

STATE OF MICHIGAN

MICHIGAN NATIONAL GUARD - AGENCY

vs.

ADVERSE ACTION APPEAL

JOSEPH L. SMOCK,

Appellant.

\_\_\_\_\_  
MILITARY PREHEARING CONFERENCE

BEFORE COLONEL KEVIN K. DAWKINS, HEARING EXAMINER

Camp Grayling, Michigan - Monday, October 6, 2014

Appearances:

For the Agency: CPT DAVID J. BEDELLS, ESQ., (P55590)  
Deputy General Counsel  
Michigan Army & Air National Guard  
3411 N. Martin Luther King Jr. Blvd.  
Lansing, Michigan 48906  
517-481-8100

For the Appellant: BEN BANCHS  
Laborers' International Union of  
North America  
Business Manager, National Guard  
District Council  
P.O. Box 1794  
Abita Springs, Louisiana 70420  
985-249-2315

Curtiss Reporting 2319418715

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25

Also Present: Joseph L. Smock  
SSG Steven Schultz, Assist. CPT Bedells  
MAJ Allyn Johnson, Labor Relations  
Specialist  
James Sweat, President 2132 Local  
Ja'net Vallotton, 2nd Chair to Mr.  
Banchs

Recorded by: CURTISS REPORTING  
Post Office Box 6  
Traverse City, Michigan 49685  
(231) 941-8715  
Tracy L. O'Brien, CER #5175

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25

TABLE OF CONTENTS

WITNESSES:

PAGE:

None

EXHIBITS:

MARKED:

Exhibit 1

37

(Book 1, AR 15-6)

Exhibit 2

37

(Book 2, AR 15-6)

Exhibit 3

37

(Case File-Smock)

1 Grayling, Michigan

2 Monday, October 6, 2014 - At about 8:00 a.m.

3 COURT RECORDER: We are on the record.

4 Today's date is October 6, 2014. The time is now 8:00  
5 o'clock.

6 HEARING EXAMINER: I'll declare this  
7 prehearing conference in session and identify myself  
8 to you.

9 I am Kevin Dawkins, the Hearing Examiner that  
10 was requested by the Adjutant General of Michigan to hear  
11 the appeal of an adverse action case of Joseph Smock. The  
12 actual case will be heard tomorrow 7 October, beginning at  
13 8:00 o'clock.

14 My name, along with other qualified examiners,  
15 was submitted to the Adjutant General of this State by the  
16 National Guard Bureau, so that he could select a qualified  
17 Hearing Examiner from outside this State to hear this  
18 case.

19 After hearing this case, I will provide  
20 the Adjutant General a recommendation resulting from the  
21 outcome.

22 For the record, I want to identify those  
23 persons that are present, beginning with the Agency. So I  
24 think what we'll do is just go around the room and  
25 identify who you are and your role in this hearing.

1                   CAPTAIN BEDELLS: I'm Captain David Bedells,  
2                   and I'm the--one of the Agency representatives and the  
3                   Recorder in this hearing.

4                   STAFF SERGEANT SCHULTZ: Staff Sergeant Steven  
5                   Schultz, and I'm assisting Captain Bedells.                   I

6                   MAJOR JOHNSON: Major Al Johnson. I'm the  
7                   Labor Relations Specialist for the Michigan Guard.

8                   MR. SMOCK: Joe Smock. I guess I'm--

9                   MR. BANCHS: The Appellant.

10                  MR. SMOCK: Oh.

11                  MR. SWEAT: James Sweat, President/Business  
12                  Manager of Local 2132.

13                  MS. VALLOTTON: Ja'net Vallotton, LIUNA  
14                  National Registry Council and the second chair.

15                  MR. BANCHS: And I'm Ben Banchs, LIUNA  
16                  National Registry Council, and I'm Mr. Smock's  
17                  representative.

18                  HEARING EXAMINER: Okay. Thank you.

19                  MR. BANCHS: You're welcome.

20                  HEARING EXAMINER: Before we get fully into  
21                  this, is there any chance of a prehearing settlement?

22                  CAPTAIN BEDELLS: No.

23                  MR. BANCHS: I mean, we'll entertain, if the  
24                  Agency has something to offer, but we haven't heard  
25                  anything, sir.

1 HEARING EXAMINER: Okay. And I just heard a  
2 no here, so.

3 CAPTAIN BEDELLS: We don't have anything to  
4 offer.

5 HEARING EXAMINER: Okay.

6 For the record, I'd like to enter my opening  
7 statement at this time. Let me give you an idea of what  
8 we're going to be doing.

9 The case we'll be hearing tomorrow is the case  
10 of an adverse action resulting in removal against  
11 Appellant. My role in this--the intent of this process is  
12 for me to be able to determine three things. And those  
13 things are did the technician do or not do what they were  
14 charged with. Two, will some discipline based on the  
15 proven conduct promote the efficiency of the service.  
16 And, three, is the penalty in this case appropriate.

17 What I'll do, then, is take that--take my  
18 determination after these hearings and send that to the  
19 TAG of the State, and he'll make the ultimate decision.

20 I've been appointed by the National Guard  
21 Bureau, and I will hear the case based upon its merits.  
22 Each party in the case will be given an opportunity to  
23 make an opening statement limited to 15 minutes each, have  
24 its evidence cross-examined, have its witnesses presented  
25 and cross-examined, and each side will be given the

1 opportunity to make a closing statement limited to 15  
2 minutes each.

3 This Examiner will hear the evidence, weigh  
4 its importance and render a recommendation to the Adjutant  
5 General of Michigan within 45 days after I receive the  
6 verbatim transcript of the proceedings.

7 Both parties may--must be aware that formal  
8 rules of evidence do not apply in a hearing of this  
9 nature. I will ask Counsel from both parties if you  
10 understand this point.

11 CAPTAIN BEDELLS: I do.

12 HEARING EXAMINER: Captain Bedells?

13 CAPTAIN BEDELLS: I do, sir.

14 MR. BANCHS: Yes, sir.

15 HEARING EXAMINER: Mr. Banchs? Okay.

16 I'm going to take a minute now to let Tracy  
17 give you guys some instruction, in terms of testimony of  
18 your witnesses, that would help her be able to get that  
19 verbatim transcript.

20 COURT RECORDER: Please advise the witnesses,  
21 your particular witnesses, to wait and hear the entire  
22 question before beginning their answer. And ask them to  
23 afford the same courtesy from the attorneys, from the  
24 people asking the questions.

25 They need to give a verbal answer. Shaking,

1           nodding of the head, uh-huhs, unh-unhs are difficult on a  
2           transcript to understand which way you're going with it.

3                       Also, you know, make sure they understand the  
4           question, because I'm assuming, they give an answer,  
5           you're going to expect that answer to be the truth, what  
6           they--what they know, but they need to have that  
7           understanding. So make sure that if they don't understand  
8           the question, to ask you, "Please rephrase," "I don't get  
9           what you're saying."

10                      Those are the basic things that we look for.

11                      HEARING EXAMINER: Okay.

12                      COURT RECORDER: Thank you, sir.

13                      HEARING EXAMINER: Thank you.

14                      MR. BANCHS: Thank you.

15                      HEARING EXAMINER: I've called this prehearing  
16           conference for the purpose of accomplishing four different  
17           functions with regard to the actual hearing.

18                      First, I want to develop and express the  
19           ground rules for the conduct of the actual hearing.  
20           Second, I want to identify any problem areas which we can  
21           foresee during the preliminary conference, which may arise  
22           during the actual hearing. Third, I want both parties to  
23           agree upon any stipulations that may be agreeable to the  
24           parties that are involved in this case. Fourth, I want to  
25           establish the responsibilities and rights of the Appellant



1 and the Agency.

2 By accomplishing these four functions, I will  
3 not be surprised by the actions of either party during the  
4 actual hearing tomorrow. Do both parties understand this?

5 CAPTAIN BEDELLS: The Agency understands.

6 MR. BANCHS: Yes, sir.

7 HEARING EXAMINER: Okay. Thank you.

8 So far as the actual conduct of the hearing is  
9 concerned, we will convene at 08:00, tomorrow 7 October in  
10 this same room. There will only be one person from each  
11 side of the case that will be allowed to represent the  
12 case. Each side needs to agree as to her--who that person  
13 would be.

14 For the Agency, I understand that person will  
15 be Captain Bedells.

16 CAPTAIN BEDELLS: Correct.

17 HEARING EXAMINER: And for the Appellant, my  
18 understanding is that will be Mr. Banchs.

19 MR. BANCHS: Yes, sir.

20 HEARING EXAMINER: Okay.

21 MR. BANCHS: One question, though, she--she's  
22 kind of like an expert, so she's going to ask--I'll just  
23 boil it down. I'm Air Guard and she's Army. So a lot of  
24 the Army terms that she understands--so there's going to  
25 be some technical questions that are going to be asked

1 that I was going to have her ask those, if that's--

2 HEARING EXAMINER: Yeah. During the hearing,  
3 I want to hear from Captain Bedells and I want to hear  
4 from you. If you need to--if you need to talk to each  
5 other to get clarification on the issues, I'm fine with  
6 that.

7 MR. BANCHS: Okay.

8 HEARING EXAMINER: But in terms of, you know,  
9 addressing the actual hearing, I want it to be you two.

10 MR. BANCHS: Okay. Understood.

11 HEARING EXAMINER: I think you can appreciate  
12 why only one person is to be heard. This rule is not to  
13 silence anyone. You are welcome and free to have as much  
14 communication with your representative as you choose. But  
15 the Examiner will hear only one voice. Okay?

16 Each witness will be sworn in prior to his or  
17 her testimony. It's my responsibility to maintain proper  
18 conduct and decorum throughout the hearing. Let me assure  
19 each of you that I intend to exercise my responsibility in  
20 this area.

21 Each party is hereby warned that, if proper  
22 conduct and decorum is not maintained, I will terminate  
23 the hearing. Does each party understand my position in  
24 this area?

