ORIGINAL

U.S. DISTRICT COURT
NORTHERN DISTRICT OF TEXAS
FILED
OCT 23 2002
CLERK, U.S. DISTRICT COURT
By _____
Deputy

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF TEXAS
WICHITA FALLS DIVISION

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| JACK E. SCHLIEPER, | § | |
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| Plaintiff, | § | |
| | § | |
| v. | § | CA No. 7:00-CV-45-R |
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| THE CITY OF WICHITA FALLS, TEXAS, et al., | § | |
| | § | |
| | § | |
| Defendants. | § | |

ENTERED
OCT 23 2002
U.S.D.C.

## FINDINGS OF FACT AND CONCLUSIONS OF LAW

Jack Schlieper brought suit against the City of Wichita Falls, City Manager Jim Berzina, Assistant City Manager and Civil Service Director Jan Stricklin, Wichita Falls Police Chief Ken Coughlin, Wichita Falls Police Department Major Dennis Bachman, Wichita Falls Police Department Major Glen Smith and Wichita Falls Police Officer Gregg Martin. All claims against Gregg Martin were dismissed on summary judgment in the Memorandum Opinion and Order (filed May 5, 2002) and a non-jury trial was held to address all of the remaining counts alleged by Plaintiff. The non-jury trial continued for twenty-nine days[1] where the Court heard from forty-three live witnesses, viewed one videotaped trial deposition, and admitted three hundred and thirty-three exhibits.

### I. SUMMARY OF CLAIMS[2]

In Count I, Plaintiff contends that Defendants City of Wichita Falls, Jim Berzina in his individual capacity and official capacity as City Manager, and Jan Stricklin in her individual capacity and official capacity as Personnel Director and Civil Service Commission Director retaliated against Plaintiff in violation of Title VII of the Civil Rights Act of 1964, 42 U.S.C. 2000e 2(a) and 42 U.S.C. 2000e 3(a) by firing him from his position as Wichita Falls Police Department Chief because he: (1) refused to follow a directive to promote a female sergeant to major on the basis of gender; (2) opposed racial homogeneity at the police academy and reversed previous decisions that had been made by Defendants to reject minority candidates from the Academy; (3) promoted two officers to the rank of major who had been instrumental in sustaining past complaints of racial discrimination within the police department, resulting in an out of court settlement by the City; and (4) implemented

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[1] Trial was held on May 13-15, May 20-24, May 28-29, May 31, June 3-7, June 10-14, June 17-21, June 24-26, 2002.

[2] This claims summary is taken from the Second Amended Joint Pretrial Order filed after the trial ended on June 27, 2002. See Second Am. Joint Pretrial Order at 7-12.

a new objective promotion procedure and criteria for the rank of major which eliminated the previous subjective procedure that had resulted in no minorities being promoted to major before Plaintiff's term of employment.

In Count II, Plaintiff contends that Defendants City of Wichita Falls, Jim Berzina in his individual capacity, and Jan Stricklin in her individual capacity, infringed Plaintiff's First Amendment right of free speech under the U.S. Constitution and violated Section 1983 of the Civil Rights Act of 1871, 42 U.S.C. § 1983 by retaliating and ultimately firing him from the position as Wichita Falls Police Chief because Plaintiff spoke out on matters of public concern including: (1) unlawful employment practices that resulted in racial and gender discrimination within the Wichita Falls Police Department; (2) police patrol methods that resulted in African-American citizen complaints of illegal stops based on racial profiling (and Plaintiff implemented police patrol methods designed to stop these practices); and (3) implementing community policing efforts in the predominantly African-American East side of town (the "Eastside"), including the reassignment of two Caucasian Crime Stoppers Police Officers to the Eastside community policing program over the opposition of Caucasian citizens.

In Count II, Plaintiff also contends that the City's personnel policies are overly restrictive and unconstitutionally prohibit its employees from complaining to someone beyond the City Manager about matters that involve employment practices and working conditions when these matters also involve matters of public concern. Plaintiff contends that the City delegated to City Manager Jim Berzina the final decision making authority to establish personnel policies, practices and customs, and the City Manager through custom, practice and usage has established the unconstitutional practices that resulted in the infringement of Plaintiff's free speech rights. Plaintiff also contends that Berzina was an active participant in the retaliation against and termination of Plaintiff. Plaintiff further alleges that Personnel Director and Civil Service Commission Director Stricklin had the authority through custom and usage to establish City personnel policy and was personally involved in the reprisals and termination of Plaintiff to silence him for speaking out about the above enumerated matters of public concern. Plaintiff also alleges that Berzina ratified Stricklin's actions.

In Count III, Plaintiff alleges that he is entitled to attorneys' fees pursuant to 42 U.S.C. § 1988 for the Defendants City of Wichita Falls, Berzina's and Stricklin's violations of Plaintiff's civil rights under the First Amendment and 42 U.S.C. § 1983.

In Count IV, Plaintiff contends that:

(1) In her individual capacity, Defendant Stricklin slandered Plaintiff by publicly making statements that Plaintiff was a thief, misused police overtime funds, misappropriated government funds, and was involved in a criminal conspiracy to defraud the citizens of Wichita Falls;

(2) In his individual capacity, Defendant Coughlin slandered Plaintiff by making public statements during a television interview broadcast on December 15, 1999, regarding Plaintiff's alleged mishandling of federal grant funds. These statements were

allegedly calculated to place Plaintiff in a false light, thereby imputing the commission of a crime by Plaintiff and asserting that Plaintiff was incompetent as the Police Chief.

(3) In his individual capacity, Defendant Berzina slandered Plaintiff by speaking to a television news reporter and failing to make efforts to dispel impressions that Plaintiff, as Police Chief, was responsible for "grant funds" administration.

In Count V, Plaintiff contends that:

(1) In his individual capacity, Defendant Bachman libeled Plaintiff by publishing a false written statement, which was used to fire Plaintiff, accusing Plaintiff of falsifying time sheets, violating Police Department polices and violating state laws. These statements were used as evidence in the decision to fire Plaintiff.

(2) In his individual capacity, Defendant Glen Smith libeled Plaintiff by publishing a false written statement, which was used in the decision to fire Plaintiff, accusing Plaintiff of mental illness and of willfully violating state laws, federal laws and police department regulations.

In Count VI, Plaintiff contends that:

(1) Defendants Berzina, Stricklin, Bachman and Smith, all in their individual capacities, engaged in a conspiracy under Texas common law, for the unlawful purpose of defaming Plaintiff in his profession, occupation and reputation; and preparing false statements which were used to fire Plaintiff from his position as Police Chief.

(2) Defendant Coughlin, in his individual capacity, engaged in a conspiracy under Texas common law, for the unlawful purpose of slandering Plaintiff in his profession, occupation and reputation; and preparing false statements that were used to fire Plaintiff from his position as Police Chief.

## II. FINDINGS OF FACT[3]

The following factual determinations are made based upon standard credibility factors including: the manner in which each witness testified, the presence of inconsistent testimony, whether the witness was impeached or confused, and whether the witness had any motivation not to be truthful. Only the testimony which the Court credits and found relevant is included in these factual findings. If the following Findings of Fact may be more properly deemed Conclusions of Law, they are hereby incorporated by reference into the Conclusions of Law.

### JACK SCHLIEPER

1. Plaintiff Jack Schlieper began his law enforcement career as a patrol officer in the Police Department in Rock Island, Illinois. He worked in various sections of the department as his career advanced.

2. Plaintiff then applied for police chief positions across the nation. Plaintiff left Rock Island in December 1994 to become the Police Chief in Mason City, Iowa at the age of 45. During Plaintiff's tenure in Rock Island, the City's form of government changed, and Plaintiff found himself in a difficult political situation in dealing with the new City Administrator and the Police Officers' Union. Plaintiff lost the City Council's support after the Union began actively filing grievances during Plaintiff's administration. Plaintiff served as Mason City's Police Chief for two years, when he accepted a severance package to resign his position.

3. Plaintiff again applied for many police chief positions in October 1996. In February 1997, Plaintiff went through three rounds of extensive interviews before receiving and accepting an offer to become the Police Chief in Wichita Falls, Texas. In his last round of interviews, Plaintiff was informed he had cleared the City's extensive background check. Berzina told Plaintiff that he would recommend Plaintiff to the City Council for hire. The City Council voted unanimously to hire Plaintiff and Plaintiff accepted the position. Then, information regarding the circumstances under which Plaintiff left his position at Mason City began to be publicized by the news media in Wichita Falls. Plaintiff never told Berzina that he had accepted a severance package to resign as the Mason City Police Chief. In an attempt to allay fears about Plaintiff, Wichita Falls' first "outsider" Police Chief, Berzina wrote a memorandum to the Police Department to counter the negative media slant on Plaintiff's tenure in Mason City. Berzina's memorandum stated that he was well aware of Plaintiff's

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[3] Testimony related to damages is not included in these Findings of Fact because the Court's Conclusions of Law holds that Plaintiff failed to prove any of his claims; therefore, Plaintiff is not entitled to damages. The witnesses whom this Court does not address in the factual findings are those of Plaintiff's wife, Kathy Schlieper; Plaintiff's Damages Expert, Dr. Alan Self; and Defendants' Damages Expert, Wayne Ruhter.

record in Mason City and that Plaintiff still remained the "outstanding choice to be our chief." See Pl.'s Ex. 74.

4. In order to be a Texas law enforcement officer, Plaintiff had to study for and pass a Texas law enforcement certification exam. Plaintiff was tutored by Wichita Falls police officers Don Yates, Patricia Yates and Glen Smith until he took the exam and passed. Plaintiff was sworn in as Police Chief on April 1, 1997. Plaintiff was an at-will employee; he could be terminated for cause or without cause.

5. Next, Plaintiff began the selection process to choose his two Majors. All Wichita Falls police officers are Civil Service employees except for the Majors and the Police Chief. Therefore, the Major selection process was not governed by Civil Service rules because Majors served at the pleasure of the Police Chief. From April until June 1997, Manuel Borrego and Glen Smith served as Acting Majors. Both officers were in contention for the Major positions in addition to Derek Knowles, John Cummings, Pat Yates (a Female officer) and others.

6. Plaintiff sought guidance in selecting Majors from various sources including Police Department officers and staff, Berzina, Stricklin and former Police Chief Harrelson. There were no objective criteria for Majors' selections except that the candidate must have been a Wichita Falls police officer for a minimal number of years. Plaintiff felt that Stricklin was overly supportive of Pat Yates for the position and discussed the matter with both Berzina and Harrelson. Both Berzina and Harrelson informed Plaintiff that the decision was his alone to make.

7. Stricklin, as Personnel Officer, and Plaintiff worked together to screen candidates. Although Plaintiff felt that Stricklin was somewhat reticent to his ideas, the two agreed to a multi-stage selection process. Step one consisted of an "internal" screening panel made up of non-Police Department City employees who would eliminate candidates to leave only ten applicants. Step two consisted of review by an "external" independent panel composed of law enforcement officers from other areas who would produce a list of the top five candidates. Step three consisted of a personal interview with Plaintiff and Stricklin of the top five candidates. Plaintiff would then choose his two Majors.

8. Plaintiff believed that Stricklin had become too involved in the process, although he had originally solicited her help. He discussed the matter with Berzina, who again assured Plaintiff that the Majors were selected by Plaintiff's preference only, and that Plaintiff was not required to enlist the aid of any other person, including Berzina himself. Plaintiff told Berzina that Stricklin had become even more insistent about hiring Pat Yates; and Berzina reiterated that it was Plaintiff's choice alone. The top five candidates were Manuel Borrego, Derek Knowles and Ken Coughlin (tied for second), John Cummings and Pat Yates respectively. Borrego was the only non-Caucasian finalist and Yates was the only female finalist. Out of these five candidates, Stricklin expressed her view that Coughlin and

Cummings were the weakest candidates. She believed both Borrego and Yates to be the best choices for Major.

9. After the interviews, Plaintiff selected Derek Knowles and Manuel Borrego for Majors. Plaintiff then met with each of the three unsuccessful candidates to offer them supervisory roles in Plaintiff's administration. Cummings took the position as Internal Affairs officer. Coughlin became the head of Street Crimes/Drug Task Force. Yates was offered the Accreditation head position, but she declined. Plaintiff then convened the Majors' Promotion Ceremony, which was held at the Police Department on July 9, 1997. Plaintiff thanked Stricklin for her help and guidance in the selection process. See Defs.' Ex. 72.

10. Plaintiff began his term as Police Chief by reorganizing the Department and filling command level positions which had been vacant. As a guideline, Plaintiff followed the Police Department Goals, which had been compiled under Harrelson's administration. See Pl.'s Ex. 13. The Police Department was plagued by vacancies in officer and staff positions. Plaintiff blamed these vacancies on Stricklin, believing that she was not hiring for the Police Department as a form of retaliation against Plaintiff for not promoting Yates to the Major position.

11. Plaintiff received his first performance evaluation from Berzina in October-November 1997. Plaintiff prepared an outline for this meeting with Berzina. See Pl.'s Ex. 92. Although the City has Personnel Evaluation Forms, Berzina did not use one. See, e.g., Pl.'s Ex. 104 and 105. Berzina regularly gave only verbal evaluations to his department heads and Plaintiff's evaluation was no exception. Plaintiff guided his administration by adhering to the Departmental Goals and monitoring the department's progress through End of Year Assessments. See Pl.'s Ex. 14. Plaintiff was given a salary increase when he became eligible for one. See Pl.'s Ex. 89.

12. In the fall of 1997, Berzina heard rumors that Plaintiff treated Police Department employees badly and discussed the issue with Plaintiff. Plaintiff denied that he mistreated any employee and Berzina dismissed the rumors. The same issue arose in the spring of 1998. Again Berzina discussed the rumors with Plaintiff, who again denied them. This time, Plaintiff attempted to investigate the rumors by asking specific employees whether they felt like Plaintiff was treating them unfairly. Plaintiff reported that his personal investigation led to nothing. In the spring of 1998, Plaintiff had District Attorney Barry Macha and his staff removed from the "Gun Shop Murders" crime scene so that the scene would not be tainted due to overcrowding. The manner in which Plaintiff had Macha removed led to a media fiasco for which Berzina reprimanded Plaintiff.

13. In the fall of 1998, Berzina discussed with Plaintiff that there were complaints that Major Knowles was engaging in off-duty behavior that was inappropriate, such as being publicly intoxicated at local bars and clubs. Plaintiff discussed the issue with Knowles, who felt strongly that his activities when off duty were his own business unless he was breaking the law. Plaintiff supported Knowles although he counseled Knowles about his behavior.

14. In December 1998, Plaintiff discussed problems with his leave time accounting with Berzina and Stricklin. Plaintiff was reprimanded for improper recording of his leave time and Berzina decided to remove some leave from Plaintiff in attempt to recover the leave which Plaintiff had already taken and not earned. Plaintiff did not believe that his actions were inappropriate, just that there had been a timekeeping error.

15. Over time, Berzina became aware, through Stricklin, that there were many more problems in the Police Department than Berzina believed intolerable. Some of these were issues with which Berzina had been directly involved, such as problems with District Attorney Barry Macha and problems with the Crime Stoppers program and its Board. Some of these were issues with which Berzina had no personal knowledge, such as complaints that Plaintiff yelled at employees, usurped the chain of command, and permitted his Majors too many latitudes. Berzina discussed a few of these concerns with Plaintiff from time to time. Plaintiff professed to have no knowledge regarding the rumors that Berzina heard.

16. The weight of the problems with Plaintiff caused Berzina to lose faith in Plaintiff. Berzina began to believe that Plaintiff was being untruthful. Berzina asked Stricklin to conduct a full investigation of all of the complaints circulating about Plaintiff. As well, in December 1998, Berzina received information from a friend, Stephen Gustafson, that the situation at the Police Department was grave in that officers were planning on resigning because of Plaintiff's management of the Police Department.

17. Berzina, Plaintiff and Stricklin met for eight hours on January 8, 1999, to discuss Stricklin's investigation. By this point, Stricklin had taken verbal, written and tape recorded statements from many police officers and staff members regarding the behavior of Plaintiff and his Majors. Stricklin presented all of the allegations against Plaintiff.

18. Stricklin's presentation addressed numerous complaints against Plaintiff, although not one was ever formally filed. The complaints for which Plaintiff was asked to answer included: yelling and screaming at officers and staff; improperly ordering a criminal history search on a Police Department employee; making unauthorized long distance telephone calls; abusing leave; forcing an officer to divulge the name of a confidential informant; falsifying time-keeping records by recording time that was never worked; ordering overtime paid to officers who did not work overtime; deteriorating the relationship with the District Attorney's office; failing to attend a scheduled breakfast in honor of Dr. Martin Luther King, Jr.; failing to appear at a meeting scheduled with local judges; missing various meetings without excuse, such as the ambulance service, wrecker service and burglar alarm meetings; deteriorating relations with the Crime Stoppers Board; usurping the chain of command; making retaliatory shift and job duties transfers; hiring Police Academy recruits who had been refused hire by the Personnel Department; forcing supervisors to lower employee evaluations; not permitting officers access to budgets for their sections; and various other complaints.

19. Plaintiff did not have knowledge of a vast majority of these complaints and asked for time to investigate the charges against him. Plaintiff asked to see written complaints and was told that there were no formal written complaints, but that Stricklin had amassed notes from interviewing individual officers and staff.

20. On January 11, 1999, Plaintiff met again with Berzina and Stricklin to discuss the complaints against him and a plan to resolve the problems. On January 18, 1999, Berzina again met with Plaintiff and offered a three month severance package in exchange for Plaintiff's resignation. Plaintiff turned down the offer and told Berzina that he would sue the City. Plaintiff was then terminated.

21. Plaintiff believes that he was terminated because he spoke out on matters of public concern at community meetings and with Berzina and Stricklin specifically. Plaintiff states that there are three areas on which he spoke out against the City for discriminatory practices: in support of settlement of the Garza-Hawkins lawsuit, regarding discriminatory Police Academy candidate selection criteria; and regarding discriminatory police promotional exams.

22. The trial record reflects that Plaintiff was more active in the community than any other Police Chief before him. Plaintiff made great and very successful efforts to reach the minority community. He earned the trust of the minority community and was quite successful in garnering their support as evidenced by the fact that an African-American church began a petition demanding to know why Plaintiff was terminated. See Defs.' Ex. 237.

