

IN THE SUPREME COURT OF MISSISSIPPI

**JOSEPH MICHAEL UPCHURCH**

**APPELLANT**

**VERSUS**

**NO. 2011-CC-00226**

**CITY OF MOSS POINT,  
A BODY POLITIC, AND  
ITS CIVIL SERVICE COMMISSION**

**APPELLEE**

**ON APPEAL FROM THE CIRCUIT COURT OF  
JACKSON COUNTY, MISSISSIPPI**

## **APPELLANT'S REPLY BRIEF**

**Oral Argument Requested**

Russell S. Gill, MSB [REDACTED]  
RUSSELL S. GILL, P.L.L.C.  
638 Howard Avenue  
Biloxi, Mississippi 39530  
Telephone: (228) 432-0007  
Facsimile: (228) 432-0025

**ATTORNEYS FOR APPELLANT**

Marilyn H. David, [REDACTED] Of Counsel  
RUSSELL S. GILL, P.L.L.C.  
638 Howard Avenue  
Biloxi, Mississippi 39530  
Telephone: (228) 432-0007  
Facsimile: (228) 432-0025

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### **AMENDED STATEMENT REGARDING ORAL ARGUMENT**

Appellant amends his previous statement regarding oral argument to add paragraph (4) below.

In accordance with Rule 34 of the Mississippi Rules of Appellate Procedure, Appellant requests oral argument. This appeal involves an area of law that has yet to be decided by the Supreme Court. There has been no determination by this Court regarding:

(1) Whether Mississippi Code Annotated § 21-31-5 requires that there be a fully appointed and constituted Civil Service Commission of three members in order for the Commission to have power to terminate an employee.

(2) Whether there must be a fully appointed and constituted Civil Service Commission of three members at the time it terminates an employee, in order for due process requirements to be met.

(3) Whether the Civil Service Commission was exercising enforcement authority as an agent of the City of Moss Point, and made the final decision on behalf of the City, when the Commission conducted a de novo investigatory hearing, made findings of fact, and decided to terminate police officer Upchurch's employment.

(4) Whether the limitation relating to appeals in Miss. Code Ann §21-31-23 is unconstitutional because it invades the powers of the judiciary.

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Appellant, Joseph Michael Upchurch, submits this Reply to Appellee's Brief [hereinafter "City Br."].

**I. This Court has power to hear Upchurch's claims of constitutional and statutory violations.**

Appellees, the City of Moss Point and its Civil Service Commission [hereinafter collectively "the City"], claim Upchurch's constitutional "argument that the Commission refused to allow him to fully present his case regarding constitutional violations by the City" should not be considered because it is being made for the first time in this Court. (CityBr.1)

**a. The City's argument is procedurally barred because the City provided no authority.**

The City cites to no authority in support of its argument on this issue in the present appeal. Therefore, its arguments on this issue are procedurally barred. *City of Vicksburg v. Cooper*, 909 So. 2d 126 (2005); *Slay v. Spell*, 882 So.2d 254, 261(¶ 20) (Miss.Ct.App.2004) (citing *Douglas v. Blackmon*, 759 So.2d 1217, 1221(¶ 13) (Miss.2000), as cited in *Cooper*, 909 So.2d at 130. This Court has

consistently held that "an argument unsupported by cited authority need not be considered by the Court." *Dowdle Butane Gas Co. v. Moore*, 831 So.2d 1124, 1136 (Miss.2002). In addition, we have expressly held that "[i]t is the duty of an appellant to provide authority . . . *Jones v. Howell*, 827 So.2d 691, 702 (Miss.2002). . . . This Court is therefore procedurally barred from considering unsupported assertions on appeal. *Webb v. DeSoto County*, 843 So.2d 682, 685 (Miss.2003).

*Entergy Mississippi, Inc. v. Bolden*, 854 So.2d 1051, 1057 (Miss. 2003)

**b. The standard of review requires the Court to look beyond the decision of the lower court to the Commission hearing and decision where the constitutional and statutory violations took place.**

Even if the Court holds the City's argument is not procedurally barred, the Court has power to review Upchurch's arguments. The Court has been clear about the extent of its

review of City decisions. The Court has made clear that its role is to look beyond the circuit court's decision and review the Commission's decision to terminate Upchurch: "Ordinarily in reviewing the decision of a circuit court, sitting as an appellate court, 'we look beyond the decision of the circuit court and examine the decision of the City,' because 'the circuit court's role was not as a trier of fact, but rather as an appellate court.'" *Mayor & Bd. of Aldermen, City of Clinton v. Welch*, 888 So.2d 416, 418(¶ 10) (Miss.2004), as cited in *Cooper*, 909 So.2d at 129.

Another court explained that the standard of review of a Mississippi appellate court is identical to that of the circuit court, and it consists of determining whether to affirm the administrative agency's decision. *Bynum v. Mississippi Dept. of Educ.*, 906 So.2d 81, 90 (Miss.App. 2004), citing to *Wilkinson County Bd. of Supervisors v. Quality Farms, Inc.*, 767 So.2d 1007, 1010(¶ 9) (Miss.2000).

These cases require the Court to examine whether the City, in reaching its decision, denied Upchurch his right to present his claims that the City had denied his other constitutional and statutory rights.

In addition, the fourth prong of the Court's standard of review requires the Court to determine whether the Commission "violated some statutory or constitutional right of the complaining party." *Southeast Miss. Legal Serv. v. Miss. Power*, 605 So.2d 796, 798 (Miss.1992). Thus, the Court must review de novo, as a matter of law, the constitutional and statutory rights violations Upchurch attempted to raise at his hearing before the Commission, as well as the constitutional violation the Commission committed by refusing to allow Upchurch to raise them. (See Upchurch Initial Br. I.A & F.)



**c. Upchurch attempted to raise his arguments at the trial level.**

Upchurch's arguments concerning violations of his constitutional and statutory rights are cognizable by this Court because Upchurch attempted to raise them before the Commission, which served as the trial-level fact-finder. *Johnson v. Gray*, 859 So. 2d 1006 (Miss. 2003). The City admits that the Commission sat "as judge and jury" for Upchurch's termination. (CityBr.7) (See Upchurch's Initial Br. Part I.G, pp. 12-15.)

**d. Even if Upchurch had not raised his arguments at trial, the Court has power to decide them under M.R.A.P. 28(a)(3).**

Upchurch attempted to raise his arguments before the Commission, but the City objected and the Commission repeatedly cut-off Upchurch's arguments and his witnesses' supporting testimony. (See citations at Upchurch Initial Brief at 33, Part VI.F.) The Commission's refusal to allow Upchurch's counsel to present its case is reversible error. See, e.g., *Mississippi Power Co. v. Harrison*, 247 Miss. 400, 152 So. 2d 892 (1963).

But, even if Upchurch had not raised his arguments at trial, "the Supreme Court can recognize plain error" and hear them anyway. *Johnson v. Gray*, 859 So. 2d 1006 (Miss. 2003) (noting inherent power of court to recognize plain error). The Court has held:

Normally, where a party fails to raise an issue before the trial court, we are procedurally barred from considering that issue. \*941 *Southern v. Miss. State Hosp.*, 853 So.2d 1212, 1214-15 (Miss.2003). However, under M.R.A.P. 28(a)(3), "the [C]ourt may, at its option, notice a plain error not identified or distinctly specified." We have held that the plain error rule becomes operable when the appellant "(1) ... has failed to perfect his appeal and (2) when a substantial right is affected." *State Highway Comm'n of Mississippi v. Hyman*, 592 So.2d 952, 957 (Miss.1991).

*Mississippi Mun. Liability Plan v. Jordan*, 863 So.2d 934, 940 (Miss. 2003).

The Court held in another case that admission of an expert witness' testimony was an error and that \$60,000 in funds at stake was a substantial right affected by the error:

This Court will ignore this requirement for preservation on appeal when a substantial right is affected. This Court retains the power to notice plain error. Miss.R.Evid. 103(d); Comment to Miss.R.Evid. 103. The plain error doctrine reflects a policy to administer the law fairly and justly. A party is protected by the plain error rule when (1) he has failed to perfect his appeal and (2) when a substantial right is affected. The Commission's appeal is not perfected because the error was not objected to at trial. And a substantial right is affected. Over \$60,000.00 of the State's money is at issue in this appeal. This is certainly a substantial right affected by the error of admitting Teague's testimony.

Admitting the testimony of Teague, Hyman's expert witness, was plain error. Teague used improper considerations in determining the value of the Hyman property.

*State Highway Com'n of Mississippi v. Hyman*, 592 So.2d 952, 957 (Miss. 1991).

Similarly, Upchurch's property right in his employment (see Upchurch's Initial Br. at 31, Part VI.B) is a substantial right at stake in this appeal, and the Commission's refusal to allow Upchurch to present evidence of race discrimination and other constitutional and statutory rights violations was a clear error affecting Upchurch's substantial right to employment.

Thus, in the alternative, Upchurch asks the Court to use its inherent authority to notice as error the constitutional and statutory rights violations Upchurch has raised, including that the Commission refused to allow Upchurch to present his case at hearing on his claims of race discrimination and First & Fourteenth Amendment violations, and to determine that these errors affected his substantial right of employment.

**II. It is proper for the Court to decide Upchurch's issues of constitutional and statutory violations in this appeal.**

The City argues that this appeal is "not the proper avenue" for Upchurch to argue his claims that his termination should be overturned because the City violated his rights under the First & Fourteenth Amendments, and under Title VII (42 U.S.C. §2000e) & Section 1983 (42 U.S.C. §1983), and that these claims should be brought in federal district court instead.

(CityBr.2-3) The City stated it would not respond to these claims made by Upchurch.

(CityBr. 3)

The City presented no authority to support this argument. As established in Part I.a, *supra*, this argument is thus waived as an issue for review, and Upchurch's claims of constitutional and statutory violations stand unrefuted.

Even if the City's argument were not waived, the City is plain wrong. As stated in Part I.b above, this Court has made clear that its role is to review the underlying administrative agency's decision, and the fourth prong of the Court's standard of review requires the Court to determine whether the Commission "violated some statutory or constitutional right" of Upchurch. *Southeast Miss. Legal Serv. v. Miss. Power*, 605 So.2d 796, 798 (Miss.1992). (See Upchurch Initial Br. at Part I, Part VI.F.)

**III. If the City's interpretation of Miss. Code Ann. § 21-31-23 is adopted, the statute is unconstitutional because it invades the powers of the judiciary.**

The City claims "the only issue before this Court is . . . whether the Civil Service Commission's decision to uphold the termination of . . . Upchurch was or was not made in good faith for cause, and no appeal to such court shall be taken except upon such grounds."

