



POLICE DEPARTMENT

October 23, 2014

MEMORANDUM FOR: Police Commissioner

Re: Lieutenant Kevin Shea  
Tax Registry No. 935732  
Midtown South Precinct  
Disciplinary Case No. 2013-9538

Police Officer Matthew Monahan  
Tax Registry No. 947263  
Police Service Area 2  
Disciplinary Case No. 2013-9539  
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The above-named members of the Department appeared before me on February 11 and May 2, 2014, charged with the following:

Disciplinary Case No. 2013-9538

1. Said Sergeant Kevin Shea, on or about December 12, 2011, at approximately 2130 hours, while assigned to Police Service Area 2 and on duty, in the vicinity of [REDACTED] Kings County, engaged in conduct prejudicial to the good order, efficiency or discipline of the New York City Police Department, in that he entered said apartment without sufficient legal authority.

P.G. 203-10, Page 1, Paragraph 5 –PUBLIC CONTACT  
PROHIBITED CONDUCT

Disciplinary Case No. 2013-9539

1. Said Police Officer Matthew Monahan, on or about December 12, 2011, at approximately 2130 hours, while assigned to Police Service Area 2 and on duty, in the vicinity of [REDACTED], Kings County, engaged in conduct prejudicial to the good order, efficiency or discipline of the New York City Police Department, in that he entered said apartment without sufficient legal authority.

P.G. 203-10, Page 1, Paragraph 5 –PUBLIC CONTACT  
PROHIBITED CONDUCT

2. Said Police Officer Matthew Monahan, on or about December 12, 2011, at approximately 2130 hours, while assigned to Police Service Area 2 and on duty, in the vicinity of [REDACTED], Kings County, abused his authority as a member of the New York City Police Department, in that he arrested Dorrey Murphy without sufficient legal authority,

P.G. 208-1, Page 1, Paragraph 3    LAW OF ARREST

The Civilian Complaint Review Board (CCRB) was represented by Vanessa McEvoy, Esq. and Paul Scotti, Esq. Respondent Shea was represented by Michael LaCondi, Esq., and Respondent Monahan was represented by Michael Martinez, Esq.

Respondents, through their counsel, entered pleas of Not Guilty to the subject charges. A stenographic transcript of the trial record has been prepared and is available for the Police Commissioner's review.

### DECISION

#### Disciplinary Case No. 2013-9538

Respondent Shea is found Not Guilty.

#### Disciplinary Case No. 2013-9539

Respondent Monahan is found Guilty of Specification No. 1. He is found Not Guilty of Specification No. 2.

### SUMMARY OF EVIDENCE PRESENTED

#### Introduction

It is not disputed that on December 12, 2011, Respondent Monahan was assigned to Police Service Area 2 (PSA 2) and that he was on duty, in uniform, partnered with Police Officer Carnemolla, performing patrol duties under the supervision of Respondent



Shea. At about 9:30 pm, Respondent Monahan and his partner responded to a call at the residential apartment building at [REDACTED], Brooklyn (the building). As they were exiting the building after handling this call, they had an interaction outside the building with two boys, Minor A and Minor B. Tarick Bell, who is an older brother of the two boys, approached the officers and spoke to them. Bell then took out his cell phone and began video recording the officers' actions.

#### CCRB's Case

CCRB called Tarick Bell and Dorrey Murphy as witnesses.

#### Tarick Bell

Bell, who is 24-years-old, testified that the reason that he began to record the officers' actions was because he saw the officers patting down his brothers Minor A and Minor B. He asked Respondent Monahan and his partner for their badge numbers and both officers provided their badge numbers. Bell testified that after he asked Respondent Monahan what was going on, Respondent Monahan tapped his partner and said, "Let's go." On Bell's recording [CCRB Exhibit (CCRBX) 4], the officers are seen starting to walk away from the building. Bell is heard on the recording telling the officers, "Don't run, don't run," and "I'll see you in mediation." Bell testified that he said this because he intended to file a complaint against the officers with CCRB.

