

BEFORE THE FORT SMITH CIVIL SERVICE COMMISSION

In the Matter of the Trial
of DON PAUL BALES

Hearing Held at Creekmore Park Community Room on
December 5, 2013, 12:00 Noon

APPEARANCES:

ON BEHALF OF:

Mr. Wyman R. Wade, Jr.
Daily & Woods
P.O. Box 1446
Fort Smith, AR 72902-1446

City of Fort Smith

Mr. Matthew D. Campbell
Pinnacle Law Firm
212 Center St., 11th Floor
Little Rock, AR 72201

Don Paul Bales

COMMISSIONERS PRESENT: Mr. Chip Sexton, Chairman
Mr. Robert Cooper
Mr. Marty Shell

NANCY BLAND, CCR
LEGAL ASSIST
P.O. Box 4143
Fort Smith, Arkansas 72914-4143
(479) 782-4445

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1 MR. SEXTON: Good afternoon. This meeting will come to
2 order. I'm Chip Sexton, Chairman of the Fort Smith
3 Civil Service Commission. To my left is
4 Commissioner Marty Shell. To my right is
5 Commissioner Robert Cooper. We're here today in
6 connection with a trial involving Don Paul Bales.
7 Mr. Wade, is the City ready for trial?

8 MR. WADE: Yes. That's correct.

9 MR. SEXTON: Okay. Mr. Campbell, is the defendant or is
10 Officer Bales ready for trial?

11 MR. CAMPBELL: Yes, sir.

12 MR. SEXTON: All right. If everyone who knows themselves
13 to be a witness please stand at this time and be
14 sworn. Raise your right hand. Do you and each of
15 you solemnly swear or affirm that the testimony
16 you're about to give in the matter now pending
17 before the Fort Smith Civil Commission shall be the
18 truth, the whole truth, and nothing but the truth?

19 [AFFIRMATIVE RESPONSES.]

20 MR. SEXTON: Thank you. You may be seated. Does either
21 side desire the Rule?

22 MR. CAMPBELL: I do.

23 MR. SEXTON: All right. At this time anyone who's going to
24 be testifying in this matter other than the
25 representative for the City and Mr. Bales will need

1 to wait outside until you're called as a witness.

2 We have a couple of preliminary matters that I want

3 to take care of.

4 MR. WADE: Let me, if I may, Mr. Chairman. I think I'm

5 going to designate Detective Smithson as the

6 representative of the City to sit up here so he can

7 assist me with some things. The Chief obviously is

8 the final decision-maker in here. We would ask

9 that he be allowed to remain and that he not be

10 subject to the Rule.

11 MR. SEXTON: Mr. Campbell, what's your position on that?

12 MR. CAMPBELL: My only concern is that Mr. Wade has mentioned

13 to me that those might be the only two witnesses he

14 actually calls, and that would sort of defeat the

15 purpose of invoking the Rule if the only two

16 witnesses can listen to each other.

17 MR. SEXTON: Mr. Wade, I tend to agree with him. I think

18 you need to designate one or the other as the

19 City's representative.

20 MR. WADE: In that case, Chief.

21 [CHIEF KEVIN LINDSEY EXITS.]

22 MR. SEXTON: The first thing is I'm going to go ahead and

23 mark as Exhibit A -- I know that the City's

24 exhibits begin with the Number 1 and I don't want

25 to mess those up. I'm going to mark as Exhibit A,

1 Commission Exhibit A the appeal that Mr. Bales
2 filed, which actually has attached to it a copy of
3 the letter, the disciplinary letter from Chief
4 Kevin Lindsey dated November 5th, 2013, and it also
5 has attached to it a photograph, a copy, I believe,
6 of a Facebook page that says I support Addisen
7 Entmeier. Does either side have any objection to
8 this being attached as an exhibit?

9 MR. WADE: None from the City.

10 MR. CAMPBELL: No, sir.

11 MR. SEXTON: That will be Exhibit A to the record in this
12 case. The next matter I have is a Motion in Limine
13 that Mr. Campbell filed on behalf of Mr. Bales
14 which concerns evidence regarding an allegation
15 that Mr. Bales was untruthful, which was ultimately
16 not sustained by Chief Lindsey. Mr. Wade, do you
17 have any argument on that you want to put forth at
18 this time?

19 MR. WADE: Mr. Sexton, as I indicated in an email back to
20 you, I believe that this Commission is entitled to
21 listen to anything and everything that was part of
22 the consideration by the Chief. If he happened to
23 determine that that particular allegation was not
24 sustained, then he ought to be allowed to tell you
25 why he took that position. In so stating, I

1 believe that this Commission has the ability to
2 affirm his decision, to reverse it or to modify it,
3 and if this Commission were to determine in the
4 course of this trial today that that should have
5 been a sustainable allegation, I believe you
6 actually have the power to order termination and
7 not just deal with the suspension itself. So, I
8 believe that the Commission is obligated, as well
9 as entitled, to hear all that went into the Chief's
10 decision.

11 MR. SEXTON: Mr. Wade, as Mr. Campbell pointed out in his
12 Motion, the purpose of the hearing is a trial on
13 the charges alleged as the grounds for suspension.
14 Rule 705 was not one of those grounds. In fact, in
15 an exhibit that you presented to us, Exhibit 5 from
16 the City, shows that the Rule 705 violation for
17 willful misrepresentation or perjury was not
18 sustained. In the letter from Chief Lindsey to
19 Officer Bales, it is clear that he didn't use the
20 Rule 705 violation as a basis for taking any
21 disciplinary action against Mr. Bales, and we as a
22 Commission don't have the jurisdiction to charge
23 Officer Bales with a Rule 705 violation when he's
24 not charged with that. Now, the evidence might
25 come in for some other purpose, but the Motion in

1 Limine in its present form is granted. I agree
2 with Mr. Campbell.

3 MR. WADE: May I add one other thing, Mr. Chair.

4 Regardless of what this Commission decides to do,
5 either side will have an opportunity or at least a
6 legal right to appeal this to Circuit Court, in
7 which case it's to be an appeal de novo on the
8 record, and so with that, I think that to have a
9 full presentation at least for the possible appeal
10 to Circuit Court, these things need to be in the
11 record.

12 MR. SEXTON: You could -- you certainly can make an offer
13 of proof, and you have done that already, Mr. Wade,
14 with the exhibits that have been introduced. My
15 point is that no matter what's here, the Commission
16 is not going to consider any of the evidence from
17 the City for purposes of making a Rule 705
18 violation. It would -- it would not only offend
19 the statute, Arkansas Code Annotated Section 14-51-
20 308(b)(1), but it would also be a violation of this
21 man's due process rights because he has an
22 entitlement to notice of the charges against him,
23 and he was never charged before this Commission or
24 at least he was never charged after Chief Lindsey
25 took action with a violation of Rule 305 or 705,

1 whatever the rule is.

2 MR. WADE: 705.

3 MR. SEXTON: 705, the rule that charges with willful
4 misrepresentation. And I think it would be a
5 violation of his due process rights under the
6 Arkansas and U.S. Constitution for us as the
7 Commission to undertake to charge him again after
8 he's already been exonerated on those charges.
9 That will be the order of the Commission.

10 Are there any stipulations or other matters
11 before we begin the hearing?

12 MR. WADE: The only thing I would point out, I provided
13 -- I advised Mr. Campbell that we had done this
14 previously with the Commission. I've got a
15 notebook and I provided a copy of that to Mr.
16 Campbell. We would ask that this be admitted as
17 City's Exhibit 1, and you've referred to documents
18 within this. I would suggest that we just treat
19 this as the City's entire exhibit and then refer to
20 the various tabs below if that's permissible?

21 MR. CAMPBELL: Subject to any limitations covered by the
22 Motion in Limine, I have no real objection to that.
23 I will stipulate that four of the five members of
24 the review board found problems with Sergeant
25 Bales' actions recommended termination. I would,

1 you know, the Commission is more than capable of
2 reviewing the record of the evidence and making
3 their own determination, so I don't know that we
4 need the reviewers to actually get up here and give
5 their -- re-state their opinions. So, we'll
6 stipulate that they did recommend termination and
7 not have that testimony.

8 MR. WADE: And I had indicated to Mr. Campbell that
9 originally I had planned on calling the five
10 reviewers. They are here and subject to being
11 called, but certainly in the interest of time and
12 safety because of the weather outside, I had
13 suggested to him that I may forego calling them,
14 and certainly with the ruling of the court or the
15 Commission on the Motion in Limine, that would
16 eliminate some of the discussion we might have had
17 on the 705 violation.

18 MR. SEXTON: So, you want to admit your exhibit as Exhibit
19 1, and then we'll just refer to the various tabs?

20 MR. WADE: If that's acceptable to the Commission, yes.

21 MR. SEXTON: Okay. That's fine. That's fine, Mr. Wade.
22 Is the CD or DVD audio recordings included in this
23 exhibit?

24 MR. WADE: Oh, yeah. All of that is in there. There
25 should be the audio disk should be in there.

1 MR. SEXTON: All right. That will be admitted as City's
2 Exhibit 1. Having said that, none of the evidence
3 presented by the City will be considered for
4 purposes of making a finding that Mr. Bales was
5 untruthful or there was never a Rule 705 violation.
6 Having said that, does either side desire to make
7 an opening statement?

8 MR. WADE: The City would.

9 MR. SEXTON: Go ahead.

10 MR. WADE: I think it's important, because this can be
11 kind of a convoluted case if it weren't expressed
12 succinctly, and I say that because the genesis of
13 this was the termination of a probationary officer.
14 I've explained to or suggested to Mr. Campbell that
15 we will do our best today not to refer to that
16 office by name. This is not a hearing that ought
17 to be on anything about that particular officer.
18 However, as the testimony comes out, you will hear
19 that in the wake of that termination, Sergeant
20 Bales, for whatever reason, seemed to take it upon
21 himself to inject himself into the review of that
22 particular termination.

23 At that time the City had been receiving
24 Freedom of Information Act requests from a local
25 attorney. They were responding to those particular

1 requests, and some of the requests seemed to be so
2 specific that it was as if somebody had accessed
3 particular records within the police department
4 that otherwise they would not have access to, not
5 that it would have been some legal violation, but
6 it would have been a violation of departmental
7 policies for one officer to go off and inquire
8 about records in another area. And as a result of
9 that, a supervisory officer, Sergeant Dewey Young,
10 went to the Chief of Police and said that he had
11 some concerns that there were officers, including
12 Sergeant Bales, that might have been accessing
13 these records that they shouldn't have.

14 Professional Standards was asked to do an
15 investigation into that, and during the course of
16 initiating the investigation, at some point
17 Sergeant Bales went to the Chief, said that the
18 termination of that probationary officer had in
19 effect been a hit job, and he made certain
20 allegations that Captain Alan Haney, Sergeant
21 Brandon Bird, Sergeant Chris Harris who did an
22 evaluation of that particular probationary officer,
23 and Sergeant Dewey Young all had in effect, and
24 these may be my words, had all in effect conspired
25 to get rid of this probationary officer for certain

1 reasons. Part of the exhibit that you have, and
2 it's under -- it's under tab 6, will be a -- you
3 see some red marks in there. Those are from
4 Sergeant Bales telling in some detail why this
5 evaluation of the probationary officer was wrong,
6 and as a result of that, the Chief, concerned that
7 if these guys had, in fact, done a hit job of a
8 probationary officer that the Chief may have done
9 something wrong, that perhaps he ought to re-hire
10 the probationary officer, and these individuals
11 that had been identified, again, Captain Haney and
12 the sergeants, perhaps there was some disciplinary
13 measures that ought to be meted out to them. This
14 thing got serious in a hurry, and as a result,
15 Professional Standards was asked to look into the
16 allegations by Sergeant Bales. As Detective
17 Smithson will tell you about that investigation as
18 they -- first of all, they talked to Sergeant Bales
19 for about two hours where he was very adamant about
20 you do this and you'll find.

21 This was an exhaustive investigation that I
22 think there were about 14 witnesses, very time-
23 consuming on behalf of Professional Standards, and
24 during the course of that investigation, at least
25 in the determination of Captain Jarrard Copeland

1 and Detective Smithson, the focus then suddenly
2 went back to Sergeant Bales. He had made these
3 various allegations against supervisors that we
4 can't confirm. In fact, if anything, we're finding
5 that what you told us and the road you set us on is
6 not true. And as a result of that, you'll see in
7 there the results of the investigation by
8 Professional Standards that then went on to asking
9 whether Sergeant Bales wanted to have a
10 pre-determination hearing. He said no, he would
11 waive it, and the reviewing officers, one of whom,
12 Major Pitts was his review officer selected by him,
13 they came up with the recommendations that
14 ultimately went to the Chief And so I think you
15 need to understand that is the background of how we
16 got to where we are today. Without, again, this
17 should not be any kind of investigation, it should
18 not be a hearing into that probationary officer and
19 what may or may not have happened to him. That's
20 just to let you know, as I say, that was the
21 genesis of all of this.

22 MR. SEXTON: Mr. Wade, we concur with you, or I concur with
23 you that this not a trial into the termination of
24 the probationary officer, whether or not that was
25 rightful or wrongful. It's a matter we don't have

1 jurisdiction over. I absolutely agree with you on
2 that. I think that as we go along today we're
3 going to try to try that case, but the Commission's
4 going to have a problem with that. Certainly there
5 are aspects of that termination that are going to
6 come in here today that go to the issue of good
7 faith and Mr. Bales.

8 But let me clarify so that we as the
9 Commission understand. Is Mr. Bales charged with
10 improperly accessing records or is that just
11 something that you --

12 MR. WADE: That started the investigation. That, again,
13 if I use genesis one and genesis two, that was part
14 of what initiated it. It is my understanding there
15 was no finding of wrongdoing on anybody's part.
16 That's correct.

17 MR. SEXTON: So, no allegation of improperly accessing
18 records?

19 MR. WADE: No. We just explained what was done and why.

20 MR. SEXTON: All right. Now, the allegations against Mr.
21 Bales are that he engaged in conduct which
22 constituted conduct unbecoming an officer or
23 neglect of duty, and I'm not trying to pin you down
24 here, but can you tell us so that we know what's
25 been going on what the acts or all omissions of Mr.

1 Bales were that constitute conduct unbecoming an
2 officer?

3 MR. WADE: I think the Chief will have to explain that to
4 you. And as I've indicated to Mr. Campbell and
5 would to this Commission, with the experience that
6 at least two members of this Commission may have in
7 hindsight about Major Barrows and the fact that he
8 was terminated for undermining the authority of the
9 Chief, at least it's my opinion that what Sergeant
10 Bales did in effect bringing these allegations
11 against a captain, three sergeants, and the
12 testimony will show and then expanded into Major
13 Chris Boyd and the members of the Professional
14 Standards department itself, the division itself,
15 that that in effect tended to undermine the
16 authority of those individuals, and where that fits
17 in or doesn't fit in to these various rule
18 violations that the Chief found, he can explain.

19 MR. SEXTON: And would that be up to the Chief also to
20 explain the allegation of a violation of Rule 305
21 about publicly criticizing or ridiculing the
22 department?

23 MR. WADE: Yeah. Mr. Chair, as you've heard me say time
24 and time again when we have these kind of hearings,
25 the buck stops with the Chief. He's going to have

1 to explain what he did and why.

2 MR. SEXTON: Mr. Wade, is the Facebook posting of the
3 officer that was terminated --

4 MR. WADE: Was that a factor? No. I believe the Chief
5 will explain that.

6 MR. SEXTON: That's not part of the allegations?

7 MR. WADE: I don't believe -- I don't believe so. Again,
8 the Chief will be able to tell you in his own words
9 under oath.

10 MR. SEXTON: Thank you. I just wanted to clarify that.
11 Mr. Campbell, would you like to make an opening
12 statement?

13 MR. CAMPBELL: Yes. I would agree with Mr. Wade that this
14 isn't about this, and with the Commission, this
15 isn't about the probationary employee who was
16 terminated and whether that termination was
17 wrongful. At the same time, I do represent that
18 probationary employee in a different capacity, and
19 necessarily, I mean, if you listen to the
20 recordings that the City's provided, I would say
21 well over three-fourths of the investigation that
22 went along was about that termination. So, to
23 pretend like we're going to just completely wipe
24 that out and just focus on Sergeant Bales behavior
25 is probably sort of wishful thinking.

1 At the same time, while I would agree that Mr.
2 Wade's time line is generally correct, there are
3 important factors that are left out that can change
4 the scope of a lot of what he's pointing at. For
5 example, the interoffice memorandum that Sergeant
6 Bales put his own notes on was given to
7 Professional Standards specifically at the behest
8 of the Chief. The Chief had called Sergeant Bales
9 in, Sergeant Bales and Sergeant Entmeier, and asked
10 them to explain why they thought that the
11 termination was improper. They gave him the
12 explanation. He said would you please, you know,
13 relay that information to Professional Standards,
14 so he did it in this format.

15 To my knowledge, you know, in Professional
16 Standards investigations the information is
17 supposed to be confidential. So, to whatever
18 extent there was sort of this -- I believe the
19 Chief used a wide-spread and pervasive campaign to
20 undermine the termination of the probationary
21 employee. That would have come from however
22 Professional Standards handled the information that
23 Sergeant Bales gave them from the Chief's request
24 and it seems sort of disingenuous at this point to
25 turn around and then say, oh, by the way, you know

1 that stuff we asked you to tell Professional
2 Standards, well, you know, we've got -- we've got
3 issues with the fact that you told them that now
4 and we're going to find that you were somehow
5 engaged in anything more than what the Chief told
6 you to do.