(CityBr.1) The City states that Miss. Code Ann. § 21-31-23 limits the Court to this one issue, and the City objects to the Court deciding any "issues stated by Upchurch [that] exceed this limitation." (CityBr.1) However, the City does later at least concede that "intertwined with this question is whether or not there was substantial evidence before the Commission to support its order and whether it is arbitrary, unreasonable, confiscatory, and capricious."

(CityBr.7) The City conveniently leaves out the fourth prong of the Court's standard of review, i.e., whether the Commission's decision violated some constitutional or statutory right of Upchurch. *Southeast Miss. Legal Serv. v. Miss. Power*, 605 So.2d 796, 798 (Miss.1992).

Indeed, §21-31-23 states that the circuit court shall “hear and determine” a city employee’s termination by a civil service commission, and that the “hearing shall be confined to the determination of whether the judgment or order of . . . discharge . . . made by the commission, was or was not made in good faith for cause, and no appeal to such court shall be taken except upon such ground or grounds.” *Id.* at last sentence. Apparently based upon this section, the City insists that this Court is “not the proper avenue” for Upchurch claims of constitutional and statutory rights violations. (CityBr.7,1) The City’s position seems to be that § 21-31-23 precludes this Court from applying the fourth prong of its standard of review, which would allow consideration of those claims.

Section 21-31-23, if interpreted as the City wants, would be unconstitutional because it attempts to abridge Upchurch’s rights of appeal and thus to deny him due process of law under the Fourteenth Amendment. Section 21-31-23 gave Upchurch a right to appeal to the circuit court for review of the Commission decision terminating his employment. Upchurch has a property right in his employment, and abridging his right to appeal is a denial of due process in the taking of his property.

The scope of appellate review of all administrative agency orders is articulated in Mississippi Uniform Circuit and County Court Rule 5.03, which, unabridged, includes all four prongs of the standard of review. The Court has consistently enunciated the four-pronged standard for appellate review. *Southeast Miss. Legal Serv., supra*, and Upchurch’s Initial Brief at Part I.A. The Court also intended for its jurisdiction over appeals to remain unfettered, stating:

This Court's role is made clear by the jurisdiction conferred upon it and the oath of the justices elected to administer its functions. Mississippi Constitution, Section 146 (1890) provides:

The Supreme Court shall have such jurisdiction as properly belongs to a court of appeals.

*Newell v. State*, 308 So.2d 71, 77 (Miss. 1975).

The Court's pronouncement of its jurisdiction and four-pronged standard of review, which would allow Upchurch's issues of constitutional and statutory rights violations to be appealed, conflicts with Section 21-31-23's limitation of issues for appeal. Under this circumstance, this Court's determinations of jurisdiction and standard of review governs:

"Where a statute conflicts with a determination of this Court concerning constitutional interpretation and powers, this Court's determination shall control." *Mississippi Bar v. Jackson*, 904 So. 2d 109, 111 (Miss. 2004). This Court in *Newell* elaborated:

We are keenly aware of, and measure with great respect, legislative suggestions concerning procedural rules and they will be followed unless determined to be an impediment to justice or an impingement upon the constitution. The inherent power of this Court to promulgate procedural rules emanates from the fundamental constitutional concept of the separation of powers and the vesting of judicial powers in the courts. Matthews v. State, 288 So.2d 714 (Miss.1974); Gulf Coast Drilling & Exploration Co. v. Permenter, 214 So.2d 601 (Miss.1968); and Southern Pacific Lbr. Co. v. Reynolds, 206 So.2d 334 (Miss.1968), wherein the following is stated:

... The phrase 'judicial power' in section 144 of the Constitution includes the power to make rules of practice and procedure, not inconsistent with the Constitution, for the efficient disposition of judicial business. 206 So.2d at 335.

*Newell, supra*, at 77. The Court in *Newell* stated it is a "universally accepted principle" that if there be a clash between the edicts of the constitution and the legislative enactment, the latter must yield.

Similar to the statute in *Newell*, Section 21-31-23 contravenes the constitutional mandates imposed upon the judiciary for the fair administration of justice, since such administration is thwarted by the terms of the statute, i.e., that no appeal to the court shall

be taken except upon the issue of whether Upchurch's termination was "made in good faith for cause." These terms prohibit the Court from properly applying its appellate jurisdiction and four-pronged standard of review, which would entail entertaining Upchurch's claims of constitutional and statutory rights violations, as well as his claims of lack of substantial evidence due to erroneous factual findings, and of arbitrary and capricious imposition of disciplinary action. (See Upchurch's Initial Brief at Part I) Similar to the statute in *Newell*, this limitation on the courts in Section 21-31-23 must fall.

**IV. Appellees' factual assertions unsupported by citations to the record should be disregarded.**

The City makes many unfounded factual assertions unsupported by citations to the record, most frequently in its Statement of the Case and Statement of the Facts. (City Br. 1-3) These assertions are:

- a. Upchurch had a full opportunity to respond to the "no confidence" letter.
- b. The Commission did not add a new ground for termination when it gave "lack of loyalty to Chief Smallman" as a ground for termination. (CityBr.1)
- c. Upchurch's counsel represented to the Commission that Upchurch had been given full due process and "had his day in Court."

These arguments or assertions are waived because the City's brief fails to include citations to the record on appeal, and therefore provides no support for its assertions. As the Fifth Circuit stated, the Rules of Appellate Procedure require that the parties, "rather than the courts of appeals, ferret out and articulate the record evidence considered material to each legal theory advanced on appeal," and failure to do so waives the assertions and associated arguments. *Alexander v. Monsanto Co.* 396 Fed.Appx. 137, 140 (5<sup>th</sup> Cir. 2010), referencing to Fed.R.App.P. 28(a)(9), which is analogous to M.R.A.P 28(a)(6).

Even if these factual assertions were not waived, they are false. Assertion (a) is false because Upchurch had no notice that the letter was a ground for termination and, as a matter of law, there cannot be an adequate opportunity to be heard and to respond, without notice. Miss. Code Ann. § 21-31-23. (See Upchurch's Initial Brief at VI.C.)

Assertion (b) is false because the letter giving Upchurch notice of the grounds for which he was being terminated did not include "lack of loyalty" for signing the "no confidence" letter. (Ct.T. 13; R.E.247) (See Upchurch Initial Brief at Part VI.C.) The letter speaks for itself.

Assertion (c) is false because the record shows the Commissioners cut-off Upchurch's counsel and witnesses and precluded their further case presentation, evidence, and testimony; Upchurch's counsel stated several times on the record they were attempting to present their case on discrimination and retaliation, which included constitutional and statutory violations. (See Upchurch's Initial Brief at Part VI.) The Commission's refusal to allow Upchurch's counsel to present its case is reversible error. See, e.g., *Mississippi Power Co. v. Harrison*, 247 Miss. 400, 152 So. 2d 892 (1963).

**V. Smallman's racially biased and retaliatory testimony and actions drove every one of the Commission findings that resulted in Upchurch's termination.**

The City claims that the discriminatory actions of Police Chief Smallman "are irrelevant because she lacked the authority to terminate Upchurch," and only "the Mayor and the Board were the final resting authority on his termination." (City.Br.2) The City claims "Upchurch provided no evidence that the Mayor and Board of Aldermen have ever discriminated against Upchurch in any way." (CityBr.3)

The City's arguments lack merit. Upchurch established that the Commission took the final action to terminate Upchurch for the City (Upchurch's Initial Br. at Part I.G), and the

Commission, and therefore the City, discriminated against Upchurch by conducting an unlawful and inadequate investigation and hearing into the grounds charged against him (Upchurch Initial Br. at Parts II, III, VI, VII) and by terminating him for grounds based upon discrimination and retaliation (Upchurch Initial Br. at Parts IV, V, VII, VIII).

Smallman's discriminatory actions and motives are the linchpin to the Commission's decision, because Smallman's racially biased and retaliatory testimony drove every one of the Commission findings that resulted in Upchurch's termination.

**VI. Erroneous factual findings by definition cannot constitute substantial evidence of a fact, and relying upon them is arbitrary and capricious.**

The City justifies the Commission's erroneous factual findings in support of Upchurch's termination by relying on the rule that, "[w]hen presented with conflicting theories as to the actual events which transpired, the jury is the judge of the weight and credibility of the testimony and is free to accept or reject all or some of the testimony given by each witness." (CityBr.7) This statement of the rule may be accurate, but it does not go far enough.

As with any fact found below, this Court may reverse the Commission if its factual findings are clearly erroneous, or if its factual findings do not relate to the elements necessary to prove the offenses for which Upchurch was terminated. Erroneous factual findings by definition cannot constitute substantial evidence of a fact, and relying upon them is arbitrary and capricious. (See legal authority in Upchurch Initial Brief at Part I.C, Parts I.A,B,D-G.)

**VII. The evidence the Commission relied upon to find "insubordination" was erroneous.**

The City claims Chief Smallman and Officer Cherry "provided strong testimony" to support insubordination. (CityBr.8) This is incorrect, because their testimony does not go to



the elements necessary for a finding of insubordination. To find insubordination, there must be clear communication to the employee directing him to perform an specific action at a particular time and place, and the employee's repeated refusal to perform the action. (See Upchurch Initial Brief at Part VII.A.(1).)

The transcript excerpts cited by the City show only that Smallman gave Upchurch a vague instruction to ensure Cherry received unspecified training somewhere in the field at some unidentified time in the future. (CityBr.9-10) The only contemporaneous memo, that of Smallman, establishes that she told Upchurch to begin training Cherry in the field on November 18<sup>th</sup>, but the Commission erroneously found Upchurch was insubordinate because Cherry said he had not been trained in the field on November 9<sup>th</sup>. (Smallman Memo, R.E.105)(Commission Decision, R.E. 13)

This erroneous factual finding cannot constitute substantial evidence under the laws of Mississippi.

**VIII. The evidence the Commission relied upon to find "disregard for departmental policy" was erroneous.**

The City claims that Upchurch changed his testimony at the Commission hearing about why he did not interrupt Chief Smallman's meeting to get approval for Officer Bond to work 1.75 hours of overtime (costing the Police Department about \$32) to cover for an absent officer. (CityBr.12) The City claims Upchurch:

"knew" he should have gotten permission and in fact testified that the "only" reason he did not was because of the sign on the door. ... However, Upchurch eventually testified the sign had nothing to do with his decision not to get pre-approval from the Chief, but rather he felt entitled to make that call. ... Written policy or not, he knew that pre-approval was needed, but chose to disregard this policy and unilaterally make the call on overtime and early departure.

(CityBr.12)

This is a mischaracterization of the transcribed testimony (CityBr.11-12), and the transcript speaks for itself. (See detailed cites in Part VII.A(2), pp. 40-43, of Upchurch's Initial Brief.) There was no "change" in Upchurch's testimony. He never testified that "the sign had nothing to do with his decision not to get pre-approval."

