

1 IN THE UNITED STATES DISTRICT COURT
 2 FOR THE DISTRICT OF OREGON
 3 EUGENE DIVISION
 4 JAMES M. CLEAVENGER,)
 5 Plaintiff,) Case No. 6:13-cv-01908-DOC
 6 v.)
 7 CAROLYN McDERMED, BRANDON) September 15, 2015
 8 LEBRECHT, and SCOTT CAMERON,)
 9 Defendants.) Portland, Oregon

10
 11 TRIAL DAY 6
 12 TRANSCRIPT OF PROCEEDINGS
 13 BEFORE THE HONORABLE DAVID O. CARTER
 14 UNITED STATES DISTRICT COURT JUDGE

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 20 COURT REPORTER: Jill L. Jessup, CSR, FMR, RDR, CRR
 21 United States District Courthouse
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 22 Portland, OR 97204
 (503) 326-8191
 23
 24 * * *
 25

1 TRANSCRIPT OF PROCEEDINGS
 2 (Jury not present.)
 3 THE COURT: Counsel, you had a matter?
 4 MS. COIT: A lot of the new exhibits that are coming
 5 in and several that have already come in are emails from me
 6 having to do with the settlement agreement and me telling them
 7 I found out about this disclosure that was made. We need to
 8 revise the settlement agreement. From where they're going with
 9 these emails and their listening to testimony on that as well,
 10 I get the impression they're going to argue that I somehow was
 11 in on this and trying to trick Mr. Cleavenger or something to
 12 that effect.
 13 THE COURT: I think the impression will be quite the
 14 obvious -- quite the opposite. It seems to me that it would
 15 almost be a bad faith argument. You're the one that alerted
 16 the plaintiff to the fact that there was newly discovered
 17 information on your part, while the settlement agreement was
 18 being consummated or close to being consummated, about the
 19 *Brady* materials that had been filed a month or two earlier.
 20 MS. COIT: I agree with that.
 21 THE COURT: I don't know how in the world counsel
 22 possibly could make that argument. Are you going to make that
 23 argument?
 24 MR. JASON KAFOURY: I think there are emails --
 25 THE COURT: I want to be very clear with my question.

1 It's a simple question. Are you going to argue that she's
2 complicit?
3 MR. JASON KAFOURY: I'm going to argue that the
4 lawyers representing the university knew about --
5 THE COURT: Now, just a moment. There's a difference
6 between Doug Park and present trial counsel. Now, you listen
7 to my question. Are you going to argue that she's complicit,
8 this counsel who represents the defendants?
9 MR. JASON KAFOURY: She sent an email on July 11th.
10 In that email it talks about Cleavenger and *Brady*-listing. 13
11 days later she's sending an email to my client saying, "We're
12 ready to sign the settlement agreement." Day 14 she then says,
13 "I recently learned about these *Brady* materials."
14 THE COURT: So you believe she knew about this when?
15 MS. COIT: And that's, Your Honor, the evidence I
16 need to get in about what I did and didn't know and what my
17 clients did and didn't know. And my question for you was
18 actually may I -- I obviously don't want to testify to this in
19 closing. Can I elicit that through leading questions with
20 Chief McDermid?
21 THE COURT: How is that going to be resolved,
22 Counsel? That's a fair question because that -- if you're
23 going to get into that kind of evidence, counsel has a right to
24 respond to that.
25 MR. JASON KAFOURY: Can I talk?

1 I don't plan on going any further with the jury in closing
2 argument other than pointing out the facts that there's
3 settlement negotiations, just like I said in the opening
4 statement, but, in fact, the lawyers for the university and
5 lawyers for the defense counsel were emailing about Cleavenger
6 and the *Brady* list 13 days earlier. That is the extent of
7 where I'm going to go with any closing arguments.
8 THE COURT: After hearing that, what is your
9 position?
10 MS. COIT: Well, my position is the -- this is my
11 explanation, and this is what I need to get out to the jury if
12 he's going to make that argument --
13 THE COURT: He just said -- you just heard his
14 argument.
15 MS. COIT: Okay. So the settlement agreement dealt
16 exclusively with we were going to keep confidential in the
17 confidential file personnel records that dealt with discipline.
18 That included Mike Morrow's internal affairs investigation.
19 The email that he's talking about forwarded the -- I did not
20 know when they submitted this stuff to the district attorney.
21 I didn't know until after.
22 THE COURT: Without you testifying -- which I don't
23 want to get lawyers involved on the stand. Without you
24 testifying, how can the chief be a benefit to you? In other
25 words, she can tell -- she can tell about your conversations

1 between each other, but you're the only one who can state that
2 you didn't know.
3 MS. COIT: Well, I think what she can state -- she
4 can identify that email and what the attachment was. And what
5 the attachment was was the cover memo from Lieutenant Lebrecht,
6 and that was not part of the documents that were to be held
7 confidential in the settlement agreement.
8 It was not until we met later in Doug Park's office that I
9 was also -- that I was shown the entire packet and it included
10 Mike Morrow's internal affairs investigation. At that point, I
11 alerted counsel that some of the documents had been turned
12 over.
13 I've explained this to Mr. Kafoury. I don't know why he
14 continues along this line of argument, but I feel I need
15 somehow to be able to bring this out. Because if the jury
16 believes that I'm doing something bad, that's going to
17 prejudice my clients.
18 THE COURT: That reflects on your clients. I agree.
19 That cannot occur without either response to or some vehicle.
20 When will this come up?
21 MS. COIT: It won't be until next week.
22 THE COURT: Next week. Can I have a little bit of
23 time to think about this? Because I think it's obviously fair
24 that counsel is making this argument that somehow you have
25 knowledge at an earlier time, when you didn't. You're entitled

1 to rebut that. So before I go any further, let me think this
2 out. Obviously, I'm trying to keep both counsel off the stand
3 for either side. But if the argument is that you're a
4 complicit lawyer for the University of Oregon, et cetera, et
5 cetera -- let me reflect on that for a while.
6 Thank you for alerting me.
7 Christy, would you be kind enough to get the jury? Do I
8 have a list of witnesses?
9 MR. JASON KAFOURY: So it's anything that's orange or
10 pink.
11 THE COURT: I read the orange and pink.
12 MR. JASON KAFOURY: Orange and pink are the new
13 exhibits that have been stipulated to.
14 THE COURT: Orange and pink. There's no distinction
15 between the two?
16 MR. JASON KAFOURY: Exactly. They're all in.
17 THE COURT: All right.
18 MR. JASON KAFOURY: There are two additional ones,
19 271 or --
20 THE COURT: This is confusing. I'm going to read the
21 orange and pink.
22 MR. JASON KAFOURY: You read the orange and the pink
23 and there's two more after.
24 THE COURT: Can I have those two also?
25 MR. JASON KAFOURY: Yes.

1 THE COURT: These have been stipulated to ; correct?
 2 MR. JASON KAFOURY: Correct.
 3 (Jury present.)
 4 THE COURT: Good morning.
 5 THE JURY: Good morning.
 6 THE COURT: How is everybody today?
 7 THE JURY: Good.
 8 THE COURT: It's good to see you all. At my age,
 9 it's good to see anybody. Have a seat.
 10 Counsel, please be seated, along with your clients.
 11 Last evening and this morning -- remember, I told you that
 12 when you go home, their work just begins at night? And there
 13 are a number of exhibits that would have taken a significant
 14 period of time to get in, and there's been stipulations between
 15 both parties for these exhibits to be received into evidence.
 16 Probably saves us hours. Maybe half a day.
 17 So the first is Exhibit No. 3. We're going to caption it:
 18 A Clarification of Expectations Letter by Lebrecht on
 19 November 18, 2011.
 20 Is that stipulated for receipt by both parties so I have a
 21 good record?
 22 MS. COIT: Yes.
 23 MR. JASON KAFOURY: Yes.
 24 THE COURT: Christy, I'll hand these right over the
 25 edge to you one by one.

1 February 20, 2012. That would be Exhibit No. 19.
 2 Are those stipulated into evidence by both parties?
 3 MS. COIT: Yes.
 4 MR. JASON KAFOURY: Yes.
 5 THE COURT: Then there is Exhibit 28, a case report,
 6 12-684. April 1, 2012. Cleavenger's report from main Spencer
 7 View Apartments incident.
 8 Exhibit 28. Is that stipulated by both parties to be
 9 received into evidence?
 10 MR. JASON KAFOURY: Yes, Your Honor.
 11 MS. COIT: Yes.
 12 THE COURT: The next exhibit is Exhibit 34. It's a
 13 CAD Log of 359, quote, "Outside Agency Assist." 154 off campus
 14 between August 1, 2010, to August 31, 2012.
 15 Is this stipulated to be received into evidence by both
 16 parties?
 17 MS. COIT: Yes.
 18 MR. JASON KAFOURY: Yes.
 19 THE COURT: Counsel?
 20 MS. COIT: Yes.
 21 MR. JASON KAFOURY: I'm sorry.
 22 THE COURT: I didn't hear plaintiff's counsel.
 23 MR. JASON KAFOURY: Yes. I'll put my mic on. Yes.
 24 THE COURT: Exhibit No. 35, Cleavenger's original
 25 grievance form for letter of reprimand, dated June 18, 2012.

1 The second is Exhibit 12. It's a list of all calls or
 2 service at Spencer View from June 16, 2011, through November --
 3 strike that. Through June 15, 2012. So a one year-year period
 4 of time.
 5 Christy, this is Exhibit 12.
 6 Is this stipulated to be received by both parties?
 7 MS. COIT: Yes.
 8 THE COURT: The next exhibit is the UODPS 21
 9 Standards of Conduct Policy. It's Exhibit No. 13.
 10 Counsel, is this stipulated to be received into
 11 evidence --
 12 MR. JASON KAFOURY: Yes.
 13 THE COURT: -- by both parties?
 14 MS. COIT: Yes.
 15 THE COURT: Did you say yes?
 16 MR. JASON KAFOURY: Yes.
 17 THE COURT: My apologies. Thank you.
 18 The next exhibit is Exhibit 14. It's the SEIU Collective
 19 Bargaining Agreement, in parens, the OUS Union Contract, 2011
 20 to 2013.
 21 Is that received into evidence by both parties?
 22 MS. COIT: Yes.
 23 MR. JASON KAFOURY: Yes.
 24 THE COURT: Christy, here's the next one.
 25 Then there are emails to and from Lieutenant Morrow, dated

1 Is this stipulated to be received, Counsel?
 2 MR. JASON KAFOURY: Yes.
 3 MS. COIT: Yes.
 4 THE COURT: Exhibit 37, the UODPS radio policy and
 5 procedures from the UODPS policy manual.
 6 Is this stipulated into evidence by both parties?
 7 MS. COIT: Yes.
 8 MR. JASON KAFOURY: Yes.
 9 THE COURT: Exhibit 39, the ORS 165.4 -- strike that.
 10 165.540. Audio recordings. Obtaining contents of
 11 communications.
 12 Is this stipulated into evidence by both parties?
 13 MR. JASON KAFOURY: Yes.
 14 MS. COIT: Yes.
 15 THE COURT: Exhibit 42. Mr. Cleavenger's job
 16 description. The 2010 public safety officer position.
 17 Now, Counsel, I don't have Exhibit 42 in front of me.
 18 MR. JASON KAFOURY: There may be a handful of those ,
 19 especially at the end, that I didn't have a physical copy of
 20 yet here, but I will make a note of them and bring them to the
 21 court today. There's so many pieces of paper.
 22 THE COURT: That will magically appear. We're
 23 waiting for it to magically appear.
 24 Counsel, I have some exhibit books up here that you can
 25 use also. Maybe it's --

1 MR. JASON KAFOURY: Oh, okay. Okay. We've got one.
 2 We've got one.
 3 THE COURT: I could have taken some of those from
 4 counsel. Do you want to use the Court's to look through also?
 5 Counsel, you stipulated that Exhibit 42 could be received
 6 into evidence?
 7 MS. COIT: Yes.
 8 THE COURT: Christy.
 9 43. The weapons policy. Letter from Jamie Moffitt.
 10 MR. JASON KAFOURY: Yes.
 11 MS. COIT: Yes.
 12 THE COURT: Okay. Can I see 43, please?
 13 This is saving a lot of time. After this is submitted to
 14 you after their argument, it will go right to you. We won't
 15 waste any time gathering up evidence. It will be waiting for
 16 you.
 17 Do you have 43? Okay. That's it.
 18 Exhibit 46. Cleavenger's DPSST training record as of
 19 2015. Stipulated into evidence?
 20 MR. JASON KAFOURY: Yes.
 21 MS. COIT: Yes.
 22 THE COURT: Okay. We'll wait for 46.
 23 Do you have it, Christy?
 24 DEPUTY COURTROOM CLERK: Yes, I do.
 25 THE COURT: Exhibit 54. Donna Laue's email request

1 certain, is this -- I thought this was received before.
 2 MR. JASON KAFOURY: Which number, Your Honor?
 3 THE COURT: 74.
 4 We'll go over it later. I don't want to waste the jury's
 5 time.
 6 Stipulated by both counsel?
 7 MR. JASON KAFOURY: Yes.
 8 MS. COIT: Yes.
 9 THE COURT: If that's a duplicate, we'll take it out
 10 and inform the jury. Right now it's received.
 11 80 is the October 2, 2012, letter. Notice of unpaid
 12 administrative leave and predismisal hearing.
 13 Stipulated to by both parties?
 14 MR. JASON KAFOURY: Yes.
 15 MS. COIT: Yes.
 16 THE COURT: 81 is the step two grievance decision
 17 denial by Brian Smith, dated October 4, 2012.
 18 Stipulated to by both parties?
 19 MS. COIT: Yes.
 20 MR. JASON KAFOURY: Yes.
 21 THE COURT: Number 86. The termination letter.
 22 That's dated October 25, 2012. It was received October 26,
 23 2012.
 24 Stipulated to by both parties?
 25 MR. JASON KAFOURY: Yes.

1 to Morrow to see his investigation report, which is Exhibit 54.
 2 Stipulated, Counsel?
 3 MS. COIT: Yes.
 4 MR. JASON KAFOURY: Yes, for plaintiff.
 5 THE COURT: We will wait for that to appear to
 6 Christy.
 7 DEPUTY COURTROOM CLERK: Counsel, I don't have a copy
 8 of that.
 9 THE COURT: Do you have it marked as a court exhibit,
 10 Christy? Okay. Thank you, Christy.
 11 Now, I'm picking up again in the stack, Counsel.
 12 Exhibit 55 is an email to and from Morrow on June 26,
 13 2012. Other traffic stops.
 14 Stipulated by both parties?
 15 MR. JASON KAFOURY: Yes.
 16 MS. COIT: Yes.
 17 THE COURT: Okay. Thank you. Christy.
 18 The next is Exhibit No. 67. Respectful workplace memo.
 19 2012. 1/31/12. By UO HR.
 20 Stipulated by both parties?
 21 MS. COIT: Yes.
 22 MR. JASON KAFOURY: Yes.
 23 THE COURT: Christy.
 24 74 is a map of the UO campus. Haven't I seen this a
 25 number of times, Counsel? Maybe I haven't. Just to be

1 MS. COIT: Yes.
 2 THE COURT: 92. The six-month trial service
 3 appraisal evaluation form by Lieutenant Lebrecht on December 7,
 4 2011.
 5 Stipulated to by both parties?
 6 MS. COIT: Yes.
 7 MR. JASON KAFOURY: Yes.
 8 THE COURT: Number 98, the CAD report, of felony
 9 reports, which are non-citable for officers between August 22,
 10 2011, and March 5, 2012.
 11 Received by both parties?
 12 MR. JASON KAFOURY: Yes.
 13 MS. COIT: Yes.
 14 THE COURT: Stipulated, I mean. My apologies.
 15 Service Employment International Union -- well, strike
 16 that. Number 102. The arbitration panel request letter of
 17 April 8, 2013.
 18 Stipulated to by both parties?
 19 MR. JASON KAFOURY: Yes.
 20 MS. COIT: Yes.
 21 THE COURT: 106, the UODPS 2012 annual report, crime
 22 stats, and Clery statistics.
 23 Stipulated by both parties?
 24 MR. JASON KAFOURY: Yes.
 25 MS. COIT: Yes.

1 THE COURT: Received into evidence.
 2 120 -- strike that. 122. The Clery Act memo from
 3 Chief Carolyn McDermed to all U of O facility and staff dated
 4 November 4 -- strike that -- November 4, 2013.
 5 Stipulated into evidence by both parties?
 6 MR. JASON KAFOURY: Yes.
 7 MS. COIT: Yes.
 8 THE COURT: Received, obviously.
 9 126, the safety escort ride document by UOPD.
 10 Exhibit 126.
 11 Stipulated into by both parties?
 12 MR. JASON KAFOURY: Yes.
 13 MS. COIT: Yes.
 14 THE COURT: And if I neglect to say "received" on the
 15 record, it's obvious that the Court is receiving these
 16 documents upon stipulation.
 17 135 -- strike that.
 18 Counsel, in my -- I pick up at 135, but there are a number
 19 of documents I don't have.
 20 130, the UOPD radio traffic from September 10, 2012. The
 21 knife incident.
 22 MR. HESS: It's an audio file.
 23 THE COURT: It says the radio traffic from 9/10/12.
 24 MR. HESS: Right. And audio file only.
 25 THE COURT: Audio. Oh, I don't know.

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1 MR. HESS: It is an audio file.
 2 THE COURT: Oh, it is an audio file. Thank you.
 3 Do we have that?
 4 MR. HESS: I have to bring it in on a disk. I'll
 5 submit to you a disk.
 6 THE COURT: So that, Christy, needs to be brought in.
 7 Stipulated into evidence by both parties?
 8 MS. COIT: Yes.
 9 THE COURT: Counsel?
 10 MR. JASON KAFOURY: Yes.
 11 THE COURT: All right. Now, Christy, we need to make
 12 sure we absolutely remember that. We don't have a physical
 13 copy of that. Okay?
 14 That will be given to us today, Counsel?
 15 MR. HESS: Yes.
 16 THE COURT: 131. UOPD radio traffic from
 17 September 3, 2012. The first problematic callout incident.
 18 Now, we've seen these, haven't we, Counsel?
 19 MR. JASON KAFOURY: Which number is that?
 20 MR. HESS: 131.
 21 THE COURT: 131.
 22 MR. JASON KAFOURY: Yes. That has been played.
 23 THE COURT: It was played. We just don't have copies
 24 of them. The jury has heard these?
 25 MR. JASON KAFOURY: Yes.

1 THE COURT: We just don't have them physical ly read
 2 for them.
 3 So 131 you'll bring in?
 4 MR. JASON KAFOURY: Correct.
 5 THE COURT: Stipulated into evidence by both parties?
 6 MS. COIT: Yes.
 7 THE COURT: 132 is the UOPD radio traffic from
 8 9/6/2012. The second problematic callout incident. The jury
 9 has also seen this, but you need a physical copy for our
 10 evidentiary record.
 11 MR. JASON KAFOURY: Yes.
 12 MS. COIT: Yes.
 13 THE COURT: Stipulated into evidence by both parties,
 14 once again?
 15 MS. COIT: Yes.
 16 MR. JASON KAFOURY: Yes.
 17 THE COURT: You'll bring that into us today?
 18 MR. HESS: Yes.
 19 THE COURT: 135. Examples of bike stops. Bike Q and
 20 bike S in CAD. I have a physical copy of that.
 21 Stipulated into evidence by both parties?
 22 MS. COIT: Yes.
 23 THE COURT: 139. Response article by University of
 24 Oregon about the bowl of dicks list on July 16, 2014, by Julie
 25 Brown.

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1 Stipulated into evidence by both parties?
 2 MS. COIT: Yes.
 3 MR. JASON KAFOURY: Yes.
 4 THE COURT: So that's 139.
 5 147. June 18, 2012, email from Wardlow, Lebrecht,
 6 McDermed discussing plan to terminate Cleavenger.
 7 Stipulated into evidence by both parties?
 8 MS. COIT: Yes.
 9 THE COURT: Counsel?
 10 MR. JASON KAFOURY: Yes.
 11 MS. COIT: Yes.
 12 THE COURT: 148. The 2011 DPSST *Brady* list memo from
 13 monthly ethics BOLI claims.
 14 Stipulated into evidence by both parties?
 15 MS. COIT: Yes.
 16 MR. JASON KAFOURY: Yes.
 17 THE COURT: 149. The April 23, 2013, University of
 18 Oregon Police Department police officer job posting listing
 19 *Brady* list eligibility as a qualification.
 20 Stipulated into evidence by both parties?
 21 MR. JASON KAFOURY: Yes.
 22 MS. COIT: Yes.
 23 THE COURT: 165. McDermed and Moffitt email from
 24 July 11, 2014. RE: Professionalism after media released the
 25 list.

1 Stipulated into evidence by both parties?
 2 MR. JASON KAFOURY: Yes.
 3 MS. COIT: Yes.
 4 THE COURT: 183. Email from McDermed to Doug Tripp
 5 on May 14, 2012. RE: The plan to try to fire Cleavenger.
 6 Stipulated into evidence by both parties?
 7 MR. JASON KAFOURY: Yes.
 8 MS. COIT: Yes.
 9 THE COURT: 192. Transcript of April 1, 2012,
 10 traffic stop of law school dean. And I've got Commissiong.
 11 Stipulated into evidence by both parties?
 12 MS. COIT: Yes.
 13 MR. JASON KAFOURY: Yes.
 14 THE COURT: 193. Transcript of June 18, 2012.
 15 Interview with Cleavenger by Morrow. First half only.
 16 Stipulated into evidence by both parties?
 17 MR. JASON KAFOURY: Yes.
 18 MS. COIT: Yes.
 19 THE COURT: 197. The new UOPD policies. Number 1011
 20 and number 1060.
 21 Stipulated into evidence by both parties?
 22 MR. JASON KAFOURY: Yes.
 23 MS. COIT: Yes.
 24 THE COURT: 209. March 31, 2014. Best practices for
 25 navigating *Brady v. Maryland*. An Oregon memo by Gardner.

1 Scott Cameron.
 2 Stipulated into evidence by both parties?
 3 MS. COIT: Yes.
 4 MR. JASON KAFOURY: Yes.
 5 THE COURT: 248. Witness disqualification email sent
 6 to Deputy DA on July 3, 2014.
 7 I don't have that document in my possession. Nor do I
 8 have 249 or 250.
 9 MR. JASON KAFOURY: Yes. The higher exhibits in the
 10 250s, I might have to bring those --
 11 THE COURT: We're in the 240s. Not the 250s.
 12 Thank you.
 13 Christy, I'm handing you now 248, 249.
 14 And each of those are stipulated into evidence. Is that
 15 correct, Counsel?
 16 MR. JASON KAFOURY: Yes.
 17 MS. COIT: Yes.
 18 THE COURT: Now I'm waiting for 250. First email
 19 from DA Gardner to UOPD RE: Cleavenger's *Brady* response sent
 20 on August 29, 2014.
 21 Give that to Christy. That's 250.
 22 Counsel, let's pick up in the stack. 251. The second
 23 email from DA Gardner to UOPD RE: Cleavenger's *Brady* response
 24 from August 29, 2014.
 25 Stipulated into evidence?

1 Stipulated into evidence by both parties?
 2 MR. JASON KAFOURY: Yes.
 3 MS. COIT: Yes.
 4 THE COURT: 210. The June 30th -- or the June 30,
 5 2014, letter from DA Gardner to Coburg Police Chief Larry
 6 Larson. RE: *Brady*.
 7 Stipulated into evidence by both parties?
 8 MS. COIT: Yes.
 9 MR. JASON KAFOURY: Yes.
 10 THE COURT: Number 224. Cleavenger's case report,
 11 number 12-1844, dated September 10, 2012.
 12 Stipulated into evidence by both parties?
 13 MR. JASON KAFOURY: Yes.
 14 MS. COIT: Yes.
 15 THE COURT: 229. The April 2, 2012, draft letter of
 16 reprimand, final on May 18th, written by Scott Cameron.
 17 Stipulated into evidence by both parties?
 18 MS. COIT: Yes.
 19 MR. JASON KAFOURY: Yes.
 20 THE COURT: 236. The termination letters of
 21 UODPS employees for theft and dishonesty.
 22 Stipulated into evidence by both parties?
 23 MS. COIT: Yes.
 24 MR. JASON KAFOURY: Yes.
 25 THE COURT: 238. The disciplinary personnel file of

1 MR. JASON KAFOURY: Yes.
 2 MS. COIT: Yes.
 3 THE COURT: 252. June 25, 2012, email from
 4 Mike Morrow regarding renaming traffic stops in dispatch. See
 5 UO discovery item number UO-017238. Stipulated into evidence
 6 by both parties?
 7 MR. JASON KAFOURY: Yes.
 8 MS. COIT: Yes.
 9 THE COURT: 254 -- I'm sorry, Christy. 254 I don't
 10 have, Counsel. It's response from U of O RE: Internet use
 11 report to Bechdolt. I need 254.
 12 Thank you. Submitted into evidence by both parties, to be
 13 sure?
 14 MR. JASON KAFOURY: Yes.
 15 THE COURT: Then 260, the picture of the 2015 U of O
 16 cricket team, stipulated into evidence by both parties?
 17 MR. JASON KAFOURY: Yes.
 18 MS. COIT: Yes.
 19 THE COURT: Does that conclude the reading, Counsel?
 20 Oh, I'm sorry. There are two additional items. My
 21 apologies.
 22 264. The time sheets for plaintiff. I'm sorry. 264.
 23 The 2012 JCPD time sheets for plaintiff.
 24 Stipulated into evidence by both parties?
 25 MR. JASON KAFOURY: Yes.

1 MS. COIT: Yes.
 2 THE COURT: Now, Christy, those may have been sitting
 3 on the ledge. I'm not sure.
 4 Counsel, I don't have those. I don't think Christy has
 5 those. I would like to see 264.
 6 MR. JASON KAFOURY: I think that's the one I have to
 7 bring back from the office today. I'll have it sent over now.
 8 THE COURT: It might be in the binders you gave me.
 9 Maybe they're in the Court's binders.
 10 MR. HESS: The higher numbers aren't in the binders
 11 because they were newer. I think the copies -- so we need --
 12 MR. JASON KAFOURY: I'll have it brought over
 13 immediately.
 14 THE COURT: 266. The July 11, 2014, email chain .
 15 RE: *Brady* materials from plaintiff.
 16 Stipulated into evidence?
 17 MS. COIT: Yes.
 18 THE COURT: Does that need to be brought over also,
 19 Counsel?
 20 MR. JASON KAFOURY: No. I believe we have a copy of
 21 that one.
 22 THE COURT: 266, Christy. 264 to insert.
 23 Give that to Christy. Thank you.
 24 Does that complete the reading, Counsel, on behalf of the
 25 plaintiff?

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1 MR. JASON KAFOURY: There's two more. 270 and 271
 2 you have there.
 3 THE COURT: 270 is a series of emails dated -- the
 4 last email is dated July 23, 2014, from Mr. Cleavenger to
 5 Marc Stefan, Pam Lepec, and Andrea Coit. That's 270. I'm
 6 sorry.
 7 Well, 271, so we go in numerical order, is from
 8 Andrea Coit, dated Tuesday, July 8, 2014, to James Cleavenger
 9 and Pam Lepec, and this is a series of emails in a chain.
 10 Is this stipulated into evidence, Counsel?
 11 MS. COIT: Yes.
 12 MR. JASON KAFOURY: Yes.
 13 THE COURT: So, Christy, we'll need a tag for 271 .
 14 And 272, the last email I have, the last document given to
 15 the Court is from James Cleavenger, dated July 23, 2014, to
 16 Andrea Coit, Marc Stefan, and Pam Lepec.
 17 Is 272 stipulated to into evidence?
 18 MS. COIT: Yes.
 19 THE COURT: Counsel?
 20 MR. JASON KAFOURY: Yes.
 21 THE COURT: Then I'll need a marker also, a yellow
 22 tag, for 272.
 23 Does that complete the reading?
 24 MR. JASON KAFOURY: Yes, Your Honor, for plaintiffs.
 25 THE COURT: Okay.

1 MS. COIT: Yes.
 2 THE COURT: All right. Thank you.
 3 Then, Counsel, thank you for those efforts between the two
 4 parties last evening.
 5 And, Counsel, would you like to call your next witness?
 6 MR. JASON KAFOURY: Yes. I have just two brief
 7 matters to confer with counsel on.
 8 THE COURT: Now, that saved us half a day. That was
 9 exciting.
 10 Counsel, would you like to call your witness, please?
 11 MR. JASON KAFOURY: Did you get 82 on the record?
 12 That was the only one I didn't have a checkmark next to.
 13 MR. HESS: 82.
 14 THE COURT: We can check during the recess.
 15 MR. HESS: Okay.
 16 THE COURT: Time for a witness now.
 17 MR. HESS: Should I get Mr. Drake?
 18 MR. JASON KAFOURY: Yes.
 19 THE COURT: Mr. Cleavenger, apparently you will take
 20 the stand, then, for cross-examination. I don't hear another
 21 witness being called.
 22 MS. COIT: They called Mr. Drake.
 23 THE COURT: Thank you, sir.
 24 Please step forward into the courtroom, please, and up
 25 into the well.

1566

Drake - D

1 Now, would you stop in that location and raise your right
 2 hand, sir?
 3 MICHAEL DRAKE,
 4 called as a witness in behalf of the Plaintiff, being first
 5 duly sworn, is examined and testified as follows:
 6 THE WITNESS: I do.
 7 THE COURT: Thank you, sir. Please be seated into
 8 the witness box. The entrance to the witness box is just to my
 9 right, closest to the wall.
 10 Please be seated. Face the jury, state your full name,
 11 please, and spell your last name.
 12 THE WITNESS: Michael Richard Drake, D-R-A-K-E.
 13 THE COURT: Counsel agreed last evening that they
 14 would like to call Mr. Drake before the cross-examination of
 15 Mr. Cleavenger. Normally, that would follow, but they believe
 16 this would be a rather short witness in duration and
 17 appropriate to call him this morning by stipulation of both
 18 counsel.
 19 Counsel, direct examination by plaintiff's counsel?
 20
 21 DIRECT EXAMINATION
 22 BY MR. JASON KAFOURY:
 23 Q. Explain to the jury your education, where you're from, and
 24 your work history.
 25 A. Like I said, my name is Michael Drake. I grew up in

1 Pasadena, California. I moved to Oregon full time in 2004. I
 2 came up here in 2002 to attend the U of O. I have a bachelor
 3 of science in general sciences, and I have been working on
 4 prerequisites to go to veterinary school.
 5 Q. Where are you currently employed?
 6 A. The University of Oregon Police Department.
 7 Q. And how long have you been an employee of the police
 8 department?
 9 A. I started as a student employee in 2003. I became a
 10 temporary full-time officer in December of 2006 and was hired
 11 full time as a public safety officer in April of 2007.
 12 Q. What positions have you held within the Department of
 13 Public Safety?
 14 A. I was the community service officer. I was the community
 15 service officer coordinator. I was a public safety officer. I
 16 was a field training officer for public safety officers. And
 17 I'm now currently a dispatcher.
 18 Q. So you worked with my client the entire time, 2010 through
 19 2012; correct?
 20 You were there at the department the whole time he was
 21 there?
 22 A. That's correct, yes.
 23 Q. Can you please explain the process for the jurors of being
 24 a field training officer during the FTEP portion of an
 25 employee's time there?

1 A. You're assigned to be with that person, show them how
 2 things are done within the department. You -- I don't know if
 3 the right word is "critique" -- critique. You coach them.
 4 Teach them how to do the job that they've been hired to do.
 5 Yeah. That's -- you're kind of their person when you're there
 6 in the department.
 7 Q. Explain what your role was in relation to my client as a
 8 field training officer.
 9 A. To train him, to teach him, show him the ropes around the
 10 department.
 11 Q. And was that over those first six months when he first
 12 became a full-time employee there at the department?
 13 A. FTEP usually runs 16 to 17 weeks, so about four months.
 14 Q. If you would pull that mic just a little bit closer and
 15 pull yourself a little closer. We want to be sure to hear you
 16 so we have a clear record.
 17 A. Okay.
 18 Q. So as a field training officer, are you his only field
 19 training officer during that time period?
 20 A. He had one other field training officer, but I spent most
 21 of his -- his -- most of his field training was spent with me.
 22 Q. How many different people over the years did you provide
 23 field training for?
 24 A. Five to six.
 25 Q. Now let's talk a little bit about the scoring on those.

1 Can you explain for the jurors what the top score is, what
 2 normal scores are, that sort of thing?
 3 A. Yeah. So the way it's set up is you're scored between
 4 zero and seven. I think zero being the lowest and seven being
 5 the highest. Seven means basically that you have mastered that
 6 concept. You're -- you're good to go. A four would be, I
 7 guess, passing, for lack of a better word. It is that you
 8 understand that and kind of apply it, but you haven't yet
 9 mastered it.
 10 Q. I want to show you your field evaluation programs and have
 11 you identify them for me.
 12 MR. JASON KAFOURY: Will you grab 99?
 13 BY MR. JASON KAFOURY: (Continuing)
 14 Q. While he's grabbing those, I'll keep moving along here.
 15 So if someone gets three or a four score, that is normal,
 16 passing scores, during that period?
 17 A. Three would be -- you know, you still have a little bit of
 18 work to do in that area. A four would mean, you know,
 19 you're -- you've got that concept. It's very normal within the
 20 first few weeks of FTEP for people to receive zeros, ones,
 21 twos, threes.
 22 People getting sixes and sevens is not necessarily usual
 23 or common within those first few weeks.
 24 Q. How did my client handle critiques or criticism while you
 25 were his training officer?

1 A. He and I got along very well, so it was always a coaching
 2 moment with Mr. Cleavenger. You had to let him explain his way
 3 of thinking and kind of go back and forth with him a little
 4 bit.
 5 Q. I'm going to show you Exhibits 90 and 91. Can you
 6 identify what those are for the record?
 7 A. 90 is an end-of-phase report for Mr. Cleavenger.
 8 Q. What's the time period on that document?
 9 A. That's between March 30, 2011, and July 3, 2011.
 10 Q. And the next exhibit. 91?
 11 A. 91 is also an end-of-phase summary for Mr. Cleavenger.
 12 The timing of that is August 8, 2011, through August 22, 2011.
 13 MR. JASON KAFOURY: I'd offer 90 and 91, Your Honor.
 14 THE COURT: Each are received. I'm sorry. I missed
 15 it. August 8, 2011, through what date?
 16 THE WITNESS: August 22nd.
 17 THE COURT: August 22nd.
 18 MR. JASON KAFOURY: Can we -- Mr. Hess, can we blow
 19 up a couple of sections of those?
 20 THE COURT: Christy, here are 90 and 91.
 21 MR. JASON KAFOURY: Please blow up the first
 22 paragraph. It starts with "This is to serve."
 23 BY MR. JASON KAFOURY: (Continuing)
 24 Q. This is a document you wrote; correct, Mr. Drake?
 25 A. That's correct.

1 Q. It says, "During this time I was pleased with Cleavenger's
2 performance. Cleavenger has a healthy desire to work in law
3 enforcement and learns quickly."
4 That was your assessment at the time in July of 2011?
5 A. That's correct.
6 Q. Did my client express a desire to you about working in law
7 enforcement as a career?
8 A. Yes.
9 MS. COIT: Object. Hearsay.
10 THE COURT: Overruled.
11 BY MR. JASON KAFOURY: (Continuing)
12 Q. That was his career goal?
13 A. Yes.
14 MR. JASON KAFOURY: Can we go down to acceptance of
15 feedback? Third paragraph.
16 BY MR. JASON KAFOURY: (Continuing)
17 Q. "Cleavenger was always looking to improve himself and
18 asked good questions. Cleavenger accepted all feedback,
19 whether positive or negative, as a professional. Cleavenger
20 explains his thinking and logic behind his actions. This can
21 come off as being defensive or argumentative. However, this is
22 not his intent. Cleavenger took my feedback and applied it to
23 future similar situations."
24 Is that what you were talking about a moment ago, in terms
25 of critique, that my client would want to tell you why he did

1 things but would be accepting of the decisions?
2 A. That's correct.
3 MR. JASON KAFOURY: Can we go to page 3, Mr. Hess?
4 Field performance critique.
5 BY MR. JASON KAFOURY: (Continuing)
6 Q. "Cleavenger was able to properly assess routine
7 situations. Cleavenger remains very calm during situations and
8 reacts appropriately. Cleavenger maintains control of the
9 situation. Cleavenger has a good demeanor with students and is
10 jovial in nature and tends to put people at ease."
11 Was that generally how he dealt with the student body
12 there at the University of Oregon?
13 A. Yes.
14 MR. JASON KAFOURY: Can we go to self-initiated
15 activity. Blow up that first sentence, Mr. Hess. The whole
16 thing is fine.
17 BY MR. JASON KAFOURY: (Continuing)
18 Q. "Cleavenger is very eager about his job. As such, he has
19 done a lot of self-initiated activity."
20 How would you describe my client's activity level versus
21 other officers there in the department during this time?
22 A. It seemed to be a little bit higher. I had a hard time
23 keeping up with him at times with all that he wanted to go and
24 do.
25 MR. JASON KAFOURY: Can we blow up officer safety,

1 the next one?
2 BY MR. JASON KAFOURY: (Continuing)
3 Q. "Cleavenger showed good officer safety and maintained
4 control over his calls. I reminded Cleavenger he needs to call
5 people out to him and use his surroundings to keep him at a
6 position of advantage. Good use of light. Cleavenger
7 responded to cover other officers in an appropriate manner and
8 arriving within an appropriate amount of time."
9 Last -- can you go to page 4?
10 "Relationship with citizens."
11 Down.
12 "Cleavenger was very polite on his contacts and
13 represented the UODPS very well. Cleavenger was professional
14 and unbiased. Cleavenger worked very well with the students,
15 faculty, and staff at the U of O. Cleavenger also explained
16 the new campus policing initiative to students very well."
17 What was the new campus policing initiative? Do you
18 remember?
19 A. That was the initiative or the move to transition from a
20 public safety department into a full sworn police department.
21 Q. And, finally, "Relationship with department members."
22 Last paragraph.
23 "Cleavenger adheres to the chain of command and accepts
24 his role within UODPS. Cleavenger and I have a good
25 relationship. Cleavenger is accepted by his shift peers.

