

VOLUME I
PAGES: 1-121
EXHIBITS: 1-4

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MASSACHUSETTS

GERALD ALSTON,

Plaintiff

vs.

TOWN OF BROOKLINE, MASSACHUSETTS,

et al.,

Defendants

DEPOSITION of PAUL R. PENDER, JR.

Wednesday, October 25, 2017

1:06 p.m.

Held at: Brookline Justice League

1309 Beacon Street

Brookline, Massachusetts

----- Megan M. Castro, RPR, Court Reporter -----

EPPLEY COURT REPORTING

Post Office Box 382

Hopedale, Massachusetts 01747

(508) 478-9795 (508) 478-0595 (fax)

www.eppleycourtreporting.com

1 Q. Whose voices are they?
 2 A. **Me and my son.**
 3 Q. What is your son's name?
 4 A. **Brian.**
 5 Q. What is it that you are saying?
 6 A. **You heard it.**
 7 Q. I can't make out -- I am not 100 percent
 8 certain what you say at the beginning.
 9 A. **I saw you on TV repeating it many times.**
 10 **So now you can't understand it?**
 11 Q. Did you say, "that fuck" or "fat fuck"?
 12 A. **Nothing like that, at all.**
 13 Q. What did you say?
 14 A. **"Fucking nigger" is what I said.**
 15 Q. What did you say before that?
 16 A. **I said "Look out," I think.**
 17 MR. AMES: I am going to play it again.
 18 You can go off the record.
 19 (Discussion off the record.)
 20 MR. AMES: Back on the record.
 21 BY MR. AMES:
 22 Q. When is the first time you heard that
 23 tape?
 24 A. **I think, when they called me in after he**

1 Q. Have you heard that minute-and-a-half
 2 that you say?
 3 A. **I never had the message at my disposal.**
 4 Q. I am asking you.
 5 A. **No, I haven't.**
 6 Q. Well, when they played it for you -- you
 7 say they played it for you -- did you hear a
 8 minute-and-a-half of dead air?
 9 A. **I don't recall, but it was a long time**
 10 **ago.**
 11 Q. So where did you get -- how do you know
 12 there was a minute-and-a-half of dead air?
 13 A. **Because we got into a traffic thing and I**
 14 **had the phone in my hand. It was down like this.**
 15 **When we almost got in the accident, I went like**
 16 **this, and that is when I said "Look out." And**
 17 **the phone was right up again.**
 18 (Witness gesturing.)
 19 A. **And then the kid gave me the finger, and**
 20 **then I responded poorly, and then I put my hand**
 21 **back down like that. I had left the message, in**
 22 **other words, and then we got to that**
 23 **intersection. We are waiting for a red light and**
 24 **I am like -- my son was in the wrong lane and I**

1 went to see the chief.
 2 Q. Who is "they"?
 3 A. **The Town. Human resources, the fire**
 4 **department.**
 5 Q. Did somebody play the tape for you?
 6 A. **Um-hmm, I think so, yes.**
 7 Q. Who?
 8 A. **It must have been human resources.**
 9 Q. I don't want you to speculate. As
 10 Mr. Padolsky said, we don't want a guess.
 11 A. **I just remember there was a meeting.**
 12 **Skerry was there. I am pretty sure Sandra Debow**
 13 **was there. And maybe another person from human**
 14 **resources. My attorney and myself, I believe.**
 15 **The Town played it. I don't know who actually**
 16 **had it.**
 17 Q. And the tape you recall -- the message
 18 you recall hearing then is different than the
 19 message you just heard?
 20 A. **No. There is a minute-and-a-half of dead**
 21 **air before any of that. There is a message that**
 22 **I left at the end of the phone call and then**
 23 **there is a minute-and-a-half of dead air. Or**
 24 **approximately. I don't know.**