23. Plaintiff believes that the Police Academy recruiting and hiring process is discriminatory because there were no written objective criteria for disqualification of candidates. Plaintiff believes that the way the hiring process is structured, such that Personnel Director Stricklin has absolute authority on candidate eligibility, leads to improper disqualification of minority candidates.

24. Plaintiff believes that the Civil Service Promotional Exams are discriminatory. Plaintiff believes that the way the promotional exams are written and administered by Civil Service Commission Director Stricklin led to skewed exams which failed to promote minorities. Plaintiff never filed a formal complaint with the Civil Service Commission regarding the content of Wichita Falls' Police Department's promotional exams.

25. Plaintiff believes that because he did not promote Pat Yates, a Female, to Major, that Stricklin began to retaliate against him by failing to fill vacancies in the Police Department, reporting inaccuracies to Berzina, and conducting a "smear campaign" by offering officers and staff job immunity if they would make false and disparaging statements against Plaintiff.

26. Plaintiff never filed a formal complaint with anybody alleging discriminatory practices by the City of Wichita Falls. Plaintiff never filed a formal complaint with Berzina or the Civil Service Commission regarding what Plaintiff believes to be Stricklin's discriminatory practices.

CREDIBILITY: Plaintiff Jack E. Schlieper was not a credible witness. He lied repeatedly during his direct and cross-examination. The Court discredits his testimony.

## JIM BERZINA

27. Jim Berzina has been the City Administrator in Wichita Falls since 1983.

28. The City of Wichita Falls, Texas is a municipal corporation and a political subdivision of the State of Texas. See Defs.' Exs. 1 and 356. The City of Wichita Falls, Texas is a home-rule municipality with a council-manager form of government. See id. Pursuant to the City's Charter, the City Council sets policy for the City, and the City Manager implements policy by serving as the chief City administrator and conducting the day-to-day operations of the City. See Defs.' Ex. 1.

29. Pursuant to Section 63 of the City Charter, the City Council, City Manager and any officer or committee authorized by either of them shall have the power to make investigations as to City affairs, and for that purpose may subpoena witnesses, administer oaths, and compel the production of books and papers, and it shall be the duty of the City Manager to designate a police officer to serve such subpoena. See Defs.' Ex. 1.

30. Plaintiff was an at-will employee; he could be terminated for cause or without cause.

31. Plaintiff's attendance at the Garza-Hawkins mediation was by happenstance, in that Berzina saw him in City Hall on the day of the mediation and invited him to attend. Plaintiff was an observer at the Garza-Hawkins mediation, and the mediator prohibited Plaintiff from participating in the mediation.

32. One of the first priorities Plaintiff had as the new Police Chief was to appoint his Majors. Berzina told Plaintiff that the majors' selection was his choice and that he could even "flip a coin." Berzina told Plaintiff "if I tell you who to promote, then I can't hold you accountable." See Defs.'Ex. 72.

33. In 1998, Plaintiff failed to attend the Dr. Martin Luther King, Jr. Breakfast, where he was scheduled to introduce the guest speaker. Plaintiff claimed to have overslept from working late with the third shift patrol the night before.

34. Plaintiff had District Attorney Macha and his staff removed from the "Gun Shop Murders" crime scene. Berzina subsequently apologized to Macha on behalf of the City. Plaintiff and Macha held a press conference in efforts to smooth the relationship between the Police Department and District Attorney's Office. See Defs.' Ex. 358.

35. Berzina received complaints from the Crime Stoppers Board regarding Plaintiff's treatment of Board members. See Defs.' Ex. 361. Plaintiff was aware of the complaints made by the

Crime Stoppers Board. See Defs.' Exs. 103-105. Police Officer Melvin Joyner spoke with Berzina on more than one occasion regarding the problems that Crime Stoppers was having with Plaintiff and his treatment of Officers Joyner and Morgan. Because of Plaintiff's actions and attitude toward the Crime Stoppers program, the Board sought to move the program from the City to the County.

36. Plaintiff ordered Arlene Eaton, the Police Department's timekeeper, to record on his time sheets that he had worked certain hours that he could not substantiate. See Defs.' Exs. 29, 29A, 193 and 269. On occasion, Plaintiff would take time off and would not accurately record that he had taken such time off on his time sheets. See Defs.' Exs. 29, 29A, 193, 268, 268b, 268c, 268d, 268e, 269, 313 and 314. Sometimes, Plaintiff put appointments on his calendar that he did not keep or had appointments that were not on his calendar. See Defs.' Ex. 313A. Plaintiff took administrative time that he had not earned. See Defs.' Exs.29, 29A, 192, 193, 268, 268b, 268c, 268e, 193, 269.

37. Plaintiff directed Arlene Eaton to record that he had earned administrative time after 40 hours, which conflicted with the City of Wichita Falls Administrative Policy No. 29, § 4.10, relating to Department Heads. Specifically, Department Heads (e.g., Police Chief) do not accumulate administrative time until after they have worked more than 50 hours in a work week. See Defs.' Exs. 268 a, c-e, 269; Pl.'s Ex. 2; Administrative Policy No. 29, § 4.10. The City of Wichita Falls' Administrative Policy No. 29 supercedes the Police Department's General Order No. 100.010, which reflected that the Police Chief would accrue administrative time after 40 hours in a work week. See Defs.' Ex. 191; Pl.'s Ex. 2; Administrative Policy No. 29, § 4.10.

38. In October 1998, Berzina and Stricklin met with Plaintiff and advised him that he could not earn administrative time until after he had worked 50 hours or more during a week. On December 4, 1998, Berzina and Jan Stricklin met with Plaintiff again regarding his inappropriate accrual and use of administrative time. Plaintiff was informed by Berzina and Stricklin that he had taken more administrative time than he had accumulated. Berzina and Stricklin advised Plaintiff that he owed the City approximately 16.93 days of administrative time. See Defs.' Ex. 192. Berzina and Stricklin further advised Plaintiff that they offset the 16.93 days he owed with the ten vacation days that Plaintiff had not used. Therefore, Plaintiff still owed the City 6.93 days of administrative time. See id.

39. Plaintiff failed to provide documentation to refute that he owed the City 6.93 days of administrative time. Despite Plaintiff owing the City 6.93 days, Berzina nevertheless permitted Plaintiff to take his prepaid Christmas vacation to Savannah, Georgia.

40. Throughout 1998, Berzina received complaints about Plaintiff from employees of the Police Department and the community. On three occasions, Berzina discussed with Plaintiff the complaints Berzina had received about Plaintiff yelling at employees. Several employees, including officers Cindy Walker and Bill Henning, made threats to sue the City for the

hostile work environment created by Plaintiff if Plaintiff's abusive management was not corrected. See Defs.' Exs. 35, 243, 262, 285 and 287.

41. On Friday, January 8, 1999, Berzina and Stricklin met for eight hours with Plaintiff and discussed the specific complaints regarding Plaintiff and his Majors. During this meeting, Plaintiff and Berzina took detailed notes regarding these specific complaints. See Defs.' Exs. 5, 71. At the conclusion of the meeting, Berzina suggested that they think about the situation over the weekend and decide what the next steps should be.

42. On Monday, January 11, 1999, Plaintiff met with Berzina and presented him with an Eight Point Plan. See Defs.' Ex. 256. Plaintiff suggested that Berzina conduct his own investigation and that Stricklin be removed from all further investigations on the matter. See id. Berzina decided to conduct his own investigation, but did not implement Plaintiff's suggestion regarding Stricklin.

43. Berzina had broad authority regarding conducting investigations pursuant to Section 63 of the City Charter. See Defs.' Ex. 1. Berzina conducted his own investigation by interviewing several members of the Police Department including Captains, Lieutenants, Sergeants, and Officers. Berzina learned that Plaintiff's treatment of employees within the Police Department caused significant disruption, turmoil and low morale. The investigation led Berzina to conclude that Plaintiff had caused permanent damage to his ability to lead the Police Department. On January 18, 1999, Berzina gave Plaintiff the choice to resign or be terminated. Berzina told Plaintiff that he had irretrievably lost the ability to command the Police Department and that the situation was not salvageable. Plaintiff gave Berzina his attorney's business card and told Berzina to speak with his lawyer. Berzina terminated Plaintiff's employment on January 20, 1999. On that same date, Berzina received a demand from Plaintiff's attorney for over $700,000 in severance pay in return for Plaintiff's resignation.

44. Under §61 of the City's Charter, Plaintiff had a right to request a written statement outlining the reasons for his termination and/or request a public hearing on the matter. Plaintiff did not make a formal request for either course of action. See Defs.' Ex. 1.

45. Plaintiff never filed any complaints with Berzina concerning Jan Stricklin.

CREDIBILITY: Jim Berzina was a very credible witness. The Court credits all of his testimony.

## JAN STRICKLIN

46. Jan Stricklin works as the City of Wichita Falls' Personnel Director and Civil Service Commission Director. Stricklin has worked in various capacities in Wichita Falls City government since 1981.

47. The City of Wichita Falls was designated as a satellite office for the Equal Employment Opportunity Commission.

48. The City of Wichita Falls, Texas, has adopted Civil Service and is covered by Chapter 143 of the Texas Local Government Code and Local Civil Service Rules adopted and promulgated by the Local Civil Service Commission. See Defs.' Ex. 110.

49. Jan Stricklin, as Director of Civil Service, is responsible for administering the provisions of Chapter 143 of the Texas Local Government Code and the Local Civil Service Rules as applicable to the Police and Fire Departments. See Defs.' Ex. 110. Civil Service, in accordance with Chapter 143.021 of the Texas Local Government Code, did not cover Plaintiff as Police Chief. See id.

50. The Police Chief has the sole discretion to appoint and remove the Majors as specified in Chapter 143.014 of the Texas Local Government Code. See id. According to Chapter 143.021 of the Texas Local Government Code, those appointed to the rank of Major do not enjoy Civil Service protection while in that rank. See Defs.' Ex. 110 and Tex. Local Gov't Code Ch. 143.014(g). During the time Plaintiff was Police Chief, the Wichita Falls Police Department had not adopted an alternate promotional system under Chapter 143.035 of the Texas Local Government Code.

51. Applicants for police officer positions with the Wichita Falls Police Department must meet the requirements set forth in Chapter 143.023 of the Texas Local Government Code and the Local Civil Service Rules. These requirements include taking and passing a competitive entrance examination and meeting the requirements set forth by the Texas Commission on Law Enforcement Officer Standards and Education ("TCLEOSE"). See Defs.' Ex. 110.

52. Applicants who meet all of the requirements set forth in Chapter 143.022 (Physical Requirements and Examination) and Chapter 143.023 (Eligibility for Beginning Positions) of the Texas Local Government Code are required to undergo a background investigation. See Defs.' Ex. 110. In addition, the City of Wichita Falls has implemented a "Legal Review" process in which applicants and their backgrounds are reviewed by Personnel Director Stricklin prior to the applicants being accepted as police recruits.

53. Promotions for police classifications (except for Majors) within the Wichita Falls Police Department are governed by Chapter 143 of the Texas Local Government Code and the Local Civil Service Rules. See Defs.' Ex. 110; Tex. Local Gov't Code Ch.143.028-036. In order to receive a promotion, a classified employee within the Wichita Falls Police Department must take a competitive written promotional examination. See Defs.' Ex. 110; Tex. Local Gov't Code Ch.143.032. Written promotional examination procedures within the Wichita Falls Police Department are governed by Chapter 143.032 of the Texas Local Government Code, which dictates, among other things, the knowledge areas which must be tested. See id. Promotional examination procedures are governed by Chapter 143.032 and 143.033 of the Texas Local Government Code, which dictates, among other things, the

materials to be used in formulating the examination test questions and its composition of 100 questions. See id.

54. When non-entry level Civil Service vacancies occur within the Wichita Falls Police Department, they are to be filled in accordance with Chapter 143.036 of the Texas Local Government Code, which requires that the vacancies be filled by those employees having the highest grades on the eligibility list. See Defs.' Ex. 110; Tex. Local Gov't Code Ch.143.036.

55. Pursuant to Chapter 143.034, an eligible promotional candidate within the Wichita Falls Police Department may examine his or her examination and answers, the examination grading, and the source material for the examination. See Defs.' Ex. 110 and Tex. Local Gov't Code Ch. 143.036. Pursuant to Chapter 143.034, an eligible promotional candidate within the Wichita Falls Police Department may appeal to the Civil Service Commission if dissatisfied with the examination, grading, or source materials. See Defs.' Ex. 110 and Tex. Local Gov't Code Ch. 143.034.

56. Chapter 143.051 of the Texas Local Government Code and the Local Civil Service Rules govern removal and suspension of classified employees within the Wichita Falls Police Department. This section does not apply to the Police Chief or to the appointed Major positions. See Defs.' Ex. 110 and Tex. Local Gov't Code Ch.143.051.

57. Pursuant to Chapter 143.052, the Wichita Falls Police Chief, as head of the Police Department, has the sole authority to suspend (up to 15 days or for an indefinite period) a member of the classified service under his supervision or jurisdiction. See Defs.' Ex. 110 and Tex. Local Gov't Code Ch.143.052. Pursuant to Chapter 143.053 of the Texas Local Government Code, a suspended Police Officer in the Wichita Falls Police Department may appeal his suspension to the Civil Service Commission or to a third party hearing examiner. See Defs.' Ex. 110 and Tex. Local Gov't Code Ch.143.053.

58. Upon removal from his appointed position, the individual holding the position of Major within the Wichita Falls Police Department is returned to his last held Civil Service Classification as specified in Chapter 143.014 of the Texas Local Government Code. See Defs.' Ex. 110 and Tex. Local Gov't Code Ch.143.014.

59. At Plaintiff's behest, Stricklin discussed her views about candidates for Major. She was delighted to see that both a Hispanic male and a woman were among the candidates who eventually became top five finalists. Although Stricklin discussed both Borrego and Yates specifically, as she did other candidates, her discussion of neither Borrego nor Yates was inappropriate. Plaintiff clearly understood that it was his right alone to choose his Majors.

60. There was a personnel shortage in the Police Department. The shortage of qualified personnel was evident throughout the City of Wichita Falls government. The number of vacancies within the Police Department was not exemplary. Both before and after Plaintiff's

administration, the Police Department experienced a greater number of vacancies than it did during Plaintiff's administration.

61. Plaintiff, in violation of the City of Wichita Falls Local Civil Service Rules, walked into the testing room where officers were taking a Lieutenant's promotional examination in November 1998. See Defs.' Exs. 9, 110. Frank Avens filed an appeal based on Plaintiff's presence in the testing room. Avens discussed his appeal with Jan Stricklin, the Civil Service Director. After he filed his appeal, Avens was told by Borrego that Plaintiff wanted Avens to write a memorandum detailing his conversation with Stricklin regarding the exam appeal. See Defs.' Ex. 39.

62. In 1997 and 1998, Stricklin received informal complaints about Plaintiff's abusive and demeaning treatment of employees. See Defs.' Ex. 269.

63. Arlene Eaton advised Stricklin of Plaintiff's unauthorized accrual and use of administrative time. Reasonably relying on the information provided by Eaton, Stricklin told Plaintiff that his timekeeping records improperly recorded his administrative time. Stricklin informed Plaintiff that Administrative Policy No. 29 prohibited him from accruing administrative time after 40 hours, but that Plaintiff could only accrue administrative time after having worked at least 50 hours in one week. Stricklin informed Berzina of Eaton's report regarding Plaintiff's timekeeping and Berzina asked Stricklin to perform a Departmental Director timekeeping audit for the upcoming Budget Session. Stricklin did as instructed and presented her audits on all Department Directors to Berzina. Plaintiff was found to have recorded 16.93 days of administrative time which he had not earned.

64. In the latter part of 1998, Berzina requested that Jan Stricklin conduct an investigation of the Police Department. During the investigation, Stricklin interviewed several officers of various ranks. See Defs.' Exs. 6, 7, 24, 33, 35 and 36. These meetings were sometimes held in groups and sometimes held one-on-one.

65. Stricklin had a group meeting with Defendants Coughlin, Bachman and Smith. Shortly after this particular meeting, Stricklin summarized her notes and provided a copy to each officer to check for accuracy. See Defs.' Ex. 33. Defendants Coughlin, Bachman and Smith prepared written summaries of their discussions with Jan Stricklin during the investigation in anticipation of litigation. See Pl.'s Exs. 50, 119 (Bachman's and Smith's Memoranda).

66. During Stricklin's investigation, several officers and civilian employees submitted written statements regarding their complaints against Plaintiff and his Majors. See, e.g., Defs.' Exs. 6, 7 and 43. During the investigation, several officers and civilian employees had discussions with Stricklin and Berzina and some of these discussions were recorded and transcribed. See Defs.' Exs. 38 and 38A.

67. Plaintiff used an abusive tone with several police officers including, but not limited to, Melvin Joyner, Jerry Morgan, Mike Yonts, Don Drury, Laura Arnold, Cindy Walker, Glen

Smith, and Gregg Martin. See Defs.' Exs. 8, 17, 23, 29, 29A, 33, 35, 36, 46, 67, 166, 193, 240, 242, 282 and 285. Plaintiff used an abusive tone with civilian employees including, but not limited to, Carmen Sosa, Arlene Eaton and Gerald Simpson. See id. Plaintiff also used profanity with several police officers.

CREDIBILITY: Jan Stricklin was a very credible witness. The Court credits all of her testimony.

## CLAUDE FOSTER

68. Claude Foster served on the Board of Directors of the Wichita Falls Police Chapter of the NAACP from 1993-2000 in various capacities. Foster was the President of the Wichita Falls Chapter of the NAACP while Plaintiff was the Police Chief of the Wichita Falls Police Department.

69. Foster was also a member of the Human Needs Commission, and in this capacity, advised the City Council of impending issues. He served in this appointed capacity for approximately three years (one and one-half terms). Stricklin made recommendations to the City Council for appointments to the Human Needs Commission.

70. Foster was not reappointed to a position on the Human Needs Commission. Foster believes that Stricklin did not nominate him for reappointment because he had been vocal on issues regarding minority representation in City government and City management both in his NAACP capacity and in his capacity as a member of the Human Needs Commission.