1 Cleavenger works well with all levels of the department from
2 security staff to command." Correct?
3 A. Correct.
4 Q. And this document was signed by yourself and
5 Lieutenant Becholdt on page 5; correct?
6 A. That's correct.
7 Q. Over those first four to six months, was this generally
8 how we just went through these -- you know, your assessments,
9 was this generally how my client was doing before
10 Sergeant Cameron became his supervisor in October 2011?
11 A. Yes. This is a good representation of how he was doing.
12 Q. Now, you and my client have socialized outside of work;
13 right?
14 A. That's correct.
15 Q. I think there's a photo that you guys went skiing during
16 this first four months?
17 A. Yes.
18 Q. Generally, is Mr. Cleavenger one of your better friends?
19 A. We're friends. I wouldn't call him a best friend.
20 Q. Okay. How often do you guys hang out outside of work
21 situations?
22 A. Actually, we see each other in person every couple of
23 months.
24 Q. I'll jump around on a few topics. Tell us about your
25 memories of Sergeant Cameron and of my client in relation to my

1 client's stance on Tasers.
 2 A. That was the Taser issue with James, was a source of --
 3 I'm sorry. I lost my dictionary here -- animosity, I guess.
 4 When James first came into the department, we all, including
 5 myself, were not thrilled that he had been hired because of the
 6 presentation that he gave on Tasers.
 7 Q. Who was the most vocal with their criticism?
 8 A. Sergeant Cameron was definitely one of them, but it was
 9 kind of an overall sentiment.
 10 Q. How often did Sergeant Cameron talk about my client and
 11 this Taser situation?
 12 A. I couldn't put a number on it.
 13 Q. Was it pretty clear to you that Sergeant Cameron disliked
 14 my client?
 15 A. Yes.
 16 MS. COIT: Object. Foundation.
 17 THE COURT: Well, more foundation, Counsel. Was he
 18 present or what he heard, et cetera.
 19 MR. JASON KAFOURY: Yeah.
 20 BY MR. JASON KAFOURY: (Continuing)
 21 Q. How often did Sergeant Cameron talk about my client?
 22 A. It -- I couldn't put a number on it.
 23 Q. Was it relatively frequently?
 24 A. My -- I -- I think so, yes.
 25 Q. Okay. And when he would discuss my client, what -- what

1 seemed to be his attitude in relation to Mr. Cleavenger?
 2 A. Negative.
 3 Q. Lieutenant Lebrecht. Let's talk about his political
 4 beliefs. How often did he -- well, first a little context.
 5 Were you there during the graveyard shift briefings in 2011
 6 while my client was there?
 7 A. Yes, I was.
 8 Q. Okay. How often did Lieutenant Lebrecht discuss political
 9 stuff during those briefings?
 10 A. Pretty often. It came up several times a week.
 11 Q. And how would you describe the opinions that
 12 Lieutenant Lebrecht was putting forth?
 13 A. You mean what --
 14 Q. What kind -- yeah, from the right to the left of the
 15 political spectrum.
 16 A. More to the right.
 17 Q. Do you remember any particular statements that he made
 18 during those briefings that stood out to you?
 19 A. We talked about President Obama not being a U.S. citizen;
 20 that there was something wrong with his birth certificate. We
 21 talked about Pat Tillman.
 22 Q. Who's Pat Tillman?
 23 A. I think he's an Army ranger who was killed by friendly
 24 fire in Afghanistan or Iraq, one of those.
 25 Q. He was a former professional football player; right?

1 A. I think so, yeah.
 2 Q. So what was -- what did Lebrecht say about Pat Tillman?
 3 A. I think it had something to do with the Democrats that
 4 killed Pat Tillman or were responsible for his death, something
 5 along those lines.
 6 Q. Let's talk about the bowl of dicks list. Is there any
 7 doubt in your mind that the list that was kept on Mr. --
 8 Officer LeRoy's phone was called the bowl of dicks list?
 9 A. No.
 10 Q. How much time was spent during those briefings talking
 11 about this bowl of dicks list?
 12 A. A decent amount. I -- I don't recall the exact number of
 13 minutes, but it was a lot.
 14 Q. Would the conversations sometimes go on for hours?
 15 A. Sometimes briefing would last upwards of an hour. Maybe
 16 more.
 17 Q. A few people -- do you remember a discussion about Eugene
 18 mayor, Kitty Piercy?
 19 A. Yes, I believe so.
 20 Q. In relation to this bowl of dicks list?
 21 A. Yes. I believe she was added to the list.
 22 Q. What about student body president Amelie Rousseau?
 23 A. She came up quite a bit during briefing.
 24 Q. OJ Simpson?
 25 A. I think -- yes, I think we talked about OJ.

1 Q. Who kept the most detailed notebooks of what was going on
 2 during those briefings?
 3 A. Kent Abbott.
 4 Q. Do you recall Officer LeRoy and Lieutenant Lebrecht
 5 spending many hours during those briefings together, not out in
 6 the field?
 7 A. Yes, I do.
 8 Q. How often did they do that?
 9 A. Oh, a few times a week.
 10 Q. What were they doing?
 11 A. I have no idea.
 12 Q. Have you ever heard of any other officer there that's been
 13 told that they can only report crimes that are felonies?
 14 A. No.
 15 Q. From -- during this time period, were the policies
 16 shifting and changing pretty frequently?
 17 A. Our policy manual remained the same, but we would have new
 18 things added and new directives.
 19 Q. Was that kind of constantly changing throughout those
 20 years: 2010, '11, '12?
 21 A. Yeah. There was new directions coming down.
 22 Q. Were you -- were you there when my client had this
 23 incident at the Addi's restaurant where he had the machetes and
 24 the headband?
 25 A. Yes.

1 Q. Were there Springfield Police Department people there too ?
 2 A. I believe so.
 3 Q. The policy manuals during that time period were outdated,
 4 weren't they?
 5 A. Yes.
 6 Q. You live in Junction City?
 7 A. That's correct.
 8 Q. Is there a lot of controversy surrounding Chief Chase
 9 there in Junction City?
 10 A. I think so. I'm not really up on politics.
 11 Q. Let's talk about -- have you ever heard of another
 12 officer, in all the years you've been there, that a supervisor
 13 has gone and reviewed every single one of their dash cam videos
 14 to look for officer safety issues?
 15 A. Not -- not that I can recall.
 16 Q. Do you remember Sergeant Cameron saying something to the
 17 effect of: You can take any video from any officer and if you
 18 scrutinize it hard enough, you can find mistakes?
 19 A. I don't remember him saying it, but that's kind of the
 20 general --
 21 Q. Do you agree with that generally?
 22 A. Yeah.
 23 Q. If you want to find something, a problem, you can watch a
 24 video and you can scrutinize it a million different angles;
 25 right?

1 A. Sure.
 2 Q. Besides that one time you went skiing with my client, how
 3 many times in the last three years have you ever gone skiing
 4 with him again?
 5 A. Let's see. We went to Willamette Pass once, met up with
 6 him again at Mt. Bachelor. So two, maybe a third. I'm not
 7 remembering.
 8 Q. I want to talk generally about the morale there. You're
 9 still there in the department. How would you describe the
 10 morale right now in the department?
 11 A. It could be better. It seems to be -- I think it could be
 12 better.
 13 Q. Within the department over the years. Has there sort of
 14 been an in crowd that gets treated differently than other
 15 folks?
 16 A. I don't know what you mean by "in crowd."
 17 Q. Well, a group of people that are close -- closer with the
 18 management, supervisor types, and they're treated differently
 19 than other people -- than other regular officers, for example?
 20 A. That's my perception.
 21 Q. Have you noticed a pattern over the years that when the
 22 management within the department wants to get rid of someone
 23 that they start a process of writing them up to build a case to
 24 be able to terminate them. Have you seen that pattern happen
 25 over the years?

1 MS. COIT: Object to the foundation.
 2 THE COURT: Sustained.
 3 BY MR. JASON KAFOURY: (Continuing)
 4 Q. Have you seen -- have you been there over the years
 5 watching people be terminated?
 6 A. Yes. People have been fired while I've been there.
 7 Q. A lot of people over the last five years?
 8 A. I -- I can only think of two off the top of my head that
 9 have been terminated -- oh, no, three.
 10 Q. How many people have left the department in the last five
 11 years?
 12 MS. COIT: Object to the foundation and the
 13 relevance.
 14 THE COURT: Sustained.
 15 BY MR. JASON KAFOURY: (Continuing)
 16 Q. The people that you can think of that were terminated, do
 17 you remember -- do you remember seeing them receiving a series
 18 of discipline up until they were terminated? Letters of
 19 reprimand?
 20 A. No.
 21 Q. Did you see Lieutenant Lebrecht play videos of his former
 22 football games there at the department?
 23 A. I remember seeing something with him and football.
 24 Q. Sitting here today with the chief -- the chief is your
 25 boss, correct, in this department?

1 A. Yes.
 2 Q. Are you fearful of retaliation for your testimony here
 3 today?
 4 A. Yes, I am.
 5 Q. Were you afraid of that back when you had your deposition
 6 taken in March of this year?
 7 A. Yes, I was.
 8 Q. After your deposition, were you given an annual
 9 evaluation?
 10 A. Yes.
 11 MR. JASON KAFOURY: I believe 204 is already in
 12 evidence, correct, Mr. Hess? 204?
 13 MR. HESS: No.
 14 BY MR. JASON KAFOURY: (Continuing)
 15 Q. Okay. Do you have a copy of 204? One moment. While he's
 16 grabbing that exhibit. Before you got this in -- you got an
 17 annual evaluation this year within months of your deposition;
 18 right?
 19 A. I think so, yeah.
 20 Q. Before you had gotten that annual evaluation, how long had
 21 it been since you got your last annual evaluation?
 22 A. A little over a year.
 23 Q. Can you identify what that document is for us?
 24 A. This is my performance evaluation.
 25 Q. What's the exhibit number? 204? Correct?

1 A. Yes.
 2 Q. What is the time period there on it?
 3 A. This is from January 10, 2014, to April 1, 2015.
 4 Q. So it's actually a 15-month annual evaluation?
 5 A. Yes.
 6 Q. So your deposition was on March 24, 2015; correct?
 7 A. That sounds about right.
 8 Q. And this reporting period isn't until seven days later.
 9 April 1, 2015; correct?
 10 A. Correct.
 11 MR. JASON KAFOURY: I'd offer 204, Your Honor.
 12 THE COURT: Any objection?
 13 MS. COIT: I object to the foundation and the
 14 relevance.
 15 THE COURT: Well, are --
 16 MS. COIT: It was not authored by any of the
 17 defendants.
 18 THE COURT: Is the relevance that you believe there's
 19 a drop in his scores, Counsel --
 20 MR. JASON KAFOURY: There's statements within here
 21 that --
 22 THE COURT: -- or do they reference his testimony in
 23 his deposition?
 24 MR. JASON KAFOURY: They reference statements that he
 25 made negative towards the department.

1 THE COURT: Show me the page.
 2 MR. JASON KAFOURY: Page 2, under Dependability, the
 3 last two paragraphs.
 4 THE COURT: All right. Just a moment.
 5 All right. What else?
 6 MR. JASON KAFOURY: Under Dependability and on page 3
 7 under Consider Effectiveness of Work Relationships. That
 8 narrative.
 9 THE COURT: I won't receive the document until
 10 there's more foundation, Counsel.
 11 MR. JASON KAFOURY: Okay.
 12 THE COURT: It doesn't say anything about a
 13 deposition. It states general comments that are made in the
 14 workplace. You can ask him about that until I have a better
 15 foundation.
 16 MR. JASON KAFOURY: Okay.
 17 BY MR. JASON KAFOURY: (Continuing)
 18 Q. When you received this annual evaluation -- do you have a
 19 copy of it there in front of you?
 20 A. Yes, I do.
 21 Q. It discusses engaging and making negative and disparaging
 22 comments to be brought forth by fellow department employees.
 23 Reports that he continues to engage in that.
 24 Did you interpret this -- these -- this section of your
 25 annual evaluation --

1 MS. COIT: Object to leading.
 2 THE COURT: Sustained.
 3 BY MR. JASON KAFOURY: (Continuing)
 4 Q. How did you interpret this section in your annual
 5 evaluation?
 6 A. I -- we, you know, talked openly about how we feel about
 7 how matters are going in the department. Everyone down there
 8 engages in it. I thought that I was being singled out and
 9 having this put in my eval because of my deposition.
 10 Q. Had you ever had any comments like these put into any of
 11 your other annual evaluations over the years?
 12 A. I would have to look at all of them. I don't recall.
 13 MR. JASON KAFOURY: Your Honor, I believe he's laid
 14 the proper foundation.
 15 THE COURT: We'll take it up during recess. I'm not
 16 certain, Counsel.
 17 MR. JASON KAFOURY: Okay.
 18 BY MR. JASON KAFOURY: (Continuing)
 19 Q. Did you feel that your annual evaluation was -- portions
 20 of it related to your deposition?
 21 A. Yes, I did. I do.
 22 Q. And tell us what -- what concerns you have for the future
 23 here.
 24 A. You know, just the continued retaliation against me, the
 25 nitpicking, critiquing.

1 Q. Is that the same nitpicking and critiquing that you saw
 2 happen to Mr. Cleavenger while he was there?
 3 A. It's similar, yes.
 4 Q. And by putting this information in your annual evaluation,
 5 how did that affect -- how did that affect your ability to move
 6 to a different department and -- and work in law enforcement
 7 somewhere?
 8 A. I --
 9 MS. COIT: Object to the foundation.
 10 THE COURT: Overruled. You can answer the question.
 11 THE WITNESS: I -- I mean, with stuff like this, I
 12 probably wouldn't be able to move to another department.
 13 BY MR. JASON KAFOURY: (Continuing)
 14 Q. Are you worried you might get fired?
 15 A. Yes.
 16 MR. JASON KAFOURY: That's all I have.
 17 THE COURT: Cross-examination?
 18 MR. JASON KAFOURY: Your Honor, I do have one matter
 19 for the Court. I conferred with counsel on it, but I'll need
 20 to discuss it with you first. I do not have an agreement with
 21 counsel on it.
 22 THE COURT: I am not going to have a sidebar,
 23 Counsel.
 24 MR. JASON KAFOURY: Okay.
 25 THE COURT: Thank you. Cross-examination.

1 CROSS-EXAMINATION
 2 BY MS. COIT:
 3 Q. Mr. Drake, who wrote your evaluation?
 4 A. Lynn Wilborn.
 5 Q. Who's your boss?
 6 A. Lynn Wilborn.
 7 Q. Were you supervised by Lieutenant Lebrecht?
 8 A. Not directly.
 9 Q. Are you supervised by Sergeant Cameron?
 10 A. Not directly.
 11 Q. Were you when your evaluation was given?
 12 A. Not Sergeant Cameron. He doesn't work there anymore.
 13 Q. Correct. When your evaluation was given, were you
 14 supervised by Sergeant Cameron?
 15 A. No.
 16 Q. How about Chief McDermed. Does she play any role in your
 17 supervision?
 18 A. Not directly.
 19 Q. Did you ask Lynn Wilborn if Chief McDermed had any input
 20 into your evaluation?
 21 A. Yes, I did.
 22 Q. What did she tell you?
 23 A. I believe her email said that Chief McDermed provided
 24 overall guidance.
 25 Q. On the process?

1 A. I don't know what she meant by "guidance."
 2 Q. Did she also tell you Chief McDermed did not provide any
 3 specific input on this evaluation?
 4 A. If that's what the email says.
 5 Q. Do you recall receiving that email?
 6 A. I do.
 7 Q. Is that what you recall saying?
 8 A. I would have to read it.
 9 MS. COIT: Your Honor, may I approach?
 10 THE COURT: You may.
 11 THE WITNESS: Did not provide any specific input --
 12 THE COURT REPORTER: I'm sorry. Could you slow down.
 13 THE WITNESS: So Chief McDermed did not provide any
 14 specific input on this evaluation. She only provided guidance.
 15 MS. COIT: Thank you.
 16 THE COURT: Who is that written by, Counsel?
 17 THE WITNESS: That is written by Lynn Johnson. Now
 18 Wilborn. Well, she was Wilborn. Now she's Johnson. She got
 19 married.
 20 BY MS. COIT: (Continuing)
 21 Q. Who's Ms. Wilborn?
 22 A. She's my supervisor.
 23 Q. You're not a public safety officer anymore, are you?
 24 A. No, I'm not.
 25 Q. You work in dispatch?

1 A. Correct.
 2 Q. Did you apply to become a police officer at UOPD?
 3 A. Yes, I did.
 4 Q. Did you withdraw from the process?
 5 A. That's correct.
 6 Q. Why did you withdraw?
 7 A. Because I wanted to go to veterinary school.
 8 Q. Before you withdrew from that process, had you failed the
 9 background checks at Eugene Police Department and the
 10 Washington County Police Department?
 11 A. Yes. Washington County Sheriff's Office.
 12 Q. Sheriff's. Excuse me. Did you fail those background
 13 checks because they found you to be dishonest?
 14 THE COURT: I'm sorry, Counsel. I couldn't
 15 understand you. Did you fail what?
 16 MS. COIT: The background checks.
 17 MR. JASON KAFOURY: I'll object on hearsay grounds,
 18 Your Honor.
 19 THE COURT: Overruled.
 20 MS. COIT: You can answer the question.
 21 THE WITNESS: Oh, I'm sorry. Could you repeat the
 22 question?
 23 BY MS. COIT: (Continuing)
 24 Q. Did you fail those background checks at the University of
 25 Oregon -- excuse me, at Eugene Police Department and the

1 Washington County Sheriff's Department because they had
 2 determined you to be dishonest?
 3 A. I was never given a reason.
 4 Q. Did you testify in your deposition that you believed it
 5 was because they found you to be dishonest?
 6 A. Yes.
 7 Q. You agree that you were Mr. Cleavenger's primary field
 8 training officer?
 9 A. That's correct.
 10 Q. Other than a few days he may have been with
 11 Chris Phillips, you were it; right?
 12 A. Yes.
 13 Q. Do you agree that you spent a lot of time during field
 14 training either sitting in the dispatch office or responding to
 15 Eugene Police Department calls?
 16 A. I'd have to look.
 17 Q. Does that sound like something that you guys did during
 18 field training?
 19 A. Yes.
 20 Q. Do you recall being interviewed by Mike Morrow when he was
 21 conducting an internal investigation into Mr. Cleavenger's
 22 conduct?
 23 A. Yes, I do.
 24 Q. Do you recall being questioned about what you taught
 25 Mr. Cleavenger regarding traffic stops?

- 1 A. Yes, I do.
- 2 Q. Do you recall telling Mike Morrow that you did not teach
- 3 Mr. Cleavenger that it was okay to conduct a full traffic stop
- 4 with lights on, pulling someone over?
- 5 A. I -- that's correct. I did not teach him to do that.
- 6 Q. And, sitting here today, is that your testimony -- you did
- 7 not teach him to do that?
- 8 A. Yes.
- 9 Q. If he told Mike -- strike that.
- 10 Did you -- as part of your job duties as a field training
- 11 officer for Mr. Cleavenger, did you teach him about his duty to
- 12 advise people that they're being recorded?
- 13 A. I don't recall if we talked about that or not.
- 14 Q. Would you agree with me that that would be part of your
- 15 job duties as his field training officer?
- 16 A. Yes.
- 17 Q. Is there any reason for you to believe that you did not
- 18 teach him that?
- 19 A. No.
- 20 Q. How many times -- well, let me ask you this first: You
- 21 agree with me that you and Mr. Cleavenger became fairly good
- 22 friends early on during the field training program; correct?
- 23 A. We became friends.
- 24 Q. A month or two into the program?
- 25 A. Yes.

- 1 Q. How many times do you recall you and Mr. Cleavenger taking
- 2 off work early to go either skiing or to do something else?
- 3 A. I don't -- I'd have to look at my schedule. I don't
- 4 recall.
- 5 Q. Do you recall one time?
- 6 A. I can't recall the time. I wouldn't be surprised if we
- 7 did.
- 8 Q. Now, do you agree that graveyard -- the graveyard shift
- 9 contacts people on campus that aren't students at times?
- 10 A. Yes.
- 11 Q. Who are the other people that you contact, as public
- 12 safety officers, that are not students?
- 13 A. Local transients, visitors of students, students at Lane
- 14 Community College. Some folks that come down from Portland.
- 15 It varies.
- 16 Q. Would you agree with me that it's a good idea to enter
- 17 into those contacts, into all contacts, being cautious?
- 18 A. Yes.
- 19 Q. Is it a bad idea, as a public safety officer or a police
- 20 officer, to be too trusting?
- 21 A. Yes.
- 22 Q. Did you ever have concerns Mr. Cleavenger was a little too
- 23 trusting?
- 24 A. Yes, I did.
- 25 Q. What were those concerns?

- 1 A. Jim liked to give people the benefit of the doubt.
- 2 Q. Is that a good idea in law enforcement?
- 3 A. It -- it has its -- it has its places in law enforcement,
- 4 yes.
- 5 Q. Can it also cause safety concerns?
- 6 A. Yes.
- 7 Q. Now, you talked about the Taser speech that Mr. Cleavenger
- 8 made. Did that speech -- did he express other opinions in that
- 9 speech, that you're aware of, other than just, "I don't want
- 10 the UOPD to have Tasers."
- 11 A. I don't recall.
- 12 Q. You testified that you didn't agree that he should have
- 13 been hired because of that Taser speech; is that correct?
- 14 A. That's correct.
- 15 Q. Was it just the fact that he didn't want DPS to have
- 16 Tasers or was there more to it in your opinion?
- 17 A. For me it was just the Taser issue. I can't recall
- 18 anything else.
- 19 Q. Did you ever hear Lieutenant Lebrecht say anything about
- 20 Mr. Cleavenger's Taser speech?
- 21 A. I don't recall.
- 22 Q. How about Chief McDermed?
- 23 A. No. I don't recall.
- 24 Q. All right. In the time period when you were talking about
- 25 Sergeant Cameron speaking negatively about Mr. Cleavenger, can

- 1 you give us a range of when that time was?
- 2 A. I -- there was a lot of talk before he started working,
- 3 before his first shift, and then the -- sporadic afterwards. I
- 4 don't remember exact times.
- 5 Q. Give me an idea of sporadic. Is that one or two times,
- 6 that you recall?
- 7 A. I just remember it being kind of the general
- 8 understanding. General theme. I --
- 9 Q. So sitting here today, you don't recall actual statements
- 10 Sergeant Cameron made, just a general feeling that
- 11 Mr. Cleavenger shouldn't have been hired?
- 12 A. Yes. I mean, yeah.
- 13 Q. Now, you talked a little bit about Lieutenant Lebrecht
- 14 saying political things. Did you ever understand anything
- 15 Lieutenant Lebrecht said in a political nature to be anything
- 16 but a joke?
- 17 A. No.
- 18 Q. Were any of the jokes he made offensive to you?
- 19 A. Not to me personally.
- 20 Q. And the list, the list that Eric LeRoy kept, did you ever
- 21 see this list before it was published on the Internet?
- 22 A. No.
- 23 Q. Did Mr. Cleavenger ever tell you he saw it before it was
- 24 published on the Internet?
- 25 A. No.

- 1 Q. You said that you knew that Officer LeRoy and
2 Lieutenant Lebrecht were spending hours in the office together
3 after briefings?
4 A. Yes.
5 Q. Tell me how you know that.
6 A. Both of their cars were parked out in front of the
7 station.
8 Q. So other than seeing their cars, do you have any other
9 reason to believe that they were goofing off inside the station
10 together for an entire shift?
11 A. That was my perception.
12 Q. Because the cars were parked outside?
13 A. Yes.
14 Q. How many times would you drive by to see their cars parked
15 out there?
16 A. Oh, I -- I don't recall. A few times, I guess.
17 Q. All right. And then the football videos. You kind of
18 said you recalled something about a football video and
19 Lebrecht.
20 A. I recall seeing something having to do with him and
21 football on the screen somewhere.
22 Q. Do you have any memory that it was actually
23 Lieutenant Lebrecht's football videos?
24 A. Yeah.
25 Q. Not Adam Lillengreen's?

- 1 A. No.
2 Q. Okay. Now, you will agree with me that you want
3 Mr. Cleavenger to win this lawsuit; right?
4 A. Yes.
5 Q. Do you agree that you have expressed the opinion that you
6 hope all the defendants get fired as a result of this lawsuit;
7 correct?
8 A. Yes.
9 Q. Tell us why you want them all to get fired.
10 A. I just want things to change at the department.
11 Q. What do you want to change?
12 A. I want new leadership to come in. I -- I just want it to
13 get better.
14 Q. Do you agree with me that your feeling is based on the
15 hiring that has been done for police officers?
16 A. Yes.
17 Q. And some of that is personal to you because you were not
18 hired?
19 A. I withdrew.
20 Q. Did you think you were going to get hired?
21 A. No.
22 Q. And that's because you failed the other background checks?
23 A. That had something to do with it, yeah.
24 Q. You said earlier you didn't think you could get a job at a
25 police department because of your personal -- your evaluation.

- 1 A. Uh-huh.
2 Q. Do you think perhaps it might be more important to the
3 other departments that you failed background checks for
4 dishonesty?
5 A. I'm sure they would take that into account, yes.
6 Q. Now, you agree that you've been, since this lawsuit was
7 filed, spreading rumors at the department; correct?
8 A. Yes.
9 Q. And these are negative rumors about the defendants and
10 other administrators at the department; correct?
11 A. Yes.
12 Q. You'd agree with me that you got this information or a lot
13 of it from Mr. Cleavenger; correct?
14 A. Yes.
15 Q. You agree that Mr. Cleavenger knew that you would spread
16 those rumors at the department; correct?
17 A. I don't -- I don't know what his intent was in telling me.
18 Q. Did you tell Mr. Cleavenger that you would tell other
19 people at the department about the information he was giving
20 you?
21 A. I don't recall.
22 Q. Did Mr. Cleavenger tell you that all of the defendants in
23 this case -- well, excuse me, all of the UOPD staff who
24 testified at the arbitration, except Sergeant Bechdolt --
25 Lieutenant Bechdolt now -- lied at the arbitration?

- 1 A. Yes, I remember that.
2 Q. Mr. Cleavenger told you that?
3 A. Yes.
4 Q. Did you tell other people at the department that?
5 A. Yes.
6 Q. Did you tell Mr. Cleavenger that you told other people at
7 the department that?
8 A. I don't re -- probably.
9 Q. Did Mr. Cleavenger ever ask you to clarify with those
10 people that he didn't really mean they lied under oath?
11 A. No.
12 Q. Do you recall testifying in your deposition -- well,
13 excuse me. Yeah, do you recall telling me in your deposition
14 that you believe Officer Hermens is a liar?
15 A. Yes, I do.
16 Q. And Officer LeRoy, you said he's a liar?
17 A. Yes.
18 Q. You said Chief Boyd, she's a liar?
19 A. Casey Boyd?
20 Q. Oh, I'm sorry. Casey Boyd.
21 A. Yes.
22 Q. And you said Amanda Hayles, she's a liar?
23 A. Yes.
24 Q. You said Lieutenant Lebrecht is a liar?
25 A. Yes.

- 1 Q. You said Chief McDermed is a liar?
 2 A. Yes.
 3 Q. And you said all this under oath; right?
 4 A. Yes.
 5 Q. But you didn't think Sergeant Cameron was a liar?
 6 A. No.
 7 Q. You testified that you think the morale in the department
 8 is low?
 9 A. It -- yes. Yeah.
 10 Q. Do you agree with me that you're playing a big role in
 11 lowering the morale at the department?
 12 A. I -- I probably am, yes.
 13 Q. Why are you doing that?
 14 A. I want the place to change.
 15 Q. You want the chief and Lieutenant Lebrecht fired; right?
 16 A. I want the place to change.
 17 Q. Did Mr. Cleavenger tell you that he'll do whatever it
 18 takes to get the defendants fired?
 19 A. No.
 20 Q. Never told you that?
 21 A. No.
 22 Q. During field training, would you and Mr. Cleavenger spend
 23 some time making fun of Lieutenant Lebrecht?
 24 A. I think so.
 25 Q. Do you recall being asked that in your deposition and

- 1 telling me that you would make fun of Lieutenant Lebrecht?
 2 A. Yes.
 3 Q. Do you recall telling me that -- or Mr. -- I'm sorry. Did
 4 I interrupt you?
 5 A. No, you're fine. I -- I'm having a moment here. Go
 6 ahead.
 7 Q. Do you recall Mr. Cleavenger making fun of
 8 Lieutenant Lebrecht during field training?
 9 A. Yes.
 10 Q. What was it about Lieutenant Lebrecht that you and
 11 Mr. Cleavenger would make fun of?
 12 A. I don't recall.
 13 Q. Can you recall anything you made fun of him about?
 14 A. No. I just know it happened.
 15 Q. And how about Sergeant Cameron? Did he make fun of
 16 Sergeant Cameron?
 17 A. I -- I think so.
 18 Q. Can you recall anything he said that was making fun of
 19 Sergeant Cameron?
 20 A. No.
 21 Q. Do you agree with me that at the time he was below them in
 22 the chain of command?
 23 A. Yes.
 24 Q. Is it appropriate to make fun of your supervisors?
 25 A. No.

- 1 Q. Do you agree that Mr. Cleavenger thought the department
 2 was a steppingstone and a Mickey Mouse operation?
 3 A. Yes.
 4 Q. Do you also agree that it's your opinion that
 5 Mr. Cleavenger thought he was smarter than the people he was
 6 working for?
 7 A. Yes.
 8 Q. You've told people at the department that you think
 9 everything Mr. Cleavenger has said in his 200 -paragraph lawsuit
 10 is true. Is that correct?
 11 A. Yes.
 12 Q. What do you base that on?
 13 A. I haven't had a reason to doubt him.
 14 Q. Do you agree that you've said some pretty crass things
 15 over the radio at dispatch?
 16 A. Yes.
 17 Q. Do you feel there's anything wrong with that?
 18 A. It's not appropriate.
 19 Q. Have you been in trouble for it?
 20 A. Yes.
 21 Q. Were you disciplined for belittling your co-workers?
 22 A. Yes.
 23 Q. Did Mr. Cleavenger engage in that belittling with you?
 24 A. Yes.
 25 Q. Specifically about Lebrecht and Cameron; correct?

- 1 A. Yes.
 2 Q. And this was during field training?
 3 A. Yes.
 4 MS. COIT: Thank you.
 5 THE COURT: Redirect.
 6
 7 REDIRECT EXAMINATION
 8 BY MR. JASON KAFOURY:
 9 Q. You never wrote anything down about my client making fun
 10 of anybody, did you? It's not in any of your written stuff?
 11 A. No, it's not.
 12 Q. Were these private jokes at 3:00 or 4:00 in the morning,
 13 walking around, with you and Mr. Cleavenger on patrol kind of
 14 stuff?
 15 A. That's the only thing I can think of that it was.
 16 Q. Now, did my client have an ego where he, you know, acted
 17 like he was smarter than everybody else?
 18 A. I -- that -- that wasn't how I perceived him.
 19 Q. She asked about your opinions about changing the
 20 department. Do you see any way this department could reform
 21 itself without a change of leadership?
 22 A. No, I don't.
 23 Q. Defense counsel asked you a lot of questions about your
 24 honesty and this failed background check. Just take a moment
 25 and explain to the jurors what really happened with that.

1 A. So I lied to my parents about having completed my degree
 2 at the U of O. I was still working on getting it, but I -- I
 3 told them that I graduated and walked.
 4 Q. How many classes away were you?
 5 A. One. I have 256.
 6 Q. Now, she asked you about this tape-recording and whether
 7 you would have talked to my client about it. Assuming the dash
 8 cam videos didn't come to the department until 2012, you
 9 wouldn't have had any discussions in 2011 about dash cam videos
 10 and policies and procedures, would you?
 11 A. No. Not about dash cams.
 12 Q. So you didn't think my client should be hired either
 13 because of his stance on Tasers. How did that change?
 14 A. I guess a few days into it, a few weeks, we had, you know,
 15 engaged in a dialogue where he explained, you know, what his
 16 opinions were, and that kind of set me at ease.
 17 Q. Sitting here today, do you have any doubt that when --
 18 well, strike that.
 19 Do you remember a joke people would say involving my
 20 client and mistakes other officers would make?
 21 A. I -- no.
 22 Q. Something about cross -- being nailed to the cross? Does
 23 that ring a bell?
 24 A. No.
 25 Q. Sitting here, do you have any doubt that Chief McDermed

1 played a role in that annual evaluation report that you had?
 2 A. I don't have any doubt, no.
 3 MR. JASON KAFOURY: That's all I have.
 4 THE COURT: Recross?
 5 MS. COIT: Nothing. Thank you.
 6 THE COURT: I'll ask you to remain available.
 7 Counsel wanted to speak to the Court, but I want to keep the
 8 case moving. But during the recess I'll find out what that's
 9 about. If you'll step out in the hallway.
 10 Next.
 11 MR. JASON KAFOURY: There's no longer an issue, Your
 12 Honor.
 13 THE COURT: No longer an issue? May he be excused?
 14 MR. JASON KAFOURY: He may be excused.
 15 THE COURT: Counsel?
 16 MS. COIT: Yes.
 17 THE COURT: You may be excused.
 18 Next witness.
 19 MR. JASON KAFOURY: Our client can retake the stand.
 20 THE COURT: Mr. Cleavenger, you can retake the stand
 21 and walk across the well. Retake the stand, and this will be
 22 cross-examination by the defense.
 23 Counsel?
 24
 25 ///

1 JAMES CLEAVENGER,
 2 called as a witness in behalf of the Plaintiff, having been
 3 previously sworn, is examined and testified as follows:
 4
 5 MS. COIT: Your Honor, may I hand you the exhibits
 6 I'm going to use?
 7 THE COURT: Certainly. You can give those to
 8 Christy.
 9 MS. COIT: And the witness as well.
 10 THE COURT: You have a stack for the witness?
 11 MS. COIT: I do.
 12 THE COURT: Okay.
 13 MR. JASON KAFOURY: Do you have a list of which ones
 14 you're using?
 15 Your Honor, to expedite things, if I can get a list of the
 16 exhibits, that way I can pull them now.
 17 THE COURT: Not on cross. Thank you, Counsel.
 18 Counsel, your cross-examination.
 19 MS. COIT: Thank you.
 20
 21 CROSS-EXAMINATION
 22 BY MS. COIT:
 23 Q. Good morning, Mr. Cleavenger.
 24 A. Good morning.
 25 Q. So I handed you up there a copy of your deposition

1 transcripts as well as exhibits we'll be talking about during
 2 your testimony. Okay?
 3 A. Okay.
 4 Q. All right. Do you agree with me that Sergeant Cameron was
 5 fair to you during your evaluation process?
 6 A. No.
 7 Q. Explain to me what Sergeant Cameron did with you and for
 8 you during your performance evaluation process.
 9 A. You mean beforehand?
 10 Q. Throughout the entire process. It was a long process;
 11 right?
 12 A. It was a very long process.
 13 Q. Okay. Tell us what Sergeant Cameron did.
 14 A. He wrote multiple drafts of my evaluation, some of which I
 15 saw; some of which I never saw.
 16 Q. Did Sergeant Cameron sit down with you and have a meeting
 17 about your evaluation?
 18 A. He did eventually sit down with me and have a meeting,
 19 yes.
 20 Q. How long was that meeting?
 21 A. I don't recall.
 22 Q. Was it -- does two hours ring a bell?
 23 A. I honestly don't know how long it was.
 24 Q. Was your union steward present at that meeting?
 25 A. I don't recall. I don't recall. I don't think so, but I

1 don't recall.
 2 Q. Did Sergeant Cameron listen to your concerns during that
 3 meeting?
 4 A. I don't know if he listened to me or not.
 5 Q. Were you at the meeting, Mr. Cleavenger?
 6 A. Yes.
 7 Q. Was it a dialogue between you and Sergeant Cameron?
 8 A. Yes.
 9 Q. Did he respond to statements you made about your concerns?
 10 A. Yes.
 11 Q. And, in your opinion, did he listen to the suggestions
 12 that you made and take those into account?
 13 A. He took some of them into account.
 14 Q. Can you tell me one that he did not take into account?
 15 A. I would have to look at the different drafts of the annual
 16 evaluations and compare them.
 17 Q. Mr. Cleavenger, you're saying he did not take some into
 18 account. So I'm asking you what you're talking about.
 19 A. I believe I just said that he did take some into account.
 20 Q. Which ones did he not?
 21 A. I don't know without looking at those different
 22 evaluations and comparing them.
 23 Q. Have you listened to the recording of that evaluation
 24 meeting you had with Sergeant Cameron?
 25 A. Not in a long time.