1 am going like this.
 2 (Witness gesturing.)
 3 A. **Got to get over this way.**
 4 Q. Just when you say that, would you
 5 describe the gestures you are making?
 6 A. **We have got to get into the other lane.**
 7 Q. You were pointing?
 8 A. **I think I said it to him, but the phone**
 9 **was down by my knees at the time. Then when he**
 10 **tried to get in the other lane after the light**
 11 **changed and we got cut off by this kid, that is**
 12 **when all of that started. That is when I said**
 13 **"Look out." I thought I was going to hit the**
 14 **window. I said "Look out" and looked at the kid**
 15 **and I went, "Come on. Will you --" like that. I**
 16 **didn't say that, but my window was up. And then**
 17 **he gave me the finger, and then I -- the rest is**
 18 **history.**
 19 Q. And so it is your recollection that there
 20 was a minute-and-a-half between when you left the
 21 message and when this traffic incident occurred?
 22 A. **I left a message on his phone and then I**
 23 **put the phone down and I had it in my hand and I**
 24 **thought I had hung it up.**

1 February?

2 **A. I wrote them the day they happened, yes.**

3 Q. Right. So Mr. Pender, nothing was in the
4 newspaper in February 2011.

5 **A. It had been in the newspaper all fall the
6 previous year, in the Tab.**

7 Q. You are saying you believe that in the
8 fall of 2010 --

9 **A. Yes.**

10 Q. -- this incident was in the newspaper?

11 **A. Yes.**

12 Q. So contemporaneous with your disciplinary
13 hearing, you are saying your disciplinary hearing
14 was in the newspaper?

15 **A. Not the context of the hearing, but the
16 results, the fact that I was suspended. It was
17 on the news, the evening news. It was
18 everywhere.**

19 Q. So what you are referring here, in your
20 notes in 2011, is to your -- this incident being
21 brought up in the newspaper and in the evening
22 news?

23 **A. I don't know why you don't understand
24 this.**

1 **This happened in the end of May -- the
2 incident happened the last day of May in 2010.
3 For the next six months, or until -- the next
4 four months, until it was kind of settled and it
5 started to quiet down, but then it kept coming
6 back up. And I decided to cover my ass and write
7 everything down.**

8 Q. The part I don't understand is, nothing
9 was in the newspaper in 2010.

10 **A. You can't say that. Do you have every
11 newspaper from 2011?**

12 Q. I get the Tab every week, Mr. Pender.

13 **A. So do I.**

14 Q. How did Firefighter Alston ruin your
15 career on February 8, 2011?

16 **A. I mean, he just put a big stain on it,
17 that wasn't there before.**

18 Q. And how did he do that?

19 **A. By -- well, I did it. But he could have
20 kept it from happening, and he didn't.**

21 Q. What was the punishment that you
22 received?

23 **A. I received a four-tour suspension without
24 pay, two weeks -- two tours to be served and two**

1 **tours to be suspended if I stayed out of trouble
2 for a year.**

3 Q. Two tours -- tours are 24 hours?

4 **A. (Witness nodding his head.)**

5 Q. Sorry. That is a yes?

6 **A. Yes.**

7 Q. Were there conditions?

8 **A. There were some. I don't recall all of
9 them. I know that I had to agree not to work in
10 group 2 anymore. There might have been a couple
11 of others.**

12 Q. That is something you were not to do. Is
13 there anything that you were supposed to do?

14 **A. Oh, yes. I had to take sensitivity
15 training, classes on valuing diversity, and I had
16 to go see a shrink to see if I had anger issues.**

17 MS. CORREA: There are portions of this
18 deposition that should be marked confidential.
19 It sounds like that statement should be
20 confidential. We can do this now or we can do it
21 afterward. We can mark some portions
22 confidential when the transcript comes out. That
23 is probably less disruptive.

24 MR. AMES: Yes.

1 BY MR. AMES:

2 Q. Mr. Pender, if you -- if we talk about
3 something that is confidential, like having to
4 see a shrink, that will be marked confidential on
5 the deposition, meaning that it won't be made
6 public. Understood?