To the contrary, Upchurch consistently testified that usual departmental practice was to ask the Chief or Deputy Chief for permission for an officer to work overtime, unless those two are unavailable. When they are unavailable, the authority to make the overtime decision falls to the supervisor in charge, who was Upchurch. Upchurch testified that, since the Chief was unavailable because she was in a closed-door meeting with a "DO NOT DISTURB UNLESS EMERGENCY" sign on her door, and the Deputy Chief was unavailable because he was absent, the authority to make the decision fell to Upchurch. He testified that, although being short one patrolman on the street for 1.75 hours would have been a serious situation and warranted making the decision for overtime, according to the usual practice in the department, it was not considered a police "emergency." (T. 119, 120, 123-124) (R.E.181-185). (R.E. 35) (T. 107-108, 116, 78-79; R.E.170,171,178,147-148) (T.136,R.E.194) (T.117, 119, 123-124, 135, 142; R.E.179,181,184-185,193,197) (T-117;R.E.179)

The City produced no evidence contradicting these facts, and the Commission's and the City's mischaracterization of the facts is erroneous, so there is no substantial evidence supporting the Commission's finding.

**IX. The evidence the Commission relied upon to find "failure to call detective or evidence technician to scene" was erroneous.**

**a. The City's evidence does not show Upchurch violated a duty to call out a detective or evidence technician.**

The City claims the evidence from Chief Smallman, Officer Clark, and Officer Savage shows Upchurch "did not adequately perform his duties." (CityBr.14) But, the undisputed

evidence shows Upchurch did not have any duty to call out a detective or evidence technician (i.e., CID), or to override the Deputy Chief, who had this duty but failed to call out the detective or evidence technician. (See Part VII.A(3), pp. 43-45, of Upchurch's Initial Brief.)

Moreover, the City's evidence from Clark and Savage shows they urged Upchurch to abrogate the police department directive (R.E. 37) by either calling out CID anyway or allowing them to do so; but Upchurch refused, stating: "you don't have the authority." (See transcript excerpt at City Br.13, C.S.T. 182-183; quote from memo at City Br.12.) This evidence does not show Upchurch did not perform his duties – it shows just the opposite, i.e., that he as a supervisor enforced Chief Smallman's police department directive by preventing his subordinates from calling in a detective or evidence technician.

Clark and Savage misunderstood the reason why Upchurch would not allow himself or them to call in CID, and their report of the reason why is uncorroborated hearsay, contradicted by more competent evidence: the direct testimony from Upchurch himself as to his reason why. (T.136,117;R.E.194,179) (T. 119, 120, 123-124) (R.E.181-185). (R.E. 35) (T. 107-108, 116, 78-79; R.E.170,171,178,147-148) (T.117, 119, 123-124, 135, 142; R.E.179,181,184-185,193,197) I

It does not matter that the subordinate officers misunderstood as to Upchurch's reason, because the objective, unrefuted testimony as to Upchurch's action (i.e., keeping anyone but the Deputy Chief from calling out CID) shows he was carrying out to the letter the orders (directive) from a higher level.

Therefore, the evidence cited by the City does not support the facts the City claims, and the factual findings of the Commission are erroneous and not supported by substantial evidence.

**b. The City's new ground for terminating Upchurch (i.e., failure to provide detail) must be overturned for lack of notice and substantial evidence.**

When Smallman was confronted at the Commission hearing with a copy of her own written directive preventing Upchurch from calling out CID, she changed the reason Upchurch was being terminated. She changed it to claim that Upchurch should "have explain[ed] what they [had] and why they need[ed] the evidence tech out or the investigator out." (CityBr.13; C.S.T.215) And now the City argues that this is its new reason for termination, as well. (CityBr.13-14)

But the City cannot terminate an employee for a reason where proper notice was not given. Miss. Code Ann. § 21-31-23 provides, "before any such employees may be removed or discharged, he shall be given written notice of the intended termination, which notice shall state the reasons for termination and inform the employee he has the right to respond in writing to the reasons given for the termination . . . and respond orally . . ." The letter of notice served upon Upchurch never gave this as a reason for termination (see Upchurch Initial Brief, Part VI.C), so it must be reversed due to lack of notice and failure of due process.

In addition, the City cannot show Upchurch breached this alleged new duty, because the City produced no competent contemporaneous evidence that Upchurch had any such duty.

Moreover, the only evidence on this issue is that of Smallman's opinion, which lacks evidentiary foundation. Inexplicably, Smallman testified that Upchurch should have given more details to the Deputy Chief about the robbery when Upchurch called the Deputy Chief from the scene of the robbery. But, Smallman showed she had no foundation upon which to make this statement, because she testified she did not even know Upchurch had called the Deputy Chief that night, and the City admits this. (CityBr.13; C.S.T. 215) This means she did

not even know what details Upchurch gave in the conversation, or whether they were insufficient to meet some newly invented duty.

All of the City's evidence regarding this issue is from lower-ranking witnesses (Clark and Savage) unfamiliar with the departmental directive on who had the authority to call out a detective or evidence technician but who testified the directive was violated anyway. Or, it is from a witness (Smallman), admittedly unfamiliar with the facts of what happened that night, who did not even know Upchurch had performed his duty to notify the Deputy Chief of the robbery, and who did not even know what Upchurch said during the notification. But this did not stop her from erroneously testifying anyway, under oath, that Upchurch failed to make proper notification.

In short, it was the African-American Deputy Chief's duty to call the detective or evidence technician out and to inform his boss, Chief Smallman, of his management/supervisory decision. It was the same Deputy Chief who failed to call out CID, and who failed to inform the Chief he had been called the night of the robbery by Upchurch but had decided not to call out CID. Yet, it was white Lieutenant Upchurch that African-American Chief Smallman and the African-American Commissioners decided to fire for failure to call out CID.

This is race discrimination and retaliation, and it must be reversed. (See Part IV, V, & VIII of Upchurch's Initial Brief.)

**X. The evidence the Commission relied upon to find “lack of respect” for Chief Smallman was erroneous.**

- a. The Court should not consider the alleged comment to Chief Gager because the Commission did not find that it occurred or that it supported termination for “lack of respect.”**

The City claims “lack of respect” is supported by substantial evidence because the Commission found “that said statement[ was] disrespectful” to Chief Smallman when Upchurch saw his old friend, Chief Gager, away from the police station and greeted him by saying, “now that is a Chief right there.” (CityBr.14) However, the Commission did not make this finding of fact or rely upon this evidence to support the termination for “lack of respect.” (See Commission findings at R.E.13.) Therefore, the City’s Brief erred by stating this, and the Court should not consider this statement when examining the Commission’s decision.

Furthermore, this comment does not constitute “lack of respect” for the reasons stated in Parts X.b thru d below regarding other comments.

- b. Savage’s and Smallman’s hurt feelings do not turn Upchurch’s comment about the Chief “leaving in three months” into disrespect.**

Instead, the Commission stated it relied upon a finding that Upchurch said Smallman would not be in the Chief’s position in three months, to terminate him for lack of respect. (R.E.13) Upchurch testified what he meant by that: he was not disrespectful but repeating idle gossip like several other officers who were not disciplined for it. As Upchurch himself pointed out, such an idle comment does not pass muster for “disrespect,” when the norm in this workplace is for the Police Chief herself to use racial slurs and refer to white police officers by the disrespectful, disparaging, and racially discriminatory term “white boys.” (Upchurch Testimony, C.S.T. 130) (City Br.16) (See Upchurch Initial Brief at Part IV.B(1), p. 24)

But the City points to hearsay testimony from Officer Savage that is not even on point, as the substantial evidence supporting the Commission's finding. (CityBr.15) Specifically, the City asked Savage if he perceived Upchurch's comment as "disrespectful," but Savage did not say yes. Instead, he testified he "perceived it as being insubordinate due to the simple fact that . . . I was tired of hearing how the Chief was going down." When asked the leading question of whether he was "personally offended" by the comment, Savage said yes. (CityBr.15)(C.S.T. 208-209)

The City points to Smallman's claims that Upchurch's comments made her "feel bad and belittled." (CityBr.15) Apparently, the Chief is a sensitive person and reacted to the comment when other individuals may not have. In any case, Smallman's undue hurt feelings are surely no reason for terminating an upstanding police officer's long-standing career. In other contexts, courts have found that such "claims of being belittled and disrespected" through such "subtle means" are "not sufficiently severe or pervasive enough." *Noah v. Community Place*, Slip Copy, 2011 WL 237701 at \*7 (S.D.Miss. 2011). It is firmly settled that under the United States Constitution the public expression of ideas may not be prohibited merely because the ideas are themselves offensive to some of their hearers. *Street v. New York*, 394 U.S. 576, 591, 592, 89 S.Ct. 1354 (1969).

In conclusion, Savage's and Smallman's hurt feelings do not turn Upchurch's comment about the Chief leaving in three months into disrespect.

**c. The City's mischaracterizes Upchurch's testimony that he has no respect for the Chief's violations of law.**

The City points to Upchurch's testimony before the Commission that he did not respect the way she treated him, as substantial evidence of disrespect. (CityBr.16) But this

is yet another mischaracterization of the hearing transcript, which speaks for itself. (See citations to Upchurch's Testimony in Upchurch's Initial Brief at Part VII.A(4).)

What the transcript really shows is that Upchurch testified he had no respect for the Chief's violations of the law: specifically, he said he had no respect for the Chief's racially discriminatory treatment of him and for her disparaging him with racial slurs, both of which are violations of law. (C.S.T. 109, 130) Even the quotes the City selected to copy into its brief show this. (City Br. 16)

**d. The City has not established there exists a punishable offense of "lack of respect" or that Upchurch's comment met any possible elements for it.**

These facts do not satisfy the elements for a finding of "disrespectful." Even Savage declined the opportunity to characterize the statements as "disrespectful," instead stating he was just "tired of hearing" them.

The City has not even shown there is a punishable offense in the City's civil-service system for "lack of respect." Comments worse than the one Upchurch made are historically not viewed by Mississippi police departments as sufficient reasons for disciplinary action. See, e.g., *Patterson v. City of Biloxi*, 965 So.2d 765 (Miss.App. 2007).

As another example, there is no offense of "disrespect" listed in the Mississippi Administrative Code as an actionable offense. (See Addendum for Code Extract.) Under Miss. Admin. Code § 3-1-1:2.6, the Attorney General's Office established disciplinary procedures in accordance with procedures set forth by the State Personnel Board, requiring all disciplinary actions to comply. The Section does not list "lack of respect" or anything similar as a punishable offense.

The Federal government recognizes an offense of "insolent disrespect toward supervisors," which "so seriously undermines the capacity of management to maintain



employee efficiency and discipline that no agency should be expected to exercise forbearance for such conduct more than once.” *O’Neill v. Department of Housing and Urban Development*, 220 F.3d 1354, 1364 (Fed. Cir. 2000), citing to *Redfearn v. Department of Labor*, 58 M.S.P.R. 307, 316 (1993); *Carson v. Veterans Admin.*, 33 M.S.P.R. 666, 669-70 (1987) (same). But this definition has not been adopted in Mississippi.