1 Q. When is the last time you listened to it?
 2 A. At least a year ago.
 3 Q. Sitting here today, you can't remember that it was two
 4 hours long?
 5 A. I cannot remember how long it was.
 6 Q. Do you agree with me that the first draft of the
 7 evaluation, the one that you claim you didn't see until this
 8 lawsuit -- do you agree that Sergeant Cameron was the author of
 9 that first draft?
 10 A. I don't know if he was the actual author or not.
 11 Q. Do you agree that that is the version of the evaluation
 12 that Sergeant Cameron wrote that was then sent up the chain of
 13 command?
 14 A. Again, I don't know that. I was not involved in that
 15 process. I never saw that evaluation.
 16 Q. Do you agree that that first evaluation, the one you claim
 17 you didn't see until recently, that first draft, do you agree
 18 that that one was a positive performance review?
 19 A. Yes. It was certainly more positive than what I received
 20 on May 31st.
 21 Q. Do you agree it was -- overall, it was a favorable review
 22 to you?
 23 A. I'd have to look at it, but it was certainly much more
 24 favorable than the one I received on May 31st.
 25 Q. All right. After you met with Sergeant Cameron to discuss

1 your performance evaluation, did he give you a revised version
 2 of it?
 3 A. He did.
 4 Q. Do you agree with me that he took into account comments
 5 and suggestions that you made to him during the meeting in that
 6 revised evaluation?
 7 A. Yes. I believe I've already testified he did take some of
 8 the comments into consideration.
 9 Q. Do you agree with me that the second version you got from
 10 Sergeant Cameron, after he met with you for two hours, was
 11 better than the first version?
 12 A. It was better, yes.
 13 Q. Now, the written reprimand that you got on May 18th of
 14 2012 had to do with the Spencer View call; correct?
 15 A. Correct.
 16 Q. And do you recall that Spencer View call happening on
 17 April 1st of 2012?
 18 A. Correct. Pretty much everything happened on April 1st.
 19 Q. Is it your testimony that you have no memory of speaking
 20 with Sergeant Cameron back at the office after that call about
 21 you driving past the apartment?
 22 A. That's correct. That's my recollection. We did not speak
 23 about it.
 24 Q. Is it possible that you did and you just don't remember?
 25 A. I suppose that's possible.

1 Q. Now, on that call, do you agree that four officers
 2 responded, including you?
 3 A. Yes, there were four.
 4 Q. One of them was a sergeant. Do you agree with that?
 5 A. Yes.
 6 Q. Do you agree that three of the officers responded as if
 7 this were an active call?
 8 A. Can you give me your definition of an active call?
 9 Q. No, Mr. Cleavenger. You testified that you believed this
 10 to be a cold call; correct? Didn't require caution in your
 11 approaching; correct?
 12 A. That was not my testimony.
 13 Q. What is your testimony about what kind of call this was?
 14 A. As I recall, my testimony was that I believed it was
 15 similar to a cold call, similar to what Officer Hermens
 16 described his previous experience at that apartment was, and
 17 that over the radio it was expressed that both parties were
 18 back inside their houses.
 19 So if you mean active and that was there a fight or an
 20 argument going on at the time, then, no, it was not active.
 21 They had gone back inside their apartments. It was no longer
 22 an active dispute.
 23 Q. Do you agree with me that of the four officers who
 24 responded, one of whom was a sergeant, you were the only one
 25 who responded to this as if it were a cold call?

1 A. I have no idea what their state of mind was.
 2 Q. Mr. Cleavenger, is it possible -- possible that your
 3 opinion that this was a cold call is just wrong. Is that
 4 possible?
 5 A. That's all -- that's always possible. A lot of times we
 6 get dispatched to something and it turns out to be something
 7 else. That happens all the time.
 8 Q. Do you agree with me that never, to this day, have you
 9 acknowledged that you may have responded to this call
 10 inappropriately?
 11 A. I believe, like Sergeant Cameron has stated, there's
 12 always room for improvement.
 13 Q. Sir, my question is, sitting here today, through three
 14 steps of grievances, through an arbitration, through your
 15 depositions -- three days of depositions -- have you ever
 16 acknowledged that you may have done something inappropriate or
 17 just wrong, made a mistake, when you arrived at the Spencer
 18 View Apartments on April 1st?
 19 A. My testimony has always been that, based on the
 20 information I had, I did the best I could, and I don't see
 21 where I could have done anything different.
 22 For instance, I was not warned that the woman was --
 23 sorry, both women were potentially crazy. That didn't happen.
 24 That was a phone call Hermens made to dispatch. I didn't hear
 25 that. I was not warned.

1 He also testified that he warned me where to park
 2 specifically. That didn't happen. Had I been told to meet
 3 everyone on the north side, I would have gone in the first
 4 entrance and met them at the north side.
 5 Q. Mr. Cleavenger, do you agree that to learn from any
 6 feedback you have to first accept that at times you could be
 7 wrong?
 8 A. Of course.
 9 Q. So since this lawsuit -- well, I guess since your
 10 grievance was filed with the written reprimand, you've learned
 11 a lot of information about that May 18th written reprimand?
 12 Correct? How it came to be. Who was involved in it.
 13 A. Correct.
 14 Q. You know that Sergeant Cameron had to sign it because he
 15 was your supervisor; correct?
 16 A. It -- I -- if that's the protocol, then, yes.
 17 Q. Mr. Cleavenger, are you part of the union? Were you part
 18 of the union when this occurred?
 19 A. Yes.
 20 Q. Are you familiar with the union requirements that a
 21 supervisor hands down discipline?
 22 A. I am now.
 23 Q. Were you aware -- you are now. Okay.
 24 So you agree with me that per the union contract, Sergeant
 25 Cameron, as your supervisor, had to be the one to sign the

1 written reprimand?
 2 A. Yes.
 3 Q. Sitting here today, you know of Lieutenant Lebrecht's
 4 involvement in the reprimand; correct?
 5 A. Yes, I knew he was involved.
 6 Q. You know of Randy Wardlow's involvement; correct?
 7 A. I can't recall when Wardlow became involved. If it was
 8 after they drafted it or before they drafted it.
 9 Q. Do you agree that Randy Wardlow was involved before you
 10 were given the written reprimand on May 18, 2012?
 11 A. I don't recall the -- it sounds accurate.
 12 Q. It sounds accurate? Is that what you said?
 13 A. I just can't remember the timeline of when Randy Wardlow
 14 became involved.
 15 Q. But did you say it sounds accurate?
 16 A. Yes, that's what I said.
 17 Q. And you're aware that the chief approved the document
 18 before it was given to you?
 19 A. I -- I know that -- I believe that to be true now. I did
 20 not know that at the time.
 21 Q. But you know that now; correct?
 22 A. I know she had some involvement now.
 23 Q. And do you also know now that Lieutenant Morrow approved
 24 the document?
 25 A. I don't recall that.

1 Q. Do you know now that Pete Deshpande, your captain,
 2 approved the document?
 3 A. Are you sure about that?
 4 Q. I'm asking you if you know that, Mr. Cleavenger.
 5 A. I don't think Pete Deshpande was hired at the department
 6 at that time.
 7 Q. In May of 2012?
 8 A. I don't think he was.
 9 Q. Well, do you agree with me that you personally were not
 10 aware -- when you met with Sergeant Cameron and
 11 Lieutenant Lebrecht on April 7 of 2012, you were not aware that
 12 there was dash cam video of the incident?
 13 A. I don't think I've ever said that.
 14 Q. Mr. Cleavenger, I'm asking you -- for your answer. Were
 15 you aware of that or not?
 16 A. I cannot remember what I thought three years ago.
 17 Q. Okay. Do you recall telling Lieutenant Lebrecht or
 18 Sergeant Cameron that if they wanted to see where Hermens was
 19 parked or how you approached or where people were standing,
 20 that they should check your dash cam video?
 21 A. I don't recall if I said "check my dash cam video" or not.
 22 Q. Do you agree with me that that's something you would have
 23 told them to do had you known there was dash cam video?
 24 A. Probably. And I may have said that.
 25 Q. Mr. Cleavenger, sitting here today, do you really believe

1 that Sergeant Cameron issued you that written reprimand on
 2 May 18 of 2012 to get back at you for something you said about
 3 Tasers four years before?
 4 A. I believe that was part of it, yes.
 5 Q. Do you believe that was a big part of it? Do you believe
 6 that is what motivated him to write that written reprimand? He
 7 wanted to get back at you for something you said four years
 8 before about Tasers. Is that what you believe?
 9 A. I believe the main reason Sergeant Cameron disliked me is
 10 because of my Taser speeches back in 2008. That animosity
 11 carried forward and then he retaliated against me when he
 12 could.
 13 Q. All right. I'll ask you the question again and I just
 14 want you to answer it. Okay? Do you believe that
 15 Sergeant Cameron was motivated to write that written reprimand
 16 because he wanted to punish you for what you said about Taser s
 17 four years before? Is that why he did it?
 18 A. I'll state that again. I believe Sergeant Cameron didn't
 19 like me because of my Taser speeches in 2008 and when he had a
 20 chance to retaliate against me, he did so.
 21 Q. Do you believe Sergeant Cameron even wrote the reprimand
 22 you got?
 23 A. I don't know who actually wrote it.
 24 Q. Do you believe Sergeant Cameron even wrote the reprimand
 25 that you got?

1 A. I don't know if he actually wrote it or not.
 2 Q. Do you believe he wrote your evaluation you ultimately
 3 got?
 4 A. Again, I don't know what he did and did not actually
 5 write.
 6 Q. So Chief McDermid -- did you think the chief didn't like
 7 you when you were at the department?
 8 A. No. Actually, I thought she did like me.
 9 Q. She was never anything but kind to you, was she,
 10 Mr. Cleavenger?
 11 A. To my face, that's true.
 12 Q. Did you ever hear her say anything negative about you?
 13 A. Again, not -- not to me.
 14 Q. Let's broaden it. Did you ever hear Chief McDermid say
 15 anything negative about anyone when you worked at the
 16 department?
 17 A. Frankly, I never heard Chief McDermid say much about
 18 anyone. I think her duties kept her away from the day-to-day
 19 operations of the department. I rarely saw her.
 20 Q. So is your answer, no, you never heard her say anything
 21 negative about anyone?
 22 A. That's correct. I never heard her say anything negative
 23 about anyone.
 24 Q. In your opinion, did she care about her officers?
 25 A. I have no idea how she felt about her officers.

1 Q. Did her actions and her statements that she made at the
 2 department give you the impression that she was actually
 3 concerned about the well-being of her officers?
 4 A. I'm not sure how I can qualify that statement. Are you
 5 asking me did she seem like a nice person?
 6 Q. Sure. Can you answer that question?
 7 A. Yes, she seemed like a nice person.
 8 Q. Now, again, you have gained a lot of information
 9 throughout this whole process; correct?
 10 A. Correct.
 11 Q. Why do you believe Chief McDermid recommended your
 12 termination?
 13 A. I believe she recommended my termination because I was
 14 speaking out against the department.
 15 Q. Speaking out to whom?
 16 A. Speaking out to people outside the department.
 17 Q. Like who?
 18 A. Such as Brian Smith, such as Linda King.
 19 Q. Let me stop you, Mr. Cleavenger. Do you agree with me
 20 that Chief McDermid had already recommended your termination
 21 before you made all these statements to Brian Smith on
 22 October 2nd?
 23 A. I have no idea when she decided, in her mind, to fire me.
 24 Q. Did you receive a notice of predismisal?
 25 A. After my meeting with Brian Smith, yes.

1 Q. It's dated October 1; is that correct?
 2 A. It was given to me on October 2nd. I believe that's
 3 pretty clear in the record.
 4 Q. Have you seen the document, Mr. Cleavenger?
 5 A. Yes, I've seen the document.
 6 Q. Do you agree with me it's dated October 1st and it's
 7 signed by Chief McDermid?
 8 A. That is the date on the letter. That is not when I
 9 received it.
 10 Q. So you believe Chief McDermid fired you because you made
 11 complaints about the department?
 12 A. Yes. I believe that's part of it.
 13 Q. What's the other part?
 14 A. The other part is I believe she was relying on false
 15 information that she was given by my supervisors, Cameron and
 16 Lebrecht and Morrow.
 17 Q. Anything else? Just those two things?
 18 A. I think those -- those things generally cover it, yes.
 19 Q. So you believe she was relying on false information from
 20 Lieutenant Lebrecht, Lieutenant Morrow, and who else?
 21 A. Scott Cameron.
 22 Q. Okay. And in reliance on that false information, you
 23 believe she recommended your termination; is that correct?
 24 A. Again, you're asking me to testify for her state of mind.
 25 I have no idea what her state of mind was.

1 Q. I'm asking you to testify what you're here today saying
 2 Chief McDermed did to you.
 3 A. She fired me.
 4 Q. I'm asking you why you think she fired you. Why do you
 5 think it was wrong?
 6 A. Because I think that there was no just cause to fire me,
 7 and I believe it was an act of retaliation.
 8 Q. So you believe your firing was wrongful because it wasn't
 9 supported by just cause?
 10 A. I'm sorry. That's what the arbitrator believed. But I
 11 believe his opinion was correct in that matter.
 12 Q. Do you believe Chief McDermed was motivated to recommend
 13 your termination, to end your career as a law enforcement
 14 officer, because of something that you said?
 15 MR. JASON KAFOURY: Your Honor, I'm going to object.
 16 At this point, she's asked it a number of times, and it's
 17 requiring speculation of what is in someone else's mind.
 18 THE COURT: Overruled.
 19 THE WITNESS: Can you ask the question again, please?
 20 BY MS. COIT: (Continuing)
 21 Q. Do you believe that Chief McDermed fired you, ended your
 22 law career -- or, excuse me, your law enforcement career at the
 23 University of Oregon, to get back at you, to punish you for
 24 something that you had said?
 25 A. Frankly, we wouldn't be here if that's what I didn't

1 believe. Yes, that's what I believe.
 2 Q. What do you base that on?
 3 A. Can you be more specific?
 4 Q. Why do you believe that?
 5 A. Because I believe that after I told her about problems
 6 within this department she retaliated against me. I believe
 7 she was also receiving information from my supervisors that was
 8 false. I also believe she did not -- she failed to -- to
 9 conduct an actual investigation in a lot of matters, so she
 10 didn't have a full picture.
 11 Q. A full picture of your side of these matters you were
 12 disciplined for? Is that what you're saying?
 13 A. Yes.
 14 Q. All right. You told her about problems in the department.
 15 Was that in the August 13th meeting?
 16 A. That was the second meeting. The first meeting was
 17 when -- June -- early June. I told her a little bit then.
 18 Q. What did you tell her in June?
 19 A. I told her I felt I was being retaliated against by my
 20 supervisors and mistreated by them.
 21 Q. Mistreated by whom?
 22 A. By my supervisors, Lebrecht and Cameron.
 23 Q. And you told her you were being retaliated against for
 24 what?
 25 A. For a lot of things.

1 Q. How long was this meeting?
 2 A. That first meeting was brief. Five minutes. My main
 3 concerns in that meeting were the harassment and retaliation
 4 from my supervisors and my concerns about the way that
 5 investigations were being conducted because they were in
 6 violation of state law under the Public Safety Officers Bill of
 7 Rights.
 8 Q. Mr. Cleavenger, sitting here today, do you recall, on
 9 June 1st, telling Chief McDermed, "I feel that my supervisors
 10 are violating the state law officers bill of rights." Is that
 11 your testimony under oath here today?
 12 A. I may not have been as eloquent back then, but I told her
 13 that I believed it was against the law and against policy for
 14 an investigation to be conducted based on a letter I'm given,
 15 that's two paragraphs long, that says I'm being investigated,
 16 but it doesn't say what I'm being investigated for or who's
 17 investigating me.
 18 Q. And that was the five-minute meeting?
 19 A. That was the five-minute meeting, yeah.
 20 Q. On what day? June 1st?
 21 A. Early June.
 22 Q. Was it the same day Lieutenant Morrow gave you -- was it
 23 the same day that you received notice from Lieutenant Morrow of
 24 the internal affairs investigation?
 25 A. I believe so, yes.

1 Q. Do you recall making a timeline at some point in this
 2 case?
 3 A. I've made many timelines, yes.
 4 Q. Do you recall on June 1st putting in that timeline in the
 5 meeting you had with Lieutenant Morrow?
 6 A. I may have. I'm not sure. These things are -- I would
 7 edit them -- they're a work in progress -- all the time.
 8 Q. Would you agree this meeting you had with Chief McDermed
 9 was something that was important to you?
 10 A. Was the meeting important to me?
 11 Q. Yes.
 12 A. Well, I wanted to have the meeting, if that's what you
 13 mean.
 14 Q. What were you putting in this timeline?
 15 A. The timeline was basically used for my notes so I could
 16 remember what was happening when and I could go back and look
 17 at those notes, basically.
 18 Q. Would you agree that your timeline makes no reference to
 19 meeting with Chief McDermed on June 1st?
 20 A. I have no idea if it does or doesn't. What version are
 21 you talking about? Because there's multiple versions.
 22 Q. Do any versions reference the meeting, Mr. Cleavenger?
 23 A. Yes.
 24 Q. Which one?
 25 A. Many versions do.

1 Q. Okay. All right. So on August 13th do you recall asking
 2 Chief McDermid to meet with you for five minutes?
 3 A. I recall asking Chief McDermid for a meeting. I believe
 4 that was by email -- is that correct? -- a few days beforehand.
 5 Q. Do you recall saying you wanted to meet with her for five
 6 minutes?
 7 A. Something to that effect.
 8 Q. The meeting you were having with Chief McDermid was the
 9 same day you met for three hours with Lieutenant Lebrecht and
 10 your union steward and Randy Wardlow; is that correct?
 11 A. That's correct.
 12 Q. Who did you meet with first?
 13 A. I'm not sure, but I'm sure you could probably tell me.
 14 Q. Sitting here today, you don't remember who you met with
 15 first?
 16 A. I'm pretty sure I met with Lebrecht first during the day,
 17 but if I'm wrong, please let me know.
 18 Q. Okay. How did you feel coming out of that meeting with
 19 Lieutenant Lebrecht?
 20 A. Pretty shocked and dismayed.
 21 Q. Were you frustrated?
 22 A. Yes, I was frustrated.
 23 Q. Do you agree with me that the meeting you had with
 24 Chief McDermid later that afternoon -- what you did was vent
 25 your frustrations about the meeting you had with

1 Lieutenant Lebrecht?
 2 A. I vented a lot of my frustrations about the meeting, about
 3 the department, about the way I was being treated. Yes, there
 4 was a lot of venting going on.
 5 Q. How did Chief McDermid respond to you in that meeting?
 6 A. She took a whole bunch of notes, multiple pages, and then
 7 she said she was going to get to the bottom of this and that --
 8 she basically told me she thought this was silly and that she
 9 was hoping that I could get back to work in my full-time job, a
 10 public safety officer, as soon as possible. I was very hopeful
 11 after that meeting.
 12 Q. What did she think was silly?
 13 A. The -- the whole process that I had been going through.
 14 Q. The investigation process?
 15 A. That's the way I took it, yes.
 16 Q. So that's what you were complaining to her about, this
 17 investigation process?
 18 A. I told you, and I'll tell you again, yes, that was part of
 19 what I was talking to her about.
 20 Q. What else did you talk to Chief McDermid about?
 21 A. Everything. I let the proverbial cats out of the bag:
 22 The bowl of dicks list; the way I felt some officers were being
 23 treated -- mistreated in the department, including myself;
 24 violations of state law.
 25 Q. Did you say "the cat's out of the bag"?

1 A. I said I let the proverbial cats out of the bag at that
 2 meeting.
 3 Q. And you recall telling Chief McDermid about a bowl of
 4 dicks at that meeting?
 5 A. Yes. As part of wasting time.
 6 MS. COIT: Your Honor, may I approach?
 7 THE COURT: You may. Are you exhibit marking this?
 8 MS. COIT: No. It's impeachment.
 9 THE COURT: I'm sorry?
 10 MS. COIT: It's impeachment.
 11 THE COURT: You still have to mark it. If you're
 12 showing him a document, it needs a number on it. It has to
 13 have some reference.
 14 MS. COIT: It's Defendant's Exhibit 422.
 15 THE COURT: 422. All right.
 16 BY MS. COIT: (Continuing)
 17 Q. Do you recognize 422?
 18 A. It seems to be an email from me to John Ahlen.
 19 Q. Who's John Ahlen?
 20 A. He was my third union steward.
 21 Q. What's the date of the email?
 22 A. Appears to be -- the subject is "Information request for
 23 JC on 9/21/12" and -- sorry, the sent time is 11:30. 2012.
 24 Q. Is the email from you, Mr. Cleavenger?
 25 A. Yes.

1 Q. Can you read for the jury the highlighted portion of the
 2 email?
 3 MR. JASON KAFOURY: Can I see a copy of this,
 4 Counsel. It's not in evidence, Your Honor. I have no idea
 5 what this is.
 6 BY MS. COIT: (Continuing)
 7 Q. Can you read for the jury the highlighted paragraph,
 8 please?
 9 A. Sure. "Are you sure we want to let the cat out of the bag
 10 at this point with the bowl of dicks? There won't be anything
 11 in their emails, I'm sure, so is the point just to give them a
 12 taste of what is to come?"
 13 Q. That email is dated a month after -- more than a month
 14 after you met with Chief McDermid; correct?
 15 A. That's correct. We're talking about press releases here.
 16 MS. COIT: I need to change that to Exhibit 423 and I
 17 would offer it.
 18 THE COURT: 423. Any objection, Counsel?
 19 MR. JASON KAFOURY: Yes, I do. I have some
 20 objections. We'll have to take it up at a later time.
 21 THE COURT: I'm going to receive this, Counsel. You
 22 can publish it.
 23 BY MS. COIT: (Continuing)
 24 Q. All right. So let's talk about Lieutenant Lebrecht. You
 25 got along with him when you first started working at the

1 department; correct?
 2 A. Yes.
 3 Q. He was kind to you?
 4 A. Yes.
 5 Q. He appeared to want you to succeed at the department?
 6 A. Yes.
 7 Q. Do you agree with Mr. Drake's testimony that you used to
 8 make fun of Lieutenant Lebrecht?
 9 A. No, I actually don't. I don't remember making fun of
 10 Lieutenant Lebrecht.
 11 Q. Do you believe Mr. Drake was lying, or you just don't
 12 recall?
 13 A. I just don't recall.
 14 Q. Do you agree you used to make fun of Sergeant Cameron?
 15 A. I don't recall making fun of Sergeant Cameron. I was not
 16 afraid to say that I didn't like the way he was treating me.
 17 Q. Is it your testimony you did not make fun of Sergeant
 18 Cameron?
 19 A. I don't recall making fun of Sergeant Cameron.
 20 Q. So, again, my question. Do you think Mr. Drake is lying,
 21 or do you just not recall?
 22 A. I -- I just don't recall specifically making fun of.
 23 Q. Okay. Do you recall specifically making fun of other
 24 officers?
 25 A. I don't recall making fun of officers. I may have

1 better than Sergeant Cameron?
 2 A. Sergeant Cameron wasn't running the police department.
 3 Q. Neither were you, Mr. Cleavenger.
 4 A. That's correct, I was not running the police department
 5 either.
 6 Q. Did you believe that your ideas on how the police
 7 department were run, how law enforcement should be handled, do
 8 you believe they differed from Sergeant Cameron's beliefs?
 9 A. Yes.
 10 Q. Did you believe yours were better than his?
 11 A. I believe they were different than his.
 12 Q. Do you agree that you were a subordinate officer at the
 13 police department?
 14 A. Yes.
 15 Q. Do you agree Sergeant Cameron was your supervisor?
 16 A. Yes, he was my supervisor.
 17 Q. Mr. Cleavenger, you have testified you want to have a
 18 career in law enforcement; correct?
 19 A. That's correct.
 20 Q. Are you familiar with the concept of chain of command?
 21 A. Yes.
 22 Q. Do you understand that it is required in law enforcement
 23 to follow the chain of command?
 24 A. Yes. That's why I transported the woman with the gun on
 25 his orders.

1 expressed concern about some of their actions, but I don't
 2 recall making fun of them.
 3 Q. Do you agree with me that people generally can tell when
 4 you don't take them seriously?
 5 A. Can you say that again.
 6 Q. Do you agree with me that people generally can tell when
 7 you don't take them seriously?
 8 THE COURT: You mean that generally or specifically
 9 with Mr. Cleavenger, Counsel?
 10 MS. COIT: Just a general concept. I can be specific
 11 if you would prefer.
 12 THE WITNESS: I don't think I understand that
 13 question.
 14 BY MS. COIT: (Continuing)
 15 Q. Well, can you tell when people don't take you seriously?
 16 A. Sometimes.
 17 Q. Do you agree that you did not take Lieutenant Lebrecht and
 18 Sergeant Cameron seriously?
 19 A. No, I would not say that is a true statement.
 20 Q. Did you believe you were smarter than them?
 21 A. I -- I did not say that.
 22 Q. I didn't ask you if you said that. Did you believe that?
 23 A. I -- I don't believe I'm smarter or better than anyone
 24 else.
 25 Q. Did you think you knew how to run a police department

1 Q. Do you agree it was hard for you to accept negative
 2 feedback from your supervising officers?
 3 A. I didn't feel like it was hard for me to accept negative
 4 feedback. I think I had to learn there was a different process
 5 in law enforcement when you discuss issues because, in my
 6 previous work experience when there was an issue, you would
 7 discuss it and you would have discussion and you would talk
 8 about why you thought one way was better than the other.
 9 I have found that in law enforcement there are some
 10 officers who just want to receive -- given or receive orders
 11 that they don't want to know the why or -- and that's fine and
 12 I believe I adapted to that. I know I have adapted to that now
 13 because I've succeeded at Junction City and Coburg and I'm used
 14 to that now.
 15 Q. So you agree with me at that -- at the time you were at
 16 the Department of Public Safety you had not yet quite adapted
 17 to that?
 18 A. I -- well, correct, I hadn't adapted to anything. I was a
 19 brand new officer.
 20 Q. Yet you still felt it was your place to tell them they
 21 were doing their job improperly?
 22 A. I did not tell anyone they were doing their job
 23 improperly. All I did was merely explain why I choose one
 24 action over the other.
 25 Q. You would explain this opinion of yours in public around

1 other officers; correct?
 2 A. Sometimes. I thought that was a healthy dialogue. I
 3 would want to hear their feedback too.
 4 Q. Do you think it's appropriate to criticize your
 5 supervisors' orders and commands and instructions in the field
 6 around other officers?
 7 A. I got recall criticizing orders.
 8 Q. That's not my question. Do you believe that's an
 9 appropriate thing to do?
 10 A. It could be inappropriate, yes.
 11 Q. It could be what?
 12 A. It could be inappropriate, yes.
 13 Q. Did you think Lieutenant Lebrecht was a very good police
 14 officer?
 15 A. You mean when I started?
 16 Q. When he was your supervisor, did you think he was a very
 17 good police officer?
 18 A. I had -- I did not have any problems with
 19 Lieutenant Lebrecht when I started there.
 20 Q. At some point did your opinion change?
 21 A. Are we talking about his police officer skills or are we
 22 talking about Lebrecht as a whole?
 23 Q. His skills as a police officer. Did you think he was a
 24 very good police officer?
 25 A. I have never had any reason to doubt his police officer

1 skills.
 2 Q. What was it about Lieutenant Lebrecht that made him
 3 someone that you would make fun of?
 4 A. I do not recall making fun of Lieutenant Lebrecht.
 5 Q. Did you make fun of his intelligence?
 6 A. I do not recall making fun of him at all.
 7 Q. Do you respect Lieutenant Lebrecht?
 8 A. I did respect Lieutenant Lebrecht.
 9 Q. When did you respect Lieutenant Lebrecht?
 10 A. When I first started, up until at some point after Cameron
 11 became my supervisor. After October of 2011 I started losing
 12 some respect.
 13 Q. How about Sergeant Cameron? Did you respect
 14 Sergeant Cameron when he was your supervisor?
 15 A. I would certainly respect him in public, and I would --
 16 yes, I would respect him in public.
 17 Q. In public? I'm sorry. You would respect Sergeant Cameron
 18 in public?
 19 A. Yes.
 20 Q. Did you disrespect him in private?
 21 A. Yes.
 22 Q. Tell me how you disrespected Sergeant Cameron in private .
 23 A. He was a very frustrating supervisor to work for because
 24 he -- he wouldn't listen to anybody else.
 25 Q. Who, other than you, did he not listen to?

1 A. Anyone.
 2 Q. Such as?
 3 A. His -- all the officers knew that Sergeant Cameron was a
 4 guy that you could not talk to, could not argue with. There
 5 was never any changing his mind. It -- everything was flowing
 6 downhill with Cameron, and you just needed to say "Yes, sir"
 7 and move on with Cameron.
 8 Q. Mr. Cleavenger?
 9 A. Yes.
 10 Q. Do you agree with me that you never said "Yes, sir" and
 11 moved on with Sergeant Cameron?
 12 A. Of course I did.
 13 Q. Do you agree with me that you oftentimes argued with him
 14 when he would give you instructions and orders in the field?
 15 A. Again, I never believed I was arguing with him.
 16 Q. What did you believe you were doing?
 17 A. Trying to understand what he wanted me to do and why and
 18 was trying to propose different ideas.
 19 Q. And sitting here today, do you believe that that is an
 20 appropriate response from a subordinate officer to his
 21 supervisor in the field?
 22 A. Yes. I think it can be. I think police work is -- is
 23 especially an -- in police work, I think working in a group
 24 benefits police work. You get better outcomes . If you make an
 25 arrest of someone, it's good to talk to multiple officers and

1 get their opinions on how to -- what crimes to charge them with
 2 or how to proceed with the investigation , how to handle things,
 3 what questions to ask them. And, yeah, I do think it's okay.
 4 Q. So were you hoping for this police environment to be some
 5 sort of collaborative process with you and the supervisors?
 6 A. I was hoping there would be some open dialogue.
 7 Q. And is that where your frustrations stemmed from?
 8 A. No. My frustrations stemmed from my feeling that I was
 9 being retaliated against.
 10 Q. But was the retaliation that you felt you were suffering,
 11 was it this failure to engage in an open dialogue with you
 12 about how police work should be handled?
 13 A. That -- that is a minor issue.
 14 Q. Okay. All right. Have you ever been disrespectful to
 15 Lieutenant Lebrecht?
 16 A. I may have. I don't recall.
 17 Q. How about have you ever said anything disrespectful to him
 18 over the radio when -- where all the other officers could hear?
 19 A. I didn't mean to. I know what you're talking about, and
 20 that was not my intention to be disrespectful.
 21 Q. Why don't we play it, and you can explain your intention.
 22 MS. COIT: Your Honor, may I play an audio?
 23 THE COURT: What's the number of it?
 24 MS. COIT: This is 424.
 25 THE COURT: 424. You may play 424.

1 MS. COIT: We're having technical difficulties. I'll
2 come back to that.

3 THE COURT: Would this be a good time for a recess,
4 Counsel?

5 MS. COIT: It would be fabulous. Thank you.

6 THE COURT: Don't discuss this matter amongst
7 yourselves or express any opinion or opinion about the case.
8 We'll come get you in 20 minutes.

9 (Jury not present.)

10 THE COURT: Counsel, if you would be seated. I
11 wanted to discuss a document that you were trying to get into
12 evidence and my hesitation in the presence of the jury. It's
13 document 204. You sought permission, and I told you I'd take
14 that up during the recess.

15 This was the document where he believes that in two
16 different sections there's retaliation because of the
17 deposition he entered into. I think, from memory, he hadn't
18 had an annual evaluation for, I think, 15 months.

19 I think the deposition takes place and seven days later
20 and, if my memory is correct, he gets this annual evaluation.

21 I want to clear the record with that. Quite frankly, my
22 hesitancy was not being certain. I didn't have a baseline. I
23 didn't see his evaluation 15 months before. I didn't know
24 whether it dropped. And the initial representation was this
25 was tied to the deposition, but I didn't see that. And you

1 gave me the explanation that he believes it's tied to the
2 deposition.

3 I let that testimony in over objection. In other words,
4 you can discuss that. It's the actual document itself that is
5 in question, so I want you to make a record, and I apologize
6 for not making that immediately. I just didn't have enough
7 information.

8 MR. JASON KAFOURY: I think there's been a lot of
9 testimony already that the command staff, including
10 Chief McDermed, was involved in the process of annual
11 evaluations; that they go up the chain of command and they go
12 into HR's files. I think that's all in the record from other
13 testimony.

14 In this instance, we have an email where the person who
15 wrote this evaluation, part of the command staff, says that
16 Chief McDermed had, quote, guidance in this document. She's a
17 defendant in this lawsuit. She's been present at a lot of the
18 depositions. And there were comments in the annual evaluation
19 about making disparaging remarks. And in the document it goes
20 on to say, I believe, that if this continues you will be
21 further disciplined and terminated.

22 Let me find the --

23 THE COURT: He admits to the disparaging remarks on
24 page 2 and I believe again on page 3.

25 MR. JASON KAFOURY: Right.

1 THE COURT: He -- but it's his subjective belief that
2 these are inserted in this timely fashion in relation to the
3 deposition. Am I understanding the argument?

4 MR. JASON KAFOURY: That is -- that is -- exactly --
5 that this is an annual evaluation up until the period ending of
6 April 1st and seven days before that he gives deposition
7 testimony. And I don't think anyone would write directly that
8 because you gave a deposition in a document like this, we are
9 therefore doing X, but I think it's a fair inference that the
10 jurors should be allowed to see.

11 THE COURT: Okay. Counsel?

12 MS. COIT: You know --

13 THE COURT: The two of you are down to fighting over
14 straws. I'm just joking with you a little bit. It already
15 came into evidence. I mean, it's verbally there.

16 My inclination is as follows: My inclination is to
17 receive it for two reasons. Although, it's fairly collateral.
18 First, it -- there's argument concerning the timing about the
19 annual -- you know, 15 months, and so the jury could speculate
20 or decide that the annual report should be an annual report and
21 this comes so close to the deposition.

22 I think on page 3 Johnson is the supervisor's name, but
23 there is testimony that there was guidance from the chief.
24 And, therefore, your effort is one to show that there's a
25 series of retaliatory moves going on of which your client is

1 the primary example of this retaliation.

2 The end result is that the testimony is already in. He's
3 testified to a subjective belief that this occurred, that
4 there's a 15-month hiatus; he gets this seven months later, and
5 on -- or on cross-examination, on behalf of the defendants,
6 you're able to show that basically he's not hired because --
7 what? You say he lied. Two police departments turned him
8 down.

9 Is anybody really harmed by this? In fact, the first part
10 says competent performance. I can't imagine why you wouldn't
11 want that part in.

12 MS. COIT: I take no position. I'm not going to
13 stipulate, but --

14 THE COURT: No, don't stipulate. There's no reason.
15 This might be a turning point in the case.

16 MR. JASON KAFOURY: My Exhibit No. 1 in closing
17 argument.

18 THE COURT: I'll receive this and let's move on. Go
19 have a nice recess. See you in 15 minutes.

20 (Recess taken.)

21 MS. COIT: Your Honor, before the jury comes in, we
22 have some impeachment audios. I made you a transcript of what
23 they are, just so you could see them.

24 THE COURT: Thank you. I probably don't need it.
25 I'll watch. But thank you. Thank you. I'll watch the -- this

1 is the audio.
 2 MS. COIT: Those are just audios.
 3 THE COURT: Right.
 4 MS. COIT: They're not videos. They're audios.
 5 THE COURT: I appreciate it. Thank you.
 6 (Jury present.)
 7 THE COURT: Back on the record. All counsel are
 8 present. The parties are present. Mr. Cleavenger, be kind
 9 enough to retake the stand and continue the cross-examination,
 10 please.
 11 BY MS. COIT: (Continuing)
 12 Q. Mr. Cleavenger, before the break, we were talking about a
 13 time that you had voiced over the radio something disrespectful
 14 to Lieutenant Lebrecht, and I believe we have solved our
 15 technical difficulties and we will play that.
 16 MS. COIT: Your Honor, may I play?
 17 THE COURT: You may.
 18 (Exhibit No. 424 was played for the jury.)
 19 BY MS. COIT: (Continuing)
 20 Q. Was that you making that last statement?
 21 A. Yes, it was.
 22 Q. Do you agree that was disrespectful to your lieutenant?
 23 A. That was not meant to be disrespectful. If you listen to
 24 it again, you'll hear the intonation in his voice. He's
 25 saying, "Did you take any pictures of that pile of garbage?" I

1 responded -- in response, I also was sarcastic, and I said,
 2 "Well, I would be if you'd stop rushing me."
 3 So it was not meant to be disrespectful. I talked about
 4 it with Lieutenant Lebrecht, and he explained to me that over
 5 the radio or during -- or in a written transcript, it could be
 6 seen as disrespectful. I made it clear to him and I believe he
 7 knew that I did not mean to be disrespectful to him by saying
 8 that.
 9 Q. Did you agree with his statement to you that it could be
 10 perceived as disrespectful by others?
 11 A. Actually, I believe he said that it would be inappropriate
 12 to say that over the radio because it could be considered
 13 disrespectful, something like that.
 14 So my point is I didn't mean him any disrespect by saying
 15 that. I was being sarcastic.
 16 Q. Sir, my question is did you agree with him that it could
 17 be disrespectful?
 18 A. Yes.
 19 Q. What are your thoughts on Officer Hermens?
 20 A. I don't find him truthful at all. Especially now.
 21 Q. The stack of documents in front of you, can you look at
 22 the top one, Exhibit 387?
 23 THE COURT: Counsel, can we get help from the
 24 co-counsel. That way we're not shuffling through documents.
 25 Unless you can find it. We have it. Thank you.

