

UNITED STATES DISTRICT COURT  
DISTRICT OF CONNECTICUT

DAPHNE MCKINNEY,	.	Case No. 3:06-CV-02055
	.	(WWE)
Plaintiff,	.	
	.	Bridgeport, Connecticut
v.	.	January 28, 2011
	.	
THE STATE OF CONNECTICUT,	.	
	.	
DEPARTMENT OF	.	
	.	
TRANSPORTATION, ET AL.,	.	
	.	
Defendants.	.	
. . . . .	.	

CONTINUED JURY TRIAL  
BEFORE THE HONORABLE WARREN W. EGINTON  
SENIOR UNITED STATES DISTRICT JUDGE

APPEARANCES:

For the Plaintiff:	Law Offices
	By: W. M. PHILPOT, JR., ESQ.
	409 Orange Street
	New Haven, CT 06511

For the Defendants:	State of Connecticut
	Office of the Attorney General
	By: JOSEPH A. JORDANO, AAG
	ELEANOR M. MULLEN, AAG
	999 Broad Street, 2nd Floor
	Bridgeport, CT 06604

Electronic Court	
Recorder Operator:	MS. SANDI BALDWIN

Transcriptionist:	MS. KATHLEEN M. JAGER
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(860) 464-1083

1 (Proceedings commenced at 9:18 a.m.)

2 MR. JORDANO: Out talking to the witness, I  
3 believe.

4 THE CLERK: Okay.

5 THE COURT: Oh, that's what happened to my  
6 hearing aid batteries. I wondered where they were.  
7 Okay.

8 All right. Well, we've done a pretty good  
9 job of moving this case along as long as we've been  
10 able to sit. There's another storm coming in next week  
11 so let's make as much progress as we can today to show  
12 the jury again we're trying to keep the case moving  
13 along. Finish it before the end of next week.  
14 Hopefully we can do it and --

15 MR. JORDANO: Your Honor, I have an issue I  
16 need to raise to the Court if I may.

17 THE COURT: Yeah, why don't you all sit down  
18 and use the mics.

19 MR. JORDANO: Your Honor, today I believe  
20 that the Plaintiff will be calling Mr. Glidden, a union  
21 person. We have no objection to that, but I do want to  
22 ask the Court to -- pursuant to your earlier ruling, we  
23 would not let the arbitration decision in. I'd ask  
24 that the Court reaffirm that Mr. Glidden will not be  
25 testifying to what the arbitrator said or things that

1 were said there, that was well after the decision was  
2 made in this case. The issue is what Ms. Arpin knew  
3 and I just want to make sure that we don't have  
4 something come in the backdoor that you wouldn't let in  
5 the front door.

6 THE COURT: Well, I make a ruling constantly  
7 in these case where these reports --

8 MR. JORDANO: Yeah.

9 THE COURT: -- that they can't be used  
10 because I don't want the opinion of an arbitrator to be  
11 substituted for that of the jury's; that's the jury's  
12 job. So the fact that there was an arbitration, that  
13 she was reinstated, the jury's heard --

14 MR. JORDANO: They've heard that, right.

15 THE COURT: -- that's fine. I'll keep an eye  
16 on the witness and make sure --

17 MR. JORDANO: All right. Thank you, Your  
18 Honor.

19 THE COURT: -- and make sure the witness  
20 knows he's not supposed to do that. That's -- I'm  
21 looking for him on the witness list.

22 MR. JORDANO: It's just a concern I have,  
23 Your Honor.

24 THE COURT: Let me see which number he is on  
25 the witness list.

1 This is Dave Maher?

2 MR. JORDANO: No, Glidden.

3 THE COURT: Oh.

4 MR. JORDANO: Mr. Glidden.

5 THE COURT: Let me see if I can find him.

6 Oh, David Glidden, he's number three. Okay.

7 All right. Okay.

8 MR. PHILPOT: Your Honor, I also note there  
9 are certain defense witnesses seated in the courtroom  
10 this morning. We would respectfully ask for a  
11 sequestration --

12 THE COURT: They should be sequestered, yes.

13 MR. JORDANO: All right. Very well, Your  
14 Honor.

15 I do note that Ms. -- I believe that Ms.  
16 Martires sat in here before her testimony.

17 THE COURT: Well, witnesses testified can  
18 stay in there courtroom.

19 MR. JORDANO: Well, I mean --

20 (Pause.)

21 THE COURT: Okay.

22 (Long pause.)

23 MR. JORDANO: Judge Eginton, I have some  
24 witnesses out there that have a lot of material with  
25 them. Could they sit in the attorney -- in the room on

1 the side here, if no one's in there?

2 THE COURT: Yeah, sure.

3 MR. JORDANO: Wendy, go and tell them that.  
4 You know where it is on the side?

5 UNIDENTIFIED: (unintelligible)

6 MR. JORDANO: Okay. Very good.

7 (Jury in at 9:20 a.m.)

8 THE COURT: Well, we lost some time, but boy  
9 it was tough on the roads so couldn't do anything about  
10 it. We'll try to move things along. The attorneys  
11 have done a good job of moving things along so we'll  
12 try to keep that going.

13 You want to see if you can get me my other  
14 hearing aid I left by the phone in there?

15 THE CLERK: Sure. You want me to swear him  
16 in?

17 THE COURT: After you swear the witness in.

18 DAVID GLIDDEN, PLAINTIFF'S WITNESS, SWORN

19 THE CLERK: Please be seated. State your  
20 name for the record, spell your last name, and your  
21 city only, please.

22 THE WITNESS: David Glidden, G-l-i-d-d-e-n;  
23 Meriden, Connecticut.

24 THE CLERK: Thank you.

25 DIRECT EXAMINATION

1 BY MR. PHILPOT:

2 Q. Good morning, sir.

3 A. Morning.

4 Q. Sir -- Mr. Glidden, would you tell us your level  
5 of education?

6 A. I have a Master's Degree from the --

7 Q. From where and in what?

8 A. University of Massachusetts in Labor Studies.

9 Q. Okay.

10 And undergrad you where?

11 A. Eastern Connecticut State University.

12 Q. What do you do, sir, for a living?

13 A. I am a union staff representative.

14 Q. Okay.

15 And for what unions?

16 A. The Connecticut State Employees Association, which  
17 is Service Employees International Union Local 2001.

18 Q. And you have worked in that capacity, sir, for how  
19 long?

20 A. Over 13 years.

21 Q. Would you briefly describe what you do on a  
22 regular basis for union members?

23 A. I am responsible for enforcing our contracts;  
24 representing our members' rights on the job, enforcing  
25 that contract; and that involves handling grievances,

1 handling investigations, representing employees in the  
2 investigation process; those kinds of things.

3 Q. It fell to you to represent Ms. McKinney, isn't  
4 that correct?

5 A. Yes.

6 Q. Okay.

7 And how did that come about, because as I recall  
8 Steven Livingston started off representing her, isn't  
9 that correct?

10 A. That's correct. Daphne is a member of our P4  
11 bargaining unit. We have stewards that represent  
12 employees at lower levels of the process. I typically  
13 get involved after grievances have been filed so that I  
14 do the representational work when it goes through the  
15 hearing process, though I do represent employees  
16 sometimes during the investigation process as I  
17 indicated before, but I did not do that for Daphne  
18 prior to her termination.

19 Q. So is it fair to say that Mr. Livingston  
20 represented her through the grievance process and you  
21 represented her through the arbitration process?

22 A. No. Nope, it -- I represented her through the  
23 grievance and arbitration process.

24 Mr. Livingston, I'm not certain to what degree he  
25 was involved with her during the investigation process.

1 I know that the two conferred at different times, but I  
2 think that she was represented actually by you in the  
3 investigation that led to her termination, if I'm  
4 remembering correctly.

5 THE COURT: Well, you and Counsel know what  
6 you're talking about, the jury and I don't have the  
7 slightest idea who Mr. Livingston is, this is the first  
8 time he's name's been mentioned so tell us who he is.

9 THE WITNESS: Mr. Livingston is one of our P4  
10 bargaining unit shop stewards. He is employed at the  
11 Department of Transportation; and, our shop stewards  
12 are responsible for kind of doing the lower level  
13 representational work for our members so --

14 BY MR. PHILPOT:

15 Q. And --

16 A. -- I think in that capacity he conferred with  
17 Daphne on issues that she was dealing with in the  
18 workplace.

19 THE COURT: Okay. I don't see his name on  
20 the witness list, so I assume we're not going to hear  
21 from him.

22 MR. PHILPOT: No.

23 THE COURT: Okay. Fine.

24 BY MR. PHILPOT:

25 Q. Prior to arbitration, Mr. Glidden, are there



1 various steps that one must go through as a union  
2 member regarding one's grievance?

3 A. Yeah, it depends on what kind of grievance it is.  
4 If it's a discipline grievance at the level of a  
5 suspension or higher then it goes directly to what we  
6 refer to as step 3. It's kind of strange that it  
7 starts with step 3, but that's those types of  
8 grievances start; and that is a conference that takes  
9 place at the Office of Labor Relations; and, then after  
10 that step if it's not resolved, the grievance proceeds  
11 to arbitration which is the final step in the process  
12 for a final and binding decision on the parties.

13 Q. Did Ms. McKinney's grievance go to step 3?

14 A. It did.

15 Q. And that was in the Office of Labor Relations at  
16 DOT?

17 A. No. The Office of Labor Relations is part of the  
18 Office of Policy and Management. It's a division of a  
19 different state agency, specifically that state agency;  
20 and yes, it did go to step 3 with OLR, Office of Labor  
21 Relations.

22 Q. And the grievance was denied?

23 A. The grievance was denied at step 3; yes, that's  
24 correct.

25 Q. And then the next step was arbitration?

1 A. Yes.

2 Q. In representing Ms. McKinney in the arbitration  
3 process, is it fair to say that this was fairly long  
4 process?

5 A. It was a very long process, yes. The arbitration  
6 had I believe six days of hearing. They're not  
7 consecutive days because you don't know how many days  
8 you're going to need from the arbitrator so they are  
9 scheduled as you go along; and the arbitrators are in  
10 great demand so there's usually a large gap in between  
11 the days so as I said I think there were six days of  
12 hearing between June '07 and June of '08, I think, if  
13 I'm remembering correctly, that's the time period that  
14 it took for the arbitration to take place.

15 Q. Was Ms. Tulum at each arbitration hearing, if you  
16 recall?

17 A. She was there for at least some of them. I don't  
18 recall if she was there for each of the six, but she  
19 was certainly present for most, if not all, of the  
20 hearing.

21 Q. She was not a party to the arbitration hearing,  
22 was she?

23 A. Well, she was not the grievant, nor was she acting  
24 as the state in a management capacity --

25 Q. Representative?

1 A. Correct.

2 Q. Right. So there was no, as far as you know, legal  
3 requirement that she be present?

4 MR. JORDANO: Objection, relevancy.

5 THE COURT: I'm not sure -- I thought we were  
6 talking about Ms. McKinney. Who we talking about?

7 THE WITNESS: Ms. Tillum.

8 MR. PHILPOT: Your Honor, Ms. Tillum --

9 THE COURT: Oh, Tillum.

10 THE WITNESS: Mm-hmm.

11 THE COURT: Oh, yeah, okay.

12 THE WITNESS: Mm-hmm.

13 THE COURT: Okay. I got it.

14 MR. PHILPOT: We --

15 THE COURT: I'll allow it.

16 THE WITNESS: I'm sorry; could you restate  
17 the question?

18 BY MR. PHILPOT:

19 Q. Yeah. Sure. So as far as you know given your  
20 capacity as the representative of the grievant, there  
21 was no legal requirement that Ms. Tillum be present at  
22 most or all of those arbitration proceedings?

23 A. There was certainly not a requirement, no.

24 Q. Okay. If you know, did she attend unescorted?

25 MR. JORDANO: Objection, relevancy.

1 THE COURT: I'll allow it.

2 THE WITNESS: I don't know.

3 BY MR. PHILPOT:

4 Q. One of the -- in terms of the issues, Mr. Glidden,  
5 that you raised during the arbitration process was  
6 whether or not Ms. McKinney was treated in a similar  
7 fashion to other similarly situated employees, is that  
8 correct?

9 A. Yes.

10 Q. Okay. And in pursuing that claim, was it  
11 necessary for you to review files provided by the  
12 Department of Transportation relative to those who had  
13 received discipline?

14 A. Yes, it was.

15 Q. Would you describe for the Court and members of  
16 the jury exactly the process in terms of you -- your  
17 request -- your initial request for that information --

18 A. Sure.

19 Q. -- and what you did?

20 A. Well, I submitted a request to the Department of  
21 Transportation. I can't remember exactly how the  
22 request was worded, what exactly I requested, but I did  
23 request a large amount of disciplines that were issued  
24 by the DOT.

25 Q. Was that for a ten-year period?

1 A. Ten years I think is what I asked for, yeah; I'm  
2 pretty sure it was a ten-year period, but I -- I'm not  
3 entirely sure that it was a ten-year period.

4 Q. All right.

5 A. It might have actually been longer than that. As  
6 I said I can't remember exactly what the wording of my  
7 request was, but there was a large amount of  
8 documentation that was provided by the DOT in response  
9 to my request and I spent a day in the DOT -- or a good  
10 part of the day in the DOT HR office with a couple of  
11 my colleagues that I enlisted to help me plow through  
12 all of those files.

13 Q. When you say plow through, is it fair to say that  
14 that means that you read those files to attempt to  
15 determine what those individuals were charged with and  
16 the discipline that was issued by DOT?

17 A. Absolutely.

18 Q. And you did that for the purpose of doing a  
19 comparative analysis with respect to the charge Ms.  
20 McKinney was issued by the DOT and what those  
21 individuals were issued?

22 A. That's correct.

23 Q. Now, later on we're going to get into specifics  
24 about those incidents or about those comparators --

25 A. Mm-hmm.

1 Q. -- but is it fair to say that you came away with  
2 an impression of the comparators that were submitted to  
3 you by the DOT as compared to Ms. McKinney's alleged  
4 offense?

5 A. Yes, I came to the conclusion based upon the  
6 review of those records that the agency engaged in what  
7 we call in Labor Relations disparate treatment by  
8 dismiss McKinney in the instance involving her.

9 Q. Mr. Glidden, you say that, sir, why?

10 A. Well, the way I looked at it I felt that there  
11 were --

12 MR. JORDANO: Objection, relevancy.

13 THE COURT: Sustained. I'm not going to have  
14 his opinion substituted for the work of this jury.

15 MR. PHILPOT: All right.

16 THE COURT: He's not going to be allowed to  
17 give his opinion.

18 MR. PHILPOT: All right. All right. Very  
19 good.

20 BY MR. PHILPOT:

21 Q. If you know, based upon your information  
22 concerning the alleged violation of the workplace  
23 violence policy, 80-16A--

24 A. Yes.

25 Q. And you're familiar with that policy, is that

1 correct?

2 A. I am.

3 Q. Okay. In your -- did you ever uncover any  
4 information of facts which suggested in any way that  
5 Ms. McKinney ever attempted to directly contact Ms.  
6 Tylum?

7 A. None.

8 Q. In your brief, sir, you -- the brief that you  
9 submitted after the -- at the conclusion --

10 MR. JORDANO: Objection, relevancy.

11 THE COURT: I don't know what the question  
12 is.

13 MR. JORDANO: All right. I'll withdraw it at  
14 this point.

15 BY MR. PHILPOT:

16 Q. In your assessment of the State's -- the DOT's  
17 position as well as Ms. McKinney's position, is it fair  
18 to say that you uncovered certain assumptions that Ms.  
19 Arpin made with respect to Ms. McKinney's actions?

20 MR. JORDANO: Objection --

21 THE WITNESS: Yes.

22 THE COURT: I'm not quite sure I understand  
23 the question.

24 MR. PHILPOT: Sure. Okay. I'll rephrase it.

25 BY MR. PHILPOT:

1 Q. You argued during the arbitration process that Ms.  
2 Arpin made certain assumptions with respect to Ms.  
3 McKinney, isn't that correct?

4 A. That's correct.

5 MR. JORDANO: Objection. Your Honor, it  
6 doesn't make a difference. It's only what Ms. Arpin  
7 believed --

8 THE COURT: Well, he's --

9 MR. JORDANO: -- at the time.

10 THE COURT: -- just answering yes or no.

11 MR. JORDANO: All right.

12 THE COURT: That's all he's asking. You're a  
13 little premature.

14 MR. JORDANO: All right.

15 THE COURT: I'm going to sustain your -- I'm  
16 not going to let him testify about that.

17 MR. JORDANO: All right. I'll withdraw the  
18 objection, Your Honor.

19 BY MR. PHILPOT:

20 Q. The arbitrator -- did the State ever indicate to  
21 you during the arbitration process that there was a  
22 particular comparator that they relied upon in  
23 discharging Ms. McKinney?

24 MR. JORDANO: Objection.

25 THE COURT: Sustained.



1 BY MR. PHILPOT:

2 Q. Are you familiar, Mr. Glidden, with the Tomches  
3 case?

4 A. Yes.

5 Q. To the extent that you are familiar with it, would  
6 you describe for the Court and members of the jury what  
7 that involved?

8 A. It involved another DOT P4 bargaining unit  
9 employee, Mr. Thomas Tomches, who was overheard to have  
10 said some I guess what I would describe as explicit  
11 threatening language while at work. Specifically, he  
12 was overheard saying, with my training in warfare I  
13 could come into the office someday with a M-16 and  
14 shoot people. He was overheard talking to his wife on  
15 the phone saying, I wish I was not married to you so  
16 that I could go into work and kill people without it  
17 reflecting on you; and also that -- this was also  
18 directed to his wife allegedly, you should file for  
19 divorce so that you could tell people that you saw it  
20 coming.

21 Q. You -- okay. Is that one of the comparators that  
22 you presented during the arbitration?

23 MR. JORDANO: Objection; relevancy.

24 THE COURT: Yeah, sustained.

25 I would have objected if -- I would have

1 sustained your objection if you objected when you first  
2 mentioned it.

3 We don't want to -- this is the job of this  
4 jury. If you want to bring the Sanchez (sic) situation  
5 in, bring him; but we have comparators, but I'm not  
6 going to let this person qualify as an expert because  
7 this jury doesn't need an expert in that. I would find  
8 that we don't need to call an expert so I'm not going  
9 to let him testify as an expert.

10 MR. PHILPOT: I understand.

11 Your Honor, Mr. Tomches is not going to be  
12 coming in, but we do have information about the Tomches  
13 case that was provided to us by the State. We would  
14 offer it, Your Honor, which at 78.

15 THE COURT: I'm going to insist that  
16 comparators come in if we have them. You've got plenty  
17 of them.

18 MR. PHILPOT: Mm-hmm.

19 THE COURT: I'm not going to allow anything  
20 to come in just on the basis of records. I want fully  
21 ability to be judged by this jury and I'm not going to  
22 deprive them of the opportunity to do that so I'll  
23 knock out anything on Sanchez. Unless --

24 MR. PHILPOT: Tomches.

25 THE COURT: -- Sanchez comes in. You've got

1 plenty of comparators here.

2 MR. PHILPOT: Absolutely, but it -- Tomches  
3 is the one that the State indicates that they were  
4 relying upon and that's why it's important, Your Honor;  
5 and --

6 THE COURT: Well, then it's important to have  
7 witnesses that can testify --

8 MR. PHILPOT: The problem is he was  
9 terminated almost 15 years ago.

10 THE COURT: Well, I can't handle that, but --

11 MR. PHILPOT: Okay. Then that's why we're  
12 submitting -- making the submission, Your Honor.

13 MR. JORDANO: Your Honor --

14 THE COURT: If he's unavailable, he's  
15 unavailable.

16 BY MR. PHILPOT:

17 Q. Who wrote the Tomches -- not an opinion, fact --  
18 who wrote the Tomches decision in terms of -- 'cause he  
19 went to arbitration, didn't he?

20 A. Correct.

21 MR. JORDANO: Objection, relevancy.

22 THE COURT: Sustained.

23 MR. PHILPOT: I claim it, Your Honor. It's a  
24 question of fact. Fact.

25 THE COURT: I better send you back while I

1 get an offer of proof. We have to have certain times  
2 we have to permit Counsel to put in the record what it  
3 is they want me to rule on so the Appellate Court can  
4 consider whether I ruled correctly, so I'll send you  
5 back.

6 (Pause. Jury out at 9:38 a.m.)

7 THE COURT: Okay. You can ask the question  
8 and he can answer.

9 MR. PHILPOT: Sure. Sure.

10 BY MR. PHILPOT:

11 Q. In your comparative analysis, you came across who  
12 authored the Tomches arbitration decision, didn't you?

13 A. Correct.

14 Q. Okay.

15 And who was that?

16 A. Arbitrator David Bloodsworth.

17 Q. Okay.

18 And how is David Bloodsworth related to the  
19 McKinney case?

20 A. He's the same arbitrator that ruled in her case.

21 Q. Okay.

22 MR. PHILPOT: We claim it, Your Honor.

23 Question of fact, it's not opinion.

24 THE COURT: Okay. I'll give my ruling.

25 That's definitely not for the jury.

1 All right, you made your offer of proof.  
2 Anything else while the jury is out?  
3 Anything we ought to consider?

4 MR. JORDANO: Nothing from Defendant at this  
5 time, Your Honor.

6 THE COURT: All right.

7 All right. You can bring them back in if --  
8 when they're ready to come back in.

9 (Pause.)

10 MR. JORDANO: Excuse me, Your Honor, this is  
11 witness I think for Mr. Philpot. I don't know who you  
12 are, sir. Can you take care of that, Mr.  
13 (unintelligible)?

14 (Jury present.)

15 BY MR. PHILPOT:

16 Q. One of the comparators that you presented to the  
17 arbitrator was John Leslie, do you recall that?

18 A. John Leslie?

19 Q. Yes.

20 A. Let me just --

21 MR. JORDANO: Objection, relevancy.

22 THE COURT: Yeah. I really don't want this  
23 witness testifying about what he did with the  
24 arbitration because that's the jury's job here and  
25 we've -- the fact that she was re-instated, the jury

1 knows. The situation and how that all came about I'm  
2 not going to have this jury hear about.

3 MR. PHILPOT: I understand, Your Honor.

4 We certainly respect the Court's ruling.  
5 Your Honor, we're just trying to streamline it so that  
6 not ever person --

7 THE COURT: That's when they were out, I  
8 asked you to cover anything that -- else you were going  
9 to do.

10 MR. PHILPOT: And I didn't know it was a  
11 problem because we had already --

12 THE COURT: Well, that's the problem. I'm  
13 not going to let him get into what he did in the  
14 arbitration. So if you want to make a long offer of  
15 proof, I'll send the jury out in due course --

16 MR. PHILPOT: No, I don't want to do that.

17 THE COURT: -- but let's finish him up  
18 otherwise.

19 MR. PHILPOT: Okay.

20 (Pause.)

21 BY MR. PHILPOT:

22 Q. Throughout the time that you represented Ms.  
23 McKinney, you had an occasion to observe her demeanor,  
24 isn't that correct?

25 A. Absolutely.

1 Q. Okay.

2 Upon being discharged, Mr. Glidden, what did you  
3 notice about her affect or her demeanor; her emotional  
4 state?

5 A. She was under --

6 MR. JORDANO: Objection, foundation.

7 THE WITNESS: -- tremendous --

8 THE COURT: I'll allow his opinion as to what  
9 he observed.

10 THE WITNESS: She was under tremendous stress  
11 and anxiety. It was very clear to me that she was, but  
12 that's not, you know, uncommon for somebody in this  
13 situation of being dismissed from their job especially,  
14 you know, she had a long career with the Department of  
15 Transportation, it was coming to an end as a result of  
16 this dismissal. So she was very upset about it, no  
17 question.

18 BY MR. PHILPOT:

19 Q. Was it an inordinately long period of time given  
20 the fact that she was out for two years, four months;  
21 was that as arbitrations goes an inordinately long  
22 period of time?

23 A. Not really.

24 MR. JORDANO: Objection, relevancy.

25 THE COURT: Yeah, I don't know that he's

1 competent to --

2 MR. PHILPOT: All right.

3 THE COURT: -- do that -- give that.

4 BY MR. PHILPOT:

5 Q. Although you've worked as a representative in  
6 arbitrations for 13 years, didn't you say that?

7 A. Yes.

8 Q. Okay.

9 THE COURT: Well, but the point is that the  
10 jury's heard the length of time. They can draw their  
11 conclusion from it.

12 MR. PHILPOT: All right. Okay.

13 BY MR. PHILPOT:

14 Q. Did you ever witness Ms. McKinney experience a  
15 panic attack?

16 A. Yes.

17 Q. Would you describe, sir, for the Court and members  
18 of the jury what you saw?

19 A. On one occasion that I was meeting with her, and  
20 obviously over that period of a year that her  
21 arbitration was ongoing, I met with her a lot; but  
22 there was on occasion that I recall where she had a  
23 panic attack. She was having difficulty breathing.  
24 She put her head between her legs and after awhile she  
25 was okay, but I was worried that I might have to bring



1 her to the hospital.

2 Q. Did she appear to you, based upon your  
3 observations, to be depressed?

4 A. I'm sorry, to be what?

5 Q. Depressed?

6 A. She appeared to me -- I mean I don't necessarily  
7 know what the definition of that might be, but there  
8 was no question that she was very stressed and she had  
9 a great deal of anxiety about the circumstance that she  
10 was in. There was a medical document that was provided  
11 that indicated that she was diagnosed with major  
12 depression so, you know, it was clear to me that that  
13 diagnosis based upon what I observed, I'm not --

14 MR. JORDANO: Objection, calls for --

15 THE WITNESS: -- I'm not a doctor --

16 THE COURT: Sustained. Sustained.

17 BY MR. PHILPOT:

18 Q. And did you -- other than the panic attack and  
19 what you read with respect to the doctor, did you see  
20 any other signs of stress? Her manifest any other  
21 signs of stress?

22 A. Yeah. Yeah, I mean there was at least one other  
23 time that I remember that she got upset and cried. You  
24 know, I think there was one when I was in a meeting  
25 with her that she actually became physically ill. So

1 yeah, she -- I observed it on more than one occasion  
2 that she was in a bad place from what I could tell.

3 Q. So based upon your observations is it fair to say  
4 that she -- that this process took a great emotional  
5 toll on her?

6 MR. JORDANO: Objection.

7 THE WITNESS: No doubt.

8 THE COURT: Well, it's opinion.

9 MR. PHILPOT: Okay.

10 BY MR. PHILPOT:

11 Q. Based upon your investigation, sir, did -- first  
12 of all, would you tell us who Dennis Jolly is?

13 A. Dennis Jolly is a manager of the Department of  
14 Transportation that at one point was Daphne's immediate  
15 supervisor and then he ascended to a managerial role,  
16 but he was -- continued to be in her chain of command.

17 Q. And did Ms. McKinney ever indicate to you that she  
18 approached Dennis Jolly about the concerns she had  
19 concerning bullying by Ms. Tulum?

20 MR. JORDANO: Objection --

21 THE WITNESS: Yes.

22 MR. JORDANO: -- calls for hearsay.

23 THE COURT: Sustained. I -- we -- that is  
24 direct evidence the jury's been hearing. We don't need  
25 to have his hearsay on it.

1 MR. PHILPOT: All right.

2 BY MR. PHILPOT:

3 Q. If you know, who initiated the investigation that  
4 was conducted at DOT in the Regulatory and Compliance  
5 Unit concerning interpersonal problems that were  
6 ongoing within the unit by -- that investigation was  
7 done by a Mr. Crowther and Maher.

8 MR. JORDANO: Objection --

9 THE WITNESS: Yes, my understanding --

10 MR. JORDANO: -- objection, relevancy.

11 THE COURT: Yeah. We -- isn't there better  
12 evidence?

13 In other words, you said if he knows, but we  
14 have direct evidence as to who did that.

15 MR. PHILPOT: We --

16 THE COURT: Again, I don't want him to  
17 testify about what he learned and what he was told by  
18 other people during this. He wouldn't have any direct  
19 knowledge as to who initiated that.

20 MR. PHILPOT: Well, actually, Your Honor,  
21 Arpin did testify -- Ms. Arpin did testify during the  
22 arbitration and indicated that she initiated it.

23 THE COURT: Fine. That's great. We'll have  
24 testify here, but --

25 MR. PHILPOT: Okay.

1 THE COURT: -- you're asking him for hearsay.

2 MR. PHILPOT: Well, she --

3 THE COURT: There's better evidence as to  
4 how --

5 MR. PHILPOT: But she's --

6 THE COURT: -- Ms. Arpin may --

7 MR. PHILPOT: -- but she's a Defendant --

8 THE COURT: -- very well have done that, but  
9 I don't want to have him --

10 MR. PHILPOT: All right.

11 THE COURT: -- give opinions on it.

12 MR. PHILPOT: Okay. But certainly it's not  
13 hearsay if she's a Defendant or party.

14 THE COURT: She's going to testify. Then  
15 it's not --

16 MR. PHILPOT: All right.

17 THE COURT: -- hearsay for him, it's hearsay.

18 MR. PHILPOT: We claim it, Your Honor, but  
19 okay. We'll move on.

20 THE COURT: It's a clear ruling. He may  
21 not --

22 MR. PHILPOT: I understand.

23 THE COURT: -- testify about hearsay.

24 BY MR. PHILPOT:

25 Q. If you know, who gave the emails that are the

1 subject of this dispute -- there was the initial one  
2 that was sent on July 10th, 2006, and that was sent to  
3 Commissioner Korta, is that correct, by Ms. McKinney.

4 A. It was sent to Commissioner Korta and I think it  
5 was sent to a number of other individuals as well.

6 Q. But it was not sent to Ms. Tylum, is that correct?

7 A. That's correct.

8 Q. If you know, who gave that email to Ms. Tylum?

9 A. Ms. Karwick indicated -- Kathleen Karwick --

10 MR. JORDANO: Objection, calls for hearsay.

11 THE WITNESS: -- from Human Resources did.

12 THE COURT: Yeah. Again, we have evidence on  
13 this.

14 Again, you're asking him what he discovered  
15 in the course of his investigation. We have people  
16 testifying about this and nobody's contesting this so I  
17 don't want to waste time with him trying to give  
18 opinions that we just don't have to have.

19 MR. PHILPOT: Okay. It's not -- okay.

20 These are not opinions; these are facts, Your  
21 Honor --

22 THE COURT: Yeah, but --

23 MR. PHILPOT: -- and they are not in evidence  
24 as of yet.

25 THE COURT: -- the facts were admitted.

1 MR. PHILPOT: They're not in evidence as of  
2 yet.

3 THE COURT: We've got other witnesses.

4 MR. PHILPOT: Who gave --

5 THE COURT: We've got other witnesses.

6 MR. PHILPOT: -- who gave the email to Tylum  
7 directly is not in evidence as of yet and that's why  
8 we're trying to put it in.

9 THE COURT: Well, we -- you can't get it  
10 through him.

11 MR. PHILPOT: All right.

12 THE COURT: He's -- it's all hearsay as to  
13 him.

14 MR. PHILPOT: All right.

15 BY MR. PHILPOT:

16 Q. In Labor Relations, Mr. Glidden, dismissal --

17 A. Mm-hmm.

18 Q. -- is akin to what?

19 A. They usually describe in Labor Relations --

20 MR. JORDANO: Objection --

21 THE WITNESS: -- dismissal being akin to --

22 MR. JORDANO: -- dismissal is dismissal.

23 THE COURT: I can't get what he's saying.

24 THE WITNESS: It's commonly referred to as  
25 the capital punishment of Labor Relations --

1 THE COURT: Okay.

2 THE WITNESS: -- dismissal is.

3 MR. JORDANO: Objection --

4 MR. PHILPOT: We claim it, Your Honor.

5 THE COURT: I'll let it stand. It's your  
6 decision as to what --

7 MR. PHILPOT: Just a moment, please.

8 (Pause.)

9 BY MR. PHILPOT:

10 Q. If I may, Mr. Glidden, you reviewed Ms. McKinney's  
11 emails?

12 A. I did.

13 Q. Did you have a view with respect to her emails in  
14 terms of what she was attempting to do?

15 MR. JORDANO: Objection --

16 THE WITNESS: Absolutely.

17 THE COURT: Sustained. She's testified.

18 MR. PHILPOT: Okay. All right.

19 THE COURT: Again, he can't be a character  
20 witness either so let's get him off the stand and move  
21 on to witnesses who can give us facts.

22 MR. PHILPOT: All right.

23 THE COURT: I let him testify as to what he  
24 observed about --

25 MR. PHILPOT: I understand.

1 THE COURT: -- her emotions and that's  
2 permissible, that's direct evidence; but that's all I'm  
3 going to let him testify to, is direct evidence.

4 MR. PHILPOT: That's fine. Just a moment  
5 just to make sure I have everything that I need. Just  
6 a moment, please.

7 (Pause.)

8 BY MR. PHILPOT:

9 Q. Do you know who wrote the arbitration decision in  
10 the McKinney matter?

11 MR. JORDANO: Same objection. Who wrote the  
12 arbitration, relevancy. It's already been --

13 MR. PHILPOT: Oh, we claim it, Your Honor.

14 THE COURT: Oh, I'm going to hear; you're  
15 worried about where he's going --

16 MR. PHILPOT: No, I'm --

17 THE COURT: -- after that. I don't object to  
18 your telling us who wrote the arbitration decision, we  
19 all know that; but I'm going to --

20 MR. PHILPOT: Yes.

21 THE COURT: -- object to the other questions.

22 MR. PHILPOT: And there's no other question.

23 THE COURT: All right.

24 MR. JORDANO: All right.

25 THE COURT: Go ahead, you can --



1 THE WITNESS: It's Arbitrator David  
2 Bloodsworth.

3 THE COURT: Yeah, I thought we already  
4 testified to that.

5 MR. PHILPOT: No, that had to do with  
6 Tomches, the other case.

7 THE COURT: I thought it had to do with  
8 McKinney also.

9 BY MR. PHILPOT:

10 Q. All right. So McKinney was David Bloodsworth, is  
11 that correct?

12 A. That's correct.

13 Q. Okay.

14 MR. PHILPOT: I have nothing further, Your  
15 Honor.

16 THE COURT: All right.

17 CROSS-EXAMINATION

18 BY MR. JORDANO:

19 Q. Just a few questions, sir.

20 A. Sure.

21 Q. You represent the P4 unit?

22 A. Not just the P4 unit, but there are other groups  
23 that I represent, but I do represent a good portion of  
24 the P4 unit.

25 Q. Let me rephrase.

1 With respect to Ms. McKinney, she's in P4?

2 A. She is in P4.

3 Q. All right.

4 A. Yes.

5 Q. Those are the engineers, the planners, and certain  
6 people within DOT are included in that unit?

7 A. It's called the engineering, scientific, and  
8 technical bargaining unit. It's all over the State,  
9 not just in DOT. Many agencies have P4 employees.

10 Q. Okay.

11 But it's referred to typically as P4?

12 A. It is.

13 Q. All right.

14 A. Yeah.

15 Q. And is Ms. Tulum part of that P4 unit?

16 A. I believe that she is.

17 Q. So your union would be responsible for protecting  
18 her rights also, is that correct?

19 A. Absolutely.

20 Q. Yeah. Now so I'm clear, you had about six  
21 sessions for this arbitration, not 18, is that correct?

22 A. Six sessions of arbitration, I believe that's  
23 correct.

24 Q. Let me just check. One moment. You have no  
25 medical training, correct?

1 A. None whatsoever.

2 (Pause.)

3 MR. JORDANO: I'm just checking my note quick  
4 here. A little trouble reading my own writing  
5 sometimes.

6 BY MR. JORDANO:

7 Q. And you told us you get involved in the  
8 arbitration stage, typically?

9 A. No, I actually get involved usually when a  
10 grievance is filed and sometimes that starts at an  
11 earlier step than step 3 and -- but I do get involved  
12 in the investigation process sometimes too.

13 Q. All right.

14 Let me rephrase it. In this case, you got  
15 involved in the arbitration phase you told us.

16 A. At step 3 I got involved --

17 Q. Step OLR and then --

18 A. -- which is the step before arbitration.

19 Q. -- OLR and then the arbitration?

20 A. Correct.

21 Q. Okay.

22 And your unit does not -- your -- backup. P4 is  
23 not the maintenance garages and things like that,  
24 correct?

25 A. We have some members that work in the maintenance

1 garages, but for the most part the employees in those  
2 places are in the maintenance bargaining unit.

3 Q. All right.

4 So the next question, P4 --

5 A. Yes.

6 Q. -- P4, the engineers --

7 A. Yes.

8 Q. -- if they were in a maintenance garage, they'd  
9 be in the engineer or one of the categories that P4  
10 covers, right?

11 A. That's correct.

12 Q. But if they're a plower or they're a maintenance  
13 worker, that's not P4?

14 A. That's correct.

15 Q. So if there was a grievance between two  
16 maintenance workers in a garage who aren't part of P4,  
17 you would not have been involved in that?

18 A. That's right.

19 Q. And these instances when Ms. McKinney had her  
20 panic attacks, you don't know her medical history going  
21 back, do you?

22 A. The extent of what I know is that letter that I  
23 mentioned --

24 Q. All right.

25 A. -- from her doctor indicating the --

1 Q. All right.

2 A. -- the major depression.

3 Q. You don't know how long she's been suffering from  
4 that or what medication she took?

5 A. No, I don't.

6 Q. You don't know -- now, 2007 to '08 so if during  
7 that period, her mother passed away or if she'd been  
8 suffering from some other medical problem, you don't  
9 know that?

10 A. I do recall that her mother was ill.

11 Q. Okay.

12 During the same period?

13 A. I think so.

14 Q. All right.

15 A. I couldn't say for sure.

16 Q. All right.

17 MR. JORDANO: Nothing further.

18 MR. PHILPOT: Nothing further, Your Honor.

19 THE COURT: Thank you. You can step down.

20 You're not on a subpoena though?

21 THE WITNESS: I am under subpoena.

22 THE COURT: Oh, you're released from the  
23 subpoena.

24 THE WITNESS: All right. Thank you.

25 THE COURT: All right. Thank you.

1 (Witness excused.)

2 MR. PHILPOT: We're getting our next witness,  
3 Your Honor.

4 (Pause.)

5 LINDA THOMAS, PLAINTIFF'S WITNESS, SWORN

6 THE CLERK: Please be seated. State your  
7 name and spell your last name, and your city only for  
8 the record.

9 THE WITNESS: Yes, my name is Linda Thomas,  
10 last name is spelled T-h-o-m-a-s; and I live in  
11 Norwich, Connecticut.

12 THE CLERK: Thank you.

13 DIRECT EXAMINATION

14 BY MR. PHILPOT:

15 Q. Good morning, Ms. Thomas.

16 A. I'm very sorry for my tardiness. I got lost.

17 Q. Okay.

18 I understand. Not a problem. We're glad that  
19 you're here.

20 Ms. Thomas --

21 MR. PHILPOT: Just a moment, please.

22 (Pause.)

23 BY MR. PHILPOT:

24 Q. What is your level of education?

25 A. Graduated high school.

1 Q. Okay.

2 And you are currently retired, is that correct?

3 A. Yes.

4 Q. Okay. For whom did you last work?

5 A. Department of Transportation --

6 Q. Okay.

7 A. -- State of Connecticut.

8 Q. Right.

9 And what did you do for them?

10 A. I was a Project Coordinator.

11 Q. Okay.

12 A. Maintainter 4.

13 Q. Okay.

14 And how long did you work for the Department of  
15 Transportation or DOT?

16 A. About 21 and a half years.

17 Q. Okay.

18 Did you have or were you issued any discipline  
19 during that period of time that worked for DOT?

20 A. Yes, towards the end of my employment I was.

21 Q. Okay.

22 MR. PHILPOT: Just a moment, please.

23 (Pause.)

24 BY MR. PHILPOT:

25 Q. Were you ever accused, madam, of violating the

1 policy -- the DOT's policy on workplace violence?

2 A. I was accused of that falsely.

3 Q. Okay.

4 Did you ever make threats regarding a co-worker?

5 A. No.

6 Q. Okay.

7 Were you ever charged by DOT as having done so?

8 A. Yes.

9 Q. Okay.

10 I understand your position is that that never  
11 happen, would you describe though what the circumstance  
12 was that gave rise to that charge?

13 A. I was taken from employment by ambulance to  
14 William Backus Hospital in Norwich for chest pains and  
15 while I was there, I was there for like a period of 22  
16 hours, and they were trying to find a room for me.

17 Q. Okay.

18 A. My family was with me. The attending physician, I  
19 believe, I don't know for sure who, asked my family to  
20 go wait in the cafeteria while I was going to go  
21 through some testing and an employer -- an employee, my  
22 immediate supervisor, Sharon Ruiz Clark, was at the  
23 hospital at the same time. She said she had some  
24 paperwork for me so my family explained to her that I  
25 was going for testing and that she couldn't deliver the



1 paperwork so she said she'd come and deliver it another  
2 day or go back to the office with it, but instead she  
3 followed me up a level. I'm on a gurney --

4 Q. Mm-hmm.

5 A. -- I'm being pushed through the hallway to go  
6 through testing. I have medication in me and at that  
7 point in time that's when she alleged that I made the  
8 allocation (sic) that I threatened violence against my  
9 immediate supervisor, Marcella Marciano (phonetic).

10 Q. Okay. And she testified in a fact-finding as  
11 much?

12 A. Yes.

13 Q. Okay.

14 All right. Now, prior to this incident --

15 A. Yes.

16 Q. -- prior to this incident, Ms. Thomas, you have  
17 been accused of other confrontations within the  
18 workplace, is that fair to say?

19 A. They said there was on July 1st.

20 Q. Okay.

21 All right. And this, if you know, happened when;  
22 when you were in the hospital? What -- the date?

23 A. No, the July 1st one was in the actual office  
24 where we all work.

25 Q. Right.

1 A. My supervisor came out and she was very angry with  
2 me.

3 Q. Okay.

4 THE COURT: Was this the same supervisor?

5 THE WITNESS: Yes, sir.

6 THE COURT: The same one that went to the  
7 hospital with the papers?

8 THE WITNESS: No, this was --

9 THE COURT: That's what we want to know. So  
10 make sure it's clear as to what the name of the person  
11 you're talking about. The jury has to know whether  
12 it's the same supervisor or somebody else --

13 MR. PHILPOT: Well --

14 THE COURT: -- so if you all can do that.

15 MR. PHILPOT: All right.

16 THE WITNESS: I'm sorry, Your Honor.

17 BY MR. PHILPOT:

18 Q. The same supervisor that allegedly, Ms. Thomas,  
19 you made threats against is the one that you had this  
20 issue with on the first of July, isn't that correct?

21 A. Yes.

22 Q. Okay.

23 THE COURT: And what's her name again?

24 THE WITNESS: Linda Leigh Thomas.

25 THE COURT: No, no --

1 THE WITNESS: Oh, my name?

2 THE COURT: -- what's her name. No, what's  
3 the supervisor's name?

4 BY MR. PHILPOT:

5 Q. The supervisor -- your supervisor?

6 A. Oh, Marcella Marciano.

7 THE COURT: That's not the one you --

8 THE WITNESS: No.

9 THE COURT: That's why -- all right, let's  
10 get this straightened out.

11 The name of the person who came -- was your  
12 supervisor who came to the hospital with the papers --

13 THE WITNESS: Yes.

14 MR. PHILPOT: No, Your --

15 THE COURT: -- what's her name?

16 MR. PHILPOT: No, Your Honor, that's not --

17 THE WITNESS: Sherry --

18 MR. PHILPOT: -- that's not accurate.

19 The issue is a co-worker of hers or a  
20 subordinate --

21 THE WITNESS: Yes.

22 MR. PHILPOT: -- came to the hospital. At  
23 the hospital, that person said she made allegations,  
24 threats against her supervisor, not the person who was  
25 in the hospital, but her supervisor.

1 THE WITNESS: Right.

2 THE COURT: But the person who --

3 MR. PHILPOT: Her supervisor --

4 THE COURT: -- came with the papers, the  
5 person who pursued you was who?

6 THE WITNESS: Sherry Ruiz Clark, a --

7 THE COURT: Who was the supervisor.

8 MR. PHILPOT: No.

9 THE WITNESS: Well --

10 THE COURT: No?

11 THE WITNESS: Well, in my capacity I had a  
12 lot of supervisors.

13 BY MR. PHILPOT:

14 Q. Okay.

15 A. So Sharon Ruiz Clark was a supervisor of mine.

16 THE COURT: That's what I thought.

17 THE WITNESS: Marcella Marciano --

18 THE COURT: I thought she testified --

19 THE WITNESS: -- was Sherry Ruiz Clark's  
20 supervisor.

21 THE COURT: Okay.

22 BY MR. PHILPOT:

23 Q. But you didn't make an allegation against Ruiz,  
24 the supervisor?

25 THE COURT: No, but the point is she would

1 not have had a co-worker bringing papers to have her  
2 sign. It was a supervisor.

