

APR 01 2016

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IN THE WASHINGTON COUNTY JUSTICE COURT

ST. GEORGE CITY,

Plaintiff

vs.

VARLO DAVENPORT

Defendant.

MOTION TO DISQUALIFY RON READ

Case No. 151700661

Judge Ronald L. Read

Pursuant to Rule 29 of the Utah Rules of Criminal Procedure, and the Certificate of Good Faith, and Affidavit filed herewith,¹ Davenport requests the Court recuse itself from this case based on the submission of documentation to the Court by Assistant Utah Attorney General Michael Carter without notice or the opportunity to respond being provided to the defense and based upon substantive ex parte communications between the Court and Carter without notice or the opportunity to respond being given to the defense.

STATEMENT OF FACTS

1. On April 21, 2015 St. George City ("SGC") filed a criminal information against the defendant, Varlo Davenport, charging one count of simple assault against an acting student stemming from events on November 21, 2014, when Davenport was employed at Dixie State University ("DSU") as an acting professor. (*See Information, on file*).

¹ The Certificate of Good Faith and Affidavit in Support are attached separately.

2. On May 6, 2015, Davenport filed a Notice of Intent to issue a subpoena to Biff Williams, president of Dixie State University (“DSU”). The subpoena sought information regarding Davenport’s employment for a five-year period, including information coming in via the University’s whistleblower hotline, law enforcement reports, and all other emails, recordings, or correspondence pertaining to Davenport. (See Subpoena Duces Tecum to Richard ‘Biff’ Williams, on file).

3. On May 21, 2015, Michael Carter, Assistant Utah Attorney General, on behalf of DSU, filed an objection to the subpoena arguing that it was too broad as it encompassed matters not relevant to the criminal proceeding. (See Objection to Subpoena Duces Tecum, on file).

4. On June 19, 2015, Davenport filed a written reply informing the Court that he was able to ascertain, from documentation received in discovery from the prosecution, that numerous additional relevant documents pertaining to the investigation were in the possession of DSU, including emails that had the metadata redacted. Specifically Davenport provided the Court the following information:

- a. That the entirety of the criminal investigation was conducted by DSU Chief of Police Don Reid. (See Reply to Objection to Subpoena and Request for Hearing at ¶ 1, on file).
- b. That Reid knew the student/alleged victim had initiated a lawsuit against DSU and so informed a fellow officer in a recording left on after interviewing the student and her parents on December 5, 2014. (See Reply to Objection to Subpoena and Request for Hearing at ¶ 2).
- c. That Reid gave the student/alleged victim and her parents the option of either having Davenport fired, or having criminal charges brought against him. If they wanted him to initiate criminal charges, they would need to **send him an email** containing certain details he suggested would make it more enticing for presentation to a prosecutor. (See Reply to Objection to Subpoena and Request for Hearing at ¶ 4). Davenport was terminated later that afternoon. (See Reply to Objection to Subpoena and Request for Hearing at ¶ 9).
- d. That DSU president Richard ‘Biff’ Williams was taking heat in the local press for the termination of Davenport, and “informed *The Daily Spectrum* that ‘local law enforcement’ was investigating Defendant. . . . However, the only law enforcement investigating Defendant was Don Reid, chief of Police at Dixie State, and direct

subordinate of Biff Williams.”² (See Reply to Objection to Subpoena and Request for Hearing at ¶¶ 14-15).

- e. “On March 6, 2015, a criminal file was opened with Dixie State’s Campus Police for the first time in Spillman regarding the alleged assault. There is no indication that the file was opened at the request of Sorensen. It is believed the file was opened at the request of Biff Williams as political cover for the termination of Davenport. **The Spillman entry contains no evidence that Sorensen emailed Reid**, as per his request on December 5, 2014, if she wished to pursue criminal charges.” (See Reply to Objection to Subpoena and Request for Hearing at ¶ 16) (emphasis added).
- f. “**At some unknown time, emails were sent to Reid from Sorensen and her mother containing the information Reid requested** they provide to make the case more palatable for a prosecutor to file. **The metadata has been removed from the emails**, apparently by Reid, making it impossible to know when the emails were received. It is believed these emails came at the request of Reid to provide cover for the fact it was President Williams who was pushing for the criminal charges to be brought to provide the political cover he needed from the firing of Defendant.” (See Reply to Objection to Subpoena and Request for Hearing at ¶ 17) (emphasis added).
- g. “**It was apparent that Reid had not provided Cosson³ even a fraction of the documentation he had in his possession.** On April 30, 2015, Cosson’s assistant asked

² DSU actually informed the Court there were other numerous conversations and documents regarding Reid’s investigation and whether to file criminal charges via an October 20, 2015, Affidavit of Don Reid, containing the following:

On or about March 2, 2015, at 19:30 hours, **I received a call from Dixie State university President, Richard Williams. President Williams advised that he had just spoken to Mr. Shaw**, to advise that Mr. Davenport had been terminated ..., **President Williams went on to relate Mr. Shaw's dissatisfaction that I had not initiated criminal proceedings** and asked me for an explanation ... I told President Williams that I had not received a witness statement from Ms. Sorensen, and that without her cooperation, the effort would be pointless. **President Williams asked that I call Mr. Shaw ... I immediately called Mr. Shaw.** Upon Mr. Shaw answering my call and introducing myself, he began to question my failure to act ... I asked him to recall that he left my office expressing to me that they ‘would think about it, and let me know.’ I advised that I had not proceeded because I had not received the necessary Witness Statement, or heard further from him what they wanted me to do so ... Upon some reflection, he acknowledged his misunderstanding ... **The next morning, March, 3, 2015, I received Ms. Sorensen's Witness Statement.** I immediately contacted Mr. Belknap [sic] at the Washington county Attorney’s Office to tell him what I had, and ask [sic] if he wanted to pursue it. He did. Later that same day, **I met with President Williams and other administrators at Dixie State University to request documents I needed in my criminal investigation.**

(See Affidavit of Donald C. Reid of October 20, 2015, attached as Exhibit 1) (emphasis and ellipses added).

Reid “to send us everything involving the criminal case. That is any and all Recordings and documents related to this criminal case. If there is something you do not want to send, Robert needs to see it and OK you not sending it.” (See Reply to Objection to Subpoena and Request for Hearing at ¶ 23) (emphasis added).

- h. “Reid responded to this email by writing, “I know how burdensome this must have been for you guys. When we notified the President’s Office that the County Attorney’s Office had recommended that we submit a complaint **request he directed his Executive Staff to sent [sic] any and all information to our office. The result was that I received packets and boxes full of information from the Dean of Student’s Office, the Human Resource Office, the President’s Office, the Faculty Senate Office, and the Theater Department, (Chair and Dean).** So I know how you must feel.” (See Reply to Objection to Subpoena and Request for Hearing at ¶ 24) (emphasis in original).
- i. “However, none of “packets and boxes full of information” sent to Reid in conducting his investigation have ever been provided to Cosson or to Defendant.” (See Reply to Objection to Subpoena and Request for Hearing at ¶ 25).

5. On August 6, 2015, the Court took oral argument on the subpoena indicating that an order would issue in seven days, requesting Prisbrey submit the emails referred to in the filings which were exchanged between the SGC prosecutor’s staff and DSU chief Don Reid. (See Minute Entry, on file).

6. On August 7, 2015, the emails referred to were submitted to the court clerk and marked “PRIVATE” by the clerk. (See minute entry on file attached hereto as Exhibit 2).

7. On February 10, 2016, minutes prior to the scheduled pretrial conference, the judge signed and emailed/faxed an order substantially limiting the subpoena to DSU, SGC, and Davenport’s attorney. (See Minute Entry, on file). The order modified the subpoena as follows:

1. DSU to provide to the Defendant’s Counsel **any information from the Silent Whistleblower Hotline** pertaining to the Defendant **that is related in any way** to the events occurring on or about November 21, 2014; and

³ At this point, Davenport had no knowledge that Michael Carter had purportedly delivered the entirety of Don Reid’s investigatory file to Cosson, and that Cosson took from Reid’s file what he deemed to be “relevant” and then sent the rest of the file back to Reid. It was in response to Davenport’s motion to compel compliance with the subpoena, that DSU revealed it had provided Reid’s file to the City prosecutor and thereafter Cosson had apparently reviewed the entire file and returned to DSU what he deemed to be “irrelevant.” The fact of the matter remains that neither the court nor Davenport have any idea of whether Carter delivered everything DSU had in his possession to Cosson, as neither the court or defense counsel has ever been given access to the information provided to Cosson, nor what was sent back to DSU, nor any kind of an index as to what was delivered and sent back.

2. DSU to provide to Defendant's Counsel **any tapes, recordings, or notes from witness interviews** pertaining to the Defendant **that are related in any way to the events occurring on or about November 21, 2014.**

(See Order, Feb. 10, 2016, attached as Exhibit 3) (emphasis added).

8. Having just received the order upon walking into the pretrial hearing on February 10, 2016, the undersigned requested the opportunity to address the scope of the Court's order. The Court indicated it would hear objections when Mr. Carter was available, Carter was not present. (See Minute Entry, on file).

9. The parties subsequently agreed to a hearing date of February 18, 2016. On that date Carter, the undersigned, Defendant, and Joseph Hood for SGC were present and the Court took oral argument to address the limited nature of the order. (Transcript of Feb. 18, 2016, Hearing, at 1, attached as Exhibit 4)⁴

10. The undersigned argued that the order was drafted so narrowly, under paragraph 2 that Davenport would not be able to obtain the complete investigatory file of Chief of Police Don Reid as the Order limited production to only "any tapes, recordings, or notes from witness interviews" The undersigned reiterated that there were numerous documents that are referred to which had not been provided:

... **[W]e don't have any of the e-mail correspondence from Don Reid.** I had indicated in documentation metadata was removed. We don't have -- I don't know -- there was e-mail correspondence. **Mr. Reid indicates in various places in his report that he was having e-mail correspondence with Del Beatty, also, I think, with Mr. Houser. We don't have any of that, as part of the investigatory file.** And the reason I'd indicated that **the metadata was removed from the e-mail** with the alleged victim and the parents is because we got statements from -- the parents and Ms. Sorensen live somewhere up north, I want to say in the Murray area.

And that information would have come from Reid via e-mail. And as I looked at it, it might be an attachment, but there's no dates. There's an affidavit from Mr. Reid that says, "I hadn't removed any metadata. I wouldn't know how to do that." Well, that stuff came to him by e-mail. I haven't -- I've gotten none of those e-mails. What was requested, how it was requested, the information he sought, why it came about three months after the fact, I don't have any of those e-mails. . . . I'm entitled to that information. **But the order's so narrowly drafted I don't think it's saying that I get**

⁴ This transcript is unofficial, however, the Audio CD of this February 18, 2016, hearing is also attached to this motion as Exhibit 5.

the e-mails or anything else, as part of his investigation. (See Transcript of Feb. 18, 2016, Hearing, at 3).

I don't have any e-mails from Don Reid pertaining to any of the conversations he's having with the people that are providing information to him. And that's why I was so concerned with the court's order, because you said I could get notes and interviews, but nothing about the emails that are going back and forth. (See Transcript of Feb. 18, 2016, Hearing, at 4-5) (emphasis added).

11. The undersigned further informed the Court that the limiting language of the order precluded production of numerous other communications Reid had regarding the filing of charges against Davenport, which the undersigned was aware of only via affidavit Reid had filed in this case. Specifically, the undersigned stated:

And on page 2 of his affidavit, he says, "On or about March 2, 2015, at 1930 hours," and this is information that exists nowhere within any of the reports that we've received. "On or about March 2, 2015, at 1930 hours," he's very specific there, **"I received a call from Dixie State University President Richard Williams. President Williams advised that he had just spoken to Mr. Shaw,"** that is the step-father of Ms. Sorenson, "to advise that Mr. Davenport had been terminated. **President Williams went on to relate Mr. Shaw's dissatisfaction that I had not initiated criminal proceedings and asked me for an explanation.**" And then thereafter, there is a **conversation that took place between President Williams and Don Reid and the fact that he called Mr. Shaw.**

And then into paragraph 16, next paragraph, the next page, **"The next morning, I received Ms. Sorensen's witness statement. I immediately contacted Mr. Belt."** I think it's supposed to say Belnap. "And then later that day, I met with President Williams and other administrators at Dixie University to request documents I needed in my criminal investigation." **So we have information here is what he's doing on his criminal investigation, and we haven't received that.** I have not received it, but for the fact we have this affidavit. I don't know the conversation takes place. I don't know how it is it's decided they're going to file the charges. That has all been withheld.
(9:32)

Here's some of the additional information that we didn't receive from the investigatory file: This is -- this came in in discovery pertaining to -- that was sent over to Brock Belnap from Mr. Reid. He says, **"I have talked again with the father of Cassidy, Jeremy Shaw, as late as 1630 hours this date. He's committed to pursuing criminal charges against Mr. Davenport. I have talked with the department chair, division dean, the dean of students and the university president, all of whom state that the action taken..."** Anyway, that's part of the investigation, is not only does he have

written documentation, but he's talked to the department chair, division dean, the dean of students, university president. And that's the information that he submitted as part of his request that criminal charges be filed against Mr. Davenport.

In reference . . . [] . . . in a case follow up report to Jerry Jaeger, the president's office and administration is open and cooperative. **I've obtained a mountain of information from the reigning human resource office, the theatre department, division dean, the vice president of academics and the president's office. And that's the information that we have not seen, the mountains of evidence. Then there is an indication in the same correspondence, he's saying that Mr. Jaeger asked him that he prosecute this case. He's having communications with the administration. . . .** (See Transcript, Feb. 18, 2016, Hearing, at 3-4) (emphasis added).

12. In response the Court expanded the order to include emails, metadata and correspondence:

What I don't want Mr. Prisbrey not to get is information that may have gone back that would include into this whistle blower hotline stuff pertaining to the events. I don't see it going back. I see it still being in Mr. Cosson's file. But in the event that some did, that needs to be disclosed. (24:46)

And tapes, recordings, notes, **and I'm going to expand that to include e-mails or correspondence pertaining to the defendant, that are related in any way to the events occurring on or about November 21st, 2014.** I do believe that there may be portions of the faculty or administrative process that may have included that. That was probably provided -- and again, I'm just guessing, provided to Mr. Cosson, he sent it back as not -- irrelevant. If you need it -- I want you to go back through it. If there is something relevant in any of that stuff that's been returned, I want it produced. **If you have an issue with it and you want me to look at it in-camera before it's given to Mr. Prisbrey, I don't have any objection.**

(See Transcript, Feb. 18, 2016, Hearing, at 8) (emphasis added).

13. Carter requested the Court conduct an in camera review to determine if the information to be produced related to the criminal or the civil matter, to which the court replied: "If I expand the order to e-mails and correspondence, we are at a jury trial, so on a -- in looking at something in-camera, I'm not concerned with me looking at it prior to and making a determination is that -- on that, **as long as the parties are okay with that.**" (Transcript, Feb. 18, 2016, Hearing, at 10) (emphasis added).

