

1 IN THE UNITED STATES DISTRICT COURT
2 FOR THE DISTRICT OF OREGON
3 EUGENE DIVISION
4 JAMES M. CLEAVENGER,)
5)
6 Plaintiff,) Case No. 6:13-cv-01908-DOC
7)
8 v.)
9) September 14, 2015
10)
11 CAROLYN McDERMED, BRANDON)
12 LEBRECHT, and SCOTT CAMERON,)
13)
14 Defendants.) Portland, Oregon
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13 TRIAL DAY 5
14 TRANSCRIPT OF PROCEEDINGS
15 BEFORE THE HONORABLE DAVID O. CARTER
16 UNITED STATES DISTRICT COURT JUDGE
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25 * * *

1 TRANSCRIPT OF PROCEEDINGS
2 THE COURT: We're on the record. The jury is not
3 present. All counsel are present. Counsel? Counsel?
4 MR. McDOUGAL: Yes. You may recall that on Friday
5 defense counsel was asked to read Doug Park's response.
6 THE COURT: I'm sorry?
7 MR. McDOUGAL: You might recall on Friday defense
8 counsel was asked to read that redacted email; what Doug Park's
9 email to Carolyn McDermed was.
10 THE COURT: I didn't request it.
11 MR. McDOUGAL: She did read it, and she said that was
12 the email.
13 THE COURT: Right.
14 MR. McDOUGAL: The email was actually five paragraphs
15 long, and it was -- you'll see it. It's at the bottom.
16 THE COURT: Counsel, the issue is?
17 MR. McDOUGAL: The issue is that we've got three
18 problems with disclosure about this one email chain. One is
19 that we were told it was only a one-paragraph response.
20 THE COURT: All right. It turns out to be five
21 paragraphs.
22 MR. McDOUGAL: Right. Two is Lieutenant Lebrecht
23 actually chimed in, and that was given to us for the first time
24 this weekend. You might remember that they moved for summary
25 judgment against us, and we had no idea that he had responded

1 shortly thereafter McDermed's email saying that he could help
 2 in the process. It's a one-liner.
 3 But then we also had the other *Brady* email where the *Brady*
 4 materials were attached. And I asked the witness. The witness
 5 said no. Then I asked counsel, and counsel said there are only
 6 two attachments. And I said, "Why is there a semicolon?" And
 7 this weekend, for the first time, we were produced *Brady*
 8 materials attached.
 9 My concern is that we have three rather large mistakes
 10 over a very simple email chain involving the *Brady* list, and I
 11 don't know what else is out there. I could not have known that
 12 there were this many mistakes with something so simple.
 13 THE COURT: Well, the end result, though, is that
 14 this was a back-and-forth between the two of you. This was
 15 never brought to the Court. And the only reason I raised this
 16 was because of Exhibit 168. And because the case didn't come
 17 to this Court for over a year or a year and a half after it was
 18 filed, I didn't know if the magistrate judge had made rulings,
 19 if Judge Aiken had made rulings, what judge had made rulings
 20 concerning discovery.
 21 So I only raised it sua sponte was because I was concerned
 22 as a gatekeeper, and I was concerned with the fact that I was
 23 not going to foreclose you in argument from the wildest of
 24 speculations or the truth because of those redactions.
 25 So if you got up and argued and if the defendant would

1 THE COURT: Did you ever raise those with the Court?
 2 MR. MCDUGAL: No.
 3 THE COURT: Okay. Probably because in good faith you
 4 thought those were attorney-client privilege; right?
 5 MR. MCDUGAL: Yes.
 6 THE COURT: They might have been. Counsel could have
 7 possibly asserted the attorney-client privilege. I don't know.
 8 Nobody brought that to me.
 9 MR. MCDUGAL: I --
 10 THE COURT: So I can't rectify the past. I hear your
 11 frustration. There may be other documents out there. I don't
 12 know.
 13 MR. MCDUGAL: The other documents --
 14 THE COURT: What are you asking me to do?
 15 MR. MCDUGAL: Two things: One, the two other
 16 documents that were just given to us were clearly responsive.
 17 It didn't matter whether they were privileged. They just
 18 simply didn't give them to us. So I couldn't have brought that
 19 to you earlier.
 20 THE COURT: What are the two other documents --
 21 MR. MCDUGAL: Lebrecht's --
 22 THE COURT: -- you handed me? So this record is
 23 clear --
 24 MR. MCDUGAL: Page 8,000 --
 25 THE COURT: No. Just a moment. You handed me 229

1 have objected and said, "Judge, that's just not fair. That's
 2 speculative," I was forewarning the defendant I was going to
 3 deny their objection because the second sentence in 168 seems
 4 to indicate that whatever this information was that the chief
 5 had rejected this information; and, yet, the chief had
 6 testified on another matter -- I think the letter of
 7 reprimand -- that she had acquiesced or accepted the
 8 recommendation.
 9 Whatever happened in discovery between the two of you -- I
 10 understand your frustration, but now apparently you have all
 11 five paragraphs.
 12 MR. MCDUGAL: That -- what I'm pointing you --
 13 you're correct, Your Honor. But when you pointed that out, we
 14 then get two other documents that are responsive the whole time
 15 that we didn't know existed.
 16 THE COURT: Remember, nobody came to me for
 17 discovery.
 18 MR. MCDUGAL: I couldn't come to you if they didn't
 19 tell me they had -- they had it. They didn't give it to us.
 20 THE COURT: That's not it. You saw the redact --
 21 this is not your fault. It's going -- you saw the redacted
 22 portions --
 23 MR. MCDUGAL: Yes.
 24 THE COURT: -- in 168; right?
 25 MR. MCDUGAL: Yes.

1 and 230 of Exhibit 412. Is the other document -- in other
 2 words, this was just given to me five minutes ago.
 3 MR. MCDUGAL: 231 is the email we never got.
 4 THE COURT: 231 is the email.
 5 MR. MCDUGAL: Very top.
 6 THE COURT: Let me read this.
 7 Okay. This is the chief's response?
 8 MR. MCDUGAL: No. This is Lebrecht's.
 9 THE COURT: No. Look down at the second. This is
 10 the chief's response. From Carolyn McDermed.
 11 MR. MCDUGAL: No. If you read "from," it says
 12 Brandon Lebrecht.
 13 THE COURT: No, I'm focused -- Counsel, follow me
 14 now. I'm not following you.
 15 MR. MCDUGAL: Okay.
 16 THE COURT: From Carolyn Lebrecht {sic} March 10,
 17 2014, at 11:35. That's what I'm focused on. I see Lebrecht.
 18 I understand. I can read it. But here is the chief's
 19 explanation. And before the chief was in the position of the
 20 wildest of speculation or the truth because of the redactions.
 21 Now, she could testify exactly to what occurred, and you
 22 could also raise the fact that here there are also *Brady* issues
 23 to consider. So what you're saying -- so you know that I
 24 understand this, you only got the portion "There are also *Brady*
 25 issues to consider." That's all you got.

1 MR. MCDUGAL: Yes.
 2 THE COURT: You didn't get the portion down below
 3 from Carolyn McDermed.
 4 MR. MCDUGAL: I did. I didn't get the portion above
 5 showing Lebrecht's involvement in the email chain.
 6 THE COURT: Oh, I see. You didn't know that Lebrecht
 7 was on the email chain. You just saw Carolyn McDermed. I
 8 don't know. Counsel, if there was an email that's from
 9 Lebrecht that says there are *Brady* issues of concern -- of
 10 concern, that's already before the Court.
 11 MR. MCDUGAL: No.
 12 THE COURT: All right. Now, I think we're wasting
 13 time, frankly. I hear your frustration. I don't hear the
 14 remedy that you're asking for.
 15 MR. MCDUGAL: I don't think they should be -- they
 16 produced a number of documents that were responsive during this
 17 trial. I don't think they should be allowed to offer any of
 18 them, and we should be able to offer them if we want.
 19 THE COURT: No. No. We haven't had a remedy. If
 20 this would have come to me before and if they would have
 21 disobeyed a court order, so be it. I understand your
 22 frustration and I understand the late discovery. I don't think
 23 I'm ready to make that dramatic remedy.
 24 Now, do you want to start over again?
 25 MR. MCDUGAL: No.

1 THE COURT: I will hear a motion for mistrial.
 2 MR. MCDUGAL: I'm not moving for a mistrial.
 3 THE COURT: I want to be very specific about that.
 4 If you are, it's 50/50. I want to tell you that. I can get
 5 discovery out, but if I do it, I'll do it with an iron hand.
 6 There won't be any discovery abuses in my court. Trust me.
 7 MR. MCDUGAL: Thank you.
 8 THE COURT: Are you sure? Sit down and talk to them.
 9 Talk to your client for a moment. We're only four or five days
 10 in. We'll get discovery sorted out real quick.
 11 MR. MCDUGAL: We do not wish for a mistrial.
 12 THE COURT: As long as it's all right with your
 13 client. That's the most important thing.
 14 MS. COIT: Your Honor, can I just put my response on
 15 the record?
 16 THE COURT: No. Now, what are you asking? I hear
 17 your frustration. By the way, I would be equally frustrated.
 18 Let me just say that. But I'm not going to take the remedy now
 19 of starting to chop up the evidence. You've got an
 20 all-or-nothing -- you've got an all-or-nothing opportunity.
 21 Four, five days doesn't bother me. That's what you don't
 22 understand.
 23 MR. MCDUGAL: I appreciate that, Your Honor, but you
 24 can't get the same --
 25 THE COURT: I can undo this discovery real quick. If

1 you think there's other stuff out there, trust me, there won't
 2 be anything out there by the time I'm done with both of you.
 3 MR. MCDUGAL: I don't want to delay the jury.
 4 THE COURT: No, I'm not worried about the jury. You
 5 can't use that as an excuse.
 6 MR. MCDUGAL: Okay. Let me give you one other
 7 example, so you'll understand.
 8 THE COURT: What I won't do, though, is take your
 9 remedy. I won't start chopping up evidence in the middle of
 10 the case. And, by the way, I understand your frustration. Let
 11 me say that again. But now we're not going to play the game of
 12 whether the judge chops it up or not. If you want to start
 13 over, there's a good chance of starting over.
 14 MR. MCDUGAL: I do not want to start over. I --
 15 THE COURT: Okay.
 16 MR. MCDUGAL: I would ask for a couple of minutes at
 17 the lunch break so that between now and then I can consider
 18 whether or not there's anything else that might alleviate my
 19 concerns.
 20 THE COURT: You can take it now if you want to. You
 21 want to take some time now -- we'll just tell the jury we're
 22 going to be a little bit late -- before you start your
 23 examination of Mr. Cleavenger? Because I don't know when
 24 you're calling him.
 25 MR. MCDUGAL: We're calling him first and --

1 THE COURT: Let me finish. Let me finish. You want
 2 a little bit of time. I'll give you that time now.
 3 MR. MCDUGAL: Let me --
 4 THE COURT: And I'll give you the time over the lunch
 5 hour if you want to.
 6 MR. MCDUGAL: I think I can do it over the lunch
 7 hour. I appreciate, Your Honor --
 8 THE COURT: By the way, once again, I say to you I
 9 understand your frustration. If this was coming to me and I
 10 was in a litigation position -- I think you have every right to
 11 be upset about this.
 12 MR. MCDUGAL: Thank you.
 13 THE COURT: But the other side could have been
 14 claiming attorney-client privilege, and I don't want to go back
 15 and forth in my rulings. And counsel should have the
 16 opportunity to present that, "Judge, it was attorney-client
 17 privilege because -- we're now waiving it." And, therefore,
 18 I'm not going to jump to the conclusion that this should be
 19 ferreted out.
 20 So now, Counsel, it's your turn.
 21 MS. COIT: Thank you, Your Honor. The email that was
 22 presented Friday -- I just want to make -- excuse me -- my
 23 comments for the record. I'm not asking for any sort of
 24 decision or ruling.
 25 The email that was read on Friday, that is the only

1 page of the document, of that email chain, that was produced.
 2 That is the only page that was responsive, and the only
 3 responsive parts were the ones that were not redacted. So when
 4 I read the unredacted part, that's the only document I had. I
 5 did not realize at the time that it was this longer email
 6 chain.

7 The corresponding emails that we have now waived privilege
 8 on and given to counsel, they dealt with the arbitration
 9 decision. They dealt with my client's getting it. That was
 10 never requested in discovery.

11 THE COURT: Also, the last portion concerning
 12 Doug Park's thought of settling it on a global basis --

13 MS. COIT: Correct.

14 THE COURT: -- it was part of the settlement
 15 discussion?

16 MS. COIT: Correct. It was all settlement
 17 discussions. It was arbitration decisions. It was withheld as
 18 nonresponsive. But had it been requested, it probably would
 19 have been withheld as attorney-client. But there's never been
 20 a request in this case for all communications regarding our
 21 knowledge of the arbitrator's decision.

22 THE COURT: Yeah.

23 MS. COIT: The discovery that they're talking about
 24 is all communications regarding turning stuff over regarding
 25 Brady issues.

1 THE COURT: Yeah.

2 MS. COIT: That's why the Carolyn McDermid email was
 3 turned over.

4 THE COURT: My concern is that I'm not willing to
 5 jump to the conclusion, as plaintiff's counsel would like the
 6 Court to do, and then start ferreting out a sanction because
 7 much of this may have been attorney-client privilege that
 8 you're voluntarily waiving. And if such -- if so, then the
 9 Court should have had the courtesy of deciding this in a
 10 thoughtful manner.

11 You should be presenting evidence about why it's
 12 attorney-client privilege. I should be getting unredacted
 13 copies. In other words, those are the things that judges do
 14 during discovery. But it was never brought me.

15 Now, counsel, on the other hand, states, "I never saw it."
 16 But, on the other hand, he did see a redacted portion in 168 at
 17 the top. And if there was a concern, that should have been
 18 brought to me, which would have led, I think, to the disclosure
 19 of all this other information.

20 So I'm not finding fault with either one of you. My
 21 frustration is it wasn't brought to me, so I couldn't make a
 22 ruling. That's why I'm not accepting your sanction. I might
 23 accept the fact if you want to start over again, but apparently
 24 you don't. So here we are.

25 Can I get the jury?

1 MR. JASON KAFOURY: Your Honor, I just wanted to --

2 THE COURT: And tomorrow you're both in court at
 3 7:30. This is exactly what I detest. It's 8:00. I'm foolish.
 4 It's my problem. It's not yours. But we're starting at 7:30
 5 every day. So from now on there's no variation. Just be here
 6 at 7:30, and we'll wait until 8:00 with the jury. That way if
 7 we have pop-ups, we're all sitting here. But this is
 8 ridiculous. It's 8:15.

9 MR. JASON KAFOURY: Your Honor, I want to be as quick
 10 and efficient about this process with my client as possible.
 11 He's going to be on the stand all day, and there's a lot of
 12 documents. I've gone through, over the weekend, and I've made
 13 three stacks of the documents. Most of the ones you already
 14 had. There's a few additional ones here and there, and I'll go
 15 through them in order. So my thought is I'll give you a copy,
 16 counsel a copy, and we'll have three, and we'll just go through
 17 them systematically that way.

18 THE COURT: That's fine. Now, can I get the jury?
 19 It's now 8:16. Can I get the jury?

20 MR. JASON KAFOURY: Yes. I just -- explain to me
 21 what I have here.

22 THE COURT: Christy, get the jury.

23 (Jury present.)

24 THE COURT: Good morning. How is everybody?

25 THE JURY: Good morning.

1 THE COURT: I apologize for the late start today. I
 2 had to walk around Portland for a while. I'm just kidding.
 3 Have a seat.

4 It's 8:16. And we shouldn't be 16 minutes late. My
 5 responsibility. I apologize.

6 Counsel, on behalf of the plaintiff, next witness, please.

7 MR. JASON KAFOURY: We call our plaintiff, James
 8 Cleavenger, to the stand, Your Honor.

9 THE COURT: Thank you. Mr. Cleavenger, if you would
 10 stand, sir.

11 JAMES CLEAVENGER,
 12 called as a witness in behalf of the Plaintiff, being first
 13 duly sworn, is examined and testified as follows:

14 THE COURT: On this occasion, walk across the center
 15 of the courtroom, to save time. I know it's not appropriate,
 16 but come up here to the entrance of the witness box, sir, and
 17 if you would be so kind to be seated.

18 And after you're seated, will you face the jury and state
 19 your full name, sir, and spell your last name, please?

20 THE WITNESS: My name is James Michael Cleavenger.
 21 Cleavenger is C-L-E-A-V-E-N-G-E-R.

22 THE COURT: Thank you. Direct examination, please.

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1 DIRECT EXAMINATION
 2 BY MR. JASON KAFOURY:
 3 Q. Take a deep breath. This is going to take a long time.
 4 A. All right.
 5 Q. Before we talk about your background, big picture, how
 6 many days have you been deposed in this case?
 7 A. Three days.
 8 Q. How many pages have you been asked questions?
 9 A. How many pages?
 10 Q. 350 pages plus of questions in depositions?
 11 A. Sounds about right, yeah.
 12 Q. Well, let's start off and introduce yourself to the
 13 jurors. Where are you from originally?
 14 A. I'm from Richland, Washington. Eastern Washington.
 15 Tri-Cities area. Hanford. That area.
 16 Q. Where did you go to high school?
 17 A. I went to Hanford High School.
 18 Q. When did you graduate?
 19 A. 1997.
 20 Q. Play any sports?
 21 A. Yeah. Baseball, hockey. That was the main thing. That's
 22 where I picked up a few scars here. Tennis, golf. All that --
 23 lots of sports.
 24 Q. What did you decide to do after high school?
 25 A. I went to De Paul University in Chicago, Illinois.

1 Q. Why did you choose Chicago?
 2 A. Because I was interested in politics for some strange
 3 reason early on, and I knew that Chicago was kind of where the
 4 epicenter is for Democratic party politics. And, also, it was
 5 a big city, and I lived in a small town all my life, and I
 6 wanted to have that experience.
 7 Q. What year did you graduate from college?
 8 A. 2002.
 9 Q. And what did you major in?
 10 A. I was a double major in international studies with a
 11 Russian emphasis in political science.
 12 Q. Did you study abroad while there in school?
 13 A. I did. I studied in Sheffield, England, and also at
 14 Harvard University for a semester.
 15 Q. Now, you got a law degree at the UK. Tell the jurors
 16 about that.
 17 A. Yes. So I kind of did things backwards, as least as far
 18 as tradition in the U.S. goes. I got my LLM first, which is a
 19 degree in international law, focusing on international human
 20 rights. I did that by going to England. And I earned that at
 21 the University of Liverpool.
 22 Q. What year was that?
 23 A. That was 2004 and 2005.
 24 Q. What did you do next in life after that?
 25 A. Then I came back to the states and did my regular law

1 degree. I graduated from the University of Oregon School of
 2 Law in 2008.
 3 Q. Did you study abroad while you were at the University of
 4 Oregon?
 5 A. I did. I did one summer semester at Oxford University
 6 back in England.
 7 Q. We're going to talk about your legal education a little
 8 bit more, but did you take the bar exam after law school?
 9 A. I did. I took two bar exams, the Washington and the
 10 Oregon bar exam.
 11 Q. What happened?
 12 A. I took both bar exams within one week of each other, and I
 13 failed both.
 14 Q. Anybody tell you that was a bad idea?
 15 A. Yes. Actually, Barack Obama told me that was a bad idea.
 16 MS. COIT: Object to the hearsay.
 17 THE COURT: Sustained. Stricken.
 18 BY MR. JASON KAFOURY: (Continuing)
 19 Q. Did you retake the Washington bar?
 20 A. I did. I immediately retook the Washington bar, by itself
 21 this time, and I passed.
 22 Q. But you have not taken the Oregon bar again; correct?
 23 A. That's correct. I'm eligible for what's called
 24 reciprocity, but I -- at this point I don't want to pay for an
 25 extra bar association.

1 Q. So let's talk about your involvement with politics. When
 2 did you first get involved with politics?
 3 A. It's a little weird. I was, like, 12 years old, and, for
 4 some reason, I was interested in politics. And a local
 5 politician knocked on the door, as they tend to do, and I
 6 volunteered for his campaign. And then I paged for him, in
 7 Olympia, in the State, House and Senate. And just, for some
 8 reason, I loved politics at that time.
 9 Q. Did you run for office yourself at any point?
 10 A. I -- I did. I was president of my high school.
 11 Q. And did you do political work when you went to Chicago?
 12 A. I did. That's what I went there for. I got really lucky,
 13 got hooked in with the -- with the Al Gore presidential
 14 campaign in 2000. I started as an intern and worked my way up
 15 to the point where I was doing motorcades and advanced teamwork
 16 any time he was in the Chicago area. So I did a bunch of --
 17 drove in a bunch of motorcades.
 18 And, by that, I'm not driving him. Obviously, that's
 19 Secret Service, but I was two cars behind, driving senior staff
 20 members, or press, depending on which car I was driving at the
 21 time.
 22 Q. Besides Al Gore, any other campaigns you worked on back in
 23 Chicago?
 24 A. Yes. Some -- some of these names are a bit nefarious, if
 25 you follow the news, but Rahm Emanuel, Mayor Daley. One of

1 Rod Blagojevich's campaigns, which was interesting.
 2 Q. And tell us about how you got involved with Barack Obama's
 3 motorcades.
 4 A. I did Barack Obama's motorcade s when he came to Oregon --
 5 it was almost three times in '08 -- because his campaign staff
 6 was based out of Chicago and was all the same people that I
 7 knew and worked on multiple campaigns back in Chicago. So they
 8 knew I was trained to do these things, and it was easy to just
 9 slot me into that position for -- for the Oregon trips.
 10 Q. Let's talk about some of your other activities that you
 11 enjoyed doing here at Oregon while at the U of O. What was the
 12 stuff you were involved with?
 13 A. At the U of O specifically?
 14 Q. We'll start with the U of O specifically.
 15 A. I got involved with the University of Oregon Outdoor
 16 Program, which is kind of like a co-op idea. It's students,
 17 but also members of the community. And as a trip initiator, I
 18 would run a lot of ski trips. I've probably done nearly a
 19 hundred trips in total in the past almost 10 years now.
 20 Q. And what do you do -- what do you do with these trips?
 21 How do you organize it?
 22 A. Basically, I would post a trip with an idea. Ski ones are
 23 simple. It would be a certain day we're going to go skiing and
 24 come back. Those were easy. I would also organize multi-day
 25 trips.

1 I've been doing an annual camping trip to Mount Adams
 2 every year since 1996, and that was uninterrupted until 2013;
 3 the first year I didn't do it.
 4 I opened that trip up to students, as well, at the U of O.
 5 That was pretty involved. It involved whitewater rafting,
 6 including over classified waterfall, hiking Mount Adams,
 7 rappeling, caving, a lot of, kind of, technical stuff.
 8 But I just enjoyed -- I enjoy showing the Northwest to
 9 people who haven't seen it before because it makes you
 10 appreciate it. You take it for granted. But, like, foreign
 11 exchange students, and stuff, come in, it -- it opens your eyes
 12 again to it, too, so --
 13 Q. Tell us about soccer. Football. How did you get into
 14 that?
 15 A. Well, I always kind of enjoyed soccer, but -- and
 16 Liverpool was my team, but I just kind of randomly picked that
 17 type initially, but then when I moved to Liverpool, it was in
 18 2004, 2005, and they won the champions league. They were down
 19 three/nil at halftime and came back. It was the greatest
 20 soccer game ever played. So then I became a total addict.
 21 And when I came back to the states, soccer wasn't on TV as
 22 much as it is now, so it was hard to get. You had to buy
 23 special satellite packages, and stuff, so I put together a
 24 group. We called it Soccers Reale Football, and we made deals
 25 with local pubs and restaurants. They would pay these

1 expensive subscription s so that we could all come in and watch
 2 the games, as opposed to having to pay that individually.
 3 Q. Now, this soccer stuff and all these trips you're going
 4 on, is this all volunteer stuff you're doing?
 5 A. Yes. It's all volunteer work. Yeah. The outdoor
 6 program, the way it's set up, everybody pays the same. I'm
 7 not -- I'm not the guide. I mean, I'm a leader. I'm
 8 initiating it, but it's -- the costs have to be the same. That
 9 way liability is shared.
 10 Q. How did you get into soccer refing?
 11 A. My father had always been a referee, and, to be honest, I
 12 thought it was kind of dorky at first. I always preferred
 13 playing soccer. I was a goalkeeper and then I got my arm
 14 kicked in half, and after that I was a little ball shy. I just
 15 preferred to let people have the ball if they were going to
 16 challenge me, so I decided while I still loved the game, then
 17 I'll ref just like my father did. So I've been doing that for
 18 about 10 years.
 19 Q. What's this level seven that your father talked about?
 20 A. It's just a -- one of the higher levels in soccer
 21 officiating; meaning, you can do college and upper-level club
 22 teams.
 23 Q. Now, why do you ref with a British accent?
 24 A. I ref with a British accent because I feel it gives me an
 25 edge when I'm refing. As I'm sure you have all seen, people

1 like to give refs a bit of trouble, heckling them and whatnot,
 2 but I learned quickly that if I was using a British accent,
 3 then players would think, "Oh, this guy knows the game. He's
 4 British." So I got far less flack from players. I mean, it
 5 was night and day.
 6 And, you know, I talked to my dad about it, and, you know,
 7 he saw me ref games like this, and he wished he had a decent
 8 British accent, but he doesn't. And I was also encouraged from
 9 the commissioners of the Referee's Association to keep doing
 10 this. They said use whatever edge you can get.
 11 MS. COIT: Object to the hearsay.
 12 THE COURT: Overruled.
 13 BY MR. JASON KAFOURY: (Continuing)
 14 Q. So that --
 15 THE COURT: You can finish your answer.
 16 THE WITNESS: Just the commissioner said, "Yes, keep
 17 doing it. Use whatever edge you can get to be able to get
 18 respect from the players and keep control of the game."
 19 THE COURT: Counsel, go ahead.
 20 It goes to state of mind, Counsel.
 21 BY MR. JASON KAFOURY: (Continuing)
 22 Q. Cricket. How did you get involved in playing cricket?
 23 A. I dabbled with it when I was at the University of
 24 Sheffield for a study abroad experience, but then I played on
 25 the actual team at the University of Liverpool, and I loved it.

1 It was a lot like baseball. A little bit more relaxed. I call
 2 it "retirement baseball," basically. A lot of guys on our team
 3 are older, faculty members, and stuff, at U of O. So it's
 4 something that I continue to play. So I joined the team and
 5 played for the team while I was in law school. And then they
 6 needed a coach, so I've been head coach for at least five years
 7 now.
 8 Q. So you're currently the University of Oregon cricket
 9 coach?
 10 A. Yes.
 11 Q. And do you use the British accent as part of that as well?
 12 A. I do. It's another British sport. I use the accent.
 13 Q. Was the University of Oregon Department of Public Safety
 14 on notice about this British accent and your use of it when you
 15 were hired?
 16 A. They were, actually.
 17 Shawn Brathwaite, an officer -- I mean, I was very open
 18 about this. I told him about it. He came and watched some
 19 cricket. He thought the accent was brilliant, and he told
 20 other officers about it. He thought it was funny. Some people
 21 didn't think it was funny, and I don't know who, but they
 22 complained or --
 23 MS. COIT: Object to hearsay. He says he doesn't
 24 know who.
 25 THE COURT: Overruled.

1 Finish your answer.
 2 THE WITNESS: So a complaint was somehow generated,
 3 came in to Lieutenant Mike Morrow. This was in 2010 while I
 4 was still just a part-time employee. Two part-time positions
 5 at U of O. He brought me in and we talked about it, and that
 6 was about the extent of his investigation. He sent a couple of
 7 follow-up emails. I think I made a joke, saying, you know, if
 8 you ever need an undercover guy, you know, in -- to do
 9 something, I can do a British accent and thanks for
 10 understanding that it's just for fun, that sort of thing.
 11 BY MR. JASON KAFOURY: (Continuing)
 12 Q. I'll show you Plaintiff's Exhibit 161. Is this the email
 13 that you just were referring to back and forth with
 14 Lieutenant Morrow?
 15 A. Yes, it is.
 16 Q. Okay.
 17 MR. JASON KAFOURY: I'd offer --
 18 BY MR. JASON KAFOURY: (Continuing)
 19 Q. What's the date on that email?
 20 A. I can see I got the date slightly wrong. Well, this
 21 email, at least, is from February 20, 2011. So it was right
 22 before I was hired full time. I think I said 2010, but it's
 23 early 2011.
 24 MR. JASON KAFOURY: I'd offer 161.
 25 THE COURT: It's received.

1 BY MR. JASON KAFOURY: (Continuing)
 2 Q. Now I raise this issue of the British accent. Are there
 3 allegations in the *Brady* materials about your -- about your
 4 involvement with honesty and this coaching?
 5 A. Sort of. It's -- it's kind of unclear to me. One thing
 6 that is included in this voluminous 250-page *Brady* packet is a
 7 picture from our old website, from back in 2010, 2011, of me
 8 and -- in a cricket uniform, and it was a screenshot from our
 9 website at the time that listed my birthplace as Liverpool,
 10 England.
 11 What I had intended was it was supposed to list your last
 12 team you were playing for.
 13 Regardless, when Mike Morrow talked to me about this, I
 14 had it taken down immediately, and it was taken down.
 15 Q. And was this at the beginning of your tenure at the
 16 University of Oregon?
 17 A. That was the beginning of my tenure as a -- as a coach.
 18 Q. So there was -- did you make this website?
 19 A. No, I did not make this website. The website was new at
 20 the time. It was a brand new website that we had put up.
 21 Q. So let me just make sure I understand. There was a
 22 website that listed your birthplace as Liverpool. You dealt
 23 with it at the beginning of working with the University of
 24 Oregon, but four years later that website picture ended up in
 25 the *Brady* materials.

1 A. That's correct. I assume -- I assume Morrow saved it or
 2 something. But, yeah, that was long gone.
 3 Q. Okay. Let's talk about your work history. What was your
 4 first real job out there?
 5 A. I think my first real job was probably working for the
 6 U.S. Census Bureau as a field enumerator, and I did a little
 7 bit of Russian interpreting. It was a little bit beyond me,
 8 but I did what I could.
 9 Q. What did you do after college? First full-time job.
 10 A. First full-time job out of college was for the Cook County
 11 assessor in Chicago. If you've seen the Blues Brothers, that's
 12 the guy that Blues Brothers have to go pay. I started with
 13 them part time while I was still in college and then worked for
 14 them until I left for Liverpool in 2004. So that was, like,
 15 2001 to 2004 approximately.
 16 Q. Did you get to work with any famous people along that
 17 route?
 18 A. I did. It's still odd to me, but one of the things we did
 19 in that office was we would write legislation for property tax
 20 reform, and we wrote a bill and had to get a couple sponsors,
 21 and one of the sponsors of the bill was then-State Senator
 22 Barack Obama. Not U.S. Senator, but State Senator. He was
 23 new. He served a one- or two-year term. I hung out with him a
 24 lot lobbying this bill. It never occurred to me this guy was
 25 going to become President some day. It's a little strange,

1 but -- but it's memorable. Definitely memorable.
 2 Q. What did you do next?
 3 A. That's -- that's when I moved to Liverpool, England, to
 4 get my first law degree.
 5 Q. And what did you do -- did you work while you were in law
 6 school?
 7 A. I did. I had a couple of jobs. I was a legal advisor for
 8 the Outdoor Program to compile some data on their liability.
 9 Still did the soccer refereeing. I had a whole bunch of little
 10 jobs. I worked for the -- for the ASUO as a student government
 11 representative. I was -- it was a small stipend. I think it
 12 was like 200 a month or something. I wasn't really paid for
 13 it, but there was a stipend involved.
 14 Q. Okay. And we're going to go through all your situation
 15 with the University of Oregon, but where are you currently
 16 working?
 17 A. Well, I guess I should add, with the jobs, when I was at
 18 law school, I clerked for two summers for then-State Court
 19 Judge Michael McShane, who has now become a federal judge in
 20 Eugene. And that's who I currently work for. So I worked two
 21 summers for him in law school when he was in state court. Now
 22 he's in federal court, and I'm what's called a term judicial
 23 clerk.
 24 Q. What is that? Explain that to the jurors. What is a term
 25 judicial clerk?

1 A. There's a limit to it. It's limited to four years, and
 2 so -- from my understanding, there's absolutely no exceptions.
 3 After those four years, they escort you out of the building and
 4 you can't do that job again.
 5 So I'm -- I'm over two years into that, so I have about a
 6 year and three-fourths left in that job, and then that job will
 7 be done.
 8 Q. Briefly, tell us about any civic boards or other things
 9 that you've been a part of in your life.
 10 A. I was parks commissioner for my hometown. City of
 11 Richland. Also, in Chicago, I was on the board of directors
 12 for the National Organization for Women as part of the
 13 political stuff that I did.
 14 Q. All your other jobs, ever been fired or disciplined from
 15 any of those jobs?
 16 A. Never. No discipline, no firing, nothing.
 17 Q. Ever file a grievance against anyone other than the
 18 University of Oregon Department of Public Safety?
 19 A. No.
 20 Q. Ever been involved in any lawsuits before all of this?
 21 A. No. Never.
 22 Q. Let's talk about your law enforcement experience. When
 23 did you first -- tell the jurors: When did you first become
 24 interested in law enforcement?
 25 A. Well, I was always interested in law enforcement because,

1 as I'm sure you remember my father testifying, I would ride
 2 with him when he was on patrol. My mother wasn't too keen on
 3 the idea, but it's been in our family for a long time, so my
 4 initial thought growing up was that I would want to be a
 5 prosecutor, a district attorney, because I still consider that
 6 part of law enforcement, and I thought there might be
 7 opportunity after doing that for a while to then get into law
 8 enforcement itself.
 9 Sort of like what our former Lane County DA Alex Gardner
 10 has done, who was a DA, and now he works for the state police.
 11 That sort of thing.
 12 But after clerking for Judge McShane at the state level --
 13 Q. What years were those, just to help --
 14 A. That was summers of 2006 and 2007.
 15 So after clerking for him and watching prosecutors work, I
 16 could see some of them had great jobs and was exciting, but
 17 some of them didn't. Especially when you first start. A lot
 18 of guys have to, you know, just do DUIs over and over and over
 19 again and seemed kind of burned out, had a high caseload,
 20 and -- and a lot of paperwork, and it just didn't -- didn't
 21 hold the same pull.
 22 So I then decided I would rather just go directly into law
 23 enforcement, which I concentrated my efforts on after I
 24 graduated and passed the bar.
 25 Q. What was your -- what was your goal back before all this

1 happened with U of O? What did you want to do with law
 2 enforcement?
 3 A. My goal was to become a chief, eventually, and I wanted to
 4 put in all the necessary steps. I didn't want to just be put
 5 into that role or high roller. I wanted to start at the bottom
 6 and work my way up. But the goal was to become a chief because
 7 I wanted to create a police department that's progressive and
 8 more connected to the citizens. Less paramilitary, frankly,
 9 and more community-based.
 10 Q. So when did you start applying for jobs in law
 11 enforcement?
 12 A. I started applying for jobs as soon as I graduated law
 13 school and passed the bar.
 14 Q. What time period are we at?
 15 A. This is 2009. I took the -- passed the bar in February of
 16 2009.
 17 Q. Did you apply for legal jobs simultaneously?
 18 A. I did. I applied for some legal jobs as well. At that
 19 point in our history, as you probably recall, the economy had
 20 tanked, and I was -- I was applying for a lot of stuff. But my
 21 heart was in the law enforcement jobs, and that's what I
 22 focused on were those jobs.
 23 But, yeah, I would apply for a DA position every once in a
 24 while. If it was, like, in a small town or I felt -- or small
 25 jurisdiction because I felt maybe in a small town there would

1 be more opportunity to do different things. I hate doing the
 2 same thing over and over and over again, so I wouldn't want to
 3 be, like, in Portland.
 4 Q. What was your first law enforcement job?
 5 A. First law enforcement job, I was hired by the Junction
 6 City Police Department as a reserve police officer. They hired
 7 me -- hired me at the end of 2009. It's a long process. You
 8 have to apply, and there's a background check. So hired at the
 9 end of 2009, started the reserve academy in January 2010.
 10 THE COURT: You started January what?
 11 THE WITNESS: 2010, Your Honor.
 12 THE COURT: 2010. Thank you.
 13 BY MR. JASON KAFOURY: (Continuing)
 14 Q. Okay. Tell us about the reserve academy. Obviously, it
 15 wasn't every day. You learned that.
 16 A. That's correct. It was four hours every Thursday night,
 17 and then eight to ten hours, depending, every Saturday. A lot
 18 of times we would go over or we would -- had an off-site
 19 location.
 20 So it was about seven months of that full day on Saturday
 21 and the night class, and that's standard.
 22 The curriculum is created by DPSST. That's the Oregon
 23 Department of Public Safety Standards and Training. They come
 24 up with a curriculum, and then it was sponsored or run by the
 25 Lane County Sheriff's Department.

1 Q. How many people were part of this reserve academy?
 2 A. It varies from year to year. My year I want to say there
 3 were nearly 20 folks, and that's because it -- the U of O, the
 4 UODPS, had a lot of people in that academy, including the chief
 5 at the time. Chief Doug Tripp.
 6 Q. I was going to ask you which chief.
 7 A. Yeah, Chief Doug Tripp was in that academy. He actually
 8 had never been to a police academy at that time. Captain
 9 Herb Horner, who was second in command at that time.
 10 Chris Phillips, who I believe was a sergeant at that time. And
 11 then about five more officers, Jen Parker, Eric LeRoy, et
 12 cetera. So they had the largest contingent, but then there
 13 were also officers from other law enforcement agencies,
 14 Oakridge Police Department, Coburg, Junction City. Basically,
 15 anywhere Lane County would send reserves.
 16 Q. So how did you end up doing after seven months? Where
 17 were you ranked?
 18 A. I graduated number one in the class.
 19 Q. How is that determined; that you're number one?
 20 A. That's determined by the instructors based on test scores
 21 and also field tests. I've never seen the actual formula, but
 22 it's up -- up to them. They say it includes not only the
 23 written test, but also firearms training scenarios, that kind
 24 of stuff, too.
 25 Q. So tell us how it was that you applied for a job at the

1 University of Oregon Department of Public Safety.
 2 A. So when I was in that academy with these U of O guys, we
 3 formed friendships, and they encouraged me to apply for a
 4 part-time position as an auxillary public safety officer. So I
 5 did that, and they hired me three months later. So March 2010
 6 I was hired as an auxillary public safety officer with their
 7 department.
 8 Q. As part of that, did you produce a resumé with your
 9 background and training and political experience?
 10 A. I did.
 11 Q. And who did you give that to?
 12 A. That was part of my application packet, which went to the
 13 department, and at that time Casey Boyd was doing the hiring.
 14 Q. Let me show you Plaintiff's 267.
 15 THE COURT: 267?
 16 MR. JASON KAFOURY: Correct.
 17 THE COURT: Thank you.
 18 BY MR. JASON KAFOURY: (Continuing)
 19 Q. Can you identify what that document is, sir?
 20 A. This would be my resumé circa 2010. The way I can tell
 21 that is some of my references are now deceased and my work
 22 history says 2010 to present, et cetera.
 23 Q. Okay. So is this an accurate copy of the resumé that the
 24 University of Oregon would have had when you applied?
 25 A. It should be.

1 MR. JASON KAFOURY: Offer 267.
 2 THE COURT: Received.
 3 BY MR. JASON KAFOURY: (Continuing)
 4 Q. Okay. Let's talk about your time there initially. How
 5 long did you work as an auxillary public safety officer?
 6 A. I was an auxillary for one year, almost, to the date.
 7 From March of 2010 to March of 2011.
 8 Q. What were your job duties as an auxillary public safety
 9 officer?
 10 A. Well, we would supplement the regular public safety
 11 officers, so during special events, football games, baseball
 12 games, et cetera, we would come in and help them out. And then
 13 there were -- it was a set schedule for, like, running the
 14 library overnight, when it was 24 hours, museum duty, kind of
 15 the slower stuff, but those were -- those were part of our
 16 duties too.
 17 Q. Who was your supervisor during that year?
 18 A. That was Lieutenant Casey Boyd.
 19 Q. Any performance problems or issues during that year?
 20 A. No, none.
 21 Q. What other job did you have there at the Department of
 22 Public Safety during that same time period?
 23 A. Well, a couple of months into working as an auxillary
 24 public safety officer, I was approached by Lieutenant
 25 Mike Morrow, former-Lieutenant Mike Morrow, who asked me to

1 become what they called the traffic petitions officer.
 2 Basically, my job was to decide if citizens -- if their
 3 appeals -- for traffic tickets and their parking tickets, if
 4 their appeals would be granted or not.
 5 Q. Who did you report to as part of that?
 6 A. Lieutenant Mike Morrow directly. And we met at least once
 7 a month. I had to fill out -- I had to give him a monthly
 8 report and tell him what kind of appeals were coming in, if
 9 there were any trends, any major problems, or if there were any
 10 officers that were, you know, over-citing in a certain area or
 11 getting things wrong. That sort of stuff. I would look at the
 12 trends, in addition to deciding each appeal as it came in.
 13 Q. Who was issuing these traffic tickets?
 14 A. The public safety officers were -- were issuing traffic
 15 and parking tickets.
 16 Q. And how were they issuing them? I mean, were they
 17 walking? Were they driving? How did it happen that they
 18 would --
 19 A. Well, insofar as the --
 20 MS. COIT: Object to the foundation.
 21 BY MR. JASON KAFOURY: (Continuing)
 22 Q. Do you know?
 23 THE COURT: Lay a foundation, Counsel, about how he
 24 would know if they were walking or driving.
 25 ///

1 BY MR. JASON KAFOURY: (Continuing)
 2 Q. How would you know when you received this information how
 3 these citations were issued?
 4 A. Well, that's -- that's pretty simple. I would read the
 5 appeals, and the citizens would say that on such and such a
 6 date and such and such a time they went through a stop sign and
 7 were then pulled over by a public safety officer and issued a
 8 citation for failure to stop at a stop sign. That was one that
 9 became problematic for a while because there were a lot of
 10 cites being issued.
 11 The stop sign was at a little parking kiosk. So the
 12 citizens were saying, "We don't see it. It's really small,"
 13 and they thought that was unfair.
 14 Another common one was driving the wrong way down a
 15 one-way street inside the campus property or driving down a
 16 closed portion. So a street that was closed off, couldn't
 17 drive on, people would be driving on it, and they were issued
 18 citations for that. And citizens would complain and appeal and
 19 basically say the signs weren't obvious enough or things like
 20 that.
 21 Q. I would like to show you Plaintiff's Exhibit 83. Can you
 22 identify for the jurors what this exhibit is?
 23 A. This exhibit is my monthly report to Mike Morrow from
 24 December of 2010.
 25 Q. So you would hand these reports to Lieutenant Morrow ; is

1 that correct?
 2 A. Two ways. I would hand them to him and we would discuss
 3 them, and I would also email them to him. I would email to him
 4 beforehand, so he could read it, and then we would discuss it.
 5 And then if we wanted to add anything or change anything, then
 6 I could email it to him again and it was saved on the
 7 department computer servers. I assume he saved it in his files
 8 too.
 9 Q. These are just a few samplings, is that correct, of
 10 monthly reports?
 11 A. Yes. There's -- oh, yeah. I guess there's more pages
 12 here. There's the December of 2010 report , and then there's a
 13 quarterly report as well. We did quarterly reports where I
 14 would look at the numbers and give him suggestions and things.
 15 I would -- another part of the job was to run the traffic
 16 appeals board. I forgot to mention that. So if they didn't
 17 like my decision on their appeal, they had one more step where
 18 they could appeal to a -- to a board, which was -- I think
 19 there were six faculty members, faculty and staff members on
 20 board, and I would run those meetings and give them
 21 documentation from the next appeal and --
 22 Q. And the exhibit number on here again is?
 23 A. 83.
 24 MR. JASON KAFOURY: Offer 83.
 25 THE COURT: 83 is received.

