

BOARD OF POLICE AND FIRE COMMISSIONERS
OF THE CITY OF MADISON

SHARON IRWIN,

Complainant,

vs.

MADISON POLICE DEPARTMENT CHIEF
MICHAEL KOVAL,

Respondent.

SHADAYRA KILFOY-FLORES,

Complainant,

vs.

MADISON POLICE DEPARTMENT CHIEF
MICHAEL KOVAL,

Respondent.

**CLOSING ARGUMENT OF RESPONDENT
MADISON POLICE DEPARTMENT CHIEF MICHAEL KOVAL**

I. Introduction

As a law enforcement officer and a public servant for over three decades, Madison Police Chief Michael Koval knows firsthand the tremendous duty a police officer owes to his community. His respect for that duty is as true today as it was 33 years ago when he took the oath of office, 31 years ago when he returned to Madison to serve his hometown, and two years ago when he became the Chief of Police. In his long history of service, Chief Koval has never been disciplined.

The events at issue in this Complaint have a 16-month history which cannot be ignored. On March 6, 2015, Complainant Sharon Irwin's grandson Tony Robinson was fatally shot by a Madison police officer, marking the beginning of a long and difficult journey for his family and for the Madison community. While the events of that night and the investigation that followed are currently the subject of a federal lawsuit that prohibits Koval from discussing them, Chief Koval has spearheaded the Madison Police Department's ("MPD") efforts to regain the trust of the community – and the Robinson family. Following Robinson's death, Koval shared his personal cell phone number with members of the Robinson family, including Sharon Irwin ("Irwin"), over concerns for their safety. As both Irwin and Chief Koval testified at the hearing, he has since fielded and returned phone calls from Irwin.

But over the months between Robinson's death and the events leading to this Complaint, Irwin has increasingly directed her grief, anger and frustration toward Chief Koval personally. Though she is aware that Koval, because of the pending lawsuit, may not speak with anyone about her grandson's death or the investigation into it, Irwin has repeatedly and obsessively attempted to draw Chief Koval into substantive conversations on both. Most notable is Irwin's monthly practice of standing on the sidewalk facing Chief Koval's office, berating him and the MPD so loudly that it can be heard with the windows closed. Needless to say, her behavior strained the relationship between her and Chief Koval as he grappled to meet the many demands of the community, the Robinson family, the MPD, and the pending federal lawsuit.

That continuous strain manifested itself in an interaction with the Complainants on June 7 during which Chief Koval characterized Irwin in a manner that he deeply regrets and for which has apologized. Chief Koval does not dispute that he called Irwin a “raging lunatic” after she and Shadayra Kilfoy-Flores (“Kilfoy-Flores”) had pursued him, for no legitimate reason, down two stairwells, yelling and attempting to provoke him. In that regard, it should be no surprise to Irwin or Kilfoy-Flores that their behavior did exactly what they intended it to do.

The Complainants’ accusations, however, go far beyond Chief Koval’s admitted indiscretion. They suggest Chief Koval characterized Irwin in a manner calculated to trigger Irwin’s alleged post-traumatic stress disorder (“PTSD”) and that his calculated behavior was so extreme that it caused Kilfoy-Flores to suffer a recurrence of her own PTSD symptoms. And, to top it off, they claim that he accompanied his remark with an actual threat of violence – a physical movement toward the firearm at his hip. Those accusations, which Kilfoy-Flores admitted were drafted with and by community members who were neither present nor witnessed the June 7 events, are wholly unfounded and were not proven at the hearing.

Chief Koval’s one misstep, his characterization of Irwin, requires no discipline. He does not seek to belittle Irwin, Kilfoy-Flores, or any Madison community member, nor to deepen the rift between the MPD and the community which he has dedicated so much of the last 22 months to repairing. But as a sworn law enforcement officer and a

fellow citizen of the Madison community, he simply cannot accept responsibility for the alleged offenses he did not and would never commit.