14. Carter responded, “How is -- **how is that to be done?** Do you want me to just deliver it to you? I want to make sure that I’m not doing anything . . . that would take -- that Mr. Prisbrey would take offense at. (Transcript, Feb. 18, 2016, Hearing, at 10) (emphasis added).

15. The undersigned indicated that as long as the information delivered to the judge was indexed so Davenport was at least aware of what the judge was going to review, he would not object to the in camera review. The undersigned stated: “Can we -- can we get some type of -- this is the frustration. We were never made aware that any of this information existed. **There’s never been a privilege log. There’s never been anything indicating what even exists. So if he delivers it to you, without waiving whatever privilege it is or whatever he’s claiming that you -- that we can’t see, because it’s part of this administrative proceeding, he ought to at least identify the nature of what it is that he has.**” (Transcript, Feb. 18, 2016, Hearing, at 10) (emphasis added).

16. The judge indicated that the information submitted by DSU should be identified stating, “Well, and Mr. Carter, **I would assume that in delivering information to me, you would give me a cover letter, or however you want to do it, with attached are these things and leave out.** And you know, if it’s a recording from this date and time, an email from this date and time, could you put that type of a list together, in submitting it to the court?” To which Carter replies “Yes” (Transcript, Feb. 18, 2016, Hearing, at 11) (emphasis added).

17. In spite of the fact the undersigned had referenced numerous email communications between Reid and the DSU administration, Sorensen, and her parents, and that Michael Carter himself had submitted the affidavit of Don Reid identifying documents Reid had received as part of his investigation, Carter, apparently determined that only two documents were responsive to the subpoena: a two-page email from Mark Houser to Richard Williams of February 23, 2015, and an incident report from an anonymous “Whistle-Blower” “caller” of May 6, 2015. (See Mem. in Opposition to Def.’s Mot. to Find Dr. Richard ‘Biff’ Williams in Contempt of Court,” at 4, attached as Exhibit 6).

18. Rather than index those documents and provide the undersigned a copy of the index as to what was to be submitted to the court as discussed in open court, Carter, apparently on February 25th, at or about 4:00 p.m. personally hand-delivered those two documents to the court clerk. (See Mem. in Opposition to Def.’s Mot. to Find Dr. Richard ‘Biff’ Williams in Contempt of Court,” at 4).⁵

19. There is no docketing that these records were ever received by the clerk, what was received, who received it, who delivered it, why no index was submitted, or why they were submitted

⁵ The undersigned was never made aware that ex parte communications between Carter and Read had taken place until receiving this motion on or about March 18, 2016.

without the undersigned being informed of the nature of the submission (*See* Absence of Record of Receipt in the Court Docket).

20. Three days later, again without notice to the undersigned, Carter appeared before the Court to discuss the five pages of documents he had hand delivered to the court clerk.⁶ (*See* Absence of Record Scheduling a Meeting Between Carter and the Court).⁷

21. What ensued in that 3:27 minute ex parte communication between Judge Read and Carter reveals Carter making substantive argument that by producing the five pages of documents he was in compliance with the Court's order, and arguing that the documents should not be produced to Prisbrey because of the date on the documents. The recording also reveals that Judge Read abandoned any role as neutral and detached magistrate by asking Carter if he would like the court to "blackout" the email address of the whistleblower, which would make it impossible for Davenport to know who had submitted the information to DSU.⁸

JR: Mr. Carter, how are you?

MC: Doing well, thank you.

JR: Come on up.

Court Clerk: Do you want me to scoot over?

JR: Nope. He gets to go to the other side. What could I help you with today?

MC: Well, **I dropped off those documents and didn't know what your pleasure** was in terms of --

JR: I'm just going to make -- **the one question I had for you is that came in on the whistle blower line?**

MC: Was what?

JR: **Did that come in on the whistle blower?**

MC: The one did referred to, [] its but it came in on [] --

JR: **Yeah. Well, and the -- and the guy's e-mail's on there.** I just didn't --

MC: **I didn't notice that.** But I thought it [] --

JR: So I'm --

MC: -- [] **the fact it was irrelevant.** But it did refer to the incident, so I get it to you as referred to [] --

JR: Well, and to me, when I look at that, because of that, **if they didn't know he was in there as a witness, that's the only thing I want it --**

⁶ It is obvious that Carter intended to have ex parte communications with Read having personally delivered the documents to the court on the 25th, then sitting in court on the 29th until Read was available to speak to him.

⁷ See also the transcript of the February 29, 2016, hearing where the ex parte discussion between the Court and Carter takes place, where it is obvious that Mr. Prisbrey was not aware of the meeting.

⁸ JR refers to Judge Read, and MC refers to Michael Carter.

MC: We don't even know who it is.

JR: Don't ya.

MC: We tried to follow it up, its still anonymous as far --

JR: So they -- well, on the report, on the incident report, the very top line, it starts like a "rwhiplerr" something. Is that who it was to, or is that his e-mail?

MC: I --

JR: And is it just -- I can't remember if it's the whole thing or just that short thing --

MC: -- it comes in through the internal monitors. The whole whistleblower thing is intended to be--

JR: Anonymous, uh-huh.

MC: a financial thing and it's intended to be anonymous.

JR: See, that's why I did -- I haven't -- Tia was out last week, so I didn't do anything with it. And I was going to deal with it this afternoon, once I get done. And --

MC: I was just in town and so --

JR: That's -- because I had that one thing on there, I didn't know whether I was going to black that out, if it was directed to who the person is that submitted it, so it stayed anonymous.

MC: I was told that it was anonymous, I didn't really read that with the idea --

JR: Okay.

MC: of anything wasn't [] --

JR: Okay. Um --

MC: My feeling was is that it was anonymous, that they said they tried to follow it back --

JR: And couldn't get to the person?

MC: [].

JR: Okay. Well, then it -- it'll be -- it'll be safe to do it. So I -- my intent will be just to disclose those two sheets you gave me.

MC: Okay. But the other thing is I gave you. Mr. [] --

JR: The only one?

MC: -- Mr. Prsbrey [] -- wanted dates and copies of the e-mails. I have not [] --

JR: Okay.

MC: -- unless there, so we can [] -- dates and times and come up with that. I was trying to maybe [] --

JR: Yeah.

MC: -- and I wanted to make sure and look at [] --

JR: Well, and then the last thing that you want me to produce it to --

MC: I didn't --

JR: -- Aaron --

MC: -- make any copies. That's why --

JR: Okay. So I --

MC: -- I made --
 JR: I'll produce a copy, and I'll give you the original back.
 MC: Okay.
 JR: **And that's the only question I really had for you is: Black that out or submit it? All right.**
 MC: **I'd ask you to black it out, please.**
 JR: **I will. Just in the event that it is somebody that's --**
 MC: **Yeah.**
 JR: **Okay.**
 MC: Yeah.
 JR: Sounds good. Thank you.
 MC: Thank you. Yeah. I'd like -- well, and then you'll just let me know how to pick it up?
 JR: Yeah. I'll have Tia call you.
 MC: Okay.
 JR: I'll get that done probably today, though.
 MC: Thank you.
 JR: All right. Thank you.

(See Transcript, February 29, 2016, Discussion, attached as Exhibit 7) (emphasis added).⁹

22. As the delivery of the five pages of documentation to the Court and the meeting between Carter and the Court had been secreted from Prisbrey, and where Richard Williams was required to comply with the Subpoena by February 26, the undersigned filed a motion to find Richard 'Biff' Williams in contempt for failure to comply with the Court's order on March 3, 2016). (See Mot. to Find Dr. Richard "Biff" Williams in Contempt of Court, on file).

23. On March 7, 2016, the undersigned received, with no explanation, what is believed to be a copy of the five pages of information Carter hand-delivered to Judge Read in an envelope from the "Washington County Justice Court." The first three pages of that information contain a "confidential memorandum" wherein an unidentified individual contacted DSU and stated:

I am a former student of DSU. I have information pertaining to the Davenport incident that is important to the college and the public. I am concerned about retaliation for coming forward with this.

The response from an unidentified individual with the Whistleblower site was:

⁹ The Audio CD of this February 29, 2016, ex parte discussion between Judge Read and Mr. Carter is attached to this motion as Exhibit 5.

Hi, well you can choose to bring forth this information through the silent whistleblower process and you can remain completely anonymous if you choose as I have no idea who you are etc. You may also contact either the Human Resources department or the Ombuds-department but at that time your identity may become known unless you did so via telephone. If it is anything pertinent to the case or situation then we ask that you please pass along any relevant information.

(See Five Pages of Documents and Mailing Envelope, attached as Exhibit 8) (emphasis added).

24. The five pages of documentation do not contain the native format emails which Prisbrey had informed the Court existed which were subject to the Court's order, nor does it contain the investigatory information from Reid's file, which were subject to the Court's order, or information pertaining to the civil lawsuit Sorensen has brought against DSU. Neither does the Whistleblower document refer to the email address of "rwhiplerr" referred to by the Court as to what was going to be redacted. (See Five Pages of Documents and Mailing Envelope).

25. The undersigned became aware of the fact that an ex parte conversation took place between Carter and the Court on or about March 18, when he received a copy of DSU's objection to Motion to find Biff Williams in contempt. That document contains the following admissions by DSU and Michael Carter. Carter states that the following events occurred on February 29, 2016:

Upon conclusion of the matter at hand, was called to the bench by Judge Read where he acknowledged receipt of the documents. **Discussion was held about redacting one aspect of the "Whistle-Blower" document.**

Asked Judge Read to take note of the actual dates of the documents, as from that standpoint, they were both well after the fact. **Judge Read indicated a disregard for the respective dates**, and proposed to provide the documents to Mr. Prisbrey.

Pointed out that the Houser e-mail may not be in native format as earlier requested by Mr. Prisbrey. **Judge Read also indicated a disregard for that absence.**

Advised Judge Read that these were my only copies, as back-up copies were not made in the interest of producing them to the court before the February 26, 2016, deadline. Judge Read advised that he would have copies made for Mr. Prisbrey, and asked me to come back later to retrieve the provided copies.

All documents related to "November 21" or the "event" or "incident" of that date were provided to the court in compliance with its Orders prior to the production deadline of February 26, 2016.

(See Mem. in Opposition to Def.'s Mot. to Find Dr. Richard 'Biff' Williams in Contempt of Court, at 5, ¶¶ 7-8) (emphasis added).

26. On March 21, two days before the scheduled jury trial, the Court heard argument regarding Davenport's motion to find Richard Williams in contempt for having failed to turn over the

emails and correspondence. At that hearing, assuming that the assertions by Carter that he and the Court had ex parte communications in the form of "Discussion . . . held about redacting one aspect of the 'Whistle-Blower' document,," and that Carter had apparently argued the Court should not turn over the documents asking, "Judge Read to take note of the actual dates of the documents," the undersigned requested the Court recuse itself because of the nature of the ex parte communication. Mr. Carter responded as follows:

We held that hearing on February 18, at 8:45, at your direction. It was my understanding that, in addition to the order that had already been issued, that specified certain things-- that I was to look through that file and locate any documents that made specific reference to the date of November 21, or the event involving Mr. Davenport and bring them to the court for in camera evaluation. I encountered several documents that I thought met the court's specifications on that date and went and met with Mr. Cosson and had him review what I had identified to determine whether or not they had already been produced in the original discovery interaction. []The outcome of that was that there were two such documents that met the specifications of your directive. One was a whistleblower account and one was another email from Mr. Hauser to President Williams two months after the fact that had to do with grading and her participation in class. Leaving Mr. Cosson's office, I came and gave those to the clerk. As I indicated, it was around 4:00 in the afternoon and I got here, evidently just prior to your departure.

So with some concern for where that was at with you, I came back and to the best of my recollection it was the following Monday, it might have been Tuesday, and I came into court and as you were holding court sat in the audience expecting to wait until after simply to try and confirm that you had received those documents. You and I will both recall that you called me to the bench to address that. We discussed that you had received the documents. **We discussed a concern that you had presented to me.** I said I was [] presenting them [] because there were preferences and that **I was concerned about their relevance given the dates that appeared on those documents.** My recollection one date was in February and the other one was in late- as late June after the fact. **It was your position that you were not concerned about the dates that you were going to go ahead and give those to Mr. Prisbrey** consistent with what we had discussed in court. **There was a brief discussion about-- a-- blocking out one aspect and we concurred on that.** Again my point was to make sure you had received them as directed. I offered to take them to Mr. Prisbrey at which point you told me that your people would take care of that.

It was my belief under those circumstances that consistent with the order you issued in writing and [] from the bench that I had undertaken to provide to Mr. Prisbrey everything that was relevant to the criminal allegation and that the date and circumstances in question. it seems to me that you were quite clear about excluding anything that had to

deal with the administrative dealings subsequent to this matter with Mr. Davenport other than those things that had already been provided as confirmed by Mr. Cosson. To my understanding, unless the court would offer further clarification here, I have complied with your direction and have I provided those documents that have any relevance to the date or the event that is associated with the criminal charges at issue before this court

The allegations regarding grading are administrative and they are expressly excluded by your order, both in writing and from the bench. And so I object to those being made an issue. Grading is the duty and province of the university [] step aside from those issues. When they weren't in any way at issue, which in fact they were not here, so I object to that issue as basically being irrelevant. And I have taken that position as well [] I have nothing further...

One more thing. Beg your pardon Aaron, I would ask you both to recall when you were addressing me from the bench about this in camera review, that I specifically addressed the question of concern about ex parte communication that would be involved in this. It was my impression walking away that that had been mentioned and that the interchange would be something to the effect that it actually was, that there was no inappropriate ex parte communication and that that was mentioned in court on that date before any of this ever happened. And I understood that that was not to be a matter of concern just by the nature of what was being contemplated. So I would register my objection to Mr. Prisbrey's assertion that somehow I, or you, or both of us have done anything in any way unethical under these circumstances.

(See Audio CD of March 21, 2016, Hearing, at 9:30 to 16:02, attached as Exhibit 9).

27. The Court, however, recited a somewhat different version of what took place:

Let me tell you here. Mr. Prisbrey with the issues you raise regarding recusal, and if anybody else wants any input on it, with that being the nature, **honestly I didn't see what me and Mr. Carter discussed any different than what we had discussed before. There was no redaction that took place.** There was two documents. **My recollection of the discussions were simply that these are all they had that met the requirements that it was an email and a whistleblower document** and just delivery of the documents to you, I think I had them already em for four days my clerk was out two of those days and over the weekend so I hadn't delivered them to you yet.

And that there was the, I don't think we used the term ex parte at the previous hearing, but I think we did discuss that Mr. Carter was going to be delivering those to my office for me to review in camera to see if there was anything to be redacted. And thought **my inquiry to Mr. Carter that day, when he approached the bench was simply whether**

it had--anything had been redacted on the two documents or if I still needed to look at that. Cuz, in looking at them I couldn't see any portion of them where there had been anything that would have been a redaction, but I think Mr. Carter just simply told me that they were complete and nothing had been redacted yet, but we have got that recusal issue, just--I may have to go back and look at one or two of the judicial canons...

