

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 9, 2015  
 8 LEBRECHT, and SCOTT CAMERON, )  
 9 Defendants. ) Portland, Oregon  
 10 \_\_\_\_\_ )

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 12 TRIAL DAY 2  
 13 TRANSCRIPT OF PROCEEDINGS  
 14 BEFORE THE HONORABLE DAVID O. CARTER  
 15 UNITED STATES DISTRICT COURT JUDGE  
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1  
2 THE COURT: We're on the record and all counsel --  
3 counsel are present and the parties are present. I want to  
4 hear your argument one more time, just to make sure. This is  
5 the motion to exclude evidence that the plaintiff reported in  
6 violation.  
7 MR. MCDUGAL: Right. First, it's their burden.  
8 They brought the motion in limine. They're saying their  
9 collective bargaining agreement covers us. It's our position  
10 that it doesn't, but they didn't revise their policies until  
11 later. We've shown that. And even if it did, as the Court  
12 pointed out, he was, in good faith, making the statements.  
13 It's protected free speech.  
14 THE COURT: Counsel?  
15 MS. COIT: Your Honor, I have the exhibits, if it's  
16 helpful, unless you've already looked at them.  
17 So it's our position that -- that the statute is -- is a  
18 safeguard so that these -- I don't know if they're on.  
19 MR. MCDUGAL: Can I add one thing before she starts ?  
20 I don't want to interrupt. There will be evidence, just so the  
21 Court knows, that Mr. Cleavenger went to the meeting with the  
22 bill of rights in his hand and said, "I'd like to record this,"  
23 and they told him he couldn't.  
24 THE COURT: I see. Counsel?  
25 MS. COIT: Okay. That's a different issue than I'm

1 addressing. And, I agree, if that comes up, that may be  
2 relevant. What I'm addressing now is his complaints that he  
3 claims that he made to several people that he wasn't given the  
4 name of the investigator. He wasn't given a description of the  
5 investigation that was -- that was discussed in the May 18th  
6 letter that moved him to parking. He says that is when he  
7 complained about not being given his protections reported under  
8 state law.  
9 So in their Exhibit 15, under ORS 236.370 -- it's  
10 paragraph 6 -- it specifically states that these protections do  
11 not apply to a person who's represented in a collective  
12 bargaining --  
13 THE COURT: Just a moment. For some reason, I can't  
14 hear you. I apologize. The jury couldn't hear me yesterday.  
15 So would you move that microphone closer?  
16 MS. COIT: I don't think it's on.  
17 THE COURT: Well, Christy will be back, and we'll get  
18 it turned on.  
19 Would you repeat? Under policy 1020 --  
20 MS. COIT: Your Honor, I was -- I was looking at the  
21 statute, is what I was talking about.  
22 THE COURT: All right. You're you looking at 236.  
23 MS. COIT: 370.  
24 THE COURT: 370. Thank you.  
25 MS. COIT: Paragraph 6. And this is the statute that

1 says when these -- these statutory fallback protections do not  
2 apply, and it specifically says, to people represented in a  
3 collective bargaining agreement, if these provisions had been  
4 provided for in that agreement.  
5 In the collective bargaining agreement that Mr. Cleavenger  
6 was a part of and that he was engaging in and taking full  
7 advantage of at the time he made these complaints, and it's our  
8 Exhibit 303, and I have it if you want it, sir, at page 14,  
9 article 17, it starts an entire section on the procedure to  
10 engage in when discipline and discharge is being pursued with  
11 an employee.  
12 THE COURT: Excuse me. Christy, could you turn on  
13 her mic?  
14 MS. COIT: Hello?  
15 THE COURT: Much better.  
16 MS. COIT: Okay. So the collective bargaining  
17 agreement, our Exhibit 303, starting at page 14, has an  
18 article 17, and it's a three -- four pages of what has been  
19 agreed to between the collective bargaining agreement -- the  
20 union and OUS, which Mr. Cleavenger is a member of the union,  
21 to be their governing document, their governing procedures,  
22 when discipline or discharge is being implemented or pursued.  
23 It sets out what the procedures are, what notifications  
24 are necessary, what the grievance procedures are, and what the  
25 employee's entitled to know, when he's entitled to have a

1 steward. Everything that the statute is intended to protect  
2 him from.  
3 So it's our position that this collective bargaining  
4 agreement comes into play under paragraph 6. The statute  
5 doesn't apply. Mr. Cleavenger was partaking in his grievance  
6 process. He was invoking the protections of the collective  
7 bargaining agreement when he made the complaints that he wasn't  
8 being given the protections afforded by state law.  
9 So the complaint he made had no foundation, and he was  
10 aware of that. So it wasn't a good faith complaint to the  
11 violation of state law for purposes of whether or not this is  
12 protected speech under the First Amendment.  
13 THE COURT: Any comments by either counsel?  
14 MR. MCDUGAL: There's been no pointing to the  
15 collective bargaining agreement about recording and the things  
16 that bill of rights allow. If they have similar procedures,  
17 there's been no pointing out similar procedures.  
18 MS. COIT: Your Honor, if -- if parties agree to  
19 engage in -- to negotiate a contract when they're fully aware  
20 of the protections that are there in the statute, and they  
21 decide to go outside of the statute, which is allowed for in  
22 the statute, to create their procedures, and if they didn't put  
23 recording in there, then we are to assume that that was  
24 intentional.  
25 THE COURT: Just a moment.

1 DEPUTY COURTROOM CLERK: Mr. McDougal, can I have you  
 2 test your microphone for me, please?  
 3 MR. MCDUGAL: Testing.  
 4 THE COURT: Well, the remaining issue is defendants'  
 5 motions in limine to exclude evidence that plaintiff reported a  
 6 violation of state laws when complaining that he was not  
 7 afforded his rights under ORS 236.350 through .370. The  
 8 Officer's Bill of Rights.  
 9 Defendants argue that the statute did not apply to  
 10 plaintiffs, so reporting a violation could not be a matter of  
 11 public concern. Based on the Ninth Circuit law discussed  
 12 yesterday by the Court, whether or not the laws technically  
 13 applied, the Court believes it's appropriate for the plaintiff  
 14 to present evidence that he reported a violation of that  
 15 statute, and defendants are free to argue to the jury that it  
 16 did not apply and that plaintiff was protected by the  
 17 collective bargaining agreement.  
 18 As discussed with the parties during the pretrial  
 19 conference, this Court will defer ruling on the final  
 20 university matters, as we agreed, which are of public concern,  
 21 until after the closing of plaintiff's case.  
 22 So, Counsel, let me return this copy to you.  
 23 Now, Counsel, do you want to use the restroom, et cetera?  
 24 I'll bring the jury in in seven minutes, so if the parties need  
 25 to use the restroom, you can.

1 MR. MCDUGAL: Thank you, Your Honor.  
 2 MS. COIT: Mr. Cleavenger is wearing a Free Mason pin  
 3 on his lapel. I know the connotations for Free Masons. I  
 4 don't know the jury's membership in any sort of community like  
 5 that. I don't think it's necessary that he wears it.  
 6 THE COURT: He has the First Amendment right to wear  
 7 whatever he wants to, frankly; but I wouldn't say the Free  
 8 Masons are real popular either. It cuts both ways.  
 9 MR. CLEAVENGER: Your Honor, it's actually a  
 10 University of Oregon pin.  
 11 THE COURT: Oh, it is? Counsel?  
 12 MS. COIT: My apologies if that's --  
 13 THE COURT: He's going to give that to you. You're a  
 14 Duck, aren't you?  
 15 MS. COIT: I am. Absolutely. My apologies if  
 16 that's --  
 17 THE COURT: Counsel, something came in informally  
 18 through Christy, our clerk. When she went back, we have one  
 19 juror that's missing at the present time.  
 20 The second thing is Christy is also instructed not to  
 21 respond, but the collective jury asked if they could have the  
 22 First Amendment right read to them.  
 23 You can do with it what they want. Christy just relayed  
 24 that information to me.  
 25 MS. COIT: It's fine with me.

1 THE COURT: We can take that up later in the day. We  
 2 won't hold up the jury. If you agree or not, I don't really  
 3 care. We're going to wrestle with that during jury  
 4 instructions. I hate to anticipate all the things that they  
 5 might ask along the way, but I'm happy to read that if you  
 6 would like to. The difficulty is it comes somewhat out of  
 7 context also. It doesn't come surrounded by a whole set of  
 8 instructions that apply to it. The First Amendment right, by  
 9 itself, is just part of this lawsuit, is how it's dealt with,  
 10 so I leave that to each of you.  
 11 I can also instruct that I'm going to read the complete,  
 12 you know, set of instructions at the end of the case that will  
 13 resolve these questions for them along the way concerning the  
 14 law and how they're to judge the matter, but I can read the  
 15 First Amendment or anything else you two agree to, so I leave  
 16 that to you.  
 17 MS. COIT: Did she understand that to mean read the  
 18 constitutional provision?  
 19 THE COURT: That's all Christy said. When she gets a  
 20 message like that, she tells me what, but she doesn't respond.  
 21 She doesn't ask questions.  
 22 DEPUTY COURTROOM CLERK: Judge, I have the full panel  
 23 here now.  
 24 THE COURT: Thank you, Christy. Bring them in.  
 25 (Jury present.)

1 THE COURT: Good morning. Have a seat. We're  
 2 standing for you, so have a seat.  
 3 Counsel, thank you for your courtesy. Please be seated.  
 4 Christy just informed me that you had asked about having the  
 5 First Amendment read. Unless counsel stipulates, I'm not going  
 6 to do that right now. At the end of the case, I'll instruct  
 7 you on a complete set of instructions, the law, et cetera. I  
 8 want to do that one time unless counsel stipulates along the  
 9 way to do things in a piecemeal fashion. I think that's more  
 10 appropriate so you have the whole panoply of the law of what  
 11 applies to the case.  
 12 Counsel, good morning.  
 13 MR. GREGORY KAFOURY: We're prepared to stipulate ,  
 14 Your Honor.  
 15 THE COURT: Counsel, we'll take that out of the  
 16 presence of the jury.  
 17 Next witness, please.  
 18 MR. MCDUGAL: Officer Zach Hermens.  
 19 THE COURT: Step forward, please.  
 20 THOMAS ZACHARY HERMENS,  
 21 called as a witness in behalf of the Plaintiff, being first  
 22 duly sworn, is examined and testified as follows:  
 23 THE WITNESS: I do.  
 24 THE COURT: Sir, please come to the witness box.  
 25 It's just to my right. The entrance is closest to the wall.

1  
2 THE COURT: Sir, would you be seated and face the  
3 jury and state your full name and spell your last name, please?  
4 THE WITNESS: Thomas Zachary Hermens, and it's  
5 H-E-R-M-E-N-S.  
6 THE COURT: Thank you. Direct examination, please.  
7  
8 DIRECT EXAMINATION  
9 BY MR. MCDUGAL:  
10 Q. Good morning, Mr. Hermens. My name is Mark McDougal.  
11 We've never met, and I represent Mr. Cleavenger.  
12 Can you state your name for the record.  
13 A. Thomas Zachary Hermens.  
14 Q. I'm going to begin by asking some -- well, give me a  
15 little bit of background. I don't want to spend too much time  
16 on it, but just sort of an overview of your education and  
17 training before you became an OUPD public safety officer.  
18 A. I was a cadet, which is with the Eugene Police Department  
19 from the age of 16 to 21. And, basically, as a cadet, I went  
20 through a basic academy with -- it's not like a full police  
21 academy, but I learned criminal law. I learned patrol tactics.  
22 I learned defensive tactics. I volunteered and conducted  
23 security at different events. I completed probably around  
24 2,000 hours of ride-along time with the police officers from  
25 the Eugene Police Department.

1 After that, I completed high school. I completed two  
2 years of college but didn't get a degree.  
3 Along with that, I attended a reserve academy down at  
4 Umpqua Community College for the Douglas County Sheriff's  
5 Office, and I got hired in 2005 as a public safety officer at  
6 the University of Oregon.  
7 Q. Sir, I just noticed you looking towards the jury. Let me  
8 tell you, you can look wherever you want when you testify, but  
9 your main purpose here is so the jury can hear you and see you  
10 and observe you, so feel free not to look at me. I won't take  
11 it as rude. You can look at them or you can do what you want.  
12 I'm not telling you what to do. I'm just giving you that  
13 heads-up. Okay?  
14 A. Okay.  
15 Q. I'm going to ask you some very specific questions about  
16 procedure, and then we can get into a couple incidents.  
17 If you get a description -- let me start this: All these  
18 questions I'm asking you about are for the time frame when  
19 Mr. Cleavenger was at the university department. Do you  
20 understand that?  
21 A. Yes, sir.  
22 Q. Okay. If I change that criteria, I'll let you know, but  
23 I'm not going to preface every question with "While  
24 Mr. Cleavenger was at the U of O PD," okay?  
25 A. Yes, sir.

1 Q. At that time, if you got a description of a suspect over  
2 the radio, was that sufficient information for a public safety  
3 officer to stop and question a person?  
4 A. Yes, sir.  
5 Q. And why is that?  
6 A. Reasonable suspicion, sir.  
7 Q. During that time, did you ever follow a DUI off campus  
8 until EPD made contact with them?  
9 A. Yes, sir.  
10 Q. Is it true that at that time the only way to set a  
11 perimeter was to use your radio and let other officers know?  
12 A. Yes, sir.  
13 Q. Now I'm getting beyond that time.  
14 Tell me about the Wild West group if, and only if,  
15 Sergeant Cameron was a member of it.  
16 MS. COIT: Objection, Your Honor. Assumes facts.  
17 THE COURT: I'm sorry?  
18 MS. COIT: Objection. Assumes facts.  
19 THE COURT: Overruled.  
20 BY MR. MCDUGAL: (Continuing)  
21 Q. Do you recall the Wild West group?  
22 A. Yes, sir.  
23 Q. Was Sergeant Cameron a member of it?  
24 A. Yes, sir.  
25 Q. What was it?

1 A. It was -- in the early days when I joined, it was a group  
2 of employees that kind of ran their department, and it was  
3 basically a sergeant and a couple of officers.  
4 Q. Okay. They didn't just run the department. They didn't  
5 follow the rules, and they didn't do it the way they should  
6 have done it. That was your testimony; correct?  
7 A. Yes, sir.  
8 Q. They ran the ship however they wanted to run it. Your  
9 testimony?  
10 A. Yes, sir.  
11 Q. If you wanted to look back -- and now we're back to at the  
12 time. If you wanted to look back and figure out, hey, when did  
13 a specific officer end their shift, what documents would you  
14 look at?  
15 A. Probably the CAD entry, sir.  
16 Q. And what would the CAD entry tell you?  
17 A. What the CAD entry is, is you radio over -- or get on your  
18 radio and you tell dispatch that you're secure. And what  
19 dispatch does is they enter it into an automated computer  
20 system and it documents what time you called in.  
21 Q. And what's done with the -- does it -- does your use of  
22 the car have anything to do with when you end your shift?  
23 A. The other thing you do is you call in your ending mileage  
24 of your vehicle.  
25 Q. So you look at ending mileage and dispatch?

1 A. Yes, sir.  
 2 Q. And that would tell you when somebody got off shift?  
 3 A. Yes, sir.  
 4 Q. Now, I want to ask you about the Spencer View Apartments .  
 5 Do you have any memory of dealing with the Spencer View  
 6 Apartments?  
 7 A. Yes, sir.  
 8 Q. And you recall there was an incident where you responded  
 9 with Mr. Cleavenger and two other officers?  
 10 A. Yes, sir.  
 11 Q. I want to talk about before that. Before that, had you  
 12 been to the Spencer View Apartments?  
 13 A. Yes, sir.  
 14 Q. You had been there a number of times?  
 15 A. Yes, sir.  
 16 Q. You had been there with other officers?  
 17 A. Yes, sir.  
 18 Q. You received a noise complaint?  
 19 A. Yes, sir.  
 20 Q. And before that day that is involved in the criticism of  
 21 Mr. Cleavenger, you had pulled directly up to the Spencer View  
 22 Apartments; correct?  
 23 A. Yes, sir.  
 24 Q. And on that day that you pulled directly up to Spencer  
 25 View Apartments, how long had you been working for the UOPD ?

1 A. Yes, sir.  
 2 Q. Okay. Now, I take it you have reviewed Spencer View  
 3 videos?  
 4 A. Yes, sir.  
 5 Q. And you did it knowing you would be questioned about  
 6 Spencer View?  
 7 A. I was shown the video after the incident came apart.  
 8 Q. Okay. And you had your deposition taken in your case?  
 9 A. Yes, sir.  
 10 Q. And I'll just take a second. I think this is the first  
 11 person we talked to about a deposition. That's your lawyer was  
 12 there. I was there. There was a court reporter. You were put  
 13 under oath. Just like today you were questioned and you knew  
 14 the testimony could be used in court; correct?  
 15 A. Yes, sir.  
 16 Q. And prior to that, you had seen the video?  
 17 A. Yes, sir.  
 18 Q. Do you recall at that deposition being asked to mark where  
 19 my client had parked?  
 20 A. Yes, sir.  
 21 MR. MCDOUGAL: Mr. Hess, could you pull up that  
 22 exhibit?  
 23 MR. HESS: 174?  
 24 MR. MCDOUGAL: Yes.  
 25 A minor technical difficulty.

1 A. I don't recall when the date is, so I couldn't tell you  
 2 exactly how long, but I had been there since 2005.  
 3 Q. Okay. So it had been five, six years? Ballpark?  
 4 A. Possibly, sir.  
 5 Q. And during that five or six years, you had responded to  
 6 numerous calls?  
 7 A. Correct, sir.  
 8 Q. And you responded with other officers?  
 9 A. Yes, sir.  
 10 Q. You had had an opportunity to observe how other officers  
 11 responded to calls?  
 12 A. Yes, sir.  
 13 Q. You had been a supervisor for five or six years?  
 14 A. That's correct, sir.  
 15 Q. And even though you had been on the job for five or six  
 16 years, supervised for five or six years, observed how other  
 17 officers responded to calls for five or six years, you pulled  
 18 directly up to Spencer View a couple of weeks before this  
 19 incident?  
 20 A. Yes, sir.  
 21 Q. Because there was nothing in your training or experience  
 22 that told you not to; correct?  
 23 A. Yes, sir.  
 24 Q. Now let's talk about Spencer View. And, in fact, it was  
 25 the same apartment number you were going to on the prior call?

1 BY MR. MCDOUGAL: (Continuing)  
 2 Q. Can you see that, sir?  
 3 A. Yes, sir.  
 4 MR. MCDOUGAL: And excuse me. I'm not -- this is my  
 5 first witness here. Are the jurors able to see that?  
 6 THE JURY: Yes.  
 7 BY MR. MCDOUGAL: (Continuing)  
 8 Q. And where did you say my client had parked? Where did  
 9 you, under oath, mark that my client had parked after you had a  
 10 chance to review the videos?  
 11 A. I, under oath, marked that your client had parked just to  
 12 the south -- or, correction, just to the north of the apartment  
 13 on the driveway area.  
 14 MR. MCDOUGAL: And if I mark this, can you display  
 15 it?  
 16 BY MR. MCDOUGAL: (Continuing)  
 17 Q. Oh, okay. You've got a screen in front of you.  
 18 A. Yes, sir.  
 19 Q. I haven't used this technology before, but my belief is  
 20 that you can circle that with your finger, and it will show  
 21 where you marked it.  
 22 A. (Witness complies.)  
 23 Q. There you go.  
 24 During your deposition, did you put an X under 57-64 for  
 25 where Mr. Cleavenger's car was parked?

1 A. I did in that parking space. That's what I'm trying to  
 2 mark.  
 3 Q. So you just hit your finger in the wrong place?  
 4 A. It's in that -- I -- it's in that whole section of parking  
 5 right there.  
 6 Q. Well, you were asked very specifically, under oath, to  
 7 mark where you parked, and there's actually a little rectangle  
 8 with an X. That was your indication of where he parked;  
 9 correct?  
 10 A. There's a rectangle and next to the rectangle is where --  
 11 sorry it's hard to see. There's a rectangle and just to the  
 12 right of the rectangle, right in that area.  
 13 Q. You keep going up the street from the X. Is there a  
 14 reason for that? Because your X was very specific.  
 15 A. There's -- it's in that -- so where that X is, is a line  
 16 of parking spots, and it's within that -- he parked with -- I  
 17 marked he parked within that line of parking spots.  
 18 Q. That's not what you said in your deposition; right? You  
 19 put an X and said he parked there; correct?  
 20 A. That's the parking spots right where I said he parked,  
 21 sir.  
 22 Q. You put an X where he parked. Is that correct, or do I  
 23 need to play the video?  
 24 A. No, that's correct.  
 25 Q. And do you understand that where you put the X is wrong?

1 A. Sir, I made a mistake.  
 2 Q. And people make mistakes. Do you know anybody else who  
 3 made a mistake where people parked that day?  
 4 MS. COIT: Objection. Argumentative.  
 5 THE COURT: Sustained.  
 6 BY MR. MCDOUGAL: (Continuing)  
 7 Q. Now, let me ask you about this: In your deposition, you  
 8 said that prior to going to Spencer View -- and I'll read it to  
 9 you, and I can play it, if you want.  
 10 Counsel --  
 11 MS. COIT: Your Honor, I'm objecting to impeaching  
 12 with this deposition. This is his witness.  
 13 THE COURT: Sustained.  
 14 MR. MCDOUGAL: Okay. He's an adverse witness,  
 15 Your Honor, but -- anyway.  
 16 BY MR. MCDOUGAL: (Continuing)  
 17 Q. Prior to Mr. Cleavenger arriving, at Spencer View, did you  
 18 tell him anything about how he shouldn't pull up?  
 19 A. I did, sir.  
 20 Q. What did you tell him?  
 21 A. I took him to our car-to-car channel and told him that  
 22 based on my previous experience, the location of the apartment,  
 23 and that she was -- the complainant was EDP, which is  
 24 emotionally disturbed.  
 25 Q. So if you did that, would there be a recording on channel

1 one saying, "Could you switch to channel three?"  
 2 A. There may be.  
 3 Q. How else would you let him know?  
 4 A. I don't know if there's -- if they had a recording, but  
 5 I'm assuming there probably would be a recording saying,  
 6 "Switch to channel three" or "four."  
 7 Q. If there's not, you didn't do it?  
 8 A. I did do it, sir.  
 9 Q. Why did you do it?  
 10 A. For officer safety reasons, I wanted to let the incoming  
 11 officer know what my past experience with this person was.  
 12 Q. Your past experience was you drove right up and parked  
 13 right in the front?  
 14 A. Yes, sir. That was for a cold call that she was a  
 15 complainant in.  
 16 Q. What did you do after you drove up?  
 17 A. To?  
 18 Q. To the Spencer View call.  
 19 A. Which Spencer View call, sir?  
 20 Q. The one at issue with Mr. Cleavenger there, as well, and  
 21 the other two officers.  
 22 A. I -- when I drove up, I parked well around the corner from  
 23 the apartment, and I stood by because Officer -- or  
 24 Mr. Cleavenger was the primary officer, and we waited for him  
 25 to respond to the apartment complex.

1 Q. And where did you stand by?  
 2 A. Somewhere in -- I don't recall exactly, sir.  
 3 Q. Middle of the street?  
 4 A. No, sir.  
 5 Q. You didn't talk to two other officers in the street?  
 6 A. Not in the middle of the street, sir.  
 7 Q. In the street?  
 8 A. I don't recall, sir; but I know I wouldn't have done it in  
 9 the middle of the street, sir. Especially on a dispute call.  
 10 Q. Why would you do it in the street at all?  
 11 A. I wouldn't, sir.  
 12 MR. MCDOUGAL: Why don't you play the dash cam video  
 13 that shows them where they are.  
 14 MR. HESS: This is number 9.  
 15 THE COURT: Number 9. Thank you.  
 16 A JUROR: We just lost our video. We lost our video.  
 17 DEPUTY COURTROOM CLERK: Are you able to see?  
 18 A JUROR: It keeps coming on and off.  
 19 MR. MCDOUGAL: Would it be permissible to move that  
 20 bigger screen around?  
 21 THE COURT: Let's see if this audio or this visual  
 22 works, and you can play this again, Counsel.  
 23 MR. MCDOUGAL: Just a moment.  
 24 THE COURT: Christy, is it working?  
 25 DEPUTY COURTROOM CLERK: Can you start it over from

1 the beginning, please.  
 2 MR. HESS: Yes.  
 3 DEPUTY COURTROOM CLERK: Mr. Hess, can you clear the  
 4 yellow mark off also?  
 5 THE COURT: I'm not sure the large screen moves  
 6 without. The tech people are coming up.  
 7 DEPUTY COURTROOM CLERK: I can move it.  
 8 THE COURT: Why don't you face it, if you can,  
 9 Christy, to the jury.  
 10 Folks, how many of you were able to see the screen? I  
 11 can't see what you're seeing. Was anything operating on? Just  
 12 off and on?  
 13 A JUROR: It was operating and then it would stop,  
 14 and then it would come back on and then it would stop.  
 15 THE COURT: We'll set up the large screen at the end  
 16 of the jury box. You're not confined to the seats you're in.  
 17 You can stray any place you would like to in the back row.  
 18 If you want to move down, fine. If you want to stay  
 19 together, that's fine.  
 20 DEPUTY COURTROOM CLERK: Jurors in the back row, did  
 21 you have flashing off and on?  
 22 THE JURORS: Yes.  
 23 THE COURT: I don't want to take much more time with  
 24 this. The visual problems are causing delay. I want counsel  
 25 to be able to show these videos to you. Thanks, Christy.

1 DEPUTY COURTROOM CLERK: Are you all able to see the  
 2 screen?  
 3 THE COURT: Why don't you start at the beginning of  
 4 that because the jury indicated they could see a portion of it  
 5 and then it cut out.  
 6 Thanks, Christy.  
 7 (Video played for the jury.)  
 8 MR. MCDOUGAL: Mr. Hess, can you please pause the  
 9 video when the officers are in view?  
 10 BY MR. MCDOUGAL: (Continuing)  
 11 Q. Now, Mr. Cleavenger's vehicle gets that far?  
 12 A. Can you repeat, sir?  
 13 Q. Do you see the hood of Mr. Cleavenger's vehicle in that  
 14 video?  
 15 A. Yes, sir.  
 16 Q. He's actually past that apartment building; right?  
 17 A. Yes, sir.  
 18 Q. And you had him parking on the other side of the apartment  
 19 building on the approach.  
 20 A. I did, sir.  
 21 Q. So he's way past that?  
 22 A. Yes, sir.  
 23 THE COURT: Counsel, to be certain, do the two of you  
 24 want to point out exactly where Cleavenger's vehicle was  
 25 parked? There's two vehicles.

1 MR. MCDOUGAL: It's not parked yet. That's my point.  
 2 He's gone past the apartment building, and he's not parked yet.  
 3 THE COURT: So this is taken from Cleavenger's  
 4 vehicle?  
 5 MR. MCDOUGAL: Yes. That's his hood in the screen.  
 6 MR. HESS: Should I continue?  
 7 MR. MCDOUGAL: Yes. Continue.  
 8 BY MR. MCDOUGAL: (Continuing)  
 9 Q. Fair to say he parks somewhat close to where other people  
 10 who respond parked?  
 11 A. Yes, sir.  
 12 Q. Now, did you think that this call involved danger?  
 13 A. Possibly, sir.  
 14 Q. And it was danger to others that you were concerned about;  
 15 correct?  
 16 A. Danger to others. Danger to ourselves. Danger to the  
 17 people within the apartment or -- and, you know, within the  
 18 apartment.  
 19 Q. I don't have police training, but you have three police  
 20 officers there, and, under your testimony, you think there's  
 21 danger to others. If you think there's danger to others, why  
 22 are three police officers chatting?  
 23 A. We're standing by for Mr. Cleavenger to arrive because he  
 24 was the primary in that. And then we -- at that time we were  
 25 unarmed, so how we responded to disputes was we responded in

1 force with multiple officers.  
 2 Q. Well, there's three of you. If somebody had been hurt in  
 3 that interim, would you had been comfortable saying, "Well, we  
 4 were just outside chatting"?  
 5 A. No, sir.  
 6 Q. In fact, wasn't the husband of the woman who called in  
 7 outside smoking?  
 8 A. I don't recall, sir.  
 9 Q. In fact, didn't two RAs go in before you?  
 10 A. I don't recall, sir.  
 11 Q. You don't recall two RAs being there when you got there  
 12 and then complaining that you guys were outside and didn't come  
 13 in?  
 14 A. Sir, the call occurred several years ago, and I don't  
 15 recall.  
 16 Q. You recall a lot of other details. Is there a reason?  
 17 A. I don't have a reason, sir.  
 18 Q. I want to ask you about another incident. Do you remember  
 19 an incident in a parking lot where there was a woman who had a  
 20 concealed weapons permit?  
 21 A. I do, sir.  
 22 Q. Yesterday defense counsel, in open argument, said there is  
 23 no evidence that Sergeant Cameron was told that the woman had a  
 24 gun at the time. Did you tell Sergeant Cameron -- did you see  
 25 or hear Mr. Cleavenger telling Sergeant Cameron that night that

1 the woman had a gun?  
 2 A. I don't recall, sir.  
 3 MR. MCDUGAL: Okay. Mr. Hess, could you please play  
 4 page 104, line 16. Clip one.  
 5 THE COURT: What exhibit number again, Counsel?  
 6 MR. MCDUGAL: This is from his deposition.  
 7 THE COURT: From the deposition. What is the  
 8 page and line number?  
 9 MR. MCDUGAL: Page 104, line 16 to page 105, line 1,  
 10 and we can submit a court exhibit that has the testimony so  
 11 that --  
 12 THE COURT: Page 104, line 16 to what?  
 13 MR. MCDUGAL: To 105, line 1.  
 14 THE COURT: Line what?  
 15 MR. MCDUGAL: 1.  
 16 THE COURT: Is that sufficient for the record?  
 17 Okay. Counsel, please.  
 18 MR. MCDUGAL: Okay.  
 19 (Video played for the jury.)  
 20 THE COURT: Counsel?  
 21 MR. MCDUGAL: Yes, Your Honor.  
 22 BY MR. MCDUGAL: (Continuing)  
 23 Q. I want to ask you about have you ever heard a term  
 24 involving a bowl used at the university?  
 25 A. Yes, sir.

1 Q. And what was it?  
 2 A. I heard the term "bowl of dicks" used, sir.  
 3 Q. Where did the term "bowl of dicks list" come from?  
 4 A. Officer Michael Drake, sir.  
 5 THE COURT: Officer who?  
 6 THE WITNESS: Former officer. He's now a dispatcher.  
 7 Michael Drake.  
 8 THE COURT: Michael Drake. Thank you.  
 9 BY MR. MCDUGAL: (Continuing)  
 10 Q. Not to -- was it technically a big bowl of dicks, sir?  
 11 A. It was never called a "bowl of dicks list," sir. It  
 12 was -- it was referred to as "the list," sir.  
 13 THE COURT: As the what?  
 14 THE WITNESS: The list.  
 15 THE COURT: I want you to say that distinctly again.  
 16 Please pull the microphone closer.  
 17 THE WITNESS: The list was never referred to as the  
 18 "bowl of dicks list." It was always called "the list." The  
 19 "bowl of dicks" term was used over and over and over by a  
 20 former officer named Michael Drake.  
 21 BY MR. MCDUGAL: (Continuing)  
 22 Q. Well, I think your earlier answer was a little different,  
 23 but so be it.  
 24 THE COURT: Just a moment. Counsel, that's  
 25 argumentative.

1 MR. MCDUGAL: Sorry.  
 2 THE COURT: Ladies and gentlemen, we'll strike that  
 3 comment. It's inappropriate.  
 4 BY MR. MCDUGAL: (Continuing)  
 5 Q. Was -- were people who were told that they should eat a  
 6 big bowl of dicks put on the list?  
 7 MS. COIT: Object. Assumes facts.  
 8 THE COURT: Overruled.  
 9 THE WITNESS: I don't know, sir.  
 10 BY MR. MCDUGAL: (Continuing)  
 11 Q. Where did the term come from?  
 12 A. Lieutenant Lebrecht had mentioned it once, and it was --  
 13 and the context was -- he was talking about one of his former  
 14 departments in Sacramento County, but I only had heard the term  
 15 once from him.  
 16 Q. Now, after -- after Spencer View, there was a callout by  
 17 Mr. Cleavenger involving a knife. Do you recall that?  
 18 A. No, sir.  
 19 Q. Do you recall a fillet knife; a suspicious person had a  
 20 knife?  
 21 A. The call that came out was called in by a person at the  
 22 Baker Center, and it was a possible unauthorized use of a  
 23 vehicle or somebody breaking into a vehicle.  
 24 Q. Did Mr. Cleavenger warn you about the knife?  
 25 A. Negative, sir.

1 MR. MCDUGAL: Mr. Hess, can you play the audio?  
 2 THE COURT: Well, what page is it again, Counsel? Is  
 3 there a transcript?  
 4 MR. MCDUGAL: This is an audio of an actual event.  
 5 THE COURT: The court reporter needs a record of  
 6 what's being played because she may not be able to take this  
 7 down. Give me some indication of a page number or line number.  
 8 MR. MCDUGAL: What's the exhibit number?  
 9 MR. HESS: The exhibit number is 130.  
 10 THE COURT: 130.  
 11 MR. HESS: It's dispatch.  
 12 THE COURT: Exhibit 130. And how would we reference  
 13 this? This is the entire Exhibit 130?  
 14 MR. MCDUGAL: Entire Exhibit 130. A portion of it  
 15 is being played.  
 16 THE COURT: And is there a line designation of any  
 17 time?  
 18 MR. MCDUGAL: Unfortunately, we don't.  
 19 MR. HESS: We're playing the whole thing?  
 20 THE COURT: Well, then I'll ask the court reporter to  
 21 do your best to take this down. Counsel at the recess will  
 22 give you that so she has a record.  
 23 Counsel, you may continue.  
 24 (Audio was played for the jury and transcribed, according to  
 25 the quality of the audio, as follows:)



1 (Inaudible.)  
 2 Bonnie Franklin Magnet.  
 3 This is (inaudible) should be bald or super short hair  
 4 with a mustache, and a goatee type of thing. And the facial  
 5 hair should be brown.  
 6 I copy.  
 7 (Inaudible) ash Fifteen.  
 8 (Inaudible.)  
 9 He's got prior for robbery.  
 10 I copy.  
 11 Ocean 5929, an EPA hair has been located for a subject  
 12 matching that description. (Inaudible.) He pulled a knife on  
 13 another subject.  
 14 I copy.  
 15 (Inaudible.)  
 16 Fifteen.  
 17 (Inaudible.)  
 18 (End of audio.)  
 19 MR. MCDOUGAL: That's sufficient, Mr. Hess.  
 20 BY MR. MCDOUGAL: (Continuing)  
 21 Q. Did you recognize that voice?  
 22 A. Yes, sir.  
 23 Q. It was Mr. Cleavenger's voice?  
 24 A. Yes, sir.  
 25 Q. Was there anything inappropriate about that callout?

1 A. No, sir.  
 2 Q. And when you went to this callout, how did you respond ?  
 3 A. I responded like I was looking for a suspicious person. I  
 4 pulled into the parking lot where he was last seen. I observed  
 5 the subject in the -- in a vehicle and made contact with him,  
 6 sir.  
 7 Q. You pulled up right to where he was, didn't you?  
 8 A. I was -- pulled into the parking lot. I didn't see him  
 9 when I had pulled in, sir.  
 10 Q. Why didn't you park away from where he was?  
 11 A. Because I didn't know he was still there, sir.  
 12 Q. But that's where you were told he was?  
 13 A. I was told that, but I didn't know he was still there.  
 14 And it's a parking lot of approximately a block long, so I was  
 15 driving through to see if he was still there, sir.  
 16 Q. Thank you. One more. I'd like to show the video of the  
 17 response.  
 18 MR. HESS: This is 128.  
 19 THE COURT: Exhibit 128. And is there a portion of  
 20 this video being shown or the entire video? Just so my court  
 21 reporter knows.  
 22 MR. HESS: I believe it's a portion. About the first  
 23 five minutes. All right.  
 24 THE COURT: If you can take it, do so; if not, we'll  
 25 mark that for the records.

1 All right, Counsel.  
 2 (Video Exhibit 128 played for the jury.)  
 3 THE COURT: The record should reflect there's no  
 4 audio, so the court reporter doesn't need to take that.  
 5 (Video was played for the jury and transcribed, according to  
 6 the quality of the audio, as follows:)  
 7 (Various inaudible portions throughout.)  
 8 Get your pepper spray.  
 9 Get on the ground. Get on the ground.  
 10 He's got a knife. We're going shotgun through the parking  
 11 lot. He's got a knife.  
 12 Get on the ground. Get on the ground.  
 13 We're going -- get on the ground. He's going towards --  
 14 he's got blue shirt, black jeans.  
 15 Get on the ground. Get on the ground. Get on the ground.  
 16 He's got a knife. He's got a blue shirt and black jeans.  
 17 (Inaudible.)  
 18 He's on a bike. He's going down an alley towards 11th  
 19 wearing blue a blue, striped shirt and dark pants. He's got  
 20 sunglasses, bald head.  
 21 (End of video.)  
 22 THE COURT: I'll have the record reflect the last  
 23 portion did have some audio on it. Thank you, Counsel.  
 24 BY MR. MCDOUGAL: (Continuing)  
 25 Q. What was the last direction of travel?

1 A. Southbound.  
 2 Q. And at some point did you have a knife pulled on you?  
 3 A. Yes, sir.  
 4 Q. And at what point was that?  
 5 A. When he first took off and ran out of view of the camera ,  
 6 towards the building, he had pulled a knife on us then.  
 7 MR. MCDOUGAL: That's all I have. Thank you.  
 8 THE COURT: Cross-examination.  
 9  
 10 CROSS-EXAMINATION  
 11 BY MS. COIT:  
 12 Q. Mr. Hermens, hi. What is your current position at UOPD?  
 13 A. I'm currently a sworn police officer.  
 14 Q. And have you gone through the police academy?  
 15 A. I have.  
 16 Q. When did you go through the police academy?  
 17 A. I went through, starting the end of January, and I  
 18 graduated in May of this year.  
 19 Q. Did you go through a field training program after that?  
 20 A. I currently am in a field training program with the Lane  
 21 County Sheriff's Office.  
 22 Q. What does that field training program entail?  
 23 A. It entails -- I ride with a coach, and I take primary on  
 24 all the calls. And I'm scored on my progress during my time  
 25 with the county.

1 MS. COIT: Your Honor, before I get further, I just  
 2 want to remind the court that I'm taking this witness as a  
 3 direct witness out of order.  
 4 THE COURT: All right. Let me remind the jury that  
 5 in a civil matter, in a civil case, either party can call  
 6 witnesses who may, in a sense, you believe, be favorable to  
 7 their side, but a party can call an adverse witness, a party  
 8 that would normally be testifying what you would think for the  
 9 other side. It's a little peculiar. So in an effort to save  
 10 time, this witness would have been called during the  
 11 defendants' case, and the defendant now is going to take this  
 12 witness on direct examination as if this witness was being  
 13 called a couple of days from now when the defendant presents  
 14 their case. It's an effort to save time.  
 15 Counsel?  
 16 MS. COIT: All right. Thank you.  
 17 BY MS. COIT: (Continuing)  
 18 Q. Were you finished with your answer about the field  
 19 training program?  
 20 A. No, ma'am. So what I do also with the county is they send  
 21 me to training as well, and they -- basically they're training  
 22 me from the ground up to be a police officer and to be able to  
 23 function on my own and to take calls on my own.  
 24 Q. Did you go through a field training program at the  
 25 University of Oregon Department of Public Safety?

1 A. Yes, ma'am.  
 2 Q. Who was in charge of that program at that time?  
 3 A. I don't recall.  
 4 Q. Okay. It wasn't any of the defendants here today, though;  
 5 correct?  
 6 A. No, ma'am.  
 7 Q. How would you compare the field training program you're  
 8 going through now to be a police officer to the one you went  
 9 through as a public safety officer at the university?  
 10 A. The university one I wouldn't really even call a field  
 11 training program. It wasn't in-depth like the county one. I  
 12 didn't get the full law enforcement experience.  
 13 Basically, I spent a lot of time making -- unlocking  
 14 doors, locking doors. I made a few contacts, but it's nothing  
 15 like the county. I didn't do traffic stops. I didn't go to  
 16 domestic disputes. It -- there's a huge difference in the --  
 17 or in the training program at the U of O and in the training  
 18 program at the county.  
 19 Q. And since, the University of Oregon became a police  
 20 department with Chief McDermid as the chief. They've  
 21 implemented this policy that you go into actual field training  
 22 programs outside of the department, correct, the one you're in  
 23 now?  
 24 A. That's correct.  
 25 Q. And you feel better trained, would you say?

1 A. Yes, ma'am.  
 2 Q. I just want to show you part of your deposition.  
 3 Well --  
 4 MR. MCDUGAL: Objection. Leading.  
 5 MS. COIT: Well, I'll go back.  
 6 BY MS. COIT: (Continuing)  
 7 Q. You were asked some questions about your deposition  
 8 testimony regarding -- excuse me -- Sergeant Cameron being  
 9 informed by Mr. Cleavenger that the woman in the parking lot  
 10 had a gun. Do you recall that?  
 11 A. Yes, ma'am.  
 12 Q. Okay. Do you recall at that same deposition clarifying  
 13 your testimony at one point?  
 14 A. Yes, ma'am.  
 15 Q. And can you explain to the jury what it was that you  
 16 clarified?  
 17 A. I clarified that Sergeant Cameron found out about the  
 18 firearm after the entire incident took place.  
 19 Q. Okay. And what did you describe? How would you --  
 20 sitting here today, how would you describe Sergeant Cameron's  
 21 reaction when he found out that Mr. Cleavenger had transported  
 22 the woman with a loaded gun?  
 23 A. Sergeant Cameron was in shock because it was a complete  
 24 officer safety issue to transport somebody with a loaded  
 25 firearm in your patrol vehicle.

1 Q. Just to be clear, you clarified that testimony in your  
 2 deposition; correct?  
 3 A. Yes, ma'am.  
 4 Q. And Mr. McDougal didn't show you that part of your  
 5 transcript, did he?  
 6 A. No, ma'am.  
 7 Q. Did you work with Mr. Cleavenger when he was at the  
 8 Department of Public Safety?  
 9 A. Yes, ma'am. I worked with him on graveyard and swing  
 10 shift.  
 11 Q. And about how long would you say you worked with him? How  
 12 many months?  
 13 A. I don't know, ma'am.  
 14 Q. Was it close to a year?  
 15 A. It could have been a year. Maybe a little more.  
 16 Q. Did you work with him enough to develop an opinion about  
 17 his officer safety skills?  
 18 A. Yes, ma'am.  
 19 Q. In your opinion, was Mr. Cleavenger a safe officer?  
 20 A. No, ma'am.  
 21 Q. In your opinion, was he an asset to the department at that  
 22 time?  
 23 A. He was another -- he was another body, which was good, but  
 24 his officer safety skills, I thought it was kind of -- it was a  
 25 hindrance to other officers. It was an officer safety issue.

1 Q. Can you explain -- explain for us what you base that  
 2 opinion on. What did you personally observe with regard to  
 3 Officer Cleavenger and his skills and his performance that gave  
 4 you concern about his safety skills?  
 5 A. There was an incident that took place on Alder between  
 6 11th and 12th in front of a pizza parlor called Sy's. I had  
 7 contacted an intoxicated disorderly subject that was  
 8 emotionally disturbed, and I tried to conduct a welfare check  
 9 on the subject. The subject was hostile and uncooperative and  
 10 didn't want assistance, so I cleared.  
 11 About right after I cleared, Officer Cleavenger showed up  
 12 at the location and contacted the subject. And right as I  
 13 was -- or I had advised Officer Cleavenger that the subject was  
 14 uncooperative and was emotionally disturbed. I responded back  
 15 to the location as Mr. Cleavenger was putting the subject in  
 16 the back of his patrol vehicle unhandcuffed.  
 17 Q. Do you recall speaking to Mr. Cleavenger over the radio  
 18 about that subject while he had him in his patrol car?  
 19 A. Yes, ma'am. I advised him over the radio that the subject  
 20 was uncooperative.  
 21 Q. Do you recall Mr. Cleavenger's response?  
 22 A. I don't, ma'am.  
 23 Q. Did you report that incident to anyone?  
 24 A. I believe I told the supervisor about it, but I don't  
 25 recall which supervisor.

1 Q. But you do recall reporting it to a supervisor?  
 2 A. Yes, ma'am.  
 3 Q. Were you ever with Mr. Cleavenger when he initiated  
 4 contacts with people on campus?  
 5 A. Yes, ma'am.  
 6 Q. How would you describe his initial approach to people?  
 7 A. It was a -- Mr. Cleavenger's approach was a typical  
 8 approach when you contact somebody. It's like, "Hi, I'm  
 9 Officer Cleavenger with University of Oregon" -- well, at the  
 10 time it was Department of Public Safety, but what -- once the  
 11 contact was made, I felt Mr. Cleavenger became too comfortable  
 12 with the situation and kind of let his guard down.  
 13 Q. Why is that a concern to you?  
 14 A. It's a concern because you let your guard down and the --  
 15 there's a lot of former convicts or people that we've contacted  
 16 that have been in prison, and what they look for is weaknesses  
 17 in people. And if you let your guard down, the person is going  
 18 to take advantage of you, and somebody is going to get hurt.  
 19 Q. All right. Aside from the officer safety issues that you  
 20 observed with Mr. Cleavenger, did you observe any behavior that  
 21 gave you concern about his judgment?  
 22 A. Yes, ma'am.  
 23 Q. Can you give us examples of that?  
 24 MR. MCDUGAL: Your Honor, I object unless it was  
 25 communicated to somebody.

1 THE COURT: Sorry. I didn't hear you.  
 2 MR. MCDUGAL: I object unless he communicated to  
 3 some of the defendants.  
 4 THE COURT: Unless he communicated -- I couldn't hear  
 5 the last portion. I apologize. You're going to have to pull  
 6 the microphone closer.  
 7 MR. MCDUGAL: I object unless this witness  
 8 communicated it to one of the defendants. It's not relevant.  
 9 THE COURT: Sustained.  
 10 Where's the foundation, Counsel?  
 11 BY MS. COIT: (Continuing)  
 12 Q. Some of the incidents that caused you to question  
 13 Officer Cleavenger's judgment, were either supervisors also  
 14 there when you communicated to your supervisors about what you  
 15 observed?  
 16 A. Yes, ma'am.  
 17 Q. Can you describe for us one of the incidents that you  
 18 described -- that you reported to a supervisor?  
 19 MR. MCDUGAL: Same objection.  
 20 THE COURT: Overruled.  
 21 BY MS. COIT: (Continuing)  
 22 Q. You can answer.  
 23 A. Yes, ma'am. One incident, in particular, was we went to  
 24 breakfast one morning at Addi's. Addi's is a diner that opens  
 25 probably around 4:00 in the morning. And we used to go as a

1 patrol team, and we went in one morning, and Mr. Cleavenger  
 2 arrived in full uniform. And when he walked in, he had a  
 3 bandanna over his face and a machete down the back of his  
 4 uniformed shirt. And he was reaching back with one of his  
 5 hands, grabbing the machete, and acting like he was a ninja.  
 6 The people in the restaurant, when he walked in and did  
 7 this, looked shock. I was shocked and embarrassed, and I let  
 8 my supervisor know of the incident.  
 9 Q. So you had been to this restaurant before?  
 10 A. Yes, ma'am.  
 11 Q. On other occasions at that restaurant, had you seen  
 12 members of the Springfield Police Department also gathering  
 13 there?  
 14 A. Yes, ma'am.  
 15 Q. In your opinion, had officers of the Springfield Police  
 16 Department been there, what are the possibilities that could  
 17 have happened?  
 18 MR. MCDUGAL: Objection. Speculative.  
 19 THE COURT: Overruled. You can testify.  
 20 THE WITNESS: They -- based on the situation,  
 21 Mr. Cleavenger would have probably been taken down at gunpoint .  
 22 BY MS. COIT: (Continuing)  
 23 Q. You reported that incident to a supervisor?  
 24 A. Yes, ma'am.  
 25 Q. Why did you report that?

1 A. Because I thought it was a serious lack of judgment on  
 2 Mr. Cleavenger's part that, one, it made our department look  
 3 bad because he was in full uniform; and, two, it was very  
 4 unprofessional.  
 5 Q. Did anyone at the restaurant, anyone from your group, that  
 6 you heard, speak to Mr. Cleavenger about what he was doing at  
 7 that point?  
 8 A. I know Officer -- excuse me, Officer Adam Lillengreen, he  
 9 told Cleavenger he's lucky there weren't Springfield police  
 10 officers in there at the time, and he told Mr. Cleavenger that  
 11 he would have left if there were. Because at that time  
 12 Officer Lillengreen was a reserve officer with the  
 13 Springfield -- excuse me, with the Springfield Police  
 14 Department.  
 15 Q. What was Mr. Cleavenger's response?  
 16 A. I don't recall what he said.  
 17 Q. Was there another incident that you reported to  
 18 supervisors about an ESPN GameDay?  
 19 A. Yes. Actually, the supervisors were present at this  
 20 incident.  
 21 Q. Can you tell the jury about that?  
 22 A. So we have ESPN GameDay come to U of O every now and then,  
 23 and, during this incident, Mr. Cleavenger -- thank you --  
 24 Mr. Cleavenger was in full uniform and acting in the capacity  
 25 as a public safety officer. He found a pair of angel wings and

1 put them on and found two cans of beer and held them up and  
 2 posed for our local newspaper photographer and let the  
 3 photographer take several photographs of him.  
 4 Q. All right. Have you ever observed -- while on shift with  
 5 Mr. Cleavenger, observed him acting inappropriate toward female  
 6 students?  
 7 A. Yes, ma'am.  
 8 Q. Can you -- did you report that to a supervisor?  
 9 A. Yes, ma'am.  
 10 Q. Can you describe for us what you observed?  
 11 A. We have a gazebo and a bike path that runs along the north  
 12 side of campus. We were on patrol in the area, and there was a  
 13 group of females that were walking in front of us, and as they  
 14 passed -- they were a ways away. Mr. Cleavenger jumped out and  
 15 started doing pelvic thrusts in their direction. And I did  
 16 report that to a supervisor.  
 17 Q. All right. Were you on the same shift as Mr. Cleavenger  
 18 when he was going through his field training program?  
 19 A. Yes, ma'am.  
 20 Q. Who was his field training officer?  
 21 A. Officer Michael Drake.  
 22 Q. Did anything that you observed regarding this field  
 23 training program with Mr. Cleavenger seem unusual to you?  
 24 A. Yes, ma'am.  
 25 Q. Tell us about that.