Furthermore, Upchurch’s comment would hardly qualify under the Federal offense. The City put forth no evidence establishing the comment “so seriously undermined the capacity of management to maintain” any employee’s efficiency or discipline; all Savage said was that he was “tired of hearing it,” and Smallman in effect said her feelings were hurt, but neither said they let their work or discipline suffer as a result.

Upchurch’s comment does not meet the “insolent” element of the Federal offense. “Insolent” is defined in *The New Oxford American Dictionary*, 2005, as “showing a rude and arrogant lack of respect.” (See Addendum for definition.) The City produced no evidence that Upchurch was ever rude or arrogant in his conduct toward the Chief.

“Disrespect” is defined in the same dictionary as a “lack of respect” or “insult.” (See Addendum for definition.) The definition of “insult” in turn is “to treat with . . . scornful abuse.” There is no evidence that Upchurch ever treated the Chief with scornful abuse.

“Respect” is defined as “a feeling of deep admiration for someone . . . elicited by their abilities, qualities, or achievements.” (See Addendum for definition.) But, whether Upchurch admired the Chief’s “abilities, qualities, or achievement” was not addressed at any point in the proceedings below, so there is no substantial evidence on this point. Failure to deeply admire supervisory personnel could hardly withstand scrutiny in most workplaces as an offense warranting termination.

In the absence of a super-ordinate law establishing a requirement or definition for “disrespect for the Chief of Police,” it is Upchurch’s right to freedom of expression that prevails: In *Street, supra*, at 593-594, the Supreme Court relied upon *West Virginia State Board of Educ. v. Barnette*, 319 U.S. 624, 63 S.Ct. 1178, 87 L.Ed. 1628 (1943), to hold that protestors could not even be held liable for “disrespecting” this country’s flag, as it would violate rights of free expression assured by the Fourteenth Amendment.

It can be seen that the evidence the City points to as substantial is either a mischaracterization by the City and the Commission, or not even on point for showing there exists a punishable offense of “lack of respect” or any element thereof. Therefore, the City has not borne its burden of proof.

**XI. The City knew all along of the “no confidence” letter the Commission relied upon for its finding of “lack of loyalty.”**

Upchurch has argued he did not have notice that the “no confidence” letter was being used as a ground for terminating his employment. (Upchurch Initial Brief at Part VI.C) In response, the City claims “Upchurch raised the ‘no confidence’ letter at the hearing for the first time in an effort to prove that he was retaliated against” (CityBr.1, 16), implying it was not required to give Upchurch notice. The City claims it “heard of the ‘no confidence’ letter at the termination hearing for the first time.” (CityBr.1)

This is false. Upchurch testified the letter was addressed and presented to the City (Aldermen). There was no rebuttal testimony. The Commissioners stated in their decision that Upchurch’s participating in the letter to the Aldermen was a motivating factor in the decision to terminate him. (R.E.13,48-49) (T104-105,167-168)(See Upchurch Initial Br. at Part VII.A(4).)

**XII. In accordance with a United States Supreme Court case, the Commission's requirement for minimum membership must be met separately from its requirement for a quorum.**

There were only two individuals appointed as members of the Civil Service Commission at the time of Upchurch's hearing and termination decision. Miss. Code Ann. § 21-31-5 states that the members of the Commission shall be three in number. Miss. Code Ann. § 21-31-5(3) states that "a majority of the members of the Commission shall constitute a quorum."

The City claims Upchurch's argument is that full boards and councils, and not quorums, must be present in order for a governmental entity to conduct business. (CityBr.17) This is incorrect. Upchurch's argument is that the Commission was not lawfully appointed because it had only two members appointed at the time of Upchurch's hearing, when three were required for the Commission's powers to vest. Upchurch argues that the vacancy on the Commission membership impaired the ability of the Commission, and the remaining Commissioners, to exercise any power or authority to act, and the Commission must have authority to act in general before it can have authority to establish a quorum.

The United States Supreme Court faced a similar question. Where a statute establishing an organizational delegation stated the delegated entity was to consist of three members, the United States Supreme Court held that the delegated entity must "*maintain* a membership of three in order for the delegation to remain valid." *New Process Steel, L.P. v. N.L.R.B.*, 130 S.Ct. 2635, 2640 (2010). The Supreme Court held this interpretation of the statutory provision was necessary in order to give meaning to its language that the entity's members were to number three. *Id.*

The Supreme Court rejected a contrary reading of the provision, which is similar to the one the City urges in this appeal (CityBr. 16-18), because it would erode the meaning of the quorum and other provisions of the statute:

The contrary reading, on the other hand, allows two members to act as the Board *ad infinitum*, which dramatically undercuts the significance of the Board quorum requirement by allowing its permanent circumvention. That reading also makes the three-member requirement in the delegation\*2641 clause of vanishing significance, because it allows a *de facto* delegation to a two-member group, as happened in this case. Under the Government's approach, it would satisfy the statute for the Board to include a third member in the group for only one minute before her term expires; the approach gives no meaningful effect to the command implicit in both the delegation clause and in the Board quorum requirement that the Board's full power be vested in no fewer than three members. Hence, while the Government's reading of the delegation clause is textually permissible in a narrow sense, it is structurally implausible, as it would render two of [the statute's other] provisions functionally void.

*New Process Steel, supra*, at 2640-41. These same factors are present in the statute in Upchurch's case. The City's reading would allow two members to act as the Commission *ad infinitum*, which would dramatically undercut the significance of the Commission's quorum requirement by allowing its permanent circumvention. Since the quorum requires "a majority of the members of the Commission," the City's reasoning of allowing the Commission to function with a vacancy in appointments circumvents the intent of the quorum provision, by requiring a quorum in effect to consist of 100% of the Commission's two-person membership.

The City's reading also makes the three-member requirement in Section 21-31-23 of vanishing significance, because it allows the operation of a two-member Commission, as happened in Upchurch's case. Under the City's approach, it would satisfy Section 21-31-23 for the Commission to include a third member for only temporarily before leaving the Commission, and then the Commission could continue to function indefinitely as a two-

member Commission. This approach gives no meaningful effect to the command implicit in the statutory provision establishing the Commission's membership, i.e., that the Commission's full power be vested when it has no fewer than three members. Hence, the City's reading of the statute would render certain provisions thereof functionally void.

The City argues that, because the Commission's quorum requirement was met, it does not matter if the Commission's membership requirement was not met. (CityBr. 17) The Supreme Court rejected a similar argument in *New Process Steel*, stating:

But the fact that there are sufficient members participating to constitute a quorum does not necessarily establish that the larger body is properly constituted or can validly exercise authority.[footnote omitted] In other words, that only two members must participate to transact business in the name of the group, does not establish that the group itself can exercise the Board's authority when the group's membership falls below three.

*New Process Steel, supra*, at 2643.

Applying the Supreme Court's holding in *New Process Steel* to the case at hand: just because the two Commissioners present for Upchurch's hearing and decision would have been enough for a quorum, does not mean that the Commission was properly constituted or could validly exercise authority. That only two Commissioners must participate to transact business in the name of the Commission, does not establish that those two Commissioners can exercise the Commission's authority when the Commission's membership falls below three.

According to *New Process Steel*, they cannot. For this reason, the hearing conducted and the decision rendered by the two Commissioners were fatally flawed and must be reversed, reinstating Upchurch's employment and seniority.

### CONCLUSION

For the above reasons, the Commission's decision does not pass the standard of review. The Court should reverse it and the court orders affirming it, and order that Upchurch be awarded reinstatement, seniority, and other make-whole relief.

In the alternative, Upchurch requests the Court to remand this case to the Commission for a hearing on the constitutional and statutory rights violations raised by Upchurch in his Initial Brief before this Court.

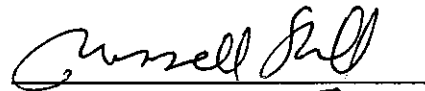
Respectfully submitted, this the 7th day of November 2011.



Marilyn H. David, #5798, Of Counsel  
RUSSELL S. GILL, P.L.L.C.  
638 Howard Avenue  
Biloxi, Mississippi 39530  
Telephone: (228) 432-0007  
Facsimile: (228) 432-0025

JOSEPH MICHAEL UPCHURCH

BY:



Russell S. Gill, MSB # [REDACTED]  
RUSSELL S. GILL, P.L.L.C.  
638 Howard Avenue  
Biloxi, Mississippi 39530  
Telephone: (228) 432-0007  
Facsimile: (228) 432-0025

**CERTIFICATE OF SERVICE**

Pursuant to Rules of Appellate Procedure 31, I hereby certify that I have sent by Federal Express, overnight delivery, an original and three true and correct copies of the above and foregoing Appellant's Reply to Appellee's Brief to:

Clerk, Mississippi Supreme Court  
Gartin Justice Building  
450 High Street  
Jackson, MS 39201

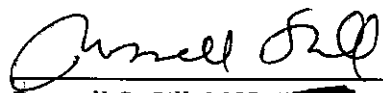
I certify that I have this date mailed, via First Class U.S. mail, postage prepaid, a true and correct copy of the above and foregoing Appellant's Brief to the following:

Amy Lassiter St. Pe', Esq.  
Nathan A. Bosio, Esq.  
Wilkinson, Williams, Kinard, Smith & Edwards  
P.O. Box 1618  
Pascagoula, MS 39568

The Honorable Robert P. Krebs  
Jackson County Circuit Court  
P.O. Box 998  
Pascagoula, MS 39568  
TRIAL COURT JUDGE

I further certify that, pursuant to M.R.A.P. Rule 28, I have served on the above addressees one electronic copy of the above and foregoing on an electronic disk and state that this brief was written in MicroSoft Word format.

SO CERTIFIED, this the 7 day of November 2011.

  
Russell S. Gill, MSB [REDACTED]  
RUSSELL S. GILL, P.L.L.C.  
638 Howard Avenue  
Biloxi, Mississippi 39530  
Telephone: (228) 432-0007  
Facsimile: (228) 432-0025

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## ADDENDUM



**Miss. Admin. Code 3-1-1:2.6**

**Alternatively cited as MS ADC 24 000 001**

**West's Mississippi Administrative Code Currentness**

**Title 3. Attorney General**

**Subtitle 1. Attorney General's Office**

**Rule 1. Attorney General's Office Employee Manual**

### **3-1-1:2.6. DISCIPLINE/GRIEVANCE**

#### **DISCIPLINE AND GRIEVANCE POLICY**

The Attorney General's Office has established disciplinary and grievance policies and procedures, in accordance with the procedures set forth by the State Personnel Board. These policies are fair, prompt, and legally sufficient. All disciplinary actions will be taken in accordance with these policies. All disciplinary actions are grievable. The procedures for filing a grievance follow the discipline policies.

