

CERTIFIED COPY

1 IN RE: INTERNAL AFFAIRS INVESTIGATION OF
2 CAPTAIN RICHARD GARDNER
3 IA NO.: 2011-09297
4

5 SWORN STATEMENT

6 OF

7 DIRECTOR KEVIN C. SWEAT
8

9 * * * * *

10 DATE TAKEN: DECEMBER 13, 2011

11 TIME: COMMENCED AT 11:05 A.M.
12 CONCLUDED AT 12:55 P.M.

13 PLACE: COUNTY OF VOLUSIA
14 LEGAL DEPARTMENT
15 DELAND, FLORIDA

16 STENOGRAPHICALLY
17 REPORTED BY: CHRISTIE SAMMARO, RMR, CRR
18 COURT REPORTER AND NOTARY PUBLIC
19

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9 ALSO PRESENT: Captain Nikki Dofflemyer

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1 THEREUPON

2 COURT REPORTER: Would you raise your right
3 hand, please. Do you swear or affirm the testimony
4 you're about to give will be the truth, so help you
5 God?

6 THE WITNESS: I do.

7 MS. DOFFLEMYER: This is Captain Nikki
8 Dofflemeyer with the Department of Public
9 Protection's Internal Affairs unit. Today's date
10 is the 13th of December 2011. The time is
11 approximately 11:10 hours. We're conducting this
12 interview with Director Kevin Sweat. We're at the
13 county admin building located in Daytona Beach,
14 Florida. This is a recorded interview statement
15 with Director Sweat. Director Sweat was given a
16 written notice of the intent to interview and
17 appear today and provide a sworn statement.
18 Director Sweat is not the subject of this
19 investigation. He is currently on duty, and has
20 been released from service to participate in this
21 interview. Director Sweat was provided a copy of
22 his Officer Bill of Rights and Advisement of
23 Garrity prior to this interview.

24 Also present in the room is Mr. John Whiteman,
25 attorney at law. He will be conducting this

1 interview today with Director Sweat.

2 Director Sweat, can you identify yourself for
3 the record, please?

4 THE WITNESS: I'm Kevin C. Sweat, director of
5 Volusia County Beach Safety.

6 MS. DOFFLEMYER: And, sir, be advised that
7 this is currently an active and open Internal
8 Affairs investigation. Per statute, you're not to
9 discuss any part of this investigation with anyone
10 until the case comes to closure.

11 THE WITNESS: Yes.

12 MS. DOFFLEMYER: Thank you.

13 **KEVIN C. SWEAT,**

14 having been first duly sworn, was examined
15 and testified upon his oath as follows:

16 EXAMINATION

17 BY MR. WHITEMAN:

18 Q By name is John Whiteman. I'm a private
19 attorney; I work at St. Johns Law Group in
20 St. Augustine. I don't know a lot of the background
21 things that you know, such as how the organization of
22 the department is set up, and so I probably will be
23 asking you some of those questions as well --

24 A Yes, sir.

25 Q -- to help me through this.

1 Has anyone told you why I'm here doing this,
2 as opposed to somebody from the county attorney's
3 office?

4 A Yes, sir.

5 Q Okay. Do you have any questions about that?

6 A No.

7 Q Okay. Good. You are Director Kevin Sweat?

8 A Yes.

9 Q Okay. And you are director of what?

10 A Division of Beach Safety, County of Volusia.

11 Q Okay. And who do you report to?

12 A Currently, Deputy Public Protection Director
13 Joe Pozzo.

14 Q Okay. Direct -- deputy public --

15 A Deputy director of Department of Public
16 Protection.

17 Q And then who is Mike Coffin?

18 A He is the director of the Department of Public
19 Protection.

20 Q And as that's set up, you have Mike at the
21 top, then you have his deputy, and how do the
22 organizational lines go from that?

23 A There are, I believe, seven different
24 divisions that they oversee, and one of them is the
25 Division of Beach Safety, which includes the department

1 that I am currently the director of, and then there's --
2 I could start guessing, but there's animal control,
3 corrections, EMS, fire, a few others.

4 Q Okay. And so there's seven divisions, and
5 you're in charge of the Division of Beach Safety?

6 A Yes, sir.

7 Q Okay. And how long have you been the director
8 of the Division of Beach Safety?

9 A Approximately ten years this month.

10 Q Now, I've read through some materials, and I
11 see words like lifeguard and senior lifeguard, and can
12 you tell me -- and I've also noticed senior lifeguard
13 appears to be a law enforcement officer. Can you sort
14 of give me a primer on how that works or what these
15 different positions are?

16 A Lifeguards are primarily part-time employees
17 that sit on lifeguard towers and provide some additional
18 duties, such as lunch reliefs and jet ski zone and
19 things of that nature. A senior lifeguard -- and
20 actually there's a step in between there. There's a
21 beach safety specialist that is a full-time lifeguard,
22 and there's also some temporary BSSs, which are 32 hours
23 instead of 40, but they serve the same role as -- they
24 perform lifeguard functions, are EMTs, do patrols, lunch
25 relief, things of that nature, but they do not have

1 sworn powers. The senior lifeguards are law enforcement
2 officers, emergency medical technicians, and lifeguards,
3 and they perform all of those functions.

4 Q Now, as the director of Division of Beach
5 Safety, are you in charge of lifeguards, senior
6 lifeguards, the beach safety specialists; they all come
7 under you?

8 A Ultimately, yes. There's layers in between.
9 There's lifeguard supervisors and there's a deputy
10 chief.

11 Q Okay. Now, do you know Paige Winters?

12 A Yes, sir.

13 Q And how do you know her?

14 A She is an employee of the Division of Beach
15 Safety.

16 Q Okay. And what type of employee is she, a
17 senior lifeguard, lifeguard?

18 A She is currently a senior lifeguard. She
19 started as a part-time lifeguard.

20 Q Okay. She's a senior lifeguard. Okay. And
21 do you know when she became a senior lifeguard?

22 A No, sir.

23 Q Can you give me an approximation?

24 A Within the last -- within the last year for
25 sure, and I'd say within the last six months.

1 Q Okay. So she was initially hired as a
2 lifeguard?

3 A Yes, sir.

4 Q And is she a long-term employee? I mean is --
5 I don't know -- how -- what would you --

6 A Two to three years is my estimate.

7 Q Two to three years. How old do you think she
8 is?

9 A Forties.

10 Q Okay. So she was employed at a fairly
11 advanced age for a lifeguard, or is that not --

12 A That would be your comment, not mine.

13 Q Well, I -- you know. Okay. Gotcha. But so
14 the two to three years that she's been employed goes
15 back to when she was first employed as a lifeguard?

16 A Yes, sir.

17 Q It sounds like it's a fairly large step to go
18 from a lifeguard to a senior lifeguard because now you
19 are a law enforcement officer, certified law enforcement
20 officer?

21 A Yes, I believe so.

22 Q Okay. What -- is there any kind of -- what
23 kind of training do they -- does a lifeguard get to
24 become a senior lifeguard?

25 A They would have to -- well, obviously they're

1 already trained as lifeguards. They'd have to become an
2 emergency medical technician, which would require a
3 semester out at the college, or another college of their
4 choosing. They would also require to take the basic law
5 enforcement academy, which is, I believe, somewhere
6 around 720 hours, estimate, as well as state test and
7 national test.

8 Q Okay. Is there any probationary period that
9 they go through when they are promoted to senior
10 lifeguard?

11 A Yes. They have a year probation.

12 Q So if she was promoted just within the last
13 year, then she'd still be a probationary --

14 A I believe she's still a probationary employee.

15 Q In addition to the basic LEO -- law
16 enforcement academy work that you mentioned, is there
17 any field training or anything like that that's done by
18 the department --

19 A Yes.

20 Q -- or the division?

21 A There's classroom field training as well as
22 ride-along field training.

23 Q Is there a specific course for that field
24 training, a number of hours or --

25 A I'm sure there is. It's a couple weeks in a

1 classroom, and then an additional, I think, four to six
2 weeks in the field, as an estimate.

3 Q And when they're in the field, is that when
4 they're assigned with someone else?

5 A They're assigned a field training officer who
6 is serving in that role year-round.

7 Q Okay. Okay. So the field training, you
8 think, is a couple weeks in class and then four weeks --

9 A An estimate of four to six weeks in the field.

10 Q Four to six weeks. Are you familiar with
11 Captain Gardner?

12 A Yes, sir.

13 Q What's his first name?

14 A Richard, I believe, is his technical full
15 name.

16 Q What do you call him, Rich?

17 A Rich.

18 Q Now, how are you familiar with him?

19 A He is -- was serving as the investigator for
20 the Division of Beach Safety.

21 Q Does the Division of Beach Safety have a group
22 of investigators, or just one investigator, or --

23 A There's one primarily assigned, and then as
24 cases dictate, we may assign additional assistants with
25 him.

1 Q Okay. I'm trying to think of this in the way
2 I think of a traditional sheriff's office; they usually
3 have like an investigative unit. And do you have an
4 investigative unit, or you just really have an
5 investigative officer, and then he handles the
6 investigations, but if he needs help, then you assign
7 another investigator?

8 A Correct. The way it currently works, we have
9 one person assigned to investigations. All of the level
10 one felonies are handled by the sheriff's office, so we
11 handle a lot of property crimes and things of that
12 nature, and as cases dictate, we would assign someone
13 else who's had the training, or needs the training with
14 him, to assist with his caseload.