This written closing argument will explain the events of the evening of June 7, 2016, through citations to the record of the testimony and exhibits submitted at the hearing. The testimony shows that Irwin and Kilfoy-Flores, for no legitimate reason, followed Chief Koval, Paula Fitzsimmons (“Paula”) and Steve Fitzsimmons as they were descending the stairs from the City Council chambers to the first floor of the City-County Building, yelling at them. Then, again for no legitimate reason, they followed Chief Koval down the main hallway and then down the stairway to the G-1 level of the building, all the while continuing to yell at and harass the Chief. The explanation by Irwin and Kilfoy-Flores, that they were merely going in the same direction as Chief Koval to get a Coke, is on its face incredible. It is indisputable that they were seeking a confrontation with Chief Koval.

The accusations made against Chief Koval, which are the product of a collaborative “community” effort to draft the complaint, are vastly overblown. Chief Koval asks that this Commission accept his heartfelt apology for his characterization of Irwin, clear him of the remaining false accusations, and allow him to continue to serve the city to which he is so deeply committed, without interruption and without discipline.

II. The Legal Standards that Govern the Commission's Deliberations and Decision.

A. The Just Cause Standard.

Under Wis. Stat. § 62.13(3), police chiefs "shall hold their offices during good behavior, subject to suspension or removal by the board for cause."

[D]isciplinary decisions are subject to 62.13, Wisconsin Statutes, which sets forth the standards which the Board must use in imposing discipline, summarized generally as "just cause" and known colloquially as the "seven standards:"

1. Whether the subordinate could reasonably be expected to have had knowledge of the probable consequences of the alleged conduct.
2. Whether the rule or order that the subordinate allegedly violated is reasonable.
3. Whether the chief, before filing the charge against the subordinate, made a reasonable effort to discover whether the subordinate did in fact violate a rule or order.
4. Whether the effort described under subd. 3. was fair and objective.
5. Whether the chief discovered substantial evidence that the subordinate violated the rule or order as described in the charges filed against the subordinate.
6. Whether the chief is applying the rule or order fairly and without discrimination against the subordinate.
7. Whether the proposed discipline reasonably relates to the seriousness of the alleged violation and to the subordinate's record of service with the chief's department.

These standards are clearly designed to guide decisions on charges prosecuted by chiefs, but the statute does not distinguish formally between such charges and those brought by a citizen . . . ; we are merely directed to consider the seven standards "to the extent applicable," and therefore we must evaluate the applicability of the seven standards to the facts before us in each instance.

Taylor v. Police Officers Minh Duc Tieu, et al. (PFC Decision, Feb. 20, 2006, p. 1)

B. Judging the Credibility of Witnesses.

Factfinders, like the Commission, which judge the credibility of witnesses should consider, among other things: (1) whether the witness has an interest or lack of interest in the result of this trial, (2) the clearness or lack of clearness of the witness' recollections, (3) the reasonableness of the witness' testimony, (4) bias or prejudice if any has been shown, and (5) possible motives for falsifying testimony. See *Wisconsin Civil Jury Instruction 215*.

III. The Credible Evidence Shows What Happened On June 7, 2016.

On the evening of June 7, 2016, the Madison Common Council held a meeting to discuss a proposed \$400,000 external review of MPD's policies and practices. The issue was hotly contested. As required, Chief Koval attended the almost six-hour meeting to hear Madison residents' views on the issue. The Complainants Sharon Irwin and Shadayra Kilfoy-Flores were present in support of the proposal. Steve Fitzsimmons and Paula Fitzsimmons ("the Fitzsimmons") attended and voiced their opposition.

Following the Fitzsimmons' initial testimony, members of the Common Council recalled them to answer follow-up questions. During that process, Chief Koval observed that Paula appeared flustered and upset when her attempt to respond was abruptly cut off. Concerned for Paula and wishing to thank the Fitzsimmons for their remarks, Chief Koval walked from the rear of the Council chambers to join Steve and Paula at the top of the two stairwells outside the chamber.

When he joined them, Chief Koval came upon a hostile confrontation that Irwin had initiated with Paula. As Irwin admitted, she had injected herself into a conversation Paula had initiated with the Common Council secretary about being cut off in her attempt to respond to a question from a council member (Tr. 49:24-50:1.) Despite Paula having told Irwin “I don’t want to engage with you,” Irwin, accompanied by Kilfoy-Flores, continued to press Paula. (Tr. 132: 3.)