#### **GUIDELINES OF OFFENSES**

##### **Group One Offenses**

Generally, group one offenses are less severe and may be addressed by written reprimands. The accumulation of three written notices of group one offenses within a three month period may result in suspension without pay not to exceed three working days. A fourth written notice occurring during a six month period may result in demotion or dismissal.

Group one includes, but is not limited to, the following of offenses

- (a) Unexcused tardiness;
- (b) Abuse of state time such as unauthorized time away from the work area or failure to notify supervisor promptly upon completion of assigned work;
- (c) Obscene or abusive language; and,
- (d) Conviction of a moving traffic violation while operating a state-owned vehicle.

## **Group Two Offenses**

Acts and behavior in this group are generally more severe than group one offenses. Actions taken to address second group offenses may include written reprimand and/or suspension without pay not to exceed five working days. Two group two offenses within one year may result in demotion or dismissal.

Accumulation of one written reprimand during a one year period for a group two offense and three written reprimands for group one offenses may result in demotion or dismissal.

Group two includes, but is not limited to, the following offenses:

- (a) Insubordination, including, but not limited to, resisting management directives through action and/or verbal exchange, and/or failure to follow supervisor's instructions, perform assigned work, or otherwise comply with established written policy;
- (b) Violation of safety rules in the absence of a threat to life;
- (c) Leave usage without justifiable and reasonable excuse for such absence;
- (d) Failure to report to work without giving proper notice to supervisor;
- (e) Leaving the work site without permission during working hours in the absence of a threat to life; and,
- (f) Unauthorized use or misuse of state property or records.

## **Group Three Offenses**

Acts and behavior in this group are of such a serious nature that the commission of a group three offense may result in a written reprimand and/or suspension without pay for up to 30 days, demotion or dismissal.

Group three includes, but is not limited to, the following offenses:

- (a) Absence or leave in excess of five (5) consecutive working days without satisfactory explanation;
- (b) Use of alcohol or unlawful manufacture, distribution, dispensing, possession or use of controlled substances while on the job or on the employer's premises:

- (c) Reporting to work under the influence of, or when ability is impaired by, alcohol or the unlawful use of controlled substances;
- (d) Falsification of records, such as, but not limited to, vouchers, reports, time records, leave records, employment applications, or other official state documents;
- (e) Willful or negligent defacement of state records or property, or another employee's property;
- (f) Acts of physical violence or fighting;
- (g) Violation of safety rules where there exists a threat to life or human safety;
- (h) Unauthorized possession or use of firearms, dangerous weapons, or explosives;
- (i) Threatening or coercing employees or supervisors;
- (j) Criminal convictions for felonies or misdemeanors while employed;
- (k) Acts of conduct occurring on or off the job which are plainly related to job performance or of such a nature that to continue the employee in the assigned position could constitute negligence in regard to the agency's duties to the public or to other state employees;
- (l) Engaging in prohibited political activity (refer to Section 3.0); and,
- (m) Leaving the work site without permission where there exists a threat to life or human safety.

#### CORRECTIVE ACTION

An employee's supervisor may attempt to correct unacceptable behavior with a verbal warning, counseling and/or other informal means. Corrective action of this nature is considered informal; however, a written account of the action taken is placed in the employee's personnel file. Documentation of corrective actions may be kept indefinitely in order to establish a pattern of employee conduct.

#### FORMS OF DISCIPLINE

Employees may be disciplined by their supervisors by four formal actions: written reprimand, suspension, demotion and dismissal. Suspension, demotion and dismissal are actions which adversely affect employment status and compensation and require that the affected employee be afforded due process prior to such actions being taken. Written notice of intent to effect any action adversely affecting compensation or employment status and the specific reasons for such action will be given to the employee at least 10 working days prior to the effective date of the intended action. The specific reasons listed shall be the only matters addressed throughout any appeals process. The written notice will contain any steps the employee must take prior to final action being taken.

ay be adopted in advers...  
s anger is the only resource...  
sources) one's personal...  
regarded as able to help...  
circumstances: we had...  
resources. ■ the ability...  
to overcome difficulties...  
ing aid. ■ *archaic* the...  
; the flower of the French...  
3 *archaic* a leisure occupa...  
e (a person or organiza...  
y, staff, and other asse...  
ration: ensuring that...  
adequately resourced...  
lete French ressource, from...  
as a noun) of Old French...  
in, recover' (based on...  
source-less adj. —re-

örsef; -zörs- ▶ *adj.* having...  
and clever ways to over...  
at CREATIVE. —re-sour...  
ess *n.*  
pective. ■ respectively...  
ndent.

▶ *n.* 1 a feeling of deep...  
something elicited by the...  
vements: the director had...  
an actor. ■ the state of...  
ay: his first chance in over...  
the business. ■ due regard...  
rights, or traditions of...  
hts. ■ (respects) a person...  
respects to your parents. ■  
or detail: the government...  
ed one.

someone or something...  
ilities, qualities, or achie...  
everyone she worked with...  
cted academic. See note...  
for the feelings, wishes...  
ected his views. ■ avoid...  
it is incumbent upon all...  
it. ■ agree to recognize...  
ment): he urged all foreign...  
of their country of reside...  
om Latin *respectus*, from...  
k at, regard,' from *re-*

aspect to as regards;...  
ups were similar with res...  
in respect that beca...  
ay one's last respect...  
due) respect used as a...  
id intended to mitigate...  
f disagreement or criti...  
r, I think you've got to be

ri, spēktə'biłetē] ▶ *n.* the...  
oper, correct, and social...  
oms of respectability. ■ the...  
cepted as valid or import...  
t: scientific respectability...  
eketēbəl] ▶ *adj.* 1 regard...  
oper, or correct: they...  
spectable lady. ■ (of a pe...  
or behavior) decent...  
respectable pair of papi...  
ortance: a respectable boy...  
ceptable in number...  
IDP grew by a respectable...  
le] ▶ *adv.* [as submodifier]...  
gh standards.

ri] ▶ *n.* a person who has...  
something: I'm always...  
r, but not necessarily...  
pector of — not be in...  
tc.: Jesus was no respect...  
faj] ▶ *adj.* feeling or show...  
they sit in respectful sil...  
'respectful-ness *n.*  
ting] ▶ *prep.* dated or for...  
to: he began to have seri...

tiv] ▶ *adj.* [attrib.] belong...  
each of two or more...  
! about their respective...  
in (in the sense 'relative...  
val Latin *respectivus*, from...  
ed,' from the verb *respe...*  
d by French *respectif*, *div...*

ively [n'spektivli] ▶ *adv.* separately or indi...  
and in the order already mentioned (used...  
enumerating two or more items or facts that...  
to a previous statement): they received sen...  
year and eight months, respectively.

re'spel] ▶ *v.* (past and past part. -spelled or...  
-spelt) [trans.] spell (a word) again or dif...  
resp. phonetically in order to indicate its...  
ation.

re'spə'rebəl; n'spirəbəl] ▶ *adj.* (of the air...  
ble or fit to be breathed. ■ (of particles in...  
ble to be breathed in: woodworking can create...  
off fine respirable dust. ▶ late 18th cent.: from...  
respirable or late Latin *respirabilis*, from *respi...*  
the out' (see *RESPIRE*).

re'spə'rāt] ▶ *v.* [trans.] Medicine & Biology...  
person or animal) to breathe by means of...  
respiration. ▶ mid 17th cent.: back-  
on from *RESPIRATION*.

re'spə'rāshən] ▶ *n.* the action of breath...  
affect respiration. ■ chiefly Medicine a single...  
Biology a process in living organisms in...  
the production of energy, typically with the...  
of oxygen and the release of carbon dioxide...  
the oxidation of complex organic substances...  
Middle English: from Latin *respiratio(n)-*, from...  
'breathe out' (see *RESPIRE*).

re'spə'rātor] ▶ *n.* an apparatus worn over...  
mouth and nose or the entire face to prevent the...  
of dust, smoke, or other noxious sub...  
■ an apparatus used to induce artificial res...

re'spə'rətōrē; n'spīrə-] ▶ *adj.* of, relat...  
or affecting respiration or the organs of res...  
respiratory disease.

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re- [expressing intensive force] + splendēre 'to glit...  
ter.' —re-splend-ence *n.* —re-splend-ency *n.* —re...  
splend-ent-ly *adv.*

re-spond [n'spənd] ▶ *v.* [reporting verb] say something...  
in reply: [intrans.] she could not get Robert to respond to...  
her words | [with clause] he responded that it would not...  
be feasible | [with direct speech] "It's not part of my job,"...  
Belinda responded. ■ (of a congregation) say or sing...  
the response in reply to a priest. ■ [intrans.] (of a per...  
son) act or behave in reaction to someone or some...  
thing: she turned her head, responding to his grin with a...  
smile. ■ react quickly or positively to a stimulus or...  
treatment: his back injury has failed to respond to treat...  
ment. ■ [trans.] Bridge make (a bid) in answer to one's...  
partner's preceding bid.

▶ *n.* 1 Architecture a half-pillar or half-pier attached to...  
a wall to support an arch, esp. at the end of an arc...  
cade. 2 (in church use) a responsory: a response to a...  
versicle. ▶ late Middle English (in the noun sense):...  
from Old French, from *respondere* 'to answer', from...  
Latin *respondere*, from *re-* 'again' + *spondere* 'to...  
pledge'. The verb dates from the mid 16th cent.  
—re-spond-ence [n'spəns] *n.* (archaic) —re-spond-...  
en-ty [n'spəns] *n.* (archaic) —re-spond-er *n.*

re-spond-ent [n'spəndənt] ▶ *n.* 1 a defendant in a...  
lawsuit, esp. one in an appeals or divorce case. 2 a...  
person who replies to something, esp. one supply...  
ing information for a survey or questionnaire or re...  
sponding to an advertisement.

