

**BOARD OF POLICE COMMISSIONERS  
ST. LOUIS COUNTY POLICE**

IN RE THE MATTER OF:

Lt. Patrick Hayes, DSN 2702

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Case Number: A13-002

**REPORT OF FINDINGS OF FACT, CONCLUSIONS  
OF LAW AND RECOMMENDATION**

**PARTIES**

St. Louis County Police Department:

Represented by: St. Louis County Counselor's Office,  
Mr. Carl W. Becker #37585  
Assistant County Counselor  
Ms. Lorena Merklin VonKaenel  
Assistant County Counselor  
41 S. Central Ave., 9<sup>th</sup> Floor  
Clayton, MO 63105

Employee, Lt. Patrick Hayes:

Represented by: Neil J. Bruntrager  
Bruntrager & Billings, P.C.  
1735 South Big Bend Blvd., Suite 300  
St. Louis, MO 63117



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**BACKGROUND**

This matter involves an appeal by Lt. Patrick Hayes from the May 13, 2013, disciplinary action of Colonel Timothy E. Fitch, Chief of Police, terminating his employment. The St. Louis County Board of Police Commissioners elected to hire a hearing officer pursuant to its Rules and Regulations of Appellate Procedure. The Board of Police Commissioners contracted with Michael W. Flynn, Attorney at Law, an attorney licensed to practice law in the State of Missouri, to act as Hearing Officer in this matter. Prior to the commencement of the hearing, Mr. Flynn subscribed an oath as hearing officer which oath is on file with the Board.

Following numerous scheduling conflicts and procedural obstacles, this appeal finally came on for hearing on May 6, 2015 and continued over the course of a total of eleven days as follows: May 6<sup>th</sup>, July 6<sup>th</sup>, July 7<sup>th</sup>, July 8<sup>th</sup>, July 9<sup>th</sup>, August 24<sup>th</sup>, August 25<sup>th</sup>, September 1<sup>st</sup>, September 2<sup>nd</sup>, September 9<sup>th</sup>, and September 24<sup>th</sup>. The record of this hearing exceeds 2,500 pages of transcribed testimony.

#### **Board Members in Attendance:**

Chairman Roland J. Corvington and Vice-Chairman T.R. Carr were present intermittently during the course of the hearing. Laurie L. Westfall, Secretary of the Board, was present for the duration of the hearing.

### **PREHEARING MATTERS**

A Joint Protective Order was agreed to by the Parties and approved by the Hearing Officer on February 27, 2014, whereby certain documents, data, interrogatory answers, admissions, depositions, or other discovery materials produced or obtained as a result of discovery regarding the allegations and defenses in this matter would be deemed to be "Confidential Information" not to be disclosed or disseminated, except as provided for under the provisions of this Joint Protective Order.

### **HEARING AND EVIDENCE**

#### **May 6, 2015:**

Prior to any testimony being adduced, written *Motions In Limine* were presented by counsel for the St. Louis County Board of Police Commissioners ("County") and oral argument on the motions ensued. The first motion sought to bar the use, results, or tendering of any privately administered polygraph examination of Lt. Hayes. The Hearing Officer deferred ruling on this subject until such time as the issue presents itself during the hearing. The second motion involved the sequestration of witnesses from the hearing. Prior to the hearing date the St. Louis County Board of Police Commissioners ("Board") ordered that the hearing be a "closed hearing" pursuant to §610.021(3) and (13), R.S.Mo. Both parties moved for the sequestration of witnesses from the hearing, which was agreed to and ordered by the Hearing Officer. However, it was represented that Appellant Hayes intended to have his spouse, Ann Hayes, present with him during the hearing. It should be noted that Ann Hayes is currently a St. Louis County Police Officer. For various reasons referenced in its motion, including strategy reasons that the County did not want to disclose in the motion, the County sought to bar Ann Hayes from the hearing.

Counsel for Appellant Hayes objected and argued *inter alia* that he did not intend on calling Mrs. Hayes as a witness for Appellant and that if the County intended to call her spousal privilege would prevent Mrs. Hayes from testifying regarding confidential communications exchanged between her and her husband. The County represented that it may call Mrs. Hayes to testify as a factual witness about matters that are the subject of the appeal and argued against the applicability of spousal privilege under the circumstances.

Upon question by the Hearing Officer, Mr. Bruntrager stated that if Mrs. Hayes were called to testify by the County, she would assert spousal privilege and refuse to testify even though she could be directed to do so by the Chief and upon refusal to do so, could possibly be subject to discipline for refusing to cooperate in the proceedings.

After consideration of the arguments presented on a situation somewhat unique in the context of an administrative proceeding of this nature, the Hearing Office ruled that Mrs. Hayes could remain in the hearing room for the proceedings.

The Hearing Officer was next presented with an oral motion by Mr. Bruntrager to exclude Lt. O'Neill from the hearing room. The County intended to have Lt. O'Neill present as a "corporate representative." The Hearing Officer ruled that since this was an administrative hearing and not a proceeding before a jury there was not the need to demonstrate a corporate presence and, therefore, held that Lt. O'Neill could not be present unless testifying as a witness.

Following the foregoing pre-hearing matters, Mr. Bruntrager stated he needed to make a record regarding two matters. One involved his desire to address the Board regarding its decision to conduct the proceedings as a closed hearing. The second matter related to a document that he "found" the day prior. The document in question was later identified as an affidavit dated May 5, 2015, obtained from Greg Van Mierlo, a former St. Louis County Police officer. Mr. Becker responded that this affidavit contained some disparaging comments, the exact nature of which were not specified for the record. On May 4, 2015, pre-hearing conference call between the Hearing Officer and counsel for both parties, Mr. Bruntrager indicated that he had his initial contact with this potential witness via a telephone call he received from Mr. Van Mierlo on the evening of May 3, 2015. As a result of the contact from Mr. Van Mierlo and the information contained in the affidavit obtained from Mr. Van Mierlo, Mr. Bruntrager stated that on May 5<sup>th</sup> he requested additional time to investigate. At this point, a brief five-minute recess was called for the purpose of determining if any Board Members had arrived. During the recess counsel for both parties became engaged in a protracted discussion outside the presence of the hearing officer. After an approximately 75 minute recess, the Hearing Officer was advised that as result of the discussion between counsel, serious issues needed to be addressed before the hearing could proceed. Two Board members, Mr. Carr and Mrs. Westfall were present and after conferring with these two Board representatives it was agreed the hearing would be continued to a later date to be determined after adjournment of this session.

#### **July 6, 2015:**

Prior to the hearing being reconvened a Motion to Quash Notice of Deposition dated June 23, 2015, was filed by Assistant County Counselor Carl W. Becker. This Motion was filed in response to a Notice to Take Deposition (sic) of fifteen police officers on July 1, 2014, just five days before the hearing was scheduled to reconvene. On June 26, 2015, the Hearing Officer entered his ruling sustaining the Motion to Quash.

On July 6, 2015, the hearing reconvened following preliminary comments by the Hearing Officer concerning the manner in which the hearing would proceed. The hearing continued on the following dates: July, 7<sup>th</sup>, July 8<sup>th</sup>, July 9<sup>th</sup>, August 24<sup>th</sup>, August 25<sup>th</sup>, September 1<sup>st</sup>, September 2<sup>nd</sup>, September 9<sup>th</sup> and September 24<sup>th</sup>. The Exhibits referenced on the record during the hearing and in this Report are as follows:

**St. Louis County Police Department's Exhibits:**

1. Certified copy of St. Louis County Ordinance No. 4866 regarding the Department of Police and pertaining to the powers and duties and organization of the Department of Police;
2. Certified copy of St. Louis County Charter adopted by the voters of St. Louis County November 6, 1979;
3. St. Louis County Board of Police Commissioners Rules of Appellate Procedure;
4. St. Louis County Board of Police Commissioners Regulations as to use of Hearing Officer;
5. St. Louis County Police Department Conduct and Discipline Manual Rules and Procedures;
6. St. Louis County Police Departmental General Order 07-81 regarding Citizen Contacts and Traffic Stop Information;
7. St. Louis County Police Department-Division of Patrol and Special Operations Procedure 07-78;
8. Anonymous letter received by the Chief's office December 24, 2012;
9. Anonymous ("LONEWOLF") St. Louis County Police Department Inter-Office Memorandum to Colonel Timothy Fitch, Chief of Police dated December 30, 2012;
10. Anonymous undated letter ("LONEWOLF");
11. Transcript of Lt. Matthew O'Neill's (DSN 2499) January 31, 2013 interview of Officer Nathan Merry (DSN 3691);
12. Pre-termination letter dated April 9, 2013, from Colonel Timothy E. Fitch Chief of Police to Lt. Patrick Hayes;
13. Termination letter dated May 13, 2013, from Colonel Timothy E. Fitch Chief of Police to Lt. Patrick Hayes;
14. Cartoon sketch of Officer Michael Torizzo;
15. St. Louis County Department of Police, Bureau of Professional Standards Index and Internal Report re Investigation A13-002 (one page of Exhibit further marked as Exhibit 15-1);
16. Lt. Hayes' prior disciplinary record;

17. St. Louis County Department of Police, Bureau of Professional Standards Summary Report regarding Case Number A12-002;
18. Deposition Transcript of the May 12, 2014 deposition of Officer William Matthews taken on behalf of Complainant Lt. Patrick Hayes; (Partial)
19. Deposition Transcript of the May 12, 2014 deposition of Officer Ryan Lawrence taken on behalf of Complainant Lt. Patrick Hayes; (Partial)
20. Written Response of Lt. Patrick Hayes;
21. Letter dated April 26, 2013 to Col. Timothy Fitch, Chief of Police, from Neil J. Bruntrager, counsel for Lt. Patrick Hayes;
22. Transcript of January 30, 2013 BPS interview of Officer Ryan Lawrence, DSN 4065;
23. Printed image of CARE Login Screen;
24. Copy of February 7, 2013 St. Louis Post Dispatch.com article concerning Lt. Hayes being placed on leave;
25. Deposition transcript of Lt. Hayes' deposition taken on April 17, 2015;
26. Print outs of e-mail exchanges dated August 24, 2012 and August 28, 2012, involving Sgt. Jensen, Officer Michael Petty and Becky Murphy, Continuing Education Coordinator, St. Louis County & Municipal Police Academy relating to Officer Petty's Field Officer Training Course.

Counsel for Lt. Hayes stipulated to the introduction of the Department's Exhibits 1-13. As to Exhibits 12 & 13, he did not stipulate to the truth or accuracy of the contents, but had no objection to the foundation or admissibility of those two exhibits.

**Employee/Appellant's Exhibits:**

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| AA | Transcript of February 7, 2013, BPS interview of Capt. James Schneider, DSN 2699                               |
| A2 | BPS Summary Report   |
| AJ | Transcript of Deposition of Officer Merry  |
| AQ | Fourth Precinct B Platoon Schedule for period beginning 01-08-12   |
| AS | Departmental General Order 04-05, Complaint Review Procedure   |
| AT | Evaluation Period Record ("EPR") dated October 22, 2013, issued to Officer Brad Hollenback (Duplicate of AAA1) |

- AAA Inter-Office Memorandum dated September 3, 2013 from Officer Ryan Lawrence to Capt. James Schneider regarding conversation with Officer Brad Hollenback
- AAA-1 Evaluation Period Record ("EPR") dated October 22, 2013, issued to Officer Brad Hollenback
- BB Document prepared by Lt. Hayes and presented to Chief Fitch in his defense of complaint against him
- CC E-mail dated March 22, 2012, from Lt. Karl Bulla to B Platoon members
- DD Partial transcript of deposition of Lt. Matthew O'Neill taken on April 14, 2014
- E Transcript of January 28, 2013 BPS interview of Sgt. Dan O'Neil (duplicates E8)
- E6 Copy of handwritten notes of Sgt. Dan O'Neil (as rewritten in his wife's handwriting)
- E7 Petition For Damages filed against St. Louis County Missouri by Sgt. Daniel O'Neil in the Circuit Court of St. Louis County, Missouri
- E8 Transcript of January 28, 2013, BPS interview (second) of Sgt. Dan O'Neil
- EE Partial transcript of deposition of Timothy Fitch taken on April 24, 2014
- GG Partial transcript of deposition of Sgt. Joanna Jensen taken on March 10, 2015
- J1 Color "Google earth" aerial photograph of Jefferson Barracks Park (overview)
- J2 Color "Google earth" aerial photograph of Jefferson Barracks Park depicting three buildings
- J3 Color photograph depicting the rear of one of the three buildings seen in Exhibit J2
- L Transcript of January 17, 2013, BPS interview of Officer Kristopher Weston
- R Inter-office Memorandum dated April 2, 2014, from Lt. Matthew O'Neill to Chief Timothy E. Fitch re BPS Case #A13-0002 (Hayes)
- T Inter-Office Memorandum dated April 6, 2014 from Lt. Matthew O'Neill to Chief Timothy E. Fitch re BPS Case #A13-002 (Hayes)
- U Fourth Precinct B Platoon Schedule for period beginning 2/3/2013

Hereinafter, reference to a numbered exhibit will be understood to refer to a Department exhibit and reference to an exhibit by a descriptive letter will be understood to refer to an exhibit of Appellant/Employee. Further, any exhibits marked and identified during the hearing but not formally introduced into evidence have been considered by this hearing officer to have been constructively admitted into evidence. See *State v Gott*, 191 S.W.3d 113, 115 (Mo. App. 2006).

During the course of the hearing testimony was presented on behalf of the St. Louis County Police Department from the following witnesses:

**Department's Witnesses:**

1. Officer/Patrolman Russell Bono (DSN 3088)
2. Officer Mike Bieri (DSN 3756)
3. Nathaniel E. Merry  
Former St. Louis County Police Officer (DSN 3691)
4. Officer/Patrolman Justin Andrew Holtz (DSN 3483)
5. Officer/Patrolman Bradley Hollenback (DSN 2867)
6. Officer/Patrolman Christopher Rickard (DSN 3398)
7. Officer Michael Andrew Petty (DSN 3856)
8. Sgt. Joanna Jensen (DSN 3372)
9. Sgt. Daniel James O'Neil (DSN 2608)
10. Lt. Matthew O'Neill (DSN 2499) Bureau of Professional Standards, St. Louis County Police Department
11. Officer William Matthews via deposition; (Portions of deposition of deposition [Exhibit 18] read into evidence)
12. Officer Ryan Lawrence via deposition; (Portions of deposition of deposition [Exhibit 19] read into evidence)
13. Timothy E. Fitch, former Colonel/Chief of Police, St. Louis County Police Department

Following the evidence presented by the Department, Appellant Lt. Patrick Hayes presented testimony as follows:

**Witnesses called by Lt. Patrick Hayes:**

1. Captain James J. Schneider (DSN 2699)



2. Dennis Elze (Former Captain, St. Louis County P.D.)
3. Officer Amy Michelle Dlugos (DSN 3835)
4. Officer Gregory E. Van Mierlo (DSN 201)  
Formerly a St. Louis County Police Officer currently employed by Des Peres  
as Public Safety Officer)
5. Officer Samantha Jo Sirles (DSN 4107)
6. Officer Matthew Ryan Jacobsmeyer (DSN 3768)
7. Lt. Jeffrey Hoots (DSN 2421)
8. Officer Michael V. Torizzo (DSN 382)
9. Lt. Leslee Tate (DSN 2421)
10. Officer Ryan A. Lawrence (DSN 382)  
Formerly a St. Louis County Police Officer currently employed by Kirkwood Police  
Department
11. Patrick Hayes, Employee/Appellant

### **TESTIMONY AND EVIDENCE**

Following opening statements by Mr. Becker and Mr. Bruntrager the St. Louis County Police Department commenced with the presentation of its evidence.

#### **ST. LOUIS COUNTY POLICE DEPARTMENT'S WITNESSES:**

##### **Officer Russell Bono (DSN 3088)**

Officer Bono testified that he has been employed by the St. Louis County Police Department for sixteen years, having started in 1997. In approximately 2003 he started at the Fourth (South County) Precinct. Lt. Hayes came to the Fourth Precinct in 2012. Lt. Hayes never gave him any verbal discipline. He never received a written complaint or an "EPR" (Employee Performance Report) form Lt. Hayes. EPR's can be given for favorable or unfavorable performance and the EPR is removed from your record after six months. Lt. Hayes did, however, counsel him about a low number of tickets and "summons in lieu" (of arrest) issued and about increasing those numbers on a monthly basis. Officer Bono stated he had no animosity toward Lt. Hayes, that he got along with Lt. Hayes, and at one point in his testimony stated that Lt. Hayes was probably one of the nicest lieutenants he has worked for.

Lt. Hayes utilized a color coded chart indicating the comparative performance of the officers. After Lt. Hayes arrived to the B Platoon in the Spring of 2012, he wanted to induct a special enforcement team to combat crime at Wal-Mart and the "mall." A special enforcement team was created, but Officer Bono was not a member.

At the main Fourth Precinct station in the Summer (July or August) of 2012, Officer Bono stated he was in the report writing room where Lt. Hayes was addressing a roll call of the special enforcement team<sup>1</sup> when he overheard Lt. Hayes say to the special enforcement team either:

**(First Statement)**

**“...let’s stop those people...”**

**Or**

**“I want those people stopped...”**

Another statement Officer Bono stated he heard Lt. Hayes make was:

**(Second Statement)**

**“We need to stop those people before they get into the mall.”**

It is not entirely clear from Officer Bono’s testimony whether these two statements were made on one occasion or two separate occasions.

During this same time period Officer Bono testified that he heard Lt. Hayes make another statement:

**(Third Statement)**

**“Let’s make the cells a little more colorful tonight.”**

Officer Bono’s interpretation of this third statement was that it was a reference to black people – to stop black people without probable cause and to put black people in the cells. Officer Bono stated that one of these statements – possibly the first statement, was accompanied by Lt. Hayes giving a wink and making a gesture whereby he touched his skin and/or rubbed his forearm with his hand. Officer Bono interpreted the statements and gesture to mean the special enforcement officers were to stop black people.

Officer Bono testified that he could not remember the name of even one officer that present when these statements and/or gestures were made because of the fact that: (a) he was 50 years old; (b) it happened three years ago; and (c) because there was always so many people coming in and out of the station. But Officer Bono also acknowledged that at the time of his deposition which was taken in regard to this matter, he testified that he thought Officers Ryan Lawrence and Chris Weston may have been present when one of the racial profiling comments was made by Lt. Hayes. He also acknowledge that in that deposition he also testified that he did not think this matter was a big deal.

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<sup>1</sup> There will be testimony from other witnesses identifying the officers assigned to “special enforcement” duties. It is important to note here that according to Officer Bono’s testimony, what he overheard were comments made to a roll call of just special enforcement officers versus a roll call of the entire B Platoon.

In response to these statements by Lt. Hayes, Officer Bono said that Sgt. Dan O'Neil said: "Guys, you know what you should do. Make sure you stop for probable cause. Don't be going out there doing anything stupid that's going to cost you your job."

Officer Bono was asked about Officer Torizzo's arrests during the period of time in question. In Officer Bono's opinion there seemed like there were a lot of blacks – more than usual – being arrested and taken to St. Louis County intake. Officer Bono testified that Officer Torizzo was not that well liked and was not part of "the group." A cartoon of Officer Torizzo drawn by an anonymous artist was posted at the station. Some officers were angry because they thought he was getting special treatment. They did not like the hours he got to work and they did not like having to transport his prisoners to St. Louis County intake, contrary to the normal practice of an arresting officer transporting his or her own arrested prisoners.

Officer Bono acknowledged per the Departments Complaint Review Procedure (**Exhibit AS**) if he observed Lt. Hayes give an illegal order, he had a duty to report it immediately to a supervisory employee. He made no written complaint about Lt. Hayes because he was not following these "orders" by Lt. Hayes and because a supervisor, Sgt. Dan O'Neil, was present. He believed Sgt. O'Neil would be the one to handle it. He testified that he had a good relationship with Captain Schneider, Lt. Hoots and Lt. Tate, but did not report to any of them what he had seen or heard.

Officer Bono was interviewed by the Bureau of Professional Standards (hereinafter sometimes referred to as "BPS") regarding statements attributed to Lt. Hayes and was told he (Officer Bono) might be given a polygraph. He understood that the Department policy under Chief Fitch was: "if you lie, you die;" meaning that if you lie to BPS you would be fired. He also testified that he told Lt. Matt O'Neill, who was conducting the BPS investigation into this matter, that he believed Lt. Hayes' "order" was being carried out and in particular by Officer Mike Torizzo, because Officer Torizzo was making so many arrests and all the other members of B Platoon were having to transport his prisoners. Officer Bono stated he never made a complaint about Officer Torizzo following the order.

Officer Bono was asked about certain aspects of a patrolman's job in the Fourth Precinct during the time period in question.

Roll calls were also conducted at the Mehlville and Oakville substations. Sometimes a sergeant would conduct the roll calls. The shifts did not start at the substations until one-half hour later than at the main precinct station, so the roll calls at the substations were not at the same time as at the main precinct station. The "B" Platoon hours were in the afternoon. When eight-hour shifts were in effect, it was from 2:30 p.m. until 10:30 p.m.

He explained that there are no designated meal times. If you go somewhere to eat you are required to remain "radio responsive" and if a radio call is dispatched you are required to leave and answer the call. The Quick Trip ("QT") in the area was a location frequented by officers for coffee etc. At one point, Officer Bono was counseled by Lt. Hayes for spending too long a period of time in QT. Officer Bono was then asked about the "Lake House." He described the Lake House as an abandoned building in "JB" (Jefferson Barracks) Park. He described it as an area where three or four officers would sit together to eat a sandwich or have lunch instead of eating at a McDonald's restaurant which did not look good. While at the Lake House he said the officers always remained radio responsive. Different officers would be at the Lake House at different times.

## **Officer Mike Bieri (DSN 3756)**

Officer Bieri has been a St. Louis County Police officer for nearly eight years. Previously he was employed as a Sheriff's Deputy for 14 years with Brevard County, Florida and prior to that, as a military police officer in the Air Force from 1984 to 1988. He served in the St. Louis County Police Department Fourth Precinct from October, 2007 until approximately November of 2012, when he was transferred to the Wildwood Precinct. He stated that Captain Schneider told him he was not being transferred as a disciplinary matter, but that it would just be better for him to broaden his horizons within the department.

In the Summer of 2012, Officer Bieri was assigned to the B Platoon in the Fourth Precinct. He worked "3's" beat which included the South County Mall and Wal-Mart. He served as the primary backup for the unit that would respond to the Wal-Mart for calls. His "Watch Commander" at this time was Lt. Hayes who arrived as Watch Commander of B Platoon in approximately the Spring of 2012. He never received any verbal or written complaints or "EPR's" from Lt. Hayes.

When Lt. Hayes arrived at B Platoon he instructed the B Platoon that they were to try to enhance patrol techniques in order to decrease the crime level around the mall location and Wal-Mart. Whenever available, they were to try to be in that area as much as possible.

Officer Bieri stated that he had minimum interaction with Lt. Hayes due to the fact that he "made relief" at the Mehlville substation and Lt. Hayes did not conduct many roll calls at the Mehlville substation. However, he did recall one very small roll call at the Mehlville substation that Lt. Hayes conducted and which Officer Bieri described as a "one-on-one" conversation. Others that he recalls being present were Sgt. Jensen and Officer Katic. At this particular roll call Officer Bieri testified that:

**Hayes wanted them to enhance their patrol techniques by stopping as many blacks around the mall – blacks going to and from the mall.**

Officer Bieri said that he told Lt. Hayes he disagreed with this approach and did not want to be part of that process. Officer Bieri stated that he does not know if it was Lt. Hayes or Sgt. Jensen that responded that if it was done properly it would not be considered racial profiling.

After Lt. Hayes made the comments about enhanced patrol techniques and stopping blacks, he left and went to the QT. He believes Officers Katic and Bono were at the QT. Officer Bieri discussed Lt. Hayes' comments with them.

Officer Bieri stated he was frustrated by this exchange because he did not believe it was a proper order to be given by a lieutenant. He did not carry out Lt. Hayes' order. When directed by radio for shop-lifting he would use his discretionary tactics and determine whether or not a full custody arrest needed to be made.

Officer Bieri stated he did not report this incident involving Lt. Hayes because Sgt. Jensen was present and he figured she would take on the matter herself. Also, he said he was not sure how it would be accepted by the Department if he reported it. He was concerned with possible retaliation. He believes that retaliation did in fact occur because he challenged Lt. Hayes. He was transferred out

of the precinct two or three weeks later. Captain Schneider was the one that informed him of his transfer and said that it was not being done as a disciplinary matter.

Officer Bieri was asked about the Quick Trip and the "Lake House." He testified that officers meeting at the QT would discuss intelligence given to various officers at roll call, "shoot the breeze," discuss rumors, joke around and make fun of one another to alleviate stress from the day, get coffee, and use the bathroom. The Lake House was described as an abandoned military home just outside of Jefferson Barracks. It was a location where officers would socialize and have lunch since they were banned from being seen congregating in public in order to avoid a bad image in the public's eye of seeing more than two officers in one location. The officers' police vehicles would be driven around a circular one-way drive and parked in the back of this building so that they would not be visible from the road. Officer Bieri describe this as "hiding." He would see on a random basis other officers at the Lake House. Officer Katic and he usually worked the same days, so he would see him there and Officer Bono. Officer Merry would be there and probably Officer Petty. Officer Bieri stated that the officers remained radio responsive while at the Lake House. Admittedly, however, some the officers were outside their assigned beats while at the Lake House, but Officer Bieri stated that there was no regulation prohibiting this.

When asked, Officer Bieri disclaimed any knowledge of a conspiracy among officers to make up the racial profiling comments about Lt. Hayes.

Officer Bieri became aware through rumors at the end of December (2012) that anonymous letters were sent complaining about racial profiling issues concerning Lt. Hayes. He stated that he mentioned to other officers the comments he had heard Lt. Hayes say. He could not recall the names of the officers that he told, but they were officers with whom he would go to the Lake House. He also became aware that lots of people were being brought in at the end of January and February (2013) to be interviewed about this subject. However, Officer Bieri was not interviewed by BPS and was not contacted by Lt. O'Neill, nor did he make any effort to contact BPS with the information he had regarding this matter.<sup>2</sup> He was first contacted about this case when the County Counselor's office contacted him in approximately February (2013).

**Nathaniel E. Merry (DSN 3691)**  
**Former St. Louis County Police Officer**

Mr. Merry appeared and testified under subpoena. He stated that he was formerly employed as a St. Louis County Police officer from 2007 until approximately two weeks prior to his testimony at this hearing when he left the Department to pursue another career. Prior to his employment with St. Louis County Police Department he was employed by the Creve Coeur Police Department for five years. (Although no longer with St. Louis County Police, Mr. Merry will be referred to as Officer Merry herein.)

His first position with St. Louis County Police Department was the South County/Fourth Precinct. He was working in the Fourth Precinct in 2012. Captain Schneider was the commander of the precinct in 2012 and Lt. Hayes was in charge of the B Platoon. The two B Platoon sergeants were Sgt. Dan O'Neil and Sgt. Joni Jensen.

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<sup>2</sup> Lt. O'Neill testified that he contacted Officer Bieri, who told him he did not hear Lt. Hayes make any racial comments. See summary of Lt. O'Neill's testimony, *infra*.

In the Spring of 2012 when Lt. Hayes came to the B Platoon Officer Merry was working the "Casino Beat" and was also responsible for assisting on calls in adjacent beats, the closest of which was the "Lemay Beat." A couple of times he rotated into the "Special Enforcement Beat."

Through roll calls he was made aware that Lt. Hayes wanted officers to focus on crime around the mall and at the Wal-Mart. He believes Lt. Hayes wanted more arrests and more stops in those areas. During roll calls at the precinct station during the summer months of 2012, Officer Merry heard Lt. Hayes make certain statements that he believed amounted to racial profiling.

On or about January 31, 2013, He was called into BPS by Lt. Matt O'Neill the person in charge of the Bureau of Professional Standards (BPS) at the time. Officer Merry understood that Colonel Fitch, the Chief of Police at the time, had a policy: "If you lie, you die." Officer Merry explained that this policy meant that if an officer lied to BPS he would be fired. Officer Merry made a statement to BPS which was not made under oath.

