

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

11
 12 TRIAL DAY 3
 13 TRANSCRIPT OF PROCEEDINGS
 14 BEFORE THE HONORABLE DAVID O. CARTER
 15 UNITED STATES DISTRICT COURT JUDGE
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TRANSCRIPT OF PROCEEDINGS

1
2 THE COURT: Good morning, Counsel. Thank you for
3 your patience with me. They liked to talk at the meeting a
4 little longer than I expected.
5 Christy is getting the jury.
6 Please sit down. That's awfully nice. Not necessary.
7 MR. MCDUGAL: I'll step out to get our counsel in
8 the hall.
9 THE COURT: Who is your next witness?
10 MR. MCDUGAL: Casey Boyd.
11 (Jury present.)
12 THE COURT: Good morning. Have a seat. Thank you
13 for your courtesy. I apologize. That 25-minute delay was my
14 responsibility. Those people like to talk in my video
15 conference.
16 We're back in session. Jury is present. Counsel is
17 present. Parties are present.
18 And, Counsel, would you like to call your next witness?
19 MR. JASON KAFOURY: Your Honor, the plaintiffs call
20 Casey Boyd.
21 THE COURT: Enter through the courtroom door and stop
22 at that location and raise your right hand, please.
23
24 ///
25 ///

1 CASEY BOYD,
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: Be kind enough to approach the witness
6 box. The entrance is closest to the wall. There's steps at
7 that location. And if you would be seated in the chair,
8 please.
9 Would you face the jury and state your full name, please,
10 and please spell your last name.
11 THE WITNESS: Casey Boyd, B-O-Y-D.
12 THE COURT: All right. You have a quiet voice.
13 Would you move closer to the microphone or bend the microphone
14 down towards you? Thank you.
15 Counsel, direct examination on behalf of the plaintiff.
16 MR. JASON KAFOURY: Thank you, Your Honor.
17
18 DIRECT EXAMINATION
19 BY MR. JASON KAFOURY:
20 Q. Ms. Boyd, I'm over here, but please address the jury when
21 you're answering questions. This is going to take a while, so
22 take a deep breath. Can you just take a moment and tell us a
23 little bit about yourself, where you're from, and a little
24 about your educational background?
25 A. I'm from Springfield, Oregon, and I went to college and

1 got a forest management degree and then got a prelaw degree .
2 And, from there, I -- I've worked for the Forest Service since
3 1989, when I was in high school, and was a firefighter most of
4 that time, and then I transferred over to be a police officer
5 with them at the time, which I graduated from Portland State
6 with my administration of justice degree.
7 Q. So let's parse that out a little bit, so which -- which
8 colleges did you attend?
9 A. Central Oregon Community College and Portland State
10 University.
11 Q. And what degrees do you hold?
12 A. I hold an associate's in forest management and a
13 bachelor's in administration of justice from Portland State.
14 Q. When did you receive your degrees?
15 A. My forestry degree was in 1993, and my administration of
16 justice was in 1998.
17 Q. So, starting in '89, you went to work for the forestry
18 department?
19 A. Yes.
20 Q. And what were your job duties?
21 A. Well, that particular summer I started as an intern. I
22 had a high school co-op. I was still a junior in high school,
23 and so I was a co-op for my junior and senior year. And then
24 as soon as I turned 18, all I wanted to be was a firefighter.
25 I switched into fire management and was a firefighter.

1 Q. And then walk us through your career up until law
2 enforcement.
3 A. So I was an engine firefighter out of one district office
4 in Crescent. Then I transferred to Prineville. I was on the
5 Prineville Hotshots in 1993, and that's when I decided I --
6 there was a lot of traumatic things that happened in 1994, and
7 that's what led me to move to Portland to pursue my law degree .
8 And so during that time while I was working -- or going to
9 college, I continued as a firefighter out in central Oregon
10 during the summers and my off time from school. And after I
11 graduated in 1998, I still continued in firefighting, because
12 there wasn't any law enforcement jobs opened at the time.
13 Q. Okay. Let's walk through your law enforcement career.
14 What was your first law enforcement job?
15 A. I was a law enforcement officer. They called them LEOs .
16 They had five positions opened in Region 6, which is Washington
17 and Oregon. Out of all the applicants, they called and offered
18 whichever position I would like, and I selected Zigzag, Oregon,
19 is where I started.
20 Q. Tell us about your evolution within law enforcement . What
21 jobs have you had, and which departments you've worked in?
22 A. So I've stayed within law enforcement with the Forest
23 Service as an officer. We were just training our field
24 training officers, FTOs, and I had transferred down to the
25 Eugene/Springfield area and the McKenzie Bridge was my last

1 patrol area. McKenzie Drainage. I'm sorry.
 2 Q. So I lost track. Where were we up to in the timeline?
 3 A. When I transferred down to the Springfield/Eugene area --
 4 Q. Okay.
 5 A. -- and trained there.
 6 Q. What were your positions there?
 7 A. I was an LEO there. And as supervisors we have different
 8 levels in law enforcement, so we have a level two, who can
 9 write citations. They have very limited authorities to enforce
 10 certain laws. So I supervised a group of them and did
 11 training, and that was a position I held until my son was born
 12 premature.
 13 Q. Okay. What year does that take us to?
 14 A. My son was born in 2005.
 15 Q. What did you do next for work after your son was born?
 16 A. I didn't. My husband is a trooper with the Oregon State
 17 Police.
 18 Q. How long has he been an Oregon State trooper for the
 19 police?
 20 A. 12, I believe. 12 years.
 21 Q. Okay.
 22 A. So he was assigned to the Newport Patrol Office, and after
 23 my son was healthy and it was more feasible for me to go back
 24 to work, it was really hard to find daycare in Newport, and our
 25 goal was to get back to the Eugene/Springfield area, because

1 his mother lives there and she has declining health, and so I
 2 didn't want to commit to an agency knowing I would have to
 3 leave as soon as he got transferred.
 4 So in 2007 he was able to transfer back, and we just
 5 weren't able to sell our house until a year later, and that's
 6 when I moved back was in 2008.
 7 Q. Is that when you went to work for the University of
 8 Oregon?
 9 A. No.
 10 Q. What happened next?
 11 A. I believe it was during 2008. I don't remember the exact
 12 time frame, but they had put out an outreach for three
 13 lieutenant positions.
 14 Q. Who's "they"? You have to be --
 15 A. I think there was a different chief at the time.
 16 Chief Williams and, I believe, Deputy McDermid at the time. So
 17 the Department of Public Safety had put out an outreach for
 18 three lieutenant positions.
 19 Q. Did you apply for those?
 20 A. I did.
 21 Q. What happened?
 22 A. I believe they were having a lot of problems within the
 23 department, and so it was my understanding that those positions
 24 were frozen until they could deal with some of the other
 25 issues. And then it was the next year, so in 2009, when they

1 finally reopened one lieutenant position, and I applied for
 2 that.
 3 Q. What were -- what were you initially brought in to do as a
 4 lieutenant?
 5 A. Well, their ultimate goal was to become a fully sworn
 6 police department, and you could tell that was the driving
 7 force of the department, was to improve and to change, and so I
 8 was brought in essentially as an operational lieutenant because
 9 we had very little overhead at the time, meaning the deputy
 10 chief and the chief, and to support that mission.
 11 Q. Okay. Let's walk through your career there. How did it
 12 start off for you?
 13 A. It -- it started off all right. It was a -- it was a hard
 14 job new. I worked an awful lot of hours. They had just the
 15 chief, the deputy chief, and we had a captain at the time that
 16 I was hired, and so I supervised in rank from the chief to the
 17 deputy chief, and then there was myself, and our captain dealt
 18 with parking and transportation. So kind of below my
 19 operational side was all of the sergeants and the officers and
 20 dispatchers and had officers at the museum and student workers.
 21 And then we were always starting an auxiliary program so -- for
 22 a very small command staff. That's a large group of people to
 23 supervise with a really large an agenda.
 24 So I was excited. I was on board. I believed in their
 25 mission, their goals, and --

1 Q. Did you get good reviews while you were there, initially?
 2 A. Yeah. I never received a performance evaluation, but
 3 always had commendations, you know, in one form or another
 4 whether it was an email or a letter or just positive feedback
 5 of, you know, the hard work I was doing.
 6 Q. How many years were you there without getting any annual
 7 evaluation?
 8 A. My entire time at the office.
 9 Q. How many years was that?
 10 A. Three. Approximately three.
 11 Q. At other departments you had worked at, had you gone three
 12 years without getting an annual evaluation?
 13 A. Never. No. You usually get one annual and then sometimes
 14 you get a mid-year review.
 15 Q. Let's talk about the graveyard shift and your experiences
 16 with that. What was your primary shift that -- during that
 17 time period?
 18 A. At the time that Lieutenant Lebrecht came, we divided up.
 19 Captain Horner had been demoted to Lieutenant Horner, and so
 20 there were three of us on various watches. And I was on the
 21 swing shift, the third watch, and Lieutenant Lebrecht was on
 22 first watch graveyard, and it -- there was always frustration
 23 and issues, whether it was because calls weren't getting
 24 answered at their shift change and then longer into the shifts.
 25 We were hearing feedback from our assistant chief about --

1 MS. COIT: Object to the hearsay.
 2 THE COURT: I couldn't hear, Counsel.
 3 MS. COIT: Object to the hearsay.
 4 THE COURT: Overruled.
 5 BY MR. JASON KAFOURY: (Continuing)
 6 Q. So let's set some context here. So graveyard shift is
 7 11:00 p.m. to 7:00 a.m.; right?
 8 A. Yes.
 9 Q. What was your normal shift starting -- beginning of 2011
 10 when Lieutenant Lebrecht arrives?
 11 A. I had 3:00 p.m. to 11:00 p.m. was the hours of the shift.
 12 Q. How often during 2011 would you work past 11:00?
 13 A. Most days.
 14 Q. Why was that?
 15 A. Just other responsibilities that were assigned, other
 16 projects or tasks, assignments, whether it was because I was
 17 the quartermaster, which was I dealt with all the uniforms, to
 18 we were working on the policing initiative during some of that.
 19 There was big events often happening.
 20 One of the last ones was the Chris Kilcullen Memorial
 21 Service. So it was oftentimes that I worked late or visiting
 22 with Lieutenant Lebrecht and -- during his transition, when he
 23 first started, and then as his shift would come on.
 24 Q. So where was your office physically located in relation to
 25 Lieutenant Lebrecht?

1 A. We shared the same office.
 2 Q. And was that true throughout 2011?
 3 A. Yes. When he was -- I was the only one in the office at
 4 the time, and then when we switched to three lieutenants, and
 5 Captain Horner was demoted to a lieutenant, then he changed his
 6 office and moved in with mine, and Lieutenant Lebrecht moved
 7 in, as well.
 8 Q. I want you -- I know you have a soft voice. Try to speak
 9 up just a little bit. I want to be sure everybody hears you
 10 about this stuff.
 11 When did you first start to have concerns about the
 12 discussions that were going on during the briefings? For the
 13 graveyard briefings.
 14 A. Well, there was often concerns just because of the
 15 duration of their shift briefing. They were longer than
 16 normal, longer than the sergeant who had been there prior to
 17 Lieutenant Lebrecht --
 18 Q. And who --
 19 A. -- and problems were arising out of it. We were getting
 20 complaints about calls not being answered, and --
 21 Q. Who was complaining?
 22 A. Well, I would assume it was citizen complaints. I knew
 23 the dispatchers had complained to me, because calls weren't
 24 answered, and I believe our assistant chief sent out an email
 25 to us about responding to those calls.

1 Q. So during these shift briefings that Lieutenant Lebrecht
 2 was leading, instead of going out and patrolling, they were
 3 just sitting in the briefing room. For how long?
 4 A. Yes. Extended periods of time. It was rare, once we
 5 switched over, that I would have been there his entire shift
 6 period. But they would be there for hours, and dispatch would
 7 also complain to me that they were there for extended periods
 8 of time, hadn't cleared their office or the squad room, or,
 9 oftentimes, if they did clear, some of them would go and then
 10 hang out at dispatch.
 11 Q. How was that different than 2000 -- well, first of all,
 12 who ran the graveyard shift briefings in 2010?
 13 A. It would have been myself or whichever sergeant was
 14 assigned to graveyard shift. And that rotated and changed
 15 throughout a year.
 16 Q. So do you remember a distinct difference between how the
 17 graveyard shift briefings were held when Lieutenant Lebrecht
 18 was there in 2011 in comparison to 2010?
 19 A. Yes. There -- it was a distinct difference.
 20 Q. When do you first recall -- well, explain where is your --
 21 where are you sitting at your desk in comparison -- how many
 22 feet away is this shift briefing?
 23 A. Oh, we had our office -- I'm not sure of the square
 24 footage of it. And then there was just a hallway and squad
 25 rooms on the other side through a window and a door toward the

1 end of the hallway.
 2 Q. Did you make complaints to then-Assistant Chief Carolyn
 3 McDermed about your concerns of those shift briefings?
 4 A. Yes.
 5 Q. Tell us about that.
 6 A. Oh, I would let her know in conversations we had, and I
 7 believe in an email, also, that there was concerns that they
 8 were in there for a long period of time. There was also this
 9 issue with -- that I had noticed with one of the officers, that
 10 any time I was in the office he would always make sure to shut
 11 the door in the squad room so that I couldn't hear what was
 12 going on. You'd have to go through the squad room to get into
 13 where the sergeant's office was, and so I would have to come
 14 in, open the door, and go through, and they would make sure to,
 15 you know, shut the door really firm right behind me, and I --
 16 I'm certain it became just this game, because I was in the
 17 office and --
 18 Q. Did you notice any changes about the shift briefings after
 19 you complained to McDermed?
 20 A. No. No changes. They continued to last for, you know,
 21 their extended periods, like they always had.
 22 Q. Did you ever overhear what they were actually discussing
 23 in there?
 24 A. No. Because the door was always closed when I was there.
 25 Q. Did you have concerns that things they were discussing

1 were inappropriate?

2 A. I would have suspected that they were, just because I was

3 the only female there, and it just seemed inappropriate that

4 they always had to shut the door, and that wasn't common

5 practice for when you're having a shift briefing, because

6 they're often quick. So unless there was a meeting in the

7 captain's office, who was across the hallway from the squad

8 room door, you might sometimes close the door so it didn't

9 interrupt him. But at graveyard and our hour of the evening,

10 there was nobody else in the office, so there was no need to

11 shut the door.

12 Q. Did you hear Lieutenant Lebrecht discussing his political

13 beliefs while you worked there?

14 A. He discussed a lot of things and had opinions on various

15 things. I just -- they weren't necessarily like mine, so I --

16 I didn't --

17 Q. On the political spectrum of things, where would you put

18 his -- from right to left, where would you put his

19 perspectives?

20 A. He was definitely more extreme, and, you know, definitely

21 opposed Obama, and, you know, and some of those issues.

22 Q. Do you remember a phrase that Lieutenant Lebrecht used in

23 relation to discussing people that he had problems with?

24 A. Yes.

25 Q. Tell the jurors. What was his phrase?

1 A. Well, he liked to -- oftentimes when he referenced the

2 police department he came from in Lincoln.

3 Q. Lincoln, California?

4 A. Yeah. Lincoln, California. There must have been a fair

5 amount of conflict with him there, because he would tell

6 stories about things that had happened there. And the phrase

7 that he used a lot and liked to use is: Well, they tried to

8 mother fuck me, and I was going to try to mother fuck them. So

9 he would reference that a lot, and to the point that, you know,

10 you just kind of took mental note not to cross him, or it would

11 probably not go well.

12 Q. How often did you hear him talk like that?

13 A. Daily.

14 Q. How did you feel about it?

15 A. At first, I just -- you know, I just kind of let it go,

16 and then when he talked like that a lot, I just -- definitely

17 it was more concerning. Like I said, I just knew that was

18 somebody I didn't want to cross, because I didn't want to end

19 up on the other side of that opinion or that sentiment.

20 Q. Did you feel threatened by it?

21 A. Yes.

22 Q. Were -- tell us about Lieutenant Morrow and Lieutenant

23 Lebrecht. What was their relationship like during the time?

24 A. They were personal friends.

25 Q. How do you know that?

1 A. They were hanging out on a regular basis and, in their

2 personal time, working out. I believe Lieutenant Lebrecht did

3 go to Lieutenant Morrow's home to watch a football game or

4 something, I believe. Lieutenant Morrow told me.

5 Q. Did you, at that time, have an issue with that, that a

6 lieutenant had a personal friendship outside of work with the

7 head of internal affairs?

8 A. I felt it was inappropriate. I think it sent the wrong

9 message. We had several officers -- or I had several officers

10 comment or complain to me that, you know, it seemed

11 inappropriate that the professional standards lieutenant was

12 befriending somebody that --

13 MS. COIT: Object to the hearsay.

14 THE COURT: Overruled.

15 BY MR. JASON KAFOURY: (Continuing)

16 Q. Yes. They told you what?

17 A. That they had complained that they just felt it was

18 inappropriate.

19 Q. Let's talk about Scott Cameron for a moment and Tasers.

20 Were you there when my client was hired in 2010?

21 A. Yes.

22 Q. Okay. When -- what do you recall about Sergeant Cameron in

23 relation to my client and Tasers?

24 A. Sergeant Cameron was the one who let me know about

25 James Cleavenger's participation. I guess I still don't recall

1 the exact specifics, but the participation with some article or

2 opposition when years prior to my arriving I believe they were

3 trying to get Tasers. They had no firearms, and he brought it

4 to my attention that -- and the way he framed it was that it

5 was James Cleavenger that posed the issue and was the driving

6 force behind it.

7 Q. Driving force behind the department not getting Tasers?

8 A. Yes.

9 Q. Okay.

10 A. And I believe publications or some kind of articles

11 through one of the newspapers.

12 Q. How would you describe Sergeant Cameron's mentality in

13 relation to law enforcement?

14 A. I think he -- he -- he was hoping it would be a -- you

15 know, a more paramilitary organization. I believe he might

16 have had past military background, and so he was -- he was

17 gung-ho, ready for it to be a police department.

18 Q. How did that compare to my client's perspective on law

19 enforcement policing?

20 A. James is highly educated and well-trained. He's been

21 through -- at that time when I had known Scott Cameron, James

22 had been through an academy. He was very skilled. I believe

23 he might have been a reserve officer at that time. Definitely

24 more professional.

25 Q. Let's talk about your supervision of my client. When my

1 client first started, what was your role in terms of
 2 supervising him?
 3 A. Well, I was the one that hired him.
 4 Q. Tell us about that. Tell us about how that hiring
 5 decision went down.
 6 A. So when James was in his reserve academy -- through Lane
 7 County Sheriff's Office, they did a reserve academy. He was
 8 attending at the same time that our chief and Captain Horner
 9 and other folks, including then-Sergeant, I believe, Phillips,
 10 and they had encouraged him to apply as an auxiliary officer
 11 for us.
 12 And so I was told that I needed to look at his application
 13 and hire him, and that's when Sergeant Cameron let me know his
 14 opposition to James coming on board with our department.
 15 Q. Just for the court purposes, Mr. Cleavenger.
 16 A. Mr. Cleavenger.
 17 Q. Yes. Or James.
 18 So what was going through your mind when you heard about
 19 my client's Taser stance from Scott Cameron?
 20 A. Well, I didn't know the background on it, but I -- I knew
 21 that Sergeant Cameron adamantly opposed hiring Mr. Cleavenger,
 22 due to his loyalties or that he was against the Department of
 23 Public Safety; that maybe he had an ulterior motive with being
 24 hired and was adamantly opposed.
 25 But I was in a position that the chief and the captain

1 and another sergeant were adamant that I hire him. In fact I
 2 was told I was going to hire him, because they thought he was a
 3 ten. They fully believed his skills and abilities, really
 4 liked him as a person, thought he did great work in training,
 5 and kind of left me no choice. I was definitely ordered to
 6 hire him, and so I did.
 7 Q. That would be Chief Tripp at the time; correct?
 8 A. Yes.
 9 Q. And these were people that had just spent seven months day
 10 to day with him in the academy training?
 11 A. Yes.
 12 Q. My client was actually the number one ranked person in the
 13 academy; is that correct?
 14 A. I believe that's what I was told.
 15 Q. Okay. So you hired him. Tell us about supervising him.
 16 What was your role?
 17 A. I was his direct supervisor when he was hired on as a
 18 public safety officer, and he was great to work with. He would
 19 volunteer for shifts. We had a very heavy workload for special
 20 events, including baseball games and basketball, and just
 21 various different events, and he was always more than willing
 22 to work.
 23 I knew I could trust in his -- his -- his skills and his
 24 ability to work, you know, unsupervised and handle himself in a
 25 professional manner out to the public.

1 Q. Throughout your time working with him, ever have any
 2 officer safety issues?
 3 A. Never.
 4 Q. Ever have any issues where you questioned his honesty?
 5 A. Never.
 6 Q. Did he seem to display good judgment out in the field?
 7 A. At all times. And that's one of the reasons I liked
 8 having him, and there was, you know, a few others, but I
 9 just -- I had no worries.
 10 Q. Defense counsel, in opening statement, said my client had
 11 a huge ego. Did you notice that about my client?
 12 A. No. I actually thought Mr. Cleavenger was more reserved,
 13 and I actually thought he kept to himself more, so it wasn't an
 14 outward showing of -- of anything.
 15 Q. There was also talk about how he wasn't good at receiving
 16 feedback. What was your experience with that?
 17 A. I -- I had never encountered that problem. I -- I didn't
 18 have to give him too much feedback. He was always receptive to
 19 whenever we were briefing or meeting and talking about things
 20 that we needed to work on, whether it was in a group setting,
 21 or otherwise, but I don't recall ever having to give him any
 22 feedback, constructive or otherwise.
 23 Q. Defense counsel also said that the department was a
 24 paramilitary force and that James wasn't a good fit because he
 25 believed too much in community policing.

1 What was your --
 2 MS. COIT: I object to the characterization of what I
 3 said in opening. That's incorrect.
 4 THE COURT: I'm going to sustain that, Counsel.
 5 MR. JASON KAFOURY: Okay. What was --
 6 THE COURT: It's not evidence. It's a summary. It
 7 may be inaccurate, so confine it to the questions, not to the
 8 opening.
 9 BY MR. JASON KAFOURY: (Continuing)
 10 Q. Tell us about your understanding at the University of
 11 Oregon Department of Public Safety. What was the relation to
 12 community policing at that department?
 13 A. Well, that was our mission statement. That was our
 14 driving force. It was like our pledge to our community that we
 15 were going to be a community-oriented policing department. We
 16 were going to be different than the Eugene Police Department.
 17 And as Chief Tripp would like to say "our sister agency,"
 18 Oregon State Police, that had a presence at OSU, that the
 19 community of the University of Oregon was different, and we
 20 were going to operate differently, and that was through
 21 community-oriented policing, and that was -- that was our goal ;
 22 that was our ultimate goal.
 23 Q. Did you ever hear my client bragging about the fact that
 24 he had legal education or anything along those lines?
 25 A. Never.

1 Q. I want to talk about some -- some of the people that you
 2 participated in discipline while you were there.
 3 A. Okay.
 4 Q. Who was your direct report?
 5 A. My direct report was Chief McDermed and --
 6 THE COURT: Sorry. Your words were Deputy --
 7 THE WITNESS: Deputy McDermed, and then her title
 8 changed to Assistant McDermed during my time.
 9 BY MR. JASON KAFOURY: (Continuing)
 10 Q. How often did you meet with Deputy McDermed and the chief?
 11 A. Daily. Unless it was on weekends.
 12 Q. What -- do you recall what chief -- the chief and Deputy
 13 McDermed's goal was for you in terms of helping shift to a
 14 police department?
 15 A. Well, our ultimate goal in becoming a fully sworn
 16 department was to create and build the best police department
 17 we could with the most qualified. And there had been a lot of
 18 past problems in that department. It had definitely a
 19 representation of being dysfunctional. And they wanted to
 20 clean house and improve the reputation of the department, and
 21 the goal was to bring on new qualified officers as part of this
 22 policing initiative.
 23 Q. So what were you tasked to do?
 24 A. I was the operational lieutenant at the time, the sole
 25 supervisor over the officers, and so it was to come clean house

1 and take care of those problems. And there were several people
 2 identified that were not going to be a part of the department
 3 moving forward, whether they just didn't fit the mold or
 4 they --
 5 Q. Who were those people?
 6 A. For example, Kent Abbott and Sam Brown. There was a host
 7 of officers that had either had past problems or they were
 8 around in a time where they were security, and so they
 9 locked/unlocked doors. So, moving ahead, thinking about people
 10 that needed to make it through an academy, a police academy,
 11 and, you know, the arduous physical training that was required.
 12 Q. What were some of these problems that these officers had
 13 that the chief and Deputy McDermed wanted to get rid of them?
 14 A. Well, it could range from anything of their punctuality,
 15 you know, when they were late to work. They referred to a term
 16 of callofs all the time; that there was a big problem of
 17 officers always just calling off work. They'd call right
 18 before shift. And it was more epidemic than the average place
 19 of employment, let alone a police department.
 20 They didn't want to actually perform the duties they were
 21 assigned to. They would prefer to go sit in -- in a building
 22 somewhere and visit with people they had known for years than
 23 to be out engaging with the public and --
 24 Q. So how did you go about trying to remove these people from
 25 the department?

1 A. Well, the only way that I knew how was through
 2 documentation. I wasn't about to terminate anybody without,
 3 you know, monitoring how they had performed, so I just felt it
 4 best to, you know, observe how they were and what our standards
 5 were, and if they were at a point to where the -- what they had
 6 done was enough to be let go, then that was the case.
 7 There was, you know, people that I was definitely assigned
 8 that they needed to be gone, and I couldn't work at a fast
 9 enough pace for our executive leadership at times, but, you
 10 know, I could only do so much.
 11 Q. Chief Tripp and Deputy McDermed were at these meetings,
 12 giving you these orders, to remove these people; is that
 13 correct?
 14 A. Yes. Yes.
 15 Q. And part of your job was to create a written record so
 16 that you could do that.
 17 A. Yes.
 18 Q. Is that accurate?
 19 A. Yeah.
 20 Q. Do you have some examples of things that you would write
 21 people up for back then that were, looking back on it, maybe a
 22 little tikki takki?
 23 A. Well, we had things that ranged from officer safety
 24 issues. We had one employ who was very bad with a radio, to
 25 where it was bringing up officer safety issues, and -- you

1 know, so that was one of the higher issues, chief complaints,
 2 were the officer safety to, you know, being on their cell
 3 phones all day long or constant complaining.
 4 So sometimes it was, you know -- it was just a hard
 5 position to be in. You know, I took it very personal because I
 6 felt and -- and mean, even in one particular instance of a
 7 female that was let go during her trial service period that,
 8 you know, regardless of how I may or may not have felt about
 9 any of the officers, you know, I'm, first and foremost, a mom,
 10 and I just felt that it always -- that during these situations
 11 it adversely affected somebody's life, and it was hard.
 12 Q. Do you feel bad, looking back on it?
 13 A. Yeah. I -- I feel bad for them.
 14 Q. So how many people, over those years, did you help get rid
 15 of?
 16 A. Numerous. From a student worker on up to an officer. I
 17 know there was not quite a dozen. There was two that -- before
 18 I left I was given -- given orders from Assistant Chief, at the
 19 time, McDermed to let go, and we just fought tooth and nail to
 20 hang onto them, because they were good employees. But the
 21 bottom line with that one was because their paperwork wasn't
 22 done on time by the chief to be able to, I guess, carry on
 23 their contract would be a way to put it.
 24 But, again, that was another example of here's two people
 25 that we're going to fire that are good employees, and because

1 we're not doing timely work on our paperwork at a higher level ,
 2 then somebody's life, you know, is affected adversely during a
 3 really hard time financially, you know, with our society.
 4 Q. So at these meetings with McDermid and Chief Tripp, would
 5 you -- would you take your written discipline documents, give
 6 it to them for review. They would edit, make changes, and then
 7 you would hand it down to --
 8 MS. COIT: Object to leading question.
 9 THE COURT: It's leading, Counsel.
 10 MR. JASON KAFOURY: Okay. I'll rephrase.
 11 BY MR. JASON KAFOURY: (Continuing)
 12 Q. How -- what was the editing process for taking your
 13 discipline letters and running them up the chain of command?
 14 A. Well, there were very few decisions that was ever made or
 15 things that were carried out that weren't approved by the chief
 16 or the assistant chief. They made the decision on just
 17 everything that went on in that department.
 18 So if there was somebody that you knew that was not part
 19 of what the end game was or the ultimate goal, that they were
 20 coming up on the end of their trial service period, then you
 21 had to make that decision if they were going to move forward
 22 with the department or not, and you would write that up and --
 23 and let them know, either verbally or in writing.
 24 And then I typically never did anything, especially
 25 adverse, that was discipline, without also consulting even

1 further with somebody who had far more experience, and that was
 2 Randy Wardlow, who -- I don't remember his title, but he worked
 3 in human resources and dealt with the union and -- so that
 4 there was another set of eyes.
 5 Q. So you would take the documentation, run it up the
 6 command, and also share it with HR --
 7 A. Uh-huh.
 8 Q. -- to make sure everybody had seen it before you had
 9 handed it down?
 10 A. Yes.
 11 Q. Eric LeRoy, did you work with him directly?
 12 A. Yes.
 13 Q. What was your take on him as an officer?
 14 A. When I first started, Eric LeRoy wasn't liked by many of
 15 the officers that were there. That was my first experience,
 16 which I had been warned that that department was known for
 17 being like a pack of wolves. When there was somebody that they
 18 didn't like, that was kind of the mentality of what they did,
 19 kind of ganged up on them, and Eric LeRoy was one of them at
 20 the time.
 21 And I was there for a very short time, days, and Eric was
 22 new and in his trial service period, and there was a whole host
 23 of complaints about his performance and officer safety. And a
 24 lot of it was, you know, when they would go to remedy problems,
 25 his integrity of owning up to his actions, being accountable,

1 which was kind of a global problem with the department, was
 2 accountability.
 3 And so they wanted him gone, and I pulled in his -- his
 4 field training officer and another officer. I don't believe he
 5 was a sergeant at the time. And essentially I told them that
 6 if he fails, we all fail, and demanded more from those two that
 7 were training him.
 8 Unfortunately, with Eric LeRoy, we had numerous problems,
 9 and a lot of them were officer safety. And he was the only
 10 employee that we had that was given a last-chance warning. So
 11 he was progressively disciplined on more higher offenses,
 12 because they were officer safety, and then we -- and we were
 13 trying to give him every opportunity to succeed.
 14 And through the union is when we gave him his -- what they
 15 called a last-chance warning; that if he did something again
 16 that affected officer safety, he was gone.
 17 Q. And did you --
 18 A. He's the only one in that position.
 19 Q. But he never was terminated?
 20 A. He was never terminated.
 21 Q. And now he's a police officer?
 22 MS. COIT: Objection. Leading.
 23 THE COURT: Sustained.
 24 BY MR. JASON KAFOURY: (Continuing)
 25 Q. Did you form an opinion over the years working with him

1 about his character for truthfulness?
 2 A. I found it questionable. He -- like I say --
 3 MS. COIT: Objection to the expanding on this.
 4 THE COURT: Sorry. Sorry. I couldn't hear.
 5 MS. COIT: Thank you. Oh, you can't hear me? I'm
 6 sorry. He asked for character opinion on character for
 7 truthfulness, and she's expanding.
 8 THE COURT: Well, restate the question. Make sure
 9 it's answered.
 10 BY MR. JASON KAFOURY: (Continuing)
 11 Q. Over your years of working with Officer LeRoy, did you
 12 form an opinion about his character for truthfulness?
 13 A. Yes, I found him to be untruthful at times, and a lot of
 14 it was dealt with his accountability when he would do something
 15 wrong, especially officer safety, and just admitting to what he
 16 had done.
 17 Q. Did you ever see Kent Abbott taking notes in that notebook
 18 of his?
 19 A. Kent Abbott was a habitual note-taker. He was very
 20 meticulous. Those were his lifeline.
 21 Q. Would you be surprised to know that he burned all of
 22 those?
 23 A. I would be very surprised if he burned them.
 24 Q. Overall, throughout your tenure there, how would you
 25 describe the culture of the department from 2009 to 2012?