1 A. It seemed like Mr. Cleavenger and Mr. Drake spent a lot of  
 2 time in dispatch and a lot of time responding to the Eugene  
 3 Police Department calls outside of the campus boundaries  
 4 instead of staying on campus like we're supposed to.  
 5 Q. Did you become aware at some point that Mr. Drake and  
 6 Mr. Cleavenger were social friends, personal friends?  
 7 A. Yes, ma'am.  
 8 Q. In your opinion, is it a good idea for a field training  
 9 officer and his trainee to become personal friends?  
 10 A. No, ma'am. It's a conflict of interest.  
 11 Q. Why is that?  
 12 A. Because if you become friends, you lack the -- or you  
 13 don't provide the necessary training to the person you're  
 14 coaching, and you give them favorable grades instead of grading  
 15 them based on what they're doing. So you let their problems  
 16 pass without dealing with the problem.  
 17 Q. During the time you were on the same shift as  
 18 Mr. Cleavenger, who was your supervisor?  
 19 A. Lieutenant Lebrecht, Sergeant Cameron, and  
 20 Sergeant Bechdolt.  
 21 Q. Do you have an opinion of Sergeant Cameron as a  
 22 supervisor?  
 23 A. I think -- I would say Mr. Cameron -- or Sergeant Cameron  
 24 was like a drill instructor. He was hard, but it was to make  
 25 you a better person and a better officer.

1 Q. In your opinion, from your personal observations with  
 2 Sergeant Cameron, did he treat all of you the same?  
 3 A. Yes, ma'am.  
 4 Q. He was hard on all of you?  
 5 A. Yes, ma'am.  
 6 Q. Did he provide feedback to you?  
 7 A. Yes, ma'am. After every call.  
 8 Q. Did you ever witness Sergeant Cameron singling out  
 9 Mr. Cleavenger?  
 10 A. No, ma'am.  
 11 Q. Did you ever witness Sergeant Cameron being unfair to  
 12 Mr. Cleavenger?  
 13 A. No, ma'am.  
 14 Q. What are your thoughts on Lieutenant Lebrecht as a  
 15 supervisor?  
 16 A. I think Lieutenant Lebrecht is a very good supervisor.  
 17 Lieutenant Lebrecht strives to make officers better people and  
 18 better officers.  
 19 Q. Did you ever have conversations with Lieutenant Lebrecht  
 20 about your concerns with Officer Cleavenger?  
 21 A. Yes, ma'am.  
 22 Q. From those conversations, did you form that opinion that  
 23 Lieutenant Lebrecht wanted to help Mr. Cleavenger succeed?  
 24 A. Yes, ma'am.  
 25 Q. Why do you say that?

1 A. Because Lieutenant -- I've had problems, and  
 2 Lieutenant Lebrecht has assisted me through my problems and --  
 3 by educating me and working with me to make me a better  
 4 officer, and I've seen Lieutenant Lebrecht do that with other  
 5 officers. And I know Lieutenant Lebrecht wanted to help  
 6 Officer Cleavenger succeed and make him a better person and a  
 7 better officer.  
 8 Q. All right. At some point during your time working with  
 9 Officer Cleavenger -- excuse me -- Mr. Cleavenger, did you stop  
 10 calling him for backup?  
 11 A. Yes, ma'am.  
 12 Q. And tell us why you made that decision.  
 13 A. Because Officer Cleavenger's officer safety skills were  
 14 not good. He was too lax and to the point that his own field  
 15 training Mr. Drake said that Officer Cleavenger needed to --  
 16 MR. MCDUGAL: Objection. Hearsay.  
 17 THE WITNESS: What's that?  
 18 THE COURT: Sustained.  
 19 BY MS. COIT: (Continuing)  
 20 Q. You can't testify to what other people have told you.  
 21 A. Okay. Yes, ma'am. Officer Cleavenger -- or  
 22 Mr. Cleavenger became lax in officer safety and was too  
 23 relaxed.  
 24 Q. So would you call different officers to back you up?  
 25 A. Yes, I used our security officers as backup or as cover.

1 Q. Do you recall a period of time when Mr. Cleavenger was  
 2 assigned to do parking duties?  
 3 A. Yes, ma'am.  
 4 Q. Now, during that time period were you still on the same  
 5 shift with him?  
 6 A. Yes, ma'am.  
 7 Q. When he was assigned to the parking duties, did he engage  
 8 in any conduct that you observed that you found concerning?  
 9 A. Yes, ma'am.  
 10 Q. Did you report any of that conduct to a supervisor?  
 11 A. Yes, I did.  
 12 Q. All right. Can you tell us what that conduct was?  
 13 A. On several occasions, Mr. Cleavenger called in different  
 14 calls. For an example, one that he called in was a suspicious  
 15 subject over at our old -- it's our parking and transportation  
 16 building at Franklin and Walnut, but before it became that it  
 17 was just a vacant building, and I went there and contacted a  
 18 female sitting well away from the building, talking on her cell  
 19 phone, and he reported her as a suspicious person -- a  
 20 suspicious person.  
 21 Q. All right. Well, why did you make the decision to report  
 22 these calls to a supervisor? What was your motivation?  
 23 A. I felt Mr. Cleavenger was trying to set us up because they  
 24 were calls that had no merit. They were calls that were what I  
 25 described as bad calls. And there was no crimes committed.

1 There was nothing suspicious about them. But they were called  
 2 in as crimes in progress.  
 3 Q. Did you -- don't tell me what you said, but did you have  
 4 discussions with the other officers regarding these callouts  
 5 with Mr. Cleavenger?  
 6 A. Yes, ma'am.  
 7 Q. From those discussions, did you form the opinion that the  
 8 other officers also felt that he was trying to set them up?  
 9 MR. MCDUGAL: Objection. Hearsay.  
 10 THE COURT: Overruled.  
 11 THE WITNESS: Yes, ma'am.  
 12 THE COURT: Counsel, the exception is it shows his  
 13 conduct and his reason for reporting.  
 14 BY MS. COIT: (Continuing)  
 15 Q. Did you report that suspicion that Mr. Cleavenger was  
 16 trying to set his fellow officers up to a supervisor?  
 17 A. Yes, ma'am.  
 18 Q. Do you recall who you reported that to?  
 19 A. I talked to now Lieutenant Andy Bechdolt. He was a  
 20 sergeant at the time.  
 21 Q. All right. I want to talk for a minute about briefings,  
 22 the briefings for graveyard shift. Can you describe for the  
 23 jury what is a typical -- what is a briefing, in your opinion?  
 24 A. A typical briefing, it lasts 30 minutes to 45 minutes. We  
 25 discuss the daily events, officer safety issues. It gives us a

1 chance to kind of build camaraderie with each other. We joke  
 2 and we relieve stress.  
 3 Q. All right. Is part of the briefing spent talking about  
 4 work?  
 5 A. Oh, the majority of the briefing is spent talking about  
 6 work.  
 7 Q. Do you feel it's important during these briefings at some  
 8 point to be able to joke and vent with your fellow officers?  
 9 A. Yes, ma'am.  
 10 Q. Why is that?  
 11 A. Because the line of work we do is stressful. We see the  
 12 darkest of dark things, and we have to have an outlet, and you  
 13 can't take it home to your families. So it's good to be able  
 14 to joke and talk with each other because we deal with the same  
 15 thing as a team.  
 16 Q. And during the briefings for graveyard shift, was  
 17 Mr. Cleavenger present during the majority of those?  
 18 A. Yes, ma'am.  
 19 Q. Okay. So you were questioned about discussion s about a  
 20 list. Do you recall that?  
 21 A. Yes, ma'am.  
 22 Q. All right. Can you just give me the context for how you  
 23 believe this list came to be discussed at these briefings?  
 24 A. Basically, when we were venting about issues, one of the  
 25 officers, Officer LeRoy, decided to start taking note of what

1 we vented about and created what we called "the list."  
 2 Q. Did you ever see this list?  
 3 A. No, ma'am.  
 4 Q. Where was it? Where -- did Officer LeRoy actually write a  
 5 list down?  
 6 A. He told me he had it on his cell phone.  
 7 Q. But you have never seen a copy of it?  
 8 A. No, ma'am.  
 9 Q. Well, I take that back. Before this lawsuit was filed,  
 10 did you ever see a copy of that?  
 11 A. No.  
 12 Q. Were these discussions about things at briefings that  
 13 Officer LeRoy would put on to the list, were they ever  
 14 malicious, in your opinion?  
 15 A. No, ma'am. It was just a way of venting.  
 16 Q. Did Mr. Cleavenger contribute to these conversations?  
 17 A. Yes, ma'am.  
 18 Q. During the conversations at briefings, did you ever hear  
 19 the name of Ann Aiken discussed at these briefings?  
 20 A. No, ma'am.  
 21 Q. Did you ever hear anyone at these briefings say "Put Ann  
 22 Aiken on the list"?  
 23 A. No, ma'am.  
 24 Q. How about Lauren Regan?  
 25 A. No, ma'am.

1 Q. Before this lawsuit was filed and you were deposed, did  
 2 you even know who Federal Judge Ann Aiken was?  
 3 A. No, ma'am.  
 4 Q. Did you ever, before this lawsuit was filed, heard this  
 5 list referred to as "the bowl of dicks list"?  
 6 A. No, ma'am.  
 7 Q. Now, you testified earlier that Lieutenant Lebrecht spoke  
 8 about a phrase -- or, excuse me, you said he used the term and  
 9 he brought that with him from his department in California. Do  
 10 you recall that testimony?  
 11 A. Yes, ma'am.  
 12 Q. When you say the term, I want you to explain what you're  
 13 talking about. What is the term you're talking about?  
 14 A. A bowl of dicks.  
 15 Q. All right. And tell me how that was used, as best you  
 16 recall, by Lieutenant Lebrecht in that one instance.  
 17 A. I just remember him referring to a call, and the call was  
 18 a cluster, and it was like it was just a big bowl of dicks. It  
 19 was a way of him venting and saying that the call was a  
 20 cluster.  
 21 Q. Did you ever hear Lieutenant Lebrecht use that phrase  
 22 again?  
 23 A. No, ma'am.  
 24 Q. Did you ever hear Lieutenant Lebrecht use that phrase in  
 25 connection with the list that Officer LeRoy kept on his cell

1 phone?  
 2 A. Never, ma'am.  
 3 Q. Were there political jokes or venting that went back and  
 4 forth at these briefings?  
 5 A. Only in joking. It was from Officer Abbott.  
 6 Q. Officer Abbott?  
 7 A. Yes.  
 8 Q. Who's Officer Abbott?  
 9 A. Officer Abbott was a public safety officer who was on the  
 10 graveyard shift with us.  
 11 Q. Who did Officer Abbott joke with?  
 12 A. Lieutenant Lebrecht.  
 13 Q. And from your observations and hearing these jokes back  
 14 and forth, did you ever understand Lieutenant Lebrecht to be  
 15 expressing a serious political opinion?  
 16 A. No, ma'am.  
 17 Q. Who, in your observation, was the primary instigator of  
 18 these jokes?  
 19 A. It was Officer Abbott.  
 20 Q. Was anything you heard about these political jokes  
 21 offensive to you?  
 22 A. No, ma'am.  
 23 Q. Did you ever hear Officer Cleavenger complain to anyone  
 24 during briefing about these jokes?  
 25 A. No, ma'am.

1 Q. Did you ever see Lieutenant Lebrecht showing football  
 2 highlights of himself at a briefing?  
 3 A. No, ma'am.  
 4 Q. How about at any time? Did you ever see  
 5 Lieutenant Lebrecht showing football highlights?  
 6 A. No, ma'am.  
 7 Q. Have you ever been involved at briefings in other  
 8 departments?  
 9 A. Yes, ma'am.  
 10 Q. How would you compare -- well, tell us where those  
 11 briefings were.  
 12 A. I've been involved in briefings at the Lane County  
 13 Sheriff's Office and at the Eugene Police Department.  
 14 Q. Okay. So if you can, how would you compare briefings at  
 15 those departments with what went on at the briefings at UOPD ?  
 16 A. I compared the briefings at U of O PD is G-rated compared  
 17 to what goes on in the briefings at the sheriff's office and at  
 18 the Eugene Police Department.  
 19 Q. And these briefings, these discussions that the officers  
 20 have before going out to do their work on graveyard shift,  
 21 these are private; correct?  
 22 A. Yes, ma'am.  
 23 Q. No members of the public are there during these briefings ;  
 24 correct?  
 25 A. No, ma'am.

1 Q. I want to talk about the Spencer View call briefly. The  
 2 first one you were asked about, did you ever drive directly up  
 3 to the apartment at Spencer View before the call that  
 4 Mr. Cleavenger was dispatched on, do you recall that?  
 5 A. Yes, ma'am.  
 6 Q. And you did drive up directly to the apartment; correct?  
 7 A. That's correct.  
 8 Q. Were you talked to about that by a supervisor?  
 9 A. Yes, ma'am.  
 10 Q. And who was that?  
 11 A. I believe it was Lieutenant Lebrecht.  
 12 Q. And what were you counseled about?  
 13 A. I was told not to drive up to the front of apartments any  
 14 more or the front of any place, even during a cold call.  
 15 Q. And what was your response to that counseling?  
 16 A. I learned. I accepted it, and I accepted responsibility,  
 17 and I learned from my mistake.  
 18 Q. Now, channel three, the unrecorded channel, that's preset  
 19 in the officer's car; correct?  
 20 A. Yes, ma'am.  
 21 Q. So when you testified that you told Officer Cleavenger  
 22 to -- where the apartment was and that the woman was EDP, that  
 23 was on channel three; correct?  
 24 A. That's correct.  
 25 Q. And it was preset in his car; is that correct?

1 A. Yes, ma'am.  
 2 Q. So there would have been no reason for you to tell him  
 3 over channel one that you need to switch to channel three; is  
 4 that correct?  
 5 A. That's correct.  
 6 Q. All right. What exactly what is it -- what did you tell  
 7 him before the call?  
 8 A. I told Officer Cleavenger -- Mr. Cleavenger whether the  
 9 location of the -- or the location of the apartment and my --  
 10 basically told her -- or told him that the female in the  
 11 apartment was EDP, emotionally disturbed, based on my past  
 12 experience with her.  
 13 Q. In your opinion, was this an active call?  
 14 A. Yes, ma'am.  
 15 Q. And what makes you say that?  
 16 A. I believe the call was dispatched as a dispute, and the --  
 17 we hadn't been told by dispatch that the parties were  
 18 separated.  
 19 Q. So from what you were told from dispatch, did you form the  
 20 opinion that it was possible that the dispute was ongoing when  
 21 you arrived?  
 22 A. I don't recall. I don't remember the exact radio  
 23 transmission.  
 24 Q. Okay. Did you drive in front of the apartment when you  
 25 arrived?

1 A. No, ma'am.  
 2 Q. Where did you park?  
 3 A. I parked to the southeast, around the corner of the  
 4 apartment.  
 5 Q. All right. This was the video you were shown earlier. I  
 6 just want you to point out -- this might be the clip.  
 7 MS. COIT: I'll play that in a minute. Sorry.  
 8 BY MS. COIT: (Continuing)  
 9 Q. What is the responsibility of responding officers to a  
 10 call when someone else is dispatched as lead? What is your  
 11 common practice?  
 12 A. Common practice is we -- common practice is we stand by  
 13 until the primary officer gets there.  
 14 Q. And is that what you did in this situation?  
 15 A. Yes, ma'am.  
 16 Q. Was Mr. Cleavenger the primary officer?  
 17 A. Yes, ma'am.  
 18 Q. From where you were standing with the other officers, did  
 19 you believe you could be seen by the occupants of the  
 20 apartment?  
 21 A. No, ma'am, we had a large recycling area and several  
 22 vehicles in front of us -- or between us and the apartment, and  
 23 we were unable to be seen.  
 24 MS. COIT: I'm going to play the video that we saw  
 25 earlier. I'll move ahead here as we drive down the street.

1 Oh, too far.  
 2 This is the dash cam video from Officer Cleavenger's car,  
 3 just so -- this is Defense Exhibit 307, for the record.  
 4 (Video played for the jury.)  
 5 BY MS. COIT: (Continuing)  
 6 Q. Are you familiar with this street?  
 7 A. Yes, ma'am. It's Patterson and the intersection right  
 8 there is 18th.  
 9 Q. And what direction are the cars traveling?  
 10 A. Southbound.  
 11 Q. And where was the apartment that you were responding to?  
 12 A. The apartment is -- the complex is located at 2250  
 13 Patterson, and the apartment was located on the southwest side.  
 14 Q. And you informed Officer Cleavenger of that location?  
 15 A. That's correct.  
 16 Q. Was there an entrance to the north side of these  
 17 apartments?  
 18 A. There's a northern entrance on the east side. There's a  
 19 southern entrance on the east side as well.  
 20 Q. So is this the apartments?  
 21 A. Yes, ma'am.  
 22 Q. And right there, is that the entrance to the north?  
 23 A. Yes, ma'am.  
 24 Q. And, again, this is Officer Cleavenger's car we're looking  
 25 at? Is this the south entrance?

1 A. That's correct.  
 2 Q. Do you see your car in that picture?  
 3 A. Yes, ma'am.  
 4 Q. See if you can touch the screen and show us where the car  
 5 is there.  
 6 A. Okay.  
 7 Q. That position where your car is, can we see the apartment  
 8 that you're responding to?  
 9 A. No, ma'am.  
 10 Q. I want you to tell me when that apartment comes into view.  
 11 A. Right -- right now.  
 12 Q. All right. Which one of these two apartments is it?  
 13 A. I don't recall which one, but it's one of the bottom ones.  
 14 Q. Okay. Was it number 64, to your recollection?  
 15 A. Yes, ma'am.  
 16 Q. You were asked earlier when -- whether or not you had  
 17 placed a mark on where you thought Officer Cleavenger had  
 18 parked when he arrived. And, again, this is  
 19 Officer Cleavenger's car. Was that what you were referring to  
 20 when you thought that he had pulled over to park?  
 21 MR. MCDUGAL: Objection. Leading.  
 22 THE COURT: Overruled.  
 23 THE WITNESS: Yes, ma'am.  
 24 BY MS. COIT: (Continuing)  
 25 Q. And in your memory of where that apartment was in location

1 to where Officer Cleavenger pulled over, was he across from the  
 2 apartment?  
 3 A. Yes, ma'am.  
 4 Q. Okay. At some point after the Spencer View incident that  
 5 we just watched the video on, did Lieutenant Lebrecht or  
 6 Sergeant Cameron come and talk to you about your conduct that  
 7 day?  
 8 A. Yes, ma'am.  
 9 Q. Who was it?  
 10 A. Lieutenant Lebrecht.  
 11 Q. And what did he say to you?  
 12 A. He told me that --  
 13 MR. MCDUGAL: Objection. Hearsay.  
 14 THE COURT: Counsel, the exception?  
 15 MS. COIT: I'll rephrase.  
 16 BY MS. COIT: (Continuing)  
 17 Q. From what Lieutenant Lebrecht expressed to you at that  
 18 meeting, did you respond?  
 19 A. Yes, ma'am.  
 20 Q. What was your response?  
 21 A. I responded and told him the location of my vehicle, and  
 22 told him that I had dash cam video showing the location of my  
 23 vehicle.  
 24 Q. Now, when you told Lieutenant Lebrecht that there was dash  
 25 cam video of your location, from your observations, how did

1 Lieutenant Lebrecht appear?  
 2 A. He appeared surprised. Surprised.  
 3 Q. Did you show him the dash cam video?  
 4 A. I did show him the dash cam video.  
 5 Q. Did you receive any discipline as a result of that  
 6 incident?  
 7 A. No, ma'am.  
 8 Q. Did you take Lieutenant Lebrecht out to the apartment at  
 9 some point?  
 10 A. Yes, ma'am.  
 11 Q. And what was the purpose of that?  
 12 A. To show him the location of my vehicle compared to the  
 13 location of the apartment.  
 14 Q. Based on your experience working with Mr. Cleavenger and  
 15 observing his conduct while performing the duties of a public  
 16 safety officer, have you formed an opinion on whether or not he  
 17 took his job seriously?  
 18 A. Yes, ma'am, I have.  
 19 Q. And what is your opinion?  
 20 A. I formed the opinion that he didn't take the job at the  
 21 U of O seriously.  
 22 Q. All right. You were asked about this -- something  
 23 referred to as a Wild West group. Do you recall that?  
 24 A. Yes, ma'am.  
 25 Q. What was the time frame that that group was known or

1 called that?  
 2 A. Probably from about 2005, when I got hired, to 2007 or  
 3 2008.  
 4 Q. Who was the leader of this group?  
 5 A. It was former Sergeant Lonnie Engstrom.  
 6 Q. Was Sergeant Cameron a sergeant at that point?  
 7 A. No, ma'am.  
 8 Q. Was Casey Boyd part of this group?  
 9 A. No, ma'am.  
 10 Q. Who else was part of this group?  
 11 A. It was Sergeant Cameron, Lonnie Engstrom, Michael Drake,  
 12 and Lisa Larkin.  
 13 Q. Again, Sergeant Cameron was just an officer at that point ;  
 14 correct?  
 15 A. Yes, ma'am.  
 16 Q. Now, the incident that we saw the video of you confronting  
 17 the fellow that pulled the knife on you, you were asked about  
 18 your approach to that incident. Would you agree -- well, would  
 19 it have been safer for you to park your car on the street and  
 20 walk into that incident, or for you to remain in your car?  
 21 A. It would have been safer -- my approach, especially if he  
 22 was in a vehicle, because I have cover using the vehicle. If I  
 23 walked in just in the middle of the parking lot, I had no  
 24 cover.  
 25 Q. And, again, at this point in time, you're not armed;



1 correct?  
 2 A. I'm not armed, no, ma'am.  
 3 Q. Who was the female we saw with you on that call?  
 4 A. Former Officer Amanda Williams. Correction.  
 5 Amanda Hayles.  
 6 MS. COIT: Thank you, Officer.  
 7 THE COURT: Redirect?  
 8 MR. MCDOUGAL: Yes.  
 9  
 10 REDIRECT EXAMINATION  
 11 BY MR. MCDOUGAL:  
 12 Q. Let's start back with the Wild West group. So he wasn't  
 13 even a sergeant then; right?  
 14 A. No, sir.  
 15 Q. But your testimony was even before he was a sergeant he  
 16 was running a shift. That's what you said in the deposition;  
 17 correct?  
 18 A. Yes, sir.  
 19 THE COURT: We need to put that mic on. For some  
 20 reason we're not picking up counsel's voice.  
 21 MR. MCDOUGAL: Testing.  
 22 THE COURT: There we go.  
 23 BY MR. MCDOUGAL: (Continuing)  
 24 Q. You said you went out to Spencer View Apartments with  
 25 Lebrecht.

1 A. That's correct.  
 2 Q. You had a dash cam; right?  
 3 A. Yes, sir.  
 4 Q. Why did you go out there?  
 5 A. He wanted to see for himself where my vehicle was parked,  
 6 sir.  
 7 Q. Didn't the dash cam show that?  
 8 A. It did, sir.  
 9 Q. You said you were counseled or talked to about the first  
 10 trip to Spencer View, the one where you drove right up.  
 11 A. Yes, sir.  
 12 Q. Was that a cold call?  
 13 A. Yes, sir.  
 14 Q. Define a cold call for me.  
 15 A. A cold call is where an incident has occurred and is no  
 16 longer in progress.  
 17 Q. Give me -- can you give me an example?  
 18 A. An example is like somebody that got their bike stolen a  
 19 couple of hours before and then reported it several hours  
 20 later.  
 21 Q. Okay. If somebody was -- had just been attacked and you  
 22 were responding, would that be a cold call?  
 23 A. No, sir.  
 24 Q. Okay. Let me show you Exhibit 29 and see if that  
 25 refreshes your memory of when you were at Spencer View at the

1 time you were counseled.  
 2 MR. MCDOUGAL: Mr. Hess?  
 3 BY MR. MCDOUGAL: (Continuing)  
 4 Q. Is that your report?  
 5 A. Yes, sir.  
 6 Q. And does it refresh your memory for why you went there ?  
 7 A. Yes, sir.  
 8 Q. A woman had just been attacked?  
 9 A. Yes, sir.  
 10 Q. So it wasn't a cold call?  
 11 A. I believe there's more to the report, sir. And do you  
 12 have a second page?  
 13 Q. Sure.  
 14 MR. MCDOUGAL: Can you put up the second page,  
 15 Mr. Hess?  
 16 THE WITNESS: Can you repeat your question?  
 17 BY MR. MCDOUGAL: (Continuing)  
 18 Q. Just -- well, let me rephrase it. When you got there, the  
 19 woman was still shaking; right?  
 20 A. Yes, sir.  
 21 Q. When were you counseled about the way you responded to  
 22 that call? How long after it?  
 23 A. I don't recall, sir.  
 24 Q. A year and a half possibly?  
 25 A. I don't recall, sir.

1 Q. And was the dash cam video of that call looked at?  
 2 A. Not by me. It may have been looked at by my supervisors.  
 3 Q. Do you know if based on that call and the way you've  
 4 responded, do you know if Lieutenant Lebrecht pulled out all  
 5 your other dash cams to see how many times you had done it?  
 6 A. I don't know, sir.  
 7 Q. Going back to the other Spencer View incident, did you say  
 8 the parties were not separated at the time individuals were  
 9 responding?  
 10 A. I don't remember saying any of that, sir.  
 11 Q. Okay. I still -- can you give me some clarification on  
 12 the three people waiting outside and you think it's a dangerous  
 13 situation, how long would you have waited?  
 14 A. I don't know, sir.  
 15 Q. And let me, for the record, play all of your testimony  
 16 regarding whether or not Mr. Cleavenger told Mr. Cameron --  
 17 Sergeant Cameron about the fact that the lady had a gun. But  
 18 before I do that, I want to ask you a question.  
 19 In that deposition, was the procedure that Mr. Kafoury,  
 20 the younger, asked you questions, then there was a break, and  
 21 then your counsel asked you questions?  
 22 A. You mean during the deposition?  
 23 Q. Yes.  
 24 A. I believe so, but I don't recall.  
 25 Q. I'll play the clips before the break.

1 MR. MCDUGAL: Mr. Hess, can you replay clip one,  
 2 clip two, and clip three?  
 3 THE COURT: What exhibit number?  
 4 MR. MCDUGAL: This would be -- I'll give you the  
 5 page and line of the deposition.  
 6 THE COURT: What exhibit number? Is this just a  
 7 deposition?  
 8 MR. MCDUGAL: Yeah, it's a deposition.  
 9 MR. JASON KAFOURY: Give me those pages.  
 10 MR. MCDUGAL: Clip one is page 104, line 16, to page  
 11 105, line 1.  
 12 THE COURT: 104, line 16, to 105, line 1.  
 13 MR. MCDUGAL: Clip two is page 107, line 9 to line  
 14 13.  
 15 THE COURT: 107. 9 to 13.  
 16 MR. MCDUGAL: Clip three is page 127, line 16 to 20.  
 17 THE COURT: I'm sorry. 127.  
 18 MR. MCDUGAL: Line 16 through 20.  
 19 THE COURT: 16 through 20. Thank you.  
 20 MR. HESS: This is clip one.  
 21 (Video played to the jury.)  
 22 MR. HESS: Clip two.  
 23 (Video played to the jury.)  
 24 MR. HESS: This is clip three.  
 25 (Video played to the jury.)

1 MR. MCDUGAL: And, actually, clip three was part of  
 2 after the break.  
 3 Now play clip four, which was, again, after the break.  
 4 MR. HESS: Clip four is page 127, line 21 to  
 5 page 128, line 9.  
 6 THE COURT: Thank you.  
 7 (Video played for the jury.)  
 8 MR. MCDUGAL: And then further clarification by  
 9 Mr. Kafoury, page -- clip five, page 128, line 14, to page 129,  
 10 line 5.  
 11 THE COURT: 128 line what?  
 12 MR. MCDUGAL: 14 to 129, line 5.  
 13 THE COURT: Thank you.  
 14 (Video played for the jury.)  
 15 BY MR. MCDUGAL: (Continuing)  
 16 Q. Let's go with your clarification, just to be clear. That  
 17 means that Mr. Cleavenger had to leave, drop the woman off at  
 18 the hotel, and come back to that lot. You had to leave and  
 19 come back to that lot. And Mr. -- Sergeant Cameron had to show  
 20 up at that lot sometime later; correct?  
 21 A. We met -- we met at that lot after the contact was over  
 22 and discussed the incident, and that's when it was disclosed.  
 23 Q. So the records will show that everybody returned there?  
 24 MS. COIT: Objection. Argumentative.  
 25 THE COURT: Overruled.

1 BY MR. MCDUGAL: (Continuing)  
 2 Q. You would expect --  
 3 THE COURT: Overruled. You can answer that question.  
 4 The record will show --  
 5 THE WITNESS: I don't know what the record will show,  
 6 but we did meet up there and talked afterwards.  
 7 BY MR. MCDUGAL: (Continuing)  
 8 Q. Any reason why the records wouldn't show it?  
 9 A. The incident was over and the call -- the call was done,  
 10 so I don't know if we checked out afterwards or if we just  
 11 showed up and talked -- or Sergeant Cameron just showed up and  
 12 talked about it. I don't know if it's -- I couldn't tell you.  
 13 Q. What time did that shift end that day?  
 14 A. I don't recall, sir.  
 15 Q. What time does it normally end?  
 16 A. I don't recall if it was swing shift or graveyard.  
 17 Q. If it was swing shift, what time would it have ended?  
 18 A. 11:00 p.m., sir.  
 19 Q. Have you been trying to become a police officer for 10  
 20 years?  
 21 A. No, sir.  
 22 Q. How long have you tried to become a police officer?  
 23 A. I decided to make the change to become a police officer  
 24 about -- a few months ago -- or a few months prior to me  
 25 getting hired.

1 Q. Did you ever try other departments, is what I'm asking?  
 2 A. I tested just for the experience.  
 3 Q. How long ago was that?  
 4 A. I don't recall the date, but it's been several years,  
 5 except for the -- our department, when I got hired.  
 6 Q. Let me ask you about a few of the specific things you  
 7 talked about.  
 8 Now, you said that you saw Mr. Cleavenger doing pelvic  
 9 thrusts in a public space?  
 10 A. Yes, sir.  
 11 Q. You said that disturbed you?  
 12 A. I said -- I didn't say it disturbed me. I thought it was  
 13 unprofessional.  
 14 Q. Okay. Did you think that you were going to report this  
 15 incident when you saw it?  
 16 A. I said something about it because, like I said, sir, it's  
 17 unprofessional.  
 18 Q. Did you get the names of anybody who saw it?  
 19 A. I don't remember who else was with me, sir.  
 20 Q. Did you ask any of the students who might have seen it,  
 21 "What's your name? I would like to" -- you know?  
 22 A. I don't believe the students saw him. They were well  
 23 ahead of Mr. Cleavenger and I.  
 24 Q. Who do you think saw it?  
 25 A. I saw him, sir.

1 Q. And there's been a lot written about Mr. Cleavenger . Very  
 2 little left out of anything. Do you have any explanation for  
 3 why this pelvic thrust wouldn't be part of this record?  
 4 A. I don't know, sir.  
 5 Q. Let's talk about the angel wings incident for a second.  
 6 What time of day did that happen?  
 7 A. I don't recall what time, but it was either in the evening  
 8 or early morning.  
 9 Q. And were there thousands of students around, like it was  
 10 said in opening argument?  
 11 A. Yes, sir.  
 12 Q. At what time of night?  
 13 A. I don't know, sir.  
 14 Q. Do you know if Mr. Cleavenger knew the photographer?  
 15 A. I have no idea, sir.  
 16 Q. Would it surprise you to learn that there were Springfield  
 17 officers in Addi's restaurant when Officer Cleavenger went --  
 18 A. I --  
 19 Q. -- with the machete?  
 20 MS. COIT: Object. Assumes facts.  
 21 THE COURT: Well, you know, "would it surprise you."  
 22 Sustained.  
 23 MR. MCDOUGAL: Okay.  
 24 THE COURT: You can ask him if there were, if he saw  
 25 them, but "would it surprise you" is sustained.

1 BY MR. MCDOUGAL: (Continuing)  
 2 Q. Were there any Springfield officers in Addi's that night?  
 3 A. I didn't see any uniformed Springfield officers, sir, in  
 4 Addi's.  
 5 Q. How big of a place is it?  
 6 A. It's a small diner, sir.  
 7 Q. If they were there and you have a good memory, that's  
 8 something you could have observed?  
 9 A. Yes, sir.  
 10 Q. That's something you probably would have retained;  
 11 correct?  
 12 A. Yes, sir.  
 13 Q. You said -- I took the gist of your testimony to be that  
 14 Sergeant Cameron was a role model. Fair enough?  
 15 A. Fair enough.  
 16 Q. Okay. Why is he gone?  
 17 A. I don't know, sir.  
 18 Q. You've never heard of sexual harassment complaints against  
 19 Sergeant Cameron?  
 20 A. I have heard of them, sir.  
 21 Q. Tell me what you heard.  
 22 A. I just know they were filed. I don't know anything in  
 23 detail.  
 24 Q. Do you know, did the department fight to retain  
 25 Sergeant Cameron?

1 A. Can you say that again?  
 2 Q. Did the department fight to retain Sergeant Cameron , the  
 3 gentleman who was described as a role model?  
 4 A. I don't know what the department did, sir.  
 5 MS. COIT: Your Honor, I'll object to this line of  
 6 questioning as beyond the scope of my direct.  
 7 THE COURT: Overruled.  
 8 BY MR. MCDOUGAL: (Continuing)  
 9 Q. You talked about Mr. Cleavenger having a conflict of  
 10 interest because he was friends with someone. Do you recall  
 11 that?  
 12 A. Yes, sir.  
 13 Q. Okay. Is Lieutenant Morrow a friend of Sergeant Cameron ?  
 14 A. I have no idea, sir.  
 15 Q. No idea if they work out -- I'm sorry. It's  
 16 Lieutenant Lebrecht. My -- my apologies. A friend of  
 17 Lieutenant Morrow?  
 18 A. I have no idea, sir.  
 19 Q. How many times have you used pepper spray?  
 20 THE COURT: I'm sorry?  
 21 MR. MCDOUGAL: Has he used pepper spray.  
 22 THE WITNESS: A few times, sir.  
 23 BY MR. MCDOUGAL: (Continuing)  
 24 Q. How many times have you been in fights as a public safety  
 25 officer?

1 A. A few times, sir.  
 2 Q. How many times has Mr. Cleavenger used pepper spray , to  
 3 your knowledge?  
 4 A. I have no idea.  
 5 Q. How many fights has he ever been in?  
 6 A. I have no idea, sir.  
 7 Q. How many reports has he written?  
 8 A. I have no idea.  
 9 Q. Have you ever read any of his reports?  
 10 A. No, sir.  
 11 Q. Do you recall Officer LeRoy spending shifts with Lebrecht ?  
 12 A. Not whole shifts.  
 13 Q. Did he ever spend entire shifts with Lebrecht?  
 14 A. What had happened was Officer LeRoy had -- or LeRoy had  
 15 gotten disciplined for falling asleep in his vehicle. And what  
 16 the supervisors allowed us to do was to come in to station so  
 17 we didn't fall asleep and crash the vehicle, injure somebody,  
 18 and we were able to do that until we were able to wake up . And  
 19 this was on graveyard.  
 20 Q. What was it a list of?  
 21 A. Just a list, sir.  
 22 Q. Well, how would people know whether or not to put  
 23 something on it if they didn't know what it was a list of?  
 24 A. It was just a list. And it was Officer Leroy's decision  
 25 to add to the list.

1 Q. And in relation to the list, do you remember discussion of  
 2 the garden planting outside of the courthouse?  
 3 A. The what?  
 4 Q. Garden planting outside of the courthouse.  
 5 A. No, sir.  
 6 Q. Okay. Is it true that Broke Mount -- Mountain was the  
 7 only movie on the list?  
 8 A. I have no idea, sir.  
 9 Q. I think I might have misspoke. Brokeback Mountain is what  
 10 I said.  
 11 A. I have no idea.  
 12 Q. You've been promoted to police officer since this lawsuit  
 13 was filed?  
 14 A. Yes, sir.  
 15 MR. MCDUGAL: Mr. Hess, can you play Exhibit 10 of  
 16 Spencer View? It's the audio.  
 17 MR. HESS: This is number 10.  
 18 (Audio Exhibit 10 played for the jury.)  
 19 BY MR. MCDUGAL: (Continuing)  
 20 Q. So they have separated by then?  
 21 A. Per dispatch, it sounds like it.  
 22 Q. And you would have been advised of that?  
 23 A. Yes, sir.  
 24 (Audio played for the jury.)  
 25 ///

1 BY MR. MCDUGAL: (Continuing)  
 2 Q. All right. That's what my client would have heard?  
 3 A. I don't know if that last part was a phone call that I  
 4 made or if that was radio transmission.  
 5 Q. That was my point. He wouldn't hear your phone call;  
 6 correct?  
 7 A. That's correct.  
 8 Q. So you never heard anything about a danger?  
 9 A. That's not true, sir. I advised him on station three of  
 10 the -- of my previous history with him.  
 11 Q. Your previous history being that you drove straight up and  
 12 it was a cold call?  
 13 A. My previous contact and experience with her, sir.  
 14 MR. MCDUGAL: That's all I have. Thank you.  
 15 THE COURT: Recross?  
 16 MS. COIT: No questions.  
 17 THE COURT: All right. Now, let's go over the  
 18 exhibits before the witness is excused.  
 19 The difficulty will be you played portions of a video, but  
 20 if the jury wants to see, during the deliberations, these  
 21 videos again, I'm not certain what rules we're operating under.  
 22 Are they to be shown the entire video? Are they simply to be  
 23 shown a portion of the video? And how is that aptly marked for  
 24 the jury and the Court so that we can get back to just the  
 25 portions each of you are playing in court?

1 Why don't you two meet and confer, which means, Counsel,  
 2 you'll stand up, Counsel, you'll stand up, and you'll meet and  
 3 confer with in the back. I don't need a plethora of attorneys.  
 4 The second thing we're going to sort out very quickly --  
 5 listen to me now -- is I've been very generous about just  
 6 putting items up on the screen. That generosity has just  
 7 ceased. You don't put items up on the screen until they've  
 8 been received by the Court. Is that understood by all counsel?  
 9 MR. MCDUGAL: Yes.  
 10 THE COURT: If that happens again, we'll tear down  
 11 that machine. Your fingers do not touch that machine until  
 12 I've received it and give you permission.  
 13 Okay. Consult.  
 14 Ladies and gentlemen, what they'll sort out is how these  
 15 will be replayed to you during deliberations if you request it.  
 16 The first day is a little rough. We'll settle it in a  
 17 workmanlike way over the next couple of days.  
 18 How have you resolved that, Counsel?  
 19 MR. MCDUGAL: The entire videos are introduced as  
 20 exhibits even though we're only playing a portion of it.  
 21 THE COURT: Is that accepted by the other side?  
 22 MS. COIT: Yes, it is.  
 23 THE COURT: That way there's no dispute.  
 24 Let's go over each item and make sure we have each item.  
 25 First of all, last evening you referred to Exhibit -- or video

1 Exhibit No. 71. Which video is that and did you request its  
 2 receipt and was it played?  
 3 MR. MCDUGAL: Yes.  
 4 MR. JASON KAFOURY: Yes.  
 5 THE COURT: Okay. Now, how are we going to mark that  
 6 Exhibit 71 when we just referred to it as a video? "I'm going  
 7 to play a video of the following." That's where the record  
 8 stands.  
 9 MR. JASON KAFOURY: Your Honor, we could --  
 10 THE COURT: Counsel, I think we have examining  
 11 counsel there. There's one counsel.  
 12 MR. MCDUGAL: There will be a disk labeled  
 13 Exhibit 71.  
 14 THE COURT: All right. Stipulated to by the other  
 15 side?  
 16 MS. COIT: Yes.  
 17 THE COURT: That's received, Counsel.  
 18 Exhibit 128 was referred to last evening. I'm not sure  
 19 the jury is going to know what that disk corresponds to.  
 20 MR. MCDUGAL: That's the pepper spray incident.  
 21 THE COURT: Pepper spray incident. We'll label that  
 22 128. Is that also stipulated to also by the defense?  
 23 MS. COIT: Yes.  
 24 THE COURT: There was a map referred to. 174. You  
 25 just put it up on the screen. That didn't have an exhibit on

1 it. Is that the map that we saw of the Spencer Apartments?  
 2 MR. MCDUGAL: Yes. Exhibit 174.  
 3 THE COURT: 174. Any objection to its receipt?  
 4 MS. COIT: No objection.  
 5 THE COURT: There was an exhibit referred to last  
 6 evening for the jury. Exhibit No. 9. This was the dash cam  
 7 video that was played at the opening. Is that going to be  
 8 labeled as a video also?  
 9 MR. MCDUGAL: Yes.  
 10 THE COURT: Counsel, is that stipulated to by the  
 11 defense?  
 12 MS. COIT: Yes, it is.  
 13 THE COURT: That's received.  
 14 There is an audio, number 10, that was referred to before.  
 15 Is that going to be clearly marked for the jury?  
 16 MR. MCDUGAL: Yes.  
 17 THE COURT: How would you describe that audio so they  
 18 know what to ask for in case they want that particular piece of  
 19 evidence?  
 20 MR. MCDUGAL: Spencer View audio.  
 21 THE COURT: Spencer?  
 22 MR. MCDUGAL: View audio.  
 23 THE COURT: Any objection to its receipt, Counsel?  
 24 MS. COIT: May I ask a question of counsel?  
 25 THE COURT: Why don't you get up and ask the question

1 quietly. I don't want that in front of the jury now.  
 2 How will that be referred to?  
 3 MR. MCDUGAL: Spencer View, April 1 audio.  
 4 THE COURT: Acceptable, Counsel?  
 5 MS. COIT: Yes.  
 6 THE COURT: That's received.  
 7 Now, was 130, 131, or 132 referred to? Are you seeking  
 8 their entrance?  
 9 MR. MCDUGAL: Just 130, Your Honor.  
 10 THE COURT: Was that played for the jury? What was  
 11 it?  
 12 MR. MCDUGAL: It was an audio and --  
 13 THE COURT: How are we going to mark that audio? How  
 14 will the jury know what to ask for?  
 15 MR. MCDUGAL: Knife. Pepper spray and knife.  
 16 THE COURT: Pepper spray and knife. Is that the  
 17 incident where you see Officer Cleavenger chasing the --  
 18 MR. MCDUGAL: Officer Hermens.  
 19 THE COURT: -- the gentleman around?  
 20 MR. MCDUGAL: That's the audio that relates to it.  
 21 THE COURT: Any objection to its receipt, Counsel?  
 22 130?  
 23 MS. COIT: No.  
 24 THE COURT: 130 is received.  
 25 So 131 and 132 are not offered; is that correct?

1 Now, check your records and make certain that that  
 2 completes your evidence so we're not doing this at night and  
 3 trying to recall.  
 4 MR. MCDUGAL: 233 would also be there, Your Honor.  
 5 THE COURT: What is 233?  
 6 I'm sorry. I'm speaking to Counsel now. What is 233?  
 7 MR. MCDUGAL: Audio excerpt relating to guns -- gun.  
 8 Sorry.  
 9 THE COURT: Is that part of another tape, or is  
 10 that -- in other words, what I don't want are different  
 11 segments.  
 12 MR. MCDUGAL: It will be a standalone of what was  
 13 said.  
 14 THE COURT: Standalone? Okay. 233. Any objection,  
 15 Counsel?  
 16 MS. COIT: No.  
 17 THE COURT: Received.  
 18 Now, go over your records and make sure we have a complete  
 19 record for you at this time.  
 20 MR. MCDUGAL: Exhibit 129 was used to refresh the  
 21 witness's memory.  
 22 THE COURT: The officer's own police report; is that  
 23 correct?  
 24 MR. MCDUGAL: Yes.  
 25 THE COURT: Any objection, Counsel?

1 MS. COIT: No.  
 2 THE COURT: It's received.  
 3 Does that complete your exhibits?  
 4 MR. MCDUGAL: Yes.  
 5 THE COURT: Counsel, are you satisfied? Does that  
 6 complete the exhibits that you referred to as well?  
 7 MS. COIT: I also referred to Defendants'  
 8 Exhibit 307. It's the same video from Officer Cleavenger's  
 9 dash cam on the Spencer View incident.  
 10 THE COURT: Why are we giving it two numbers? That's  
 11 confusing.  
 12 MS. COIT: It's fine to put it in as plaintiff's  
 13 exhibit.  
 14 THE COURT: That would be Exhibit No. 9; is that  
 15 correct?  
 16 MS. COIT: Yes.  
 17 THE COURT: See how confusing that is when we start  
 18 using numbers and don't match those up?  
 19 So, for your memory, this dash cam video played in the  
 20 opening statement, as well as the dash cam video you saw today,  
 21 it really has two numbers. It's been dually marked. It's 9  
 22 and 307. So if you have a readback of this particular portion  
 23 of the testimony during your deliberations and you hear "307,"  
 24 you'll see Exhibit 9 back there. In fact, what we'll do, just  
 25 so you're not confused we'll mark it 9 and 307 on this

1 occasion, and then we'll get our marking system together today.  
 2 Okay. Counsel, may this witness be excused?  
 3 MR. MCDUGAL: Yes.  
 4 THE COURT: All right. Thank you. You're excused.  
 5 Let's take a 20-minute recess. I want to come back and  
 6 visit with counsel for a little bit. Please don't discuss this  
 7 matter or form or express any opinions, and we'll come get you  
 8 in 20 minutes, which it's 10:00 now.  
 9 (Jury not present.)  
 10 THE COURT: Counsel, be seated. Here are my  
 11 expectations, which means this is exactly what you'll do. The  
 12 first day is always rough. I've given you a lot of latitude  
 13 compared to what I would normally give in my court. That's  
 14 gracious on my part. Thank you, Judge Carter. You're welcome,  
 15 Counsel. But from now on, if you touch that one more time  
 16 without permission, I'll order it torn down. Is that clear?  
 17 MR. HESS: Yes, sir.  
 18 THE COURT: That will be the end of it.  
 19 Exhibits do not go up unless they're received by the  
 20 Court. When they're received by the Court, then you may  
 21 display them. Is that understood by all counsel?  
 22 MR. MCDUGAL: Yes.  
 23 THE COURT: This isn't going to be -- sit down,  
 24 Counsel. This is not going to be a helter skelter where you  
 25 use technology in an inappropriate way concerning the evidence

1 code. I know that that's inadvertent, but sometimes technology  
 2 tends to get in the way of fairness. And in this case there  
 3 isn't going to be one exhibit number -- and I'm going to repeat  
 4 the second time, so the third time you're on strike if it goes  
 5 up on this screen without the receipt of the Court.  
 6 Second, if you're referring to deposition testimony, I  
 7 would like to see that deposition testimony if you're using  
 8 it for impeachment purposes. So I expect that that deposition  
 9 is marked and it's given to me, and I don't care if that's  
 10 informally done by co-counsel who approaches the bench. I like  
 11 the lines clearly stated, and I'd like you to slow down so I'm  
 12 making you a record.  
 13 For instance, I'm scribbling as fast as I can the  
 14 different notations, and I'll read back to you, and hopefully  
 15 we have them right. Clip one, 104, line 16 through 105. Clip  
 16 2. 107, line 9 through 13 -- are you keeping up with me? Now,  
 17 let me stop. That's exactly the way it sounds. When it comes  
 18 that quickly, nobody is absorbing it.  
 19 MR. MCDUGAL: I'm sorry.  
 20 THE COURT: If I want to play games with you, what I  
 21 do now is I'll just start tossing out exhibit numbers to you.  
 22 31, 130, et cetera, and I'll have you so confused. So if you  
 23 don't understand what's happening to the jury right now -- it's  
 24 pretty confusing about these audiotapes. We'll sort that out.  
 25 How else would you like to spend your time with me, or

1 would you like a restroom break?  
 2 MR. JASON KAFOURY: I'd like a restroom break.  
 3 THE COURT: Fifteen minutes, Counsel.  
 4 (Recess taken.)  
 5 (Jury present.)  
 6 THE COURT: All right. The jury is present. All  
 7 counsel are present. The parties are present.  
 8 Counsel, your next witness please.  
 9 MR. JASON KAFOURY: Plaintiffs call Royce Myers to  
 10 the stand, Your Honor.  
 11 THE COURT: Thank you. Thank you, sir. If you would  
 12 walk between the doors. Now, sir, would you raise your right  
 13 hand please. Christy is our clerk, and she'll administer an  
 14 oath to you.  
 15 ROYCE MYERS,  
 16 called as a witness in behalf of the Plaintiff, being first  
 17 duly sworn, is examined and testified as follows:  
 18 THE WITNESS: I do.  
 19 THE COURT: Thank you, sir. Please be seated. The  
 20 entrance to the jury box is just to my right, closest to the  
 21 wall.  
 22 Sir, would you face the jury and state your full name and  
 23 spell your last name, please.  
 24 THE WITNESS: My name is Royce Myers. Last name  
 25 is --

1 THE COURT: Please sit down. Now, would you face the  
 2 jury, pull the microphone closer to you, and state your full  
 3 name, sir.  
 4 THE WITNESS: My name is Royce Myers. Last name is  
 5 M-Y-E-R-S.  
 6 THE COURT: Thank you, sir.  
 7 Direct examination, please.  
 8  
 9 DIRECT EXAMINATION  
 10 BY MR. JASON KAFOURY:  
 11 Q. Officer Myers, I'm going to be talking to you over here.  
 12 It's kind of an odd courtroom, but I want you to be able to  
 13 address your jury with your responses. Okay?  
 14 THE COURT: Christy, is that microphone on?  
 15 MR. JASON KAFOURY: It is. It's just kind of far  
 16 away, so I'll just scoot up.  
 17 THE COURT: It's government property. Just yank it  
 18 hard.  
 19 MR. JASON KAFOURY: Better?  
 20 THE COURT: That's fine. Thank you, Counsel.  
 21 MR. JASON KAFOURY: I have a pretty loud voice,  
 22 but -- mobile mic, okay.  
 23 BY MR. JASON KAFOURY: (Continuing)  
 24 Q. First, Officer Myers, did we compel you to be here under a  
 25 subpoena to appear in court?

1 A. Yes.  
 2 Q. Can you tell us a little bit about your background; where  
 3 you're from and your education?  
 4 A. I currently live in Eugene, Oregon. I have an associate's  
 5 degree in criminal justice. I'm currently employed by the  
 6 University of Oregon and have been there for quite a while.  
 7 Q. What is your current title at the University of Oregon?  
 8 A. I'm public safety officer with the University Police  
 9 Department.  
 10 Q. And how long have you been doing that?  
 11 A. This is year number 16.  
 12 Q. So you've seen a lot in your 16 years?  
 13 A. I have.  
 14 Q. I want to focus in on the time period of 2010 to 2012.  
 15 That's when my client, James Cleavenger, was there. Okay?  
 16 Was there a general fear during that time, within the  
 17 officers, that if you spoke up against the administrators that  
 18 you might be retaliated against?  
 19 MS. COIT: Objection. Lack of foundation. Calls for  
 20 hearsay.  
 21 THE COURT: What years were you employed there, sir?  
 22 THE WITNESS: I've been there since 1999.  
 23 THE COURT: And in what capacity again?  
 24 THE WITNESS: As a public safety officer.  
 25 THE COURT: Overruled.