Officer Merry said that the transcript of his statement to BPS contained an accurate reflection and his best recollection of the statements he heard Lt. Hayes make at roll calls. Officer Merry was then asked to read from the transcript of his BPS statement (**Exhibit 11**) what he recalled Lt. Hayes saying. Officer Merry stated that Lt. Hayes said things like:

**"If they are black and they have a temp tag, stop them. You have a right to stop them to examine the temp tag."**

Officer Merry testified that based upon his training and experience as a police officer, such statements by Lt. Hayes in his opinion constitute racial profiling because if there is no crime or suspicion of a crime, he does not think that is justification to stop somebody.

Again, referring to the transcript of his statement to BPS the other comment he said he heard Lt. Hayes say was something to the effect of:

**"If they have a tan or they look like they have a tan, stop them."**

According to Officer Merry, at the time Lt. Hayes made this statement he made a gesture by rubbing his left hand with his right hand. Referring again to his statement to BPS, Officer Merry said Lt. Hayes also made a comment:

**"Let's have a black day."**

Officer Merry interpreted these comments and the gesture to mean that if somebody has darker skin – if they are African American, stop them. He believed this comment by Lt. Hayes was racial profiling.

Under cross-examination about his prior sworn deposition testimony about these comments and gestures of Lt. Hayes, Officer Merry acknowledged that at the time of his deposition he testified that he could not recall the exact comments made by Lt. Hayes and could not recall if Lt. Hayes specifically used the word "black." Further, in his deposition testimony Officer Merry stated he did not remember if Lt. Hayes' comment about "tan" and about "temp tags" occurred in the same roll call and said it was possible that the comments were made at the same roll call. At the hearing, his

testimony on this point was that the comments were made over a period of time at several roll calls and some of the comments could have been at the same roll call, but he did not know. He also testified at the hearing that different people were at different roll calls and that he could not provide the name of a single officer that was present when Lt. Hayes made any of the comments. He gave the same testimony at his deposition including his statement that he could not remember whether or not Sgt. Dan O'Neil was present. However, at the hearing he said he was sure that Sgt. Dan O'Neil was present because he recalls speaking to his sergeants, including Sgt. O'Neil, about Lt. Hayes' comments.

He also stated he was concerned about the high number of warrant arrests of African Americans being made in the precinct. These outstanding warrants for subjects stopped or arrested at the mall would be for various offenses including things like traffic tickets, failure to pay a Metro-link fare, or assaults. Persons with these outstanding warrants would then have to be transported to intake (at the Justice Center in Clayton, Missouri). He was one of the officers assigned to transport the prisoners which he did not like because it occupied a lot of time – one to four hours – and took him away from his beat.

Officer Merry said that he was worried that if he came forward with allegations about Lt. Hayes he could be transferred and there was a time that officers started being transferred. He thinks the first officer transferred may have been Rickard, then Bieri and Katic. He stated that eventually all but a couple of officers in B Platoon were transferred.

Officer Merry said he went to the Lake House and when he did, he always remained radio responsive. He disagreed with Officer Bieri's characterization that they were hiding when at the Lake House. At times when he was at the Lake House he would be out of his beat. He did not recall how many police cars would be there at one time, but acknowledged it could have been three, four or five cars at a time, out of ten to fourteen cars operating in the precinct on a typical day – approximately nine of which may be B Platoon cars. Officer Merry said that there were never any supervisory officers – sergeants or lieutenants – at the Lake House.

There was a time when Lt. Hayes denied him the assignment and use of a police car as personal "P" car.

#### **Officer Justin Andrew Holtz (DSN 3483)**

Officer Holtz has been employed by St. Louis County Police Department for approximately fourteen years. He was in the B Platoon of the Fourth Precinct the Spring of 2012, working a general assignment beat. He was under the command of Captain Schneider and Lt. Hayes. He made roll calls out of all three locations – the main station at 3031 Telegraph Road, and the Mehlville and Oakville substations.

Lt. Hayes was concerned with numbers. At one of the roll calls – he believes it may have been at the Mehlville substation – Lt. Hayes said there was a lot of crime at the mall and he wanted a lot of traffic stops there, and a lot of arrests from the mall. Lt. Hayes said:

**Do whatever one had to, in order to take people to jail from the mall area.**

While rubbing his left arm with his right hand he also stated to the officers that they:

**...knew the ones that don't belong down here at the mall.**

According to Officer Holtz' testimony, Lt. Hayes made these statements without reference to any reports or statistical charts. Officer Holtz understood the statements and gesture to mean that they were to stop all blacks and take them to jail for whatever reason you had to and he considered this to be racial profiling. He reached this conclusion because a significant amount of the crime at the mall was large groups of black males or females grabbing "tons and tons of jeans or whatever" and then running out and jumping in a car to take off. However, he testified that Lt. Hayes did not specifically tell the officers to stop only black people. He did not hear Lt. Hayes make a statement: "Let's have a black day." He did not hear Lt. Hayes say: "Let's make the cells more colorful."

Officer Holtz was aware of the crime taking place at the mall independent of Lt. Hayes stating the fact. He was aware of the crime at the mall because he would hear the radio calls coming out over the air.

Lt. Hayes gave an example. He said if you see a car parked in the fire lane that had Illinois temp tags, to stop and check it out. When Officer Holtz commented to Lt. Hayes that it was not illegal in St. Louis County to park in a fire lane he could tell by his body language that he was annoyed with him. Officer Holtz stated that he did not question Lt. Hayes about these statements further because he was afraid if he did, he would be transferred out of the precinct, lose his car and get sent to midnights somewhere. He was uncomfortable with Lt. Hayes' statements and if he was going to make any arrests, it was going to be for the right reason. He stated he was so uncomfortable with this that he requested a transfer to a different platoon. He received a transfer at the end of August or beginning of September 2012, and his new lieutenant was Lt. Tate. After this transfer Officer Holtz did not report anything to Lt. Tate about the statements of Lt. Hayes. Again, he said his reason for not reporting was fear of going against a "white shirt" (commander rank) and being transferred, losing his car, getting sent to nights – which in his opinion eventually happened as a result of the Hayes investigation. He says he was transferred to the Wildwood Precinct, the furthest from his residence and had to go on either the complete midnight shift or 6 to 4 midnights.

The subject of "MIAC" reports (police crime information intelligence bulletins put out by the State) were discussed. Officer Holtz stated that Illinois vehicle temp tags were capable of being checked. He acknowledged that if there is a "wanted" outstanding on an Illinois temp tag and it is connected to a black male for example, and a black male drives by in a car with an Illinois temp tag on it, an officer is going to "run" that temp tag. And if upon running the temp tag it came back wanted, an officer has reasonable suspicion to pull over the vehicle and determine if the occupant is the same person wanted in connection with the temp tag. Officer Holtz also acknowledges that when a radio calls came out over the air it was common for the race of the perpetrators to be included in the broadcast – such as four or five black males...or four or five black males with temp tags, etc. Officer Holtz acknowledged that if there was a "smash and grab" larceny offense committed and the report came out over the air stating that the offense was committed by four black males with temp tags, that would not be racial profiling. He also testified that during the time period in question involving the statements by Lt. Hayes, he recalled there was at least one MIAC bulletin with information about multiple black males and Illinois temp tags on cars. He also conceded that information such as this, contained in a MIAC report, is something you would want to keep an eye out for as a matter of crime prevention.



Officer Holtz stated that he only recalls Lt. Hayes making these statements and gesture one the one occasion. He could not state how many people were present when the statement was made, nor could he identify a single person that was present. Further, he did not recall if either one his sergeants was present at this roll call, but stated that he does remember both Sgt. Dan O'Neil and Sgt. Joni Jensen saying make sure any stop made had the proper probable cause. At some point he did tell Sgt. Dan O'Neil what he had heard.

Later he was called in for an interview by Lt. Matt O'Neill, commander of BPS. Officer Holts understood that he could be subject to a polygraph examination and was also aware of Chief Fitch's "lie you die" policy.

Officer Holtz stated that back in 2012 he was not aware of the "Lake House." He also testified that Officers did not like the fact they had to transport Officer Torizzo's prisoners.

#### **Officer Bradley Hollenback (DSN 2867)**

Officer Hollenback testified that he was first hired by St. Louis County Police Department in September of 1996, as a records clerk. Then, in 2002, he went to the police academy and was commissioned as a police officer that same year. In 2008, he was transferred to the Fourth Precinct where he remained until 2014.

In the Spring and Summer of 2012, he was assigned to the B Platoon in the Fourth Precinct and was riding Beat 401 (the 4 designating the precinct, 01 the beat number) which is lower Lemay, the busiest beat in the precinct. Lt. Hayes was his watch commander at that time.

After Lt. Hayes came to B Platoon he held a platoon meeting. This was not a roll call, but a meeting for the entire platoon. At the meeting Lt. Hayes stated that there was a high percentage of crime at the mall and Wal-Mart and this crime was responsible for a large part of the crime statistic for the entire precinct. He said that they were going to be doing special enforcement and hitting the area hard. Lt. Hayes said that they were going to knock down crime statistics and if anybody was not on board with that and not going to work, they were going to get transferred.

Sometime thereafter, a second platoon meeting was held. Lt. Hayes reported that the platoon's numbers were not good and crime statistics were not really going down. He was detaching a couple of officers; one to specifically ride the mall and the other to ride Wal-Mart. He indicated that this is where the train was headed and if the officers were not good with that, they needed to get on the train or be transferred. Officer Hollenback stated that Captain Schneider made appearances at these platoon meetings and would make some sort of a speech and then leave.

Officer Hollenback was offered the opportunity to work overtime in the capacity of special enforcement at the mall and Wal-Mart area. There was one day that he worked special enforcement duty with Officer Lawrence, an officer he had trained.

At the main precinct station in the Spring or Summer of 2012, Lt. Hayes made a racial profiling comment or order according to Officer Hollenback's testimony. He testified that Lt. Hayes stated something along the lines of:

**If you see some people rolling around South County Mall, you need to stop them, find out what they are doing there. We know who is doing the crime up there. If you see three or four people rolling around in a car, you need to stop them, especially if they have a temp tag. Find out what they are doing up there. Run everybody in the car. You have the right to stop them and inspect that temp tag and run them to see if they have any warrants and handle it from there.**

After making the statement, Lt. Hayes looked at Officer Lawrence (who is African-American) and patted him on the back and said:

**Not like you and Weston (who is black or bi-racial), you guys are the good kind (or ...you're one of the good ones).**

Officer Hollenback said he was taken aback by this comment to Officer Lawrence because he thinks it was an inappropriate thing to say. He believes Officers Bono, Lawrence and Wilkerson were present when Lt. Hayes' comments were made.

Another comment Officer Hollenback testified he heard Lt. Hayes make was:

**Let's have a tan day.**

He is not sure if this comment was made on the same day as the previous comment. Officer Hollenback testified he was not providing verbatim quotes, but was paraphrasing Lt. Hayes' comments. This "tan day" comment was made only once. Further, he stated that this "tan day" comment, like the others, would have been made at the main precinct station, the only location where he made relief. He could not state when this "tan day" comment was made or who was present.

He also remembers Lt. Hayes doing something along the lines of **rubbing his skin** while talking about crime stats regarding special enforcement at the mall.

Lt. Hayes also said that they had a right to stop people/cars with temp tags and inspect it. According to Officer Hollenback, if one can read the temp tag and it is not expired you still need probable cause, otherwise, you do not have a right to stop the vehicle.

Officer Hollenback never heard Lt. Hayes say to specifically stop blacks. He interpreted the comment to mean blacks because of the statement about knowing who was doing the crime at the mall and because of the comment he made to Officer Lawrence. He did not report Lt. Hayes because of fear of retaliation and transfer. Also, because he knew his supervisors, Sgt. O'Neil and Sgt. Jensen, were aware of the comments and telling the officers to just keep doing their job and do not do anything dumb. There had been other officers that did not produce that had been transferred such as Officer Rickard, but he could not recall who else.

### **Lake House**

Officer Hollenback was familiar with the "Lake House" and described it as old military housing at Jefferson Barracks. Officer Hollenback identified photographic exhibits (**Exhibits J1, J2 and J3**) of the "Lake House" on the grounds of Jefferson Barracks and described it as the middle building of the three buildings depicted. He identified the picnic table behind the middle house and

the location of the road. He stated that officers at the Lake House would not be visible to the public traveling on the road and it was the officers' intention to have privacy and not be visible while there. Besides going there himself five to ten times, Officer Hollenback testified that the other officers that frequented the Lake House were Ruhland, Katic, Bieri, Merry. He recalls Officer Ruhland being present on one occasion. Hollenback states he was never present with Officers Petty or Holtz.

Officer Hollenback later had a dispute with Officer Lawrence relating to the Hayes investigation. This dispute arose after Officer Hollenback had been interviewed by the County Counselors' office. Hollenback heard that Lt. Hoots, who was Officer Lawrence's lieutenant in the Fourth Precinct, asked Lawrence what questions the County Counselor's office had asked him. Hollenback said he thought that Lt. Hoots was trying to pry information out of Lawrence for the benefit of the lieutenants and the captain in the precinct and he feared retaliation. Hollenback stated that he trained Officer Lawrence and Lawrence was still a young officer and he did not want Lawrence to get in trouble. For these reasons, Hollenback said he sent a text message to Lawrence telling him that people were being transferred and he did not think it was right for him to be telling Lt. Hoots what was asked, because they had been told by BPS and the County Counselors not to discuss the situation. The text message contained something along the lines of: "...it is us against the white shirts..." but Hollenback denied that the message to Lawrence contained any threat or reference to the effect that Lawrence had better get on the right team. Officer Lawrence showed this text message to Lt. Hoots. As a result, on October 22, 2013, Hollenback said he received a reprimand (**Exhibit AT**) from Captain Schneider and Lt. Tate for sending Lawrence the text message and telling him not to talk about it. He also received both a positive and negative EPR from Lt. Tate together at the same. Thereafter, in May of 2014, he was transferred and he believes the transfer was a disciplinary or punitive measure by either Lt. Tate or Captain Schneider..

Officer Hollenback disclaimed any knowledge of a conspiracy to fabricate these statements or testimony about Lt. Hayes in order to get Lt. Hayes fired or transferred.

### **Arrest of Tony Gianino**

Officer Hollenback was involved with the arrest of Tony Gianino, a convicted felon who was on probation. He was arrested at a probation and parole office on warrant from the City of St. Louis for a harassment offense. When Officer Hollenback took him back to the station Sgt. Hoots became involved in the matter and brought the arrest of Gianino to the attention of Lt. Hayes, who then called Commissioner/Colonel Saracino, the uncle of Gianino. The warrant was either taken out of this system or determined to be inactive and Hollenback was told to give Gianino a ride back to the probation and parole office.

### **Re: Officer Mike Torizzo**

Officer Hollenback testified that he offered his opinion to Lt. Matt O'Neill that Officer Mike Torizzo was acting inappropriately. It was Officer Hollenback's belief that Officer Torizzo was engaged in racial profiling. Hollenback conceded that he never actually looked up Torizzo's arrest records but believed he could arrive at this opinion because he was working the area and could hear (radio traffic) how he was making the stops. At the request of Lt. O'Neill, he gave an example of a parked vehicle that he, Hollenback, was sitting on at the mall. The vehicle had expired plates with a warrant outstanding. He was due to get off, so he called Officer Torizzo over to apprise him of the vehicle. Officer Torizzo took up surveillance of the vehicle and ultimately made an arrest of the driver

who Hollenbeck imagines may have had a warrant or warrants outstanding. He admits in his hearing testimony that he was using this example and complaining of this arrest without having all the facts. He further admitted that this arrest was not an example of racial profiling. Rather, his complaint was that Officer Torizzo could have made a legitimate traffic stop, but, instead, called it out as a suspicious vehicle. Officer Hollenbeck also acknowledged that Officer Torizzo was exonerated regarding any allegations he engaged in racial profiling.

Officer Hollenbeck said he was part of a group of officers complaining about the fact that Officer Torizzo was allowed to make arrests, bring the prisoners to the station, and not have to convey the prisoners. The officers of B Platoon were complaining about the fact that they had to transport Officer Torizzo's prisoners. From talking with officer Rickard, he learned (as testified to in his deposition) that one day at the station, Officer Rickard engaged Lt. Hayes in a heated discussion about B Platoon officers having to transport Torizzo's prisoners. This discussion had nothing to do with racial profiling or about violating civil rights. It was confined to the prisoner transport topic. Two days after this heated confrontation with Lt. Hayes, Officer Rickard was transferred.

### **Officer Christopher Rickard (DSN 3398)**

Officer Rickard has been employed by St. Louis County Police for thirteen years. During the first eight months of 2012, he was assigned to B Platoon in the Fourth Precinct which was composed of approximately twenty officers. In mid-August 2012, he was transferred as discussed below.

In the Spring of 2012, his chain of command was Captain Schneider, Lt. Hayes, and Sergeants Dan O'Neill and newly promoted Joni Jensen. Officer Rickard did not have a beat assignment in the Fourth Precinct. Instead, he was the relief car and also assisted mostly as the assistant desk officer at the main station. As relief car, he would work whatever beats were open if the main beat officers were not working. He did a lot of work at the casino and also did special enforcement at the mall. He had a "take home" car assigned to him. Officer Rickard was familiar with the "Lake House" which has been described elsewhere in this document. Officer Rickard testified that he went to the Lake House on only one occasion during a break.

When Lt. Hayes became the Lieutenant in B Platoon he wanted more productivity – more arrests and tickets. According to Officer Rickard, Lt. Hayes was one of those supervisors that ruled by fear. In Officer Rickard's opinion, Lt. Hayes thought that if you feared him, you would work for him, so he would try and intimidate you by threatening transfer, or to take your car or beat away from you. Officer Rickard said that technique probably works for some people, but it did not work for him or for most of the senior officers. Rickard stated that it was some of the senior officers that Lt. Hayes was getting on for lack of productivity.

During the Summer of 2012, Officer Torizzo was working full time as special enforcement officer at the mall – not as the mall car which was Officer VanMierlo, but as an extra car. The prisoner conveyance unit would call the desk officer inquiring if there were prisoners that needed to be transported from the precinct. There came a time in the Summer of 2012, when the conveyance unit would call and inquire if they had prisoners to convey and would ask if they were Officer Torizzo's prisoners. If the conveyance unit was told that the prisoners were Officer Torizzo's, the conveyance unit would tell the desk officer that they were not coming for those prisoners and that the precinct would have to convey them. Officers in the Fourth Precinct did not like having to convey Officer Torizzo's prisoners to Clayton for booking because it could consume anywhere from one and one-

half hours, to three or four hours, and it also created more work load for the other officers who would have to cover the beats of the officers who were involved in transporting the prisoners.

According to Officer Rickard, in the Summer of 2012, there was an increase in African-Americans being arrested in the Fourth Precinct. Sometime during that summer, Officer Rickard believes that in the roll call room he remembers Lt. Hayes saying: "**Black day.**"

When asked in what context was the statement said, Officer Rickard stated that the people in the roll call room were going to go out and arrest or find black people in or around the mall. However, he does not remember any of the words that went before or after "black day."

Officer Rickard testified that he recalled Lt. Hayes making other racial profiling statements at other roll calls, but he was unable to provide any specific details. Officer Rickard further testified that he heard other officers say that they had heard similar statements. Officer Rickard then stated that Lt. Hayes made these statements multiple times over several months, but his testimony was vague as to whether he claims to have heard such statements on more than one occasion, or if he was just relating that he heard about multiple statements from other officers.

For example, Officer Rickard stated that at times, his two sergeants (Sgt. Dan O'Neil and Sgt. Joni Jensen) were present when statements were made by Lt. Hayes and he believes they heard the statements. Further, he testified that both O'Neil and Jensen were pretty adamant about not doing anything without probable cause and about not following any generic orders about stopping black people. Officer Rickard stated that he specifically remembered Sgt. Dan O'Neil telling him and other officers not to stop anyone without probable cause.

In contrast, Officer Rickard stated during cross-examination that when his deposition was taken on July 1, 2014, he testified that he could not remember a single person who was present when Lt. Hayes made the "black day" comment, nor could he recall if the statement was made in the month of May, June, July or August of 2012. On further cross-examination, Officer Rickard stated that when he says there were many comments of a racial nature made by Lt. Hayes, these were things he was interpreting. Officer Rickard testified he never saw Lt. Hayes make any gestures to his skin with either his left or right arms in conjunction with a statement to the effect of: "...you need to stop these people, you know who we're talking about..."

Officer Rickard did not go to Captain Schneider or to BPS directly report the statements of Lt. Hayes because Captain Schneider was not in his (direct) chain of command and also because he feared retaliation. He testified that at the time, he had a three-month-old child with night breathing problems and he did not want to get transferred to a midnight shift further away from his house, or lose his take home car.

In 2012, Officer Rickard had two meetings with Lt. Hayes. Lt. Hayes was not happy with Rickard's production in terms of arrests and tickets. He said that Lt. Hayes called him "worthless," and threatened to take away Rickard's take home car. They discussed their differences in philosophy about police work. Officer Rickard disagreed with the focus of writing tickets. He also did not like B Platoon officers having to transport Officer Torizzo's prisoners. In mid-August 2012, several days after his second meeting with Lt. Hayes, Rickard was transferred to the Third Precinct (Affton Southwest) where he remained on an afternoon shift. Once this transfer had occurred, Officer Rickard still did not report Lt. Hayes' statements to anyone.

During the Hayes investigation Officer Rickard was called to the Oakville substation in the Fourth Precinct to meet with Lt. Matt O'Neill, Commander of BPS at the time. He does not recall Lt. O'Neill saying anything about being subject to a polygraph examination, but Rickard knew that was a possibility. He was also familiar with Chief Fitch's "lie you die" policy; meaning that if an officer lied during a BPS investigation, he would be terminated. Officer Rickard said he had an opportunity to review his BPS transcript and it appears to be accurate. Before the meeting with Lt. O'Neill, Rickard ran a computer search and pulled Officer Torizzo's CAD calls and/or actual stops, arrest reports and booking sheets for a particular month (July) and made notes. He says he did this because he suspected Officer Torizzo was engaged in racial profiling and went through the numbers with Lt. O'Neill, but did not have his notes with him. Rickard acknowledged that according to the transcript of his BPS statement he discussed Torizzo's racial profiling numbers with Lt. O'Neill and there was only a difference of one, between the number of black arrests and white arrests – 20 white arrest and 19 black arrests.

The Wal-Mart store also had a beat car assigned. This beat was covered by Officer Petty and Officer Brad Murray. Wal-Mart also had an extra car assigned, which was Officer Belcher. However, Officer Rickard stated that he did not check or compare the arrest information for these officers. Officer Torizzo's arrests are the only arrests he focused on.

Officer Rickard acknowledged that the members of B Platoon were "very tight." Rickard got along with everybody in the platoon. Platoon members socialized outside of work. Lt. Hayes was present on one of those occasions. Rickard did not remember socializing with Sgt. Dan O'Neil outside of work.

#### **Officer Michael Andrew Petty (DSN 3856)**

Officer Petty has been employed by St. Louis County Police Department for over six years. He is a field training instructor. This is equivalent to the rank of corporal. When he completed the Police Academy he was assigned to the Fourth Precinct but was transferred to the Third Precinct (Affton Southwest) in approximately June of 2013. He attended the week long field training instructor school while in the Fourth Precinct under Lt. Hayes.

In the Spring of 2012, he was a member of the B Platoon in the Fourth Precinct. He was given the "4's beat" which would have been north of Telegraph Road and north of Highway 255. The 4's beat included Wal-Mart, the precinct station and all the way down to Kingston and the Jefferson Barracks Park area.

In the Fourth Precinct, relief could be made at the main station or at the Mehlville or Oakville substations. Generally speaking, the Fourth Precinct beats are divided by north and south beats. The south, or lower Oakville beats make relief out of the Oakville substation, and the north beats would make relief at either the main station or the Mehlville substation. He stated that he did not really remember which beats made relief out of the main precinct station and it changed at one point.

On cross examination of Officer Petty conducted with the use of a precinct work schedule (**Exhibit AK**), Petty acknowledged that he only worked 4's beat two times out of eighteen work days in May of 2012. During the next period from May 27<sup>th</sup> to June 23<sup>rd</sup>, out of twenty work days he did not work 4's beat. From June 24<sup>th</sup> to July 21<sup>st</sup>, he only worked 4's beat one time out of approximately sixteen or seventeen work days. From July 22<sup>nd</sup> to August 18<sup>th</sup>, out of eighteen days worked, he did

not work 4's beat. From August 18<sup>th</sup> until September 15<sup>th</sup>, he only worked 4's beat on two occasions. Officer Petty conceded that during the Spring, Summer and Fall months of 2012, it was Officer Goran Katic who predominantly worked 4's beat. This cross-examination testimony illustrated the contradiction in this witness' earlier testimony that he knew the location where he made relief during the Spring, Summer and Fall of 2012, because he was 4's beat.

When Lt. Hayes came to the Fourth Precinct in the Spring of 2012, he held a general platoon meeting and conveyed what he expected from the platoon. The mall and Wal-Mart were a major problem for the precinct and generated large call volume. Something needed to be done about those two areas which were to be a priority and main focus.

Officer Petty testified that Lt. Hayes made racial profiling comments at more than one roll call. Officer Petty heard two statements that he thought he could remember. The first statement was about Wal-Mart and the mall area. The statement he remembers is that:

**If anyone with a tan got near those two areas, they were to be pulled over.**

To Officer Petty that meant that probable cause was to be disregarded. If there was a person of color, they needed to be pulled over if they got into those two areas. There was no doubt in Officer Petty's mind that "tan" meant black. Officer Petty believed that this was racial profiling.

Officer Petty never heard Lt. Hayes make any statement relating to pulling over blacks with temp tags.

The only other statement Officer Petty heard Lt. Hayes make was one that took place when Office Lawrence was in the room and he believes Officer Weston was also present. He does not recall the comments preceding the statement in question, but he remembers Lt. Hayes looking at Officer Lawrence-and he believes Officer Weston<sup>3</sup> – and saying:

**Not you guys. You guys are the good ones.**

Officer Petty stated that he heard other officers talking about Lt. Hayes making racial profiling comments at other roll calls. He recalls Sgt. Dan O'Neil telling officers to make sure they have probable cause and are stopping people for good reason and making good traffic stops.

Officer Petty stated that he did not follow Lt. Hayes' directives. He also did not report Lt. Hayes' statements to anyone because the first step to reporting would be to his sergeants. His sergeants were at the roll calls, so the chain of command was aware. Secondly, he only had a couple of year with the department and rightly or wrongly, he did not want to be the young police officer to report on his lieutenant. He also feared ruining his career and feared retaliation from Lt. Hayes, who he believed to be close with certain high ranking officers in the Department.

Officer Petty met with Lt. Matt O'Neill, Commander of BPS, at the Oakville substation. Officer Petty was aware of Chief Fitch's "you lie you die" policy and knew that BPS had the option of subjecting him to a polygraph. On the subject of whether or not he would lie for another officer in the platoon, Officer Petty stated that he had moved to St. Louis, had a wife and was renting, hoping

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<sup>3</sup> Other evidence and testimony, including Officer Lawrence's testimony, establish that Weston was not present.

to get a house, and he could not afford to get fired for lying. He has read the transcript of his meeting with Lt. O'Neill and it is accurate.

Officer Petty testified about prisoner transport issues and attitudes in the Fourth Precinct along the same lines as the preceding witnesses. With regard to the "Lake House," he testified that he had heard about from other officers in the platoon, but had never been there until his last day working in the precinct.

Officer Petty testified that B Platoon was a very close platoon and the members socialized together.

**Sgt. Joanna Jensen (DSN 3372)**

Sgt. Jensen holds a degree in criminal justice. She attended the St. Louis Police Academy from June to December, 2001. Thereafter she was a patrol officer for seven years. She was first assigned to the Affton/Southwest Precinct and then was assigned to Fenton for a few years. In May of 2012, she was promoted to sergeant and assigned to B Platoon in the Fourth/South County Precinct. Her commanding officer was Captain Schneider and her direct commanding officer was Lt. Hayes. Also holding the rank of sergeant in B Platoon was a senior sergeant, Sgt. Dan O'Neil. Upon her promotion to sergeant she was under probationary status for a one year period.