1 MS. COIT: Object. She wasn't in the department that
 2 long.
 3 THE COURT: Counsel, let's make certain how long she
 4 was in the department.
 5 THE WITNESS: I started in 2009 and I left in January
 6 of 2012.
 7 THE COURT: 2009 to 2012.
 8 BY MR. JASON KAFOURY: (Continuing)
 9 Q. That's what I asked.
 10 THE COURT: Okay. You may answer the question.
 11 THE WITNESS: It was toxic from before I arrived to
 12 outgoing. It just was dysfunctional, and it pretty much stayed
 13 that way and --
 14 BY MR. JASON KAFOURY: (Continuing)
 15 Q. How was the morale amongst people within the department
 16 while you were there?
 17 A. It was low. It was low when I got there. You could just
 18 tell that there were -- they were happy to see somebody new,
 19 hopeful that there would be change. And then, unfortunately, I
 20 think as, you know, people would come on, we all felt hopeful,
 21 and we wanted to effect change and have positive change, and we
 22 believed in this policing initiative and where it was going,
 23 and then it was just stifling in our ability to progress.
 24 Decisions couldn't be made until both the chiefs bought on to
 25 whatever the decision was.

1 Pretty much, you know, if you went to the assistant chief ,
 2 needing something or a decision -- it could be simple, from
 3 ordering shorts for the officers who were on bicycle patrol in
 4 the summer, to something much larger or a shift schedule -- she
 5 wouldn't be able to make decisions until talking with Doug,
 6 with Chief Tripp; and Chief Tripp, likewise, if you spoke with
 7 him, he would need to talk to Carolyn, and it -- change was
 8 just very hard and progressing was very hard.
 9 So morale was always low. We worked the officers too
 10 long. You know, everybody was short-staffed and it just killed
 11 morale.
 12 Q. Were policies and procedures, while you were there,
 13 shifting continuously, depending on who the supervisor was?
 14 A. Will you restate the question?
 15 Q. Yeah. The policies and procedures of the department, were
 16 they shifting, depending on who was a supervisor at different
 17 time periods when you were there?
 18 A. Well, the policies were always a gray area , because there
 19 was never established very good policies when I got there , and
 20 we hired Lieutenant Morrow after I was hired, and his job and
 21 the intent there was to develop new policies for our department
 22 and especially as we were progressing to a police department,
 23 and that just -- it took a long time.
 24 So the policies seemed to oftentimes be in a gray area.
 25 And if we were in an urgent need for something, usual ly because

1 something bad had happened or we had had a problem, then we
 2 quickly would develop a policy around one select thing and just
 3 kind of wing it moving forward.
 4 Q. When you got there, were the -- were the policies up to
 5 date or not?
 6 A. There were old policies in place, so, technically, I -- I
 7 suppose, they were there, but extremely outdated, and not only
 8 in their terminology, but concepts. And I believe there were
 9 things that were dated that were outdated, as well.
 10 Q. What is -- what was the policing initiative?
 11 A. That was when the police department went from being
 12 originally the University of Oregon Public Safety, so more of a
 13 security atmosphere, to a fully sworn police department through
 14 the legislature.
 15 Q. Did you ever search officers' Internet search history?
 16 A. Yes.
 17 Q. Who did you do that for?
 18 A. There were three officers that -- or employees that come
 19 to mind. And that was Officer Myers, I believe at the time he
 20 was Sergeant Phillips, and Sergeant Bechdolt's.
 21 Q. Who asked you to do those Internet search histories?
 22 A. I didn't request Bechdolt's, and I requested Sergeant
 23 Phillips', and I actually don't recall what transpired for
 24 Officer Myers.
 25 Q. Why were you -- why were you -- well , let's deal with them

1 individually.
 2 A. Okay.
 3 Q. Myers, and what was the other one besides Bechdolt?
 4 A. Sergeant Phillips.
 5 Q. Sergeant Phillips. Why were you going to search their
 6 Internet history?
 7 A. Well, they were spending an exorbitant amount of time on
 8 the computer, such that they weren't getting out into the field
 9 patrolling and doing things they were assigned to do.
 10 So when I had noticed, especially in Sergeant Phillips'
 11 case, that he was -- he was on the computer for a long period
 12 of time, hours and hours during his eight-hour shift -- for
 13 example, with Sergeant Phillips, I requested that from --
 14 Bill Anderson is the computer person or the IT person, and he
 15 did a printout in Sergeant Phillips' case, and it was an
 16 extensive stack.
 17 Q. Was the reason you were doing this --
 18 MS. COIT: Object. Leading.
 19 THE COURT: Sustained.
 20 BY MR. JASON KAFOURY: (Continuing)
 21 Q. What was your goal in pulling all their Internet history?
 22 A. Well, before I dealt with the issue, obviously it was a
 23 problem. But before I did that, I wanted to find out what was
 24 the subject matter. You know, were they researching as we were
 25 growing and progressing and changing in the department? Were

1 they possibly doing things I had asked them to do, or were they
 2 on Facebook or social media and looking at those kinds of
 3 things.
 4 So before I confronted them about it and dealt with the
 5 problem, I wanted to -- to just have that information so that I
 6 was accurate with the way I was proceeding.
 7 Q. Who asked you to do an Internet search history on
 8 Lieutenant Bechdolt?
 9 A. I -- I wasn't --
 10 THE COURT: Just a moment, Counsel. Was it sergeant
 11 at that time or lieutenant at the time?
 12 THE WITNESS: Sergeant.
 13 THE COURT: It's a little confusing.
 14 MR. JASON KAFOURY: Sergeant Bechdolt.
 15 THE WITNESS: He was a sergeant.
 16 THE COURT: He was sergeant?
 17 THE WITNESS: Yes.
 18 THE COURT: Thank you.
 19 THE WITNESS: That was Lieutenant Lebrecht at the
 20 time that requested the computer Internet search on
 21 Sergeant Bechdolt.
 22 BY MR. JASON KAFOURY: (Continuing)
 23 Q. Did Lieutenant Lebrecht tell you why he wanted to conduct
 24 an Internet search history on Lieutenant Bechdolt -- Sergeant
 25 Bechdolt?

1 A. Well, that was dialogue that he and I had had.
 2 Sergeant Bechdolt was -- while he was a good person, he just
 3 wasn't the most -- wasn't a go-getter, I guess. He spent an
 4 awful lot of time in the office, most of his shift, on the
 5 computer.
 6 And speaking with Lieutenant Lebrecht, he was somebody
 7 that we no longer wanted to see. We didn't feel he could
 8 perform the functions of a sergeant. And so we were looking at
 9 some of these issues, and one of them being that he would spend
 10 hours, hours in his eight-hour shift, on the computer, and so
 11 he requested that history.
 12 Q. I'd like to show you Plaintiffs' Exhibit 262. Without
 13 identifying any information in there --
 14 THE COURT: 262?
 15 MR. JASON KAFOURY: This is a new exhibit. She
 16 brought it today, Your Honor.
 17 THE COURT: Okay. Thank you.
 18 BY MR. JASON KAFOURY: (Continuing)
 19 Q. Without identifying the contents of it, is that -- what is
 20 that document?
 21 A. It's an email.
 22 Q. Okay. And who is it from?
 23 A. The one is from Bill Anderson.
 24 Q. And what's the other one from?
 25 A. The originating email is from Lieutenant Lebrecht.

1 Q. Did you receive this email?
 2 A. Yes.
 3 MR. JASON KAFOURY: I would offer 262, Your Honor.
 4 MS. COIT: No objection.
 5 THE COURT: I would like to see it, please.
 6 I'll receive 262, Counsel.
 7 MR. JASON KAFOURY: Can I give it back to the
 8 witness?
 9 BY MR. JASON KAFOURY: (Continuing)
 10 Q. Do you have a copy of it there?
 11 A. Yes.
 12 Q. The bottom email there, what is the date on that email?
 13 A. February 9, 2011.
 14 Q. And what is the -- what is Lieutenant Lebrecht -- what is
 15 he asking for in that email?
 16 A. Do you want me to read it?
 17 Q. Sure.
 18 A. It says: Hi, Bill. Can you provide me with the last six
 19 months of Sergeant Andy Bechdolt's Internet browsing history ?
 20 Thanks. Brandon.
 21 Q. And what's the email above it?
 22 A. It's from Bill Anderson saying: Here you go. Let me know
 23 if you want me to analyze it.
 24 THE COURT: Just a minute. Can I see that again? Is
 25 this addressed to you?

1 THE WITNESS: I'm copied on it.
 2 THE COURT: You're copied on it?
 3 THE WITNESS: Yes, sir.
 4 THE COURT: All right. Great. Thank you.
 5 BY MR. JASON KAFOURY: (Continuing)
 6 Q. So in that email Bill Anderson sent you and
 7 Lieutenant Lebrecht Andy Bechdolt's Internet search history;
 8 correct?
 9 A. Can you rephrase the question -- or restate it? I'm
 10 sorry.
 11 Q. In that email, that document indicates that Bill Anderson
 12 sent to you and Lieutenant Lebrecht Andy Bechdolt's Internet
 13 search history; correct?
 14 A. Yes. He didn't want to print it out, because it was so
 15 extensive that it would take multiple reams of paper. He was
 16 just sending us a link for it.
 17 Q. I want to talk about what happened with your career there.
 18 When did -- when did you -- well, I'll ask you. While you were
 19 there, did you feel you were retaliated against by Chief
 20 McDermed and Lieutenant Lebrecht?
 21 A. Yes.
 22 Q. Okay. Tell us about how that started.
 23 A. Well, I was unaware of issues until it was spring. It was
 24 after the -- or I would say up until just after the Chris
 25 Kilcullen Memorial Service. I had worked hard. I had worked

1 many hours. I had been there for three shift periods. I
 2 worked double shifts often.
 3 Q. Just to clarify, we're talking -- the time period is 2011;
 4 is that correct?
 5 A. Yeah. So from 2009 to 2011 -- it was in May of 2011 -- I
 6 worked really hard, and, you know, it was a hard job being
 7 tasked with not only just supervising and the daily, you know,
 8 operation of the patrol division, but being tasked with dealing
 9 with all these personnel problems, and I worked really hard,
 10 and Assistant Chief McDermed knew that. She would sometimes
 11 refer to me as superwoman.
 12 Q. What happened? It's okay. Take a deep breath. Tell us
 13 your story.
 14 A. We worked really hard a lot of hours, a lot of stress, and
 15 it was -- it was the kind of mission that you dedicated
 16 yourself to this policing initiative. You either believed in
 17 it and you gave everything, or you didn't, and I did that.
 18 I believed in it, and I believed in them. And so this
 19 memorial service -- and I just bring that up because it was
 20 very pivotal that it was just kind of after this that -- it was
 21 another situation where I worked around the clock. It was
 22 hard, it was stressful, and it was a hard time for all of us.
 23 And I received several commendations for this. Emails,
 24 numerous commendations from Chief -- Assistant Chief McDermed ,
 25 and then I was just blindsided with a -- kind of an

1 investigation packet. I didn't see it coming.
 2 Q. Did you have a meeting?
 3 A. Yes. She called me in with Lieutenant Morrow and hit me
 4 with this investigation with multiple allegations. Some of the
 5 things were my off duty time. I wasn't even working. And I
 6 just didn't even see it coming. And I knew there was a shift,
 7 and part of that shift I felt was because of
 8 Lieutenant Lebrecht and just things that had been transpiring
 9 and --
 10 Q. Why did you feel like Lieutenant Lebrecht was retaliating
 11 against you?
 12 A. Well, I -- that was all in the time period that we had
 13 multiple officers that were disgruntled and a few of them were
 14 the ones that they knew they were being progressively
 15 disciplined. There was one specific that Chief Tripp wanted
 16 gone, and he was really disappointed in me that I was not
 17 getting it done fast enough, and they were very verbal at
 18 making clear that they were going to -- things were going to
 19 change, and they were telling -- one of them had told
 20 Sergeant Cameron and myself that change was coming. They were
 21 going to make sure change happened. And, sure enough, in May
 22 this -- this packet came.
 23 Q. Okay. What were some of the allegations against you? Do
 24 you remember?
 25 A. One was for a parking permit of mine. We have -- do you

1 want me to explain it?
 2 Q. Yeah. Just --
 3 A. It's on a college campus, so you buy an annual parking
 4 permit, and it doesn't cost any more to add other vehicles.
 5 You just have to add them to it. And I had always had an
 6 annual parking permit. And the year prior I purchased a
 7 motorcycle, and I paid for the little bracket that your permit
 8 goes in that hooks onto your motorcycle, and it was on there
 9 the prior year, and so when I went and renewed the next year,
 10 our parking employees, which was a part of our whole public
 11 safety division, there were no problems. "We'll take care of
 12 it. We'll get you updated," and I paid my fees.
 13 And the one time I brought my motorcycle -- I didn't know
 14 until later, but Officer Abbott filed a complaint that I didn't
 15 have a motorcycle permit, and -- or that my motorcycle wasn't
 16 registered to my permit. I had my permit. I was displaying my
 17 permit. But he went and did research to find out that it
 18 wasn't in the computer with my permit information. They just
 19 hadn't transferred all the vehicles over.
 20 Q. That was one of the reasons that you were being
 21 investigated?
 22 A. Yes.
 23 Q. Okay.
 24 A. And at the time we had numerous officers who had been
 25 cited for not having permits, that had parked illegally.

1 Chief -- Assistant Chief McDermed at the time was one of them,
 2 where they didn't even receive citations or any sanctions, and,
 3 yet, I was being investigated, or it was one of the allegations
 4 of this large investigation that I was under.
 5 Q. Tell us about the conversation with Tyler Maness that you
 6 were being investigated for.
 7 A. So that was the second set of allegations that came in.
 8 There were two of them, and they came in as a direct result of
 9 a complaint that Lieutenant Lebrecht made to Lieutenant Morrow.
 10 And my conversation with Tyler Maness, he was -- he was an
 11 auxiliary officer that we had hired. I knew him personally.
 12 And at the time when I hired him, the chief had put out an
 13 order that I was to -- I had to hire a high quantity of
 14 officers. He had a certain level of them, and he wanted
 15 numbers. And I was under a lot of pressure and knew his
 16 performance and another one from knowing them previously and
 17 hired them, so we had been friends before.
 18 I never engaged with him outside of work, but, you know,
 19 he knows my family. So Tyler and I had numerous personal
 20 conversations, just, how's the family; how are the kids; how's
 21 my husband; how is Amanda, which is one of our friends. A lot
 22 of times when we'd have these conversations, it was Tyler and
 23 Casey talking, not Lieutenant Boyd and Officer Maness.
 24 So at the time this one particular conversation came up,
 25 Tyler had been getting teased about being gay, and I -- I

1 didn't have any idea that that was the case. I didn't care.
 2 He was my friend. But they were making jokes about him at work
 3 and another officer, based on, I believe, a base -- a
 4 basketball game that they were at, because there was a girl
 5 that was there with him that he wasn't putting the moves on,
 6 and so the officers were teasing him that he must be gay.
 7 And I didn't like it because Tyler was my friend. I just
 8 thought it was inappropriate that they would be teasing him at
 9 work about it, making the jokes, and so I -- I wanted it to
 10 stop.
 11 And so one of our conversations Tyler and I were having
 12 was about this and just about, again, how are the kids, how is,
 13 you know, his friends, and just different things, and there was
 14 something that was -- he had said when we were having this
 15 conversation that led me to ask the question, "Are you gay?"
 16 And it would have been no different in my personal conversation
 17 with my friend for me to ask him if he was married, because,
 18 again, Tyler had been my friend for years. He was a very good
 19 friend. And I just asked him that question, and he said "No,"
 20 and --
 21 Q. Did Tyler ever complain about this conversation?
 22 A. No.
 23 Q. What happened?
 24 A. So we continued our conversation, and I was just adamant
 25 that it needed to stop. And so at shift change, I asked -- or

1 I didn't ask. I talked with Lieutenant Lebrecht about this and
 2 said, "Look, I talked with Tyler today and talked with him
 3 about this, and he is not gay, and you need to tell your guys
 4 to stop. This -- all this teasing and joking about him being
 5 gay needs to stop," and his immediate response is -- was,
 6 "Well, I think Michael Drake is gay. All of graveyard shift
 7 thinks Drake is gay."
 8 That was kind of his response to this whole thing, and I
 9 just kind of let it go at that. I wasn't going to pursue it.
 10 But I had made my point that I had wanted the teasing to stop.
 11 Q. Who did Lieutenant Lebrecht report your conversation with
 12 Tyler to?
 13 A. So he went to Lieutenant Morrow and complained to him that
 14 I had asked Tyler if he was gay.
 15 Q. Did you ever hear Lieutenant Lebrecht make other
 16 derogatory homophobic statements about an athlete there at the
 17 University of Oregon?
 18 A. I recall a general conversation. I don't recall
 19 specifically who the athlete was.
 20 Q. I'll show you a document here to refresh your memory.
 21 Showing you Plaintiff's 119, without getting into the contents
 22 of this document in its entirety, what is this document?
 23 A. It's a letter I wrote -- or it's not a letter. It's a
 24 rebuttal to the reprimand I received.
 25 Q. We'll talk about it more in detail, but I would like to

1 show you this paragraph. If you could read that paragraph in
 2 relation to -- see if that refreshes your memory. Does that
 3 refresh your memory --
 4 A. Yes.
 5 Q. -- about what Lieutenant Lebrecht said about one of the
 6 athletes at the University of Oregon?
 7 A. Yes.
 8 Q. What did he say?
 9 A. He had referred to one of the athletes as a faggot pussy.
 10 THE COURT: A what? I couldn't hear you.
 11 THE WITNESS: He called one of the athletes a faggot,
 12 pussy.
 13 BY MR. JASON KAFOURY: (Continuing)
 14 Q. Did you ever have any written communication with
 15 Lieutenant Morrow where you felt that homophobic statements
 16 were made on his part?
 17 MS. COIT: Object, Your Honor. Totally irrelevant.
 18 Lieutenant Morrow is not a defendant here.
 19 MR. JASON KAFOURY: Your Honor, his conduct in this
 20 case is completely at issue, and he's friends with
 21 Lieutenant Lebrecht.
 22 THE COURT: Well, it doesn't matter unless he's
 23 saying this in front of Lieutenant Lebrecht. So sustained.
 24 If you have a nexus where they're having this kind of
 25 conversation, then I'll allow it.

1 MR. JASON KAFOURY: Well, he was investigated by the
 2 university, so they all know about it.
 3 THE COURT: That's not my question. Is whatever
 4 you're about to ask concerning Lieutenant Morrow something that
 5 is said in front of Lieutenant Lebrecht, or is this an isolated
 6 statement?
 7 MR. JASON KAFOURY: It is an isolated statement.
 8 THE COURT: Okay. Sustained.
 9 BY MR. JASON KAFOURY: (Continuing)
 10 Q. We were talking about allegations against you. You went
 11 through a couple of them. Let's talk about the other ones.
 12 What was the monster truck incident?
 13 A. So for the first time the -- the monster truck rally had
 14 came to the Matthew Knight arena. I have a little boy. At the
 15 time he was maybe seven. He could have been younger than that.
 16 Five, maybe. And he loved Hot Wheels and monster trucks, so I
 17 bought tickets for our family to go.
 18 So we had parked the car, and we were walking over there,
 19 through the Market of Choice parking lot, and somebody was
 20 selling T-shirts for the event, and my son went running up and
 21 was elated, wanting a monster truck T-shirt. It had Grave
 22 Digger on it, and he's saying, "I want a Grave Digger T-shirt."
 23 I went and asked the gentleman -- I was with my husband and two
 24 kids -- and asked the man how much, and I don't remember the
 25 exact dollar figure, but, for example, if the shirts were, you

1 know, \$10 or \$15, whatever his response was, my daughter
 2 immediately said "I want one too."
 3 And so I had a \$20 bill in my pocket, and I think it was
 4 \$5 less than he was selling the shirts for. I said, "Would you
 5 take 20 for two?" And he said "yeah," and he hands over the
 6 T-shirts.
 7 And while he's putting the money away, we're waiting at
 8 the stoplight to cross, and I think there's just chitchatting,
 9 like "How is the weather" kind of conversation, and the kids
 10 put on the shirts, and off we go to the event.
 11 And then came in this allegation, and I believe -- correct
 12 me if I'm wrong, because I haven't looked at the document for a
 13 while -- that I said that I threatened the man that if he
 14 didn't give me the T-shirts, I was going to call the police on
 15 him or --
 16 Q. Who made that allegation?
 17 A. Lieutenant Lebrecht.
 18 Q. What happened with the EmX bus station incident you were
 19 alleged -- oh, how did Lebrecht know about the situation?
 20 A. We were -- myself and Lieutenant Horner and Lieutenant
 21 Lebrecht were going to training, and Lieutenant Horner and I
 22 were sitting in the front, having a conversation. He was
 23 asking how it was. He knows my family well. And I was just
 24 talking about that it was loud and it was smelly, and I told
 25 him about the shirts. And so the allegation was apparently

1 that I had said that I did this.
 2 That was all I could suspect. I never talked to
 3 Lieutenant Lebrecht about it. It was just what was conveyed
 4 from Lieutenant Morrow.
 5 Q. What was the May 7, 2011, EmX bus station allegation?
 6 A. That incident, there was a -- I can't remember the
 7 original call, but there was a -- maybe a possible armed
 8 suspect or a subject, armed subject at a bus stop, that was
 9 near where our office was, kind of at the east end of campus.
 10 And it was off campus, but this had come over the radio. Our
 11 officers were all aware of it. And it was at a shift change.
 12 It was after our briefing.
 13 And we have several officers who smoke. At this time they
 14 weren't fully sworn police officers. They were still the
 15 original Department of Public Safety officers, so they have not
 16 had any formal training, for the most part, on officer safety
 17 skills or otherwise, and when they go out after briefings and
 18 smoke between the cars, they get very complacent. They're
 19 chitchatting. Their guard is down.
 20 So during this call I was very concerned that my officers
 21 were going to be out there not paying attention. If there was
 22 an armed subject that came running through or in their way --
 23 and one of the problems we always had was that -- or concerns
 24 was that a suspect could think our officers are an actual
 25 police officer and harm them, when they have no way to defend

1 themselves with training or weapons or otherwise.
 2 So I had asked an officer to go post up at a separate
 3 location to have a vantage point, because we didn't have direct
 4 radio communications with the officers on the scene, and I knew
 5 the time delay to get from the Eugene police officers to their
 6 dispatch to ours and back to our officers and this whole thing
 7 could be the difference between somebody being fatally wounded
 8 or otherwise.
 9 And so I asked an officer to go post up at a vantage point
 10 so he could relay what was going on, and that was met with
 11 resistance.
 12 It was one of the officers who told Sergeant Cameron and I
 13 that he was, you know, going to be dealing with some stuff in
 14 the office, and he wasn't going to do this. He was starting to
 15 resist. So I went and asked another officer to do this. In
 16 the time I was communicating with him, the call had been
 17 cleared. I don't recall the disposition; if they had contacted
 18 the armed subject or if he was gone or if it was a false alarm,
 19 but it eventually dissipated.
 20 Q. And the final incident, the Oregon Ducks basketball game.
 21 You're there with your kids. What happened?
 22 A. That was a baseball game.
 23 Q. Baseball. Sorry.
 24 A. At PK Park. We're season ticket holders. I was there
 25 with my two children, and we were sitting in our seats, which

1 there's the -- the Ducks team has a dugout. There's a concrete
 2 structure. There's a walkway and a row of chairs, and we were
 3 in the second row. And there was -- whoever has season
 4 tickets, or otherwise, the people that come and sit in front of
 5 us change all the time.
 6 And at this particular game there was a man and his little
 7 boy, and the little boy kept resting his feet on the concrete
 8 dugout, and the Crowd Management Service staffs those games
 9 to -- as just a monitor, and he kept yelling at this little boy
 10 to put his feet down, and he was yelling at the dad. And there
 11 was a lot of people sitting around us that would, you know,
 12 start chipping on this CMS worker saying, you know, "Give him a
 13 break." It was just -- it was turning into quite the scene.
 14 And so the little boy did it again, and so the man had
 15 come around -- because we were on the far edge of the section,
 16 and he was stationed over here. And so when he came up and
 17 around, he came straight over to my son and started yelling at
 18 my son about it. I pulled my son in, and I told him, "You will
 19 never talk to my son like this," and he had mistaken -- because
 20 he had went all the way around this crowd, he mistook my son,
 21 who doesn't even sit up in that the front row, for this other
 22 man and his boy, and started screaming at him.
 23 So a situation ensued with that. And at the point when he
 24 started yelling at my son, and I kind of tucked my son into me
 25 and I said, "You're not going to talk to my son this way. It's

1 not my son. You have the wrong person."
 2 But I felt really bad for this man who had never been to
 3 the game sitting there with his son. I had never seen him
 4 before. All the rest of the crowd started, that was around us,
 5 because they were season ticket holders, and you kind of get to
 6 know everybody around you, and they started chipping away at
 7 the CMS worker. And then at that point I just told my kids
 8 just to face forward, watch the game, don't pay attention.
 9 Well, then one of the officers who was working that
 10 evening was definitely not one of my advocates. He was not a
 11 stronger employee, and he had numerous problems, and I think he
 12 was a part of this complaint process and went and alleged an
 13 allegation that something happened.
 14 MS. COIT: Object. Foundation.
 15 THE COURT: Which part, Counsel?
 16 MS. COIT: Her speculating why this person may have
 17 reported her was because he had a problem with her.
 18 THE COURT: That portion is stricken. The rest
 19 remains.
 20 BY MR. JASON KAFOURY: (Continuing)
 21 Q. What is CMS?
 22 A. Crowd Management Service.
 23 Q. Do you know why Crowd Management Service is on the bowl of
 24 dicks list?
 25 A. I don't know why they're on there.

1 MS. COIT: Object. Foundation.
 2 BY MR. JASON KAFOURY: (Continuing)
 3 Q. Just, if you don't know -- I'm just asking.
 4 THE COURT: That's overruled. You're there during
 5 this period of time. That's the one foundation that's lacking,
 6 if she's aware of this list.
 7 MR. JASON KAFOURY: Oh.
 8 THE COURT: I'll reverse that ruling. It's
 9 incorrect. I'll sustain the objection. But if you can lay a
 10 foundation, if she's aware of the list, then you can ask her if
 11 she knows why Crowd Management Services is on the list. It
 12 hadn't been established yet that she's aware of this list, so
 13 it's sustained.
 14 BY MR. JASON KAFOURY: (Continuing)
 15 Q. During 2011, during these shift briefings, were you aware
 16 of this bowl of dicks list people were being put on?
 17 A. No. Not at the time.
 18 Q. So these five -- well, what was the actual allegation in
 19 relation to the EmX bus station? The smoking. What were you
 20 alleged to have done wrong?
 21 A. At the EmX --
 22 Q. Yeah. Can --
 23 A. The allegation, I believe, was that I put -- or was -- I
 24 didn't put them in danger, but I was going to put them in
 25 danger by having them post up at an observation point.

1 Q. So these allegations come in in writing. Tell me about
 2 the meeting you had with McDermid.
 3 A. When I received these allegations?
 4 Q. When you received these allegations, yes. In June of
 5 2011.
 6 A. Well, I had been -- well, the first four -- there were the
 7 original four, and then there were the two additional ones that
 8 came from Lieutenant Lebrecht. So the first four I became
 9 aware when I got called in with Assistant Chief McDermid and
 10 Lieutenant Morrow, and I believe it was in Lieutenant Morrow's
 11 office, and they read me the allegations.
 12 Q. Okay. And what happened next?
 13 A. Other than?
 14 Q. Well, what was going through your mind at that moment when
 15 you -- these allegations were sprung on you?
 16 A. I was shocked. Really disappointed. I knew what the
 17 writing on the wall was when those four came in. Two -- some
 18 of them being off duty, which is completely irrelevant to my
 19 job, and they weren't even accurate. It was the worst feeling
 20 ever.
 21 Q. What did you do about it?
 22 A. I couldn't do anything. I was under investigation.
 23 Assistant Chief McDermid said it would only take about a week.
 24 It went on for over a month. And I kept asking her and
 25 Lieutenant Morrow when it would be done. They would say

1 another week. It's going to be done after the weekend. It was
 2 a hard thing to move forward, trying to work really hard, long
 3 hours, excessive things, and knowing this is looming over your
 4 head and that the allegations aren't accurate, but knowing you
 5 can't do anything about it.
 6 And so after another month they called me in to
 7 Lieutenant Morrow's office, and I thought finally we would see
 8 a conclusion on it, and Lieutenant Morrow had been leading me
 9 to believe that don't worry about the PK Park thing and
 10 don't -- you know, so when I came in I was quite surprised that
 11 not only was it not resolved, they added two more
 12 investigations or allegations from Lieutenant Lebrecht and that
 13 it was going to continue.
 14 And eventually I was put on administrative leave because
 15 of them, and I knew that I wouldn't -- that that was definitely
 16 the beginning of the end.
 17 Q. Did you speak up to anybody about this?
 18 A. Yes.
 19 Q. Tell us about that.
 20 A. During this period, I had spoke with a person from the EEO
 21 office.
 22 Q. What is EEO?
 23 A. Equal Employment Opportunity.
 24 And I spoke with Linda King, who's the vice president of
 25 human resources.

1 Q. At the University of Oregon?

2 A. Yes.

3 Q. Okay. Why did you go to HR?

4 A. Other than the host of problems that had been happening at

5 the department, the -- one of the last reasons I went was,

6 after I received a written reprimand, I was scared. I didn't

7 know what my options were, and I didn't want to work in the

8 department anymore with the retaliation that was happening, and

9 I didn't want to work under Lieutenant Lebrecht, and so I went

10 to her for help, because I -- I didn't know what other options

11 I had.

12 Q. Did she help?

13 A. No. She told --

14 MS. COIT: Object to the hearsay.

15 THE COURT: Overruled.

16 You can answer the question. It shows your conduct.

17 THE WITNESS: No. It ultimately led into her

18 speaking with the two chiefs, and then I was immediately

19 reassigned to our parking and transportation division, and I

20 wasn't going to get my contract renewed.

21 BY MR. JASON KAFOURY: (Continuing)

22 Q. Were you told right then you weren't going to get your

23 contract renewed?

24 A. At what point?

25 Q. Right when you were being reassigned to parking duty.

1 A. Yes.

2 Q. Can you explain for the jurors the difference between a

3 supervisor and their contracts versus a union officer, like my

4 client, in terms of how the employment agreement works?

5 A. So the officers are represented by the union, and they

6 have a trial service period, and then once they're beyond that,

7 then they're represented by the union. The supervisors are

8 officers of administration, and we have an annual contract that

9 gets renewed, and it either doesn't or it does.

10 Q. So the university basically every year can decide whether

11 they want to keep you. Is that --

12 A. Yes. Yes.

13 Q. How was that last six months to a year knowing you weren't

14 going to be renewed there at the department?

15 MS. COIT: Object.

16 THE COURT: On what grounds?

17 MS. COIT: Relevance. Her damages aren't at issue

18 here.

19 MR. JASON KAFOURY: Punitive damages, Your Honor.

20 THE COURT: Overruled. You can ask the question.

21 BY MR. JASON KAFOURY: (Continuing)

22 Q. Tell the jurors what was it like.

23 A. It was horrible. I was reassigned to the parking office,

24 which is separate from the main office, and pretty much it's

25 like being exiled.

1 Q. Tell us about what you did on your last day.

2 A. Well, I had hoped that -- well, prior to being reassigned

3 to parking and transportation, which is still under the chief

4 and the Department of Public Safety, I had hoped that if I

5 wasn't there that maybe I could be reassigned to another

6 department on the university campus. Anywhere else, whether it

7 was student affairs, journalism, athletic, or anywhere else,

8 and they would be able to see what a hard worker I was and what

9 a good employee I was, and I would have the opportunity, then,

10 to continue on there.

11 You know, having a family, two kids. And my daughter was

12 just about to start college.

13 THE COURT: The question was what did you do the last

14 day.

15 THE WITNESS: So I waited to file a response, my

16 rebuttal, because -- to my reprimand, because I was afraid that

17 if I filed that before I left that there would be further

18 retaliation, and I had held out hope until the last day that

19 they would do the right thing and renew my contract. I had

20 been working very hard in parking and transportation, and the

21 director of parking and transportation wanted me to stay on,

22 and nothing had happened.

23 So the last day is when I waited to hand-deliver my

24 rebuttal to the reprimand.

25 I hand-delivered it to Jamie Moffitt, who's the vice

1 president of finance and administration, who was Chief Tripp's

2 supervisor, and I hand-delivered it to Linda King.

3 BY MR. JASON KAFOURY: (Continuing)

4 Q. Do you know what happened to that letter after that?

5 A. No. I was told that it was going to go into my file and

6 that they would be passing it on.

7 Q. To the department?

8 A. Yes. Because it would need to go in my file.

9 Q. Do you know if -- have you seen your personnel file in the

10 last three years?

11 A. No. I have not seen the actual files. I've seen copies

12 of a few things, but I know it's not the total file. I know

13 that's multiple files.

14 Q. In your letter you asked to have your letters of reprimand

15 taken out -- removed from your personnel files. Do you know if

16 that's happened?

17 A. It has not.

18 Q. Tell us, how has this time at the University of Oregon and

19 not being renewed, how has it affected your employment?