7 I just also would note from the outset that
8 Detective Smithson, the investigation, I mean, I
9 listened to them. I'm sure that the Commission has
10 listened to all of the recordings. There's no
11 investigation into did you hear X, Y, or Z from
12 Sergeant Bales. Did Sergeant Bales -- did you hear
13 this from someone who heard this from Sergeant
14 Bales? Exactly two of the recordings even mention
15 Sergeant Bales by name. In one of them Sergeant
16 Young says that he asked Corporal Holloway if he
17 heard something from Sergeant Bales. Corporal
18 Holloway tells Sergeant Young, no, that's not where
19 it came from. There's literally no looking into --
20 for all the talk of a wide-spread campaign, there's
21 nothing in the actual investigation that supports
22 even a mild campaign, let alone a wide-spread
23 anything. And it really -- it sorts of feels like
24 you've got the initial investigation based on the
25 telephone recordings. That streams along for about

1 two months. There's nothing that comes of it. All
2 of a sudden, you know, it's a lot like if you've
3 ever played with a little kid and you're racing
4 them and all of a sudden they say, oh, we're
5 turning around here and they take off back the
6 other direction because they're losing going one
7 route. It feels a lot like that with this. They
8 thought they had the telephone recording thing and
9 nothing came of that, and then he does what the
10 chief asks him, and then they turn around and say,
11 well, that thing you did right there, now that's
12 what we have a problem with. So, I mean, to say
13 again, the whole thing feels disingenuous at best,
14 and I certainly don't think that the Commission
15 will find any evidence of undermining the Chief's
16 authority or a wide-spread campaign or any of the
17 other allegations with which Sergeant was charged.
18 Thank you.

19 MR. SEXTON: Mr. Wade, call your first.

20 MR. WADE: Call Detective Greg Smithson. May I remain
21 seated during the questioning?

22 MR. SEXTON: Certainly. Be comfortable.

23 DIRECT EXAMINATION OF GREG SMITHSON

24 BY MR. WADE:

25 Q. State your name, please?

1 A. Greg Smithson.

2 Q. You're currently a detective, is that correct?

3 A. Yes. That's correct.

4 Q. And you're in the Office of Professional
5 Standards?

6 A. Yes, sir.

7 Q. How long have you been in Professional Standards?

8 A. A little over -- about three and a half years.

9 Q. What did you do prior to that?

10 A. I was a criminal investigator.

11 Q. How long were you a criminal investigator?

12 A. For 12 years.

13 Q. So, you've had experience in investigating all
14 types of matters, I assume?

15 A. Yes, sir.

16 Q. Okay. Now, is there anybody else in Professional
17 Standards with you?

18 A. Yes, sir. There's Captain Jarrard Copeland.

19 Q. Okay. Now, Captain Copeland has been there for a
20 fairly short time, I believe. How long has he been there?

21 A. Just -- I believe it was in August when he moved
22 over.

23 Q. Okay. Would you help us -- I guess go back to the
24 beginning and tell how Professional Standards got involved in
25 an investigation that ultimately focused on Sergeant Bales

1 and got us here today. Take us back to the beginning if you
2 would?

3 A. Okay. Your opening statement was pretty much --

4 Q. Let me do one other thing for you. You helped me
5 put together the City's Exhibit 1, correct?

6 A. Yes, sir. That's correct.

7 Q. For the benefit of Mr. Campbell and the Commission,
8 would you go through here and tell us fairly briefly what's
9 under each of these tabs, what we're looking at?

10 A. Okay. Under tab one, I've -- well, before tab one
11 I've got the table of contents. Under tab one it's a
12 reference sheet for the audio statements -- it's -- that are
13 on a DVD. Tab one is the copy of the law enforcement code of
14 ethics and the oath of office signed by Sergeant Don Bales
15 when he was hired. Under tab three is a signature line under
16 our Power DMS program which shows that he's reviewed his
17 rules and regulations, it just shows that he was made aware
18 of them. Under four is the listed rules and regulations
19 throughout this investigation. There's 301.02, 302, 305,
20 305.04, and 705.

21 Q. And 705, of course, is the rule that the
22 Commission's already made a determination about?

23 A. That's correct. Yes.

24 Q. Go ahead.

25 A. Okay. Under tab is a printout of the original

1 complaint and our data base that we use in internal affairs.

2 Q. Now, the original complaint would have come from
3 whom?

4 A. I believe it was entered by Chief Lindsey.

5 Q. He can explain what he did and why, of course?

6 A. Yes. Under tab 6 is an interoffice memo that was
7 completed by Sergeant Chris Harris. It's got red ink
8 markings on it. This was provided by Sergeant Bales during
9 the investigation. Behind tab 7 is a notice of
10 administrative investigation to Sergeant Chris Harris.
11 Behind tab eight is an investigative warning for Sergeant
12 Harris. Behind nine is Sergeant Chris Harris' interoffice
13 memo that's unmarked. Behind ten is a notice of the
14 investigation for Sergeant Bales. This is the original
15 investigative notice that was given to him listing 301.02,
16 302, 305, and 305.04. Behind tab 11 is an investigative
17 warning for Sergeant Bales that he was provided. Behind tab
18 12 is a second notice of investigation for Sergeant Bales.
19 It's the same as the first, but also was added Rule 705.
20 Behind 13 is Captain Copeland's reports, his investigative
21 notes and reports.

22 Q. Now, when he was doing his part of the
23 investigation, were you with him?

24 A. Yes, sir. We was working together throughout the
25 entire investigation. I think he may have missed -- there

1 may have been two interviews that he was not present with me.

2 Q. And was that primarily, even though he was a
3 ranking officer, is it he was new to the Professional
4 Standards --

5 A. Yes, sir.

6 Q. -- and you were accompanying him?

7 A. Yes, sir.

8 Q. Go ahead.

9 A. Behind tab 14 is another report completed by
10 Captain Copeland. There's two additional pages. These are
11 phone number -- phone records of Matthew Holloway. Behind 15
12 is one additional report --

13 Q. I want to make sure for the benefit of the
14 Commission. The reference to Matthew Holloway, was that in
15 reference to the potential Rule 705 violation?

16 A. That's correct.

17 Q. Okay. Go ahead.

18 A. Behind 15 is another report completed by Captain
19 Jarrard Copeland, and it has a disciplinary review
20 recommendation of a past employee.

21 Q. Okay.

22 A. Behind 16 -- the first page behind 16 is just sort
23 of a little investigative summary I completed for the purpose
24 of the disciplinary review board to try to keep things clear,
25 and behind that is my investigator notes which consist of

1 about, I think it's 19 pages. Yes, sir. Behind 17 are
2 allegation determination forms for this case. These are
3 forms completed by the review board. There should be five of
4 them.

5 Q. Yeah, we'll go through the process of how we got to
6 these. Right now we're just trying to identify what's behind
7 the tabs.

8 A. Okay. Behind 18 is a pre-determination hearing
9 form that's given to Sergeant Bales. Behind 19 are
10 disciplinary review recommendations from the review board.
11 Behind 20 is Chief Lindsey's letter to Sergeant Don Paul
12 Bales, the disciplinary letter.

13 Q. Let me go back one step. The pre-hearing
14 determination, is there some place in here where Sergeant
15 Bales had waived his right to be at that hearing?

16 A. Yes, sir. It's on page two of that form.

17 Q. Which tab are you under?

18 A. It's behind tab 18, and there's a checkmark I wish
19 to waive the hearing on this matter.

20 Q. Okay. Go ahead. I interrupted you. Go back to
21 where you were. I think you were at the Chief's under tab
22 20.

23 A. Behind tab 20 is the Chief's disciplinary letter.
24 And behind 21 is Sergeant Bales' notice of appeal for the
25 disciplinary hearing or the Civil Service hearing. He also

1 -- there's also another copy of the Chief's disciplinary
2 letter with that, as well as a photo and it says I support a
3 particular person. And I've got a piece of paper here from
4 the City of Fort Smith, notice of the schedule of the
5 hearing. And --

6 Q. Okay. Let -- I'm sorry, go ahead.

7 A. There's one behind 22 is an email from Captain
8 Alan Haney.

9 Q. Okay. Now, let's go back to the question I posed
10 before we started going through the Exhibit 1, that is, tell
11 us about how Professional Standards got involved in this?

12 A. Originally, like I said, like you had mentioned
13 earlier, Chief Lindsey was approached by Sergeant Dewey Young
14 regarding some -- and it all began over FOI's and there was a
15 belief that maybe some access to the department records were
16 being released improperly, and the complaint basically
17 started there and there was --

18 Q. Now, the records of the FOI, these were related to
19 the terminated probationary officer?

20 A. That's correct.

21 Q. And as I indicated to the Commission early, I
22 believe that Sergeant Young's specific concern was that some
23 of the requests under the Freedom of Information Act were so
24 specific that at least he thought that maybe there had been
25 unauthorized access?

1 A. That's correct.

2 Q. Now, when you started out to do that preliminary
3 investigation, did anybody else in the department other than
4 the Chief give you any instructions as to what you were to do
5 as far as your investigation?

6 A. No, they did not.

7 Q. And what specifically did the Chief you that you
8 were to do?

9 A. I was working at that time with Sergeant Dawn
10 Sprayberry. She was in on the very beginning. It began by
11 checking phone records and emails and such things like that.

12 Q. And I think we've already indicated that you
13 weren't able to confirm that allegation, is that correct?

14 A. It would have been my opinion that there would have
15 not been enough evidence to support that.

16 Q. Okay. What happened from that point? You started
17 down one road and how did you get onto another?

18 A. Well, just about the time we were finishing that,
19 as we had done a couple of interviews with different
20 employees about public criticism, as well as this access to
21 department records, we were -- myself and Captain Copeland
22 were about to interview Sergeant Bales concerning this matter
23 when Chief Lindsey approached Captain Copeland and informed
24 him of Sergeant Bales' information that this might be a hit
25 job.

1 Q. On the probationary officer?

2 A. On the probationary officer. And we then scheduled
3 to meet with Sergeant Bales, took a statement regarding this
4 information he passed on to Chief Lindsey.

5 Q. Okay. Now, when Chief Lindsey approached you about
6 that aspect of it, the possible hit job on the probationary
7 officer, did he give you any instructions as to what to do in
8 terms of conducting the investigation, who the focus of the
9 investigation might be?

10 A. No, sir.

11 Q. Okay. What did you do next then?

12 A. We first interviewed Sergeant Bales, sat down with
13 him. During that interview, he provided us the one
14 interoffice memo that had all the red writing on it.

15 Q. Okay. Let's refer to the tab so can be consistent
16 with identifying documents in that exhibit.

17 A. I believe it's behind tab five. No, I'm sorry.
18 It's behind tab six.

19 Q. So, is that something that you asked for or is that
20 something that Sergeant Bales voluntarily provided to you?

21 A. He brought it with him and I believe I asked if I
22 could keep a copy and he said he was going to provide to us,
23 anyway, because it had his notes on it.

24 Q. Now, if Mr. Campbell will allow me to do a little
25 bit leading here just so we understand the context of this.

1 As I understand it, the probationary officer was coming up
2 close to the end of his probation and there were at least
3 some expressed concerns by certain sergeants, I believe
4 Brandon Bird, Sergeant Dewey Young, and perhaps even Captain
5 Alan Haney about the ability it complete the probationary
6 process, is that correct, as you remember it?

7 A. Yes, sir. That's correct.

8 Q. And that at some point the idea was to do kind of a
9 final evaluation and that that was Sergeant Chris Harris to
10 ride almost as a neutral party in the patrol car with that
11 probationary officer?

12 A. That's correct.

13 Q. And what we're looking at here is the evaluation
14 that Sergeant Harris did on that probationary officer and
15 then Sergeant Bales' response to that, is that correct?

16 A. That's correct.

17 Q. Okay. Now, at that point that you're talking to
18 Sergeant Bales and he's providing you with this marked-up, I
19 guess, opinion of Sergeant Harris' evaluation, what was
20 Sergeant Bales' relationship, what had it been to the
21 probationary officer? Was it supervisor or --

22 A. No. He was not a supervisor of this probationary
23 officer. It was friendship.

24 Q. So, you had a police officer who, based friendship
25 alone, at least apparently friendship alone, comes to

1 Professional Standards complaining about an evaluation done
2 by another sergeant?

3 A. Yes, sir.

4 Q. Okay. And in those red marks, if you'll just kind
5 of hit the highlights of what Sergeant Bales was telling you
6 Sergeant Harris had done wrong?

7 A. There's one here underlined, it says Captain Haney
8 had the arrest dismissed by the PA's office after an attorney
9 and Judge both agreed the arrest was invalid. He's got an
10 arrow over to Thursday, June 20th, 11:47, Crystal Cunningham
11 good arrest.

12 Q. So, there were some very specific things that the
13 probationary officer had done or not done that Sergeant
14 Harris had evaluated from this perspective, and now Sergeant
15 Bales is critiquing that, is that what happened?

16 A. He's critiquing Sergeant Harris' report, yes, sir.

17 Q. And there's been some mention about this hit job on
18 the probationary officer. Where did that language come from
19 if you know?

20 A. The hit job itself came from Sergeant Bales talking
21 to myself and Captain Copeland.

22 Q. And so at that point did he suggest to you that
23 there had been, in my words, a conspiracy involving Captain
24 Haney and at least two sergeants, three if you count Sergeant
25 Harris, to kind of hit this probationary officer? That's --

1 A. Yes, sir.

2 Q. -- the impression you got from the interview with
3 Sergeant Bales?

4 A. Yes, sir.

5 Q. How long did you talk to Sergeant Bales?

6 A. I believe it was an hour and 20, an hour and 30
7 minutes.

8 Q. Okay. And during that conversation, did he give
9 you specific individuals that you ought to talk to to confirm
10 what he was saying?

11 A. Yes, sir. There was several mentioned.

12 Q. And did you take notes of that so that you would
13 know who to interview based on what he told you?

14 A. Yes, sir. That's how we directed our
15 investigation.

16 Q. At that point after talking to Sergeant Bales, did
17 you talk to Chief Lindsey at all about these specific
18 allegations that Sergeant Bales was making?

19 A. No, sir.

20 Q. Was the Chief already aware of this marked-up
21 document at all?

22 A. I don't know if he looked at it personally, but he
23 had already met with Chief Lindsey about this information.

24 Q. And at that point where did -- what was the focus
25 of your investigation? We've moved away from the records of

1 the phone call, that kind of accessing. Now you're
2 responding to Sergeant Bales. What was the investigation at
3 that point?

4 A. Well, we go through the information that he give us
5 in trying to prove or disprove where there's --

6 Q. Why were you doing that? Did anybody give you any
7 directions to do that?

8 A. No, sir. I mean, he's telling us this is a hit job
9 and how this report is incorrect, and I've got to try to
10 prove whether Sergeant Harris' report is correct or the
11 information Sergeant Bales has given us is correct.

12 Q. Now, as a member of Professional Standards in the
13 course of starting your investigation, had you determined
14 that Captain Haney, Sergeant Bird, Sergeant Harris, and/or
15 Sergeant Young had, in fact, somehow conspired to do in this
16 probationary officer, what potential consequences could there
17 have been for those four?

18 A. It would have been an investigation on them four,
19 you know, the possible 705 violation which actually Sergeant
20 Chris Harris was interviewed for that potential violation for
21 the -- for the claim that his report was false.

22 Q. So, your investigation on these four, and
23 particularly, I guess, on Sergeant Harris, could have
24 resulted in some kind of punishment, suspension or
25 termination for any or all of them?

1 A. Correct.

2 Q. Okay. What did you then do in response to -- what
3 did you do for your investigation?

4 A. Like I said, mostly we talked to people,
5 interviewed several people throughout the department, and we
6 looked at records, some L3 video that was documented in on
7 one particular incident.

8 Q. What is an L3 video?

9 A. L3 is a dash cam video in the patrol cars. It was
10 noted in one particular incident, in particularly a pursuit.
11 I mean, just every piece we tried to verify one way or the
12 other.

13 Q. Now, in doing that, this is in effect a complaint
14 has been lodged by Sergeant Bales. Did he indicate to you at
15 any time that he had any personal knowledge about any of
16 this?

17 A. No. In his statement, I mean, he said he obtained
18 this report through part of the FOI request that had been
19 done for the probationary officer, and this was the only
20 report that he wanted to see and he went through it and it
21 was his opinion that he applied based on reading this report.

22 Q. Why, from Professional Standards' standpoint,
23 you've got a sergeant that comes in and expresses his opinion
24 about what these one, two, three, or four had done to the
25 probationary officer, why did you all take it seriously and

1 pursue an investigation?

2 A. It's a serious allegation if somebody falsified a
3 report. It's not the kind of department we would like.

4 Q. So, in the course of your interviewing these -- how
5 many were there? I said 14, is that correct? How many
6 witnesses did you ultimately interview?

7 A. I believe there was 20, maybe 21 total in the
8 course of the interview.

9 Q. Were all of these departmental employees either
10 uniformed or non-uniformed?

11 A. Yes, sir, they were.

12 Q. Okay. And so when Mr. Campbell said earlier about
13 I guess this -- I'm having to remember what he said about
14 this disruption within the department, that as a matter of
15 your investigation, you were having to talk to all of these
16 people and to some extent tell them what the investigation
17 was about. Is that correct or not?

18 A. That's correct.

19 Q. Okay. So, as you interview these 20 some-odd
20 people, did your assessment of what Sergeant Bales had
21 originally told you, did you start to form your own
22 investigator's opinion?

23 A. At that -- we went through each one, we could not
24 verify hardly anything that he told us, anything at all.

25 Q. Now, you're talking about not verify. Were you

1 able to determine whether, I mean, was it just lack of
2 information or were you able to confirm that what he was
3 telling you just was the opposite of what these witnesses
4 were telling you?

5 A. Some of it was just the opposite. In the one
6 pursuit that I was talking about, he had mentioned that
7 another officer had came on the radio and was going to be
8 second in pursuit, and the probationary officer was not
9 actively engaging because he thought a second officer was
10 already there. Captain Copeland and I listened to the radio
11 traffic, we listened to the L3 video, watched the video and
12 the audio, and we never hear this other officer come on the
13 radio. In fact, he finally showed up, the officer that was
14 mentioned, but it was after both the pursuit ended and the
15 probationary officer arrived on the scene.

16 Q. So, at some point during the investigation that you
17 talked to Bales originally for a couple of hours, did you get
18 back with him and discuss some of the things you were
19 finding?