1 BY MR. JASON KAFOURY: (Continuing)
 2 Q. Now explain to the jurors, Mr. Cleavenger, what is
 3 significant about this document in relation to traffic stops
 4 and public safety officers.
 5 A. So on page 2 of this exhibit, number 83, right in the
 6 middle --
 7 MR. JASON KAFOURY: Yeah. Can we publish 83, Your
 8 Honor?
 9 THE COURT: You may.
 10 THE WITNESS: So under the failure to stop paragraph,
 11 I was pointing out to Lieutenant Morrow that there were three
 12 appeals just that month alone, and, again, these are only
 13 appeals. Not everybody obviously appeals their citations at
 14 the -- the traffic kiosk booth that I was trying to explain, so
 15 I suggested that I should go out there and just see how good or
 16 bad the signage was to see if you could actually see a stop
 17 sign, for instance.
 18 But the point is officers were doing traffic stops and
 19 this was common knowledge. This is -- these weren't the only
 20 moving violation-type cites that had been written. And I
 21 discussed these every month with Mike Morrow , so that's why it
 22 kind of came as a shock to me later on when he was trying to
 23 tell me there were absolutely no traffic stops being done at
 24 U of O because I had been talking to him about these appeals
 25 for -- well, for over a year.

1 I was in this TPO position for over a year and that
 2 carried over. I was the traffic petitions officer from like --
 3 I think it was, like, July 2010 until August of 2011. So even
 4 when I was a full-time public safety officer, I still had this
 5 part-time job, so I had a full-time job and a part-time job for
 6 a few months there. So that -- that's the point.
 7 BY MR. JASON KAFOURY: (Continuing)
 8 Q. Now, were you the only person doing this job?
 9 A. Yeah. There was only one traffic petitions officer.
 10 Q. Just to clarify, we'll talk about this more later, but the
 11 internal affairs investigation that Lieutenant Morrow did of
 12 you in relation to the stops from early April, those -- one of
 13 the things they were investigating was the fact you did a
 14 traffic stop; right?
 15 A. Correct. I remember during that meeting he told me that
 16 there were absolutely no traffic stops of any form on campus.
 17 I mean, I was just kind of taken aback by that because
 18 everybody was doing that. There were differences on how they
 19 were done from shift to shift, supervisor to supervisor, but
 20 they were definitely being done.
 21 Q. So did you receive any feedback from Lieutenant Morrow
 22 about how you were doing during that time working with him?
 23 A. My relationship with Lieutenant Morrow at that time was
 24 great. He sent me a couple of emails that said I was doing a
 25 great job and I had -- he said something like --

1 MS. COIT: Object to the hearsay.
 2 THE COURT: Well, finish your answer.
 3 THE WITNESS: The emails he sent me said something
 4 about, "You have great judgment and make sound opinions."
 5 THE COURT: Overruled.
 6 THE WITNESS: Or vice versa.
 7 MR. JASON KAFOURY: Can we have Exhibit 108,
 8 Mr. Hess?
 9 MR. HESS: Do you have it?
 10 MR. JASON KAFOURY: We'll come back and offer
 11 Exhibit 108. We have a long time.
 12 BY MR. JASON KAFOURY: (Continuing)
 13 Q. Let's talk about when you were hired full time as a public
 14 safety officer at the development. When was that?
 15 A. I went full time March of 2011.
 16 Q. Now, when -- just for time purposes for the jurors, when
 17 did the University of Oregon Department of Public Safety begin
 18 the transition to become a police department?
 19 A. That was -- during the transition period, that's what
 20 attracted me to the U of O job. When I got my conditional
 21 offer of employment from University of Oregon, I also had
 22 another conditional offer of employment from a suburb of
 23 Seattle. City of Mill Creek. It was also a conditional offer.
 24 And I had to decide between the two -- either move to Seattle
 25 or stay in Oregon -- and I decided I would prefer to stay in

1 Oregon. Of course these were both, you know -- when I say
 2 "conditional offer," what that means is they're saying, "We
 3 want to hire you, but you have to pass the background, the
 4 physical exam, the psych test, as well," which I did all three
 5 of those for U of O and passed and was hired.
 6 Q. I found Exhibit 108 here. I want to make sure that gets
 7 in. Can you identify what that document is?
 8 A. This is one of the emails that Mike Morrow sent me. It's
 9 dated August 18, 2011. So it's right at the end of my work
 10 there as a -- as the traffic petitions officer.
 11 Q. So this is August of 2011. It's a couple of months before
 12 Sergeant Cameron became your supervisor; right?
 13 A. Correct.
 14 MR. JASON KAFOURY: I'd offer 108.
 15 THE COURT: Any objection?
 16 MS. COIT: Hearsay.
 17 THE COURT: Overruled. Received.
 18 MR. JASON KAFOURY: Permission to publish,
 19 Your Honor?
 20 THE COURT: You may.
 21 MR. JASON KAFOURY: Mr. Hess, can you blow up the
 22 date there, and then the -- and then the second paragraph.
 23 BY MR. JASON KAFOURY: (Continuing)
 24 Q. No, I -- so this is the email that you discussed earlier
 25 where -- why don't you just read the bottom paragraph there so

1 we have it clear in the record, Mr. Cleavenger.
 2 A. Second paragraph states, "Thank you for your leadership in
 3 this position and navigating through some of the more difficult
 4 petitions with good judgment and sound decisions. You did a
 5 fine job in this role as TPO and kept the program active and
 6 operational with little or no complaints from our campus
 7 community. This is not an easy task to accomplish. My
 8 sincerest appreciation for you readily accepting the duties of
 9 this position when first approached. Well done," exclamation
 10 point. "I welcome any and all future opportunities to work
 11 together."
 12 Q. That's the last paragraph you just read there; right?
 13 A. Oh, sorry. Yeah.
 14 Q. Okay. So let's talk about while you are working for the
 15 University of Oregon Department of Public Safety, give -- when
 16 you start full time, give the jurors a sense of how often you
 17 were working at the Department of Public Safety and how often
 18 you were working simultaneously at Junction City.
 19 A. So it was my first graveyard shift of any kind in my life.
 20 So that was generally 40 hours a week, but I was very eager at
 21 the time, so if there were any -- if there were overtime
 22 opportunities, I would take them. And then sometimes we'd have
 23 to. Like, all football games, we'd all have to work. So I was
 24 doing that for U of O.
 25 And then I put in a lot of hours at Junction City too. I

1 was just very excited to be in law enforcement , and I -- I know
 2 that in 2012, on average, at Junction City, I worked about 16
 3 hours a week. So, like, 830 hours, or something like that, for
 4 the year. 2011, I hadn't looked my numbers recently, but I
 5 think it was lower than 830, but it was still pretty high.
 6 Q. Before everything happened at the University of Oregon, I
 7 want to talk a little bit about activities you really enjoyed
 8 doing in life. So let's start with skiing. Is that your
 9 favorite?
 10 A. Skiing is my first passion, yes, as long as there's snow.
 11 Q. Can you tell the jurors why you ski in a leisure suit?
 12 A. You know, I started collecting leisure suits in high
 13 school. On one of my annual Mount Adams trips, there was a
 14 community yard sale and there was a huge collection of
 15 polyester, and I -- I thought that was pretty cool. It was a
 16 dollar a bag, so I got a bagful of leisure suits and started
 17 wearing them at, you know, high school events, and it kind of
 18 became my thing.
 19 And -- and then -- but as I grew up, you can't really wear
 20 leisure suits around to work, and whatnot, too much, so I had
 21 to figure out another use for these things.
 22 If you look at your North Face jacket, it's about
 23 90 percent or more polyester, so I figured why not kick it up
 24 to a hundred percent? And I've actually found that it works
 25 great. I always ski in polyester. It doesn't matter the

1 weather. If it rains, I may get wet a little bit going up the
 2 lift, but by the time I ski down, I'm completely dry; bone dry.
 3 The Mazamas, the mountain climbing group, actually used to
 4 recommend 100 percent polyester cloth ing for mountain climbing.
 5 So, technically, using, you know, technology, it's a good
 6 fabric; but, yes, it's also very flashy. And I ski on little
 7 skis that are about this short. They have non-releasable
 8 bindings, so when you fall the skis don't pop off, which I
 9 think is kind of nice because, if you fall, there will be a
 10 plume of snow, but you just keep tumbling on. Then you can
 11 right yourself and keep skiing. It doesn't look like you fell.
 12 People just see a poof and you ski through it. I don't know.
 13 It's just fun.
 14 Q. Let's show a photo.
 15 MR. JASON KAFOURY: Offer 263, Your Honor. The photo
 16 skiing that I showed you on Friday.
 17 THE COURT: Was it Friday night, Counsel?
 18 MR. JASON KAFOURY: Yeah.
 19 THE COURT: Which number is it?
 20 MR. JASON KAFOURY: 263.
 21 THE COURT: 263.
 22 MR. JASON KAFOURY: Very end of the stack of stuff.
 23 THE COURT: End of the stack.
 24 From memory, is this the one with Mr. Cleavenger skiing in
 25 the polyester suit?

1 MR. JASON KAFOURY: Yes.
 2 THE COURT: That's received, Counsel.
 3 MR. JASON KAFOURY: Permission to publish?
 4 THE COURT: You may.
 5 BY MR. JASON KAFOURY: (Continuing)
 6 Q. What's going on in this photo here?
 7 A. I'm skiing over a cliff, as usual. What's nice about
 8 these short skis is that you can -- again, they don't pop off,
 9 and you can go through the trees and make turns on a dime. So
 10 it's kind of like I'm cheating. I mean, I can turn really
 11 quickly and maneuver around things that other people can't.
 12 The only drawback is it has to be steep. You know, if
 13 it's flat, you kind of would be slower than people on normal
 14 skis.
 15 Q. So how often before everything happened -- before 2012,
 16 let's say, how often would you ski a year?
 17 A. Oh, about 30 days a year.
 18 Q. Besides skiing, let's talk about some of the other outdoor
 19 activities you really enjoyed doing. Tell us about it.
 20 A. Well, as I mentioned, the outdoor program trips, I did a
 21 lot more of them prior to these things happening at U of O. I
 22 still do some because I don't -- I didn't want to give that up
 23 completely. It's just been a lot harder for me to do that
 24 because I get really nervous when I'm setting up in the barn --
 25 what's called the barn. It's where we stage everything, and

1 that's where all the equipment is. And I'm always really
 2 paranoid that I -- that UOPD is going to stop by just to see
 3 what's going on. It may be late at night or early in the
 4 morning. I totally understand this. That's legit. I patrol
 5 that area too. I'm always worried that the wrong person will
 6 stop by and see me inside and consider me an intruder.
 7 This is what's going through my mind, so I've done a lot
 8 less of those trips.
 9 Q. What about family trips? We heard from your dad. Tell us
 10 about those.
 11 A. Yeah, I used to do a lot more of those. The thing is that
 12 I -- I -- I was really embarrassed by what happened, and I
 13 couldn't explain it, and it was -- it was just -- it consumed
 14 my life, and so I didn't have the free time, and, frankly, I
 15 didn't have the funding to do a lot of the family trips. But
 16 it was primarily -- I just kind of isolated myself for a long
 17 time there.
 18 There's a period of my life, that's about two years, that
 19 is just kind of -- I -- it's like it went into a black hole
 20 somewhere. I don't know really what happened, but I know I
 21 shouldn't -- I shut off from a lot of people. I wouldn't -- I
 22 basically wouldn't answer my phone. I wouldn't answer texts.
 23 I wouldn't answer emails.
 24 Q. Prior to all of this, prior to 2011, ever have any
 25 problems with your, you know, emotional state or long periods

1 of depression or anything like that?

2 A. No. I was very convivial and outgoing and was always

3 organizing either some kind of party or an event.

4 Q. How would you describe your energy level before all of

5 this happened?

6 A. My energy level was higher back then. I still have

7 energy, but it's -- I was -- I was just happier back then. It

8 was more of a jovial energy. I never -- I have never been one

9 to sleep much, in general, but when I did sleep back then, it

10 was -- I would sleep fine; whereas, now, it's -- the sleep is

11 not as sound or I have nightmares or wake up and it's

12 disrupted, if that makes sense.

13 Q. We'll talk more about that at the end. How trusting were

14 you of the world back before all of this?

15 A. I was very trusting. Admittedly, maybe too trusting. I

16 would describe myself prior to this 2012 stuff as very

17 optimistic. Very optimistic and very trusting. I would always

18 assume the best of people, and I -- I just noticed that I'm

19 just a lot more -- a lot more guarded now.

20 I mean, my friends are still my friends, but I don't see

21 them as often, and I question meeting new people. I -- I worry

22 about who they might know or, you know, what could happen. I

23 used to never worry about that.

24 Q. Well, let's talk about the Taser time period. 2008. What

25 were you doing in your life around that point?

1 A. So in 2008 I was in my last year of law school, and I

2 think I mentioned before that I was part of student government

3 and the issue of Tasers came up because the previous, previous

4 director -- this was two directors ago -- two chiefs ago --

5 Kevin Williams -- at UODPS wanted to get Tasers for the

6 department. He came from the jail system. That was his

7 background. And he felt that officers should have Tasers on

8 campus. I personally felt that that was a very reckless idea.

9 Q. Why did you think that?

10 A. Well, because around that time period there were a lot --

11 there was a lot of news stories. There was a viral saying,

12 "Don't tase me, bro." It was a video of students being tasered

13 by police officers -- and a lot of campus police officers or

14 security officers, and having the department at that time get

15 Tasers was very concerning to me personally, but also to the

16 general vast majority of the student population at U of O was

17 concerned.

18 And I took the lead in -- in expressing my personal

19 beliefs, but also the beliefs of the student population, that

20 we didn't want them to have Tasers.

21 Now, I always tried to explain it that, you know, my

22 personal opinion was that Tasers themselves are not necessarily

23 a bad thing. They're a useful tool in the right hands, with

24 the right use policy. The problem was in 2008, with Kevin

25 Williams, is that he did not provide a use of force policy to

1 us that would show when Tasers could be used and when they

2 could not be used, and he was -- he seemed unwilling to solicit

3 input from students and faculty and staff to create that

4 policy.

5 Basically, he just wanted to get them and then work the

6 details out later. And I -- I felt that was not a good idea.

7 Q. Who were you working with at this point?

8 A. So, you know, I was part of student government and

9 receiving a stipend, but that was -- that was for my general

10 duties, you know, in working for the ASUO president.

11 This was kind of like a special project that they also

12 supported, and then I also, you know, was placed on the public

13 safety advisory group they called it at the time.

14 It's basically a group of students, faculty, and staff

15 that would make suggestions, and stuff, to the chief at that

16 time, Kevin Williams. So there were different avenues that I

17 was attacking this Taser issue.

18 I was in the law school, so we had -- I had -- we did a

19 couple -- I had a couple of speeches and events organized

20 through the law school.

21 At the law school, the ASUO, also organized some events.

22 Public safety advisory groups. I helped draft a couple

23 resolutions, stating that we were against Tasers. I also then

24 helped the student government -- student senate help draft a

25 resolution.

1 Each group was a little different because each group had

2 different takes on -- some of them are like "Absolutely no

3 Tasers," some were like, maybe -- maybe for, like, Eugene

4 police officers -- some people didn't even -- they wanted the

5 Eugene police officers to take off their Tasers when they came

6 onto campus. I felt that was a little ridiculous and also

7 outside the jurisdiction of U of O to do anything about it.

8 I still helped with all these events because, in my

9 personal viewpoint, it was a bad idea. These folks at the time

10 were not trained at all. I mean, they hadn't even been to

11 these reserve academies, and whatnot, that we started doing

12 when I came on board in 2010.

13 So I just -- I saw the writing on the wall and thought

14 they could be misused, so that was my concern and made a whole

15 bunch of speeches. It was in the news, newspaper, television.

16 Q. How many news articles were there back in '08 about all

17 this?

18 A. Dozens, in total, because they would get picked up by the

19 AP and reprinted. Online media, et cetera. The main outlets

20 were the local TV stations covered a couple of the speeches.

21 The student newspaper was probably the number one because

22 students were talking about it all the time, so there's at

23 least 10 articles about it in the student newspaper. And the

24 local paper, *Eugene Register-Guard*, yeah, it was kind of all

25 over. It was a hot topic at the time.

1 Q. What's the exhibit I handed you there? That's what
 2 number?
 3 A. 235.
 4 Q. 235.
 5 And without going through the contents of it, what is 235?
 6 A. First article is from a local news source. KATU. I
 7 believe that's a television station, but they also have print
 8 articles. It quotes me and it also quotes Kevin Williams, the
 9 former chief.
 10 Q. How -- on page 1 there, you see, what -- what is your
 11 quote about?
 12 A. Let's see. It says, "Jim Cleavenger, a law student who
 13 comes from a police family, cited a report by the American
 14 Civil Liberties Union that listed police administered Taser
 15 blasts as a contributing factor in more than 200 deaths
 16 nationwide between 1999 and 2006." And, yeah, it quotes me.
 17 Q. Are you quoted throughout many of these articles during
 18 that time period?
 19 A. I believe in this stack of articles I'm quoted in all of
 20 them, I think.
 21 MR. JASON KAFOURY: Subject to the redactions we
 22 discussed on Friday, I would offer 235.
 23 THE COURT: I'm not sure how those redactions were
 24 worked out between the two of you.
 25 MR. JASON KAFOURY: I believe we were only going to

1 use the portions of any statements he made was the agreement.
 2 THE COURT: Counsel?
 3 MS. COIT: At this point, he's testified to the
 4 entire article, so I would have no objection to submitting the
 5 entire exhibit.
 6 THE COURT: Counsel, is the entire group being
 7 submitted?
 8 MR. JASON KAFOURY: Fine with me.
 9 THE COURT: This will be received. All the articles
 10 will come in.
 11 Normally, they would be hearsay. The reason you're
 12 receiving them isn't that you should believe or disbelieve the
 13 content. It's for the purpose of showing how active
 14 Mr. Cleavenger was or how well-known he was at that time
 15 concerning his leadership or voicing his discontent with the
 16 Taser -- Taser, or lack thereof, policy of UOPD.
 17 They're received. Go ahead, Counsel.
 18 BY MR. JASON KAFOURY: (Continuing)
 19 Q. In 2008 were you aware that people like Sergeant Cameron
 20 were there listening to your speeches?
 21 A. Yes. Definitely they came to the speeches and watched. I
 22 mean, they were in uniform, so they were pretty easy to spot.
 23 In a couple of the speeches I did, Chief Kevin Williams
 24 was there, and it was sort of -- sort of a debate, basically,
 25 up on stage between the two of us a couple of times.

1 Q. How long did this debate about Tasers rage on in 2008?
 2 A. Months. Can I look at the dates on some of these
 3 articles?
 4 Q. Sure. Go ahead.
 5 A. So I'm seeing some January of 2008. I'm seeing some
 6 April -- May -- sorry, May of 2008. So at least -- at least
 7 five months. And my recollection is that it basically lasted
 8 until school got out, so it was like January of 2008 until
 9 early June, graduation, that things kind of settled down
 10 because the department eventually said, okay, we're -- we're
 11 not going to try to get Tasers.
 12 Q. Can you turn to page 2, paragraph 3, and we'll publish
 13 that. That relates to your speech here. Does this quote -- or
 14 your statements back then, does this help articulate what
 15 you -- does this summarize, sort of, what you were saying back
 16 then?
 17 A. Yes. Yeah. Because, again, my personal opinion was that
 18 Tasers could be a useful tool in the right hands, and that was
 19 also -- you know, I felt that if it was going to happen, this
 20 is the model they should get because it would have a video
 21 recorder on it, so you could capture the scene.
 22 Now, Student Government Association did not -- they did
 23 not believe this. They wanted absolutely no Tasers at all of
 24 any kind. I was just expressing, you know, my personal opinion
 25 that if they were to get Tasers, they should at least get this

1 model with the videos.
 2 Q. So what happened with the Taser fight? How did it end?
 3 A. Well, they did not get Tasers. And I guess they still
 4 don't have Tasers today. They have firearms, but they do not
 5 have Tasers, to my knowledge, I should say.
 6 Q. Let's talk about statements that Sergeant Cameron made to
 7 you directly about this Taser stuff. What do you remember?
 8 A. Sergeant Cameron was quite open about it. He --
 9 specifically to Tasers, he blamed me for not being able to have
 10 Tasers. He held me personally responsible. And the other
 11 thing that --
 12 Q. How would those conversations come up?
 13 A. It seemed kind of random. He would bring it up in
 14 briefings. He would be -- seemed like he would be agitated
 15 about it and then he would bring it up -- and what would bother
 16 me is he would always misstate my statements. He would always
 17 say that I was completely anti-Taser, when, in fact, I -- I
 18 never said that.
 19 I expressed -- I expressed that I believed Tasers, in
 20 general, would be a useful tool if you have real police
 21 officers with full training and a good policy that has
 22 incorporated citizens' thoughts and what citizens want because
 23 I think citizens can be responsible to help police departments
 24 come up with policies and decide, well, in what instances
 25 should a Taser be used versus when it should not.

1 Q. What was Sergeant Cameron's demeanor when he would talk to
 2 you about this Taser issue?
 3 A. Always very angry. I had been warned before coming --
 4 coming into his shift -- well, coming into his shift when he --
 5 MS. COIT: Objection to hearsay.
 6 THE COURT: Sustained.
 7 THE WITNESS: His demeanor was always angry and it
 8 seemed like he would never let me -- I would express my
 9 thoughts and I would try to correct him, but he wouldn't -- he
 10 wouldn't accept it. He wouldn't -- would not listen to me.
 11 BY MR. JASON KAFOURY: (Continuing)
 12 Q. So you guys had the redebate about Tasers in 2011 while
 13 you were there?
 14 A. More than once. Many times.
 15 Q. Did he seem angry that he and the department didn't have
 16 Tasers?
 17 MS. COIT: Objection. Speculation.
 18 THE COURT: Overruled. You can answer that question.
 19 THE WITNESS: Again, he was very open about it. He
 20 said -- he said I should not have ever been hired because, if
 21 it wasn't for me, the department would have Tasers. And it
 22 was -- I mean, it was common knowledge.
 23 BY MR. JASON KAFOURY: (Continuing)
 24 Q. What did he tell -- what did Sergeant Cameron tell you
 25 about your law degree?

1 MS. COIT: Object. Leading.
 2 THE COURT: Overruled.
 3 THE WITNESS: On a few occasions, he told me my law
 4 degree was worthless.
 5 BY MR. JASON KAFOURY: (Continuing)
 6 Q. What did he tell you about your opinions? Political
 7 stuff.
 8 A. He didn't want to hear my opinions.
 9 Q. What would happen when you would try to talk to
 10 Sergeant Cameron and give your thoughts on a situation?
 11 A. That was very hard. It was very frustrating. I was used
 12 to working in environments where if you wanted to rehash an
 13 issue, you know, talk about what happened, come up with ideas
 14 of how to make things better, that that was a conversation.
 15 There would be some back and forth, and you would discuss --
 16 you know, I would explain why I did X and what my train of
 17 thought was, and then the sergeant would -- could say, "Okay.
 18 Well, I see where you're coming from, but here's why and here's
 19 why it's better."
 20 But with Cameron it was never like that. It was always
 21 just his way or the highway. It just was all coming -- coming
 22 down from the top. I mean, there was never any discussion, so
 23 in the few times that I did try to explain why I thought what I
 24 had done worked, he -- he -- it was just no. He would just
 25 tell me to shut up and -- and it was his way or no way.

1 Q. Let's talk about those first six months when you start
 2 working full time with Lieutenant Lebrecht.
 3 First, who was on that shift with you?
 4 A. I'm not going to be able to remember all the names.
 5 Maybe. Maybe. I'll try. Lieutenant Lebrecht was the
 6 lieutenant. Andy Bechdolt was the sergeant. He's now a
 7 lieutenant. Eric LeRoy. Officer LeRoy was on the shift.
 8 Michael Drake was on the shift. He was my field training
 9 officer; my primary field training officer. Adam Lillengreen
 10 was on the shift. Kent Abbott was on the shift. And I believe
 11 Zach Hermens. There may have been some shifting with Hermens.
 12 I think he may have been on the shift for part of the time and
 13 not the other, but I may have actually got everybody.
 14 Q. Explain to the jurors how -- what was going through your
 15 mind for those first six months when you became full time.
 16 A. Well, those first six months are kind of scary because
 17 you're -- you're totally at will. You can be terminated
 18 without just caution. You don't have those union protections.
 19 You know, they basically just let you go. They don't have to
 20 give you a reason.
 21 In law enforcement, it's -- it's kind of traditional to,
 22 you know, be a little heavy on the officers, you know, see what
 23 kind of stress they can take. You know, not all the way to
 24 hazing or anything like that, but, you know, a little bit
 25 they'll -- your field training officer may put a knife in the

1 back of your car because you're supposed to check your car at
 2 the beginning of shift and end of shift, and if you don't find
 3 it, he would point that out. "Hey, look there's a knife back
 4 here."
 5 I heard of that one, so I was -- I always checked and I
 6 never -- Drake never got me on that. Those sort of things.
 7 It was a learning process. I had not been in law
 8 enforcement before, so I was making plenty of mistakes. Weird
 9 little things, like when you -- when you pull up behind a car
 10 at a red light, Drake taught me you need to leave extra space
 11 in case you need to dart out of there.
 12 And as a regular driver, you would never think of it. You
 13 would pull up to the next car and there you are. You never
 14 would think you'd need to get out of there. Things like that
 15 he taught me, and I'd have to learn it. Sometimes I would slip
 16 back into regular driving, and he'd say, "Hey, look how close
 17 you are to this car." "Oh, yeah, you're right." Or shutting
 18 the door when you get out of the car. You need to shut it very
 19 quietly because you might need to be in a stealth mode sort of
 20 thing. So it's good to practice those things.
 21 So there's a learning experience. There's a lot of
 22 information to learn. That's on top of just learning the
 23 campus. The U of O campus is huge. There are all these
 24 underground tunnels. It's -- it's a lot to learn. And you had
 25 to learn all those buildings so that when there was a fire

1 alarm you would know where to go.
 2 So, yeah, it was a little overwhelming.
 3 Q. How does termination work in the first six months of your
 4 full-time employment?
 5 A. Yeah, my understanding is that you're -- you're -- you're
 6 in a -- an at-will process basically those first six months.
 7 They don't have to give a reason if they want to let you go.
 8 It's called a probation period. They can just let you go. I
 9 kept my head down and worked hard.
 10 Q. Let's talk about, how did you first become aware of
 11 Lieutenant Lebrecht's political statements?
 12 A. He was pretty open about them. There was some -- you
 13 know, some banter that would go on at these preshift briefings.
 14 Most of the time it was -- it was just easygoing, you know,
 15 typical stuff that you would expect to hear back and forth.
 16 Sometimes it got up to be a little much.
 17 Q. Give us some examples.
 18 A. He definitely believed that Obama was not born in the
 19 United States. You know, I -- I've heard that a few times, and
 20 that's fine. Thought it was a joke at first, but then it
 21 became clear to me that he was pretty serious about that, so
 22 I -- eventually, months later, you know, I brought up the point
 23 that, well, he has produced birth certificates -- a birth
 24 certificate, rather -- and that Hawaii had different types at
 25 that time, and there was an announcement in the paper -- in the

1 Hawaiian paper back then, but we got into an argument. So
 2 that's just one example.
 3 Things would get heated, and so I eventually started
 4 saying, "Hey" -- I said it in a nice way. I said, "Let's just
 5 maybe tone it down a notch. Maybe not discuss politics at work
 6 all the time."
 7 The general stuff I didn't mind, but there was some --
 8 there was some stuff that was kind of really far out there.
 9 Q. Give us some examples.
 10 A. That Obama is secretly a Muslim; that Bill and Hillary
 11 Clinton are responsible for the murders of dozens of people,
 12 people that Clintons personally didn't like. They had the
 13 Secret Service, or whatever, go and assassinate these people.
 14 Again, heard this more and more often. And then he would back
 15 it up by saying he heard this on these kind of right-wing radio
 16 shows, and whatnot, to the point that I became paranoid. I had
 17 to always make sure I changed my radio station at the end of
 18 the night because I listened to NPR, and he would talk about
 19 NPR being this liberal left-wing media. He believed all the
 20 media was left-wing and NPR was the pinnacle of liberalness. I
 21 had to make sure the radio station was not on NPR when I got
 22 out of the car so no one would notice that, but it was just --
 23 just kept bringing up a lot of this, kind of, extreme
 24 right-wing stuff.
 25 There were plenty of conservatives in Junction City. Very

1 conservative guys, and I got along with them great, and I --
 2 again, during this first six months, I was keeping my head
 3 down, trying not to make too much of an issue out of it, but
 4 after that goes a long for a while, then you start to say
 5 little things.
 6 Q. Let's talk about the bowl of dicks, shall we?
 7 A. Sure.
 8 Q. Okay. When did you first become aware of this concept of
 9 the bowl of dicks?
 10 A. Immediately. As soon as I came on the shift, the bowl of
 11 dicks was talked at the preshift briefings.
 12 Q. Give us a flavor of how the discussions of the bowl of
 13 dicks would go.
 14 A. Officers would be complaining about an RA, a resident
 15 advisor, or somebody they had been dealing with recently that
 16 they felt wasn't friendly to officers. They would complain
 17 about him or her -- usually a her -- and they'd say, "Yeah, she
 18 should go eat a bowl of dicks." And then LeRoy was keeping the
 19 list of the bowl of dicks people on his phone, and we would all
 20 see him writing them in. Sometimes he would show us a snippet
 21 so we could see part of the list, and, yeah, people were just
 22 added all the time.
 23 Sometimes -- this is preshift briefing. This is
 24 definitely going on while we're working, during work -- during
 25 work hours, because everybody had to be there. So a couple of

1 people might have arrived early, but that's not part of the
 2 shift briefing. Everybody has got to be there so we can talk
 3 about business and then the bowl of dicks, and sometimes this
 4 lasted hours. Like literally hours.
 5 Q. What was going through your mind in those first six months
 6 while all this was happening?
 7 A. I thought it was a little ridiculous and a lot of the
 8 entries, you know, pissed me off, frankly, because I am -- I am
 9 a liberal, you know. I have left politics behind. I didn't
 10 want to be involved in politics, and I tried to hide my
 11 political involvement. But, I mean, like, Bob Dylan. I mean,
 12 I love Bob Dylan, and he's on this bowl of dicks list. I mean,
 13 a lot of people I respected, a lot of community activists, and
 14 stuff, were on this list that I would just have to sit there
 15 and listen to it. Al Gore, the guy I worked for, was on the
 16 list.
 17 Q. I want to ask you how did you know that Cameron and
 18 Lebrecht knew about your political background?
 19 A. Because when you apply for your law enforcement job, any
 20 law enforcement job, you have to declare every single job, paid
 21 or unpaid. If you don't, that's considered lying in your
 22 background.
 23 You have to account for any gaps in employment. It -- you
 24 just -- you have to give your entire history, depending on the
 25 department, either you can go from the age of 18 or if

1 you're -- if you're only in your 20s, then they make you go
 2 back to birth. You have to list every place you've lived,
 3 which was very hard for me to go and figure out, especially all
 4 this travel abroad and whatnot, but I got it done.
 5 Yeah, every single job, every single volunteer activity.
 6 And, you know, if they found out you left something off, then
 7 they considered it a failed background if you left that off on
 8 purpose, et cetera. So I knew they knew that way, and it was,
 9 you know, also on my resumé as well, but that's all part of the
 10 employment packet that they had.
 11 Q. Would Lebrecht talk to you about your political beliefs at
 12 these briefings?
 13 A. Well, eventually, yes.
 14 Again, at first, I tried to keep my head down; didn't say
 15 a whole lot; tried to stay neutral. Once Cameron became my
 16 supervisor, then it became pretty apparent to me that he then
 17 knew about all my political work, and it seemed to me that he
 18 had -- he ramped it up at that point.
 19 Q. But he -- we need to be precise.
 20 A. Oh, sorry. Lieutenant Lebrecht.
 21 Q. Let's talk about some names that were on the bowl of
 22 dicks.
 23 Now, you cited -- well, did you cite in your lawsuit that
 24 you filed in this case some examples of names on the bowl of
 25 dicks?

1 A. I did. The only names I listed on the complaint in the
 2 lawsuit were the names that I could remember specifically being
 3 on the list and specific instances why -- the context of them
 4 being put on the list.
 5 Q. And when you filed that lawsuit, naming these people,
 6 had -- did you know whether they were on Eric LeRoy's phone at
 7 that point?
 8 A. I assumed that they were definitely on the phone. I mean,
 9 again, it's his phone, so I didn't have control of it. I had
 10 asked for it, and he said he was going to give it to me a
 11 couple of times. But I think he figured out that I wanted to
 12 preserve it, so he ended up not turning it over to me.
 13 Q. Let's talk about specific people. OJ Simpson. How did he
 14 get on the list?
 15 A. We had a long discussion about how OJ Simpson was guilty
 16 and got away with it, and that's why he was on the list.
 17 Q. Oprah?
 18 A. Considered a big complainer and anti law enforcement for
 19 some statement that she had made.
 20 Q. Reverend Al Sharpton.
 21 A. Sharpton, there was an event going on, and he was put on
 22 the list where he was -- seemed to be antipolice. He was in
 23 the newspaper a lot.
 24 And that's how these things usually got triggered. There
 25 would be some media event or something would personally happen

1 to an officer. Again, it is not always just celebrities.
 2 There's a lot of people on the list; you know, real people that
 3 we knew. RAs, local attorneys, the mayor, things like that.
 4 Q. Jesse Jackson?
 5 A. Yeah. Jesse Jackson was on the list because Kent Abbott
 6 had a personal experience with Jesse Jackson when he came to
 7 visit U of O to do a speech.
 8 And the way Abbott told the story to all of us,
 9 Mr. Jackson has some kind of incontinence issue and had to
 10 urinate outside on the wall before the speech, and Kent didn't
 11 arrest him, but he talked about how he could have arrested him,
 12 and people thought that he deserved to eat a bowl of dicks for
 13 that.
 14 Q. Al Gore. How did he end up there?
 15 A. Yeah. Way too liberal. Lebrecht specifically said that
 16 he believed Al Gore was making too much money off of
 17 environmental causes. I never quite understood the connection,
 18 but he felt it was wrong for Al Gore to make money off of his
 19 environmental views.
 20 Q. What about Hillary Clinton?
 21 A. I take that that's a pretty standard one for those who
 22 are -- who are more right-wing, they just don't like
 23 Hillary Clinton, and of course the murders of dozens of people
 24 and these kinds of conspiracy theories.
 25 Q. The Eugene mayor, why was she on the list?

1 A. Kitty Piercy was on the list because of the way she
 2 handled the Occupy Movement. She allowed the camp to stay in
 3 certain locations longer than what she had initially said.
 4 She'd say, "Okay. You guys can be here for a week," and
 5 then she kept expanding it and expanding it and expanding it,
 6 and it got bigger and bigger and bigger. And then we got to
 7 the Occupy issue that we'll probably address later, but it's
 8 basically surrounding Occupy and their general belief that
 9 Kitty Piercy was, you know, too liberal.
 10 Q. Student body president Amelie Rousseau.
 11 A. Yeah, Amelie Rousseau. She was the past student body
 12 president at that time. Casey Boyd was the person who found a
 13 picture of her topless from the Oregon Country Fair and then
 14 showed it to some of her officers on her shift. I was not on
 15 her shift. But then somebody posted the picture -- like,
 16 printed it -- printed the picture and posted it in the briefing
 17 room.
 18 That was taken down right away and dealt with. You know,
 19 it's not like it was up there for days, but it was up
 20 there, which then sparked the discussion about her and the
 21 people remembered, yes, she's very anti this department.
 22 Didn't want -- because she was spearheading the student body's
 23 position that UODPS should not become a police department. She
 24 thought it should stay an unarmed group.
 25 I had nothing to do with that. I was already in the

1 department, but that's why she was on the list.
 2 Q. Who's Lauren Regan?
 3 A. Lauren Regan is a local attorney. I think she was also an
 4 ACLU attorney. And Hermens had an issue with her. I think he
 5 had a -- a specific case where she was the defense attorney
 6 because I think she had a contract to defend, you know,
 7 suspects that Hermens had arrested and stuff, and they were --
 8 Hermens had a bad experience with her. He put her on the list.
 9 Q. What about Judge Ann Aiken? Who is Judge Ann Aiken?
 10 A. Judge Ann Aiken is the presiding judge, federal judge, in
 11 Oregon. I remember her being on this list specifically. The
 12 reason is at the federal courthouse in Eugene to the east side,
 13 where there's now a bank building, there was a garden, and
 14 it -- it's kind of strange because you're in the middle of the
 15 city and there's this huge garden, and Lieutenant Lebrecht and
 16 I were riding bikes, and Drake was there also. We were riding
 17 bikes on patrol. We had seen that garden. He was curious as
 18 to why is there a garden in the middle of the city.
 19 At the time I didn't know, but we got to talking about it
 20 in briefing, and someone found a newspaper article that
 21 explained that that garden was put together by Judge Ann Aiken
 22 as part of her reentry court, which is a program for offenders
 23 that would normally be in custody, but if they do certain
 24 things, go to counseling, do community service, you know, work
 25 jobs, that kind of thing, they can stay out of prison. And I

1 remember that upset Lebrecht. He felt these people should be
 2 in jail, as opposed to out gardening. He was pissed off that
 3 why are they out gardening. He felt that was ridiculous.
 4 So I very specifically remember why Judge Ann Aiken was
 5 put on that list because of that.
 6 Q. Now, all these names you put into your lawsuit; correct?
 7 A. Correct. I put the ones that I could remember in context,
 8 yeah.
 9 Q. Were any of those names on the eventual list that
 10 Eric LeRoy produced?
 11 A. Zero. Zero of those names were on the list of 250-plus
 12 entries that were eventually turned over months and months
 13 after I filed the lawsuit.
 14 Q. Was the list ever produced to you before there was media
 15 attention about it?
 16 A. To me, no.
 17 Q. Do you know why University of Oregon Department of Public
 18 Safety citizen employee Israel Escobedo was on the list?
 19 A. People thought he was gay. I did not. I work with him as
 20 the traffic petitions officer. He was a very nice guy, but he
 21 dresses sharp and is really nice. I think that's why some
 22 people thought he was gay, but he's definitely married and has
 23 a kid. At least one.
 24 Q. Now, you didn't put that name on your lawsuit, and that
 25 ended up actually on this list we have here today; isn't that

1 right?
 2 A. Right. That was actually on the list. There were lots of
 3 examples of staff members and other people. I just -- the
 4 names I put on my lawsuit were the ones I could remember
 5 specifically.
 6 Q. Let's talk about some of the, for lack of a better word,
 7 humor and shenanigans involved there in your early career.
 8 A. Okay.
 9 Q. The angel wings incident. I'm sure defense counsel will
 10 ask you lots of questions about that. Your chance to explain
 11 to the jurors what happened about that.
 12 A. Middle of the night. They were setting up for GameDay, so
 13 the cameras -- video cameras were not rolling yet. I found a
 14 bunch of beer bottles, which I always took upon myself -- these
 15 were full, actually. I always felt they shouldn't be lying
 16 around because kids throw them. If nothing else, it makes a
 17 mess, but it's always dangerous.
 18 I picked up the beer bottles. With the beer bottles were
 19 some angel wings, and, yes, I put them over my jacket, and then
 20 I walked about 50 yards from where I found them to my group of
 21 guys, our officers, who were standing around, and I said, "Hey,
 22 look what I found."
 23 Q. How did people react?
 24 A. Everybody laughed; thought it was funny.
 25 Q. Do you think that there's a place for humor in law

1 enforcement, generally?
 2 A. Generally, yes, I do. I grew up thinking that. I
 3 followed my dad's example.
 4 Q. Let's talk about -- there's an allegation that you did
 5 some sort of a dance on a table. Tell us about that.
 6 THE COURT: Do some sort of what, Counsel?
 7 MR. JASON KAFOURY: Dance on a table.
 8 THE WITNESS: I danced for approximately five seconds
 9 or less. Two officers were trying to find us. Again, in the
 10 middle of the night. We were at turf field number two. It's
 11 kind of elevated, so I needed to get higher so they could see
 12 me. I jumped up on top of the table, and I said, "I'm here.
 13 You can probably see me dancing," because I felt the movement
 14 would help them see me, as opposed to standing still in the
 15 dark.
 16 BY MR. JASON KAFOURY: (Continuing)
 17 Q. Let's talk about the machete incident. What happened with
 18 that?
 19 A. While on patrol, I found a machete.
 20 Q. Describe it for us.
 21 A. Your standard big gnarly machete. I found it on U of O
 22 property. Middle of the street. I don't remember exactly
 23 where. I found that. And then close to it I also found a red
 24 bandanna, so I grabbed those things because I just felt that it
 25 wasn't, you know, safe lying around. I put them in my patrol

1 car.
 2 And then at the end of shift we were planning to meet at
 3 Addi's Diner at Springfield because Adam Lillengreen, who
 4 worked with us at U of O, also worked as a reserve at the
 5 Springfield Police Department, and a couple of his buddies were
 6 meeting us for breakfast. I think it was his birthday or
 7 something like that.
 8 When I arrived, I could see into Addi's Diner, and I could
 9 see the Springfield guys were there, and Adam and Hermens and
 10 Drake, and I could see that there weren't -- there was staff
 11 members there, public members, but there were -- it was a
 12 really small place and just opened at 4:00 in the morning or
 13 something. There were not families of public sitting there.
 14 So I put the machete behind my back between my jacket and
 15 my clothes, put the red bandanna over my hat, walked in, pulled
 16 out the machete, and said, "Check out what I found."
 17 Q. How did people react?
 18 A. Everybody laughed.
 19 Q. Were these big deals back then?
 20 A. I didn't think so at the time because everyone was
 21 laughing. It was well received.
 22 After I talked to Lebrecht later, I could see that -- I
 23 could see his point of view, that maybe this was -- some of
 24 these things were inappropriate or went too far.
 25 As soon as we had that conversation, all those shenanigans

1 and jokes stopped. I -- once he told me that was
 2 inappropriate, message received. I did not -- did not do any
 3 more of those over-the-top-type jokes.
 4 Q. There's an allegation of pelvic thrusting at some
 5 students.
 6 A. Yeah, so that's never come up before. I never heard that
 7 before. And a lot of things have pissed me off regarding these
 8 allegations, but that's just absolutely not me.
 9 I think if an officer were to do that in uniform, that
 10 they should just be immediately fired. It just really pisses
 11 me off, and it's not documented anywhere. I've never been
 12 accused of that before. That was a nice little surprise.
 13 Q. Let's talk about Occupy Eugene. Help set the context for
 14 us here. Sergeant Cameron takes over as your supervisor when?
 15 A. October 2011.
 16 Q. Okay. And is that the same month that the Occupy Movement
 17 begins in Eugene?
 18 A. I don't recall exactly, but, roughly, yes.
 19 Q. Okay. Tell us -- just help set the stage for the jurors
 20 here. Where was the Occupy camp, and how long was it there?
 21 A. Okay. So the Occupy camp was off campus initially. Then
 22 Kitty Piercy moved it on campus for a time. That made some
 23 people angry. I think it was in the middle of campus for a
 24 couple of days and then they put it where it was still on
 25 campus, but it was down by the riverbank. It was there for a

1 couple of weeks, I want to say, before it was finally moved
 2 again to City property off somewhere else. But we had it there
 3 for a couple of solid weeks down by the riverbank, and this is
 4 what the main briefings, and stuff, were about.
 5 Q. Let's talk about -- well, there's some reference to a code
 6 seven lunch incident near Occupy. Do you remember that?
 7 A. I do.
 8 Q. Tell us about it.
 9 A. So this code seven lunch -- code seven just means you're
 10 out to lunch. It's just a radio code. I was near the Occupy
 11 Eugene camp. It's down by the riverbank, so there are not any
 12 streets there to give a cross street of a location. I was at
 13 the Phoenix Inn Hotel because I needed to stop in there to find
 14 out what time the Holt -- the Hut shuttles were running. It's
 15 a shuttle that goes from the Portland Airport down to Eugene
 16 because I needed to pick up my friend the next day and I needed
 17 the schedule.
 18 So I figured I'll stop here, eat my lunch, because I
 19 packed a lunch, stop in and do my personal business on my
 20 lunchtime, and then be on my way.
 21 This happened to be -- so the intersection I gave -- I
 22 can't remember, but it's near there, but also happens to be
 23 near the Occupy camp. So I didn't think anything of it.
 24 Later on, when I'm interviewed about it, I'm accused of
 25 having -- having lunch with the Occupy folks. The only problem

