

1 And I don't remember if somebody before
2 Tom, but Dave Rosenthal was the section chief. And
3 the deputy, who was Gene Ervine, left, from my
4 recollection.

5 And when he left, because he was head --
6 deputy for the criminal division is what it was
7 called at the time from my recollection -- they
8 bumped Dave up in an acting capacity. And then they
9 had a bunch of acting -- or they had acting section
10 chiefs. And I believe it was Tom Gillice.

11 Then it was real clear that the heir
12 apparent was going to be Rubenstein. Again, none of
13 these positions were advertised. No one was allowed
14 to have them. They put whoever they wanted in these
15 positions.

16 And I started complaining. I said, "This
17 is not fair."

18 By then, we'd gotten a union, or the union
19 was coming into being. And the union said, "We've
20 got to stop them doing it."

21 And that's when Rubenstein got really
22 angry. And Dave Rosenthal had made him the de facto

EXHIBIT

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1 A Yes. There were -- I mean, this goes back
2 to '97. And then things would settle down.

3 After I filed my complaint against
4 Alper -- I actually was doing well. I had actually
5 been made a Saturday supervisor. I was getting
6 outstanding evaluations. And then when I filed my
7 complaint against Alper, all of a sudden my
8 evaluation went down to a satisfactory.

9 And Alper said that right out.

10 I said, "What is this about?"

11 He said, "Well, you know, it's that little
12 thing you did."

13 I said, "Absolutely not" -- and I had
14 not -- I was trying to resolve it. I had not
15 actually filed a complaint. I filed an EEO
16 complaint but I had not filed suit.

17 He said, "Next year it will be fine."

18 I said, "Absolutely not."

19 He told me right out that that was what it
20 was.

21 Because I had filed this complaint about
22 his vulgar conduct with the interns and so forth,

1 19-year-old college kids. Many of mine were from
2 Brigham Young and they were very religious and they
3 were particularly offended by his conduct.

4 But then, you know, as I said, when Paul
5 told me right out he knocked me down in my
6 evaluation and it would go -- from outstanding to
7 satisfactory and said right out it was because of my
8 complaint against him, I -- that was ...

9 Q Were there any other acts of retaliation?

10 A It was an ongoing pattern. It was -- it
11 was -- I never got any more promotions. Well,
12 correct that. John Ferren got me promoted.

13 I was getting promotions about every 18
14 months or so. After that, I don't think I got any
15 more -- I didn't get any supervisory
16 responsibilities. I trained Rubenstein and Gillice
17 and the various new lawyers coming on. They, couple
18 years down the road, became my supervisor.

19 Even though, as I said, I was the most
20 senior attorney in the office.

21 Q Any other incidents of retaliation?

22 A One thing that comes to mind, when my

1 agencies, which would have been DMH, CFSA, YSA,
2 Court Social Services, and that was this new
3 position, executive level position, 15/16. I was
4 only a 14, had not received a promotion since John
5 Ferren had given me one.

6 So they stripped me of any involvement
7 with the Department of Mental Health. I'd been the
8 agency representative. I helped establish the MAPT,
9 which is Multi-Agency Planning Team.

10 I had been there from the outset. I was
11 our representative. There was a representative
12 from -- there was a representative from PDS, Public
13 Defender Service. I was there -- there was somebody
14 from DCPS, CFSA. All the agencies had a
15 representative.

16 I was our representative. I was our
17 representative to the MAPT thing, process.

18 Dave Rosenthal, that July, had tried to
19 block me from that. And Sharon Anderson, Sharon
20 Styles Anderson, overruled Dave's decision and said,
21 "No, Mary is the agency representative and Mary will
22 attend all of the meetings at DMH," which is the

1 Judge S-U-D-A. There were just certain judges. And
2 it used to really make them angry. But they knew --
3 the judges knew I would drop whatever I was doing
4 and come over.

5 And the more I looked good in the judges'
6 eyes, particularly in this last six-month,
7 nine-month period, the more they tried to take it
8 away from me.

9 And it really culminated that day when
10 Judge Shuker said how great I was. And three hours
11 later I was getting hit with a letter kicking me out
12 the door.

13 Q Before I leave this area, David
14 Rubenstein, what was your relationship with him
15 before he became supervisor?

16 A I trained him. I was senior to him. When
17 he started, I had been there for five years. So he
18 was a rookie, and I participated in his training.

19 But he never -- I never really had much to
20 do with him after a little while on. He was one of
21 those who didn't think it was a good thing that
22 Alper was gone.

1 Q How soon after him being named, speaking
2 of David Rubenstein, being named to a supervisory
3 position, did your relationship deteriorate?