71. Foster experienced resistance from Berzina on the issue of effective implementation of the City's Affirmative Action Plan. The City's reticence to address issues of racial discrimination in Wichita Falls was recorded in print and television by debates facilitated through the local news media.

72. Berzina was involved in the African-American community by attending church and civic functions. Foster felt that Berzina's involvement was not genuine overall, but was designed to allay serious challenges to the City's implementation of the Affirmative Action Plan.

73. Berzina regularly referred Foster to Stricklin for answers to questions regarding the representation of minorities amongst the City's managerial employees. Foster felt that Stricklin addressed these hiring and recruiting issues with empathy.

74. Under the administration of Former Police Chief Curtis Harrelson, Foster logged complaints made to the NAACP regarding the Wichita Falls Police Department, including complaints of racial profiling, being discourteous to minorities, indiscriminate stops and searches, and excessive use of force by police without cause. Foster believes that these issues of racial discrimination that occurred during Police Chief Curtis Harrelson's administration resulted in the City's hiring of an out-of-state police chief such as the Plaintiff.

75. Once Plaintiff was hired as Police Chief, Foster reports a strong commitment to improved relations with minorities, frequent patrolling by police officers, improvements in the methods used for stops and searches, an increased police presence throughout the minority communities, regular visits by Plaintiff, and an opening of dialogue between the police and minority community. Foster attributes all of these positive changes to Plaintiff directly.

76. Plaintiff himself had a wide presence in the minority community by patrolling the area, attending church and civil functions, and having open dialogue with leaders of minority groups such as the NAACP. Foster believes that Plaintiff's overtures to the minority community were genuine and directly improved relations between the Police Department and the minority community.

77. When the news media reported that Plaintiff had been fired in January 1999, the minority community led a petition demanding that Berzina explain the reasons for Plaintiff's termination. See Defs.' Ex. 237. This petition went unanswered.

78. In 1998, Plaintiff failed to appear at a breakfast held to commemorate the contributions of Dr. Martin Luther King, Jr., because Plaintiff overslept. Foster expressed disappointment at Plaintiff's absence, but stated that the MLK Breakfast was more important to the Caucasian community than it was to the minority community. Foster felt that prominent Wichita Falls Caucasians attend the breakfast because "it eases the conscience of certain elements of the community."

79. After missing the MLK Breakfast, Plaintiff personally apologized to Foster. Foster did not find Plaintiff's absence at the breakfast to be disconcerting or a reason to fire Plaintiff because Plaintiff's presence in the minority community was well established regardless of his absence at the MLK Breakfast.

80. Foster testified that the majority of improvements made in relations between the police and the minority communities continued once Plaintiff was fired.

CREDIBILITY: The Court credits the testimony of Claude Foster to the extent it is consistent with these Findings of Fact.

## JIM DOCKERY

81. Jim Dockery is the City of Wichita Falls Finance Director. His job duties include managing the City's budget. Dockery held this position from 1997 to the present, inclusive of the time period when Plaintiff was Police Chief.

82. As Director of Finance, Dockery is responsible for all of the City's money. He has full authority to allocate money, move money, make purchases, deny funding requests, make corrections and conduct audits.

83. Dockery is solely responsible for the administration of grant funds. Department heads, such as the Police Chief, are not responsible for grant administration. Dockery manages all grants, monitors spending from grants, and makes all corrections to properly allocate grants. In this respect, the only restrictions on grant management to which Dockery adheres are those specified by the grant limitations. Dockery is solely responsible for all allocations from grant funds to general spending funds and vice versa.

84. Dockery was responsible for the Department of Justice grant made to the Wichita Falls Police Department in 1997. Dockery had the sole authority to move grant funds and made the allocation of funds which became the subject of a DOJ audit.

85. Plaintiff was not responsible for the mismanagement of grant funds because Plaintiff did not have access to the accounts in which the grant funds were stored. Dockery never issued instructions to the Police Department regarding the use of grant funds. Dockery was not required to and did not consult with Plaintiff regarding the administration of grant funds.

86. Dockery, upon consultation with Berzina, believed that the DOJ grant could be spent on overtime pay for officers. Therefore, Dockery supplanted money from the grant fund to the general fund to pay for officer overtime. Dockery's assumption was wrong. The DOJ grant contained an anti-supplanting clause which prohibited grant payments for expenditures (such as general overtime) which should have been paid out from the City's funds. The DOJ grant was not to be spent on regular police officer overtime, but only for overtime paid to police officers who were working on particular programs covered by the DOJ grant. Dockery did not take proper notice of the anti-supplanting clause and therefore he alone improperly spent the DOJ grant on regular overtime.

87. The DOJ permitted the City to attempt to prove up their overtime expenditures. Dockery had not instructed the Police Department to segregate overtime, and thus records had to be produced after the fact to demonstrate to DOJ auditors that some of the overtime spent was proper.

88. Don Drury was the Police Department Grant Manager. Dockery did not consult with Drury regarding the allocation of grant funds, supplanting those funds, or any restrictions pertaining to the DOJ grant. Dockery did not issue instructions to Drury regarding how overtime for the DOJ grant must be substantiated.

89. Any and all shortages in the grant funds were directly caused by Dockery's decision to supplant the funds and Dockery's failure to understand the anti-supplanting clause of the DOJ grant. The result of the audit held the City of Wichita Falls responsible for $22,800 in misallocated grant funds.

90. Dockery was never told by Stricklin, Berzina or Coughlin that the grant funds issue was Plaintiff's fault. Dockery does not believe that any issues stemming from the grant funds issue were caused by or exacerbated by Plaintiff.

CREDIBILITY: The Court credits the testimony of Jim Dockery to the extent it is consistent with these Findings of Fact.

## REVEREND R. D. SANDERS

91. Reverend R.D. Sanders was the pastor at the Wichita Falls AME Church when Plaintiff was Police Chief. The AME Church is a historically African-American place of worship.

92. City officials had been invited to attend services and community meetings at Sanders' church and did not attend. Former Wichita Falls Mayor Kay Yeager attended services at the AME Church on a few occasions, but she only made an appearance and then left without attending the services.

93. Shortly after Plaintiff was hired, he was invited to attend the AME Church services and he did so on many subsequent occasions. Sanders was surprised by Plaintiff's presence because Sanders had invited former Police Chief Curtis Harrelson to services in the past, but Harrelson never attended.

94. Sanders was further impressed by the fact that Plaintiff stayed for the duration of the church services, even including the fellowship session held after the formal sermon was completed.

95. Sanders testified that Plaintiff was well accepted by the members of the Church, who took Plaintiff's presence as an indication that Plaintiff cared about the minority community and was not merely making a show of an occasional appearance at minority community meetings.

96. Plaintiff interacted very well with the minority community as a whole, and Sanders attributes the increase of police officers in the minority community and frequency of patrols directly to Plaintiff. Overall, the Police Department under Plaintiff was more friendly and respectful to the minority community under Plaintiff's administration.

97. Sanders reports regularly seeing Plaintiff patrolling the minority community himself and took the opportunity to personally discuss policing issues with Plaintiff directly. Sanders relays that his concerns regarding drug crime, lighting issues and overall community safety were regularly addressed by Plaintiff after these discussions.

98. Sanders was aware that Plaintiff failed to attend the Dr. Martin Luther King, Jr. Breakfast in 1998, but was not upset by Plaintiff's absence.

99. Sanders' church organized the community petition questioning the City Council regarding Plaintiff's termination. See Defs.' Ex. 237. The petition included approximately 450 signatures of Wichita Falls residents of the minority and Caucasian communities. Sanders questioned City Council members directly regarding Plaintiff's termination, but was told that "there is no answer at this time." Sanders never received any further response to the petition.

100. Sanders found Plaintiff to be respectful and genial. Sanders never saw Plaintiff lose his temper or heard him raise his voice in anger.

CREDIBILITY: The Court credits the testimony of this witness.

**BRENDA JARRETT**

101. Brenda Jarrett is the founder of the Youth Opportunity Center in Wichita Falls. While Plaintiff was Police Chief, Jarrett was the Director of the Youth Opportunity Center and the Weed and Seed Program. Jarrett is a leader in the African-American community known as the "Eastside."

102. Jarrett was very supportive of Plaintiff as Police Chief. She found him to be caring and responsive to the needs of the Eastside. Jarrett was very impressed with Plaintiff from their first meeting.

103. Plaintiff attended Eastside community functions regularly. Plaintiff increased the number of police officers patrolling the Eastside and those officers frequently spoke with community members when patrolling and took an active interest in the community. Jarrett states that the cooperation between the community and the Police Department was a result of Plaintiff's excellent understanding of how to communicate with the minority community.

104. Jarrett frequently spoke with Plaintiff directly regarding her concerns relating to policing in the Eastside. Plaintiff was responsive to Jarrett's concerns and took steps to address endemic problems such as the open air drug market on Fleet Street.

105. Jarrett attributes the overall reduction in crime and the closing of the Fleet Street drug market to Plaintiff's efforts.

106. Jarrett and her brother, Assistant U.S. Attorney Barry Jarrett, worked with Plaintiff to administrate the DOJ-approved Weed and Seed Program in the Eastside. Jarrett states that although the Weed and Seed grant funds were applied for while Harrelson was Police Chief, that Harrelson was not at all involved in the program. Jarrett states that Plaintiff aided her in getting the Weed and Seed program off to an excellent start.

107. Jarrett found Plaintiff's administration of the Police Department to be refreshing and she stated that "Wichita Falls residents were relieved that we had someone in that position that would change the old ways." The old way [consisted of] harassing Blacks, youth, not communicating, and having the power and not distributing it among the residents. The old way is representative of "the old Wichita Falls" under Police Chief Harrelson. Jarrett stated that the Police Department under Harrelson was not "people conscious" and did not have open door policies.

108. Jarrett became aware of Plaintiff's termination through the local newspaper. Around the same time, she coincidentally met Berzina somewhere and questioned him regarding the cause for Plaintiff's termination. Berzina implied that Jarrett should not get involved and that she did not really want to know the cause for Plaintiff's termination. Jarrett expressed that her encounter with Berzina left her with the impression that if she wanted continued City support for her programs in the minority community, that she should not support Plaintiff.

109. Jarrett found Plaintiff to be respectful and genial. She never saw Plaintiff lose his temper or heard him raise his voice in anger.

CREDIBILITY: The Court credits the testimony of this witness.

**FRED SMITH**

110. Fred Smith was the head of the Internal Affairs Division of the Wichita Falls Police Department under Plaintiff. Smith has more than twenty years experience with the Wichita Falls Police Department.

111. As the Internal Affairs officer, Smith took complaints regarding officer conduct, discussed the complaints with Plaintiff, and Plaintiff would then direct Smith as to which complaints warranted an official investigation.

112. Any and all criminal complaints could also be investigated by the Criminal Investigations Unit in conjunction with, or exclusive of, the Internal Affairs investigation.

113. Smith reported that the protocol for addressing complaints about Plaintiff or any Police Chief would be to speak with the City Manager directly. Criminal complaints against Plaintiff would most likely be discussed only with the City Manager and not be referred to the Criminal Investigations Unit.

114. Internal Affairs complaints fall into two informal categories. Serious complaints (classified as Class A complaints under Coughlin's administration) are addressed by Internal Affairs only. Simple complaints (Class B complaints under Coughlin's administration) are addressed by the Criminal Investigations Unit, the patrol officers.

115. Smith asserted that no complaints against Plaintiff were filed through the Internal Affairs Unit during Plaintiff's tenure as Police Chief or after Plaintiff's termination.

116. Upon reviewing the Answers to Interrogatories, Smith reported that he had no knowledge of any of the complaints against Plaintiff that are listed as allegations in the interrogatory answers. See Pl.'s Ex. 15.

117. Smith stated that "the grapevine stopped short of [my] office," but that the allegations against Plaintiff contained in the Answers to Interrogatories would be of the sort which Smith, as the

Internal Affairs officer, would have had to investigate had they been reported to him. See Pl.'s Ex. 15.

118. Smith's position required direct contact with Plaintiff daily. Smith never heard Plaintiff yelling or cursing to a degree worse than using the word "damn" when Plaintiff was angry.

119. Plaintiff asked Smith to remove the Fair Labor Standards Act materials from the Police Department library and place them in the Internal Affairs (Smith's) office. Smith believed that the move was done to facilitate updating the FLSA materials and then the materials would be returned to the library. However, Plaintiff never instructed Smith to update the FLSA materials or to return them to the library.

120. Smith states that any Police Department employee could have gone into the Internal Affairs office to access the materials, but that it was unlikely that they would do so because police officers tend to avoid the Internal Affairs office.

121. Smith believes that the former location of the FLSA materials in the Police Department's library provided for easier access to the materials than the placement of the materials in his own office.

122. At one point in time, Plaintiff asked Smith to run a complete criminal history search on Gerald Simpson because Plaintiff believed that Simpson may have had warrants out for his arrest in Florida for non-payment of court-ordered support to Simpson's children and/or former wife. See Defs.' Ex. 293. Plaintiff did not tell Smith why he believed that Simpson had failed to pay court-ordered support.

123. Texas law enforcement agents use the Texas Department of Public Safety's Texas Law Enforcement Electronic Telecommunications System ("TLETS") to conduct criminal history searches.

124. Smith did not know how to complete a TLETS search because he ordinarily asked a police dispatcher (a civilian employee) to complete the search for him. Smith did not inform Plaintiff that he was not trained to access TLETS search engine. However, Smith nevertheless attempted to access the TLETS system without consulting a dispatcher so as to protect Simpson's privacy because Simpson was an employee of the Police Department.

125. Smith was unsuccessful in his attempts to conduct a TLETS search on Simpson and subsequently asked Cindy Baker, a civilian employee who was familiar with the search engine, to conduct the TLETS search on Simpson. Smith asked Baker to run the search but not to look at the report print out. Baker regularly conducted TLETS searches, was trained and authorized to do so, and she was successful in running the TLETS search on Simpson.

126. Smith reviewed the TLETS search, determined that Simpson did not have any outstanding warrants for his arrest, and reported his findings to Plaintiff. Plaintiff gave Smith no further instructions on the matter.

127. Smith stated that it is a misdemeanor to run a TLETS search without authorization and that it is a felony to run a TLETS search for remuneration.

128. Smith stated that had he believed that Plaintiff's request for a search on Simpson was illegal, that Smith would have refused to conduct the search. Smith believed that Plaintiff was within his authority to order the criminal history search on Simpson. Smith does not believe that Plaintiff's actions, nor his own actions, violated any laws or departmental policies and that is why Smith carried through with the search on Simpson.

129. Once Plaintiff was under investigation by Stricklin, Smith was asked by Stricklin to meet with her to discuss Plaintiff. Smith met with Stricklin and reported that he did not have any problems with Plaintiff's administration of the Police Department.

130. Stricklin discussed the issue of the Simpson criminal history search with Smith. Smith did not know how Stricklin was privy to the fact that Plaintiff requested that Smith conduct such a search. Smith explained to Stricklin that he did not believe that Plaintiff violated any laws or policies by asking Smith to conduct a criminal history search on Simpson. If the reverse were true, Smith reports that he would have refused to conduct the search.

131. Smith did not experience any form of retaliation from Plaintiff for meeting with Stricklin to discuss Plaintiff's administration of the Police Department.

132. At one point in time, after Berzina had discussed with Plaintiff informal complaints against Plaintiff's management style, Plaintiff invited Smith, Major Manuel Borrego and Major Derek Knowles to Plaintiff's home to discuss issues raised by Berzina. Plaintiff asked Smith to write a memorandum responding to Berzina's concerns which Plaintiff relayed to the officers at this meeting.

133. Smith produced a memorandum to Plaintiff regarding the allegations against Plaintiff. See Pl.'s Ex. 12. This memorandum addresses Berzina's and Stricklin's issues point-by-point and states that Plaintiff acted properly in all situations of which Smith had personal knowledge.

134. In this memorandum, Smith concludes that, "[t]he PD is a long way from where it was when Plaintiff arrived. Goals and objectives are being addressed and met. They are not perfect, they never will be under ANY administration. I believe the Chief is giving us the direction, guidance, and leadership we need. I enjoy working with him." Pl.'s Ex. 12 at 6-7 (all emphasis in original).

135. Smith did not discuss any aspects of Plaintiff's administration with Berzina.

136. Smith and Plaintiff had a social relationship outside of their work.

CREDIBILITY: The court credits the testimony of this witness.

**DEREK KNOWLES**

137. Derek Knowles served as a Wichita Falls Police Department Major during Plaintiff's administration. He had been a police officer for over fifteen years at the time of his promotion.

138. Before Knowles was hired, Stricklin told him that she was excited because there were going to be two new Majors, a female and a Hispanic. Knowles assumed that Stricklin referred to Pat Yates and Manuel Borrego, respectively.

139. Knowles reports a history of racial intolerance and insensitivity in the Police Department. Knowles personally was involved in the Garza-Hawkins matter because he wrote the whistle-blowing memorandum to Chief Harrelson, which became the catalyst for the Garza-Hawkins suit and settlement.

140. After Plaintiff promoted Knowles to Major, Plaintiff told Knowles that Berzina and Stricklin had not wanted him promoted, so Knowles "had better watch [his] back."

141. Knowles attended the FBI's Academy for law enforcement officers from mid-January until the end of March, 1999. The night before Knowles was leaving to attend the FBI Academy program for law enforcement officers, Stricklin called Knowles at home. Stricklin questioned Knowles about rumors she had heard about Plaintiff "getting things cleared up a bit." Before Knowles left the following day, he stopped by Plaintiff's office to inform Plaintiff of Stricklin's telephone call. Knowles then left to attend the program in Virginia. Once Knowles arrived at the Academy, Stricklin called him again to further discuss Plaintiff. Stricklin told Knowles that she had been asked by Berzina to look into certain issues. At the end of February 1999, Knowles returned for a weekend visit to Wichita Falls. At this time, he was instructed by Borrego that Stricklin wanted to meet with him.