15 Q And so now the -- his jurisdiction, because
16 you said the sheriff's office investigates certain
17 crimes as well, does it end where the sand ends, or how
18 does that work?

19 A No, he's got countywide jurisdiction.

20 Q Okay. If he's investigating a crime, is it a
21 crime that occurred on the beach --

22 A Yes.

23 Q -- as opposed to on the pavement -- I mean the
24 street, 50 feet off the beach?

25 A Correct. If it was off the beach, we would

1 give that to another jurisdiction, unless it happened on
2 an approach, which is part of the beach, then he would
3 investigate it, unless it was a level one felony, in
4 which he would turn it over to sheriff's office.

5 Q But if it's like a theft of somebody's
6 pocketbook on the sand, he can follow that wherever it
7 goes?

8 A Correct.

9 Q Is Captain Gardner, is he involved at all in
10 the field training program?

11 A No.

12 Q Okay. Does he -- now, that's -- he currently
13 is not. Has he in the past been involved with the field
14 training and evaluation program?

15 A Not to my knowledge.

16 Q Okay. You indicated there's a classroom
17 portion of it. Do you know whether he's -- whether he
18 currently teaches any portion of that or in the past has
19 taught any portion of that?

20 A Not to my knowledge. Captain Berard would
21 know that answer.

22 Q Captain who?

23 A Berard.

24 Q And he is?

25 A Oversees the training.

1 Q Okay. Is that a separate division, the
2 training, or --

3 A It's not a separate division. He's an
4 employee with the Division of Beach Safety and he
5 oversees training.

6 Q Okay. When you have one of these individuals
7 that's going from lifeguard to senior lifeguard and
8 they're undergoing this training, field training, who is
9 their supervisor?

10 A Captain Berard would be the overall
11 supervisor, and then their field training officer would
12 be their supervisor during the time they were assigned
13 to them.

14 Q Okay. So they're basically assigned to field
15 training, and their supervisor would be their -- would
16 be the field training officer that's assigned to them,
17 their immediate supervisor would be?

18 A Correct.

19 Q Now, do you have some form of observation
20 reports or training evaluation reports or anything?

21 A Yes.

22 Q What are those called or what -- as best you
23 can tell me?

24 A They're basically what you said; they're
25 observation reports that a series of notes are taken and

1 skills are performed and assessments are given, and then
2 those are reviewed by the field training officers and
3 the field training supervisor.

4 Q Okay. The observation reports, are they done
5 on a weekly basis, a daily basis, monthly basis, or...

6 A I'm not sure. I believe they're daily,
7 though.

8 Q Okay. And who would complete that on an
9 individual trainee?

10 A The field training officer.

11 Q Okay. Are those -- when those are
12 completed -- and I assume they're turned in to someplace
13 or they're put in a file or -- those are written
14 reports?

15 A Correct. They're given to Captain Berard.

16 Q Okay. As the --

17 A Supervisor of training.

18 Q -- supervisor of training. Thanks.

19 Okay. So he would get those and he'd review
20 those evaluations?

21 A Yes.

22 Q Okay. And ultimately, how do you know whether
23 a trainee passes or fails? Or who decides whether a
24 trainee passes or fails?

25 A It's done within the field training officer's

1 meetings that they have on each segment they meet. They
2 discuss their deficiencies and their performance, and
3 then it is within that meeting, if they've met the
4 qualifications and they haven't failed any of the
5 sections, then they go forward.

6 Q Okay. So each segment -- when you said each
7 segment, there's like this segment of training that
8 deals with one subject and then there's another
9 segment --

10 A I believe there's a list of criteria they have
11 to complete. And once they complete all those and also
12 ride with the different field training officers, because
13 they're assigned a different one every two weeks --

14 Q Okay.

15 A -- then that's when they complete.

16 Q Okay. And so then you have the daily training
17 observation reports or whatever, and at some point do
18 all the training officers sit down and they review all
19 of them and talk about each of the individuals, or you
20 don't know that?

21 A Yes, they do.

22 Q I would assume that, you know, they rotate
23 through them so they all get exposure to the trainee,
24 and that would make sense.

25 A Yes.

1 Q Would Captain Gardner be in a position where
2 he would ever review the daily observation reports?

3 A Not that I'm aware of.

4 Q Does he ever serve as acting deputy chief?

5 A Yes.

6 Q Okay. And so the chief is who again? I'm
7 sorry.

8 A The deputy chief is Scott Petersohn.

9 Q So Gardner does serve from time to time as
10 operating -- as acting deputy chief?

11 A Yes.

12 Q And what kind of circumstance would he be
13 serving as acting deputy?

14 A It would be when Deputy Chief Petersohn was
15 off or unavailable. Also, Supervisor Manchester fills
16 in for that role as well. So it would be in the absence
17 of one of those two.

18 Q Would the deputy chief review the daily -- the
19 daily observation reports?

20 A There would be no reason to.

21 Q Okay. That would all stay within the training
22 department?

23 A Yes.

24 Q So if Gardner was acting as the deputy chief,
25 you don't think there's any reason why he would come

1 across any of the daily observation reports or have the
2 need to see any of those?

3 A Correct.

4 Q Or that they would routinely go to his
5 attention because he's serving in that capacity?

6 A No, not that I'm aware of.

7 Q So I want you to think about since July of
8 2011, which was only, you know -- almost six months ago,
9 I guess. Since that time, since that time frame,
10 Captain Gardner -- would you have any opinion as to
11 whether Captain Gardner would be involved in the
12 training program in any way, the field training, or
13 reviewing the daily observation reports on trainees?

14 A Not that I'm aware of. The only instructor
15 certification that I believe Captain Gardner holds is
16 taser instructor. That's the only one that I'm aware
17 of.

18 Q Is that part of one of the trainings that the
19 trainees receive?

20 A At some point in time. I'm just not sure if
21 it's during their field training segment.

22 Q Okay. So it is possible that he may have
23 provided that taser training to trainees during the
24 field training?

25 A He could have, yes.

1 Q You never observed him give that training to
2 the field trainees?

3 A Not that I'm aware of, no, I've never seen
4 him.

5 Q Did you ever hear any rumors about Captain
6 Gardner and Paige Winters being involved in some sort of
7 romantic relationship?

8 A No. And let me clarify. Not until an
9 anonymous letter arrived.

10 Q That was going to be my next question. I mean
11 obviously you know about it because we're here, but --
12 so what you're saying is, is that you never heard any
13 rumor about it or -- until the anonymous letter arrived?

14 A Not a single rumor.

15 Q Did you ever, prior to seeing -- prior to
16 seeing that anonymous letter or hearing of the anonymous
17 letter, because I don't know whether you've seen it or
18 you've just heard of it --

19 A Both.

20 Q Both. Okay. Prior to that time, did you ever
21 see them together outside of work in any type of social
22 setting?

23 A No.

24 Q Obviously you've seen -- have you ever seen
25 them together at work?

1 A I'm sure I have without even realizing it.

2 Q Anything that sticks in your memory as to
3 anything unusual about any time that you would have seen
4 them together at work?

5 A No.

6 Q You've probably attended some social
7 gatherings where they're there as well as you're there?

8 A No.

9 Q Have you ever seen anything inappropriate --
10 or questionable. I don't like the word inappropriate.
11 Anything that raised any question in your mind about
12 their interaction with one another that led you to
13 believe that maybe they were in a romantic relationship?

14 A No.

15 Q And you first became aware that they may have
16 been in some sort of romantic relationship when you saw
17 the anonymous -- or heard of the anonymous letter?

18 A Correct.

19 Q Did you ever ask Captain Gardner whether he
20 had or was having a romantic relationship with Paige
21 Winters?

22 A No.

23 Q I'm going to ask you about Cara Gittner. Do
24 you know Cara Gittner?

25 A Yes.

1 Q Now, she is also an employee of the
2 department?

3 A Yes.

4 Q And what is her position? Is she a senior
5 lifeguard or --

6 A Senior lifeguard, yes.

7 Q Okay. And do you know how long she's been a
8 senior lifeguard?

9 A Approximately two to three years.

10 Q Would she also have been initially hired as a
11 lifeguard?

12 A Yes.

13 Q Most of the senior lifeguards at one time were
14 lifeguards?

15 A Most.

16 Q What's your estimate of her age?

17 A Mid 20s, late 20s.

18 Q At some point she would have had to go through
19 the same training to become a senior lifeguard that
20 Winters went through; is that correct?

21 A Yes.

22 Q Okay. I'm gonna ask you just generally, I'm
23 not going to go through step by step, but do you know
24 whether or not Captain Gardner would have been involved
25 in her training in any respect?

1 A I wouldn't know.

2 Q Other than maybe he would have given the taser
3 training then if it's given to the trainees?

4 A That would be the only thing I could even
5 think would be possible, yes.

6 Q At some time did you become suspicious that
7 Captain Gardner and Cara Gittner may be involved in a
8 romantic relationship?

9 A I don't know about romantic, but there was a
10 point where they were around each other quite a bit with
11 their drills, which is, you know, swimming and running
12 in the morning, which is not uncommon for many
13 lifeguards to do, but they were meeting almost every
14 morning to swim and run drill.