25 Captain Bedells?

1 CAPTAIN BEDELLS: We understand.

2 HEARING EXAMINER: Mr. Banchs?

3 MR. BANCHS: Yes, sir.

4 HEARING EXAMINER: Okay. Both parties have  
5 previously agreed in this case to an open hearing.  
6 Onlookers will be limited to the pre-approved list.

7 I plan on sequestering all the witnesses. And  
8 since I don't know the people here in Michigan, I'll ask  
9 each of you to ensure that, if any witness shows up here,  
10 that you identify them to me immediately, so that I can  
11 make sure that they're not here as an audience member, and  
12 then also as a witness.

13 I expect, for the hearing, the Agency  
14 representative will be here, along with Sergeant Schultz.

15 And Major Johnson, I see your role  
16 primarily as a subject matter expert. And we probably  
17 ought to talk about that, because I think you asked if you  
18 would be a witness--him and--there was a warrant officer.

19 MAJOR JOHNSON: Chief Mosciski.

20 MR. BANCHS: Chief Mosciski.

21 CAPTAIN BEDELLS: Yeah. And I wanted to take  
22 that up today.

23 HEARING EXAMINER: Let's talk about it now.

24 CAPTAIN BEDELLS: Okay.

25 HEARING EXAMINER: Well, let me finish just

1 this--this piece, and then we'll--we'll visit that.

2 So my expectation, obviously, primarily the  
3 Appellant's here, the Appellant's primary representative,  
4 the Agency's primary representative, the Court Reporter  
5 and myself. Those are--those are the primaries. Then  
6 we've got the assistance of Sergeant Schultz, and then  
7 your assistant, the local representative.

8 Are there any objections from the Agency to  
9 those folks being present during the hearing?

10 CAPTAIN BEDELLS: To Ja'net, is it?

11 MS. VALLOTTON: Yes, sir.

12 CAPTAIN BEDELLS: And Jim Sweat?

13 HEARING EXAMINER: Yeah.

14 CAPTAIN BEDELLS: I have no objection.

15 HEARING EXAMINER: Okay. Okay. And any  
16 objection to Sergeant Schultz assisting and--well, we  
17 can--let's talk about Major Johnson last.

18 MR. BANCHS: Yeah, no objections against  
19 Sergeant Schultz.

20 HEARING EXAMINER: Okay.

21 MR. BANCHS: And, at this point in time, I  
22 don't plan on questioning--

23 HEARING EXAMINER: As a witness?

24 MR. BANCHS: No, sir.

25 CAPTAIN BEDELLS: What about Mosciski?

1 MR. BANCHS: Mosciski, yes. But he's not  
2 here.

3 CAPTAIN BEDELLS: Right. Yeah, just by way of  
4 background, I reviewed the emails that you and I exchanged  
5 over the--these many months. And it slipped through that  
6 he had even asked for Major Johnson and Chief Mosciski. I  
7 didn't even realize that until last week.

8 I don't see--frankly, I don't see how they're  
9 material to this case at all. So, I mean, you--obviously  
10 you can plead your case to Colonel Dawkins. Mosciski, I  
11 understand, held Major Johnson's--

12 MAJOR JOHNSON: Correct.

13 CAPTAIN BEDELLS: --position. You know, if we  
14 would have had this hearing on time, he would have--he  
15 would have held that position. So inasmuch as he's not  
16 part of the 15-6, I don't know how his testimony bears on  
17 this. I'd object to--I mean, thank you for excusing Major  
18 Johnson, because he's here to help me. But I'd object to  
19 Chief Mosciski. I don't know what role he plays in this  
20 at all, so.

21 And the reason I bring up the emails is I  
22 think what got caught in the middle was you had said you  
23 wanted to change a couple of spectators, if you will, and  
24 named Jim Anderson and someone else, to which I had no  
25 objection. And to that, I said I don't have any objection

1 to that. And then somehow an email followed up right  
2 after that saying, "And I want to put Mosciski and Johnson  
3 on my witness list." And I didn't catch that or I would  
4 have objected then, so.

5 HEARING EXAMINER: Okay.

6 MR. BANCHS: They would just be procedural  
7 questions.

8 HEARING EXAMINER: And here's what I would  
9 suggest: It's not unusual to have the Labor Relations  
10 Specialist--the Labor Relations Specialist's role in  
11 adverse action cases is to--is to facilitate the process.  
12 They don't represent the Agency necessarily. They don't  
13 represent the Appellant necessarily. They provide advice  
14 to both parties to make sure that the process works. It's  
15 typical for that individual to sit in the hearing, not as  
16 a witness, but--and not as a--necessarily an assistant to  
17 any particular side.

18 So my thinking is Major Johnson should be  
19 here. If there are questions regarding the procedures  
20 prior to his being in that role--is--is the Chief around?

21 MAJOR JOHNSON: He is in Lansing today and en  
22 route this afternoon.

23 HEARING EXAMINER: So he'll be here for  
24 tomorrow and Wednesday; is that the plan?

25 MAJOR JOHNSON: Yes, sir. Yes, sir.

1 CAPTAIN BEDELLS: Well--

2 MAJOR JOHNSON: And he is available. I can  
3 get hold of him now, if you need.

4 HEARING EXAMINER: My thought is you be the  
5 primary representative of that piece of this case, the  
6 subject matter expert on the process. And if there are  
7 questions about what happened prior to your--your being in  
8 that role, that you would get with him offline and bring  
9 that information back.

10 Is that--

11 MR. BANCHS: You know, sir, if you don't mind,  
12 not that we're tipping our hand or anything, but the  
13 questions that--that I was potentially going to ask the  
14 Chief had to do with representational issues, insofar as  
15 whether representation was denied to any of the witnesses  
16 that were questioned, not--the employees. At the time  
17 they weren't witnesses, obviously, but--not to this  
18 proceedings. Now they are. But those are the kind--those  
19 are the kind of procedure--because they were issues, and  
20 we did file an unfair labor practice. And I'm sure, as  
21 you guys know--well, I don't know if you've been contacted  
22 by the FLRA but--

23 MAJOR JOHNSON: Yes, sir.

24 MR. BANCHS: --the FLRA has a pending charge  
25 against the Agency because they did find there were

1 violations of the statute. So those were the kind of  
2 questions that we're going to ask--be asked of the Chief.  
3 They weren't necessarily in regards to the meat and  
4 potatoes of the case, but just leading up to, you  
5 know--and here's why: I mean I don't want to try the case  
6 now, but--

7 HEARING EXAMINER: Sure.

8 MR. BANCHS: --in the instructions that were  
9 given to Colonel Doolittle, he was told that, if he was  
10 questioning technicians, that he had to remind them that  
11 they had a right to be represented by the Union, and he  
12 didn't do that. And so--you know, I mean, if they want to  
13 stipulate to that, then the Chief won't have to testify.  
14 But I wanted to have that available to me, because I think  
15 it is an important part of the case, the fact that he did  
16 deny witnesses representation.

17 HEARING EXAMINER: I'm trying to think  
18 what--was Mosciski present during the 15-6 investigation?

19 MR. BANCHS: Well, no. He was the LRS. And  
20 we--and we--and we contacted Chief Mosciski numerous times  
21 to tell him that Colonel Doolittle was denying employees  
22 representation even after they did ask for it.

23 CAPTAIN BEDELLS: Well, sir, as he said, it  
24 doesn't go to the meat and potatoes of the case. I don't  
25 think it's relevant. He--we don't have a--we weren't



1 provided any sort of witness synopses with respect to what  
2 he's going to testify to or hear. I mean, I'm learning  
3 about it for the first time.

4 HEARING EXAMINER: Sure.

5 CAPTAIN BEDELLS: I want to--I want to think  
6 on it, but--I mean, we added him. He had an opportunity  
7 to say this is what he was going to testify to. I could  
8 have, you know, I suppose responded with a written  
9 objection. But I don't know how it's relevant to--I mean,  
10 he--Mr. Banchs--Mr. Banchs can certainly get to, when he  
11 asks each witness, were you denied--

12 HEARING EXAMINER: Right.

13 CAPTAIN BEDELLS: --and did you ask for and  
14 were you denied representation. And then I--then I have  
15 an opportunity to cross-examine them. I don't know what  
16 Chief Mosciski can really add to that. And I don't even  
17 know how that's relevant to what we're going to try here.  
18 But that's our position.

19 HEARING EXAMINER: Colonel Doolittle is a  
20 witness, as are all of the folks that were interviewed  
21 during the 15-6. So I would tend to agree. I think you  
22 can get what you're looking for in terms of--to get it  
23 into the record by asking those individuals.

24 The Chief was a facilitator of the process. I  
25 mean, you can go right to the Weingarten Rules and

1 establish for the record, if you want to, what's required  
2 without having the Chief here.

3 MR. SMOCK: Sir, can we--can I speak offline  
4 with Ben at this point right now? Thank you.

5 HEARING EXAMINER: Go off the record.

6 COURT RECORDER: Go off the record?

7 HEARING EXAMINER: Please.

8 COURT RECORDER: We are going off the record.

9 The time is 8:15.

10 (Off the record)

11 (On the record)

12 COURT RECORDER: We are back on the record.

13 The time is 8:18.

14 HEARING EXAMINER: Okay. Is there further  
15 discussion on--

16 MR. BANCHS: Yes, sir. So what we'll propose  
17 is that we--I agree with what you're saying we could get  
18 what--we can get what we're looking for as far as the  
19 denial of representation hopefully from the witness  
20 statements. However, if for some reason Colonel Deletol  
21 (sic)--Colonel Doolittle does not admit to the  
22 non-representation, can we call the Chief as a rebuttal  
23 witness? Because that was what--and it wasn't just with  
24 him. It was also with Colonel Houchley (phonetic), it is?