20 A. As far as these allegations, we did interview
21 Sergeant Bales a second time about the accessing public
22 records and the Facebook post and public criticism
23 information and also about a potential vote of no confidence
24 that was also brought up in this investigation.

25 Q. Were you able to confirm any of those during your

1 investigation or did you just investigate them?

2 A. We investigated them and there was no -- my
3 thoughts is there not enough to sustain on those issues.

4 Q. Well, at some point this investigation to turn back
5 towards Sergeant Bales and not just the allegations he had
6 made. At what point did that occur and why?

7 A. During the first interview and the second interview
8 with Sergeant Bales, Sergeant Chris Harris was interviewed
9 because of the claim that his report is false and he did a
10 hit job on this probationary officer.

11 Q. Now, let me ask you about that. Was there any
12 discussion with Sergeant Bales about why any of these
13 officers would have singled out a probationary officer to do
14 these things and especially why they would have gotten
15 together as a group?

16 A. I don't recall that specifically being asked during
17 any of the interviews.

18 Q. Now, at some point in talking about the Sergeant
19 Harris evaluation of the probationary officer, was there any
20 discussion with Sergeant Bales about who should have been
21 doing that particular evaluation other than Sergeant Harris?

22 A. Sergeant Bales told me during his original
23 statement that he had actually met with the Chief, the Chief
24 had talked to him about this evaluation and who he was
25 planning to put with it, and Sergeant Bales says, Chief, I

1 disagree, I wouldn't put that sergeant with him, I'd put
2 Detective Smithson with him.

3 Q. So, at some point early on before Sergeant Harris
4 even did the evaluation, Sergeant Bales was volunteering the
5 neutral, his disinterested party would be you in Professional
6 Standards, you ought to be doing that?

7 A. That was his statement.

8 Q. Now, subsequent to you having rendered your opinion
9 on this investigation, are you aware that Sergeant Bales has
10 now questioned your and Captain Copeland's integrity in terms
11 of the investigation?

12 A. Yes, sir, I am aware of that.

13 Q. I asked you about the investigation turning back
14 towards Sergeant Bales. Tell us about how that occurred?

15 A. Well, like I said, we interviewed Sergeant Chris
16 Harris. Obviously this claim upset him, that he was
17 basically made to be doing a hit job on this probationary
18 officer. This was a job that he was not -- he was asked to
19 do. It was not a -- not an employee on this troop, but he
20 was called as a impartial sergeant to go ride with this
21 probationary officer, plain clothes, just sort of in the
22 shadows and just give an evaluation of how he thought he
23 could perform.

24 Q. Has that happened in other situations involving
25 probationary or other officers where somebody would do that,

1 ride along to evaluate them?

2 A. It happens with -- probationary officers ride with
3 different training officers. To my -- to my recollection at
4 the time, I couldn't remember maybe a sergeant being
5 necessarily placed in with one. Captain Copeland checked
6 around and talked to a couple of people and they actually --
7 he talked to a couple that remembered sergeants being placed
8 in cars in the past with patrolmen to see that they were
9 functioning.

10 Q. So, this was unusual, but not that unusual?

11 A. Correct.

12 Q. And so after you -- I keep interrupting you, I
13 apologize. But going to back to my question again. How does
14 it turn then to Sergeant Bales?

15 A. Obviously, like I said, after the questioning of
16 Sergeant Harris and his statement, he was obviously upset and
17 wanted things to be considered that, hey, you know, they're
18 filing a false complaint against me. He said I'm doing my
19 job, did what I was asked, you know, and the allegation or
20 the 705 was the amended issue to the case.

21 Q. Did you ever determine at any point that Major Boyd
22 who had been in charge of patrol or Captain Haney or Sergeant
23 Bird or Sergeant Young or Sergeant Harris had ever worked
24 together, separately or collectively, to do the hit job on
25 the probationary officer? Did you ever find anything to

1 confirm that?

2 A. No, sir.

3 Q. At any point during your investigation, did you
4 ever receive any instructions from either Major Boyd or from
5 Captain Haney as to what you ought to be looking at or not
6 looking at?

7 A. No, sir.

8 Q. All right. So, once the -- once the -- Chris
9 Harris is now upset about the charges that have been made
10 against him and you're back looking at Bales, what did you do
11 then?

12 A. Like I say, we continued to interview people with
13 every piece of information that we could find and people,
14 even down to the training officers. We were told by Sergeant
15 Bales that this probationary officer passed field training
16 and was given an excellent rating by his training officers.
17 Captain Copeland went through the training records and found
18 things that didn't indicate that he was doing excellent, and
19 we interviewed the training officers just to try to verify
20 this excellent marks.

21 Q. During the investigation, were there times when
22 Sergeant Bales would tell you other people to talk to or to
23 go back to, that the information you weren't getting was,
24 that the information you were getting wasn't correct?

25 A. I don't think he ever came back and give us any

1 more specific people to talk to.

2 Q. Okay. At what point did you advise Sergeant Bales
3 that he was under investigation?

4 A. After we interviewed Sergeant Chris Harris, in the
5 second interview with Sergeant Bales, he was given a notice
6 of investigation.

7 Q. Again, if you'll refer to the tab where that notice
8 was given?

9 A. That was under tab ten.

10 Q. And tell us what happened after that?

11 A. He was interviewed and, like I said, it was listing
12 301.02, 302, 305, 305.04.

13 Q. Now, at that point your investigation had taken
14 about how long, days or weeks?

15 A. It was right at a month, maybe a little over a
16 month.

17 Q. And about 20 interviews?

18 A. At that point I don't believe we had interviewed
19 everybody at that point.

20 Q. Okay. So, from Professional Standards' viewpoint,
21 you were taking this seriously either as the allegations that
22 Officer Bales had made or now you're focusing back on him
23 about the accusations that you perhaps were finding weren't
24 true?

25 A. Correct.

1 Q. What happened next?

2 A. Once we finish all of the interviews, everything
3 that we could do, we verify the people we talk to and say
4 this is what happened or this is what happened, Captain
5 Copeland and I, we do our reports and it's submitted to a
6 review board.

7 Q. When you do your report, are you making any
8 findings or are you making any recommendations at all?

9 A. No, sir.

10 Q. Okay. As a trained investigator, however, do you
11 -- when you do investigate, do you find yourself forming an
12 opinion?

13 A. You know, I think everybody would form an opinion
14 doing so, but it's not something I do in this particular
15 report.

16 Q. Well, as far as that's the report, but from a
17 personal standpoint, did you form an opinion as to the
18 various allegations that Sergeant Bales had made against at
19 least one superior officer, if not two, and three sergeants?

20 A. Yes, sir, I did.

21 Q. What was that?

22 MR. CAMPBELL: I'm going to object at this point. His
23 opinion was not something that was actually
24 considered by Chief Lindsey at any point in making
25 the determination. He's already stated that

1 forming an opinion is not his job as part of the
2 investigation because his opinion is completely
3 irrelevant to the actual purpose of this trial.

4 MR. CAMPBELL: What is the relevancy of his opinion, Mr.
5 Wade?

6 MR. WADE: That's fine. I'll just withdraw the question.

7 CONTINUING BY MR. WADE:

8 Q. At that point, Sergeant Smithson, once you had
9 turned over your, the results of the investigation, then
10 those went to a reviewing board?

11 A. Yes, sir.

12 Q. Tell us about how that works in terms of the
13 reviewing board, because I believe it's changed from what it
14 had been previously how they, procedurally how they went
15 about it?

16 A. And I'm -- yes, there has been a couple of changes.
17 We have a five-panel board now instead of a three-panel maybe
18 what it's been in the past. But the first step is once we
19 present a case to the review board is they will look at the
20 entire case and make a determination if they feel that
21 there's potential rule violations.

22 Q. In this case how were the five selected if you
23 know?

24 A. By Chief Lindsey and Sergeant Bales got to pick one
25 peer, a peer reviewer.

1 Q. And who was the individual that Sergeant Bales
2 picked?

3 A. Major Dean Pitts.

4 Q. Was there some discussion about another officer
5 being involved in that reviewing board?

6 A. Yes, sir, there was. Originally one of the
7 selected by Chief Lindsey was going to Major Boyd.

8 Q. And Major Boyd's position at that time was head of,
9 and I guess still is, head of the patrol division?

10 A. That's correct.

11 Q. Where the probationary officer had been?

12 A. That's correct.

13 Q. And what was decided about Major Boyd and his
14 position on the reviewing board?

15 A. Sergeant Bales had some objections. He voiced
16 those to the Chief about Major Boyd being on that board.

17 Q. Do you know what those objections were?

18 A. They were something to do with the --

19 MR. CAMPBELL: I'm going to object again. That's something
20 the Chief can testify to and the Chief would know
21 what the objections were. This is all secondhand.

22 MR. SEXTON: Mr. Wade, what's your --

23 MR. WADE: He's a Professional Standards officer.

24 Anything he's told by the Chief, he's able to, you
25 know, as part of his job, I think he's able to

1 relay here.

2 MR. SEXTON: The Chief can testify about it. I'll allow
3 the Chief to testify about it, also. Go ahead.

4 CONTINUING BY MR. WADE:

5 Q. Go ahead.

6 A. Okay. I believe it was due to some possible
7 involvement in emails releasing the FOI concerning a
8 probationary officer. He felt that that would be a conflict.

9 Q. Okay. And as a result of the concerns that
10 Sergeant Bales had about Major Boyd participating, tell us
11 what involvement, if any, you had in communicating that to
12 Major Boyd?

13 A. Before that decision was made that Major Boyd had
14 been removed, I had already assigned him to be a reviewer in
15 the internal affairs data base program. I had to inform him
16 to not open that program.

17 Q. So, you informed Major Boyd that he was not going
18 to be a member of the reviewing board and not to open that
19 program?

20 A. That's correct.

21 Q. To the best of your knowledge, did he ever open it?

22 A. To my knowledge, no.

23 Q. And to reiterate a question. Major Boyd never,
24 ever injected himself into your investigation one way or the
25 other?

1 A. No, he did not.

2 Q. Okay. And once it went to the reviewing board, as
3 a member of Professional Standards, are you out of the
4 picture at that stage?

5 A. Pretty much, yes.

6 Q. When you say pretty much, what did --

7 A. Until they get -- make a decision on the
8 allegation determinations and they will complete a form and
9 send it back to me.

10 Q. In this case we know that the forms were completed
11 and those are under what tab?

12 A. I believe they're behind tab 17.

13 Q. And the reviewing officers, since we may not call
14 them, who are the reviewing officers?

15 A. Major Mark Hallum, Major --

16 Q. The chair of the reviewing board?

17 A. Yes, sir. Major Dean Pitts.

18 Q. That was the peer review officer selected by
19 Sergeant Bales?

20 A. That's correct. Captain Larry Ranells, Captain
21 Levi Risley, and I believe it's Captain Jamie Hammond.

22 Q. And the recommendations that came back to you, what
23 were the recommendations by number and by recommendation
24 itself?

25 A. We have -- on this form there's three boxes that

1 can be checked. The first, there is not sufficient evidence
2 to show that the officer violated a rule or policy. The case
3 should be closed as not sustained. The second, there is
4 sufficient evidence to show the officer violated one or more
5 rules or policies. The matter should be informally closed
6 with, and it's got a couple of sub-categories, counseling,
7 written reprimand, training, or restitution. And the third,
8 there is sufficient evidence to show the officer violated one
9 or more rules or policy and the officer should be offered a
10 pre-determination hearing. And all five were marked with the
11 latter of the three boxes, that he should be offered a pre-
12 determination hearing.

13 Q. Okay. And then what happened as far as that was
14 concerned?

15 A. Sergeant Bales was given a pre-determination
16 hearing form.

17 Q. Where are you?

18 A. Behind tab 18.

19 Q. I guess about, what, page five or six?

20 A. There's only two pages to it.

21 Q. Which page? We don't have them numbered, but just
22 for the record, identify it.

23 A. Tab 18, behind tab 18.

24 Q. At what page?

25 A. Page one.

1 Q. Okay.

2 A. And there's two pages to it.

3 Q. And that's where he had waived his right to the
4 pre-determination hearing?

5 A. That's correct.

6 Q. And what happens next?

7 A. Then the case is actually given back to the review
8 board to make any kind of discipline recommendation. They
9 form their recommendation, and all of that is then sent back
10 to me and then it's forwarded to the Chief.

11 Q. What were the recommendations of the five?

12 A. There was one for ten days suspension.

13 Q. That was Major Pitts?

14 A. Yes, sir. That's correct. And --

15 Q. That's the peer review officer he had selected?

16 A. Yes. That's correct. And the other four were all
17 for termination.

18 Q. Okay. At that point once the officers have made
19 those recommendations, what happens procedurally?

20 A. The case is then given to Chief Lindsey.

21 Q. So, the Chief then makes the final decision based
22 on what's been given to him?

23 A. That's correct.

24 Q. The last question I have for you, Detective
25 Smithson, that I had said in opening about the disruptive

1 nature of this. During your interview of those 20 some-odd
2 people and your investigation into this whole thing, the
3 allegations made by Sergeant Bales concerning Captain Haney
4 and the three sergeants, did you sense that there was any
5 disruption in the department --

6 A. Yes, sir.

7 Q. -- as a result of those allegations?

8 A. Yes, sir.

9 MR. WADE: Pass the witness.

10 CROSS EXAMINATION OF GREG SMITHSON

11 BY MR. CAMPBELL:

12 Q. You initially began investigating the phone
13 recordings and the access to those?

14 A. Yes, sir.

15 Q. Were those interviews done separately from the
16 interviews that were included in this file?

17 A. Those --

18 Q. When you were in -- how do you go about that
19 investigation?

20 A. Sergeant Sprayberry began that initial
21 investigation and actually she actually started checking --

22 MR. WADE: You may need to speak up. We're fighting a
23 highway back here.

24 A. Okay. She began that part of the investigation and
25 actually went in through some of our computer data bases

1 checking access records for Sergeant Bales to see if he had
2 accessed. It's called a nice scenario program, I believe,
3 and only certain people have -- has access. Sergeant Bales
4 is a communication room supervisor and obviously needs access
5 to a lot of phone records. She did a lot of that and it was
6 basically physical checks.

7 Q. There were no interviews with anyone?

8 A. I believe the only person she talked to or had any
9 dealings with was our technical guys or IT guys to assist her
10 in that.

11 Q. Okay. So, to your knowledge, nobody in your
12 department interviewed Sergeant Young about that, about the
13 phone recordings?

14 A. I talked to Sergeant Young specifically. No, sir.

15 Q. Okay. Considering that he's the one who made that
16 allegation, wouldn't you normally expect to ask him what his
17 basis for that was?

18 A. Correct. I'm not sure if Sergeant Sprayberry ever
19 talked to him during her part of the investigation, but at
20 the time I got there, I was -- I was convinced enough that
21 that part hadn't occurred, that he had done anything with the
22 phone records.

23 Q. All right. So, Sergeant Young told the Chief, and
24 I believe it's in here, that it was Sergeant Bales, Sergeant
25 Entmeier, Corporal Wendall Sampson, and Captain Smalley who

1 he thought had accessed the phone records?

2 A. Yes, sir. You're correct.

3 Q. And the investigation was done and it was
4 determined that no, the claim made against Sergeant Young had
5 no basis to it, is that correct?

6 A. Correct.

7 Q. And there was never any, hey, maybe we should go
8 investigate Sergeant Young for making these allegations about
9 -- I mean, he's a sergeant and he's saying a captain
10 improperly accessed phone recordings and nobody --

11 A. Sergeant Sprayberry had cleared the first, Captain
12 Smalley and Corporal Sampson before I'd even got into it, and
13 as I'm starting into it, then Sergeant Bales comes forward
14 with this new information.

15 Q. Okay. I guess what I'm getting at is what is the
16 fundamental difference between, say, Sergeant Young saying
17 that about Captain Smalley and you finding out, your office
18 finding out it's not true, and Sergeant Bales saying what he
19 did to you guys and you guys finding out it's not true? What
20 turned that into an investigation against him that didn't
21 turn into an investigation against Sergeant Young?

22 A. Because Sergeant Harris specifically said, hey,
23 this I think, he's making this claim against me, I want to
24 make this claim against him, I have to go into that. And,
25 there again, Sergeant Sprayberry had done most of this first

1 part before I'd got into it.

2 Q. Okay. And then I think you said that Sergeant
3 Bales made clear the Chief had asked him to come to you with
4 his concerns?

5 A. Sergeant Bales said he was -- there was two issues
6 that had came up. He said that he was approached by Chief
7 Lindsey regarding a vote of no confidence rumor that was
8 going around and that's when this information and he was
9 directed to my office.

10 Q. Okay. And actually let's stay with that vote of no
11 confidence thing for a second. You investigated that to a
12 certain extent in these interviews?

13 A. Yes, sir.

14 Q. And you said you ever able to figure out where that
15 came from?

16 A. The source of it.

17 Q. Okay. And correct me if I'm wrong, but when you
18 interviewed Sergeant Young, he said he heard it from Officer
19 McCabe who had heard it from his wife?

20 A. He had heard that.

21 Q. Okay. And then when you interviewed Angela McCabe,
22 she said that she had heard it from Matthew Holloway?

23 A. Correct.

24 Q. When you interviewed Matthew Holloway, he said he
25 had heard it from Schibblehut --

1 A. Schibblehut.

2 Q. -- and McCoy?

3 A. Yes, sir.

4 Q. Did you then go to Schibblehut and McCoy and ask
5 them if they knew anything about it?

6 A. I did talk to Schibblehut. He just said it was
7 just the circle, again, like we were going home and it was
8 just continuous. There was no source of the actual who said
9 Sergeant Bales said this. Nobody heard him say it to my
10 knowledge, and I could never show that he ever said that.

11 Q. Now, you said that Captain Copeland, I believe,
12 found other examples where there had been ride-alongs with
13 probationary officers, sergeants riding along with
14 probationary officers?