20 A. I'm not employed.

21 Q. Why is that?

22 A. Because when you come from a department that has a

23 reputation of being dysfunctional and all the problems, it's

24 really hard moving forward. I -- I fear retaliation, if I

25 apply for a job elsewhere, of what Chief McDermed will say

1 or -- or Lieutenant Lebrecht. I'm scared. So at this point
 2 I'm still unemployed.
 3 Q. Have you done background checks in your -- over your
 4 years?
 5 A. Yes.
 6 Q. As part of a background check, if you applied at another
 7 department, would they contact -- would you assume they would
 8 contact the University of Oregon superiors to ask about you?
 9 A. Yes.
 10 Q. I want to talk about *Brady* listing. When were you first
 11 made aware of the concept of a *Brady* list?
 12 A. Well, I knew about *Brady* list from college, but I learned
 13 about it in detail at my police academy.
 14 Q. What year was that?
 15 A. 2000.
 16 Q. Why do you think Lieutenant Lebrecht and Chief McDermid
 17 retaliated against you?
 18 MS. COIT: Object. Foundation.
 19 THE COURT: Ladies and gentlemen, this is her
 20 personal opinion. I will allow it.
 21 You can answer that question.
 22 THE WITNESS: Well, as far as Lieutenant Lebrecht and
 23 his -- in previous conversations, when he talked about somebody
 24 mother fucking him or crossing him previously and how he was
 25 going to do the same, I figured that was probably what happened

1 to me, because I had complained about the issues going on,
 2 whether it was our auxiliary officers -- they had complained
 3 about how they were being treated -- for the graveyard shift,
 4 about their excessive briefings and some of those issues, and I
 5 knew that making -- passing that information on to both
 6 Lieutenant Morrow and Assistant Chief McDermid that that would
 7 ultimately or possibly could be my consequences. And I'm not
 8 sure why with Assistant Chief McDermid.
 9 THE COURT: All right, Counsel, she's answered. Your
 10 next question, please.
 11 BY MR. JASON KAFOURY: (Continuing)
 12 Q. Did you have discussions with Chief McDermid about the
 13 *Brady* list while you were there?
 14 THE COURT: As it pertains to who? General
 15 discussion about it?
 16 MR. JASON KAFOURY: General discussion about it or
 17 discussions about a specific person.
 18 THE WITNESS: Yes, we had -- in one particular
 19 instance, we had an officer who we were in the process of
 20 terminating for a couple reasons. One was official misconduct.
 21 And we were in communications with the district attorney's
 22 office, and that was one of the topics of discussion that they
 23 were asking, is if we would be looking at putting her on the
 24 *Brady* list. And that was not the goal, but that had come up in
 25 that time.

1 BY MR. JASON KAFOURY: (Continuing)
 2 Q. What year was that?
 3 A. It was 2009 or 2010.
 4 Q. Which officer?
 5 A. Her name was Officer Bowes.
 6 Q. What was the allegation against her?
 7 A. There were two, and I -- one of them was official
 8 misconduct, and I don't recall the specifics of the second.
 9 Q. What was the official misconduct?
 10 A. She was utilizing her position for personal gain.
 11 Q. So were there meetings about whether -- with the DA back
 12 in 2009/2010 about the *Brady* listing?
 13 A. With the Deputy DA.
 14 Q. Okay. Who was that?
 15 A. Patty Perlow.
 16 Q. You were at those meetings?
 17 A. Yes.
 18 Q. Was Chief McDermid at those meetings?
 19 A. No.
 20 Q. How do you know Chief McDermid was aware of that?
 21 A. Because I had to report back to her.
 22 Q. Do you believe that someone at the Eugene Police
 23 Department who ran internal affairs would not know about the
 24 *Brady* listing?
 25 A. No. I would not believe they wouldn't know.

1 Q. Over your time working with Lieutenant Lebrecht, did you
 2 form an opinion about his character for truthfulness?
 3 A. I don't know if I formed an opinion about his
 4 truthfulness. I just -- I just didn't trust him.
 5 Q. What is your understanding, once you're on the *Brady* list,
 6 of how that affects your possible future employment in law
 7 enforcement?
 8 A. Typically, it ends your profession in law enforcement,
 9 because it's about your integrity, and that's all you have.
 10 And when somebody is put on that *Brady* list, it's extremely
 11 rare they continue on. You have to have a police department --
 12 a police department has, you know, another position for you,
 13 but pretty much that ends your career and your future in law
 14 enforcement.
 15 Q. Ms. Boyd, when did you figure out that you and your
 16 husband were actually the second-to-last items on the bowl of
 17 dicks list?
 18 A. When I --
 19 MS. COIT: Excuse me. Objection. Foundation.
 20 THE COURT: I didn't hear the answer. I'm sorry.
 21 When did you hear this?
 22 THE WITNESS: When it came out in *The Oregonian*.
 23 THE COURT: Overruled.
 24 BY MR. JASON KAFOURY: (Continuing)
 25 Q. Can you tell the jurors, just briefly, what happened with

1 your husband at the football game, in October, against
 2 Washington State, of 2013?
 3 MS. COIT: Objection. Relevance.
 4 THE COURT: Overruled.
 5 THE WITNESS: We were at this football game, and
 6 there were some people sitting next to us that were getting
 7 belligerent with somebody else in the stands, and they -- they
 8 were throwing popcorn. There was a highly intoxicated person
 9 down below us that wanted to fight with anybody and everybody,
 10 and other people had complained to this CMS who worked at the
 11 football game.
 12 And so eventually -- it was quite a time delay, but Eugene
 13 Police Department, an officer, came walking right by us, and we
 14 kind of pointed down where he needed to go, because we knew it
 15 was to this one particular person. He contacted him.
 16 In a very short amount of time he came back up and asked
 17 to talk with my husband. And we both just naturally assumed he
 18 recognized him because he's a -- he's worked in the local area
 19 and knows many of the officers, and asked him if he could talk
 20 with him away from where we were standing.
 21 And my husband was like "Absolutely," thinking, you know,
 22 he could help point out what had happened. And so as my
 23 husband got up to walk away, the officer followed, and I saw
 24 him brandish his -- those big Maglite flashlights. But he took
 25 it out in such a manner that he wasn't using it, nor which you

1 needed to, because it wasn't dark enough, but he -- he grabbed
 2 it like he was going to use it as an impact weapon. And I
 3 thought -- at that moment I knew instantly that it was --
 4 something bad was going to happen.
 5 And they got over to the side, and my husband turned
 6 around to ask him what's going on, what -- you know, and the
 7 officer jabbed him in the stomach with the flashlight and then
 8 ordered him up to the top of the concourse level, screaming at
 9 my husband.
 10 So, anyway, they got up to the top, and he had asked my
 11 husband for his identification. My husband had it out and
 12 asked him who he was, because he didn't have his ID visible,
 13 and what this was, you know, for, and why he just, you know,
 14 assaulted him, and they eventually ended up taking him into
 15 handcuffs and out down onto the ground level.
 16 And they -- it's an ongoing situation where they've
 17 discovered that it was a -- they have the wrong guy.
 18 BY MR. JASON KAFOURY: (Continuing)
 19 Q. Let's talk about how the University of Oregon -- what
 20 happened with them and the Department of Public Safety after
 21 that incident. Can you tell the jurors?
 22 A. They had no involvement. In fact, the only part they
 23 participated in is when we were escorted down the stairs and my
 24 husband was sitting down and I was visiting with one of the
 25 officers, one of the Eugene police officers. They were --

1 there was Officer Abbott and one other. I believe it was
 2 possibly Zach Hermens was working that east gate, and I didn't
 3 know if they could see me or not, but they saw what was going
 4 on. But at no time did they participate in the situation.
 5 And then later I noticed Sergeant Geeting was riding by on
 6 his Polaris, but they had no involvement in the contact or the
 7 situation.
 8 Q. Was your understanding that after this incident the Eugene
 9 Police Department determined that it would be fine for you guys
 10 to attend future football games?
 11 A. Yes. Captain Fellman, who came on scene, he told us --
 12 MS. COIT: Object. To the hearsay.
 13 THE COURT: No. This is conduct. Overruled.
 14 THE WITNESS: He told us to come up. We had -- this
 15 year I got season tickets for my husband for a few games -- or
 16 for that season, and we were only able to go to a couple of
 17 games after this. But he told us to come back the next weekend
 18 and he would see us then. They didn't take our tickets. They
 19 didn't process us like anybody being ejected. They didn't
 20 write any citations. They made clear to tell us they were
 21 just -- he was writing out a memo. They weren't even doing a
 22 report. That was kind of it. And that was essentially how it
 23 was concluded.
 24 BY MR. JASON KAFOURY: (Continuing)
 25 Q. Tell us about the trespass order you were given by

1 Sergeant Cameron.
 2 A. Well, we actually didn't receive it until almost a month
 3 later. Because even though it never came to our home and my
 4 husband -- it was well known he was on admin leave, because it
 5 was in the paper. They sent a letter of trespass. I believe
 6 it was a week later. They waited to issue this trespass, and
 7 then they sent it to my husband's office. And then we didn't
 8 receive it for a month. And it was just kind of out of the
 9 blue.
 10 Q. So what -- what does that mean that your husband is
 11 trespassed from the University of Oregon?
 12 A. Well, it meant that he wasn't able to come onto any
 13 University of Oregon property, which isn't exclusive to just
 14 U of O, but he, in any capacity, couldn't come onto University
 15 of Oregon campus.
 16 Q. So your husband was not arrested; correct?
 17 A. No.
 18 Q. He was not charged with any crimes; correct?
 19 A. No. Well, ultimately, that changed, but -- but at the
 20 time, no.
 21 Q. And as a result of this incident, the University of Oregon
 22 Police Department, a week later, issued him a trespass notice;
 23 is that correct?
 24 A. Yes. I would have to look at the dates, but give or take.
 25 Q. Can you identify for us what Exhibit 120 is, please.

1 A. It's the letter of trespass issued to my husband.
 2 Q. And that's signed by Sergeant Scott Cameron?
 3 A. I believe that's his signature, but that's his badge or
 4 officer number.
 5 Q. What's the date on that document?
 6 A. I'm sorry.
 7 Q. I think it's down at the bottom.
 8 A. Oh, October 28, 2013.
 9 MR. JASON KAFOURY: I'd offer 120, Your Honor.
 10 THE COURT: Received.
 11 BY MR. JASON KAFOURY: (Continuing)
 12 Q. Ms. Boyd, do you feel that this letter of trespass given
 13 to you by the University of Oregon Police Department was
 14 retaliation for your employment there?
 15 A. Yes.
 16 Q. During your time while working there, was this a typical
 17 pattern, that someone in a football situation like this would
 18 get a trespass, a letter, a week later from the police
 19 department?
 20 A. No.
 21 MR. JASON KAFOURY: Thanks. That's all I have.
 22 THE COURT: All right. Why don't we take a recess
 23 before we start the cross-examination.
 24 We'll resume in 15 minutes. Is that acceptable?
 25 MS. COIT: Yes.

1 THE COURT: Come in about 10:30. Don't discuss the
 2 matter amongst yourselves or form an opinion or express an
 3 opinion. Have a nice recess.
 4 (Jury not present.)
 5 THE COURT: Counsel, 10:30.
 6 MS. COIT: I just wanted to show you something before
 7 I show it to the witness.
 8 THE COURT: You want to show me something?
 9 MS. COIT: Yes.
 10 THE COURT: Show it to the other parties.
 11 MR. JASON KAFOURY: Can I see it?
 12 MS. COIT: I'm showing it to you because I want -- I
 13 want to use it as impeachment.
 14 THE COURT: Now, on -- on the record. All counsel
 15 are present. The jury is not present. What am I looking at?
 16 I got your notepad.
 17 MS. COIT: I apologize. We didn't have this -- I
 18 didn't realize this issue was going to come up.
 19 THE COURT: Well, remember, I'm only going over
 20 plaintiff's exhibits.
 21 MS. COIT: But that's why it's on my notepad and not
 22 printed out.
 23 THE COURT: What is this?
 24 MS. COIT: This is the incident having to do when she
 25 was at the baseball game.

1 THE COURT: Oh, and the boy was standing up?
 2 MS. COIT: And that's a picture of her son standing
 3 up.
 4 THE COURT: Well, that door was opened. You can
 5 certainly impeach. Have a nice recess.
 6 (Recess taken.)
 7 MR. JASON KAFOURY: Your Honor, after this witness, I
 8 believe we're calling another one of the adverse witnesses, and
 9 maybe that would be a good time to get that -- remind me about
 10 the adverse witness.
 11 THE COURT: That would be appropriate. I can do that
 12 now, but I would rather wait.
 13 MR. JASON KAFOURY: Let's do that.
 14 THE COURT: Give me the cue, and I'll be happy to.
 15 MS. COIT: Your Honor, can I have the Court ask
 16 counsel a question before the jury comes in? He wasn't aware,
 17 obviously, of not talking to the witnesses beforehand, and she
 18 was sitting out there receiving texts --
 19 THE COURT: I can't hear you.
 20 (Jury present.)
 21 THE COURT: Jury is present. All counsel are
 22 present. The parties are present. Please be seated.
 23 Will Lieutenant Boyd please retake the stand?
 24 Do you know where she is? Does anybody know? Is she out
 25 in the hallway? She must be standing out in the hallway.

1 Thanks, Christy.
 2 Counsel, be seated.
 3 Ms. Boyd, if you would take the witness stand, please.
 4 Cross-examination, please.
 5
 6 CROSS-EXAMINATION
 7 BY MS. COIT:
 8 Q. Ms. Boyd, how many times did you meet with Mr. Cleavenger
 9 or his attorneys to prepare for your testimony?
 10 A. I have not met with them.
 11 Q. Did you speak on the phone?
 12 A. Yes.
 13 Q. How many times?
 14 A. Once.
 15 Q. When was that?
 16 A. This past week.
 17 Q. Did they give you any documents to review before you
 18 testified?
 19 A. No.
 20 Q. Did you look at anything?
 21 A. I looked at my rebuttal document.
 22 Q. Anything else?
 23 A. I looked at this letter that I had. I have a bunch of
 24 papers that are time sheets, schedules, that kind of thing.
 25 Q. Anything else?

- 1 A. Just miscellaneous documents that I have. I quickly had
 2 to pack all my stuff when I had to leave the building, so
 3 there's no order to anything. I don't necessarily have
 4 anything organized.
 5 Q. That's not my question, ma'am. Did you look at anything
 6 else?
 7 A. Just what was there.
 8 Q. So you said you looked at your rebuttal letter. Is that
 9 the letter you wrote and gave to Jamie Moffitt?
 10 A. Yes.
 11 Q. You blame Chief McDermid for being nonrenewed; right?
 12 A. I wouldn't say solely, no.
 13 Q. Who else do you blame?
 14 A. Well, they were -- her and Chief Tripp made that decision.
 15 Q. Are you angry at Chief McDermid for doing that?
 16 A. No.
 17 Q. Do you think it was justified?
 18 A. No.
 19 Q. But you're not angry?
 20 A. It's been three years. I'm hurt more than I'm angered.
 21 Q. Part of the reason that you were transferred to parking
 22 and then nonrenewed was based on two complaints by Lieutenant
 23 Lebrecht; correct?
 24 A. I didn't make the decision.
 25 Q. Did you receive a written reprimand right before you were

- 1 transferred?
 2 A. Yes.
 3 Q. That came from Chief McDermid; is that correct?
 4 A. Yes.
 5 Q. And in that written reprimand there were two complaints
 6 that were made by Lieutenant Lebrecht; is that correct?
 7 A. Yes.
 8 Q. You were told about that before you were transferred;
 9 isn't that correct?
 10 A. Yes.
 11 Q. And right after you were told about that, you threw a fan
 12 in the office, smashed it. Lieutenant Lebrecht's fan. Do you
 13 remember that?
 14 A. No.
 15 Q. So do you agree with me that part of the reason you were
 16 terminated was because of two complaints Lieutenant Lebrecht
 17 made? Excuse me. Nonrenewed.
 18 MR. JASON KAFOURY: Your Honor, I'll object. She
 19 already answered she doesn't know, and I think --
 20 THE COURT: Overruled.
 21 THE WITNESS: I -- I don't know. I didn't make the
 22 decision.
 23 BY MS. COIT: (Continuing)
 24 Q. Who -- well, are you aware of who did the internal
 25 investigation that led to you ultimately being nonrenewed?

- 1 A. That was Lieutenant Morrow and Assistant Chief McDermid.
 2 Q. Do you also blame Lieutenant Morrow for not being renewed ?
 3 A. No.
 4 Q. Did you agree with any of the findings in that
 5 investigation?
 6 A. Yes.
 7 Q. Which ones?
 8 A. I asked Tyler Maness if he was gay.
 9 Q. Tyler Maness actually complained about that and said he
 10 felt uncomfortable, didn't he?
 11 A. No. They went to him.
 12 Q. Did he tell them he felt uncomfortable?
 13 A. No. They asked him the question, and he feared
 14 retaliation from them if he didn't cooperate.
 15 Q. How do you know that?
 16 A. He told me.
 17 Q. Retaliation from whom?
 18 A. Chief McDermid and Lieutenant Morrow.
 19 Q. One of the other bases for your nonrenewal was this
 20 incident at the baseball game, correct, with your son?
 21 A. Yes.
 22 Q. You were on duty at that time, weren't you?
 23 A. No.
 24 Q. Weren't you in your duty pants? Your shoes?
 25 A. It's what I came to work in.

- 1 Q. You had taken flex time or comp time go to the game?
 2 A. My shoes were also my personal purchase.
 3 Q. Had you taken some sort of comp time after the fact --
 4 A. No.
 5 Q. -- to go to the game?
 6 A. I was splitting my shift.
 7 Q. To go to the game?
 8 A. Yes.
 9 Q. Was it discovered during the course of that internal
 10 affairs investigation that that was a common practice for you?
 11 You actually had season tickets; right?
 12 A. I had season tickets. It wasn't a common practice, no.
 13 Q. Well, it was a sustained finding that you were misusing
 14 your time, wasn't it?
 15 A. That doesn't mean it was correct.
 16 Q. Was the allegation correct that your son had been the one
 17 that was causing the disturbance?
 18 A. No.
 19 Q. Was it your son with you there that day?
 20 A. Yes.
 21 Q. Was your son standing up, looking into the game, standing
 22 on top of the bleachers or the dugout?
 23 A. Never.
 24 Q. He's never done that?
 25 A. No.

1 Q. Is that your son?
 2 A. That was at the end of a game.
 3 Q. Is that your son?
 4 A. Yes, that's my son.
 5 Q. Is he standing on the bleachers?
 6 A. Yes.
 7 Q. Is that taken at the same game?
 8 A. Actually, that's not the bleachers. No.
 9 Q. The dugout. Excuse me.
 10 A. No. That was his very first baseball game.
 11 Q. Isn't it true that this is the -- or the picture that was
 12 on your screensaver at the office the day after you had this
 13 incident at the baseball game?
 14 A. I think it was always my screensaver.
 15 Q. Answer my question, please. Did you put that up the day
 16 after you got in trouble at this baseball game?
 17 A. No.
 18 Q. Why did you put it up?
 19 A. I believe it's been there for a long time.
 20 Q. So, just to be clear, your testimony that your son has
 21 never sat in the front row or stood on top of the dugout at a
 22 baseball game is not true?
 23 A. He's never sat in the front row. That was not during the
 24 game. It was after, when everybody always stands up to cheer
 25 for the team, and he was clapping as they were standing there

1 facing the crowd.
 2 Q. One of the findings in the internal affairs investigation
 3 was that your story on that wasn't credible; is that correct?
 4 A. I don't recall.
 5 Q. One of the findings was there never actually was a man
 6 with another little boy there; isn't that correct?
 7 A. I don't recall.
 8 Q. Do you recall telling Lieutenant Lebrecht, you know,
 9 everybody thinks you're a bitch, but you like to write people
 10 up?
 11 A. No.
 12 Q. You never said that?
 13 A. I don't recall that.
 14 Q. Is it possible you said that to him?
 15 A. Oh, you're saying I said that to him?
 16 Q. Correct.
 17 A. No, I don't recall that.
 18 Q. Is it possible you said that to him?
 19 A. I -- I wouldn't know. I don't recall saying that.
 20 Q. You used the "F word" a lot in the office; right?
 21 A. I don't recall it that way, no.
 22 Q. Do you recall using it more than other officers?
 23 A. No.
 24 Q. Was it part of your common speech?
 25 A. No.

1 Q. Do you recall telling Amanda Hayles that you wouldn't buy
 2 her a new duty vest until she lost her baby weight?
 3 A. No.
 4 Q. You never told her that?
 5 A. No.
 6 Q. Did you ever tell anyone that?
 7 A. No.
 8 Q. Now, the incident we talked about with your husband at the
 9 football game, do you recall that?
 10 A. Yes.
 11 Q. He was charged with a crime, right; resisting arrest? Was
 12 he charged with a crime of resisting arrest?
 13 A. Yes. It's not quite so black and white, but --
 14 Q. Your husband was an Oregon State police officer; correct?
 15 A. He is an Oregon State police officer.
 16 Q. While you were lieutenant at the Department of Public
 17 Safety, were you aware of the policy to trespass people, when
 18 to trespass people from campus?
 19 A. I was aware we trespassed people from campus, yes.
 20 Q. And when were people trespassed? What was the policy?
 21 A. I don't recall what the hard-and-fast policy was. It was
 22 based on circumstances for each different situation, and each
 23 one was taken different.
 24 Q. Would you agree with me that it would fit within that
 25 policy when a person who would come to a game armed with a gun

1 gets in a fight and charged with resisting arrest with the
 2 Eugene Police Department, that that would qualify for trespass?
 3 A. My husband wasn't armed with a gun.
 4 Q. I asked if you would agree with me based on those facts.
 5 A. I wouldn't know any further details of it, so, no, not
 6 necessarily. Especially when they're a police officer. They
 7 are authorized to carry. My husband was not carrying, but a
 8 police officer would be authorized to carry on campus.
 9 Q. You weren't trespassed, were you?
 10 A. No.
 11 Q. That was despite the fact that you had to be restrained by
 12 the police officers?
 13 A. No, I didn't have to be restrained by the police officers.
 14 Q. Who restrained you?
 15 A. Nobody.
 16 Q. Did you get in an altercation with anyone there?
 17 A. No.
 18 Q. Did you yell at anyone?
 19 A. Nope.
 20 Q. The trespass order was limited in time; correct?
 21 A. The trespass was the standard 18 months.
 22 Q. That's limited in time; right?
 23 A. Well, it's not a full duration, yes.
 24 Q. Your husband applied for an exception so he could take
 25 your daughter to campus; is that correct?

1 A. Yeah. Yes.
 2 Q. He was given one; right? Wasn't he? He was given that
 3 waiver?
 4 A. Well, we did apply for an exception. It was an
 5 unreasonable trespass, and so we wrote to the university
 6 president. We never sent it to Chief McDermid. We sent it to
 7 the president, requesting that the whole entirety of the
 8 trespass be removed because he's a state trooper and has
 9 conducted business in support of the University of Oregon.
 10 So we requested the whole thing to be dropped. And
 11 Chief McDermid replied back only granting the ability to take
 12 our daughter who was attending classes during high school. She
 13 had a class that had to be taken in the middle of the day.
 14 Q. And so Chief McDermid granted that exception to the
 15 trespass; correct?
 16 A. Only that exception.
 17 Q. You were never trespassed, were you?
 18 A. No.
 19 Q. So in this internal affairs investigation, you were
 20 actually found to be untruthful; is that correct?
 21 A. I don't recall that, no.
 22 MS. COIT: May I approach?
 23 THE COURT: You may.
 24 BY MS. COIT: (Continuing)
 25 Q. I apologize. This is -- take a look at that document and

1 some way.
 2 Ladies and gentlemen, we'll get a number to this later on.
 3 It may not come into evidence, but something was shown to the
 4 witness -- apparently a letter of reprimand -- to refresh her
 5 recollection.
 6 MS. COIT: It will be Exhibit 409.
 7 THE COURT: 409.
 8 MS. COIT: Defendant's 409.
 9 THE COURT: Defendant's 409. Okay.
 10 MS. COIT: For the record, it's the written reprimand
 11 dated August 24, 2011, to Casey Boyd from Carolyn McDermid.
 12 THE COURT: Okay. Thank you.
 13 BY MS. COIT: (Continuing)
 14 Q. Ms. Boyd, I showed you your written reprimand. Does that
 15 refresh your recollection of whether or not there were findings
 16 of untruthfulness about you in the course of that
 17 investigation?
 18 A. No, there weren't findings of untruthfulness. It doesn't
 19 say that. It says she had concerns. Just because I said what
 20 happened and they talked with somebody else who had a different
 21 version, I was not found to be untruthful. She said she had
 22 concerns. So, no.
 23 Q. Would you agree with her concerns that you were possibly
 24 untruthful in this reprimand?
 25 A. No.

1 see if you recognize that.
 2 A. Yes.
 3 Q. Can you look at the bottom of page 3, please.
 4 A. It says that the writer of this, Chief McDermid, she has
 5 concerns. It doesn't mean I was found with that.
 6 THE COURT: What document are you referring to? What
 7 is the number?
 8 MS. COIT: This is her written reprimand.
 9 THE COURT: But it must have an exhibit number. If
 10 you're showing something to the witness, I need that number.
 11 MS. COIT: It is not an exhibit. I was refreshing
 12 her memory of it.
 13 THE COURT: It's not an exhibit?
 14 MS. COIT: It's not my exhibit.
 15 THE COURT: Just a moment. I need a record of what
 16 the witness is looking at, at least. Is this something that's
 17 refreshing her recollection?
 18 MS. COIT: Yes.
 19 THE COURT: What is it? Is it a letter of reprimand?
 20 MS. COIT: It's her written letter of reprimand.
 21 THE COURT: Isn't that Exhibit 119? Or is that the
 22 response to the --
 23 MR. JASON KAFOURY: That's the response, Your Honor.
 24 THE COURT: What exhibit number will this have? It
 25 may not be received by the Court, but I want it referenced in

1 Q. It also called into question your credibility and your
 2 integrity; is that correct?
 3 A. I don't remember word for word what it says.
 4 Q. Let's talk about that monster truck rally that you went to
 5 that we talked about earlier. That was also part of your
 6 written reprimand?
 7 A. Yes.
 8 Q. Do you recall telling the person selling the shirts that
 9 if you didn't get them two for \$20, you were going to refer him
 10 for illegally selling to the DPS officer standing nearby?
 11 A. No.
 12 Q. So you don't recall telling him that?
 13 A. No.
 14 Q. Do you agree that in the course of the investigation into
 15 that allegation, it was determined that you had told him that?
 16 A. No.
 17 Q. You don't agree with that?
 18 A. That it was determined? No. Because that's not what I
 19 said.
 20 Q. The incident when you sent Mr. Brathwaite and another
 21 officer, unarmed DP officers, to respond to an armed incident,
 22 do you recall that one?
 23 A. Yes. With Cole Parker.
 24 Q. Did that allegation call into question your abilities as a
 25 lieutenant?

1 A. No.
 2 Q. Your professional judgment?
 3 A. It questioned my officer safety judgment.
 4 Q. Did you agree with the allegation that that was unsafe to
 5 send unarmed officers to an armed call?
 6 A. I didn't send them to the call. I was requesting that
 7 they go to a position of observation that was at a safe
 8 distance to provide greater safety to the officers who were all
 9 standing and smoking their cigarettes while they were ready to
 10 go out to their cars.
 11 Q. Well, Officer Brathwaite actually had to fight with you
 12 about that, didn't he?
 13 A. No.
 14 Q. He actually had to disobey an order, didn't he?
 15 A. No, he didn't fight with me.
 16 Q. He had to disobey your order?
 17 A. He was starting to, and the call was dissipated in the
 18 middle of our conversation.
 19 Q. Did Officer Brathwaite get in trouble for disobeying
 20 your order?
 21 A. No. The situation was over at the point that the -- the
 22 call with the Eugene department. I don't recall how the
 23 resolution ended.
 24 Q. Sitting here today, do you think that was a good idea, as
 25 their lieutenant, to have them do that?

1 A. To go and post up at the position of observation for
 2 safety? Yes.
 3 Q. Now, that allegation was also sustained; is that correct?
 4 A. I don't recall.
 5 Q. Do you recall there being a finding that you forced the
 6 officers to wisely disobey your order?
 7 A. That -- please repeat.
 8 Q. Do you recall the finding being that you forced the
 9 officers to wisely disobey your order?
 10 A. I -- that may be what the letter says. I don't remember
 11 verbatim.
 12 Q. Now, that -- that issue where we talked about with your
 13 son standing up at the baseball game, Lieutenant Lebrecht is
 14 the one that reported that issue, isn't he?
 15 A. I don't know. I assumed it was one of the officers
 16 working that day. They probably reported it to him, but I
 17 don't have that information.
 18 Q. Were those the officers you said that probably didn't like
 19 you?
 20 A. I don't know if they didn't like me. They didn't like
 21 that they were probably some of the officers that were the less
 22 competent officers.
 23 Q. You felt they were less competent? Is that what you're
 24 saying?
 25 A. Than others, yes.

1 Q. So for that reason, you thought that they would be the
 2 ones to report you?
 3 A. No.
 4 Q. I don't understand, then. Why did you think that them
 5 being less competent --
 6 A. You were saying that they didn't like me, and I was
 7 correcting you, that it -- I didn't think it was about whether
 8 they liked me or not. I didn't know that was an issue.
 9 Q. Are you aware that you had quite a reputation for being a
 10 bully and retaliatory at the department?
 11 A. No.
 12 Q. You're not aware of that sitting here today?
 13 A. Well, I've since been told, yes. Today -- or yesterday.
 14 Q. You were told yesterday?
 15 A. Yes.
 16 Q. Who told you that?
 17 A. I don't remember. Somebody was telling me that people
 18 kind of aren't happy with me.
 19 Q. You don't remember who told you yesterday that you had a
 20 reputation for being a bully in the department?
 21 A. No.
 22 Q. In this baseball game incident, in the course of that
 23 investigation, you actually admitted that you had the season
 24 tickets and often took comp time or changed your schedule to go
 25 to the games; correct?

1 A. No.
 2 MR. JASON KAFOURY: That was exhibit --
 3 MS. COIT: This is 408. This is the same exhibit,
 4 Your Honor. I'll use it to refresh your memory.
 5 THE COURT: 408. Just a moment. 408, you say, is
 6 the same exhibit as what?
 7 MS. COIT: The one I just used.
 8 THE COURT: I'm sorry.
 9 Christy, is that microphone off? I can barely hear her.
 10 DEPUTY COURTROOM CLERK: It should be on.
 11 THE COURT: Counsel, I can't hear you.
 12 DEPUTY COURTROOM CLERK: Counsel, Exhibit 409?
 13 MS. COIT: Yes. 409. Excuse me. It's the one I
 14 just used to refresh her memory.
 15 MR. JASON KAFOURY: We'd like to get a copy of this
 16 before it's being used for this witness or see the document.
 17 THE COURT: Don't you have a copy of the reprimand?
 18 MR. JASON KAFOURY: No. This is different. This
 19 is -- I don't have a copy of Casey Boyd's letter. I only have
 20 the rebuttal letter.
 21 THE COURT: Is 409 the actual reprimand handed down
 22 to Lieutenant Boyd?
 23 MS. COIT: Yes.
 24 THE COURT: Well, in all of the discovery that we've
 25 had, you don't have a copy?