4 A It deteriorated even before he got named
5 because what happened was -- it really deteriorated
6 when I challenged that he was being -- when he
7 started giving me orders.

8 And I challenged it because he was a trial
9 supervisor, and I was not a trial attorney any
10 longer. And I had never been supervised by a trial
11 attorney. And -- I mean, by a trial supervisor
12 because I hadn't been a trial attorney for five
13 years.

14 And when he started trying to get into my
15 cases, he had nothing to do with them. I never once
16 had a show cause issued against me -- against the
17 agency on any case I worked on the entire five years
18 that I did that.

19 And that was the whole reason that they
20 hired me, was because the agency was always in
21 trouble and having show cause orders issued against
22 them.

1 Rubenstein was officially given the position.

2 Q And do you believe you were more qualified
3 than David Rubenstein?

4 A Yes.

5 Q Why?

6 A Because I had more than double the
7 experience he had. I have a master's degree and I
8 clerked for two judges. I had been working in the
9 office and had outstanding and exceeds --
10 substantially exceeds expectations evaluations.

11 And I had, for the number of trials I did,
12 that I -- cases I tried when I was a trial attorney,
13 I had probably the best record by far of any
14 attorney in the office. I tried 45 cases in nine
15 months and won 42 of them.

16 Q You said you had the best record by far.
17 What was your record other than what you just
18 stated?

19 A When I tried cases, I had the -- every
20 rating period, I had a very, very, very high win
21 rate. I don't agree with that. I don't think we
22 should be judged on that. I think it's

1 agencies collaboratively.

2 That was just before she left. That's why
3 I'm referring to this. That was one of the things I
4 talked to Eugene Adams about when I met with him in
5 one of those four, five, six meetings I had with him
6 between August 26 and October or November 1st.

7 I guess it's then when he sent me the
8 e-mail that it became clear, after I filed my
9 complaint and after things got -- after Arabella
10 gave David Rubenstein the job, that none of this was
11 happening, my evaluations had not been changed, I
12 didn't get the promotion I had been promised that
13 Gene told me Arabella had approved.

14 Gene sat right here in this building in
15 the food court downstairs and said to me, "I met
16 with her. She has approved it. The only hangup is
17 we have to wait until after October 1st because we
18 are in a budget crunch. As soon as the new fiscal
19 year kicks in, it will be taken care of."

20 That was about two or three weeks away at
21 the time so that must have been early to
22 mid-September. So he was leading me to believe

1 I gave my opinions and so forth. I
2 supported the hiring of Andy, and we hired Andy.
3 That was when Mike Cobb was there. Even though Mike
4 was Paul's friend, and was upset about it, Mike took
5 the high road.

6 And Mike hired me for the position. I
7 don't think he wanted to. He was pretty upset; but,
8 YSA had specifically created the position and asked
9 for me, and said -- they wrote a letter asking me to
10 be their lawyer, and said they had designed the
11 position with me in mind, kind of like what happened
12 a few years later with this other position, but they
13 wrote a letter.

14 So Mike was kind of stuck. He had to give
15 me the position, or it would be more evidence of
16 more retaliation, I would think.

17 At any rate, I was given the position.
18 Mike took the high road. I felt that he tried to
19 curb some of the hostility. But he left -- I don't
20 remember when he left, but it wasn't that much
21 later.

22 He -- however, when Andy moved into

1 him because he's a smiling face, he comes across as
2 Mr. Nice Guy and very laid back and very mellow, and
3 underneath that is somebody with a dagger.

4 But as long as Sharon was there, it was
5 okay.

6 Q Did you and Sharon ever have any
7 discussions as to the root of the treatment that you
8 were getting from David Rubenstein or David
9 Rosenthal?

10 A I don't know about the -- she knew -- she
11 knew they were out to get me. She said to me before
12 she left, I am trying to recollect when it was,
13 shortly before she left, and I can't remember if it
14 was before or after she called me in for that
15 conversation about the position that Arabella had
16 created, maybe it was before but it was right around
17 the time she was leaving.

18 And I was in her office. I don't know if
19 she called me in or why I was talking to her. And
20 she said, "You got to get out of here. They're
21 gunning for you. They are out to get you."

22 And basically, in so many words, they are

1 need to get the kid out. I think Valerie Boykin had
2 called me, too, from YSA -- long story short,
3 whatever it was -- I don't if the kid was being
4 illegally held, but there was some issue.

5 And so I tried to work on it. And it
6 was -- must have been a pre-commitment case. But it
7 also involved YSA, who was my client. Anyway they
8 called me at nighttime.

9 The next morning -- and I followed up and
10 did whatever.

11 The next morning, I came in. I got in
12 trouble from Dave Rosenthal and I was told -- there
13 must have been a defense attorney who called me,
14 too, because I don't know who that was.