3 But it's the other woman was a supervisor  
4 above her.

5 THE WITNESS: Yeah.

6 THE COURT: Okay. That's all we want to make  
7 sure we understand.

8 BY MR. PHILPOT:

9 Q. But your allegations of threat or your -- the  
10 allegations in terms of threats against a  
11 supervisor were -- involved the same person, isn't  
12 that correct?

13 So Ruiz said that you --

14 THE COURT: Wait a minute. You can't  
15 testify.

16 MR. PHILPOT: I'm asking?

17 THE WITNESS: I know.

18 THE COURT: Let's get --

19 MR. PHILPOT: I'm trying to clear --

20 THE COURT: You're putting words in her mouth  
21 by saying it's the same person. Let her testify.

22 THE WITNESS: Okay.

23 The person that came to the hospital was  
24 Sherry Ruiz Clark. She's the one that made the false  
25 allegation of violence in the workplace.

1 BY MR. PHILPOT:

2 Q. That's right, but you're threat was not directed  
3 against her?

4 A. No.

5 Q. Oh.

6 A. She said it was directed against Marcella  
7 Marciano.

8 Q. Right. Okay.

9 And that's the same supervisor that you had a  
10 problem with earlier, isn't that correct?

11 A. July 1st, yes.

12 Q. Okay.

13 So there was an allegation about you having a  
14 history with respect to allegations against that same  
15 supervisor so there are two incidents involving that  
16 same supervisor?

17 A. Yes.

18 Q. All right.

19 THE COURT: Yeah. Now explain to us so we  
20 can get this straight 'cause it's important for the  
21 jury, how did this person become involved with the  
22 person who brought the papers to the hospital.

23 In other words, how did you come to make  
24 allegations against somebody else who had not brought  
25 the papers? Was that person -- did that person order

1 the person to come to the hospital and pursue you?

2 THE WITNESS: Yes, Your Honor.

3 THE COURT: Okay.

4 That's what we want to find out.

5 THE WITNESS: Yes, sir.

6 THE COURT: All right. Fine.

7 BY MR. PHILPOT:

8 Q. You were issued discipline as a result of those  
9 incidents, is that correct?

10 A. Yes.

11 Q. Okay.

12 And would you tell us, madam, what the discipline  
13 was?

14 A. (No verbal response)

15 Q. And I know that this is difficult and so take your  
16 time.

17 THE COURT: Have you got anything to refresh  
18 her recollection?

19 MR. PHILPOT: Yes.

20 THE COURT: Why don't you do that?

21 THE WITNESS: This is such a hard time for  
22 me. I mean during this period because of these  
23 allegations I attempted suicide. I can't see.

24 MR. PHILPOT: Take your time.

25 THE WITNESS: It's taking me right back

1 there.

2 THE COURT: I'm going to send you back.

3 (Jury out at 10:05 a.m.)

4 MR. PHILPOT: I'm sorry.

5 THE COURT: This is difficult for her. Why  
6 don't you just go through this with her while the  
7 jury's outside so she knows what's going on.

8 MR. PHILPOT: Oh, all right. All right.

9 MR. JORDANO: Your Honor, I'm going to move  
10 just to record -- to strike the unsolicited comment  
11 that the witness inadvertently made. I'm going to ask  
12 you to strike the comment unsolicited comment that the  
13 witness inadvertently made --

14 THE COURT: And what was --

15 MR. JORDANO: -- about her suicide.

16 THE COURT: -- what was the comment?

17 MR. JORDANO: She said that -- in front of  
18 the jury, she said that because of the allegations and  
19 stuff, I think she said she attempted -- did she say  
20 suicide?

21 THE COURT: Suicide, yeah.

22 MR. JORDANO: And I'd like to have that  
23 stricken it was --

24 THE COURT: Well, I can strike, but the  
25 jury's heard it.



1 MR. JORDANO: Yeah.

2 THE COURT: All right.

3 BY MR. PHILPOT:

4 Q. Okay. Ms. --

5 THE COURT: She's -- that's why she's upset  
6 so --

7 MR. PHILPOT: Absolutely.

8 THE COURT: Let's take her through it; try to  
9 calm her down.

10 MR. PHILPOT: Okay. All right.

11 BY MR. PHILPOT:

12 Q. Okay, Ms. Thomas?

13 We're not going to keep you long.

14 A. Good.

15 Q. Okay? Okay?

16 And we appreciate you coming. All right? You  
17 worked for DOT 21 years?

18 A. Yes.

19 Q. There were allegations in July of '05 about these  
20 two incidents, involving that same supervisor, is that  
21 correct?

22 A. I'm not sure of the year, but --

23 Q. Okay.

24 But if you look at what I've put in front of you--

25 THE COURT: That's why he put it in front of

1 you.

2 BY MR. PHILPOT:

3 Q. Yeah.

4 THE COURT: To refresh your memory.

5 BY MR. PHILPOT:

6 Q. Right. I think it was '05 or '06. I think it was  
7 '05 though.

8 THE COURT: Now she's testified, the jury's  
9 heard her testify that she no longer works for DOT.

10 MR. PHILPOT: That's true.

11 THE COURT: Have you brought out when it was  
12 she left DOT?

13 MR. PHILPOT: I have not and I will.

14 THE COURT: Do you know when it was?

15 MR. PHILPOT: She said four or five -- she  
16 told me four years ago or so.

17 THE WITNESS: I retired in May of '06.

18 MR. PHILPOT: Yeah.

19 THE COURT: That very next year.

20 MR. PHILPOT: Yeah.

21 THE COURT: Okay.

22 MR. PHILPOT: Right.

23 BY MR. PHILPOT:

24 Q. Okay?

25 A. They gave me a medical disability retirement.

1 Q. Right. Right.

2 But the discipline after the fact-finding --

3 A. Yes.

4 Q. -- that you went through concerning this -- these  
5 two incidents --

6 A. Yes.

7 Q. -- you were ultimately issued a transfer, isn't  
8 that correct?

9 A. A demotion and a transfer.

10 Q. That's right. Okay. Okay.

11 And that's what I was going to try to get at.

12 THE COURT: All right. When you're ready to  
13 proceed, I'll bring the jury back in, but I want to get  
14 you calm down.

15 MR. PHILPOT: Yeah, Ms. Thomas, take your  
16 time please. We understand it's difficult, all right?  
17 And we're not trying to make it even more difficult for  
18 you.

19 (Pause.)

20 THE WITNESS: I'm ready.

21 THE COURT: Okay.

22 You can bring them if they're ready to come  
23 out.

24 (Pause.)

25 THE COURT: We'll get you through this and

1 out of here as quickly as we can.

2 THE WITNESS: Thank you, Your Honor. It just  
3 takes me back to it.

4 THE COURT: Sometimes it's difficult to have  
5 these things brought back into your memory.

6 THE WITNESS: Yes, very much so, Your Honor.

7 THE COURT: That's why I want to give you  
8 time.

9 (Pause.)

10 (Jury present.)

11 THE COURT: Okay. People react in different  
12 ways to what happens to them, but that's not the issue  
13 that you're considering in this case. So you can  
14 strike from your notes or anything else that she felt  
15 suicidal at one point. You don't want to get into her  
16 whole history and so on 'cause that's not your job.

17 You job is to compare what was done to her by  
18 the employer for what she did and what the employer  
19 said she did and that's what juries have to judge as a  
20 comparator so that's all your considering here.

21 All right. Go ahead, Mr. Philpot.

22 MR. PHILPOT: Sure.

23 May I just get that from you?

24 BY MR. PHILPOT:

25 Q. So now there were at least two incidents where you

1 had to go through a fact-finding, is that correct?

2 A. I believe so.

3 Q. Okay.

4 And a fact-finding basically is a hearing where  
5 the incidents that are complained of are reviewed?

6 A. Yes.

7 Q. Is that correct?

8 A. Yes.

9 Q. Okay.

10 And ultimately there was discipline issued by DOT  
11 against you, isn't that correct?

12 A. Yes, sir.

13 Q. Okay.

14 Would you describe for the Court and members of  
15 the jury what that was?

16 A. Well, I was a Project Coordinator of Maintainer 4;  
17 I took care of all the paving projects during the year  
18 and in the wintertime I had to plow snow. So I had  
19 about 100 people -- at least 100 people that I was  
20 responsible for working with that we all combined work  
21 concerned with paving the roads.

22 Q. Yes.

23 A. And I was in charge of the paperwork for all the  
24 garages.

25 Q. Okay.

1           And so is it fair to say, Ms. Thomas, that you  
2 were demoted from that position as a result of these  
3 two occurrences?

4           A.    Yes, sir.

5           Q.    Okay.

6           You got a demotion. Okay. To what?

7           A.    To Maintainer II Clerk.

8           Q.    Okay. And in addition to that, what else  
9 happened?

10          A.    (No verbal response)

11          Q.    Were you transferred?

12          A.    Oh, yes, I was transferred from the District  
13 Office where I had worked for like 17 years to  
14 Plainfield Science and Markings Garage.

15          Q.    Okay.

16                If you know through this whole fact-finding  
17 process and subsequent discipline that was issued, was  
18 there a threat assessment team done with respect to  
19 these two incidents? Do you remember that, a threat  
20 assessment being done?

21          A.    No.

22          Q.    Okay.

23          A.    If it was, I wasn't privy to it.

24          Q.    Okay.

25                I'm going to show you this document and see if it

1 refreshes your recollection.

2 A. Okay.

3 MR. JORDANO: Can I ask what exhibit you're  
4 referring to, sir?

5 MR. PHILPOT: Fifty-six.

6 THE COURT: Well, what you're showing here  
7 we'll mark for identification as Exhibit 56.

8 MR. PHILPOT: That's right.

9 THE COURT: Yeah.

10 MR. PHILPOT: Okay.

11 MR. JORDANO: Can I ask what page --

12 THE WITNESS: I wasn't involved --

13 MR. JORDANO: -- is there a particular page  
14 that you're --

15 THE WITNESS: -- in that meeting. These  
16 people don't even know me.

17 MR. PHILPOT: Okay. All right. I  
18 understand.

19 Second page.

20 MR. JORDANO: The second page.

21 BY MR. PHILPOT:

22 Q. Under fact-finding results you see in the corner  
23 right bottom of the page where it says Wanda  
24 confirms --

25 MR. JORDANO: Objection, calls for hearsay.

1 THE COURT: Yeah, let me take a look at it.  
2 I'm going to open it up and take a look at it.

3 MR. PHILPOT: It's not hearsay, it's against  
4 a party.

5 THE COURT: I don't know; I got to look at  
6 it. We're on page 2?

7 (Pause.)

8 MR. PHILPOT: Second page, Your Honor, fact-  
9 finding recommendation.

10 (Pause.)

11 THE COURT: I'm looking at the letter that --

12 MR. PHILPOT: Yeah.

13 THE COURT: -- Vicki Arpin wrote.

14 Is that what you're talking about?

15 MR. PHILPOT: And then next to the letter --

16 MR. JORDANO: It's really the third page,  
17 Your Honor.

18 MR. PHILPOT: Okay. Third page. Fact-  
19 finding meeting results, total number of  
20 recommendations in the top right corner.

21 THE COURT: Yeah, she was transferred. She's  
22 testified to that.

23 MR. PHILPOT: No, no, at the bottom of that  
24 page, lower right hand, it says threat assessment --

25 THE WITNESS: Well, it looks like this one.



1 MR. PHILPOT: Yeah, see it says Wanda  
2 confirms predecessor; signed by Vicki Arpin. You see  
3 that?

4 (Pause.)

5 THE COURT: Oh, well, I'm going to let -- I  
6 can't read this as well as you can. I can read the  
7 Vicki, I sure certainly make Arpin out of the thing to  
8 the right of Vicki.

9 MR. PHILPOT: Okay.

10 THE COURT: Is that Arpin?

11 MR. PHILPOT: Yes.

12 THE COURT: Well, okay. I'll let her testify  
13 about that one when she takes the stand.

14 You weren't aware of this at the time?

15 THE WITNESS: The threat assessment?

16 THE COURT: Yeah.

17 THE WITNESS: No, sir.

18 THE COURT: Okay.

19 THE WITNESS: No, Your Honor.

20 THE COURT: Okay.

21 BY MR. PHILPOT:

22 Q. Are you aware of who issued you the discipline?

23 Her signature's there.

24 A. Vicki Arpin. She had never met me, but --

25 Q. I understand. But it was she who issued the

1 discipline, isn't that correct? I mean signed there,  
2 isn't that?

3 A. She was in charge of Human Resources --

4 Q. That's right. Okay.

5 A. -- at the District Headquarters.

6 Q. Okay.

7 Very good.

8 A. Department Headquarters, I should say.

9 (Pause.)

10 MR. PHILPOT: Just let me make sure, Your  
11 Honor, I don't have anything further.

12 And we appreciate this, madam.

13 THE WITNESS: Thank you.

14 (Pause.)

15 BY MR. PHILPOT:

16 Q. Just one last thing, there -- you had other  
17 discipline in your history with respect to other  
18 matters, isn't that correct -- well, I say -- when I  
19 say discipline, you other matters, oral counselings,  
20 within your file, isn't that correct, before --

21 MR. JORDANO: Objection.

22 BY MR. PHILPOT:

23 Q. -- prior to this?

24 MR. JORDANO: Objection --

25 MR. PHILPOT: That's --

1 MR. JORDANO: -- foundation. We don't --  
2 there's been no evidence that's discipline.

3 THE COURT: I'll let her testify if she  
4 knows, but --

5 MR. PHILPOT: Sure.

6 THE COURT: -- or she can tell us what her  
7 experience was.

8 MR. PHILPOT: Sure. And I can show her if it  
9 refreshes her recollection.

10 THE COURT: Yeah, you can do that.

11 BY MR. PHILPOT:

12 Q. I've asked you to review that personnel file on  
13 you, Ms. Thomas, and those are other counselings and/or  
14 warnings that you had in your file, isn't that correct?

15 MR. JORDANO: Objection.

16 THE COURT: If that refreshes her memory --

17 BY MR. PHILPOT:

18 Q. Yes, does it?

19 THE COURT: -- I'll let her testify.

20 THE WITNESS: Well, if you used too much sick  
21 leave, if you use more than five occasions --

22 BY MR. PHILPOT:

23 Q. Yes.

24 A. -- in a one-year period --

25 Q. Right.

1 A. -- you would receive a verbal counseling for it.

2 Q. Okay.

3 And so those are the warnings that you received,  
4 is that correct?

5 A. I would say so.

6 Q. Okay.

7 And there are a number of them. There are at  
8 least five of them, aren't there?

9 A. It was bad period of time there, yes.

10 Q. I understand. Okay.

11 THE COURT: But they have -- that has nothing  
12 to do with workplace violence though.

13 MR. PHILPOT: No.

14 THE COURT: It has to do with sick leave.

15 MR. JORDANO: Move to strike.

16 THE COURT: Okay.

17 MR. PHILPOT: No, we claim it, Your Honor. I  
18 mean --

19 THE COURT: I didn't throw it out.

20 MR. PHILPOT: Okay.

21 THE COURT: But I just want the jury to --

22 MR. PHILPOT: All right.

23 THE COURT: -- understand it has nothing to  
24 do with workplace violence.

25 MR. PHILPOT: We will tie it all up.

1 I have nothing further, Your Honor. Thank  
2 you.

3 THE COURT: Mr. Jordano.

4 MR. JORDANO: Yes. Thank you.

5 CROSS-EXAMINATION

6 BY MR. JORDANO:

7 Q. I'm going to walk through this slowly, madam --

8 A. Yes.

9 Q. -- and I just want you to take your time. Breathe  
10 deep, okay? Now, so I have it clear, Ms. Marcella was  
11 one of the supervisors in the chain of command?

12 A. In our department --

13 Q. Yes.

14 A. -- she was the head supervisor.

15 Q. All right.

16 And you had your chest pains that day and you were  
17 taken to the hospital?

18 A. Yes, sir.

19 Q. And you were given medication and sedation at the  
20 hospital?

21 A. Believe I was.

22 Q. Yes. All right.

23 And part of your symptoms you felt were related to  
24 Ms. Marcella's treatment of you, is that correct?

25 A. I couldn't say directly because I'm not a doctor.

1 I know I was feeling chest pain --

2 Q. Did you feel that because of your relationship  
3 with Ms. Marcella, that that precipitated your  
4 symptoms?

5 A. Actually we were just going into a regular  
6 meeting --

7 Q. All right then.

8 A. -- like we normally would so no I wouldn't say it  
9 had to do with Ms. Marcella at the time.

10 Q. And then you got to the hospital and while you're  
11 sedated, you're being pursued about signing these forms  
12 and stuff, correct?

13 A. Right. Right. Yes, sir.

14 Q. And then allegedly you made these comments when  
15 you were on the gurney?

16 A. So they said I did.

17 Q. Okay.

18 I understand. I understand. Now, what union were  
19 you part of at the time?

20 A. In P2.

21 Q. All right. So you weren't part of the P4  
22 engineering unit?

23 A. No, sir.

24 Q. You with the maintenance group?

25 A. Yes, sir.

1 Q. All right.

2 And so you went through the process and you  
3 received a demotion and you received -- and they gave  
4 you the transfer; and prior to that you had some  
5 medical issues, did you not, and that's why you were  
6 out a number of times during your career?

7 A. Oh, yes.

8 Q. All right. And --

9 A. If I was sick, I would never come to work sick.

10 Q. No, I understand that, but part of the counselings  
11 you spoke about were some years you were out more than  
12 the five days and you were told that in your service  
13 rating, correct? Fair attendance or counseled about  
14 attendance, correct?

15 A. Yes.

16 Q. That's automatic if you're out a certain number of  
17 days?

18 A. Only for the Department of Transportation.

19 Q. Right.

20 A. Not for any other agency.

21 Q. I see. But that wasn't discipline?

22 A. Yes, it was.

23 Q. Oh, wait a minute.

24 So the counseling you got about you were out a  
25 long time, that was actually part of your service

1 rating, is that correct?

2 A. It could be either or.

3 Q. All right.

4 And then there was one incident when you were  
5 warned about operating a vehicle where there was some  
6 damage or something done small -- it was a fender  
7 bender or something with some equipment? Do you  
8 remember that?

9 A. No, I got rear-ended by an Easter Seal van when I  
10 was in a state vehicle.

11 Q. Okay.

12 Maybe that was it. All right. And -- but none of  
13 these incidents involved workplace violence, these  
14 other incidents, correct?

15 A. No.

16 Q. Is that correct?

17 A. (unintelligible)

18 Q. Yes. Okay. Other than the incident in July,  
19 okay, all these prior incidents did not deal with  
20 workplace violence?

21 MR. PHILPOT: Objection. There were two  
22 incidents involved.

23 THE COURT: I'll allow it.

24 BY MR. JORDANO:

25 Q. I --



1 THE COURT: Well, she can make that clear.  
2 Go ahead.

3 MR. PHILPOT: Okay.

4 BY MR. JORDANO:

5 Q. Listen to my question carefully. You had the July  
6 incidents that lead to the demotion and the transfer,  
7 correct?

8 A. Yes.

9 Q. All right. Now, the prior incidents, the  
10 attendance issues and stuff, none of those dealt with  
11 workplace violence, did they?

12 A. No.

13 Q. Okay.

14 MR. JORDANO: Nothing further.

15 MR. PHILPOT: Nothing further.

16 THE COURT: Thank you. You're released from  
17 the subpoena. And I'm sorry we had to expose you to  
18 this, but we needed the testimony. Thank you.

19 (Witness excused.)

20 MR. PHILPOT: Just a moment, Your Honor. May  
21 I see who's --

22 THE COURT: Yeah.

23 (Pause.)

24 ROBERT BISSELL, PLAINTIFF'S WITNESS, SWORN

25 THE CLERK: Please be seated. State your

1 name and spell your last name, and your city for the  
2 record.

3 THE WITNESS: Robert Bissell, last name is  
4 B-i-s-s-e-l-l; North Haven, Connecticut.

5 THE CLERK: Thank you.

6 MR. PHILPOT: Just a moment, Your Honor.

7 (Pause.)

8 DIRECT EXAMINATION

9 BY MR. PHILPOT:

10 Q. Good morning, sir.

11 A. Morning, sir.

12 Q. You currently are employed by whom?

13 A. State of Connecticut Department of Transportation.

14 Q. And you've worked for them for how long, sir?

15 A. I believe I am in my 12th year there.

16 Q. And in what capacity do you work for DOT?

17 A. My title is Lead Special Investigator.

18 Q. Okay.

19 And what is your level of education?

20 A. I'm a high school graduate.

21 Q. Okay.

22 And do you have any police training?

23 A. Yes, sir, and I was Police Academy graduate, I  
24 want to say 1987.

25 Q. Okay.

1 Have you ever been employed as a police officer?

2 A. Yes.

3 Q. Okay.

4 When and for whom?

5 A. For the town of North Haven; 1987, I believe, to  
6 1999.

7 Q. Okay.

8 Would you describe for the Court and members of  
9 the jury what your current assignment at DOT entails?

10 THE COURT: Let me pickup something. I  
11 missed you, 1987 to 1999 you were a North Haven Police  
12 Officer?

13 THE WITNESS: Yes, sir.

14 THE COURT: And then you came to work at DOT  
15 in 1999?

16 I missed that somewhere.

17 THE WITNESS: Correct; yes.

18 THE COURT: Okay. Fine. Thanks.

19 BY MR. PHILPOT:

20 Q. What does your -- what are your duties as a Lead  
21 Investigator at DOT entail?

22 A. I'm assigned to the security division. There's a  
23 wide array of assignments that we can be given whether  
24 it's internal issues dealing with employees, whether  
25 it's that thefts, whether it's liaisioning with any

1 outside law enforcement entities or other state agency  
2 entities through the AG's office, the auditors of  
3 public accounts, and so on.

4 Q. Okay.

5 And how -- if you know, how many investigations  
6 have you been required to involve yourself in over the  
7 years of the course of your career at DOT?

8 A. I probably couldn't put a number on it, but it's  
9 numerous. We do --

10 Q. Okay.

11 A. -- see a wide array of assignments throughout the  
12 year.

13 Q. Okay.

14 And how big is the group that you -- that  
15 investigates incidents within DOT?

16 A. Presently there's a Director of Security --

17 Q. And who is that?

18 A. Michael Morrison.

19 Q. Okay.

20 A. And at this current time there's another  
21 investigator assigned mostly to the front desk and to  
22 the building there, and there are several building and  
23 grounds officers.

24 Q. Okay.

25 Did there come a point in time, sir, that you

1 investigated Ms. McKinney's emails to Commissioner  
2 Korta, to Kathleen Karwick, to Steven Livingston?

3 A. I sat in on a threat assessment involving those  
4 series of emails.

5 Q. Okay.

6 But there was not just one threat assessment,  
7 isn't that correct, involving Ms. McKinney; there was  
8 also a threat assessment that was convened with respect  
9 what we call the paper cutter incident and -- on  
10 7/7/06, is that correct? Do you recall that at all?

11 A. No, sir, I wasn't involved with that one --

12 Q. Are you aware of it occurring?

13 A. Somewhat; not all the details, no.

14 Q. Okay.

15 So you're not -- but you're aware that it  
16 happened, but you weren't part of it?

17 A. Correct.

18 Q. Okay.

19 Is there any reason that you weren't part of  
20 that 'cause you usually are on threat assessment teams,  
21 aren't you?

22 MR. JORDANO: Objection, relevancy. Calls  
23 for speculation.

24 THE COURT: I -- if he -- I don't want him to  
25 speculate, but if he knows -- do you know why you

1 weren't part of the cutter incident?

2 THE WITNESS: I might have been in the field  
3 that day.

4 THE COURT: Ah.

5 THE WITNESS: Both me and Director Morrison,  
6 we have other outside facilities, District Headquarter  
7 buildings, so on and so forth so he may have been in  
8 the building that day and being the one that received  
9 the phone call and followed up on that part in other  
10 words.

11 BY MR. PHILPOT:

12 Q. Okay.

13 Is it true that you are normally part, however, if  
14 you're in the building, of a threat assessment team?

15 A. Again, if they'll ask someone from the security  
16 unit to come if it's me or Mike Morrison, if Mike  
17 Morrison isn't there or available; so I'm not at every  
18 single one is the answer to the question though.

19 Q. Okay. Fine.

20 Do you know what the recommendation was with  
21 respect to the first threat assessment team, I know you  
22 weren't there --

23 MR. JORDANO: Objection, foundation. Which  
24 incident we talking about?

25 THE COURT: Yeah, there's probably better

1 evidence. We don't want him to speculate.

2 MR. PHILPOT: All right. Okay. I just want  
3 to know if he knows. All right. Fine.

4 THE COURT: If he knows, it'll probably be  
5 hearsay because he wasn't part of it.

6 MR. PHILPOT: All right. Fine.

7 BY MR. PHILPOT:

8 Q. You investigated the three emails that went back  
9 and forth between Ms. McKinney and other individuals  
10 within the Department of Transportation.

11 What was -- what occurred at the threat  
12 assessment? Who was there --

13 MR. JORDANO: Objection --

14 BY MR. PHILPOT:

15 Q. -- first of all and when did it occur, if you  
16 remember?

17 MR. JORDANO: Objection. Mischaracterizes  
18 his testimony. He didn't say he investigated anything  
19 about the emails.

20 THE COURT: Let -- well, it's your testimony  
21 that counts, not the -- you don't pay attention to the  
22 question, you listen -- let's hear what he says.

23 BY MR. PHILPOT:

24 Q. Were you a part of a threat assessment team that  
25 looked at emails initiated by Ms. McKinney on or about

1 July 10th, July 13th, July 14th of 2006?

2 A. Yes.

3 Q. Okay.

4 And by the way, Mr. Bissell, you did a report with  
5 respect to an investigation, isn't that correct?

6 A. Not really, not necessarily. Once it took the  
7 direction that it took, I just liaised with the State  
8 Police on it and it was their investigation.

9 MR. PHILPOT: May I approach, Your Honor?

10 THE COURT: Yes.

11 MR. JORDANO: What exhibit number, please?

12 MR. PHILPOT: Twenty-three.

13 (Pause.)

14 BY MR. PHILPOT:

15 Q. Does that document, Mr. Bissell, refresh your  
16 recollection as to an investigation that you actually  
17 did with respect to the emails that were sent by Ms.  
18 McKinney?

19 That's the cover page.

20 A. Correct.

21 Q. Does that refresh your recollection that you did  
22 an investigation?

23 A. Actually you hit it on the head, it's -- it is  
24 just that, it's a cover sheet --

25 Q. Right.



1 A. -- we fill these out to just document again that I  
2 didn't do the investigation, but what took place that I  
3 was -- subsequent to the State Police investigation  
4 relating to those emails. That's all; and I just  
5 document that.

6 Q. So there's -- there are no additional documents  
7 that are attached to that cover sheet that you  
8 authored?

9 A. We may have attached the affidavit to it and maybe  
10 the policy for reference through HR and the continuing  
11 administrative process, but --

12 MR. PHILPOT: Your Honor --

13 THE WITNESS: -- once we contacted the State  
14 Police, that's all I did was just a couple paragraph  
15 cover sheet; that's all.

16 BY MR. PHILPOT:

17 Q. Oh, so that was the extent of any investigation  
18 that you did?

19 A. That's correct.

20 MR. PHILPOT: We offer it.

21 MR. JORDANO: Is this 23?

22 MR. PHILPOT: Yes.

23 THE COURT: Yeah, it's only one page.

24 MR. PHILPOT: Yes.

25 THE COURT: I don't have any problem with it.

1 We don't have the attachments, but is that --

2 MR. PHILPOT: But he's testifying that there  
3 was nothing else to it.

4 MR. JORDANO: Your Honor, I believe the  
5 attachment is actually 21, but the witness can tell us.  
6 I think 21's already in.

7 THE COURT: Oh, let's take a look at that.  
8 Yeah, maybe --

9 MR. PHILPOT: That's the -- I think that's  
10 the arrest warrant.

11 MR. JORDANO: Twenty-one is the actual police  
12 report.

13 MR. PHILPOT: Yeah.

14 MR. JORDANO: I believe it was -- but he can  
15 tell us if that was attached.

16 I have the actual report to refresh his  
17 memory right there.

18 THE COURT: Yeah.

19 MR. PHILPOT: Twenty-one, you see --

20 THE COURT: Twenty-one's the report.

21 Take a look at 21, let him see 21.

22 MR. PHILPOT: Go ahead. Twenty-one.

23 THE COURT: I'll allow 23 into evidence.

24 (Long pause.)

25 BY MR. PHILPOT:

1 Q. So in your job as the Lead Investigator for the  
2 Department of Transportation, your testimony is with  
3 respect to the emails that were forwarded by Ms.  
4 McKinney, the extent of your investigation was to refer  
5 it over to essentially the State Police for their  
6 investigation, and that's what you attached to this  
7 cover sheet, is that correct?

8 Along with the policy, I think you testified.

9 And the policy 80-16A?

10 A. Upon the completion of their investigation, yes.

11 Q. Okay.

12 THE COURT: He turned it over to Human  
13 Resources.

14 THE WITNESS: Correct.

15 THE COURT: Yes. Okay.

16 BY MR. PHILPOT:

17 Q. I bring your attention to that paragraph there on  
18 Plaintiff's Exhibit 23, and it says -- the third --  
19 fourth paragraph down, the activity outlined in the  
20 State Police report and the warrant application may be  
21 in violation of DOT policy and procedures, is that  
22 correct? Is that what you said?

23 A Yes, sir, that's what I wrote.

24 Q. Okay.

25 Let me just back up. After -- would you describe

1 for the Court and members of the jury if you -- to the  
2 extent that you recall, what happened at the threat  
3 assessment team who looked at the emails that were  
4 forwarded on the 10th, 13th, and 14th by Ms. McKinney?

5 A. Yes, sir.

6 Q. Do you recall when that happened? When the threat  
7 assessment meeting occurred? Did it occur on the 10th?

8 A. The exact date I can't -- I'm not sure, sir.

9 Q. Okay. Do you --

10 A. I don't believe so.

11 Q. -- do you recall having initially convening a  
12 threat assessment on the 10th and then having another  
13 threat assessment with respect to the emails of the  
14 13th and 14th?

15 A. I only recall being called into the one where all  
16 of the emails were provided and read --

17 Q. Okay.

18 A. -- that's the only --

19 Q. All right. Fine.

20 And who was present?

21 A. To the best of my recollection I -- the normal  
22 course of events is that someone from Safety, someone  
23 from Security, and HR representatives --

24 Q. Do you recall who the HR representatives were?

25 A. Again to the best of my recollection, I believe it

1 was Kathy Karwick, Vicki Arpin, and I want to say the  
2 Assistant Administrator, Wanda Seldon, I believe were  
3 those -- were the three from HR --

4 Q. All three?

5 A. To the best of my recollection, yes.

6 Q. Okay. Any --

7 A. And Jim Ridder (phonetic), I believe from Safety,  
8 and myself from Security were there. And -- along with  
9 Mike Sanders, he -- who was a manager from Public  
10 Trans.

11 Q. Is he the Transit Administrator?

12 A. I believe that's his title.

13 Q. Okay. For Public Transit, right?

14 A. Correct.

15 Q. Okay.

16 And ultimately, to the extent that you recall,  
17 what was discussed at this threat assessment team  
18 meeting?

19 A. To my recollection -- the way I remember it was  
20 that the emails were presented there, the discussion  
21 was about an employee, Lisa Tylum, being afraid,  
22 concerned or scared about the emails, what was in  
23 them --

24 Q. Well, let me just ask about that.

25 So the issue came up about Ms. Tylum's feelings

1 concerning the emails, is that correct?

2 A. Correct.

3 Q. Did anyone indicate how she learned about them  
4 because those emails were not directed to Ms. Tylum,  
5 were they?

6 A. To the best of my knowledge, no, so I do not know  
7 the answer to that.

8 Q. Okay.

9 So you don't know who advised Ms. Tylum about the  
10 emails?

11 A. Initially no.

12 Q. Okay.

13 Well, when you say initially, then subsequently  
14 did you learn?

15 A. It was determined that she wasn't at work the day  
16 that we had convened for the threat assessment and she  
17 was contacted via cell phone and --

18 Q. By whom?

19 A. Mike Sanders.

20 Q. Okay.

21 So you don't know if Kathleen Karwick ever  
22 contacted her initially about the July 10th, 2006 email  
23 sent to Commissioner Korta?

24 A. Repeat that whole thing.

25 Q. Do you know if Kathleen Karwick was the person who

1 initially contacted Ms. Tylum about the initial July  
2 10th email sent to Commissions Korta by my client?

3 A. Correct, I'm not aware of that.

4 Q. Okay. Fine.

5 But ultimately, although these emails were not  
6 directed to Ms. Tylum, Mike Sanders, as far as you  
7 know, did contact her?

8 A. During the course of the threat assessment, yes.

9 Q. Okay.

10 And so you were there when he did it?

11 A. Yes.

12 Q. Okay. Fine.

13 And she -- okay, and what was the recommendation  
14 of the threat assessment team?

15 A. Her expression of concern over the contents, she  
16 started to inquire about police activity or police  
17 intervention, or a concern that --

18 Q. Well, did you hear her say that?

19 A. No, I --

20 Q. Because there was Mike Sanders on the other end of  
21 the line, right, on the other end of the line to her,  
22 is that correct?

23 A. Yeah, correct.

24 Q. Okay.

25 A. She wasn't in the room, no.

1 Q. Okay.

2 So you don't know exactly what she said, you know  
3 what Mike Sanders told you?

4 A. During the course of --

5 Q. Okay.

6 A. -- the threat assessment, yes.

7 Q. All right.

8 And so what was the upshot of the threat  
9 assessment team? What was the recommendation?

10 A. Based on -- I believe based on that conversation  
11 in other words and what was expressed to us about her  
12 feelings and concerns, it was decided that since I  
13 liaison with the State Police, I have the ability to --  
14 I have access to the line of the resource officer that  
15 works with us out of Troop H. In other words, that I  
16 would contact him and bring him up to speed and ask him  
17 to come to the building and review this and turn it  
18 over to him.

19 Q. Okay.

20 And so you were tasked with the matter of  
21 contacting the State Police?

22 A. Correct.

23 Q. Okay.

24 And did you contact Trooper Ginley?

25 A. Yes. At the time he was the Community Resource



1 Officer up there out of H, yes.

2 Q. Okay.

3 Any other -- were there any other recommendations  
4 that came out of the threat assessment team?

5 A. (No verbal response)

6 Q. And by the way this was on the 14th of July of  
7 2006?

8 A. I believe it was later than that. I want to say  
9 maybe the 17th or -- I'm not quite sure of the actual  
10 date, but.

11 Q. Was it recommended that Ms. McKinney be placed on  
12 administrative leave?

13 A. Yes, at that one, yes.

14 Q. Okay.

15 A. (unintelligible) --

16 Q. And did that happen?

17 A. Yes.

18 Q. That same day it -- isn't that correct?

19 A. Correct.

20 Q. Okay.

21 So if we know that she was placed on  
22 administrative leave on or about the 14th, she was told  
23 at least, but there was no letter available.

24 Do you remember saying that to Ms. McKinney? You  
25 didn't have a letter for her, but you had to inform her

1 that she was being placed on administrative leave?

2 MR. JORDANO: Objection, the question is  
3 leading.

4 THE COURT: I'll allow it.

5 THE WITNESS: There has been times that the  
6 process I will follow through on that HR processing and  
7 we'll take the employee's ID and we'll explain to them  
8 that they're being sent home on administrative leave  
9 while a matter's looked into and that a letter is  
10 probably forthcoming from HR and if you have any  
11 questions, you know, you can either go through us or --

12 BY MR. PHILPOT:

13 Q. Sure.

14 A. Right.

15 Q. Mr. Bissell, would you take a look at Number 18,  
16 Exhibit 18, please, dated the 17th of July, is that the  
17 letter that you were referring to Ms. McKinney in terms  
18 of placing her on administrative leave?

19 See the first paragraph --

20 A. Yeah, I'm just --

21 Q. Sure.

22 A. Give me a second, I'm now into reading glasses and  
23 I'm a little vain, I didn't bring them today so I'm --

24 Q. Okay.

25 Take your time.

1 A. Just give me a second. Yes, I believe that's a  
2 copy of one.

3 Q. Okay.

4 A. Right.

5 Q. And you see the first line says, this letter is to  
6 confirm the verbal notification that you have been  
7 placed on administrative leave, you see that?

8 A. Yes, sir.

9 Q. Okay.

10 And it was you who gave her the verbal  
11 notification, isn't that correct?

12 A. (No verbal response)

13 Q. The preceding 14th of July?

14 A. (No verbal response)

15 Q. Do you recall that at all? Does this refresh your  
16 recollection?

17 A. (No verbal response)

18 Q. Effective the close of business Friday, July 14,  
19 2006, it says in this first paragraph?

20 MR. JORDANO: Excuse me, Your Honor, may I  
21 approach the witness with some reading glasses?

22 That might make it easier for him to see  
23 that.

24 THE COURT: Everybody who takes the stand --

25 MR. JORDANO: To see that.

1 THE COURT: -- needs those glasses.

2 MR. JORDANO: Let me help you, sir.

3 THE WITNESS: A little vain. Thank you.

4 That's what it says. I didn't author this,  
5 but yes, that's what it says in the first paragraph.

6 BY MR. PHILPOT:

7 Q. Right. I know you didn't author it, but in fact  
8 do you -- does this refresh your recollection as to  
9 your actions with respect to Ms. McKinney on the 14th  
10 of July?

11 A. Yes, correct.

12 Q. Okay.

13 And do you remember telling her that she -- you  
14 were sorry, but you had to tell her that she was being  
15 placed on administrative leave?

16 A. Words --

17 Q. And that you did --

18 A. -- to those effect.

19 Q. Right.

20 You didn't have the paperwork, but you -- she  
21 would be getting a letter?

22 A. Correct.

23 Q. Okay.

24 Now, what was the concern of the threat assessment  
25 team with respect to Ms. McKinney remaining with -- at

1 work to the extent you recall?

2 A. I don't really recall. I'm not the decision-maker  
3 in that regard, I'm just the -- just basically one of  
4 the --

5 Q. Right. But you were there at the meeting and was  
6 there some concern expressed at having Ms. McKinney  
7 remain in the workplace?

8 THE COURT: Yeah, take a look at paragraph 4  
9 and tell us if you communicated that to her on the 14th  
10 as is set forth there as to what she was to do when she  
11 got that notification on the 17th that told her what  
12 she was to do.

13 Did you tell her on the 14th to contact your  
14 boss?

15 THE WITNESS: That was part of our discussion  
16 is that if she has any questions or any actions --  
17 sometimes some people will end up leaving like a  
18 personal item or something in the building and we  
19 advise them not to either call a supervisor that may  
20 some -- you know, may lead to something. We advise  
21 them to call Mike Morrison, the Director of Security,  
22 and we would make arrangements on any kind of  
23 questions, any kind of things that they had.

24 THE COURT: So you think you told her that on  
25 the 14th?

1 THE WITNESS: I'm pretty sure I did, yes.

2 THE COURT: Yeah. Okay.

3 BY MR. PHILPOT:

4 Q. Okay. All right. Very good.

5 As best as you recall, and you may not, at the  
6 threat assessment team, was there some concern  
7 expressed at Ms. McKinney remaining in the workplace?

8 A. I wouldn't say that there was any more than any of  
9 the other ones. Once the determination is made that  
10 they want to separate employees or send one home on  
11 administrative leave, sometimes I'm just the bearer of  
12 it.

13 Q. That's -- okay.

14 A. I don't --

15 Q. All right. Fine.

16 Were you present when Officer McGinley (sic)  
17 questioned Ms. McKinney?

18 A. It's a yes and no. Yes, I was in the conference  
19 room. If you're familiar with our building or to  
20 familiarize anyone in here with it, it was a dual sized  
21 conference room which is almost three-quarter the size  
22 -- oh, well, half of this size of this courtroom,  
23 three-quarters the size of this courtroom the two  
24 conference rooms combined and Trooper McGinley asked if  
25 there was a spot where he could talk to her. I brought

1 her into there, I brought him into there; and I was --  
2 I stayed way over in another corner of the room  
3 directly away from them, but so yes, I was in the room,  
4 but they were discussing things over in the corner.

5 Q. Okay.

6 Did Officer Ginley ever indicate to you that he  
7 wanted to -- did you show him the emails that were the  
8 subject of the concern of the threat assessment team at  
9 that time?

10 A. Yes.

11 Q. Okay.

12 Did he ever indicate to you that he wanted to  
13 arrest Ms. McKinney on the spot?

14 A. No, he made no comment to that effect, no.

15 Q. Okay.

16 And you made no recommendation in that regard?

17 A. No.

18 Q. Is that correct?

19 A. Yes. No, sir.

20 Q. Oh, okay. All right. Fine.

21 And if you recall, after they had their  
22 conversation off to the side, what occurred?

23 A. I believe Trooper Ginley's voice, like I said,  
24 became elevated. He said Bob, we're all set over here;  
25 and I walked over and joined the two of them and made

1 that advisement to --

2 Q. Okay.

3 A. -- to Daphne.

4 Q. Okay.

5 And you told her to leave?

6 A. I --

7 Q. Or did you escort her or how did that work?

8 A. To the best of my recollection, I think we did  
9 walk back to her cubicle together and I just talked to  
10 her a bit in basic, nothing about any of the  
11 involvement, I just walked her back and everything and  
12 asked her if she had any personal belongings and so on  
13 and I think she grabbed, you know, probably her  
14 pocketbook and then we asked for her ID and --

15 Q. Okay.

16 A. -- walked her to the front of the building, yes.

17 Q. Mr. Bissell, you've known Ms. McKinney for a long  
18 time, is that correct?

19 A. Yes, sir.

20 Q. Okay.

21 More than ten years?

22 A. She's been there as long as I have probably than I  
23 have.

24 Q. Yeah. Okay. Did she seem a bit dismayed or  
25 shocked at being placed on administrative leave, to



1 you? What did you observe?

2 A. She really didn't express anything. I've seen a  
3 wide array. I've seen some people become very  
4 emotional, others the opposite effect. She was just  
5 very -- like I said we just talked about what she has  
6 over there, she says gees I think I might have to lock  
7 up my desk or turn off my computer and general  
8 conversation and it went relatively well.

9 Q. Okay.

10 It went smoothly?

11 A. Yes, sir.

12 Q. Okay.

13 Subsequent to her being placed on administrative  
14 leave, did you do any further internal investigation  
15 concerning the emails and/or anything leading up to it?

16 A. No, sir. We usually -- once we turn that over to  
17 -- something like that to the State Police, then we  
18 step back and wait for their findings before taking any  
19 further action or steps.

20 Q. Mr. Bissell, have you ever been tasked with the  
21 mission of investigating workplace bullying?

22 A. No, that's usually referred to, I think,  
23 Affirmative Action.

24 Q. Okay.

25 You were never, in this case, requested to

1 investigate the matter of bullying by Ms. Tylum as  
2 against Ms. McKinney, is that correct?

3 A. Just -- repeat that.

4 Q. Sure.

5 You were never tasked with the mission of  
6 investigating bullying by Tylum of McKinney?

7 A. No, sir.

8 Q. Okay.

9 MR. PHILPOT: Just a moment. May I confer  
10 just a moment, please?

11 (Pause.)

12 BY MR. PHILPOT:

13 Q. Were you aware of any allegations of bullying by  
14 Ms. McKinney as against Ms. Tylum prior to the July  
15 10th email she sent to Commissioner Korta?

16 A. Not that I recall, no.

17 Q. Okay.

18 MR. PHILPOT: I have nothing further. Thank  
19 you.

20 THE COURT: Mr. Jordano.

21 MR. JORDANO: Thank you, Your Honor.

22 CROSS-EXAMINATION

23 BY MR. JORDANO:

24 Q. Mr. Bissell, once the matter was turned over to  
25 the State Police Department, did Department of

1 Transportation ever insist that Ms. McKinney be  
2 arrested to your knowledge?

3 A. To the best of my knowledge, no, sir.

4 Q. All right.

5 Once it's turned over to the police department who  
6 handled the issue of whether or not -- I mean once it  
7 was given to the State Police, did -- who handled that  
8 investigation for them, for the State Police? You  
9 weren't involved in that?

10 A. No, sir; Trooper, I believe it's Myles, Myles  
11 McGinley.

12 Q. So we're clear for a second here, I'll show you  
13 some emails here. One moment, here. There were three  
14 emails that Ms. McKinney was involved in, one was on  
15 the 10th of July to the Commissioner, correct?

16 A. If those are the series and ones I turned over  
17 when we (unintelligible), yeah.

18 Q. And then one of them was this one on the 14th that  
19 she sent to Ms. Karwick, correct, referring to Ms.  
20 Tulum as the sorry bitch she is, correct?

21 A. Yes, sir.

22 Q. All right.

23 That was given to the officer?

24 A. Yes, sir.

25 Q. All right.

1           And there was this email right here that she sent  
2 seven minutes later to Mr. Livingston, 7/12, correct,  
3 where she said she wanted to -- I'm going to go to Ms.  
4 Tulum off state property and confront her verbally or  
5 physically, that was also given to the officer?