Chief Koval sought to avoid escalation of the conflict. He tapped Steve on the shoulder, reassured him, and offered to escort him and Paula safely out of the building. (Tr. 131: 2-3.) Paula testified Chief Koval then “took the lead and he was leading Steve and I down the steps” which is one of the two opposing stairwells on the second floor of the City County building that lead out to the Martin Luther King, Jr., Blvd. exit from it. (Tr. 134:21-22.)

At that point, Irwin transformed what would have been the calm resolution of one dispute into the eager pursuit of another. As Irwin affirmed in her testimony, she and Kilfoy-Flores began – uninvited – to pursue Chief Koval, Steve and Paula down the stairs. (Tr. 52:14-16.) Irwin then launched a verbal assault on Koval, yelling at him that she wanted “clarity” in regards to Robinson’s death. As Paula explained,

I couldn’t tell you verbatim what she was saying. I remember a lot of screaming. I remember a lot of yelling. They were yelling at him, screaming...I was frankly concerned at that point...It was very tense. They were screaming at him...They were almost like right in his face.”

(Tr. 135:15-137:7.) And Steve Fitzsimmons, observing the same scene, described a striking level of verbal aggression toward Chief Koval:

Attorney Pines: Was Ms. Irwin and anyone else nearby [Chief Koval] as you saw him move away from you?

Fitzsimmons: I wouldn't say nearby. I'd say almost on top of him. [Irwin] was right next to him; pushing into him. I don't know if there was any physical contact, but she was that close. I think she was very angry at him for something.

(Tr. 146:20-25.) Resisting the provocation, Chief Koval's eyes remained straight ahead as he delivered Steve and Paula safely to the exit.

Chief Koval decided that he should remove himself from Irwin and Kilfoy-Flores' presence by going to his office. (Tr. 162:15-16.) He walked a short way down the main hallway to a stairway that led to the G-1 level and that continued to the garage level through which he could reach his office. Irwin and Kilfoy-Flores followed him. (Tr. 164:12-14.)

Thus, despite Koval's continuing choice not to engage with them (Tr. 164:20-24), despite Irwin's professed discomfort in confined spaces (Tr. 58:1-4), Irwin and Kilfoy-Flores pursued the Chief down the stairs to G-1 and partially down the stairs to the garage. (Tr. 92:21-93:2.) A bystander, referred to as Scott, had followed the group as it was harassing Chief Koval into the stairwell from the first floor to G-1. Hearing Irwin demand to talk to the Chief, Scott suggested Irwin make an appointment with him at a later time, and Chief Koval turned and replied that he would not make an appointment with her because she was a "raging lunatic." (Tr. 165:9-166:2.) That remark was heard by Erica Bach. (Tr. 117:22-24.) Following it, Koval went down the last set of stairs, and was followed part of the way by Irwin and Kilfoy-Flores. (Tr. 92:21-93:2.) He then went

through a doorway into the garage, and to his office. He returned to the Common Council meeting shortly thereafter.

Approximately two hours after this interaction, Irwin testified before the Common Council in favor of the MPD review. A portion of her testimony was presented to the Commission through Exhibit 1, the video of the Council meeting. By the time Irwin spoke, Mayor Soglin had excused himself and Alderman Mike Verveer, who did not usually serve in the role of meeting chair, presided in Soglin's absence. (Tr. 170:19-24.) After Irwin had exceeded the three minute time limit that applied to all speakers that evening, Chief Koval, in an effort to maintain the order and decorum of the meeting, tapped his open palm on the wooden desk at which he was sitting to indicate to Verveer that Irwin's time had expired. (Tr. 169:7-15.) Verveer, recognizing that it had, thanked Irwin for her comments and moved the meeting forward. (Ex. 1, Video 2:44:05.) He neither acknowledged nor reprimanded Koval for tapping on the table. As the video shows, no member of the Common Council appeared to take note of Chief Koval having tapped on the desk. There was no disruption caused by Chief Koval's action.