1 THE WITNESS: I've got 387.
 2 BY MS. COIT: (Continuing)
 3 Q. What is 387?
 4 A. 387 is an email between Donna Laue, one of my former union
 5 stewards, and myself, where she's asking me my opinions of some
 6 of the officers in the department.
 7 MS. COIT: Your Honor, I offer 387. Permission to
 8 publish?
 9 THE COURT: Received. You may publish.
 10 BY MS. COIT: (Continuing)
 11 Q. Can you read that statement in the first paragraph?
 12 A. Yes. Can I get a context?
 13 Q. No. Can you just read it?
 14 A. Just read it? Okay. "Zach Hermens is a nice guy, but just
 15 isn't that bright and also cannot think for himself at all.
 16 Zach will do anything Cameron tells him, including lying,
 17 because Zach thinks Cameron protects him from discipline. He's
 18 probably harmless, but won't contribute anything. I would add
 19 Adam Lillengreen, Royce Myers, or Michael Drake. Lillengreen
 20 was on the other committee, and Myers and Drake had a lot of
 21 seniority and are independent."
 22 Q. Do you agree with me that the statement you made there
 23 about Zach Hermens is rather belittling?
 24 A. This is not a public statement. It's a confidential
 25 statement where I'm asked to assess these possible candidates

1 to be included in the search committee.
 2 Q. That was your opinion of Officer Hermens?
 3 A. Yes.
 4 Q. So when was the Occupy Movement on campus?
 5 A. I don't recall the exact dates.
 6 Q. Was it around the end of October of 2011?
 7 A. I don't -- I don't recall the exact dates.
 8 Q. Do you agree you were out of field training at the time
 9 the Occupy Movement was on campus?
 10 A. I -- I think so.
 11 Q. So you were in your role as a public safety officer when
 12 the Occupy Movement was on campus; is that correct?
 13 A. Yes.
 14 Q. So what did you see your role as being in connection with
 15 the Occupy Movement on campus, your professional role?
 16 A. I'm not sure I understand the question. My role as a
 17 public safety officer remained as a public safety officer.
 18 Q. What was your role? What were your job duties as it
 19 pertained to the Occupy Movement when they were on campus?
 20 A. To treat them like human beings, like I would treat anyone
 21 else. I don't quite understand where you're going with this.
 22 Q. Do you agree that as a public safety officer for the
 23 University of Oregon you had a responsibility to act as a
 24 public safety officer with respect to the Occupy Movement?
 25 A. Of course. That was my job.

1 Q. Do you agree there was a line that needed to be respected
 2 between the Occupy Movement and public safety officers?
 3 A. Of course.
 4 Q. Did you cross that line?
 5 A. No, I don't believe that I did.
 6 Q. Do you believe you became a little too sympathetic to the
 7 Occupy Movement while you were acting in your job as a public
 8 safety officer?
 9 A. By trying to stop rape jokes? No, I don't think I crossed
 10 the line at that point. And to clarify for the officers on my
 11 shift what the Occupy Movement was about, as opposed to having
 12 our officers out there talking to people and looking stupid,
 13 frankly, if they totally misunderstood what the Occupy 99
 14 Percent Movement was about.
 15 Q. What about your actual interactions with the Occupy
 16 Movement? Do you believe that you were too lenient, too
 17 trusting when you were encountering the Occupy protestors?
 18 A. I don't recall having to make any arrests of the Occupy
 19 Movement. I coordinated with the leaders of the Movement when
 20 I went down there. One of the first things I did was met the
 21 leaders so I would know who to talk to if I did see a problem.
 22 And the times I dealt with them there were no problems.
 23 Q. All right. You talked earlier about the incident
 24 involving a person named Christian, a missing person from
 25 Occupy. Do you recall that?

1 A. Yes.
 2 MS. COIT: Your Honor, with your permission, I would
 3 like to play the audio for Exhibit 416.
 4 THE COURT: 416. You may play 416.
 5 (Exhibit No. 416 was played for the jury.)
 6 BY MS. COIT: (Continuing)
 7 Q. All right. You're Ocean 29; right?
 8 A. Yes, I am.
 9 Q. Do you agree with me that you disregarded Officer Hermens'
 10 warning to you that that person he had just contacted was drunk
 11 and aggressive?
 12 A. I believe Officer Hermens' warning was uncalled for. The
 13 gentleman was not aggressive.
 14 Q. And you came to that conclusion after how long with that
 15 person?
 16 A. Well, I spent more time with him than Hermens did, if
 17 that's what you're asking.
 18 Q. So my question is did you disregard Officer Hermens'
 19 warning that it was unsafe for you to be putting that person
 20 into your car?
 21 A. No. I certainly took his warning into account.
 22 Q. But then you disregarded it; correct?
 23 A. No. Then I made my own independent decision.
 24 Q. And then after you dropped off this person, as you heard
 25 on the radio, he started running in and out of traffic;

1 correct?
 2 A. That's conjecture. There were a lot of people at the
 3 Occupy Movement. It could have been that guy. It could have
 4 been another guy.
 5 Q. Sitting here today, do you dispute that it was the same
 6 person who as soon as you dropped him off started running in
 7 and out of traffic and creating a hazard?
 8 A. I do dispute that because I have no idea if it was or
 9 wasn't.
 10 Q. Now, you were talked to about this incident, correct, by
 11 Lieutenant Lebrecht?
 12 A. Yes.
 13 Q. And he talked to you about not running -- your failure to
 14 run the person for wants and warrants before you put him in
 15 your car; is that correct?
 16 A. Again, as I stated in my testimony yesterday, I believe
 17 that that had been done.
 18 Q. And you believe that had been done because you assumed
 19 that dispatch would do it for you? Is that what your testimony
 20 was yesterday?
 21 A. Because dispatch typically does that for us, yes.
 22 Q. So it's your testimony, sitting here today, under oath,
 23 that dispatch takes it upon themselves to run wants and
 24 warrants on someone?
 25 A. Yes. That's why I gave dispatch the information, in order

1 to be able to run wants and warrants. That was my
 2 understanding.
 3 Q. So now you're saying you gave them information to run
 4 wants and warrants? What information did you give them,
 5 Mr. Cleavenger?
 6 A. His name, date of birth, that sort of stuff. Whatever
 7 information I had at the time.
 8 Q. Did you tell Lieutenant Lebrecht that at the time?
 9 A. I believe so, but I don't remember.
 10 Q. Do you think you were perhaps a little too trusting in
 11 that encounter?
 12 A. I'm not sure. I don't remember the incident.
 13 Q. Did you pat the man down for weapons before you put him in
 14 your car?
 15 A. I can't remember.
 16 Q. Did you handcuff him?
 17 A. There would be no reason to handcuff him.
 18 Q. But you didn't pat him down for weapons?
 19 A. I didn't say that. I said I don't remember.
 20 Q. Mr. Cleavenger, can you understand how your supervisors
 21 may have a concern with your safety tactics in this situation?
 22 A. I -- I don't know if they did or didn't.
 23 Q. Can you understand if they did?
 24 A. Sure.
 25 Q. Now, you talked about a briefing when Occupy was discussed

1 and you kind of stood up and made a speech. Does that refresh
 2 your memory of what you testified to yesterday?
 3 A. I think that's roughly what I said, yes.
 4 Q. Were you upset by how the people were disrespecting the
 5 Occupy Movement?
 6 A. Yes. Disrespecting the Occupy Movement, the rape joke,
 7 and misunderstanding the Movement, yes.
 8 Q. Well, after that -- during the briefing, you actually got
 9 up and left; correct?
 10 A. I don't recall, specifically, but that may have happened.
 11 Q. You don't recall if you got up and left the briefing after
 12 making that speech?
 13 A. I just -- I just don't remember. I honestly don't
 14 remember when I got up or if I got up at all.
 15 Q. All right. How long after this briefing did you have the
 16 discussion with Lieutenant Lebrecht?
 17 A. That I remember, it was immediately after the briefing.
 18 Q. Do you recall if anyone else was out there?
 19 A. There were a lot of people there because it was in the
 20 hallway next to the briefing room where we just had a briefing
 21 with roughly 30 people.
 22 Q. Okay. Who was there? Who saw this encounter with
 23 Lieutenant Lebrecht in the hallway?
 24 A. I don't know.
 25 Q. Has anyone, to this day, confirmed to you that they saw

1 it?
 2 A. I don't think we've asked anyone.
 3 Q. Isn't it true, Mr. Cleavenger, that you actually had the
 4 discussion with Lieutenant Lebrecht in his office with Sergeant
 5 Cameron present?
 6 A. No. And I believe I testified yesterday that there may
 7 have been a follow-up meeting in his office. The part I
 8 remember was the traumatic part which is where I -- when I
 9 thought he was going to hit me in the hallway.
 10 Q. All right. And, Mr. Cleavenger, you were deposed for
 11 three days in this lawsuit; correct?
 12 A. Three days in the lawsuit, yes.
 13 Q. And you filed three versions of your complaint; correct?
 14 A. That sounds about right.
 15 Q. And each of those --
 16 A. There were typos, yes.
 17 Q. And each of those versions contained around 200 paragraphs
 18 of allegations; is that correct?
 19 A. Well, I don't recall the number of paragraphs, but I'm
 20 sure you can tell me.
 21 Q. Does that sound pretty close?
 22 A. I -- I'm not sure, but I'm sure you have it in front of
 23 you, so whatever it is is what it is. I don't know.
 24 Q. All right. Mr. Cleavenger, before your counsel stood up
 25 in opening statement and said that Lieutenant Lebrecht

1 physically assaulted you in this encounter you claim you had,
 2 had you ever mentioned that before?
 3 A. It should be in there.
 4 Q. Where is it, Mr. Cleavenger?
 5 A. I don't know.
 6 Q. Had you ever told anyone in connection with this lawsuit
 7 that Mr. -- Lieutenant Lebrecht physically assaulted you?
 8 A. You're talking about poking the finger in my chest; right?
 9 Q. Yes.
 10 A. So I wouldn't consider that an assault. It was
 11 threatening in nature.
 12 Q. Did you ever, until your counsel stood up in opening
 13 statement and said Mr. -- or Lieutenant Lebrecht poked you in
 14 the chest, had you ever made that statement anywhere involved
 15 in this lawsuit, in your arbitration, anywhere before?
 16 A. I -- I think so.
 17 Q. Where?
 18 A. I think at arbitration. I would have to check the notes,
 19 and I would have to check the lawsuit.
 20 Q. You can't remember, can you? You never made that
 21 statement before, did you?
 22 A. I'm telling you I don't remember where it's at. It's
 23 definitely been portrayed before.
 24 Q. But you can't remember when?
 25 A. Is that -- was that a question?

1 Q. Yeah. This seems pretty important, doesn't it? Your
 2 lieutenant assaults you in the hallway in front of numerous
 3 witnesses?
 4 A. You keep saying "assault." It wasn't an assault. It was
 5 threatening. I said I thought he was going to hit me.
 6 Q. No. You testified yesterday he actually poked you in the
 7 chest. Were you not telling the truth, Mr. Cleavenger?
 8 A. He did poke me in the chest. I'm saying that's not an
 9 assault.
 10 Q. So he did poke you in the chest, but you never mentioned
 11 that before?
 12 A. I believe that I had mentioned it before.
 13 Q. But you don't know where?
 14 A. I don't know which paragraph of the complaint addressed
 15 that incident.
 16 Q. So you believe it's in your complaint?
 17 A. I -- I'm not sure. We'll have to check.
 18 Q. All right. Let's talk about this list. Now, regardless
 19 of what you may have believed this list was called, do you
 20 agree with me that you never heard any person at a briefing
 21 call this list a bowl of dicks list?
 22 A. Absolutely not. I disagree with that statement.
 23 Q. Who called it that?
 24 A. It was commonly referred to as the bowl of dicks list.
 25 Q. Did Officer LeRoy call it that?

1 A. Yes.
 2 Q. So when he testified under oath in this trial that he did
 3 not call it that, he was lying?
 4 A. Yes, he is lying. It was called the bowl of dicks list.
 5 Q. Did Kent Abbott call it that?
 6 A. I don't recall what his testimony was.
 7 Q. In the briefings, Mr. Cleavenger, did Kent Abbott call it
 8 a bowl of dicks list?
 9 A. In briefings?
 10 Q. Yes.
 11 A. Yes. We've all called it the bowl of dicks list.
 12 Q. So when Mr. Abbott denied it being called that, he was
 13 lying?
 14 A. We'll have to look at his testimony.
 15 Q. If he said it wasn't called that, was he lying,
 16 Mr. Cleavenger?
 17 A. Then he would be lying.
 18 Q. All the other officers who denied it being called that,
 19 were they lying?
 20 MR. JASON KAFOURY: Your Honor, I'm going to object.
 21 This is forcing him to create opinions about things of general
 22 character when it's improper impeachment.
 23 THE COURT: Overruled.
 24 You can answer the question, sir.
 25 THE WITNESS: If anyone says that the bowl of dicks

1 list wasn't called the bowl of dicks list, they are being
 2 untruthful.
 3 BY MS. COIT: (Continuing)
 4 Q. Were you offended by the discussions of these people and
 5 things that should go on this list?
 6 A. Some of them, yes.
 7 Q. Who did you complain to about that?
 8 A. Sometimes I complained directly. I fought vehemently to
 9 try to keep Bob Dylan off the bowl of dicks list, for example.
 10 Q. So directly, you mean in a briefing you would complain
 11 about it? Or you would just argue about who shouldn't go on
 12 the list?
 13 A. Isn't that the same thing? We discussed this in briefing.
 14 Q. My apologies. That was probably a bad question, then.
 15 Did you complain to any of your supervisors about this
 16 list before you filed this lawsuit?
 17 A. Yes.
 18 Q. Who?
 19 A. Carolyn McDermed was my supervisor.
 20 Q. So in this August meeting, this is when you claimed you
 21 complained to her about it?
 22 A. August 13th.
 23 Q. Okay. Now, you -- have you ever seen -- did you ever see
 24 the list before it was published on the Internet and in the
 25 paper?

1 A. I would see pieces of the list. Whenever Eric LeRoy would
 2 add someone to the list, he would type it in his phone. And he
 3 would also sometimes have to go back and check and see if
 4 someone was already on the list because they would be talking
 5 about someone and then he would have to check and see if that
 6 person was already on the list.
 7 Q. Did you see the list before it was published in the paper?
 8 A. The entire list?
 9 Q. Yes.
 10 A. No. Of course not. It's on Eric LeRoy's cell phone.
 11 Q. Did you testify in your deposition that Eric LeRoy showed
 12 you the list numerous times on his cell phone?
 13 A. Yes. Again, he would show me adding people. I could see
 14 him scrolling through the names, see how long it was, to make
 15 sure he got somebody that he needed to get, et cetera. So,
 16 yes, I had seen the list on his phone.
 17 Q. Did you tell Diane Dietz, of *The Register-Guard*, that you
 18 had seen this list before you filed your lawsuit and all the
 19 people that you put in your lawsuit were on the list. Did you
 20 tell her that?
 21 A. I don't recall what I told Diane Dietz. That's a while
 22 ago. I believe that was in a phone call with my attorney and
 23 Diane Dietz.
 24 Q. I'm not asking you for anything that's privileged.
 25 A. Well, can you rephrase the question please?

1 Q. Outside of conferences you had with your counsel, did you
 2 tell Diane Dietz that you had seen the list before you filed
 3 your lawsuit and all the people that you put in the complaint
 4 were on the list?
 5 A. No. I don't think that's what I said.
 6 I said that everyone that I've listed in the lawsuit as
 7 being on the list I was sure of because I remember the context
 8 of those people going on the list.
 9 Q. Do you recall reading the newspaper -- the article online
 10 that said that you told her that you saw the list and these
 11 people were on it?
 12 A. I -- what -- I quite -- don't quite understand your
 13 question. You always -- you're suggesting things, and I want
 14 to make sure I hear it correctly.
 15 Q. Do you recall reading the article from Diane Dietz?
 16 A. I do recall reading the article.
 17 Q. And it quoted you as saying you had seen this list and the
 18 people in your lawsuit were on the list. Do you recall that?
 19 A. Yes. I believe I explained to Diane Dietz that I had seen
 20 the list on his phone. I was sure that all the names I put in
 21 my lawsuit were on the list.
 22 Q. Okay. So --
 23 A. And the list had already been published at that point.
 24 Isn't that right?
 25 Q. Yes. I -- I -- well, no. Actually, that was before the

1 list was published, and it was confirmed that actually these
 2 people were not on the list. Does that refresh your memory?
 3 A. Yes. On the published list.
 4 Q. Okay.
 5 A. Yes.
 6 Q. So, tell me, the times that Officer LeRoy showed you -- or
 7 did he show you the list on his phone, or did you just look at
 8 it?
 9 A. Both. It would depend on the context.
 10 Q. So Officer LeRoy's testimony that he never showed it to
 11 you, he was lying as well?
 12 A. I think what -- well, if you want me to tell you what I
 13 think Officer LeRoy was talking about, I think he was saying
 14 that he's never shown anyone the entire list. He never printed
 15 it off before. Because I believe he talked about in his
 16 deposition how hard it was for him to be able to print the list
 17 because it came in -- when it was -- it was hard for him to
 18 figure out how to print from his cell phone, so it came in
 19 weird chunks as you can see in the published list.
 20 Q. When Officer LeRoy testified under oath he had never shown
 21 you the list on his phone, was he telling the truth?
 22 A. It depends on how you define showing me the list. I've
 23 seen the list on his phone.
 24 Q. All right. Is it your testimony that these little
 25 snippets that you saw on his phone, you actually saw Federal

1 Judge Ann Aiken on his phone?
 2 A. I remember Ann Aiken going on the list.
 3 Q. That's not my question, sir. Did you ever see her on
 4 LeRoy's cell phone as being on this list?
 5 A. I cannot recall.
 6 Q. Did you file a lawsuit, which you signed it yourself, in
 7 which you said that Ann Aiken was on that list?
 8 A. Yes. Ann Aiken was on the bowl of dicks list.
 9 Q. Did you ever see her on the list?
 10 A. I cannot recall.
 11 Q. Has anyone throughout all the depositions we've taken in
 12 this case, all the testimony you have heard, has anyone
 13 confirmed that Ann Aiken was on that list?
 14 A. In the depositions over this lawsuit? I don't think so.
 15 But we haven't called everyone that was on the shift, have we?
 16 Q. Mr. Cleavenger, you just put your case on. Did you call
 17 someone who had seen Ann Aiken on the list?
 18 A. I don't recall.
 19 Q. Now, you filed this lawsuit in the federal court in
 20 Eugene; correct?
 21 A. Yes, I did.
 22 Q. And how many Article III sitting judges were there in
 23 Eugene when you filed this lawsuit?
 24 MR. JASON KAFOURY: Object. Irrelevant, Your Honor.
 25 THE COURT: Overruled.

1 THE WITNESS: Two.
 2 BY MS. COIT: (Continuing)
 3 Q. You work for one of them; right?
 4 A. Yes.
 5 Q. So he couldn't hear your case, could he?
 6 A. Of course not.
 7 Q. Who was the other judge, Mr. Cleavenger?
 8 A. Judge Ann Aiken.
 9 Q. Did you ever see the name Kitty Piercy on Officer LeRoy's
 10 cell phone?
 11 A. Kitty Piercy? Absolutely on the bowl of dicks list.
 12 Q. Did you ever see her name on Eric LeRoy's cell phone?
 13 A. I'll hopefully simplify this for you. I cannot remember
 14 anyone specifically on the list because he would scroll through
 15 the list, there were a bunch of names, so I'm not going to be
 16 able to recall who I physically saw on the list or didn't
 17 physically see on the list.
 18 Q. Well, just let me confirm, then. In your lawsuit you said
 19 the ACLU was on the list. Is it your testimony that you never
 20 saw them on the list?
 21 A. Let me try to explain this again. If I were to take out
 22 my cell phone and flip through all my phone numbers of
 23 contacts, are you going to be able to say that you've seen all
 24 the names on my contact list? No.
 25 That's what I'm talking about with the list on

1 Eric LeRoy's cell phone. I remember these individuals being
 2 put on the list. Eric LeRoy never printed a full copy of the
 3 list until he was forced to.
 4 Q. Okay. So, Mr. Cleavenger, the only people you listed in
 5 this lawsuit as being on the list, that you apparently never
 6 saw, were either Liberal Democratic local politicians or
 7 national politicians or the ACLU; is that correct?
 8 A. No. I believe there were more people on the list than
 9 that, that I listed.
 10 Q. Who else did you list, Mr. Cleavenger?
 11 A. Lauren Regan, I believe.
 12 Q. Who's Lauren Regan?
 13 A. She's a local attorney in Eugene.
 14 Q. She is a civil rights attorney in Eugene; correct? An
 15 activist?
 16 A. She is, yeah.
 17 Q. Did you ever see her on the list, Mr. Cleavenger?
 18 A. She was definitely on the bowl of dicks list.
 19 Q. Did you ever see her on the list?
 20 A. Okay. I'll keep explaining this. I never saw -- I can't
 21 say for sure I saw anyone's name on the list because it was
 22 never printed until this lawsuit.
 23 Q. Mr. Cleavenger --
 24 A. I would see the names on the list on his phone.
 25 Q. Whose name did you see on his phone?

1 MR. JASON KAFOURY: Asked and answered.
 2 THE WITNESS: Lots of names.
 3 MS. COIT: No, he's not -- sorry. He objected.
 4 MR. JASON KAFOURY: Your Honor, she's asked the same
 5 thing about eight times now, and he's said the same answer.
 6 THE COURT: Overruled. There's the list, printed
 7 list, and on the phone. Overruled.
 8 BY MS. COIT: (Continuing)
 9 Q. You just testified just now that you actually did see some
 10 names on the list?
 11 A. Yes. But I'm telling you I can't remember which names I
 12 saw.
 13 Q. Okay. I -- okay. I agree that was asked and answered.
 14 All right. So you've seen the list since it came out;
 15 correct?
 16 A. I've seen this version of the list once it came out.
 17 Q. And you would agree with me that Condoleezza Rice was on
 18 the list?
 19 A. I believe so.
 20 MS. COIT: Your Honor, may I have permission to
 21 publish the list? It's been received in evidence.
 22 THE COURT: I don't remember the exhibit number. Was
 23 that 1 --
 24 MS. COIT: 159.
 25 THE COURT: That's already been received, hasn't it?

1 MS. COIT: Yes.
 2 THE COURT: You may publish 159.
 3 THE WITNESS: I see Condi Rice.
 4 BY MS. COIT: (Continuing)
 5 Q. You see Condi Rice. Okay.
 6 Go to the next page. On this page do you see
 7 Donald Trump?
 8 A. Oh, yes, I do see Mr. Trump.
 9 Q. Do you see Sarah Palin underneath Donald Trump?
 10 A. Yes.
 11 Q. Do you see Dick Cheney?
 12 A. Yes.
 13 Q. Do you see John McCain?
 14 A. Yes.
 15 Q. Would you describe those people as Republicans?
 16 A. Those are Republicans, yes.
 17 Q. But you couldn't remember any of those people when you
 18 were filing this lawsuit?
 19 A. Not specifically. I only wanted to make -- I wanted to
 20 make sure that the people I remembered were definitely on the
 21 list and that I could remember the context. I do remember
 22 having a few Republicans put on the list, but I couldn't
 23 remember which ones.
 24 Q. Isn't it true, Mr. Cleavenger, that you put the people in
 25 your lawsuit as being on the list because you wanted to portray

1 it as something it wasn't?
 2 A. That sounds -- can you repeat that question?
 3 Q. Do you recall telling the media that this was
 4 Lieutenant Lebrecht's enemy list?
 5 A. No. I do not recall saying that.
 6 Q. Do you recall describing it as such in your lawsuit and
 7 then identifying only the liberal activists that weren't even
 8 on the list as being part of this list?
 9 A. I disagree with that. They were on the list.
 10 Q. Do you agree that you made that decision, that you did
 11 that in your lawsuit and in the media, to portray this list and
 12 Lieutenant Lebrecht as something that he and they were not?
 13 A. I -- I don't even -- I don't even understand the question.
 14 Q. Now, the political discussion you claim
 15 Lieutenant Lebrecht engaged in, did you ever believe that he
 16 was voicing a serious political belief?
 17 A. Sometimes yes.
 18 Q. Did you hear Mr. Abbott also engaging in these
 19 discussions?
 20 A. Yes.
 21 Q. Did you believe Mr. Abbott was expressing a serious
 22 political belief?
 23 A. Sometimes, yes.
 24 Q. Did you express serious political beliefs during these
 25 briefings?

1 A. Sometimes, yes.
 2 Q. But it was okay for you to do it?
 3 A. Well, it totally depends on the context.
 4 Q. And is it you, Mr. Cleavenger, who determines that
 5 context?
 6 A. No.
 7 Q. You, of anyone, should agree there's a place for humor in
 8 police work; correct?
 9 A. Yes, I believe there is a place for -- a limited amount of
 10 humor in police work.
 11 Q. But you don't believe that Lieutenant Lebrecht has that
 12 same right to engage in humor?
 13 A. I did not say that.
 14 Q. Well, you're complaining about it in this lawsuit. Is
 15 that your opinion: Lieutenant Lebrecht is not allowed to make
 16 jokes at work, but you are?
 17 A. No. That's not my opinion at all.
 18 Q. So it was okay that he made political jokes.
 19 A. Again, it depends on how far you go with it. I think
 20 jokes are fine.
 21 Q. Now, we've heard several people testify about political
 22 jokes or statements that Mr. -- or, excuse me,
 23 Lieutenant Lebrecht made; correct?
 24 A. Correct.
 25 Q. Would you agree with me -- without having to put up your

1 complaint, would you agree with me that those are the same ones
 2 that you put in your lawsuit -- the Pat Tillman, the Obama
 3 being a Muslim, the birth certificate -- you agree you put all
 4 of those in your lawsuit and attributed them all to Lebrecht?
 5 A. I'm not sure. We'd have to look at the complaint. I
 6 can't remember every question that we asked each witness, if
 7 that's what you're asking.
 8 Q. Do you recall putting in your lawsuit several allegations
 9 about Lieutenant Lebrecht, saying that he engaged in these
 10 serious political statements?
 11 A. Yes, of course.
 12 Q. Okay. Sitting here today, do you agree with me that
 13 everything you put in that lawsuit about Lieutenant Lebrecht's
 14 statements he made were said in a joking manner?
 15 A. No. Sometimes things went a little too far.
 16 Q. Mr. Cleavenger, if a joke goes too far -- I can understand
 17 if you feel it went too far, but it still remains a joke;
 18 correct?
 19 A. I believe the original intent can remain the same, but
 20 that is what it was intended to be.
 21 Q. Did you ever tell Lieutenant Lebrecht that you thought one
 22 or more of his jokes had gone too far?
 23 A. Yes.
 24 Q. When did you tell him that?
 25 A. I do not recall the exact date.

1 Q. Do you recall where you were when you told him that?
 2 A. In the briefing room.
 3 Q. Who was there?
 4 A. A couple of other officers.
 5 Q. Who?
 6 A. I don't recall. I don't recall the date.
 7 Q. Were you at work? Was it before shift?
 8 A. At work.
 9 Q. Did these other officers hear you tell Lieutenant Lebrecht
 10 you thought his jokes had gone too far?
 11 A. Probably.
 12 Q. But you can't remember who they were?
 13 A. I cannot remember who they were.
 14 Q. Throughout this entire lawsuit, have you ever heard any
 15 person confirm that they heard you tell Lieutenant Lebrecht
 16 that you thought his political joking had gone too far?
 17 A. I think there was some testimony about that, but I'd have
 18 to check the deposition and the trial transcripts.
 19 Q. And whose deposition would you check?
 20 A. I don't know. I would have to check.
 21 Q. There's also been testimony -- and correct me if I'm
 22 wrong -- that you'd complained about a culture of mistreatment
 23 against women in the department. Is that correct?
 24 A. That sounds correct.
 25 Q. Who did you make this complaint to?

1 A. I remember specifically making some of those complaints to
 2 Brian Smith on October 2nd.
 3 Q. Anybody else?
 4 A. I -- I don't remember.
 5 Q. You don't remember?
 6 A. I can't remember at this time.
 7 Q. So if you made the complaint to Brian Smith, that was on
 8 October 2nd; correct?
 9 A. Yeah. I remember that one specifically.
 10 Q. What were you talking about specifically when you made
 11 that complaint?
 12 A. We were talking about the two previous BOLI complaints
 13 that were filed against Sergeant Cameron and also some informal
 14 complaints, but it was primarily the official BOLI complaints
 15 that had to do, in part, with sexual harassment by
 16 Scott Cameron.
 17 Q. So your complaint there was a culture of mistreatment of
 18 women in the department focused specifically on two BOLI
 19 complaints filed against Sergeant Cameron. Is that your
 20 testimony?
 21 A. If I said "specifically," then I misspoke. I meant
 22 primarily. I thought I said "primarily."
 23 Q. Well, what else did it entail? What else did that
 24 complaint involve?
 25 A. The general, kind of, overall treatment of women and not

1 just women in the department, but the way Scott Cameron viewed
 2 university women. He had -- he had made comments prior to me
 3 coming that you've heard about from Elizabeth Nix, and those
 4 continued when I was there.
 5 A little bit of, you know, like, victim blaming. That
 6 sort of ilk.
 7 Q. Were your complaints limited to Scott Cameron?
 8 A. Well, about sexual harassment, limited to Scott Cameron,
 9 yes.
 10 Q. Well, I think in your lawsuit you described it as a
 11 culture of mistreatment of women. Was that limited to your
 12 complaints about Scott Cameron and his opinions?
 13 A. No. I said the sexual harassment complaints were limit ed
 14 to Scott Cameron.
 15 Q. Okay.
 16 A. Those were sexual harassment complaints by fellow
 17 officers.
 18 Q. So please explain for us what you mean by a culture of
 19 mistreatment of women in the department.
 20 A. Well, that's evident in the BOLI complaints themselves.
 21 Q. Those have to do with Scott Cameron; correct?
 22 A. Yes, they have to do primarily with Scott Cameron and the
 23 way the department handled those investigations. All the
 24 allegations.
 25 Q. Do you agree with me that Scott Cameron was disciplined

1 for those?
 2 A. I don't -- I know that he was eventually -- "terminated"
 3 is not the right word because it wasn't officially terminated,
 4 but nonrenewed for yet another sexual harassment-based
 5 complaint.
 6 Q. Mr. Cleavenger, and what more did you want the department
 7 to do with those complaints against Scott Cameron?
 8 A. I think they could have done something a little earlier.
 9 Q. So it was the timing you have a problem with?
 10 A. No. It's that -- the culture of allowing an officer like
 11 Scott Cameron to remain in the department for so long. That is
 12 a concern. This department needs to change. It's totally
 13 inappropriate for any law enforcement agency, let alone a
 14 university campus.
 15 Q. Did you ever engage in any conduct that you would
 16 characterize as being demeaning or discriminatory towards
 17 women?
 18 A. Not that I can recall and certainly not this thrusting
 19 behind women.
 20 MS. COIT: Your Honor, permission to play an audio?
 21 We'll mark it as 425.
 22 THE COURT: 425. This is an audio?
 23 MS. COIT: Yes.
 24 THE COURT: You may play 425.
 25 (Exhibit No. 425 was played for the jury.)

1 BY MS. COIT: (Continuing)
 2 Q. Was that you? Do you want to hear it again?
 3 A. Yeah. It doesn't quite sound like me.
 4 (Exhibit No. 425 was played for the jury.)
 5 BY MS. COIT: (Continuing)
 6 Q. Is that you? Are you the Cle-Avenger?
 7 A. I don't quite recognize the voice. It may be. I don't
 8 know.
 9 Q. Did anyone else at the department identify themselves as the
 10 Cle-Avenger?
 11 A. People identified me as the Cle-Avenger. That was a
 12 nickname given to me, yes.
 13 Q. Are you denying that that is your voice on the audio?
 14 A. I don't know. It just sounds odd. I'm not denying it.
 15 I'm saying I don't know. Why don't we play some more so I can
 16 get some context.
 17 Q. Sure.
 18 (Exhibit No. 425 was played for the jury.)
 19 BY MS. COIT: (Continuing)
 20 Q. Does that help?
 21 A. Yeah. That's got to be me because I'm the only one in the
 22 department that speaks Russian and Mike speaks Spanish.
 23 Q. And you were asking for some information about the drunken
 24 stripper?
 25 A. Yeah. For my report. To write the report.

1 Q. Do you think that's a little demeaning to women? To that
 2 woman in specific, in particular, that student?
 3 A. I don't recall her being a student. I recall -- first of
 4 all, this is not a public conversation. I'm calling Mike for
 5 information. And she was drunk, she was DUI, and she did work
 6 at a strip club.
 7 Q. Mr. Cleavenger, is it your testimony, under oath, that
 8 this woman -- you actually know she worked at a strip club?
 9 A. Absolutely. She told me that. I think it's in my report
 10 too.
 11 Q. So based on that, you don't find that comment demeaning to
 12 women?
 13 A. It's -- it's not something I would say in public, but it
 14 helped Mike identify the call I was looking for information
 15 for.
 16 Q. Let's talk about advising of recordings. In April of
 17 2012, April of 2012 --
 18 A. Okay.
 19 Q. -- were you aware that you had an obligation to advise
 20 people that you were recording them? Simple question. Were
 21 you aware?
 22 A. No. It's not a simple question. It's not a simple
 23 question. The answer is, no, I did not -- I did not see the
 24 actual law at that time.
 25 Q. So your answer is you were not aware that you needed to

1 advise people that they were being recorded?
 2 A. That is correct. I had not seen the law.
 3 Q. So the fact that you didn't see the law that -- I'm
 4 confused by your answer. Were you aware or were you not aware
 5 that you needed to advise people as part of your job duties as
 6 a public safety officer that when they were being recorded you
 7 had to tell them, when it was reasonable, that they were being
 8 recorded? Did you know that?
 9 A. As I testified to yesterday, I misunderstood the law.
 10 Q. Can you answer my question? Did you know or did you not
 11 know?
 12 A. You're -- you're asking a very long question that's very
 13 leading, so it's very hard for me to say yes or no to your
 14 leading questions.
 15 I knew at that time that there were instances where I had
 16 to tell people I was recording them. I misunderstood all the
 17 complexities of the law at that time.
 18 Q. Okay. Did you understand that if you stopped someone and
 19 there was no other intervening circumstances, such as a fight
 20 or you being in danger, and you were recording them, that you
 21 had to tell them as soon as possible that you were recording
 22 them? Did you understand that?
 23 A. No, I did not understand that.
 24 Q. Okay. All right. Now, you were interviewed by
 25 Lieutenant Morrow as part of your internal affairs

1 investigation; correct?
 2 A. That's correct.
 3 Q. And part of that interview had to do with you making
 4 traffic stops; is that correct?
 5 A. That's correct.
 6 Q. Did you tell Lieutenant Morrow in that internal affairs
 7 investigation that you were trained by your FTO that you could
 8 make traffic stops?
 9 A. That is misstating what I said. Campus version of traffic
 10 stops, yes. And we've got evidence of hundreds and hundreds of
 11 traffic stops.
 12 Q. Okay. So let me clarify. It's your testimony that you
 13 told Lieutenant Morrow that you understood that you could only
 14 make campus versions of traffic stops, and that's what Michael
 15 Drake taught you. Is that your testimony?
 16 A. That is not my testimony.
 17 Q. Okay. What's your testimony? What did you tell
 18 Lieutenant Morrow about what Michael Drake taught you?
 19 A. I don't recall.
 20 Q. Do you recall --
 21 A. You obviously want specifics, and I don't remember
 22 specifics.
 23 Q. Do you recall the interview?
 24 A. Vaguely, yes. That was a long time ago.
 25 Q. Do you recall what your understanding was , at the time of

1 that interview, regarding what kind of traffic stops you could
 2 make?
 3 A. I don't recall the specifics, but I -- I only remember
 4 generalities. I do recall Lieutenant Morrow's report
 5 exonerating me for making traffic stops because he interviewed
 6 other officers and found out that lots of other officers were
 7 making different versions of traffic stops, so I remember that
 8 part.
 9 Q. Do you agree with me that you made numerous full traffic
 10 stops, like pulling people over, while you were a public safety
 11 officer?
 12 A. On city streets? No. Definitely not.
 13 Q. On university streets?
 14 A. I was acting exactly how I believed I was supposed to be
 15 acting. I never disobeyed an order regarding traffic stops
 16 that I was given.
 17 Q. Do you agree that you made numerous full traffic stops
 18 while you were a public safety officer being on university
 19 property or not?
 20 A. I do not agree with that statement.
 21 Q. What don't you disagree -- what don't you agree with?
 22 A. Because it's -- you're trying to say full traffic stops,
 23 and you're trying to differentiate that between a campus
 24 version of a traffic stop.
 25 I'll say it again. I believe that I was acting within

1 policy and procedures that were set out for the department at
 2 that time.
 3 Q. All right. The woman with the gun, Ms. Whitney Harder, is
 4 it your testimony that you gave her a ride with the gun because
 5 Sergeant Cameron told you to do it?
 6 A. My testimony is that, yes, he authorized that ride.
 7 Q. Were you concerned about the fact that she had a loaded
 8 gun on her lap in the back of your car?
 9 A. It was never on her lap, number one. She had a holster
 10 for that reason. Two: Yes, I was concerned, but I was more
 11 concerned about the potential of her stalker, who she said was
 12 also armed and maybe had friends, being potentially three
 13 blocks away. I was very concerned.
 14 Q. Mr. Cleavenger, were you concerned about your safety when
 15 you took that woman in the back of your car when she had a
 16 loaded gun?
 17 A. I'm always concerned about my safety.
 18 Q. Do you agree that that was not a good decision that you
 19 made?
 20 A. I don't think there was a good decision to be had that
 21 night.
 22 Q. Do you agree that that was not a good decision?
 23 A. I don't think there was a good decision to be had that
 24 night. The other options weren't any good either.
 25 Q. Mr. Cleavenger, are you aware that the phone call that you

1 made to Sergeant Cameron requesting permission to make this
 2 transport was recorded?
 3 A. I don't recall a phone -- actually, I think there was --
 4 you're talking about a phone call versus conversation on the
 5 radio; right?
 6 Q. How many times did you ask for permission to do this
 7 transport?
 8 A. We had multiple conversations.
 9 Q. How many times did you ask Sergeant Cameron, "May I take
 10 this woman to a hotel?"
 11 A. I do not recall.
 12 Q. Why would you ask him more than once?
 13 A. Because situations change.
 14 Q. Two minutes before you gave this woman a ride to the
 15 hotel, there's a phone call between you and Sergeant Cameron in
 16 which you ask if you can take her. Do you -- are you aware
 17 that that phone call is recorded?
 18 A. I don't recall the phone call.
 19 Q. When you asked for this permission to transport the woman
 20 to the hotel, you asked Sergeant Cameron; correct?
 21 A. Yes.
 22 Q. And I believe you testified yesterday it was in that
 23 conversation, that same conversation when you said, "Can I take
 24 her" that you reminded him that she had a loaded gun on her?
 25 A. I think I said I believed that's when I reminded him about

1 the gun. Because, as I testified, the gun was very obvious.
 2 She was wearing it on her hip, like a cowboy, when he came out
 3 there to the scene.
 4 Q. My question is: Was it the same conversation, the
 5 conversation you have with Sergeant Cameron two minutes before
 6 the transport, when you asked if you could take her to the
 7 hotel, is that when you claim you reminded him that she was
 8 carrying a loaded gun?
 9 A. I do not recall. We'll have to listen to the phone call.
 10 Q. Wasn't that your testimony yesterday, Mr. Cleavenger?
 11 A. Again, I don't recall. We'd have to listen to the phone
 12 call and we'd have to listen to the radio to see if the times
 13 match.
 14 Q. Why don't you just tell me what you remember.
 15 A. I told you what I remembered yesterday.
 16 Q. Yeah. What you remembered yesterday was that you called
 17 Sergeant Cameron right before the transport, asked if you could
 18 do it, and reminded him she had a loaded gun.
 19 A. I don't believe that was my testimony, and my testimony
 20 was that I called him over the radio on channel three, and you
 21 could hear that clearly, on the radio transcript, when I asked
 22 him to switch to three.
 23 Q. So it's your testimony that you asked twice if you could
 24 make this transport within minutes of each other? You asked
 25 him on the phone and then you asked him on channel three?