6           A.    Yes, sir.

7           Q.    All right.

8           Now, the letter that went out, Exhibit 18, to --  
9 about the administrative leave also notified Ms.  
10 McKinney that you'll be notified to attend a fact-  
11 finding investigation which will be held to discuss the  
12 statements you allegedly made about confronting Lisa  
13 Tulum off state property, you see that?

14           It's up on the board here.

15           A.    Yes, sir. I mean excuse me.

16           Q.    All right.

17           So that would have been the investigatory stage  
18 about what happened and whether or not Ms. McKinney,  
19 had in the agency's eyes, had violated the policy,  
20 correct?

21           The fact-finding.

22           A.    Yes, sir.

23           Q.    The threat assessment was only to determine  
24 whether or not someone should be separated -- they  
25 should be separated and whether or not they perceived

1 to be a threat that required some type of immediate  
2 action such as putting someone out on leave, separating  
3 people, something like that?

4 A. Yes, sir.

5 Q. All right.

6 And then the State Police, Exhibit 21, for a  
7 moment here, this would have been the actual State  
8 Police -- this is the first page here. This is the --  
9 looks like the very first cover page of the report and  
10 then the next page is part of the affidavit from the  
11 officer; and this sets out that he -- some of the dates  
12 when he did things, right?

13 MR. PHILPOT: Well, objection, Your Honor.  
14 It speaks for itself.

15 Why are we asking this witness about someone  
16 else's work?

17 MR. JORDANO: It mentions Mr. Bissell so I  
18 just want to cover that paragraph.

19 THE COURT: Yeah, you can cover the --

20 MR. JORDANO: Yeah.

21 THE COURT: -- reference to Mr. Bissell.

22 MR. JORDANO: Right.

23 BY MR. JORDANO:

24 Q. It says here on paragraph 9 that on, I think,  
25 that's 7/14/2006 approximately 14:45, that would be

1 4:45, I think, the (unintelligible) met with Ms.  
2 McKinney and Mr. Bissell.

3 All right? So on the date the officer came, you  
4 gave him the emails, correct?

5 A. Yes, that's at 14:45, 2:45 in the afternoon.

6 Q. Or 2:45. All right.

7 A. Yes, sir, on that -- yes; yes.

8 Q. And then the officer met with Ms. McKinney?

9 A. Yes, sir.

10 Q. And then he also spoke, according to this, briefly  
11 with Ms. Tulum by phone if you look at paragraph 10 and  
12 then again with Ms. Tulum on the 12th --

13 MR. PHILPOT: Objection, we're going into  
14 something that someone else did through this witness.  
15 He represented he was going to ask about --

16 THE COURT: This is a full exhibit, isn't it?

17 MR. JORDANO: It's a full exhibit.

18 THE COURT: All right. You can pull anything  
19 from an exhibit. Go ahead.

20 BY MR. JORDANO:

21 Q. So I want to clear, so the officer is still  
22 meeting with witnesses, at least Ms. Tulum, on the  
23 17th, is that correct, according to this -- if you look  
24 at paragraph 12 -- excuse me, you look at paragraph --  
25 yes, 12? That's -- I think it says to be 07/17/2006?

1 A. Yes, sir; that's correct.

2 Q. All right. So the -- so to your knowledge, the  
3 officer was doing his investigation after the matter  
4 was turned over to him, is that your understanding?

5 A. Yes, sir.

6 Q. All right.

7 And to your knowledge, did you -- did you ever  
8 tell Officer McGinley that Ms. McKinney had to be  
9 arrested?

10 A. No, sir.

11 Q. All right.

12 Did he ever ask you your opinion about whether or  
13 not he should make an arrest?

14 A. No, sir.

15 Q. After he left and did his investigation, when did  
16 you learn that the State Police had issued an arrest  
17 warrant? Was that later on?

18 A. Yes, sir. I believe we asked for a follow up call  
19 when his investigation was complete and that's when he  
20 notified us that -- of that.

21 Q. And then at some point then he would have sent you  
22 his report or whatever information you needed and then  
23 you attached it to Number 23, I'll pull it out right  
24 here, you attached it to your cover sheet, Number 23,  
25 you see that paragraph there the --

1 MR. JORDANO: -- it's a full exhibit, Your  
2 Honor --

3 BY MR. JORDANO:

4 Q. -- the activity outlined in this State Police  
5 Report in the Warrant Application all of that was  
6 attached to this, is that correct?

7 A. That's correct, that's the cover sheet; right.

8 Q. All right.

9 THE COURT: That was all sent to Human  
10 Resources.

11 BY MR. JORDANO:

12 Q. And it was sent to Human Resources?

13 A. Yes, sir; we compile it and send it to them, yes.

14 Q. And then your area was done then, it was up to HR  
15 to do its thing to decide if discipline were  
16 appropriate, what happened and they take it from there,  
17 is that correct?

18 A. That's correct, sir.

19 Q. So your involvement so I'm clear was, you notify  
20 the police; you're there when he comes; you give him  
21 the emails; he talks to Ms. McKinney in your presence,  
22 but you're over near the end of the room, so I take it  
23 you didn't hear what they said?

24 A. No, sir; right, I stayed on the other side of the  
25 conference room.



1 Q. Okay.

2 And he said I'm done, Bob; you tell Ms. McKinney  
3 she's out on administrative leave; you explain the  
4 circumstances, tell her about the letter; she leaves as  
5 she's walked out; and the officer goes about his  
6 business?

7 A. That's correct.

8 Q. And then the next thing you know is the officer  
9 sends you the follow up of the State Police  
10 investigation and what they -- and what was going to be  
11 done from their standpoint?

12 A. That's correct.

13 MR. JORDANO: Nothing further.

14 MR. PHILPOT: Brief follow up, Your Honor.

15 REDIRECT EXAMINATION

16 BY MR. PHILPOT:

17 Q. Mr. Bissell, is it your position that you took no  
18 position with respect to whether or not Ms. McKinney  
19 should be arrested?

20 MR. JORDANO: Objection.

21 THE COURT: I'll allow it.

22 THE WITNESS: Could you word it again,  
23 please?

24 BY MR. PHILPOT:

25 Q. Sure.

1           Is it your testimony that you took no position  
2 with respect to whether or not Ms. McKinney should be  
3 arrested?

4           A.     That's correct, sir.

5           Q.     Okay.

6           You are not aware of the conversations that either  
7 Vicki Arpin or Wanda Seldon or Kathleen Karwick or  
8 Paula Yukna ever had with the State Police concerning  
9 the arrest of Ms. McKinney, are you?

10          A.     That's correct.

11          Q.     Okay.

12          So you wouldn't know if they advocated for her  
13 arrest, would you?

14          A.     I would have no personal knowledge of that, no,  
15 sir.

16                   MR. PHILPOT: Thank you.

17                   THE COURT: I guess you can step down. Thank  
18 you.

19                   THE WITNESS: Thank you, Your Honor.

20                   THE COURT: If you're under subpoena, you are  
21 released.

22                   THE WITNESS: Thank you, Your Honor.

23                   (Witness excused.)

24                   THE COURT: You all need a recess?

25                   Everybody's all right? Okay.

1 MR. JORDANO: Thank you, sir.

2 (Pause.)

3 MR. PHILPOT: Next we call Trooper Ginley to  
4 the stand.

5 TROOPER MYLES GINLEY, PLAINTIFF'S WITNESS, SWORN

6 THE CLERK: You may be seated. Please state  
7 your name and spell your last name, and your city for  
8 the record.

9 THE WITNESS: And my what? I'm sorry.

10 THE CLERK: Your city for the record.

11 THE WITNESS: Trooper Myles Ginley, last name  
12 is G-i-n-l-e-y; Hartford.

13 THE CLERK: Thank you.

14 DIRECT EXAMINATION

15 BY MR. PHILPOT:

16 Q. Good morning, sir.

17 A. Good morning.

18 Q. Thank you for coming. You are under subpoena, is  
19 that correct?

20 A. Yes.

21 Q. Okay. And that was issued by my office, is that  
22 correct?

23 A. Yes.

24 Q. Okay. Sir, you've been a Trooper with the  
25 Connecticut State Police or Department of Public Safety

1 for how long, sir?

2 A. I'm in my 12th year.

3 Q. Okay. And prior to successful completion of the  
4 Police Academy, what is the extent of your education?

5 A. I have a four-year degree, Bachelor's Degree in  
6 Criminal Justice.

7 Q. Okay.

8 And that's from where?

9 A. Saint Anselm College in Manchester, New Hampshire.

10 Q. Okay.

11 And you are currently stationed where, sir?

12 A. Governor Security Unit.

13 Q. Okay. And prior to that?

14 A. Troop H in Hartford.

15 Q. Okay.

16 And is Troop H assigned to matters involving the  
17 Department of Transportation?

18 A. Yes.

19 Q. Okay.

20 And they're located -- their headquarters is  
21 located in Newington, Connecticut, is that correct?

22 A. Yes.

23 Q. All right.

24 There came a point in time in July of 2006 when  
25 you were contacted by Mr. Bissell concerning a Ms.

1 Daphne McKinney and emails that were sent by her, is  
2 that correct?

3 A. Yes.

4 Q. Okay.

5 Would you tell us what Mr. Bissell advised you of?

6 A. He wanted me to stop by to talk about an incident  
7 concerning workplace violence concerning a couple of  
8 the employees at DOT.

9 Q. Okay.

10 Did he indicate that it involved workplace  
11 violence?

12 A. I believe so.

13 Q. All right. ]

14 And did you acquiesce to his request?

15 A. Yes, I did.

16 Q. Okay.

17 And that was on the same day as he called you,  
18 isn't that correct?

19 A. I believe so.

20 Q. All right.

21 And do you -- if you recall what did he present to  
22 you?

23 A. I believe Ms. --

24 Q. I'm going to show you this and perhaps it'll help  
25 refresh your collection. Just a moment.

1 A. Please.

2 (Pause.)

3 THE COURT: Just for the record, what Exhibit  
4 are you showing him?

5 MR. PHILPOT: Exhibit 23 -- Exhibit 21.

6 (Pause.)

7 MR. PHILPOT: Exhibit 21.

8 THE COURT: Twenty-one?

9 MR. PHILPOT: Yes, Your Honor.

10 THE COURT: Thank you.

11 BY MR. PHILPOT:

12 Q. Would you identify that, sir?

13 A. Looks like my report.

14 Q. Okay.

15 And does this help refresh your recollection in  
16 terms the documents or the information that Mr. Bissell  
17 provided you on or about the 14th of July of 2006?

18 A. I'm sorry. Could you repeat that question?

19 Q. Does this help refresh your recollection in terms  
20 of the information --

21 A. Yes, it does.

22 Q. -- you were provided by Mr. Bissell on July 14th  
23 of 2006?

24 A. Yes, it does.

25 Q. Okay.

1           What information did he provide to you?

2       A.    It looked like there were some emails.

3       Q.    Okay.

4           You read the emails?

5       A.    Yes.

6       Q.    Okay.

7           Did he provide you with any other information?

8       A.    It looks like it was just four emails.

9       Q.    Okay.

10          And that was it?

11       A.    (No verbal response)

12       Q.    One of those emails was not authored by Ms.

13       McKinney, isn't that correct?

14       A.    (No verbal response)

15       Q.    It was authored by Ms. Karwick, isn't that  
16       correct?

17       A.    (No verbal response)

18       Q.    If you look at Exhibit 15, Officer, is that one of  
19       the four emails that you were given by Mr. Bissell?

20       A.    It could be.

21       Q.    Okay.

22       A.    It could be.

23       Q.    All right. Fine. All right.

24           Were you given DOT's policy on workplace violence,  
25       80-16a?

1 A. I'm sorry?

2 Q. Were you given, by Mr. Bissell, DOT's policy on  
3 workplace violence?

4 A. I don't recall if I was or not.

5 Q. Okay.

6 Do you recall receiving anything concerning zero  
7 tolerance with respect to workplace violence?

8 A. I don't recall.

9 Q. All right.

10 What steps did you take in investigating this  
11 matter on the 14th of July of 2006?

12 A. Well, it looks like I read the emails.

13 Q. Yeah.

14 A. I initiated an investigation, read the emails, met  
15 with Ms. McKinney and Mr. Bissell.

16 Q. Okay.

17 Did you ask Ms. McKinney about her intent  
18 regarding the emails?

19 A. I'm sure I did and it looks like all she responded  
20 was she was wondering what would happen if a  
21 confrontation occurred.

22 Q. All right.

23 Did she also make reference to the fact that she  
24 was asking for a policy from the DOT concerning  
25 confronting the bullier?



1 A. I don't recall that.

2 Q. Okay.

3 And so is it that you -- are you saying that you  
4 don't recall her saying that she did not intend to  
5 physically confront anyone?

6 A. No, I'm not saying that; I'm just saying that I  
7 don't recall that she said to me that she was looking  
8 for the policy.

9 Q. Okay.

10 Do you recall asking her whether or not she  
11 intended to physically confront Ms. Tylum?

12 A. I don't recall; I'm sure I did, I'm sure I did and  
13 I don't see it here in the report so --

14 Q. Right. Because that would be an important  
15 question in --

16 A. Sure.

17 Q. -- terms of her intention with respect to the  
18 emails, isn't that correct?

19 A. Agreed.

20 Q. Okay.

21 And did you come away from your conversation with  
22 Ms. McKinney comfortable with the fact that there was  
23 no imminent threat presented to Ms. Tylum?

24 A. I don't know if I would say that. I -- it looks  
25 like I took some steps to have West Hartford PD make

1 patrol checks at Ms. Tilum's house so I think that  
2 there was some concern.

3 Q. Okay.

4 Is it fair to say, Trooper Ginley, that if you  
5 were concerned about an imminent threat or harm to any  
6 member of the public that you would have arrested Ms.  
7 McKinney?

8 A. Well, the problem with this is because of the  
9 level of what the crime was, making an onsite arrest  
10 like that would have been somewhat difficult.

11 Q. What does that mean?

12 A. We're not talking about a felony, we're talking  
13 about a -- it looks like a misdemeanor here.

14 Q. Okay. Well --

15 A. So making an onsite arrest would have been pretty  
16 difficult at that time.

17 Q. And why's that? Would you --

18 A. There's protocols that need to be followed and you  
19 need to, you know, take certain steps before you arrest  
20 somebody; i.e. an arrest warrant; make, you know, a  
21 prosecutor and a judge sign off to show that there is  
22 probable cause and --

23 Q. Right, probable cause.

24 A. -- to carry forward.

25 Q. Okay.

1           And so is it fair to say that the time you  
2 interviewed Ms. McKinney you did not believe you had  
3 probable cause to make any arrest?

4       A.    Well, I think what happens is when I initiate an  
5 investigation, my investigation is to see if I have  
6 probable cause or not, so when I first started it I may  
7 or may not have known that there was probable cause. I  
8 needed to kind of read through the emails and figure it  
9 out.

10       Q.    Okay.

11           And at least in terms of figuring it out, 'cause  
12 you read through the emails on the 14th of July, you  
13 did not indicate to Ms. McKinney that she would be  
14 placed under arrest, isn't that fair?

15       A.    I don't believe that on the 14th that I would have  
16 said that, that she was going to be placed under  
17 arrest; correct.

18       Q.    Okay.

19           And thereafter, sir, would you explain to the  
20 Court and members of the jury what steps you took in  
21 investigating this matter?

22       A.    Well, I believe I read over the emails in depth.  
23 There's a certain protocol that we need to take within  
24 my department and --

25       Q.    Okay.

1           And what is that?

2           A.    I would talk it over with my supervisor to see  
3           what we had and to see if there was anything to proceed  
4           forward.  It looks like we agreed there was because of  
5           the emails.

6           Q.    Okay.

7           A.    And I drafted an Arrest Warrant and got one over  
8           to AG14 in Hartford.  A prosecutor and a judge signed  
9           off on the warrant giving me -- allowing me to arrest  
10          Ms. McKinney for the harassment.

11          Q.    Okay.

12                But your initial Arrest Warrant included the  
13          misdemeanor crime of threatening, didn't it?

14          A.    That in here too?  Just a sec.  Yes, it did.

15          Q.    And the judge who signed off on it, crossed that  
16          out, isn't that correct?

17          A.    It looks that way, yes.

18          Q.    So you and your supervisor who thought that there  
19          had been probable cause for the crime of threatening,  
20          was essentially overruled by the judge who read the  
21          warrant, is that correct?

22          A.    It looks that way, yes.

23          Q.    Okay.

24                Now, with respect to the issue of harassment, now  
25          none of these emails were directed at Ms. Tillum, isn't

1 that correct?

2 A. It looks like -- right, they were directed  
3 elsewhere.

4 Q. Right. Okay.

5 To other individuals within DOT?

6 A. They were sent to other individuals, correct.

7 Q. Okay.

8 As the arresting officer, Trooper Ginley, who did  
9 Ms. McKinney harass?

10 A. It looks like Ms. Tylum.

11 Q. Ms. Tylum was never the subject of any of the  
12 emails, isn't that correct?

13 A. All I can tell you is Ms. Tylum was aware of them,  
14 therefore --

15 Q. How did she become --

16 A. I don't know that.

17 Q. Oh, okay.

18 So how do you know that she was aware of them?

19 A. I had a conversation with her, she was already  
20 aware of them.

21 Q. Okay.

22 So you don't know though who at DOT --

23 A. No, I don't.

24 Q. -- specifically advised her of them?

25 A. I don't.

1 Q. Okay.

2 And to the extent that you know, is there such  
3 thing as third party harassment?

4 A. I don't know.

5 Q. Okay.

6 When did you speak to Ms. Tylum?

7 A. It looks like on 14th at 15:30 hours.

8 Q. Okay.

9 What time is that?

10 A. That's 3:30.

11 Q. Okay.

12 So that same --

13 A. P.M.

14 Q. -- day and she was not at work, is that correct?

15 A. I don't believe she was.

16 Q. Okay.

17 Did she indicate to you her position with respect  
18 to your effectuating an arrest against Ms. Tylum -- Ms.  
19 McKinney, excuse me?

20 A. I don't believe so, no.

21 Q. So she took no position, is that what you're  
22 saying?

23 A. All she told me is that she was fearful and  
24 scared, that was it.

25 Q. Okay.

1           Is that a factor in terms of whether or not the  
2 State Police decide to issue an arrest warrant?

3           A.    I would say so.  That would be why threatening  
4 would be on there as well.

5           Q.    Okay.

6                    But there was no direct threat, is that correct?

7           A.    I -- the only person that could answer that would  
8 be Ms. Tilum I guess if she felt there was a direct  
9 threat.

10          Q.    Well, wait a minute.  I mean based upon the  
11 information that you had, there were emails three --

12          A.    Mm-hmm.

13          Q.    -- none of them directed to --

14          A.    It looks like four.  I think there were four.

15          Q.    Yes, there were four.  We talked about that, one  
16 was not sent by Ms. McKinney, one was sent by Ms.  
17 Karwick.

18                   We had you look at it, right?  So there were  
19 three?

20          A.    I have in my report four sent by Ms. McKinney.  I  
21 don't know if that makes a difference.

22          Q.    Yes.  I mean -- okay.

23                   Are you aware of -- other than the one on the  
24 10th, other than the one on the 13th to Ms. Karwick,  
25 other than the one on the 14th to Steve Livingston --

1 excuse me, one was -- the 13th was sent by Ms. Karwick  
2 to Ms. McKinney and then there were two on the 14th  
3 with respect to Karwick and Livingston, correct? And  
4 I'll show --

5 A. I have one on the 14th from McKinney to  
6 Livingston; I have one on the 13th from McKinney to  
7 Livingston; I have one on the 14th from McKinney to  
8 Karwick; and I have one on the 10th from McKinney to  
9 Korta.

10 Q. Okay. All right.

11 Did you speak to anyone at DOT with respect to  
12 your investigation other than Ms. Tillum?

13 A. I believe it would have been -- if I did, it would  
14 have been Mr. Bissell.

15 Q. Okay.

16 And if you -- do you recall what you spoke to Mr.  
17 Bissell about with respect to your investigation? This  
18 was after the 14th of July, after you talked to both  
19 Ms. McKinney as well as Ms. Tillum, is that correct?

20 A. It would have been after that.

21 Q. Okay.

22 So Mr. Bissell is still -- he was still in the  
23 loop with respect to your investigation?

24 A. I think what I would have done is after the  
25 initial call from him and meeting at DOT that same day,



1 would have been to let him know that an arrest was  
2 affected on Ms. McKinney.

3 Q. Okay.

4 Is it your sworn testimony, Officer Ginley, that  
5 you never spoke to anyone else at DOT --

6 A. I'm not sure.

7 Q. -- about this investigation?

8 A. I'm not sure. I don't recall that.

9 Q. Okay.

10 A. I just know that I would have spoken to Mr.  
11 Bissell.

12 Q. Okay.

13 A. Other than that, I don't know.

14 Q. There came a point in time where you contacted Ms.  
15 McKinney, isn't that correct? When you -- after the  
16 arrest warrant was signed?

17 A. To come turn herself in, I imagine, yes.

18 Q. Okay. Right.

19 And in fact you didn't go pick her up; you allowed  
20 her the opportunity to turn herself in after her  
21 doctor's appointment, isn't that correct, that day, do  
22 you recall that?

23 A. I don't remember that she had a doctor's  
24 appointment; I do remember that I gave her an  
25 opportunity that I had -- that I had an arrest warrant

1 and that if she would like to turn herself in that that  
2 would probably be the best.

3 Q. Okay.

4 And did she say that she was contacting her  
5 attorney to arrange a time to also meet with you at the  
6 station?

7 A. That sounds somewhat familiar, yes.

8 Q. Okay. Okay. Fine.

9 And would you walk us through what occurred at the  
10 station to the extent that you recall? And where was  
11 this, this Troop H?

12 A. Troop H in Hartford, yes.

13 Q. And that's located where?

14 A. 100 Washington Street, rear building.

15 Q. Okay.

16 And what happened to the extent that you recall?

17 A. I would have met her in the lobby; made sure that  
18 she didn't, you know, have anything on her dangerous;  
19 brought her back to our processing room; and then there  
20 are just various forms that needed to be filled out and  
21 inform her as to what she's being arrested for and  
22 release her it looks like on a \$1,000 non-surety bond,  
23 so she was gone after about 45 minutes of processing.

24 Q. Okay.

25 And was she incarcerated for a period of time?

1 Put in a cell?

2 A. It would be for that processing, yes, she would be  
3 technically considered she's incarcerated for 45  
4 minutes --

5 Q. Right.

6 A. -- of fingerprinting, forms, and then, you know.

7 Q. But was she actually in a cell for some period of  
8 time?

9 A. I -- it's customary that when someone comes into  
10 the processing room, they'd be placed in a cell. It  
11 has a bench in it, they sit down, and until I'm ready,  
12 I have all my forms ready, then would be taken out and  
13 fingerprinted and then released; yes.

14 Q. Okay.

15 Taken out and fingerprinted, but she was also  
16 photoed, a mugshot was taken, isn't that correct?

17 A. Sure. Part of the procedure, yes.

18 Q. Okay.

19 Any other aspects of the procedure that we haven't  
20 covered?

21 A. It would be a photograph, fingerprints, and some  
22 forms; that would be about it.

23 Q. Okay.

24 And so the charge that she was alleged to have  
25 committed was harassment in the second degree, isn't

1 that correct?

2 A. It looks like that is the -- yes, charge.

3 Q. Okay. All right.

4 And that charge is processed in the New Britain  
5 Superior Court, is that correct, if you know?

6 A. Actually it looked like it did go to New Britain  
7 Superior Court; GA15.

8 Q. Okay.

9 And why was that as opposed to Hartford?

10 A. I misspoke earlier GA14, it would have gone to  
11 GA15 because Newington where the investigation took  
12 place --

13 Q. And the alleged crime?

14 A. -- and the alleged crime --

15 Q. Right.

16 A. -- took place in Newington. GA15 in New Britain  
17 covers the town of Newington.

18 Q. Okay. Okay.

19 I understand. All right. When you contacted Ms.  
20 McKinney, do you recall saying I'm sorry to advise you  
21 of this, but the DOT wants you arrested?

22 A. I don't recall saying that, no.

23 Q. You don't have any recollection of that?

24 A. No.

25 Q. Okay.

1 Does the so-called victim in terms of the process  
2 of your investigations have some input into whether or  
3 not a person is arrested?

4 A. The only input would be, in this case, I'll use  
5 this case would be Ms. Tulum stating that she was  
6 fearful and scared. That would be an input that I  
7 would use in my investigation to determine charges and  
8 whatnot.

9 Q. So if a person is apprehensive or fearful, that is  
10 a factor in issuing an arrest warrant?

11 A. Absolutely.

12 Q. Okay.

13 After that, sir, after she turned herself in, did  
14 you have any further involvement with this matter?

15 A. I believe, I'm not sure when, it may be a couple  
16 of years ago, I went to a hearing at 410 Capitol  
17 Avenue --

18 Q. The arbitration?

19 A. -- regarding this matter. Yeah, I believe so,  
20 yes, and I think that would be the only other  
21 involvement with this case.

22 Q. Did you follow this case at all?

23 A. No, absolutely not.

24 Q. Are you aware of the disposition with respect to  
25 the charge of harassment in the second degree?

1 A. No, I am not.

2 Q. Okay.

3 MR. PHILPOT: Just a moment, Your Honor. Let  
4 me see if I have anything.

5 (Pause.)

6 MR. PHILPOT: Just a moment, please.

7 (Pause.)

8 BY MR. PHILPOT:

9 Q. Now -- yeah -- I want to turn your attention, sir,  
10 to one, two, three -- the fourth page of this arrest  
11 warrant, which is Exhibit 21, 4th page. Okay.

12 And I'm going to refer you to the second paragraph  
13 on that page, see that?

14 A. The paragraph --

15 Q. Starts with, on 7/14/2006 at approximately 14:45  
16 hours, you see that?

17 A. Yup.

18 Q. Okay.

19 Second line, McKinney verbally stated the  
20 following: McKinney admitted to authoring the email  
21 mentioned above, McKinney would not initiate a  
22 confrontation; do you see that in your arrest warrant?

23 MR. JORDANO: Objection, it's not the  
24 warrant; it's the report.

25 BY MR. PHILPOT:

1 Q. McKinney would not initiate a confrontation, is  
2 that not --

3 MR. PHILPOT: -- that's not the words?

4 MR. JORDANO: No. I don't think it's the  
5 warrant, I think it's the report you're referring to if  
6 I'm on the right page, which I believe is the report.

7 MR. PHILPOT: Okay. All right. The report.  
8 I'm sorry.

9 UNIDENTIFIED: Paragraph 9 of the warrant.

10 MR. PHILPOT: What?

11 UNIDENTIFIED: Paragraph 9 of the warrant.

12 MR. PHILPOT: Okay.

13 BY MR. PHILPOT:

14 Q. We can go to the warrant too.

15 A. I think I got the paragraph you're talking about.

16 Q. Yes. Okay.

17 A. What's the question?

18 Q. Does it say McKinney would not initiate a  
19 confrontation?

20 A. Right --

21 Q. She told you --

22 A. -- but then it also says would like to know what  
23 would happen if a confrontation occurred.

24 Q. Right. Okay. Fine.

25 But she said -- all right. Fine.

1 Does that mean to you that one would occur?

2 A. That would indicate to me that one is possible.

3 Q. Okay. All right.

4 But did you take any credence from the fact that  
5 she said one would -- she would not initiate one?

6 A. Well, I put it in the report so I mean, you know,  
7 yes --

8 Q. Okay.

9 A. -- however that second part also was in the report  
10 too so --

11 Q. Okay.

12 A. -- I took that into account as well.

13 Q. Did you take into account that she was asking  
14 questions in her emails for a policy with respect to  
15 confronting the bullier?

16 A. I'm sorry. Can you repeat that?

17 Q. Did you take into account the fact that her emails  
18 were -- was asking for the policy from DOT with respect  
19 to confronting the bullier?

20 A. No, I didn't. Ms. McKinney did not state that she  
21 was being bullied or needed to talk to me about that at  
22 that time or at any time so I did not.

23 Q. Are you aware of any policy -- did anyone at DOT  
24 ever provide you a policy or statement, a supplement to  
25 the policy about bullying in the workplace?



1 MR. JORDANO: Objection; relevancy. Never  
2 mentioned it, relevancy.

3 THE COURT: Well, I'll allow it. He can  
4 answer yes or no.

5 THE WITNESS: I'm not aware of anyone giving  
6 me that policy, no.

7 BY MR. PHILPOT:

8 Q. Okay.

9 MR. PHILPOT: I just want to refer him very  
10 quickly, Your Honor, to Number 24.

11 BY MR. PHILPOT:

12 Q. Exhibit Number 24, sir. Exhibit 24.

13 You see that?

14 A. Yeah.

15 Q. Okay.

16 Center, bottom of the page, approaching the bully,  
17 alleged bully; you see that?

18 A. Mm-hmm.

19 Q. Would you read that to yourself? In your  
20 investigation were you ever aware that DOT had a  
21 supplemental policy indicating that one could in fact  
22 confront the bullier?

23 MR. JORDANO: Objection, relevancy. It's not  
24 a policy, it's a brochure, but relevancy.

25 MR. PHILPOT: And we claim it, Your Honor.

1 His --

2 THE COURT: Well, he can tell us the answer  
3 yes or no.

4 THE WITNESS: I was not aware of this, no.

5 THE COURT: Okay.

6 BY MR. PHILPOT:

7 Q. No -- okay, Mr. Bissell did not give you this?

8 A. No, I don't believe so.

9 Q. Nor any -- nor Ms. Tulum, nor anyone from DOT, is  
10 that fair?

11 A. I do not recall receiving this or any policy.

12 Q. Okay. Thank you.

13 MR. PHILPOT: Nothing further, Your Honor.

14 THE COURT: Mr. Jordano.

15 MR. JORDANO: Thank you.

16 CROSS-EXAMINATION

17 BY MR. JORDANO:

18 Q. One of the emails, sir, that you looked at was  
19 this email where Ms. McKinney was asked by Ms. Karwick  
20 what she meant -- she said, I am concerned by your  
21 statement to --

22 MR. JORDANO: -- this is Exhibit by the way  
23 15 for the record --

24 BY MR. JORDANO:

25 Q. -- if you handle the situation off state property.

1 I can provide you with the relevant documentation.

2 Would you please clarify what that statements means.

3 That was one of the emails, correct?

4 A. Correct.

5 Q. All right.

6 And here's Ms. McKinney's response to that:

7 "What I'm referring to is this, if I approach Lisa  
8 Tilum off state property and give her the opportunity  
9 to do what she does to me on state property then can I  
10 have a confrontation with her? Thus giving her the  
11 perfect opportunity to try to hit me again or smirk or  
12 intimidate me. That -- I think that off state property  
13 she won't be so bold and confident. I think she will  
14 back off like the sorry bitch she is. Do you  
15 understand now?"

16 All right. Now, there's nothing here about I'm  
17 simply looking for a policy, correct?

18 A. It doesn't appear that way.

19 Q. But you took this into account what she said here  
20 in responding asking for a clarification of what she  
21 meant off state property, correct?

22 A. Right. Correct.

23 Q. You also took into account, did you not, the email  
24 that she sent to Mr. Livingston?

25 MR. JORDANO: For the record which is eight

1 minutes -- this is 7:30 and this is 7:38 of the same  
2 day.

3 BY MR. JORDANO:

4 Q. "I implore you to help me please, does CDOT have a  
5 policy on this, specifically if I were to go to Lisa  
6 Tulum off state property and confront her verbally or  
7 physically, can I still keep my job at CDOT," do you  
8 see that?

9 A. Yes.

10 Q. All right.

11 So you took into account that this was her  
12 explanation of what she wanted to do and -- to the  
13 question "What do you mean by doing something off state  
14 property?"

15 A. Correct.

16 Q. Right.

17 And in both of these emails if I'm correct, in  
18 Number 16 and also Number 17, she specifically mentions  
19 Ms. Tulum?

20 A. Yes.

21 Q. All right. All right.

22 And then part of your investigation, you spoke to  
23 Ms. McKinney on the 14th?

24 A. Yes.

25 Q. Correct? She gave you the two statements, I won't

1 initiate a confrontation, but what can I do if I -- if  
2 there is one, right?

3 A. Right.

4 Q. And then you also spoke with Ms. Tulum by phone?

5 A. Yes.

6 Q. All right.

7 And according to your report -- now you do a  
8 report and then you do also if there's justification  
9 for an arrest warrant, you do the affidavit for arrest,  
10 correct?

11 A. Correct.

12 Q. So if you investigate a matter and there's no -- a  
13 decision is made not to seek an arrest warrant, you'd  
14 have a report though of your investigation?

15 A. Correct.

16 Q. Okay.

17 So that's what -- so when we look at this right  
18 here this -- right here, this report, this is your  
19 report, all right, and on this report you discuss the  
20 different emails that Mr. Bissell gave you, correct?

21 A. Yes.

22 Q. And you paraphrase what they said?

23 A. Correct.

24 Q. All right.

25 Then you also talk about your meeting with Ms.

1 McKinney on the 14th, correct? And you also -- your  
2 phone --

3 A. Yes.

4 Q. -- conversation with Ms. Tulum on the 14th?

5 A. Correct.

6 Q. All right.

7 And what Ms. Tulum told you, correct?

8 A. Yes.

9 Q. Now, that was by phone and then on the 17th,  
10 toward the bottom here, all right, you spoke with  
11 Sergeant Jeff Bowles of West Hartford Police. You  
12 initiated that call, is that correct?

13 A. Yes, I did.

14 Q. All right. 'Cause you wanted them to be aware of  
15 the situation?

16 A. Yes.

17 Q. You felt in your professional judgment it  
18 warranted a called to the West Hartford Police?

19 A. Yes.

20 Q. All right.

21 And then you also spoke to Ms. Tulum on 7/17 of  
22 2006, correct?

23 A. Yes.

24 Q. All right.

25 Then based on your investigation, sir, you would

1 have spoken with your chain of command, all right, and  
2 you would have spoken with the prosecutor at the GA or  
3 whatever and you would have drafted a proposed arrest  
4 warrant, is that correct?

5 A. Correct.

6 Q. Laying out the facts from your investigation that  
7 you believed justified probable cause?

8 A. Yes.

9 Q. Who made the decision, sir, that there was or  
10 wasn't probable cause? Did you make that decision?

11 A. Yes, I did.

12 Q. All right.

13 Did DOT ever come to you, to your knowledge, and  
14 tell you that Ms. Tilum -- that Ms. McKinney had to be  
15 arrested?

16 MR. PHILPOT: Objection, asked and answered.

17 MR. JORDANO: Oh --

18 THE COURT: I'll allow it.

19 THE WITNESS: No.

20 BY MR. JORDANO:

21 Q. All right.

22 Did Ms. Arpin -- Ms. Arpin, sitting over here, did  
23 she ever come to you and say, "You have to arrest her,  
24 she has to be arrested?"

25 A. No.

1 Q. All right.

2 You spoke to Mr. Bissell and got the evidence,  
3 from there you spoke to the two people involved, Ms.  
4 McKinney and Ms. Tylum, and from there you formed a  
5 decision or you made the decision whether or not you  
6 believed under Connecticut law there was probable cause  
7 to make an arrest, is that correct, sir?

8 A. Correct.

9 Q. All right.

10 And then you did your affidavit, which is part of  
11 this same exhibit, you begin -- you did your affidavit  
12 where you laid out the information that your  
13 investigation uncovered, correct?

14 A. Yes.

15 Q. This one ends on paragraph 5 and it picks up on  
16 the next page, 6 through 13 and then you -- and this is  
17 submitted and a judge has to sign off on whether or not  
18 the judge agrees there's probable cause for the arrest,  
19 is that correct?

20 A. Right, prosecutor and a judge.

21 Q. Both have to sign off?

22 A. Yeah.

23 Q. All right.

24 If either one believe that there's not probable  
25 cause that your -- or that you don't have -- there's



1 going to be no arrest, correct?

2 A. Correct.

3 Q. All right.

4 So even if you -- hypothetically, even if DOT  
5 wanted Ms. McKinney arrested -- all right, if for  
6 instance if you and the prosecutor and a judge did not  
7 believe there was probable cause to believe that a  
8 crime had been committed, there would have been no  
9 arrest, correct?

10 MR. PHILPOT: Objection, calls for  
11 hypothetical.

12 THE COURT: I'll allow it.

13 BY MR. JORDANO:

14 Q. Am I correct, there would have been no arrest?

15 A. Correct.

16 Q. Now, then you testify what happened, Ms. McKinney  
17 came, you processed her.

18 Now, the cell, the holding cell, if someone has to  
19 go to the bathroom, can they signal to someone that  
20 they have to use a restroom?

21 A. Yes, absolutely.

22 Q. All right.

23 Is there a restroom close by, near the holding  
24 cell area?

25 A. Yes.

1 Q. At the time, was the holding cell area very close  
2 to dispatch center?

3 A. Yes.

4 Q. All right.

5 So did Ms. McKinney ever indicate to you or  
6 someone else that she needed to use the restroom or  
7 that the place was so unsanitary she couldn't use the  
8 bathroom?

9 A. I don't recall that.

10 Q. So she was there for the time you describe or the  
11 45 minutes, she signed all the forms, everything was  
12 done, and off she went, correct?

13 A. Correct.

14 Q. All right.

15 And then you would have notified DOT that an  
16 arrest had been effectuated and then you may have sent  
17 them this information for their file, is that correct?

18 A. Correct.

19 Q. So I understand your testimony, at no time did you  
20 ever tell Ms. McKinney or anyone else, that DOT was the  
21 people who made the decision to have her arrested --

22 MR. PHILPOT: Objection, asked and --

23 BY MR. JORDANO:

24 Q. -- is that correct?

25 MR. PHILPOT: -- asked and answered.

1 THE COURT: I'll allow it.

2 BY MR. JORDANO:

3 Q. Is that correct, sir?

4 A. Correct.

5 MR. JORDANO: Nothing further.

6 (Pause.)

7 REDIRECT EXAMINATION

8 BY MR. PHILPOT:

9 Q. I asked you earlier whether or not Vicki Arpin,  
10 Kathleen Karwick, Wanda Seldon, or Paula Yukna ever  
11 contacted you about effectuating an arrest of Daphne  
12 McKinney. You said to me on direct, I thought and  
13 correct me if I'm wrong, that you did not recall?

14 A. I don't recall if they ever contacted me  
15 regarding --

16 Q. All right.

17 A. -- (unintelligible) of arrest.

18 Q. So that's different than not ever having contacted  
19 you, isn't it, Trooper?

20 A. (No verbal response)

21 Q. Do you understand my question?

22 If you don't recall whether or not they did, then  
23 they might have. If you are saying that they didn't,  
24 you do have a recollection.

25 Are you -- do you understand? Do you understand

1 my question?

2 A. I believe I understand, yes.

3 Q. Okay.

4 So which is it? I thought you said initially when  
5 I asked you whether or not any of those individuals  
6 from Personnel or DOT contacted you, you didn't recall.

7 A. I didn't -- the only thing that -- I do not  
8 recall, however, if they did, it would be in my report  
9 most likely and it's not here.

10 Q. Most likely? So that means that --

11 A. Most likely.

12 Q. Most likely. Okay. I do understand that. All  
13 right.

14 A. Great.

15 Q. Oh, would you turn to Exhibit 17, please, Exhibit  
16 17? It says, "Steve, I implore you to help me please.  
17 Does CDOT have a policy on this?"

18 Is that a request for a policy?

19 A. I would say that she's asking if there is a  
20 policy, not requesting the policy.

21 Q. Okay.

22 That references a policy?

23 A. Sure. Yes.

24 Q. Okay.

25 So it doesn't just talk about a confrontation it -

1 - in one of the emails that you considered with respect  
2 to issuing this arrest warrant, she specifically asked  
3 for a policy?

4 MR. JORDANO: Objection, mischaracterizes his  
5 testimony.

6 BY MR. PHILPOT:

7 Q. There's a policy referenced in it, is that  
8 correct? Trooper? Is it correct?

9 A. I'm sorry. Can you --

10 Q. Is it correct that a policy is referenced in one  
11 of the emails you considered in making this arrest  
12 warrant?

13 A. Yes.

14 Q. Okay.

15 That's the policy you didn't have when you issued  
16 the arrest warrant, the one I showed you at Exhibit 24,  
17 correct?

18 A. Correct. It's also --

19 MR. JORDANO: Objection, beyond --

20 THE WITNESS: -- it's also --

21 MR. JORDANO: -- beyond the scope of cross.

22 Beyond the scope of cross.

23 THE COURT: I'll allow it.

24 THE WITNESS: It's also the policy that I do  
25 not need for my investigation.

1 MR. PHILPOT: Okay. Thank you.

2 I have nothing further, Your Honor.

3 THE COURT: Step down. You're released from  
4 the subpoena. Thank you.

5 THE WITNESS: Thank you.

6 (Witness excused.)

7 THE COURT: Any time you all need a recess,  
8 just -- sitting for awhile, but you probably don't  
9 notice it maybe Debbie will notice it.

10 MR. PHILPOT: Just a moment, Your Honor.  
11 We're checking on our next witness.

12 (Pause.)

13 DAVID ASTARITA, PLAINTIFF'S WITNESS, SWORN

14 THE CLERK: You may be seated. Please state  
15 your name, spell your last name, and your city for the  
16 record, please.

17 THE WITNESS: My name is David Astarita,  
18 A-s-t-a-r-i-t-a. I live in North Haven.

19 THE CLERK: Thank you.

20 DIRECT EXAMINATION

21 BY MR. PHILPOT:

22 Q. Good morning, sir.

23 A. Morning.

24 Q. You are here, sir, pursuant to a subpoena issued  
25 by my office, is that correct?

1 A. Yes.

2 Q. Okay. And what is your level of education, sir?

3 A. High school graduate.

4 Q. Okay.

5 And to whom are you -- whom with -- to whom are  
6 you employed?

7 A. State of Connecticut Department of Transportation.

8 Q. Okay.

9 And you've worked for the Department of  
10 Transportation, DOT, for how long, sir?

11 A. It'll be ten years in May.

12 Q. Okay.

13 There came a point in time, Mr. Astarita, that you  
14 were involved in an incident with one, Vincent  
15 Giardina, is that correct?

16 A. Yes, sir.

17 Q. Okay.

18 Do you recall when that was?

19 A. Yes.

20 Q. Was it June 13th, 2006, or thereabouts?

21 A. Yes, sir.

22 Q. Okay.

23 Would you describe for the Court and members of  
24 the jury what occurred on June 13th of 2006?

25 A. That morning all maintainers at the garage got

1 their work orders. As I was proceeding to leave he  
2 came up behind me and he accused me of stealing his  
3 keys.

4 Q. Okay.

5 A. I turned around --

6 Q. And let me just backup for a minute before you get  
7 into it.

8 Q. Sure.

9 A. Is it fair to say that you were friendly with him  
10 prior to that?

11 A. We were very friendly. We were almost like  
12 family. Yes.

13 Q. Okay. All right.

14 THE COURT: So the jury and I are interested.  
15 What changed you? What caused the change?

16 THE WITNESS: It wasn't from -- I didn't  
17 change. He changed. What it is, is if you look at his  
18 prior record with the State of Connecticut you'll see  
19 that he's a very -- how should I say it, very  
20 disgusting being a --

21 BY MR. PHILPOT:

22 Q. Are you referring to a failed drug test?

23 A. His record, yes.

24 Q. Is that what you -- okay, that's what I'm --

25 A. Yes, his record. At all my jobs I ever had I



1 never had a problem with anyone. Getting back to  
2 the -- on that day --

3 Q. Yeah.

4 A. -- he accused me of stealing his keys. He came up  
5 from behind me. I turned around, I said, Vinny, you  
6 know that we don't get along anymore, but I did not  
7 take your keys.

8 Q. Okay. All right.

9 And then what happened?

10 A. I walked away.

11 Q. Okay.

12 A. Well, he kept on nagging me; walking behind me,  
13 what are you talking about, what you talking about.  
14 It's like pushing somebody, you know, keep on pushing,  
15 you going to -- someone's going to turn around and  
16 going to react. I turned around, I said, I do not have  
17 your keys. I know we were very good friends at one  
18 time, but you let something get in between us.

19 Q. Okay.

20 A. And it's --

21 Q. Are you referring to drug use?

22 A. Yes, sir.

23 Q. All right. Fine.

24 And that was documented with the DOT?

25 A. Numerous times, yes.

1 Q. Numerous times. Okay. Go ahead.

2 A. And after that it was just an altercation. We had  
3 a lot of words said back and forth, a little belly  
4 bumping and that was it. I never hit him. I never  
5 threatened him. Nothing like that.

6 Q. Did you -- were you restrained by three or four  
7 other individuals who you, in the process of attempting  
8 to make your way toward Vincent, threw on the floor?

