CASE MATERIALS

Official 2019 Mock Trial Materials

for the

THIRTY-NINTH ANNUAL

UTAH LAW RELATED EDUCATION

MOCK TRIAL PROGRAM

Savea Tuvale
v.
Emigration Police Department

Case No. 18-CV-5678

Rewritten and Updated by Kristina Kindl

Original case from Carolina Center for Civic Education

Written by Susan H. Johnson

WITNESSES

Plaintiff Witnesses	Defense Witnesses
K.J. Tamu, Aunt/Uncle of Savea Tuvale Blair Hernandez, Student, Eyewitness Archer Bradshaw, Psychologist	Max Christensen, School Resource Officer Alex Singh, Student, Eyewitness Jadyn Johnson, Chief of Police for Emigration Police Department

LEGAL DOCUMENTS

Complaint
Answer
Stipulations

CASE DOCUMENTS

Relevant Law & Cases
Applicable Law

EXHIBITS

Exhibit 1. Emigration Police Department Rules of Conduct and Procedure

Exhibit 2. Archer Bradshaw C.V.

Exhibit 3. DSM-IV Asperger's Syndrome*

Exhibit 4. Savea Tuvale's Blog

Exhibit 5. Photo of 3D Gun

Exhibit 6. Photo of 3D Model Plane

Exhibit 7. Freeze + P Pepper Spray Information Sheet*

Exhibit 8. Complaints filed against Max Christensen

Exhibit 9. EPD Complaint Statistics for 2013-2017

Exhibit 10. School Suspension Reports for Savea Tuvale

Exhibit 11. *Emigration News & Record* Article on SROs

Exhibit 12. U.S. Department of Education: 2013-2014 Civil Rights Data Collection*

Exhibit 13. Emigration High School's Bullying Prevention Fact Sheet

*SOURCES FOR EXHIBITS

The *Diagnostic and Statistical Manual of Mental Disorders (DSM-IV) Sec. 299.80: Asperger's Disorder* information sheet is adapted from information publicly available at numerous websites including at http://www.autism-society.org/dsm-iv-diagnostic-classifications/#aspergers.

The document on Aerko International's Freeze + P pepper spray is adapted from information on the product's material safety data sheet, which is available at http://aerko.com/freezep2k3.htm.

The *2013-2014 Civil Rights Data Collection, A First Look* document is publicly available on the U.S. Department of Education's website: https://www2.ed.gov/about/offices/list/ocr/docs/2013-14-first-look.pdf.

These materials are all publicly available and are only being used for educational purposes.

SUPERIOR COURT FOR THE STATE OF ZION
SNOW CANYON COUNTY

SAVEA TUVALE, a minor, by and through his next friend, **K.J. TAMU**, **Plaintiff,** v. **EMIGRATION POLICE DEPARTMENT**, a municipal entity of THE STATE OF ZION, **Defendant.**	**Case No. 18-CV-5678** Judge Robin Fox **VERIFIED COMPLAINT**

Plaintiff SAVEA TUVALE, by and through his aunt/uncle and next friend K.J. TAMU, states as follows:

NATURE OF THE CASE

1. This is an excessive force action brought by Plaintiff Savea Tuvale ("Tuvale") against Defendant Emigration Police Department ("EPD") to remedy violations of the Due Process Clause of the Fourteenth Amendment to the United States Constitution, pursuant to 42 Zion Code ("Z.C.") § 1983, for the unprovoked use of "Freeze + P" pepper spray by Defendant's agent, Officer Max Christensen. The unjustified use of said pepper spray was the direct result of EPD's longstanding policy, practice, and/or custom of permitting its agents to use unreasonable and excessive force when apprehending students in Snow Canyon County School District.

PARTIES

2. Plaintiff Tuvale is a minor born on September 12, 2001, in Pago Pago, on the island of Tutuila, which is part of American Samoa. At age thirteen, he traveled to Emigration, Zion, to live with his relative, K.J. Tamu, and attend high school.

3. Defendant EPD is a department, agency, bureau, and/or subdivision of the State of Zion. Defendant is a "person" for purposes of enforcement of the rights guaranteed under 42 Z.C. § 1983 and the Fourteenth Amendment to the U.S. Constitution.

JURISDICTION AND VENUE

4. This Court has subject matter jurisdiction because this action is brought under the Zion Civil Code.

5. This court has personal jurisdiction over Defendant because EPD's central office is within this district, and the acts and omissions forming the basis for this Complaint occurred in Zion.

6. Venue is properly placed in this district because EPD's central office is within this district, the events giving rise to this claim arose in this district, and records relevant to the practices complained of herein are located in this district.

7. In the aggregate, Plaintiff's claims exceed $25,000 exclusive of interests and costs, and, therefore, this Court has original jurisdiction.

FACTUAL BACKGROUND

8. On October 10, 2017, Defendant EPD employed Officer Max Christensen as a sworn peace officer in Emigration, Zion.

9. On October 10, 2017, Officer Max Christensen was assigned to work as a school resource officer ("SRO") at Emigration High School in the Snow Canyon County School District.

10. During second period, at approximately 9:35 a.m., Officer Christensen abruptly entered the classroom in which Savea Tuvale was peacefully attending class.

11. Without provocation, Officer Christensen, in a threatening manner, ordered Savea to hand over his backpack and accompany Officer Christensen to the principal's office.

12. Confused and frightened, but in an effort to comply with Officer Christensen's directive, Savea reached for his backpack, only to be sprayed with pepper spray by Officer Christensen.

13. The pepper spray caused excruciating pain to Savea, and he fell to the floor.

14. Officer Christensen did not offer to assist Savea. Instead, he handcuffed Savea and roughly dragged him to the principal's office.

15. At no point was Savea given a chance to wash out his eyes, change clothes, or do any of the other steps recommended by the manufacturer to decontaminate from the pepper spray.

16. After suffering for over an hour from the effects of the pepper spray in the principal's office, Savea was transported to the police station. At no point during this time was Savea's guardian, K.J. Tamu, contacted or apprised of what had occurred.

17. At the police station, Savea was handcuffed in a room and left alone. Again, at no point was Savea given a chance to wash out his eyes, change clothes, or perform any of the other steps recommended by the manufacturer to decontaminate from the pepper spray.

18. At the station, it was determined that Savea's backpack contained a 3D non-functional model of a gun that posed no threat to anyone.

19. At approximately 1:00 p.m., Savea's guardian was finally contacted, and Savea was released in his guardian's care. Even after his release, Savea continued to suffer intense pain from the effects of the pepper spray for several hours.

20. Savea was so traumatized by these events that he never returned to Emigration High School. Instead, he returned to his home in Pago Pago on October 27, 2017, thereby losing the substantial educational benefit he had received while attending Emigration High School.

CAUSE OF ACTION: VIOLATION OF DUE PROCESS

DUE TO DEFENDANT'S POLICIES, PRACTICES, OR CUSTOMS THAT PROMOTE VIOLATIONS OF CONSTITUTIONAL RIGHTS

21. Plaintiff repeats and re-alleges paragraphs 1-20 as if fully set forth herein.

22. The Due Process Clause of the Fourteenth Amendment to the United States Constitution provides that "[n]o State shall . . . deprive any person of life, liberty, or property, without due process of law...." U.S. Const. amend. XIV, § 1. Such violations are actionable pursuant to 42 Z.C. § 1983.

23. Defendant EPD exhibits a policy, practice, or custom of inadequately training, supervising, and disciplining law enforcement officers who use unreasonable force when acting as SROs.

24. Although Defendant has written policies concerning the use of force in the school environment and the treatment of officers who use unreasonable force, these policies are superseded by the predominant, overriding, and long-standing policy, practice, or custom of Defendant knowingly, willfully, and deliberately:

    A. Overlooking or ignoring incidents of unreasonable use of force by EPD officers;
    B. Allowing its officers to actively promote the use of unreasonable force;
    C. Refusing to intervene or take any preventive and/or precautionary measures to eliminate or decrease the use of unreasonable force by SROs; and
    D. Failing to discipline or impose any sanctions on its officers who have used unreasonable force, including those who have done so repeatedly or even habitually.

25. The foregoing conduct violates the Due Process Clause of the Fourteenth Amendment of the U.S. Constitution, pursuant to 42 Z.C. § 1983.

26. On six occasions prior to October 10, 2017, complaints alleging use of unreasonable force by Officer Christensen were filed with the EPD; five of them involved students at Emigration High School.

27. Despite receiving the above notice, Defendant did not adequately investigate or discipline Officer Christensen during Christensen's employment with the EPD and thus failed to take necessary and reasonable measures to protect the public, including Plaintiff Tuvale, from Officer Christensen.

28. Defendant's decision to permit Officer Christensen to serve as an SRO, despite receiving the above notice, is consistent with EPD's policy, practice, and custom of failing to properly investigate and discipline officers who utilize unreasonable force.

29. During the events in question on October 10, 2017, Officer Christensen was acting, under color of law, as a duly authorized agent of the EPD.

30. When Officer Christensen sprayed Savea Tuvale with Freeze + P pepper spray, Tuvale was unarmed and defenseless, and had made no furtive or threatening moves or gestures whatsoever that would warrant Christensen's use of excessive force.

31. At no time during the foregoing, wrongful action were Officer Christensen or others in imminent, serious, grave, or life-threatening danger. Additionally, at no time did the circumstances, including Plaintiff's actions, appearance, and/or demeanor, give rise to a reasonable perception or fear of imminent, serious, grave, or life-threatening danger to Officer Christensen or others.

32. Through his/her actions, Officer Christensen unjustifiably, directly, and proximately caused harm to Tuvale, including but not limited to severe pain and suffering and mental anguish, such that Tuvale believed it necessary to leave Zion and return to American Samoa, thereby severely damaging Tuvale's future educational and career opportunities.

33. As a result of the foregoing, Officer Christensen's actions were an unjustifiable and unreasonable violation of Tuvale's right to due process of law under the Fourteenth Amendment to the U.S. Constitution, pursuant to 42 Z.C. § 1983.

34. Because of the EPD's violation of Plaintiff Tuvale's constitutional rights, Tuvale has suffered damages and will in the future suffer damages as described in the foregoing paragraphs incorporated herein.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff respectfully requests that the Court:

A. Award compensatory damages for the medical bills and associated costs, pain, suffering, emotional distress, loss of dignity, and damage to reputation

and livelihood endured by Plaintiff in amounts that are fair, just, and reasonable, to be determined at trial;

B. Award Plaintiff all costs of this action and reasonable attorneys' fees; and

C. Grant Plaintiff such other and further relief as the Court deems just and proper, including punitive damages and injunctive and declaratory relief as may be required in the interest of justice.

Respectfully submitted this 9th day of January, 2018.

Mozelle Orton
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SUPERIOR COURT FOR THE STATE OF ZION
SNOW CANYON COUNTY

SAVEA TUVALE, a minor, by and through his next friend, **K.J. TAMU**, **Plaintiff**, v. **EMIGRATION POLICE DEPARTMENT**, a municipal entity of THE STATE OF ZION, **Defendant**.	**Case No. 18-CV-5678** Judge Robin Fox **VERIFIED ANSWER**

Defendant EMIGRATION POLICE DEPARTMENT answers as follows:

NATURE OF THE CASE

1. The allegations contained in paragraph 1 of the Complaint do not appear to require a response. To the extent that a response is required, Defendant denies the allegations.

PARTIES

2. Defendant lacks information sufficient to form a belief as to the truth or falsity of the allegations in Paragraph 2 of the Complaint, and thus it is denied.

3. Admitted.

JURISDICTION AND VENUE

4. Admitted.

5. Defendant admits that Defendant's central offices are within this district, and otherwise denies the allegations contained in Paragraph 5 of the Complaint.

6. Upon information and belief, admitted.

7. Upon information and belief, admitted.

FACTUAL BACKGROUND

8. Admitted.

9. Admitted.

10. Denied.

11. Denied.

12. Denied.

13. Denied.

14. Denied.

15. Defendant lacks information sufficient to form a belief as to the truth or falsity of the allegations in Paragraph 15 of the Complaint, and thus it is denied.

16. Defendant lacks information sufficient to form a belief as to the truth or falsity of the allegations in Paragraph 16 of the Complaint, and thus it is denied.

17. Admitted.

18. Admitted.

19. Admitted.

20. Denied.

CAUSE OF ACTION: VIOLATION OF DUE PROCESS

DUE TO DEFENDANT'S POLICIES, PRACTICES, OR CUSTOMS THAT PROMOTE VIOLATIONS OF CONSTITUTIONAL RIGHTS

21. Defendant's responses to Paragraphs 1 – 20 are incorporated herein by reference.

22. Admitted.

23. Denied.

24. Denied.

25. Denied.

26. Denied.

27. Denied.

28. Denied.

29. Denied.

30. Denied.

31. Denied.

32. Denied.

33. Denied.

34. Denied.

WHEREFORE, having fully answered the Complaint of Plaintiff,

> Defendants request a bench trial, and pray that Plaintiff's Complaint be dismissed, that Plaintiff recover nothing, that Plaintiff be charged with the costs and disbursements of this action, and for such other relief as this Court may deem just and proper.

Respectfully submitted this 8th day of March, 2018.

Jillian Norton

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SUPERIOR COURT FOR THE STATE OF ZION
SNOW CANYON COUNTY

SAVEA TUVALE, a minor, by and through his next friend, **K.J. TAMU**, **Plaintiff**, v. **EMIGRATION POLICE DEPARTMENT**, a municipal entity of THE STATE OF ZION, **Defendant**.	**Case No. 18-CV-5678** Judge Robin Fox **STIPULATIONS**

COME NOW the parties and agree to the following stipulations:

1. All documents, signatures, and exhibits included in the case materials are authentic and accurate in all respects; no objections to the authenticity or accuracy of the documents will be entertained. If asked, a witness must acknowledge signing the document(s) and must attest to the content of the document(s) and the date(s) indicated therein.

2. All witnesses reviewed their statements immediately prior to trial and were given an opportunity to revise their prior statements. None did so. All witnesses were advised, both when giving the statement and when reviewing it, to include all material facts within their knowledge.

3. Judicial notice has been taken of the reliability of the following documents: Diagnostic and Statistical Manual of Mental Disorders (DSM-IV), Sec. 299.80: Asperger's Disorder (Exhibit 3); Freeze + P Pepper Spray Information Sheet (Exhibit 7); Emigration Police Department Complaints and Discipline 2013-2017 (Exhibit 9); 2013-2014 Civil Rights Data Collection, A First Look (Exhibit 12). These documents are admissible without further foundation, and no hearsay objections to these documents will be allowed.

4. Due to Savea Tuvale's relocation to Tutuila, American Samoa, and his refusal to return to Snow Canyon County, Zion, to testify at these proceedings despite this court ordering him to do so, he is being deemed unavailable pursuant to Rule 801(a)(2). However, any hearsay statements made by Savea Tuvale must meet one of the Rule 804(b) exceptions to hearsay, or another hearsay exception under Rule 803, in order to be admitted into testimony.

5. K.J. Tamu is properly designated "as next friend" of Savea Tuvale. K.J. Tamu is, therefore, allowed to act on the behalf of Savea Tuvale, who was minor at the time this

action was filed. Other than the possibility of being called as a witness at trial, K.J. Tamu is not a party to this lawsuit.

6. At all times relevant to this proceeding, Max Christensen was an employee of, and acted on behalf of, the Emigration Police Department.

7. Based upon the fact that his parents are U.S. citizens, Savea Tuvale is a U.S. citizen, and no challenge may be raised with regard to his citizenship status.

8. This trial is bifurcated into two phases: (i) a determination of liability and (ii) a determination of the amount of damages. In the first phase, there will be no determination as to the amount of damages. Therefore, the Plaintiff need not prove the extent of the injuries or damages in the first phase, although the Plaintiff is required in this phase to prove the existence of damages in order to meet his burden of proof.

9. A witness must be formally tendered to the Court before giving an expert opinion.

10. Jurisdiction and venue are proper and may not be challenged.

11. No props may be used in lieu of, or in addition to, evidence included in this packet. Teams may not use markers or laser pointers to assist in the presentation of witness testimony concerning an exhibit. Use of electronic equipment is prohibited.

12. Exhibits may be copied and enlarged for demonstrative purposes only, but may not exceed 24" x 36" in size.

DATED: March 26, 2018

IT IS SO ORDERED.

ROBIN FOX
Judge of the Superior Court

RELATED TOPICS

Civil Law
43 Z.C. 1983
44 Z.C. 1983

42 Z.C. § 1983 – Law & Relevant Cases
Burke | Zion Civil Practice (*Approx. 2 pages*)

David Burke
42 Z.C. § 1983 – Law & Relevant Cases

I. Relevant Law

TITLE 42, CHAPTER 21, SUBCHAPTER 1, § 1983

Every person who, under color of any statute, ordinance, regulation, custom, or usage, of the State of Zion, subjects, or causes to be subjected, any citizen of the State or other person within the jurisdiction thereof to the deprivation of any rights, privileges, or immunities secured by the Constitution and laws, shall be liable to the party injured in an action at law or other proper proceeding for redress.

THE UNITED STATES CONSTITUTION, FOURTEENTH AMENDMENT, § 1.

All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

II. Relevant Precedent

A government entity may be held liable for the deprivation of a person's Fourteenth Amendment right to due process, pursuant to 42 Z.C. § 1983, where the deprivation is the result of the action of one of its agents, acting under color thereof, and the deprivation is the proximate result of a policy, practice, or custom of the agency. Parker v. Scheef, 725 Z.2d 599 (1987).

A police officer deprives a citizen of their right to due process under the Fourteenth Amendment to the U.S. Constitution when he employs excessive force. Excessive force is force in excess of that which is reasonable to subdue a suspect while keeping bystanders and officers safe. A citizen may seek civil redress in state court by filing an action under 42 Z.C. §1983. Nichols v. Schmidly, 800 Z.2d 901 (1987).

A police officer deprives a person of due process of law, within the meaning of the Fourteenth Amendment, when he employs chemical sprays, batons, or tasers to subdue a minor under the age of 16 when said minor presents no danger to the personal safety of the officer or other persons. City of Eden v. Manger, 543 E.2d 901 (2011).

A local government entity may not be sued under 42 Z.C. § 1983 for an injury inflicted solely by its employees or agents. Instead, it is when execution of a government's policy, custom, or practice, whether made by its lawmakers or by those whose edicts or acts may fairly be said to represent official policy, inflicts the injury that the government as an entity is responsible under 42 Z.C. § 1983. A custom or practice can be inferred from the conduct of government actors within the entity in the absence of an explicit policy. County of St. Thomas More v. Blocker, 725 Z.2d 599 (2005).

To hold a government entity liable under 42 Z.C. § 1983 for a violation of due process pursuant to the Fourteenth Amendment, the plaintiff must show: (i) the existence of a continuing, persistent, and widespread practice of unconstitutional misconduct by the entity's employees; (ii) deliberate indifference to or tacit approval of such misconduct by the entity's policymaking officials after notice to the officials of that particular misconduct; and (iii) injury resulting from the unconstitutional acts pursuant to the entity's custom. Britton v. State of Zion, 625 Z.2d 499 (2007).

To prove a 42 Z.C. § 1983 claim, the plaintiff must prove that its alleged injury was actually *and* proximately caused by the defendant's actions. To prove actual causation, the plaintiff must show that "but for" the defendant's actions, the alleged injury would not have occurred. To prove proximate causation, the plaintiff must show that its alleged injury was a reasonably foreseeable consequence of the defendant's actions. The plaintiff need not prove that the defendant actually foresaw the alleged injury as a consequence of its actions; rather, the plaintiff need only show that a reasonable person in the same situation would have foreseen the alleged injury as a consequence of her actions. Where the claim is brought against a government entity for the actions of one of its agents, the plaintiff must prove *first* (i) that the actions of the agent were the actual and proximate cause of the plaintiff's alleged injury; and *second* (ii) that a policy, practice, or custom of the government entity was the actual and proximate cause of the actions of the agent. Department of Corrections v. Gordon, 100 Z.2d 899 (2011).

APPLICABLE LAW

Explanation of Burden of Proof & Relevant Civil Law

Burden of Proof – Preponderance of the Evidence

This is a civil case in which the Plaintiff has the burden of proving his case by the preponderance of the evidence (i.e., more than 50%). That means the Plaintiff has to prove, when all of the evidence is considered, that his allegation is more likely true than not. To say it differently: If all the evidence favorable to Plaintiff and all the evidence favorable to Defendant were placed on opposite sides of a scale, the evidence favorable to Plaintiff would have to make the scales tip ever so slightly to its side. If the Plaintiff fails to meet this burden, then the verdict must be for the Defendant.

Issues in the Case

Section 1983 of the Zion Civil Code allows an individual to seek damages from any person who, under color of law, deprives that individual of any rights protected by the Constitution or laws of the United States. A claim of excessive force is appropriate under Section 1983 because a police officer deprives a citizen of his/her right to due process under the Fourteenth Amendment to the U.S. Constitution when the officer employs excessive force.

In order to prevail upon an excessive force claim, the Plaintiff must establish all three of the following:

1. The officer was acting under color of law when s/he applied force against the Plaintiff;

2. The officer's actions were the actual and proximate cause of an injury to the Plaintiff, and the officer applied excessive force against Plaintiff, thereby depriving Plaintiff of his/her right to due process; and

3. The injury to Plaintiff was caused by a policy, practice, or custom of the police department to inadequately supervise and discipline law enforcement officers who use excessive force.

Color of Law

State or local officials act under color of law when they act within the limit of their lawful authority. Officials also act under color of law when they act beyond the bounds of their lawful authority while the officials are purporting or pretending to act in the performance of their official duties.

Officials also may act under color of law when they are acting as agents of the State. An employer, such as a police department, is liable for the acts or omissions of its employees, including school resource officers, if those acts or omissions occur within the scope of their employment and cause injury to another person.

Cause/Excessive Force

Where the claim is brought against a police department for the acts of one of its officers, a Plaintiff must prove that the actions of the police officer were the actual and proximate cause of Plaintiff's injury. A cause is an actual cause where the injury would not have occurred but for the Defendant's actions. A cause is a proximate cause when the injury is a reasonably foreseeable consequence of the Defendant's actions.

Plaintiff also must prove that the officer used excessive force (i.e., more force than was necessary) in subduing Plaintiff. To do so, Plaintiff must prove each of the following elements: (i) Plaintiff sustained physical and/or emotional harm; (ii) the harm resulted from the officer's use of excessive force; and (iii) the excessiveness of the force used was objectively unreasonable in light of the facts and circumstances at the time.

Even if an officer is permitted to use force, it is not legally permissible to use unreasonable force. Reasonableness is an objective standard. The issue to be decided is what a reasonable person with the officer's knowledge would have deemed necessary under the circumstances. Put another way, were the officer's actions objectively reasonable at the time and in light of the facts and circumstances confronting the officer, without regard to the officer's underlying intent or motivation. If the force the officer used was unreasonable, it would not matter that the officer had good intentions. Likewise, if the force the officer used was reasonable, it would not matter that the officer had bad or improper motives.

The officer's actions must be judged from the perspective of a reasonable officer on the scene at the time, rather than with the 20/20 vision of hindsight. In using this standard, it is necessary to consider that police officers are often forced to make split-second judgments about the amount of force necessary in a particular situation, including in circumstances that are tense, uncertain, and rapidly evolving.

Some of the factors to consider in determining whether the officer used excessive force include:

1. The likelihood of an immediate threat to the safety of police officers or others;

2. The severity of such threat;

3. The severity of the force applied, relative to the risk of harm from not applying it;

4. The amount of time that the officer had to consider whether force needed to be applied;

5. Whether Plaintiff was actively resisting the instructions of the officer; and

6. The extent of the injury suffered by the Plaintiff.

It is *per se* unreasonable and excessive force for an officer to use chemical sprays, batons, or tasers on a minor under the age of sixteen, where that minor poses no danger to the personal safety of the officer or other persons.

Policy, Practice, or Custom

Because Plaintiff has filed suit against the police department rather than against the officer as an individual, Plaintiff must prove that the use of excessive force by the officer was the result of Defendant's policy, practice, or custom to inadequately supervise and discipline school resource officers who use excessive force. Plaintiff must prove that a policy, practice, or custom of the police department was the actual and proximate cause of the actions of the officer.

To prevail on such a claim, Plaintiff must prove the following:

1. The existence of a continuing, persistent, and widespread practice or custom of unconstitutional misconduct by the police department's employees, specifically those working as SROs in the Snow Canyon County School District;

2. Actual or implied approval of or deliberate indifference toward such misconduct by the police department's policy-making officials after notice to the officials of the misconduct; and

3. The unconstitutional misconduct is the actual and proximate cause of injury to Savea Tuvale.

Approval or indifference to unconstitutional misconduct can be proven by a consistent failure to enforce departmental orders or policies when that failure is the actual and proximate cause of a denial of a constitutional right.

SUPERIOR COURT FOR THE STATE OF ZION
SNOW CANYON COUNTY

SAVEA TUVALE, a minor, by and through his next friend, **K.J. TAMU**, **Plaintiff,** v. **EMIGRATION POLICE DEPARTMENT**, a municipal entity of THE STATE OF ZION, **Defendant.**	**AFFIDAVIT OF K.J. TAMU** **Case No. 18-CV-5678**

K.J. TAMU, having been duly sworn, hereby states the following:

My name is K.J. Tamu. I am 45 years old and have lived in Emigration for 15 years. I was born on Tutuila, which is the largest and main island of American Samoa. American Samoa is an unincorporated and unorganized territory of the United States, and people born on the American Samoa islands are American nationals, but not U.S. citizens. Even though I could live in the U.S. as an American national, I am a U.S. citizen because my mother was a U.S. citizen, as well. Like most people on American Samoa, I learned to speak English, but we spoke a different language at home. Because I wanted to study aerospace engineering, I moved to Utah at age 18 to attend Utah State University. In 2003, I moved to Emigration, Zion, where I work at the Boeing plant, designing business jets.

In early June of 2015, my nephew, Savea Tuvale, came to live with me to attend high school before applying to college. Although there are several high schools on Tutuila, there's only a community college, and it has very limited options for a field to study. Because of the limited opportunities on the island, it is not uncommon for families to send their children to school on the U.S. mainland.

Sometime after I had settled in Emigration, my sister and I talked about how her son, Savea, who is multi-racial, was having a hard time fitting in with the kids in his own school. So, although I've never married and never had kids, when my sister and her husband asked if Savea could stay with me and attend school in Emigration, of course I said yes. I had never

experienced any type of discrimination in Emigration, so I couldn't imagine the kids not welcoming and accepting Savea.

It had been 10 years since I had seen Savea, and he was very quiet when he arrived at the airport. He was smaller than I expected and seemed a bit awkward, but I figured he was just shy. After all, Emigration is quite different than his home town; Pago Pago has less than 4,000 people whereas Emigration has over 200,000! Driving home from the airport, I forgot that 25 m.p.h. was the highest speed limit on the island, so me going 70 m.p.h. on the freeway really freaked him out, too. So, I could completely understand how Savea would feel a bit overwhelmed, but he soon got settled into his room and was happy I had provided him with a computer.

As Savea became more talkative, I could see that he was very bright, particularly in math and science. He was very interested in how machines were made – especially tanks, airplanes, helicopters, and various types of guns. He seemed to have a particular interest in military history and tactics, and he had studied U.S. battles in the Pacific during World War II in great detail. That wasn't terribly surprising given that American Samoa has the highest rate of military enlistment of any U.S. state or territory; I was pretty confident Savea's old school would have really cultivated a love of military history in their students. So, while Savea's passion for the subject was pretty intense, I wasn't concerned.

Savea enrolled in ninth grade at Emigration High School on August 26, 2015. He had to take quite a few placement tests, and he did well on them, placing into several honors classes. Making new friends, however, proved more difficult. Savea's shyness and awkwardness continued, and he couldn't seem to find a group of friends that "clicked" with him. I encouraged him to invite classmates out for pizza and a movie when he turned 14 on September 12, but he said everyone he invited was busy and couldn't come. He seemed pretty sad about it. I hated to see him feeling so discouraged, so I suggested he check out some of the school clubs as a way to make friends. He joined the History Club and the Chess Club, but it didn't help much. When I watched him interact with other kids at school, I noticed he didn't seem able to really carry on a conversation. He didn't engage in "small talk," and if he got started on his favorite subject, he talked on and on, not noticing when others were losing interest. I just figured that he was trying too hard to fit in because he was the new kid in town.

Then, in the spring of 2016, one of his classmates mentioned something called "CAP" – the "Civil Air Patrol" – an auxiliary of the U.S. Air Force. The CAP supports after-school programs for youth to help them develop character, fitness, and leadership skills – and they can learn how to fly! Savea excitedly joined the patrol at Emigration High, and he was soon busy working to advance through the ranks. At last, he seemed to have found a group of kids who shared his interests. He even went to a one-week summer camp.

Savea's sophomore year started off smoothly in the fall of 2016. A few friends sometimes came over to play computer games or do homework, including Blair Hernandez and Alex Singh. I didn't get to know either of them very well, but Savea seemed much happier until the spring semester. That's when several ISIS terrorist attacks overseas became big stories in the news. For some reason, a few kids at school got it into their head that Savea must be Muslim, and they started giving him a hard time. I guess these kids, like many people, feared those who were different from them.

Savea wasn't Muslim – most people on American Samoa are Protestant – not that it matters. As I told Savea, people should be seen as individuals, not judged based on fears and stereotypes. He said that no matter how much he tried to talk to the kids, they wouldn't listen. Savea came home with bruises and torn clothes on several occasions. He said the kids would shove him and yell, "Go back to wherever you came from. We don't want you here." Savea said they never did it when teachers were around. I wanted to talk with the principal about it (like the school handout suggested), but Savea begged me not to, saying that would just make things worse for him. Yet after a few weeks of this bullying, Savea started to withdraw and stay in his room after school. And one time he was hauled to the principal's office and suspended for five days for fighting, which I thought was outrageous. Yet Savea still begged me not to intervene.

I wasn't sure what to do. I wanted to respect Savea's request to handle it himself, but things weren't improving. Then I had an idea. I knew Savea was a good writer, even if he had trouble conversing, so I suggested he write a blog. He could talk about airplanes or other aspects of World War II, and maybe he could help his classmates see that he wasn't so different from them after all. Savea seemed to like the idea, and soon he started a blog called "Weapons Guru." He would pick a topic, such as "What was the most effective firearm during WWII?", and then he'd go into great detail giving his answer. He seemed much happier now that he had

80 an outlet to express himself. When I periodically checked the blog, most of the comments were
81 positive. I thought it was great because it gave Savea a way to interact with others who shared
82 his interests.

