 DEVIATIONS FROM THE GUIDELINES THAT THEY FOUND  
20 JUST IN A PRELIMINARY SEARCH AND PROBABLY ANOTHER 20 CASES OF  
21 SOME OTHER MISCELLANEOUS M.P.P. SECTIONS, SO AT LEAST OVER  
22 DOUBLE WHAT MS. BUENO HAD INDICATED, THE NUMBER THAT SHE  
23 INDICATED. AND I DON'T KNOW IF IT'S -- YOU KNOW, I DON'T KNOW  
24 THAT THE DEPUTIES NECESSARILY ALL WOULD -- THAT ALADS WOULD  
25 KNOW OF ALL OF THOSE CASES, BUT THAT'S WHAT SHE JUST FOUND

1 PRELIMINARILY.

2 Q OKAY.

3 A WE'D HAVE TO GO IN AND DO A MUCH LENGTHIER HAND  
4 SEARCH, I THINK, TO GO BEYOND THAT.

5 Q OKAY. AND THOSE DEVIATIONS WITH RESPECT TO THE  
6 USE OF FORCE OR THE REPORTING THE USE OF FORCE, WERE THOSE  
7 DEVIATIONS UPWARD OR DOWNWARD?

8 A I THINK THAT THEY WERE PRIMARILY DOWNWARD.

9 Q OKAY. WHY DON'T WE TURN TO EXHIBIT A-5 IN THE  
10 BIG BINDER, AND LOOKING AT -- LET'S GO TO PAGE 40.

11 HEARING OFFICER ROSS: 4-0?

12 MR. WONG: 4-ZERO, YES.

13 HEARING OFFICER ROSS: OKAY.

14 BY MR. WONG:

15 Q AND SPECIFICALLY I'D LIKE TO REFER YOU TO  
16 3-10/100.0, WHICH IS THE "USE OF FORCE REPORTING AND REVIEW  
17 PROCEDURES."

18 A UH-HUH.

19 Q SO FAILURE TO REPORT USE OF FORCE IS 15 DAYS  
20 TO DISCHARGE.

21 A RIGHT.

22 Q SO IF THERE'S A DEVIATION, THE DEVIATIONS THAT  
23 THE DEPARTMENT'S I GUESS PRELIMINARY INVESTIGATION SHOWED THAT  
24 THE DEVIATIONS WOULD HAVE BEEN -- WOULD HAVE BEEN DOWNWARD, SO  
25 LESS THAN 15 DAYS IMPOSED?

1           A           CORRECT.

2           Q           OKAY.

3           A           AND I THINK AS FAR AS, YOU KNOW, THE SPECIFIC  
4           -- YOU KNOW, FAILURE TO REPORT THE USE OF FORCE, THOSE KINDS OF  
5           M.P.P. SECTION VIOLATIONS, I THINK THEY SAID THOSE IN  
6           PARTICULAR WERE FOR AT LEAST THE LAST -- AT LEAST THE LAST TWO  
7           YEARS THEY HAVE BEEN -- THEY HAVE BEEN HAVING DEVIATIONS FROM  
8           THAT, YOU KNOW.

9           Q           OKAY.

10          A           THE OTHER SECTIONS, AGAIN, THIS WAS NOT AN  
11          ALL-ENCOMPASSING SEARCH. THIS IS JUST WHAT THEY HAD AT THEIR  
12          FINGERTIPS.

13          Q           OKAY. ALL RIGHT. AND DO YOU KNOW WHAT OTHER  
14          AREAS THEY LOOKED AT, WHAT OTHER SPECIFIC VIOLATIONS THEY  
15          LOOKED AT?

16          A           I'D HAVE TO REFRESH MY RECOLLECTION.

17          Q           OKAY. NOW, YOU INDICATED THAT YOU WERE TRYING  
18          TO LOOK AT THE NUMBERS BUT THERE WERE SOME TECHNICAL  
19          DIFFICULTIES?

20          A           WELL, IT'S JUST DIFFICULT TO CAPTURE THAT. I  
21          MEAN THEY DON'T -- THEY DON'T HAVE A READYMADE DATABASE THAT  
22          JUST STORES ALL OF THIS STUFF. THEY REVIEW AN AWFUL LOT OF  
23          CASES, AND THAT'S JUST SOMETHING THAT THEY -- WHATEVER TRACKING  
24          SYSTEM THEY'RE USING. WHATEVER THEY WERE ABLE TO COME UP WITH  
25          QUICKLY --

1 Q OKAY.

2 A -- THEY DID COME UP WITH.

3 Q OKAY. GOT IT.

4 IS THE DEPARTMENT CONTINUING TO TRY TO PULL  
5 THAT DATA REGARDING THE NUMBER OF CASES, THE NUMBER OF  
6 DEVIATIONS?

7 A YES.

8 Q SO THAT'S STILL ONGOING?

9 A YES.

10 Q OKAY.

11 MR. WONG: ALL RIGHT. I THINK THAT'S ALL I HAVE FOR  
12 NOW ALTHOUGH I WOULD -- THAT'S ALL I HAVE NOW ON DIRECT  
13 ALTHOUGH I WOULD POTENTIALLY LIKE TO KEEP IT OPEN AS TO  
14 COMMANDER NELSON IF HE IS ABLE TO GATHER THAT ADDITIONAL  
15 INFORMATION. I THINK IT MIGHT BE HELPFUL TO GET IT INTO RECORD  
16 SOME WAY OR ANOTHER.

17 HEARING OFFICER ROSS: OKAY. IF ADDITIONAL  
18 INFORMATION BECOMES AVAILABLE AFTER TODAY, YOU CAN GET A  
19 STIPULATION FROM ALADS AND I WILL TAKE IT AS EVIDENCE.