15 Q Okay. So at that point she was a lifeguard or
16 senior lifeguard?

17 A I believe she was a senior lifeguard.

18 Q And Captain Gardner would have been still the
19 investigator?

20 A Yes.

21 Q But it's not uncommon for him, in his position
22 as an investigator, to drill --

23 A No.

24 Q -- with and run with other life -- with the
25 senior lifeguards?

1 A That would be correct. We all do.

2 Q And if you had any suspicions -- or that's
3 maybe too strong a word -- any thoughts that maybe they
4 were -- they had some sort of relationship, it would
5 have been just because of seeing them drilling together
6 and this type of thing?

7 A Yes.

8 Q Anything else that you observed of their
9 interaction that would -- that might have led you to
10 believe that maybe they were in a relationship?

11 A No. I've only seen them at work.

12 Q Okay. So you haven't socialized with them
13 together? You may have been at some social function
14 when one of them was there, but you have not seen them
15 to interact in a social relationship?

16 A I've never seen them interact in a social
17 relationship. The only time we may have been together
18 would have been the lifeguard banquet, and we weren't
19 together, by any means. I didn't sit with them and I
20 surely don't know if either one of them attended, to be
21 honest with you. But they both or either could have
22 been there, for all I know.

23 Q What level of supervision is there between
24 Gardner and you?

25 A He reports directly to me.

1 Q And how many people do you have reporting
2 directly to you?

3 A I have the deputy chief, I have the beach
4 coordinator, Nancy Nolan, so I have --

5 Q Nancy Nolan is someone other than the beach
6 coordinator, or is that --

7 A Yeah, she's --

8 Q I'm counting people.

9 A -- support services manager. The beach
10 coordinator is Supervisor Manchester.

11 Q Okay. So four or five, I guess?

12 A Yeah. It's an estimate.

13 Q Does Captain Gardner report to you directly
14 because he's the investigator?

15 A Yes.

16 Q Were you the -- were you in your current
17 position before he became an investigator, or was he
18 investigator before you became --

19 A I was in my position before.

20 Q Okay. Did you select him or --

21 A Yes.

22 Q And prior to that, he would have been a
23 senior -- a senior lifeguard --

24 A No. He would have been a lifeguard
25 supervisor.

1 Q Lifeguard supervisor. Okay. At some time did
2 you have occasion to ask Captain Gardner if he was in a
3 relationship with Ms. Gittner?

4 A I did.

5 Q And when do you think that was, timewise?

6 A This is a very rough guess. Somewhere between
7 six to 12 months ago.

8 Q And where were you when you asked him?

9 A My office.

10 Q And as best you can tell me, what did you ask
11 him?

12 A I basically asked him if he was in an
13 inappropriate relationship or romantic relationship with
14 Cara Gittner.

15 Q Okay. And what did he tell you?

16 A He was not. That they were just friends.

17 Q Did he elaborate at all on that, or we're just
18 friends or --

19 A He said that him and his wife continue -- hang
20 around Cara and other people that are employed with us
21 on a continual basis, that they're all friends, and that
22 was all there was to it.

23 Q Was anyone else present when you had this
24 conversation with him, Captain Gardner?

25 A No.

1 Q And you indicated that this was in your
2 office. Why was he in your office at that time?

3 A He's in my office every day giving me updates
4 on investigations. I speak to him on a daily basis.

5 Q So he wasn't called in the office to ask him
6 about this?

7 A He may or may not have been. I don't recall.

8 Q Why did you ask him that question?

9 A Because I knew they were hanging around a lot
10 together at drill and it was -- I don't want to say it
11 was uncommon, but it was enough to say, okay, I've got
12 two employees who one's male, one's female, they seem to
13 be meeting on a continual basis, every single day, to
14 swim and run. Considering what we've had go on the last
15 three years, I thought it would be appropriate for me to
16 ask him.

17 Q From a leadership position, what was the
18 importance of knowing the answer to that question?

19 A I think at the time it was very important for
20 me to understand what was going on in the department as
21 far as relationships, no matter what, for the fact of
22 making sure the working relationship was not compromised
23 by a social relationship.

24 Q The working relationship between the two of
25 them or the working relationship between all the

1 officers?

2 A Anyone.

3 Q Okay.

4 A We have a -- not written policy, but I have a
5 standard rule that I do not allow employees who are
6 dating to work in the same zone.

7 Q So had he told you that he was -- and I'm not
8 saying that he was, but just theoretically, had he told
9 you that he was in a relationship with her, you would
10 have taken some sort of action, I guess?

11 A Absolutely.

12 Q And that would have just been -- what would
13 that --

14 A Well, at the time, they weren't working
15 together, but I surely would have made my superiors
16 aware that there was a relationship occurring. But they
17 were not working in the same zone at that time, that I'm
18 aware of.

19 Q Do you believe he was honest with you when he
20 answered and told you that he was not in a relationship
21 with her?

22 A I do not know. I don't know if they were
23 seeing each other at that time frame or not.

24 Q Have you since learned that they have at some
25 point in time been involved in a romantic relationship?

1 A My understanding is they have had a romantic
2 relationship on and off since -- I would use a rough
3 date of 2009, from what I'm told.

4 Q When you asked him the question about him
5 being -- whether or not he was involved in a
6 relationship with her, did he offer the fact that he had
7 in the past been in a relationship with her or --

8 A He did not.

9 Q In asking the question that you asked him, if,
10 in fact, he had been in a romantic relationship with
11 her, but it had terminated, but he had been in one
12 months before, would you have expected him to have
13 volunteered that information to you?

14 A I would like to think anybody should be
15 forthright, should volunteer the information if they're
16 especially in a supervisor level of that magnitude.

17 Q I'm just curious as to -- and you can just
18 tell me in your own words, if, you know, the way you
19 asked the question, were you inviting him to tell you
20 more, or, I mean, was it just asked and then just
21 dropped? You know, what was your expectation from him
22 when you asked the question in how forthcoming he would
23 be?

24 A Well, obviously I can Monday morning
25 quarterback and realize I should have asked a different

1 question. We learn from our mistakes, and I will ask
2 different questions from this point forward.

3 Unfortunately, I asked, was he in a romantic
4 relationship, and I should have asked, have you ever
5 been in a romantic relationship, would have been the
6 correct question to ask.

7 Q Believe me, I share that same problem.

8 A Yeah.

9 Q I've got a letter from, I guess it's Captain
10 Gardner's attorney, which attributes some statements to
11 you. Have you seen this letter?

12 A I'd have to review it to see.

13 Q I guess I'm going to read a little bit from
14 it, then I'll hand it to you, and you can look at it and
15 see if you understand what this is referring to.

16 I'm at the bottom of page nine, the paragraph
17 that starts at the bottom of page nine. It says, first
18 you state -- and this is -- this is a letter from
19 Gardner's attorney to Mike Coffin, so when he says you,
20 it would be Mike Coffin. First you state, quote,
21 "During the time that you were involved with Officer
22 Gittner you were asked by a supervisor whether you were
23 having an inappropriate relationship with her, which you
24 denied," end quote. Then the attorney says that is
25 false. Although Director Sweat asked Captain Gardner

1 about a year ago if he was involved in a relationship
2 with Officer Gittner, Sweat asked that question after
3 Captain Gardner and Officer Gittner had broken up.
4 Accordingly, Captain Gardner replied no. Captain
5 Gardner's response was true. If he had said yes, that
6 they were still in a relationship after they had broken
7 up, that would have been false. That's the attorney
8 talking.

9 The letter goes on, it says, now, as you know,
10 the relationship subsequently resumed, but Director
11 Sweat did not thereafter ask again. Indeed, when
12 Captain Gardner read this line in the presence of
13 Director Sweat, while sitting in the passenger seat of
14 Sweat's vehicle at the south end of Sun Splash Park
15 after having been presented with your NOI, he had to
16 read it several times. While he was running his finger
17 under each time, Director Sweat spoke up and said, I
18 know, I had to read that three times, too. I told
19 you -- I told them you didn't lie to me, only that it
20 was misleading.

21 The way I read that, the line that he was
22 putting his finger under must have been the line where
23 it says, quote, "During the time that you were involved
24 with Officer Gittner you were asked by a supervisor
25 whether you were having an inappropriate relationship

1 with her, which you denied," end quote. Do you want to
2 look at this?

3 A No, I'm okay.

4 Q You're okay. Do you recall that conversation
5 in the -- in your car?

6 A Some of that conversation, yes.

7 Q Okay. And what do you recall of the
8 conversation?

9 A I don't remember that particular line that he
10 was going over. I thought it was another line he was
11 going over in which it referred to Mr. Coffin.

12 Q Okay.

13 A They were close in proximity, if I remember,
14 but I don't -- I -- I didn't realize he was going over
15 the line in which that statement was made.

16 Q Do you remember what the line that involved
17 Coffin stated?

18 A Not exactly. It was something to the effect
19 that he, I believe, falsely made a statement to
20 Mr. Coffin during an interview.

21 Q Okay. The next paragraph in this letter says,
22 Secondly, you stated, quote -- and again, when he says
23 you stated, this would be Coffin stating, I guess, in
24 the NOI. You stated, quote, "More recently, I," which
25 would be Coffin, "asked you whether there was anything

1 in your background which could cause embarrassment to
2 the division, and you said no."

3 A Could that -- is that -- would that be the
4 line that you think he attributed --

5 A That's the line I thought he was running his
6 finger over time and time again, and my response was
7 different than what I recall in there.

8 Q Okay. Let's talk about that day then or that
9 time. This would have been a conversation that involved
10 Captain Gardner, yourself, and Mr. Coffin?