25 MR. SMOCK: Houchley.

1 MR. BANCHS: Houchley.

2 HEARING EXAMINER: I'm trying to--

3 MR. BANCHS: And he doesn't--he doesn't have  
4 to be here in person either, sir.

5 HEARING EXAMINER: Yeah. I'm just  
6 under--trying to understand how Mosciski would know that.  
7 I mean, how--what--

8 MR. BANCHS: That he would know that Colonel  
9 Doolittle was denying representation? Because we called  
10 him on it numerous times.

11 HEARING EXAMINER: But--

12 CAPTAIN BEDELLS: Can I speak to--

13 HEARING EXAMINER: Please.

14 CAPTAIN BEDELLS: But unless--unless Houchley  
15 or--Colonel Houchley or Chief Mosciski was actually  
16 there--and I suppose you might get that through the  
17 testimony. "Chief Mosciski was sitting right next to me  
18 when I was denied representation." He's really not--I  
19 don't know how that bears on it. I understand you told--I  
20 understand you might have informed Chief Mosciski, "Hey,  
21 our people are being denied Union representation." But  
22 what you have is you have someone who's going to testify,  
23 presumably, "I was denied Union representation," and  
24 you're going to have Colonel Doolittle say, "No, you  
25 weren't," and then the Hearing Examiner is going to have

1 to access their credibility.

2 MR. BANCHS: Well, there's also email traffic  
3 back and forth that Colonel Doolittle was included in,  
4 where I've warned him to stop denying representation. And  
5 that was to the Chief. So, I mean this all goes to--to  
6 the--

7 CAPTAIN BEDELLS: Well, I mean, I haven't seen  
8 your email traffic. It wasn't submitted prior to  
9 September 26th, which was your deadline, sir. So I don't  
10 know. I suppose--

11 MR. BANCHS: Was--it's the Agency's emails. I  
12 mean, these are your emails, as well.

13 CAPTAIN BEDELLS: Well--

14 MR. BANCHS: So I mean, you know, they're  
15 readily available. I mean, we could certainly submit them  
16 to the record.

17 CAPTAIN BEDELLS: Well, I would have liked to  
18 have had them before September 26th, which was Colonel  
19 Dawkins' deadline to have this stuff. And I don't--I  
20 didn't include them in my exhibit list. So I suppose--

21 MR. BANCHS: Well, how about this: The  
22 Federal Labor Relations Authority has filed--has found  
23 enough merit to a charge against the Agency for the  
24 non-representation. If they want to stipulate to that,  
25 I'm good with that, and we don't have to call anybody.

1                   CAPTAIN BEDELLS: It's not material. We won't  
2 stipulate to it. So--I don't think it's material, so.

3                   HEARING EXAMINER: I think they're separate  
4 issues. I mean, you have that issue, and obviously you  
5 guys are pursuing that.

6                   MR. BANCHS: Well, and here's what it goes to,  
7 sir, because, you know--the--you know, part of the--part  
8 of the concern here--and it was submitted to the Agency in  
9 a separate letter that went along with the technician  
10 replies, was that Colonel Doolittle's tactics were  
11 coercive and they were intimidating. So it does go to all  
12 this. I mean--

13                  HEARING EXAMINER: You have an independent  
14 case pending on that issue. We've--and I see the  
15 connection and the relationship obviously with this issue.  
16 But I think this hearing needs to be about the specific  
17 charges in this case. And I think we need to focus on  
18 that here.

19                  MR. BANCHS: Fair enough. Now, I mean, I  
20 would just ask for some latitude, then, when I'm  
21 questioning Colonel Doolittle. I mean, it might seem a  
22 little--you know, I don't want it--I don't want it to come  
23 across and be objected against because they feel I'm  
24 badgering the witness or anything. But if he doesn't want  
25 to admit to the fact that he did deny these folks

1 representation--I mean, there is email traffic in the--in  
2 the record where he told Ms. Reed that she didn't--and I  
3 know this is the Reed case, but just, you know, for all  
4 intents and purposes--where he told her he didn't need  
5 rep- --she didn't need representation, so.

6 HEARING EXAMINER: Okay. And you can ask him  
7 that question--

8 MR. BANCHS: Okay.

9 HEARING EXAMINER: --when he's here.

10 MR. BANCHS: All right.

11 HEARING EXAMINER: But I don't--I think--we're  
12 getting--

13 MR. BANCHS: As far as the Chief goes--

14 HEARING EXAMINER: Yeah.

15 MR. BANCHS: --what--you know what,  
16 we'll--well, how about this: You know, the Agency objects  
17 to it. We would like it. You know, I mean if--you can  
18 make your ruling, sir.

19 HEARING EXAMINER: Right.

20 MR. BANCHS: If you don't think he needs to be  
21 here, then--

22 HEARING EXAMINER: Okay.

23 MR. BANCHS: --you know, but we'll--yeah.

24 HEARING EXAMINER: And I understand both your  
25 positions on the issue. So, in terms of this case and

1 what we're here for, I'll take that into consideration.

2 MR. BANCHS: Okay.

3 HEARING EXAMINER: Okay. I do have some  
4 instructions. We'll have an audience here on Tuesday and  
5 Wednesday. As the Appellant was the requesting party for  
6 the open hearing, and as the Agency has not requested the  
7 presence of any audience members, I'm holding the  
8 Appellant's representative, Mr. Banchs, responsible for  
9 ensuring the following of the audience members:

10 Audience needs to understand this is not a  
11 show. I expect quiet respect for the process, no  
12 emotional outbursts or disruptive behavior of any kind.  
13 No photography or any other form of recording of any part  
14 of the proceeding. No entering or exiting the hearing  
15 room between the time that a witness is sworn in and the  
16 time that they're released. I just don't want that kind  
17 of disruption. And it causes problems for Tracy, too,  
18 with the noise in the background.

19 No contact, whatsoever, between the witnesses  
20 and the audience during testimony. And I think we'll have  
21 the room arranged to where the witnesses will be--or--I'm  
22 sorry--the audience will be at that west end of the room,  
23 and the witnesses will come through this door.

24 I retain the right to dismiss any or all of  
25 the audience members if, in my opinion, the process is

1 contaminated by their presence. I'll exercise that right  
2 if necessary.

3 Is this understood by both parties?

4 CAPTAIN BEDELLS: We understand, and we  
5 have--I've learned that Lieutenant Colonel Niedergall and  
6 Captain Marshall, both of whom are--well, Lieutenant  
7 Colonel Niedergall is your supervisor in some sense?

8 MAJOR JOHNSON: She's my immediate supervisor  
9 and--

10 HEARING EXAMINER: She's a Deputy HRO.

11 MAJOR JOHNSON: She's a Deputy HRO.

12 CAPTAIN BEDELLS: Okay. I understand she and  
13 Captain Marshall--I don't know Captain Marshall's  
14 position.

15 MAJOR JOHNSON: Captain Marshall is assuming  
16 my position effective 15 October.

17 HEARING EXAMINER: Okay.

18 CAPTAIN BEDELLS: I understand they--

19 MAJOR JOHNSON: They're moving me again.

20 CAPTAIN BEDELLS: --they--

21 MR. BANCHS: You're not going to LRS?

22 MAJOR JOHNSON: No.

23 CAPTAIN BEDELLS: They intend--

24 MR. BANCHS: I'm sorry.

25 CAPTAIN BEDELLS: Yeah. You've chased him



1 out.

2 MAJOR JOHNSON: You scare me, Ben.

3 CAPTAIN BEDELLS: So you'll be on the third  
4 one.

5 I understand that they're going to come up  
6 here and observe. And, of course, as you know, I don't  
7 think I'll have a problem with them remaining quiet.  
8 But--and this is last minute. I didn't--

9 MR. BANCHS: No objections.

10 CAPTAIN BEDELLS: I didn't realize this,  
11 either, so.

12 MR. BANCHS: There's no objections.

13 HEARING EXAMINER: Okay. That's fine.

14 MR. BANCHS: Did you guys get our updated  
15 witness--guest list--guest--

16 HEARING EXAMINER: Let's go through that real  
17 quick--

18 MR. BANCHS: Okay.

19 HEARING EXAMINER: --just to make sure.

20 MR. BANCHS: And--well, Mr. Smock's list,  
21 there was just one addition. His list didn't change.

22 MR. SMOCK: At this point time, though the  
23 hearing's changed so many times, I don't know--you know, I  
24 contacted the personnel that are on my guest list, and  
25 some are out of town. So we'll see who--at this point in

1 time, who shows up.

2 HEARING EXAMINER: The list I have is Karen  
3 Smock, Hannah Smock, Nick Smock, John Petersen, Jim  
4 Sheldon, Jim Shirkey, Jerime Bower, Jim Anderson, Shawn  
5 Krause, Keith Babenmoyer, Jerry Cannon, Mitch LeClair and  
6 Gary McConnell.

7 MR. SMOCK: You should also have Jim Anderson  
8 on there. I think you said--did you say his name, sir?

9 MR. BANCHS: He did.

10 MR. SMOCK: Okay. Sorry. He is--he's  
11 currently out of town.

12 HEARING EXAMINER: Okay. So he will not be  
13 here?

14 MR. SMOCK: There's a few that I have not got  
15 contact back from that may be out of town at this point in  
16 time.

17 HEARING EXAMINER: Okay.

18 CAPTAIN BEDELLS: We don't have any objection  
19 to any of those people.

20 HEARING EXAMINER: Okay. And, ma'am, I have a  
21 list of those names with spellings, so I can get that to  
22 you.

23 And then Colonel Niedergall and Captain--

24 MAJOR JOHNSON: Captain Marshall.

25 HEARING EXAMINER: Okay.

1 CAPTAIN BEDELLS: And that's--as far as we  
2 know, that's all--

3 MAJOR JOHNSON: Yes, sir.

4 CAPTAIN BEDELLS: --who will appear? Okay.

5 MAJOR JOHNSON: Yes, sir.

6 MR. BANCHS: Just for the record, we don't  
7 object to any Agency guests, as long as they're not  
8 witnesses.

9 HEARING EXAMINER: Okay.

10 MR. BANCHS: If they want to bring the whole--

11 CAPTAIN BEDELLS: I might. I don't need--I  
12 don't need 30 people telling me how to try this case.

13 HEARING EXAMINER: Maybe your supervisor will  
14 show up.

15 CAPTAIN BEDELLS: I think he will. I'm just  
16 saying.

17 HEARING EXAMINER: Okay. Regarding  
18 stipulations, I'm going to encourage each party to enter  
19 as many stipulations as can be agreed to in this hearing.  
20 By using stipulations, we can cut down the size of the  
21 verbatim transcript and speed up the actual hearing.