20 MR. WONG: OKAY.

21 HEARING OFFICER ROSS: OKAY?

22 MR. AITCHISON: AND WE'LL CONSIDER WHETHER TO  
23 STIPULATE WHEN WE SEE WHATEVER IT IS, IF IT HAPPENS.

24 HEARING OFFICER ROSS: EXACTLY.

25 MR. WONG: OKAY.

1 HEARING OFFICER ROSS: ANY CROSS-EXAMINATION?

2 MR. AITCHISON: JUST BRIEFLY.

3 HEARING OFFICER ROSS: PROMISES, PROMISES.

4 MR. AITCHISON: YEAH.

5

6 CROSS-EXAMINATION

7

8 BY MR. AITCHISON:

9 Q GOOD AFTERNOON, COMMANDER.

10 A GOOD AFTERNOON.

11 Q IN ADDITION TO BEING A COMMANDER, YOU'RE AN  
12 ATTORNEY; CORRECT?

13 A YES, SIR.

14 Q AND YOU'VE REPRESENTED THE DEPARTMENT IN  
15 APPEARANCES BEFORE ERCOM?

16 A I HAVE.

17 Q AND IT'S YOUR TESTIMONY THAT IN THE EMPLOYEE  
18 RELATIONS ORDINANCE THAT THE PHRASES "MEET AND CONFER" AND  
19 "MEET AND CONSULT" MEAN THE SAME THING?

20 A THAT IS IN THE EMPLOYEE RELATIONS ORDINANCE,  
21 YES.

22 Q OKAY.

23 HEARING OFFICER ROSS: I CAN'T HEAR YOU. SORRY.

24 THE WITNESS: I'M SORRY. THAT IS IN THE EMPLOYEE  
25 RELATIONS ORDINANCE.

1 HEARING OFFICER ROSS: THANK YOU.

2 BY MR. AITCHISON:

3 Q AND IT'S YOUR --

4 THE WITNESS: TO THE BEST OF MY RECOLLECTION.

5 BY MR. AITCHISON:

6 Q IT'S YOUR TESTIMONY AS WELL THAT THOSE TWO  
7 PHRASES ARE DIFFERENT THAN THE PHRASE "NEGOTIATIONS"; CORRECT?

8 A FOR PURPOSES OF THE EMPLOYEE RELATIONS  
9 ORDINANCE AND APPLICATION TO THE COUNTY, YES.

10 Q YES. AND THAT IN YOUR JUDGMENT SOMETHING THAT  
11 IS MANDATORY FOR BARGAINING IS SOMETHING THAT IS SUBJECT TO  
12 NEGOTIATIONS?

13 A I BELIEVE THAT'S THE LANGUAGE IN THE EMPLOYEE  
14 RELATIONS ORDINANCE.

15 Q THAT'S YOUR INTERPRETATION OF THE ORDINANCE? I  
16 JUST WANT TO MAKE SURE I UNDERSTAND WHAT YOU'RE SAYING.

17 A I WOULD SAY THAT MANDATORY SUBJECT OF -- WELL,  
18 I WOULD HAVE TO LOOK AT THE -- I'D HAVE TO LOOK AT THE  
19 LANGUAGE. I WAS THROWING OUT MY RECOLLECTION OF THE EMPLOYEE  
20 RELATIONS ORDINANCE. I WOULD HAVE TO LOOK AT IT SPECIFICALLY  
21 TO PARROT BACK THE -- PARROT BACK THE LANGUAGE.

22 Q ALL RIGHT. ARE YOU AWARE OF THE FACT THAT  
23 ERCOM HAS RULED THAT DISCIPLINARY STANDARDS AND PROCEDURES AND  
24 PUNISHMENTS ARE A MANDATORY SUBJECT FOR NEGOTIATIONS?

25 A I AM NOT.

1 Q OKAY. AND I HAVE A FEW KIND OF SCATTERED  
2 QUESTIONS.

3 IN EXHIBIT 5 ON THE FIRST PAGE OF THE BAIL  
4 SCHEDULE, WHICH WOULD BE PAGE 27 OF EXHIBIT 5, DO YOU SEE THE  
5 FIRST LINE THERE:

6 "VIOLATION OF THE DEPARTMENT'S  
7 CORE VALUES."

8 A YES, SIR.

9 Q WITH A PUNISHMENT OF A WRITTEN REPRIMAND TO  
10 DISCHARGE?

11 A YES, SIR.

12 Q IS IT SAFE -- IS IT A FAIR DESCRIPTION OF THE  
13 CORE VALUES AS A SHORT GENERAL STATEMENT OF THE DEPARTMENT'S  
14 COMMITMENT TO CERTAIN VALUES?

15 A I'M SORRY. COULD YOU REPEAT THE QUESTION?

16 Q OKAY. HOW WOULD YOU DESCRIBE WHAT THE  
17 DEPARTMENT'S CORE VALUES DOCUMENT IS?

18 A YOU KNOW, IT HAS EVOLVED WITH THE VARIOUS  
19 SHERIFFS, I BELIEVE, AND I WOULD HAVE TO REFER TO THE ACTUAL  
20 LANGUAGE.

21 Q IS IT YOUR UNDERSTANDING THAT A VIOLATION OF  
22 THE CORE VALUES CAN BE AN INDEPENDENT BASIS FOR DISCIPLINE,  
23 INDEPENDENT IN THAT IT WOULD STAND ALONE WITHOUT EVEN AN  
24 UNDERLYING PROVISION OF THE M.P.P.?

25 A I BELIEVE THAT THERE ARE -- THERE ARE

1 UNDERLYING M.P.P. VIOLATIONS, OTHER M.P.P. VIOLATIONS THAT  
2 WOULD APPLY ALONGSIDE THE CORE VALUES. I CAN'T SEE HOW THAT  
3 COULD NOT BE THE CASE.