142. Stricklin asked Knowles to meet her at a local restaurant to discuss Plaintiff. The meeting lasted six hours and Knowles became very uncomfortable discussing sensitive issues in a public restaurant. With Knowles' permission, Stricklin tape recorded the conversation, although the recorder itself did not capture the full conversation because it was malfunctioning. See Defs.' Exs. 38 and 38A. Stricklin asked Knowles whether he had anything negative to say regarding Plaintiff's administration. Knowles did not.

143. Stricklin asked Knowles whether Plaintiff yelled and screamed at employees. Knowles said that Plaintiff questioned employees pointedly and singled-out wrongdoers, but that he had never heard Plaintiff be anything more than stern except on one occasion. Knowles

recounted the incident with Laura Arnold and Glen Smith, and expressed that Plaintiff was very upset by Arnold's failure to keep her command staff informed as to investigations. Knowles said that although Arnold was the one responsible for the mistake, her supervisor, Glen Smith, answered all of Plaintiff's questions.

144. Over time, Stricklin's questions shifted and she began to ask Knowles about his behavior, asking whether he had been involved in any illegal activity under Plaintiff's direction or at his own behest. Knowles said he had not. Stricklin asked whether Plaintiff or Borrego had done anything illegal. Knowles stated that, to his knowledge, neither man had committed an illegal act.

145. Stricklin expressed to Knowles that Plaintiff was not working out as Police Chief and that Knowles, Borrego and Plaintiff would be "lucky if they didn't get indicted," based on what she had uncovered in her investigation of the Police Department. Knowles asked whether he could see documentation of complaints against him or evidence against him. Stricklin did not respond although she motioned to a large stack of papers which she had placed on the restaurant table. Knowles became angry with Stricklin's numerous allegations, at which point he asked to leave. Stricklin indicated that if Knowles left, he could lose his job. Stricklin told Knowles that he could avoid criminal investigation if he would take a voluntary demotion. Knowles refused, denied Stricklin's allegations, and left the meeting.

146. Knowles immediately discussed the incident with Borrego, who told him just to go back to the Academy and complete the program. Knowles returned to the Academy, but kept in contact with Borrego.

147. While Knowles was at the Academy, Plaintiff met with Berzina and Stricklin to discuss the allegations against him. Plaintiff asked Knowles to respond to certain allegations and Knowles did so through a handwritten document which Knowles faxed to Plaintiff from the Academy. See Pl.'s Ex. 10. Shortly afterwards, Knowles became aware that Plaintiff's employment was terminated.

148. Borrego subsequently was appointed Acting Police Chief, and he called Knowles at the Academy to relay that Stricklin had suggested Knowles take a voluntary demotion from Major. Knowles refused to do so. Borrego subsequently called Knowles a second time to say that he would have to demote Knowles, otherwise Knowles would be fired. Shortly after this conversation, Knowles was demoted by Borrego.

149. Knowles was subsequently placed on indefinite suspension from the Wichita Falls Police Department for conduct unbecoming an officer and insubordination. An indefinite suspension is equivalent to termination of employment. Knowles exhausted his two Civil Service appeals and has been unable to reverse the suspension. Knowles has filed a federal suit against the City of Wichita Falls, the Police Department, and both of their agents for claims stemming from his suspension.

CREDIBILITY: Derek Knowles lied repeatedly during his testimony. Accordingly, the Court discredits the testimony of this witness except to the extent it is consistent with these Findings of Fact.

## MANUEL BORREGO

150. Manuel Borrego served as a Wichita Falls Police Department Major over Field Services during Plaintiff's administration. Borrego had been a City of Wichita Falls employee for over 20 years.

151. In Harrelson's administration, Borrego served as the Internal Affairs officer. In this capacity, Borrego investigated the incidents which led to the Garza-Hawkins lawsuit because Borrego found that Garza and Hawkins' allegations were founded. The officer they accused of racial discrimination had in fact violated several of the Police Department's General Orders. Borrego dealt directly with Harrelson in investigating and reporting the incident.

152. Borrego supervised the Community Policing Section, which included Crime Stoppers and the DARE Program. Borrego repeatedly had difficulty with Crime Stoppers officers Melvin Joyner and Jerry Morgan. Borrego believed that these two officers and Donna McAnulty, the Crime Stoppers secretary, were "undermining [his and Plaintiff's] attempts" to create effective programs. Borrego also believed that Berzina was supportive of reining in Joyner and Morgan so that they would "come more in line with the rest of the [Police Department]."

153. Joyner and Morgan's continued insubordination led to Borrego conducting a disciplinary meeting on October 2, 1998. Borrego told both officers that they had been insubordinate regarding several Crime Stoppers issues and that those instances of insubordination had been overlooked in their Annual Performance Evaluation. Borrego informed Joyner and Morgan that Plaintiff had asked Borrego to revise their Performance Evaluations. See Pl.'s Ex. 72 and 108. Joyner asked Borrego why his direct supervisor, Yonts, had not included the Crime Stoppers problems on the original evaluation. Borrego answered that Yonts did not feel that he had enough proof of Joyner's "behind the scenes" activities to mark them down for insubordination.

154. Once Stricklin's investigation of Plaintiff began, she telephoned Borrego to ask him about complaints made against Plaintiff. Borrego told Stricklin that he had no knowledge of the vast majority of allegations that she was investigating; specifically, he had never heard Plaintiff yelling or verbally abusing any employees. Borrego understood from Stricklin that "[he] was getting immunity here, [he] wouldn't be getting into any trouble for talking about [Plaintiff]." However, Borrego did not have anything negative to say. Stricklin revealed to Borrego that "[Plaintiff] has got to go," because many officers were complaining to her about him. Borrego asked for specific examples or officers' names and Stricklin would not oblige his request.

155. Borrego assumed that Stricklin was seeking out negative information against Plaintiff from him because she needed a Major to support the allegations against Plaintiff. Borrego stated that Stricklin "is very powerful in City government and she's Berzina's right hand – very influential to Berzina." Borrego understood from Stricklin that she was going to terminate Plaintiff and that Stricklin could be very influential if Borrego sought the Police Chief position. At the end of the conversation, Stricklin said, "the City Manager would appreciate you not disclosing this conversation to [Plaintiff] for a few days." Nevertheless, Borrego reported the conversation in a Memorandum to Plaintiff. See Pl.'s Ex. 67.

156. On or about the same point in time, Plaintiff reviewed with Borrego the allegations against him as presented by Stricklin. Plaintiff asked Borrego for a written response regarding any knowledge Borrego might have had regarding particular accusations. Borrego was unable to elucidate the complaints made against Plaintiff. See Pl.'s Ex. 11.

157. Upon Plaintiff's termination, Borrego became the Acting Police Chief. Borrego was immediately pressured by Stricklin to demote Knowles. Stricklin said that demoting Knowles "would make the City Manager happy." It became clear to Borrego that Knowles "was going to be demoted, either by [him] or by another Chief." Berzina expressed to Borrego that he would "consider the matter closed" if Knowles stepped down from Major. Borrego wanted to apply to be Police Chief permanently; however, he did not do so on Stricklin's urging that his application would be futile because of his association with Plaintiff.

158. Borrego subsequently agreed to take a voluntary demotion from Major to allay an Internal Affairs investigation into his activities while he was Plaintiff's Major. Borrego argues that he was forced to accept demotion and has filed a federal suit against the City of Wichita Falls, the Police Department, and both of their agents for claims stemming from his demotion.

CREDIBILITY: The Court credits the testimony of this witness to the extent it is consistent with these Findings of Fact.

## MARK KISINGER

159. Mark Kisinger is an officer in the Wichita Falls Police Department.

160. Kisinger was taking a Civil Service promotional exam proctored by Stricklin during the term of Plaintiff's administration.

161. During the exam, Plaintiff entered the testing room in violation of Civil Service test taking procedures. Plaintiff was received warmly by Stricklin who "patted him on the arm" when he entered the testing room and seated himself beside Stricklin.

162. Plaintiff and Stricklin spoke to one another during the exam and Stricklin made no visible efforts to remove Plaintiff from the testing room.

163. Plaintiff aided Stricklin in grading the exams by pointing out an additional error made by Kisinger that Stricklin did not note when she was grading Kisinger's exam.

164. Kisinger heard Coughlin make disparaging comments about Plaintiff. Kisinger also made negative comments about Plaintiff. Kisinger qualifies both Coughlin's and his own comments as the type that "troops made about their leadership." Kisinger stated that "probably everybody" had made disparaging comments about Plaintiff.

CREDIBILITY: The Court credits the testimony of this witness.

**KAY YEAGER**

165. Kay Yeager was Mayor of Wichita Falls from May 1996-May 2000, a time which included the term when Plaintiff was Police Chief.

166. Yeager believes the Mayoral position to be simply a "figurehead" in Wichita Falls. The Mayor functions just as any other City Counsel member would save for a very few exceptions.

167. Wichita Falls had a seven member City Council. A simple majority (four votes) was required for the Council to take any action. Yeager states that the City Counsel is the sole policymaker for the City of Wichita Falls.

168. The only way to speak formally at City Council meetings was to be included as part of the Agenda, which was prepared by City Manager Berzina. The Mayor had a right to add an Agenda item by informing Berzina. Council Members needed three members' support in order to have an item placed on the Agenda. Berzina himself was free to add any item to the Agenda.

169. Yeager never dealt directly with Plaintiff. It is the City Manager's job to deal directly with department heads such as the Police Chief. Yeager stated that all substantive issues relating to the daily functions of any department, including the Police Department, are the sole responsibility of Berzina; therefore, she did not expect to have personal dealings with Plaintiff. Throughout Plaintiff's tenure, Yeager and Plaintiff never had a formal meeting. Yeager relied on Berzina's status reports regarding all departments because Berzina was the City Manager.

170. Yeager was involved in mediating the Garza-Hawkins discrimination lawsuit. She voted to settle the suit "somewhat reluctantly" because she felt that the City should have litigated the claims against it rather than mediate a settlement of the claims.

171. Yeager was involved with the hiring of Plaintiff at Berzina's request. Yeager served as a "sounding board" and Berzina made the final decision of whom to hire to fill the Police Chief vacancy.

172. Yeager stated that she never had any desire to hire a reformer into the Police Chief position, but a person with community policing experience. Yeager does not feel that Plaintiff was effective in implementing community policing in Wichita Falls.

173. Yeager defines community policing as programs that the police officers are involved with closely in a way that the officers are able to relay to the community that they are there to be helpful rather than antagonistic. Yeager defines this approach as "an ounce of prevention."

174. Yeager had dealings with Claude Foster and felt that he was active in trying to get the City to hire more minorities overall. Yeager relied on the efforts of Stricklin and Berzina to recruit and hire qualified minority candidates. Yeager felt that Stricklin was making progress in increasing the number of minority employees.

175. Yeager did not hear any complaints of Police Department racial profiling, but she admits that any such complaints would not be filed with the Mayor. Discrimination complaints would have been filed directly with the Police Chief, Berzina or Stricklin.

176. Yeager took over as the Director of the Weed and Seed Program after Brenda Jarrett left the position. Plaintiff attended the Weed and Seed Program meetings but his participation was minimal. The Police Department's bicycle patrol officers also attended the Weed and Seed Meetings.

177. Yeager felt that Plaintiff's tenure as Police Chief was poor overall, but she does not relay specific incidences which she considered in arriving at this conclusion.

178. Yeager was personal friends with former Police Chief Curtis Harrelson.

CREDIBILITY: The Court credits the testimony of this witness.

## CURTIS HARRELSON

179. Curtis Harrelson was the Police Chief before Plaintiff. Harrelson participated in hiring his replacement and sat in on the hiring interviews held with Plaintiff.

180. Under Harrelson, the Wichita Falls Police Department gained national accreditation from the Commission for Accreditation of Law Enforcement. See Defs.' Ex. 123. Part of this accreditation process included reviewing community surveys required by the accrediting agent. See Defs.' Exs. 83-89.

181. Although these surveys were random, they did not represent the overall demographic of Wichita Falls. The surveys collected revealed friction between Berzina and the minority community.

182. The accreditation process also required a phone bank to log citizen complaints and a public hearing. The process revealed that there were complaints from the minority community regarding unfair treatment by Wichita Falls police officers.

183. The Commission for Accreditation of Law Enforcement continued to investigate issues surrounding racial discrimination and required that the Police Department change some of its policies in order to gain accreditation.

184. The Police Department complied with the accreditation body's requests for correction and thus gained Accreditation in 1988. The Police Department has renewed their accreditation since its initial granting without a lapse.

185. Harrelson stated that the Wichita Falls Police Department was required to have an Affirmative Action Plan in place by the accrediting body.

186. From 1977 until 1997, Harrelson admits that there was scant representation of minorities in the higher ranks of the Police Department. Harrelson states that Hawkins was the first African-American officer promoted to sergeant. Garza and Borrego were the only Hispanics with command positions in the Police Department.

187. Harrelson did not support the settlement of the Garza-Hawkins lawsuit and felt that settlement was reached only because of the "cost-benefit analysis" of taking the case to trial.

188. Harrelson was interested in implementing community policing techniques in Wichita Falls but was not able to do so before his retirement in March 1997.

189. Harrelson advised Plaintiff during the selection for Police Department Majors. Police Department Majors are police officers who are regularly known as "Assistant Police Chiefs" or "Deputy Chiefs" in other police departments. The Wichita Falls Police Department historically had two Majors who served in that capacity at the will of the Police Chief.

190. Harrelson explained that Plaintiff could select whomever he wanted for Major out of the police officers and that there was very little objective criteria that had to be considered other than the candidate's length of service as a Wichita Falls police officer.

191. In his own administration, Harrelson had chosen Majors by selecting them at his will and employing a process which took into account objective criteria. Harrelson expressed that the method of simply appointing a chosen person to be Major had caused problems in the Police Department.

192. Harrelson stated that he subsequently chose to use objective assessments of candidates to allay internal problems amongst candidates for Majors. The objective criteria method is called an Assessment Center and was predominantly conducted by Stricklin as the Personnel Chair.

193. Plaintiff did not ask Harrelson for his recommendations for Major, but the two spoke about the various candidates in general including Manuel Borrego, Pat Yates, Derek Knowles, and Glen Smith.

194. Plaintiff told Harrelson that he felt Stricklin was strongly suggesting that Plaintiff select Pat Yates for Major. Harrelson reminded Plaintiff that the Police Chief had absolute authority concerning the selection of Major although Harrelson did comment that Yates was lacking in experience as a supervisor although she was otherwise qualified for Major.

195. Harrelson experienced two instances of problems with Glen Smith and relayed those to Plaintiff upon Plaintiff's inquiry as to whether Smith was a "troublemaker." Harrelson classified these issues with Smith as ones that were addressed and resolved. Harrelson said that he had no "hard feelings" and hoped that Smith felt the same.

196. During his tenure as Police Chief, Harrelson worked with three City Managers and felt that Berzina was the best because he permitted Harrelson to manage the Police Department without interference.

197. Stricklin began her employment as Assistant City Manager and Personnel Director two years into Harrelson's administration. Harrelson thought that Stricklin was a good Personnel Director and trusted her to set up and administer the Assessment Center process for Majors.

198. The Police Department under Harrelson's administration used both paid and unpaid informants. Harrelson never asked officers to provide him with the names of informants, but he attempted to maintain accurate records on how confidential expenditure funds were spent to compensate the paid informants. Harrelson did not keep records on the unpaid informants because he did not see a need.

199. A Police Chief may transfer an officer's shift or unit without notice; however, Harrelson attempted to give one to two weeks notice for these transfers in the absence of an emergency.

200. Harrelson stated that the grant funding for Weed and Seed was applied for during his tenure, but that he did not have any involvement with the program because Weed and Seed was implemented under Plaintiff's tenure.

201. Harrelson's only involvement with Crime Stoppers was that he furnished the police officer coordinators for the program. Harrelson took no other role in the administration or management of Crime Stoppers.

202. After his retirement from the Police Department, Harrelson spoke with Berzina regarding problems with Plaintiff's term as Police Chief. Berzina did not tell Harrelson that there was a formal investigation, but said that he was "looking into" complaints about Plaintiff.

203. In late 1998, toward the end of Plaintiff's term of office as Police Chief, Harrelson spoke with Arlene Eaton, a Wichita Falls Police Department secretary. Eaton expressed to Harrelson that Plaintiff had repeatedly raised his voice at her and called her an "idiot."

204. Shortly thereafter, Harrelson ran into Berzina and told him of Eaton's comments regarding Plaintiff. Berzina informed Harrelson that he was aware of Eaton's concerns, and that Plaintiff was under investigation regarding his administration of the Police Department.

CREDIBILITY: The Court credits all of the testimony of this witness.

**FRANK AVENS**

205. Frank Avens was a Wichita Falls police officer under Plaintiff's management.

206. Avens was one of the officers who was taking the Civil Service promotional exam when Plaintiff entered the exam room to speak with Stricklin.

207. When taking the exam, Avens knew that it was a violation for anyone other than the exam takers and Stricklin to be present in the room.

208. Avens felt that Plaintiff's presence in the exam room affected his exam performance because Plaintiff's presence was distracting and obviated Avens' right to anonymity in taking a Civil Service exam.

209. After completing the exam, Avens informed Plaintiff that he would appeal the exam results to the Civil Service Commission because the exam administration rules had been compromised by Plaintiff's presence in the exam room.

210. Avens did not feel that Plaintiff was angry with him for appealing the exam results, although Borrego later asked Avens to write Plaintiff a memorandum outlining Avens' concerns regarding Plaintiff's presence during the exam's administration. See Defs.' Ex. 39.

211. Avens wrote the memorandum as requested, although he did not consider it voluntary.

212. After Plaintiff's termination, Avens met with Stricklin at her request. Stricklin told Avens that she was investigating the "mood" of the Police Department and how Plaintiff managed the department as the Police Chief.

213. This discussion was tape recorded by Stricklin with Avens' knowledge. A transcript of the tape recording revealed that Avens' complaints centered around issues that occurred under

Harrelson's administration, not under Plaintiff's administration of the Police Department. See Pl.'s Ex. 153.

CREDIBILITY: The Court credits the testimony of this witness.

## ARLENE EATON

214. Arlene Eaton served the Wichita Falls Police Department under Plaintiff's administration as a secretary who administered payroll. Eaton was the Police Department's timekeeping clerk for seven to eight years before Plaintiff's hire. Eaton attended "timekeeper's school" each year to update her skills.