83 In early May, I got a call from the school counselor, asking me to come in for a
84 conference. When I got there, she told me that she thought Savea's social difficulties might be
85 due to more than shyness – that he was exhibiting possible signs of a developmental disability.
86 She recommended that Savea be evaluated by a psychologist, Archer Bradshaw. I was a bit
87 surprised, but I made an appointment for Savea to see Dr. Bradshaw on May 15.

88 Dr. Bradshaw spent nearly six hours interviewing me and Savea and conducting tests. At
89 the end, Dr. Bradshaw met with us and said Savea had been diagnosed with a developmental
90 disorder called "Asperger's Syndrome." As Dr. Bradshaw explained, individuals with
91 Asperger's Syndrome have difficulties in social interactions because they do not recognize
92 "social cues." They also may have intense and focused interests in narrow topics, carry on long,
93 one-sided conversations on those narrow interests, and be physically clumsy. The more we
94 talked, the more I felt that the diagnosis was accurate and explained a lot of the difficulties Savea
95 had been experiencing. During our discussion, Dr. Bradshaw noted Savea's blog was an
96 excellent way for him to learn how to engage with others. However, Dr. Bradshaw suggested I
97 monitor it in case any posts or comments were inappropriate or should be deleted.

98 Dr. Bradshaw recommended that Savea return for follow-up appointments to take part in
99 social skills training and other therapies. Dr. Bradshaw said s/he would send the testing results
100 to me as well as to Savea's parents. S/he also asked permission to send the results to the school,
101 and, of course, I said that was fine. I did not sign any paperwork about passing on the results,
102 though, and we never met with anyone at the school to go over the report.

103 Savea seemed subdued when we got home. I'm sure the whole thing was a bit confusing
104 to him, as it was to me. But I reminded Savea that he was doing well in all of his classes, that he
105 was clearly a bright and motivated person, and that this diagnosis didn't change any of that. He
106 could use his strengths and interests to succeed in school and in a career, and, hopefully, the
107 social skills training and support would help him make more friends. I tried to be upbeat, but
108 Savea didn't seem entirely convinced. I encouraged Savea to keep writing his blog, and I checked
109 in on it every week or two. In mid-June, he blogged about some of the weapons used in the
110 nightclub shooting in Orlando, Florida, as well as other school shootings and gang attacks. I

knew he was just writing on a topic that interested him, but others viewed it differently. A few comments got pretty nasty, accusing him of planning some sort of "radical terrorist attack." Savea got pretty upset, saying he'd show them not to talk about him that way. I urged him to calm down and told him it would be better to write about less controversial topics. When he finally calmed down, he said he just wouldn't write anymore at all. I didn't think he meant it at first, but when he hadn't posted any more blogs by the end of July, I quit checking.

Savea started attending monthly "social skills" sessions with Dr. Bradshaw beginning in June, and they seemed to help. At least, Savea did fine at his summer job at an office supply center and didn't have issues getting along with coworkers. While he was working there, Savea took an interest in 3D printers, and he begged me to get one. I told him they were too expensive, and we just couldn't afford it. But then I found a kit online for a 3D printer you could build yourself. I decided to surprise Savea and get it for his 16th birthday. Given his interest in engineering and now printing, it seemed like it would be the perfect gift.

Savea seemed happy enough when school started back up on August 23, and soon he was busy with homework, history club, and CAP. Everything seemed to be going well. When he opened his present on his birthday, he was speechless! He gave me a huge hug – the first time that had ever happened – and started putting it together right away. By the weekend it was finished, and he was excited to try it out. At first, Savea just made simple shapes, but soon he progressed to items a bit more complicated. He even printed parts to build a simple model airplane! Savea brought the plane to school to show his friends in CAP, and he came home happier than I'd ever seen him: "Everyone was really impressed!" He invited his CAP friends to come try out the printer, and Alex came over several times. Savea told me they were working on a remote-controlled plane, and he showed me the plans. It was based on an open-source "flying wing" design, although he was modifying it to be a bit smaller than the online version. Savea was really excited about it, and he talked a lot at night about how fast and far it would fly when it was finished. I began to think he might follow my footsteps to major in aerospace engineering.

But Savea seemed upset after Alex's visit on September 29, and he wouldn't tell me why. Alex didn't come over after school for the next few weeks, which was a huge change. Savea was withdrawn at dinner. When I tried talking with him about the model plane, he just looked away and changed the subject. He'd go right into his room after dinner and lock the

142 door. I figured maybe he'd had a fight with Alex and assumed he would be okay after they
143 worked it out. I gave him space and didn't try to pry or force him to talk with me, since he
144 clearly didn't want to do so.

145 The next thing I knew, on October 10 at approximately 1:00 p.m., I got a call at work
146 from the school principal, telling me that Savea had been arrested for "bringing a weapon to
147 school." I was stunned and didn't know what to think. I left work immediately and drove to the
148 police station, where I found Savea, handcuffed and crying, saying he'd been pepper-sprayed
149 for no reason by Officer Christensen, the school resource officer. His eyes were still all watery,
150 red, and puffy from the after-effects of the spray, and he was almost too distraught to talk. He
151 said it felt like thousands of bees were stinging his eyes and like a 500-pound weight was on his
152 chest.

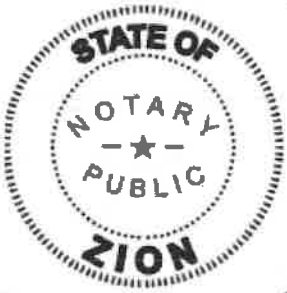
153 I confronted the police captain, who told me a student had reported seeing a gun in
154 Savea's backpack. When the SRO found Savea in class and asked him to hand over his
155 backpack and come to the principal's office, Savea supposedly "refused to comply" and
156 "reached for his backpack in a threatening manner." Reportedly fearing for the safety of
157 everyone in the room, the SRO sprayed Savea with pepper spray, handcuffed him, and dragged
158 him to the principal's office. Why did the SRO ask Savea to hand over his backpack only to
159 pepper spray him for trying to comply with that directive? The principal admitted that Savea sat
160 handcuffed in her office for over an hour while she and the SRO decided what to do. Finally,
161 the principal called the Emigration Police, who sent an officer to take Savea to the station, and
162 SRO Christensen went with Savea. Sometime after they had gone to the station, the principal
163 finally called me and told me Savea had been arrested.

164 I also learned that the police had tried to question Savea without me or an attorney being
165 present. Savea was still crying and reportedly wouldn't talk with them, so they left him sitting
166 alone in a conference room, handcuffed to a chair, still suffering from being pepper sprayed. I was
167 furious. I asked if they'd found a gun, and they showed me the 3D model. It was clearly not a
168 working gun – more like a child's toy. I asked if Savea was going to be charged with a crime.
169 They said, "No, not this time, but get him out of here now before we change our minds." They
170 were rude and demeaning the entire time, and at no point did they apologize for the way they had
171 treated Savea. As we were leaving, I heard one officer mutter, "Watch yourselves. Better yet; go
172 back where you came from. We don't want your kind here." When I turned to see who'd spoken,

173 SRO Christensen stared at me in a hostile manner and made a shooing motion with his hand, so
174 I'm pretty sure he's the one who made that nasty comment.
175 Savea was still in pain from the pepper spray when I got him home; he said he was still
176 having a hard time breathing, and his eyes were stinging. He showered and changed clothes, but
177 his eyes continued to burn for hours afterward. I called his parents right away, and they were
178 horrified and justifiably concerned about their son's safety. They wanted to fly him back home
179 immediately, but I encouraged them to wait a bit because I was sure it was just a
180 misunderstanding. I planned to talk with the school principal and thought she would apologize
181 for overreacting. To my shock, instead of apologizing, I received an e-mail from the school late
182 that evening saying Savea had been suspended for 10 days.
183 The next day, I tried to arrange a meeting with the school principal. Every time I called,
184 it went straight to voice mail, and she never called me back. Savea didn't want to return to the
185 school anyway; he grew frantic at the mere suggestion of it. Then Savea told me he'd been
186 receiving threats in the comments on his blog, that he was being called a "terrorist" and other
187 things too terrible to repeat. Typewritten notes with similar threats were stuck in our front door
188 late at night, and someone egged our car and slashed the tires. When I tried to file a police
189 report, an officer came to take a statement, but said there wasn't anything they could do. When
190 the suspension was over, Savea begged me to just let him go home – he would rather be safe in
191 Tutuila than go to college and pursue his dreams. His parents agreed, so I sadly helped him
192 pack his things. I was heartbroken at how Savea had been treated. It just wasn't right.
193 I told my friends at work about what had happened, and some said they knew of other
194 students who had been pepper-sprayed at the school without any justification. Some sent me
195 links to news stories, and it looked like my friends were right – the SROs and Emigration Police
196 Department had mistreated students before, especially minorities or those with disabilities. I
197 was appalled. As a U.S. citizen, I know our rights under the U.S. Constitution. The police need
198 to stop this behavior before others are traumatized. That's why I'm filing this lawsuit. Savea's
199 future has been ruined by an overzealous police department, and they should be held
200 accountable. They're supposed to "serve and protect" people in Emigration, not abuse them.
201 No one else should have to go through what Savea endured.
202 Of the available exhibits, I am familiar with the following and only the following:
203 Exhibit 4 (Savea's blog); Exhibit 5 (the 3D model gun Savea made); Exhibit 6 (the 3D plane

204 Savea tried to make); Exhibit 10 (the letters from Emigration High School when Savea was
205 suspended); Exhibit 11 (an article in the *Emigration News & Record*); and Exhibit 13 (a
206 handout on bullying that Savea brought home from school).
207
208 K.J. Tamu
209 K.J. TAMU
210
211 Christi Lea
212 Christi Lea, Notary Public

THE STATE OF ZION
Christi Lea
My commission expires 10/7/20



SUPERIOR COURT FOR THE STATE OF ZION
SNOW CANYON COUNTY

SAVEA TUVALE, a minor, by and through his next friend, **K.J. TAMU**, **Plaintiff**, v. **EMIGRATION POLICE DEPARTMENT**, a municipal entity of THE STATE OF ZION, **Defendant**.	**AFFIDAVIT OF BLAIR HERNANDEZ** **Case No. 18-CV-5678**

BLAIR HERNANDEZ, having been duly sworn, states the following:

My name is Blair Hernandez. I'm a junior at Emigration High School, where I'm president of the Robotics Club and captain of our Science Olympiad teams. When I graduate from high school, I plan to study computer engineering at Duke or MIT, then move back here to work. There are lots of job opportunities for computer engineers in Emigration, and people come here from all over the world.

I've lived in Emigration all my life, and it has changed a lot since I was a kid. It used to be a peaceful place, with dairy and vegetable farms right outside of town. But then the legislature bought up land to build a research zone, and dozens of new companies moved to the area. Emigration has exploded in size since I started kindergarten. A lot of the "old-timers" are unhappy about all the new people moving here. I've even seen fights at school between kids whose families have always lived here and kids who are new in town. I don't feel that way, though, because I've always liked making new friends.

Emigration High School is a great place overall, with lots of honors classes. Nearly 1,500 students attend the school. We have tons of clubs and after-school activities, everything from an Anime Club, to the Future Business Leaders of America, to the Global Citizens Club. The only thing I don't really like is all the security, although I guess it makes sense, given school shootings in other places. Every door is key-coded, and every student has to walk

through metal detectors on the way in and out of the school. We also have a school resource officer ("SRO") on campus all the time which you'd think would be a good idea, but it hasn't worked out that way.

When I was in middle school, our SRO was Officer Caroline Pope. She was really nice. She knew all the kids and seemed to care about everyone. If two kids started to argue or act stupid, she'd step in and calm the situation down, usually without anyone getting suspended. But it's different at Emigration High. Our SRO is Officer Christensen, who's just not friendly at all. I get that the SRO is a police officer and not a "friend," but Officer Christensen almost seems to hate students.

For instance, when I was a freshman, I was at a basketball game where some kids got a bit rowdy afterward and started talking smack after we beat our biggest rival. Without even asking them to tone it down, Officer Christensen grabbed one kid, Juan Santibanez, threw him to the ground, and put him in handcuffs. I learned the next day that the kid had been suspended three days for "Disrespect and Inappropriate Language Toward Staff." It was crazy; from what I saw, the kid was just joking around and certainly wasn't saying anything disrespectful to staff. A few months later, I was eating lunch in the cafeteria when I heard students at the next table talking about how they didn't like their Biology teacher and would be glad when the semester was over. Officer Christensen was walking by at the time, and s/he turned to the students and asked what they had said. One guy, Arvind Gupta, said, "Nothing; we were just talking about our class." Officer Christensen said, "That's not what I heard" and grabbed Arvind, hauling him off to the principal's office. Later that day, I learned he had been suspended for the same reason: "Disrespect Toward Staff." I couldn't believe it. Whatever happened to free speech? Arvind didn't say anything disrespectful *toward* staff; it was just normal complaining about homework and stuff. I heard the whole conversation. But I'm sure it came down to his word against the SRO's, and no student will win that battle.

Interestingly, both times I saw Officer Christensen treat a student that way, the student was a member of a minority group. I'd certainly heard white students say similar things when Officer Christensen was nearby, but Officer Christensen never took them to the principal's office. It made me wonder if more was going on than just the SRO trying to enforce the rules.

Even worse, during my sophomore year, I was in P.E. class when two guys started getting in each other's faces. One of them had supposedly fouled the other during the basketball game we were playing. The P.E. teacher was helping other students at that time and didn't see

what was happening. I tried to calm them down, but they didn't want to hear it. Next thing I knew, one guy shoved me out of the way and punched the other guy! That is when the real fight started. The P.E. teacher finally noticed them and radioed for the SRO.

Not two minutes later, Officer Christensen was there. I figured s/he would yell at them to stop, separate them, and take them to the principal. Instead, without any warning, Officer Christensen used pepper spray on them! They screamed in pain and immediately stopped fighting. Officer Christensen handcuffed them and hauled them off to the principal. I was close enough that some of the pepper spray got me, and it stung like crazy. I seriously felt like I was being blinded, and I only got a little bit in my eyes! I ran to the bathroom to rinse out my eyes, but it took hours for the pain to go away. I cannot even imagine what those kids felt like.

Later, the P.E. teacher said both guys were suspended for two weeks for fighting. Two weeks! That seemed crazy, harsh, and unfair, but again the two kids were minority students. I couldn't imagine trying to make up two weeks of missed classes. The one who threw the first punch came back after the suspension ended, but the other student dropped out of school completely. One small fight, nothing really serious, and that kid's life had been changed forever. The consequences were way out of proportion for what had happened. I wondered if the consequences would have been the same if they hadn't been minority students.

I was concerned enough about what I'd seen that I arranged to meet with the school principal, Dr. Madden. But when I tried to talk about my concerns and what I'd seen, she just brushed me aside. "The SRO does what's needed to keep you safe. I fully support every decision Officer Christensen has made. Thank you for coming, but we've got everything under control." Given all I'd seen, I wasn't so sure.

And I was proved right by what happened to Savea Tuvale. I was in the classroom when Savea was pepper-sprayed on October 10, 2017. I had first met Savea our freshman year (2015) in Algebra II class. Savea was from overseas and seemed very shy. He spoke with an unusual accent, which made him a little hard to understand. He mostly kept to himself as far as I could tell. We weren't in any clubs together and didn't talk a lot that year. But he was really smart and got 95s and 100s on all the tests.

My sophomore year we had two classes together: Programming II and Trig. My desk was next to his, so we started talking more. I learned that we liked some of the same computer games, especially *Overwatch*, so we started getting together at his house after school to play it. Savea was different from other kids in some ways – like, he had this intense interest in airplanes, guns, and

82 World War II. In the spring he even started a blog to write about weapons, which I read once or
83 twice.

84 Sometimes Savea talked on and on about stuff, and I'd get bored and a little annoyed by
85 it. I'd always try to get him talking about growing up on Tutuila, which sounded cool. He said
86 he wanted to go back there after he finished college. He invited me to visit him, which would be
87 awesome! I'd love to visit a tropical island, and Tutuila sounds like a beautiful place.

88 Late in the spring, after all the news reports of terrorist attacks overseas, some kids at
89 school started giving Savea a hard time, calling him a terrorist supporter and a "Muslim
90 extremist." I don't know where they got that idea – he'd told me most people on Tutuila were
91 Protestant. I think most kids think of Samoans as big Polynesians – like football players, and
92 because Savea was small and looked Filipino, maybe they thought he was from the Middle East.
93 Who knows. Even if he were Muslim, so what? That certainly didn't make him a terrorist.

94 Obviously, their bullying bothered Savea a lot. Whenever I heard kids harass him, I told
95 them to knock it off, but mostly they picked on him when no one else was around. A couple of
96 times near the cafeteria, Officer Christensen saw what was going on, but s/he didn't do anything
97 about it. I urged Savea to go to the principal and said I'd go with him, but he didn't want to do
98 it. He thought it would make things worse, and he begged me not to report it. I wish now that I
99 had done it anyway.

100 I knew Savea had been being bullied for a few weeks, but one day I saw some kids shove
101 him into a locker and rip his shirt. That time, Savea got really upset and yelled, "Leave me alone
102 or I'll take care of you! You can't treat me that way!" A couple of days later he got into another
103 shoving match with a couple of other kids. Luckily, the SRO wasn't nearby at the time, and
104 several of us got everyone calmed down before it got out of control. Things chilled out after
105 that, but I could tell that Savea was still pretty stressed whenever he saw those kids.

106 Soon school let out for the summer, and I didn't see Savea much since we were both
107 working. When we came back to school in August, we had two classes together: AP U.S.
108 History and Calculus I. In mid-September, Savea came to school really excited – he had gotten a
109 3D printer kit for his 16th birthday! How cool is that? I came over to see it the next week, and it
110 was pretty amazing. He had figured out how to print some simple shapes, and we had fun trying
111 it out. A few weeks later, he brought a model plane to school that he had printed. He said he
112 wanted to show it to his friends in CAP – the Civil Air Patrol. It wasn't very detailed, but it was
113 still awesome.

A week or so went by, and he hadn't brought anything else to school yet. I asked what was next – a jet? A drone? – and he said it was a secret. But he told me his next project was almost done. That was on October 9. I remember because the next day was when everything went crazy. Second period had just started – Calculus, one of the classes we had together – when the SRO burst into the room. The teacher looked shocked, but before she could even ask what was going on, Officer Christensen looked around, spotted Savea, and ran over, demanding in a loud, aggressive voice: "Give me your backpack, and come with me, NOW!" Savea froze for a moment, looking scared and confused. "NOW, I said!!" Officer Christensen shouted and grabbed at Savea. Savea put up his hand and started to reach for his backpack when, without warning, Officer Christensen sprayed him with pepper spray! Savea screamed and put his hands to his face, and the students nearby also cried out in pain because some of the spray hit them. Savea actually fell out of his desk and was lying on the floor crying and screaming.

Officer Christensen grabbed Savea's arms, jerking them hard, and handcuffed him. Savea had tears pouring out of his eyes and was completely disoriented, but Officer Christensen didn't care at all. Officer Christensen snatched Savea's backpack and dragged him from the room, without providing any explanation at all.

The teacher stood there, stunned, not knowing what to do. After a moment, she told the students who'd been near Savea to go to the bathroom, wash out their eyes, and come right back. Then she called the main office to find out what was going on. After she listened for a moment, she nodded and hung up the phone. She told us the situation was under control and then assigned us calculus problems to complete. When we asked what had happened, she wouldn't say. Class ended with no further explanation, and we went on to our third period class, which for me was AP U.S. History. Savea was not there, and the teacher didn't seem surprised, as though he'd been told something, but wouldn't share it with us.

I tried calling Savea that night, but he wouldn't speak with me. His aunt/uncle answered the phone and said Savea didn't feel well. I eventually found out Savea had been taken to the police station for "bringing a gun" to school. But clearly it was bogus because the police released him without charging him with anything. Savea also was suspended from school for ten days. I tried several more times to call him, but he never would come to the phone. I even went by his house once. When I rang the doorbell, I saw the curtains move, but no one came to the door. Savea never returned to school, and, a few weeks later, I heard he'd gone back to Tutuila. I never got to talk with him or his aunt/uncle. But from what I saw, it looked like one

146 more instance of the SRO overreacting and treating Savea in a way that wasn't justified at all –
147 ruining one more student's life for no reason. It's crazy. Someone needs to hold the
148 Emigration Police Department accountable for the SRO's actions before anyone else gets hurt.
149 Of the available exhibits, I am familiar with the following and only the following:
150 Exhibit 4 (Savea's blog, but only the posts on May 2 and May 22 of 2017); and Exhibit 13
151 (Bullying Fact Sheet from school).
152

153 *Blair Hernandez*

154 BLAIR HERNANDEZ
155

Kelly Pinkston

Kelly Pinston, Notary Public

THE STATE OF ZION
Kelly Pinston
My commission expires 12/15/24

SUPERIOR COURT FOR THE STATE OF ZION

SNOW CANYON COUNTY

SAVEA TUVALE, a minor, by and through his next friend, **K.J. TAMU**, **Plaintiff**, v. **EMIGRATION POLICE DEPARTMENT**, a municipal entity of THE STATE OF ZION, **Defendant**.	**AFFIDAVIT OF ARCHER BRADSHAW** **Case No. 18-CV-5678**

ARCHER BRADSHAW, having been duly sworn, hereby states the following:

My name is Archer Bradshaw. I am 39 years old and the Director of the Emigration Center for Youth and Development (ECYD). At the ECYD, we provide evaluation, support, and resources for "exceptional students" – students who are gifted or who have learning disabilities. We also develop materials and provide training for educators to aid them in understanding and teaching exceptional students. Because such students are often the target of bullying, our center has recently expanded our mission to include assisting schools with efforts to "Banish Bullying." In 2013, I began teaching yearly "Banish Bullying" sessions to new school resource officers ("SROs") at the Zion Justice Academy. SROs are often called upon to identify or address situations that involve bullying, so it is an important topic for new SROs to understand in order to react appropriately.

I grew up just outside of Baltimore, Maryland, and attended Harvard after graduating as valedictorian of my high school. Unfortunately, high school isn't a great experience for everyone. My younger sister was diagnosed with a learning disability and was often the target of bullying, despite all my efforts to protect her. Seeing what she endured, I was determined to pursue a career that would help make schools safer for everyone. So, I earned graduate degrees in education and developmental psychology at Stanford and moved to Emigration to join the staff at the ECYD.

17 I have testified in court on six previous occasions, five on behalf of the plaintiff and once on
18 behalf of the defendant. I was asked to testify in this case for two reasons. First, I am familiar with
19 the plaintiff, Savea Tuvale. I diagnosed Savea with Asperger's Syndrome in the spring of 2017.
20 Asperger's Syndrome is a type of pervasive developmental disorder that involves difficulties in
21 social skills; eccentric or repetitive behaviors; communication difficulties, including poor eye
22 contact and very literal use of language; limited, almost obsessive, interests; and coordination
23 problems. It is one of several "Autism Spectrum Disorders" ("ASD") and is sometimes called
24 High-Functioning Autism ("HFA") because these individuals usually have normal intelligence and
25 near-normal language development.
26 I also was asked to testify because of my extensive experience in creating safe learning
27 environments for all students. On numerous occasions, I have assessed school policies and
28 procedures that address bullying and made recommendations for improvement. Well-designed
29 school policies include guidelines and procedures for SROs, since they are often called upon to
30 deal with situations that involve bullying.
31 For this case, I was asked to evaluate the actions of SRO Christensen on the date in
32 question as well as on prior occasions when complaints had been lodged against him/her. In my
33 expert opinion, SRO Christensen's actions at Emigration High School were a clear violation of
34 accepted national standards, and the Emigration Police Department policies were a key factor
35 leading to Christensen's egregious behavior.
36 To reach my conclusions in this case, I relied on my evaluation of Savea Tuvale; reviewed
37 the sworn statements of K.J. Tamu, Blair Hernandez, Max Christensen, Alex Singh, and Jadyn
38 Johnson; and examined Exhibits 1 – 4 and 8 - 13. I compared the facts of this case with the best
39 practices of schools, police departments, and SROs nationwide. I spent a total of 40 hours on case
40 preparation, for which I was paid my standard rate of $400/hour. If I testify, I will earn an
41 additional $3,000 plus expenses.
42 As I said, I first met Savea on May 15, 2017, at the ECYD. The school counselor at
43 Emigration High School had recommended that Savea schedule a diagnostic evaluation to
44 determine whether his social difficulties were due to a developmental disorder. Savea was
45 accompanied by his aunt/uncle, K.J. Tamu. In general, the evaluation process takes anywhere
46 from 6 – 12 hours, depending upon the complexity of the case and the services provided. Savea's
47 evaluation included a number of assessments, including an interview of Mr./Ms. Tamu (without

48 Savea present); a review of Savea's medical, social, academic, and developmental history; written
49 questionnaires for both Savea and Mr./Ms. Tamu; and a one-on-one testing session with Savea,
50 using Module 4 of the Autism Diagnostic Observation Schedule – 2nd Edition ("ADOS-2") and
51 the Childhood Autism Rating Scale – 2nd Edition ("CARS-2"). Both assessments are widely used
52 and empirically validated. In combination, these tests provided me with vital historical
53 information and an opportunity to observe behaviors that can confirm or negate a diagnosis of
54 Asperger's Syndrome/HFA.

55 I was able to complete Savea's evaluation in six hours. I diagnosed him with Asperger's
56 Syndrome under the criteria listed in the Diagnostic and Statistical Manual of Mental Disorders,
57 fourth edition (DSM-IV). I do not agree with the diagnostic criteria for Autism Spectrum
58 Disorders as described in DSM-V, as I believe the more limited diagnostic criteria exclude many
59 individuals who should receive educational and supportive services. The diagnostic criteria in
60 the DSM-IV correspond more closely with the International Classification of Diseases (ICD)
61 standards, as well. For that reason, I, and many of my colleagues, still utilize the criteria detailed
62 in the DSM-IV.

63 Savea exhibited nearly all of the typical diagnostic criteria, including poor eye contact,
64 limited ability to engage in reciprocal conversation, literal use of language, and difficulty in
65 social interactions. Savea evidenced very narrow interests and an intense preoccupation with
66 weapons and World War II. He also displayed repetitive movements, clumsiness, and
67 coordination problems. Savea also had several strengths. He worked hard, was cooperative and
68 eager to please, and possessed an extensive, even advanced, vocabulary.

69 I met with both Savea and Mr./Ms. Tamu to review the results at the end of the day.
70 Savea mostly refused to look at me and remained very quiet. Mr./Ms. Tamu seemed shocked by
71 the diagnosis at first, but eventually recovered enough to ask questions regarding how best to help
72 Savea succeed in school and in social situations. I recommended that Savea return to the ECYD
73 for social skills training, and I encouraged him to keep writing his blog to help establish
74 connections with others who shared his interests. At the end of our discussion, I indicated that I
75 would send the written report to Savea's parents, Mr./Ms. Tamu, and the school counselor. I
76 forgot to have Mr./Ms. Tamu sign the paperwork granting me permission to send the report to the
77 school counselor, but I told my assistant to follow up with Mr./Ms. Tamu to get that done.

78 Savea started coming to our monthly social skills training in late May, and his work ethic
79 and eagerness to learn served him well. He was very attentive, and I felt encouraged by the
80 progress I was seeing. Savea thrived in his summer job at a copy center, even earning a raise.
81 He told me that he hoped to receive a 3D printer for his birthday in mid-September. But at the
82 September 25 session, Savea seemed less engaged, almost angry, and was very reluctant to
83 discuss what was bothering him. I asked if he was struggling in school or was being bullied –
84 common experiences among those in the group – but he would not answer.
85 In mid-October I saw the news report about the incident involving Savea at the school, and
86 I was very concerned. Savea had been pepper-sprayed by the SRO, who claimed to consider him a
87 potential threat after it was reported that Savea might have a gun. It turned out that he had a 3D-
88 printed model gun in his backpack. From my interactions with Savea, I was certain he meant no
89 harm – he was most likely bringing the model to show to his friends at school. As soon as I saw
90 the reports, I called to check on Savea. But my call went to voicemail and was not returned.
91 Before the date for the October session, I was distressed to learn that Savea had returned to
92 Tutuila.
93 It is true Mr./Ms. Tamu stated in news interviews that Savea had been bullied, and I am
94 aware that some school shootings have been carried out by victims of bullying. Nonetheless, I am
95 quite sure Savea would never pose a threat to others at the school. Media reports sometimes
96 portray those with ASD as cold, calculating killers, but such reports are both inaccurate and quite
97 harmful to people with ASDs. I'm passionate about spreading the truth and countering such
98 misinformation.
99 The fact that Savea was bullied was not surprising, unfortunately. As Chair of the Snow
100 Canyon County School Board Safe Schools Committee, I am privy to statistics on bullying and
101 other key issues within our county and statewide. Bullying (both in-person and cyber-bullying)
102 had been on the rise in Zion for a decade, especially for students diagnosed with learning
103 disabilities. To address the problem, Emigration High School implemented a new program in
104 2013, including a mandatory "Banish Bullying" school assembly for all freshmen, with handouts
105 for students and parents. These efforts were making an impact, but progress has been slow.
106 Anonymous student surveys showed that 18% of students at Emigration High School reported
107 being the victim of bullying in 2017, down from a reported incidence of 25% in 2014 before
108 implementation of the program. However, students with disabilities – those receiving services

109 under the Individuals with Disabilities Education Act, or IDEA – showed no such decrease. In
110 fact, their reported rates of bullying rose from 30% to 38% during that same period. Admittedly,
111 the sample size for students with disabilities at Emigration High was not large (120 in 2015 and
112 116 in 2017), but the increase is still quite concerning.

113 Also disturbing are the school discipline statistics at Emigration High. Overall, students of
114 color are suspended at a rate 2.5 times greater than white students (13% versus 5%). Boys
115 represent nearly 75% of those suspended multiple times or expelled. Students with disabilities are
116 suspended at twice the rate of students without disabilities (13% versus 6%). And even though
117 students with disabilities comprise only 12% of the overall student population, they represent 58%
118 of those placed in seclusion or involuntary confinement, 80% of those physically restrained at
119 school or subjected to control measures, such as pepper spray, and 26% of the students arrested
120 and referred to law enforcement.