IV. Argument

A. Irwin and Kilfoy-Flores' purpose was to provoke Chief Koval.

There can be no doubt that the confrontation between Irwin and Chief Koval was instigated and exacerbated by Irwin herself with the participation of Kilfoy-Flores. Irwin initiated a hostile exchange with Paula outside Council chambers, inserting

herself into Paula's conversation uninvited. She followed Chief Koval down the stairs and, in her own words, "I did interject at that time," screaming at the Chief and continuing to do so despite the fact that the Chief had neither engaged with nor responded to her. (Tr. 29:14.) Her tirade was so disruptive that she attracted other onlookers, like Scott, who apparently followed for no other reason than being attracted by the turmoil. (Tr. 164:12-15.)

At the MLK, Jr. entrance, Irwin had gotten in the Chief's face so aggressively that Steve Fitzsimmons was concerned for him and even wondered if Irwin was making physical contact with him. (Tr. 146:20-25). Irwin, on her own volition, and with her friend, Kilfoy-Flores, chose to continue to pursue Koval down the hall and into yet another confined stairwell to the basement, all the while continuing her argumentative assault. She did this not just voluntarily but eagerly, despite apparently suffering from a disorder that makes her averse to confrontations and confined spaces.

Irwin offered the implausible explanation that, through all of that, her only objective was to get a Coke. (Tr. 27:24-25.) Her claim simply cannot be believed.

B. Chief Koval fully acknowledged and apologized for his uncharacteristic remark.

Chief Koval deeply regrets calling Irwin a raging lunatic, acknowledging that his fleeting indiscretion was not in keeping with the code of conduct he holds himself to:

I apologize then and now for any belittling or language that would have been insulting, and I think I'm better than that, and I apologize for that because the Chief of Police has to model more exceptional behavior because I lead a workforce where that's the expectation and in that instance as a man

with feet of clay I did not retain the composure that I would have liked.
(Tr. 165:18-24.)

He hopes that Irwin will accept his heartfelt apology and agree to put the episode behind them. Irwin, while professing that's all she has wanted to do, refused in advance of the hearing on this complaint to meet with Chief Koval and a facilitator so that she could talk with him about her concerns and try to reach a mutual understanding.

The events of the evening of June 7 occurred on the heels of many tense and difficult months for both Irwin and Chief Koval. Recognizing this, Chief Koval twice attempted to remove himself from Irwin's presence before the offending interaction—once outside the Common Council chambers, and once at the Martin Luther King, Jr., Blvd. exit. But Irwin and Kilfoy-Flores persisted. He had told Irwin previously that he could not speak about anything related to Robinson's death or the investigation. Irwin and Kilfoy-Flores persisted.

The layout of the City-County Building gave Irwin and Kilfoy-Flores an opportunity to get to the vending machines by using an elevator or a second stairwell directly opposite of the one Chief Koval used. They deliberately chose not to use either of those. They persisted in following the Chief. At any point they could have easily ended the interaction but, as Irwin herself described, "I put myself in a position, you're right." (Tr. 58:11.)

This was hardly the behavior of someone simply seeking to have a conversation with Chief Koval. This behavior was argumentative, badgering, and meant to incite an emotional reaction from Chief Koval who deeply regrets

that he did react emotionally. However, the evidence shows that he clearly and consistently tried to avoid the interaction by removing himself physically and by verbally informing Irwin and Kilfoy-Flores that he could not engage them. The Complainants do not dispute that, and the Commission should consider that broader context of how this incident developed.

The undisputed fact is this: Irwin has been harassing Chief Koval for over a year. She finally succeeded in pushing him until he made an ill-advised remark. That gave her and her coterie of supporters, including Kilfoy-Flores, the opportunity to file a complaint with the Commission that was designed to embarrass Chief Koval and to advance a political agenda.

C. Chief Koval did not make any remark to intentionally, deliberately or maliciously refer to or exacerbate Irwin's PTSD.

The allegation that Chief Koval used the words "raging lunatic" in order to reference or exacerbate Irwin's diagnosis of post-traumatic stress disorder was not proven and, on its face, is patently absurd.