215. Plaintiff was required to produce time slips to certify all hours worked. Eaton's job responsibilities included aiding Plaintiff in time slip preparation by recording Plaintiff's time as Plaintiff relayed it to Eaton.

216. The Wichita Falls Police Chief is a Department head, which is a non-civil service position; therefore, the Police Chief is an "exempt" employee. Employees covered by the Civil Service Commission rules are termed "non-exempt" or "Civil Service" employees. Non-exempt employees include police officers and civilian employees in the Police Department.

217. As an exempt employee, the Police Chief is entitled to earn administrative leave. Non-exempt employees are entitled to earn compensatory leave. The Police Chief begins to accrue administrative leave for each hour worked over fifty hours per week.

218. Plaintiff believed that he was entitled to earn administrative leave for each hour worked over 40 hours per week. Eaton explained to Plaintiff that he was entitled to earn leave for each hour worked over 50 hours per week. Therefore, Plaintiff was a "50-hour week," not a"40-hour week" employee. Plaintiff did not accept Eaton's explanation and asked her to report his accrued leave and vacation time based on a 40 hour work week.

219. Eaton did not agree with the accuracy of Plaintiff's reported time, but recorded the time as Plaintiff instructed her to do. Eaton disagreed with Plaintiff's time reports because: 1) she observed that Plaintiff sometimes reported for work at a later time than he had her record for purposes of timekeeping; 2) he took time off for doctor's appointments for which he did not use sick leave as required; 3) he reported working evenings to attend community meetings that were not recorded in Plaintiff's appointment book; and 4) he used administrative leave and vacation leave in excess of what he had earned.

220. Issues with Plaintiff's timekeeping began to cause problems because in order to report Plaintiff's time and leave accrual as he desired, Eaton had to override the payroll system's automatic leave accrual information. Eaton would effect the override by sending a memo to Janet Lauer in the Personnel Department. Lauer would then have to manually make changes to Plaintiff's timekeeping and payroll to comply with how Plaintiff wanted his leave

to accrue. Plaintiff believed that he was entitled to leave time based on a 40 hour work week although he was, in fact, a 50 hour work week employee.

221. Plaintiff asked Eaton to prepare a record of his accrued leave so that he could meet with Berzina and Stricklin to discuss problems regarding his leave time and vacation time accrual.

222. Eaton expressed her concerns regarding Plaintiff's timekeeping reports to Stricklin and various members of the Police Department (including Dennis Bachman).

223. Eaton heard Plaintiff yelling at employees including Carmen Sosa, Jerry Simpson, Manuel Borrego and Derek Knowles. Plaintiff raised his voice when speaking to Eaton on several occasions, and once he derided Eaton by calling her "stupid."

224. Eaton was reprimanded by Plaintiff for socializing too much and being inefficient in her work.

225. For a short time, Eaton was the "Quartermaster" for the Police Department. Her responsibilities in this capacity included ordering supplies for police officers. Eaton ordered uniforms, protective gear and shoes for police officers.

226. In order to aid smaller neighboring police departments, Eaton ordered gear for non-Wichita Falls police officers. See, e.g., Pl.'s Ex. 154. This included ordering a uniform for her husband, an Iowa Park, Texas, police officer. Although, this pooling of orders was an established practice of the Wichita Falls Police Department, Plaintiff had no knowledge of any tacit or written agreement for pooling orders or reimbursement to the Wichita Falls Police Department by the neighboring police departments. Therefore, Eaton was reprimanded by Plaintiff for abuse of the quartermaster duties and this responsibility was taken away from her.

227. Eaton never filed any complaints or grievances regarding her treatment by Plaintiff.

228. In the Spring of 1997, Eaton requested that Stricklin transfer her employment out of the Police Department. In November 1998, Eaton was transferred to another department within the City of Wichita Falls government.

229. Eaton chose to leave her job with the Police Department for employment in another division of City government. Eaton had an exit interview conducted by Jerry Ashlock. Eaton testified that she told Ashlock that she was transferring departments because she did not like working with Plaintiff. Ashlock testified that Eaton wanted to transfer departments because she was leaving to find better pay. On this point, the Court credits the testimony of Ashlock. Eaton did not tell Ashlock that her reasons for leaving were due to Plaintiff.

230. After Eaton was no longer employed with the Police Department, Stricklin and Berzina began investigating Plaintiff's management of the Police Department. Berzina and Stricklin

met with Eaton on January 19, 1999. During this meeting, Eaton expressed her concerns regarding Plaintiff's management of the Police Department. Stricklin asked Eaton to write a statement regarding the issues discussed in the meeting. Eaton complied and gave Stricklin a signed written statement which contained various complaints against Plaintiff including allegations of sexism, favoritism, timekeeping inaccuracies, management style inequities and reprimands that Plaintiff gave Eaton. See Defs.' Ex. 29.

CREDIBILITY: The Court credits all of the testimony of this witness, insofar as it is consistent with these Findings of Fact.

## GREGG MARTIN

231. Gregg Martin has been a Wichita Falls Police Department officer for over twenty years.

232. Martin does not believe that Plaintiff provided positive leadership to the Wichita Falls Police Department. Martin explained that Plaintiff's management style was demoralizing and that he used "steamroller" techniques to reorganize units in the department.

233. Martin found Plaintiff's actions in reorganizing the Crime Stoppers program by moving it within the Police Department's organizational framework to be poorly managed. Martin was frustrated because Plaintiff "did not sell the changes" to the police officers by explaining or discussing the necessity for change. After Plaintiff's reorganization, Crime Stoppers fell under Martin's command.

234. In private, Plaintiff treated Martin with respect. However, if Martin was in a group setting, Plaintiff criticized Martin openly and harshly.

235. Plaintiff gave Martin, Drury and Glen Smith an assignment to make changes in the department's Performance Evaluation Form. The officers understood Plaintiff's instructions to be that he did not want the form to be drastically changed; therefore, the three officers made minimal changes.

236. Plaintiff reviewed the updated Performance Evaluation Form and went on a "tirade" that lasted over twenty minutes while he yelled at Martin, Drury and Smith. Plaintiff was very angry because he wanted drastic changes to the form and felt that the officers simply did not complete the assignment as instructed. Martin found Plaintiff's actions to be unwarranted and not productive because the officers had followed Plaintiff's instructions as they understood them.

237. Martin believed that Plaintiff was trying "to bully people instead of lead." Martin observed that Plaintiff had a difficult time controlling his anger and that Plaintiff's angry outbursts prevented unity within the Police Department.

238. Martin heard Plaintiff repeatedly yelling at officers and staff. Martin's office was approximately twenty-five feet from Plaintiff's office and Martin could hear that Plaintiff was yelling through the closed door, but never heard the specifics of Plaintiff's tirades.

239. Martin observed Plaintiff yelling at Carmen Sosa in Plaintiff's office with the door closed on at least one occasion. Martin did not know the context of the reprimand, but personally found Carmen Sosa to be very competent, well-liked and hard working.

240. On at least two occasions, Plaintiff told Martin not to contact any city government officials, including Berzina and Stricklin. Martin found this instruction to be a "real puzzle" to him and disregarded Plaintiff's instructions because Martin believed that he was entitled to communicate with city officials.

241. Martin did not fear retaliation from Plaintiff. Martin regularly addressed his concerns with his supervisor, Major Borrego. On at least one occasion, Martin accompanied Borrego to Plaintiff's office to discuss concerns that Martin had with issues occurring within the Police Department.

CREDIBILITY: The Court credits the testimony of this witness.

**RON BULLOCK**

242. Ron Bullock was the Chairman of the three member Wichita Falls Civil Service Commission while Plaintiff was the Police Chief.

243. The Civil Service Commission heard Frank Avens' appeal regarding the promotional exam where Plaintiff entered and remained to speak with Stricklin. Minutes of the appeal were recorded. See Defs.' Ex. 96.

244. In the appeal meeting, Stricklin recommended that the promotional exam be declared void and re-administered. The Civil Service Commission did not agree and permitted the exam results to stand.

245. Stricklin was reprimanded for permitting Plaintiff to compromise the testing regulations and the officers' anonymity by entering and remaining in the exam room. The Commission determined that it was Stricklin's responsibility to prevent violations of the Civil Service Rules and that she had failed in her duties by not preventing Plaintiff from entering the exam room and by permitting Plaintiff to stay in the exam room once he had entered.

CREDIBILITY: The Court credits the testimony of this witness.

**JERRY MORGAN**

246. Jerry Morgan has over twenty years of experience as a Wichita Falls Police officer.

247. In 1994, Morgan was assigned to Crime Stoppers and worked in the program throughout Plaintiff's tenure as Police Chief.

248. Crime Stoppers is a citizens' organization housed in and operated from the Police Department. Crime Stoppers is run by a Board of Directors who are all private citizens. The Board works with the police officers assigned by the Police Chief to the Crime Stoppers unit. Throughout Plaintiff's tenure, the program was facilitated by officer Melvin Joyner, who was assisted by Morgan.

249. Morgan experienced many problems with Plaintiff arising from the reorganization of the Crime Stoppers program. At the outset, Morgan believed that Plaintiff's idea to consolidate and reorganize the Police Department was a good one. Over time, Morgan's impression became that, in fact, Plaintiff was reorganizing and relocating Crime Stoppers to eviscerate the program and take control away from the Board of Directors.

250. Mike Tucker was the Board President. Tucker and Plaintiff had very strained relations over the reorganization and relocation of Crime Stoppers. At one meeting, Plaintiff met with the Board to discuss the issue of payment for installing phone lines in Crime Stoppers' new location on the first floor of the Police Department. At this meeting, Plaintiff raised his voice at the Board and told them that they were only "an advisory board" without any power. This incident was exacerbated by Plaintiff's demands that the Board pay the bill to relocate the telephone lines.

251. After this meeting with the Board, Morgan felt that Plaintiff did not act properly and attempted to ameliorate the friction between the Board and Plaintiff by speaking with Mike Tucker. Shortly thereafter, Morgan, Borrego and officer Mike Yonts were called in by Plaintiff and "chewed out" for meeting with a board member without permission.

252. Plaintiff asked Joyner and Morgan to resign their positions with Crime Stoppers. Neither officer resigned although Morgan felt that Plaintiff's actions were "blackmail" because Plaintiff later marked down Morgan's Annual Performance Evaluation for insubordination because of this incident with Crime Stoppers.

253. Morgan did not take issue with other changes that Plaintiff made such as switching the Crime Stoppers officers from business dress to uniform or switching the officers from unmarked cars to patrol vehicles.

254. Morgan was upset by the relocation of the Crime Stoppers unit to the first floor because he felt that the area was too noisy.

CREDIBILITY: The Court credits the testimony of this witness.

## MELVIN JOYNER

255. Melvin Joyner was the Crime Stoppers Coordinator under Plaintiff's administration of the Police Department. Joyner's job required coordinating between the Police Department and the Board of Directors. Joyner also served as the Crime Stoppers public information officer. In that capacity, he would regularly communicate with the media.

256. Crime Stoppers is a 501(c)(3) non-profit organization.

257. Joyner found Plaintiff's actions relating to Crime Stoppers to be negative and counterproductive. Joyner referred to a situation regarding Crime Stoppers' "Crime of the Week" program that aired regularly on a local television station. Plaintiff had a preference that a particular television station should participate in the program although, under Harrelson's administration, two television stations worked together to produce and air the segment.

258. Joyner explained to Plaintiff verbally and in written form that the television segment was the purview of the Crime Stoppers Board; therefore, Plaintiff should address the issue with the Board directly. Plaintiff scheduled a meeting where representatives of the Board attended to view proposals by television stations vying to air the program.

259. Plaintiff pushed the Board to accept a particular television station's proposal. The Board specifically did not like Plaintiff's suggested station's format, arguing that there were liability issues. Therefore, a second meeting was held to discuss the proposals where all television stations agreed to work with one another to co-produce and co-air the "Crime of the Week" segment. The only station unwilling to participate in this arrangement was the station which Plaintiff originally wanted to have exclusive rights to the segment.

260. Joyner believes that Plaintiff blamed Joyner for this outcome. Plaintiff became very angry with Joyner and called Joyner in to discuss the matter with him. Plaintiff told Joyner that the Board had too much control over the Police Department and that Joyner worked for him, not for the Board.

261. After this incident, Plaintiff began to ignore Joyner unless there were other people around, at which point, Plaintiff would be very congenial toward Joyner.

262. In addition, Plaintiff effectively lowered Joyner's annual Performance Evaluation from "exceeds expectations" to "meets expectations" to "below expectations" due to the friction that Plaintiff believed Joyner caused with the Crime Stoppers Board. Joyner found this action to be unwarranted and unfair because the Crime Stoppers incidents had occurred during the prior evaluation period.

263. Joyner became aware that due to friction with Plaintiff, the Crime Stoppers Board was in the process of investigating running the program completely autonomously of the Police

Department. The Board asked Joyner to leave the Police Department and head the program. Joyner was contemplating leaving the department when he became aware that Plaintiff was under investigation by Stricklin.

264. Joyner attended a meeting with Stricklin and other officers to discuss Plaintiff's administration. Joyner subsequently met individually with Berzina.

265. At the beginning of the investigation of Plaintiff, Joyner prepared an undated, signed memorandum for Stricklin outlining his complaints against Plaintiff. See Pl.'s Ex. 155. This memorandum was later expanded in a subsequent memorandum after Plaintiff's termination. See Defs.' Ex. 17.

266. Joyner testified that he never filed a formal complaint or grievance against Plaintiff because he feared retaliation; however, Joyner was able to take issue with supervisors directly when he was displeased. Joyner's record reflects two "Performance Reminders" written by Joyner's direct supervisor Mike Yonts. See Pl.'s Ex. 157 (Morgan's and Joyner's joint Performance Reminders).

267. Performance Reminders are reports detailing incidents of unsatisfactory work behavior. Yonts found that both Joyner's and Morgan's attitudes were unsatisfactory on two occasions: once when both officers were ordered by Berzina to relinquish particular cellular phones given to the Police Department; and once in relation to the Crime Stoppers incidents. See Pl.'s Ex. 157. Yonts issued verbal and written reprimands to both officers.

268. Joyner also was present for an incident regarding a confidential informant. During an investigation, Plaintiff had grouped together various officers in a meeting room for a briefing. At some point, Plaintiff became interested in the name of a particular confidential informant who had provided information to the investigating officers. Plaintiff began to question the officers and Joyner witnessed Plaintiff becoming irate because the officers were reticent to divulge the informant's name.

CREDIBILITY: The Court credits the testimony of this witness.

## MARK TUCKER

269. Mark Tucker was the Treasurer of the Crime Stoppers Board until 1997 when Tucker became the President. Therefore, Tucker served first as Treasurer and then as President of Crime Stoppers while Plaintiff was Police Chief.

270. Tucker testified that former Police Chief Harrelson had very little involvement with Crime Stoppers other than attending an occasional Board meeting.

271. The Crime Stoppers program flourished under Joyner and received international, federal, state and local awards. Joyner himself received various awards for his personal contributions to Crime Stoppers.

272. Approximately 75% of the Crime Stoppers' budget is funded through the Police Department. State grants, with private donations supplying the remaining 25% of the program's funding.

273. Tucker recognized Plaintiff's right to direct the Crime Stoppers police officers as Plaintiff thought necessary; however, Tucker believed that Plaintiff lacked courtesy because Plaintiff did not solicit Board members' comments regarding the plans to reorganize and relocate the program. Plaintiff was not required to discuss these changes with Tucker or the Board, but doing so beforehand would have led to better Police Department/Crime Stoppers cooperation.

274. The record reflects that on February 10, 1998, Yonts and Borrego made a special presentation to the Board specifically to allay any concerns regarding the move of the program. See Defs.' Ex. 103. At this meeting, Yonts and Borrego reported that the security of the new location would actually be better for maintaining the program informants confidentiality.

275. On March 10, 1998, Plaintiff, Borrego and Yonts attended a meeting of the Crime Stoppers Board. See Defs.' Ex. 104. Tucker was in attendance at this Crime Stoppers Board meeting where Plaintiff tried to reconcile with the Board. Tucker observed that Plaintiff's behavior at the meeting further deteriorated Plaintiff's credibility in the Board's estimation.

276. During this meeting, Plaintiff discussed the telephone bill the Police Department incurred for transferring telephone lines to Crime Stoppers' new location within the department. Plaintiff told Tucker "I strongly encourage you to pay this bill," in an intimidating manner.

277. Tucker believed that this meeting with the Board worsened relations between the Board and the Chief. Plaintiff's demeanor during the telephone bill discussion was so disconcerting that the Board held a subsequent meeting simply to discuss Plaintiff's behavior.

278. The Board voted unanimously not to pay the telephone bill because they felt that they should not pay a bill which was incurred due to a move about which they were not even consulted.

279. Tucker testified that Plaintiff's plan to give Morgan and Joyner duties outside of the Crime Stoppers program was troubling, but that he would have been satisfied as long as the officers had ample time to continue to run the Crime Stoppers program.

280. Tucker understands that Plaintiff was well within his rights as Police Chief not to provide police officers to serve as Crime Stoppers coordinators. In fact, Tucker believed that Plaintiff's long term goal was to simply remove Joyner and Morgan from the program. Tucker believed that Joyner was more significant to the program than Morgan (who

coordinated the Midwestern University campus Crime Stoppers program), and that the Board's goal was to keep Joyner even if they had to lose the services of Morgan.

281. Other changes to the program included giving the Crime Stoppers secretary Donna McAnulty other duties because the department's support staff was understaffed. In addition, her desk was not relocated along with the Crime Stoppers program. This troubled the Board because McAnulty personally took the called-in tips from informants, but she did not have direct access to the Crime Stoppers files which were moved, along with Joyner and Morgan, to another floor of the Police Department.

282. In early 1998, Tucker and Kay Patrick (a founding member of Crime Stoppers) met with Berzina to discuss the program's relocation, concerns regarding Donna McAnulty's physical separation from the program, and their belief that Plaintiff wanted to remove Joyner and Morgan from the program. Berzina was supportive of Plaintiff during this meeting; he did not give Tucker and Patrick any assurances regarding how the program would be governed in the future. Berzina reiterated that Plaintiff was able to administer the Police Department and its employees in any way he chose.