9 A. To be honest with you, he did not -- he did fall,  
10 I did not throw him, he fell on his own two feet.

11 Q. Okay.

12 So when you say he, you're talking about Vincent?

13 A. No --

14 Q. Oh.

15 A. -- another employee.

16 Q. Oh, okay.

17 A. Yes.

18 Q. All right. Was that person --

19 A. Because --

20 Q. -- trying to restrain you?

21 A. There was a group of guys there holding me back,  
22 they said, Dave, no one's worth it to lose your job.

23 Q. Okay. All right.

24 Were you aware at that time of the zero tolerance  
25 policy?

1 A. Yes, I was.

2 Q. Okay.

3 And so is it fair to say that your bodies, I think  
4 you said bellies --

5 A. Bellies.

6 Q. -- did come in contact with each other in this  
7 confrontation?

8 A. Yes.

9 Q. Okay.

10 And this happened at the North Haven Maintenance  
11 site?

12 A. Garage; yes, sir.

13 Q. Garage. Okay.

14 And there were witnesses there?

15 A. Yes.

16 Q. Okay.

17 And ultimately, sir, there was a fact-finding that  
18 occurred, isn't that correct?

19 A. Yes, sir.

20 Q. Okay.

21 Why do you smile when I say fact-finding?

22 A. Oh, it's protocol. That's all.

23 Q. Okay. All right. Fine. All right.

24 And were you satisfied with the fact-finding that  
25 occurred?

1 A. No, sir.

2 MR. JORDANO: Objection, relevancy.

3 MR. PHILPOT: Claim it, Your Honor. In terms  
4 of fact-finding.

5 THE COURT: Well, I think we already have --  
6 you got three weeks, I think, and Giardina got two  
7 weeks?

8 THE WITNESS: Yes, sir.

9 THE COURT: Okay.

10 BY MR. PHILPOT:

11 Q. Okay.

12 But in terms of the way that the fact-finding was  
13 conducted, was it a foregone conclusion --

14 MR. JORDANO: Objection.

15 BY MR. PHILPOT:

16 Q. -- as far as you were concerned?

17 MR. JORDANO: Objection, relevancy.

18 THE COURT: I'll sustain that.

19 MR. PHILPOT: All right. Okay.

20 BY MR. PHILPOT:

21 Q. Your -- the discipline issued was three weeks?

22 A. Yes, and transferred.

23 Q. And a transfer?

24 A. Yes, sir.

25 Q. Okay.

1 And did you make that transfer?

2 A. Yes.

3 Q. Okay.

4 A. I work now at the Wallingford DOT garage,  
5 Warrensburg garage now.

6 Q. Prior to that, sir, Mr. Astarita, did you have any  
7 discipline?

8 A. Never. No, sir, nope.

9 Q. And subsequent to that have you had any  
10 discipline?

11 A. Nope. Clean as a whistle.

12 Q. Okay.

13 Did it concern you that Mr. Giardina, who has  
14 priors, got a week less than you?

15 MR. JORDANO: Objection, relevancy.

16 THE COURT: Yeah, sustained.

17 MR. PHILPOT: Okay.

18 BY MR. PHILPOT:

19 Q. So did you consider the transfer to be discipline?

20 A. Yes.

21 Q. And that's because you did not initiate this,  
22 isn't that correct?

23 A. Yes, correct.

24 MR. PHILPOT: Okay.

25 I have nothing further.

1 BY MR. PHILPOT:

2 Q. Oh, by the way, do you remember who issued this  
3 discipline to you?

4 A. It's always upper management.

5 Q. Okay. And is it somebody from HR?

6 A. I have no idea.

7 Q. Let me see if I can refresh your recollection.

8 THE COURT: What's the Exhibit number?

9 MR. PHILPOT: Forty.

10 THE COURT: Forty?

11 MR. PHILPOT: Forty.

12 BY MR. PHILPOT:

13 Q. Here's a letter dated August 8, 2006.

14 (unintelligible)?

15 A. Mm-hmm.

16 Q. (unintelligible), see that?

17 A. Yes.

18 Q. A letter from HR? There was a letter you received  
19 in August of '06? You see that?

20 A. Yes.

21 Q. Who signed the letter?

22 A. I'm --

23 Q. Does it look like Vicki Arpin?

24 A. That's what it looks like, yes.

25 THE COURT: I think it's Wanda Seldon, isn't

1 it?

2 MR. JORDANO: Ms. Seldon.

3 MR. PHILPOT: No, actually it's not. You  
4 see --

5 THE COURT: Well, you gave me your list of  
6 Exhibits and you said Wanda Seldon.

7 MR. PHILPOT: Okay.

8 Well, then there was a mistake, Your Honor,  
9 but --

10 THE COURT: Okay. Let's take a look at 40  
11 'cause I assumed it was Seldon.

12 MR. PHILPOT: Yeah, it's --

13 MR. JORDANO: (unintelligible).

14 MR. PHILPOT: -- the named typed -- yes, the  
15 name typed there is Wanda Seldon, but actually the  
16 signature is Vicki Arpin.

17 THE COURT: Well, that's why I could never  
18 tell that signature.

19 MR. PHILPOT: Yeah.

20 THE COURT: I see.

21 MR. PHILPOT: See?

22 THE COURT: Yeah, Wanda Seldon --

23 MR. JORDANO: It says for Wanda Seldon.

24 THE COURT: It's Vicki Arpin for Wanda Seldon  
25 apparently.

1 MR. PHILPOT: That's right.

2 THE COURT: Okay.

3 MR. PHILPOT: Okay?

4 THE COURT: All right.

5 BY MR. PHILPOT:

6 Q. You see that, Mr. Astarita?

7 A. Yes.

8 Q. Is that correct?

9 A. Yes.

10 Q. So it was not signed by Wanda Seldon, it was for  
11 Vicki -- by Vicki Arpin. Okay.

12 MR. PHILPOT: Your Honor, I have nothing  
13 further.

14 Counsel is going to ask you some questions,  
15 all right? Thank you.

16 THE WITNESS: Sure.

17 CROSS-EXAMINATION

18 BY MR. JORDANO:

19 Q. Sir, I take it this is kind of one of those heat  
20 of the moment things that erupted, is that a fair  
21 statement?

22 A. Yes, sir.

23 Q. And then it was over?

24 A. Yes.

25 Q. And you said you'd been friends with Mr.



1 Giardina --

2 A. Giardina, yes.

3 Q. -- for awhile and for whatever reason your  
4 relationship -- your closeness changed?

5 A. Yes.

6 Q. All right.

7 And then you were disciplined, he was disciplined,  
8 is that a fair statement?

9 A. Yes.

10 Q. All right. 'Cause it was a mutual aspect of the  
11 I'll call it mutual combatancy, but both of you kind of  
12 got heated up --

13 A. Yes.

14 Q. -- and kind of said things and then -- 'frit'  
15 (phonetic), it dissipated, correct?

16 A. Yes.

17 MR. JORDANO: Nothing further.

18 THE COURT: You can step down. You're  
19 released from the subpoena.

20 THE WITNESS: Thank you.

21 (Witness excused.)

22 MR. JORDANO: (unintelligible) sit in the  
23 chair right over there, sir.

24 ANDREW CASERTA, PLAINTIFF'S WITNESS, SWORN

25 THE CLERK: Please be seated. State your

1 name and spell your last name for the record, and the  
2 city you're from.

3 THE WITNESS: Andrew Caserta, C-a-s-e-r-t-a;  
4 from Stratford, Connecticut.

5 THE CLERK: Thank you.

6 DIRECT EXAMINATION

7 BY MR. PHILPOT:

8 Q. Good morning.

9 A. Good morning.

10 Q. You are here, sir, pursuant to a subpoena that was  
11 issued by my office?

12 A. Yes.

13 Q. Okay.

14 And would indicate who you work for?

15 A. I work for Department of Transportation Highway  
16 Maintenance.

17 Q. Okay.

18 A. Trumbull.

19 Q. Trumbull. And how long have you, Mr. Caserta,  
20 worked for them?

21 A. Twenty-one years.

22 Q. Okay.

23 And what is your level of education, sir?

24 A. High school.

25 Q. Okay.

1           And I refer you to an incident which occurred on  
2 or about the -- April 16th of 2006 -- 2002, excuse me  
3 --

4           MR. PHILPOT: -- and this is at, Your Honor,  
5 Exhibit 46, Exhibit 46 --

6 BY MR. PHILPOT:

7 Q. Do you recall that incident on April 16th, 2002?

8 A. Yes.

9 Q. It involved one Joseph Harvey?

10 A. Yes.

11 Q. Okay.

12           Would you share with the Court and members of the  
13 jury what occurred on that date?

14 A. We were on a crew where we cut grass and the two  
15 mowers were staying behind and I was in the truck and I  
16 decided that I would get out of their way and drive  
17 about 100, 150 yards ahead of them.

18           Joe, who was on a smaller tractor, decided to  
19 follow me; and when he had stopped to talk to me he was  
20 quite upset because I had his water in the truck. It  
21 was one of the first hot days of summer. He proceeded  
22 to get aggressive. He threw his lunch box in my face  
23 and after that he threw a paper picker at me which --

24 Q. What do you mean a paper picker?

25 A. A paper picker is an instrument we remove garbage

1 with from the ground.

2 Q. Right. And it has a sharp edge --

3 A. Yes, it does.

4 Q. -- on it? Okay. And he threw it -- is it fair to  
5 say he threw it at you like a spear?

6 A. Yes.

7 Q. All right.

8 Did you do anything in response?

9 A. I locked myself in the truck.

10 Q. Okay.

11 A. And after he had been trying to get in the truck,  
12 I decided to get out of the truck, remove the keys, and  
13 kind of jog down to the other tractor operator to tell  
14 him what happened and then they had called the boss by  
15 then.

16 Q. Okay.

17 Did there come a point in time where you grabbed  
18 Mr. Harvey's lunch box?

19 A. Yes.

20 Q. And what did you do with that?

21 A. I threw it into the traffic.

22 Q. Into the oncoming traffic that was going down the  
23 road, isn't that correct?

24 A. Yes.

25 Q. Okay.

1           And it was -- that -- it ultimately hit a car,  
2 didn't it?

3           A.    No, it didn't hit a car; it got run over.

4           Q.    Oh, okay. All right. Fine.

5                   And did anything else go out the truck?

6           A.    Yes, when he threw the paper picker at me --

7           Q.    Yeah.

8           A.    -- it bounced off a car's window.

9           Q.    Okay.

10                   That was driving by?

11          A.    Yes.

12          Q.    Okay.

13                   Did that car attempt to veer out of the way?

14          A.    No.

15          Q.    Okay.

16                   So it was a direct hit?

17          A.    A direct hit.

18          Q.    Okay. Was there a fact-finding that occurred as a  
19 result of this?

20          A.    Yes.

21          Q.    Okay.

22                   And what happened with that fact-finding?

23          A.    In the fact-finding, Joe said that he did not --

24          Q.    Is that Joe, Joe Harvey?

25          A.    Joe Harvey did not --

1 Q. Okay.

2 A. -- he said that he did not throw a paper picker at  
3 me.

4 Q. Oh, he -- okay.

5 And you contradicted that?

6 A. Yes.

7 Q. All right.

8 Were there any witnesses?

9 A. No.

10 Q. Okay.

11 What happened at the fact-finding?

12 A. At the fact-finding, they seemed to be more upset  
13 about his lunch box and did not believe me about the  
14 paper picker.

15 Q. Okay.

16 So what was the upshot of the fact-finding?

17 A. I received a week off without pay.

18 Q. Okay.

19 Did Mr. Harvey receive any discipline?

20 A. He received also a week off without pay.

21 Q. Were you both deemed to have run afoul of the  
22 workplace violence policy, 80-16A?

23 A. Yes, I believe so.

24 Q. Okay.

25 Let me just show this to you, see if that

1 refreshes your recollection.

2 MR. PHILPOT: May I approach, Your Honor?

3 BY MR. PHILPOT:

4 Q. Did you receive that letter from HR of DOT  
5 concerning this incident?

6 A. Truthfully I can't recall if I received the  
7 letter.

8 Q. It's to you?

9 A. Oh, okay. Let me go down a little further. I  
10 don't remember this letter. I'm sorry.

11 Q. That's okay.

12 That was sent to you by Personnel, is that fair to  
13 say though?

14 A. Yeah, I believe I did receive a letter.

15 Q. All right.

16 A. I just don't recall it.

17 Q. All right.

18 Mr. Caserta, you got five days off, is that  
19 correct?

20 A. Yes.

21 Q. Okay.

22 But isn't it true that you had prior discipline  
23 before this?

24 A. For what, Attorney? I'm sorry.

25 Q. That's okay. No problem.

1           Isn't it true that in 1993 you got a suspension  
2 for fighting on the job?

3           A.    Yes.

4           Q.    Okay.

5           And there were other prior disciplines that you  
6 received, isn't that correct?

7           A.    Yes, I believe that I got a week off for that one  
8 also.

9           Q.    Okay.

10          A.    But --

11          Q.    So you got the same -- so the second one that you  
12 received, the second discipline you received you got  
13 the same amount of suspension time?

14          A.    Yes.

15          Q.    Okay.

16                I'm going to show you what's part of Exhibit 46,  
17 and ask if this refreshes your recollection as to the  
18 number of disciplines that you received; one, two,  
19 three, four, five? Does that refresh your recollection  
20 as to the various disciplinary actions administered?

21                THE COURT: This by the way is Exhibit 46.  
22 It'll be marked for ID also.

23                MR. PHILPOT: All right. Thank you.

24                THE WITNESS: I can't recall the first one.  
25 Okay. I recall the second one.



1 BY MR. PHILPOT:

2 Q. All right.

3 A. The third one, no I don't recall that one.

4 Q. Okay.

5 A. I don't recall the fourth one.

6 Q. Okay.

7 A. I don't recall the fifth one.

8 Q. Okay.

9 So you have no recollection as you sit here today  
10 of those other references in your file?

11 A. No, just the -- number two.

12 Q. Which is the suspension for fighting on the job?

13 A. Yes, and now that was before the first one you  
14 talked to me about, right?

15 Q. Right. Yeah. Exactly.

16 A. Yeah, I recall that.

17 Q. Okay. Sir, thank you.

18 MR. PHILPOT: I have no further questions.

19 THE WITNESS: You're welcome.

20 THE COURT: Mr. Jordano.

21 MR. JORDANO: Yes. Thank you.

22 CROSS-EXAMINATION

23 BY MR. JORDANO:

24 Q. Mr. Caserta, I want to make sure I understand this  
25 a little bit because I'm trying to follow along.

1 You're on a crew, summertime I take it pretty hot?

2 A. Yeah.

3 Q. Okay.

4 And you have someone with a tractor up ahead  
5 cutting the grass and then behind them is someone with  
6 the truck who may be picking litter and doing things  
7 like that?

8 A. Yes, that's a normal operation that we do.

9 Q. All right. All right.

10 So let me understand this for a second, so Mr.  
11 Harvey is driving the tractor?

12 A. Yeah, he's on one --

13 Q. Okay.

14 A. -- of the tractors.

15 Q. All right. And you're doing the litter pickup  
16 with the litter pickup stick or whatever you call it,  
17 and you're also -- let's see you're doing -- let's see  
18 your trimming and you're doing the picking up of  
19 litter?

20 A. Yes.

21 Q. All right. And there was an issue about one  
22 vehicle being too far ahead of the other 'cause Mr.  
23 Harvey became upset because -- he was upset because he  
24 claimed that he was dying of thirst.

25 You knew he had a medical condition, that he was a

1 diabetic, correct?

2 A. Yes.

3 Q. And you knew that the heat and the need for water  
4 that sometimes he'd get agitated if he couldn't get  
5 water, correct?

6 A. Well, I don't recall anyone ever being agitated  
7 when I worked, over water.

8 Q. Well, let me backup. Did you say -- did you tell  
9 the fact-finding people, sir, that you were aware that  
10 sometimes he would get agitated or upset if he couldn't  
11 get at his water because he had a medical condition?

12 A. (No verbal response)

13 Q. Did you tell them that?

14 A. Did I tell Joe that?

15 Q. No, did you tell the fact-finding people that you  
16 were aware of that?

17 A. I don't think so.

18 Q. All right.

19 So then now -- so now -- so you get into this  
20 heated argument about he wants his water, he's  
21 concerned the truck is too far ahead, this is the truck  
22 you were driving ahead of the mower, right, and there's  
23 a dispute between you about who threw the picker, then  
24 it was thrown, who threw the -- he claims you threw his  
25 lunch box out of the truck at him; there was a number

1 of conflicting testimony, wouldn't you agree; versions  
2 of what happened in this incident?

3 A. Yeah, just me and his, yup.

4 Q. I mean you disagreed about how things happened and  
5 the sequence of how things happened?

6 A. Yes.

7 Q. All right.

8 And -- but you don't disagree that both of you  
9 became kind of upset in the heat of the moment about  
10 what was going on?

11 A. Well, I was upset of the fact that Joe became  
12 aggressive --

13 Q. Right.

14 A. -- and I wasn't.

15 Q. All right.

16 But what I'm saying is you both got agitated in  
17 the heat of the moment over this incident and then it  
18 was done, is that correct?

19 A. Well, after he threw his lunch box in my mouth I  
20 was upset.

21 Q. All right.

22 And then -- but after the incident was over --

23 A. Yeah.

24 Q. -- did you go back to doing the work?

25 A. Yes.

1 Q. All right.

2 So the incident occurred, whatever happened  
3 happened, and then you both went back to doing the job  
4 --

5 A. Yeah.

6 Q. -- that day on the crew?

7 A. I'm trying to recall the incident. I believe that  
8 after my boss came out to see what happened, I think he  
9 made me leave.

10 Q. All right.

11 He made you leave?

12 A. Yeah, he just told me return to the garage, I  
13 believe.

14 Q. All right.

15 And you were part of the maintenance union -- you  
16 were out of the garage, correct?

17 A. Yeah, we're maintenance, yes.

18 Q. And had you worked with Mr. Harvey -- this wasn't  
19 your first day working with him?

20 A. No.

21 Q. You'd worked with him for awhile?

22 A. I've worked with him for 21 years.

23 Q. All right.

24 And you'd never gotten into a fight with him  
25 before, right? I mean where you were disciplined for a

1 fight with him? Or was your discipline nine years  
2 earlier a fight with Mr. Harvey or someone else?

3 A. It was with someone else.

4 Q. All right.

5 So you worked pretty harmoniously with Mr. Harvey.  
6 This is just one of those incidents where things kind  
7 of got out of control?

8 A. Joe got out of control that day.

9 Q. All right. Okay.

10 But the agency felt that both of you had acted  
11 inappropriate?

12 A. That's what the agency thought, yes.

13 Q. And you don't know what they considered, you don't  
14 know what documents they looked at or what they  
15 considered in coming to that conclusion, do you?

16 A. No.

17 Q. All right.

18 And the letter actually to you was signed Vicki  
19 Arpin for Wanda Seldon, that's what it said? The  
20 letter you looked at that we read here out loud,  
21 correct?

22 A. Correct.

23 Q. All right.

24 And you don't know who actually made the decision  
25 about what type of discipline you or Joe should

1 receive?

2 A. No, not -- no.

3 Q. Okay.

4 MR. JORDANO: Nothing further. Thank you.

5 THE WITNESS: The Personnel --

6 THE COURT: Do you and Joe --

7 THE WITNESS: -- Department --

8 THE COURT: -- you and Joe still work

9 together?

10 THE WITNESS: Yes, we do.

11 THE COURT: All right. Okay.

12 MR. PHILPOT: Just very quickly.

13 REDIRECT EXAMINATION

14 BY MR. PHILPOT:

15 Q. Attorney Jordano asked you after this heat of the  
16 moment between you and Joe Harvey it was over, but you  
17 threw a lunch box out of the truck window, isn't that  
18 correct?

19 A. Yes.

20 Q. Okay.

21 And that effected the general public because  
22 somebody ran over it, is that correct?

23 MR. JORDANO: Objection.

24 THE WITNESS: Yes.

25 THE COURT: I'll allow it.

1 BY MR. PHILPOT:

2 Q. Okay.

3 And it wasn't over because then he, Harvey, who  
4 was out of control threw a paper picker out the window  
5 that hit a car, isn't that correct?

6 A. Yeah, he threw it at me while I was seated in the  
7 truck cab --

8 Q. Right.

9 A. -- and it went out the window and bounced off a  
10 car's window --

11 Q. Right.

12 A. -- on the passenger side.

13 Q. And had that window been open, somebody could have  
14 been seriously injured, is that correct?

15 A. Yes.

16 MR. JORDANO: Objection.

17 MR. PHILPOT: Okay.

18 THE COURT: Sustained.

19 MR. PHILPOT: All right. Thank you, Your  
20 Honor.

21 THE COURT: Please step down. Thank you.  
22 You're released from the subpoena.

23 THE WITNESS: Thank you, Your Honor.

24 (Witness excused.)

25 MR. JORDANO: Your Honor, I have a number of



1 people here, could I inquire who the next witness is?

2 MR. PHILPOT: Peter Bates.

3 MR. JORDANO: Peter Case?

4 MR. PHILPOT: Bates.

5 MR. JORDANO: Bates.

6 MR. PHILPOT: Exhibit 41 for ID.

7 The last one was Exhibit 46 for ID, Your  
8 Honor.

9 THE COURT: Yes.

10 PETER BATES, PLAINTIFF'S WITNESS, SWORN

11 THE CLERK: And you may be seated. Please  
12 state your name, spell your last name, and your city  
13 for the record.

14 THE WITNESS: Peter Bates, B-a-t-e-s;  
15 Wallingford, Connecticut.

16 THE CLERK: Thank you.

17 DIRECT EXAMINATION

18 BY MR. PHILPOT:

19 Q. Good afternoon, sir.

20 A. How you doing?

21 Q. Good.

22 You are here, Mr. Bates, pursuant to a subpoena  
23 issued by my office, isn't that correct?

24 A. Yes.

25 Q. Okay.

1           And would you describe to the Court and members of  
2 the jury your level of education?

3           A.    High school.

4           Q.    Okay.

5           What do you -- who -- by whom are you currently  
6 employed?

7           A.    Department of Transportation.

8           Q.    And you have worked for DOT for how long, sir?

9           A.    Almost 13 years.

10          Q.    What do you do for them?

11          A.    Highway maintenance.

12          Q.    Okay.

13          And did there come a point in time, sir, where you  
14 were disciplined for violating the workplace violence  
15 policy?

16          A.    I don't know if it was workplace violence or I'm  
17 not -- you know, I was disciplined, but I wouldn't call  
18 it workplace violence.

19          Q.    Okay.

20          Do you recall any references to what is called  
21 Memorandum 80-16A?

22          A.    I've heard them, but I'm not sure what it exactly  
23 says anymore.

24          Q.    Okay.    Okay.

25          Do you recall being entitled Conduct and Behavior,

1 Memorandum 80-16A? No?

2 A. I'm not sure.

3 Q. All right. Just a moment, please.

4 A. Mm-hmm.

5 Q. Just looking for the date.

6 Date of incident September 22nd, 2005 do you  
7 recall that incident? While you were mowing on I91  
8 southbound in the vicinity of Exit 20?

9 A. Not to my -- I don't remember what it was about.  
10 That's like five, six years ago.

11 Q Yes, it was. Okay. Just a moment.

12 There's an -- that's five, six years ago. There's  
13 another incident that occurred in or about September of  
14 '02 involving your use of a racial slur toward a co-  
15 worker, do you recall that?

16 A. Yes, I do.

17 Q. Would you describe for the Court and members of  
18 the jury what occurred?

19 A. Well -- do you want me to say exactly what I said?

20 Q. Sure.

21 A. Okay.

22 What I called -- and I admitted to it, yeah, I  
23 called the Puerto Rican kid a Spic.

24 Q. All right.

25 A. Okay.

1           Yes, I know that's racial and I apologized after I  
2 said it, but --

3           Q.    Okay.

4           A.    -- so --

5           Q.    All right.

6           And what were the circumstances for you to call  
7 him that? And who was --

8           A.    That was out of --

9           Q.    -- who was the other person, by the way?

10          A.    That was a co-worker that I worked with out of  
11 Miller Avenue.

12          Q.    Right. And what was his name?

13          A.    His name was Jose Lopez.

14          Q.    Okay.

15          And why did you call Mr. Lopez out of his name?

16          A.    That was due to anger on my part because I was  
17 called at the end of the day to go to another job that  
18 I was not involved in and ended up standing in the  
19 middle of a highway getting almost run over while this  
20 guy was talking on the phone.

21          Q.    Okay.

22          Did he have something to do with you almost  
23 getting run over?

24          A.    Yeah, he should have been out there helping me  
25 watching traffic, but that was -- that's here nor

1 there, that's over -- as far as I'm concerned that's  
2 over and done with.

3 Q. All right. Okay. Fine.

4 And did you receive discipline as a result of  
5 that?

6 A. Yes, I did.

7 Q. How much time?

8 A. One -- I think it was one day.

9 Q. Now, did you make that reference to him directly?  
10 To his face?

11 A. What do you mean that I called him -- yes, I did.

12 Q. Yes, to his face?

13 A. To his face.

14 Q. Okay.

15 A. And he reported to the boss and it went from  
16 there, it went --

17 Q. Okay. Fine.

18 You got one day, is that correct?

19 A. Correct.

20 Q. Okay.

21 Now, you've had other disciplines since then,  
22 isn't that correct?

23 A. Yes.

24 Q. Okay.

25 There was one situation where you got a three-day

1 suspension, isn't that correct?

2 A. Yes, sir.

3 Q. And why is that?

4 A. Allegedly for calling a co-worker --

5 Q. Go ahead. I'm sorry.

6 A. -- allegedly for calling a co-worker --

7 Q. Calling a co-worker what?

8 A. A lazy cock sucker.

9 Q. Okay.

10 A. All right.

11 I'm sorry, Your Honor, I hope I'm --

12 Q. All right.

13 A. Yeah.

14 Q. Fine.

15 And who were you referring to?

16 A. It was a -- well, I said it as a general  
17 statement, but it was not taken that way 'cause it was  
18 like it was -- I was talking to my boss --

19 Q. Right.

20 A. -- behind closed doors and somebody overheard  
21 this.

22 Q. Somebody out -- besides your boss hear it?

23 A. Yes.

24 Q. Okay.

25 A. And there was another person sitting in the room

1 with us --

2 Q. There was?

3 A. -- that said that I had made -- it was a general  
4 statement was what I was making, but it wasn't taken  
5 that way so --

6 Q. Okay.

7 A. -- and I --

8 Q. And who were you referring to? Do you remember?

9 A. Supposed -- yeah, it was a black person.

10 Q. Okay. Fine.

11 And did that black person happen to have a name?

12 A. Name was Dave Bunch.

13 Q. Okay.

14 And so somebody heard this reference to Dave Bunch  
15 and reported it?

16 A. Correct.

17 Q. Okay. And was this deemed a violation of the  
18 Workplace Violence Policy? A racial slur or a slur  
19 against a co-worker, not racial?

20 A. As far as -- yes, I think it was.

21 Q. Okay.

22 And as a result of that, you got a three-day  
23 suspension?

24 A. Yes.

25 Q. Okay.

1           And that was after this incident with Mr. Lopez,  
2 is that correct?

3           A.     Correct.

4           Q.     Okay.

5           Are the only individuals that you've directed  
6 slurs toward, minorities; one Hispanic, one African  
7 American?

8           A.     Yes.

9           Q.     Okay.

10          Then in addition to that, you got -- you had  
11 another discipline, isn't that correct, in '05?

12          A.     I'm trying --

13          Q.     Suspension, one day?

14          A.     Yeah, that was for a chock block.

15          Q.     That was for a what?

16          A.     A chock block; you know, the wheels for chocking  
17 the wheels?

18          Q.     Well, explain it to us, please.

19          A.     You know how -- let me try to -- you know the  
20 truck tires?

21          Q.     Yes.

22          A.     We have to put -- we are -- we're supposed to put  
23 chock blocks down --

24                   THE COURT:   It's not his, it's up there.

25                   THE WITNESS:  -- on the wheels and I didn't



1 and the boss saw it and I had been -- I had a --  
2 previous to that I got a warning for not knowing that  
3 and the next time was a suspension. I got one day for  
4 that.

5 Q. Okay.

6 And let me just understand this, so there was the  
7 one-day suspension in '02?

8 A. Correct.

9 Q. There was a one-day suspension in '05?

10 A. Correct.

11 Q. There was a three-day suspension in '07?

12 A. Was it -- I'm not sure what year, could have been  
13 around then. I'm not sure what -- exactly what year it  
14 was, but yeah, there was three times --

15 Q. Okay.

16 A. -- that I was suspended.

17 Q. And did anybody during this process talk to you  
18 about this concept called progressive discipline? Did  
19 you ever hear that phrase, progressive discipline?

20 A. No.

21 Q. Okay.

22 MR. PHILPOT: Just a moment, Your Honor,  
23 please.

24 (Pause.)

25 THE COURT: I think that's the mic that

1 acting up now.

2 THE CLERK: I don't know. I can try and  
3 unplug it and see if that helps.

4 BY MR. PHILPOT:

5 Q. I just want to show you this and ask if it  
6 refreshes your recollection 'cause I see evidence of  
7 another suspension in '03.

8 MR. JORDANO: What exhibit is it?

9 MR. PHILPOT: It's Exhibit 41.

10 MR. JORDANO: Okay.

11 THE WITNESS: Trying to see here. This is  
12 the one -- that's maybe the -- I think that's the one  
13 in '03 is with the black guy.

14 BY MR. PHILPOT:

15 Q. Oh.

16 A. Okay.

17 Q. 'Cause there's another on in '07 --

18 A. No, there shouldn't have been -- '07?

19 Q. Yeah.

20 A. That's I think for the chock block.

21 Q. Okay.

22 A. For wheels chucks or wheel chocks.

23 Q. Yup.

24 A. Okay. That's --

25 Q. All right.

1           So one occurred in -- let me just get this  
2 straight. One occurred in '02?

3 A. Correct. Like it's showing here and then one --

4 Q. With Mr. Lopez?

5 A. Yes, and then --

6 Q. One occurred in '03?

7 A. Correct.

8 Q. With Mr. Bunch?

9 A. Correct.

10 Q. Is that what you're saying?

11 A. Yes, as far --

12 Q. And then there was another one and that was -- the  
13 second one was the three-day suspension?

14 A. Second one was a three-day suspension.

15 Like the one you asked me about the third time?

16 Q. Yeah.

17 A. That had nothing to do with any --

18 Q. Workplace violence?

19 A. -- workplace violence, no.

20 Q. No, but it was --

21 A. No and that's a safety issue.

22 Q. Safety issue.

23 A. That's what that --

24 Q. And that was one day?

25 A. Correct.

1 Q. Okay.

2 Have you had any other disciplines beside that,  
3 sir?

4 A. Yeah, I got a -- well, what they call a written  
5 warning.

6 Q. Okay. For?

7 A. Same thing, chock blocks. It's a --

8 Q. A safety issue?

9 A. Correct. But other than --

10 Q. And when was that?

11 A. Last year.

12 Q. Last year. Okay.

13 And so you didn't get any suspension?

14 A. No.

15 Q. Okay.

16 So although you had already been warned about the  
17 safety issue the second time, you got a warning, not a  
18 suspension?

19 A. Because how they do it at the State is after 18  
20 months I can go back to Human Resources or Personnel  
21 and I can have -- if I stay out of trouble, I can have  
22 -- go back to Resources and ask to have that removed  
23 for anything for like a written warning. Suspensions  
24 stays in your -- I was told, stays in your file as long  
25 as you work there.

1 Q. Just a moment.

2 You were accused in that second incident involving  
3 Mr. Bunch of using an obscenity, is that correct?

4 A. Yes. I told you that.

5 Q. Yes. Okay.

6 Just a moment, sir, I'm just going to -- making  
7 sure that I've covered everything with you.

8 The obscenity remark directed toward Mr. Bunch,  
9 but was stated to your supervisor and another  
10 individual that wasn't the heat of the moment, was it?  
11 You said that because you meant it, isn't that correct?

12 A. No, I was angry at the time.

13 Q. You were angry why?

14 A. 'Cause of something that went down that I didn't  
15 care for.

16 Q. Okay.

17 A. And --

18 Q. Did it involve Mr. Bunch?

19 A. That and a lot of things that were going on with  
20 the garage.

21 Q. Okay.

22 But you had time to think about it and you sat  
23 down and you said what was on your mind, isn't that  
24 correct?

25 MR. JORDANO: Objection --

1 THE WITNESS: No, this --

2 MR. JORDANO: -- it's been asked and  
3 answered.

4 THE COURT: I'll allow it.

5 BY MR. PHILPOT:

6 Q. You can answer.

7 A. No, because I went in and talked with the  
8 supervisor at that point. He says come on into my  
9 office and we sat down and we were talking and I'll --

10 Q. Okay.

11 And you were talking and he was trying to what,  
12 cool you off?

13 A. Yes.

14 Q. Okay.

15 And you had already received a discipline for a  
16 racial slur just two years before, isn't that correct?

17 A. A year before according to this.

18 Q. A year before? Okay.

19 A. A year before, yes.

20 Q. And so you knew that any words directed at co-  
21 workers may have consequences, isn't that correct?

22 A. Yes.

23 Q. Okay. Sir, thank you.

24 THE COURT: Mr. Jordano.

25 CROSS-EXAMINATION

1 BY MR. JORDANO:

2 Q. So that maintenance garage is kind of a rough and  
3 tumble place, huh?

4 A. They all are. They all are.

5 Q. Now, let me ask you this, has it been your  
6 experience that in the maintenance garage -- now, I  
7 assume that there's both men and women who work in the  
8 maintenance garage?

9 A. Correct.

10 Q. All right.

11 But that it's a place where -- what do I want to  
12 say -- people kind of -- I can't think of the right  
13 word -- they kind of let it hang out when it comes to  
14 their language? I mean people aren't hesitant to put  
15 into graphic detail what's on their mind?

16 MR. PHILPOT: Objection about people.

17 MR. JORDANO: Well, co-workers.

18 MR. PHILPOT: You can talk about him.

19 THE WITNESS: Co-workers; yes, sir.

20 BY MR. JORDANO:

21 Q. Well --

22 A. So --

23 THE COURT: So I'll let him talk about the  
24 rest (unintelligible).

25 BY MR. JORDANO:

1 Q. Let me ask you this, have other co-workers used  
2 obscenities in your presence?

3 A. Oh, yes. Where it's 90 percent male and, you  
4 know, there are some women, yeah, now, and people say  
5 things --

6 Q. And would you --

7 A. -- all the time. It's -- it'd be kind of a boring  
8 world if --

9 Q. Well, let me put it this way --

10 A. -- things weren't, you know, I mean I'm not -- I  
11 shouldn't say boring, but people say things --

12 Q. Let me ask you this, would it be a fair statement  
13 that people's language in the maintenance garage is not  
14 exactly pristine?

15 A. Yes, I would say that.

16 Q. All right.

17 A. Yeah.

18 Q. That when people are angry, you tend to know about  
19 it --

20 A. People say things, yeah.

21 Q. Okay. All right.

22 A. All right?

23 Q. And if they're not pleased with something whether  
24 it be a work assignment or what someone's doing, they  
25 may tell you --



1 A. You voice your opinion.

2 Q. -- what --

3 A. That's what I do. I'm sorry, that's what I do.

4 Q. All right.

5 A. That's me.

6 Q. All right. All right.

7 And you've seen that with others?

8 A. Yes.

9 Q. All right.

10 And so none of these incidents that we're talking  
11 about here, the two racial slurs, none of them deal  
12 with you doing something off property, going to try to  
13 find someone to physically confront them off state  
14 property, does it?

15 A. No.

16 Q. And none of it dealt with you asking about whether  
17 or not you could keep your job if you went and did  
18 something like -- these are all on the site kind of the  
19 heat of the moment things, right?

20 A. Yes. Yes.

21 Q. Bad judgments certainly --

22 A. Yes.

23 Q. -- express what you're thinking, correct?

24 A. Yes. Exactly.

25 Q. All right.

1           And second one about with your supervisor you're  
2 upset and you give him your opinion and someone  
3 overhears it and they're offended?

4       A.     Correct.

5       Q.     Is that a fair statement?

6       A.     That's a fair statement.

7       Q.     And the chock blocks is -- there are certain  
8 safety procedures that DOT requires and OSHA requires  
9 with trucks that carry weight and stuff and the chock  
10 block is designed to keep the wheels from rolling back  
11 or rolling forward, that a fair statement?

12      A.     Yes.

13      Q.     And on one occasion you didn't put the chock block  
14 where you should have and there was concern and that  
15 where you received the suspension -- it had nothing to  
16 do with threatening anybody --

17      A.     No.

18      Q.     -- or anything like that?

19      A.     No.

20      Q.     And the other one you got the warning reminding  
21 you of the importance 'cause it seems like on  
22 occasion --

23      A.     We all forget.

24      Q.     --you forget the chock block stuff?

25      A.     We all forget, you're tired. Even you're human.

1 Q. Is that --

2 A. People are human.

3 Q. -- fair statement, sir?

4 A. Yes, sir.

5 Q. But those didn't deal with violence toward a  
6 co-worker at all?

7 A. No.

8 Q. The chock blocks?

9 A. No.

10 Q. And you didn't indicate you wanted to physically  
11 confront Mr. Lopez or Mr. Bunch or anything like that?

12 A. No, I did not.

13 Q. All right.

14 MR. JORDANO: Nothing further. Thank you.

15 MR. PHILPOT: Nothing further of Mr. Bates.

16 THE COURT: You're excused from the subpoena.

17 (Witness excused.)

18 THE COURT: Let me straighten out a record  
19 here because these are Exhibit for identification.  
20 When Mr. Caserta was about to leave the stand, I forget  
21 which Counsel it was, but somebody said well, Mr.  
22 Caserta, your warning, Exhibit 46, was signed by Arpin  
23 or Seldon and he agreed with that. Actually that's not  
24 a correct statement. It was Exhibit 40 that Astarita  
25 warning was signed by Arpin for Seldon. Exhibit 46 was

1 signed by a woman (sic) whose name you haven't heard  
2 today, Michelle (sic) Pancallo P-a-n-c-a-l-l-o,  
3 Personnel Administrator in 2002 and the other one in  
4 1993. They were both signed by her.

5 MR. PHILPOT: And that person was at or was  
6 with the HR Department of DOT, is that correct, Your  
7 Honor?

8 THE COURT: Yes, they're all HR people who  
9 signed these things.

10 Okay. We'll take a 30 minutes. You brought  
11 you lunch today, did you?

12 All right. We'll take 30 minutes.

13 (Jury out at 12:27 p.m.)

14 THE CLERK: The Honorable United State  
15 District Court is now in recess.

16 (Lunch Recess at 12:27 p.m., until 1:12 p.m.)

17 THE CLERK: The Honorable United States  
18 District Court is now open after recess.

19 THE COURT: Okay. Bring them in.

20 (Pause.)

21 (Jury in at 1:13 p.m.)

22 THE COURT: Okay. Good afternoon. We're  
23 ready to go.

24 MICHAEL SANDERS, PLAINTIFF'S WITNESS, SWORN

25 THE CLERK: You can be seated. Please state

1 your name, spell your last name, and your city for the  
2 record.

3 THE WITNESS: Michael Sanders, S-a-n-d-e-r-s.  
4 City of residence or work?

5 THE COURT: Whatever you prefer.

6 THE WITNESS: Well, work in Newington,  
7 Connecticut.

8 THE CLERK: Thank you.

9 DIRECT EXAMINATION

10 BY MR. PHILPOT:

11 Q. Good afternoon, Mr. Sanders. You currently work  
12 where, sir?

13 A. I work for the Connecticut Department of  
14 Transportation.

15 Q. In what capacity?

16 A. I'm Transit Administrator in the Bureau of Public  
17 Transportation.

18 Q. And you have held that position, Mr. Sanders, for  
19 how long?

20 A. Almost 17 years.

21 THE COURT: Well, wait a minute. Now, let's  
22 figure this out. He's not --

23 (Pause.)

24 MR. JORDANO: He's not on their list, Your  
25 Honor.

1 THE COURT: No, I -- that's what I say and  
2 he's no longer a Defendant.

3 MR. JORDANO: No.

4 THE COURT: I suppose on the theory that he  
5 was a Defendant, I can allow him to testify.

6 Any objection?

7 MR. JORDANO: Can I have just a moment, Your  
8 Honor?

9 I assumed he was not going to be called when  
10 I got their amended list. I was going to call him in  
11 my case only.

12 THE COURT: Well, as long as you're going to  
13 call him in your case --

14 MR. JORDANO: Yeah.

15 THE COURT: -- let's put him on now --

16 MR. JORDANO: Yeah.

17 THE COURT: -- and cover him completely.

18 MR. JORDANO: I agree.

19 THE COURT: Okay.

20 MR. PHILPOT: And we did notify the Defendant  
21 that we did intend to call him so --

22 THE COURT: Well, I just wanted the Court to  
23 be notified. Okay. Go ahead.

24 MR. PHILPOT: I think you got inadvertently  
25 dropped off in some of the amended; that's what

1 happened. Okay.

2 BY MR. PHILPOT:

3 Q. Would you briefly describe your education, sir?

4 A. I have a Bachelors of Arts in Geography from  
5 Bennington University in New York; a Masters of Arts in  
6 Geography from Bennington University in New York; and a  
7 Masters in Business Administration from Pace University  
8 in New York.

9 Q. Would you describe, sir, what you do as Transit  
10 Administrator for DOT for the last 17 years?

11 A. Our office is responsible for overseeing all of  
12 the service contracts for bus services, para-transit  
13 van services for the disabled, ridesharing activities,  
14 marketing, some service planning activities, and then  
15 also overseeing the Office of Regulatory and Compliance  
16 that regulates taxi, livery, and motorbus in the State.

17 Q. To whom do you report?

18 A. I report to the Bureau Chief.

19 Q. And who is that?

20 A. James Redeker.

21 Q. Okay.

22 A. R-e-d-e-k-e-r.

23 Q. Okay.

24 And how long have you reported to him?

25 A. Since he started working, which was January of

1 '09.

2 Q. And he's the Bureau Chief of what?

3 A. Bureau Chief of the Bureau of Public  
4 Transportation.

5 Q. Okay.

6 Who is current Commissioner?

7 A. Oh, sorry; I'm really drawing a blank. Jeffrey  
8 Parker. Sorry.

9 Q. Okay.

10 And you're drawing a blank because he's only been  
11 in that position for a short amount of time?

12 A. He's been in about six or seven months.

13 Q. Okay.

14 Is it true that over the last ten years, the  
15 Department of Transportation has had nine  
16 Commissioners?

17 A. I don't know if nine's the right number, but  
18 several, yes.

19 Q. Isn't it more than several?

20 A. Well, I'd have to count them up. I don't --

21 Q. Oh, well then for the last ten years, isn't it  
22 more than three --

23 MR. JORDANO: Objection, relevancy.

24 THE COURT: Yeah, why do we care?

25 BY MR. PHILPOT:



1 Q. Is Ms. McKinney an employee within your unit?

2 A. Yes, she is.

3 Q. Okay.

4 And how many reports direct -- how many  
5 individuals are under your supervision, sir?

6 A. I think last time I counted it was 31.

7 Q. Who is Dennis Jolly?

8 A. Dennis Jolly is a Transit Manager in our office.

9 Q. Okay. And does he report to you?

10 A. He's a direct report to me, yes.

11 Q. Okay.

12 Was there a time where Dennis Jolly supervised Ms.  
13 McKinney?

14 A. Yes.

15 Q. Directly?

16 A. Yes.

17 Q. Was that in or about '05/'06?

18 A. In that time period he supervised her, yes.

19 Q. Okay.

20 And that went up through April of '06, is that  
21 correct, and then her supervisor changed, is that  
22 correct?

23 A. I believe it was March 31st, '06 was the date of  
24 the change, yes.

25 Q. Okay.

1           And change -- the change of supervisor was whom?

2           A.     Well, Dennis Jolly had been a supervising  
3           Transportation Planner. He got promoted to a Transit  
4           Manager in December of '05; and then a promotional or  
5           well an opening to replace him, we conducted interviews  
6           to replace him in his former position.

7                     MR. PHILPOT: May I approach the witness,  
8           Your Honor?

9                     THE COURT: Sure.

10           BY MR. PHILPOT:

11           Q.     So, Mr. Sanders, I asked you to take a look at  
12           what has been marked as Exhibit 2.

13                     Exhibit 2, you see that?

14           A.     Yes, I do.

15           Q.     Okay.

16                     And the first email at the bottom of the page is  
17           from Dennis Jolly, is that correct?