1 MR. JASON KAFOURY: I -- I don't think I've ever been
 2 provided that, no.
 3 THE COURT: Counsel, I don't know if that's factual
 4 or not.
 5 MR. JASON KAFOURY: If it hasn't been produced, I
 6 don't think you can use it.
 7 MS. COIT: I don't know if it's been produced. I
 8 just wanted to use it to refresh her memory.
 9 THE COURT: Was it requested? I can't imagine that a
 10 letter of reprimand comes as any surprise. Obviously, it has
 11 to exist. The question is if counsel is prepared or received
 12 it, and I won't get into the machinations right now if you
 13 requested it or if it wasn't given or if it wasn't requested
 14 and there was no duty to give it.
 15 But somehow we have to get that information to both of
 16 you, even at this late date. How are we going to resolve that?
 17 MR. JASON KAFOURY: How many more questions do you
 18 have that relate to it?
 19 THE COURT: Well, why don't you two have a private
 20 conversation? I don't think we have to do this in front of the
 21 jury.
 22 Ladies and gentlemen, would you excuse us for a moment? I
 23 want to apologize to you. I'll have a discussion with both
 24 counsel for just a moment. It will go more smoothly.
 25 DEPUTY COURTROOM CLERK: I'll come get you in five or

1 10 minutes at the most.
 2 (Jury not present.)
 3 THE COURT: Have a seat, Counsel. I say this with a
 4 smile on my face. I'm constantly amazed. Over the last year
 5 and a half, or so, of discovery, that either a letter of
 6 reprimand was not requested as part of the discovery or it
 7 wasn't produced by the defense. I could get into this in terms
 8 of who's at fault, but it's holding up the trial and a lot of
 9 taxpayer money.
 10 How are we going to resolve this quickly? You certainly
 11 need to be prepared if you haven't received it; but if you
 12 didn't request it, then the fault lies with you. But if you
 13 did request it and it wasn't turned over, the fault lies with
 14 the defense.
 15 MS. COIT: Your Honor, we turned over --
 16 THE COURT: We have to get this trial on the road
 17 here, but we can sit up here for a month here in Oregon. It's
 18 a very nice place.
 19 MR. JASON KAFOURY: I'll have to look at the record.
 20 I believe we asked for some time period of all letters of
 21 discipline.
 22 THE COURT: We can do that later on. Go through the,
 23 you know, fault-finding, but the important thing is that we get
 24 the jury back in session, and I don't want to deter your
 25 cross-examination. So why don't you just hand him the copy of

1 the reprimand for a moment, and why don't you read that.
 2 Now, also, Counsel, during the recess the record should
 3 reflect you asked if you could speak to your -- to this
 4 witness. I was a little unclear about who this witness was
 5 testifying for. Just because you called her, didn't mean she
 6 was necessarily adverse. But if you want to speak to her and
 7 you want to show her some document outside the presence of the
 8 jury, the more I think about it, I'm not going to preclude you.
 9 MR. JASON KAFOURY: Okay.
 10 THE COURT: But you're going to be subject to
 11 vigorous examination. Because I think you're right. I don't
 12 know of any rule that says you can't speak to any witness that
 13 you call as your own, but I will forewarn you that the
 14 witnesses aren't supposed to speak to each other. But there's
 15 no preclusion against speaking to an attorney, especially a
 16 sponsoring attorney.
 17 MR. JASON KAFOURY: Okay.
 18 THE COURT: Which you tend to appear to be. So if
 19 you want to speak to her, I'm going to let you do that.
 20 Counsel is aware of that.
 21 Counsel, for discovery purposes -- I don't want to get
 22 into the issue too deeply right now -- but was there a request
 23 made, do you know, or -- or was no request made and this simply
 24 was --
 25 MS. COIT: Your Honor, there's been six requests for

1 production. We've turned over tens of thousands of documents.
 2 If this was requested, it would have been turned over. I'm
 3 absolutely certain of that.
 4 MR. JASON KAFOURY: I believe I asked for all letters
 5 of discipline in relation to the department for some period of
 6 time.
 7 THE COURT: But you two are extraordinarily bright on
 8 both sides, and I can't imagine each of you not being aware
 9 that there was a letter of reprimand.
 10 MS. COIT: Well, the rebuttal letter that she wrote
 11 is in direct rebuttal of this letter of reprimand, so --
 12 THE COURT: So we have to know that there's a letter
 13 of reprimand.
 14 MS. COIT: And counsel put in the rebuttal letter, so
 15 I honestly -- I did not -- I was not aware he did not have this
 16 document, and I apologize for that.
 17 THE COURT: That doesn't mean he did or didn't. I
 18 don't know.
 19 MR. JASON KAFOURY: I -- I'm not going to get into
 20 the document discovery, but it was a long arduous process to
 21 get what we wanted.
 22 THE COURT: In other words, they were stonewalling
 23 you?
 24 MR. JASON KAFOURY: That's mine --
 25 MS. COIT: For the record, I disagree. I don't need

1 to use this actual document if it's a problem.
 2 THE COURT: Well, you're entitled to it, but if that
 3 document comes in, the rebuttal comes in to complete it.
 4 MR. JASON KAFOURY: I don't want to take up more
 5 time. We have a lot of people from out of town, so I think we
 6 should just -- if you're not going to ask questions directly
 7 out of the document, let's just move on.
 8 THE COURT: Well, you're not bargaining with each
 9 other. She may decide to have the document received. But if
 10 so, I'll let in the rebuttal document.
 11 MS. COIT: That's fine. Yeah, I'm going to offer it.
 12 MR. JASON KAFOURY: You're going to offer this?
 13 MS. COIT: Yes.
 14 MR. JASON KAFOURY: Fine. I'll offer the rebuttal.
 15 THE COURT: Counsel, I'll receive both. So I will
 16 receive 409 and receive 119.
 17 MR. JASON KAFOURY: Can I ask one question about this
 18 document? There's some handwriting at the top. I'm assuming
 19 that's the original handwriting from Casey Boyd?
 20 MS. COIT: That is, and I need to make copies of
 21 that --
 22 MR. JASON KAFOURY: Okay.
 23 MS. COIT: -- for you.
 24 MR. JASON KAFOURY: Okay. So I --
 25 MS. COIT: I'll get it after. You can have it while

1 I question.
 2 THE COURT: Christy, maybe we can do that and speed
 3 the process. Why don't we make a copy right now, otherwise you
 4 have to go back to your office.
 5 MR. JASON KAFOURY: We also have a scanner here. We
 6 can scan stuff. We're very high-tech.
 7 THE COURT: We can do it.
 8 Counsel, Christy was kind enough to show me a newspaper
 9 article over the recess. I want you to be aware of this. And
 10 in most of the trials, I -- in many of the trials I preside
 11 over, there's a lot of notoriety, a jam-packed courtroom. Here
 12 I moved it to Portland, hoping to at least delay some of that.
 13 Apparently, there's a *Register-Guard*. Christy was kind enough
 14 to educate me that that is a Eugene paper, which means that the
 15 jury here is shielded from the article in the Eugene paper,
 16 but, trust me, the press moves towards the center of gravity,
 17 and once this is picked up in the Eugene paper, it will make
 18 its way into *The Oregonian*, which I'm aware of, since I grew up
 19 here, and read it, and still do.
 20 So at the end of the day, will one of you remind me to
 21 counsel the jury now not to refer to newspaper articles or, if
 22 they recognize anything about the case, to just set it aside on
 23 the initial recognition. I delayed that thus far, because I
 24 hoped not to get any press, but having had this come to me
 25 today from the Eugene paper, I can just assume that *The*

1 *Oregonian* is going to pick this up.
 2 But has *The Oregonian* picked up any articles about this
 3 case in the past?
 4 MS. COIT: Yes.
 5 THE COURT: Well, then it's going to follow almost
 6 immediately. It will be in tomorrow's paper or by Monday.
 7 What I require my counsel to do and what I'm going to
 8 require each of you to do is any time you're aware of a
 9 newspaper article, besides Christy, who's my clerk, I want you
 10 to bring it to court and to quietly give it to me at the
 11 beginning or at the end of each day's session. The reason for
 12 this is as follows: Sometimes a juror, an individual juror,
 13 will disobey a Court's admonition. They will pick up a
 14 newspaper article, but they haven't spread that information to
 15 others, and you hear a conversation between two jurors, and we
 16 bring them out of the presence of the jury, and, quite frankly,
 17 the other jurors aren't aware of it, and it's in a way, in a
 18 sense, that the prejudice hasn't spread, and, therefore, a new
 19 trial is not required.
 20 Oftentimes, courts just assume that there's jury-wide
 21 prejudice. Oftentimes, we can literally save a case, that's a
 22 lengthy case, just by making an inquiry or two.
 23 So if you're aware of a newspaper article, just give it to
 24 Christy. I don't need to read it, but I want to collect them
 25 so I know what they are reading if they're disobeying my

1 admonition.
 2 MS. COIT: Can I also ask that you to broaden that to
 3 and urge them not to read anything on the Internet about this?
 4 THE COURT: Yes. And radio, apparently.
 5 Now, in Eugene, apparently this would be big news and you
 6 might have even more coverage than the local paper, but I don't
 7 know how that translates to Portland. I just assume that
 8 *The Oregonian* is going to write some article.
 9 All right. Christy, would you be kind enough to bring the
 10 jury in?
 11 (Jury present.)
 12 THE COURT: Thank you, ladies and gentlemen. Outside
 13 your presence, I want you to know I received two documents that
 14 may save a lot of time.
 15 The first document I received is what's been referred to
 16 as the letter of reprimand to Lieutenant Boyd. Casey. That's
 17 been marked for identification in your presence a few moments
 18 ago as Exhibit 409.
 19 I've also received, outside your presence, but now note
 20 for you, her rebuttal, which is Exhibit 119. So both of those
 21 are in evidence now, and that will give you a fairly clear
 22 picture of what the reprimand was and what the response was
 23 close in time of these proceedings.
 24 All right. Counsel, if you would like to continue your
 25 cross-examination, please.

1 MS. COIT: Thank you.
 2 BY MS. COIT: (Continuing)
 3 Q. Okay. Did you have a meeting with Chief McDermid where
 4 you were given the letter of reprimand?
 5 A. Yes.
 6 Q. Did you discuss it with her?
 7 A. Briefly. Because I didn't read it.
 8 Q. Who else was there?
 9 A. Chief Tripp.
 10 Q. Who did the talking? Chief McDermid or Chief Tripp?
 11 A. I don't recall.
 12 Q. Do you recall the conclusion of that meeting being you
 13 were told that you were going to be transferred -- or demoted,
 14 excuse me, to a sergeant and reporting to Lieutenant Lebrecht ?
 15 A. That was an option that -- that I could take. It was in
 16 there, I believe.
 17 Q. And that was going to be immediate; correct?
 18 A. I assume so.
 19 Q. Were you also told that your contract was not going to be
 20 renewed the next year?
 21 A. No.
 22 Q. At some point did you learn that?
 23 A. That was a whole different conversation later after I
 24 spoke with Linda King.
 25 Q. So did you choose the option of demoting to sergeant and

1 staying in the department?
 2 A. The decision was taken away from me.
 3 Q. By whom?
 4 A. I don't know who made the decision. I just know that when
 5 the two options were in the letter or whatever the option was
 6 to work for Lieutenant Lebrecht, I hadn't even read the letter
 7 fully, because it was -- it was more than a page, and so that's
 8 why I notated that I received it but didn't read it.
 9 And so I wanted to talk with Linda King about what my
 10 options were, because I immediately knew working for
 11 Lieutenant Lebrecht probably wouldn't be a good -- good thing .
 12 Q. Because you were angry at him at that point; correct?
 13 A. No.
 14 Q. You weren't angry with Lieutenant Lebrecht?
 15 A. No.
 16 Q. So what option did you choose?
 17 A. I didn't. I talked with Linda King, and then she made a
 18 call to Chief Tripp and Chief McDermid, and I was then notified
 19 that I was being immediately reassigned to parking and
 20 transportation and then my contract wouldn't be renewed.
 21 Q. Do you know whose decision that was?
 22 A. No.
 23 Q. So the date of this letter is August 24, 2011. Do you
 24 recall the date that you were reassigned to parking?
 25 A. I don't recall exact date, no.

1 Q. Do you recall it being September of 2011?
 2 A. I'm sure it's within a week plus or minus of that date.
 3 Q. And do you agree with me that once you were reassigned to
 4 parking, you were moved out of that Department of Public Safety
 5 building, the east building, moved to the west building, and
 6 you never came back to that department; correct?
 7 A. It's all the same department that works underneath
 8 Chief Tripp and Chief McDermid.
 9 Q. You never came back to that building?
 10 A. I think I did.
 11 Q. When?
 12 A. As part of my regular duties. I think there was -- the
 13 fingerprint -- I can't say never, because it was still part of
 14 the same department. Our -- our personnel, our administrative
 15 people, are there for the department.
 16 Q. Sitting here today, do you remember one time that you went
 17 back to that building after you were reassigned to the parking
 18 department?
 19 A. I don't recall a specific one.
 20 Q. Have you -- so you said you reviewed your rebuttal letter
 21 prior to your testimony; correct?
 22 A. I just saw it, yes. I didn't read it verbatim.
 23 Q. And that rebuttal letter is in response to the reprimand
 24 we just talked about; is that correct?
 25 A. Yes.

1 Q. Do you recall stating in that rebuttal letter that you
 2 refused to work under Lieutenant Lebrecht, and that's why you
 3 didn't demote to sergeant?
 4 A. That's why I wouldn't choose that option.
 5 Q. So your statement that the option was taken away from you
 6 is not true. Is that correct?
 7 A. No, that's true.
 8 Q. Since leaving the Department of Public Safety, have you
 9 had any jobs in law enforcement or public safety?
 10 A. No.
 11 Q. Never worked as a police officer again?
 12 A. No.
 13 Q. Did you ever go to the police academy?
 14 A. Yes.
 15 Q. When did you graduate?
 16 A. In 2000.
 17 Q. Was that through DPSST?
 18 A. No. It was the larger. It's the federal police academy,
 19 and it's the Federal Law Enforcement Training Center in
 20 Glencoe, Georgia. It's a much more intensive police academy.
 21 We were given certification through the Department of Public --
 22 DPSST.
 23 Q. So that program was recognized by DPSST?
 24 A. Yes. It's for all the greater federal agencies. FBI,
 25 police, and ATF, they all go there.

1 Q. So it's your testimony that the FBI training, the federal
 2 training, is more intensive, a better training program than the
 3 Oregon DPSST?
 4 A. I didn't say better. I just said more intensive. It's a
 5 longer academy.
 6 Q. Now, you also talked about when Mr. Cleavenger was
 7 applying for the job and you said that Chief Tripp had met him
 8 at this reserve academy. Do you recall testifying about that?
 9 A. Yes.
 10 Q. And I think you said that it was an eight-month
 11 intensive -- seven-month intensive reserve academy?
 12 A. I don't recall saying the time frame, because I don't
 13 know. I didn't go through the academy, so I don't remember how
 14 long it was.
 15 Q. Well, I wrote it down.
 16 A. Okay.
 17 Q. You said this was a seven-month, seven-days-a-week
 18 training program. Do you recall saying that?
 19 A. No, I didn't say seven days a week. I think counsel might
 20 have said something about that they saw him daily or -- daily.
 21 I don't remember saying seven days a week, no.
 22 Q. Do you agree with me that that program was actually a
 23 two-day-a-week part-time program?
 24 A. I knew that it was so many days a week. I wasn't going to
 25 be rude and correct him. I understood what his point was ; that

1 it was a regular academy.
 2 Q. So in your direct exam, if counsel asked you a question
 3 that wasn't quite correct, you just didn't want to be rude and
 4 you would agree with him?
 5 A. No, that's not accurate.
 6 Q. Isn't that what you just said?
 7 A. No.
 8 Q. Were there any other questions counsel asked you that you
 9 didn't want to correct him on?
 10 A. No.
 11 Q. So in the letter of reprimand we looked at, was there
 12 anything in there that you agreed with that you had done wrong?
 13 A. In the letter of reprimand, yes. I said I had asked
 14 Tyler Maness if he was gay. I asked that question.
 15 Q. You were also found to have asked him that question and
 16 went and told his response to all the officers. That was the
 17 problem, wasn't it?
 18 A. No.
 19 Q. Did you go tell his response to all the other officers?
 20 A. No. I told Lieutenant Lebrecht that evening, and I
 21 believe I talked with my sergeant about it, because the point
 22 being that he was being teased and harassed, and I wanted that
 23 behavior to stop, because no other supervisors had made that
 24 happen.
 25 Q. Who's Jennifer Parker?

1 A. She's a former officer at DPS.
 2 Q. Did you recommend that Ms. Parker not make it out of her
 3 probationary period?
 4 A. Yes.
 5 Q. Why was that?
 6 A. I had received numerous complaints from the sergeants
 7 working for me at the time about her performance, about her
 8 conduct. And so, with those, then I sent a message, I believe
 9 an email, to -- at the time I believe it was Deputy Chief
 10 McDermed. I don't know if it was cc'd to Chief Tripp on it,
 11 but I sent it to McDermed with that information.
 12 And she, I believe, replied back that, you know, just make
 13 sure we had the documentation. We had several conversation s
 14 about this, as well. And so I asked the sergeants to document
 15 to me why, and they did.
 16 Q. Do you agree that it was your recommendation not to allow
 17 her to come out of the probationary period, to terminate her
 18 employment?
 19 A. Officially. I wrote the official to the chief.
 20 Q. Was that your recommendation?
 21 A. Sure. After she had been complained about by my sergeants
 22 who directly supervise her.
 23 Q. Scott Cameron was under your direct supervision; is that
 24 correct?
 25 A. Yes.

1 Q. For what period of time?
 2 A. Well, from when I started in 2009. And when the other
 3 lieutenants were hired, I don't recall if it -- for a period of
 4 time if he was at another shift than I was, so probably most of
 5 the time, but I don't remember if Lieutenant Lebrecht had him
 6 on one of his shifts before I left.
 7 Q. Did you ever take disciplinary action against
 8 Sergeant Cameron?
 9 A. I -- I don't recall. I don't -- I don't recall if I did.
 10 Q. Had you -- would that have been your job as his
 11 lieutenant, his supervisor, to take disciplinary action against
 12 him if that was called for?
 13 A. Yes. Disciplinary action would have been a very adverse
 14 action that I would have had to seek permission from
 15 Chief McDermed for. I don't -- I don't recall if there was a
 16 circumstance.
 17 Q. But you agree with me that if discipline was warranted for
 18 Sergeant Cameron, it would have been your job to either take or
 19 recommend discipline for him. And sitting here today, you
 20 don't recall any?
 21 A. Well, that was a two-part question. I don't think that
 22 actually because I was a sergeant it would have been my sole
 23 responsibility; that that could have just come from
 24 Chief McDermed. And, no, I don't recall administering any
 25 discipline.

- 1 Q. Were you a good supervisor?
- 2 A. Yes.
- 3 Q. Were you hands-on?
- 4 A. I was a good supervisor.
- 5 Q. Were you aware of what was going on with the people you
- 6 were supervising?
- 7 A. As much as I could be when I couldn't be on all three
- 8 shifts, 24 hours a day, at all times.
- 9 Q. Does that include Sergeant Cameron? You were a good
- 10 supervisor for him?
- 11 A. I didn't try to individually be a better supervisor to one
- 12 or the other. I just tried very hard to be a good supervisor.
- 13 Q. As a lieutenant, you would appear with other lieutenant s;
- 14 correct? Lieutenant Lebrecht and Lieutenant Morrow?
- 15 A. Lieutenant Morrow was professional standards , so he was
- 16 actually at a different capacity. I wouldn't say I'm his peer,
- 17 because clearly he was able to investigate me.
- 18 Q. On the chain of command, are lieutenants on the same
- 19 level?
- 20 A. If they're a standard patrol lieutenant, yes.
- 21 Q. You weren't a member of the union?
- 22 A. No.
- 23 Q. So you weren't subject to the collective bargaining
- 24 agreement requirement for annual evaluations?
- 25 A. I believe that the university policy says its employees

- 1 get performance evaluations, but I wasn't a member of the
- 2 union.
- 3 Q. What policy do you think says that?
- 4 A. Well, I'm assuming that the University of Oregon probably
- 5 has a policy for providing performance evaluations for its
- 6 employees.
- 7 Q. For lieutenants?
- 8 A. I was just an employee, as anybody else in the university .
- 9 Q. Have you ever seen this policy?
- 10 A. I don't recall, no.
- 11 Q. Do you know who Amanda Hayles is?
- 12 A. No.
- 13 Q. Amanda Williams?
- 14 A. Yes.
- 15 Q. Okay. And that was her former name. She's gotten married
- 16 since then and is now Amanda Hayles.
- 17 A. Okay.
- 18 Q. Who was she -- is she?
- 19 A. She's an employee at the UOPD.
- 20 Q. Did you ever supervise Ms. Hayles?
- 21 A. Yes.
- 22 Q. And did she pose any problems for you as an employee?
- 23 A. No.
- 24 Q. No?
- 25 A. No.

- 1 Q. Didn't Ms. Hayles file a BOLI complaint against you?
- 2 A. I didn't realize it was just to me. I wouldn't call it a
- 3 problem. That's something she can do, but it didn't change my
- 4 performance. And, in fact, I don't even think I received
- 5 information about that until the end of my time there.
- 6 Q. What were the allegations against you in that BOLI
- 7 complaint?
- 8 A. I don't recall the specifics because I know that
- 9 Scott Cameron and Andy Johnson -- and there were others in it,
- 10 so I've only seen the document one time. I don't recall the
- 11 specifics.
- 12 Q. Ms. Boyd, have you been a defendant in a BOLI complaint
- 13 several times?
- 14 A. Well, I don't know what level Amanda took hers to.
- 15 Ms. Williams -- sorry, I don't know her last name. I don't
- 16 know what capacity, because I was kept in the dark about that,
- 17 but prior to that there was one other one.
- 18 Q. Who filed that?
- 19 A. Jennifer Parker.
- 20 Q. What was that based on?
- 21 A. Sergeant Cameron grabbed her arm in dealing with another
- 22 officer.
- 23 Q. What were the allegations against you?
- 24 A. I was his supervisor. I don't remember the specifics of
- 25 that. That was some time ago.

- 1 Q. So sitting here today, you don't recall the specifics of
- 2 two BOLI complaints that were filed against you in the course
- 3 of your professional career with DPS?
- 4 A. One of them I -- they didn't communicate with me about the
- 5 specifics, and then I was in parking and transportation when
- 6 all of that proceeded. All I knew, when that one resolved, is
- 7 she got a suite at the football stadium for a football game and
- 8 a day off. That's all I knew of how that worked out.
- 9 Q. It's your testimony no one ever showed you that BOLI
- 10 complaint?
- 11 A. No, that's not my testimony. I said I did see the
- 12 document. The initial one. I didn't see additional documents
- 13 until -- I believe there was other documents that transpired
- 14 through the process that they didn't discuss with me.
- 15 Q. Okay. So my question just goes to that first document
- 16 that you saw. What were the allegations against you?
- 17 A. I don't recall what they specifically were.
- 18 Q. You don't recall it having anything to do with you telling
- 19 her you wouldn't buy her a duty vest until she lost weight?
- 20 A. I knew that that was something stated in the document. I
- 21 didn't know that it was an actual allegation.
- 22 Q. Did you make that statement to her?
- 23 A. No.
- 24 Q. Did you make it to anyone?
- 25 A. No.

1 Q. She just made that up?

2 A. Yes.

3 The context of that conversation was that I was ordering

4 uniforms, as I did for everybody, and I asked her what she

5 would like to do for getting her uniforms, and she wanted to

6 work hard at getting back down to where she was before she was

7 pregnant, and I told her that we could divide up the amount of

8 uniforms, and she said that she wanted to wait, because

9 currently, at that time, she was having to wear men's uniforms,

10 because that's all that she fit in, and she was hoping to get

11 back into other uniforms. And I told her to let me know when

12 she was ready to order more and I would do those -- do that.

13 Q. And so it's your understanding, based on that conversation

14 you say you had with her, she filed a BOLI complaint against

15 you?

16 A. I assumed it was -- there was a lot more to it than that.

17 Q. You were also investigated for attacking a female parking

18 attendant. Do you recall that?

19 A. I know that there was a De Paul security person that

20 worked there that had said that. I don't think it turned into

21 an investigation, and actually it didn't -- it didn't quite go

22 that way, but --

23 Q. But you know what I'm talking about; right?

24 A. Yes.

25 Q. A female parking attendant that works for Crowd Management

1 Services accused you of attacking her. Do you recall that?

2 A. Yes. And then we pulled up the video footage and can show

3 that that never happened and that employee was immediately

4 terminated from De Paul security after saying those things.

5 Q. Are you sure about that?

6 A. Well, that's what I was told.

7 Q. Who told you that?

8 A. De Paul security.

9 Q. That she was immediately terminated for making those

10 complaints?

11 A. That she was going to be terminated and she was

12 immediately removed from the U of O. She never returned.

13 Q. Tell me about the naked photo you pulled up on your

14 computer and showed to other officers.

15 A. It wasn't a naked photo, and it wasn't on my computer. We

16 were at a football game. I think it was the spring game. And

17 there was a professional photographer there, and he had taken

18 several photos of our officers, some really good ones, and we

19 had been working hard on our websites trying to put up photos.

20 And I talked with him about it, and he had given me his card.

21 He said, "I'll be posting them soon, and you can get all the

22 photos."

23 So, as I go to his website, it was a complex website, many

24 tabs going around to try to find photos, because he's

25 photographed several events at the University of Oregon, and

1 amongst looking through the photos of finding the ones of the

2 officers, there was one of Amelie Rousseau, and she was at an

3 event where she was topless, and there was -- she -- I don't

4 remember her position, president. And I showed that to another

5 officer and asked, "Is this not Amelie Rousseau?"

6 Q. Michael Matchulat, do you know who that is?

7 A. Yes.

8 Q. He made a complaint against you for that. He thought it

9 was very inappropriate. Is that your understanding?

10 A. No.

11 Q. You called him into the office and said, "Hey, look at

12 this photo"; is that correct?

13 A. It could have been. I don't recall which officer I was

14 asking. I didn't say, "Hey, look at this." I said, "Who is

15 this," because I thought it was Amelie Rousseau.

16 Q. Did you show that photo to several other officers there

17 that day?

18 A. No, I believe that was the one time that I was asking

19 another officer who that was. I didn't remember if it was

20 Michael Matchulat.

21 Q. So it's your testimony that you showed that photo to one

22 officer. Michael Matchulat. Is that your memory?

23 A. I was showing it to an officer. There were other people

24 in the room. It was in the squad room at one of the computers.

25 Q. How about Royce Myers? Was he there?

1 A. I don't recall.

2 Q. How about Andy Johnson?

3 A. I don't recall specifically who was in the room.

4 Q. Did you call them all over and say, "Hey, look at this"?

5 A. No.

6 Q. Do you think that's appropriate to do?

7 A. Probably not. I didn't call them all over to look.

8 Q. Let's say, if you did, would that have been appropriate?

9 A. It wasn't about looking at a naked woman. It was

10 identifying that it was Amelie Rousseau, and she was completely

11 painted, head to toe, and she had clothing from the waist down.

12 Q. So her clothing on top was paint?

13 A. Yes.

14 Q. And why was it important to determine who the photo of the

15 naked woman was?

16 A. There was some -- there was something happening at the

17 current time with Amelie Rousseau, who was adamantly opposed to

18 our department, and there was something -- I don't recall

19 exactly what it was, but there was something she was opposing

20 about our officers and it seemed very hypocritical of her in

21 that environment that she was in, so that's why I asked the

22 question.

23 Q. So it was your intent to have them realize that it was

24 this person opposing your department who was posing naked on

25 the Internet. Is that your testimony?

1 A. No. My -- my intent was to ask if that was her.
 2 Q. Why did it matter to you?
 3 A. Well, I was curious if that was Amelie Rousseau.
 4 Q. As a lieutenant, supervising all of these officers, do you
 5 think that was an appropriate thing to do, as a woman?
 6 A. As a woman? Well, I wouldn't think whether it was male or
 7 female it would be different. My intent wasn't to harm anybody
 8 or to make problems. I was merely asking who it was.
 9 Q. So is your answer to my question you didn't think there
 10 was anything wrong with it?
 11 A. No, that's not my testimony.
 12 Q. What's your testimony?
 13 A. You're taking out of context of what my intent was asking
 14 about the photo. It's not about showing something that you're
 15 assuming was a naked photo. That wasn't the intent. I was
 16 just merely asking if it was a specific person.
 17 Q. I'm not asking for your intent. I'm asking as a
 18 lieutenant in the Department of Public Safety, supervising all
 19 these officers, do you think that was an appropriate thing to
 20 do?
 21 A. Probably not.
 22 Q. Do you think that was deserving of discipline?
 23 A. No.
 24 Q. Had a male officer done that and showed it, would you have
 25 disciplined him?

1 A. We deal with that all the time. There's -- whether it's
 2 country fair photos or photos when we have to look up student
 3 information on social media or dealing with university students
 4 when they're intoxicated, we deal with nudity all the time.
 5 Q. So it's your testimony now it was job-related?
 6 A. Yes. I was actually asking who she was.
 7 Q. Would you agree with me that when you were hired as a
 8 lieutenant at the University of Oregon, you did not have the
 9 qualifications to take that position?
 10 A. No.
 11 Q. What were your qualifications to become a lieutenant?
 12 A. Whatever they were outlined in the --
 13 Q. What was your experience that qualified you, in your mind,
 14 to have the role of lieutenant?
 15 A. That I had the -- the adequate police experience. I have
 16 the adequate supervisory experience. I -- I met all the
 17 criteria in the job application.
 18 Q. Did you feel a little out of your league when you got
 19 there?
 20 A. No.
 21 Q. Isn't it true Doug Tripp told you he was hiring you as a
 22 lieutenant because he needed more females in the department?
 23 A. I don't recall that.
 24 Q. You don't recall him telling you that?
 25 A. No.

1 Q. Do you recall anyone telling you that?
 2 A. No.
 3 Q. Didn't your law enforcement experience, prior to becoming
 4 lieutenant, wasn't that basically being a BiMart security
 5 guard?
 6 A. No.
 7 Q. Was your work at BiMart prior to working at the University
 8 of Oregon?
 9 A. Yes. While I was waiting for the job to not be frozen,
 10 somebody offered me a job there, and I said yes.
 11 Q. How long were you a security guard at BiMart?
 12 A. I was not a security guard. I was in loss prevention.
 13 And not even a year, I think. It was until this job opened up
 14 and then I reapplied for what then was the second lieutenant
 15 position.
 16 Q. When you were at the department, did you feel there was a
 17 culture of harassment or discrimination against women?
 18 A. Yes. I believe that came from the top.
 19 Q. The top. Who was at the top?
 20 A. Well, the top of our department is Chief Tripp -- at the
 21 time.
 22 Q. Do you feel you contributed to that culture?
 23 A. No.
 24 Q. Have you ever gotten angry at working, physically angry?
 25 A. No.

1 Q. How about going to or from a training in a car maybe with
 2 Lieutenant Lebrecht. Does that ring any bells?
 3 A. No.
 4 Q. Do you recall going through a drive-through window --
 5 excuse me, going through a drive-through with
 6 Lieutenant Lebrecht?
 7 MR. JASON KAFOURY: Your Honor, I'll object. I think
 8 she's got into a whole bunch of character evidence in relation
 9 to this witness. That's getting a little far afield.
 10 THE COURT: Counsel?
 11 MS. COIT: She has testified that all of the actions
 12 that she took with regard to other employees were done at the
 13 direction of Chief McDermid and Chief Tripp; that she had
 14 nothing to do with it; that she is not a vindictive,
 15 retaliatory person. The instances show that that character she
 16 is explaining is not the character she displayed at the
 17 department.
 18 THE COURT: Overruled. You can ask the question.
 19 BY MS. COIT: (Continuing)
 20 Q. Do you recall the incident I'm taking about? The
 21 drive-through at McDonald's where it took too long to get your
 22 drink?
 23 A. No. I barely remember the training. I believe we drove a
 24 vehicle up there, a Tahoe. I don't remember specifics.
 25 Q. Do you remember banging on the window with your duty

1 flashlight, saying, "Give me my fucking drink?"
 2 A. No.
 3 Q. No memory of that whatsoever?
 4 A. No, I don't.
 5 Q. How about a time that you were with Lieutenant Lebrecht
 6 and I believe Lieutenant Morrow, and you had asked
 7 Sergeant Cameron to cover for you, and Chief McDermed said that
 8 that was not okay. Do you remember that incident? Does that
 9 ring any bell to you?
 10 A. No.
 11 Q. You were on the phone with Sergeant Cameron, and you
 12 called Chief McDermed a fucking liar. Do you remember that?
 13 A. No.
 14 Q. Do you recall Sergeant Cameron calling you back and
 15 telling you that he had had the phone -- the radios on at that
 16 time and you throwing your clipboard at the windshield and
 17 screaming and hitting the dashboard?
 18 A. No.
 19 Q. No memory of that?
 20 A. No.
 21 Q. Are you saying it didn't happen or you just don't remember
 22 it?
 23 A. I don't remember anything like that.
 24 Q. How about the time you took a command vehicle to a funeral
 25 and you were told to bring it back? Do you remember that?

1 A. Yes.
 2 Q. And Lieutenant Morrow and Lieutenant Lebrecht had to come
 3 get it?
 4 A. Yes.
 5 Q. What was your reaction then?
 6 A. I was upset because I had just worked an exorbitant amount
 7 of hours. I needed a vehicle to take over, and they made a big
 8 deal about having a -- the Tahoe that we had -- or that I had,
 9 and they came and got it.
 10 And in the whole scheme of planning this massive memorial
 11 for this officer, I was just shocked that we were just wasting
 12 time over a Tahoe for two guys that weren't even participating
 13 over at the Matthew Knight arena, and they were at the office.
 14 And in the whole scheme of everything we were doing, it was all
 15 about the Tahoe.
 16 Q. Well, what was your reaction when they came to take the
 17 car?
 18 A. I had to come and get my stuff out of it, and I had to
 19 drop what I was doing dealing with this funeral to get it. I
 20 don't know if it was a box or whatever I had with all these
 21 papers for what was going on.
 22 Q. What did you do with the box?
 23 A. I -- I think it was a box. I don't want to say for sure.
 24 There was just stuff in there, and I got it, and I don't know
 25 what I did with it. I probably took it in to the arena.