283. Tucker began to investigate moving the Crime Stoppers program out of the Police Department and into the county government. Tucker approached Wichita Falls District Attorney Barry Macha to discuss the possibilities. Macha reported that the county did not have the funding to support Crime Stoppers.

284. Before the April 15, 1998 Crime Stoppers Board meeting, Plaintiff began to give assurances that Joyner would not be removed from the program. See Defs.' Ex. 105. Therefore, the Board decided not to further investigate soliciting funds to move Crime Stoppers.

285. Tucker recognized that Plaintiff kept making attempts to repair his relationship with the Board; however, Plaintiff failed to ameliorate the damage he caused by initially using intimidation tactics.

CREDIBILITY: The Court credits the testimony of this witness.

## ROY WILSON

286. Roy Wilson worked as a Wichita Falls Police officer from 1979 until November 1997. Under Plaintiff, Wilson worked in the Crime Prevention Unit which included the DARE Program and the Citizens' Police Academy. Wilson was also an instructor in the Wichita Falls Police Academy.

287. Shortage in staffing the Crime Prevention Unit required Wilson to perform his own job duties plus those of officer Carolyn Berriman, who left her employment for health reasons.

288. Wilson had problems communicating with his supervisor, Derrick Knowles. Knowles would not permit Wilson access to the Crime Prevention Unit's budget although Wilson was the head of the unit and had access to the budget in the past. Wilson stated that without a budget, he experienced difficulties in allocating spending on the various programs he administered.

289. The Citizens' Police Academy is a training academy which permits Wichita Falls citizens to learn about the Police Department. Berriman had been the Academy's administrator and, when she left, Wilson was unable to continue administering the program while taking over the rest of Berriman's responsibilities.

290. Wilson also administered the Neighborhood Watch program. Plaintiff and Officer Wilson attended a few Neighborhood Watch meetings together.

291. As a Police Academy instructor, Wilson was involved in completing the initial screening process for Academy applicants. He researched and interviewed individual applicants and reported his findings in written form to Personnel Director Stricklin. Stricklin would then review the applicants' files and determine whether or not they should be admitted into the Police Academy.

292. There were no written criteria used to disqualify applicants; however, Wilson believed that recent drug use automatically disqualified a candidate.

293. Wilson worked under Plaintiff for approximately seven months before Wilson left his job due to stress-related problems. Although he had occasion to observe Plaintiff at work, Wilson did not work directly with Plaintiff.

294. Wilson never observed Plaintiff yelling at anyone. Plaintiff never yelled at Wilson. Wilson believed that he and Plaintiff had a good working relationship.

295. Stricklin never asked Wilson to prepare a statement about Plaintiff and Wilson never did so at his own behest. However, Wilson prepared an unsolicited statement for Stricklin regarding problems between officer Norman Walker and Knowles. See Defs.' Ex. 29.

CREDIBILITY: The Court credits the testimony of this witness to the extent it is consistent with these Findings of Fact.

## WILLIAM HENNINGS

296. William Hennings was a Wichita Falls Police Department patrol officer and had been so for fifteen years at the time Plaintiff became the Police Chief. During Plaintiff's administration, Hennings served as the Juvenile Patrol officer and thus sat on the Juvenile Board.

297. Hennings had many conflicts with his supervisor Knowles. He addressed the problems he experienced with Knowles by meeting with Stricklin. Subsequent to that meeting, Hennings was questioned by Knowles and felt that Knowles was retaliating against Hennings for complaining to Stricklin. Hennings sought legal advice to determine whether he had a retaliation claim against Knowles. However, Hennings never pursued filing charges.

298. Hennings found Plaintiff's administration to be plagued by disorganization and misinformation.

299. At one point, there was an incident where the Juvenile Board wanted Hennings to attend a particular meeting that his supervisor, Bachman, told Hennings that he could not attend. The Board then wrote a letter to Plaintiff asking that Hennings be permitted to attend their meeting. Knowles became aware of the letter, got angry, and met with Bachman and Hennings to announce that Hennings would not be permitted to attend the Board meeting. The meeting occurred without representation from the Police Department.

300. Later, a second meeting of the Juvenile Board was scheduled. Plaintiff was invited to attend because it was clear that Hennings would not be permitted to attend. At the last minute, Plaintiff decided not to attend the meeting and sent Hennings instead.

301. Hennings did not file complaints or grievances against Plaintiff because "with a Chief that's brand new, it would not be good for your career."

302. Hennings' problems were with Knowles directly. However, Hennings attributes Knowles' shortcomings to Plaintiff because Plaintiff promoted Knowles to Major.

303. Hennings reports no incidents of retaliation by Plaintiff.

CREDIBILITY: The Court credits the testimony of this witness.

## BARRY MACHA

304. Barry Macha has spent the entirety of his legal career working in the Wichita Falls District Attorney's Office. He was an Assistant District Attorney for twenty years before he became the District Attorney. Macha was the District Attorney during Plaintiff's tenure as Police Chief.

305. Macha had problems dealing with Plaintiff during the investigation of the "Gun Shop Murders." Macha was present at the scene of the crime at the onset. There were a total of seven members of the District Attorney's Office at the scene–three attorneys, Macha, and at least three investigators.

306. At some point in time, Bachman asked Macha to remove his office from the scene of the crime. Macha interpreted this instruction to mean that the Police Department did not want the District Attorney's Office at all involved in the crime scene investigation.

307. Macha found Bachman's request to be highly irregular; however, he left the scene immediately and asked his employees to do the same. Macha believes that his staff left the scene shortly after he left.

308. Macha was offended by Bachman's action and sought out Plaintiff the following morning to discuss the issue because ordering the District Attorney off of a crime scene was "so contrary to accepted practice that [Macha couldn't] begin to describe...how upsetting that was for us."

309. Macha went to the Police Department and was speaking with officers while waiting for Plaintiff to see him. Plaintiff came out of his office and ordered the officers speaking to Macha not to speak with Macha in a loud and angry tone. Macha then followed Plaintiff into his office where they argued loudly. Plaintiff stated that it was highly unusual for the District Attorney to be at the crime scene, and Macha replied that it was a common, beneficial practice.

310. The issue between Plaintiff and Macha became highly publicized because one of Macha's employees gave a press interview openly expressing his dissatisfaction with Plaintiff's actions. Berzina became involved in the issue as well. The result was that Plaintiff and Macha held a joint press conference to convince the news media that there was no ill will and that the investigation had not been compromised in any way.

CREDIBILITY: The Court credits all of the testimony of this witness.

## STEVEN GUSTAFSON

311. Steven "Reno" Gustafson is a prominent Wichita Falls businessman. He served on the Crime Stoppers Board in 1991-94, before Plaintiff's tenure as Police Chief.

312. In February 1998, Gustafson was contacted by Mark Tucker in order to solicit Gustafson's influence in attending the March 1998 Crime Stoppers Board meeting that Plaintiff was to attend. Tucker believed that Gustafson's presence would build strength on the Board and block Plaintiff from making changes to the program. Tucker was concerned about control of the program, respect between the Board and Plaintiff, working relationships, staffing, and the overall exclusion of the Board by Plaintiff in effecting program changes.

313. Gustafson did not know Tucker well and initially believed that the majority of Tucker's complaints were not well-founded. However, Gustafson later encountered officer Gerald Todd and heard Todd's very negative impressions of Plaintiff. Gustafson also heard very negative comments from Joyner regarding Plaintiff's behavior.

314. Gustafson began to feel that he had enough evidence of a brewing problem and decided to discuss the Crime Stoppers problems with his close personal friends Berzina and Mayor Yeager. Gustafson warned Berzina that several police officers were getting angry regarding the management of the Crime Stoppers program and were contemplating resigning their employment over the issue. Berzina stated that he would like to discuss the issues directly with the officers who were concerned and Gustafson informed Joyner and Todd that Berzina would like to speak to them directly.

315. At some point in time, Joyner showed Gustafson a button with the Plaintiff's photo on it with a line crossing diagonally through Plaintiff's face. Joyner was not wearing the button, but holding it in his hand.

CREDIBILITY: The Court credits the testimony of this witness.

**MIKE YONTS**

316. Mike Yonts worked as a Wichita Falls Police officer during Plaintiff's term as Police Chief. Yonts was promoted to sergeant during Plaintiff's administration. Yonts was assigned to be the sergeant in charge of the Community Services Section of the Police Department. This section included the DARE program, Crime Prevention, Neighborhood Watch, and the Public Information units.

317. Yonts observed Plaintiff's "arrogant attitude" with the Crime Stoppers Board members. Yonts recalls Plaintiff telling the Board that "[Plaintiff] was the Wichita Falls Police Chief and he ran the Crime Stoppers...he would never tell the Board how to run their businesses, so they should not tell him how to do his job." Yonts also observed Plaintiff's discussion with the Board regarding payment of the telephone bill for moving the Crime Stoppers phone lines.

318. Yonts stated that he never understood the Board's fears about Plaintiff although he observed that Plaintiff would not answer the Board members' questions directly, his answers were always vague. Yonts believed that the problems between Plaintiff and the Board were all caused by misconceptions on both sides. Yonts observed that had Plaintiff taken a softer approach, he would have been able to resolve issues with the Board instead of fighting with them.

319. Plaintiff also refused to take Joyner's and Morgan's suggestions on how to approach Board members. Joyner and Morgan became unmotivated to work and Yonts continually worked with the two officers to improve their attitudes regarding the problems between Plaintiff and the Board.

320. Yonts attempted to placate problems between Plaintiff, Joyner and Morgan by creating memoranda which were passed up through the chain of command. In his April 2, 1998 memorandum, Yonts reported that Joyner found there to be no security problems with

moving Crime Stoppers' location in the department. See Pl.'s Ex. 158. The installation of the new phone lines made an improvement to the program in that a twenty-four hour phone line was established for informants to leave tips. When Yonts wrote this memorandum, he believed that the Boards' concerns had all been resolved.

321. Yonts completed both Joyner's and Morgan's Annual Performance Evaluations and also disciplined them regarding their behavior over Crime Stoppers issues. See Defs.' Exs. 79 and 80 (Joyner's and Morgan's Performance Evaluations); Pl.'s Ex. 157 (Joint Performance Reminder on Joyner and Yonts).

322. Plaintiff discussed Joyner's and Morgan's Performance Evaluations with Yonts. Plaintiff was very upset regarding Joyner's and Morgan's activities relating to the Crime Stoppers Board and felt that the two had exacerbated or created the problems between Plaintiff and the Board. Yonts did not agree that Joyner's or Morgan's evaluations should be lowered because the Crime Stoppers issues had occurred during the prior evaluation period, and because there was no proof that the officers were the cause of the problems with the Board.

323. Plaintiff directed Yonts to lower the Performance Evaluations. Yonts did as he was directed. Borrego then further lowered the evaluations.

324. Yonts testified that Plaintiff was disorganized. On one occasion, Plaintiff was scheduled to videotape a cable television program called "Chief of Police." Plaintiff had made the arrangements far in advance; however, Plaintiff did not show up to the scheduled taping. Plaintiff did not call to say that he could not attend, and he did not apologize to the program directors for missing the scheduled taping.

325. Once Stricklin began her investigation into Plaintiff's administration, Yonts was called at home by Knowles and encouraged not to speak with Stricklin and violate the trust of the "family." Knowles was not Yonts' supervisor. Yonts had never worked with Knowles and had no contact with Knowles prior to this exchange.

326. Yonts' first impression of Plaintiff was that he was a reformer who would vastly improve the Wichita Falls Police Department. Over time, Yonts changed his mind because he observed Plaintiff to be a vindictive person who was irrational and easy to anger. Yonts lost all respect for Plaintiff due to Plaintiff's intimidation tactics. Yonts never heard Plaintiff use profanity.

327. In late September or early October 1998, Yonts told Stricklin that he wanted to leave his employment with the Police Department. Stricklin asked Yonts to outline his reasons for doing so in writing. Yonts composed his memorandum several months later on January 29, 1999, near the time Plaintiff was terminated. The memorandum addresses the failings of Plaintiff's administration of the department. See Defs.' Ex. 242.

CREDIBILITY: The Court credits all of the testimony of this witness.

## DON DRURY

328. Don Drury has been a Wichita Falls Police officer for over 20 years. Drury served as the Police Department's Grant Coordinator during Plaintiff's administration; therefore, he regularly worked directly with Plaintiff.

329. Drury testified that Plaintiff did not like officers Joyner and Morgan. Plaintiff stated that he was "going to reel them in a bit" by making them wear uniforms instead of suits and drive patrol cars instead of unmarked cars.

330. Plaintiff disliked Glen Smith and told Drury to circumvent Smith in the chain of command.

331. Drury testified that Plaintiff did not usually yell at him except for two incidents. The first time that Plaintiff gave Drury "an earful" was when there was an information leak to the media regarding a crime investigation. Drury found the leak so minor that he could not remember the content of the information divulged. Both Drury and Greg Martin were reprimanded by Plaintiff for ten to fifteen minutes. Plaintiff repeated himself, pounded the table, and yelled at the two officers during a staff meeting where many other officers were present. Drury found Plaintiff's reaction to be excessive.

332. The second time Plaintiff yelled at Drury involved the incident where Drury was part of the group asked to update the Performance Evaluation Form. Drury believed that Plaintiff wanted "a quick fix" made to the form, and therefore made only minor changes. When he presented the updated form to Plaintiff, Plaintiff became very angry because he had wanted a complete overhaul of the form. This time, Plaintiff yelled at the officers for approximately twenty minutes, pounded his fist on the table, and threw the Performance Evaluation Form across the table at the officers.

333. Drury did not respect Plaintiff; however, Drury never filed complaints against Plaintiff. Drury states that he did not fear retaliation because he was protected by the Civil Service rules regarding terminations.

334. In August 1998, City Attorney Greg Humbach wrote a memorandum informing Stricklin that Police Department sexual harassment policies needed to be updated in order to comply with a recent legal development. Stricklin passed this memorandum on to Plaintiff with instructions to write a new policy that mirrored the City's sexual harassment policy. Plaintiff then asked Drury to draft the new policy because policy updates were part of Drury's responsibilities at the Police Department.

335. Drury received a copy of Humbach's memo and was told of Stricklin's instructions. Drury drafted a new policy and presented it to Plaintiff. Plaintiff directed Drury to make changes that would prevent a person from taking a complaint about the police Majors to the Personnel Director directly. Plaintiff wanted Drury to change the draft to require people making complaints about the Majors to make those complaints only to the Police Chief. Plaintiff

also wanted all complaints against the Police Chief to be taken to the City Manager directly instead of to the Personnel Director. Drury took contemporaneous notes regarding the instructions that Plaintiff gave him for this assignment. See Defs.' Ex. 30.

336. Drury did not make Plaintiff's suggested changes because he became aware that Plaintiff was under investigation and could likely be terminated soon. As well, Drury had met with both Humbach and Stricklin, who agreed that Drury's draft policy was appropriate.

337. Drury met with Stricklin to discuss the investigation of Plaintiff although Plaintiff had instructed Drury not to speak with Stricklin regarding Police Department matters. Stricklin took notes during this meeting and presented them to Drury to assess their accuracy. Drury prepared a written statement addressing each of Stricklin's points because there were a few statements in Stricklin's notes with which Drury did not agree. See Defs.' Ex. 240. The majority of the statements contained in Drury's memorandum are those for which Drury had no personal knowledge.

338. Drury is married to police officer Laura Arnold.

CREDIBILITY: The Court credits the testimony of this witness.

**ROBERT DALE ROSEDAHL**

339. Robert Rosedahl was a patrol officer under Plaintiff's administration. He served as the President of the Wichita Falls Police Officers Association for six years. The Association functioned like a police officers' union.

340. Rosedahl admits that there was some racial profiling in the Eastside of Wichita Falls. However, this was "reverse profiling" in that patrol officers followed Caucasians who were in the Eastside after dark because their experience was that Caucasians only were in the Eastside when they were out to buy drugs.

341. On one occasion, police officers from the Mason City, Iowa, Police Department where Plaintiff had been the Police Chief visited the Wichita Falls Police Department. Rosedahl met with the Mason City officers who had only disparaging things to say about Plaintiff. These same Mason City officers sent the Wichita Falls Police Officers Association a sympathy card when Plaintiff was hired to be the Wichita Falls Police Chief.

342. Rosedahl admits that he uses the word "nigger"and has written the word in his police reports.

CREDIBILITY: The Court credits the testimony of this witness.

## CINDY WALKER

343. Cindy Walker has over fifteen years experience as an officer with the Wichita Falls Police Department. She was the sergeant in charge of the Crimes Against Persons divisions under Plaintiff's administration. Walker's position is highly coveted because her division investigates major felonies.

344. Walker was the officer speaking with District Attorney Macha the morning after the "Gun Shop Murders." After she viewed the exchange, Plaintiff ordered Walker not to speak with the District Attorney. Walker believed Plaintiff's behavior to be unnecessary and unprofessional on that occasion.

345. Walker was also the officer who was questioned by Plaintiff regarding the identity of her confidential informant. Plaintiff yelled at Walker in front of a room full of various law enforcement personnel. Plaintiff ordered Walker to divulge the name, address and phone number of the unpaid confidential informant. Walker did as instructed although there were approximately ten other people present in the room.

346. Walker is married to police officer Norman Walker.

347. Norman Walker had been the polygraph examiner prior to his retirement. Once he retired, Cindy Walker made suggestions for officers to replace her husband's position. This was well within her rights as sergeant of the Crimes Against Persons division, which contained the polygraph examiner amongst its ranks.

348. Walker recommended officers Pruitt and Cassis for the opening. Bachman recommended officer Pruitt for the opening; however, Walker was told by Knowles that Plaintiff only wanted a younger person for the job. Walker understood that the polygraph examiner position required a lot of training and, therefore, Plaintiff had to address retention issues. However, Walker believed that more experienced officers would do a better job in assessing a person's truthfulness rather than a young officer who had polygraph classroom training, without on-the-job experience in assessing people's veracity. Walker also felt it unfair to exclude officers from the position because they were too experienced.