15 A. Yes, sir.

16 Q. And you said it wasn't that common, but do you know
17 how far back those were?

18 A. Sir, I couldn't give you dates.

19 Q. No, I mean, a decade, 15 years? I mean, how far
20 are we talking about?

21 A. I've been there 19 years now, and I'll tell you
22 this. The one that he told me I know started before I did.

23 Q. Okay.

24 A. So, specifically I don't know how many years that
25 officer has been there.

1 Q. Oh, no, that's fine. I was just trying to get more
2 of a big picture sense. You said that you did do a second
3 interview with Sergeant Bales?

4 A. Yes.

5 Q. But that you did not specifically discuss with him
6 the discrepancies between what he had said and what Sergeant
7 Harris had said?

8 A. I don't specifically remember saying anything about
9 that. We were --

10 Q. I believe that's the way -- oh, no, you said --

11 A. Yeah.

12 Q. Okay. I'm sorry. Now, under the actual policies
13 and procedures for Professional Standards under investigation
14 of complaints, I mean, it specifically says that if you
15 determine that there's any significant discrepancies, you
16 should make efforts to resolve those discrepancies by
17 speaking to both parties figuring out where the difference
18 comes from, correct?

19 A. Correct.

20 Q. But you didn't?

21 A. I think we --

22 Q. You didn't talk to Sergeant Bales and try to figure
23 out where he got his basis of information that made his
24 statement different from --

25 A. He told me during this first interview that his

1 information was his opinion based on reading Sergeant Harris'
2 report.

3 Q. Okay. That's -- that part I see, and I see that
4 then you -- you interviewed people and you decided, no,
5 Sergeant Harris' report was probably right, so then, I mean,
6 I think that's what would trigger the regulation that says,
7 you know, now you've determined discrepancies exist, you
8 should probably try to get to the bottom of these
9 discrepancies. I mean, is that a fair assumption of -- I
10 mean, you wouldn't have been able to --

11 A. I understand what you're --

12 Q. -- start this until you had done the investigation?

13 A. I understand what you're saying, but, you know, the
14 facts I had backed up what Sergeant Harris was showing.

15 Q. Okay.

16 A. And that's what -- I feel that's what the
17 investigation showed.

18 Q. And you also said that as part of the interviews in
19 the investigation that you had to kind of tell people sort of
20 what the background was and, you know, give them some
21 information?

22 A. Sure.

23 Q. I'm wondering who you actually gave any sort of
24 background to that would implicate that Sergeant Bales had
25 done anything because I listened to the recordings, heard his

1 name twice, and never once heard you say somebody saying
2 that, you know, that it's a hit job. I didn't hear any of
3 those words. All I heard was you asking questions about the
4 probationary officer's performance.

5 A. And I'm not going to tell them that he's saying
6 it's a hit job.

7 Q. Right. Okay. That's --

8 A. I'm just trying to verify facts that he's telling
9 me.

10 Q. Okay. So, if you didn't tell them there was a hit
11 job and you didn't mention Sergeant Bales by name, how was
12 this investigation causing any more discord in the department
13 than any other investigation of an allegation would have?

14 A. I'm sorry, sir, I'm not sure I follow your
15 question.

16 Q. You didn't use the word hit job, you didn't give
17 them any of the background as far as Sergeant Bales came to
18 me and said these things because, I mean, you wouldn't do
19 that, you wouldn't name him by name --

20 A. No.

21 Q. -- in that context?

22 A. No.

23 Q. But you also didn't really do more than just ask
24 people about the probationary officer's performance, I mean,
25 that was about 90 percent of the investigation?

1 A. Correct. To verify whether Sergeant Harris' report
2 is correct or the information provided by Sergeant Bales is
3 correct.

4 Q. So, my question then is, how does this
5 investigation where you're just asking about the probationary
6 officer, how did that cause any more discord in the
7 department than any other internal investigation would have?

8 A. It's just the claim that he's making against
9 another sergeant, a captain, and three or two sergeants.

10 Q. Right. But nobody knew that he had made those
11 claims other than --

12 A. Once we start doing the interviews, people knew, I
13 mean.

14 Q. But you didn't mention him by name and you didn't
15 mention his claim specifically to any of these people, so
16 unless there was some talking outside of class going on where
17 people are spreading information, how would that, I mean, how
18 were his claims causing discord? I don't get that. This
19 seems like this was an internal affairs investigation, you
20 asked these people about the probationary officer, it was
21 unfounded. I don't see discord or any sort of widespread
22 anything.

23 A. There again, I'm not following where you're going.

24 Q. You said these claims against these other officers
25 was the root of the discord, but you've also said that you

1 didn't tell anybody in these interviews about his claims.
2 You didn't name him, there was no specific Don Paul says this
3 is a hit job?

4 A. Right.

5 Q. So, again, how was that any different than any
6 other -- I mean, you say it's his claims against these
7 officers that caused discord, but you just did an
8 investigation like you would have with any other internal
9 complaint?

10 A. Sure. The information gets out there and, you
11 know, I interview Sergeant Harris about his report, what's
12 been made aware of it, he's made aware of it, you know, it is
13 made aware at some degree. Now, once it gets out from me, I
14 have no control over what happens.

15 Q. Okay. Did you mention Sergeant Bales by name to
16 Sergeant Harris?

17 A. I'm sure I did.

18 Q. Okay.

19 A. At some point.

20 Q. So, then you mentioned him by name and you've kind
21 of told him what the allegations are, you told Sergeant
22 Harris what the allegations are. If Sergeant Harris takes
23 that and runs with it, is that Sergeant Bales' fault for
24 bringing a concern to you guys at the behest of the Chief or
25 is that the fault of whoever ran with that information and

1 started spreading it?

2 MR. WADE: Object. That's for the Commission to decide.

3 MR. SEXTON: Would you repeat the question again?

4 Q. If Sergeant Harris learned of Sergeant Bales'
5 identity and the claims about Sergeant Harris' report because
6 of the investigation and then he goes out and he spreads that
7 information among the officers and the department, I'm just
8 failing to see how that's Sergeant Bales' fault, how Sergeant
9 Bales has done anything other follow the rules that say, you
10 know, if you have these concerns, you take these to
11 Professional Standards?

12 MR. SEXTON: And I think the question is how is that
13 Sergeant Bales' fault and --

14 Q. Yeah.

15 MR. SEXTON: -- I think that's a proper question.

16 A. Sure. I can't see that that would be Sergeant
17 Bales' fault, but the information out there with the -- with
18 the Facebook stuff and all of the -- there was only a couple
19 of Facebook posts and he was asked to take those off, and I
20 believe Sergeant Bales did at the request.

21 Q. Right.

22 A. But as the information grew and grew and the
23 support, it just caused such --

24 Q. Isn't there a regulation against, I mean, aren't
25 officers not supposed to relay the information they learn of

1 in one of these investigations?

2 A. Yes, sir. That's supposed to be confidential,
3 but --

4 Q. So, did you launch an investigation into how this
5 information was getting out?

6 A. I don't know the source. I'm not sure which --

7 Q. Well, you just assumed that it was Sergeant Harris
8 a minute ago?

9 A. I can only assume, and I can tell you a story. One
10 of the first times as I worked up there when we suspended an
11 officer, I walked him from upstairs to the locker room, out
12 the back door, and before I got back to my office it was all
13 over the department. I mean, that's the way things spread.

14 Q. Okay. So, if there's a culture of everybody knows
15 everything and these things spread, then I guess I circle
16 back again to how is it Sergeant Bales' fault when he just
17 made a complaint at the behest of the Chief?

18 A. Right.

19 Q. Okay. The other question I had was just sort of
20 the nuts and bolts of your investigative summary.
21 Specifically I believe it was --

22 MR. WADE: Which tab are you behind?

23 Q. 16.

24 A. I believe it's 16.

25 Q. And I'm on page -- I believe it was Schaefer.

1 A. I believe it's towards the end.

2 Q. On tab 16 and I'm trying to find the page.

3 A. Are you looking for Sergeant Schaefer's?

4 Q. Yeah, 18.

5 A. Page 18.

6 Q. Page 18, the middle paragraph, and we can play the
7 recording if the Commission wants, but my question is, you
8 say specifically that Sergeant Schaefer recalled noticing the
9 probationary employee standing next to someone exposing his
10 weapon. I've listened to the recording six or seven times.
11 He literally does not say that at any point in the recording.
12 So, I'm wondering where that came from? And we can listen to
13 the recording if the Commission wants.

14 MR. SEXTON: Would you point me to the paragraph again on
15 this page 18?

16 Q. Page 18, the fourth paragraph down.

17 A. Fourth.

18 Q. The second and third sentences.

19 MR. SEXTON: All right. Thank you.

20 A. Sir, without listening, I don't recall. There
21 was --

22 Q. Okay. If the Commission wants, we can play it in
23 fairly short order.

24 MR. SEXTON: We've got the tape.

25 Q. Okay. And then considering -- considering this

1 investigation at this point was about Sergeant Bales, one of
2 the only two people that you actually interviewed to mention
3 Sergeant Bales by name, not counting Sergeant Entmeier, was
4 Sergeant Young and it was in the context of the vote of no
5 confidence?

6 A. Yes, sir.

7 Q. He said that he had heard -- he said that Matt
8 Holloway -- or he said he asked Matt Holloway if Don Paul had
9 told him?

10 A. Right.

11 Q. And that Corporal Holloway said, no, that didn't
12 happen. And I'm just curious why in the context of an
13 investigation about Sergeant Bales you omitted his name
14 entirely from your summary of Sergeant Young's interview?

15 A. Omitted?

16 Q. Omitted Sergeant Bales' name?

17 A. Sergeant Bales' name?

18 Q. Yeah. I mean, if you didn't even mention him while
19 you're talking and it's not even included?

20 A. I'm not sure exactly where you're saying I omitted
21 it. If I -- I just --

22 Q. Let me find that real quick.

23 A. Was it in Sergeant Young's statement?

24 Q. Uh-huh.

25 A. Okay.

1 Q. Page 17. Sergeant Young was asked about reporting
2 to Chief Lindsey on a no confidence vote, confirmed that he
3 told the Chief, asked where he had heard the information,
4 said he received a call from Officer McCabe, going through
5 all of that, and you failed to mention the part where
6 Sergeant Young told you that Corporal Holloway told him, no,
7 Don Paul didn't say that to me. If you're investigating the
8 vote of no confidence issue, that seems like something that
9 you would probably want to pass on to the reviewers, doesn't
10 it, that the only person to mention Sergeant Bales in that
11 context said, no, that didn't happen?

12 A. Right. I'm not sure why his name is not in there.

13 Q. Okay. And then Sergeant Young --

14 MR. BALES: May I be excused for just one minute just to
15 use the restroom, sir?

16 MR. SEXTON: If we need to take a break, we can take a
17 break.

18 MR. BALES: I can wait if you'd like to finish your
19 question.

20 MR. SEXTON: Okay. Let's take a five-minute break.

21 [OFF THE RECORD BREAK.]

22 MR. SEXTON: We're back in session. Mr. Campbell?

23 CONTINUING BY MR. CAMPBELL:

24 Q. Picking up kind of where we left off in terms of
25 the actual statements in your investigative summary. You

1 said that Sergeant Young -- you testified earlier that
2 Sergeant Young said that he had heard the vote of no
3 confidence thing from Lee McCabe who had heard it from Angela
4 McCabe?

5 A. Yes, sir.

6 Q. Okay. Then I'm a little confused as to why at no
7 point during your interview with Lee McCabe why you didn't
8 ask about it at all?

9 A. Because that was way before -- Lee's interview was
10 way before I knew that information.

11 Q. Okay. And after you --

12 MR. WADE: Mr. Chair, you've already expressed an opinion
13 as to the Rule 705 and I think we've indicated that
14 some of these things, including perhaps the picture
15 that was on the internet, were not issues that were
16 taken into consideration or at least they were
17 considered, but they were not factors in the
18 punishment assessed by the Chief, and if there's no
19 finding of wrongdoing in terms of this alleged no
20 confidence vote, I think this is irrelevant.

21 MR. CAMPBELL: Detective Smithson testified just a little bit
22 ago on direct that the second investigation or the
23 second interview with Sergeant Bales focused on
24 some of these issues such as the no confidence, and
25 this more of sort the big picture look at, you

1 know, there's all of this testimony that somehow
2 Sergeant Bales' actions led to this widespread
3 problem and this widespread undermining of the
4 authority, and it sure looks to me like there's
5 nothing in the investigation that actually supports
6 that anybody was saying anything about Sergeant
7 Bales and that even the rumors weren't investigated
8 to the point where you say one way or the other
9 whether there was anything to them.

10 MR. SEXTON: All right. We'll allow that. Let's kind of
11 break here.

12 CONTINUING BY MR. CAMPBELL:

13 Q. Okay. So, I understand as was indicated, you spoke
14 to Angela McCabe and you asked, you called her up and you
15 asked her if she knew anything about a vote of no confidence?

16 A. Correct.

17 Q. Her initial reaction was, no, what's that?

18 A. Correct.

19 Q. And then a little while later in the interview,
20 again, she seemed unclear as to what you were even talking
21 about a vote of no confidence?

22 A. Right.

23 Q. On like the third time you asked, then she finally
24 said something about, oh, she had heard it from Corporal
25 Holloway while they were working together, but, yet, nothing

1 in your investigative summary actually points out that not
2 only did Sergeant Bales not having to do with it, she didn't
3 even know what you were talking about?

4 A. At first, yes. After I had to explain to her.

5 Q. After about two-thirds of the talk?

6 A. Correct.

7 Q. Okay. That's all I'm getting at. Just a second.
8 Let me make sure I'm not missing anything here. And the
9 other -- the only other thing is, and this is kind of
10 repetitive so I apologize, but I just want to make clear.
11 Any of the allegations about Sergeant Bales that you heard
12 throughout this thing you did not follow-up on, there was no
13 -- there was no new investigation launched into
14 unsubstantiated allegations about him, whether it was the
15 phone recordings, whether it was the no confidence, none of
16 that?

17 A. I'm not quite following you, sir. I'm sorry.

18 Q. At any point during this investigation when you
19 found out that something someone had said that Sergeant Bales
20 did or said, when you found out that that wasn't true, you
21 never launched an investigation kind of going back the other
22 direction and finding out, you know, following up on
23 unsubstantiated rumors about him?

24 A. I mean, we tried to find the source of those, but
25 couldn't.

1 MR. CAMPBELL: Okay. No further questions.

2 MR. SEXTON: Mr. Wade?

3 MR. WADE: Nothing further.

4 MR. SEXTON: Mr. Cooper? Mr. Shell?

5 MR. SHELL: I've got just two questions for Detective
6 Smithson. Can you tell me since this case was
7 brought to your attention, ballpark number, just
8 for me to understand, how many man hours have been
9 involved in this case?

10 A. It's been ongoing, which I've had a couple of other
11 cases to go along with it, I would estimate a good probably
12 50 hours of interviews, typing, you know, some of our
13 research, and you're not only looking at mine, you're also
14 looking at Captain Copeland. It's been quite lengthy.

15 MR. SHELL: And then, Sergeant Bales, did Chief Lindsey
16 come to you or did you go to Chief Lindsey?

17 MR. BALES: To begin this investigation, what he asked me
18 to tell them, he came to myself and Sergeant
19 Entmeier on August 20th. He actually called us
20 into the CID briefing room and said it's just us
21 boys talking. His first question was, was I behind
22 a vote of confidence. No. The second was, well,
23 why do you still feel that Addisen was improperly
24 terminated. Chief, it's just the way our PTO
25 program works, and I think I'll be called to

1 testify on this later, Mr. Shell. But the thing
2 was he asked me to provide them with this
3 information, said he wanted to look into it, so
4 much so that he said if there was a problem there,
5 he could unring that bell was an exact quote from
6 the Chief. And I think I went so far as to say I
7 think it's a moot point because August 20th was so
8 far removed from the July 5th date that Addisen had
9 been terminated. And that's when he said, he
10 reassured me, no, no, if there's a problem there,
11 we can unring that bell.

12 MR. SHELL: But Chief Lindsey came to you?

13 MR. BALES: Yes. He called myself and Sergeant Entmeier
14 to the CID briefing room. I was actually walking
15 down the hallway one way and he was going the other
16 and said do you have a minute. I followed him over
17 there, and I didn't know it, but he had already
18 gotten ahold of Rick and wanted to talk to him,
19 too, and it was the next day that I was asked to go
20 speak with Detective Smithson.

21 MR. SHELL: Thank you.

22 MR. SEXTON: Mr. Cooper?

23 MR. COOPER: Nothing.

24 MR. SEXTON: I've got just a few questions here. Now, the
25 initial complaint from Sergeant Young was that some

1 FOIA requests were so specific as to give an
2 indication that departmental records or computers
3 were accessed?

4 A. That's correct.

5 MR. SEXTON: Did Sergeant Young receive the FOIA requests?

6 A. No. He didn't receive it.

7 MR. SEXTON: How did he have knowledge about it?

8 A. I'm not sure exactly how he come to get knowledge
9 of that. I can tell you what it was about. What was a
10 concern to him was that request was so specific as far as to
11 the sergeant's office phone and phone calls made during a
12 specific block of time. But how he became aware of it, I'm
13 not sure.

14 MR. SEXTON: All right. And that's why he came to you?

15 A. No. He did not come to me. He came to -- he went
16 directly to the Chief.

17 MR. SEXTON: To the Chief. All right. And that started
18 the first investigation?

19 A. Yes, sir.

20 MR. SEXTON: And that investigation was unsubstantiated?

21 A. I would say there was no evidence to support
22 anything to that matter.

23 MR. SEXTON: Now, when an officer reports what is potential
24 misconduct of another officer in good faith, does
25 that violate any departmental rules?

1 A. No. No, sir.

2 MR. SEXTON: Was any action taken against Sergeant Young
3 for making the report that could not be
4 substantiated about the improper accessing of
5 computer records?

6 A. No, sir.

7 MR. SEXTON: Does an officer who believes that another
8 officer has violated departmental policies have an
9 obligation to report that to the Chief or to the
10 Office of Professional Standards?

11 A. Yes, sir, they do.

12 MR. SEXTON: And it's a violation of department policy to
13 not make that report?

14 A. You're correct.

15 MR. SEXTON: All right. Now, on the vote of no confidence,
16 did I understand from you that Sergeant Young
17 reported to you or to the Chief or to somebody that
18 there was this rumor about a vote of no confidence?