(See Audio CD of March 21, 2016, Hearing, at 19:50 to 22:28) (emphasis added).

26. After having heard the Court's version of what took place in the ex parte conversation, Carter then argued that there were never any substantive communications that took place:

I don't believe the nature of our conversation was, in the word, substantive, the way Mr. Prisbrey is arguing. I came here only to affirm the receipt. You asked me a question, I answered. I pointed out the dates. You said that's not important. I then left. I suppose I had a great degree of argument [] ... to construe anything that we did as substantive in that nature, I would entirely disagree. The nature was--it was transactional...

(See Audio CD of March 21, 2016, Hearing, at 23:20 to 24:15).

POINTS & AUTHORITIES

The Court's communications with Carter reveals a relationship of collaboration, not that of a neutral detached magistrate. Listening to the audio of the Court and Carter casually discuss redacting the identity of the whistleblower's email, the undersigned is struck by the familiarity of the two. In this ex parte substantive communication, the two appear oblivious to the fact this communication violates the judicial canons and the rules of professional conduct. Indeed, the two appear bound and determined to assist St. George City in obtaining a conviction against Davenport at all costs.

Nine months ago Davenport petitioned this Court for an order requiring DSU to turn over the investigatory file of DSU chief of police Don Reid, the sole investigator of the alleged criminal conduct. Davenport referenced for the Court numerous documents that were part of Reid's investigation that have not been turned over. These references were made in both filings

with the Court and in oral argument on at least two separate occasions. The Court was fully aware that Davenport was seeking numerous emails in native format demonstrating the metadata that would accompany the native formatting. One week before Carter's submission, the Court ordered the emails to be submitted in native format.

Seven days later, on February 25, 2016, when Carter submitted one email, without metadata, and one incident report from the Whistleblower site, both Carter and the Court were fully aware of the fact that this submission would be unacceptable to Davenport. There was no delivery of correspondence between Reid and Sorensen, Sorensen's mother, Richard 'Biff' Williams, Del Beatty, Mark Houser, and DSU administration, to which Prisbrey had specifically referred. And there certainly were not delivered emails, in native format, containing the metadata as had been ordered by the Court. There was no index or privilege log, and as such the submission was done ex parte, as Carter did not notify the undersigned the documents had been submitted. Carter simply indicated to the Court that he was fully in compliance with the Court's order, and without anyone to rebut the allegation, the Court apparently took that at face value.

A neutral magistrate would have docketed the submission of the documents. A neutral magistrate would have required that the undersigned be placed on notice as to the filing. A neutral magistrate would ensure that the undersigned be made aware of the general nature of the documents submitted vis-à-vis the type of the indexing Prisbrey had requested prior to the Court entertaining in camera review. A neutral magistrate would recognize that the documentation submitted was woefully inadequate and there was only one email, and no emails had been submitted in native format. A neutral magistrate would give the defense an opportunity to respond to the inadequacies of the submission. And a neutral magistrate would not permit ex parte discussions over substantive matters to take place.

Here however, the Court did none of those things that an unbiased magistrate would do. The Court made no effort to inform the undersigned of the filing, nor did it require the submission of an index or notice to be sent to Davenport. Instead, the clerk, presumably upon directive from the Court, made no entry in the docket to apprise the undersigned that any documents were received. (The clerk obviously knew how to docket private records, as she did so upon receipt of the emails between Cosson and Don Reid which were filed by the undersigned on August 7, 2015). Furthermore, the Court apparently accepted Carter's representation that Carter was fully compliant with the Court's order without giving Davenport the opportunity to object. Then the Court and Carter engaged in ex parte communication without notice to Davenport of either the submissions or the communications.

With the Court and Carter having both kept Davenport in the dark as to the nature of the submissions, either Carter or the Court decided to go a step further and one of them initiated a surreptitious meeting to discuss the content of the documents. Carter claims he went to the court on February 29th to make sure the court had received the submission.¹⁰ That explanation seems suspect as Carter hand-delivered the documents to the clerk two work days prior. If he wanted to make sure Judge Read had received the documents, the appropriate procedure would have been to have phone the clerk, or simply asked her when he went to the court on the 29th if the judge had received them. In any event, it is clear that Carter intended to have ex parte communication with the Court because he sat through the Court's calendar in order to communicate ex parte with the Court.

¹⁰ Certainly, Carter had motive for an ex parte meeting wherein he could argue, without challenge, that he was in full compliance with the Court's order and where he could ask the Court to not turn over the whistleblower documents and the email regarding Sorensen's grade.

While Carter certainly took full advantage of this ex parte communication with the Court, the context of the conversation demonstrates it was likely the Court that called the ex parte meeting. First, it seems rather audacious that an attorney would approach a judge ex parte, without being invited to do so. Second, it is apparent Carter does not know why he is in court. After the Court invited Carter to approach the bench, Carter states, “ Well, I dropped off those documents **and didn’t know what your pleasure was in terms of--.**” At that point, the Court indicates that the court wants to discuss redacting the email address of the whistleblower. The Court cuts Carter off stating, “The **one question I had for you is that came in on the whistle blower?**” Carter answers in the affirmative to which the court responds, “[W]ell, and **the – – guys e-mail’s on there.**” Carter said, “**I didn’t notice that,**”¹¹ to which the Court responds, “**if they didn’t know he was in there as a witness, that’s the only thing I want it . . . because I had that one thing on there, I didn’t know whether I was going to black that out . . .**” The Court is clear that its purpose in having the ex parte discussion is to determine whether the Court is going to withhold from Davenport the identity of the whistleblower vis-à-vis the email address.

While the Court is clear that it does not want to provide Davenport the identity of the whistleblower email address, it was apparently struggling for legal justification for withholding the identity. The Court and Carter discussed options available to justify redacting the identity of the whistleblower. Carter, now understanding the Court’s concerns, suggests there is no need to even turn over the whistleblower incident report because “it was irrelevant.” Carter stated in the

¹¹ Clearly Carter did not go to court with the intent of redacting the email address of the whistleblower, because he asked the court, what the court’s “pleasure” was, and was unaware that the whistleblower email address was on the document, until the court pointed it out to him. However, it is also obvious that Carter took full advantage of the ex parte communication arguing that no documents should be turned over to Davenport and informing the court that he had fully complied with the court’s order, when he had not.

recent March 21st hearing that he informed Judge Read in the ex parte meeting that, **“I was concerned about their relevance given the dates that appeared on those documents. My recollection one date was in February and the other one was in late- as late June.”**

Apparently the Court was not persuaded by this ex parte argument because, as Carter remembers **“It was your position that you were not concerned about the dates . . .”**¹²

Next, the Court and Carter explore the viability of redacting the whistleblower identifying information under some kind of confidentiality theory. Carter states that the **“whole whistleblower thing is intended to be - ,”** and Read finishes his statement **“Anonymous.”** The Court then states **“because I had that one thing on there, I didn’t know whether I was going to black that out, if it was directed to who the person is that submitted it, so it stayed anonymous.”** To which Carter offers **“I was told that it was anonymous . . . My feeling was that it was anonymous . . .”** Apparently agreeing that because Carter was told the whistleblower information was intended to be kept anonymous that would provide legal justification to black out the whistleblower address. The Court states, **“And that’s the only question I really had for you is: “Black that out or submit it? All right.”** Carter says **“I’d ask you to black it out, please.”** To which the court says **“I will.”**

If the undersigned were given the opportunity to participate in this ex parte substantive¹³ conversation, he could have pointed out the duplicity of what the two were contemplating. First and foremost, the Court had already ruled the information provided to the whistleblower site was

¹² The significance of this ex parte argument by Carter cannot be understated. The whistleblower incident report clearly refers to what took place between Sorensen and Davenport in class, and Carter has refused to turn it over for nine months. It is incredulous that an officer of the court, ex parte, would argue that that information be withheld from the defense as irrelevant, when it clearly refers to the incident in question.

¹³ Not only did Carter and Read discuss the legal theories that could be used to keep the defense from knowing the email address of the whistleblower, there was substantive discussion regarding DSU’s attempts to determine who the whistleblower was. Specifically, Carter informed the Court **“we don’t even know who it is . . . they said they tried to follow it back . . .”** To which the Court completes Carter’s thought, **“And couldn’t get to the person.”**

to be turned over. There had never been any argument, nor even an inference, that there was some kind of legal privilege regarding communications between the whistleblower and DSU. No such privilege exists. The communications between DSU and the whistleblower have all the protections of fishing buddies who agree to keep secret the fact that their day's catch exceeded the legal limit. Furthermore, the fact the Court and Carter used this as justification to redact the whistleblower's email address outside of the presence of defense counsel, and where such an argument was never raised in an appropriate proceeding is unconscionable.

It is clear that the Court's motives in redacting the whistleblower email had nothing to do with protecting "confidential whistleblower information," but that the Court was concerned that Davenport might discover the identity of the individual who had information pertaining to the events at issue. When Carter revealed to the Court that DSU was unable to determine the identity of the whistleblower vis-à-vis the whistleblower's email address, the Court responded, **"Okay. Well, then it -- it'll be -- it'll be safe to do it. So I -- my intent will be just to disclose those two sheets you gave me."** The Court obviously has no concern over keeping the identity of the whistleblower anonymous; the Court's concern was that Davenport, through disclosure of the whistleblower's email address, might be able to find out who the whistleblower was and find out what information the whistleblower had regarding the events at issue and why the whistleblower feared retaliation.

It is apparent that both the Court and Carter intended to keep the nature of their ex parte communication secreted from defense counsel. If the Court wanted Prisbrey to know of the ex parte conversation, one would expect that when he forwarded the five pages of information to Prisbrey on March 4th, he would have informed him that he had received the documents on February 25th, discussed them with Carter on the 29th, and that he was redacting portions of

them. However, oddly enough, the Court did not even include a cover letter identifying what the documents were or where they came from. Indeed, all the actions of the Court demonstrate that it did not want Prisbrey to be aware of the ex parte communications, and as discussed above, the Court was quite secretive about even having received the documents as it apparently instructed the clerk to not docket the receipt of the documents.

Likewise, Carter never informed Prisbrey of the ex parte communication, until two-and-a-half weeks later when he was attempting to defend his client for failure to comply with the Court's order on the subpoena duces tecum. In that document, Carter referenced the ex parte communication to demonstrate he had in fact delivered documents to the Court and apparently to justify the paucity of information produced by explicitly stating that the Court approved his failure to provide the emails in native format. If that motion had not been filed, the undersigned would never have known that Carter and the Court conferred and agreed to secret the identity of the whistleblower email address from Davenport. Carter did not reveal the ex parte communication out of an ethical obligation, but rather out of the interest of his client.

If there is any doubt as to the inappropriate motives of this Court in secreting information from the defense, those doubts were removed when the Court misrepresented the nature of his involvement in the ex parte communications when Prisbrey suggested the Court recuse itself at the March 21, 2016, hearing. The recording of the February 29th ex parte meeting between the Court and Carter demonstrates that the Court was concerned that Davenport would receive the whistleblower report with the email address of the whistleblower revealed. The Court and Carter agreed the Court should redact the whistleblower email under the guise of some type of quasi, unidentified confidentiality.

However, when Prisbrey revealed that he was aware a communication had taken place between the Court and Carter, before Prisbrey even knew there was a recording of the meeting, the Court stated, “And I thought **my inquiry to Mr. Carter that day, when he approached the bench was simply whether it had--anything had been redacted on the two documents** or if I still needed to look at that. Cuz, **in looking at them I couldn’t see any portion of them where there had been anything that would have been a redaction**, but I think **Mr. Carter just simply told me that they were complete and nothing had been redacted yet.**” The recording of the February 29 ex parte communication reveals that no such conversation took place. The Court never asked Carter if the documents had been redacted and Carter certainly never told the Court that nothing had been redacted yet. The Court asked Carter if he wanted the Court to black out the email address of the whistleblower, Mr. Carter asked that he do so, and the Court indicated he would black it out.

Both the Rules of Professional Conduct, which govern the conduct of attorneys licensed in the State, as well as the Code of Judicial Conduct, which governs the behavior of judges, including justice court judges, expressly prohibit ex parte communications. Rule 3.5 of the Rules of Professional Conduct, provides, that a lawyer shall not, “Communicate *ex parte* in an adversary proceeding as to the merits of the case with a judge . . . , prior to full discharge of that person’s duties in the proceeding unless authorized to do so by law, rule, or court order.” Utah R. Prof’l. Conduct 3.5(b).

Similarly, the Code of Judicial Conduct, under Rule 2.9, prohibits a judge from initiating, permitting, or considering ex parte communications, made to the judge outside the presence of the parties or their lawyers, concerning a “pending or impending matter,” except as follows:

1. “When circumstances require it, ex parte communication for scheduling, administrative, or emergency purposes which does not address substantive matters, is permitted, provided:

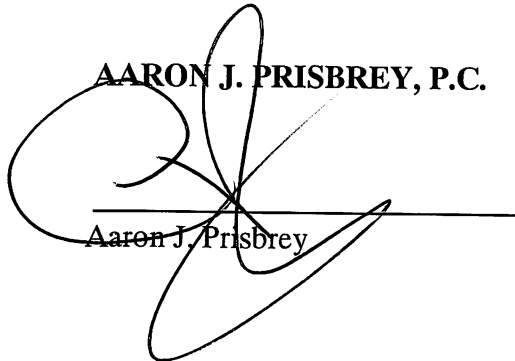
(a) the judge reasonably believes that no party will gain a procedural, substantive, or tactical advantage as a result of the ex parte communication; and

(b) the judge makes provision promptly to notify all other parties of the substance of the ex parte communication and gives the parties an opportunity to respond.”

Code of Judicial Conduct, R. 2.9(A)(1)(a)-(b).

It is not debatable as to whether Carter and the Court had ex parte communication wherein they discussed substantive issues. The two discussed redacting the identity of the whistleblower’s email address. Carter even argued that no documentation need be turned over based on the dates of the documents. The two discussed the fact Carter’s submission did not include emails in native format as previously ordered, and the Court apparently waived that requirement. Furthermore, Carter represented that he was in full compliance with the Court’s order and the Court accepted this at face value, when a cursory review of the five pages reveal Carter was not in compliance. Discussions were had regarding the nature of the investigation conducted by DSU to determine the identity of the whistleblower. Furthermore, this Court looked the undersigned in the eye and indicated that no substantive communication took place. The court misrepresented the extent of the communications and there is no doubt that this Court should step aside immediately.

DATED this 1st day of April, 2016.

AARON J. PRISBREY, P.C.