349. Shortly before his retirement, Norman Walker called in sick. At that point, he had two hundred fifty accumulated sick leave days. Cindy Walker was told that if her husband did not bring in a doctor's note by noon that day, he would be marked as absent without pay. Cindy Walker stated that it is required to bring in a doctor's slip as proof of illness only if an officer has been out three days in a row. Because Cindy Walker was on the job and could not leave to tend to her husband, their high school-aged son had to leave school in order to take his father to the doctor. Norman Walker procured the doctor's note, which his son took to Cindy Walker at work. Cindy Walker turned the note over to Knowles. Cindy Walker found the purpose of this situation to be harassment toward herself and her husband because he was retiring.

350. Walker overheard Plaintiff yell at Carmen Sosa on one occasion. Plaintiff picked up his telephone, called Sosa and yelled, "Carmen, I'm out of coffee," and then hung up the phone. Walker said that Plaintiff seemed to "tolerate" women at the department, but that he did not seem to care for their presence. Walker was one of two women in managerial positions in the Police Department.

351. As Walker became increasingly frustrated with Plaintiff, she met with Berzina and Stricklin. Walker told Berzina that if he did not intervene to prevent Plaintiff's poor behavior, her only recourse would be for officers to sue the City and Berzina for permitting a hostile work environment.

352. Walker testified that she did not file any formal complaints against Plaintiff because Plaintiff would have found out about it and retaliated against her.

353. Walker found Plaintiff to be a micromanager who did not trust her to do her duties. Walker spent so much time briefing Plaintiff and seeking his permission to take particular actions on investigations, that she have very little time to actually attend to her job of supervising over 180 police officers.

354. Walker also wrote a memorandum to Stricklin addressing concerns she had with the Police Department. See Defs.' Ex. 285. These concerns stemmed mostly from Major Knowles' behavior. Walker does not directly attribute Knowles' actions to Plaintiff, but she held Plaintiff responsible for hiring Knowles and not correcting Knowles' inappropriate behavior.

CREDIBILITY: The Court credits all of the testimony of this witness.

**STEVE BEGGS**

355. Steve Beggs was a Wichita Falls Police officer throughout Plaintiff's tenure as Police Chief.

356. Beggs worked in the Police Academy as an instructor and applicant screener. At the Academy, Beggs has taught ethics, use of force, cultural diversity, wellness, physical education, and defense tactics. Applicant screening is an involved process which covers the applicant's life span. The Police Academy screening process includes a physical assessment, polygraph exam, academic skills exam, personal history assessment, credit check, and a psychological exam. The officers who conducted the screening reviewed the facts presented in the applicant's Personal History Statement and checked them for accuracy through telephone calls, personal interviews with the candidates, and personal interviews with people who had worked with the candidate in the past.

357. Part of the screening process included an "Assessment Center," which was a simulated work day test designed to assess the candidate's ability to cope with the work duties and stress

related to being a police officer. See Defs.' Ex. 294. Beggs served as an Assessment Center proctor, not as an assessor.

358. Once the file on each candidate was completed, the final step was to review the file with Stricklin, the Personnel Director. The officer in charge of the file would take the completed documentation to Stricklin and discuss the candidate with her as she reviewed the officers' findings. Stricklin reviewed the files to determine whether there were any reasons to disqualify the candidate from admission. Sometimes the Majors or the Police Chief would sit in on these meetings with Stricklin.

359. The only automatic disqualification of which Beggs was aware was for a felony conviction. The felony disqualification is mandated by the Police Department's accrediting agency.

360. In January 1998, Plaintiff became involved in the Academy screening process on behalf of three candidates. Plaintiff's involvement resulted in the hiring of these three candidates regardless of the fact that they had been or were slated to be rejected as applicants.

361. The first applicant was an Air Force staff sergeant who had been eliminated from contention because he admitted to using drugs and appeared to have had issues with spousal abuse. This candidate was a white male in his late 30s. Beggs was the supervising officer for this applicant's application process. The Air Force applicant received a letter informing him that he was denied admission into the Police Academy. With Plaintiff's permission, Knowles reinstated the Air Force applicant and permitted him admission into the Police Academy.

362. The second applicant was a white male who was rejected by Stricklin previously during Harrelson's administration as Police Chief. The reason for disqualifying this candidate was based on Stricklin's assessment of the applicant's moral character. Stricklin's assessment related to an incident concerning insurance payments made to the candidate for a car which was paid for by his mother-in-law.

363. This candidate had been rejected for Academy admission under Chief Harrelson's administration. This candidate was nevertheless hired pursuant to Plaintiff's instructions.

364. The third applicant was an Asian male that admitted to cocaine use many years prior to making his application to the Police Academy. This applicant had also been rejected under Harrelson's administration because of drug use. This was the Asian applicant's third application to join the Police Academy.

365. All three of these candidates were hired by Plaintiff although they had been previously disqualified by Stricklin. By the time Stricklin became aware that her authority had been usurped by Plaintiff, the applicants had already matriculated into the Academy. Stricklin did not terminate the three men because she did not want to expose the City to legal problems.

366. Beggs admits that he does not have personal knowledge that Plaintiff directed Knowles to hire the three candidates who had been rejected by Stricklin. Beggs only knows that the candidates had been rejected by Stricklin and that Knowles insured that they were hired regardless.

367. Around this same time, Knowles and Borrego began conducting applicant screening themselves. Beggs and the other Academy instructors were removed from the process because Plaintiff supposedly felt the disqualification criteria were discriminatory.

368. Beggs stated that he never found that there was racial discrimination in the screening process although he recognizes that the assessment criteria is very discretionary.

369. Beggs himself is a Caucasian male. His wife is a Mexican-American and the couple has experienced discrimination in the past and their children have experienced discrimination. Beggs testified that he would never permit discrimination in the hiring process of which he was a part. He believes that the officers he worked with at the Academy would not have allowed discrimination at any level because "we just didn't do that."

370. Plaintiff believes that Knowles' concern was not based on belief that the process led to racial discrimination, but that there was disparity in the screening process because of the differentiation of candidates who had a history of drug use.

371. Beggs himself was raised in the predominantly minority Eastside of Wichita Falls. He frequently went to the Eastside to attempt to recruit candidates for the Academy by leafleting local businesses and posting notices encouraging minorities to become police officers.

372. Beggs states that he personally has never seen any form of discrimination within the Wichita Falls Police Department and if he did see discrimination, he "would do something about it."

373. Beggs never heard Plaintiff using defamatory language, but he had heard Plaintiff yelling at employees.

374. After Plaintiff was terminated, Beggs prepared a memorandum to Stricklin regarding issues that Beggs had with Plaintiff's administration of the Police Department. See Defs.' Ex. 166.

CREDIBILITY: The Court credits the testimony of this witness.

## LAURA ARNOLD

375. Laura Arnold has been a Wichita Falls Police officer for twenty-one years. She worked in the Criminal Investigations Section during Plaintiff's tenure as Police Chief. The Criminal Investigations Section included four units: juvenile crimes, misdemeanors, crimes against persons, and crimes against property. Arnold supervised approximately thirty officers.

376. Arnold had various negative experiences with Plaintiff during his administration. Arnold found Plaintiff to be intimidating and aggressive toward her.

377. In June 1997, one of Arnold's subordinates, Karl Lilly, wrote a memorandum to Plaintiff requesting a transfer of job assignment due to stress. Both Arnold and Lilly were called into Plaintiff's office. Lilly attempted to audio record the conversation with a small tape recorder and Plaintiff did not permit him to do so. The three met over the transfer issue and then Lilly was excused. Lilly testified that Plaintiff treated him with respect during this meeting. Once Lilly left, Plaintiff reprimanded Arnold for permitting Lilly to bring a tape recorder into the meeting. Plaintiff derided her for failing to provide adequate leadership to her subordinates. At the time of this meeting, Arnold had been in her supervisory role for two months.

378. Arnold admits to making mistakes such as failing to inform her supervisors of developments in her unit. In one instance, Arnold failed to inform Knowles that she had assigned Mike Stecco to do a helicopter search for locations of automobile "chop shops." Arnold believed that she had informed her direct supervisor, Glen Smith, but Smith said that she had not. In this instance, Arnold did not disagree with the reprimand; however, she became upset when Plaintiff then joined Knowles and continued to reprimand her.

379. Plaintiff yelled at Arnold, told her that she was a bad police officer, and he took Smith's word over hers. Arnold was very angered by Plaintiff's statement because she "believes in honesty" and "was not lying" about having kept Glen Smith informed. During this exchange, Plaintiff yelled at Arnold and she began crying. She asked to leave the room and Plaintiff remained silent. So, Arnold stayed and cried while Plaintiff continued to yell at her. Arnold was embarrassed by Plaintiff's treatment of her and found it to be malicious, not instructive.

380. After the meeting, Arnold found out that Glen Smith had known about the helicopter search and that he had allowed Arnold to take the blame for the communication gap. Arnold then requested a transfer to the Patrol Division on November 7, 1997, stating that she no longer could work with Glen Smith because "he was out to get me, it was unbearable." See Pl.'s Ex. 160. Arnold's transfer memorandum contained no complaints against Plaintiff. On November 21, 1997, Arnold was transferred to Patrol as she had requested. Arnold found her work under Borrego to be much more pleasant because Borrego was "more mature" and handled the Major responsibilities better than Knowles.

381. Over time, Arnold began to have problems in Patrol working under Borrego. She and Borrego disagreed about an issue regarding payment of overtime to certain officers. Arnold had consulted the Fair Labor Standards Act materials located in the department's library to solidify her decision. She cited those materials in her discussion with Borrego. Shortly afterwards, the materials were removed from the library and put in the Internal Affairs office. Arnold believed that the materials were removed from the library as a reprisal to prevent officers from learning about their FLSA rights.

382. After Plaintiff was terminated, Arnold wrote Stricklin a lengthy memorandum on February 12, 1999, detailing the reasons for her dissatisfaction with Plaintiff's administration of the police department. See Defs.' Ex. 8.

383. Arnold admits that she tends to cry and that she knows her crying does not foster confidence by her subordinates.

384. Arnold remembers seeing a button with Plaintiff's photo crossed out on it. Arnold believes that her husband, police officer Don Drury, showed it to her.

CREDIBILITY: The Court credits all of the testimony of this witness.

### MICHAEL FINCANNON

385. Michael Fincannon was a Drug Task Force police officer during Plaintiff's administration.

386. Fincannon testified that the first time he met Plaintiff was in an open meeting shortly after Plaintiff became the Police Chief. Plaintiff walked into the room of officers and asked who was Fincannon. Fincannon identified himself and Plaintiff said that he had been told that Fincannon was "a fuck-up." This was the extent of Fincannon's dealings with Plaintiff and Plaintiff never elaborated on this initial comment.

CREDIBILITY: The Court credits the testimony of this witness.

### JERRY THOMAS

387. Jerry Thomas was a Wichita Falls Police officer who worked during Plaintiff's tenure as Police Chief. Thomas is now retired.

388. Thomas worked in the Criminal Investigations Section supervised by Knowles. Thomas sought a transfer because he was personal friends with Knowles and felt that it would be more appropriate to be supervised by Major Borrego. Thomas applied for and was given the transfer he sought although Knowles continued to solicit Thomas' return.

CREDIBILITY: The Court credits the testimony of this witness.

### DUANE JEWELL

389. Duane Jewell was a Mason City, Iowa, police officer during Plaintiff's term as Police Chief for the Mason City Police Department. Jewell had forty years of service for the Mason City Police Department when he retired.

390. Jewell was the Acting Police Chief before Plaintiff was hired to replace him. Jewell had applied for the Police Chief position and was not selected. He found Plaintiff's selection for

Police Chief to be "a bitter pill" because Jewell had served over thirty years with the Police Department when he applied for the Police Chief position. Jewell worked under Plaintiff for one month before Jewell retired.

391. Jewell testified that Plaintiff had difficulty with the Police Officers' Union in Mason City. Plaintiff said to Jewell, "No union is going to run my department."

392. Jewell found Plaintiff to be an "autocratic ruler"of the Police Department because Plaintiff would target anyone who challenged his authority as Police Chief. Jewell believed that Plaintiff targeted him by removing him from the chain of command and removing all of his job duties so that Jewell had no responsibility.

393. Jewell was friends with Kathy Schlieper, Plaintiff's wife, before Kathy and Plaintiff were married. Jewell was Kathy's neighbor in Mason City, Iowa.

CREDIBILITY: The Court credits the testimony of this witness.

**WILLIAM JAY LEE**

394. William Jay Lee served as a Mason City, Iowa, Police Officer with Plaintiff. Lee was the most senior Union Steward for the Police Officers' Union. Lee was one of the officers who had supported Duane Jewell's bid to be Police Chief.

395. Lee liked Plaintiff when he was hired. He found Plaintiff's speeches about empowering low level officers in decision making to be admirable. Lee supported Plaintiff's first year as Police Chief by discouraging his members from filing any grievances regarding Plaintiff. Lee took this action because Plaintiff was the first "outsider" Police Chief that Mason City had ever had.

396. Lee reported that Plaintiff had difficulty complying with the Union Contract by ignoring seniority rights and the grievance procedure. Over time Lee disliked Plaintiff when he observed that although Plaintiff's speeches were about empowerment, Plaintiff was hypocritical because Plaintiff himself made all decisions and did not permit lower level officers any discretion.

397. Plaintiff began to have difficulties with the Union. Plaintiff ordered the Mason City police officers not to speak with the Mayor, City Administrator or City Counsel.

398. Lee found that he could not prevent grievances against Plaintiff any longer because of the "ground swell" against Plaintiff. Lee felt that he had to take action or risk losing his ability to lead the Union membership. Plaintiff's behavior continued to become more domineering; therefore, the Union held a "no confidence vote" against Plaintiff.

399. Plaintiff tried to intimidate Lee by telling Lee that he "would be fired and would not see retirement." Lee did not feel very protected by the Union because if he were fired, it would take months for Lee to grieve the termination and gain his job back. Lee felt that he would have been able to prove a retaliatory firing, but that it would take a lot of work. Therefore, Lee was careful to document Plaintiff's activities.

400. Lee received an anonymous letter from Rock Island, Illinois, where Plaintiff had been the Police Chief before accepting the Mason City position. See Defs.' Ex. 301. This letter detailed problems with Plaintiff's administration of the Rock Island Police Department that were similar to the problems that Lee himself was having with Plaintiff. As the trouble with Plaintiff continued, Lee decided to travel to Rock Island to meet with the police officers named in the anonymous letter.

401. The anonymous letter from Rock Island berating Plaintiff was posted in the Police Department, on the Union message boards and even in local restaurants. Plaintiff learned about Lee's trip and wanted to question Lee about his activities in Rock Island. Lee refused to meet with Plaintiff unless the Union Business Agent was present, as permitted by the Union Contract. Plaintiff at first refused to meet Lee with the Business Agent present. Plaintiff then acquiesced and Lee, Plaintiff and Business Agent Ron Wheeler met to discuss Lee's trip to Rock Island. The meeting turned into a yelling match because Plaintiff wanted to know what was said about him in Rock Island and Lee did not want to tell him.

402. A second anonymous letter was sent to the City Counsel on December 25, 1998, complaining about Plaintiff. See Pl.'s Ex. 161. This letter began an exchange between City Council members and the anonymous writer, assuredly a Mason City police officer. Plaintiff blamed Lee for this situation. One year after the Union's "no confidence" vote, the City Council had a unanimous vote of confidence for Plaintiff.

403. Lee filed a formal complaint against Plaintiff with the Human Rights Commission. See Defs.' Ex. 303.

404. Lee had been diagnosed with depression in 1995. Lee's level of dissatisfaction with Plaintiff became so great that on April 13, 1996, Lee told his psychologist that he was planning to murder Plaintiff. The psychologist immediately intervened to remove Lee from the Police Department and Lee was hospitalized for depression. Lee did not work from April 1998 until his retirement in December 1998.

405. In December 1998 or January 1999, Lee saw reports in the Mason City news media that Plaintiff was having problems as the Wichita Falls Police Chief. In February 1999, Lee traveled to Wichita Falls to investigate. He met with various Wichita Falls police officers on or about February 21, 1999. The following day, Lee met with Stricklin and Keith Jenkins, the Wichita Falls Police Association President, to discuss Plaintiff.

CREDIBILITY: The Court credits all of the testimony of this witness.

## MARK MCNEILL

406. Mark McNeill was the City Administrator in Mason City, Iowa. He was the first City Administrator after Mason City changed its strong mayoral form of government to a City Administrator/City Counsel/Mayor form of government.

407. McNeill administered the selection process for the Mason City Police Chief and hired Plaintiff. Duane Jewell was the Acting Police Chief until Plaintiff was hired out of five finalists.

408. McNeill hired a former FBI Agent to conduct an extensive background check of Plaintiff before he was selected for Police Chief. McNeill's investigator reported that there were no concerns in hiring Plaintiff, even upon investigating Plaintiff's career as the Rock Island, Illinois Police Chief. Plaintiff's background check revealed no behavioral problems, management problems, psychological problems, or any other "red flags."

409. McNeill testified that Jewell had applied for the Police Chief position but removed himself from contention because Jewell was very near retirement age. McNeill testified that had Jewell not removed himself from contention, he would not have been hired because he did not have the skills to advance the Mason City Police Department.

410. McNeill testified that there were no formal complaints against Plaintiff and Plaintiff flourished as the Mason City Police Chief during a very unfavorable political climate. McNeill never heard reports of or observed Plaintiff raising his voice. McNeill found Plaintiff to be "very even tempered, a very respectful individual, and a very decent Christian man."

411. McNeill received and replied to the anonymous letters received about Plaintiff. See Pl.'s Ex. 161. McNeill found these anonymous letters to be a poor effort to disparage Plaintiff.

412. McNeill personally discussed Plaintiff's candidacy for the Wichita Falls Police Chief position with Berzina. McNeill gave Plaintiff a very high recommendation and advised Berzina that any negative comments that Berzina might hear about Plaintiff's troubles with the Mason City Police Officers' Union should be "taken with a grain of salt."

413. McNeill knew Kathy Schlieper before she married Plaintiff. McNeill was happy for their marriage and remains personal friends with the couple.