1 A. I don't recall. There may have been follow-up questions.
 2 I don't -- I don't know.
 3 Q. Do you believe that Sergeant Cameron, regardless of what
 4 you claim you told him, what you may have thought you told him,
 5 do you believe that he actually knew that that woman had a
 6 loaded gun when he told you he -- you could transport her?
 7 A. You're asking me what I think Cameron believed? I don't
 8 know what Cameron believed.
 9 Q. Now, you talked about Officer Hermens' statement that you
 10 guys met in the parking lot after the transport and how that
 11 couldn't be true. Do you remember that?
 12 A. Absolutely.
 13 Q. Mr. Cleavenger, where was that parking lot that you took
 14 the woman from? Where was that in relation to your parking lot
 15 for DPS?
 16 A. It was nearby, but there's a locked fence all the way
 17 around it.
 18 Q. But it's right next to each other; correct?
 19 A. It is close.
 20 Q. And when you finished the transport, you drove back to
 21 that parking lot at the station; correct? That's where you
 22 ended your mileage?
 23 A. That's a different parking lot. We're talking about two
 24 different parking lots.
 25 Q. I understand that. You drove your car back to the station

1 parking lot, the east station, the locked parking lot; correct?
 2 A. Of course.
 3 Q. And that is where Officer Hermens drove his car at that
 4 same time; isn't that correct?
 5 A. That wasn't his testimony in the deposition.
 6 Q. Mr. Cleavenger, I'm not asking for you to tell me what he
 7 testified to. I'm asking for your memory.
 8 We heard the audio yesterday. You both signed off within
 9 seconds, I believe, of each other. Is it your memory that he
 10 drove to that same parking lot where you drove to?
 11 A. No. I wasn't done with that transport.
 12 Q. When you finished the transport, where did you go?
 13 A. Then I went back to the station. Not to the parking lot
 14 where the woman had parked.
 15 Q. Correct. You went back to the parking lot at the station.
 16 That's right next to the other parking lot; correct?
 17 A. Say that again, please.
 18 Q. You drove your car back to the station parking lot, which
 19 is right next to lot 52, where you had met the woman?
 20 A. I believe so.
 21 Q. And Officer Hermens was also off duty. We heard the
 22 audio, and he drove his car to that same station parking lot;
 23 isn't that correct?
 24 A. Officer Hermens had already secured his vehicle. I was
 25 finishing the transport, and Officer Hermens' testimony was

1 that we had met back in the parking lot where the woman was
 2 parked, and that was impossible.
 3 Q. Okay. Sitting here today, without trying to figure out
 4 what you can and cannot prove with the audio recordings, do you
 5 recall having a conversation with Officer Hermens at a parking
 6 lot after you transported the woman?
 7 A. No, I do not recall that conversation.
 8 Q. Now, you testified that this incident with Ms. Harder, the
 9 transport with the gun, was never discussed with you before
 10 your termination. Is that what your testimony was?
 11 A. To my knowledge, I was never under investigation. I was
 12 never advised of any kind of investigation involving that
 13 incident.
 14 Q. Well, I don't think that was your testimony. You
 15 testified it was never discussed with you before you were
 16 terminated. Is that an accurate statement?
 17 A. If I said "discussed," I may have chosen the wrong word.
 18 I wrote a report about it.
 19 Q. Do you recall meeting with your union steward and
 20 Lieutenant Lebrecht, Sergeant Cameron where you discussed this
 21 incident?
 22 A. I vaguely remember discussing it. But, again, this was
 23 not -- what I was trying to convey is that I was never
 24 officially investigated for it. I was never accused of doing
 25 something wrong, you know, like with a letter of reprimand, a

1 letter of clarification.
 2 Q. So you're changing your testimony today to say that you
 3 actually were discussed -- were talked to about this incident
 4 by your supervisors; is that accurate?
 5 A. I'm saying if -- if I used the word "discussed," that was
 6 the wrong choice of words.
 7 Q. Okay.
 8 A. I'm saying I was never under investigation for it.
 9 Q. Was this --
 10 A. It was never an allegation in my termination, et cetera.
 11 Q. Was this incident discussed with you by your supervisors ?
 12 A. Again, yes, because I brought it up. I wrote the report
 13 about it because I was concerned about this woman.
 14 Her car was still on university property. We didn't know
 15 where this guy was. The situation could have escalated, and I
 16 was going off shift.
 17 Q. Did your supervisors discuss with you in a meeting on
 18 July 14, 2012, the safety concerns they had with your conduct
 19 in transporting this woman?
 20 A. I don't recall that specific conversation, but it may have
 21 happened.
 22 Q. Your union steward was there. Does that refresh your
 23 memory? Lois Yoshishige?
 24 A. I brought my union steward to lots of meetings after I
 25 started getting harassed.

1 Q. Do you recall Ms. Yoshishige telling Sergeant Cameron and
 2 Lieutenant Lebrecht that the woman had the gun in a fanny pack?
 3 Does that refresh your memory?
 4 A. I don't recall specifics.
 5 Q. Do you recall when this incident occurred?
 6 A. I believe it was May 2012.
 7 Q. Can you understand why Chief McDermed would be alarmed
 8 when she heard about this incident?
 9 A. I can understand why anybody was alarmed. I was alarmed
 10 by the situation. It's a situation involving a potentially
 11 armed stalker. Of course it's alarming.
 12 Q. Can you understand why Chief McDermed was concerned by
 13 your judgment, by your officer safety skills, in making the
 14 decision to transport this woman with the gun?
 15 A. Again, I think I made it clear that Scott Cameron didn't
 16 like me. I didn't particularly like him. The only reason I
 17 would ever call Scott Cameron out to the scene on one of my
 18 calls is if I wanted to make sure that a supervisor was
 19 approving something that I was doing. Otherwise, I preferred
 20 to avoid Scott Cameron at all costs.
 21 Q. Well, you never hesitated before to discuss your positions
 22 with Sergeant Cameron; correct?
 23 A. No. I definitely hesitated because if I discussed any --
 24 if I discussed anything with Scott Cameron, he would jump down
 25 my throat and tell me how my law degree was worthless and how I

1 was stupid and those sorts of things.
 2 Q. So Sergeant Cameron is telling you, in your memory, that
 3 he wants you to take this woman with a loaded gun, take her to
 4 a hotel. Did you have concerns with that order?
 5 A. I already testified to you today and yesterday, yes, of
 6 course I had concerns with this -- with the whole situation.
 7 Q. But --
 8 A. All the options were bad.
 9 Q. You could have called a taxi, couldn't you? You could
 10 have called Eugene police, couldn't you?
 11 A. I can't call Eugene police. That would be something
 12 dispatch would have to do. Again, that would be something that
 13 Sergeant Cameron would have to approve.
 14 Believe me, he would be -- I don't want to -- he would be
 15 upset if I called the Eugene Police Department into one of my
 16 calls without his approval first. He would have been livid.
 17 Q. You could have just said, no; correct?
 18 A. You're right. I could have just abandoned her on the
 19 street with who she believes is an armed stalker three block
 20 away. You're right. I could have just left her there.
 21 Q. Let's talk about this armed stalker. This is someone that
 22 you identified; correct?
 23 A. No. My recollection is it was Officer Hermens who ran the
 24 plate.
 25 Q. Well, it was you who said you saw someone give you a hard

1 look?
 2 A. Yeah. Absolutely.
 3 Q. That's the person you told this woman you thought her
 4 stalker was out there; is that correct?
 5 A. No. That's not my testimony.
 6 Q. Well, did you tell this woman that you had found someone
 7 that you thought to be her stalker?
 8 A. I never said I thought it was her stalker.
 9 Q. Did you give this woman information off the LEDS system
 10 about this person you identified?
 11 A. Absolutely. I was investigating a crime. That's what you
 12 do when you investigate crimes.
 13 Q. Isn't it against the law, Mr. Cleavenger, to give that
 14 information to civilians?
 15 A. Not when you're investigating a crime.
 16 Q. So it's your testimony, sitting here today, that you could
 17 give this woman that person's criminal history, his driver's
 18 license history? That's your testimony?
 19 A. I don't believe that happened. I did not --
 20 Q. What did you tell --
 21 A. What you said right there. I was investigating a crime.
 22 Q. What was the crime?
 23 A. Stalking.
 24 Q. Do you have the authority to investigate stalking?
 25 A. Under ORS 352.385, as a public safety officer, I had the

1 authority to make probable cause arrests, period, for any crime
 2 that I witnessed.
 3 Q. What did you tell the woman? What information did you
 4 give her that you got from LEDS?
 5 A. I gave her limited information to try to determine -- I
 6 gave her the guy's name, basically. I wanted to find out, "Is
 7 this your stalker or is this one of his friends, somebody you
 8 recognize?" Because, again, she's from Creswell. He's from
 9 Creswell. Small town.
 10 I want to find out if this matches up and if this is the
 11 guy, so I'm investigating a crime using LEDS to investigate a
 12 crime.
 13 Q. The name didn't match up, did it? She didn't recognize
 14 the name?
 15 A. Well, she said she didn't recognize the name; correct.
 16 Q. When you got to the hotel with the woman, what else did
 17 you tell her about this person that actually wasn't her
 18 stalker?
 19 A. I don't recall.
 20 Q. You don't recall giving her any information about that
 21 person's criminal history, his prior arrests?
 22 A. I don't recall.
 23 Q. Would that be appropriate if you did that?
 24 A. I -- that would depend.
 25 Q. On what?

1 A. On whether or not I was still investigating a crime, if he
 2 was potentially involved.
 3 Q. So it's your understanding of the law that you could
 4 disclose information that you got off LEDS to a civilian that
 5 you just met?
 6 A. That's all very dependent. Are you asking me was I ever
 7 charged with any LEDS violations? No. I still have my LEDS
 8 certification.
 9 Q. Did you violate the law when you gave her that
 10 information, Mr. Cleavenger?
 11 A. Not to my knowledge.
 12 Q. You gave her the vehicle registration information. That's
 13 confidential, isn't it?
 14 A. What is the vehicle registration information?
 15 Q. You identified the car, called in the plates, and gave her
 16 the name of who it came back to; correct?
 17 A. I just testified that I gave her the name to see if she
 18 would recognize the name as her stalker or one of his friends,
 19 someone else involved.
 20 Q. You described the car; is that correct?
 21 A. Again, I am investigating a crime. I want to know does
 22 her husband have access to a -- whatever it was green, a Jeep
 23 Cherokee, whatever. Have you seen a green Jeep Cherokee around
 24 your house recently? Have you seen a guy that looks like this?
 25 That's what police officers do.

1 Q. But it wasn't the right guy, was it, Mr. Cleavenger?
 2 A. I also testified to that, that she said, no, she didn't
 3 recognize that name or that car. It was just a coincidence. A
 4 strange coincidence, but, nonetheless, it was a coincidence.
 5 Q. Mr. Cleavenger, you gave this woman a description of the
 6 car. You gave her the license number. You gave her the
 7 person's name. You gave her the criminal history, which showed
 8 he had a violent history, and you said that this is probably
 9 someone who was stalking her, and if he drove into the parking
 10 lot, she should immediately call 911. Do you recall that?
 11 A. No. I did not say, "This is probably the guy that's
 12 stalking you." I was asking her questions. I was trying to
 13 find out if this was the guy that was stalking her. That's a
 14 very leading question.
 15 Q. You are aware you're on cross-examination; correct?
 16 A. Yes.
 17 Q. All right. So you told her all this information. You
 18 know she has a loaded gun. And it was the wrong guy. What if
 19 he would have drove in there? What if she would have shot him?
 20 Would your violation of LEDS have been a little more serious at
 21 that point?
 22 A. I -- I don't even know where to begin with that.
 23 Q. But you still, sitting here today, can't understand the
 24 concerns with your judgment?
 25 A. I told you I had concerns about the whole situation.

1 Q. All right. Let's talk about Junction City. Why did you
 2 suddenly resign?
 3 A. Because of pressure from Mark Chase. I was told by my
 4 supervisors, Brandon Nicol and Chuck Salsbury, that he was
 5 considering putting me on suspension of duties until the end of
 6 the U of O thing. And I realize this U of O thing could go on
 7 for a long time. So I decide to resign and move over to
 8 Coburg.
 9 Q. Isn't it true Sergeant Salsbury came and told you that
 10 Chief Chase was about to fire you?
 11 A. No. He said he was about to put me on a suspension.
 12 Q. Didn't you ask Sergeant Salsbury if he could ask
 13 Chief Chase if you could resign instead of being terminated?
 14 A. No. I wanted to resign so there would be no discipline in
 15 my record. Discipline being the suspension. If there was a
 16 suspension on my record, it would show up on my DPSST record.
 17 Q. All right. But you'll agree that you were about to face
 18 discipline when you made this decision to resign?
 19 A. Absolutely.
 20 Q. Did you tell your dad about this offer you got from Mill
 21 Creek to be a police officer?
 22 A. I don't recall if I told him or not. He was not my
 23 primary concern at the time.
 24 Q. Well, Mr. Cleavenger, how many police jobs had you applied
 25 for by the time you got this supposed offer?

1 A. A lot.
 2 Q. How many?
 3 A. I would guess at least 20. I basically just applied for
 4 every job possible.
 5 Q. And this is the only offer you got; correct?
 6 A. At that time in the process, that was the only offer I
 7 got. These things take a long time. It can take up to six
 8 months to get hired.
 9 Q. So out of 20 applications you made, you finally get an
 10 offer, and you don't tell your dad?
 11 A. I didn't say that. I said I don't remember if I told my
 12 dad or not.
 13 Q. You heard him testify that he didn't know about it.
 14 A. No. His testimony was that he remembered me talking about
 15 something up in Seattle near where my sister-in-law -- sorry,
 16 ex-sister-in-law worked at that time.
 17 Q. You didn't get that offer, did you, Mr. Cleavenger?
 18 A. I told you it was a conditional offer. Same as the
 19 conditional offer from U of O.
 20 Q. And you failed the background, and you didn't get the
 21 offer?
 22 A. I did not fail the background.
 23 Q. Why didn't you get the offer then?
 24 A. Because I withdrew. I remember where I was standing when
 25 I called them on the phone and said, "I'm sorry I have to

1 withdraw from this process. I'm deciding to take a job with
 2 the University of Oregon Department of Public Safety.
 3 Q. This job in Mill Creek, that's by Seattle; right?
 4 A. Yes, that's by Seattle.
 5 Q. Was it for a job as a police officer?
 6 A. Yes. As far as I remember, yes.
 7 Q. So you turned down a job as a police officer to take a job
 8 as a public safety officer?
 9 A. Yes. Because -- because, as I explained yesterday, I
 10 believed that I could be part of this transition at University
 11 of Oregon Department of Public Safety to create a brand new
 12 police department and I could be part of that building as a
 13 police department, so I knew University of Oregon was becoming
 14 a police department.
 15 THE COURT: Counsel, why don't you pick a convenient
 16 place for lunch that fits your cross-examination.
 17 MS. COIT: This is good.
 18 THE COURT: Is this a good time?
 19 MS. COIT: Sure.
 20 THE COURT: I'll remind you not to discuss this
 21 matter among yourselves or form or express any opinion
 22 concerning the case. Give me about 15 minutes extra today.
 23 About 1:15, okay. Have a nice lunch, and we'll see you then.
 24 (Lunch recess taken.)
 25 (Jury not present.)

1 THE COURT: Counsel, 82?
 2 MR. JASON KAFOURY: Yes.
 3 THE COURT: Was it stipulated to?
 4 MR. JASON KAFOURY: Yes.
 5 THE COURT: Can we wait until Christy is with us? I
 6 want to make certain she has an adequate record as we go.
 7 DEPUTY COURTROOM CLERK: Judge, I show that was one
 8 highlighted on your list.
 9 THE COURT: That would be given to us. We have a
 10 couple more, don't we?
 11 DEPUTY COURTROOM CLERK: I have the original of 82.
 12 THE COURT: So we have 82. Thank you very much.
 13 There were a couple of others that we were going to --
 14 MR. HESS: We provided them here.
 15 THE COURT: Show those to Christy and make sure
 16 they're marked.
 17 MR. HESS: The additional exhibits are in the back.
 18 THE COURT: Make sure you show these to counsel,
 19 also. Have you seen these?
 20 MR. HESS: The audio clips that I burned over lunch
 21 of 130, 131, 132.
 22 THE COURT: You can look at them, too.
 23 MS. COIT: That's fine.
 24 THE COURT: Mr. Cleavenger, why don't you retake the
 25 stand.

1 (Jury present.)
 2 THE COURT: Jury is present, counsel and parties are
 3 present. Thank you for your courtesy. The witness is present.
 4 I want to apologize for the 15 minutes we had you wait. We had
 5 a few problems with the machine, so the gentleman just finished
 6 fixing it. So we're ready to go, jury.
 7 Counsel, continue your cross-examination please.
 8 BY MS. COIT: (Continuing)
 9 Q. Mr. Cleavenger, in the September 7th meeting that you had
 10 with Sergeant Cameron and Lieutenant Lebrecht about your radio
 11 use -- do you recall that?
 12 A. I recall it was a meeting but not about my radio use.
 13 Q. Okay. You recall what meeting I'm talking about?
 14 A. Yes. When I was issued the order to only report felonies.
 15 Q. Okay. And you were told at that meeting to only call out
 16 these things over the radio. Only the serious crimes or
 17 felonies, call it out over the radio. Correct? Is that your
 18 understanding?
 19 A. Almost. My understanding was I was to only call out
 20 felonies over the radio.
 21 Q. Nobody told you at that meeting or any time after that
 22 meeting that you could not report these other crimes in other
 23 ways; isn't that correct?
 24 A. We tried to get a clarification on what that order was
 25 multiple times. So that was my understanding.

1 Q. Your understanding was you were only supposed to call out
 2 felonies over the radio, otherwise stay off the radio. Was
 3 that your understanding?
 4 A. That was my basic understanding.
 5 Q. You agree there are many other ways for you to report
 6 other sorts of crimes?
 7 A. I -- I suppose that's possible.
 8 Q. Now, you testified yesterday that you thought
 9 Lieutenant Lebrecht targeted you because Cameron --
 10 Sergeant Cameron shared your resumé that had all your political
 11 jobs and Democratic party involvement. Do you recall saying
 12 that?
 13 A. That is my general belief.
 14 Q. All right. First off, I would like you to tell me how it
 15 is you think Sergeant Cameron, a sergeant in the department,
 16 would have access to your confidential personnel files.
 17 A. I don't know what the standards are for access to files.
 18 Q. You had to actually sign a waiver in writing to give your
 19 own union steward access to your personnel files; correct?
 20 A. That was my personnel file held by U of O. That was my
 21 official personnel file. Come to find out there were, I
 22 believe, four additional files held with the department. So I
 23 believe, in total, there were about five files. So there was a
 24 personnel file held U of O. That was the official one.
 25 Secondary personnel file held by the department. Supervisory

1 file held by the department. Training file held by the
 2 department. And I know I'm missing one. But we were very
 3 confused and -- and alarmed once we found out there were all
 4 these other files with different names and different access
 5 standards.
 6 Q. Mr. Cleavenger, you've reviewed every single one of those
 7 files; correct? I made them available to you, and you came to
 8 my office and reviewed them. Do you recall that?
 9 A. I recall reviewing one of the files in your office, yes.
 10 Q. Do you recall seeing your job application or your resumé
 11 in any file other than the HR file held by University of
 12 Oregon?
 13 A. I don't recall, but I believe it should be pointed out
 14 that that was after all my files had been purged as part of the
 15 settlement agreement.
 16 Q. Purged of disciplinary information; correct?
 17 A. Purged of all information not pertinent to the lawsuit,
 18 was my understanding. My understanding was you kept a file
 19 with information that would be pertinent to this lawsuit. I
 20 could be -- I could be wrong on that understanding.
 21 Q. Mr. Cleavenger, do you have any information that
 22 Sergeant Cameron ever had access to your resumé or your job
 23 application in this case?
 24 A. Like I said, that's just my belief.
 25 Q. Okay.

1 A. I can tell you where that belief came from.
 2 Q. Now, tell me what information you have to support your
 3 allegation that Sergeant Cameron somehow shared this
 4 information with Lieutenant Lebrecht.
 5 A. Because as soon as Sergeant Cameron became my supervisor,
 6 Lieutenant Lebrecht all of a sudden knew all about my political
 7 background. So I just assumed that's how he must have found
 8 out. Because prior to that, that stuff hadn't been brought up
 9 before.
 10 Q. And that's just your assumption; correct?
 11 A. Like I said, that's my belief. I fully admit I have no
 12 proof of that.
 13 Q. Do you deny that you often talked about your connections
 14 with Barack Obama, driving in his motorcade, during these shift
 15 briefings at the department? You had a sticker on your
 16 computer that said "Barack Obama," didn't you?
 17 A. I didn't bring my computer to work. We had work
 18 computers.
 19 Q. Did you have a sticker on something at the office that had
 20 Barack Obama on it?
 21 A. No. I think that would be inappropriate. I vaguely
 22 recall there's some kind of policy about not having political
 23 stuff. I may have had one on my car possibly.
 24 Q. A bumper sticker on your car. My apologies.
 25 A. Okay.

1 Q. But it's fair to say that you talked about your
 2 involvement with Barack Obama at the department?
 3 A. With the Obama stuff, yes, a little bit. And the reason
 4 for that is because when I was doing those motorcades in
 5 Oregon, there were two trips that came to the University of
 6 Oregon, and at that time I was working on the Public Safety
 7 Advisory Group I was doing the Taser speeches, et cetera. I
 8 knew a lot of the DPS officers. So they saw me step out of the
 9 motorcade and interact with the advance team and Secret Service
 10 and stuff, and I know they were kind of shocked at the time
 11 because they were like, "Who's this guy? You know, this is the
 12 law student that's speaking against us. Against Tasers. How
 13 the heck is he on -- you know, on this motorcade?" So that was
 14 already out there. People knew about that.
 15 Q. Do you understand that in a police agency there are
 16 certain appearance requirements? Uniform. Grooming.
 17 A. Yes.
 18 Q. You chose this career; correct?
 19 A. Yes.
 20 Q. Your uniform needs to be clean?
 21 A. Yes.
 22 Q. Shoes need to be shined?
 23 A. Yes.
 24 Q. And at the university and -- well, at the University of
 25 Oregon Department of Public Safety, men had to be clean shaven;

1 is that correct?
 2 A. That's correct. That was the standard.
 3 Q. Now, you would agree with me that well before you got this
 4 letter of clarification, you were talked to about your failure
 5 to shave; is that correct?
 6 A. I remember one occasion where I was told -- reminded that
 7 I needed to try to shave, and I explained on that date that I
 8 had just come from Junction City, but, yes, I understood that
 9 that was the expectation.
 10 Q. And on that occasion, the first time you were talked to,
 11 you weren't given any sort of discipline, were you?
 12 A. That's correct.
 13 Q. And then there was a second occasion when you failed to
 14 shave, and you had a meeting with Lieutenant Lebrecht and
 15 Sergeant Cameron. Do you recall that?
 16 A. I don't recall a meeting, but I believe it could have
 17 happened.
 18 Q. Do you recall them asking you if you needed a copy of the
 19 policy and trying to hand it to you?
 20 A. I don't recall the meeting, so I don't recall the policy,
 21 but I knew it was the policy.
 22 Q. Do you recall Sergeant Cameron telling you if there's some
 23 sort of reason you can't shave, if you have sensitive skin or
 24 something, to get a doctor's note and they would make an
 25 exception. Do you remember that?

1 A. Something to that -- actually, I think I brought that up.
 2 I told them that I had sensitive skin and -- you know, but I
 3 was unable to get a doctor's note in time for the letter of
 4 clarification.
 5 Q. Well, I think you violated the policy again a third time;
 6 correct? After you had been talked to twice about this policy,
 7 you simply disregarded it again, and that's when you got the
 8 letter of clarification. Isn't that correct?
 9 A. That could very well be.
 10 Q. Now, we talked about the incident when a fellow was
 11 reported to be known to carry a weapon, specifically a javelin.
 12 Do you recall that?
 13 A. Yes.
 14 Q. Okay. This is another -- another incident that you said
 15 you didn't think was a big deal. Is that right?
 16 A. I don't recall using those words.
 17 Q. Do you think it was a big deal?
 18 A. I -- I remember testifying yesterday that I believe there
 19 was some training -- that it was a training opportunity at that
 20 time and I learned that I should handcuff people before I let
 21 them make phone calls.
 22 Q. Okay. What about the issue of you searching through the
 23 backpack? Do you agree that was an unsafe situation?
 24 A. I did not search through his backpack. I asked for
 25 permission, and he did not give me that permission.

1 Q. No. My apologies. I mean allowing this person known to
 2 carry dangerous weapons, allowing him to search through his
 3 backpack.
 4 A. As I testified yesterday, I could see where the cell phone
 5 was. I could also see that the bag was too small to carry a
 6 javelin.
 7 Q. Is it your belief that someone who's known to carry
 8 dangerous weapons is somehow limited to always carrying the
 9 same weapon?
 10 A. Could you say that again?
 11 Q. Do you think you should have considered in that situation
 12 that he may have also had a different weapon inside his
 13 backpack?
 14 A. That -- that is possible that he had a different weapon.
 15 Q. Were you counseled about this incident afterwards?
 16 A. Yes.
 17 Q. Were you counseled on the fact that you allowed him to
 18 look through the backpack?
 19 A. Again, from my recollection of that incident, the cell
 20 phone was on top. Inside the bag, but on top. And I was right
 21 there, and I could see it. But, yes, I admit that there were
 22 better ways for me to handle that, and that was what I was
 23 counseled about. And this was during my field training, and I
 24 learned from it.
 25 Q. Well, it wasn't during your field training, was it? It

1 was on the 29th, I believe. You were out of field training on
 2 the 27th?
 3 A. So it was two days after?
 4 Q. Yeah.
 5 A. If that's what it was, that's what it was.
 6 Q. All right. Do you recall what your response was to --
 7 after you were counseled about letting him look through the
 8 backpack?
 9 A. I do not.
 10 Q. Do you recall telling Lieutenant Lebrecht that it was
 11 pretty stupid to think that there might be a javelin inside
 12 that backpack?
 13 A. I don't think I would have made that statement. I would
 14 have made a statement similar to I thought it was funny that
 15 the -- that it was noted in his record that he carried a
 16 javelin because I've never heard of a javelin as a noted weapon
 17 in police reports before and I haven't since. So I -- I
 18 thought that was kind of unique.
 19 Q. Do you agree with your supervisors that you displayed poor
 20 officer safety skills during that incident?
 21 A. As I stated, I believe that I learned from that incident
 22 about how to handle letting people make phone calls when
 23 they're being arrested.
 24 Q. Do you agree that you go -- well, back during this time
 25 we're talking about -- that you went into every contact giving

1 the contact the benefit of the doubt? They were a good guy
 2 until they proved to you that they weren't?
 3 A. Sort of. What I mean by that, giving people the benefit
 4 of the doubt, is I mean I treat everybody like a decent human
 5 being and I give them respect like a decent human being. They
 6 may have a very long criminal record, but I don't immediately
 7 pull pepper spray on them, for instance. I treat them
 8 respectfully and will continue to do so, unless I feel I'm in
 9 danger or they become best disrespectful.
 10 Q. Do you agree you can still be respectful while maintaining
 11 caution?
 12 A. Of course. I believe that I always maintain caution. I
 13 care about my personal well-being.
 14 Q. You testified that there was a meeting with
 15 Lieutenant Lebrecht on August 13th. Do you recall that?
 16 A. I recall that meeting taking place on that day, yes.
 17 Q. You testified you felt threatened and intimidated at that
 18 meeting. Do you recall that?
 19 A. On the August 13th meeting?
 20 Q. Yes.
 21 A. I don't recall that.
 22 Q. You testified that you felt threatened because they were
 23 going to charge you criminally?
 24 A. Oh, yes. Being told that I was possibly facing criminal
 25 charges did definitely -- it definitely concerned me.

1 Q. Well, do you not agree that you testified you felt
 2 intimidated and threatened during that meeting?
 3 A. I was definitely threatened with criminal charges, and I
 4 was definitely intimidated with facing criminal charges, also.
 5 So yes, yes, I did.
 6 Q. Did you feel threatened by Lieutenant Lebrecht, how he was
 7 talking to you? Is that what you claim was intimidating to
 8 you?
 9 A. I think anybody who's told they can face -- I don't know
 10 what he said -- 20-some misdemeanor accounts would feel
 11 threatened and intimidated by that statement.
 12 MS. COIT: Your Honor, I would like permission to
 13 play audio from Exhibit 351-I.
 14 THE COURT: The marking would be 351 and is I the
 15 designation?
 16 MS. COIT: It's -- 351, it's Lieutenant Lebrecht's
 17 performance review, and there are exhibits to it, and that's
 18 Exhibit I to his performance.
 19 THE COURT: Exhibit I. Thank you. You may play
 20 351-I.
 21 (Exhibit No. 351-I was played for the jury.)
 22 BY MS. COIT: (Continuing)
 23 Q. Yesterday you testified that you sent an email to the
 24 district attorney office after the *Brady* submission had been
 25 made that you now regret sending. Do you recall that?

1 A. I regret sending -- I regret saying part of that email.
 2 Q. And the part I think you testified you regretted saying
 3 was about Lieutenant Lebrecht; is that correct?
 4 A. I regret saying that he is the most vindictive person
 5 I've ever met because at that point I thought it was just
 6 Lebrecht acting on his own or that he was spearheading and it
 7 was his idea to *Brady* list me.
 8 I've since found out it was actually Carolyn McDermed that
 9 was behind it and, further, that Lieutenant Lebrecht actually
 10 didn't really want to do it.
 11 So I regret saying that about Lebrecht.
 12 Q. It was a pretty harsh email, wasn't it?
 13 A. It was a harsh email, and I --
 14 Q. You said he was dishonest, didn't you?
 15 A. I may have.
 16 Q. Have you -- have you followed up with the DA's office and
 17 told him that you don't believe that anymore?
 18 A. I will when we -- when I'm able to have a meeting with --
 19 with the new DA.
 20 Q. So knowing what you know now, sitting here today, do you
 21 believe that Lieutenant Lebrecht submitted this information to
 22 the district attorney to retaliate against you for something
 23 that you said?
 24 A. I definitely believe the *Brady* submission was sent as
 25 retaliation against me. The point I'm trying to make is that I

1 realize that it was McDermed that was behind it, not so much
 2 Lebrecht.
 3 Q. All right. Look at exhibit --
 4 MS. COIT: Your Honor, I would like permission to
 5 publish Exhibit 178. It's been offered and accepted in
 6 plaintiff's case.
 7 THE COURT: You may.
 8 BY MS. COIT: (Continuing)
 9 Q. All right. This is the arbitration decision. You read
 10 this; correct?
 11 A. A long time ago, yes.
 12 MS. COIT: My apologies. May I approach?
 13 THE COURT: Sure. You can approach any time you
 14 would like to, and the same courtesy for the defense {sic}.
 15 You don't have to ask from this point forward with this
 16 witness.
 17 MS. COIT: Thank you.
 18 BY MS. COIT: (Continuing)
 19 Q. All right. On page-- page 18 of the arbitration decision,
 20 the third paragraph in, do you see that?
 21 A. Yes.
 22 Q. Starts with, "Here, grievant, an attorney" --
 23 A. Yes.
 24 Q. It says -- "is charged, among other things, with
 25 dishonesty." Do you see that?

1 A. Yes.

2 Q. Do you agree with me that the *Brady* issue involves

3 credibility, not dishonesty, and those are different concepts?

4 A. I think those are synonyms.

5 Q. Okay. Look down further in this paragraph where it starts

6 with, "I do not require that employer eliminate all doubts,

7 even reasonable ones, but the evidence should be sufficient to

8 satisfy the arbitrator that there are substantially more

9 reasons to conclude that grievant is guilty as charged than he

10 is without fault. Such a burden of proof is often referred to

11 as clear and convincing evidence." Do you see that?

12 A. Yes.

13 Q. Do you agree that that is the standard that the arbitrator

14 was imposing on the employer when they were charged with

15 proving you had been dishonest in this arbitration?

16 A. I don't think that's completely accurate. I believe

17 that's a standard they were using to determine if there was

18 just cause for the discipline.

19 Q. Can you look at page 19?

20 A. Yes.

21 Q. This has to do with your letter of reprimand; correct?

22 The May 18th warning.

23 A. Yes. It appears to be with regard to Spencer View.

24 Q. Do you agree that the arbitrator found "and I find very

25 circumstances support the conclusion that grievant knew or

1 should have known that caution, when approaching Spencer View,

2 was expected."

3 Do you agree that's what the arbitrator concluded?

4 A. It appears to be.

5 Q. Look at page 20. You see the paragraph starting with

6 "most significant"?

7 A. Yes.

8 Q. "Even when the grievant -- the grievant was informed on

9 April 7th of the employer's policy on appropriate precautions,

10 he nevertheless continued to maintain that no particular safety

11 measures were necessary. Grievant's intransigence in response

12 to policies and expectations that were clearly expressed by

13 Cameron and Lebrecht left the employer no option other than

14 some form of corrective discipline."

15 Do you see that to be the arbitrator's conclusion?

16 A. Yes. But, again, I think both sides, yours and mine, were

17 disappointed in the arbitration decision for different reasons.

18 I believe I never stated that I had to take no caution on this

19 incident. I -- you always have to be cautious.

20 Q. Please look at page 21. First sentence in this paragraph

21 we called out, "Given these circumstances, notice from the 2011

22 clarification and grievant's continuing refusal to acknowledge

23 appropriate safety practices, I'm compelled to find that the

24 employer has met its burden of demonstrating just cause for

25 discipline over the Spencer incident."

1 Do you see that conclusion by the arbitrator?

2 A. Yes.

3 Q. Please look at page 22. Here I believe the arbitrator was

4 commenting on the stop of the dean. Does that seem accurate?

5 A. Yes, that seems to be referring to the dean stop.

6 Q. It says, "Of additional concern are the various and

7 inconsistent reasons grievant proffered for following the

8 Honda. Thus, the tape of his encounter with the driver reveals

9 that grievant expressed concern to her about the registration

10 tags, but he later asserted in an interview with Morrow that he

11 may have intended to determine if the driver was inebriated or

12 had stolen the vehicle. Further, at arbitration, grievant

13 testified he was concerned about careless driving, an offense

14 over which he did, in fact, have authority."

15 Do you -- do you take from that paragraph the arbitrator's

16 concern with your credibility?

17 A. No. In fact, the arbitrator finds that I was not

18 dishonest. I would point out page 21 in the footnote.

19 Q. Let's stick here with page 22. "In this regard, I find

20 grievant's differing explanations puzzling, particularly as

21 careless driving concerns fell within the scope of his

22 authority. Thus, there appears to be no good reason why

23 grievant would inform the driver she's been stopped for an

24 alleged offense over which grievant had no authority if he

25 otherwise had a good faith belief a legitimate purpose existed.

1 I further note that grievant's claim about careless driving

2 rests on a weak foundation, as the video reveals the driver was

3 uncertain or perhaps confused, but hardly reckless."

4 Do you interpret that to be a comment on your credibility?

5 A. No. He says he's confused.

6 Q. But he's confused by your testimony, isn't he?

7 A. He's confused by the number of reasons that I contacted

8 the assistant dean. As I tried to explain, there were a number

9 of reasons I found her suspicious and wanted to speak to her.

10 What I talked to her about when I got out of the car was about

11 the expired tags because that's a way to start the

12 conversation.

13 Q. Let's look at page 23. The paragraph starting with "Even

14 assuming, for the sake argument, that grievant was not present

15 at the training sessions regarding the dash cam recorders, I

16 find that grievant, a law school graduate, either knew or

17 should have known that the underlying purpose behind the

18 required protocol for PUMA recordings would apply equally

19 forcefully to similar recordings by other means. Indeed, the

20 record reveals grievant did provide the proper warnings with

21 regularity, strongly suggesting he was aware of the underlying

22 policy."

23 Do you see that statement?

24 A. I see that statement.

25 Q. Do you interpret that as calling into question your

1 credibility?
 2 A. No.
 3 Q. I'll have you look at Exhibit 418.
 4 MS. COIT: 418, Your Honor.
 5 THE COURT: 418? Thank you.
 6 BY MS. COIT: (Continuing)
 7 Q. All right. Yesterday you testified that Chief McDermed
 8 promised you that she would meet with you to have a step one
 9 hearing on your written reprimand grievance. Do you recall
 10 that?
 11 A. Yes, I do.
 12 Q. I've just given you Exhibit 418. Do you recognize -- my
 13 mistake. Sorry. Wrong question.
 14 There was testimony earlier in the case about a letter of
 15 reference that Chief McDermed gave you in connection with the
 16 settlement agreement of the arbitration award. Do you recall
 17 that?
 18 A. Yes. That was part of the agreement.
 19 Q. All right. Is the document I've just handed you,
 20 Exhibit 418, is that the neutral letter of reference that
 21 Carolyn McDermed signed and gave to you as part of that
 22 settlement agreement?
 23 A. This appears to be that letter, yes.
 24 MS. COIT: Your Honor, I offer 418 and request
 25 permission to publish.