Aaron J. Prisbrey

CERTIFICATE OF SERVICE

I certify that a true and correct copy of the foregoing “Motion to Disqualify Ron Read,” including the exhibits, the Certificate of Good Faith, and Affidavit in Support, were caused to be served via First Class United States mail, upon the following individuals on this 1 day of April, 2016:

Shawn Guzman
Robert Cosson
St. George City Attorney’s Office
175 East 200 North
St. George, Utah 84770

D. Michael Carter
Assistant Utah Attorney General
225 South 700 East
St. George, Utah 84770

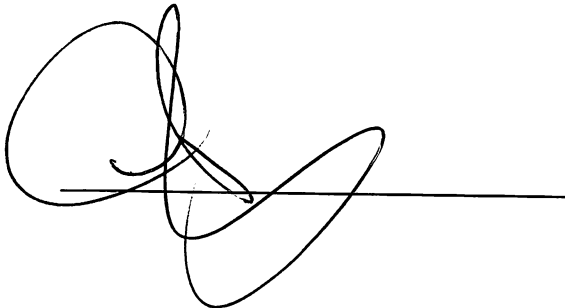
A handwritten signature in black ink, consisting of a large, stylized 'D' followed by a horizontal line and a large, sweeping flourish that loops back under the 'D'.

EXHIBIT 1

D. MICHAEL CARTER (4548)
Assistant Utah Attorney General
SEAN D. REYES (7969)
Utah Attorney General
Attorneys for Dixie State University
225 South 700 East
St. George, Utah 84770
Phone: (435) 652-7879
Fax: (435) 656-4000
E-mail: carter_m@dixie.edu
Attorneys for Dixie State University

**IN THE WASHINGTON COUNTY JUSTICE COURT
STATE OF UTAH**

CITY OF ST. GEORGE,

Plaintiff,

VARLO DAVENPORT,

Defendant.

**AFFIDAVIT OF
DONALD C. REID**

Case No. 151700661

Judge Ronald Read

STATE OF UTAH)
)
) ss.
COUNTY OF WASHINGTON)

I, DONALD C. REID, being first duly sworn upon oath, do hereby state:

1. That I am over 18 years of age, and having personal knowledge, I am fully competent to testify to the following if called to do so.

2. I am employed as the Chief of Campus Police at Dixie State University, trained and fully certified as a Category I Police Officer of the State of Utah, and have been for 40 years.

3. On or about December 5, 2014, at 14:30 hours, I met in my office on the campus of Dixie State University with Cassidy Sorensen and her parents, Mr. and Mrs. Jeremy Shaw.

4. During that meeting, I had related to me by Ms. Sorensen the events that had taken place in a class conducted by Professor Varlo Davenport, which events Ms. Sorensen and her parents believed to be so inappropriate as to have violated criminal law.

5. Among other things, we discussed the possibility of disciplinary proceedings on campus, their interest in criminal charges, and their feelings regarding "Justice" for what had happened.

6. The emotional state of Ms. Sorensen being very apparent, prompted me to be frank about the prospects of her undergoing direct questioning and cross examination in a criminal trial.

7. I advised that I would be willing to initiate a criminal investigation and pursue a "Complaint Request" with the Washington County Attorney's Office if they wanted to pursue that option.

8. Mr. Shaw advised that they would think about it and let me know if they wanted to proceed. Based on our discussion, I expected to hear back from them the following Monday, December 8, 2014. I did not hear back from Mr. Shaw, Mrs. Shaw, or Ms. Sorensen. Being advised that discipline was being instituted against Professor Davenport on campus, I assumed that they were not willing to proceed with a criminal complaint.

9. On or about March 2, 2015, at 19:30 hours, I received a call from Dixie State University President, Richard Williams. President Williams advised that he had just spoken to Mr. Shaw, to advise that Mr. Davenport had been terminated.

10. President Williams went on to relate Mr. Shaw's dissatisfaction that I had not initiated criminal proceedings, and asked me for an explanation.

11. I told President Williams that I had not received a witness statement from Ms. Sorensen, and that without her cooperation, the effort would be pointless. President Williams asked that I call Mr. Shaw.

12. I immediately called Mr. Shaw.

13. Upon Mr. Shaw answering my call and me introducing myself, he began to question my failure to act.

14. I asked him to recall that he left my office expressing to me that they "would think about it, and let me know." I advised that I had not proceeded because I had not received the necessary Witness Statement, or heard further from him that they wanted me to do so.

15. Upon some reflection, he acknowledged his misunderstanding.

16. The next morning, March 3, 2015, I received Ms. Sorensen's Witness Statement. I immediately contacted Mr. Belknap at the Washington County Attorney's Office to tell him what I had, and ask if he wanted to pursue it. He did.

17. Later that same day, I met with President Williams and other administrators at Dixie State University to request documents I needed in my criminal investigation.

18. At no time was I directed to pursue criminal charges against Varlo Davenport by President Williams. I was directed to keep him and the Shaws advised of progress.

19. Upon learning that Mr. Davenport had confessed to what I believe constitutes criminal assault in the on-campus faculty hearing, and upon having that information corroborated by the victim Ms. Sorensen and others in class at the time of the alleged event, I again contacted the County Attorney to advise. I was directed to file a Complaint Request.

20. I cooperated fully with the Washington County Attorney's Office as they evaluated the evidence and conducted their own investigation. On March 27, 2015, I was advised that because of jurisdictional considerations, the case would be referred to the St. George City Attorney's Office for evaluation of misdemeanor charges.

21. My office was contacted on April 30, 2015, by the St. George City Attorney's Office via e-mail from Cassandra Warren, asking if they had "all" the information related to the Davenport case.

22. I replied by e-mail the same day that I had provided all that I thought would be pertinent to a criminal prosecution, and that there was other information related to on-campus administrative proceedings that had not been supplied.

23. Again, via e-mail, I was advised that they wanted to see all of the information.

24. The following morning, May 1, 2015, Officer Ron Isaacson of my office delivered all additional information to the City Attorney's Office.

25. Ms. Warren of the City Attorney's Office contacted my office by telephone and asked that we pick up the additional information at our convenience, as they had determined it to be irrelevant to the criminal proceedings. Officer Isaacson picked up these materials on May 14, 2015.

26. I believe I followed standard procedure in investigating this case. I am unaware of any specific evidentiary requirement that "Chain of Evidence" be entered into the Spillman Program.

27. I am aware of what is being alleged, and have no idea how to remove metadata from e-mails or other electronic documents. To be clear, I did no such thing, nor did anyone else involved in this investigation, to my knowledge.

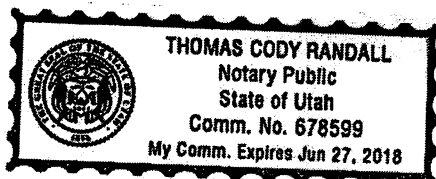
28. As stated above, I have cooperated with both the County and City Attorneys' Offices as they have requested information. I have spoken to Mr. Belknp, Mr. Jeager, and their Investigator, Mr. Barry Goulding. I have yet to speak with Mr. Cosson; my only contact with his office has been via e-mail with Ms. Warren, Mr. Cosson's Office Supervisor-Legal Secretary. There was no "brokering."

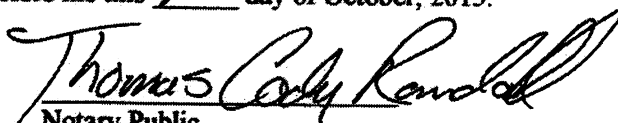
FURTHER AFFIANT SAYETH NAUGHT.

DATED this 20th day of October, 2015.


DONALD C. REID

SUBSCRIBED AND SWORN TO before me this 28th day of October, 2015.




Notary Public

My Commission Expires:
June 27th 2018
Page 4 of 4

EXHIBIT 2

08-06-15 Minute Entry - Minutes for MOTION HEARING

Judge: RONALD READ

PRESENT

Clerk: tiab

Prosecutor: HALES, VICTORIA H

Defendant

Defendant's Attorney(s): PRISBREY, AARON J

Bill of Particulars motion addressed first.

Mr Prisbrey gives his arguments. They want to know which element the City will be go forward with.

Ms. Hales gives her arguments. She believes a time frame is given on a Bill of Particulars, and the motion was not timely. Mr Prisbrey gives final arguments.

Court doesn't believe the time is a fatal error on this motion, but does feel the affidavit and information gives enough information to prepare for a defense. Court denies the motion for a Bill of Particulars.

Subpoena Duces Tecum addressed next. Mr. Carter in for this motion. Mr. Prisbrey gives his arguments, Mr. Prisbrey indicates this is dealing with Rule 14,

Mr Carter gives arguments, He doesn't believe there is a motion before the court, Just a Subpoena that was presented to the college. He believes that Rule 14 is guided by Rule 45. He believes the information is beyond the information to charge the defendant. He would like the court to quash the subpoena.

Mr Prisbrey gives final arguments, The motion before the court is the objection to the subpoena. Mr. Carter gives final statement.

Judge wants copies of the emails Mr. Prisbrey referenced. He will get this to the court.

Judge takes the Subpoena motion under advisement. He will make his order within 7 days.

Mr Prisbrey does indicate this Jury trial may take 2 if not 3 days.

TIME: 9:17 AM

08-06-15 Filed: Supplemental Response to Defendant's Discovery Request

08-07-15 **** PRIVATE **** Filed: Emails for Subpoena Motion

Printed: 03/31/16 09:53:02

Page 6

EXHIBIT 3

IN THE WASHINGTON COUNTY JUSTICE COURT
WASHINGTON COUNTY, UTAH

City of St. George, Plaintiff)	
)	ORDER
v.)	
)	Case No. 151700661
Varlo Davenport, Defendant)	
)	Judge Ronald L. Read

This matter came before the Court on August 6, 2015 for the purpose of oral argument on a non-party's, Dixie State University (hereinafter DSU), objection to a subpoena duces tecum, dated May 12, 2015. The subpoena duces tecum that was served upon it by the Defendant. The objection has been fully briefed by the parties over the course of approximately 6 months starting with the filing of an objection by DSU to a subpoena duces tecum served upon it by the Defendant on May 21, 2015 and ending with DSU's filing a response to the Defendant's supplemental argument pertaining to subpoena documents.

At least one factual issues appears to have resolved itself over the course of the last few months in that the Defendant was not sure whether or not DSU had turned over all of its information to the St. George City Prosecutor's Office. Said issue was based upon some email correspondence between the St. George City Prosecutor's Office and Chief Don Reid of DSU. It now appears to be resolved that DSU turned all information over to the St. George City Prosecutor's Office and that said office retained all relevant information and returned information that it deemed irrelevant to this criminal matter back to DSU.

The file also reflects that the Defendant filed a discovery request pursuant to Rule 16 of the Utah Rules of Criminal Procedure directed to the St. George City Prosecutor's Office and that the prosecutor responded to the Defendant's discovery request initially on May 1, 2015 and

subsequently provided supplemental responses on May 12, 2015, May 14, 2015, May 15, 2015, May 19, 2015, May 22, 2015, August 6, 2015, August 12, 2015 and August 31, 2015.

ANALYSIS

Rule 14 of the Utah Rules of Criminal Procedure provides in relevant part that “[a] subpoena may command the person to whom it is directed to . . . allow inspection of records, papers or other objects” and it allows the court to “quash or modify a subpoena if compliance would be unreasonable.” See URCrP 14(a)(2). The subpoena duces tecum requested that DSU produce the following documents, papers, materials or tangible things and then provided five specific requests namely: (1) Silent Whistleblower Hotline information over past 5 years pertaining to the Defendant; (2) allegations brought by anyone during the Defendant’s employment at DSU; (3) faculty or administrative meetings pertaining to the Defendant from January 1, 2015 through the present; (4) evidence reviewed by the President of DSU, Dr. Richard Williams, which he relied to reject the conclusion of the faculty review hearing to reinstatement the Defendant; and (5) documentation relied upon by President Williams to suspend the Defendant prior to the faculty review hearing.

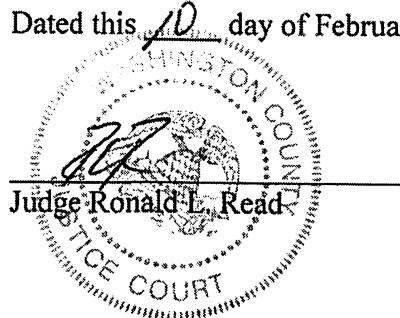
The subpoena duces tecum is modified as follows:

1. DSU to provide to the Defendant’s Counsel any information from the Silent Whistleblower Hotline pertaining to the Defendant that is related in any way to the events occurring on or about November 21, 2014; and
2. DSU to provide to Defendant’s Counsel any tapes, recordings, or notes from witness interviews pertaining to the Defendant that are related in any way to the events occurring on or about November 21, 2014.

Said information to be provided by DSU to the Defendant’s Counsel within 10 days of this order.

Defendant's other requests regarding the administrative proceedings, evidence reviewed by President Williams as a part of those proceedings, and any other information requested is either not relevant, unduly burdensome and/or beyond any proportionality analysis pursuant to Rules 14 and 16 of the Utah Rules of Criminal Procedure and Rules 26 and 45 of the Utah Rules of Civil Procedure. St. George City Prosecutor's Office received the entire file from DSU and said information was reviewed by the City Prosecutor and all information required under Rule 16 of the Utah Rules of Criminal Procedure, as delineated in subsections (a)(1) – (a)(5) to be disclosed to the Defendant by the St. George City Prosecutor's Office should be disclosed to the Defendant. Any violation of said discovery rule is subject to relief as set forth in the discovery rules.

Dated this 10 day of February, 2016



CERTIFICATE OF NOTIFICATION

I certify that on the 10 day of February, 2016, I provided a copy of this document to the following:

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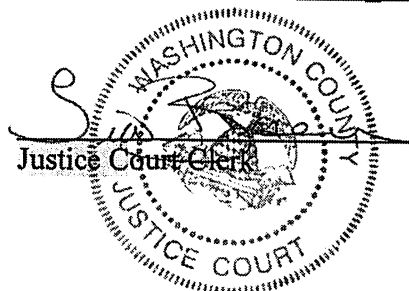


EXHIBIT 4

FEBRUARY 18, 2016 HEARING TRANSCRIPT

**TRANSCRIPT OF HEARING TAKEN FROM COURT RECORDINGS OF FEBRUARY 18, 2016
REGARDING CLARIFICATION OF SUBPOENA SERVED ON RICHARD BIFF WILLIAMS**

**IN THE MATTER OF THE CITY OF ST. GEORGE v. VARLO DAVENPORT, CASE NO. 151700661
WASHINGTON COUNTY JUSTICE COURT, JUSTICE COURT JUDGE RONALD READ**

(JR: Judge Read; AJP: Aaron J. Prisbrey; MC: Michael Carter;

JH: Joseph Hood; VD: Varlo Davenport; []: inaudible)

JR: How you doing?

UNKNOWN: Looks like we got everybody here. Let me see what he wants to do on page.

[]

MC: Michael Carter.

(Everyone talking at once)

UNKNOWN: University?

UNKNOWN: Yeah, yeah.

JH: My name's Joseph. Second name's Hood.

UNKNOWN: [] please?

JH: Yes. I'm here on behalf of the City of St. George.

[]: [] assistant --

JH: All right. Thank you.

MC: Michael Carter.