4 I MEAN SOMETHING LIKE OBEDIENCE TO LAWS,  
5 REGULATIONS AND ORDERS OR PERFORMANCE TO STANDARDS, THESE ARE  
6 SOME ALL-ENCOMPASSING PROVISIONS, AND WHEN YOU SAY VIOLATING  
7 THE CORE VALUES, I THINK THEY WOULD FIT IN WITH OTHER M.P.P.  
8 VIOLATIONS.

9 Q SO THERE WOULD ALWAYS BE AN INDEPENDENT M.P.P.  
10 VIOLATION THAT WOULD PROVIDE THE BASIS FOR DISCIPLINE WITHOUT  
11 CITATION TO THE CORE VALUES. IS THAT RIGHT?

12 A I BELIEVE SO.

13 Q OKAY.

14 A BUT WHETHER THERE ARE PARTICULAR INSTANCES  
15 WHERE THAT WAS NOT THE CASE, I'M NOT AWARE OF ANY.

16 Q SO LET'S GO TO THE DEPARTMENT'S NOTEBOOK, THE  
17 SMALLER OF THE TWO, AND EXHIBIT 2.

18 A OKAY.

19 Q I JUST WANT TO RUN THROUGH WHAT HAPPENED IN  
20 2013.

21 COMMANDER, LOOKING AT THIS LETTER FROM  
22 MR. LOPEZ TO MR. REMIGE, IS IT CORRECT TO SAY THAT MR. LOPEZ  
23 INDICATES -- LIEUTENANT LOPEZ INDICATES THAT ALL OF THE CHANGES  
24 WITH THE EXCEPTION OF THE LAST ONE WERE RECOMMENDATIONS FROM  
25 THE C.C.J.V.?

1           A           YOU KNOW, QUITE FRANKLY, I BELIEVE THAT THE  
2 VERY LAST ONE WAS -- THAT THEY DID DISCUSS INMATE RETALIATION  
3 IN THEIR REPORT, SO I WOULD THINK THAT THEY ALL WERE TOUCHED ON  
4 SOMEHOW.

5           Q           AND WOULD YOU ALSO AGREE THAT LIEUTENANT LOPEZ  
6 REPRESENTED TO ALADS THAT THE CHANGES WERE BEING MADE -- AND  
7 I'M GOING TO QUOTE -- "IN RESPONSE TO RECOMMENDATIONS FROM THE  
8 C.C.J.V."?

9           A           I'M SORRY. YOUR QUESTION IS WHAT?

10          Q           LIEUTENANT LOPEZ TOLD ALADS THAT THESE  
11 RECOMMENDATIONS WERE BEING MADE IN RESPONSE TO RECOMMENDATIONS  
12 FROM THE C.C.J.V. IS THAT CORRECT?

13          A           YEAH. THAT'S WHAT HE HAD WROTE HERE, YES.

14          Q           OKAY. AND THEN YOU THEN TOOK US FROM JANUARY  
15 14TH WHEN THAT HAPPENED, THAT LETTER HAPPENED, AND YOU TOOK US  
16 TO JANUARY 30 AND EXHIBIT 4. COULD YOU LOOK AT THAT?

17          A           SURE.

18          Q           AND THIS IS WHAT YOU DESCRIBED AS A LETTER FROM  
19 ALADS INDICATING NO OBJECTIONS FOR ACCEPTANCE OF THE POLICY.  
20 IN FACT, THERE'S NO ONE FROM ALADS ON EITHER OF THESE  
21 CIRCULATION LISTS; IS THERE?

22          A           NO. I'M SORRY. I THINK YOU'RE MISQUOTING MY  
23 TESTIMONY. THIS IS A -- AND I HAD -- I HAD -- FOR SOME REASON  
24 I WAS THINKING IT WAS PAT MATHERS THAT HAD TALKED TO STEVE  
25 REMIGE. BUT, NO, THIS INDICATES THAT DAN LOPEZ SPOKE TO STEVE

1 REMIGE, I'M ASSUMING ON THE TELEPHONE OR IT MIGHT HAVE BEEN IN  
2 PERSON. I DON'T KNOW.

3 BUT AFTER SPEAKING WITH STEVE REMIGE, IT WAS  
4 HIS UNDERSTANDING THAT ALADS ACCEPTED THE CHANGES, SO THAT'S --  
5 THAT'S -- I AGREE WITH YOU THAT THIS IS NOT -- THIS IS NOT A  
6 COMMUNICATION TO OR FROM ALADS.

7 Q THIS IS AN INTERNAL DEPARTMENT COMMUNICATION;  
8 CORRECT?

9 A CORRECT.

10 Q OKAY. SO ON JANUARY 30 LOPEZ HAS A  
11 CONVERSATION WITH REMIGE AND LOPEZ SAYS I THINK ALADS ACCEPTS  
12 THIS POLICY.

13 THE NEXT THING THAT HAPPENS IF I UNDERSTAND  
14 YOUR TESTIMONY IS EXHIBIT 5. A LITTLE LESS THAN TWO WEEKS  
15 LATER, FEBRUARY 11TH, LOPEZ SENDS REMIGE A LETTER SAYING TWO  
16 TWEAKS, YOUR WORD, TO THE JANUARY 14TH POLICY. IS THAT  
17 CORRECT? IS THAT THE NEXT EVENT?