1 THE WITNESS: Could you repeat the question for me ?  
 2 BY MR. JASON KAFOURY: (Continuing)  
 3 Q. Yeah. During the time period my client was there, 2010 to  
 4 2012, amongst the officers, public safety officers, was there a  
 5 general fear that if they spoke up to the supervisors that  
 6 there would be retaliation?  
 7 A. I would say during my time there there were  
 8 administrations that I think the officers would be afraid of  
 9 reporting anything.  
 10 Q. And did that include this time period when -- from the  
 11 transition from Tripp to when Chief McDermid took over?  
 12 A. I'm trying to think about the time period because it was a  
 13 while back.  
 14 Q. 2010 to 2012 range?  
 15 A. I would probably say from certain supervisors, yes.  
 16 Q. Okay. That was not the supervisor.  
 17 How would you describe the morale in that time period  
 18 within the department of 2010 to 2012 amongst the officers?  
 19 A. I think it was pretty low.  
 20 Q. And why was that?  
 21 A. There were a couple of supervisors within the department  
 22 that were making a lot of people miserable.  
 23 Q. During that time period, were the policies and procedures  
 24 shifting and changing depending on who the supervisors were?  
 25 A. I would say that there was a little bit of confusion about

1 policies. There would be the written policy, which obviously  
 2 would you have to follow, but then some supervisors would say  
 3 with kind of a nod or a wink at times, "No, not really. You  
 4 don't have to do that."  
 5 MS. COIT: Your Honor, I'll object on the basis of  
 6 relevance of these. He's not identifying the individual  
 7 supervisors. I don't know if it has anything to do with these  
 8 clients.  
 9 THE COURT: I assume that this is foundational,  
 10 but --  
 11 MR. JASON KAFOURY: Yes. That's where I was going to  
 12 go next.  
 13 BY MR. JASON KAFOURY: (Continuing)  
 14 Q. In terms of Lieutenant Lebrecht and Sergeant Cameron  
 15 during this time period, as they became supervisors, were the  
 16 policies shifting and changing during that time period?  
 17 A. I think there was a lot of things that were changing  
 18 during that time. If you're asking me specifically if they  
 19 ever told me one thing and -- as opposed to the policy, I -- I  
 20 couldn't recall them ever doing that.  
 21 But, again, I'd say that we had other supervisors who  
 22 would say -- oh, I'm trying to think of a good example for you,  
 23 and I'm really not coming up with anything right now.  
 24 Q. But was it a common issue amongst the officers that some  
 25 policies were in writing, some weren't, and it was confusing

1 for the officers during that time period of what the actual  
 2 policy was?  
 3 A. I think there was some confusion.  
 4 Q. Did you notice during that time, 2010 to 2012, that there  
 5 was sort of an "in crowd" and an "out crowd"?  
 6 A. I'm having problems recalling exactly the specific people  
 7 that were there during that time, but I would say, yeah, there  
 8 were definitely cliques within the department.  
 9 Q. Was it hard during that period for female officers within  
 10 the department?  
 11 A. I had some female officers come to me with, you know,  
 12 complaints about stress and some other things. Sure.  
 13 Q. What about sexual harassment?  
 14 A. I think that was an ongoing issue in the department.  
 15 Q. And who was the perpetrator of that sexual harassment?  
 16 A. The person that was accused of it --  
 17 Q. Yes.  
 18 A. -- was Scott Cameron. He used to be a sergeant there.  
 19 THE COURT: I'm sorry. I didn't hear you. You  
 20 dropped your voice.  
 21 THE WITNESS: I'm sorry. Scott Cameron.  
 22 THE COURT: Scott Cameron?  
 23 THE WITNESS: Yes.  
 24 THE COURT: Thank you.  
 25 ///

1 BY MR. JASON KAFOURY: (Continuing)  
 2 Q. Is this difficult for you, being a current employee and  
 3 being in this courtroom, testifying with your chief and other  
 4 folks here?  
 5 A. It's awkward.  
 6 Q. And only you can answer this, but do you fear any  
 7 retaliation for your testimony?  
 8 A. I think if a couple of people were still employed at the  
 9 department, I would be pretty worried about it.  
 10 Q. Including Sergeant Cameron?  
 11 A. Yes.  
 12 Q. I want to talk a little bit about your experience working  
 13 with my client during that time period. Okay?  
 14 So you were there the entire time, 2010 to 2012, that he  
 15 was there; correct?  
 16 A. Yes.  
 17 Q. Can you explain to the jurors what type of experiences,  
 18 what sort of investigations that you had observing my client as  
 19 an officer?  
 20 A. That was a while back. We mainly worked together like --  
 21 so there would be overtime opportunities. Somebody would have  
 22 to hold over. So we would cross paths; we never worked on the  
 23 same shift, per se, on any kind of regularity. We were  
 24 together doing baseball games, special events, that sort of  
 25 thing.

1 Q. Throughout those years you worked with my client, did you  
 2 ever observe any officer safety problems?  
 3 A. No.  
 4 Q. Did anyone from the University of Oregon Police Department  
 5 ever come to you and ask you your thoughts or feelings about my  
 6 client's truthfulness?  
 7 A. Not that I recall.  
 8 Q. If someone had asked you for your perspective on his  
 9 truthfulness, what would you have told them?  
 10 MS. COIT: Object. Calls for speculation.  
 11 THE COURT: Overruled.  
 12 THE WITNESS: Say that again. I'm sorry.  
 13 BY MR. JASON KAFOURY: (Continuing)  
 14 Q. Yes. If, for example, during 2014, when these *Brady*  
 15 materials were being collected on my client, if any -- if  
 16 Lieutenant Lebrecht or a chief --  
 17 THE COURT: Well, Counsel, it's not a specific  
 18 period. It's his association. So he can cast an opinion about  
 19 veracity or truthfulness concerning your client during the time  
 20 he's known him.  
 21 BY MR. JASON KAFOURY: (Continuing)  
 22 Q. What was your opinion about my client's truthfulness when  
 23 you worked with him?  
 24 A. I didn't have any problem with him at all in terms of  
 25 his -- he never -- let me put it this way: He never displayed

1 to me at any time that he was dishonest or untruthful.  
 2 Q. Did he ever -- did you ever hear him call out, you know,  
 3 problematic things over the radio while he worked there?  
 4 A. What do you mean problematic things?  
 5 Q. Calling out things that weren't really happening over the  
 6 radio.  
 7 A. I wouldn't say that that wasn't -- no.  
 8 Q. Did he seem to have good judgment, in your opinion?  
 9 A. For the time periods that I worked with him, I didn't see  
 10 any problems.  
 11 Q. For the time period that you worked with him, was he the  
 12 kind of person, in your opinion, that would purposefully  
 13 violate someone's constitutional rights?  
 14 A. No.  
 15 MS. COIT: Object.  
 16 THE COURT: Sustained. It's improper opinion,  
 17 Counsel. Truthfulness, veracity, work, fine.  
 18 BY MR. JASON KAFOURY: (Continuing)  
 19 Q. Can you -- so were there some officers that were a lot  
 20 more lazy than other officers during that time period?  
 21 A. I would say sure, yeah.  
 22 Q. Okay. On the scale of very lazy officers to very active  
 23 officers, where would you put my client?  
 24 A. I would say he was very active.  
 25 Q. Until Sergeant Cameron became my client's supervisor in

1 October of 2011, did you ever see any problems within the  
 2 department told to you about his performance?  
 3 A. No.  
 4 Q. Let's talk about Sergeant Cameron for a moment.  
 5 You were there back in 2008 when he was there; correct ?  
 6 A. I was.  
 7 Q. Tell the jurors about what you remember about my client's  
 8 Taser speech back in 2008.  
 9 A. Well, there was --  
 10 Q. Pull up to the microphone so everybody can hear you there.  
 11 A. Sure. How's that?  
 12 Q. Better.  
 13 A. So there was a "meet the chief" event for a new director  
 14 that had come in for the department, and it was at the law  
 15 school at the University of Oregon. And during that time there  
 16 had been a lot of speculation that we were getting Tasers,  
 17 which we weren't. It was kind of a dead issue at the time.  
 18 I had given presentations to the president's office and a  
 19 couple of other groups about the benefits of getting the Tasers  
 20 for the officers, for the safety of the officers and the safety  
 21 of the public and the safety of the people that we contact, and  
 22 it was pretty -- pretty well known that they were never going  
 23 to approve it.  
 24 During the 2008 "meet the chief" event, there were several  
 25 students that came in and voiced their opinions about the Taser



1 issue, and one of them was Jim Cleavenger.  
 2 And during that time there were a lot of people that were  
 3 pretty veracious about us not having the Tasers. And after the  
 4 meeting I talked to some of the students, and Jim Cleavenger  
 5 was one of the students that I talked to.  
 6 Q. What did you tell him?  
 7 A. We talked about the Tasers and why he was opposed to them  
 8 and I kind of recall -- I kind of remember talking about what  
 9 he was going to do with himself after law school, and I told  
 10 him, "If you think that this job doesn't require this sort of  
 11 equipment for the officers to protect themselves" -- I just  
 12 told him -- "why don't you come in and apply for a job, either  
 13 public safety or go apply at a police department and be a  
 14 police officer if you thought it was so easy and that we didn't  
 15 need them," and I was pretty surprised that he wound up  
 16 actually coming to work for the department.  
 17 Q. Let's talk about your -- well, was Sergeant Cameron there  
 18 when my client spoke out about the Tasers?  
 19 A. I believe so.  
 20 Q. What do you recall of conversations back in 2008 with  
 21 Sergeant Cameron in relation to my client's Taser views?  
 22 A. Well, I would say that he was pretty adamant that  
 23 Jim Cleavenger didn't know what he was talking about. And  
 24 there was a lot of discussion about it at first and a lot of  
 25 the other people just stopped talking about it, but he kind of

1 seemed to go on about it quite a bit.  
 2 Q. How long did Cameron continue to talk about my client and  
 3 his Taser stance?  
 4 A. It was quite a while.  
 5 Q. Months?  
 6 A. I would probably say weeks or so.  
 7 Q. Did -- let's talk about when my client decided to apply to  
 8 come and work there. Did you hear any discussions with  
 9 Sergeant Cameron about the fact that my client was applying for  
 10 a job?  
 11 A. I don't recall any. I remember hearing some displeasure  
 12 in the fact that he had been hired full time.  
 13 Q. By Sergeant Cameron?  
 14 A. Yes.  
 15 Q. And do you know why Sergeant Cameron was unhappy that  
 16 Jim Cleavenger had been hired full time?  
 17 A. I couldn't say for sure.  
 18 MS. COIT: Objection. Calls for speculation.  
 19 THE COURT: He's answered the question. He couldn't  
 20 say for sure.  
 21 BY MR. JASON KAFOURY: (Continuing)  
 22 Q. Do you remember Sergeant Cameron showing any videos of my  
 23 client's speeches or any news articles about my client and  
 24 Tasers back in the 2010, 2011 time frame?  
 25 A. I vaguely recall something being shown, but I couldn't say

1 for sure if it was a video or if it was an article.  
 2 Q. Throughout your years working with Scott Cameron, did you  
 3 form an opinion about his character for truthfulness?  
 4 A. Yes.  
 5 Q. Without going into specifics, what is that opinion?  
 6 A. I don't think he's very credible.  
 7 Q. Did you draft a document outlining your concerns for his  
 8 truthfulness?  
 9 A. A document?  
 10 Q. Yes. I can show it to you and help you refresh your  
 11 memory, if you would like.  
 12 A. Please.  
 13 MR. JASON KAFOURY: May I approach, Your Honor?  
 14 THE COURT: Exhibit number is 208, Counsel?  
 15 MR. JASON KAFOURY: Yes.  
 16 THE COURT: It's been identified as 208 for the  
 17 record.  
 18 THE WITNESS: Thank you. Yeah, I did -- I did -- I  
 19 did write this. Jim Cleavenger, for his arbitration hearing,  
 20 in a meeting with somebody at the U of O, asked me to draft a  
 21 letter.  
 22 BY MR. JASON KAFOURY: (Continuing)  
 23 Q. It's four pages long; correct?  
 24 A. Can you hold it up? I'm not sure.  
 25 Q. Four pages long?

1 A. That's four pages.  
 2 Q. All about Sergeant Cameron and his truthfulness; correct?  
 3 MS. COIT: Object to him testifying about the hearsay  
 4 in the document.  
 5 THE COURT: Overruled.  
 6 THE WITNESS: Yes.  
 7 BY MR. JASON KAFOURY: (Continuing)  
 8 Q. That's what all this is. I just want to confirm you wrote  
 9 and drafted this statement. By client did not participate in  
 10 that statement; correct?  
 11 A. That's correct.  
 12 Q. Why did you -- why did you make that document for my  
 13 client?  
 14 A. He asked me about my opinion about Scott Cameron, and I'd  
 15 say that I -- you know, he asked me for it, and it was, you  
 16 know, the truth, so I gave it to him.  
 17 Q. Do you know if any of those allegations that you made ever  
 18 made it to Chief McDermid or Lieutenant Lebrecht?  
 19 A. I don't think they did. I couldn't say for certain. I  
 20 could say that I talked to a couple of supervisors about it in  
 21 the past.  
 22 Q. But they were given to a U of O administrator, Brian  
 23 Smith; isn't that correct?  
 24 A. I'm not sure if they were given to him or not.  
 25 Q. 208?

1 A. If you were asking me if I gave it to Brian Smith, I  
 2 didn't.  
 3 Q. No, no. I'm using it to refresh your memory. This is a  
 4 statement that you gave?  
 5 A. Yes.  
 6 Q. Correct?  
 7 A. Yes.  
 8 Q. And does this document indicate that my client sent this  
 9 to Brian Smith October 5, 2012?  
 10 MS. COIT: Object, Your Honor. No foundation. This  
 11 witness has never seen that document.  
 12 THE COURT: Sustained. Sustained.  
 13 BY MR. JASON KAFOURY: (Continuing)  
 14 Q. When you wrote this document, were you intending it to go  
 15 to the U of O administration as part of my client's union  
 16 grievance process?  
 17 A. I was intending it to go to wherever he needed it to go.  
 18 Q. And you knew at that point that he was involved with a  
 19 union grievance over his discipline; correct?  
 20 A. Yes.  
 21 Q. Do you know if any of your allegations regarding  
 22 dishonesty over those four pages involving Scott Cameron, do  
 23 you know if any of those were investigated by the department?  
 24 MS. COIT: Objection. Assumes facts.  
 25 THE COURT: Overruled.

1 THE WITNESS: I wouldn't be able to say yes or no  
 2 because I frankly wouldn't know about it.  
 3 BY MR. JASON KAFOURY: (Continuing)  
 4 Q. Did you ever complain in relation to Scott Cameron to  
 5 anyone else within the department?  
 6 A. I did.  
 7 Q. Who did you complain to?  
 8 A. There was a former lieutenant named Casey Boyd.  
 9 Q. Did anything change after that complaint?  
 10 A. I don't believe so.  
 11 Q. Has Chief McDermed ever broken any promises she gave to  
 12 you?  
 13 A. What do you mean "promises"? Like she --  
 14 Q. Things she told you that were going to happen that didn't  
 15 happen.  
 16 A. I'd say yes.  
 17 Q. Okay. What were those?  
 18 A. There was a lot of confusion about people's job status  
 19 within the department, and when Carolyn applied for the chief's  
 20 position, I strongly supported her during that time and  
 21 advocated for her to be in the position because a lot of people  
 22 thought that there was going to be some pretty big changes  
 23 because the former director, Doug Tripp, just was a terror in  
 24 the department. He was just horrible for the department and  
 25 the morale in the place.

1 During that time, there were a lot of different things  
 2 said about certain positions, so, just to clarify, we have  
 3 police officers and then we have public safety officers and  
 4 then we have security officers, and I'm right in the middle.  
 5 I'm a mix of a police officer and a security officer. And they  
 6 had determined that they were going to phase out the public  
 7 safety officer program, so eliminating all the positions for  
 8 that, and it was supposed to be out by attrition, meaning that  
 9 once you -- once a position -- somebody left the position for  
 10 either a police officer job or they went to work someplace  
 11 else, that they would not refill that position, and they would  
 12 just go away gradually.  
 13 And at first it was -- all public safety officers were  
 14 fine. "You guys are going to come along with us. You don't  
 15 have to leave your position. You won't have to worry about  
 16 it." And --  
 17 Q. These were things that Chief McDermed were telling you at  
 18 this time?  
 19 A. These were things that Doug Tripp initially had said, and  
 20 it kind of continued in tune with Chief McDermed. And there  
 21 were a lot of rumors floating around that, "Well, no, they're  
 22 not going to save your jobs. Your jobs are going away," or  
 23 "You're not going to be employed there anymore," or, "Yeah,  
 24 you're still going to be there." Nobody really knew.  
 25 And there had been -- there were going to be police

1 officers and security officers. There were going to be public  
 2 safety officers. It kind of went back and forth, and no one  
 3 got a real clear picture of exactly what was going to happen at  
 4 that time, and I had come back from -- last summer from being  
 5 gone for a while from a -- from a back injury. And in October  
 6 my wife and I had adopted two children that had been living  
 7 with us for quite a while, and when I went back to work, I was  
 8 hearing all these rumors that there was going to be a big  
 9 meeting, and they were going to tell us that our jobs were  
 10 going away, and it was kind of just floating around.  
 11 And so I went to Carolyn, and I asked her -- I said,  
 12 "Listen, I've got some concerns. I just adopted two kids. My  
 13 wife, you know, my family now, and I just need to know what's  
 14 going on with my job," and I was told that I didn't have  
 15 anything to worry about. And I took that to mean as, okay,  
 16 well, that means, you know, maybe my job is not going away.  
 17 And then I can't remember exactly what month it was, but  
 18 the last three public safety officers had a meeting with the  
 19 chief and an administrator there, and we were told that our  
 20 jobs would be eliminated within a year.  
 21 Q. That's where things stand now?  
 22 A. As far as I know.  
 23 Q. How is the morale now within the department under the  
 24 chief?  
 25 A. I'd say a lot of people are -- I'd say it's low.

1 Q. I want to jump around a few other topics.  
 2 Apparently, defense is planning on calling Junction City  
 3 Chief Mark Chase. Do you know if he -- Chief Chase has applied  
 4 for a job at the University of Oregon Department of Public  
 5 Safety -- Police Department?  
 6 A. I'm not involved in the hiring process, but there's a lot  
 7 of talk that he has. So I couldn't say yes or no.  
 8 Q. Who is infamous for keeping the most detailed, thorough  
 9 field notebooks within the department?  
 10 A. I would probably say Kent Abbott.  
 11 Q. Another witness that will be called today is Eric LeRoy.  
 12 He's the guy that had the bowl of dicks list on his phone.  
 13 MS. COIT: Object.  
 14 THE COURT: Well, you'll hear this referred to in  
 15 various ways. Bowl, bowl of dicks. I think, Counsel, you can  
 16 use it interchangeably. You're not to assume that it's called  
 17 that. By the same token, if the evidence shows that it's  
 18 referred to in that way and there's already one witness that  
 19 referred to it in that vernacular, I'm not going to stand on  
 20 the niceties of sophisticated language. So you can refer to  
 21 it, Counsel, as "bowl"; you can refer to it as "bowl of dicks."  
 22 You're not to assume it's either by counsel's stating  
 23 questions. You will decide what the list is called and what it  
 24 means.  
 25 Counsel?

1 BY MR. JASON KAFOURY: (Continuing)  
 2 Q. Am I correct, you were not part of that graveyard shift so  
 3 you did not participate in the list, items being put on the  
 4 list?  
 5 A. No. I didn't find out about it until it was in the  
 6 newspaper.  
 7 Q. Do you -- over your years working with Officer LeRoy, did  
 8 you form an opinion for his character for truthfulness?  
 9 A. Yes.  
 10 Q. What was that?  
 11 A. He's dishonest.  
 12 Q. When did you first learn that you were investigated back  
 13 in 2009 and 2010 for your Internet use?  
 14 A. I'm sorry. Say that again.  
 15 Q. When did you first learn that someone within the  
 16 department went and pulled all of your Internet search history ?  
 17 A. I can't recall the specific date, but I do remember that.  
 18 Q. Do you remember why people were looking at your Internet  
 19 search history?  
 20 A. I don't recall.  
 21 Q. Did anyone ever talk to you and question your honesty for  
 22 searching on the Internet outside of official duties and  
 23 capacities?  
 24 A. About my honesty?  
 25 Q. Yes. You know, I'll give you a little context. My client

1 was --  
 2 MS. COIT: I object to counsel testifying.  
 3 THE COURT: Counsel?  
 4 BY MR. JASON KAFOURY: (Continuing)  
 5 Q. Did anyone at the department ever take -- did anyone at  
 6 the department ever tell you that they were searching through  
 7 your Internet history and compiling a file of it to question  
 8 your honesty?  
 9 A. No.  
 10 Q. Did you -- did you sign a policy agreement in relation to  
 11 Internet use?  
 12 A. I did.  
 13 Q. But nobody ever threatened to send that material to the  
 14 district attorney or *Brady*-list you for that?  
 15 A. Nobody ever did that.  
 16 Q. I want to talk about annual evaluations. You've been  
 17 there for 16 years. How often, over the last 10 years, have  
 18 you gotten annual evaluations?  
 19 A. That would be a hard question to answer. I'll say  
 20 throughout my career it had been sporadic. I think within the  
 21 last five years it's gotten quite a bit better.  
 22 Q. Have you seen a pattern where annual evaluations are used  
 23 to justify discipline?  
 24 A. I can say that -- we can talk about my evaluations and  
 25 what those were like.

1 Q. Sure. Tell us.  
 2 A. This is a long time ago. This is back in probably the  
 3 early 2000s where --  
 4 MS. COIT: Your Honor, I object to the relevance.  
 5 THE COURT: Well, the question goes toward, Counsel,  
 6 annual evaluations?  
 7 MR. JASON KAFOURY: Annual evaluations, yes.  
 8 THE COURT: You can use that for comparison. You can  
 9 answer that question.  
 10 THE WITNESS: I had an incident where I had a  
 11 supervisor come to me and tell me that he prepared my  
 12 evaluation and he was told by the director at that time, who  
 13 was not Chief McDermid, that he had been told by the director  
 14 and another supervisor to mark me lower than he had, and he had  
 15 given me really high ratings.  
 16 THE COURT: Just a moment. We need to make certain  
 17 of the time period we're speaking about and if this is directly  
 18 related to any of the defendants here in court.  
 19 THE WITNESS: This is probably 2001, 2002.  
 20 THE COURT: Does this involve either  
 21 Lieutenant Lebrecht or Sergeant Cameron?  
 22 THE WITNESS: No.  
 23 THE COURT: Then I'm going to sustain your objection,  
 24 Counsel.  
 25 We'll strike that testimony. It's irrelevant, ladies and

1 gentlemen. The answer is being stricken.  
 2 MR. JASON KAFOURY: I'll ask it different. In your  
 3 annual evaluations that you've had over the last 10 years, have  
 4 you seen a pattern where if someone within a department wants  
 5 to discipline you, they use -- they put that information into  
 6 your annual evaluation?  
 7 MS. COIT: Object to the relevance.  
 8 THE COURT: I'm going to sustain it, Counsel. I need  
 9 to know that time frame. Ten years is much too long.  
 10 MR. JASON KAFOURY: How about from the last five  
 11 years.  
 12 THE COURT: You can answer that. From 2010, let's  
 13 say, to the present time.  
 14 THE WITNESS: I would say that my personal experience  
 15 was that information was put into a couple of my evaluations  
 16 where I don't think it should have been in there, and I was  
 17 baffled that it had been in there to begin with.  
 18 BY MR. JASON KAFOURY: (Continuing)  
 19 Q. Jumping around to a couple of different topics here, was  
 20 it -- during 2010 to 2012, was it common for officers to stop  
 21 people for crimes even though they could not cite them for  
 22 their crimes? For example, prohibited camping?  
 23 A. Yes.  
 24 Q. What about DUIs or felonies, that sort of stuff?  
 25 A. The DUIs -- that would involve a traffic stop, and it was

1 kind of up in the air. You know, should we do traffic stops?  
 2 No, let's not do them. And then I think the final word was,  
 3 no, no more traffic tops. If I was -- if I was on campus --  
 4 this excludes the police officers that are welcome to stop  
 5 anybody because they're -- because of their position, but --  
 6 Q. We're talking about Eugene police officers. Let's try to  
 7 narrow this to 2010, 2012.  
 8 A. Okay. So public safety officers --  
 9 Q. Public safety officers, yeah.  
 10 A. -- were not to do any traffic stops. So if I got somebody  
 11 that I suspected was driving under the influence, I would call  
 12 my dispatch and let them know about it, and they would probably  
 13 call Eugene police and advise them. Or if the person stopped,  
 14 parked their vehicle, and got out, or even just stopped to park  
 15 on university property, I would get up and probably go and say  
 16 hi to them and see what was going on.  
 17 Q. So is that, that latter portion there -- you're following  
 18 a car and you have a reason to be suspicious about and that car  
 19 goes and parks on university campus, is that what is called a  
 20 campus stop?  
 21 A. Yeah. I suppose it would be.  
 22 Q. Okay. Was that a -- was that a phrase you had heard in  
 23 2010, 2011, 2012? Campus version of a traffic stop?  
 24 A. I don't know if it would be a campus version. It's just  
 25 that's what was -- that's what we were instructed, that we

1 wouldn't do any traffic stops.  
 2 Q. And was that final no more traffic stops, did that happen  
 3 after my client was terminated in October of 2012?  
 4 A. I couldn't say for sure.  
 5 Q. Let's talk about the dash cam audio recording.  
 6 THE COURT: What exhibit, Counsel?  
 7 MR. JASON KAFOURY: What's that?  
 8 THE COURT: What exhibit number?  
 9 MR. JASON KAFOURY: No exhibits, Your Honor. Just  
 10 the concept.  
 11 BY MR. JASON KAFOURY: (Continuing)  
 12 Q. Recording people as part of dash cams, is that something  
 13 that from time to time you forgot to do as an officer back in  
 14 2010, 2011, 2012?  
 15 A. Forgot to record?  
 16 Q. Forgot to notify the person. You walk up and you start a  
 17 conversation, and you forget to notify the person that they're  
 18 being recorded. Did that happen with you?  
 19 A. Oh, I'm sure it did.  
 20 Q. Did anyone ever go through all of your videos and look to  
 21 see every time you forgot to do it and disciplined you for it?  
 22 A. Not that I'm aware of.  
 23 Q. After my client left, so post-2012, did there then become  
 24 an official dash cam policy in writing?  
 25 A. We do have a dash cam policy, but I don't recall what year

1 it was, and it was either 2013 or 2014 that policy came into  
 2 effect.  
 3 Q. After my client was terminated in October of 2012?  
 4 A. If he was gone in 2012 and the policy came out in 2013 or  
 5 2014, I would say yeah.  
 6 Q. What's a courtesy ride, a safety escort back in 2010,  
 7 2012?  
 8 A. So during all my time at the U of O, we've always given  
 9 safety escorts to people, people that are afraid to walk home  
 10 alone at night from, say, the library, or they're afraid to  
 11 walk home from one part of campus to their residence hall or  
 12 dorm room, and so we would give them a courtesy escort or a  
 13 safety escort, whatever you want to call it, and we would call  
 14 in to dispatch you're giving someone a ride somewhere, and you  
 15 would tell them where you were going to and your starting  
 16 mileage, and that's pretty much it. You were just giving a  
 17 safety escort.  
 18 Q. Did you ever pat people down as part of that?  
 19 A. No.  
 20 Q. Were there drunk people you gave safety rides to, safety  
 21 escorts to?  
 22 A. Oh, sure.  
 23 Q. That was just part of campus life; right?  
 24 A. Right.  
 25 Q. Did anybody ever discipline you for any safety escorts you

1 ever gave anybody?  
 2 A. No.  
 3 Q. When was the first time you heard of a concept of an  
 4 officer and the *Brady* list?  
 5 A. *Brady* list? The *Brady* law has been around for a while,  
 6 and I couldn't say when that was, but quite a while back.  
 7 Q. Many years, fair to say?  
 8 A. At least four. Maybe more. Maybe less.  
 9 Q. Have you -- throughout all of your time there, do you  
 10 recall any officer ever being ordered that they could not  
 11 report any crimes unless they were felonies?  
 12 A. No.  
 13 Q. Do you know why Scott Cameron is no longer employed at the  
 14 department?  
 15 A. I do not know. The only thing that I know is they chose  
 16 not to renew his contract for whatever reason.  
 17 Q. You're not personal friends with Mr. Cleavenger, are you ?  
 18 A. No.  
 19 Q. Don't spend any social occasion with him, do you?  
 20 A. No.  
 21 MR. JASON KAFOURY: Thanks. That's all I have.  
 22 THE COURT: Cross-examination.  
 23 ///  
 24 ///  
 25 ///

1 CROSS-EXAMINATION  
 2 BY MS. COIT:  
 3 Q. Officer Myers, is it true that public safety officers back  
 4 in 2010 through 2012 could cite for violations of the Oregon  
 5 Revised Statutes?  
 6 A. No.  
 7 Q. Oh, I'm sorry. The OAR. Oregon Administrative Rules.  
 8 A. Yeah, you can cite for the administrative rules for  
 9 traffic, parking, that sort of thing, and then you were also  
 10 able to cite under the municipal code, as well for the City of  
 11 Eugene for certain crimes.  
 12 Q. Okay. You were asked about whether or not you could or if  
 13 you ever knew of officers stopping people on campus property  
 14 for illegal camping. Do you recall that question?  
 15 A. I do.  
 16 Q. Are you aware that illegal camping is prohibited under the  
 17 OARs?  
 18 A. No, I'm not.  
 19 Q. You talked about giving courtesy transports.  
 20 A. Uh-huh.  
 21 Q. Is that something you've done before?  
 22 A. Yes.  
 23 Q. Have you ever given a courtesy transport to a woman  
 24 carrying a loaded gun in the back of a car?  
 25 A. Not that I'm aware of.

1 Q. Would you ever do that?  
 2 A. I think it would depend on the circumstance. Probably  
 3 not.  
 4 Q. Can you give me a circumstance where you would  
 5 transport -- a courtesy transport of a woman carrying a loaded  
 6 gun in her lap in the back of your car?  
 7 A. No, I don't -- I don't think I could.  
 8 Q. Now, the recordings, the dash cam videos in your car, when  
 9 you turn them on, they record people; is that correct?  
 10 A. The dash cameras, the way they operate is when you  
 11 activate the lights on your vehicle, your overhead red and blue  
 12 lights, if you activate all of them, they turn on.  
 13 Q. The recording turns on?  
 14 A. Yeah. There's a video camera that's mounted in the -- in  
 15 the -- so if I'm driving, the video camera is right here, and  
 16 the recording device that it sends all the data to is down here  
 17 in the console. And there's a microphone in the -- in the  
 18 vehicle that records everything, and there's also a small  
 19 microphone that you wear up on your shoulder so when you leave  
 20 the vehicle that it's still recording the audio when you're out  
 21 of your car.  
 22 Q. And that shoulder -- the shoulder mic, you can actually  
 23 activate the audio with that shoulder mic, too; correct?  
 24 A. You can activate the camera with that.  
 25 Q. The camera. Excuse me.

1 You testified that sometimes in 2010 through 2012 you  
 2 would forget to tell people that you were recording them. Is  
 3 that correct?  
 4 A. You know, sometimes you do that job over -- the same thing  
 5 over and over and over again. Like, we have body cameras now,  
 6 too, and I know that when I have gotten out, I've activated my  
 7 camera and walked up and have started talking to people and  
 8 have gone, oh, I forgot to tell them that I was recording.  
 9 Q. All right. Sir, that's my question. Even though  
 10 sometimes you forgot, were you aware that it was your  
 11 obligation to advise people that you were recording them?  
 12 A. Oh, yes.  
 13 Q. Never any confusion about that, was there?  
 14 A. No.  
 15 Q. It's the law, isn't it?  
 16 A. It is.  
 17 Q. It was the law in 2010, 2011, 2012?  
 18 A. Yes, yes, yes.  
 19 Q. So if I understood your testimony correctly, it was your  
 20 understanding in 2011, 2012 that public safety officers were  
 21 not supposed to be making full traffic stops, turning lights  
 22 on, following people, and pulling them over. Is that a correct  
 23 statement of your understanding?  
 24 A. It would be.  
 25 Q. Now, you were asked about your Internet search history

1 being pulled.  
 2 A. Yes.  
 3 Q. Do you know who pulled that history?  
 4 A. I would assume it would be the person -- do you mean the  
 5 person that requested it? Because if you do, it would be an IT  
 6 person that pulled it.  
 7 Q. Yes. Bad question. I apologize. Who requested that your  
 8 Internet search history be pulled?  
 9 A. If I had made an educated guess, I would say --  
 10 MR. JASON KAFOURY: I object, Your Honor. He can't  
 11 speculate if he doesn't know.  
 12 THE COURT: Sounds speculative, Counsel.  
 13 BY MS. COIT: (Continuing)  
 14 Q. Do you know who pulled your Internet search history?  
 15 A. I don't.  
 16 Q. Have you ever, during the course of an IA investigation,  
 17 an internal affairs investigation, made the statement to the  
 18 investigator that you have never violated the policies --  
 19 the -- excuse me, the department's policies against misusing  
 20 the Internet? Have you ever made that statement in the course  
 21 of an internal affairs investigation?  
 22 A. I have never been the subject of an IA investigation.  
 23 Q. So your answer is no?  
 24 A. That's correct.  
 25 Say that one more time.

1 Q. Have you ever made the statement, in the course of an  
 2 internal affairs investigation, that you have never  
 3 intentionally violated the department's policy against misusing  
 4 the Internet?  
 5 A. Is this in reference to when I was asked about that during  
 6 this -- when I was interviewed by a supervisor about something  
 7 regarding that? Is that what you're asking?  
 8 Q. I'm just asking in general, sir, if you never made that  
 9 statement or if you have made that statement.  
 10 A. No. That was so long ago that I don't think I can say yes  
 11 or no either way.  
 12 Q. Okay.  
 13 A. If you have a report or something, I would be glad to look  
 14 at it.  
 15 Q. Okay. I want to go back to this Taser speech that we  
 16 talked about. This was in 2008, as best you remember?  
 17 A. Yes.  
 18 Q. And did you know who Mr. Cleavenger was at that time, or  
 19 did you later learn that he was the student talking?  
 20 A. That's when I first knew about Jim Cleavenger was at that  
 21 time.  
 22 Q. So you were introduced to him there. Is that your  
 23 testimony?  
 24 A. No. I just went up and talked to him and kind of  
 25 introduced myself and -- to see what the deal was with him

1 opposing the Tasers.  
 2 Q. Was Sergeant Cameron there when you had that discussion  
 3 with Mr. Cleavenger?  
 4 A. No.  
 5 Q. Do you have any personal knowledge that Sergeant Cameron  
 6 knew who Mr. Cleavenger was in 2008?  
 7 A. Did he know him personally?  
 8 Q. Yes.  
 9 A. I don't believe so.  
 10 Q. Were you and Sergeant Cameron friends in 2008?  
 11 A. We were co-workers.  
 12 Q. How would you describe your relationship with him? Was it  
 13 friendly?  
 14 A. We were co-workers. I just showed up and worked with him,  
 15 and that was it.  
 16 Q. Sitting here today, you don't like Sergeant Cameron, do  
 17 you?  
 18 A. I would say that I wouldn't have him over for dinner at my  
 19 house any time soon, but if you're implying that I'm saying  
 20 something in a retaliatory manner, I would say no.  
 21 Q. Okay. I'm not implying anything. My question is, do you  
 22 like Sergeant Cameron?  
 23 A. On a personal level? Not so much. I -- I feel sorry for  
 24 him, in terms of him losing his job. He's like me. You know,  
 25 he has a family, and he has his child and his wife to support.

1 And, you know, I have some compassion for him in terms of that.  
 2 Q. All right. In 2008 would Sergeant Cameron -- did  
 3 Sergeant Cameron have an actual discussion with you about his  
 4 feelings about Mr. Cleavenger speaking out about Tasers?  
 5 A. Any time that those discussions took place, there was more  
 6 than one officer around. It was more in a group setting where  
 7 that discussion would take place or it'd take place at a  
 8 briefing or out in the field.  
 9 Q. Would it be fair to say that the information you have  
 10 about Sergeant Cameron's feelings about this Taser issue came  
 11 from you overhearing snippets of conversations he had with  
 12 somebody else?  
 13 A. I would say I was involved in some of those conversations.  
 14 Q. Tell me what you said.  
 15 A. It was so long ago I really couldn't recall.  
 16 Q. But you recall actively being involved with  
 17 Sergeant Cameron in a conversation?  
 18 A. I do.  
 19 Q. At this point, in 2008, the department members knew that  
 20 this Taser thing was a dead issue. Is that your testimony?  
 21 A. I think a lot of people knew that it was going to go  
 22 nowhere. There was some hope that they were going to actually  
 23 give us the -- give us the equipment for -- you know, for us to  
 24 better protect ourselves and the people we were contacting and  
 25 whatnot, but it was just kind of hard to say.

1 I think a lot of people kind of knew it wasn't going to go  
 2 anywhere, but maybe there was that little bit of glimmer that  
 3 maybe they might do it.  
 4 Q. All right. How often did you work with Mr. Cleavenger?  
 5 A. Probably not very often. I couldn't give you a specific  
 6 number of shifts or anything. We didn't work the same shift,  
 7 but I -- I'm going to say that I was probably out on some calls  
 8 with him.  
 9 Q. When you were out on a call with him, how much time would  
 10 you actually spend observing his activity?  
 11 A. Oh, well, it could be anywhere from, you know, five  
 12 minutes to around 15 minutes, 20 minutes. Just kind of would  
 13 depend on the call.  
 14 Q. Over the course of the two years you worked together, how  
 15 many times do you think you went on a call with him?  
 16 A. I wouldn't even begin to guess.  
 17 Q. Is that because you have no memory of going on a call with  
 18 him?  
 19 A. I'd say that I've gone on a couple of stops with him, but,  
 20 in total, I wouldn't be able to tell you exactly how many or  
 21 there have been around or what of -- it might be in an arm's  
 22 log. An arm's log is where they record all the calls you go on  
 23 and went on.  
 24 Q. Would you say maybe a couple?  
 25 A. Probably.

1 Q. Have you ever been the subject of discipline at the  
 2 department?  
 3 A. I have.  
 4 Q. Tell me about that.  
 5 A. I was pulled into a meeting about using the Internet too  
 6 much and was given a reprimand letter as a result of that, and  
 7 that reprimand letter was later rescinded because I was told  
 8 that it was given outside of the parameters of progressive  
 9 discipline.  
 10 Q. Who gave you this letter of reprimand?  
 11 A. This would have been Casey Boyd.  
 12 Q. My question earlier about who probably --  
 13 MR. JASON KAFOURY: Objection. Asked and answered.  
 14 He already says he doesn't know.  
 15 THE COURT: Overruled.  
 16 BY MS. COIT: (Continuing)  
 17 Q. My question earlier regarding who pulled your Internet  
 18 history, was it probably Casey Boyd?  
 19 A. Was it probably her? Sure, it probably was.  
 20 Q. Was Casey Boyd a good supervisor?  
 21 A. No.  
 22 Q. Why do you say that?  
 23 A. She was pretty terse with people. She was prone to  
 24 targeting people. If -- if -- for whatever reason, if you were  
 25 not within her graces, so to speak, she went after you.

1 Q. Would it be fair to say that the morale in the department  
 2 got better after Chief McDermid disciplined Lieutenant Boyd and  
 3 she was transferred out of the department?  
 4 A. I would say it pleased a lot of people, yes.  
 5 Q. Now, you testified earlier that there was a general fear  
 6 that if you spoke up you would be retaliated against. Do you  
 7 remember saying that?  
 8 A. I do.  
 9 Q. If you know, please tell me who is that general fear of?  
 10 A. I think that general fear was of Doug Tripp, who was a  
 11 former director; Casey Boyd; and Scott Cameron.  
 12 Q. Had Scott Cameron ever disciplined you?  
 13 A. He gave me a letter one time. It wasn't a discipline  
 14 letter. It was a letter of clarification. And after he gave  
 15 me the letter, we were walking out, and I can't remember what  
 16 the letter was about. It has since been pulled from my file.  
 17 We were walking, and he -- and the letter was signed by him,  
 18 from what I recall, and he told me that he was sorry that he  
 19 had to give me the letter and that he didn't write the letter,  
 20 which I thought was kind of weird. But outside of that, I  
 21 don't think I've ever been disciplined by Scott Cameron.  
 22 Q. Were you in fear of retaliation from Lieutenant Lebrecht?  
 23 A. No.  
 24 Q. How about Chief McDermid?  
 25 A. No.

1 Q. Have you ever seen Chief McDermid retaliate against  
 2 someone?  
 3 A. No.  
 4 Q. How would you describe her as a chief?  
 5 A. I get along with Chief McDermid pretty well. I really  
 6 don't have any -- any complaints in that department with her.  
 7 I get along. She's very personable to me.  
 8 Same with Lieutenant Lebrecht. He's always -- he's always  
 9 treated me very well.  
 10 Q. Were you present at the GameDay incident with  
 11 Mr. Cleavenger and the angel wings?  
 12 A. No. But I did hear about it.  
 13 Q. Did you ever make a complaint about Lieutenant Boyd?  
 14 A. I did.  
 15 Q. Did one of those complaints involve something she showed  
 16 you on her computer?  
 17 MR. JASON KAFOURY: I'm going to object, Your Honor.  
 18 We're getting a little outside the scope and --  
 19 THE COURT: What's the relevance, Counsel?  
 20 MR. JASON KAFOURY: -- what is this relevant to?  
 21 THE COURT: Just the relevance.  
 22 MS. COIT: During direct, he gave very general, broad  
 23 testimony about mistreatment by supervisors, retaliation,  
 24 general feelings of morale because of the supervisors.  
 25 THE COURT: Overruled.

1 BY MS. COIT: (Continuing)  
 2 Q. Do you remember my question?  
 3 A. Would you ask it again.  
 4 Q. Do you recall making a complaint about Casey Boyd,  
 5 Lieutenant Boyd, having to do with something she showed you on  
 6 her computer?  
 7 A. I remember that incident.  
 8 Q. Tell me about that.  
 9 A. So I was in her office. She wanted to talk to me about  
 10 something, and she had her computer on, and she was laughing  
 11 about it, and showed it to me, and it was a photo of a young  
 12 woman who was topless. And I want to say that she was  
 13 either -- she made -- I think she may have been playing a  
 14 musical instrument, a violin or something, and I'm kind of  
 15 shocked she's showing me this in the office. And she told me  
 16 that it was -- Amelie Rosseau was the person's name, and I have  
 17 no idea how to spell that except for the last name is probably  
 18 R-U-S-S-O.  
 19 And Ms. Rosseau at the time was the ASUO student body  
 20 president for the university, and she showed me this picture  
 21 and I'm kind of like, okay, and she said -- she was laughing  
 22 about it and saying that she was going to somehow put this  
 23 photo to use to discredit the student body president, and I  
 24 really didn't take that very seriously. And at the time the  
 25 student body president was very opposed to public safety

1 becoming a police department, and she went on about that photo  
 2 for a little bit, and I just kind of left the office, and I  
 3 was, like, wow.  
 4 And I want to say that I mentioned it to a sergeant. I  
 5 don't remember who. But I knew that there was an investigation  
 6 over the photo, but nobody ever came and interviewed me about  
 7 it.  
 8 Q. In your opinion, did Chief McDermid improve both the  
 9 morale and the running of the department when she disciplined  
 10 and ultimately had Lieutenant Boyd taken out of the department?  
 11 MR. JASON KAFOURY: Objection. Asked and answered.  
 12 THE COURT: Overruled.  
 13 THE WITNESS: One more time.  
 14 BY MS. COIT: (Continuing)  
 15 Q. In your opinion, did Chief McDermid improve both the  
 16 morale and the functioning of the University of Oregon Police  
 17 Department when she had Ms. -- or, excuse me, Lieutenant Boyd  
 18 disciplined and moved out of the department?  
 19 A. A lot of people were really happy that Casey Boyd was  
 20 removed from her position.  
 21 MS. COIT: Thank you. That's all I have.  
 22 THE COURT: Redirect.  
 23 ///  
 24 ///  
 25 ///

1 REDIRECT EXAMINATION  
 2 BY MR. JASON KAFOURY:  
 3 Q. Do you know if Casey Boyd was following McDermid and  
 4 Tripp's orders to discipline people like you?  
 5 A. I don't have any direct knowledge of that, but it was  
 6 suspected that there were certain people in the department that  
 7 were -- that were targeted for getting rid of them, and I  
 8 believe I was one of those at that time when Doug Tripp was  
 9 there.  
 10 Q. Kent Abbott another one?  
 11 MS. COIT: Object on relevance. He said it was  
 12 Doug Tripp.  
 13 THE COURT: Overruled.  
 14 You can answer the question. Was Kent Abbott another one?  
 15 BY MR. JASON KAFOURY: (Continuing)  
 16 Q. Was Kent Abbott another one? Someone who was there for a  
 17 really long time and was being targeted?  
 18 A. I had conversations with Kent about what was happening at  
 19 that time, and he really felt that the -- that --  
 20 MS. COIT: Hearsay.  
 21 THE WITNESS: -- he was being targeted.  
 22 BY MR. JASON KAFOURY: (Continuing)  
 23 Q. You said morale is still low at the department now where  
 24 the chief still runs the place; correct?  
 25 A. It is.

1 Q. Do you know that Amelie Rosseau, the U of O student body  
 2 president, do you know if there were discussions about her  
 3 ending up on the bowl of dicks list?  
 4 A. I have --  
 5 MS. COIT: Object. This is --  
 6 THE WITNESS: -- no idea about that list.  
 7 MS. COIT: This is beyond the scope.  
 8 THE COURT: Overruled. You can answer the question.  
 9 THE WITNESS: I -- no.  
 10 BY MR. JASON KAFOURY: (Continuing)  
 11 Q. We talked about you heard my client give the speech. Was  
 12 he the only law student that gave a speech about Tasers at this  
 13 event with the chief?  
 14 A. That's a great question. I wouldn't be able to say if he  
 15 was the only law student or not.  
 16 Q. But do you specifically remember back in 2008 that  
 17 Sergeant Cameron was unhappy with James Cleavenger because of  
 18 that speech that he gave?  
 19 A. He was.  
 20 Q. And that went on for weeks after everybody else stopped  
 21 talking about it; right?  
 22 A. Quite a while.  
 23 Q. Prohibited camping was not something you could cite for ;  
 24 is that correct?  
 25 A. It's not in the OAR. It's in the city code and I don't



1 know if we had the authority to cite for that at that time.  
 2 That also changed. We had -- we were in an agreement with  
 3 the city police where they wrote us in as law enforcement  
 4 officers so we could write citations instead of having to  
 5 constantly call their officers over to do it for us to really  
 6 unlock the burden because they were pretty short-staffed. And  
 7 that list of what we could and couldn't cite for changed quite  
 8 a bit.  
 9 There were a handful of things that we could cite for in  
 10 the beginning and then they expanded it. And so I couldn't  
 11 tell you during those years what we could and couldn't cite for  
 12 specifically.  
 13 Q. We talked about body cameras. Didn't my client purchase  
 14 body cameras?  
 15 A. Yeah, he did actually.  
 16 Q. Bought you some, didn't he?  
 17 A. I asked him to purchase me one, yes.  
 18 Q. Talking about this loaded gun incident, if you were  
 19 ordered by your command staff sergeant to give a safety escort  
 20 to a woman in distress who had a gun, would you do it?  
 21 A. Well, I can't say no.  
 22 MR. JASON KAFOURY: Thanks. That's all I have.  
 23 THE COURT: Recross?  
 24 MS. COIT: None, Your Honor.  
 25 THE COURT: Let's make certain, Counsel. Exhibit 208

1 was referred to but has not been received by the Court.  
 2 Exhibit 253, Counsel, you mentioned that last night. Are you  
 3 going to seek that or not? If so, I want to do that while the  
 4 witness is still here.  
 5 MR. JASON KAFOURY: It's -- I'll offer it. It's  
 6 the --  
 7 THE COURT: All right. Once again, what does it  
 8 purport to be? Just so I have it.  
 9 MR. JASON KAFOURY: This is the witness's Internet  
 10 search history that was collected.  
 11 THE COURT: I'm going to -- but you'll have to lay  
 12 the foundation. You'll have to ask him about 253, Counsel.  
 13 MR. JASON KAFOURY: Okay.  
 14 THE COURT: Just to explain to the jury, we've been  
 15 going over items of evidence each evening after you left so we  
 16 don't have to have sidebars, and so a number of these documents  
 17 are familiar to all counsel, and it saves a lot of time so  
 18 we're not going out in the hallway.  
 19 Counsel?  
 20 MR. JASON KAFOURY: Can we show him the document ?  
 21 THE COURT: Certainly. It's 253.  
 22 BY MR. JASON KAFOURY: (Continuing)  
 23 Q. 253. Oh, does it appear to be Internet search history?  
 24 A. It does.  
 25 MR. JASON KAFOURY: It was produced by the other

1 side, Your Honor, as his --  
 2 THE COURT: I'm going to receive it, Counsel. That's  
 3 received.  
 4 Could you tell us, though, the time period it indicates  
 5 that it covers?  
 6 THE WITNESS: Well --  
 7 THE COURT: All you have to do is look at the first  
 8 page and maybe look at the last. It will give you just a rough  
 9 period in years.  
 10 THE WITNESS: It looks like it's from January 22,  
 11 2010, to July 19, 2010.  
 12 THE COURT: Thank you. It's received.  
 13 MR. JASON KAFOURY: Okay.  
 14 THE COURT: Any more questions of this witness,  
 15 Counsel? Let me turn to the plaintiff.  
 16 MR. JASON KAFOURY: No.  
 17 THE COURT: Let me turn back to the defense. You're  
 18 not limited, Counsel.  
 19 MS. COIT: No questions.  
 20 THE COURT: Now, may we excuse the witness at this  
 21 time, Counsel?  
 22 MR. JASON KAFOURY: Yes.  
 23 THE COURT: Mr. Myers, thank you. You may step down.  
 24 THE WITNESS: Am I good to go home?  
 25 THE COURT: Yes, you can. Thank you for waiting in

1 the hallway last evening.  
 2 THE WITNESS: Yes.  
 3 THE COURT: Counsel, your next witness.  
 4 MR. JASON KAFOURY: We will call Officer Kent Abbott  
 5 to the stand.  
 6 THE COURT: Thank you, sir. If you would step  
 7 forward, please, between the doors and into the courtroom.  
 8 Step forward. Thank you, sir.  
 9 Would you raise your right hand, please.  
 10  
 11 ROBERT KENT ABBOTT,  
 12 called as a witness in behalf of the Plaintiff, being first  
 13 duly sworn, is examined and testified as follows:  
 14 THE WITNESS: Yes.  
 15 THE COURT: Thank you, sir. Would you be seated in  
 16 the witness box. The entrance is closest to the wall, just to  
 17 my right. Be seated.  
 18 Sir, would you move your chair close to that microphone?  
 19 Now, sir, would you state your full name and spell your last  
 20 name.  
 21 THE WITNESS: My name is Robert Kent Abbott, and my  
 22 last name is spelled A-B-B-O-T-T.  
 23 THE COURT: Thank you. Direct examination by  
 24 plaintiff's counsel.  
 25

1 DIRECT EXAMINATION  
 2 BY MR. JASON KAFOURY:  
 3 Q. Okay. Mr. Abbott, Officer Abbott, we compelled you to be  
 4 here under subpoena; correct?  
 5 A. Yes.  
 6 Q. You are still currently an employee of the department; is  
 7 that accurate?  
 8 A. Yes.  
 9 Q. Can you briefly tell us a little bit about yourself and  
 10 answer your questions, as best you can, to the jury even though  
 11 I'm over here.  
 12 A. Sure.  
 13 Q. It's an awkward courtroom, but the mic only picks you up  
 14 if you talk close to it, so -- there you go. Perfect. Tell us  
 15 a little bit about yourself, where you're from, and your  
 16 educational background.  
 17 A. I'm a native Oregonian. I'm from Eastern Oregon. We call  
 18 it the state of Eastern Oregon, and I've been employed at the  
 19 university since 1984. November 13th. That's the last of my  
 20 careers. And I like it here in Oregon.  
 21 Q. Tell us what positions you've held, roughly, over the  
 22 years at the department.  
 23 A. I started out as a parking officer and then a campus  
 24 security officer, public safety campus security officer, public  
 25 safety officer, and now commission public safety officer.