UNKNOWN: [].

AJP: I am.

[]

JR: [] The order in that -- on that date. At the hearing, Mr. Prisbrey indicated we might want to request supplementing the order on paragraph 2, from what I understand, to include some correspondence and e-mails. And so that's the purpose of the -- of the hearing today. I appreciate you to accommodate your schedule and make it work for you to be here today. So I'm going to have Mr. Prisbrey address it first, and then you and Mr. Hood both, if you'd like to, could address it. Okay?

MC: Thank you.

JR: Mr. Prisbrey, go ahead.

AJP: Thank you, Your Honor.

JR: Mr. Davenport?

VD: Yes.

JR: You can come up, if you'd like to.

(2:22)

AJP: And I received this about during the hearing.

JR: Correct.

AJP: [] copy of the -- the concern I had was with part 2 of the order. It indicates DSU is to provide to defense counsel any tapes, recordings or notes from witness interviews and pertaining to the Defendant that are related in any way to the events occurring on or about or about November 21, 2014. I just need to put some context into what it is that's transpiring. Because if you will recall, just like last summer, you wanted to see copies of the e-mail that went back and forth between Cosson's office and Don Reid.

JR: Correct.

AJP: And what happened there, I had a conversation with Cosson on April 29th and followed that up with a letter that said there's a reference to mountains of evidence I hadn't seen, and I never got that e-mail until after I filed the Subpoena. The information -- that e-mail that I brought to the court, that is dated April 29th, didn't get to my office until May 18th. So I didn't -- I wasn't aware when we filed -- and I brought that up at a later point in time. But at the time we'd filed a request for the Subpoena, I wasn't aware that Mr. Reid was saying that he had boxes and packets of evidence from dean of students, from the president's office and the rest of that information. And I will tell you as of this date, I've never received that information. What I received in the report indicates -- in your letter -- I'm sorry. In the order, that I got responses May 1st, May 12, May 14, May 15, May 19, May 22, August 6, August 12 and August 31. And Your Honor, none of that was in the information. That's information for whatever reason the City decides they will take information, they will give it to me. When I made my initial discovery request and apparently since I filed the motions on the Subpoena, apparently, the entire file's delivered to Mr. Cosson's office. But I should have been -- I should have received discovery twice. I should have received what I asked for initially. And when the file went to Mr. Cosson, I should have got the rest of it. Not this piecemeal thing where an issue comes up in court, and then they send you a little bit more. And then an issue comes up in court, and then they send you a little bit more.

And so what -- that's just the background in how that came up. Because the Subpoena was fairly broad, but I didn't know that we had this other information, desultory file that I had not received. And so there's a -- as I -- as I was going through the information in the file, there are a couple of things that I want to refer to. And some of it came from the affidavit from Mr. Reid. I never received that information. The fact that he's having conversations or the context of the conversations between him and Biff Williams and Mr. Shaw, that's nowhere within the police reports. And that's part of the issue that we raised.

JR: Right.

AJP: I don't have something that's done in Spillman where it says, "This conversation took place on this date." We're relying on a Word document that was created on some date, I assume in March, from Don Reid. And so it's very difficult to put together any time line and prepare and hence the Subpoena. So the one thing that I would indicate is with the exception of the e-mail to Mr. Cosson's office, we don't have any of the e-mail correspondence from Don Reid. I had indicated in documentation metadata was removed. We don't have -- I don't know -- there was e-mail correspondence. Mr. Reid indicates in various places in his report that he was having e-mail correspondence with Del Beatty, also, I think, with Mr. Houser. We don't have any of that, as part of the investigatory file. And the reason I'd indicated that the metadata was removed from the e-mail with the alleged victim and the parents is because we got statements from -- the parents and Ms. Sorenson live somewhere up north, I want to say in the Murray area.

And that information would have come from Reid via e-mail. And as I looked at it, it might be an attachment, but there's no dates. There's an affidavit from Mr. Reid that says, "I hadn't removed any metadata. I wouldn't know how to do that." Well, that stuff came to him by e-mail. I haven't -- I've gotten none of those e-mails. What was requested, how it was requested, the information he sought, why it came about three months after the fact, I don't have any of those e-mails. And so these are things that are referred to, is the court said: I think what you're saying is to the extent he was meeting with witnesses and he was doing his investigation, I'm entitled to that information. But the order's so narrowly drafted I don't think it's saying that I get the e-mails or anything else, as part of his investigation.

And so there's a few things that I just wanted to make the court aware of. And this is all information that came in. For example, the affidavit. The affidavit that was filed by Mr. Carter came in. I didn't even have a chance to respond to that. That was the last document that was ever filed, the... containing affidavit of Don Reid. And on page 2 of his affidavit, he says, "On or about March 2, 2015, at 1930 hours," and this is information that exists nowhere within any of the reports that we've received. "On or about March 2, 2015, at 1930 hours," he's very specific there, "I received a call from Dixie State University President Richard Williams. President Williams advised that he had just spoken to Mr. Shaw," that is the step-father of Ms. Sorenson, "to advise that Mr. Davenport had been terminated. President Williams went on to relate Mr. Shaw's dissatisfaction that I had not initiated criminal proceedings and asked me for an

explanation.” And then thereafter, there is a conversation that took place between President Williams and Don Reid and the fact that he called Mr. Shaw.

And then into paragraph 16, next paragraph, the next page, “The next morning, I received Ms. Sorenson’s witness statement. I immediately contacted Mr. Belt.” I think it’s supposed to say Belnap. “And then later that day, I met with President Williams and other administrators at Dixie University to request documents I needed in my criminal investigation.” So we have information here is what he’s doing on his criminal investigation, and we haven’t received that. I have not received it, but for the fact we have this affidavit. I don’t know the conversation takes place. I don’t know how it is it’s decided they’re going to file the charges. That has all been withheld.

(9:32)

Here’s some of the additional information that we didn’t receive from the investigatory file: This is -- this came in in discovery pertaining to -- that was sent over to Brock Belnap from Mr. Reid. He says, “I have talked again with the father of Cassidy, Jeremy Shaw, as late as 1630 hours this date. He’s committed to pursuing criminal charges against Mr. Davenport. I have talked with the department chair, division dean, the dean of students and the university president, all of whom state that the action taken...” Anyway, that’s part of the investigation, is not only does he have written documentation, but he’s talked to the department chair, division dean, the dean of students, university president. And that’s the information that he submitted as part of his request that criminal charges be filed against Mr. Davenport.

In reference [] in a case follow up report to Jerry Jaeger, the president’s office and administration is open and cooperative. I’ve obtained a mountain of information from the reigning human resource office, the theatre department, division dean, the vice president of academics and the president’s office. And that’s the information that we have not seen, the mountains of evidence. Then there is an indication in the same correspondence, he’s saying that Mr. Jaeger asked him that he prosecute this case. He’s having communications with the administration. And what he says is according to the administration, the suspect in this case was officially placed on probation on June 13, 2014. The dean of student’s office has five to six year file of related student complaints in the case of this suspect. That’s the information they’re using as part of this investigation. That’s part of what the Court’s ruled I cannot have. So I’m going to be at trial. I have no idea what the nature of this is, and I’m going to be in the situation where Mr. Beatty’s going to testify to whatever it is that we can’t get, whatever it is that Mr. Reid saw regarding this five to six years of similar complaints that he alleges.

Additionally, in the documentation that was sent to Mr. Jaeger, there’s a reference to an Article 1, and none of this has any page numbers. It was just get kind of in this Word document. These are all references from Mr. Reid. He says he had a copy of the e-mail from Mark Houser, theatre program director and chair of fine arts advising him of incidents. And then it says, “My reply to him was this would only involve my office, if the reporting person is waiting to press

criminal charges." There's no evidence in those -- that e-mail. I don't have any e-mails from Don Reid pertaining to any of the conversations he's having with the people that are providing information to him. And that's why I was so concerned with the court's order, because you said I could get notes and interviews, but nothing about the e-mails that are going back and forth.

(12:46)

And then you have -- there is a statement from Del Beatty, where he indicates "I've had a two week [sic] -- two to three occasions with students visited my office with concerns about the atmosphere." I haven't received that. That's nowhere within the documents that Mr. Reid has provided, so those are the concerns that I have. When we're dealing with an officer who's not putting anything into Spillman, indicating this is what transpired. But after he conducts the investigation -- and Mr. Carter takes issue with, "Well, we have a two year Statute of Limitations." That's something entirely different than law enforcement engaging in the investigation in November and doing things in November and then recording it in March. And that's where we don't have -- we don't have dates. I don't have the e-mails. And what it is that we're -- and if the court thinks this is the subpoena is too broad, with the additional information that's came in, I can draft a narrow Subpoena that says I want all of this information that pertains to the investigation of Don Reid. But really what it is: We're -- I just want to see information that Don Reid had as part of his investigation, the e-mails going back and forth. And I don't believe that we've ever been provided that. And I think that the order doesn't require him to do that.

JR: Thanks, Mr. Prisbrey. Mr. Carter, go ahead.

(14:09)

MC: Well, Your Honor, to my knowledge, the e-mail -- first, we're at issue with the issue those emails between Officer Reid and the City Attorney's Office relative to information that we delivered to them, as the investigating officer. Mr. Prisbrey persists in suggesting that the University somehow decided to file charges which was not within the University's authority. That authority rests with the County Attorney and with the city attorney who ultimately made such a determination.

Another concern that I have here, in terms of Mr. Prisbrey's statement relative to communications with deans of students, department chairs and so on and so forth is that whether or not Mr. Davenport's termination, as an employee of the university, was justified is not before this court. What's before this this court is whether or not the crime as alleged was committed in class on a specific day, at a specific time. Now, it would seem prudent for an officer not to have interviews with some of these people, who were related to the events, on a grander scale. But to turn that over to Mr. Belnap and subsequently Mr. Belnap and Mr. Cosson's office had relevance only to the issue of the criminal charges that were being contemplated at the time. Whether or not Mr. Davenport was terminated by what means and on what terms and so forth is the very reason why the Subpoena was objected to in the first

place. Because that's outside the scope of what's before this court. It's not within this court's jurisdiction, in any case. And so this is somewhat circular, in my opinion, that we keep allotting those things that have no relevance, at least my opinion and apparently in the opinion of the prosecuting attorney, have no relevance to the alleged crime in question. And so I renew my objection, to all of those extraneous things that have any relationship to internal proceedings within the institution, things done and said in context of dealing with an employment matter, I don't know -- fairly, I'm not prepared to argue with Mr. Prisbrey. But I simply don't know whether the conversations that he's alluding to between these people and Officer Reid are in e-mail or whether they're verbal. I would submit to the court that I've never seen any such e-mail (17:41), even in the broader course of this. Whether they exist or not, I'm not prepared to say. But I -- in my dealings with it, I have not seen those emails.

The only emails that I have found to be of relevance here -- at issue here are those e-mails between the City Attorney's Office, and I believe it was primarily with his administrative assistant and not necessarily Mr. Cosson, who said that they want to see all these different documents that were compiled. Well, that's fine, but in terms of the final prosecution, they looked at them and said, "We're not going to use these. We don't feel these as being relevant to the crime," and they were sent back. Now, that's Mr. Reid's doing due diligence in his role to take everything he had to the prosecuting attorney. And they're saying, "This I need. This I don't. This I need. This I don't." And they looked at everything and said, "Most of this stuff related to the employment issue, but [] -- as unrelated to the criminal charge." It's my position that that was their prerogative, and it's my position that the Subpoena is overly broad in seeking those things, as it relates to the employment matters. I understood your order to include a -- an audio tape of the faculty hearing. If that's your order, that's your order. But there are certainly parts of that that should be considered in-camera as being irrelevant to the case before the court and parts that are considered irrelevant before the court. And I would request that the court exercise that prerogative to consider the context of that [] as whether or not it's relevant. (19:49) It's not my position in this to make a motion in limine, so I'm clearly out of my element in that suggestion. But in that same spirit, I'm suggesting that some of these things should not be cluttering the issues before the court, for they have no relevance.

If I understood the court's order, we were to turn over some of the calls that came in on the so-called "hotline" that have relevance to Mr. Davenport. I suppose that I have no objection to that its simply opinion of people who would like to have seen him continue with his employment. But whether that's a character statement, how you choose to do that, that's one thing. But to me, it seems of marginal relevance to whether or not the crime of, excuse me, what happened in the court -- in the classroom on a given day during a class period. And that's been my argument on the outset. I think that the employment matter, if it's -- if it's being dealt with in the court, needs to be dealt with in the -- in the court of proper jurisdiction and that to have it before this court in this proceeding seems entirely irrelevant. And I'm asking that the discovery be limited to what happened from the criminal perspective.

JR: Mr. Carter, one question, if I could. With regard to the -- have you seen my order?

MC: I did.

JR: Second and third --

MC: There were some problems I didn't bring mine with me; --

JR: Okay.

JR: The first -- the first item I want to disclose was the whistle blower hotline pertaining to the events on that date. Do you have any objection --

MC: I --

JR: -- to getting that together?

MC: I -- let me ask.

JR: Sure.

MC: I'm trying to understand, in terms of clarification, that you want any whistle blower call that had to do with the events in the classroom, and not necessarily those whistle blower calls that may have had to do with a opinions relevant to Mr. Davenport intentions or separation --

JR: No. Correct. I'm separating the administrative faculty matter and the criminal.

MC: Okay.

JR: Okay? So limit it to that. On 2, with regard to tapes, notes, records, recordings, witness interviews pertaining to that date, if I expand that as requested by Mr. Prisbrey to e-mails and correspondence, if there is some more, we've got a little bit. The -- but there -- it does sound like there may be some more. If you have those, any objection to produce e-mails? And if there's something that may contain both, I don't have any objections to looking at it in-camera (22:38) and making a determination that way, if that's how you want to present it to the court. Any objection to doing that? Again, limiting it to the events on the day. Okay.

MC: I have no objection. I'm happy to produce whatever's relevant to --

JR: Let me just tell you both. My -- go ahead and sit down, Mr. Carter. Let me just tell you my -- in looking at this. I think we -- the biggest issue I had at the first hearing back in I think it was August was whether or not everything had been disclosed. (23:10) I think that issue came to fruition that -- with the affidavit that Officer Reid produced, just those things he thought relevant to the criminal proceeding to the County's Office, County Attorney's Office. That information was then given to Mr. Cosson, still just the relevant stuff. Mr. Cosson's office, through the e-mails, wanted to make sure they had everything and requested anything else from Dixie State. The additional information was provided to Mr. Cosson's office. I don't remember the dates, but it's in Mr. Reid's e-mail. Mr. Cosson looked at that and gave back

what he didn't think was relevant, stayed with the relevant and criminal stuff. And then under the discovery rules, he's disclosed that, and Mr. Prisbrey, that's where I put in those supplements. I don't know what was produced with those supplements. I just wanted to make sure that he knew that there was initial disclosure, and then five or six or seven, I can't remember how many supplement disclosures, as new information was found. But it's clear that the not relevant information, from both Officer Reid and Mr. Cosson's office, was returned to Dixie State.