18           A.     That's correct.

19           Q.     And it's to Kathleen Karwick?

20           A.     Yes.

21           Q.     As well as -- would you pronounce that name,  
22           Nancy?

23           A.     Malinguaggio.

24           Q.     Okay.

25                     And who is she?

1 A. She's an employee in Human Resources.

2 Q. HR?

3 A. Yes.

4 Q. Okay.

5 Now, would you read aloud this email, please? "I  
6 recall --"

7 MR. JORDANO: Objection, the exhibit speaks  
8 for itself.

9 THE COURT: Yeah, why does this -- well, you  
10 got it. You all got the Exhibit. Just look at Exhibit  
11 2.

12 MR. PHILPOT: Oh, okay. Do you have any  
13 objection, Your Honor, to me reading it?

14 THE COURT: Well, the jury can read it.

15 MR. PHILPOT: Right. I understand.

16 MR. JORDANO: What's the question?

17 THE COURT: But you can call his attention to  
18 whatever it is you want to call his attention to.

19 MR. PHILPOT: Oh, all right. Okay. Fine.

20 BY MR. PHILPOT:

21 Q. Sir, Mr. Jolly is indicating to Kathleen and Nancy  
22 that he does recall there being a situation where Ms.  
23 McKinney complained about bullying by Tylum, you see  
24 that?

25 MR. JORDANO: Objection. Mischaracterizes --

1 MR. PHILPOT: That's why I wanted to read it.

2 THE COURT: Well, let's let him comment on  
3 it. He's read it now, let him testify as to what it  
4 says.

5 THE WITNESS: It is an email talking about  
6 bullying and Ms. McKinney.

7 BY MR. PHILPOT:

8 Q. Okay.

9 And that she thought that it was bullying then she  
10 should pursue it through her supervisor, Jim, or  
11 directly with Personnel, is that correct, it says at  
12 the end of it?

13 A. Yes, it does.

14 Q. But in February or March of '06, Jim wasn't  
15 McKinney's supervisor, was he?

16 A. No.

17 Q. The supervisor was actually Jolly, isn't that  
18 correct?

19 A. I believe Dennis is writing a letter -- a memo in  
20 December of '06 recollecting something in the past --

21 THE COURT: Well, I think rather than our  
22 speculating, I think we should wait for Jolly and ask  
23 him about this.

24 MR. PHILPOT: But I'm not --

25 THE COURT: You don't know why he wrote this

1 the way he did.

2 MR. PHILPOT: I'm not asking why he wrote it,  
3 Judge. That's not what I'm asking, it's time --

4 THE COURT: Let's get Jolly to --

5 MR. PHILPOT: I'm not asking Jolly anything,  
6 Your Honor, about this.

7 MR. JORDANO: Objection --

8 MR. PHILPOT: I'm asking --

9 THE COURT: Well, that's up to you, but --

10 MR. PHILPOT: That's right. It is.

11 THE COURT: -- Jolly's the only person who  
12 can tell why he wrote this.

13 MR. PHILPOT: I didn't ask why he wrote it.

14 THE COURT: Well, but --

15 MR. PHILPOT: I'm asking --

16 THE COURT: -- the Exhibit's in evidence.  
17 You don't have to ask anything except about what it  
18 says because the jury can read it. This guy can read  
19 it. You can read it. I can read it.

20 I'm not going to let him interpret it.

21 MR. PHILPOT: I'm not asking --

22 THE COURT: So what we going to gain?

23 MR. PHILPOT: Your Honor, with all due  
24 respect, I'm not asking for interpretation. I'm --

25 THE COURT: What do you want me to do?

1 MR. PHILPOT: -- I'm asking for time frames.  
2 That's the issue.

3 THE COURT: Well, everybody's admitted that.  
4 Jim was not his -- we don't know why Jolly wrote this  
5 the way he did, but Jim was not the supervisor back in  
6 February and March. Everybody agrees on that.

7 BY MR. PHILPOT:

8 Q. So, Mr. Sanders, the irony is that actually the  
9 person who Ms. McKinney should have reported any  
10 bullying to was the person that she did, who was Dennis  
11 Jolly, isn't that correct?

12 A. I'm not sure so I'd say irony, but --

13 Q. Oh, it's not --

14 A. -- he made a claim towards a certain time frame  
15 and you have to determine from him whether --

16 THE COURT: Yeah, the only person that can  
17 testify --

18 THE WITNESS: -- whether that was accurate or  
19 not.

20 THE COURT: -- about this is Jolly.

21 THE WITNESS: Yeah.

22 THE COURT: I'm not going to have him impeach  
23 Jolly. Let Jolly do that himself.

24 MR. PHILPOT: It's not offered for that  
25 reason, Your Honor.

1                   Okay. But I'll move on.

2 BY MR. PHILPOT:

3 Q. Jolly was her supervisor during the time frame  
4 when this complaint was made that he's referencing,  
5 isn't that correct?

6                   MR. JORDANO: Objection --

7 BY MR. PHILPOT:

8 Q. March/February --

9                   MR. JORDANO: -- objection --

10 BY MR. PHILPOT:

11 Q. -- of '06, isn't that correct?

12                   MR. JORDANO: -- objection, it  
13 mischaracterizes the testimony. He didn't say it was a  
14 complaint.

15                   THE COURT: Well, all right.

16                   MR. PHILPOT: He --

17                   THE COURT: You listen to the witness's  
18 answer, not the question.

19                   MR. PHILPOT: Right.

20 BY MR. PHILPOT:

21 Q. The word bullying is used, isn't it?

22 A. Yes.

23 Q. Oh, okay. All right.

24                   And during the time that he acknowledges this  
25 issue coming up by Ms. McKinney to him, he was her

1 supervisor, isn't that correct, Dennis Jolly?

2 A. If a complaint came up during February or March --

3 Q. Yes.

4 A. -- Dennis would have been her direct supervisor.

5 Q. Absolutely. Thank you.

6 You are -- how long has Ms. McKinney worked in  
7 your unit?

8 A. She was there when I got there in 1994.

9 Q. A long time?

10 A. Yes.

11 Q. Okay.

12 And so you pretty much are familiar with her work  
13 product and her job performance, is that correct?

14 A. Pretty much familiar? I'm --

15 Q. Well, very.

16 A. -- fairly familiar with what goes on in the unit  
17 and fairly familiar with her work product, but she  
18 doesn't report directly to me, so I don't see her day-  
19 to-day work product.

20 Q. Absolutely. I do understand that. Okay.

21 Did you ever indicate to me that before she  
22 reported to Dennis Jolly that her service ratings were  
23 good or better, do you recall that?

24 A. I --

25 Q. She started reporting to Jolly in or about '06 or



1 -- '05 or thereabouts directly --

2 A. Well, she --

3 Q. -- before that, did you ever say to me under oath  
4 that before she started to report to Jolly her service  
5 ratings were good or better?

6 A. I suspect that in prior depositions that I said  
7 that my awareness of service ratings from her were good  
8 or better, yes.

9 Q. Okay.

10 Before she reported to Jolly?

11 A. Well, she reported to Jolly during most of that  
12 time period probably. It was only when Dennis was  
13 promoted and an employee was put in between them that  
14 she wouldn't have reported to him and that was for some  
15 number of years. I don't know exactly when she might  
16 have started reporting to him when he was Supervising  
17 Planner.

18 Q. Very good.

19 You are aware of this incident that we call the  
20 oatmeal incident that occurred on or about December 8th  
21 of 2005?

22 A. I am.

23 Q. Okay.

24 Would you describe for the Court and members of  
25 the jury what you remember?

1 A. All right as a little context we had an employee  
2 in the Regulatory and Compliance Unit who was out on  
3 some kind of extended sick leave. She had a file  
4 cabinet where we had files pending --

5 Q. Was that Ms. Martires?

6 A. Yeah, that's Ms. Martires.

7 Q. All right.

8 A. She kept certain work files in a file cabinet that  
9 was locked when she was left -- when she had left. We  
10 had a little bit of -- a couple of days before that we  
11 had gotten a call from a customer, somebody that was  
12 interested in checking the status of their application  
13 to either run a taxi or livery company, and we couldn't  
14 get into the files called pending files because they  
15 were locked in the cabinet; and none of us had a key.  
16 So on that day, I believe it was December 8th, that  
17 you're talking about, on that day Lisa Tylum, who was  
18 the supervisor of the Regulatory Unit, who had been  
19 trying to access that file, we'd been trying to find  
20 ways to access that file a couple of days prior --

21 Q. Well, let me ask this question when you say that.

22 Mr. Sanders, did you ever try to call her?

23 A. I think you're getting ahead of the story, but --

24 Q. Well, no, no, when you say --

25 A. -- we did --

1 Q. Let me just ask the question, sir. You said that  
2 you -- a couple days before that we're trying to access  
3 the file.

4 Did you ever in those couple days before the  
5 incident attempt to call her?

6 A. No, we did not.

7 Q. Okay.

8 Now, is it that you don't have her phone number or  
9 HR did not have her phone number if you --

10 A. Well, if I didn't try it was I didn't know at the  
11 time. We didn't really think about calling her until  
12 the 8th.

13 Q. Okay. Okay.

14 So you were trying to access it, but it never  
15 occurred to anyone to try to call her, is that what  
16 you're saying?

17 A. I don't know if it never occurred to anyone, but  
18 we hadn't tried to call prior.

19 Q. Okay. All right. Fine. Go ahead.

20 A. That morning Lisa Tilum, who was the supervisor of  
21 the Regulatory Unit that Ms. Martires worked in, came  
22 down to my office, said something to the effect of  
23 Daphne has the key to the file cabinet, you know, come  
24 up with me and -- so we went up to the area and Daphne  
25 indeed was waiting by the file cabinet, which is in a

1 separate cubicle that was Ms. Martires's cubicle, and  
2 if anything I think we were probably excited that oh,  
3 good, somebody's got the key, let's see if -- you know,  
4 let's get in there. We asked Ms. McKinney to give us  
5 the key or to open the cabinet. She resisted that  
6 request and a morning of events transpired after that.

7 Q. You were not there when she first as you put it  
8 resisted that request, is that correct, you weren't  
9 there --

10 A. Well, I don't know if she resisted a request from  
11 Ms. Tulum before Ms. Tulum came down to me, but I know  
12 once I went up there --

13 Q. Yes.

14 A. -- with Ms. Tulum, Ms. McKinney was resistant to  
15 giving us the key --

16 Q. Did she --

17 A. -- or opening the cabinet.

18 Q. -- did she indicate to you that she wanted it in  
19 writing to -- that you wanted the personal keys of Ms.  
20 Martires?

21 A. Well, there's two questions in there. First of  
22 all, it was couple hours later that she said anything  
23 about if I'm going to give it to you it has to be in  
24 writing; and we never really had any interest in  
25 getting Ms. Martires's personal keys.

1 Q. Okay.

2 They were one in the same, weren't they, they were  
3 on the key chain?

4 A. Well, there were many keys on the key chain. I  
5 don't really care about other --

6 Q. Sure.

7 A. -- I just wanted the key to the file cabinet.

8 Q. All right. Okay. Fine.

9 There came a point in time where Ms. Karwick was  
10 contacted, isn't that correct?

11 A. Yes.

12 Q. Okay.

13 And did Ms. Karwick attempt to call Ms. Martires,  
14 if you know?

15 A. I'm not aware.

16 Q. Okay.

17 And ultimately as a result of Ms. Karwick  
18 intervening, Ms. McKinney did provide the keys, isn't  
19 that correct?

20 A. Yes, by about noon of that day, Ms. McKinney had  
21 expressed the desire that if she got us something in  
22 writing that asked for the keys, she would surrender it  
23 and she did indeed get something in writing from Ms.  
24 Karwick and she surrendered the key.

25 Q. Okay. All right. Did --

1 A. Or at least unlocked the file cabinet. I'm not so  
2 sure she surrendered the key, but she at least unlocked  
3 the file cabinet.

4 Q. So you don't know?

5 A. I don't know if she surrendered the key.

6 Q. Okay. All right.

7 Did you ever indicate to Ms. McKinney that unless  
8 you got some cooperation that she -- you were going to  
9 hold Ms. Martires's paycheck?

10 A. Yes, I did.

11 Q. Okay.

12 Did anyone ever discuss that manner of dealing  
13 with that issue with you?

14 A. I'm not sure I understand the question.

15 Q. Were you ever issued a warning that it was  
16 improper to hold an employee's check because of  
17 anything that occurred within the workplace?

18 A. I didn't have to be issued a warning, I knew that  
19 I really couldn't do it anyway.

20 Q. Okay.

21 A. And that --

22 Q. But you said it nonetheless?

23 A. Well, I said it nonetheless because we had asked  
24 if someone would contact Ms. Martires. In fact I  
25 believe we asked Ms. McKinney if she would contact Ms.

1 Martires. She said no; and until we got some  
2 cooperation, I had made the threat knowing that in the  
3 end I've been in this public service long enough to  
4 know that it was an empty threat that I couldn't carry  
5 out anyway.

6 Q. Okay.

7 So it was, as you put it, an empty threat? Is  
8 that correct?

9 A. Yes. I would say it's something that I knew I  
10 couldn't execute in the end.

11 Q. An empty threat. Okay.

12 A. Well, it's --

13 Q. Is it fair to say that from that point on, you  
14 began to hear of difficulties between Ms. McKinney and  
15 Ms. Tillum?

16 A. It didn't necessarily start at that point, but  
17 that certainly didn't help the situation. Things  
18 didn't get better after that.

19 Q. Did you become aware in April of 2006 that Ms.  
20 McKinney had made a complaint about being bullied by  
21 Tillum; April 2006?

22 A. Yes, I'm aware that she made comments to Mr. Stutz  
23 about behavior of Ms. Tillum.

24 Q. Okay. And did you, Mr. Sanders, ever follow up on  
25 that issue, the fact that Ms. McKinney, an employee

1 within your unit, was complaining about problems she  
2 was having with another one of your supervisors?

3 A. We have a very explicit policy for complaints like  
4 that. The first step is handling it through your  
5 supervisor and if your -- and your supervisor can  
6 handle it in ways that they choose that they think are  
7 effective, but you also then can go to Human Resources  
8 to pursue a claim like that.

9 Q. And that policy requires the next level supervisor  
10 to issue an incident report, isn't that correct, about  
11 that complaint?

12 A. I am not aware of that, no.

13 Q. Okay.

14 Is that supervisor required to investigate?

15 A. The supervisor is empowered to handle the comment  
16 in a way that they feel is suitable and I believe Mr.  
17 Stutz from -- had handled that by also consulting with  
18 HR on the issue.

19 Q. Okay.

20 I'm going to refer you to Exhibit Number 9, which  
21 is already in evidence.

22 A. Am I allowed to look it up in the book?

23 Q. Yeah, absolutely.

24 A. Okay.

25 Q. That's why you have it. Exhibit Number 9.



1 THE COURT: Nine's not in evidence.

2 MR. JORDANO: No, 9's not in evidence, Your  
3 Honor.

4 THE COURT: You want to put it in?

5 MR. PHILPOT: Oh, okay. I apologize.

6 We're going to -- I -- we offer it, Your  
7 Honor.

8 May we offer it, Your Honor?

9 THE COURT: Okay. Nine's the Personnel --  
10 that's the 81-16B. We have a copy of that regulation,  
11 but we don't seem to have it in Number 9. Let's put  
12 Number 9 in.

13 It is in Number 8, that's where we got it.

14 THE WITNESS: Yeah.

15 THE COURT: It's in Number 8, but now it's  
16 also in -- well, this is B, this is not A.

17 MR. PHILPOT: Right. Exactly.

18 THE COURT: Okay.

19 MR. PHILPOT: That's why we want it, Your  
20 Honor.

21 THE COURT: Okay.

22 MR. PHILPOT: Okay.

23 MR. JORDANO: Your Honor? Your Honor? Just  
24 so we're clear for a second, I thought Number 9 was out  
25 because it was not -- this may not have been in effect

1 at the time if you look at the date.

2 THE COURT: Well, I'll let the -- we have a  
3 proper witness on, so let's --

4 MR. JORDANO: Maybe, Your Honor.

5 THE COURT: -- let's let him explain that and

6 MR. PHILPOT: Thank you.

7 THE COURT: -- tell us what its applicability  
8 was, if any, at the time.

9 BY MR. PHILPOT:

10 Q. Okay. Number 9 --

11 MR. JORDANO: Excuse me, Your Honor --

12 BY MR. PHILPOT:

13 Q. -- under supervisors, do you see that?

14 MR. JORDANO: -- excuse me, Your Honor, I  
15 believe Number -- Your Honor?

16 Number 10 I believe we already have in  
17 evidence as the applicable policy.

18 MR. PHILPOT: Well, okay. May I ask the  
19 question. We -- it's already been admitted, Your  
20 Honor.

21 THE COURT: Yeah, I see what you mean. We  
22 have Exhibit 10 was admitted. Let the witness explain  
23 all this.

24 MR. PHILPOT: Right.

25 MR. JORDANO: If he knows.

1 MR. PHILPOT: Okay.

2 MR. JORDANO: If not --

3 BY MR. PHILPOT:

4 Q. Under supervisors, do you see that paragraph?

5 A. I do.

6 Q. Okay.

7 And this is dated reissued 1998, is that correct,  
8 of April?

9 A. It does.

10 Q. Okay.

11 Under supervisors, it says must document the  
12 incident based on information obtained, is that  
13 correct?

14 A. Yes.

15 Q. Okay. So --

16 THE COURT: There's got to be something wrong  
17 with this. Your memo --

18 MR. PHILPOT: It's not mine.

19 THE COURT: I don't understand it. Maybe the  
20 jury does.

21 MR. PHILPOT: It's not mine. Yeah. All  
22 right.

23 THE COURT: No, I say Sanders's memo is dated  
24 December 6, 1996.

25 THE WITNESS: That's --

1 MR. PHILPOT: That's --

2 THE WITNESS: -- that's another Sanders;  
3 unrelated.

4 MR. PHILPOT: That's Fred Sanders as opposed  
5 to Michael.

6 MR. JORDANO: Different person, Your Honor.

7 THE COURT: Oh, I thought this was the  
8 Sanders we were going to --

9 MR. JORDANO: No --

10 UNIDENTIFIED FEMALE: No.

11 MR. JORDANO: -- no, sir, Your Honor.

12 THE WITNESS: No, no.

13 THE COURT: All right.

14 MR. PHILPOT: Okay.

15 THE COURT: So maybe I shouldn't be so quick  
16 to let 9 in. I thought I was letting in because  
17 Sanders was on the stand.

18 MR. PHILPOT: Well, this -- yeah, that's  
19 Personnel Administrator. It says his title right under  
20 his name. Right? Personnel Administrator?

21 MR. JORDANO: But it's not in effect at the  
22 time, Your Honor, if you look at 10; 10 superseded  
23 that.

24 THE COURT: Yeah, my point is that I don't  
25 know how he could write a memo in '96 about a

1 memorandum that was issued -- I guess it had to be  
2 issued and then reissued --

3 MR. PHILPOT: It was reissued.

4 THE COURT: -- in 1998, but I would think we  
5 probably ought to go with 10.

6 MR. PHILPOT: Okay.

7 THE COURT: If he doesn't know anything about  
8 9 --

9 BY MR. PHILPOT:

10 Q. Do you --

11 THE COURT: -- well I thought we were dealing  
12 with the Sanders.

13 MR. PHILPOT: Okay. I understand. I'll just  
14 ask this question if Your Honor just to -- for some  
15 continuity sake.

16 BY MR. PHILPOT:

17 Q. Were you aware of 80-16B as stated in Exhibit 9?

18 A. In the time frame that existed there, yes.

19 Q. Okay. And then it was reissued or revised in  
20 2005, isn't that correct?

21 A. That's correct.

22 Q. Which is Exhibit 10?

23 A. That's correct.

24 Q. Isn't that correct?

25 A. That's correct.

1 Q. Okay.

2 And then under supervisors, there's a section for  
3 supervisors at the bottom of the page on 10, Exhibit  
4 10, you see that?

5 A. You mean the paragraph that starts, in addition to  
6 the above?

7 Q. That's right.

8 A. Yes.

9 Q. Okay.

10 It says contact their next level supervisor and  
11 Human Resource Officer immediately, you see that?

12 A. Yes.

13 Q. And that -- this is not employees as is referenced  
14 in the preceding paragraph, this has to do with what  
15 supervisors must do, isn't that correct?

16 A. Correct.

17 Q. Okay.

18 Now, in '05 and March -- up to March of '06,  
19 Dennis Jolly was Ms. McKinney's supervisor, isn't that  
20 correct?

21 We just talked about that.

22 A. Up until March 31st of '06, yes.

23 Q. Okay. Are you --

24 MR. JORDANO: Your Honor, objection,  
25 relevancy.

1 MR. PHILPOT: It has to do with --

2 MR. JORDANO: (unintelligible) termination  
3 here.

4 THE COURT: I can't tell so --

5 MR. PHILPOT: Okay.

6 BY MR. PHILPOT:

7 Q. So the issues is did, if you know, as -- because  
8 Jolly reported to you, isn't that correct?

9 A. That's correct.

10 Q. Did he ever issue to you any report regarding  
11 bullying complained of by McKinney relative to Tilum?

12 A. He did not and the reason for that is the  
13 chronology which is his recollection in December of '06  
14 of when the incident took place was not correct. The  
15 incident was first made through Mr. Stutz in April of  
16 '06, as I think you asked a question about earlier, and  
17 in April of '06 Mr. Stutz was her supervisor and Mr.  
18 Stutz worked through his supervisor, Mr. Jolly, and HR.

19 Q. Are you saying that Mr. Jolly, if you know, never  
20 received a complaint from Ms. McKinney in  
21 February/March of 2006, is that what you're suggesting?

22 A. I --

23 MR. JORDANO: Objection, relevancy.

24 MR. PHILPOT: Well, he just --

25 MR. JORDANO: (unintelligible) judgment

1 ruling.

2 THE COURT: Well, I think it would go back to  
3 Exhibit 2 so --

4 MR. PHILPOT: Right.

5 BY MR. PHILPOT:

6 Q. Go --

7 A. And I'm not aware of Mr. Jolly receiving a  
8 complaint in February or March of '06.

9 Q. Okay.

10 So let me just ask this, if he had received a  
11 complaint as his email suggests and he was her  
12 supervisor, under the policy that was in effect at the  
13 time, you would have been required to receive a report  
14 about that, isn't that correct?

15 A. If he had received a complaint --

16 Q. Yes.

17 A. -- in that broad two-month time frame that he  
18 specifies ten months later --

19 Q. Yeah.

20 A. -- in December of '06 and he did not report that  
21 through me then it would have been a violation, yes.

22 Q. Okay.

23 MR. JORDANO: Your Honor, objection,  
24 relevancy. In the summary judgment ruling, page 33 of  
25 your ruling, it dealt with this issue.



1 MR. PHILPOT: No, it did not.

2 MR. JORDANO: (unintelligible) --

3 MR. PHILPOT: We claim it, Your Honor.

4 Clearly it has to do with --

5 MR. JORDANO: May --

6 THE COURT: I'm going to go look at page 33  
7 of my ruling on summary judgment.

8 MR. PHILPOT: That's --

9 THE COURT: See what that's all about.

10 MR. PHILPOT: Yeah. It has to do with  
11 notice, Your Honor.

12 THE COURT: Here it is. Let's see. Here's  
13 my Memorandum of Decision. Page 33?

14 MR. JORDANO: Yes, 33. It begins on 32,  
15 bottom of 32 on the HOSTILE WORK ENVIRONMENT claim, if  
16 you look it goes onto the top of 33.

17 THE COURT: Well, wait a minute now this is  
18 my ruling on the hostile work environment.

19 MR. JORDANO: Right. And that --

20 THE COURT: What's that got to do with this?

21 MR. JORDANO: It does --

22 MR. PHILPOT: That's right. It -- that --

23 MR. JORDANO: The point is, you dealt with  
24 the fact of the allegedly inadequate handling of the  
25 claim of bullying; you dealt with that in the summary

1 judgments.

2 MR. PHILPOT: Your Honor, should this be --

3 MR. JORDANO: You already took care of it.

4 You dismissed it.

5 MR. PHILPOT: That's --

6 MR. JORDANO: And we're rehashing it here,

7 sir.

8 MR. PHILPOT: No, we're not. This has to --

9 THE COURT: You're not going into hostile  
10 work environment --

11 MR. PHILPOT: At all.

12 THE COURT: -- but I thought this --

13 MR. PHILPOT: This --

14 THE COURT: -- was dealing with the bullying  
15 of Tylum. Anything that deals with bullying by Tylum,  
16 I'm going to allow.

17 MR. PHILPOT: Okay. All right. Okay. Fine.

18 BY MR. PHILPOT:

19 Q. So it would have been a violation of the policy?

20 A. If Mr. Jolly had received a complaint in that time  
21 frame while he was my direct report, it would have been  
22 a violation, yes.

23 Q. And it also -- that policy, Number 10, also under  
24 what supervisors are required to do, it says document  
25 both the incident based on initial information from the

1 employee and a witness involved in supervisory response  
2 to the situation. It says document the supervisory  
3 response to the situation, is that correct?

4 A. Yes.

5 Q. Is that what it says?

6 A. Yes.

7 Q. Okay.

8 And if -- again, if he hadn't done that that would  
9 have been -- in terms of his -- documenting his  
10 response that would have been a violation of 80-16b,  
11 isn't that correct?

12 A. We're talking about a hypothetical here, but if an  
13 incident occurred in February or March that Mr. Jolly  
14 received a report on directly from the employee, then  
15 that would not have been in accordance with the policy  
16 in effect at the time.

17 Q. A violation of the policy?

18 A. It would -- well, I don't know what violation  
19 means in that context, but --

20 Q. I thought you just used it.

21 A. -- it would not have complied with the policy.

22 Q. Okay. Okay.

23 Now, I want to bring your attention to another  
24 thing.

25 (Pause.)

1 MR. PHILPOT: Just a moment, please.

2 (Pause.)

3 BY MR. PHILPOT:

4 Q. I want to refer your attention to Exhibit 4.

5 Would you read that to yourself, please? You see  
6 that?

7 A. I'm still reading.

8 Q. I apologize. Okay.

9 It uses the word bullying by -- she specifically  
10 uses the word bullying, is that correct?

11 A. (No verbal response)

12 Q. Third line down; beginning of the line.

13 A. Not in my copy.

14 Q. Okay.

15 Exhibit 4?

16 A. Exhibit 4.

17 Q. You looking at 4?

18 THE COURT: I'm getting very confused here.

19 I thought Brown or Jones or Smith was a common name,  
20 but is Sanders so common that there were three Sanders  
21 here?

22 MR. PHILPOT: No, this is Michael Sanders  
23 here.

24 THE COURT: It says Dennis M. Sanders. Oh --

25 MR. PHILPOT: No --

1 THE COURT: -- I see, it was Dennis A. Jolly.

2 MR. JORDANO: Right.

3 MR. PHILPOT: Yes.

4 THE COURT: It puts the last name, first.

5 MR. PHILPOT: That's right.

6 THE COURT: Michael Sanders.

7 BY MR. PHILPOT:

8 Q. This was sent to you, is that correct? You --

9 THE COURT: I got it.

10 MR. PHILPOT: Okay.

11 BY MR. PHILPOT:

12 Q. This was sent to you, Mr. Sanders, is that --

13 A. I don't see my name on it.

14 THE COURT: It's on it. The last name on it.

15 MR. PHILPOT: Let's make sure he's -- Your

16 Honor, may I approach?

17 THE WITNESS: Well, I only have -- oh,  
18 there's a -- no, I only have what looks like a second  
19 page.

20 THE COURT: Well, you looking at Number 4?

21 THE WITNESS: Oops -- sorry. Okay. That  
22 makes a big difference.

23 MR. PHILPOT: Yup.

24 THE COURT: It does indeed.

25 MR. PHILPOT: Yes.

1 BY MR. PHILPOT:

2 Q. Why don't you read that please to yourself?

3 Number 4.

4 A. Okay.

5 Q. Okay.

6 You received this?

7 A. Yes.

8 Q. It refers to bullying?

9 A. Yes.

10 Q. Okay.

11 This has to do with an investigation that was  
12 going on in the Regulatory and Compliance Unit, is that  
13 correct?

14 A. She's referring -- she's referencing an  
15 investigation that was ongoing in this, yes.

16 Q. Okay.

17 All right. And that was being conducted by David  
18 Maher and Dave Crowther (phonetic), is that correct?

19 A. Yes.

20 Q. Okay. And it has to do with statements that she  
21 made to them in February, February of '06, is that  
22 correct?

23 A. That's what this memo indicates, yes.

24 Q. Okay.

25 Mr. Sanders, you received it. Did you ever follow

1 up on this complaint?

2 MR. JORDANO: Objection to the  
3 characterization as a complaint. She asked for  
4 records, that's all.

5 BY MR. PHILPOT:

6 Q. Did you ever follow up on the fact that Ms.  
7 McKinney had notified Mr. Maher and Mr. Crowther  
8 (phonetic) that she was being bullied by Tylum?

9 MR. JORDANO: Objection to the  
10 characterization. Memo speaks for itself.

11 THE COURT: Well, she's asking for notes.

12 MR. PHILPOT: Yes.

13 BY MR. PHILPOT:

14 Q. Did you -- so notes concerning her complaint to  
15 them about bullying?

16 MR. JORDANO: Objection --

17 MR. PHILPOT: We claim it, Your Honor.

18 BY MR. PHILPOT:

19 Q. Did you ever follow up on this, sir? After  
20 having --

21 A. I --

22 Q. -- received a cubicle of this email?

23 A. This is five days after Exhibit 3 which I looked  
24 at erroneously, which was --

25 Q. I understand.

1 A. -- Mr. Stutz's report on it, so this was after the  
2 fact, after this had already been made aware to people.  
3 Mr. Stutz was already handling it from his prior  
4 emails. I didn't feel a need to further investigate  
5 this.

6 Q. Okay. Fine.

7 So you felt, Mr. Sanders, that this was already  
8 being handled by Mr. Stutz, is that fair?

9 A. Yes. The procedure under that personnel  
10 memorandum --

11 Q. Yes.

12 A. -- would be that the supervisor and the  
13 supervisor's supervisor, Mr. Jolly, would be handling  
14 this, yes.

15 Q. Okay.

16 So it should be handled by -- under this -- the  
17 current policy should be handled by Dennis Jolly and  
18 Mr. Stutz?

19 A. Correct.

20 Q. Okay. All right. Very good.

21 As far as -- you're familiar with the policy 80-  
22 16A, is that correct?

23 A. Is that what we just looked at or is that a  
24 different one?

25 Q. No, no -- Exhibit 8.



1 A. Exhibit 8.

2 Q. Exhibit 8. Exhibit 8 refers to what is called  
3 zero tolerance, you see that in the first paragraph,  
4 zero tolerance? You're familiar with this --

5 A. Yes.

6 Q. -- are you not? Okay.

7 Isn't it true that this policy, and you've told me  
8 before, that this policy includes threatening gestures?

9 A. (No verbal response)

10 Q. Second paragraph, third line.

11 A. Well, threatening acts, yes.

12 Q. Okay.

13 Is it -- are supervisors and/or HR required under  
14 the policy to thoroughly investigate the complaint of  
15 bullying, to the extent that you know? We just looked  
16 at --

17 A. We --

18 Q. -- 80-16B --

19 A. Yeah, we --

20 Q. -- which talks about the responsibilities of  
21 supervisors, correct?

22 A. Yes.

23 Q. Are they, under this zero tolerance policy  
24 enunciated in 80-16A, required to thoroughly investigate  
25 such complaints?

1 A. I don't see any place where it says the  
2 investigation is part of 16A, but if you can point that  
3 out to me that would --

4 Q. It's not. It refers -- we're referencing  
5 application of this zero tolerance policy as it relates  
6 to 80-16B -- six -- 80-16B is the implementation of  
7 the --

8 THE COURT: Exhibits --

9 MR. JORDANO: Objection.

10 THE COURT: -- 8 and 10 were issued at the  
11 same time. A and B.

12 MR. PHILPOT: That's right.

13 THE COURT: Yup.

14 MR. PHILPOT: That's right. Absolutely.

15 BY MR. PHILPOT:

16 Q. If you look at 10, they're both dated the same  
17 day, as Your Honor points out, right? And this is how  
18 it -- this is implemented, is that correct?

19 A. I don't know that I can speak to the sequence of  
20 events that HR policies are intending. I believe --

21 Q. Is --

22 A. -- one is talking about a zero tolerance policy,  
23 one is talking about the workplace -- they're not  
24 dissimilar, but one involves steps you take to  
25 investigate, the other talks about a specific type of

1 incident as -- that zero tolerance would apply to.

2 THE COURT: Well, who would be the HR person  
3 who can tell us about these things?

4 BY MR. PHILPOT:

5 Q. Well, what -- okay. Sure. Yeah.

6 A. Well the memo comes from Vicki Arpin so --

7 THE COURT: Okay.

8 MR. PHILPOT: Okay.

9 THE COURT: So she's the person.

10 MR. PHILPOT: I understand. So -- okay, just  
11 one last question on that, Your Honor. I'm not going  
12 to belabor the issue.

13 BY MR. PHILPOT:

14 Q. Are you saying, Mr. Sanders, as Transit  
15 Administrator, that you can't tell us whether or not  
16 one is to follow the steps enunciated in 18 -- 80-16B  
17 with -- as it relates to zero tolerance, is that what  
18 you're saying?

19 A. There's no language that I see that links the two  
20 documents together, though they maybe timely in that  
21 one could define what's types of behaviors, another  
22 defines an investigatory process on how you deal with  
23 it.

24 THE COURT: Well, these were issued by HR.

25 THE WITNESS: Correct.

1 THE COURT: So somebody from HR should be  
2 able to tell us exactly what they have.

3 MR. PHILPOT: That's true, Your Honor; and we  
4 will get to that for sure.

5 BY MR. PHILPOT:

6 Q. But just by way of clarification and the -- didn't  
7 you in your deposition indicate to me that under  
8 80-16B, one is required to thoroughly investigate a  
9 complaint of bullying? And I'm going to show you pages  
10 70 through 73 of your deposition and ask if that  
11 refreshes your recollection for what you told me back  
12 in my office back on January 7th of 2008.

13 A. I don't think I said anything just now that says  
14 that 16B doesn't require a full investigation --  
15 doesn't require an investigation. How you define full,  
16 I don't know.

17 Q. Well, I'm asking you as it relates to zero  
18 tolerance.

19 I'm asking you as it -- doesn't the zero tolerance  
20 policy, as it relates to bullying, require a full  
21 investigation?

22 That's all I'm asking.

23 A. And I'm telling you that as I -- I can't interpret  
24 the HR document, but the document itself doesn't say --

25 Q. All right.

1 A. -- there needs to be an investigation. 16 --  
2 Document 16A.

3 MR. PHILPOT: Just a minute.

4 BY MR. PHILPOT:

5 Q. Okay.

6 I'm going to refer you to page 73 at the bottom,  
7 your answer. Read it to yourself, please. Please  
8 verify that that's your deposition.

9 MR. JORDANO: Is this Volume 1?

10 MR. PHILPOT: Yeah.

11 MR. JORDANO: Page 73?

12 MR. PHILPOT: There's only one page 73 and  
13 it's both volumes.

14 MR. JORDANO: I presumed so.

15 MR. PHILPOT: Okay.

16 MR. JORDANO: There's only one page 73.

17 (Pause.)

18 BY MR. PHILPOT:

19 Q. Didn't you tell me then that if there's a  
20 complaint of bullying, it is incumbent upon a  
21 supervisor to thoroughly investigate it?

22 A. Well, actually that answer was not -- that's not  
23 what that answer said.

24 Q. Okay.

25 A. We were talking about imminent threat and the

1 answer that I gave, if I can paraphrase it, was that  
2 imminent threat is not just because somebody makes an  
3 allegation. So the particular answer you're referring  
4 me to is if we're aware of this, this is why we have an  
5 investigative process in the bullying policy --

6 Q. Right.

7 A. -- which is just because you say something,  
8 doesn't make it true.

9 Q. Right.

10 A. Which is why you have an investigation.

11 Q. Right.

12 And so we were referring to bullying and we're  
13 referring to investigations and that's why you  
14 investigate, isn't that correct?

15 A. Yes.

16 Q. That's what you said?

17 A. Yes.

18 Q. Okay.

19 But you -- there's no place to investigate under  
20 80-16A; the only place that it's required to -- for any  
21 investigation refers to 16B, is that correct?

22 A. All right. But 16A does not directly link the  
23 two, but clearly 16B refers to certain acts and 16A I  
24 would presume defines what some of those acts are.

25 Q. I'll move on. You were an after-the-fact witness

1 to the -- what is called the paper cutter incident,  
2 isn't that correct?

3 A. That's correct.

4 Q. Okay.

5 And would you describe for the Court and members  
6 of the jury what you recall of that day and that was  
7 July 7th, 2006, is that correct?

8 A. I believe that's the correct date, yes.

9 Q. All right.

10 A. Okay.

11 Q. Tell me what happened.

12 A. I was sitting in my office. I had a co-worker  
13 there, Jim Boice, B-o-i-c-e, who was either Deputy  
14 Commissioner or Bureau Chief at that time, I don't know  
15 what his title was at that moment, but he had come down  
16 to talk so he was sitting in a chair in my office and  
17 we were talking. We heard a very loud scream,  
18 basically saying Mike Sanders, get out here right now.  
19 It was loud enough that it was alarming, that I jumped  
20 up from my desk, and ran to a point where I could see  
21 down the hallway because from my desk you can't see  
22 down the hallway; and saw Daphne in the hall so and not  
23 seeing somebody lying in a pool of blood or anybody  
24 attacking somebody, it was -- I didn't have to run down  
25 the hall, but I was able to move down the hall and when

1 I got there Ms. McKinney said what do I have to do to  
2 protect myself from her until this thing is done.

3 Q. Just a second. Did she say thing or this  
4 investigation?

5 A. I don't know if she said investigation, but she  
6 said some blank and until this is done.

7 Q. All right.

8 A. Yeah.

9 Q. And you said?

10 A. Well, I said I don't know what you're talking  
11 about because I'm not aware of any investigation that  
12 was ongoing at the time.

13 Q. Oh, so you -- okay, so she did reference an  
14 investigation 'cause -- because you said I'm not aware  
15 of any investigation?

16 A. Okay. All right.

17 Whatever it was, whether it was a complaint,  
18 investigation; I think the pertinent fact is she was  
19 talking about something that I had no idea what she was  
20 talking about.

21 Q. Okay. So you weren't aware at that time, July 7th  
22 of '02 -- '06, excuse me, of any investigation  
23 involving Ms. Tulum and Ms. McKinney?

24 A. Well, other than perhaps something going on with  
25 Mr. Stutz and that prior occasion, but there was



1 nothing that I was aware of that would make me think  
2 what do I have to do -- I mean what am I supposed to be  
3 doing to keep them apart.

4 Q. Okay.

5 A. It was nothing that was going on to my knowledge  
6 at that time.

7 Q. Yeah. Okay. And you're the Transit Administrator  
8 for that entire department, is that correct? You were  
9 head of that department?

10 A. For the entire office --

11 Q. Office, excuse me.

12 A. -- yeah, not for the whole department.

13 Q. All right.

14 A. Don't give me too much credit.

15 Q. All right. All right. I meant that unit. All  
16 right. All right. Fine.

17 And then what else occurred?

18 A. Jim Boice also followed me down the hall after I  
19 came down. Daphne made a statement something to the  
20 effect of she almost hit me. Lisa Tillum is on the  
21 other side of a table holding some paper in her hands  
22 and with this kind of befuddled look on her face not  
23 knowing what to make of it.

24 Q. Mm-hmm.

25 A. So we have this really loud shout, this scream,

1 and then I walk down there and everybody's really calm  
2 and so we -- Daphne mentioned her concern about what do  
3 I have to do to protect -- to keep her away, whatever  
4 the actual words were; and we had a rather civil  
5 conversation that I said I don't know what you're  
6 talking about. Subsequently I found out what she was  
7 talking about, but not at that point, at that time; and  
8 Lisa's there holding the paper and this very befuddled  
9 look on her face like she doesn't know what was going  
10 on with this scream and she's just standing there,  
11 she's behind tables so it's not really -- she can't  
12 just walk away. So it was -- we had a -- you know, we  
13 had a little bit of a conversation about what had  
14 happened, very little conversation about what had  
15 happened --

16 Q. Who's we?

17 A. Me, Ms. McKinney -- well, that was probably it.  
18 Mr. Boice and later Mr. Jolly came over and then Lisa  
19 Tilum was there on the far side of the table the whole  
20 time.

21 Q. Did it seem mystifying to you that Ms. McKinney  
22 was calm after she screamed when you approached her?

23 A. Mystifying?

24 Q. Well, okay, well what -- I mean you mentioned that  
25 she seemed calm.

1 A It seemed incongruous with the decibel level of  
2 the scream and the intensity of the scream that then I  
3 get there and she's like cool as a cucumber.

4 Q. Okay.

5 I show -- I refer you to Exhibit 10, please.  
6 Exhibit 10.

7 Got that? All right? And this is procedures for  
8 handling and reporting threatening and violent  
9 behavior, you see that? Is that correct?

10 A. Yes.

11 Q. This is 80-16B, right?

12 A. Yes.

13 Q. Revised 2005. Okay. Under employee, you see  
14 that, the second bullet, you see that?

15 A. (No verbal response)

16 Q. What does that say?

17 A. Remain calm and use good judgment.

18 Q. Okay. Then you at this -- so the fact that she  
19 was calm is in accordance with this policy, isn't that  
20 correct?

21 A. The fact that she was calm was again totally  
22 incongruous with the intensity of the reaction that we  
23 got, but that she was calm is not surprising and  
24 whether it was in conjunction with this policy or not,  
25 she was just very calm about the whole thing.

1 Q. Okay.

2 A. She perhaps had a little mild look of anger on her  
3 face, but she was --

4 Q. Okay.

5 A. -- basically in control. She didn't look like she  
6 felt threatened or --

7 Q. Okay.

8 And as you said --

9 A. -- just very calm.

10 Q. -- there was no blood on the floor? There's no --

11 A. No blood on the floor. No apparent weapons.

12 Q. Right.

13 A. No -- nobody reaching across the table trying to  
14 strangle somebody, it was one person --

15 Q. You're familiar with the emails that were sent by  
16 Ms. McKinney in this case, aren't you?

17 A. The emails subsequent to July 10th or July 10th  
18 and later?

19 Q. Yes.

20 A. Yes.

21 Q. Okay.

22 Tell me this, Mr. Sanders, was there any blood on  
23 the floor when those emails were sent?

24 MR. JORDANO: Objection.

25 MR. PHILPOT: Okay. I don't claim it. I'll

1 move on.

2 BY MR. PHILPOT:

3 Q. You were talking to us about what happened on the  
4 7th of July, '06, did you go back into your office?

5 A. After a couple minutes I went back into my office,  
6 yes.

7 Q. Okay.

8 Did she did indicate -- she did -- you said  
9 earlier, I thought and you tell me if I'm wrong, that  
10 she said that she thought Ms. Tilum attempted to hit  
11 her, is that correct?

12 A. I think she said she almost hit her.

13 Q. Right. Almost hit her.

14 A. Yeah.

15 Q Okay.

16 And tell me this, did you ever write a report, an  
17 incident report in accordance with this policy relative  
18 to that incident?

19 A. I didn't write an incident report. I --

20 Q. I'm sorry, I didn't hear you.

21 A I did not write an incident report.

22 Q. Okay. Okay. All right.

23 Would that mean that to the extent that she  
24 reported it to you, that you ran afoul of 80-16B?

25 A. (No verbal response)

1 Q. Under supervisors and what they're supposed to do  
2 when they receive a complaint in the workplace?

3 A. Well, my next level supervisor was standing right  
4 there so he didn't have to be notified in any special  
5 way.

6 Q. Oh, that's true.

7 A. Mr. Boice was right there.

8 Q. Okay. That's true.

9 A. And HR was notified very shortly thereafter.

10 Q. But doesn't it require, doesn't the policy require  
11 at 16B, and this Item Number 10, doesn't it require  
12 that you document it?

13 A. It doesn't say you have to document it that  
14 minute. It talks about --

15 Q. Did you ever --

16 A. -- it talks about the overall complaint being  
17 documented and given the events of the subsequent five  
18 business days, there was a high level of documentation  
19 both to Affirmative Action, HR, all over the department  
20 of this incident. Basically the incident got elevated.  
21 When Ms. McKinney wrote her first email to the  
22 Commissioner, that basically elevated it way beyond my  
23 level.

24 Q. Okay.

25 Way beyond your level. But at least with respect

1 to what you did or did not do, on that date, on the  
2 7th, you never documented this incident in accordance  
3 with 80-16B, is that fair?

4 A. I'd have to go back and see which different ways I  
5 documented it. There were several different ways that  
6 I recorded the events of the day. I don't remember  
7 right now who I sent things to. I at least documented  
8 it to Affirmative Action. I documented it in my own  
9 personal file, but I don't -- I mean it -- by Monday  
10 morning -- this was Friday at noontime, by Monday  
11 morning I had not filed an incident report, that's  
12 correct.