▶ *adj.* [attrib.] 1 in the position of defendant in a law...  
suit: the respondent defendant. 2 replying to some...  
thing, esp. a survey or questionnaire: the respondent...  
firms in the survey. 3 Psychology involving or denot...  
ing a response, esp. a conditioned reflex, to a spec...  
ific stimulus. ▶ early 16th cent. (sense 2 of the...  
noun): from Latin *respondent-* 'answering, offering in...  
return,' from the verb *respondere* (see *RESPOND*).

re-spon-sa [n'spənsə] ▶ *n.* plural form of *RESPONSUM*.

re-sponse [n'spəns] ▶ *n.* a verbal or written answer...  
without waiting for a response, she returned to her news...  
paper | we received 400 applications in response to one job...  
ad. ■ a written or verbal answer to a question in a...  
test, questionnaire, survey, etc. ■ a reaction to...  
something: an extended, jazzy piano solo drew the biggest...  
response from the crowd | an honors degree course in...  
Japanese has been established in response to an increasing...  
demand. ■ Psychology an excitation of a nerve impulse...  
caused by a change or event: a physical reaction to a...  
specific stimulus or situation. ■ the way in which a me...  
chanical or electrical device responds to a stimulus or...  
range of stimuli. ■ (usu. responses) a part of a religious...  
liturgy said or sung by a congregation in answer to a...  
minister or cantor. ■ Bridge a bid made in answer to...  
one's partner's preceding bid. ▶ Middle English: from...  
Old French *re-spons* or Latin *responsum* 'something offered...  
in return,' neuter past participle of *respondere* (see...  
*RESPOND*).

re-sponse time ▶ *n.* the length of time taken for a...  
person or system to react to a given stimulus or...  
event. ■ Electronics the time taken for a circuit or...  
measuring device, when subjected to a change in...  
input signal, to change its state by a specified frac...  
tion of its total response to that change.

re-sponse vari-able ▶ *n.* another term for *DEPENDENT VARIABLE*.

re-spon-si-bi-lity [n'spənsə'biłetē] ▶ *n.* (pl. -ties) the...  
state or fact of having a duty to deal with something...  
or of having control over someone: women bear child...  
ren and take responsibility for child care. ■ the state or...  
fact of being accountable or to blame for something...  
the group has claimed responsibility for a string of...  
murders. ■ the opportunity or ability to act independ...  
ently and make decisions without authorization: we...  
would expect individuals lower down the organization...  
to take on more responsibility. ■ (often responsibilities)...  
a thing that one is required to do as part of a job, role...  
or legal obligation: he will take over the responsib...  
ilities of overseas director. ■ [in sing.] (responsibility...  
to/toward) a moral obligation to behave correctly to...  
ward or in respect of: individuals have a responsibility...  
to control personal behavior.

re-spon-si-bil [n'spənsəbəl] ▶ *adj.* [predic.] having an...  
obligation to do something, or having control over...  
or care for someone, as part of one's job or role: the...  
department responsible for education. ■ being the pri...  
mary cause of something and so able to be blamed or...  
credited for it: the game was responsible for a rare type...  
of eye cancer. ■ [attrib.] (of a job or position) involv...  
ing important duties, independent decision-making, or...  
control over others. ■ [predic.] (responsible to) hav...  
ing to report to (a superior or someone in authority)

and be answerable to them for on...  
team manager is responsible to the league...  
pable of being trusted: a responsible...  
accountable for one's behavior: the p...  
gence of the child as a responsible being...  
(in the sense 'answering to, corresp...  
obsolete French, from Latin *respons-*  
fered in return,' from the verb *respi...*  
SPOND). —re-spon-si-bil-ness *n.* —  
-biłē] *adv.*

THE RIGHT WORD accountable, answerable, responsible

Responsible is an adjective that app...  
who is in charge of an endeavor or to...  
has been delegated, and who is subj...  
or blame in case of default (respons...  
everyone out of the building in the event of...  
Answerable implies a legal or mo...  
for which one must answer (the pare...  
be answerable for their children's behavio...

Accountable is more positive than...  
answerable, suggesting that something...  
trusted to someone who will be call...  
for how that trust has been carried c...  
rectly accountable to the department hea...  
that had been allocated to her group).

Liability is more restricted in scope th...  
foregoing words; it refers exclusively...  
ment of blame or the payment of m...  
ages in the event of a mishap (because...  
sible for the accident, he was held liable for...

re-spon-sive [n'spənsiv] ▶ *adj.* 1 reactin...  
positively: a flexible service that is respons...  
social and economic patterns. ■ respondi...  
with interest or enthusiasm: our most e...  
responsive students. 2 answering: I'm i...  
nibble on my line: I jig it several times, but...  
sponsive tug. ■ (of a section of liturgy) u...  
es. —re-spon-si-ly *adv.* —re-spon-si-...  
re-spon-so-ri-al [n'spənsə'rīəl] ▶ *adj.* (of...  
liturgical chant) recited in parts with...  
tional response between each part.

re-spon-so-ry [n'spənsəri] ▶ *n.* (pl. -ries)...  
tian Church) an anthem said or sung by...  
choir after a lesson. ▶ late Middle Engli...  
Latin *responsorium*, from Latin *respons-*  
from the verb *respondere* (see *RESPOND*).

re-spon-sum [n'spənsəm] ▶ *n.* (pl. -sa) a...  
reply by a rabbi or Talmudic scholar to...  
on some matter of Jewish law. ▶ Lat...  
'reply.'

res-pub-li-ca [rəs'pöblikə; 'pəblikə] ▶ *n.* 1...  
public, or commonwealth. ▶ Latin, liter...  
matter.

res-sen-ti-ment [rəs'səntē'mənt] ▶ *n.* a ps...  
state arising from suppressed feelings...  
hatred that cannot be acted upon, fre...  
sulting in some form of self-abasement...  
man (used by Nietzsche in this sense) fi...  
ressentiment 'feeling.'

rest [rest] ▶ *v.* [intrans.] 1 cease work or...  
in order to relax, refresh oneself...  
strength: he needed to rest after the feverish...  
going to rest up before traveling to Engla...  
allow to be inactive in order to regain...  
health, or energy: her friend led her to her...  
ed her eyes. ■ [trans.] leave (a player) out...  
temporarily: both men were rested for the...  
■ (of a dead person or body) lie buried...  
body rested in his tomb. ■ (of a problem or...  
left without further investigation, disc...  
treatment: the council has urged the plann...  
not to allow the matter to rest. ■ [trans.] allo...  
lie fallow: the field should be grazed or re...  
clude the case for the prosecution or the...  
a law case: the prosecution rests. See also...  
CASE below. 2 [intrans.] be placed or supp...  
to stay in a specified position: her elbow...  
on the arm of the sofa. ■ [trans.] place (som...  
that it is supported in a specified positio...  
a hand on her shoulder. ■ (rest on/upon)...  
alight or be steadily directed on: his eyes r...  
on the boy. ■ (rest on/upon) be based on or...  
in: depend on: the country's security rests...  
stances. ■ [trans.] (rest something in/on) p...  
trust, or confidence on or in: she rested h...

Pronunciation Key ə ago; ər over; ə or ə u...  
fur; a hat; ā rate; ā car; CH chew; e let; ē see...  
ift; i hy; i(ə) ear; NG sing; o go; ō for; o boy;...  
goo; ou out; SH she; TH thin; T then; (h) wh...

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# The New Oxford American Dictionary

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Erin McKean

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il meetings. —**dis-pu-ta-tious-ly** *adv*  
ness *n*.

t/ ▶ *n*. a disagreement, argument, or  
ual dispute between the two countries |  
ispute is altogether insignificant. See  
.. ■ a disagreement between man-  
employees that leads to an action of  
employees: if this dispute cannot be re-  
rmal strike is inevitable.  
bout (something); discuss heatedly:  
ge on the bill | [*intrans.*] he taught and  
il poets. ■ question whether (a state-  
fact) is true or valid: the accusations  
[with clause] the estate disputes that it  
ie embankment. ■ compete for: strive  
livers crashed while disputing the lead.  
a landing or advance): the Sudanese  
ound upon which to dispute the advance.  
.. via Old French from Latin *disputare*  
late Latin 'to dispute'), from *dis-*  
reckon. —**dis-pu-tant** /ˈpyootnt/ *n*.

ond dispute certain or certainly:  
the main part of his argument was be-  
pen to dispute not definitely decid-  
s are always open to dispute.

on /disˌkwələfˈkashən/ ▶ *n*. the ac-  
fying or the state of being disquali-  
condition that disqualifies someone  
or activity: such an offense is no longer  
for office.

kwələˌfɪ/ ▶ *v*. (-fies, -fied) [*trans.*] (often  
pronounce (someone) ineligible for  
tivity because of an offense or in-  
was disqualified from driving for six  
ate (someone) from a competition  
nfringement of the rules: he was dis-  
ling a drug test. ■ (of a feature or char-  
e (someone) unsuitable for an office  
art murmur disqualified him for military

vi-ɪt/ ▶ *n*. a feeling of anxiety or worry:  
out animal testing.

as *adj.* (disquieted) make (someone)  
ious: she felt disquieted at the lack of in-  
t shown.

isˈkwɪ-tɪŋ/ ▶ *adj.* inducing feelings of  
rry: he found Jean's gaze disquieting.  
My *adv*.

disˈkwɪ-iˌtɪ/ ▶ *n*. a state of uneasi-  
.

ˈdiskwəˈzɪʃən/ ▶ *n*. a long or elabo-  
scussion on a particular subject: noth-  
lio show quicker than a disquisition on in-  
is. >late 15th cent.: via French from  
(-n-) 'investigation,' based on *querere*  
ginal sense was 'topic for investiga-  
discourse in which a subject is inves-  
7th cent.). —**dis-qui-si-tional** /-ʃənəl/

ālɪ/ Benjamin, 1st Earl of Beacons-  
, British statesman; prime minister  
4-80. He was largely responsible for  
on of the second Reform Act (1867).  
d that Britain bought a controlling in-  
iez Canal (1875) and made Queen Vic-  
of India.

/ ▶ *v*. [*trans.*] (usu. be **disrated**) reduce  
ower rank.

ɪnˈgɑːd/ ▶ *v*. [*trans.*] pay no attention to;  
y of evidence is too substantial to disregard.  
GLECT.

or state of disregarding or ignoring  
tant disregard for the law.

reɪlɪʃ/ *archaic* ▶ *n*. a feeling of dislike or  
ish for any pursuit is ample reason for

d (something) with dislike or distaste:  
ed that some members should disrelish your

ɪˌdɪsnˈmembər/ ▶ *v*. [*trans.*] *dialect* fail  
they had a word for it, but I disremember

.. the best condition of a build.

**dis-re-pute** /ˌdɪsɪˈpyoot/ ▶ *n*. the state of being held  
in low esteem by the public: one of the top clubs in the  
country is close to bringing the game into **disrepute**.

**dis-re-spect** /ˌdɪsnˈspekt/ ▶ *n*. lack of respect or cour-  
tesy: growing disrespect for the rule of law.

▶ *v*. [*trans.*] *informal* show a lack of respect for; insult: a  
young brave who disrespects his elders. —**dis-re-spect-ful**  
/-lə/ *adj.* —**dis-re-spect-fully** /-lə/ *adv*.

**dis-robe** /ˌdɪsˈrɒb/ ▶ *v*. [*intrans.*] take off one's clothes:  
the girl disrobed slowly and climbed into the high bed.

■ take off the clothes worn for an official ceremony:  
they walked to the vestry to **disrobe**. ■ [*trans.*] undress  
(someone): Kate remembers being **disrobed**. >late Mid-  
dle English: from *dis-* (expressing reversal) + *ROBE*,  
perhaps on the pattern of French *desrober*.