MC: That's my understanding --

JR: What I don't want Mr. Prisbrey not to get is information that may have gone back that would include into this whistle blower hotline stuff pertaining to the events. I don't see it going back. I see it still being in Mr. Cosson's file. But in the event that some did, that needs to be disclosed. (24:46) And tapes, recordings, notes, and I'm going to expand that to include e-mails or correspondence pertaining to the defendant, that are related in any way to the events occurring on or about November 21st, 2014. I do believe that there may be portions of the faculty or administrative process that may have included that. That was probably provided -- and again, I'm just guessing, provided to Mr. Cosson, he sent it back as not -- irrelevant. If you need it -- I want you to go back through it. If there is something relevant in any of that stuff that's been returned, I want it produced. If you have an issue with it and you want me to look at it in-camera before it's given to Mr. Prisbrey, I don't have any objection. I believe that if we've got to -- I don't know how long a faculty proceeding like that might be. But if we have a hour proceeding and two minutes of it is with regard to this incident and the rest of it's not relevant, then I'll have to find a way to maybe exclude that not relevant portion. And -- but I would look at that in-camera.

Again, I think that with the discovery rules, if Mr. Cosson has it and produces it, he's got that ethical duty to produce anything that's relevant, material to a defense, material to witnesses, etc. But the concern I had was in the investigation, and it's just concerns, that there were some allegations about witnesses maybe being discussed in duress. So that's why I want it related to those witness statements. I just want to make sure there was nothing there that Mr. Prisbrey should have. And Mr. Prisbrey, you're aware with regard to the people that you mentioned as providing statements and you're indicating that you haven't received those and you're concerned that they may be witnesses at the time, well, clearly, there's procedures at the trial for objecting to testimony and evidence that wasn't produced that should have been produced. And I think there's some a surety in that and a surety with Mr. Cosson's ethical duties to provide everything to you. And then you've got the trial procedure and motions to suppress anything else that you might have a basis for that you can address. But I think that's where I'm still at is limited to those two areas, but include if there's e-mails or correspondence that might be related also.

AJP: Can I address this?

JR: Give -- you bet.

AJP: A few things?

JR: You bet.

(27:35)

AJP: First off, to say that we had an administrative proceeding is far beyond the criminal proceeding. I don't know if that's necessarily accurate. Every bit of information that we've been asking for in this case is that information that was provided to the chief of police. Don Reid isn't involved in anything that went on at the administrative level. Don Reid is the chief investigator on this case. That's the information that I'm concerned about. And so as Mr. Carter says, you know, we have this hearing and what transpired in the hearing isn't relevant. Those are the exact statements that Don Reid used as part of his investigation and sent to Jerry Jaeger and he sent over to Mr. Cosson. That's the information. That's what I'm asking for is the investigatory file. This -- everything that went to Reid was part of the criminal investigation. And so the court's saying, "Well, they -- they've all made a determination as to what's relevant." I've never been in a situation before where we have an investigating officer and the prosecutor not turning over what came in from the investigatory file, but they say, "We will give you what's relevant." And I get that piece by piece by piece. As I sit back and I ask for it and say, "Well, I can come into trial, and I can ask that the evidence not be -- not be used." I would like to see the evidence in advance. I would like to see the e-mails that Don Reid was sending out, because Don Reid was conducting a criminal investigation, end of story. He wasn't involved in the administrative proceeding whatsoever. (29:04) Everything he has relates to this case and Mr. Davenport. And that's what was made clear with the e-mail of April 29th. That's why that's so important, and that's the information I've been hunting for, since we received that.

JR: Mr. Carter, specifically to that last statement from Mr. Prisbrey.

MC: Well, I -- that's my burden.

JR: Okay.

MC: From you. And I think if it would have been Mr. Reid -- Officer Reid's prerogative, and it was probably something of a duty for him to do a broad spectrum inquiry of people about documents and information. But certainly in that process, he would have gotten things that related to the administrative dealings. And if he got something related to the criminal dealings, I presume that that went through Mr. Cosson's office, and Mr. Cosson made that decision about relevance. Yes, there was a situation where he turned over this much stuff. He gave it to Mr. Belnap. They turned it over to Mr. Cosson. Mr. Cosson understood that there might have been more. He asked to see it. Why he didn't say was all this stuff is all administrative. At least in writing that's what he said. And that's what -- that's the way I think it should stay. (30:23)

I think him doing due diligence on the part of Officer Reid doesn't necessarily open what Mr. Prisbrey characterizes as an investigative file to discovery as -- if only it relates to the administrative proceedings and those involved with that. And that's the distinction that I've asked the court to make.

JR: Mr. Carter, let me ask you one more question. If I expand the order to e-mails and correspondence, we are at a jury trial, so on a -- in looking at something in-camera, I'm not concerned with me looking at it prior to and making a determination is that -- on that, as long as the parties are okay with that. But if I make that order, and I hope you're familiar enough with your files or after talking to Officer Reid that you could. Do you have a time period when you think you could get that information to the court, if I am going to look at some of that in-camera? Could it be by next Thursday?

Let me tell you why I'm looking at that time period. I've had a -- Thursday's a trial day, a jury trial day. It sounds so far that that jury trial is going to come off next Thursday, so I'll have that date open. And so if I could get it by that date, I could at least look at it in a --

MC: How is -- how is that to be done? Do you want me to just deliver it to you? (31:44) I want to make sure that I'm not doing anything --

JR: I would --

MC: -- that would take -- that Mr. Prisbrey would take offense at. And -- (31:52)

JR: Yeah, and Mr. Prisbrey, if I have him deliver it to me --

AJP: Yeah. Can we -- can we get some type of -- this is the frustration. We were never made aware that any of this information existed. There's never been a privilege log. There's never been anything indicating what even exists. So if he delivers it to you, without waiving whatever privilege it is or whatever he's claiming that you -- that we can't see, because it's part of this administrative proceeding, he ought to at least identify the nature of what it is that he has. Because you are going to need to make a determination as to what's relevant and what's not. For example, there's information that we have that after this transpired, there were -- there were certain things that were given to the alleged victim. We have never received any of that information. You might not think that's relevant, but that's certainly relevant to us. Certain things as to whether she has motive, whether she filed a [], whether she filed a civil lawsuit, those type of things. We have never been given any of that information.

And I would point out one thing. I think that Mr. Carter and Mr. Cosson's office are walking a very fine line. When they come in, they say, "Okay. Nothing from the administrative proceeding's coming in." Because that's part of their case. They're going to use statements from those hearings. And so if we go down that slippery slope and we're going to say the administrative stuff's out, great, the administrative stuff's out. But it's going to cut both ways --

JR: Okay.

AJP: -- at the time of trial.

JR: Well, and Mr. Carter, I would assume that in delivering information to me, you would give me a cover letter, or however you want to do it, with attached are these things and leave out. And you know, if it's a recording from this date and time, an e-mail from this date and time, could you put that type of a list together, in submitting it to the court?

MC: Yes, but in reference to one point.

JR: Sure.

MC: The tape of the administrative hearing, for example, Mr. Prisbrey told me earlier this morning that admittedly he has that in its entirety.

(33:49)

JR: Okay.

MC: And so the question here isn't whether he gets to hear it. It's a matter of whether he gets to use it, as far -- and its --

JR: Okay.

MC: -- extraneous issue.

JR: Well, let's produce that stuff, and do you think you could do it by next Thursday?

MC: Only []

JR: Okay.

MC: I don't know who has what, at this point. I'm herding cats here.

JR: No, I understand.

MC: One question that might [] -- again, here I am standing on the heels of these [] -- by these two gentlemen on either side. I don't know if there's been a witness list proposed. I would find some guidance from something like that, if I [] --

JR: And worse --

?: -- people proposed --

JR: Yeah.

?: -- to be --

JR: And Mr. Carter, we're still far enough out that I haven't seen anything like that either. I don't know if the parties -- I should have exchanged that information in discovery. If you'd like to talk to both of them about that specific information, that may help you limit or find

additional information. Go ahead, talk to them. I don't think other party's going to refuse to discuss it with you to see if they can make it more reasonable on your part to get that -- those things produced.

MC: I'll make every effort.

JR: Thanks, Mr. Carter.

AJP: Just on the e-mails in reference, can we get those in native format? I would like those -- I know we've gotten these off the servers at Dixie College before. It's relatively easy for those -- everything they have is Microsoft Outlook. I would like those in native format, not a -- not a printed off copy of what it is they have of these files.

JR: Sure. And Mr. Carter, can you do that?

MC: Well, I would admit that native format's a bit over my head, but I'll find out what it is and --

JR: It's probably over mine right now, too, but let's honor that request, if we can get it done. Mr. Hood, I know you're here for the City. I haven't -- because we're dealing with that Subpoena, you haven't --

JH: No. I --

JR: -- had much involvement. Do you have any input?

JH: I don't have anything else to add. I think Mr. Carter summed it up perfectly, that from the City's standpoint, we believe we've disclosed everything that's relevant to the criminal case. But I'm -- I also understand the discussions that have taken place today. So we're in the same position as Mr. Carter.

JR: Okay. Let's do that. Mr. Carter, if you can get that to me by Thursday, I really would appreciate it. If not, if you could give me a time period, maybe get me what you can by Thursday. If there's other things that you think exist, just tell me a time period that you think you could get the rest those --

MC: I'll make every effort, Your Honor.

JR: Okay. Appreciate that. All right. Thank you all very much. Thanks, Mr. Davenport, for being here today.

And I know The Spectrum is here. I -- and I hope Salote, the court administrator, got in touch with you after the last hearing. There's a procedure now that the state fiduciary requires that we use to allow video or recording in the courtroom. You've used that before. You didn't at the last hearing, and I let you in. But I had asked her if she would contact you to make sure you'd know who to contact and get that form, so --

UNKNOWN: For the court's information, I think it was actually someone else, not The Spectrum.

JR: Oh, was it?

UNKNOWN: Yes.

UNKNOWN: It was the Dixie Sun.

JR: Oh, okay. Great. Either one of you, the Sun, Spectrum, there's just a procedure if you do want to check with my court administrator after the hearing, you can get the contact information and the form that we need done --

UNKNOWN: [] make sure --

JR: -- that lets you come in and video or record proceedings. We need them 24 hours ahead, based upon the current rules. Okay?

UNKNOWN: Gotcha.

JR: Appreciate that. You bet.

All right. Let's call our 9:00 calendar.

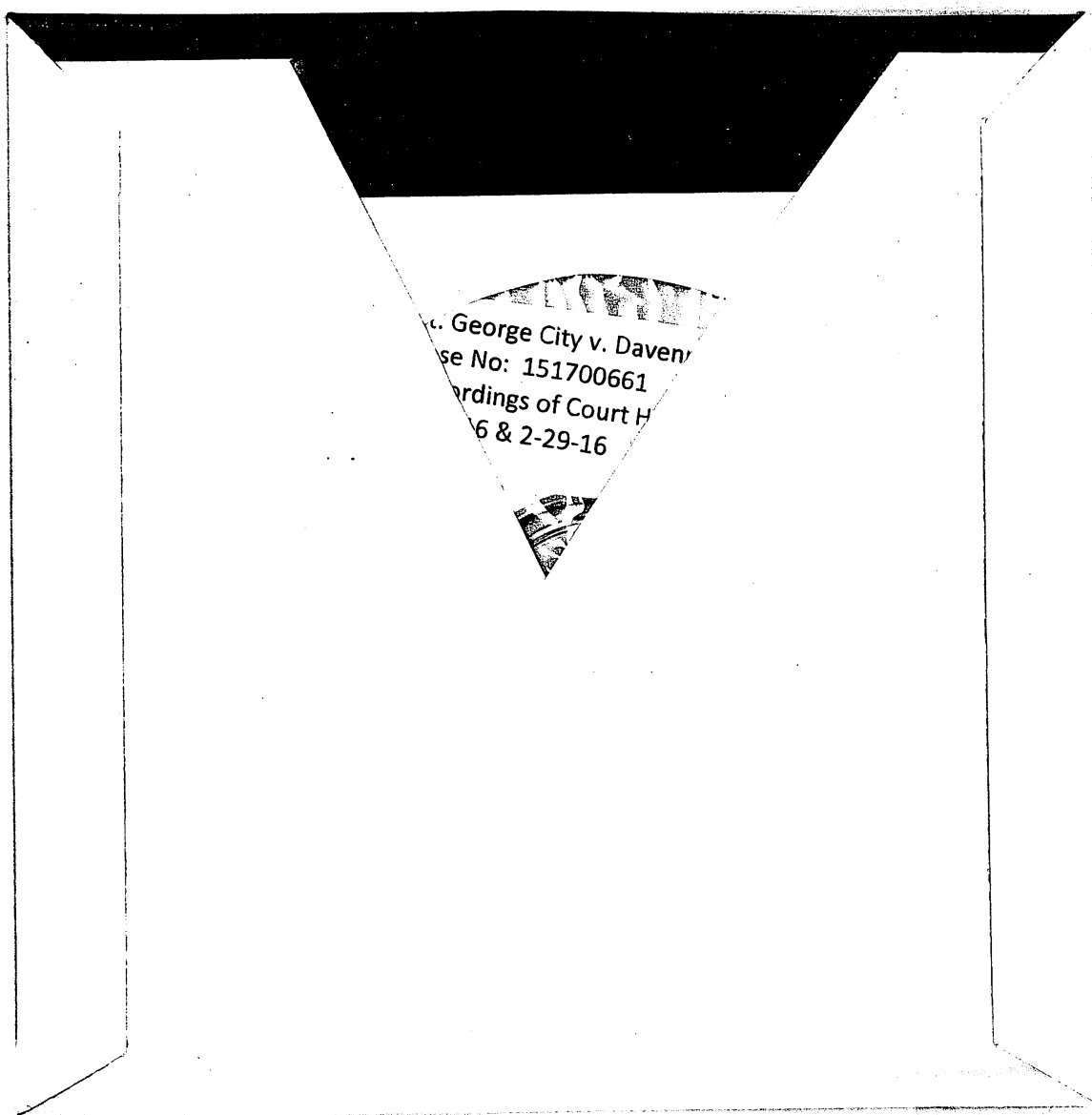


EXHIBIT 5

Audio CD of February 18, and 29, 2016 Court Hearings

EXHIBIT 6

D. MICHAEL CARTER (4548)
Assistant Utah Attorney General
SEAN D. REYES (7969)
Utah Attorney General
Attorneys for Dixie State University
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St. George, Utah 84770
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Fax: (435) 656-4000
E-mail: carter_m@dixie.edu
Attorneys for Dixie State University

**IN THE WASHINGTON COUNTY JUSTICE COURT
STATE OF UTAH**

CITY OF ST. GEORGE,

Plaintiff,

VARLO DAVENPORT,

Defendant.