121 As a male international student diagnosed with Asperger's Syndrome, Savea was at high
122 risk of being bullied and of being subjected to inappropriately harsh discipline by the SRO and/or
123 by school personnel. Sadly, the affidavits of K.J. Tamu, Blair Hernandez, and Alex Singh all
124 reveal that Savea was bullied. One time he was suspended from school as a result of an ensuing
125 fight. No evidence exists that the school took any specific steps to address the problem, such as
126 seeking to identify and discipline the bullies, informing teachers to be more vigilant, or informing
127 the SRO of the situation. Admittedly, neither Savea nor Mr./Ms. Tamu apparently informed the
128 SRO or school personnel of many of the incidents. However, one of the witnesses indicated that
129 the SRO saw Savea being bullied, but did nothing.

130 A separate and equally serious concern is Max Christensen's selection as an SRO, given
131 Christensen's previous interactions with youth. Christensen reports a time when s/he narrowly
132 escaped serious injury or even death when a teenager attempted to knife Christensen in the neck.
133 After that incident, Christensen's demeanor toward youth reportedly changed. Prior to
134 Christensen's selection as an SRO, complaints were filed against Christensen for use of excessive
135 force, particularly against teenagers. Such reports should have been a red flag that Christensen
136 may have needed counseling to deal with the trauma of that prior incident. The complaints
137 certainly should have raised questions as to whether Christensen was an appropriate choice as an
138 SRO. However, the complaints were disregarded by the EPD. Christensen was neither
139 suspended nor provided with an opportunity for counseling. Similar complaints continued to be

140 filed against Christensen after Christensen was assigned to Emigration High, and, again, the EPD
141 did nothing. Given Christensen's demeanor toward youth after the attempted-knifing incident and
142 Christensen's history of using excessive force with youth, Christensen should never have been
143 chosen as an SRO. At the very least, Christensen should have been reassigned to a non-SRO
144 position after his/her pattern of negative interactions with youth became clear.

145 SROs are a vital partner in ensuring a healthy school environment for all students. In my
146 interactions with new SROs at the Zion Justice Academy, I have been very impressed by these
147 officers' dedication and commitment to "protect and serve" the youth of Zion. But to make the
148 transition successfully from patrol officer to SRO, officers benefit from additional training. At the
149 Zion Justice Academy, new SROs are taught about youth psychology, bullying, learning
150 disabilities, and gang influences in schools. They learn how to assess scenarios quickly and
151 accurately, de-escalating potentially volatile situations to ensure students' safety. And their role
152 extends beyond command and control; an important aspect is serving as a role model and educator
153 for students. SROs learn how to lead crime prevention and community-justice initiatives and often
154 teach courses on law or responsible citizenship. An effective SRO helps to create a sense of
155 community and mutual respect among the students, staff, and family members.

156 Because the role of an SRO is so vital, the National Association of School Resource
157 Officers ("NASRO") strongly recommends that SROs should attend a basic SRO training course
158 prior to starting work and should obtain advanced training while on the job. In the state of Zion as
159 a whole, nearly 90% of SROs since 2011 have completed the one-week SRO basic curriculum
160 before being assigned to a school, and 50% have completed additional related training.

161 But the situation in Emigration does not mirror that of the rest of Zion. Officer
162 Christensen was not provided with any additional training, despite Christensen's requests. Other
163 new SROs in Emigration over the last five years were similarly denied specialized training,
164 leading to numerous instances when SROs reacted inappropriately to stressful situations. By
165 preventing SROs from receiving proper training, the EPD has put the students and staff at
166 Emigration High School and other schools at increased risk of physical harm and/or unjustified
167 arrests. The policies and procedures of the EPD are acceptable as written. But the current Chief
168 of Police has created a culture of cost-savings above community, to the detriment of the officers
169 and residents of Emigration alike.

170 I recognize that "hindsight is 20-20." It can appear easy to critique the actions of an
171 officer from the safe confines of the ECYD. Officers and SROs are often called upon to make
172 split-second decisions – decisions that can have life-or-death consequences for the officer,
173 innocent bystanders, victims, and perpetrators. Yet that is all the more reason to make sure
174 SROs are appropriately trained and supported if we are to prevent tragic circumstances like those
175 that befell Savea Tuvale. The EPD must be held accountable for the pain SRO Christensen
176 inflicted on Savea, both for Savea's sake and to prevent any such tragedies in the future. Our
177 children's future health and safety are on the line.
178 Of the available exhibits, I am familiar with the following and only the following:
179 Exhibit 1 (EPD Policies and Procedures); Exhibit 2 (my C.V.); Exhibit 3 (the DSM-IV criteria
180 for diagnosing Asperger's Syndrome); Exhibit 4 (Savea's blog); Exhibits 8 & 9 (incident
181 reports and complaints filed with the Emigration Police Department); Exhibit 10 (Incident
182 Report Forms at Emigration High School); Exhibit 11 (Article in *Emigration News & Record*);
183 Exhibit 12 (the U.S. Department of Education's 2013-2014 Civil Rights Data Collection); and
184 Exhibit 13 (Emigration High School parent information sheet addressing bullying).
185
186 Archer Bradshaw
187 ARCHER BRADSHAW
188

Adrienne Applewhite
Adrienne Applewhite, Notary Public

THE STATE OF ZION
Adrienne Applewhite
My commission expires 1/3/22

SUPERIOR COURT FOR THE STATE OF ZION
SNOW CANYON COUNTY

SAVEA TUVALE, a minor, by and through his next friend, **K.J. TAMU**, **Plaintiff**, v. **EMIGRATION POLICE DEPARTMENT**, a municipal entity of THE STATE OF ZION, **Defendant**.	**AFFIDAVIT OF MAX CHRISTENSEN** **Case No. 18-CV-5678**

MAX CHRISTENSEN, having been duly sworn, hereby states the following:

1 My name is Max Christensen. I'm a sworn peace officer in the Emigration Police
2 Department, which I joined in 2007. Ever since I was a kid, I've wanted to follow in my
3 parents' footsteps and be a police detective. They met as young patrol officers in New York
4 City, and, after they got married, they decided Emigration was a better place to raise a family.
5 As a child, I saw how people in Emigration treated the police with respect. After I graduated
6 from high school, I went to Zion University and earned a bachelor's degree in criminal justice;
7 then I came back to Emigration to attend the police academy. I loved everything about the
8 police academy, and I graduated first in my class.
9 It was cool to be on the force with my parents, and they taught me a lot. The Chief of
10 Police at the time was really supportive, encouraging all the new officers to get extra training. I
11 took several courses at the Zion Justice Academy, including "Community Oriented Policing,"
12 "Gangs Across Zion," "Interview and Interrogation," "Basic Hostage and Crisis Negotiation," and
13 "Threat Assessment." I also made sure to familiarize myself with the Emigration Police
14 Department Policies and Procedures Manual.
15 But in March of 2011, a new police chief, Jadyn Johnson, took over, and the working
16 environment became much more stressful. Money was tighter, and officers were laid off, so the
17 rest of us had to pull more double shifts. We were discouraged from using our sick leave, and

18 funds for extra training were cut. My parents finally decided to retire and move to Florida in 2012,
19 but I didn't want to leave Emigration.

20 During my first five years on the force, I was a regular "beat" cop, patrolling mostly the
21 poorer, downtown area in Emigration. As a new officer, I made lots of arrests for petty theft,
22 shoplifting, DWI, and speeding. But in 2010, gangs started taking over those neighborhoods
23 after the economy took a downturn, and my job became much more dangerous. I always had to
24 be on high alert when I was working, and it was pretty stressful.

25 On November 19, 2012, I was on patrol downtown around 5:00 p.m. when I saw two
26 teenage boys trying to grab a backpack away from a young girl. The boys started punching her,
27 so my partner and I pulled over. The boys immediately took off, with my partner in pursuit. I
28 ran over to check on the girl, who was kneeling on the ground clutching the backpack. As I bent
29 down to ask if she was okay, she whipped out a knife and slashed at me, barely missing my
30 throat! I flung myself back, and she took off. By the time I reacted and started chasing her, she
31 had ducked into an apartment building and got away. The other teens escaped, too.

32 The whole thing shook me up pretty badly, and I had nightmares for weeks. If her knife
33 had connected, I'd have died right then and there. The nightmares got so bad that I asked if I
34 could take some time off or meet with a counselor, but Chief Johnson told me there wasn't
35 anyone to cover for me, and I should just "buck up and deal with it, like a real cop." I talked
36 with some of the older cops and called my parents more often for a month or two, and that really
37 helped.

38 Gangs were getting bolder in Emigration. Several of my buddies on the force had been
39 knifed or shot at by gangs in 2012, and one of my best friends had even been killed in the line of
40 duty. Despite my parents' support, I started to question whether being a police officer was the
41 right career for me after all. But I'd worked my whole life to be an officer, and I didn't really
42 have a "Plan B." So I vowed to take no chances when dealing with suspects – better to rough up
43 a criminal than risk getting hurt myself. I wasn't the only cop who felt that way, either; it sort of
44 became the new culture of the department . . . "Better them than me."

45 When a position as a school resource officer ("SRO") opened up in late summer of 2013, I
46 jumped at the chance for a change. It's not that I wanted to work with high school students – I
47 knew they were as dangerous as any adult. In fact, I viewed teens loitering on the street with
48 increased suspicion because most gang members were teens or young adults. With all the metal

49 detectors and security measures in place at the local schools, I was sure an SRO position would be
50 safer. And the job came with a nice raise – $8,000 per year – so I was thrilled when the Chief
51 offered the position to me! Then s/he told me to report to Emigration High School the very next
52 week. I was surprised; I thought I'd have to attend the 40-hour SRO training class and 32-hour
53 SRO Ethics class first. But when I asked Chief Johnson about it, s/he said, "No money for that in
54 the budget. I've got the training class manuals you can borrow. You'll be fine…unless you want
55 me to pick someone else?" I assured the Chief I was on board and would report to the school on
56 Monday.

57 Emigration High School had ~ 1,000 students and 50 faculty in 2013, so it wasn't a small
58 school but wasn't huge, either. I was the only SRO, so I had to learn on the job. Of course, the
59 manuals were useful, but it wasn't the same as having a mentor. Still, I read everything I was
60 given and was determined to do my best, just like I always had. The hardest part was finding the
61 right balance between befriending the students and strictly enforcing the rules. I decided the most
62 important thing was to keep the students safe, and if the kids didn't seem all that friendly, it didn't
63 matter to me too much. When in doubt, I would apprehend anyone who seemed to be a
64 troublemaker. I also stayed vigilant to make sure gangs and guns weren't infiltrating the school.

65 The first few years went pretty smoothly. I had to use pepper spray a few times when
66 students got in fights. But most of the time, simply talking to the students was sufficient to calm a
67 situation. Of course, the parents of the students I pepper-sprayed filed complaints, but that's to be
68 expected in today's "helicopter parent" society. The Chief backed me up every time. But in
69 2015, things started to change in the community.

70 Like I already said, I grew up in Emigration. When I was a little kid, family farms
71 surrounded the town, and migrant workers flocked here every summer to harvest the crops.
72 Eventually, some of the workers settled here and took other jobs in the area. But when the
73 research park was built in 2015, the population of Emigration exploded. Many highly educated
74 people from overseas moved here to work in the new companies, making Emigration a much
75 more diverse – and sometimes more polarized – city. The population of the school grew to
76 nearly 1,400, and eight trailers were added to handle the overflow. I was still the only SRO, and
77 I was stretched thin.

78 Not everyone benefited from the booming economy. A majority of the farms were
79 bought out or went bankrupt during the drought in 2014-2015. A large textile manufacturing

company that had been in Emigration more than 60 years reduced its workforce, sending jobs overseas where labor was cheaper. Quite a few of my friends who started working there after high school were laid off, and many of them had trouble finding a new job. It was really tough to see them suffering in that way, and some had to move in with family or leave the area altogether.

In July of 2017, crowds picketed outside one of the new research companies, holding signs saying, "American Jobs for Americans" and "Go Back Where You Came From." It got pretty ugly, and some of my buddies on patrol had to resort to force to disperse everyone. Thirty people were arrested for trespassing and vandalism after they threw rocks and sprayed paint on the outside of the company headquarters. I'd never seen anything like this in Emigration before.

Tensions even spilled over to Emigration High School. Bullying and fights became more common, and the student body became divided between those whose families had lived in Emigration for decades and those whose families had moved here more recently. The school administration did its best to calm things down, adding additional school counselors and holding "International Fairs" to try to build connections between the students. But their efforts didn't seem to be working, and tensions remained high. I also began to see evidence of gang infiltration in the school, which worried me a great deal. Sometimes the metal detectors in the school didn't work, and I was afraid students would find a way to sneak weapons on campus. I sure didn't want us to have a shooting like what had happened in other parts of the country. The stress started getting to me a bit, and my nightmares came back. I didn't try asking the chief about counseling again – I knew how that would go; instead, I started working out more to make myself tired enough to sleep.

October 10, 2017, started off like any normal day. I greeted students in the school lobby as they arrived in the morning. When maybe half of the students had gone through the metal detector, it stopped working. Rather than make everyone late to class, I watched the students entering the school and pulled aside anyone who looked suspicious, so I could search their backpacks. Some of the kids seemed to resent being pulled aside, but no one caused any problems. A bit later, I was patrolling the halls between first and second period when a student named Alex Singh ran up to me and told me s/he'd seen a gun in Savea Tuvale's backpack when Savea was at his locker. I knew who Savea was; he seemed somewhat antisocial and often had an angry look on

111 his face. The previous spring, he had been involved in several fights at school. He always
112 reported being the victim of bullying rather than the instigator, so I think he'd only been suspended
113 once, for five days. If he was continuing to be bullied, I thought he might have decided to fight
114 back. I was afraid of what he might be planning to do.

115 All of my nightmares about school shootings flashed before my eyes. I knew I had no
116 time to waste. I radioed the office to find out where Savea was and ran to the room. I
117 immediately entered and saw Savea at a desk near the wall. I swiftly approached him and
118 insisted he hand over his backpack and come with me to the office. All I could think of was
119 getting the backpack away before Savea could pull out the gun. Savea looked at me with wild
120 eyes and reached aggressively toward the backpack. I reacted instantly, spraying Savea with
121 pepper spray to disable him. Savea threw up his hands, and I grabbed him, handcuffed him, and
122 dragged him out of the room and to the office.

123 When we got to the office, the principal, Dr. Madden, was there to meet us. She asked
124 what was going on. I said that a student had seen a gun in Savea's backpack. We looked inside
125 the pack, and, sure enough, we saw what looked like a gun. It had a bit of an odd appearance,
126 sort of like it was plastic or something. I couldn't tell for sure if it was functional. I didn't take
127 it out of the backpack because I didn't want to disturb any evidence before the CSIs could
128 analyze everything. In any case, I was convinced I had acted properly by intervening right away.
129 It certainly hadn't been worth taking a chance on a possible school shooting.

130 I said we needed to arrest Savea and call for back-up to take him down to the station.
131 The principal was indecisive and a little unsure about what to do. Meanwhile, Savea was
132 moaning in pain, with red, watery eyes. I thought about taking him to the bathroom or to a water
133 fountain to wash his eyes out – keeping him cuffed, of course – but I got distracted when the
134 principal started to open the backpack as though she was going to take out the gun. I stopped her
135 and insisted that we call for backup. Finally, after maybe 40 minutes had gone by, she agreed.
136 A patrol car arrived within minutes, and I accompanied Savea to the station.

137 When we got there, Savea was still very upset, crying out that his eyes hurt and that he
138 couldn't breathe. The other officer ignored him, so I did as well. Savea refused to answer any
139 questions, so the officer gave up and handcuffed him to a chair in a conference room. Savea's
140 backpack had been sent to the CSIs, and pretty soon they brought it back saying, "It's just a 3D
141 model gun. It looks like he printed it himself. It can't fire any bullets; it's just a toy."

142 Moments later Savea's relative, K.J. Tamu, stormed into the station. Tamu was quite
143 upset, shouting about "violation of rights" and "discrimination." By then, we knew the gun
144 wasn't functional, so Savea was released into Tamu's custody after a strong warning about not
145 bringing anything that looked like a weapon to the school. Tamu was still ranting as they left
146 the station. I tried to calm Tamu down, telling them to go home and let Savea rest. But Tamu
147 would have none of it, pushing me away and shouting, "You just wait. You haven't heard the
148 last from me yet!" I was sorry Tamu was so upset. But I knew I'd done the right thing. If
149 Savea had brought a real gun to school, Emigration High could have been the site of a massacre.
150 I'd do the same thing again in a heartbeat. Better a couple of angry people than a crowd of dead
151 or injured students.

152 After Tamu left, I was interviewed by Chief Johnson. When I explained what had
153 happened, the Chief told me I had acted properly, given the information I had at the time. "We
154 can't take any chances when it comes to guns in schools. The stakes are too high." When I
155 asked if I would be put on desk duty for a few days until things calmed down, the Chief said,
156 "Definitely not. Like I said, you did nothing wrong. It's important for you to be at the school
157 tomorrow, so no one thinks otherwise. You're good with that, right?" To be honest, I wouldn't
158 have minded waiting a few days to go back to the school. But I also knew the Chief was
159 counting on me to be strong. So, I said I'd be fine, not to worry about me. The Chief was
160 clearly pleased and even said I'd be commended for my actions at the next SRO group
161 debriefing session.

162 When I went back to the school the next day, I learned that Savea had been given a 10-
163 day suspension because of the incident. That seemed like a pretty mild consequence to me. If
164 he had brought an actual weapon to the school, he would have received a mandatory 365-day
165 suspension. Given the fear and disruption that even the model gun caused, a 10-day suspension
166 was pretty lenient, in my opinion.

167 When I told the principal I was surprised about the length of the suspension, she said
168 that she took into account the fact that Mr./Ms. Tamu reported that Savea had recently been
169 diagnosed with Asperger's Syndrome. That was news to me; in fact, I didn't even know what
170 Asperger's Syndrome was. It wasn't discussed in any of the training materials I'd read. When I
171 looked it up, my research helped me to understand why Savea had difficulties interacting with
172 other students. Maybe if I'd known about it beforehand, I would have approached Savea a bit

173 differently. Or maybe not; after all, I had been told he had a gun in his backpack and ensuring
174 everyone's safety had to be my highest priority.
175 The *Emigration News & Record* ran a story on SROs in late September of 2017 after an
176 incident at Bald Mountain Academy. The article made it sound like SROs don't care about the
177 students and treat them too harshly. But the reporter doesn't know what it's like to have to
178 make those split-second decisions to keep people safe. It's easy to be a sideline quarterback;
179 much harder when you're the one on the field. I think articles like that do more harm than
180 good, by making the community suspicious of SROs. Without us there to intervene and prevent
181 bad things from happening, schools would be a much more dangerous place for everyone.
182 Of the available exhibits, I am familiar with the following and only the following:
183 Exhibit 1 (the EPD Policy Manual); Exhibit 5 (the model gun that Savea Tuvale brought to
184 school); Exhibit 7 (the pepper spray that is part of an officer's gear); Exhibit 8 (incident reports
185 in my personnel file); pages 1 & 3 of Exhibit 10 (the incident report forms I filed after
186 altercations at Emigration High School); and Exhibit 11 (the article in the Emigration
187 newspaper).
188

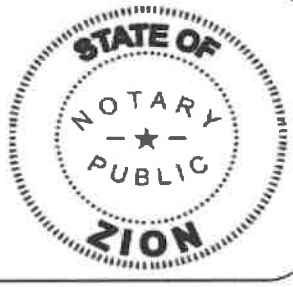
Max Christensen

MAX CHRISTENSEN

Michelle Strickland

Michelle Strickland, Notary Public

THE STATE OF ZION
Michelle Strickland
My commission expires 8/30/20



SUPERIOR COURT FOR THE STATE OF ZION
SNOW CANYON COUNTY

SAVEA TUVALE, a minor, by and through his next friend, **K.J. TAMU**, **Plaintiff**, v. **EMIGRATION POLICE DEPARTMENT**, a municipal entity of THE STATE OF ZION, **Defendant**.	**AFFIDAVIT OF ALEX SINGH** **Case No. 18-CV-5678**

ALEX SINGH, having been duly sworn, hereby states the following:

My name is Alex Singh, and I'm a senior at Emigration High School. I really like the school and have made a lot of friends here. I'm captain of the tennis team and vice president of the senior class. I'm also president of the Service Club. We've sponsored Walk-A-Thons for diabetes and heart disease, and last year I organized a bone marrow registry donor drive for the "Save the Wolf" campaign to help Superior Court Judge Carla Wolf, who has blood cancer. More than 100 people registered during our event. Even if none prove to be a match for Judge Wolf, they might save someone else's life.

Next year, I'll be attending the Air Force Academy in Colorado. My favorite aunt is in the Air Force now, and one of my uncles and my granddad also served. Wanting to continue the family tradition is partly why I joined the Civil Air Patrol ("CAP") at school as a freshman. CAP is a non-profit civilian auxiliary for the Air Force. Adult members help with emergency services and search and rescue operations. CAP also sponsors a cadet program in schools to help students learn about aviation, military customs, and leadership. I've attended some amazing CAP summer camps on cyber defense, aerospace, and survival skills. Best of all, I've gotten to fly planes for free! I've put in half of the flight hours that I need to earn my pilot's license, and I hope to finish the rest before I graduate from high school in the spring.

I'll have to admit my mom wishes I would choose a different career. She's worried about me getting shot down and tortured by terrorists in Afghanistan or the Middle East. I told her not

19 to worry; there's a greater chance I could get hurt crossing the street in America. But every
20 time there's a story in the news about some sort of terrorist bombing or attack, whether in the
21 U.S. or overseas, she talks about it for days. Honestly, that's one reason I want to serve – to
22 stop such attacks and keep us all safe. It is scary that terrorists secretly live in the U.S., and no
23 place is safe – they could even be in Emigration!

24 I worked hard at CAP to advance through the ranks. By the beginning of my sophomore
25 year, I earned my first leadership rank, Cadet Technical Sergeant. That meant I could coach the
26 junior (new) cadets during meetings and have a chance to become a better leader myself. Now
27 I've earned my Billy Mitchell Award and achieved the rank of Cadet First Lieutenant, which
28 was really helpful when I applied to the Air Force Academy.

29 In March of my sophomore year, a freshman named Savea Tuvale started attending the
30 CAP meetings. It's a little unusual for people to join in the spring, but he had just heard about
31 CAP and was really interested. Savea was born in Tutuila and came to Emigration to live with
32 his aunt/uncle the previous summer, so he could go to school here. Savea already seemed to
33 know a lot about airplanes and flight, so that aspect of CAP was easy for him. But other parts
34 were tougher. He moved sort of awkwardly, had trouble learning the military drill movements,
35 and struggled during the physical fitness training. To be honest, Savea had difficulty fitting in
36 with the group. I don't know if it's because Savea was born overseas or what, but he sometimes
37 didn't seem to understand jokes, and he got offended easily. Even so, he worked hard, and he
38 managed to advance in rank before the school year ended. He even signed up for summer
39 encampment in June.

40 Encampment is a challenging week-long camp at a local military base. I attended as a
41 first-year cadet the previous summer and went again in 2016 as a squadron leader. The camp
42 schedule includes daily calisthenics, obstacle courses and team fitness challenges, team
43 leadership problems, and sessions on aviation. We also get to go on several flights where we're
44 allowed to take control of the airplane for short periods. It's intense but awesome.

45 Savea wasn't in my squadron at camp, but I saw him several times most days. He still
46 struggled to stay in formation during drill practice, and he also came in near the back of the
47 pack on the obstacle course. As the week went on, he always seemed stressed or discouraged
48 whenever I saw him. He didn't speak much in the dining hall and kept mostly to himself during
49 free time. I tried to talk with him a few times, but he didn't really look at me or say much.

When I asked his squadron leader how he was doing, the leader said "fine" but didn't give any details.

I wasn't sure if Savea would come back to CAP in the fall, but he did. I decided to make a real effort to get to know him better. I figured it must be hard making friends in a place so different from where he grew up. So, after the second CAP meeting, I went up to him before he left and asked how he was doing. He seemed sort of surprised that I was talking with him. He said, "Great! Everything's great! Hey, my birthday is next week. Want to come over for pizza?" I was caught a bit off guard since we weren't close friends or anything, but I said, "Maybe…when is it?" He told me September 12, which was a Monday. I already had plans, so I told him I couldn't come. He looked really disappointed, so I said, "Hey, maybe another time." He said okay and left.

I felt kind of bad, so the next week I asked what he liked to do after school. We got to talking about computer games and discovered we both liked *Company of Heroes*, a massive multiplayer online game (MMO) based on World War II. He invited me to come over Friday after school to play, so I said sure.

Savea's room was pretty sparse. I noticed that he had a lot of books about weaponry and tactics during World War II; he also had military-oriented posters covering the walls. He pretty much talked non-stop about the specs of various guns while we were playing the game. I heard way more than I cared to about the topic, but some of it was interesting. Savea seemed really happy that I had come over and invited me back anytime. So, every couple of weeks, I'd go hang out after school to play video games. Sometimes we'd talk about CAP, but mostly we talked about the game or about World War II weapons and tactics. Savea would go on and on about details of various guns and planes. I couldn't believe he knew so much about it all – it was like he had memorized an encyclopedia or something. That part got to be kind of boring, but Savea was decent at *Company of Heroes*, and none of my other friends really liked the game. So, I'd go over after school every few weeks. Once or twice when I suggested coming over, he told me he already had plans to play a different computer game with Blair Hernandez. I didn't know Blair at all – we didn't have any classes together – so, I didn't visit if Blair was there.

Savea continued to advance in CAP as the year went on, although more slowly than most of the cadets. I gave him extra help when I could, and he seemed a bit happier overall. At least he did until late in the spring of 2017. One night we started discussing current events, and

82 people brought up some recent terrorist attack in London. A student made a comment about the
83 "ISIS terrorists," and all of a sudden Savea jumped up and said, "I don't have anything to do
84 with ISIS! I'm not even a Muslim. Leave me alone!!!" Everyone was shocked, especially
85 since no one had said anything about Savea at all. Savea ran out of the room, and I ran after
86 him.

87 When I caught up to him, he was shaking and half-crying. I sat down beside him and
88 waited for him to calm down. I asked what was going on. "Savea, no one was talking about you
89 at all. We were talking about ISIS. Why did you blow up like that?" Savea took a deep breath
90 and said, "Ever since those attacks, kids have been calling me 'Muslim terrorist,' shoving me
91 into lockers, and knocking my books on the floor when no teachers are around. If they keep it
92 up, I'll show them! They can't treat me this way." He balled up his fists and looked like he
93 wanted to punch someone. I was surprised, especially since Emigration High School has
94 programs to prevent bullying. In the mandatory Freshman Orientation, a school counselor talks
95 about bullying: how to recognize it, how to report it, how to help others. Posters have been
96 hung up all over the school, with helpline numbers and reminders to "Banish Bullying." I felt
97 bad that Savea was being bullied, but it was weird how furious and aggressive he got in the
98 meeting, especially since no one had said anything at all to set him off.

99 I asked if he'd told his teacher or guidance counselor about the bullying. He said, "I
100 tried, but they didn't listen to me. If they won't protect me, I'll take matters into my own
101 hands!" I knew that would only make matters worse, so I kept talking to Savea and finally got
102 him calmed down. I made him promise to tell me if he had any more problems. I told him we
103 could go talk to the principal together. He never came to me, though. And he seemed fine at the
104 rest of the CAP meetings that spring, although I never asked him if the bullying had stopped.

105 Because I was really busy with school, I didn't make it over to Savea's house to play
106 video games again before school let out for summer. In fact, I didn't see him at all for several
107 months. I was working at Encampment, and he got a summer job in Emigration. But once
108 school started, and I saw him at CAP, he invited me over to play *Company of Heroes*. When I
109 went over, we talked about Encampment, and he told me about his summer job. He said he'd
110 gotten to use a 3D printer, which sounded really cool. He seemed pretty happy and glad to be
111 back at school.

112 Savea invited me over for pizza again on his birthday, but I couldn't make it. The next
113 time I saw him at school, he was super-excited about his birthday present – a 3D-printer kit! He

said he put it together himself and invited me over to try it out. I went over the next afternoon, and it was awesome! We messed around and made some simple shapes, including a really basic plane shape using plans he'd downloaded from Thingiverse. Savea brought the plane to CAP and passed it around. Everyone thought it was cool, and they all gathered around Savea when the meeting ended. He went into lots of detail on the printer, how he'd put it together, and how he'd made the plane – enough detail that several people got bored and left, but he didn't notice. He was clearly stoked to be the center of attention.

Then Savea said he was going to make a remote-controlled model airplane using plans he'd found online. He said he'd downloaded several different versions and would start with a Flying Wing design that was more than two feet across. It sounded amazing. I asked if I could help, and he said sure! So, I went over several times in the next few weeks after school. We spent hours each time, checking and rechecking the dimensions and then printing and assembling the parts. The inner wing structure was pretty complicated, but we were making great progress. We'd almost finished all the 3D printing and soon would be ready to add the motors and stuff. I thought we'd have it finished by mid-October at the latest.

On September 29, I went to Savea's house after school to work on the plane. I hadn't seen him at school that day, but I usually didn't. I texted him when I was almost there. He didn't reply, so I knocked on the door, opened it, and called out for him. All of a sudden he came running out of his room shouting, "Go away! I don't want you here! I hate you and everyone else at that @#*!@ school!" He had the plane in his hand, and, next thing I knew, he threw it on the ground and stomped on it. I stood there for a moment, stunned. Then I shouted, "What are you doing? Are you crazy?! We've been working on that for weeks! Why did you do that?"

He looked at me all wild-eyed and shouted, "Don't talk to me like that! I'm not crazy! I'm not a terrorist!! I'm sick of being shoved into lockers! I'm sick of being told to 'go back where you came from.' I'm not going to take it anymore! You'll all be sorry. They're gonna pay for what they've done. I can make other things on this printer, you know! Now get out of my house and don't come back!!" I tried to tell him to calm down, but he shouted, "Get out!! Now!!" So, I turned around and left.