22 We'll come back to stipulations later during  
23 this prehearing conference, and make each stipulation that  
24 both parties can agree upon a matter of record.

25 Each of you will have certain rights and

1 certain responsibilities. I'd like to outline what those  
2 rights and responsibilities are.

3 First, all parties have a right to be present  
4 throughout the entire hearing.

5 Both parties have a right to question all the  
6 witnesses, and to respond to any adverse evidence that may  
7 be presented in the course of the hearing.

8 Each side has a right to inspect all the  
9 evidence or exhibits before they are made a part of the  
10 record.

11 There are two very important obligations for  
12 both sides.

13 First, there is an obligation to confine  
14 testimony to matters which are relevant to this case, and  
15 to avoid discussion of extraneous issues that will tend to  
16 clutter the record.

17 Second, each party has an obligation to  
18 introduce all the testimony and all the evidence that is  
19 available for this hearing. No evidence is to be withheld  
20 by either party, and especially by the Agency, even  
21 if--even if it is prejudicial to your case.

22 I have the responsibility to create an  
23 impartial atmosphere, treating both parties alike. Since  
24 the objective of this hearing is to develop fully all the  
25 evidence surrounding the issues in this case, I shall be

1 as flexible about the application of the procedures as I  
2 possibly can. I will always make certain that each  
3 party's been given an opportunity to fully present their  
4 case.

5 Do each of the parties understand their rights  
6 and responsibilities?

7 Agency?

8 CAPTAIN BEDELLS: Yes, sir.

9 HEARING EXAMINER: Appellant?

10 MR. BANCHS: Yes, sir.

11 HEARING EXAMINER: Thank you.

12 I will now speak about testimony. If  
13 testimony is given to a conversation or occurrence or an  
14 event, then the place, persons present, date, approximate  
15 time of the conversation or event must also be stated as  
16 part of the testimony.

17 I will hear opinions, but opinions will be  
18 consider and weighed upon the qualifications of the  
19 witness. If it's to be an expert opinion on some matter,  
20 then the witness' qualification as an expert will be  
21 considered in weighing the content of the opinion that is  
22 expressed.

23 I'd like to now talk about evidence. And if  
24 there were questions, I'd like to revolve them as we  
25 proceed through the following definitions. I'll define

1 four different types of evidence and how each may be used  
2 in the hearing.

3 First is direct evidence. Oral evidence which  
4 tends to directly prove or disprove a fact. Direct  
5 evidence is also admissible in this type of proceeding,  
6 however, when you present direct evidence, identify it for  
7 the record.

8 Two, documentary evidence. Documentary  
9 evidence may be admitted subject to identification and  
10 subject to its relevancy. And in a few minutes we'll go  
11 through the documents and then identify those.  
12 Affidavits, if there are any, may be--may be admitted,  
13 however, I will rule on each affidavit separately prior to  
14 its submission. Documentary evidence must be shown to all  
15 parties concerned before introduction into the record.

16 Number three, hearsay evidence. Hearsay  
17 evidence is admissible in this type of proceeding,  
18 however, if you use hearsay, the evidence must be  
19 identified as hearsay. And I'll give it whatever weight  
20 it merits. Consequently, the weight of hearsay evidence  
21 usually will not be so great as documentary evidence or  
22 direct evidence that might be brought out by a witness.

23 And, finally, circumstantial or indirect  
24 evidence, which are facts which usually tend to prove  
25 other facts.

1                   Does each party understand my definitions of  
2                   evidence and what types of evidence I will allow to be  
3                   submitted during the hearing?

4                   Agency?

5                   CAPTAIN BEDELLS: We do.

6                   HEARING EXAMINER: Appellant?

7                   MR. BANCHS: Yes, sir.

8                   HEARING EXAMINER: I want you to understand  
9                   that all evidence to be considered will be made a part of  
10                  the appeal file. I will decide any question concerning  
11                  the admissibility of evidence. All evidence presented in  
12                  this case must be both relevant and material and not  
13                  unduly repetitious. Evidence is relevant when it has some  
14                  bearing on the issue in the adverse action. Evidence is  
15                  material when it will have some weight on the disposition  
16                  of the case. Evidence is unduly repetitious when it  
17                  duplicates other evidence which conclusively proves the  
18                  point.

19                  It's important that both parties understand  
20                  the definition of evidence that I've just placed into the  
21                  record, because my recommendations and decision in this  
22                  case will be based upon the understanding of evidence.

23                  Before we leave the subject of testimony and  
24                  evidence, I would like to explain off-the-record  
25                  discussions. If any party to this hearing asks to talk

1 off the record, he or she may be permitted to do so for  
2 the sake of keeping long, irrelevant chatter off the  
3 record. When we go back on the record, I'll make a short  
4 summary of our off-the-record discussion that will become  
5 a part of the record on the verbatim transcript.

6 The actual hearing that we shall conduct will  
7 proceed in this fashion: The Agency will present their  
8 case, followed by the Appellant.

9 Does each side understand the order of  
10 business for the actual hearing?

11 Agency?

12 CAPTAIN BEDELLS: Yes.

13 HEARING EXAMINER: Appellant?

14 MR. BANCHS: Yes, sir.

15 HEARING EXAMINER: All right. Let's talk  
16 about documents. I've received documents for the appeals  
17 case file. The finished product, which each party has  
18 before them at this time, consists of the case file.  
19 Let's talk about this.

20 So the Agency has proposed that there are--are  
21 three exhibits in this case. And let's talk about this.  
22 The 15-6 Investigation is in two binders. The Agency's  
23 proposed that the first binder be Exhibit 1, the second  
24 Exhibit be binder 2, and the third Exhibit be the binder  
25 marked "Smock Case File." And then we can get into the



1 subdivisions within each of those exhibits, if you're  
2 agreeable to the--

3 MR. BANCHS: Sir, just for my understanding,  
4 this is the second CD, right, volume 2, and this is volume  
5 1; the way that you guys sent it to us?

6 MAJOR JOHNSON: Yes, sir.

7 MR. BANCHS: Okay. It looks correct, sir.

8 HEARING EXAMINER: Okay.

9 MR. BANCHS: We're not entertaining the Reed  
10 case right now, though, right? We're not--

11 HEARING EXAMINER: No. Right. We'll do that  
12 this afternoon.

13 MR. BANCHS: Okay.

14 CAPTAIN BEDELLS: And what we--what we  
15 propose, Ben, is, unless you have one that's better than  
16 this one, this--our version is not printed on both sides  
17 of the page, and it's further subdivided.

18 MR. BANCHS: What are you talking about? The  
19 15-6?

20 CAPTAIN BEDELLS: Right.

21 MR. BANCHS: We've got our own copies of it.

22 CAPTAIN BEDELLS: Okay. Great. Well, what  
23 we're proposing to do--if you don't mind, sir--

24 HEARING EXAMINER: No, please.

25 CAPTAIN BEDELLS: --is admit this one as--for

1 instance, Book 1, as Exhibit 1, so that we could--so that  
2 we can say Exhibit 1, Tab A, Sub-tab 3, then we could  
3 point to it and say that--well, this is a bad example.  
4 But this is Lieutenant Colonel Golnick's--

5 MR. BANCHS: Well, obviously, our tabs are not  
6 the same as y'all's. So that might be an issue. So do  
7 you have another one of those that's tabbed out for us?

8 CAPTAIN BEDELLS: No. This is--this is my  
9 copy, and that's your copy. But I mean this is--we--I  
10 suppose what we can do is we'll propose to admit our two  
11 books, and if--if--if the Appellant's binders contain  
12 precisely what we do, I don't have any objection to them  
13 admitting them, but if it includes more, than--

14 HEARING EXAMINER: Let's go off the record  
15 here for just a minute.

16 COURT RECORDER: We are going off the record.  
17 The time is 8:35.

18 (Off the record)

19 (On the record)

20 COURT RECORDER: We are back on the record.  
21 The time is 8:48.

22 HEARING EXAMINER: Okay. Being back on the  
23 record, we just discussed the ordering and numbering of  
24 the evidence in the case. And so I'll explain how that's  
25 going to be done.

1                   There will be three in- --or three Exhibits.  
2           Exhibit 1 is Book 1 of the AR 15-6 Investigation. Exhibit  
3           2 will be Book 2 of that same Investigation. Exhibit 3 is  
4           the actual Adverse Action Case File for Joseph Smock.

5                   The index for Book 1 begins with Tab A, which  
6           is the Appointment Memoranda.

7                   Tab B Questions and Interviews. Sub-Tabs to  
8           Tab B are Number 1, Lieutenant Colonel McNamara  
9           transcript. Number 2, Major Brian Burrell transcript.  
10          Number 3, Lieutenant Colonel Christopher Golnick  
11          transcript. Number 4, CW2 Joel Mack transcript. Number  
12          5, Master Sergeant Thad Cooper transcript. Number 6,  
13          Master Sergeant Renee Reed transcript.

14                  Tab C is Privacy Act Statements. Tab D is  
15          Rights/Warnings.

16                  Tab E, Sworn Statements. Sub-tabs to Tab E  
17          are Sergeant First Class Jamie Joseph, Number 1. Number  
18          2, Sergeant Kathryn Barrick. Tab 3, Staff Sergeant Brian  
19          Barrick. Tab 4, Master Sergeant Jane (sic) Fouts. Tab 5,  
20          CW2 Joel Mack. Tab 6, Master Sergeant Thad Cooper. Tab  
21          7, Warrant Officer 1, Sharon Whitcher. Sub-Tab 8, CW4  
22          Dean Miller. Sub-Tab 9, Major Brian Burrell. Sub-Tab 10,  
23          CW2 Robert Fitzpatrick. Sub-Tab 11, CW2 Robert (sic)  
24          Whitcher. Sub-Tab 12, Master Sergeant Troy Herblet.