7 **A. That it won't be?**

8 BY MR. AMES:

9 Q. Won't be. Yes. It will be private,
10 protected by an order that we have agreed to and
11 has been filed in the Court.

12 **A. Okay.**

13 Q. Now, going back to the document, you
14 said -- or you wrote, "Well, Gerald, I tried to
15 tell you, when we talked on the phone, that if
16 you went to the chief, this would create a huge
17 shit storm. I begged you, and I apologized to
18 you up and down, not to do what you did. You
19 could see that this was going to happen."

20 What was the shit storm that was going
21 on?

22 **A. It was just general that when there
23 is -- anytime there is -- for lack of a better
24 term, call it a whistle blower incident, that no**

1 have been September of 2010.

2 Q. Were you interviewed?

3 A. No.

4 Q. Was Gerald interviewed?

5 A. I don't know.

6 Q. Did you see it or just hear about it?

7 A. I don't recall. There was so much going
8 on that I was actually trying to ignore it.

9 Q. So much -- just focusing on the media,
10 what was the "so much"? You say there was a
11 story in the evening news, but you don't remember
12 seeing it?

13 A. There was stuff in the Tab almost weekly,
14 for a long time.

15 Q. In 2010?

16 A. I believe so.

17 Q. What was the stuff in the Tab?

18 A. Just reporting on the incident.

19 Q. Was Gerald interviewed?

20 A. I don't recall.

21 Q. Did you talk to anybody in the fire
22 department about the shit storm, for want of a
23 better word?

24 A. No. Not really. Everybody was sort of

1 A. I do not know.

2 Q. Did human resources want to talk to you?

3 I am talking about after the suspension you
4 mentioned. After that, did human resources ever
5 reach out to you about any allegations that
6 Gerald had made in any type of legal action?

7 A. No.

8 Q. We are going to talk about Exhibit 2,
9 which is the second document you have there.

10 So this is dated October 31, 2013?

11 A. Um-hmm.

12 Q. This was in the same envelope that you
13 handed to Sandra Debow on, I guess, the following
14 month?

15 A. Yes. Apparently, by the dates, yes.

16 Q. Now, it says that you spoke to
17 Gerald Alston at training?

18 A. Right.

19 Q. And where is training?

20 A. Station 6.

21 Q. Is that on Hammond Street?

22 A. Correct.

23 Q. It says, "I told him that I had read the
24 lawsuit and as far as I could tell, it was a

1 sick of the whole thing and no one really talked
2 about it.

3 Q. Did the union play any role in addressing
4 the conflict between you and Gerald?

5 MR. PADOLSKY: Objection.

6 MS. CORREA: Objection.

7 MR. BECKER: Objection.

8 A. I don't know what conflict you are
9 talking about.

10 BY MR. AMES:

11 Q. You left a message for Gerald. You
12 learned that he had reported it to Mike O'Reilly.
13 You had a couple of conversations with Gerald.

14 Was the union involved, at any point?

15 A. I don't really understand. They provided
16 me with some representation, I believe. But that
17 was it. Which they do with everybody who is
18 brought up on charges.

19 Q. Did the union pay for Bobby Allen?

20 A. Yes, I think they did.

21 Q. Did there come a time when you learned
22 that Gerald had filed some sort of legal action?

23 A. Yes. At some point, I heard that.

24 Q. Who did you hear it from?

1 bunch of lies."

2 A. Yes.

3 Q. Who gave you a copy of the lawsuit?

4 A. I don't know. I think I downloaded it
5 offline, I think.

6 Q. Did you talk to any of your colleagues on
7 the Fire about the lawsuit?

8 A. Maybe one.

9 Q. Who?

10 A. I am not sure, so I am just going to say,
11 I am not sure. I don't remember.

12 Q. Did you tell anybody, besides Gerald,
13 that you thought the lawsuit was a bunch of lies?

14 A. I didn't really like talking about it
15 with anyone, so I don't think I did.

16 Q. Well, going back to 2011, when you were
17 talking to Gerald -- that is the
18 Exhibit 1 -- Robert O'Connor was a witness?