15 He said, "You're not allowed to take calls
16 from defense attorneys, and you are not allowed to
17 take calls at nighttime."

18 I said, "This is crazy. And, you know,
19 I'm getting these calls. And people come to me
20 because they know I'm available. And if a kid's
21 illegally held or whatever I'm going to..."

22 So I went into Sharon. That's what's in

1 here. Sharon -- and he got furious because Sharon
2 said to him, "You can't tell her not to do this."

3 She said, "Mary's been around this town
4 for ten years or more." I remember something about
5 ten years. She said, "The judges, the lawyers, and
6 the advocates, everybody knows Mary. Everybody
7 knows her phone number, and everybody calls Mary to
8 get things done. You cannot tell her not to take
9 phone calls."

10 And he was furious.

11 So even though it was upsetting to me, I
12 knew that ultimately the boss had my back and I was
13 doing the right thing and I was safe.

14 They could have discriminated all day
15 long, as long as the ultimate decision-maker wasn't
16 allowing it to happen, I could handle the barbs. I
17 could ward them off as long as I could keep doing my
18 job and keep doing what I had to as long as I knew
19 they couldn't destroy me professionally, as much as
20 they would have liked to, it was when she left that
21 they tried their darndest.

22 Q Did you and Sharon ever discuss any EEO

1 But I'm also not afraid of it.

2 Q Hopefully, just two more questions.

3 Did you raise EEO implications based on
4 how you'd been treated with Gene when you spoke to
5 him?

6 A Yes. Gene's the one who raised it with
7 me.

8 Q Sorry?

9 A Gene's the one -- Gene's the one who
10 brought it up. Gene is the one -- that's what upset
11 me because Gene is also the one who went to Sid
12 Bixler and told him. And of all people to have gone
13 to was the guy Dave has lunch with every day. Gene
14 is the one.

15 And furthermore, Gene knows -- when I
16 talked to Gene, Gene told me, gave me his sister's
17 phone number, because I saw him over here one night,
18 I was crying because something else they had done, I
19 don't remember what had happened.

20 I went up to find Steve Anderson, the
21 union representative, maybe about 7:30 at night.
22 And we were in this building because Gene didn't at

1 agree because of his digs at me and saying that I
2 shy away from it, and if you look, it looks like
3 he just lifted the same language from year to
4 year to year in my evaluation, and I just was
5 very, very angry, and as he says right on the
6 front of this, "Notwithstanding that Miss
7 Phillips received an overall rating of
8 substantially exceeds expectations, she refused
9 to sign the evaluation."

10 I was not into a whole lot of -- I
11 didn't challenge it. I guess it didn't make a
12 difference in my finances, but I was very angry.
13 Because I maintained the top rating, I didn't get
14 a pay cut, and I guess that's probably what
15 pushed me over the edge when I finally did appeal
16 it when the review panel knocked me down, but I
17 was very angry about this.

18 Even though it looks like he's trying
19 to pretend like he thinks great things about me,
20 I know Dave Rosenthal didn't like me and Dave
21 Rosenthal didn't hesitate to try to make digs at
22 me and cover himself at the same time so I

1 couldn't challenge it.

2 Q. Did you file more pleadings after
3 receiving -- let me ask it this way:

4 Did you address the statement that
5 Miss Phillips shies away from filing pleadings
6 and she prefers to argue her cases orally? As a
7 result of that seeing that in the evaluation for
8 the period April 1998 through September 1999, did
9 you do anything different?

10 A. I continued to file what was
11 necessary. I refused to file frivolous
12 pleadings, and I worked with the defense
13 attorneys and I continue to work with them and to
14 represent my agency and to make sure that no show
15 cause or no findings of contempt were issued.

16 I never had an order to show cause
17 issued where I didn't reply, where I didn't file
18 a written pleading. I never failed -- I never
19 failed to file something appropriate, and that's
20 why I would get so angry with Dave, and I would
21 say to him every time show me where I should have
22 filed something, give me one case, one instance

1 performance appraisals and I guess prior to the
2 one that was appealed, it would be two, and I'm
3 referring to Exhibit 6 and Exhibit 7. As a
4 result of receiving these, did you do anything
5 different?

6 A. I made it a point -- actually, yes. I
7 made it a point of showing him every time I filed
8 anything.

9 I also, if I remember correctly, went
10 to him and showed him prior evaluations I had had
11 where I had gotten evaluations from Paul Alper
12 and Mike Cobb talking about where I got
13 outstanding for the written pleadings to show him
14 that I did not shy away from anything and that
15 other supervisors had found it.