Since the officers were walking away and appeared to be leaving the area, Bell turned around, stopped recording on his cell phone, entered the building with Minor A and Minor B and walked up the stairs to the second floor and to Apartment [REDACTED] where he

lived with his mother, his brothers Dorrey Murphy, [REDACTED] Minor A and Minor B, and his stepfather [CCRBX 3 A-E consists of photos depicting the stairs to the second floor and the hallway leading to Apartment [REDACTED]

Minor A and Minor B entered the apartment in front of Bell and he walked in after them. When he turned around and started to close the door, Respondent Monahan suddenly appeared at the door and stood in the doorway. He told Bell to step out. Bell refused to step out because he believed that he had not done anything wrong. Respondent Monahan again asked Bell to step out and told him that he wanted to give him a summons. Bell asked Respondent Monahan, "Why?" Respondent Monahan then grabbed Bell by his jacket and attempted to pull Bell out of the apartment. Bell's jacket came off when Bell got out of his jacket. Bell then took his cell phone out and started to record what was happening [CCRBX 2 C & D consists of photos from this video which depict Respondent Monahan standing in the doorway of Apartment [REDACTED]

Respondent Monahan said that he was going to call 15 to 20 cops "to come rushing to my house." Bell stopped recording so that he could call his mother. Bell kept telling Respondent Monahan that he did not do anything wrong. Respondent Monahan remained at the door.

When backup officers arrived they entered Apartment [REDACTED] One officer grabbed Bell's brother Dorrey Murphy who was standing at the door. Bell was arrested and so was Murphy. When officers handcuffed Bell, he was still recording on his phone. Respondent Monahan took the phone out of his hand. Bell was not issued a summons and was not prosecuted. Bell filed a civil lawsuit which was settled.



On cross-examination, Bell could not recall where he had been before he arrived at the building and saw officers patting down his brothers Minor A and Minor B outside the front door of the building. Bell confirmed that he told CCRB investigators that he had started recording because police officers had previously harassed him by stopping him. He had no previous interactions with Respondent Monahan. Bell confirmed that he has been arrested five or six times for Disorderly Conduct.

Bell asserted that when he told the officers, "Don't run, don't run," as they were walking away, he was not taunting the officers. When Bell was asked about his "I'll see you in mediation" comment, Bell explained that although he had never personally filed a complaint against a police officer, he had heard about mediation of complaints to CCRB.

Bell agreed that when he walked into Apartment [REDACTED] the officers told him to come out because they wanted to issue him a summons for "being loud" outside. Bell agreed that the officers did not enter all the way into the apartment. Rather, they conversed with him in the threshold of the doorway. Bell denied that he or Murphy had tried to close the door on the officers. Bell also agreed that the officers told him, "You better handle this, come outside, we're not going away, we're going to have 20 cops here." Bell confirmed that he told the officers that he had not done anything wrong and that he did not come out when the officers asked him to.

Bell agreed that Murphy was standing in the doorway when the backup officers arrived at the doorway. Bell confirmed that he exclaimed, "Call Internal Affairs!" He started yelling because he wanted anyone within earshot to hear what was going on. Bell agreed that the situation at the open doorway was confusing and that this confusion continued when the backup officers arrived at the door which was still open.

Dorrey Murphy

Murphy, who is 23-years old and is in training to become a professional boxer, recalled that on December 12, 2011, he was inside apartment [REDACTED] when he heard a knock on the door. When he opened it, he saw his brothers Minor A, Minor B and Tarick Bell. As Bell was walking into the apartment, two police officers suddenly appeared behind him. Murphy identified Respondent Monahan in the trial room as the officer who stated that he was trying to give a summons to Bell. Bell told Respondent Monahan, "Get off of me." Bell continued to try to get inside the apartment. When Bell slipped out of his shirt, Bell managed to get inside the apartment. Murphy told the officers that they could not enter his house. Respondent Monahan entered by standing inside the doorway. He stated that he was trying to issue a summons to Bell and that if Bell did not come out he was going to have 20 to 30 officers rushing to their home.

Other officers soon arrived and they all immediately entered the apartment. Murphy told them that they had no right to be in his home. Murphy asserted that although he held his hands up when these officers were entering the apartment and telling him to move out of the way, he heard an officer state, "Arrest him too." Murphy does not know which officer said this. Murphy and Bell were both arrested but Murphy was released from custody and he was not issued a summons.

Murphy's attorney filed a civil lawsuit on his behalf seeking damages of one million dollars. The case was settled for \$27,000. Murphy has been convicted in Georgia and North Carolina of criminal charges involving bank card fraud, identity theft and forgery, but he has no criminal convictions in New York.