25                  Tab F, Original Complaint. Tab G, Records

1 Requests. Tab H, Ben Banchs FaceBook Post. Tab I, MATES  
2 Union Representation Request.

3 The Sub-Tabs in Exhibit 2 are Sub-Tab J--or  
4 Tab J, MATES Standard Operating Procedures. Tab K, Waste  
5 Management Invoices. Tab L, Suburban Bolt and Supply  
6 Invoices. Tab M, MATES Credit Card Purchases. Tab N,  
7 MATES Time Off/Safety Awards. Tab O, Sergeant Bower  
8 Document Request and Supporting Documents. Tab P, MATES  
9 Time and Attendance Records for 4 September 2013. And Tab  
10 Q, Investigation Timeline.

11 Moving to Exhibit 3, which is the Adverse  
12 Action Case File for Joe Smock, tabs are as follows:

13 Tab A, Proposed Adverse Action Notice. Tab B,  
14 Request for Representation. Tab C, Representation Notice  
15 and Request for Extension to Suspense for Reply. Tab D,  
16 Extension to Suspense for Reply Granted. Tab E, Reply to  
17 Adverse Action Notice. Tab F, Attachment to Technician  
18 Reply. Tab G, Original Decision Memo and Douglas Factors.  
19 Tab H, Suspension With Pay. Tab I, Request for Hearing  
20 Examiner. Tab J, Notice of Personnel Action. And Tab K,  
21 Request for Information Concerning Agency Disciplinary  
22 Practices.

23 Thank you.

24 Any other questions on the documentation?

25 CAPTAIN BEDELLS: And, sir, for the record,

1 we're just marking those Exhibits right now.

2 HEARING EXAMINER: Okay.

3 (At about 8:53 a.m., Exhibits 1, 2 and 3  
4 marked)

5 MR. BANCHS: Sir, do we want--can we--do we  
6 want to or can we talk about documents that we had  
7 requested from the Agency in the last, you know, 30 days  
8 or whatever, like, inspection records and stuff like that,  
9 that was provided to us by the Agency? They weren't  
10 necessarily requests for information, per se, but they  
11 were requests made in--in support of this case.

12 HEARING EXAMINER: Talk about it in what--in  
13 what sense? I mean--

14 MR. BANCHS: As far as our ability to  
15 reference them. Because they're not necessarily evidence,  
16 they're just documents that exist, no--no more than a reg  
17 would exist.

18 HEARING EXAMINER: What's--what's your  
19 question? What specifically?

20 MR. BANCHS: Well, we had asked for copies of,  
21 you know, all inspections that had been taken--that had  
22 been done at MATES since 2007, all, you know, NGB, Army,  
23 whatever, which the Major provided to us. We also asked  
24 for copies of all the FLIPLs that have been done here  
25 since 2007, which they provided to us. I don't

1 necessarily think that's evidence. I mean, those are all  
2 Agency records. So as far as us referencing them during  
3 the--during the case--do we want to submit them into  
4 evidence or--

5 CAPTAIN BEDELLS: Well, are--

6 MR. BANCHS: We also have a request for all  
7 the GSAs, and I know it's not supportive of this case,  
8 but--

9 HEARING EXAMINER: Let me ask this first:  
10 Have you received everything you've asked for from the  
11 Agency?

12 MR. BANCHS: Everything but the GSA logs,  
13 because they were at--on property here. And, you know,  
14 they're voluminous. And they're in support of the Reed  
15 case, anyway.

16 HEARING EXAMINER: Okay. So for the Smock  
17 case, you have everything that you've asked for?

18 MR. BANCHS: Yes, sir. And it was just--we  
19 had just asked for copies of all the inspections that had  
20 taken here and whatever property loss reports had been  
21 done over the last seven years.

22 HEARING EXAMINER: Captain Bedells, do you--

23 CAPTAIN BEDELLS: Well, did--did--I honestly  
24 don't recall, but I tend to think that we--that you didn't  
25 submit those as proposed exhibits at the outset of this

1 case. Right? I mean, you've asked for the material, but  
2 you didn't--

3 MR. BANCHS: Yeah--well, no, we--well,  
4 it's--whatchamacallit. It's--it's no different than a  
5 reg.

6 HEARING EXAMINER: Yeah. I'm--if I'm hearing  
7 you right, you're asking if it's a--you're asking if  
8 there's documentation that you refer to that's not  
9 evidence, but has been established, for the record, in a  
10 shop somewhere or something like that.

11 MR. BANCHS: Correct.

12 HEARING EXAMINER: If you refer to that  
13 during--during your questioning, are you wondering if  
14 that's admissible? Is that what you're--is that what  
15 you're asking?

16 MR. BANCHS: Yeah. Act- --

17 HEARING EXAMINER: And--and--

18 MR. BANCHS: Yeah.

19 HEARING EXAMINER: --and if that's the case,  
20 do those documents need to be here? I don't think they  
21 need to be a part of the record.

22 MR. BANCHS: Right. Because I'm not  
23 submitting them into evidence.

24 HEARING EXAMINER: Right.

25 MR. BANCHS: I'm just going to be asking

1 witnesses about their knowledge of, you know, do you--you  
2 know, basically are you aware that there's only been one  
3 FLIPL that has been filed in the MATES since 2007. That's  
4 the nature of the questioning.

5 CAPTAIN BEDELLS: Not the FLIPL, itself?

6 MR. BANCHS: Right. Not the FLIPL, itself--I  
7 mean--

8 CAPTAIN BEDELLS: Yeah. So--

9 MR. BANCHS: --well, we--I might reference  
10 what the FLIPL was about, but--

11 HEARING EXAMINER: So if he--

12 CAPTAIN BEDELLS: Right.

13 HEARING EXAMINER: --references an  
14 administrative process that took place, but doesn't have  
15 the actual documents showing that, are--and obviously I  
16 don't want to--I don't want to rule anything in or out  
17 that we don't know what's going to come up, but--

18 CAPTAIN BEDELLS: Okay. Well, that's a  
19 different issue. I thought he was speaking to, perhaps,  
20 even getting a FLIPL in or--

21 HEARING EXAMINER: No, I don't--

22 CAPTAIN BEDELLS: --a GSA log in.

23 MR. BANCHS: No.

24 CAPTAIN BEDELLS: But if he's just going to  
25 question someone about, you know--



1 MR. BANCHS: Well, the--

2 CAPTAIN BEDELLS: --"I have in my possession a  
3 GSA log, and, you know, I'm going to ask you to read it,"  
4 and whatnot. What I object to is I wasn't provided notice  
5 that that GS log--GSA log was going to be admitted into  
6 evidence.

7 HEARING EXAMINER: Right. Right.

8 CAPTAIN BEDELLS: But as far as questioning  
9 them, I don't have a problem with that.

10 MR. BANCHS: Well, the GSA log would go to the  
11 Reed case. But we--have we located the GSA logs?

12 MAJOR JOHNSON: I just sent Major Austhof an  
13 email asking for--asking him to round them up, so.

14 CAPTAIN BEDELLS: Well, your instruction said  
15 we're going to provide--

16 HEARING EXAMINER: Yeah.

17 CAPTAIN BEDELLS: --you know, whether it's  
18 prejudicial to our case or not. I don't have a problem  
19 with submitting the GSA logs. What I like to have--I  
20 would like to have known if--if, in the case of the Reed  
21 file, they wanted to submit the GSA log, they would have  
22 said that "We propose to admit this GSA log into  
23 evidence." And I--and so I guess we can take that up this  
24 afternoon.

25 HEARING EXAMINER: Yeah. We can talk about

1           that later.

2                         MR. BANCHS:   Okay.   Let's talk about it then.

3                         HEARING EXAMINER:   Well, talk about--in terms  
4           of you referring to--and this goes to either party.   If  
5           you're referring to something that's factual that the  
6           record exists out there somewhere--

7                         MR. BANCHS:   Correct.

8                         HEARING EXAMINER:   --I'm fine with that.  
9           Obviously, you know, if there's an objection that I--I'm  
10          not thinking of right now, that can come up at the time,  
11          and we can--we can talk about it at the time.

12                        MR. BANCHS:   Okay.

13                        HEARING EXAMINER:   Okay.   Any further  
14          discussion on documentation or evidence?   Okay.

15                        MR. BANCHS:   No, sir.

16                        HEARING EXAMINER:   Let's move to witnesses  
17          then.   I'm in receipt of a list of witnesses from both  
18          parties.   And I'd like to thank each representative for  
19          providing this information as requested.   I want to  
20          identify each of these witnesses for the record at this  
21          time.   And let's start with the Agency.

22                        Mr. Banchs, have you--I assume you've looked  
23          through the witness list.

24                        MR. BANCHS:   Yes, sir.

25                        HEARING EXAMINER:   To make sure we're all on

1 the same page, I have Sergeant Brian Barrick.

2 MR. BANCHS: Do we have those--do you guys  
3 have a list available? I didn't--we can just go through  
4 it. It's fine.

5 HEARING EXAMINER: Okay. Sergeant Brian  
6 Barrick. Sergeant Kathryn Barrick. Major Brian Burrell.  
7 Master Sergeant Thad Cooper. Colonel Scotty Doolittle.  
8 Colonel Gregory Durkac. Captain Blaine Emery. Chief  
9 Warrant Officer 2 Robert Fitzpatrick. Master Sergeant  
10 Jane (sic) Fouts. Master Sergeant Troy Herblet. CW2 Joel  
11 Mack. Lieutenant Colonel Michael McNamara. CW4 Dean  
12 Miller. Staff Sergeant Cory Rock. Master Sergeant Tim  
13 Sheldon. Warrant Officer 1 Sharon Whitcher. CW2 Todd  
14 Whitcher.