19 A. Um-hmm.

20 Q. So he certainly knew how you felt about
21 the incident being reported; right?

22 A. I think he could have come to some
23 conclusion that it didn't make me happy.

24 Q. Explain that to me.

Page 81

1 **A. When someone puts you in on charges, it**
2 **is not a fun thing. He probably knew I didn't**
3 **like that I was put in on charges.**
4 Q. What were the bunch of lies in the
5 lawsuit? This is October 31, 2013.
6 **A. One of them was that I had refused to**
7 **shake his hand in front of a bunch of people and**
8 **embarrassed him. That is just flat out not true.**
9 **And I don't remember the other ones. Again, it**
10 **was a long time ago.**
11 Q. Did you ever refuse to shake Mr. Alston's
12 hand?
13 **A. No.**
14 Q. That was the only one you remember right
15 now, the only lie?
16 **A. Yes. You are talking about something I**
17 **read almost five years ago. So yes, that is all**
18 **I remember.**
19 Q. You wrote, "I asked him about" --
20 **A. Oh, it said that I was instituting -- I**
21 **was -- I forget exactly how it was worded, that I**
22 **was behind a -- to blackball him or something.**
23 **Absolutely not true. I forget exactly the**
24 **terminology, I mean.**

Page 82

1 Q. So you had had a copy of the lawsuit that
2 you had read, and that is what you were
3 responding to?
4 **A. Yes.**
5 Q. You say it said something about words to
6 the effect that you had been behind an effort to
7 blackball Gerald?
8 **A. Right. Which was absolutely not true.**
9 Q. Now, in this document, you write, "I
10 asked him about the quote in the lawsuit that
11 stated in January 2011 he started telling people
12 that I should not be promoted to captain."
13 Do you see that?
14 **A. Um-hmm.**
15 Q. And what was the process for being
16 promoted to captain?
17 **A. You study, to take a test. And if you do**
18 **well and you come up on the top of the list, they**
19 **have to promote one of the top three guys on the**
20 **list.**
21 Q. Was there an interview?
22 **A. Yes.**
23 Q. Who was the interview with?
24 **A. What is the date on this? The interview**

Page 83

1 **was -- I believe it was Chief Ford and Chief**
2 **Ward. That is all I remember, for sure.**
3 Q. Just for the stenographer, it is Ford and
4 Ward; right? W-A-R-D?
5 **A. Yes.**
6 Q. And he was the chief operating officer?
7 **A. Chief of operations.**
8 Q. And you had actually, at this point, been
9 promoted to captain; correct?
10 **A. Correct.**
11 Q. That was when? Spring of 2013?
12 **A. It was May, I think, of 2013, or June.**
13 Q. And when you interviewed with Chief Ford
14 and Chief of Operations Ward, did the incident
15 with Mr. Alston come up?
16 **A. I don't believe it did.**
17 Q. So it didn't have an impact on your
18 becoming captain?
19 MR. PADOLSKY: Objection.
20 **A. It didn't have an impact on that**
21 **interview.**
22 BY MR. AMES:
23 Q. Well, you became captain?
24 **A. I did.**

Page 84

1 Q. Did you talk about the fact that you had
2 read in the lawsuit that Gerald, according to
3 you, told people that you shouldn't be promoted
4 to captain? Did you talk to other people about
5 that?
6 **A. I don't think so.**
7 Q. Now, you say, also in this document,
8 that, "I told him I was sorry and that it wasn't
9 directed at him, it was road range from a traffic
10 incident, which can be a side effect of PTSD,
11 which I had been treated for after a bad fire the
12 previous year."
13 Did you say that?
14 **A. Yes.**
15 Q. And who told you that road rage can be a
16 side effect of PTSD?
17 MR. PADOLSKY: Objection.
18 **A. I think any like temper tantrum or**
19 **outburst is a side effect of PTSD.**
20 BY MR. AMES:
21 Q. Are you speaking just from your layman's
22 experience?
23 **A. No, what the doctor said and I read**
24 **online about it.**