11 A We're going back to the interview for the
12 deputy chief's position?

13 Q Yes..

14 A Yes.

15 Q Because I think that's what this statement is
16 talking about.

17 A That's what I believe it is, yes.

18 Q So that was an interview for the deputy chief
19 position?

20 A Yes.

21 Q Okay. And who would have been present for
22 that interview?

23 A Mr. Coffin, Mr. Gardner, and myself.

24 Q And I'm assuming that was in somebody's
25 office?

1 A My office.

2 Q Your office. What do you recall Mr. Coffin
3 asking Mr. Gardner, or Captain Gardner?

4 A My recollection of the conversation was --
5 amongst lots of things that were discussed about
6 salaries and other things, the question I specifically
7 remember being asked was, was Mr. Gardner gonna have his
8 name come up in any way, shape, or form in the Ashley
9 Drury lawsuit; whether he was going to be involved or
10 have knowledge that he should have shared with us
11 involving Ashley Drury.

12 Q Okay. So your recollection is that it was --
13 the comment was specifically tied to that lawsuit?

14 A Yes, sir.

15 Q Say that lawsuit again, the --

16 A Ashley Drury, D-r-u-r-y.

17 Q Is that -- are you being -- are you a
18 defendant in that suit?

19 A Yes, I am being personally sued as well as the
20 County.

21 Q And how certain are you of your recollection
22 that that was the way the question was asked?

23 A I'm fairly positive because he asked a very
24 similar question to Supervisor Petersohn at the same
25 time. They were both very similar questions within days

1 of each other.

2 Q And he was the other person that was being
3 considered for the deputy --

4 A Yes. There was two.

5 Q Okay. So as I understand it, you have --
6 you -- your testimony is that there was not a general
7 question about are there any skeletons in your closet
8 that are going to come up to harm the department, it was
9 really tied to that pending lawsuit --

10 A That particular day and that particular
11 interview I do not recall any other questions being
12 asked that I remember.

13 Q You said that particular day and that
14 particular interview. Was there any other interview or
15 day that you were present where a broader question was
16 asked?

17 A No. I'm just not sure if Mr. Gardner and
18 Mr. Coffin had a conversation outside of my presence.

19 Q On page ten of this letter there's a paragraph
20 in here, and I'm going to let you look at this because I
21 made an assumption, and I want to see -- just to make
22 sure you agree with me. Here's where he says, Second,
23 you state more recently I asked you whether there was
24 anything in your background which could cause
25 embarrassment to the division, this is at the interview

1 for the deputy's position, and then I think down here
2 there's a paragraph that starts off, indeed, when
3 Captain Gardner read this line in the presence of
4 Director Sweat, he stopped and said this isn't true.
5 Director Sweat said, quote, "I know it's not true, and
6 that is not the way I remember it either," end quote.
7 Sweat said, quote, "I know" -- wait a second. I messed
8 that all up. It's hell getting old. I jumped a whole
9 line. I'll start over.

10 It says, indeed, when Captain Gardner read
11 this line in the presence of Director Sweat, he stopped
12 and said, quote, "This isn't true," end quote. Director
13 Sweat said, "I know it's not true, and that is not the
14 way I remember it either," end quote. Captain Gardner
15 then reminded that you had asked if he, quote, "knew
16 about Simmons and Tameris," end quote. Director Sweat
17 said, quote, "I know." He then said, quote, "Don't go
18 telling people about this, you know I'll be fired, but
19 if I have to, I will tell the truth about the
20 conversation -- that conversation under oath," end
21 quote.

22 Do you agree -- do you think -- do you agree
23 with my assumption that this paragraph is talking about
24 that statement up there?

25 A Yes.

1 Q Do you recall having this conversation down
2 here with Gardner?

3 A I do not recall saying every word that he has
4 quoted in there. My recollection of the exact quote
5 was, I understand your concern, and all I can tell you
6 is that I will be honest if asked.

7 Q Okay. And you've already told us what
8 you've -- what your recollection of that conversation --
9 or the statement was by Mr. Coffin or question by
10 Mr. Coffin?

11 A That's the way I recall the question, yes.

12 Q You, at one point, asked Captain Gardner
13 whether he was involved in a relationship --
14 inappropriate relationship, and then this second -- the
15 question by Mike Coffin when you were there, you didn't
16 speak it, but Mike Coffin asked, and you told us what he
17 said, which of those happened first in time?

18 A You have to explain better. Which of what
19 happened?

20 Q Okay. There's -- in the NOI there's alleged
21 that he made two false statements; one involved the
22 statement where you asked him, are you involved in an
23 inappropriate relationship? The second one is where
24 they have the interview for the deputy position, and
25 Mike Coffin asked him what Mike Coffin says he asked,

1 which is different from what you remember the question
2 being asked. Do you know which of those occurred first
3 in time?

4 A I don't. I know -- I know Deputy Petersohn's
5 been in his position for approximately a year, so I
6 would think they were in close proximity, but I can't
7 remember which one occurred first.

8 Q Had the relationship between Gardner and
9 Gittner rekindled before Coffin's question, would you
10 have expected Captain Gardner to have said anything to
11 you or to Coffin?

12 A Yes.

13 Q And -- about the fact that the relationship
14 had rekindled?

15 A Yes. I think at a deputy chief's position
16 you've got to lay everything on the table at that point
17 to me to make sure that -- I'm putting him in a position
18 of almost the highest position in the department, and
19 unfortunately, whether we like it or not, any
20 relationships at that level would be inappropriate.

21 Q And at any time did he come to you and tell
22 you about that relationship?

23 A He did not.

24 Q After you had the conversation with him, with
25 Gardner, and asked him whether he was in a relationship

1 with Gittner, did you see any difference in the way he,
2 Gardner, and Gittner interacted?

3 A No.

4 Q Still training the same way as before?

5 A Yes.

6 Q Okay. I'm advised that Officer Gittner has
7 testified that you asked her whether she was in a
8 relationship with Captain Gardner. Is that true, or
9 what's your recollection on that?

10 A I don't ever remember asking Gittner if she
11 was in a relationship. I remember speaking to her in
12 general terms about relationships and her career path
13 and things of that nature, but I don't remember
14 specifically asking her if she was in a relationship
15 with Gardner, I do not.

16 Q Okay. So I'm assuming she didn't tell you she
17 was in a relationship with Gardner?

18 A She did not.

19 Q What basically did you tell her about the
20 nature of relationships and --

21 A She had -- she has expressed an interest
22 throughout her career, even at the very beginning, that
23 her desire was to work her way through the division and
24 be the director one day. And I explained to her that to
25 do that, it's difficult to have relationships of any

1 sort tied to the department, whether they just be
2 friends or not, and I said I understand you and Richard
3 are very good friends, but potentially that could harm
4 you down the road, because friendships are tough to
5 maintain if you're going to be the boss one day. So you
6 have to start thinking about those things and thinking
7 about how the perception is, because sometimes
8 perception is conceived as reality.

9 Q When you had this conversation with her did
10 you suspect that she may be in a relationship with
11 Captain Gardner?

12 A No, other than just them being around each
13 other a lot for swimming and running.

14 Q And this conversation with her, would that
15 have occurred prior or after the conversation you had
16 with Gardner, or in the same time frame?

17 A I'd like to say it was somewhere in the same
18 time frame. Fairly close.

19 Q Was Gittner transferred to the Daytona zone
20 from Dunlawton?

21 A Eventually, yes.

22 Q Where is Dunlawton?

23 A The Port Orange area. Dunlawton Bridge.

24 Q Okay. Who made the decision to transfer her?

25 A It's -- it's basically made amongst

1 supervisors, then it goes to the deputy chief, and then
2 if there's any complications, it comes to me.

3 Q Did hers come to you or --

4 A I don't recall.

5 Q Do you know why she was transferred, or is it
6 routine, or what --

7 A Actually, Mindy Greene and -- I believe this
8 is the reason. Mindy Greene and Tom McGibeny advised me
9 that they were in a relationship together. They both
10 worked in the Daytona zone, so we needed to move one of
11 them out of there, and Tom requested to go to Dunlawton,
12 and Cara had requested to come to Daytona, and the
13 supervisors agreed to that swap in personnel.

14 Q Okay. So Gittner was transferred to Daytona
15 from Dunlawton to make room for McGibeny --

16 A Yes.

17 Q -- to be transferred the other way around,
18 from Daytona to Dunlawton?

19 A Yes.

20 Q Okay. Any particular reason why Gittner was
21 the one that was selected to be transferred as opposed
22 to someone else?

23 A It's done by request from the officer.

24 Q So you think Gittner volunteered or requested?

25 A Yes.

1 Q Is that -- is there any writing or any -- you
2 know, is there like a request form, or is it just
3 verbal?

4 A I think it's verbal. And some of them may
5 write a letter. I don't know if she did or not. It's
6 mostly verbal, though.

7 Q So it's basically if you have to make a
8 transfer like that, I would assume what you would do is
9 you try to see if anybody wants to volunteer for the
10 transfer, as opposed to forcing somebody to transfer
11 that may not want to transfer?

12 A That would be the goal.

13 Q Okay. Did Rich Gardner have any input at all
14 in the decision for Gittner to be transferred?

15 A Not to me, unless he did it behind the scenes,
16 but he never spoke that to me.

17 Q Did he ever express to you any kind of opinion
18 as to whether that transfer was appropriate, not
19 appropriate, he was happy with the transfer, not happy
20 with it, or --

21 A The only thing he ever expressed to me, that
22 he respected her work and thought she was very diligent
23 and her skills on the computer and other things, and
24 that he thought she was an extremely talented officer.