16 I challenged him, and I said, "Dave,
17 you're just doing this time after time," and I
18 would show him. I made it a point of showing
19 him -- in fact, Dave had to sign off on my
20 pleadings -- showing him and going to him --
21 sometimes he wouldn't talk to me, sometimes he
22 would -- what I was doing just to make sure, just

1 A. It was not.

2 Q. What about the section chief?

3 A. It was not.

4 Q. Were there any positions to which you
5 applied?

6 A. Not during that time because none of
7 them were advertised. That's when all the
8 trouble started, when it was very clear that
9 Rubenstein was -- the pattern was continuing,
10 that Rubenstein was the de facto chief, and I
11 sent e-mails saying that, and by then we were
12 getting a union, and finally they pretended like
13 they were advertising it, and then they sent out
14 bogus criteria, and David and I were the only
15 two, and that's when David got so angry and when
16 his hostility to me just went over the top.

17 Q. Did you apply for it?

18 A. Eventually I did when I was allowed,
19 and there were only two of us, and I was not even
20 interviewed.

21 Q. Do you know if David Rubenstein was
22 interviewed?

1 A. Yes, he was, and we were the only two
2 applicants.

3 Q. How do you know he was interviewed?

4 A. Because I was told.

5 Q. By?

6 A. Maybe Rosenthal. I just remember it.
7 I know that Arabella gave him the job. He had
8 the job before I ever -- I mean, he was acting in
9 that capacity. In fact, he got put in that
10 capacity when Tom went out on paternity leave and
11 Dave Rosenthal went on, got promoted up to
12 another acting position higher up, Eugene Irvin's
13 position.

14 Q. In paragraph 10 in the complaint, you
15 say that you were temporarily reassigned as a
16 result of your EEO-based allegations.

17 A. Uh-huh.

18 Q. Is it your contention that that
19 reassignment was discriminatory in nature?

20 A. I'm sorry?

21 Q. Was that reassignment discriminatory
22 in nature?

1 about two to three weeks before I had any
2 access. So when he would e-mail me, I couldn't
3 open any of my e-mails.

4 Q. But the question is, do you know
5 whether or not anybody attempted to get you
6 access through the Department of Mental Health?

7 A. And the answer is yes, Dave Norman
8 did, and David Rubenstein had blocked it so we
9 couldn't get it. Yes, he did. He got me a
10 computer, and he contacted Rubenstein, and I
11 believe he contacted OCTO, and I contacted OCTO,
12 they're the people that provide it, and they were
13 told that Rubenstein had to clear it up. He's
14 the one who had put the block on it. I think
15 there was a guy name Lewis or Mr. Lewis or Luis
16 or something like that.

17 Q. In paragraph 16 you say defendants
18 attempted to further demote plaintiff.

19 A. Yes.

20 Q. What do you mean when you say there
21 was an attempt to further demote you?

22 A. By money. David Rubenstein insisted

1 on doing an evaluation of me even though I had
2 left the office, and Dave Norman told him that he
3 could give an advisory opinion but that it was
4 Dave Norman's responsibility to do an evaluation,
5 and Rubenstein was determined that he was going
6 to do it, and, in fact, he did do it and gave me
7 a reduced pay and sent me a letter -- in fact, it
8 may be the letter you've already shown, I don't
9 remember -- through Spagnoletti saying that my
10 evaluation had been changed, and, therefore, I
11 would lose pay. So that's how, yes.

12 Q. You said he gave you a reduced pay?

13 A. Well, he gave me a reduced evaluation,
14 which automatically reduced my pay. I think he
15 tried to knock it down to needs improvement, and
16 this was well after I had gone, many months after
17 it was due and well after I had left the office
18 and was working under Dave Norman's supervision,
19 and he clearly did not want Dave Norman to write
20 my evaluation.

21 Q. Did you have any discussions with Dave
22 Norman during this period as to who should write

1 your evaluation?

2 A. Yes.

3 Q. And did he tell you why he believed --
4 this is Dave Norman. Did Dave Norman tell you
5 why he believed that he was the appropriate
6 person to write the evaluation?

7 A. Yes. He pulled out the personnel
8 regs. Dave is a very, very, very bright lawyer,
9 very bright person. He pulled out the -- and he
10 even told Rubenstein what they were chapter and
11 verse and said, "This is why I believe you are
12 not supposed to be doing this, I'm supposed to be
13 doing it," and, in fact, he then went to a
14 meeting, I believe he said it was over in 441,
15 where he ran into Rubenstein and brought it up
16 again with him and came back and told me that.

17 Q. In paragraph 17, what did you mean
18 when you entered that into the complaint?

19 A. That's exactly what I meant, what I
20 just described. Rubenstein challenged Dave
21 Norman when Dave told him, "I'm responsible for
22 doing the evaluation. If you want to give me