19 A. Correct.

20 MR. SEXTON: All right. And was the allegation that
21 Sergeant Bales was behind the vote of no
22 confidence?

23 A. It was the allegation that Sergeant Young had heard
24 that Sergeant Bales was trying to get a no confidence vote,
25 and we were trying to try it where that source came from.

1 MR. SEXTON: Do you know what was the source where Sergeant
2 Young got the information?

3 A. He got it from Officer Lee McCabe.

4 MR. SEXTON: All right. And that allegation also was
5 unsubstantiated?

6 A. I couldn't find anything that would substantiate
7 it, no, sir.

8 MR. SEXTON: Was any action taken against Sergeant Young
9 for making that report?

10 A. No, sir.

11 MR. SEXTON: Am I correct that Sergeant Schaefer was the,
12 was a sergeant for the probationary officer that
13 was terminated?

14 A. Yes, sir. You are correct.

15 MR. SEXTON: Is it also correct from reading your notes
16 that Sergeant Schaefer said that he was unaware of
17 any problems that the probationary officer was
18 having before he was terminated?

19 A. You're correct.

20 MR. SEXTON: And without getting into all of those
21 allegations and what certainly goes to the issue of
22 good faith of Mr. Bales, was that officer
23 terminated just a matter of days before his one-
24 year anniversary was up?

25 A. It was within a very short time. I don't know a

1 specific day number, but it was within a few days.

2 MR. SEXTON: And it was within that same period of
3 certainly within a few weeks that Sergeant Harris
4 was placed in the car with him?

5 A. Yes, sir.

6 MR. SEXTON: And in listening to the recordings, I
7 understood that both Sergeant Harris and I heard
8 Sergeant Classen also say in a recording that they
9 had never seen that done with a probationary
10 officer before?

11 A. Correct.

12 MR. SEXTON: Have you ever seen it done with a
13 probationary officer before?

14 A. As I stated to Mr. Campbell, I am -- I've been
15 there 19 years and I don't ever recall seeing it. Other than
16 Captain Copeland doing some checking with other officers, he
17 was made aware of one time prior to me, and that officer was
18 hired prior to me. But I have not seen it, sir.

19 MR. SEXTON: And I was listening to these tapes to try to
20 make a determination about whether or not Officer
21 Bales had acted in good faith, and one of the
22 things he was relying upon is that Officers
23 Honeycutt and Thompson had passed the probationary
24 officer through their evaluation process --

25 A. Correct.

1 MR. SEXTON: -- in the training program, and both of these
2 officers were field training officers or PTO
3 officers?

4 A. That's correct, sir.

5 MR. SEXTON: And that they had both passed the probationary
6 officer, is that correct?

7 A. That's correct.

8 MR. SEXTON: And that after both Honeycutt and Thompson
9 passed the probationary officer, did any other PTO
10 officer fail the probationary officer?

11 A. No, sir.

12 MR. SEXTON: And that Officer Bales was actually the
13 creator of the PTO program?

14 A. That's my understanding. Yes, sir.

15 MR. SEXTON: And it was my understanding that what he was
16 saying is that he felt this was highly unusual?

17 A. Yes, sir.

18 MR. SEXTON: And when he came to you, he actually had
19 access to this report from Officer Harris, is that
20 correct?

21 A. He had gained access through the FOI of the
22 probationary officer.

23 MR. SEXTON: The probationary officer's FOIA?

24 A. Correct.

25 MR. SEXTON: And I certainly -- I think Officer Harris or

1 Sergeant Harris was acting in good faith, but let
2 me ask you about a couple of things in his report
3 because I can certainly understand that these would
4 be troubling. Didn't Sergeant Harris report that
5 he had had a meeting before he ever had the ride-
6 along with the probationary officer, a meeting with
7 Captain Haney and Sergeant Bird and Sergeant Young
8 about deficiencies of the officer?

9 A. Yes, sir.

10 MR. SEXTON: And wasn't that part of the complaint or the
11 concern that Officer Bales had?

12 A. Yes.

13 MR. SEXTON: And let me ask you. If you could, turn to
14 tab six of the report from Chris Harris, the very
15 last page or the very last typed page. There was a
16 statement in this report, if you look at the last
17 typed page that I've got very troubling, and that
18 is reported on the very last paragraph, the last
19 page that is typed where Sergeant Harris says it is
20 my suspicion he has taken upon ill advice and spent
21 time and energy in the research of policy
22 violations and complaint/grievance procedures
23 against his chain of command rather than focusing
24 his energy on receiving, embracing, and focusing on
25 things he needs to learn to make him proficient at

1 his job.

2 A. Yes, sir.

3 MR. SEXTON: Do you know what that's about?

4 A. Yes, sir. I can try to explain it for you.

5 MR. SEXTON: I don't want to go into all the details, but I
6 do want to know what that's about and where
7 Sergeant Harris got that information?

8 A. Basically this young officer if you would give him
9 some kind of directions and he didn't agree to it, he would
10 go to Mr. Shell and try to get another answer instead of
11 embracing and taking that advice, and he had actually --
12 someone done that with coming to my office, seeing if he'd
13 had any disciplinary history, and I'd sit and talk to him on
14 a particular day before this, before his termination and told
15 him, I said, no, I don't see nothing that's been documented,
16 and he had talked a little bit about how he felt he was
17 treated. I asked him if he wanted to file a complaint. No,
18 he didn't want to go that far. And I sort of talked to him.
19 I used to be a training officer back in the nineties when I
20 worked the streets. I said, look, this is what you do, go
21 out, answer your calls, make the decisions, and typically
22 you're going to be right, you know. Most of the people we
23 deal with are intoxicated or mad and everything else. You're
24 the coolest head there, let that prevail. The next day -- at
25 that time Sergeant Dawn Sprayberry was still my supervisor

1 -- you know, after I told her, he goes to her, and it's sort
2 of like playing mom against pop if he didn't get his answer,
3 and I think that's what Sergeant Harris is trying to refer
4 to.

5 MR. SEXTON: If Sergeant Harris was assigned to the job of
6 performing an impartial evaluation on the
7 probationary officer, how could he have access to
8 this information?

9 A. I'm not sure how he came to that unless Captain
10 Haney, Sergeant Young, or Sergeant Bird talked to him about
11 that.

12 MR. SEXTON: Wasn't that part of Officer Bales' concern
13 that he was concerned that Sergeant Harris could
14 obtain it in the process?

15 A. Yes.

16 MR. SEXTON: And if, in fact, Sergeant Harris had obtained
17 it in the process, wasn't it Officer Bales'
18 obligation to report that to you in the Office of
19 Professional Standards or to his superior officer?

20 A. Yes.

21 MR. SEXTON: And that wouldn't be a violation of department
22 policy?

23 A. No, sir, it would not.

24 MR. SEXTON: That's all I have. Thank you. Mr. Wade?

25 RE-DIRECT EXAMINATION OF GREG SMITHSON

1 BY MR. WADE:

2 Q. If I may, Detective Smithson, going back to the
3 Sergeant Young making the complaint, as I understand that
4 Sergeant Young had been in the office at the time the phone
5 conversation was being made, is that correct?

6 A. Correct.

7 Q. And so when he became aware -- and the Freedom of
8 Information Act is not some secret thing, the world could
9 know about it -- but when he came aware of those very
10 specific requests for the time slot that he had been in
11 there, he didn't really need any other information other than
12 the fact that that particular time was being asked for to
13 suspect that somebody had accessed records they shouldn't
14 have, is that correct?

15 A. Correct.

16 Q. Did you understand my question?

17 A. Yes, sir.

18 Q. Okay. And as far as Sergeant Harris in doing his
19 evaluation, when you did your investigation, did you get the
20 impression that Sergeant Harris had been told things to taint
21 or that this was a last-minute effort to try to salvage the
22 career of this officer and that that's why he was there as a
23 neutral party to try to put a different face on this?

24 A. That is as a neutral party to try to be impartial.

25 MR. WADE: That's all I have. Thank you.

1 MR. SEXTON: Mr. Campbell?

2 RE-CROSS EXAMINATION OF GREG SMITHSON

3 BY MR. CAMPBELL:

4 Q. Does Sergeant Young have any role in the
5 fulfillment of FOI requests as part of his job duties?

6 A. No, sir. Not to my knowledge, no.

7 Q. And the specifics in the FOI requests, could they
8 have been because the person making the requests, the
9 probationary officer knew the same specific information?

10 MR. WADE: Object. To clarify, the requests were not
11 being made by the probationary officer. They were
12 being made by attorney Jered Medlock.

13 MR. CAMPBELL: On behalf of the probationary officer.

14 MR. WADE: And he was making a number of requests that
15 were asking for emails and documents from various
16 officers in various parts of the department. So,
17 there would have been any number of officers aware
18 of the FOI. Sergeant Grubbs is here, if necessary,
19 and can tell you about, you know, who he contacted
20 to try to respond to that valid FOI request. A lot
21 of people would have known about it.

22 MR. SEXTON: I don't think anybody's alleging that Sergeant
23 Young did anything wrong at all, Mr. Wade. Why
24 don't you rephrase your question and ask about the
25 FOIA requests in terms of it being made by --

1 CONTINUING BY MR. CAMPBELL:

2 Q. Yeah. Sergeant Young's concern was that there was
3 specific information about phone calls or phone records and
4 that's why he thought that somebody maybe was accessing those
5 records improperly?

6 A. And releasing them outside the department.

7 Q. Yes.

8 A. Yes.

9 Q. Couldn't those things, specifics just for those
10 phone records, couldn't the probationary officer have had the
11 knowledge necessary to tell his attorney, you know, these are
12 the specific phone records that would be relevant considering
13 this all relates to him?

14 A. I assume it --

15 Q. You said about 50 man hours had been devoted to the
16 investigation roughly?

17 A. That's a rough guess.

18 Q. And that's over the span of from the first one to
19 when, what, 70 days?

20 A. Pretty close to that. Since mid-August.

21 Q. Yeah, mid-August and then November 5th was when the
22 discipline was handed down or a few days prior to that?

23 A. Yes, sir.

24 Q. Okay. So, 50 hours, over -- call it 60 days to be
25 fair?

1 A. Okay.

2 MR. CAMPBELL: Okay. Nothing further.

3 MR. SEXTON: Mr. Wade?

4 MR. WADE: Nothing further.

5 MR. SEXTON: Mr. Shell?

6 MR. SHELL: No.

7 MR. SEXTON: The 50 to 60 hours, that is actually the time
8 period for all of these investigations, though,
9 isn't it? It's not just Mr. Bales. That's the Mr.
10 Harris investigation, the vote of no confidence
11 investigation, everything altogether?

12 A. Everything altogether because it just sort of
13 snowballed and --

14 MR. SEXTON: Everybody complaining on everybody?

15 A. Correct, sir.

16 MR. SEXTON: And at the end of the day, the only person who
17 got any investigation or, I'm sorry, the only
18 person who got any discipline that started that
19 investigation was Officer Bales. Is that an
20 accurate statement?

21 A. There was one more party involved that received
22 some discipline.

23 MR. SEXTON: That started the investigation?

24 A. That was -- yes, that was --

25 MR. SEXTON: Who?

1 A. They came in with Sergeant Bales.

2 MR. SEXTON: Okay. All right. Was there any evidence that
3 Mr. Bales was telling anybody inside the department
4 about his claim that Officer Harris had engaged in
5 an impropriety?

6 A. I can't recall of any specific person.

7 MR. SEXTON: And just so we're clear on that -- I'm through
8 with asking questions -- I was not alleging that
9 Sergeant Harris was tainted at all, and as I
10 understand the findings, the finding was Sergeant
11 Harris acted in good faith, wasn't it?

12 A. That's correct, sir.

13 MR. SEXTON: That's all I have. You may step down. Mr.
14 Wade?

15 MR. WADE: Call our next witness. Call Chief Kevin
16 Lindsey.

17 DIRECT EXAMINATION OF KEVIN LINDSEY

18 BY MR. WADE:

19 Q. State your name, please?

20 A. Kevin Lindsey.

21 Q. You're currently Chief of the Fort Smith Police
22 Department?

23 A. Yes, sir.

24 Q. How long have you been in that capacity?

25 A. Will be seven years this coming January.

1 Q. And I believe you were chief of another department
2 before you joined us, is that correct?

3 A. I'm sorry. How many more?

4 Q. You were chief elsewhere?

5 A. Yes, sir. Yes.

6 Q. Where?

7 A. Previously -- immediate previous to this
8 department, the City of Joplin, Missouri, and then prior to
9 that the Town of Madison, Wisconsin.

10 Q. I want to hand you the City's Exhibit 1, the
11 notebook of exhibits that we have provided to the Commission,
12 and I want to take you immediately to behind tab 20.

13 A. Yes, sir.

14 Q. It's a letter from you to Sergeant Don Paul Bales
15 dated November 5th, 2013, in which you say that you found
16 that he was in violation of certain rules and regulations of
17 the police department and then you meted out suspension of
18 five days, 40 hours, without pay. Is that the letter of
19 suspension that you sent to him?

20 A. Yes, sir.

21 Q. All right. Chief, you and I have been here before
22 and I know at least one or two of the members of the
23 Commission have been here before, so I'm not going to be
24 unique in asking you the next question. As you know, the
25 buck stops with you.

1 A. Uh-huh.

2 Q. Would you tell us what you did and why, and in
3 asking you that, if you'd kind of take us from the beginning
4 so that we understand how we got to that November 5th letter?

5 A. Certainly. The original complaint was received
6 actually by Sergeant Dawn Sprayberry, who was in the Office
7 of Professional Standards at that time. The original
8 complaint was made by Sergeant Dewey Young, who had come to
9 her and approached with some concerns and allegations that
10 there were members of the supervisory staff at the department
11 that were accessing phone records and other records within
12 the department improperly regarding the termination of a
13 probationary police officer prior to that. Sergeant
14 Sprayberry, rightly so, arranged a meeting between myself and
15 Sergeant Young, wherein as a result of that, I entered a
16 request for an administrative inquiry to be conducted. This
17 request was entered into our application software handling
18 those types of complaints on August the 5th of this year, and
19 it was based on the allegations by Sergeant Young that there
20 were some, more than one supervisor accessing these records
21 inappropriately. After that, on August the 7th, I amended
22 the investigation and then again amended the investigation on
23 August the 20th as a result of additional information that I
24 had received. The reason an administrative inquiry was used
25 is that there are other types of investigations, Class A,

1 Class B, Class A being the most serious, but the
2 administrative inquiry was used in this case because of the
3 allegations were not brought forth with direct evidence of
4 the allegations. So, an administrative inquiry was directed
5 by me to check through the Office of Professional Standards
6 an investigation to see if there, in fact, any basis for
7 these allegations. This was began as a, as I said,
8 administrative inquiry. It was eventually evolved into what
9 I would characterize as a major violation in that it involved
10 a lot of the resources of the Office of Professional
11 Standards.

12 Q. Let me stop you a second, Chief. As far as that
13 original complaint that Sergeant Young posed with you and
14 resulted in the administrative inquiry, there's been some
15 question as to whether Sergeant Young was punished as a
16 result of no finding of anything to sustain his allegation.
17 Why would Sergeant Young in particular not have been punished
18 for bringing forth that kind of allegation and a finding of
19 no sustaining proof?

20 A. To begin with, departmental policy requires members
21 of the department, and especially supervisors, if they are
22 aware or believe that there are violations occurring that are
23 contrary to the department's written directives, which
24 include policy, procedure, rules, and regulations, they are
25 obligated to bring those allegations forward to the

1 department. The department does have a -- in its
2 professional standards policies the obligation to review
3 those allegations and conduct investigations insofar as they
4 are sustainable or non-provable.

5 Q. Okay. Let me ask you then, and I'm just going to
6 get right to the heart of this.

7 MR. SEXTON: Mr. Wade, do you have that policy with you?

8 Can you read that policy to us? I think that it's
9 going to be part of our inquiry today. What does
10 that policy specifically say?

11 A. I might be able to assist, Mr. Chair, if I could
12 just get a second here to -- if I may, and I don't have
13 multiple copies, but if I may, I'll read out of the
14 department's policies and procedures. Policy titled
15 Professional Standards. This is number 1104.03, under
16 Section 2, entitled policy, if I may read. It says it shall
17 be the policy of the Fort Smith Police Department to
18 investigate all complaints, even those made anonymously,
19 against departmental employees or against department policies
20 and procedures, regardless of the source of those complaints.
21 It further goes on as to how those complaints are documented
22 and etc. I can continue reading if you so desire.

23 MR. SEXTON: What does it say about the obligation of an
24 officer to report a violation?

25 MR. BALES: Mr. Chair, counsel, and Chief, that's our

1 rules and regulations we're obligated to report
2 violations. We can actually be held accountable
3 for failure to supervise.

4 MR. SEXTON: And I understood that's what Officer Smithson
5 testified to. I just wondered what the specific
6 policy said if you have it. If you don't have it,
7 that's fine.

8 A. I can't locate that specific language at this point
9 in time, sir.

10 MR. SEXTON: Does the policy require the reporting of
11 suspected policy violations, opinions of policy
12 violations, possible policy violations, or what is
13 required to be reported?

14 A. Well, it says investigate all complaints, which I
15 would take to mean allegations or other possible rule
16 violations within the department.

17 MR. SEXTON: Of course, we're talking here about the
18 investigative part, and I'm talking about the
19 mandatory reporting part, the rule that requires
20 mandatory reporting of rule violations. If you
21 don't -- I'm not going to tie you up on that. If
22 you don't have that rule, that's fine.

23 A. Okay.

24 MR. SEXTON: Go ahead, Mr. Wade.

25 CONTINUING BY MR. WADE:

1 Q. Chief, what I started to ask you is, there's been
2 some suggestion earlier that if Sergeant Young wasn't
3 punished for perhaps making this obligatory report, how did
4 that differ from what ultimately happened to Sergeant Bales
5 in terms if he felt that there had been supervisory
6 misconduct and he reported it, why would he be punished and
7 Sergeant Young not be?