**dis-rupt** /ˌdɪsˈrʌpt/ ▶ *v*. [*trans.*] interrupt (an event, ac-  
tivity, or process) by causing a disturbance or prob-  
lem: a rail strike that could **disrupt** both passenger and  
freight service. ■ drastically alter or destroy the struc-  
ture of (something): alcohol can **disrupt** the chromo-  
somes of an unfertilized egg. >late Middle English:  
from Latin *disrupt*, 'broken apart,' from the verb *dis-*  
rumpere. —**dis-rupt-er** (also **dis-rup-tor** /-tər/) *n*.  
—**dis-ruption** /-ˈrʌpʃən/ *n*.

**dis-rupt-ive** /ˌdɪsˈrʌptɪv/ ▶ *adj.* causing or tending to  
cause disruption: disruptive and delinquent children |  
the hours of work are **disruptive** to home life. —**dis-rup-**  
**tively** *adv*. —**dis-rupt-ive-ness** *n*.

**diss** ▶ *v*. variant spelling of **dis**.

**dis-sat-is-fac-tion** /ˌdɪsˌsætɪˈfakʃən/ ▶ *n*. lack of satis-  
faction: widespread public dissatisfaction with incum-  
bent politicians.

**dis-sat-is-fied** /ˌdɪsˌsætɪˈfɪd/ ▶ *adj.* not content or  
happy with something: small investors **dissatisfied**  
with rates on certificates of deposit | **dissatisfied** customers.  
—**dis-sat-is-fied-ly** *adv*.

**dis-sat-is-fy** /ˌdɪsˌsætɪˈfɪ/ ▶ *v*. (-fies, -fied) [*trans.*] fail to  
satisfy (someone).

**dis-sav-ing** /ˌdɪsˈsævɪŋ/ ▶ *n*. the action of spending  
more than one has earned in a given period. ■ (**dis-**  
**savings**) the excess amount spent. —**dis-sav-er**  
/-vər/ *n*.

**dis-sect** /dɪˈsekt; di-/ ▶ *v*. [*trans.*] (often be **dissected**)  
methodically cut up (a body, part, or plant) in order  
to study its internal parts. ■ analyze (something) in  
minute detail: novels that **dissect** our obsession with cities  
and urban angst. >late 16th cent.: from Latin *dissect-*  
'cut up,' from the verb *dissecare*, from *dis-* 'apart' + *se-*  
*care* 'to cut.' —**dis-section** /-ˈseksən/ *n*. —**dis-sec-**  
**tor** /-tər/ *n*.

**dis-sect-ed** /dɪˈsektɪd; di-/ ▶ *adj.* 1 having been cut up  
for anatomical study. 2 having a divided form or  
structure, in particular: ■ **Botany** (of a leaf) divided  
into many deep lobes. ■ **Geology** (of a plateau or up-  
land) divided by a number of deep valleys.

**dis-sem-ble** /dɪˈsembəl/ ▶ *v*. [*intrans.*] conceal one's  
true motives, feelings, or beliefs: an honest, sincere  
person with no need to **dissemble**. ■ [*trans.*] disguise or  
conceal (a feeling or intention): she smiled, **dissem-**  
bling her true emotion. >late Middle English: alter-  
ation (suggested by **SEMBLANCE**) of obsolete *dis-*  
*simule*, via Old French from Latin *dissimulare*  
'disguise, conceal.' —**dis-sem-blance** /-ˈblɑːns/ *n*.  
—**dis-sem-ble** /-ˈbɒlə/ *n*.

**dis-sem-i-nate** /dɪˈseməˌnæt/ ▶ *v*. [*trans.*] spread or dis-  
perse (something, esp. information) widely: health  
authorities should foster good practice by **disseminating** in-  
formation. See note at **SCATTER**. ■ [*usu. as adj.*] (**dis-**  
**seminated**) spread throughout an organ or the  
body: **disseminated** colonic cancer. >late Middle Eng-  
lish: from Latin *disseminat* 'scattered,' from the verb  
*disseminare*, from *dis-* 'abroad' + *semen*, *semin-* 'seed.'  
—**dis-sem-i-na-tion** /-ˌseməˈnæʃən/ *n*. —**dis-sem-i-**  
**na-tor** /-ˌnætər/ *n*.

**dis-sem-i-nule** /dɪˈseməˌnyool/ ▶ *n*. **Botany** a part of a  
plant that serves to propagate it, such as a seed or a  
fruit. >early 20th cent.: formed irregularly from *dis-*  
*semination* (see **DISSEMINATE**) + *-ULE*.

**dis-sen-sion** /dɪˈsensən/ ▶ *n*. disagreement that  
leads to discord: this maneuver caused **dissension** within  
feminist ranks. >Middle English: via Old French from  
Latin *dissensio(n)*, from the verb *dissentire* (see **DIS-**  
**SENT**)

at: for an instant the man

tissue will be resorbed. 19th cent.: from Latin *resorbere*, from *re-* (expressing intensive force) + *sorbere* 'absorb'.

**es-or-cin-ol** /jə'zɔ:rsə,nɒl/; /nɒl/ ▶ *n.* **Chemistry** a crystalline compound originally obtained from galbanum resin, used in the production of dyes, resins, and cosmetics. • **Alternative name:** 1,3-dihydroxybenzene; **chem. formula:** C<sub>6</sub>H<sub>4</sub>(OH)<sub>2</sub>. ▶ late 19th cent.; from the earlier term *resorin* + -OL.

**e-sorp-tion** /é-'sôrpshən; -'zôrp-/ ► *n.* the process or action by which something is reabsorbed: *the resorption of water.* ■ *Physiology* the absorption into the circulation of cells or tissue: *bone resorption.* ◀ early 19th cent.; from **RESORB.** on the pattern of the pair *absorb, absorption.* — **re-sorp-tive** /-tɪv/ *adj.*

**re·sort** /rɪˈzɔːrt/ **n.** 1 a place that is a popular destination for vacations or recreation, or which is frequented for a particular purpose: a seaside resort | a health resort. ■ *archaic* the tendency of a place to be frequented by many people: places of public resort. 2 the action of turning to and adopting a strategy or course of action, esp. a disagreeable or undesirable one, so as to resolve a difficult situation: Germany and Italy tried to resolve their economic and social failures by resort to fascism. ■ [*in sing.*] a strategy or course of action that may be adopted in a difficult situation: her only resort is surgery.

4 [intrans.] (**resort** to) **1** turn to and adopt (a strategy or course of action, esp. a disagreeable or undesirable one) so as to resolve a difficult situation: the duke was prepared to resort to force if negotiation failed. **2** formal go often or in large numbers to: local authorities have a duty to provide adequate sites for gypsies residing in or resorting to their areas. —late Middle English (denoting something one can turn to for assistance): from Old French *resortir*, from *re-* 'again' + *sortir* 'come or go out'. The sense 'place frequently visited' dates from the mid 18th cent. —**re-sort** *n* **PHRASES** **as a first (or last or final) resort** before anything else is attempted (or when all else has failed). **in the last resort** ultimately: in the last resort what really moves us is our personal convictions. [suggested by French *en dernier ressort*.]

**•sort** /rè 'sòrt/ ► *v.* [*trans.*] sort (something) again or differently.

**sound** /fɪˈzaʊnd/ ▶ *[intrans.]* (of a sound, voice, c.) fill a place with sound; be loud enough to echo: *rather scream resounded through the school.* ■ (of a ace) be filled or echo with a particular sound or unds: *the office resounds with the metronomic clicking keyboards.* ■ *figurative* (of fame, a person's reputa- tion, etc.) be much talked of; whatever they do in the neties will not resound in the way that their earlier hievements did. ■ *[trans.] poetic/iterary* sing (the aises) of: *Horace resounds the praises of Italy.* ■ *[trans- etic/iterary]* (of a place) reecho (a sound): *cliffs, ods, and caves, her viewless steps resound.* ■ late Mid- English: from RE- 'again' + the verb **SOUND**<sup>1</sup>, sug- gested by Old French *resoner* or Latin *resonare* 'sound ain.'

**sound-ing** /n'zounding/ ▶ **adj.** 1 (of a sound) loud enough to reverberate: *a resounding snare drum across the c.* 2 [attrib.] unmistakable; emphatic: *the evening was a resounding success.* —**re-sound-ing-ly** **adv.**

**source** /f're,sòrs; 'rè,zòrs; n'sòrs, n'zòrs/ ▶ **n.** usu. **(resources)** a stock or supply of money, materials, staff, and other assets that can be drawn on a person or organization in order to function effectively: *local authorities complained that they lacked resources.* ■ **(resources)** a country's collective means of supporting itself or becoming wealthier, as represented by its reserves of minerals, land, and other assets. ■ **(resources)** available assets 2 **n** an action or

**re-source-ful** /rɪ'sɔːsəl/; -'zɔːs-/ ► *adj.* having the ability to find quick and clever ways to overcome difficulties. See note at **CREATIVE**. —**re-source-ful-ness** *n.*

**resp.** ▶ *abbr.* ■ *respective*. ■ *respectively*. ■ *respelling*. ■ *respondent*.

**re-spect** /ri'spekt/ ► *n.* 1 a feeling of deep respect for someone or something elicited by the

qualities or achievements: the director has **respect** for Douglas as an actor. ■ the state **respected** him in such a way: his first chance in order to **regain respect** in the business. ■ **due** respect: feelings, wishes, rights, or traditions of **respect** for human rights. ■ (respects) a polite greeting: give my **respects** to your parents. ■ a particular aspect, point, or detail: the government **respects** this respect is a mixed one.

v. {trans.} admire (someone or something) as a result of their abilities, qualities, or actions: she was respected by everyone she worked for (respected) a respected academic. See note. ■ have due regard for the feelings, wishes, or traditions of: I respected his views. ■ avoid interfering with; it is incumbent upon all of us to respect the environment. ■ agree to recognize (by a legal requirement): he urged all forces to respect the laws of their country of residence. Middle English: from Latin *respectus*, from *respicere* 'look back at, regard,' from *specere* 'look at.'

► **PHRASES** □ **with respect to** as regards; reference to: *The two groups were similar with respect to sex and diagnoses.* □ **in respect that** because: *One's respects, pay one's last respects.* □ **with (or with all due) respect** used as a formula preceding, and intended to mitigate, an expression of disagreement or criticism: *With all due respect, Father, I think you've got to be reminded these days.*

**respect-a-bil-i-ty** /rɪˈspektəˈbɪləti/ **n.** ■ the quality of being proper, correct, and socially acceptable: provincial notions of respectability. ■ the quality of being accepted as valid or important in a particular field: scientific respectability.