Chief Koval acknowledged that he could not recall how exactly he heard about Irwin's alleged PTSD, but that he could "recall being sort of aware that that was an acknowledged problem that [Irwin] had or issue that she had." (Tr. 150:12-13.) Several days after Robinson's death on March 6, 2015, Koval was present at a gathering at which Beris Taki recalled Irwin revealing that she suffered from PTSD:

Attorney Matano: [W]as anything mentioned about Sharon's status as a veteran?

Taki: Yes, she stated – you also understand because of what happened there was a lot of tension and so speaking to him and others that were present it was stated that she had PTSD, you know, and how it was freaking her out what was going on.
[...]

Attorney Pines: There were a lot of people present?

Taki: Yeah, I would have to say, yeah, there were a lot of people.

Attorney Pines: More than ten?

Taki: Fifteen, twenty.

(Tr. 124:20-126:1.) Clearly, there is no evidence that Irwin ever privately spoke with Chief Koval or wrote to Chief Koval about her PTSD and what events or behaviors might trigger it.

Moreover, by June 7, 2016, over 16 months had passed since Robinson's death and the gathering at which Irwin disclosed that she suffered from PTSD. The accusation that during the course of his encounter with Irwin on June 7 he both recalled her diagnosis and crafted comments targeting her for that diagnosis is ridiculous. Chief Koval did no such thing. He simply lost his composure after being harassed that day by Irwin on top of her prior year-long harassment of him. Irwin's admirable status as a veteran and her apparent struggle with PTSD had nothing to do with the interaction on June 7, 2016, and the Commission should find as such.

D. Chief Koval did not touch, motion toward, or otherwise index his firearm during his interaction with Irwin and Kilfoy-Flores.

The Complainants' second accusation, that Chief Koval made a motion toward his firearm during this encounter, is preposterous and Koval's testimony at the hearing disposed of it as such:

[I]n the 33 years that I have been engaged in this profession I have never nor would I have ever done such a thing like that. It's absolutely preposterous ...No ifs, ands or buts... I have been shot at twice in this field and never even drew my gun, and I'm certainly not at the point where after having trained legions of officers what the appropriate standards are for accessing a firearm, to even suggest that my hand was even indexing my weapon is a bold-faced lie. (Tr. 166:19-25; 167:1-6.)

Pressed further by Attorney Matano on whether he could have accidentally "just tensed up" and touched his gun, Koval reiterated

I cannot be more strenuous, I cannot be more vehement that no such gesture, perceived or otherwise took place." (Tr. 172:1,7-9.)

Two key omissions demonstrate the falsity of this allegation. First, just two hours after Irwin was allegedly threatened with Chief Koval's firearm, she testified before the Common Council without once mentioning the episode. If the Chief had indeed threatened use of his loaded firearm just two hours before, one would think that Irwin, who not only alleges she suffers from PTSD but who lost her grandson to a police officer's firearm, would have brought the incident to the Common Council's attention. Such an experience would have been highly traumatic for anyone, but particularly for her – yet she said nothing about it. She gave no indication, either verbally or through

her demeanor, that something that disturbing had just occurred. Her omission speaks for itself.

Second, eyewitness Erica Bach did not recall Chief Koval making a movement toward his firearm even upon prompting by the Complainants' own attorney:

Attorney Matano: Did you see anything in Chief Koval's body language with Sharon Irwin?

Bach: I'm sorry, I'm not sure I'm understanding the question.

Attorney Matano: Well, you spoke – you've given us the words and such, but did he conduct himself physically in a way that was worth of note?

Bach: I found it intimidating, and I was separated by a gate, and I found it intimidating.

(Tr. 118:4-11.) Surely if Chief Koval had in fact motioned toward his firearm, Bach would have found that notable to explain why she felt intimidated. However, her testimony is entirely devoid of it. Bach did not recall the firearm motion because it never occurred.

While Complainants' false accusation is egregious, it is not surprising given the way in which the Complaint was composed. As Kilfoy-Flores explained at trial, the Complaint was co-drafted by community members who were neither present nor witnessed the June 7 events complained of.

Attorney Pines: You say you co-wrote [the complaint]. Who did you co-write it with?

Kilfoy-Flores: I had a number of community members who helped me. We used a Google Docs and so it was myself and a couple of other community members.

[...]

Attorney Pines: Other community members?