I was pretty freaked out when I left. I couldn't believe Savea was being bullied again. I didn't know who was doing it, but I figured the principal, Dr. Madden, needed to be aware that it was happening. I went to talk with Dr. Madden the next day to alert her to the situation. She

146 listened to me and said she'd talk with Savea to get more details, but she couldn't really do
147 anything except to tell teachers to be on the lookout for bullying.
148 I didn't have any classes with Savea and rarely saw him in the halls, so I figured I'd
149 catch up with him at CAP the next week. But he didn't come to the meeting, and he didn't
150 reply to my texts. I knew he'd written a blog back in the spring but had stopped during the
151 summer. I thought I'd check it out to see if I could tell how he was doing. The spring postings
152 had mostly talked about World War II weapons and tactics. He didn't post anything from mid-
153 June until mid-September, but he'd made two recent posts on 3D printers. One linked to the
154 online site with airplane plans; it was detailed and talked about the plane he was making. But
155 the post on October 8 worried me. It talked about using 3D printers to make guns and how they
156 could get through security because they didn't have metal in them. I started getting concerned
157 about what Savea might be planning. I was determined to go see him at his house if he didn't
158 come to CAP on October 10.
159 That very morning, October 10, I saw Savea at his locker before our second period class.
160 I started to walk over to say hi, and then I saw him pull something that looked like a gun out of
161 his coat pocket and put it in his backpack. He glanced around as if to make sure that no one had
162 seen the gun; then he grabbed his backpack and headed down the hall. He hadn't seen me, and I
163 just stood there for a moment in shock. I didn't know what he was planning, but I knew I had to
164 tell someone in authority right away. I ran down the hall toward the main office and bumped
165 into Officer Christensen on the way. I grabbed the officer's arm and blurted out what I'd seen.
166 Officer Christensen listened intently and then told me to go to class and stay there. As I turned
167 to go, Officer Christensen radioed to the office to ask where Savea was. Then Officer
168 Christensen sprinted down the hall toward the math wing. I ran to class, hoping I'd done the
169 right thing.
170 I went to my class, but I couldn't focus. I kept wondering what had happened, was
171 Savea okay, and was he really planning to shoot up the school? I didn't know what to think.
172 When second period finally ended, I tried to go the principal's office to see what was going on.
173 But no one would tell me anything. I tried calling Savea after school let out, but he didn't
174 answer.
175 Later that night I was checking news headlines online when I saw the story: An
176 "unidentified student" at Emigration High School had been detained for bringing a printed-
177 model handgun to the school. The student was eventually released after the police determined

178 that the gun wasn't a working model. I knew the student had to be Savea. I tried texting him,
179 but he still didn't reply.

180 The next day at school, everyone was talking about the news. I heard quite a few
181 students say they thought he should be suspended for the rest of the semester, or that he needed
182 to get counseling to make sure it was safe for him to return. A few people talked about
183 "terrorism" and said, "They should kick him out of the country." I didn't see Savea in the hall
184 at all, and he never did come back to CAP. A few weeks later, I heard he'd gone back to
185 Tutuila.

186 I'm still not sure how I feel about all of it. I mean, I don't think Savea would've really
187 tried to hurt anyone, but he was out of control at his house that day. And even though that
188 model gun wasn't functional, given the complexity of the plane we'd made, I was sure he could
189 make a working gun if he'd wanted to. I'm sorry he was bullied. I wish him well and hope he
190 gets the counseling he needs. But part of me is not sorry that he's no longer at Emigration High
191 School. It's pretty scary to think we could have had our own "Columbine" if he'd tried to carry
192 out his threats and "make the bullies pay."

193 Of the available exhibits, I am familiar with the following and only the following:
194 Exhibit 4 (Savea's blog); Exhibit 6 (the 3D plane model Savea and I were making); and Exhibit
195 13 (the handout on bullying that we receive at the school assembly each year). Exhibit 5 also
196 looks a lot like the gun I saw Savea put in his backpack, although I got such a quick glance at it
197 that I'm not 100% sure it's the same.

Alex Singh

ALEX SINGH

Patti Chichester

Patti Chichester, Notary Public

THE STATE OF ZION
Patti Chichester
My commission expires 6/5/21

SUPERIOR COURT FOR THE STATE OF ZION
SNOW CANYON COUNTY

SAVEA TUVALE, a minor, by and through his next friend, **K.J. TAMU**, **Plaintiff**, v. **EMIGRATION POLICE DEPARTMENT**, a municipal entity of THE STATE OF ZION, **Defendant**.	**AFFIDAVIT OF JADYN JOHNSON** **Case No. 18-CV-5678**

JADYN JOHNSON, having been duly sworn, hereby states the following:

My name is Jadyn Johnson, and I am 56 years old. I am the Chief of Police for the Emigration Police Department, a position I have held since 2011. I was born in Flint, Michigan, where my father served as Chief of Police, and my mom taught history and psychology at Huron High School. I wanted to leave Michigan for college, so I moved to Boise, Idaho, and earned my B.S. in Criminal Justice from Boise State University. In 1985, I joined the Boise Police Department as a sworn peace officer, and I swiftly advanced through the ranks, earning promotions to Captain and Division Commander by 1992. I'd always set my sights higher, though, so I earned my Advanced Certificate from the Idaho POST (Peace Officer Standards and Training) Council in 1994 and completed their Management Certificate in 1996. I was promoted to Major in 1997 and served in that role for three years.

At that time, my mom learned she had cancer, so I took a position in the Lansing, Michigan, Police Department to be closer to home. I was heartbroken when my mom passed away in 2002, right before I earned my M.S. in Criminal Justice from Michigan State University. Soon afterward, I was hired as Deputy Chief of Police in Ann Arbor, Michigan. While I loved living in Ann Arbor, I often found myself at odds with the Chief of Police when it came to the best approach to maintaining a safe community. I wanted to implement "quality-of-life (QOL)" or "broken windows" policing to reduce crime. QOL policing involves taking a stand on seemingly minor, but highly visible, infractions – aggressive panhandling, sleeping on public benches, graffiti writing – leading to arrests in situations where a warning or simple

20 citation would otherwise be issued. QOL policing puts perpetrators on notice that the police are
21 serious about maintaining order. But the Ann Arbor Chief of Police felt the policies I suggested
22 were too harsh and did not take into account individual circumstances. When I was offered the
23 Chief of Police position in Emigration in November of 2011, I jumped at the chance. I was
24 eager to implement QOL policies in my own department.

25 In many ways, serving as Chief of Police is similar to being the CEO of a large
26 corporation. I manage our entire operation, develop and revise department policies and
27 regulations, oversee our officers (which includes promotions, disciplinary actions, and
28 dismissals), devise strategic plans and new programs to ensure community safety, present
29 reports to the mayor and city council, and work within an ever-shrinking budget. It's not a
30 position for the faint-of-heart. Fortunately, the courses I took at MSU were incredibly helpful
31 to me as I took on my new role. Especially useful were courses on "Assessment of Police
32 Policies and Operations," "Crime Causation, Prevention, and Control," "Risk Perception and
33 Decision-Making," and "Budget Planning and Resource Allocation."

34 As the new Chief, I decided to spend a year getting to know the community and my
35 officers before trying to implement any new programs or major changes. In particular, I wanted
36 to focus on professional development. I had experienced first-hand the importance of advanced
37 training and continuing education, and I wanted to provide those same opportunities to my
38 officers. But factors soon intervened to make it impossible. The economy was suffering, and
39 the city council reduced my budget by 35% in 2013. I had to cut back on training, and I even
40 had to reduce the force by 10% (from 550 to 495 sworn officers). Fortunately, a number of
41 officers were nearing retirement age, and others decided to relocate. Because of the budget
42 cuts, I left their positions unfilled. I only had to lay off three staff in all: two psychologists and
43 the head of the Internal Affairs Division (IAD). I'll admit, it's very unusual to get rid of the
44 head of the IAD. But my priority was keeping as many officers on patrol as I could. I figured I
45 could take on the IAD role by reviewing complaints against officers and making the "hard
46 calls." Because all our remaining officers were top-notch, I knew I wouldn't receive many
47 legitimate complaints anyway.

48 The budget cuts and reduction in force put a strain on everyone, for sure, but I was
49 proud of the way our people responded. Officers rarely called in sick, and everyone pitched in
50 to cover extra shifts when needed. Those who couldn't handle the heat left for jobs elsewhere,
51 and we were always able to fill their positions, no problem. It's true that some officers asked

52 for counseling after shootings or difficult situations, and I just didn't have the staff to make it
53 possible. When the economy took a turn for the better, I asked the city council to increase our
54 budget, but the council decided to put the money toward parks and tax breaks for businesses
55 instead. Their decision worried me, especially as gangs were becoming more active in
56 Emigration. But we just had to do the best we could with what we had.

57 With the budget cuts, I could not afford to send officers to the Zion Justice Academy for
58 advanced certifications. To compensate for the lack of off-site training, I set up a mentorship
59 program, pairing experienced officers with new officers to help them learn the ropes. The
60 experienced officers could offer advice on dealing with the stresses that come with the job,
61 leaving our one remaining psychologist to focus on really tough cases like PTSD or job-related
62 depression. I also arranged for more in-house training on topics including, "Interview and
63 Interrogation," "Community-Oriented Policing," and "Gangs and Drugs."

64 One of the officers who had requested counseling was Max Christensen. Officer
65 Christensen and Officer Tylee Matthews had intervened in an altercation among several teenage
66 gang members in November of 2012. While Officer Matthews pursued two of the suspects,
67 Officer Christensen tried to assist a third individual who reportedly pulled out a knife and
68 attempted to stab Christensen. Officer Christensen barely avoided injury but was unsuccessful
69 in apprehending the individual, and the other suspects escaped as well. Christensen reported
70 having nightmares after the event and asked for counseling, but our psychologist was already
71 overburdened in assisting officers diagnosed with PTSD after being injured or involved with
72 shootings while on patrol. Given the facts of the situation (which were not out of the ordinary
73 for a patrol officer), I met with Christensen myself and decided Christensen was able to remain
74 on patrol.

75 In general, the department receives 50 – 75 complaints each year, mostly for "unfair
76 treatment" of suspects. When I looked into them, very few of the complaints had merit. They were
77 mostly the kind of whining one would expect from criminals trying to game the system. From
78 January 1, 2013, to December 31, 2014, official reprimands or warnings were issued against only
79 five sworn officers: Detective Dan Reagan and Officers Tyler Steiner, Alex Boulton, Mike Cirillo,
80 and Max Christensen.

81 Officer Christensen was reprimanded in February of 2013 for using excessive force in
82 apprehending two gang members accused of spray-painting graffiti on a downtown storefront.
83 Neither of the suspects was armed when apprehended, yet Christensen had "Tased" the suspects

84 when lesser force would have been sufficient. I met with Christensen myself, admonished
85 Christensen, and issued a written reprimand. I also required Christensen to complete an online
86 course on "Proper Use of Force" before returning to patrol.

87 After Christensen completed the online course, I received no more complaints against
88 Christensen. So, when Christensen applied for a position as an SRO in August of 2013, I felt
89 Christensen was the right person for the job. Aside from that one incident, Christensen had
90 always been one of my best officers. Even though Christensen had worked for the EPD for only
91 six years, Christensen's parents had both been vital members of the EPD before moving out of
92 state. Christensen's relative youth was also a benefit for an SRO: Christensen was young
93 enough to relate to the students, yet mature and experienced enough to be effective. I was
94 certain Christensen could enforce the rules fairly, while also establishing good rapport with
95 students, staff, and parents.

96 Officer Christensen began working as the SRO at Emigration High a week after being
97 promoted. Ideally, Christensen would have attended two weeks of SRO training at the Zion
98 Justice Academy prior to beginning the new position, but I had no funds in the budget for such
99 training. Besides, students were returning to school that very week, and Christensen was
100 needed on campus. So, I provided Christensen with SRO training manuals and instructed
101 Christensen to read through them in the evenings. I also provided Christensen with contact
102 information for other SROs in Snow Canyon County, instructing Christensen to contact them if
103 Christensen had any questions. But, as far as I know, Christensen never did so.

104 During Christensen's first year at Emigration High, Christensen pepper-sprayed several
105 students while breaking up fights on campus. On three occasions in 2013-14, parents of
106 students at Emigration High filed complaints against Christensen, and they were passed on to
107 me. I was initially concerned, but, when I investigated the complaints, Christensen always had
108 a reasonable explanation for the use of such force. In addition, the school principal, Dr.
109 Madden, spoke highly of Christensen and said that Christensen's presence had made the school
110 much safer for everyone. As a result, I deemed Christensen's use of force to be appropriate in
111 every instance, and no reprimands or other actions were taken against Officer Christensen. Two
112 additional complaints were filed against Christensen in 2014-15, but, again, I found each
113 complaint to be without merit. While it may appear that the EPD policy manual required that
114 Christensen be suspended after so many complaints, I felt a strict application of departmental

policy was not warranted and would simply remove an excellent officer from duty for no reason.

It is true no complaints were filed against any SROs at other area high schools from January 2014 to August of 2017. However, the student population at Emigration High was nearly 50% larger than at any other school in the county. It was also more racially and economically diverse than in any other county school, which sometimes led to altercations between various student factions. I will admit I am concerned by statistics showing that minority students and students with learning disabilities are suspended or expelled, or apprehended by SROs, in higher-than-expected numbers in Emigration High School and the Snow Canyon County school system as a whole. Despite the statistics, I am confident that Officer Christensen and our other SROs are committed to "protecting and serving" students of all backgrounds and abilities. I will, however, make it a point of emphasis in our in-service training sessions for the coming year.

Another area of concern was the increasing presence of gangs in the neighborhoods feeding into Emigration High. The school instituted a dress-code policy banning gang colors or paraphernalia at school, which eased tensions somewhat. But Officer Christensen still had to remain alert for any potential gang activity at the school, which made Christensen's job more stressful than that of many SROs. If I had had sufficient funds, I would have assigned a second SRO to Emigration High, but it just wasn't possible. On the whole, I thought Christensen effectively established rapport with most students while maintaining a safe environment.

Despite the increasing student enrollment at Emigration High, the 2015-16 school year passed without any additional complaints being filed against Officer Christensen. The 2016-17 school year also got off to a calm start – until October 10, 2017, when Christensen pepper-sprayed Savea Tuvale after receiving a report that a student had seen a gun inside Tuvale's backpack between first and second period classes. Christensen successfully subdued Tuvale without anyone sustaining injury and appropriately asked the principal to call for back-up in transporting Tuvale to the station.

While it turned out the item in Tuvale's backpack was a non-working, 3D-printed model of a gun, I fully support Christensen's decision to act quickly when faced with such a potentially dangerous situation. It's easy for armchair quarterbacks to second-guess the split-second decisions of SROs and other police officers – but, if their own lives are at risk, they are

146 grateful we are there to protect them. Situations that may seem black-and-white, after the fact,
147 can be all-too-gray in the moment when a decision must be made.
148 Each year, I lead a training session for all EPD officers on a topic that is timely and
149 important. In July of 2017, I presented information on the epidemic of gun violence and shootings
150 in our nation's schools. Discharge of firearms in schools is a much more common occurrence than
151 most people realize. In fact, between 2015 and mid-2017, an average of two school shootings took
152 place at K-12 schools each month – and in more than half, the shooter was a minor. I stressed to
153 all of our SROs that if they had any doubts about the seriousness of a situation, it was best to err on
154 the side of using force to keep a situation under control. The stakes are just too high to do
155 otherwise.
156 I interviewed Officer Christensen for more than an hour on October 10, 2017, after Savea
157 Tuvale was released into the custody of his family member. Based on Christensen's account of
158 events, I was and am confident that Christensen acted appropriately under the circumstances.
159 While it would have been advisable for Christensen to have taken Tuvale to the bathroom or a
160 water fountain to rinse the pepper spray out of his eyes, Christensen was unable to do so both
161 because Tuvale was belligerent and uncooperative and because the school principal did not allow
162 it. In his role as an SRO, Christensen had to abide by the principal's directives.
163 Christensen was clearly upset by what had transpired and asked to be placed on desk duty
164 for the remainder of the week. But I was convinced that doing so would be a mistake –
165 Christensen's absence at the school would make it appear that Christensen was being disciplined
166 for acting as Christensen did. I also had no officers qualified to take Christensen's place. So, I
167 explained to Christensen it was important for Christensen to return to the school as usual the next
168 day, and Christensen agreed.
169 I understand that Savea Tuvale never returned to Emigration High, flying home to Tutuila
170 instead. While it is a shame that events transpired in that fashion, Officer Christensen did
171 exactly as Christensen had been trained to do: Act quickly under difficult circumstances to keep
172 the students and staff at Emigration High School safe. Officer Christensen should be
173 commended for that, rather than vilified.
174 Of the available exhibits, I am familiar with the following and only the following:
175 Exhibit 1 (the EPD Policies & Procedures manual); Exhibit 5 (the 3D gun Savea Tuvale brought
176 to school); Exhibit 7 (Freeze + P pepper spray carried by all EPD officers and SROs); Exhibits

177 8 - 10 (incident reports and EPD statistics on officer discipline); and Exhibit 11 (an article on
178 SROs published in the *Emigration News & Record*).

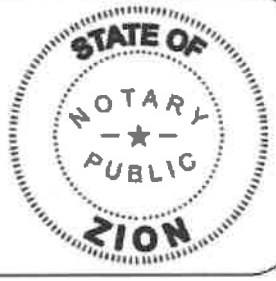
Jadyn Johnson

JADYN JOHNSON

Victoria Moore

Victoria Moore, Notary Public

THE STATE OF ZION
Victoria Moore
My commission expires 7/6/19



EXHIBITS

EXHIBIT 1

EMIGRATION POLICE DEPARTMENT POLICIES AND PROCEDURES

Revised 9/1/12

100. Officer Eligibility Requirements

In order to be eligible to serve as an officer of the Emigration Police Department ("EPD"), an officer must meet each departmental requirement.

101. Ethical Requirements

A. An officer candidate must pass a criminal background check prior to beginning the EPD Basic Training Course.

B. An officer must not be charged or convicted of any crime or infraction while serving on the EPD, with the sole exception of up to three (3) minor moving violations per five-year period.

1. Officers who are charged with any infraction or violation other than a minor moving violation will be placed on immediate suspension with pay, pending the outcome.

2. Officers who are convicted of any infraction or violation other than a minor moving violation will be immediately terminated, without exception.

102. Academic Requirements

A. An officer must have, at a minimum, a high school diploma or general equivalency degree.

B. An officer candidate must pass the EPD officer entrance exam with a score of 75 or above.

C. An officer must complete the 20-week EPD Basic Training Course, passing each component with a score of 80 or above.

103. Physical Requirements

A. An officer must be examined and deemed "fit for service" by an approved physician.

B. An officer candidate must take and pass the EPD physical fitness test before that officer candidate may begin the EPD Basic Training Course.

C. An officer must pass the EPD physical fitness test annually.

104. Mental Requirements

A. An officer candidate must be examined and deemed "mentally healthy" by a city psychiatrist before entering the force as well as every year subsequent to the officer's initiation.

B. A definitive diagnosis by a trained medical professional that an officer suffers from a mental illness is *per se* evidence that an officer is not "mentally healthy," in which case the EPD is required to place the officer on leave pending further examination.

C. An officer must be able to meet the mental health requirement at all times.

EXHIBIT 1

200. Duties of an officer
In order to serve as an officer of the Emigration Police Department, an officer must know and adhere to all the departmental standards outlined in the Emigration Police Department Policies and Procedure Handbook.

201. Departmental Behavioral Code
An officer must know and follow each departmental behavioral code.

202. Violation of Departmental Standards
An officer must report any violation of departmental standards on the part of a fellow officer.

300. Professional Development
A. An officer will be provided with appropriate training opportunities, either online, in-service, or at the Zion Justice Academy, to maintain the highest standards of professional knowledge and conduct.
1. The EPD will cover training costs, including room and per diem, for course work at the Zion Justice Academy.
2. An officer will be compensated at the normal salary rate for time spent in professional development.
B. A new School Resource Officer ("SRO") should attend 80 hours of SRO training at the Zion Justice Academy prior to assignment to a school campus.
1. In exceptional circumstances only, a new SRO will be provided with training manuals for self-study rather than attending SRO training at the Academy.

301. Annual Requirement
A. A patrol officer must complete 8 hours of approved professional development annually.
B. A detective must complete 12 hours of approved professional development annually.
C. An SRO must complete 10 hours of approved professional development annually.

400. EPD Chief Eligibility Requirements
In order to be eligible to serve as the Chief of the Emigration Police Department, an officer must meet each departmental requirement.

401. Length of Service
In order to be eligible to serve as the Chief of the Emigration Police Department, an officer must have served a minimum of 5 years as a sworn peace officer.

402. Rank
In order to be eligible to serve as the Chief of the Emigration Police Department, an officer must have achieved the rank of captain.

500. Duties of EPD Chief
The Chief must ensure that each officer of the EPD meets every departmental eligibility requirement and fulfills every duty outlined in the EPD Policies and Procedure Handbook at all times.

EXHIBIT 1

501. Maintenance of Officer Files

A. The EPD Chief is responsible for reviewing and maintaining each officer's personnel file.

B. The EPD Chief is responsible for reviewing and maintaining a record of the number of reports in each officer's personnel file.

C. The EPD Chief is responsible for reading and authorizing every report entered into an officer's personnel file.

502. Determining the Nature and Severity of a Complaint or Report

A. The EPD Chief is responsible for determining the nature and severity of every complaint or report at the time it is filed.

B. Whether a report warrants further investigation or disciplinary action is left to the sole discretion of the EPD Chief.

503. Conduct Review

A. A conduct review may be called and must be supervised by the EPD Chief.

B. A conduct review requires that the officer and the officer's personnel file be reviewed by the EPD Chief in addition to two of the officer's superior officers, who are to be appointed by the Chief. The three officers constitute the conduct review panel.

C. The conduct review panel must determine whether the officer's conduct warrants further investigation or suspension.

600. Misconduct

A. If an officer violates, in any way, the Policies established by the Emigration Police Department Policies and Procedure Handbook, suspension and/or termination are the only available sanctions.

B. The EPD Chief has the sole discretion of determining whether an officer's conduct violates the Emigration Police Department Policies and Procedure Handbook.

C. An officer may be suspended with pay or without pay, depending upon the nature and severity of the infraction. The EPD Chief has sole discretion to determine whether suspension will be with pay or without pay.

601. Grounds for suspension

A. Insubordination. An officer may be suspended if the officer disregards the orders of his or her superior officer or shows disrespect for his or her superior officer. The EPD Chief has the sole discretion of determining whether an officer's conduct qualifies as insubordination.

B. Misconduct. An officer may be suspended if his or her behavior violates, in any way, the Policies established by the Emigration Police Department Policies and Procedure Handbook.

1. As noted in 101.B, an officer charged with any infraction other than up to three (3) minor moving violations per five-year period will automatically be suspended, pending the outcome.

2. In all other situations, the EPD Chief has the sole discretion of determining whether an officer's conduct violates the Emigration Police Department Policies and Procedure Handbook.

C. Conduct Unbecoming. An officer may be suspended if he or she engages in conduct unbecoming an officer. The EPD Chief has the sole discretion of determining whether an officer's conduct is unbecoming an officer.

602. Besmirched Record

A. An officer must be suspended once three reports have been officially filed against him or her. The reports do not have to be of any specific degree or nature. In the event that a total of three reports

are entered into an officer's file, the officer must be suspended immediately for an indefinite amount of time. The suspension period is to be used by the officer's superiors to review the officer's file and conduct.

B. An officer may be suspended or brought up for conduct review regardless of the number of reports in the officer's file if the EPD Chief determines that a report filed against that officer violates the Emigration Police Department Policies and Procedure Handbook.

603. Procedure for suspension

A. Forfeiture of gear and powers. When an officer is suspended, the officer must submit his or her badge, gun, and handcuffs to the EPD Chief. The officer is not to undertake any of the duties or utilize any of the powers of an officer.

B. Length of suspension. If an officer is suspended, the length of the officer's suspension is to be determined at the time of his or her suspension by the EPD Chief.

C. Termination of suspension. If an officer is deemed fit for active duty following a period of suspension, the officer's gun, badge, and handcuffs are to be returned to the officer, and the officer's powers are to be restored.

604. Mandatory probation

A. After an officer's suspension period is terminated, the officer is to remain on probation for a period of at least 6 months. During the probation period, the officer's conduct must be closely monitored. The status of the officer's suspension must be re-evaluated at the end of each month.

B. The length of an officer's probation period is to be determined by the EPD Chief but must be a minimum of 6 months.

605. Psychiatric Treatment

A. Any officer referred for psychiatric treatment must be closely monitored and must be evaluated on a bi-weekly basis by the EPD Chief. The treating psychiatrist must make regular reports to the EPD Chief on treatment and prognosis, and these reports must be considered by the EPD Chief in determining the officer's fitness for active duty.

B. Where a psychiatrist expresses doubts about the ability of an officer to perform his or her daily responsibilities, the EPD Chief should either (i) obtain a second psychiatric assessment of the officer or (ii) place the officer on immediate leave pending further examination; however, the ultimate decision on whether to place an officer on leave lies with the EPD Chief based on his or her training and experience.

700. Termination

A. If an officer is not deemed fit for active duty, the officer's employment must be terminated. An officer's termination of service can never be reversed.

B. In the event of a termination of service, the officer's gear and powers are not to be returned to him or her after termination.

C. In the event of a termination of service, the officer's file must be marked permanently closed, and all police departments in the state must be made aware of the officer's termination of service.

EXHIBIT 2

ARCHER BRADSHAW, Ph.D., M.Ed.

521 Main Street | Emigration, Zion | Bradshaw@ECYD.com

EDUCATION

Stanford University, Ph.D. in Developmental Psychology with Highest Honors, 2007

Stanford Virginia, M.Ed. in Educational Psychology with High Honors, 2001

Harvard University, B.A. in Psychology with Honors, Phi Beta Kappa, 1998

EXPERIENCE

Emigration Center for Youth and Development
Clinical Psychologist, 2007 – present
ECYD Director, 2012 – present
Emigration, Zion

- Oversee forty staff, including clinical psychologists, physicians, speech and occupational therapists, and social workers, in multi-disciplinary evaluation and treatment center.
- Evaluate, counsel, and develop treatment plans for youth with a variety of developmental disorders, including autism, Asperger's Syndrome, attention deficit disorder, and dyslexia.
- Develop educational materials for staff, educators, non-profits, parents, and youth.
- Conduct research on strategies to ensure academic success for at-risk students.
- Instruct educators and SROs on assessing and preventing bullying and youth suicide.

Institute for Academic Success of Youth
Guidance Counselor and Research Associate, 2001 – 2003
Johns Hopkins University, Center for Exceptional Youth, Baltimore, MD

PROFESSIONAL ACTIVITIES

Society for Research in Child Development, Executive Board Member, 2011 – present
Snow Canyon County School Board, Safe Schools Committee Chair, 2014 – present
Society for Research on Autism Spectrum Disorders, Co-Chair, 2013 – 2014
Association for Positive Behavior Support, Awards Reviewer, 2011 – 2012
Zion SRO Conference, Presenter, "Recognizing Victims of Bullying," 2011
Zion Governor's Advisory Panel on Bullying Prevention, Chairperson, 2009 – 2011
Centers for Disease Control Panel on Adolescent Suicide Prevention, Member, 2010
U.S. Department of Education, Bullying Prevention Conference, Presenter, 2004 – 2007
Baltimore City Schools Strategies for Success Conference, Co-Chair, 2002 - 2003

RECENT PUBLICATIONS

Bradshaw, A. (2015). *Handbook on Bullying Prevention*. New York: Springer Publications.
Bradshaw, A., & Quinlan, S. (2014). *Ensuring School Success for Exceptional Students.* New York: Patel.
Bradshaw, A. et al. (2013). *Banish Bullying: Safe Schools for All.* Zion University Press, Zion City.
Franklin, S. & **Bradshaw, A.** (2015). *Asperger's Syndrome: A Guide for Educators.* Chicago: Piper Press.

EXHIBIT 3

DIAGNOSTIC AND STATISTICAL MANUAL OF MENTAL DISORDERS (DSM-IV)
Sec. 299.80: Asperger's Disorder

Six criteria must be present for a diagnosis of Asperger's Disorder:

A. Qualitative impairment in social interaction, as manifested by at least two of the following:

(1) marked impairment in the use of multiple nonverbal behaviors, such as eye-to-eye gaze, facial expression, body postures, and gestures to regulate social interaction

(2) failure to develop peer relationships appropriate to developmental level

(3) a lack of spontaneous seeking to share enjoyment, interests, or achievements with other people (e.g., by a lack of showing, bringing, or pointing out objects of interest to other people)

(4) lack of social or emotional reciprocity

B. Restricted repetitive and stereotyped patterns of behavior, interests, and activities, as manifested by at least one of the following:

(1) encompassing preoccupation with one or more stereotyped and restricted patterns of interest that is abnormal either in intensity or focus

(2) apparently inflexible adherence to specific, nonfunctional, routines or rituals

(3) stereotyped and repetitive motor mannerisms (e.g., hand or finger flapping or twisting, or complex whole-body movements)

(4) persistent preoccupation with parts of objects

C. The disturbance causes clinically significant impairment in social, occupational, or other important areas of functioning.

D. There is no clinically significant general delay in language (e.g., single words used by age 2 years, communicative phrases used by age 3 years).

E. There is no clinically significant delay in cognitive development or in the development of age-appropriate self-help skills, adaptive behavior (other than in social interaction), and curiosity about the environment in childhood.

F. Criteria are not met for another specific Pervasive Developmental Disorder or Schizophrenia. Asperger's Syndrome is also known as Asperger Syndrome, or AS for short. It is a Pervasive Developmental Disorder, one of five neurological conditions characterized by difference in language and communication skills, as well as repetitive or restrictive patterns of thought and behavior. The other four related disorders or conditions are autism, Rett Syndrome, Childhood Disintegrative Disorder, and PDD-NOS (Pervasive Developmental Disorder Not Otherwise Specified).