414. McNeill was aware that after he left his position in Mason City, the Union filed many complaints against Plaintiff for age discrimination, shift assignment changes, and a leave complaint. McNeill was also aware that Plaintiff had difficulty working with outside agencies. However, McNeill did not consider these issues problematic because Plaintiff was

making vast changes to the Mason City Police Department; the improvements upset people who did not want change.

CREDIBILITY: The Court credits the testimony of this witness to the extent it is consistent with these Findings of Fact.

## CARL MILLER

415. Carl Miller was the first Mayor of Mason City, Iowa after the governmental change from a strong mayor to a City Administrator/City Council/Mayor form of government.

416. Miller reports that Jewell could not have been Mason City's Police Chief because of his age. Under Iowa law, a new Police Chief cannot be older than 65 when selected. Jewell was 66 when he applied to be Police Chief.

417. Plaintiff was the unanimous choice of the City Council for Police Chief. Miller testified that Plaintiff had an excellent rapport with rank and file officers and called him a "man of integrity."

418. Miller was contacted by Wichita Falls Councilman Harold Hawkins to discuss Plaintiff's candidacy for Wichita Falls Police Chief. Miller informed Hawkins that Plaintiff was an efficient change agent who could bring advancements to the Wichita Falls Police Department.

419. Miller testified that the Mason City Police Officers' Union "no confidence" vote against Plaintiff was not surprising because there was "a lot of mediocrity" in the Police Department.

420. Miller explained that after Mark Tucker left, a new City Administrator (Hammond) began and that Plaintiff "was being forced out by a gentleman who was incompetent as City Administrator." Miller stated that Hammond had previously served as Mason City's "bean counter" and he lost his City Administrator position shortly after Plaintiff left to work in Wichita Falls.

421. Miller testified that the positive changes which Plaintiff instituted remain part of the Mason City Police Department.

CREDIBILITY: The Court credits the testimony of this witness to the extent it is consistent with these Findings of Fact.

## CARMEN SOSA

422. Carmen Sosa's testimony was presented in trial via a June 8, 2002, videotaped deposition.

423. Sosa served as Plaintiff's secretary throughout Plaintiff's tenure as Police Chief. Sosa worked with the Wichita Falls Police Department for over 20 years and has held the Police Chief's secretary position since Harrelson's administration as Police Chief.

424. Soon after becoming Police Chief, Plaintiff had to make selections for two Majors. He consulted Sosa about her opinion of particular officers. Sosa thought it strange that the Police Chief would ask a secretary her opinion about such an important matter.

425. Sosa found Plaintiff's manner of addressing her very uncomfortable because Plaintiff was stern and aggressive. Sosa stated that Plaintiff told her "that he was not a coffee maker, that it was a woman's job to do that." Plaintiff would become very agitated if the coffee was not made for him.

426. Sosa was stressed and uncomfortable around Plaintiff because she never knew "how he was going to be that day." She felt "passive...[she] was always in a stress mode." Sosa was intimidated and belittled by Plaintiff's behavior toward her. Sosa did not feel that Plaintiff would physically harm her, but that he would lose his temper. Sosa does not report specific incidents of Plaintiff yelling at her, but on occasion, she would go into a closet near her desk to cry unobserved in order to "get [her] frustrations out." Sosa admits that she is a sensitive person, who would be more affected by Plaintiff's manner of conversation than others might be.

427. Sosa observed Plaintiff yelling at Gerry Simpson and reported that the two frequently had differences which led to arguments. Sosa also heard Plaintiff yelling at Yonts, Morgan and Joyner.

428. Sosa kept Plaintiff's appointment calendars by writing in appointments as he instructed her.

429. Sosa never discussed her complaints against Plaintiff with anyone, not even her husband. Sosa recalls that Plaintiff and her husband went on a fishing trip together. Plaintiff and his wife also drove to another town to observe Sosa's husband perform in a "pow-wow."

430. At some point in time, Sosa decided to seek a transfer out of the Police Department. She spoke with Stricklin and applied for a City clerk position. Sosa was not offered the position and she did not apply for any other positions in hopes that "things would get better" for her at the Police Department. Sosa's sister-in-law was Stricklin's personal secretary.

CREDIBILITY: The Court credits all of the testimony of this witness.

## DENNIS BACHMAN

431. Dennis Bachman was a Wichita Falls Police officer during Plaintiff's tenure as Police Chief. Glen Smith was Bachman's superior officer in Plaintiff's administration.

432. Bachman thought Plaintiff's administration of the Police Department was poor. Bachman stated that, "most of the time, I don't think [Plaintiff] knew what his Majors were doing." Bachman believed that Knowles made retaliatory transfers of officers whom Knowles did not like. Bachman held Plaintiff responsible for his Majors' conduct according to the Wichita Falls Police Department's General Order 100.011, which governs professional conduct of police officers. See Defs.' Ex. 316.

433. Bachman admits that it was his duty under Wichita Falls Police Department General Order 200.036 to report any incidences of officer misconduct immediately. See Defs.' Ex. 239. However, Bachman never filed a formal complaint against the Majors or Plaintiff.

434. Bachman was questioned by Stricklin and Berzina regarding his impressions of Plaintiff's tenure as Police Chief. Stricklin asked Bachman to compose a memorandum detailing his statements against Plaintiff. Stricklin informed Bachman that Plaintiff was intending to litigate the termination and she was attempting to create a written record. Bachman's memorandum contains very few allegations for which Bachman had personal knowledge. See Pl.'s Ex. 50. The bulk of Bachman's memorandum details areas where Bachman disagreed with Plaintiff's management of cases and assignment of officers. Bachman acknowledges that the Police Chief may make such decisions, but Bachman found Plaintiff's management decisions to be ill founded.

435. After Plaintiff was terminated, and at Stricklin's request, Bachman audited the telephone records of Plaintiff, Borrego and Knowles and produced memoranda detailing his findings. See Defs.' Exs. 31 and 42.

CREDIBILITY: The Court credits all of the testimony of this witness.

## GLEN SMITH

436. Glen Smith was a Wichita Falls Police officer during Plaintiff's tenure as Chief.

437. Smith was present when Plaintiff reprimanded Laura Arnold for failure to keep her superiors informed regarding helicopter search activities. Smith recalls that Plaintiff's meeting with himself and Arnold lasted twenty minutes, not one hour as Arnold testified. The Court credits Smith's testimony to resolve this issue. Arnold and Smith have a history of problems working with one another. At one point in time, Arnold filed a sexual harassment complaint against Smith for a letter which he wrote to Arnold.

438. Smith was also involved during the "Gun Shop Murder" investigation when he ordered District Attorney Macha to leave the crime scene per Knowles' orders. Smith assumed that Knowles received his orders from Plaintiff.

439. Smith applied for the Major position under Plaintiff and was not selected. He was told by Berzina that he had been a top five candidate, but had been removed from contention by Plaintiff. Stricklin also told Smith that he had been a top candidate for the position.

440. Smith had a heart attack in February 1998. Plaintiff informed Smith that due to his health, Smith should not return to work at the Police Department. Smith took leave time from June 3 - July 22, 1998. Smith was unable to discuss the issues with Plaintiff directly, so Smith met with Stricklin on August 6, 1998. Stricklin told Smith that his medical condition was a concern and encouraged him to retire. Smith refused, so Stricklin offered him a job in the Personnel Department making demand payment calls for the City. Stricklin showed Smith Plaintiff's memorandum dated July 22, 1998, transferring Smith to the Personnel Department. See Pl.'s Ex. 134. Smith went to work for Stricklin and attempted to resolve his work issue with the Civil Service. Smith maintained that as a sworn officer, he could not work in Personnel because there was no higher ranking officer supervising him. Stricklin eventually concurred with Smith's assessment on or about August 17, 1998. Stricklin informed Plaintiff, who then wrote a memorandum to Stricklin rescinding Glen Smith's transfer to the Personnel Department effective August 28, 1998. See Pl.'s Ex. 135. Smith was able to substantiate his position and he returned to work in the Police Department.

441. Smith did not care for Plaintiff and found his administration of the Police Department to be wanting.

442. Smith acknowledged that many officers believed that he was improperly interfering with their work investigating the "Gun Shop Murders." Smith knew that Plaintiff received various memoranda complaining about Smith's interference and asking that Smith be reprimanded for his actions. See Pl.'s Ex. 107. However, Smith was unaware that Plaintiff removed him from the chain of command in an effort to remedy officer complaints regarding Smith's behavior. Plaintiff never told Smith why he was being left out of the chain of command.

443. Smith discussed the transfer of Pat Yates out of the SWAT unit. Smith believes that Plaintiff's actions in transferring Yates were appropriate because Yates had lost the trust of her team by making a judgment error which subjected the team to danger. Yates also felt that she had made a grievous error, requested a transfer, and was granted one. Smith does not feel that Yates' transfer was retaliatory.

444. Smith described Cindy Walker as a difficult person with whom to work. Smith testified that Walker has had many problems with various officers in the Police Department. Walker has filed, and been the subject of, harassment complaints with other officers.

445. Stricklin met with Smith when she was investigating Plaintiff's tenure as Police Chief. Stricklin asked Plaintiff to prepare a written statement. Smith prepared his written statement to Stricklin on March 16, 1999, long after Plaintiff was terminated. See Pl.'s Ex. 119. In his eight page memorandum, Smith outlines various problems that he encountered with Plaintiff

and Knowles. Smith admits that many of the opinions he expressed in the memorandum are based on his opinion and a "good faith belief" that what other officers and employees were reporting to him was true.

446. Smith prepared the memorandum for Stricklin and Berzina only. The only other person who saw the memorandum's contents was the secretary who typed the statement for him.

CREDIBILITY: The Court credits the testimony of this witness to the extent it is consistent with these Findings of Fact.

## KEN COUGHLIN

447. Ken Coughlin was a Wichita Falls Police officer during Plaintiff's administration. Coughlin has served as the Wichita Falls Police Chief since May 1999, when he took over for Acting Police Chief Borrego.

448. Coughlin had filed grievances during his career. Coughlin filed a grievance against a Major under Harrelson's administration. Coughlin has no explanation for why he did not make a formal grievance against Plaintiff.

449. Coughlin experienced problems with Knowles, who he felt was trying to "set [him] up" to get him in trouble with Plaintiff. In one instance, Coughlin became aware that the Narcotics officers would lose their clothing allowance due to budgeting mandates from Berzina. The officers, who were under Coughlin's command, were very angry. Knowles advised Coughlin to simply "pad" their overtime hours to make up for the lost clothing allowance. Coughlin did not follow Knowles instructions, but attributes Knowles' unethical suggestion to Plaintiff's poor management of the Majors.

450. On December 15, 2000, Coughlin gave a television interview which aired as part of the KDFX evening news at 6 p.m. and 10 p.m. In the interview, Coughlin was questioned because the City was being forced to pay back grant funds used to pay Police Department overtime because that overtime had not been properly documented as a grant eligible payout. See Pl.'s Ex. 8 (transcript of interview) and 9 (videotape of interview). Coughlin stated that there was a problem in the management of the grant funds during Plaintiff's administration; however, the Police Department was doing it's best to correct the problem. Coughlin stated that, "[a]ll of the money that was budgeted for that grant overtime was simply mixed in with regular overtime. Now to unmix it would be next to impossible." Coughlin did not actively take steps to explain to the reporter that all grant funds had been and were being handled by City of Wichita Falls Finance Director Jim Dockery. However, Coughlin said, "I don't think that we misused any money back then," and "I'm not gong to try to point fingers on who did what, but I do know this, that grant management is a difficult thing to get your hands on."

451. As Police Chief, Coughlin assigned Laura Arnold, who became the new Internal Affairs officer, to investigate the overtime/grant funds issue. Borrego immediately went to Coughlin

to discuss the matter. A deal was struck whereas Borrego would take a voluntary demotion in exchange for the cessation of Arnold's investigation of him. Coughlin conferred with Stricklin and the City's Legal Department, who approved the deal and drafted a voluntary demotion agreement for Borrego to sign. Three days lapsed from the time Arnold's investigation started to the time Borrego signed the voluntary demotion contract. The investigation against Borrego was dropped. The investigation of the officer's under Borrego's supervision was dropped as well, because Coughlin believed that they had no culpability because the subordinate officers would have simply been following Borrego's instructions.

452. The Internal Affairs investigation against Knowles continued and the result was that Knowles was indefinitely suspended from his job at the Wichita Falls Police Department.

453. Coughlin did not support Plaintiff's administration of the Police Department. Coughlin testified that Plaintiff mismanaged the Department in a variety of ways, including giving only one day of notice for transfers. See, e.g., Defs.' Ex. 319. At his attorney's request, Coughlin prepared a table documenting that Plaintiff had similar problems as Police Chief of Wichita Falls as he did in Mason City. See Defs.' Ex. 321.

454. Coughlin states that Plaintiff removed department property upon his termination. The property in question is the Police Chief's badge, which was purchased through department funds. See Defs.' Ex. 322. The badge went missing after Plaintiff was terminated. The badge had been in Plaintiff's possession and never returned. Coughlin believed that Plaintiff still had the badge because Plaintiff wore it in a post-termination photo he had taken of himself in uniform. See Defs.' Exs. 309 and 323. Plaintiff sent this photo to the Police Department.

CREDIBILITY: The Court credits all of the testimony of this witness.

## III. CONCLUSIONS OF LAW

These conclusions of law address the Counts against Defendants as outlined in the Second Amended Joint Pre-Trial Order (filed June 27, 2002), as presented in these Findings of Fact and Conclusions of Law's Summary of Claims section. See Summary of Claims, supra Part II at 1-3. If the following Conclusions of Law may be more properly deemed Findings of Fact, they are hereby incorporated by reference into the Findings of Fact.

## COUNT I
## Retaliation Prohibited by Title VII of the Civil Rights Act of 1964, 42 U.S.C. 2000e3(a)

1. The City of Wichita Falls complied with the provisions of Title VII of the Civil Rights Act of 1964, 42 U.S.C. 2000e(a) and 42 U.S.C. 2000e2(a) at all times germane to Plaintiff's cause of action.

2. The City of Wichita Falls complied with the provisions of Chapter 143, Texas Local Government Code, in the recruiting, hiring, promotion, discipline, and firing practices within the Wichita Falls Police Department at all times germane to Plaintiff's cause of action.

3. Defendants Berzina and Stricklin, in their official and individual capacities, committed no illegal act against Plaintiff.

4. Plaintiff did not oppose any practices made unlawful by Title VII of the Civil Rights Act. Therefore, Plaintiff never engaged in any activity protected by Title VII.

5. There is no causal connection between Plaintiff's termination and his claim that he was engaging in acts protected by Title VII. Berzina based his decision to terminate Plaintiff's employment on the legitimate, nondiscriminatory reasons that Plaintiff ineffectively managed the Police Department, which led to significant disruption, turmoil and low morale.

6. Defendants' proffered reasons for Plaintiff's termination are not false or pretextual. Berzina terminated Plaintiff for cause. Defendants did not take any retaliatory action against Plaintiff.

7. Plaintiff suffered no damages as a proximate or legal result of any conduct by Defendants.

## COUNT II
## First Amendment Infringement Prohibited by § 1983 of the Civil Rights Act of 1871, 42 U.S.C. §1983

8. Plaintiff was an "at-will" employee.

9. Plaintiff did not speak out regarding any alleged discrimination within the Police Department or regarding mistreatment of minority citizens by the Police Department. Plaintiff was not engaged in constitutionally protected speech during the time he was the Wichita Falls Police Chief.

10. Berzina terminated Plaintiff's employment because Plaintiff's treatment of employees and members of the community resulted in Plaintiff's inability to garner the respect he needed to effectively manage the Police Department.

11. Neither the City of Wichita Falls, nor any of its officials, had any policy or custom to deprive employees of their First Amendment rights. Policy-making authority for the City resides solely with the City Council.

12. The City of Wichita Falls does not have any official policy statement or persistent, widespread practice, exercised by any city official or employee, that was so common and well settled that it fairly represented municipal policy, that was the cause in fact of any deprivation of Plaintiff's constitutional rights.

13. Berzina, as City Manager, is authorized by the City Charter to be the final decision maker regarding the hiring and termination of Department Heads, such as the Police Chief. Berzina exercised his discretionary authority delegated to him by the Charter in terminating Plaintiff's employment.

14. Plaintiff suffered no damages as a proximate or legal result of any conduct by Defendants.

## COUNT III
## 42 U.S.C. § 1988 Demand for Attorneys Fees for Violations of 42 U.S.C. § 1983

15. Plaintiff is not entitled to attorneys fees because he has failed to prove the underlying 42 U.S.C. § 1983 claim.

## COUNT IV
## Slander Per Se

16. Defendant Stricklin did not make any defamatory remarks about Plaintiff.

17. Defendant Coughlin's statements to the television news media on December 15, 1999, were not defamatory toward Plaintiff Schlieper because Coughlin's remarks were truthful and did not place Plaintiff in a false light.

18. Defendant Berzina did not make any defamatory remarks about Plaintiff. Berzina's silence toward the news media's inquiries regarding Plaintiff was not defamatory.

## COUNT V
## Libel Per Se

19. Defendant Bachman did not libel Plaintiff in his Memorandum to Stricklin dated February 2, 1999. Bachman's statements were made neither with actual malice nor with reckless disregard for the truth.

20. Defendant Glen Smith did not libel Plaintiff in his Memorandum to Stricklin dated March 16, 1999. Smith's statements were made neither with actual malice nor with reckless disregard for the truth.

**COUNT VI**
**Civil Conspiracy**

21. Plaintiff has failed to establish his underlying defamation claims against all Defendants. Therefore, the civil conspiracy claim must also fail.

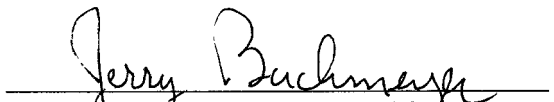
22. Plaintiff suffered no damages as a proximate or legal result of any acts allegedly taken by Defendants.

## IV. CONCLUSION

For the foregoing reasons, the Court finds in favor of the Defendants on all counts.

**It is so ORDERED.**

**ENTERED: October 23, 2002.**



**JUDGE JERRY BUCHMEYER**
**UNITED STATES DISTRICT COURT**
**NORTHERN DISTRICT OF TEXAS**