1 Q. You were a sergeant; correct?  
 2 A. I was a sergeant for approximately eight months. 2000,  
 3 2001-ish.  
 4 Q. So you -- at least for a brief period, you were part of  
 5 the management side of things?  
 6 A. Repeat.  
 7 Q. At least for a brief period you were within the  
 8 supervisory management portion. Is that accurate?  
 9 A. Yes.  
 10 Q. I asked you at your deposition if you read portions of my  
 11 client's lawsuit?  
 12 A. I didn't hear you. Your client's what?  
 13 Q. I asked you if you had read portions of my client's  
 14 lawsuit at your deposition. Do you remember that?  
 15 A. Yes.  
 16 Q. I'm assuming you haven't read any additional portions of  
 17 the lawsuit since the deposition.  
 18 A. No. It's too long. I'm not interested.  
 19 Q. But when you did read it, nothing jumped out to you as  
 20 inaccurate, did it?  
 21 A. That's too general.  
 22 Q. Do you remember giving a deposition in this case?  
 23 A. I did give a deposition in this case.  
 24 Q. Have you reviewed your deposition prior to your testimony  
 25 today?

1 A. No.  
 2 Q. Page 8, line 23.  
 3 THE COURT: Could I see a copy of that deposition and  
 4 those pages, please?  
 5 MS. COIT: Your Honor, I object to this. His answers  
 6 to the question was that that question was too general. I  
 7 don't think you can impeach him on that.  
 8 THE COURT: That's why I want to see the pages of the  
 9 deposition that are marked, Counsel.  
 10 Thank you.  
 11 THE WITNESS: Should I wait before I answer?  
 12 THE COURT: Just a moment. What's, Counsel, again  
 13 the page number?  
 14 MR. JASON KAFOURY: I gave you -- I only have one  
 15 copy.  
 16 THE COURT: See how difficult that is when you have  
 17 one copy. Let's move on.  
 18 The question is too general.  
 19 BY MR. JASON KAFOURY: (Continuing)  
 20 Q. Okay. You've been -- you're hoping to retire here in the  
 21 next few years; is that right?  
 22 A. Yes.  
 23 Q. Were you recently notified that the public safety officer  
 24 positions were no longer going to be there?  
 25 A. It was finally formalized, yes.

1 Q. So will that be the end of your career at that point?  
 2 A. Be more specific.  
 3 Q. Are you planning after that one-year period to work any  
 4 further at the department, or is that it?  
 5 A. Within the department, I have some options.  
 6 Q. Okay. And who's provided you those options?  
 7 A. The chief. Chief McDermed.  
 8 Q. And what options are those?  
 9 A. There's also a security officer position that is  
 10 available. There is dispatch which is available. If they  
 11 develop an evidence property position, that's available. And I  
 12 can apply for the police position. That's available.  
 13 Q. At your deposition you said you would not apply for the  
 14 police position; isn't that accurate?  
 15 MS. COIT: Objection. Improper impeachment with his  
 16 deposition.  
 17 THE COURT: Overruled.  
 18 You can answer the question.  
 19 THE WITNESS: At that time I had not determined that  
 20 as an option.  
 21 BY MR. JASON KAFOURY: (Continuing)  
 22 Q. Okay. Now, as we sit here today, you might apply to  
 23 become a police officer. Is that what you're testifying?  
 24 A. There could be several positions I'm looking at, yes.  
 25 Q. Let's talk about your experience working with my client.

1 You were on the same graveyard shift with my client; isn't that  
 2 correct?  
 3 A. At some point, yes.  
 4 Q. Well, do you know what portions you were there with him  
 5 from 2011, 2012?  
 6 A. I have no idea.  
 7 Q. Months, though, fair to say?  
 8 A. Approximately, six to eight months. Six months is usually  
 9 our rotation. Six months.  
 10 Q. And your relationship with him was cordial, wasn't it?  
 11 A. Yes.  
 12 Q. In fact, you had nothing negative to say about him at all  
 13 during that time period, did you?  
 14 A. No.  
 15 Q. Would you agree that some officers -- there's a spectrum.  
 16 Some officers are a lot more active, meaning they're out  
 17 patrolling, and some are not as active. Would you agree with  
 18 that during 2011, 2012?  
 19 A. You're going to have to define "active."  
 20 Q. Well, how about -- things we can quantify, like writing  
 21 police reports.  
 22 A. There are certain officers that write a lot more police  
 23 reports, yes.  
 24 Q. Are you aware of the fact that my client, during one  
 25 eight-month stint of that, wrote double the number of police

1 reports in comparison to everyone else?  
 2 A. I don't keep track of anyone else's stats.  
 3 Q. You would generally agree that he was one of the more  
 4 active officers; right?  
 5 A. I don't know. I don't remember. I don't keep track of  
 6 that.  
 7 Q. I'll ask it more specifically. In your deposition --  
 8 THE COURT: Counsel, page?  
 9 MR. JASON KAFOURY: Page 19.  
 10 THE COURT: And I'll see that deposition.  
 11 MR. JASON KAFOURY: Page and line is page 19, line 16  
 12 through 24.  
 13 THE COURT: Thank you.  
 14 You may ask the question, Counsel. I've got it.  
 15 MR. JASON KAFOURY: It's my fault for not having more  
 16 copies. It won't happen again.  
 17 THE COURT: This is becoming unduly consumptive of  
 18 time. Not with this witness, but with this process. Ask your  
 19 question and let's move on.  
 20 BY MR. JASON KAFOURY: (Continuing)  
 21 Q. At my deposition did I ask you: I imagine there were some  
 22 people that were more active in terms of being out doing  
 23 patrols, looking at things in the field. There were probably  
 24 others that were a bit more stationary and not moving around as  
 25 much. What I'm trying to get a sense of is --

1 THE COURT REPORTER: I'm sorry. Could you slow down  
 2 a little bit.  
 3 THE COURT: Read that again, Counsel.  
 4 BY MR. JASON KAFOURY: (Continuing)  
 5 Q. What I'm trying to get a sense of was my client, in your  
 6 perspective, one of the more active people, you know, moving,  
 7 investigating, and your answer was yes.  
 8 THE COURT: And your question is does that refresh  
 9 his recollection?  
 10 BY MR. JASON KAFOURY: (Continuing)  
 11 Q. Does that refresh your memory about what you said at your  
 12 deposition?  
 13 THE COURT: Do you need to read it? Counsel will  
 14 give you a copy if you need to look at it.  
 15 THE WITNESS: No. I think I would modify that, is if  
 16 you -- the way I framed it is if -- everyone writes more  
 17 reports than I do, so, yeah, he -- he wrote more reports than I  
 18 did. He did that type of work to write more reports, and  
 19 that's what I meant by that. But then everyone does. So  
 20 singling him out, I don't know the stats enough to single him  
 21 out.  
 22 BY MR. JASON KAFOURY: (Continuing)  
 23 Q. What I asked you at the deposition was, was he out at  
 24 patrol doing stuff in the field more often than other officers  
 25 not as stationary?

1 THE COURT: It was kind of a compound question. Why  
 2 don't you read that again very slowly.  
 3 I want you to listen to the question. Unfortunately, we  
 4 don't have the document in front of you, but we will tomorrow.  
 5 BY MR. JASON KAFOURY: (Continuing)  
 6 Q. I imagine that there were some people that were more  
 7 active in terms of being out on -- doing patrol, looking at  
 8 things in the field, and there were probably others that were a  
 9 bit more stationary, not moving around as much, and I'm trying  
 10 to get a sense of was my client, in your perspective, one of  
 11 the more active people? You know, moving around and  
 12 investigating.  
 13 And you said yes.  
 14 A. He's out of the office. He's moving around, yes.  
 15 Q. Okay. Any reason -- did counsel not give you a copy of  
 16 your deposition?  
 17 A. Yes.  
 18 Q. She did?  
 19 A. Yeah.  
 20 Q. Any reason you didn't read it before coming here today?  
 21 A. I have no point to read it.  
 22 Q. Do you not care about this process?  
 23 A. This trial is not important to me. No, I didn't read it.  
 24 MS. COIT: Object to the badgering. This is his  
 25 witness.

1 THE COURT: No. Interesting colloquy. Overruled. I  
 2 think it gives a perception of where everybody stands in terms  
 3 of the relationship to the trial.  
 4 BY MR. JASON KAFOURY: (Continuing)  
 5 Q. You thought that my client was an asset to the department,  
 6 isn't that correct, while he was there?  
 7 A. As we first started out, yes. During that time period,  
 8 yes.  
 9 Q. During what time period?  
 10 A. The time that he was there working on the same shift I was  
 11 at some point. I didn't think anyone wasn't an asset, so he  
 12 was an asset.  
 13 Q. Over your 30 years there, you've seen a lot of people be  
 14 terminated, haven't you?  
 15 A. Yes.  
 16 Q. But when my client was terminated, you were actually  
 17 surprised; isn't that correct?  
 18 A. I was.  
 19 Q. Because normal pattern, someone gets a letter of  
 20 reprimand. They go -- maybe they grieve it. Maybe they don't.  
 21 They get retrained, and they go back to work. Isn't that a  
 22 normal pattern you observed throughout your years there?  
 23 A. No.  
 24 Q. So why were you surprised he was fired?  
 25 A. People have been fired for any number of reasons over my

1 career, and some have surprised me and some have not.  
 2 Q. Why did my client surprise you?  
 3 A. I'm not familiar with his work ethics or regarding his  
 4 issues with management. So when the time came up, yeah, I was  
 5 surprised.  
 6 Q. In fact, at your deposition because you didn't see any  
 7 cause why he should have been fired; right?  
 8 A. At the time, no.  
 9 Q. Let me ask, over the 30 years you were there, my client --  
 10 there was only one other officer who was ever reassigned from  
 11 public safety officer to parking duty; isn't that right?  
 12 A. One I remember, yes.  
 13 Q. That's Officer McIntyre back in 2005.  
 14 A. Officer McIntyre. I'm not sure of the year.  
 15 Q. Officer McIntyre was actually terminated, got reinstated,  
 16 and then put on parking duty; isn't that right?  
 17 A. Yes.  
 18 Q. So my client is the only person that you are aware of over  
 19 your time, while still an officer, before being terminated,  
 20 that was put on parking duty; isn't that correct?  
 21 A. McIntyre was also terminated from parking.  
 22 Q. But he had been terminated and then reinstated and put on  
 23 parking; isn't that right?  
 24 A. Yes.  
 25 Q. My client was not terminated and then put on parking.

1 That did not occur.  
 2 A. Rephrase that again.  
 3 Q. My client was put from being a public safety officer to  
 4 parking duties. No other off -- without any termination. No  
 5 other officer, you're aware of, has had that happen; isn't that  
 6 accurate?  
 7 A. True.  
 8 Q. Through your years, have you seen a pattern where the  
 9 command staff wants to terminate someone, the person starts to  
 10 get written up, they face discipline, HR gets involved, and  
 11 then they're eventually terminated. You have seen that happen  
 12 a number of times, haven't you?  
 13 A. Yes.  
 14 Q. And when my client got that letter of reprimand and got  
 15 put on parking duty, what went through your mind?  
 16 A. What did he do?  
 17 Q. At your deposition you said, "Oh-oh."  
 18 A. Yeah. What did he do? Yeah.  
 19 Q. Basically, from all your years there, you knew that when  
 20 that happened, the command staff was setting the stage to be  
 21 able to terminate him; isn't that right?  
 22 A. You're going to have to ask that differently.  
 23 Q. And when you saw my client in May of 2012 be reassigned  
 24 after a letter of clarification and a letter of reprimand and  
 25 HR being involved, did you think that the command staff was

1 preparing a case to be able to terminate my client?  
 2 A. That can be a pattern to get rid of someone, yes.  
 3 Q. Did my client have a good sense of humor?  
 4 A. I'm sorry?  
 5 Q. Did my client have a good sense of humor?  
 6 A. I thought he did.  
 7 Q. Working in stress -- working in law enforcement is pretty  
 8 stressful, isn't it?  
 9 A. It is.  
 10 Q. Graveyard shift. All night. Stressful?  
 11 A. That's not stressful.  
 12 Q. Okay. And you would agree that there's a place for humor  
 13 within law enforcement, obviously?  
 14 A. Yes.  
 15 Q. And within the University of Oregon Department of Public  
 16 Safety, there's a place for humor there, too; right?  
 17 A. In the police department, yes.  
 18 Q. Over the 30 years you were there, you're not aware of any  
 19 union grievance that has been overturned prior to going to an  
 20 arbitration, are you?  
 21 A. In the level of arbitration?  
 22 Q. Yes. All the way to arbitration. Nothing overturned at  
 23 step one or step two or step three?  
 24 A. I don't recall anything like that, no.  
 25 Q. Let's talk about annual evaluations. You got more annual

1 evaluations than other people, didn't you?

2 A. Yes.

3 Q. An annual evaluation is a way for command staff to

4 document any issues that they have with the officers, isn't

5 that right?

6 A. Repeat that again.

7 Q. An annual evaluation is a way for the command staff to

8 document any issues that they have with the officers; isn't

9 that right?

10 A. That's incorrect. Well, it documents the good, the bad,

11 and the ugly, so to speak. There are high points. There are

12 points that need to be trained on, further training. Their

13 training and issues they need to reevaluate, upgrade if they

14 have to.

15 Q. Well, some people over the last five to ten years haven't

16 had any annual evaluations or very few; isn't that right?

17 A. I've heard of some of them complaining they hadn't.

18 Q. And you didn't feel a lot of your annual evaluations were

19 fair and accurate in the last 10 years, did you?

20 A. What officer feels that a supervisor is giving them an

21 accurate evaluation? I mean, everyone has a point of

22 contention, but that's normal. I'm -- that's normal to a

23 university system with all the people I have contact with from

24 other departments. That's normal.

25 Q. But, specifically, you took issue with things that were in

1 your own evaluations because they weren't fair and accurate;

2 right?

3 A. You'll have to be specific what type of training or in

4 what type of period that occurred. Which period are you

5 talking about?

6 Q. Over the last, let's say, five years.

7 A. Ask that differently.

8 Q. Do you think things were put in your annual evaluation

9 that were not accurate in the last five years?

10 A. Yes.

11 Q. And do you think that it was unfair for those things to be

12 put in your annual evaluation?

13 A. Some things, yes.

14 Q. Now, you -- you had an issue with Lieutenant Casey Boyd ;

15 isn't that correct?

16 A. She's not my favorite.

17 Q. You felt like she was targeting you, though; isn't that

18 right?

19 A. Yes.

20 Q. Do you know if she was following command staff decisions

21 from Chief Tripp and Assistant Chief McDermed while making

22 those determinations?

23 A. Could be. I don't know.

24 Q. Now, you do remember generally that this transition period

25 of 2011 to 2012, when the department was transitioning to

1 becoming a police department, do you remember that time period?

2 A. Yes.

3 Q. You do remember that the chief, then Chief Tripp , and the

4 administration was encouraging officers to go out and seek

5 additional training during that. Do you remember that?

6 A. Yes.

7 Q. Did you attempt to seek any additional outside training?

8 A. I was assigned outside training.

9 Q. But you didn't seek to get any?

10 A. I didn't have to. If they wanted me to be trained on

11 something, they assigned me that.

12 Q. Let's talk about your field notebooks. Would you agree

13 that it was common knowledge within the department -- the

14 department that you took, by far, the most copious notes in the

15 field notebooks?

16 A. I got teased about it, but I wouldn't know if that was

17 department-wide.

18 Q. It was kind of a joke that you documented everything in

19 your notebooks; right?

20 A. Probably.

21 Q. And you wrote stuff down during shift briefings, didn't

22 you?

23 A. Important stuff from the supervisor, yes.

24 Q. Now, part of the reason that you wrote all of that down

25 was to protect yourself, wasn't it? Be honest.

1 A. You have to be more specific on that.

2 Q. Well, if you document --

3 THE COURT: We're going to strike the comment "be

4 honest," Counsel.

5 MR. JASON KAFOURY: Okay. It was a second question.

6 THE COURT: That's for the jury to decide, not for

7 you to lead.

8 MR. JASON KAFOURY: Okay.

9 THE COURT: Your next question.

10 BY MR. JASON KAFOURY: (Continuing)

11 Q. Deep down, were you writing everything down in your

12 notebook so that you could protect yourself if you were ever

13 asked later what happened at this meeting or what was said?

14 A. The only thing I wrote down was work-related regarding

15 instructions for that particular day or week or assignments

16 given. It was all patrol-related.

17 Q. But were you also documenting things to make sure there

18 was a clear record so there would be no discrepancies later

19 about what happened on certain instances?

20 A. Yes.

21 Q. Okay. Do you recall getting an email from general

22 counsel, Doug Park, at the University of Oregon, in regards to

23 my client's lawsuit, that there was a hold on all materials

24 that could be related to this lawsuit?

25 A. Yes.

1 Q. And you got that shortly after this lawsuit was filed, the  
 2 end of 2013?  
 3 A. Okay. I don't know the date.  
 4 Q. Well, do you agree that you got the email shortly after  
 5 the lawsuit regardless of the date?  
 6 A. I got it. I don't remember the time frame one way or the  
 7 other.  
 8 Q. How many field notebooks would you do in a month?  
 9 A. Four.  
 10 Q. So that's 30 to 40 field notebooks a year?  
 11 A. Could be.  
 12 Q. Now, at your deposition, I initially asked you about your  
 13 field notebook retention policy. Do you recall that?  
 14 A. Reread it.  
 15 Q. Well, do you recall your answer? I'd like to know if you  
 16 recall your initial answer.  
 17 A. No.  
 18 Q. I asked --  
 19 MS. COIT: I object to the impeachment. He hasn't  
 20 even asked a question.  
 21 THE COURT: I'm going to sustain it. The witness  
 22 hasn't reviewed the deposition. So, Counsel, why don't you  
 23 show him that page and let him read that for a moment and see  
 24 if that refreshes his recollection.  
 25 ///

1 BY MR. JASON KAFOURY: (Continuing)  
 2 Q. I'd like you to read for the jurors, if you would be so  
 3 kind --  
 4 THE COURT: Read it to himself, Counsel, first to see  
 5 if that refreshes his recollection.  
 6 MR. JASON KAFOURY: Page 45, line 20 through page 46,  
 7 line 4.  
 8 THE WITNESS: Okay. Yeah.  
 9 BY MR. JASON KAFOURY: (Continuing)  
 10 Q. Okay. Does that refresh your recollection about what you  
 11 first stated when I asked you about your field notebooks?  
 12 A. Yes.  
 13 Q. You first stated that you retained them for a short period  
 14 of time. Around a year. Correct?  
 15 A. Yeah.  
 16 Q. Then I asked you what you did with them, and you said you  
 17 destroyed them?  
 18 A. Yes.  
 19 Q. And I asked you how you destroyed them, and you said a  
 20 shredder; correct?  
 21 A. Yes.  
 22 Q. Then I asked you why you didn't retain any of your  
 23 notebooks in relation to Mr. Cleavenger -- that may relate to  
 24 Mr. Cleavenger after you received that email from general  
 25 counsel. Do you remember that?

1 A. Yes.  
 2 Q. And isn't it a fact that you actually destroyed all 30  
 3 years of your field notebooks in the spring of 2014?  
 4 A. No. Over a period of time, I would purge -- purge them.  
 5 Q. Is it your testimony that you did not destroy all of your  
 6 field notebooks for 30 years in the spring of 2014?  
 7 A. I destroyed what I had left.  
 8 Q. And was it not all 30 years of your notebooks?  
 9 A. It was a lot of them because I had purged earlier.  
 10 There's quite a bit that I destroyed. I didn't go through and  
 11 count any number. It's just there were several large boxes.  
 12 Q. And those ones that you destroyed would cover the time  
 13 period of 2010 to 2012 when my client was there; correct?  
 14 A. Sure.  
 15 Q. It actually took about a month to destroy all of them,  
 16 didn't it?  
 17 A. No. Because I threw them in the fire. I've got a  
 18 woodstove at home. That's how I shred them.  
 19 Q. So you burned them?  
 20 A. Yes.  
 21 Q. Did you burn years and years and years of these books,  
 22 including time that my client was there, all after you received  
 23 this notice from general counsel --  
 24 A. Yeah.  
 25 Q. -- to hold on to any material?

1 A. Yes.  
 2 Q. And you did it because you wanted to purge the past; isn't  
 3 that right?  
 4 A. You're going to have to be more specific on that.  
 5 Q. Well, I asked you on page 46, line 18: And why did you  
 6 decide to start doing that?  
 7 Answer, line 20, I wanted to purge the past.  
 8 A. I'll modify that. Related to patrol. The books are  
 9 related to patrol.  
 10 Q. Okay.  
 11 A. Only patrol.  
 12 Q. How many years had you been doing patrol?  
 13 A. As a general term, since 1984.  
 14 Q. So you did burn every single one of your field notebooks  
 15 since 1984 that related to patrol; is that accurate?  
 16 A. Yeah. Yeah.  
 17 Q. Let's talk about the bowl of dicks list. You were there  
 18 during at least some of those shift briefings that  
 19 Lieutenant Lebrecht ran; correct?  
 20 A. It wasn't a bowl of dicks list.  
 21 Q. Okay. Well, let's talk about that.  
 22 A. It was called "the list."  
 23 Q. I understand there's some disagreement in this case about  
 24 that.  
 25 THE COURT: We've heard it referred to in both ways.

1 Counsel for the plaintiff refers to it as the bowl of dicks  
 2 list and counsel for the defendant may refer to it as the list  
 3 or the bowl. We're not sure yet. The jury will decide what  
 4 the appropriate nomenclature is.  
 5 Counsel?  
 6 BY MR. JASON KAFOURY: (Continuing)  
 7 Q. You do agree that the concept of a bowl of dicks list was  
 8 discussed at these meetings; correct?  
 9 A. A list was discussed at times during briefing before  
 10 shift, yes.  
 11 Q. But the list was referred to, at least at times, as the  
 12 bowl of dicks list; isn't that accurate?  
 13 A. No. No. It was "the list."  
 14 Q. At your deposition I asked you --  
 15 THE COURT: Well, just a moment, Counsel. The  
 16 appropriate way is to refresh his recollection. Not just to  
 17 start reading from the deposition. That means you usually take  
 18 the page and you approach him and show him the page, and you  
 19 have him read it. And then you step back to the lectern and  
 20 you ask him if he said it. And then if he denies it, then you  
 21 impeach him with it.  
 22 MR. JASON KAFOURY: Okay.  
 23 THE COURT: Tomorrow we'll have --  
 24 MR. JASON KAFOURY: We'll have multiple copies of  
 25 depositions. After lunch we'll have them.

1 THE COURT: Excellent.  
 2 BY MR. JASON KAFOURY: (Continuing)  
 3 Q. I would like you to read starting at page 53, line 4, down  
 4 to line 22.  
 5 A. Okay.  
 6 Q. Okay. Does that help refresh your memory about what we  
 7 discussed at the deposition?  
 8 A. Yeah.  
 9 Q. Okay. So you first heard the phrase "bowl of dicks"  
 10 during these briefings; right?  
 11 A. It was, yes. It was, yeah. If you phrase it that way,  
 12 yes.  
 13 THE COURT: Counsel, let's be sure: Is that the  
 14 exact terminology, in other words?  
 15 BY MR. JASON KAFOURY: (Continuing)  
 16 Q. Question, page 53, line 4. When did you first hear the  
 17 phrase bowl of dicks?  
 18 Answer: During one of those briefings.  
 19 Then I asked you: Was it a frequent subject of  
 20 discussion?  
 21 You asked me to rephrase.  
 22 And then I said: Was it discussed once and then never  
 23 discussed again, or was it talked about multiple times in these  
 24 meetings?  
 25 And you said different times. Right?

1 A. Yes.  
 2 Q. The bowl of dicks was discussed at different times during  
 3 the --  
 4 A. The phrase was used, yes.  
 5 Q. And you do recall that during part of those discussions  
 6 people would name a person or a thing and they would say that  
 7 person or that thing can eat a bowl of dicks. That did happen,  
 8 didn't it?  
 9 A. Not the way you said it.  
 10 Q. Okay. How did a person or a thing and the phrase "that  
 11 person can eat a bowl of dicks," how was it used?  
 12 A. Some people would comment on -- comment after we had a  
 13 discussion about a particular crazy thing that happened that  
 14 day, and people would say different phrases. And one person or  
 15 two would say that particular phrase regarding -- about that  
 16 incident that happened that day that was talked about.  
 17 Q. And during those meetings you saw Eric LeRoy take out his  
 18 cell phone and appear to put names into it during those same  
 19 discussions; isn't that right?  
 20 A. I don't know if he put stuff into it or not.  
 21 Q. Okay. But you saw him take out his cell phone?  
 22 A. Yes.  
 23 Q. And it looked like he was trying to enter information into  
 24 it; right? You recall seeing that?  
 25 A. I saw him fingering, but I didn't give it much thought.

1 Q. There were also other times where the bowl of dicks was  
 2 discussed but LeRoy didn't take out his cell, for example;  
 3 correct? You saw that too?  
 4 A. Yes.  
 5 Q. And you do remember, during those briefings, a discussion  
 6 about Mayor Kitty Piercy, the Eugene mayor, being discussed,  
 7 don't you?  
 8 A. Yes.  
 9 Q. You also remember the University of Oregon student body  
 10 president, Amelie Rosseau -- she was on the list, wasn't she?  
 11 A. I remember talking about her. I don't know if she was put  
 12 on any list.  
 13 Q. Do you remember why she was put on the list?  
 14 MS. COIT: Object.  
 15 THE COURT: Overruled.  
 16 You can answer the question.  
 17 THE WITNESS: I think she was -- if I had a general  
 18 term, she's an activist.  
 19 BY MR. JASON KAFOURY: (Continuing)  
 20 Q. Jesse Jackson was put on the list?  
 21 A. He's an activist.  
 22 Q. But the reason they're put on the list is because they're  
 23 an activist? That's what the whole discussion was?  
 24 A. Rephrase that.  
 25 Q. The reason the student body president and Jesse Jackson

1 were put on this list was because they were activists. That  
 2 was the discussion; right?  
 3 A. Well, they were outspoken. I don't know if it was on the  
 4 same day.  
 5 Q. I understand. But your word "activist" --  
 6 A. Activist. People that are out doing stuff. Out -- out  
 7 for a cause.  
 8 Q. All of these discussions we're talking about here,  
 9 everyone who's sitting there is being paid to be working during  
 10 those shifts; right?  
 11 A. The discussion was done mostly before shift.  
 12 Q. Okay. How long did these shift briefings last?  
 13 A. Shift briefings can go from zero time -- we get calls the  
 14 minute we get on the shift -- to in the summer, where we  
 15 discuss training for an hour, hour and a half, which is rare,  
 16 but it does happen.  
 17 Q. Sometimes these meetings lasted hours; is that right?  
 18 A. Yes.  
 19 Q. Now, I want to be clear about this because during those  
 20 briefings, at times, someone would be brought up in the context  
 21 of that person can eat a bowl of dicks and then that person  
 22 ended up on Eric LeRoy's cell phone. That did happen, did it  
 23 not?  
 24 A. Rephrase it differently.  
 25 Q. At times people would be brought up in the context of that

1 person can eat a bowl of dicks, and then that person ended up  
 2 on Eric LeRoy's cell phone?  
 3 A. Not necessarily.  
 4 Q. That did happen?  
 5 A. I don't know that to be on a list or on a cell phone. I  
 6 don't know that for sure.  
 7 Q. Please read page 63, line 10 through 21.  
 8 THE COURT: To save time, Counsel, if we can hear  
 9 you, you can question from there.  
 10 MR. JASON KAFOURY: Okay.  
 11 THE WITNESS: Okay.  
 12 BY MR. JASON KAFOURY: (Continuing)  
 13 Q. Okay. At your deposition, I asked: And is it true, that  
 14 someone would be discussed, someone would say, "They can eat a  
 15 bowl of dicks," and that person who was discussed ended up on  
 16 Eric LeRoy's phone. Did that happen?  
 17 I wouldn't know that because we discussed other topics,  
 18 other things, other people that never got on the list.  
 19 I understand that. That sometimes people didn't end up on  
 20 the list. But sometimes all that happened in the same way as  
 21 Eric LeRoy testified to, on his phone.  
 22 And your answer was sometimes. Correct?  
 23 A. Okay.  
 24 Q. So that did happen sometimes. You would tell people they  
 25 could eat a big bowl of dicks, and they ended up on

1 Eric LeRoy's cell phone; isn't that accurate?  
 2 A. Okay. They ended up on the phone, I guess. I haven't  
 3 read down the full list; but, yes.  
 4 Q. Do you agree that Casey and Mark Boyd are on the list?  
 5 A. They would be on anyone's list. Yeah.  
 6 Q. And they were second-to-the-last names on the list; isn't  
 7 that right?  
 8 A. I don't know that to be.  
 9 Q. Can we have exhibit -- I think it's -- well, to save time,  
 10 were Mark and Casey Boyd put on the list in relation to  
 11 Mark Boyd's arrest at the U of O football game?  
 12 A. I don't -- I don't know the time frame. I remember the  
 13 football season. Yeah, I think -- yeah. Okay, yeah.  
 14 Q. Okay. Well, the game was the Ducks versus Washington  
 15 State October 2013 --  
 16 MS. COIT: Object to counsel testifying.  
 17 THE COURT: This is refreshing his recollection. You  
 18 can ask the question, Counsel.  
 19 THE WITNESS: Yeah. Cougars.  
 20 BY MR. JASON KAFOURY: (Continuing)  
 21 Q. Cougars, okay. And that October 13, 2013, it was just a  
 22 month before my client filed this lawsuit, and people were  
 23 still being put on that list; isn't that right?  
 24 A. I don't know when it -- people stopped being put on a  
 25 list. I don't know that.

1 Q. Is it fair to say that over 2010, 2011, 2012, when my  
 2 client was there, there were a lot of different policies and  
 3 directives depending on who the supervisors were?  
 4 A. You need to ask that differently.  
 5 Q. Well, sometimes there were written rules and sometimes  
 6 there weren't during these years; right?  
 7 A. Yes.  
 8 Q. And sometimes some supervisors interpreted some rules some  
 9 ways and other times supervisors interpreted them differently?  
 10 Right? That happened?  
 11 A. Certain supervisors emphasized different parts of the  
 12 rule, yes.  
 13 Q. Let's talk about politics. Fair to say that my client was  
 14 more on the Democratic left perspective than other people on  
 15 the shift briefings?  
 16 A. Yes. He was on my side, I think.  
 17 Q. That was pretty common knowledge within the department,  
 18 that my client was more on the left side; right?  
 19 A. Yes.  
 20 Q. People within the department knew that my client had  
 21 volunteered on Democratic presidential campaigns and driven in  
 22 the motorcade for Al Gore and Barack Obama?  
 23 A. We had discussed that at briefings, yes.  
 24 Q. And you remember Lieutenant Lebrecht making some pretty  
 25 politically conservative statements during those briefings,



1 don't you?  
 2 A. Yeah.  
 3 Q. For example, President Obama wasn't born in the United  
 4 States?  
 5 A. I heard that from everybody. In humor, yeah, he's  
 6 mentioned it.  
 7 Q. Bill Clinton was responsible for Pat Tillman's death in  
 8 Afghanistan?  
 9 A. Who?  
 10 Q. Bill Clinton was responsible for Pat Tillman's death in  
 11 Afghanistan. Do you remember hearing that?  
 12 A. No. It was the Republicans.  
 13 Q. You actually posted a photo of Ronald Regan on the wall in  
 14 the briefing room, didn't you?  
 15 A. The official photograph, yes.  
 16 Q. And you don't believe any of these political discussions  
 17 or this putting people on a list was inappropriate; right?  
 18 A. Now, you just put that all in one sweeping category.  
 19 Q. Okay. Well, let's separate that out. You don't think the  
 20 political discussions were inappropriate on work time, do you?  
 21 A. They weren't serious. They were fun stuff.  
 22 Q. Do you think it was inappropriate to take people and put  
 23 them on a list, the bowl of dicks list?  
 24 A. Talking about things humorously? No, I don't.  
 25 Q. Would you agree that the department culture was pretty

1 A. What involved Sergeant Cameron?  
 2 Q. Sexual harassment complaints all involved  
 3 Sergeant Cameron, didn't they?  
 4 A. No. That I don't know to be. I don't get the full  
 5 picture on anything. It's usually one side or the other. If  
 6 there's a discussion, it's about the one person on the side of  
 7 their point of view regarding the issue, whatever the issue is.  
 8 Q. Over the last five years, people complaining about a  
 9 hostile work environment has been a common phrase there in the  
 10 department, hasn't it?  
 11 A. I've heard that discussion, yes.  
 12 Q. I want to talk about people fired for dishonesty. People  
 13 have been fired for theft; right?  
 14 A. Yes.  
 15 Q. Theft and burglary?  
 16 A. Yes.  
 17 Q. Gino Acuno. Is that the name?  
 18 A. Acuna.  
 19 Q. As far as you know, Gino Acuno was never *Brady*-listed  
 20 despite allegations; correct?  
 21 A. What do you mean by *Brady*-listed?  
 22 Q. No information was taken by the department and sent to the  
 23 district attorney calling that person dishonest?  
 24 A. I don't know that one way or the other.  
 25 Q. You never heard it has, have you?

1 conservative during the time my client was there?  
 2 A. You're going to have to ask that differently. I don't  
 3 know how to answer that.  
 4 Q. I'll just show you.  
 5 A. I'd have to break that up into either patrol or office  
 6 staff.  
 7 Q. What about patrol? Was it pretty conservative?  
 8 A. On our shift, pretty much we're all left of center  
 9 brain -- radical, activists, pretty much.  
 10 Q. Except for Lieutenant Lebrecht?  
 11 A. He's never mentioned any party down the line -- he's  
 12 always down the line; never could pin him one way or the other.  
 13 Q. You -- multiple women, over the last five years,  
 14 complained to you directly they suffered sexual harassment in  
 15 the department; isn't that accurate?  
 16 A. Yes.  
 17 Q. And those accusations seemed credible to you, didn't they?  
 18 A. You're going to have to rephrase that differently.  
 19 Q. Were the accusations to you credible?  
 20 A. From their point of view, yes.  
 21 Q. I'm wondering about your point of view. Did you --  
 22 A. You don't get that.  
 23 Q. What's that?  
 24 A. You don't get my point of view on that.  
 25 Q. Well, they all involve Sergeant Cameron, didn't they?

1 A. No.  
 2 Q. Now, you would agree that if a supervisor sat and watched  
 3 a bunch of dash cam videos but doesn't talk to the officer  
 4 about the context of what they're making their decisions on  
 5 that the supervisor is going to get an incomplete picture of  
 6 why the officer is making certain decisions in the moment;  
 7 isn't that right?  
 8 A. Yes.  
 9 Q. By the way, you would agree there's a morale problem  
 10 within the department, isn't there?  
 11 THE COURT: What time period, Counsel?  
 12 MR. JASON KAFOURY: Now.  
 13 THE COURT: Well --  
 14 BY MR. JASON KAFOURY: (Continuing)  
 15 Q. Well, was there a morale --  
 16 THE COURT: Counsel, what's the relevance to this  
 17 lawsuit now?  
 18 MR. JASON KAFOURY: Punitive damages. Same people in  
 19 charge.  
 20 THE COURT: No. Time period. You can constrict it.  
 21 BY MR. JASON KAFOURY: (Continuing)  
 22 Q. Was there a morale problem back in 2010 to 2012 when my  
 23 client was there?  
 24 A. With your client?  
 25 Q. I was asking about a morale problem within the department

1 generally.  
 2 THE COURT: You can have that up to 2014, Counsel.  
 3 MR. JASON KAFOURY: 2014.  
 4 THE COURT: 2010 to 2014 was there a morale problem ?  
 5 THE WITNESS: Yes. We had issues at times, yes.  
 6 MR. JASON KAFOURY: That's all I have.  
 7 THE COURT: We'll start the cross-examination after  
 8 lunch. What time is it now, Christy?  
 9 DEPUTY COURTROOM CLERK: 12:20.  
 10 THE COURT: Just like that clock says, right, that I  
 11 didn't see.  
 12 Now I know where the clock is in the courtroom.  
 13 Why don't you take an hour and 10 minutes. Make it 1:30.  
 14 It's easier to remember. Please don't discuss this matter  
 15 amongst yourselves or form any opinion or express any opinion  
 16 about the case.  
 17 Counsel, I want you back at 1:15. I want to give you a  
 18 lunch. 1:15.  
 19 So we'll see you at 1:30 promptly. Thank you.  
 20 (Jury not present )  
 21 (Recess taken.)  
 22 THE COURT: You can roam a little bit, if you want  
 23 spaces between each other.  
 24 We're back in session. Thank you. The jury is present,  
 25 all counsel, the parties, and Officer Abbott is retaking the

1 stand, please.  
 2 (Jury present.)  
 3 THE COURT: Okay. Thank you. This is  
 4 cross-examination.  
 5  
 6 CROSS-EXAMINATION  
 7 BY MS. COIT:  
 8 Q. Mr. Abbott, I'm going to start out with a little bit of  
 9 talk about these briefings that were discussed earlier in your  
 10 direct exam with Mr. Kafoury. During these briefings, do you  
 11 ever recall there ever being a football video shown of  
 12 Lieutenant Lebrecht's football highlights?  
 13 A. No.  
 14 Q. Do you recall a video highlight being shown of anyone's  
 15 football highlights?  
 16 A. It was from another officer.  
 17 Q. Who was that?  
 18 A. It was Officer Lillengreen.  
 19 Q. Did Lieutenant Lebrecht have anything to do with showing  
 20 that video?  
 21 A. No. I think we were -- no.  
 22 Q. Thank you.  
 23 So the political discussions that you talked about, how  
 24 would you describe those, the context of how those political  
 25 discussions arose?

1 A. It was fun. It was humor. I mean, every time the season  
 2 comes around, it's always fun to pick. It's nothing serious,  
 3 so it was in a satirical, funny type of humor.  
 4 Q. Who generally partook in the humor?  
 5 A. Everyone that showed up early before shift. We were  
 6 all -- a lot of us come in an hour, 45 minutes before work.  
 7 Kind of get into the work, get our vehicles set up, get our  
 8 logbook and everything set up and our equipment, and we just BS  
 9 until the top of the hour or when the sergeant says we're  
 10 starting our briefing; then we start our briefing.  
 11 Q. Would you agree that oftentimes you were the instigator of  
 12 these political jokes?  
 13 A. Yes.  
 14 Q. How would you describe your political leanings?  
 15 A. Poking fun of politicians, which is easy to do.  
 16 Q. Okay. Did you ever find anything inappropriate about this  
 17 joking back and forth?  
 18 A. No.  
 19 Q. Did you ever hear Mr. Cleavenger complain to anyone,  
 20 including yourself, about these political jokes?  
 21 A. No.  
 22 Q. Did you ever hear Mr. Cleavenger making jokes during  
 23 briefings?  
 24 A. Yes.  
 25 Q. Do you recall any that you -- any that stood out to you,

1 any that you remember?  
 2 A. The only thing I remembered was, pointedly, he made an  
 3 inappropriate joke that kind of crossed the line into more  
 4 sexual than not, and Lieutenant Lebrecht says, "We're not going  
 5 there." He admonished him for going that far over.  
 6 I remember the incident because it was the first time we  
 7 had really an issue with it crossing the line, and then he put  
 8 an end to it, and I think we left briefing pretty quick just to  
 9 let him know, you know, "Come on guys, we're having fun here.  
 10 Don't take it to that direction."  
 11 Q. Do you remember what the comment was Mr. Cleavenger made ?  
 12 A. No. I know it was sexual in nature, and that's all I  
 13 remember about. I remember him stepping forward because we  
 14 always had a comfortable briefing and when it occurred it kind  
 15 of shocked everyone, and so we just moved on from that and it  
 16 didn't happen again.  
 17 Q. Did you ever work directly under Sergeant Cameron?  
 18 A. Yes.  
 19 Q. How would you describe, from your experiences with him,  
 20 Sergeant Cameron's supervisory style?  
 21 A. When he was a supervisor, we never had an issue. We had  
 22 nothing in common, but he didn't go out of his way to pick on  
 23 me or I pick on him. It was always professional. He kept his  
 24 briefings professional, and we moved on from that.  
 25 Q. Would you describe him as a fair supervisor?

1 A. He was with me.  
 2 Q. Did you ever witness Sergeant Cameron being unfair to  
 3 Mr. Cleavenger?  
 4 A. No.  
 5 Q. And were you and Mr. Cleavenger -- you were on the same  
 6 shift under Sergeant Cameron's supervision; correct? The  
 7 graveyard?  
 8 A. At some point, yeah.  
 9 Q. Now, would you describe yourself as fairly outspoken with  
 10 your political views, your union activities, things like that?  
 11 A. I'm an activist, yes.  
 12 Q. And you filed grievances through the union; is that  
 13 correct?  
 14 A. In the past, yes.  
 15 Q. Have you ever felt as though you were targeted by  
 16 Lieutenant Lebrecht for those political beliefs, union  
 17 grievances?  
 18 A. No.  
 19 Q. How about Sergeant Cameron?  
 20 A. No.  
 21 Q. Chief McDermid?  
 22 A. No.  
 23 Q. So we talked about the list, and I'm going to be brief on  
 24 this. The phrase "big bowl of dicks," Mr. Kafoury used that in  
 25 a number of ways. I just want to ask you a question. Did you

1 ever hear anyone tell another person, "You can go eat a big  
 2 bowl of dicks"?  
 3 A. No.  
 4 Q. Is that ever how that phrase was used?  
 5 A. No. It was used when we talked about a humorous thing of  
 6 the day. The phrase would go, "Well, they can eat a big bowl  
 7 of dicks," and that was it.  
 8 Q. Did you ever hear anyone at the department refer to this  
 9 list as "the bowl of dicks list" before Mr. Cleavenger named it  
 10 that in this lawsuit?  
 11 A. No. It was always called "the list."  
 12 Q. Did you ever hear the name Ann Aiken on that list or even  
 13 discussed in briefings?  
 14 A. Who?  
 15 Q. Federal Judge Ann Aiken.  
 16 A. I don't know who she is.  
 17 Q. Now, this Regan photo that was put on the bulletin board  
 18 in the briefing room, did Lieutenant Lebrecht have anything to  
 19 do with that?  
 20 A. No.  
 21 Q. And before any of this information about the list came out  
 22 in the paper or in the lawsuit, had you ever seen it on  
 23 Mr. Leroy's cell phone?  
 24 A. No.  
 25 Q. So you don't know, sitting here today, who was on that

1 list before it hit the paper?  
 2 A. Who was on the list? I wasn't really aware of the list.  
 3 And as far as any specific name, no. If you went through the  
 4 list, I could say, "I remember that one. I don't remember that  
 5 one." It could have happened when I wasn't at work.  
 6 Q. Are you done?  
 7 A. Yeah.  
 8 Q. Do you recall ever discussing things that ended up on the  
 9 list?  
 10 A. Yes.  
 11 Q. What was that?  
 12 A. Tried to get the Rolling Stones on the list. They're an  
 13 ugly group. I don't like their music. I couldn't get them on  
 14 the list. We were poking fun of the list -- of that particular  
 15 band.  
 16 Q. Anything else you recall?  
 17 A. The ending to Brokeback Mountain. I didn't like the  
 18 ending.  
 19 Q. So was it your suggestion that Brokeback Mountain go on  
 20 the list?  
 21 A. Yeah. Because I didn't like the ending to that.  
 22 Q. What did you not like about the ending?  
 23 A. One of the chief characters died in the -- in the end of  
 24 the movie, and my daughter, who writes gay novels, she doesn't  
 25 have any of her characters pass on. She's written 15 books,

1 and I didn't like the ending to that particular movie, so it  
 2 went on the list. Any ending to a movie I don't like, if I can  
 3 get it on the list, I'll get it on the list, as in jest or fun.  
 4 Q. So these discussions of who to put on the list, what to  
 5 put on the list, did Lieutenant Lebrecht lead these  
 6 discussions?  
 7 A. No. Someone else in the briefings would bring it up.  
 8 Q. It was more of a conversation among the officers?  
 9 A. It was a conversation. We deal with serious stuff all the  
 10 time, so it kind of gets us comfortable in the right mood,  
 11 camaraderie, just to kind of get us in the mood to get out in  
 12 the field where we have to deal with serious stuff all the  
 13 time. So he was very good at making us comfortable and having  
 14 fun and where everyone can contribute and have fun.  
 15 Q. Did Amanda Hayles ever come to you with complaints she had  
 16 about Sergeant Cameron?  
 17 A. She did. She did.  
 18 Q. Do you remember discussing those complaints with  
 19 Chief McDermid?  
 20 A. I may have. I don't remember. I don't -- you know, I'm  
 21 going to take -- I don't remember. It is something I would  
 22 have done, but I don't remember. I don't recall.  
 23 Q. Do you recall having regular kind of sit-down discussions  
 24 with Chief McDermid? You guys called it your check-ins or your  
 25 updates?

1 A. Yeah. I used to do that.  
 2 Q. What was the purpose of that?  
 3 A. Just to -- it's kind of a straight communication line with  
 4 the chief to find out if we're hearing everything, because we  
 5 have different levels of supervisors, if we're in the right  
 6 direction. She'll sometimes check on the morale of the  
 7 officers. You know, what's the mood? What's this type of  
 8 thing? It was informal, and she had that open for a while.  
 9 Q. Did you feel Chief McDermid was receptive to these  
 10 sitdowns?  
 11 A. Yes. Otherwise I wouldn't have done it, yes.  
 12 Q. How would you describe Chief McDermid as the police chief  
 13 of the University of Oregon Police Department?  
 14 A. She's always been respectful to me. She's given me  
 15 opportunity. She's never, to my face, talked bad about me. I  
 16 don't have any negative. As a chief, I haven't had anything  
 17 negative from her.  
 18 Q. You were in the department when Lieutenant Casey Boyd was  
 19 there; correct?  
 20 A. Yes.  
 21 Q. Do you have an opinion of Casey Boyd as a supervisor?  
 22 A. She was a bad supervisor, and she's difficult to  
 23 communicate with.  
 24 Q. Do you believe the morale in the department got better  
 25 when Lieutenant Boyd was transferred out?

1 A. Yes.  
 2 Q. And you were questioned about your notebooks, your field  
 3 notebooks.  
 4 A. Yes.  
 5 Q. In your opinion, was there anything in those field  
 6 notebooks that pertained to Mr. Cleavenger's lawsuit?  
 7 A. No. I didn't keep those in the logbooks. Early on, when  
 8 I was hired, they were strictly patrols to make sure of the  
 9 communication, whatever the sergeant passed along to me, and  
 10 whatever I did for that particular day of that shift.  
 11 After a decade old or more, I don't need to keep those. I  
 12 destroy them. Some of them have names or date of births and no  
 13 one else needs to have that. So once I no longer have a use  
 14 for them, I elected to destroy them. I still have up to a year  
 15 now, and that's about it. I usually try to keep them a year  
 16 now, and I shred them or burn them.  
 17 Q. Did anyone at the University of Oregon ask you to get rid  
 18 of your field notebooks?  
 19 A. No.  
 20 MS. COIT: That's all I have. Thank you, sir.  
 21 THE COURT: Redirect?  
 22  
 23 ///  
 24 ///  
 25 ///

1 REDIRECT EXAMINATION  
 2 BY MR. JASON KAFOURY:  
 3 Q. Do you remember being interviewed by my client's union  
 4 steward in relation to this grievance process?  
 5 A. If she was the steward out of PLC, yes.  
 6 Q. Okay. Do you recall -- do you remember the date of when  
 7 you were interviewed by her?  
 8 A. No, I don't.  
 9 Q. Was it sometime before my client was terminated?  
 10 A. I believe so.  
 11 Q. August 2012. Does that sound about right?  
 12 A. I wouldn't know.  
 13 Q. Do you remember telling the investigator for the union  
 14 that there was age discrimination within the department?  
 15 A. Yes.  
 16 Q. Do you remember telling the union investigator there was  
 17 gender discrimination within the department?  
 18 A. I don't recall that discussion.  
 19 Q. Do you remember telling her that there was philosophical  
 20 discrimination?  
 21 A. Yes.  
 22 Q. What was the philosophical discrimination going on?  
 23 A. Oh, my gosh. I don't remember that.  
 24 Q. Well, what was the philosophy you thought was being  
 25 discriminated against in August of 2012 when you talked to my

1 union investigator -- my client's union investigator?  
 2 A. In the general discussion, what I recall was the  
 3 university, as a whole, had gone more conservative than it did  
 4 in the late '60s, early '70s when I was more of an activist on  
 5 the scene. So, in those regards, it's got a lot more  
 6 conservative, in my opinion.  
 7 Q. You were referring to the University of Oregon Department  
 8 of Public Safety's culture when you described it as  
 9 philosophical discrimination, didn't you?  
 10 A. Yeah. We had that discussion.  
 11 Q. You also told the union investigator that there was not  
 12 much respect for women officers in the department culture, did  
 13 you?  
 14 A. I felt we didn't hire enough women in that department, so  
 15 yes.  
 16 Q. The union steward emailed you a copy of this statement so  
 17 you could review it. Do you remember that?  
 18 A. No.  
 19 Q. Do you remember saying that you and my client are both  
 20 liberals and that it's not the culture of the department so you  
 21 butt heads with the sergeants? Do you remember telling him  
 22 that?  
 23 A. Yeah, I did.  
 24 Q. And you had several letters of reprimand over the years  
 25 because of that. Do you remember saying that?