See http://www.usautism.org/definitions.htm and http://www.autism-help.org/asperger-syndrome-diagnosis.htm

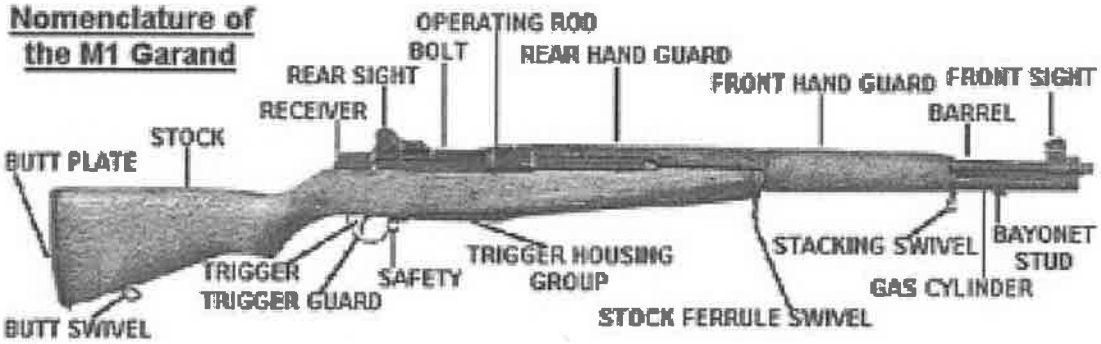
EXHIBIT 4

WEAPONS GURU
Savea Tuvale

May 2, 2017
Welcome to my new blog! I'm writing this to share my research and interest into weapons and tactics from World War II. I live now in Emigration, Zion. But I grew up on Pago Pago, Tutuila, in the American Samoa islands. It may seem weird, but American Samoa has the highest rate of military enlistment out of any U.S. state or territory; my family is really proud of our service in the armed forces. My great-grandfather, my grandfather, and my father all enlisted. They would tell me stories about how scary the fighting was, but I could tell they were didn't regret joining. My great-grandfather's stories about WWII interested me the most, and I want to learn everything about that war that I can. I like learning about tactics both sides used, but my main interest is WWII weapons.

Let's talk about the most effective weapons. Everyone has heard about the atomic bomb and Japanese Zero fighter plane. But new firearms were also developed during the war by both sides. These new guns made a huge difference in how the war was fought.

The best firearm, overall, was the M1 Garand semi-automatic rifle used by the U.S. It replaced the bolt action Springfield rifle used until the 1930s. It was the first standard-issue semi-automatic rifle. General George Patton called it the "greatest battle implement ever devised."



The M1 Garand was used by every branch of the U.S. military. Nearly 5.5 million were produced. It was used in the Korean War and some even in the Viet Nam war. Some military drill teams use it even today. Examples include the U.S. Marine Corps Silent Drill Team and almost all ROTC and JROTC drill teams.

Someday I hope I can buy one and own an important piece of American military history.

WWIIManiac: Cool article, Gabriel. I share your interest in WWII. Have you read about the M1 Carbine and M2? Those were pretty awesome, too.

Gr8testGen: Yeah, Gabriel. I agree. The M1 Garand was a game-changer. My granddad owns one that he bought at a gun show. He has some great stories to tell.

WeaponsGuru: Hey guys. Glad you liked it the article. I know all about the M1 Carbine and M2. They were pretty good, but I agree with Patton. M1 Garand was top gun. And Gr8testGen: wow. So cool!

May 22, 2017

Thought I'd write a bit about the M1 Carbine. It was smaller than the M1 Garand, and lighter. It wasn't as sturdy as the Garand. It also fired different ammunition. It wasn't as powerful, so its reputation in front-line combat was mixed. It didn't have as much stopping power as the Garand.

But it cost half as much to produce. So more of them were produced than the Garand: 6.5 million in WWII.

Here's a cool diagram that shows the difference between them.

WWIIManiac: Good research. Guess each gun served a different purpose, huh?

Gr8testGen: My granddad says he liked the Garand better. It was more effective.

WeaponsGuru: Yeah, that's what I read. I'd rather have a Garand if I was in a battle.

June 16, 2017

Today I want to change topics. I want to talk about weapons used in recent mass shootings. Weapons have changed a lot since WWII. Americans can get destructive weapons pretty easily. The New York Times says that the "majority of guns used in recent mass shootings were bought legally and with a federal background check." (NYT)

The news makes it sound like all these shootings involve assault rifles. But most shooters use handguns – quick reload weapons that are commonly found in gun stores across the country. I guess they are easier to purchase and to sneak into places. Here are some of the guns used: Sig Sauer AR-15-style assault rifle, semi-automatic Glock pistols, Smith & Wesson assault rifle, Smith and Wesson handgun, Llama handgun, Del-Ton assault rifle, Taurus pistol, Beretta pistol, Bushmaster rifle, and Savage Mark II rifle. That sounds like a lot of rifles and assault weapons.

But assault weapons were only used in less than 15% of mass shootings (Everytown Research). So, reality is different than what the media make us think.

NoGuns: I checked out your links. I can't believe so many guns used in these shootings were bought legally. We need stronger gun laws.

WeaponsGuru: Ya, it surprised me to. But I also support our Second Amendment right to bear arms.

NoGuns: I think times are different now. The National Guard's like the militia. Individuals don't need guns. Or we need to test for mental illness before letting people buy guns.

WeaponsGuru: I'm not a big fan of those tests. I don't think they're accurate. People should be able to own guns. It's our right as citizens.

NoWayNoHow: No way, no how. Citizens don't need guns. Police can protect us. Why do you want a gun? Only criminals and terrorists want guns.

WeaponsGuru: You're crazy! Lots of people want guns to protect their families. Or because they appreciate their beaut. Or their history. That's what interests me.

NoWayNoHow: I'm not the one whose crazy, you are. What are you, a radical? You gonna go shoot up people? You remind me of a kid at my school. He's always talking about planes and weapons. He's weird. He's not from the US. He should go back where he came from.

NoGuns: Woah, why you talking like that? No need for personal attacks.

NoWayNoHow: Right, let's wait for more mass shootings instead, from psychos like WeaponsGuru. I'll bet he's got a stash of guns in his house right now.

WeaponsGuru: What?!?! You don't know me at all. Of course, I don't. But someday I will.

NoGuns: Why? Why do you want one? Guns are scary.

WeaponsGuru: Not if you're trained to be safe. Guns don't kill. People do.

NoWayNoHow: Yeah, right. People WHO HAVE GUNS! I hate you and your kind. Terrorists. Immigrants. Criminals. We don't want any of you here.

WeaponsGuru: You really are crazy.

NoWayNoHow: Watch it!! You better hope I don't figure out who you are. Or I'll show you what's what, like I did to that weird kid at my school. I beat him up whenever I can. I can take you out, to. And I will, if I get the chance. You don't scare me.

WeaponsGuru: Maybe I don't now. But someday I will! You better watch out yourself.

NoGuns: You guys are both crazy. I'm outta here.

September 12, 2017

I haven't written in a while because I've been busy with other things. But I just got the coolest gift for my birthday. A 3D-printer kit! I've wanted a 3D printer for a while. I even thought about making one myself. Here's an article that tells how: DIY 3D Printer.

But it was even better to use a kit! I've just finished putting it together. I've already made some basic shapes, just to practice. Now I want to print model airplanes. I plan to start with a basic glider of some sort. When I finish that, I'm going to make models of WWI planes. Or maybe an open-source flying wing model. I found a really cool one online. Check it out here: Flying Wing.

Not sure what to do. It's hard to choose! I'll post photos as I finish things. If anyone reading this has advice, please share.

WWIIManiac: Glad you're back! Sounds like a fantastic gift. Can't wait to see what you make.

Gr8testGen: Yeah, sounds really awesome! Models of WWII planes would be so cool.

WeaponsGuru: Thanks! Any advice?

NoWayNoHow: Yeah, I have advice. Why don't you take your nerd self somewhere else? No one cares what you got for your birthday. Plane models. You sound like a little kid.

WWIIManiac: What's wrong with you, NWNH? Get outta here. No one wants to hear from you. Ignore that troll, WG. I can't wait to see what you build.

October 8, 2017

3D printing is more complicated than I thought. I've made some simple plane models, but the delta wing didn't work out. I've decided to switch to different models: handguns. There's lots of patterns online, and it's a cool way to learn about gun design. Maybe I can make one for a Halloween prop.

Cool fact: It takes 10 – 18 hours to build parts for a plastic gun. And 3D-printed guns aren't picked up by most x-ray scanners. That's because they don't have metal. One UK company has created a scanner that can detect them. But it's not available on the market yet. So if you want to sneak a plastic model gun into a school Halloween party, you oughta be able to. Awesome, huh?

WWIIManiac: Models could be cool. But I wouldn't take them to school.

Gr8testGen: Yeah, sounds like a way to get in big trouble. Don't think I'd do that, dude.

WeaponsGuru: Why? Models can't hurt anyone. I think it'd be cool. Maybe showing it around would impress people.

WWIIManiac: Not in the way you'd think. I bet the principal and SRO wouldn't like it. They might not think it's just a model. I wouldn't do that.

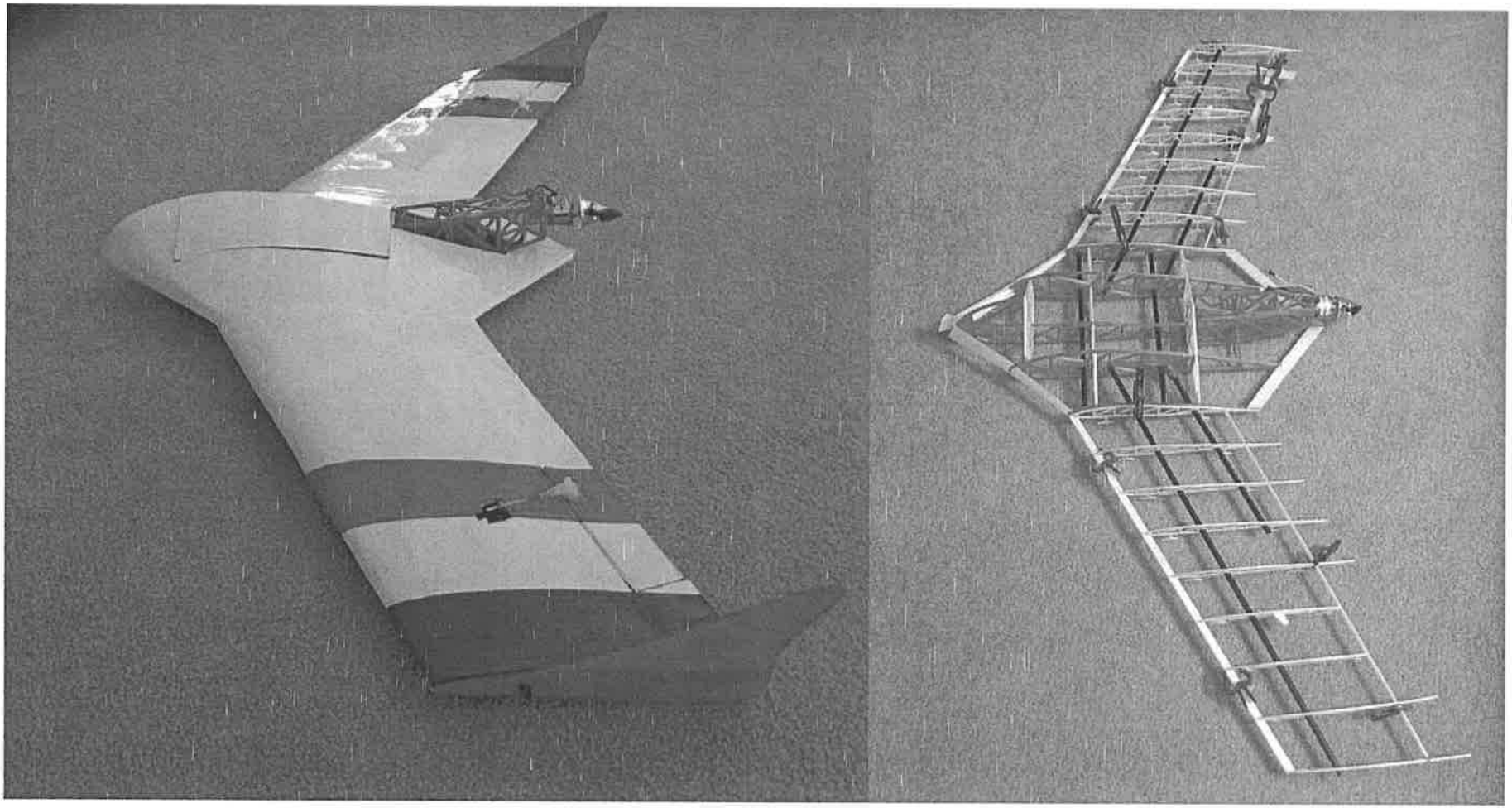
NoWayNoHow: Bet it won't be just a model. I'm telling you, this guy's crazy. Bet he makes a working model. When something happens, don't say I didn't warn ya. WG, if I find out where you are, I'm turning you in.

WeaponsGuru: Shut up, NWNH. I'm tired of you. If something happens to you, it'll serve you right.

EXHIBIT 5

3D printed model Walther PPK gun; found in Savea Tuvale's backpack on 10/10/17

EXHIBIT 6



Model of 3D plane being modified and built by Savea Tuvale and Alex Singh in September of 2017

EXHIBIT 7

Freeze + P Pepper Spray

HAZARDOUS IDENTIFICATION

FREEZE 2K3 is a strong irritant effecting skin, eyes, nose, and breathing. It is a non-persistent acute (short term) exposure which can be relieved with running water and soap for cleanup of the oleoresin capsicum. One of the solvents used is a suspected carcinogen in laboratory testing with **chronic** (long-term) exposure. No health risk has been found from **acute** (short-term) exposure.

EYE: May cause pain. May cause slight transient (temporary) eye irritation. Symptoms include stinging, tearing, redness, and swelling of eyes.

SKIN: Short single exposure may cause skin irritation. Repeated contact may cause drying or flaking. A single prolonged exposure is not likely to result in the material being absorbed through skin in harmful amounts.

INHALATION: Irritant, stimulation of facial nerves causes feeling of restricted airway. No danger exists for asphyxiation. Remove persons to fresh air.

INGESTION: Single-dose oral toxicity is considered to be extremely low. Small amounts swallowed incidental to normal handling operations are not likely to cause injury.

FIRST AID MEASURES

EMERGENCY AND FIRST AID PROCEDURE

EYES: Flush eyes with large quantities of water to speed recovery. Face subject into wind or forced air source, such as fans or air conditioning outlet. Wash face with mild soap

SKIN CONTACT: Remove contaminated clothing. Wash affected area with soap and water to avoid transfer to more sensitive areas. Burning sensation with skin contact in most areas. Use no creams or salves. Persons with preexisting skin disorders may be more susceptible to the effects of this agent. Remove contaminated clothing

INHALATION: Irritant stimulation of facial nerves causes feeling of restricted airway. No danger exists for asphyxiation. Remove persons to fresh air.

EYE EFFECTS: This product is an eye irritant. Tearing and redness may occur. This product has been thoroughly tested by FDA approved Labs and has been found to have minor non-persistent eye irritation, to be non-toxic, and not to cause dermatitis.

EXHIBIT 8

EMIGRATION POLICE DEPARTMENT INCIDENT REPORT

Incident Date: Friday, Feb. 15, 2013
Time: 6:20 p.m.
Location: 231 State St., Emigration, Zion
Offending Officer: Officer Max Christensen
Complainant: Officer Tylee Matthews

At approximately 6:20 p.m., on February 15, 2013, Officer Max Christensen and I answered a radio transmission from the station reporting that two African-American males between the ages of 14 and 17 were engaged in spray-painting gang slogans on the wall of the alleyway next to 231 State Street. When we drew near to the scene, we saw two young men of slight build, engaged in spray-painting graffiti. Upon seeing the patrol car, both perpetrators threw down their cans of spray paint and began to flee the area. Officer Christensen immediately exited the vehicle and gave chase, while I followed in the patrol car.

Officer Christensen gained on the perpetrators while chasing them down the alley, cornering both individuals at the end of the alley. Both perpetrators stopped running and raised their hands in the air when ordered to do so by Officer Christensen. Neither perpetrator appeared armed, nor did either perpetrator make any sudden or threatening movements.

I expected Officer Christensen to handcuff the perpetrators and read them their Miranda rights according to proper procedure. However, upon reaching the perpetrators' position, Officer Christensen drew the department-issued Taser and proceeded to Tase both perpetrators in rapid succession. Both perpetrators fell to the ground, stunned. After performing these two actions, Officer Christensen placed the perpetrators in handcuffs and read them their rights. The violent actions undertaken by Officer Christensen against the perpetrators are not in line with departmental procedure.

Date Submitted: 2/18/2013
Date Filed: 2/21/2013

Authored by: Officer Tylee Matthews

Read and approved by: Chief Jadyn Johnson

EXHIBIT 8

EMIGRATION POLICE DEPARTMENT
INCIDENT REPORT

Incident Date: Tuesday, Sept. 17, 2013
Time: 6:43 p.m.
Location: Emigration High School
Offending Officer: SRO Max Christensen
Complainant: Amy Zhang Song

My daughter, Melody, was traumatized by SRO Christensen at the Emigration High School girls' soccer game on Tuesday afternoon. Melody plays soccer on the JV team, which had just beaten their rivals from Bald Mountain. Melody and her teammates planned to stay and watch the varsity game.

Melody went to the concession stand to purchase snacks before the varsity game. After paying for her items, she turned around quickly and bumped into SRO Christensen by accident. Melody tells me that she quickly apologized.

In response, SRO Christensen grabbed Melody's arm, startling her and causing her to drop her beverage and popcorn, and said in a very unfriendly tone, "Dammit, kid!! Who do you think you are? I'm keeping my eye on you. Do something like that again and you'll be sorry." SRO Christensen squeezed Melody's arm very hard before letting go and walking away.

Melody was very upset and started crying. She told her coach she wasn't feeling well and called me to pick her up from the game. When I arrived, I could see a bruise on Melody's arm. I wanted to go speak to SRO Christensen myself, but Melody was afraid of what would happen if I did.

I understand that SRO Christensen is new to the school this year, but such behavior is unacceptable. Please speak to Officer Christensen about appropriate ways to interact with students.

Date Submitted: 9/20/2013
Date Filed: 9/23/2013

Complaint received by: Sergeant Jamie Ford

Read and approved by: Chief Jadyn Johnson

EXHIBIT 8

EMIGRATION POLICE DEPARTMENT
INCIDENT REPORT

Incident Date: Friday, Nov. 8, 2013
Time: 9:16 p.m.
Location: Emigration High School
Offending Officer: SRO Max Christensen
Complainant: Maria Santibanez

My son, Juan Santibanez, was roughed up by SRO Christensen on Friday night after the basketball game between Emigration High and Bald Mountain High School. According to Juan, he and his friends were joking about how badly Emigration had beaten the other team as they were leaving the gym. Students from Bald Mountain were joking back with them, but no one was upset.

Suddenly SRO Christensen came up to Juan without warning, threw him to the ground, and handcuffed him. SRO Christensen dragged Juan to the principal's office and told Dr. Madden that Juan had been trying to start a fight with students from the other school and had cursed an Emigration High School teacher when she asked him to stop. Juan denied both accusations to Dr. Madden, but Dr. Madden suspended Juan from school for 3 days for "Disrespect and Inappropriate Language Toward Staff."

I know my Juan. He is a very respectful boy and would never do such things. I don't know why SRO Christensen lied about what Juan did. I do know that Juan is very upset. He also has bruises on both wrists from the handcuffs, and his shoulder is very sore from being thrown on the ground.

My Juan has always respected the police. I don't think you want SRO Christensen to behave this way. That's why I'm filing this complaint.

Thank you.

Date Submitted: 11/12/2013
Date Filed: 11/15/2013

Complaint received by: Officer Alex Boulton

Read and approved by: Chief Jadyn Johnson

EXHIBIT 8

EMIGRATION POLICE DEPARTMENT INCIDENT REPORT

Incident Date: Monday, March 24, 2014
Time: 12:32 p.m.
Location: Emigration High School
Offending Officer: SRO Max Christensen
Complainant: Giridhar Gupta

My son, Arvind Gupta, was treated unjustly by SRO Max Christensen today in the lunchroom. According to Arvind, he was minding his own business, talking with his friends about their Biology class, when SRO Christensen walked by. SRO Christensen overheard their conversation and without any justification, grabbed Arvind, dragged him out of his seat, and forcibly took him to the principal's office. No explanation was given to Arvind.

When they reached Dr. Madden's office, SRO Christensen claimed that Arvind had been speaking disrespectfully about the Biology teacher, Ms. Spaller. SRO Christensen claimed that Arvind said he planned to put the organs and other remains from their next laboratory dissection into Ms. Spaller's desk or purse when she wasn't looking. Arvind was promptly suspended for 3 days for showing disrespect to a staff member.

Arvind tells me he said no such thing. Arvind is a very conscientious student who has always told me the truth. If Arvind tells me he made no such statement, I believe him.

Arvind has a bruise on his shoulder from where SRO Christensen grabbed him, and he is complaining that SRO Christensen twisted his arm while walking him to the principal's office. I am outraged.

In addition, I am very concerned about the work that Arvind will have to make up as a result of being suspended, which includes a Biology test. Arvind's Biology teacher will surely be told about these untrue accusations, which will go on Arvind's permanent record and could impact him when he applies to college.

The SRO is supposed to keep our children safe at school, not abuse them and put them in danger. Please call me right away at 555-345-1987 to discuss this matter. Thank you.

Date Submitted: 3/25/2012
Date Filed: 3/31/2012

Complaint received by: Officer Tyler Steiner

Read and approved by: Chief Jadyn Johnson

EXHIBIT 8

EMIGRATION POLICE DEPARTMENT
INCIDENT REPORT

Incident Date: Wednesday, Oct. 15, 2014
Time: 11:16 a.m.
Location: Emigration High School
Offending Officer: SRO Max Christensen
Complainant: Obele Mbajamele

My child, Enzi Mbajamele, was pepper-sprayed by SRO Max Christensen in gym class today at school. Enzi tells me that he was playing basketball in P.E. class when another student, Henrik Buck, aggressively pushed him, nearly knocking him to the floor. The P.E. teacher was at the other end of the gym and did not see what had just occurred.

Henrik had acted in similar fashion toward Enzi on prior occasions, and Enzi had always reacted peacefully. Today Enzi was fed up, so Enzi spoke to Henrik and told him not to do that again. Henrik became verbally aggressive and threatened to punch Enzi. Other students tried to intervene, but Henrik pushed them away and punched Enzi. At that moment, the P.E. teacher saw what was going on and called the office, requesting assistance from the SRO.

Enzi tells me that SRO Christensen arrived right away, but instead of separating the students and listening to what had happened, SRO Christensen immediately pepper-sprayed both Enzi and Henrik before handcuffing them and taking them to the principal's office. Enzi was suspended from school for 10 days without being given any chance to explain himself. I was called within the hour and required to pick up Enzi from school.

Enzi tells me he was not given a chance to rinse out his eyes after being pepper-sprayed. His eyes were still very red and watery when I arrived at the school. I took him to Urgent Care, where they rinsed out his eyes with distilled water and told me he should rest for several hours, avoiding bright lights. Enzi is still in pain now, nearly 4 hours later.

In my opinion, SRO Christensen's actions were unjustified and subjected my child to needless physical and emotional pain. I ask that SRO Christensen be disciplined and even removed from the school unless SRO Christensen recognizes that such actions are inappropriate.

Date Submitted: 10/15/2015
Date Filed: 10/17/2015

Complaint received by: Officer Tylee Matthews

Read and approved by: Chief Jadyn Johnson

EXHIBIT 8

EMIGRATION POLICE DEPARTMENT
INCIDENT REPORT

Incident Date: Thursday, May 26, 2015
Time: 4:37 p.m.
Location: Emigration High School
Offending Officer: SRO Max Christensen
Complainant: Samir Gaballah

My son, Ahmed Gaballah, was almost pepper-sprayed by SRO Max Christensen today at Emigration High School. Ahmed is a senior and will attend Duke University in North Carolina in the fall.

According to Ahmed, he was with several of his classmates (Cameron Brown, Caitlin O'Neill, Henry Higgins, and Hans Klein) in the school parking lot after school. They were using chalk to draw funny sketches and clever sayings on the sidewalk in honor of the senior class.

When the students saw SRO Christensen making rounds outside the school, they stopped and waited for Christensen to approach them so they could explain what they were doing. Making such drawings is a tradition for seniors at the school. It is harmless, and the drawings wash away at the next rain.

When SRO Christensen reached them, Ahmed began explaining what they were doing. Christensen abruptly interrupted him and said, "I don't care about your excuses. You're breaking school rules. You need to come with me to the principal's office." When Ahmed began to speak again, Christensen pulled out pepper spray in a threatening manner and said, "Don't say another word, or I'll use this. All of you, come with me now."

All five students went with SRO Christensen to Dr. Madden's office. When they arrived, SRO Christensen said they were all "defacing school grounds" and accused Ahmed of being belligerent and disrespectful. Without giving the students a chance to speak, Dr. Madden gave the other students a verbal warning but suspended Ahmed for three days!

When I called Dr. Madden and reminded him of Ahmed's spotless record and class standing (third in his class), Dr. Madden reluctantly lifted the suspension.

Even so, Officer Christensen's actions were completely unjustified. Ahmed tells me SRO Christensen has a reputation at school for singling out minority students for disciplinary action. I ask that you investigate further and suspend Christensen if facts prove that such is the case.

Date Submitted: 3/26/2015
Date Filed: 3/30/2015

Complaint received by: Officer Sam Sachs

Read and approved by: Chief Jadyn Johnson

EXHIBIT 9

EMIGRATION POLICE DEPARTMENT

Complaints and Officer Discipline 2013-2017

2017

COMPLAINTS	
Citizens	10
Suspects	41
Officers	2
TOTAL	***53***

OFFICER DEMOGRAPHICS	
> 3 Incident Reports Filed	0
2-3 Incident Reports Filed	1
1 Incident Report Filed	35
TOTAL	***36***

DISCIPLINARY ACTION	
Probation	2
Suspension w/pay	0
Suspension w/o pay, < 2 months	1
Suspension w/o pay, 2-6 months	0
Suspension w/o pay, > 6 months	0
Termination	0
TOTAL	***3***

IAD INVOLVEMENT	
Investigations conducted	2
Investigations resulting in conduct review	0
Investigations resulting in disciplinary action	0

2016

COMPLAINTS	
Citizens	12
Suspects	43
Officers	1
TOTAL	***56***

OFFICER DEMOGRAPHICS	
> 3 Incident Reports Filed	1
2-3 Incident Reports Filed	2
1 Incident Report Filed	46
TOTAL	***49***

DISCIPLINARY ACTION	
Probation	1
Suspension w/pay	3
Suspension w/o pay, < 2 months	1
Suspension w/o pay, 2-6 months	0
Suspension w/o pay, > 6 months	0
Termination	1
TOTAL	***6***

IAD INVOLVEMENT	
Investigations conducted	3
Investigations resulting in conduct review	0
Investigations resulting in disciplinary action	0

2015

COMPLAINTS	
Citizens	15
Suspects	47
Officers	1
TOTAL	***63***

OFFICER DEMOGRAPHICS	
> 3 Incident Reports Filed	3
2-3 Incident Reports Filed	4
1 Incident Report Filed	46
TOTAL	***53***

DISCIPLINARY ACTION	
Probation	1
Suspension w/pay	3
Suspension w/o pay, < 2 months	2
Suspension w/o pay, 2-6 months	
Suspension w/o pay, > 6 months	1
Termination	0
TOTAL	***7***

IAD INVOLVEMENT	
Investigations conducted	4
Investigations resulting in conduct review	2
Investigations resulting in disciplinary action	0

2014

COMPLAINTS	
Citizens	20
Suspects	54
Officers	0
TOTAL	***74***

OFFICER DEMOGRAPHICS	
> 3 Incident Reports Filed	4
2-3 Incident Reports Filed	12
1 Incident Report Filed	43
TOTAL	***59***

DISCIPLINARY ACTION	
Probation	7
Suspension w/pay	3
Suspension w/o pay, < 2 months	0
Suspension w/o pay, 2-6 months	0
Suspension w/o pay, > 6 months	5
Termination	1
TOTAL	***16***

IAD INVOLVEMENT	
Investigations conducted	2
Investigations resulting in conduct review	1
Investigations resulting in disciplinary action	1

2013

COMPLAINTS	
Citizens	27
Suspects	66
Officers	0
TOTAL	***93***

OFFICER DEMOGRAPHICS	
> 3 Incident Reports Filed	4
2-3 Incident Reports Filed	14
1 Incident Report Filed	48
TOTAL	***66***

DISCIPLINARY ACTION	
Probation	13
Suspension w/pay	0
Suspension w/o pay, < 2 months	2
Suspension w/o pay, 2-6 months	1
Suspension w/o pay, > 6 months	0
Termination	3
TOTAL	***19***

IAD INVOLVEMENT	
Investigations conducted	5
Investigations resulting in conduct review	3
Investigations resulting in disciplinary action	2

HOME OF THE ANGELS
EMIGRATION
HIGH SCHOOL

EXHIBIT 10

INCIDENT REPORT FORM

Complete this form immediately following an incident at the school resulting in suspension of a student for five (5) days or more. A copy of the form should be placed in the student's file.

Name of Student: Savea Tuvale

Location: On the sidewalk outside of Classroom; Building A

Date: March 21, 2017 Time: 12:46 [ ] AM [x] PM

Report Filed by: SRO Max Christensen

Brief Description of Incident:

While on routine patrol of the school grounds, SRO Christensen intervened to stop a fight between Savea Tuvale and 2 other students. Christensen reported seeing Savea punch Tom Smith in the mouth, then punch Adam Harrison in the stomach. Christensen quickly subdued Savea Tuvale, securing his arms so he could not throw any more punches. Christensen instructed Tom and Adam to report to the nurse's station and brought Savea to the office.

Personal Injury? Yes. Tom's nose was bleeding, and Adam complained of a stomach ache.

Weapons: Yes [ ] No [X] Type: _____

Names of persons involved: Savea Tuvale, Tom Smith, Adam Harrison

Police Involvement:

Name of SRO: SRO Max Christensen

Description of SRO's actions (if any):

See above description.

Name(s) of any additional officers: None

Additional information: N/A

School Actions:

Parent(s)/Guardians notified: Yes [x] No [ ] [x] Suspension [ ] Expulsion [ ] Other (specify)

Attach copy of letter of suspension or expulsion.