1 with this is that this is at like 3:00 in the morning, and some
 2 of those Occupy people might stay up, but they're not having
 3 meals at 3:00 in the morning. That's only us poor graveyard
 4 people that were doing that, so that allegation was just
 5 ridiculous to me.
 6 Q. What was the Christian welfare allegation about you and
 7 the Occupy efforts? What was that about?
 8 A. So this is a little convoluted story, but you should be
 9 able to follow it. There was a gentleman who I had earlier
 10 spoken to his wife. They were protestors at Occupy. When I
 11 spoke to his wife, she told me that he was missing. They
 12 weren't from Eugene, and he had gone off to get supplies and
 13 beer, and she -- he hadn't come back. He was lost. And the
 14 U of O campus there can be a pretty confusing area.
 15 So at some point, a couple hours later, Hermens found this
 16 guy in a parking lot that was real near Occupy, but he was just
 17 a couple of blocks away. He was almost there. And he was
 18 upset because he had been lost for a long time, and Hermens
 19 called out with him but didn't take him. He said that this guy
 20 was real angry and agitated and -- and that he had -- and that
 21 he believed that he was Jesus.
 22 I contacted the guy. He told me his name was Christian,
 23 which was his name, and he was thanking Jesus that we had found
 24 him because he was worried about being lost.
 25 So, yeah, the guy was a little kooky, but he did not

1 believe he was Jesus. He was talking about how he had found
 2 Jesus and that his parents named him Christian, and this kind
 3 of stuff, and he wasn't aggressive, or at least with me he was
 4 not aggressive or confrontational. He simply wanted to know
 5 how to get back to find his wife at Occupy Eugene.
 6 So I -- I think there's -- I'm sure you'll hear the radio
 7 callout of it eventually. The problem -- the -- what I got in
 8 trouble for was when I called into dispatch -- it was a very
 9 busy night because we were dealing with all this Occupy stuff.
 10 Normally, you would just do it over the radio -- sorry, your
 11 handheld radio. It would be quick and easy. This time I had
 12 to call because the radio was being used by other officers, so
 13 I called in, and I believe this part is recorded because they
 14 record -- no, there was an issue with this. I called in, and I
 15 went to the second line, which wasn't recorded, which is very
 16 unfortunate for me.
 17 So I call in and I give the information about this guy.
 18 This is based off of his wife, you know, because it's, like, a
 19 missing person thing. So I go, "Can you check jail, and stuff,
 20 to see if he's there?" You know, he wasn't at the jail. And I
 21 assumed she also ran, you know, a records check for this guy to
 22 find out if he's, you know, an ax murderer, or whatever, if he
 23 has a warrant, et cetera. So I assumed all that was done.
 24 Evidently, it wasn't done. But no harm done because, in
 25 the end, it turned out this guy did not have warrants. He was

1 not a criminal. But somehow I get in trouble for not running
 2 the full records check, but I believe that I have. I believe
 3 that by calling in, asking the dispatcher to find that
 4 information, find out if he was in jail, et cetera, that the
 5 full background check would be done.
 6 So it's -- it's a weird story, and that's -- that's all it
 7 was. I mean, it wasn't -- it was not a big deal.
 8 Q. So let's talk about how this Occupy effort and -- what was
 9 going through your head, you know, politically, in terms of
 10 your opinion about the Occupy effort?
 11 A. I wasn't participating in the Occupy Movement, but I
 12 supported the general idea, the whole 99 percent idea, but I
 13 was not vocal about it. I --
 14 Q. Well, let's talk about the briefing where you have your
 15 interaction with Lieutenant Lebrecht during the Occupy, so --
 16 A. So we had a briefing, which was two shifts combined,
 17 graveyard and swing shift. The guys start talking about Occupy
 18 Eugene, which -- which someone came up with nicknaming it
 19 District 9, after this movie where aliens are cordoned off into
 20 a camp. Basically like a POW camp sort of thing.
 21 I was okay with that. That wasn't too over the top, so I
 22 went along with that. But then they just -- they started
 23 talking more about what they thought the Occupy Movement was
 24 about. And people were saying, "Yeah, it's nothing -- nothing
 25 but dirtbags, dirty hippies, people without jobs." There was

1 an article in the newspaper about a local shock jock, radio
 2 jock that went out dressed like Santa Claus --
 3 MS. COIT: Objection.
 4 THE COURT: Overruled. Plaintiff's state of mind and
 5 conduct. You can continue.
 6 THE WITNESS: It was a local radio personality that
 7 went out there dressed like Santa Claus and was handing out job
 8 applications to people, which wasn't really the point of the
 9 99 percent. You know, people in the 99 percent still have
 10 jobs. They were just complaining that the 1 percent has all
 11 the wealth.
 12 So I'm thinking about this stuff in the back of my mind.
 13 I'm still not saying anything. I'm also thinking, you know,
 14 there are a lot of professors that go and protest there. There
 15 are a lot of students that go there. It's not just dirtbags
 16 and dirty hippies.
 17 What put it over the top for me was someone made a rape
 18 joke. They said, "If you want your daughter to get raped, send
 19 her to the Occupy event."
 20 At that point it was just too much, so I tried to explain
 21 to the guys, "Listen. Listen. You guys don't understand what
 22 Occupy was about." Part of my concern was I didn't want our
 23 department to be in -- to be embarrassed, like if -- if they're
 24 stopped and asked what do you think Occupy is about, I didn't
 25 want them to say, "It's just -- just a place for homeless

1 people and dirty hippies."
 2 So I tried to explain a little bit about what the movement
 3 was about. I got laughed down. They said, "Shut up you ACLU
 4 lawyer," which was the nickname they kind of placed on me. I
 5 was -- yeah, I was upset about it.
 6 BY MR. JASON KAFOURY: (Continuing)
 7 Q. What happened next?
 8 A. So after the briefing, Lieutenant Lebrecht cornered me in
 9 the hall.
 10 Q. What's going through your mind at that moment?
 11 A. Well, I was upset about the meeting and just the
 12 misconceptions, but then I got a little more scared because he
 13 cornered me, basically pinned me up against the wall. He
 14 didn't push me up against the wall, but he used his body to
 15 back me up against the wall, so my back is against the wall,
 16 and we're basically touching. You know, we have our vests on,
 17 so the uniforms make us bigger, and I remember him tapping, you
 18 know, like, on my chest, with his finger saying, "Why weren't
 19 you laughing? What is your problem? Why did you leave?"
 20 Because I got up and left momentarily, went to the bathroom,
 21 when this was going on, so -- just because I wanted to cool
 22 down with what -- what was being said at this meeting.
 23 So he tapped me, and I just -- I thought he was going to
 24 hit me, basically. He had never encroached on my personal
 25 space like that before, so I thought he was going to hit me.

1 He didn't.
 2 I tried to diffuse the situation by saying, "No, I'm not
 3 upset. It's fine." I think he even said something like, "You
 4 know, you called it District 9 too."
 5 I was like, "Yeah, yeah. That's fine. District 9." And
 6 I said, "Okay, I -- you know, I -- my main concern I was just
 7 upset because I don't -- I don't like duty that you're -- that
 8 you're assigning me," which was to sit there in the car and
 9 watch the Occupy protesters for the whole night.
 10 I mean, no, that's not a great duty. True, it was a
 11 concern. It would be kind of boring, but I was just trying to
 12 push it away from any comments I had made trying to diffuse the
 13 situation and get it over with.
 14 Q. How does that end?
 15 A. I don't recall how it ends. He -- he may have taken me to
 16 his office. I just -- I don't remember. All I remember is
 17 the -- the -- what was traumatic for me is when I thought he
 18 was going to hit me; pushed me up against the wall.
 19 Q. Now, within days of that briefing, what happened in
 20 relation to the letter of clarification?
 21 A. Within days I got a letter of clarification for not
 22 observing the shaving standards on -- I think it's a -- on
 23 two -- two or more occasions or something like that.
 24 Q. Let's talk about the grooming standards. Why was it,
 25 Officer Cleavenger, that you were unshaven for a couple of

1 days?
 2 A. A couple reasons. We were working overtime for that event
 3 itself, the Occupy event itself, and then I also had a major
 4 felony case that if I -- well, I was working on at Junction
 5 City, and I had to stay over because the chief wanted the
 6 reserve officer reports done in Junction City because you never
 7 know when we would come back, et cetera, so I had to work a
 8 couple double shifts back to back in that period of a couple
 9 weeks.
 10 Q. Did you feel over those weeks your grooming standards were
 11 different than anybody else's?
 12 A. I felt that other guys were certainly unshaven from time
 13 to time, especially on the graveyard shift. I mean, it's --
 14 it's very common that you might -- if you have any kind of life
 15 outside of work, most activities go on during the day, so you
 16 may be up during the day and up during the night, and you may
 17 not have shaved since the morning, and you may not be totally
 18 clean shaven, so --
 19 Q. Now, there's emails between you and Lieutenant Lebrecht
 20 about the letter of clarification and not including some of the
 21 other incidents. What do you remember about that?
 22 A. Yeah, at some point prior to that we had a conversation in
 23 his office, I think, about some of my shenanigans, like the
 24 angel wings and the machete, and stuff like that, being over
 25 the top and, you know, too much, and explained that that could

1 be, you know, a public persona issue. And I understood. I --
 2 message was received, and I did not do any of those kind of
 3 shenanigans in public like that again.
 4 And I think I thanked him at some point for not putting
 5 everything in the letter of clarification, because there were,
 6 you know, lots of these shenanigans that he didn't include all
 7 of them in the letter.
 8 Q. At this point, you know, mid fall, how would you describe
 9 your relationship with Lieutenant Lebrecht?
 10 A. Well, everything prior to Cameron was fine. We got along
 11 great. And it was only -- it was only after Cameron became my
 12 supervisor that things went downhill, and they went downhill
 13 pretty quickly.
 14 Q. Now, as part of that letter of clarification, they
 15 included an incident from three months earlier, this javelin
 16 incident from August. Tell us about that.
 17 A. So the javelin incident was during my training period,
 18 during the first six months where I'm being evaluated, and I'm
 19 receiving daily observation reports and training issues are
 20 usually covered at the end of every shift.
 21 So in this incident I saw a gentleman that was sleeping
 22 under a tree, which is prohibited camping. It's something we
 23 couldn't actually cite for, but we would stop people for it and
 24 then talk to them. And then if they had a warrant, or
 25 something like that, we would deal with that, or an open

1 container, or whatever. Whatever it happened to be.
 2 So I called for backup before I even roused the guy.
 3 Officers started to arrive. It was real slow that day, so
 4 there wasn't a lot going on. So eventually -- I don't remember
 5 who came first, or whatever, but eventually I think it was --
 6 it was me, LeRoy, Drake, Lieutenant Lebrecht, Kent Abbott.
 7 There may have even been one more.
 8 So there's, like, five or six officers there surrounding
 9 this guy. Wake him up. He's -- he's very polite, but if
 10 somebody has an altercation with the police or is found to have
 11 a weapon during an incident, they'll put that on your records.
 12 So we'll hear it over the radio that this person was once seen
 13 with a javelin.
 14 Now, I have never ever heard of someone carrying a javelin
 15 before, so this was -- my guess is it was somebody's joke,
 16 because, I mean, a javelin is a pretty big type of weapon, so I
 17 didn't see any type of javelins around at the time. He was
 18 very polite. He wasn't resisting. I informed him that he had
 19 a warrant for a theft charge out of Cottage Grove; real minor
 20 level misdemeanor warrant.
 21 He expressed a concern to me that his girlfriend was going
 22 to be meeting him later in the evening, and he didn't want her
 23 walking around searching for him. So he wanted to call her and
 24 say he was going to jail and to not come look for him.
 25 I felt this was a reasonable request. He asked if he

1 could get it out of his bag. Again, multiple officers around.
 2 I'm standing right there by the bag. I could see the phone. I
 3 let him get the phone, let him make the phone call, and there
 4 were -- there was arrest without -- without incident, and the
 5 Eugene Police Department took him to jail.
 6 Q. Were you counseled back in August about this?
 7 A. I was. Yeah. That day my FTO Drake and
 8 Lieutenant Lebrecht took me aside, and said the thing you
 9 definitely could have done better there was you could have
 10 handcuffed him first before you let him make the phone call.
 11 And I thought, you know, you're right. That's definitely a
 12 more reasonable thing to do. And I never let anybody make a
 13 phone call not handcuffed after that.
 14 Q. Did it seem like a big deal back in August?
 15 A. No. It seemed like it was part of a training issue. That
 16 was the first time I had let someone make a phone call during
 17 an arrest like that, and they taught me how to do it right the
 18 next time.
 19 MR. JASON KAFOURY: Your Honor, it may be a good time
 20 for a morning break here. I'm about to transition.
 21 THE COURT: Don't discuss this matter amongst
 22 yourselves or form or express any opinions concerning the case.
 23 We'll come get you at 10:30. Have a great recess.
 24 Mr. Cleavenger, you can step down.
 25 Counsel, we'll see you in 20 minutes.

1 (Jury not present.)
 2 THE COURT: We're back to -- sir, counsel, parties,
 3 have a seat, please.
 4 Counsel, this would be the -- thank you, Christy. This
 5 would be the continued direct examination of plaintiff's
 6 counsel.
 7 MR. JASON KAFOURY: Thank you, Your Honor.
 8 (Jury present.)
 9 BY MR. JASON KAFOURY: (Continuing)
 10 Q. So we're talking about the fall of 2011. We talked about
 11 the letter of clarification. Did you have discussions with
 12 Lebrecht and Cameron more generally during this time period
 13 about your philosophy of policing?
 14 A. We did have a couple shift briefings about policing
 15 philosophies. The one I remember, in particular, was when
 16 Officer Adam Lillengreen came back from a planning meeting
 17 discussing with university staff and faculty about trying to
 18 create some kind of oversight group of citizens committee. The
 19 committee I was on back in law school, Public Safety Advisory
 20 Group, was no longer. There was no citizen oversight group.
 21 They were discussing different models on how that would
 22 work. And we were having a discussion and -- during a shift
 23 briefing, and I explained that I enjoyed being on the Public
 24 Safety Advisory Group, but I felt like it didn't have enough
 25 actual input into the department, and I felt that the community

1 members should and they should have some say in discipline of
 2 officers, or at least be able to see the investigation, and I
 3 remember that that made Lebrecht very mad.
 4 He said that citizens cannot understand what police
 5 officers go through. He has -- he expressed a very "us against
 6 them" mentality. "Us" being the police, "them" being everybody
 7 else. And that's just not what I believed in. That's one of
 8 the reasons I chose UOPD in the first place.
 9 During my interview with the chief, we discussed our
 10 philosophies. I wanted to be part of creating a new police
 11 department that was going to be very progressive, very
 12 intertwined with the community, and that the goals would be to
 13 protect the students from the outside versus trying to punish
 14 the students at every chance, which was the philosophy, I felt,
 15 of Cameron, who kept telling me that I needed to write more
 16 citations, make more arrests.
 17 And these are arrests and citations of students who have
 18 zero criminal record, and I felt it would be more appropriate
 19 to give warnings or to move things through the student conduct
 20 code on campus so the students didn't have a criminal record
 21 for criminal trespass for walking out onto their balcony or
 22 something like that. They would just have some kind of
 23 punishment through the university that wouldn't follow them
 24 around for years.
 25 Q. Was this a continued battle between Lebrecht, you, and

1 Cameron about how hard to penalize people?
 2 A. It continued with Cameron and I because it was brought up
 3 in my annual evaluations. I showed him my stats. My stats
 4 showed that I had roughly the same amount, or more, of arrests
 5 and citations issued than -- as compared to the other officers
 6 on my shift. But he still felt I was giving too many warnings.
 7 Q. I want to show you Plaintiff's Exhibit 31. I think this
 8 is already in evidence. Can you identify what that is for the
 9 record?
 10 A. These are special weekly evaluations that were given to me
 11 by Lieutenant Lebrecht.
 12 Q. Okay. You can hang onto that copy.
 13 MR. MCDUGAL: Is 31 received?
 14 MR. JASON KAFOURY: Is 31 received by the Court? I
 15 believe it is.
 16 THE COURT: 31 is received at this time, Counsel.
 17 MR. JASON KAFOURY: Permission to publish.
 18 BY MR. JASON KAFOURY: (Continuing)
 19 Q. Can you explain before we show the jurors a couple
 20 portions here, Mr. Cleavenger, why were you on the special
 21 weekly evaluation?
 22 A. Because I had received that letter of clarification for
 23 the shaving and the practical jokes.
 24 Q. The first page, that's -- the paragraph down, areas for
 25 improvement. So here we see a second sentence. "He seems to

1 favor issuing many warnings rather than corrective enforcement
 2 actions."
 3 Is this an example of the types of discussions and the
 4 incidents that you had with Sergeant Cameron?
 5 A. Yeah, it was. And this was also -- I remember this
 6 incident because the first time I stopped this guy, he didn't
 7 have a light at all. Second time, a week later, he had a
 8 light, but it was broken. I could see where it had been
 9 broken.
 10 So, yes, normally I wouldn't issue someone two warnings
 11 for the same thing, but he went and bought a bike light, which
 12 is what I wanted him to do. That's why I gave him the warning
 13 in the first place. And then it had been broken. I could see
 14 that it was, so I issued the second warning.
 15 But, yes, this is exactly the type of thing.
 16 Q. Okay. So what happened with these weekly evaluations?
 17 A. So when I got that letter of clarification, I was told
 18 that I would be on -- I didn't quite understand it -- some kind
 19 of special weekly evaluation period that could last up to -- I
 20 have to read the letter of clarification. Up to 12 weeks or
 21 something like that.
 22 Q. 8 to 10, I think it said.
 23 A. 8 to 10 weeks.
 24 Q. And how long did this period actually last?
 25 A. It lasted four, five weeks.

1 MR. JASON KAFOURY: Can we blow up that last
 2 paragraph on the last page, Mr. Hess?
 3 BY MR. JASON KAFOURY: (Continuing)
 4 Q. So middle of the paragraph here. "I don't see it as
 5 necessary to continue weekly evaluations at this point, as
 6 Officer Cleavenger immediately took it upon himself to quickly
 7 correct the points that were to be addressed and is working at
 8 a level that is equal to that as his peers."
 9 Did you have a conversation with Lieutenant Lebrecht or
 10 Sergeant Cameron around this time period about how you were
 11 doing?
 12 A. I -- I don't recall specific conversation. There were
 13 conversations about this each week, briefly, at least.
 14 Q. But was it your general understanding that because you had
 15 done so well over those weeks that that's why they took you
 16 off?
 17 A. Oh, yes. Sorry. Yeah, that's clear. It was -- yeah, it
 18 was supposed to last up to 10 weeks. I think it was 8 to 10
 19 weeks specifically, and Lieutenant Lebrecht said he felt no
 20 need to continue with them after five weeks.
 21 Q. I want to talk about how things started to change for you
 22 generally when Sergeant Cameron became your supervisor. Can
 23 you sort of walk us through in the coming months, end of 2011,
 24 end of 2012, how would you describe the change in your work
 25 environment from before Cameron was your supervisor?

1 A. When Cameron became my supervisor, he started nitpicking
 2 on everything I did. From my boots not being quite shiny
 3 enough to a situation he would have handled totally differently
 4 and I totally did the wrong thing. I would write a report, and
 5 he would tell me the report was bad because I used -- used too
 6 many big words. It just -- I mean, it was just little
 7 ticky-tack things, and they were always in public. When I say
 8 "in public," I mean when other officers were around. It's not
 9 like he was taking me aside trying to help me learn something.
 10 It was all negative criticism.
 11 Q. How did you feel at that moment, during these moments it
 12 was happening?
 13 A. I felt like I was being singled out and picked on.
 14 Q. Let's talk about the training request. Tell the jurors
 15 what you recall happening in January of 2012.
 16 A. So there was a meeting with the former chief, Doug Tripp,
 17 department wide. Everybody was there. He and
 18 Lieutenant Morrow gave some long speeches about the future of
 19 the department and the vision and talked about how people could
 20 become police officers, how that application process was going
 21 to work, and that was everybody's main concern, was how am I
 22 going to be able to keep my job in this department, et cetera.
 23 One suggestion they made was that we take it upon
 24 ourselves to request more training to become better officers.
 25 So I started making training requests.

1 Q. How did you go about making the requests?
 2 A. So my understanding of the process is we were supposed to
 3 find the training -- these are usually listed online at the
 4 DPSST website. You know, any police officers can go to these
 5 things. Some cost money and some are totally free. Some are a
 6 week long. Some are two hours. And there are literally
 7 hundreds of these things.
 8 So I would photocopy the training I wanted to go to. I
 9 would write up, you know, an email, and then send it through
 10 the chain of command. You know, sergeant, lieutenant on my
 11 shift, and then it was supposed to be kicked up to
 12 Lieutenant Mike Morrow, who was the head of standards and
 13 training, basically. I had been also training. And he would
 14 make the final decision and let us know if there was -- if we
 15 could go.
 16 Q. If you wanted to seek outside training at Junction City,
 17 what was the process during that time period?
 18 A. Request it from any supervisor so it could be --
 19 Q. At Junction City, did you ever have your training request
 20 denied?
 21 A. Never. All of my training requests at Junction City were
 22 approved, even if the department had to pay for them.
 23 Q. So let's talk about what happened -- what starts happening
 24 after you start making requests in the beginning of 2012?
 25 A. They start getting denied. All, in told, I made 33

1 training requests, all 33 were denied. And I -- actually, I
 2 should clarify. Most of them were denied. Some of them were
 3 just completely ignored, and I never even heard back on some of
 4 them.
 5 Q. And that's 33 training requests over the course of 2012
 6 until you were terminated in October?
 7 A. Yes. I continued to make training requests whenever I saw
 8 them.
 9 Q. Now, about a third of those requests for training, you did
 10 near the end of your tenure. Can you explain to the jurors why
 11 that was?
 12 A. Yes. Towards the end of my tenure -- that's a nice way to
 13 put it -- they were saying generally --
 14 Q. "They"?
 15 A. Sorry. The administration, the supervisors were saying,
 16 you know, there's officer safety issues in general, so I
 17 started trying to find trainings that specifically addressed
 18 officer safety issues. Some of the ones I had requested before
 19 also addressed officer safety issues, but I was trying to focus
 20 on those because there was also some talk at that time about
 21 some kind of possible retraining program that the department
 22 might be offering me. We never got anything in writing about
 23 it, but I wanted to show my general acceptance to training.
 24 Q. Well, we'll talk about that a little bit later. Let's
 25 talk about what you did in early 2012 when you weren't hearing

1 back from Lebrecht and Cameron about your training requests.
 2 A. Yeah. So I was confused because I -- I was making all
 3 these requests, and they were either being denied or ignored,
 4 and so I wanted to make sure I understood the process
 5 correctly, so I emailed Mike Morrow and I said in what I
 6 believe was a nice, polite email, "I just want to understand
 7 the process correctly. Are you seeing these training requests?
 8 You know, I want to make sure I'm doing this right because so
 9 far I've only heard either just verbally" -- verbal denials,
 10 you know, or sometimes email denials from my direct supervisors
 11 and not from him. So I was just checking to see if he had
 12 actually been receiving them, or if they were getting blocked
 13 off at -- at my supervisor -- my first supervisor level.
 14 Q. What happened next?
 15 A. Well, I received -- received an email from Morrow saying,
 16 yes, he had been getting them, but then I got called in to
 17 Lebrecht's office as soon as I came to work.
 18 Q. How soon was that after you sent that email to Morrow?
 19 A. I don't remember the exact day, but within two, three
 20 days. At most, within two, three days after sending that email
 21 to Morrow, I was called into Lebrecht's office.
 22 Q. Who else was there?
 23 A. Nobody.
 24 Q. Tell us what happened.
 25 A. He called me in his office, shut the door, and he was very

1 angry. I didn't know what about. He told me to sit down. He
 2 told -- he told me, "Don't you ever think that you can go
 3 behind my back and complain about me to IA." To Mike Morrow.
 4 He said, "You know that Mike and I are friends, and I'm going
 5 to find out every single time."
 6 Q. What's going through your mind when he's telling you that?
 7 A. Well, first of all, I'm confused, because I never meant
 8 that email to be a complaint about Lebrecht. I just wanted to
 9 make sure they were going up the chain of command.
 10 Secondly, that put me on notice, from that day forward,
 11 that if I ever was going to complain about Lebrecht, he was
 12 going to find out. Because the -- oh, the other important part
 13 was that Morrow -- sorry, Lieutenant Lebrecht told me, "I have
 14 an email from Lieutenant Lebrecht" -- sorry -- "from
 15 Mike Morrow, and I can show it to you." Lieutenant Lebrecht
 16 said he had an email from Morrow showing that I had emailed
 17 Morrow, so Morrow had turned over that email to Lebrecht.
 18 Q. Explain to the jurors the process of internal affairs and
 19 how it's supposed to work within a department with regard to
 20 complaints.
 21 A. Well, it's supposed to be separate and isolated, and the
 22 position is supposed to be permanent so you don't have someone,
 23 like, cycling through all the time. Otherwise, it would be
 24 weird to have your supervisor be your supervisor and then all
 25 of a sudden he goes to IA for six months and comes back. It's

1 supposed to be isolated, fair, neutral.
 2 Q. Did this change the way that you approached the department
 3 after that meeting with Lieutenant Lebrecht?
 4 A. Absolutely. Like I say, it became very clear to me I
 5 could not complain to Mike Morrow about anything.
 6 There were little things that would happen after that that
 7 I felt Lebrecht and Morrow were trying to show me that they
 8 were, in fact, very close. There was an issue with
 9 Thor's hammer. I think I have that right. Lieutenant Lebrecht
 10 was carrying a baton that was just gigantic and it was
 11 oversized, and someone in the department said he couldn't use
 12 it because it was too big and took -- looked too threatening,
 13 or something like that, and Mike Morrow had written, like,
 14 "Thor's hammer" on it, as like a joke. Lebrecht brought it
 15 into briefing to show us, "Look what Mike Morrow -- you know,
 16 my IA buddy -- did for me." Just little things to keep
 17 pointing out they're real close.
 18 Then there was the incident where I am sitting in a
 19 training or a briefing -- I can't remember which -- in our
 20 squad room, either Morrow or Lebrecht had come in to say
 21 something to us and then left, and then the two of them walked
 22 around to the other side of the building, right by the
 23 windows -- they knew where I was sitting -- and they sat there
 24 arm in arm laughing and pointing at me, and I -- I know that --
 25 you know, I noted on my notepad exactly what time and day it

1 was. There was nothing between the window and me except maybe
 2 the air conditioner, and I don't see what would be funny about
 3 that. It was made clear to me that --
 4 Q. How did you feel about that?
 5 A. I felt like I was being retaliated against, and it was a
 6 show of force to show me haha, they had got me.
 7 Q. I want to talk about -- before we talk about Spencer View,
 8 a couple of specific incidents regarding Sergeant Cameron and
 9 force. Can you tell the jurors about the lot 16 incident?
 10 A. So there's an incident in a parking lot one evening where
 11 a young lady believed -- she was drunk. This is kind of after
 12 the bars closed. She believed those two guys had stolen her
 13 cell phone, when, in fact, they hadn't. We found the cell
 14 phone on the ground in the parking lot a ways away.
 15 She was very upset, very convinced that these guys had
 16 stolen her cell phone. These guys let us search them, and
 17 everything, just to prove they hadn't done this, and then
 18 eventually found the phone.
 19 She got so upset that she started, you know, struggling
 20 and kind -- and kind of had to be held back by some of the
 21 officers. I didn't see it as that big of a deal. She made a
 22 scene. You know, a lot of people came around to see what was
 23 going on. But to me she was the victim and she was upset. A
 24 little more than she should have been? Yes. But, I mean, she
 25 didn't hit any officers or anything like that. She just

1 struggled with them. She -- they put her in handcuffs for a
 2 few minutes.
 3 Because I was the first officer to arrive there, I was the
 4 first person dealing with it. I think I also found the phone,
 5 too, but I'm not sure. At any rate, by the end of this
 6 incident there's, like, five of us there, five officers there.
 7 I'm not holding this girl back at all. I've never -- I
 8 didn't -- that wasn't part of my dealings. I was dealing with
 9 the guys.
 10 But Cameron asks me to have the girl arrested for
 11 resisting arrest -- or, no, sorry, for interference with a
 12 police officer. Not resisting arrest. She wasn't under
 13 arrest. And I thought that was just ludicrous. I mean, yes,
 14 technically, we could have cited her for that and had her
 15 arrested, but I thought that was ridiculous.
 16 Further, I thought it was ridiculous that I had to do it.
 17 As I told him, I said, "I'm not comfortable with making that
 18 arrest." I said, "If you are, go ahead." Officer discretion.
 19 Either one of us could have done that. He didn't want to do
 20 it, but he wanted me to do it.
 21 Q. So what happened?
 22 A. I refused, and he was angry, and it came up in evaluations
 23 again that I'm too lenient on people and too soft. But, again,
 24 that situation was out of control for a little bit. She was
 25 angry for a little bit. Once she got her phone back, she

1 calmed down. Everybody went on their way.
 2 Q. That incident was October 2011; right? Just a few weeks
 3 after you started with Cameron?
 4 A. Sounds about right. I'm not sure on the exact date.
 5 Q. Okay. Let's talk about January of 2012. The west station
 6 roof incident. Tell us about that.
 7 A. So that's an incident -- at that time we had two police
 8 stations. One had all the police vehicles and the officers
 9 were there. The one on the west side was dispatch. There is a
 10 roof to that building that you can access from windows of some
 11 of the dorms right next to it. So some students had come out
 12 on the roof, and this was fairly common, because there weren't
 13 any signs at the time saying you couldn't do it. Now, they may
 14 have been taken down, or something like that, but at the time
 15 there weren't any signs that said you couldn't come out on the
 16 roof.
 17 Should they have known better? Sure. So they came out on
 18 the roof, looking around. We respond. When I get there, I'm
 19 able to talk most of the kids to come down. There was one left
 20 up on top, who, I think, ran back inside, or something like
 21 that. So they came down. These kids were, like, you know, 17
 22 years old.
 23 Q. Were they drunk?
 24 A. No. No. Absolutely no alcohol, no marijuana, nothing.
 25 They were just -- they lived in that dorm. They were just

1 exploring. Frankly, you know, they were the sweetest kids you
 2 could think of. Like, 17. Just been there for a couple of
 3 months. Shaking -- literally shaking they were too scared.
 4 They had never been in trouble before. They were just nice
 5 kids.
 6 Cameron --
 7 Q. So what happened?
 8 A. Cameron wants me to arrest them for criminal trespass.
 9 First of all, I don't think legally we could have got there
 10 because I don't think it was posted at all. Cameron says,
 11 "Well, there's case law about, you know, roofs are
 12 automatically trespass. They don't have to be posted." Maybe.
 13 I haven't seen that case. Maybe that's true. But you're
 14 supposed to have officer discretion. I'm supposed to be able
 15 to decide myself and not be influenced by my supervisor to
 16 decide if I'm going to make that arrest or not. I felt that
 17 was totally inappropriate.
 18 I was fine with using the option of the in-house student
 19 conduct violation because that's not going to be on their
 20 record. But criminal trespass, I mean, if they're applying for
 21 jobs and that pops up, it sounds like they're prowlers or
 22 something like that. No. I mean, they just went out on the
 23 roof of their dorm. I didn't feel it was appropriate.
 24 And, again, this is another incident where there were two
 25 other officers there, but he's just harping on me to do this,

1 to make this arrest. He could have made that arrest. If he
 2 had wanted to charge them with that, fine. He was there too.
 3 So was Officer Hermens. But, for some reason, he focused in on
 4 me.
 5 Q. Were these all things that became eventually part of your
 6 annual evaluation?
 7 A. Yes. Yes, they were.
 8 Q. Let's talk about Spencer View, shall we?
 9 First, I want to go through the video with Hermens and
 10 Phillips from five weeks before your incident. Before we do
 11 that, when did you find out about Hermens and Phillips driving
 12 right up to the front door of Spencer View prior to your
 13 situation?
 14 A. I found out about it -- I believe I presented it at the
 15 step two hearing, I think. I think that's when I found out
 16 about it.
 17 Q. So that would have been sometime over the four to six
 18 months' range from when you're accused of doing this?
 19 A. Yeah. Yeah. It was easy to find because, with our
 20 computer systems, we could just type in the location, and it
 21 will give us all the -- all the incidents that have been there
 22 before.
 23 Q. Big picture. Spencer View. Explain to the jurors what it
 24 is and how often you guys were out there dealing with stuff.
 25 A. So Spencer View is an off campus apartment complex that is

1 for families, usually graduate students that have kids, because
 2 they have a daycare center right there. So it's families in
 3 apartment-style living. Approximately eight blocks off of
 4 campus, but it's still considered U of O property.
 5 Q. And how often would you guys go out there for stuff?
 6 A. Quite often. They're not built that well. I've come to
 7 find, from my experience there, you know, the walls are kind of
 8 thin. You have families, and there could be a lot of noise,
 9 noise complaints.
 10 And then we also get a lot of calls out there because
 11 the -- some of the homeless population would come through and
 12 steal bikes or cans or go through the garbage, and stuff like
 13 that, and the residents would call us for those issues too.
 14 Q. So set the stage for us here. This 2/24/12 incident with
 15 Hermens and Phillips, about five weeks before your incident
 16 with Spencer View, what were they responding to?
 17 A. So, from reading the report, it was possible assault that
 18 had just taken place at Spencer View involving the mother in
 19 the bottom apartment, that I later dealt with. So I believe
 20 the bottom apartment is apartment 60, if I recall correctly.
 21 Q. So they're responding to the exact same apartment number
 22 that you're dealing with five weeks later; right?
 23 A. Right.
 24 Q. Okay.
 25 A. And that call was the --

1 MR. JASON KAFOURY: Mr. Hess, can you -- permission
 2 to play Exhibit 71, which I believe is already in evidence,
 3 Your Honor.
 4 THE COURT: You may play 71.
 5 MR. JASON KAFOURY: You can.
 6 BY MR. JASON KAFOURY: (Continuing)
 7 Q. You can walk us through what's happening. If you want us
 8 to pause, let us know.
 9 A. This is Officer Hermens' vehicle coming to Spencer View.
 10 It doesn't have audio because the audio doesn't kick on yet,
 11 and it's not important for this either.
 12 THE COURT: Just let it run continuously, Counsel. I
 13 don't want it to stop. I think it's misleading to stop it.
 14 So you can narrate it as you go, Mr. Cleavenger.
 15 MR. JASON KAFOURY: Okay.
 16 THE WITNESS: So they're going to apartment 60, which
 17 you can see the number just to the left of the door. That's
 18 where they're going for this potential -- potential assault
 19 call.
 20 BY MR. JASON KAFOURY: (Continuing)
 21 Q. Now, we heard Officer Hermens --
 22 THE COURT: Just a moment, Counsel. If this -- does
 23 this stop the video? Because the trees are still moving.
 24 BY MR. JASON KAFOURY: (Continuing)
 25 Q. Anything else from this video?

1 A. If you can just wait until the officers get out. So
 2 that's Officer Hermens on his phone there on the left, and
 3 that's Officer Chris Phillips on the right. Former Sergeant
 4 Phillips and Field Training Officer Phillips on the right, so
 5 the two most-senior officers, I believe, in the department at
 6 that time.
 7 Q. So the two most-senior officers --
 8 A. Well, two of the most. Royce Myers, I believe, beats them
 9 and Abbott beats them.
 10 Q. Two of the most senior officers in the department, five
 11 weeks before your incident, park right in front on an assault
 12 charge and walk right up to the door; right? That's what this
 13 video shows us?
 14 A. Yes. And that's kind of standard.
 15 THE COURT: Now, Counsel, now you can go back and
 16 either one of you can replay the tape and break it up if you
 17 want to. First time playing it through, either you or the
 18 defendant, play the whole tape. I want a continuous run. Then
 19 you can go back and break that down for either party if you
 20 want to.
 21 MR. JASON KAFOURY: Okay.
 22 BY MR. JASON KAFOURY: (Continuing)
 23 Q. Prior to April 1, 2012, had you ever been told about how
 24 to pull up in relation to Spencer View and where you should
 25 park?

1 A. In Spencer View specifically, no. There are different
 2 tactics for responding to different calls. There was no set
 3 meeting place for Spencer View. It wasn't like, okay, any time
 4 we go to Spencer View, we're going to meet at a specific
 5 location.
 6 Q. Well, let's --
 7 MR. JASON KAFOURY: I'd like to offer Exhibit 47.
 8 THE COURT: Just a moment. Received.
 9 MR. JASON KAFOURY: Okay. Publish 47?
 10 THE COURT: You may.
 11 BY MR. JASON KAFOURY: (Continuing)
 12 Q. Officer Cleavenger, can you walk the jurors through what
 13 we're seeing here in 47? And, if you can, with your hands. I
 14 think it's a touch screen.
 15 A. Okay. So this is the way I drove in. It's a -- it's a
 16 one-way street, so you don't have much of a choice. As you're
 17 driving down Patterson, you have two options of how to turn
 18 into Spencer View Apartments from Patterson. You've got this
 19 one here on 22nd Avenue, or you can wait and turn in up here a
 20 little later.
 21 So when I got the call -- I was the last officer to arrive
 22 because I was furthest away. I was told that the incident is
 23 in the southwest corner.
 24 Q. Okay. Can you indicate where the southwest corner on this
 25 is?

1 A. The southwest corner would be there. You can tell because
 2 right down here at the bottom right-hand corner, that's your
 3 north directional compass.
 4 Q. Okay.
 5 A. So the quickest way to get to this southwest corner would
 6 be to come in and take that second entrance.
 7 Q. Which unit here are you responding to?
 8 A. 64. 60 and 64. They are here.
 9 Q. So tell us what you know about this call. We'll listen to
 10 the audio here in the moment. What did you know about the
 11 call, as you're heading in?
 12 A. So, as I recall, I was told that there was a dispute
 13 between two neighboring families over a noise complaint,
 14 upstairs and downstairs neighbors, and that both families were
 15 now back inside their apartments and wanted us to come take a
 16 complaint about -- about the noise, which relatively is a
 17 standard call.
 18 Q. Why were you primary?
 19 A. I'm not sure. Sometimes they're just randomly assigned.
 20 I know why they wanted me to go in and talk to them; why they
 21 waited for me.
 22 Q. Why did they wait for you?
 23 MS. COIT: Object. Foundation.
 24 THE COURT: I need more foundation, Counsel, of
 25 whether he knows.

1 BY MR. JASON KAFOURY: (Continuing)
 2 Q. Had you been to Spencer View before this for similar
 3 calls?
 4 A. Yes.
 5 Q. Okay. And during those calls, what was generally your
 6 role in dealing with noise disturbance kind of situations?
 7 A. Well, I wouldn't say -- my role, in general, a lot of
 8 times, was to deal with people who were -- who were angry or
 9 upset. Especially women. If there was ever an opportunity to
 10 choose which officer would go, I would typically get called to
 11 those calls because I dealt with people better, had more
 12 patience. And I don't know if that was dispatch doing that,
 13 but it's very typical of this department. So you get a feel
 14 for who your officers are, what they can do, what their
 15 strengths are, and so I noticed I was getting called to more of
 16 those type of calls.
 17 Q. Is that why your understanding of why you were the one to
 18 go lead this effort?
 19 A. That's my guess. I can't prove it.
 20 Q. Okay. So we're going to watch the video here. Tell the
 21 jurors what do you know about this call from the radio as
 22 you're heading in.
 23 Oh, let's not take that off quite yet. Well, we can --
 24 why don't -- so the jurors have a sense here, can you show us,
 25 with your fingers, where other people were actually parked and

1 where you ended up parking, and then we'll show the video?
 2 A. Okay. Gotcha. So the first that you'll see here is
 3 Officer Hermens' vehicle. This is where Officer Hermens'
 4 vehicle was actually parked.
 5 When I was asked about this a week later, not knowing that
 6 there was any issue from this event, and never having seen this
 7 video, I thought Hermens was parked here where the question
 8 mark is. So I was wrong by about 40 yards. I was right on
 9 where I thought Cameron parked. I was right on that. Right
 10 on. I was right on where I thought I parked, which is this --
 11 that second X next to Cameron. I was right about Davis.
 12 And the point is when I was interviewed about this a week
 13 later, I thought it was a citizen complaint or something about
 14 the way we handled the call or something. I made the point
 15 that all three of the officers who had arrived before could be
 16 seen by the apartments in 60 and 64 there. I said all three
 17 vehicles could be seen and Hermens was the one who showed up
 18 first.
 19 But I was wrong about his location. Hermens was actually
 20 back here.
 21 Q. So Hermens, after all the video was reviewed, you realized
 22 could not be seen, but the other ones could?
 23 A. Correct. I said that from where I thought Hermens was
 24 parked, which is, again, by the question mark, that you could
 25 see the apartment, and, therefore, the apartment could see you.

1 But it's impossible because Hermens was parked back here.
 2 I just didn't know it because I never had seen the video.
 3 MR. JASON KAFOURY: Okay. Let's show the video.
 4 Exhibit 9. I'll offer Exhibit 9 if it's not received already.
 5 THE COURT: Exhibit 9 is received, Counsel. You may
 6 play Exhibit 9.
 7 BY MR. JASON KAFOURY: (Continuing)
 8 Q. Feel free to narrate it for us. I won't stop it.
 9 THE COURT: Once again, whose video? Which car? Is
 10 this Hermens' car or your car?
 11 THE WITNESS: Sorry, Your Honor. This is my car.
 12 THE COURT: Okay.
 13 THE WITNESS: So you'll start to see here up on the
 14 right that's Hermens' vehicle.
 15 So now I'm in the southwest corner. I thought he was
 16 parked right there, right where I just passed. I know I'm in
 17 the southwest corner. I'm looking for these guys. When I turn
 18 the corner, I can read the apartment numbers on the left. I
 19 see these guys down here parked and waiting for me.
 20 THE COURT: Who are they?
 21 THE WITNESS: Sergeant Cameron, Officer Davis, and
 22 Officer Hermens.
 23 THE COURT: Okay.
 24 BY MR. JASON KAFOURY: (Continuing)
 25 Q. So when you arrive, does anybody talk to you and say "Wow,

1 that was incredibly unsafe. I can't believe you just drove
 2 by?"
 3 A. No. Nobody said a single word about that.
 4 Q. Okay. Were you ever warned over the radio about what the
 5 mental health situation was of the people involved?
 6 A. Absolutely not. This is important because Hermens now
 7 claims that he told me that this lady was crazy -- or,
 8 actually, both ladies were crazy and that that's potentially
 9 dangerous because these women are crazy.
 10 You'll hear, when we listen to the dispatch, that he tells
 11 somebody that he thinks they're crazy, but it's not me. He
 12 calls on his phone into dispatch. Dispatch is recorded.
 13 Anytime you call dispatch, it's recorded. Anytime dispatch
 14 puts out a radio broadcast, it's recorded.
 15 So Hermens has a nice long conversation with the
 16 dispatcher, talking about, you know, "I've been there before.
 17 I think this lady is crazy. Wait. No. Maybe it's the other
 18 lady that's crazy. No. They're both crazy." You see where
 19 this is going?
 20 He has a discussion with her about this. Not with me.
 21 I'm in a car. I'm not in dispatch. I can't hear this phone
 22 conversation between his cell phone and the dispatcher. What I
 23 can hear is the radio content.
 24 So after they're done having this conversation about which
 25 one or both of these women being crazy, he comes on the radio

1 and he tells me -- he tells me he thinks it's in the southwest
 2 corner, which had already been broadcast before, so I already
 3 knew where I was going. He just repeats that. He says nothing
 4 about the craziness or potential craziness. I actually found
 5 both women to be quite sane. But, at any rate, I was not
 6 warned. There was no warning.
 7 Q. Let's listen to the audio. Exhibit 10. And we'd offer
 8 Exhibit 10.
 9 THE COURT: Just a moment. 71 has been received,
 10 Exhibit 9 has been received. Exhibit 10 is received.
 11 Counsel, you may play it.
 12 (Exhibit 10 is played for the jury.)
 13 MR. JASON KAFOURY: So explain to us what we just
 14 heard.
 15 THE WITNESS: So when you heard the dispatcher answer
 16 the phone and say, "Department of Public Safety," she's
 17 answering the phone. That's her greeting. Then she's talking
 18 to Officer Hermens back and forth trying to decide who's crazy.
 19 That part I can't hear. I would have to be in dispatch to hear
 20 that. I can't hear that. I was never warned.
 21 He also testified that he told me specifically where they
 22 were located and where I was supposed to meet them. I don't
 23 think we heard that either.
 24 Can we go back to that map real quick?
 25 ///

1 BY MR. JASON KAFOURY: (Continuing)
 2 Q. Sure.
 3 MR. JASON KAFOURY: That would be Exhibit 47, I
 4 believe, Mr. Hess.
 5 THE WITNESS: So you may recall he repeated the
 6 location, that it's in the southwest corner.
 7 BY MR. JASON KAFOURY: (Continuing)
 8 Q. No pronouns. "He" Hermens?
 9 A. Sorry. Zach Hermens repeated that it's in the southwest
 10 corner. I had already heard that. I was already going that
 11 way. He testified that he told me exactly where they were
 12 going to meet me and where I should meet them. Here's the
 13 problem with that: If he had told me we were going to meet
 14 here, I would have taken this first entrance. Simple. I would
 15 have taken the first entrance. I wouldn't drive all the way
 16 around to get there. In any police response call, you're
 17 supposed to go there as quick as you can.
 18 Q. Let's talk about what happens after you arrive there.
 19 What did do you?
 20 A. So I got out of my car, and then at that point
 21 Zach Hermens tells me that he's dealt with these women before
 22 and he thinks one or both are crazy.
 23 The lady upstairs is definitely not crazy. She's from
 24 Senegal, so she's loud. That's just in her culture. She's --
 25 she wasn't crazy. She's just a loud person.