1 A. With some other things in there, yes.  
 2 Q. You described my client as intuitive, watches people and  
 3 assesses their mood, and is great about not being  
 4 confrontational or coming across as authoritative. That's how  
 5 you described him in August of 2012; right?  
 6 A. At that time, yeah.  
 7 Q. This is a month before he's terminated?  
 8 A. It's what?  
 9 Q. This is a month before he's terminated that you're giving  
 10 these answers to a union steward; correct?  
 11 "He's great at working at getting the same results, but  
 12 being more friendly and respectful." Do you remember saying  
 13 that?  
 14 A. Repeat that again.  
 15 Q. "He's great at working at getting the same results, but  
 16 being more friendly and respectful."  
 17 A. Yes.  
 18 Q. He's able to diffuse a situation without resorting to  
 19 force?  
 20 A. When he was with me on the calls, yes.  
 21 Q. Do you remember how you described Sergeant Cameron to the  
 22 union investigator?  
 23 A. No.  
 24 Q. Let me show you this to help refresh your memory. Can you  
 25 read the section there where it says "Cameron"? The section

1 right here. This paragraph.  
 2 A. Yeah. That was before we had a discussion. About eight  
 3 years earlier, we did not get along at all when I was a  
 4 sergeant. So those are some things from that era.  
 5 Q. Describing Cameron in August of 2012, you said, "He's an  
 6 ass"; right?  
 7 A. Yep.  
 8 Q. Condescending; right? Condescending?  
 9 A. Yes.  
 10 Q. Gender discriminative?  
 11 A. Yes.  
 12 Q. Belittles women officers.  
 13 A. Yes.  
 14 Q. And you just flatout don't trust him?  
 15 A. I didn't then.  
 16 Q. Well, do you now?  
 17 A. Yeah, because we've had several discussions post that.  
 18 Q. Why was he -- why is he no longer there at the department?  
 19 A. I did not see his reprimand or why he was let go.  
 20 Q. You also said that stepping down from sergeant was the  
 21 worst decision you ever made.  
 22 A. Yeah.  
 23 Q. And that happened when Cameron was hired; right?  
 24 A. From -- as a sergeant?  
 25 Q. Yeah.

1 A. No. We changed directors. I was under Fitzpatrick when  
 2 he left and Director Hicks came in. I stepped down because I  
 3 don't think I would have lasted much more than a year with him  
 4 under his command.  
 5 Q. You were also interviewed about these recordings.  
 6 Remember that?  
 7 A. Repeat.  
 8 Q. Recordings. Notifying people about you were actually  
 9 recording them on the dash cam videos. Do you remember being  
 10 interviewed about that?  
 11 A. Give me a point of reference.  
 12 Q. Well, not mentioning that they were being recorded. It  
 13 happens all the time. That's what you told the union  
 14 investigator in August of 2012; isn't that right?  
 15 A. We now and then have our recordings on the vehicles  
 16 sometimes in operation, and that infuriates me because I don't  
 17 like the big brother aspect of our job. Although, between the  
 18 personal recording devices and the vehicle recording devices,  
 19 overall it's worked. But I still don't like the idea of being  
 20 recorded.  
 21 Q. That didn't really answer my question, though.  
 22 Did you tell the union advisor not mentioning that they're  
 23 being recorded to the suspect happens all the time? Is that  
 24 what you told the union investigator?  
 25 A. Yeah. I was throwing it out. I was pissed off at the

1 time.  
 2 Q. There were hundreds of people put on this list; isn't that  
 3 right?  
 4 A. Somebody told me a number of 240 entries-ish, so that's  
 5 all I know.  
 6 Q. And sometimes there were people that, as you testified  
 7 earlier, didn't make it on the list. You never saw LeRoy put  
 8 them in, right, but they were still discussed?  
 9 A. Yeah, there's people and things that didn't get on the  
 10 list.  
 11 Q. For example, the Oakridge Police Department was on the  
 12 list?  
 13 A. Yes.  
 14 Q. Why was it on the list?  
 15 A. Because it lost Hermens's application for employment  
 16 twice, so they got on the list.  
 17 Q. Why was Israel Escobedo on the list? It was because they  
 18 thought he was gay, wasn't it?  
 19 A. Oh, assistant. He was an office assistant.  
 20 Q. It was because they thought he was gay. Wasn't that the  
 21 discussion?  
 22 A. No. He has a baby. So what? He's not gay.  
 23 Q. But a staff member of the department is on the list?  
 24 A. Besides Casey Boyd?  
 25 Q. Yes. Israel Escobedo is on the list, isn't he?

1 A. Okay.  
 2 Q. Do you remember discussing it?  
 3 A. Vaguely.  
 4 Q. Brian Vizzusi.  
 5 A. Okay.  
 6 Q. You remember Lebrecht didn't like Brian Vizzusi, don't  
 7 you?  
 8 A. If that's what the supervisor -- that -- I don't recall  
 9 that one at all.  
 10 Q. You put former Chief Doug Tripp on the list, didn't you?  
 11 A. Yeah, we did.  
 12 Q. Portland City Council even made the list, didn't it?  
 13 A. Yeah.  
 14 Q. The list is about a dozen pages, isn't it?  
 15 MS. COIT: Object, Your Honor. He --  
 16 MR. JASON KAFOURY: I'm asking the witness if it's  
 17 about a dozen pages. I'll withdraw the question.  
 18 BY MR. JASON KAFOURY: (Continuing)  
 19 Q. Can you confirm -- the jury hasn't seen the list yet, but  
 20 can you confirm Casey and Mark Boyd are the second-to-last  
 21 entry on the last page? The last page you had there.  
 22 A. Oh, I had it already?  
 23 Q. Right there. Second-to-last. Casey and Mark Boyd are  
 24 second-to-last names.  
 25 ///

1 A. Yes.  
 2 Q. And right afterwards are the new NFL rules; right?  
 3 A. Yeah. It's a funny list.  
 4 Q. This sexual reference you made about my client, but you  
 5 don't recall what he said, you didn't say anything about that  
 6 in your deposition, did you?  
 7 A. About what?  
 8 Q. About this supposed sexual --  
 9 THE COURT: Counsel, that assumes he was asked. Was  
 10 he asked?  
 11 BY MR. JASON KAFOURY: (Continuing)  
 12 Q. I asked a lot of questions in the deposition about my  
 13 client, didn't I, and your -- I asked a whole bunch of  
 14 questions.  
 15 MS. COIT: Objection, Your Honor.  
 16 THE COURT: Sustained. If he wasn't asked about the  
 17 question, then it's inappropriate.  
 18 BY MR. JASON KAFOURY: (Continuing)  
 19 Q. Your deposition was 107 pages long; right?  
 20 A. Okay.  
 21 Q. In fact, I asked you: You had nothing negative to say  
 22 about him at all; correct?  
 23 THE COURT: You're referring to who, Counsel?  
 24 BY MR. JASON KAFOURY: (Continuing)  
 25 Q. To James Cleavenger, at his deposition. I'll give you the

1 page and line. Page 18, number 24.  
 2 THE COURT: You can answer the question, sir. The  
 3 question is whether you said anything negative about  
 4 James Cleavenger at your deposition.  
 5 THE WITNESS: Anything negative? No. Working. No,  
 6 not with working with him, no.  
 7 BY MR. JASON KAFOURY: (Continuing)  
 8 Q. But my point is at your deposition you didn't say  
 9 anything, over 107 pages, including when I asked you about  
 10 whether you had anything negative to say about him, you didn't  
 11 tell us this story you just told us about sexual innuendo that  
 12 you no longer remember. Isn't that right?  
 13 A. I don't remember the sexual innuendo, and I don't believe  
 14 the question was asked on the deposition. Is that what you're  
 15 asking?  
 16 Q. I'm asking --  
 17 MS. COIT: Counsel, perhaps you can show him the  
 18 document.  
 19 BY MR. JASON KAFOURY: (Continuing)  
 20 Q. Page 18.  
 21 A. Okay. And --  
 22 Q. My point is I asked you in your deposition how would you  
 23 describe your guy's relation -- how would you describe your  
 24 guy's relationship while you worked together?  
 25 And your answer was: I had nothing negative about him at

1 all.  
 2 A. Okay. And when I worked with him, yes.  
 3 THE COURT: Counsel, where -- it's fine if you walk  
 4 across the well. In most courts, they would swallow you up and  
 5 have you eaten by alligators. I'm just joking with you. It's  
 6 just a tradition that nobody walks across the well; but,  
 7 apparently, Counsel, if you want to walk across the well  
 8 publicly, you can do so. But usually you don't do that in  
 9 court.  
 10 MR. JASON KAFOURY: I think that's all I have for  
 11 you, sir.  
 12 THE COURT: Redirect.  
 13  
 14 RE-CROSS-EXAMINATION  
 15 BY MS. COIT:  
 16 Q. Mr. Abbott, the conversation you had with the union  
 17 steward, was that over the telephone?  
 18 A. It was in person.  
 19 Q. Was it recorded?  
 20 A. No.  
 21 Q. Do you recall ever seeing a transcript of that interview  
 22 being prepared?  
 23 A. No.  
 24 Q. But you do recall making a statement that you felt there  
 25 was age discrimination in the department; isn't that correct?

1 A. Yeah.

2 Q. Can you give me some context for that statement?

3 A. There was a particular group of people on the shift that

4 didn't give me the benefit of the doubt, as far as dealing with

5 criminal activity or coverage or being kind of left out out

6 there where they worked camaraderie as a team, where it was

7 not.

8 There was a discussion on this one particular officer who

9 eventually left, had an older officer -- showed a video, trying

10 to show me a lesson that this older officer is un -- is not

11 able to deal with a particular officer cover issue and that I

12 was like that particular officer, and it kind of hit home that

13 I felt that was the issue. And I brought up to him that if you

14 look at that particular older officer that you think is

15 untuned, he actually had his hand around his gun, where the

16 other -- suspect had the gun, and I knew exactly what he was

17 doing. He was going to be nonchalant and he was going to get

18 that gun out in a microsecond and do what he needed to do.

19 So on that particular video, what he wanted to show me was

20 I looked like that officer, acted like that officer, and I'm

21 thinking, that's okay, because that officer, if you watch his

22 hand and what he's moving, he's making the next correct move.

23 He's not going to stir up the suspect when he does make that

24 move.

25 So -- and I had issue with a particular supervisor who's

1 no longer with the department regarding that. So I had a

2 discussion with the sergeant at the time, and I had a

3 discussion with one of the officers. Closed-door session with

4 the sergeant as a moderator, and I lit into him regarding I

5 didn't care for the way I was being treated out in the field.

6 Q. And who were these officers and sergeant you were talking

7 about?

8 A. Matchulat. Sergeant Matchulat and Officer Brathwaite.

9 Q. Did you ever feel Lieutenant Lebrecht discriminated

10 against you based on your age?

11 A. No.

12 Q. How about Chief McDermid?

13 A. No.

14 Q. Sergeant Cameron?

15 A. No.

16 Q. Philosophical discrimination that you talked about, who

17 specifically were you talking about that you felt was somehow

18 discriminating based on philosophy?

19 A. At the time I thought that Chief Tripp was a little

20 more -- in that realm, a little more conservative, the way he

21 was pushing forward. I didn't care for his philosophy. And

22 that's the predecessor before Chief McDermid.

23 Q. Do you believe there's any philosophical discrimination

24 under Chief McDermid's control?

25 A. I haven't gotten that. She's allowed me to go to the

1 reserve police academy for nine months of torture and has

2 encouraged me to apply for the police academy up in Salem, so

3 no.

4 Q. And I know we discussed having some political

5 differences -- viewpoints, at least -- joking with

6 Lieutenant Lebrecht. Did you ever feel he was discriminating

7 against you for your philosophical differences?

8 A. No. It's humor. It's funny. No. Absolutely not.

9 MS. COIT: All right. Thank you, sir.

10 THE COURT: Counsel, may the witness being excused?

11 MS. COIT: Yes.

12 MR. JASON KAFOURY: Yes, Your Honor.

13 THE COURT: Thank you very much, sir. You may step

14 down. Call your next witness, please.

15 MR. JASON KAFOURY: Plaintiffs call Sean Brathwaite

16 to the stand.

17 THE COURT: Thank you, sir. Step forward please. Go

18 through the door, please. Raise your right hand.

19

20 SEAN BRATHWAITE,

21 called as a witness in behalf of the Plaintiff, being first

22 duly sworn, is examined and testified as follows:

23 THE WITNESS: I do.

24 THE COURT: Thank you, sir. Would you be seated in

25 the witness box. That's just to my right.

1 THE WITNESS: Yes, sir.

2 THE COURT: Sir, would you state your name for the

3 jurors, please, and spell your last name.

4 THE WITNESS: Yes. My name is Sean Christopher

5 Brathwaite. My last name is B-R-A-T-H-W-A-I-T-E.

6 THE COURT REPORTER: Can you spell Sean, too, please.

7 THE WITNESS: Yes. It's S-E-A-N.

8 THE COURT: Thank you. Go ahead.

9

10 DIRECT EXAMINATION

11 BY MR. JASON KAFOURY:

12 Q. Can you take a moment and introduce yourself to the

13 jurors? I know we have an awkward courtroom, but try to

14 address them, and I'll ask the questions from here.

15 A. Of course, yes. Like I said, my name is Sean Brathwaite.

16 I work at the state hospital in Junction City, Oregon. I do

17 investigations there, security, secure transport, orientations

18 for new employees, liaison with the state police. I was born

19 and raised in Eugene, Oregon. I went to school there. I lived

20 a little bit of time in Boise, Idaho. I volunteered for the

21 police department while I was there. That's a quick synopsis

22 of the collaboration detail.

23 Q. What were you doing before you came to work at the

24 University of Oregon?

25 A. Before I came to work at the University of Oregon?

1 Q. Yes. Just scoot up a little. You have a soft voice.  
 2 Make sure we have a good record.  
 3 A. Sure. Yes. There we go. I worked -- before the  
 4 University of Oregon, I worked at AlliedBarton Security, and  
 5 before that I worked for Eugene Police.  
 6 Q. How long were you with the Eugene Police Department?  
 7 A. About eight months.  
 8 Q. So what all departments have you worked for in terms of  
 9 police departments?  
 10 A. I volunteered at the Boise Police Department at Boise,  
 11 Idaho. I worked for the Eugene Police Department. I was a  
 12 volunteer for the Coburg Police Department for about four  
 13 years. I just left that last year, and the University of  
 14 Oregon Police Department for about five years. Over five  
 15 years.  
 16 Q. So did you get to work alongside James Cleavenger in the  
 17 Coburg Police Department as a reserve officer?  
 18 A. Yes.  
 19 Q. How often, let's say in a given month or a given few  
 20 months, would you work directly with him at Coburg?  
 21 A. I would estimate that at probably once a week. So three  
 22 to four times a month.  
 23 Q. And why did you -- from what year to what year were you at  
 24 the University of Oregon? Let's get some context.  
 25 A. I worked at the University of Oregon from 2009 -- it was

1 May or April -- to 2014. November of 2014.  
 2 Q. You left about a year ago?  
 3 A. Yes. So that was --  
 4 Q. Why did you leave the department?  
 5 A. I got a better paying job, much better schedule. I work  
 6 Monday through Thursday. I work four tens. It's close. And  
 7 it's still in the line that I like. Investigative work with  
 8 the police and assisting people.  
 9 Q. What positions did you hold at the University of Oregon  
 10 Department of Public Safety?  
 11 A. I was a public safety officer.  
 12 Q. Were you also a sergeant at a -- for a period?  
 13 A. Yes. I did an acting sergeant for two different periods  
 14 of time. So six months, which was the max allotment for that  
 15 position, and then I did it again for three months when we were  
 16 short sergeants and they needed assistance.  
 17 Q. As part of that time period that my client was there, were  
 18 you also a field training officer?  
 19 A. I was.  
 20 Q. And were there some days that you got to work directly  
 21 with my client when he went through his field training in the  
 22 first six months?  
 23 A. There was a few days that I believe I had him when his  
 24 original FTO was either on vacation or sick or something was  
 25 going on.

1 Q. What do you remember about how he was as an officer during  
 2 that time period of 2011?  
 3 A. I never had any issues with Jim. Always reliable, a hard  
 4 worker, just a go-getter, a really strong worth ethic, almost  
 5 to a fault. So he -- he likes to get things done and work.  
 6 Q. How do you recall, overall, my client doing during that  
 7 first field training six-month period?  
 8 A. Well, from my experience and my knowledge --  
 9 Q. When you left the department last year, how was the morale  
 10 within the department?  
 11 A. On the officer level, it was pretty bad. It hadn't been  
 12 well for a number of years.  
 13 Q. Why was that?  
 14 A. I think just communication. Communication was pretty  
 15 poor. Just like any relationship, it's no different with a  
 16 work relationship. If they have good communication, when the  
 17 communication lines break down, morale will break down.  
 18 Q. Did people miss a lot of work at the department?  
 19 A. Certain people did, yes.  
 20 Q. Is that because they didn't like being there?  
 21 MS. COIT: Object.  
 22 THE WITNESS: I don't know.  
 23 MR. JASON KAFOURY: I'll move on.  
 24 THE COURT: Counsel, I'm going to sustain the  
 25 objection. Strike the answer.

1 BY MR. JASON KAFOURY: (Continuing)  
 2 Q. During this time period -- 2011, 2012 -- were policies and  
 3 procedures shifting a lot depending on who was the supervisor ?  
 4 A. Can you restate that question, please?  
 5 Q. Yeah, were there -- what I'm getting at here is were there  
 6 different rules, written or unwritten, depending on who was the  
 7 supervisor over the time when my client was there?  
 8 A. Yeah. It varied from supervisor to supervisor, sergeant  
 9 to sergeant. A lot the sergeants had different backgrounds and  
 10 experience. Their training within the department wasn't as  
 11 current as it needed to be, so you would get varying levels of  
 12 expertise and answers.  
 13 Q. We just heard from Kent Abbott who told us that often  
 14 people came in an hour early just to be there before their  
 15 shift started. Do you remember that?  
 16 A. I don't, no.  
 17 Q. People mostly showed up when their shift started. Is that  
 18 the --  
 19 A. Yeah. I would show up probably about 20 minutes before my  
 20 shift started, so that's what I would see, is people showing up  
 21 around that time.  
 22 Q. If you want -- what did you do during that time period --  
 23 2011, 2012 -- if you were uncertain about what the rule of  
 24 procedure was? What did you do?  
 25 A. Are you able to be a little more specific?



1 Q. Yeah. If you wanted to find out what a policy or  
 2 procedure was, how would you get a concrete answer? What would  
 3 you do?  
 4 A. Usually, first, I'd look it up or I would ask a supervisor  
 5 if I was either unsure or unsatisfied with the answer, I would  
 6 look at the policy as well, and generally I would get my answer  
 7 between those two sources for the most -- most of the time.  
 8 Q. Did you do investigations because of your background and  
 9 training that other officers didn't do?  
 10 A. Yes.  
 11 Q. Tell us about it.  
 12 A. As a whole or certain investigations?  
 13 Q. Certain types of investigations.  
 14 A. Okay. So I would be tasked at times with doing sex abuse  
 15 investigations that other officers weren't trained or qualified  
 16 to do. More complex investigations that required a lot of  
 17 follow-up. Burglaries. Thefts. We had a lot of property  
 18 crimes. So things that I enjoyed doing, but also I was tasked  
 19 with those more often than other officers.  
 20 Q. But those -- so you were given tasks and assignments that  
 21 were not part of your general responsibilities. Fair to say?  
 22 A. Not necessarily.  
 23 Q. Okay. Let me ask you. During that time period of 2011 to  
 24 2012, did you feel safe voicing your concerns within the  
 25 department to your supervisors?

1 A. Depended on what the concerns were.  
 2 Q. Okay. What would you not feel comfortable telling?  
 3 A. Personnel issues.  
 4 Q. Why was that?  
 5 A. They -- the personnel issues that we were having at the  
 6 University of Oregon were not, in my opinion -- or, excuse me,  
 7 were not being addressed, and I felt that if I expressed my  
 8 concerns about these personnel issues that I would just be  
 9 spinning my wheels.  
 10 Q. Did you ever make any direct complaints to Chief McDermid,  
 11 Lieutenant Lebrecht, or Sergeant Cameron?  
 12 A. Regarding?  
 13 Q. Any retaliation or personnel issues, that you can recall.  
 14 A. I'm -- I believe I did. I don't recall the exact ones.  
 15 Q. Do you remember anything being done when you went and  
 16 talked to them about it?  
 17 A. No, I don't.  
 18 Q. Even though you're no longer within the department, is  
 19 it -- do you have any hesitation or difficulty being here in  
 20 this courtroom testifying?  
 21 A. No. Not at all.  
 22 Q. Let's talk about my client and the work at the Coburg  
 23 Police Department. So you were there with him for how many  
 24 years?  
 25 A. I think one year.

1 Q. Did -- did my client put in a lot of hours with the Coburg  
 2 Police Department?  
 3 A. Yes.  
 4 Q. Any safety-related concerns, officer safety-related  
 5 issues, ever, that you remember about my client?  
 6 A. None that I ever witnessed.  
 7 Q. I've been told that Lieutenant Bechdolt may testify about  
 8 his experience at Coburg. Do you know how much time he  
 9 actually spent at Coburg?  
 10 A. During his tenure?  
 11 Q. Yeah.  
 12 A. Or with me or while I was there?  
 13 Q. While you were there.  
 14 A. While I was there? Not very much. I had him as an FTO  
 15 for two days, and I believe a month later he resigned.  
 16 Q. Do you know why he left?  
 17 A. I believe he was working at the U of O. So to work there  
 18 full time.  
 19 Q. You've been in a lot of different departments. Who's the  
 20 best chief you ever worked for?  
 21 A. Larry Larson at the Coburg Police Department.  
 22 Q. And why was he the best?  
 23 A. He is very personable. He would come on any call -- if  
 24 you called him at home, he would come out. He would be right  
 25 there with you. If we had to do some sort of saturation

1 parole, he would be right there, writing tickets, stopping  
 2 people, talking to the community. Any volunteering events, he  
 3 would be there. He was -- you could always rely on him. He  
 4 was just kind of like a good co-worker. You didn't think of  
 5 him as a chief.  
 6 Q. Help us explain. What are the similarities between the  
 7 type of work that my client does as a reserve police officer at  
 8 Coburg and the work he was doing as a public safety officer?  
 9 A. They're identical, with the exception of not being armed  
 10 with a firearm at the University of Oregon as a PSO.  
 11 THE COURT: Excuse me for just a minute. Counsel,  
 12 let's stand up and take a stretch for a minute. Okay?  
 13 Counsel, continue please.  
 14 BY MR. JASON KAFOURY: (Continuing)  
 15 Q. What's the *Brady* list?  
 16 A. *Brady* list is a list that most DAs, probably all DAs, keep  
 17 of officers that have been untruthful in the course of their  
 18 job or during testimony.  
 19 Q. For how many years have you known about this *Brady* list?  
 20 A. Ever since I first got into policing. So 2007, 2008.  
 21 Q. Do you find it credible that someone like Chief McDermid  
 22 that ran internal affairs for the Eugene Police Department  
 23 would not know anything about the *Brady* list?  
 24 MS. COIT: Object. Calls for speculation. No  
 25 foundation.

1 THE COURT: Overruled.  
 2 You can answer the question.  
 3 THE WITNESS: Can you restate that please?  
 4 BY MR. JASON KAFOURY: (Continuing)  
 5 Q. Sure. Do you find it credible that someone like  
 6 Chief McDermed, who ran internal affairs at the Eugene Police  
 7 Department, didn't know anything about *Brady* listing?  
 8 THE COURT: Let me caution the jury. We don't know  
 9 if that statement was ever made or if the statement was made.  
 10 I'm allowing this just so we don't have to call the officer  
 11 back. The chief will testify. I don't know what prior  
 12 statements were or weren't made, but I'll allow the question at  
 13 this time. That way the gentleman won't have to come back.  
 14 MS. COIT: Your Honor, just for the record, I  
 15 objected to it being a vague question because he said "someone  
 16 like Chief McDermed."  
 17 THE COURT: Okay. I agree with that, Counsel. I'll  
 18 sustain that. Just rephrase the question.  
 19 BY MR. JASON KAFOURY: (Continuing)  
 20 Q. Let's assume, hypothetically, Chief McDermed ran internal  
 21 affairs, Eugene Police Department, prior to being at the  
 22 University of Oregon. Do you find it credible, using your  
 23 experience and knowledge about police departments, that  
 24 Chief McDermed would not have known about the *Brady* listing  
 25 back then?

1 A. No, I do not find that credible.  
 2 Q. Now, we talked about officer safety in relation to my  
 3 client. Defense counsel, in opening statement, said that one  
 4 of the witnesses is going to testify that back in 2012 he  
 5 questioned my client's fitness for duty. Have you ever had any  
 6 concerns about my client's fitness for duty when you worked  
 7 with him?  
 8 A. When I worked with him? No, not at all.  
 9 Q. Do you ever remember him at the University of Oregon  
 10 calling out things over the radio that weren't really  
 11 happening?  
 12 A. Not while I worked, no.  
 13 Q. Did you find my client to be a truthful person?  
 14 A. In my experience, yes.  
 15 Q. How did my client compare to other officers at the  
 16 University of Oregon in relation to being an active officer out  
 17 patrolling, writing reports?  
 18 A. He was in the top, as far as activity. Personal stops,  
 19 calls for service, yeah; he's very active compared to other  
 20 officers.  
 21 Q. Never heard, never seen with your own eyes, anything in  
 22 relation to my client racially profiling anyone?  
 23 A. No. Not while I was on patrol with him ever.  
 24 Q. Defense counsel also said that my client, in opening  
 25 statement, had a big ego. How would you describe my client in

1 relation to ego?  
 2 A. I don't really have an opinion either way. In my  
 3 experience with Jim, he's always been very pleasant, nice, very  
 4 knowledgeable. Somebody you can come to with questions.  
 5 Extremely smart and willing to do anything for them.  
 6 Q. Did he think he was better than everybody else?  
 7 A. I never got that feeling.  
 8 Q. When do you first recall Sergeant Cameron discussing my  
 9 client in relation to Tasers?  
 10 A. Probably when he was first hired.  
 11 Q. My client was first hired?  
 12 A. Yes.  
 13 Q. What do you remember about that?  
 14 A. During briefing, it was mentioned that we just hired a new  
 15 officer. He was in opposition of Tasers during his time at  
 16 AUSO or the student body there, and that's kind of the synopsis  
 17 of that. I don't recall much more of that.  
 18 Q. What was Sergeant Cameron's demeanor when he was talking  
 19 about this?  
 20 A. I don't know. I don't recall.  
 21 Q. Was he displeased that the department was hiring my  
 22 client?  
 23 A. I think he was indifferent.  
 24 Q. Do you recall -- do you remember during the time -- around  
 25 the time my client was hired, Sergeant Cameron referencing any

1 YouTube speeches my client was a part of involving the Tasers  
 2 or news articles in the *Daily Emerald* or other papers?  
 3 A. I do remember that talk. I don't remember if it came from  
 4 him.  
 5 Q. How many years did you work with Sergeant Cameron?  
 6 A. 2009 until I left in 2014. So my whole -- full time at  
 7 the University of Oregon.  
 8 Q. Were you able to form an opinion about his character for  
 9 truthfulness over those years?  
 10 A. I believe so.  
 11 Q. Okay. And what is that opinion?  
 12 A. It was hard to tell when he was telling the truth to when  
 13 he may be guessing or speculating.  
 14 Q. Through your observations, did you observe  
 15 Lieutenant Lebrecht's and Lieutenant Morrow's relationship  
 16 outside of work?  
 17 A. Yes.  
 18 Q. Okay. What do you remember?  
 19 A. I remember when I would work swing shift they would work  
 20 out together at the student rec center daily.  
 21 Q. They were working out daily together?  
 22 A. Yes.  
 23 Q. Outside of work?  
 24 A. Correct.  
 25 Q. Was Lieutenant Morrow knowledgeable about what the

1 day-to-day activities of what the public safety officers were  
 2 doing?  
 3 A. I think he had a general overview of what was going on. I  
 4 wouldn't say it was knowledgeable.  
 5 Q. Let's talk about the bowl of dicks. When do you first  
 6 remember hearing about that?  
 7 A. Probably -- I'm trying to think. Probably when it broke  
 8 in the paper as far as the actual name of the bowl -- the bowl  
 9 of dicks.  
 10 Q. When do you remember first hearing -- you weren't on the  
 11 graveyard shift; right?  
 12 A. That's correct.  
 13 Q. Okay. When do you remember first hearing that people were  
 14 sitting around on the shift putting names on a list?  
 15 A. Are you looking for a date?  
 16 Q. Rough time period.  
 17 A. Probably 2013. I don't have a specific month.  
 18 Q. Do you remember a night where you had to stay over late  
 19 into the graveyard shift while Lebrecht was there, where this  
 20 whole concept of putting people on a list happened?  
 21 A. Yeah. I -- I mean, I would hold over. Not routinely, but  
 22 it would be common, with cases, reports that bled into the next  
 23 shift. But, yeah.  
 24 Q. Do you remember people sitting around during the briefings  
 25 and bantering and putting people on the list?

1 A. I don't recall that.  
 2 Q. Was it common for officers to stop people, back during my  
 3 client's time -- 2010, 2011, 2012 -- for crimes where they  
 4 could not cite people for?  
 5 A. Yes.  
 6 Q. Give us some examples.  
 7 A. Prohibitive camping is a huge one.  
 8 Q. What do you remember about what was supposed to happen  
 9 when you would stop people for things you couldn't cite for?  
 10 What happened generally back then?  
 11 A. So when we would stop people for things like prohibitive  
 12 camping, we'd gather their information. It's a city ordinance,  
 13 but it's a crime. So you can go to jail for that. So we  
 14 request their information, run it through the system for any  
 15 wants or warrants or missing persons and generally give them a  
 16 warning or field interview card and send them on their way.  
 17 If anything more came out of it, if they had a warrant,  
 18 then we would impress the assistance of Eugene Police  
 19 Department to transport them to jail.  
 20 Q. Did you ever write annual evaluations for people when you  
 21 were a sergeant?  
 22 A. Yes.  
 23 Q. Did you have conversations with the command staff about  
 24 what information was to be put in people's annual evaluations?  
 25 A. Yes.

1 Q. Without getting into the substance of what was said, what  
 2 was -- what was your understanding of what was supposed to go  
 3 into an annual evaluation?  
 4 A. So when I did annual evaluations, I would encompass the --  
 5 obviously, it's annual, but the prior year and any highlights  
 6 the officer had or any disciplinary action or any things that  
 7 needed improved on. So we would usually have a form and go  
 8 stage by stage.  
 9 I would also review our CAD logs, all our calls for  
 10 service, and review that; take statistics from that to see how  
 11 many stops they had, things that they did well and things they  
 12 needed to work with -- work on. I would also get input from  
 13 command staff on things that I needed to add. Generally, they  
 14 review my -- my review and see if it was okay and needs  
 15 improvements, if it needed to be -- things need to be taken out  
 16 or if they wanted something particular added.  
 17 Q. So the command staff would review your work, and if they  
 18 wanted to put stuff in there, they would tell you?  
 19 A. Yes. They requested it.  
 20 Q. And that's an order within the command structure; right?  
 21 A. That's the way I took it.  
 22 Q. Is it pretty common for officers that have holdovers at  
 23 the shifts to deal with two different jobs to not get much  
 24 sleep?  
 25 A. Yes.

1 Q. Finally, you've been able to observe my client -- well,  
 2 strike that.  
 3 You're not a personal friend of my client, are you?  
 4 A. I would say we're -- we're friends. I mean, we went  
 5 skiing a couple times. So I -- not to the same level I would  
 6 call my other friends. I don't consistently talk to Jim, by  
 7 any means.  
 8 Q. In the -- you were able to observe my client from before  
 9 he was terminated at the University of Oregon, and you saw him  
 10 in the years afterward at Coburg. How would you describe for  
 11 these jurors the difference you saw in him emotion ally between  
 12 dealing with all of this stuff and his termination?  
 13 A. I can tell that Jim doesn't get a lot of sleep. I don't  
 14 know what that was from, but he looked tired, exhausted.  
 15 Q. Do you think this whole thing has been pretty difficult on  
 16 him?  
 17 A. Yes. It would be difficult on me if I was going through  
 18 it.  
 19 MR. JASON KAFOURY: That's all I have. Thanks.  
 20 THE COURT: Cross-examination.  
 21  
 22 CROSS-EXAMINATION  
 23 BY MS. COIT:  
 24 Q. Mr. Brathwaite, am I saying that right?  
 25 A. Yes.

1 Q. When were you a sergeant at OPD?  
 2 A. 2000 -- I believe it was 2011. Sometime during that year.  
 3 And then again in 2013, I believe. I don't --  
 4 Q. Are you sure about that?  
 5 A. No, I'm not a hundred percent positive. I don't have the  
 6 dates in front of me, so --  
 7 Q. Do you recall being a sergeant at the University of Oregon  
 8 Police Department when Lieutenant Lebrecht was there?  
 9 A. Yes. I --  
 10 Q. What shift were you working?  
 11 A. Graveyard.  
 12 Q. Do you recall what year that was?  
 13 A. 2013.  
 14 Q. How about in 2011? What shift were you working as a  
 15 sergeant?  
 16 A. Dayshift.  
 17 Q. So when Mr. Cleavenger was in field training, you were on  
 18 a different shift; correct?  
 19 A. Yes.  
 20 Q. How often would you actually observe his conduct during  
 21 field training?  
 22 A. The times that he would be with me when his FTO wasn't  
 23 there.  
 24 Q. How would it come about that he was with you if you were  
 25 on dayshift and he was on night shift?

1 A. He would augment his shift and be on my shift.  
 2 Q. How many times did that happen?  
 3 A. I recall three times.  
 4 Q. Three entire shifts?  
 5 A. I don't know if they're the whole shifts. I don't recall  
 6 that. That was a little while ago.  
 7 Q. Do you recall being with Mr. Cleavenger during those three  
 8 shifts on any contacts he made with community members?  
 9 A. I remember one contact.  
 10 Q. From what you observed in that one contact, how would you  
 11 describe Mr. Cleavenger's style in contacting members of the  
 12 community?  
 13 A. Something I would expect of a new officer. Confident, but  
 14 yet unsure, able to gather the correct information and go with  
 15 it. So the contact I recall was just a violation.  
 16 Q. Was it a student or a member of the community?  
 17 A. I believe it was a student.  
 18 Q. That's the only actual contact you recall being with  
 19 Mr. Cleavenger on during his employment at the University of  
 20 Oregon?  
 21 A. That's correct.  
 22 Q. Were you ever Mr. Cleavenger's supervisor?  
 23 A. Not that I recall.  
 24 Q. You said a lot of people -- or you said some people missed  
 25 a lot of days of work. Do you remember saying that?

1 A. Yes.  
 2 Q. Do you recall Mr. Cleavenger being one of those people?  
 3 A. I don't recall that.  
 4 Q. Do you remember him taking off half days at a time to go  
 5 skiing?  
 6 A. I don't recall that.  
 7 Q. Do you recall ever hearing Mr. Cleavenger and Mr. Drake  
 8 taking time off work during field training to go skiing?  
 9 A. I don't recall that.  
 10 Q. Are you friends with Mr. Drake as well?  
 11 A. I am.  
 12 Q. So you said there was a period of time at the university  
 13 that you felt uncomfortable telling your personal -- your  
 14 personnel issues to supervisors. Do you recall that?  
 15 A. I do.  
 16 Q. And who were the supervisors you were uncomfortable  
 17 talking to?  
 18 A. There's Sergeant Cameron, Sergeant Geeting,  
 19 Lieutenant Morrow. Those are the three.  
 20 Q. And what was the basis for you feeling uncomfortable  
 21 talking to Lieutenant Morrow?  
 22 A. I felt his knowledge within the department of what went on  
 23 in patrol operations, he was unfamiliar with. He didn't have  
 24 any firsthand knowledge of what was going on and was very hard  
 25 to approach as a person.

1 Q. Were you hesitant to talk to Lieutenant Morrow because you  
 2 felt he would retaliate against you?  
 3 A. No.  
 4 Q. What was your hesitation to talk to Sergeant Cameron?  
 5 A. His lack of experience and his history of being unable to  
 6 deal with personnel issues that had went on there in the past.  
 7 Q. Is that something you have personal knowledge of? Did  
 8 that involve yourself?  
 9 A. No. But I do have personal knowledge of it, yes.  
 10 Q. Tell me what you're talking about.  
 11 A. We had an officer, Amanda Williams, as well as -- excuse  
 12 me while I try to recall the names.  
 13 Q. Just for the jury, that's Amanda Hayles now; is that  
 14 correct?  
 15 A. That's what she goes by now, yes.  
 16 Q. Sorry. I interrupted you.  
 17 A. And Royce Myers.  
 18 Q. Do you recall taking -- excuse me. Another question  
 19 first. So you said that you had remembered making complaints  
 20 to either Lieutenant Lebrecht, Sergeant Cameron, or  
 21 Chief McDermid at some point, but you couldn't remember who it  
 22 was. Do you recall that testimony?  
 23 A. I recall something similar to that, I believe.  
 24 Q. Okay. What did he say with regard to making complaints to  
 25 those three people?

1 A. Can you rephrase that please?

2 Q. You testified earlier that you do recall at some point

3 making complaints to supervisors to involve those three people,

4 making complaints to them and nothing was done, and I'm asking

5 who it was you were talking about.

6 A. I don't recall saying that exactly.

7 Q. Do you recall making a complaint to Chief McDermid about

8 anything and nothing was done about your complaint?

9 A. No. We would go chain of command, and she wasn't in my

10 direct chain of command.

11 Q. Do you recall making a complaint to Sergeant Cameron about

12 something you wanted action taken on and nothing being done?

13 A. I don't recall a specific complaint.

14 Q. Do you recall coming to Lieutenant Lebrecht with an issue

15 you were having with Amanda Hayles and -- and Kent Abbott and

16 asking for Lieutenant Lebrecht to step in?

17 A. I do. I remember that now.

18 Q. Do you recall Lieutenant Lebrecht referring you, asking

19 you to go to the office of affirmative action at the university

20 to deal with your complaint?

21 A. Yes.

22 Q. And did you refuse to do that?

23 A. No.

24 Q. Did you go?

25 A. Yes.

1 Q. Were you looking for anything further from

2 Lieutenant Lebrecht with regard to that complaint?

3 A. Yes. I was hoping they could address it within the

4 department as opposed to shuffling it off to another entity.

5 Q. What was the complaint?

6 A. I don't recall the exact complaint. I would just be

7 hypothesizing or guessing at this point.

8 Q. Well, did you follow up with the Office of Affirmative

9 Action?

10 A. I did.

11 Q. Do you recall what the outcome was?

12 A. It was a meeting, a -- the recommendation was to have a

13 sit-down meeting with the involved parties. So Chief McDermid,

14 myself, Kent Abbott, and Amanda Hayles.

15 Q. Sat down and had a meeting?

16 A. That was the recommendation, yes.

17 Q. Okay. Did that occur?

18 A. No, it did not.

19 Q. And why is that?

20 A. I felt that nothing would come out of that since we had

21 already had talks between the officers.

22 Q. So it was your decision not to follow through?

23 A. That's correct.

24 Q. You talked about Larry Larson as being the best chief

25 you've ever worked with because he was more hands-on. Do you

1 remember that?

2 A. Yes.

3 Q. The City of Coburg has about a thousand people; correct?

4 A. I believe. That's a good estimate.

5 Q. When you worked there, how many officers worked for the

6 City of Coburg?

7 A. About 12.

8 Q. 12?

9 A. Yes.

10 Q. Were you a reserve or an officer? Were you a full-time

11 officer or were you a reserve officer?

12 A. I was a reserve officer.

13 Q. Were you paid?

14 A. At times, yes, we could be paid.

15 Q. Now, you said that your job at Coburg was identical to the

16 job as a public safety officer at the University of Oregon. Do

17 you recall that?

18 A. I said with the exception of carrying a firearm, it's

19 pretty much identical.

20 Q. Did that exception of not being armed with a firearm, does

21 that make a difference in your job?

22 A. It does, yes.

23 Q. Would you agree with me that encountering the same

24 situations armed versus unarmed makes the job quite different ?

25 A. No.

1 Q. Why do you disagree with that statement?

2 A. I would say it would make it unsafe.

3 Q. To encounter the same situations?

4 A. Yes. To be unarmed.

5 Q. So would you agree with me that the job, then, is not

6 identical?

7 A. I would agree with that statement as you phrased it.

8 Q. Does being unarmed require you to focus on different

9 skills when you're making contacts with people?

10 A. It can.

11 Q. What would those skills be?

12 A. Verbal skills.

13 Q. Is it important to be cautious if you're unarmed?

14 A. I think it's important to be cautious either way, whether

15 you're armed or unarmed.

16 Q. Is it -- is it important to approach a situation when

17 you're unarmed, keeping your guard up, not being too trusting ?

18 A. I think that goes for both scenarios, unarmed and armed.

19 Q. Did you ever work the graveyard shift at the university?

20 A. Yes.

21 Q. What year was that?

22 A. I don't recall. I worked several shifts. I'd get

23 switched around yearly, so I don't remember what year it was.

24 Q. How would you compare the contacts you made on the

25 graveyard shift at the university with regard to the contacts

1 you made on the dayshift? Who were you contacting? Was it  
 2 more dangerous on one shift than the other, in your opinion?  
 3 A. Not the contacts I made, no. I would contact the same  
 4 people.  
 5 Q. Are you aware of the incident when Mr. Cleavenger  
 6 transported the female in the back of his car with a loaded gun  
 7 in her lap?  
 8 A. No.  
 9 Q. Sitting here today, are you aware of that?  
 10 A. No.  
 11 Q. Would you find that to be unsafe?  
 12 A. Yes.  
 13 Q. You talked about times that you would stop people for  
 14 violations or crimes that you couldn't cite for. Do you recall  
 15 that?  
 16 A. Yes.  
 17 Q. Were you always required to be on university property when  
 18 making those contacts?  
 19 A. Yes. Unless it was hot pursuit.  
 20 Q. I'm sorry. Unless it was what?  
 21 A. Hot pursuit.  
 22 Q. Hot pursuit.  
 23 Now, you applied to become a police officer at the  
 24 University of Oregon, didn't you?  
 25 A. That's correct.

1 Q. And you failed a background; is that correct?  
 2 A. I don't know what I failed. I have never been given a  
 3 letter.  
 4 Q. Sitting here today, are you aware that you failed the  
 5 psych part of the background check?  
 6 A. I believe I failed the background, yes.  
 7 Q. And Lieutenant Morrow gave you that information, didn't  
 8 he?  
 9 A. Yes.  
 10 Q. You're no longer a police officer, are you?  
 11 A. I'm not.  
 12 MS. COIT: No further questions.  
 13 THE COURT: Redirect.  
 14  
 15 REDIRECT EXAMINATION  
 16 BY MR. JASON KAFOURY:  
 17 Q. While you were there at the department, was there sort of  
 18 an in crowd and then the outsiders in relation to officers and  
 19 the transition to becoming a police department?  
 20 A. Yes.  
 21 Q. How would you describe it?  
 22 A. I'd go back to communication. There was communication  
 23 lines that were being, for lack of better words, opened to the  
 24 police officers that weren't being opened to the public safety  
 25 officers. These were all the same people that were doing the

1 same job, side by side, during this whole process.  
 2 Q. Did you notice a pattern where people that towed the line  
 3 and did what they were told were offered a chance to become a  
 4 police officer within the department while others were just  
 5 stuck as public safety officers?  
 6 A. I can't say that I directly saw that.  
 7 Q. This loaded gun incident, let me give you some additional  
 8 facts. Let's assume that you have an incredibly distraught  
 9 woman fleeing an abuser. She has a concealed weapons permit,  
 10 and she's openly carrying, and your direct commander orders you  
 11 to give her a safety escort. Does that change your opinion  
 12 about the facts in that situation? Would you have given her a  
 13 ride if you were under a direct order?  
 14 A. Yes, with airing my concerns.  
 15 Q. Counsel asked you about the difference between Coburg and  
 16 University of Oregon Department of Public Safety. Are the  
 17 duties, the actual work you're doing on a day-to-day basis,  
 18 different between those two departments?  
 19 A. Not really, no. No.  
 20 Q. And whether you have a firearm or not, the goal, whether  
 21 you're a reserve police officer or a public safety officer, is  
 22 to keep the community safe; right?  
 23 A. Yes.  
 24 Q. And being able to effectively talk to people, deescalate  
 25 situations, that's a helpful skill whether you have a firearm

1 on you or not, isn't it?  
 2 A. That's correct.  
 3 Q. And that's something that my client was pretty good at,  
 4 wasn't it?  
 5 A. Very much so.  
 6 MR. JASON KAFOURY: Thanks. That's all I have.  
 7 THE COURT: Recross.  
 8  
 9 RECCROSS-EXAMINATION  
 10 BY MS. COIT:  
 11 Q. Is it your opinion that Mr. Cleavenger was very good at  
 12 that based on that one contact you had with him?  
 13 A. I can't answer that with a yes or no.  
 14 MS. COIT: No questions.  
 15 MR. JASON KAFOURY: Can I, Your Honor, one more  
 16 question?  
 17 MS. COIT: I'm done with my redirect.  
 18 THE COURT: Yeah. I think we've had two and two now,  
 19 Counsel. That's sufficient. Thank you very much.  
 20 Well, if it saves you from returning, it's always in my  
 21 discretion.  
 22 MR. JASON KAFOURY: It's just one question.  
 23 THE COURT: One question, Counsel.  
 24  
 25 ///

1 FURTHER REDIRECT EXAMINATION  
 2 BY MR. JASON KAFOURY:  
 3 Q. Are you basing your opinion on your experiences with my  
 4 client off, additionally, the time you spent with him at Coburg  
 5 where you were working with him once a week for the last year?  
 6 A. Yes.  
 7 MR. JASON KAFOURY: Thank you.  
 8 THE COURT: Counsel, you have an additional question  
 9 if you would like.  
 10 MS. COIT: No questions.  
 11 THE COURT: Hopefully that will save you from coming  
 12 back.  
 13 Counsel, may this witness be excused? Counsel?  
 14 MR. JASON KAFOURY: What's that?  
 15 THE COURT: May this witness be excused?  
 16 MR. JASON KAFOURY: Yes.  
 17 THE COURT: Counsel?  
 18 MS. COIT: Yes.  
 19 THE COURT: Thank you, sir. You may step down.  
 20 Counsel, your next witness, please. Counsel, your next  
 21 witness? Counsel, your next witness?  
 22 MR. JASON KAFOURY: We'll call Officer Larry Black to  
 23 the stand.  
 24 THE COURT: Officer Black, step forward, please,  
 25 between the doors and into the courtroom. Raise your right

1 from, a little bit about your education and work history.  
 2 A. So I was born and raised -- well, I was born in Eugene,  
 3 Oregon, raised for a while in Eastern Oregon on a cattle ranch,  
 4 moved back to Eugene, started out as a logger, did some  
 5 construction work, and now I worked with the U of O PD for the  
 6 last five years, and I'm currently a reserve deputy for the  
 7 Lane County Sheriff's Department.  
 8 Q. How long have you been a -- how long did you work at the  
 9 University of Oregon?  
 10 A. I'm still currently employed there, and I have been for  
 11 five years.  
 12 Q. So you started roughly 2010?  
 13 A. Yes, sir. In September 2010.  
 14 Q. Is that right about the same time my client was there?  
 15 A. I believe he was employed before me maybe a month or two.  
 16 Q. How often did you work with my client back in 2010, 2011 ?  
 17 A. Every Sunday night for an eight-hour shift. From 11:30 to  
 18 7:30 at night.  
 19 Q. And you -- that was consistent over a few years?  
 20 A. No. I believe it was consistent for six to eight months,  
 21 maybe. And then we worked various football games and stuff,  
 22 also, together.  
 23 Q. Did you guys do joint investigations on things over the  
 24 years?  
 25 A. One time James helped me with -- I have a son that's

1 hand.  
 2 LARRY BLACK,  
 3 called as a witness in behalf of the Plaintiff, being first  
 4 duly sworn, is examined and testified as follows:  
 5 THE WITNESS: I do.  
 6 THE COURT: Thank you, sir. Be seated just to my  
 7 right. The entrance is closest to the wall.  
 8 THE WITNESS: Okay.  
 9 THE COURT: Be seated.  
 10 THE WITNESS: Thank you.  
 11 THE COURT: Sir, would you face the jurors, state  
 12 your full name to them, and spell your last name.  
 13 THE WITNESS: My name is Larry Lee Black, B-L-A-C-K.  
 14 THE COURT: Thank you.  
 15 Direct examination, please.  
 16  
 17 DIRECT EXAMINATION  
 18 BY MR. JASON KAFOURY:  
 19 Q. You are a current employee of the University of Oregon  
 20 Police Department; correct?  
 21 A. Correct.  
 22 Q. I'd like you to address the jury, even though I'm standing  
 23 over here, as best you can.  
 24 A. Okay.  
 25 Q. Can you take a moment and introduce yourself, where you're

1 adopted, and we didn't know anything about his father, and  
 2 James helped me figure out who his dad was and his lineage.  
 3 Q. How did he do that?  
 4 A. Facebook and a few other things. I'm not really sure. He  
 5 just showed me something on the computer and says, "Does this  
 6 look about right," and the next thing you know, yeah, that was  
 7 it.  
 8 Q. How is the morale right now in the department?  
 9 A. It's pretty low.  
 10 Q. Why is that?  
 11 A. Well, there's a lot of people that wanted to move on to  
 12 police officer and haven't been able to for one reason or  
 13 another. For me, the morale is low right now because there's  
 14 just not a lot of camaraderie between myself and other  
 15 officers. I try to be, you know, upbeat as much as I can, but  
 16 it seems like a lot of people aren't very happy.  
 17 Q. How was it back in 2010 to 2012 when my client was there?  
 18 A. It was a little bit higher. I would say actually quite a  
 19 bit higher. There were some other people that were working  
 20 there that were quite a bit more -- you couldn't make them  
 21 unhappy. They were just happy people to be around.  
 22 Q. Back in that time period -- 2010, '11, '12 -- were  
 23 policies shifting often between who your supervisor was?  
 24 A. Yes. I had -- I believe I started out underneath  
 25 Lieutenant Casey Boyd and then I believe I went to a couple of

1 different sergeants as my supervisor.  
 2 Q. Was one of those people, initially, who was happy and  
 3 energetic, my client?  
 4 A. Oh, yeah. Yeah. James was one of the people that was  
 5 happy and energetic.  
 6 Q. Did you notice any pattern back then -- 2010, 2011,  
 7 2012 -- where certain officers that were sort of an in crowd  
 8 versus the other folks that were not in that crowd and people  
 9 were treated differently?  
 10 A. Yeah. I believe there was just a little bit of that,  
 11 yeah.  
 12 Q. This is a small random point, but is it fair to say that a  
 13 can sitting on the University of Oregon property wouldn't last  
 14 very long if it was just sitting there?  
 15 A. Like -- you mean like a beer can? A pop can?  
 16 Q. Yeah.  
 17 A. Yeah. We had quite a few people to wanted to take those  
 18 for the nickel.  
 19 Q. Canners would come grab them?  
 20 A. Yeah.  
 21 Q. Defense counsel, in opening statement, talked about that  
 22 there's going to be testimony regarding my client's fitness for  
 23 duty. Back when you worked with him in 2011 and 2012, did you  
 24 ever feel unsafe working with my client?  
 25 A. No.