1 Q. You don't recall throwing it all over the ground in front
 2 of an Oregon State police officer's patrol car?
 3 A. No.
 4 Q. No memory of that either?
 5 A. I don't recall that incident, no.
 6 Q. Well, do you recall yelling at Lieutenant Morrow during
 7 that incident?
 8 A. No.
 9 Q. Do you recall being told not to take that vehicle and
 10 that's why they had to come get it?
 11 A. I do recall being told to take a different vehicle, and I
 12 don't remember what time it was. 4:00 in the morning or
 13 something. I took it because I had stuff to take over.
 14 Q. You talked about an incident with Ms. Bowes. Do you
 15 recall that?
 16 A. Yes.
 17 Q. Okay. This had to do with, you said, there were
 18 conversations with the DA about possibly *Brady*-listing her. Do
 19 you recall that?
 20 A. The conversation wasn't about *Brady* listing. The question
 21 did come up.
 22 Q. Who raised that question?
 23 A. I believe Patty Perlow asked if that was our intent, and I
 24 told her I didn't think so.
 25 Q. Okay. Chief McDermed didn't make that statement, did she?

1 A. No. Patty Perlow did.
 2 Q. And Chief McDermed was not there with Patty Perlow and you
 3 when that statement was made; correct?
 4 A. That's correct.
 5 Q. And this investigation into Ms. Bowes was an EPD, a Eugene
 6 Police Department investigation; correct?
 7 A. Chief McDermed had contacted -- I don't remember his
 8 rank -- Mozan, I believe, to ask him for his internal affairs,
 9 and she knew him. And we asked for his assistance so that it
 10 was an outside person investigating this; that it wasn't me.
 11 It wasn't one of ours. And I think she made that call, because
 12 she knew that maybe it was Lieutenant Mozan.
 13 Q. It was an EPD investigation; correct?
 14 A. Yes. We asked them to investigate the separate side of
 15 it.
 16 Q. So any --
 17 A. We had their own, and they had a separate side.
 18 Q. Any findings in their report would have been an EPD
 19 finding in that report; correct?
 20 A. Yes. I believe so.
 21 Q. You testified about Eric LeRoy. Do you remember that?
 22 A. Yeah.
 23 Q. Do you recall an incident you had with Eric LeRoy where
 24 you drove your motorcycle to work and you blocked in a car?
 25 A. No.

- 1 Q. Do you recall Eric LeRoy having to move your motorcycle
2 and your husband coming and confronting Mr. LeRoy?
3 A. No.
4 Q. You don't remember that?
5 A. No.
6 Q. All right. Who was it on the graveyard shift that
7 complained to you about -- well, maybe it wasn't someone on
8 graveyard. Who complained to you about the graveyard shift not
9 responding to calls?
10 A. Well, there was numerous. I don't remember specifically .
11 I knew dispatch made complaints, and I believe Chief McDermed
12 put out an email about if it -- that we needed to do a better
13 job; that there was a problem.
14 Q. I believe I recall you testifying that Chief McDermed took
15 no action. Is that what you recall you testifying?
16 A. Well, the problem continued.
17 Q. But she took action; correct?
18 A. I don't know. I mean, she sent an email. But the problem
19 continued, so I don't know what action she would have corrected
20 it -- that's not my shift, so I wouldn't have known.
21 Q. You said you were there almost every night for the entire
22 shift, didn't you; that's how you knew they weren't answering
23 calls?
24 A. No. I didn't say I was there for the entire shift.
25 Q. How many nights were you there?

- 1 A. Well, most nights. If my shift ended at 11:00, I was
2 still doing work and I'm still there. On nights that I went
3 home at 11:00 or 11:10, I was, I guess, technically there
4 during the graveyard shift.
5 Q. So your testimony that they were not answering calls is
6 based on you being there for 10 minutes after your shift?
7 A. No.
8 Q. So how long were you generally there after your shift?
9 A. It varied.
10 Q. What did it vary from?
11 A. It could have varied from a majority of a shift. It could
12 have varied from however long it took me to put everything away
13 after 11:00 to go home.
14 Q. So it's your testimony you could have been there for a
15 majority of an eight-hour shift after your shift?
16 A. No. My testimony would be that it varied. I don't have a
17 document and --
18 Q. Who in dispatch complained to you that they weren't
19 answering calls?
20 A. Well, I was notified multiple times. I don't remember
21 exactly the dispatcher.
22 Q. Give me one person. One person who notified you of that.
23 A. I don't remember which dispatcher it was.
24 Q. You can't think of one person?
25 A. No, because I wouldn't want to inaccurately say it was one

- 1 and it was the other, because there was also two dispatchers
2 during that shift change. She changed dispatchers, and the
3 dispatch schedule changed as well.
4 Q. Well, then how about you give me one call they didn't
5 respond to that you were told about.
6 A. They wouldn't have been my calls, so I wouldn't know. I
7 just know that there was a problem with them not responding to
8 calls, which is what led to an email from Chief McDermed.
9 Q. That's what I'm trying to get at. What are you basing
10 that opinion on that there was a problem with them not
11 responding to calls? You can't remember who complained to you
12 or what the complaints were, so what are you basing that on?
13 A. It was just common knowledge. It was a general problem.
14 Q. Among who? Whose common knowledge?
15 A. The officers. They were in briefing for an extended
16 period of time.
17 Q. How long?
18 A. I wasn't there every day. I couldn't -- I couldn't say
19 for certain.
20 Q. Now, isn't it correct that you're perfectly aware, sitting
21 here today, it was Officer Abbott who was closing the door on
22 those briefings?
23 A. I know some of the days it was, yes.
24 Q. And you even discussed this with Lieutenant Lebrecht and
25 asked why Abbott was doing that; isn't that true?

- 1 A. Yeah.
2 Q. What did Lieutenant Lebrecht tell you?
3 A. He didn't. No, I think he thought it was a joke.
4 Q. Officer Abbott was below you in rank; correct?
5 A. Yes.
6 Q. You could have done something to Officer Abbott or
7 complained or taken discipline against him if that was a
8 problem; correct?
9 A. I believe I asked his direct supervisor, which was
10 Lieutenant Lebrecht on some nights and Sergeant -- now
11 Lieutenant -- Bechdolt, and I told Chief McDermed.
12 Q. What did you tell Chief McDermed?
13 A. Well, I was telling her about this problem, because it was
14 frustrating and it felt discriminatory that it was just me that
15 was in there. And even every repeated time I would come in and
16 out of the door, they would shut it. It seemed silly at
17 midnight or 11:00 or whatever the time was.
18 Q. Well, you are aware it wasn't "they"; correct. It was
19 Officer Abbott; correct?
20 A. I don't know. I don't know who always shut it. I know
21 that some of the time it was Officer Abbott.
22 Q. Describe for us your relationship with Officer Abbott.
23 A. I don't have one.
24 Q. What was it like when you were working there?
25 A. He -- I don't know. I didn't -- he was just an officer.

1 I kept my distance from Officer Abbott. He, you know, was -- I
 2 don't know, he just did his own thing. I didn't really
 3 interact with him a whole lot.
 4 Q. You didn't like him, did you?
 5 A. No. Actually, I didn't have an opinion. I didn't really
 6 care for him, but --
 7 Q. When you shared an office with Lieutenant Lebrecht, how
 8 often were you two in there together?
 9 A. I would expect three to five days a week, based on our
 10 days off. I don't know.
 11 Q. For how long?
 12 A. Uhm --
 13 Q. Excuse me. On a specific day that you were both in the
 14 office, what would the general time period be that you spent
 15 together in the office? An hour? 15 minutes?
 16 A. It varied.
 17 Q. Give me the ranges.
 18 A. Well, it -- it could have been 10, 15 minutes to hours.
 19 Q. Would you describe your relationship with
 20 Lieutenant Lebrecht during that period as friendly?
 21 A. In the beginning.
 22 Q. Did it change at some point while you were still there?
 23 A. Yes.
 24 Q. When did it change?
 25 A. I don't know the exact date.

1 Q. What changed it?
 2 A. I just became more withdrew -- withdrew more and guarded
 3 just because how I perceived he was, based on the things he
 4 said about his previous department, and then I knew things had
 5 changed -- I knew they had changed somewhere during the summer,
 6 and I just kept to myself. I had limited contact or
 7 conversation, I guess.
 8 Q. Did something specific happen with Lieutenant Lebrecht
 9 that changed your relationship?
 10 A. No. It was just his behavior and just how he talked, and
 11 then, like I said, I could tell something had changed, and so I
 12 kept to myself. I don't think we -- we hardly talked much when
 13 I left.
 14 Q. Was this change before or after you came in and told him
 15 that you had just confronted Tyler Maness and asked him if he
 16 was gay?
 17 A. I had stayed guarded before then, just based on things
 18 he'd say. I never wanted to cross him.
 19 Q. Why would you make that statement to Lieutenant Lebrecht,
 20 then? Why would you tell him that?
 21 A. About Tyler Maness?
 22 Q. Yeah.
 23 A. Because I wanted his officers to stop teasing him about
 24 being gay. I didn't think it was appropriate for them to make
 25 jokes and tease him.

1 Q. Did the relationship with Lieutenant Lebrecht change after
 2 you found out he had actually reported you for confronting
 3 Tyler and then spreading it to other officers?
 4 A. I don't think we were talking a whole lot up until that
 5 time.
 6 Q. What officers complained to you about Lieutenant Lebrecht
 7 and Lieutenant Morrow lifting weights together?
 8 A. I don't recall specifically who.
 9 Q. You said several officers made these complaints to you.
 10 Tell me who they are. Tell me one.
 11 A. I can't remember.
 12 Q. You can't remember one?
 13 A. I don't remember who it was.
 14 Q. You gave some pretty broad opinions about
 15 Mr. Cleavenger's -- his skills as an officer. Do you recall
 16 giving your opinion on that?
 17 A. Yes.
 18 Q. Tell me, how often did you work with Mr. Cleavenger;
 19 actually observe him in the field?
 20 A. I have seen him at special events, is typically where I
 21 would see him. I don't remember when he patrolled, if he was
 22 ever out on patrol, because he was under a different capacity
 23 as an auxiliary when I -- he first hired than as an officer who
 24 would normally patrol, so I would see him at special events
 25 that he would work and how he would interact with the public

1 and --
 2 Q. Can you recall any occasion, any one time that you were
 3 actually with Mr. Cleavenger when he made a contact with a
 4 member of the public or a student?
 5 A. I don't remember the exact games that it was. I mean, he
 6 was a regular employee for some time. I saw all my employees
 7 often.
 8 Q. Do you remember ever actually being in a situation with
 9 him where you could observe his officer safety skills?
 10 A. I can't remember an exact game.
 11 Q. Well, what is your opinion based on, then, that you say he
 12 had good officer safety skills?
 13 A. From working with him, I just -- it's been some time, and
 14 I don't remember exact specifics to give to you.
 15 Q. Well, what about his officer safety skills did you think
 16 was good?
 17 A. Well, it could be anything based on, you know, his -- they
 18 call it an F.I. stance and how he would stand, you know, to
 19 have his hands at a certain position. It could be anything
 20 from that or his tone with the public -- there's a lot of ways
 21 to judge officer safety.
 22 Q. But you can't remember what it was specifically with
 23 Mr. Cleavenger?
 24 A. Well, I'm saying that was all part of the totality of what
 25 his officer safety skills were.

1 Q. So were you actually in charge of hiring him? Did you
 2 make the offer to him of employment?
 3 A. I believe I did.
 4 Q. Did you review his background file before you made that
 5 offer?
 6 A. Yes.
 7 Q. Did anything in that background concern you about
 8 Mr. Cleavenger?
 9 A. No. He was highly educated. While he had really good
 10 references, he was currently, when he hired on, at the top
 11 of -- I think he was applying for jobs elsewhere, and I believe
 12 he was, at the time, at the top of those hiring processes.
 13 I was concerned once -- or not once, but when
 14 Sergeant Cameron had told me about this whole Taser situation.
 15 I wasn't there at the time, so I had no direct knowledge of the
 16 context or what it was, except for what he had said, and that
 17 caused me concern, because I worried after, you know, being
 18 told about it, you know, was there an ulterior motive.
 19 And so when Chief Tripp and Captain Horner and Sergeant
 20 Phillips said, "This guy is incredible. Hire him." And,
 21 "You're going to hire him." I said, "Okay."
 22 Q. You were aware who had an ulterior motive?
 23 A. I wasn't aware anybody was. I was just wondering that
 24 based on what --
 25 Q. Who are you talking about, though?

1 A. That had an ulterior motive or who was worried about it?
 2 Sergeant Cameron?
 3 Q. No. You said you were concerned that he had an ulterior
 4 motive. I'm asking who "he" is.
 5 A. Mr. Cleavenger.
 6 Q. Now, this Taser information, that wasn't in his
 7 background, was it; the actual background investigation file?
 8 A. I don't think so.
 9 Q. So in that specific document itself, was there anything in
 10 there that raised concerns for you, as a hiring lieutenant,
 11 about this officer that you were going to hire?
 12 A. I don't recall, no.
 13 Q. Do you recall having any conversations with
 14 Lieutenant Morrow about anything in that background that
 15 concerned him?
 16 A. That concerned?
 17 Q. Lieutenant Morrow.
 18 A. No. I don't recall that.
 19 Q. Did Sergeant Cameron ever say to you that he was going to
 20 see to it that Mr. Cleavenger was disciplined or fired because
 21 of his stance on Tasers?
 22 A. I don't recall that statement.
 23 Q. You were his supervisor; correct?
 24 A. Yes, I was his supervisor.
 25 Q. You talked about meetings that you had with lieutenant --

1 or, excuse me, Chief Tripp and Deputy -- or then-Assistant
 2 Chief McDermid about -- "cleaning house" is how you put it. Do
 3 you recall that testimony?
 4 A. Yes.
 5 Q. I want you to tell me the actual context. How did a
 6 conversation like that come up and involve you?
 7 A. When I got hired, there was only Deputy Chief McDermid and
 8 Chief Tripp and myself, and then Captain Horner was separate.
 9 So we had a very small command staff and an awful lot of
 10 officers and auxiliary. And we had several meetings, the three
 11 of us, whether it was in Chief McDermid's office or
 12 Chief Tripp's, and, I mean, most -- most of them talked about
 13 the officers or what was going on with the patrol division,
 14 because that's really what we had.
 15 Q. What were the concerns that were raised in those meetings
 16 about the officers?
 17 A. Well, we had a department that was not very accountable;
 18 that was -- had been there at a time when they just did
 19 building lock and unlock, and they had a big mission ahead, and
 20 that was to become a fully sworn police department. And that's
 21 a huge leap from locking buildings to becoming fully sworn,
 22 armed department, and it was talked about there were a lot of
 23 people that probably were not going to be a part of that
 24 transition.
 25 So everything from, you know, how we're going to get

1 people up to speed, to, you know, having concern about those
 2 that are going to be left behind. And then as we distance
 3 ourselves further and further and progress, the concern for
 4 those who will be left behind and how to help them either in a
 5 new position or, you know, just how to handle that.
 6 There's a lot of change.
 7 Q. So is that kind of a summary of what those conversations
 8 entailed?
 9 A. Yeah.
 10 Q. Did Chief McDermid ever tell you to go paper a file and
 11 terminate someone who she didn't like?
 12 A. I don't recall her making that statement.
 13 Q. How about anyone who she felt was a liberal or an
 14 activist?
 15 A. I don't recall anybody making that statement.
 16 Q. Was your understanding of the intent of those
 17 conversations to find people to retaliate against for
 18 something?
 19 MR. JASON KAFOURY: Object. I don't understand the
 20 question.
 21 THE COURT: Do you understand the question?
 22 THE WITNESS: No.
 23 THE COURT: Reask the question.
 24 BY MS. COIT: (Continuing)
 25 Q. I'll ask it a different way.

1 What was your understanding, from those meetings, of the
 2 purpose of -- of what you were asked to do, to -- strike that.
 3 What did you take away from those meetings? What were you
 4 being asked to do?
 5 A. The meetings weren't just about me and what I was being
 6 asked to do. We met on a regular basis about a whole host of
 7 topics.
 8 Q. Were you a participant in those conversations?
 9 A. Yes, I was there.
 10 Q. Were you actively participating, or were you just there to
 11 take instruction?
 12 A. Most of the time I took instruction. They were my
 13 supervisors.
 14 Q. That's my question. What did you understand your
 15 instruction to be?
 16 A. Well, the meetings weren't necessarily about instruction.
 17 Are you referring to a specific meeting?
 18 Q. No.
 19 A. Okay.
 20 Q. You described these meetings as you being told to go on
 21 out there and clean house. I'm asking what gave you that
 22 impression, or am I misunderstanding what you thought your
 23 intrusion was?
 24 A. Well, we had -- if you're talking about dealing with
 25 officer issues, for example, you know, we had meetings about

1 Officer Brown and Officer Abbott, and there were meetings about
 2 me not getting my job done and getting them terminated fast
 3 enough and having to work at that and --
 4 Q. Okay. Let me stop you there.
 5 A. -- we had meetings about, you know, when Officer Abbott --
 6 or Brown got moved on, in lieu of termination, you know, that
 7 finally I got the job done and disappointment that I hadn't
 8 done the same with Officer Abbott. And I -- you know, there
 9 was a whole range of meetings.
 10 Q. Okay. Who made the statement to you that you hadn't
 11 gotten Officer Abbott fired fast enough?
 12 A. Chief Tripp.
 13 Q. Did Chief McDermid say anything to you in that regard?
 14 A. She did not make that statement.
 15 Q. How about this other officer you said? Brown. Who did
 16 that come from? Who did that statement come from?
 17 A. Well, the one where I did a good job because I finally got
 18 the problem dealt with, that would have been Chief Tripp.
 19 Q. During these meetings you're talking about, did you ever
 20 get the impression from anything that Chief McDermid said to
 21 you that she had retaliatory motives in what she was asking you
 22 to do?
 23 A. No.
 24 Q. Did you get the impression that she wanted to better the
 25 department?

1 A. Yes.
 2 MS. COIT: That's all I have. Thank you.
 3 THE COURT: Redirect.
 4
 5 REDIRECT EXAMINATION
 6 BY MR. JASON KAFOURY:
 7 Q. Did your opinion of Chief McDermid and her ability to
 8 retaliate change as the course went on over your employment?
 9 A. Yeah.
 10 Q. Why was that, or how did it change?
 11 A. I'm not sure how it changed. I just knew that I became
 12 the target or the focus and how she treated me changed.
 13 Q. No longer her superwoman?
 14 A. No.
 15 Q. Did you know, as you were going through the IA
 16 investigation, that you were going through the exact same
 17 pattern that you had done to other people?
 18 A. Yes.
 19 Q. Did you feel pressure in those meetings with the chief and
 20 McDermid to move more quickly to write people up so that the --
 21 there would be adequate documentation to move towards
 22 termination?
 23 A. Yes.
 24 Q. Did you work with human resources as part of that effort?
 25 A. Yes.

1 Q. Did you have meetings with human resources to discuss how
 2 to craft letters?
 3 A. Yes. Sometimes they would write them for me, just so that
 4 there were I's dotted and T's crossed.
 5 Q. Do you remember what you had for breakfast on August 10,
 6 2011?
 7 A. No.
 8 THE COURT: Counsel.
 9 MR. JASON KAFOURY: I'll ask it more to the point.
 10 BY MR. JASON KAFOURY: (Continuing)
 11 Q. Do you remember which football game you were with
 12 Cleavenger at the third week of October of 2011?
 13 A. No.
 14 Q. Do you remember which football game would you have been
 15 with him on October 10th?
 16 A. No.
 17 Q. Do you tend to recall things where there were more serious
 18 officer safety issues years later?
 19 A. Yes.
 20 Q. For example, Officer LeRoy falling asleep in his car, you
 21 disciplined him for that; correct?
 22 A. Yes.
 23 Q. You remember that still to this day?
 24 A. Yes.
 25 Q. I just want to make sure our timeline is -- you are being

1 disciplined and investigated over the summer of 2011; correct?
 2 A. Yes.
 3 Q. In September 2011 you are put over to the parking
 4 department; correct?
 5 A. Yes.
 6 Q. In October of 2011 you're no longer supervising
 7 Sergeant Cameron at that point.
 8 A. Yes.
 9 Q. And Sergeant Cameron had no supervision over my client
 10 until October of 2011; isn't that correct?
 11 A. I think that's correct.
 12 Q. As a supervisor, the information that you're using for
 13 discipline, you have to rely on the accuracy of what you're
 14 getting from the sergeants and other people below you; correct?
 15 A. Yes.
 16 Q. So if you're told something that's completely inaccurate
 17 and you weren't there -- by a sergeant -- that could form the
 18 basis for discipline potentially; right?
 19 A. Yes.
 20 Q. Mike Morrow also hired my client to work after you did,
 21 didn't he?
 22 A. Yes.
 23 Q. What was the capacity of that?
 24 A. It was the -- I just remember the acronym was TPO. He
 25 was -- so with Mr. Cleavenger's performance, as with auxillary,

1 were involved; is that correct?
 2 A. Well, we didn't make any decision about that. The -- the
 3 context was at -- I think the district attorney's office didn't
 4 want -- didn't want to take it that far and was asking if
 5 that's what we were expecting. And I kind of made the decision
 6 that, no, we weren't going that far, but I just relayed the
 7 information and just kind of clarifying that I was making the
 8 correct decision.
 9 Q. So ultimately, at that point in 2011, Chief Tripp and
 10 Chief McDermed had a decision to make, after the DA brought up
 11 *Brady* listing, about whether they wanted to pursue *Brady*
 12 listing for Officer Bowes; is that right?
 13 A. They could have made the decision. I don't think they
 14 would ever have pursued a *Brady* list.
 15 Q. Why?
 16 A. Well, because the district attorney's office didn't want
 17 to go through those hoops of -- of doing that, because they
 18 were -- they were kind enough to investigate this separately
 19 for us, and so that would have been an even further step.
 20 Q. Because the *Brady* listing is pretty darn serious to
 21 someone's career; right?
 22 A. Yes.
 23 Q. Not a decision you jump into lightly, is it?
 24 MS. COIT: Objection. Argumentative.
 25 THE COURT: Sustained.

1 he hired him for that position. There was a -- somebody had
 2 left that position, and they were looking for someone, and he
 3 sought out Mr. Cleavenger for it.
 4 Q. Small point, but from where you sat at your desk, could
 5 you see who closed the door in the shift briefing rooms?
 6 A. No.
 7 Q. What was the longest shift you ever worked?
 8 A. It was just shy of 24 hours.
 9 Q. Was that normal as an officer; working long hours,
 10 multiple shifts?
 11 A. Not quite that long, but we had -- we had very long shifts
 12 for officers. And then when we didn't have other lieutenants,
 13 I worked double shifts often, especially if our sergeants
 14 called off and we didn't have the coverage.
 15 Q. Counsel asked you about this conversation with the
 16 district attorney where Officer Bowes and the *Brady* list were
 17 discussed. Did you relay the information about the *Brady* list
 18 back to Chief McDermed?
 19 A. Yes.
 20 Q. What do you remember about that conversation?
 21 A. I just remember it was a verbal conversation of passing on
 22 the information after I was at Patty Perlow's office. She knew
 23 I was going, so I just followed up.
 24 Q. But there was no decision about *Brady* listing that the
 25 department needed to make at that point because Eugene police

1 BY MR. JASON KAFOURY: (Continuing)
 2 Q. Let's talk about this Tahoe incident. Can you tell the
 3 jurors -- give them a little context. What was this funeral
 4 involving Kilcullen?
 5 A. Officer Chris Kilcullen was a motorcycle officer with the
 6 Eugene Police Department, and he was making a traffic stop in
 7 Springfield, and the -- the subject in the vehicle shot him in
 8 the armpit.
 9 Q. This was a pretty emotional time for everyone, wasn't it,
 10 down in Eugene?
 11 A. Yes. And the circumstances around it were big for our
 12 community. It hit very close to home for the folks in our
 13 office. And because we had one of the biggest venues, we
 14 coordinated with a multiagency task force to host this -- this
 15 memorial service, and it was a -- at least a week long. It was
 16 long hours, high stress. It was -- it was a hard task. And
 17 myself, personally, I worked around the clock. I had my shifts
 18 to cover, and then I was a major part of the coordination in
 19 the arena and getting that ready. And the night before the
 20 service I was there until almost midnight, I believe, and then
 21 I had to get up at -- I had about three hours of sleep after I
 22 got home and came back, because we were prepping that morning
 23 and everybody coming in for the memorial service, so it was --
 24 Q. And it was in this context --
 25 A. It was a hard day.

1 Q. It was in the context that you took the Tahoe at
 2 4:00 a.m.; right?
 3 A. Yes.
 4 Q. Are the BOLI complaints that Amanda Williams and
 5 Jen Parker filed, those were primarily related to
 6 Sergeant Cameron and claims of sexual harassment; isn't that
 7 right?
 8 A. Yes.
 9 Q. The photo, the painted photo of Ms. Rousseau, it was
 10 actually from the country fair; isn't that right?
 11 A. Yes.
 12 Q. Counsel asked you about your qualifications when you were
 13 hired.
 14 Isn't it a fact that Chief Tripp had never even been to
 15 the police academy when you were there, when you were hired?
 16 A. That's correct.
 17 Q. How many sergeants have never been to the police academy
 18 when you were hired?
 19 A. All of them, I believe.
 20 Q. How many college degrees did you have?
 21 A. Two.
 22 Q. How many years in law enforcement had you been there --
 23 had done?
 24 A. Five, six -- five.
 25 Q. I believe it was me that said "daily," so I will --

1 THE COURT: Received? Was it?
 2 DEPUTY COURTROOM CLERK: Correct.
 3 THE COURT: There's a duplicate there. 150 is not
 4 received at this time or is 253. They weren't referred to.
 5 MR. JASON KAFOURY: No.
 6 THE COURT: Nor 254. Does that complete your record ?
 7 MR. JASON KAFOURY: Yes. Along with Plaintiff's 119.
 8 THE COURT: 119 was received and 409 was received on
 9 behalf of the defense.
 10 You're excused. Thank you very much.
 11 THE WITNESS: Thank you.
 12 THE COURT: You may step down. Counsel informed me
 13 they have a 1:00 witness by video from San Diego. And,
 14 therefore, if we finish by 5:00 tonight, can I manipulate you
 15 into a really quick lunch? Or is that too quick right now? If
 16 you need an hour, we can take an hour.
 17 MR. JASON KAFOURY: We can call the place.
 18 THE COURT: I thank you very much, but I am speaking
 19 to the jury now.
 20 Can you make it in 45 minutes? If not, we can make it an
 21 hour. If you can, let's try for 45 minutes. Come right back
 22 to work, and how about I promise we let you go at 5:00?
 23 A JUROR: You promise we get out at 5:00, then?
 24 THE COURT: Well, now you're bargaining with me. By
 25 5:00. Okay? By 5:00. You have a nice lunch.

1 A. Thank you.
 2 Q. It was a two-day-a-week-for-seven-months program?
 3 A. I actually don't recall. By that, I knew it was a routine
 4 regular event.
 5 Q. And I also, yesterday, told you that there were some
 6 officers who discussed your discipline in court, didn't I?
 7 A. Yes. I -- I'm sorry. There was a -- I was -- I was very
 8 anxious yesterday. I couldn't recall which one it was.
 9 MR. JASON KAFOURY: Thanks.
 10 THE COURT: Redirect -- recross.
 11 MS. COIT: No more questions.
 12 THE COURT: Can the witness be excused, Counsel?
 13 MR. JASON KAFOURY: Yes.
 14 THE COURT: Counsel?
 15 MS. COIT: Yes.
 16 THE COURT: Before she's excused, I want to make sure
 17 the items of evidence we went over last night are not later
 18 being requested. There was a reference to the University of
 19 Oregon trespass notice, which was 120.
 20 MR. JASON KAFOURY: That was received.
 21 THE COURT: Duplicate last night was also 141. It's
 22 the same one.
 23 MR. JASON KAFOURY: Correct.
 24 THE COURT: Is this requested into evidence?
 25 MR. JASON KAFOURY: I think I offered 120.

1 Counsel, we'll have lunch now and make sure it goes
 2 smoothly this afternoon.
 3 (Jury not present.)
 4 (Recess taken.)
 5 (Jury present.)
 6 THE COURT: Back on the record. All counsel are
 7 present and the parties are present. The next witness is being
 8 presented to us by video. That person, I believe, Counsel, is
 9 located in San Diego; is that correct?
 10 THE WITNESS: Yes, that's correct.
 11 THE COURT: Well, thank you, sir.
 12 Would you call your next witness, Counsel?
 13 MR. MCDUGAL: Yes. Plaintiff calls Daniel Pearse .
 14 THE COURT: Mr. Pearse, would you stand up for a
 15 moment? Stand, sir. Thank you.
 16 Mr. Pearse, this is an extraordinary process on this
 17 court. Normally, I don't allow it. And I can't see you. I
 18 can see your tie.
 19 THE WITNESS: Yes, it's hard to stand up and be seen
 20 on camera, I'm afraid, but I'm standing.
 21 THE COURT: Would you raise your right hand, sir?
 22 Christy is the clerk. She's going to administer an oath.
 23 Listen carefully.
 24
 25 ///

1 DANIEL PEARSE
 2 called as a witness in behalf of the Plaintiff, being first
 3 duly sworn, is examined and testified as follows:
 4 THE WITNESS: Yes, I do.
 5 THE COURT: Thank you, sir. Would you state your
 6 full name -- would you be seated, sir, and thank you. If you
 7 would sit down. Thank you. And would you state your full name
 8 for the jurors, sir?
 9 THE WITNESS: Yeah. My name is Daniel Martin Pearse .
 10 THE COURT: Thank you.
 11 Counsel for the plaintiff is taking you on direct
 12 examination. And, Counsel, would you state your name for the
 13 witness.
 14 MR. MCDUGAL: Mark McDougal.
 15 THE COURT: Louder.
 16 MR. MCDUGAL: Mark McDougal. Attorney for James
 17 Cleavenger.
 18 THE COURT: Thank you. And your questions of
 19 Mr. Pearse, please. Direct examination.
 20
 21 DIRECT EXAMINATION
 22 BY MR. JASON KAFOURY:
 23 Q. Mr. Pearse, where are you from?
 24 A. I'm from the UK.
 25 Q. What brought you to the U of O?

1 A. Graduate studies.
 2 Q. Did you get a degree?
 3 A. Yes, I did.
 4 Q. There's a cricket team at the U of O?
 5 A. Yes, there is.
 6 Q. And that's an official University of Oregon club sport;
 7 correct?
 8 A. Correct.
 9 Q. And you were the team's student president; correct?
 10 A. Yes.
 11 Q. And who was the official registered coach for the team?
 12 A. That was James Cleavenger.
 13 Q. Was he a good coach?
 14 A. Yes. For sure.
 15 Q. Was he paid?
 16 A. I'm sorry? Did it pay?
 17 Q. Yeah.
 18 A. No. It was an unpaid position.
 19 Q. Just briefly, I don't have that many questions for you,
 20 but could you give me an idea of the diversity of the cricket
 21 team?
 22 A. Yes. The club's pretty diverse. We have representation
 23 from most of the cricket-playing countries, but we
 24 predominantly were mostly an Indian cricket team. We have
 25 myself, British, Australian representatives. We've had some

1 Pakistani representation as well.
 2 Q. Did Mr. Cleavenger get along with all the players
 3 regardless of where they came from?
 4 A. Yes, he did.
 5 Q. Did Mr. Cleavenger use an accent when he was coaching ?
 6 A. He did.
 7 Q. And what accent was that?
 8 A. He used the British accent.
 9 Q. Was it offensive?
 10 A. No. It caused no offense to me.
 11 Q. Did he even ask for your permission to use it?
 12 A. He did after a while, yeah.
 13 Q. Did he ever use it to make you think he was not American ?
 14 A. Not particularly, no.
 15 Q. Did you think the use of a British accent made him
 16 untrustworthy?
 17 A. No, I do not think so.
 18 Q. Did he have a reputation for honesty among the cricket
 19 club community there?
 20 A. Absolutely.
 21 Q. What was that reputation?
 22 A. I think Jim has the reputation as being a pretty
 23 level-headed guy. He's pretty quiet. He goes about his
 24 business. He helps run the club. I think people would agree
 25 he's pretty dependable.