18 A YES. IT LOOKS LIKE IT, YES.

19 Q OKAY. THEN THE NEXT THING THAT HAPPENS AFTER  
20 FEBRUARY 11TH IS TWO DAYS LATER REMIGE, EXHIBIT 6, SENDS LOPEZ  
21 A LETTER SAYING WE ARE DEMANDING THAT THE DEPARTMENT CEASE AND  
22 DESIST AND THAT THE PROPOSED CHANGES NOT BE IMPLEMENTED UNTIL  
23 THE PARTIES HAVE MET. DO YOU SEE THAT?

24 A I SEE THAT.

25 Q WOULD YOU AGREE WITH ME, COMMANDER, THAT THIS

1 INDICATES THAT ALADS HAS NOT AGREED WITH THE CHANGES?

2 A YES.

3 Q ALL RIGHT. AND THEN THE NEXT THING THAT OCCURS  
4 IS THE FOLLOWING DAY ON FEBRUARY 14TH, IF THAT'S CORRECT. AND  
5 IS THIS LETTER LIEUTENANT LOPEZ TELLING MR. REMIGE, HEY, YOU  
6 SAID YOU HAD NO OBJECTIONS. WE'RE GOING TO GO AHEAD AND  
7 IMPLEMENT IN THREE DAYS. IS THAT WHAT --

8 A (WITNESS NODS.)

9 THE REPORTER: MAY I HAVE AN AUDIBLE ANSWER, SIR?

10 HEARING OFFICER ROSS: WELL, WAS THAT A "YES" OR A  
11 "NO"?

12 THE WITNESS: OH, I'M SORRY. YES, THAT'S WHAT THE  
13 LETTER INDICATES.

14 HEARING OFFICER ROSS: THANK YOU.

15 THE WITNESS: YES.

16 BY MR. AITCHISON:

17 Q WHY DIDN'T THE DEPARTMENT MEET WITH ALADS IN  
18 RESPONSE TO THIS LETTER?

19 A I THINK IN THE LETTER THAT IT DOES OFFER TO  
20 MEET WITH ALADS. IT APPEARS THAT LIEUTENANT LOPEZ SAID THAT,  
21 YOU KNOW, THE DEPARTMENT IS MOVING FORWARD WITH A FEBRUARY 17  
22 IMPLEMENTATION, BUT THEY WERE MORE THAN WILLING TO MEET WITH  
23 ALADS AND DISCUSS THEIR CONCERNS.

24 Q MEET AFTER THE FACT, MEET AFTER THE  
25 IMPLEMENTATION?

1           A           I DON'T THINK THAT'S WHAT IT SAYS.

2           Q           OH, OKAY. OKAY. BUT WOULD YOU AGREE WITH ME  
3 THAT LIEUTENANT LOPEZ IS CLEAR, WE ARE GOING TO IMPLEMENT. WE  
4 WILL DISCUSS IF YOU WANT BUT WE ARE GOING TO IMPLEMENT ON  
5 FEBRUARY 17TH?

6           A           THE DOCUMENT SPEAKS FOR ITSELF. YES, IN THOSE  
7 WORDS.

8           Q           THAT'S WHAT HE SAYS?

9           A           YES.

10          Q           OKAY.

11          MR. AITCHISON: THANK YOU, COMMANDER. NO FURTHER  
12 QUESTIONS.

13          THE WITNESS: THANK YOU, SIR.

14          HEARING OFFICER ROSS: ANY REDIRECT?

15          MR. WONG: LET'S TAKE A TEN-MINUTE BREAK?

16          MR. NELSON: COULD I HAVE A ONE-MINUTE BREAK BECAUSE I  
17 NEED TO CHECK -- I APOLOGIZE. I'VE GOT SOME --

18          HEARING OFFICER ROSS: OKAY. I'D LIKE TO TAKE A  
19 FIVE-MINUTE BREAK, SO YOU'RE IN LUCK.

20          MR. WONG: OH, OKAY.

21          MR. NELSON: THANK YOU.

22

23                       (RECESS.)

24

25          HEARING OFFICER ROSS: SO BACK ON THE RECORD.

1 MR. WONG: SO THE DEPARTMENT HAS NO FURTHER QUESTIONS  
2 FOR COMMANDER NELSON.

3 HEARING OFFICER ROSS: THANK YOU. AND DO YOU HAVE ANY  
4 ADDITIONAL WITNESSES?

5 MR. WONG: WE DO NOT AT THIS TIME SUBJECT TO WHAT I'D  
6 MENTIONED EARLIER WITH RESPECT TO COMMANDER NELSON AND WANTING  
7 TO COMPLETE THAT RESEARCH.

8 WE ALSO WANTED TO ACTUALLY TAKE A LOOK AT THE  
9 OFFICE OF THE INSPECTOR GENERAL REPORT THAT MR. AITCHISON  
10 PROVIDED.

11 BUT IF WE COULD HAVE PERHAPS TWO WEEKS TO, YOU  
12 KNOW, COMPLETE THE RESEARCH AND THEN TRY TO PUT TOGETHER A  
13 STIPULATION AND THEN FIND OUT IF MR. AITCHISON OR IF ALADS IS  
14 AGREEABLE TO THAT STIPULATION. THEN WE COULD DO THAT.

15 BUT IF WE CAN'T GET A STIPULATION, WE WOULD  
16 LIKE TO KEEP THE RECORD OPEN UNTIL THEN, IF NECESSARY, TO HAVE  
17 AN ADDITIONAL DAY OF HEARING JUST TO GET THAT ADDITIONAL  
18 INFORMATION IN.

19 HEARING OFFICER ROSS: OKAY. WELL, I AM REALLY NOT IN  
20 FAVOR OF HAVING AN ADDITIONAL DAY OF HEARING.

21 MR. AITCHISON: IF I MAY BE HEARD?

22 HEARING OFFICER ROSS: YES.

23 MR. AITCHISON: THIS CASE HAS BEEN READY FOR HEARING  
24 FOR A LONG TIME AND EVERYBODY SHOULD BE HERE WITH EVERYTHING,  
25 EVERY PIECE OF EVIDENCE THAT THEY WANT TO INTRODUCE.