Francis Madden, PhD
(Signature of Principal/Designate)

3/21/17
(Date)

EXHIBIT 10

EMIGRATION HIGH SCHOOL
Suspension Letter

March 21, 2017

K.J. Tamu
4873 Elk Fields
Emigration, Zion

RE: Suspension of Savea Tuvale, DOB 9/12/2001

Dear K.J. Tamu:

Savea has been suspended from Emigration High School and from engaging in all school-related activities from March 22, 2017, through March 28, 2017, inclusive i.e., five (5) school days. This suspension applies to all school buildings, grounds, school functions, activities, and trips. Savea may return to school on March 29, 2017, at 7:30 a.m. Savea must report to the office before returning to the classroom.

This suspension is made in accordance with the Snow Canyon County School Board's Safe School Policy and Emigration High School's Code of Conduct.

The reason for the suspension is a violation of Rule 3.24, Prohibition against Fighting in School. My findings indicate that Savea engaged in a fight with another student on school grounds during today's lunch period. During that incident, Savea punched two students, one in the mouth and the other in the stomach. Such behavior cannot be tolerated.

School work is available at the office. Please make arrangements to have it picked up.

Should you wish to appeal this suspension, you must provide written notice of your intention to appeal to Dr. Francis Madden, Emigration High School Principal, within 24 hours of the date of this written notice i.e., by 5:00 p.m. on March 22, 2017. Please be aware that an appeal <u>does not stay the suspension</u>.

Sincerely,

Francis Madden, PhD
Francis Madden, PhD

cc: Ms. Knight, Mr. Sills, Ms. Gray, Ms. Richardson, Ms. Brown (Savea Tuvale's teachers)
Ms. A. Marschall, MSW, M.Ed. (Savea Tuvale's school counselor)

HOME OF THE ANGELS
EMIGRATION
HIGH SCHOOL

EXHIBIT 10

INCIDENT REPORT FORM

Complete this form immediately following an incident at the school resulting in suspension of a student for five (5) days or more. A copy of the form should be placed in the student's file.

Name of Student: Savea Tuvale

Location: Classroom 246A

Date: Oct. 10, 2017 Time: 9:06 [x] AM [x] PM

Report Filed by: SRO Max Christensen

Brief Description of Incident:

Alex Singh approached SRO Christensen between 1st and 2nd period classes, reporting a possible gun in Savea Tuvale's backpack. SRO Christensen located Savea in his 2nd period class and asked him to hand over the pack and accompany Christensen to the office. Savea responded aggressively, so SRO Christensen used pepper spray to subdue him. Christensen then handcuffed Savea and brought him to my office. After discussion, the Emigration Police Department was contacted and Savea was transported to the police station.

Personal Injury? No

Weapons: Yes [x] No [ ] Type: What appeared to be a gun in Savea's backpack.

Names of persons involved: Savea Torres; suspected gun was reported by Alex Singh.

Police Involvement:

Name of SRO: SRO Max Christensen

Description of SRO's actions (if any):

See description above.

Name(s) of any additional officers: Officer Tylee Matthews

Additional information:

Officer Matthews and SRO Christensen transported Savea Torres to the police station, where it was determined that the gun was a non-functional, 3D model.

School Actions:

Parent(s)/Guardians notified: Yes [x] No [ ] [x] Suspension [ ] Expulsion [ ] Other (specify)

Attach copy of letter of suspension or expulsion.

Francis Madden, PhD
(Signature of Principal/Designate)

10/10/17
(Date)

EXHIBIT 10

EMIGRATION HIGH SCHOOL
Suspension Letter

October 10, 2017

K.J. Tamu
4873 Elk Fields
Emigration, Zion

RE: Suspension of Savea Tuvale, DOB 9/12/2001

Dear K.J. Tamu:

Savea has been suspended from Emigration High School and from engaging in all school-related activities from October 11, 2017, through October 24, 2017, inclusive i.e., ten (10) school days. This suspension applies to all school buildings, grounds, school functions, activities, and trips. Savea may return to school on October 25, 2017, at 7:30 a.m. Savea must report to the office before returning to the classroom.

This suspension is made in accordance with the Snow Canyon County School Board's Safe School Policy and Emigration High School's Code of Conduct.

The reason for the suspension is a violation of Rule 4.12, Prohibition against bringing a Weapon to School; and of Rule 4.27, Resisting the Directives of an SRO or Staff Member. My findings indicate that Savea brought what appeared to be a gun in his backpack, and when ordered to turn over his backback, Savea reacted aggressively, prompting the use of pepper spray by the SRO in order to bring Savea under control. Such behavior cannot be tolerated.

School work is available at the office. Please make arrangements to have it picked up.

Should you wish to appeal this suspension, you must provide written notice of your intention to appeal to Dr. Francis Madden, Emigration High School Principal, within 24 hours of the date of this written notice i.e., by 9:00 p.m. on October 11, 2017. Please be aware that an appeal <u>does not stay the suspension</u>.

Sincerely,

Francis Madden, PhD
Francis Madden, PhD

cc: Ms. Fairchild, Ms. Jones, Mr. Smith, Mr. Bryson, Ms. Lemons (Savea Tuvale's teachers)
Ms. A. Marschall, MSW, M.Ed. (Savea Tuvale's school counselor)

EXHIBIT 11

September 20, 2017

School Resource Officers Under Scrutiny; Roles Re-Evaluated

- Danielle DaRos, Senior News Correspondent

After cameras captured a Bald Mountain Academy school resource officer (SRO) forcibly dragging a student from her chair to the floor in the school cafeteria, pundits and educators erupted over what happens – and what should happen – in the more than 84,000 schools around the nation that have a security presence on campus.

Numerous educators and law enforcement officials have weighed in, asserting that SROs should not intervene in routine discipline matters in schools. The Bald Mountain Academy incident reportedly stemmed from the student's refusal to surrender her cellphone and report to the principal's office.

More broadly, though, what happened at Bald Mountain Academy has presented an urgent opportunity to evaluate the role of SROs in schools. Important questions include where and how to draw the line between disciplinary and criminal matters, and how to clarify specific duties and procedures for SROs and staff in schools.

The highest priority for SROs is to ensure the safety of students, Zion State School Superintendent Eve Astuto proclaimed. She, along with Snow Canyon County School Superintendent Celia Walker, Police Chief Jadyn Johnson, and other local and statewide leaders say SROs continue to have an important and appropriate function in schools.

"Fortunately, violent crimes are rare in our schools, but they have been increasing as gangs become more active. When crimes happen, you want a trained SRO on site to deal with the problem," Johnson said. "It's particularly important to have SROs in schools with a higher percentage of students from neighborhoods where gangs are prevalent."

Blurred lines and mission creep

But "a mission creep problem occurs when that safety role morphs into involvement in routine discipline," said Justin Piper, an assistant professor at the University of Zion School of Law.

"SROs shouldn't be called in when someone won't put their cellphone away," said Piper, who teaches juvenile justice and child welfare law. "Teachers and administrators should

be discouraged from calling on SROs for most issues. After all, they have a wide range of school consequences they can impose on a disobedient student."

SROs in the Emigration school system have three primary roles: to perform law enforcement duties, such as handling assaults, thefts, threats, and other crimes; to counsel students on law-related issues; and to teach law-related topics to students. On the other hand, disciplining students for violations of school rules is a school responsibility.

But officers' roles are muddied by a Zion law that essentially criminalizes discipline issues in schools. The state's statute for "disturbing schools" makes it a misdemeanor criminal offense to "interfere with or to disturb in any way or in any place the students or teachers of any school or college."

"When you've got nonviolent disobedience, or you've got a teenager acting obnoxiously – yes, that violates the law," Piper said. "But involving the SRO is not good law enforcement policy or good education policy."

Nearly 1,200 "disturbing schools" cases were generated statewide during 2014, including 98 cases in Snow Canyon County – a shockingly high number of instances in which students are brought into the criminal justice system for very minor offenses.

Profiling and improper use of force

Concerns have also been expressed about the number of students entering the "school-to-prison pipeline" through involvement of SROs in school discipline situations.

According to the 2013-14 Civil Rights Data Collection, a nationwide survey conducted by the U.S. Department of Education, minorities and students with disabilities are disproportionately suspended and expelled from school, often after interactions with SROs.

Black students are nearly four times as likely to be suspended and twice as likely to be expelled as are white students. And black students are more than twice as likely to be referred to law enforcement or subject to a school-related arrest as white students.

The same holds true for students with disabilities. While students with disabilities overall are more than twice as likely to receive suspensions as students without disabilities, minority students with disabilities are two to four times more likely to be suspended than are white students with disabilities.

And of the more than 100,000 students nationwide who were placed in seclusion or involuntary confinement, or physically restrained at school and unable to move freely, 67,00o of them – two-thirds! – were students with disabilities.

The corresponding numbers for Zion and the Snow Canyon County School system are in line with these national statistics, which raises worrying questions about the impact of such disruptions in school attendance on the future of our most vulnerable students.

As Walker notes, "To ensure success for all students in Snow Canyon County, it is imperative that SROs be trained to engage appropriately with students from all backgrounds."

Evaluate and improve training and resources

Statewide, most Zion SROs are trained through the state criminal justice academy, and many are given the option to attend additional professional development seminars along with school educators. Such training costs money, however, and not every police department has the resources to provide those options to all SROs.

Both Johnson and Walker said they soon will be convening their major players, including SROs, school administrators, and other educators, to review and refine the policies and procedures already in place regarding student discipline, especially in light of what happened at Bald Mountain Academy.

"When should you intervene? How far do you need to go? How do you de-escalate a situation?" are all issues to be discussed and clarified, Johnson said. "I think we all could use a refresher course in that."

SRO training should include "at least some concepts related to understanding the teen brain and adolescent emotional issues, things you're dealing with in the school environment," said Thomas Magnum, executive director of the National Association of School Resource Officers. The Association has offered to conduct a free statewide training course in Zion in the wake of the Bald Mountain Academy incident, Magnum said.

"In addition to better training for SROs, schools and school districts should be assessing the availability of 'wraparound services' for students facing discipline issues," said Elvira Kuhn, president of the Zion Education Association, a union representing public school teachers in the state.

"Those services include access to and relationships with guidance counselors, nurses, mental health professionals, teachers and administrators," said Kuhn, who has been a math teacher for more than two decades at Ligon Middle School in Eden.

"When a student acts out or misbehaves, there's a reason," Kuhn said. "If we have the proper resources (and training) to address the underlying factors that cause those behaviors...we can counsel students and prevent outbursts. We all have the goal of helping students succeed. Working together, we can make it happen."

NEW RELEASE FOR 2016

U.S. Department of Education
Office for Civil Rights

***UPDATE (as of 10/28/16):** The state of Florida, on behalf of its school districts, corrected data it previously submitted to the 2013-2014 Civil Rights Data Collection. Those data are now incorporated in this revised document. See page 13 for details.

2013-2014 CIVIL RIGHTS DATA COLLECTION

A FIRST LOOK

KEY DATA HIGHLIGHTS ON EQUITY AND OPPORTUNITY GAPS IN OUR NATION'S PUBLIC SCHOOLS

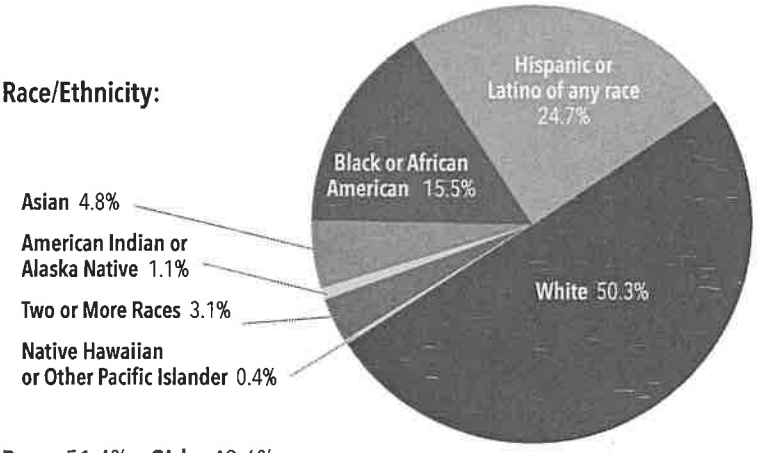
The **2013-14 Civil Rights Data Collection (CRDC)** is a survey of all public schools and school districts in the United States. The CRDC measures student access to courses, programs, instructional and other staff, and resources – as well as school climate factors, such as student discipline and bullying and harassment – that impact education equity and opportunity for students. The U.S. Department of Education (ED) will release additional data highlights later in 2016 on key topics such as student discipline, early learning access, teacher and staffing equity, access to courses and programs that foster college and career readiness, and chronic student absenteeism. The full CRDC data file may be downloaded now; please visit crdc.ed.gov for more information. In Fall 2016, the public will be able to look up 2013-14 CRDC data for individual schools, school districts, and states by visiting the CRDC website at ocrdata.ed.gov.

Who's in the 2013-14 CRDC?

Number of school districts: 16,758 (99.2% of all school districts)
Number of schools: 95,507 (99.5% of all public schools)
Total number of students: 50,035,744

Nationwide Student Demographics:

Race/Ethnicity:



Boys: 51.4% **Girls:** 48.6%

English Learners: 9.9%

Students with Disabilities: 14.0%
(includes students receiving services under IDEA and/or Section 504 of the Rehabilitation Act)

WHAT'S INSIDE

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Newly Published Data

In this document, data highlights marked as **NEW** indicate that the CRDC collected new information on the topic for the first time in the 2013-14 CRDC.

About the CRDC

The purpose of the CRDC is to obtain data related to the obligation of public school districts and of elementary and secondary schools to provide equal educational opportunity. Since 1968, the CRDC has collected a variety of information, including student enrollment and educational programs and services data that are disaggregated by race/ethnicity, sex, English learner status, and disability, from public schools across the nation.

The CRDC is a longstanding and important aspect of the Office for Civil Rights' overall strategy for administering and enforcing the civil rights statutes for which it is responsible. Other ED offices, as well as policymakers and researchers outside of ED, also use CRDC information. Additionally, the CRDC database, with hundreds of data elements, is fully accessible to the public. School districts self-report and certify all data presented.

The CRDC is a mandatory data collection, authorized under the statutes and regulations implementing Title VI of the Civil Rights Act of 1964, Title IX of the Education Amendments of 1972, Section 504 of the Rehabilitation Act of 1973, and under the Department of Education Organization Act (20 U.S.C. § 3413). The regulations implementing these provisions can be found at 34 CFR 100.6(b); 34 CFR 106.71; and 34 CFR 104.61.

For more information about the CRDC, please visit crdc.ed.gov.

What's in the 2013-14 Civil Rights Data Collection?

- **The 2013-14 CRDC provides equity and opportunity data on a wide array of topics, including:**
  - Bullying and harassment
  - Early learning
  - Pathways to college and career readiness (including access to math/science and AP courses)
  - Restraint and seclusion
  - School finance
  - Prevalence of and student participation in interscholastic athletics
  - Student discipline
  - Teachers and other school personnel
- **NEW Data topics now available in the 2013-14 CRDC include:**
  - Chronic student absenteeism
  - Availability of free or partial-payment preschool in school districts
  - Educational access in justice (detention, correctional or residential) facilities
  - Civil rights coordinators in school districts
  - Sworn law enforcement/school resource officers in schools
  - Access to distance education courses, credit recovery, and dual enrollment/dual credit programs

What's Coming Next In The CRDC?

Topics collected for the first time in the 2013-14 CRDC as optional data items, and that will be collected from every school in the 2015-16 CRDC, include:

- Allegations of bullying or harassment on the bases of sexual orientation and religion
- Discipline-related transfers to alternative schools
- Number of students participating in education programs in justice (detention, correctional or residential) facilities, by number of days of participation
- Preschool corporal punishment
- Number of instances of and school days missed due to out-of-school suspensions
- Number of criminal acts committed at school that would lead to discipline
- Number of preschool children enrolled in district who are served in non-district facilities
- Number of students enrolled in distance education, dual enrollment/dual credit, and credit recovery programs
- Access to instructional aides, support services staff, psychologists, social workers, nurses, and school administrators
- Number of security guards and sworn law enforcement/school resource officers
- Teacher churn/turnover

2013-14 CRDC DATA HIGHLIGHTS: A FIRST LOOK†

School Discipline

- **Black public preschool children are suspended from school at high rates:** Black preschool children are 3.6 times as likely to receive one or more out-of-school suspensions as white preschool children.
  - Black children represent 19% of preschool enrollment, but 47% of preschool children receiving one or more out-of-school suspensions; in comparison, white children represent 41% of preschool enrollment, but 28% of preschool children receiving one or more out-of-school suspensions.
  - Black boys represent 19% of male preschool enrollment, but 45% of male preschool children receiving one or more out-of-school suspensions.
  - Black girls represent 20% of female preschool enrollment, but 54% of female preschool children receiving one or more out-of-school suspensions.
- **Most public preschool children suspended are boys:** While boys represent 54% of preschool enrollment, they represent 78% of preschool children receiving one or more out-of-school suspensions.
- **Children with disabilities and English learners are not disproportionately suspended in public preschool:**
  - Children with disabilities served by the Individuals with Disabilities Education Act (IDEA) represent 20% of preschool enrollment, but 15% of preschool children receiving one or more out-of-school suspensions.
  - English learners represent 12% of preschool enrollment, but 7% of preschool children receiving one or more out-of-school suspensions.
- **Nationwide, 2.8 million K-12 students received one-or-more out of school suspensions:**
  - These include approximately 1.1 million black students; 610,000 Latino students; 700,000 students served by IDEA; and 210,000 English learners.
- **Racial disparities in suspensions are also apparent in K-12 schools:** While 6% of all K-12 students received one or more out-of-school suspensions, the percentage is 18% for black boys; 10% for black girls; 5% for white boys; and 2% for white girls.
  - Black K-12 students are 3.8 times as likely to receive one or more out-of-school suspensions as white students.
  - Black girls are 8% of enrolled students, but 13% of students receiving one or more out-of-school suspensions. Girls of other races did not disproportionately receive one or more out-of-school suspensions.
  - American Indian or Alaska Native, Latino, Native Hawaiian or other Pacific Islander, and multiracial boys are also disproportionately suspended from school, representing 15% of K-12 students but 19% of K-12 students receiving one or more out-of-school suspensions.

ED Initiative Spotlight

Reforming School Discipline Policy and Practice

The Department has made school discipline reform a top priority. In the 2016 Investing in Innovation (i3) Program, the Department seeks to support innovative alternatives to suspension. This priority builds on the #RethinkDiscipline campaign to increase awareness about the detrimental impacts of exclusionary discipline, our investment in School Climate Transformation Grants to help states and districts strengthen behavioral supports for students, and a School Discipline Guidance Package to clarify schools' obligation not to discriminate on the basis of race in discipline.

For more information on the programs and initiatives appearing in this document, please visit www.ed.gov.

† *Note:* Except where the percentage is below 1%, the percentages listed in these data highlights are rounded to the nearest whole number. Numbers in phrases such as "__ times more likely" are rounded to nearest tenth (one decimal place). *Black* refers to persons who are black or African American; *Latino* refers to persons who are Hispanic or Latino of any race; and *multiracial* refers to persons of two or more races. The numbers in these data highlights reflect a privacy protection protocol and other methodologies for collecting and preparing the data.[1] For additional information on the methodology for collecting and preparing the data cited in this document, please visit ocrdata.ed.gov.

- 11% of American Indian or Alaska Native boys received one or more out-of-school suspensions, as did 10% of multiracial boys, 8% of Native Hawaiian or other Pacific Islander boys, and 7% of Latino boys.
- Asian and white students did not disproportionately receive one or more out-of-school suspensions.

■ **Students with disabilities in grades K-12 are disproportionately suspended from school:**

- Students with disabilities served by IDEA (12%) are more than twice as likely to receive one or more out-of-school suspensions as students without disabilities (5%).
- More than one out of five American Indian or Alaska Native (23%), Native Hawaiian or other Pacific Islander (23%), black (25%), and multiracial (27%) boys with disabilities served by IDEA received one or more out-of-school suspensions, compared to one out of ten white (10%) boys with disabilities served by IDEA.
- More than one in five multiracial girls with disabilities served by IDEA (21%) received one or more out-of-school suspensions, compared to one in twenty white girls with disabilities served by IDEA (5%).

■ **English learners are not disproportionately suspended from school:**

- English learners make up 10% of all students, but they are 7% of those who received one or more out-of-school suspensions.

■ **Black students are expelled from school at disproportionately high rates:**

- Black students are 1.9 times as likely to be expelled from school without educational services as white students.
- Black boys represent 8% of all students, but 19% of students expelled without educational services.
- Black girls are 8% of all students, but 9% of students expelled without educational services.

■ **American Indian or Alaska Native, white, and multiracial boys are also disproportionately expelled from school without educational services:**

- White boys represent 26% of all students, but 35% of students expelled without educational services.
- American Indian or Alaska Native boys represent 0.6% of all students, but 2% of students expelled without educational services.
- Multiracial boys represent 2% of all students, but 4% of students expelled without educational services.

■ **Latino and Asian boys and girls, as well as Native Hawaiian or other Pacific Islander and white girls, are not disproportionately expelled without educational services from schools.**

- Latino students represent 25% of all students, but 15% of students expelled without educational services.
- Asian students represent 5% of all students, but 1% of students expelled without educational services.
- Native Hawaiian or other Pacific Islander girls represent 0.2% of all students, but 0.1% of students expelled without educational services.
- White girls represent 24% of all students, but 12% of students expelled without educational services.

■ **Black students are more likely to be disciplined through law enforcement:** Black students are 2.2 times as likely to receive a referral to law enforcement or be subject to a school-related arrest as white students.

ED Initiative Spotlight

Increasing Equity for Students of Color in Special Education

Students of color are more likely to be identified as having a disability and face harsher discipline than their white classmates. To address these inequities, in February 2016, the Department proposed a new rule to improve equity in the Individuals with Disabilities Education Act (IDEA). IDEA requires states to identify districts with "significant disproportionality" in special education–that is, when districts identify, place outside the regular classroom, or discipline children from any racial or ethnic group at markedly higher rates than their peers. The proposed Equity in IDEA rule would, for the first time, require states to implement a standard approach to compare racial and ethnic groups, with reasonable thresholds for determining when disparities have become significant, and would also provide identified districts with new flexibility to support student needs.

- **NEW A significant number of schools have sworn law enforcement officers (SLEOs), including school resource officers (SROs):**
  - 24% of elementary schools (grades K-6, excluding justice facilities) have SLEOs; 42% of high schools (grades 9-12, excluding justice facilities) have SLEOs.
  - 51% of high schools with high black and Latino student enrollment* have SLEOs.

Restraint and Seclusion

- **More than 100,000 students were placed in seclusion or involuntary confinement or were physically restrained at school to immobilize them or reduce their ability to move freely – including almost 69,000 students with disabilities served by IDEA:**
  - Students with disabilities served by IDEA represent 12% of all students, but 67% of students subject to restraint or seclusion.
  - American Indian or Alaska Native and multiracial boys represent 2% of all students, but 5% of students subject to restraint or seclusion.
  - Black boys and white boys represent 8% and 26% of all students, respectively, but 18% and 43% of students subject to restraint or seclusion.
  - Asian, Latino, and Native Hawaiian or other Pacific Islander boys are not disproportionately subject to restraint or seclusion; neither are girls of any race or ethnicity.

ED Initiative Spotlight

Supporting Early Learning Educators

In 2014, the U.S. Departments of Education and Health and Human Services issued a *Policy Statement on Expulsion and Suspension Practices in Early Childhood Settings* to assist states and public and private early childhood programs in preventing and severely limiting expulsions and suspensions in early learning settings. In 2016, through the Departments' Preschool Development Grants Program national activities funds, model sites will be developed to implement strategies that improve social, emotional, and behavioral outcomes in preschoolers and support preschool teachers, administrators and families in addressing and reducing disproportionate discipline practices in early learning settings.

Early Learning

- **More than half of school districts provide public preschool programs beyond providing those services required by federal law for children with disabilities – but many children are still left without access to early learning:**
  - By law, all school districts must provide special education and related services for preschool children with disabilities under the Individuals with Disabilities Education Act (IDEA). In addition, 54% of all school districts report providing preschool programs to children not served by IDEA.
- **Among school districts that report offering preschool programs for children not served by IDEA, nearly half provide full-day preschool:**
  - 48% of these school districts offer full-day preschool programs.
  - 70% of these school districts offer part-day preschool programs.

  (Percentages above do not sum to 100% because districts can offer both full-day and part-day programs.)
- **Of the school districts that offer preschool programs for children not served by IDEA, 73% extend preschool eligibility to all children in the district (but do not necessarily provide preschool programs universally to every child):**
  - The remaining 27% of school districts extend preschool eligibility to children from low-income families or children in Title I schools, but not to all children.
- **NEW Most, but not all, public preschools are free:** Of the school districts that provide preschool programs for children not served by IDEA, 86% offer part-day or full-day preschool at no cost; the remaining 14% require parents or guardians to pay for part or all of the cost to enroll children in preschool.

College and Career Readiness

- **High-rigor course access is not a reality across all of our nation's schools:** Nationwide, 48% of high schools offer calculus; 60% offer physics; 72% offer chemistry; and 78% offer Algebra II.
- **Black and Latino students have less access to high-level math and science courses:**
  - 33% of high schools with high black and Latino student enrollment* offer calculus, compared to 56% of high schools with low black and Latino student enrollment.
  - 48% of high schools with high black and Latino student enrollment* offer physics, compared to 67% of high schools with low black and Latino student enrollment.
  - 65% of high schools with high black and Latino student enrollment* offer chemistry, compared to 78% of high schools with low black and Latino student enrollment.
  - 71% of high schools with high black and Latino student enrollment* offer Algebra II, compared to 84% of high schools with low black and Latino student enrollment.
- **Course enrollment rates differ by race/ethnicity, and by disability and English learner status:**
  - Black and Latino students are 38% of students in schools that offer Algebra II and 37% of students enrolled in Algebra II; they are 36% of students in schools that offer calculus and 21% of students enrolled in calculus; and they are 37% of students in schools that offer physics and 35% of students enrolled in physics.
    - White students are 53% of students in schools that offer Algebra II and 53% of students enrolled in Algebra II; they are 55% of students in schools that offer calculus and 61% of students enrolled in calculus; and they are 54% of students in schools that offer physics and 53% of students enrolled in physics.
  - Students with disabilities served by IDEA are 12% of students in schools that offer Algebra II and 6% of students enrolled in Algebra II; they are 11% of students in schools that offer calculus and 1% of students enrolled in calculus; and they are 11% of students in schools that offer physics and 6% of students enrolled in physics.
    - To close the participation gap in physics, more than 104,000 additional students with disabilities served by IDEA would need to participate in physics classes nationwide.
  - English learners are 5% of students in schools that offer Algebra II and 4% of students enrolled in Algebra II; they are 5% of students in schools that offer calculus and 1% of students enrolled in calculus; and they are 5% of students in schools that offer physics and 4% of students enrolled in physics.
    - To close the participation gap in physics, more than 16,000 additional English learners would need to participate in physics classes nationwide.
- **Girls are underrepresented among students enrolled in physics, but not in calculus:**
  - Girls represent 49% of all students nationwide and 49% of students enrolled in calculus, but 46% of students enrolled in physics.
    - To close the participation gap in physics, more than 91,000 additional girls would need to participate in physics classes nationwide.

ED Initiative Spotlight

Boosting STEM and Computer Science Education

The President has proposed a $4.1 billion Computer Science for All program that would support states' and school district's efforts to expand access for all students to computer science instruction and programs. And in April 2016, the Department issued a *Dear Colleague* letter to states, school districts, schools and education partners on how to maximize federal funds to support and enhance innovative science, technology, engineering and math (STEM) education for all students and decrease the equity and opportunity gaps for historically underserved students in STEM.

- **Unequal access to accelerated courses or programs:** Black and Latino students represent 42% of student enrollment in schools offering gifted and talented education (GATE) programs, yet 28% of the students enrolled in GATE programs.
  - White students are 49% of all students in schools offering GATE programs and 57% of students in GATE programs.
  - While English learners are 11% of students in schools offering GATE programs, fewer than 3% of GATE students nationwide are English learners.
  - Similarly, students with disabilities served by IDEA are 12% of all students in schools offering GATE programs, but represent fewer than 3% of GATE students nationwide.
- **Student enrollment in Advanced Placement (AP) courses is unequal:**
  - Black and Latino students represent 38% of students in schools that offer AP courses, but 29% of students enrolled in at least one AP course.
  - English learners represent 5% of students in schools that offer AP courses, but 2% of the students enrolled in at least one AP course.
  - Students with disabilities served by IDEA represent 11% of all students in schools that offer AP courses, but fewer than 2% of students enrolled in at least one AP course.
- **English learners, students with disabilities, and students of color are more likely to be retained or held back in high school:** Students with disabilities served by IDEA and English learners are 12% and 5% of high school student enrollment , but 22% and 11% of high school students held back or retained.
  - Black students are 16% of high school students but 30% of high school students retained, while white students are 53% of high school students but 31% of high school students retained.
  - Latino, American Indian or Alaska Native, Native Hawaiian or other Pacific Islander, and multiracial high school students are also retained at disproportionately high rates, representing 27% of high school students but 35% of high school students retained.

Using Data to Ensure Equity in the Every Student Succeeds Act (ESSA)

Under the new law, Congress required that states and districts include new information in their annual report cards, including data about student discipline, school arrests, chronic absenteeism, preschool enrollment, accelerated coursework, and per pupil expenditures. Access to this important data is a critical step forward in ensuring that school communities are able to have meaningful conversations about equity in their communities and may help states and districts identify schools and students for supports to improve student outcomes.

ED Initiative Spotlight

Addressing Chronic Absenteeism in Schools

In 2015, the Obama Administration launched Every Student, Every Day: A National Initiative to Address and Eliminate Chronic Absenteeism to support coordinated community action that addresses the underlying causes of local chronic absenteeism affecting millions of children each year. A core component of the effort is the MBK Success Mentor Initiative – a partnership between the Department and key institutions to match chronically absent students with school-linked mentors in 30 communities to improve their school attendance and achievement.

Chronic Student Absenteeism

- **NEW Nationwide, more than 6.8 million students - or 14% of all students - are chronically absent (absent 15 or more school days during the school year).**
- **NEW More than 3 million high school students - or 19% of all high school students - are chronically absent.**
  - 20% or more of American Indian or Alaska Native (27%), Native Hawaiian or other Pacific Islander (25%), black (23%), multiracial (21%), and Latino (21%) high school students are chronically absent.
  - High school students with disabilities served by IDEA are 1.4 times as likely to be chronically absent as high school students without disabilities.
  - 21% of all English learner high school students are chronically absent.