Page 89

1 referring to an incident around December of 2013,
 2 which ended up with Firefighter Alston being
 3 placed on leave. Is that around the same time
 4 you remember hearing these stories about alleged
 5 threats?
 6 **A. I believe so.**
 7 Q. And do you remember how it turned out?
 8 What was the next thing that was communicated to
 9 you?
 10 **A. I don't know. I think he was suspended**
 11 **or something, or put on leave. He went on leave,**
 12 **I think. He was put on leave.**
 13 Q. Are you a member of the union, the
 14 firefighter union?
 15 **A. I was, yes.**
 16 Q. Local 950?
 17 **A. Yes.**
 18 Q. How often does the union meet?
 19 **A. Monthly.**
 20 Q. Where are the meetings?
 21 **A. Usually at the vet's hall in Brookline.**
 22 Q. Is that down from the police station?
 23 **A. Um-hmm. Yes.**
 24 Q. Did Mr. Alston come up, his status come

Page 90

1 up at any union meeting?
 2 MR. BECKER: Objection.
 3 MR. AMES: You can answer. He is
 4 objecting because he represents the union, but.
 5 **A. I didn't go to that many meetings. The**
 6 **ones that I was at, I don't recall. I wasn't**
 7 **really at many, around that particular time.**
 8 BY MR. AMES:
 9 Q. Did you hear, just in the wind, in the
 10 rumor mill, whether the union was representing
 11 Gerald in connection with him being placed on
 12 leave?
 13 MR. PADOLSKY: Objection.
 14 **A. No, I didn't.**
 15 BY MR. AMES:
 16 Q. Did there ever come a time where you
 17 understood that Gerald was no longer in the
 18 union?
 19 MR. BECKER: Objection.
 20 **A. No.**
 21 BY MR. AMES:
 22 Q. Did you ever hear that?
 23 **A. No.**
 24 **(Exhibit 3, Four-page typed document, marked**

Page 91

1 **for identification.)**
 2 BY MR. AMES:
 3 Q. Mr. Pender, you have got in front of you
 4 what has been marked Exhibit 3. Do you recognize
 5 it?
 6 (Witness viewing Exhibit 3.)
 7 **A. Yes.**
 8 Q. What is it?
 9 **A. It is a letter that I wrote to -- it says**
 10 **"confidential," but apparently it is not that.**
 11 **But I wrote to the Selectmen. I believe it was a**
 12 **year ago -- year-and-a-half ago when I was being**
 13 **considered for another promotion.**
 14 Q. What was the promotion you were being
 15 considered for?
 16 **A. Deputy chief.**
 17 Q. Now, in this statement, first let me ask,
 18 did you actually, verbally express this statement
 19 to the Board of Selectmen?
 20 **A. I don't recall. I might have read it,**
 21 **but I can't say, for sure.**
 22 Q. It says here that, "I have addressed this
 23 issue with many of the firefighters over the last
 24 six years."

Page 92

1 "This issue" relates to the voicemail
 2 that you left for Mr. Alston, yes?
 3 **A. Yes.**
 4 Q. How did you address the issue?
 5 **A. Well, I talked to lot of the black**
 6 **firefighters and told them what happened and**
 7 **said, you know, "I made a mistake and I said**
 8 **something I shouldn't have said. And if you take**
 9 **offense to it, I apologize."**
 10 Q. Which black firefighters did you talk to?
 11 **A. I talked to quite a few of them.**
 12 **Walt Francis comes to mind. He was one of the**
 13 **first guys that I bumped into. Others, I don't**
 14 **recall who.**
 15 Q. Was it more than one?
 16 **A. Yes. Sam Scott. I don't know.**
 17 Q. Was he retired at that time?
 18 **A. Yes, he was retired.**
 19 Q. So any other active firefighters, other
 20 than Walt Francis?
 21 **A. I think I talked to Karl Hatton. I am**
 22 **not sure, so I don't want to start throwing names**
 23 **out.**
 24 Q. What was your goal? Did you just bump