8 A. Well, insofar -- and this leads to my findings.
9 Sergeant Bales' actions in my opinion were not a reckless
10 disregard for the truth as alleged in one of the rule
11 violations anymore than the original allegations that were
12 made by Sergeant Young. Instead, I believe that they were a
13 good faith effort to communicate to me the possible existence
14 of issues involving manpower that is either administered or
15 controlled by the department and ultimately by me. Sergeant
16 Bales, as I believe Sergeant Young's good faith
17 communications in making those allegations, were in my
18 opinion based on a reasonable belief in the existence of a
19 violation of departmental policy, and in my mind I believe
20 Sergeant Bales' communications were not malicious nor were
21 they false or frivolous, and, again, that's my opinion.

22 Q. Well, why then, if that's the case -- we've already
23 heard from Detective Smithson about the investigation and the
24 findings from Professional Standards were ultimately
25 communicated to the reviewing board and then on to you -- why

1 do you believe that this five-day suspension was appropriate
2 in this circumstance?

3 A. While I obviously disagreed with the
4 recommendations of four out of the five reviewers in this
5 case, the main difference between my review and ultimate
6 decision in this case differed because I, first of all, I
7 did not find a violation of Rule 705, which is the
8 untruthfulness rule. I don't -- and can elaborate on that if
9 you so desire, but basically I did not see any untruthfulness
10 on the part of Sergeant Bales' allegations or testimony.
11 I've already testified as to my belief as to his mind set
12 when he was making those allegations. But I do believe that
13 the other four rule violations were violated and that they
14 did create a situation, and I'll refer -- I think I was
15 actually quite eloquent in the letter -- that they did
16 exhibit conduct unbecoming an officer on the part of Sergeant
17 Bales' part.

18 Q. Okay. Let me stop you there. When you say conduct
19 unbecoming an officer, whether he was obligated to make this
20 complaint in the first place or just simply came forward and
21 was concerned in good faith, what did he do in your
22 estimation that was conduct unbecoming an officer?

23 A. Well, first of all, his pervasiveness or his
24 aggressive pursuit of the allegations that he had brought
25 forth against other supervisors within the department created

1 a very uncomfortable environment, working environment within
2 the department. The other supervisors, I believe, resented
3 Sergeant Bales' involvement and I believe that they looked at
4 it as him butting into other people's business where he had
5 no right to do that since he was not even in the unit.

6 Q. Well, let me stop you there. Some of the earlier
7 inquiry focused on how would anybody know unless Sergeant
8 Bales was identified and it's flashed to the world that he's
9 the one that made these complaints, how would there have been
10 that kind of disruptive results within the department with
11 those other sergeants or supervisors?

12 A. I don't know if there's been earlier testimony
13 today regarding rumors within the department about other
14 allegations, but the rumor mill within the department and the
15 informal transmission of information, regardless of whether
16 it's accurate or not, probably can be measured in nano
17 seconds as opposed to a stopwatch. I suspect, although I
18 cannot affirmatively declare, that just the information got
19 around. I can say that it didn't come from my office or the
20 Office of Professional Standards. As a rule, we -- our
21 policies prohibit us from sharing that information.

22 Q. So, like a chain of dominoes, ever how it got to
23 the tail end, you believe that the first push of that domino
24 was Sergeant Bales by making the complaint?

25 A. Yes.

1 Q. Okay. Back to my question about the conduct
2 unbecoming an officer. If he in good faith made these
3 allegations and the end result happened to be somehow the
4 supervisors being upset, what do you believe he did that was
5 unbecoming as an officer?

6 A. Well, just the aggressiveness and assertiveness of
7 it and the interruption that it created within the working
8 environment of the department. Although I was not directly
9 involved at the line level or supervisory level of the
10 department, I did hear from other sources how much of a
11 distraction this created among other supervisors, and they
12 felt that it lent to an improper influence on other officers
13 within the department.

14 Q. Now, if I understand his original allegations
15 correctly, he in effect was saying that two sergeants,
16 Sergeant Bird and Sergeant Young, along with Captain Haney
17 and then later with Sergeant Harris, that all four of those
18 somehow had worked together to help end a probationary
19 officer's tenure before he became a full regular officer. Is
20 that what you understand the allegations were?

21 A. Yes, sir.

22 Q. Okay. All right. Go ahead. What's the next
23 violation you found?

24 A. Following the conduct unbecoming, the -- and the
25 dissension and the polarizing segments of the department

1 created by this dissension further, I believe, well, it
2 created a lot of discord within the department and ultimately
3 violating the, in my mind, about the Rule 305 where other
4 officers are not publicly criticizing or ridiculing the
5 department, its policies or other employees by speaking,
6 writing, or expressing in any manner which in this case there
7 was a posting of, I believe, a photograph of Addisen or of
8 the probationary officer that was terminated, and while I
9 believe the caption was something to the effect of I support
10 the officer's, the former officer's name. While I did not
11 personally take this as an affront to my authority, it did
12 create some problems and, in fact, some staff members
13 commented to me that they felt it was affronting my authority
14 as the Chief. I specifically mentioned to Sergeant Bales in
15 a face-to-face conversation at one time that I did not take
16 that as an affront to my authority, but took it as a mode of
17 support for the terminated officer. But notwithstanding
18 that, I'm not the only one in the department. There were
19 other staff officers that felt that it created a problem and
20 they felt it did in their minds create a hazard or an
21 interruption with my authority and the good order and
22 discipline of the department.

23 Q. Chief, let me ask you. During the course of an
24 investigation such as this, even if Sergeant Bales' name had
25 remained anonymous, as a matter of course with the sergeants

1 who were involved, Sergeant Young, Sergeant Bird, and
2 Sergeant Harris, as well as Captain Haney, would they have
3 become aware of the allegations, period, that they had done
4 this hit job on a probationary officer?

5 A. They would have if -- as an anonymous complainant,
6 the department's process would be to try to either
7 substantiate or unsubstantiate the allegations that were
8 made, and that would be brought up to a point if no
9 substantiation was made, then the department would likely not
10 notify the alleged parties involvement of that involvement or
11 those allegations. Since this was an internal complaint by
12 another supervisor, then that process was, I guess, taken to
13 or at least through the process of the policy and they were
14 notified of those allegations.

15 Q. So, are you personally aware now as to the impact
16 that these allegations have had on the three sergeants and a
17 captain and perhaps even Major Boyd as the supervisory head
18 of patrol, what impact, if any, this has, that these
19 allegations have had on them?

20 A. And, again, that leads to my finding as far as the
21 discipline was concerned and the meting out of that in that
22 the proliferation of those allegations did, in fact, I
23 believe rendered to some extent moot their ability to
24 supervise the officers that are subordinate to them and their
25 assignees, and the effect that it had on the entire

1 department as it served actually to polarize the department
2 into two essential segments, those in favor of Sergeant Bales
3 and those in support of the four supervisors mentioned by Mr.
4 Wade.

5 Q. Now, any other violations that we haven't mentioned
6 today? We've talked about the conduct not becoming an
7 officer, the publicly criticizing. Any other rule violation
8 you believe occurred?

9 A. The last -- well, there's the first rule was
10 301.02, which is failure to observe and adhere to the rules
11 and regulations, that's a catchall that refers to those
12 other. The last rule that I did find a violation of was
13 305.04, stating that it tends to impair the operation of the
14 department by interfering with the efficiency, with the
15 ability of supervisors to maintain discipline, or by a
16 reckless disregard for the truth. With the exception of that
17 last phrase, reckless disregard of the truth, I did find that
18 Sergeant Bales was in violation of the first portion of that
19 rule by the fact that, as my testimony's already been made,
20 of the working environment and the eroding of the ability for
21 those other supervisors to conduct business.

22 MR. SEXTON: Are we talking -- I'm sorry, I just want to
23 make sure. Are we talking about the Facebook
24 posting as in public criticism or what was the
25 public criticism that caused this problem inside

1 the department?

2 A. Well, by public criticism, I'm meaning I received
3 little input from outside the department as far as public,
4 but within the department, which I am going to refer to as
5 the public criticism because it was -- it was from several
6 members of the department that there was -- there was
7 problems with Sergeant Bales' conduct.

8 MR. SEXTON: Okay. What was the public criticism? And
9 I'll let you ask him, Mr. Wade, but what I'm asking
10 is what was the public criticism from Officer Bales
11 that constituted a violation of public criticism?

12 MR. WADE: It might easier, Mr. Chair, if you just ask so
13 that I don't rephrase the question incorrectly.

14 A. There was -- there was very little public criticism
15 and then the words I did not receive any calls from citizens,
16 per se. We did have, I believe, from a former officer that
17 was no longer with the department received a request, an FOIA
18 request for some records that he had seen the post, and he
19 wasn't even living with the state at that time.

20 MR. SEXTON: Chief, I'm sorry. I'm not making myself
21 clear. As I read 305.04, it precludes an officer
22 from publicly criticizing or ridiculing the
23 department.

24 A. I see.

25 MR. SEXTON: And what was it that Officer Bales did that

1 publicly criticized or ridiculed the department?

2 A. Well, there was a number, and let me preface my
3 comment and my response to you, Mr. Chairman, with another
4 comment to follow-up before. The photograph of the former
5 officer, probationary officer, had a caption -- there was
6 also a quote from an unknown source to me about the --
7 something to do to the effect of the problem with all good
8 men is they do nothing, and I'm really paraphrasing that, but
9 that, I would think, would be more of a public criticism of
10 the department than the photograph.

11 MR. SEXTON: Chief, the reason I asked this is in the
12 opening statements in this case, I asked Mr. Wade
13 whether or not the Facebook posting formed part of
14 the misconduct allegations against Officer Bales,
15 and so what I'm trying to do, and I understood from
16 him that that was not?

17 A. That is correct.

18 MR. SEXTON: But it is correct that the Facebook posting
19 was not part of the allegation?

20 A. Yes, sir. That's correct.

21 MR. SEXTON: And was this all good men statement, was that
22 part of the Facebook posting?

23 A. I don't believe it was visible on the -- I did not,
24 other than a photograph that was provided by the officer, the
25 Office of Professional Standards investigation, I did not

1 actually go on Facebook. I don't have an account. So, I
2 can't really say if that quote was part and parcel of that
3 same photograph or that same image.

4 MR. SEXTON: All right. If the Facebook allegation wasn't
5 the public criticism or ridicule, are you aware of
6 anything else that was a public criticism?

7 A. No, sir, I'm not.

8 MR. SEXTON: All right. Thank you.

9 CONTINUING BY MR. WADE:

10 Q. Chief, I don't know if I asked all of the right
11 questions to get to the rule violations. Have we covered all
12 of the various rules --

13 A. Yes, sir.

14 Q. -- that you believe were violated? The officers at
15 the reviewing board in a four to one vote, four recommended
16 termination and one recommended a ten-day suspension. I
17 realize that you've said you didn't find any violation of
18 705, but how is it you came up with a final determination
19 that differed dramatically from four of those voters and it
20 modified somewhat the fifth in terms of suspension? I
21 believe you give five days. How did you come up with that as
22 a punishment?

23 A. First of all, let me preface, and this is not to a
24 primer for the Commission, but obviously the police
25 department's decision-making authority ultimately resides

1 with me at least as far as this phase of the process. The
2 review and recommendations of junior officers are not binding
3 to me as the Chief, although I will say in the past I have
4 relied upon those as respected members of the department and
5 their deliberations and judgment. But in this case, as I do
6 so in every disciplinary case, I independently review all of
7 the evidence, I consider any aggravating or mitigating
8 circumstances that may present themselves, and make my
9 decision in accordance with my own judgment and experience,
10 as well as the disciplinary matrix that has been utilized by
11 the department for over the past several years. And with
12 that, the disciplinary matrix is maybe a relatively new
13 concept at least as far as the Civil Service Commission is
14 concerned, in that I don't believe this was officially
15 utilized as any of the cases previously appearing before the
16 Commission. The disciplinary matrix genesis was first
17 developed in 2009 at the request of Sergeant Dawn Sprayberry,
18 who was the Office of Professional Standards' supervisor at
19 that time. She had came across that concept in a conference,
20 came back to the office, proposed it to me, and a long story
21 short, over a period of several months at my request, she
22 went ahead and researched it and then developed and we
23 ultimately implemented a disciplinary matrix that was
24 designed to harbor all of the rules and regulations of the
25 department and then provide some guidance to members of

1 disciplinary review committees to use as guidance for various
2 violations of the department. So, that was also part of my
3 deliberations regarding the ultimate award of discipline that
4 I used.

5 Q. Chief, and I apologize, I haven't been as
6 articulate as I should be on some of these questions and I'll
7 try to be more so. I want to go back a minute to the
8 comparison with Sergeant Young to Sergeant Bales. In
9 Sergeant Young's case, as I understand it, he did not make a
10 specific allegation against any particular person?

11 A. I believe that's accurate. I believe that he felt
12 that there was supervisors that were, I guess, either
13 involved with or in support of the former probationary
14 officer's termination.

15 Q. And in that case as a supervisor of that
16 probationary officer, he was directly involved in, I guess,
17 any of the FOI requests, any inquiry related to the
18 probationary officer, is that correct?

19 A. Could you --

20 Q. Sergeant Young as a supervisor --

21 A. Okay.

22 Q. -- had been directly involved with that
23 probationary officer?

24 A. Yes, sir.

25 Q. Okay. And in this case, and I'm trying to figure

1 out how you go into the future. Sergeant Bales had
2 absolutely no connection, other than perhaps friendship, with
3 this probationary officer. Is that --

4 A. That's correct.

5 Q. -- what you understand?

6 A. Uh-huh.

7 Q. And so you had basically a non-involved officer, a
8 sergeant coming to you with specific allegations about
9 Sergeant Harris, Sergeant Bird, Sergeant Young, and Captain
10 Haney. Do you see that as different from this inquiry by
11 Sergeant Young because now you've got specific folks accused
12 of being, of doing wrong?

13 A. Well, to some extent the difference is the fact
14 that this case is basically all about supervisors. We have,
15 first of all, a respected member of the supervisory team, a
16 sergeant making this -- making the original allegation. We
17 have follow-up allegations from yet another sergeant or
18 supervisory member of the department, also well respected,
19 that is making counter-allegations and about some hit squad
20 or some conspiracy. And then you have myself kind of caught
21 in the middle trying to gauge which has more credibility and
22 which not. Both sergeants or supervisors are valued members
23 of the department. I felt it prudent to lend some credence
24 to both of their allegations, both of their statements, and
25 thus ordering the internal investigation or administrative

1 inquiries I testified to earlier. So, there are some
2 differences, but I think for the most part they're, you know,
3 I felt that there was an obligation on the part of the
4 department to investigate those allegations.

5 Q. Had there been confirmation of Sergeant Bales'
6 allegations that seemed to more his opinion and based on what
7 he was told as opposed to what he knew, had there been
8 confirmation, what, if anything, could have happened to those
9 three sergeants and that one captain?

10 A. It's very possible that their, that those
11 allegations could have resulted in the ultimate termination
12 of any one or more of the supervisors.

13 Q. Do you still believe that the five-day suspension
14 was an appropriate punishment?

15 A. I do.

16 MR. WADE: Pass the witness.

17 MR. SEXTON: Mr. Campbell?

18 CROSS EXAMINATION OF KEVIN LINDSEY

19 BY MR. CAMPBELL:

20 Q. I actually want to get to this just because I just
21 wrote it down and I don't want to forget. I believe you just
22 testified that Sergeant Young didn't name specific people
23 when he came to you with the telephone?

24 A. That was my understanding.

25 Q. And how did you come up with Sergeant Bales,

1 Entmeier, Corporal Sampson, and Captain Smalley?

2 A. Because of the support of, you know, the Facebook
3 support and all of that, and it was as a result of the Office
4 of Professional Standards investigation.

5 Q. The Office of Professional Standards hadn't
6 investigated anything at that point?

7 A. But they were.

8 Q. Yeah, but the initial -- the document that started
9 all of this on August 5th, you specifically say you were
10 contacted by a supervisory member of the department. This is
11 behind tab five, page four. Contacted by a supervisory
12 member of the department, stated he believed several members
13 of the department were accessing telephone recordings without
14 authorization related to an ongoing complaint that originated
15 with the termination of the probationary officer. Your
16 words, the members of the department believed to be accessing
17 phone records include Captain Smalley, Sergeant Entmeier,
18 Sergeant Bales, and Corporal Sampson. So, again, I'm just
19 wondering how you got there?

20 A. Yeah. And I don't recall the exact conversation
21 that could have been part of it, but I did not recall that.

22 Q. Okay. So, going back to Mr. Wade's point. If
23 Sergeant Young had come to you, Sergeant Young is a
24 supervisory employee, correct?

25 A. Uh-huh.

1 Q. If he had come to you and named a corporal, two
2 sergeants, and a captain had accused him of something, then
3 structurally would his allegation be different from Sergeant
4 Bales' allegations about the other supervisory employees?
5 What you testified was that, you know, there was no -- there
6 no follow-up investigation of Sergeant Young after this
7 complaint was unsubstantiated?

8 A. Uh-huh.

9 Q. There was no follow-up investigation because his
10 was somehow different from Sergeant Bales because Sergeant
11 Bales had named the supervisory officers and, you know, this
12 is a problem and Sergeant Bales his himself a supervisory
13 officer, and I'm saying Sergeant Young's a supervisory
14 officer, he named a supervisory officer, how are they
15 different?

16 A. Given those facts there, there is no difference.

17 Q. Okay.

18 A. And my testimony was that I gave credence to both
19 of those allegations by both members of the department.

20 Q. Right. But when Sergeant Bales' allegations about
21 Sergeant Harris were found to be untrue by Detective
22 Smithson, then we launch into an investigation of Sergeant
23 Bales which is how we're here today. I'm wondering why there
24 wasn't a similar investigation on Sergeant Young that would
25 have somebody else sitting in this chair defending him right

1 now?