***UPDATE (as of 10/28/16):** The New York City Department of Education has acknowledged anomalies in its chronic student absenteeism data that may affect the numbers reported in this document.

- **NEW More than 3.8 million elementary school students – or 11% of all elementary school students – are chronically absent.**
  - American Indian or Alaska Native and Native Hawaiian or other Pacific Islander elementary school students are 1.9 times as likely to be chronically absent as white elementary school students.
  - Black elementary school students are 1.4 times as likely to be chronically absent as white elementary school students.
  - Elementary school students with disabilities served by IDEA are 1.5 times as likely to be chronically absent as elementary school students without disabilities.
- **NEW Chronic student absenteeism where the majority of teachers are also frequently absent:**
  - Native Hawaiian or other Pacific Islander students represent 0.4% of all students, but 2% of chronically absent students who attend schools where more than 50% of teachers were absent for more than 10 days.
  - Black students represent 16% of all students, but 21% of chronically absent students who attend schools where more than 50% of teachers were absent for more than 10 days.

***UPDATE (as of 10/28/16):** The New York City Department of Education has acknowledged anomalies in its chronic student absenteeism data that may affect the numbers reported in this document.

Education in Justice Facilities

The 2013-14 CRDC collected, for the first time, the days and hours of educational programs – consisting of credit-granting courses and classroom instruction through grade 12 – at justice facilities. Justice facilities are short- and long-term public or private facilities (including correctional facilities, detention centers, jails, and prisons) that confine (before or after adjudication or conviction) juveniles under 18 years of age, adults who are 18 years of age and older, or both; however, the CRDC included data only from justice facilities confining individuals up to 21 years of age.

- **NEW** On average, justice facilities report offering 26 hours per week of educational programming during their regular school year. But more than one in seven (15%) offers less than 20 hours per week during the school year – which is less than four hours each day in a five-day week.
- **NEW** While state requirements for public schools vary, the majority of states require 180 days of school instruction. More than one in five justice facilities (21%) reports having fewer than 180 days in a regular school year, and one in 20 (5%) reports having fewer than 170 days. By contrast, 24% of justice facilities report having more than 230 days in a regular school year, reflecting the year-round nature of these facilities.

ED Initiative Spotlight

Promoting Correctional Education and Reentry

The Department has prioritized access to education as a tool and resource for incarcerated and formerly incarcerated individuals through Improved Reentry Education (IRE) and Promoting Reentry Success Through the Continuity of Educational Opportunities (PRSCEO) grants, Reentry Education Toolkit, and Guidance on Correctional Education in Juvenile Justice Facilities. And through the Juvenile Justice Reentry Education Program, the Department is helping schools provide robust Career and Technical Education (CTE) and wraparound reentry supports for juveniles involved in the justice system.

Teacher and Staffing Equity

- **Black, Latino, and American Indian or Alaska Native students are more likely to attend schools with higher concentrations of inexperienced teachers:**
  - 7% of black students, 6% of Latino students, and 6% of American Indian or Alaska Native students attend schools where more than 20% of teachers are in their first year of teaching, compared to 3% of white students and 3% of Asian students.
  - 9% of teachers in schools with high black and Latino student enrollment* are in their first year of teaching, compared to 5% of teachers in schools with low black and Latino student enrollment.
- **Nearly 800,000 students are enrolled in schools where more than 20% of teachers have not met all state certification or licensure requirements:**
  - 3% of black students and 2% of Latino and American Indian or Alaska Native students attend these schools, compared to 1% of white students.
- **While most teachers are rarely absent, 27% of teachers are absent more than 10 school days per year for reasons unrelated to school activities:**
  - About 6.5 million students attend schools where more than 50% of teachers were absent more than 10 days per year.
  - 35% of Native Hawaiian or other Pacific Islander students attend schools where more than 50% of teachers were absent for more than 10 days, compared to 12% of white students.

ED Initiative Spotlight

Focus on Teacher Diversity

In May 2016, the Department released a report titled The State of Racial Diversity in the Educator Workforce in conjunction with the National Summit on Teacher Diversity. Using data collected by the Department as well as data from public school districts collected by the U.S. Equal Employment Opportunity Commission (EEOC), the report reviews trends in educator diversity and reveals that, while students of color make up 50% of students according to the CRDC, and are expected to make up 56% of the student population by 2024, the educator workforce is still overwhelmingly white. Other report highlights:

- In school districts with more than 100 employees that responded to the EEOC's survey, black and Latino teachers represent 17% of the teacher workforce and 21% of newly hired teachers.
- In those same school districts, 27% of principals (including assistant principals) and 26% percent of new principals are black and Latino.

- **Most high school students have access to a school counselor:** About 95% of high school students have access to at least one school counselor.
  - But 21% of high schools and about 850,000 high school students nationwide do not have access to any school counselor.
  - 1.6 million students attend a school with an SLEO, but not a school counselor.
    - Latino students are 1.4 times as likely to attend a school with an SLEO but not a school counselor as white students; Asian students are 1.3 times as likely; black students are 1.2 times as likely.

CRDC Endnotes and Definitions

[1] The data analyses and highlights presented in this document are based on student privacy-protected CRDC data. The CRDC data is privacy-protected by rounding student counts in groups of three to prevent the disclosure of individual student information. For example, student counts from 1-3 are rounded to two, and student counts from 4-6 are rounded to five. True zeroes are revealed where possible. In general, the distortion of rounding one student to two is balanced by the rounding down of three students to two. However, this privacy protection method may inflate total counts for CRDC data elements in which schools report only one student; for example, one student retained or held back a grade in school is rounded to two students retained.

For additional information on the methodology for collecting and preparing the data cited in this document, please visit ocrdata.ed.gov.

* "High/low black and Latino enrollment" refers to schools with more than 75 percent and less than 25 percent black and Latino student enrollment, respectively.

Students

English learner (limited English proficient student): In coordination with the state's definition based on Title IX of the Elementary and Secondary Education Act, limited English proficient students (referred to in this document as "English Learner") are students:

(A) who are ages 3 through 21;
(B) who are enrolled or preparing to enroll in an elementary school or secondary school;
(C) (who are i, ii, or iii)
(i) who were not born in the United States or whose native languages are languages other than English;
(ii) (who are I and II)
(I) who are a Native American or Alaska Native, or a native resident of the outlying areas; and
(II) who come from an environment where languages other than English have a significant impact on their level of language proficiency; or
(iii) who are migratory, whose native languages are languages other than English, and who come from an environment where languages other than English are dominant; and
(D) whose difficulties in speaking, reading, writing, or understanding the English language may be sufficient to deny the individuals
(i) the ability to meet the state's proficient level of achievement on state assessments described in section 1111(b)(3)[of ESEA, 20 U.S.C. 6311(b)(3)]; or
(ii) the ability to successfully achieve in classrooms where the language of instruction is English; or
(iii) the opportunity to participate fully in society.

Note - To be classified as limited English proficient, an individual must be A, B, C, and D. For C, an individual can be i, ii, or iii. If C-ii, the individual must be I and II. For D, an individual must be denied D-i, D- ii, or D-iii.

Students with disabilities: Unless otherwise indicated, "students with disabilities" refers to students who receive special education and related services under the Individuals with Disabilities Education Act (IDEA) and who receive related aids and services under Section 504 of the Rehabilitation Act of 1973.

Students with disabilities served by IDEA: Students with intellectual disabilities; hearing impairment, including deafness; speech or language impairment; visual impairment, including blindness; serious emotional disturbance; orthopedic impairment; autism; traumatic brain injury; developmental delay; other health impairment; specific learning disability; deaf-blindness; or multiple disabilities and who, by reason thereof, receive special education and related services under the Individuals with Disabilities Education Act (IDEA) according to an Individualized Education Program, Individual Family Service Plan, or service plan.

Student Discipline

Out-of-school suspension: For students without disabilities, out-of-school suspension is an instance in which a child is temporarily removed from his/her regular school for at least half a day (but less than the remainder of the school year) for disciplinary purposes to another setting (e.g., home, behavior center). Out-of-school suspensions include removals in which no educational services are provided, and removals in which educational services are provided (e.g., school-provided at home instruction or tutoring).

- **For students with disabilities (served under IDEA):** Out-of-school suspension is an instance in which a child is temporarily removed from his/her regular school for at least half a day for disciplinary purposes to another setting (e.g., home, behavior center). Out-of-school suspensions include both removals in which no individualized family service plan (IFSP) or individualized education plan (IEP) services are provided because the removal is 10 days or less as well as removals in which the child continues to receive services according to his/her IFSP or IEP.

Expulsion without educational services refers to an action taken by the local educational agency of removing a child from his/her regular school for disciplinary purposes, and not providing educational services to the child for the remainder of the school year or longer in accordance with local educational agency policy. Expulsion without services also includes removals resulting from violations of the Gun Free Schools Act that are modified to less than 365 days. *Note: the CRDC also collects data on expulsion with educational services.*

Preschool out-of-school suspension:

- **For students with disabilities (served under IDEA):** Out-of-school suspension is an instance in which a child is temporarily removed from his/her regular school for at least half a day for disciplinary purposes to another setting (e.g., home, behavior center). Out-of-school suspensions include both removals in which no individualized family service plan (IFSP) or individualized education plan (IEP) services are provided because the removal is 10 days or less as well as removals in which the child continues to receive services according to his/her IFSP or IEP.
- **For students without disabilities and students with disabilities served solely under Section 504 of the Rehabilitation Act:** Out-of-school suspension is an instance in which a child is temporarily removed from his/her regular school for at least half a day (but less than the remainder of the school year) for disciplinary purposes to another setting (e.g., home, behavior center). Out-of-school suspensions include removals in which no educational services are provided, and removals in

which educational services are provided (e.g., school-provided at home instruction or tutoring).

Referral to law enforcement is an action by which a student is reported to any law enforcement agency or official, including a school police unit, for an incident that occurs on school grounds, during school-related events, or while taking school transportation, regardless of whether official action is taken. Citations, tickets, and court referrals are considered referrals to law enforcement.

School-related arrest refers to an arrest of a student for any activity conducted on school grounds, during off-campus school activities (including while taking school transportation), or due to a referral by any school official.

Restraint and Seclusion

Restraint refers to both mechanical and physical restraint.

Mechanical restraint refers to the use of any device or equipment to restrict a student's freedom of movement. The term does not include devices implemented by trained school personnel, or utilized by a student that have been prescribed by an appropriate medical or related services professional and are used for the specific and approved purposes for which such devices were designed, such as:

- Adaptive devices or mechanical supports used to achieve proper body position, balance, or alignment to allow greater freedom of mobility than would be possible without the use of such devices or mechanical supports;
- Vehicle safety restraints when used as intended during the transport of a student in a moving vehicle;
- Restraints for medical immobilization; or
- Orthopedically prescribed devices that permit a student to participate in activities without risk of harm.

Physical restraint refers to a personal restriction that immobilizes or reduces the ability of a student to move his or her torso, arms, legs, or head freely. The term physical restraint does not include a physical escort. Physical escort means a temporary touching or holding of the hand, wrist, arm, shoulder or back for the purpose of inducing a student who is acting out to walk to a safe location.

Seclusion refers to the involuntary confinement of a student alone in a room or area from which the student is physically prevented from leaving. It does not include a timeout, which is a behavior management technique that is part of an approved program, involves the monitored separation of the student in a non-locked setting, and is implemented for the purpose of calming.

Early Learning

Preschool refers to preschool programs and services for children ages 3 through 5.

Preschool provided by the district: District-provided preschool includes preschool services or programs that the district provided by contracting with another entity to provide those services or programs; preschool programs or services that are operated by a non-district facility (including intermediate units, residential facilities, social service agencies, hospitals, and private schools) contracted by the district are considered district-provided preschool. Also, please note that responses from school districts that serve only vocational or high school students were among the 16,757 districts surveyed as to whether they provide preschool programs and services for children ages 3 through 5.

Full-day preschool program is a program that a child attends each weekday for approximately six hours or more.

College and Career Readiness

Advanced Placement (AP) refers to a program, sponsored by the College Board, through which students may earn college credit and advanced college placement by successfully completing AP courses and standardized AP exams.

Advanced Placement (AP) course is an advanced, college-level course designed for students who achieve a specified level of academic performance. Upon successful completion of the course and a standardized AP exam, a student may be qualified to receive college credit and/or placement into advanced college courses.

Algebra II (college-preparatory) course topics typically include field properties and theorems; set theory; operations with rational and irrational expressions; factoring of rational expressions; in-depth study of linear equations and inequalities; quadratic equations; solving systems of linear and quadratic equations; graphing of constant, linear, and quadratic equations; properties of higher degree equations; and operations with rational and irrational exponents.

Calculus (college-preparatory) course topics include the study of derivatives, differentiation, integration, the definite and indefinite integral, and applications of calculus. Typically, students have previously attained knowledge of precalculus topics (some combination of trigonometry, elementary functions, analytic geometry, and math analysis).

Chemistry (college-preparatory) courses involve studying the composition, properties, and reactions of substances. These courses typically explore such concepts as the behaviors of solids, liquids, and gases; acid/base and oxidation/reduction reactions; and atomic structure. Chemical formulas and equations and nuclear reactions are also studied.

Gifted and talented education (GATE) programs are programs during regular school hours that provide special educational opportunities including accelerated promotion through grades and classes and an enriched curriculum for students who are endowed with a high degree of mental ability or who demonstrate unusual physical coordination, creativity, interest, or talent.

Physics (college-preparatory) courses involve the study of the forces and laws of nature affecting matter, such as equilibrium, motion, momentum, and the relationships between matter and energy. The study of physics includes examination of sound, light, and magnetic and electric phenomena.

Retained: A student is retained if he or she is not promoted to the next grade prior to the beginning of the following school year. Students are not considered retained if they can proceed to the next grade because they successfully completed a summer school program or for a similar reason. At the high school level, a student who has not accumulated enough credits to be classified as being in the next grade is considered retained.

Chronic Student Absenteeism

Chronically absent student: a student who is absent 15 or more school days during the school year. A student is absent if he or she is not physically on school grounds and is not participating in instruction or instruction-related activities at an approved off-grounds location for the school day. Chronically absent students include students who are absent for any reason (e.g., illness, suspension, the need to care for a family member), regardless of whether absences are excused or unexcused.

Teacher and Staffing Equity and Other Personnel

Teacher refers to a person who provides instruction, learning experiences, and care to students during a particular time period or in a given discipline.

- **Teachers include:** Regular Classroom Teachers (teach Chemistry, English, mathematics, physical education, history, etc.); Special Education Teachers (teach special education classes to students with disabilities); General Elementary Teachers [teach self-contained classes in any of grades preschool-8 (i.e., teach the same class of students all or most of the day); team-teach (i.e., two or more teachers collaborate to teach multiple subjects to the same class of students); include preschool teachers and kindergarten teachers]; Vocational/Technical Education Teachers (teach typing, business, agriculture, life skills, home economics as well as any other vocational or technical classes); teaching principals, teaching school counselors, teaching librarians, teaching school nurses, or other teaching administrators [include any staff members who teach at least one regularly scheduled class per week (e.g., a librarian teaches a regularly scheduled class in mathematics once a week)]; teachers of ungraded students; Itinerant, Co-op, Traveling, and Satellite Teachers (teach at more than one school and may or may not be supervised by someone at your school); current Long-Term Substitute Teachers (currently filling the role of regular teachers for four or more continuous weeks); and other teachers who teach students in any of grades preschool-12.
- **Teachers exclude:** Adult Education and Postsecondary Teachers (teach only adult education or students beyond grade 12); Short-term Substitute Teachers (fill the role of regular or special education teachers for less than four continuous weeks); Student Teachers; Day Care Aides/Paraprofessionals; Teacher Aides/Paraprofessionals; and Librarians who teach only library skills or how to use the library.

School counselor refers to a professional staff member assigned specific duties and school time for any of the following activities: counseling with students and parents, consulting with other staff members on learning problems, evaluating student abilities, assisting students in making education and career choices, assisting students in personal and social development, providing referral assistance, and/or working with other staff members in planning and conducting guidance programs for students..

Sworn law enforcement officer (SLEO): A sworn law enforcement officer is a career law enforcement officer, with arrest authority. A sworn law enforcement officer may be considered a school resource officer (who is assigned to work at a school in collaboration with school and community-based organizations). A sworn law enforcement officer may be employed by any entity (e.g., police department, school district or school).

School resource officer (SRO): a sworn law enforcement officer, with arrest authority, whose main responsibility is to work at a school in collaboration with school and community-based organizations. An SRO may have received specialized training to serve in a variety of roles, including: law enforcement officer, law-related educator, problem solver, and community liaison. An SRO may be employed by any entity (e.g., police department, school district or school).

Teacher absenteeism: A teacher was absent if he or she was not in attendance on a day in the regular school year when the teacher would otherwise be expected to be teaching students in an assigned class. This includes both days taken for sick leave and days taken for personal leave. Personal leave includes voluntary absences for reasons other than sick leave. Administratively approved leave for professional development, field trips or other off-campus activities with students should not be included.

Certified teacher refers to a teacher who has met all applicable state teacher certification requirements for a standard certificate. A certified teacher has a regular/standard certificate/license/endorsement issued by the state. A beginning teacher who has met the standard teacher education requirements is considered to have met state requirements even if he or she has not completed a state-required probationary period. A teacher working towards certification by way of alternative routes, or a teacher with an emergency, temporary, or provisional credential is not considered to have met state requirements.

Year of teaching refers to the number of year(s) of teaching experience including the current year but not including any student teaching or other similar preparation experiences. Experience includes teaching in any school, subject, or grade; it does not have to be in the school, subject, or grade that the teacher is presently teaching.

Justice Facilities

Justice facility: a public or private facility that confines pre-adjudicated/pre-convicted individuals, post-adjudicated/post-convicted individuals, or both. Justice facilities include short-term (90 calendar days or less) and long-term (more than 90 calendar days) facilities, such as correctional facilities, detention centers, jails, and prisons. These facilities may confine juveniles (individuals typically under 18 years of age), adults (individuals typically 18 years of age and older), or both. Some states and jurisdictions include individuals younger than age 18 as adults due to statute/legislation and/or justice procedures. For the purposes of the CRDC, only individuals up to 21 years of age who are confined in justice facilities are of interest.

Justice facility educational program: a program for children and youth (not beyond grade 12) served at a justice facility that consists of credit-granting courses and classroom instruction in at minimum, basic school subjects, such as reading, English language arts, and mathematics. Classroom instruction in vocationally-oriented subjects may also be considered part of the program. Neither the manufacture of goods within the facility nor activities related to facility maintenance are considered classroom instruction. Credit-granting refers to any course that results in a letter grade or a pass/fail designation and is required of a student to move to the next grade level or complete a program of study and receive a high school diploma.

Availability of Alternate Formats:

Requests for documents in alternate formats such as Braille or large print should be submitted to the Alternate Format Center by calling 202.260.0852 or by contacting the Section 508 Coordinator via e-mail at om_eeos@ed.gov.

Notice to Limited-English-Proficient Persons:

If you have difficulty understanding English, you may request language assistance services for Department information that is available to the public. These language assistance services are available free of charge. If you need more information about interpretation or translation services, please call 1-800-USA-LEARN (1.800.872.5327) (TTY: 1.800.877.8339) or e-mail us at ED.Language.Assistance@ed.gov. You also can write to U.S. Department of Education, Information Resource Center, LBJ Education Building, 400 Maryland Ave. SW, Washington, DC, 20202.

Document History:

This document was originally issued on June 7, 2016. On August 10, 2016, the document was updated by adding a text box (on page 1) that stated that the Department had been alerted to errors in data the state of Florida submitted on behalf of its school districts as part of the 2013-2014 Civil Rights Data Collection and that, as a result, the data referenced in this document might not fully represent all students in Florida. The text box continued by stating that the Department was working with Florida to address the issue and would be making updates accordingly. On September 29, 2016, after the Department received corrected data from Florida, the document was updated by amending the text box (on page 1) to remove the discussion of working with Florida and making updates. On October 28, 2016, the document was updated to incorporate corrected data submitted by the state of Florida, on behalf of its school districts. That corrected Florida data resulted in changes to some of the national numbers reported for out-of-school suspensions (pages 3-4), restraint and seclusion (page 5), retention (page 7), chronic absenteeism (pages 7-8), and inexperienced teachers (page 9). In addition, the text box (on page 1) was amended to note the incorporation of Florida's corrected data and text boxes were added (on pages 7 and 8) noting that the New York City Department of Education had acknowledged anomalies in its chronic student absenteeism data.

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Office for Civil Rights

EMIGRATION
HIGH SCHOOL
HOME OF THE ANGELS

EXHIBIT 13

Steps To Take If Your Child Is Being Bullied At School

It is important that parents approach this situation in a calm manner and that parents keep records of facts in the situation. It is helpful if parents and school staff work together to resolve the issue. Parents can use the following steps to resolve the issue.

I. Work With Your Child

Thank your child for telling you. Tell your child that the bullying is not his or her fault.

Talk with your child about the specifics of the situation and ask:

- Who is doing the bullying?
- What happened? Was it
  - o Verbal bullying?
  - o Physical bullying?
  - o Cyberbullying? (Meet directly with the principal if this is the case.)
- What days and times were you bullied?
- Where did the bullying take place?

Also find out how your child responded to the bullying and if other children or adults might have observed the bullying. Does your child know the names of these people? Keep a written record of this information.

Practice possible ways for your child to respond to bullying.

Tell a school staff (teacher, principal, other staff).

Go to step two if needed.

II. Work With The School

Meet with your child's teacher:

- Discuss what is happening to your child using information from Step One.
- Ask what can be done so your child feels safe at school.

Keep a written record of what happened at this meeting, including names and dates.

Make an appointment to meet with the principal to discuss the bullying situation:

- Share information from Step One.
- Mention your work with your child regarding the situation.
- Share the outcome of your meeting with the teacher.
- Mention how the situation is impacting your child:
  - o Does not want to come to school
  - o Is fearful he or she will be hurt
  - o Complains of stomach aches, headaches, etc.
  - o Has other new behavior as a result of bullying
- Ask if school has a written policy on bullying and harassment. If so, ask for a written copy.
- Ask what the school can do to keep your child safe at school, on school bus, etc.

Go to step three if needed.

III. Work With District Administration

Write a letter or send an email to district superintendent requesting a meeting to discuss the situation. Include name of child, age, grade, school, your address and phone number, background information of the bullying situation and how you have tried to resolve it. This letter should be as brief and factual as possible. Include the times you are available for this meeting. Send copies of this letter to the principal, special education director (if child is receiving special education) and chair of the school board. Be sure to keep a copy for yourself.

Prepare for this meeting by organizing the information you have kept and the questions you want to ask. Remember to ask what can be done to keep your child safe in school so he/she can learn.

Decide if you want to take someone with you. Clarify their role (e.g., take notes, provide support, contribute information about your child).

Be sure to keep a written record of this meeting, including who was present, what was discussed and any decisions that were made.

If after taking these three steps, the bullying issue has not been resolved, you may wish to contact a parent center or advocacy organization for assistance.

**Email is an acceptable way of contacting persons.*

GUIDANCE: UTAH SIMPLIFIED MOCK TRIAL RULES OF EVIDENCE

A. HOW TO USE THIS SECTION

1. Complex rules are used to govern the admission of proof (i.e., oral or physical evidence). These rules are designed to ensure that all parties receive a fair hearing and to exclude evidence that is not important to the case, to ensure that only persons with knowledge of facts or specialized training provide testimony, to protect parties from introduction of evidence that may be unfairly prejudicial, to ensure the trial is completed in a timely manner, and to achieve other policy goals.

2. The teams should know the Mock Trial Rules of Evidence (based on the National High School Mock Trial Championship Rules of Evidence and the Federal Rules of Evidence) and be able to use them to make their own case and to fairly limit the testimony and evidence of opposing counsel and their witnesses.

3. IMPORTANT: The Guidelines in this section are generally accepted practices about the appropriate ways to enter physical evidence, lay foundation for expert witnesses, and object to testimony and documents, with some examples of how the rules work. Just like in actual trials, not all judges will interpret the Rules of Evidence (or procedure) the same way. Just because one judge rules one way and another judge has ruled another does not mean one judge was "right" and the other was "wrong." Likewise, simply following these examples does not guarantee that your objection will be sustained, or that a judge will score you highly.

B. GENERAL PROCEDURE FOR OBJECTING TO QUESTIONS OR TESTIMONY

1. If it appears that an attorney's question, or a witness' answer will violate, or has violated, a rule of evidence, the attorney responsible for that witness may raise an objection to the judge.

2. In general, the objection must be made before the witness begins her answer, unless the objection could not be anticipated before the witness started answering.

3. The judge then decides whether the question or answer violates a rule and whether the evidence must be excluded from the record of the trial. In the absence of a properly made objection, however, the judge will probably allow the evidence.

4. When the attorney responsible for the witness believes the opposing attorney has asked a question that is objectionable, the attorney may follow the following procedure:

    a. Wait for the opposing attorney to finish her question.

    b. Stand.

c. Say, "Objection, your Honor", and state the basis for the objection (relevance, leading, hearsay).
This initial objection should be brief and state only the basis of the objection, without additional argument. The most persuasive mock trial attorneys are prepared to point out specific rules (quoting from the rule and citing the rule number, if necessary).

d. Wait for the opposing party to respond or for the Court to ask for further argument.
In general, the opposing party is the first to provide argument to support the admission of the question. There may be circumstances where the reason for the objection is not apparent. In such situations, it is appropriate to ask the Court to be heard immediately.

For example:
***Q**: Where did John go after that?*
***Attorney**: Objection, your Honor, this question calls for hearsay. May I be heard further?*
***The Court**: You may.*
***Attorney**: We expect that this witness will say she left the party by herself, and John left 30 minutes later. The only way she would know where John went is when Mary told her about it, the next day. Therefore, the question calls for a hearsay statement.*
***The Court**: Opposing counsel, response?*

e. Respond when requested and await the Court's ruling. If the Court agrees with the objecting attorney, the objection will be "sustained." If the Court disagrees, the objection will be "overruled", and the questioning attorney or witness will be allowed to ask and answer the question.

f. Sit down.

g. Remember, if the objection is sustained, then object again if the attorney asks the same question.

5. When the attorney responsible for the witness believes the witness has offered objectionable testimony, even if the question itself was not objectionable, the attorney may follow the following procedure:

a. Stand.

b. Say, "Objection, your Honor, move to strike; this witness' answer is. . . ", and then briefly state the basis for the objection.
*While it is generally inappropriate to interrupt an opposing attorney while she is in the middle of a question, the objecting attorney **should** interrupt a witness as soon as practicable if the witness begins testifying to*

objectionable material. It also may be appropriate to say, "While counsel's question did not ask for any objectionable testimony, the witness' answer did", and state the basis for the objection.

c. Wait for the opposing party to respond or for the Court to ask you for further argument.

d. Respond when requested and await the Court's ruling.

e. If the objection is sustained, say, "Your Honor, I move to strike", and describe the objectionable portion of the witness' testimony.

f. Sit down.

6. When an attorney is questioning a witness and the opposing attorney objects to a question (or to testimony), the attorney may follow the following procedure:

a. Remain standing.

b. Wait for the opposing party to finish her objection and argument (if requested by the Court).

c. Respond to the objection.

1) *The Court may ask for a response, or indicate that the Court is ready to hear a response by looking at the attorney. If the attorney is unsure, the attorney may ask, "May I respond, your Honor?"*

2) *A response may include a legal response (quoting or citing a rule number, if necessary), or an offer to clarify or modify the question so that it follows the rules.*

d. Respond further if requested and await the Court's ruling.

e. Continue your questioning.

1) *If the objection was overruled and the witness has not answered, the witness will need to answer the question.*

2) *You may ask the witness the same question again, or you may ask the witness, "Please answer the question."*

3) *If the objection was sustained, you may not ask the question, but, depending on the objection, you may ask a similar question about the same material.*

C. EXAMPLES OF SPECIFIC OBJECTIONS

1. The following are examples of objections typically offered under the Mock Trial Rules of Evidence and most commonly used in most mock trial situations.

2. These examples do not supersede the Rules and may not be cited to during a mock trial, but are provided as a learning tool and guide. A reference to the number of the Simplified Rules is included in parenthesis following each objection.

a. **Objections based on the form of the question/answer**
These are the most common objections when the attorney is primarily concerned not with the content of a witness' answer, but rather the way in which a question is being asked or when it is asked. They include:

- *Leading the witness*
- *Beyond the scope (of cross-examination, or redirect examination)*
- *Calls for narration*
- *Asked and answered*
- *Argumentative*
- *Nonresponsive*
- *Compound*
- *Arguing/Assuming a fact not in evidence*

1) **Leading the witness** (applicable to direct examination only) (Rule 611(c))

a) In mock trials, witnesses may generally not be asked leading questions by the attorney who calls them, except when the attorney asks questions on preliminary, non-substantive matters.

b) A leading question is a question that suggests to the witness the answer desired by the examiner, often "yes" or "no".

c) Questions on direct examination must be open-ended and are generally phrased to bring out a set of facts from the witness: who, what, where, when, why, and how.

Examples of leading questions:
***Mr. Wolf**, you've always liked roast pork, haven't you?*
***Mr. Wolf**, the money was under the hay bale, correct?*
***Ms. White**, the old woman had a weathered face and a long, crooked nose just like the defendant, didn't she?*

Example of a proper, open-ended question:
***Ms. White**, what did the old woman who knocked on the door look like?*

Example of an objection:
***Q**: Ms. White, the old woman had a weathered face and a long, crooked nose just like the defendant, didn't she?*
***Attorney**: Objection, your Honor, counsel is leading the witness.*

Examples of potential responses:
***Your Honor**, the question does not suggest an answer to the witness.*
***Your Honor**, this is a preliminary matter and asking leading questions is necessary to develop the witness' testimony.*

2) **Beyond the scope** (applicable to redirect examination and recross examinations only) (Rule 611(b))

a) In mock trials, teams may not call a witness for the other side as their own witness. A team *may* question a witness for the other side on cross-examination about *anything* in that witness' statement (so long as it is otherwise admissible). Consequently, in a mock trial, a "beyond the scope" objection is different from actual trial--it is available only during redirect and recross examinations.

b) During redirect or recross, attorneys may only ask questions that relate to matters brought out by the other side on cross-examination or redirect. Any attempt to question about anything else is objectionable.