25 Q Okay. So he wasn't upset by the transfer or

1 particularly happy with the transfer?

2 A He didn't seem either way to me.

3 Q Do you know whether Gardner has ever been a
4 direct supervisor of Gittner in any position?

5 A The only time I can -- I know of, and I --
6 it's not direct, is when he's a deputy chief he oversees
7 the whole department, obviously, for that day, but I
8 guess there would be a supervisor in between him and
9 wherever Cara was working. And I'm not sure if there's
10 any special details that I'm not aware of.

11 Q Because he's an investigator, so then who
12 is -- who is he -- who does he supervise as an
13 investigator? Does he supervise anyone?

14 A No.

15 Q Okay. Unless he needs help and you assign
16 somebody?

17 A If he needs help, yes.

18 Q Okay. Do you recall anytime that he may have
19 worked overtime as a zone captain?

20 A He could have, yes.

21 Q And if he did that and she was in that zone
22 working at the same time, then he could have been a
23 supervisor of hers?

24 A Yes.

25 Q Do you know whether that ever occurred or...

1 A I would have no idea.

2 Q I guess there would be records that would show
3 that?

4 A Yes. There are schedules.

5 Q Do you recall whether she ever worked any
6 plainclothes assignments that were directed or
7 supervised by Captain Gardner?

8 A She may have, but I'm not aware of them. He
9 had different officers help him at different times, so
10 she very well may have. I just am not aware of them.

11 Q If he needed help for some investigation he
12 was doing, how would he get the personnel to do that?

13 A It depends on what he needed. Sometimes he
14 would go to the deputy chief and say, I need someone
15 assigned to me. Sometimes he could just call in a zone
16 and say, hey, could you do some computer stuff for me
17 while you're sitting in your zone? There's all kinds of
18 ways. If he needed someone actually assigned to him,
19 normally he would go to the deputy chief, though, and
20 ask.

21 Q Okay. So the -- so Gardner -- the deputy
22 chief -- and there's one layer of supervision between
23 the deputy chief and Gardner, correct?

24 A Well, the deputy chief --

25 Q Not Gardner. I'm sorry. You've got the

1 deputy chief and then I'm looking at Gittner. There's
2 one -- there's one level of supervision between the two
3 of them?

4 A Yes, lifeguard supervisor.

5 Q Lifeguard supervisor. Okay. So he wouldn't
6 go to the lifeguard supervisor to say I need her
7 assistance; he'd go to the deputy chief or --

8 A He would normally go through the deputy chief.

9 Q Okay.

10 A He may have went to one of the supervisors,
11 but normally -- the deputy chief oversees scheduling, so
12 they understand the personnel and what they've got
13 available and not available for the day.

14 Q But if Gardner needed assistance, he would ask
15 for the assistance, and he could either ask for a person
16 by name or he could just say, I need somebody, and the
17 deputy chief would give him somebody?

18 A True.

19 Q Are you aware of any details that they worked
20 on together?

21 A No. I don't see who's working details. So
22 they may have, they may not have. I don't know.

23 Q I'm going to ask a dumb question, but I'm not
24 even sure what detail is.

25 A It's basically -- I'll use the example. Most

1 of our details are done at the parking garage that's
2 owned by the county. It's afterhours. They pay their
3 wages, but they work under the authority of the Division
4 of Beach Safety as a law enforcement officer to provide
5 security for the garage.

6 Q And who pays the wages? It's a county garage?

7 A Yes. The Ocean Center pays the wages.

8 Q Okay. So it's like hiring off-duty police
9 officers to do a security detail?

10 A Correct.

11 Q Okay.

12 A And officers volunteer for the detail.

13 Q And so -- and then who assigns them to the
14 detail? Is there like a -- you volunteer, and then
15 it's -- there's some equitable way to make sure that one
16 person doesn't always get the detail?

17 A The scheduling person monitors it.

18 Q And the scheduling person is?

19 A Could be various people. It could be Liz
20 Johnson or it could be Chris Atkinson, or one of the
21 fill-ins.

22 Q Now, when you're on a detail and there's two
23 or three, I'll call them officers on the detail, do they
24 still recognize some sort of chain of authority among
25 them?

1 A I've never worked a detail, but I'm assuming
2 if you're a supervisor, you're a supervisor. You don't
3 lose your rank because you're working a detail; you're
4 still a supervisor.

5 Q So theoretically if Gardner and Gittner were
6 working a detail, he may be her supervisor at that
7 detail -- on that detail?

8 A I think you're -- I think if you're a
9 supervisor, you're a supervisor seven days a week, 24
10 hours a day. I don't think because you work a detail
11 you lose your supervisor rank. Now, what occurs in the
12 parking garage, I'm not sure of, because their
13 assignments are given by the person who oversees the
14 parking garage on what they would like them to do
15 throughout the night. So I'm not sure what role they
16 would have together if they worked together.

17 Q I've been advised that there's an allegation
18 that Gardner nominated Gittner for Officer of the Year
19 in 2010. Do you know whether that's true or not? Or do
20 you know if she -- first of all, do you know if she was
21 nominated for Officer of the Year in 2010?

22 A She may have. I don't know. I'd have to go
23 back and look. I know she has been nominated in the
24 past. I'm not aware that Officer Gardner nominated her
25 because normally it's done by a zone captain.

1 Q How does that nomination process work? They
2 fill out some sort of form to nominate somebody, or what
3 do they do?

4 A They have to write -- their criteria for
5 nominating someone is normally done within the zone.
6 Captain Gardner does not have a nomination because he's
7 an investigator. So in other words, I mean he could
8 make a recommendation to a zone, for sure, and I don't
9 know if he did that or not. But the supervisors of the
10 zone would make their nomination from their zone. And
11 that's done by various ways. Sometimes they let the
12 officers vote on who they'd like to see nominated and
13 then they bring that to the final meeting, and that's
14 how it works.

15 Q Is there any documents that would show who was
16 nominated for 2010 and -- or -- it's not all verbally
17 done? I mean, there's some writing that says that this
18 zone has nominated this officer, this zone has nominated
19 this officer?

20 A The final nominations would be on the banquet
21 program. Their nomination is the one that gets on the
22 program. So if they were nominated, they would be on
23 the program.

24 Q They would be on the banquet program?

25 A Correct. And who nominated them.

1 Q Okay. But the way they're actually nominated,
2 it could be verbal? I'm just wondering if there's a
3 report, where somebody fills out a report that says --

4 A It's not a report.

5 Q -- this zone nominated -- nominates so and so?

6 A They would have a sheet of paper that would
7 talk about their strengths throughout the year and
8 things they've done, correct. That would have been read
9 out loud.

10 Q Yeah. Otherwise, how do you vote on them?

11 A Correct.

12 Q If -- besides the banquet menu or whatever --
13 program, would you have -- or the department have the
14 narrative that mentions the strengths of the person
15 nominated --

16 A No, they didn't submit it.

17 Q -- maintained?

18 A They don't submit it. So, no, we wouldn't
19 have -- the individual supervisor may have kept records
20 of it, but we wouldn't have records of them, that I'm
21 aware of.

22 Q At the banquet, are those -- are those
23 narratives read?

24 A No.

25 Q Who decides?

1 A It's voted on.

2 Q Among?

3 A Secret ballot.

4 Q Among all --

5 A All the supervisors.

6 Q Okay. Do you have any knowledge that Captain
7 Gardner -- whether Captain Gardner had any input at all
8 regarding Gittner's nomination for Officer of the Year
9 in 2010?

10 A He may have. I don't know. I don't remember
11 if he spoke or not spoke, honestly.

12 Q Do you have any knowledge as to whether
13 Captain Gardner recommended Officer Gittner for a
14 commendation in 2009?

15 A Oh, he could have very easily. He's allowed
16 to make recommendations, so, yes, he could have.

17 Q Would there be -- would that be a permanent
18 record someplace, the recommendation?

19 A I would think so.

20 Q If you were looking for it, where would you
21 look?

22 A Gosh. I would probably start with emails, but
23 we have a nominations committee that I would probably go
24 to, and they keep a file. Actually, let me rephrase
25 that. It's an awards committee.

1 Q So as the supervisor of investigation, Gardner
2 doesn't really have a senior lifeguard that works in
3 investigations with him?

4 A Not on a regular basis. You know, he may have
5 someone assigned to him for a day, or a couple weeks, or
6 whatever the caseload may be, but not --

7 Q There's no full-time --

8 A There's no full-time, no.

9 Q And you've already talked to the process in
10 which he would request that type of help?

11 A Yes.

12 Q And so it's not your position or your job to
13 determine who is going to provide him that help in
14 investigations; that's the deputy's?

15 A I mean, I may have input in it if it's brought
16 up in my presence, sure.

17 Q Okay.

18 A I could have input in the decision,
19 absolutely.

20 Q Would you normally be brought into it to give
21 input?

22 A Not always. It's hit or miss. You know, if
23 the deputy chief wasn't around, it would not be uncommon
24 for him to walk in and ask me.

25 Q Okay. Do you recall a time when Gittner was

1 assigned as assistant to Gardner for one of these
2 details -- not details -- for an investigation?

3 A I don't recall a time. I know she's assisted
4 him in some things with computers and running some
5 records and things like that, but I don't -- I don't --
6 I don't know if she's ever been assigned to him, that
7 I'm aware of. But she could have been.