1 There's some folks on my cricket team that have cultures
 2 that are also very loud. The Jamaican guys I play with are
 3 always loud. It's a cultural thing. She's not crazy.
 4 The one downstairs, I mean, I'm not a psychologist, but
 5 she had some issues. I wouldn't call her crazy, but she had
 6 some -- there was a little bit of racial bias with -- with the
 7 lady downstairs. She made a couple comments to me about, you
 8 know, these people from foreign countries sort of thing. I
 9 mean, I could just tell. But I felt for her, too, because they
 10 were playing soccer in the house right above her head for hours
 11 supposedly.
 12 Q. So what did you do?
 13 A. So I went upstairs with Hermens, took the report from the
 14 Senegalese women upstairs first and then went downstairs and
 15 got the story from the lady downstairs. And it's important to
 16 note that both apartments had called us. Upstairs and
 17 downstairs had both called and said, "Can you please come over
 18 here and take a complaint about this incident that happened?"
 19 Because the woman from downstairs had come upstairs, yelled at
 20 the woman from upstairs, saying, "You've got to control your
 21 kids," blah, blah, blah, and then they went back in their
 22 apartments and called us.
 23 Q. There was no surprise element?
 24 A. No.
 25 Q. Both people knew the police were coming?

1 A. Yes. They both called the police and asked us to come.
 2 Unless they have really bad memory issues, I think they would
 3 have expected us to show up, and we did.
 4 Q. Okay. So how long are you there dealing with the
 5 situation?
 6 A. Quite a while because in situations like this the best
 7 thing you can do is to hear people out, and sometimes you just
 8 have to have some patience.
 9 There's some cops who just don't have patience. You know,
 10 they want to be out there doing more active fun stuff. I've
 11 learned, through my training, especially at Junction City, just
 12 take the time -- sometimes people just want to vent about
 13 what's ticking them off, and, you know, I'll say, "Okay, you
 14 know, I'll put in extra patrol. We'll listen. If we hear them
 15 get out of control, we'll do something about it," that sort of
 16 thing. That's my approach to policing, and I think it worked
 17 beautifully in this case.
 18 In fact, I distinctly remember getting a phone call the
 19 next day from the woman from downstairs. And it's on a
 20 recorded line. I never got the tape. Unless it goes further
 21 back. At any rate, she said to me -- even though she got into
 22 a little bit of trouble for the incident, because I sent it to
 23 the bias response team from the university because I felt there
 24 was some racial bias there. She said to me, "Thank you.
 25 You're the first officer from this department who's treated me

1 like a human being." And I remember that quote almost
 2 verbatim.
 3 Q. Let's talk about what happens after that night. You're
 4 there. Did you write a report about this incident?
 5 A. Oh, later that night. So I go back, start writing my
 6 report on this incident, and then get called back again for the
 7 same -- same problems, same two apartments. I responded this
 8 time only with -- only Hermens and I.
 9 And, as I recall, Hermens came with me to the apartments,
 10 started taking the complaint, and eventually Hermens left and I
 11 finished talking to the lady, and then -- then I left too.
 12 So we responded again that night, same call. She -- the
 13 lady downstairs had called us over because she wanted us to
 14 hear the noise from upstairs.
 15 Q. So --
 16 A. Yeah.
 17 Q. -- throughout this whole night, do you have any memory of
 18 anybody saying, "Wow, that was incredibly unsafe. You drove
 19 past this?"
 20 A. I do not have any memory about that. I think obviously
 21 the most appropriate time to have said something would be
 22 during the incident. Or I can tell you this: If I'm an
 23 officer waiting for someone else to arrive and I see someone
 24 coming up a way I don't want them to come because I think
 25 they're going to be in danger, first of all, I would have told

1 them in advance -- I would have told them which way to come in,
 2 which way would be safe. Second, if I saw them coming around
 3 the corner like that, I would say -- I would quickly get on the
 4 radio and say "stop." The radio is literally right here. You
 5 just press a button and say, "Stop. Go back the other way."
 6 Q. What -- just briefly explain for the jurors in a situation
 7 like this, what would be setting up a perimeter?
 8 A. This is important too. So if you are going to set up a
 9 perimeter, you plan this and you call this out over the radio
 10 ahead of time. So in the tape we just listened to, you hear
 11 the officers call out, just out. That means they're out
 12 dealing with the incident. You know, they're there at the
 13 incident.
 14 If you're going to build a perimeter, you would say,
 15 "Okay, I'm out to the northwest corner keeping an eye on the
 16 situation in the north corner," or you would say, "I'm out to
 17 the south, approximately a hundred yards away." You would let
 18 the other officers know what location you have and where you
 19 are waiting for them.
 20 And usually that first officer can then plan things out.
 21 He can say, "Okay, the next unit proceed to the -- to the
 22 southeast corner," and we'll direct things in such a way over
 23 the radio so you can plan where you want to put your pieces.
 24 Pretty simple standard procedure.
 25 This didn't happen in this case.

1 Q. Now, if there's a serious officer safety concern, is the
 2 perimeter what you do when you're going to a scene?
 3 A. Absolutely. You want to set the perimeter so you can see
 4 what's happening.
 5 I think so far Lieutenant Casey Boyd talked about it a
 6 little bit about how there was an incident with a gun and she
 7 wanted to have somebody set up far enough away where they would
 8 be safe but they could still kind of see what was going on.
 9 Q. So let's --
 10 A. Yeah, there are other instances we have -- I think we have
 11 audio of perimeters that we'll show at some point.
 12 Q. I'd like to show you Exhibit 257, 258, and 265. If you
 13 can identify all these for the record.
 14 Starting with 257, what is that?
 15 A. 257 is a photograph that I took a couple months later from
 16 this incident, showing on the right-hand side a white box,
 17 which is where Officer Hermens' vehicle was.
 18 Q. We'll talk about them. Generally, why were you taking
 19 photos after this incident?
 20 A. I wanted to recreate the scene and show the measurements
 21 to show where I thought vehicles were, where they actually
 22 were, in lines of sight, so I could prove that from the
 23 apartment you could see where the other vehicles were.
 24 Q. Were all of these photos, were these all things to do to
 25 help fight against the charges of the letter of reprimand?

1 A. Correct. Because in the letter of reprimand it said that
 2 I was the first vehicle that could ever have been in view of
 3 the apartments, and I'm not -- I'm the one that tipped off the
 4 neighbors that the police were there. Again, even though they
 5 both called.
 6 MR. JASON KAFOURY: I'd offer these photos,
 7 Your Honor.
 8 THE COURT: Is that 257?
 9 MR. JASON KAFOURY: 257.
 10 THE COURT: Remember on Friday I received an entire
 11 packet. Is it one photograph or a series?
 12 MR. JASON KAFOURY: They're a series of photographs.
 13 THE COURT: Just a moment. 257 should have one, two,
 14 three, four, five, six, seven, eight. Is that correct,
 15 Counsel?
 16 MR. JASON KAFOURY: Yes. Eight.
 17 THE COURT: That's received. 257 is received.
 18 MR. JASON KAFOURY: 258.
 19 THE COURT: Just a minute. Let me do the counting.
 20 One, two, three, four, five, six, seven, eight. Is that
 21 correct?
 22 MR. JASON KAFOURY: Correct. And then there's --
 23 THE COURT: 258 is received. And 265 is one photo.
 24 MR. JASON KAFOURY: Is one photo, correct. Yes.
 25 THE COURT: It's received.

1 BY MR. JASON KAFOURY: (Continuing)
 2 Q. I just want to go through a couple of these photos.
 3 THE COURT: Now we're going to have to put numbers to
 4 those. So if we refer to one of those in a packet --
 5 MR. JASON KAFOURY: I will. I will.
 6 THE COURT: -- that's where I'd want the pages.
 7 MR. JASON KAFOURY: I'd like to look at 257, page 1,
 8 please.
 9 THE COURT: Page 1. Is that the very first photo?
 10 MR. JASON KAFOURY: Correct.
 11 THE COURT: All right. So then we'll go
 12 sequentially, 1 through 8, in 257.
 13 MR. JASON KAFOURY: For time purposes, I'll just show
 14 a couple of the photos for now.
 15 BY MR. JASON KAFOURY: (Continuing)
 16 Q. Can you explain for the jurors what we see here?
 17 A. So the white box here marks where Hermens' vehicle
 18 actually was. This cone marks where I thought Hermens' vehicle
 19 was parked when I'm asked about it a week later, having never
 20 seen the video.
 21 Q. Was this event, while it was happening, a memorable thing,
 22 in terms of where everybody was when you got there?
 23 A. Absolutely not. Standard.
 24 Q. Okay. Let's go to photo page 2 of 257. What does this
 25 show us?

1 A. This is a snapshot from my vehicle. You can see the hood
 2 of my patrol car here. You see Hermens' vehicle is, in fact,
 3 parked here where the white box is, and there would be where
 4 the orange cone is. This is just so you can see that I'm
 5 taking the photo -- the reconstruction photo, page 1, that it's
 6 the same spot.
 7 Q. Was this all stuff you used as evidence throughout the --
 8 well, during the grievance process and the step two hearing?
 9 A. Absolutely. Yep.
 10 Q. Let's go to Exhibit 258, page 8.
 11 THE COURT: That would be the last page; is that
 12 correct?
 13 MR. JASON KAFOURY: Correct.
 14 THE COURT: Thank you.
 15 BY MR. JASON KAFOURY: (Continuing)
 16 Q. Now, what do we see here?
 17 A. So what we see here is -- this is when I'm -- again, it's
 18 a snapshot from my dash cam. This is the hood of my vehicle.
 19 It is showing the officers standing here on the street, waiting
 20 for me. From left to right of these three officers here --
 21 left to right, you've got Hermens, Sergeant Cameron, and
 22 Officer Davis. The vehicle they're standing in front of, that
 23 is Sergeant Cameron's vehicle. This vehicle is Officer Davis'
 24 vehicle.
 25 Q. Now --

1 A. And the apartment is to the left and behind there a little
 2 bit.
 3 Q. So at this point you've driven just past the apartment and
 4 this documents -- this is a still shot from your dash cam video
 5 where they were parked that day; correct?
 6 A. Correct.
 7 Q. Okay. Can we go to 265, please?
 8 So show us what is the significance of -- well, when did
 9 you take this photo?
 10 A. A few months later, obviously, because you can tell
 11 there's leaves on the trees now, which actually kind of hinders
 12 my point because the lines of sight were easier during the
 13 actual incident because there were no leaves. Now you have
 14 leaves. But you can still see.
 15 Q. Where are you taking this from?
 16 A. This is from the apartments where the incident took place.
 17 Q. You're standing where when you're taking this photo?
 18 A. Here I'm standing where the incident took place, where the
 19 altercation took place, right in front of the apartments.
 20 Q. Okay. So what do we see here?
 21 A. So this car on the right, there's an orange cone on top of
 22 that. This is how high-tech I was back then. Sorry. I didn't
 23 have high-tech stuff, but I put a cone where Davis' vehicle
 24 was, and then I put a cone and parked a vehicle -- because you
 25 actually can't park. There's not a parking space. But that's

1 where Sergeant Cameron's vehicle was parked. So I'm just
 2 showing the lines of sight.
 3 Q. So is it fair to say that from that apartment, if someone
 4 would have stepped out on their porch, they would have seen
 5 both Cameron's car and Davis' car right there?
 6 A. Oh, absolutely from the front porch. And also you can see
 7 it from -- from the windows. For sure you can see Officer
 8 Davis' from the windows, which --
 9 MS. COIT: Object to the foundation.
 10 THE COURT: Sustained.
 11 BY MR. JASON KAFOURY: (Continuing)
 12 Q. So in terms of officer safety issues and the element of
 13 surprise, by parking in these two spots, is there anything
 14 Sergeant Cameron or Davis were doing that involved officer
 15 safety or the element of surprise?
 16 A. Well, yes. If you wanted -- if you felt this was a really
 17 dangerous call and you needed to not be seen, you would want to
 18 park a lot further away or around the building. Like Hermens
 19 did do. Hermens' vehicle was out of sight. I thought it was
 20 on the corner, but I was wrong about Hermens. But Hermens was
 21 out of sight. These two were not.
 22 Q. We're going to talk about your meeting here next. Before
 23 we do, I just want to offer Exhibit 30. Can you identify for
 24 the jurors what Exhibit 30 is?
 25 A. This is a case report that Officer LeRoy wrote.

1 Q. What does it involve?
 2 A. It looks like another noise complaint involving Spencer
 3 View Apartment No. 60 on 4/16, so that's 15 days later.
 4 Q. What is the significance of this document?
 5 A. This is a report that he wrote showing that he was sent
 6 alone, by himself, to deal with the same thing.
 7 Q. So two weeks after you're -- the discipline starts for you
 8 involving Spencer View, Officer LeRoy drives up for a noise
 9 complaint to the same apartments two weeks later; right?
 10 A. Right.
 11 MR. JASON KAFOURY: Okay. I'd offer 30.
 12 MS. COIT: I object to the foundation and the
 13 relevance.
 14 THE COURT: Sustained. No. Strike that. I'm going
 15 to reverse that. I'm going to accept this, Counsel.
 16 Overruled.
 17 30 is received.
 18 BY MR. JASON KAFOURY: (Continuing)
 19 Q. Okay. So let's talk about that next week. During that
 20 next week, did you have any indication that Lebrecht and
 21 Cameron were emailing, writing a letter of reprimand, and
 22 working with HR?
 23 A. No clue whatsoever.
 24 Q. What do you remember about that meeting that you had?
 25 A. I remember being called into that meeting a week later.

1 Cameron and Lebrecht were very relaxed, nonchalant, just leaned
 2 back in their chairs. They said, "Oh, Cleavenger, we've got to
 3 ask you about some incident last week at Spencer View. No big
 4 deal." They did say, you know -- but, you know, technically we
 5 have to read you this -- your rights -- not your -- *Weingarten*
 6 *or Garrity*. I always confuse the two. "We've got to read you
 7 these union rights saying you can have someone present if you
 8 want."
 9 So Cameron read them real nonchalant. So I'm thinking,
 10 okay, this is cool, you know. This must be about a citizen
 11 complaint or something from somebody at the apartments that we
 12 thought maybe we handled the call wrong or something. That was
 13 my thought, that it was no big deal, so of course I signed and
 14 say, "Yeah, sure. What do you want to talk about?"
 15 Q. What happens next?
 16 A. Well, it all starts off kind of nonchalant, but it quickly
 17 becomes accusatory about which -- which way I drove in and why
 18 and where did I think I was going to, and I -- I said what I
 19 thought I was going to, sounded a lot like -- a lot like a cold
 20 call, which is the same way that Hermens described his call at
 21 the same place two weeks earlier. The one where he just drives
 22 straight up and takes the report on the potential assault.
 23 So when I -- what I mean by "cold call" is that the
 24 parties have been separated and gone back into their respective
 25 apartments; meaning, there was -- it wasn't an active fight.

1 It wasn't a fight in progress. It didn't come out over the
 2 radio. And it wasn't.
 3 So I explained that I had driven in, saw Hermens' vehicle
 4 in the southwest corner, didn't see any of other guys. I had
 5 heard that they all called out, so I assumed they're out
 6 dealing with the call because they didn't set up a perimeter;
 7 they didn't say they were going to wait for me. And officers
 8 are allowed to what's called jump someone's call, meaning take
 9 their call away from them, if they have prior experience with
 10 the call, expertise with the call, or if they just simply get
 11 there first. Let's say it was a fight in progress. Would you
 12 want -- there's a five-minute difference between the first -- I
 13 think approximately five minutes, approximately, between
 14 Hermens arriving and me arriving. I don't think anybody would
 15 want their cops just sitting around waiting if there was
 16 something serious going on. You know, to wait for the -- for
 17 the correct guy to come.
 18 So Hermens, when he called out, I assumed he was dealing
 19 with it already.
 20 So I had no idea that there was -- obviously, they're not
 21 setting a perimeter because they're just sitting out on the
 22 street with their arms crossed, and they're within sight, but I
 23 didn't know they were waiting for me and I didn't know where
 24 they were waiting for me.
 25 Again, had I known they were parked where they were, I

1 would have come in the quicker entrance, the first entrance.
 2 Q. So at this meeting did anybody say, "Hey, I know how we
 3 can get this resolved. Let's go review your dash cam video?"
 4 A. No. No one suggested that.
 5 Q. Okay. So what did you get wrong at that meeting?
 6 A. I got the location of Hermens' vehicle wrong by 40 yards.
 7 I went and measured it, and that's in the pictures and whatnot.
 8 I thought he was in the corner. He was actually further back.
 9 I said -- I said all of their vehicles were in sight, but
 10 Hermens was there first. So if a perimeter or something needed
 11 to be set, then Hermens should have set it for us.
 12 Q. What was your goal in trying to point out where you
 13 thought Hermens was parked? What were you trying to do?
 14 A. I was trying to show that all the vehicles were already
 15 within sight, so how -- how can they say that I tipped these
 16 people off that we were coming? It just -- it was -- frankly,
 17 it just seemed ridiculous, and it was -- I had already been
 18 going through a lot of this nitpicking-type retaliation from
 19 Cameron, and this was just like another instance of that.
 20 Q. Were you trying to get Zach Hermens in trouble?
 21 A. Absolutely not. I didn't think anybody should be in
 22 trouble for this incident. It wasn't -- it wasn't a big deal.
 23 I didn't think anybody should be in trouble.
 24 Q. Now, if Hermens had been parked up there in that general
 25 vicinity, can you see the numbers on the apartment?

1 A. Yes. That's why -- that's why when you put the numbers of
 2 your house out in front of your house, you would like to be
 3 able to be seen from the street. Same thing with these
 4 apartments. Yes, you can -- you can absolutely see the numbers
 5 of the houses when you're driving on the street. That's what
 6 they're there for.
 7 Q. So how did -- how does this meeting end?
 8 A. It ends with that they're going to -- I think I suggested
 9 you should talk to Hermens, or, you know, I -- I can't remember
 10 if I suggested they look at videos or not. It was probably
 11 brought up. So they said they were going to do some
 12 investigating.
 13 Q. Okay. We'll talk about what happens next, but I'd like to
 14 move to something else that happened that exact same day. On
 15 April 1, 2012, we have what's known as the admissions law dean
 16 stop. Tell us -- set the scene for us before we show the video
 17 to the jurors of what's going on.
 18 A. So I am at the drive-through of the Dairy Queen getting an
 19 Oreo Blizzard, and I receive my Blizzard. I'm starting to pull
 20 out onto a one-way street. 13th Avenue you can only turn
 21 right. If you go straight, you crash into the hospital. If
 22 you go left, you go into oncoming traffic. You have to turn
 23 right.
 24 Q. What did you do next?
 25 A. I turned right.

1 Q. Let's -- why don't you narrate through the video to save
 2 time.
 3 A. Okay.
 4 MR. JASON KAFOURY: We'd offer Exhibit 129, Your
 5 Honor.
 6 THE COURT: Just a moment. 129 is the video. Is
 7 that correct?
 8 MR. JASON KAFOURY: The video of the dean, yes.
 9 THE COURT: 129 is received. You may play it.
 10 (Exhibit No. 129 was played for the jury.)
 11 THE WITNESS: So I'm turning right onto 13th.
 12 BY MR. JASON KAFOURY: (Continuing)
 13 Q. Is that the dean's car?
 14 A. That was the dean's car, but I didn't notice anything
 15 about it at that point. When I start to notice her was about
 16 now because I'm noticing that her tags are expired. They look
 17 tampered with, like pulled away.
 18 Q. Now, can you explain to the jurors why is this blurry? Is
 19 that --
 20 A. It's for privacy.
 21 Q. Okay. So the video is not blurry in real life. You can
 22 see?
 23 A. You can see the license plate in real life, yes. It's
 24 just for --
 25 Q. Tell us what is going through your mind when you see bad

1 tags on a car like that as a public safety officer.
 2 A. Well, I'm mildly suspicious, but not -- not terribly
 3 suspicious yet. Because they look, you know, pretty relaxed at
 4 this point. But I do know, from my experience, that a lot of
 5 times -- not a lot of times, but sometimes people won't renew
 6 their plates if they have a warrant out for their arrest, et
 7 cetera, because they don't want -- they figure that if they
 8 renew their license then they -- then the cops will know where
 9 they live. There's actually no -- so now she's signaling left
 10 and then turns -- and then turns right. So it's like she's not
 11 sure where she wants to go. And then she speeds up pretty
 12 quickly. You'll see when I turn, she's already all the way
 13 down there. I say "she," but I cannot tell her gender or her
 14 race. But now that I know who she is, I know her race and
 15 gender.
 16 So we're on Sixth Street right now. Now we're going into
 17 parking.
 18 At this point I'm talking with Officer Davis.
 19 The audio and video are not matching for some reason.
 20 They're not lined up.
 21 Q. Well, generally, just what happens during that exchange?
 22 A. Okay. So --
 23 Q. Before we go there, how often were public safety officer s
 24 doing traffic stops like this where they actually stop someone
 25 but not until they get to the campus?

1 A. All the time. That was standard practice. We show that
 2 with the traffic petition officer reports. We went on to the
 3 computer system, pulled up all traffic stops for, I don't know,
 4 almost two years, or something like that, and there were 240
 5 vehicle stops.
 6 And they're all -- they're all going to be a little
 7 different, you know. It would depend shift to shift and
 8 supervisor to supervisor what exactly you could do. And it
 9 would change maybe month to month.
 10 So, in other words, when I was there, I knew clearly I
 11 couldn't do a full traffic stop, like, on a city road, on a
 12 main road. That was clear.
 13 Although, sometimes we could assist with them. There's a
 14 couple cases where I was the first officer to arrive for a DUI,
 15 and I was praised for being the first to arrive and keeping the
 16 drunk person in the car from fleeing. This was on a city
 17 street.
 18 And we have lots and lots of reports like that. There's
 19 always exceptions.
 20 But general feeling, at least on my shift, was that you
 21 could stop people in their cars once they came onto the
 22 University of Oregon property; meaning the parking lot, et
 23 cetera, or within the inner campus. That was my --
 24 Q. What did you guys call that?
 25 A. Well, it was called a campus stop, a campus traffic stop,

1 or campus version of a traffic stop.
 2 Q. So why -- what was suspicious about this vehicle enough
 3 that you thought you should stop and see what's going on?
 4 A. There were a lot of things. Tags being expired, little
 5 issue. Tags being -- seemed to be tampered with, another
 6 little issue. The key -- the keyhole scratched into in the
 7 back, like it maybe had been forced, another little issue. The
 8 way she kind of lurched forward, like she wanted to get going
 9 at that first stoplight, a little issue. And then the bigger
 10 issue is the turning left -- or, sorry, signaling left and then
 11 all of a sudden signaling right and going right.
 12 And Honda Accord, number one stolen car in I think the
 13 whole U.S., totality -- and then speeding away. So totality of
 14 the circumstances. All those things made me suspicious of
 15 this -- of this person or persons.
 16 I could tell there were two people in there. That's all I
 17 could tell.
 18 When they came on to campus, I felt that was reasonable
 19 enough to stop and have a conversation. In that parking lot
 20 there were also a lot of spaces that were reserved for specific
 21 permit holders at all times.
 22 Q. I'd like to show you 246. What's 246?
 23 A. 246 is a bunch of pictures of parking lot number 16, and
 24 I -- and it's pictures taken of specific parking spots that are
 25 numbered that say, like -- for instance, the second picture,

1 "Service vehicles only at all times." A couple more. "Service
 2 vehicles at all times." Then there's one for a specific permit
 3 number at all times. And so I basically just took a bunch of
 4 pictures.
 5 And these are near where the assistant dean stopped that
 6 day, which you'll be able to see in these pictures too.
 7 MR. JASON KAFOURY: I'd offer -- what's the number?
 8 THE COURT: 246.
 9 MR. JASON KAFOURY: 246.
 10 THE COURT: And there are nine photos.
 11 Any objection, Counsel?
 12 MS. COIT: No objection.
 13 THE COURT: Received.
 14 MR. JASON KAFOURY: Okay.
 15 THE COURT: Counsel, just to be sure, and I apologize
 16 to each of you. Were there any objections to the photos in
 17 257, 258, and the single photo of 265?
 18 MS. COIT: No.
 19 THE COURT: Okay. Each of those were previously
 20 received.
 21 BY MR. JASON KAFOURY: (Continuing)
 22 Q. So did that incident lead to a citizen complaint?
 23 A. No. It absolutely did not. She did not complain. And
 24 you could hear Officer Davis and I talking about it. He
 25 testified he didn't remember anything from this incident. It

1 was just another typical incident.
 2 Q. Let's move to the next traffic stop the next day. Tell
 3 us -- set the scene. April 2, 2012. Just for the jurors'
 4 purposes here, these two traffic stops, the dean stop from
 5 April 1st and the young college student stop from April 2nd,
 6 these were what Lieutenant Morrow did an internal affairs
 7 investigation of you on; correct?
 8 A. That's correct.
 9 Q. Let's move to the second of the two incidents that you
 10 were investigated for. Give us the setting of what's going on
 11 on April 2nd of 2012.
 12 A. So on this date I was near an intersection within the
 13 inner campus of U of O. I had been asked by Sergeant Pietre , I
 14 think -- he was new on the shift -- to put some presence in
 15 that area because there was heavy foot traffic and someone had
 16 been hit recently on their bike, and cars were just running
 17 through this four-way stop a lot.
 18 So that's why I was there.
 19 Q. Okay. I'd like to show you Plaintiff's Exhibit 63. Can
 20 you tell us what this document is, sir?
 21 A. This is a photocopy of what we call an FI card or a field
 22 interview card.
 23 Q. And what you were supposed to do with those cards?
 24 A. We use these a lot to record contacts with citizens. It's
 25 pretty standard in police work, where you would write down

1 their information. Especially if you were going to, like, give
 2 a warning for something, because if you actually issue a
 3 citation, you usually have their, you know, license information
 4 will be recorded on the ticket, et cetera, so you don't -- this
 5 would be superfluous. But if you are just giving a warning, or
 6 something like that, or suspicious subject, or whatever, you
 7 can write down their information, turn this in, and it will
 8 show what day you contacted them, what you talked about. But
 9 it gets their, you know, height, weight, you know, hair, eyes,
 10 state of birth, you know.
 11 Q. So this is all data that the department is asking you to
 12 fill out in relation to stops?
 13 A. That's correct.
 14 MR. JASON KAFOURY: Okay. I'd offer 63, Your Honor.
 15 THE COURT: My 63 doesn't have anything on it,
 16 Counsel; is that correct?
 17 MR. JASON KAFOURY: No, it should.
 18 THE WITNESS: No, it's blank.
 19 THE COURT: Just --
 20 MR. JASON KAFOURY: Oh, just an example, yes.
 21 THE COURT: All right. So let's be clear. Between
 22 you and the defendant, this is just a blank example?
 23 MR. JASON KAFOURY: This is a blank example of the
 24 type of cards he would have filled out in relation to this
 25 incident, yes.

1 THE COURT: Any objection, Counsel?
 2 MS. COIT: No.
 3 THE COURT: Received.
 4 BY MR. JASON KAFOURY: (Continuing)
 5 Q. Before I show you the video -- well, let's watch the video
 6 and then you can comment on it.
 7 THE COURT: What video is this, Counsel?
 8 MR. JASON KAFOURY: 191. This is a transcript.
 9 THE COURT: Be careful. What video number is this?
 10 MR. HESS: No video. We have a transcript.
 11 MR. JASON KAFOURY: Oh, I thought we had a video .
 12 This is a transcript of that exchange.
 13 THE COURT: Just a moment. Let's slow down. It's
 14 becoming very confusing to me. Is this going to be a video
 15 that's played?
 16 MR. JASON KAFOURY: I believe we have a video.
 17 THE COURT: Well, all right.
 18 MR. JASON KAFOURY: Do you have video? Which one is
 19 your video?
 20 THE COURT: What is the marking on this if there's a
 21 video that we're to have?
 22 MR. JASON KAFOURY: Defense counsel has graciously
 23 offered to play hers because it's one of her exhibits as well.
 24 THE COURT: Well, I need the correct marking between
 25 the two of you. I'm not excluding the video. I just don't

1 have a record of what's being played.
 2 MS. COIT: It's 337.
 3 MR. JASON KAFOURY: 337. Can we play 337?
 4 THE COURT: I'm sorry. Just a moment. What video
 5 number is it?
 6 MS. COIT: 337. Defendant's Exhibit 337.
 7 THE COURT: 337. So it will be marked Defendant's
 8 Exhibit 337; is that correct?
 9 MR. JASON KAFOURY: Yes.
 10 THE COURT: So Exhibit 337. And this purports to be
 11 a video of the stop of April 2, 2012.
 12 MR. JASON KAFOURY: Correct, Your Honor.
 13 THE COURT: You may play that video, Counsel.
 14 MR. JASON KAFOURY: Okay. Can we switch the --
 15 MS. COIT: Sorry. It appears we're having technical
 16 difficulties in our display.
 17 MR. JASON KAFOURY: Let's just keep rolling for the
 18 moment.
 19 THE COURT: Counsel, have you got that video?
 20 MR. JASON KAFOURY: Unfortunately, defense counsel --
 21 looks like they weren't able to play it.
 22 Your Honor, it's 12:05. Should we take a lunch break and
 23 then play it after lunch?
 24 THE COURT: It's obviously lunch. Why don't we work
 25 this out over the lunch hour. Is 1:00 okay today? All right.

1 Don't discuss this matter amongst yourselves. Don't form or
 2 express any opinions concerning this case. We'll see you at
 3 1:00. What time is that funeral on Thursday? You mentioned to
 4 Christy. Is it 1:00?
 5 A JUROR: Yes.
 6 THE COURT: Have a good lunch.
 7 (Jury not present.)
 8 THE COURT: Let's see if we can find that video and
 9 get that set up so we're not wasting time at 1:00.
 10 Do I have any surprise motions for me at 1:00, or do you
 11 want to have some lunch. Otherwise we can just sit here and
 12 enjoy each other. In other words, if you have motions, I'm
 13 happy to hear them. I'll never go through that again, you
 14 know, five minutes to 8:00 and have the jury sitting.
 15 MR. JASON KAFOURY: I agree.
 16 THE COURT: It's nobody's fault. Understand that.
 17 I'm not casting blame on the plaintiff or defendant. I just
 18 don't want to have the jury sitting.
 19 MR. JASON KAFOURY: A couple things. Number one, if
 20 defense counsel believes that anything my client says over the
 21 course of his testimony has opened the door in relation to any
 22 of your limine rulings, I'd like to deal with that out of the
 23 presence of the jury before she springs it on him in court.
 24 MS. COIT: I think there's no possibility that would
 25 happen.

1 THE COURT: Counsel, you don't even have to respond.
 2 MS. COIT: Thank you.
 3 THE COURT: Thank you, Counsel, for that statement.
 4 Denied.
 5 Now, she can surprise you. She can pop things on you.
 6 That's the element of cross-examination. I think everybody has
 7 been forewarned not to disobey my limine motions, and I don't
 8 think it's going to happen.
 9 MR. JASON KAFOURY: We could address this now: One
 10 of their exhibits involves -- we just received it over the
 11 weekend -- is a --
 12 THE COURT: You got this over the weekend?
 13 MR. JASON KAFOURY: Yeah, we got about 10 exhibits
 14 over the weekend.
 15 THE COURT: Okay.
 16 MR. JASON KAFOURY: It is Exhibit-- I believe it's
 17 the Michael Drake impeachment exhibit. I believe it's 415.
 18 THE COURT: I don't -- do I have that exhibit?
 19 MR. JASON KAFOURY: No. I'll give you a copy of it,
 20 Your Honor.
 21 MS. COIT: We have a copy of it, Your Honor.
 22 THE COURT: Okay.
 23 MS. COIT: Before we even get there --
 24 THE COURT: Before you do that, we'll work on this
 25 audio and get this set up. That's the first thing we're going

1 to do. Why don't you two work on that while I look at Michael
 2 Drake's exhibit here. It's an interesting opening, by the way,
 3 to Mr. Drake's exhibit. It says March 31, 2018.
 4 MS. COIT: Your Honor, these are impeachment only,
 5 but out of an abundance of caution, I have the impeachment
 6 audio made into transcripts. There's no surprises.
 7 THE COURT: That's fine. And you don't have to --
 8 you don't have to alert the Court to impeachment if it's
 9 proper. You don't have to take away the element of surprise
 10 for the party. I'm not going to require you to do that. It's
 11 the element of surprise.
 12 MR. JASON KAFOURY: Well, okay, but I think we should
 13 deal with it now in a businesslike fashion versus -- because
 14 what these are are phone calls between Officer Drake and
 15 dispatch --
 16 THE COURT: Okay.
 17 MR. JASON KAFOURY: -- where he's tape-recorded.
 18 THE COURT: Drake is tape-recorded?
 19 MR. JASON KAFOURY: Drake is tape-recorded.
 20 The only -- there's only three calls on here. The last
 21 has the reference to Cleavenger. None of the other two do that
 22 I can see.
 23 THE COURT: What are the purpose of the first two?
 24 MR. JASON KAFOURY: Officer Drake says really
 25 inappropriate joking around stupid things over the course of

1 these audio recording conversations.
 2 THE COURT: I haven't read these. Let me turn to
 3 page 2 and let's see the -- let me just read for a moment.
 4 Dispatch: Public safety. Mr. Drake: Pubic Safety, I need
 5 assistance with an emergency. Dispatch: What can I do for
 6 you, Officer Drake? Mr. Drake: There's a man and he's got a
 7 penis out and he wants to go --
 8 MR. JASON KAFOURY: Yeah, you get the flavor.
 9 THE COURT: -- in my mouth. Unidentified man: You
 10 know we're recorded? Mr. Drake: I don't care. Dispatch: No.
 11 No means no. Just telling him no means no.
 12 Where do you get this stuff?
 13 MR. JASON KAFOURY: They just produced this to me. I
 14 had never seen this before.
 15 THE COURT: Well, let me say police work can be
 16 interesting. Dispatch: No. No means no. Just tell him no
 17 means no. Mr. Drake: And there's a stray dog. Dispatch: I
 18 don't want to know where that one's going.
 19 MR. JASON KAFOURY: It's funny. I don't disagree
 20 with you on that.
 21 THE COURT: I'm just not sure the purpose of this.
 22 What are we doing with this? Counsel, is this just to show
 23 that there's --
 24 MS. COIT: I'm not going to -- it's impeachment only.
 25 I gave it to them out of an abundance of caution.

1 THE COURT: You're being cautious.
 2 MS. COIT: If he testifies, I was totally perfectly
 3 on it. I have never --
 4 THE COURT: I'll rule on it at the time. You don't
 5 have to give away the cross-examination, nor does the other
 6 side. I'll rule on it at the time it comes up. I'm aware of
 7 it now. Okay.
 8 MR. JASON KAFOURY: Okay.
 9 THE COURT: Now you're worried about the third
 10 portion, and the third portion of this tape I haven't read it.
 11 I've just seen it. Let me turn to the third portion.
 12 Does that begin with: Dispatch: Public safety.
 13 Mr. Drake: Yeah. It's ocean 26 giving you a call. Is that
 14 the --
 15 MR. JASON KAFOURY: Yes.
 16 THE COURT: Just a moment. Let me read that.
 17 Cleavenger is on foot patrol. Do you still want me to dispatch
 18 him when he calls? Come up? I wasn't sure about that.
 19 Mr. Drake: Did he not clear us from the foot patrol?
 20 Dispatch: Yeah. You are on foot patrol in south Eugene, which
 21 is -- Mr. Drake: Oh, that would explain that. Dispatch: Is
 22 that -- Mr. Drake: Okay. Dispatch: What do you mean to do
 23 about that?
 24 I'm not going to make a ruling on that. You're both aware
 25 of it. You bring it up in impeachment. I'll deal with it at

1 the time.
 2 MR. JASON KAFOURY: Okay. All right. That's the
 3 only issues I have.
 4 THE COURT: Now I'm about to see this video that we
 5 can't get up on the screen.
 6 DEPUTY COURTROOM CLERK: Judge, I called for
 7 assistance. They should be up in just a minute.
 8 THE COURT: All right. We'll just sit and enjoy each
 9 other. That way we won't waste time. Come on in for a second
 10 and see if I can get us fixed up.
 11 MS. COIT: Got it.
 12 THE COURT: You got it? Amazing. Your mere
 13 appearance solved all of our technical problems.
 14 Well, Counsel, I'm just going to sit here because I'm
 15 enjoying you both so much, but do you want to go to lunch?
 16 MR. JASON KAFOURY: I would prefer that, yes.
 17 MS. COIT: Do we know anything for Thursday yet for
 18 planning purposes?
 19 THE COURT: Yeah. Believe it or not, I've been on
 20 the phone with United Nations starting with 7:00 something this
 21 morning. We're still negotiating plane fares. The plane
 22 fare -- that's why I'm checking my computer hourly -- is still
 23 \$2,200 for the midnight flight. I think you have Thursday off.
 24 I just can't justify the \$460 compared to the \$2,200 in terms
 25 of taxpayer money, and the afternoon flight is not much better

1 for me. It doesn't save me that much money. So the end result
 2 is the UN, quite frankly, waited and dilly-dallied -- I'll put
 3 that on the record, dilly-dallied -- and the rates were
 4 climbing up from 350 to, the best flight, 460 and moving up on
 5 the hour. But apparently bureaucracy thinks that they wanted
 6 to pass it through 10 different agencies. Unless they're
 7 careful, it's going to climb up well over \$1,000.
 8 In the meantime, we also got a note this morning from the
 9 same juror whose wife has -- had brain cancer. His closest --
 10 one of his closest friends died, so he's asking to go to a
 11 funeral at 1:00. That's why I asked him when's the funeral. I
 12 think he said 1:00.
 13 MR. JASON KAFOURY: Yeah.
 14 THE COURT: I think a couple of hours -- we could get
 15 you in here at the most from 8:00 to maybe 10:00 at the best.
 16 It's not worthwhile. And I think, from my standpoint, I would
 17 rather take the 6:45 now and just get back there, frankly, in
 18 the combination with all the other things.
 19 So I think unless these rates drop, United Airlines, PDX
 20 to any airport in New York -- you can check your own emails if
 21 you would like to, get from the airport back to Santa Ana so I
 22 get back to my law clerks that weekend and do some work on
 23 Saturday and Sunday and then fly back up here to see you on
 24 Sunday night. I think you'll have Thursday off. But I haven't
 25 said that yet, have I?

1 MR. JASON KAFOURY: You have not.
 2 THE COURT: Okay. Well, I would suggest we go to
 3 lunch.
 4 MR. JASON KAFOURY: Thank you, Your Honor.
 5 THE COURT: I'm just going to sit here and wait for
 6 you. Have a nice lunch.
 7 MR. JASON KAFOURY: Do you not eat, sir?
 8 THE COURT: I don't eat, Counsel. I don't sleep. Go
 9 have a nice lunch.
 10 Counsel, also -- that works out perfect for that juror.
 11 Christy just told me it lets him make -- lets him make it to
 12 his wife's appointment for the brain cancer check and also to
 13 the funeral. If that's the case, Christy, and he's told that
 14 to you informally, you're going to have Thursday off.
 15 MR. JASON KAFOURY: Okay.
 16 THE COURT: Unless the UN doesn't fight with the
 17 ticket. Because right now they don't know why I'm flying,
 18 which, by the same token, costs exactly the same amount if I
 19 flew from PDX back to PDX. But that's up in the air right now.
 20 But I think you've got Thursday off.
 21 We'll talk to you -- we'll talk to you again at the end of
 22 the day and see what the UN does.
 23 (Lunch recess taken.)
 24 (Jury present.)
 25 THE COURT: The jury is present. All counsel are

1 present. The witness is present. Parties are present. Be
 2 seated, please.
 3 Counsel, continue your direct examination on behalf of
 4 plaintiff.
 5 BY MR. JASON KAFOURY: (Continuing)
 6 Q. Mr. Cleavenger, I'd like to go back to one of the
 7 allegations in the *Brady* list about at the very beginning of
 8 the dean -- the assistant dean stop and whether you could see
 9 anything about the driver when she drives past.
 10 MR. JASON KAFOURY: Can we just start the beginning
 11 of Exhibit 129, please?
 12 (Exhibit No. 129 played for the jury.)
 13 MR. JASON KAFOURY: Thank you, Mr. Hess.
 14 THE COURT: This is Exhibit No. 2?
 15 MR. JASON KAFOURY: 129.
 16 THE COURT: 129. So this isn't going to be 337.
 17 MR. JASON KAFOURY: I'll play that one next.
 18 THE COURT: Okay. So this is 129. Thank you.
 19 MR. JASON KAFOURY: And I believe we already played
 20 that. That was just the very beginning.
 21 THE COURT: No, Counsel, you hadn't played 337. That
 22 was the one we were having problems with.
 23 MR. JASON KAFOURY: Correct.
 24 THE COURT: And that we were trying twice. So the
 25 confusion is -- I don't want this double marked. So is this

1 the same as 337 for the defendant?
 2 MR. JASON KAFOURY: No. This is back to the dean
 3 stop from April 1st.
 4 THE COURT: Okay. This is the dean stop.
 5 MR. JASON KAFOURY: Yes. Just rewind a little bit.
 6 THE COURT: My apologies.
 7 BY MR. JASON KAFOURY: (Continuing)
 8 Q. Now, as part of the *Brady* materials, what were you alleged
 9 to be dishonest in relation to that dean stop?
 10 A. According to the *Brady* materials, they said something
 11 about it's hard to believe I would not be able to see her race
 12 and gender as she drove by. In other words, a thinly veiled
 13 accusation of being racially biased and racially profiling?
 14 I'd like to -- can we play that more times and pause it right
 15 as it drives by? I don't know how.
 16 THE COURT: Just a moment. You're the witness.
 17 Counsel will direct the proceedings, and the jury will have
 18 this if they choose to look at it.
 19 MR. JASON KAFOURY: We'll play it one more time.
 20 Just the first 10 seconds or so.
 21 (Exhibit No. 129 played for the jury.)
 22 BY MR. JASON KAFOURY: (Continuing)
 23 Q. From that vantage point, could you see race or gender of
 24 anybody in that car?
 25 A. Absolutely not. I --

1 Q. And, yet, the material that Lieutenant Lebrecht submitted
 2 is questioning your honesty about that statement; isn't that
 3 accurate?
 4 A. Yes.
 5 Q. Now we're going to play Exhibit 337, starting at one
 6 minute and 40 seconds. This is the April 2nd traffic stop.
 7 The next day.
 8 Mr. Cleavenger, feel free to narrate here what's going on.
 9 (Exhibit No. 337 played for the jury.)
 10 THE WITNESS: So this is my dash cam video. This
 11 intersection is where typically there tends to be a lot of foot
 12 traffic and someone had recently been hit on a bike.
 13 It's a four-way stop, but the green Jeep didn't realize
 14 it.
 15 (Audio begins.)
 16 BY MR. JASON KAFOURY: (Continuing)
 17 Q. What's happening?
 18 A. Some of that was blocked off, so you couldn't hear her
 19 personal information. Driver's license number, name, date of
 20 birth, that kind of stuff.
 21 At this point I think I'm waiting for dispatch to return
 22 some information.
 23 Q. Are you sitting in your car right now?
 24 A. I think I -- I don't know. I can't tell.
 25 (Exhibit No. 337 continued to play.)