1 Q. Let me cut you off. I asked you if you had an opinion
 2 about his reputation.
 3 A. Yes.
 4 Q. Is it your opinion he has a reputation for honesty?
 5 A. Yes, I have that opinion.
 6 MR. MCDUGAL: That's all I have.
 7 THE COURT: Thank you.
 8 Cross-examination.
 9 MS. COIT: No questions.
 10 THE COURT: All right. May Mr. Pearse be excused ?
 11 MR. MCDUGAL: Yes.
 12 THE COURT: Mr. Pearse, thank you very much. You're
 13 excused from these proceedings.
 14 THE WITNESS: Thank you very much.
 15 THE COURT: Good day.
 16 Counsel, your next witness please.
 17 MR. MCDUGAL: John Ahlen.
 18 THE COURT: Thank you. Counsel, there's an image on
 19 the screen at this time. Can you tell us who your next witness
 20 is, please?
 21 MR. MCDUGAL: John Ahlen.
 22 THE COURT: Can you see us? Be kind enough to stand
 23 and raise your right hand. Christy is the clerk. She's going
 24 to administer an oath to you, sir. If you would raise your
 25 right hand.

1 Christy?

2 JOHN AHLEN,

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: If you would be seated, Mr. Ahlen.

7 Mr. Ahlen, would you spell your last name for us?

8 THE WITNESS: It's spelled A-H-L-E-N.

9 THE COURT: Thank you. This is direct examination by

10 plaintiff's counsel.

11

12 DIRECT EXAMINATION

13 BY MR. MCDOUGAL:

14 Q. Good afternoon, Mr. Ahlen. I'm Mark McDougal. Can you

15 tell me when you first had anything to do with Mr. Cleavenger ?

16 A. That would have been about three years ago , immediately

17 following his termination from the university.

18 Q. And what's your background?

19 A. I've been employed at the university for about five years.

20 I'm currently serving as chief steward for the union for

21 classified employees.

22 Q. Did you have anything to do with the police commission in

23 Eugene? And what was it, if you did?

24 A. That's correct. I served on the Eugene Police Commission

25 for about eight years. It's an appointment to a policy body.

1 Q. What was your first role in relation to Mr. Cleavenger?

2 A. I served as his union steward.

3 Q. At what point of the process did you become involved?

4 A. It would have been during the step three hearing held by

5 Ryan Hagemann around the time of his termination.

6 Q. And Ryan Hagemann held a hearing on step three. About how

7 long did it last?

8 A. No more than a couple of hours, if I remember correctly.

9 THE COURT: Counsel, perhaps the jury should know who

10 Ryan Hagemann is with this witness. It's just a name right now

11 to the jurors.

12 BY MR. MCDOUGAL: (Continuing)

13 Q. Who is Ryan Hagemann?

14 A. He was serving as an attorney for the Oregon University

15 System.

16 Q. He was the hearings officer for this?

17 A. That's correct.

18 Q. Step three letter of reprimand?

19 A. That's correct.

20 Q. Can you briefly explain what step three means?

21 A. Sure. So grievances that are brought forward by the union

22 go through a multi-tier step process. So both sides have an

23 interest in resolving disputes at the lowest possible level.

24 So, ideally, that would be just by involving an employee and

25 their supervisor, and, if not, if that doesn't work out, then

1 it gets escalated to step two and then step three, which is

2 basically somebody's boss's boss and so on and so forth.

3 Step three, at that point, management designee was an

4 attorney through the Oregon University System.

5 Q. And did Ryan Hagemann ever issue an opinion from a step

6 three hearing on Mr. Cleavenger's appeal of his letter of

7 reprimand?

8 A. He did not.

9 Q. Have you ever encountered in all your experience of doing

10 these any other occasion upon which a step three hearings

11 officer who heard a hearing did not issue an opinion?

12 A. It would only be under extreme circumstances or if a

13 settlement was reached.

14 Q. Were there any extreme circumstances that were involved in

15 this step three hearing?

16 A. Not to my knowledge, no.

17 Q. Is Mr. Hagemann still around? Was he still at the

18 university?

19 A. I don't know the answer to that.

20 Q. Was he there shortly after the step three hearing process

21 that he did not issue an opinion on?

22 A. Correct. He was still employed following the hearing.

23 Q. Was an opinion ever issued on the step three hearing that

24 was heard by Ryan Hagemann?

25 A. There was a response issued by Brian Caufield following

1 the termination, which I believe was intended to respond to

2 both the letter of reprimand and termination.

3 Q. Who's Brian Caufield?

4 A. He was also serving as an attorney for the Oregon

5 University System.

6 Q. Have you -- do you have any knowledge of how

7 Brian Caufield made a decision if he wasn't at the hearing?

8 A. My understanding is that he reviewed Ryan Hagemann's notes

9 from the step three letter of reprimand hearing.

10 Q. How did you get that understanding?

11 A. That's what I recall him saying to me.

12 Q. Have you ever heard of a situation where one hearings

13 officer issues an opinion based on another hearings officer's

14 notes?

15 A. It would have to be in extreme circumstances. It may have

16 come up. It would be unusual.

17 Q. No extreme circumstances here again?

18 A. Not to my knowledge, no.

19 Q. Were you ever able to see the notes Ryan Hagemann made ?

20 A. No.

21 Q. Now, Brian Caufield, he was a hearings officer on the

22 termination itself as well; correct?

23 A. That's correct. He was assigned to hear the termination

24 grievance.

25 Q. Did he hear the termination grievance?

1 A. My belief is that, no, he did not formally have a step
 2 three hearing to the termination.
 3 Q. What happened when you went to the step three hearing ?
 4 A. We scheduled a step three hearing , and we were both in the
 5 same room at the same time. We were not able to agree to
 6 ground rules for the meeting. Brian was abusive and I feel was
 7 not acting in good faith during that meeting, and so we said
 8 that we needed to reschedule the meeting when we could agree to
 9 proper ground rules.
 10 Q. You say "abusive." How?
 11 A. Shouting, yelling . The content of what he was saying was
 12 bullying. He was forcibly disconnecting the phone line for one
 13 of our meeting participants. He was being very unilateral in
 14 his decision-making and was not -- was not making decisions on
 15 how the meeting could be run jointly with us, as we felt would
 16 be required.
 17 Q. So what happened?
 18 A. We said that we would let -- still like to hold the step
 19 three meeting, but we needed to be able to agree on some basic
 20 rules, and we felt that there needed to be kind of a minimum
 21 level of professionalism and respect in the meeting for us to
 22 be able to properly participate, and what we had heard back was
 23 that Brian Caufield felt that -- that there had been a step
 24 three meeting that took place and that he felt like he had what
 25 he needed to issue a decision and a determination.

1 Q. Did he accept any documents that you had to offer to him?
 2 At the step three hearing, did you have documents that you were
 3 going to provide?
 4 A. We did have documents that we intended to provide. My
 5 understanding is that he did not accept them.
 6 Q. You were there. You tried to give them to him. He
 7 wouldn't take them?
 8 MS. COIT: Object. Leading.
 9 THE COURT: Sustained.
 10 Just reask the question.
 11 BY MR. MCDUGAL: (Continuing)
 12 Q. Yeah. Can you tell me what -- more specifically, what
 13 happened with regard to your efforts to give Mr. Caufield
 14 documents?
 15 A. Sure. So towards the beginning of what would have been
 16 the meeting, we had prepared a list of documents, exhibits , and
 17 witnesses that we wanted to bring forward for purposes of the
 18 step three hearing. At that point we had begun the procedure
 19 exactly as we had done in the step three letter of reprimand
 20 hearing in which we planned to chronologically go through the
 21 evidence that we had compiled.
 22 At that point Brian Caufield informed us that he intended
 23 to change the rules of the meeting and demanded that we
 24 immediately hand over all documents for his review.
 25 At that point we suggested that that was different than

1 our expectations going into the meeting and that would be
 2 something we needed to talk about. And at that point
 3 Brian Caufield began to yell and became abusive and informed us
 4 that this was his meeting and that we needed to play by his
 5 rules and that this was our only chance to present evidence and
 6 informed us that if we didn't do things his way, then we would
 7 not have another opportunity to do so.
 8 At that point our decision was rather than to continue to
 9 face the unilateral decision-making and the abusive behavior,
 10 to try to reconnect over email to see if there's a way we could
 11 find some common ground to be able to hold the meeting because
 12 the way it was being conducted was not healthy or professional
 13 or working for us.
 14 Q. Are hearings officers supposed to be neutral?
 15 A. My understanding is that they should be. They're
 16 designated by management to hear grievances that the union has
 17 brought forward, and they should be able to provide impartial
 18 disposition to be able to either uphold grievances brought
 19 forward by the union or to deny them and then allow us to
 20 progress to the next step as needed.
 21 Q. And let me go back. I focused on step three with you, but
 22 let me ask you this: During this meeting, did Mr. Caufield at
 23 any time tell you before you presented evidence what he thought
 24 his decision was going to be?
 25 MS. COIT: Object. Hearsay.

1 THE COURT: Overruled. You can answer the question,
 2 sir.
 3 THE WITNESS: Brian Caufield was clear that he
 4 thought that this case would be denied at step three and we had
 5 already been talking as if this was the case that would be
 6 arbitrated.
 7 BY MR. MCDUGAL: (Continuing)
 8 Q. And did -- did, in fact, Mr. Caufield even express an
 9 opinion on your chances at arbitration?
 10 MS. COIT: Object. Hearsay.
 11 THE WITNESS: Yeah. So --
 12 THE COURT: Overruled.
 13 THE WITNESS: -- during the step three termination
 14 hearing, Brian Caufield said that this case would be an
 15 insurmountable mountain for us to climb ; that it had no chance
 16 at arbitration. He said that based on his experience he felt
 17 like the best that we could ever hope for would be what's
 18 called a resign and purge, meaning that Mr. Cleavenger would
 19 walk away with nothing. And the best that he could hope for
 20 would be a neutral reference from the university.
 21 BY MR. MCDUGAL: (Continuing)
 22 Q. This is all before --
 23 A. Even that -- I'm sorry. Even that, I think he -- he
 24 didn't express that as an actual offer. He just said that
 25 would be the best that Mr. Cleavenger could hope for.

1 Q. And to be clear, this is all before you presented evidence
 2 or testimony?
 3 A. That's correct.
 4 Q. Now, was there something about part of Mr. Cleavenger's
 5 grievance process being held in abeyance? Do you recall
 6 anything about that?
 7 A. Yes. So we had -- we had asked that a decision be issued
 8 per our contractual rights. We have a collective bargaining
 9 agreement that gives strict timelines on when a response would
 10 be due, and so we requested that within the timeline. And what
 11 we had heard back from Brian Caufield is that he had
 12 unilaterally held that in abeyance per his own wishes.
 13 Q. Have you ever heard of this concept of holding it in
 14 abeyance in any other case?
 15 A. That's something that wouldn't apply without mutual
 16 agreement from both sides, so a -- a change of timeline
 17 unilaterally, that's something that would have to be agreed
 18 upon by all parties.
 19 Q. And this -- your -- what organization are you with? I'm
 20 sorry. I think I skipped that in the intro.
 21 A. I work for the University of -- the classified employees
 22 and the SEIU.
 23 Q. Okay. And isn't one of the key features of all this
 24 collective bargaining the requirement that both sides act in
 25 good faith by contract?

1 A. That's correct, yes.
 2 Q. Do you know if Mr. Caufield ever got a hearing on his step
 3 one letter of reprimand? I'm sorry. Mr. Cleavenger. I'm
 4 sorry. Let me restate it.
 5 A. Go ahead.
 6 Q. Do you know if Mr. Cleavenger ever got a hearing on his
 7 step one grievance for his letter of reprimand?
 8 A. I don't recall. I wasn't serving as the steward during
 9 that time.
 10 Q. That's fine. I won't ask it, then.
 11 One -- I -- did you eventually go to arbitration?
 12 A. That's correct.
 13 Q. And was Chief McDermid at the arbitration proceeding?
 14 A. Yes, she was.
 15 Q. Was she there basically the whole time?
 16 A. Yes. I recall her being there the entire time.
 17 Q. Okay. Do you recall -- I want to make sure I get this
 18 right -- Lieutenant Lebrecht testifying at the arbitration
 19 hearing?
 20 A. I do.
 21 Q. Do you recall Lieutenant Lebrecht using the phrase "bowl
 22 of dicks list"?
 23 A. Yes.
 24 MR. MCDOUGAL: That's all I have.
 25 THE COURT: Cross-examination, please.

1 CROSS-EXAMINATION
 2 BY MS. COIT:
 3 Q. Mr. Ahlen, this is Andrea Coit. I'm the defense attorney.
 4 Was Chief McDermid involved at all at this step three hearing
 5 with Brian Caufield? Was she there? Was she part of his --
 6 A. She was not present, no.
 7 Q. Was Lieutenant Lebrecht present?
 8 A. He was not, no.
 9 Q. Was Sergeant Scott Cameron present?
 10 A. He was not, no.
 11 Q. Do you have any basis to believe that either Mr. Hagemann
 12 or Mr. Caufield were taking direction from Chief McDermid at
 13 this point?
 14 A. I wouldn't know one way or the other.
 15 Q. How about Lieutenant Lebrecht?
 16 A. I wouldn't know that either.
 17 Q. Sergeant Cameron?
 18 A. I also wouldn't know that.
 19 Q. Do you know who Brian Caufield and Ryan Hagemann work for?
 20 A. At the time they worked for the Oregon University System.
 21 Q. That's not the University of Oregon, is it?
 22 A. The answer to that might be somewhat complicated. It's a
 23 consortium based of a set of universities.
 24 Q. It's the governing body for the seven universities; is
 25 that correct?

1 A. That's correct.
 2 Q. Your contract, SEIU's collective bargaining agreement,
 3 it's with OUS; correct?
 4 A. That -- yes. That's correct.
 5 Q. Are you aware that Ryan Hagemann is or was -- at the time,
 6 Ryan Hagemann was Brian Caufield's boss?
 7 A. I don't recall if I was aware of that or not.
 8 Q. Are you aware if Ryan Hagemann was general counsel of OUS?
 9 A. I don't recall if I knew that.
 10 Q. Do you know that now?
 11 A. I'm assuming that if you're saying that, that's true.
 12 Q. Okay.
 13 A. But I don't know that.
 14 Q. Do you know what Brian Caufield's title was?
 15 A. No.
 16 Q. Mr. Cleavenger did go to arbitration on the reprimand and
 17 termination; correct?
 18 A. That's correct.
 19 Q. You were there every day; correct?
 20 A. That's correct.
 21 Q. Did you feel he got a fair and impartial hearing on both
 22 the reprimand and the termination?
 23 A. Are you talking about the step three hearing?
 24 Q. No, sir. The arbitration.
 25 A. I felt like the arbitration was fair.

1 MS. COIT: No further questions.
 2 THE COURT: Redirect.
 3 MR. MCDUGAL: Nothing further.
 4 THE COURT: May the witness be excused, Counsel?
 5 MR. MCDUGAL: Yes.
 6 THE COURT: Counsel?
 7 MS. COIT: Yes.
 8 THE COURT: Sir, thank you very much for your
 9 attendance today. You're excused from the proceedings.
 10 Counsel, the next witness, please.
 11 MR. JASON KAFOURY: Officer Bechdolt.
 12 THE COURT: Thank you, sir. Step forward. Please
 13 come into the courtroom, please.
 14 DEPUTY COURTROOM CLERK: Sir, stop there.
 15 THE COURT: Raise your right hand, please.
 16
 17 ANDREW BECHDOLT,
 18 called as a witness in behalf of the Plaintiff, being first
 19 duly sworn, is examined and testified as follows:
 20 THE WITNESS: Yes.
 21 THE COURT: Be seated in the witness box. The
 22 entrance to the witness box is closest to the wall.
 23 Now, after you're seated, would you face the jurors, state
 24 your full name, and spell your last name, sir?
 25 THE WITNESS: My full name is Andrew Bechdolt,

1 B-E-C-H-D-O-L-T.
 2 THE COURT: Pull yourself a little closer to the
 3 microphone or pull the microphone towards you. Thank you.
 4 Direct examination by plaintiff's counsel.
 5
 6 DIRECT EXAMINATION
 7 BY MR. MCDUGAL:
 8 Q. Good afternoon, Officer Bechdolt. I'm Mark McDougal. I
 9 represent Mr. Cleavenger. What's your current position at
 10 U of O?
 11 A. I'm a lieutenant with the police department.
 12 Q. Okay. And did you ever have any supervision over
 13 Mr. Cleavenger?
 14 A. Yes, I did.
 15 Q. And when was that?
 16 A. 2010, 2011. Somewhere in that vicinity.
 17 Q. And do you recall getting favorable reports about
 18 Mr. Cleavenger?
 19 A. I'm not sure what you mean by "favorable reports."
 20 Q. Let me hand you two documents and just see if these are
 21 documents that you were involved in.
 22 THE COURT: Numbers, Counsel?
 23 MR. MCDUGAL: I'm handing the witness number 90 and
 24 91.
 25 THE COURT: 90 and 91. Thank you.

1 BY MR. MCDUGAL: (Continuing)
 2 Q. Can you identify -- first, do you have anything to do with
 3 these documents?
 4 A. Yes, I do.
 5 Q. Okay. Can you identify Exhibits 90 and 91?
 6 A. Let's see. 90 appears to be an end-of-phase turn-in
 7 report and 91 is a phase evaluation summary.
 8 Q. And these are documents pertaining to Mr. Cleavenger that
 9 were made in the regular course of business at the U of O
 10 Police Department --
 11 A. Yes.
 12 Q. -- by public safety officers?
 13 A. Yes.
 14 MR. MCDUGAL: Permission to publish or offer the
 15 exhibits?
 16 THE COURT: 90 and 91 are received. You can publish
 17 those, Counsel.
 18 BY MR. MCDUGAL: (Continuing)
 19 Q. Do you have any independent memory of -- I'll strike that.
 20 What was the purpose of Exhibit 90?
 21 A. Sorry. I'll put my glasses on. I'm going to have to look
 22 through it a little closer. It looks to me like it was -- the
 23 purpose of it was the end-of-phase reports from his field
 24 training officer.
 25 Q. I would like to direct your attention -- I'm just going to

1 focus on Mr. Cleavenger's attitude for a minute here.
 2 A. Okay.
 3 Q. What does the document say about his attitude?
 4 A. In Exhibit 90 it says: Attitude toward law enforcement.
 5 He demonstrates an active interest in this profession.
 6 Q. At the very top of the document, what does it say, also,
 7 about his attitude?
 8 A. He has a healthy desire to work in law enforcement and
 9 learns quickly.
 10 Q. Yes.
 11 A. Okay.
 12 MR. MCDUGAL: Mr. Hess, could you go to page 3? And
 13 I'll ask the witness also to go to page 3.
 14 BY MR. MCDUGAL: (Continuing)
 15 Q. And there's a heading called: Self-Initiated Activity.
 16 A. Okay.
 17 Q. And what does it say about Mr. Cleavenger in that regard?
 18 A. It says he was very eager about this job. He's done a lot
 19 of self-initiated activity. He takes building security very
 20 seriously and will routinely close any open exterior windows.
 21 He initiates bicycle patrols and foot patrols. Cleavenger also
 22 cleaned out the bike shed and made sure all bicycles had lights
 23 and full tires. He volunteers for assignments and tends to
 24 take extra steps to provide full service to constituents.
 25 Q. What does that heading, Self-Initiated Activity, what does

1 that mean to the department?

2 A. Sir, that section, in this context, pertains to the things

3 that officers do in their unobligated time.

4 Q. Okay.

5 A. Even when they're not dispatched to a call for service.

6 Q. And this is a review of Mr. Cleavenger. How far along in

7 his career at the U of O?

8 A. Well, it's dated July 4, 2011. I honestly don't remember

9 when his -- what his hire date was with the U of O.

10 Q. Second sentence of the document on the first page will

11 tell us a time frame it's relating to.

12 A. Okay. March 20 to July 3rd.

13 THE COURT: What year?

14 THE WITNESS: 2011. Sorry, Your Honor.

15 THE COURT: Thank you.

16 BY MR. MCDUGAL: (Continuing)

17 Q. When did you stop having any supervisory role over

18 Mr. Cleavenger?

19 A. When did I stop? I don't remember exactly when it was.

20 Q. Okay. At some point he's transitioned and he's under

21 Sergeant Cameron. Does that ring any bells?

22 A. Yes.

23 Q. And how long after this letter, if you know, was that?

24 A. I honestly don't know, to tell you the truth. I don't

25 remember.

1 Q. Do you remember Mr. Cameron talking about Mr. Cleavenger

2 and whether or not Mr. Cleavenger should even be at the

3 department?

4 A. I remember Mr. Cameron talking about Mr. Cleavenger, but I

5 don't -- I don't have any -- off the top of my head, I don't

6 remember him saying anything about whether he should be there

7 or not.

8 Q. Let me hand you a copy of your deposition, sir.

9 A. Sure.

10 Q. Yes. Yes. I would like to direct your attention to

11 page 56, lines 14 through 23.

12 A. 56. Okay. Surrounding body cameras?

13 Q. Oh, I'm sorry. 58. I'm sorry.

14 A. Okay.

15 Q. 58, line 14 through 23.

16 A. Okay.

17 Q. Have you had a chance to look at it?

18 A. Lines 14 through --

19 Q. 23.

20 A. Yes.

21 Q. Now I would also like you to look at page 59, lines 10

22 through 13 -- 10 through 14. 59, 10 through 14.

23 A. Okay.

24 Q. Then page 60, lines --

25 THE COURT: Just a moment. Let him read that,

1 Counsel. So page 59, 10 through 14.

2 THE WITNESS: 10 through 14. Okay.

3 BY MR. MCDUGAL: (Continuing)

4 Q. And then page 60, lines 19 through 23.

5 A. Okay.

6 Q. Isn't it a fact that Officer Cleavenger told you -- I

7 mean, Officer Cameron, I'm sorry, told you that Cleavenger

8 shouldn't have been hired?

9 A. He did tell me at some point, yes.

10 Q. He also told you he didn't like Cleavenger's stance on

11 Tasers?

12 A. Yes.

13 Q. And he said that while he was working there?

14 A. Yes. He was an employee there and -- yeah.

15 Q. Were you ever asked to investigate any callouts that

16 Mr. Cleavenger had made?

17 A. Yes. In the -- the terminology "investigate" is -- isn't

18 how I would put it, but, yes.

19 Q. Okay. What would your terminology be?

20 A. I was assisting someone else in an investigation and just

21 gathering some facts.

22 Q. And those were three callouts?

23 A. Yes.

24 Q. Problematic callouts, is what they were referred to as?

25 A. That's what they were referred to as, yes.

1 Q. Did you, after you looked into them, form an opinion as to

2 whether or not there was a problem with the callouts?

3 A. I did.

4 Q. And what was that opinion?

5 A. That those, in and of themselves, were not problematic.

6 Q. Sorry. Give me one second.

7 A. Okay.

8 Q. And you even testified to that at the --

9 MS. COIT: Object to the impeachment. He's given his

10 opinion.

11 MR. MCDUGAL: I'm not impeaching.

12 THE COURT: Counsel, what is your question?

13 BY MR. MCDUGAL: (Continuing)

14 Q. You, in fact, testified that that was your opinion at the

15 arbitration in this matter; correct?

16 THE COURT: Overruled. You can state that. You can

17 state that.

18 THE WITNESS: Yes.

19 BY MR. MCDUGAL: (Continuing)

20 Q. Okay. And I want to ask you very specifically: Is it

21 your testimony that in your opinion you looked into these

22 callouts and in your personal opinion you didn't find anything

23 wrong with them and that's still your opinion?

24 A. I didn't -- that's not what I said. I said in and of

25 themselves there was no problem with them.

1 Q. Okay.

2 A. As they stand on their own, there's no problem.

3 Q. Can you look at page 44 --

4 A. Sure.

5 Q. -- of your deposition? Lines 17 through 21.

6 A. Page 44. 17 through 21.

7 Q. Yes.

8 A. Okay.

9 MR. MCDUGAL: Your Honor, I would like permission to

10 play that.

11 THE COURT: Well, first, you're refreshing his

12 recollection. I think the question should be asked.

13 BY MR. MCDUGAL: (Continuing)

14 Q. Does that refresh your recollection of whether or not

15 that's what you said?

16 A. That's exactly what I said, yes.

17 THE COURT: Counsel, you can repeat exactly what he

18 said.

19 MR. MCDUGAL: I don't want to -- I can read the

20 question and answer or play it.

21 THE COURT: Go ahead.

22 MR. MCDUGAL: Okay. Play it.

23 THE COURT: Just verify that this is what you said.

24 Okay?

25 MR. MCDUGAL: Page 44, line 17 through 21.

1 MR. HESS: My apologies. I need to start over.

2 THE COURT: Counsel, first of all, let's stop. This

3 isn't what he said. He answered "yes," didn't he?

4 MR. MCDUGAL: Yes.

5 THE COURT: You asked the question.

6 MR. MCDUGAL: Right.

7 THE COURT: I'm not going to let you do that,

8 Counsel. This is a leading question. You can -- you can --

9 you got a response to your question, but his answer is "yes."

10 MR. MCDUGAL: That's correct.

11 THE COURT: All right.

12 MR. MCDUGAL: Let me do it a different way.

13 BY MR. MCDUGAL: (Continuing)

14 Q. At your deposition were you asked the following question:

15 In your opinion -- okay, okay, so in your opinion you looked

16 into these callouts. In your personal opinion, you didn't find

17 anything wrong with them, and that's still your opinion today.

18 Were you asked that question in your deposition?

19 A. Yes, I was.

20 Q. And what was your answer?

21 A. My answer was yes.

22 MR. MCDUGAL: That's all I have.

23 THE COURT: Cross-examination.

24 ///

25 ///

1 CROSS-EXAMINATION

2 BY MS. COIT:

3 Q. Just a couple of points. These callouts that you looked

4 into, Lieutenant Bechdolt, you gave the opinion that based on

5 those alone you didn't find anything wrong with them; is that

6 correct?

7 A. That's correct.

8 Q. Was that opinion based on your understanding that

9 Mr. Cleavenger was acting in the authority of a public safety

10 officer?

11 A. Yes.

12 Q. Would that opinion change if he was acting under the

13 authority of a parking attendant?

14 A. Would my opinion change of whether they were problematic

15 or not?

16 Q. Yes.

17 A. Probably not.

18 Q. And I just want to look at the exhibit, Exhibit 90, that

19 you looked at earlier.

20 A. Okay.

21 Q. Do you see up at the first page the time period that this

22 report applies to?

23 A. March 30, 2011, to July 3, 2011.

24 Q. And do you know who Mr. Cleavenger's field training

25 officer was, the author of this document?

1 A. I believe that was Officer Michael Drake.

2 Q. Do you know by this time in July of 2011 whether or not

3 Mr. Drake and Mr. Cleavenger had developed a personal

4 friendship?

5 A. I believe they had, yes.

6 Q. Now, look at the acceptance of feedback. Halfway through

7 the paragraph, do you see where it says, "Mr. Cleavenger

8 explains his thinking and logic behind his actions. This can

9 come off as being defensive or argumentative." Do you see

10 that?

11 A. Yes, I do.

12 Q. Do you agree with that statement?

13 A. Yes.

14 MS. COIT: Thank you. That's all I have.

15 THE COURT: Redirect.

16

17 REDIRECT EXAMINATION

18 BY MR. MCDUGAL:

19 Q. Can you put that back up? Can you just read the rest of

20 that?

21 THE COURT: You can put that back up. I don't know

22 if that entire paragraph was read, so --

23 BY MR. MCDUGAL: (Continuing)

24 Q. Part of this paragraph was just read. Can you read the

25 rest of it?

1 A. I'll start with, "However, this is not his intent.
 2 Cleavenger took my feedback and applied it in future similar
 3 situations."
 4 MR. MCDUGAL: That's all I have.
 5 THE COURT: Recross?
 6 MS. COIT: None.
 7 THE COURT: May the witness be excused, Counsel?
 8 Counsel?
 9 MR. MCDUGAL: Yes.
 10 THE COURT: May the witness be excused?
 11 MR. MCDUGAL: Yes.
 12 THE COURT: Counsel?
 13 MS. COIT: No, Your Honor. He's coming back in my
 14 case.
 15 THE COURT: Okay. Let me once again explain to the
 16 jury. It's a good time to constantly remind you. Remember I
 17 said either side can call what they believe are favorable
 18 witnesses or adverse witnesses, and remember that the defense,
 19 with many witnesses, has consented and agreed to take those
 20 witnesses at one time, and they may have normally called those
 21 witnesses as their witnesses during the case-in-chief, but
 22 Lieutenant is going to be returning to us in the next year or
 23 so. I'm kidding. He'll be with us next week.
 24 THE WITNESS: Yes, sir.
 25 THE COURT: He'll be apparently one of the people

1 coming back in the presentation. So many of the questions are
 2 now reserved for the defense so they have a presentation.
 3 Now, remember that's entirely plaintiff's right to call a
 4 favorable or an adverse witness or a witness who's testifying
 5 as to whatever, and that's the oddity of the civil matter.
 6 It's a significant change than if this was a criminal trial,
 7 which it's not.
 8 You can step down.
 9 Counsel, next witness.
 10 We have a series of short witnesses, so if you're very
 11 good, it may be before 5:00. I'm just teasing you. They're
 12 very short witnesses, but there's six or seven people who are
 13 going to be presented to you rapidly. I apologize for the
 14 45-minute lunch.
 15 MR. MCDUGAL: We're going to switch to Mr. Ranger
 16 because Mr. Hoffman is not immediately --
 17 THE COURT: I'm sorry?
 18 MR. MCDUGAL: We're switching witnesses because
 19 Mr. Hoffman is not in the hallway.
 20 THE COURT: That's fine.
 21 Mr. Ranger, is that correct?
 22 THE WITNESS: Correct.
 23 THE COURT: Raise your right hand.
 24 ///
 25

1 TIMOTHY RANGER,
 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'll affirm.
 5 DEPUTY COURTROOM CLERK: Affirm. Thank you.
 6 THE COURT: Thank you. The entrance is closest to
 7 the wall. Be kind enough to be seated. Would you pull the
 8 chair close to the microphone and would you look at the jury
 9 and state your full name and spell your last name.
 10 THE WITNESS: My full name is Timothy Roger Ranger.
 11 THE COURT: Thank you.
 12 Direct examination, please.
 13
 14 DIRECT EXAMINATION
 15 BY MR. JASON KAFOURY:
 16 Q. Mr. Ranger, I'm Jason Kafoury. I'm an attorney for
 17 Mr. Cleavenger. I'm going to be talking to you here, but
 18 please address the jurors when you're talking. I want to talk
 19 a little bit about your background, a little about your
 20 relationship with my client, and how all this situation with
 21 the University of Oregon has affected him. Okay?
 22 A. Okay.
 23 Q. Where are you from originally?
 24 A. London, England.
 25 Q. And tell us a little bit about your educational

1 background.
 2 A. Well, I'm a late bloomer. I actually went to the
 3 University of Oregon, which is where I met Jim. And I was a
 4 history major then, and I wanted eventually to get into
 5 education.
 6 I actually got into education a little bit earlier than
 7 anticipated because I got into some voluntary work in schools
 8 and just found it was the place I needed to be.
 9 Q. When did you come to the United States?
 10 A. 1998.
 11 Q. And did you move to Oregon right off the bat?
 12 A. Yeah. Pretty much. My wife -- I don't mean to be
 13 flippant here, but my wife wanted a souvenir from England, and
 14 I was it, so --
 15 Q. Okay. Just tell us briefly what kind of jobs you've had
 16 before your current employment.
 17 A. Let's see. So in the United States, to begin with, I
 18 wasn't able to work because I was -- you know, how legally you
 19 have to even come to Oregon -- sorry if I'm not making this
 20 clear. I think you have to live in the state for a year before
 21 you can, you know, get a job, all right, in the state.
 22 I ended up getting into hospitality. I worked at the
 23 Hilton Hotel for a while. That helped me with paying for my
 24 tuition as well when I was at the university.
 25 So the university 2005 to 2008. Full time. But then I

1 did take classes beyond that up until winter of 2011.
 2 Q. And tell us what you currently do for work.
 3 A. I'm a librarian. K through 5. And I'm missing my little
 4 ones, because this is the second day of school, and our school
 5 district just went into full-time kindergarten.
 6 Q. Well, we won't keep you long.
 7 When did you first meet my client, James Cleavenger?
 8 A. That's going to be about 2006. And the reason why I'm
 9 pretty clear on the date is because we're soccer fans, or I
 10 would call it football, but we met during the World Cup, and
 11 there were places on campus we could watch it. I met Jim as
 12 well as a number of really cool people during that time. And
 13 we ultimately got together and created a club for like-minded
 14 people who, you know, really liked soccer.
 15 Q. How big of a club was this?
 16 A. Oh, it was pretty big. I mean, at least 50. You get
 17 emails, and the people that, you know, give us emails their
 18 emails, we send out their information. We had a website we
 19 called it "real football." At least "real football" was in the
 20 title of the website. And we had regular interactions with
 21 lots of members. We didn't always get them all at once. I
 22 think there was something in the region of a hundred people,
 23 but that type. But there were people from all over the world,
 24 okay, and plus there were Americans, too, that just loved the
 25 sport, wanted to be around people that were from, you know,

1 different countries, and, so, yeah.
 2 Q. Was this a club within the University of Oregon system?
 3 A. No. It was -- it was -- it was primarily made up of
 4 university students because of, you know, the people we met.
 5 But, no, it was not an affiliation of the university, that I
 6 can recall.
 7 Q. Was there a particular soccer team that you and my client
 8 connected around?
 9 A. Oh, absolutely. Liverpool.
 10 Q. Who was that?
 11 A. Home of the Reds. Liverpool Football Cup.
 12 Q. Why don't you help the jurors and explain out your guys'
 13 relationship as friends evolved since 2006.
 14 A. Well, you know, Jim is a very charismatic person. Very
 15 caring and very giving. Jim is the sort of person -- he loves
 16 to organize things. Whether it's camping trips we've been on,
 17 particularly wilderness trips up at Mount Adams in Washington.
 18 We would -- of course, as part of the club, we would get
 19 together -- usually weekends, but also weeknights as well -- to
 20 watch together. Like any friends, we would watch games. And
 21 then there were lots of social interactions. We would go out
 22 in the evening. Dinners, drinks, et cetera.
 23 Q. While you were at the University of Oregon as a student,
 24 from what year to what year were you there as a student?
 25 A. So I want to clarify. Full time between 2005 and 2008,

1 and because I have other -- my wife, I have to look after her.
 2 I'm a caregiver to her. And so, you know, I had to kind of cut
 3 off my education at that point and revisit it a little bit
 4 later. So then after 2008, at least as far as my education on
 5 campus, I went back as late as winter of 2011.
 6 Q. What -- what was the reputation of the University of
 7 Oregon Department of Public Safety while you were there?
 8 A. Well, at least around everybody that I hung out with, and
 9 I have a broad spectrum of friends, okay, from very different
 10 walks of life. I think, best characterized, as, excuse me,
 11 good ole boys. I don't mean to be disparaging of what they do,
 12 but, you know, many people were upset that the position of
 13 campus police, it was -- it was as though they -- they enjoyed
 14 being confrontational. And I don't necessarily mean physical.
 15 I just mean that their presence, it was a little overbearing,
 16 to say the least.
 17 I mean, yeah, I never experienced -- I want to clarify. I
 18 never actually experienced that myself, but, you know, I had
 19 plenty of friends, and I understand that that's going to be
 20 considered hearsay, but this was a regular thing, okay, with
 21 all groups of friends of mine, that they would usually come up
 22 and say at some point --
 23 MS. COIT: Okay. Hearsay.
 24 THE COURT: Sustained.
 25 ///

1 BY MR. JASON KAFOURY: (Continuing)
 2 Q. You can only testify about -- you can't testify about
 3 what --
 4 THE COURT: Ladies and gentlemen, I'm going to strike
 5 that answer. You have to not regard that as testimony in this
 6 matter.
 7 Counsel?
 8 BY MR. JASON KAFOURY: (Continuing)
 9 Q. Do you recall around 2008 a debate on the campus about
 10 whether or not the department should have Tasers?
 11 A. Oh, yeah.
 12 Q. Was that a hot button topic at that point?
 13 A. Very much so, because many students I knew -- and not just
 14 students, just members of the community -- this was not a good
 15 idea, given the, I want to say, sort of hostile behavior, all
 16 right, and negative behavior towards the very people they're
 17 supposed to keep safe and, you know, serve.
 18 So, yeah, having a Taser was not something that the people
 19 I knew thought was a good idea.
 20 Q. I'm going to ask just a couple of questions about my
 21 client's British accent. That may come up at points during
 22 this trial. Have you heard my client's British accent?
 23 A. Oh, sure. He has more than one, but definitely one that
 24 stands out very, very good.
 25 Q. And which one is that that stands out?