13 Q. Ever?

14 A. And I have not subsequently because it got  
15 elevated to --

16 Q. Ah, okay.

17 A. -- a very different level in the department.

18 Q. Okay.

19 Elevated. There was a threat assessment team  
20 convened with respect to this incident, isn't that  
21 correct?

22 A. Yes.

23 Q. Okay.

24 Would you tell the Court and members of the jury  
25 what a threat assessment team is?

1 A. I'll give you my best description of it because --

2 Q. Okay.

3 A. -- I'm not a threat assessment team member.

4 Q. I understand.

5 A. I was called into this meeting as an -- I guess as  
6 an observer because it involved one of my employees.  
7 Basically it's a group of people that's -- that when  
8 they get a report of certain kinds of incidents,  
9 they'll convene themselves and assess whether there's a  
10 threat involved and whether the employees need to be  
11 separated or any immediate actions taken. That's my  
12 understanding of what a threat assessment team does,  
13 though again, it's basically an HR function so there  
14 may be more clarity someplace else in HR rules and  
15 procedures.

16 Q. And were you part of this threat assessment team  
17 that was convened with respect to this incident?

18 A. I was invited into the meeting on July 10th, the  
19 Monday. I'm not a member of the team, but I was  
20 invited in I believe because it involved one of my  
21 employees and in fact at the time I didn't even know we  
22 had a threat assessment team, you know, by that name,  
23 but I became aware of it during that course of that  
24 week. So I was called in as one of the people that  
25 discussed the issues at hand based on the email, yes.



1 Q. Oh, and who was there at the threat assessment?

2 A. I don't recall right now. You could probably  
3 check my deposition and have some of the names. There  
4 were some people I didn't know, again because I'm not a  
5 member of the team. I don't know everybody who was  
6 around the table. There were clearly one or two  
7 representatives from HR; a gentleman who I later  
8 learned was Jim Ridder, who's a security person in HR;  
9 um -- right.

10 Q. Did this happen on that same day?

11 A. Same day as what?

12 Q. As the incident?

13 A. No, it happened on Monday morning.

14 Q. Okay. All right. Fine.

15 And what was the upshot of the threat assessment  
16 team? What did they recommend?

17 A. The recommendation of the threat assessment team  
18 was to hold a fact-finding to see if indeed Lisa Tilum  
19 had -- well, whether Daphne McKinney was indeed at any  
20 risk based on the behavior of Lisa Tilum on the  
21 previous Friday.

22 Q. So now I thought, I thought that the threat  
23 assessment team, and you tell me if I'm wrong, had to  
24 do with issues of imminent harm, is that correct?

25 A. You have to look at -- they probably have bylaws

1 or rules of some kind, but just by the nature of the  
2 nature one would assume that they're assessing any  
3 immediate threat.

4 Q. Okay.

5 And so they thought it appropriate to allow a  
6 fact-finding to occur; this happened on the 7th and the  
7 fact-finding was scheduled for the 12th of July of '06,  
8 isn't that correct?

9 A. That's correct.

10 Q. Okay.

11 All right. So some five days later?

12 A. Three business days later, yes.

13 Q. Okay. All right. Fine.

14 Did the threat assessment team make a  
15 determination that Ms. Tylum and Ms. McKinney could  
16 continue to work in the same space? Because usually --

17 A. I --

18 Q. -- they separate them if they think that there's a  
19 threat, isn't that fair?

20 A. Well --

21 MR. JORDANO: Objection, Counsel's  
22 testifying.

23 MR. PHILPOT: That's a question.

24 THE COURT: Well --

25 MR. JORDANO: It's not a question, Your

1 Honor.

2 MR. PHILPOT: Okay.

3 THE COURT: What?

4 MR. JORDANO: This is direct exam.

5 THE COURT: Let's let him testify.

6 MR. PHILPOT: I will.

7 THE WITNESS: All right. Having never been  
8 on a threat assessment team, having never seen a threat  
9 assessment team report, I'm more than conjecturing, but  
10 less than certain that they're looking at immediate  
11 danger. This incident took place on a Friday right  
12 before lunchtime. Both employees left the office that  
13 afternoon anyway --

14 BY MR. PHILPOT:

15 Q. Right.

16 A. -- so there was clearly no immediate need on  
17 Friday.

18 Q. That's true.

19 A. By Monday, they met and apparently in their  
20 judgment they didn't see any immediate threat that they  
21 needed to separate the employees. But I don't know  
22 that I really have ever seen their final report on that  
23 day.

24 Q. I understand. So notwithstanding the fact that  
25 Ms. McKinney indicated that she was almost hit by Ms.

1 Tulum, the threat assessment team on Monday morning met  
2 and decided that Ms. McKinney was not in any imminent  
3 danger, isn't that fair?

4 A. You'll have to read the report. I don't --

5 Q. But you were there.

6 A. -- I don't know that I ever saw the threat  
7 assessment team report.

8 Q. But you --

9 A. But what they did do is they scheduled a fact-  
10 finding --

11 Q. Okay.

12 A. -- for two days hence.

13 Q. All right.

14 Did you -- do you recall saying to Ms. McKinney,  
15 and I thought you did say this earlier, what  
16 investigation, there is no investigation, but you're  
17 disrupting the office?

18 A. I think you're putting about three different  
19 paraphrases together.

20 Q. All right.

21 A. She said --

22 Q. Well, tell me what you said.

23 A. -- she said there -- you know, what do I have to  
24 do until this thing, this investigation, this whatever  
25 was over; I don't know if investigation came out of her

1 mouth. My comment was I don't know what you're talking  
2 about. Then she said, well, I don't want to make a  
3 scene in the office; and I said, you already made a  
4 scene by screaming so there's really -- these weren't  
5 necessarily consecutive -- this wasn't consecutive  
6 sentences out of each other's mouths.

7 Q. Fine. Okay.

8 Let's fast forward. You talked about the  
9 incident, you talked about the threat assessment team,  
10 then there was the fact-finding on the 12th of July, is  
11 that correct?

12 A. That's correct.

13 Q. Okay.

14 And you attended the fact-finding, is that  
15 correct?

16 A. I did.

17 Q. Did you take notes?

18 A. I took some notes, yes.

19 Q. Okay.

20 I want to refer you to Exhibit 14.

21 MR. PHILPOT: That's not in evidence as of  
22 yet, folks.

23 BY MR. PHILPOT:

24 Q. I just want you to identify that. Are those your  
25 (unintelligible)?

1 A. This is indeed a copy out of my steno pad, yes.

2 Q. Okay.

3 MR. PHILPOT: We offer it then.

4 MR. JORDANO: What number is it?

5 MR. PHILPOT: Fourteen.

6 THE COURT: Fourteen. I'll allow 14.

7 MR. PHILPOT: Okay.

8 (Long pause.)

9 BY MR. PHILPOT:

10 Q. Because it's in your handwriting and it's fairly  
11 legible, but I just want to make sure that we have a  
12 clear report of what it indicates, would you be so kind  
13 as to read that for us?

14 A. Read the whole thing?

15 Q. Yeah --

16 A. Okay.

17 Q. -- but it's not that much. It's a short note.

18 A. Seven-twelve, fact-finding.

19 Q. Yup.

20 A. Steve Livingston, John Vitali (phonetic), Lisa  
21 Tylum, me -- part of it's cutoff on the right side, but  
22 that --

23 Q. Yeah.

24 A. -- would say Brenda Jannotta, Kathleen, and  
25 Daphne.

1 Q. Yes.

2 A. And the different bullets that I jotted down at  
3 this meeting was: DECISION-MAKER, meaning Daphne, can  
4 get the stenographer's notes from today's meeting;  
5 DECISION-MAKER can get a copy of the decision from this  
6 fact-finding; Commissioner Korta got sent an email from  
7 DECISION-MAKER, includes statement of off of state  
8 property --

9 Q. Okay.

10 So that had -- that went out on the 10th and so  
11 Korta did receive that email, is that correct?

12 A. I don't know if he received it, it was directed to  
13 him.

14 Q. Okay.

15 Well, then why do you say Korta got sent -- oh,  
16 sent. Okay. Not necessarily received?

17 A. I wouldn't know.

18 Q. Okay.

19 Fair enough. Please go ahead.

20 A. KK's, Kathleen Karwick, response is we could use  
21 it against her, will look for policy statement. I'm  
22 not sure, there's something after the comma, there  
23 might be another word there, I can't tell because it's  
24 off the end of the page.

25 Q. Let me ask you about that, if I may.

1           What do you mean when you say KK's response? Was  
2 she talking to Daphne or was she talking to you?

3           A. She was talking to the fact-finding panel.  
4 Someone asked her a question. This is not a verbatim  
5 transcript, maybe you can tell that.

6           Q. I can.

7           A. But this is a -- I mean these are just notes that  
8 I wrote to myself to either trigger memories later on  
9 or to document some of the key statements. Somebody  
10 must have asked a question to Kathleen about taking it  
11 off state property and she said yes, we could use it  
12 against her.

13          Q. What does that mean?

14          A. I don't know.

15          Q. How did you take it?

16          A. I would say that it -- that the interpretation at  
17 the fact-finding was being made that yes if you took  
18 something off state property, it could be used against  
19 you.

20          Q. Was Ms. McKinney told that, if you know?

21          A. I don't know.

22          Q. Okay.

23                 So it says -- response is we could use it against  
24 her, will look for policy statement.

25                 What policy statement, if you know?



1 A. I don't know what policy statement. Daphne asked  
2 for a particular policy statement; Kathleen said she  
3 had it, so --

4 Q. Did she ask --

5 A. -- there must be something.

6 Q. If you recall, did she ask for a policy with  
7 respect to bullying?

8 A. Well, I don't know why she would because that was  
9 a very public document, but --

10 Q. What was a public --

11 A. -- I assume there must have been -- the bullying  
12 policy that the -- there's a policy, a little brochure  
13 --

14 Q. Right.

15 A. -- that we have that's widely disseminated --

16 Q. Okay. And that is --

17 A. -- that's certainly public, so you wouldn't have  
18 to ask somebody for it.

19 Q. But if you didn't have it, you should -- you  
20 could, right?

21 A. If you didn't have it, but it was distributed I  
22 believe to all employees.

23 Q. I understand.

24 But you don't know whether or not Ms. McKinney had  
25 it, do you?

1 A. That's correct, I don't.

2 Q. Okay.

3 And she has a right to go to her HR person and ask  
4 for it if she doesn't have it, doesn't she?

5 A. Certainly.

6 Q. Okay.

7 And this is what she did, is that fair?

8 MR. JORDANO: Objection.

9 MR. PHILPOT: All right. I'll go on.

10 BY MR. PHILPOT:

11 Q. LISA TILUM, is that Lisa Tilum?

12 A. Lisa Tilum.

13 Q. Okay. And she said you came running out?

14 A. She says Mike came running out.

15 MR. JORDANO: Excuse me, Your Honor. She  
16 (sic) asked him -- he asked him to read the notes.

17 MR. PHILPOT: Okay.

18 MR. JORDANO: I don't think he's done reading  
19 the notes.

20 MR. PHILPOT: Fine. Read them.

21 THE COURT: Well, we can go through it as we  
22 are --

23 MR. PHILPOT: Yes.

24 THE COURT: -- one by one. He can --

25 MR. PHILPOT: I'm asking questions as we go.

1 THE COURT: Yeah, I don't bother  
2 (unintelligible).

3 MR. PHILPOT: Very good.

4 BY MR. PHILPOT:

5 Q. Okay. Next?

6 A. And it's in quotes so I presume that the reason I  
7 wrote that down was because that was verbatim of what  
8 she said.

9 Q. Very good. Next?

10 A. DECISION-MAKER, Daphne, in quotes again, had I not  
11 moved my head like this and I think the motion she made  
12 was standing up, she would have hit me.

13 Q. Okay.

14 Then Livingston question.

15 A. Then Livingston question, so this must have been a  
16 question from Steve Livingston that Daphne claimed  
17 there was a threat to my life here at the something and  
18 it's cutoff at the end of the page.

19 Q. Okay. All right. Fine. Very good.

20 You recall anything else about that fact-finding  
21 based upon your review of this document, Exhibit 14?  
22 Does this refresh your recollection as to anything else  
23 that occurred that we haven't talked about?

24 A. There was a lot that went on at the fact-finding  
25 that's not written down on here because --

1 Q. Well --

2 A. -- I wasn't writing verbatim notes.

3 Q. Do you recall Ms. McKinney asking specifically to  
4 bring up prior incidents of bullying?

5 A. No.

6 Q. By Ms. Tillum?

7 A. I don't recall that.

8 Q. Now, let me just clarify this, Kathleen Karwick is  
9 Ms. McKinney's HR representative, isn't that correct?

10 A. She's the HR representative assigned to our  
11 Bureau, yes.

12 Q. Okay.

13 And she's the HR representative for Celeste  
14 Martires, isn't that correct?

15 A. Yes, that's correct.

16 Q. And she's the HR representative for Lisa Tillum,  
17 isn't that correct?

18 A. That's correct.

19 Q. Why would, if you know, Ms. Karwick want to use  
20 anything against one of her reports?

21 MR. JORDANO: Objection, calls for  
22 speculation.

23 THE COURT: Yeah, let's wait for Karwick.

24 MR. PHILPOT: Very good.

25 BY MR. PHILPOT:

1 Q. We talked about the 10th of July email sent to  
2 Commissioner Korta. Is this what triggered a second  
3 threat assessment team to be assembled?

4 A. The July 10th email?

5 Q. Yes.

6 A. No.

7 Q. No.

8 MR. PHILPOT: Just a moment, Your Honor,  
9 please.

10 (Pause.)

11 BY MR. PHILPOT:

12 Q. Page 82, line 17.

13 Would you look at the question on 14 and ask what  
14 your answer was back then when I asked you that  
15 question?

16 A. There was a threat assessment team meeting --  
17 there was a threat assessment at the beginning of the  
18 week when Commissioner Korta first got an email, that's  
19 correct.

20 Q. Okay. So --

21 A. My answer is that's correct, yeah.

22 Q. Right.

23 A. Okay.

24 Q. So that's what triggered the threat assessment  
25 team -- the email --

1 A. The first threat assessment team. I thought you  
2 said the second threat assessment team meeting.

3 Q. It was because there was one for the paper cutter  
4 incident and then there was another one, if I may.  
5 There was another one for the email that went to  
6 Commissioner Korta, is that correct?

7 A. Well, it wasn't the July 10th email that went to  
8 Commissioner Korta. My recollection of the threat  
9 assessment team meeting was there were a number of  
10 subsequent emails that went to a number of people that  
11 then resulted in calling the second threat assessment  
12 team.

13 Q. Okay.

14 So what you say here, there was a threat  
15 assessment at the beginning of the week when  
16 Commissioner Korta first got an email and then you say  
17 that's correct?

18 A. Yes.

19 Q. Is that your answer?

20 A. Yes, there was an email on July 10th to  
21 Commissioner Korta and they called the first threat  
22 assessment team.

23 Q. You agree, of course, Mr. Sanders, that the emails  
24 were -- that were subsequently sent, which were sent to  
25 Karwick as well as Livingston, were not sent to Tillum,

1 you agree with that?

2 A. I don't know. I'd have to look at the emails to  
3 see who was on the cubicle list or -- and there may be  
4 people on the bcc list that wouldn't have gotten  
5 anything. So I don't know for sure.

6 Q. But you've talked to Ms. Tulum about this, haven't  
7 you, as to whether or not she ever received them  
8 directly, haven't you?

9 A. I don't know that I've ever talked to her about  
10 that, no.

11 Q. Okay.

12 I'm going to refer you, sir, to -- just make sure  
13 I have them -- now the emails that we're talking about  
14 are one at Exhibit 12, take a look, Exhibit 12 and then  
15 Exhibits 16 and 17; 16 and 17 and 12, those are three  
16 that we're talking about. Twelve, 16, and 17. At  
17 least with respect to the references on them, there's  
18 no indication that Tulum ever received them.

19 A. That's correct.

20 Q. Okay. And --

21 A. Well, there's no indication that Tulum was ever  
22 directed or cc'd on it.

23 Q. That's right.

24 But at that second threat assessment team, there  
25 came a point in time where she didn't need to be

1 directed or cc'd on it because you told her about it,  
2 isn't that true?

3 A. That's correct, by the 14th --

4 Q. Okay.

5 A. -- after the results of that threat assessment  
6 team we shared some of the information in the emails,  
7 not the emails themselves that I'm aware of, but --

8 Q. Right.

9 A. -- just the general tenor of things.

10 Q. And was she aware of them before you told her?

11 A. It would seem that she was not.

12 Q. Okay.

13 When you first saw what has been marked as Exhibit  
14 12, you didn't think it had anything to do with Ms.  
15 McKinney approaching Ms. Tulum in a physical manner,  
16 isn't that true?

17 A. Well, first I didn't receive a memo this directly.  
18 I only got this after it was distributed before the  
19 threat assessment team. I'm not on the list. There  
20 are some people that were on the bcc list that don't  
21 show here and that was actually how I first really  
22 found out about it.

23 Q. All right.

24 A. But once I found out about it, it was -- a threat  
25 assessment team meeting was called.



1 Q. I understand. When you first read the email, sir,  
2 did you believe that this -- Ms. McKinney was referring  
3 to a confrontation, a physical confrontation with Ms.  
4 Tylum?

5 A. My recollection of my first impression of this was  
6 that it was not -- it was not referring to a violent  
7 confrontation.

8 Q. Okay.

9 And why do you say that?

10 A. That's just how I read it the first time.

11 Q. Right. Okay.

12 Well, but it also has to do with the fact that you  
13 know Daphne McKinney, isn't that correct?

14 You've known her and worked with her for a long  
15 time.

16 A. I do.

17 Q. Okay.

18 And didn't you -- haven't you told me that based  
19 upon your assessment and working with her for more than  
20 17 years, that it is not in her nature to threaten  
21 anyone physically? Didn't -- haven't you said that?

22 A. I believe the context of that question was --

23 Q. All right.

24 A. -- that you -- it's always after the fact that you  
25 say, gee, we never thought that that person would do

1 it, but again I wasn't implying that in my first  
2 reading of the email. But my understanding is yes, I  
3 would -- I had not ever seen a violent action by Daphne  
4 McKinney.

5 Q. Did you say to me, under oath, it's not --

6 MR. JORDANO: What page, please?

7 MR. PHILPOT: Just a moment, please. I think  
8 it's 234.

9 MR. JORDANO: Two-thirty-four.

10 MR. PHILPOT: Just a moment.

11 (Pause.)

12 BY MR. PHILPOT:

13 Q. Was it in Ms. McKinney's personality to physically  
14 threaten Ms. Tillum?

15 You say physically, no.

16 MR. JORDANO: And what page are you reading  
17 from, sir?

18 MR. PHILPOT: Two-thirty-four.

19 MR. JORDANO: Two-thirty-four.

20 BY MR. PHILPOT:

21 Q. Will you verify that I've read it correctly, Mr.  
22 Sanders? Line 17 through 19.

23 A. (No verbal response)

24 Q. Is that yours?

25 A. Yes.

1 Q. Oh, okay.

2 I just want to make sure.

3 A. I was taking time to read the context of the  
4 question so.

5 Q. That's fine. Take your time.

6 (Pause)

7 THE WITNESS: All right.

8 This was in the context of actually discussing the  
9 file cabinet incident, but yes that's correct.

10 BY MR. PHILPOT:

11 Q. You said it's not in Ms. McKinney's personality to  
12 threaten Tilum physically?

13 A. Well, now that you may have paraphrased it again,  
14 but --

15 Q. Well, I don't want to paraphrase it. Why don't  
16 you just read --

17 A. What page was it again?

18 Q. Seventeen; page 234.

19 A. Was it in --

20 Q. Two-thirty-four.

21 A. -- was it in Ms. McKinney's personality to  
22 physically threaten Ms. Tilum? Physically, no.

23 Q. In fact, when you first read the email to  
24 Commissioner Korta, you put an email to Ms. Karwick  
25 together concerning it, isn't that correct, do you

1 recall that, sir?

2 A. I recall a couple of emails for that day, yes.

3 Q. Would you refer to --

4 MR. PHILPOT: -- and it's not in evidence as  
5 to yet, Your Honor, I'm going to offer it, Exhibit 84.  
6 Exhibit 84.

7 MR. JORDANO: No objection.

8 THE COURT: Eighty-four is admitted.

9 (Pause.)

10 BY MR. PHILPOT:

11 Q. Do you have 84 there?

12 A. I do.

13 Q. Okay. Okay.

14 In the first email that is at the bottom of the  
15 page, you say in the second paragraph, an interesting  
16 point has been brought to -- brought up by two of my  
17 employees who are mentioned in the email we've reviewed  
18 this morning.

19 Who is that?

20 A. I don't recall right now. I don't know if I had  
21 recalled at the deposition if it was, but I honestly  
22 don't remember right now.

23 Q. Okay.

24 And so why do you say it's an interesting point?  
25 What do you mean?

1 A. Well, because it had gone beyond what my initial  
2 interpretation had been of this just being a threat to  
3 sue us or a threat to, you know, take legal action  
4 against us, which was, you know, my first reading of it  
5 and not an act of a threat of violence, so some other  
6 people raised that perhaps this went deeper than my  
7 first reading of it.

8 Q. Okay.

9 So in the next paragraph you say, in the next to  
10 the last paragraph of the email referring to the July  
11 10th email she sent to Commissioner Korta, "What I want  
12 to know from you is that if I address this situation  
13 off state property will I be able to keep my job?";  
14 that's what it's referring to, right?

15 A. Yes.

16 Q. Okay.

17 And you say in the next paragraph, "I think we had  
18 all assumed that meant dealing outside the office in  
19 legal actions," see that?

20 A. I do.

21 Q. But the two employees both had interpreted that to  
22 mean potential actions that might be -- might not be  
23 limited to legal actions, for example, some other  
24 physical actions against person or property.

25 You said that?

1 A. That's correct.

2 Q. Okay.

3 And you were -- don't recall who suggested that to  
4 you?

5 A. I really don't.

6 Q. Okay.

7 THE COURT: Can we look at the memos that  
8 were referred to because those two employees must have  
9 made then known.

10 MR. PHILPOT: All right.

11 THE WITNESS: Well, actually there's -- there  
12 are a number of cc's -- bcc's --

13 MR. PHILPOT: Yeah.

14 THE WITNESS: -- on that memo, people that  
15 got it that were not on the distribution list.

16 BY MR. PHILPOT:

17 Q. All right. But I'm more --

18 A. Because the -- that's how the first time I got it  
19 was somebody that --

20 Q. Yes.

21 A. -- who's name wasn't even on it that forwarded it  
22 to me.

23 Q. Okay. But you -- and you wrote that to Vicki  
24 Arpin, Kathleen Karwick, Wanda Seldon, okay, and  
25 Michael Morrison, is that correct?

1 A. That's correct.

2 Q. Okay.

3 And who is Michael Morrison? Is he security?

4 A. He's -- I don't know what his title is, but he's  
5 kind of the head security guy.

6 Q. Okay.

7 And you said that in an email to those individuals  
8 and the three of them are in -- all in HR, isn't that  
9 correct, Vicki --

10 A. Correct.

11 Q. -- Arpin, Kathleen Karwick, as well as Wanda  
12 Seldon; they're all HR?

13 A. Correct.

14 Q. Okay.

15 And you referred to that as an interesting point  
16 that she might be referring to something other than  
17 legal action, is that right?

18 A. Yes.

19 Q. Okay.

20 But you had already told me that it was not in Ms.  
21 McKinney's nature to make a physical threat against Ms.  
22 Tylum, is that correct?

23 A. I did say that, yes.

24 Q. Okay. All right. Fine.

25 But then even after you brought out what you

1 called an interesting point to HR, you sent this email  
2 at the top of the page, didn't you?

3 A. I sent the follow up at the top of the page, yes.

4 Q. Okay.

5 And even though that interesting point had been  
6 brought to your attention, you retained the view that  
7 Ms. McKinney was talking about addressing it by way of  
8 a legal action or restraining order.

9 Don't you refer to a restraining order?

10 A. Well and I think or I'm laying out options of what  
11 potentially she could mean by that and really the  
12 purpose of the first meeting -- the first memo at 12:19  
13 was, you know, what's really -- are there other issues  
14 here that the threat assessment team may want to look  
15 at beyond just what they talked about that morning.

16 Q. Okay.

17 But then you go on further, don't you, and clarify  
18 -- you clarify your position in the last paragraph of  
19 that last email, time stamped 5:26; "I can't believe  
20 she would be so stupid as to be talking about physical  
21 threats, but what else do we have to go on without  
22 knowing what she really meant. I'd feel uncomfortable  
23 if I were Lisa coming back into this tomorrow."

24 Is that correct?

25 A. Yes, it is.



1 Q. Okay.

2 So you didn't believe that McKinney was talking  
3 about anything physical because you didn't believe she  
4 was that stupid?

5 A. Well, the issue was should the threat assessment  
6 team look at a little broader range of potential  
7 impacts, perhaps research it with Ms. McKinney at what  
8 she really meant by it, but knowing the history of  
9 legal action against the department, I was thinking she  
10 can't be so stupid as to actually write it down knowing  
11 that this is going to be evidence someday.

12 Q. What -- when you say in terms of history of legal  
13 action against the department, what are you referring  
14 to?

15 A. There had been -- well, this -- I believe that  
16 this lawsuit actually predated the -- this whole paper  
17 cutter incident anyway.

18 Q. Okay.

19 A. I'd have to be corrected if I'm not correct, but I  
20 believe that the fact that this whole -- this lawsuit  
21 began before the termination discussions anyway.

22 Q. Is it fair to say based upon your last email, this  
23 one that we just referred to, where you referred to her  
24 as not being so stupid that you were giving her the  
25 benefit of the doubt?

1 A. I was giving her the benefit of the doubt that  
2 she's smart enough to know that you don't write things  
3 down that can be interpreted that way.

4 Q. Okay. But you've done things, Mr. Sanders, that  
5 you later regretted in the workplace, isn't that true?

6 A. Haven't we all? Yes, I have.

7 Q. For sure. And in fact when Ms. McKinney was  
8 placed on administrative leave, you sent out  
9 immediately, I won't call it a press release, but an  
10 email to supervisors and managers alerting everybody to  
11 that effect, isn't that true? I --

12 A. Yes, that's correct.

13 Q. Okay.

14 And that's at Exhibit 19, isn't that correct?

15 A. I don't know if it's Exhibit 19, I have to look.

16 Q. I know it's hard to trust, but take a look.

17 A. Yes, that certainly looks like the memo that I  
18 sent out.

19 Q. Okay.

20 And do you recall receiving -- or ever seeing this  
21 note that's attached from Kathleen Karwick to Vicki  
22 about whether or not you should have sent it out?

23 A. I don't recall it.

24 Q. Did you -- do you recall talking to Kathleen  
25 Karwick about whether or not you should have sent that

1 release out?

2 A. There was probably some conversation, yes.

3 Q. Okay.

4 And it's fair to say that that might not have been  
5 your finest hour in terms of sending this out?

6 A. I don't know. This is sent to the direct managers  
7 and supervisors in our unit and what we're talking  
8 about is in order to control the rumor mill, which  
9 really runs the department, that you know if all the  
10 truth comes out of the rumor mill, that we just wanted  
11 to set it straight that you might have heard something;  
12 well, here was the deal just so if people come up to  
13 you, you can explain to them, yes, she's been put on  
14 administrative leave.

15 Q. Okay.

16 But these emails were not directed to Tilum as far  
17 as we know directly from Ms. McKinney, is that correct?

18 MR. JORDANO: Objection, it's been asked and  
19 answered several times.

20 MR. PHILPOT: All right. I'll move on.

21 BY MR. PHILPOT:

22 Q. But you have made specific statements to employees  
23 in the workplace that have been -- that could be  
24 interpreted as a violation of the workplace violence  
25 policy, isn't that correct?

1 A. I don't know that I'd say that, no.

2 Q. Seldon Lubin (phonetic), do you know that name?

3 A. Sheldon Lubin?

4 Q. Excuse me. Sheldon; excuse me.

5 A. Yes, I do.

6 Q. Okay.

7 And, isn't that true, in your capacity as Transit  
8 Administrator you told Mr. Lubin to shut the f---up?

9 A. That's correct.

10 Q. Okay.

11 And were you, Mr. Sanders, ever reprimanded for  
12 that?

13 A. Well, reprimanded is kind of a formal thing.

14 Q. Okay.

15 A. I was asked to recount the incident and that  
16 somebody was offended, I don't even remember if it was  
17 Sheldon, and that -- would I apologize to him? So I  
18 did.

19 Q. Okay.

20 So there was no resulting discipline that occurred  
21 as a result of you doing that in the workplace?

22 A. That's correct.

23 Q. Okay. And your --

24 A. That I'm aware of anyway.

25 Q. And your testimony is that you don't even know if

1 Mr. Lubin was offended? Is that what you're saying?

2 A. I don't even know if it was Mr. Lubin who  
3 complained to HR about it.

4 Q. Well -- okay.

5 A. You know somebody complained to HR; HR called me,  
6 said is this true; I said, yeah, we were having a staff  
7 meeting on personnel plans and Sheldon kept saying you  
8 didn't ask for enough people in Regulatory and  
9 Compliance and he asked a question about three times  
10 and I finally said, Sheldon, we've been over this, just  
11 shut the fuck up. So yes, that's the nature of the  
12 incident and --

13 Q. Was -- yes --

14 A. Go ahead.

15 Q. -- and was he offended, if you know?

16 A. I don't know if it was he who was offended.  
17 Somebody -- but somebody called HR and I did directly  
18 apologize to Sheldon. No, but they didn't tell me to  
19 apologize to anybody else. I can only assume that  
20 Sheldon was the one that went down, but --

21 Q. So HR --

22 A. -- I'm not positive.

23 Q. -- was alerted to it and they told you to  
24 apologize?

25 A. That seemed to be the mitigation that he was going

1 to be satisfied with, yes.

2 Q. Who's he?

3 A. Sheldon.

4 Q. Okay.

5 So he was at least offended enough to require of  
6 HR that you apologize?

7 A. They asked me to apologize to him, yes.

8 Q. If you know, does that appear anyway -- anywhere  
9 in your personnel file?

10 A. I'm not aware of that.

11 Q. Is it your testimony that that's not a violation  
12 of the workplace violence policy?

13 A. I'm not making an interpretation of that, I'd have  
14 to really go through and say if saying the f-word once  
15 to somebody who really got you irritated is a violence,  
16 then okay maybe it is, but --

17 Q. Okay. So --

18 A. -- if -- that's got to be a determination made by  
19 somebody else.

20 Q. Okay.

21 And by the way, you don't work in the maintenance  
22 garage?

23 A. That's correct.

24 Q. Okay.

25 And you work headquarters, isn't that correct?

1 A. That's correct.

2 Q. Okay.

3 And you're considered one of the -- part of the  
4 higher echelon of managers within DOT, isn't that  
5 correct?

6 A. That's correct.

7 Q. All right.

8 I just want to get this clarified if I may, I know  
9 that we covered it just very quickly. At that fact-  
10 finding that occurred on the 12th of July of '06, was  
11 Ms. McKinney told specifically that if she took some  
12 action off state property that it could have -- it  
13 could affect her job? Do you recall that at all?

14 A. I don't know if she was directly told that, no.

15 Q. Okay. Ms. McKinney never took any action off  
16 state property, isn't that correct?

17 A. I'm not aware of any.

18 Q. Okay.

19 You keep notes on employees in your unit, isn't  
20 that correct? You keep files? And you --

21 A. Yes, I have folders in my desk on employees, yes.

22 Q. Okay.

23 And you kept notes, you told me once upon a time,  
24 that -- on Ms. McKinney, isn't that correct? You have  
25 a file on her?

1 A. I have a file on most employees who at some point  
2 were direct reports or had personnel incidents, yes.

3 Q. You have no notes or files on Ms. Tylum, do you?

4 A. I don't know for sure; I'd have to check the desk  
5 draw, but I probably do.

6 Q. Didn't you tell me that you don't have any notes  
7 for -- with respect to Ms. Tylum?

8 A. Well, that may -- it depends on what the context  
9 of the question was. I have folders in my drawer on  
10 most of my employees, which have service ratings or any  
11 commendations they might have gotten and also sometimes  
12 have negatives in there. The fact that I probably  
13 signed a service rating for Ms. Tylum once upon a time,  
14 she would likely have a folder in my desk.

15 MR. PHILPOT: Just a moment, please.

16 BY MR. PHILPOT:

17 Q. At the bottom of 228, starting with line 21, I  
18 asked you about -- you said that you had a file on Ms.  
19 McKinney and I asked you about Tylum there and you can  
20 read it over to the next page.

21 A. I think you're mixing two things. One is my  
22 personal steno pad that was like the exhibit before  
23 that was taken from that pad.

24 Q. Right.

25 A. That's not a file though. A file is in my desk,



1 but notes that I have wrote -- written down in the  
2 book. Your question related to do I have any notes in  
3 my book about Ms. Tilum and the answer was no.

4 Q. Okay.

5 But you do have some in your book about Ms.  
6 McKinney?

7 A. I do.

8 Q. (unintelligible) okay. Let me just ask you this  
9 question, this last question, sir, in your capacity as  
10 Transit Administrator and you oversee you said -- I  
11 think you said 31 or so employees, do you believe that  
12 it is fair for discipline to be issued in a consistent  
13 basis throughout DOT?

14 A. That's always been my position, yes.

15 Q. Does DOT follow what is called progressive  
16 discipline?

17 A. Yes, they do.

18 Q. Would you describe for the Court and members of  
19 the jury what progressive discipline is?

20 A. Well, basically there's a very prescribed process.  
21 I mean generically I think we all know what it is, but  
22 there's a very prescribed process in DOT of -- that you  
23 can talk to somebody before you actually sit down with  
24 their union representatives and it's different for  
25 different bargaining units and we have 28 different

1 bargaining units at the State so each one has a little  
2 different rules, but basically it is -- there's a  
3 process of you can talk to somebody, but it's not  
4 considered an official counseling. Then there's a more  
5 official counseling where they get to bring their union  
6 reps, if they want, depending on the bargaining units  
7 they're in; and basically that's the way you start  
8 building documentation for any kind of action.

9 Q. But there are other steps in terms of discipline  
10 also, isn't that correct?

11 A. I'm sure there are, yeah.

12 Q. Okay.

13 Would you name some of them? There's a transfer?  
14 If a person is --

15 A. Well, that's not progressive discipline; that's  
16 actions.

17 Q. Okay. All right.

18 Well, tell me what other examples of progressive  
19 discipline in terms of the steps?

20 A. Well, there's -- and there's go -- grievances, and  
21 there's step 2 grievances, and there's step 3  
22 grievances, and --

23 Q. But there are also written warnings, is that  
24 correct?

25 A. There are written warnings that we issue

1 sometimes.

2 Q. Okay.

3 There are transfers that can occur?

4 A. Well, that's an action; it's not a part of the  
5 discipline process.

6 Q. Okay. I'm sorry.

7 A. Actually written warning's part of the -- is an  
8 action too, it's not a part of the process.

9 Q. Okay.

10 Is a suspension an action?

11 A. You'd have to ask an HR person. I don't know -- I  
12 would consider that an action, yeah.

13 Q. Okay.

14 And a discharge is certainly an action, isn't that  
15 correct?

16 A. Well --

17 Q. But that's part of discipline too?

18 A. (No verbal response)

19 Q. Right?

20 A. Yeah, I guess we could semantically discuss this  
21 all afternoon --

22 Q. Okay.

23 A. -- but the reality is that no employee has no --  
24 no supervisor or manager has termination powers, no  
25 supervisor or employee has transfer powers. So I think

1 what you expect an employee to do before it goes on to  
2 the next step where it's dealt with on a more  
3 department wide process. So that's where I -- I guess  
4 that's where I define the difference between steps in  
5 the process that we actually control and steps in the  
6 process once --

7 Q. Oh, I see.

8 A. -- it gets beyond a point.

9 Q. Okay. Thank you.

10 THE COURT: All right. Do you want to break?

11 MR. JORDANO: Your Honor, I need to have a  
12 break for five.

13 THE COURT: You're going to be brief?

14 MR. JORDANO: Brief? What I meant I'm not  
15 going to hold up the jury if that's the issue if --

16 THE COURT: Well, I thought since he --

17 MR. JORDANO: -- we're not going to take a  
18 break.

19 THE CLERK: No, he wants to take a break.

20 THE COURT: Yeah, I think we ought to take a  
21 break before we go into your exam, that's -- okay.

22 (Jury out at 2:48 p.m.)

23 THE CLERK: The Honorable United States  
24 District Court is now in recess.

25 (Recess at 2:48 p.m., until 3:03 p.m.)

1 THE CLERK: The Honorable United States  
2 District Court is now open after recess.

3 MR. PHILPOT: Your Honor, just before you  
4 bring back the jury, I do have a procedural question,  
5 if I may. If I may?

6 Yes, Judge, the issue is this, comparators.  
7 You've indicated earlier based on some of your rulings  
8 that those comparators need to be present. I was  
9 hoping to streamline the case in part this afternoon by  
10 being able to ask Ms. Sheldon, who issued many of the  
11 disciplines at issue to comparators, about those cases.

12 May I be permitted to do that?

13 THE COURT: Why not?

14 MR. PHILPOT: Okay. Because I was hoping  
15 that you would say that. All right. Thank you.

16 MR. JORDANO: Your Honor, I also expect to  
17 ask Ms. Sheldon (phonetic) about some -- I expect to  
18 ask Ms. Sheldon about comparable white employees who  
19 were disciplined so --

20 THE COURT: Yeah. What I would do is this in  
21 a case, I always accommodate Counsel and the witnesses.  
22 I don't care about the order in which the witnesses  
23 come in; but when a Plaintiff calls a Defendant, such  
24 as we have on the stand, that are a defense witness, I  
25 like everybody to do the whole examination at once

1 because that gives the jury a chance to judge  
2 credibility in one fell swoop. So I always appreciate  
3 having one -- so the witness doesn't have to come back.  
4 That always gives you the right to call the witness  
5 back if you have to do that.

6 MR. JORDANO: I was going to recommend that  
7 this morning, but I have to confess to you, Your Honor,  
8 that I was going to do that -- do my cross and then  
9 tell you I'm going to switch to my direct --

10 THE COURT: Yeah.

11 MR. JORDANO: -- so he'd make, but I really  
12 am not prepared for this witness because --

13 THE COURT: That's all right. You have --

14 MR. JORDANO: -- next witness or Ms. Seldon,  
15 but I agree with you like maybe with Mr. Stutz I could  
16 do everything.

17 THE COURT: Yeah. Whatever you can do, if  
18 you can't do it with a witness, you can't do it --

19 MR. JORDANO: Right.

20 THE COURT: -- then you call them back if you  
21 do.

22 MR. JORDANO: If Mr. -- if it's okay with  
23 you, if the Court will accept Ms. -- Officer Ginley's  
24 and those people's examination as complete, I don't  
25 want to have to recall them to say the same thing they

1 said in my case in chief. You don't want that.

2 THE COURT: Oh, I agree with that.

3 MR. JORDANO: Yeah. Okay.

4 THE COURT: Yeah.

5 MR. PHILPOT: Well, so do I.

6 MR. JORDANO: Yeah.

7 MR. PHILPOT: I have no objection.

8 MR. JORDANO: Okay.

9 THE COURT: Mm-hmm.

10 MR. JORDANO: That's fine then.

11 THE COURT: Okay.

12 (Pause.)

13 (Jury present at 3:06 p.m.)

14 THE COURT: Now, as this case is going along,  
15 very often the Plaintiff in a case will call witnesses  
16 that are obviously adverse to the Plaintiff, they're  
17 employees or officers of the Defense. When that  
18 happens, we try to have the whole examination take  
19 place while the witness is on the stand so he doesn't  
20 have to be recalled and you get the exposure to him in  
21 one exposure, so we go beyond the direct examination  
22 and the complete the examination of the witness. Now,  
23 there are times it's not possible to do that for one  
24 reason or another, so I never bind Defense Counsel. I  
25 tell them they can do what they can do at the time and

1 then if they have to recall a witness, they can recall  
2 them. Sometimes we will do that, sometimes we can get  
3 the witness all done with one exposure.

4 All right. You can go ahead, Mr. Jordano.

5 MR. JORDANO: Thank you, Your Honor.

6 CROSS-EXAMINATION

7 BY MR. JORDANO:

8 Q. Mr. Sanders, is it correct, sir, that progressive  
9 discipline is not required in every circumstance?

10 A. Probably an HR call, but it's different -- it's  
11 handled differently; you start at different points  
12 sometimes so yes.

13 Q. All right.

14 Now, you were asked by Mr. Philpot, he said that  
15 your comment to Lubin in that situation where you said  
16 to Mr. Lubin shut up, shut the f---up, that -- he asked  
17 you if that was a violation of the policy and I think  
18 your response was well, saying that word is and that  
19 that might be a violation; but that's an HR call, is  
20 that correct? Is that your testimony?

21 A. Yeah, somebody would have to interpret that and  
22 not me.

23 Q. And looking at Exhibit 16, Plaintiff's 16, for a  
24 moment then, would it be a fair statement then that Ms.  
25 McKinney's reference to Ms. Tulum as a sorry bitch that



1 your same testimony might apply to that, that that  
2 would be a call as to whether or not that single --  
3 that reference violates the policy too, correct?

4 A. I suppose the same call would have to be made by  
5 HR for consistency purposes, yes.

6 Q. Okay. All right.

7 Now, I want to talk about the fax incident first,  
8 okay?

9 And I want you to turn to Exhibit 518 in  
10 Defendant's book.

11 You don't have that exhibit yet? All right.

12 MR. JORDANO: Five-eighteen, Judge;  
13 Defendant's book.

14 THE WITNESS: Plaintiff's dividers have the  
15 number on both sides; that would have been a lot  
16 easier.

17 BY MR. JORDANO:

18 Q. Well, it is the State and we're in a little bit of  
19 budget crunch so I apologize, sir.

20 A. Okay.

21 Q I'll take that as a suggestion in the future. All  
22 right. Now, I want to go back for a moment. You heard  
23 the scream, you came out, you saw Ms. McKinney. Now,  
24 we'll use our little diagram here for a moment, okay?

25 And I'll -- up here on the -- all right. And this

1 here is Ms. McKinney's office, Mr. Stutz's, this is the  
2 hallway, this is a doorway here, sir, and this is the  
3 fax area, the table where the paper cutter is and then  
4 the fax machine along that wall, correct?

5 A. You probably took a little bit of liberty with  
6 the --

7 Q. Oh, yes, the dimensions, of course.

8 A. -- portions because there's really a couple more  
9 offices between --

10 Q. Okay.

11 A. -- Stutz's office and the hallway, but yes.

12 Q. All right.

13 But I'm just giving you a -- I mean just a rough  
14 layout here, okay? All right. So Ms. McKinney was  
15 here using the paper cutter and Ms. Tulum had to go  
16 inside and get the fax, correct?

17 A. That would -- yes, that would be the case.

18 Q. And wasn't it also true that what Ms. McKinney  
19 complained about was that Ms. Tulum almost hit her in  
20 the head with some paper that she had taken, that she  
21 had gotten off the fax or from the basket, isn't that  
22 right?

23 A. I don't know if she was that specific at the  
24 moment of the incident, but my recollection was she  
25 said she almost hit me.

1 Q. All right.

2 And then let's go back for a second here.

3 After that incident she went down and spoke to Ms.  
4 LaBarge, do you know that?

5 A. Yes, I'm aware of that.

6 Q. Exhibit 11, Plaintiff's Exhibit 11. This is  
7 her -- this is 15 minutes after the incident roughly  
8 according to Ms. McKinney's testimony and she describes  
9 what happened, do you see that?

10 A. Yes.

11 Q. All right.

12 Now, and in this she says -- she describes that  
13 Lisa Tylum walked over to the copy machine and took her  
14 papers from it and also -- and almost hit me in my  
15 head. Do you see that?

16 A. Yes.

17 Q. She never indicated that Ms. Tylum -- she never  
18 says in here that she felt her life was threatened?  
19 Right?

20 A. That doesn't say that.

21 Q. No.

22 A. That's correct.

23 Q. And she didn't tell you at the time when you heard  
24 the scream and you went up, she didn't blurt out to  
25 you, oh, my god, my life was threatened or anything

1 like that when she spoke to you, right?

2 A. That's correct.

3 Q. All right.

4 It was only later on that she described the  
5 incident as the papers going by her as threatening her  
6 life, is that correct?

7 A. Yeah, I believe it was the fact-finding notes that  
8 I had written, yes.

9 Q. All right. All right.

10 Now, after that incident because it -- the people  
11 went back, Ms. Tilum went to deliver her fax or  
12 whatever, Ms. McKinney went back to her area, you went  
13 back to your office, correct?