On cross-examination, Murphy stated that he first saw a police officer at the door when the officer touched Bell as Bell stepped into the apartment and that Bell was halfway through the threshold of the door when this occurred. Murphy agreed that Bell was trying to get into the apartment as the officers were trying to pull him out by his shirt which came off Bell. Murphy denied that he had tried to push the door closed on the officers. Murphy asserted that he only told them that they could not enter the apartment because they did not have a warrant and because they had no “probable cause.” Murphy admitted that he prevented the officers from entering the apartment and arresting his brother and that when backup officers arrived at the door he remained where he had been standing in the doorway when they immediately entered the apartment. Murphy agreed that at his CCRB interview he had stated that the officers who grabbed Bell did not completely enter into the apartment until the backup officers arrived, but that the officers had held the door open with their feet and had pushed their entire bodies against the door to prevent it from closing when he had tried to close the door.

#### Respondents’ Case

Respondent Monahan and Respondent Shea each testified in his own behalf.

#### Respondent Monahan

Respondent Monahan testified that when he and his partner were exiting the building, they noticed that two young men appeared to be trying to pry open a locked door by putting their hands underneath the door. When Respondent Monahan approached the young men and told them that they should not be doing what they were

doing, Bell approached the officers and “ask[ed] us to stop harassing them, what are we stopping them for, et cetera, et cetera.” Respondent Monahan tried to explain to Bell what they were doing with his brothers but Bell was not interested in hearing his explanation. Respondent Monahan stated, “Just forget it,” or words to that effect, because he was frustrated. Bell asked for their shield numbers and they provided them. Respondent Monahan described Bell as very agitated, yelling and “being very racist.” As he and his partner were walking toward their vehicle, Bell seemed to be “emboldened” by the fact that they were leaving. Bell stated, “I’ll see you in mediation.”

Respondent Monahan asserted that Bell must at that point have turned off his cell phone because Bell then began a “profanity-laced rant” yelling “profanities in a... nonsensical way” that is not heard on the recording in evidence (CCRBX 4). Respondent Monahan asserted that Bell was screaming so loudly that when he reached his vehicle, which was parked 20 feet away from Bell, he could still hear Bell clearly. When Respondent Monahan turned around to look at Bell, he saw that bystanders were looking also so he told Bell, “Okay, you’ve had your say, let’s call it a night. Go inside.” Respondent Monahan testified that he repeated this admonition two or three times. Since Bell continued his “nonsensical rant,” he told him, “Okay, stay where you are. I’m going to hand you a summons.”

Respondent Monahan testified that his intent was to issue Bell a summons for Disorderly Conduct because Bell was being loud and boisterous and causing unnecessary noise when there were people to his left and right watching the scene play out for no reason and there were at least two women there. Respondent Monahan stated that he did not think that it was fair that these two women had to hear that language. Respondent



Monahan stated that the language that Bell used is used quite frequently but he decided to issue a summons for Disorderly Conduct because the women had heard it.

After Respondent Monahan told Bell to stay where he was because he was going to get a summons, Bell replied, "Naw, son, no summons." When Respondent Monahan started to walk toward Bell, Bell turned around and entered the building. The officers entered the building and followed Bell up a stairwell. As they were going up the stairs, Respondent Monahan called to Bell, "Stop, come back. Stop, where you are, stop prolonging this." Bell did not comply with his instructions. When Bell reached the second floor and started knocking on an apartment door, the officers and Bell engaged in a conversation. Bell wanted to know why he was being stopped. Respondent Monahan told him, "You're stopped for disorderly conduct," and explained that it was based on Bell's rant outside. As Respondent Monahan's partner put his hands on Bell's back and guided Bell towards them, Murphy opened the door and asked "What's going on with my brothers?" Bell then wiggled out of his jacket and Respondent Monahan's partner was left holding Bell's jacket as Bell entered the apartment. Respondent asked Bell to come back and explained to Murphy what was going on. As Respondent Monahan tried to hand the summons to Bell, Murphy blocked his action with his hands. Respondent Monahan ordered Murphy to move out of the way. Murphy refused. Respondent Monahan stated that none of this was on Bells' video recording which begins as Respondent Monahan steps over the threshold of the door and states, "Let's not escalate this. Let's just come outside and get your summons." Respondent Monahan testified that he believed that he had a legal right to enter the apartment at that point in time because Bell had been in their custody and had slipped out of their custody. Respondent

Monahan explained that he essentially treated Bell as a kind of escaped prisoner because he had stopped Bell for a summons which Respondent Monahan had not finished issuing to him.