15 Any other witnesses for the Agency? Is that--

16 CAPTAIN BEDELLS: I believe that's all. And I  
17 think that, sir, we could not locate McNamara; is that  
18 correct?

19 MAJOR JOHNSON: Yes. Correct. McNamara did  
20 not reply to any of my correspondence.

21 CAPTAIN BEDELLS: And we excused Rock.

22 MAJOR JOHNSON: Rock.

23 CAPTAIN BEDELLS: Because he has a family  
24 emergency of some sort, so. And I think you were tracking  
25 that?

1 MR. BANCHS: Yes, sir.

2 CAPTAIN BEDELLS: So I don't think we're going  
3 to see Cory--I believe his name is Cory Rock.

4 HEARING EXAMINER: Yes. Yep.

5 CAPTAIN BEDELLS: Or Lieutenant Colonel  
6 McNamara. Now, I'm going to continue to reach out to try  
7 to get Lieutenant Colonel McNamara here, but we can't seem  
8 to pin him down. So other than that, that list seems  
9 complete. Is that right?

10 STAFF SERGEANT SCHULTZ: I think so, sir.

11 MR. SMOCK: Sir, do we--do we know what order?  
12 I haven't--is this a point where we discuss who comes  
13 first or anything else? Do you know what's--how that  
14 works, sir, or do you--

15 CAPTAIN BEDELLS: I don't--can I respond?

16 HEARING EXAMINER: Yeah. Please.

17 CAPTAIN BEDELLS: Okay. I don't have an order  
18 in mind right now.

19 MR. SMOCK: Okay.

20 CAPTAIN BEDELLS: So we'll figure that out  
21 tomorrow morning.

22 HEARING EXAMINER: And I'll just remind you,  
23 if you have--

24 MR. SMOCK: Okay. Sorry. Sorry--

25 HEARING EXAMINER: --no. That's fine.

1 MR. SMOCK: --sir.

2 HEARING EXAMINER: Just--it's easier--it keeps  
3 it more orderly.

4 MR. SMOCK: Yeah. I'll ask him the question  
5 from here on out.

6 HEARING EXAMINER: Very good. Thanks.

7 MR. SMOCK: No problem.

8 HEARING EXAMINER: And are any of these  
9 witnesses--will they all be present, physically present,  
10 other than McNamara and Rock? There was some talk about  
11 somebody on a DCR or VTC.

12 MAJOR JOHNSON: Lieutenant Colonel Perricane.

13 MR. BANCHS: Those were defense witnesses,  
14 sir.

15 MAJOR JOHNSON: They were for Reed.

16 HEARING EXAMINER: Okay. We'll get to those,  
17 then.

18 MAJOR JOHNSON: That's the Reed case only.

19 HEARING EXAMINER: Okay. Any other issues on  
20 the Agency's witnesses?

21 MR. BANCHS: If McNamara doesn't show, is  
22 our--is his witness statement even admissible?

23 HEARING EXAMINER: How did you guys get his  
24 witness statement? Is it--

25 MR. BANCHS: Because I don't think he has a

1 sworn statement. It was just a--it was just the interview  
2 transcript. Most of the witness submitted--

3 HEARING EXAMINER: He was interviewed in the  
4 15- --was he interviewed in the 15-6?

5 MR. BANCHS: Yes, sir.

6 HEARING EXAMINER: So obviously that's  
7 acceptable. Whatever--did he sign a sworn statement  
8 during--during the 15-6?

9 MR. BANCHS: No. Not for the interviews.  
10 None of the--none of the witnesses that were interviewed  
11 signed. The only sworn statements are the actual DA form,  
12 whatever it is.

13 CAPTAIN BEDELLS: There was, however, a  
14 transcript done. And I believe I forwarded the audio  
15 tapes to everyone, correct?

16 HEARING EXAMINER: I have that also.

17 MR. BANCHS: But the transcripts are not  
18 verbatim--

19 HEARING EXAMINER: Right.

20 MR. BANCHS: --which I don't--I do have an  
21 issue with, because they're not verbatim. They're just  
22 kind of more like notes. Because if you--if you listen to  
23 an actual recording and you look at what the Agency  
24 provided as a "transcript," is not verbatim. So it's--I  
25 would not--I would not agree to admitting the transcripts

1 as verbatim transcripts into the record. They're more  
2 like notes. And absent a DA form, sworn statement from  
3 Colonel McNamara, I would not think that his  
4 interview--because really, in the interview notes, are  
5 just notes from Colonel Doolittle. I don't think, in our  
6 opinion, it would be admissible. Same thing with Colonel  
7 Golnick, although he's--he's on the witness list. But  
8 that's the only one that jumped out at me was Colonel  
9 McNamara did not provide a sworn written statement.

10 The only other one that didn't provide a sworn  
11 written statement was Master Sergeant Reed, but obviously  
12 that's in her case, and she's going to be testifying--I  
13 mean, I'm sorry, not--I don't know if she's going to be  
14 testifying or not, but she's there.

15 HEARING EXAMINER: Let me ask the Agency.  
16 This was your witness. If he's not here, what's your  
17 intent in terms of presenting what--what he would have  
18 contributed to--to your case?

19 CAPTAIN BEDELLS: Well, frankly, I would--I  
20 thought we had previously stipulated that these exhibits  
21 were in. So what was--what was included in Book 1,  
22 Exhibit 1--

23 MR. BANCHS: Well, I never stipulated to the  
24 contents of it. I just stipulated that it--to the--it's  
25 Colonel Doolittle's file as he submitted it.

1 HEARING EXAMINER: There's a lot of stuff in  
2 the 15-6 that had--that is far beyond the scope of this  
3 case and is far beyond the individuals we're talking about  
4 in these two cases.

5 MR. BANCHS: Exactly. So that--

6 HEARING EXAMINER: So--

7 MR. BANCHS: If--I didn't real- --

8 HEARING EXAMINER: The 15-6 is in the record.  
9 Okay?

10 MR. BANCHS: Yes.

11 HEARING EXAMINER: Whatever it is or it isn't,  
12 it's in there. My interest in this case for Mr. Smock is,  
13 if McNamara was here, you'd have questions for him,  
14 obviously. If he's absent, what's your position in terms  
15 of his contribution to--

16 CAPTAIN BEDELLS: Well, it'd be limited to  
17 what's in the--

18 HEARING EXAMINER: Okay.

19 CAPTAIN BEDELLS: --official investigation. I  
20 mean, I'm not asking for anything more. But I do expect  
21 what was presented in the investigation to be part of the  
22 record. And I'm at a loss. I mean, we've--I've no--I'm  
23 sure Major Johnson has made--you know, gone above and  
24 beyond what's required to reach out to this guy and get  
25 him here. But, for whatever reason, we can't locate him.



1           So I'm--I guess I'm stuck with what's in the actual 15-6.  
2           I wouldn't ask for anything more, but I certainly am not  
3           going to, you know, stipulate to anything less than what's  
4           in the 15-6.

5                         MR. BANCHS:   Well, our--

6                         HEARING EXAMINER:   All right.

7                         MR. BANCHS:   --my position would be that it  
8           certainly there's a lot of stuff that's in the 15-6.  But  
9           whatever statements Colonel McNamara might have made  
10          against or even for Mr. Smock, you know, I mean, our  
11          inability to be able to question him.  You know, and  
12          he's--and he was--he was on the list as your witness, not  
13          ours.  I think those statements shouldn't be--I mean, I'm  
14          not telling you what to do, sir.  But I mean, in our  
15          opinion, I don't think they should be considered because  
16          we can't--I can't cross-examine that witness if he's not  
17          here.

18                        And, at this point--now, granted, we do have  
19          the audio, but it was not a sworn statement.  And each  
20          audio recording, every witness that provided audio  
21          testimony, it's not even really testimony.  They were all  
22          told that that was not going to be released to anybody.  
23          And that's why we have the written sworn statements.  So  
24          what people said during the interview could have been just  
25          something that they were saying just because they thought

1           it was never going to be released to anybody. Because  
2           clearly--and there's several witnesses in there that--that  
3           asked Colonel Doolittle at least once or twice during the  
4           interview, "Are you sure this is not going to be  
5           released?"

6                         So without a sworn statement from Colonel  
7           McNamara and him not here being present to--to be  
8           cross-examined, I object to his--I mean, it's in the--it's  
9           in the file, obviously. But I object to anything he said  
10          being used or referenced.

11                        CAPTAIN BEDELLS: Depending on who did the  
12          interview, I don't know if it was Captain Emery or Colonel  
13          Doolittle, but I suppose what we could do is we can  
14          certainly--I mean, to the extent you take--you object to  
15          the contents of the interview, you can ask Captain Emery  
16          or Colonel Doolittle.

17                        MR. BANCHS: Well, they were both there.  
18          Yeah.

19                        CAPTAIN BEDELLS: Right. Or you can ask both  
20          of them. So you can--you can question--you can question  
21          the actual interviewer about the actual interview, insofar  
22          as it exists in this book. I would like Lieutenant  
23          Colonel McNamara here. We can't pin him down.

24                        HEARING EXAMINER: I think we all would.

25                        CAPTAIN BEDELLS: It seems to be a theme of

1 this investigat- --or this hearing. We can't get everyone  
2 here, so.

3 MR. BANCHS: Well, Colonel McNamara's--I mean,  
4 even though--I mean, he's one of your primary, you know,  
5 contributors, for the lack of a better word--not yours,  
6 but, you know, to the investigation. I mean, he made a  
7 lot of allegations, not just--I mean, and he's made a lot  
8 of allegations, you know, concerning Mr. Smock. So, you  
9 know, I don't want to get all Constitutionally on y'all,  
10 but, you know, he does have the right to face his  
11 accusers.