She was present for a platoon meeting where Lt. Hayes told the platoon what he wanted the enforcement focus to be for the platoon. He wanted special enforcement or concentration around the South County Mall and the business corridors on Lindbergh and Lemay Ferry, around K-Mart and Wal-Mart. Lt. Hayes was focused on numbers and would pull up numbers and refer to the fact that the platoon was not writing enough tickets and making enough self-initiated stops. He also wanted the officers to be seen in these areas in order that their presence would provide a deterrent to crime.

The high performing officers were Hollenback and some of the newer officers such as Lawrence, Matthews, Ruhland and Petty. The lower producers were officers that had been with the platoon a long time. She described Lt. Hayes' management style as heavy-handed. He indicated that if you were not going to be an effective officer, you were going to get transferred. She believes that Officer Rickard was transferred in August of 2012, Officer Bieri in November of 2012, and Officer Katic in December of 2012. Sgt. Jensen testified that she and all of the officers eventually were transferred. She was transferred to Jennings which is her current assignment.

Officer Mike Torizzo was assigned a special enforcement officer and was under the direct command of Captain Schneider. In a similar fashion to the officers that testified before her, Sgt. Jensen's testimony echoed their testimony about the increase in (African-American) arrests that occurred in the Fourth Precinct, and the prisoner transport issues and complaints within the platoon about having to transport Torizzo's prisoners.

**Racial Profiling Comments**

Sgt. Jensen testified that in the Summer of 2012, Lt. Hayes made comments at roll calls such as:



**Stop those people that don't belong.**

**Stop those people from the City, from North County.**

**Stop those (people) that take the bus.**

Although she testified that she never heard Lt. Hayes make a statement to the effect: "We are going to stop black people," Sgt. Jensen stated that the majority of people in South County that take the bus are African-American, and the residents living in North City and North County are predominantly African-American. Her interpretation was that these geographical references were references to race.

In the Summer of 2012, when eight-hour shifts were being worked, Sgt. Jensen said that there would have been very few times when she and Lt. Hayes, and Sgt. Dan O'Neil would have been at the same roll call. She said she did not remember where Sgt. O'Neil normally did roll call, but he probably did roll call at the Oakville substation which was near his house. According to her testimony, some of these comments were made at the main station, some at the Mehlville substation, and some at the Oakville substation. Other than Sgt. Dan O'Neil who was present at some of these roll calls, she does not recall names of any of the B Platoon members present when the comments were made. She does not recall Lt. Hayes using any statistics or MIAC reports in conjunction with these comments.

Sgt. Jensen said that the comments of Lt. Hayes, and when "all of this was going on," was in the Summer of 2012. Sgt. Jensen was told about Officer Bieri's testimony that Sgt. Jensen was present at a meeting at the Mehlville substation in October of 2012, with Officer Goran Katic and Lt. Hayes, where Lt. Hayes (according to Bieri's testimony) said: "Go out and stop black people." In response, she stated that if Officer Bieri said there was such a meeting, she does not remember that occurring and does not remember Lt. Hayes making that statement. She does not remember Lt. Hayes making that statement.

Sgt. Jensen testified that she never heard Lt. Hayes say to arrest black people, nor did she ever hear Lt. Hayes say: "Let's have a tan day." She never heard him say: "Let's make the cells more colorful." She also never heard Lt. Hayes use the "N" word.

To her knowledge, no B Platoon officers followed Lt. Hayes' "racial profiling orders." She further testified that she never heard Sgt. O'Neil or any officers in B Platoon make any racist statements.

Sgt. Jensen stated that in response to these comments of Lt. Hayes she and Sgt. Dan O'Neil reminded the officers that "...this is not what we do, this is not who we stop, we just go out and deter crime." She said that she and Sgt. Dan O'Neil made similar statements reminding the officers that they had to use reasonable suspicion and probable cause and to do the right thing and not follow "the order."

However, under cross-examination, Sgt. Jensen admitted that the following question was asked, and following answer given, when she was interviewed by Lt. O'Neill of BPS on January 31<sup>st</sup>, 2013:

**Question:** Now, did you have conversations with officers afterwards about what was said? Did you inform them of anything, advise them that they should – I'm just asking if you had any conversations where they would come to you and talk to you about any of their concerns?

**Answer:** No, I was never approached privately or on the side of any of their, if they were offended in any way or if they (inaudible) any concerns. I can't...I don't think so.

When further pressed on this point, Sgt. Jensen said she was never approached about Lt. Hayes' comments individually or by a group of officers, but that it was the scuttlebutt and topic of conversation around the station.

Sgt. Jensen testified like many of the other witnesses presented at the hearing that under the General Orders of the St. Louis County Police Department if she or other officers saw an illegal order being given, there was a duty to promptly report it. Sgt. Jensen said she did not make any report of Lt. Hayes' comments because she was on probation and she was not the senior sergeant, and, therefore, looked to Sgt. O'Neil to take the lead.

She stated that Sgt. O'Neil's administrative skills, ability to do paperwork, and his familiarity and ability to use the computer scheduling program were not very good. But as far as his interpersonal management of B Platoon, communicating with the members, leading them, trusting them, backing them, and being there for them, he was very good at that and he was very protective of "his guys." She also testified that when Sgt. O'Neil was on duty, often he was not around and could not be found.

Sgt. Jensen testified that B Platoon was a very cohesive, very close, tight-knit group that socialized together. They would hang out after work and go to a bar for a few drinks. They would go to one another's houses and go on float trips.

Following his suspension, Lt. Hayes reached out to Sgt. Jensen. They had a short conversation on the telephone. She said Lt. Hayes was trying to figure out and get specific information about what was going on and what was being said.

Sgt. Jensen was interviewed on two occasions by BPS, January 31<sup>st</sup>, 2013, and March 19<sup>th</sup>, 2013. Prior to the hearing she had also given a deposition regarding this matter. In her deposition she was asked if she had seen anything that would have been inappropriate regarding race or racial profiling would she have made a complaint, and her answer was: "Yes." During her first BPS meeting with Lt. O'Neill she did not inform Lt. O'Neill about the Lt. Hayes comments that she testified to at this hearing. All she told Lt. O'Neill was that there may have been some implied statements. Sgt. Jensen confirmed that during her deposition the following exchange took place:

**Question:** During that time period were you ever present at roll calls where you heard Lt. Hayes tell people that they were to pull people over based upon their race?

**Answer:** No.

Sgt. Jensen explained her deposition answer by stating that she took the question to mean did Lt. Hayes ever say the words "black" or "African-American."

Sgt. Jensen further testified to the following at her deposition:

**Question:** Did you have any problems with Lieutenant Hayes during the Summer of 2012?

**Answer:** No.

**Question:** Did you feel like you had a relationship with Lieutenant Hayes that would allow you to talk to him if there were issues?

**Answer:** Yes. It was an open door policy.

And yet, she acknowledged at this hearing that she was claiming that Lt. Hayes made comments of a racial nature which to her, indicated racial profiling. She also believed that Officer Torizzo was engaged in racial profiling even though she is aware he was exonerated of any such conduct.

**Sgt. Daniel James O'Neil (DSN 2608)**

Sgt. O'Neil testified that he was hired by the St. Louis County Police Department in 1992. Prior to being hired by St. Louis County Police Department he was a police officer for the St. Louis Metropolitan Police Department for six years. After being hired by St. Louis County Police Department he worked for two years in the First Precinct (North County). He was next assigned to drug enforcement for approximately seven years, after which he was promoted to sergeant and returned to the First Precinct for approximately two years. He next was assigned to "Internal Affairs" for over two years and then returned to drug enforcement for almost five years, except for a period of about six months when he was assigned back to BPS due to a manpower shortage. His next assignment after this second tour in BPS was the Fourth Precinct (South County). At some point following his assignment to the Fourth Precinct he went on sick leave. Upon return from sick leave he went to "Central County" and then to the North County Division where he is currently serving as a watch supervisor.

During the Summer of 2012, he was working as a watch supervisor of the B Platoon in the Fourth Precinct. His watch commander had been Lt. Karl Bulla, but at the end of April or beginning of May, 2012, Lt. Hayes took over as watch commander of the B Platoon. Sgt. O'Neil said that when Lt. Hayes came to the B Platoon the two of them had a meeting at a restaurant in the Dierberg's shopping center in the Oakville area. Lt. Hayes informed him that the captain had an agenda and he wanted the mall cleaned up and they were all to "get on the train." Lt. Hayes told him the following in words that Sgt. O'Neil paraphrased:

**We're going to clean up the mall and we're going to stop a lot of blacks before they get to the mall.**

Sgt. O'Neil testified that he did not question Lt. Hayes about this statement and said that he was somewhat intimidated by Lt. Hayes.

During the Summer of 2012, Lt. Hayes would normally conduct the roll calls at the main station. Either Sgt. O'Neil or Sgt. Jensen would conduct roll calls at the two substations in the precinct. Occasionally, Sgt. O'Neil would conduct roll call at the main station for Lt. Hayes. Very rarely would Lt. Hayes conduct a roll call at the substations.

Lt. Hayes wanted productivity in the B Platoon and Lt. Hayes equated productivity with numbers – number of arrests made, number of “summons-in-lieu of arrest” that were issued, reports written, calls to service etc. The mall was a big concern and focal point in the Summer of 2012.

Lt. Hayes conducted a roll call at the main station in May of 2012 when he said:

**It's a black Wednesday. You know what that means? I want you to go lock up all the blacks you can find.**

Sgt. O'Neil thinks Officer Bono may have been present at this roll call, but he stated he could not remember who all was present because this occurred over three years ago. During the investigation Sgt. O'Neil told Lt. Matt O'Neill that Officer Ryan Lawrence was present when these statements were made. But later, by some means he can no longer recall, Sgt. O'Neil testified he was mistaken about Officer Lawrence being present when the statements were made.

Sgt. O'Neil testified that on another occasion he was doing paper work when Lt. Hayes walked up to him and pointed to the hold-over cells and in a stern voice told him:

**I want every nigger locked up in the mall today.**

Sgt. O'Neil testified that when this occurred, he made no reply to Lt. Hayes.

On another occasion at the main station, possibly in June of 2012, Sgt. O'Neil testified that Lt. Hayes made another statement while Officer Lawrence, an African-American officer was present. He cannot remember the exact terminology, but what he remembers the most about it was Lt. Hayes saying something to the effect:

**Not you, you're one of the good ones.**

Sgt. O'Neil testified that later, Officer Lawrence met him at the Mehlville substation and was quite upset and told him that Officer Weston, another African-American officer who Sgt. O'Neil thinks may have been at this roll call, was also very upset about this statement made by Lt. Hayes. Any statements that Officer Lawrence would have heard would have to have been made prior to mid-July because Officer Lawrence transferred to A Platoon in mid-July.

Sgt. O'Neil testified to other comments which he attributed to Lt. Hayes and again, which he paraphrased as follows:

**I want the blacks stopped as they are coming off of Highway 55 and I want them stopped before they get to the mall.**

**I want the cells full of color today.**

**If you've got a tan, you're going to jail today.**

Sgt. O'Neil stated that he never saw Lt. Hayes stroke his skin or make a gesture with his finger or hand to his cheek. The last racial profiling comment he heard Lt. Hayes make was probably in the month of June or possibly beginning of July, 2012. After the initial "black day" remark by Lt. Hayes he met with the officers at roll calls and would frequently tell them that they were not going to do what Lt. Hayes said and that what Lt. Hayes said was an unlawful order. He told the officers were are going to stop for reasonable suspicion and lock up for probable cause and not because of the color of somebody's skin.

Sgt. O'Neil stated that the B Platoon was a close platoon. As for their effectiveness as police officers they were very good, although he acknowledged that not every officer was a high ticket writer. Sgt. O'Neil, as an older officer, said did not socialize with the officers outside of work hours unless someone was going away.

In the Fall of 2012, Sgt. O'Neil had concerns that racial profiling may have been occurring within the precinct by Officer Belcher, Officer Torizzo, and possibly some mall security officers. He started conducting his own investigation by looking at precinct records and arrest records/booking sheets. He made photocopies of those records which he took home and thereafter, gave to his attorney. He testified that his investigation is ongoing to this day and that he has turned his information over to BPS and has made several complaints to BPS regarding his concerns about possible racial profiling. Further, Sgt. O'Neil testified that the Department of Justice in Washington D.C. has contacted him and that he has been working with an agent in Washington D.C.

Sgt. O'Neil said he waited until the end of December, 2012, to report Lt. Hayes' racial profiling comments. When asked why he waited so long, the following questions and answers ensued:

**Answer:** Well, I'm going to -- it's kind of a long answer. I do not want to bring my family through another ordeal. My family's been through a lot with the Weichert incident, me almost getting killed, my family almost getting killed. I've had it with retribution. I'm not dragging my family through another thing like that. So I was scared. Not happening again. I was scared, so...

**Question:** And what about Lieutenant Hayes? Did you have concerns about him, reporting it on a supervisor?

**Answer:** I had concerns about him, just reporting it, because he's a tactically trained man. And if you -- he's very capable of harming me.

**Question:** All right. And what were your other concerns regarding Lieutenant Hayes?

**Answer:** That he was politically connected. That my complaint would fall somewhere -- in a box somewhere.

**Question:** And who was he politically connected to that you're aware of?

**Answer:** He was good friends with the Captain.

**Question:** Captain who?

**Answer:** Captain Schneider, I'm sorry.

**Question:** Okay. Who else?

**Answer:** Lieutenant Colonel Roberds, Colonel Saracino, and I believe he was good friends with the Chief. So I didn't know who to go to, to report to. Who do I report this to?

**Question:** All right. Just so the record's clear, Captain Schneider, your Fourth Precinct captain; correct? You're saying he was friends with; correct?

**Answer:** I believe, yes.

**Question:** All right. Lieutenant Colonel Roberds, R-O-B-E-R-D-S, he was one of the highest ranking police officers at the time. He's now retired; correct?

**Answer:** Correct.

**Question:** All right. Colonel Saracino, S-A-R-A-C-I-N-O, you're referring to Commissioner – former Commissioner John Saracino; correct?

**Answer:** Yes.

**Question:** All right. And then when you say the Chief, do you mean Chief Fitch at the time?

**Answer:** Chief Fitch.

**Question:** All right. And what would Lieutenant Hayes tell you about these people, his connection to them?

**Answer:** Well, he would frequently talk about they were very social with the Roberds. They hung out with the Roberds socially. Good friends with the Captain. They've got history through TAC, and good friends. Colonel Saracino, he socialized, ate at his restaurant frequently, claimed to be good friends with him. Chief Fitch, went to different conventions, different things with him as far as Special Olympics. And there was pictures all over the wall with him and the Chief and they were very friendly, so...

In addition, Sgt. O'Neil further testified that he believed Lt. Hayes was impervious to discipline because of the lenient manner in which a prior disciplinary complaint against him had been handled and because of the apparent lack of discipline regarding an incident involving Lt. Hayes'

wife, who is also a St. Louis County Police Officer. He also stated that the whole incident was stressing him out. He also said he was afraid again for his family and was not going to bring his family through another horrific deal – an apparent reference to family stress dating back to his experiences working undercover while assigned to drug enforcement.

Sgt. O'Neil identified **Exhibit 8** as the first anonymous letter dated December 24, 2012, that he sent to the Chief and to BPS regarding this matter. He testified that he sent the letter anonymously for some of the same reasons he previously stated for why he delayed reporting on this matter. As a further reason for reporting anonymously, he stated that at the time his mother was very old and sick and he did not want risk a transfer which apparently would take him further away from where she lived.

Next, Sgt. O'Neil identified **Exhibit 9** as the second anonymous ("Lone Wolf") letter that he sent six days later to Chief Fitch. He testified that he sent this second letter out of fear that because of Lt. Hayes' connections, nothing was going to happen in response to his first anonymous letter.

**Exhibit 10** was then identified by Sgt. O'Neil as the third anonymous letter he sent following a meeting he had in January, 2013, in Lt. Hayes' office, after Lt. Hayes had learned of the first two letters. Sgt. O'Neil described Lt. Hayes comments as follows:

**Question:** All right. So then what did Lieutenant Hayes tell you?

**Answer:** He was very upset. Started beating on the desk. He started yelling, I'm going to kill these mother-fuckers. I apologize for my – I'm going to find out who the fuck they are. And I'm paraphrasing, but a lot of that language was in there. I asked, What are you talking about? Somebody wrote some f'ing letters about me. I'm going to find out who they are. I'm going to – you know, he didn't say – at that point, something to the effect that I'm going to F them up. I'm going to kill them. He was very enraged. And then he talked about reaching out and finding them. You know, that he had connections that these guys aren't going to get away with it. I have connections. I don't care where they go, I'm going to find out where they go and I'm going to – with my connections, I'm going to get them.

**Question:** What was he referring to?

**Answer:** The letter writer.

Sgt. O'Neil stated that he did not identify himself as the letter writer until after he gave his statement to Lt. Matt O'Neill, the commander of BPS. When his interview was concluded and the tape recorder was turned off, Lt. O'Neill indicated that he was going to put everyone on the polygraph and that is when Sgt. O'Neil volunteered that he was the letter writer.

Sgt. O'Neil was asked about the "Lake House." He stated that he was unaware of the Lake House until the subject came up in depositions regarding this case.

In addition to his deposition being taken on two occasions, two taped statements (January 28, 2013 and March 18, 2013) were given to BPS by Sgt. O'Neil concerning the investigation of Lt. Hayes. He was first interviewed by Lt. Matt O'Neill at the Fourth Precinct Oakville substation. **Exhibit E** was identified as the transcript of that recorded first interview.

**Exhibit E6** was identified as personal notes of Sgt. O'Neil that he prepared after his first interview with Lt. O'Neill, but they were transcribed for him by his wife because of his poor penmanship. These notes were never given to Lt. O'Neill, nor did Sgt. O'Neil give Lt. O'Neill any of the records that he said he had gathered regarding Officer Mike Torizzo, an officer about whom Sgt. O'Neil made a complaint of racial profiling. Sgt. O'Neil said that he heard that Officer Torizzo had been exonerated of racial profiling, but that he had not been officially informed of that outcome by BPS or anyone else. When asked if he was still conducting his own investigation of Officer Torizzo, Sgt. O'Neil replied that he has been working with the NAACP and the Department of Justice and brought his materials to these agencies sometime within the past two years.

Sgt. O'Neil also acknowledged that he is suing St. Louis County alleging that he has suffered damages because of retaliation. In particular, **Exhibit E7** was identified as a copy of the lawsuit filed by Sgt. O'Neil, in which he alleges, *inter alia*, that he has suffered lost wages and benefits of employment, and has suffered and continues to suffer emotional distress for which he is seeking monetary recovery including punitive damages.

On cross-examination Sgt. O'Neil was asked about Officer Mike Costa who was assigned to the Fourth Precinct in 2012 at the time relevant to the Hayes investigation. Sgt. O'Neil testified that Officer Costa told him that he had heard different statements (presumably of a racial nature) made by Lt. Hayes, but Sgt. O'Neil was not sure if Officer Costa claimed to have actually heard the statements himself, or had just heard from other officers about statements being made by Lt. Hayes. Officer Costa told Sgt. O'Neil that he had not been interviewed by Lt. O'Neill. Upon further questioning, Sgt. O'Neil stated that Costa told him he had heard comments or statements, or observed conduct (by Lt. Hayes) that would be of a racial nature. In contrast to this testimony from Sgt. O'Neil, attorney Bruntrager then read into the record the following questions and answers from the April 9, 2015 deposition testimony of Officer Costa:

**Question:** At any roll calls that you attended, did Lieutenant Hayes ever make a statement to you that you considered of a racial nature?

**Answer:** No

**Question:** Did you ever hear him – overhear him say anything like, quote, Let's have a tan day today?

**Answer:** No.

**Question:** Did you ever hear him say, I want you to go to arrest black people today?

**Answer:** No, sir.



**Question:** Did you ever hear him make any statements that could have been interpreted as violating the rights of African Americans or people of color?

**Answer:** No, sir.

**Question:** All right. Did you ever see him make any gesture or do anything that could be interpreted as a racially motivated gesture?

**Answer:** No, sir.

**Question:** Did you ever see him point to his hand?

**Answer:** Not that I recall.

**Question:** All right. Did you ever hear him say, We need to stop people; and point to his hand or face indicating skin color?

**Answer:** No, sir.

**Question:** You know during this time period there were allegations that such statements were being made; is that right?

**Answer:** Correct.

Sgt. O'Neil was questioned about whether he had talked to any present or retired command staff about racial profiling. It was established that during his prior deposition testimony as well as his testimony during this hearing that he spoke with Captain Dennis Elze who at the time of the hearing was several years into his retirement from the St. Louis County Police Department. Sgt. O'Neil could not recall if Captain Elze was retired at the time he had this conversation with him. Sgt. O'Neil state that Elze was over at his house and he confided in him about the situation he found himself in with regard to Lt. Hayes and the racial profiling orders he was giving. According to Sgt. O'Neil, Elze told him it was a "time bomb" and to drop it and leave it alone.

Sgt. O'Neil stated that he started his investigation into racial profiling because of rumors he heard from B Platoon officers about the high number of blacks being arrested and also because of complaints from two conveyance officers. He testified that the conveyance officers had objected and refused to transport the prisoners of Officers Belcher and Torizzo. He could not recall the names of these two conveyance officers, but stated that one of them is now retired and had moved to Greece.

Sgt. O'Neil testified that he offered to take a polygraph regarding this investigation, but a polygraph examination was not given to him by the St. Louis County Police Department.

**Lt. Matthew O'Neill (DSN 2499)**

**Bureau of Professional Standards, St. Louis County Police Department**

Lt. O'Neill testified that he was first hired by the St. Louis County Police Department on December 28, 1990. At one point during his tenure he was the commander in B Platoon at the Fourth

Precinct and knows many of the officers in B Platoon that are involved in the Lt. Hayes investigation. Lt. O'Neill worked secondary employment for CBL Properties at the South County Mall once or twice per month, and at Christmastime, with some of the B Platoon members such as Ryan Gardner and Russ Bono. In his current assignment he is Director of the St. Louis County Municipal Police Academy. Prior to his current assignment he was assigned to BPS for four and one-half years. For approximately three of those years he was the Commander of the unit.

On or about January 2<sup>nd</sup> or 3<sup>rd</sup> of 2013, he was assigned the case involving Lt. Hayes. Chief Fitch gave him the two anonymous letters (**Exhibits 8 and 9**) and asked him to look into the matter. Later, probably that same week, another anonymous letter (**Exhibit 10**) was received.

Lt. O'Neill identified **Exhibit 15**, a document approximately two inches thick, as the documentation of his investigation. He interviewed everyone referenced in Exhibit 15 except for Captain Schneider and Lt. Hayes. Colonel Ken Cox interviewed Captain Schneider. Captain Stoltz, the previous commander of BPS, interviewed Lt. Hayes. All of the interviews were recorded and then transcribed. The transcripts are included in Exhibit 15.

His first steps in the investigation were to set up interviews with Officers Chris Weston and Ryan Lawrence, the two names referenced in the letters. He spoke to Officer Weston on the parking lot of the Fourth Precinct and set up a later date to interview him.

According to his interview with Officer Weston, there was nothing really discovered with regard to racial profiling comments by Lt. Hayes. According to Lt. O'Neill's testimony, apparently Lt. Hayes and Officer Weston had an inside joke that related to the fact that Officer Weston drove a large 4x4 truck and Lt. Hayes kidded him about stealing the truck because "you guys" don't drive those things. The unstated inference being that this would not be the vehicle of choice for an African-American to be driving.

Lt. O'Neill interviewed Sgt. Dan O'Neil at the Oakville substation. After the interview was concluded and they were leaving the substation, Sgt. O'Neil advised Lt. O'Neill that he was the person that wrote the anonymous letters. Sgt. O'Neil said he was going to tell him he wrote the letters if asked, but since he was not asked that question by Lt. O'Neill, he did not volunteer this information while his recorded statement was being taken.

During his investigation he interviewed Officer Tom Noble who operated one of the mall cars. Lt. O'Neill asked Noble if he had heard any statements made by Lt. Hayes, to which Noble responded that he had never heard Lt. Hayes say anything of a racial nature, but said that the precinct captain had told him something to the effect of: "Why don't you just use the Mike Torizzo method of policing and arrest every nigger before they get to the mall."

According to Lt. O'Neill, this statement opened up the investigation further and led to two more complaints being investigated against Captain Schneider and Officer Mike Torizzo, respectively. Based upon what information Lt. O'Neill had about the Torizzo complaint – and Lt. O'Neill said that they never quite completed the Torizzo investigation – his recommendation to the Chief was that of a "Not Sustained," meaning the allegation was neither proved nor disproved. However, Officer Torizzo was exonerated by the Chief on the complaint. Lt. O'Neill said his recommendation on the complaint against Captain Schneider was also a "Not Sustained."

Lt. O'Neill confirmed that it was Chief Fitch's policy for BPS investigations that if an officer was not truthful in the course of a formal investigation, allegations would be brought against the person and generally the punishment would be termination.

After Lt. O'Neill completed his investigation of Lt. Hayes, his initial recommendation was that Lt. Hayes be demoted to a patrol officer. This recommendation was never formally written. Lt. O'Neill never actually had a meeting with Chief Fitch about discipline for Lt. Hayes. Instead he had to go through his superior, Bill Howe, Executive Director of Operational Support.

Lt. O'Neill spoke with Officer John Spicer who worked out of the Oakville substation in the further south beats with Officer Jacobsmeyer, Officer Ruhland and Officer Govero. Officer Spicer did not hear any racial comments made by Lt. Hayes, so Lt. O'Neill did not mention Officer Spicer in his BPS report.

Lt. O'Neill spoke by telephone with Officer Ruhland, who said he was never in the precinct when anything of a racial profiling nature was said by Lt. Hayes.

Officer Amy Dlugos was not interviewed because her name did not come up during the investigation.

Lt. O'Neill spoke with Officer Jacobsmeyer, who said he did not hear any statements by Lt. Hayes.

Officer Angela Logaglio was not interviewed because she is a school resource officer ("SRO"), so she never made relief during roll calls.

Likewise, Officer Borner was not interviewed because he is also an SRO. However, Lt. O'Neill acknowledged that during summer months SRO's would be working beats if they were not on vacation or doing SRO duties.

Officer Manning was not interviewed because Lt. O'Neill did not know he was on the squad.

Officer Inglehart's name was never brought up during the investigation and, therefore, Lt. O'Neill did not interview him.

Officer Govero was not interviewed because he was never at the main station.

Officer Samantha Sirles was not interviewed because her name was never brought up during the investigation as somebody who would have been a witness.

Lt. O'Neill interviewed Officer Katic. Initially it was thought that Officer Katic wrote the anonymous letters. People assumed this because he was transferred to the Wildwood Precinct. Lt. O'Neill stated that Officer Katic did not hear or witness anything and was not aware of anything going on with Lt. Hayes.

The same applied to Sgt. Wendling who was also interviewed. Lt. O'Neill said that he was not going to set up interviews with anybody that was not present for the roll calls and would not be able to testify to hearing any of the racial profiling statements attributed to Lt. Hayes.

Lt. O'Neill testified that his recommendation to sustain the complaint against Lt. Hayes was based upon the preponderance of the evidence from the eight or nine officers that accused Lt. Hayes of racial profiling. Other than Lt. Hayes' denial, Lt. O'Neill stated that he did not have any evidence to negate the statements of the officers that accused Lt. Hayes.

When Sgt. O'Neil was interviewed he provided a list of names of officers that might have seen or heard what Sgt. O'Neil claimed he had seen and heard regarding Lt. Hayes. Lt. O'Neill identified **Exhibit AQ** as being the 28-day schedules (of B Platoon, Fourth Precinct) from January through December of 2012, when eight-hour shifts were in effect. These schedules were not printed out by Lt. O'Neill during the course of his investigation. If he had wanted to print these schedules he would have had to go to computer services or to the precinct to print the schedules because he did not have access to them from within BPS. He did not print out these schedules and include them in his BPS report because he did not believe the schedules to be relevant to his investigation. However, he acknowledged that it was relevant to his case to know if someone was working in B Platoon at the time period in question, and their particular assignment. It was established that **Exhibit AQ** would provide this information.