Respondent Monahan called for additional units to respond because he and his partner were out numbered. When Respondent Shea arrived on the scene, Respondent Monahan informed him as to what was going on and what police action he had wanted to take regarding issuing the summons to Bell. Respondent Monahan also explained that since Murphy had spent so much time obstructing him, he wanted to place both Bell and Murphy under arrest. When Respondent Shea heard his explanation, he agreed with Respondent Monahan. They went in and placed both individuals under arrest. Bell was charged with disorderly conduct, obstruction and resisting arrest, and Murphy was charged with obstruction and resisting arrest. Respondent Monahan was informed that the arrests would not be prosecuted. Respondent Monahan testified that he disagreed with the dismissal of the charges.

On cross-examination, Respondent Monahan agreed that the two women sitting on the bench did not complain to him about Bell's language, that no large crowd had formed, and that no one called 911. Respondent Monahan agreed that both Bell and Murphy told him that he could not enter their home and that he did not have an arrest warrant.



Respondent Shea

Respondent Shea, a ten-year member of the Department who presently holds the rank of lieutenant and is assigned to Midtown South Precinct, was a sergeant on December 12, 2011, assigned to PSA 2. When Respondent Shea arrived in front of Apartment [REDACTED] he saw Respondent Monahan and his partner standing in the door frame holding the door open. Respondent Shea described the yelling as "fairly chaotic" with a lot of shouting. Respondent Shea asked Respondent Monahan what was going on. Respondent Monahan explained to Respondent Shea that there was a male inside the apartment who had been disorderly in front of the building, that Respondent Monahan had followed the male into the building and had stopped in the hallway, but that he had twisted out of his jacket and fled into Apartment [REDACTED]

Based on what Respondent Shea was told, he believed that they had a legal right to enter the apartment. Respondent Shea then called out to the person who Respondent Monahan had identified as being disorderly and asked him to come out of the apartment. Bell refused. Bell was asked a second time and Bell again refused. At that point, Respondent Shea determined that he was going to take Bell into custody. Respondent Shea then told Respondent Monahan and the other officers present to proceed into the apartment, which they did.

As Respondent Shea and the officers entered the apartment, individuals that were blocking the doorway area were asked to move out of the way. One man who was holding his hand up against the wall continued to block Respondent Shea and the other officers. Respondent Shea asked the man to put his hand down. He refused. Respondent Shea then told the man that he would be subject to an arrest if he did not put his hand

down. When the man still did not put his hand down, Respondent Shea took the individual's arm and pushed it down. Respondent Shea then passed the man whose name he later learned was Murphy, back to an officer who was behind him. Bell and Murphy were arrested and removed from the apartment.

On cross-examination, Respondent Shea testified that Murphy had personally blocked him by stepping in front of him, raising his arm, placing his hand against the wall and obstructing Respondent Shea's path. Respondent Shea asked Murphy to take his arm down so that he could pass but Murphy refused. Respondent Shea then told Murphy that he would be subject to arrest if he did not move his arm. When Murphy still did not move his arm, Respondent Shea put one of his hands on Murphy's wrist and his other hand on Murphy's shoulder and pushed Murphy's hand down towards his hip. Respondent Shea then passed Murphy behind him. Respondent Shea reiterated that he had made the decision to arrest Murphy for Obstruction of Governmental Administration.

### FINDINGS AND ANALYSIS

#### Disciplinary Case No. 2013-9539

#### Specification No. 1

It is charged that Respondent Monahan engaged in conduct prejudicial to the good order, efficiency or discipline of the Department by entering Apartment [REDACTED] without sufficient legal authority to do so. I find Respondent Monahan Guilty based solely on his own testimony regarding the facts he relied on in determining that Bell had committed the offense of Disorderly Conduct.



Respondent Monahan does not dispute that he entered Apartment [REDACTED] even though he did not possess an arrest warrant and even though he knew that he had not received consent to enter because both Bell and Murphy had told him that he was not permitted to enter. Respondent Monahan asserted that he was, nonetheless, justified in entering the apartment to serve Bell with a summons for Disorderly Conduct because he had a sufficient legal basis to charge Bell with having engaged in Disorderly Conduct.