Kilfoy-Flores: That I'm aware of perhaps. I'm not sure who all contributed. Like I said, it was a Google Doc which means that people can make different edits if it's necessary so the only other person that I'm aware of is the Rykos, Nate and Amelia Ryko.

Attorney Pines: Who are Nate and Amelia Ryko?

Kilfoy-Flores: They're neighbors of mine.
[...]
So Google Docs is an online application. It's software that if you create a document it's – whomever is given access to that document can make changes to that document.

Attorney Pines: [...] So in fact those people participated in drafting your complaint, correct?

Kilfoy-Flores: Yes.

(Tr. 88:21-90:20.) Perhaps such an open platform provided opportunity for Chief Koval's uncharacteristic verbal indiscretion to grow into an accompanying threat of violence. However, the absurdity of the allegation, coupled with the method of producing it, calls into question the motive of the Complaint's engineers.

As MPD's Training Sergeant, Chief Koval dedicated years of his professional life to training Madison police officers on the safest, most up-to-date techniques for the use and restraint from use of firearms by law enforcement professionals. (Tr. 149:15-17.) He does not take lightly the significant responsibility that comes with carrying a firearm. His professional record is spotless and his competence in handling firearms is beyond

question. He has worn a firearm on his hip for 33 years and never once fired it— not even on the two occasions when someone has fired directly at him. (Tr. 167:1-6.) With his record and level of experience, there can be little debate that Chief Koval would never even accidentally motion toward his weapon. The Commission should roundly reject this accusation as the simple untruth that it is.

E. Chief Koval’s brief tapping at the close of Irwin’s testimony alerted Alderman Verveer that the time limit had expired and was neither unprecedented nor intended to disrespect Irwin.

Lastly, Irwin alleges in the Complaint that Chief Koval “loudly pounded the table three times with his hand” during her testimony at the Common Council meeting. The videotape of the meeting and the hearing testimony of Irwin herself, however, contradict this allegation. As shown by the evidence, Chief Koval’s open-palmed tapping on the table was meant to alert the chair to the time limit and not to disrespect Irwin.

Prior to the June 7 meeting, Chief Koval had expressed to Mayor Soglin his concern for order and decorum at the meeting based on observations at similar meetings, stating he had

made it very clear to the Mayor that the lack of decorum at these Council meetings is troubling, and to that extent I asked that there be some mechanism in place at the outset where everybody is put on notice about time limitations, respecting those time limitations and adhering to them as well as sort of minimizing either the cheering, the snapping, the booing, the loud tones when other people are speaking which I just think is completely inappropriate. (Tr. 169:25-170:9.)

Clearly, Chief Koval's main concerns were respect for the speakers and fairness in allowing each an equal amount of time to state their opinions. As the meeting progressed, Mayor Soglin adhered to the time limits and maintained order, addressing the Chief's concerns.

At some point prior to Irwin's testimony, Soglin excused himself and left Alderman Mike Verveer in charge, who had not heard Chief Koval's input prior to the meeting. When Irwin testified and ignored the timer signaling her to conclude her comments, Chief Koval used his open palm to tap on the table three times. Irwin herself testified at the hearing that "It wasn't a pound. He didn't pound on the table." (Tr. 41:3-4.) While she concluded that she felt disrespected, she failed to explain why she felt entitled to an extended time limit. The video shows that Chief Koval's taps merely brought Alderman Verveer's attention to the time limit in much the same way that the timer itself alerts the speaker and the audience that the speaker's time is up.

The video could not be clearer: Koval taps, Irwin briefly responds, and then Verveer informs Irwin her time is up and announces the next speaker. The video also reveals the testimony of witness Rachel Rodriguez to be false:

Attorney Matano: So you used the word pound, is that correct?

Rodriguez: I would describe it as pound, yes.

Attorney Matano: [...] Did this disrupt the floor of the meeting?

Rodriguez: Yes, it did, very much so.

[...]

The Chair had to address Chief Koval's actions, maybe not—I can't recall if it was specifically to Chief

Koval, but did have to stop the meeting and, you know, kind of bring order back to the Common Council chambers.