1 **A. At one point, he did.**
 2 Q. Did you ask him to write that?
 3 **A. No.**
 4 Q. Do you know who did? Or do you know if
 5 someone did?
 6 **A. I don't know if anyone did.**
 7 Q. How about Karl Hatton?
 8 **A. How about him?**
 9 Q. Did you ask him to speak?
 10 **A. Either I did or Jimmy did. I don't know**
 11 **who asked him.**
 12 Q. How about Walt Francis?
 13 **A. Yes, either me or Jimmy. I don't know**
 14 **who.**
 15 Q. Who was at the meeting you referred to?
 16 You said there was a meeting?
 17 **A. There was a different Selectmen's meeting**
 18 **when you were on one of your rants.**
 19 MR. AMES: Strike that. I understand.
 20 BY MR. AMES:
 21 Q. Was there ever a kind of organizational
 22 meeting to talk about what you were going to do?
 23 **A. No.**
 24 Q. Did you get any feedback or assistance in

1 question, you can answer.
 2 **A. Yes, it was.**
 3 BY MR. AMES:
 4 Q. Do you know why that was?
 5 **A. Yes.**
 6 Q. Why?
 7 **A. Because of you.**
 8 Q. And why didn't this happen back when you
 9 were made captain?
 10 **A. Because you weren't involved.**
 11 Q. Well, you have told me a number of times
 12 that this was in the newspaper for four to six
 13 months and on the news in 2010.
 14 **A. Yes.**
 15 Q. So it was, according to you, it was in
 16 the public domain long before I got involved?
 17 **A. But you managed to keep bringing it up.**
 18 Q. So what did the Selectmen do, in terms of
 19 your effort to be acting deputy chief?
 20 MR. PADOLSKY: Objection.
 21 **A. They really didn't do anything. Because**
 22 **the way civil service is set up, when there is**
 23 **someone on the list and there is an opening, they**
 24 **have 30 days to put you in the opening. So all**

1 writing a statement that you put together for the
 2 Selectmen?
 3 **A. This?**
 4 **(Witness pointing to Exhibit 3.)**
 5 Q. Yes.
 6 **A. No.**
 7 Q. Did you run it by anybody?
 8 **A. Before I went to the meeting?**
 9 Q. Yes.
 10 **A. Just my wife.**
 11 Q. Did you know what other people were going
 12 to say, what the other statements were going to
 13 be? Did you talk about that, at all?
 14 **A. No.**
 15 Q. Now, this was just to be -- I shouldn't
 16 say "just." This was to be acting deputy chief?
 17 **A. Right.**
 18 Q. And there is, what, four of them?
 19 **A. There is six deputy chiefs.**
 20 Q. Was this outside of the typical process,
 21 to be an acting?
 22 MR. PADOLSKY: Objection.
 23 **A. I have still got to answer; right?**
 24 MR. PADOLSKY: Yes. If you understand

1 **they did was they voted to stay on civil service**
 2 **protocol. That is all they did.**
 3 BY MR. AMES:
 4 Q. Had you been sitting in the position to
 5 be acting for more than 30 days?
 6 **A. What was the date?**
 7 Q. June of 2016.
 8 **A. It was over 30 days, at that point.**
 9 Q. Yes. Now, did the union advocate for
 10 you?
 11 MR. PADOLSKY: Objection.
 12 MR. BECKER: Objection.
 13 **A. I don't think so. I think the union**
 14 **advocated for the process.**
 15 BY MR. AMES:
 16 Q. So indirectly, the union advocated that
 17 the 30 days had been exceeded and you were
 18 outside of the civil service process?
 19 MR. PADOLSKY: Objection.
 20 MR. BECKER: Objection.
 21 **A. Right. But it wasn't only me.**
 22 BY MR. AMES:
 23 Q. There was others?
 24 **A. This was three or four other guys that**

1 this affected. Because they couldn't -- they
2 kind of have to do everybody at once, because
3 everybody bumps up a slot. So if you move one
4 guy, you create another opening, so.