1 A. (With an accent) "So have I been a scouser?" So scouser
 2 is somebody from Liverpool. I think mine is better than his,
 3 but he might argue otherwise.
 4 Q. When would he use that accent when you knew him back then?
 5 A. Sometimes, like I can -- I can think of one example, in
 6 particular. Not only am I a librarian and teach K through 5,
 7 as I said, but also a soccer coach, and this is voluntary.
 8 This is something I do in my spare time for the kids. And, you
 9 know, Jim is always giving time, all right, to his friends, but
 10 this was something I wanted him to do.
 11 I mean, yeah, for me; but, I mean, for the kids. He came
 12 out. He's -- you know, he's good with kids, too, and, you
 13 know, the whole time he's using a British accent.
 14 Sure, at the end he let them know, you know, he's not
 15 British. He was trying to see if anybody could pick up on it.
 16 But the kids were so sharp and alert and watching him, and
 17 I think they were amused as well that there was another Brit in
 18 their presence.
 19 Q. Throughout all the times that you have heard him use this
 20 British accent, has he ever been using it to try to, you know,
 21 deceive other people to be untrustworthy?
 22 MS. COIT: Object. Foundation.
 23 THE COURT: Sustained.
 24 BY MR. JASON KAFOURY: (Continuing)
 25 Q. Throughout the time that you have been around him over the

1 years, how often does he use a British accent?
 2 A. Well, he used a British accent. He uses different
 3 accents. I mean, he's just being sociable. You know, I do the
 4 same. And, actually, we've got a friend who's actually from
 5 Liverpool, and I'm a Southern. I'm from London. So the fact
 6 that I do a Liverpool accent in England, that's not always
 7 greatly appreciated.
 8 My friend who actually lives in Portland, he's a scouser.
 9 He's a Liverpoolean, okay, somebody from Liverpool, and he
 10 chastises me. We're friends, but he chastises me because I
 11 will use a Liverpool accent when I'm around him and so he gives
 12 me a hard time about that.
 13 But he'll tell you that James does an awesome Liverpool
 14 accent. So I think he just picks on me because I'm from the
 15 south.
 16 Q. I guess I'll ask it differently. Have you ever seen him
 17 use this accent to try to gain personally from it?
 18 MS. COIT: Object. Foundation.
 19 THE COURT: Overruled. You can -- this is your
 20 personal observation.
 21 BY MR. JASON KAFOURY: (Continuing)
 22 Q. In your personal observations.
 23 A. No. Jim is just a fun-loving guy. That's all.
 24 Q. Let's talk about his personality. How -- how often did
 25 you spend time with him, let's say, during the years of 2006 to

1 2008?
 2 A. A lot. I mean, as I've already told you, you know, when
 3 we were getting together for the club and we would watch
 4 soccer. We were soccer fans, right, so we're going to get up
 5 at the crack of dawn. I mean, this is friendship for you, when
 6 somebody opens their doors to you, you know, make his apartment
 7 into, you know, a soccer clubhouse, and, you know, 4:00 or 5:00
 8 in the morning to be able to watch live soccer. So we would do
 9 that every week. There'd be mid-week games. And as I've
 10 already explained, that, you know, definitely after the first
 11 couple of weeks, we were already bonding as a group. We would
 12 do other things, and that extended a little bit later on into
 13 campaign and other events that we'd do.
 14 Q. How often did you see or talk to him over the years
 15 when -- that he worked at the University of Oregon? So that's
 16 2010 to 2012.
 17 A. Let's see. Well -- so 2010, I'm not at the university
 18 now, so I'm not seeing him on campus, but I was still -- we
 19 were still doing the club, and we were meeting each other for
 20 that.
 21 2012. I remember that was really the time that he was
 22 beginning to have problems where he was at work, and he was
 23 already --
 24 Q. Before we go into the problems, let's talk about who
 25 Jim Cleavenger was, in your mind, in terms of his personality

1 before that.
 2 A. That's easy. I already told you. A fun-loving guy, and I
 3 already gave an example of how, you know, he would give his
 4 time -- he's a very generous person. He cares tremendously.
 5 Q. How about his energy level?
 6 A. Well, he's the organizer. He's the guy. He's the guy.
 7 He organizes everything. The club, it was at his house.
 8 Camping trips, he organizes. So we're talking high energy
 9 here. Always available to his friends.
 10 Q. You started talking about, in 2012, you started to notice
 11 some differences. Tell me, what do you remember?
 12 A. Well, I just remember the -- I didn't -- James -- he
 13 doesn't wear his emotions on his sleeve, okay? Sometimes you
 14 have to kind of bait him to get him to get out of it, but he
 15 was already, you know, upset with what was going on. To be
 16 honest, I don't know the full details of that, but I know how
 17 he was feeling at the time.
 18 He was very frustrated, and it just seemed to get worse as
 19 it progressed, and then, of course, ultimately, it culminated
 20 in his position finishing.
 21 And after that, well --
 22 Q. How was he doing after the termination? What do you
 23 remember?
 24 A. Not good at all. In fact, I want to say Christmas 2012 or
 25 thereabouts. I mean, it was winter. And, you know, going

1 through to sort of like spring of 2013, he was just -- it was
 2 like he -- you know, it was like he left town. He was gone.
 3 And, I mean, you know, I would contact him and text -- we did a
 4 lot of texting, and, you know, games. Like I said, he's the
 5 organizer. So he would be the one that would contact you,
 6 right and say, "Hey." Mass text, right? "We have a game
 7 Saturday. See you Saturday." There was no text. There was
 8 nothing going on.

9 So of course I'm going to contact him and say, "Where are
 10 you at? What are you doing?" I'm not really getting anything.
 11 I'm not getting any texts back. No messages. Nothing.

12 So I then reached out. I don't know his family, but I
 13 know other friends because of the club, so I reached out to
 14 other friends and said, "Look, what's going on with Jim? Where
 15 is he?" And, you know, there was -- there was chat that there
 16 were problems, right. There were issues with work. I wasn't
 17 aware at that time that, you know, he was no -- he was no
 18 longer with the campus police.

19 But I was worried about him. He's always there -- been
 20 there for me. So it was -- it was springtime 2013. I remember
 21 reaching out to, as I say, other friends. They had contacted
 22 him and said, you know, "Tim is worried about you."

23 Still, I'm not getting anything. I end up contacting him
 24 and telling him -- and this was a plan, okay. I came up with
 25 it with a friend of mine. And I said, "Look, he's not -- he's

1 not talking. There's something really wrong here." So I
 2 contacted him and I said, "I'm having problems," which -- which
 3 was true, but it wasn't for -- you know, it wasn't for me. I
 4 was trying to get a hold of him to find out what was going on
 5 with him.

6 Wouldn't you know it? Of course he came out, and that's
 7 just Jim.

8 So he's there. He's there, but he's not there. It's like
 9 he's -- he's physically in front of you, but he's not -- it's
 10 not the Jim I know, right? It's not the Jim that makes a laugh
 11 and a joke and helps you with whatever your problem is. He was
 12 distant, he looked depressed, and, quite frankly, he looked
 13 sick. Okay? The sort of sickness that you see in people that
 14 are stressed out.

15 Q. So what did you do?

16 A. I tried to get him to talk to me about it, and, you know,
 17 to some extent, he did. I mean, at the beginning, not -- not
 18 wanting to make it look like it was a ruse. I was obviously
 19 sharing what was going on for me with my home care and
 20 everything else I was going through, but Jim, he -- well, he
 21 was in tears. He just was not -- he just wouldn't open up too
 22 much about it except to say that things felt like they were
 23 unraveling.

24 Q. Did he talk to you about the difficulties that he had had
 25 at the University of Oregon?

1 A. Yes. Now, he didn't go into too much detail about it, but
 2 except to say that --

3 MS. COIT: Object. Hearsay.

4 MR. JASON KAFOURY: Goes to the state of mind.

5 THE WITNESS: No, I'm --

6 THE COURT: Overruled.

7 BY MR. JASON KAFOURY: (Continuing)

8 Q. Was it clear to you that losing his job and what had
 9 happened is what had him so down?

10 A. No, absolutely. In the same way that I've told you that,
 11 you know, I wanted to come and -- become an educator, right, it
 12 was clear I wanted to become an educator. I bore people to
 13 death when I go to parties because all I do is talk about kids.
 14 Remember I have K through 5. Jim, he will bore you to death
 15 about wanting to be a cop. So that was his deal.

16 So the fact that this was all going down, I didn't know
 17 what it meant to him at the time, but I didn't -- I didn't know
 18 what the consequence was of his not being in that department
 19 anymore, but I knew how much being a police officer meant to
 20 him. I mean, it was something that was always spoken of,
 21 right, so --

22 Q. How much have you seen Mr. Cleavenger over the last few
 23 years since that -- since 2013?

24 A. Well, a little bit more now, and you might attribute that
 25 to obviously the proceedings that we're dealing with right now,

1 but it was starting to get a little bit better, you know, over
 2 the last couple of months.

3 He's still not himself, and, quite frankly, I look at him
 4 today, and he looks a little gaunt. Maybe it's just the stress
 5 that he's gone through, but the last few years it's been
 6 really, really hard to, you know, get him to get involved with
 7 things.

8 Only this year, which I was really happy about, until I
 9 threw my back out and couldn't go, he started up again with his
 10 camping trips, all right, to -- to Mount Adams, which is a
 11 really fun thing to do. He does a great job of organizing
 12 that.

13 But he didn't do that for a couple of years. He's been
 14 doing this for years. He's the one. He does it every year.
 15 For the last couple of years, prior, it was like he slipped off
 16 and he just wasn't anywhere. He wasn't organizing anything.
 17 We weren't doing any, you know, like soccer group activities.

18 Q. How many people historically go on this camping trip that
 19 he organizes?

20 A. I would say, because sometimes they have more people --
 21 you know, they maybe can't come for the first few days and
 22 they'll drive up separately and come later, but 20, 30.

23 I mean, you know, the campsite is full, all right. Full
 24 of people. Actually, we usually have little groups, because
 25 they're from all different places. We have international

1 students. You have -- I mean, I remember one time I was there
 2 with Jim and we had some military guys and just people from all
 3 different walks of life, and, you know, obviously people
 4 from -- from the University of Oregon, because I'm pretty sure
 5 that it's all organized through the outdoor program.
 6 Q. How has -- how often have you seen him, let's say, in the
 7 last six months to a year?
 8 A. Well, not as much as I want, but a couple of times a
 9 month, you know, we'll get together. I mean, he has parties at
 10 his house. I'm always invited. I mean, you know, more so than
 11 anything else it's a lot more to do -- and we're talking
 12 recent, because, you know, it's only really been -- I mean,
 13 you're saying six months ago.
 14 Q. Yeah. It's been three years since his termination, so --
 15 A. Yes.
 16 Q. -- I'm just trying to get a sense of your understanding of
 17 how he's doing nowadays.
 18 A. I would say he's improven, but he's not James that, you
 19 know, did all the organizing that I was used to when I was at
 20 the University of Oregon.
 21 Q. How has this whole thing affected him in terms of trusting
 22 people?
 23 A. Well, like I said at the beginning, you know, Jim is not
 24 the kind of person that, you know, wears his emotions on his
 25 sleeve. But having said that, he's very generous with his

1 time. You know, he would open himself up to you. I would
 2 definitely say he's way more closed off. I'm not going to say
 3 that I don't think he trusts me, but he definitely -- he
 4 doesn't open up to me like he used to. We don't have those
 5 kind of conversations anymore, in-depth conversations,
 6 feelings.
 7 MR. JASON KAFOURY: Thanks. Defense counsel may have
 8 a few questions for you.
 9 THE WITNESS: Thank you.
 10 THE COURT: Cross-examination, please.
 11
 12 CROSS-EXAMINATION
 13 BY MS. COIT:
 14 Q. Mr. Ranger, so when you met Mr. Cleavenger, he was in law
 15 school; is that right?
 16 A. That's correct.
 17 Q. Did he ever talk to you about his career aspirations in
 18 law?
 19 A. Yeah. Mostly law enforcement. But, yeah, law. I mean,
 20 if that's the umbrella that you're talking about.
 21 Q. No. No. About being a lawyer.
 22 A. A lawyer. Well, I mean, he was at law school, so I
 23 presume that he -- you know, that was originally maybe what he
 24 intended, but he didn't really talk too much about that.
 25 You know, when we would go out together, he was usually

1 talking about becoming a police officer.
 2 Q. Did you ever ask him why he was going to law school if he
 3 wanted to be a police officer?
 4 A. Excuse me. If the conversation came up, I'm sure, you
 5 know -- I don't remember the answer if we had that
 6 conversation.
 7 Oh, and, ma'am, I apologize. I -- I think it's really
 8 down to -- you know, I mean, law, and, you know, I just -- I
 9 just accepted it as something that was like a progression of,
 10 you know, his goals to become a police officer. I don't know
 11 what is involved in becoming a police officer, so it wasn't
 12 something I was questioning.
 13 Q. So you thought he may have been going to law school to
 14 become a police officer. Is that what you're saying?
 15 A. Sure.
 16 Q. Okay. Did you ever hear Mr. Cleavenger tell anyone he was
 17 actually from Liverpool?
 18 A. No.
 19 Q. Anywhere in England?
 20 A. No.
 21 Q. Now, you were good friends, according to your testimony,
 22 with Mr. Cleavenger when you developed this opinion about the
 23 Department of Public Safety. Is that right?
 24 A. You mean, the -- when I made the statement about that it
 25 was like a club of good ole boys? Do you mean that? Did I

1 formulate it?
 2 Q. Yes.
 3 A. Well, it was nothing to do with Jim. It was just, you
 4 know, what the feeling is on campus.
 5 You don't really need my testimony for that. There's
 6 plenty of documented, you know, articles about the behavior of
 7 the officers on campus.
 8 Q. So when you had that opinion about the officers on
 9 campus --
 10 A. Yeah.
 11 Q. -- you and Mr. Cleavenger were friends. You were good
 12 friends at that time. You hung out all the time, doing the
 13 soccer stuff, football stuff?
 14 A. Yeah. I think that the opinion I have is something that
 15 was really never spoken about. I mean, it wasn't -- it's
 16 something that is there in the background. It's something
 17 you're aware of because it's there, but it's never been
 18 relevant to me, you know, except for, as we say, we're talking
 19 about, you know, police having Tasers or learning how to -- or
 20 excuse me, I don't think it ever passed, but having firearms.
 21 That was like no way; did not want to see that.
 22 Q. Did you ever talk with Mr. Cleavenger about his opinions
 23 about the Department of Public Safety officers during this time
 24 period?
 25 A. No. Generally, we didn't talk about his job. I mean, we

1 were too busy, you know, having fun, so --
 2 Q. I apologize. That might have been confusing. I mean
 3 during the time period that he's in law school and you're going
 4 to school there, did you talk with him about your opinion or
 5 his opinion about the Department of Public Safety?
 6 A. You know, I'm not going to -- I'm not going to look at you
 7 and tell you that we never discussed that. I mean, there's --
 8 there isn't a moment that I can point to and say, "This was a
 9 specific thing we talked about." That didn't happen.
 10 But, you know, in general conversation, talking about
 11 what's going on in campus, could that conversation have
 12 happened? You know, there were times of how maybe they were
 13 going to have Tasers. I'm sure that probably happened. But,
 14 you know -- you know, the outcome of that conversation, I don't
 15 recall, so I don't think it could have been, you know, that big
 16 of a deal.
 17 Q. Did you ever get the impression from anything
 18 Mr. Cleavenger said to you that he disagreed with your opinion
 19 of the Department of Public Safety?
 20 A. Well, again, I don't recall having a conversation about
 21 it, so I'm not -- I can't give you an opinion about what his
 22 opinion was because I don't remember having a conversation
 23 about it.
 24 Q. All right. Well, let me ask you this.
 25 A. Yeah.

1 Q. Given the opinion you had and apparently this general
 2 consensus about the Department of Public Safety, were you
 3 surprised when you found out that Mr. Cleavenger was going to
 4 work as a public safety officer at the university?
 5 A. I do remember this, okay, when he told me he was going to
 6 do it, and I said, "Don't you become one of the good ole boys."
 7 I made some comment like that. Just an offhanded comment like
 8 that. I do remember making some off-the-cuff comment to him
 9 about that.
 10 Q. Did he give you an explanation as to why he had made that
 11 decision to go to work there?
 12 A. I think it was -- I -- I think it was a steppingstone is
 13 what he said. A steppingstone in order to become a
 14 quote/unquote, you know, full police officer.
 15 Q. A real police officer?
 16 A. Well, that's your words, but I would say, you know, a
 17 full-time police officer.
 18 MS. COIT: Okay. Thank you. No questions.
 19 THE WITNESS: You're welcome.
 20 THE COURT: Redirect examination?
 21
 22 REDIRECT EXAMINATION
 23 BY MR. JASON KAFOURY:
 24 Q. Did he express to you that his goal was to some day run
 25 his own police department?

1 A. Yes. Definitely. As I say, I go on about kids all day.
 2 He goes on about being a police officer. He wants, you know,
 3 the top job.
 4 MR. JASON KAFOURY: Thanks. That's all I have.
 5 THE WITNESS: A pleasure.
 6 THE COURT: Recross-examination?
 7 MS. COIT: No questions.
 8 THE WITNESS: Thank you.
 9 THE COURT: Thank you. May the witness be excused ,
 10 Counsel?
 11 MS. COIT: Yes.
 12 MR. MCDOUGAL: Yes.
 13 THE COURT: Thank you, sir. You may step down.
 14 Counsel, your next witness please.
 15 THE WITNESS: Get back to my kids.
 16 THE COURT: I don't know who the next person is
 17 you're calling, Counsel.
 18 MR. JASON KAFOURY: Corey Mertz.
 19 THE COURT: Come to the well of the Court and raise
 20 your right hand.
 21 MR. JASON KAFOURY: Corey Mertz.
 22 THE COURT: Come to the well of the court and raise
 23 your right hand.
 24
 25 ///

1 COREY MERTZ,
 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. Sir, be seated in the witness
 6 box, and the entrance to the witness box is closest to the
 7 wall. Be seated.
 8 Sir, would you state your full name for the jurors,
 9 please, and spell your last name for me.
 10 THE WITNESS: My name is Corey Mertz. That's
 11 M-E-R-T-Z.
 12 THE COURT: Thank you. Direct examination, please.
 13 MR. JASON KAFOURY: Thank you, Your Honor.
 14
 15 DIRECT EXAMINATION
 16 BY MR. JASON KAFOURY:
 17 Q. Mr. Mertz, I'm going to be talking to you over here, but
 18 please address the jury over here with your responses.
 19 Can you take a moment, just briefly introduce yourself,
 20 where you're from, a little bit about your educational
 21 background?
 22 A. Okay. I've -- I have been a full-time police officer for
 23 the Junction City Police Department since July 1, 1997. Prior
 24 to that, I was a reserve police officer with the Junction City
 25 Police Department for one year. And then prior to that I was

1 an explorer with the Eugene Police Department from 1989 to
 2 1996. And as my employment as a police officer at the Junction
 3 City Police Department, I've -- I have over 2,000 training
 4 hours, and my assignments have been school resource officer.
 5 I've been on a motorcycle. I've been a detective. I've done
 6 patrol. I've been a public information officer. So I've had a
 7 variety of different assignments throughout the years that I've
 8 been there.
 9 Q. When -- when did you first meet my client,
 10 James Cleavenger?
 11 A. I met Mr. Cleavenger for the first time when I was
 12 instructing a traffic law class at the Lane Community College
 13 Reserve Police Academy in Eugene, Oregon.
 14 Q. So that would have been 2010, when my client was attending
 15 this seven-month reserve academy?
 16 A. Correct.
 17 Q. Okay. Do you know how it was that my client started
 18 working at Junction City?
 19 A. He went through a testing process and then was selected as
 20 a reserve, which our standard testing process is a physical
 21 fitness test, a written test, an oral board, and a background
 22 investigation.
 23 Q. Tell us about how you started working directly with my
 24 client.
 25 A. I began working directly with James Cleavenger as an FTO.

1 He would come out and -- FTO stands for field training officer.
 2 I would -- James would ride with me as a reserve, and I would
 3 teach him about law enforcement.
 4 Q. How -- how often were you working with him during that
 5 time period?
 6 A. It -- the times varied. Sometimes it was, you know, he
 7 wouldn't show up at all, sometimes he would be out two, three
 8 times a week or even more.
 9 Q. What were your observations about him back in 2010, 2011
 10 how he was as an officer?
 11 A. My observations were that he -- from a -- you know, I
 12 believe I can speak for most people in the department, is that
 13 he --
 14 MS. COIT: Object. Foundation.
 15 THE COURT: Just reask it, Counsel.
 16 BY MR. JASON KAFOURY: (Continuing)
 17 Q. Without getting into everyone, just give us your --
 18 A. My opinion of James is that he was by far, as far as that
 19 group of reserves, the most competent. He was -- had by far
 20 the greatest amount of knowledge and street skills, and I --
 21 you know, I think that -- you know, I felt very comfortable
 22 working with him. I didn't feel like I had to watch my back,
 23 per se, as I did other reserves or other people that were hired
 24 in the same class that he was.
 25 Q. Tell us about what kind of complex cases you would work

1 with him on in Junction City.
 2 A. James was unusual in the fact that he was, one, very
 3 intelligent and then, two, he was wanting to really go above
 4 and beyond what was expected or even required.
 5 One of the examples was one day I was working and there
 6 was an armed robbery that occurred, and I was working dayshift,
 7 and it was towards the end of my shift, and James had been
 8 there with me, and James responded to the call, and he
 9 proceeded to assist myself and the police officer, legal
 10 advisor from the district attorney's office, and two Eugene
 11 Police Department major crime teams -- three officers -- write
 12 a search warrant for a suspect that we believed that did the
 13 robbery. He was there for over a 24-hour period of time; not
 14 only writing the search warrant, but he also stayed and helped
 15 execute it and processed the evidence.
 16 It's not unheard of that he would -- he would stay there,
 17 you know, much, much past the end of a single shift to complete
 18 reports.
 19 Also during my time period of knowing James is that he
 20 assisted me, as I was the accreditation director, if you will,
 21 where I procured information and facts from the police
 22 department and compiled them to ensure that our department was
 23 within the Oregon Accreditation Alliance standards and
 24 training.
 25 As part of that duty, it entailed writing policies,

1 directives, and other complicated and lengthy writings that
 2 would dictate how our department functioned. James directly
 3 assisted me with those tasks and was more than happy. He was
 4 there, you know, day in and day out, sitting there with me,
 5 helping me do this for -- just because.
 6 Q. Was he also working on the SWAT raid teams? Oh, the event
 7 you talked about. The robbery?
 8 A. Yes.
 9 Q. Was he involved with a hostage situation?
 10 A. Yes. Yes.
 11 Q. Tell us about that.
 12 A. We, as in -- it was during, I believe, the Scandinavian
 13 Festival a few years ago. It was myself, the chief of police,
 14 the sergeant, and I believe -- and I know James was there, and
 15 as we responded to the situation, we -- at the time it was
 16 alleged that the suspect in the case had taken his family --
 17 meaning his wife and her sister and her parents -- hostage,
 18 with a firearm, inside the house.
 19 As -- when we arrived, James was put in charge of, if you
 20 will, hostage negotiator, or negotiating or talking to the
 21 alleged suspect, and to try to resolve the situation with --
 22 without the use of force.
 23 During the subsequent phone conversation Mr. Cleavenger
 24 had with the involved suspect, he did agree to come out, and no
 25 one was harmed.

1 Q. How would you describe Mr. Cleavenger's philosophy towards
 2 law enforcement throughout your working with him?
 3 A. I believe that Mr. Cleavenger's philosophy was -- is
 4 similar, quite honestly, to mine. It's to protect and serve.
 5 It's to, you know, necessarily writing the ticket for a
 6 first-time offender may not be the best way. Maybe just
 7 talking to them. You know, I think that he's very community
 8 oriented. He's in it for -- he would -- an example is when it
 9 snowed. Nobody asked James, but he brought a snow shovel out
 10 and went and shoveled elderly people's driveways. You know,
 11 those sort of things that go, you know, miles and miles and
 12 miles towards to help the police department, to help improve
 13 the image of the police department, and to really gain
 14 community support. And he has time and time again shown that
 15 he is willing to do that for our -- the Junction City Police
 16 Department.
 17 Q. Are those, what you just described, kind of the pillars of
 18 community policing?
 19 A. Certainly.
 20 Q. Now, over that time, you also developed a friendship with
 21 my client; correct?
 22 A. Correct.
 23 Q. Okay. Sort of walk us through from when you first met him
 24 in 2010, how your guys's relationship evolved.
 25 A. I met James, and we -- we clicked personality-wise, and I

1 think a lot of that had to do with how we looked at law
 2 enforcement. And I didn't like people riding with me no matter
 3 who they were, and James I didn't mind riding with me, you
 4 know. So that was kind of the beginning of our relationship.
 5 And then just over the years we became friends and began
 6 to associate outside of work, either having him come over to my
 7 house or I would go to his house, or we would go out to dinner,
 8 those sorts of things. We would go camping together. My
 9 family, my mom and my dad, everybody knows who James is.
 10 Q. Before all this situation with the University of Oregon
 11 and him being terminated, how would you describe him -- you
 12 know, his personality; what type of person he was?
 13 A. Prior -- prior to the unfolding of the incidents that --
 14 the incident that occurred at the University of Oregon, James
 15 was a very eager person. He looked forward to, you know,
 16 becoming a full-time police officer. It was very clearly his
 17 goal, his dream. It was something that he was striving to
 18 obtain. He, personality-wise, was very charismatic. He was
 19 very fun to be around, very jovial. He laughed a lot. He made
 20 jokes and was always somebody that -- everybody wanted James
 21 around. I mean, even when -- you know, James was kind of
 22 just -- you know, he would call me several times a week. We
 23 would text back and forth, and so became very close.
 24 As the university thing began to unfold, I'd say James
 25 really became much less social. I heard from him very

1 infrequently, if ever, and we certainly associated much less
 2 frequently.
 3 An example is that he has a Studebaker car that he had
 4 purchased to restore, and he put it in my garage, and James was
 5 working on it every single day after work. He would come over
 6 and work on it, and I'd help him. And James has -- you know,
 7 he quit -- when this whole thing started occurring, he really
 8 stopped doing and working on that and just became much more
 9 reclusive.
 10 Q. How has it affected your guys's friendship over the last
 11 couple years?
 12 A. It's affected it in a manner that -- you know, it's not a
 13 question of if we're still friends. How it's affected is that
 14 I seldom, if ever, see him. We hardly ever talk on the phone
 15 or through texts and it's -- it's more of kind of an
 16 acquaintance sort of relationship versus, you know, somebody
 17 that, you know, I would describe a year ago as my best friend
 18 and that, you know, talked to way more than anybody else.
 19 Q. How has this affected his sleep?
 20 A. His -- to the best -- I mean, I --
 21 Q. You're not sleeping next to him, but has he described
 22 sleeping problems to you?
 23 A. Yes, he's described the difficulty of sleeping. I know
 24 that I've gotten texts from him, you know, early hours of the
 25 morning, and he calls me. You know, I -- I tend to go to sleep

1 at 9:00 and wake up at, you know, like, 7:00 in the morning
 2 every single day, and James does not, and it -- it has
 3 increased since this has begun.
 4 Q. When you've seen him recently, how do you feel like he's
 5 doing recently? It's been almost three years since he was
 6 terminated.
 7 A. James -- I believe it was the last time that I saw James,
 8 and it was approximately two weeks ago, and in -- just through
 9 conversation and his demeanor, I was honestly concerned about
 10 his mental health, his mental well-being. And one of his
 11 co-workers is a roommate of mine, and I asked the roommate to
 12 check on James the following day, when he was at work, to see
 13 how he was doing, because James was definitely not himself and
 14 definitely not the James that I once knew.
 15 Q. So it's fair to say three years later he's still having a
 16 lot of problems?
 17 A. A tremendous amount.
 18 Q. I want to talk about *Brady* materials. You've been in law
 19 enforcement for 19 years; is that right?
 20 A. Yes.
 21 Q. Tell us about -- have you done background investigations
 22 as part of your training and experience?
 23 A. Yes. As -- for a while as -- I was assigned as police
 24 detective. I also conducted background investigations on
 25 potential employees.