8 Q Who is Kyle McDaniel?

9 A He was an employee of ours. He's now
10 currently with the sheriff's department, and he was one
11 of those officers who assisted Mr. Gardner at times.

12 Q But he then -- he didn't -- he wasn't
13 appointed to the position where he was a full-time
14 assistant to --

15 A Not always. I mean at times -- if the
16 caseload dictated, he may have been there for three or
17 four months, but, yeah, so he could have been there
18 for -- but we didn't really -- we didn't have a
19 full-time position that served all the time. I think
20 the last person to do that was Pat Casey, who was
21 assigned there pretty much primarily as Rich's
22 assistant. But since that time, it's been various
23 people coming through.

24 Q But sometimes the assignments are for lengthy
25 periods of time?

1 A Yes.

2 Q Kyle McDaniel, was he selected for more than
3 one investigation, or was he selected because there was
4 one lengthy investigation?

5 A No, I think he helped on many investigations,
6 not just one. There was many of them that he assisted
7 with.

8 Q Have you ever had any discussion with Gittner
9 about her applying to be an investigator or work with
10 Gardner in the investigation department?

11 A I don't know if I've had discussions with her,
12 but I knew her desire was to be an investigator one day.

13 Q Did she ever ask you to consider her for the
14 appointment or the assignment as an assistant to -- or
15 assister for Gardner?

16 A She may have. Lots of people have.

17 Q Did Gardner ever come to you and ask that
18 Gittner be made an assistant for him?

19 A And he may have as well, yes. He may have --
20 he's asked for so many people, it's hard to remember who
21 he's asked for, but Cara could have been one of them,
22 and I know he's asked to do -- I know she's done some
23 computer stuff, ran some names and tracked some stuff
24 down for him at times, so I know he's used her. I just
25 don't know if she's ever been officially assigned to

1 where she showed up in his office and worked under him
2 all day. I'm not sure. But the schedule would dictate
3 that. If it's there, the schedule would say that's what
4 she served as.

5 Q Are you familiar with an employee performance
6 notice given to Gittner in October of 2011 for failure
7 to attend a mandatory station meeting?

8 A No.

9 Q An employee performance notice, is that --
10 what is that? That's a -- it's a written document to
11 the employee?

12 A Yes. It's a personnel form that's
13 standardized that has a bunch of check boxes that you
14 would write someone for not attending a meeting. Lots
15 of things.

16 Q And does the officer then sign that, the
17 officer who the report is about --

18 A Yes.

19 Q -- is asked to sign it?

20 A Yes.

21 Q Okay. Did you -- were you ever told that
22 Gittner had refused to sign one of these employee
23 performance notices?

24 A No.

25 Q Have you ever seen firsthand or heard through

1 any rumor that Gardner intimidates other employees?

2 A No. I mean he's 6'4", 240 pounds. I think
3 he's intimidating enough.

4 Q In one of the anonymous letters, which are
5 very similar, there was an allegation that senior
6 lifeguard Andy Ethridge -- there are allegations about
7 senior lifeguard Andy Ethridge. Do you know Andy
8 Ethridge?

9 A Yes.

10 Q And the allegations regard his prior criminal
11 history. And apparently there was an Internal Affairs
12 investigation in 2002 following his second arrest for
13 domestic battery. Are you familiar with that? Do
14 you --

15 A Somewhat.

16 Q Okay. And my understanding is that resulted
17 in his demotion to lifeguard. So he would have been
18 demoted from senior lifeguard to lifeguard -- or --

19 A To beach safety specialist, I believe.

20 Q Beach safety specialist to lifeguard?

21 A Senior lifeguard to beach safety specialist.

22 Q And then I understand -- that was in 2002.
23 Then I understand he was promoted to senior lifeguard in
24 2006. Do you recall him being promoted to senior
25 lifeguard?

1 A Other than I know he was promoted to senior
2 lifeguard, yes.

3 Q Okay. It's been alleged that it is known
4 among employees in the department and supervisors that
5 Ethridge consistently becomes possessive of female
6 employees. Have you heard that rumor or heard that
7 complaint?

8 A No.

9 Q Have you ever observed anything like that?

10 A No.

11 Q It's also been alleged that Ethridge has been
12 known to have sexual relations, while on and off duty,
13 with female employees. Have you ever heard that rumor,
14 allegation --

15 A Never.

16 Q And you have no firsthand knowledge of that
17 having happened?

18 A None.

19 Q Have you ever seen any -- have you ever seen
20 any activity of his that would either believe you --
21 would lead you to believe that either of these two
22 allegations are true, the one allegation being that he
23 becomes possessive of female employees, the second
24 allegation being that he has had sexual relations, on
25 and off duty, with female employees?

1 A Never.

2 Q Never saw anything that would make you suspect
3 that?

4 A No.

5 Q There's an allegation in the anonymous letter
6 that retired Captain Dave Williams was, quote, known to
7 have younger girls take showers with him at the Ormond
8 Beach lifeguard station while on duty after morning
9 drills, and that that was brought to your attention. Do
10 you know anything about that allegation?

11 A It's a common shower place in Ormond, and,
12 yes, they -- after drill, everybody went and showered,
13 but it was an open shower. It's not a -- it's not a
14 one-on-one shower where you go in and shower. It's five
15 shower heads, or whatever it is, and everybody showers
16 together.

17 Q The males and the females shower together?

18 A Yes.

19 Q And the senior lifeguards and the lifeguards?

20 A Yes. And I think they've recently changed the
21 policy to try to get a little more organized to where --
22 but I believe they try to let the females go first and
23 then the males go first, but it's an open shower.

24 Q Because the -- some of the lifeguards would
25 be -- they're part-time employees, and some of them are

1 under the age of 18; is that --

2 A Some of them are.

3 Q Do you know how long that practice was going
4 on, the one shower and everybody would go in and take a
5 shower at the same time?

6 A Since the station's been built, in the '40s
7 maybe. However long that station's been there, that's
8 what's been happening.

9 Q And you indicate you think there's recently
10 been a change in that?

11 A Yes. I believe the supervisor up there has
12 implemented a change in which they try to regulate who
13 goes in first, who goes in second.

14 Q And this is something that basically everybody
15 in the department knew about?

16 A Everybody's clothed -- yes, they all -- it
17 happened in every -- they shower, they use hoses, they
18 shower outside. It's a common practice. They're
19 lifeguards. They're fully clothed. They're in their
20 work uniform.

21 Q Okay. They're in their bathing suit?

22 A Absolutely.

23 Q Okay. I don't think this allegation in the
24 anonymous letter is suggesting that they're in their
25 bathing suits, and so -- but what you're telling me is

1 there's a -- that when they shower, it's a common
2 shower, and everybody's got their bathing suit on in the
3 shower?

4 A Yes. And it's open.

5 Q They're not naked?

6 A Yeah. You couldn't close it off if you wanted
7 to. You can't even -- there's not even a door to close
8 to it. It's in the building, and there's no way to
9 close it off. It's open.

10 Q Let's go back then, because I think the
11 allegation in the anonymous letter is not that everybody
12 showers in their bathing suits together, it's that
13 Captain Dave Williams would have these younger girls, I
14 guess the lifeguards, shower with him with no clothes on
15 in the shower in the Ormond Beach lifeguard station.

16 A No.

17 Q Okay. You know nothing about that, have not
18 heard that?

19 A No one's ever reported that, no one's ever
20 said that to me.

21 Q It's also alleged that Dave Williams, captain
22 retired, would drink on his boat with underage
23 lifeguards. Have you heard that? Do you know anything
24 about that?

25 A No one has ever reported that to me.

1 Q When did he retire?

2 A It's a guess. Maybe last October. That's a
3 guess maybe.

4 Q Do you know whether there was anything --
5 whether he was asked to retire, whether he retired
6 abruptly, whether this was a planned retirement that he
7 had planned for years? Do you know anything about the
8 circumstances of his retirement?

9 A My understanding is it was planned. It was a
10 little sooner than expected from him because his
11 investment plan did much better than he expected. But
12 he told me as soon as he had "X" amount of dollars, he'd
13 be retiring, so he got to that faster than even what he
14 thought he'd get to it.

15 Q When did he retire?

16 A Last year, in October.

17 Q He did a lot better than most people are
18 doing.

19 A My understanding, he did very well.

20 Q Okay. So then you don't know of anything that
21 was suspicious about the timing of his retirement --

22 A No.

23 Q -- that he knew that there were allegations
24 about him, and so he better retire, or anything --

25 A There was no allegations, to my knowledge,

1 about Captain Williams ever.

2 Q And I'm just saying that because of the
3 anonymous letter.

4 A Sure.

5 Q There's an Officer Texter?

6 A Yes.

7 Q There's an allegation, I guess, in the
8 anonymous letter again that Officer Texter has made
9 inappropriate comments towards girls. And I think there
10 was an investigation, internal investigation, done about
11 some comment he might have made to someone. Are you
12 familiar with whether or not there was ever any
13 investigation of an inappropriate comment he made?

14 A There was an investigation about an
15 inappropriate joke he made in a restaurant in which a
16 female customer overheard the comment.

17 Q Okay. And can you tell me what the comment
18 was, just so I can see if it's what was in the anonymous
19 letter?

20 A I'd have to go back, but it was something
21 about -- it was a sexual comment. I don't remember it
22 verbatim. I know they were in a pizza place.