Lt. O'Neill also testified that there were several officers, such as Goran Katic, and Officer Bieri who made relief at the main station and told him they did not hear Lt. Hayes make any racial statements, but he conceded that the schedules reflect that some of the officers who he testified they did not make relief at the main station, did in fact make relief there. Further, he did not determine who made relief at the main station during the summer months, other than by asking people where they made relief.

When Lt. O'Neill was advised during cross-examination that earlier in the hearing Officer Bieri had testified that there was a meeting in October of 2012, at which Lt. Hayes in the presence of Sgt. Jensen told Bieri and Katic to go out and arrest all the black people, or something to that effect, he said that this was the first he had heard of this. Officer Katic had never told him this and Officer Bieri told him he had never heard anything.<sup>4</sup>

Lt. O'Neill testified that he did not believe it was relevant to include the information about Officer Bieri's and Officer Katic's professed lack of knowledge in his BPS report because their lack of hearing anything does not mean that they were present at each and every roll call conducted by Lt. Hayes.

During the course of his investigation not one person could provide Lt. O'Neill with an exact date or time when any of the statements attributable to Lt. Hayes were made. If a date and time had been provided for when any of the statements were made he could have checked the schedule to determine who else was present.

During the times that Lt. O'Neill worked secondary employment at South County Mall, neither Officer Russ Bono (with whom Lt. O'Neill was best of friends) nor any of the other police officers working secondary employment with him at the mall ever said that there was a racial profiling problem at the mall or that Lt. Hayes was telling them to racially profile.

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<sup>4</sup> Officer Bieri testified he did hear profiling instructions if not actual derogatory racial statements. He also testified he did not speak with Lt. O'Neill. See summary of Officer Bieri's testimony, *supra*.

Lt. O'Neill was questioned about a page found in **Exhibit 15** that Lt. O'Neill testified was written by Chief Fitch during the initial phase of the investigation before he decided the final discipline. Lt. O'Neill said that this page could be a copy or an error where it stuck to the page because it is not found in his copy of **Exhibit 15**.

The page contains a statement stating that Capt. Schneider should be disciplined upon a determination that he failed to exercise supervisory responsibility and the note further indicated that the complaint against Sgt. Dan O'Neil was to be "Sustained." Lt. O'Neill prepared reprimand letters accordingly.

But, two weeks before Chief Fitch retired he called Lt. O'Neill into his office and told him that his final determination is that the complaint as to Officer Mike Torizzo is "Exonerated." As to Capt. Schneider, Lt. O'Neill was told that is a "Not Sustained," and also, a "Not Sustained" for the complaint against Sgt. Dan O'Neil for following an improper procedure for making a complaint.

As part of his investigation, Lt. O'Neill looked at arrest information regarding every officer that rode a mall beat, including Officer Mike Torizzo, Officer Greg Van Mierlo and Officer Brett Belcher, another officer assigned to special enforcement. Officer Belcher was assigned a car that had a license plate camera/reader. Lt. O'Neil recommended speaking with Officer Belcher, but that was something that was never followed-up.

Lt. O'Neill's understanding was that Officer Torizzo was answerable only to Capt. Schneider, but at one point may have been under the supervision of Sgt. Matt Redmond. He interviewed Redmond and he said he was not aware of any orders regarding racial profiling. Sgt. Redmond was replaced at some point by Sgt. Krisca.

Sgt. Jensen was interviewed twice. Sgt. Dan O'Neil was interviewed twice. Lt. Hayes was interviewed twice. Lt. O'Neill made certain recommendations to Chief Fitch regarding things that in his opinion still needed to be done in order to have a complete and full investigation, such as interviewing Officer Brett Belcher, Sgt. Krisca, and other supervisors assigned to the South County Precinct. He also recommended that additional interviews be conducted with Officer Torizzo, Capt. Schneider and Lt. Hayes. Further investigation into some of the individuals that had been stopped by Officer Torizzo and other officers was also recommended. Lt. O'Neill also requested that Lt. Hayes and Capt. Schneider be given polygraph examinations.

Lt. O'Neill's recommendations were not approved and he was told not to continue with the investigation by a directive from Chief Fitch that came him through his supervisor, Bill Howe. Lt. O'Neill testified that because he was not able to follow up on the recommendations he made for further investigation, his investigation was not a full and complete investigation. Disturbingly (as noted below under the summary of former Chief Fitch's hearing testimony), deposition testimony of Chief Fitch was introduced into evidence which contradicts Lt. O'Neill's testimony that Chief Fitch would not permit him to conduct further investigation.

During the course of his investigation Sgt. Dan O'Neil and Tom Nobel requested polygraph examinations which in Lt. O'Neill's opinion were reasonable requests. Lt. O'Neill is of the opinion that if the request for a polygraph examination is reasonable, Department policy requires that a polygraph examination be given. However, he acknowledged that Department policy states that an employee "may" request such an examination and the Department "may" require a polygraph,

but testified that it is up to the Chief's discretion whether or not to administer a polygraph examination.

**Officer William Matthews (via deposition)**

**(Portions of deposition of deposition (Exhibit 18) read into evidence)**

From the deposition testimony of Officer Matthews and the excerpts thereof read into evidence, it was established that at the time of his deposition, Officer Matthews had been a St. Louis County Police Officer for a little over four years. He was first assigned to the Fourth Precinct, B Platoon.

When he was the Mall Officer in 2012, Lt. Hayes was his Commander and Captain Schneider was Lt. Hayes' supervisor.

At a roll call in 2012 at the Mehlville substation, Lt. Hayes was talking about the Mall and made a statement to the effect that:

**If you are black, (and) if you have temp tags, you need to be stopped – period.**

Officer Matthews also frequented the Lake House with other members of B Platoon in the Summer of 2012, while he was on duty. He does not recall if Sgt. O'Neil, Sgt. Jensen, Officers John Spicer, Greg Van Mierlo or Chad Menard went to the Lake House. He does recall Officer Merry, Officer Tom Nobel, and Officer Jared Ruhland going to the Lake House. He believes Officer Spicer went there too. He said usually everybody in the Platoon went.

**Officer Ryan Lawrence (via deposition)**

**(Portions of deposition of deposition (Exhibit 19) read into evidence)**

Comment: Before reviewing the deposition testimony of Officer Lawrence that was offered and received into evidence, or for that matter, any of the deposition testimony read into evidence, it is important to note that reading selected excerpts into evidence can often result in misleading inferences being drawn when such testimony is presented out of context. When an entire transcript of a deposition is offered and received into evidence as an exhibit, a Hearing Officer is not limited to consideration of only those portions of the deposition read into evidence. For example, in this instance, the testimony read into evidence contained an oblique reference to an **Exhibit X**, a deposition exhibit attached to the deposition transcript. However, the selected testimony which was read into the record did not identify or explain that this exhibit is the transcript of Lt. O'Neill's interview with Officer Lawrence conducted on January 30, 2013. (Note: This transcript is the same as Exhibit 15, Section C, Item 4.) This exhibit gives context to the testimony of Officer Lawrence, and in particular, provides in its entirety, the statement he recalled Lt. Hayes making during a roll call in the Summer of 2012.

Also, it should be noted that the Department did not call upon Officer Lawrence to testify as a witness at the hearing. However, he was called as a live witness by Employee/ Appellant, Lt. Hayes. The summary of Officer Lawrence's testimony appears with the summaries of other witnesses presented by Employee/Appellant, *infra*.

From the deposition testimony of Officer Lawrence, including the excerpts thereof read into evidence, it was established that Officer Lawrence became a police officer in December of 2011, and was a probationary officer for a year until December, 2012. In the Summer of 2012, Officer Lawrence's was assigned to the South County Precinct, B Platoon. He was not assigned to a particular beat, but, instead, was a "floater." Lt. Hayes was his commander during this period. During a roll call during the Summer of 2012, Officer Lawrence recalls the following statement being made by Lt. Hayes:

**If you see three or four black people in a car with Illinois temp tags or Illinois plates, stop them, see what they're doing, they don't belong down here.**

Officer Lawrence was not sure whether or not Lt. Hayes referenced a specific "MIAC" report when he made the statement. When he heard the statement, Officer Lawrence said he was thinking the police officer aspect of it and not necessarily racial.

But then, Officer Lawrence stated that it got uncomfortable when after making this statement, Lt. Hayes walked by, turned, and patted him on the back and said: "Not like you though, Lawrence." Officer Lawrence does not recall if Hayes followed that statement with: "You are one of the good ones."

Officer Lawrence had a conversation with Officer Matthews about the occasion when Lt. Hayes made the above referenced statement. He cannot recall the exact conversation, but, generally speaking, Officer Matthews said something to him along the lines of: "Can you believe he [Lt. Hayes] said that? I apologize."

A few other officers, including possibly Officer Matthews, asked Officer Lawrence if he was offended by Lt. Hayes' statement. Originally, Officer Lawrence told these officers that he was not offended, but now upon reflecting upon it, he could see what these officers were saying.

Officer Lawrence remembers Lt. Hayes calling him afterward and mentioning the comment he had made and then apologizing to him, saying: "Hey, sorry I got you involved in this." Further, Lt. Hayes said he wanted to assure him that he was not a "racist."

**Timothy E. Fitch**  
**Former Chief of Police, St. Louis County Police Department;**

Mr. Fitch testified that he was the former Chief of Police for St. Louis County and served in that capacity from 2009 until 2014. His DSN while employed by the St. Louis County Police Department was 2125.

Mr. Fitch started his full time law enforcement career in 1980 as a civilian employee with the Cahokia Police Department. When he became twenty years of age, he applied to the St. Louis County Police Department and was accepted into the police academy in January 1983. He finished in May of 1983. Thereafter, he had various assignments as a patrol officer and field training instructor for approximately six years. Eventually, he was transferred to the Chief's office to work in the Municipal Services Unit. From there he became an investigator in the robbery/homicide unit. He was promoted to Sergeant and had assignments as watch commander in the Fourth Precinct and the Fenton Precinct. He was then promoted to Lieutenant and transferred to the Affton Precinct. Thereafter, for

approximately two and one-half years he was commander of the Bureau of Professional Responsibility ("Internal Affairs Unit") which is now known as the Bureau of Professional Standards. He was then promoted to Captain and returned to patrol. He became precinct commander of the Fenton Precinct. In 2001, Chief Battelle promoted him to the rank of major. This rank was later eliminated. The position became instead, the rank of lieutenant colonel. In this position which is directly under the Chief, he was in charge of the entire patrol division consisting of all seven precincts, special operations, and tactical operations. He was then transferred and placed in charge of the Division of Operational Support which included internal affairs, budget, the academy, communications, etc. In 2009 he was promoted to Chief of Police.

He first learned of the allegations of racial profiling by Lt. Hayes from an anonymous letter he received through inter-office mail on December 24, 2012. Because it was Christmas Eve when he received the letter, and since most of the staff had already left and would be on Christmas break, he waited until the following week to see Lieutenant Colonel Gregory, the head of the Division of Patrol. He informed Lt. Col. Gregory of the letter and that he was intending to take the letter to the Bureau of Professional Standards. Lt. Col. Gregory informed him that a similar letter had been sent to him. Mr. Fitch said he then gave the letter to Lt. Matt O'Neill, Commander of BPS, to conduct an investigation.

Mr. Fitch identified **Exhibit 8, Exhibit 9 and Exhibit 10**, as being the first, second and third anonymous letters, respectively, that he received. He also identified **Exhibit 15** as being the summary of the BPS investigation conducted by Lt. O'Neill. Included in Exhibit 15 is a summary of the investigation as well as transcripts of the all of the witness interviews which Mr. Fitch testified he read in their entirety.

In addition to Exhibit 15, Mr. Fitch said he took Lt. Hayes' prior discipline into account. Mr. Fitch identified **Exhibit 16** as the BPS case file copy from 2006, which contains the information regarding the prior discipline for several transgressions, including the making of a false official statement and insubordination, which Lt. Hayes received when he was a sergeant.

**Exhibit 12** was identified by Mr. Fitch as the pre-termination letter given to Lt. Hayes which outlines the grounds for his dismissal. Following the pre-termination letter, Mr. Fitch met with Lt. Hayes and his attorney, Mr. Bruntrager. **Exhibit 13** was identified as a multi-page statement that Lt. Hayes presented to Mr. Fitch at this meeting. **Exhibit 21** was identified as a letter Mr. Bruntrager sent to Chief Fitch in which he stated that Lt. Hayes had passed two polygraph tests. In this letter he suggested that Sgt. O'Neil be given a polygraph examination. Mr. Fitch testified he took both of these letters into account in making his determination regarding discipline for Lt. Hayes.

When asked about polygraph examinations, Mr. Fitch testified that under the Department's Code of Conduct and Discipline polygraph examinations can be given to employees who are accused of offenses under the Code of Conduct and Discipline. Polygraph examination can also be suggested by the commanding officer of the division or by the Internal Affairs commander. However, Mr. Fitch stated that the ultimate decision to administer a polygraph examination is always in the discretion of the Police Chief. Under the General Orders, an employee cannot dictate that a polygraph examination be given. Mr. Fitch was cross-examined regarding the Department's policy on polygraph examinations in an apparent effort to establish that an employee's request for a polygraph examination mandates that one be given. In that regard, Mr. Fitch was referred to **Exhibit AS**, General Order 04-



06, Section 3, paragraph 3, entitled: Employees' Rights and Obligations During a Bureau of Professional Responsibility Investigation and asked to read subparagraph L which states:

An accused employee *may* request an intoximeter, blood, psychological, polygraph, medical or laboratory examination if the employee believes such examination would be beneficial to his or her defense. The Department *may* require such examination upon the direction of the commanding officer. [Italics supplied for emphasis]

The plain reading of this section supports Mr. Fitch's testimony regarding a polygraph decision resting with the Chief's discretion.

Lt. Hayes made a request to Mr. Fitch that he be given a polygraph. However, the request was made on the pre-condition that all the other officers that made allegations against him be given polygraph examinations first. Mr. Fitch testified that there were multiple reasons he did not elect to administer polygraph examinations for this investigation. First, he stated that there were two sergeants and seven police officers that basically made similar allegations against Lt. Hayes and none of these individuals had ever been accused of any type of false official statement in the past. Secondly, there was never any kind of challenge to their testimony that would lead him to believe that these nine police officers would be untruthful. And finally, Mr. Fitch testified that he had these nine police officers making allegations against an individual who had a history of having a sustained complaint of making a false official statement. After considering these factors he did not believe a polygraph examination would be of any value in this particular case.

Mr. Fitch was critical of the manner in which Sgt. Dan O'Neil reported the allegations against Lt. Hayes by using anonymous letters. This is not the way he would want something like this reported. As a supervisor, it is the supervisor's job to enforce the rules and enforcing the rules is not done through anonymous letters. **Exhibit AS**, General Order 04-06, Section 4B relating to an employee duty to report violations of the rules, regulations, policy or procedures of the department was reviewed in the context of whether or not Mr. Fitch believed discipline was merited for the seven officers and two sergeants that were involved in the investigation of Lt. Hayes. Mr. Fitch did not believe discipline of the seven officers was warranted because of the fact they knew that these matters involving Lt. Hayes had been brought to their supervisors' (O'Neil and Jensen) attention.

Mr. Fitch did not believe discipline was warranted for Sgt. Joni Jensen because she was a probationary sergeant who had just been sent to this platoon and since she had conversations with her senior sergeant (Sgt. Dan O'Neil) about the matter. As for Sgt. Dan O'Neil, Mr. Fitch has always felt that Sgt. O'Neil should have been disciplined for not bringing the matter to his superiors' attention immediately as is required.<sup>5</sup>

Mr. Fitch identified **Exhibit 17**, as a preliminary draft copy of the summary report of the Lt. Hayes incident. This draft report included racial profiling numbers and data, and included the investigations of Officer Mike Torizzo and Captain Schneider. There were no allegations against Officer Torizzo; only innuendo and speculation that he was following Lt. Hayes' "orders to racially profile" and his arrest statistics would prove that.

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<sup>5</sup> The evidence is silent as to why Sgt. O'Neil was not disciplined by Chief Fitch if this was his opinion.

When asked the about the significance of Officer Torizzo's arrest statistics, Mr. Fitch stated that those statistics alone would not provide an answer to any question about racial profiling unless those statistics were compared to those of another officer who, like Officer Torizzo, did not have to be radio responsive; who had the same specific assignment and for the same period of time as did Officer Torizzo, and who was free to conduct enforcement efforts in this retail area of South County. In this particular case there was no other officer fitting these parameters to whom Officer Torizzo's statistics could be compared. So, the numbers alone did not mean Officer Torizzo was engaged in racial profiling and Officer Torizzo would argue that he had legal justification for every one of his stops, arrests and tickets issued. Mr. Fitch testified he had no reason to believe that is not accurate. Further, Mr. Fitch testified there was no sustainable evidence against Officer Torizzo and no one ever complained that Officer Torizzo engaged in racial profiling against them. Therefore, Officer Torizzo was exonerated and there was no sustained complaint against him.

After reviewing **Exhibit 17**, the preliminary draft copy of the summary report this statistical data was deleted for the final summary report which is contained in **Exhibit 15**, because Mr. Fitch asked the Board of Police Commissioners to hire a company to review the statistical data for the entire department.

With regard to Captain Schneider, Officer Tom Noble made an allegation that Captain Schneider had used the "N" word when describing to him what type of activity he wanted him to address in the retail areas in South County. An actual complaint was not made by Officer Noble. This information came out during Lt. O'Neill's investigation. Since there were no witnesses to the alleged statement and since Captain Schneider denied the allegation, Mr. Fitch concluded that it was one person's word against the other's. Therefore, the matter was considered "not sustained" insofar as any discipline for Captain Schneider. A "not sustained" means that the allegation cannot be proved or disproved, as distinguished from "unfounded" which means the allegation was either false or the matter complained of did not occur. A finding of "sustained" would mean that the allegation was proven by a preponderance of the evidence.

Mr. Fitch testified that when he took over as Chief in St. Louis County he made it clear from the outset that he would not tolerate any type of untruthfulness in any kind of official matter or BPS investigation. He believed that if he had a commissioned police officer that was untruthful, he had no use for them anymore. Rather than be disciplined as was often the case in the past, they would instead, be terminated. This was referred to as the "you lie, you die" policy he instituted and which was referenced by various witnesses throughout the hearing of this case.

Mr. Fitch, did not consider a polygraph examination for Captain Schneider and Officer Tom Noble because a polygraph was something that was only ordered when they have more than just one person's word against another person's word.<sup>6</sup>

After considering all the investigative material and consulting with three former St. Louis County Police Chiefs and two police chiefs from large departments in two other states, he made the final decision that Lt. Hayes should be terminated for his actions. This decision was reached shortly before Mr. Fitch retired as the Police Chief of the St. Louis County Police Department.

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<sup>6</sup> Comment: This explanation appears to somewhat contradict the rationale Mr. Fitch testified to earlier for why polygraph examinations were not given in Lt. Hayes' case where there was more than one person's word (seven officers and two sergeants) against one person's word, to wit: Lt. Hayes.

Mr. Fitch was aware that during the pendency of this investigation Lt. Hayes approached Mr. Saracino, who was then one of the St. Louis County Police Board Commissioners. Mr. Saracino told Mr. Fitch that Lt. Hayes contacted him to plead his case and to ask for his support in this matter. According to Mr. Fitch, it was inappropriate for Lt. Hayes to do so. During cross-examination it was suggested that Lt. Hayes was within his right as an aggrieved employee to contact Mr. Saracino. Reference was made to **Exhibit AS**, Subsection E, which states:

Nothing in this directive shall prohibit citizens or employees from taking a complaint to the Board of Police Commissioners at a public meeting or meeting individually with a member of the Board of Police Commissioners when they are dissatisfied with the decision reached by the Department of Police regarding their complaint.<sup>7</sup>

Mr. Fitch acknowledged that there were televisions in most of the precincts and eating on break and writing reports in front of a television was acceptable practice. Also, in the Summer of 2012, Mr. Fitch stated that there was no particular restriction on Officers taking meals while on duty. There have never been set times for officers to take meals. Under the previous Chief (Chief Battelle), there had been a rule that you could not have more than two cars at a restaurant, but that changed. Under Mr. Fitch's tenure as Chief, it was up to the supervisor to determine the rule and to determine if there was good reason to have more than two officers at a restaurant on break together. When asked about Officer Hollenback's testimony regarding three, four or five patrolman meeting at the "Lake House" to talk, relax and smoke cigars while on duty and the propriety of this activity, Mr. Fitch indicated that it would depend on the circumstances, including supervisor knowledge and/or participation. If it were a situation where officers were in fact hiding and not answering their calls or not doing their duties, then that would be inappropriate.

Mr. Fitch identified **Exhibit 5** as the St. Louis County Police Department Code of Conduct and Discipline Manual. **Exhibit 6** was identified as the Department General Orders which apply to the entire Department regarding citizen contacts and traffic stop information. **Exhibit 7** was identified as Citizen Detention and Arrest Requirements and pertains to Patrol Division and Special Operations Division procedure.

**Exhibit T** (also referenced as Exhibit G1 to the deposition of Mr. Fitch) was identified as an internal memorandum to Chief Fitch from Lt. Matt O'Neill in which reference is made to the fact that Officer Thomas Noble inquired of Lt. O'Neill about the possibility of taking a polygraph examination to clear his name.

Through cross-examination of Mr. Fitch, his previous deposition testimony was introduced. In this deposition testimony Mr. Fitch stated that he never told Lt. O'Neill not to conduct follow-up interviews of any witnesses that Lt. O'Neill recommended be re-interviewed.

#### **WITNESSES FOR APPELLANT LT. PATRICK HAYES:**

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<sup>7</sup> However, reliance on this section appears misplaced. In the context of this section, if it was Lt. Hayes who had made a complaint which resulted in an unfavorable decision, he would then have a right under this section to take up the matter with the Board of Police Commissioners in a manner provided by this section. In this instance Lt. Hayes was not the complainant, but, instead, a person about whom a complaint was made. If aggrieved with the outcome of that complaint (and subsequent discipline arising therefrom) he would then have the right to appeal to the Board of Police Commissioners as he has done in this case.

## **Captain James J. Schneider (DSN 2699)**

Captain Schneider appeared under subpoena issued by Lt. Hayes's attorney. He testified that in the Spring of 2012, he was promoted to captain and transferred to the Fourth Precinct. He met with Lieutenant Colonel Ken Cox and his younger brother, Lieutenant Mark Cox who was also assigned to the Fourth Precinct. He was told that Captain Monteleone had lost control of the Fourth Precinct and that leadership needed to be provided for all the supervisors and officers in that precinct. Even the Chief told him he expected him to go down there and provide sound leadership.

The watch commander of B Platoon at the time was Lt. Karl Bulla. Captain Schneider determined that Lt. Bulla was not coming to the precinct on a regular basis. Reportedly he was going to Clayton several days a week to attend to some unspecified business. When he finally encountered Lt. Bulla he scheduled a meeting with him for the following day at 7:00 a.m. At this meeting he told Lt. Bulla what he had observed about officers not shaving and wearing modified uniforms. He also told him roll calls were not being conducted because a supervisor was not present. Captain Schneider said that shortly thereafter Lt. Bulla was transferred and was succeeded by Lt. Hayes.

The transfer of Lt. Hayes came about after Captain Schneider spoke to Lt. Hayes and asked him to come to the Fourth Precinct as a favor. He explained to Lt. Hayes that he needed an experienced lieutenant and could not bring in a brand new lieutenant to deal with the circumstances that he had found with officers in the Fourth Precinct and the headache and "luggage" that would be involved with Sgt. O'Neil, whom Captain Schneider had previous experience with in the narcotics division.

Captain Schneider proceeded to testify about the conditions he found in the Fourth Precinct from his very first day on the job. For example, he arrived early on his first day at approximately 6:00 AM and passed Officer Goran Katic on the parking lot. Katic was coming to work without his gun belt on and not wearing his uniform shirt at a time thirty minutes after when the first roll call would have been started. He walked into the building and the lights were turned off. When he walked into the break room where a roll call should have been in progress, he found officers watching TV with the lights turned off. He found the ("Officer Mike Torizzo Action Figure") cartoon drawing of Officer Torizzo (**Exhibit 14**), on the bulletin board and tore it off and threw it in the trash can. (The cartoon would reappear from time-to-time and Captain Schneider spoke to Officer Torizzo about it, but Torizzo declined his offer to do something about it.) Later, when Captain Schneider first had contact with Sgt. O'Neil after his arrival at the Fourth Precinct, he found that he was not wearing body armor as required. He also learned from Sgt. O'Neil that he did not have the officers responding to sick calls.

After Captain Schneider took over the Fourth Precinct, he constantly met resistance to strategies he was trying to employ at the mall and strategies he was trying to use with dealing with other "hot spot" issues. As an example, he did not want officers spending 80% of their time where only 20% of criminal activity is going on. The retail area of South County Mall was where 90% of the arrest and call volume was coming from.

He had two cars assigned to the mall. In addition, in April of 2012, he had Officer Torizzo assigned as a special mall car so that in essence there were three mall cars. He also wanted officers

with beats near the mall to drive through the Mall once or twice during their beat to increase visibility for deterrence purposes. He would also have Neighborhood Policing Officers (NPO's) sent to the Mall if they were slow in their other areas. As an example of the attitude he encountered, Captain Schneider testified that Sgt. Dabbs, with an audience of officers around, told him that the mall was a "shit-hole" and it would never change; to which Captain Schneider replied by stating to Dabbs that he did not ask for his opinion.

Officer Torizzo was making a large number of arrests at the Mall. Captain Schneider described Officer Torizzo as a hard working officer whom other officers resented and made fun of. In an effort to keep Officer Torizzo visible at the mall, Captain Schneider said he instituted a policy that Officer Torizzo did not have to transport prisoners he arrested. He never received any complaints about this by officers assigned to prisoner conveyance, but he was aware of "bitching" by officers in B Platoon.

Officer Torizzo worked directly under Sgt. Matt Redmond and Sgt. Craig Krisca. Both of those officers worked directly under Captain Schneider. Originally Torizzo had been on B Platoon. Sometime during the April or May 2012 period he was moved to the D Platoon, which is the platoon for neighborhood policing and school resource officers. This was done so that his schedule could be manipulated to provide another mall call. Officer Brett Belcher was a neighborhood policing officer in the Fourth Precinct who was assigned to provide extra patrol at the mall similar to Officer Torizzo. He also reported directly to Sgt. Redmond.

Captain Schneider was asked about a conversation, that according to testimony given by Sgt. O'Neil, took place between the two of them at the time Lt. Hayes was assigned to the Fourth Precinct. In particular, Captain Schneider was read a portion of testimony given by Sgt. O'Neil at his second deposition on March 10<sup>th</sup>, wherein Sgt. O'Neil testified about a meeting he said took place with Captain Schneider around the time Lt. Hayes was transferred to the Fourth Precinct. The following questions from that second deposition that were asked of Sgt. O'Neil, and his answers, were read to Captain Schneider as follows:

**Question:** What did he say to you?

**Answer:** Captain Schneider told me that Rick Hayes was a basket case, that Rick Hayes was falling apart because of his previous marriage and he had done – and he – and he had some problems. He told me: 'Rick Hayes was fucked up.' He said: 'I want you to kind of watch him, help him out. He has a lot of personal problems and he fucks it up.' I apologize, Ma'am. That's him saying that...I said, I think he can handle it.

**Question:** Tell me what he said to you?

**Answer:** He said: 'His wife was a stumbling drunk that was always falling down and causing problems. Mr. Hayes at a hard enough time dealing with her.' And he said I needed to help take care of him because he was his friend.

Captain Schneider was then asked if he had a conversation like that with Dan O'Neil. Captain Schneider's response was that he absolutely did not. Captain Schneider said that this testimony by Sergeant Dan O'Neil was a complete and utter lie.