14 A. Yes.

15 Q. Or wherever you went, okay, after the paper cutter  
16 incident was over.

17 And that day, sir, did you document for your file  
18 a description of what happened?

19 A. I did.

20 Q. Would you look at 518 in the Defendant's book?

21 MR. JORDANO: Your Honor, 518, Defendant's  
22 book.

23 BY MR. JORDANO:

24 Q. And tell me if you recognize that document?

25 A. Yes, this would be a memo to file that I wrote

1 right after the incident.

2 Q. All right.

3 MR. JORDANO: Offer Exhibit 518.

4 MR. PHILPOT: Objection, cumulative. He's  
5 testifying about it.

6 MR. JORDANO: It goes to --

7 MR. PHILPOT: He testified about the  
8 incident.

9 MR. JORDANO: -- it goes to show that he  
10 documented and what he said because he wasn't asked all  
11 of that information, but it shows he --

12 MR. PHILPOT: This was not submitted to HR.

13 MR. JORDANO: He shows that it was  
14 documented; that he documented something about what  
15 happened.

16 THE COURT: Well, he made -- I think there is  
17 a good point Mr. Philpot has about this. The -- it's  
18 not distributed, it's just put in the file.

19 MR. JORDANO: But the policy that Mr. Philpot  
20 asked him about said you need to document. It didn't  
21 say it had to go to HR.

22 MR. PHILPOT: No, it says it has to go to the  
23 next higher level supervisor. It didn't; it went to  
24 his own file.

25 THE COURT: Well, this was done to -- for his

1 file. I think I'll just -- he testified from it; I  
2 think I'll just leave it marked for identification.

3 MR. JORDANO: All right.

4 THE COURT: If you want to go over it with  
5 him --

6 MR. JORDANO: I will --

7 THE COURT: -- you can go over it with him.

8 MR. JORDANO: -- I will do that.

9 BY MR. JORDANO:

10 Q. Would you look at that, sir, and just tell me,  
11 sir, so you described what happened, is that correct?

12 A. Yes.

13 Q. All right.

14 And describe for us, Mr. -- just tell us was Ms.  
15 McKinney shaking when you went over to see her?

16 A. Ms. --

17 Q. Ms. -- was she shaking?

18 A. My recollection was she was -- I don't know what I  
19 wrote about it yet, but --

20 Q. All right.

21 A. -- I'd have to look -- refresh my memory to see if  
22 I wrote it.

23 Q. All right.

24 Refresh your memory. Tell me if you saw -- you  
25 made any reference to her shaking or being distressed.

1 A. No, it doesn't look like it.

2 Q. Well, in fact Ms. -- you -- your recollection is  
3 that Ms. McKinney did not claim that Ms. Tilum swung at  
4 her, she did not claim to you that she actually hit  
5 her, isn't that correct?

6 MR. PHILPOT: Objection to the form of the  
7 question.

8 THE COURT: Yeah, let's have him testify.

9 BY MR. JORDANO:

10 Q. Well, did Ms. McKinney ever tell you that Ms.  
11 Tilum actually swung at her?

12 A. This memo, which was timely with the event,  
13 said --

14 Q. Just look at it and tell me -- refresh your  
15 recollection on what you recall.

16 THE COURT: Yeah, he's telling you the exact  
17 thing you should do. You should look at it --

18 THE WITNESS: Okay.

19 THE COURT: -- to refresh your recollection  
20 --

21 MR. JORDANO: Then tell us what you recall.

22 THE COURT: -- then give us testimony.

23 THE WITNESS: Okay.

24 Yeah, Daphne's claim was she almost hit her  
25 in the head and -- but there was no claim of she took a

1 swing at her, reaching across the table, anything else.

2 So that recollection basically stands, yeah.

3 BY MR. JORDANO:

4 Q. And did Ms. Tylum explain what she was doing over  
5 there? Why she was there?

6 A. I don't recall it. I don't know if I wrote  
7 anything. I could look for that too.

8 Q. Take a moment to look in that paragraph, if it  
9 refreshes your recollection.

10 A. No, there's really nothing about Ms. Tylum saying  
11 anything. Well, she -- well -- I'm sorry. She did say  
12 she was picking up a fax.

13 Q. A fax. And that would have been work-related  
14 business?

15 A. Yes.

16 Q. All right.

17 A. In fact I know what that fax was. It was about a  
18 bus garage project we had up in Watertown so.

19 Q. All right.

20 Very well. And Ms. McKinney was she working on  
21 state business with the paper cutter?

22 A. It didn't appear to be state business, no.

23 Q. What was she actually working on, if you recall,  
24 sir?

25 A. She was cutting a large diagram -- a large



1 advertising type piece with photographs and texts and  
2 it turned out to be a print from Raevis.com, a real  
3 estate website.

4 Q. Of homes?

5 A. Of -- well, I believe it was homes, it might have  
6 been floor plans, but it was something like that.

7 Q. All right.

8 Now, moving on for moment to the email of July  
9 10th to the Commissioner.

10 Sir, do you recall if Mr. King or Mr. Jolly ever  
11 spoke to you about that email?

12 A. Well --

13 Q. It's a yes or no question.

14 A. Yes.

15 Q. All right. And what concerns were discussed?

16 A. Well, Mr. King had already written his own email  
17 back to the Commissioner --

18 MR. PHILPOT: Objection, hearsay.

19 THE COURT: Yeah, I'll sustain.

20 MR. JORDANO: All right.

21 THE WITNESS: Well --

22 BY MR. JORDANO:

23 Q. Regarding the email that Ms. McKinney wrote,  
24 was -- did Mr. King have any concerns about the threat?  
25 About a threat?

1 MR. PHILPOT: Objection, hearsay.

2 THE COURT: Yeah, sustained.

3 BY MR. JORDANO:

4 Q. Did any employee discuss to you concerns about a  
5 threat?

6 A. Yes.

7 BY MR. JORDANO:

8 Q. Yes or no.

9 MR. PHILPOT: Objection, hearsay.

10 MR. JORDANO: I'm just asking if someone  
11 raised it, not what they said.

12 THE COURT: It's a yes or no, but --

13 BY MR. JORDANO:

14 Q. And is that what prompted you to ask the threat  
15 assessment team to reassess or look at or dig into to  
16 find out what Ms. McKinney meant by her comment take it  
17 off state property?

18 A. That was certainly one of the drivers behind the  
19 same answer I gave to Attorney Philpot of there were  
20 other questions that were being raised that I hadn't  
21 really -- that hadn't really occurred to me.

22 Q. And did the agency ask Ms. McKinney what she meant  
23 by the comment, take it off state property?

24 A. I don't know when they might have done that. It  
25 wasn't timely with the first email, but it might have

1 been as part of the fact-findings, any of the fact-  
2 finding, yeah.

3 Q. Was it your understanding this email was her  
4 answer? Or one of her answers?

5 A. That was certainly something that was discussed at  
6 the threat assessment team meeting, yes.

7 Q. And on the second threat assessment was this email  
8 also discussed, where she mentions specifically if I  
9 were to go to Lisa Tulum off state property and  
10 confront her verbally or physically, was that  
11 discussed?

12 A. Yes.

13 Q. Now this would have been after, after you  
14 testified that you wrote the email that said you didn't  
15 think Ms. McKinney would be so stupid as to write down  
16 what she wanted to do?

17 A. Right, 'cause that was Monday; these were Thursday  
18 or Friday, yes.

19 Q. All right.

20 I want to turn for a moment to the file cabinet  
21 incident for a moment. Sir, do you have the right as a  
22 manager to inspect those file cabinets, the state-owned  
23 file cabinet at any time?

24 A. I would assume that as managers, we have the right  
25 to inspect any state property at any time, yes.

1 MR. PHILPOT: Objection, ask that it be  
2 stricken, an assumption.

3 THE COURT: Yeah, that sounds like  
4 speculation.

5 MR. JORDANO: All right.

6 BY MR. JORDANO:

7 Q. Did you believe you had the right to look in the  
8 file cabinet and look for the folders in Ms. Mantires's  
9 file cabinet?

10 A. We believe that the missing folders were part of  
11 day-to-day business and that we should have a right to  
12 see them, yes.

13 Q. And this file cabinet was owned by the state?

14 A. Yes, it was.

15 Q. All right. And that's what you wanted to get at,  
16 correct?

17 A. All we -- we wanted the -- we wanted to look for  
18 this particular file for this particular applicant who  
19 was asking questions about what the status of their  
20 application was.

21 Q. You didn't care about Ms. Martires's personal  
22 property, correct?

23 A. No.

24 Q. And you told Ms. --

25 A. Or it was, correct, yes.

1 Q. -- McKinney that?

2 A. I didn't care, no.

3 Q. Yes. Okay.

4 And did you tell Ms. McKinney that? Did you tell  
5 her we just want to get into the file cabinet and get  
6 the files?

7 A. Well, we said we just want to get the -- we want  
8 to see if the files are in there.

9 Q. But first it was that she wasn't going to do it  
10 because she was worried about the personal property, is  
11 that right?

12 A. I don't know what was her motivation, but she  
13 certainly indicated that she wasn't going to be the one  
14 that let us into the file cabinet.

15 Q. Then you asked her to call Ms. Martires and she  
16 said that Ms. Martires was home sick and couldn't be  
17 bothered?

18 A. Well, I --

19 Q. Correct?

20 A. The query we made was we asked if she could call  
21 her and say is it all right so that she could let us in  
22 to get the files that we need.

23 Q. Now --

24 A. And the response we got back was no, she's home on  
25 sick leave, I don't -- I'm worried about waking her up

1 or something like that.

2 Q. And she didn't give you the phone number? Right?

3 A. She did not.

4 Q. And you didn't have it?

5 A. I did not.

6 Q. And HR didn't have a current phone number?

7 A. We actually asked HR at that point and said do you  
8 have a number for her and they didn't have a current  
9 phone number either.

10 Q. All right.

11 But then after you made the comment about the  
12 check, suddenly Ms. Martires could be disturbed at  
13 home, is that correct?

14 A. Ah --

15 Q. Well, I mean --

16 MR. PHILPOT: Objection, if he knows.

17 BY MR. JORDANO:

18 Q. Someone called you saying that Ms. Martires had  
19 contacted them, right?

20 A. No.

21 Q. Did --

22 A. Ms. Martires contacted the Governor's office and  
23 complained that I was withholding her check.

24 Q. Did she call your office to find out about the  
25 file cabinet incident?

1 A. No, she didn't.

2 Q. Did she call up to inquiry why, why there was an  
3 incident at all, to talk to you?

4 A. No, in fact we got explicit instructions when she  
5 did call in that she didn't want to talk to either me  
6 or Lisa Tylum.

7 Q. Oh. Now, there were different people on the  
8 threat assessment team versus a fact-finding, correct?

9 A. That's correct. There were a couple of common  
10 people, but there -- it was based two totally different  
11 sets of people.

12 Q. So we're clear now, the email -- the July 7th  
13 incident happens, it happens afternoon, the two people  
14 leave; Monday morning, first threat assessment is  
15 whether or not Ms. Tylum and Ms. McKinney -- if there's  
16 an imminent threat by Ms. Tylum right then and that's  
17 one threat assessment, correct?

18 A. That was -- yes --

19 Q. All right.

20 A. -- that was the first threat assessment.

21 Q. All right.

22 And then after that's done, a fact-finding is  
23 scheduled in which Mr. Jennings and Ms. Jannotta were  
24 going to hold on the 12th?

25 A. That's -- on the -- yes, on the 12th, yes.

1 Q. And that was to look into whether -- what happened  
2 at the fact-finding -- I mean at the fax machine and  
3 whether Ms. Tylum had actually tried to assault Ms.  
4 McKinney?

5 A. Yes.

6 Q. Right? That was the purpose of it?

7 A. That's correct.

8 Q. Correct? Then later on, on that day there was a  
9 threat assessment on the first email that came to the  
10 Commissioner earlier that morning?

11 A. Later that day meaning Monday, July 10th?

12 Q. Monday --

13 A. Yeah.

14 Q. -- right, Monday.

15 A. Yes.

16 Q. Yes.

17 A. Yes.

18 Q. Okay.

19 And then that's when you wrote the memo, sometime  
20 that day about that it could be legal, you're not sure,  
21 you know, someone should inquire into it, correct?

22 A. That's correct.

23 Q. All right.

24 And then whoever came and discussed with you a  
25 concern about the email being a threat, then the threat



1 assessment team was reconvened, correct?

2 A. On that first day? I'm not aware that it was --

3 Q. All right.

4 A. -- it was not reconvened with me present. It's  
5 possible --

6 Q. Okay.

7 A. -- they might have met later on that Monday --

8 Q. All right.

9 A. -- but not being on the team, I might not have  
10 been invited.

11 Q. All right.

12 And your -- was it your understanding that the  
13 result of that was someone was going to ask Ms.  
14 McKinney to explain her comment?

15 A. What I was trying to get out of Kathleen and the  
16 rest of the threat assessment team with that first  
17 Monday memo, the 12:19 memo, was, you know, does -- you  
18 know, can somebody clarify this just so we can be sure?  
19 If she really just meant, you know, I'm going to file a  
20 lawsuit, then we know it's one thing; if it's something  
21 different, then we get a little better understanding of  
22 what's really at hand here.

23 Q. All right.

24 At some point HR asked that an investigation be  
25 conducted by Mr. Crowthers and Mr. Maher of the

1 Regulatory and Compliance unit, is that correct?

2 A. I don't think it was at the direction of HR. I  
3 think that was actually the -- a tiny bit of context,  
4 the Regulatory unit had been gutted during the 2003  
5 early retirements. We lost 9 out of 11 employees. We  
6 had to assemble a whole new team and it was a fairly  
7 interesting transition, a lot of dysfunctionality, a  
8 lot of personality conflicts, and a lot of people that  
9 really didn't know what their job was because obviously  
10 they'd never done it before; and there was not a lot of  
11 transition time to train new people to do the job. So  
12 that period from June 2003 probably for about a year  
13 was a very difficult period. It was sometime after  
14 that that -- after we had complained to the  
15 administration in the department enough about, you  
16 know, can we do something to fix the problem here, that  
17 the administration actually ordered this research by  
18 Mr. Crowthers and Mr. Maher.

19 Q. It was limited to that unit, is that correct?

20 A. And it was looking into the functionality of the  
21 Regulatory and Compliance unit.

22 Q. Not the Rideshare area?

23 A. Not any other part of the department other than,  
24 obviously, from, you know, my position because I  
25 supervise both, but just really that chain from

1 Regulatory and Compliance up.

2 Q. All right.

3 Would you look at Exhibit -- Defense Exhibit 535  
4 in that book? Tell me if this is the organizational  
5 structure on or about the time of March 2006?

6 A. Yes, this is it before March 31st actually that's  
7 the note on the bottom. Before March 31st. It was  
8 before the promotions were made to Supervising Planner.

9 MR. JORDANO: I offer Exhibit 535.

10 MR. PHILPOT: No objection.

11 THE COURT: Five-thirty-five is admitted.

12 MR. JORDANO: I'm going to put it up here,  
13 ladies and gentlemen. Then we'll give you the book in  
14 the exhibit later on.

15 THE COURT: I don't know if they want to do  
16 that.

17 MR. JORDANO: You think that'll be too hard?

18 THE COURT: Yeah, that's so blurred. That  
19 whole screen seems to be always blurred. I keep  
20 wanting to ask the jury --

21 MR. JORDANO: It's supposed to  
22 automatically --

23 THE COURT: The jury keeps looking in the  
24 wrong books.

25 MR. JORDANO: All right. So --

1 THE COURT: Because it's hard to read that.

2 MR. JORDANO: We'll hand that out then.

3 Would you just hand out this sheet and the  
4 books right now if you would and we'll put 535 in there  
5 and we'll check to the extent this helps us a little a  
6 bit, we'll have it.

7 (Long pause.)

8 BY MR. JORDANO:

9 Q. Okay.

10 If you look at this Exhibit, all right, sir, you  
11 have it there, I just want to go over it a little bit.  
12 I'm going to use this one here, I have to look at it.  
13 You have yourself in the center there at the Office of  
14 Transit and Rideshare Public Transit Administrator,  
15 there you are, correct, right in the middle under the  
16 Bureau Chief?

17 A. Yup.

18 Q. Okay. All right.

19 And on the lefthand side is the Rideshare area,  
20 correct, Project Design and Project Implementation, Mr.  
21 Jolly's in charge?

22 A. Yeah, and -- yes --

23 Q. All right.

24 A. -- and Marketing TDM is the specific Rideshare  
25 area. There's also a Capital Projects small unit

1 there.

2 Q. I'm going to get that in a second.

3 A. Okay.

4 Q. All right.

5 Under him, under Mr. Jolly is Ms. Tylum for the  
6 Capital Projects, that's the position that she held  
7 before you asked her to temporarily run the Regulatory  
8 and Compliance unit in 2005, is that correct? So she  
9 had --

10 A. Yes --

11 Q. -- a dual role?

12 A. -- she actually held it before, during, and after,  
13 yes.

14 Q. All right.

15 She had a dual role, is that right?

16 A. Yes, she was dual for that period from September  
17 '05 --

18 Q. You look over on the far right-hand side where it  
19 says Regulatory and Compliance, you see her name's  
20 written in there, Lisa Tylum?

21 All right.

22 You see that? And there's kind of a broken line  
23 there in ink.

24 But she's over in that Regulatory and Compliance  
25 area, is that correct?

1 A. Yes, that was -- that reflected her interim  
2 assignment for her.

3 Q. And this one that says -- over here the  
4 (unintelligible) Contract Services and Support  
5 Transportation, vacant. Is that -- or -- and the one  
6 next to it is also vacant, Marketing and TBM  
7 (phonetic), is that where Mr. -- Marketing and TDM  
8 where Mr. Stutz went?

9 A. Mr. Stutz is already on under Marketing and TDM as  
10 a Planner II, so I'm not sure I understand the  
11 question.

12 Q. So did he move up to that vacant position to  
13 supervisor that area?

14 A. Oh, yes, after the interview process --

15 Q. Right. Okay.

16 A. -- he was assigned to take that spot at the top of  
17 that chain, yes.

18 Q. All right.

19 So that's how it lays out roughly; there's some  
20 people moving around, but Ms. Tilum as the dual roles;  
21 Mr. Stutz moves up into the position that says vacant  
22 for the Marketing and TDM Transportation Supervising  
23 Planner, is that correct?

24 A That's correct.

25 Q. All right.

1           Now, have you ever been aware, sir, of anybody  
2 being investigated for smiling at someone? You aware  
3 of anyone in your department ever being investigated  
4 for smiling?

5           A.     This Plaintiff excepted, no.

6           Q.     Well, did any -- other than Ms. McKinney, did  
7 anyone ever complain that they were threatened,  
8 threatened by someone smiling?

9                     MR. PHILPOT:  Objection, relevance.

10                    MR. JORDANO:  Well, she testified --

11                    THE COURT:  I'll allow it.

12           BY MR. JORDANO:

13           Q.     All right.

14                     Answer the question, sir.

15           A.     I haven't -- I don't know of anybody who has done  
16 that.

17           Q.     All right.  Are you aware of anyone who complained  
18 -- anyone in your department complained that they were  
19 threatened by someone laughing?

20           A.     I have -- I'm not aware of anyone having done  
21 that.

22           Q.     How about smirking?  Did anyone ever come to you  
23 in your department and say that they were threatened by  
24 someone smirking?

25           A.     No.

1 Q. Now looking at our chart for a moment here, this  
2 little very inartful diagram, all right, where Ms.  
3 McKinney was and Mr. Stutz and there may have been some  
4 other cubicles before the hallway there, Mr. Stutz and  
5 Ms. McKinney had their cubicles across from each other?

6 A. Yes, that's correct.

7 Q. All right.

8 And did Mr. Stutz and Ms. Tulum ever work on  
9 different types of projects where one -- they handled  
10 different aspects of a project?

11 A. There were occasions giving Ms. -- given Mr.  
12 Stutz's expertise in marketing, there were occasions  
13 where we'd have news releases going out or events to be  
14 scheduled or brochures to be prepared, yes.

15 Q I want to explain this for a second 'cause I'm --  
16 I know you do the public transportation, but what's the  
17 marketing component? What's that mean?

18 A. Well, we've designed a website for transit  
19 information. We have other subsidiary websites, sites  
20 that some of the contractors do for us to put  
21 information materials on. We have the series of news  
22 releases and we schedule events and we have marketing  
23 campaigns.

24 Q. All right.

25 A. The Ridesharing brokerages actually conduct a lot



1 of the marketing campaigns --

2 Q. All right. So --

3 A. -- so there's interaction among all of them and  
4 Mr. Stutz for the marketing piece so.

5 Q. And is that the same with Capital Projects?

6 A. Capital Projects doesn't have a lot in marketing,  
7 but it does have if we're doing a public meeting and we  
8 have to schedule hearings and we want to have handouts  
9 and brochures and, you know, pretty four-page color  
10 whatever --

11 Q. That's where Ms. --

12 A. -- to hand out, that type of thing.

13 Q. So that's where Ms. Tulum might have to interact  
14 with him if she's in the Capital Projects area?

15 A. There would be some occasion to, yes.

16 Q. All right.

17 Did Ms. McKinney ever come to you and say that she  
18 -- excuse me. On the 7th of July and on the fax  
19 machine incident, did Ms. McKinney ever come to you and  
20 say that she felt her life was threatened and felt that  
21 a major investigation needed to occur about that?

22 MR. PHILPOT: Objection.

23 MR. JORDANO: It's what Ms. McKinney --

24 MR. PHILPOT: Asked and answered.

25 THE COURT: Pardon me?

1 MR. PHILPOT: Asked and answered. Asked and  
2 answered. Already covered.

3 THE COURT: Well, I don't see that it has  
4 been to the extent that he can't ask the question. Go  
5 ahead.

6 MR. JORDANO: All right. Well, I'll  
7 rephrase.

8 THE WITNESS: Could you ask the question  
9 again?

10 BY MR. JORDANO:

11 Q. No, I'll change it.

12 A. All right.

13 Q. Friday the incident, Monday the first day. So  
14 within three business days, a fact-finding was already  
15 set up and occurred to look at that incident, correct,  
16 the --

17 A. Well, it was actually over a weekend so it was  
18 like half a business day.

19 Q. I said with -- or so two and a half business days?

20 A. Three calendar days, yeah.

21 Q. All right.

22 Is that correct? So the agency didn't delay, did  
23 they? It happened on Friday; Monday they do the threat  
24 assessment, they say there's nothing really that we  
25 have to do right now on the threat assessment, but

1 let's schedule a fact-finding; Wednesday it occurs?

2 A. That's correct.

3 Q. And Ms. McKinney was there? At the fact-finding.

4 A. At the fact-finding, yes.

5 Q. Okay.

6 She told her story of what happened?

7 A. I would presume she did, yes --

8 Q. All right.

9 A. -- that's what it would be, I --

10 Q. Were you there for the whole meeting?

11 MR. PHILPOT: Objection as to what --

12 THE WITNESS: I'm -- okay.

13 MR. PHILPOT: -- he presumed.

14 THE WITNESS: Yeah.

15 MR. JORDANO: Okay.

16 BY MR. JORDANO:

17 Q. Were you there for the whole meeting?

18 A. She was a witness at the fact-finding so she would  
19 have had an opportunity to tell her story.

20 Q. All right.

21 And the -- and Ms. Tylum also?

22 A. Ms. Tylum was also there.

23 Q. And you were asked questions, sir?

24 A. I wasn't really asked questions. I did provide a  
25 little clarifying information, a little better than

1 that map, but I -- there was some misstatements of what  
2 was what piece of equipment was where and there was  
3 some discussion of the printer and the printer was  
4 really on the opposite side from the fax and -- so  
5 there -- they were just to clarify where the fax  
6 machine was, where the wire basket was, where the paper  
7 cutter was, and, you know, basically I almost wrote out  
8 a similar drawing of just that floor space though.

9 Q. All right.

10 Now, sir, did you have any involvement at all in  
11 the decision to discipline Ms. McKinney? I mean did  
12 you make that -- were you involved in --

13 A. No.

14 Q. -- what discipline would be metered out?

15 A. No.

16 Q. All right.

17 That was done through HR?

18 A. It was done as a result of another fact-finding.

19 Q. Were you a witness at that fact-finding at all?

20 A. I provided some -- I provided a written -- some  
21 written information, but I wasn't in town that day so I  
22 couldn't attend the fact-finding.

23 Q. All right.

24 And -- but you had no involvement at all in the  
25 decision to discipline Ms. McKinney?

1 A. That's correct.

2 Q. That was done by someone else?

3 A. That's correct.

4 Q. Did you have any involvement at all with the  
5 police department's investigation, State Police  
6 investigation?

7 A. No.

8 Q. When Mr. Stutz took over as the supervisor for Ms.  
9 McKinney, did he through Mr. Jolly keep you abreast of  
10 his efforts to monitor or take care of the issue of  
11 this bullying?

12 A. Yeah, I was aware of the issue from his email  
13 around April 5th or 6th and just as a normal course of  
14 business of, you know, what's new on whatever hot  
15 issues we're dealing with, I would talk to Mr. Jolly  
16 now and again and just check on status of things. I  
17 don't recall if I ever talked directly to Mr. Stutz  
18 about it, but I was able to get briefings or status  
19 from Mr. Jolly.

20 Q. So it would come through Stutz to Jolly to you,  
21 generally?

22 A. Yes.

23 Q. Unless you were cc'd on or blind copied on an  
24 email?

25 A. Yes, that's correct.

1 Q. Do you know who Ricardo Almeida is?

2 A. Yes, I do.

3 Q. Who is Mr. Almeida?

4 A. He's a Transit Manager for the office.

5 Q. And do you remember any occasion where Mr. Almeida  
6 came and complained to you about Ms. McKinney and Ms.  
7 Martires's behavior in the workplace?

8 MR. PHILPOT: Objection, relevance.

9 THE COURT: I don't know what's coming. I'll  
10 let --

11 MR. JORDANO: Well --

12 THE COURT: -- I'll let him answer yes or no.

13 THE WITNESS: Yes.

14 BY MR. JORDANO:

15 Q. Would you look at Exhibit 501 in that book if you  
16 would, 501? Just look at it and tell me if you  
17 recognize it, sir?

18 A. Yes, I do.

19 Q. It's an email you received from Mr. Almeida, is  
20 that correct?

21 A. That's correct.

22 Q. Does this deal with a concern he has about Ms.  
23 McKinney, Ms. Martires, in the area there, in the  
24 workplace in your unit?

25 A. Ms. Martires, but yes.

1 MR. PHILPOT: Well, objection, Your Honor;  
2 relevance. It has to do with Ms. Martires.

3 THE COURT: This goes to credibility I guess  
4 because on the Plaintiff's exam she was asked if she'd  
5 ever been complained about for the socializing --

6 MR. JORDANO: Correct.

7 THE COURT: -- and she said no.

8 MR. JORDANO: Correct.

9 THE COURT: And so I'll allow this.

10 MR. PHILPOT: Not complained about, but  
11 complained to.

12 THE COURT: Yeah. I'll allow this.

13 MR. JORDANO: Offer Exhibit 501.

14 (Pause.)

15 BY MR. JORDANO:

16 Q. This is 501, sir, and you'll see that this is  
17 dated August 26, 2005, and I apologize part of that  
18 part of the word is cutoff on the left, but I think the  
19 second paragraph says, "I did not bring this situation  
20 to your attention until today;" and he's talking about  
21 concerns he has about the -- there have been several  
22 occasions he's concerned about Ms. McKinney and Ms.  
23 Celeste using the conference room and the noise and the  
24 disruption it creates in your area, is that correct?

25 A. That's correct.

1 Q. Exhibit 502, please. And don't comment on it. At  
2 some point I think you already testified, but I want to  
3 make sure. At some point Ms. Tilum became the  
4 supervisor of Regulatory and Compliance. You mentioned  
5 that when we looked at the diagram of the different  
6 areas, is that correct?

7 A. Yes.

8 Q. And that was roughly in September of 2005?

9 A. That's correct.

10 Q. All right.

11 And did you send an email out to all the people in  
12 that area, including Ms. McKinney, saying that that was  
13 going to occur?

14 A. Yeah, this should be an all staff memo so  
15 everybody should be on it. Yeah, she's on it.

16 MR. JORDANO: I offer Exhibit 502.

17 MR. PHILPOT: Relevance. It's already  
18 stipulated that --

19 THE COURT: Well, it's -- why does the jury  
20 need this? It's not disputed.

21 MR. JORDANO: All right. Well, I was trying  
22 to show the progression and what was said about the --  
23 about who's going to supervise, but if it's -- if  
24 there's no dispute that she took over --

25 THE COURT: Yeah, I don't think we ought



1 to --

2 MR. JORDANO: I don't have a problem with  
3 that, Judge.

4 THE COURT: -- burden the jury with stuff  
5 they don't -- they got enough they have to look at.

6 MR. JORDANO: No problem, Judge.

7 BY MR. JORDANO:

8 Q. Now, after Ms. Tylum took over, took over that  
9 area, did she -- look at 503, please, if you would --  
10 did she complain about Ms. Martires and Ms. McKinney  
11 and their use of the conference room and an issue she  
12 had in the workplace?

13 A. I'm sorry; could you rephrase --

14 Q. Yes.

15 A. -- or repeat the question?

16 Q. After Ms. Tylum took over the Regulatory and  
17 Compliance area, did she complain to you about Ms.  
18 Martires and Ms. McKinney and their conduct in the  
19 workplace regarding her area?

20 A. Yes.

21 Q. All right.

22 And Exhibit 503, is that an email she sent to you  
23 in November of 2005?

24 A. Yes, it is.

25 Q. About that issue?

1 A. Yes. About excess fraternizing, yes.

2 MR. JORDANO: Offer 503.

3 MR. PHILPOT: Relevance. This is not about  
4 socializing, this is about disparate treatment.

5 MR. JORDANO: She said that she was never --  
6 no --

7 THE COURT: Yeah, I will allow this solely  
8 because even though it's to Sanders, she claims that  
9 she did speak to the two of them so that can be a  
10 subject of examination when she's on the stand, but  
11 I'll allow it.

12 (Pause.)

13 BY MR. JORDANO:

14 Q. Now at some point the file cabinet incident got  
15 resolved through the assistance of Ms. Karwick, is that  
16 correct?

17 A. That's correct.

18 Q. All right.

19 And would you look at 505? I just want to be --  
20 and at some point did Ms. McKinney acknowledge that the  
21 matter had been resolved through Ms. Karwick regarding  
22 the key to the file cabinet?

23 A. Insofar as it effects the key to the file cabinet,  
24 yes?

25 Q. Yes. Okay. Now, sir, at the time -- afterwards I

1 take it you looked into this issue and there was some  
2 type of new policy issued so this type of repeat  
3 situation didn't occur?

4 A. Well, it -- I actually issued a new policy that if  
5 there were any file cabinets that contained the general  
6 business of the department that somebody else should  
7 have a key just besides the employee. Actually not  
8 just somebody, but actually their supervisor so not  
9 just anybody.

10 (Pause.)

11 MR. JORDANO: Your Honor, at this time I'm  
12 going to reserve the rest for my case in chief because  
13 I think there's some other areas, but I want to make  
14 sure I can lay the predicate before that.

15 THE COURT: Yeah, you can call him back.

16 MR. JORDANO: Yeah. In my case in chief,  
17 sir.

18 THE COURT: Mm-hmm.

19 REDIRECT EXAMINATION

20 BY MR. PHILPOT:

21 Q. Okay.

22 Mr. Sanders, Attorney Jordano asked you whether or  
23 not the reference to quote, "sorry bitch," as  
24 referenced in Ms. McKinney's email was equivalent to  
25 what you said to Mr. Lubin, do you recall that?

1 A. I do.

2 Q. Okay.

3 And you said well if one's a violation the other  
4 also is a violation or that it's up to the  
5 interpretation of HR?

6 A. I believe that the interpretation of HR or  
7 somebody who investigates would really be the issue.

8 Q. But in your case when you said that to Mr. Lubin  
9 at a meeting, you said it directly to him, isn't that  
10 correct?

11 A. Yes, I did.

12 Q. Okay.

13 And in your case the discipline you got was the  
14 punishment of having to apologize to him, isn't that  
15 correct?

16 A. That's correct.

17 Q. Okay. In Ms. McKinney's case when she said it,  
18 she didn't say it to Ms. -- in terms of the "sorry b,"  
19 she said it to others, but not to Ms. Tulum, isn't that  
20 correct?

21 A. I would assume that -- oh, I'm sorry, can't  
22 assume.

23 Q. You're right.

24 A. It would appear that that is correct from the  
25 email documentation.

1 Q. Okay. Fine.

2 And the punishment that she got, the discipline  
3 she got was not to say she's sorry to Ms. Tylum, but  
4 rather dismissal, isn't that correct?

5 A. That's not my call to make though.

6 Q. I understand it's not your call.

7 A. And --

8 Q. But isn't that what happened?

9 A. Well, I think you're dealing with a very narrow  
10 piece of it, you can't just take two words and say that  
11 that's the result of -- for her dismissal.

12 Q. Okay.

13 That was the discipline that she got, isn't that  
14 correct?

15 MR. JORDANO: Objection, mischaracterizes his  
16 testimony.

17 MR. PHILPOT: All right. I'm not --

18 MR. JORDANO: It's been answered.

19 MR. PHILPOT: -- I'm not going to claim it,  
20 Your Honor. I'll move on.

21 BY MR. PHILPOT:

22 Q. Mystifying to me is this, Mr. Sanders, is it your  
23 testimony that no one prior to this incident in  
24 December of 2005 involving the file cabinet, no one in  
25 your department, no supervisors, had keys to cabinets?

1 A. I don't know that none had it, but clearly some  
2 didn't.

3 Q. Okay.

4 And the supervisor -- the direct supervisor of Ms.  
5 Martires was whom?

6 A. Ms. Tylum.

7 Q. Tylum; and so Ms. Tylum clearly did not have the  
8 key?

9 A. That's correct.

10 Q. Okay.

11 And there was no copy of the key within the unit?

12 A. That would appear to be correct. No -- we --  
13 there's file cabinets in general office space and  
14 there's file cabinets in offices; and this one was in  
15 her particular office and so there would likely be no  
16 reason for somebody else to have a key to it.

17 Q. But now there's a reason. I mean you made a new  
18 policy saying there's a reason for there to be a copy.

19 A. That's correct.

20 Q. Of every key.

21 A. Yes.

22 Q. Okay.

23 I thought Attorney Jordano asked you whether or  
24 not Ms. McKinney had to tell you what to do after it  
25 became -- you became aware that Crowthers and Maher

1 were complained to about bullying. Do --

2 MR. JORDANO: Objection.

3 BY MR. PHILPOT:

4 Q. -- do you recall that?

5 MR. JORDANO: Objection, I never -- that was  
6 never asked.

7 THE COURT: I don't remember this.

8 MR. JORDANO: I never asked.

9 MR. PHILPOT: All right.

10 THE COURT: Let's see what he says.

11 MR. PHILPOT: Okay.

12 BY MR. PHILPOT:

13 Q. I thought that Attorney Jordano asked you whether  
14 or not Ms. McKinney ever said to you after the  
15 complaint was made to Crowthers and Maher that you were  
16 required to investigate the matter?

17 A. Well, she made the complaint to a special group of  
18 investigators. I'm not even aware that she made that  
19 complaint until --

20 Q. May?

21 A. -- we got further into this trial stuff so.

22 Q. Right. Okay.

23 But you don't have to be told how to handle a  
24 complaint in your capacity as Transit Administrator.  
25 You're aware of the policy and you are aware -- for

1 instance, with respect to the -- for instance, the  
2 paper cutter incident, you're aware of what to do based  
3 upon 80-16B, aren't you?

4 A. 16B is the process? Yes.

5 Q. Yes. Okay. Is the process so --

6 A. Yes.

7 Q. -- you don't have to be told by your employee as  
8 to what your responsibilities are under the policy --  
9 under the what you call the process?

10 MR. JORDANO: Objection, relevance. He was  
11 never asked --

12 MR. PHILPOT: He asked about --

13 THE COURT: I'll allow it.

14 THE WITNESS: I would certainly welcome input  
15 from an employee if they had something constructive to  
16 add, but when we get issues like this quite often we  
17 know what our policy is; we may contact HR or  
18 Affirmative Action--

19 BY MR. PHILPOT:

20 Q. Sure.

21 A. -- action and affirm that what we're doing will be  
22 the right way to go with it. So there is potentially a  
23 lot of interaction.

24 Q. I guess the question is, it's not incumbent upon  
25 the employee to tell you how to handle what the policy



1 tells you you're required to do, isn't that fair?

2 A. It's not the employee's job to tell me, that's  
3 correct.

4 Q. Okay.

5 Mr. Sanders, is it your testimony that Dennis  
6 Jolly kept you abreast, as you put it briefings, as to  
7 what was going on with respect to Ms. McKinney's  
8 complaints about bullying by Tilum? Is that your  
9 testimony?

10 A. It's my testimony that when we had occasion to  
11 talk about the status of issues after April 5th, the --  
12 I would often ask a question of, you know, what's  
13 happening with this, where's it at; but that doesn't  
14 mean briefings every day or every week. It might just  
15 be a passing in the hallway, what's going on.

16 Q. All right.

17 And is it your testimony after April 5th -- and  
18 why April 5th? Why is that --

19 A. I think that was the date of the -- Mr. Stutz's  
20 email.

21 Q. Okay.

22 A. Whatever the date of his email was that I was  
23 copied on. I believe it was April 5th; 4/5/6.

24 Q. Or May 5th?

25 A. No, it's 4/5/6.

1 Q. Four-five --

2 A. April 5th, 2006.

3 Q. Okay. All right.

4 A. I'm sorry, it was May.

5 Q. Thank you.

6 A. May 5th. Sorry.

7 Q. Okay.

8 A. Right.

9 Q. Right.

10 A. My bad.

11 Q. Okay. So -- okay.

12 After May 5th, your testimony is Dennis Jolly kept  
13 you apprised of what was going on with respect to  
14 complaints made by McKinney about Tylum bullying her?

15 A. It was a subject of our conversations when we  
16 would have them, yes.

17 Q. Let me just make sure that I have this right.  
18 With respect to what has been marked as Defendant's  
19 Exhibit 501, right, use of meeting room, 11/29.

20 MR. JORDANO: Which Exhibit are we on; excuse  
21 me?

22 MR. PHILPOT: Five-o-one.

23 MR. JORDANO: Five-o-one.

24 BY MR. PHILPOT:

25 Q. And this is an email to you --

1 A. Yes.

2 Q. -- by Ricardo Almeida?

3 A. Yes, it is.

4 Q. Okay.

5 Did you ever speak to either Celeste Martires or  
6 Daphne McKinney about this email?

7 A. I didn't feel it was necessary. A department or a  
8 bureau manager talked to them and that seemed  
9 sufficient for the moment.

10 Q. Where does it say that he talked to them?

11 Second paragraph it says, I went on --

12 A. It's -- I did not meet -- I did not bring this to  
13 their attention until today, which means he brought it  
14 to their attention today.

15 Q. Okay. That they were --

16 A. I went to the meeting room and told them I was  
17 having a meeting. It was hard for us to carry on our  
18 business due to the noise.

19 Q. Okay. And so --

20 THE COURT: And he says also, they complied  
21 with my request after that.

22 MR. PHILPOT: Okay. I understand.

23 BY MR. PHILPOT:

24 Q. Is this in -- is that in the nature of what you  
25 would call a oral counseling?

1 A. Oral counseling has a very specific meaning in --

2 Q. Right.

3 A. -- state personnel. I would say this is like that  
4 first step on progressive discipline. No, I'm not  
5 saying that this was a progressive discipline we were  
6 starting. This was just, hey, we want you to, you  
7 know, respect other people's wishes or their ability to  
8 work in the office or whatever, it was really just an  
9 advisory.

10 Q. Okay. So it's not --

11 A. It was a conversation, which is --

12 Q. So is it fair to say, Mr. Sanders, that this is  
13 not in a nature of oral counseling; this is simply a  
14 statement by a manager indicating quiet down?

15 A. In the real world they may say this is an oral  
16 counseling, in state terms that has a very specific  
17 meaning. This is just a conversation to say quite down  
18 and they did.

19 Q. So not in the real world, but in the state, it's  
20 not an oral counseling?

21 A. An oral counseling is something very specific --

22 Q. Right.

23 A. -- and depends again on your bargaining unit  
24 and --

25 Q. I understand.

1 A. -- whether you can bring a union rep there and  
2 stuff. This was not a union oriented disciplinary  
3 action. This was just a conversation.

4 Q. Okay. Okay.

5 Just one moment, please.

6 MR. JORDANO: One --

7 (Pause.)

8 BY MR. PHILPOT:

9 Q. Five-o-three, Defendant's 503; and this was in  
10 November of 2005?

11 A. That's correct.

12 Q. And Ms. Tilum documented or sent you an email  
13 basically saying that she told McKinney and Martires  
14 that the meeting -- the conference room that they were  
15 utilized was for meetings, is that correct?

16 A. It's its primary function, yes.

17 Q. Okay. All right.

18 This is not what you would call in the state's  
19 world an oral counseling either, is it?

20 A. This is not an oral counseling in bargaining unit  
21 terms, correct?

22 Q. Okay.

23 MR. PHILPOT: Nothing further, Judge.

24 MR. JORDANO: If I could just quick follow  
25 up.

1 RE CROSS-EXAMINATION

2 BY MR. JORDANO:

3 Q. Both of these emails were managers working for you  
4 to apprise you of situations they wanted you to be  
5 aware of, is that correct?

6 A. Well, Mr. Almeida was a manager, Ms. Tylum is only  
7 a supervisor.

8 Q. A supervisor?

9 A. Yes.

10 Q. But they wanted you to be aware of these  
11 situations, correct?

12 A. Yes.

13 MR. JORDANO: Nothing further. Thank you.

14 THE COURT: You can step down for the moment.  
15 You'll be subject to recall, however.

16 MR. PHILPOT: Just one follow up question?  
17 Just one -- sorry. I apologize.

18 REDIRECT EXAMINATION

19 BY MR. PHILPOT:

20 Q. And -- but you never spoke to either of these  
21 individuals about any of this, isn't that correct?  
22 Meaning Ms. McKinney and Ms. Martires.

23 A. As I stated, we had a manager in the first  
24 instance, a supervisor in the second instance; that  
25 seems -- it seems formal enough without getting too

1 carried away.

2 Q. Okay. And without it being in the nature of an  
3 oral counseling?

4 MR. JORDANO: Objection. It's been asked and  
5 answered several times.

6 MR. PHILPOT: Don't claim it.

7 THE COURT: Please step down, please.

8 THE WITNESS: Thank you.

9 (Witness excused.)

10 MR. PHILPOT: May I approach, Your Honor?

11 The clerk.

12 (Pause.)

13 MR. PHILPOT: Your Honor, in terms of --

14 JAMES STUTZ, PLAINTIFF'S WITNESS, SWORN

15 THE CLERK: Please be seated. State your  
16 name for the record, spell your last name, and your  
17 city.

18 THE WITNESS: And my what?

19 THE CLERK: City or town.

20 THE WITNESS: James Stutz, S-t-u-t-z;  
21 Wethersfield, Connecticut.

22 THE CLERK: Thank you.

23 DIRECT EXAMINATION

24 BY MR. PHILPOT:

25 Q. Good afternoon, sir. What is your current title

1 with the Department of Transportation?

2 A. I am a Transportation Supervising Planner.

3 Q. And you have worked in that capacity, sir, for how  
4 long?

5 A. Since March 31st, 2006.

6 Q. And before that, what positions did you hold at  
7 the DOT?

8 A. You want me to start from the date of hire?

9 Q. Sure.

10 A. I was hired in 1993 as a Connecticut Careers  
11 Trainee.

12 Q. Did you come in the same class as Ms. McKinney?

13 A. (No verbal response)

14 Q. 1993?

15 A. I have no idea. I don't know.

16 Q. You don't recall. Okay. Fine.

17 A. There's some class. I came in as a separate hire.

18 Q. Okay.

19 And did you come in, in the same year, I should  
20 say and in the same job, Connecticut Career Trainee as  
21 Ms. McKinney in 1993? You don't recall?

22 A. I didn't know her at the time.

23 Q. All right. Fine.

24 And thereafter?

25 A. I was a Connecticut Careers Trainee for two years.



1 It's a typical program for state hires. That put me  
2 into the class of Transportation Planner 1 after a two-  
3 year period, so that would be 1995. And then I was  
4 promoted to Transportation Planner II, I believe in  
5 1999.

6 Q. In 1999?

7 A. I think so.

8 Q. Okay.

9 THE COURT: Yeah, I think since your voice is  
10 fairly soft, see if you can get any closer to that mic.

11 THE WITNESS: Sure.

12 THE COURT: Okay.

13 BY MR. PHILPOT:

14 Q. In your capacity as a Transportation Supervisor,  
15 what is it that you are required to do? What do you do  
16 as a Transportation Supervisor?

17 A. I supervise the unit that oversees transportation  
18 demand management programs and we also do marketing for  
19 public transportation.