Example of an objection:
***Q**: [After a redirect examination which discussed only whether the lights were on by the door when Ms. White answered it;] Ms. White, when you ate the apple, what happened to you?*
***Attorney**: Objection, your Honor, this question is beyond the scope of my redirect examination.*

Examples of potential responses:
***Your Honor**, on cross-examination, attorneys may inquire about any relevant facts contained in the witness' statement.*

***Your Honor**, this question is within the scope because during (cross, or redirect), counsel inquired about the issue of ___ (i.e., damages, the witness' ability to see, motive, etc.).*

3) **Narration** (Rule 611(a), 403)

a) While the purpose of direct examination is to get the witness to tell a story, the questions must ask for specific information. The questions must not be so broad that the witness is allowed to wander or "narrate" a whole story.

b) The reason for this is that it would make it very difficult for opposing counsel to make an appropriate objection. While some questions call for a narrative answer, sometimes a witness may continue outside the bounds of the original question. An attorney may object to improper narration in this situation as well.

Example of an objection:
***Q**: Ms. White, tell the Court about your family history since 1902.*
***Attorney**: Objection, your Honor, this question calls for a narrative answer.*

Example of an objection when a witness begins narrating:
***Q**: Ms. White, what happened when the old lady came to the door?*
***A**: Well, she wanted me to eat this apple. So I took it. Then, later, I put the apple to the side and started cooking dinner. After that, my seven roommates came home--Sleepy, Happy, Doc. . . .*
***Attorney**: Objection, your Honor, the witness has begun to narrate, and I ask that the examination proceed in a question-and-answer format.*

Examples of potential responses:
***Your Honor**, the question is limited in time and scope and does not call for narration.*
***Your Honor**, the witness has limited her answer to the question asked and has not narrated.*
***Your Honor**, I will be happy to ask another question.*

4) **Asked and answered** (Rule 611(a), 403)

- It is properly within a trial judge's discretion to prevent one party from repeating a question already asked by that party.

Example of an objection:
***Q**: Ms. White, who was at the door?*
***A**: The wicked Queen, my stepmother.*
***Q**: Who was at the door again?*
***A**: The wicked Queen, my stepmother.*
***Q**: Was it your stepmother at the door?*
***Attorney**: Objection, your Honor, this question has been asked and answered.*

Examples of potential responses:
***Your Honor**, this question is different from the one I asked previously because____.*
***Your Honor**, I asked this question before, but the witness has not yet answered it.*

5) **Argumentative** (Rule 611(a), 403)

- An attorney cannot badger or argue with the witness, even when using a pleasant tone of voice. An attorney cannot, in the guise of asking a witness a question, present a *legal argument* to the judge or jury.

Example of an objection (badgering):
***Q**: [While leaning over the witness box and pointing,] Ms. White, you knew that the old hag was your stepmother, didn't you! You hate her and want to be queen and so you're lying.*
***Attorney**: Objection, your Honor, this question is argumentative, and counsel is badgering the witness.*

Example of an objection (arguing):
***Q**: Ms. White, you didn't recognize the woman at the door, did you?*
***A**: Not her appearance, but I recognized her soul--it was my stepmother.*
***Q**: There's no way you can recognize someone's soul!*
***Attorney**: Objection, your Honor, counsel is arguing with the witness. The comment should be struck, and counsel should be instructed to proceed in a question-and-answer format.*

Example of an objection (legal argument):
***Q**: Ms. White, because you knew that the old woman was your stepmother in disguise, you knew she didn't like you, you knew she had access to apple-poisoning facilities, and you saw there was a syringe prick in the apple. Isn't it fair to say that you assumed the risk of eating the apple?*

***Attorney**: Objection, your Honor, this question is essentially a legal argument.*

Examples of potential responses:
***Your Honor**, merely because I am asking hard questions does not mean I am badgering the witness.*
***Your Honor**, the witness has not answered my question, and I am attempting to appropriately cross-examine the witness so the witness will answer my question.*
***Your Honor**, I am not giving a legal argument, but rather asking for this witness' knowledge.*

6) **Nonresponsive** (Rule 611(a), 403)

a) On cross-examination, a witness might give an answer that makes a point the witness wants to make, but evades answering the question the attorney asked.

b) After repeated nonresponsive answers, the cross-examining attorney could ask the judge to strike any nonresponsive testimony and to instruct the witness to answer the question actually asked.

Example of an objection:
***Q**: Ms. White, the apple the old woman gave you was red, wasn't it?*
***A**: I think so, but at the door, I spent most of my time staring into the old hag's evil, sad, piercing blue eyes. As I stared into her eyes, I knew she wanted to harm me. But at the time, I thought I was being too paranoid.*
***Attorney**: Objection, your Honor, the witness' answer was nonresponsive. I ask that you strike everything after "I think so," and instruct the witness to answer my questions.*

Examples of potential responses:
***Your Honor**, the witness was responding to the question asked.*
***Your Honor**, the question was worded such that the witness was providing the best testimony she could.*
***Your Honor**, the question was worded such that the witness could not truthfully simply answer "yes" or "no".*

***Hint**: The use of the nonresponsive objection is highly effective with some judges, while other judges believe it is an ineffective way of controlling a witness on cross-examination. Only use the objection if the witness has*

repeatedly been evading questions, and then carefully examine the judge's reaction to the objection.

7) **Compound** (Rule 611(a), 403)

- Questions should be about one topic, or fact, only. Because the answers to compound questions are unclear and often only partially correct, particularly on cross-examination, compound questions are objectionable.

  Example of an objection:
  ***Q**: Ms. White, when you went to the door, the old woman was there with an apple in her hand, and no one else was at home to see her, right?*
  ***Attorney**: Objection, your Honor, the question is compound.*

  Example of a potential response:
  ***Your Honor**, I am asking only about one fact: ____.*

8) **Arguing/Assuming a fact not in evidence** (Rule 611(a), 403)

a) During testimony, this objection is raised where the introductory part of a question assumes a fact not in evidence, and the fact is in dispute. It is objectionable because it prejudices the fact-finder to believe there is testimony on a particular issue when, in fact, none exists.

b) It also may be raised after an attorney states a fact in closing argument that was never introduced in trial.

Example of an objection:
***Q**: Ms. White, isn't it true that you still chose to bite into the apple, even after you tested the apple with your home chemistry kit for any traces of sleeping powder?*
***Attorney**: Objection, your Honor, the question assumes a fact--that Ms. White tested the apple with a chemistry set--that is not in evidence.*

This is sometimes used as the basis for arguing that the witness is creating a material fact not in the record--an unfair extrapolation. Attorneys should be very clear about whether the objection is because the question (or the attorney's statement) improperly assumes facts not in evidence, or whether the witness' testimony is not in her statement.

b. **Objections based on the witness' knowledge, or the witness' capacity to be able to answer the question**

These are the most common objections when the attorney is primarily concerned that a witness does not have the background, capacity, expertise, or ability to answer the question, and, therefore, the testimony will be unreliable, unhelpful, or confusing. They include:

- *Lack of personal knowledge*
- *Speculation*
- *Lack of foundation*
- *Improper opinion*
- *Improper expert opinion*
- *Creating a material fact not in the record (Mock Trial only)*

1) **Lack of personal knowledge** (Rule 602)

- Witnesses may only testify to information of which they have personal knowledge. However, expert witnesses may provide their opinions based on facts of which they have no personal knowledge.

  Example of an objection:
  ***Q**: Ms. White, you just testified that you were asleep from midnight until 5:00 the next morning. What was your roommate Dopey doing at that time?*
  ***Attorney**: Objection, your Honor, lack of personal knowledge.*

  Examples of potential responses:
  ***Your Honor**, the witness' answer is based on her reasonable perceptions at the time.*
  ***Your Honor**, she can answer if she knows, or she can tell the Court that she does not, in fact, know.*

  ***Note**: This is not the same as creating a material fact not in the witness' statement. A witness statement may state a fact, but that witness may not have any way of knowing it.*

2) **Speculation** (Rule 602, 403, 701, 401)

a) Any question that asks the witness to speculate or guess is improper because cases should be decided on facts, and guesswork from a witness on what the facts might be or could possibly be is irrelevant and unhelpful.

b) Witnesses, however, are permitted to give estimates and approximations if they are rationally based on the perceptions of the witness and are helpful to the trier of fact.

Example of an objection:
***Q**: Ms. White, how long do you think you might have slept if you had taken a bite out of that apple?*
***Attorney**: Objection, your Honor, speculation.*

Example of an objection:
***Q**: Ms. White, isn't it possible that the poison wouldn't have affected you at all if you had taken a bite of the apple?*
***Attorney**: Objection, your Honor, counsel is asking the witness to guess in order to answer the question.*

Examples of potential responses:
***Your Honor**, I am asking for an estimate based on the witness' perception. Witness' answer is based on her reasonable perceptions at the time.*
***Your Honor**, I am asking about the facts understood by this expert witness.*

3) **Lack of foundation** (Rule 602, 702, 901, 1003)

a) An attorney must establish that the witness has the "who, what, where, when, why, or how" of the subject about which a question is asked. The objection is not that the witness cannot testify about the topic, but that she has not proven she has personal knowledge of the subject.

b) This objection also is used when introducing documents (See p. 20.), where there has not been foundation to establish that the witness has adequate knowledge of the document, or with an expert that the expert does not have adequate foundation to offer an opinion being requested.

Example of an objection:
Q: *[To a witness who has never seen the police report;] Ms. White, what does this police report reflect as the criminal history of your stepmother?*
Attorney: *Objection, your Honor, lack of foundation.*

Examples of potential responses:
***Your Honor**, this witness is testifying about her personal knowledge.*

***Your Honor**, I have provided foundation for this testimony/document by demonstrating _____.*

4) **Improper opinion** (Rule 701, 704)

a) Generally, witnesses must offer "just the facts". A witness' opinion on any matter is usually not relevant or helpful at court. However, if the witness' opinion is related to the witness' perception, helpful to the jury, and is not based on specialized training, then it can be admitted.

b) A witness' opinion about how a case should be decided (i.e., whether the defendant is guilty) is not admissible.

Examples of an objection:
Q: *Mr. Bear, was Ms. Locks mean to your children?*
Attorney: *Objection, your Honor, improper opinion. The opinion is not helpful to the jury.*
Q: *Mr. Bear, was Ms. Locks legally drunk when she was in your house?*
Attorney: *Objection, your Honor, improper opinion. The opinion requires specialized training.*

Example of a response:
Q: *Mr. Bear, was the weather stormy that day?*
Attorney: *Objection, your Honor, improper opinion.*
Response: *Your Honor, Mr. Bear already testified that he had been out in the weather, and my client's defense to trespass was necessity. Mr. Bear's perception of the weather is relevant to determine whether it was necessary to get out of the storm, and the opinion is related to his perceptions of the weather at the time.*

5) **Improper expert opinion** (Rule 702)

- See the section on Expert Witnesses, below.

6) **Creating a material fact not in the record** (Rule 616)

a) One objection available only during a mock trial, allows you to stop an opposing witness from creating new facts. Witnesses are bound by their witness statements and cannot invent new, material facts, or even testify to information contained in another person's witness statement. An opposing attorney may object when, on direct examination, the witness

makes a statement of fact which is not in the witness' statement and is likely to affect the outcome of the trial.

Example of an objection:
Q: *Mr. Bear, what was the condition of your house when you arrived home?*
A: *Terrible. Ms. Locks had burned the sofa in the fireplace. The bathroom was flooded because she left the water running in the tub. She plucked out the eyes of my daughter's favorite stuffed animal.*
Attorney: *Objection, your Honor, the witness is creating a material fact not in the record. On line 35 of Mr. Bear's statement, he says, "When I got home, the place was a mess! There were toys everywhere." Nowhere does he mention burning items, flooding, or destroying toys.*

Examples of a response:
***Your Honor**, the fact is not likely to affect the outcome of the trial. (Such as, for example, the witness inventing her middle name.)*
***Your Honor**, the fact testified to is stated in line ___ of the witness' statement.*

b) On cross-examination, a cross-examining attorney **may not** object to the witness creating a material fact. If the witness testifies contrary to the witness' statement, the attorney should impeach by prior inconsistent statement. (See p. 24.) If the attorney asks a question about a fact that does not exist in the witness' statement, the witness may answer consistent with the statement, so long as the answer does not materially affect the rest of the witness' testimony, or may simply say, "I don't know."

c. **Objections based on the substance of the witness' testimony**
These are objections to the substance of the witness' testimony. The question may have been worded properly, and the witness may have knowledge of the fact, but the testimony is inadmissible because it does not matter to the case, is unfair, or is excluded for other reasons. They include:

- *Relevance*
- *Unfairly prejudicial* (New this year)
- *Improper character evidence*
- *Hearsay*

1) **Relevance** (Rule 401, 402)

a) Generally, only relevant testimony and evidence is allowed. Relevant evidence is evidence that tends to make an important fact more or less likely than the fact would be without the evidence. Testimony, physical evidence, and demonstrations may be disallowed if they have no direct bearing on the issues of the case or have nothing to do with making the issues clearer.

b) Note that the witness' credibility is always relevant. Thus, questions about facts showing the witness' bias, motive, or interest should generally be allowed, even if the questions themselves might not have to do with the events in the case.

Example of an objection:
Q: *Mr. Bear, isn't it true that Mama Bear never made cookies for your child?*
Attorney: *Objection, your Honor, relevance.*

Example of a response:
***Your Honor**, the question is relevant to the issue of ___ (knowledge, or breach of duty, or causation, or damages, whatever the legal elements are in the case).*
Q: *Mr. Bear, isn't it true that Ms. Lock's father, a banker, foreclosed on your house a few years ago?*
Attorney: *Objection, your Honor, what does that have to do with this case?*
Response: *Your Honor, the question goes to Mr. Bear's bias against Ms. Locks. Because Ms. Locks' family caused him financial ruin, it's more likely that his testimony about what Ms. Locks did in his house is untrue.*

2) **Danger of unfair prejudice** (Rule 403)

a) Sometimes evidence might be relevant, but if it is admitted, the trier of fact might be so prejudiced against the other side that it would be impossible for the other side to get a fair trial. The evidence can be excluded.

b) The evidence must not just be "prejudicial" to the other side--all adverse evidence is "prejudicial"--it must be "unfairly prejudicial." And the danger of prejudice must "substantially outweigh" any value it has as relevant evidence.

Example of an objection:
Q: *Your Honor, I move to admit Exhibits A-Z, twenty-four close-up pictures of the corpse of the 8-year-old murder victim.*
Attorney: *Objection, your Honor, this evidence is not relevant. And even if it is marginally relevant, its probative value is substantially outweighed by a danger of unfair prejudice.*

Examples of a response:
***Your Honor**, this evidence is highly relevant to determine the issue of ____; therefore, its probative value substantially outweighs the risk of unfair prejudice.*
***Your Honor**, the evidence is not unfairly prejudicial; the evidence shows ____.*

3) **Improper character testimony** (Rule 404, 406, 608)

a) The proper use of character evidence is extremely complicated. Most mock trial students--and really most attorneys--do not understand these rules, so do not feel bad if you are unable to master them.

b) For mock trial purposes, evidence of a person's character, character trait, or a specific bad act (i.e., the witness is generally a bad person, they are untruthful, they are cruel, they previously tortured animals) is generally not admissible to prove that they acted a particular way on an issue relevant at trial, sometimes called "conduct in conformity". This means that the opposing party may not introduce evidence that a criminal defendant is "bad" or "mean", or because the party tortured cats in the past, he is more likely to have murdered someone.

c) Additionally, evidence of a witness' religious beliefs is not admissible to enhance or impair the witness' character or credibility.

d) There are exceptions to these general rules.

i) First, if a criminal defendant offers evidence of her character, the prosecution may introduce evidence rebutting that evidence. So, for example, if a defense witness testifies that the defendant has "never harmed a flea," then the prosecution could ask the defense witness about the defendant torturing cats.

ii) Second, a witness may be impeached by the introduction of evidence that the witness was convicted of crimes related to dishonesty, or any felony conviction, so long as the felony conviction occurred within the last 10 years, or that another witness can testify that the first witness has a reputation for untruthfulness.

iii) Third, other crimes, wrongs, or acts may be admissible not to show conduct in conformity, but rather for other purposes, such as motive, intent, plan, lack of mistake, or other purposes listed in Rule 404(b).

For example:
Goldilocks' previous conviction for breaking and entering the Bears' house may be admissible not to show that because she broke into the house in the past, it is more likely that she broke in this time, but to show that she knew she did not have permission to enter the Bears' home this time.

iv) Fourth, evidence of a person's habit is admissible to prove that the person acted in the same way. The line between impermissible "conduct in conformity" and permissible "habit" is blurry and difficult. In general, something is someone's habit if it is the person's (or organization's) regular response to a repeated, specific situation. The action should be "semi-automatic," "specific," "regular," and "frequent".

Examples of an objection:
***Objection**, Your Honor, the question seeks to introduce improper character evidence.*
***Objection**, Your Honor, counsel is seeking to prove conduct in conformity with a past bad act.*
***Objection**, Your Honor, the defendant has not put her character at issue.*
***Objection**, Your Honor, the witness' reputation for truthfulness is at issue here, not the witness' reputation for (neatness, kindness to dogs, etc.).*

Examples of a response:
***Your Honor**, the Defendant has put her character at issue by ____.*
***Your Honor**, this evidence is offered to impeach the witness and is permitted by Rule 608.*

***Your Honor**, this evidence is not offered to prove the witness' character, but instead is offered to prove her (motive, intent, plan, etc.).*
***Your Honor**, this is evidence of the witness' habit or routine practice.*

4) **Hearsay** (Rule 801, 802, 803, 805)

a) Hearsay is the in-court repetition of an out-of-court statement in which the statement is being offered to prove the truth of the statement. Different from previous years, the new Simplified Rules define as hearsay any out-of-court statement offered for its truth. It does not matter whether the person who gave the statement is in court to testify.

b) An out-of-court statement is any statement made not during the trial. This includes oral statements ("John said, ...") as well as statements in documents.

c) What does "offered for the truth of the matter asserted" mean? It means that the party is offering the statement, so the judge will believe the statement is true (not merely that someone said the statement).

i) If a witness testifies, "Mama bear yelled, 'Goldilocks is in our house!'" and the prosecutor is entering the evidence to convince the judge that Goldilocks, in fact, was in the house, then the statement is being "offered for the truth of the matter asserted."

ii) But if the statement is being offered for another purpose, for example, to show that Mama bear knew who Goldilocks was at the time of the break-in, then the statement is not hearsay by definition.

d) In general, hearsay is not admissible, but there are a number of exemptions and exceptions to this blanket rule.

i) The rules exclude from the definition of hearsay statements made by a person, under oath, in the current proceeding.

ii) This rule is slightly different from the rule in real life, but the effect is that witness statements are not

hearsay, and statements in them can be offered for their truth.

e) Second, a statement by the opposing party, offered against the party, is not hearsay. This rule is sometimes referred to an "admission by a party opponent."

f) Third, there are a slew of hearsay exceptions. The Simplified Rules have six exceptions:

i) An **Excited Utterance** is a statement relating to a startling event, made while the speaker was under the stress of the excitement it caused.

Example testimony:
"I saw Ms. Locks run out of the house. She was terrified. She said, 'Oh my goodness, these bears are trying to eat me!'"

ii) The **State of Mind** exception allows hearsay statements describing a condition while the speaker was describing the condition.

Example testimony:
"Yes, I saw the defendant five minutes before he got into his car. He said, 'I probably should not be driving. I'm feeling drunk.'"

iii) **Statements for purposes of medical diagnosis and treatment** are admissible when they are made for, and related to, a medical diagnosis or treatment.

Example testimony:
"The plaintiff was my patient. When she came in for her examination after the accident, she said that she got a little bump on her head when she rear-ended the driver in front of her, but her neck snapped back hard when the driver behind her rammed into her afterwards, and she was afraid she had whiplash."

iv) The **Business Records** exception allows documents to be admitted if they are regularly kept in the ordinary course of business, and the record was made at or near the time by a person with knowledge.

Example testimony:
"These cell phone records are automatically generated every month to show every call in and out of the cell phone. They are kept in our servers, and I printed them out."

v) **Learned Treatises** (basically, well-recognized books or articles) are allowed to be admitted as part of cross-examination to expert witness' testimony, if the expert admits that the book is reliable.

Example testimony:
"Yes, I admit that Black's Law Dictionary is the primary source for looking up legal terms. Even though Black's defines a 'contract' as requiring mutual assent, I believe the contract in this case came about because of implied consent."

g) Finally, attorneys should look out for "hearsay within hearsay", or sometimes called "double hearsay". This occurs when a hearsay statement exists within another hearsay statement; for example, a police report contains hearsay statements made by eyewitnesses. Each hearsay statement must have an appropriate exception.

D. HINTS ON OBJECTIONS

1. Object as soon as you're sure you feel comfortable about a question asked or the answer a witness begins to give. While you should wait until the question is completely asked before objecting, feel free to stand up in anticipation of the objection.

2. Use objections sparingly and accurately (i.e., when it matters), not wildly. Too many objections during a trial may be annoying to the judge. Do not object to a question if you intend to address the exact same testimony during your examination.

3. Only the attorneys assigned to do the direct or cross-examination of a particular witness shall raise and respond to objections when the opposing side conducts its examination of that witness. (See "Team Composition," p. 7 of the Handbook.)

4. Do not argue with opposing counsel on objections. Direct all arguments to the judge.

5. If the judge rules against you on a point in the case, take the ruling gracefully. Be cordial to the judge; don't roll your eyes, sigh, protest, or interrupt the judge. Don't thank the judge for ruling against (or for) you. Don't take the ruling personally or be afraid to object again.

6. Don't give up a line of questioning because an objection to one question is sustained. Take a deep breath, then think of a different way to ask the question or approach the subject.

7. If an objection is overruled, ensure that the witness has answered the question asked. Re-ask the question, if necessary.

8. If an objection is sustained, ensure that the opposing party does not simply ask the same question again to "sneak" in the testimony.

9. Sometimes if your witness is getting killed on cross, you have to object to just try to break up the flow. Objections about the form of the question, or the "unfairly prejudicial" objection, which almost always requires the attorneys to respond, are often particularly effective in this situation.

E. INTRODUCTION OF DOCUMENTS OR OTHER PHYSICAL EVIDENCE

1. There is a special procedure for introducing physical evidence (called exhibits) during a trial. Physical evidence includes written materials, diagrams, photos, or any other object that might help clarify what happened.

2. Most of the time, physical evidence does not include a witness' statement or any demonstratives (like a notepad or enlargement); these physical objects will not be admitted into evidence. The physical evidence must be relevant to the case, and the attorney must be prepared to defend its use on that basis.

3. Below are the basic steps an attorney must use when introducing a physical object or document for identification and/or use as evidence.

   a. **Mark before trial.**
   Most exhibits used in mock trials will come premarked with exhibit numbers. **Use those numbers if they are provided.** If not, Prosecution/Plaintiff should mark exhibits with numbers (P-1, P-2, etc.), and Defense should mark exhibits with letters (D-A, D-B, etc.). Make sure the opposing party has seen your premarked exhibits before the trial begins.

   b. **Identify exhibit.**
   Your Honor, I would like to refer to what has been marked as Exhibit 1, a picture of a golden hair.

c. **Show opposing counsel.**
Let the record reflect I am showing opposing counsel what has been marked as Exhibit 1.

d. **Ask to approach the witness and provide the witness a copy.**
It's best if the attorney has a second copy for herself to refer to during the questioning. May I approach the witness to hand him a copy of Exhibit 1?

e. **Show witness.**
Baby Bear, I am handing you a copy of Exhibit 1. Do you recognize Exhibit 1?

f. **Lay foundation.**

1) At this point, the attorney must ask the witness a series of questions about Exhibit 1 in preparation for asking the crucial question.

2) This may include how the witness recognizes the exhibit, whether any document is a fair and correct copy, and any other questions necessary to demonstrate that the witness has personal knowledge of the exhibit, and there is sufficient foundation for the exhibit to be admitted.

g. **Request admission of the exhibit.**
Don't wait until you have asked substantive questions about the exhibit. Your Honor, Defense offers Exhibit 1 into evidence.

h. **Objections.**

1) Opposing counsel may then object to the exhibit's admission (if there is some basis for objection, such as lack of foundation, relevance, hearsay, or the like), and the judge will decide whether the exhibit is to be admitted.

2) If it is admitted, continue. If not, you may be able to repeat the steps (f.) above, laying more foundation to get the exhibit admitted. If the exhibit is not admitted, you may not refer to it in testimony or in closing argument.

i. **Ask crucial questions.**
At this point, the attorney should ask about the substance of the exhibit: This hair does not match the hair on Goldilocks' head, does it?

j. **Collect and keep the exhibit.**

When finished asking about an exhibit, ask permission to retrieve it from the witness. The judge may request that you place it on the bench, give it to the bailiff, or keep it safe in another way.

F. **OPINIONS OF EXPERT WITNESSES** (Rule 702, 703)

1. As a general rule, a witness may not give opinions on matters that require specialized knowledge, skill, training, education, or experience. Witnesses who do have such special knowledge and have no (direct) interest in the outcome of trial may provide an "expert opinion".

2. An expert must be qualified to give an expert opinion, and the basis of their qualification must be sufficiently established during trial through questioning.

   Examples:
   To lay foundation for a law enforcement officer to be an expert in fingerprint identification, the following questions could be asked:
   Q: *What do you do for a living?*
   Q: *How long have you been a police officer?*
   Q: *What sort of education or training did you have to have to become a police officer?*
   Q: *What specialties do you have?*
   Q: *What type of specialized training have you had on fingerprint identification?*
   Q: *What experience have you had using your education and training to identify fingerprints?*

3. At this point, in the past, our rules suggested that the side offering the expert had to "tender" the expert--to ask the judge, "Your Honor, I would like this witness to be qualified as an expert in fingerprint identification." Then, the opposing party might object to the qualification, and the Court would rule.

   a. "Tendering" does not happen often in real trials (because judges do not want a jury to think that the judge's approval means the jurors have to believe the expert), and it is not required under the Simplified Rules.

   b. While the rules do not prohibit tendering, a judge is not required to qualify an expert. All an attorney needs to do is lay sufficient foundation for the expert to testify, and then ask the expert's opinion:

      Q: *Based on your education, training, and experience, as well as your examination of the fingerprints at the scene and the record of Ms. Locks' prints kept in the police database, have you formed an opinion, to a reasonable degree of certainty, about whether the fingerprints at the scene came from Ms. Locks' fingers?*

c. At this point, the opposing party could object that there is not sufficient foundation for the witness to provide an expert opinion, or that the question falls outside of the witness' expertise.

G. USE OF A WITNESS' STATEMENT TO IMPEACH OR REFRESH THE WITNESS' RECOLLECTION

- In mock trials, witnesses generally may not use notes and may not refer to their witness statements. However, their statements may be shown to them in two particular circumstances--when used to refresh the witness' recollection (generally on direct examination), and when used to impeach the witness by a prior inconsistent statement (generally on cross-examination).

a. **Refreshing recollection (Rule 612)**

1) If a witness is unable to recall a statement made in that witness' statement, or if the witness' testimony contradicts the statement, the attorney on direct may have the witness refer to that portion of the statement that could help the witness to remember. This is generally done on direct examination to help the attorney's own witness to remember.

2) Of course, refreshing a witness' recollection may be embarrassing for the witness. An attorney must decide whether to follow the procedure for refreshing recollection, or simply asking additional questions to clarify the witness' testimony.

3) **Procedure for refreshing recollection.**

a) **Confirm that the witness cannot remember or has made a mistake.**

Q: *Ms. White, I asked you what color the apple was, and you said that you can't remember; OR*
Q: *Ms. White, I asked you what color the apple was, and you said that it was red. Are you positive about that? [This may draw an objection for leading the witness, but you respond by saying that you're laying foundation to determine whether the witness needs to have her recollection refreshed.]*

b) **Ask the witness if there is something that would refresh her recollection on the matter.**

Q: *Ms. White, is there something you could refer to that would refresh your recollection about what color the apple was?*
A: *Oh yes, my witness statement.*

c) **After asking to approach the witness, hand the witness the statement, pointing out the part of the statement that is relevant. Do not have the witness read the statement out loud. Take the witness statement back from the witness.**

d) **Ask if the witness' memory is refreshed.**

Q: *Now, after reviewing the statement, has your memory been refreshed about what color the apple was?*
A: *Yes.*

e) **Ask the question.**

Q: *What color was the apple?*
Note: *You do not enter the witness statement into evidence nor have the witness read the statement out loud.*

b. **Impeaching a witness by a prior inconsistent statement** (Rule 608)

1) To "impeach" a witness simply means to put on evidence showing that their testimony is not to be believed.

2) The rules allow impeachment by prior criminal convictions, an opinion about the witness' truth-telling ability, and, finally, by demonstrating that they testified one way before (in this case, in their witness statement) and now are saying something different.

3) An "impeached" witness is not automatically disqualified, nor does their testimony have to be wholly disregarded. Impeachment is just a method to demonstrate they should not be believed.

4) To impeach a witness with a prior inconsistent statement, the attorney should:

a) **Allow the witness to make the inconsistent statement.**

b) **Ask the witness if she made a statement at an earlier time.**

c) **Ask the witness if she told the truth when she made the earlier statement.**

d) **Ask the Court to approach the witness.**

e) **Show opposing counsel the copy of the statement the attorney plans to use, identifying the paragraph or lines to which she will refer.**

f) **Show the witness her statement, asking if the signature on the statement is her own.**

g) **Point the witness to the specific line or paragraph of the prior inconsistent statement. Ask her to read along while you read aloud the lines.**

h) **Confirm with the witness that you read the lines correctly.**

i) **Stop. Do not accuse the witness of lying or asking why her testimony is different today. That may be done in closing argument.**

H. JUDICIAL NOTICE (Rule 201)

1. The purpose of judicial notice is to allow the Court to recognize a fact everyone agrees on without having to put on testimony about that fact. For the purposes of mock trial, the facts capable of being noticed are facts "not subject to dispute" and are a "matter of mathematical or scientific certainty."

2. **For example:** The court could take judicial notice that 10 x 10 = 100 or that there are 5,280 feet in a mile. The request may be made during a witness' testimony, or before or after a witness testifies. These should be used sparingly, as most facts which could be judicially noticed also may be introduced through fact or expert witnesses.