Captain Schneider testified that officers under his command reported that they thought there was an effort by the County Counselors to direct their testimony in this Hayes investigation. Officer Sam Sirles and Officer Amy Dlugos went to their supervisors about this. Those supervisors in turn, informed Captain Schneider. Officer Van Mierlo called Captain Schneider on the telephone and Officer Jacobsmeyer came into Captain Schneider's office with the same concerns.

Captain Schneider complained to Chief Fitch about the manner in which the Hayes investigation was being conducted and the choice of Lt. O'Neill to be the investigator. He expressed his concern about Lt. Matt O'Neill being in charge of the investigation because his twenty-year relationship with Lt. O'Neill has always been extremely volatile and he believes Lt. O'Neill is jealous of him. He attributed this jealousy to the fact he was always promoted ahead of O'Neill at every rank, and O'Neill succeeded Captain Schneider in certain command positions. He was also concerned about Lt. O'Neill's impartiality due to the fact that this investigation involved members of Lt. O'Neill's old platoon with whom he had personal relationships. Also, he believed Lt. O'Neill's impartiality was called into question because Lt. O'Neill worked secondary employment at the South County Mall, a location that central to the investigation; and while working secondary employment there he wore a brown uniform shirt instead of a white shirt denoting his supervisory rank, contrary to regulations.

The first knowledge about allegations against Lt. Hayes came on or about January 2<sup>nd</sup> or January 3<sup>rd</sup>, 2013, when he received a telephone call from Lt. Co. Gregory in which he was informed by Lt. Col. Gregory that Lt. Hayes was calling Ryan Lawrence and Chris Weston racially derogatory terms including the "N" word. Officer Weston and Officer Lawrence were the only two African-American officers in the Fourth Precinct and both were on the B Platoon. Prior to receiving this call no one had come to him with any allegations about Lt. Hayes being involved in any inappropriate conduct of a racial nature. Further, Captain Schneider testified that he has never seen any of the anonymous letters referred to in the evidence.

After receiving this call from Lt. Col. Gregory, he called in Officer Chris Weston and asked him if anybody had been racially discriminating against him etc. Officer Weston said no one had, but he said he had a feeling he knew what this was about. He told Captain Schneider that he (Captain Schneider) needed to talk to Officer Ryan Lawrence. When Captain Schneider spoke with Officer Weston nothing was said by Weston about observing any misconduct by Lt. Hayes regarding racial epithets or anything of that nature.

The day after he spoke with Officer Weston, Captain Schneider spoke to Officer Lawrence. He informed Lawrence that someone had made a complaint about Lt. Hayes saying racially charged comments against him. He asked Officer Lawrence to tell him what Lt. Hayes said.

Officer Lawrence then told him that during a roll call Lt. Hayes was talking about either a robbery or a "grab-and-run." Officer Lawrence said he understood what Lt. Hayes was talking about – and supposedly black guys were in the car – when Lt. Hayes suddenly said: "But I didn't mean – or not you, or I don't mean, you know, something about you." Captain Schneider told Lawrence that he had worked with Lt. Hayes in tactical operations and assured Lawrence that he

did not mean anything racist. According to Captain Schneider, Lawrence said he was also sure Lt. Hayes did not mean anything racist by the comment and asked Captain Schneider what to say because he did not think Lt. Hayes should be getting into trouble for this.

Several days later Chief Fitch had occasion to visit the Precinct. At that time Captain Schneider told him about the conversations he had with Officer Lawrence. It was at this time that Captain Schneider learned for the first time that anonymous letters had been received that contained complaints that Lt. Hayes was giving orders to stop minorities.

In the Spring, Summer and Fall of 2012, Captain Schneider had conversations with Lt. Hayes about productivity and what was going on in B Platoon. Some of these discussions would be during watch commander meetings which included Lt. Lesley Tate and Lt. Jeff Hoots.

Included in his discussions with Lt. Hayes were matters regarding employees Rickard, Bono, Merry, Hollenback, Petty, Bieri, Katic and Sgt. Dan O'Neil. According to Captain Schneider, there were officers in B Platoon with abilities, but they were getting negative reinforcement from a nucleus or clique of veteran senior officers ("power brokers") such as Chris Rickard and Russ Bono who wielded a great amount of power. He and Lt. Hayes were both aware of this situation and discussed the fact that some officers needed to be transferred for the good of the Platoon and in some cases, for the betterment of the particular officer. In fact, he testified that it was his plan to have everyone, except for newer officers, moved off of B Platoon because of the years of problems with the Platoon; where you had good supervisors that would come and go, but the problems with the Platoon remained.

They had discussions about having Sgt. O'Neil transferred. Lt. Hayes believed Sgt. O'Neil was salvageable. Captain Schneider being a new captain himself, he did not want to go crying back to the Major saying he needed O'Neil transferred. Eventually Sgt. O'Neil was transferred out of B Platoon. Afterward, Captain Schneider and Sgt. Krisca cleaned out his desk. In doing so, Captain Schneider found an original completely intact signed booking sheet for an individual named Jonathon Bromeyer who had been arrested by Officer Torizzo on a felony warrant. This booking should not have been in Sgt. O'Neil's desk. Instead, it should have followed the subject to intake in Clayton. The booking sheet was signed off by the desk sergeant and by the conveyance officer. Captain Schneider checked and determined that there was no record that this subject had ever been taken to intake. He turned this over to Lt. Tate and asked her to investigate further. It was determined that either the warrant had been recalled or the subject had made bond. He later determined that the Bromeyer subject was someone who was on the varsity wrestling team with Sgt. O'Neil's son. This matter was then turned over to BPS.

He also found in Sgt. O'Neil's desk a copy of the previously-described cartoon of Officer Torizzo, and a completed ticket that had been ripped from a ticket book. He explained that ticket books given to officers are numbered and have to be accounted for. When a ticket is written, the cardboard manila copy is removed from the back of the ticket and given to the violator. The two white copies and pink copy are handed in to the officer's supervisor. If the copies are not turned in, the computer system generates a missing ticket log. Captain Schneider determined that the ticket had been issued by Officer Tim Harrison. When he checked with Officer Harrison, he learned that although the missing ticket log indicated something to the effect that the ticket had been lost, in fact, Dan O'Neil requested the ticket from Harrison because the ticket was issued to the son of the boss of Sgt. O'Neil's son. Captain Schneider said that because the Hayes

investigation was going on, he did not believe it was appropriate for him to commence an investigation and, instead, gave Lt. Col. Gregory the information about this ticket and the other items he found in O'Neil's desk drawer.

Captain Schneider testified that Officer Chris Rickard was a problem employee who felt entitled to do whatever he wanted. He wore altered uniforms and did not shave. He would make taunting comments that inferred that nothing could be done to discipline him because his wife was a doctor and he did not need his job. Further, Captain Schneider had information that caused him to believe that Rickard was changing the schedule to accommodate his friends. He elected to have Rickard transferred. Thereafter, he also had Bieri and Katic transferred. Officer Petty requested transfer.

During his testimony, Captain Schneider identified **Exhibit AA** as a copy of the transcript of his recorded statement to BPS taken on February 7, 2013. Portions of this statement were read into evidence and Captain Schneider was questioned concerning certain matters referred to in the statement. He described that "MIAC" is short for "Missouri Information and Analysis Center" and that "MIAC Bulletins" or "MIAC Reports" are prepared by the state highway patrol. Information is collected from law enforcement agencies and then disseminated. As former commander of the Intelligence Unit, he was very familiar with MIAC Reports and considers himself an expert in regard to these reports.

In the Fourth Precinct he would share the MIAC Reports with the men and women that worked in his command. He would also share "MORCA Reports," which are from the Missouri Organized Retail Crime Association. This organization, and these reports, were described as being a more or less a civilian MIAC type organization that collects crime and retail theft information from its retail members. It then disseminates this information to the members who would not have access to MIAC reports which are restricted to law enforcement. In **Exhibit AA**, and in his hearing testimony, Captain Schneider explained how the racial descriptions of perpetrators/suspects factor into the information that is contained in MIAC and MORCA reports. He described and classified this collective information as "criminal profiling" information, as distinguished from "racial profiling." By way of further explanation, Captain Schneider stated that if the race of a suspect is known and a police radio broadcast were being made, the race of the suspect should be included in the description of the suspect.

Also, by way of further illustration, as a result of this investigation involving Lt. Hayes, Captain Schneider looked at such intelligence reports regarding criminal activity at commercial or retail shopping centers in the Spring and Summer of 2012. He found information indicating serial shoplifters were engaged in conduct that included the use of cars with temporary tags ("temp tags"). The information found in these reports suggested that groups of four to five African-American men may be in a car with temp tags circling the malls and engaged in criminal activity. This is information that he would share with the men and women under his command. He also made the point that he is not the only person in the precinct that receives these reports. He indicated that of 75 people working in the precinct building, approximately 40 receive MIAC reports directly. Captain Schneider testified that during this investigation no one ever asked him for MIAC report information or for information about crime trends at the mall.

Captain Schneider was asked about a BPS complaint filed against him by Officer Tom Noble. Noble alleged he was assigned to D Platoon temporarily to assist with "special



enforcement” duty at the mall similar to Officer Torizzo. Noble claims he stuck his head in Captain Schneider’s office door and asked if Captain Schneider had any special direction for him in this assignment. Further, according to Noble’s complaint, Captain Schneider is reported to have responded by saying: “Follow Torizzo’s plan and keep locking up all the niggers.” When asked about this, Captain Schneider stated that Noble was never assigned to D Platoon. Further, he testified that the described scenario and statement attributed to him never took place. The outcome of this BPS complaint was a “not sustained,” meaning there was not sufficient evidence to either prove, or disprove, the allegation. Captain Schneider was interviewed by Lt. Col. Cox on February 7, 2013. Officer Noble was transferred approximately three days later.

Captain Schneider testified that he never instructed Officer Torizzo, Officer Belcher, Officer Van Mierlo or any other officer to engage in racial profiling. He also said no one ever made any complaint to him that Lt. Hayes was giving inappropriate orders for racial profiling. He never heard Lt. Hayes give any racial profiling orders. Captain Schneider described himself as a friend of Lt. Rick Hayes. Based on his experience with Lt. Hayes, he does not believe Hayes is a racist and it is his belief that Lt. Hayes would never order racial profiling.

Captain Schneider told Chief Fitch, Director of BPS, Bill Howe, Lt. Col. Ken Cox and Terry Robards that he was willing to take a polygraph examination regarding this investigation.

**Dennis Elze**  
**(Former Captain, St. Louis County P.D.)**

Mr. Elze testified that he retired from the St. Louis County Police Department at the rank of captain in March 2010. Mr. Elze now runs a business in Wildwood Missouri known as the Historic Country Music Hall. This business is a bar/nightclub.

Mr. Elze is familiar with Sgt. Dan O’Neil. He and Sgt. O’Neil worked together in the drug unit in the early 1990s. When Mr. Elze was a sergeant in the DSI unit, Dan O’Neil worked for him. In the latter part of the 1990’s when Mr. Elze was a captain in the First Precinct, Dan O’Neil was promoted to sergeant and worked under him In the First Precinct.

Mr. Elze described his relationship with Sgt. Dan O’Neil as being pretty close acquaintances. Before owning the bar/nightclub, he and Dan O’Neil celebrated New Year’s Eve at this establishment for six or seven years before his retirement. Also, before his retirement, Dan O’Neil has had occasion to stay overnight at the Elze home. Mr. Elze testified that he is also a friend of Lt. Rick Hayes’.

Mr. Elze stated that in 2012, including the Spring or Summer of 2012, Sgt. Dan O’Neil never discussed with him any allegations or concerns that he had about racial profiling or about Lt. Hayes ordering racial profiling or doing anything of a racial nature. The last time he recalls having any conversation with Sgt. Dan O’Neil was at a pool party at Dan O’Neil’s house in approximately May or June 2010, which was about two months after his retirement. He recalls this conversation taking place on the front porch of O’Neil’s house. His wife and Dan O’Neil’s wife were present at the time. Mr. Elze later testified that maybe this conversation took place in 2011. When provided the details of the conversation that Sgt. O’Neil testified he had with Mr. Elze regarding Lieutenant Hayes and seeking Mr. Elze’s advice, etc., Mr. Elze denied ever having such a conversation with Sgt. Dan O’Neil.

Lt. Hayes called Mr. Elze at one point and asked him if he had any conversation with Dan O'Neil about the subject matter of this investigation. Mr. Elze said that he told Lt. Hayes that he had not spoken with Dan O'Neil since his retirement. After being told what Dan O'Neil had said about having had a conversation with him, Mr. Elze stated that he reached out to Dan O'Neil by calling him, but O'Neil did not call him back.

**Officer Amy Michelle Dlugos (DSN 3835)**

Officer Dlugos testified that she has been a police officer in the Fourth Precinct for six and one-half years. In the Summer of 2012 she was assigned to the B Platoon. She was a relief officer at that time and so her beat would switch every day. On some occasions she would be the special enforcement car with responsibility to go to the shopping mall.

She occasionally made roll calls at the main station. On those occasions she was present when roll calls were conducted by Lt. Hayes. She never heard Lt. Hayes make any statement about wanting officers to go out and target or arrest black people, nor did she observe any conduct by Lt. Hayes that was racial in nature. While an officer in the B Platoon she never heard any scuttlebutt about such things being said.

Officer Dlugos does recall going to what has been described as the Lake House on one occasion while she was on duty and there were some officers having lunch there. However, at the time, she did not know it was referred to as the Lake House.

Officer Dlugos testified that prior to the hearing she went to the office of the St. Louis County Counselor and met with Mr. Becker and Ms. Merklin VonKaenel. When she came out of that meeting, she was upset and expressed her concern to her supervisor, Sgt. Seaver. Officer Dlugos testified that she felt pressured and cornered to answer something that she did not know. She further testified that when she met with Mr. Becker and Ms. Merklin VonKaenel, they discussed other officers in the B Platoon and she told them that generally they were good officers. In her experience she had not heard any of them make any racist comments.

**Officer Gregory E. Van Mierlo (DSN 201)**  
**Des Peres as Public Safety Officer**  
**(Formerly a St. Louis County Police Officer)**

Officer Van Mierlo testified that he has been employed by the City of Des Peres for two and one-half years as a public safety officer, a position which combines the duties of police, fire and EMS. Prior to his employment by the City of Des Peres, he was employed by the St. Louis County Police Department. He was assigned to the South County (Fourth) Precinct for approximately five or six years. He left to work for the City of Des Peres in May of 2013. His wife is still employed as a St. Louis County Police Officer and is currently assigned to the Fourth Precinct.

Officer Van Mierlo stated that he is a defendant in a civil suit pending in Federal Court in the Eastern District of Missouri arising out of an incident that occurred while he was under Lt. Hayes' command. The nature of this civil suit apparently involves allegations of unlawful use of force by Officer Van Mierlo in the Summer of 2012, when he used a "Taser" on a twelve-year-old black female while making a warrant arrest. He is represented by the St. Louis County Counselor's Office in that suit. Much of Officer Van Mierlo's testimony was involved with this collateral subject and Officer

Van Mierlo's concerns about his representation by the St. Louis County Counselor's Office, and in particular, his representation by Ms. Von Kaenel. Without digressing into all of the back-and-forth exchanges regarding this subject, suffice it to say that gist of all this was that Officer Van Mierlo believed during meetings purportedly scheduled for the purpose of discussing the defense of his civil case with him and other officers, Ms. Von Kaenel was using these meetings as a pretext to question and/or influence them with regard to the Hayes case.

He believes that the County Counselor's office was displeased with him when he expressed his opinion that the allegations against Lt. Hayes were quite possibly fabricated by disgruntled problem officers who conspired to extract revenge on Lt. Hayes for their transfers. Thereafter, it was his opinion the attorneys in the County Counselor's Office denigrated him and were only interested in making sure that Lt. Hayes' termination was upheld by the Board. He believed that the defense of his civil case was being sacrificed for the benefit of their pursuit of the Hayes case. Eventually, because he believed that Ms. Von Kaenel had a conflict of interest his defense was assigned to a different attorney in the County Counselor's Office. Officer Van Mierlo also engaged private counsel.

In the Spring, Summer and Fall of 2012, he was assigned to the B Platoon under the command of Lt. Hayes, and under the supervision of Sgt. Dan O'Neil and Sgt. Joni Jensen. During that time, his assignment was the South County Mall beat (mall car). This beat was described as an area that encompassed South County Mall, Lindbergh, Lemay Ferry, a portion of Interstate 270 and a portion of Interstate 55. It was further described as a square area that contained a lot of businesses and one condominium and/or apartment complex.

Officer Van Mierlo testified that he never heard Lt. Hayes make a racist comment or do or say anything that suggested, or could be construed to mean, that individuals should be stopped on the basis of race alone. And with particular reference to his Mall beat assignment, he was never directed by Lt. Hayes to stop people based on their race, nor did he ever do so. He does not believe Lt. Hayes is a racist and Lt. Hayes never did anything that demonstrated he was a racist.

At the time when two new African-American officers (Ryan Lawrence and Kris Weston) were joining the platoon Sgt. Dan O'Neil told members of the platoon that they were getting two new black officers. He told the platoon members that they would have to watch what they say and made a gesture by touching his left forearm with two fingers of his right hand.<sup>8</sup>

Officer Van Mierlo was never formally interviewed by BPS regarding the Hayes investigation. However, during the relevant period of time he was working secondary employment at the South County Mall on an occasion when Lt. Matt O'Neill was also working secondary employment there. Lt. O'Neill told Van Mierlo about the allegations against Lt. Hayes and asked him if he had ever heard or seen anything regarding the allegations against Lt. Hayes. Officer Van Mierlo told him he had not. However, Officer Van Mierlo pointed out that because of his Mall assignment his start time was different than other officers and he attended virtually no roll calls after being assigned to this beat.

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<sup>8</sup> Note: This is the same gesture that Sgt. O'Neil testified that Lt. Hayes made.

**Officer Samantha Jo Sirles (DSN 4107)**

Officer Sirles testified is currently a school resource officer in the Fourth Precinct. She was hired by the St. Louis County Police Department in January 2012 and completed the academy in June of 2012. She was then assigned to the B Platoon of the Fourth Precinct as a patrol officer undergoing field training. Her direct supervisor was Lt. Hayes. Her field training officer was John Spicer. During the Summer and Fall of 2012, she attended roll calls in the main station and at times, those roll calls were conducted by Lt. Rick Hayes. During that time period she never heard Lt. Hayes tell anyone in the B Platoon to target people on the basis of race, nor did she ever hear him say anything that was of a racial nature or make any gesture that could be construed as a racial gesture. However, most of the time she made relief and roll calls out of the Oakville Substation.

Officer Sirles remained in B Platoon through December of 2012. She was never interviewed by BPS. However, in approximately March or April of 2015, while she was on maternity leave after having her baby, she was called in to the St. Louis County Counselor's Office by Ms. Von Kaenel to discuss the Van Mierlo case. When she arrived for this meeting the questions directed to her at the outset were about Lt. Hayes and the South County Mall. She informed Ms. Von Kaenel that she did not hear Lt. Hayes make any racial remarks.

**Officer Matthew Ryan Jacobsmeyer (DSN 3768)**

Officer Jacobsmeyer testified that he is currently employed as a St. Louis County police officer assigned to the A Platoon in the Fourth Precinct. Lt. Hayes was assigned as commander of the B Platoon on April 29, 2012. In the Spring, Summer and Fall of 2012, he was assigned to the B Platoon working primarily in Oakville. Sometimes worked the Casino beat, and occasionally did desk duty at the main precinct station.

Most of the roll calls he attended were at the Oakville Substation. Some of these roll calls were conducted by Lt. Hayes. At times, he attended roll calls at the main station, but when assigned to desk duty at the main station it was optional for the desk officer to attend roll calls. The roll calls were held in the report writing room. This room was connected by a door and hallway approximately fifteen feet long to the room where the desk officer was located.

On the occasions when he attended roll calls conducted by Lt. Hayes at the main station during the Spring, Summer and Fall of 2012, he never heard Lt. Hayes make any statements or gestures of a racial nature or any statements indicating that people should be stopped based on their race.

At some point in time he became aware of the anonymous letters that had been written in December 2012, and January 2013. After that, he became aware of rumors among members of the B Platoon that Lt. Hayes had made statements and/or gestures of a racial nature. In conversations that he had with members of the B Platoon, no one ever told him that they had actually heard anything of that nature directly from Lt. Hayes.

A BPS interview of Officer Jacobsmeyer was conducted by Lt. Matt O'Neill. He was told he might be subject to a polygraph. His conversation was not tape recorded, unlike others that were interviewed. He assumes this is because he told Lt. O'Neill he not hear any statements by Lt. Hayes.

## **Lt. Jeffrey Hoots (DSN 2605)**

Currently, Lt. Hoots is a watch commander in the Central County Precinct. In the Spring, Summer and Fall of 2012, he was assigned to the Fourth Precinct. Lt. Hoots and Lt. Hayes went through the police academy together. They have known each other for years and are friends. At one point in their careers when Lt. Hoots was still a sergeant, Lt. Hayes was his lieutenant. In his experience, Lt. Hayes is not a racist.

In 2010, when he was a sergeant under Lt. Hayes' command, he was involved with Lt. Hayes in supervisors' meetings that were held to develop special enforcement plans to implement "hotspot" policing – identifying areas where there was significant criminal activity such as retail theft at the mall or other retail stores, burglaries etc. Information would be gathered from neighborhood police officers that included detailed information about particular suspects, including the race of suspect, and about suspicious vehicles etc. This information was plotted and highlighted on a detailed map. An operations plan was then put in place as to how to address the problem. Approximately 300 arrests were made. Afterward, Lt. Hoots (then Sgt. Hoots) said he prepared a debriefing report that would break down the types of arrest. As a result of this 2010 effort a Chief's commendation was given.

During this initiative in 2010, Lt. Hayes never told him or any member of his platoon to arrest people based on their race. He never made any statements such as: "Let's have a black day" or "Let's make the jail cells more colorful."

Thereafter, Lt. Hoots (still a sergeant) was transferred to Jennings for approximately one and one-half years. He was then promoted to the rank of lieutenant in April of 2012 and transferred back the Fourth Precinct where he was assigned to the C Platoon under the direct supervision of Capt. Schneider. He had occasion to attend watch commanders meetings with Capt. Schneider, Lt. Hayes, and Lt. Leslee Tate. In these meetings, information from the NPO officers and crime trend reports would be discussed as well as hotspot policing to address crime at the mall and for Wal-Mart. During these meetings he never heard Capt. Schneider say that he wanted them to direct their officers to go out and arrest people on the basis of their race or to disregard probable cause or reasonable suspicion.

Lt. Hoots testified to conversations he had with Lt. Hayes regarding the abilities of Sgt. Dan O'Neil as a supervisor. In particular, there was one incident he related to Lt. Hayes about seeing Sgt. O'Neil having Officer Chris Rickard sitting at the computer completing the work schedule, a task that is the responsibility of a sergeant. He told Lt. Hayes about how he called Sgt. O'Neil aside and asked him what he was doing by having Rickard doing the scheduling. He was told by O'Neil how Rickard was helping him with the scheduling. Lt. Hoots informed Lt. Hayes that he told O'Neil the appearance of a patrolman completing the schedule looks bad and that if he has a problem doing the schedule he should come to Lt. Hoots for assistance.

Lt. Hoots also testified that he was familiar with the fact that there was a clique of about five to eight officers in the B Platoon that were led by Officer Russ Bono. Lt. Hoots described these officers as good policemen individually, but said they were bad for each other when together as a group. They did not like handling radio calls or doing self-initiative work.

He brought to Lt. Hayes' attention the fact that on his way to or from work he observed that officers were frequently congregating and hanging out at the Quick Trip on Bayless Road contrary to orders that Lt. Hayes had given to the officers about this practice.

Prior to December 2012, Lt. Hoots had not heard any rumors about Lt. Hayes giving any illegal orders.

After the allegations were made against Lt. Hayes, Lt. Hoots became commander of the B Platoon and he had issues with Sgt. O'Neil. Lt. Hoots testified that shortly after taking over the Platoon, there was an incident involving a call for shots fired – possible domestic disturbance. A probationary patrolman who had just completed field training responded along with another officer. Upon arrival at the scene there was appearance of a domestic altercation. A gun was recovered, but apparently no victim could be located. Sgt. O'Neil as watch commander was supposed to have been in route to the call. After approximately twenty minutes elapsed, Sgt. O'Neil was still not on the scene. The probationary officer called Sgt. O'Neil and related the details of the call and was instructed to “un-found” the call – meaning the circumstances for the call never occurred. A short time thereafter, a female victim and child who were determined to be associated this call appeared at the Affton Precinct. The victim's vehicle had a window shot out with a bullet lodged in the back seat. Lt. Hoots confronted Sgt. O'Neil about this. Col. Gregory, Division Commander, also became involved. Lt. Hoots investigated the matter and wrote a report which was sent to BPS.

Lt. Hoots also had problems with Sgt. O'Neil with regard to his ability to handle scheduling and payroll matters. At one point, after Sgt. O'Neil informed Lt. Hoots that he was the anonymous letter writer concerning the allegations against Lt. Hayes, he told Lt. Hoots that he was suffering from stress. Eventually Sgt. O'Neil was placed on an extended leave relating to his mental stress. Subsequently, Sgt. O'Neil lodged a complaint against Lt. Hoots for sending him to an impromptu drug screen test. Lt. Hoots testified that O'Neil was sent because he was selected through the random selection system that comes down from headquarters. O'Neil also made complaint that Lt. Hoots subjected him to unnecessary write-ups. One of the write-ups he complained about as being unwarranted was the shooting incident referred to previously. The other complaint O'Neil believed to be unwarranted concerned a write-up Lt. Hoots gave him for repeated payroll errors.

While O'Neil was on his extended leave from work Lt. Hoots tried making contact with him numerous times to determine his status, but O'Neil would never return his calls. Lt. Hoots said he then went to O'Neil's house, but O'Neil refused to answer the door. Based on the fact that O'Neil was going to be on extended leave Lt. Hoots had O'Neil turn in his personal police car per applicable department policy. Sgt. O'Neil lodged a complaint against Lt. Hoots over this as well, claiming this was done as punishment.

Lt. Hoots, Lt. Matt O'Neil and Officer Russ Bono all worked secondary employment at South County Mall during the investigation of Lt. Hayes. During a conversation Lt. Hoots had with Officer Bono while working secondary employment at the mall, Officer Bono told Lt. Hoots that he was upset about all the “stuff” (a reference to the investigation of Lt. Hayes) that was getting way out of control. He felt that Sgt. O'Neil had stabbed them in the back by dragging them all into this mess and that it was all “BS.”

Lt. Hoots related that during the Hayes investigation Officer Ryan Lawrence came to him to report a text message he received from Officer Hollenback which upset him. Apparently Officer Hollenback had previously been Officer Lawrence's field training officer. Officer Lawrence showed Lt. Hoots the text message on his phone. Lt. Hoots read the text message and testified that the message contained statements to the effect that Lawrence:

“needed to get on the right team”

“the white shirts are against us”

“you can’t trust Lt. Hoots, he is a snake.”

Lt. Hoots testified he was completely caught off guard by this because he considered Officer Hollenback a friend. Thereafter, he had Officer Lawrence come to the station and meet with Capt. Schneider and show him the text message. Capt. Schneider then had Lawrence write a memo documenting the text message. Lt. Hoots identified **Exhibit AAA** as the Lawrence memo documenting this text message.

After Lt. Hoots took over from Lt. Hayes as commander of the B Platoon, at no time during the Hayes investigation did any officer who had been on the B Platoon ever come to him and say that they observed Lt. Hayes give an illegal order.

#### **Officer Michael V. Torizzo (DSN 3157)**

Officer Torizzo testified that he has been employed by the St. Louis County Police Department since June 8, 1999. Prior to his employment by St. Louis County he was in the United States Army (82<sup>nd</sup> Airborne) from 1993 to 1996, having enlisted at age seventeen. He was honorably discharged. During his employment as a St. Louis County Police Officer he has received a Meritorious Service Citation, a Purple Heart Award and six or seven Awards of Excellence. In 2012 he was given the Elks Lodge Officer of the Year Award.