**respect-a-ble** /rɪˈspektəbəl/ **adj.** 1 regard worthy to be good, proper, or correct: they stage no life for a respectable lady. ■ [of a person] appearance, clothes, or behavior) decent. ■ [of a statement] sensible: a perfectly respectable pair of pants. ■ [of an action] having some merit or importance: a respectable bluff. ■ [of a sum of money] adequate or acceptable in number or amount: America's GDP grew by a respectable 1.5%.

**re-spect-a-bly** /-blē/ *adv.* [as submodifier] *t*ure of respectably high standards.

**re-spect-er** /ɪnˈspektər/ *n.* a person who has regard for someone or something: I'm always respectful of the office of the presidency, but not necessarily obedient.

► **PHRASE** □ be no respecter of — not be by status, wealth, etc.: *Jesus was no respecter of persons*

**re-spect-ful** /ri'spektfəl/ ► **adj.** feeling or showing respect and respect: *they sit in respectfully*

**re-spect-fully** **adv.** — **re-spect-ful-ness** **n.**

**re-spect-ing** /ri'spektɪŋ/ ► **prep.** dated or reference or regard to: *he began to have respect for his car.*

**re-spec-tive** /rɪˈspektɪv/ ▶ *adj.* [attrib.] being  
relating separately to each of two or more  
things: *they chatted about their respective*  
late Middle English (in the sense 'relat-  
ative'); from medieval Latin *respectivus*  
'regarded, considered,' from the verb  
RESPECT, reinforced by French *respect*

**respiration** /ˈrɛspəˈreɪʃən/ *n.* the action of breathing. **Respirators** affect respiration. ■ **chiefly Medicine** a single tube. ■ **Biology** a process in living organisms involving the production of energy, typically with the intake of oxygen and the release of carbon dioxide. **the oxidation of complex organic substances.** **in Middle English:** from Latin *respiration(-i)*, from *respirare* 'breathe out' (see **RESPIRE**).

**respirator** /ˈrɛspəˌrɑːtər/ *n.* an apparatus worn over the mouth and nose or the entire face to prevent the inhalation of dust, smoke, or other noxious substances. ■ an apparatus used to induce artificial respiration.

**respiratory** /ˈrɛspəˌrɔːtəri, ˈrɪˈspɪrə-/ *adj.* of, relating to, or affecting respiration or the organs of respiration. **respiratory disease.**

**laboratory dis-tress syn-drome** ▶ *n.* another name for HYALINE MEMBRANE DISEASE.

**laboratory pig-ment** ▶ *n.* Biochemistry a substance such as hemoglobin or hemocyanin) with a molecule consisting of protein with a pigmented prosthetic group, involved in the physiological transport of oxygen or electrons.

**Physiologic quotient** *n.* Physiology the ratio of the volume of carbon dioxide evolved to that of oxygen consumed by an organism, tissue, or cell in a given time.

**respiratory syncytial virus** ▶ *n.* **Medicine** A paramyxovirus that causes disease of the respiratory tract. It is a major cause of bronchiolitis and pneumonia in young children and may be a contributing factor in sudden infant death syndrome.

**respiratory tract** ▶ *n.* the passage formed by the mouth, nose, throat, and lungs, through which air passes during breathing.

**respiratory tree** ▶ *n.* Zoology a branched respiratory organ in the body cavity of sea cucumbers.

organ in the body cavity. **respire** /rɪˈspɪr/ *v.* [trans.] breathe; he lay back, **respiring** deeply | [trans.] a country where fresh air seems impossible to **respire**. ■ (of a plant) carry out respiration. **esp.** at night when photosynthesis has ceased. ■ poetic/lit. **to recover hope, courage, or strength after a time of difficulty:** the archduke, newly **respiring** from so long a **jour.** **late Middle English:** from Old French **respirer** **from Latin** **respirare** 'breathe out,' from **re-** 'again' + **spīrāre** 'breathe.'

**respirometer** /ˌrɛspəˈrɪmətər/ ► *n.* **Biology** a device that measures the rate of consumption of oxygen by a living organism or organic system. ■ **Medicine** an instrument for measuring the air capacity of the lungs.

**respite** /'respait, ri'spait/ ▶ *n.* a short period of rest or relief from something difficult or unpleasant: the judge's encampments will provide some respite from the suffering | [*in sing.*] a brief respite from a dire food shortage ▶ a short delay permitted before an unpleasant obligation is met or a punishment is carried out.

the execution was only respite<sup>d</sup> a few months. ■ archaic  
grant a delay or extension of time to: reprieve from  
death or execution: some poor criminal ... from the  
gallows, respite<sup>d</sup> for a day. ■ Middle English:  
from Old French *respit*, from Latin *respectus* 'refuge,  
consideration'.

**resplendent** /riˈsplendənt/ ▶ *adj.* attractive and impressive through being richly colorful or sumptuous. She was **resplendent** in a sea-green dress. See note at **BRIGHT**. ▶ *late* Middle English: from Latin *resplendere* 'shining out', from the verb *resplendere*, from

**respondent** /rɪˈspɒndənt/ *n.* **1** a defendant in a suit, esp. one in an appeals or divorce case. **2** a person who replies to something, esp. one supplying information for a survey or questionnaire or replying to an advertisement.

1 **respondent** *ˈrɒspəndənt* **n** 1 in the position of defendant in a law-  
[attrib.] 2 the respondent defendant. 2 replying to some-  
thing: the respondent defendant. the respondent  
questionnaire: the respondent questionnaire. 3 **Psychology** involving or denot-  
ing a response, esp. a survey or questionnaire: the respondent  
questionnaire. 4 a response, esp. a conditioned reflex, to a spec-  
ific stimulus. 'Nearly 16th cent. (sense 2 of the  
word): from Latin *respondent-* 'answering, offering in  
return': from the verb *respondere* (see **RESPOND**).

**response** /ri'spɒns/ ▶ plural form of **RESPONSE**.  
**response** /ri'spɒns/ ▶ n. a verbal or written answer:  
 without waiting for a response, she returned to her news-  
 paper | we received 400 applications in response to one job  
 ▶ a written or verbal answer to a question in a  
 questionnaire, survey, etc. ▶ a reaction to  
 something, especially a negative one: a negative response to the biggest

response: an extended, jazzy piano solo drew the biggest response from the crowd | an honors degree course in Japanese has been established in response to an increasing demand. ■ **Psychology & Physiology** an excitation of a nerve impulse caused by a change or event; a physiological reaction to a specific stimulus or situation. ■ the way in which a mechanical or electrical device responds to a stimulus or range of stimuli. ■ (usu. responses) a part of a religious liturgy said or sung by a congregation in answer to a minister or cantor. ■ **Bridge** a bid made in answer to one's partner's preceding bid. ■ **Middle English:** from Old French *respon* or Latin *responsum* 'something offered in return,' neuter past participle of *respondere* (see RESPOND).

**response time** ▶ *n.* the length of time taken for a person or system to react to a given stimulus or event. ■ *Electronics* the time taken for a circuit or measuring device, when subjected to a change in input signal, to change its state by a specified fraction of its total response to that change.

**response variable** ▶ *n.* another term for DEPENDENT VARIABLE.

**re-spon-si-bil-i-ty** /rɪˌspɒnsəˈbɪləti/ **n.** (pl. **-ties**) the state or fact of having a duty to deal with something or of having control over someone: women bear children and take responsibility for child care. ■ the state or fact of being accountable or to blame for something: the group has claimed responsibility for a string of murders. ■ the opportunity or ability to act independently and make decisions without authorization: we would expect individuals lower down the organization to take on more responsibility. ■ (often **responsibilities**) a thing that one is required to do as part of a job, role, or legal obligation: he will take over the responsibilities of overseas director. ■ [in sing.] (**responsibility to/toward**) a moral obligation to behave correctly toward or in respect of: individuals have a responsibility to control personal behavior.

**re-spon-si-ble** /ri'spənsəbəl/ ▶ *adj.* [*predic.*] having an obligation to do something, or having control over or care for someone, as part of one's job or role: the department responsible for education. ■ being the primary cause of something and so able to be blamed or credited for it: the gene was responsible for a rare type of eye cancer. ■ [*attrib.*] (of a job or position) involving important duties, independent decision-making, control over others. ■ [*predic.*] (responsible to) having to report to (a superior or someone in authority)

...answerable for their children's behavior. Accountable is more positively connotable, suggesting that someone who will accept responsibility for how that trust has been carried out is fully accountable to the department. If the trust had been allocated to her group, the liability is more restricted in scope. In the foregoing words, it refers exclusively to the extent of blame or the paymaster's obligation in the event of a mishap. In the case of the accident, he was held accountable.

**respon-sive** /ri'spənsiv/ ▶ **adj.** 1 **positively:** a flexible service that is social and economic patterns. ■ **re-** with interest or enthusiasm: responsive students. 2 **answering:** I jig it several responsive tug. ■ **(of a section of)** s. —**re-spon-sive-ly** **adv.** —**ri-**

**-spon-so-ri-al** /rī,spān'sōrēəl  
(liturgical chant) recited in p  
tional response between each

**re-spon-so-ry** /ri'spənsərē/ ▶ *n.*  
 (in the Roman Catholic Church) an anthem said by the choir after a lesson. ▶ *Plate* *Middle*  
**re-spon-sor-i-um** /ri'spənsər-i-əm/ ▶ *n.*  
 a Latin responsorium, from Latin  
 from the verb *respondere* (see  
**re-spon-sum** /ri'spənsəm/ ▶ *n.*  
 a reply by a rabbi or Talmudic scholar  
 on some matter of Jewish law.  
 'reply.'

**es pu-bli-ca** /rās 'pōōbli,kā; 'p  
public, or commonwealth.  
matter.'

**es-sen-ti-ment** /rə,səntē'mā  
state arising from suppressed  
hatred that cannot be ac-  
tually expressed in some form of self-  
assertion (used by Nietzsche in the  
sense of 'ressentiment' 'feeling')

**rest** /rest/ ▶ *v.* [intrans.] 1 *ce.*  
in order to relax, refresh  
strength: he needed to rest after  
going to rest up before travel  
allow to be inactive in order  
to let an organism or friend

health, or energy. ■ [*trans.*] leave (temporarily; both men were ■ (of a dead person or body) rested in his tomb. ■ (of: left without further investigation: the council has urged not to allow the matter to rest lie fallow: the field should be ■ (of a case) to be decided the case for the prosecution: the prosecution rest case below. 2 [*intrans.*] be (to stay in a specified position on the arm of the sofa. ■ [*trans.*] that it is supported in a special hand on her shoulder. ■ (to rest or be steadily directed on the boy. ■ (rest on/upon) in: depend on: the country liances. ■ [*trans.*] (rest some trust, or confidence on or

**Pronunciation Key** ə go; ɛ fur; ʌ hat; ā rate; ă car; CH ɪ fit; i by; i(ə) ear; NG sing; ō ʒoon; ou out; SH she; TH thin; -