1 Q. Do you remember, during that time period, seeing any other  
 2 officers commit what you felt were much larger safety  
 3 violations than things my client was blamed for?  
 4 A. During that time, I -- as an APSO, I didn't work around  
 5 other officers that much. We had kind of different duties, so  
 6 I wasn't privy to see what the officers were really doing.  
 7 Q. I've asked this to many folks, but how would you describe  
 8 my client's activity level in terms of being an officer versus  
 9 other officers?  
 10 A. Well, I heard him on the radio. I didn't -- I wasn't  
 11 around him much. Like I said, because I wasn't in that  
 12 section. But he was always on the radio. Seemed like he was  
 13 quite active.  
 14 Q. Did you ever hear him make callouts over the radio about  
 15 things that weren't true or weren't happening?  
 16 A. With me not being at the same level of Mr. Cleavenger, I  
 17 couldn't say yes or no because I wasn't there.  
 18 Q. Did he seem to have good judgment as an officer, in your  
 19 opinion?  
 20 A. Yeah, it still goes back to the -- as far as I can say,  
 21 yes.  
 22 Q. Okay.  
 23 A. But I wasn't there on all the stops.  
 24 Q. Well, obviously. From your limited experience, I'm  
 25 asking, did you ever --

1 A. In front of me, he never made a poor judgment call.  
 2 Q. Did you -- was my client an honest person in terms of --  
 3 trustworthy person in terms of your experiences around him?  
 4 A. Yes.  
 5 Q. How often have you seen my client in the last few years  
 6 since all this happened?  
 7 A. When I worked the football games, he would come through  
 8 the gates there. I would see him, probably, during football  
 9 season, maybe five times. I think I went and helped him get  
 10 wood once. We went snow skiing one time years ago, but not a  
 11 lot.  
 12 Q. You talked about how he was a happy, energetic person  
 13 initially. Since all this happened with the University of  
 14 Oregon termination, have you noticed a difference in him as a  
 15 person?  
 16 A. I believe that between losing his job, his personal life  
 17 and stuff, has made him quite less -- less happy, yeah.  
 18 Q. Did you have concerns during 2010 to 2012 about going to  
 19 any of your command staff with concerns?  
 20 A. No, because I didn't -- during that time period, I didn't  
 21 have any concerns. Everything was going really good for me, so  
 22 I didn't need to go talk to anybody.  
 23 Q. Did you watch other officers that went and made complaints  
 24 and nothing happened?  
 25 A. It would be a speculation. I never seen anybody do that.

1 I've heard of it, but I didn't see it with my own eyes.  
 2 Q. Let's talk about Sergeant Cameron for a moment.  
 3 A. Okay.  
 4 Q. Did Sergeant Cameron ever say anything disparaging to you  
 5 about your footwear?  
 6 THE COURT: About your what?  
 7 MR. JASON KAFOURY: Footwear.  
 8 THE COURT: Footwear. Thank you.  
 9 THE WITNESS: One time in the locker room I had a  
 10 pair of cowboy boots with green tops, and he said those boots  
 11 made me look like a fag.  
 12 BY MR. JASON KAFOURY: (Continuing)  
 13 Q. How did you respond?  
 14 A. "Thank you."  
 15 Q. Did you -- do you remember Sergeant Cameron talking about  
 16 my client in relation to the Taser speech he made?  
 17 A. I overheard a conversation in the locker room that if it  
 18 wasn't for James Cleavenger's actions, we would have Tasers.  
 19 Q. When did Sergeant Cameron make that statement?  
 20 A. I don't know the date or time. It was --  
 21 Q. Was -- was James Cameron an employee at that point? Was  
 22 James Cleavenger -- not the director. Was my client an  
 23 employee at the university when that statement was made?  
 24 A. I don't know if he was. It was right towards the end  
 25 before he was terminated.



1 Q. And you recall Sergeant Cameron saying, "If it wasn't for  
 2 James Cleavenger -- James Cleavenger, we'd all have Tasers."  
 3 That's your memory?  
 4 A. Yes.  
 5 Q. How many times did he say it?  
 6 A. I only heard him -- overheard him one time.  
 7 Q. Was it common knowledge that Sergeant Cameron had looked  
 8 at news articles about my client and the Taser speech?  
 9 MS. COIT: Object.  
 10 THE COURT: Sustained.  
 11 Speculative, Counsel. Common knowledge. I don't know  
 12 what that means.  
 13 BY MR. JASON KAFOURY: (Continuing)  
 14 Q. Do you remember Sergeant Cameron talking about my client  
 15 and his Taser speech and referencing any news articles or  
 16 speeches or anything along those lines?  
 17 A. Never to me, no.  
 18 Q. Did you ever feel bullied by Sergeant Cameron?  
 19 A. A little bit. It was because I was the new guy, you know,  
 20 and he was a big guy. Not that I was physically bullied by  
 21 him, but I was intimidated by him because he was the sergeant  
 22 and I was just a part-time employee.  
 23 Q. Is it common for officers, if they have holdover shifts,  
 24 to work very long hours and stay up long hours?  
 25 A. Yes.

1 Q. What's the longest you've had to stay up?  
 2 A. I worked a full eight-hour shift and then we had a Eugene  
 3 police officer get killed in the line of duty, and I  
 4 volunteered to stay and work for his memorial. I believe I  
 5 worked about 18 hours that shift.  
 6 Q. Who had the most detailed and thorough-filed notebooks  
 7 within the department?  
 8 A. Who had the most detailed and thorough notebooks?  
 9 Q. Yeah. Field notebooks.  
 10 A. I don't know. I never seen another officer's notebooks.  
 11 Q. Did you ever overhear conversations in the graveyard  
 12 briefing room that you now realize were related to this whole  
 13 bowl of dicks list?  
 14 A. I didn't get to go to the briefings because that wasn't  
 15 part of my duties. So as far as the list goes, I heard about  
 16 it, but I never -- not with my own eyes or ears.  
 17 Q. Through your own observations, were Lieutenant Lebrecht  
 18 and Lieutenant Morrow good friends?  
 19 A. I don't know about their friendship. I know that they  
 20 went to lunch a couple of times maybe, but I think that was  
 21 common with all command staff.  
 22 Q. Was -- were there times that you observed other officers  
 23 that didn't shave every day?  
 24 A. I think I've seen a few that might have not stood close  
 25 enough to the razor one day, yes.

1 Q. Nobody ever got disciplined for that, did they?  
 2 A. Not that I know of. I would imagine, I would say, I  
 3 missed a day or two at least once in my career.  
 4 Q. Have you seen Junction City Chief Mark Chase at the  
 5 University of Oregon Police Department recently?  
 6 A. I believe I saw him maybe three months ago in the hallway.  
 7 Q. Was he in uniform or not?  
 8 A. No.  
 9 Q. Any idea what he was doing there?  
 10 A. No. No idea why he was there.  
 11 Q. Did the University of Oregon Police Department give you  
 12 any support when you entered the police academy?  
 13 A. You mean financially?  
 14 Q. Yes.  
 15 A. No. I really tried to do that on my own.  
 16 Q. Did you ask for support?  
 17 A. All I asked for was a letter of recommendation because  
 18 when you get put into that academy, there's three different  
 19 classes. One, you were being sent there by the police  
 20 department. Two is if you have a letter of recommendation with  
 21 the police department. And then they fill all remaining slots  
 22 with people that just go there on their own. I asked for a  
 23 letter, and they gave me one.  
 24 Q. Did the department pay for other officers to go for -- and  
 25 pay for the other officers to go to the reserve academy?

1 A. If it was part of their duties to be a public safety  
 2 officer, yes, they did, but I was not a public safety officer.  
 3 MR. JASON KAFOURY: All right. That's all I have.  
 4 Thanks.  
 5 MS. COIT: Thank you.  
 6 THE COURT: Cross-examination, please.  
 7  
 8 CROSS-EXAMINATION  
 9 BY MS. COIT:  
 10 Q. Mr. Black, is it fair to say that Sergeant Cameron, in  
 11 your observations, treated everyone fairly?  
 12 A. I think he treated everybody fairly and the same.  
 13 Absolutely.  
 14 Q. You never saw Sergeant Cameron single out Mr. Cleavenger ?  
 15 A. Single him out?  
 16 Q. Unfairly.  
 17 A. I never witnessed that, no.  
 18 Q. You never heard Sergeant Cameron say he was going to  
 19 discipline Mr. Cleavenger for his stance on Tasers?  
 20 A. No.  
 21 Q. Do you have any firsthand knowledge about why  
 22 Mr. Cleavenger was given a written reprimand?  
 23 A. I do not.  
 24 Q. From your observations working with Mr. Cleavenger at the  
 25 University of Oregon Police Department, do you believe he took

1 his job as a public safety officer seriously?  
 2 A. I would say most of the time, yes. Some of the times he  
 3 was a little more, maybe, animated and having a good time.  
 4 Maybe more so than other people.  
 5 Q. Give us an example of what gives you that impression.  
 6 A. That's the thing. Only stuff I've heard. I didn't  
 7 witness anything. We just didn't work together that much when  
 8 he was a public safety officer.  
 9 Q. So you mentioned you went -- you've gone skiing with  
 10 Mr. Cleavenger?  
 11 A. Yes. I went with him one time.  
 12 Q. How was that ski trip?  
 13 A. We had a good time. I'm kind of a redneck a little bit.  
 14 Boots and jeans. And he wore a polyester leisure suit. That  
 15 was a little embarrassing.  
 16 Q. Was he wearing a candy necklace too?  
 17 A. Yes.  
 18 Q. Where did you guys meet to go for that ski trip?  
 19 A. We met at the Dairy Queen in Pleasant Hill, Oregon.  
 20 Q. Did he ask you to cover for him with his wife and tell her  
 21 you were at work?  
 22 A. He said if the wife asks, yes, to say that.  
 23 Q. To lie to her?  
 24 A. Yes. But I would never have been in contact with her.  
 25 Q. Do you recall a time seeing Mr. Cleavenger in uniform , on

1 duty, urinating in public?  
 2 A. I did see that one time. We were following -- somebody  
 3 had been tagging all over campus, and we were following. About  
 4 halfway through, a long ways away from the car or building, he  
 5 urinated, and then we kept following the tagger.  
 6 Q. Was it right next to a kids' playground?  
 7 A. CSD. There's a wall and a playground, yes.  
 8 Q. Have you seen YouTube videos of Mr. Cleavenger?  
 9 A. He showed me a couple of videos on the way to skiing one  
 10 time of him skiing and shooting guns with his friends and  
 11 stuff.  
 12 Q. Tell me about the video of him shooting guns. What was on  
 13 that video?  
 14 A. It was him and another guy shooting guns, and I believe it  
 15 was a friend of his from Germany, and he was -- he was in one  
 16 of his -- talking in a German accent.  
 17 Q. Was he wearing a hockey outfit, hockey gear?  
 18 A. Oh, there was one time where he was skiing and he was  
 19 wearing a hockey outfit.  
 20 Q. That was a different video?  
 21 A. Yes. That was where he was skiing the pass in a hockey  
 22 uniform. I don't recall.  
 23 THE COURT: Just a moment, Counsel. Is this  
 24 relevant? Is this tied to the UOP knowing about this and the  
 25 reason for his firing?

1 MS. COIT: No.  
 2 THE COURT: Is this just character?  
 3 MS. COIT: Character.  
 4 THE COURT: I'm going to strike that. It's improper,  
 5 Counsel. Disregard the skiing and the German, or whatever, and  
 6 shooting, or whatever this is. It's irrelevant. Unless UOP  
 7 knows about this and this is a reason for the firing. It's  
 8 character. It's improper.  
 9 Counsel?  
 10 BY MS. COIT: (Continuing)  
 11 Q. You testified you'd seen Mr. Cleavenger since his  
 12 termination and you gave some opinion about how it's impacted  
 13 him. Do you recall that?  
 14 A. Yeah. He told me that it's caused him to get a divorce  
 15 and depression and whatnot.  
 16 Q. Him losing the job, he said, caused him to get a divorce?  
 17 A. The trouble going through losing the job has caused him to  
 18 get a divorce, yes.  
 19 MS. COIT: That's all I have.  
 20 THE COURT: Redirect?  
 21  
 22 REDIRECT EXAMINATION  
 23 BY MR. JASON KAFOURY:  
 24 Q. This whole urinating thing, isn't that common, sometimes,  
 25 when you're in pursuit of a suspect, that people have to do

1 that?  
 2 A. I've heard of other people doing that. That's the only  
 3 person I've ever seen do it.  
 4 Q. And you never -- that never was reported to anybody, was  
 5 it, in the department?  
 6 A. No.  
 7 Q. And there was nobody around when he did it, was there?  
 8 A. No.  
 9 Q. In the middle of the night?  
 10 A. Anywhere from between midnight to 2:00 in the morning.  
 11 MR. JASON KAFOURY: Thanks. That's all I have.  
 12 THE COURT: Recross?  
 13  
 14 RECROSS-EXAMINATION  
 15 BY MS. COIT:  
 16 Q. Isn't it true you reported that to Lieutenant Lebrecht?  
 17 A. I didn't report it. I, like, talked to him about it. I  
 18 guess you could call it reporting. I talked to him about it.  
 19 MS. COIT: Okay. Thank you.  
 20 THE COURT: May the officer be excused, Counsel?  
 21 MR. JASON KAFOURY: Yes.  
 22 THE COURT: Counsel?  
 23 MS. COIT: Yes.  
 24 THE COURT: Thank you. Thank you, Officer. You may  
 25 step down.

1 Call your next witness.  
 2 First of all, how are you doing? Do you need a restroom  
 3 break? A little bit. Okay. Let's do that. See you in 20  
 4 minutes.  
 5 Please don't discuss this matter amongst yourselves or  
 6 form or express any opinions on the case.  
 7 (Jury not present.)  
 8 (Recess taken.)  
 9 THE COURT: Have a seat, ladies and gentlemen,  
 10 Counsel.  
 11 Let me talk to you -- let me talk to all of you. How are  
 12 you holding up so far?  
 13 A JUROR: Barely.  
 14 THE COURT: Holding up so far?  
 15 A JUROR: Do we have another 6:00 session tonight?  
 16 THE COURT: If we had it my way, we'd be here longer.  
 17 I want to finish up four witnesses who have come up from  
 18 Eugene. If we can avoid them coming up tomorrow, two-hour  
 19 drive up and down the highway, so we'll get pretty close to  
 20 5:00. Maybe a little after. But those four we have to go  
 21 through.  
 22 Counsel, your next witness.  
 23 MR. MCDUGAL: Jared Davis.  
 24 THE COURT: Thank you.  
 25 Thank you, sir. Would you raise your right hand, please.

1 BY MR. MCDUGAL: (Continuing)  
 2 Q. I'm going to summarize some stuff to move the pace a  
 3 little faster. Feel free to stop me or tell me if I get it  
 4 wrong, okay?  
 5 A. Okay.  
 6 Q. You started at the U of O in 2009 part time?  
 7 A. Yes.  
 8 Q. In 2010 to 2014 you were full time and now you're a police  
 9 officer there?  
 10 A. That's correct.  
 11 Q. Okay. You went to the Lane County Reserve Academy, and  
 12 Mr. Cleavenger was a teacher there?  
 13 A. For one of the classes, correct.  
 14 Q. Do you have good working relationship with Mr. Cleavenger?  
 15 A. I do, and I did.  
 16 Q. He was proactive and responded to calls for service?  
 17 A. Yes.  
 18 Q. You thought he was doing a good job?  
 19 A. Just like any other officer.  
 20 Q. Have you heard something to the effect that you can always  
 21 find mistakes if you watch an officer on video?  
 22 A. I guess that's possibly true.  
 23 Q. Would you deal with noise complaints at least twice a  
 24 month or more at Spencer View?  
 25 A. That sounds about right, but I can't say for sure.

1 JARED DAVIS,  
 2 called as a witness in behalf of the Plaintiff, being first  
 3 duly sworn, is examined and testified as follows:  
 4 THE WITNESS: I do.  
 5 THE COURT: Thank you. Please come up to the witness  
 6 box. The entrance is just to my right, closest to the wall,  
 7 and be seated, sir.  
 8 Pull the chair close to the microphone and tell the  
 9 jury -- state your full name for the jury, please, and please  
 10 spell your last name for me.  
 11 THE WITNESS: My name is Jared Davis.  
 12 THE COURT: Thank you. And the spelling of your last  
 13 name, sir?  
 14 THE WITNESS: D-A-V-I-S.  
 15 THE COURT: Thank you very much. Direct examination,  
 16 please.  
 17  
 18 DIRECT EXAMINATION  
 19 BY MR. MCDUGAL:  
 20 Q. Thank you. I'm Mark McDougal, attorney for  
 21 Mr. Cleavenger.  
 22 THE COURT: Can you pull that microphone closer to  
 23 you, Counsel?  
 24 MR. MCDUGAL: Yes, sir.  
 25 ///

1 Q. Can you think of any call at Spencer View that sticks out  
 2 in your mind?  
 3 A. No.  
 4 Q. Were you ever interviewed after you did a call at Spencer  
 5 View?  
 6 A. No.  
 7 Q. Was your dash cam video ever looked at?  
 8 A. Not that I was aware of.  
 9 Q. Did any traffic stop made by Officer Cleavenger stand out?  
 10 A. No.  
 11 Q. Do you recall an assistant law school dean being stopped?  
 12 A. No.  
 13 Q. If the records show you were there, it wouldn't be  
 14 eventful enough for you to remember. Is that fair to say?  
 15 A. That's fair to say.  
 16 Q. Do you remember Mr. Cleavenger making callouts when he was  
 17 on parking duty?  
 18 A. I do.  
 19 Q. Fair to say that during that time period he was doing a  
 20 good job of spotting people and helping connect officers to  
 21 them?  
 22 A. To the best of my knowledge. I don't remember personally  
 23 responding to those calls, but I didn't hear anything  
 24 otherwise.  
 25 Q. Do you remember a report of a man with pants down and a

1 girl?

2 A. No, I don't.

3 Q. That's been identified as, quote, a problematic callout.

4 Anybody ever interview you about it?

5 A. No.

6 MR. MCDUGAL: Thank you.

7 THE WITNESS: Thank you.

8 THE COURT: Cross-examination?

9 MS. COIT: No questions.

10 THE COURT: May the witness be excused?

11 MS. COIT: Yes.

12 THE COURT: Counsel, may the witness be excused?

13 MR. MCDUGAL: Yes.

14 THE COURT: Thank you. You're excused, sir.

15 THE WITNESS: Thank you.

16 THE COURT: Your next witness, please.

17 A JUROR: You got off easy.

18 THE COURT: Step forward, please. And I apologize

19 for not knowing your name. Come through the double doors or

20 single door. Raise your right hand, please.

21

22 CHRISTOPHER WAGGONER,

23 called as a witness in behalf of the Plaintiff, being first

24 duly sworn, is examined and testified as follows:

25 THE WITNESS: I do.

1 THE COURT: Thank you, sir. Please come to the

2 witness box. It's located just -- well, the entrance is just

3 to my right, closest to the wall. There's a stairway.

4 THE WITNESS: Thank you.

5 THE COURT: Please be seated in the chair. Okay. If

6 you would pull the chair close to the microphone and would you

7 state your full name to the jurors, please.

8 THE WITNESS: Christopher David Waggoner.

9 THE COURT: And would you spell your last name, sir?

10 THE WITNESS: W-A-G-G-O-N-E-R.

11 THE COURT: Thank you.

12 Direct examination, please.

13

14 DIRECT EXAMINATION

15 BY MR. JASON KAFOURY:

16 Q. Mr. Waggoner, make sure that even though I'm asking you

17 questions, please address this jury. Speak loudly and clearly

18 into the microphone.

19 First, you haven't seen my client in years; right?

20 A. Correct.

21 Q. Let's talk a little bit about yourself. Tell us where

22 you're from and where you grew up and your education.

23 A. I'm from Eugene, Oregon, where I was born and where I grew

24 up. I'm currently living in Springfield. I attended the

25 University of Oregon and graduated with a bachelor's degree

1 there, majoring in economics, with a business minor.

2 Q. Let's talk about your work history. When did you start

3 with University of Oregon Department of Public Safety?

4 A. I worked there in several different capacities, starting

5 from a student worker, to working at a museum of art, and then

6 continuing on as a public safety officer was my final position.

7 And with certainty, I worked as a public safety officer from

8 May of 2007 until around January of 2015.

9 The other capacities -- the security guard and the student

10 worker -- were several years prior, so maybe 2003 to 2015.

11 Q. And who are you currently working for?

12 A. I'm currently working for the Lane County Sheriff's

13 Office.

14 Q. What do you do?

15 A. I'm a patrol deputy.

16 Q. Why did you leave the University of Oregon Police

17 Department?

18 A. I was looking to become a police officer, and I -- I

19 attempted a couple of times at the University of Oregon once

20 they transitioned to being a police department, and after two

21 unsuccessful attempts -- I was in my third attempt, and I

22 started applying elsewhere, just to make that goal of mine

23 happen, and the Lane County Sheriff's Office offered me a

24 position.

25 Q. What was the morale like in the department in 2014 before

1 you left?

2 A. They were in their -- the transition from being a public

3 safety agency to a police agency, so there were obviously

4 hurdles. So it was -- it was trying or not -- not great, but

5 they were trying to work through that transition.

6 Q. From your observations, was there a crowd of people that

7 was sort of the in crowd that got the offers and acceptance of

8 police officers and others that just stayed as public safety

9 officers?

10 A. Not -- not really. The first handful of people that were

11 hired were all actually from external, from outside of the

12 agency.

13 Q. I'm talking about the internal hires.

14 A. No. I don't -- I don't think there was an in crowd.

15 Q. How would you describe my client in terms of his activity

16 level as an officer when you worked with him?

17 A. I had very little interaction when he did. He seemed as

18 productive as the other officers.

19 Q. How was the morale of the department back then in 2011 and

20 2012?

21 A. I think at that time we were still trying to become a

22 police agency, and I would say it was about the same as in

23 2014. It just constant little -- little struggles for the

24 department to make that transition into a police agency, which

25 made it -- the morale not as great as it could be, so

1 building -- the building phase.  
 2 Q. The morale -- what you're describing is that some people  
 3 are getting an opportunity to become a full-time police officer  
 4 and others aren't; right?  
 5 A. Correct. There was a hiring process, and some people made  
 6 the cut and others didn't, which obviously, yeah, it makes for  
 7 a difficult morale.  
 8 Q. Were -- back in 2011 and 2012, were policies shifting a  
 9 lot depending on who was your supervisor and what the -- what  
 10 the -- their interpretation of the policies and rules?  
 11 A. Yes. The policies could -- could be interpreted  
 12 differently by different supervisors.  
 13 Q. Throughout the time that you were there with my client,  
 14 did you ever feel unsafe working with him?  
 15 A. During one call I felt unsafe as a result of some of the  
 16 communication, but I can't say that that doesn't happen  
 17 normally with any officers. It's a dangerous job. But, yeah,  
 18 there was one call that I felt unsafe during that call.  
 19 Q. I'm assuming that is not a call that had anything to do  
 20 with his termination or discipline; right?  
 21 A. Not that I've heard. I don't know the ins and outs of his  
 22 termination, or, frankly, that's usually a private matter why  
 23 someone is terminated. So not as far as I know, no.  
 24 Q. So that one call, what happened, in a nutshell?  
 25 A. He found a suspicious vehicle. It was suspicious because

1 Q. So --  
 2 A. Like I say, it was a police call, and things are fluid and  
 3 occur quickly, and I can't say that that hasn't happened with  
 4 other officers in that kind of -- in our environment that we  
 5 work in.  
 6 Q. That's part of being a public safety officer, is reacting  
 7 quickly; right?  
 8 A. Reacting quick on your feet, right.  
 9 Q. Did that guy have a couple bicycles in the car? Do you  
 10 recall?  
 11 A. Not that I recall. He had one bicycle in his possession  
 12 that he was pushing. I -- I quickly asked him if he had a lock  
 13 for the bicycle. He argumentatively removed a lock from his  
 14 backpack and showed it to me and shoved it back inside.  
 15 I really couldn't tell if he had a key for it or if it  
 16 was cut. Like I say, things happened so quickly, and I -- I  
 17 didn't describe it, because I was trying to keep things brief,  
 18 but another vehicle pulled up with another subject -- a vehicle  
 19 pulled up with a subject in the driver's seat that looked  
 20 equally as large as this subject. Two subjects, a dog, over a  
 21 bicycle, just wasn't worth myself getting hurt in that  
 22 situation, and I didn't have enough information to know what  
 23 was going on, so I told him and the other subject to get in  
 24 their vehicle, leave the University of Oregon; that they were  
 25 being last trespassed and if I saw them back they would end up

1 it had numerous belongings inside of it. It appeared someone  
 2 might be living inside of it. He called me on the radio to see  
 3 if I could respond to a parking lot, and it wasn't described  
 4 why I was going there, in particular. I just knew I was going  
 5 there to assist him.  
 6 In the meantime, during my route to that area, he then  
 7 observed a separate incident occurring where he believed that a  
 8 subject was potentially trying to steal a bicycle.  
 9 As I got into the area, he let me know on the radio, "That  
 10 guy right there, I think he's trying to steal that bicycle."  
 11 So I was a little taken aback and caught off guard by the  
 12 last-minute reliance of this information. But he had just knew  
 13 he'd seen this new information, so I can kind of understand why  
 14 he hadn't passed it along ahead of time.  
 15 So I was then, within split seconds, required to exit my  
 16 vehicle. I tried to engage with this subject who was  
 17 uncooperative and much larger than I was and had a German  
 18 shepherd dog that didn't appear to be friendly, and so just to,  
 19 you know, shorten things up, it was chaotic and a cluster to  
 20 where I didn't feel safe with this person where I didn't have  
 21 enough information to know what was going on, and I disengaged  
 22 and let him go and spoke with Mr. Cleavenger about what just  
 23 happened. And so he relayed to me, "Well, I was bringing you  
 24 here for this vehicle, and then I saw this subject last  
 25 minute."

1 going to jail for trespassing. Kind of cut my losses at that  
 2 point.  
 3 Q. Let's talk -- was my client, in your interactions with  
 4 him, a truthful person?  
 5 A. Yes.  
 6 Q. Did he generally seem to have good judgment as a public  
 7 safety officer?  
 8 A. From my experience with him, I didn't have any personal  
 9 issues, no.  
 10 Q. Did you have any issues with Sergeant Cameron,  
 11 Chief McDermid, or Lieutenant Lebrecht while you were there as  
 12 an officer?  
 13 A. I -- nothing more than typical employer/employ  
 14 interactions and relationships. I made mistakes. I crashed  
 15 vehicles. I got disciplined. That's never fun. But that --  
 16 that was my relationship with -- with those individuals.  
 17 Q. Let's move to what's been termed a problematic callout my  
 18 client did that you were involved with September 6, 2012. Do  
 19 you recall that incident?  
 20 A. Vaguely, yeah.  
 21 Q. What do you recall my client calling out?  
 22 A. I remember him calling out two suspicious subjects that  
 23 were down along a Millrace slough lawn area that was a frequent  
 24 problem for transient activity, drug activity, drinking,  
 25 typical law enforcement problems.

1 Mr. Cleavenger stated that the two subjects down there  
2 were doing something suspicious with the male subject's  
3 clothing, where it appeared his pants were being removed or  
4 that he was changing clothing. He was observing from a  
5 distance and was requesting officers respond to investigate  
6 what was occurring.

7 He additionally described that the subjects were  
8 potentially in possession of an open container of alcohol,  
9 which, like I said, is common for that area, so I responded to  
10 find out what was going on there.

11 Q. Do you remember specifically my client stating that the  
12 male either just put his -- on his pants or had just taken them  
13 off?

14 A. I do remember that, something to that nature.

15 Q. What sort of public safety issues does that raise from a  
16 situation where the male and female -- where a man is taking  
17 his pants off?

18 A. There are crimes like public indecency, indecent exposure,  
19 prohibited nudity that we could be looking into different  
20 sexual acts that could be occurring down there, or just  
21 sometimes mental episodes where people have been consuming  
22 narcotics, where they end up stripping their clothes. It could  
23 range from being harmless to where he is changing into some  
24 shorts, to being very criminal and something pressing.

25 Q. Do you remember which officer was with you at the time ?

1 A. I don't. To my recollection, it was either Officer Zach  
2 Hermens or Officer Jared Davis; but, at this point, it did  
3 occur quite a long time ago, and I don't recall specifically.

4 Q. Let's assume, again, that the man has his pants down and  
5 the woman is on her knees. What sort of issues does that  
6 raise?

7 MS. COIT: Object, Your Honor. Calls for  
8 speculation. That's not the facts in evidence.

9 THE COURT: Well, I'm not sure where we're going with  
10 this. Is this the incident?

11 MR. JASON KAFOURY: This is. I'm talking about the  
12 particular incident, yes.

13 THE COURT: Overruled.

14 BY MR. JASON KAFOURY: (Continuing)

15 Q. And --

16 A. It could be, like I said, range the gamut from something  
17 that's not even harmless to something like oral sex.

18 Q. Which is prohibited on campus; right?

19 A. Certainly.

20 Q. What happened next after you got this callout?

21 A. By the time I arrived in the area, the subjects had  
22 proceeded up approximately 100 yards to the east, near Franklin  
23 and Onyx area. I stopped the subjects. They were both fully  
24 clothed at this time, so I began to question them about the  
25 open container that they had potentially been drinking from.

1 They denied drinking from an open container of alcohol. They  
2 stated that there was one down in the area that they were in, a  
3 beer can that they both had been playing with.

4 And that seemed a little too coincidental to be true, and  
5 so I requested that Mr. Cleavenger respond and examine the area  
6 that they had been in, confirmed that there was an alcohol can  
7 there. I was able to ask them "were they drinking from it."

8 And he said that they had been drinking from it, so I -- I took  
9 Mr. Cleavenger's observations as probable cause and issued  
10 citations to both individuals for being in possession of the  
11 open container.

12 After releasing the two subjects, I responded to the area  
13 where they had been. At this point Mr. Cleavenger had been  
14 called away for another duty, and my intention was to take a  
15 photograph of the evidence of the can. And when I got there,  
16 I -- I did find a can. I believe it was a Coors Light can.

17 However, the label appeared sun-faded, like it had been out for  
18 many hours. The top rim of the can had kind of crusted mud  
19 over the top of it. By my observations, it didn't appear that  
20 anyone had recently consumed alcohol from that can.

21 I then spoke with Mr. Cleavenger about what had occurred ,  
22 and it sounded like there was maybe some -- some  
23 miscommunication through the radio that when he said they were  
24 drinking from it, that that was potentially either the can or a  
25 Nalgene water bottle that they had. And when I had been with

1 them, I did see that they had a Nalgene water bottle.

2 So with those facts in mind, I didn't feel they had been  
3 drinking from an open container. I notified a supervisor to  
4 determine what to do. I was able to locate the subjects and  
5 retrieve their citations back and tear them up and rescind  
6 them.

7 Q. To be clear, in my client's callout, was his main concern  
8 the beverage or the pants?

9 MS. COIT: Object. Calls for speculation.

10 THE COURT: Beverage or pants. I don't understand  
11 the question. Sustained.

12 BY MR. JASON KAFOURY: (Continuing)

13 Q. When my client was calling out from the radio --

14 THE COURT: That also calls for speculation about  
15 what your client --

16 BY MR. JASON KAFOURY: (Continuing)

17 Q. Do you recall exactly what my client said on the callout?

18 A. I don't recall exactly at this time.

19 Q. Showing you, for the record, Defense Exhibit 356, can you  
20 read to yourself that quoted section?

21 A. Aloud?

22 Q. Just that section.

23 A. Out loud?

24 Q. No. Just to yourself.

25 A. (Witness complies.)

1 Q. Does that help refresh your memory as to what was actually  
 2 called out?  
 3 A. Yes.  
 4 Q. So what my client said was from the Millbank River -- from  
 5 the Millrace River --  
 6 MS. COIT: Object to the hearsay.  
 7 THE COURT: Sustained. You can ask him a question,  
 8 Counsel, about what this refreshes his recollection about.  
 9 BY MR. JASON KAFOURY: (Continuing)  
 10 Q. What does this refresh your recollection in relation to  
 11 exactly what my client called out?  
 12 A. The first thing he states is that they're drinking from a  
 13 container.  
 14 Q. A blue container; right?  
 15 A. Correct.  
 16 Q. And then what else does he say?  
 17 A. He then states that the male appears to be taking his  
 18 pants off or putting his pants back on.  
 19 Q. In your opinion, anything wrong with that callout, with  
 20 him calling out this observation over the radio? Anything  
 21 wrong with that?  
 22 A. Nothing wrong with that.  
 23 Q. Anybody ever -- did you ever file a formal complaint  
 24 against my client in relation to that incident?  
 25 A. No.

1 Q. Anyone ever interview you about this incident?  
 2 A. I don't recall. I know that -- like I said, I notified a  
 3 supervisor of the situation because it was different for me  
 4 that I had -- I never issued a citation in error like that, so  
 5 I did speak with a supervisor on the phone and asked what I  
 6 should do. So they -- so they knew that the conditions and the  
 7 circumstances, and I was directed to rescind the citations.  
 8 Q. And that supervisor you told that to was Sergeant Cameron;  
 9 correct?  
 10 A. I believe he was the sergeant on duty.  
 11 Q. When you actually stopped the people, did the woman tell  
 12 you anything about the pants?  
 13 A. I don't remember if we just got sidetracked with the open  
 14 container entirely or if -- I think they did explain that he  
 15 was changing into a second pair of pants and that he had those  
 16 with me, so I -- I was immediately kind of relieved of that  
 17 concern and moved on to the concern of whether they were  
 18 consuming alcohol down there or not.  
 19 Q. So just so we're a hundred percent clear, you were calling  
 20 Sergeant Cameron to figure out what to do about this situation  
 21 because you wanted to figure out how to rescind this ticket  
 22 that you did, the citation; right?  
 23 A. Yes, sir.  
 24 Q. You weren't calling to complain about my client's call;  
 25 right?

1 A. No.  
 2 Q. Now, my client had been on reassignment of parking duty  
 3 for months before this; right?  
 4 A. I believe so.  
 5 Q. And he had been calling out potential crimes that he had  
 6 seen, but he couldn't do any enforcement on for months, hadn't  
 7 he?  
 8 A. I think that was the parking lot incident with the  
 9 suspicious vehicle as well as this particular call.  
 10 Q. Were there any other callouts that you remember from that  
 11 whole summer that were inaccurate?  
 12 A. Not that I remember.  
 13 Q. Did you feel like my client was calling this situation out  
 14 to set you up to get in trouble or something like that?  
 15 A. No.  
 16 Q. Can you describe for the jurors back at that time period,  
 17 2011 and 2012, what campus version of a traffic stop was?  
 18 A. There's been several modifications of -- of a campus  
 19 traffic stop, so I'm not exactly sure during that particular  
 20 time period. We've gone from driving unmarked Ford Taurus es,  
 21 red in color and blue in color and no markings, no lights, no  
 22 nothing, to driving Jeep Cherokees that looked a little more  
 23 law-enforcement-like with yellow and amber light bars, to when  
 24 I left they were currently driving police marked, red and blue  
 25 lights, Ford Interceptors, typical police package vehicles.

1 As a result of the different variety of vehicles, as well  
 2 as the change in statutory authority from public safety to  
 3 police, they were different varieties.  
 4 I, possibly during that time, around that time, I do  
 5 remember we would wait for a vehicle to pull over and park  
 6 after observing it, run a red light, or a stop sign, and after  
 7 the vehicle was parked, then pull up next to or behind the  
 8 vehicle, get out, contact the driver, and advise them of our  
 9 observations and either issue a warning or a citation.  
 10 Q. That was a -- around that time period, that was what was  
 11 called a campus version of a stop; right?  
 12 A. Okay.  
 13 Q. I'm just asking you. Is that your memory?  
 14 A. I don't remember calling it that or hearing it called  
 15 that, but I -- that makes sense.  
 16 Q. Generally, the policy was you didn't stop, you know, a  
 17 moving traffic vehicle, but if they stopped on campus property  
 18 and you observed them doing something illegal, you could stop  
 19 and deal with it at that point; right?  
 20 A. Yes. At one time we were doing that, uh-huh.  
 21 Q. Do you remember the Occupy Eugene time period? October of  
 22 2011?  
 23 A. Yes, sir.  
 24 Q. Were you on those shift briefings where -- the graveyard  
 25 shift where Occupy Eugene was discussed?

1 A. No.  
 2 Q. Graveyard. I'm sorry. Graveyard.  
 3 A. No.  
 4 Q. You were on the swing shift?  
 5 A. Yes, sir.  
 6 Q. Do you have a memory of my client speaking up and trying  
 7 to explain to other members during the shift briefing about the  
 8 Occupy Movement, the 99 percent, that sort of stuff?  
 9 A. No.  
 10 Q. Do you recall any discussion at all about Occupy during  
 11 those -- during that time period?  
 12 A. A lot of different discussions with a lot of different  
 13 people, yes.  
 14 Q. I mean -- specifically, I'm talking about the graveyard  
 15 shift briefing. Were you ever there when any Occupy discussion  
 16 happened?  
 17 A. Not that I'm aware of, no.  
 18 Q. Do you ever recall Scott Cameron making any statements in  
 19 relation to my client and his speech about Tasers?  
 20 A. I don't know that he said it to me personally. I heard  
 21 through the department that --  
 22 MS. COIT: Objection. Hearsay.  
 23 THE COURT: Sustained.  
 24 BY MR. JASON KAFOURY: (Continuing)  
 25 Q. Without saying what you heard, what did you hear -- who

1 did you hear it through in the department?  
 2 A. Other officers. I can't recall in particular.  
 3 Q. Was Sergeant Cameron unhappy that my client was hired as a  
 4 public safety officer?  
 5 A. I never heard he was unhappy, no. I can't speculate to  
 6 that.  
 7 Q. Do you know what *Brady*-listing is?  
 8 A. Yes.  
 9 Q. How many years have you known throughout your career in  
 10 law enforcement about *Brady*-listing?  
 11 A. When I first attended the public safety academy up at  
 12 DPSST in Salem, it was a campus public safety academy I  
 13 attended.  
 14 Q. What year was that?  
 15 A. That was in 2007.  
 16 Q. Was it your understanding, back when you learned that in  
 17 2007, that the *Brady* list applied to public safety officers?  
 18 A. I guess I would have believed it would apply, yes.  
 19 MR. JASON KAFOURY: That's all I have. Thanks.  
 20 THE COURT: Cross-examination.  
 21  
 22 CROSS-EXAMINATION  
 23 BY MS. COIT:  
 24 Q. I would like to play an audio of this callout. It's  
 25 Exhibit 353.

1 THE COURT: 353. All right.  
 2 MS. COIT: May I play that, Your Honor?  
 3 THE COURT: You may.  
 4 MS. COIT: Sorry. I apologize. It doesn't appear to  
 5 be working. The monitor is not working.  
 6 MR. JASON KAFOURY: Counsel, it's quoted in 356.  
 7 Your 356.  
 8 MS. COIT: Do I need to turn it down on mine?  
 9 THE COURT: That's perfect, Counsel. I can hear it.  
 10 MS. COIT: Told you I would get it.  
 11 (Audio Exhibit 353 played for the jury.)  
 12 BY MS. COIT: (Continuing)  
 13 Q. Mr. Waggoner, do you recognize that voice on there?  
 14 A. Yes, ma'am.  
 15 Q. Who is that?  
 16 A. Mr. Cleavenger.  
 17 (Audio continued to be played for the jury.)  
 18 BY MS. COIT: (Continuing)  
 19 Q. Did you hear what Mr. Cleavenger said there?  
 20 A. They ditched a can down by the riverbank, but he didn't  
 21 see where.  
 22 (Audio continued to be played for the jury.)  
 23 BY MS. COIT: (Continuing)  
 24 Q. All right. Officer Waggoner, does that refresh your  
 25 memory of what you heard over the radio that day?

1 A. Yes.  
 2 Q. Excuse me. And Officer Cleavenger told you that it was a  
 3 Keystone Light can; right?  
 4 A. Correct.  
 5 Q. He told you he went and found the can and he could hear an  
 6 audible sound of liquid in the can; correct?  
 7 A. Yes. Correct.  
 8 Q. He said he saw them passing it back and forth to each  
 9 other; is that correct?  
 10 A. Correct.  
 11 Q. When you later looked and found that can, that's the one  
 12 you described earlier having mud on top of it, having been  
 13 there for a while?  
 14 A. Correct.  
 15 Q. Is that why you rescinded the ticket?  
 16 A. Correct.  
 17 Q. So Mr. Cleavenger told you afterward that he thought they  
 18 were drinking out of a Nalgene bottle? Is that your memory?  
 19 A. That's my memory. A water bottle type similar to a  
 20 Nalgene container that they had.  
 21 Q. Based on what you just heard, is that a true statement?  
 22 That that is what he reported over the radio?  
 23 A. Over the radio, it appeared that it was the can that they  
 24 were sharing passed back and forth, and that's what the  
 25 citation was issued based upon.



1 Q. It was after you had rescinded the ticket that you spoke  
 2 to Mr. Cleavenger and he changed the story?  
 3 A. I spoke with him after rescinding the ticket, yes, and  
 4 obtained additional details, details about the water bottle.  
 5 Q. Now, do you recall being interviewed about this incident,  
 6 this one we just listened to, by Lieutenant Andy Bechdolt?  
 7 A. I don't, no. As I stated before, I just -- it could have  
 8 happened. I don't remember.  
 9 Q. Do you recall having a conversation with Officer Hermens  
 10 about this callout in which you said you didn't trust  
 11 Mr. Cleavenger anymore?  
 12 A. I don't recall that. I -- I don't deny it, but I just  
 13 don't recall it. I think that's how I was feeling at that  
 14 time; that the facts were inaccurate or misconstrued or weren't  
 15 articulate through the radio. There was miscommunication, and  
 16 I was frustrated, yes.  
 17 MS. COIT: No further questions. Thank you.  
 18 THE COURT: Redirect.  
 19  
 20 REDIRECT EXAMINATION  
 21 BY MR. JASON KAFOURY:  
 22 Q. You were frustrated at the time because you'd never had to  
 23 rescind a ticket; right?  
 24 A. I issued a ticket in error, and our job is to make sure  
 25 justice is served, and I felt they were inaccurately cited

1 against.  
 2 Q. Do you remember Davis, Officer Davis, asking if you had  
 3 seen the blue container similar to a thermos attached to the  
 4 male subject's backpack? Does that ring a bell?  
 5 A. It does.  
 6 Q. Did the people that you were stopping, were they the ones  
 7 that said, oh, no, the container was the thermos on my  
 8 backpack?  
 9 A. I remember them reporting that to me, yes.  
 10 Q. So they're the ones that said, "We weren't drinking a beer  
 11 can. It was the thermos on our backpack"; right?  
 12 A. They told me that, yes.  
 13 Q. Did they tell you they were playing around with the beer  
 14 can?  
 15 A. They did.  
 16 MR. JASON KAFOURY: That's all I have. Thanks.  
 17 THE COURT: Recross.  
 18 MS. COIT: No questions.  
 19 THE COURT: May the witness be excused, Counsel?  
 20 THE WITNESS: Thank you, sir.  
 21 THE COURT: Just a moment.  
 22 MS. COIT: Yes.  
 23 THE COURT: Counsel?  
 24 MR. MCDUGAL: Yes.  
 25 THE COURT: Thank you very much.

1 THE WITNESS: Thank you, Your Honor.  
 2 THE COURT: Next witness, please.  
 3 Ladies and gentlemen, for this evening we have two more  
 4 witnesses, just so you know, and we'll recess as soon as we  
 5 complete those two witnesses.  
 6 Thank you, sir. If you step forward and walk through the  
 7 door into the courtroom. Raise your right hand.  
 8  
 9 ERIC LEROY,  
 10 called as a witness in behalf of the Plaintiff, being first  
 11 duly sworn, is examined and testified as follows:  
 12 THE WITNESS: Yes, ma'am.  
 13 THE COURT: Thank you, sir. Be seated in the witness  
 14 box. It's just to my right. The stairway is closest to the  
 15 wall.  
 16 After you're seated, would you pull the seat close to the  
 17 microphone so we can hear you? Now state your name to the  
 18 jury, please, and please spell your last name.  
 19 THE WITNESS: Eric LeRoy. L-E Capital R-O-Y.  
 20 THE COURT: Thank you.  
 21 Direct examination, please.  
 22  
 23 ///  
 24 ///  
 25 ///

1 DIRECT EXAMINATION  
 2 BY MR. MCDUGAL:  
 3 Q. Good afternoon, Mr. LeRoy.  
 4 A. Good afternoon.  
 5 Q. Can you state your name for the record.  
 6 A. Eric LeRoy.  
 7 Q. I'm going to try to summarize some, just to move it along.  
 8 You were hired as a public safety officer in July of 2009 at  
 9 the university?  
 10 A. Yes.  
 11 Q. And you were that way until 2014 and you became a police  
 12 officer there?  
 13 A. Yes.  
 14 THE COURT: Back up just a little bit.  
 15 THE WITNESS: Sorry.  
 16 BY MR. MCDUGAL: (Continuing)  
 17 Q. There's a list on your phone; correct?  
 18 A. Yes.  
 19 Q. We have a copy of the list. Is the name on the top of  
 20 that list the very first name that was ever entered on that  
 21 list?  
 22 A. Are you referring to Eli Manning?  
 23 Q. Yes.  
 24 A. Yes.  
 25 Q. And right before putting Eli Manning on that list, what

1 was the discussion?

2 A. We were making jokes about him. Something came up on

3 ESPN. I can't remember exactly what, but we were making jokes

4 about him.

5 Q. And how far did the joking go?

6 A. I really don't remember exactly how far, but jokes. Quite

7 a few of them.

8 Q. Well, let me --

9 MR. MCDUGAL: Your Honor, may I publish the list,

10 Exhibit 159, to the jury?

11 THE COURT: Well, eventually, the list is going to

12 come in. Is this the appropriate witness to receive this? Is

13 this the gentleman who's keeping the list?

14 MR. MCDUGAL: He's the keeper of the list.

15 THE COURT: Adding to the list, the keeper, or

16 whatever?

17 MR. MCDUGAL: Yes.

18 THE COURT: Is this the list, sir? Let's get a

19 proper foundation. Why don't you ask him if he recognizes this

20 list. So there's no mistake, have him go through the list.

21 MR. MCDUGAL: Certainly.

22 BY MR. MCDUGAL: (Continuing)

23 Q. Give you a second to look at that.

24 Can you identify that document, sir?

25 A. This is the list I kept on my phone.

1 MR. MCDUGAL: I'll offer Exhibit 159.

2 THE COURT: Received.

3 MR. MCDUGAL: Mr. Hess, can you publish the first

4 page of Exhibit 159?

5 BY MR. MCDUGAL: (Continuing)

6 Q. Isn't it a fact that Eli Manning was put on this list

7 right after saying that he could eat a bowl of dicks, and

8 that's when the list started?

9 A. I don't remember the exact -- the exact timeline of it,

10 no.

11 Q. Well, do you remember talking about Eli Manning eating a

12 bowl of dicks?

13 A. Not exactly.

14 MR. MCDUGAL: Mr. Hess, can you hand His Honor a

15 copy of the deposition of Mr. LeRoy?

16 MR. HESS: I did.

17 BY MR. MCDUGAL: (Continuing)

18 Q. I would like to read from your deposition. Page 79. I'm

19 going to hand you a copy of your deposition, in fairness,

20 before I start using it.

21 THE COURT: Counsel, I think he should read it to see

22 if it refreshes his recollection and then point out the lines

23 if you believe there's some contradiction in them.

24 MR. MCDUGAL: Okay.

25 ///

1 BY MR. MCDUGAL: (Continuing)

2 Q. Would you please turn to page 79? And could you look at

3 lines 7 through 12? Does that refresh your memory of talking

4 about Eli Manning eating a bowl of dicks?

5 A. Yes.

6 Q. How so?

7 A. If -- it was four years ago. If I remembered it then,

8 that's what happened.

9 Q. And what you remembered is that it was Eli Manning "eat a

10 bowl of dicks" situation; correct?

11 A. Yes.

12 Q. And who was the conversation -- who brought that up?

13 A. It was either myself or Lieutenant Lebrecht.

14 Q. True that in the -- later you would be talking about

15 someone eating a bowl of dicks when you put them on the list?

16 A. Not a hundred percent of the people on the list, but

17 occasionally.

18 Q. You can't tell me what percentage; right?

19 A. No.

20 Q. So you'll agree that either some of the people on the

21 list -- the reason they got put on there was because it was

22 said they could eat a bowl of dicks?

23 A. I wouldn't say that's the reason they got put on there.

24 Q. And can you look at your deposition page 91, lines 16

25 through 20?

1 A. (Witness complies.)

2 Q. Have you had a chance to look at that?

3 A. Yes.

4 Q. Does that refresh your memory?

5 A. It -- some of the people were, yes; but not all of them.

6 Q. Let me change topics here for a second.

7 How many annual performance reviews did you have? They

8 started in 2009.

9 A. We -- at least three. Maybe two or three.

10 Q. Your first couple of years you didn't have any; correct?

11 A. I don't believe so.

12 Q. Do you have any idea as to why sometimes people have them

13 and sometimes people don't?

14 A. No. I am under the impression that they're annual. They

15 come up at the anniversary of your employment with the

16 department.

17 Q. But that didn't happen with you?

18 A. No.

19 Q. Oh, you have taken some people off the list; correct?

20 A. Yes.

21 Q. Can you name a few?

22 A. Just one.

23 Q. Who's that?

24 A. Doug Park.

25 Q. Who is Doug Park?

1 A. He's the general counsel for the University of Oregon.  
 2 Q. Oh, towards the very end of your list --  
 3 MR. MCDUGAL: Mr. Hess, could you put up the last  
 4 page of the list?  
 5 BY MR. MCDUGAL: (Continuing)  
 6 Q. Do you see, second-to-last, Casey and Mark Boyd?  
 7 A. Yes, sir.  
 8 Q. Why are they on the list?  
 9 A. I made some jokes about them that I thought were funny.  
 10 Q. What were the jokes?  
 11 A. I don't remember specifically.  
 12 Q. Who did you make them in front of?  
 13 A. I don't remember specifically.  
 14 Q. Was it during a shift briefing?  
 15 A. I don't remember.  
 16 Q. Do you remember it was that they could eat a bowl of  
 17 dicks?  
 18 A. I don't remember.  
 19 Q. You might have taken some other people off the list. You  
 20 just don't remember; correct?  
 21 A. No. I didn't take anybody else off the list except for  
 22 Doug Park.  
 23 Q. One second, please.  
 24 Can you take a look at page 7 of your deposition, line 21  
 25 through 25.

1 A. Page 7 you said?  
 2 Q. Yes. Do you agree it's possible you could have taken  
 3 other people off the list?  
 4 A. If I said it then, it's possible.  
 5 Q. And you said it then; right?  
 6 A. Yes. It's in the deposition.  
 7 MR. MCDUGAL: That's all I have. Thank you.  
 8 THE COURT: Cross-examination.  
 9  
 10 CROSS-EXAMINATION  
 11 BY MS. COIT:  
 12 Q. Mr. LeRoy.  
 13 MS. COIT: Your Honor, I would like to put the list  
 14 back up on the screen, if I may.  
 15 THE COURT: You may. It's been received, Counsel.  
 16 I'm sorry. Has it been? Christy, did I receive it  
 17 actually formally into evidence?  
 18 DEPUTY COURTROOM CLERK: Yes, you did.  
 19 THE COURT: It's been received. You can display it  
 20 once it's received.  
 21 BY MS. COIT: (Continuing)  
 22 Q. So this list that was on your phone, is that something you  
 23 maintained?  
 24 A. Yes.  
 25 Q. Did anyone tell you what to put on this list?