2 A. Uh-huh. Well, the original allegation was made by
3 Sergeant Young. The amendment or re-direction of the
4 investigation came at a later time, I believe August the
5 20th, and at that time my feeling was that the -- while I
6 gave credibility to the investigation, they were very serious
7 violations, not to deprecate the original allegations, but
8 these were very serious and they're, obviously because of the
9 discord and everything that it created within the department
10 which was not existent with the allegations by Sergeant
11 Young, I felt that that needed to be addressed.

12 Q. Okay. I'll move on. I might come back to it. I
13 just don't know that we've answered each other's questions.

14 A. Fair enough.

15 Q. On some level a lot of this seems to boil down to
16 the proper or improper application of the training program to
17 the now terminated probationary officer. I mean, is that
18 also --

19 A. I don't agree with that. I believe the police
20 training officer program was properly applied.

21 Q. Right. But that would still be the same thing.
22 I'm saying it comes down to whether you believe it was
23 properly applied or not?

24 A. Okay. And I do believe it was.

25 Q. Okay. Now, is it true that Sergeant Bales at your

1 direction actually implemented the current PTO program?

2 A. That's correct.

3 Q. And as far as the implementation, he went to
4 multiple out-of-state workshops to help with skills, learn
5 about it?

6 A. Yes, sir.

7 Q. And he coordinated the hosting of some DOJ
8 sponsored instructors to actually train the trainers?

9 A. That's correct.

10 Q. He himself attended the training and was a PTO?

11 A. That's correct.

12 Q. And he actually authored the training program for
13 the [inaudible]?

14 A. Yes, sir.

15 Q. Do any other supervisors within the department
16 right now have that same level of expertise about the
17 training program?

18 A. No.

19 Q. With that in mind, do you recall a meeting on June
20 25th of this year when Sergeant Bales accompanied the
21 probationary officer to your office to attempt to file a
22 grievance?

23 A. Yes. I don't recall the date, but I do recall that
24 meeting, yes.

25 Q. Okay. And apparently you had instructed Major Boyd

1 not to accept any grievance from the probationary officer, he
2 came to you, you refused to accept his grievance --

3 A. That's right.

4 Q. -- and you said that under the policy you're not,
5 you're not going to accept a grievance from a probationary
6 officer because he had no rights in that area?

7 A. Yes. That's right. That's pretty accurate.

8 Q. Okay. The policy at the time said absolutely
9 nothing about probationary officers not being able to file a
10 grievance, is that correct?

11 A. Uh-huh.

12 MR. COOPER: What did you ask, your last statement?

13 Q. Oh, I'm saying the policy at the time when the
14 probationary officer tried to file a grievance didn't say
15 anything about probationary officers not being allowed to
16 file a grievance. In fact, actually I'm going to mark this
17 as our Exhibit 1. This is -- the first half of the pages are
18 the policy as it existed at the time the probationary officer
19 tried to file a grievance, and then the second half of the
20 pages are the changes to the policy that were made shortly
21 after the probationary officer's termination. Is that
22 correct?

23 A. I'm sorry. The question again, sir?

24 Q. The second half of the pages in there -- the policy
25 at the front reflects the policy as it existed on June 25th?

1 A. The old policy?

2 Q. Yes.

3 A. Okay.

4 Q. The second policy, what's the date of when it was
5 changed?

6 A. On the second policy under grievance procedures,
7 the issue date was, well, the day reviewed was July 12th,
8 2013. In contrast with the original policy that was in
9 effect at the time that that meeting was held, the date was
10 September 20th, 2012.

11 Q. Okay. And when was the old policy scheduled to be
12 reviewed?

13 A. The old policy's scheduled review date was October
14 1st, 2013.

15 Q. Okay. But instead it was reviewed and changed
16 within a week of the --

17 A. Yes.

18 Q. -- probationary officer's termination?

19 A. Yes.

20 Q. To add the part about probationary officers not --

21 A. That's correct.

22 Q. Okay.

23 A. And that's not unusual. We change policies all the
24 time.

25 Q. Right. But, I mean, by your own admission then,

1 you were violating policy by not accepting the grievance from
2 the probationary officer?

3 A. Well, it was silent on that and that was a call
4 that was made by me. The original policy was silent on
5 accepting grievances, but I did feel it was appropriate given
6 that it was a probationary employee.

7 MR. SEXTON: Was Mr. Bales present at the -- at this
8 particular attempted meeting or attempted filing of
9 a grievance with you, Chief, was that part of the
10 basis for the charges against Officer Bales?

11 A. No.

12 MR. SEXTON: Okay. Mr. Campbell, I think we probably need
13 to move on.

14 CONTINUING BY MR. CAMPBELL:

15 Q. Okay. My reason in asking that was to ask, given
16 what Sergeant Bales knew about the training program and the
17 fact that he witnessed this question with the policy, could
18 you see where he might feel the need to come and talk to you
19 about problems he saw with the termination after that?

20 A. I could see that, yes.

21 Q. Okay. And you actually on the 20th, I believe,
22 asked Sergeant Bales to come and talk to you about what he
23 perceived as the problems with the termination?

24 A. August 20th, I approached Sergeant Bales and
25 another officer, another supervisor, based upon what I was

1 told by Sergeant Young about a rumor that there was a request
2 for the FOP to have a vote of no confidence, and that was a
3 specific -- my specific purpose for contacting the two
4 supervisors.

5 Q. And I think we've had some testimony about that.
6 And in that same meeting, is that when you instructed
7 Sergeant Bales to take his concerns about the termination to
8 Professional Standards?

9 A. What I told him was that I found that those
10 allegations had some credibility to them and that I would
11 facilitate having those looked, those allegations looked
12 into, and, again, as in support of my earlier testimony, the
13 fact that I have two additional supervisors here that have
14 credibility within the department and are valued members of
15 the supervisory team, and then for them -- I believe I
16 instructed them to give that information to the Office of
17 Professional Standards investigators.

18 Q. Okay. And do you have any personal knowledge of
19 Sergeant Bales discussing his concerns of the termination
20 with anyone other than you or the office of Professional
21 Standards?

22 A. I believe -- well, I believe that there's some
23 documents in here that refer to him discussing it with
24 another supervisor, Sergeant Entmeier, but anybody else
25 outside of that, no. No, sir, I don't.

1 Q. Okay. And you mentioned -- actually, no, skip
2 that. The initial investigation was on or about August 5th
3 with the allegations concerning about the phone access?

4 A. Correct.

5 Q. As the investigation proceeded for however long,
6 Detective Smithson testified that Ms. Sprayberry handled kind
7 of that initial part, but there doesn't seem to be at least
8 in this record any actual investigation or questions about
9 the phone usage. I mean, it was just -- Detective Smithson
10 testified that Ms. Sprayberry checked the logs and that was
11 sort of the end of it?

12 MR. WADE: Mr. Chair, I believe we've already been over
13 this several times.

14 Q. Not with the Chief and, I mean, that's what I'm
15 getting to is, if Sergeant Sprayberry checked the logs, said,
16 no, there's nothing to it, then I don't understand how the
17 amended complaint that came later is somehow even related to
18 the initial complaint?

19 A. First of all, to answer your first inquiry about
20 the failure to find anything about improper access to the
21 logs, I do recall that I was apprised of that. The
22 connection here was I believe there was a discussion and I
23 believe Detective Smithson was involved, but I can't say for
24 sure, about whether to, because of this additional
25 information, to start a whole new investigation separate from

1 the current one or to just incorporate everything since the
2 players are all pretty much the same. My decision was to
3 just keep it all within that and just expand the
4 investigation.

5 Q. Okay. Prior to -- actually Sergeant Bales waived
6 his pre-determination hearing, is that correct?

7 A. That is correct.

8 Q. Prior to his waiver of the pre-determination
9 hearing, did he approach you and ask for a copy of the
10 investigative summary, not the actual statements, just the
11 investigative summary?

12 A. I believe he did.

13 Q. Okay. And you declined that request?

14 A. I did.

15 Q. What is -- per regulations, what is the point of
16 the purpose of a pre-determination hearing?

17 A. It's for the accused employee whether it's an
18 officer or not, and even though we're not required to do
19 those for civilian employees, we do, but it's part of the due
20 process and for them to basically tell their side of the
21 story and for the review board to ask any questions they may
22 have of the accused employee.

23 Q. And I mean, specifically for policy, it's also to
24 allow them to, I mean, as you said, offer an explanation and
25 address the charges against them?

1 A. That's correct.

2 Q. Without some sort of copy of the investigative
3 summary or anything more than the amended complaint that just
4 states rules, how in the world could Sergeant Bales or anyone
5 actually go into a pre-determination hearing prepared to
6 address the charges against them and the allegations?

7 A. I agree that that may be a challenge, but he was
8 apprised of the allegations against him in letters from the
9 Office of Professional Standards, and so he knew what the
10 allegations were.

11 Q. Okay.

12 MR. SEXTON: Do you mean the factual allegations or the
13 rules that's just alleging?

14 A. The rules, yes.

15 MR. SEXTON: Was he ever given the factual allegations?

16 A. I believe, let's see, if you can bear with me just
17 a minute. I'm looking at tab 12 on City's Exhibit 1. This
18 is the amended notification of investigative inquiry. The
19 very first sentence on the -- underneath the heading there
20 was an administrative inquiry has been filed against you
21 alleging misconduct. Specifically you have publicly
22 criticized the department and accessed department records
23 without authorization. You are also alleged to have
24 misrepresented details during this investigation. Granted,
25 it's not an extensive description of the allegations, but it

1 is -- it is a description.

2 CONTINUING BY MR. CAMPBELL:

3 Q. Considering your final determination, it talks more
4 about widespread, pervasive attempts to undermine, you know,
5 and challenge the termination. I suppose at this point we'll
6 just agree to disagree that he was provided with any facts
7 because --

8 A. Okay. That's fair.

9 Q. -- without the --

10 MR. SHELL: I have a question real quick. Sergeant Bales,
11 when this was presented to you, did you understand
12 this?

13 MR. BALES: The pre-determination hearing offering?

14 MR. SHELL: Yes.

15 MR. BALES: Commissioner, when it was presented to me at
16 that moment, two were presented to me, another
17 complaint against me. There's been three
18 substantiated complaints now since I stood at
19 Addisen's side. The detective for the Office of
20 Professional Standards notified me, in my opinion,
21 quite briefly, that I had to two PDH's I was facing
22 and not just one. I had already asked the Chief
23 for the particulars of factual things I had been
24 charged with so I could try to defend myself.
25 There's a number of things I'll give testimony to

1 later, but, no, my main complaint was how do I
2 defend myself if I don't know the specifics of the
3 allegation. It was such a hostile experience at
4 that very moment. Sergeant Sprayberry walks in the
5 door when I'm being told I'm under investigation
6 for two different things and needed PDH and shows
7 me an award she got for the Internal Affairs
8 Investigator of the Year. I'm going to tell you it
9 was a very hostile environment every time I had any
10 interaction with the Office of Professional
11 Standards and every effort I made to figure out
12 factually what I was accused with was denied.

13 MR. SHELL: Why did you sign this then?

14 MR. BALES: I signed it. I denied the PDH. That I didn't
15 -- I didn't want to go in because I saw what
16 happened to another peer of mine who also tried to
17 stand by this young man at a PDH hearing. I had no
18 intentions going into a situation that I thought
19 was going to be pretty much an effort to bolster
20 their desire to fire me. In the earlier stage of
21 this before I was ever advised I was under
22 investigation, I was told one of us would be fired
23 and the other would be demoted. They talk about
24 the rumor mill, sir. That's what the rumor mill
25 was on me.

1 MR. SHELL: Did you feel threatened or intimidated --

2 MR. BALES: Yes.

3 MR. SHELL: -- during this process?

4 MR. BALES: I expressed those concerns. I actually
5 attempted to file a grievance with the Chief over
6 the disciplinary process itself and it was denied.

7 MR. SHELL: Okay.

8 CONTINUING BY MR. CAMPBELL:

9 Q. That actually brings me to my next question as to
10 why would you refuse to accept a grievance from Sergeant
11 Bales and Sergeant Entmeier prior, I mean, they're not
12 probationary officers, so what was the basis for denying
13 their grievances?

14 A. Because it's specifically stated in the policy that
15 we don't accept it on disciplinary procedures.

16 Q. Okay.

17 A. I could quote that section for you if you want to.

18 Q. No. I just wanted to double-check on that.

19 A. All right.

20 Q. Let's take a look at your disciplinary letter.

21 You stated that it's conduct unbecoming an officer, quote,
22 through a pervasive and widely known campaign challenging the
23 efficacy of a recently terminated probationary police
24 officer. There is little to nothing in the actual
25 investigation that says anything about Sergeant Bales

1 actually challenging or saying anything to anyone about the
2 termination other than Sergeant Entmeier, there's nothing
3 that says there was any effort on his part to undermine you.
4 I'm failing to see a widespread anything on the part of
5 Sergeant Bales here and I'm hoping you can tell me?

6 A. Well --

7 Q. With specifics preferably.

8 A. Certainly. The fact that I had -- I had been
9 approached by a number of staff members about the problem,
10 the rumors they are hearing, the problems they have seen, and
11 the fact -- and I testified earlier to essentially Sergeant
12 Bales' involvement in this was viewed as butting in, nosing
13 into somebody else's business when he is not a direct
14 supervisor of the former officer or anywhere involved in the
15 patrol division since -- because of his new assignment. And
16 I want to correct something earlier in the statement about
17 him undermining me. I did not feel personally that I was
18 being undermined.

19 Q. Okay.

20 A. I want to clarify that for the Commission, and
21 Sergeant Bales and I talked about that and I was very
22 forthcoming in the fact that I did not feel that way. But
23 that said, there were a lot of other supervisors that felt
24 that my authority was being undermined, while I did not, and
25 that it was having an adverse effect on their ability to

1 conduct themselves as supervisors for the rest of the
2 department. There are --

3 Q. Who were some of these?

4 A. Sergeant Hallum, I'm sorry, Major Hallum was one of
5 them. Captain Copeland was another. Major Boyd was yet
6 another. And, granted, these are all supervisors. I don't
7 recall being contacted by any officer, individual officer.

8 Q. Okay. So, we've got three supervisors saying that
9 somehow you were undermining them or that Sergeant Bales
10 actually were undermining them, but, I mean, there's been
11 ample testimony between you and Detective Smithson that, you
12 know, the rumor mill hit?

13 A. Uh-huh.

14 Q. We can go down the list. There's just, you know,
15 Sergeant Young knew about the Freedom of Information request
16 as far as the phone records. Everyone apparently knew about
17 Detective Smithson taking somebody out of the police
18 department a few years ago. Everyone apparently knew about
19 Sergeant Bales' complaint. Everyone -- in fact, everyone,
20 according to -- and I'll just say it. There was an incident
21 with a former officer and his minor children were interviewed
22 as part of the investigation. Everyone knew about that.
23 Everyone, I mean, from what I've read, everyone was pretty
24 upset about that --

25 A. They were very upset.

1 Q. -- as far as widespread discord?

2 A. No.

3 Q. So, if there's a rumor mill and everybody knows
4 everything that's going on and he has a duty per the rules to
5 tell -- to go if he thinks there's, you know, a violation and
6 you find it as a good faith violation, his heart was in the
7 right place, he did nothing wrong. How is he done a
8 widespread anything if that's just how the department works
9 and everybody knows everything that's going on?

10 A. All I can say is that the three officers that I had
11 mentioned earlier -- and keep in mind, these are not just
12 three individuals, but they also represent, at least and in
13 especially Major Boyd's capacity. He's the division
14 commander for the patrol division. He is effectively my eyes
15 and ears for that division, as if Major Hallum for the
16 criminal investigations. So, while I'm not a boots on the
17 ground kind of person as far as interaction on a daily basis
18 with individual detectives and other units, I rely on their
19 advice, their counsel, and their information. So, that's how
20 I equate that to the widespread and pervasiveness of Sergeant
21 Bales' actions.

22 Q. Okay. Did any of those three say that Sergeant
23 Bales had specifically discussed his problems with the
24 termination with them?

25 A. Not to my knowledge, no.

1 Q. And everything that's given to Professional
2 Standards is supposed to be confidential and just on a need
3 to know basis?

4 A. That's correct. With the instructions to the
5 accused that they are only to discuss that with their
6 attorney, their chain of command, and Office of Professional
7 Standards, and I suppose you could throw me in there, as
8 well.

9 Q. Yeah. I think the policy actually gives you
10 permission to --

11 A. Yes.

12 Q. -- allow them to release more information? But if
13 you didn't allow them to release more information and
14 Professional Standards didn't do it on their own, then it's
15 getting out somehow. Was there any investigation into --

16 A. And allow me to --

17 Q. Yeah.

18 A. -- articulate a little bit. You mentioned earlier
19 a former officer whose children were interviewed as part of
20 an investigation. I know for a fact, while I can't speak to
21 the other circumstances, that that officer himself passed
22 that information around to line level officers, which I have
23 no control over. And I would -- I would not be out of line,
24 I think, to postulate that that very same lines of
25 communication could have happened before with this case, too.

1 Q. So, during your investigation of that officer, once
2 it got around and everybody knew about it, was there any fall
3 back toward the person who had made the complaint against
4 that officer in the first place?

5 A. I think the complainant was a citizen outside the
6 department.

7 Q. You said the disciplinary matrix came about in
8 2009?

9 A. Yes. And it was revised again in 2012.

10 Q. Okay. But it was in place in April of 2012 --

11 A. Yes, sir.

12 Q. -- when Captain Haney was suspended?

13 A. Yes.

14 Q. Okay. And do you recall the facts surrounding
15 Captain Haney's suspension?

16 A. I recall the gist of --

17 MR. WADE: Object. We said we were going to not be
18 venturing off into these other areas. Is the
19 Commission going to allow that to happen now?

20 MR. CAMPBELL: Captain Haney's suspension is a perfect
21 parallel. It began with an allegation of improper
22 access of records just as this did. There was an
23 investigation, there was an admission of guilt
24 finding it, and Captain Haney got one day. And
25 this is a much harsher suspension.