In the early Spring of 2012, he was assigned as a patrol officer in the Fourth Precinct under the command of Lt. Bulla and Sgts. Brad Wendling and Dan O’Neil. Later, Wendling was transferred and Sgt. Joni Jensen filled that position. While working this special enforcement duty he was originally assigned to D Platoon. His immediate supervisor was Sgt. Redmond. Officer Torizzo said he did not answer to Lt. Hayes. He never went to B Platoon roll calls and was never at a roll call where Hayes was present. In January 2013, the precinct went to ten-hour shifts and the entire precinct got shuffled with people picking shifts based upon seniority. As a result, Officer Torizzo wound up back in the B Platoon with Sgt. O’Neil as his immediate superior.

In 2011 and early 2012, his productivity and number of arrests increased. In the year 2012 he had close to three hundred arrests. At one point, before Lt. Hayes took over B Platoon, Sgt. O’Neil came to him and told him to slow down with his arrest; not to kill himself and take it easy.

Officer Torizzo related the circumstances of his arrest of a subject named Jonathon Bromeyer which occurred at a point in time before Lt. Hayes took over from Lt. Bulla. Officer Torizzo said this subject had a felony warrant outstanding for his arrest. Officer Torizzo parked down the street from Bromeyer’s residence and when the subject came out and was walking down the street he was arrested. On the way to the station the subject informed Officer Torizzo that he was a friend of Sgt. O’Neil’s son and that they wrestled together. After the arrested subject was taken to the station, Officer Torizzo went back into service. When he returned to the station later that day with another subject he had arrested, he discovered that Bromeyer was no longer in custody. Officer Merry was in the station and made the comment to him that it looked like he had lost an arrest. He walked into Lt.

Bulla's office to inquire about the Bromeyer subject and Lt. Bulla started laughing and told him good luck finding Bromeyer's booking sheet. Officer Torizzo said he then just turned around and left.

With regard to his relationship with other members of the B Platoon he said that they did not much care for him. Officer Torizzo attributed this to his work ethic. As evidence of how the other officers regarded him, he said his patrol vehicle was tampered with and they started hanging up cartoons of him. On another occasion a picture from a body building magazine was hung up with his name written across the forehead of the person depicted. If he went in the break room to make his lunch, the other officers shunned him by getting up and leaving. During his BPS interview Lt. Tate informed Lt. O'Neill that Officer Torizzo does not get lost and sit behind a building. He works the entire time he is on duty. He is big into fitness and does not drink and, therefore, does not go out and socialize with the other officers.

In the Spring of 2012, Capt. Jim Schneider was transferred to the Fourth Precinct and took over command. Capt. Schneider came to him and told him he was doing a good job and told him he wanted to change his assignment and make him a special assignment car to do aggressive patrol at the South County Mall. Capt. Schneider told him 50% of the larcenies were occurring in the business corridor. Officer Torizzo described the distinction between a "mall car" and the assignment he was given. He said a mall car was there to respond to radio calls for any type of call for South County Mall. Officer Torizzo would assist the mall car on these calls if needed, but his assignment and his car was to be a self-initiative car, making stops for traffic violations, improper registration of vehicles (plate violations) or individuals matching descriptions of perpetrators of crimes that have just occurred. In that regard, he would have available to him daily intelligence bulletins or "MIAC" reports which often contained vehicle and/or subject descriptions and license plate information.

After being given this special assignment duty, when he made arrests he would transport prisoners to the Fourth Precinct and book them at the station; but someone else would transport his prisoners to the Justice Services building in Clayton. This procedure was followed because he was told he was not to transport his prisoners to Clayton. This further eroded his relationship with other B Platoon members.

Officer Torizzo explained that aggressive patrol meant zero-tolerance policing and heavy patrol in the business corridor. If somebody had outstanding warrants, he was not to cut them any breaks – they were to be taken into custody. He was never told by Capt. Schneider to arrest black people or to ignore the concepts of reasonable suspicion or probable cause. Capt. Schneider never told him to go out and "arrest all the niggers." Officer Torizzo testified that Lt. Hayes never gave him an illegal order and never told him to go out and arrest black people. Lt. Hayes never told him to ignore reasonable suspicion or probable cause. He never heard Lt. Hayes make any statements like: "Let's have a tan day." Or, "Let's make the cells more colorful." He never saw Lt. Hayes make any gesture that could be construed as a racial gesture. His testimony was the same with regard to Capt. Schneider.

Officer Torizzo did not become aware of the allegations against Lt. Hayes until January 2013. Sgt. O'Neil came to him and told him to meet him over at the Schnuck's parking lot by the Oakville Substation. When he met Sgt. O'Neil as requested, O'Neil asked him if he had heard about Lt. Hayes. Officer Torizzo did not know what O'Neil was referring to. O'Neil informed him that BPS was looking into Lt. Hayes and that someone had written a letter stating that he was targeting black people. He then instructed Officer Torizzo to distance himself from Lt. Hayes.



Shortly thereafter, Officer Torizzo was notified to report to BPS to be interviewed about a complaint that had been made against him. An officer has a right to have a supervisor accompany him to a BPS interview. Sgt. O'Neil offered to go with him, but he declined the offer because his instincts told him that Sgt. O'Neil was up to something. Instead, he asked Lt. Leslee Tate to go with him to BPS. At the BPS interview on February 4, 2013, he was informed by Lt. Matt O'Neill that he was being accused of racial profiling. He was not informed who his accusers were. After the tape recorder was turned off Lt. O'Neill told him he was going to be terminated. Officer Torizzo said he was shocked. When he returned to work, he basically just showed up and stopped working. He would just respond to radio calls. He was angry and lost a lot of weight. He felt isolated and no one was telling him anything. Thereafter, there was an opening in Lt. Tate's platoon. He requested a transfer to her platoon which was granted.

Eventually, he received a telephone call from Chief Fitch and arrangements were made for Chief Fitch to meet him at a parking lot. When they met, Chief Fitch informed him that he was going to be exonerated and told him that the people who had made statements about him were just insinuating that he did something because they were lazy. He asked Chief Fitch why he had been placed under investigation to begin with. Chief Fitch told him that his name appeared in the third anonymous letter received regarding Lt. Hayes. Officer Torizzo testified that he was, in fact, exonerated, which occurred one year after the complaint had been made. He said this complaint against him has ruined his life. He believes it has affected his career after having his name dragged through the mud. He thinks he has been labeled as a bad guy, when he did nothing but his job.

Sometime thereafter, Officer Torizzo placed a call to Mr. Bruntrager, attorney for Lt. Hayes. A meeting was arranged and the two met. Officer Torizzo testified that he contacted Mr. Bruntrager because he did not feel Lt. Hayes got a fair shake.

#### **Lt. Leslee Tate (DSN 2421)**

Lt. Tate testified that she has been a lieutenant with the St. Louis County Police Department for approximately three and one-half years. She was promoted in March of 2012. After her promotion she was assigned to the South County (Fourth) Precinct in command of the A Platoon under precinct commander, Capt. Jim Schneider. Lt. Tate was familiar with Capt. Schneider before coming to the Fourth Precinct. Capt. Schneider had been a sergeant in the Narcotics unit when she worked in that unit. He was a lieutenant in the Intelligence unit when she was a sergeant in BPS working under Lt. Matt O'Neill. Also they received their respective promotions to captain and lieutenant at the same time and at the same Board Meeting.

Lt. Tate and Capt. Schneider both came to the Fourth Precinct at about the same time. Shoplifting and retail crime was rampant. There were frequent watch commander meetings for brainstorming discussions to address these crime issues and in particular, the "snatch and grabs" type of larceny that was occurring. These meetings would include Capt. Schneider, Lt. Tate, Lt. Hayes and Lt. Hoots. At no time during these meetings or at any time during the Spring, Summer or Fall of 2012 did she ever hear Capt. Schneider or Lt. Hayes give any order that suggested a group be targeted based on race or that they were going to combat retail crime by arresting black people. Further, she never heard Lt. Hayes use any racial epithets.

In the course of some of these meetings she had discussions with Lt. Hayes regarding cliques that he was dealing with in the B Platoon. He told her he was separating some people to different

beats, but was concerned that someone was manipulating the schedule to counteract these changes. Also, she and Lt. Hayes had arranged for "overlay cars" that would become part of Lt. Tate's staffing, but found that these cars were not placed on the schedule. Lt. Hayes told her this problem was caused by Sgt. O'Neil. Lt. Hayes also discussed with her the fact that Sgt. Dan O'Neil was having problems with his leadership skills and administratively as a whole. She was familiar with discussions about efforts to transfer Sgt. O'Neil and said Capt. Schneider had attempted to transfer him, but could not get anyone else willing to accept him. In November or December of 2012, a decision was made to switch to ten-hour shifts. Sgt. O'Neil was vehemently opposed to this, as were other members of B Platoon. He went through the entire precinct building and with a red marker pen placed a red circle with a line through it everywhere the number 10 appeared. This included defacing and permanently damaging a clock in Lt. Tate's office by a placing such a mark over the number ten on her clock.

Prior to the anonymous letters being sent she never heard any rumors about any illegal orders being given by Lt. Hayes and no one from the B Platoon ever approached her with any such information.

Lt. Tate believes that she first learned from Capt. Schneider about the anonymous letters being written. The next thing that happened with regard to the Hayes investigation was a call from Lt. Matt O'Neill asking if he could use her office to conduct some interviews. He did not say anything about the subject matter of the interviews he wanted to conduct, but she suspected that it related to the allegations against Lt. Hayes that she had heard about from Capt. Schneider. Upon reminding Lt. O'Neill that she shared her office with Lt. Hayes, he said it would not be a good idea to use this shared office. It was then suggested he conduct the interviews at a substation. Lt. O'Neill did not want to do that. Next, she then suggested using a school and he dismissed that idea. She then mentioned that she knew the owner of a business with a large conference room (Reinhold Electric) who was friendly to law enforcement. She arranged for that location to be used. Lt. Tate met Lt. O'Neill on the parking lot of this business. Lt. O'Neill said he would appreciate it if she did not mention to anyone that he was conducting these interviews. She told him she would be calling her precinct commander (Capt. Schneider) to let him know about the meetings that were going to be taking place. They then went inside the business and into the conference room. Lt. O'Neill showed her the list of people he wanted to interview. It was at this time he said to her: "You know your captain is involved in this as well." She told Lt. O'Neill that she did not know that.

Lt. Tate testified to the circumstances involving her accompanying Officer Torizzo to his BPS interview conducted by Lt. O'Neill and Sgt. Diane Leonard. Prior to the interview, Officer Torizzo was told nothing about the nature of the complaint against him. According to Lt. Tate, this was contrary to BPS protocol she was familiar with from working under Lt. O'Neill for one and one-half years in BPS.

Lt. Tate believes that the allegations against Officer Torizzo definitely had an effect on him. At some point following Torizzo's interview, he came to her and asked to be transferred to her platoon. She accepted this request. She testified that in her opinion, Officer Michael Torizzo is a good, hard-working police officer – one of the best St. Louis County has.

Lt. Tate was asked about Officer Amy Dlugos. Officer Dlugos requested transfer to Lt. Tate's A Platoon and was assigned to her platoon in January 2013, when the changeover to ten-hour shifts went into effect. Lt. Tate opined that Officer Dlugos is a good, hard-working officer. Following the termination of Lt. Hayes, Lt. Tate had received information indicating that Officer Dlugos may have

some information about a place referred to as the "Lake House" where many members of B Platoon would hang out while on duty. She approached Officer Dlugos about this. Officer Dlugos appeared to her to be somewhat surprised that she was aware of the "Lake House," and became quiet. Lt. Tate then told her that if she had information about it, she believed it important that Officer Dlugos share that information with her. She then told Lt. Tate that she had learned about this place from some of the officers in B Platoon whom she had worked with while she was on B Platoon. She had run into two of the B Platoon officers buying cigars while they were on duty and headed to the Lake House. When she went to the Lake House she said there were six to eight police cars there and the officers told her they were just hanging out there smoking cigars. She told Lt. Tate she did not remain there very long.

Officer Dlugos also discussed with Lt. Tate that the officers in B Platoon, including Officer Rickard, were not officers she could count on. She went on to tell Lt. Tate that she structured the type of work she would perform on a particular day based upon who was working and whether or not she could count on them to give her backup. Lt. Tate said Dlugos was a young, aggressive officer who made a lot of traffic stops and was not comfortable searching a vehicle alone. In those circumstances, she was not comfortable calling some of the members of B Platoon, and in particular, Officer Bono and Officer Rickard, because she would be bothering them.

Officer Dlugos never indicated to Lt. Tate that she ever heard Lt. Hayes use any kind of racial epithet or that she had ever been given an illegal order.

Lt. Tate testified that there was an occasion when Chief Fitch visited the Fourth Precinct. He came into her office, sat down and asked her how she was doing. Lt. Tate stated that she got up and shut the door. She told Chief Fitch she did not think things were going great. She informed Chief Fitch that she was concerned about the manner in which Lt. Matt O'Neill was handling the investigation of the Hayes complaint. She was aware from Lt. O'Neill showing her the list of people he was going to interview, that it did not include all the members of B Platoon. She posed the question to Chief Fitch: How one could have an investigation and not interview all the people in B Platoon? Chief Fitch's response to her was that Lt. O'Neill was conducting the investigation like it was a homicide investigation. Lt. Tate inferred that this did not adequately answer her question or address her concerns because she testified that she has been involved in homicide investigations and in such investigations you interview every possible witness, and not just once. She communicated to the Chief that this was not happening with this investigation. She also told Chief Fitch that she had not been interviewed although she believed she had valuable information to contribute.

**Officer Ryan A. Lawrence (DSN 382)**  
**Kirkwood Police Department**  
**Formerly St. Louis County Police Officer- DSN 4065)**

Officer Lawrence testified that he is currently employed by the City of Kirkwood as a police officer. He started with Kirkwood August 11, 2014. Prior to that he was employed by the St. Louis County Police Department. He was hired by St. Louis County on June 24, 2011, while in the police academy. He began working as probationary patrolman in December of 2011.

After becoming a police officer with St. Louis County, one is on probation for a year. During the first four months of the probationary period, the probationary officer works with a field training officer. In Officer Lawrence's case, his FTO was Officer Brad Hollenback. He got along well with

Officer Hollenback. Their relationship was a good one. Officer Lawrence did not experience any problems during his probationary period.

At the conclusion of his probationary period he had an interview with the Chief of Police, as is customary. The interview took place in the captain's office at the Fourth Precinct in December of 2012. During this meeting Chief Fitch inquired about how he had been treated in the Fourth Precinct, both in-house by his fellow police officers and by the citizens, since he was one of two black officer in the Precinct. Officer Lawrence testified that he told the Chief everything was fine and he liked it in the Fourth Precinct.

In February and March of 2012, he was assigned to the B Platoon. His duty assignment was as a "mall car." At that time, Lt. Karl Bulla was his watch commander. Sgt. Dan O'Neil was his direct supervisor.

His impression of the officers in B Platoon was that they were good officers, but they were close knit and somewhat lazy, in that they did not like to work. He agreed with the description of these officers as being a clique. As a young officer full of energy, the unwillingness of these officers to work was starting to wear on him in the Spring of 2012.

Lt. Hayes eventually became his lieutenant. He believes Lt. Hayes came to B Platoon around April 29, 2012. He had met Lt. Hayes before this occurred. He had a conversation Lt. Hayes one evening between shift changes in which Lt. Hayes asked him what Officer Lawrence wanted to do in his career and where he wanted to go. Lt. Hayes commented to Lawrence that Lawrence was good at his job. Lt. Hayes was giving him insight and encouragement about how to further his career.

In the Spring of 2012, Lawrence requested Lt. Hayes help in getting transferred from the afternoon shift to midnights because the afternoon shift was becoming difficult. Lawrence and his wife had a three-year-old, and his wife was pregnant. Lt. Hayes said he would do his best to accommodate his request. Around June 2012, Lawrence did get transferred from the B Platoon to midnights.

Between April 29, 2012, the date recited as when Lt. Hayes came to B Platoon, and late June 2012, when Lawrence switched to midnights, he never heard a comment from Lt. Hayes that he thought was a comment toward racial profiling or that was racist.

Officer Lawrence was then asked about the roll call incident that was discussed with Lt. Matt O'Neill in BPS. Officer Lawrence testified that he recalls Officer Terry Wilkerson, Officer Will Matthews, and Sgt. Dan O'Neil being present in the Fourth Precinct lobby. There had been a lot of shoplifting in the Fourth Precinct. The conversation going on at that time was about shoplifting at the mall. Lt. Hayes said if you see four or five black males in a car with Illinois temp tags, stop them, check them out. Lawrence testified that this statement by Lt. Hayes was criminal profiling. Lawrence stated that intelligence bulletins lead you to believe that a certain group of people are doing the shoplifting and by way of example, he stated that a week prior to Lt. Hayes' statement, there was a grab and run committed by a black male in a black vehicle with Illinois temp tags. So, Officer Lawrence did not interpret Lt. Hayes' statement as a racial profiling statement, but, instead, as a criminal profiling statement. He testified that the statement by Lt. Hayes did not cause him any concern. He was not offended by it. If anyone said otherwise, they would be inaccurate.

Following this criminal profiling statement by Lt. Hayes, Officer Lawrence said Lt. Hayes turned to Lawrence and patted him on the back and said: "Not like you." Officer Lawrence said he found this a little awkward, but he was not offended by the comment. If he had considered Lt. Hayes's comment to be racially motivated, he would have said something to Lt. Hayes.

Following this comment by Lt. Hayes, some officers who were present spoke to him. Other than Sgt. O'Neil, he does not remember which officers, nor does he remember what they said. As for Sgt. O'Neil, he made a big deal of it and stated something along the lines of: "Can you believe he said that?" He then suggested that Officer Lawrence should say something and he could become a new sergeant tomorrow. Officer Lawrence testified that this was a suggestion by Sgt. O'Neil that he should somehow take advantage of the comment.

After this roll call Officer Lawrence called Officer Kris Weston, the other black officer in the Fourth Precinct. He related to him the exchange that had taken place with Lt. Hayes. They both laughed about it and thought it was funny. Neither one of them was offended by the comment.

Sometime, not long after, perhaps a month after these events occurred, Officer Lawrence transferred to midnights. This would place the time of this roll call conversation in May of 2012.

A portion of **Exhibit 12**, Chief Fitch's Pre-termination letter, was read to Officer Lawrence containing essentially this same statement of Lt. Hayes just testified to by Officer Lawrence. Officer Lawrence was then asked if the statement in the Chief's letter stating that Lt. Hayes' comment was offensive to an African-American officer under his command, was in fact, offensive to him? His response was that the statement was not offensive to him.

On December 21, 2012, Officer Lawrence testified his daughter was born and he took time off. In January of 2013 when he returned, the precinct went to ten-hour shifts and he went back to B Platoon. When he went to get his schedule, Capt. Schneider pulled him in to his office and filled him in on the anonymous letters that had been written and everything that had happened. Capt. Schneider asked him about the roll call incident, Officer Lawrence said he provided Capt. Schneider with the same information that he testified to at this hearing. When speaking to Capt. Schneider, he learned that some people thought he was the author of the anonymous letters. So, he asked Capt. Schneider if he could call Lt. Hayes to let him know he was sorry about all of this and to let him know that he had nothing to do with the letters. He was informed that Lt. Hayes was on vacation and out of the country.

Thereafter, Lt. Hayes called him to apologize that Officer Lawrence was being drawn into this and said something about him being a young officer, not needing to be drug into all this. Officer Lawrence said there was nothing threatening, intimidating or inappropriate about this conversation.

After the news of the anonymous letters came out, no one in B Platoon ever came up to him and said that they had heard Lt. Hayes make any statements that were of a racial nature. Officer Lawrence testified that he made a point of trying to find anyone who had actually heard Lt. Hayes make any racial comments. He said he talked to pretty much every officer and he was unable to find anyone who had actually heard Lt. Hayes make such statements.

Officer Lawrence identified **Exhibit AAA**, as a document he prepared to memorialize the text message he received from Officer Hollenback, his former field training officer telling Lawrence that, in effect, he had to pick sides between his fellow officers and the "white shirts."

Officer Lawrence testified that he never heard Lt. Hayes:

- give an order to target African-Americans;
- make a disparaging comment about African-Americans;
- use any racial epithets;
- use the "N" word;
- make a statement like: "Let's make the cells more colorful today."
- make a statement like: "It's a black Wednesday, go out and arrest all the blacks."
- suggest that arrests should be based on race;
- give an order that the rights of African-Americans should be violated.

Officer Lawrence made the statement during his testimony that if the roll statement and pat on the back exchange that took place between him and Lt. Hayes had occurred with a different lieutenant, we would not be at this hearing. He explained this statement by saying that Sgt. Dan O'Neil, Officer Russ Bono and the majority of officers in the B Platoon did not like Lt. Hayes. Continuing, he testified that if this occurrence had involved Lt. Karl Bulla, whom they all loved, none of them would have said anything and it would not have gone anywhere. Officer Lawrence again said the way he feels about it, it was not a big deal and he is stating that as the only black officer that was present.

Officer Lawrence also identified **Exhibit 22**, the transcript of his statement to BPS on January 20, 2013. He testified that during this interview he was not asked about the context in which Lt. Hayes' statement about, "If you see four or five black people in a car with Illinois temp tags..." was made.

**Patrick W. Hayes**

**(Formerly Lt. Patrick W. Hayes, DSN 2641, St. Louis County Police Department)**

(Although Mr. Hayes has been terminated and, therefore, no longer a lieutenant, for continuity he will be referred to as Lt. Hayes herein.)

Lt. Hayes testified that after graduating college he started his career in law enforcement with the Nebraska State Patrol, where he was employed for almost two years. Thereafter, he applied to the St. Louis County Police Department and attended the St. Louis County Police Academy. He was

number one academically in his class, was the top in firearms, and voted the best overall recruit in the class by the academy staff.

Following his graduation from the Academy, he was assigned as a patrol officer in Affton. After six and one-half years he was promoted to sergeant in approximately 1999. In 2009, he was promoted to lieutenant.

Lt. Hayes is certified instructor through "POST," which is an acronym for police officer standards training. This is a state-wide organization. He is certified to instruct any general class. For a long time he was also a certified firearms instructor. He was also a "SWAT" officer for approximately eight years and was trained by the National Highway Transportation and Safety Administration regarding driving while intoxicated offenses. He has taught classes on that subject. Lt. Hayes said he has taught at Jefferson College, St. Charles Academy and at the Highway Patrol. Included in the classes he has taught, are classes on constitutional law and racial profiling.

During his employment with the St. Louis County Police Department he was awarded seven Chief's commendations and over 70 Awards of Excellence. He has a Life Saving Award. He was the Special Olympics coordinator for the State of Missouri for all law enforcement in the State of Missouri. He was selected to attend the 2009 Special Olympics World Games as an ambassador speaker, torch runner and goal messenger. He has received the Unsung Hero Award from the Special Olympics. He has also been involved for fifteen years with Habitat For Humanity in North City and Central City (St. Louis) and with the St. Vincent DePaul Society. Lt. Hayes has also been involved with sponsoring African refugees through Catholic Charities.

When he was promoted to lieutenant in 2009, he was assigned to A Platoon in the Fourth Precinct. Captain Monteleone was commander at the time. While assigned to A Platoon he was involved with special enforcement plans and "hot spot" policing, including the use of special enforcement cars at the mall. In fact, he testified that the A Platoon spearheaded the special enforcement program. During this time there were never any complaints made against him regarding illegal orders for racial profiling and in fact, he received a Chief's Commendation for this work and the amount of arrests made, and crimes solved.

In the Spring of 2012 he was assigned to the C Platoon. Lt. Karl Bulla was the lieutenant for B Platoon. In March of 2012, Capt. Schneider became the new commander of the Fourth Precinct. Lt. Leslie Tate also came to the precinct as a new lieutenant along with Lt. Hoots. Capt. Schneider offered Lt. Hayes the opportunity to take over his old platoon, the A Platoon. Lt. Hayes declined this offer. Later on, Capt. Schneider contacted him again and told him Lt. Bulla was being transferred. Capt. Schneider asked Lt. Hayes to take over the B Platoon because he did not want to put a brand new lieutenant in charge of the B Platoon. Lt. Hayes did not want to take over B Platoon. Lt. Hayes told Capt. Schneider that he had previously had run-ins with some of the B Platoon because of discussions he had with Capt. Monteleone about the need to transfer some of the B Platoon members who were "running their own show." However, he accepted the assignment to take over B Platoon because in the manner it was presented to him by Capt. Schneider, he did not really believe he had a choice. Lt. Hoots then took over Lt. Hayes' former platoon. Lt. Hayes took over B Platoon in the later part of April 2012. The B Platoon was composed of approximately twenty-three officers.

Lt. Hayes identified **Exhibit CC**, as being a copy of an e-mail dated March 22, 2012, sent from Lt. Karl Bulla to the members of B Platoon. He was given this e-mail by Capt. Schneider during

one of the meetings they had with regard to Lt. Hayes taking over B Platoon. This e-mail documents the type of problems that existed with B Platoon and the things that were not getting done. In particular, the names of the B Platoon members to whom this e-mail was directed are: William Matthews, Thomas Noble, Ryan Lawrence, Christopher Weston, Amy Dlugos, William Govero, Bradley Hollenback, Russell Bono, Mike Torizzo, Chris Rickard, Gregory VanMierlo, Justin Holtz, Terry Wilkerson, Robert Carr, Nathaniel Merry, Goran Katic, John Spicer, Michael Bieri, Matthew Jacobsmeyer, Jaren Ruhland and Michael Petty.

With regard to the characterization of Lt. Hayes being a "numbers guy," Lt. Hayes said he did not consider his command style to be that of a numbers guy, but, instead, that of productivity, which he measured in any way he could and documented in a weekly activity log.

Lt. Hayes knew many of the members of B Platoon prior to taking command of the platoon. He knew for example, Chris Rickard, Brad Hollenback, Russell Bono and Justin Holtz. He did not know Michael Petty or Nathan Merry very well. He was aware of a clique of officers in B Platoon prior to taking command. He had made a recommendation to Capt. Monteleone that Justin Holtz be transferred because he thought his association with this clique group was holding him back from becoming a better officer.

Capt. Schneider and Lt. Hayes also discussed Sgt. Dan O'Neil. According to Lt. Hayes, Capt. Schneider wanted to transfer Sgt. O'Neil right away. Initially, Lt. Hayes' problems with Sgt. O'Neil were more to do with his administrative abilities and not with his street knowledge. Lt. Hayes testified that he thought he could work with Sgt. O'Neil regarding his administrative shortcomings. He believed that with Sgt. O'Neil being a senior sergeant who had the ear of the other officers, if he could get him onboard it could be useful.

Over time, Lt. Hayes said his attitude toward Sgt. O'Neil changed. He provided training opportunities for Sgt. O'Neil. He had other sergeants work with him to try and correct his administrative deficiencies. The feedback, however, from the people tasked to help him and from O'Neil himself was that he only had five years remaining with the Department and he didn't care. He just wanted to get by.

Other problems were persistent with Sgt. O'Neil. He would ignore Lt. Hayes' rule about being present at the Oakville Substation for roll calls. Sgt. O'Neil would frequently change his schedule without notifying Lt. Hayes as he had been instructed. Lt. Hayes testified that on one occasion, Sgt. Jensen took a call from Sgt. O'Neil at 11:30 p.m. O'Neil sounded intoxicated to her. He told her he would be taking the next day off. Sgt. Jensen alerted Lt. Hayes about this call because she knew O'Neil was supposed to call Lt. Hayes about any changes in his work schedule.