1 BY MR. JASON KAFOURY: (Continuing)
 2 Q. Okay. First, what were you calling into dispatch?
 3 A. Her driver's license number so they could look it up and
 4 make sure she's not suspended or have a warrant for her arrest
 5 or something like what.
 6 Q. Okay. Is that standard practice?
 7 A. Yes. Very standard.
 8 Q. The questions you're asking her about eye color and stuff,
 9 why were you doing that?
 10 A. Because that goes on the field interview card that we fill
 11 out.
 12 Q. One of the things that people later on say is that you
 13 were being flirtatious in this exchange. What is your take on
 14 that?
 15 A. I wasn't trying to be flirtatious. I was trying to be
 16 nice. You'll see, I'm sure, a bunch of videos where I'm
 17 usually very nice and friendly. That's my starting point. If
 18 things turn south, then I can change that demeanor. But that's
 19 where I start off with people, especially people who seem to be
 20 really nervous. I'll try to be extra nice and put them more at
 21 ease.
 22 I do recall this instant -- she actually made me a little
 23 nervous, too, because she was going to the gym, and she was in
 24 a state of semi-undress. She was in a sports bra or real short
 25 shorts and her clothes were like here. So at first you see me

1 kind of keep looking away because it was just slightly awkward.
 2 It just made me slightly awkward.
 3 Q. How does that traffic stop end up becoming an IA
 4 investigation?
 5 A. Well, I can't remember the timing, but a few days later
 6 something -- I'm not sure. She calls -- she calls dispatch
 7 because she's curious about the questions that I asked her.
 8 She thought it was odd that I would be asking for, you know,
 9 hair color and all the stuff that's standard on here. And then
 10 she gets to chatting with dispatch about those questions, and
 11 that is -- to me it sounds like she has questions about
 12 procedure. She's not complaining, and she never actually files
 13 a complaint.
 14 Q. So from that message she leaves, that starts this whole
 15 chain of events where people start looking at your videos, they
 16 find the dean video, and everything else comes from there?
 17 A. Yes. I believe this was forwarded to Lebrecht, who then
 18 sent it to Morrow, and then, if I recall correctly, from
 19 documents I've read --
 20 MS. COIT: Objection. Foundation.
 21 THE COURT: Overruled.
 22 You can explain the process that you believe led to the
 23 investigation.
 24 THE WITNESS: I believe Morrow then tried to call her
 25 numerous times, and she refused to call him back.

1 THE COURT: The college student. That I will
 2 sustain, Counsel. That's hearsay, so I don't know what that
 3 conversation is.
 4 MR. JASON KAFOURY: Okay.
 5 THE COURT: Unless it's being offered for another
 6 purpose. In other words, it's hearsay, but if it shows conduct
 7 or state of mind --
 8 MR. JASON KAFOURY: It goes to the motive of the
 9 defense in bringing the charges.
 10 THE COURT: I'll allow it, Counsel.
 11 BY MR. JASON KAFOURY: (Continuing)
 12 Q. So what's your understanding of the steps that Morrow took
 13 to attempt to get this young college student to file a
 14 complaint against you?
 15 A. He called her numerous times. She refused to call him
 16 back. Eventually, Morrow lets McDermed know that he can't get
 17 in contact with her, and they finally decide, okay, well,
 18 then we'll --
 19 MS. COIT: Object. Hearsay. Relevance. Foundation.
 20 THE COURT: I'm going to sustain this. This is
 21 taking us down a different path that I had thought.
 22 Ladies and gentlemen, I want you to disregard that answer.
 23 Lieutenant Morrow is available. They can come -- he or she can
 24 come in and testify about what that conversation was and
 25 whether she called him back or not. So this is hearsay. I

1 want you to strike it from your mind. Okay?
 2 Counsel, your next question, please.
 3 MR. JASON KAFOURY: Thank you, Your Honor. I offer
 4 191, which is the transcript of the exchange that happens there
 5 on the video.
 6 THE COURT: Any objection?
 7 MS. COIT: No.
 8 THE COURT: It's received.
 9 BY MR. JASON KAFOURY: (Continuing)
 10 Q. So as part of this investigation involving
 11 Lieutenant Morrow, explain how traffic stops became part of the
 12 investigation. The fact that you were doing these stops, how
 13 did they become part of the investigation?
 14 A. I'm not sure, but that's one of the questions he asked me
 15 during his IA investigation.
 16 Q. And as part of the IA investigation, did you -- what did
 17 you do to defend yourself?
 18 A. I explained to him that I believed lots of traffic stops
 19 had been done over a number of years by other officers. I
 20 explained that in person. Then I went and found evidence of
 21 them. I got case reports of cases that involved traffic stops.
 22 I went on to the computer-aided dispatch system, the CAD
 23 system, searched for all traffic stops in the last couple of
 24 years. There was something like 240 listed. I printed off
 25 our -- our list of authorities, things we could cite for. It

1 listed careless driving, failure to stop at a stop sign, all
 2 sorts of documents. It's a pretty thick stack.
 3 I first offered it to him via email. I sent him an email
 4 saying I got some events that will show that my understanding
 5 is correct. There's been plenty of traffic stops. And he
 6 refused, over email, to accept it.
 7 Q. Did he give a reason why he wouldn't accept it?
 8 A. Something about how he is very experienced in
 9 investigations from his time with the FBI and --
 10 MS. COIT: Object. Hearsay.
 11 THE COURT: Is this Lieutenant Morrow's statement,
 12 Mr. Cleavenger, or Mr. Lebrecht?
 13 THE WITNESS: This is Morrow's statement.
 14 THE COURT: Sustained.
 15 BY MR. JASON KAFOURY: (Continuing)
 16 Q. There will be emails.
 17 So what happens? Do you have a meeting with him in
 18 person?
 19 A. Yes. So, first, I tried by email. He said he didn't want
 20 to see it. So then my union steward, Donna Laue, and I had a
 21 meeting with him, and I physically tried to give this stuff to
 22 him, and he refused to take it.
 23 THE COURT: Just a moment. Is Lieutenant Morrow
 24 going to testify?
 25 MR. JASON KAFOURY: He is, Your Honor.

1 THE COURT: Counsel?

2 MS. COIT: Yes.

3 THE COURT: All right. Then whether this is

4 technically hearsay or not, it can be offered for state of mind

5 to show subsequent conduct and therefore I think that that

6 creates the exception to the hearsay rule for most of these

7 statements, Counsel.

8 If there are statements from Morrow to Cleavenger and

9 Cleavenger back to Morrow, you can reask those questions.

10 MR. JASON KAFOURY: All right.

11 THE COURT: Okay.

12 BY MR. JASON KAFOURY: (Continuing)

13 Q. Do you recall any specific reason why he gave you -- that

14 he would not accept the evidence you had pulled together to

15 show that there were hundreds of traffic stops happening?

16 A. He told Donna Laue and I -- I physically tried to hand

17 that stuff to him -- that he didn't need it, and he had 30

18 years experience in the FBI, and if there was any evidence out

19 there to prove my side, he would find it.

20 Q. I'm going to show you 48 and 49. I'll do this as quick as

21 possible. Please tell us what these are.

22 A. Exhibit 48 is a list of case numbers so that he could --

23 if Mike Morrow would have accepted these, he would have been

24 able to look these up, look these cases up, and see they were

25 traffic stops. Also, a number of citations, traffic citations,

1 that were for failure to obey traffic control devices, stop

2 sign, that were appealed, these -- again, these are just the

3 appealed ones because I had the database from the traffic

4 petition officer position that I had, so I could easily look

5 that up. There were about a dozen there.

6 Then I looked up the number of stops involving vehicles,

7 traffic stops, for a period of about a year, showing 240. All

8 in all, these things, you know, could have been looked up

9 individually.

10 Q. This is a compilation of stuff that you attempted to email

11 him and you attempted to hand to him, and he refused to accept;

12 is that correct?

13 A. That's correct. You know, it shows location. It shows

14 stops per officer.

15 MR. JASON KAFOURY: I offer 48, Your Honor.

16 THE COURT: Received.

17 BY MR. JASON KAFOURY: (Continuing)

18 Q. What's 49?

19 A. 49? These are just some policies that mention traffic

20 stops. They mention authorities.

21 Q. Who are they policies of and from what time period?

22 A. Oh, the policies of the department at the time.

23 Q. Okay.

24 A. Mainly talking about traffic offenses and tickets that

25 could be written.

1 MR. JASON KAFOURY: I'd offer 49.

2 THE COURT: Received.

3 BY MR. JASON KAFOURY: (Continuing)

4 Q. All right. So we'll try to take these individually. So

5 how does the internal affairs investigation conducted by

6 Morrow, how does that conclude?

7 A. It concludes with a report that finished sometime in

8 September, but we never got to see it until after I was already

9 placed on admin leave. We had been asking for it.

10 Q. By "we," who's "we"?

11 A. Sorry. My union stewards had been asking for it for a

12 number of months. We kept -- we kept being told it would only

13 be a little bit longer, a little bit longer, and it lasted five

14 months or something like that.

15 Q. And what were Morrow's conclusions?

16 A. To summarize, he exonerated me on the second traffic stop.

17 Q. The student that we just saw going to the gym?

18 A. The student, yeah. I was exonerated on that one. But on

19 the first one with the dean stop, he said it was an illegal

20 stop was his conclusion.

21 Q. What was the basis for deeming it an illegal stop?

22 A. He -- in my opinion, he focused on the question of whether

23 or not I had authority to write a cite for expired tags, which

24 I knew I did not. But my reason for talking to her that day

25 was a whole bunch of things; the totality of the circumstances.

1 I had cases I worked at Junction City where just the fact

2 alone someone had signaled left and then turned right, pulled

3 them over, and lo and behold they were drunk. That was one of

4 the things that crossed my mind, might have been happening in

5 this case.

6 There was just a whole bunch of weird things that when you

7 pile them all together, made me think that I just kind of want

8 to talk to this person. Go up to them and talk to them. Use

9 the excuse of the expired tags to say, "Oh, I just want to let

10 you know your tags are expired," et cetera, but then if I

11 smelled alcohol, then it might turn into an investigation for a

12 possible DUI, et cetera. Or if it comes back stolen, okay,

13 that's something else.

14 Generally, in law enforcement work, that's called

15 interdiction.

16 Q. So tell the jurors briefly about the meeting you had where

17 some of it was recorded and some of it wasn't.

18 A. Right. So going back to Mike Morrow with the 30 years of

19 experience with the FBI, et cetera, he interviews me about

20 these stops. We -- we actually asked to record it, too, but he

21 said, no, his tape was going to be the only tape.

22 He records the first half. I think I'll get this right.

23 He records the first half, which is about the stop of the dean?

24 No, it's the other way around. He records the first half.

25 That's the stop of the student that I'm exonerated for. Second

1 half is the stop of the law school dean where he finds me
 2 guilty, basically. That one mysteriously doesn't record.
 3 Q. So the one that you're found sustained on, when you
 4 attempted to have an audio recording with your union steward as
 5 part of the grievance process, you were -- that tape never --
 6 it never worked?
 7 A. Yeah. He said that he accidentally forgot to turn it back
 8 on, and that's the one I'm busted on.
 9 Q. Let's talk about the dash cam tape-recording, the
 10 investigation that Lebrecht launches.
 11 First, before we go through this, when do you first learn
 12 that Lieutenant Lebrecht is conducting a separate investigation
 13 from Lieutenant Morrow's investigation?
 14 A. That took me a while. Honestly, it makes my head spin so
 15 much trying to figure out who was investigating me for what
 16 because I kept getting different answers.
 17 If you show that -- the first letter that I got is a
 18 paragraph or two saying I'm being placed on a temporary
 19 reassignment of duties and an investigation is starting. I
 20 don't know who is investigating me. I don't know what for. I
 21 don't know for -- for what. It -- totally confused.
 22 I'm told by Sergeant Cameron -- because he's my sergeant,
 23 I asked him first. He assumes this is about -- that Morrow
 24 must be investigating. So I'm waiting for a couple weeks to
 25 hear from Morrow.

1 When I finally do talk to Morrow, he tells me that he has
 2 just started an investigation of me, and I -- you know, I say,
 3 "Well, what do you mean? I got this letter two weeks ago," or
 4 whatever it was. He said, "That has nothing to do with me."
 5 But, you know, that -- that was my assumption and that was
 6 Sergeant Cameron's assumption because he's the IA guy. He
 7 would be doing investigations; right?
 8 Q. So --
 9 A. Yeah.
 10 Q. -- let's talk about generally back in the spring of 2012.
 11 What was your understanding of when you had to notify someone
 12 that they were being audio-recorded?
 13 A. That -- that is my fault. I had a misunderstanding of the
 14 law at that time. There's a specific state law where you have
 15 to warn somebody if you're audio-recording them. There's a
 16 whole bunch of exceptions. For instance, on the telephone you
 17 can record someone and not tell them that you're recording
 18 them. There's an exception for law enforcement if it's
 19 connected to your -- to your lights, like ours were, where you
 20 don't have to tell them right away; but as soon as it becomes
 21 reasonable, you have to tell them that they're being recorded.
 22 I had never seen the law itself at all. It's nowhere in
 23 the training manuals that I was given at Junction City, at
 24 Coburg, at U of O. It wasn't in the police academy training.
 25 The following year at that police academy, I taught the law

1 section. It wasn't in there either. It's a pretty obscure law
 2 and so I didn't -- I didn't understand the law.
 3 My working knowledge at that time was that they were going
 4 to come up with a policy for the dash cam video systems, and,
 5 in fact, they did in 2013. After I was gone, they did come up
 6 with a policy.
 7 Q. How long did they have these dash cam videos in place in
 8 your cars before the dean stop?
 9 A. Oh, only a few months. In fact, not every vehicle had a
 10 system in place, the cameras installed, so it was -- it was a
 11 work in progress.
 12 Q. Now, we talked to Corey Mertz and some of the other folks
 13 about the Junction City policy. All field contacts involving
 14 actual or potential criminal conduct is in their department
 15 directive from 2011?
 16 A. Right.
 17 Q. Were you taught that? This is Exhibit 150.
 18 A. I was never taught that, but that was a directive the
 19 chief came up with. He put them in a book. You know, there
 20 were around 50 or so in there. You were asked to read through
 21 them, and I did. That policy that was in effect at the time at
 22 Junction City does not follow the law. That policy technically
 23 breaks the law. The way the law reads, you have to tell
 24 everybody. So, you know, we've talked to a lot of officers who
 25 have said they've left the camera on for --

1 MS. COIT: Objection. Hearsay.
 2 THE COURT: Sorry. Objection?
 3 MS. COIT: Hearsay.
 4 THE COURT: Sustained.
 5 BY MR. JASON KAFOURY: (Continuing)
 6 Q. Let's go through this as quick as we can. I'll show you
 7 Plaintiff's 38 and 268. If you can identify what these are for
 8 the record, please.
 9 THE COURT: 38 and 268?
 10 MR. JASON KAFOURY: Correct.
 11 THE WITNESS: So Exhibit 38 is the old 2010 UOPDS
 12 policy on the digital audio recorders, which are the handheld
 13 devices we wore on our belt. So those were not connected at
 14 all to the lights on the car. These we would use for
 15 investigations and you would have to, you know, press record.
 16 And this policy I understood because it would -- it was
 17 very simple. You would need to tell somebody you were going to
 18 record them because you were going to be using it as evidence
 19 against them in court, you know, to take a statement. You
 20 know, if -- I would sit someone down and say, "Hey, you're
 21 being investigated." Read them *Miranda* rights, et cetera.
 22 Tell them, "I'm going to record the conversation," and record
 23 it. Pretty simple.
 24 This policy does not list the state law that I'm talking
 25 about, the ORS.

1 BY MR. JASON KAFOURY: (Continuing)
 2 Q. Okay. What's the next exhibit?
 3 A. So, as I mentioned before, the department eventually came
 4 up with a separate policy for the dash cams. This policy is
 5 number 446, and it's dated June 17, 2013.
 6 Q. That's more than a -- almost a year after you're gone?
 7 A. That's correct. And on page 4 is the -- again, the new
 8 department policy. Same date. Same effective date.
 9 6/17/2013. The new department policy number, 450, on the
 10 portable audio video recorders, like the handheld ones on our
 11 belts.
 12 So in 2013 they came up with a new policy, 446, involving
 13 dash cams. And policy 450, which replaced the -- this digital
 14 audio recorder policy because it was outdated.
 15 MR. JASON KAFOURY: I would offer those two,
 16 Your Honor.
 17 THE COURT: 38 is received, Counsel. And 268 is
 18 received.
 19 MR. JASON KAFOURY: Thank you.
 20 BY MR. JASON KAFOURY: (Continuing)
 21 Q. Generally speaking, 2011 and 2012, tell us what was going
 22 on about policy, whether they were written or unwritten, and
 23 depending on the supervisor, how they were going.
 24 A. It was a smorgasbord. Different shifts were told
 25 different things. And if you crossed paths with people from

1 different shifts, you might get different answers on what was
 2 okay and not okay, which is to be expected in some sorts
 3 because it was becoming a police department, so things are in
 4 flux, but it was -- it was confusing for a lot of us.
 5 Q. And, now, as part of the supervisory notes that
 6 Lieutenant Lebrecht ends up putting together, he alleges in
 7 there that you attended three trainings by him about this audio
 8 recording. How did you attack that?
 9 A. Well, I knew that I hadn't been trained on this at all, so
 10 to -- to be told that I went to three trainings about this new
 11 state law was quite shocking to me.
 12 So he -- there are three dates listed in the termination
 13 documents that I received. He says there's three instances.
 14 He gives dates for two of them. The third one is left to be a
 15 mystery date. He gives dates for two of them, so I look up
 16 those dates, and I look to see who were the other officers that
 17 he claims were -- were there during the briefing to learn this
 18 knowledge. So I started going through the computer-aided
 19 dispatch records to show that it was impossible to substantiate
 20 his claim that these certain officers were all available at the
 21 certain time to have a meeting because they were all on
 22 different calls at different times. So I made a chart, a nice
 23 flowchart, that I then presented at the step two grievance
 24 hearing to show that on these two dates it was impossible to
 25 have this training.

1 Q. Now, what is Exhibit 51 and 52?
 2 A. 51 is correspondence to the first date. March 9, 2012.
 3 Q. What's 52?
 4 A. 52 corresponds to the second date that he mentioned that
 5 he claimed I was trained, which is April 23, 2012.
 6 Q. And we heard Lieutenant Lebrecht testify that the
 7 5/14/12 date was inaccurate from his supervisory notes earlier ;
 8 correct?
 9 A. I -- I don't recall the details, but I know he said that
 10 he realized he got a couple of dates wrong.
 11 MR. JASON KAFOURY: Okay. I'd offer 51 and 52.
 12 THE COURT: Received.
 13 BY MR. JASON KAFOURY: (Continuing)
 14 Q. Now, if you had been trained on this particular recording,
 15 would you have signed something?
 16 A. I believe so.
 17 Q. Please identify. What document number is that?
 18 A. This is Exhibit 144. It is a memo to Deputy Carolyn
 19 McDermed from Sergeant Clark Hansen, and it's showing the
 20 signatures -- names and signatures of two individuals, two
 21 officers, Eric LeRoy, who's still at the department, and
 22 Jennifer Parker, who's now with the Eugene Police Department.
 23 It shows that they were trained on the PUMA digital voice
 24 recorders and the policy. So that would be the old 2010
 25 policy. Training records are kept by all police departments,

1 even internal and external training, because you want to be
 2 able to show in court that your officers have been trained
 3 properly, et cetera. So this is a document showing that Eric
 4 LeRoy and Jennifer Parker were trained on the old 2010 policy,
 5 which, again, I think only applies to the digital handheld
 6 recorders.
 7 MR. JASON KAFOURY: Exhibit 144, we'd offer and offer
 8 to publish.
 9 THE COURT: Received. You may publish 144.
 10 BY MR. JASON KAFOURY: (Continuing)
 11 Q. So if you had been trained by Lieutenant Lebrecht about
 12 what the policy was for these new dash cam videos that had been
 13 around for a few months, you're telling this jury that you
 14 assumed you would have signed something like this?
 15 A. I would expect it would either be this specific training
 16 record or some training record beyond just some typed notes by
 17 my supervisor much later. There would be some training
 18 records.
 19 Q. All right. Let's talk about the woman and the gun
 20 situation. Early May. I believe the record is May 6, 2012.
 21 Briefly just tell the jurors what was your understanding of
 22 what a courtesy safety ride was back in May of 2012.
 23 A. A courtesy safety ride was when you would be allowed to
 24 take someone from point A to point B, if they requested it, for
 25 their safety.

1 Q. Okay. How often did you do courtesy safety rides?
 2 A. Pretty often. Especially around finals time and whatnot.
 3 The students would be staying up much later to study.
 4 Q. How does this evening event with this woman, how does it
 5 start for you?
 6 A. So this is a pretty bizarre situation that I -- I feel
 7 like I handled as best I could. It starts off by my patrolling
 8 near our police station on the east side of campus. As I'm
 9 rounding a corner, there's a guy in a Jeep Cherokee that locks
 10 on with eye contact with me, scowls, and follows me all the way
 11 around as I'm turning the corner, which has never happened to
 12 me before and has never happened to me since. It's quite odd.
 13 Even myself, when I'm driving around in my personal
 14 vehicle, if there's a cop, I might look at him and say hello,
 15 but I definitely don't have long sustained eye contact and
 16 certainly wouldn't be following him and be scowling. It was
 17 bizarre.
 18 So I decided I need to drive around and check this out
 19 again. So I was trying to take the long way around so I could
 20 drive by again, and I wanted to get it on video also.
 21 So I'm driving around. But before I can get back to that
 22 location, I'm flagged down by a woman who was pulling a trailer
 23 full of a lot of stuff in a parking lot near our station --
 24 east police station as well; about three to four blocks away
 25 from the guy that I saw scowling and sitting in his car.

1 Q. Okay. What happens next?
 2 A. So she's kind of frantic. She flags me down. I get out
 3 of the car, and I approach her to talk to her. She explains
 4 that she feels she is being stalked by her boyfriend who she is
 5 afraid of. She said she believes he's armed, that he was in
 6 the Army, and has friends that may be helping track her down.
 7 Q. Did she seem credible to you at that point?
 8 A. She did. She seemed very frightened of this guy, and she
 9 had packed up all of her belongings and put them in a vehicle
 10 and trailer, and, yeah, she wanted to leave them there
 11 overnight so she could walk to her hotel, was her initial plan,
 12 so that if he came by he wouldn't see her car and stuff out in
 13 front of the hotel and know that she was there and then try to
 14 track her down that way. So that was her initial plan.
 15 Q. Did you feel threatened at all by this woman?
 16 A. I didn't feel threatened by her. She did have a firearm
 17 on her person.
 18 Q. Okay.
 19 A. On a -- on a holster, like a cowboy.
 20 Q. Okay. So what do you do next?
 21 A. So she gave me her ID. I ran that through dispatch. It
 22 came back that she had a valid concealed weapons permit, which
 23 means she's gone through the background check and everything
 24 that the sheriff does.
 25 So then this is in May now. I'm already starting to worry

1 about retaliation, getting picked on from Cameron, so I want to
 2 make sure that whatever I do I'm going to dot all the Is and
 3 cross the Ts, right, so I call him out to the scene.
 4 Q. What was his demeanor when he gets out there?
 5 A. He seemed disgruntled for having to come out to deal with
 6 it and/or to hang around me, but at this point it was clear
 7 there was no love lost between the two of us. I would prefer
 8 to stay in my corner, and he would prefer to stay in his. So
 9 bringing us together --
 10 Q. So what happens?
 11 A. So he comes out and talks to her briefly. She explains
 12 the situation. He says, "Okay. Fine. She can park over here
 13 overnight."
 14 Q. How close did Sergeant Cameron get to this woman with a
 15 loaded gun on her hip?
 16 A. Take the distance between you and I and cut it in half.
 17 Close enough to have a personal conversation.
 18 Q. What time is this happening?
 19 A. This is at night, so it is dark, but there's -- it's well
 20 lit. That's why she picked this parking spot to park her stuff
 21 because she could see it was well lit.
 22 Q. What kind of light was there in the parking lot?
 23 A. Just streetlights owned by the U of O.
 24 Q. So Cameron comes out, is talking to this woman, and what
 25 happens next?

1 A. Okay. So while I'm sitting there talking to her and she's
 2 getting her stuff arranged, Hermens also arrives, and I send
 3 Hermens to go back to check out that car that I saw with the --
 4 with the scowling guy -- okay, because this is important, so
 5 she is from Creswell. It's a small town 30 minutes, or so,
 6 away from Eugene. She's from Creswell. I send Zach Hermens to
 7 go check out the weird guy in the vehicle that I saw three or
 8 four blocks away. He goes, runs the plate, comes back over
 9 dispatch, from Creswell. It's kind of a coincidence; right?
 10 So --
 11 Q. What's going through your mind at that moment?
 12 A. I'm thinking this lady has something to her story because
 13 it's the same -- this is the guy that scowled at me. Very
 14 weird, strange situation.
 15 Q. Okay. So what happens next?
 16 A. So she asks -- she asked me can I stick around while she
 17 gets her stuff together and secured and everything. Then she
 18 feels like she has too much -- you know, too many bags to walk,
 19 and so she asks if I can drive her.
 20 And now knowing that this guy is from Creswell, that makes
 21 sense -- oh, the other part, sorry, when Zach drove by, now the
 22 guy is gone. He's no longer in the car. We don't know where
 23 he is. So that made me a bit fearful, too, because I just
 24 assume he's watching us. But I feel like I can protect her as
 25 long as I'm there because our vehicles look like police

1 vehicles. From afar, it would look like, you know, I'm a
 2 normal police officer probably with multiple firearms,
 3 et cetera, so I felt that I should remain there.
 4 She asks for a ride. Again, I want to make sure that
 5 everything is okay with my sergeant.
 6 Q. How far did she want to get a ride to?
 7 A. She wanted to go to her hotel. All she could remember is
 8 it was on Franklin, the main drag, and had a little bit of
 9 yellow in the sign. Unfortunately, that describes about three
 10 other hotels, but they're all within about a mile.
 11 MR. JASON KAFOURY: Your Honor, I have 270. It's a
 12 map of Eugene. I don't have an extra copy of it. I was going
 13 to ask the witness to show us --
 14 THE COURT: That's fine. 270 is fine. I don't need
 15 to see it beforehand.
 16 MR. JASON KAFOURY: Can we publish 270?
 17 THE COURT: Do you want that received into evidence?
 18 MR. JASON KAFOURY: Yes, please.
 19 THE COURT: All right. 270 is received. You can
 20 publish the map of Eugene.
 21 BY MR. JASON KAFOURY: (Continuing)
 22 Q. So can you show us here, Mr. Cleavenger, where the parking
 23 lot was?
 24 A. Sure. So that -- is that showing up, the cross?
 25 Q. Yeah.

1 A. That's the police station. She was here. And then, I
 2 think -- and then we eventually had her park a little over
 3 there. But that doesn't matter. That's where she was parking.
 4 And her hotel she wanted to go to -- I can't remember. It was
 5 one of these somewhere on Franklin there. There's about five
 6 hotels on Franklin. Three of them with some yellow in the
 7 signs. And that's where she wanted to go.
 8 Q. Okay. So what happens next? She wants a ride. What do
 9 you do?
 10 A. So now she wants a ride, and I'm feeling that's probably a
 11 good idea for her, so I call it out, the radio for Cameron, and
 12 then I work -- you know, I request the ride to give her a
 13 safety transport, but he's giving me some grief about well --
 14 because I said, "Well, it's a hotel with yellow on Franklin" --
 15 because that's what she told me -- "I don't know which one."
 16 He's giving me a little bit of grief about that's not very
 17 specific, blah, blah, blah.
 18 And I'm thinking he doesn't quite get the gravity of this
 19 situation. So I ask him, "Let's switch to three so we can talk
 20 more about it." You go to channel three if you're going to
 21 talk longer.
 22 But, again, if we go back to that issue I was talking
 23 about before with Spencer View, you hear on channel one, on the
 24 radio, I ask him to "Let's switch to three." So you hear that.
 25 That's recorded. I ask him to switch to three. After that,

1 you can't hear what we're talking about because it's not
 2 recorded.
 3 In Spencer View you don't hear Hermens say, "Hey, let's
 4 switch to three so I can warn you how crazy these ladies are."
 5 You don't hear him say that. Here you do.
 6 So that's when I believe I -- I believe I was reminding
 7 Sergeant Cameron that she had a gun. That's my recollection of
 8 what happened, because, to me, it was plain as day.
 9 Q. So you wanted to double-check that it was okay to give
 10 this woman a ride, so you called Cameron back and said, "Let's
 11 switch to the private channel," and that's where you tell him
 12 she has a gun?
 13 A. Right. That's correct. She's -- and she's got the valid
 14 conceal carry permit, which I -- as I recall, what Cameron told
 15 me, you know, I can't take it from her.
 16 Q. Explain that to me. Why can't you take her gun and put it
 17 in the trunk?
 18 A. Because I'm worried that the moment I have possession of
 19 that gun I will then be breaking the university policies.
 20 Jamie Moffitt, who is the boss of the entire -- she's the boss
 21 of the chief, put out a memo saying no university officials,
 22 including public safety officers, could have possession of
 23 firearms at any time. So I'm worried that the moment I touch
 24 that gun, Cameron is then going to use that against me for more
 25 letters of --

1 Q. Violating the policy?
 2 A. Right.
 3 Q. So --
 4 MS. COIT: Object.
 5 THE COURT: Object?
 6 MS. COIT: Counsel is leading and testifying.
 7 THE COURT: Sustained, Counsel.
 8 MR. JASON KAFOURY: I'll move on.
 9 THE COURT: You don't have to move on, but you can
 10 reask the question. The answer will stand and the question
 11 will stand, but --
 12 BY MR. JASON KAFOURY: (Continuing)
 13 Q. Let's -- well, now let's talk about Officer Hermens and
 14 his testimony. Officer Hermens testified at his deposition, at
 15 a second point, that there was a second meeting after this
 16 incident. Explain your take on that.
 17 A. Well, as you may recall, Officer Hermens first testified
 18 that he did, in fact, hear me call and tell Cameron about the
 19 gun, and then he changed his mind, wanted to clarify or change
 20 his story, then he said, no, the time I told Cameron about the
 21 gun is after I had given her the transport to the hotel. But
 22 there's a big problem with that.
 23 Q. What is that?
 24 A. Okay. So any time you take out a vehicle when you go on
 25 duty, you give a starting mileage. At the end of the day you

1 give an ending mileage so you can see how many miles you've
2 driven and it's recorded. You do that at the end of your
3 shift, which, in this case, for us, on swing shift, was
4 11:00 p.m.

5 So, according to Hermens' second story, I told Cameron
6 about the gun in person when we came back to the parking lot to
7 talk about it.

8 First of all, I don't understand the logic why we would
9 come back to an empty parking lot to talk about this. But the
10 main problem is not only do you give your mileage when you
11 start the day and end the day, but any time you give a
12 transport to a citizen, you give a starting mileage and an
13 ending mileage just to record how far you went, et cetera, so
14 no one can accuse you of taking someone, you know, out back and
15 beating them up or something like that. It just covers you for
16 liability.

17 So this is at the very end of the day at -- at 11:00 p.m.
18 I take her to her hotel. I give a starting mileage and an
19 ending mileage. Within about 30 seconds of my ending
20 mileage -- so I'm at the hotel -- 30 seconds later Hermens
21 gives his ending mileage to secure it at the end of the day,
22 and it's 11:00 p.m. He's off work. It's impossible.

23 MS. COIT: Object. Foundation.

24 THE WITNESS: Let's play it.

25 MR. JASON KAFOURY: All right.

1 THE COURT: Counsel, I didn't hear the objection.
2 MS. COIT: Foundation to what Hermens' log showed.
3 THE COURT: Okay. Sustained.
4 MR. JASON KAFOURY: Let's listen to the audio. I'd
5 offer Exhibit 233.

6 THE COURT: 233? What is 233, Counsel?

7 MR. JASON KAFOURY: This is audio of the dispatch
8 about this loaded-gun incident on May 6th.

9 THE COURT: You may play 233, and I'll receive 233.
10 (Exhibit No. 233 played for the jury.)

11 BY MR. JASON KAFOURY: (Continuing)

12 Q. So what do we hear there?

13 A. It's a little confusing. We can probably play it again.
14 So over the radio, I'm Ocean 29. That's my call sign. Hermens
15 is Ocean 14; right? Yeah, 14.

16 So the time marks by the digitalized voice that you hear,
17 a female digitalized voice, that is going to tell you exactly
18 what time it is. So what you will hear is the start of the
19 call. You will hear my starting mileage when I start, pick her
20 up, and then you will hear the ending mileage from when I drop
21 her off, and then it will note, approximately 30 seconds later,
22 based on these time marks that you will hear, that Hermens then
23 secures, puts his vehicle away. He's done for the night. He
24 goes home.

25 It was impossible for us to have gone back and met in the

1 parking lot.

2 Q. What is Exhibit 234?

3 A. 234 is just the CAD report, the written CAD report, as
4 opposed to the actual audio here. The very last page it shows
5 that when I transported her I cleared -- you know, 2258, two
6 minutes -- sorry, we're using military time also, so 2258 is
7 10:58 p.m. Yeah, two minutes to go before end of shift.

8 Q. Any reason you would have gone back when your shift ends
9 at 11:00, after working eight hours, to go have a conversation
10 with Cameron and Hermens about this incident?

11 A. No. If they wanted to have that meeting, they would have
12 gone on the radio and said, "Ocean 29, get back here to lot
13 52," or whatever it was. "We want to talk to you." And there
14 was none of that on the radio at all.

15 MR. JASON KAFOURY: Offer 234.

16 THE COURT: Received.

17 BY MR. JASON KAFOURY: (Continuing)

18 Q. Okay. How does this incident come to light? Anybody talk
19 to you about it that night or the next day?

20 A. Never, ever, ever am I interviewed about this incident.
21 Ever.

22 Q. How does it come to light? How do people find out that
23 there was even this loaded-gun incident?

24 A. Because I wrote an information -- sorry, an informational
25 email about it because I was concerned about this stalking

1 situation, especially if she was going to have her stuff parked
2 there for -- she said at least a day, but it could turn into
3 longer, et cetera, et cetera. I put as much information as I
4 could -- I think I sent it out on the email. Maybe I did an
5 info-only report within the department just to kind of let
6 people know what was going on.

7 Q. And at any point throughout all of your time working
8 there, before you're terminated, did you ever know that this
9 situation involved any of your termination?

10 A. No. It's not listed on my -- it's not listed on my
11 termination letter. It's not listed on my pretermination
12 letter. There's no letter of clarification, no letter of
13 reprimand. It's nowhere.

14 Q. Briefly let's talk about the annual evaluations and what
15 we have. We saw this first draft by Sergeant Cameron on
16 April 1st. Did you ever see that draft?

17 A. No. I never saw the April 1st draft.

18 Q. What's the first time that you ever get an annual
19 evaluation handed to you?

20 A. The first time I get what I believe was the first draft is
21 May 31st. So May 31st is what I thought was the first draft.

22 Q. 2012?

23 A. 2012, yeah.

24 Q. Okay. So there's a draft on April 1, 2012. When did you
25 first get that document?

1 A. Well after I was fired.
 2 Q. Even after Sergeant Cameron's deposition; right?
 3 A. I believe so. I believe that is correct, yeah.
 4 Q. And that is where your scores in seven of eleven
 5 categories go down between the April 1st first draft and the
 6 May 31, 2012, date where it's handed to you; correct?
 7 A. That's correct. My scores were -- on the May 31st
 8 edition, what I thought was the first edition, was basically
 9 just marked as the lowest score possible in all the categories.
 10 There's a couple of exceptions, but --
 11 Q. What did you do to fight that annual evaluation with the
 12 low scores you were handed on May 31, 2012?
 13 A. Well, first of all, when I'm handed this evaluation, it's
 14 given to me by Lieutenant Lebrecht, even though
 15 Sergeant Cameron has supposedly written it, and it's
 16 Sergeant Cameron who is supposed to write them and give it to
 17 me and discuss it. But Lebrecht gave it to me for some reason
 18 and told me, "There's no discussion. Just take it." I -- I
 19 assume because he didn't write it, or whatever; but, yeah, it
 20 was kind of given to me.
 21 So I started requesting -- I started emailing requesting a
 22 hearing -- not a hearing, but like a discussion to talk about
 23 the annual evaluation because it was -- it was just kind of --
 24 it was inaccurate.
 25 Q. Okay. Did you have a meeting about the annual evaluation?

1 A. Yes. Eventually, I was allowed to have a couple of
 2 meetings about the evaluation. One of which was actually
 3 audio-recorded. I had always asked to audio-record some of
 4 these meetings once I started getting in a lot of trouble
 5 because I was watching retaliation happen, and I wanted -- I
 6 wanted these things to be recorded so there would be no
 7 question as to who said what, and it's also part of Public
 8 Safety Officers Bill of Rights, which they refused to --
 9 MS. COT: Objection. Relevance.
 10 THE COURT: Sustained. I'll strike the answer.
 11 Reask the question, Counsel.
 12 BY MR. JASON KAFOURY: (Continuing)
 13 Q. Okay. When did you first start to complain to anyone that
 14 the discipline you were getting and the investigations that
 15 were happening were not being done according to the officers
 16 bill of rights?
 17 A. I would say that the very first time I complained was
 18 probably -- I think it was June 1st I received that letter
 19 of -- received the letter of reprimand and this weird
 20 two-paragraph suspension thing on May 18th. So I think it was
 21 around June 1st.
 22 First of the year I had a very short meeting with
 23 Carolyn McDermid right after I had had a very short meeting
 24 with Lieutenant Morrow, who Morrow told me the first time that
 25 he had no idea what my reassignment was about and that he was

1 not involved with that investigation, didn't know whose
 2 investigation that was, so he sent me over to McDermid's
 3 office.
 4 I sat down with her. This was a very brief meeting, and I
 5 believe at that point she said she -- she thought maybe that
 6 investigation was being done by Lebrecht. So I told her this
 7 was all very confusing. I received this letter two weeks
 8 prior. It doesn't tell me whose investigation it is, but my
 9 sergeant tells me it's Morrow's. That makes sense to me that
 10 it would be Morrow's because he's the IA guy that does these
 11 investigations. Now she's telling me, no, it's Lebrecht's
 12 investigation actually. Morrow's is separate.
 13 I had never received any written notice about Morrow's
 14 second investigation, so, again, my head is just spinning. I
 15 don't know who's investigating me. I don't know what for. And
 16 I bring up to her that I believe that this is -- that I'm being
 17 retaliated against by my direct supervisors because they don't
 18 like me. I think these guys are in cahoots and subjecting me
 19 to retaliation.
 20 And I mention Public Safety Officers Bill of Rights allows
 21 me to know, at the very least, who's investigating me, what
 22 for, time span, et cetera.
 23 Q. Is that an Oregon state law?
 24 A. That's an Oregon state law.
 25 Q. And did you continue to complain about the officer safety

1 bill of rights throughout that summer?
 2 A. Absolutely. Basically, every meeting from then on I said
 3 the Public Safety Officers Bill of Rights applies to me, and I
 4 just want some basic rights. One of which was being able to
 5 record the meetings. Another one was being able to have
 6 someone with me during the meetings, and, of course, to know
 7 what I'm being accused of so I can form some kind of defense or
 8 just to know what I'm being accused of.
 9 Q. What's Exhibit 1 and 2 there in front of you?
 10 THE COURT: Exhibit 1 and Exhibit 2?
 11 MR. JASON KAFOURY: Correct, Your Honor.
 12 THE COURT: Okay. Thank you.
 13 THE WITNESS: So Exhibit 1 is the letter of reprimand
 14 that I received for the Spencer View incident.
 15 BY MR. JASON KAFOURY: (Continuing)
 16 Q. Now, a letter of reprimand, what is supposed to happen
 17 with that?
 18 A. So as opposed to a letter of clarification, like I had
 19 received for the shaving and whatnot, that disappears after a
 20 year or supposed to disappear after a year. Letters of
 21 reprimand stay in from your file longer. I want to say it's
 22 three years, but I'm not sure if that's based on the old policy
 23 or the new policy. It's progressive discipline.
 24 A letter of reprimand is worse than a letter of
 25 clarification on the scale of --

1 Q. Now, everything in the letter of reprimand involves the
 2 Spencer View April 1st incident; correct?
 3 A. That's correct. This is dated May 18th.
 4 Q. Okay. So let's turn to Exhibit 2.
 5 MR. JASON KAFOURY: I'd offer 1.
 6 THE COURT: 1 is received.
 7 BY MR. JASON KAFOURY: (Continuing)
 8 Q. What's 2?
 9 A. Exhibit 2 is the two-paragraph letter that I also received
 10 on May 18th. It's from acting -chief Carolyn McDermid and the
 11 subject of this memo is titled, "Temporary Reassignment from
 12 Public Safety Officer Duties to Parking Enforcement Related
 13 Duties."
 14 Q. Now, can you --
 15 MR. JASON KAFOURY: I publish -- offer 2 and publish,
 16 Your Honor?
 17 THE COURT: You may.
 18 MR. JASON KAFOURY: Blow this up.
 19 BY MR. JASON KAFOURY: (Continuing)
 20 Q. So explain to the jurors. You get handed -- did you get
 21 handed the letter of reprimand and this at the same moment?
 22 A. Yes. Together.
 23 Q. And this is from Chief McDermid. So paragraph 2 says, "An
 24 investigation has been initiated concerning your job
 25 performance."

1 Do you at this moment, when you get handed this document,
 2 know what investigation they're talking about?
 3 A. No.
 4 Q. When do you first learn about what investigation you're
 5 being investigated for as they're changing your duties to
 6 parking duty?
 7 A. I -- I don't know for sure for a long time because I keep
 8 hearing different things from different supervisors. Even --
 9 even at depositions in this case, if I recall correctly, which
 10 I believe I do, Lebrecht and Morrow both think it's the other
 11 person's investigation that this letter responds to. So they
 12 don't even know.
 13 MS. COIT: Object to the relevance of all this line
 14 of questioning.
 15 THE COURT: Overruled.
 16 BY MR. JASON KAFOURY: (Continuing)
 17 Q. All right. So what were your new duties as a parking duty
 18 person?
 19 A. My new duties were to -- it was the start of summer, so I
 20 had to seize all of the bikes that had been left by students
 21 over the summer. So that means cutting through locks and
 22 seizing all these bikes and documenting where we got them from
 23 and put them in storage. And they're held for three months and
 24 sold. And writing parking tickets and enforcing the parking
 25 violations around campus.