1 I MEAN I WILL COMMIT, ALEX, THAT I WILL BE  
2 REASONABLE IN MY RESPONSE TO YOUR REQUEST FOR A STIPULATION.  
3 I'M NOT GOING TO HARD-TIME YOU AND SAY "NO" JUST TO SAY "NO."  
4 I MEAN, OF COURSE, I WILL WANT TO SEE THE UNDERLYING DOCUMENTS  
5 SO THAT I CAN VERIFY WHAT IT IS THAT YOU ARE ASKING ME TO  
6 STIPULATE TO, BUT WE WOULD OPPOSE ANY ADDITIONAL HEARING IN  
7 THIS CASE.

8 HEARING OFFICER ROSS: OKAY. SO LET ME MAKE THIS  
9 RULING. AT THE END OF THE DAY, I'M GOING TO CLOSE THE RECORD.  
10 IF YOU CANNOT COME TO AN AGREEMENT AND YOU WISH TO REOPEN THE  
11 RECORD, YOU CAN CERTAINLY MAKE THAT MOTION TO ME.

12 MR. WONG: OKAY.

13 HEARING OFFICER ROSS: AND IF YOU ARE GOING TO -- IF  
14 IT COMES TO THAT AND YOU ARE GOING TO MAKE SUCH A MOTION,  
15 PLEASE CONSIDER WHETHER AN IN-PERSON APPEARANCE IS REQUIRED OR  
16 SOME OTHER FORM OF COMMUNICATION COULD BE USED TO COMMUNICATE.  
17 I MEAN I DON'T KNOW THAT WE HAVE TO ALL BE HERE, DEPENDING UPON  
18 WHAT THE OBJECTIONS ARE, IF ANY, TO THIS STUDY.

19 MR. AITCHISON: VERY WELL.

20 MR. WONG: OKAY.

21 HEARING OFFICER ROSS: BE OPEN TO OPTIONS; OKAY?

22 MR. WONG: FAIR ENOUGH.

23 HEARING OFFICER ROSS: IF IT COMES TO THAT.

24 YOU ARE ACTUALLY EXCUSED FROM THE WITNESS CHAIR  
25 THERE.

1 THE WITNESS: THANK YOU.

2 HEARING OFFICER ROSS: THANK YOU FOR YOUR TESTIMONY.

3 MR. AITCHISON: DOES THE DEPARTMENT REST?

4 MR. WONG: THE DEPARTMENT RESTS --

5 MR. NELSON: PROVISIONALLY.

6 MR. WONG: -- PROVISIONALLY SUBJECT TO POTENTIALLY  
7 REOPENING THE RECORD. THANK YOU.

8 HEARING OFFICER ROSS: EXCUSE ME. NOW, I'VE JUST BEEN  
9 HANDED A REPORT DATED DECEMBER 2015, "ASSESSING THE RISE IN  
10 UNINTENDED DISCHARGES FROM THE SHERIFF'S DEPARTMENT'S  
11 CONVERSION TO A NEW HANDGUN," FROM THE OFFICE OF INSPECTOR  
12 GENERAL, COUNTY OF LOS ANGELES, MAX HUNTSMAN, INSPECTOR  
13 GENERAL.

14 THE REPORTER: EXCUSE ME, "HUNTSMAN"?

15 HEARING OFFICER ROSS: MAX HUNTSMAN, H-U-N-T-S-M-A-N.

16 THE REPORTER: THANK YOU.

17 HEARING OFFICER ROSS: IS THERE ANY --

18 MR. AITCHISON: AND WE WOULD OFFER THIS AS EXHIBIT  
19 A-33.

20  
21 (UNION'S EXHIBIT A-33 WAS MARKED  
22 FOR IDENTIFICATION BY THE HEARING OFFICER.)

23  
24 HEARING OFFICER ROSS: IS THERE ANY OBJECTION TO THIS  
25 DOCUMENT COMING IN AS A-33?

1 MR. WONG: I THINK IN FAIRNESS WE'RE NOT GOING TO  
2 OBJECT.

3 MR. AITCHISON: I JUST PULLED IT OFF THE INTERNET AND  
4 REPRINTED IT.

5 HEARING OFFICER ROSS: I WAS GOING TO SAY I THINK I  
6 COULD PROBABLY FIND IT MYSELF IF I WAS INTERESTED ENOUGH TO  
7 LOOK.

8 SO IS THERE ANY OBJECTION?

9 MR. WONG: OH, I MEAN SUBJECT TO OUR ABILITY TO SUBMIT  
10 SOMETHING, YOU KNOW, SINCE WE HAVEN'T EVEN READ THIS YET.  
11 THAT'S WHY WE WANTED TO KEEP THE RECORD OPEN IF WE DID WANT AN  
12 OPPORTUNITY TO SUBMIT SOMETHING TO REBUT IT. I THINK THAT  
13 WOULD BE PART OF THE STIPULATION THAT --

14 HEARING OFFICER ROSS: OKAY. WELL, IN THAT CASE, I'M  
15 NOT GOING TO ADMIT THIS DOCUMENT. HONESTLY, I DON'T WANT TO  
16 LEAVE THE RECORD OPEN. YOU GUYS HAVE HAD MONTHS AND MONTHS AND  
17 MONTHS.

18 MR. AITCHISON: I'M JUST PUTTING IT IN BECAUSE HE  
19 ASKED FOR IT. I DON'T CARE.

20 MR. WONG: YEAH. I THINK --

21 HEARING OFFICER ROSS: I DON'T THINK IT'S PART OF THE  
22 APPELLANT'S CASE. YOU'RE NOT APPELLANT. I DON'T THINK IT'S  
23 PART OF ALADS' CASE.