23 Q In the anonymous letter it says there was also
24 another complaint about Officer Texter regarding a
25 comment made to a female along the lines of, quote, "Do

1 I make you wet," end quote, and Kevin -- they're talking
2 about you -- explained how the investigating officer
3 should handle it in the absence of Captain Gardner. Is
4 that the one we're talking about?

5 A It would have been, but I think Internal
6 Affairs handled that call, so I surely wouldn't -- I
7 surely wouldn't tell Internal Affairs how to handle the
8 investigation.

9 Q Was there some other comment that was made at
10 some point where Internal Affairs wasn't involved and
11 you, quote, explained how the -- whoever was
12 investigating should handle it in the absence of Captain
13 Gardner? Meaning, I guess Captain Gardner wouldn't have
14 been there, so Captain Gardner might have normally
15 looked into it or handled it without necessarily
16 involving Internal Affairs.

17 A Not that I'm aware of. The only other -- I
18 know -- there was another complaint lodged against
19 Officer Texter, and I'm not sure if it was done by IA or
20 internally, but it turned out to be nothing. And it
21 wasn't about any comment he made, no.

22 Q Okay. So you're right. Looking further at
23 this, you know, the one that the internal investigations
24 handled was in a restaurant, so that's --

25 A Yes.

1 Q -- probably the thing that you were replying.

2 So are you aware of any other inappropriate
3 comments that he might have made other than that one in
4 the restaurant --

5 A No.

6 Q -- for which he was disciplined?

7 A Correct. That's the only comment that I'm --
8 that I'm aware of that he made. There was another
9 allegation when he backed up at the sheriff's office on
10 a call, but that was looked into, and the guy said he
11 had been to his house, and we pulled records, and he had
12 never been to that house on a call in his life.

13 Q Now, this letter says there was another
14 complaint, and I'm not sure what the first one was, but
15 there was another complaint about Officer Texter
16 reference a comment made to a female along the lines of,
17 do I make you wet, and Kevin, quote, "explained," end
18 quote, how the investigating officer should handle it in
19 the absence of Captain Gardner. Do you have any idea
20 what they're even referring to in that?

21 A No. To me, it's the same complaint from the
22 restaurant. There was never a second allegation made
23 that he made that statement to anybody else, that I'm
24 aware of.

25 Q So you think that's referring to the comment

1 in the restaurant that was handled by --

2 A Investigations. IA.

3 Q Okay.

4 A Yes.

5 Q And the statement in here that Kevin, quote,
6 "explained," end quote, how the investigating officer
7 would handle it in the absence of Captain Gardner, you
8 have no idea what that is referring to or --

9 A No. I mean, I wouldn't direct IA ever, but if
10 I was sending someone else to look into a complaint, I
11 would always look at the specific questions that we're
12 going to ask to make sure that we were getting the
13 information we needed. But I don't do that with IA
14 ever. IA does their own thing, and I don't see the
15 questions.

16 Q It's also alleged that Texter drives around
17 with a bag binder with Polaroid pictures of girls'
18 breasts and other sexual positions that he took with a
19 county-issued camera, end quote, and that's a known
20 fact. Do you know anything about that allegation?

21 A No, not known to me. I can surely go back and
22 look, though.

23 Q Okay. There's a general allegation that there
24 are officers who show -- who, quote, "show up with
25 strong odors of alcohol on their breath and in their

1 system while carrying a gun," end quote, and that this
2 is a known fact, quote, "among fellow employees, his
3 supervisors, and all the way up to Kevin," end quote.

4 Do you have any officers who come to work with
5 alcohol on their breath, to your knowledge?

6 A If they do, they are sent home. I don't
7 drink, I don't smoke, and I don't tolerate it, period.

8 Q Do you have some that do get sent home for
9 that?

10 A I'm not -- I don't recall of any being sent
11 home, but I'm not saying it's never happened since I've
12 been in charge. It may have, but it's not common, I can
13 tell you that.

14 Q In the spring of 2011 apparently there was a
15 promotional examination given for the position of
16 captain. Was Captain Gardner involved in any part in
17 that examination process?

18 A I'd have to go back and review, but I don't
19 believe so.

20 Q Are you aware that someone told Gardner the
21 schedule for the oral interview of the applicants?

22 A I'm not aware.

23 Q Are those -- the times for the schedule for
24 the oral interviews, the times each of the different
25 candidates, I guess, will appear for their oral

1 interviews, is that supposed to be confidential and held
2 information so that the interviewees don't know who's
3 going in at what time and --

4 A I wouldn't know. I don't set the interviews,
5 so I wouldn't know. It would be a personnel question.
6 Usually personnel and Nancy handles that.

7 Q If you were doing that, would you keep that
8 confidential? Would you see a need to not have that
9 general knowledge, the schedule of the interviews?

10 A I guess thinking through it, the only reason I
11 could see why there would be any importance to it is to
12 make sure they didn't share questions --

13 Q Right.

14 A -- is the only thing I can think of. So --
15 but like I said, personnel and Nancy would know if
16 that's kept confidential or not. I don't know.

17 Q Did Captain Gardner ever discuss with you any
18 concerns that he may have had about the fact that Tom
19 McGibeny and Mindy Greene were in a relationship, and I
20 guess they were both involved in the promotion to
21 captain and would be interviewed, and that they may
22 give -- one may give the interview questions to the
23 other if they knew the --

24 A It may have come from either -- either Captain
25 Gardner or it may have come from Andy Ethridge, but I

1 know one of the two made me aware that there was some
2 concern about them sharing questions.

3 Q Do you know what, if anything, was done to --
4 because of that concern?

5 A I know I reported it to personnel, and we
6 spoke to -- I believe we spoke to everyone involved, and
7 there was no proof that that had ever occurred, and the
8 person that made the allegation didn't have any proof
9 that that had occurred.

10 Q Who made the allegation?

11 A I believe it was Mr. Ethridge.

12 Q I understand that McGibeny was interviewed
13 first. Did you know or have you been made aware that
14 Ethridge confronted McGibeny before the interviews?

15 A My understanding is that yes, I was aware
16 there was an altercation between the two.

17 Q Tell me what you know about that.

18 A My understanding is just that Ethridge had
19 made a comment to McGibeny that you better not give
20 Mindy the questions, and I think Tom made some sarcastic
21 remark like -- and I forget the exact wording was, well,
22 that's the only reason why I'm taking the interview,
23 because I don't really care about the promotion, or
24 something, but that was -- he later said it was a wise
25 crack, not to be taken seriously.

1 Q Now, was Ethridge also in line for a promotion
2 to captain or --

3 A Yes.

4 Q Okay. So he's also going to be interviewed
5 and asked the same questions?

6 A Yes.

7 Q When did you hear about this confrontation
8 between Ethridge and McGibeny?

9 A It would have been before the interview
10 started. I don't know a date, though.

11 Q Did you take any action as a result of that
12 or --

13 A I called personnel and asked them what they
14 would like me to do with it, and they said to speak to
15 them and see if there's anything to it and give us a
16 report back verbally, and I did that, and they said, you
17 know, I don't think there's any proof of anything that
18 occurred, and -- or is going to occur, and...

19 Q Okay. Did you talk to Mindy at all prior to
20 the interview?

21 A I may have. I believe I did.

22 Q What do you recall having talked to her about?

23 A It would have been the same line of
24 questioning about that the questions are confidential
25 and they can't be shared amongst candidates. And I

1 think I let her know that there was an allegation made
2 that there was concern that that may occur since her and
3 Mr. McGibeny were dating.

4 Q Do you know how Ethridge learned of the oral
5 interview schedule?

6 A I do not.

7 Q So you don't know whether Gardner gave the
8 oral interview schedule to Ethridge or not?

9 A I do not.

10 Q Well, everybody would have known everybody
11 else was getting interviewed, correct?

12 A Honestly, they probably told each other.

13 Q Right. You're coming at 1:00, you're coming
14 at 3:00?

15 A Well, they don't tell them in front of each
16 other, but they talk amongst each other.

17 Q Sure. If McGibeny and Mindy Greene were both
18 going to be interviewed and they're in a relationship
19 with each other, it would make sense that they may say,
20 well, I'm going in at 10:00 and the other one says I'm
21 going in at 1:00 between the two of them?

22 A I would believe that would be a fairly
23 accurate assumption.

24 Q Apparently within the past year you had this
25 vacant deputy chief position?

1 A Yes.

2 Q Okay. Did the deputy chief resign or retire?

3 A He retired.

4 Q Retired? Okay. What was the selection
5 process for his replacement?

6 A They made an advertisement nationwide, they
7 took applications, we reviewed those applications,
8 Mr. Ryan, Mr. Coffin, and myself, and I believe -- the
9 name doesn't come to me, a lady from personnel, it will
10 come to me. Anyway, we reviewed those applications,
11 narrowed the list down to five, and then set up
12 interviews.

13 Q And the interviews, that takes us to Rich
14 Gardner, he was one of the five?

15 A Yes.

16 Q And we talked before about his interview with
17 Mr. Coffin?

18 A That was secondary.

19 Q Oh. There was another interview?

20 A The first interview occurred with Mr. Ryan,
21 myself, and Ramona Jackson, which was the name I was
22 trying to think of.