1 MR. SEXTON: I think it's admissible for that purpose. We
2 can limit it for that purpose.

3 MR. WADE: We can stipulate that Captain Haney was
4 suspended for one day for accessing records.

5 MR. SEXTON: All right.

6 MR. WADE: But, again, the finding --

7 MR. SEXTON: That's fine. That's fine.

8 MR. WADE: -- finding in this case was that there was
9 nothing to confirm the access of the records, so
10 they're apples and oranges.

11 MR. SEXTON: If you made that stipulation, though, the
12 stipulation's been made Mr. Campbell.

13 MR. CAMPBELL: Okay.

14 MR. SEXTON: Go ahead.

15 CONTINUING BY MR. CAMPBELL:

16 Q. Well, then my only follow-up question to that based
17 on the stipulation would be, what in this investigative file
18 did you see and think, yeah, that is five times worse than
19 what Captain Haney did?

20 A. Well, first of all, there again, taking Mr. Wade's
21 comment, they're apples and oranges. He did not access any
22 files. What he did is, is essentially butting in in support
23 of a former probationary officer, interrupted, so interrupted
24 the operation and good order of the department that it, I
25 felt that it warranted the amount of the suspension.

1 Q. How did he interrupt the operations of the
2 department?

3 A. Well, just --

4 Q. Specific details. What happened that wouldn't have
5 happened because of the investigation?

6 A. Well, I think morale has been severely affected,
7 and while morale is not a substantive or substantiated
8 dollars and cents thing, it does have a very adverse effect,
9 especially poor morale has an adverse effect on the operation
10 of the department, and I believe that that, in fact, was in
11 the case here.

12 Q. Do you recall telling Major Boyd not that long ago
13 that he needed to do something about the discord between the
14 three troops because it was like having three different
15 police departments down there?

16 A. Yes. I gave him directions, specific direction.

17 Q. So, how was morale, I mean, absent Sergeant Bales,
18 how was morale?

19 A. Actually it went worse. It became worse.

20 Q. That's what I'm saying.

21 A. Yeah.

22 Q. But it was already bad?

23 A. In my -- well, the part of the direction was, and
24 it's -- your comment was kind of out of context, in that
25 there's one shift that was doing paperwork a little bit

1 differently than another shift. So, morale was not the only
2 component of that direction. It was also the specific
3 procedure operations of each shift or each troop.

4 Q. Okay. The last thing is you said that it was
5 somehow unbecoming, conduct unbecoming for Sergeant Bales to
6 aggressively pursue his allegations of his complaint, yet you
7 pulled into CID and asked him to, asked him to instruct
8 Professional Standards, and that's what he did. So, A, how
9 was that overly aggressive, and, B, again, how is that
10 conduct unbecoming?

11 A. The overly aggressive categorization was, actually,
12 did not come until the end when there had been ample time for
13 Sergeant Bales to, I think, even conduct his own evaluation
14 or analysis of some of the allegations that he had made
15 regarding specific incidents that had led to the ultimate
16 termination of the probationary employee, and instead of
17 backing off, he continued to pursue that and that was the
18 reason for the conduct unbecoming.

19 Q. Where in the policy is he required to perform his
20 own investigation?

21 A. He's not. But he -- as a valued member and I think
22 a very intelligent man, he has the ability to make his own
23 analyses.

24 Q. Right. But, yet, he acted in good faith and there
25 was no mal-intent and he stuck by what it was said in the

1 first place. That doesn't strike me as aggressive. And how
2 was that -- and all I'm saying is how that's conduct
3 unbecoming to make an allegation and then just stand by it?

4 A. Well, when the ultimate result was the
5 pervasiveness of the discord within the department and a
6 supervisor causing that kind of discord, I think is conduct
7 unbecoming.

8 Q. If he had believed all of these things, which he
9 apparently did, and you found out that he didn't go up his
10 chain of command and make a complaint about it, wouldn't he
11 have been in trouble for that?

12 A. Conceivably, yes.

13 MR. CAMPBELL: Okay. No further questions.

14 MR. SEXTON: Mr. Wade?

15 RE-DIRECT EXAMINATION OF KEVIN LINDSEY

16 BY MR. WADE:

17 Q. Just I think the last question and the follow-up of
18 what Mr. Campbell said about the distinction. In this case
19 where you've got a sergeant who has brought unsubstantiated
20 allegations against what in effect is a major, a captain,
21 three sergeants, and if you add to that the two members of
22 Professional Standards, Captain Copeland and Detective
23 Smithson, all of that challenging and potentially undermining
24 their authority, did you see that as a concern?

25 A. Yes, I did.

1 MR. SEXTON: Mr. Wade, if the allegations concerning Mr.
 2 Smithson and Mr. Copeland are part of the -- you're
 3 saying they are part of the charges, I don't think
 4 that the officer has notice of that, and this
 5 Commission is not going to consider that as part of
 6 the violation because I think it would violate Mr.
 7 Bales' due process rights.

8 Q. That's fine. I'll just eliminate those two. Minus
 9 those two, do you concur?

10 A. I recognize that there would have been.

11 Q. And do you see that as a distinctive difference
 12 from somebody who is allegedly accessing a record that has no
 13 impact whatsoever on anybody's authority? Do you see that as
 14 a difference between those two?

15 A. I would see that as a substantial difference in the
 16 adverse effects that it could have on the department.

17 MR. WADE: That's all I have. Thank you.

18 MR. SEXTON: Mr. Campbell?

19 RE-CROSS EXAMINATION OF KEVIN LINDSEY

20 BY MR. CAMPBELL:

21 Q. Didn't you just testify that the people who
 22 complained about this were saying that they felt like
 23 Sergeant Bales was sticking his nose into stuff?

24 A. Yes.

25 Q. So, there was some level and, even with Sergeant

1 Young's initial complaint, there was some level of
2 undermining authority and, you know, sticking his nose where
3 it didn't belong?

4 A. Uh-huh.

5 Q. So, the really kind of difference of degree where
6 Sergeant Young complained about a corporal, two sergeants,
7 and a captain, whereas, Sergeant Bales complained about a
8 sergeant, two captains, and a major?

9 A. I'm not keeping score, but that --

10 Q. So, it's not this abstract huge difference, is it?

11 A. Yeah. The essential -- the thing that essentially
12 mattered to me the most was I've got command staff or
13 supervisory staff members -- there's 30 supervisors in the
14 department plus myself, and it's all about the supervisors
15 and one faction against another, and that was my biggest
16 concern.

17 Q. Okay. So, the majors catch wind of it however,
18 through the rumor mill, they're upset, and that somehow makes
19 Sergeant Bales' appropriate steps up to that point
20 inappropriate, is that correct?

21 A. Ultimately, yes, they were inappropriate.

22 MR. CAMPBELL: All right.

23 MR. SEXTON: Mr. Wade?

24 MR. WADE: Nothing further.

25 MR. SEXTON: Mr. Shell?

1 MR. SHELL: We'll deal with this issue here today, Chief,
2 but, you know, as you say, you have polarization
3 and you have some morale issues. For me as a
4 Commissioner on this Board, what actions have you
5 taken to kind of resolve some of these issues so we
6 don't have further issues like this?

7 A. Probably the largest actions taken, we're trying to
8 maintain consistency of -- you heard Mr. Campbell remark
9 about my direction to Major Boyd to try to bring all of the
10 troops on line to where they're doing procedurally, as well
11 as their day-to-day actions, everything the same way. It
12 came to my attention -- this has been over a year ago -- that
13 one of the shifts, troop three, which is the midnight shift,
14 was doing things a little bit differently, and, granted
15 there, I recognize there are some needs to operate a little
16 bit differently. Day shift is certainly different from
17 working midnights. Troop two, which is mainly afternoons,
18 operates a little bit differently. But as far as the
19 department is concerned, paperwork and process, I had been
20 informed of officers' frustrations in moving from troop to
21 troop where things are done a little bit differently when
22 policy essentially says it's got to be done this way. And my
23 direction to Major Boyd at that time was to try to get
24 everybody on the same page. We need to be playing off the
25 same sheet of music here. That's the most significant step.

1 The other one is, contrary to evidence here, is try to be
2 very consistent in how we mete out discipline. We have
3 incorporated a new position within the department within this
4 last year called the KEEP officer. KEEP is an acronym
5 meaning keep exceptional employees program. That is a --
6 basically it's a diversionary program to negative discipline
7 within the department where a member of the department, an
8 employee, either civilian or sworn, has an option to either
9 apply to that program themselves if they're having problems.
10 And this is in addition to the Employee Assistance Program,
11 the EAP program, but instead it's a much more involved
12 program where employees having difficulties either
13 incorporating the culture or having other problems outside of
14 probation -- and I did that for Mr. Campbell's edification
15 -- can participate. If there is negative discipline awarded,
16 then that employee would most times -- and I did offer
17 Sergeant Bales the option of that, asked him if he would be
18 interested to participate in this -- and then what it would,
19 in fact, if satisfactory completion of the KEEP program was
20 done -- this is over a 90-day period -- the employee's
21 negative discipline would be wiped off the books.

22 MR. SHELL: Did Sergeant Bales take that option?

23 A. He did not. And those are two good examples of
24 what we've tried to do for the morale. In these economic
25 times it's kind of difficult to keep everything up.

1 MR. SHELL: I understand.

2 MR. SEXTON: Mr. Cooper?

3 MR. COOPER: Chief, will you go to tab 12?

4 A. Yes, sir.

5 MR. COOPER: To me, I've got a lot of contradictory
6 testimony here. Okay. I'm just going to read just
7 a little bit here. I think specifically you've
8 publicly criticized the department. Where was the
9 public criticism if we're not allowing Facebook?

10 A. The public criticism in my mind, sir, is the quote
11 that was apart from the original photograph of a former
12 probationary officer that I believe the caption there was I
13 support the name of the officer, but that other quote, and
14 while --

15 MR. COOPER: Where was it posted? Where is this?

16 A. On Facebook, but it was a separate.

17 MR. COOPER: Are you saying that Don Bales says whatever
18 that quote is?

19 A. I didn't look at the Facebook posting itself. I
20 was -- I looked at -- I don't even know if I saw an image of
21 it, but I was told about the quote that was on there. And I
22 don't know that it was -- I'm not sure --

23 MR. COOPER: I'm just asking you if Sergeant Bales signed
24 it or is it on his account? I mean, I'm not much
25 on Facebook either.

1 A. I don't -- yeah, I don't know. I don't know if was
2 actually on his account. I can't even say for sure that he's
3 the one that posted it or if it just appeared in his account
4 or on somebody else.

5 MR. COOPER: The accessed department records without
6 authorization, and I'm understanding that was
7 cleared up --

8 A. Yes, sir.

9 MR. COOPER: -- and there wasn't any truth to that? All
10 right. Misrepresented details during an
11 investigation, and is that the allegation of 705?

12 A. That's my opinion. Yes, sir.

13 MR. COOPER: And that was cleared up?

14 A. To my -- as far as I'm concerned, it was, yes.

15 MR. COOPER: I mean, you're the boss?

16 A. Yes.

17 MR. COOPER: Okay. All right. I guess that -- and now
18 you've got your board or review board, a five-panel
19 board, and I consider part of our duty here is not
20 to judge your decision that you followed procedure.
21 All right. So, you've got your board and they made
22 their recommendations and you're not bound by their
23 recommendations --

24 A. That's correct.

25 MR. COOPER: -- but for some reason they -- I've read their

1 allegations and their reports, and you all do
2 disagree?

3 A. Uh-huh. Yes, sir.

4 MR. COOPER: Tremendously disagree?

5 A. Right.

6 MR. COOPER: In what they're saying that they found an
7 investigation and what you're saying here today. I
8 just wanted to point that out. But you do rely on
9 -- that's part of your management?

10 A. Yes, sir.

11 MR. COOPER: You've got a corporation here you're running
12 and, you know, you've got this layer of management
13 that you work with because they're supposed to be
14 managing down below?

15 A. Yes, sir.

16 MR. COOPER: Okay. I'm done.

17 MR. SEXTON: Chief, was the quote, and I apologize if I've
18 seen this in the media or if I've read it in what
19 we have, something to the effect of all that needs
20 to happen for evil to prevail is for good men to do
21 nothing, something to that effect?

22 A. That's the quote. Thank you.

23 MR. SEXTON: And you don't know whether that came from Mr.
24 Bales, do you?

25 A. I really can't say. No, sir.

1 MR. SEXTON: All right. Now, if the complaint that Don
2 Paul Bales had made been substantiated, would that
3 have been a violation of the police department
4 policy?

5 A. It certainly would.

6 MR. SEXTON: Okay. And you have said that at the end of
7 the investigation he continued to aggressively
8 pursue it?

9 A. After the -- after the investigation had been
10 ongoing for several weeks and, in fact, this investigation
11 was extended, I believe, around September 19th for another
12 two weeks. By policy we have 45 days to complete an
13 investigation, and because of the extensive number of people
14 to be interviewed by the Office of Professional Standards, it
15 was extended. My feeling along those lines, if I can
16 interpret your question, would be that during this time he
17 had had opportunity to probably to talk to other people
18 besides the initial sources that he had gotten the
19 information from regarding the possible allegations, and I
20 felt that there could have been some misinformation or some
21 mistakes made and could have withdrawn any of those
22 allegations at any time and he found any kind of -- I won't
23 use the word investigation -- but any kind of inquiries into
24 allegations.

25 MR. SEXTON: Wasn't he prohibited from doing that very

1 thing because the departmental policies prohibit
2 him from discussing matters involving an internal
3 investigation with third parties?

4 A. Yes, sir.

5 MR. SEXTON: And wasn't a lot of the aggressiveness that he
6 had -- just tell me if I'm wrong because I'm not
7 sure here -- it would seem to me that a lot of the
8 aggressiveness that he had towards the end of the
9 investigation was because an allegation had been
10 made against him which could result in him being
11 terminated with a Rule 705 violation?

12 A. That would be very understandable, yes.

13 MR. SEXTON: And wouldn't it be understandable for him to
14 aggressively pursue his defense at this point?

15 A. It would.

16 MR. SEXTON: Now, did the -- you had testified about a
17 statement with -- some statements between Officer
18 Bales and Sergeant Entmeier?

19 A. Yes.

20 MR. SEXTON: Did those statements that occurred between the
21 two of them in any way form part of the
22 disciplinary action that you took against Officer
23 Bales or Sergeant Bales?

24 A. No, sir.

25 MR. SEXTON: That's all I have. Thank you, Chief. Chief,

1 let me say this. I do think that no matter what we
2 do here, you definitely acted in good faith, and I
3 do want to congratulate you on the award that Dawn
4 Sprayberry got. It's certainly an impressive
5 program and I know your funds went down and I know
6 you certainly acted in good faith.

7 A. Thank you, Mr. Chairman.

8 MR. WADE: If the Commission doesn't have any other
9 questions and Mr. Campbell doesn't, I don't have
10 any other questions of this witness and the City
11 would rest save rebuttal.

12 MR. SEXTON: If nobody plans to call Chief Lindsey again,
13 then, Chief Lindsey, you can stay here in the room.

14 A. Thank you, sir.

15 MR. SEXTON: Mr. Campbell?

16 MR. CAMPBELL: Given that we're coming up on three o'clock,
17 I'm asking if the Commission feels like they need
18 testimony from Sergeant Bales on this issue and, if
19 so, he's more than happy to answer questions. I
20 don't know that I have any questions for him that
21 are going to be anything beyond his version of the
22 same testimony solicited here.

23 MR. SEXTON: And I think to answer that question that what
24 we're going to have to do is go into executive
25 session to consider that particular issue and then

1 we can come back out.

2 MR. CAMPBELL: Okay.

3 MR. SEXTON: At this point time I think it would just be
4 quicker for everyone to step out of this room.
5 We'll be in executive session.

6 MR. WADE: I couldn't hear because of the noise. Are
7 they saying they don't have any witnesses?

8 MR. SEXTON: That was by design, Rick, that we did that.
9 No, what he asked is are we prepared to make a
10 decision without the testimony from Mr. Bales, and
11 I told him I think that's a matter that we need to
12 go into executive session and discuss.

13 [COMMISSION IN EXECUTIVE SESSION.]

14 MR. SEXTON: We're back in session now. We think this was
15 a very unfortunate matter -- we do have a motion --
16 a very unfortunate matter, and, Chief Lindsey, we
17 all think that you acted in very good faith in
18 what's going on in this situation. We think you've
19 had a hard situation here with a lot of -- a lot of
20 sides pulling at each other through no fault of
21 your own.

22 At this point in time, as Chairman of the
23 Civil Service Commission, I'd make a motion that
24 the Commission reverse the decision of the Chief of
25 Police and find no improper action, no rule

1 violation by Don Paul Bales, that Mr. Bales be
2 restored to his five days of pay that have, I
3 assume they've already docked from him, and that
4 any other benefits because of the five days be
5 restored to him, and that any adverse information
6 contained in his employment file by virtue of a
7 rule violation be expunged.

8 MR. COOPER: Second.

9 MR. SEXTON: All in favor?

10 FULL COMMISSION: Aye.

11 MR. SEXTON: All opposed? I show it as passing
12 unanimously. That will be the decision of the
13 Commission. Thank you.

14 [HEARING CONCLUDED AT 3:11 P.M.]

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1 CERTIFICATE

2 I, Nancy Bland, Certified Court Reporter, do hereby
3 certify that the trial before the Fort Smith Civil Service
4 Commission on December 5, 2013, and that the testimony of
5 said witnesses was taken by me in stenomask and was
6 thereafter reduced to typewritten form by me or under my
7 direction and supervision; that the foregoing transcript is a
8 true and accurate record of the testimony given to the best
9 of my understanding and ability.

10 I further certify that I am neither counsel for, related
11 to, nor employed by any of the parties to the action in which
12 this proceeding was taken; and, further, that I am not a
13 relative or employee of any attorney or counsel employed by
14 the parties hereto, nor financially interested, or otherwise,
15 in the outcome of this action; and that I have no contract
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23 IN WITNESS WHEREOF, I have hereunto set my hand and
24 seal.

25 Nancy Bland
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