Consistent with Sgt. Jensen's testimony, Lt. Hayes would also have problems finding Sgt. O'Neil when he was supposed to be on duty. Lt. Hayes testified that there were instances when he would go to the Oakville Substation at roll call time and Sgt. O'Neil would not be there. He would then call Sgt. O'Neil to ask him his location and O'Neil would lie and say that he was at the Oakville Substation. On this subject, testimony was read into evidence from the deposition of Sgt. Jensen which was marked as **Exhibit GG**, and included the following excerpts:



**Question:** Okay. Again, typically would Dan O'Neil be present for every roll call in the main station?

**Answer:** No.

**Question:** Why would he not be there, assuming he was working?

**Answer:** He was hard to locate.

**Question:** When you say he was hard to locate, tell me what you mean by that.

**Answer:** Didn't know where he was.

**Question:** Were there times when he was supposed to be present when you couldn't find him?

**Answer:** Yes.

**Question:** Was that some of the problems that you had with Dan O'Neil during the Summer of 2012?

**Answer:** Yes.

**Question:** Okay. In terms of those problems, did you ever have any discussions with Lieutenant Hayes about that?

**Answer:** Yes, I believe I talked to him about it.

**Question:** Okay. You're not a newbie. All right. Did you ever have any conversations with Captain Schneider about Dan Hayes and the difficulty – I'm sorry – Dan O'Neil, and the difficulty you had finding him?

**Answer:** No.

**Question:** Was that something that occurred frequently?

**Answer:** Quite a bit, yes.

**Question:** All right. Did you ever have any conversations with Dan O'Neil about the fact that he was hard to find?

**Answer:** Yeah, I think I asked him about it.

**Question:** What did he say?

**Answer:** What was his quote? I think he was just saying, "*Oh, I'm around, I'm around, Babe.*" That's what he would say. "*I'm around.*"

**Question:** Babe?

**Answer:** *"I'm around, Babe."* That's one of the things he would say. Not a direct reference, no. Just said, *"I'm around."* He's *[sic]* say, *"I'm around."*

Lt. Hayes said he knew that Sgt. O'Neil lived in the precinct and, therefore, had a vested interest in staying in the precinct during his remaining five years on the job. He would often tell Sgt. O'Neil that if he would do the things he was supposed to do, he stood a good chance of finishing his five years in the precinct.

Lt. Hayes also testified that one night when Sgt. O'Neil was working, he checked with Sgt. O'Neil to see what he was working on. Several people had been arrested and when he approached Sgt. O'Neil, he told Lt. Hayes that all they were doing was: "just arresting these city niggers." Lt. Hayes called him into his office and told Sgt. O'Neil that he could not say that type of thing. Other than this verbal exchange with Sgt. O'Neil, he did not give him any formal discipline, but he did make Capt. Schneider aware of this.

On another occasion, Lt. Hayes said he saw Sgt. O'Neil doing some type of gesture with his fingers down his forearm and hand and then opened his palm over his forehead. Lt. Hayes asked him what he was doing. Sgt. O'Neil responded by saying that is how you alert other officers that that there is a black person in the vicinity. Lt. Hayes said he brought Sgt. O'Neil into his office and asked him about this gesture. Sgt. O'Neil told him that it was something that was used in the narcotics unit. Lt. Hayes said he told O'Neil that if he saw anyone doing this there would be problem. Once again, there was no formal disciplining of Sgt. O'Neil, but Lt. Hayes made Capt. Schneider aware of the situation.

Lt. Hayes testified about Officer Chris Rickard. He met with Rickard about his low productivity. Lt. Hayes reflected this low productivity on his rating sheets for Rickard. He told him he was a senior officer and also a field training instructor and asked him about his opinion about crime fighting strategies. Rickard expressed dissatisfaction with officers having to transport the prisoners arrested by the special enforcement beats. He also thought that making arrests of subjects for outstanding warrants was not a deterrent to crime. Rickard admitted that he was a low producer. He acknowledged that he had been an officer for twelve years and had not gone anywhere in his career and was bored. He told Lt. Hayes that he did not need his job because his wife was a doctor. Lt. Hayes told him that if he did not see improvement in his productivity, he was not going to continue to enjoy the privileges of a senior officer such as his personal take home car, beat selection and working the desk.

At some point, Lt. Hayes recommended to Capt. Schneider that Rickard be transferred. Eventually, Capt. Schneider came to him and told him he had a problem with Rickard working on the desk and never wanted him on the desk again. He did not describe the problem. Shortly thereafter, Rickard was transferred in August of 2012. Officer Bieri was transferred in either October or November of 2012. Officer Goran Katic was transferred December 22, 2012, which was two days before the first anonymous letter.

Lt. Hayes was asked about the productivity of other B Platoon officers and his recommendations for transfers of many of the officers whose performance did not improve. Some examples follow.

He testified to the low productivity of Officer Bono and Merry. The threat of transfer was made to Officer Bono if his productivity did not improve. Officer Merry's casino beat was taken away from him and he was denied a personal car that he was next in line to receive. Lt. Hayes discussed with Capt. Hayes the possibility of transferring Officer Petty. Officer Holtz wanted to transfer to the K-9 unit and he was told that if his productivity improved his request would be considered. When his productivity did not improve, Lt. Hayes did not recommend him for the K-9 unit and, instead, recommended him for transfer.

Counsel for the Department spent considerable time establishing the fact that Lt. Hayes did not write up EPR's or otherwise generate written disciplinary documentation regarding officers that were not productive or who were engaged in inappropriate conduct. Lt. Hayes' explanation was that he was a new lieutenant to this platoon who was brought into a known situation where good order and discipline were lax. He was tasked with motivating these individuals into better performance. His position was that if he shows up one day and just "start chopping down trees" by putting everything on paper, he is not going to get anywhere. He believed that if he started putting everything down on paper it would have a negative effect on his attempt to salvage this platoon.

When asked about Officer Ryan Lawrence, Lt. Hayes said that he had been around other African-American officers for a long time and had seen what they go through – specifically with the African-American community. So, he spoke to Lawrence before one of the roll calls and told him to keep it as simple as possible. He told him that the bottom line is that there are good guys and there are bad guys and if he thinks of it in those terms he will keep things fairly simple. He then told Lawrence, that he (Lawrence) was one of the good guys.

Lt. Hayes described how roll calls were conducted at the main Fourth Precinct station. There was a large table in the middle of the room. There were boards behind him with different information on the boards. They would sit as a group at the table. Lt. Hayes said he would have the desk officer or someone else read the desk book from the night or day before. The desk book contains information about crimes that occurred on shifts when the officers at roll call were not present. It would contain victim information if available, and a small narrative about the reports and incidents. Intelligence reports or "MIAC" bulletins would be discussed. If available, the MIAC reports would also contain suspect identification information, including race.

Lt. Hayes was then asked if he remembered a particular roll call like the one that Officer Lawrence had testified about. Lt. Hayes said yes, and testified that on his way into the station that day he received a phone call from Capt. Schneider. Capt. Schneider was calling him from the mall. Capt. Schneider told him he and three other police cars were there doing an arrest when a vehicle pulled up to one of the stores (Lt. Hayes believes it was Macy's). He told Lt. Hayes that three or four black males jumped out of a car in the fire lane, ran into the store, grabbed over \$5,000 of merchandise and ran back to the car and drove off.

At the roll call he conducted when he arrived at the station, he told the officers that three to four black males – in what he believed Capt. Schneider described as a vehicle with Illinois temp tags – had pulled up in the fire lane, jumped out, grabbed merchandise from the front of the store, and ran back to the car and took off.

Lt. Hayes denies that he ever told officers if there are three or four black males in a car with temp tags, stop them. He also testified that he does not recall turning around at this roll call and patting

Lawrence on the shoulder while telling him something like: "Not you Lawrence, you're one of the good guys." Even though Officer Lawrence testified to an exchange like that, Lt. Hayes said he does not recall this. Lt. Hayes stated that Officer Lawrence never indicated to Lt. Hayes that he had offended him in any way or that he had said anything that concerned him.

Before Lt. Hayes was assigned to B Platoon and was still working midnights, Officer Lawrence approached him about working midnights because of his family situation. Lt. Hayes told Lawrence he would love to have him, but he would have to work on it and discuss it with Capt. Schneider. He told Officer Lawrence it would take some time. On April 29, 2012, Lt. Hayes took over B Platoon. Officer Lawrence then spoke to him and indicated that he was a little torn between staying with Lt. Hayes now that he was taking over B Platoon, and his desire to transfer to midnights for family reasons. Lt. Hayes told him he would have a lot of time in his career to work with different people and to do what is best for his family situation. Sometime before the end of June 2012, Officer Lawrence transferred out of B Platoon and into the C Platoon. Later, toward the end of 2012 when the ten-hour shifts were going to be implemented, Officer Lawrence came to Lt. Hayes and asked to come back to Lt. Hayes' platoon.

Lt. Hayes testified that there was never a time when he said he wanted officers to target black people at the mall or to stop people solely on the basis of race.

At the end of April 2012, when Lt. Hayes came to the B Platoon, Officer Torizzo was still assigned to the B Platoon. By the end of May 2012, he was transferred out of B Platoon to the D Platoon because Capt. Schneider wanted him for the special project at the mall. The B Platoon continued handling Officer Torizzo's payroll, but he was placed under the direct supervision of Sgt. Redmond who was in charge of NPO officers. Torizzo was considered an NPO officer while working this special assignment.

It was Capt. Schneider that made the decision about Officer Torizzo not having to convey the prisoners he arrested. Lt. Hayes never heard Capt. Schneider give Officer Torizzo an order to focus on or arrest black people. Lt. Hayes never heard Capt. Schneider use any racial epithet.

Lt. Hayes said he first became aware of the first anonymous letter on January 6, 2013. It was a Sunday. He was on his way back from vacation when Capt. Schneider called him to tell him about it. Lt. Hayes subsequently called Officer Lawrence and Officer Weston to tell each of them he did not know what was going on. They both told him they did not write the letter and they did not know who did. They indicated to him they did not know why the letter writer would put their names in the letter. Lt. Hayes told each of them that if he had ever said anything that they found offensive he would have hoped that they would have told him. They each responded to Lt. Hayes that he never had said anything that offended them.

Lt. Hayes stated that he had a meeting with Sgt. O'Neil about the letter to see what he knew about it, but denies ranting and raving about it as testified to by Sgt. O'Neil. He also met with Sgt. Jensen for the same purpose.

Later on, he was informed by Capt. Schneider that there had been other anonymous letters sent, but Lt. Hayes was not aware that an investigation was in progress until January 28, 2013, when Capt. Schneider informed him he was being placed on administrative leave. He never returned to active duty from the time he was placed on administrative leave until his termination.

Lt. Hayes identified **Exhibit AS**, the Department's Policy/General Order 04-05, Complaint Review Procedure which deals with complaints against officers. Lt. Hayes testified that when he went to the BPS interview on February 6, 2013, he had not been provided with a copy of a written complaint against him. When he was interviewed by BPS on February 6, 2013, he was given copies of the three anonymous letters, but was not told that the anonymous letter writer was Sgt. Dan O'Neil. At the interview he was cautioned that he may be subject to a polygraph examination. Lt. Hayes testified that he told Capt. Stulce that he wanted to take a polygraph, but his request was never responded to, and the Department never requested one.

A second BPS interview of Lt. Hayes was conducted on March 14, 2013. This interview was as a result of the complaint Lt. Hayes made against Sgt. O'Neil once he learned that O'Neil authored the anonymous letters. Before being interviewed by BPS on this second occasion, Lt. Hayes tendered to Capt. Stulce a private polygraph examination that he had taken prior to this second interview. In addition to Lt. Hayes' testimony on this point, the fact of this tender is documented in the Department's **Exhibit #15**, Section C 17 at page 24, which is the BPS transcript of the March 14, 2013 interview. This tender of the private polygraph was made again in conjunction with **Exhibit BB** discussed below.

Following his second BPS interview, Lt. Hayes had a pre-termination meeting with Lt. Col. Gregory and Executive Director Bill Howe in which he received a pre-termination letter. He next met with Chief Fitch. He identified **Exhibit BB**, as a document he presented to Chief Fitch at this meeting in an attempt to respond to the allegations against him. (Note: Mr. Bruntrager's letter to Chief Fitch dated April 26, 2013, was part of Exhibit BB, but was separately marked and received into evidence as Department's **Exhibit 21**, so the letter was not included with Exhibit BB at the hearing)

Lt. Hayes told the Chief he was concerned about how the investigation had been conducted. One of Lt. Hayes' criticisms of the investigation is the fact that not all of the B Platoon officers were interviewed by BPS. As an example, Lt. Hayes mentioned in his testimony some of the B Platoon officers that were not interviewed by BPS. Those officers are: Ruhland, Govero, Medlin, Steinhoff, Belcher, Logaglio, Eller, Costa, Katic, and Spicer.

At the conclusion of his testimony, Lt. Hayes denied the allegations against him and testified that he never instructed anyone under his command to violate the rights of citizens of the Fourth Precinct of St. Louis County. He believes the allegations were planned and fabricated primarily by Sgt. Dan O'Neil. Lt. Hayes testified that he never made any statements such as the following:

"Let's make the cells a little more colorful today."

"It's going to be a black Monday" (...or Wednesday)

"Let's arrest those people." (accompanied by a gesture to his skin)

"We are going to go out and arrest every nigger at the mall."

Lt. Hayes further testified that he taught and instructed members of the B Platoon to arrest based upon reasonable suspicion and probable cause and to treat all people with respect irrespective of race, creed, or color.

## DISCUSSION

*"Truth will ultimately prevail where there is pains to bring it to light."  
-George Washington*

This case is troubling on many levels. First, the subject matter giving rise to the discipline eventually meted out to Lt. Patrick Hayes is that of pernicious racism. In the context of the police work which forms the backdrop of this disciplinary investigation, it is involved in allegations of racial profiling being a predicate to the stopping and arresting of African-Americans in the Fourth Precinct of the St. Louis County Police Department. Another aspect of this case giving rise to concern is the nature and extent of the investigation conducted by the Bureau of Professional Standards into the allegations leading to Lt. Hayes' termination. And certainly not the least area of concern is what appears to be a significant lack of candor on the part of many of the officers that were involved in the investigation.

Certain members of the B Platoon and a few other officers of the Fourth Precinct form the cast of involved characters. The precinct, its substations, and certain key locations within the geographic boundaries of the Fourth Precinct form the theatrical stage upon which this tragic drama unfolds. But before the curtain is lifted, the setting must be laid out.

Predating April of 2012, the Fourth Precinct was commanded by Captain Monteleone. The B Platoon was headed by Lieutenant Karl Bulla. What can be gleaned from the testimony is that both Captain Monteleone and Lieutenant Bulla were amiable and well-liked by the officers under their command. What was more definitively established is that good order and discipline had grown lax over a period of time leading up to the Spring of 2012 to the point that at least insofar as the B Platoon was concerned, Lt. Bulla had either lost or abdicated day-to-day control of matters to clique of more senior officers who had the blessing and approval of an administratively inept, leadership-challenged "pied piper of a sergeant," more prone to engaging in juvenile antics, rather than role model behavior. One hearing this testimony is left with the impression that B Platoon, for the most part, was run like a disorganized group of cub scouts under the direction of Sgt. Daniel O'Neil instead of professional police officers of the caliber that calls themselves "The Proud Ones."

This tightly knit group of B Platoon officers appear to have become demonstrably lazy and disinterested in performing their patrol duties. Self-initiated police work was at a low ebb. The officers in this clique apparently equated tenure on the job as a pass which relieved them from their responsibility to provide a full day's work for a full day's pay.

For example, evidence adduced at the hearing established that multiple officers frequently gathered while on duty behind an abandoned structure in Jefferson Barracks Park that they named the "Lake House," in order to smoke cigars and "hang out." Ostensibly, some of the officers assembled at this location for purposes of a meal break. But, the frequency and number of officers gathering there at a given time – as many as five and six cars, some outside of their geographic beat assignments – and the fact that one officer even described their assembly at this location as "hiding," is more indicative of patrol avoidance rather than meal break sustenance. And surely, this conduct would be disfavored by most citizens of St. Louis County were it to come to their attention. The frequent mantra by the officers that they remained "radio responsive" while at this

location does little to justify the practice, especially when police visibility is thought by most in law enforcement to be a tool of crime deterrence.

And speaking of crime, it was running rampant in the Fourth Precinct of St. Louis County around this time period – especially at the South County Shopping Mall and the Wal-Mart Store. It is against this backdrop that new blood was instilled into the Fourth Precinct.

Captain Schneider was transferred to the Fourth Precinct in the Spring of 2012, to be the new precinct commander. Lieutenant Hoots and Lieutenant Tate came on board at approximately the same time. Both were newly promoted to the rank of lieutenant. Almost immediately after taking over the Fourth Precinct, Captain Schneider prevailed upon Lieutenant Hayes to take over leadership of the B Platoon. Captain Schneider was aware of the situation in the B Platoon and with the lack of leadership and other issues with Sergeant Dan O'Neil. He did not believe a newly-promoted lieutenant was the prudent choice to take over B Platoon and deal with the entrenched officers and associated problems. It was for this reason that he pressed Lieutenant Hayes to assume the task.

Mindful of this background, I turn to the complaint leveled against Lieutenant Hayes. The fountainhead of the allegations against him spring from a series of three anonymous letters which we now know were penned by Sgt. O'Neil. The first such letter landed on then Chief Fitch's desk on Christmas Eve, December 24, 2012. The other two followed shortly thereafter. Based upon these three missives, an investigation was launched by the Bureau of Professional Standards (BPS) at the direction of Chief Fitch.

Sgt. O'Neil provided two statements to BPS. He testified at a deposition and again at this hearing. His veracity is central to the allegations against Lt. Hayes and the issue of whether or not the Board should uphold the discipline (termination) or reach some alternative result. As with all witnesses who testified and other evidence presented, the totality of Sgt. O'Neil's statements and testimony have been considered by this Hearing Officer. The inescapable conclusion reached is that Sgt. O'Neil is not a credible witness concerning the allegations against Lt. Hayes.

First, the allegations leveled against Lt. Hayes purportedly occurred sometime during the months of Spring, Summer and Fall of 2012. And yet, Sgt. O'Neil did not launch his first anonymous letter until December 24, 2012. If he, in fact, had heard improper orders given, or racially charged statements made by Lt. Hayes, he was duty bound by Departmental General Orders to report this to a superior officer. He proffered explanations for why that was not done and why this first letter and the subsequent two were issued anonymously. But coming from a seasoned veteran officer with thirteen years of experience, including undercover narcotics work, his reasons were feeble, at best.

Next, his timing in issuing these anonymous letters is highly suspect and devoid of any coincidence considering the context of certain transfers of fellow officers and the ample reasons he had to suspect his own unwanted transfer was imminent.

Continuing, one of the key aspect of the allegations contained in the first anonymous letter (**Exhibit 8**) was that offensive comments ("Not you guys, you're the good ones.") were made directly to African-American officers (Lawrence and Weston) in the precinct. First, the occasion providing the subtext for a comments similar to the one stated in O'Neil's letter involved only one

African-American officer, to wit: Officer Lawrence. Secondly, the evidence coming from Officer Lawrence's own lips established beyond question that the actual comment that was made was not offensive to Lawrence. How then is one to ascribe any veracity to the other comments that O'Neil alleges Lt. Hayes made if he has distorted and embellished this key allegation to suit his agenda?

The erosion of Sgt. O'Neil's credibility continued as other evidence was presented throughout the hearing. Sgt. Joanna Jensen, the newly-promoted sergeant serving alongside Sgt. O'Neil in B Platoon was presented as a supporting witness to some of the O'Neil's allegations. She appeared nervous at times during her testimony. Clearly she did not enjoy the position in which she found herself. The impression given was that she was new to this B Platoon club, wanted to fit in, and did not want to rock the boat. Through her testimony she walked a tightrope between lending support to O'Neil's allegations, while at the same time, testifying to some of O'Neil's glaring deficiencies as established through the testimony of other witnesses. Her credibility suffered upon cross-examination when inconsistencies were shown between her hearing testimony and her three prior statements – two of which were to BPS, and the third being her deposition.

Presumably to bolster his own credibility, Sgt. O'Neil testified that he was so troubled by the conduct of Lt. Hayes, he had a personal conversation with his self-professed friend, Captain Dennis Elze, while Elze was at his house socializing. O'Neil said he sought out Elze's advice and guidance on how to handle the Hayes situation. Captain Elze, now retired from St. Louis County Police Department, upended Sgt. O'Neil's account in dramatic fashion when he appeared at the hearing and testified that no such conversation ever took place.

The *coup de grâce* for Sgt. O'Neil's credibility was the testimony from Lt. Hoots concerning Sgt. O'Neil's involvement in the "shots fired / domestic disturbance call" incident mentioned in the evidence.

Added to the objective factors when weighing the credibility of a witness is the subjective assessment of a witness' overall demeanor as determined by the trier of fact. On that score, my impression of Sgt. O'Neil was that he was not a believable witness.

What makes this case particularly disturbing is testimony given under oath by eight other officers lending support to the racial profiling allegations against Lt. Hayes. The hearing testimony and other evidence from these witnesses has been summarized above. Only the highlights of testimony from these witnesses will be briefly noted here.

Officer Bono: Other than Sgt. O'Neil, Officer Bono could not remember the names of a single person who was present when any of the alleged incendiary statements or gestures by Lt. Hayes were made. He then acknowledged the statement he made in his prior deposition testimony in which he said he "did not think this matter was big deal." There was no explanation for this inexplicable dichotomy. Having supported Sgt. O'Neil's account, did he at this stage already regret doing so and being drawn into this investigation? By this comment, was he trying to defuse the developing investigation or distance himself from consequences he did not expect or intend? These are plausible explanations especially in view of the comment he made to Lt. Hoots which is referenced later in this discussion.



Officer Bieri: He was not interviewed by BPS. Although he was aware of the investigation being conducted, he never made any effort to contact BPS to report anything he claims to have heard Lt. Hayes say. He was transferred to Wildwood Precinct in November of 2012.

Officer Merry: He worked the Casino beat. He could not recall a single person present when any of the comments were made that he claims Lt. Hayes said. When he gave his BPS statement, he could not recall if Sgt. O'Neil was present. At the hearing he changed his recollection to say that Sgt. O'Neil was present. In contrast to his hearing testimony, he acknowledged under cross-examination that when he testified at his deposition, he could not recall the exact comments he claims Lt. Hayes, nor could he recall if Lt. Hayes used the word "black." Lt. Hayes denied Merry the use of a personal "P" car.

Officer Holtz: He also could not identify a single person present when he claims Lt. Hayes made an inappropriate statement.

Officer Hollenback: This is the officer who contacted Officer Lawrence and told him it is "us against the white shirts."

Officer Rickard: He testified that Sgt. O'Neil and Sgt. Jensen were present when the alleged "black day" statement(s) were made by Lt. Hayes. However, during cross-examination it was shown that at his deposition he said he could not recall a single person present when that statement was made. As for any racial profiling comments alleged to have been made by Lt. Hayes, he was unable to provide any specific details. Rickard was very outspoken in his complaints about having to transport prisoners arrested by other officers. He disagreed with Lt. Hayes about production and the issuing of tickets. Lt. Hayes threatened to take away his take-home car if Rickard's production did not improve. In August 2012, shortly after his second confrontation with Lt. Hayes over differences in opinion regarding police work philosophy, he was transferred to the Third Precinct.

Officer Petty: By his testimony, he placed himself at the location where Lt. Hayes is alleged to have made the offensive statements in question. He established this based upon the beat he said he was assigned to, and the station where that beat made relief. This testimony and rationale and the witness' credibility on this point was totally undercut on cross-examination.

Officer Matthews: This officer did not testify. Excerpts of his deposition testimony were read into evidence. These excerpts related to statements made by Lt. Hayes regarding blacks with temp tags being stopped. This deposition testimony was ineffectual for the point it was intended to establish. The context for this statement, which was provided through the testimony and evidence of other witnesses, showed that as it was actually made as part of a criminal profiling information as distinguished from any racial profiling.

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Lt. Hayes was assigned to B Platoon on April 29, 2012. Indications are that the racial profiling statements attributed to him occurred shortly thereafter in either the Spring or Summer of 2012. Yet, as outraged as these officers professed to be, not one of them came forward to report any wrongdoing. Not one of these officers made a complaint to BPS. The rote excuse principally relied on was that their sergeants were aware. Therefore, there was no need for them to take any

action. This, of course, ignores the reality of the situation. If this was their respective justification for taking lack of reporting then it would have been abundantly clear to these officers that months were passing by without action having been taken by either sergeant to address this issue with someone higher up in the chain of command. Not one of these officers spoke to anyone who held a supervisory rank above Lt. Hayes. No one did anything or said anything – that is until seven or more months later when BPS came calling to take statements on the heels of Sgt. O’Neil’s anonymous letter writing campaign. It appears that it was then that they followed their roles and played their parts reciting for BPS what had been scripted for them by Sgt. O’Neil, the master playwright for this drama.

And when BPS did investigate, unfortunately the scope and thoroughness of the investigation is not what one would have expected or that Lt. Hayes deserved considering the serious nature of the charge. Not intending to disparage Lt. O’Neill, it is unfortunate that he was chosen to lead up the BPS investigation of this complaint. As a former B Platoon member, he had a close pre-existing relationship with many of the B Platoon members involved in this investigation and was admittedly a close personal friend of at least one the officers who supported the allegations against Lt. Hayes. Such circumstances can often have the tendency to tamp down the vigorous questioning of witnesses that is necessary to ferret out the truth especially when, as here, there was substantial indication that most of the officers standing behind the allegations against Lt. Hayes were displeased with his demanding management style and had ample motivation to exact retribution for unwanted transfers, threatened transfers, denial of take home (“P”) cars, beat transfers etc.

There was testimony to suggest that this investigation was conducted like a homicide investigation. That certainly did not appear to be true. I found that for the most part, the questioning of witness to be a bit tepid. Probing and challenging questioning appeared lacking. Instead, the questioning was more along the lines of tell me what you know about this, and then accepting the responses being the gospel truth.

There was also the fact that Lt. O’Neill worked secondary employment with other B Platoon members at the South County Mall, a venue that formed the backdrop for the racial profiling allegations featured prominently in this investigation. When you add to this the contentious personal history he had with the Capt. Schneider, the Fourth Precinct commander prudence dictated another choice for the investigator to conduct this investigation.

More significant than all of these factors, however, is the incompleteness of the investigation. Even though Lt. O’Neill may not have been the preferred choice to head the investigation, to his credit, he recognized that more needed to be done. He recommended that Officer Torizzo, Capt. Schneider and Lt. Hayes be re-interviewed, but Chief Fitch did not approve this.

Polygraph examination is a discretionary option under the Department’s General Orders. Everyone that was interviewed by BPS was cautioned that they could be subject to a polygraph examination. Everyone was aware of Chief Fitch’s “you lie, you die” policy.

Sgt. O’Neil and Officer Tom Nobel requested that they be given a polygraph examination – requests that Lt. O’Neil found to be reasonable. Capt. Schneider told Chief Fitch, BPS Director Bill Howe and Lt. Col. Ken Cox and Col. Terry Robards that he was willing to take a polygraph

examination. Lt. Hayes made a request to Chief Fitch that he be given a polygraph; although he preconditioned his request that the alleging officers first be administered polygraph exams. There was also evidence that Lt. Hayes tendered to Capt. Stulce the results of a privately administered polygraph examination.

And yet, all of this having been noted, and even with allegations as controversial as these, not to mention a command rank officer's career at stake, one would find it curious, to say the least, why no polygraph examinations were conducted. That answer to that conundrum was provided by former Chief Fitch's explanation concerning the circumstances under which he would elect to use the polygraph. Frankly, Mr. Fitch's testimony on that account was befuddling.

In passing, it is also interesting to note the fact that Chief Fitch exonerated Officer Torizzo on the racial profiling allegations against him that stemmed from the Hayes investigation. This is ironic since Sgt. O'Neil, and the officers supporting the allegations against Lt. Hayes, pointed to Officer Torizzo's arrest record as evidence to corroborate that Lt. Hayes gave orders for racial profiling.

Perhaps the most glaring deficiency in the entire BPS investigation is the fact that BPS did not interview every member of B Platoon during the period in question. Considering the coterie of alleging officers' inability to identify other witnesses present when Lt. Hayes allegedly made the racially inappropriate statements and the significance placed upon who made relief at which station or substation, it seems that a most fundamental investigative step would be to interview all potential witnesses to determine what was, or was not, said. Sadly, this was not done. Lt. O'Neill provided names of a few officers he approached and who said they were not present. He accepted their answer and did not pursue this further through independent verification. Others that may have been present and may have had important information to contribute were simply not interviewed. This leaves one to speculate about other officers who were certainly present at the various roll calls and who, if interviewed, may have given contradictory statements to those made by Sgt. Dan O'Neil and the officers who supported the allegations against Lt. Hayes.