Respondent Monahan asserted that after Bell stated "see you at mediation" and turned off his cell phone camera, even though Respondent Monahan and his partner were walking away, Bell began to "rant" at them by calling them "faggots," using "the f word," and saying "suck my dick." Respondent Monahan asserted that two women who were within earshot "looked" over at Bell and that because Bell was being "loud and boisterous" and "causing unnecessary noise" and "mak[ing] a scene," and because Respondent Monahan felt that it was not "fair" to these two women that they "had to hear that language," he decided to serve Bell with a summons for having engaged in Disorderly Conduct.

The wording of Penal Law Section 240.20 does not support Respondent Monahan's position that he had a sufficient legal basis to charge Bell with this offense. To be found guilty of violating any subdivision of Penal Law Section 240.20, a person must either intend to cause public inconvenience, annoyance or alarm, or recklessly create a risk of public inconvenience, annoyance or alarm.

Since Respondent Monahan did not sufficiently establish during his testimony that Bell had intentionally caused any public inconvenience, annoyance or alarm, or that Bell had recklessly created a risk of public inconvenience, annoyance or alarm,

Respondent Monahan did not articulate a sufficient factual basis to justify his action of charging Bell with Disorderly Conduct.

Since Respondent Monahan did not have sufficient legal authority to charge Bell with having violated Penal Law Section 240.20, Respondent Monahan's action of entering the apartment solely for the purpose of serving Bell with a summons for Disorderly Conduct was improper.

Respondent Monahan is found Guilty of Specification No. 1.

Specification No. 2

It is charged that Respondent Monahan abused his authority by arresting Murphy without sufficient legal authority. I find Respondent Monahan Not Guilty because I credit Respondent Shea's testimony that he, not Respondent Monahan, made the decision to arrest Murphy for Obstruction of Governmental Administration.

Respondent Shea's testimony that Murphy had blocked his forward movement by stepping in front of him, raising his arm, and placing his hand against the wall, thereby blocking Respondent Shea's path, is supported in part by Murphy's own testimony that when the backup officers entered the apartment he was told to move out of the way but that he remained where he had been standing; he raised his hands in the air; and he did not move out of their way. Also, Respondent Shea's testimony that he ordered that Murphy be arrested is supported by Murphy's testimony that as the backup officers were entering the apartment he heard one of them say, "Arrest him too." The authoritative direction described by Murphy is consistent with an order being issued by a sergeant to a police officer.



Although Respondent Monahan testified that when he was speaking to Respondent Shea in the hallway he recommended to Respondent Shea that a man who had blocked his access to Bell be arrested, I credit Respondent Shea's testimony that he decided to arrest Murphy and "passed" Murphy behind him to other officers after Murphy refused to comply with his order that Murphy put his arm down.

Having been ordered by a supervisor to arrest Murphy, Respondent Monahan was required to comply with this order. Therefore, Respondent Monahan is found Not Guilty of Specification No. 2.

Disciplinary Case No. 2013-9538

It is charged that Respondent Shea engaged in conduct prejudicial to the good order, efficiency or discipline of the Department by entering Apartment [REDACTED] without sufficient legal authority to do so. I find Respondent Shea Not Guilty because based on what Respondent Shea personally observed when he arrived at the scene and based on what Respondent Monahan told him, Respondent Shea's decision to enter Apartment [REDACTED] did not constitute misconduct under the circumstances he was presented with here.

Respondent Shea's testimony that when he arrived outside the door to Apartment [REDACTED] the situation was "fairly chaotic" with civilians inside the apartment yelling at the officers was corroborated by Bell who agreed that the situation was confusing and that he was yelling loudly from inside the apartment. Respondent Shea's testimony that when he arrived officers were standing in the door frame holding the door open was corroborated by Murphy. As the ranking supervisor at the scene, Respondent Shea had the duty to take

control of this chaotic and potentially dangerous doorway threshold stand-off so that the situation would not get out of hand.

I credit Respondent Shea's testimony that Respondent Monahan told him that after Bell had engaged in Disorderly Conduct outside the building, Bell had fled into the building and then fled into Apartment [REDACTED]. Under the "fellow officer rule" Respondent Shea had the right to assume that the information conveyed to him by Respondent Monahan was reliable until proven otherwise<sup>1</sup> and based on Respondent Monahan's description of Bell's actions, Respondent Shea had good reason to believe that Respondent Monahan had been in hot pursuit of Bell.