24 MR. WONG: OH, AND THERE WAS TESTIMONY AND QUESTIONING  
25 ON IT.

1 HEARING OFFICER ROSS: THERE WAS. BUT SINCE THE  
2 PEOPLE ALL SAID THAT THEY WEREN'T FAMILIAR WITH IT, WHAT'S THE  
3 POINT?

4 MR. AITCHISON: IT'S ALSO A MATTER OF PUBLIC RECORD.  
5 WE CAN JUST CITE IT, IF WE WANT.

6 MR. WONG: WELL, I MEAN I'M NOT OPPOSED TO HAVING IT  
7 COME IN, BUT THAT'S WHY I JUST WANTED TO RESERVE THE ABILITY  
8 TO -- YOU KNOW, SINCE THE PLAN IS TO WORK OUT A STIPULATION  
9 WITH RESPECT TO THE STUDY, THIS WOULD JUST BE -- TO THE EXTENT  
10 THERE IS ANY NEED FOR THE DEPARTMENT TO RESPOND SPECIFICALLY TO  
11 THE STUDY, THEN THAT WOULD BE -- I WAS CONTEMPLATING THAT WOULD  
12 BE PART OF THE STIPULATION THAT I MIGHT WORK OUT WITH  
13 MR. AITCHISON.

14 MR. AITCHISON: THAT IS FINE WITH ME SUBJECT TO THE  
15 SAME TERMS THAT WE HAD BEFORE.

16 HEARING OFFICER ROSS: OKAY. AND THAT'S FINE WITH ME,  
17 ALSO, BUT I WAS REALLY GOING TO ADD, ARE YOU SUBMITTING A  
18 BRIEF?

19 MR. WONG: YES, I WOULD LIKE TO.

20 HEARING OFFICER ROSS: SO IF YOU HAVE OBJECTIONS TO  
21 THIS OR COMMENTS, YOU CAN MAKE AN ARGUMENT IN YOUR BRIEF ABOUT  
22 IT.

23 MR. WONG: THAT'S TRUE. BUT I MEAN THE CONCERN IS  
24 THAT THERE MAY BE ADDITIONAL DOCUMENTS THAT MIGHT BE NEEDED.

25 HEARING OFFICER ROSS: OKAY.

1 MR. WONG: SO THAT'S WHY --

2 HEARING OFFICER ROSS: THEN THOSE ARE ALSO -- THEY CAN  
3 COME IN UNDER STIPULATION, SHOULD THERE BE ONE.

4 MR. WONG: OKAY.

5 THE REPORTER: SO WHERE ARE WE? WE HAVE DEPARTMENT'S  
6 23. THAT CAME IN. AND THEN WE HAVE A-33 --

7 HEARING OFFICER ROSS: A-33 IS IN.

8 THE REPORTER: IT'S IN? OKAY.

9

10 (UNION'S EXHIBIT A-33 WAS RECEIVED  
11 IN EVIDENCE BY THE HEARING OFFICER.)

12

13 HEARING OFFICER ROSS: AND THE PARTIES MAY COME TO A  
14 STIPULATION AFTER TODAY IN THE NEXT TWO WEEKS ABOUT ADDITIONAL  
15 STUDY TO BE DONE BY THE DEPARTMENT ON DISCIPLINE OUTSIDE THE  
16 GUIDELINES.

17

18 AND THE DEPARTMENT MAY ALSO FIND OTHER  
19 DOCUMENTS RELATING TO THIS LAST DOCUMENT, A-33, THAT IT WOULD  
20 CHOOSE TO SEEK A STIPULATION WITH ALADS ON THAT COULD COME IN,  
21 TOO.

21

OKAY. ARE WE ON THE SAME PAGE?

22

MR. WONG: I WOULD SAY SO.

23

MR. AITCHISON: YES.

24

HEARING OFFICER ROSS: SO DO YOU WISH TO FILE A BRIEF

25

OR DO AN ORAL CLOSING?

1 MR. WONG: OUR PREFERENCE IS TO SUBMIT A BRIEF.

2 HEARING OFFICER ROSS: OKAY.

3 MR. AITCHISON: WE'LL BE SUBMITTING A BRIEF ON THE  
4 SAME SCHEDULE. WE DO HAVE ONE MORE WITNESS.

5 MR. WONG: OH.

6 HEARING OFFICER ROSS: YOU DO HAVE ONE MORE?

7 MR. AITCHISON: WE HAVE A REBUTTAL WITNESS.

8 HEARING OFFICER ROSS: OH, I'M SO SORRY.

9 MR. AITCHISON: THAT'S OKAY. IT'S NOT GOING TO TAKE  
10 LONG.

11 HEARING OFFICER ROSS: WELL, LET'S PROCEED WITH YOUR  
12 REBUTTAL WITNESS.

13 MR. AITCHISON: WE'D RECALL REBECCA BUENO.

14 HEARING OFFICER ROSS: THAT WAS VERY PRESUMPTIVE OF  
15 ME. I APOLOGIZE. I THOUGHT WE WERE FINISHED-FINISHED. I WAS  
16 HURTLING YOU TO THE AIRPORT.

17 MS. BUENO: ME, TOO.

18 HEARING OFFICER ROSS: WELL, YOU ARE GOING TO BE  
19 HURTLED TO THE AIRPORT.

20 MS. BUENO: THAT'S RIGHT.

21 MR. AITCHISON: SHE WILL.

22 HEARING OFFICER ROSS: OKAY. PLEASE RAISE YOUR RIGHT  
23 HAND.

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REBECCA BUENO,

PRODUCED AS A WITNESS BY AND ON BEHALF OF THE UNION, AND HAVING BEEN FIRST DULY SWORN BY THE HEARING OFFICER, WAS EXAMINED AND TESTIFIED AS FOLLOWS:

HEARING OFFICER ROSS: PLEASE STATE YOUR NAME AGAIN.