20 Q. Okay.

21 And when you say marketing for public  
22 transportation, what does that mean?

23 A. We market public transportation services. Try to  
24 get people interested in taking the train, the bus,  
25 ridesharing through a vanpool or a carpool.

1 Q. So those commercials and/or posters that I see  
2 promoting the use of carpooling is something that is  
3 authored by the DOT?

4 A. Yes.

5 Q. Okay.

6 And how many direct reports do you currently have,  
7 Mr. Stutz?

8 A. Five.

9 Q. And one of those is Ms. McKinney, is that correct?

10 A. Yes.

11 Q. Okay. Upon your meeting with Ms. McKinney when  
12 you became her supervisor, do you recall that in or  
13 about April of 2006, that meeting?

14 A. Yes.

15 Q. Would you describe for the Court and members of  
16 the jury what happened during the course of that  
17 meeting?

18 A. The meeting was to discuss work roles, my role as  
19 a supervisor and what I expected to be done. It ended  
20 up being much more than that. Ms. McKinney described a  
21 variety of different issues that she had.

22 Q. Was one of those issues that she had bullying by  
23 Ms. Tillum?

24 A. I don't know if it was characterized as bullying.

25 Q. Okay.

1           What did -- how did she characterize it or how did  
2 she present it to you?

3       A.    I don't recall because we were talking about work  
4 roles and all of a sudden it started talking about  
5 FMLA, different litigation she was involved with, with  
6 the state, a variety of different issues, and  
7 truthfully it was overwhelming and I don't recall.

8       Q.    It was overwhelming to you?

9       A.    The meeting was anticipated to be a work roles  
10 meeting and then it ended up being much more than that.

11       Q.    I'm going to show you what has been marked as  
12 Exhibit 3, Plaintiff's Exhibit 3; and ask if that  
13 refreshes your recollection in terms of the meeting  
14 that you had with Ms. McKinney on April 27, '06?

15       A.    Yeah.

16       Q.    Yes?

17       A.    Yes.

18       Q.    And you see in her response back it says, "Thanks  
19 for the email. Just to recap I told you that Lisa  
20 Tilum was bullying me by glaring and grinning at me in  
21 the office in the ladies' room; and that I told Dennis  
22 Jolly."

23            Do you see that?

24       A.    Yes.

25       Q.    So when you say you weren't sure if she

1 characterized it as bullying, does this refresh your  
2 recollection as to what --

3 A. I don't remember what she said in the meeting  
4 because there were so many things discussed in the  
5 meeting. I don't remember if she said that it was  
6 bullying in the meeting. The email summary that -- the  
7 reply that she gave me in the email, yes, it does say  
8 bullying right here.

9 Q. Okay.

10 Now, as a result of that meeting, Mr. Stutz, what,  
11 if anything, about where she made this complaint about  
12 Ms. Tilum's interaction with her in the workplace,  
13 what, if anything, sir, did you do?

14 A. I contacted HR.

15 Q. Okay. Who in HR?

16 A. Kathleen Karwick.

17 Q. All right.

18 And what, if anything, did Ms. Karwick direct you  
19 to do?

20 A. She asked me to have a follow up meeting with Ms.  
21 McKinney.

22 Q. All right.

23 And did you do that?

24 A. Yes, I did.

25 Q. All right.

1           And when was that?

2       A.    I don't recall the exact date.

3       Q.    All right.

4           Was that soon thereafter?

5       A.    Yes, it was a week or so probably.

6       Q.    Okay.

7           And what was the purpose of having a follow up  
8 meeting with Ms. McKinney?

9       A.    To get any details of what she had classified as  
10 bullying in this email.

11       Q.    Okay.

12           And did you get that?

13       A.    Yes.

14       Q.    Okay.

15           And did you document it?

16       A.    Did I document what?

17       Q.    What she classified as bullying by Ms. Tulum?

18       A.    Yes, I was told it was grinning, smirking.

19       Q.    Okay. All right.

20           And did you attempt to -- what, if anything, did  
21 you say to Ms. McKinney about what would happen going  
22 forward?

23       A.    I asked her to report anything to me that she  
24 considered, you know, grinning or smirking or really  
25 anything that she would consider bullying.

1 Q. Did you ever tell her that her concerns would be  
2 addressed?

3 A. I told her I would document them and as they -- as  
4 it warranted, I would move it up through the management  
5 chain or discuss it with HR.

6 Q. Okay.

7 I refer your attention to 80-16b, which is at  
8 Exhibit 10. Ten, please.

9 A Mm-hmm.

10 Q. Okay.

11 At the bottom where what supervisors are required  
12 to do, you understand that?

13 Under this policy as Mr. Sanders called the  
14 process. You see that?

15 A. Yes.

16 Q. Okay. The second bullet, it says, assure  
17 employees that their concerns will be appropriately  
18 addressed; you see that?

19 A. Yes.

20 Q. Did you do that?

21 A. I believe I did. I told her I would document them  
22 and as things came up, I would move it through the  
23 channels through my management and through HR.

24 Q. Okay. Did you contact your next level supervisor  
25 about her complaints after you documented?

1 A. After I documented what?

2 Q. Well, you said you had a second meeting with her  
3 where you got more specific information about what she  
4 considered to be bullying.

5 A. At the second meeting she gave me the history of  
6 what had occurred.

7 Q. Okay.

8 A. But nothing that was currently occurring, so I did  
9 not document that because I was not supervising her at  
10 that time.

11 Q. Prior? You --right, you were not supervising her  
12 before April 1 of 2006, correct?

13 A. At that meeting I told her I would document  
14 anything that occurred while I was supervising her.

15 Q. Okay. All right. Fine.

16 But prior to that in terms of she -- her giving  
17 you the history, you did not feel it necessary to  
18 document that 'cause you weren't supervising her, is  
19 that fair?

20 A. Yes.

21 Q. Okay.

22 Did Dennis Jolly ever tell you when Ms. McKinney  
23 became your report that there was an ongoing problem  
24 between Ms. Tylum and Ms. McKinney?

25 Did Dennis Jolly ever tell you?

1 A. I don't think so.

2 Q. Okay. All right.

3 Did there come a point in time where Ms. McKinney  
4 came to you after your second meeting with her in or  
5 about May of 2006 to indicate that there were problems  
6 between she and Ms. Tillum?

7 A. I don't believe it was in May. I think there were  
8 two occurrences where she reported to me that Ms. Tillum  
9 was smirking or grinning or smiling at her.

10 Q. Okay.

11 Or two. So you documented those?

12 A. I documented those.

13 Q. Okay.

14 And did you bring those to the next level  
15 supervisor?

16 A. I don't believe so.

17 Q. Okay. And by the way, who would that have been?

18 A. Mr. Jolly would have been my manager at the time.

19 Q. Okay.

20 A. Or I would have brought it to Kathleen Karwick,  
21 who is my HR liaison.

22 Q. Okay.

23 I'll refer you to again Exhibit 10 at the bottom,  
24 which is the procedures for handling and reporting  
25 threatening and violent behavior. Under the first



1 bullet at the bottom, contact their next level  
2 supervisor and Human Resources Officer immediately.

3 You see that?

4 A. Yes, threatening or violent behavior, is that what  
5 you're saying?

6 Yes. I see that.

7 Q. Is that what you're -- you are saying that this  
8 requires -- this applies to?

9 A. I'm just reading the document. It says incidents  
10 of threatening and/or violent behavior are then to be  
11 addressed through the department's administrative fact-  
12 finding process.

13 Q. Above that. Above that.

14 A. I thought that's what you pointed out.

15 Q. First bullet.

16 You see that?

17 A. There's a lot of bullets on here.

18 Can you read that to me?

19 Q. Contact their next level supervisor and Human  
20 Resources Officer immediately, which is in bold, upon  
21 being notified of an incident.

22 Does that have to do with life threatening as far  
23 as you're concerned?

24 A. You were reading something about life threaten or  
25 violent behavior. That would --

1 Q. No, I'm reading the first bullet on this page --

2 A. Okay.

3 Q. -- of Exhibit 10.

4 A. Mm-hmm.

5 Q. I'm asking you, sir, did you follow this protocol,  
6 okay, with respect to the two incidents that were  
7 brought to your attention by Ms. McKinney?

8 A. I don't know what to classify as an incident.

9 Q. Well, you told me there were two. You just  
10 said --

11 A. I told you there were two instances that she  
12 reported to me.

13 Q. Instances. Okay.

14 And so you did not consider them, Mr. Stutz, to be  
15 incidents?

16 A. Smirking and grinning happens all the time.

17 Q. To who?

18 A. I've been smirked at, grinned at, smiled at.

19 Q. On a consistent basis by one person throughout the  
20 course of a year to two years?

21 A. It happens all the time.

22 Q. Has it happened to you on a consistent basis by  
23 one person over the course of one to two years, sir?

24 MR. JORDANO: Objection, foundation,  
25 relevancy.

1 MR. PHILPOT: He says it happens all the  
2 time. I'm asking him for specifics.

3 THE COURT: Overruled.

4 MR. JORDANO: There's no testimony about any  
5 over years.

6 THE COURT: No, overruled.

7 BY MR. PHILPOT:

8 Q. You can answer it, sir.

9 A. It's happened since I started working there.

10 Q. To you?

11 A. My supervisor used to smile at me every day.

12 Q. Okay.

13 Does Dennis Jolly smile at you every day now?

14 A. I don't see him every day, but he smiles at me  
15 often, yeah.

16 Q. But it's not in a menacing or mocking fashion, is  
17 it?

18 A. I would not classify it as that.

19 Q. Okay.

20 But when Ms. McKinney complained about Tylum  
21 smiling at her, it was not in a positive manner, it was  
22 in a mocking fashion, wasn't it?

23 A. I have no idea.

24 Q. You did ask her when you had the second meeting to  
25 ask for specifics?

1 A. No.

2 Q. Okay.

3 And with respect to this policy, is it fair to say  
4 that you didn't -- you never told or contacted Dennis  
5 Jolly or -- and you never contacted Kathleen Karwick  
6 about those two, as you put it, instances that Ms.  
7 McKinney complained to you about?

8 A. No.

9 Q. Okay.

10 Mr. Stutz, is that a violation, as far as you're  
11 concerned, or is that in contravention of the policy  
12 that you're looking at right now?

13 A. I don't think so.

14 Q. All right. Okay.

15 And that's because, is it fair to say you didn't  
16 take them seriously?

17 A. I took them seriously enough to document them.

18 Q. Okay.

19 But not serious enough to follow the policy that's  
20 required here when there's a report of inappropriate  
21 conduct in the workplace?

22 MR. JORDANO: Objection to characterization.

23 THE COURT: Yeah.

24 MR. PHILPOT: All right.

25 THE COURT: Overruled.

1 MR. PHILPOT: Okay.

2 THE COURT: I'll sustain on the objection.

3 MR. PHILPOT: Okay.

4 BY MR. PHILPOT:

5 Q. You conducted, Mr. Stutz, no investigation with  
6 respect to the instances that were brought to your  
7 attention by Ms. McKinney, isn't that correct?

8 A. I wouldn't classify anything as an investigation,  
9 no.

10 Q. Okay. All right.

11 Did you ever talk to Ms. Karwick about the fact  
12 that you did not believe it necessary to investigate  
13 Ms. McKinney's complaints of bullying?

14 A. (No verbal response)

15 Q. Did you ever talk to Ms. Karwick about the fact  
16 that you did not believe it necessary to investigate  
17 Ms. McKinney's complaints?

18 A. I don't recall.

19 Q. So if Ms. Karwick were to come before this Court  
20 and this jury and indicate that she thought you were  
21 investigating it, but that -- investigating Ms.  
22 McKinney's complaints, but that you found them not to  
23 be credible would that not be accurate?

24 A. I didn't --

25 MR. JORDANO: Objection, calls for hearsay.

1 THE WITNESS: -- say anything about  
2 credibility.

3 MR. PHILPOT: No, I'm asking --

4 MR. JORDANO: Hypothetical.

5 MR. PHILPOT: Just to save time, Your  
6 Honor ---

7 THE COURT: Well, I assume it's going to be  
8 connected up; I'll allow it as long as it's connected  
9 up.

10 MR. PHILPOT: Thank you. We will. We  
11 certainly will have Ms. Karwick here.

12 BY MR. PHILPOT:

13 Q. Mr. Stutz, if Ms. Karwick were to come before this  
14 Court and this jury and say she thought you were  
15 investigating the matter, but that you -- and that you  
16 had come to the conclusion that Ms. McKinney's  
17 complaints were not credible, would that be mistaken  
18 given the fact that you have just told us you didn't do  
19 an investigation?

20 A. I don't think I made any decision on the  
21 credibility of the claims.

22 Q. Okay.

23 Other than document what Ms. McKinney told you at  
24 these -- of these two instances, did you do anything  
25 else with respect to her complaints about Ms. Tulum?

1 A. I asked her to keep me notified if there was any  
2 escalation in the situation beyond smiling and  
3 grinning, if there was any words said between the two,  
4 if there was any other -- anything that happened beyond  
5 smiling and grinning.

6 Q. Okay.

7 Now, ultimately, as you know, Ms. McKinney was  
8 terminated, is that correct, for emails that she sent  
9 to the Commissioner as well as to Ms. Karwick as well  
10 as Mr. Livingston, you know that, is that correct?

11 A. Yes, I found out subsequently.

12 Q. Okay.

13 There was a fact-finding done by a panel  
14 concerning the emails sent by Ms. McKinney, are you  
15 aware of that?

16 A. Subsequently, yes.

17 Q. Okay.

18 And that's at Exhibit 25, please, Exhibit 25 of  
19 Plaintiff.

20 A. I don't have an Exhibit 25.

21 Q. I'll read it. "Did you become aware, Mr. Stutz,  
22 of the recommendation made by the fact-finding panel  
23 concerning Ms. McKinney?"

24 A. I've never seen this document.

25 Q. Okay.

1           If you turn to the third page under the  
2 recommendations.

3 A.     Yup.

4 Q.     You see that?

5 A.     Yes.

6 Q.     Okay.

7           Before you read that, could you just give us a  
8 little background on these fact-finding panels? Is it  
9 correct that DOT has this process where with respect to  
10 issues of discipline, non-interested employees sit and  
11 make a recommendation to HR as to what discipline  
12 should be issued?

13 A     I've never been involved in a fact-finding.

14 Q.     Right. I understand.

15           But are you aware of the process as a supervisor  
16 within the DOT?

17 A.     Yes, I've heard about it.

18 Q.     Okay.

19           And is it correct that they make recommendations  
20 as fellow employees as to what level of discipline  
21 should be issued to the subject employee?

22 A.     I'm in no position to make a determination of  
23 correctness of the process.

24 Q.     I'm not asking you about correctness, I'm asking  
25 if it occurs.



1 A. If it occurs?

2 Q. Yes, if --

3 A. I'm sorry; I misheard you I thought you said if it  
4 is correct.

5 Q. No. If it occurs.

6 A. If it occurs?

7 Q. Fact-finding panels meet, hear from the various  
8 participants, and make a recommendation as to what  
9 level of discipline should be issued?

10 MR. JORDANO: We object to foundation. He  
11 said he wasn't involved in a fact-finding --

12 MR. PHILPOT: But --

13 MR. JORDANO: -- so he's going to be  
14 speculating on what he was told. Someone else needs to  
15 explain that.

16 THE COURT: Well, he's trying to get his  
17 general knowledge. I'll let him try to get his general  
18 knowledge, if he has any.

19 MR. PHILPOT: Yeah.

20 BY MR. PHILPOT:

21 Q. As a supervisor, you're aware of fact-finding  
22 panels that meet that discuss and make recommendations  
23 as to the proper level of discipline that should be  
24 meted out to employees, isn't that correct, within DOT?  
25 Are you aware of that, sir?

1 A. Aware of it, secondhand, yes.

2 Q. Okay.

3 And those recommendations, as far as you know, are  
4 generally followed by --

5 MR. JORDANO: Objection.

6 THE COURT: No, I think that goes beyond what  
7 he can tell us.

8 MR. PHILPOT: Okay. All right. Okay. Very  
9 good.

10 BY MR. PHILPOT:

11 Q. In this particular case concerning the  
12 recommendation, let me just ask this, Mr. Stutz, Ms.  
13 McKinney was recommended for in total --

14 MR. JORDANO: Objection. The Exhibit speaks  
15 for itself.

16 BY MR. PHILPOT:

17 Q. Do -- are you aware of what --

18 THE COURT: I guess it's a preliminary  
19 question, what --

20 MR. PHILPOT: Yes. Yes.

21 THE COURT: -- are you going to ask him?

22 MR. PHILPOT: Yes.

23 BY MR. PHILPOT:

24 Q. Are you aware that this fact-finding panel of  
25 independent, fellow employees at DOT recommended to HR

1 that Ms. McKinney receive a 35-day suspension?

2 A. I've never seen this document before.

3 Q. Oh, okay.

4 Would you read it -- read the recommendation then,  
5 please?

6 THE COURT: Well, the -- it speaks for  
7 itself.

8 MR. PHILPOT: Okay. All right.

9 THE COURT: The jury's got that.

10 MR. PHILPOT: All right. Very good.

11 Nothing further with this witness, Your  
12 Honor. Thank you.

13 THE COURT: Okay. Mr. Jordano.

14 MR. JORDANO: Yes. Just a couple quick  
15 questions. A few questions if I could.

16 CROSS-EXAMINATION

17 BY MR. JORDANO:

18 Q. There should be a book up there that says  
19 Defendant's Exhibits. I want you to look if you would,  
20 sir, to 512.

21 MR. JORDANO: And there's no objection to  
22 this Exhibit, Your Honor.

23 BY MR. JORDANO:

24 Q. Do you recognize 512, sir? I want to get you that  
25 in a second, 512.

1 A. Yes.

2 Q. It's a string of emails. In fact the second page  
3 is just the two emails that Mr. Philpot showed you, but  
4 he didn't show you the others, did he? This is a  
5 string, isn't it?

6 A. Yes.

7 Q. And this the shows the progression of emails from  
8 May 1 right up through May 11th that you had with Ms.  
9 McKinney about her complaint, is that correct?

10 A. Yes.

11 MR. JORDANO: Offer Exhibit 512.

12 THE COURT: Five-twelve is admitted.

13 MR. PHILPOT: No objection.

14 BY MR. JORDANO:

15 Q. Now, so we have it down for a second.

16 You met with Ms. McKinney on 4/27 or about, she  
17 gave you a lot of information you weren't expecting,  
18 correct?

19 A. Yes.

20 Q. All right.

21 Then she told you that she felt in an email here  
22 -- in the email she said, I've been -- this is the  
23 email of May 2nd, I told you Lisa Tilum was bullying me  
24 by glaring and grinning at me in the office and ladies'  
25 room, all right? See that? Okay?

1 A. Yes.

2 Q. So you call HR, correct?

3 A. Yes.

4 Q. You talk to Ms. Karwick, correct?

5 A. Yes.

6 Q. And she says hey have another meeting with Ms.  
7 McKinney, find out more of the facts, right?

8 A. Mm-hmm. Yes.

9 Q. And you do that, right?

10 A. Yes.

11 Q. And here's your email where you say "Daphne, I'd  
12 like to arrange for a meeting between you and I to  
13 discuss the items you brought up with regard to Lisa  
14 Tulum if you are identifying this continuing issue,"  
15 right? And then she says to you, "Oh, yes it is and  
16 I'm available; Monday is good for me." Right? And you  
17 met with her?

18 A. Yes.

19 Q. All right.

20 And then you wrote an email that says, "Hi Daphne,  
21 I just want to confirm that we met on Monday May to  
22 discuss the issue. In that meeting I heard you say  
23 that the extent of the contact between Lisa Tulum and  
24 yourself that you consider bullying thus far to be  
25 limited to occasional grinning, staring, glaring, okay.

1 I've requested from you to be informed of any  
2 additional grinning, staring, glaring and to be  
3 notified immediately if the situation escalates to  
4 verbal conflict. At that time, I will document the  
5 situation and take further action through Human  
6 Resources," correct?

7 A. Yes.

8 Q. And then she wrote back to you, "Jim, these  
9 incidents have been much more than occasional. This is  
10 what she says, they have included stupid smiling," that  
11 correct? "Stupid smiling and the incidents have been  
12 each time she passes me in work area in the office as  
13 well ladies' room. Everything else you stated is  
14 correct."

15 That's what she writes, right?

16 A. Yes.

17 Q. All right.

18 No evidence in here about her life being  
19 threatened, correct?

20 A. No.

21 Q. Nothing in here about the fact that she's  
22 fearful --

23 MR. PHILPOT: Objection, Your Honor,  
24 that's -- the time frame is misleading. The paper  
25 cutter incident happened subsequent to that.

1 THE COURT: Well, these all speak for  
2 themselves.

3 MR. JORDANO: Yes.

4 BY MR. JORDANO:

5 Q. I'm asking during this time when you got this  
6 incident right here, as of this date here, okay, when  
7 she describes her complaint to you, a complaint to you,  
8 right? May of 2006, all right? She -- her concern is  
9 she's smiling and grinning at me, correct?

10 A. Yes.

11 Q. All right.

12 Now, you weren't there for the fax machine  
13 incident, is that correct?

14 A. I was not in the office that day.

15 Q. All right. All right.

16 If you look if you would in that book to 517.  
17 Tell me if you recognize 517.

18 A. Yes, I wrote that.

19 Q. All right.

20 This is an email that you wrote on the same issue,  
21 correct, but this time to the HR folks, Ms. --

22 A. Malinguaggio.

23 Q. -- Malinguaggio and Ms. Karwick, correct?

24 A. Yes.

25 Q. And you're reporting in December on the status of

1 the incidents, is that correct?

2 A. Yes.

3 Q. All right.

4 MR. JORDANO: Offer Exhibit 517.

5 THE COURT: Yeah, 517's admitted.

6 MR. PHILPOT: No objection.

7 BY MR. JORDANO:

8 Q. All right.

9 Now, I'll put up on the screen here for you too.

10 This is an email dated December 14, 2006. All right.

11 All right.

12 And this is a summary of the incident reported to  
13 me by Daphne during my period of supervision. Now, so  
14 we're clear, you stopped supervising Ms. McKinney at  
15 least for a time period after she was terminated, is  
16 that correct? In 2006 at some point she was out and  
17 then she didn't come back, there was a period she was  
18 gone; didn't get reinstated til 2009, is that correct?

19 A. Yes.

20 Q. So you were her supervisor from April 27, 2006  
21 until her termination in I'll say October/November, the  
22 latter part of the year, when she was terminated,  
23 correct?

24 MR. PHILPOT: Objection, that's not his  
25 testimony.



1 MR. JORDANO: I'm asking.

2 BY MR. JORDANO:

3 Q. Is that correct?

4 THE COURT: Well, he can tell us what the  
5 correct is.

6 THE WITNESS: Technically I got my promotion  
7 on March 31st --

8 BY MR. JORDANO:

9 Q. Okay.

10 A. -- 2006.

11 Q. All right.

12 So March 31st until she's terminated later in  
13 2006?

14 A. Yes.

15 Q. All right.

16 Obviously, you didn't supervisor when she was gone  
17 and then when she comes back, you're her supervisor  
18 again, correct?

19 A. Yes.

20 Q. All right.

21 But this reflects during that period that you  
22 supervised her during that year, correct, 2006? It  
23 started in March. All right. And you say here --

24 A. Yes.

25 Q. -- "This is some of the incidents reported by

1 Daphne during my period of supervision; 6/2/06 Daphne  
2 reported to me that while I was out of the office in a  
3 meeting, Lisa Tilum was in our area smirking and  
4 grinning." Okay?

5 Then she says 6/14 Daphne reported to me that Lisa  
6 Tilum passed her in the hallway smiling and grinning.  
7 Correct?

8 A. Yes.

9 Q. These were the only two incidents directly  
10 reported to me in this time period from late April to  
11 the date of the incident on July 7.

12 So that's the July 7, which was the paper cutter  
13 incident, correct?

14 A. Yes.

15 Q. Again, smiling and grinning, that correct?

16 A. Yes.

17 Q. Sir, looking at the Defendant's Exhibit 10 for a  
18 moment -- you have Defendant's 10 in front of you  
19 there?

20 THE COURT: You mean Plaintiff's 10?

21 BY MR. JORDANO:

22 Q. I'm sorry; Plaintiff's 10. Plaintiff's 10.  
23 Plaintiff's 10. Sorry about that, Plaintiff's 10.

24 Do I have the right one? Is this the one  
25 Plaintiff's 10 that has the what a supervisor does at

1 the bottom? All right? You see those? The bullet  
2 points?

3 A. Yes.

4 Q. All right.

5 A. Yeah.

6 Q. Sir, did you believe that the smiling and grinning  
7 was a threat of a violent act?

8 A. No, I did not.

9 Q. Did you believe, sir, that the smiling and  
10 grinning, okay, was bullying?

11 A. I don't think it rose to that level at this point.

12 Q. All right.

13 So you documented what happened and you told the  
14 HR people, all right, what was going on that Ms.  
15 McKinney reported to you, is that correct?

16 A. I documented it.

17 Q. And you sent them the email outlining what she had  
18 told you during that period, correct?

19 A. Yes. Actually I -- when I originally talked to  
20 Ms. McKinney, I told her I would document incidents  
21 that were verbal --

22 Q. Yes. Yes.

23 A. -- and greater and these weren't even verbal, they  
24 were smiling and grinning.

25 Q. I understand that. But you still nevertheless you

1 asked apparently for a summary from Ms. Karwick and you  
2 gave her that email -- the email outlining what  
3 happened during that period?

4 A. Yes.

5 Q. Sir, you supervised Ms. McKinney when she came  
6 back, right?

7 A. Yes, I did.

8 Q. And you know Lisa Tylum?

9 A. Yes, I do.

10 Q. Have you had occasion to work on some projects  
11 with her during the -- sometime during your career?

12 A. Yes.

13 Q. All right.

14 And after Ms. McKinney came back, did you ever  
15 witness any incident involving interaction between Ms.  
16 McKinney and Ms. Tylum?

17 A. I noted one incident.

18 Q. All right.

19 Would you describe that for us, please?

20 A. In mid-December of this past year, 2010 --

21 Q. All right.

22 A. -- I was talking with Ms. Tylum in the hallway --

23 Q. Where were you?

24 A. We were near the restrooms on the first floor,  
25 north end.

1 Q. Okay.

2 You have to speak up a little bit or pull that  
3 microphone --

4 A. Sorry.

5 Q -- closer to your face.

6 THE COURT: Yeah, you need to get close to  
7 that mic. Your voice is very soft.

8 BY MR. JORDANO:

9 Q. Okay.

10 A. I'm fighting a cold. Sorry.

11 Q. Go ahead, sir. I'm sorry.

12 A. We were in the north end near the restrooms.

13 Q. All right.

14 A. On the first floor.

15 Q. Okay. Go ahead. All right.

16 A. We were discussing a bus service that actually  
17 went to New York City.

18 Q. All right.

19 A. As we were discussing it in the hallway, Ms.  
20 McKinney came around the corner from the elevator area.

21 Q. All right.

22 A. She saw us there, she walked back toward the  
23 elevator and circled back to whomever she was talking  
24 to, I didn't see who it was.

25 Q. All right.

1           What happened then?

2           A.    Ms. Tilum said something to the effect of well, I  
3           was going to take the elevator or I was going to walk  
4           that way, but maybe we should just wait a minute.

5           Q.    All right.

6           A.    So --

7           Q.    And did you wait a minute?

8           A.    Yeah, we talked for another minute or two and --

9           Q.    And then did you walk up toward the elevator to go  
10          to wherever you were going?

11          A.    After just a minute, we ran out of things to talk  
12          about so I headed back toward my area and she walked  
13          with me. She was going to continue on and use the  
14          other set of elevators.

15          Q.    All right.

16          I understand. You're walking up a hallway -- are  
17          the elevators on the right?

18          A.    Yes.

19          Q.    And there's a door that you were going to take  
20          going to the left, correct?

21          A.    Yes 'cause --

22          Q.    And Ms. Tilum in theory has to continue down the  
23          hallway past the elevators, right?

24          A.    Yeah, she was going to go to the south bank of  
25          elevators.

1 Q. Ms. McKinney is over here behind where you can't  
2 see her initially in the elevator?

3 A. In the elevator area.

4 Q. Area.

5 A. Yes.

6 Q. So she came out, she saw you, and she circled back  
7 where she -- went back to where she was and now you're  
8 walking up the hallway with Ms. Tilum, is that correct?

9 A. Yes.

10 Q. What happened?

11 A. As we were walking by, Ms. McKinney was speaking  
12 aloudly with whomever she was talking to, swinging her  
13 arm around and --

14 Q. All right.

15 Swinging her arms around -- her arm like this?

16 A. Yeah, her right arm and saying let's go, let's go,  
17 let's go.

18 Q. All right. And your perception of that incident?  
19 Why do you remember that?

20 A. She was walking toward Ms. Tilum while saying that  
21 fairly loudly, even though it was -- seemed to in the  
22 context of the conversation that she was having.

23 Q. All right.

24 A. I chose to document it because I thought it was  
25 odd.

1 Q. Why was it odd?

2 A. It was odd.

3 Q. All right.

4 Now, did Ms. Tilum say anything to her or do  
5 anything to provoke any incident that you saw during  
6 that instance?

7 A. No, Ms. Tilum continued walking on.

8 Q. Let me understand it. Ms. McKinney comes out of  
9 the elevator, all right, and do you know if she was  
10 heading straight into the doorway where you were going?

11 A. She probably was heading in that direction.

12 Q. I mean is that -- was that the office --

13 A. There's nothing else really there.

14 Q. -- area?

15 A. Yes, that's the area we all sit in.

16 Q. All right.

17 But rather than go across the way into the office,  
18 she turns around and goes in front of the elevator  
19 again?

20 A. (No verbal response)

21 Q. Out of sight?

22 A. Yes --

23 MR. PHILPOT: Objection. Can he testify or  
24 are you?

25 MR. JORDANO: He's describing what was --



1 THE COURT: Just let him testify.

2 MR. JORDANO: All right. All right. I  
3 wasn't -- all right.

4 BY MR. JORDANO:

5 Q. So when Ms. McKinney sees you, does she go in the  
6 door to the area where you work?

7 A. No, she may have been continuing her conversation,  
8 but she did circle back toward the elevator.

9 Q. And then right when Ms. Tylum got there, Ms.  
10 McKinney was making her move toward the door, is that  
11 what you're saying?

12 A. Yes.

13 Q. Did Ms. McKinney look frightened and afraid?

14 A. No.

15 Q. Did Ms. Tylum say anything to her? Anything like  
16 or she just keep walking?

17 A. I don't believe so. I walked into the office.  
18 She seemed to be on her way to the other bank of  
19 elevators.

20 Q. Now, you supervisor Ms. McKinney? All right?

21 A. Yes.

22 Q. And there's been some discussion in this case  
23 about her -- have you observed whether Ms. McKinney  
24 does excessive socializing with Ms. Martires?

25 A. I would say yes.

1 Q. Frequently?

2 A. Frequent.

3 Q. All right.

4 And, sir, I'm going to ask you an interesting  
5 question here, have you ever said anything to Ms.  
6 McKinney about that?

7 A. No, I have not.

8 Q. Why not?

9 A. She's had a history of litigation, especially in  
10 regard to supervisors.

11 Q. You tell me you're afraid -- you're telling me  
12 you're afraid you're going to end up being a defendant  
13 in a lawsuit?

14 A. Yes.

15 Q. And do you see her -- does she leave her office  
16 and go to see Ms. Martires -- I mean you see her there  
17 a lot talking with Ms. Martires again over there?

18 A. Ah --

19 Q. When you say socializing, you're talking about  
20 that?

21 A. Yes, she's often at her desk.

22 Q. All right.

23 Now, you gave Ms. McKinney some tasks to do and I  
24 assume she does some of the work -- or the work you  
25 assign her for the most part?

1 A. Yeah.

2 Q. Do you ever have to repeat something to her again  
3 and again?

4 MR. PHILPOT: Objection, relevance.

5 THE COURT: Yeah.

6 MR. JORDANO: Goes to performance issue  
7 'cause she claims she's such an excellent performer and  
8 the work environment that she's in so I'm trying to  
9 establish that that, you know --

10 MR. PHILPOT: Work environment --

11 MR. JORDANO: -- since she's back.

12 MR. PHILPOT: -- is not in this case.

13 THE COURT: Work environment is not in the  
14 case.

15 MR. JORDANO: No.

16 THE COURT: That's exactly right.

17 MR. JORDANO: But she's talking about she's  
18 -- she presents herself as being an exemplary employee  
19 and I just want to verify this because she also claim  
20 -- I mean this is where I'm going with this about the  
21 supervision, after she comes back -- also think it -- I  
22 mean that's what I'm trying to establish.

23 THE COURT: Well, she does claim that the  
24 harassment is continuing after she came back. With  
25 (unintelligible) I'm limiting this case to Tulum.

1 MR. JORDANO: I understand completely. If  
2 you don't want me to go here --

3 THE COURT: Okay.

4 MR. JORDANO: -- just tell me, but I'm trying  
5 to get a handle on this --

6 THE COURT: Yeah, go ahead. Let's see  
7 what --

8 MR. JORDANO: -- because he's her supervisor.

9 MR. PHILPOT: Whether or not he -- the  
10 supervisor has to repeat, is not an issue of  
11 harassment.

12 THE COURT: Well, I don't know what the  
13 supervisor is going to say. That's what --

14 MR. PHILPOT: Okay.

15 MR. JORDANO: If you let me try to tie it up  
16 if I can; if not, Judge, you can strike it. I mean I  
17 just ask --

18 THE COURT: I'll strike it if --

19 MR. JORDANO: All right.

20 THE COURT: -- it's not tied up, yeah.

21 BY MR. JORDANO:

22 Q. Do you have to repeatedly tell Ms. McKinney to do  
23 certain tasks that you want done?

24 A. There's certain things like taking time off.  
25 There's standards that our unit holds such as

1 notification, three-hours notice for a three-hour time  
2 off. A day's notice for a day's time off. I need to  
3 reiterate that frequently.

4 Q. All right.

5 Let me ask you this, sir, do you -- did you  
6 discuss this with Ms. McKinney about these work  
7 standards that you want taken care of, did you ever  
8 discuss that with her as a performance issue?

9 MR. PHILPOT: Objection, these standards. T  
10 One issue in terms --

11 MR. JORDANO: Let me backup.

12 MR. PHILPOT: -- of timeliness --

13 MR. JORDANO: I'll lay a predicate.

14 BY MR. JORDANO:

15 Q. Do you ever talk to her about her time sheet being  
16 -- having errors on it repeatedly?

17 A. Yes, I do.

18 Q. And --

19 MR. PHILPOT: Well, lead -- okay.

20 BY MR. JORDANO:

21 Q. And do you have to send her a memo telling her how  
22 you want it done?

23 A. Yes.

24 Q. And do you have to do that --

25 A. I send emails.

1 Q. -- repeatedly?

2 A. Yes. Frequent.

3 Q. All right.

4 And have you ever addressed these issues with her  
5 from a performance standpoint that -- of what you want  
6 done?

7 A. Not from a performance standpoint.

8 Q. Do you discuss them from any other standpoint  
9 about her doing what you ask?

10 A. Technically, I'd like the time sheet filled out  
11 correctly so the time is recorded correctly. If I have  
12 to sign off on it, I want to ensure it's correct.

13 Q. All right. And -- but have you raised that to Ms.  
14 McKinney?

15 A. That I would --

16 Q. Other than sending her emails saying it has to be  
17 done a certain way, have you -- talked to her about the  
18 repeated need to have to say this?

19 A. I don't believe so.

20 Q. Okay.

21 THE COURT: No, I'm going to strike this.  
22 I'll strike it.

23 MR. JORDANO: All right. All right.

24 THE COURT: All that testimony about her  
25 current performance is stricken.

1 MR. JORDANO: All right.

2 BY MR. JORDANO:

3 Q. You weren't involved at all in the decision to  
4 discipline Ms. McKinney?

5 A. No.

6 Q. You weren't involved in any fact-finding regarding  
7 her, correct?

8 A. No.

9 Q. All right. You've never been involved in a fact-  
10 finding to this date?

11 A. No, I have not.

12 Q. Okay.

13 And you're not part of threat assessment team?

14 A. No, I am not.

15 Q. And you weren't involved at all in any way with  
16 Ms. McKinney's arrest, anything like that, correct?

17 A. Michael Sanders called me apparently that day that  
18 I found out subsequently was the day of the arrest.

19 Q. All right.

20 But other than the fact that it occurred, you  
21 weren't involved in the investigation, anything like  
22 that? You were just notified of it, is that what  
23 you're telling me?

24 A. He just called me to make sure that she was at her  
25 desk.

1 Q. Okay. All right. But -- so my question is, you  
2 weren't involved in the decision to call the State  
3 Police or their --

4 A. No.

5 Q. -- anything like that?

6 A. No. Not at all.

7 Q. That a fair statement?

8 A. That is.

9 MR. JORDANO: Thank you, Your Honor.

10 REDIRECT EXAMINATION

11 BY MR. PHILPOT:

12 Q. Mike Sanders called you on the day that Trooper  
13 McGinley came to the DOT for purposes of interviewing  
14 Ms. McKinney, is that what you're saying, in terms of  
15 when Mike Sanders called you?

16 A. I'm not 100 percent sure. I don't know the  
17 person's -- the Trooper's name.

18 Q. Sure.

19 A. I don't know the events that occurred that.

20 Q. Sure.

21 A. I received a call Mike Sanders asking me if Daphne  
22 was at her desk. He told me that he wanted to make  
23 sure that she was around because he was going call  
24 security and make sure that her badge was returned  
25 because she was being placed on administrative leave.



1 Q. Okay.

2 MR. PHILPOT: Just a moment, please.

3 (Pause.)

4 BY MR. PHILPOT:

5 Q. Okay.

6 What is marked as Defendant's Exhibit 517, are  
7 these the two instances that you and I discussed  
8 earlier that you documented, dated 6/2/06 as well as  
9 6/14/06?

10 A. Those are the two incidences.

11 Q. Okay.

12 Isn't it true, Mr. Stutz, actually that Daphne  
13 told you that Ms. Tilum bumped into her in the hallway?  
14 Not that she was just smirking and grinning in the  
15 hallway on 6/14/06, but also that she bumped into her?

16 A. No.

17 Q. Do you recall that at all?

18 A. I do not recall that. I would have made a note of  
19 it.

20 Q. Okay.

21 This incident that you talked about I guess it  
22 happened in December of 2010, is that correct? With --

23 A. Yes.

24 Q. Okay.

25 Now, are you saying, Mr. Stutz, that Ms. McKinney

1 was swinging her arms at Ms. Tylum?

2 I'm just trying to get a clarification.

3 Are you suggesting that?

4 A. She was swinging her arm wildly in the general  
5 vicinity of Ms. Tylum.

6 Q. Okay.

7 I thought you said it -- she was swinging her arms  
8 in the context of her conversation with the person she  
9 was talking to?

10 A. It appeared to be that.

11 Q. Okay.

12 So you were in the general vicinity of her  
13 swinging her arms, weren't you?

14 A. Ms. Tylum was between Ms. McKinney and I.

15 Q. Okay.

16 But you were in that same general vicinity,  
17 weren't you?

18 A. I was walking into the door, she was continuing  
19 past Ms. McKinney.

20 Q. Are you suggesting that the swinging of arms was a  
21 provocative act on the part of Ms. McKinney?

22 A. I found it odd.

23 Q. Okay.

24 So odd is different than provocative, is that  
25 fair?

1 A. Yeah.

2 Q. Okay.

3 Attorney Jordano asked you about Ms. McKinney if  
4 she seemed to be fearful.

5 Did Ms. Tulum appear to be fearful?

6 A. I walked away from her as it was occurring.

7 Q. Do you know if she appeared to be -- did she  
8 mention anything to you about being afraid or fearful  
9 of Ms. McKinney's actions?

10 A. We discussed it subsequent to the time that it  
11 occurred.

12 Q. You did?

13 A. With Ms. Tulum, yes.

14 Q. Okay. All right.

15 And?

16 A. I told her that I wrote it down because I found it  
17 odd.

18 Q. Okay.

19 A. And she said yes she was scared by that.

20 Q. Okay. All right.

21 And did you take it any further and report it?

22 A. At the time I did not because it was non-verbal  
23 and I think it was -- I did not take it any further.

24 Q. So Ms. Tulum subsequently told you that she  
25 thought that an act that you thought was odd, but not

1 provocative, was frightening?

2 MR. JORDANO: Objection, asked and answered.

3 Been asked --

4 THE COURT: I'll allow it.

5 BY MR. PHILPOT:

6 Q. You can answer.

7 A. Can you repeat the question?

8 Q. Sure. So Ms. Tulum told you that a act by Ms.  
9 McKinney that you thought was odd, but not provocative,  
10 was to her frightening?

11 A. Yeah. Yes.

12 Q. You've worked with Ms. McKinney for how long, sir?

13 A. I've supervised Ms. McKinney since --

14 Q. April 1 or March 31 --

15 A. -- yeah, March 31st, 2006.

16 Q. Okay.

17 But before that, did you work with her?

18 A. Yes.

19 Q. Okay. And for how long, please?

20 A. I don't recall.

21 Q. Was it more than five years?

22 A. We worked in the same office.

23 Q. Yes.

24 A. Yeah.

25 Q. Okay.

1           Did you ever know Ms. McKinney to be physically  
2 confrontational or violent?

3           A.    I didn't know Ms. McKinney that well.

4           Q.    Okay.

5           Now that you have supervised her since March of  
6 2006, have you ever known Ms. McKinney to be physically  
7 confrontational?

8           A.    No.

9           Q.    Okay.

10          Now, when you say litigation and supervisors  
11 involving Ms. McKinney, there was one situation  
12 involving Brian Chapman that you're aware of, isn't  
13 that correct?

14          A.    Yes.

15          Q.    Okay.

16          And do you know the circumstances of that lawsuit?

17          A.    No, I do not.

18          Q.    Okay.

19          So you don't know the particulars of it as to why  
20 that occurred? Why Ms. McKinney felt compelled to  
21 pursue that?

22          A.    No, I do not.

23          Q.    Okay.

24          You have not been sued by Ms. McKinney at all,  
25 have you?

1 A. No, I have not.

2 Q. Other than Ms. Tylum, have you found Ms. McKinney  
3 able to get along pretty much with everyone in the  
4 unit?

5 A. Could you clarify get along?

6 Q. Is -- does she have a reasonable working  
7 relationship with everyone in the unit besides Ms.  
8 Tylum?

9 A. Yes.

10 MR. PHILPOT: Nothing further.

11 RE-CROSS-EXAMINATION

12 BY MR. JORDANO:

13 Q. In the incident in 2010, did Ms. McKinney look  
14 afraid of Ms. Tylum?

15 MR. PHILPOT: Asked and answered.

16 MR. JORDANO: No, I'm asking about Ms.  
17 McKinney.

18 THE COURT: I'll allow it.

19 BY MR. JORDANO:

20 Q. Did Ms. McKinney look afraid when she was wailing  
21 her arm, did she look afraid of Ms. Tylum?

22 A. No. As I was walking to the door when I saw it,  
23 no she did not.

24 Q. Had Ms. Tylum ever told you that she was afraid of  
25 Ms. McKinney after her return to work?

1 A. I believe so --

2 MR. PHILPOT: Relevance.

3 THE COURT: I'll allow it.

4 BY MR. JORDANO:

5 Q. Go ahead, sir.

6 A. I believe so.

7 MR. JORDANO: Nothing further. Thank you.

8 THE COURT: All right. You can step down.

9 (Witness excused.)

10 THE COURT: Okay.

11 Ladies and gentlemen, don't talk about the  
12 case over the weekend. Battle the snow, whatever we  
13 get; and we'll see you Monday morning at 9:00 o'clock.  
14 Leave all the notes back there.

15 I think we're making pretty good progress and  
16 I think we'll finish the case a little faster than I  
17 was afraid it was going to go. I think we're -- we'll  
18 push it along pretty quickly next week. Unless the  
19 snow kills us next week.

20 (Jury out at 4:52 p.m.)

21 THE COURT: All right. I'll see you all  
22 Monday morning. Have a good snowy weekend.

23 MR. JORDANO: Thank you.

24 MR. PHILPOT: Okay.

25 (Proceedings concluded at 4:52 p.m.)

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Linda Thomas	38	61	--	--	--
Robert Bissell	67	90	97	--	--
Trooper Myles Ginley	99	122	131	--	--
David Astarita	134	144	--	--	--
Andrew Caserta	145	153	159	--	--
Peter Bates	161	174	--	--	--
Michael Sanders	180	272	307	318	318
James Stutz	319	339	360	346	--
<u>WITNESSES FOR</u>					
<u>THE DEFENDANT:</u>					
None					
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C E R T I F I C A T E

I certify that the foregoing is a correct transcript  
from the electronic sound recording of the proceedings  
in the above-entitled matter.

/s/ \_\_\_\_\_

May 11, 2011

STEPHEN C. BOWLES