Lt. O'Neill identified Exhibit AQ, the 28-day schedules for the Fourth Precinct B Platoon for the entire year 2012. Lt. O'Neill testified that he did not have access to these schedules in BPS and would have had to go to either the computer services department or the precinct to print out these schedules. He further testified that he did not do this. He said he did not believe these schedules to be relevant to his investigation. I would disagree with that thinking. For instance, Lt. O'Neill acknowledged that these schedules reflect that some of the officers who testified they did not make relief at the main station did in fact make relief there. Lt. O'Neill made no independent determination about who made relief at which location. Instead, he accepted what officers told him when he asked them where they made relief. As demonstrated, use of the schedules would have been an important investigative tool to determine this information.

The conclusion to be reached with regard to the BPS investigation of Lt. Hayes is that it was incomplete and lacking in investigative rigor. Due process and fundamental fairness dictates that a command rank officer with over twenty years of distinguished law enforcement service facing scurrilous, character destroying, career ending allegations, deserves a more thorough effort than was demonstrated in this case.

If there is a single piece of testimonial evidence which distills the essence of the entire case against Lt. Hayes, it is the testimony from Lt. Hoots, who worked secondary employment at South County Mall with Officer Russ Bono and Lt. Matt O'Neill. Lt. Hoots testified to a conversation he had with Officer Bono while they were working secondary employment at the mall in which Bono told him he was upset with all the "stuff" that was getting way out of control and he felt Sgt. O'Neil stabbed them in the back by dragging them all into this mess and that it was all BS!

Reduced to its essence, Lt. Hayes had been accused of being a racist. A good indicator of the true nature of a person's character is to look at what a person chooses to do with his or her own uncompensated personal free time away from work; away from his co-workers and peers. In doing so in this instance, one finds a person who has devoted his time over a fifteen-year period to the work of Habit for Humanity in the City of St. Louis and as a member of the St. Vincent DePaul Society. Both of these organizations benefit the urban poor, a large segment of which is composed of African-Americans and other minorities. Finally, Lt. Hayes has worked with Catholic Charities sponsoring African-American refugees. One has to ask: Is this volunteer activity consistent with a person who is a racist? Does this square with the man portrayed by Sgt. O'Neil and the others?

In the terminology used by BPS, the evidence establishes that the disciplinary determination on the complaint against Lt. Hayes, should have been "Not Sustained."

[Any Board Members that did not have the opportunity to hear all the testimony and evidence presented are encouraged to avail themselves of the hearing transcript in order to review the evidence in its entirety, should they be inclined to do so. Suffice it to say that with a transcript approaching 3,000 pages, and additional documentary exhibits of several hundred pages, it would be counter-intuitive for this discussion section to attempt to provide in detail each factor supporting the conclusion ultimately reached. And, it is important to keep in mind that fundamental to the role of a hearing officer is his or her task to make determinations of witness credibility based not only on what words rolls off a witness' tongue, but upon assessment of such intangible factors such as a witness' demeanor.]

### **FINDINGS OF FACT**

Based upon the weight of relevant, credible testimony and other evidence adduced at the hearing, findings of fact are hereby made as follows:

1. Pursuant to Article IV, Section 4.270.1, of the St. Louis County Charter (Department Exhibit #2) adopted by the voters of St. Louis County on November 6, 1979, the Board of Police Commissioners is in charge of the Department of Police;
2. Pursuant to Article IV, Section 4.270.7, of said Charter, the Board of Police Commissioners has the duty and power to promulgate, upon recommendation of the Superintendent of Police, a manual of rules and regulations for the qualifications, conduct and discipline of personnel of the Department of Police and the power to hear and determine appeals from the decisions of the Superintendent of Police on disciplinary matters arising within the Department;
3. Article IV, Section 4.280, of said Charter provides that the Superintendent of Police shall remove, suspend or take other disciplinary action against all personnel and other employees of the Department in accordance with the provisions contained in the Charter and the rules and

regulations adopted by the Board of Police Commissioners. Said Section further provides that all cases of disciplinary action shall be subject to each employee's right of appeal to the Board of Police Commissioners, whose findings and orders shall be final and conclusive.

4. Over a period of time leading up to the Spring of 2012, good order and discipline had grown lax the Fourth Precinct B Platoon. The officers became demonstrably lazy and disinterested in performing their patrol duties and self-initiated police work was at a low ebb. A clique of mostly senior officers equated tenure on the job as a pass which relieved them from their responsibility to provide a full day's work for a full day's pay. This situation was obvious to the younger/newer officers such as Officer Lawrence and Officer Dlugos, and it affected their morale. The climate in B Platoon had deteriorated to the point that Officer Dlugos, a young aggressive female officer structured her work schedule on a particular day based upon which B Platoon officers were working because some of the officers she could not count on to provide her backup in situations such as when having to search a vehicle alone. She was not comfortable calling B Platoon members such as Officer Bono or Officer Rickard because she perceived that their attitude would be that she was bothering them.

5. In 2012, when Sgt. O'Neil was supposed to be on duty, he frequently could not be found by either Sgt. Jensen or Lt. Hayes.

6. In 2012, when Sgt. O'Neil was supposed to be conducting roll call at the Fourth Precinct Oakville substation, he at times was not present. On several instances Lt. Hayes appeared at the Oakville Substation at roll call time and Sgt. O'Neil not present. When Lt. Hayes called him and asked his location, Sgt. O'Neil would be caught in a lie by saying he was at the station, when in fact he was not.

7. In 2012 Lt. Patrick Hayes was employed by the St. Louis County Police Department.

8. On or about April 29, 2012, Lt. Hayes was transferred to the Fourth Precinct.

9. In 2012, and at all time relevant to this matter, the Fourth Precinct operated out of a main station and two substations referred to as the Mehlville Substation and the Oakville Substation.

10. Beat shifts did not start at the Fourth Precinct substations until thirty minutes after the roll call conducted at the main Fourth Precinct station.

11. Roll calls in the Fourth Precinct substations were not held at the same time as roll call at the main Fourth Precinct station.

12. In 2012, except for Officer Torizzo, officers of the B Platoon Fourth Precinct were a very close, tight-knit group that socialized together which would include going to a bar for drinks, go to one another's house and go on float trips.

13. An abandoned military residential-type structure on the property of Jefferson Barracks Park where certain B Platoon officers would meet and gather while on duty was referred to as the "Lake House" by officers who frequented this location.

14. Officer Russell Bono was assigned to the Fourth Precinct B Platoon in 2012 and 2013 and had been working in the Fourth Precinct since approximately 2003.

15. Officer Bono did not lodge any complaint against Lt. Hayes or contact BPS regarding racial profiling orders or regarding racial statements of any nature.

16. Officer Mike Bieri served in the Fourth Precinct from October 2007 until approximately November 2012, when he was transferred to the Wildwood Precinct.

17. In 2012, Officer Bieri was a member of B Platoon.

18. Officer Bieri was not interviewed by BPS regarding the Hayes investigation.

19. Officer Bieri did not lodge any complaint against Lt. Hayes or contact BPS regarding racial profiling orders or regarding racial statements of any nature.

20. Officer Bieri frequented the Lake House and described the officers present there as "hiding."

21. As many as five police cars at a time could be at the Lake House. Some of the officers there would be out of their assigned beat.

22. Approximately ten to fourteen cars operated out of the Fourth Precinct on a typical day. Approximately nine of the cars could be B Platoon cars.

23. On those occasions when as many as five B Platoon officers (cars) were hanging out at the Lake House, this would mean that approximately one-half to one-third of all the B Platoon cars would not be visible to the public and would not be engaged in patrol activity.

24. At one point in time in 2012, Lt. Hayes denied Officer Merry the use of a personal "P" or "take-home" car.

25. Officer Nathaniel E. Merry was assigned to the Fourth Precinct B Platoon in 2012 and 2013.

26. Officer Merry was assigned to the "Casino beat" in 2012.

27. Officer Merry frequented the Lake House.

28. Officer Merry did not lodge any complaint against Lt. Hayes or contact BPS regarding racial profiling orders or regarding racial statements of any nature.

29. Officer Justin Holtz was assigned to B Platoon Fourth Precinct in 2012.

30. Officer Holtz did not lodge any complaint against Lt. Hayes or contact BPS regarding racial profiling orders or regarding racial statements of any nature.

31. Officer Bradley Hollenback was assigned to B Platoon Fourth Precinct from 2008 until 2014, when he was transferred.

32. Officer Hollenback was the training officer for Officer Ryan Lawrence.

33. During the course of the Hayes investigation, Officer Hollenback sent Officer Lawrence a telephone text message in which he said to Officer Lawrence: "...it is us against the white shirts..."

34. Officer Hollenback was one of a group of officers that complained about having to transport Officer Torizzo's prisoners.

35. Officer Bieri did not lodge any complaint against Lt. Hayes or contact BPS regarding racial profiling orders or regarding racial statements of any nature.

36. Officer Christopher Rickard is a thirteen year veteran of the St. Louis County Police Department and for the first eight months of 2012, he was assigned to the B Platoon in the Fourth Precinct.

37. Officer Rickard was assigned a "take-home" car.

38. Officer Rickard did not lodge any complaint against Lt. Hayes or contact BPS regarding racial profiling orders or regarding racial statements of any nature.

39. Officer Rickard took it upon himself to perform a computer search to investigate Officer Torizzo's CAD calls and/or actual stops, arrest reports for the month of July 2012 and found there was only a difference of one between arrests of black subjects versus white subject; the tally being 20 white arrests to 19 black arrests.

40. Officer Rickard did not like B Platoon officer having to transport Officer Torizzo's prisoners.

41. Officer Rickard was transferred in mid-August 2012 following a second contentious meeting with Lt. Hayes over his complaints about transporting Torizzo's prisoners and his differences with Lt. Hayes over philosophy of police work.

42. Officer Michael Petty was assigned to the Fourth Precinct B Platoon upon his completion of the Police Academy approximately six years ago.

43. Officer Petty was transferred from the Fourth Precinct in June of 2012.

44. Officer Petty did not lodge any complaint against Lt. Hayes or contact BPS regarding racial profiling orders or regarding racial statements of any nature.

45. Sgt. Joanna Jensen was promoted to the rank of sergeant in May 2012 and assigned to B Platoon in the Fourth Precinct. Upon her promotion to sergeant, she was on probationary status for a one year period.

46. Sgt. Jensen did not lodge any complaint against Lt. Hayes or contact BPS regarding racial profiling orders or regarding racial statements of any nature.

47. Sgt. Dan O'Neil authorized the three anonymous letters identified as Exhibits 8, 9 and 10.

48. Lt. Matthew O'Neil himself never had a meeting with Chief Fitch about discipline for Lt. Hayes.

49. Lt. O'Neill spoke with Officer Spicer, a B Platoon officer concerning the Hayes investigation but did not take a formal statement from him and Officer Spicer is not mentioned in Lt. O'Neill's report.

50. Lt. O'Neill spoke with Officer Ruhland, a B Platoon officer, but did not take a formal statement from him as part of his report.

51. Lt. O'Neill spoke with Officer Jacobsmeyer, a B Platoon officer, but did not take a formal statement from him as part of his report.

52. Some of the B Platoon officers Lt. O'Neill spoke with claimed they did not hear Lt. Hayes make any of the statements in question. Lt. O'Neill ignoring the possibility that these officers may not have wanted to get drawn into the investigation, accepted these assertions without checking any duty schedules to determine which officers would have been present at the same place and time as other officers claiming to have heard such statements.

53. Included among the B Platoon officers Lt. O'Neill did not interview are Officers Amy Dlugos, Angela Logaglio and Samantha Sirles; Officers Bieri, Borner, Manning, Inglehart, Gorvero, and Sgts. Matt Redmond, Craig Krisca and Sgt. Dabbs.

54. There was not a single person that was able to provide Lt. O'Neill with a date or a time when any of the alleged statements in question were made by Lt. Hayes.

55. Lt. O'Neill worked secondary employment at South County Mall with Officer Russ Bono and Lt. Hoots.

56. Lt. O'Neill and Officer Bono were best of friends.

57. During the time that Lt. O'Neill worked secondary employment at South County Mall with Officer Bono, Lt. Hoots and other police officers working secondary there, no one ever said to him that there was a racial profiling problem at the mall or that Lt. Hayes was telling them to racially profile.

58. Lt. O'Neill recommended that Officer Torizzo, Capt. Schneider and Lt. Hayes be re-interviewed, but he was not given authority to do so by Chief Fitch.

59. Lt. O'Neill recommended that Officer Brett Belcher be interviewed, but this was not followed up.

60. Lt. O'Neill had an inherent conflict of interest due to his close association with members of B Platoon and his questionable personal history with Capt. Schneider. He should not have been designated to be the investigating officer on this case in order to maintain the integrity of the investigation.

61. Officer Torizzo was not liked by certain officers in B Platoon.

62. Officer Torizzo was not part of a B Platoon "clique" of officers.



63. Certain officers in B Platoon resented the hours that Officer Torizzo was allowed to work.

64. Certain officers in B Platoon resented having to transport prisoners arrested by Officer Torizzo.

65. Officer Torizzo's patrol vehicle was tampered with in 2012 and cartoons of him were hung up in the precinct station.

66. Sgt. O'Neil instructed Officer Torizzo to slow down with his arrest and to take it easy and not kill himself.

67. Officer Torizzo was shunned by other B Platoon officers in 2012.

68. In 2012, Officer Torizzo was assigned to a special enforcement car by Capt. Schneider for the purpose of carrying out aggressive patrol at South County Mall.

69. Officer Torizzo was not aware of the allegations against Lt. Hayes until January of 2013.

70. Officer Torizzo was never given an illegal order by Lt. Hayes or Capt. Schneider.

71. Lt. Hayes and Capt. Schneider never told Officer Torizzo to ignore reasonable suspicion or probable cause.

72. Officer Torizzo never heard Lt. Hayes or Capt. Schneider make any of the racial statements like those that others have said Lt. Hayes made.

73. Lt. Leslee Tate was promoted to the rank of lieutenant in March of 2012 and assigned to the Fourth Precinct in command of the A Platoon under precinct commander Capt. Jim Schneider.

74. Lt. Tate participated in frequent watch commander meetings in 2012 with Lt. Hoots, Lt. Hayes and Capt. Schneider regarding the rampant shoplifting and retail crime in the precinct.

75. In 2012, or at any other time, Lt. Tate did not ever hear Lt. Hayes or Capt. Schneider give any racial profiling orders.

76. In 2012, or at any other time, Lt. Tate never heard Lt. Hayes use any racial epithets.

77. In 2012, Lt. Hayes discussed with Lt. Tate the problem he was having with a clique of officers in B Platoon and problems he was having with Sgt. Dan O'Neil's leadership and administrative skills.

78. In 2012, Lt. Tate was aware that Capt. Schneider was attempting to transfer Sgt. O'Neil, but was having difficulty finding anyone willing to accept him.

79. When ten-hour shifts were decided upon in late 2102, Sgt. O'Neil in protest, used a red marker to deface anything he could find that had the number 10 on it, including Lt. Tate's office clock.

80. Prior to knowledge surfacing of the anonymous letter authored by Sgt. O'Neil, Lt. Tate had never heard any rumors about illegal orders being given by Lt. Hayes and no member of B Platoon had ever approached her with any information about Lt. Hayes giving illegal orders.

81. The Bureau of Professional Standards ("BPS") investigation of Lt. Hayes was grossly incomplete in its scope and thoroughness.

82. Officer Ryan Lawrence is an African-American police officer who in 2012 and 2013 was employed by the St. Louis County Police Department and assigned to the B Platoon in the Fourth Precinct.

83. Before Lt. Hayes was assigned as watch commander of the Fourth Precinct B Platoon, the watch commander for that platoon was Lt. Karl Bulla, and the precinct commander was Capt. Monteleone.

84. Prior to April 29, 2012, when Lt. Hayes was assigned to B Platoon, Officer Lawrence had a conversation with Lt. Hayes in which Lt. Hayes complimented him, expressed interest in Lawrence's career and gave Lawrence encouragement about how to further his career.

85. Officer Lawrence was not offended by the "not like you" comment made by Lt. Hayes as referenced in the evidence and the comment did not cause him any concern.

86. Officer Lawrence did not interpret the contextual statement which preceded the "not like you" comment made by Lt. Hayes, to be a racial profiling statement but instead a criminal profiling statement.

87. Officer Kris Weston was the only other African-American officer assigned to the Fourth Precinct in 2012. Officer Weston was not present when the "not like you" comment was made by Lt. Hayes.

88. In the Spring of 2012, Capt. Schneider received his promotion to the rank of captain. At the time of this promotion he was transferred to the Fourth Precinct and took over as commander of the precinct.

89. Prior to Capt. Schneider taking over the Fourth Precinct, Capt. Monteleone was the commander of the precinct and Lt. Karl Bulla was watch commander of the Fourth Precinct B Platoon.

90. Prior the arrival of Capt. Schneider and Lt. Hayes to the Fourth Precinct in the Spring of 2012, disciplinary control of the Fourth Precinct had been lost by those in command. Most of the seasoned officers had become lazy, indifferent and independent in the performance of their duties as police officers.

91. Crime in the Fourth precinct in the Spring and Summer of 2012 was rampant, especially at the retail establishments in South County Mall and the nearby Walmart. A large percentage of the crime involved larcenies of the shoplifting variety, including "snatch and grab" (or "grab and run") thefts.

92. During the Spring and Summer of 2012, intelligence bulletins such as "MIAC" and/or "MORCA" reports provided criminal profiling information that some of the snatch and grab thefts

were being perpetrated by black male subject driving a vehicle or vehicles with temporary license tags ("temp tags").

93. Lt. Hayes was tasked by Capt. Schneider with taking over command of B Platoon in order to provide leadership, discipline and an increase officer productivity, especially with regard to a clique of more senior officers including Rickard, Bono, Merry, Hollenback, Petty, Bieri, Katic and Sgt. Dan O'Neil.

94. Prior to December 2012, Lt. Hoots who was assigned to B Platoon never heard any rumors about Lt. Hayes giving any illegal orders.

95. Officer Amy Dlugos was assigned to the B Platoon during the Summer of 2012. She never heard Lt. Hayes make any statement about targeting black people, nor did she ever observe any conduct of Lt. Hayes of a racial nature. While assigned to B Platoon she never heard any scuttlebutt about Lt. Hayes making any statements of a racial nature.

96. Former St. Louis County Police Department Officer Gregory Van Mierlo, was assigned to B Platoon for five or six year and left in 2013. He never heard Lt. Hayes make a racist comment or do or say anything that would suggest or be construed to mean that individuals should be stopped on the basis of race alone.

97. Officer Samantha Jo Sirles was hired by the St. Louis County Police Academy in January 2012 and graduated the Police Academy in June of 2012. She was assigned to Fourth Precinct B Platoon. During the Summer and Fall of 2012, she never heard Lt. Hayes tell anyone in B Platoon to target people on the basis of race, nor did she ever hear him say anything that was of a racial nature or make any gesture that could be construed as a racial gesture.

98. Officer Matthew Jacobsmeyer was assigned to the B Platoon in the Spring, Summer and Fall of 2012 and he never heard Lt. Hayes make any statements or gestures of a racial nature or any statements indicating that people should be stopped based on their race. In conversations he had with B Platoon members, no one ever told him that they had actually heard Lt. Hayes make any statements of a racial nature.

99. Lt. Hoots held the rank of sergeant in 2010 and was under Lt. Hayes' command at that time. He was involved in supervisor meetings with Lt. Hayes and others to develop hotspot policing for areas where there was significant criminal activity involving retail theft at the mall and other retail stores. Intelligence information was gathered, including information about suspects -- including race and about vehicles involved. A special enforcement plan was put in place and approximately 300 arrests were made. A Chief's commendation was given for this effort. During this 2010 initiative Lt. Hayes never told any member of his platoon to arrest people based on their race or made any statements of a racial nature like the statements allegedly made in 2012.

100. After 2010, Lt. Hoots, while still a sergeant, was transferred to Jennings. He was then promoted to the rank of lieutenant in April 2012 and transferred back to the Fourth Precinct and assigned to the C Platoon. During the year 2012, he had occasion to attend watch commander meetings with Lt. Hayes, Lt. Tate and Capt. Schneider. Meeting to develop hotspot policing were held similar to those he participated with Lt. Hayes in 2010.

101. During 2012, Lt. Hayes never heard Capt. Schneider direct officers to arrest people based upon their race. He also never heard Capt. Schneider tell officers to ignore probable cause or reasonable suspicion.

102. Lt. Hoots was familiar with the clique of officers in B Platoon led by Officer Russ Bono.

103. Lt. Hoots had occasion in 2012 to observe Sgt. O'Neil allowing Officer Rickard completing work schedules that was the responsibility of Sgt. O'Neil.

104. In 2012, Lt. Hoots would frequently see B Platoon officers congregating at the Quick Trip contrary to Lt. Hayes' orders.

105. Prior to December of 2012, Lt. Hoots had not hear any rumors about Lt. Hayes giving any illegal orders.

106. Following Lt. Hayes being relieved of command of the B Platoon, Lt. Hoots became watch commander for this platoon.

107. While commander of the B Platoon, Lt. Hoots determined that Sgt. O'Neil improperly handled a shots fired domestic disturbance call, including instructions given to a probationary officer to "un-found" the call as if the call had never occurred when in fact there was a female victim and her child in a vehicle which had its window shot out. Lt. Hoots investigated this matter and made a report to BPS about Sgt. O'Neil's handling of this matter.

108. During the pendency of the Hayes investigation, Lt. Hoots was working secondary employment at the South County Mall with Lt. O'Neill and Officer Russ Bono. During a conversation with Officer Bono, Lt. Hoots was told by Bono that he was upset about all the "stuff" getting way out of control regarding the Hayes investigation and he felt Sgt. O'Neil had stabbed them in the back by dragging them all into this mess and that it was all "BS."

109. Lt. Hoots was shown the text message that Officer Lawrence received from Officer Hollenback and read it. The text message contained statements from Hollenback to Lawrence telling such things as he: "...needed to get on the right team..." / "...the white shirts are against us..." / "...you can't trust Lt. Hoots, he is a snake..."

110. After Lt. Hoots took over command of B Platoon from Lt. Hayes, at no time did any officer come to him and tell him that Lt. Hayes had given an illegal order.

111. Lt. Hayes let Sgt. O'Neil know that if his performance did not improve he was subject to transfer from the Fourth Precinct.

112. Lt. Hayes informed Officer Rickard that if his productivity did not improve he would lose his privileged of a take-home car and working on the desk.

113. Lt. Hayes threatened to transfer Officer Bono if his productivity did not improve.

114. Lt. Hayes took Officer Merry's Casino beat away from him and he was denied a take-home car when he was next in line to receive one.

115. Lt. Holtz was denied his request to transfer to the K-9 unit and recommended him for a transfer.

116. The May 13, 2013 disciplinary order of Chief Fitch terminating Lt. Hayes was within his authority and jurisdiction.

117. The disciplinary order of Chief Fitch terminating Lt. Hayes was unconstitutional because the scope and manner the BPS investigation denied Lt. Hayes due process.

118. The disciplinary order of Chief Fitch terminating Lt. Hayes was an abuse of his discretion.

119. The disciplinary order of Chief Fitch terminating Lt. Hayes was capricious.

120. The disciplinary order of Chief Fitch terminating Lt. Hayes was unreasonable.

### **CONCLUSIONS OF LAW**

The Department is the moving party in this action. It bears the burden of proof. *Heidebur v. Parker*, 505 S.W.2d 440, 444 (Mo. App. 1974). In this instance, the Department bears the burden of proving whether or not the disciplinary order of the Chief of Police terminating Lt. Hayes was constitutional; was within his authority and jurisdiction; was an abuse of his discretion; was arbitrary, capricious or unreasonable. In so doing, the Department must establish that the termination of Lt. Hayes was supported by preponderance of the evidence.

Preponderance of the evidence is a standard of proof that is, “[t]he degree or level of proof demanded in a specific case.” BLACK’S LAW DICTIONARY 1535 (9<sup>th</sup> ed. 2009). It is evidence which is of greater weight or more convincing than the evidence which is offered in opposition to it. It means that the evidence as a whole establishes that a fact is “more probable than not.” *State Bd. of Nursing v. Berry*, 32 S.W.3d 638, 642 (Mo. App. W.D. 2000). A preponderance of the evidence is the minimum standard of proof in civil cases. *Rodriguez v. Suzuki Motor Corp.*, 936 S.W. 2d 104, 110 (Mo. Banc 1996), citing *Santosky v. Kramer*, 455 U.S. at 755. It has been said that proof by a “preponderance of the evidence” is rock bottom at the fact-finding level of civil litigation. *Charlton v. Fed. Trade Comm’n*, 543 F.2d 903, 907 (D.C. Cir. 1976).


Proof by a preponderance of evidence is not some arithmetic formula by which the number of witnesses or stacks of documentary evidence presented by each party is added up to determine which side prevails. Rather, it is a determination of whether the party having the burden of proof has met that burden through the greater weight of credible evidence presented. It is not simply a matter of numbers. Substance and veracity are paramount. The context of facts, events and testimony can provide a lens through which truth can be brought into focus. Evidence is weighed on the basis of its persuasive value, not on the basis of quantity or amount. *Hanebrink v. Parker*, 506 S.W.2d 455, 458 (Mo. App. E.D. 1974). The trier of fact draws inferences and decides which of the parties’ positions are more probable, more credible and of greater weight. *Fujita v. Jeffries*, 714 S.W.2d 202, 206 (Mo. App. E.D. 1986). Both parties to a contested matter can present substantial evidence, however, only one can meet the preponderance of evidence standard. *Fujita, supra*.

Based upon the evidence adduced at the hearing, I do not believe the Department met its burden of proof because the preponderance of the evidence does not support the Department's case. Based solely upon on the evidence presented at this hearing and the reasonable inferences to be drawn therefrom, I find that the disciplinary order of Chief Fitch was within his authority and jurisdiction, but was unconstitutional, an abuse of his discretion, and was arbitrary, capricious and unreasonable.

### **RECOMMENDATION**

It is this Hearing Officer's recommendation that the St. Louis County Board of Police Commissioners overturn and set aside the discipline imposed on employee Lt. Patrick Hayes as undertaken by former Chief Timothy E. Fitch in his letter to Lt. Hayes dated May 13, 2013; and that the Board direct the current serving Chief of Police to enter an order restoring Mr. Hayes to his former position of employment as a lieutenant in the St. Louis County Police Department.

Dated: February 17, 2016

  
MICHAEL W. FLYNN,  
Hearing Officer  
Missouri Bar Number: 23342

### **CERTIFICATE OF SERVICE**

On the 16<sup>th</sup> day of February, 2016, I have directed that the above-described original transcript of the hearing be transmitted by e-mail to the Board members and to the parties' attorneys in electronic "E-Tran" format only, as instructed by the Board. This will be done via the services of Gretta Cairatti, Gore Perry Reporting and Video, 515 Olive Street, Suite 300, St. Louis, Missouri 63101.

Five duplicate originals of this Report of Findings of Fact, Conclusions of Law and Recommendation were hand-delivered to the St. Louis County Board of Police Commissioners this 17<sup>th</sup> day of February, 2016, together with the folder containing the original exhibits. The undersigned hereby further certifies that on this same date, a copy of the Report of Findings of Fact, Conclusions of Law and Recommendation was hand delivered to: Mr. Carl W. Becker and Ms. Lorena Merklin VonKaenel, Assistant County Counselors, Office of the St. Louis County Counselor, St. Louis County Government Center, 41 South Central Avenue, Ninth Floor, St. Louis, Missouri 63105; and to: Mr. Neil J. Bruntrager, Attorney at Law, Bruntrager & Billings P.C., 1735 S. Big Bend Blvd., St. Louis, Missouri 63117, Attorney for Appellant/Employee Lt. Patrick Hayes.

  
MICHAEL W. FLYNN