THE WITNESS: REBECCA BUENO, B-U-E-N-O.

HEARING OFFICER ROSS: THANK YOU.

OKAY. SHE'S ALL YOURS.

DIRECT EXAMINATION

BY MR. AITCHISON:

Q MS. BUENO, WOULD YOU PLEASE TELL US WHAT THE IMPLICATIONS ON PROMOTIONS ARE IF A DEPUTY HAS BEEN DISCIPLINED?

A SURE. FOR COVETED POSITIONS, IF YOU'VE GOT DISCIPLINE OF 5 DAYS OR MORE, YOU CANNOT TAKE A COVETED POSITION FOR TWO YEARS.

IF YOU'VE GOT 15 DAYS OR MORE, YOU CANNOT TAKE ONE FOR -- YOU WON'T BE CONSIDERED FOR ONE FOR FIVE YEARS.

Q SO IT'S A BAR ON OBTAINING A COVETED POSITION?

A RIGHT, AND THAT'S IF MY MEMORY SERVES ME CORRECTLY.

HEARING OFFICER ROSS: OKAY. I MISSED SOMETHING HERE.

1                   IF YOU HAVE 5 DAYS OR MORE, YOU CAN'T APPLY FOR  
2 A -- BE CONSIDERED FOR A COVETED POSITION FOR --

3                   THE WITNESS: TWO YEARS.

4                   HEARING OFFICER ROSS: TWO YEARS. OKAY.

5                   THE WITNESS: AND 15 DAYS OR MORE --

6                   HEARING OFFICER ROSS: IT'S FIVE?

7                   THE WITNESS: IS FIVE YEARS, IF I RECALL CORRECTLY.

8                   MR. WONG: I'D LIKE TO OBJECT. I'M NOT SURE. WAS  
9 THIS -- I'M NOT SURE THIS WAS COVERED IN THE DEPARTMENT'S CASE  
10 IN CHIEF.

11                   HEARING OFFICER ROSS: WELL, I MAY BE LOSING IT, IT'S  
12 TOTALLY POSSIBLE, BUT I DO RECALL HEARING SOMETHING ABOUT THIS.  
13 DO YOU WANT ME TO SCAN MY NOTES?

14                   MR. WONG: LET ME TAKE A LOOK.

15                   MR. AITCHISON: IF IT MATTERS, THAT'S THE ONLY  
16 QUESTION I'M GOING TO ASK HER.

17                   MR. WONG: I'M SORRY?

18                   MR. AITCHISON: IT'S THE ONLY QUESTION I'M GOING TO  
19 ASK HER.

20                   MR. WONG: YEAH. NOW, I DO SEE THE QUESTION, BUT I  
21 DON'T SEE THAT -- YEAH, A QUESTION WAS ASKED, BUT I JUST DON'T  
22 KNOW IF THAT TESTIMONY --

23                   HEARING OFFICER ROSS: ARE YOU OBJECTING BECAUSE IT'S  
24 NOT TRUE OR ARE YOU OBJECTING BECAUSE IT WASN'T IN THEIR CASE  
25 IN CHIEF?

1 MR. WONG: WELL, PRIMARILY BECAUSE IT WASN'T PART OF  
2 THEIR CASE IN CHIEF.

3 HEARING OFFICER ROSS: WELL, I'M NOT GOING TO STAND ON  
4 CEREMONY --

5 MR. WONG: OKAY.

6 HEARING OFFICER ROSS: -- IF THAT'S THE BASIS FOR YOUR  
7 OBJECTION. I'M GOING TO ALLOW THE TESTIMONY --

8 MR. WONG: OKAY.

9 HEARING OFFICER ROSS: -- EVEN IF I'M MISTAKEN AND IT  
10 WASN'T IN THEIR CASE IN CHIEF.

11 MR. AITCHISON: THANK YOU. NO FURTHER QUESTIONS.

12 HEARING OFFICER ROSS: AND DO YOU HAVE ANY  
13 CROSS-EXAMINATION?

14 MR. WONG: YES. OKAY. NO, NO QUESTIONS FOR  
15 MS. BUENO.

16 MR. AITCHISON: WE REST.

17 HEARING OFFICER ROSS: THANK YOU.

18 MR. WONG: WE DO HAVE A SURREBUTTAL.

19 HEARING OFFICER ROSS: A REBUTTAL-REBUTTAL? OKAY.

20 MR. WONG: A REBUTTAL-REBUTTAL WITNESS, COMMANDER  
21 NELSON.

22 HEARING OFFICER ROSS: YOU'RE STILL UNDER OATH.

23 THE WITNESS: THANK YOU.

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GREGORY NELSON,

PRODUCED AS A WITNESS BY AND ON BEHALF OF THE DEPARTMENT, AND  
HAVING BEEN PREVIOUSLY SWORN BY THE HEARING OFFICER, WAS  
EXAMINED AND TESTIFIED AS FOLLOWS:

DIRECT EXAMINATION

BY MR. WONG:

Q YOU JUST HEARD MS. BUENO'S TESTIMONY REGARDING  
THE IMPACT OF DISCIPLINE ON PROMOTIONS AND WHATNOT?

A WELL --

Q LET ME ASK IT THIS WAY. YOU JUST HEARD  
MS. BUENO'S TESTIMONY?

A YES.

Q IS HER TESTIMONY, IS IT THAT CLEARCUT WITH  
RESPECT TO THE IMPACT OF DISCIPLINE?