1 Q. I'm going to show you 33 and 223, which I'll move through
 2 this as --
 3 THE COURT: Sorry, Counsel. Once again?
 4 MR. JASON KAFOURY: 223 and 33.
 5 THE COURT: 223 and 33. Thank you.
 6 BY MR. JASON KAFOURY: (Continuing)
 7 Q. If you can identify what those two documents are?
 8 A. So document 223 is a CAD report from the department
 9 showing all of my activities starting the day of temporary
 10 reassignment, 5/18/2012, going through the last day that I
 11 worked at the department before I was put on admin leave, which
 12 is 9/18/2012. So it basically lists everything that I did
 13 during that period.
 14 But I have highlighted and marked the roughly dozen, or
 15 so, incidents where I was put back into regular public safety
 16 officer duties to do; for instance, the -- we had the Olympic
 17 trials going on that summer, which was a very high security
 18 event, with a lot of federal law enforcement agencies. We had
 19 to get extra special credentials to be able to go on the -- to
 20 go onto the field, et cetera.
 21 They put me back in regular uniform. I should say the
 22 only difference between my parking duty uniform and my regular
 23 uniform was the shirt. I would -- as a public safety officer,
 24 I would wear a nice shirt with a badge, a metal badge. When I
 25 was doing parking duties, I wore a cotton shirt that had an

1 embroidered badge that said "public safety officer." So it
 2 might be hard for the public to tell the difference, but I
 3 could tell the difference.
 4 But they had me back in the nice uniform, doing full
 5 duties, just like a regular public safety officer, on about 12
 6 occasions. For the Olympic trials, for a couple of baseball
 7 games, a couple of football games, et cetera. So I was always
 8 kind of going back and forth. They would have me do regular
 9 duties again.
 10 Q. So let's talk about the conclusion of Lebrecht's
 11 investigation where he goes through dozens and dozens of your
 12 recordings. What happened over the summer that you were
 13 involved with as part of that investigation?
 14 MR. JASON KAFOURY: Oh, sorry. I forgot to offer
 15 those exhibits. 223 and -- what was the additional?
 16 THE WITNESS: Oh, 33. These are my -- these are my
 17 stats. I compiled these stats in order to use them at the
 18 meetings I set up to talk about my annual evaluation because I
 19 wanted to be able to show how much work I was doing, et cetera,
 20 so I printed these stats and I made a chart showing how I was
 21 doing compared with everybody else on the shift.
 22 MR. JASON KAFOURY: I'd offer those two exhibits,
 23 Your Honor.
 24 THE COURT: Any objection?
 25 MS. COIT: No.

1 THE COURT: Received. 33 is received.
 2 Any objection, Counsel, to 223?
 3 MS. COIT: No.
 4 THE COURT: Received.
 5 BY MR. JASON KAFOURY: (Continuing)
 6 Q. Okay. Sorry. Back to Lieutenant Lebrecht's watching all
 7 of your videos for investigation. Tell us about the meetings
 8 you had that summer.
 9 A. So there were two meetings about this with my union
 10 steward. The first one was in early July. I'm brought in, sat
 11 down, and I'm threatened with criminal charges, basically,
 12 which was a shock to us. Lebrecht basically said that he had
 13 20-some videos of me committing a misdemeanor by, you know,
 14 forgetting to tell people they're being recorded, and that
 15 he -- I could be charged with 20 misdemeanors.
 16 Again, I -- that -- I did not know of this law at that
 17 time. So that meeting was pretty brief, so we set up another
 18 meeting that we could fully discuss these videos.
 19 Q. What was the date of that next meeting?
 20 A. August -- was it -- I think it was August.
 21 Q. I believe the records indicate it was the same time you
 22 met with the chief. August 13th.
 23 A. That sounds right. Same -- same day. August 13th.
 24 Q. So that's a pretty big day. August 13, 2012. Tell us
 25 about the meeting that you had with HR, Lieutenant Lebrecht,

1 and your union steward about this investigation Lebrecht was
 2 doing.
 3 A. Okay. So, again, the first thing we had with Lebrecht in
 4 July, he tells me I could face misdemeanor charges. So then I
 5 scramble and I look up -- I try to find this law. I find it
 6 sometime in mid to late July, and I read it, and I'm like, oh,
 7 gosh, technically, this is true. You know, technically, if I
 8 had left the recorder on for the whole day, when I go to Dutch
 9 Brothers and grab a cup of coffee and get the coffee and say,
 10 "Thank you. Bye," if I don't say, "Oh, by the way, the
 11 recording is still on," I technically committed a misdemeanor.
 12 If there are two people in the booth, two misdemeanors. So
 13 I -- I'm kind of freaking out.
 14 So by the second meeting there's a union procedure where
 15 you can invoke rights of the union where you say, "Okay. I'm
 16 willing to talk about these instances and what happened as long
 17 as you, the employer, promises not to pursue criminal charges"
 18 because I obviously didn't want to be arrested.
 19 But they refused to do that. They refused to allow me to
 20 talk about it.
 21 Q. Who's "they"?
 22 A. Lebrecht and Wardlow. When we invoked those rights, they
 23 refused to accept them.
 24 Q. And Wardlow works for the human resources at the
 25 University of Oregon?

1 A. Wardlow was, yeah, vice president of HR.
 2 Q. Okay. So how did that meeting conclude on 8/13/2012?
 3 A. That meeting was a little weird because there were lots of
 4 things I wanted to say and I wanted to explain that I didn't
 5 understand what the law fully entailed, but I couldn't because
 6 I would be incriminating myself. So I sat there and listened
 7 to Lebrecht explain what I was doing wrong in this video, this
 8 video, this video, et cetera, including forgetting to record
 9 people and also officer safety issues here and there, but it
 10 concludes -- twice -- and this is recorded. We finally are
 11 allowed to record this meeting.
 12 A couple times when they were both -- Randy Wardlow and
 13 Lebrecht state that they are not seeking termination at this
 14 point; that retraining is -- is what they're going to try to
 15 do, is come up with a retraining plan.
 16 Q. So your supervisor, Lebrecht, and Wardlow explicitly tell
 17 you that retraining, not termination, is the plan in relation
 18 to this investigation.
 19 Who do you meet with next that day?
 20 A. So then I go to a meeting with Carolyn McDermid.
 21 Q. So let's just set this up. Where are -- what is your
 22 plans for the rest of that month, in August?
 23 A. I was going on vacation to South Dakota for -- I think it
 24 was approximately three weeks or something like that. A pretty
 25 decent little vacation.

1 Q. And why did you set up this meeting with Chief McDermid ?
 2 A. Well, initially, I just wanted to make sure that I could
 3 touch base with her before I left on that vacation. So I
 4 initially thought, you know, it would be, you know, kind of a
 5 shorter meeting. Touch base. I would -- yeah, initially, I
 6 thought it would be shorter.
 7 But after what had happened in this meeting with Lebrecht
 8 and Wardlow, where they were threatening me with criminal
 9 charges and then refusing to let me talk, I'm a lot more
 10 concerned and I am under the impression that Carolyn McDermid
 11 does not know the full extent of what's going on with these
 12 guys.
 13 Q. Now, what had the chief's role been prior to this
 14 August 13th meeting in relation to grieving the letter of
 15 reprimand?
 16 A. So we first asked Carolyn McDermid to -- to hear the step
 17 one hearing on my grievance of the letter of reprimand.
 18 Normally -- because Sergeant Cameron wrote the letter of
 19 reprimand, normally, your step one grievance would go to the
 20 next highest person, which would be Lieutenant Lebrecht. But I
 21 was pretty well convinced, since I received this from
 22 Lieutenant Lebrecht, et cetera, that they worked together and
 23 decided this discipline together. So I wanted someone outside
 24 of those two people to hear it, but I still wanted to keep it
 25 in-house. I wanted to keep it within the department.

1 So we had asked Carolyn McDermid to hear the step one
 2 hearing. She initially agreed to conduct and hear the step one
 3 hearing, but then 30 days later I still haven't heard anything
 4 back. We kept trying to get a date, and she kept not
 5 responding. So at that point time had expired and we had to
 6 what's called bump the letter to step two. So I never got a
 7 step one hearing.
 8 Q. So you asked Chief McDermid to be part of the grievance
 9 process. She agrees, but that never happens.
 10 A. That's correct.
 11 Q. So what was your mindset, going into this meeting on
 12 August 13th, about where the chief was on all this stuff
 13 happening in relation to these investigations?
 14 A. I thought she did not know the full extent of what was
 15 going on. I thought -- she had led me to believe in that first
 16 meeting that she was hoping this could get moved on quickly and
 17 basically implied that it sounded silly that it was taking so
 18 long and it should get wrapped up and I could get back to my
 19 job soon. So I believed she was neutral or, you know, would
 20 hear me out.
 21 Q. Now, at this point you have no idea that she's been
 22 sending emails about the loaded-gun incident back in May about,
 23 you know, potentially terminating you. You have no idea;
 24 right?
 25 A. No clue whatsoever.

1 Q. Okay. So how long was this meeting?
 2 A. I believe we have an exact time. Luckily -- the reason I
 3 say "luckily" is because I -- I knew this was going to be a
 4 meeting where I wanted to get some stuff out. I wanted to air
 5 some stuff to her. So I called off the air, basically. I went
 6 on the radio and said, "Cancel Ocean 29. I'm going to be off
 7 the air in a meeting." In other words, don't give me any
 8 calls. I'm not going to do anything.
 9 Then after the meeting was over, I came back on the air,
 10 and I think it's something like 37 minutes or something -- just
 11 under 40 minutes is the total length of time, if I recall
 12 correctly.
 13 Q. So that's the time that you were at her office meeting
 14 with her alone; is that correct?
 15 A. Correct.
 16 Q. Now, was she taking notes during this meeting?
 17 A. She was absolutely taking notes.
 18 Q. Okay. Your chance to tell this jury what do you remember
 19 happening at this meeting?
 20 A. At that point I -- I had witnessed myself being retaliated
 21 upon a bunch by my supervisors, so I told her everything I
 22 could think of. I told her that I believe I was being
 23 retaliated against because of my political views that Cameron
 24 had exposed to Lebrecht about the Taser stuff from way back in
 25 2008. I told her about all the wasted time, which included the

1 bowl of dicks list, which included watching Lebrecht's old
 2 football videos on VHS, officers pending entire days -- entire
 3 shifts in the office with him.
 4 I explained just inappropriate ways that these two
 5 supervisors were coming after me and how they would come after
 6 other people. I mean, I just -- the whole cat was out of the
 7 bag.
 8 And I'm embarrassed to say I cried. It's probably silly,
 9 but I -- I definitely keep my composure most of the time. I do
 10 not cry in public. There's nothing wrong with that, crying in
 11 public, but I just prefer not to. Especially when I know that
 12 I cried in front of someone who was really a wolf in sheep's
 13 clothing and knew what was going on the entire time.
 14 And my spilling the beans to her actually backfired and
 15 accelerated the process of me being fired, as opposed to
 16 helping it, because she knew of all of this stuff all along.
 17 She was very well aware of all these investigations and who was
 18 investigating.
 19 Q. Did you talk to her about the -- the political Occupy
 20 stuff?
 21 A. Yeah. Yeah. I mentioned the Occupy stuff. I mentioned
 22 the -- the ways that Lebrecht and Morrow -- the way Lebrecht
 23 had told me I can't go to IA because he and Lebrecht -- Morrow
 24 and Lebrecht were friends and that Lebrecht would find out.
 25 So I explained to her I was cut off from that angle,

1 couldn't go to Morrow, had to go to her. She was my last hope,
 2 that sort of thing.
 3 Again, I thought I was telling her a bunch of stuff that
 4 she didn't know, that she should know, and she acted shocked.
 5 She acted concerned. She said she was going to do something
 6 about it. She took a whole bunch of notes. And then I went on
 7 vacation.
 8 Q. Let's talk about this offer for retraining and discussions
 9 that happened. What -- over those coming weeks, what was your
 10 understanding of the negotiations between the union folks,
 11 yourself, and HR about retraining?
 12 A. So they had mentioned possible retraining in that meeting
 13 with Wardlow and the -- and Lebrecht. And then my union
 14 stewards met with Wardlow while I was on vacation in South
 15 Dakota, and they talked about it verbally, but we've never
 16 received anything in writing.
 17 So what came back to me was an email from my union
 18 stewards talking about their conversation with Randy Wardlow
 19 and what he told them verbally. We asked to get something in
 20 writing so we could understand what we would be agreeing to,
 21 what the plan was going to be, but we never saw anything in
 22 writing.
 23 Q. Please identify Exhibit 58 for us.
 24 A. Exhibit 58 are emails dated September 11, 2012, to
 25 September 10. September 10 and September 11, 2012. It's --

1 first one is from Lois Yoshishige, Y-O-S-H-I-S-H-I-G-E.
 2 MR. JASON KAFOURY: I'd offer 58 and offer to
 3 publish.
 4 THE COURT: Any objection?
 5 MS. COIT: No objection.
 6 THE COURT: Received.
 7 MR. JASON KAFOURY: Can we go to the third -- the
 8 last page in there, Mr. Hess? Okay. So -- can we blow this
 9 up, Mr. Hess?
 10 BY MR. JASON KAFOURY: (Continuing)
 11 Q. So this is an email while you're on vacation. Do you
 12 remember getting this while you're on vacation?
 13 A. I do. And I remember responding, saying, "Can we get
 14 something more in writing?" Because it doesn't explain who
 15 these guys are going to be, how long, that sort of thing.
 16 Q. So what were your concerns about this offer being made by
 17 HR for training?
 18 A. My concerns were -- I don't -- I don't know if this was a
 19 legitimate offer or if I was just being set up for failure.
 20 You know, who are these two best trainers going to be? Is that
 21 going to be Lebrecht and Cameron? You know, I -- I don't know.
 22 And there's a lot of ifs in here that -- it just seemed like a
 23 scary deal, which is why we wanted something in writing.
 24 Because this is just Lois Yoshishige and Donna Laue explaining
 25 what they were told in person. It's not something in writing.

1 Q. So it says there on the third line, "James would withdraw
 2 the grievance and enter a retraining phase."
 3 How did you interpret that?
 4 A. My understanding was that I had to drop my grievance on
 5 the letter of reprimand completely and stop -- stop complaining
 6 about that.
 7 MR. JASON KAFOURY: Okay. Can we go to the response
 8 from Lois, the next -- September 10, page 2. Blow that up.
 9 BY MR. JASON KAFOURY: (Continuing)
 10 Q. So explain to us here what you and the union were trying
 11 to communicate to HR at this point on September 10, 2012.
 12 A. Well, what we were trying to communicate was that I would
 13 be willing to accept a retraining program, but I was not
 14 willing to relinquish my rights to be able to grieve stuff
 15 because we thought that they were possibly going to try to
 16 prohibit me from grieving anything connected and associated to
 17 this retraining process.
 18 So, basically, we were trying to negotiate, you know, and
 19 this -- this was our offer. We said yes. I'll take the
 20 retraining as long as I still keep my union rights to be able
 21 to grieve if something goes wrong.
 22 Q. Did anyone ever get back to you with this offer, where you
 23 accept retraining but not relinquishing your union rights?
 24 A. No one responds to me directly, but on the first page
 25 Randy Wardlow, HR, responds with one line on September 11th.

1 MR. JASON KAFOURY: Can we publish that, Mr. Hess?
 2 BY MR. JASON KAFOURY: (Continuing)
 3 Q. Is this all you ever hear before you're terminated?
 4 A. Basically, yes, that's what we hear, so we assume -- we
 5 assume they retracted that offer.
 6 Q. Now, we saw during Lieutenant Lebrecht that there's this
 7 draft retraining exhibit where it said you would start
 8 retraining September 13th. Did you ever see that document
 9 prior to being terminated?
 10 A. Absolutely not. I never, ever, ever saw that document.
 11 Q. Let's talk real quickly about these problematic callouts.
 12 When did you first hear anything about an investigation about
 13 problematic callouts in September of 2012?
 14 A. Well, I never heard anything about an investigation of
 15 problematic callouts. What I heard was in a letter. I believe
 16 it was -- I believe it was after I -- I was put on paid
 17 administrative leave on my birthday. That's an easy one to
 18 remember. September 20th.
 19 On September 26th, I think it was, is when I received a
 20 letter saying that I was then being put on special
 21 investigation for three problematic callouts.
 22 Thank you.
 23 Q. Is that, Exhibit 79, that letter?
 24 A. That is. Just to clarify, it's dated September 25th.
 25 Actually, it was originally dated September 26th. They

1 crossed out "26" and wrote "25."
 2 THE COURT: What exhibit is that? 76, did you say?
 3 MR. JASON KAFOURY: 79, I believe.
 4 THE COURT: 79.
 5 MR. JASON KAFOURY: We offer 79.
 6 THE COURT: Received.
 7 BY MR. JASON KAFOURY: (Continuing)
 8 Q. So you have the document there, but which paragraph do
 9 they get into the allegations about these new problematic
 10 callout charges?
 11 A. It's in the third paragraph.
 12 MR. JASON KAFOURY: Permission to publish?
 13 THE COURT: You may.
 14 BY MR. JASON KAFOURY: (Continuing)
 15 Q. The third large paragraph there?
 16 A. Yes.
 17 Q. Okay. So you're put on paid administrative leave at this
 18 point. And weeks after these incidents -- this is the first
 19 notice you ever had that there was anything wrong with anything
 20 you've done on the job during September?
 21 A. Correct.
 22 Q. Does this document allow you to do any sort of
 23 investigation about these supposed problematic callouts?
 24 A. Not really. It gives me one date. September 6, 2012. So
 25 I get one date of the three.

1 Q. Do you even know what other events they're talking about
 2 in this document when you get it? When you get it.
 3 A. Oh, when I get it? No, I'm quite confused as to what all
 4 it's talking about.
 5 Q. Now, we heard Lieutenant Bechdolt testify he didn't see
 6 any problem with these callouts. Can you just briefly tell us
 7 the 3 one -- we'll start with the September 3, 2012, incident.
 8 The hunched-over person. What you allegedly did in that wrong?
 9 A. I'm sorry. I don't quite understand.
 10 Q. Yeah. The -- we're going to go through them.
 11 A. Oh, gotcha.
 12 Q. The first problematic callout on September 3, 2012.
 13 A. Yes. In this letter, does it call this person a guy or a
 14 girl? Because different letters say it was a guy, some say it
 15 was a girl, and I'm just trying to find it.
 16 Q. Regardless, what did you do?
 17 A. I tried to figure out what they were talking about.
 18 Q. What do you remember about the actual call?
 19 A. I don't remember the actual call because -- because these
 20 calls were quite common. This would be what we would call a
 21 welfare check. Somebody, like, passed out on a bench. It
 22 happened a lot on a college campus, if you can imagine that, or
 23 someone sleeping that could be passed out or could be sleeping.
 24 We don't know. So we want to send somebody to shake them and
 25 make sure they're okay. It happened all the time.

1 During my temporary reassignment period, they didn't want
 2 me to make contacts directly with people, so they said, "Just
 3 observe and report." So any time I saw something that needed
 4 some attention, I would observe and report. Even though I
 5 might be standing right there and could have done it myself, I
 6 let them do it.
 7 Unless, of course, it was one of these 12, or so, days
 8 where they put me back in full uniform. Then I could do these
 9 things.
 10 Q. Just so we're clear, we are starting from May 18th, when
 11 you're reassigned.
 12 A. Right.
 13 Q. You were supposed to just call out and not do enforcement?
 14 A. Yeah, I did it all the time throughout the whole summer.
 15 Q. So what about the 9/6/12 incident? We heard some
 16 testimony from Officer Davis. This is the beer can incident.
 17 What do you remember about that?
 18 MS. COIT: Object to the -- it wasn't Davis.
 19 THE COURT: Overruled. I don't believe it was
 20 Officer Davis, though, was it?
 21 BY MR. JASON KAFOURY: (Continuing)
 22 Q. Okay. Who was involved with that incident?
 23 A. Officer Waggoner was involved and so was Officer Davis.
 24 Officer Davis was the secondary officer with Waggoner.
 25 Q. What is your memory of that incident?

1 A. My memory of that incident is that I was driving the
 2 parking truck down Franklin Boulevard. I noticed to my right,
 3 as I was looking down by the river or Creek -- Mill Race Creek,
 4 I saw a gentleman standing up, with his pants down to his
 5 ankles, and a young lady not standing up helping -- helping him
 6 either get dressed or undressed or something like that. This
 7 concerned me. It was in a park owned by U of O, so I parked my
 8 car, walked all the way around. It was only at that time that
 9 he was starting to put his pants back on, so he seemed to be in
 10 a state of undress for a few minutes there.
 11 I called out the description. I could see well enough
 12 that I could see what was written on the guy's shirt, which was
 13 "Resist." I could -- so I was relatively close, but I was
 14 across the street.
 15 I also noticed that in addition to having his pants off,
 16 they had passed back and forth a blue and silver can that was
 17 consistent with a can of alcohol. Frankly, I didn't care about
 18 that. What I cared about was the pants off stuff because we
 19 have had plenty of problems down there. It's a university
 20 campus, so there are a lot of people with sex crime
 21 convictions, et cetera, that hang around college campuses. So
 22 I wanted to make sure everything was okay, whatever happened
 23 was consensual, or -- general concerns.
 24 I couldn't contact these people myself, so I had to call
 25 out over the radio to send two officers to investigate the

1 situation, which was Waggoner and Davis.
 2 Q. Let's talk, just briefly, about the September 10, 2012,
 3 knife robbery suspect callout. Tell us your memory of that.
 4 A. I believe you've already seen the video of two officers
 5 when they run around in a circle when the guy has the knife and
 6 then rides away on the bike.
 7 Q. The pepper-spraying incident?
 8 A. Yeah. The pepper spraying. He's smoking a cigarette and
 9 running around and jumps on the bike and goes away.
 10 In that incident I had been listening to the Eugene police
 11 radio and our radio at the same time. I had heard a
 12 description of this gentleman who had pulled a knife on
 13 somebody on a bus, city bus, and the City of Eugene Police
 14 Department was looking for this gentleman. Put that in the
 15 back of my head.
 16 Ten minutes later, on our radio, the UOPD, we get this
 17 callout for someone -- a car prowler, basically, trying to get
 18 into cars on U of O property kind of downtown.
 19 Hermens goes and Amanda Williams also responds. When I
 20 hear that, I get on the radio to warn them. I warn them that
 21 this guy matches the description of a guy with a knife.
 22 Because when they're told about the car-prowling situation, it
 23 doesn't mention a knife, but it fits the physical descriptions
 24 and is in the same area. It sounds like the guy.
 25 And I was right. This was the same guy, and he pulled a

1 knife on Officers Hermens and Williams prior to fleeing on a
 2 bike.
 3 So I was right at that point of the call.
 4 Q. Okay. What happens next?
 5 A. So after that he obviously gets away, as you saw on the
 6 video.
 7 The last direction of travel you can see on the video is
 8 east. Yes. East. So EPD responds, Eugene Police Department.
 9 They try to set up a perimeter and try to get him inside
 10 because this is now, you know, two people he's pulled knives
 11 on, and they consider him a priority.
 12 So I -- roughly, at least -- at least half an hour goes
 13 by, from my recollection, and they still haven't found him.
 14 They've broken down the perimeter. Units have gone mobile. In
 15 other words, they are not holding this tight perimeter any more.
 16 They're going mobile now because he either got away or he's
 17 hunkered down somewhere and he's not going to come out.
 18 So I'm driving around. I had to impound a bike sort of
 19 near there, and we have the case report for that because that
 20 was part of my job was impounding bikes.
 21 Then I go to McDonald's to get a soda. While I am driving
 22 to the McDonald's drive-through lane -- let me back up. Sorry.
 23 I know these stories are too long, but prior to that, as I was
 24 driving there, I saw a white bike that matched the description
 25 of the bike that the suspect took off on. That's not enough

1 for me to say anything over the radio, but I noticed it was on
 2 one side of the building unsecured. It wasn't locked up.
 3 Which is really weird in Eugene because it's the bike theft
 4 capital of the world. So I noticed it, but didn't think too
 5 much about it.
 6 Now, I pulled around the side of the building, near
 7 McDonald's, and I see a guy matching a physical suspect
 8 description hunkered down between a dumpster -- behind a
 9 dumpster and some trees, hunkered down, actively hiding. He's
 10 shifting his head from side to side, actively hiding. It
 11 matches this guy's description.
 12 However, the shirt color is different. But on the radio
 13 Sergeant Cameron had called out earlier that the suspect had
 14 changed his shirt. That there was information -- I don't know
 15 how -- but information that the suspect had changed his shirt.
 16 Cameron must have been told by some one that they saw the
 17 guy, you know, probably pull his shirt off, because if he was
 18 pepper sprayed, he would need to do that because there would be
 19 pepper spray on it.
 20 So my location is in between where this incident happened
 21 and the river. So I'm thinking, well, it might make sense if
 22 this guy got pepper sprayed, he might come to the river to wash
 23 his face off and he's actively hiding.
 24 And I wait for a little while. I wait and I look
 25 carefully because I want to make sure this information is going

1 to be useful, and I don't want to waste anybody's time.
 2 Because I thought -- sorry to be crass, but I thought maybe he
 3 was defecating or something like that. He wasn't. His pants
 4 were still on. Actively hiding.
 5 I call out over our radio, U of O radio, describe what I'm
 6 seeing, and I ask them to please relay that to Eugene Police
 7 Department in case they think that's something to follow up on.
 8 One of the EPD officers was actually listening to our
 9 radio, and he jumped on it immediately; the best lead they had
 10 so far.
 11 So he immediately jumped on this call, came to the scene.
 12 A backup officer arrived. They had the -- had the guy come
 13 out, stood up. They knew both -- they knew the actual suspect
 14 and this guy real well. Although they had similar physical
 15 descriptions, it wasn't the guy. They said, "No, it isn't our
 16 guy. He's just a weird kind of transient gentleman that likes
 17 to hide behind dumpsters." I -- go figure.
 18 Q. So that's what --
 19 A. That's what I did --
 20 Q. -- you did?
 21 A. That's what I did. I reported what I saw because it
 22 matched the behaviors and matched the physical description.
 23 Q. When did you ever find out that Lieutenant Bechdolt had
 24 actually gone and done an investigation to find out what
 25 happened?

1 A. I have no idea. I had no idea Bechdolt ever investigated
 2 me until just prior to the arbitration. It was after I was
 3 fired.
 4 Q. So a year or -- more than a year after you were fired is
 5 when you found that out?
 6 A. At some point we got something through an information
 7 request.
 8 Q. Were you ever interviewed or allowed to respond to any of
 9 those allegations before you were terminated?
 10 A. No.
 11 Q. Let's talk about the meeting.
 12 A. I should correct that.
 13 Q. Yeah.
 14 A. At the termination -- at the predismissal meeting with
 15 Linda King, you have this meeting right before you're fired
 16 where you can kind of beg for your job, basically. I was
 17 allowed to discuss these, and I figured out what two of them
 18 were. The first one, to this day, I don't know if it's a guy
 19 or a girl or which incident it is, but, yeah.
 20 Q. So let's talk about the meeting with you, Lebrecht, and
 21 Cameron on September 7, 2012. Set the stage for us. What's
 22 happening?
 23 A. So on that date I'm randomly called into a meeting with
 24 Cameron and Lebrecht. At this point Lebrecht is no longer my
 25 lieutenant. Bechdolt has become my lieutenant. But for some

1 reason Bechdolt is not in this meeting. It's just Lebrecht and
 2 Cameron. Cameron issues me a verbal order that from then on
 3 I'm only supposed to report crimes that are felonies. I'm no
 4 longer supposed to report any misdemeanor crimes that I
 5 witnessed.
 6 Q. What's going through your head when you hear that order?
 7 A. That's -- that's an illegal order. I mean, I've taken all
 8 these oaths. It's state law. It's my job.
 9 Q. Okay. How do you respond?
 10 A. I tell them I think that sounds like an illegal order.
 11 Q. What happens next?
 12 A. They tell me this isn't up for discussion, just do what
 13 I'm told, so then I start sending emails trying to get
 14 clarification of these duties.
 15 Q. Now, is this Exhibit 57 copies of the emails in relation
 16 to this 9/7 meeting?
 17 A. Yes.
 18 THE COURT: I'm sorry. Your voice dropped. In
 19 relation to the 9 --
 20 MR. JASON KAFOURY: 9/7/12.
 21 THE COURT: 9/7. September ??
 22 MR. JASON KAFOURY: Yes. I would offer Exhibit 57.
 23 THE COURT: Received.
 24 MR. JASON KAFOURY: Permission to publish?
 25 THE COURT: You may.

1 MR. JASON KAFOURY: Can we go to page 3. James'
 2 email on 9/10. Mr. Cleavenger. Yes, blow up the date for us
 3 there.
 4 BY MR. JASON KAFOURY: (Continuing)
 5 Q. So why did you send this email?
 6 A. I sent this email because I wanted to -- wanted to have it
 7 in writing what I could and couldn't do because it was my
 8 understanding I had to report crimes that I witnessed otherwise
 9 it would be a dereliction of duty and I could be fired for
 10 that, for not reporting crimes.
 11 Q. Okay. Let's blow up the next section here.
 12 So second paragraph, "While I have not been allowed to
 13 take any enforcement action or to back up any officers since
 14 5/18/12, I have been encouraged to report any crimes in
 15 progress that I witness. As I understand it, the same
 16 encouragement is given to all U of O employees who witness
 17 crimes. This summer I have both called out on the radio
 18 numerous instances of trespassing, public intoxication, drug
 19 use, et cetera. On 9/7/12 I was told by Sergeant Cameron, with
 20 Lieutenant Lebrecht observing in a closed door meeting in
 21 Sergeant Cameron's office, that from now on I am not allowed to
 22 call out/report crimes in progress that I witness unless it is
 23 a felony. And, of course, I'm still prohibited from taking any
 24 direct enforcement action except for parking tickets and
 25 impounding bikes as outlined in the 5/18 letter signed by

1 Chief McDermid and as directed by my supervisors."
 2 Next.
 3 "Also on 9/7/12 I was told to report to UODPS, west
 4 station, to be trained by auxiliary Public Safety Officer Lakey
 5 on academic lockup duties."
 6 Okay. And then at the end you say, "Please respond if
 7 this is not accurate. If no response is received, I will
 8 assume that you are in agreement that I will continue to carry
 9 out my job duties as directed.
 10 THE COURT: Way too fast. Thank you.
 11 Well, Counsel, finish.
 12 BY MR. JASON KAFOURY: (Continuing)
 13 Q. "If no response is received, I will assume that you are in
 14 agreement that I will continue to carry out my job duties as
 15 directed." What are you saying in that last sentence?
 16 A. I just want to make sure that I understood the reading
 17 correctly and that that is, in fact, what they ordered me to
 18 do, so I don't want there to be any discrepancies.
 19 MR. JASON KAFOURY: Okay. Can we go -- I believe
 20 it's the former page or the page after the email from Lois.
 21 BY MR. JASON KAFOURY: (Continuing)
 22 Q. Do Lieutenant Lebrecht and Scott Cameron ever write back
 23 to you to clarify or explain what that order was you were
 24 given?
 25 A. From the email you were previously looking at, if you look

1 at the top of the page, Lebrecht does respond by saying, "Jim,
 2 if you want clarification regarding the meeting, you -- you can
 3 speak with me in person. I will have no information regarding
 4 the lockup duties. Thanks, Brandon."
 5 Q. So he doesn't address --
 6 A. No. It seems to me that he doesn't want to put anything
 7 in writing.
 8 And the other problem is, again, he's no longer my shift
 9 supervisor, so if I want to -- and what was strange about this,
 10 too, is that during the first meeting on 9/7 Lebrecht said he
 11 was just there as a witness. He said he had nothing to do with
 12 this. He was just there to observe. Yet, it was Lebrecht who
 13 responds to my inquiry about it. So I was slightly confused
 14 about that.
 15 Q. Sitting here today, do you have any idea who gave this
 16 order?
 17 A. Well, physically, actually, you mean?
 18 Q. No. Ultimately, where the order came from.
 19 A. After years of research, I believe it was
 20 Carolyn McDermid, but that was never made clear at the time.
 21 Q. Can we go to the email from Lois. So eight days after you
 22 sent that email, this is an email from your union steward to
 23 Randy Wardlow, HR, and Brandon Lebrecht, September 18, 2012.
 24 MR. JASON KAFOURY: Can you blow that up, please.
 25 ///

1 BY MR. JASON KAFOURY: (Continuing)
 2 Q. "We'd like James Cleavenger's change of duties in writing.
 3 He emailed his supervisors with this request after the meeting
 4 on September 7, 2012. At that meeting, he was told not to
 5 report any crimes in progress that he witnesses except for
 6 felonies. He is being directed not, in capitals, to do things
 7 any citizen would do. Since this directive is in major
 8 conflict with his stated duties as a campus public safety
 9 officer, we'd like to have this change in duties in writing.
 10 Please provide us with a letter by Friday, September 21, 2012."
 11 What happened, instead, on September 20, Thursday, 2012?
 12 A. I was put on admin leave, so they didn't have to answer
 13 that question.
 14 Q. Your birthday?
 15 A. Yes.
 16 Q. Did they know it was your birthday?
 17 A. They did know it was my birthday because every year on our
 18 birthdays we would receive a birthday card signed by every
 19 officer on the shift. Needless to say, I did not get one that
 20 year.
 21 Q. Let's talk about the step two hearing about the letter of
 22 reprimand with Brian Smith. That is on five days later after
 23 you're put on paid administrative leave. 9/25. What do you
 24 recall about this meeting?
 25 A. I recall that we were -- my union steward and I were very

1 excited about this meeting because this was our first chance to
 2 present our case and our evidence against the letter of
 3 reprimand to an outside person or what we believed was an
 4 outside person. His name was Brian Smith. He was number two
 5 below Jamie Moffitt.
 6 So Jamie Moffitt was the vice president of student
 7 affairs -- no, vice president of finance and administration.
 8 There's lots of titles. So Brian Smith was number two under
 9 her -- her deputy.
 10 So he was holding the step two hearing, and we prepared
 11 for weeks now. You know, went out and took all those pictures,
 12 videos, showing the lines of sight at Spencer View, made these
 13 charts showing how, you know, when things happened. We were
 14 ready to go.
 15 Q. Okay. What happens at the meeting? What happened when
 16 you get there? Let's start there.
 17 A. We were very excited. We go to the administration
 18 building, which is separate from UOPD, middle of campus, never
 19 been in that part of the building before. And, you know, we --
 20 we show up for the meeting and we wait for a little while and
 21 then all of a sudden the hearings officer, Brian Smith, comes
 22 out of his office, followed by Lebrecht and -- was McDermid
 23 there too? I can't remember. Anyway, the UOPD folks follow
 24 him out of the office, which took a little wind out of our
 25 sails to know that they had just been meeting about it.

1 Q. So the university administrator who was going to oversee
 2 this hearing was meeting with them in a closed door room before
 3 you got there?
 4 A. In fact, it delayed the meeting a little bit before they
 5 came out.
 6 Q. So what do you remember happening at that 9/25 meeting?
 7 A. I'm an optimist, so we still gave the presentation. It
 8 was long. Probably, if I had to guess, you know, almost two
 9 hours sort of thing. We really gave a lot of evidence and
 10 thought we made a really good case, proving why the letter of
 11 reprimand shouldn't have been given.
 12 Because if the letter of reprimand was gone, then there
 13 wouldn't be progressive discipline for the -- for the
 14 termination, which at that point was basically pending because
 15 they put me on leave on September 20th. So I could read the
 16 writing on the wall.
 17 Q. Let's talk about what you do next after the Brian Smith
 18 meeting. What's your next move?
 19 A. Well, actually, at the end of the Brian Smith meeting is
 20 when we get the letter. It's actually handed to me right after
 21 the meeting, handed to me, talking about this investigation of
 22 the --
 23 Q. Callouts?
 24 A. -- the three problematic callouts.
 25 Okay. So what happens after that, Brian Smith is leaving

1 the university for good. He's going to -- he's going to take a
 2 job in San Diego at this point. So this is -- the meeting was
 3 September 25th. He's leaving early October, like 2nd or 3rd,
 4 something like that.
 5 We -- my stewards and I had a discussion amongst
 6 ourselves. We tried to figure out, okay, put yourself in
 7 Brian Smith's position. He's leaving the university real soon.
 8 Their thought, my union steward's, was he's just going to
 9 rubber stamp this thing, this letter of reprimand, and he's not
 10 going to do anything. He doesn't want to rock the boat before
 11 he leaves.
 12 My feeling, being the optimist, was, you know what, he's
 13 going to do the right thing, and that way he can do it and he
 14 won't have any flack from his friends. He can say, no, this is
 15 not a good letter, and he leaves, and nobody can give him any
 16 gruff. Because I thought we put on a really good presentation.
 17 So to -- to -- we also wanted to be able to tell him more
 18 about what was going on in the department.
 19 At that point --
 20 Q. Now, explain your strategy that you and the union folks
 21 had been operating on in terms of divulging things within the
 22 department and outside the department.
 23 A. Right. Prior to that I had told my union steward over and
 24 over again that I wanted to keep things in-house, within the
 25 department, because I knew and I had seen from experience you

1 don't want to be a complainer in law enforcement. As soon as
 2 you're a complainer, it's hard to get hired elsewhere, et
 3 cetera.
 4 So I wanted to keep things in-house, and I thought that
 5 Carolyn McDermid didn't know what was really going on and she
 6 could help me. I was wrong about that.
 7 So at this point we're like, okay, we need -- we need to
 8 tell somebody outside of the department now. It's -- this is
 9 our -- this is our opportunity to be able to do that. And the
 10 stuff we want to tell them has nothing to do with the grievance
 11 of the letter of reprimand. This is about -- this is about all
 12 the bad acts. This is about the bowl of dicks list. This is
 13 about the gross waste of funds for sitting around for hours
 14 talking about the bowl of dicks list and for watching the
 15 videos. This is for, you know, overcharging students and
 16 problems within the department.
 17 So Lois Yoshishige is able to set up a private meeting
 18 with Brian Smith.
 19 Q. What is the date of that meeting?
 20 A. This is October the 2nd.
 21 Q. Okay. So what did you tell Mr. Smith?
 22 A. I told him everything. Obviously, you know, everything --
 23 I told him everything at this point because I didn't feel
 24 comfortable doing that at the step two meeting because there
 25 was U of O PD officials there. Lay it all out on the line.

1 One thing I submitted was a letter written by current,
 2 still current, Officer Royce Myers about the problems that --
 3 MS. COIT: Object. Hearsay.
 4 THE COURT: Counsel?
 5 MR. JASON KAFOURY: I think it goes to Brian Smith's
 6 state of mind and then his next actions.
 7 MS. COIT: Object. Relevance. He's not a defendant.
 8 THE COURT: Well, I think -- but it's the process.
 9 MR. JASON KAFOURY: The process, yeah.
 10 THE COURT: Overruled.
 11 BY MR. JASON KAFOURY: (Continuing)
 12 Q. So what did you --
 13 A. So I turned in a written statement by another officer
 14 complaining about the issues surrounding Scott Cameron.
 15 Q. Okay. Is that the four pages of documents that
 16 Royce Myers wrote about Sergeant Cameron questioning his
 17 honesty?
 18 A. Yes. Yes. Correct. I turned that in, explained the --
 19 the whole -- the background, the Taser speeches.
 20 Q. Did you get into the political things that were going on?
 21 A. Yes. Got into the political stuff. You know, that was in
 22 the context of the bowl of dicks list and how political that
 23 was, and we also -- and we submitted redacted interviews of
 24 some of the other officers that the union had interviewed
 25 backing my claims about the -- about the politics being

1 discussed too much at work, about how I was being retaliated
 2 against. You know, disparate treatment. These other officers
 3 said, you know, they had done X or they knew people who had
 4 done X. I did X, and I'm the only one that gets in trouble.
 5 That kind of documentation.
 6 Q. So you lay it all out for Brian Smith about what's really
 7 going on. How does he react?
 8 A. He's also former FBI, strangely enough. I think he did it
 9 for a while and then got into administrating schools, so he's a
 10 little -- he also guides his -- guards his emotions and
 11 feelings, so it's kind of hard to tell, but he seemed
 12 interested. He was, you know, definitely taking notes, and it
 13 seemed like if anyone could do anything about not -- not only
 14 my situation, but fixing the department as a whole, it could
 15 be -- it could be Brian Smith, or he would know where to
 16 forward that information so it's -- so that something could be
 17 done.
 18 Q. Now, does Brian Smith report at this point directly to the
 19 president of the University of Oregon?
 20 A. He reports, I think, to Jamie Moffitt, who then reports to
 21 the president. That's the best we could get. We couldn't get
 22 anywhere with Jamie Moffitt.
 23 Q. So what happens next in relation to Brian Smith and his --
 24 well, what happens next for you? We're on October 2nd here.
 25 You just met with Brian Smith.

1 A. Oh, like two days later I -- my union stewards are proved
 2 right. I get a rubber stamp on the letter of reprimand. It
 3 doesn't even discuss the -- like the evidence we had brought
 4 up. It just basically said this letter sounds great and covers
 5 all the bases and does not even address, like, the views, line
 6 of sight, and everything we worked so hard on to try to
 7 present.
 8 Q. So how did you find out that your paid administrative
 9 leave was heading towards termination?
 10 A. Oh, I -- at some point I get a predismissal letter around
 11 about the 10th or the 12th. October 12th, something like that.
 12 Q. Tell us about the meeting you had with Linda King. First
 13 of all, who's Linda King?
 14 A. Linda King is the head of HR, and she's the one who
 15 will -- technically, I believe, does the firing. Chief Carolyn
 16 McDermid will recommend the firing, but it's officially done by
 17 HR. So you get this last chance kind of "beg for your job"
 18 meeting at the predismissal meeting.
 19 Q. Did you -- did you -- what did you tell Linda King at that
 20 predismissal hearing?
 21 A. Same -- same stuff. Addressed all the substantive
 22 matters, tried to prove that certain -- certain things were
 23 wrong, tried -- I showed her the charts that Lebrecht couldn't
 24 have had those trainings at the times that he said, you know,
 25 they occurred. Showed her the pictures and the photos from

1 Spencer View, that you could see other vehicles, and then got
 2 into a lot of the dirty laundry, too, to show why they would
 3 want to be retaliating against me.
 4 Q. What was her demeanor in that meeting?
 5 A. She's -- she's been in HR for 35 years.
 6 Q. She's heard it all?
 7 A. Yes.
 8 Q. So what -- when are you terminated?
 9 A. I'm terminated October 26, 2012.
 10 Q. What are the official reasons you were given why you were
 11 being terminated?
 12 A. Official reasons? The three problematic callouts, the
 13 Spencer View letter of reprimand, the part of Mike Morrow's
 14 investigation where he said I made the illegal stop of the
 15 dean, and I -- I think they mention that I had previously
 16 received a letter of clarification. I don't think it's
 17 actually in there, but it just says I received a previous
 18 letter of clarification.
 19 Q. Nothing in your termination about all the videos Lebrecht
 20 watched in that investigation; right?
 21 A. Right.
 22 Q. Nothing about the loaded-gun incident or anything in
 23 relation to your documents for your termination; right?
 24 A. That's correct.
 25 Q. No formal citizen complaints ever came about any of your

1 actions related to anything in your termination, did they?
 2 A. That's correct.
 3 Q. In fact, no formal citizen complaints about your behavior
 4 were ever documented throughout this, were they?
 5 A. That's correct. To my knowledge, I had zero.
 6 Q. I want to just talk for a couple of seconds about
 7 disparate treatment. Can you tell us about some really big
 8 officer safety issues that you were around for that had no
 9 investigation or discipline?
 10 A. Oh, I think a number of officers had issues. One officer
 11 had -- I don't think I'm exaggerating here -- something like 10
 12 car accidents. Some of those were fender-benders, but some of
 13 them were -- hurt people. People went to the hospital. That
 14 was just one officer. Another one --
 15 Q. How about Sergeant Clark Hansen?
 16 A. Sergeant Clark Hansen did allow a suspect that was
 17 handcuffed to run off into the river and nearly drowned because
 18 Sergeant Hansen was talking on his personal cell phone, turned
 19 around, didn't notice the guy ran off into the river, and they
 20 had to call the county to get a boat out there.
 21 MS. COIT: Your Honor, I'll object to the foundation
 22 for these.
 23 THE COURT: Sustained.
 24 BY MR. JASON KAFOURY: (Continuing)
 25 Q. How do you know about these incidents?