5 Q. Was there a process to be acting deputy
6 chief -- sorry.

7 Was there a process to be permanent
8 deputy chief, after you were promoted to the
9 acting position?

10 A. There should have been.

11 Q. Explain that to me.

12 A. Well, usually, when someone is acting,
13 there is an opening. The chief retired, so there
14 was openings all the way up. They moved
15 everybody in temporary positions and basically
16 let my list die.

17 Q. Is it Sullivan who retired?

18 A. No, Ford.

19 Q. Ford.

20 You said you -- earlier you said you had
21 an interview for captain with Chief Ford and
22 Chief Ward.

23 Did you have an interview for deputy
24 chief?

1 the list. In this case, there was only one -- I
2 was the only guy on the list.

3 Q. So the fire chief didn't really have to
4 do anything in this circumstance?

5 A. Right.

6 Q. It went -- the decision was solely in the
7 hands of the Selectmen?

8 MR. PADOLSKY: Objection.

9 A. Correct.

10 BY MR. AMES:

11 Q. Was there ever a time where Chief Ford
12 was responsible for not promoting you to deputy
13 chief?

14 A. Chief Ford was gone. He is the one that
15 created the opening, when he left.

16 Q. I see.

17 You may not know this, but your wife sent
18 an email to the chairman of the Board of
19 Selectmen asking that you be promoted to
20 permanent deputy chief and that the Selectmen not
21 allow you to die on the list. Did you know that?

22 A. She writes a lot of things. She might
23 have read it to me, but I probably wasn't paying
24 attention.

1 A. No, you don't do that, when you are just
2 acting.

3 Q. But did you have an interview in
4 connection with trying to be the permanent deputy
5 chief?

6 A. No.

7 Q. What does it mean to die on the list?

8 A. The lists have a date. There is a
9 starting date and an ending date. So they -- my
10 list was only good until September 20th or
11 something. So they just let me die on the list
12 and didn't promote me.

13 Q. This is a tough question in Brookline,
14 but who is "they"?

15 A. Selectmen.

16 Q. The Selectmen.

17 A. You can throw Kleckner on there, too, I
18 guess.

19 Q. Who is Kleckner?

20 A. Town administrator.

21 Q. What is the fire chief's role in deciding
22 which of his men or women are going to be
23 promoted?

24 A. Well, he has to pick from top three on

1 Q. Did you ever get a response from the
2 Board of Selectmen about why you had been allowed
3 to die on the list?

4 A. No.

5 Q. What is your opinion?

6 MR. PADOLSKY: Objection.

7 (Witness gesturing.)

8 A. You guys.

9 BY MR. AMES:

10 Q. What is the difference between not making
11 deputy chief and making captain? Wasn't this all
12 out in the open before, according to you?

13 MR. PADOLSKY: Objection.

14 A. After the discipline and everything and
15 Mr. Alston came back to work, things started to
16 die down a little bit, you know. But then,
17 again, when you got involved, it came up on the
18 front page, more often than not, in the Tab, and
19 it became a bigger issue.

20 BY MR. AMES:

21 Q. Did you -- you are retired now, yes?

22 (Witness nodding his head.)