**MEMORANDUM IN OPPOSITION
TO DEFENDANT'S MOTION TO
FIND
DR. RICHARD "BIFF" WILLIAMS
IN CONTEMPT OF COURT**

Case No. 151700661

Judge Ronald Read

President, Richard B. Williams, on behalf of DIXIE STATE UNIVERSITY, files this MEMORANDUM IN OPPOSITION TO DEFENDANT'S MOTION TO FIND DR. RICHARD "BIFF" WILLIAMS IN CONTEMPT OF COURT ("Memorandum"), by and through counsel, D. Michael Carter, Assistant Utah Attorney General.

RESPONSE

In his MOTION TO FIND DR. RICHARD "BIFF" WILLIAMS IN CONTEMPT OF COURT ("Motion"), Defense Counsel presents a STATEMENT OF FACTS, by which he

supports what he is seeking in the Motion. Counsel for the Objecting Party, DIXIE STATE UNIVERSITY ("University"), responds to the particulars thereof, and only for purposes of this Memorandum, as follows:

1. Denied; the Notice of Intent will speak for itself.
2. Admitted
3. Admitted.
4. Denied; the Order will speak for itself.
5. Denied; the Minute Entry will speak for itself.
6. Denied; the Minute Entry will speak for itself.
7. Denied.
8. Denied.
9. Denied.
10. Denied. No such voice mail has been received.

ARGUMENT

Point One

UNIVERSITY'S COUNSEL PROVIDED THE ORDERED DOCUMENTS TO THE COURT FOR *IN CAMERA* REVIEW ONE DAY BEFORE THE FEBRUARY 26, 2016, DEADLINE.

A. The Court's Orders:

At a hearing on February 18, 2016, relative to the court's Order issued February 10, 2016, argument was heard between counsel for the Objecting Party Dixie State University ("DSU"), Mr. Carter, and the Defendant, Varlo Davenport, Mr. Prisbrey. The Order provides that the Subpoena Duces Tecum is modified as follows:

1. DSU to provide Defendant's Counsel any information from the Silent Whistleblower Hotline pertaining to the Defendant that is related in any way to the events occurring on or about November 21, 2014; and

2. DSU to provide to Defendant's Counsel any tapes, recordings, or notes from witness interviews pertaining to the Defendant that are related in any way to the events occurring on or about November 21, 2014.

Following the February 18th hearing, the above-referenced Minute Entry (pertinent pages attached as Exhibit "A") provides:

Court expands the order to include e-mails or correspondence that pertain to the Defendant in relation to the events on or about November 21, 2014.

The Minute Entry also states:

The court would like the video information to the court by Next [sp] Thursday. With a cover letter letting the court know what it will pertain to.

B. The Deadlines:

The court's written Order is dated February 10, 2016; however, the court wished to hear any objections from Mr. Carter (See Minute Entry 02-10-2016 – Pretrial Conference, and the specific statement: "Court will continue a hearing once we can get Mr. Carter present."). A hearing was held on February 18, 2016, at which argument was heard from Mr. Prisbrey and Mr. Carter, whereupon the court's written Order was "expanded."

There was a 10-day production time frame in the written Order; at the hearing the court required documents for *in camera* review to be delivered by Thursday, February 26, 2016. It is reasonable to conclude that the production deadline following

the hearing was no earlier than February 26, 2016, and no later than Monday, February 29, 2016. Otherwise, the Order would provide only two (2) days following the hearing for document research and production. And the production date most certainly would not have been on Saturday, February 20, 2016, as propounded in Defendant's Motion.

C. Compliance with the Orders by the Deadline:

The following are efforts made by DSU Counsel, Mr. Carter, to comply with the Court's Orders by the February 26, 2014, deadline:

1. Reviewed Chief Reid's file to locate any documents related to "November 21, 2014," or related to the "event" or "incident."
2. Identified several possible documents.
3. On February 25, 2016, met with the prosecuting attorney, Mr. Robert Cosson, to review these documents in an effort to avoid duplication of those already produced.

There were two (2) documents not produced earlier:

- A DSU "Whistle-Blower" record dated May 6, 2015, (stated as: 2015-05-06 on the document) –three pages- in which an anonymous caller referred to the Varlo Davenport "incident" (of no specific date). The caller could not be identified, and has not attempted a subsequent contact; and,
- An e-mail from Mark Houser to Richard Williams, dated Monday, February 23, 2015, - two pages - in which Mr. Houser communicated general course related information (e.g. homework received) pre- and post – "November 21," and her current earned grading percentage of 78.3%.

4. Discussed with Mr. Cosson audio tapes, recording and notes from witness interviews. He advised that all had been previously provided to Mr. Prisbrey.

5. Neither Mr. Cosson nor Mr. Carter is in possession of, can locate, or is aware of any "video" information referred to by the court's Minute Entry.

6. Immediately following the meeting with Mr. Cosson, at or about 4:00 p.m., on February 25, delivered the two identified documents to the Court Clerk – Judge Read having departed minutes earlier.

7. Went to the Justice Court on the afternoon of February 29, 2016, entered Judge Read's courtroom while other matters were in session, and sat in the audience. Upon conclusion of the matter at hand, was called to the bench by Judge Read where he acknowledged receipt of the documents. Discussion was held about redacting one aspect of the "Whistle-Blower" document.

Asked Judge Read to take note of the actual dates of the documents, as from that standpoint, they were both well after the fact. Judge Read indicated a disregard for the respective dates, and proposed to provide the documents to Mr. Prisbrey.

Pointed out that the Houser e-mail may not be in native format as earlier requested by Mr. Prisbrey. Judge Read also indicated a disregard for that absence.

Advised Judge Read that these were my only copies, as back-up copies were not made in the interest of producing them to the court before the February 26, 2016, deadline. Judge Read advised that he would have copies made for Mr. Prisbrey, and asked me to come back later to retrieve the provided copies.

8. Offered to deliver the documents to Mr. Prisbrey's office. Offer was declined.

All documents related to "November 21" or the "event" or "incident" of that date were provided to the court in compliance with its Orders prior to the production deadline of February 26, 2016.

Point Two

UNIVERSITY IS IN FULL COMPLIANCE WITH THE COURT'S ORDER. THERE IS NO BASIS WHATSOEVER FOR DEFENDANT'S CLAIM OF CONTEMPT.

Having delivered the related "Whistleblower" Report citing the Davenport "incident," and an e-mail from Mark Houser to Biff Williams which references "November 21," and relates to Ms. Sorensen's assignments turned in and grading percentage;

Having reviewed all other "documents from Don Reid's file," or referring to the "event" on "November 21, 2014," with Mr. Cosson to determine that they have already been produced; and.

Having gotten the assurance of Mr. Cosson that all related audio tapes, recording and notes from witness interviews, -- all documents reasonably related to the particulars of the court's written Order of February 10, 2016, and the court's verbal order of February 18, 2016, have been provided before February 26, 2016. The University and President Richard "Biff" Williams are in full compliance with the Court's Order and all "expansions" thereof. Defendant's claim that President Williams and the University are in contempt of court for having failed to timely produce documents is without basis.

Point Three

THE CLAIMS OF NON-DELIVERY AND NON-COMPLIANCE IN THE MOTION GO WELL BEYOND ANYTHING ACTUALLY ORDERED BY THE COURT.

Noting Paragraphs 6 and 9 of the Motion's "Statement of Facts," there is no language in the Order of February 10, 2016, in the court's directions from the bench in the February 18, 2016, hearing, or in the court's Minute Entries that direct Dixie State

University or its counsel to “submit the entirety of” or “submit Don Reid’s file to the tribunal by February 25, 2016.” Defense counsel’s argument to the court as referenced in the Minute Entry, does not constitute an order of the court. The fact that Don Reid’s entire file was not submitted as Defendant might have wished is no basis for contempt.

Point Four

ASSERTIONS IN DEFENDANT’S MOTION RELATED TO MS. SORENSEN’S GRADE ARE BEYOND THE SCOPE OF THE COURT’S ORDER, AND ARE IN NO WAY RELATED TO THE ALLEGED CRIME.

In the third (un-numbered) paragraph of his Motion, Defense Counsel, alludes to “falsified documentation” by which Mark Hauser [sp] supposedly entered into a “promise” with Ms. Sorensen to give her an “A” in Defendant Davenport’s acting class, in exchange for her testimony.

The University objects to this allegation and any related inference. The issue of Ms. Sorensen’s grade in the Acting I class is beyond the scope of the allegations of Assault presently before the court. In addition, this assertion addresses “administrative proceedings,” which have been ruled by this court in its Order of February 10, 2016, to be “[E]ither not relevant or unduly burdensome and/or beyond any proportionality analysis pursuant to Rules 14 and 16 of the Utah Rules of Criminal Procedure and Rules 26 and 45 of the Utah Rules of Civil Procedure.”

CONCLUSION

President Richard “Biff” Williams and Dixie State University, by and through counsel, have produced all documents and related evidence to the court as ordered, before the specified deadline. Dixie State University is in full compliance with the court’s orders – written and “expanded”.

In some respects Defense Counsel has exceeded any reasonable reading of the court's Order or relevant Minute Entries to bolster his argument seeking contempt. This effort is inappropriate and forms no basis for finding the University or its President in contempt.


The grading assertion violates the courts earlier Order.

The Defendant's Motion should be denied. There is no reasonable basis for contempt to be found or an Order of Contempt to be issued.

HEARING

In the event the court would like to hold a hearing to consider further argument or issue further clarification of its Orders, DSU Counsel would have no objection, and would make every reasonable effort to accommodate the court's prompt scheduling. Counsel makes no direct request for such a hearing, unless, for some reason, the court has any inclination to actually find contempt. In such an event, a hearing is formally requested prior to the issuance of any further order.

DATED this 16th day of March, 2016.


D. MICHAEL CARTER
Assistant Utah Attorney General
Attorney for DIXIE STATE UNIVERSITY
and its President, Dr. Richard B. Williams

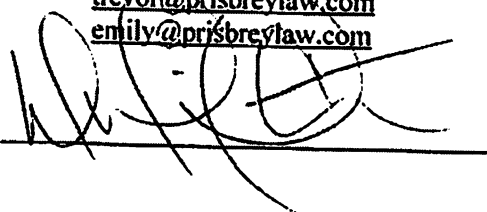
CERTIFICATE OF SERVICE

I certify that a true and correct copy of the foregoing, "MEMORANDUM IN
OPPOSITION TO DEFENDANT'S MOTION TO FIND DR. RICHARD "BIFF" WILLIAMS
IN CONTEMPT OF COURT," was caused to be served via e-mail, as indicated, and via United
States mail, postage pre-paid, upon the following individuals on this 16th day of March.

2016:

Shawn M. Guzman
Robert L. Cosson
CITY OF ST. GEORGE
175 East 200 North
St. George, Utah 84770
robertcosson@sgcity.org
cassandra.warren@sgcity.org

Aaron J. Prisbrey
Trevor C. Sanders
AARON J. PRISBREY, P.C.
1090 East Tabernacle Street
St. George, Utah 84770
trevor@prisbreylaw.com
emily@prisbreylaw.com



Exhibit

A

CASE NUMBER 151700661 Other Misdemeanor

St George, UT 84770

Before Judge: RONALD READ

JURY TRIAL is scheduled.

Date: 03/24/2016

Time: 09:00 a.m.

Location: Justice Court

87 N 200 E Suite 301

St George, UT 84770

Before Judge: RONALD READ

DEFENDANT'S APPEARANCE IS REQUIRED

11-02-15 JURY TRIAL Cancelled.

11-02-15 JURY TRIAL Cancelled.

11-02-15 JURY TRIAL scheduled on March 24, 2016 at 09:00 AM in Justice Court with Judge READ.

11-02-15 Note: Pros has gotten back with me, The March 23-24 dates will work for them as well.

02-10-16 Filed order: Order regarding Supeana Duces Tecum

Judge RONALD READ

Signed February 10, 2016

02-10-16 Note: Order was emailed to Mr. Prisbrey's office, and Mr. Michael Carter. Faxed a copy to the City Prosecutor.

02-10-16 Minute Entry - PRETRIAL CONFERENCE

Judge: RONALD READ

PRESENT

Clerk: tiab

Prosecutor: COSSON, ROBERT L

Defendant

Defendant's Attorney(s): PRISBREY, AARON J

Mr Prisbrey is asking for a continuance on the trial they are not prepared to go forward, the ruling on the motion was just made today. Arguments heard. Court denies the motion at this time. If there is any new information given to the defense they can file another motion to continue.

Voir Dire and Jury instructions to be exchanged and to the court by March 17 2016 by 5:00 PM, Trial management meeting on 3/21/2016 at 4 PM Chambers meeting at 3/23/2016 at 8:30 PM.

Mr Prisbrey would like to address the Order filed today. Pros doesn't believe we can address this with out Mr. Carter being present. Court will continue a hearing once we can get Mr. Carter present.

Mr Prisbrey also has some issues with some exparte contact. Judge lets Mr. Prisbrey know he can file an affidavit and motion in regards to this.

Mr Cosson gives Mr. Prisbrey an offer in this case today.

TIME: 9:07 AM

TRIAL MANAGEMENT CONFERENCE is scheduled.

Date: 03/21/2016

Time: 04:00 p.m.

Location: Justice Court

87 N 200 E Suite 301

St George, UT 84770

before Judge RONALD READ

02-10-16 TRIAL MANAGEMENT CONFERENCE scheduled on March 21, 2016 at 04:00 PM in Justice Court with Judge READ.

02-10-16 Filed: Notice for Case 151700661 ID 11230000

02-16-16 ORDER REVIEW HEARING scheduled on February 18, 2016 at 08:45 AM in Justice Court with Judge READ.

02-16-16 Note: I have talked with Mr. Prisbrey, Mr Carter and Mr Cosson. They are all ok with the time of hearing on Thursday.

02-18-16 Minute Entry - ORDER REVIEW

Judge: RONALD READ

PRESENT

Clerk: tiab

Prosecutor: D MICHAEL CARTER

Defendant

Defendant's Attorney(s): PRISBREY, AARON J

Mr Prisbrey addresses his concerns with the order. Mr Prisbrey indicates he believes the order doesn't allow him to get the emails that are referred to.

Mr Carter addresses the court.

Court expands the order to include emails or correspondence that pertain to the Defendant in relation to the events on or about November 21 2014.

Mr Prisbrey believes everything that went to Mr. Reid (Chief officer) is material for this criminal case and he believes he should have this. Mr Carter gives argument. He believes that The officer would have gotten administrative information in his investigation and that is not an issue in this case.

The court would like the video information to the court by Next Thursday. With a cover letter letting the court know what it will pertain to.

TIME: 8:47 AM

03-03-16 Filed: Motion to Find Dr. Richard "Biff" Williams in Contempt of Court

Filed by: PRISBREY, AARON J,

EXHIBIT 7

FEBRUARY 29, 2016 HEARING TRANSCRIPT

**TRANSCRIPT OF EX PARTE COMMUNICATION TAKEN FROM COURT RECORDINGS OF
FEBRUARY 29, 2016 BETWEEN MICHAEL CARTER, ASSISTANT UTAH ATTORNEY GENERAL,
REPRESENTING DIXIE COLLEGE AND JUSTICE COURT JUDGE RON READ**

**IN THE MATTER OF THE CITY OF ST. GEORGE v. VARLO DAVENPORT, CASE No. 151700661
WASHINGTON COUNTY JUSTICE COURT, JUSTICE COURT JUDGE RONALD READ**

(JR: Judge Read; MC: Michael Carter; []: inaudible)

JR: Hi. Give us just a sec. We'll get you that form.