1 A. Oh, people showed the case reports and pictures and
 2 that's -- everyone talked about these things.
 3 Q. You actually saw the case reports for these?
 4 A. I've seen case reports. I've seen the DORs or the daily
 5 -- daily reports for people who are on FTEP in their training
 6 periods and committed certain things like falling asleep in the
 7 car while it's running.
 8 Q. Who fell asleep in the car?
 9 A. Eric LeRoy.
 10 Q. You were disciplined for allowing someone to make a cell
 11 phone call back during the javelin incident. Anybody else
 12 allow something like that to happen?
 13 A. Yes.
 14 Q. Tell us about it.
 15 A. A couple of officers allowed a suspect who -- there was an
 16 ATL, attempt to locate, issued by Eugene Police Department
 17 because he was wanted in connection with a shooting at Dutch
 18 Brothers, and that person was allowed to make a phone call.
 19 MS. COIT: Object to foundation.
 20 THE COURT: Sustained.
 21 BY MR. JASON KAFOURY: (Continuing)
 22 Q. Have you read any of the underlying documents about that
 23 incident?
 24 A. About that incident? No.
 25 Q. Let's quickly go through the grievance process. Tell us

1 about the step three hearing with Ryan Hagemann.
 2 A. So the step three hearing with Ryan Hagemann --
 3 Ryan Hagemann was an attorney that worked for the Oregon
 4 University System, which is -- used to oversee all of the
 5 universities in Oregon. Now the U of O is not part of it.
 6 So this was a step three hearing. And, again, we spent a
 7 long time making these presentations, optimistic again that,
 8 you know, somebody not only outside of the department, but also
 9 outside of the university, will give us a fair shot and listen
 10 to our evidence, and -- and make a good decision.
 11 Q. What happens after that hearing?
 12 A. He never gets to write an opinion.
 13 Q. Do you ever see the notes he took?
 14 A. No.
 15 MR. JASON KAFOURY: Your Honor, it is 3:15. I think
 16 we may want to take a brief break.
 17 THE COURT: I'll remind you not to discuss this
 18 matter amongst yourselves or form or express any opinion. I'm
 19 giving counsel the right to call recesses, so it doesn't
 20 interrupt the direct. Come back in 20 minutes. Have a good
 21 recess.
 22 (Jury not present.)
 23 THE COURT: Okay. Counsel, do you need me for any
 24 reason?
 25 MR. JASON KAFOURY: No.

1 THE COURT: Counsel?

2 MS. COIT: Maybe just a scheduling issue we can bring

3 up right now. So it sounds, if I was overhearing correctly, it

4 sounds like there's 40 minutes or more left.

5 MR. JASON KAFOURY: 30 probably. I've got to go

6 through all the *Brady* stuff.

7 MS. COIT: I have a witness here. My cross-exam is

8 going to be at least three to four hours.

9 THE COURT: Why don't you start your

10 cross-examination tomorrow, then, and if you have a witness who

11 you two have agreed to, with an explanation to the jury, you

12 can put that person on the stand, or is that --

13 MS. COIT: It's -- it's --

14 THE COURT: Unless you two agree -- why don't you two

15 have that conversation.

16 MS. COIT: I think we already did. He's agreed to

17 let me call Brian Caufield -- this was the only day he was

18 available -- out of order.

19 THE COURT: Is that helpful?

20 MR. JASON KAFOURY: It is helpful.

21 THE COURT: But not interrupting your client on

22 direct examination.

23 MS. COIT: No.

24 THE COURT: In other words, this is going to go

25 through blocks of time. If you both agree, Brian Caufield can

1 be called today, and I think he was put on notice for today --

2 MS. COIT: Yes.

3 THE COURT: -- then you have my permission to call

4 him. But under no circumstances do you interrupt the direct

5 examination. Okay?

6 MR. JASON KAFOURY: That's fair.

7 THE COURT: Okay. As long as that's fair for the

8 both of you, you finish your direct examination of

9 Mr. Cleavenger in a block of time, and Brian Caufield will be

10 called this evening sometime and the cross will resume

11 tomorrow. Is that my understanding?

12 MR. JASON KAFOURY: Correct.

13 THE COURT: Just a moment. All the nice rules don't

14 mean a thing unless it's fair. So is that fair?

15 MR. JASON KAFOURY: I believe that is fair.

16 THE COURT: No, not a belief. Are you objecting to

17 it?

18 MR. JASON KAFOURY: I'm not objecting to it.

19 THE COURT: Counsel, is that fair?

20 MS. COIT: Yes.

21 THE COURT: Why don't you go have a recess.

22 MR. JASON KAFOURY: How late can we go today?

23 THE COURT: How late would you like to go?

24 MR. JASON KAFOURY: Like I said, I have maybe 30 or

25 40 minutes max, and then I will be done with this witness.

1 Sounds like she has hours of cross, so I'm thinking maybe we

2 should do Caufield and let her begin the cross.

3 THE COURT: Now, that's up to you to negotiate. My

4 standard rule is I'm not going to interfere in a block of

5 testimony. But if you two stipulate, I'm happy to abide by

6 your stipulation. But I'm not going to cause you to interrupt.

7 That's your choice. I want you to present your case in a

8 timely fashion and counsel to begin her cross-examination in

9 her time. So now we're just wasting time. Okay.

10 (Recess taken.)

11 (Jury present.)

12 THE COURT: Jury is present. Thank you for your

13 courtesy. Mr. Cleavenger, you can retake the stand. Counsel

14 are present and parties.

15 Counsel, continue with your direct examination.

16 MR. JASON KAFOURY: Thank you, Your Honor.

17 BY MR. JASON KAFOURY: (Continuing)

18 Q. We left off with Ryan Hagemann, step three hearing.

19 Roughly, how many months post-termination was that hearing?

20 A. That, I'm not sure of, but it was definitely

21 post-termination.

22 Q. Okay. Let's talk about -- so no decision was ever issued

23 by Ryan Hagemann from that step three hearing; correct?

24 A. Correct. We kept asking for one to be written, but it was

25 never written.

1 Q. Can you generally tell the jury how was the Department of

2 Public Safety and HR to work with on trying to get documents in

3 discovery as part of the grievance process?

4 A. It was like pulling teeth. We would make requests, and

5 they would either be nonresponsive or refuse, redact, or

6 charge.

7 Towards the end, they relied on charging really exorbitant

8 fees that were impossible for the union to pay, so there were a

9 lot of documents that we didn't get to see through the union

10 that we -- I only got to see after this lawsuit was filed.

11 Q. Let's talk about the step three hearing with

12 Brian Caufield. Tell us how that got set up.

13 THE COURT: You dropped your choice. With who?

14 MR. JASON KAFOURY: Brian. Sorry. Brian Caufield.

15 THE COURT: Is that microphone working? Maybe not.

16 Let's make sure.

17 MR. JASON KAFOURY: I've got a pretty loud voice.

18 THE COURT: That's fine.

19 MR. JASON KAFOURY: That looks --

20 THE COURT: There we go. That way we're not

21 struggling.

22 MR. JASON KAFOURY: Hello? Okay.

23 THE COURT: Now, hearing with?

24 MR. JASON KAFOURY: Brian Caufield. I am getting an

25 echo. Is it because there's two of these devices on at the

1 same time?

2 THE COURT: Let's make sure that that's appropriate,

3 and we'll get rid of that hum so it's not distracting.

4 MR. JASON KAFOURY: Okay.

5 THE COURT: Okay.

6 MR. JASON KAFOURY: All right. Let's continue.

7 BY MR. JASON KAFOURY: (Continuing)

8 Q. Mr. Cleavenger, tell us about how the step three -- the

9 second step three hearing with Brian Caufield was set up.

10 A. So the second step three hearing, and this was going to be

11 over the letter of reprimand and the termination, because

12 termination grievance hearings go straight to step 3, was going

13 to be held by Brian Caufield, who had stepped in at some point

14 and taken over from Ryan Hagemann.

15 And Brian Caufield emailed the union and said that

16 Ryan Hagemann's opinion that we had asked to have written and

17 given to us was being held in abeyance indefinitely, until he,

18 Brian Caufield, could have this new step three meeting.

19 Q. Okay. Tell us about what happened when you got there for

20 the step three hearing.

21 A. So we again set up some witnesses, and stuff, to come in,

22 had a bunch -- presentation ready. Lots of documents. Came

23 into the meeting. Caufield walked in, and I'm paraphrasing,

24 but he basically said, "Okay, I've looked at all the evidence

25 from the U of O, and this is a mountain of evidence. Totally

1 insurmountable. You're never going to win here. You're never

2 going to win at arbitration. I have years of experience in

3 arbitration. I can tell you're never going to win. So the

4 best you can do is -- the best I can offer you is you should

5 resign in lieu of termination, and that will -- that's the best

6 you can ever do."

7 Q. What's going through your mind when you walk in to have a

8 hearing and that's the first thing you hear?

9 A. Yeah, my thought was I thought this was supposed to be a

10 hearing. I thought we were going to be able to present our

11 case and our evidence, but that's what we were hit with right

12 off the bat.

13 Q. What did you do next?

14 A. Well, he then said, okay, if you want to proceed, you

15 know, even though it's going to be impossible, what I need you

16 to do is give you all of your evidence and notes. This

17 included all our exhibits. Basically he wanted everything on

18 the table that we had ready to go. Stuff that was going to be

19 exhibits, notes, everything. He wanted it all to him right

20 then and there so he could review it. We're talking about

21 hundreds of documents. And if we didn't do that, then we

22 couldn't present him any evidence because he wouldn't look at

23 any evidence. So that's the ultimatum he gave us.

24 Q. What did you guys do?

25 A. Well, we had a meeting with myself, my new steward,

1 John Ahlen, who testified via video from Eugene, and my -- the

2 SEIU's member resource official, Sean Brailey. So we talked

3 and we decided, well, we've prepared for this. Why don't we

4 just go ahead and present, and then we'll just -- we'll leave

5 the evidence on the table, you know, as we're discussing the

6 exhibits, kind of like this, and if he wants to pick them up

7 when he leaves, he can, and, if not, then he doesn't have to.

8 He can just leave them here. But let's at least present them.

9 Witnesses, you know, wanted to come and say things, and

10 that's -- that's what we decided to do.

11 Q. So what happened when you went back in?

12 A. So we came back in, told him this, and he said, "Nope.

13 I've changed my mind. This is -- this is my hearing, and

14 you -- you've either got to give it all to me now or we're not

15 having this meeting." There was none of this I just won't take

16 the evidence. It's "We won't have it."

17 And then he hung up the phone on Sean Brailey at least

18 twice. I can't remember. At least twice. Because Brailey was

19 trying to say, "Wait a second. This isn't your hearing. This

20 is supposed to be a mutually agreed-upon process, and we've

21 never heard of this happening before.

22 I previously had a step three hearing where we presented

23 the evidence like this, and if he wanted to have some kind of

24 strange ground rule like that, just tell us ahead of time, or

25 we can set up another meeting, and we'll play it by whatever

1 rules he wants to impose.

2 So twice he hung up on Sean Brailey, and I -- I really

3 didn't find anything in his behavior -- from Brailey's behavior

4 to be rude. He wasn't screaming or anything. It was just this

5 was Caufield's hearing and it was his domain, and he just

6 didn't care. He kept hanging up.

7 And so eventually we decided that this obviously isn't --

8 this isn't feasible at this time. So we left and then

9 immediately sent emails requesting to have a new step three

10 hearing, and then the union attorney asked us, myself and

11 John Ahlen, to immediately write down what happened in that

12 meeting because the behavior by Caufield was shocking to the

13 union side.

14 Q. So you guys write down -- did Caufield give you a chance

15 for a real meeting?

16 A. No. In fact, within -- within a very short period of

17 time -- I want to say it was less than an hour -- he already

18 had an opinion written denying the step three termination and

19 also denying the step three -- on the letter of reprimand that

20 he didn't even hear -- that Hagemann had heard -- but he

21 supposedly had read the notes from just a blanket denial and

22 saying that we, the union, had abandoned the meeting, which was

23 not our account of the story at all.

24 Q. So you have your step three hearing. Walk us through

25 how -- you know, very briefly how the grievance process worked

1 to go to the arbitration -- to do an arbitration.
 2 A. So to go to arbitration, you have to go before -- well,
 3 first you send notice to the other side, to the U of O, and
 4 then you have to go through a panel of members from different
 5 universities that are all part of the union and you present
 6 kind of a mini case to them. You present them with a bunch of
 7 documents before that they can read over, and they vote,
 8 basically, to decide if the case is worthy to proceed to
 9 arbitration, because, you know, it costs money, and stuff, for
 10 the union, and we got a unanimous vote on that to proceed to
 11 arbitration.
 12 Q. Okay. At what point did defense counsel get involved with
 13 this proceeding?
 14 A. At some point prior to arbitration, the U of O hired --
 15 hired a law firm to handle the arbitration.
 16 Q. That's the same law firm that's defending this case today;
 17 right?
 18 A. Same law firm. Same attorney. Ms. Coit.
 19 Q. So tell us what were you able to present in terms of
 20 evidence at the arbitration to defend yourself?
 21 A. I was able to -- to -- I think we put in 16 exhibits
 22 from -- from the union side on that. It was a limited -- the
 23 arbitration was for limited matters.
 24 Q. Okay. Did you feel like you got to present to the
 25 arbitrator as much information as you would have liked?

1 A. Definitely not. I had prepared three exhibit books that
 2 had well over 150 documents. I had them labeled. Three
 3 copies. I wanted to present a lot more evidence.
 4 Q. Now, this arbitration, how many days did it last?
 5 A. Three days.
 6 Q. Were the individual defendants, were they present during
 7 the arbitration?
 8 A. Yes. Chief McDermid was there every day, as I recall.
 9 And Lieutenant Lebrecht testified. Scott Cameron testified.
 10 And they brought in -- Lieutenant Bechdolt testified. They had
 11 a number of witnesses that testified.
 12 Q. So, roughly, what were the dates for the arbitration? Do
 13 you recall?
 14 A. November -- I want to say late November, December 2013.
 15 There were two dates in November and one date in December, if I
 16 recall correctly.
 17 Q. Three days of arbitration, and this is over a couple
 18 different weeks. When did you file this lawsuit?
 19 A. On October 25, 2013.
 20 THE COURT: 2000 what?
 21 THE WITNESS: 2013.
 22 THE COURT: Thank you.
 23 BY MR. JASON KAFOURY: (Continuing)
 24 Q. Now, tell the jurors what all did you include about your
 25 situation in your lawsuit.

1 A. Everything. It was -- the complaint was lengthy. I had
 2 never written my own complaint before. I've read them,
 3 obviously, in my current job; but I put everything out there
 4 because I obviously had been taking notes and this has been
 5 consuming my life for quite a while, so I had a lot of notes, a
 6 lot of things I wanted to say, and a lot of things that
 7 happened. I had gone through a lot of these grievance hearings
 8 with nothing happening.
 9 So all the allegations were -- were in the complaint
 10 including, you know, all the -- all the matters of public
 11 concern, such as the bowl of dicks, the violations of state
 12 law, violations of federal law in -- involving the Clery Act,
 13 which I think probably I can explain later.
 14 But basically everything was in the lawsuit, and it was --
 15 it named names. It named dates. It named times. It named
 16 specifics of who was retaliating against me and why; why I
 17 believed that was happening.
 18 Q. Okay. So when does the arbitration decision come out?
 19 A. I believe it comes out in February 2014.
 20 Q. Now, on Friday we showed Exhibit 168, which is the email
 21 chain between McDermid and her command staff when they received
 22 the arbitration decision. Do you remember that?
 23 A. Yes, I do.
 24 THE COURT: What exhibit number, again, Counsel?
 25 MR. JASON KAFOURY: That is 168.

1 THE COURT: Thank you.
 2 MR. JASON KAFOURY: Now, can we bring 168 up,
 3 Mr. Hess? Can we blow up, starting with McDermid's email,
 4 at -- no, we've seen that one. That's at 11:35.
 5 The email from Lieutenant Bechdolt at 11:39.
 6 BY MR. JASON KAFOURY: (Continuing)
 7 Q. So McDermid sends the email with the decision --
 8 MS. COIT: Your Honor, I object to the relevance and
 9 foundation with this witness. He has no knowledge of -- of
 10 this.
 11 THE COURT: Can I see 168, Counsel? In the morass of
 12 materials, I just don't have it.
 13 Thank you very much. I appreciate it, Christy.
 14 Counsel, I don't know what the question would be, but it
 15 can't be a comment by this witness about this document unless
 16 he's on the chain.
 17 MR. JASON KAFOURY: Well, I would like to discuss the
 18 recent information we received this weekend in relation to this
 19 chain that we did not have until this weekend.
 20 THE COURT: Well, why don't we take that up out of
 21 the presence of the jurors. I don't know if that's appropriate
 22 or not. You each have claims on both sides.
 23 MR. JASON KAFOURY: Okay. I will hold off for now.
 24 BY MR. JASON KAFOURY: (Continuing)
 25 Q. Okay. So let's talk about -- you get reinstated as part

1 of the arbitrator's decision; correct?

2 A. Correct.

3 Q. Over the coming months, can you sort of summarize for the

4 jury the back and forth that was going on between you and the

5 department about returning?

6 A. Okay. So I'm ordered reinstated with backpay. So now I

7 basically have to decide whether or not I actually want to come

8 back and what those conditions are going to be like.

9 So negotiations start, and they last, unfortunately, a

10 long time. Many months.

11 I remember one of the first responses I received from

12 defense was an email saying that if I actually asked for

13 reinstatement that they would appeal to block it. They would

14 appeal it to -- I think it goes up to the Bureau of Labor and

15 Industries or some state agency. I'm not quite sure.

16 Basically, they said if I actually wanted to come back, they

17 would appeal to block it.

18 Q. What was going through your mind during this time?

19 A. Well, I was conflicted about it because on the one hand it

20 kind of opened the door to get back into law enforcement and

21 clear my name; on the other hand, I would be possibly back in

22 the fire. So I was conflicted for a while and I wanted to find

23 out what it would look like if I did go back. So the attorney

24 for the union, you know, started asking questions insofar as,

25 "What's going to happen when he comes back?" They suggested it

1 was going to be some kind of retraining program or special

2 duties, special status, which kind of raised red flags for me

3 because that didn't sound like a full reinstatement, so I let

4 the attorneys go back and forth for a while there.

5 Q. At a certain point did you reach a tentative agreement

6 about what was -- what was going to happen?

7 A. Yeah. So let me back up just a step. Red flags are

8 raised. I'm thinking, okay, I'm probably not going to get a

9 fair shot if I come back. Plus, the public safety officer

10 positions are going to disappear soon, and it's just going to

11 be police officers, and they kind of made it apparent that I

12 wasn't going to be considered for one of those positions, so it

13 seemed fruitless. So I decided, okay, we'll just try to work

14 out a deal where in exchange for, you know, like a neutral

15 letter of recommendation sort of thing, I will give up those

16 reinstatement rights and then of course be awarded the backpay

17 money that they already owed me anyway, and then we could move

18 forward.

19 Q. What was discussed in relation to all of your thought --

20 your personnel files and your disciplinary files?

21 A. Well, that was a major part of the agreement. The

22 original agreement was that all of my HR files, personnel

23 files, disciplinary files would all be sealed and put into a

24 special file that would only be used if there was a court

25 order, such as this lawsuit or something like that. That would

1 be the only way they would be released.

2 So that was the agreement that was set and ready to go.

3 The specifics are in the contract itself, and eventually that's

4 what we had agreed upon. I agreed to resign as of the date I

5 started my current job with the court. They were going to pay

6 backpay up until that day that I started. All my documents

7 were to be sealed and not -- not released.

8 Q. Okay.

9 A. That's my understanding.

10 Q. Okay. I'd like to show you Plaintiff's Exhibit 155. Can

11 you identify what that is?

12 A. Exhibit 155 is an email between me and defense counsel

13 Andrea Coit and Marc Stefan, the union attorney. These were

14 all dated July 23, the first page.

15 MR. JASON KAFOURY: Your Honor, I would like to

16 publish the bottom of 155.

17 THE COURT: Just a minute.

18 MR. JASON KAFOURY: On page 1.

19 THE COURT: Counsel, I said just a minute. So this

20 would show the culmination -- the culmination of agreement on

21 page 1?

22 MR. JASON KAFOURY: Yes.

23 THE COURT: Any objection, Counsel?

24 MS. COIT: No.

25 THE COURT: You may do so.

1 MR. JASON KAFOURY: Please blow up the email on the

2 bottom of that exhibit.

3 BY MR. JASON KAFOURY: (Continuing)

4 Q. So Wednesday, July 23, 2014. From Ms. Coit to you. "I

5 have this signed original letter of reference for you. I do

6 not yet have the check, as I am waiting to see if we needed to

7 add another month of interest. I will find out today. Then I

8 will have the check and let you know. We can set a date to

9 sign and exchange documents then."

10 So this is sent 1900, so 7:00 at night on Wednesday,

11 July 23rd.

12 So what was the status of the settlement agreement at this

13 point, in your mind?

14 A. We were ready to sign.

15 Q. And what were you agreeing in exchange for resigning?

16 A. That all -- that I would receive a neutral letter of

17 reference that I could use to give employers that I could

18 hopefully get hired elsewhere and that all my personnel files

19 would be -- would be sealed at the U of O and be confidential.

20 Q. At this moment, Wednesday, July 23rd, did you know

21 anything about *Brady* listing?

22 A. I had no idea.

23 Q. I'd like to show you Plaintiff's 211. What is that

24 document?

25 A. These are emails between myself, Defense Counsel Andrea

1 Coit, one of the partners in her law firm, Jens Schmidt is
 2 cc'd, as is Marc Stefan, the union lawyer, is also cc'd.
 3 Q. Okay. Do these emails relate to the first time you are
 4 disclosed that you have been *Brady*-listed?
 5 A. Yes. I believe on page 3, which is the email dated 24th,
 6 so the day after.
 7 MR. JASON KAFOURY: I'd offer Exhibit 211, Your
 8 Honor.
 9 THE COURT: Just a minute. The day after?
 10 THE WITNESS: The day after the emails we just talked
 11 about in Exhibit 155 where the settlement agreement is ready to
 12 go forward.
 13 THE COURT: And, Counsel, I'm sorry. You --
 14 MR. JASON KAFOURY: I'd like to offer 211.
 15 THE COURT: Any objection?
 16 MS. COIT: No.
 17 THE COURT: Received.
 18 MR. JASON KAFOURY: Permission to publish page 3 of
 19 that email.
 20 THE COURT: You may.
 21 BY MR. JASON KAFOURY: (Continuing)
 22 Q. Is this email -- I believe the page before that shows it
 23 came from Ms. Coit. Is this email on Thursday, July 24th, at
 24 11:00 at night, is this the first notice that you had of
 25 anything about *Brady* materials?

1 A. Yes. This is the first time I'm told.
 2 MR. JASON KAFOURY: Can we go to the substance of the
 3 email, Mr. Hess.
 4 BY MR. JASON KAFOURY: (Continuing)
 5 Q. "I just recently learned that on June 17, 2014, the
 6 University of Oregon PD provided the Lane County District
 7 Attorney's Office some of the documents that are within the
 8 scope of paragraph 3B of the proposed settlement agreement.
 9 This disclosure to the district attorney was done pursuant to
 10 UOPD's obligations under *Brady v. Maryland* while the terms of
 11 the proposed settlement agreement were not in effect when the
 12 information was given to the district attorney. I believe you
 13 both should be aware of this disclosure prior to entering into
 14 the settlement agreement."
 15 Mr. Cleavenger, what went through your mind when you read
 16 this email?
 17 A. I was completely and utterly shocked. I had no idea what
 18 could possibly be *Bradyable* -- to make up a word. I couldn't
 19 think of anything. Especially after having received the
 20 arbitrator's decision because the arbitrator's decision said I
 21 did not lie.
 22 So now receiving this email, right after we were ready to
 23 sign the settlement agreement, I -- it just blew me away, but I
 24 was under the impression, based on Ms. Coit's email, that she
 25 also just recently learned about this and she didn't -- she

1 didn't know about it because this is happening more than a
 2 month before, and she says, "I just recently learned that on
 3 June 17th this had happened." Now we're at July 24th.
 4 Q. I'd like to show you Plaintiff's Exhibit 230. Without
 5 getting into contents, what is this document?
 6 A. This is an email dated July 11, 2014. It -- it's from
 7 Carolyn McDermed. The subject is called Brady Work Group,
 8 updated and corrected final.
 9 MS. COIT: Your Honor, I object to this witness
 10 testifying to this document. Foundation. Relevance.
 11 MR. JASON KAFOURY: Your Honor, it goes to his
 12 damages, I think, at this point.
 13 THE COURT: Counsel, it depends upon when he got
 14 this. Otherwise, it's argument. In other words, was he the
 15 recipient of that on or about the time of July 24th? What went
 16 through his mind? And if this was a part of that process, I'm
 17 going to overrule the objection. If this is not, this is
 18 argument. That's for you to make during your closing.
 19 BY MR. JASON KAFOURY: (Continuing)
 20 Q. Do you know when you first saw this document,
 21 Mr. Cleavenger?
 22 A. It was pretty recently.
 23 MR. JASON KAFOURY: Okay. Your Honor, I think it
 24 goes to his damages and punitive damages, his reaction to this
 25 document.

1 THE COURT: It's relevant. The question is if he's
 2 the person to testify to it. Other people can testify about
 3 how he was armed emotion ally or what other processes he had,
 4 but you're not giving me enough information about what
 5 "recently" means. I don't know if it's a year ago recently.
 6 And if it's recently, then I don't see how it pertains to
 7 damages. If they're emotional damages that occurred in 2014 or
 8 even 2015, so be it; but I don't have enough information, so
 9 I'm going to sustain the objection.
 10 MR. JASON KAFOURY: Can we have a brief sidebar on
 11 this, Your Honor?
 12 THE COURT: No.
 13 BY MR. JASON KAFOURY: (Continuing)
 14 Q. Do you have a rough sense of when you first got that
 15 document?
 16 A. The first time I saw it was relatively recently, within --
 17 within -- I can't be sure. It's within the last couple of
 18 weeks. I just can't remember.
 19 THE COURT: Counsel, you're not precluded from
 20 arguing --
 21 MR. JASON KAFOURY: I understand.
 22 THE COURT: -- this. You're not precluded from
 23 questioning Chief McDermed about it.
 24 MR. JASON KAFOURY: Right.
 25 THE COURT: But having received this so recently, I

1 don't see how this ties to damages. You may argue bad faith,
2 you may argue a number of other things eventually in arguing
3 why punitives can be given, but as far as this witness being
4 the conveyor of that information, I think the objection should
5 be sustained.

6 MR. JASON KAFOURY: Okay.

7 BY MR. JASON KAFOURY: (Continuing)

8 Q. So let's talk about what you've done once you -- what did
9 you do? Well, first, when did you first realize what the
10 allegations in the *Brady* materials were against you?

11 A. Well, it took me a while to figure out what they were
12 because I was never notified that anything was being sent to
13 the DA's office for *Brady* materials. So when I received this
14 notification from Ms. Coit on July 24th, I, of course,
15 immediately responded and asked to be able to see it, and she
16 responded. And, eventually, after a few days, I believe we set
17 up a time where I could come look at what was submitted with
18 these *Brady* materials.

19 Q. So I'd like to go through some of the allegations of
20 dishonesty that are -- that are in Lieutenant Lebrecht's
21 summation of the materials. First, he alleges you were
22 dishonest when you made the statement that you generally
23 advised people you're recording them.

24 Can you give a little more context for the jurors about
25 that?

1 A. That would probably -- that would take a long time. I
2 would have to discuss --

3 Q. Well --

4 A. It was in context to -- to the recording law and my
5 misunderstanding of the recording law. However, I did know,
6 through word of mouth, that it was a good idea to tell people
7 because I was working off of the Junction City policies to
8 follow the law. So my understanding was it was a good idea
9 because an investigation might turn into investigating a
10 criminal matter versus a violation or just helping somebody who
11 crashed their bike or whatever, because my understanding is if
12 you're just helping somebody who crashed their bike, you didn't
13 need to tell them you were recording them because that's never
14 going to be used as evidence against them in court. You're not
15 investigating a crime.

16 Q. The second allegation, you were untruthful when you stated
17 that JC -- that Junction City only had one vehicle with an
18 operational dash cam.

19 A. Right. That's -- that was a true statement, and I believe
20 that the three Junction City guys who at the time were the
21 acting chief, the acting sergeant, and my FTO, in the response,
22 made that pretty clear. It's true. There was only one car
23 that was available for me to use. That was Corey Mertz's car,
24 and it was -- that system was broken.

25 The other cameras -- they talked about one being in the K9

1 vehicle, which was Sergeant Chuck Salsbury's car, that
2 constantly smelled like dog, and he had to have his stuff in
3 the front seat because the dog would take up the whole back.
4 No, I didn't want to sit in the back with the dog or whatever
5 idea they had.

6 Q. Third category of untruthfulness in Lieutenant Lebrecht's
7 *Brady* materials.

8 MS. COIT: Your Honor, I just want to object to how
9 counsel is testifying as to what the document is categorizing
10 without putting the document up first to look at.

11 THE COURT: Well, Counsel, your question?

12 MR. JASON KAFOURY: I'm just trying to generally
13 summarize some of the allegations.

14 THE COURT: I didn't hear the question. Just repeat
15 the question.

16 BY MR. JASON KAFOURY: (Continuing)

17 Q. The third category of untruthfulness is a statement that
18 Cleavenger made that Junction City doesn't usually make
19 recording of traffic stops or contacts at Junction City Police
20 Department.

21 A. I have zero recordings that I know of at Junction City PD.
22 We just didn't use those very much.

23 There were a couple officers that had their own take-home
24 vehicles, and they tinkered with them. They didn't use them
25 all the time either. But we, as reserves, never used them. So

1 there are zero, as far as I know.

2 Q. The second and third allegations of your dishonesty, those
3 both came from Chief Chase to Lieutenant Lebrecht; correct?
4 They both relate to Junction City?

5 A. That's correct, yeah.

6 Q. While we're on this topic, can you, as briefly as
7 possible, tell us your involvement with the Chief Chase
8 situation at Junction City?

9 A. Oh, so the Chief Chase situation, I kind of got drug into
10 it. Approximately over a year ago, a bunch of the officers and
11 dispatchers at Junction City got together and made a bunch of
12 complaints.

13 Q. This was after you're gone?

14 A. After I'm gone, yeah.

15 Q. After you're gone.

16 A. I left Junction City. I'm at Coburg. They made a bunch
17 of complaints against Chief Chase. They didn't trust his
18 leadership, and there were -- they all had different
19 allegations.

20 MS. COIT: Object. Hearsay.

21 THE COURT: Sustained.

22 BY MR. JASON KAFOURY: (Continuing)

23 Q. Okay. So what were you asked to do?

24 A. I was asked to submit a complaint that I had had against
25 Chief Chase for a long time when the gist of it is that he

1 changed my test scores, my written test scores, when I was in
 2 the hiring process with that agency. I got along with
 3 everybody at Junction City, with the exception of one person.
 4 The chief. Unfortunately, it had to be the chief I didn't get
 5 along with. And he didn't want to hire me, and my test scores
 6 were altered, so I submitted that. I was asked to submit that.
 7 I was asked to interview with the city manager at the
 8 time, so I gave her my statement, gave her my documents,
 9 because my former colleagues asked me to -- to participate, so
 10 I did.
 11 Q. And did -- did your statement play any role, if you know,
 12 in Chief Chase being put on administrative leave by Junction
 13 City?
 14 A. I have no idea what did and what didn't. I just know that
 15 he was on administrative leave for -- I can't remember what
 16 Officer Paterson said -- something like eight months, roughly.
 17 Whatever Officer Paterson said.
 18 Q. How do you know he changed your scores?
 19 A. Okay. Well, it's a longer story, but you asked for it.
 20 Q. The short version.
 21 A. Okay. So you take this written test score. It's basic,
 22 like, I would say 9th or 10th grade math, some reading
 23 comprehension, and stuff, to make sure you could write a
 24 report, you know, add up money, you know, kind of the basics,
 25 and I had taken this thing many times, so much so that I kind

1 of even remembered the answers when I would see it because I
 2 think it was three or four versions, same questions.
 3 So, on average, I was scoring somewhere between 97 and
 4 98 percent on this test each time. But when I got my scores
 5 back from Junction City, when I was in the application process
 6 with them, it was something like 93 percent. And I was kind of
 7 shocked by that because I had never gotten a score that low.
 8 And then I started looking into it further, and I saw my
 9 scores in each section when added together and averaged, which
 10 is what they always do, was actually, you know, 96.5 percent,
 11 rounded up to 97, or something like that.
 12 So I asked the chief to talk about it with me, and he
 13 refused to meet with me. He pushed me off to Brandy Smith, who
 14 was his administrative assistant. She got back to me saying,
 15 "Okay, well, the chief says the scores were done and averaged
 16 by the Oregon Chiefs of Police Association and then they sent
 17 them back to us, and we had nothing to do with it. If there's
 18 anything wrong, it's the Oregon Chiefs of Police Association."
 19 So I called them and they said, "No, actually, any
 20 averaging of scores would have been done by your agency. We
 21 did not do that." So that left one person that could have
 22 tinkered with the scores, and that was Mark Chase.
 23 And that was confirmed, when I talked to Brandy Smith,
 24 that he was the one that handled those scores, so that -- that
 25 was -- that was the gist of the main complaint, was that he

1 downgraded my scores a little bit so that --
 2 Q. Back in 2010, when you were initially hired?
 3 A. No, no. This was -- I was applying for full time at the
 4 time that -- basically, right after I had been terminated by
 5 U of O. It was part of that process.
 6 Q. The fourth category of your dishonesty, the signed
 7 statement you gave that you always act in good faith when
 8 working and never deliberately disregard instructions,
 9 policies, or other department procedures. And that was
 10 untruthful because you were written up for violating the
 11 grooming policies and using the department computers for
 12 personal use on numerous occasions.
 13 A. I know. And I'm sorry that logic is hard to follow. It's
 14 true I made a statement that I never intentionally broke any
 15 laws or policies at the department. Absolutely true. Made
 16 that statement. But then to say because I made that statement
 17 and now they can go and they did a search of my computer use,
 18 after I was gone, basically, but they went back and looked and
 19 said, "Oh, here's a couple of times he checked his email or
 20 bought some tickets to an event, or something, online, using
 21 the department computers, and he signed a computer use
 22 agreement. Therefore, he lied because he said he never
 23 intentionally broke any laws or policies."
 24 Of course, if you actually look at the computer use
 25 policy, there's an exception for limited use, limited personal

1 use, but they don't address that issue. It's --
 2 Q. But the fifth category of your dishonesty, sir, your
 3 statement that you could not see into the vehicle -- this is
 4 the dean stop -- when you first observed it is un-- untruthful
 5 because the video shows, quote, "It's difficult to imagine that
 6 anyone else in a similar circumstance could not see the
 7 driver."
 8 And they called you dishonest because the driver did not
 9 accelerate quickly as you claimed.
 10 A. Whether or not the driver accelerated quickly when she
 11 turned right, I think, is a matter of opinion. I think she did
 12 accelerate quickly, especially in what area of town because
 13 there's a lot of foot traffic.
 14 Insofar as the veiled racial profiling allegation, that
 15 one is below the belt, I think, more than -- more than the
 16 others, and, like I say, I would like -- the jury can decide
 17 for themselves, and they can watch the video over and over
 18 again. You can pause it right as it drives by, and I think you
 19 will conclude, as I did --
 20 MS. COIT: Object to the fanfare.
 21 THE COURT: Sustained.
 22 MR. JASON KAFOURY: Let the jury do their own job.
 23 THE WITNESS: Okay.
 24 BY MR. JASON KAFOURY: (Continuing)
 25 Q. There was also an allegation of dishonesty because you

1 were evasive or untruthful about when you activated your lights
 2 during the dean stop.
 3 Can you explain to us what that is about?
 4 A. Yes. So as I was being interviewed by Mike Morrow, he
 5 asked when I thought I turned on the lights, and I said I
 6 thought I turned on the lights right as I pulled up behind her,
 7 when, in fact, he was able to show me I turned them on, you
 8 know, just a couple of seconds prior to that and -- but, you
 9 know, it was, like, right as I was in the parking lot, but I
 10 hadn't come to a complete stop yet.
 11 At first I questioned that. I said, "Are you sure that's
 12 accurate that that matches up?" You know, kind of like today
 13 where you've got the sound different than the video. I was
 14 just -- I was just questioning, you know, is he sure. And he
 15 said, yes, he was sure. This was high-tech equipment, et
 16 cetera. And I said, "Okay. All right. Then I -- then I admit
 17 I probably turned on my lights a little -- a little too early.
 18 I didn't come to a complete stop yet."
 19 Q. Okay.
 20 A. I admitted that.
 21 Q. These last few, just quickly. You were untruthful about
 22 why you run record checks on everyone.
 23 Do you know what that relates to?
 24 A. Not really.
 25 Q. And you were untruthful when you stated that you had been

1 up for 35 hours before you met with Morrow. That was false?
 2 A. I was definitely up for 35 hours. I don't think that is a
 3 matter of contention because I think the Junction City guys
 4 showed my time sheets. So I was up for 35 hours. I think that
 5 the issue was they left out a sentence in what I wrote.
 6 Q. Finally, the final allegation of dishonesty is that
 7 there's some website out there, that you don't create, where
 8 your birthplace says Liverpool.
 9 A. That's correct. And that website is gone.
 10 Q. That is, in essence, what the 250 pages of *Brady* materials
 11 involved; isn't that right?
 12 A. Right. Yeah.
 13 Q. So what did you do in relation to the district attorney to
 14 combat these charges?
 15 A. I sent an email to the district attorney and his top staff
 16 that I believe were handling this situation. I basically
 17 begged them to be heard, to be able to have the opportunity to
 18 show my side of the case. I also appealed to their common
 19 sense. I said, I mean, some of this logic in this is just
 20 ridiculous. Yeah. So that was my first move.
 21 Q. Then what happened next?
 22 A. Radio silence. I did not receive anything back from the
 23 Lane County District Attorney's Office. So then I sent another
 24 email basically asking for the same thing.
 25 Q. I'll show you 212. What is 212?

1 A. Exhibit 212 is an email from Alex Gardner, who, at the
 2 time, was the district attorney responding to my email, or
 3 emails, actually, that I had sent him prior to that.
 4 Q. And where did it end up with --
 5 MR. JASON KAFOURY: I'd offer 212.
 6 THE COURT: Received. Strike that.
 7 Counsel, any objection?
 8 MS. COIT: No.
 9 THE COURT: Received.
 10 BY MR. JASON KAFOURY: (Continuing)
 11 Q. Where did it end up with the district attorney and your
 12 role on the *Brady* list?
 13 A. Well, where it ended up is that I was put on the *Brady*
 14 list at the first tier where everything has to be turned over
 15 to the defense attorney in any case, and he was going to hold
 16 off on deciding if I was going to be completely disqualified
 17 from ever testifying again, which is the second tier.
 18 Q. And that won't be determined until after this proceeding
 19 here; is that correct?
 20 A. That's correct. That's what we eventually were able to
 21 agree on. But I know that I've already been disqualified from
 22 one case when they first received this stuff. I guess, in an
 23 abundance of caution, they just disqualified me for one of my
 24 cases in Lane County Court.
 25 Q. Okay. What -- what date did you actually officially

1 resign from the Department of Public Safety?
 2 A. What date did I sign this settlement agreement?
 3 Q. Yes. Yes.
 4 A. September 4, 2014. Around there. I think that's
 5 accurate.
 6 Q. So more than a month after you were aware of the *Brady*
 7 disclosures you reached a final settlement agreement to resign
 8 at that point?
 9 A. Right. At that point I just wanted to settle this part
 10 and move on. Otherwise, I, you know -- yeah.
 11 Q. This whole Internet search history, I want to spend one
 12 moment on this. What sort of things were you doing on the
 13 Internet?
 14 A. I was checking the weather so I would know whether or not
 15 I would need a hat that day, if it was going to rain and I was
 16 going to be outside, or my jacket, et cetera. I did check my
 17 email, my personal email and buying things for the department
 18 through the Internet, including on eBay, like tactical pens.
 19 They were real popular.
 20 They're these metal pens that, as you're writing a ticket,
 21 if somebody attacks you, you can stab them with it. They're
 22 metal pens. And they have a glass breaker on the top so you
 23 could break a window.
 24 Anyway, I had been asked to buy these things through eBay,
 25 because I buy everything through eBay, and it was much cheaper

1 than the \$60 pens in the catalog. Sergeant Cameron asked me to
 2 look into this, so I ordered some for a bunch of officers.
 3 A lot of research on cases. I was doing -- they basically
 4 put in a hundred-some pages of Internet history, but a lot of
 5 it was actually business-related. I was supposed to look up
 6 bike lights, and stuff, because I told Sergeant Cameron, who
 7 ran the bike program, that, again, I could find cheaper lights
 8 on eBay, and I would show him. So I went to eBay and printed
 9 off some stuff for him so he could see the prices.
 10 Yeah, but I -- I was never asked -- I was never
 11 interviewed, investigated about this. I had no idea they had
 12 investigated my Internet use. Had they asked me, I would say
 13 yes, of course I used the computer sometimes for personal use.
 14 Very limited amount.
 15 Q. I just want to quickly -- quickly summarize a few
 16 categories of the speech here and have you explain who all you
 17 disclosed these things to. Okay?
 18 A. Okay.
 19 Q. Your Taser speech.
 20 A. Well, it -- the Taser speech was kind of out there before
 21 I even came in, but, of course, when I came in,
 22 Sergeant Cameron let everybody in the department know about it
 23 again, so I didn't have to tell many people about that in
 24 general.
 25 I mentioned it during meetings with Carolyn McDermid, with

1 Linda King at the predismissal hearing. Sorry. It's all in my
 2 complaint that I wrote out. It's hard to remember after how
 3 many hours of this it's been, but during the step -- some of
 4 the step grievance hearings. The Brian Smith meeting. Did I
 5 already say that?
 6 Q. What about wasting time on the bowl of dicks list? When
 7 did you publicly come forward and tell people about that?
 8 A. First time publicly was the Brian Smith meeting. Because
 9 until then we wanted to keep stuff in-house. I mentioned it to
 10 Carolyn McDermid. That's when I was trying to keep things
 11 in-house. First time I made that public to Brian Smith outside
 12 the department was that meeting on -- the special meeting that
 13 was set up on October 2, 2012.
 14 Q. Did you discuss it through the arbitration process and in
 15 your lawsuit, obviously, as well?
 16 A. Yes. As we heard testimony before it was brought up in
 17 arbitration, yeah.
 18 Q. How about the pattern of discrimination that you had seen?
 19 A. The pattern of discrimination to myself was probably one
 20 of the first things I mentioned in the early 1st of June
 21 meeting with Carolyn McDermid, but then, from then on, I
 22 mentioned it to basically anybody who would listen.
 23 Certainly the step grievance hearings, certainly in the
 24 lawsuit, probably -- probably too much in the lawsuit. It's
 25 lengthy. I apologize for some of that. I maybe could have

1 made it shorter.
 2 Q. What about the --
 3 MS. COIT: Object to leading questions.
 4 THE COURT: I'm sorry?
 5 MS. COIT: I object to the leading questions.
 6 THE COURT: Overruled. This doesn't suggest the
 7 answer.
 8 You can ask the question, Counsel.
 9 BY MR. JASON KAFOURY: (Continuing)
 10 Q. Who did you complain to about the Occupy efforts and other
 11 misconduct that you saw within the police department?
 12 A. Well, the Occupy stuff, particularly, I mentioned that to
 13 McDermid during that second meeting on August 13th. I thought
 14 that that might resonate with her.
 15 I had mentioned it to Brian Smith when we -- when that
 16 meeting was set up on October the 2nd. So, obviously, in my
 17 lawsuit. I mentioned it in arbitration.
 18 Q. What about laws you thought were being violated?
 19 THE COURT: I'm sorry. What?
 20 MR. JASON KAFOURY: "Laws you thought were being
 21 violated."
 22 THE COURT: Thank you.
 23 THE WITNESS: So the federal law, the Clery Act
 24 stuff, obviously, I didn't mention that prior to September 7,
 25 2012, because it was on that date that I was given that order

1 to no longer report any crimes unless they're felonies. The
 2 Clery Act is a federal law that requires certain crimes to be
 3 reported by all university staff members, not just public
 4 safety officers, and a list compiled at the end of year with
 5 the stats. And these include some alcohol-related crimes,
 6 which are misdemeanors.
 7 So by telling me not to report some of these crimes, that
 8 was a violation of federal law. So I took notes -- I was
 9 taking notes as I was working and not being able to report
 10 things, and that was a violation of federal law. But that -- I
 11 mentioned that at the Brian Smith meeting and beyond anything
 12 after the September 7th order was issued. I -- you know, I
 13 told the guys -- sorry, Lebrecht and Cameron -- when they
 14 issued that order that I felt it was illegal.
 15 The state law stuff had to do with the Public Safety
 16 Officers Bill of Rights that I kept trying to assert. And, in
 17 fact, on more than one occasion, I physically handed the law to
 18 them, but I was told, "This doesn't apply to you. You can't
 19 record this meeting. Too bad. You can't know what we're
 20 investigating. Too bad."
 21 Yeah, it -- same cast of characters that I reported that
 22 to.
 23 BY MR. JASON KAFOURY: (Continuing)
 24 Q. Okay. I want to talk to you a little bit about how all
 25 this has affected you as a person.