23 Q. Sorry. Yes?

24 A. Yes.

1 injury was?
 2 **A. That he went out with in May?**
 3 **Q. Yes.**
 4 **A. I do not. I wasn't working in his group**
 5 **then.**
 6 **Q. What is the Town's policy on drug and**
 7 **alcohol use by firefighters?**
 8 **MS. CORREA: Objection.**
 9 **A. I don't know that it is allowed. I don't**
 10 **think it is.**
 11 **BY MR. AMES:**
 12 **Q. Is there a policy about random testing?**
 13 **A. About what?**
 14 **Q. Random testing.**
 15 **A. I think, if you go in an EAP, there is.**
 16 **I am not sure.**
 17 **Q. Is that an employee assistance program?**
 18 **A. Yes.**
 19 **Q. And so your understanding is that people**
 20 **on EAPs, because of a substance abuse issue, may**
 21 **be required to drug test, alcohol test?**
 22 **MR. PADOLSKY: Objection.**
 23 **MS. CORREA: Objection.**
 24 **A. I think so. I have never been on the**

1 **Q. Are you aware of anybody ever being**
 2 **reported for violating the prohibition on drug**
 3 **and alcohol use?**
 4 **A. No.**
 5 **MR. AMES: I don't have anything else.**
 6 **MS. CORREA: Before we close, I don't**
 7 **have any questions, but I just want to put on the**
 8 **record that I, hopefully, we will all agree to**
 9 **treat all of the testimony today as confidential,**
 10 **because there was confidential and private**
 11 **matters discussed, and we will go through the**
 12 **transcript and officially mark. But pending**
 13 **that, there were some personal, sensitive things**
 14 **discussed today. So I trust everyone will**
 15 **protect today's deposition.**
 16 **MR. AMES: Yes. I think the protocol**
 17 **should be that we will treat this as confidential**
 18 **until we have all had an opportunity to review**
 19 **the transcript.**
 20 **MS. CORREA: Yes. And hopefully -- even**
 21 **then, hopefully it will be treated**
 22 **professionally. But certainly, confidentially**
 23 **under the stipulation as to the matters that are**
 24 **marked confidential.**

1 **EAP, so I don't know.**
 2 **BY MR. AMES:**
 3 **Q. Have you ever seen a firefighter use**
 4 **illegal drugs?**
 5 **MS. CORREA: Objection.**
 6 **A. No.**
 7 **BY MR. AMES:**
 8 **Q. Even off duty, at a party or something?**
 9 **A. No.**
 10 **Q. Have you ever seen a firefighter get**
 11 **drunk?**
 12 **MS. CORREA: Objection.**
 13 **A. At a party?**
 14 **BY MR. AMES:**
 15 **Q. Yes.**
 16 **A. Yes.**
 17 **Q. Ever see a firefighter come into work**
 18 **still drunk from the night before?**
 19 **MS. CORREA: Objection.**
 20 **A. Tough to say. I mean, I would say, no.**
 21 **BY MR. AMES:**
 22 **Q. Did you ever tell someone, "sleep it**
 23 **off"?**
 24 **A. No.**

1 **MR. AMES: Yes. I think that is what we**
 2 **just agreed to.**
 3 **MR. PADOLSKY: John, do you have**
 4 **questions?**
 5 **MR. BECKER: I don't have anything.**
 6 **MR. PADOLSKY: I just have one quick**
 7 **question, I think.**
 8 **CROSS EXAMINATION**
 9 **BY MR. PADOLSKY:**
 10 **Q. Sir, we have never met before today;**
 11 **correct?**
 12 **A. Correct.**
 13 **Q. Earlier today, Attorney Ames asked you if**
 14 **you had had any evidence that the recording that**
 15 **he played for you today has been doctored. Do**
 16 **you recall him asking that question?**
 17 **A. Yes.**
 18 **Q. Was that the full voice message that you**
 19 **had left for Firefighter Alston?**
 20 **A. The message that I left for**
 21 **Firefighter Alston wasn't even there. That was**
 22 **the first part of the tape, then there was dead**
 23 **air, and then there was that. You heard the very**
 24 **end of the tape.**