1 A. No.  
 2 Q. How was it that someone -- you would make the decision to  
 3 put, say, for example, page two here, rubberneckers. On your  
 4 list?  
 5 A. If jokes were made about a specific subject or a person  
 6 and I thought the jokes were funny, then I put them on the  
 7 list. Sometimes people would suggest I would put something on  
 8 the list, but it doesn't mean I would put it on there.  
 9 Q. Do you recall anything on this list that Mr. Cleavenger  
 10 suggested?  
 11 A. Not specifically, no.  
 12 Q. Sitting here today, do you remember anyone else -- ever  
 13 taking anyone else off this list?  
 14 A. No.  
 15 Q. Did you ever show this list to Mr. Cleavenger?  
 16 A. No.  
 17 Q. Are you positive of that?  
 18 A. Yes.  
 19 Q. Would you describe Lieutenant Lebrecht as being the  
 20 instructor of who you were supposed to put on this list?  
 21 A. No.  
 22 Q. Would you describe this list, looking at here, say, for  
 23 example, the cast of Friends, Spongebob Squarepants, was this  
 24 an enemy list?  
 25 A. No.

1 Q. Was this a hate list?  
 2 A. No.  
 3 Q. Let's look at the next page. Sweater vest. Is this  
 4 something you guys were targeting?  
 5 A. No.  
 6 Q. Soap operas. Were you targeting soap operas?  
 7 A. No.  
 8 Q. How about half shirts?  
 9 A. No.  
 10 Q. All right. Did you ever feel that this list you were  
 11 keeping on your phone was somehow targeted at activists?  
 12 A. No.  
 13 Q. Targeted at liberals?  
 14 A. No.  
 15 Q. Targeted at minorities?  
 16 A. No.  
 17 Q. Did anyone ever complain to you about keeping this list on  
 18 your phone?  
 19 A. No.  
 20 Q. Did you ever hear Mr. Cleavenger complain during a  
 21 briefing about talking about this list or putting people on  
 22 this list?  
 23 A. No.  
 24 Q. All right. I want to look at -- well, tell me the time  
 25 period that you think that this list was actually discussed

1 during this -- the graveyard briefing, shift briefings.  
 2 A. The only time that all of us were on graveyard together  
 3 would have been 2011. I was only on graveyard from 2011 to  
 4 2013.  
 5 Q. So after you left graveyard shift in 2011, is it your  
 6 recollection that discussing this list, putting people or  
 7 things, Activision, on the list, that ceased when you left the  
 8 graveyard shift in 2011?  
 9 A. To the best of my knowledge, yes.  
 10 Q. Was Federal Judge Ann Aiken ever on your list?  
 11 A. No.  
 12 Q. Before Mr. Cleavenger put this list in his lawsuit and  
 13 gave it the name "bowl of dicks list," have you ever heard it  
 14 referred to as that?  
 15 A. No.  
 16 Q. Was Mayor Kitty Piercy ever on this list?  
 17 A. No.  
 18 Q. Did Mr. Cleavenger ever talk to you before he filed this  
 19 lawsuit to ask you if these people were on the list?  
 20 A. No.  
 21 Q. And you don't remember ever showing him a copy of this  
 22 list?  
 23 A. No.  
 24 Q. Has anyone ever had access to your phone to look at that  
 25 list?

1 A. No.  
 2 Q. How do you know that?  
 3 A. It's always in my pocket.  
 4 Q. Is it password-protected?  
 5 A. Yes.  
 6 Q. You still have the phone with the list on it; correct?  
 7 A. It's in my pocket right now.  
 8 Q. Did Mr. Cleavenger ever, through this lawsuit, ask if he  
 9 could have your phone to have it examined forensically to see  
 10 if that list was ever altered?  
 11 A. No.  
 12 Q. Was the ACLU ever on the list?  
 13 A. Not that I remember.  
 14 Q. How about Al Sharpton?  
 15 A. Not that I remember.  
 16 Q. Lauren Regan. Ever put her on the list?  
 17 A. No.  
 18 Q. How about generally the category of defense lawyers?  
 19 A. Not that I recollect, but maybe.  
 20 Q. And in Mr. Cleavenger's lawsuit, he says that the list  
 21 before -- well, have you seen in the paper that  
 22 Mr. Cleavenger's accusing you of having scrubbed this list?  
 23 A. Yes.  
 24 Q. All right. And the scrubbed version that he says you came  
 25 out with didn't include any of these people that I just

1 mentioned; correct?  
 2 A. I don't -- could you repeat the question?  
 3 Q. The people I just asked you about -- Ann Aiken,  
 4 Al Sharpton, Jesse Jackson, Lauren Regan, Kitty Piercy -- the  
 5 people that aren't on the list -- is Mr. Cleavenger's statement  
 6 that he made in both the lawsuit and later on in the media that  
 7 you took those people off of this list after the information  
 8 came out in the lawsuit, is that a false statement?  
 9 A. That statement is false.  
 10 Q. There has also been an allegation made by Mr. Cleavenger  
 11 in this lawsuit and in the media that you and Mr. Lebrecht --  
 12 are you aware -- let me ask this first: Are you aware of a  
 13 statement being made by Mr. Cleavenger to the media and in his  
 14 lawsuit that you and Lieutenant Lebrecht would spend the  
 15 majority of an eight-hour shift just talking in  
 16 Lieutenant Lebrecht's office?  
 17 A. Yes, I'm aware of that.  
 18 Q. Is that a true statement?  
 19 A. No.  
 20 Q. Have you ever spent the majority of an eight-hour shift in  
 21 anyone's office just talking?  
 22 A. Absolutely not.  
 23 Q. Did Mr. Cleavenger ever ask you, before he filed this  
 24 lawsuit, "Have you ever spent the majority of an eight-hour  
 25 shift in Lieutenant Lebrecht's office?"

1 A. Not that I remember.  
 2 Q. Did you ever hear Mr. Abbott, Officer Abbott, and  
 3 Lieutenant Lebrecht, joking about political figures?  
 4 A. The only thing I can remember is when Officer Abbott had  
 5 a -- I don't remember in what context, but he had a picture of  
 6 Ronald Regan, or something like that, and he and Abbott was  
 7 joking about it.  
 8 Q. Did you ever understand these comments from Lieutenant  
 9 Lebrecht or Officer Abbott to be serious discussions of their  
 10 political beliefs?  
 11 A. No.  
 12 Q. Are you a described liberal Democrat?  
 13 A. I would like to say I'm a moderate, an independent.  
 14 Q. Did anything you hear during these briefings or these  
 15 discussions about politics offend you?  
 16 A. No.  
 17 Q. Did you ever feel targeted for your political beliefs?  
 18 A. No.  
 19 Q. Did you ever hear Mr. Cleavenger complain about being  
 20 targeted for his political beliefs?  
 21 A. Not that I remember.  
 22 Q. Did you ever overhear anything said to Mr. Cleavenger that  
 23 would make you think he was being targeted for political  
 24 beliefs?  
 25 A. No.

1 Q. Have you worked with Sergeant Cameron at the department?  
 2 A. Yes.  
 3 Q. Has he been your supervisor?  
 4 A. Uh-huh.  
 5 Q. What is your opinion of him as a supervisor?  
 6 A. I thought he was a fine supervisor.  
 7 Q. Is he hard on people?  
 8 A. I wouldn't say -- not overly so.  
 9 Q. Would you say he's fair to people?  
 10 A. Yes.  
 11 Q. Have you ever seen him be unfair to Mr. Cleavenger?  
 12 A. No.  
 13 Q. Have you ever heard Sergeant Cameron say that he was going  
 14 to discipline Mr. Cleavenger to get back at him for his  
 15 position on Tasers?  
 16 A. Absolutely not.  
 17 Q. You went to Mr. Cleavenger's wedding; correct?  
 18 A. No.  
 19 THE COURT: I'm sorry. I didn't hear the answer.  
 20 You were at Mr. Cleavenger's wedding. Is that the question?  
 21 MS. COIT: Sorry. I asked it incorrectly. That was  
 22 the question, Your Honor.  
 23 THE COURT: That was the question. What was your  
 24 answer?  
 25 THE WITNESS: No.

1 BY MS. COIT: (Continuing)  
 2 Q. Did you invite Mr. Cleavenger to your wedding?  
 3 A. Yes.  
 4 Q. Did he come?  
 5 A. Yes.  
 6 Q. When was that wedding?  
 7 A. That wedding was October 15, 2011.  
 8 Q. Have you ever worked with Lieutenant Lebrecht?  
 9 A. Yes.  
 10 Q. And how would you describe Lieutenant Lebrecht's  
 11 supervisory style?  
 12 A. I like it.  
 13 Q. How would you describe it?  
 14 A. It's fair.  
 15 Q. Do you feel that you can go to Lieutenant Lebrecht with  
 16 issues or concerns that you have?  
 17 A. Absolutely.  
 18 Q. Did you ever take issues or concerns about Mr. Cleavenger  
 19 to Lieutenant Lebrecht?  
 20 A. Yes.  
 21 Q. Tell me about some of those.  
 22 A. Well, we used to go out riding bike on bicycle patrol when  
 23 we were on graveyard, and I noticed that a couple of times  
 24 during one of our rides I would look behind me and -- when we  
 25 were in a pair, I would look behind me and no one was there. I

1 would look back, there he is again. About five minutes later,  
 2 I would be riding around some more, and then gone again. And  
 3 I -- that felt extremely unsafe to me, and I felt that it put  
 4 me at risk, seeing as we were unarmed at the time, and I didn't  
 5 want to be put in that situation anymore. I didn't want to be  
 6 put unnecessarily at risk.  
 7 Q. Did you ask Lieutenant Lebrecht to not put you on bike  
 8 patrol with Mr. Cleavenger anymore?  
 9 A. I stated that I did not want to.  
 10 Q. From your experience with Lieutenant Lebrecht, is it  
 11 important for him -- is it important to him for people to  
 12 accept his feedback when he's trying to teach them?  
 13 MR. MCDUGAL: Objection. Leading.  
 14 THE COURT: Overruled.  
 15 THE WITNESS: Yes.  
 16 BY MS. COIT: (Continuing)  
 17 Q. From your observations of Officer Cleavenger, was he good  
 18 at accepting feedback from his supervisors?  
 19 A. No.  
 20 Q. Do you have an example that you can share with us?  
 21 A. It's kind of lacking in specifics, but we were on a call.  
 22 It was on graveyards. It would have been 2011. We were  
 23 debriefing a call. It was students at a dumpster or somebody  
 24 at a dumpster outside the art museum, and I remember that we  
 25 were debriefing the calls as a group, as we usually did with

1 any call that required some sort of action, and we went to --  
 2 we went to debrief the call, and I remember that there was a --  
 3 there was a -- we typically go around and say what we did good  
 4 and what we could have done better, and we do this with all of  
 5 us, and I remember that there was -- I don't remember  
 6 specifically what it was, but Mr. Cleavenger was getting  
 7 counseled on something that could have got better -- that we  
 8 could do better next time, and I remember he kind of reacted  
 9 like he was being singled out.  
 10 Q. Do you recall him saying anything?  
 11 A. I don't remember the exact words, but something to the  
 12 effect of, "Why are you picking on me?"  
 13 Q. Who was he talking to?  
 14 A. Either Lebrecht or Cameron.  
 15 Q. Do you recall anything else that happened shortly after  
 16 that debrief with Mr. Cleavenger, something Mr. Cleavenger  
 17 said?  
 18 A. Not specifically.  
 19 Q. Were you present for a call that Mr. Cleavenger responded  
 20 to about the subject who was called out over the radio to be  
 21 known to carry a javelin?  
 22 A. Yes.  
 23 Q. Tell me what you recall about that incident.  
 24 A. It was in an area that was off the beaten path away from  
 25 this -- away from an intersection, and we had contacted the

1 person. I can't remember exactly why we had contacted them,  
 2 but it turned out that they had a warrant and we needed to take  
 3 them into custody, so when -- and when the warrant information  
 4 comes back, the information -- any pertinent officer safety  
 5 information gets relayed as well, and in this case it was that  
 6 the person had carried a javelin in the past. Whether that was  
 7 used as a weapon or not, the officer certainly interpreted it  
 8 that way, enough to list it as a caution, and when that person  
 9 was -- after that had already been broadcast, Mr. Cleavenger  
 10 allowed him to dig around in his bag. And I -- still, to this  
 11 day, I'm not sure why.  
 12 Q. Did you see Mr. Cleavenger allow that man to make a phone  
 13 call?  
 14 A. Yes.  
 15 Q. What was your concern with that?  
 16 A. He could be calling any number of people, telling us --  
 17 telling them where we were, telling them to come and shoot us,  
 18 anything.  
 19 Q. Was there a concern having to do with putting the man in  
 20 handcuffs?  
 21 A. I had a bit of a concern when we were walking up to inform  
 22 him that he had a warrant and that he had -- that he was under  
 23 arrest. That normal procedure, when you do that, is to have  
 24 the person's hands under control before your handcuffs even  
 25 come out of your handcuff case.

1 Well, Mr. Cleavenger walked up to him, face to face with  
 2 him, with his handcuffs in his hand, and to me that is -- and  
 3 to a lot of other people that's extremely unsafe.  
 4 Q. Now, going back to him digging through the backpack and  
 5 him being reported as a -- being known to carry a javelin,  
 6 would you -- in your experience, would you understand a person  
 7 who's known to carry a javelin as a possible weapon to be more  
 8 or less likely than a normal person to have other sorts of  
 9 weapons?  
 10 A. Absolutely.  
 11 Q. More likely?  
 12 A. I would say more likely.  
 13 Q. Would it be possible for that person to keep his weapons  
 14 in a backpack?  
 15 A. Absolutely.  
 16 Q. And the person was digging through the backpack prior to  
 17 being handcuffed, I assume?  
 18 A. Yes.  
 19 Q. Now, this incident, was there a debriefing after this  
 20 incident?  
 21 A. Yes.  
 22 Q. All right. And who was there?  
 23 A. The people I remember being there -- myself,  
 24 Lieutenant Lebrecht, and Michael Drake and Mr. Cleavenger.  
 25 Q. Okay. And Michael Drake was Mr. Cleavenger's field

1 training officer; correct?  
 2 A. I believe so.  
 3 Q. Do you recall Michael Drake saying anything at that  
 4 debrief?  
 5 MR. MCDOUGAL: Objection. Hearsay.  
 6 THE COURT: Counsel?  
 7 MS. COIT: I'll move on.  
 8 BY MS. COIT: (Continuing)  
 9 Q. Did you say anything during that debrief?  
 10 A. I noted that -- I thought that when I was observing  
 11 Mr. Cleavenger search the person -- we normally do -- whenever  
 12 they are put into any sort of vehicle, regardless of their --  
 13 if they're going to be transported anywhere, we pat them down .  
 14 We make sure they don't have weapons . We make sure they don't  
 15 have means of escape. So when he patted him down, it looked to  
 16 me like he just barely was touching the outside of the pants.  
 17 He was not really -- it seemed to me like he was not thoroughly  
 18 searching.  
 19 Q. Did Mr. Cleavenger respond to you about that comment?  
 20 A. I vaguely remember him saying something about I -- that he  
 21 searched him.  
 22 Q. Did you hear Mr. Cleavenger respond to anything that  
 23 either Lieutenant Lebrecht or Officer Drake had said to him  
 24 during that debrief?  
 25 A. I don't remember specifically.

1 Q. Putting specifics aside, did you observe anything in his  
 2 demeanor that made you believe he was being receptive to the  
 3 feedback?  
 4 A. No. He seemed a bit agitated.  
 5 Q. Have you observed -- other than officer safety issues,  
 6 have you observed the conduct of Mr. Cleavenger , while on duty,  
 7 that makes you call into question his judgment?  
 8 A. There's one specific incident that I can remember, if you  
 9 would like me to go into that.  
 10 Q. Please.  
 11 A. There was -- it was one of the times that  
 12 Officer Cleavenger, or former Officer Cleavenger , and I were on  
 13 bike patrol together. I think it was a Friday or a Saturday  
 14 night. And there's an area down by the student recreation  
 15 center at the U of O where there's kind of a dark corner where  
 16 you can remain unseen while people come down the path from  
 17 the -- from 18th Street. And when you go, they can't see you  
 18 until you have already seen them for quite a ways.  
 19 MR. MCDOUGAL: Your Honor, I'm going to object unless  
 20 there's a foundation --  
 21 THE COURT REPORTER: I'm sorry. I can't hear you.  
 22 THE COURT: He's objecting because of lack of  
 23 foundation?  
 24 MR. MCDOUGAL: Yes.  
 25 THE COURT: Reask the question, Counsel.

1 MS. COIT: Thank you.  
 2 BY MS. COIT: (Continuing)  
 3 Q. The incident that you're thinking, had called into  
 4 question Mr. Cleavenger's judgment, did you report that to  
 5 anyone?  
 6 A. Yes.  
 7 Q. Who did you report that to?  
 8 A. Lieutenant Lebrecht.  
 9 Q. Okay.  
 10 MS. COIT: May he proceed with the description?  
 11 THE COURT: Proceed.  
 12 THE WITNESS: Should I start over?  
 13 BY MS. COIT: (Continuing)  
 14 Q. No, you can start from --  
 15 A. So when we were sitting in this little alcove, we were  
 16 looking for people because a lot of people are coming down that  
 17 way from parties. There's a lot of houses and fraternities in  
 18 that area, and they will be coming back to the dorms, and a lot  
 19 of them will have open containers of alcohol or they'll be so  
 20 intoxicated that they can't stand up. We might need to check  
 21 on them and get them help. So I like to sit down there and  
 22 watch for them, to make sure they either don't get hurt or that  
 23 we can deal with any violations of the law.  
 24 We did find a pair of them that had -- that were minors in  
 25 possession of alcohol. We dealt with it. And then after we

1 were done, they had walked down the -- down the path a little  
 2 more towards the dorms, and there's a picnic table right next  
 3 to us, and Mr. Cleavenger jumped up on the picnic table and  
 4 started kind of dancing, kind of suggestively, and I don't know  
 5 if he was necessarily pointing towards the people we just  
 6 contacted, but that's the direction he was thrusting in. And  
 7 he was in full uniform at the time. I was mortified.  
 8 Q. Do you recall whether these people that you had contacted  
 9 were males or females?  
 10 A. Two females.  
 11 Q. Why did you report that incident to Lieutenant Lebrecht?  
 12 A. I was -- like I said, I was mortified. It's -- I am  
 13 embarrassed, and it just -- it casts a bad light on us as  
 14 officers, if somebody were to have seen that, which there were  
 15 people that go up and down that path. I don't know if anybody  
 16 did see it. But if they would have seen it, it would have cast  
 17 a horrible light on him, and for me, just standing there, me as  
 18 well.  
 19 Q. Do you recall any other incidents such as this when  
 20 Lieutenant Lebrecht was actually present with you and  
 21 Mr. Cleavenger?  
 22 A. I do. There was one when we were on bicycle, all three of  
 23 us, and we were behind the library. There's this big open  
 24 field. It would have had to have been mid June because the  
 25 stages and the chairs were set up for graduation. And I

1 remember we were kind of standing there, catching our breath a  
 2 little bit, and we noticed some people between us and the  
 3 cemetery that were kind of -- looked like they were poking  
 4 around at the stage and the chairs, and we get some people  
 5 every now and then that will knock over chairs or they'll  
 6 just -- they'll mess up what the people spent a long time to  
 7 set up. So we tend to deal with that every now and then. But  
 8 I remember him yelling out in a really loud voice, and I'm  
 9 quoting now, "Hey, you hooligans," and it just seemed really  
 10 unprofessional to me.  
 11 And, again, I was embarrassed. I'm sure  
 12 Lieutenant Lebrecht was embarrassed as well, and we got out of  
 13 there. We didn't want to linger in the area.  
 14 Q. Based on these incidents you just described and your  
 15 general experience of working with Mr. Cleavenger, did you form  
 16 an opinion on whether or not he took his job as a public safety  
 17 officer seriously?  
 18 A. I would say yes. I don't think he did. I formed an  
 19 opinion, but I don't think he did.  
 20 Q. Did you ever have an experience with Mr. Cleavenger in  
 21 which he expressed what you believed to be paranoia?  
 22 A. I don't remember anything specific.  
 23 Q. Have you seen Mr. Cleavenger driving his Coburg Police  
 24 Department vehicle on U of O campus?  
 25 A. Just outside of U of O campus Franklin and Villard, yes.

1 Franklin and Villard Street.  
 2 Q. Was it in the direction of Coburg?  
 3 A. No. He turned eastbound onto Franklin.  
 4 MR. MCDUGAL: I'll object unless -- object based on  
 5 foundation.  
 6 THE COURT: How do you know this?  
 7 THE WITNESS: I saw it.  
 8 THE COURT: You saw it. Overruled.  
 9 MR. MCDUGAL: No. Did he ever communicate it to  
 10 anyone?  
 11 THE COURT: Did you communicate this to someone?  
 12 THE WITNESS: Yes, Your Honor.  
 13 THE COURT: Who?  
 14 THE WITNESS: Lieutenant Lebrecht.  
 15 THE COURT: Thank you. Overruled.  
 16 MR. MCDUGAL: Never mind.  
 17 MS. COIT: All right. Thank you, Officer LeRoy.  
 18 THE COURT: Redirect?  
 19 MR. MCDUGAL: I get to ask some questions. Can you  
 20 give me that portion?  
 21  
 22 REDIRECT EXAMINATION  
 23 BY MR. MCDUGAL:  
 24 Q. Did you hear the conversation between Mr. Cleavenger and  
 25 the gentleman that had the bag that had been seen with the

1 javelin before?  
 2 A. I don't remember if I did.  
 3 Q. Did you know whether or not the gentleman asked for  
 4 permission to get his cell phone?  
 5 A. I don't.  
 6 Q. Do you know that the gentleman knew that he was going to  
 7 be escorted off and his girlfriend was trying to find him, meet  
 8 up with him, and she was worried -- he was worried that he  
 9 needed to tell her where he was?  
 10 A. That sounds vaguely familiar.  
 11 Q. And how many officers were present that could have heard  
 12 that and seen this happen?  
 13 A. There would have been three others besides.  
 14 Q. So three others besides you and Mr. Cleavenger?  
 15 A. Two others.  
 16 Q. Two others besides you and Mr. Cleavenger that could have  
 17 heard the request that he look in the bag and be granted  
 18 permission to look in the bag to get his cell phone; correct?  
 19 A. Yes.  
 20 Q. Okay. He didn't have any weapons on him; right?  
 21 A. Not that I remember.  
 22 Q. Now, you have actually arrested someone for a felony, and  
 23 they've gotten to use their cell phone in the back of your car;  
 24 correct?  
 25 A. I don't recall specifically.

1 Q. You don't recall arresting someone for a felony, putting  
 2 them in your car, and then them using a cell phone? Handcuffs.  
 3 I'm sorry. He was handcuffed?  
 4 A. Handcuffed?  
 5 Q. Yeah.  
 6 A. It's possible. I don't remember anything specific,  
 7 though.  
 8 Q. You talked about some of the joking around. Tell me about  
 9 the jokes they made about Obama during the shift break.  
 10 Lieutenant Lebrecht.  
 11 A. The only one I remember specifically is he asked, "Has  
 12 anybody seen Obama's birth certificate?"  
 13 Q. Did he state that Obama wasn't born in the U.S.?  
 14 A. I don't remember anything specifically.  
 15 Q. How often was this situation that people can eat a bowl of  
 16 dicks discussed?  
 17 A. I don't remember. I couldn't put a number on it.  
 18 Q. At least once a week; right?  
 19 A. I would say the phrase came up at least once a week.  
 20 Q. Do you remember in your deposition page 78, line 16 to  
 21 line 19?  
 22 THE COURT: We're going to have you get closer.  
 23 We're having trouble hearing you.  
 24 MR. MCDUGAL: Page 78, line 16 to line 19.  
 25 THE WITNESS: That looks about right.

1 BY MR. MCDUGAL: (Continuing)  
 2 Q. What looks about right?  
 3 A. That it was discussed at least once a week.  
 4 Q. Now, you talked about -- let me see if I can get your word  
 5 down -- some things being mortifying.  
 6 Before I -- isn't it sort of mortifying to have a list  
 7 that you put people that could eat a bowl of dicks on?  
 8 A. If the list were entirely that.  
 9 Q. Oh, so just being partially that doesn't mortify you?  
 10 A. Some of them were in poor taste, yes.  
 11 Q. Is it embarrassing to the department?  
 12 A. Yes.  
 13 Q. You got promoted?  
 14 A. I got a new job, yes.  
 15 Q. It's a promotion; correct?  
 16 A. I consider it a promotion.  
 17 Q. Now, there are ways that people could know who's on that  
 18 list at one point; correct?  
 19 A. Could you -- could you repeat? I don't understand what  
 20 you're asking.  
 21 Q. There is a way that people could know that at one point  
 22 there were other people on that list; correct?  
 23 A. If there is, I don't, other than discussing.  
 24 Q. Exactly. During the shift, you would announce you were  
 25 putting the person on the list; correct?

1 A. There were times, yes.  
 2 Q. By the way, did the department ever investigate this list?  
 3 A. No.  
 4 Q. Did they ever forensically check your phone?  
 5 A. No.  
 6 MR. MCDUGAL: That's all I have. Thank you.  
 7 THE COURT: Recross.  
 8 MS. COIT: No questions.  
 9 THE COURT: May the witness be excused, Counsel?  
 10 MS. COIT: Yes.  
 11 MR. MCDUGAL: Who's next?  
 12 MR. JASON KAFOURY: Casey Boyd.  
 13 MR. MCDUGAL: Oh, yes, released.  
 14 Actually, can I ask one last question?  
 15 THE COURT: I don't want to get into this habit.  
 16 MR. MCDUGAL: It's not a habit. I forgot it.  
 17 THE COURT: You can ask one more question.  
 18 BY MR. MCDUGAL: (Continuing)  
 19 Q. I just wanted to clarify your statement that Casey and  
 20 Mark Boyd -- is it true, by your testimony, they would have  
 21 been put on this list way back in 2011?  
 22 A. No. I -- I -- the -- if you look at the end of the list,  
 23 then, no, they weren't put on the list in 2011.  
 24 Q. Do you know when they were put on the list?  
 25 A. I don't know a specific date.



1 Q. What's the latest you would say?  
 2 A. Well, no -- looking at the people on the list around them,  
 3 anywhere between football season of 2012 and 2013.  
 4 MR. MCDUGAL: Sorry. That was a few more than one  
 5 question. Thank you.  
 6 The witness is released.  
 7 THE COURT: Counsel, do you have other questions?  
 8 You're not limited to the last questions.  
 9 MS. COIT: Thank you. I do just on that follow-up.  
 10  
 11 RE-CROSS-EXAMINATION  
 12 BY MS. COIT:  
 13 Q. Your statement before about the list in 2011, that was  
 14 your -- were you saying that -- excuse me. Was it your  
 15 testimony that the list being discussed at briefings ended in  
 16 2011?  
 17 A. Yes.  
 18 Q. You never testified, did you, that you stopped making  
 19 entries at that -- December of 2011?  
 20 A. Absolutely not.  
 21 MS. COIT: No further questions.  
 22 THE COURT: Now may the witness be excused?  
 23 MR. MCDUGAL: Yes, Your Honor.  
 24 MS. COIT: Yes.  
 25 THE COURT: Thank you, sir. You may step down.

1 THE WITNESS: Do I leave these here?  
 2 THE COURT: Leave those there.  
 3 Now, the last witness you have, who is that witness?  
 4 MR. JASON KAFOURY: Casey Boyd is the last witness of  
 5 the day, Your Honor.  
 6 THE COURT: Just a moment. Let me check with the  
 7 jury. Some of you may have child problems, transportation  
 8 problems. If you can stay, I'd like to. If not, go with my  
 9 blessings. Okay. Do any of you have problems? And how long  
 10 will this witness be, Counsel?  
 11 MR. JASON KAFOURY: Sadly, she says she has 40  
 12 minutes and I have 40 minutes.  
 13 THE COURT: Then tomorrow morning. That's not fair  
 14 to keep you past 6:30. I want you to hear that testimony in a  
 15 block of time. That witness will stay with us this evening.  
 16 Is 6:30 okay tomorrow? Just kidding. 8:00, okay?  
 17 I have a conference call back to my court starting at  
 18 7:00. I'll be with you, unless it's something dramatic  
 19 happening that the free world won't survive -- at judge's  
 20 meetings I've had that problem, trust me. So I should be with  
 21 you right at 8:00, but give me a couple minutes.  
 22 First of all, has anybody talked to anybody about the case  
 23 so I get to start all over again?  
 24 THE JURY: No.  
 25 THE COURT: Don't do it. After we're done, you can

1 talk to anybody. I don't care who you talk to. Right now  
 2 you're the only people who are ever going to hear this evidence  
 3 at one time. So don't discuss it. Don't think about it. Go  
 4 home, and see you tomorrow at 8:00.  
 5 You can leave your notepads right on the seat. Christy,  
 6 they don't have to take them with them. If you want to take  
 7 them on the seat, trust me, nobody is taking a thing out of  
 8 this court.  
 9 (Jury not present.)  
 10 THE COURT: Counsel, let's have a seat. Just for my  
 11 own curiosity -- have a seat. Thank you.  
 12 MR. JASON KAFOURY: Oh, have a seat. I heard it but  
 13 didn't hear it.  
 14 THE COURT: Judge Aiken took it upon herself to  
 15 disqualify herself and every judge in Oregon. What is the  
 16 future evidence that shows that Judge Aiken was on this list?  
 17 Is there -- is it your client's testimony, or is there another  
 18 list that is later produced with the name on it?  
 19 MR. JASON KAFOURY: No. My client has direct memory  
 20 of the conversation, the context, and why she was put on the  
 21 list.  
 22 THE COURT: Okay. Is there anybody who corroborates  
 23 that? Not that your client is not credible or not. Is there  
 24 another witness who's going to testify -- by the way, I have no  
 25 disagreement with Judge Aiken's call. I don't want to imply

1 that. In fact, out of caution, if this was mine, I would have  
 2 taken the same action.  
 3 MR. JASON KAFOURY: I believe there's one other  
 4 witness who remembers the context of why she was put on it.  
 5 THE COURT: Why she was put on it?  
 6 MR. JASON KAFOURY: Yeah.  
 7 THE COURT: Does that witness, you believe,  
 8 specifically recall her name being mentioned? Judge Aiken?  
 9 MR. JASON KAFOURY: I don't remember. I have to  
 10 look. I don't remember.  
 11 THE COURT: Well, I won't put you in that position of  
 12 making that statement tonight, then. Go back and look.  
 13 All right.  
 14 MS. COIT: Your Honor, if I could comment on your  
 15 question?  
 16 THE COURT: Certainly. Thank you.  
 17 MS. COIT: Mr. Cleavenger is going to testify that he  
 18 has never seen the list until we produced it to him, so, no,  
 19 there will be no direct evidence that she was ever on the list.  
 20 THE COURT: So it will be plaintiff's statement that  
 21 he recalls the incident and the context of it. Is that your  
 22 understanding? Whether you believe it or not, that's where the  
 23 evidence will come from?  
 24 MS. COIT: He will, at best, be able to say that he  
 25 heard her being discussed in a briefing and thinks maybe

1 Mr. LeRoy might have put her on the list.  
 2 THE COURT: Okay. Let me go back to some other  
 3 people mentioned. I looked down that list a number of times,  
 4 but I don't see the ACLU or Al Sharpton on that list. Do you?  
 5 MR. JASON KAFOURY: It's our position that --  
 6 THE COURT: It's a simple question. Not --  
 7 MR. JASON KAFOURY: No. I don't see it either.  
 8 THE COURT: Other people may testify about it. I'm  
 9 just talking about the list for now.  
 10 MR. JASON KAFOURY: Yeah.  
 11 THE COURT: Your client may and other people may.  
 12 Defense lawyers in general or -- all right. I think I  
 13 understand.  
 14 Well, first, we're going to go off the record for a moment  
 15 and let you rest.  
 16 (Off the record.)  
 17 THE COURT: Back on the record.  
 18 353 was played, but not received. I want to thank the  
 19 clerk of the court, Christy, for reminding the Court of that.  
 20 It's received at this time.  
 21 MS. COIT: Thank you, Christy.  
 22 THE COURT: I've got two other exhibits. 144 and 41.  
 23 Are we going to refer to those again?  
 24 MR. JASON KAFOURY: Which witness were those for,  
 25 Your Honor?

1 THE COURT: Are we having fun yet? That's what  
 2 counsel always tells to the Court. So, Counsel, 144 and 41.  
 3 MR. MCDUGAL: They were both exhibits for Mr. LeRoy .  
 4 I gave them out of abundance of caution. I didn't use them.  
 5 THE COURT: Do you want me to hold them out in the  
 6 future or just give them to Christy as a packet?  
 7 MR. MCDUGAL: Just give them back.  
 8 THE COURT: Christy, I'll give these back. Thank  
 9 you, Counsel.  
 10 Now, I'll tell you how much I appreciate you. This is an  
 11 appreciation for both counsel on both sides. We're settling  
 12 in. This isn't a four-month trial. Usually counsel don't  
 13 catch on until the second week, so I want to compliment both of  
 14 you now. I want to compliment both sides.  
 15 If you want a judge to pay attention, you've now got me in  
 16 a good place because it's hard for me to take notes -- and,  
 17 trust me, my notes are copious, they're thorough -- and also  
 18 scramble for an exhibit or look for a deposition. So what is  
 19 becoming extraordinarily helpful, and I very much appreciate  
 20 it, is I'm getting depos now and I'm getting page numbers to  
 21 refer to so that I can see if this is impeaching or refreshing,  
 22 and I think we've fallen into the correct pattern now of  
 23 refreshing the witness first, and then, if the answer is  
 24 different, impeaching.  
 25 The second thing I appreciate is the fact that you're

1 giving me exhibits at the same time. Very helpful. Because  
 2 what I don't want do is this: Walk away from my notes and walk  
 3 to three binders and shuffle through them. I'm not going to do  
 4 that. So these binders are appreciated. They're utterly  
 5 worthless to me. I'm not going to step back. I want to listen  
 6 to the witnesses and hear the evidence.  
 7 Third, I now want to make certain this evening, before we  
 8 leave, that Christy is current with her records. What I don't  
 9 like is at the end of a case counsel says, "You know, Judge, of  
 10 the 300 exhibits we have, Exhibit No. 108 we have a debate  
 11 about, and, Judge, go back two weeks and go through that  
 12 again."  
 13 Therefore, at the end of the case, you're each going to  
 14 sign, just as you would in my court, the back of the exhibit  
 15 list. What that means is you examined every exhibit.  
 16 Regardless of the ruling by the Court, you agree that's a  
 17 complete exhibit or not a complete exhibit.  
 18 So, first, since you might have attempted to put in 30  
 19 pages or 10 pages in the future, but only one page was referred  
 20 to and the other side is objecting to the other, we need to  
 21 sort that out as we go. Otherwise, that comes in two weeks  
 22 when our memories are dim. So tonight is just a catch-up night  
 23 with Christy. If we have a dispute, we'll go back on the  
 24 record and resolve that. But tonight we're current before we  
 25 go home.

1 I have jury instructions prepared?  
 2 MR. MCDUGAL: Yes.  
 3 THE COURT: Excellent. If you would hand those to  
 4 Marie for just a moment. Has the other counsel seen those?  
 5 MR. MCDUGAL: No. They were just delivered.  
 6 THE COURT: Give them a copy. It's very much  
 7 appreciated.  
 8 MR. MCDUGAL: Part of it is in the witness room, and  
 9 I am happy to get that. These are the uniforms, and the  
 10 non-uniforms are in the witness room.  
 11 THE COURT: Now, we're starting through the witnesses  
 12 for tomorrow, but I think we've already discussed Boyd. I'll  
 13 go over those. Before I had Exhibit 119. I had Exhibit 120.  
 14 I had Exhibit 137. I had Exhibit 131. I had Exhibit 150. And  
 15 I had Exhibit 253.  
 16 Are those basically the exhibits you tend to rely on for  
 17 tomorrow?  
 18 MR. JASON KAFOURY: We've got 119, 120, and --  
 19 THE COURT: 119, 120.  
 20 MR. JASON KAFOURY: Yeah.  
 21 THE COURT: 137.  
 22 MR. JASON KAFOURY: Yep.  
 23 THE COURT: 141.  
 24 MR. JASON KAFOURY: Yep.  
 25 THE COURT: 150.

1 MR. JASON KAFOURY: Yep.  
 2 THE COURT: And, finally, we have 253.  
 3 MR. JASON KAFOURY: Yeah. I think, 253 has already  
 4 been received. I think that's Royce Myers' --  
 5 THE COURT: It may have been. I just don't recall.  
 6 Take your time. Of course you can add or retract or you  
 7 can give me the plethora of exhibits and pick and choose  
 8 tomorrow. I don't want any significant surprises. Of course  
 9 you can always keep the one document you believe turns the case  
 10 with surprise, but it's limited.  
 11 MR. JASON KAFOURY: 254, also, is Bechdolt's Internet  
 12 history.  
 13 THE COURT: 254. Thank you. I had that in my notes.  
 14 I missed that for some reason. My apologies. Sorry, Counsel.  
 15 253, 254, 255.  
 16 MR. JASON KAFOURY: Correct.  
 17 THE COURT: Anything you would like to potentially  
 18 add? Remember, I'm not going to chastise you for missing one.  
 19 Just basically getting both sides prepared so we're not having  
 20 sidebars.  
 21 MR. JASON KAFOURY: No. I think that's it,  
 22 Your Honor.  
 23 THE COURT: Remember, you're not limited. If you  
 24 come up with something tonight, I'm not trying to chill what  
 25 effort by either one of you made. But basically most of the

1 THE COURT: Whether you take him on cross-examination  
 2 or delay that, that's a tactical decision based upon direct.  
 3 I'm not requiring you to lay out evidence on your side right  
 4 now. Okay? I want to hear the plaintiff.  
 5 So after Lieutenant Andy Bechdolt, who, potentially, will  
 6 be your next witness?  
 7 MR. JASON KAFOURY: Probably Officer Corey Mertz.  
 8 THE COURT: Before we get to Corey Mertz, what  
 9 exhibits would you like to rely on?  
 10 MR. JASON KAFOURY: For Bechdolt?  
 11 THE COURT: Yeah.  
 12 MR. MCDUGAL: I have a packet here, Your Honor, but  
 13 I'll narrow it down. It will take me a minute.  
 14 THE COURT: That's okay. Why don't you just name  
 15 them. I don't require you to narrow them down. In other  
 16 words, tonight if you decide there's an exhibit you're not  
 17 going to rely upon, just give me the panoply of exhibits.  
 18 You're not limited.  
 19 MR. MCDUGAL: 168.  
 20 THE COURT: 168. And what is that?  
 21 MR. MCDUGAL: That was just -- I was just handed it,  
 22 Your Honor. I don't have that. You've got a list. Okay.  
 23 It's the *Brady* email.  
 24 THE COURT: The *Brady* email. Okay.  
 25 What's your next exhibit?

1 documents need to be laid out.  
 2 After Boyd tomorrow, which is a substantial witness, who  
 3 would you like to call?  
 4 MR. JASON KAFOURY: We have some damage witnesses.  
 5 My client's father.  
 6 THE COURT: Okay. Why don't you give me the name.  
 7 MR. JASON KAFOURY: Michael Cleavenger.  
 8 THE COURT: Michael Cleavenger. That's your client's  
 9 father?  
 10 MR. JASON KAFOURY: Correct.  
 11 THE COURT: Okay. Just a moment. What exhibits will  
 12 he be relying upon?  
 13 MR. JASON KAFOURY: I don't think any.  
 14 THE COURT: And the next witness tomorrow potentially  
 15 will be?  
 16 MR. JASON KAFOURY: I think we'll call Lieutenant  
 17 Andy Bechdolt.  
 18 THE COURT: Okay. Lieutenant Andy Bechdolt. And  
 19 what will the lieutenant be testifying to?  
 20 MS. COIT: He's coming back in my case, so I don't  
 21 know what he's testifying to, Your Honor.  
 22 THE COURT: So he will be on the stand, apparently,  
 23 tomorrow.  
 24 MS. COIT: He'll be here at 9:00. We'll have him  
 25 here at 9:00.

1 MR. MCDUGAL: Defense 347.  
 2 THE COURT: 347. I understand with  
 3 Lieutenant Bechdolt or the sergeant that there may be a volume  
 4 of documents that we later rely upon and are called with  
 5 additional witnesses, like the sergeant, if he testifies  
 6 Friday, or the chief. So it's a good run-through of many of  
 7 the exhibits I think we're going to see over and over again.  
 8 So 347. What is that?  
 9 MR. MCDUGAL: Your Honor, I think I can make this go  
 10 faster if you just give me five minutes.  
 11 THE COURT: Counsel, you have all night.  
 12 MR. MCDUGAL: Thank you.  
 13 THE COURT: You have no idea. Should I come back in  
 14 an hour?  
 15 MR. MCDUGAL: I think five minutes.  
 16 THE COURT: Five minutes? Okay. I'll just sit here.  
 17 MR. MCDUGAL: I can tell you that Timothy Ranger  
 18 will be a witness tomorrow.  
 19 THE COURT: Timothy Ranger?  
 20 MR. MCDUGAL: Yeah. No exhibits.  
 21 THE COURT: Is Corey Mertz the next person?  
 22 MR. JASON KAFOURY: Yeah. Mertz will have a few  
 23 exhibits.  
 24 THE COURT: Let's take Corey Mertz, then, for just a  
 25 moment. What exhibits do you think you will rely upon for

1 Corey Mertz?

2 MR. JASON KAFOURY: 93.

3 THE COURT: 93.

4 MR. JASON KAFOURY: 172.

5 THE COURT: 172.

6 MR. JASON KAFOURY: 220.

7 THE COURT: 220.

8 MR. JASON KAFOURY: That's it. Those three.

9 THE COURT: Could I see those, please?

10 MR. JASON KAFOURY: I can give you my copies.

11 THE COURT: Christy, want to stick a little tag on

12 these? Oh, let me give this back to you. I'll give you my

13 seating chart and I'll give you this back, which is that

14 wonderful list you gave me.

15 Okay. Mertz. Well, the first exhibit that was handed to

16 me was Exhibit 45. Is that correct, Counsel?

17 MR. MCDUGAL: Yes. May I clarify, Your Honor?

18 Those are the pages we would intend to rely upon. Exhibit 45

19 itself is very thick. If you want the whole thing, I'll give

20 you the whole thing, but it keeps you from leafing through it.

21 THE COURT: And the City of Junction City New Employ

22 Checklist, is this just some kind of checklist that shows his

23 performance?

24 MR. MCDUGAL: Actually, it's his entire personnel

25 file.

1 THE COURT: It's his entire personnel file?

2 MR. MCDUGAL: Training file. I'm sorry.

3 THE COURT: Training file.

4 And are the dates -- the dates are noted in the margin,

5 then. 5/23/11. Is that correct?

6 MR. JASON KAFOURY: Yeah.

7 THE COURT: Okay. Then it goes up to March 23, '11.

8 So it looks like we're working backwards in time; is that

9 correct?

10 MR. JASON KAFOURY: Correct.

11 THE COURT: So if we start at the back, any

12 objection, Counsel?

13 Counsel, any objection to 45?

14 MS. COIT: No, Your Honor.

15 THE COURT: The next exhibit is 93. In 93, "We the

16 officers and dispatchers of the Junction City Police Department

17 hereby give our full confidence, support, and recognition to

18 James Cleavenger." This looks like hearsay to me.

19 MS. COIT: It's hearsay and it's also written by

20 Mr. Cleavenger. We object to it.

21 THE COURT: Well, it still has the officers'

22 signatures, so it has some authenticity, but I'm -- I'm

23 certainly being very progressive in letting you call a number

24 of people. In fact, possibly unduly consumptive of time, but

25 I'm letting you call people from Junction City, and this

1 appears to be hearsay.

2 MR. JASON KAFOURY: Right. I am not using this

3 document for the truth of the matter asserted, Your Honor.

4 What I'm doing is showing that if -- during the *Brady*

5 submissions a year later, if the defendants had done a fair and

6 impartial job of reaching out for evidence about my client's

7 truthfulness, they would have and should have encountered this

8 document and turned it over to the district attorney, and they

9 did not.

10 THE COURT: And this document is at or near the time.

11 Can we see the date on it? I don't see a date on it.

12 MR. JASON KAFOURY: 93 is a year before.

13 THE COURT: Well, I don't see a date on it.

14 MR. JASON KAFOURY: March 1, 2013. At the top.

15 THE COURT: So that's a year before the *Brady*; is

16 that correct?

17 MR. JASON KAFOURY: What's that?

18 THE COURT: That's a year before *Brady*?

19 MR. JASON KAFOURY: That's correct. Yes. My

20 argument is that if they wanted to do a fair and balanced job

21 of submitting material to the district attorney about my

22 client's truthfulness, that this document should have been

23 sent. It's every single person except for the chief.

24 THE COURT: You are sure you want this in? In other

25 words, you want the fact that he wrote this document in and had

1 his fellow officers sign it?

2 MR. JASON KAFOURY: He has all of his fellow officers

3 sign it.

4 THE COURT: I know that. That's what you would like.

5 MR. JASON KAFOURY: Yeah. Yes.

6 THE COURT: Okay. Counsel?

7 MS. COIT: Well --

8 THE COURT: I think you're going to hear from most of

9 Junction City anyway.

10 MS. COIT: Correct. I'll just state my position on

11 that letter. It is not our obligation whatsoever to go out and

12 find information from other police departments and make an

13 independent decision on his credibility. It's our job to turn

14 over information we believe we have bears on his credibility

15 that was uncovered in the course of investigations and let the

16 DA do that. And the DA got that letter. So maybe when the DA

17 is here he could -- he could talk about it.

18 MR. JASON KAFOURY: Well --

19 MS. COIT: We had no obligation to go get that

20 letter.

21 MR. JASON KAFOURY: They did talk to Junction City.

22 They did talk to Junction City before they submitted the

23 materials, and they included what they claim are lies by my

24 client from Chief Chase.

25 THE COURT: In the same time period?

1 MS. COIT: No.  
 2 MR. JASON KAFOURY: With the submission of the *Brady*  
 3 materials, Lebrecht contacts Chief Chase. Chief Chase says,  
 4 "Oh, yes. Here's more information about Cleavenger." Lebrecht  
 5 takes that information from the chief and puts it into the  
 6 *Brady* materials and says, "Here's other examples of Cleavenger  
 7 lying about it."  
 8 THE COURT: So the chief in Junction City is not  
 9 going to be favorable to your client?  
 10 MR. JASON KAFOURY: No. Nor are --  
 11 THE COURT: Just a moment. I don't know that. So  
 12 your answer is he's not favorable.  
 13 MR. JASON KAFOURY: Yes. That's correct. And --  
 14 THE COURT: And, therefore, these officers offset  
 15 that, in your opinion, if that bolsters his virtue, from your  
 16 perspective, then why would the chief be aware of this? Did  
 17 the chief receive this? In other words, foundationally, would  
 18 this be something that the chief had in their possession?  
 19 Because, if not, then I don't know what the nexus is to the  
 20 packet being handed over by the chief.  
 21 MS. COIT: Chief McDermid or Chief Chase?  
 22 THE COURT: Chief Chase.  
 23 MS. COIT: Chief Chase is going to testify he --  
 24 THE COURT: Counsel, I don't need that.  
 25 MS. COIT: Sorry. I thought you were talking to me.

1 THE COURT: Did this come to Chief Chase?  
 2 MR. JASON KAFOURY: We will have to ask Chief Chase.  
 3 I don't know.  
 4 THE COURT: Did -- was it sent to Chief McDermid or  
 5 any member of the U of O Police Department? And was this  
 6 something your client came and basically -- and I don't mean it  
 7 facetiously -- put it in his back pocket?  
 8 MR. JASON KAFOURY: He was applying for more jobs,  
 9 and this was a letter of reference, basically, for him.  
 10 THE COURT: Who would have had this besides your  
 11 client? In other words, if Chief -- if -- Counsel, make it  
 12 simple. If Chief Chase had this and didn't submit it, I'm  
 13 going to agree with your position.  
 14 MR. JASON KAFOURY: Okay.  
 15 THE COURT: Should have been submitted. Along with  
 16 the good and the bad. If the support of fellow officers is  
 17 part of his file and made known to the chief, then I think it's  
 18 absolutely appropriate. This should have been turned over.  
 19 If not, though. If your client is getting this signed and  
 20 keeping it, then I disagree with you. That's not something I  
 21 would expect would be inquired about or known about.  
 22 MR. JASON KAFOURY: Well, why don't we wait to talk  
 23 to some Junction City folks who signed this letter, because  
 24 they all got copies of it, and see if they gave it to Chief  
 25 Chase.

1 THE COURT: I think we can wait foundationally  
 2 instead of just trying to flash it up on the board. You'll be  
 3 in a better position. Otherwise, I'll deny it and you're going  
 4 to be by it, so why don't you get the foundation in.  
 5 Now, 69 --  
 6 MR. JASON KAFOURY: Now, this is different.  
 7 THE COURT: Just a moment. 69 wasn't on my list.  
 8 Hold on.  
 9 MR. JASON KAFOURY: 69. Sorry.  
 10 THE COURT: 69 is another document. It's a Junction  
 11 City Police Department report, dated August 13, 2014. And you  
 12 have to keep reminding me of the *Brady* time frame.  
 13 MR. JASON KAFOURY: Okay.  
 14 THE COURT: Somewhere in July or August.  
 15 MR. JASON KAFOURY: Right. So this is signed by  
 16 three witnesses from Junction City, all the commanding officers  
 17 underneath Chief Chase, and it is responding -- it's sent to  
 18 the DA, Alex Gardner, and it is responding to the untruthful  
 19 allegations against my client put forward by Lebrecht.  
 20 MS. COIT: We stipulate to that one.  
 21 THE COURT: I'm sorry?  
 22 MS. COIT: We stipulate to that one.  
 23 THE COURT: Okay. That makes it easy.  
 24 Exhibit 220.  
 25 MR. JASON KAFOURY: We'll withdraw it.

1 THE COURT: You don't have to. Right now I'm putting  
 2 a question mark by it, okay?  
 3 And Exhibit 172. I don't see 172.  
 4 MR. JASON KAFOURY: Oh, I think what we're doing is  
 5 doublespeak. You were reading the deposition number 69,  
 6 Your Honor. It's actually 172. Same document.  
 7 THE COURT: Now I'm real confused.  
 8 MR. JASON KAFOURY: Okay. Unfortunately, we left the  
 9 deposition sticker on this that said 69, so everything we just  
 10 discussed about this Junction City --  
 11 THE COURT: Is 172?  
 12 MR. JASON KAFOURY: -- is actually 172.  
 13 THE COURT: I apologize.  
 14 MR. JASON KAFOURY: Now we're square.  
 15 THE COURT: There we go. I understand.  
 16 Okay. Is that basically -- remember, I -- trial counsel  
 17 never sleep, and so, therefore, if you come up with some  
 18 document at 3:00 in the morning, I'm not trying to chill that  
 19 presentation. I just basically want to know from both of you  
 20 what's coming in tomorrow.  
 21 Is that somewhat complete?  
 22 MR. JASON KAFOURY: Yes. For Corey Mertz, yes.  
 23 THE COURT: Christy, would be kind enough -- oh,  
 24 you've already done it. Christy, you're way ahead of me.  
 25 After you call Mertz, who are you going to call?