A WELL, JUST FOR CLARITY, WE WERE TALKING ABOUT  
COVETED SELECTION, COVETED APPOINTMENTS?

HEARING OFFICER ROSS: NO, THIS IS NOT AN INTERACTIVE  
SESSION.

THE WITNESS: RIGHT. IF WE WERE TALKING ABOUT COVETED  
APPOINTMENTS, THEY ARE NOT PROMOTIONS. THEY ARE APPOINTMENTS.  
THEY LIVE WITHIN THE M.O.U. THEY'RE NOT PROMOTIONS, PER SE,  
CIVIL SERVICE PROMOTIONS.

HEARING OFFICER ROSS: I'M ACTUALLY FAMILIAR WITH

1 THAT.

2 THE WITNESS: RIGHT.

3 HEARING OFFICER ROSS: BUT THE RECORD MAY NOT BE.

4 THE WITNESS: RIGHT.

5 HEARING OFFICER ROSS: SO DID YOU WANT TO EXPLAIN THAT  
6 SHOULD SOMEONE EVER READ IT?

7 THE WITNESS: I JUST WANT TO CLARIFY THAT MS. BUENO  
8 HAS GOT IT ALMOST RIGHT. AND, IN FACT, IT USED TO BE A 5-DAY  
9 SUSPENSION YOU WOULDN'T BE ABLE TO GET APPOINTED FOR TWO YEARS  
10 FROM THE IMPOSITION THERE.

11 IN FACT, WE DID IMPACT BARGAINING WITH THE  
12 UNION A NUMBER OF YEARS AGO AND WE AGREED THAT THAT WOULD BE  
13 CHANGED TO 6 DAYS OR MORE OF SUSPENSION, I BELIEVE. I MEAN  
14 THIS IS GOING OFF MY MEMORY NOW, BUT I BELIEVE THAT IS THE  
15 CASE.

16 ALSO, AS FAR AS THE UPPER END, I THINK IT'S  
17 A 16 OR MORE DAY SUSPENSION FOR THE HIGH END FOR THE FIVE YEAR  
18 APPOINTMENT DELAY. THAT IS MY RECOLLECTION.

19 HEARING OFFICER ROSS: OKAY. SO IF I'M UNDERSTANDING  
20 YOUR TESTIMONY CORRECTLY, WHAT YOU'RE TELL ME IS THAT IF AN  
21 INDIVIDUAL IS SUSPENDED FOR 6 DAYS OR MORE THEY WOULD NOT BE  
22 CONSIDERED FOR A COVETED POSITION FOR TWO YEARS?

23 THE WITNESS: APPOINTMENT TO A COVETED POSITION FOR  
24 TWO YEARS.

25 HEARING OFFICER ROSS: AND IF THEY ARE SUSPENDED FOR

1 16 DAYS OR MORE, THEY WOULD NOT BE CONSIDERED FOR APPOINTMENT  
2 TO A COVETED POSITION FOR FIVE YEARS?

3 THE WITNESS: I BELIEVE THAT'S THE CASE, YES.

4 HEARING OFFICER ROSS: OKAY.

5 MR. WONG: NOTHING FURTHER.

6 HEARING OFFICER ROSS: ANY CROSS?

7 MR. AITCHISON: NO CROSS.

8 HEARING OFFICER ROSS: THANK YOU.

9 MR. WONG: THANK YOU.

10 THE WITNESS: A TINY NUANCE THERE.

11 HEARING OFFICER ROSS: OKAY. SO ARE BOTH OF YOU  
12 RESTING NOW?

13 MR. WONG: YES.

14 MR. AITCHISON: ALADS RESTS.

15 MR. WONG: THE DEPARTMENT RESTS.

16 HEARING OFFICER ROSS: OKAY. ARE YOU ORDERING  
17 TRANSCRIPTS?

18 MR. AITCHISON: YES.

19 MR. WONG: YES.

20 HEARING OFFICER ROSS: WILL YOU NOTIFY, PLEASE, THE  
21 STAFF OF ERCOM WHEN THE TRANSCRIPTS ARRIVE AND THEY WILL SET  
22 THE BRIEFING SCHEDULE?

23 MR. AITCHISON: OH, OKAY.

24 HEARING OFFICER ROSS: OKAY?

25 MR. AITCHISON: YES.

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MR. WONG: YES.

HEARING OFFICER ROSS: THANK YOU.

MR. WONG: THANK YOU.

HEARING OFFICER ROSS: THEN THE RECORD IS CLOSED AND  
YOU CAN ALL GO HOME, WHEREVER YOU'RE HEADED.

(PROCEEDINGS CONCLUDED AT 3:45 P.M.)

HEARING REPORTER'S CERTIFICATE

I, JOYCE SILVERMAN, HEARING REPORTER IN AND FOR THE STATE OF CALIFORNIA, DO HEREBY CERTIFY:

THAT THE FOREGOING TRANSCRIPT OF PROCEEDINGS WAS TAKEN BEFORE ME AT THE TIME AND PLACE SET FORTH, THAT THE TESTIMONY AND PROCEEDINGS WERE REPORTED STENOGRAPHICALLY BY ME AND LATER TRANSCRIBED BY COMPUTER-AIDED TRANSCRIPTION UNDER MY DIRECTION AND SUPERVISION, THAT THE FOREGOING IS A TRUE RECORD OF THE TESTIMONY AND PROCEEDINGS TAKEN AT THAT TIME.

I FURTHER CERTIFY THAT I AM IN NO WAY INTERESTED IN THE OUTCOME OF SAID ACTION.

I HAVE HEREUNTO SUBSCRIBED MY NAME THIS 21ST DAY OF JUNE, 2018.

---

JOYCE SILVERMAN  
HEARING REPORTER