1 Did -- we heard what Casey Boyd said Lieutenant Lebrecht
 2 liked to say. Did you hear him say that as well?
 3 A. He said he was really good at mother fucking people who
 4 mother fucked him.
 5 Q. How often did he say that?
 6 A. Relatively often. I mean, it's kind of a shocking thing
 7 to hear said, so -- it wasn't like it was every day, but it
 8 was -- it was certainly often enough that I remembered it.
 9 Yeah, once every week or two he'd talk about old experiences
 10 with his old captains or people that he knew back in California
 11 involving IA investigations where one guy would try to get the
 12 other guy in trouble and if anybody tried to get him in
 13 trouble, he was really good at mother fucking people because he
 14 knows how to work the system and turn IAs around on people, and
 15 that was expressed.
 16 Q. After you sued Lieutenant Lebrecht in this lawsuit and now
 17 that you've learned that he put forth all these *Brady*
 18 materials, how does that make you feel?
 19 A. I was pretty upset with Lieutenant Lebrecht, specifically,
 20 for a long time, and I wrote some things to the DA that I
 21 actually regret. I said something about that
 22 Lieutenant Lebrecht is one of the most vindictive people I've
 23 known, et cetera. And if I could take anything back, I would
 24 take that back, because at the time I didn't know that it was
 25 Chief McDermed who actually ordered Lebrecht to do this *Brady*

1 list stuff.
 2 At least during the -- during the depositions and in the
 3 testimony today -- or Friday, but I learned, of course, about
 4 it during the depositions that he didn't particularly want to
 5 do this *Brady* list stuff but that he was ordered to do it by
 6 McDermed.
 7 When I wrote this letter, I didn't know that, so I regret
 8 saying that -- saying that about Lebrecht.
 9 Q. Let's talk a little bit about how -- how you think this is
 10 going to impact your future career.
 11 A. I really have -- I have no idea. Obviously, I've never
 12 been *Brady*-listed before. So I've got a year and a half left
 13 of the job that I have now, but it's limited. I mean, it's
 14 nothing -- I can't -- there's no way around it. It's federal
 15 law. What I'm going to do after this, I don't know, because I
 16 was focusing on law enforcement. Now I'm 37 years old,
 17 trying -- I'm back to square one.
 18 Yeah, it's tough. I just -- I don't know how I'm going to
 19 go into interviews anywhere, let alone police departments, but
 20 any law firm and say, "Hi. I'm James Cleavenger, if you Google
 21 me" -- which employers tend to do when they interview people --
 22 "this lawsuit is going to come up." And they'll notice, "Oh,
 23 he was *Brady*-listed? This guy is a liar? Do we want a lying
 24 attorney in our firm?" It's a concern.
 25 MS. COIT: Objection.

1 THE COURT: Overruled.
 2 THE WITNESS: That's a concern for me. So I have --
 3 I have no idea. I have no idea what's going to happen.
 4 BY MR. JASON KAFOURY: (Continuing)
 5 Q. How does it feel to know that your dream of being a police
 6 chief is in jeopardy?
 7 A. That sucks. I -- I was focusing on it quite hard there
 8 for a while. When I got in, like I said -- like I said,
 9 Doug Tripp, the old chief, you know, I had a meeting with him
 10 where he said I was going to get to be part of creating this
 11 new progressive police department.
 12 So we -- it just -- it changed my direction. I feel -- I
 13 feel unguided in my life right now. I don't have a real end
 14 goal beyond seeking justice for this. I'm relatively focused
 15 on that because it's been a -- it's been a long -- it's been a
 16 long path to get here.
 17 Q. Do you have a range of what police chiefs in this state
 18 make for salaries?
 19 A. They generally make anywhere from 100,000 to almost
 20 200,000. It's -- from what I've seen posted, because the job
 21 postings are online on DPSST when they're up and available.
 22 Q. How -- walk us through the months and the first year there
 23 after your termination. Take a moment and just kind of explain
 24 to the jurors what happened to you emotionally because of this
 25 incident with U of O.

1 A. So I had never -- I never dealt with anything like this
 2 before. I -- I've always kind of felt like the world is just
 3 and there is a way to right wrongs. You're going to get a fair
 4 hearing at some point. This process just jaded me.
 5 There was always something for each hearing. You know, I
 6 didn't get the step one. And then the step two was with a guy
 7 who left two days later and rubber-stamped it. The step --
 8 first step three the guy didn't even get to write it and
 9 somebody took it away from him and didn't let us have a
 10 hearing. The arbitration, I didn't get to get everything out.
 11 I still generally won that, but it's -- it -- it just felt so
 12 wrong, and I felt like I had to stand up and do something about
 13 this. Not only for myself, but for all the other cops out
 14 there and public safety officers because it's -- they have
 15 rights, too, you know.
 16 You shouldn't be able to just *Brady*-list someone using
 17 some very strange logic saying, "Well, you said you never
 18 committed any policy violations, and we have a policy manual
 19 that's 800 pages long, and we found one, and, therefore, you're
 20 a liar."
 21 You know, I was never -- I was never noticed about this.
 22 I had no idea this stuff was going on. And this is going on
 23 within the legal community that I am now a part of, at least
 24 somewhat, but I don't feel real comfortable going to a lot of
 25 legal functions because there's a lot of people from the DA's

1 office, and I'm sure they're all aware of this.
 2 In fact, we've seen emails back and forth saying
 3 Cleavenger happens to be a law clerk for a federal judge and he
 4 happens to know people.
 5 MS. COIT: Object.
 6 MR. JASON KAFOURY: Goes to his damages.
 7 THE COURT: Goes to his damages. Overruled. This
 8 isn't for the truth of the matter of what the email is saying.
 9 It goes to his state of mind.
 10 Reanswer please.
 11 THE WITNESS: So we've seen these emails connecting
 12 me to the judge, which taints the judge, and I -- I very much
 13 respect my boss. I try to keep -- try to keep things separate
 14 and keep his office from being tainted, but that's hard to do.
 15 And I -- I just -- you know, I never know what people
 16 think because there's a *Brady* file on me 250 pages long. Does
 17 anybody want to read that? No. You just -- I think at first
 18 glance you'd say, "Oh, 250 pages. *Brady*. Must be -- must be a
 19 liar." Who is going to go through that whole thing and look at
 20 it? I mean, it's -- it just shouldn't happen to anybody
 21 without some kind of due process. And it all started because I
 22 started to complain about stuff, and they didn't like the fact
 23 that I was complaining.
 24 BY MR. JASON KAFOURY: (Continuing)
 25 Q. Did Sergeant Cameron ever tell you his thoughts on

1 watching somebody's video out in the field and --
 2 A. Cameron said, on multiple occasions, that you could take
 3 any officer's dash cam video and if you scrutinize it enough,
 4 you could find little nitpicky things that could be changed or
 5 made better or second-guessed.
 6 Q. How has this affected your connection with friends and
 7 family over the last few years?
 8 A. It's -- it's severed multiple connections. I -- I feel
 9 like I said it earlier, but maybe I didn't. I feel like I've
 10 gone into a black hole for a couple of years now. I mean,
 11 things -- things got better, you know, when I got my current
 12 job. Starting to get better. But it's just -- this has just
 13 changed who I am. It's changed my entire personality.
 14 I used to be very trusting, very outgoing. Now I'm much
 15 more guarded, a little bit paranoid, because I just -- I -- I
 16 trusted Carolyn McDermid to help me and to look into these
 17 things. I believed that she didn't know. I was wrong. My
 18 trust was betrayed.
 19 I -- I trusted police officers in general that -- that
 20 they wouldn't stoop so low to -- I mean, some of these
 21 allegations are just -- are -- I -- they're just ridiculous.
 22 I mean, you heard Chief Larson up here saying, of course
 23 there's different ways to do different things. To have some of
 24 these little things nitpicked, I mean, it's -- it's -- it's
 25 ridiculous because it's -- some of these allegations are just

1 not me, and they're illogical.
 2 You know, if I was truthfully warned at Spencer View where
 3 to go, I would have taken the first entrance. It would have
 4 been quicker. I mean, it's just -- I just feel like I -- I
 5 just want to pull my hair out all the time because I'm so
 6 frustrated that no one would listen to me and how -- how much
 7 time and money they've been paid to come up and to continue to
 8 investigate me for years and years after I even left.
 9 Q. Let's stop.
 10 A. Sorry. I'm frustrated.
 11 Q. It's okay. I understand.
 12 You talked about trust in people. How has this affected
 13 your sleep?
 14 A. Well, I've never slept a lot. I generally sleep four to
 15 five hours on average. I'm not the only one. I know that I
 16 read a biography on Bill Clinton. I guess he does that too.
 17 But it was calm sleep. I never had nightmares and stuff like
 18 that.
 19 Q. Okay. What kind of nightmares did you have involving this
 20 U of O stuff?
 21 A. Nightmares were primarily Lebrecht and Cameron coming to
 22 try to kill me, which, you know, my logic, I know that's not --
 23 they're not going to do that, but I have these nightmares that
 24 they -- they would. I have nightmares about, you know, what
 25 would happen if I finally got justice, you know. Would they

1 come after me? And this was -- this is what the nightmares are
 2 about. Yeah.
 3 Q. How do you feel about missing your dad's 60th birthday and
 4 things like that?
 5 A. Yeah, there's a lot of things I regret missing in that
 6 timeline, but I shut down, and I shut down for a long time, you
 7 know.
 8 Q. How do you feel like you're doing now?
 9 A. I feel like I'm doing better. I still would really like
 10 to go get some counseling, but I -- I put that on hold until
 11 the end of this. I want this to be over before I do that.
 12 Yeah, reaching this juncture has helped -- as stressful as
 13 it is to be in court for multiple days, it is -- it's helped
 14 because I -- I feel like I'm getting this out there for myself,
 15 finally being heard, but, also, again, for everybody else.
 16 When I filed this lawsuit, my phone rang off the hook for
 17 a few days once it was publicized. People were calling me out
 18 of the blue that I had no idea who they were. They worked for
 19 the department 10 years ago or more. They were calling me
 20 saying, "Oh, my God, the same thing happened to me. You've got
 21 to do something about it."
 22 MS. COIT: Object.
 23 THE COURT: Sustained.
 24 MR. JASON KAFOURY: Punitive damages, Your Honor.
 25 THE COURT: What, Counsel?

1 MR. JASON KAFOURY: Punitive damages.
 2 THE COURT: Sustained.
 3 BY MR. JASON KAFOURY: (Continuing)
 4 Q. How many people have left this department or been
 5 terminated in the last five years?
 6 MS. COIT: Object. Relevance.
 7 MR. JASON KAFOURY: Punitive damages.
 8 MS. COIT: Not the same defendants.
 9 MR. JASON KAFOURY: Same chief.
 10 THE COURT: Is it the same chief?
 11 MR. JASON KAFOURY: How about -- how about --
 12 THE COURT: Counsel, I'm speaking. You're -- we'll
 13 have that hearing tonight outside the presence of the jurors.
 14 I don't want that discussed yet. If it's the same chief, I may
 15 let it in, but I want to be sure.
 16 BY MR. JASON KAFOURY: (Continuing)
 17 Q. If you were sitting there having coffee with a friend --
 18 it's been almost three years since you were terminated -- what
 19 would you tell them about how all of this, things with the
 20 University of Oregon, has affected you overall?
 21 A. Well, I'd probably be -- if you were an old friend, I
 22 would be explaining why I hadn't seen you in three years. So I
 23 would explain that I, you know, went -- I was in a dark place
 24 for a while because I didn't know how to explain this, what had
 25 happened. I didn't know -- I didn't know who was responsible

1 they can't stay -- so, sir, if you step down, you'll be
 2 cross-examined tomorrow.
 3 How long is this witness? Just so the jury has an idea
 4 and if they can't stay, if they have child problems or
 5 whatever, they're leaving.
 6 MS. COIT: It will be at least 30 minutes on direct.
 7 THE COURT: At least 30 minutes on direct.
 8 MS. COIT: Your Honor, if I might, I spoke to the
 9 witness on the break, and he can come back next week. It was
 10 this week that he couldn't come.
 11 THE COURT: He can come back the following week.
 12 Then why don't you present that in an orderly fashion the
 13 following week.
 14 It's obvious to me you'll be back next week for some short
 15 period of time. Why don't you go home tonight at 5:00. I want
 16 to speak to counsel about a couple of issues that came up
 17 today.
 18 And 8:00 tomorrow. Don't talk to anybody about the case.
 19 A JUROR: Getting used to it.
 20 THE COURT: Also, there's two issues. I think it's
 21 simpatico. I don't know how to spell that, but -- but it's to
 22 my benefit to recess Thursday, just because of the cost. So I
 23 humbly say to you I'm sorry that occurred. It got set up a
 24 long time ago. All sorts of excuses on my part, but my
 25 preference would be to go straight through. I just know I

1 for a long time. I didn't know who was doing what. And --
 2 it's hard -- after you explain everything to someone, you know,
 3 all the reasons you got fired, it hurts a little bit. And then
 4 you keep explaining it to people and -- and your friends will
 5 get upset. They're like, "Oh, that sounds ridiculous," but
 6 just saying it again and again, it just -- it just twists the
 7 knife every time you've got to -- you've got to explain it.
 8 But I would -- I would further explain why I filed this
 9 lawsuit, that, again, this is not just for me. This is for
 10 other police officers so this does not happen to them. This is
 11 for my friends that are still back in the department at U of O
 12 so this won't happen to them.
 13 MR. JASON KAFOURY: Thanks.
 14 THE COURT: All right, Counsel. Each of you
 15 approached the Court about another witness.
 16 Mr. Cleavenger, thank you. Before you step down, let me
 17 just make certain.
 18 Are you both agreeing that the cross-examination can start
 19 tomorrow with Mr. Cleavenger, and is there going to be another
 20 witness called tonight by agreement of both of you? If not an
 21 agreement, I want to know that.
 22 MR. JASON KAFOURY: We have an agreement that they
 23 may call one of their witnesses out of order, correct.
 24 MS. COIT: Correct.
 25 THE COURT: I don't know if the jury can stay. If

1 wouldn't be available on Friday when I started the case. I
 2 believed I wouldn't. I alerted counsel to that, but I thought
 3 I could take the midnight flight. That flight went from \$470
 4 to 2,200. That's just beyond crazy. Part of that was just the
 5 United Nations and the State Department stalling on the ticket,
 6 quite frankly, and I'll put that on the record. They could
 7 have had it at 470 bucks. I would have gotten a nice sleep,
 8 and you would have had a full day. They sat on it.
 9 I've got the flight now for \$391 as of a few moments ago.
 10 That's what I'm doing every hour. So it's to my benefit.
 11 Second, I understand you can make both now. As the juror
 12 you can make not only -- the gentleman behind you. You can
 13 make not only your wife's brain surgery doctor's appointment in
 14 the morning and you can go to your friend's funeral, and you
 15 have a birthday party that we're all attending -- I'm just
 16 joking -- on Friday.
 17 You know, folks, it just works out. Just not going to try
 18 to bring you in for a couple of hours on Thursday.
 19 A JUROR: So we're going into Monday.
 20 THE COURT: You were always going into Monday.
 21 A JUROR: Oh, were we really?
 22 THE COURT: You were always going into Monday. Even
 23 if we went straight through. Okay?
 24 I can't guess, but I would think probably Wednesday of
 25 next week. That's -- I'm being cautious about that. But,

1 Counsel, you'll need anywhere from two to three days, you've
 2 estimated?
 3 MS. COIT: Three to four.
 4 THE COURT: Three to four. So it's going into next
 5 week. Okay.
 6 A JUROR: To be clear --
 7 THE COURT: I think we've got a -- the plaintiff is
 8 going to rest tomorrow, okay.
 9 A JUROR: So --
 10 THE COURT: So, to be clear, we have Thursday and
 11 Friday. I think you'll have about two to two and a half days
 12 next week. I think you'll get the case probably on Wednesday,
 13 realistically. Now that's my best guess right now. Okay.
 14 So go home. Come back tomorrow at 8:00. Please don't
 15 discuss this matter with anyone or form or express an opinion.
 16 Goodnight and please drive safe.
 17 Counsel, if you can remain.
 18 (Jury not present.)
 19 THE COURT: Counsel, have a seat for just a moment.
 20 Let's discuss two issues coming up without the jury present.
 21 Counsel, sit down, please.
 22 MS. COIT: Your Honor, may I let the witness know he
 23 can leave?
 24 THE COURT: You can let someone else do it. You stay
 25 there right now.

1 his dad's birthday, checking out, those things I can accept.
 2 I'm being pretty liberal on that.
 3 MR. JASON KAFOURY: I think that's fair. I thought
 4 it was a month. I didn't realize it was only weeks.
 5 THE COURT: That's fine. I let you inquire. We
 6 found out it was weeks.
 7 MR. JASON KAFOURY: So --
 8 THE COURT: Is this something -- we'll talk more.
 9 I'm giving you the chance to bring that out before your client
 10 sits down.
 11 MR. JASON KAFOURY: There are many, many people that
 12 have left the department over the last five years.
 13 Chief McDermid, I believe, became the acting chief or the --
 14 the acting chief sometime in the summer of 2012.
 15 THE COURT: Here's what's happening to me. Depending
 16 on who I talk to, acting chief, permanent chief. That's not
 17 your fault. That's just -- that's coming from the defendant's
 18 side, so I understand that.
 19 My only question is, is he the one to testify to this? In
 20 other words, this may be relevant evidence, but it's just like
 21 we see in the email in the last couple of weeks.
 22 Chief McDermid is going to be back up on the stand, and you can
 23 question her about those emails. You're not being precluded.
 24 You're not being precluded from arguing. How those people left
 25 are also a matter of hearsay. I don't think able counsel on

1 Now, a couple of things, as you state clearly, punitives
 2 damages. It depends on who you have convey information. You
 3 heard my ruling before, and it's the right ruling whether you
 4 like it or not. This witness is not the witness to argue this
 5 matter when he recently receives a document. In fact, it's
 6 harmful to you. You're stretching it. But you simply saying
 7 "punitives," you don't want to get in a colloquy with the
 8 Court.
 9 MR. JASON KAFOURY: I agree.
 10 THE COURT: Okay. But I do want to be cautious
 11 because I could be wrong. Isn't that refreshing?
 12 MR. JASON KAFOURY: No, you can't.
 13 THE COURT: Yes, I can. So, therefore, we're going
 14 to discuss it thoroughly before your client is done tonight.
 15 And if I make a mistake, then I want to give you the time to
 16 rectify that and for me to cure it tonight. I say that very
 17 humbly to both counsel. Judges aren't always right. We
 18 pretend that we are.
 19 Now, go to the lectern and tell me what there is that you
 20 wanted to get into in punitives that you think you're entitled
 21 to that was harmful to your case and that you want to revisit
 22 potentially tomorrow. And the one thing I am precluding and
 23 not revisiting is the recently received email in the last
 24 couple of weeks. That just can't go to damages or punitives.
 25 If there's damages, he's already damaged earlier on. Missing

1 the other side would immediately state, "Judge, hearsay. Lack
 2 of foundation because we don't know why that person left," and
 3 your client, then, is going to be in a position of saying,
 4 "Well, I heard the following."
 5 Now, there may be one or two people where he has personal
 6 knowledge, but I've got to sort that out and be careful about
 7 that. I don't want to try this case twice when it goes up to
 8 be reviewed by the Ninth Circuit with whoever prevails in this;
 9 you or the other party.
 10 So we need to know, with specificity, what he's going to
 11 say about how they left -- how he has that knowledge. If he
 12 had a personal conversation, if he knows their personnel
 13 records and why that isn't hearsay. And how that goes to
 14 punitives, as far as he's concerned. It seems to be more
 15 character evidence against the department. It doesn't seem to
 16 reflect his damages. His damages are personal.
 17 MR. JASON KAFOURY: I understand. So he's testified
 18 now a few times, from the witness stand, that part of the
 19 reason that he brought this lawsuit and has gone through this
 20 ordeal is to stand up for everything else out there who he
 21 feels has been retaliated against.
 22 THE COURT: Just a moment. That doesn't go to
 23 damages, though. There wasn't an objection, or I might have
 24 sustained that. His being crusader is not damages. It may be
 25 a virtue, but that's not emotional damages. Those aren't

1 punitive damages. So when you say to me from the bench in
 2 front of the jury, said punitives, you immediately got denied.
 3 MR. JASON KAFOURY: Right.
 4 THE COURT: Those may be a normal virtue for the
 5 future.
 6 Now, that doesn't mean I'm precluding you from examining
 7 the chief if she gets on the stand about how many people left
 8 or what the morale is. So it's not the area. It's the vehicle
 9 that's being used. And your client is not a mouthpiece for
 10 this entire case.
 11 MR. JASON KAFOURY: Right. I think part of -- and
 12 it's very complicated. His emotional state has to do with
 13 feeling sad about all the other people that were retaliated
 14 against, and I think that we should have -- because we have a
 15 claim for punitive damages, I think we should have some
 16 liberalness to his ability to talk about other folks and how
 17 that's affected him, realizing he's not alone out there in
 18 terms of being retaliated against.
 19 THE COURT: I'm inclined to deny your request as far
 20 as your client testifying to that. I think that's really
 21 stretching not only emotional, but the punitive aspect, but I'm
 22 not precluding the area. In other words, if law enforcement
 23 takes the stand, the chief or Sergeant Cameron or the
 24 lieutenant, or other people who were called, I'm not precluding
 25 you from going into the number of people that were left. And,

1 in fact, I'm not precluding you from calling witnesses. I
 2 mean, I think you've had Abbott, a whole bunch of people on the
 3 stand. He hasn't left yet.
 4 MR. JASON KAFOURY: Right.
 5 THE COURT: You had a lot of people who you may have
 6 left, and if you want to call them, I'm not precluding you.
 7 I'm not putting any time limit on your case.
 8 MR. JASON KAFOURY: Okay.
 9 THE COURT: If you want to get them in, that's fine.
 10 Okay?
 11 MR. JASON KAFOURY: Okay. That's fine.
 12 THE COURT: Now, what are we -- what else?
 13 MR. JASON KAFOURY: I guess I would like to know what
 14 the defense plan is for tomorrow, since they're now sort of in
 15 the driver's seat, and figure out who they're going to call.
 16 THE COURT: I don't know because I don't know how
 17 long they're going to take. I don't think they know how long.
 18 I think you said three-quarters of a day. You took a day.
 19 Fine. And where they go -- you know about the magic moment?
 20 It's kind of like this haze that comes over counsel in
 21 litigation. They know when they've asked enough questions.
 22 And the other five percent doesn't matter. It's called a magic
 23 moment for both sides.
 24 So I can't -- I'm joking with you. I can't predict on
 25 cross-examination when your opposition believes that she's got

1 somebody in a box or when it's time to leave. I don't think
 2 she can either. So she's not limited. You can have a day
 3 tomorrow if you want or whatever. Anything else?
 4 MR. JASON KAFOURY: Your order stands.
 5 THE COURT: Counsel, this is your chance to rectify
 6 it. This is your chance to actually have a conversation with
 7 the Court and tell me what else is of great concern before your
 8 client gets done testifying.
 9 Mr. Cleavenger, you can sit there and have a conversation
 10 quietly with your counsel for a moment. You're not precluded.
 11 You've brought the lawsuit, so --
 12 Remember this, Counsel, same courtesy equal ly with you.
 13 When you get done, you can talk to your clients outside the
 14 presence of the jury and, you know, ask for their participation
 15 quietly what they think. I'm not precluding that same kind of
 16 discussion. Okay. I thought I was only going to be here four
 17 or five days. Welcome to Oregon.
 18 MR. JASON KAFOURY: Would have been tough to do this
 19 in 10 hours.
 20 THE COURT: Well, you know, upon reflection, you're
 21 absolutely right, and I would have been absolutely wrong. It's
 22 an all or nothing case. You either let everybody get their
 23 story out or you limit it and then it's going to be unfair and
 24 chopped up, and I'm chopping into your case, and I'm not going
 25 to do that.

1 My colleagues may think I'm becoming a permanent resident
 2 up here, so --
 3 MR. MCDOUGAL: Can I confer with Ms. Coit while
 4 he's --
 5 THE COURT: Sure. Now it's going to work out with
 6 Brian Caufield, anyway, because you're still going to get
 7 partway through your case and then be coming back next week,
 8 obviously. I think you'll have about a day minimally,
 9 Wednesday it sounds like, for the presentation of your case.
 10 And then you've got as much time as you need next week on
 11 behalf of the defendants. Okay? Monday, Tuesday, Wednesday.
 12 My guess is if your time estimate is halfway accurate,
 13 which I'm not holding you to, three to four days, they're
 14 probably going to get it, at the best, on Wednesday, at the
 15 worst, on Thursday.
 16 MS. COIT: Do we know the jury can stay next week
 17 that long?
 18 THE COURT: What?
 19 MS. COIT: Do we know if the jury can stay next week
 20 that long?
 21 THE COURT: I'm not going to ask them because if I
 22 ask them, they may decide that they don't want to.
 23 MS. COIT: Okay.
 24 THE COURT: One juror says she's leaving town on the
 25 25th, Counsel. One juror says she's leaving town on the 25th,

1 Counsel. Just so you know that. Juror number one.
 2 MS. COIT: Is that Friday? We can get you there by
 3 Friday for sure.
 4 THE COURT: Remember, I just have to have six. The
 5 two of you can do this. You can stipulate to when she comes
 6 back and nobody can remember the case.
 7 MR. JASON KAFOURY: Your Honor, I would like --
 8 THE COURT: No, we're speaking to her now. We're
 9 speaking to defense counsel.
 10 MR. JASON KAFOURY: Sorry.
 11 THE COURT: Counsel, keep talking to her. Whatever
 12 you're working out. One thing at a time. Go ahead and have
 13 your conversation.
 14 MR. MCDOUGAL: Thank you.
 15 THE COURT: Okay. Now, counsel, they have had their
 16 conversation on behalf of the defense. Counsel?
 17 MR. JASON KAFOURY: Hang on one second.
 18 THE COURT: Thank you. I certainly will.
 19 MR. JASON KAFOURY: I think for the moment, in
 20 accordance with your ruling, we're -- we're ready for him to go
 21 back on cross-examination tomorrow morning first thing.
 22 THE COURT: Okay. Now --
 23 MR. JASON KAFOURY: Can I say one --
 24 THE COURT: Usually I demand all the evidence the
 25 night before. This is the time I want to keep you fresh. In

1 the two of you, I'll abide by that usually, but your
 2 cross-examination isn't -- you will delay -- if you want to
 3 start off with Mr. Cleavenger tomorrow, that's what we'll do.
 4 Okay? What's your preference?
 5 MS. COIT: I'm fine taking Drake first.
 6 MR. JASON KAFOURY: Okay.
 7 THE COURT: Is that what you want to do?
 8 MR. JASON KAFOURY: Yeah, let's do that. Then he can
 9 drive home.
 10 THE COURT: If you two have reached an agreement.
 11 I'll abide by your wishes. Drake is first tomorrow.
 12 MS. COIT: May I speak?
 13 MR. JASON KAFOURY: Go ahead.
 14 MS. COIT: My problem -- my concern now is I have
 15 Mike Morrow coming down from Seattle. He's head of security
 16 for the Seahawks. It's the middle of football season. He's
 17 taken this day off because I thought he would be able to get on
 18 tomorrow. He's going to be at least a three- to four-hour
 19 witness.
 20 THE COURT: Okay. Your option. You can put him on
 21 tomorrow by agreement if you want to.
 22 MS. COIT: Oh, no, no. That's not what I'm saying.
 23 THE COURT: I can't fix that time for you. Okay.
 24 MS. COIT: Yeah. And I guess we don't know how long
 25 we'll be able to stay tomorrow.

1 other words, literally, in all my years of litigation, there
 2 are key points in the case and this is one of them. I want to
 3 send you home tonight, get as much rest as you can. When you
 4 have the chief on the stand, Lieutenant Lebrecht, you've got
 5 Sergeant Cameron, and you've got Mr. Cleavenger. I'm not
 6 saying that this isn't the lawsuit, but this is the lawsuit,
 7 and for me to keep you now until 7:00 or 8:00 at night, I just
 8 suggest you get home, get some dinner, get some rest, and
 9 figure out what you're going to do tomorrow.
 10 I'll worry about the evidence because I think you'll be a
 11 substantial period of time anyway. Whether it's a couple of
 12 hours, that's probably going to be minimum, so I'll worry about
 13 who's going to be called. But after Mr. Cleavenger, is there
 14 one more witness? Drake?
 15 MR. JASON KAFOURY: Yes. I'm going to do him very
 16 short.
 17 THE COURT: And there was one other witness also.
 18 MR. MCDOUGAL: She's not being called.
 19 THE COURT: She won't be called. It's just Drake and
 20 that's the end of your case. You'll rest?
 21 MR. JASON KAFOURY: Yeah. We'll rest after Drake.
 22 Do you want to try to put on Drake first thing in the morning?
 23 THE COURT: No. It's not my case.
 24 MR. JASON KAFOURY: Okay.
 25 THE COURT: Any time you reach an agreement between

1 THE COURT: You both are controlling the lawsuit once
 2 I gave you both carte blanche to present a full lawsuit.
 3 MS. COIT: Okay.
 4 THE COURT: Okay. All right. Goodnight.
 5 8:00 tomorrow.
 6 MR. MCDOUGAL: Can she tell us what witnesses she
 7 will call tomorrow if she gets to those, just so we can
 8 prepare, out of fairness?
 9 THE COURT: Counsel?
 10 MS. COIT: I can tell you the possibilities.
 11 THE COURT: Cleavenger.
 12 MR. MCDOUGAL: I know Cleavenger, but --
 13 THE COURT: Drake.
 14 MR. MCDOUGAL: You don't think we'll get further than
 15 that?
 16 THE COURT: And who?
 17 MS. COIT: Chelsea Brandenburg. If --
 18 Nicole Commissiong is coming tomorrow. I'll get her on.
 19 THE COURT: Nicole who?
 20 MS. COIT: Commissiong. The dean.
 21 THE COURT: Oh, the dean on the stop.
 22 MR. MCDOUGAL: Is it fair to say Morrow is not coming
 23 tomorrow?
 24 MS. COIT: I don't know. I don't know. It may
 25 either be Morrow or it may be all these other witnesses.

1 THE COURT: No. Just a moment. Same courtesy here.
 2 Once you start your case, I want now the plaintiff to be able
 3 to focus on materials each night, just like you had, you know,
 4 some idea of who was being called so you could go home and look
 5 at your documents.
 6 Who is going to be here tomorrow if you call anybody?
 7 MS. COIT: I can't tell you that until I know if
 8 Morrow can come back on Wednesday. I have all the exhibits
 9 pulled if you want those.
 10 THE COURT: Where is Morrow?
 11 MS. COIT: He's in Seattle.
 12 THE COURT: Well, call him.
 13 MS. COIT: I can --
 14 MR. MCDUGAL: Your Honor, may I inquire of the Court
 15 while she's doing that?
 16 THE COURT: I want to stay focused. Let's find out
 17 who's testifying. That's what you asked for.
 18 MS. COIT: All right. Your Honor, so I will call --
 19 I can't get ahold of Mr. Morrow, but I will just assume he'll
 20 stay over if need be. So tomorrow I'll definitely call Morrow.
 21 I'll move Chelsea Brandenburg to a different day.
 22 THE COURT: Chelsea Brandenburg?
 23 MS. COIT: I'll move her. So she won't go tomorrow.
 24 So tomorrow will be Mike Morrow and --
 25 THE COURT: Okay. Now, is he already here, or is he

1 everything in the IA report, but it's in the IA report and I
 2 don't have a dispute with that.
 3 THE COURT: Two and a half hours. Who would be the
 4 other person? Who else are you going to call just in case?
 5 MS. COIT: We'll go with Randy Wardlow.
 6 THE COURT: Randy Wardlow. Okay.
 7 Now, with Lieutenant Morrow, are there documents that we
 8 haven't looked at that we're going to be putting into evidence?
 9 Otherwise, it seems like most of the documents now have come
 10 into evidence through your client.
 11 MS. COIT: Yes. It will be the entire IA.
 12 THE COURT: Okay. Entire IA. And what exhibit
 13 number is that?
 14 DEPUTY COURTROOM CLERK: Counsel, can you tell me an
 15 exhibit number?
 16 MS. COIT: 331, I believe.
 17 THE COURT: 331, Counsel? That will be --
 18 MS. COIT: Yes. 331.
 19 THE COURT: I'm sorry?
 20 MS. COIT: It's Exhibit 331.
 21 THE COURT: 331. Okay.
 22 MS. COIT: That's all for Morrow.
 23 THE COURT: Counsel, 331.
 24 MR. MCDUGAL: Okay.
 25 THE COURT: That's through Morrow; right?

1 going to drive down from Seattle?
 2 MS. COIT: He's driving down.
 3 THE COURT: Okay. So he's a relatively significant
 4 witness concerning the AI investigation, the relationship
 5 allegedly with Lieutenant Lebrecht. Your guesstimate?
 6 MS. COIT: Two and a half hours direct.
 7 THE COURT: Two and a half hours? Okay. Doesn't
 8 that fill the day? By the time we have the cross-examination
 9 of Cleavenger, we have a half hour, at least, of Drake, let
 10 alone whatever cross-examination there is of Drake. It seems
 11 to me, minimally, we'll be into the afternoon with
 12 Lieutenant Morrow. And I can't imagine we're taking two and a
 13 half hours. So let's just say minimally you took two hours,
 14 just minimally, with Cleavenger, and say an hour -- that
 15 doesn't count the redirect and recross with Mr. Cleavenger. It
 16 doesn't count your cross. That's the morning session.
 17 MS. COIT: Yes.
 18 THE COURT: The afternoon with Morrow. Two, two and
 19 a half hours, even, in a four-hour session, at best. I think
 20 you fill the day.
 21 MS. COIT: Okay.
 22 THE COURT: Now, if not, we'll go over the second
 23 witnesses.
 24 MR. MCDUGAL: I'm not -- I'm not planning on
 25 crossing Morrow very much. I understand she's going to lay out

1 MS. COIT: Yes.
 2 THE COURT: Who's the other witness you thought you
 3 might call tomorrow?
 4 MS. COIT: Randy Wardlow.
 5 THE COURT: Remind me again his position. I'm sorry.
 6 MS. COIT: He's the HR.
 7 THE COURT: Oh, the HR person. Okay. And what
 8 exhibits?
 9 MS. COIT: 303, 349, 402, and 405.
 10 THE COURT: Okay. Can I see those?
 11 Counsel, I may have given the exhibit books back. Just a
 12 moment.
 13 Counsel, where would I find 331?
 14 MS. COIT: We just gave you the notebook there.
 15 THE COURT: Is this mine?
 16 MS. COIT: Yes.
 17 THE COURT: Okay. Great.
 18 MS. COIT: That whole thing is 331.
 19 THE COURT: Thank you. But you have a number of
 20 other exhibits. Do you need this back?
 21 MS. COIT: No. Your Honor, that's yours.
 22 THE COURT: Okay. Then 303 is not in this notebook.
 23 Are they in the black notebooks?
 24 MR. HOOD: It's --
 25 THE COURT: I don't have those. First of all, any

1 objection to 331, Counsel?

2 MR. MCDUGAL: Not in general. I'd have to see if

3 there's anything that needs to be redacted, but no.

4 THE COURT: You know my proclivity and my desire not

5 to chop things up. The collective bargaining agreement is 303 .

6 Any disagreement, Counsel?

7 MR. MCDUGAL: No.

8 THE COURT: 349 is the -- that's an email from Lois

9 to Randy Wardlow. Any objection? Mr. Wardlow testifies.

10 MR. JASON KAFOURY: Sorry. What was the exhibit

11 number?

12 THE COURT: 349.

13 MR. JASON KAFOURY: No objection to 349.

14 THE COURT: 402 appears to be another email from

15 Brandon Lebrecht to Randy Wardlow. Scott Cameron and Chief

16 McDermed. Any objections?

17 MR. JASON KAFOURY: I need to see a copy of it.

18 THE COURT: 402.

19 MR. JASON KAFOURY: 402.

20 THE COURT: 402.

21 MR. JASON KAFOURY: Your Honor, I don't have any

22 objection to 402.

23 This was produced during litigation; right?

24 MS. COIT: Yes.

25 MR. JASON KAFOURY: Not one of the recent drops.

1 THE COURT: Any objection to 402?

2 MR. JASON KAFOURY: No.

3 THE COURT: 405.

4 MR. JASON KAFOURY: I do object to 405.

5 THE COURT: These are handwritten notes.

6 MR. JASON KAFOURY: Yeah.

7 THE COURT: Are these her notes?

8 MS. COIT: These are Mr. Wardlow's notes taken during

9 the predismissal meeting.

10 THE COURT: This would be hearsay, but certainly can

11 be used to refresh their recollection.

12 MS. COIT: That's all they're there for, Your Honor.

13 THE COURT: All right. Well, then I think that

14 resolves it for tomorrow, doesn't it? Realistically, we'll be

15 lucky if we get that far.

16 MS. COIT: Yeah. And it's possible I will have

17 Nicole Commissiong, the dean, come tomorrow, just if that's --

18 school is starting on Wednesday, so if she needs to come, I

19 will get her on at some point. There's no exhibits with her as

20 a witness, but she may also go.

21 THE COURT: All right. Anything else this evening ?

22 Counsel on behalf of plaintiff, anything else this evening?

23 MR. JASON KAFOURY: The only issue I foresee in terms

24 of resting is we have a lot of exhibits. We've stipulated to a

25 lot of them. We entered a lot of them. I think we may need to

1 use the lunch hour tomorrow just to make sure we've gotten

2 every other exhibit in that we'd like to offer before we rest.

3 I mean, there's probably -- we have --

4 THE COURT: Well, if we think we're going to rest

5 before the lunch hour, then I'm going to do it this evening.

6 MR. JASON KAFOURY: We can do it in the --

7 MS. COIT: I'm fine doing it now.

8 THE COURT: What I'm not going to do is recess

9 arbitrarily just to go over exhibits. That's something we can

10 do and hopefully you were current as of last week. Friday.

11 Weren't you?

12 MR. JASON KAFOURY: Right.

13 THE COURT: Or were you?

14 MR. JASON KAFOURY: Well, I -- yeah, no, I know where

15 we are now. Everything that's in. There may be some

16 additional exhibits that I want to offer that are -- that I

17 haven't offered yet, just because I don't have the right

18 witness for it yet.

19 THE COURT: Now I'm really confused.

20 MR. JASON KAFOURY: Okay.

21 THE COURT: Are those ones you'll just stand up and

22 start offering, Counsel?

23 MR. JASON KAFOURY: I'd like -- well --

24 THE COURT: We'll get them through a witness.

25 MR. JASON KAFOURY: They've stipulated to a bunch of

1 exhibits. I may not have entered all of those.

2 THE COURT: Okay. Let's go through them.

3 MR. JASON KAFOURY: What's that?

4 THE COURT: Let's go through them.

5 MR. JASON KAFOURY: Okay.

6 MS. COIT: There's one other thing I think we should

7 discuss for timing, or I would like to discuss, as far as when

8 they rest, because of our time constraints tomorrow, I don't

9 want to waive my motions for judgment as a matter of law,

10 but if Your Honor --

11 THE COURT: Why don't you make your motions. I'll

12 probably delay them anyway. I'm entitled, per the code, to

13 either -- well, I can simply delay them until the close of the

14 defense case. I can delay those issues until the beginning of

15 the jury deliberations. I can even delay them until after jury

16 deliberations. Depends on our timing. Or I'm happy to take

17 the time and resolve them.

18 MS. COIT: My question is what's --

19 THE COURT: This is all what you control in terms of

20 time.

21 MS. COIT: My suggestion would be that we take them

22 up after the jury leaves tomorrow, but I just don't want to

23 waive my ability to make them if we put witnesses on in my case

24 first.

25 THE COURT: If you put a -- what I call a placeholder

1 and make those motions out of the presence of the jury and you
 2 both stipulate, I can hear them after court hours tomorrow.
 3 I'm happy to do that.
 4 MS. COIT: Okay.
 5 THE COURT: But you control that here.
 6 MR. MCDUGAL: We stipulate.
 7 THE COURT: You're stipulating to that?
 8 MR. MCDUGAL: Yes.
 9 THE COURT: All right. We'll hear the motions. Put
 10 a placeholder, so you meet the legal requirement, when they
 11 rest, and then we'll hear them after court tomorrow.
 12 MS. COIT: Thank you.
 13 MR. JASON KAFOURY: I'm happy to go through exhibits
 14 now and we can move en masse. I think they're stipulated to --
 15 THE COURT: If they've already stipulated, that's
 16 work that the two of you can do.
 17 MR. JASON KAFOURY: That's why I would think it would
 18 be more productive to plan out a moment tomorrow -- maybe we
 19 can do it at 7:30 a.m. It doesn't matter to me. But I --
 20 THE COURT: This is a waste of my time. How long is
 21 it going to take? I don't care. I'm happy to keep you here
 22 all night. I'm happy to do it at 7:30 tomorrow. But if you
 23 two have stipulated to document s already, that's something you
 24 two should be doing. You should be coming to the Court saying
 25 we stipulated to documents 1, 35, and 42. You're wasting my

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1 time right now. If those are stipulations, they're
 2 stipulations. Now, if you have a disagreement, let's hear it.
 3 I'll spend time with you.
 4 MR. JASON KAFOURY: There's going to be some that we
 5 disagree on, obviously. So we --
 6 THE COURT: You two haven't gone over those?
 7 MR. JASON KAFOURY: I don't think we've gone over
 8 every single one of ours.
 9 THE COURT: How long is that going to take? Why
 10 don't you get to it, then. All I was doing was paying you the
 11 courtesy of preserving this for tomorrow. I really don't care.
 12 MR. JASON KAFOURY: Do you want to do these now?
 13 MS. COIT: Yeah.
 14 THE COURT: What I'm going to do is send my court
 15 reporter home. This is a waste of her time.
 16 Goodnight. This is a waste of your time.

(Trial Day 5 adjourned.)

C E R T I F I C A T E

Cleavenger v. McDermed, et al.

6:13-cv-01908-DOC

TRIAL DAY 5

September 14, 2015

I certify, by signing below, that the foregoing is a true
 and correct transcript of the record, taken by stenographic
 means, of the proceedings in the above-entitled cause. A
 transcript without an original signature, conformed signature,
 or digitally signed signature is not certified.

/s/Jill L. Jessup, CSR, RMR, RDR, CRR

Official Court Reporter	Signature Date: 12/28/15
Oregon CSR No. 98-0346	CSR Expiration Date: 9/30/17

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