1 MR. JASON KAFOURY: Timothy Ranger.  
 2 THE COURT: Okay. One moment. This is off the  
 3 record.  
 4 (Off the record.)  
 5 THE COURT: Timothy Ranger. And what's he going to  
 6 testify to?  
 7 MR. JASON KAFOURY: Damages. Personal friend of my  
 8 client.  
 9 THE COURT: Personal friend? And what exhibits?  
 10 MR. JASON KAFOURY: None.  
 11 THE COURT: And then after Mr. Ranger?  
 12 MR. JASON KAFOURY: We may call John Hoffman.  
 13 THE COURT: And, remember, you're not tied to this  
 14 list. If you decide not to use a witness, so be it. John  
 15 Hoffman. Tell me about John Hoffman.  
 16 MR. JASON KAFOURY: He's a soccer referee. He'll  
 17 talk about my client's British accent.  
 18 THE COURT: Okay. Was that one of the criticisms in  
 19 the materials submitted to -- on the *Brady* list?  
 20 MR. JASON KAFOURY: It's strange. Page 7 of the  
 21 *Brady* materials -- I don't believe any explanation -- has a  
 22 photo of my client from a web page and on the photo it says --  
 23 or on the description of it, it says my client was born in  
 24 Liverpool.  
 25 THE COURT: I see.

1 MR. JASON KAFOURY: And so I think that that  
 2 issue is --  
 3 THE COURT: Well, if it's admitted, there's something  
 4 about British --  
 5 MR. JASON KAFOURY: There's a connection to my client  
 6 and Liverpool, yes.  
 7 THE COURT: At least it went into the *Brady* material.  
 8 MR. JASON KAFOURY: At least it went into the *Brady*  
 9 materials, yes.  
 10 THE COURT: Now, hopefully we catch up tomorrow. If  
 11 we don't, I'm not going to have a heart attack. But sometime  
 12 in the afternoon, at 1:00, you have scheduled a person that I  
 13 gave consent to testify by video from San Diego; right?  
 14 MR. JASON KAFOURY: Correct.  
 15 THE COURT: Remind me why I did that because that's  
 16 absolutely against my procedural motion. I believe the person  
 17 was ill or had some kind of --  
 18 MR. JASON KAFOURY: Yeah, the person has no job and  
 19 it was an economic hardship for him to fly up, I believe.  
 20 THE COURT: What is Daniel Pearse going to testify  
 21 to?  
 22 MR. MCDUGAL: He's a five- to ten-minute witness.  
 23 He's going to testify to Mr. Cleavenger's use of a British  
 24 accent, how it was authorized during the sporting events, and  
 25 to his trustworthiness.

1 THE COURT: Okay. Authorized --  
 2 MR. MCDUGAL: Yes.  
 3 THE COURT: -- during event.  
 4 Okay. And then we have another witness who shortly  
 5 follows by video, also, and that was --  
 6 MR. MCDUGAL: We may not be calling Mr. Ahlen now  
 7 that the arbitration award is completely in.  
 8 THE COURT: But SEIU Chief Steward John Ahlen; right?  
 9 MR. MCDUGAL: Right.  
 10 THE COURT: Now, once again, those are your  
 11 decisions, and I won't interfere with those, but if he is  
 12 called, what exhibits would you be presenting?  
 13 MR. MCDUGAL: There would be emails during the  
 14 negotiations that may be used depending on what comes up. That  
 15 would be Exhibit 87. Do we have that yet? Perhaps if we  
 16 return to Mr. Bechdolt -- Bechdolt? Sorry if I'm  
 17 mispronouncing that. I'm ready on that one now.  
 18 THE COURT: We'll go back to Lieutenant Andy  
 19 Bechdolt. I have 168, which was *Brady* emails. I have 347,  
 20 which was --  
 21 MR. MCDUGAL: 347 is an email from Scott Cameron to  
 22 Andrew Bechdolt regarding Cleavenger's assignment.  
 23 MS. COIT: What number is that?  
 24 MR. MCDUGAL: 347.  
 25 THE COURT: Why don't you send that packet up for me.

1 MR. MCDUGAL: Mr. Cleavenger, you took my list.  
 2 MR. CLEAVENGER: Sorry. We're using the same list.  
 3 THE COURT: I appreciate it. Let's try to get these  
 4 in order, then. Let's start with 347. This is a September 19,  
 5 2012, document from Andrew Bechdolt, sent to Mike Morrow, and  
 6 this must be the two drinking -- or two subjects drinking beer  
 7 that shows in an official report.  
 8 MR. JASON KAFOURY: Yes.  
 9 THE COURT: Are you trying to show that -- well, from  
 10 the defendants' perspective, this is absolutely appropriate.  
 11 You're trying to show from the plaintiff's perspective that no  
 12 other person is disciplined in this matter.  
 13 MR. JASON KAFOURY: Yes, that's a portion of it. And  
 14 also that Bechdolt had problematic callouts and it was no big  
 15 deal.  
 16 THE COURT: Well, Counsel?  
 17 MS. COIT: It's my exhibit. I don't object.  
 18 THE COURT: Okay. It's going to be received.  
 19 The next exhibit is 168. That should be the *Brady* email.  
 20 Let me get that out of order. Was that already received? It's  
 21 already in evidence.  
 22 MS. COIT: It was used in opening.  
 23 THE COURT: Christy, do you have 168 already  
 24 received?  
 25 DEPUTY COURTROOM CLERK: Let me check.

1 MR. JASON KAFOURY: It was used in opening, but I  
2 don't think it was offered.  
3 DEPUTY COURTROOM CLERK: It was not offered yet,  
4 Judge.  
5 THE COURT: I need 168. Can you check on the video  
6 hookup tomorrow, then?  
7 By the way, for Mr. Cleavenger and the chief, you're not  
8 required to be here. If you have -- if you have a boring life,  
9 you can stay here, but if you want to go about your way, you  
10 can. It's up to you. Counsel are required to be here, but  
11 you're not, so I leave that to you.  
12 I won't be offended if you leave, but you're welcome to  
13 stay. You can leave at any time. I think Mr. Cleavenger is  
14 going to be here because he's actively going through the  
15 exhibits, but you don't have to.  
16 Counsel, I think we're waiting for 168 still.  
17 MR. MCDUGAL: I thought that was already in,  
18 Your Honor.  
19 THE COURT: Christy doesn't have it.  
20 DEPUTY COURTROOM CLERK: I don't have it on my list.  
21 MR. MCDUGAL: Does Your Honor have a copy of it?  
22 THE COURT: No. Apparently, I lost it.  
23 MR. MCDUGAL: Here's another one.  
24 THE COURT: I refer to them one at a time.  
25 Obviously, this is coming in, Counsel.

1 So the next exhibit after 347, Counsel, that you wanted  
2 the Court to look at was what? 254? Or you already gave it to  
3 me?  
4 MR. MCDUGAL: I've already given those to you,  
5 Your Honor.  
6 THE COURT: The Mozilla history list. 254.  
7 MR. MCDUGAL: Yes.  
8 THE COURT: Tell me about that.  
9 MR. MCDUGAL: I believe it will be a history of  
10 Bechdolt's web searches.  
11 THE COURT: This is Lieutenant Bechdolt's web search.  
12 MR. MCDUGAL: Yeah.  
13 THE COURT: You can expect that's going to be  
14 received, but let me hear from counsel. This is Bechdolt's web  
15 search.  
16 MS. COIT: I would need to see how it's offered  
17 before I can --  
18 THE COURT: It's -- in all likelihood, Counsel, it's  
19 coming in. Even if it's hearsay, it goes to the extent of his  
20 conduct, et cetera. It's a nice exception to the hearsay rule.  
21 Then the next exhibit I have, and in no particular order,  
22 is 238. That's the Scott Cameron Sergeant Targeted Crimes  
23 Unit. Director of Affirmative Action and Equal and Personal --  
24 Personal and Confidential. What is this?  
25 MR. MCDUGAL: The subject of it is a formal

1 grievance and it has to do with Amanda Williams.  
2 THE COURT: With who?  
3 MR. MCDUGAL: Amanda Williams -- now Hayles -- that  
4 testified.  
5 THE COURT: Now, just a moment. Amanda Williams  
6 hasn't testified yet.  
7 MR. MCDUGAL: Amanda Hayles. She changed her name.  
8 She got married.  
9 THE COURT: Oh, well, it says Amanda Williams.  
10 MR. MCDUGAL: She was a Williams at the time in  
11 2011.  
12 THE COURT: She hasn't testified yet, has she?  
13 MR. MCDUGAL: She did. Amanda Hayles is her name  
14 now.  
15 THE COURT: And what is this about? Otherwise,  
16 you're going to sit here and watch me read it page by page.  
17 MR. MCDUGAL: I would only be using these to refresh  
18 his recollection. I don't know if you want those handed in the  
19 exhibit list.  
20 THE COURT: We won't pay that much attention to it if  
21 you are just going to refresh his recollection.  
22 Next document, in no particular order, I have is  
23 Exhibit 195. What is that?  
24 MR. MCDUGAL: It's about one of the callouts.  
25 THE COURT: Okay. This is an official record?

1 MR. MCDUGAL: Yes. It's from --  
2 THE COURT: This is one of the supposed callouts, the  
3 three callouts?  
4 MR. MCDUGAL: Yes. It's actually three callouts and  
5 it goes on.  
6 THE COURT: That's coming into evidence, Counsel.  
7 Next is Exhibit 188. What is this, Counsel?  
8 MR. MCDUGAL: Again, about a callout. The two  
9 people drinking beer.  
10 THE COURT: Callout. Okay. You can expect the  
11 official reports made, that that's coming into evidence.  
12 What's your next exhibit number. 4?  
13 MR. MCDUGAL: Yes.  
14 THE COURT: What's that?  
15 MR. MCDUGAL: It's an evaluation of Mr. Cleavenger  
16 made back in 2011.  
17 THE COURT: And this is going to show a good  
18 evaluation and a subsequent drop in evaluations. In other  
19 words, is this in the first of the series where you show good  
20 evaluations and then seven out of eleven categories going down?  
21 MR. MCDUGAL: This is a separate document, but this  
22 is his release from training.  
23 THE COURT: High drive. Positive attitude.  
24 MR. MCDUGAL: Right.  
25 THE COURT: This is early in his career. Let me see

1 the date. What's the date?  
 2 MS. COIT: This is No. 4?  
 3 THE COURT: 8/8/11.  
 4 MR. MCDUGAL: I'm sorry. It's 91. Exhibit 4 of the  
 5 deposition. This is 91.  
 6 THE COURT: Oh, 91. Okay. 91. Thank you.  
 7 MR. MCDUGAL: It says date phase 8/8/11.  
 8 THE COURT: Yeah, it says 8/8/11.  
 9 This is going to -- now, this probably would have been  
 10 part of this *Brady* material, right, or was this excluded, or do  
 11 you know?  
 12 MR. MCDUGAL: *Brady* says you're supposed to provide  
 13 exculpatory evidence.  
 14 THE COURT: Time out. Was this in the *Brady* packet?  
 15 91?  
 16 MR. MCDUGAL: You know, I -- sitting here, my good  
 17 faith answer is "I don't think so."  
 18 THE COURT: Okay.  
 19 MS. COIT: Do you want my answer?  
 20 THE COURT: Yes. Do you know?  
 21 MS. COIT: I do know. It's not in there.  
 22 THE COURT: It's not in there. Okay. Well, you can  
 23 expect that that's coming into evidence.  
 24 All right. Then we have 90.  
 25 MR. MCDUGAL: Similar. This goes back to 2011.

1 not tag-teaming this.  
 2 360. What is this?  
 3 MR. MCDUGAL: It's a letter regarding Cleavenger's  
 4 termination.  
 5 THE COURT: You can expect that's coming in.  
 6 In good faith, remember, I'm not holding you to these.  
 7 You don't have to put these in. You can add to them tonight.  
 8 It's just a good faith effort that we're prepared on both  
 9 sides.  
 10 MR. MCDUGAL: There's also three audios of the  
 11 callouts. They're 131, 132, 130. They're all callouts.  
 12 THE COURT: 131 and 132; right.  
 13 MR. MCDUGAL: Yes. They're all callouts.  
 14 THE COURT: Okay. Christy, here's a wonderful list  
 15 for you. Would you put Lieutenant Bechdolt on this?  
 16 Okay. After -- now, we're going to jump down to 19 again.  
 17 SEIU Chief Steward Ahlen. Video from Eugene.  
 18 MR. MCDUGAL: Yes.  
 19 THE COURT: Start with email number 87. Can I see  
 20 that, or is that just a --  
 21 MR. MCDUGAL: Where's 87? Do you have copies?  
 22 THE COURT: If you're not going to call him, I won't  
 23 waste your time.  
 24 MR. MCDUGAL: We weren't going to make that decision  
 25 until later, Your Honor.

1 It's a review of his abilities and attitude.  
 2 THE COURT: Okay. The date on this would be --  
 3 MR. MCDUGAL: The second sentence of it talks about  
 4 the time frame it relates to. The last page says July 4, 2011.  
 5 THE COURT: Thank you. July 4, 2011.  
 6 And the next exhibit is 356. That's 9/25/12. What does  
 7 this show. This is a callout?  
 8 MR. MCDUGAL: I think that is. I don't have it in  
 9 front of me, Your Honor. I apologize. It's a defense exhibit.  
 10 It's a memo from --  
 11 THE COURT: Yeah, this is Officer Cleavenger advised  
 12 Officer Hermens via radio that there was a suspicious subject  
 13 in the area. This is one of those --  
 14 MR. MCDUGAL: Callout.  
 15 THE COURT: That's a callout. You can expect that  
 16 that's coming in.  
 17 And 361.  
 18 What happened to other counsel? Where is he? This isn't  
 19 a tag team. I've got one counsel over here. Get your other  
 20 counsel back here. He's not going home. We're not trading off  
 21 counsel back and forth. Get him back here.  
 22 MR. MCDUGAL: I don't think he left the building,  
 23 Your Honor. I think he just stepped out.  
 24 THE COURT: All right. Make sure. You're one  
 25 against three or four. You're all here for the party. We're

1 THE COURT: That's okay. Then I'll go into the  
 2 exhibits. That way I'm not surprised.  
 3 MR. MCDUGAL: I gave them to him. I don't have -- I  
 4 don't have a second set of these, Your Honor. I apologize.  
 5 THE COURT: That's okay. That's my set, then.  
 6 MR. MCDUGAL: Yes.  
 7 THE COURT: You write down exhibit numbers and make  
 8 duplicates tonight.  
 9 Exhibit 164. And this appears to be a request to review  
 10 Cleavenger's files, including his FTE observations. What is  
 11 this? Is this from the union steward?  
 12 MR. MCDUGAL: Yes. And they didn't let them be with  
 13 the file.  
 14 THE COURT: Oh. You can expect that that's coming  
 15 in. Next one is -- well, I think that that -- I have a series  
 16 of emails next. Is that all part of the file, the same  
 17 exhibit?  
 18 MR. MCDUGAL: Does it have a different exhibit  
 19 number on it?  
 20 THE COURT: No. They don't have a number, so -- but  
 21 it's pages all the way up to seven of seven, it looks like, so  
 22 I -- I assume it's all part of 164.  
 23 MR. MCDUGAL: Yes. Yes, sir.  
 24 THE COURT: Then we have 163. This appears to be  
 25 more follow-up concerning Cleavenger.



1 MR. MCDUGAL: Yes.  
 2 THE COURT: Union email. Again, the same?  
 3 MR. MCDUGAL: Similar, yes.  
 4 THE COURT: They didn't let him view it?  
 5 MR. MCDUGAL: There's irregularities in the step  
 6 three hearing. I don't know how much I'll get into it. I may  
 7 not. This is out of an abundance of caution.  
 8 THE COURT: Then I'm confused. What's the purpose?  
 9 MR. MCDUGAL: A step three doesn't happen. A step  
 10 three hearing does not happen.  
 11 THE COURT: Well, is that because your client chose  
 12 to file the lawsuit? Strike that. How did step one and two  
 13 get bypassed?  
 14 MR. MCDUGAL: Step one is never -- and correct me --  
 15 step one was never heard. Chief McDermid says she'll hear it.  
 16 Never makes the time to. So they go on to step two.  
 17 THE COURT: Step two is what?  
 18 MR. MCDUGAL: Step two is heard in front of  
 19 Brian Smith who then leaves the university three days later.  
 20 THE COURT: Okay. And so they do go through,  
 21 supposedly, step one and step two, but you don't get any  
 22 results from step two. In other words, Brian Smith hears it  
 23 and leaves.  
 24 MR. MCDUGAL: Right.  
 25 THE COURT: Or do you get the results?

1 step one and two and three. Not satisfactorily.  
 2 MR. MCDUGAL: Yes. Step one didn't happen because  
 3 there was never the hearing. Step three there was never a  
 4 hearing.  
 5 THE COURT: Okay.  
 6 MS. COIT: There was --  
 7 THE COURT: That points to, from your perspective, a  
 8 perceived bias?  
 9 MR. MCDUGAL: Yes.  
 10 THE COURT: Okay. Or at least not following the  
 11 proper procedure?  
 12 MR. MCDUGAL: Yeah. When I say there was no hearing  
 13 in step three, it started, but it stopped before they were  
 14 allowed to give evidence.  
 15 THE COURT: Why did it stop?  
 16 MR. JASON KAFOURY: That's a long story.  
 17 MR. MCDUGAL: Yeah. There was debate over -- I  
 18 don't know if I'll get into that debate. Basically John Ahlen  
 19 asked the decider to please give rules that could be followed  
 20 and let them put on their presentation in the way that they  
 21 wanted to put it on.  
 22 THE COURT: John Ahlen is the union rep?  
 23 MR. MCDUGAL: Yes. And the gentleman said no.  
 24 MS. COIT: Your Honor, I guess I just want to make it  
 25 clear that we completely object to the relevance of any of this

1 MR. MCDUGAL: They get a very short letter that  
 2 doesn't address much.  
 3 THE COURT: What is that? In other words, if you're  
 4 getting into 163, you ought to get the very short letter. Then  
 5 that would seem for the jury that they skipped it and skipped  
 6 town. That's not true. It doesn't matter if we've got a short  
 7 letter or not. They responded. It's the response to step two.  
 8 MS. COIT: It's kind of long. It's like four pages.  
 9 THE COURT: It's four pages. So it's not such a  
 10 short letter?  
 11 MS. COIT: That's right.  
 12 THE COURT: What exhibit number is it?  
 13 MR. MCDUGAL: Exhibit 81.  
 14 THE COURT: All right. Now, 81 should also come in  
 15 the same packet. If I let in 163, potentially then 81 is  
 16 coming in also.  
 17 All right. What is your -- then I've got 156. Here is  
 18 our step three. So I'll wait for 81.  
 19 Thank you, Christy. I really appreciate you.  
 20 156. This is the step three meeting, and that's the  
 21 dismissal. Therefore, you finish out step one, two, and three.  
 22 MR. MCDUGAL: Yes.  
 23 THE COURT: So it sounds to me that your client is  
 24 dissatisfied, from the defense perspective, whether it's a  
 25 short letter or a long letter, or whatever, that you go through

1 information to the claims that are at issue here.  
 2 This is Brian Caufield, an employee of OUS, who does the  
 3 step three hearing. You've already ruled on the due process  
 4 claim and dismissed it from a motion to dismiss.  
 5 THE COURT: Okay. But if there's a conscious  
 6 disregard by the department of their own procedures, then I'll  
 7 have to weigh that. Not sure what I'll do with that yet. I'll  
 8 simply wait to see if you call this person or not.  
 9 MR. MCDUGAL: Thank you, Your Honor.  
 10 THE COURT: 103.  
 11 MR. MCDUGAL: 103.  
 12 THE COURT: This is a complaint from your client?  
 13 MR. MCDUGAL: Yes. To --  
 14 THE COURT: It's dated October 2012. 31, October.  
 15 So he's trying to gather evidence for, what, the step three  
 16 procedure?  
 17 MR. MCDUGAL: Yes.  
 18 THE COURT: Okay. And then we have 102. That's a  
 19 request for arbitration and showing the date. Is that the  
 20 request by your client through Molly May?  
 21 MR. MCDUGAL: Through SCIU, yes. Molly May is --  
 22 THE COURT: Okay. So there's your request for  
 23 arbitration. April 8, 2013. Is that correct?  
 24 MR. MCDUGAL: Yes.  
 25 THE COURT: Then the last document you've given me is

1 87, and this is the official statement of grievance form --  
 2 MR. MCDUGAL: Yes.  
 3 THE COURT: -- where your client makes the request  
 4 for full reinstatement?  
 5 MR. MCDUGAL: Yes.  
 6 THE COURT: Okay.  
 7 MR. MCDUGAL: Then what's not in your packet,  
 8 Your Honor, is defense number 303. That's the collective  
 9 bargaining agreement. I don't know if it's going to come up  
 10 and be relevant or not.  
 11 THE COURT: Where is it, then?  
 12 MR. MCDUGAL: Can you give Your Honor a copy of 303?  
 13 THE COURT: Are you co-counsel on this matter?  
 14 MR. HOOD: Yes, Your Honor.  
 15 THE COURT: Okay. Do you, Counsel, want to get  
 16 together and start going through instructions and make sure  
 17 they're matched up?  
 18 MS. COIT: Your Honor, Mr. Hood has to go get my son  
 19 again. He has to leave at 6:00.  
 20 THE COURT: Okay.  
 21 MS. COIT: I'll make him work really late into the  
 22 night on it.  
 23 MR. MCDUGAL: Actually, our 14. It's been handed to  
 24 you now. Rather than using Defense 303, we'll use our 14.  
 25 THE COURT: Plaintiff's 14. This is the collective

1 THE COURT: That's all of Junction City?  
 2 MR. JASON KAFOURY: Yeah.  
 3 THE COURT: We just need the foundation from that.  
 4 MR. JASON KAFOURY: Correct. The question is whether  
 5 it was given to Chase.  
 6 THE COURT: If it's not submitted and it was put in  
 7 the back pocket, it won't be in. If it is, you have a strong  
 8 argument that it was in someone's possession, either UOP or  
 9 Junction City, we're going to acquire it.  
 10 MR. MCDUGAL: Out of the stack you gave me, this is  
 11 the only one I'd like to use. It's in relation to Casey Boyd.  
 12 THE COURT: Casey Boyd. Okay.  
 13 Now, and then we have former Police Sergeant Brandon  
 14 Nicol.  
 15 MR. JASON KAFOURY: Nicol.  
 16 THE COURT: Nicol. I'm sorry. Thank you.  
 17 MR. CLEAVENGER: Same exhibits, Your Honor. 93 and  
 18 172.  
 19 THE COURT: Where is Brandon Nicol from? Junction  
 20 City?  
 21 MR. JASON KAFOURY: Yeah.  
 22 THE COURT: So one of these are quick witnesses.  
 23 Will that fill our day tomorrow?  
 24 MR. MCDUGAL: Starting with Casey Boyd. I think.  
 25 THE COURT: Casey Boyd is going to take a while.

1 bargaining agreement. All right.  
 2 Now, let me constantly remind you, you're not limited.  
 3 I'm not precluding you and I'm not chilling you, but at the  
 4 same token -- okay.  
 5 Counsel, why don't you take a look at these exhibits up  
 6 here. I've set them off to the side. See if you're going to  
 7 use them with any of the witnesses tomorrow. I put them off to  
 8 the side and I forgot what they were. My apologies.  
 9 Then we have Officer Ken Jackson, Counsel.  
 10 MR. CLEAVENGER: He'll use the same exhibits as the  
 11 other Junction City officers, Your Honor. I believe that's 93.  
 12 THE COURT: 93.  
 13 MR. CLEAVENGER: And actually just that one.  
 14 THE COURT: Just 93?  
 15 Then we have Sergeant Eric Markell.  
 16 MR. CLEAVENGER: Your Honor, that will be 93 and 172.  
 17 THE COURT: 93. And I do have 172?  
 18 MR. CLEAVENGER: You do, Your Honor. That's the  
 19 packet that was sent to the DA.  
 20 THE COURT: Okay. Packet to the DA.  
 21 What's 93?  
 22 MR. CLEAVENGER: That's the letter of recommendation  
 23 signed by the entire department that you're holding onto.  
 24 THE COURT: That's all of Junction City?  
 25 MR. JASON KAFOURY: Find out what was given to Chase.

1 That's why we recessed tonight. I don't want to split to gain  
 2 a half an hour, so --  
 3 MR. JASON KAFOURY: Yeah, I -- I am not certain. I  
 4 think some of those afternoon witnesses are going to be 10  
 5 minutes.  
 6 THE COURT: Yeah, I do too. That's what I'm worried  
 7 about. I won't have the jury sitting here. I'll give you all  
 8 the time in the world for both sides, but not wasted time.  
 9 Obviously, I'm not going to force your client on. He's in  
 10 a block of time. You choose when that is. There are a couple,  
 11 three, or four critical witnesses for both sides. Those are  
 12 the witnesses I don't want to tinker with. The rest of them  
 13 I'm going to push pretty hard.  
 14 MR. MCDUGAL: We'll make some calls tonight and see  
 15 who can come tomorrow afternoon as a filler.  
 16 THE COURT: Yeah. Make those calls. I don't think  
 17 we have enough in the afternoon, quite frankly, even with the  
 18 lengthy witness in the morning. I'd like to send them home  
 19 between 5:00 and 5:30 again, if possible okay.  
 20 So we're behind, but not so substantially behind. And  
 21 it's my expectation, then, that Fridays are pretty dramatic  
 22 days. I'll tell you why you both need to be prepared. I don't  
 23 know about Paterson or Dispatcher Myra Jones, but Chief Larry  
 24 Larson.  
 25 MR. JASON KAFOURY: He's the Coburg chief.

1 THE COURT: Yeah, I think he's relatively short.  
 2 MR. JASON KAFOURY: Short. Oh, yeah.  
 3 THE COURT: But then you have Brandon Lebrecht .  
 4 Pretty important. You've got Carolyn McDermid. Who's really  
 5 important for both of you. And Dayna Lange (ph).  
 6 MR. JASON KAFOURY: And don't forget we also have  
 7 Sergeant Cameron that day too.  
 8 THE COURT: Sergeant Cameron that morning. I just --  
 9 I question that day, if it's fair, to get to James Cleavenger.  
 10 We may, and we'll know by tomorrow. So we've got another day  
 11 to see how, Mr. Cleavenger, if you're testifying on Friday or  
 12 not.  
 13 MR. JASON KAFOURY: Yeah, I --  
 14 THE COURT: It may be that you're not. It may be  
 15 that you're over until Monday. What I don't want to do is  
 16 split your testimony of all the testimonies if possible, but I  
 17 will if I have to. I just don't want to. So work with your  
 18 counsel. So we can try to get you on in a block of time.  
 19 Okay?  
 20 I'll pay the same courtesy to Chief McDermid, who you can  
 21 call back, Counsel. You can ask her a few questions. You can  
 22 do whatever. You'll make the decision after you hear the chief  
 23 testify, obviously, as well as Lebrecht and Cameron.  
 24 So my guess is that you're finishing sometime Monday and  
 25 probably not Monday morning.

1 MR. JASON KAFOURY: No. I mean, I think -- I just  
 2 sincerely feel that we're going to be two-thirds of a day with  
 3 James on direct exam. There's so much to cover, and I think  
 4 the defense will have half a day.  
 5 THE COURT: That's what I'm saying. I just don't  
 6 think, unless I'm going to push the accelerator on the case,  
 7 which I'm not, that probably Monday afternoon, at the best, at  
 8 the very best, is when we'll finish him.  
 9 MR. JASON KAFOURY: Yeah.  
 10 THE COURT: We'll talk about that again tomorrow so  
 11 you're prepared. In other words, this whole thing is designed  
 12 to get, for both of you, the majority of the exhibits, so  
 13 you're not going through a hundred thousand pages of whatever.  
 14 You know what's going to happen in your direct and cross. And  
 15 when we start with the defendant, I'll pay you the same  
 16 courtesy. We'll go through each exhibit. You'll know which  
 17 ones you have to pull out of that stack. Okay.  
 18 MR. JASON KAFOURY: Can we get a list? I know  
 19 defense counsel is calling Morrow Tuesday morning. Can we get  
 20 a list? Same courtesy we gave her so we can prepare over the  
 21 weekend?  
 22 THE COURT: Absolutely. We'll go over that Friday.  
 23 I know you're ending Monday sometime ; right? I don't think in  
 24 the morning.  
 25 MR. JASON KAFOURY: Yeah. No.

1 THE COURT: My guess is sometime Monday afternoon or  
 2 early evening.  
 3 MS. COIT: Can I ask a question about tomorrow?  
 4 THE COURT: Sure.  
 5 MS. COIT: Are we -- are you adding more witnesses or  
 6 are you stopping with Morrow?  
 7 MR. JASON KAFOURY: I want to see if, for example,  
 8 Chief Larry Larson can move over.  
 9 THE COURT: They'll make some calls tonight. We just  
 10 don't have enough for the afternoon. If we don't, then I'll  
 11 force somebody up on the stand. One of them is going to get  
 12 split, and that's not to the plaintiff's advantage. That's to  
 13 the defendants' advantage. I don't want that for either one of  
 14 you. If I have to, if you run out of witnesses, I'll force you  
 15 to call primary witnesses, which means you get through direct  
 16 and then they've got all they need for cross to examine on.  
 17 I'll go off the record and send this most wonderful court  
 18 reporter home. Good night. Now we're off the record.  
 19 (Off the record.)  
 20 THE COURT: Back on the record.  
 21 Counsel, as we went off the record, raised the issue of  
 22 divorce and the whole issue concerning infidelity.  
 23 MR. JASON KAFOURY: Correct.  
 24 THE COURT: When is the -- when is the wife going to  
 25 testify?

1 MR. JASON KAFOURY: What's that?  
 2 THE COURT: When is the wife testifying or former  
 3 wife?  
 4 MR. JASON KAFOURY: She said it's her first witness.  
 5 I'm assuming Tuesday morning.  
 6 THE COURT: Oh, well, we've got time then. We can  
 7 take that up tomorrow night.  
 8 MS. COIT: Okay.  
 9 THE COURT: I'm thinking instead of keeping you here ,  
 10 we have a lot of other work to do.  
 11 MR. JASON KAFOURY: I just wanted to raise the issue.  
 12 THE COURT: That's tomorrow night with me, okay?  
 13 That's a fairly dramatic issue. Okay. Now you're off the  
 14 record. Thank you. Goodnight.  
 15 (Trial Day 2 adjourned.)

## C E R T I F I C A T E

Cleavenger v. McDermid, et al.

6:13-cv-01908-DOC

TRIAL DAY 2

September 9, 2015

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

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

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

<p><b>A JUROR: [6]</b> 349/15 349/17 350/12 558/12 558/14 562/16</p> <p><b>DEPUTY COURTROOM CLERK: [13]</b> 333/25 336/21 349/16 349/24 350/2 350/6 350/19 350/25 490/8 591/17 637/24 638/2 638/19</p> <p><b>MR. CLEAVANGER: [8]</b> 335/8 637/1 651/9 651/12 651/15 651/17 651/21 652/16</p> <p><b>MR. GREGORY KAFOURY: [1]</b> 337/12</p> <p><b>MR. HESS: [16]</b> 344/22 349/13 350/1 352/5 357/8 357/10 357/18 359/17 359/21 394/19 394/21 394/23 395/3 402/16 410/16 587/15</p> <p><b>MR. HOOD: [1]</b> 650/13</p> <p><b>MR. JASON KAFOURY: [163]</b> 394/8 405/3 405/8 412/1 412/8 413/14 413/18 413/20 416/10 424/12 424/14 433/6 434/1 434/9 436/6 436/8 438/20 442/9 447/12 449/16 449/19 451/10 454/21 455/4 455/8 455/12 455/19 455/24 456/12 456/15 456/21 457/3 460/13 463/8 463/10 463/14 473/4 473/7 475/5 478/21 478/23 483/9 489/11 489/17 490/2 490/5 506/15 509/9 512/11 512/14 516/22 529/18 541/5 541/14 541/21 542/6 542/13 542/15 542/21 549/6 553/2 557/10 557/20 571/10 579/18 580/5 583/15 613/11 615/3 615/10 616/11 616/18 617/2 617/5 617/8 618/4 618/6 618/9 618/23 621/17 621/19 621/21 621/23 621/25 622/2 622/10 622/15 622/20 623/3 623/6 623/9 623/12 623/15 624/6 624/9 625/21 626/1 626/3 626/5 626/7 626/9 627/5 627/9 628/1 628/11 628/13 628/16 628/18 629/1 629/4 629/17 629/20 630/1 630/9 630/12 631/1 631/7 631/13 631/21 632/5 632/8 632/12 632/14 632/24 633/3 633/7 633/11 633/13 633/21 633/25 634/6 634/9 634/11 634/15 634/19 634/25 635/4 635/7 635/13 635/17 637/7 637/12 637/25 648/15 651/24 652/1 652/3 652/14 652/20 653/2 653/24 654/1 654/5 654/12 654/25 655/8 655/17 655/24 656/6 656/22 656/25 657/3 657/10</p> <p><b>MR. MCDUGAL: [211]</b></p> <p><b>MS. COIT: [147]</b> 330/14 330/24 331/15 331/19 331/22 331/24 332/13 332/15 333/17 335/1 335/11 335/14 335/24 336/16 340/15 340/17 347/3 347/10 356/6 361/25 362/15 364/4 384/6 384/23 387/14 390/5 395/23 398/19 400/4 403/15 404/21 405/15 405/22 406/3 406/11 406/23 407/4 407/22 408/15 408/25 409/6 409/11 409/15 414/18 416/4 419/9 420/14 423/17 425/2 426/9 426/23 430/12 432/1 433/3 434/6 449/21 451/20 452/10 452/19 453/4 453/6 454/23 456/18 460/4 461/14 465/23 474/18 481/13 484/15 499/19 506/14 507/14 508/16 512/8 512/10 516/20 521/23</p>	<p>522/13 539/11 541/13 541/16 542/9 542/17 550/8 553/4 555/25 556/2 556/18 557/18 557/22 562/8 562/10 571/6 573/8 574/5 578/21 580/1 580/3 580/7 580/9 582/16 583/17 583/21 591/12 598/20 604/6 605/25 606/9 609/16 613/7 613/9 614/8 614/20 614/23 617/13 617/16 617/23 618/20 623/19 623/23 627/13 627/18 629/6 629/9 629/18 629/25 630/20 630/22 630/24 632/19 632/21 636/22 637/16 637/21 639/15 642/1 642/18 642/20 647/7 647/10 648/5 648/23 650/17 650/20 656/2 656/4 657/7</p> <p><b>THE COURT REPORTER: [3]</b> 463/25 513/5 605/20</p> <p><b>THE COURT: [573]</b></p> <p><b>THE JURORS: [1]</b> 350/21</p> <p><b>THE JURY: [2]</b> 345/5 615/23</p> <p><b>THE WITNESS: [81]</b> 337/22 338/3 355/5 355/13 355/16 356/8 369/19 374/16 376/10 386/22 392/15 396/4 400/21 412/17 412/23 413/3 414/21 414/23 414/25 417/20 417/22 419/11 424/17 425/5 426/25 433/9 433/18 433/21 434/13 451/12 452/20 453/5 453/8 456/5 456/9 456/23 457/1 457/13 457/20 460/10 461/18 464/14 475/7 481/16 483/10 484/18 490/4 508/4 512/22 512/25 513/3 513/6 516/21 522/2 543/4 543/7 543/9 543/12 549/8 559/3 559/10 559/13 562/6 562/14 562/24 563/3 563/7 563/9 583/19 583/25 584/11 584/18 585/14 598/24 600/14 606/11 609/6 609/11 609/13 611/24 614/25</p> <p>'</p> <p><b>'11 [2]</b> 545/22 627/7</p> <p><b>'12 [1]</b> 545/22</p> <p><b>'60s [1]</b> 501/4</p> <p><b>'70s [1]</b> 501/4</p> <p>.</p> <p><b>.370 [1]</b> 334/7</p> <p>/</p> <p><b>/s/Jill [1]</b> 658/14</p> <p>0</p> <p><b>0346 [1]</b> 658/16</p> <p>1</p> <p><b>10 [12]</b> 396/19 402/15 402/17 402/18 406/14 432/17 434/3 470/19 483/7 490/13 620/19 653/4</p> <p><b>100 yards [1]</b> 571/22</p> <p><b>1000 [1]</b> 327/21</p> <p><b>102 [1]</b> 649/18</p> <p><b>1020 [1]</b> 331/19</p> <p><b>103 [2]</b> 649/10 649/11</p> <p><b>104 [6]</b> 354/4 354/9 354/12 394/10 394/12 411/15</p> <p><b>105 [5]</b> 354/9 354/13 394/11 394/12 411/15</p> <p><b>107 [5]</b> 394/13 394/15 411/16 507/19 508/9</p> <p><b>108 [1]</b> 620/10</p>	<p><b>10:00 now [1]</b> 410/8</p> <p><b>10th [1]</b> 327/8</p> <p><b>11 [4]</b> 627/5 642/3 642/7 642/8</p> <p><b>119 [3]</b> 621/13 621/18 621/19</p> <p><b>11:00 p.m [1]</b> 396/18</p> <p><b>11:30 to [1]</b> 544/17</p> <p><b>11th [2]</b> 360/18 366/6</p> <p><b>12 [4]</b> 536/7 536/8 588/3 643/6</p> <p><b>12/28/15 [1]</b> 658/15</p> <p><b>120 [3]</b> 621/13 621/18 621/19</p> <p><b>127 [3]</b> 394/16 394/17 395/4</p> <p><b>128 [8]</b> 359/18 359/19 360/2 395/5 395/9 395/11 405/18 405/22</p> <p><b>129 [3]</b> 395/9 395/12 408/20</p> <p><b>12:20 [1]</b> 490/9</p> <p><b>12th [1]</b> 366/6</p> <p><b>13 [5]</b> 394/14 394/15 411/16 484/21 632/11</p> <p><b>130 [11]</b> 357/9 357/10 357/12 357/13 357/14 407/7 407/9 407/22 407/24 411/22 644/11</p> <p><b>131 [5]</b> 407/7 407/25 621/14 644/11 644/12</p> <p><b>132 [4]</b> 407/7 407/25 644/11 644/12</p> <p><b>137 [2]</b> 621/14 621/21</p> <p><b>13th [1]</b> 458/19</p> <p><b>14 [7]</b> 332/8 332/17 395/9 395/12 650/23 650/24 650/25</p> <p><b>141 [1]</b> 621/23</p> <p><b>144 [2]</b> 618/22 619/2</p> <p><b>15 [5]</b> 331/9 446/12 496/25 599/7 658/15</p> <p><b>150 [2]</b> 621/14 621/25</p> <p><b>156 [2]</b> 647/17 647/20</p> <p><b>159 [3]</b> 586/10 587/1 587/4</p> <p><b>16 [17]</b> 338/19 354/4 354/9 354/12 394/10 394/12 394/16 394/18 394/19 411/15 414/11 414/12 432/17 463/11 588/24 611/20 611/24</p> <p><b>163 [3]</b> 645/24 647/4 647/15</p> <p><b>164 [2]</b> 645/9 645/22</p> <p><b>168 [7]</b> 624/19 624/20 636/19 637/19 637/23 638/5 638/16</p> <p><b>17 [3]</b> 332/9 332/18 658/16</p> <p><b>172 [10]</b> 626/4 626/5 633/3 633/3 633/6 633/11 633/12 651/16 651/17 652/18</p> <p><b>174 [4]</b> 344/23 405/24 406/2 406/3</p> <p><b>18 [4]</b> 477/5 508/1 508/20 551/5</p> <p><b>188 [1]</b> 641/7</p> <p><b>18th [3]</b> 331/5 385/8 605/17</p> <p><b>19 [7]</b> 456/11 463/9 463/11 611/21 611/24 637/4 644/16</p> <p><b>195 [1]</b> 640/23</p> <p><b>1984 [3]</b> 458/19 477/13 477/15</p> <p><b>1999 [1]</b> 414/22</p> <p><b>1:00 [1]</b> 635/12</p> <p><b>1:15 [2]</b> 490/17 490/18</p> <p><b>1:30 [1]</b> 490/13</p> <p><b>1:30 promptly [1]</b> 490/19</p> <p>2</p> <p><b>2,000 [1]</b> 338/24</p> <p><b>20 [10]</b> 394/16 394/18 394/19 410/8 446/12 475/6 477/7 517/19 558/3 588/25</p> <p><b>20-minute [1]</b> 410/5</p>
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<b>2</b>	<b>255 [1]</b> 622/15 <b>29 [1]</b> 391/24 <b>2:00 [1]</b> 557/10	<b>9</b>
<b>200 [1]</b> 327/5 <b>2000 [2]</b> 459/2 530/2 <b>2000s [1]</b> 433/3 <b>2001 [1]</b> 433/19 <b>2001-ish [1]</b> 459/3 <b>2002 [1]</b> 433/19 <b>2003 [1]</b> 564/10 <b>2005 [4]</b> 339/5 343/2 389/2 467/13 <b>2007 [5]</b> 389/2 521/20 564/8 579/15 579/17 <b>2008 [12]</b> 389/3 421/5 421/8 421/24 422/20 443/16 444/6 444/10 445/2 445/19 453/16 521/20 <b>2009 [6]</b> 431/13 514/25 525/6 560/6 585/8 589/8 <b>2010 [32]</b> 414/14 415/3 415/14 415/18 417/4 418/14 423/24 431/13 434/12 434/20 435/7 435/23 436/14 437/6 439/4 441/1 441/17 456/11 456/11 476/13 485/1 489/22 490/4 527/3 544/12 544/13 544/16 545/17 545/22 546/6 548/18 560/8 <b>2011 [40]</b> 421/1 423/24 435/23 436/14 441/17 441/20 462/5 462/18 471/25 485/1 516/2 517/2 517/23 518/23 527/3 530/2 530/14 544/16 546/6 546/23 565/19 566/8 576/17 577/22 594/3 594/3 594/5 594/8 599/7 600/22 613/21 613/23 614/13 614/16 614/19 640/11 641/16 642/25 643/4 643/5 <b>2012 [48]</b> 414/14 415/4 415/14 415/18 417/4 418/14 426/9 434/20 435/7 435/23 436/3 436/14 436/23 437/3 437/4 437/7 439/4 441/1 441/17 441/20 462/5 462/18 468/23 471/25 476/13 485/1 489/22 500/11 500/25 502/5 503/5 504/14 517/2 517/23 518/24 523/4 527/3 545/17 546/7 546/23 548/18 565/20 566/8 569/18 576/17 614/3 637/5 649/14 <b>2013 [12]</b> 437/1 437/4 474/2 484/15 484/21 526/17 530/3 530/13 594/4 614/3 628/14 649/23 <b>2014 [16]</b> 419/14 437/1 437/5 476/3 476/6 490/2 490/3 490/4 515/1 515/1 525/6 560/8 564/25 565/23 585/11 632/11 <b>2015 [4]</b> 326/7 564/8 564/10 658/6 <b>208 [4]</b> 424/14 424/16 425/25 454/25 <b>21 [4]</b> 338/19 395/4 483/7 590/24 <b>22 [2]</b> 456/10 479/4 <b>220 [3]</b> 626/6 626/7 632/24 <b>2250 [1]</b> 385/12 <b>23 [2]</b> 460/2 627/7 <b>233 [4]</b> 408/4 408/5 408/6 408/14 <b>236 [1]</b> 331/22 <b>236.350 [1]</b> 334/7 <b>236.370 [1]</b> 331/9 <b>238 [1]</b> 639/22 <b>24 [2]</b> 463/12 508/1 <b>240 [1]</b> 505/4 <b>25 [1]</b> 590/25 <b>253 [8]</b> 455/2 455/12 455/21 455/23 621/15 622/2 622/3 622/15 <b>254 [5]</b> 622/11 622/13 622/15 639/2 639/6	<b>3</b> <b>30 [9]</b> 376/24 466/13 467/9 469/18 474/10 476/2 476/6 476/8 620/18 <b>300 [2]</b> 327/9 620/10 <b>301 [1]</b> 327/21 <b>303 [5]</b> 332/8 332/17 650/8 650/12 650/24 <b>307 [5]</b> 385/3 409/8 409/22 409/23 409/25 <b>31 [2]</b> 411/22 649/14 <b>326-8191 [1]</b> 327/22 <b>347 [8]</b> 625/1 625/2 625/8 636/19 636/21 636/24 637/4 639/1 <b>353 [4]</b> 579/25 580/1 580/11 618/18 <b>356 [4]</b> 573/19 580/6 580/7 643/6 <b>360 [2]</b> 327/8 644/2 <b>361 [1]</b> 643/17 <b>370 [2]</b> 331/23 331/24 <b>3:00 in [1]</b> 633/18	<b>9/25/12 [1]</b> 643/6 <b>9/30/17 [1]</b> 658/16 <b>90 [1]</b> 642/24 <b>91 [6]</b> 588/24 642/4 642/5 642/6 642/6 642/15 <b>93 [12]</b> 626/2 626/3 627/15 627/15 628/12 651/11 651/12 651/14 651/16 651/17 651/21 652/17 <b>97204 [2]</b> 327/5 327/21 <b>97401 [1]</b> 327/9 <b>98-0346 [1]</b> 658/16 <b>99 percent [1]</b> 578/8 <b>9:00 [2]</b> 623/24 623/25
<b>4</b> <b>40 [3]</b> 474/10 615/11 615/12 <b>41 [2]</b> 618/22 619/2 <b>411 [1]</b> 327/4 <b>45 [6]</b> 376/24 475/6 492/6 626/16 626/18 627/13 <b>46 [2]</b> 475/6 477/5 <b>4:00 [1]</b> 368/25	<b>4</b> <b>40 [3]</b> 474/10 615/11 615/12 <b>41 [2]</b> 618/22 619/2 <b>411 [1]</b> 327/4 <b>45 [6]</b> 376/24 475/6 492/6 626/16 626/18 627/13 <b>46 [2]</b> 475/6 477/5 <b>4:00 [1]</b> 368/25	<b>A</b> <b>a violation [1]</b> 531/15 <b>A-B-B-O-T-T [1]</b> 457/22 <b>aback [1]</b> 567/11 <b>Abbott [26]</b> 380/5 380/6 380/8 380/9 380/11 380/19 430/10 452/10 452/14 452/16 457/4 457/11 457/21 458/3 458/3 490/25 491/8 509/16 517/13 534/15 535/14 597/2 597/2 597/4 597/6 597/9 <b>abilities [1]</b> 643/1 <b>able [30]</b> 345/5 349/17 350/10 350/25 351/1 357/6 362/22 377/8 377/13 401/18 401/18 413/12 427/1 439/10 446/20 453/14 468/21 469/1 502/18 510/11 517/25 525/8 529/1 529/8 531/14 540/24 545/12 572/7 573/4 617/24 <b>about [389]</b> <b>above [1]</b> 658/10 <b>above-entitled [1]</b> 658/10 <b>absolutely [13]</b> 335/15 512/8 553/13 596/22 598/16 599/17 603/10 603/15 614/20 631/18 635/16 637/10 655/22 <b>absorbing [1]</b> 411/18 <b>abundance [2]</b> 619/4 646/7 <b>abuse [1]</b> 518/14 <b>abuser [1]</b> 540/9 <b>academy [13]</b> 338/20 338/21 339/3 361/14 361/16 512/1 512/2 552/12 552/18 552/25 560/11 579/11 579/12 <b>accelerator [1]</b> 655/6 <b>accent [3]</b> 555/16 634/17 635/24 <b>accept [1]</b> 600/12 <b>Acceptable [1]</b> 407/4 <b>acceptance [1]</b> 565/7 <b>accepted [3]</b> 382/16 382/16 404/21 <b>accepting [1]</b> 600/18 <b>access [1]</b> 594/24 <b>according [2]</b> 357/24 360/5 <b>accurate [12]</b> 458/7 459/8 461/14 468/6 470/19 470/21 471/1 471/9 477/15 478/12 484/1 487/15 <b>accusations [2]</b> 487/17 487/19 <b>accused [1]</b> 417/16 <b>accusing [1]</b> 595/22 <b>ACLU [2]</b> 595/12 618/4 <b>acquire [1]</b> 652/9 <b>across [5]</b> 387/1 502/4 509/4 509/6 509/7 <b>acted [1]</b> 510/20 <b>acting [4]</b> 369/5 370/24 371/5 515/13
<b>5</b> <b>5/23/11 [1]</b> 627/5 <b>503 [1]</b> 327/22 <b>53 [2]</b> 479/3 479/16 <b>57-64 [1]</b> 345/24 <b>5929 [1]</b> 358/11 <b>5:00 [1]</b> 558/20 <b>5:00 and [1]</b> 653/19 <b>5:30 again [1]</b> 653/19	<b>5</b> <b>5/23/11 [1]</b> 627/5 <b>503 [1]</b> 327/22 <b>53 [2]</b> 479/3 479/16 <b>57-64 [1]</b> 345/24 <b>5929 [1]</b> 358/11 <b>5:00 [1]</b> 558/20 <b>5:00 and [1]</b> 653/19 <b>5:30 again [1]</b> 653/19	
<b>6</b> <b>63 [1]</b> 483/7 <b>64 [2]</b> 345/24 386/14 <b>69 [6]</b> 632/5 632/7 632/9 632/10 633/5 633/9 <b>6:00 [1]</b> 650/19 <b>6:00 session [1]</b> 558/15 <b>6:13-cv-01908-DOC [2]</b> 326/5 658/4 <b>6:30 [1]</b> 615/14 <b>6:30 okay [1]</b> 615/16	<b>6</b> <b>63 [1]</b> 483/7 <b>64 [2]</b> 345/24 386/14 <b>69 [6]</b> 632/5 632/7 632/9 632/10 633/5 633/9 <b>6:00 [1]</b> 650/19 <b>6:00 session [1]</b> 558/15 <b>6:13-cv-01908-DOC [2]</b> 326/5 658/4 <b>6:30 [1]</b> 615/14 <b>6:30 okay [1]</b> 615/16	
<b>7</b> <b>71 [3]</b> 405/1 405/6 405/13 <b>78 [2]</b> 611/20 611/24 <b>79 [2]</b> 587/18 588/2 <b>7:00 [1]</b> 615/18 <b>7:30 at [1]</b> 544/18	<b>7</b> <b>71 [3]</b> 405/1 405/6 405/13 <b>78 [2]</b> 611/20 611/24 <b>79 [2]</b> 587/18 588/2 <b>7:00 [1]</b> 615/18 <b>7:30 at [1]</b> 544/18	
<b>8</b> <b>8/8/11 [3]</b> 642/3 642/7 642/8 <b>81 [4]</b> 647/13 647/14 647/15 647/18 <b>8191 [1]</b> 327/22 <b>87 [4]</b> 636/15 644/19 644/21 650/1 <b>8:00 [3]</b> 615/16 615/21 616/4	<b>8</b> <b>8/8/11 [3]</b> 642/3 642/7 642/8 <b>81 [4]</b> 647/13 647/14 647/15 647/18 <b>8191 [1]</b> 327/22 <b>87 [4]</b> 636/15 644/19 644/21 650/1 <b>8:00 [3]</b> 615/16 615/21 616/4	

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