12 HEARING EXAMINER: I think we all would like  
13 Colonel Doolittle (sic) to be here. But if he's not able  
14 to be here--

15 MR. BANCHS: McNamara.

16 HEARING EXAMINER: Or McNamara.

17 And given the nature of your concern, you  
18 certainly are welcome to ask Colonel Doolittle or Captain  
19 Emery whatever questions you want about the period of time  
20 they questioned Colonel McNamara. And then I'll--I'll  
21 give due weight to the lack of additional witness  
22 testimony from Colonel McNamara if he's not able to be  
23 here.

24 Any other discussion on the Agency's  
25 witnesses?

1 MR. BANCHS: I don't have any at this point,  
2 sir.

3 HEARING EXAMINER: Okay.

4 CAPTAIN BEDELLES: Hold on. You did say Thad  
5 Cooper, correct? I think you missed him.

6 HEARING EXAMINER: Yeah.

7 CAPTAIN BEDELLES: Okay.

8 HEARING EXAMINER: All right. All right.  
9 Let's move to the Appellant's witness list for Mr. Smock's  
10 case.

11 I have Colonel Scotty Doolittle. First  
12 Lieutenant Blaine Emery. Colonel Greg Durkac. Master  
13 Sergeant Thad Cooper. Master Sergeant Jane (sic) Fouts.  
14 CW2 Todd Whitcher. Lieutenant Colonel Chris Golnick.  
15 Warrant 1 Sharon Whitcher. Major Brian Burrell. Master  
16 Sergeant Troy Herblet. CW4 Dean Miller. CW2 Joel Mack.  
17 Mr. Tim Sheldon. Lieutenant Colonel Scott Meyers.

18 And then there was a following email asking  
19 for Colonel Jim Gardiner. Was that specific to either one  
20 of the cases or was that for both?

21 MR. BANCHS: That was just for Mr. Smock's  
22 case.

23 HEARING EXAMINER: Okay. He's the G4?

24 MAJOR JOHNSON: Correct.

25 HEARING EXAMINER: Any objection to this

1 witness list from the Agency?

2 CAPTAIN BEDELLS: With the--with the inclusion  
3 of Colonel Gardiner, correct?

4 HEARING EXAMINER: Right.

5 CAPTAIN BEDELLS: There's--I don't think we  
6 objected at the time to Colonel Gardiner. And I want to  
7 double check, sir, now that you mention Lieutenant Colonel  
8 Meyers, I thought we included him on our--on our witness  
9 list, as well.

10 HEARING EXAMINER: There are several that are  
11 on both.

12 CAPTAIN BEDELLS: Right. But I thought--

13 HEARING EXAMINER: Oh, I see what you're  
14 saying.

15 CAPTAIN BEDELLS: Yeah. He's included on  
16 the--on Mr. Smock's witness list, but for some reason he's  
17 left off our, and I thought we included him, so. Either  
18 way he's going to be here.

19 HEARING EXAMINER: Right.

20 CAPTAIN BEDELLS: I want to--I want to take a  
21 look and make sure.

22 HEARING EXAMINER: So you want him to be an  
23 Agency witness?

24 CAPTAIN BEDELLS: I thought we--I thought we  
25 named him, because he, you know, proposed the adverse

1 action notice, so. But--but if that was an oversight on  
2 our part, then--he'll be here regardless, though. But I'd  
3 like to call him. I'd like to call him tomorrow in  
4 the--as Mr. Smock alluded to, I've got an order in mind.

5 HEARING EXAMINER: Right.

6 CAPTAIN BEDELLS: And it would make sense to  
7 call him--

8 HEARING EXAMINER: Sure.

9 CAPTAIN BEDELLS: --in the order in which I  
10 propose to do it. But--

11 HEARING EXAMINER: I suggest--

12 CAPTAIN BEDELLS: --if we didn't--if we didn't  
13 do it and they object, I--

14 MR. BANCHS: No, sir. No objections.

15 HEARING EXAMINER: Okay. So Lieutenant  
16 Colonel Scott Meyers will be a witness for both the Agency  
17 and for the Appellant.

18 Any objection to--any other objection? Okay

19 CAPTAIN BEDELLS: No.

20 HEARING EXAMINER: Is there any reason  
21 why--other than Colonel McNamara and Sergeant Rock, any  
22 reason why any of these witnesses cannot be present for  
23 the hearing that either of you are aware of at this time?

24 MAJOR JOHNSON: No, sir.

25 HEARING EXAMINER: Okay.

1                   I would like to, for the record, indicate that  
2                   I'm hereby instructing Counsel for the Agency to assure  
3                   all witnesses who are employed in the full-time support of  
4                   the National Guard are available to testify at the  
5                   designated time.

6                   Additionally, I want the record to indicate  
7                   that I'm hereby instructing Counsel of the Appellant that  
8                   it's the Appellant's responsibility to assure that all  
9                   persons who are testifying on behalf of the Appellant and  
10                  not employed by the National Guard are present at the  
11                  designated time at no expense to the Agency.

12                  Advised earlier that we would return to  
13                  stipulations and decide what each party could  
14                  stipulate--could stipulate for the record.

15                  I shall begin with the representative for the  
16                  Agency and ask if you have any stipulations.

17                  CAPTAIN BEDELLS: Well, the only--sir, the  
18                  only thing we'd ask that--that the Appellant stipulate to  
19                  are the exhibits that I believe we've already discussed,  
20                  which is Exhibits 1--Exhibit 1, the Book 1 of the 15-6,  
21                  Exhibit 2, which is Book 2 of the 15-6, and Exhibit 3,  
22                  which is our Case File and all the attachments included.  
23                  So that--I mean, we don't propose any other documentary  
24                  evidence other than what's in there.

25                  MR. BANCHS: Outside our objection to the

1           McNamara statements that are in--in those files, we  
2           stipulate to everything else.

3                       HEARING EXAMINER: Do you have any further  
4           stipulations that you want to--

5                       MR. BANCHS: I can't think of any right now,  
6           sir. I mean, the only concerns that we had were just, you  
7           know, the pictures and stuff like that. But if--I think  
8           they've already stipulated to these, so.

9                       HEARING EXAMINER: Right.

10                      MR. BANCHS: Do you--you want to review these  
11           before, so you know what you're stipulating to.

12                      CAPTAIN BEDELLS: Are they--well, you've  
13           represented to me that what they are is more--

14                      MR. BANCHS: It's just what's already in here.

15                      CAPTAIN BEDELLS: Yeah. Which is already in  
16           there. So if I--

17                      MR. BANCHS: Right.

18                      CAPTAIN BEDELLS: --if when you propose to,  
19           you know, explore those photos--

20                      MR. BANCHS: Right.

21                      CAPTAIN BEDELLS: --I find that it's not  
22           what's in the--

23                      MR. BANCHS: Obviously you can object, yeah.

24                      CAPTAIN BEDELLS: --then, at that point, we'll  
25           place our objection. But for right now, we're good with



1 photos that are--

2 MR. BANCHS: That have already been submitted.

3 CAPTAIN BEDELLS: Right. That are more  
4 accurate than what's in a black and white version.

5 HEARING EXAMINER: And I don't know that we  
6 need to--I mean, these exhibits are--they're in the  
7 record.

8 MR. BANCHS: Yes.

9 HEARING EXAMINER: So I don't know that there  
10 even needs to be a stipulation that--that we accept that  
11 they're in the record.

12 MR. BANCHS: Right. And probably I should  
13 make clear that we stipulate to the physical--I don't  
14 stipulate to what's in them, I mean, per se. I mean, I  
15 don't necessary agree with everything that's in them,  
16 obviously, this is what the case is about. Right?

17 HEARING EXAMINER: Right.

18 MR. BANCHS: So we understand that we're not  
19 accepting that as--

20 HEARING EXAMINER: Yeah. And we're not going  
21 to change the case.

22 MR. BANCHS: Okay.

23 HEARING EXAMINER: I mean, the case is what it  
24 is, and it--and it'll be up to you to explore, obviously,  
25 both parties explore with the witnesses when they're here

1           what they thought or what they--as it--as it affects Mr.  
2           Smock and Ms. Reed.

3                        Okay. So I'm hearing no--no stipulations?

4                        MR. BANCHS: No, sir.

5                        HEARING EXAMINER: I mean, I don't think we  
6           need to re-stipulate that these are the record. Is--am  
7           I--

8                        CAPTAIN BEDELLES: No. No.

9                        HEARING EXAMINER: Okay.

10                      CAPTAIN BEDELLES: That's--that's--yeah--

11                      HEARING EXAMINER: Okay.

12                      CAPTAIN BEDELLES: I understand he's not  
13           stipulating to the veracity of necessarily what's in  
14           there, but he's stipulating that they're exhibits and  
15           we're going to admit them into evidence.

16                      MR. BANCHS: Yes.

17                      CAPTAIN BEDELLES: Right?

18                      HEARING EXAMINER: Right. Okay. Do we--let  
19           me get back to witnesses again real quick. Do we want to  
20           talk about the order? I mean, the Agency's going to  
21           present their case first. Are--do you want to--you just  
22           want to have the flexibility to be able to call your  
23           witnesses as--

24                      CAPTAIN BEDELLES: I do, sir.

25                      HEARING EXAMINER: Okay.

1 MR. BANCHS: I don't have an order either,  
2 sir.

3 HEARING EXAMINER: Okay. So as far as--those  
4 folks just need to be here for the day.

5 MAJOR JOHNSON: All right, sir. I'll put that  
6 out.

7 HEARING EXAMINER: And--

8 MAJOR JOHNSON: I did give them all a warning  
9 when I told them. I said, "I have no idea what the order  
10 is."

11 HEARING EXAMINER: Yeah.

12 MAJOR JOHNSON: "You just need to be prepared  
13 to be here at 08:00 and be prepared to be called multiple  
14 times if need be."

15 HEARING EXAMINER: Right. Okay.

16 MR. SMOCK: Yes. I have a question to Ben.  
17 So, when the witnesses are called and they go back, do  
18 they go back to the same room with everybody else?