1 THE COURT: Received. You may publish 418.
 2 BY MS. COIT: (Continuing)
 3 Q. Did you write Exhibit 418?
 4 A. As I recall, you asked me to write this.
 5 Q. So you agree that you wrote Exhibit 418?
 6 A. Yes. Based on the parameters you gave me.
 7 Q. Okay. And those parameters included the dates you were
 8 employed at the university; correct?
 9 A. Yes. That was one of the parameters.
 10 Q. The position you held; correct?
 11 A. Yes.
 12 Q. And how much you were paid in each position; correct?
 13 A. Yes.
 14 Q. There's nothing in this letter of reference that in any
 15 way comments on your credibility, your abilities as an officer,
 16 or gives you any sort of recommendation. Do you agree with
 17 that?
 18 A. This letter wasn't supposed to serve that purpose.
 19 Q. So you agree with that?
 20 A. Can you ask me the question again, please?
 21 Q. Is this letter some sort of recommendation from the chief
 22 on your abilities, commenting on your credibility, that could
 23 be submitted to future employers?
 24 A. This is a neutral letter of reference or recommendation,
 25 whichever you want to call it, that you had me prepare as part

1 of the settlement agreement, and I believe this is pretty
 2 typical and standard -- or at least you told me it was for
 3 these type of settlement agreements.
 4 Q. Now I'm going to hand you 325.
 5 MS. COIT: 325, Your Honor.
 6 THE COURT: 325? Thank you.
 7 BY MS. COIT: (Continuing)
 8 Q. All right. In 325 I'm only concerned with the top email.
 9 A. Okay.
 10 Q. Do you recognize that email?
 11 A. I don't recall this email.
 12 Q. Who's it addressed to?
 13 A. This looks like it's -- it's to me, but it doesn't have my
 14 email address. And it's from Carolyn McDermed, and it doesn't
 15 have her email address.
 16 Q. Do you believe you ever received this email?
 17 A. I don't -- I don't recall receiving this specific email.
 18 Q. Well, look at the contents of the email and tell me if
 19 that refreshes your memory of whether or not you received this
 20 information.
 21 A. I have a vague recollection of this email. I believe this
 22 is what prompted us -- prompted the union and me to then ask
 23 Carolyn McDermed if she would participate in the step one
 24 grievance hearing instead of Lieutenant Lebrecht because we
 25 felt Lieutenant Lebrecht was involved in the --

1 Q. Let me just stop you for a second.
 2 A. Sure.
 3 Q. So you do now recall this email?
 4 A. Again, vaguely.
 5 MS. COIT: Your Honor, I offer Exhibit 325 and
 6 request permission to publish.
 7 THE COURT: Any objection, Counsel?
 8 MR. JASON KAFOURY: No.
 9 THE COURT: Received. You may publish 325.
 10 BY MS. COIT: (Continuing)
 11 Q. All right. Back to my earlier question. You testified
 12 that Chief McDermed initially promised to meet for a step one
 13 grievance with you and then failed to live up to that promise.
 14 Is that your testimony?
 15 A. That's correct.
 16 Q. This is an email that came to you from Chief McDermed,
 17 which she says, "I spoke with Randy Wardlow, HR labor relations
 18 manager. He said normally when an employee wants to initiate a
 19 grievance within the department, he sits in. It would be my
 20 preference that he sit with you while you present your
 21 grievance to Lieutenant Lebrecht. How does that sound?"
 22 Do you see that email?
 23 A. This seems like the email we were sent -- this was before
 24 we asked Carolyn McDermed to be the step one hearings officer
 25 instead of Lieutenant Lebrecht. This is precisely why we asked

1 her to be the step one hearings officer because we felt
 2 Lieutenant Lebrecht was involved in writing the letter of
 3 reprimand. So we wanted someone who was at least slightly more
 4 neutral than Lieutenant Lebrecht. So, yeah, this email is
 5 earlier than we asked her to participate.
 6 Q. Do you --
 7 A. And she agreed.
 8 Q. Do you understand from that email that she's telling you
 9 that she's not comfortable participating in a step one
 10 grievance with you?
 11 A. It doesn't say she's uncomfortable with it. She says her
 12 preference is that Randy Wardlow would also be included in the
 13 meeting. I believe she's asked -- seems to me she's asking for
 14 permission to have Randy Wardlow also sit in the step one
 15 meeting with Lieutenant Lebrecht.
 16 And she's also telling me how step ones are typically run.
 17 They would typically be -- because Sergeant Cameron wrote the
 18 letter, typically it would go to the next person higher in the
 19 command, which would be Lieutenant Lebrecht, which is precisely
 20 why we asked Chief McDermed to take Lebrecht's place.
 21 Q. And it's your memory that she somehow later changed her
 22 mind and agreed to meet with you?
 23 A. Yes. It's my memory that she agreed to take his place.
 24 And I believe we have emails to prove that.
 25 Q. Remind me again what was your call number when you were an

1 officer.
 2 A. Ocean 29.
 3 MS. COIT: Your Honor, permission to play an audio
 4 I'm marking Exhibit 426.
 5 MR. JASON KAFOURY: Is this for impeachment,
 6 Your Honor?
 7 MS. COIT: Yes.
 8 THE COURT: What does it pertain to?
 9 MS. COIT: Impeachment.
 10 THE COURT: What?
 11 MS. COIT: Impeachment.
 12 THE COURT: I know. What does it pertain to?
 13 MS. COIT: You have a transcript, Your Honor.
 14 THE COURT: 429? Oh, I'm sorry. 426.
 15 MR. JASON KAFOURY: Your Honor, I don't have any of
 16 these documents as we go through these, just for the record. I
 17 don't have any transcripts.
 18 MS. COIT: Your Honor, it's page 13 of the
 19 impeachment transcripts I gave you.
 20 MR. JASON KAFOURY: Your Honor, I think we should
 21 have a copy of any impeachment --
 22 THE COURT: Do you have a copy for counsel?
 23 MS. COIT: Sure.
 24 MR. JASON KAFOURY: Can we get a complete copy of all
 25 the transcripts given to you, Your Honor?

1 THE COURT: Let's take the 426. You can play 426,
 2 Counsel.
 3 MS. COIT: Thank you.
 4 (Exhibit No. 426 was played for the jury.)
 5 BY MS. COIT: (Continuing)
 6 Q. Was that you?
 7 A. That's me.
 8 MS. COIT: No further questions.
 9 THE COURT: Redirect?
 10
 11 REDIRECT EXAMINATION
 12 BY MR. JASON KAFOURY:
 13 Q. Okay. Let's go through a few things, Mr. Cleavenger. I'm
 14 going to go in reverse order. The most recent stuff we
 15 discussed, and then we'll go back. Okay?
 16 A. Okay.
 17 Q. First, how much communication were you having with defense
 18 counsel over those months about these settlement negotiations?
 19 A. A lot. There were a lot of emails.
 20 Q. Any of those emails, prior to July 24th, ever get into
 21 anything about *Brady* listing you?
 22 A. Zero. None of them.
 23 Q. Throughout -- how many months had you guys been discussing
 24 this neutral letter of reference and what should be in it and
 25 what you could include and all this kind of stuff?

1 A. Almost six months, I believe.
 2 Q. Now, we listened to some audio from the meeting you had
 3 with Lieutenant Lebrecht and Randy Wardlow. That's the
 4 August 13 meeting from 2012; right?
 5 A. Correct.
 6 Q. And we heard Lieutenant Lebrecht say, "Oh, no, we're not
 7 going to be looking at criminal charges for these misdemeanors
 8 at this point." You heard that?
 9 A. Yes.
 10 Q. Have you learned throughout this process that the attitude
 11 of the chief of the department changed in that respect?
 12 A. Obviously, it changed. I was terminated soon after that
 13 meeting.
 14 Q. But how about the attitude about whether you should be
 15 charged with crimes? Did you learn that that -- that changed
 16 as well?
 17 A. Yes, that did change.
 18 Q. Okay. And when did you learn that?
 19 A. Well, relatively recently.
 20 Q. In fact, Lieutenant Lebrecht stated at his deposition that
 21 Chief McDermed told him to inquire with the district attorney
 22 about whether you could be charged with crimes, didn't he?
 23 A. That's correct.
 24 Q. Now, the arbitrator's decision, the arbitrator was not
 25 asked to decide whether you were honest or not, was he? That

1 wasn't his decision?
 2 A. You mean if I was honest in general?
 3 Q. In general, yeah. That was not what he was tasked to do
 4 in this project; right?
 5 A. No. He was just tasked to figure out if there was just
 6 cause or not for termination.
 7 Q. Despite that, did he come to conclusions about your
 8 honesty within this document?
 9 A. He did.
 10 MR. JASON KAFOURY: Mr. Hess, can you bring up
 11 Plaintiff's 178, please. Page 20.
 12 Mr. Hess, can you blow up the first sentence on the last
 13 paragraph there? The whole paragraph.
 14 BY MR. JASON KAFOURY: (Continuing)
 15 Q. Did the arbitrator conclude that, "On the other hand, I
 16 find insufficient evidence to support the employer's argument
 17 that grievant was, quote, "dishonest when during the April 7
 18 interview he claimed that Hermens' car was visible from the
 19 apartments"?
 20 He actually went up and looked up honesty in the
 21 dictionary here, right, and came to the conclusion after
 22 hearing all the evidence for three days there was nothing in
 23 the record to say that you were dishonest. That was his
 24 conclusion in this report, was it not?
 25 A. Yes.

1 MR. JASON KAFOURY: Can we go to the next page,
 2 Mr. Hess? The last sentence of the first paragraph there,
 3 starting with accordingly.
 4 BY MR. JASON KAFOURY: (Continuing)
 5 Q. Accordingly, even though grievant had an arguable motive
 6 to defect blame on others, there is simply insufficient
 7 evidence to support the employer's burden of establishing a
 8 finding of a purposeful intention to mislead.
 9 This is the arbitrator commenting on your honesty in this
 10 report; correct?
 11 A. Yes. I believe there's a footnote.
 12 MR. JASON KAFOURY: Can you put the footnote up,
 13 please, Mr. Hess.
 14 BY MR. JASON KAFOURY: (Continuing)
 15 Q. "I also note that the reprimand itself does not accuse
 16 grievant of dishonesty, but rather asserts that the video
 17 refutes his contention."
 18 Did the *Brady* materials accuse you of dishonesty in
 19 relation to this incident?
 20 A. It -- yes, I believe so.
 21 MR. JASON KAFOURY: Next. 24, Mr. Hess. No. Sorry
 22 23. 23. On the bottom.
 23 BY MR. JASON KAFOURY: (Continuing)
 24 Q. "On the other hand, nothing on the record suggests
 25 anything other than inadvertence by grievant. That conclusion

1 is supported by the evidence that grievant did not, in fact, on
 2 numerous other -- did, in fact, record on numerous other
 3 similar occasions. Under these circumstances, the record, in
 4 its entirety, leads me to conclude that on April 1 and 2
 5 grievant unintentionally violated ORS 165.40 and the employer's
 6 policy on notification to the parties that a conversation is
 7 being recorded. I further find the employer has met its burden
 8 of demonstrating just cause for discipline for this offense."
 9 Now, this is what this charge, purposefully violating
 10 people's rights, of 165.40, this is the exact same charge that
 11 the chief wanted Lebrecht to go talk to the DA about in June of
 12 2014 and say you should be charged with dishonesty; isn't that
 13 right?
 14 A. Right. Months after this decision.
 15 Q. Right. So the independent arbitrator concludes there is
 16 no evidence to show that you lied on this key question about
 17 whether you had the intent to not record people and yet this
 18 was not given to the district attorney; isn't that right?
 19 A. Correct. And I -- if I recall correctly, that was also
 20 the DA's determination; that it was inadvertent and not
 21 purposeful.
 22 Q. Next, page 24. First sentence regarding the callouts --
 23 problem with the callouts. "There are no credibility issues
 24 regarding what grievant expressed to dispatch during the three
 25 callouts."

1 Now, the arbitrator did not find any issues with these
 2 callouts, did he?
 3 A. That's correct.
 4 MR. JASON KAFOURY: Can you go to the next page,
 5 Mr. Hess? First sentence. "Based on the above."
 6 BY MR. JASON KAFOURY: (Continuing)
 7 Q. "Based on the above, I am compelled to find there is no
 8 evidence that grievant had been ordered to refrain from any and
 9 all callouts and that the record does not support a conclusion
 10 that grievant attempted to exercise prohibited enforcement
 11 authority."
 12 That was his conclusion; right?
 13 A. Correct.
 14 MR. JASON KAFOURY: Okay. And, finally, page 28.
 15 Can you blow up the full second?
 16 BY MR. JASON KAFOURY: (Continuing)
 17 Q. And this is the conclusion by the arbitrator here.
 18 Starting in the middle of the paragraph, "concluded that
 19 discharge could not be supported under the principles of just
 20 cause, the arbitrator did consider the employer's contention
 21 that grievant's misconduct called into question his judgment,
 22 his understanding of the obligation to follow laws, his ability
 23 to follow safety-related policies and protocols and his
 24 credibility."
 25 The employer at that arbitration attacked your

1 credibility, your officer safety, questioned your judgment and
 2 your understanding and ability to follow laws, the arbitrator
 3 took all of that into account at the arbitration and still
 4 didn't find there was just cause on top of finding nothing,
 5 showing you were dishonest. Isn't that all accurate in the
 6 arbitrator's opinion?
 7 A. That's my understanding of his decision.
 8 Q. And because of this, you were awarded all the backpay for
 9 the months of time that you were off; correct?
 10 A. That's correct.
 11 Q. Now, you talked about now you know that
 12 Lieutenant Lebrecht was under orders to write those *Brady*
 13 materials.
 14 Did Lieutenant Lebrecht select what was going to go in
 15 that first draft of materials that went to the chief?
 16 A. It is my understanding that he was responsible for putting
 17 the *Brady* materials together.
 18 Q. So if, when we go through the *Brady* materials over the
 19 course of this trial, there's information in those *Brady*
 20 materials which was selectively chosen by Lieutenant Lebrecht,
 21 that may lead to some conclusions of retaliation; isn't that
 22 correct?
 23 A. That's correct, yes.
 24 Q. Let's talk about this. Defense counsel asked you about
 25 what you put in your complaint about this incident in Occupy.

1 I would like to show you. To help refresh your memory -- does
 2 that refresh your memory about what you stated in your lawsuit
 3 about the Occupy incident?
 4 THE COURT: What page, Counsel?
 5 MR. JASON KAFOURY: Page --
 6 THE COURT: Or paragraph.
 7 MR. JASON KAFOURY: Paragraph 20.
 8 THE WITNESS: Paragraph 32, Your Honor.
 9 MR. JASON KAFOURY: 32 in the complaint.
 10 THE WITNESS: Third amended complaint.
 11 BY MR. JASON KAFOURY: (Continuing)
 12 Q. From the third amended complaint, yes.
 13 Does it help refresh your memory of what you put in there
 14 in regards to the Occupy incident and your interaction with
 15 Lieutenant Lebrecht afterwards?
 16 A. Yes.
 17 Q. Okay. And what did you say?
 18 A. I mentioned a paragraph 32 that after the -- "After the
 19 briefing Lebrecht appeared angry and confronted plaintiff in
 20 the hallway and asked" -- blah, blah, blah.
 21 Q. Okay. Well, you keep reading.
 22 A. Sorry.
 23 -- "and asked why weren't you laughing like everyone else
 24 at the jokes about the Occupy Movement?"
 25 Q. So is that the same paragraph you've had about this in all

1 three of your complaints?
 2 A. I believe so. If there were any changes made, they would
 3 be minor for grammar, et cetera.
 4 Q. So you put in your complaint that he was angry, confronted
 5 you in the hallway right after the briefing, and asked you why
 6 you weren't laughing. You put all that in your complaint;
 7 right?
 8 A. Yes.
 9 Q. You never testified yesterday that you were physically
 10 assaulted, did you?
 11 A. Correct.
 12 Q. Did I say in opening statement that you were physically
 13 assaulted?
 14 A. I don't think so.
 15 Q. Let's talk more on the topic of this political thing. Was
 16 it well-known within everybody in the briefing of graveyard
 17 what your political beliefs were?
 18 A. At what time?
 19 Q. At the time that Cameron comes into play in October of
 20 2011.
 21 A. No, it wasn't well-known at that point. I tried to hide
 22 some of the political background.
 23 Q. And how did your political stuff come out?
 24 A. Well, again, this is my belief of how it came out.
 25 Because Lebrecht started making mention of my political

1 background after Cameron became my sergeant on that shift.
 2 Prior to that, you know, I tried not to mention some of my
 3 political backgrounds. For instance, working for Al Gore,
 4 because Al Gore had been put on the bowl of dicks list, so I
 5 felt maybe I should not mention that. Especially during this
 6 first six months where you can be terminated for any reason.
 7 They don't have to have a reason. So I tried to keep that on
 8 the down-low basically and keep my head down and work.
 9 Q. This grooming, were you -- how many days did you miss
 10 shaving over those weeks?
 11 A. I think it was two or three over this period that were
 12 identified, but I'll admit right for -- there may be -- there
 13 may have been other days too.
 14 Q. Was that any different than anybody else during that time
 15 period of Occupy, in terms of people missing shaving?
 16 A. No. Especially during that time period because we were
 17 working a lot of overtime to cover the event, plus I had my
 18 duties with Junction City. Some of those shifts I'd signed up
 19 for, you know, a month in advance. Especially the paid shifts.
 20 You had to sign up for those in advance. So I was working a
 21 lot during that time period.
 22 Q. Defense counsel asked you why you didn't tell your father
 23 about this job offer in Seattle. What is your memory of that
 24 time period?
 25 A. Well, I thought that I did discuss it, and then I thought

1 his testimony yesterday was that he remembered discussing with
2 me a job offer up in Seattle, you know, where my sister-in-law
3 was a captain or lieutenant. I think it was a captain at an
4 agency up there.

5 I generally talk to him about application process because
6 he was a retired police officer, so I was always asking for
7 advice and help, like how -- what should I say during oral
8 boards? What should I expect? What are departments with good
9 reputations? I would seek out his advice -- advice a lot
10 during that process.

11 Q. Defense counsel also asked you about a quote that you gave
12 to a reporter in *The Eugene Register-Guard*. I would like to
13 show you this actual article. Can you identify that document
14 and date of the document?

15 A. This is *The Eugene Register-Guard* news article from
16 July 11, 2014.

17 Q. Okay. And can you turn to, I believe, the second
18 page there, the third page. Let me see it. Okay. That
19 paragraph there.

20 Did you say in that article that you saw with your own
21 eyes the names of people in your lawsuit on this list? Is that
22 what you told the reporter?

23 A. No. That is not my quote. I -- that's not what I said.

24 Q. What did you indicate in that report about what happened?

25 A. Without reading the --

1 Q. Yeah, what did you indicate?

2 A. What I indicated was that I knew that certain people were
3 on the bowl of dicks list, and I knew they were on the list
4 because I saw LeRoy type them, you know, with his fingers into
5 his own phone when they kind of came up for discussion for the
6 bowl of dicks list.

7 I mentioned that a lot of these names -- and I list them
8 here -- were strangely not on the copy that was provided to *The*
9 *Register-Guard* by Chief McDermed. This is months after I had
10 filed a lawsuit listing those names.

11 Q. Do you think it's a huge coincidence that most of the
12 people you put in your lawsuit somehow just didn't end up on
13 the list that Mr. LeRoy provided?

14 A. I could be wrong, but I think that every single person or
15 entity that I listed in my lawsuit was strangely not on the
16 list of 250 entries in the list. I could be wrong. Maybe
17 there's one or two, but I think all of them that I remembered
18 specifically were not on the list that was produced.

19 Q. Defense counsel asked you about whether this loaded-gun
20 incident came up on the July 14, 2015, meeting with Lebrecht
21 and Wardlow. Can you provide the jurors some context of what
22 was happening during that meeting?

23 A. Yes. So we had had a previous meeting with Lebrecht and
24 Wardlow and my union steward where we were told that Lebrecht
25 had evidence of potential, what, 20-plus misdemeanors and that

1 we might be discussing some of those incidents later. And then
2 at the start of that meeting -- this is the second meeting --
3 my union steward and I, we tried to invoke the union right --
4 again, I always confuse *Garrity* and *Weingarten*, but we tried to
5 invoke the right where we said that I would be willing to talk
6 about those incidents and explain why I did what I did or why I
7 didn't do what I didn't do, as long as the employer promised
8 that there would not be any criminal charges.

9 But the employer, Wardlow and Lebrecht, refused to let us
10 do that. So that specter of criminal charges was still out
11 there. That's why I say I was at that point still feeling
12 threatened, and I can't remember the other word she used,
13 but -- I will -- I had a great deal of anxiety being in that
14 meeting and not knowing what was going to happen.

15 Q. Is that generally how you felt that whole summer long?

16 A. Yes, to say the least.

17 Q. Defense counsel asked you if you thought the chief should
18 be alarmed about this loaded-gun incident and from the chief's
19 perspective. What is your take on that?

20 A. Well, from the chief's perspective -- if I were the chief,
21 having received information from only one side -- I'll just
22 give you a hypothetical. If I were the chief and my sergeant
23 told me that one of the officers transported a distraught,
24 disturbed woman with a loaded gun in her hand, in her lap,
25 without any permission from a supervisor, all on his own, if

1 that's the information I heard as the chief, of course I would
2 be concerned.

3 Q. That sounds pretty bad, doesn't it, if that's all you
4 know?

5 A. Yes.

6 Q. Now, we've talked about traffic stops and
7 Lieutenant Morrow -- defense counsel asked you about those.
8 Can you explain to the jurors one more time what were trained
9 on what a campus version of a traffic stop was as of April
10 2012?

11 A. Right. So what I thought we were allowed to do, based on
12 my training there from multiple field training organizers -- I
13 was only with Chris Phillips for two weeks, but during those
14 two weeks I did some of these traffic stops with him. My
15 understanding was I was allowed to stop a vehicle as long as it
16 was on University of Oregon property. That's what I could do.

17 It was clear to me I could not follow it off campus and
18 make a stop, you know, like on a city street. I could not do
19 that.

20 Q. You were asked about --

21 A. Oh, I'm sorry.

22 Q. Go ahead.

23 A. And finishing that, also that the car had to be on
24 university property and then, you know, coming to a stop, like
25 in a parking space or something like that, with one exception,

1 and that being driving the wrong way down one of our little
 2 non-city streets, but they're one-way streets on campus. A lot
 3 of officers did those stops.
 4 And, also, again, the stop sign on campus that I pointed
 5 out to Lieutenant Morrow in my traffic petitions officer
 6 reports. So there were some exceptions to that final stop
 7 rule.
 8 But, again, there was no set policy that was uniform and
 9 that we could all look at for guidance for that, so I'm just
 10 going based off of the training and following the other
 11 officers.
 12 Q. Defense counsel played some video clips for you . How many
 13 times over the years you were there were you communicating on a
 14 recorded line with dispatch?
 15 A. Including --
 16 Q. All times you were communicating with dispatch on some
 17 sort of recorded line, how often did that happen?
 18 A. Oh, with me, I -- I was pretty active, so I was making
 19 lots of callouts. Hundreds if not thousands.
 20 Q. Okay.
 21 A. Thousands. It has to be.
 22 Q. Thousands of recordings of all your interactions with
 23 dispatch. Defense counsel brought a few of them here into this
 24 courtroom. The one about -- where she was talking to you about
 25 the Junction City intoxicated woman, can you -- the --

1 A. Where I --
 2 Q. The Junction City stripper, I think you said, or
 3 intoxicated --
 4 A. No. I think I said "the drunken stripper incident" or
 5 something like that.
 6 Q. Why did you have to call dispatch at that point?
 7 A. Because I had to finish writing the report, and so I was
 8 calling on a phone. So, admittedly, I could have -- I could
 9 have described her better, more decently; but, again, that's
 10 not a public statement. No one -- you know, there are scanners
 11 where you can listen to a police radio if you want. This was
 12 not something that the public could hear.
 13 I wanted to quickly get the information from dispatch so I
 14 could finish my report, and I knew that he would remember the
 15 drunken stripper incident so he could pull up the case number
 16 for me and give me the information I needed.
 17 Q. How else would you have described the situation to help
 18 jog his memory?
 19 A. I could have said the inebriated young lady that worked at
 20 Diablo's or something like that -- something maybe more
 21 specific.
 22 Q. While we're on the topic, could you explain to the jurors
 23 what your feelings were and what you reported to people about
 24 the treatment of women within the department?
 25 A. My general concern was the fact that we were always losing

1 female officers. A lot had jumped ship to go to other
 2 departments. Some had been terminated. Like Jen Parker. She
 3 was terminated right when I started. And it's only now that
 4 she's finally been hired with the Eugene Police Department. I
 5 mean, that's -- took six years for her to get over what had
 6 happened and how she was --
 7 MS. COIT: Object to the foundation and the
 8 relevance.
 9 THE COURT: That concludes the answer.
 10 Counsel, next question.
 11 BY MR. JASON KAFOURY: (Continuing)
 12 Q. Who did you communicate to about how women were treated at
 13 the department?
 14 A. As I recall, I touched on it briefly with Carolyn McDermid
 15 because I thought that might, you know, hit a nerve with her
 16 and she might be concerned about that because she had been
 17 there a long time and she had seen it.
 18 With Brian Smith, on that October 2nd meeting, as well. I
 19 think we discussed that earlier in cross about the BOLI
 20 complaints, et cetera, against Cameron and the department's
 21 seeming unwillingness to take care of the problem.
 22 Q. Defense counsel asked you about Lieutenant Lebrecht and
 23 taking jokes too far; right? You heard that?
 24 A. Right.
 25 Q. Is there anything funny about the rape of a girl?

1 A. No.
 2 Q. Is that in any way something that should be discussed
 3 during shift briefings in relation to an Occupy Movement?
 4 A. I didn't think so. That's why I said something.
 5 Q. Is that where things go way too far?
 6 A. That's an example where things went way too far.
 7 Q. Can you explain to the jurors the difference between
 8 joking with a fellow officer and dealing with a supervisor?
 9 A. If you're joking among peers, you're equal and opinions
 10 are equal. One person might have a stronger personality, but
 11 generally you could walk away or, you know, tell each or to --
 12 to take a hike. But if it's your supervisor that's, you know,
 13 leading the discussion, I think a lot of people, including
 14 myself, would feel pressured or obligated to buy into those
 15 opinions and jokes.
 16 It's like when your boss laughs, you should probably laugh
 17 too. A general concept.
 18 So there's just a lot more pressure. I felt a lot more
 19 pressure when, you know, these things were led from above, if
 20 that makes sense.
 21 Q. Defense counsel asked how were feeling going into that
 22 meeting with Carolyn McDermid after spending hours with
 23 Lieutenant Lebrecht, HR, being tape-recorded, going through all
 24 of your videos. How did you feel walking into that meeting
 25 about to go on a vacation at that moment?

1 A. I was still very, very nervous. I don't know if anyone
2 else caught it but me, but, yes, Lebrecht has a very nice
3 demeanor, as does Wardlow. But Wardlow does say, as we were
4 listening, well -- I think he says something like, "Well,
5 technically this could lead to termination, but we're not
6 looking at that right now."

7 That was a -- you know, a red flag for me. So was the
8 start of the meeting when they wouldn't take the union's
9 attempt to say, yeah, we'd love to talk about performance and
10 you guys can discuss these issues in exchange for you not
11 pursuing criminal charges on his misunderstanding of the law .

12 Those were some pretty serious red flags, so I was just
13 upset and worried about my job, my career, as I had been for
14 weeks. But, yeah, I was upset, if that -- is that your general
15 question? Was I upset?

16 Q. Yeah. What was going through your mind ? That's what I
17 wanted to better understand.

18 Finally, on Spencer View, as you sit here today, do you
19 have any idea what route Cameron and Davis took to park where
20 they parked that day?

21 A. No. I have no idea.

22 Q. Is it possible they could have driven right by that place
23 to park there, too, isn't it?

24 A. It's possible.

25 MR. JASON KAFOURY: That's all I've got.

1 Q. Did you make a complaint about it?

2 A. I think I let it be known that that was offensive to me by
3 walking out.

4 Q. To be clear, that wasn't Lieutenant Lebrecht?

5 A. I have never said that was Lieutenant Lebrecht. I said he
6 was the -- I believe the highest ranking officer in that
7 meeting.

8 Q. All right. Counsel asked you how else you could have
9 described this drunken stripper incident. Do you recall that?

10 A. Yes.

11 Q. How about saying, "The woman who crashed on Franklin last
12 night"?

13 A. And got a DUI?

14 Q. Do you think that would have gotten the purpose across ?

15 A. Yes. That -- you're right. That's a better way to put
16 it.

17 Q. And this recording, it's a public record, isn't it?

18 A. I suppose, but that wasn't the point I was trying to make .

19 Q. You said it was private. It wasn't ever going to be
20 released to the public.

21 A. If I -- I don't know if that's public record or not. I
22 suppose it could be. I was saying that it wasn't going out
23 public. It's nothing you would be able to hear on a police
24 scanner.

25 Q. Okay. And you --

1 THE COURT: Recross?

2

3 RECROSS-EXAMINATION

4 BY MS. COIT:

5 Q. Are you now trying to say that it was Lieutenant Lebrecht
6 who made this rape joke?

7 A. No. I have not said that. He was in charge of the
8 meeting, though.

9 Q. He wasn't even there, was he? That was -- Andy Bechdolt
10 was in charge of that meeting?

11 A. Of course he was there. He cornered me in the hallway
12 afterwards. He was definitely at that meeting.

13 Q. When the rape joke was made?

14 A. Yes. That's the whole point. That's when I, you know,
15 got upset and then he cornered me in the hallway and then maybe
16 or maybe not took me into his office with Sergeant Cameron.

17 Q. Do you agree with me that you just answered your client --
18 your counsel's question about an example when

19 Lieutenant Lebrecht took a joking too far and you said, "Yes,
20 with the rape joke"?

21 A. I may have misunderstood counsel's question. I thought
22 his question was is it going too far when a joke like that is
23 allowed to be made.

24 Q. Who made that joke?

25 A. I do not recall who specifically made that joke.

1 A. But I also said and admitted, yes, I could have described
2 her better. And, you're right, I could have.

3 Q. Your counsel showed you your complaint, where you
4 described in detail what happened after you made the comments
5 about the Occupy at briefing; correct?

6 A. Yes.

7 Q. And you agree with me nothing in that complaint says that
8 Lieutenant Lebrecht poked you in the chest?

9 A. I'm not sure. I'm not sure if one of the other versions
10 did or didn't. I can tell you this: If I put down every
11 single bad act that happened to me, the lawsuit would be 500
12 pages. That's how --

13 Q. How often -- how often have you ever observed a
14 professional employee being physically touched, poked, hit,
15 whatever you want to call it, in the workplace?

16 A. This was the first time.

17 Q. Okay. And it's kind of a big deal, wouldn't you think?

18 A. On the scale of things that happened to me throughout this
19 process, no, actually, I would put that lower.

20 Q. That's not in your complaint, is it?

21 A. We just read it. It's in the complaint.

22 Q. The poking?

23 A. Again, I can't put every single detail in my complaint.
24 You already chastised me for writing too big of a complaint.

25 MS. COIT: That's all. Thank you.

1 THE COURT: Thank you. You may step down.
 2 Then, Counsel, do you want to take a recess at this time
 3 before the next witness? Would that be appropriate, or would
 4 you like to go on with your next witness?
 5 MS. COIT: Do you have any more witnesses?
 6 MR. JASON KAFOURY: At this point the plaintiff is
 7 prepared to rest, Your Honor.
 8 THE COURT: Rest at this time, then?
 9 MR. JASON KAFOURY: Yes.
 10 THE COURT: That's subject going over all the items
 11 of evidence. We'll go over that this evening.
 12 Why don't you take a recess, then, for a few moments. 20
 13 minutes now. Don't discuss this matter amongst yourselves.
 14 Don't form or express any opinions concerning the case.
 15 Counsel, will you remain for just a moment?
 16 (Jury not present.)
 17 THE COURT: The jury is no longer present. Counsel
 18 have indicated last evening that they wanted to benchmark and
 19 hear arguments this evening concerning your motion.
 20 Counsel, would you like to make your record at this time
 21 and do that so you preserve your argument this evening?
 22 MS. COIT: Yes, Your Honor. The defense moves for
 23 judgment as a matter of law against all claims currently
 24 pending against all of the individual defendants.
 25 THE COURT: All right. And, once again, I want to

1 make certain my record is complete. That is -- it was agreed
 2 we'll argue this this evening. Is that correct, Counsel?
 3 MR. MCDUGAL: Yes. So stipulated by the plaintiff.
 4 THE COURT: Counsel?
 5 MS. COIT: Yes.
 6 THE COURT: Why don't you have a recess. When we
 7 come back, we'll start with defense. And you had one and maybe
 8 two witnesses today?
 9 MS. COIT: It will just be one.
 10 THE COURT: Okay. Well, thank you very much.
 11 Counsel, we'll see you in 19 minutes.
 12 (Recess taken.)
 13 (Jury present.)
 14 THE COURT: Jury is present. Parties are present.
 15 And counsel are present.
 16 Counsel, would you like to call the next witness, please?
 17 Sorry. The first witness for the defense. Plaintiff has
 18 rested. You've seen a number of witnesses who may not be
 19 returning, who they agreed to call during plaintiff's case.
 20 Oftentimes people are presented by the defendant. You're well
 21 aware of that now.
 22 So, Counsel, on behalf of the defense.
 23 MS. COIT: The defense calls Lieutenant Mike Morrow.
 24 THE COURT: Thank you. If you would step into the
 25 well, please, and be kind enough to raise your right hand.

1 MICHAEL MORROW,
 2 called as a witness in behalf of the Defendant, being first
 3 duly sworn, is examined and testified as follows:
 4 THE WITNESS: I do.
 5 THE COURT: Thank you. Please be seated in the
 6 witness box. Stairway is closest to the wall, just to my
 7 right.
 8 THE WITNESS: Thank you, Your Honor.
 9 THE COURT: After you're comfortably seated, will you
 10 face the jury, state your full name, and spell your last name?
 11 THE WITNESS: Michael Lee Morrow, M-O-R-R-O-W.
 12 THE COURT: Direct examination on behalf of the
 13 defense.
 14
 15 DIRECT EXAMINATION
 16 BY MS. COIT:
 17 Q. Mr. Morrow, who's your employer?
 18 A. First and Goal, Incorporated, with the Seattle Seahawks.
 19 Q. What do you do for First and Goal? What is your position?
 20 A. The managing director of security for CenturyLink Field
 21 Stadium.
 22 Q. How many people are under your supervision in that
 23 position?
 24 A. On the -- it varies. Day-to-day operations, there's
 25 approximately 20 officers. And on game day that increases

1 quite a bit.
 2 Q. Can you walk us through your education and your
 3 professional background?
 4 A. Yes. I graduated from San Jose State University with a
 5 bachelor of arts in psychology and a minor in business
 6 management. I worked with Seattle Police Department for
 7 approximately three and a half years. I entered the Federal
 8 Bureau of Investigation. Retired from the FBI in 2007. I had
 9 Private Investigators, LLC, for several years. I was a special
 10 deputy with the Lane County Sheriff's Office for a couple of
 11 years. I was hired with the University of Oregon in 1999. I
 12 worked with the University of Oregon for four years in the
 13 capacity of lieutenant of professional standards and training.
 14 I also did some fraud investigation for Travelers Insurance.
 15 Q. I think you might have misspoke. When were you hired at
 16 the University of Oregon? You said 1999.
 17 A. Oh, I meant 2009. Excuse me. Thank you.
 18 Q. You're welcome. And can you tell us what were your
 19 various job titles and responsibilities at the FBI?
 20 A. I was hired as a special agent. In 1987 I was assigned to
 21 the Muncie, Indiana, resident agency, which is a smaller office
 22 that reported into the Indianapolis field office, and I worked
 23 a multitude of violations for the FBI at that time.
 24 Then in 1995 I was promoted to supervisor special agent
 25 within the Child Abduction and Serial Killer Unit, also

1 Behavioral Analysis Unit. I assisted with cold case homicides,
 2 child abductions, and threat assessments for approximately four
 3 years.
 4 And then I received a promotion as the supervisory senior
 5 resident agent of the Eugene and Salem resident agency offices,
 6 also the Medford office, until there was a realignment.
 7 In that capacity, I oversaw the different programs that
 8 the FBI was charged with.
 9 Q. And did you retire from the FBI?
 10 A. Yes, ma'am, I did.
 11 Q. Did you have experience prior to coming to the University
 12 of Oregon in conducting internal affairs investigations?
 13 A. I did. As a supervisor senior resident agent, I was on
 14 our special staff. I conducted internal affairs investigations
 15 for misconduct within the FBI.
 16 Q. And in that capacity, did you receive any sort of special
 17 training on how to conduct internal affairs investigations?
 18 A. Yes. When initially hired, we go through a supervisory
 19 management seminar and they give you training on personnel
 20 matters.
 21 Q. How about any training in psychological profiling?
 22 A. I did. Upon being assigned to Quantico, Virginia, with
 23 our Child Abduction and Serial Killer Unit. We had four months
 24 of in-house training. Approximately four months.
 25 Q. So tell us how you ended up at the University of Oregon.