23 Q And so you interviewed -- that group of people
24 interviewed the first --

25 A Five.

1 Q -- five?

2 And then did all five of them make the cut to
3 the second interview, or did you narrow the field?

4 A We narrowed it down to two.

5 Q Down to two. Okay. And I understand Scott
6 Petersohn --

7 A Yes.

8 Q -- was the person selected?

9 A Yes.

10 Q Was he from within the department or --

11 A Yes.

12 Q -- or was he outside?

13 And so the two that you would have narrowed it
14 down to would have been Petersohn and Gardner?

15 A Yes.

16 Q And then they were both interviewed by
17 Mr. Coffin?

18 A Yes. Interview is a loose term. He asked
19 them questions.

20 Q When you all did the first interview of five,
21 did you basically ask everybody the same questions or --

22 A Yes.

23 Q And how were the questions selected? Did --

24 A I believe personnel Ramona Jackson provided
25 the questions from similar interviews they have done

1 throughout the county.

2 Q Okay. And then after you had completed the
3 round of five interviews, you all caucused, I guess, and
4 decided who you thought were the two best candidates?

5 A Yes. We used a scoring matrix.

6 Q The scoring matrix is a document that you then
7 would have turned back in to personnel?

8 A Personnel would have them, I'm assuming.

9 Q In the scoring matrix were there any places to
10 put comments or notes or things like that?

11 A There may have been.

12 Q And so personnel should have those?

13 A They should.

14 Q Then you move on to the second round. Now,
15 did you ask any questions in that second round when it
16 was you and Coffin and the --

17 A I don't think so.

18 Q -- two individuals; one at a time, obviously?

19 A I don't think so.

20 Q But Director Coffin asked questions?

21 A Yes.

22 Q How long did those interviews take, about?

23 A Twenty, 30 minutes, at the most.

24 Q Did you take any notes on those interviews

25 or --

1 A No.

2 Q -- was there a scoring form or anything like
3 that for those?

4 A No.

5 Q Do you know whether Director Coffin took any
6 notes?

7 A I don't believe he did.

8 Q Were the questions basically the same to both
9 candidates, or were --

10 A Yes.

11 Q -- they different?

12 Do you remember any questions asked by Coffin
13 that were intended to elicit any negative information
14 with regards to either of the candidates,
15 embarrassing --

16 A The Drury case was the one that
17 specifically -- it was mostly about salaries and duties,
18 and the Drury question is the one that pops out at me
19 about.

20 Q You don't remember him asking any kind of very
21 general and broad question --

22 A I don't.

23 Q So basically what I'm understanding from you
24 is that he really only asked one question with regards
25 to the -- to those cases as well?

1 A Yes. That's my recollection, yes.

2 Q And no general or broad question with regards
3 to any skeletons in your closet that may jump out and
4 bite us in the future?

5 A I don't recall that question being asked.

6 Q I don't mean that specific one, but I mean of
7 that nature.

8 A No, I don't remember.

9 Q Could he have asked something like that?

10 A He may have.

11 Q But you don't recall?

12 A I don't recall the question, no.

13 Q Obviously there's -- you don't recall any
14 answer that would have put Mr. -- is it Mr. or Director?

15 A Director.

16 Q Director Coffin on edge or at alert?

17 A No. Primarily -- the bulk of the conversation
18 was almost more about salaries.

19 Q I'm sorry, it's going to take me a second to
20 read this. I'm back to Captain Gardner's letter, and at
21 the bottom of page two there's a footnote that starts
22 down here where my finger is, footnote number three
23 starts off on October 13.

24 A Okay.

25 Q And when you read that, there's two lines on

1 the bottom of page two, then you have to jump over to
2 here --

3 A Okay.

4 Q -- where it completes. Would you read that
5 footnote, and then I want to ask you some questions
6 about it, or get your overall sense as to --

7 A Do I have to read it for the record, or just
8 to myself?

9 Q You can just read it to yourself. Let me tell
10 you the question I'm going to ask you so that you'll
11 have that in mind when you're reading it.

12 A Okay.

13 Q And my question, is that an accurate
14 representation of your conversation with Captain
15 Gardner? So, you know, as you're looking through it, if
16 you see anything that you don't think is accurate, you
17 can --

18 A I mean not verbatim. There's some general
19 allegations here that are accurate, and I can go through
20 them if you'd like.

21 Q Okay.

22 A It's up to you.

23 Q Why don't you.

24 A Obviously it was -- it was an emotional time
25 for both of us when you're firing a 27-year employee,

1 so, yes, I was upset, that's accurate. I did state that
2 they intended to dismiss him, and that his decision to
3 retire would have to come before 5:00, and not one
4 minute later. That's what Mr. Coffin told me to tell
5 him.

6 He did ask who had made the decision, and I
7 replied that I was told it didn't matter who made the
8 decision; that it was made.

9 I don't remember if he said you've got to be
10 kidding me. I have no idea if that's accurate or not.

11 I think we -- you know, I did express some
12 surprise with him that it unfortunately had come to this
13 after a 27-year career.

14 I think he did ask what policy violations, and
15 I told him I was not aware of the policy violations
16 because I hadn't seen a final report at that time; it
17 was still a draft at that time. So that's accurate so
18 far.

19 Q I think that footnote ends on that page.

20 A Yeah, pretty much.

21 Q So it is pretty much accurate?

22 A It's pretty much. I don't remember those
23 exact words being used about some of it, but it's within
24 the ballpark range.

25 Q He's got in there that he said -- that Captain

1 Gardner said, you've got to be kidding me, to which he
2 says you responded by saying, that's exactly what I said
3 to them.

4 A Oh, I don't know the exact words I said to
5 them. I think anytime you are told that an employee's
6 going to be terminated -- and in my case, not knowing
7 the investigation, it was a surprise to me as much as
8 anything else.

9 Q Did you question Director Coffin in this
10 decision?

11 A Not at the time, no.

12 Q And he said something like, wow, I'm your
13 starting quarterback. Do you recall him saying anything
14 like that?

15 A I don't. He may have said it. I just don't
16 recall it.

17 Q This last sentence in here he attributes to
18 you. He says, when Captain Gardner asked what policy he
19 violated, Director Sweat said, quote, "I have no idea,
20 Rich. I told them it looks bad, it smells bad, it is
21 bad, but, guys, we simply don't have a policy violation
22 here," end quote.

23 Do you recall having that conversation with
24 Mr. Coffin?

25 A I don't remember the exact terms. What I

1 thought I remember saying was that I was not aware of
2 the policy violations because I had not seen a final
3 report. I don't remember saying those exact quotes.

4 Q You don't recall commenting on this is bad,
5 and I told him this was bad, the firing, I guess?

6 A No, I think I told him the allegations were
7 bad.

8 Q Okay.

9 A The allegations of him having the affairs.

10 Q I'm just trying to understand this because it
11 says -- it attributes you as saying, when he asked what
12 policy he violated, it says, quote, I have no idea,
13 Rich. Now, that answers that question. Then it goes on
14 and says, I told them -- so if this is you speaking,
15 them must be Coffin -- it looks bad, it smells bad, it
16 is bad. But, guys, we simply don't have a policy
17 violation here.

18 So I guess what you're saying is you told them
19 it looks bad, his relationship looks bad?

20 A Oh, absolutely.

21 Q It smells bad, it is bad, but we don't have a
22 policy?

23 A Well, we don't have a policy of -- we don't
24 have any policies about having an affair, no, that I'm
25 aware of. I mean, there's supervisor merit rules and

1 regulations, but there's not a policy, that I'm aware
2 of, about having an affair. And Richard asked me that
3 on several occasions, if we had a policy about -- his
4 exact words were, I'm not aware that we have a policy
5 for me being a bad husband, and I said, I'm not aware of
6 that policy either.

7 Q And when he asked you that, that was --

8 A I don't know if it was that day or not, but he
9 was making a general comment and I was answering his
10 direct question. His direct question was, do we have a
11 policy that I'm a bad husband? I said, no, I'm not
12 aware that we have a policy for being a bad husband.

13 Q Before this conversation on October 13 with
14 Captain Gardner had you expressed to Director Coffin
15 that we don't have a policy violation here?

16 A There was a meeting with Mr. Coffin, Mr. Ryan,
17 and myself. There was some discussion, and, yes, the
18 point was brought up about what policy violations that
19 we would or would not have; they were still being looked
20 into at the time. And there was some generic policies,
21 and then there were some direct questions asked about
22 certain aspects of the investigation, whether there was
23 an exact policy to, for instance, the affairs, and then
24 we concluded that meeting with Mr. Coffin's
25 recommendation that he was going to go to the county

1. manager and speak to him about his recommendation.

2 Q I think we're almost done, but let me just
3 make sure I didn't miss anything that I was going to ask
4 about.

5 MR. WHITEMAN: I don't have anything else to
6 ask.

7 (The proceedings were concluded at 12:55 p.m.)

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3 **REPORTER'S COURT CERTIFICATE**

4 STATE OF FLORIDA)

5 COUNTY OF VOLUSIA)

6 I, CHRISTIE SAMMARO, RMR, CRR, certify that I
7 was authorized to and did stenographically report
8 the foregoing proceedings and that the transcript is
9 a true record of my stenographic notes.

10 I further certify that I am not a relative,
11 employee, attorney, or counsel of any of the parties,
12 nor am I a relative or employee of any of the parties'
13 attorneys or counsel connected with the action, nor am I
14 financially interested in the action.

15
16 Dated this 13th day of December 2011.

17
18 Christie Sammaro
19 CHRISTIE SAMMARO, RMR, CRR
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