19 MR. BANCHS: I guess the question goes to  
20 where are the witnesses going to wait?

21 HEARING EXAMINER: Let's go off the record for  
22 just a minute.

23 COURT RECORDER: We are going off the record.  
24 The time is 9:16.

25 (Off the record)

1 (On the record)

2 COURT RECORDER: We are back on the record.

3 The time is 9:24.

4 HEARING EXAMINER: For the record, we just had  
5 a discussion regarding where the witnesses will spend  
6 their time when they're not in the hearing room.

7 Building--several rooms in building--this  
8 building 104 are available for them to congregate in. We  
9 will also have the building next door available for them.  
10 The primary point is that they be responsive and available  
11 as needed throughout the course of the hearing.

12 I'm going to ask one more time if there's any  
13 chance of a prehearing settlement--

14 CAPTAIN BEDELLS: I don't believe so.

15 HEARING EXAMINER: --after we've gone through  
16 this process.

17 Mr. Banchs?

18 MR. BANCHS: I mean, I would--I would  
19 entertain an offer from the Agency. But if they--if they  
20 don't have one, sir, I mean--

21 CAPTAIN BEDELLS: And I--and I haven't been  
22 authorized to offer anything. So I don't think--that's  
23 why I say I don't think it's likely.

24 HEARING EXAMINER: Okay. Thanks.

25 Do either parties have any additional

1 questions at this time concerning the conduct of the  
2 hearing?

3 CAPTAIN BEDELLS: I do. In terms of moving  
4 this along, sir, you have the entire 15-6. I presume  
5 everyone's reviewed it. I know Mr. Banchs--Banchs--

6 MR. BANCHS: Yes, sir.

7 CAPTAIN BEDELLS: --has reviewed it. And  
8 you've admonished all of us not to be duplicative. So  
9 without, again, stipulating to the veracity of what's in  
10 there or the--you know, the truthfulness, I think we can  
11 move this along if both parties are allowed to ask leading  
12 questions, and we don't get a lot of--I mean, I'm--you're  
13 told me you're not a lawyer; is that right?

14 MR. BANCHS: No, sir, I'm not a--I'm not.

15 CAPTAIN BEDELLS: Okay. Well, I'm not--I  
16 don't have any intention on getting tricky with leading,  
17 lack of foundation, and I'm sure you would, you know,  
18 admonish me not to do that. So what I'd like to is, in  
19 furtherance of moving this along as quickly as possible,  
20 but covering everything, is ask leading questions  
21 of--right on direct. And I have no objection when--when  
22 Mr. Banchs calls his witnesses to get us right down--you  
23 know, right into the testimony. And, by leading, I mean  
24 leading in terms of open-ended questions. I would--I  
25 would like to ask witnesses, you know, tell me what you

1 know about a particular matter, without, you know,  
2 objection, it's, you know, overly broad or whatever the  
3 case may be. So I think that gets us there.

4 And that's a question I have. I've read the  
5 TPR. I've read the TPR as it relates to administrative  
6 hearings. It says the court rules don't apply. And  
7 that's--

8 HEARING EXAMINER: And I think if you--let me  
9 just say this, too, and then I'll want to hear your  
10 response, Ben, to that.

11 My--and I said it at the beginning, I'll say  
12 it again. My main objective is to determine whether or  
13 not the offenses occurred, whether or not some penalty  
14 promotes the efficiency of the service, assuming the  
15 offense occurred, and then, number three, in this case,  
16 was that offense--I'm sorry. Was that penalty the penalty  
17 that was necessary to promote the efficiency of the  
18 service.

19 So I'm--I'm pretty open to however you guys  
20 want to handle it. Obviously, I'll hear your objections  
21 if you have objections. But I want you guys to know  
22 what's going through my mind as I'm listening to the  
23 testimony. Those are the main points I'm trying to get  
24 to. So if it wanders off in some direction that doesn't  
25 answer those questions for--doesn't help me answer those

1 questions, then I'm going to--I'm going to try and bring  
2 it back.

3 But other than that, I'm--I hear what you're  
4 asking, and I'd like to hear from Mr. Banchs.

5 MR. BANCHS: It's not a court of law.

6 HEARING EXAMINER: Right.

7 MR. BANCHS: It's much more informal than  
8 that. You know, so, I mean, if I have any objections, you  
9 know, they're probably going to more--go more towards  
10 relevancy than anything, you know, and maybe an asked and  
11 answered, you know, might come out there every now and  
12 then. But--and you might have more of those than I do.  
13 But as far as, like, anything, like, really technical, no.

14 HEARING EXAMINER: Okay.

15 CAPTAIN BEDELLS: Well, I think it'll move  
16 things along tomorrow.

17 HEARING EXAMINER: I agree.

18 CAPTAIN BEDELLS: I'll ask my witnesses--

19 MR. BANCHS: Now, I'll say this, though, I  
20 mean, you know--and maybe not in this case, but in the  
21 Reed case, it could get--the subject matter could get a  
22 little ugly. You know, so you guys need to be prepared  
23 for that, you know.

24 CAPTAIN BEDELLS: Well, we can save that for  
25 this afternoon, if you want. But I'm not going to

1 tolerate any ugliness. This is--we're--

2 MR. BANCHS: I'm not saying--it's not going to  
3 be disrespectful. But the subject matter, itself, is not  
4 going to be pleasant in some instances. I'm just  
5 saying--and maybe even in this case. I don't know.

6 CAPTAIN BEDELLS: Okay. Well, as it--

7 MR. BANCHS: So I wouldn't want an objection  
8 just because nobody likes what's being said. You know, I  
9 mean, if it's--if it's testimony, then it's testimony.

10 CAPTAIN BEDELLS: Agreed.

11 MR. BANCHS: Okay.

12 CAPTAIN BEDELLS: I can agree there. What I  
13 won't--

14 MR. BANCHS: And it's not going to be sorted.  
15 You know, it's not going to be anything like that. It's  
16 just--

17 HEARING EXAMINER: Yeah.

18 CAPTAIN BEDELLS: Right. Ugliness is probably  
19 the wrong term to use, then. I mean, I won't tolerate  
20 that. But yeah, if it's testimony we don't like,  
21 obviously, it's under oath, so. I intend to move things  
22 along.

23 And then will you, not having participated in  
24 this, do you intend to ask questions of witnesses if  
25 something's not clear?



1 HEARING EXAMINER: I will. And I'll--I'll  
2 more often than not, save my questions until--until you  
3 guys are done.

4 CAPTAIN BEDELLS: Yeah.

5 HEARING EXAMINER: If there's some--my  
6 experience has been that typically the questions I have  
7 eventually get asked while each of you have the witness.  
8 If I--if there's anything remaining at the end, I'll ask  
9 that at the end if I need clarification. And then if--and  
10 I'll give you an opportunity to follow up with that if  
11 there's something new that comes up at that point. But 99  
12 percent of the time you guys will ask all the questions I  
13 will--

14 CAPTAIN BEDELLS: Okay.

15 HEARING EXAMINER: --I would have anyway.

16 MR. BANCHS: I will say this, though, since  
17 you want some latitude in, you know, your questioning and  
18 you want to lead the witnesses, which is fine because I  
19 don't mind it, you know, I would--I would object to  
20 anything that's not already into evidence. You know, now,  
21 if they say it, that's--you know, if the witness comes up  
22 with something new that's not in the record already, but,  
23 you know, if you try to introduce something new with your  
24 line of questions, I am going to object to that. And I  
25 would expect that you would object to me, as well.

1 CAPTAIN BEDELLS: Well, that--I don't foresee  
2 that at this point.

3 MR. BANCHS: Okay.

4 CAPTAIN BEDELLS: And I'm not asking for  
5 latitude. What I'm asking for is, sir, what--you know,  
6 what your parameters are. I mean, we can go--you know, we  
7 can follow laying a foundation and not leading people and  
8 whatnot. I'm perfectly willing and capable of doing that.  
9 I just--I'm trying to move things along here. And what I  
10 mean is asking open-ended questions.

11 MR. BANCHS: That's fine.

12 CAPTAIN BEDELLS: I'm not going to object to,  
13 you know, you asking witnesses, you know, tell me your  
14 general thoughts on this particular person. I mean, if  
15 that--if that--

16 MR. BANCHS: Absolutely.

17 HEARING EXAMINER: I think if you jump  
18 in--jump in at the point with the witness where you need  
19 to be at to get the information that you're trying to get  
20 out there, if we need to go back and reestablish some  
21 foundation because there's something that's unclear at  
22 that point, that's--I think it'll--it'll flow.

23 MR. BANCHS: Yeah, it will.

24 HEARING EXAMINER: I mean, I agree with you.  
25 I'm also for expediting this process and making sure we

1 don't waste--that we waste as little time as possible.

2 MR. BANCHS: Okay.

3 HEARING EXAMINER: So I think we'll be fine.

4 I mean, I--

5 Any other questions, discussion?

6 CAPTAIN BEDELLS: No, sir--

7 MR. BANCHS: No, sir.

8 CAPTAIN BEDELLS: --not from the Agency.

9 HEARING EXAMINER: Okay. If that's the case,  
10 this prehearing conference is hereby adjourned. Again,  
11 the actual hearing will begin tomorrow, 7 October, at  
12 08:00 in this room.

13 Okay. Thank you.

14 MR. BANCHS: Thank you.

15 COURT RECORDER: We are off the record. The  
16 time is 9:32.

17 (At 9:32 a.m., proceedings concluded)

18 -0-0-0-

19

20

21

22

23

24

25

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25

RECORDER'S CERTIFICATE OF TRANSCRIPTION

I do hereby certify that on the date and at the place set forth on the title page hereof, there did personally appear before myself, Notary Public, the witnesses named on the table of contents page; that said witnesses were sworn to tell the truth and that testimony electronically recorded, the same being later reduced to typewriting, and that the foregoing is a true and accurate transcription by me of said electronic recording.

I further certify that I, to the best of my knowledge, am not related to or employed by any party to this cause or their respective counsel/representative.

  
\_\_\_\_\_  
Tracy L. O'Brien



Notary Public - CER - 5175

My commission expires 3/19/2020