Mr. Carter, how are you?

MC: Doing well, thank you.

JR: Come on up.

Court Clerk: Do you want me to scoot over?

JR: Nope. He gets to go to the other side. What could I help you with today?

MC: Well, I dropped off those documents and didn't know what your pleasure was in terms of --

JR: I'm just going to make -- the one question I had for you is that came in on the whistle blower line?

MC: Was what?

JR: Did that come in on the whistle blower?

MC: The one did refered to, [] its but it came in on [] --

JR: Yeah. Well, and the -- and the guy's e-mail's on there. I just didn't --

MC: I didn't notice that. But I thought it [] --

JR: So I'm --

MC: -- [] the fact it was irrelevant. But it did refer to the incident, so I get it to you as referred to [] --

JR: Well, and to me, when I look at that, because of that, if they didn't know he was in there as a witness, that's the only thing I want it --

MC: We don't even know who it is.

JR: Don't ya.

MC: We tried to follow it up, its still anonymous as far --

JR: So they -- well, on the report, on the incident report, the very top line, it starts like a "rwhiplerr" something. Is that who it was to, or is that his e-mail?

MC: I --

JR: And is it just -- I can't remember if it's the whole thing or just that short thing --

MC: -- it comes in through the internal monitors. The whole whistleblower thing is intended to be--

JR: Anonymous, uh-huh.

MC: a financial thing and it's intended to be anonymous.

JR: See, that's why I did -- I haven't -- Tia was out last week, so I didn't do anything with it. And I was going to deal with it this afternoon, once I get done. And --

MC: I was just in town and so --

JR: That's -- because I had that one thing on there, I didn't know whether I was going to black that out, if it was directed to who the person is that submitted it, so it stayed anonymous.

MC: I was told that it was anonymous, I didn't really read that with the idea --

JR: Okay.

MC: of anything wasn't [] --

JR: Okay. Um --

MC: My feeling was is that it was anonymous, that they said they tried to follow it back --

JR: And couldn't get to the person?

MC: [].

JR: Okay. Well, then it -- it'll be -- it'll be safe to do it. So I -- my intent will be just to disclose those two sheets you gave me.

MC: Okay. But the other thing is I gave you. Mr. [] --

JR: The only one?

MC: -- Mr. Prisbrey [] -- wanted dates and copies of the e-mails. I have not [] --

JR: Okay.

MC: -- unless there, so we can [] -- dates and times and come up with that. I was trying to maybe [] --

JR: Yeah.

MC: -- and I wanted to make sure and look at [] --

JR: Well, and then the last thing that you want me to produce it to --

MC: I didn't --

JR: -- Aaron --

MC: -- make any copies. That's why --

JR: Okay. So I --

MC: -- I made --

JR: I'll produce a copy, and I'll give you the original back.

MC: Okay.

JR: And that's the only question I really had for you is: Black that out or submit it? All right.

MC: I'd ask you to black it out, please.

JR: I will. Just in the event that it is somebody that's --

MC: Yeah.

JR: Okay.

MC: Yeah.

JR: Sounds good. Thank you.

MC: Thank you. Yeah. I'd like -- well, and then you'll just let me know how to pick it up?

JR: Yeah. I'll have Tia call you.

MC: Okay.

JR: I'll get that done probably today, though.

MC: Thank you.

JR: All right. Thank you.

Cynthia Amadore? Ms. Amadore, come on up.

EXHIBIT 8

CASE DETAILS

DIX-15-05-0003

CONFIDENTIAL MEMORANDUM

Report Initiated	2015-05-06 13:03 ET	Primary Priority	C
Scheduled Follow-up		Case Indicator	
Source	Web Submission	Current Status	New
			2015-05-06
Awareness Resource	Declined	Case Opened	
Language	English	Case Closed	
Documented by	WEBALLEGATIONSUBMIT	Days Open	N/A
		Case Due Date	2015-05-16

Allegation	Class	Priority	Primary
Other	Other	C	Yes

Location	Location Geography	Location Function
Location Provided by Caller		
This happened at DSU		

Parties Involved	Party Type	Job title	Description
B Winkle	Caller		
Other			
bwinkle13@yahoo.com			
	Other Involved Party		

Issue Summary

I am a former student of DSU. I have information pertaining to the Davenport Incident that is important to the college and the public. I am concerned about retaliation for coming forward with this.

Issue Details

I have sensitive and pertinent information pertaining to the Davenport incident. I am concerned about retaliation for coming forward with this.

Additional Questions

Answers

What is your involvement in the issue?	I observed it
Is this an ongoing issue?	Yes
What is the date of the most recent occurrence?	2015-04-15
Have you reported this issue to anyone within the organization?	No
Do you believe that anyone has taken steps to hide this issue?	I do not know
Where did the issue occur?	At a location of Dixie State University
What is your relationship to Dixie State University?	Other

Communication with Reporter

Type	Date Entered	Entered By	Reply Given to Reporter	Language
Reply	2015-05-06 13:53 ET	Mike Pinegar	No	English

Initial

Hi,

well you can choose to bring forth this information through the silent whistleblower process and you can remain completely anonymous if you choose as I have no idea who you are etc. You may also contact either the Human Resources department or the Ombuds department but at that time your identity may become known unless you did so via telephone. If it is anything pertinent to the case or situation then we ask that you please pass along any relevant information.

Thanks

Assignee	Assignment Type	Complete/Removed	Date Assigned	Assigner
No Assignment found for this call report.				

Assignment Notes	Date Entered	Entered By
No Case Assignment Notes found for this call report.		

Investigation Notes	Date Entered	Entered By
No Case Investigation Notes found for this call report.		

Date of Incident	N/A
------------------	-----

Monetary Field 1:	Currency
-------------------	----------

Monetary Field 2:	Currency
-------------------	----------

Monetary Field 3:	Currency
-------------------	----------

Case Indicator

Legally Privileged
Reportable to Audit Committee
Potential Report to SEC
Significant
Up the Ladder

Related Case	Same Case	Date Added	Added by
No Related case found for this call report.			

Resolution Details

No Resolution found for this call report.
Executive Summary

Attachments

File Name

Date Added

Uploaded By

No Case Upload Files found for this call report.

*Client agrees and understands that Global Compliance neither warrants, vouches for, nor authenticates the reliability of the allegations provided in this report. Client agrees that it shall have the sole responsibility for investigating or otherwise evaluating these allegations and other information provided and to comply with all local, state and federal laws pertaining to the investigation and protection of such information, as well as the protection of all rights of any person or persons accused of any wrongdoing.

President Williams, Biff

From: Houser, Mark
Sent: Monday, February 23, 2015 3:39 PM
To: President Williams, Biff
Cc: Jarvis, Jeffery; Craver, Will; Christensen, Bill
Subject: Cassidy Sorenson Canvas Stats and Attendance

According to the Canvas analytics, Cassidy participated heavily in the course.

204 Page views for the course.

15 out of 17 Participations.

11 Assignments on time, 7 Late, 2 missing.

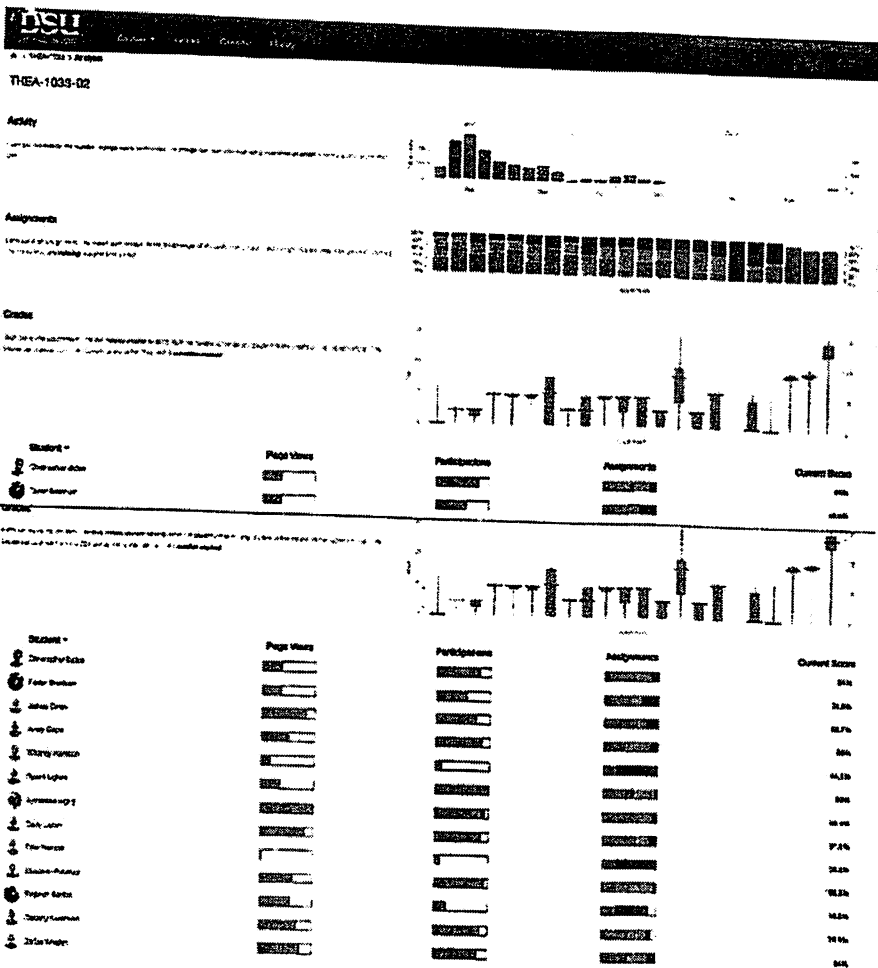
She rates average in the course at 78.3%

The report Jared Johnson sent shows her actively accessing canvas for this course for discussions and assignments even past Nov. 21. I know she was checking for a grade. The absences students and Professor Davenport are eluding to may be the weeks during the last portion of the semester. The dean and I recommended she not attend the rest of the course for her safety. Varlo did not use the attendance tool on Canvas, so there is no attendance record.

If you need anything else, please let me know.

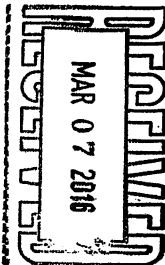
Thank you.

Mark



Mark Houser
 Chair of Fine Arts
 / Theatre Program Director
 Dixie State University
 Theatre Department
 435-879-4384

Washington County Justice Court
37 North 200 East Ste. 301
St. George, UT 84770



Aaron Friedberg
1090 E Tabernacle St
St George UT 84770

Hasler
03/04/2016
FIRST-CLASS MAIL
USPS® \$001.20
ZIP 84780
01E12650385

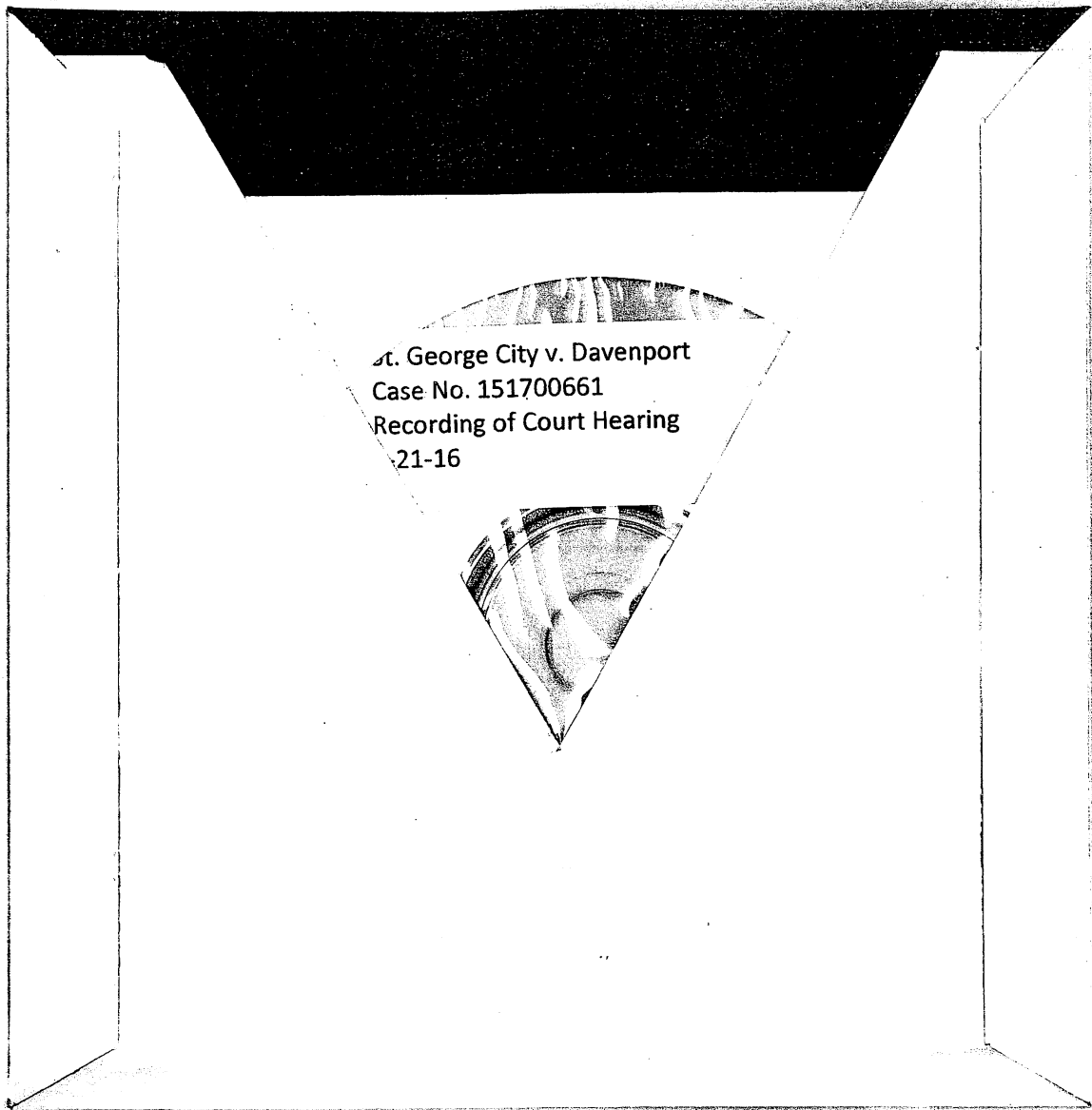


EXHIBIT 9

Audio CD of March 21, 2016 Court Hearing