Chair Verveer did no such thing. Following Koval's taps (Ex. 1, Video 2:43:52), Irwin speaks four sentences more and then Verveer interrupts her to say "Thank you. Thank you, Ms. Irwin. Thank you very much. Your time has expired. Our next speaker is..." (Ex. 1, Video 2:44:02). Rodriguez clearly did not take the time to refresh her memory prior to the hearing, relying instead on her own embellishments. Fortunately, the Commission has the indisputable video evidence to rely on rather than Rodriguez's faulty memory.¹

F. No Discipline of Chief Koval Is Warranted.²

The Commission is "limited by statute to a simple set of penalties: suspension, reduction in rank and discharge." (*Taylor v Police Officers Minh Duc Tieu, et al*, supra, at p. 5) Complainants have asked the Commission to suspend Chief Koval for either a brief or extended period of time. (Compls.' Closing Br. 20.) Assuming that the Commission concludes that there is just cause for discipline, a suspension is wholly unwarranted because under the seventh standard for just cause: "whether the proposed discipline reasonably relates to the seriousness of the alleged violation and to the

¹ Rodriguez's claim that when Chief Koval left the meeting following Irwin's testimony he disrupted it, is also contradicted by the video which shows that there was no disruption at all. She is not a credible witness.

² By making this part of the argument, Chief Koval does not concede that the Complainants proved that there was just cause for discipline under the "seven part test" for just cause.

[Chief's] record of service with the . . . department" suspension would be a vastly disproportionate penalty for the following reasons.

Chief Koval has a long and distinguished career as a law enforcement officer with an unblemished record. An errant characterization of an individual who has continually harassed him for over a year is not a violation of a department rule. Chief Koval is human. He has apologized for what he said. That should be sufficient.

Had this been a pattern of behavior toward citizens, that would be a different story. But there is no pattern. The June 7 incident was, indeed, isolated. Chief Koval regrets his characterization of Irwin after she had pursued him through the City-County Building. In light of Chief Koval's 33 years of service to Madison to suspend him for an isolated misstep would not be proper.

Notably, at no point have Complainants argued that the incident is at risk of recurrence. In fact, there is virtually no risk that the incident will be repeated. Chief Koval is committed to avoiding unconstructive interaction with Irwin and Kilfoy-Flores for the duration of the pending lawsuit and beyond. He has successfully implemented ways to abate the stress of his leadership role, and is confident that his behavior will abide by the MPD code of conduct going forward. And the Complainants now fully understand Chief Koval's legal obligation to refrain from discussing Robinson's death or the investigation for, at least, the duration of the pending federal lawsuit. All of these factors together resolve the problem.

In short, the incident bears no risk of reoccurrence, and a suspension of any length would only serve to obstruct the Chief from attending to his important duties and to delay the process of rebuilding trust in the Madison community.

A suspension would be discipline that is far in excess of the “seriousness of the alleged violation.” It would accomplish nothing for the Complainants, the Police Department, or the Madison community. Any suspension would be unnecessary, unduly harsh, would disrupt the management of the Madison Police Department and would only serve to delay the process of repairing the relationship between the MPD, the Robinson family and Madison citizens at a very critical time.

As the Chief of Police, Koval plays a crucial role in not only leading the MPD but serving as its liaison to the community. Both the Chief and Complainants agree that these 22 months since Robinson’s death have been trying. At no time has it been more important for the MPD and the community to maintain lines of communication. Any form of suspension would needlessly disrupt that process and leave the Department without its leader at a critical time.

V. Conclusion

The Complainants and their witnesses were not credible as shown by: the implausibility of Irwin pursuing and harassing the Chief because she simply wanted a Coke; Kilfoy-Flores’ admission that the Complaint was drafted with community members who did not witness the June 7 events; Rodriguez’s insistence that Chair Verveer had to interrupt the meeting following Koval’s taps and that Koval disrupted


the meeting as he left the Council Chambers, despite video evidence to the contrary; the complete omission or lack of corroboration of any evidence supporting the allegation that Koval indexed his firearm. All of these factors demonstrate that the Complainants and their witnesses simply cannot be believed. They have failed to prove that there is just cause to discipline Chief Koval.

Their complaints must be dismissed.

Dated this 16th day of January, 2017.

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