1 A. They were expanding the police department. Position was
 2 posted for a lieutenant for professional standards of training,
 3 and I applied for it.
 4 Q. Was that a dedicated internal affairs position?
 5 A. Yes.
 6 Q. And you were hired as a lieutenant?
 7 A. Yes, ma'am.
 8 Q. What were your job responsibilities as a lieutenant for
 9 internal affairs?
 10 A. Overseeing training matters, any allegations of
 11 misconduct, also assisting with the transition to a police
 12 department. I was hired to help with that. Those -- those are
 13 major responsibilities there.
 14 Q. In that job, were you involved in the day-to-day
 15 supervision of public safety officers?
 16 A. No, ma'am.
 17 Q. So who did you supervise?
 18 A. A traffic petition officer, which was a position in which
 19 people were issued citations. There was an appeal process.
 20 The traffic petition officer reviewed the appeals and made the
 21 determination of whether to support or deny the appeal.
 22 Then later we hired an administrator to help with the
 23 professional standards and training, as we were moving closer
 24 to a police department. Another person was hired to help track
 25 the training and other administrative duties.

1 Q. So at some point did Mr. Cleavenger come under your
 2 supervision in the role of traffic petitions officer?
 3 A. Yes. He was hired as a traffic petitioner.
 4 Q. So how many hours a week did he do on average in that
 5 position?
 6 A. I don't recall. It was a part-time position, and it would
 7 vary depending on the number of appeals that were received.
 8 Q. And did he do a good job in that role?
 9 A. Yes, he did.
 10 Q. You never had -- did you have any problems with him --
 11 A. No.
 12 Q. -- as a traffic petitions officer?
 13 A. No.
 14 THE COURT: As a what?
 15 MS. COIT: Traffic petitions officer.
 16 THE COURT: Traffic partitions?
 17 MS. COIT: Petitions.
 18 THE COURT: Petitions. I'm sorry. My apologies.
 19 Thank you.
 20 BY MS. COIT: (Continuing)
 21 Q. So are the job duties and responsibilities of a traffic
 22 petitions officer similar to those of a public safety officer?
 23 A. No, ma'am.
 24 Q. Is the judgment required to perform the job of a traffic
 25 petitions officer similar to the judgment required to perform

1 the job of a public safety officer?
 2 A. It's a different position requiring different skills.
 3 Q. All right. Were you aware when Mr. Cleavenger was
 4 applying for a position as a full-time public safety officer?
 5 A. I became aware of it at some point being an employee. As
 6 a traffic petition officer, I'm certain that there was dialogue
 7 about applying for it.
 8 Q. Were you involved at all in the hiring process?
 9 A. No. I do not recall being involved in the hiring of him.
 10 Q. Do you recall who was involved in hiring him?
 11 A. No, ma'am.
 12 Q. Did you work under Chief Tripp?
 13 A. Yes, I did.
 14 Q. Do you recall any discussions with Chief Tripp about his
 15 hiring of Mr. Cleavenger?
 16 A. I don't remember specific discussions. What comes to mind
 17 is that Chief Tripp was impressed that Mr. Cleavenger was a law
 18 school graduate and was hoping that Mr. Cleavenger could do
 19 some writing for the department.
 20 Q. Throughout your time at the University of Oregon Police
 21 Department, you always got along with Mr. Cleavenger, didn't
 22 you?
 23 A. I would say so.
 24 Q. You never had any issues with his personality?
 25 A. No. No.

1 Q. Any issues with his politics?
 2 A. No, ma'am.
 3 Q. When do you recall first meeting Lieutenant Lebrecht?
 4 A. Shortly after he was hired.
 5 THE COURT: I'm going to move you just a little bit
 6 closer to that microphone.
 7 THE WITNESS: Absolutely.
 8 THE COURT: Just a little bit. Okay. There you go.
 9 Thank you.
 10 THE WITNESS: You're welcome, sir.
 11 BY MS. COIT: (Continuing)
 12 Q. Did you work closely with Lieutenant Lebrecht?
 13 A. Yes.
 14 Q. Did you two develop a friendship?
 15 A. Yes.
 16 Q. Tell us, would you do things socially together?
 17 A. Yes.
 18 Q. Tell us what you would do with him.
 19 A. Oh, we often worked out together, have coffee together,
 20 lunches.
 21 Q. Can you describe Lieutenant Lebrecht for us? What sort of
 22 person is he?
 23 A. Describe his personality type?
 24 Q. Yes.
 25 A. He is trustworthy. He's a person that does not get

1 excited very easily, a man of integrity, dedicated to the job
 2 and dependable, reported on time.
 3 Q. What sort of supervisor is he?
 4 A. Well, he didn't supervise me, but I would -- from my
 5 perspective, he was always trying to be fair and consistent in
 6 what he did.
 7 Q. Have you ever seen him raise his voice at anyone at work?
 8 A. No, I did not.
 9 Q. Have you ever seen him get angry with anyone at work?
 10 A. No.
 11 Q. Based on what you know about Lieutenant Lebrecht, is he a
 12 person who would retaliate against someone?
 13 MR. MCDUGAL: Objection.
 14 THE COURT: What?
 15 MR. MCDUGAL: Objection.
 16 THE COURT: Sustained.
 17 BY MS. COIT: (Continuing)
 18 Q. Did you have conversations with Lieutenant Lebrecht about
 19 Mr. Cleavenger and the concerns he had about him?
 20 A. I don't recall specific conversations, but I'm sure we had
 21 discussions.
 22 Q. From those discussions, did you ever -- well, from those
 23 discussions, did you form an opinion that Lieutenant Lebrecht
 24 wanted to help Mr. Cleavenger?
 25 A. In Mr. Cleavenger's performance of duties?

1 Q. Yes.
 2 A. I would have to say yes, through remediation.
 3 Q. Did you work closely with Chief McDermed?
 4 A. Yes, I did.
 5 Q. Did you two meet on a regular basis?
 6 A. We met regularly.
 7 Q. Did she consult with you on decisions that she made
 8 regarding the department?
 9 A. I don't recall specific conversations, but it's a small
 10 enough department. I'm sure there were conversations.
 11 Q. How would you describe Chief Tripp as a chief of the
 12 department?
 13 MR. MCDUGAL: Objection. Relevance.
 14 THE COURT: Would you repeat the question?
 15 BY MS. COIT: (Continuing)
 16 Q. How would you describe working under Chief Tripp?
 17 THE COURT: Overruled.
 18 You can ask that question.
 19 THE WITNESS: He was authoritarian, certainly had his
 20 idea of where to go and how to go about it. At times, seemed
 21 unapproachable by the troops. Not one to really socialize
 22 much, but he had a goal and worked towards that end.
 23 BY MS. COIT: (Continuing)
 24 Q. Did you observe a change in the department when
 25 Chief McDermed took over from Chief Tripp?

1 A. Yes.
 2 Q. Describe that for us.
 3 A. It was under Chief McDermed. She was certainly more
 4 approachable, concerned about the employees, concerned about
 5 everyone getting home safely and had an open door policy.
 6 Q. At some point you were asked to conduct an internal
 7 affairs investigation of Mr. Cleavenger; is that correct?
 8 A. Yes, ma'am.
 9 Q. Who instructed you to begin that investigation?
 10 A. Chief McDermed.
 11 Q. Did you ever have concerns that Chief McDermed was asking
 12 you to do that for any reason other than to investigate a
 13 safety or judgment concern of Mr. Cleavenger?
 14 A. No, ma'am.
 15 Q. All right. So you were also in charge of training for the
 16 department; correct?
 17 A. Yes, ma'am.
 18 Q. Can you describe for us what that job entailed?
 19 A. Overall, it -- we were looking at increasing the
 20 professionalism of our staff through training opportunities, so
 21 the goal was to have internal training at least once a month
 22 where we brought in subject matter experts on various subject
 23 matters, and the training was mandatory. We usually held it --
 24 had two dates for the training, with the third date for a
 25 makeup. That way it gave employees several opportunities to

1 attend the training.
 2 Q. Do you recall a meeting of all the staff at the department
 3 sometime in late 2011, early 2012, when you and Chief Tripp
 4 spoke about getting additional training for the officers?
 5 A. Yes.
 6 Q. Tell us what you spoke about at that meeting.
 7 A. Just basically about increasing the professionalism of our
 8 employees through training opportunities and having the
 9 internal training as just mentioned.
 10 Q. And all the officers were able to attend these trainings?
 11 It was open to everyone?
 12 A. Yes. It was mandatory.
 13 Q. All right. Do you recall getting an email at some point
 14 from Mr. Cleavenger asking about his training requests and them
 15 being denied?
 16 A. I do.
 17 Q. What was your response to Mr. Cleavenger when you received
 18 that email?
 19 A. I directed him to go through his chain of command and make
 20 the request through them.
 21 Q. Why did you give him that direction?
 22 A. That was the procedure, was for officers to submit
 23 training requests through their line supervisors and, if
 24 approved, it was sent to my level for further approval.
 25 Q. And in your experience, is following the chain of command

1 understood took at the University of Oregon when conducting an
 2 internal affairs investigation?
 3 A. The overall process and not specifically on this internal
 4 affairs investigation?
 5 Q. Yes. Just the general process.
 6 A. Generally, when a complaint is received, it's reviewed to
 7 see if there's an allegation of misconduct or if it's a
 8 performance issue. If there's not enough information
 9 available, a preliminary inquiry would be open to try to gather
 10 more information to determine whether there's enough
 11 information to proceed to open an internal affairs
 12 investigation.
 13 Once that information is collected, it's forwarded to the
 14 chief to make a determination as to authorize an internal
 15 affairs investigation be opened. Once the case is opened, then
 16 I would start identifying witnesses, potential witnesses,
 17 trying to collect information to either verify or disprove the
 18 allegations, but just to collect the facts and present the
 19 facts at the end in a report, which would either sustain the
 20 allegation or it might exonerate it.
 21 Exonerate it means that the allegation was true as
 22 asserted, but there was no misconduct conducted.
 23 Sustained would mean that the information was true, as
 24 alleged, and there was misconduct.
 25 Then another finding would be not sustained, meaning

1 important in law enforcement?
 2 A. It is.
 3 Q. Did you contact Lieutenant Lebrecht and Sergeant Cameron
 4 about Mr. Cleavenger's email to you about the training
 5 requests?
 6 A. I believe so.
 7 Q. Did you instruct them to speak with Mr. Cleavenger about
 8 going around the chain of command?
 9 A. Yes, ma'am.
 10 Q. Did you find anything unusual about the training requests
 11 Mr. Cleavenger was submitting?
 12 A. I don't recall reviewing the requests at that point. At
 13 some point through our litigation, I was presented a list of
 14 training opportunities. That's what I remember most recently.
 15 And there were some classes on there that weren't within his
 16 job description that we would not approve.
 17 Specifically, one that comes to mind was the FBI National
 18 Academy Class. He requested to go to a retrain er, and had that
 19 been brought to my attention or had I seen it, certainly that
 20 stands out that that's something that would not be approved.
 21 Q. Was he also submitting a lot of training requests?
 22 A. Yes. From what I recall, there was a number of requests
 23 that he wanted to submit, if he hadn't submitted.
 24 Q. Let's talk about the internal affairs investigation you
 25 conducted. Can you tell us, first, the process that you

1 there's not enough information in the evidence that was
 2 collected during the investigation to say it either happened or
 3 did not happen.
 4 And then there was a policy violation that could be the
 5 allegations proved true and the officer acted in accordance,
 6 but it was a policy violation in which the policy would need to
 7 be changed.
 8 And then the last category was unfounded, meaning the
 9 information, as alleged, there was not enough information to
 10 show that it happened.
 11 Q. All right. Is the internal affairs process -- is it a
 12 confidential process?
 13 A. It's a sensitive and confidential -- depending on what you
 14 classify as confidential.
 15 Q. As you're going through the process, before you reach your
 16 findings, do you keep anyone updated on what you're
 17 discovering, what the facts are?
 18 A. Yes. It is not uncommon to keep the chief apprised . But,
 19 generally, you try to, again, get all the information together
 20 instead of piecemealing it and present it at the end.
 21 It's not uncommon for a chief to want to have a status
 22 inquiry as to if it's still ongoing and where you're at in the
 23 investigation.
 24 Q. In the internal affairs investigation that you did of
 25 Mr. Cleavenger, did anyone from the University of Oregon Police

1 Department influence your findings?
 2 A. No, ma'am.
 3 Q. Mr. Cleavenger has testified here that he offered you
 4 exculpatory evidence during the course of this investigation
 5 and you refused that. Do you know what he's referring to?
 6 A. I do.
 7 Q. Tell us about that.
 8 A. At one point Mr. Cleavenger started sending emails
 9 offering further explanations as to his behavior for the
 10 traffic stops that were -- or the allegations under
 11 investigation. I told him to make an appointment with me and
 12 I'd be glad to go over it.
 13 At the time, I presented a written statement to him to
 14 sign. He wanted to give me a number -- or documentation on
 15 other traffic stops. It was, in my opinion, not pertinent to
 16 the investigation, in the sense that I had asked him, "Are you
 17 wanting to make a complaint against other officers for
 18 misconduct?" He said, "No." I said, "I'm glad if you want to
 19 make a complaint against other officers, I'll entertain it; but
 20 if you're providing this on your behalf, I don't need it. I'm
 21 a seasoned investigator. I know what I'm looking for."
 22 In my opinion, he was just trying to distract my findings
 23 towards other -- other employees.
 24 Q. All right. So the initial internal affairs investigation
 25 involved two stops. Do you recall that?

1 A. Yes, ma'am.
 2 Q. Do you have an opinion, after conducting this
 3 investigation, whether or not these two stops raised concerns
 4 that were sufficiently serious to rise to the level of an
 5 internal affairs matter?
 6 A. Yes, ma'am.
 7 Q. What is that opinion?
 8 A. That there was potentially misconduct and one of the
 9 allegations was sustained as misconduct. The other exonerated
 10 and partial non-sustained.
 11 Q. In your opinion, did both of these stops warrant
 12 investigation?
 13 A. Yes, they did.
 14 MS. COIT: Your Honor, may I approach the witness to
 15 give him an exhibit?
 16 THE COURT: You may.
 17 BY MS. COIT: (Continuing)
 18 Q. This is Defendant's Exhibit 331.
 19 THE COURT: 331?
 20 MS. COIT: Yes. And Your Honor should have a copy of
 21 the entire binder.
 22 THE WITNESS: Thank you.
 23 BY MS. COIT: (Continuing)
 24 Q. Just take a minute and look inside the binder I've given
 25 you and tell me if that packet of documents is familiar to you.

1 A. Yes. This is a copy of the internal affairs investigation
 2 I conducted.
 3 MS. COIT: All right. So defendant's offer
 4 Exhibit 331.
 5 THE COURT: Received.
 6 Well, any objection, Counsel?
 7 MR. MCDUGAL: No.
 8 THE COURT: Received.
 9 MS. COIT: Permission to publish?
 10 THE COURT: You may.
 11 BY MS. COIT: (Continuing)
 12 Q. So this is the first page of your investigative report;
 13 correct?
 14 A. Yes, ma'am.
 15 Q. Can you tell us what allegation one involved? What were
 16 you investigating?
 17 A. I was investigating inappropriate behavior and statements
 18 made during a traffic stop on April 2, 2012.
 19 Q. All right. Let's look at allegation two. What were you
 20 investigating in allegation two?
 21 A. It was the lawful authority to effect a traffic stop for a
 22 violation that was unenforceable by a public safety officer;
 23 that Mr. Cleavenger acted inappropriately in making this stop
 24 and unlawful.
 25 Q. Now, during the course of these investigations in

1 allegation one and allegation two, did you develop spinoff
 2 allegations?
 3 A. I did.
 4 Q. Tell us what spinoff allegations are.
 5 A. Well, it's common in internal affair investigations that
 6 other subsequent acts of misconduct can be disclosed during the
 7 investigation which warrant further investigation.
 8 Q. All right. So on page 42 of your report, there's
 9 allegations three, four, and five. Are these the spinoff
 10 allegations?
 11 A. Yes, ma'am.
 12 Q. Can you tell us what three, four, and five -- what those
 13 involve?
 14 A. Allegation three was that Mr. Cleavenger conducted traffic
 15 stops on two occasions that were in violation of department
 16 policy prohibiting the conducting of a traffic stop.
 17 Q. Okay. And number four?
 18 A. Number four was that Mr. Cleavenger violated an Oregon
 19 statute that requires when a recording is made, a conversation
 20 is made that's being recorded, that the parties are advised
 21 that their conversation is being recorded, which he had failed
 22 to do.
 23 Q. And what was allegation five?
 24 A. That -- his ability to competently and safely perform the
 25 duties of a public safety officer.

1 Q. Tell us what that means.
 2 A. Well, whether he -- the concern was whether he had the
 3 physical, mental, emotional, just overall capacity to perform
 4 the duties based upon what was observed and disclosed during
 5 the internal affairs investigation.
 6 Q. Okay. All right. So let's go to allegation one. And
 7 this involved a complaint from a student; is that correct?
 8 A. Yes, ma'am.
 9 MS. COIT: Your Honor, permission to play the audio
 10 of the call? That's part of Exhibit 331.
 11 THE COURT: You may play it.
 12 (Exhibit No. 331 was played for the jury.)
 13 BY MS. COIT: (Continuing)
 14 Q. All right. Did that telephone call raise any concerns for
 15 you?
 16 A. Yes, it did.
 17 Q. And what were they?
 18 A. About the behavior that was exhibited by Mr. Cleavenger
 19 during the traffic stop and what was his motive in conducting
 20 the traffic stop.
 21 Q. Based on the information given by that young lady on the
 22 telephone call, did you feel you had sufficient information to
 23 begin an internal affairs investigation?
 24 A. I had enough information, yes, to present it to the chief.
 25 Q. Now, you never actually interviewed this student, did you?

1 A. No, ma'am.
 2 Q. Can you tell us why not?
 3 A. She was difficult to get a hold of and at one point we had
 4 a meeting set up. She called me just prior to the meeting to
 5 state that she had to go home on a personal issue and then
 6 subsequent efforts to reschedule an interview were
 7 unsuccessful. And those occurred prior to hearing this phone
 8 call. At that time I was unaware of this phone call.
 9 I had a voicemail message on my phone from her with much
 10 less information. So I was trying to establish what occurred.
 11 It wasn't until subsequent efforts that this phone recording
 12 was made known to me.
 13 Q. Okay. So then at that point you felt that this phone call
 14 gave you enough information to move forward?
 15 A. Yes. It -- it demonstrated the mindset of the
 16 complainant; that she was concerned about behavior exhibited by
 17 a public safety officer during a traffic stop.
 18 Q. All right. Let's play the --
 19 MS. COIT: Your Honor, permission to play the video
 20 of the stop?
 21 THE COURT: You may. This would be stop number
 22 one -- the 4/12/2002 stop -- is that correct? So we're
 23 sufficiently clear here?
 24 MS. COIT: Yes, it is.
 25 MR. JASON KAFOURY: 4/2?

1 MS. COIT: Oh, I'm sorry. This is 4/2. It's Exhibit
 2 No. 337.
 3 THE COURT: Now, just a moment now. We've already
 4 seen this video one time from the plaintiff. What number was
 5 used when it was played? I don't want to double mark it.
 6 MR. JASON KAFOURY: 337?
 7 THE COURT: It was 337?
 8 MS. COIT: So they used ours.
 9 THE COURT: Okay. 337. What did you want to have it
 10 marked as? I don't mind doing the markings, but it will be
 11 real confused.
 12 MS. COIT: It was our exhibit they used.
 13 THE COURT: It was your exhibit they used in their
 14 case?
 15 MS. COIT: Yes.
 16 THE COURT: It's Exhibit 337 already played in the
 17 plaintiff's case, and this would pertain to the 4/12/2012 stop
 18 involving the woman we just heard on the audio; correct?
 19 MS. COIT: Yes. Okay.
 20 THE COURT: You can play 337.
 21 (Exhibit No. 337 was played for the jury.)
 22 MS. COIT: This is the unredacted version of the
 23 video. I believe the one that was played before was the one
 24 that kind of marks out their face. I -- is that okay?
 25 MR. JASON KAFOURY: You want us to play?

1 MS. COIT: No. No. I prefer to play the unredacted
 2 version.
 3 MR. JASON KAFOURY: What's redacted?
 4 MS. COIT: The faces.
 5 MR. JASON KAFOURY: That's fine. Whatever.
 6 MS. COIT: Permission to play, Your Honor?
 7 THE COURT: You may.
 8 (Exhibit No. 337 was played for the jury.)
 9 BY MS. COIT: (Continuing)
 10 Q. All right. After watching that video, did you have
 11 concerns with Mr. Cleavenger's behavior?
 12 A. Yes, ma'am.
 13 Q. Can you walk us through what those concerns were?
 14 A. Well, the initial approach, how he lost focus and command
 15 presence of the traffic stop. The driver having to ask him if
 16 he was all right. And the questioning of the identifiers
 17 initially, why he was going into detail with that. At the very
 18 end when he dismisses her, he admonishes her about the sign,
 19 but there's very little dialogue as to the actual nature or
 20 reason for the stop, which would have been running the traffic
 21 control device.
 22 And then also the statement "I intend to give warnings. I
 23 shouldn't have told you that so soon to keep you fearful,"
 24 that's just unprofessional. That's not something that -- as a
 25 public safety officer, you don't desire to keep people fearful

1 but to put them at ease.
 2 Q. Did you have any concerns of the fact he ran her for wants
 3 and warrants?
 4 A. That's often standard procedure by police officers. If
 5 they -- during a traffic stop, if they have a reasonable
 6 suspicion that a person has committed a crime during a traffic
 7 stop, that's standard procedure.
 8 Q. Is that the same if they even intend from the beginning to
 9 give a warning?
 10 A. Again, that would be officer's discretion. Often, if it's
 11 a warning, officers will give a warning and advise them what
 12 the driver did wrong and send them on their way.
 13 But, again, the officer has the discretion why.
 14 Again, it appeared he was taking a lot of information
 15 that's beyond the citation, what is the driver's license,
 16 beyond what's normally posted on that. But the investigation
 17 disclosed why he was doing that and that was he was filling out
 18 a field interview card to record the stop, which lists that
 19 information on it.
 20 Q. And you ultimately exonerated him on the issue of him
 21 asking those questions; correct?
 22 A. That's correct. Based upon subsequently establishing that
 23 he was completing a field interview report card to track the
 24 stop.
 25 Q. Now, was there another focus of that allegation that he

1 had new suspenders on and that might have accounted for his
 2 balance.
 3 Q. Did you ask him why he didn't advise her that he was
 4 recording?
 5 A. I did.
 6 Q. What was his answer?
 7 A. That he was thrown off initially by her questioning him as
 8 to the reason why she was stopped, whether it was her tags or
 9 not.
 10 Q. Let's go to allegation number two. This is Exhibit 332.
 11 MS. COIT: I believe it's already admitted, Your
 12 Honor.
 13 THE COURT: Thank you.
 14 MS. COIT: Permission to play?
 15 THE COURT: You may.
 16 (Exhibit No. 332 was played for the jury.)
 17 BY MS. COIT: (Continuing)
 18 Q. Do you know if this is a public street that they're on
 19 right now?
 20 A. Yes, it's a public street. I believe it's 13th Avenue
 21 East.
 22 Q. And do public safety officers have the authority to cite
 23 infractions on a public street?
 24 A. No, ma'am.
 25 Q. This is a public street; correct?

1 wasn't exonerated on?
 2 A. Well, no. The other aspect were the comments how he
 3 handled himself, what he said to the student, and that was --
 4 it was undetermined, really, what his intent for the stop was;
 5 whether it was truly to educate the driver in unsafe driving or
 6 whether it was being flirtatious, which he denied. I couldn't
 7 establish that, so that part was not sustained.
 8 Q. All right. Mr. Cleavenger, he just seemed nervous in that
 9 stop?
 10 A. Yes, ma'am.
 11 Q. You interviewed him about this stop; correct?
 12 A. That's correct.
 13 Q. Do you recall him ever telling you that the reason he was
 14 nervous or distracted was because the woman in the car was in a
 15 state of undress?
 16 A. No, ma'am.
 17 Q. Is that something you would remember?
 18 A. Yes. I would remember if a driver was in a state of
 19 undress as a reason as to throwing off an officer's command
 20 presence.
 21 Q. Did he give you a different reason for why he appeared
 22 thrown off?
 23 A. I don't readily recall. There was some talk about new
 24 suspenders and -- because I had asked him -- he seemed to be
 25 off balance, and he took that literally, and he stated that he

1 A. Yes, ma'am.
 2 (Video continued.)
 3 BY MS. COIT: (Continuing)
 4 Q. All right. Did Mr. Cleavenger have authority to write her
 5 a ticket for expired tags?
 6 A. No, ma'am.
 7 Q. In that video, did he tell the woman that he did have the
 8 authority to write her a ticket for expired tags?
 9 A. He said he had jurisdiction, and she was questioning
 10 whether he had authority. He did not have authority to issue a
 11 citation for the reason he cited to her. Having expired tags.
 12 Q. At one point did you hear the passenger say, "Write her a
 13 ticket"?
 14 A. Yes, I did.
 15 Q. What was Mr. Cleavenger's response?
 16 A. Similar -- basically, "I can do that."
 17 Q. Was that a true statement?
 18 A. No. Well, I mean, he could write her a citation. It
 19 doesn't mean that it would uphold in a court of law.
 20 Q. And this one, again, he didn't tell her he was recording?
 21 A. No, ma'am.
 22 Q. Was his interaction with the couple -- was that of concern
 23 to you?
 24 A. Just the fact that he didn't have the authority to cite
 25 for what he cited was a concern.

1 Q. And was there anything else about this stop, after just
 2 watching the video, that was of concern to you?
 3 A. No.
 4 Q. All right. And you interviewed Mr. Cleavenger with regard
 5 to both of these stops; correct?
 6 A. I did.
 7 Q. And did he have a union steward with him during that
 8 interview?
 9 A. Yes, he did.
 10 Q. Was that interview recorded?
 11 A. The first half of it was.
 12 Q. Did you intend to record the entire interview?
 13 A. Yes, I did.
 14 Q. What happened?
 15 A. There was a break in between the first allegation.
 16 Mr. Cleavenger asked to speak with his union steward in
 17 private, so I stopped the recorder, and when the second part of
 18 the interview resumed, I activated the recorder, but apparently
 19 did not do it correctly to where it recorded the second half of
 20 the interview.
 21 Q. Did you take notes during the second half of that
 22 interview?
 23 A. I took notes during the whole interview, so I was able to,
 24 from the notes, draft a written statement and then present that
 25 to Mr. Cleavenger to proof. And then once he proofed it, a

1 did you talk to him about traffic stops?
 2 A. Yes, ma'am.
 3 Q. Okay. I'm going to play part of that interview.
 4 (Exhibit 12 to Exhibit 331 was played for the jury.)
 5 BY MS. COIT: (Continuing)
 6 Q. All right. From that interaction with Mr. Cleavenger, did
 7 you get the impression that he felt he had made a traffic stop?
 8 A. Yes.
 9 Q. How about in the stop with the dean? Did he make a
 10 traffic stop there?
 11 A. Yes.
 12 Q. Did he tell you that it was his field training officer
 13 that taught him he could make those traffic stops?
 14 A. In that interview, I don't recall that he said -- he said
 15 he was trained that way. I don't believe he specifically said
 16 his field training officer. But then when I asked him who, he
 17 said, "It's graveyard."
 18 Q. Okay.
 19 A. I did not specifically get field training officer as a
 20 response, that I recall.
 21 Q. Did anything else in that exchange we just listened to
 22 cause you concern?
 23 A. His inability to accept responsibility for turning on the
 24 traffic lights of the vehicle, of when he activated. In his
 25 frame of reference, it was -- it's okay to stop a vehicle

1 final version of it was made a matter of record for the
 2 investigation.
 3 Q. Okay. So the first half of the interview that was
 4 recorded, which stop did that involve?
 5 A. That involved the stop with the student on April 2nd.
 6 MS. COIT: Your Honor, this is Exhibit 12 to
 7 Exhibit 331 that's in evidence. It's the audio of the
 8 interview with Mr. Cleavenger. I would like play some portions
 9 of it.
 10 THE COURT: So just a moment. This is the audio
 11 portion to the interview concerning stop number one on
 12 April 12, 2012; is that correct?
 13 MS. COIT: April 2, 2012.
 14 THE COURT: And this is the student?
 15 MS. COIT: Yes.
 16 THE COURT: What audio number is this?
 17 MS. COIT: It is a portion of Exhibit 331. It's
 18 Exhibit 12 to 331.
 19 THE COURT: It is going to be Exhibit 12 to 331. And
 20 is this going to be in evidence?
 21 MS. COIT: Yes, Your Honor. The entire thing is in
 22 evidence.
 23 THE COURT: You may play Exhibit 12 to 331.
 24 BY MS. COIT: (Continuing)
 25 Q. All right. So during this interview with Mr. Cleavenger,

1 without putting on the traffic lights, and he asserted he did
 2 not put the lights on until she had already stopped and he put
 3 them on for safety reasons.
 4 The -- each vehicle -- or patrol cars that are outfitted
 5 with an in-car video system, the in-car video system tracks
 6 when lights are activated, tracks vehicle speeds, tracks when
 7 brakes are applied, and, looking at that, it indicated that he
 8 had activated the lights upon completing his U-turn; that he
 9 had turned them on at that point before accelerating.
 10 Q. Now, you admonished him right there towards the end about
 11 integrity and credibility. What were you talking about?
 12 A. Just being truthful in his responses.
 13 Q. Did you have concerns that he was not being truthful at
 14 that point?
 15 A. I was not sure whether he was not being truthful or just
 16 inability to recall with accuracy.
 17 MS. COIT: I want to play one more -- or another
 18 portion.
 19 MR. JASON KAFOURY: What was the date of this
 20 interview, Counsel?
 21 MS. COIT: I'll find out.
 22 (Exhibit 12 to Exhibit 331 was played for the jury.)
 23 BY MS. COIT: (Continuing)
 24 Q. All right. Again, when you asked him about why he
 25 appeared nervous --

1 THE COURT: Just a moment, Counsel. I have the same
 2 rules for both sides. Play it all the way through until you're
 3 done with playing it. Then you can come down and break it down
 4 if you want to. But the chopping up for the plaintiff, as I
 5 warned them, and also I warn you now, play the portions all the
 6 way through and stop it and go back if you would like to. Same
 7 rules. Play it all the way through or don't play it. In other
 8 words, I don't need the whole thing, but those portions you're
 9 going to play -- taking out different portions, is that what is
 10 occurring.
 11 MS. COIT: It is, Your Honor. It's over an hour
 12 long, so I was just playing different portions of it.
 13 THE COURT: Well, the other side is entitled to have
 14 the entire portion played. I don't know what your position is
 15 going to be.
 16 MR. MCDUGAL: Yes. In fact, we're going to replay
 17 the last video because it didn't start at the beginning. We'll
 18 replay just that part. If she's saying that she's playing
 19 exhibit so and so, she should play exhibit so and so.
 20 THE COURT: What I don't want is -- there's nothing
 21 wrong, first of all, with what either counsel is doing, okay,
 22 but let me be clear about that. But when one party plays a
 23 portion of a tape or video, the other party is entitled to play
 24 any other portion that they believe is beneficial to them, and
 25 just don't know what is beneficial or not to each of the

1 parties. So how are we going to resolve that between the two
 2 of you?
 3 MR. MCDUGAL: I have no problem if she --
 4 THE COURT: Why don't the two of you have a meeting
 5 back in the back, out of our presence, from when we discussed
 6 how it's going to come in. I'm not precluding it.
 7 Counsel, you have the same rule. That is play it all the
 8 way through and come back to it if you want. But here we have
 9 an hour, and it may be unduly consumptive of time. So if you
 10 two can work it out, that's fine. Same rules apply.
 11 Counsel, 106 or 104 you're also entitled to play selected
 12 portions that you choose or selected portions that the other
 13 party is playing.
 14 Do you have some kind of resolution?
 15 MR. MCDUGAL: Yes, we do.
 16 THE COURT: As long as you reoffered it to your
 17 satisfaction, I'll bend to whatever your agreement is. What is
 18 it?
 19 MS. COIT: I will just say that I'm playing a portion
 20 of the tape and give the time stamp of what portion I'm
 21 playing.
 22 THE COURT: Okay. Then they can -- you can obviously
 23 come back and play those portions you choose to play. You just
 24 need the time stamp.
 25 MR. MCDUGAL: Yes, sir.

1 THE COURT: Give it after court or while you're
 2 playing it.
 3 MS. COIT: Yes. While I'm playing it.
 4 THE COURT: Why don't you do it while you're playing
 5 it so the jury can make a note if they want to look back
 6 without looking at the entire tape if they don't want to.
 7 MS. COIT: Okay.
 8 THE COURT: Now, is this entire tape going to come
 9 in, though? Eventually, is this tape going to be edited to
 10 just the portions you play and the defense plays? See, we get
 11 into all sorts of problems with this methodology. Or is the
 12 entire tape coming in?
 13 MS. COIT: The entire tape is in.
 14 THE COURT: Counsel, is that your understanding?
 15 MR. MCDUGAL: Yes.
 16 THE COURT: All right. So what portion are you on?
 17 MS. COIT: We're now going to play minute 33 and 42
 18 seconds through minute 39 and 5 seconds.
 19 THE COURT: Thank you. 39 and 5. Thank you very
 20 much.
 21 MS. COIT: May I ask a question about the last
 22 portion we played of the witness?
 23 THE COURT: Yes.
 24 BY MS. COIT: (Continuing)
 25 Q. In that portion that you just heard, did Mr. Cleavenger

1 give us his reason for being nervous the fact that the woman
 2 was in a state of undress?
 3 A. No.
 4 (Exhibit 331, Minutes 33, 42 through 39,
 5 5 was played for the jury.)
 6 BY MS. COIT: (Continuing)
 7 Q. All right. Did you have concerns with Mr. Cleavenger's
 8 statement to you that he runs everyone for wants and warrants?
 9 A. Not at that time, but later I did.
 10 Q. Explain that to us.
 11 A. Well, he said he did it for consistency purposes. And
 12 when I further questioned him on that, he stated he had
 13 received a letter of clarification for not running a person for
 14 wants and warrants, and so he does it on everybody. So that --
 15 at that time, taken on face value, I was trying to determine
 16 his mindset for a traffic stop, in which he was giving a
 17 warning, why he would run someone for wants and warrants,
 18 especially a student, a female student, through the system on
 19 that, and he gave an answer that he does it to be consistent.
 20 He does it on everybody.
 21 Q. All right. Did you look further into that answer?
 22 A. Well, the second traffic stop with the motorist with the
 23 expired registration plates, he did not run her for wants and
 24 warrants, so I asked him -- asked him that because there's an
 25 inconsistency there, and he stated that she was being snippy

1 with him and confrontational. Maybe confrontational is not the
 2 exact word, but hostile and questioning his authority. So he
 3 did not want to escalate the situation and did not run her for
 4 wants and warrants.
 5 Q. Do you recall Mr. Cleavenger giving you a copy of his
 6 letter of clarification during this internal affairs
 7 investigation?
 8 A. I believe he produced it, yes.
 9 Q. Did you review that letter to see if, in fact, he was
 10 given a clarification for failing to run someone for wants and
 11 warrants?
 12 A. Yes. I reviewed that and looked into it and he was issued
 13 a letter of clarification, but it wasn't for the same purpose
 14 as in the traffic stop. It was because he gave a person a ride
 15 and did not run that person for wants and warrants before
 16 putting them -- putting that person in his vehicle. And
 17 apparently there was no record of him requesting a wants and
 18 warrants. He stated he did. But the radio traffic is
 19 recorded, and there was no recording of him asking for wants
 20 and warrants. He stated he did it by phone. So the
 21 clarification was that you're not to use a phone, you're to use
 22 a radio to make those requests.
 23 Q. So from that, did you conclude that his portrayal of the
 24 purpose of the letter of clarification to you was inaccurate?
 25 A. Yes, in relation to his response as to why he runs

1 people when he was recording?
 2 A. Yes, ma'am.
 3 Q. Did he ever say to you that he had never been trained on
 4 that obligation and didn't realize that that was his
 5 obligation?
 6 A. Correct.
 7 Q. All right. So I'm going to go to the second half of the
 8 interview, and that's in this memo form. So the booklet in
 9 front of you, can you look at Exhibit 14 to your internal
 10 affairs investigation?
 11 MS. COIT: Your Honor, this is Exhibit 14 to
 12 Defendant's Exhibit 331.
 13 THE COURT: Are these going to be the notes?
 14 MS. COIT: This is, yeah, the prepared statement of
 15 Mr. Cleavenger.
 16 THE COURT: Sorry. These are handwritten notes?
 17 MS. COIT: No, sir. It's in the binder that we gave
 18 you of Exhibit 331.
 19 THE COURT: Oh, thank you.
 20 BY MS. COIT: (Continuing)
 21 Q. All right. Do you recognize Exhibit 12 to 331? Or 14.
 22 Excuse me.
 23 A. Yes, ma'am.
 24 Q. And is this the written statement that you prepared off of
 25 your notes?