Finally, it was Respondent Shea's responsibility to insure the safety of the officers under his supervision who were in the vulnerable position of being halfway inside and halfway outside the entrance door to an apartment containing an unknown number of people at least two of whom, Bell and Murphy, were upset with the officers. Since the only information that Respondent Shea possessed was Respondent Monahan's assertion that a male suspect had avoided being served with a summons by fleeing into the apartment, Respondent Shea's action of entering Apartment [REDACTED] did not constitute misconduct under these circumstances.

Respondent Shea is found Not Guilty.

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<sup>1</sup> See *People v. Doti*, 61 NY2d 408, 369 NYS2d 67 (1984). See also Case No. 2013-9627 (June 17, 2014) where a lieutenant who was charged with having stopped a vehicle without sufficient legal authority was found not guilty because he had authorized the stop by relying on a claim made by an officer he was supervising that the vehicle had excessively tinted windows; and Case No. 2007-82894 (March 15, 2010) where a sergeant who was charged with having stopped a civilian without sufficient legal authority was found not guilty because the sergeant, who was supervising a narcotics operation, had made the stop relying on a description that one of the officers he was supervising had provided.



PENALTY

In order to determine an appropriate penalty, Respondent Monahan's service record was examined. See *Matter of Pell v. Board of Education*, 34 NY 2d 222 (1974). Respondent Monahan was appointed to the Department on July 8, 2008. Information from his personnel record that was considered in making this penalty recommendation is contained in an attached confidential memorandum.

Respondent Monahan has been found Guilty of having engaged in conduct prejudicial to the good order, efficiency or discipline of the Department by entering an apartment without sufficient legal authority to do so. The Administrative Prosecutor recommended that Respondent Monahan forfeit 15 vacation days as a penalty.

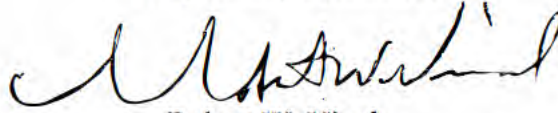
Since I have found that Respondent Monahan's action of entering the apartment to serve Bell with a summons for Disorderly Conduct was improper because Respondent Monahan did not have a sufficient factual basis to charge Bell with having committed Disorderly Conduct, for guidance in determining an appropriate penalty recommendation I have examined prior cases where members have been found Guilty of having improperly arrested a civilian for Disorderly Conduct.

In determining a penalty recommendation I have also taken into consideration that Respondent Monahan has no prior disciplinary record and consistently good performance evaluations.



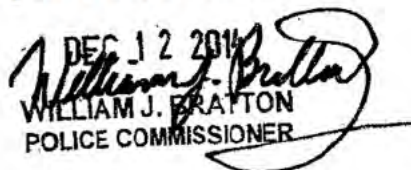
It is recommended that Respondent Monahan forfeit five vacation days.

Respectfully submitted,



Robert W. Vinal  
Assistant Deputy Commissioner Trials

**APPROVED**

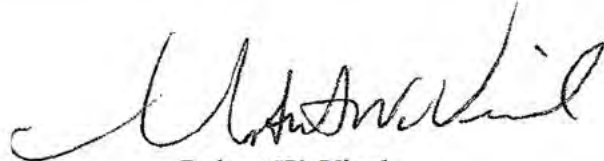
DEC 12 2014  
  
WILLIAM J. BRATTON  
POLICE COMMISSIONER

POLICE DEPARTMENT  
CITY OF NEW YORK

From: Assistant Deputy Commissioner - Trials  
To: Police Commissioner  
Subject: CONFIDENTIAL MEMORANDUM  
POLICE OFFICER MATTHEW MONAHAN  
TAX REGISTRY NO. 947263  
DISCIPLINARY CASE NO. 2013-9539

Respondent received an overall rating of 4.0 on his 2013 annual performance evaluation, 4.0 on his 2012 evaluation, and 3.5 on his 2011 evaluation. He has no medals. [REDACTED] He has no prior disciplinary record and he has no monitoring records.

For your consideration.



Robert W. Vinal  
Assistant Deputy Commissioner Trials