1 everyone.
 2 MS. COIT: All right. Now I'm going to play minute
 3 40 at 45 seconds to minute 42.
 4 THE COURT: Thank you.
 5 (Exhibit 331, 40, 45 through 42 was played for the jury.)
 6 BY MS. COIT: (Continuing)
 7 Q. All right. His comment to you about "What have I done to
 8 you guys," did that seem odd to you?
 9 A. Yes.
 10 Q. Why did that seem odd?
 11 A. He was being defensive, thinking he was being picked on,
 12 is how I interpreted that.
 13 Q. You had no prior negative experience with Mr. Cleavenger;
 14 correct?
 15 A. No, I did not.
 16 Q. All right. And the last one I want to play is at time
 17 stamp 44 minutes through 45 minutes and 30 seconds.
 18 THE COURT: Sorry 44 minutes to 45?
 19 MS. COIT: 45 minutes and 30 seconds.
 20 THE COURT: Thank you.
 21 (Exhibit 331, Minutes 44 through 45,
 22 30 was played for the jury.)
 23 BY MS. COIT: (Continuing)
 24 Q. All right. From that interaction with Mr. Cleavenger, did
 25 you understand him to be aware of his duty to record -- advise

1 A. It is.
 2 Q. Did Mr. Cleavenger review this statement?
 3 A. Yes, he did.
 4 Q. And did he sign off on it as accepting it?
 5 A. Yes, he did.
 6 Q. Did his union steward review it at some point?
 7 A. Yes, she did.
 8 Q. Did she also sign off on it as accepting it?
 9 A. Yes, she did.
 10 MS. COIT: Your Honor, permission to publish
 11 Exhibit 14 to Exhibit 331?
 12 THE COURT: You may. But has that been received up
 13 to this time?
 14 MS. COIT: Yes.
 15 THE COURT: It's all part of 331?
 16 MS. COIT: Yes.
 17 THE COURT: Okay. You certainly can.
 18 BY MS. COIT: (Continuing)
 19 Q. Now, part of this allegation one was the reason for the
 20 stop; is that correct?
 21 A. Correct.
 22 Q. And at the bottom there that we have called out on your
 23 screen, can you tell us what it was that Mr. Cleavenger said
 24 was the reason for him stopping this car?
 25 A. He became suspicious of it due to the expired registration

1 tags, and the tags appeared to have been tampered with. He
 2 stated the Honda emblem was missing from the trunk and painted
 3 over. The driver briefly signaled left and abruptly changed to
 4 a right signal and made a right turn onto Kincaid Street,
 5 quickly accelerating, and then making another right turn, and
 6 then a turn into the parking lot.
 7 Q. Was this a valid basis for him to stop the car?
 8 A. Not within the public safety officer's authority.
 9 Q. And that's because he was on a public street?
 10 A. Yes. He was on a public street as well.
 11 Q. And also he doesn't have authority to cite for expired
 12 tags; correct?
 13 A. Yes. Right. But in the parking lot, parking lot 16 is a
 14 campus controlled parking lot.
 15 Q. Okay. Let's go to the next page, page 2.
 16 Now, the next -- the first paragraph, not a full
 17 paragraph, up on the top -- yeah. Did Mr. Cleavenger also tell
 18 you a reason for him stopping the car was that he thought it
 19 might be stolen?
 20 A. Yes, ma'am.
 21 Q. Did he have authority to stop and cite for a stolen car?
 22 A. No, ma'am.
 23 Q. Now, the stated basis that he gave you for why he stopped
 24 this car, he developed that suspicion on a public street;
 25 correct?

1 safety officer, he did not have authority for what his
 2 suspicions were to stop the driver and the vehicle.
 3 Q. Let's go to the next page.
 4 All right. So you questioned him again about why he
 5 didn't advise of recording; correct?
 6 A. Yes, ma'am.
 7 Q. What was his answer?
 8 A. That basically she threw him off when she questioned him
 9 about his authority and was being snippy with him.
 10 Q. Then he told you that he generally advises persons that he
 11 contacts that he's recording them?
 12 A. That's correct.
 13 Q. Says it's part of his routine?
 14 A. Yes, ma'am.
 15 Q. Now, there in the middle of the page he says that he
 16 always acts in good faith when working and never deliberately
 17 disregards instructions, policies, or other department
 18 procedures. Can you give us some context for why that
 19 statement was made to you?
 20 A. Well, because he was questioned as to his authority to
 21 make that stop for the reason cited, the expired registration.
 22 Q. Was he trying to justify his conduct?
 23 A. I believe so.
 24 Q. Did you get the impression he was trying to explain away
 25 what he did as just being a mistake?

1 A. Correct.
 2 Q. Is that within his authority to do?
 3 A. No.
 4 Q. Now, we watched the video. Would you -- do you consider
 5 that a traffic stop that he made?
 6 A. Yes, ma'am.
 7 Q. Did he block in the woman in the parking lot?
 8 A. Yes. She was not free to leave without him moving the
 9 patrol vehicle.
 10 Q. Without the legal basis to stop her, was that detention
 11 itself unlawful?
 12 A. Yes.
 13 Q. The second paragraph, the first full paragraph on page 2,
 14 he says his intent there was to see if the driver was drunk.
 15 Did he have authority to pull over drunk drivers?
 16 A. No, ma'am.
 17 Q. Now, the driver, we saw from the video, she questioned his
 18 jurisdiction to make the stop. You saw that?
 19 A. Yes, ma'am.
 20 Q. She was correct; right? He didn't have jurisdiction?
 21 A. That's correct.
 22 Q. Did you have concerns with the explanations he gave you
 23 for why he made the stop?
 24 A. Not concerns for the explanation. The concern was his
 25 lack of authority for the explanations he gave. As a public

1 A. He never offered a reason as to it being a mistake. He
 2 never took ownership or admitted that what he did was wrong.
 3 Q. All right. And when Mr. Cleavenger reviewed Exhibit 14 to
 4 Exhibit 331, did he ask you to make some additional comments on
 5 that?
 6 A. He did.
 7 Q. And if you want to look at page 4, now, is that an
 8 additional comment Mr. Cleavenger asked you to add to the
 9 statement?
 10 A. Yes, ma'am.
 11 Q. Do you recall him telling you during that interview that
 12 he had been up for 35 hours?
 13 A. No. I do not recall him telling me that.
 14 Q. Did that cause you any concern?
 15 A. Yes, ma'am.
 16 Q. Why is that?
 17 A. Well, had he been up for 35 hours, I would have been
 18 concerned about interviewing him at that time, whether he was
 19 in a state of mind to be interviewed on a serious matter, and I
 20 would have suggested having an interview at another time.
 21 Also, just in concern about his well-being. Well, why was he
 22 up for 35 hours?
 23 Q. Did that call into question his judgment of coming in for
 24 an interview after being up for 35 hours?
 25 A. Certainly, if that was the case.

- 1 Q. All right. Let's go to page 38 of the actual report. Can
2 you look at page 38 of your actual report?
3 A. Yes, ma'am.
4 Q. All right. So these are your findings; correct?
5 A. It's the start of the findings.
6 Q. Right. Okay. So the findings for allegation 1A was
7 exonerated. Tell us what that entailed.
8 A. That was about his behavior of asking for the additional
9 physical descriptors and identifiers of the driver. It was
10 determined that he had filled out a field interview report, the
11 card, to document that information. So that, in itself, made
12 sense.
13 Q. Okay. Let's go to the next page. Oh, and so you
14 exonerated him. That means he didn't violate policy; correct?
15 A. It means his behavior was in line and there was no
16 misconduct found.
17 Q. Okay.
18 A. The behavior was affirmed to have occurred, but the
19 behavior was not of misconduct. It was acceptable.
20 Q. All right. In allegation 1B -- tell us again what not
21 sustained -- what does that mean?
22 A. Not sustained means there was not enough information to
23 say it either occurred or did not occur.
24 Q. What did this allegation involve?
25 A. That was just about his behavior during the traffic stop.

- 1 In particular, asking -- making comments to the driver, "I
2 should keep you in fear for a while and not tell you that I'm
3 going to give you a warning"; how he was patting his chest
4 several times, had a loss of words initially at the approach or
5 introduction, comments to the driver, his overall demeanor,
6 lack of a command presence, and it was not sustained.
7 Q. All right. The last sentence there on the paragraph I
8 have called out, his officer safety tactics were deficient, but
9 that was not the focus of this investigation. Can you tell me
10 what you meant by that sentence?
11 A. Yes. In a traffic stop, it's an inherently dangerous
12 situation, in that the officer does not know who's in the
13 vehicle, whether they're wanted or whether they're armed, so
14 traffic stops officers are taught to stand in certain positions
15 to give them more of an advantage over a driver who might be
16 armed or might try to harm them.
17 None of these type of tactics Mr. Cleavenger exhibited.
18 In fact, he stands right in front of the driver, to the side,
19 in full view, versus stepping behind her, where she has to look
20 back at him. If she has a weapon, it would be shown. But he
21 has his hands across -- across. He's not in a defensive
22 position that if he has to react quickly, he could.
23 Those are overall observations.
24 Q. Okay. Let's go to page 40. Allegation number two. What
25 was your finding on that?

- 1 A. Sustained. Meaning that the -- he -- the allegation did
2 occur as alleged.
3 Q. And what was the actual finding?
4 A. That he did not have authority, for the reasons stated, to
5 make the traffic stop. Public safety officers do not have
6 authority to cite someone for expired registration.
7 Q. Let's go down here to the last paragraph. "During the
8 interview of Officer Cleavenger, he never acknowledged his
9 wrongdoing in conducting this stop." Why did you include that
10 sentence in your findings?
11 A. Because, again, a lack of ownership. A lack of ability to
12 admit that what he did was wrong.
13 Q. Let's go to the next page. Page 41. Now, this
14 paragraph -- tell us what you're talking about in this
15 paragraph.
16 A. That the finding was that Mr. Cleavenger, as a public
17 safety officer, did not have the legal authority to stop the
18 vehicle in an essence that resulted in an unlawful stop for an
19 un -- unenforceable traffic violation.
20 Q. Then your last sentence, "Aside from the driver's legal
21 expertise, Officer Cleavenger placed the department and the
22 university at significant risk for litigation of his unlawful
23 stop and indefensible behavior."
24 What did you mean by that?
25 A. Mean that by his actions, had the driver decided to pursue

- 1 litigation, the university was certainly exposed to his
2 unlawful detention. And the fact that the driver was the
3 assistant dean of the law school was someone who could
4 certainly pursue -- anyone could pursue litigation, but here's
5 a person who should be versed in legal matters.
6 Q. Was it your opinion that Mr. Cleavenger violated this
7 woman's constitutional rights?
8 A. Yes.
9 Q. Okay. All right. So for allegation number three on
10 page 42, this is the allegation about the -- whether or not he
11 had conducted traffic stops in violation of department policy.
12 What was your finding on that allegation?
13 A. I believe it was not sustained, a policy issue.
14 Q. Explain that to us. How did you come to that
15 determination?
16 A. Well, Mr. Cleavenger asserted that all the officers were
17 doing traffic stops, and so I conducted research into the
18 computer-aided dispatch that logs -- when an officer goes over
19 the radio, that information is logged. There were 200 -- I
20 believe 243 traffic stops during a one-year period and almost
21 all of the officers working, with the exception of two, had
22 conducted traffic stops.
23 What I was unable to determine from that were whether the
24 traffic stops were of vehicles, of pedestrians, or bicyclists,
25 and also whether the traffic stops were in what was called a

1 campus version of a traffic stop, which was at the time deemed
 2 acceptable, versus a traffic stop in which a vehicle-marked
 3 patrol car was used with lights activated to force the driver
 4 to stop.
 5 The campus version of a traffic stop would be the driver
 6 willingly, without any influence from the public safety
 7 officer, pulls over and stops, is in a parking lot or parks and
 8 gets out of their vehicle. Once they leave their vehicle, the
 9 public safety officer could then approach them, provided it was
 10 for a violation enforceable by public safety officers, and at
 11 that time could engage them.
 12 Q. All right. So from your investigation into this traffic
 13 stop issue, you would determine that there wasn't sufficient
 14 direction to Mr. Cleavenger to actually sustain the finding; is
 15 that correct?
 16 A. That's correct. I could not find a written policy
 17 describing why it was acceptable as a traffic stop. All I -- I
 18 interviewed each of the supervisors to -- on the patrol side to
 19 get an understanding as to what type of traffic stop was
 20 acceptable, what type was allowable on a shift, and most of
 21 them were consistent with the campus version; but, again, there
 22 was no policy or written record whatsoever, that I could find,
 23 that prohibited traffic stops. So based on that is why I felt
 24 a not sustained was fair and the right decision to make.
 25 Q. Okay. And let's look at allegation number four on

1 page 44. You sustained that allegation. Tell us why you
 2 sustained that one.
 3 A. Well, on both traffic stops and both contacts
 4 Mr. Cleavenger failed to advise the drivers that the
 5 conversations were being recorded.
 6 The Oregon statute provides for police officers in uniform
 7 in a patrol car, and I believe with in-car video camera systems
 8 mounted, an exception that they don't have to advise drivers or
 9 who they come in contact that it's being recorded if they do
 10 not have a reasonable opportunity to advise them.
 11 For example, if the contact turned into a fight and
 12 they're defending themselves or something, it's not reasonable
 13 to expect an officer to advise someone that the conversation is
 14 being recorded. Otherwise, it's expected of all officers to
 15 advise whoever they come in contact with that the conversations
 16 are being recorded.
 17 In both instances, Mr. Cleavenger had plenty of
 18 opportunities to advise the people they were being recorded,
 19 but he failed to do so.
 20 Q. Now, is this violation both a violation of policy and a
 21 violation of Oregon law?
 22 A. Well, of Oregon law, I can't say. Of our policy, we were
 23 rewriting policies at the time. We have an in-car video camera
 24 policy, but I don't know if that was in effect at the time of
 25 this stop.

1 Q. Okay. So your finding was it was a violation of law?
 2 A. Correct.
 3 THE COURT: Counsel, you're going to call the time
 4 just in a few moments because what we're going to do is send
 5 the jury home. Either now or if you're close to finishing,
 6 I'll let you finish.
 7 MS. COIT: I would prefer to stop now, then.
 8 THE COURT: Okay. 8:00 tomorrow.
 9 Then, please don't discuss this matter among st yourselves
 10 or form or express any opinion concerning the case. We
 11 definitely won't be in session Thursday or Friday. We'll be in
 12 session the following Monday.
 13 (Jury not present.)
 14 THE COURT: Have a seat.
 15 The reason I interrupted -- I don't think it can be
 16 completed in tonight's session; the cross-examination would be
 17 impossible. I don't want to put you in that position. I want
 18 you to have a choice of when you resume your witness, but I
 19 also understand you have a number of professional obligations
 20 and you're able to be here today but not tomorrow. Is that
 21 correct?
 22 THE WITNESS: That's correct.
 23 THE COURT: We'll try to accommodate you.
 24 THE WITNESS: I appreciate that.
 25 THE COURT: What are your thoughts, Counsel? When is

1 he available again and when do we bring him back?
 2 Why don't you have a discussion with him.
 3 MS. COIT: Okay.
 4 THE COURT: There's no choice he's coming back. It's
 5 just when. Let's make that as comfortable as possible. So why
 6 don't you step down and you talk to both counsel and see if you
 7 can work that out. Okay?
 8 THE WITNESS: Thank you, Your Honor.
 9 THE COURT: Counsel?
 10 MS. COIT: He can come back at 10:00 on Tuesday.
 11 THE COURT: Tuesday, okay. Now, we -- I assume
 12 you'll still be in your case. You said you needed three to
 13 four days.
 14 MS. COIT: Yes. We will definitely be in our case.
 15 THE COURT: Would that work for the --
 16 MR. MCDUGAL: I told counsel it's her time to put on
 17 her case. I'll let her decide, so --
 18 THE COURT: Tuesday at 10:00.
 19 MR. MCDUGAL: One clarification. We may be in the
 20 middle of another witness at 10:00.
 21 MS. COIT: He'll just be here.
 22 MR. MCDUGAL: I just want to be sure.
 23 THE COURT: We'll be courteous and bring him back
 24 according to his schedule, but that doesn't mean he --
 25 MR. MCDUGAL: I want to be sure because we said

1 10:00.
 2 THE COURT: Especially in the middle of
 3 cross-examination, Counsel, we don't want to do that. That's
 4 not going to happen.
 5 So, sir, we'll apparently see you on Tuesday at 10:00.
 6 MS. COIT: Sorry.
 7 THE COURT: Tuesday at 10:00, then? Thank you.
 8 Now, I want to have the court reporter rest for a moment.
 9 We're going to hear some motions this evening. I don't want
 10 your hands moving.
 11 (Recess taken.)
 12 THE COURT: Back on the record. We're back on the
 13 record. And, Counsel, you have brought a motion for directed
 14 verdict. Please make your record.
 15 MS. COIT: Sorry. Would you like me to argue the
 16 motion? Is that --
 17 THE COURT: It's your choice. You can argue it. You
 18 can bookmark it now. You can --
 19 MS. COIT: I'm happy to argue it, if you want to.
 20 THE COURT: You can argue it at the end of your case.
 21 MS. COIT: I'll do that again.
 22 THE COURT: What?
 23 MS. COIT: I'll do that again.
 24 THE COURT: What would you like to do?
 25 MS. COIT: I would like to present it to Your Honor

1 people, the testimony has been, in fact, was a better version
 2 of the review than was first given.
 3 So the evidence is, first, that no negative performance
 4 review was issued; and, second, even if we assumed it was worse
 5 than the first draft, it improved after his meetings with
 6 Sergeant Cameron, and that came from the plaintiff's own
 7 testimony today.
 8 So there's two elements of this claim that Mr. Cleavenger
 9 cannot prove; does not have sufficient evidence to take to the
 10 jury.
 11 For Lieutenant Lebrecht, the only claim at issue for
 12 Lieutenant Lebrecht is that he submitted the *Brady* materials to
 13 the district attorney to retaliate for protected speech. The
 14 adverse action here has to be the submission to the district
 15 attorney. Simply compiling information at a police department,
 16 in and of itself, causes no harm to the plaintiff. It is the
 17 act of submitting it to the district attorney that is the
 18 adverse act.
 19 The testimony is, on both sides, from Mr. Cleavenger
 20 himself, that it was Chief McDermid who made that decision.
 21 Lieutenant Lebrecht was following an order. I mean, the
 22 testimony from Mr. Cleavenger was he doesn't even believe that
 23 Lieutenant Lebrecht wanted to do this, so there's no evidence
 24 there that there's an adverse act done by Lieutenant Lebrecht.
 25 And, again, this is claims against the defendants as

1 now.
 2 THE COURT: Go ahead.
 3 MS. COIT: All right. Defense moves for directed
 4 verdict in favor of Sergeant Cameron on the issue that there
 5 has been no evidence, other than speculation, on the element of
 6 causation. It's plaintiff's burden to prove that
 7 Sergeant Cameron was motivated in taking an adverse employment
 8 action against Mr. Cleavenger in substantial part to retaliate
 9 against him for engaging in the Taser speech back in 2008.
 10 There has not been evidence from any witness that they
 11 heard, saw, or had reason to believe that Sergeant Cameron took
 12 those actions to retaliate for that speech. The best we have
 13 is testimony from witnesses that Sergeant Cameron voiced his
 14 displeasure with the Taser speech and that, in and of itself,
 15 is Sergeant Cameron's First Amendment right, and is not
 16 evidence sufficient to support a causation -- causation for
 17 retaliation.
 18 So we move on that basis for Sergeant Cameron, and we also
 19 move for Sergeant Cameron on the basis that plaintiff did not
 20 show an adverse employment action.
 21 The two actions at issue for Sergeant Cameron are the
 22 performance review and the written reprimand. Mr. Cleavenger
 23 testified today that the performance review that was actually
 24 written by Sergeant Cameron was a positive review. The
 25 ultimate version that had hands in it from several other

1 individuals. Only their conduct is at issue.
 2 And for Chief McDermid, we move for her -- there's two
 3 adverse acts at issue. The termination -- the recommendation
 4 for termination and then the submission of the *Brady*
 5 information. We move on the one adverse act of the termination
 6 because there's no evidence -- first, that there's a complete
 7 lack of evidence that her decision to terminate, recommend his
 8 termination, was based on her desire to retaliate for any
 9 speech he engaged in, protected or not.
 10 He testified today that he thinks she did it because she
 11 was relying on false information from Lieutenant Morrow and
 12 Lieutenant Lebrecht. That is not a substantial motivating
 13 factor sufficient to prove that she retaliated against him for
 14 speech he engaged in. There's no evidence of causation on
 15 that.
 16 Second, there's no evidence that he engaged in protected
 17 speech, speech on a matter of public concern, before she made
 18 the decision to terminate him.
 19 Plaintiff's Exhibit 80 is in the record. That is the
 20 predissmissal letter. It is dated and signed by Chief --
 21 Chief McDermid October 1st of 2012. The only possible
 22 protected speech that's been brought up, other than the
 23 lawsuit, occurred during the meeting with Brian Smith on
 24 October 2nd.
 25 Mr. Cleavenger testified that he met with Chief McDermid

1 on August 13th, but he also testified that the contents of that
2 meeting were exclusively contained to his allegations against
3 Lieutenant Lebrecht and Sergeant Cameron for harassing him, his
4 frustration with the process of the investigations. Purely
5 personal matters to him.

6 On redirect he was -- his counsel asked: Well, did you
7 also maybe bring up the matter of a culture of harassment
8 against women? And he said: Well, yeah, maybe I touched on
9 that. That's not sufficient. That's not sufficient to prove
10 that he brought to her a matter of public concern.

11 And his testimony on what that culture of harassment of
12 women involved was limited to the two BOLI complaints that were
13 filed against Sergeant Cameron.

14 So I think the evidence in and of itself on whether or not
15 he reported there being a culture of harassment against women
16 is insufficient to even show that he made such a report.

17 So we move on that aspect, for the adverse employment
18 action, that the termination cannot be a basis for finding of
19 liability against Chief McDermed.

20 So that leaves the *Brady* submission. And we move on that
21 on causation. There's been nothing presented in plaintiff's
22 case that would tie her decision to something that he said.
23 Best that he presented was that she was upset that the
24 arbitrator ordered him reinstated. She didn't want him to come
25 back. That's not a First Amendment violation. It may be

1 MR. JASON KAFOURY: F.3d 917. It clearly holds that
2 the filing of a lawsuit is protected speech. And we have in
3 the record here the lawsuit being filed in November or October
4 of 2013, more than six months before the *Brady* materials were
5 submitted. We also have -- and I have additional case cites to
6 that, too, if you would like. Additional -- I -- copies. I
7 have extra copies.

8 I also have -- let's see. *Lucke v. Multnomah County*.
9 2008 WL 4372882, which holds that going through -- it bases its
10 language on the broad language of *Alpha Energy* and determines
11 that going through the arbitration process is protected -- the
12 administrative process of the arbitration, filing grievances is
13 First Amendment protected speech.

14 And so, starting at the beginning, Sergeant Cameron.
15 We've had six to eight witnesses say because of the Taser
16 speech my client should not have been hired. We have my
17 client's testimony that because right at the moment that he
18 began working with Cameron, Cameron told him he shouldn't have
19 been hired and that it related to the Taser speech, and we have
20 this pattern of retaliation starting with a written discipline
21 letter of clarification, where Sergeant Cameron was there while
22 it was being handed to my client, and involving incidents that
23 Sergeant Cameron was involved with, like the javelin incident
24 and the Jesus Christ October incident in the letter of
25 clarification.

1 wrong. It may be wrongful termination. It is not a First
2 Amendment violation. There's no speech involved there.

3 He presented nothing, as far as Chief McDermed went, to
4 tie her decision to submit the *Brady* information to the filing
5 of the lawsuit. He brought it up with Lieutenant Lebrecht
6 saying: Well, didn't you -- weren't you a little embarrassed?
7 He didn't bring it up with Chief McDermed. There's no evidence
8 in the record that Chief McDermed had any thoughts about the
9 lawsuit. Maybe she did, but there's no evidence in the record
10 of it.

11 He has the burden on this issue of providing evidence from
12 which a jury could find that it was a substantial and
13 motivating factor in her decision. His speech.

14 So that's why we move for all three defendants.

15 THE COURT: Okay.

16 MS. COIT: And then we also move against the claim of
17 punitive damages for all three defendants. There's been no
18 evidence of a pattern and practice by these three individual
19 defendants against this person, Mr. Cleavenger, of a malicious
20 activity. There's nothing to support punitive damages.

21 THE COURT: Counsel, do you care to respond?

22 MR. JASON KAFOURY: Yeah. Just briefly. First, the
23 case *Alpha Energy Savers, Inc. v. Hansen*. Let's see. That's
24 381 F.3d 917.

25 THE COURT: Sorry. 381?

1 So anything Sergeant Cameron did, based on -- in part, on
2 his dislike of my client's free speech rights, the jury could
3 find that anything that happens after that moment, along the
4 course of my client's adverse employment actions, which would
5 include the letter of clarification, the letter of reprimand,
6 the reassignment of job duties, the -- obviously, the
7 termination, and then the *Brady* listing, any of those things
8 that Cameron or Lebrecht were involved with could be -- a jury
9 could find there's circumstantial evidence that because of the
10 Taser speech and because of my client's political beliefs,
11 Lebrecht and Cameron could be operating -- retaliating because
12 of my client's free speech beliefs.

13 And in terms of the actual content of things that he said
14 beyond the Taser speech, we have all this time wasting bowl of
15 dicks complaint. That was told to Chief McDermed at that 8/13
16 meeting. He testified to that. We have the discriminatory
17 behavior towards women of the discussion regarding the Occupy
18 Movement. This all comes to, you know, misuse of
19 discrimination or misconduct within a police force. Misconduct
20 related to political bias. All of that my client testified was
21 disclosed to Carolyn McDermed at that 8/13 meeting and to
22 Brian Smith at -- on the 10/2 meeting.

23 Also, the pattern of retaliation that my client said
24 Cameron and Lebrecht were doing to him, he said he complained
25 first to Chief McDermed about that on 6/1 in their initial

1 meeting. He said he complained much more extensively on
2 8/13 to Chief McDermed about that. And he continued to
3 complain throughout the meetings with Brian Smith, Linda King,
4 and this was all before the termination. And after the
5 termination he complained throughout the grievance process. He
6 complained in his lawsuit. He was very detailed in his lawsuit
7 of all these allegations, as we have in the record; it was more
8 than 50 pages. And he also complained to Lieutenant Lebrecht
9 and to Carolyn McDermed that they were violating federal and
10 state laws.

11 Those come in the form of the Officer's Bill of Rights.
12 He told Carolyn McDermed and Lebrecht throughout that summer of
13 2012 that because they did not allow him to tape-record, that
14 they didn't allow him to know what the investigation was, that
15 all of those things were violations of the Officer's Bill of
16 Rights, which is obviously protected speech.

17 And then we have the order to not report anything but
18 felonies and the complaints that come about from that; that,
19 you know, within weeks of him emailing, his union steward
20 emailing, he's suddenly put on paid administrative leave, and
21 then he's terminated within weeks.

22 A jury could find that at the moment that Lebrecht and
23 Wardlow are having a meeting with him on 8/13, saying, as we
24 heard on the video today, retraining is what the option is, and
25 then he goes and spills the beans to the chief and suddenly the

1 know, we don't need any evidence. I think we have a lot of
2 evidence to support a claim for punitive damages.

3 THE COURT: The rules really require the Court to --
4 I can defer. I can rule. But I think I would like some time
5 to consider this. Do I have your permission, from both
6 counsel, to take that time, or would you like a ruling as of
7 tomorrow?

8 MR. JASON KAFOURY: Take your time.

9 THE COURT: All right. It's up to you.

10 MS. COIT: Yes, Your Honor, you can take the time,
11 obviously, that you need.

12 THE COURT: Maybe by Monday, then. Give me the
13 weekend to sort through that.

14 And, frankly, I may defer. I may defer until the
15 conclusion of the defendant's case. That way I have a comfort
16 level that I've heard 99.9 percent of the evidence, depending
17 upon rebuttal.

18 You have a couple instructions. Most of the instructions
19 you agree upon. But there are a couple that I would like to
20 hear argument on this evening, just so I can consider them over
21 the weekend.

22 So, Counsel, let's set out some timing also for the case.

23 Let's go off the record. Rest your hands for just a
24 moment.

25 (Off the record.)

1 retraining option comes off the table within weeks and suddenly
2 he's terminated. A jury could conclude that that speech
3 activity, that protected speech that he did with the chief, was
4 the real motivating factor behind the chief's decision to
5 terminate.

6 So I think if you look, there's -- there's endless fair
7 inferences that a jury could go down that -- all of this
8 protected speech he did and all these complaints he made
9 throughout this process, there's enough evidence that a
10 reasonable juror could find that all three of the defendants
11 were guilty of violating his free speech rights by retaliating
12 and causing an adverse employment action.

13 In relation to punitive damages, we have heard from
14 multiple witnesses that not just my client's activities and the
15 injuries he suffered as a result of this retaliatory behavior,
16 but we heard from Casey Boyd. This ruined her career. We
17 heard my client say that Jen Parker wasn't able to get a job
18 for five years after she left the department.

19 We had Officer Drake today on the witness stand saying
20 that right after his deposition it's put in his annual
21 evaluation that if he continues to say disparaging things about
22 the department that he may be terminated.

23 So we have the pattern here and we have a lot of evidence
24 of people saying that if you speak up within this department
25 you're retaliated against, and we think that that's -- you

1 THE COURT: Back on the record. The Court has raised
2 some concern about the verdict form and whether the Court
3 should be giving each of the public concerns, if there are
4 public concerns, in a segmented way, on a special verdict form,
5 so if the Court has made a mistake concerning any public
6 concern, it's not put together in a holistic or ball, if you
7 will, that the circuits can discern, which public concern the
8 jury is making a finding on. I haven't made that decision.
9 But I cautioned counsel that they have some tactical decisions
10 to make, and they can present that to me on Monday.

11 Jury instructions.

12 MS. COIT: We object to plaintiff's proposed special
13 jury instruction on causation. Their number one. Special
14 instruction. We propose that the Court use the uniform
15 instruction on causation.

16 THE COURT: Now, uniform on causation comes from the
17 Ninth Circuit.

18 MS. COIT: Yes.

19 THE COURT: With Baggi and Kashi in the California
20 system with Blackmere, and whoever they are. I'm just kidding
21 you. Why would I ever stray from a Ninth Circuit instruction?

22 Can counsel on behalf of the plaintiff tell me why I would
23 stray from a standard causation instruction from the Ninth
24 Circuit from the rules committee who worked very hard and take
25 a modified version?

1 The Ninth Circuit usually doesn't reverse itself.
 2 MR. MCDUGAL: Forgive my ignorance, Your Honor. In
 3 Oregon, the uniform jury instructions are not done by the,
 4 quote, "Court." They're done by counsel in court proceedings.
 5 THE COURT: Isn't this a federal court?
 6 MR. MCDUGAL: I know. I said, "Forgive my
 7 ignorance."
 8 THE COURT: And therefore you have Ninth Circuit
 9 instructions on causation. Why wouldn't I go right to the
 10 Ninth Circuit instruction rather than the Oregon causation
 11 instruction?
 12 MR. MCDUGAL: This is not the Oregon instruction.
 13 This is based on a Ninth Circuit case.
 14 THE COURT: Right. So why wouldn't I use it?
 15 Standard instruction.
 16 MR. MCDUGAL: I believe, Your Honor, my problem with
 17 the standard instruction is not a problem. Maybe it
 18 supplemented, Your Honor, because it tells them they
 19 consider -- do you have a standard one here?
 20 Neither one of these.
 21 One of us has a complete set of it.
 22 THE COURT: You can argue that if you want to on
 23 Monday. But, remember, you never want to turn courtrooms over
 24 the weekend when I'm working 24/7. I'll go down the line
 25 concerning instructions by that time.

1 concerned about?
 2 MS. COIT: The next one is -- is their number four,
 3 the claim against Defendant Cameron.
 4 THE COURT: Okay. Your reasoning?
 5 MS. COIT: They misstate the causal elements of this
 6 claim, that -- that the jury can find in favor of plaintiff on
 7 this claim -- well, it strays from the model instruction, for
 8 one, and adds another element that they could find for
 9 plaintiff if the speech -- if the adverse action is likely to
 10 deter protected speech.
 11 THE COURT: Next instruction?
 12 MS. COIT: Those are our only objections.
 13 THE COURT: Okay. Counsel, do you want to respond to
 14 9.8, 3, and 4?
 15 MR. MCDUGAL: Yes. I don't have a problem with 9.8.
 16 I just don't think it tells the jury that there are certain
 17 things that they consider that they might, as laypeople, not
 18 understand, and that this instruction supplements that and lets
 19 them know that they can make certain inferences from certain
 20 events if they find that those events occurred.
 21 THE COURT: Sometimes courts are concerned about
 22 pinpoint instructions. Pointing out a specific piece of
 23 evidence. Leave that to the argument, Counsel.
 24 I'm going to overrule that.
 25 MR. MCDUGAL: Okay.

1 One of the reasons, Counsel, is a courtesy to you so I'm
 2 not keeping you up late on Monday and Tuesday. I want you
 3 fresh for your arguments.
 4 MR. MCDUGAL: I might be able to get it right now
 5 and articulate yourself. But we can move on.
 6 THE COURT: Next instruction. Any suggestion as
 7 to --
 8 MS. COIT: We moved against plaintiff's version of
 9 the claim against Defendants McDermid and Lebrecht.
 10 THE COURT: Okay.
 11 MS. COIT: Their Instruction No. 3.
 12 THE COURT: That's Instruction No. 3. Okay.
 13 MS. COIT: It misstates the private citizen element,
 14 trying to lower burden at trial. We propose, obviously, our
 15 special instruction as the alternative.
 16 THE COURT: Okay. And on this version. Okay.
 17 That's relatively simple. I'm alerted to it.
 18 MS. COIT: We also objected on the grounds that it
 19 misstates the speech that's at issue.
 20 THE COURT: I'm sorry. It misstates the --
 21 MS. COIT: The speech that's at issue in the case.
 22 THE COURT: Okay. All right.
 23 MS. COIT: Well, Your Honor, I -- I withdraw that
 24 objection. It had to do with the predissmissal with Linda King.
 25 THE COURT: What's the next instruction you're

1 THE COURT: How about 3 and 4?
 2 MR. KIEL: Would it be all right if I speak now?
 3 THE COURT: Absolutely.
 4 MR. KIEL: Regarding the fourth special instruction ,
 5 Your Honor, the considerable thought to the peculiar
 6 circumstances of the Taser speech and your order on summary
 7 judgment, the fact that it took place while plaintiff was a
 8 private citizen and the retaliation did not occur until he was
 9 a public employee. I believe you derived three or four pages
 10 to that. So that was an equivalent that the uniform
 11 instruction is simply not suited for the particular facts of
 12 the case.
 13 THE COURT: It's the same place where we started with
 14 when none of us could find a case that even approached this
 15 fact situation, so I'll look at that.
 16 All right. Now, let's turn to the defendant's
 17 instructions and objections that you have.
 18 MR. MCDUGAL: We drafted ours because we didn't like
 19 theirs. Oh, the defendants are here.
 20 Can we see your instructions for a minute? It's not in
 21 our book for some reason.
 22 MR. KIEL: I believe we objected generally to the
 23 number of uniform instructions as simply being somewhat --
 24 MR. MCDUGAL: He's resolved that. Just on the
 25 special instructions.

1 THE COURT: You really have very few disputes.
 2 MR. MCDUGAL: I agree.
 3 MR. JASON KAFOURY: Helps when there's only one
 4 claim.
 5 MR. KIEL: I suppose their Special Instruction No. 4
 6 would be antithetical to ours.
 7 THE COURT: I'm sorry. I couldn't hear you.
 8 MR. KIEL: Their Instruction No. 4, regarding First
 9 Amendment claim against Defendant Cameron, is mutually
 10 exclusive with what we would instruct them on the same; so we
 11 object on the grounds that we just talked about particularly
 12 that it's in the second number three that -- under their
 13 Special Instruction No. 4, there's -- there's four points
 14 enumerated -- numbered one, two, three -- and, again, the
 15 second No. 3 says: The Defendant Cameron took the adverse
 16 action.
 17 THE COURT: Just start over again. You pointed out
 18 the location in the instruction. We just couldn't hear you.
 19 Let's use the microphone.
 20 MR. KIEL: This is defendant's special requested Jury
 21 Instruction No. 4. Under the elements, there are four points
 22 enumerated: Numbered one, two, three, and then again three.
 23 The second No. 3 says: Defendant Cameron took the adverse
 24 action with the intent to substantially interfere with the
 25 plaintiff's exercise of protected speech.

1 MR. MCDUGAL: And then the measure of types of
 2 damages, they don't have any reference to economics that the
 3 uniform does.
 4 THE COURT: Okay. Then tomorrow 8:00?
 5 MS. COIT: Okay.
 6 THE COURT: Goodnight.
 7 (Trial Day 6 adjourned.)
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1 I believe we covered this on the motion on summary
 2 judgment. That intent to interfere with speech is not an
 3 element.
 4 THE COURT: Okay.
 5 MR. MCDUGAL: May I speak to what I see as a law to
 6 both sides instructions on the specials? I think it's wrong to
 7 try to list the adverse actions. There are a whole bunch of
 8 things that could be adverse actions that were talked about or
 9 testified to. I think instead of listing them, the jury should
 10 just be advised what an adverse action is. Otherwise, it's
 11 also a comment on the evidence. A comment on the evidence .
 12 THE COURT: Okay. Any other instructions?
 13 MR. MCDUGAL: Yes. They had two -- they had an
 14 affirmative defense instruction.
 15 THE COURT: Okay.
 16 MR. MCDUGAL: We're going to move on the fact that
 17 they had one about their affirmative defense of the settlement
 18 agreement. I think the plain language -- if you disagree with
 19 our motion at the end of the case, then I guess they get this,
 20 except he didn't release the defendants from his claim for lost
 21 income. He released the defendants for anything arising out of
 22 the arbitration agreement -- arbitration award, not agreement.
 23 So I think it's just a wrong statement of law based on the
 24 wording of the settlement.
 25 THE COURT: Okay.

1 C E R T I F I C A T E
 2
 3 Cleavenger v. McDermed, et al.
 4 6:13-cv-01908-DOC
 5 TRIAL DAY 6
 6 September 15, 2015
 7
 8 I certify, by signing below, that the foregoing is a true
 9 and correct transcript of the record, taken by stenographic
 10 means, of the proceedings in the above-entitled cause. A
 11 transcript without an original signature, conformed signature,
 12 or digitally signed signature is not certified.
 13
 14 /s/Jill L. Jessup, CSR, RMR, RDR, CRR
 15
 16 Official Court Reporter Signature Date: 12/28/15
 17 Oregon CSR No. 98-0346 CSR Expiration Date: 9/30/17
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DEPUTY COURTROOM CLERK: [4]

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