1 Q. In the 19 years you've been in the profession, has anyone
 2 that you've worked with actually been *Brady*-listed?
 3 A. No.
 4 Q. From your experience working -- well, have you been
 5 involved in the hiring process before?
 6 A. Yes. I've been involved in many hiring processes.
 7 Q. Tell us what -- from a hiring standpoint, what -- what
 8 would happen if someone tried to apply with a *Brady* list --
 9 while they were on the *Brady* list?
 10 A. Well, initially, probably -- the circumstances that I
 11 imagine, like with our testing process, would be that the *Brady*
 12 list necessarily wouldn't be discovered until we reached the
 13 background phase of the -- the hiring process, and certainly
 14 the background investigator, if -- discovered that, me
 15 personally, if somebody was on the *Brady* list, I would make the
 16 recommendation that they would not be hired. Granted, it's
 17 not -- wasn't my role as the background investigator to make
 18 the final hire or fire; however, it was my job to recommend if
 19 these people were to be hired or not.
 20 And do you want me to talk about what the *Brady* list is
 21 or --
 22 Q. Yeah. Just -- the jurors have heard some, but give your
 23 understanding.
 24 A. So my understanding of what the *Brady* list is is that it's
 25 a list of -- if the district attorney has exculpatory evidence

1 that a law enforcement officer has told a lie, then the
 2 district attorney is mandated by law to disclose that
 3 information to the defense counsel during a trial. And, as a
 4 result of that, it would essentially make a candidate not able
 5 to be a police officer.
 6 And what I mean by that is that frequently, as a police
 7 officer, it's your word against the suspect's word. There's no
 8 witnesses. There's oftentimes no cameras. There's -- it's --
 9 and if you -- credibility is the one thing that a police
 10 officer has to always have. And if you're putting somebody on
 11 a list that's saying they don't have credibility, then you're
 12 ruined.
 13 Q. So Mr. Cleavenger was with the Junction City Police
 14 Department from 2010 to 2013; correct?
 15 A. Correct.
 16 Q. Okay. And you worked with him all throughout that time
 17 period?
 18 A. Yes.
 19 Q. The jurors will have his hours; but, generally, just to
 20 shorten things, he averaged about 16 hours a week at Junction
 21 City. Is that right?
 22 A. I do not know that for sure, but I would not be surprised.
 23 He would -- he was a fixture there.
 24 Q. And he would -- he was working at Junction City, both paid
 25 and volunteer; is that right?

1 A. Correct.
 2 Q. And he did that on top of his normal work duties while he
 3 worked at the University of Oregon Department of Public Safety ;
 4 right?
 5 A. That's correct.
 6 Q. Sometimes that required him to --
 7 MS. COIT: Object to leading questions.
 8 THE COURT: Sustained.
 9 BY MR. JASON KAFOURY: (Continuing)
 10 Q. I'll ask generally. In law enforcement, if you have two
 11 different shifts between different departments, how does that
 12 affect your sleep?
 13 A. Well, I know that James would come in and work as a
 14 reserve and things would come up or cases, you know, that you
 15 just can't leave. And, you know, that's the, I guess,
 16 unfortunate thing about law enforcement is that if you, you
 17 know, get into something terribly time-consuming, you can't
 18 say, "Oh, my eight hours are over. I'm going to go home." You
 19 know, you're stuck there until it's taken care of or until
 20 somebody else comes on that can assist you in dealing with the
 21 situation.
 22 And if, you know, you were working as a -- if a reserve
 23 was working and was a dedicated reserve and would stay there
 24 until they -- when they had to go to their other job.
 25 Q. Was that a policy within Junction City Police Department

1 that if you were a reserve and you started investigating a case
 2 you had to stay there at the department until you finished
 3 the --
 4 THE COURT: Excuse me, Counsel. Why don't we all
 5 stand for just a minute.
 6 All right. Thank you, Counsel.
 7 THE WITNESS: In reference to the question if there
 8 was a policy that a reserve had to stay, my answer would be no.
 9 BY MR. JASON KAFOURY: (Continuing)
 10 Q. But was that generally what Mr. Cleavenger did, was stay
 11 until his reports were done?
 12 A. Yes. Which it was preferred, and the reason for that --
 13 and it used to be actual policy is that because the reserves --
 14 most reserves came in so infrequently that if, let's say, there
 15 were errors found in the report or an issue that arose with
 16 that particular incident, that we didn't know when the report
 17 would be done, and so that is why it was kind of somewhat
 18 encouraged. But to say it was policy, it wasn't verbal or
 19 written.
 20 Q. You talked about the mental health stress that you've seen
 21 in your friend, Mr. Cleavenger, you know, recently. Before all
 22 this with the University of Oregon, ever see any emotional
 23 problems with him whatsoever?
 24 A. No. None whatsoever.
 25 Q. Do you think he's been suffering from depression?

1 A. As of recently.
 2 MS. COIT: Object. Foundation. Qualifications.
 3 THE COURT: Sustained.
 4 BY MR. JASON KAFOURY: (Continuing)
 5 Q. All the time you worked with my client, any officer safety
 6 issues that you recall?
 7 A. None that were noted that were uncharacteristic for
 8 somebody who was learning the trade, the profession.
 9 Q. In terms of his character for truthfulness, did you form
 10 an opinion about that?
 11 A. I felt that he was very truthful and honest and I had no
 12 evidence to indicate that he wasn't, and I still believe that
 13 he is.
 14 Q. I want to talk about -- I want to show you Plaintiff's
 15 Exhibit 172? Can you identify what that document is?
 16 A. This document is a memo that I had written in response to
 17 the district attorney and as he was investigating
 18 Mr. Cleavenger for the *Brady* list and attached with the
 19 information was a report that included the University of
 20 Oregon's filing with the -- with the district attorney.
 21 Q. So you sent this in response to a request by the district
 22 attorney for information?
 23 A. Correct.
 24 Q. Okay.
 25 MR. JASON KAFOURY: I'd offer Plaintiff's 172.

1 MS. COIT: No objection.
 2 THE COURT: I'm going to receive that document. 172.
 3 Thank you, Counsel.
 4 BY MR. JASON KAFOURY: (Continuing)
 5 Q. I want to talk to you about a few things in here.
 6 So you wrote this document; is that correct?
 7 A. That's correct.
 8 MR. JASON KAFOURY: Can we bring up, Mr. Hess,
 9 Plaintiff's 172 can you go to page 3?
 10 Can you blow up who signed the letter?
 11 BY MR. JASON KAFOURY: (Continuing)
 12 Q. So while -- so what is AIC?
 13 A. Acting in capacity.
 14 Q. So at the time this letter was signed, Eric Markell was
 15 the acting-in-capacity chief of Junction City; is that correct?
 16 A. Correct.
 17 Q. And Brandon Nicol was the acting-in-capacity sergeant?
 18 A. Correct.
 19 Q. And this is dated 8/13/14; right?
 20 A. Correct.
 21 Q. Okay. Can you see a copy of the letter there on your
 22 screen?
 23 A. I only can see the blown-up portion with the signatures.
 24 Q. Let's go back to page 1. I'm going to go through a couple
 25 of allegations that Lieutenant Lebrecht put into the *Brady*

1 materials.
 2 MS. COIT: Object to foundation.
 3 THE COURT: Sustained. Unless it's signed by
 4 Lebrecht, Counsel.
 5 MR. JASON KAFOURY: I think it's undisputed that
 6 Lieutenant Lebrecht wrote the *Brady* material cover letter.
 7 THE COURT: 172 has been received.
 8 MR. JASON KAFOURY: Right.
 9 THE COURT: Does this witness need to return?
 10 Lieutenant Lebrecht will be testifying tomorrow? That question
 11 is going to be asked, by either one of you, about who wrote
 12 this page; correct?
 13 MS. COIT: Your Honor, he's referring to a different
 14 document.
 15 THE COURT: Just a moment. 172 is up on the screen.
 16 What are you referring to?
 17 MR. JASON KAFOURY: I'm referring to the *Brady*
 18 material. The actual packet of *Brady* material.
 19 THE COURT: That has an exhibit number?
 20 MR. JASON KAFOURY: 150.
 21 THE COURT: 150?
 22 MR. JASON KAFOURY: Correct.
 23 THE COURT: Then why is 172 on the screen?
 24 MR. JASON KAFOURY: 172 is a letter in response to
 25 his *Brady* material. This is a letter where he's addressing the

1 allegations within the *Brady* material, Your Honor.
 2 THE COURT: And what was your question?
 3 MR. JASON KAFOURY: I hadn't even asked it yet. What
 4 I was going to ask -- that was my next question, was did he
 5 read this *Brady* material in order to respond with this letter.
 6 THE COURT: In 150?
 7 MR. JASON KAFOURY: Exhibit 150, yes.
 8 THE COURT: All right. You can ask that question.
 9 So did you read Exhibit 150, or do you even have that in
 10 front of you?
 11 THE WITNESS: I don't have it in front of me.
 12 THE COURT: Counsel --
 13 BY MR. JASON KAFOURY: (Continuing)
 14 Q. To save time --
 15 THE COURT: No, that's fine. Not to get confused.
 16 BY MR. JASON KAFOURY: (Continuing)
 17 Q. When you wrote the materials in that letter --
 18 THE COURT: Exhibit 172.
 19 BY MR. JASON KAFOURY: (Continuing)
 20 Q. In Exhibit 172. When you wrote that letter, were you
 21 responding to this *Brady* submission regarding my client, which
 22 is Exhibit 150?
 23 A. Yes, I did. The information that I had was not as vast as
 24 this one; but, however, the -- the summary part of it I did
 25 receive.

1 Q. Okay.

2 A. The actual text, but not the enclosed, I guess, what you'd

3 call evidence.

4 THE COURT: You read the summary portion?

5 THE WITNESS: Yes. The narrative.

6 THE COURT: Was the rest of the material attached in

7 that kind of volume? Do you remember?

8 THE WITNESS: It was not.

9 THE COURT: You just had a summary?

10 THE WITNESS: Yes.

11 THE COURT: Okay. Counsel?

12 BY MR. JASON KAFOURY: (Continuing)

13 Q. And let's go through this document. 172.

14 THE COURT: Counsel, I can take that subject to a

15 motion to strike. Is there going to be any disagreement

16 eventually that 150 is going to come into evidence; in other

17 words, by some witness at some point? It might save this

18 witness coming back.

19 MS. COIT: There will be no objection when it's

20 offered.

21 THE COURT: Counsel, why don't I allow you to receive

22 150 with representation by defense counsel that eventually it's

23 going to be coming into evidence --

24 MR. JASON KAFOURY: Okay.

25 THE COURT: -- in light of the question, so

1 address that?

2 A. Yes, I did.

3 MR. JASON KAFOURY: Can you pull up the third

4 paragraph?

5 BY MR. JASON KAFOURY: (Continuing)

6 Q. And so these two reserve vehicles, which Reserve Officer

7 Cleavenger had, did not have the video equipment; is that

8 correct?

9 A. Correct. It was never installed. They were older cars

10 they were phasing out.

11 MR. JASON KAFOURY: Can we go to the next paragraph?

12 BY MR. JASON KAFOURY: (Continuing)

13 Q. So this was referring to an additional vehicle that had

14 it, and this was assigned to you; is that correct?

15 A. Correct. That was my police car.

16 Q. And the system in your car was actually broken and had

17 still not been replaced by August of 2014?

18 A. Correct. It had -- it had been removed.

19 Q. So when my client made the statement that at the Junction

20 City Police Department the vehicle he was permitted to use did

21 not have this MAV recording system, that was accurate; right?

22 A. That's correct.

23 MR. JASON KAFOURY: Can you go to the first paragraph

24 on page 2? I should have said second paragraph.

25 ///

1 Officer Mertz doesn't have to come back another day.

2 THE WITNESS: Thank you, Your Honor.

3 THE COURT: Now, the problem, though, is you're

4 confining that to just the material that he read. I don't know

5 what he read.

6 MR. JASON KAFOURY: It's a seven-page summary.

7 THE COURT: Okay. And you've got that.

8 MR. JASON KAFOURY: Yes. Which is a portion of it.

9 I want to go through this as quickly as possible.

10 BY MR. JASON KAFOURY: (Continuing)

11 Q. One of the allegations in the *Brady* materials was that

12 Junction City Police Department had three Chevy Tahoe patrols

13 that were pre-equipped with the WatchGuard video systems.

14 Just for a little context, the allegation of dishonesty --

15 MS. COIT: Your Honor, I object to the testimony by

16 Counsel.

17 THE COURT: Sustained. This is testimony, Counsel.

18 Ask your question.

19 BY MR. JASON KAFOURY: (Continuing)

20 Q. Do you -- do you recall that one of the allegations in the

21 *Brady* materials was that my client had access to a vehicle

22 while he worked at Junction City that had this recording

23 equipment?

24 A. Yes.

25 Q. And as part of your response letter on 8/13/14, did you

1 BY MR. JASON KAFOURY: (Continuing)

2 Q. An additional allegation in the *Brady* materials related to

3 a statement my client made that he had been up for 35 hours

4 when he gave his internal affairs recorded statement to

5 Lieutenant Morrow. Do you recall that?

6 A. Yes.

7 Q. And what did you do as part of this letter to confirm that

8 he had been working at Junction City right before that

9 interview?

10 A. We pulled up the timecards and reviewed them and

11 determined that he had worked a shift that prior evening to --

12 prior to the interviews. There -- there's -- there is a typo

13 on that year somehow I would like to point out.

14 Q. Oh 6/18/12, you mean; not '14?

15 A. Yes.

16 MR. JASON KAFOURY: Okay. Can we pull up the next

17 paragraph?

18 BY MR. JASON KAFOURY: (Continuing)

19 Q. This relates to my client having to work at both

20 departments and having to pull long shifts at Junction City;

21 what we discussed earlier?

22 A. Yes. And in the reports, per se, you know, is -- when we

23 would talk about that, they don't have to complete the entire

24 investigation, but, at the very least, the basic narrative of

25 what had occurred.

1 Q. Can you -- before I pull up the next paragraph, did anyone
 2 from the University of Oregon Department of Public Safety
 3 contact you or any of the other officers, other than
 4 Chief Chase, to ask about my client's truthfulness?
 5 MS. COIT: Object. Foundation.
 6 THE COURT: Reask the question, Counsel.
 7 BY MR. JASON KAFOURY: (Continuing)
 8 Q. Did anyone from the University of Oregon ever contact
 9 you -- before materials were submitted for *Brady* materials, did
 10 anyone contact you to ask about my client's character for
 11 truthfulness?
 12 A. No.
 13 Q. Has anyone from the University of Oregon, after you sent
 14 this letter, ever contacted you to ask about his character for
 15 truthfulness?
 16 MS. COIT: Object. Foundation.
 17 THE COURT: Overruled. To your knowledge.
 18 THE WITNESS: No.
 19 BY MR. JASON KAFOURY: (Continuing)
 20 Q. Has anyone from the district attorney's office ever
 21 contacted you in response to this letter to ask about my
 22 client's truthfulness?
 23 A. They had contacted me and I was advised that they were
 24 going to wait to see how this hearing came -- went -- the
 25 outcome of this hearing was.

1 Q. Just to be clear, the final determination for *Brady*
 2 materials, they told you won't be determined until after this
 3 civil trial is over; is that correct?
 4 A. Correct. They did tell me that in the interim that he --
 5 they would be forced to --
 6 MS. COIT: Object. Hearsay.
 7 THE COURT: Counsel?
 8 MR. JASON KAFOURY: I don't think I'm using it for
 9 the truth of the matter asserted. I'm using it for the effect
 10 on the listener.
 11 MS. COIT: Then the objection is relevance.
 12 THE COURT: Well, let me ask you both: Is the DA
 13 testifying?
 14 MS. COIT: Yes.
 15 THE COURT: And is it -- is this an appropriate area
 16 for questions of the district attorney?
 17 MR. JASON KAFOURY: He's no longer the district
 18 attorney.
 19 THE COURT: Former district attorney.
 20 MR. JASON KAFOURY: Former district attorney.
 21 THE COURT: Well, who's going to make the decision?
 22 In other words, if the former district attorney is testifying,
 23 he's probably going to testify about what his thought process
 24 was. Who's relaying this information to you about holding this
 25 in abeyance pending the trial here in federal court?

1 THE WITNESS: The district attorney told me.
 2 THE COURT: Now, there's two district attorneys. The
 3 new district attorney?
 4 THE WITNESS: The old one. Alex Gardner.
 5 THE COURT: The old one is telling you this?
 6 THE WITNESS: He told me this when he was the
 7 district attorney and upon receipt of this document.
 8 THE COURT: Counsel, my question is: Are you both
 9 getting a fair opportunity to ask these questions through the
 10 former district attorney who allegedly made this statement to
 11 you about holding this in abeyance until the conclusion of this
 12 trial? And I'm just curious how he can hold it in abeyance if
 13 he's not the present district attorney.
 14 MR. JASON KAFOURY: Because we're -- I'll move on,
 15 from this witness, off of that question.
 16 THE COURT: I think you both have a fair opportunity
 17 of this. I want to make certain it's not hearsay. Talk to the
 18 Court about that afterwards in case we need the present
 19 district attorney up here, as well. Maybe we have a whole lot
 20 of district attorneys.
 21 BY MR. JASON KAFOURY: (Continuing)
 22 Q. Did you, in this letter here, respond on behalf of
 23 Mr. Markell, the acting chief; Brandon Nicol, the acting
 24 sergeant; and yourself, and respond to my client's
 25 representation for veracity?

1 A. Yes. We -- we responded to the letter that the district
 2 attorney sent us and included this information within that
 3 letter.
 4 Q. Explain here, in this paragraph, what involving
 5 trustworthiness is involved in doing evidence and property
 6 audits back in 2011 and 2012.
 7 A. Well, evidence room audits and inspections are, you
 8 know -- clearly, you've seen the news, and it's a
 9 high-liability area in law enforcement. And to do such
 10 inspections and audits is very time-consuming to do them
 11 correctly, and -- which would result in a very thorough report
 12 that summarizes for them the findings, suggestions, and it's,
 13 you know, very time-consuming.
 14 Not only that, but Mr. Cleavenger is allowed access with
 15 the evidence officer to the evidence room, which no other
 16 police officer is. And this was a major area for the
 17 accreditation that he helped out with as well.
 18 Q. The letter also states that my client's personnel file
 19 does not contain any discipline or allegations of misconduct
 20 within the Junction City department. That's accurate? You
 21 checked?
 22 A. Yes. That's correct.
 23 Q. You drafted this letter. What role did Acting Chief
 24 Markell and Acting Sergeant Nicol play in helping create this?
 25 A. Well, I sat next to -- Eric and I have desks that are next

1 to each other. I type the letter up with him in the room, and
 2 he proofread it, you know, as I went, and -- and then he -- he
 3 and I signed it. And then later Officer Nicol signed it
 4 when -- after he had an opportunity to read it.
 5 Q. Okay. I'm going to show you one more document.
 6 Plaintiff's Exhibit 93. Do you recognize that document?
 7 A. Yes. This was a letter of recommendation that was
 8 circulated through the police department, which subsequently
 9 all the police department employees signed, including
 10 dispatchers.
 11 Q. And that's your signature there, the second line?
 12 A. Yes.
 13 Q. This was a letter of reference for my client,
 14 Mr. Cleavenger; correct?
 15 A. Correct.
 16 THE COURT: What was the date on that letter,
 17 Counsel?
 18 MR. JASON KAFOURY: March 1, 2013.
 19 THE COURT: Thank you.
 20 Counsel, can we find out if that's in response to the
 21 *Brady* info?
 22 BY MR. JASON KAFOURY: (Continuing)
 23 Q. Did you ever -- did you ever submit this letter to anyone
 24 at the University of Oregon?
 25 A. No.

1 MR. JASON KAFOURY: Okay. Thanks.
 2 THE COURT: Cross-examination.
 3
 4 CROSS-EXAMINATION
 5 BY MS. COIT:
 6 Q. Is it Officer Mertz?
 7 A. Corey Mertz.
 8 Q. Are you still employed at the Junction City Police
 9 Department?
 10 A. Yes.
 11 Q. You're currently on leave, though, aren't you?
 12 A. Yes.
 13 Q. Why are you on leave from the department?
 14 MR. JASON KAFOURY: Object, Your Honor. Relevance.
 15 THE COURT: I don't know what the answer is, so I
 16 don't know if it's relevant or not.
 17 MR. JASON KAFOURY: We may have to have a sidebar on
 18 it, Your Honor.
 19 THE COURT: Well, this is a good time for the jury to
 20 take a break anyway, isn't it?
 21 We'll come right back and see you in 20 minutes. Promise
 22 not to discuss this matter amongst yourselves. Don't express
 23 any opinion concerning this case. Have a nice recess.
 24 (Jury not present.)
 25 THE COURT: All right. The jury is no longer

1 present.
 2 Counsel, what's the reason for the leave?
 3 MS. COIT: I don't know.
 4 MR. JASON KAFOURY: My client is under a stress --
 5 MS. COIT: Your client?
 6 MR. JASON KAFOURY: Sorry. Mr. Mertz is under stress
 7 leave. It somewhat relates to the fact that Mark Chase, the
 8 chief, is now back at the department. Mark Chase has a
 9 lawsuit -- or is involved potentially with litigation against
 10 the department. He --
 11 THE COURT: Is Mark Chase going to testify?
 12 MS. COIT: Yes.
 13 MR. JASON KAFOURY: Mark Chase is going to testify,
 14 apparently. It's a federal lawsuit, apparently, that he
 15 sued --
 16 THE COURT: What is Mark Chase going to say, the
 17 present chief?
 18 MS. COIT: About why he's on leave?
 19 THE COURT: No.
 20 MS. COIT: In general?
 21 THE COURT: About this case.
 22 MS. COIT: He is going to confirm some of the items
 23 that are in the *Brady* materials. He's going to talk about his
 24 participation in these conferences that Alex Gardner was
 25 putting on.

1 THE COURT: Is he going to have a different opinion
 2 concerning --
 3 MS. COIT: Yes.
 4 THE COURT: -- the plaintiff?
 5 MS. COIT: Yes.
 6 THE COURT: So Officer Mertz is going to vary from
 7 the acting or present chief, Chase, and therefore puts the
 8 testimony of both Officer Mertz and Chase in direct
 9 contradiction to one another?
 10 MS. COIT: Which makes his credibility --
 11 THE COURT: So what's this stress? Is this a
 12 disagreement between the two?
 13 THE WITNESS: Can I talk?
 14 MR. JASON KAFOURY: Yeah, go ahead.
 15 THE COURT: Please. I don't mean to embarrass you,
 16 but I don't know how to make a good ruling unless I've had
 17 an --
 18 MR. JASON KAFOURY: He also has an attorney.
 19 THE WITNESS: I appreciate that, Your Honor. I have
 20 pending litigation with the city.
 21 THE COURT: Oh, you do?
 22 THE WITNESS: Yes. It's for PTSD.
 23 THE COURT: Were you in the service?
 24 THE WITNESS: No. Almost 20 years in law
 25 enforcement.

1 THE COURT: Okay.
 2 THE WITNESS: And so, yeah, I have an attorney, and
 3 we have a -- a -- not a hearing, but a -- where we were going
 4 to mediate and try to settle. Mediation is set for next month.
 5 THE COURT: Is there some personal or professional
 6 disagreement between you and Chase?
 7 THE WITNESS: No. As pertaining to this case? No.
 8 THE COURT: So you haven't -- you haven't gotten into
 9 a personal discussion with him about Mr. Cleavenger?
 10 THE WITNESS: No.
 11 THE COURT: All right. So, Counsel, help me. Other
 12 than his present, you know, mental condition, you could argue
 13 that PTSD causes -- what? Untruthfulness? I don't think so.
 14 Stress? I imagine every police officer is under stress. It's
 15 a stressful position.
 16 MS. COIT: I didn't know why he was on leave. He's
 17 at the department testifying as a -- on -- as a spokesman for
 18 the department for Mr. Cleavenger's credibility. I think I can
 19 ask him if he's currently been working there.
 20 THE COURT: Tell me why. I don't follow.
 21 MS. COIT: I think it goes to his credibility as a
 22 witness. A lot of the things he's saying are going to be
 23 called into question by Chief Chase.
 24 THE COURT: Well, as to his truthfulness?
 25 MS. COIT: Yeah.

1 THE COURT: His perception?
 2 MS. COIT: Both.
 3 THE COURT: So you think he's untruthful because he
 4 has PTSD?
 5 MS. COIT: I don't personally think he's untruthful.
 6 THE COURT: Okay. So let's move that off to the
 7 side.
 8 MS. COIT: Okay.
 9 THE COURT: Is it a matter of his perception? He
 10 can't perceive things because he has PTSD?
 11 Did you have PTSD when you wrote these letters, when you
 12 signed these letters, back in 2013?
 13 THE WITNESS: Yes.
 14 THE COURT: Did you?
 15 THE WITNESS: Yes.
 16 THE COURT: Okay. Perception?
 17 MS. COIT: Yes.
 18 THE COURT: Explain that to me. It's in the DSM-IV.
 19 It wasn't in DSM-III. They simply discovered this recently.
 20 It used to be with the military and then they expanded it into
 21 the big population, and rightfully so.
 22 Explain to me how somebody with PTSD has less perception
 23 and less credibility and why every law enforcement wouldn't
 24 almost eventually qualify for it in the profession after 20
 25 years? I'm not sure that they should or if they should get

1 paid, but it's a pretty tough profession.
 2 MS. COIT: Your Honor, I have no intent to argue that
 3 his PTSD has somehow affected his perception. I didn't know
 4 that that's why he's on leave.
 5 THE COURT: Well, help me. If you really want this
 6 in, I've got wide open ears, but then I, you know --
 7 MS. COIT: I understand. It's not a huge deal, given
 8 that it's a medical condition, you know. The fact that he's on
 9 leave I think should be able to come in.
 10 THE COURT: On leave is fair. On leave is fair. And
 11 then if plaintiff wants to open that door, that's their
 12 decision. But if I go down that route with this gentleman, I
 13 don't know where that leads me with other people in this case.
 14 MS. COIT: Or me, Your Honor. I agree with you.
 15 MR. JASON KAFOURY: We're willing to stipulate that
 16 he's currently on medical leave.
 17 MS. COIT: Your stipulation is fine. I can ask him
 18 that in front of the jury.
 19 THE COURT: You can ask him that question. You don't
 20 have to accept the stipulation.
 21 MS. COIT: Okay.
 22 THE WITNESS: Your Honor, can I add something? I am
 23 still a police officer in the state of Oregon. I still have
 24 police authority, and I have not had my police authority
 25 removed by the police department or the State of Oregon, and

1 I'm still --
 2 THE COURT: You're still -- but you're on medical
 3 leave?
 4 THE WITNESS: Yes. I'm still considered a police
 5 department employee.
 6 THE COURT: So you --
 7 MS. COIT: I won't delve into the background at all
 8 or the reasons for leaving.
 9 THE COURT: But the other side can. He's still a
 10 police officer and medical leave and -- but if you really want
 11 to get into PTSD, I mean, tell me, because I want to give both
 12 of you as broad a trial as possible without bending all of the
 13 rules.
 14 MS. COIT: No, Your Honor. I don't think that's
 15 anywhere I want to go.
 16 THE COURT: All right. So then let's take about 10
 17 or 15 minutes, okay, to go use the restrooms.
 18 (Recess taken.)
 19 (Jury present.)
 20 THE COURT: The jury is present. Be seated, please.
 21 Counsel is present. Parties are present. The witness is
 22 present.
 23 Counsel, please continue your cross-examination.
 24 BY MS. COIT: (Continuing)
 25 Q. Mr. Mertz, when we left off, I was asking if you were on

1 leave with the Junction City Police Department.
 2 A. Yes.
 3 Q. How long have you been on leave?
 4 A. I'm on medical leave. I've been on medical leave for
 5 about four months.
 6 Q. You testified -- I think I heard correctly that you and
 7 Mr. Cleavenger were best friends. Is that what you said?
 8 A. Yes.
 9 Q. While he worked at Junction City, you were his supervisor ;
 10 correct?
 11 A. At one point in time. All full-time police officers are
 12 supervisors of all reserves. And, as an example, even the
 13 most-senior officer -- which I am the most-senior officer at
 14 the police department -- you're in charge of less-senior
 15 officers when they're working.
 16 Q. So you were his supervisor while you were his field
 17 training officer; correct?
 18 A. Correct.
 19 Q. You were his supervisor the entire time you worked at
 20 Junction City; correct?
 21 A. Correct. When I was there. I mean, I'm not -- like, we
 22 have a reserve coordinator who is the reserve supervisor at all
 23 times, if that makes sense. So if -- if we have reserves that
 24 come out and take their -- take their own vehicle, go drive
 25 around, and, you know, the -- necessarily just because they're

1 an officer there it doesn't mean they're supervising them, per
 2 se. It's the coordinator that's ultimately responsible for
 3 them.
 4 Q. Any time you were on a call with Mr. Cleavenger, either as
 5 FTO or as a police officer, while he was a reserve, were you
 6 his supervisor?
 7 A. Yes.
 8 Q. In your opinion, in your experience in law enforcement, do
 9 you think it's a good idea for supervisors and their
 10 supervisees to be best friends?
 11 A. I think that there's a fine line. I believe that it's
 12 okay as long as -- one, I didn't do evaluations, I had no hire
 13 or fire capability over them. I had no disciplinary capability
 14 over them. Police officers frequently are best friends with
 15 other police officers. I don't think that that's uncommon.
 16 Q. Well, would you agree with me it's uncommon when it's a
 17 supervisor/subordinate position?
 18 A. No, I wouldn't. I used to go fishing with the chief of
 19 police all the time. With --
 20 Q. With Mark Chase?
 21 A. No. The other chiefs. In fact, I have taken Mark Chase.
 22 I've gone golfing with him. I've taken him crabbing.
 23 Mark Chase.
 24 Q. Okay. Do you believe that your relationship with
 25 Mr. Cleavenger colors your testimony on how you view his

1 performance at Junction City?
 2 A. If you're suggesting that I would be compromising my
 3 integrity for anybody, the answer is no.
 4 Q. Are you more favorable to him because of your personal
 5 relationship to him?
 6 A. No.
 7 Q. There's different background checks for reserves than
 8 regular police officers at Junction City; correct?
 9 A. Not when I did them. I don't know if they've changed.
 10 Q. Well, did you do the background checks for the first group
 11 of reserves that came in after Mark Chase took over?
 12 A. No.
 13 Q. Mr. Cleavenger was part of that first group; correct?
 14 A. I don't know. I -- quite honestly, the reserves over the
 15 years have come and gone. It's -- I don't keep, necessarily,
 16 track of them.
 17 Q. Is it kind of an informal program?
 18 A. Informal in what way?
 19 Q. Well, you just said that sometimes reserves can just bring
 20 their cars, their own cars, and drive around Junction City.
 21 A. No, not their personal vehicles. They're allowed to drive
 22 the three vehicles that were listed in that memorandum and
 23 there is -- not all of them, but those that have been deemed
 24 worthy enough can have the ability to do that.
 25 Q. Are you aware of any training requirements for the reserve

1 program at Junction City for the reserves?
 2 A. As far as -- I know that they're mandated to keep up on
 3 the state minimums and required to attend a reserve academy .
 4 Q. Did you do performance evaluations for the reserves?
 5 A. I have done a few, but not very many. As far as, like, we
 6 have performance evaluations, there's a monthly, a daily, a
 7 yearly. If you're talking about the -- like a DOR, a daily
 8 observation report, that an FTO would do, yes. I've done DORs
 9 on reserves that have been assigned to me.
 10 Q. Have you done performance evaluations for Mr. Cleavenger
 11 while he was at Junction City?
 12 A. I do not recall.
 13 Q. Did Mr. Cleavenger ever write any of your reports for you ?
 14 A. As -- as far as writing them for me, that's -- could you
 15 clarify?
 16 Q. Did Mr. Cleavenger ever write a police report for you?
 17 A. When reserve police officers ride with police officers,
 18 that's what the reserve police officers do, is they go handle
 19 the calls, they get the information and write the reports --
 20 and they come back and write their reports. Their -- in
 21 essence, their job is to write reports when they're riding with
 22 a police officer. So did he do me a favor by writing my
 23 report? No. But did he do what reserves do? Yes.
 24 Q. So it's your testimony that other reserves, other than
 25 Mr. Cleavenger, would write reports for the officers at

1 Junction City?
 2 A. Absolutely.
 3 Q. Did Mr. Cleavenger write reports for you for calls that he
 4 was not on? Ever?
 5 A. Not that I remember.
 6 Q. Is it possible?
 7 A. I -- I don't think that he would have -- I don't see how
 8 he would, but I -- I don't know.
 9 Q. Do you recall Mr. Cleavenger writing a report for you and
 10 actually signing your name to that report?
 11 A. No.
 12 Q. Would that be acceptable? On a call he wasn't on.
 13 A. To -- to write a report and forge my name? No.
 14 Q. You don't recall that happening?
 15 A. No.
 16 Q. Do you recall Mr. Cleavenger writing a search warrant for
 17 a call you guys were on? It ended up being the wrong house,
 18 the wrong person. Eugene SWAT was called out. Do you recall
 19 that?
 20 A. Yes.
 21 Q. Tell me about that.
 22 A. Erik Hasselman was there, who was the police legal advisor
 23 at the time for the district attorney's office, and there was
 24 also three other detectives from the Eugene Police Department
 25 Major Crime Team Division. We had probable cause to write the

1 search warrant based upon witnesses who observed the suspect
 2 fleeing the scene during the course of the robbery, and we --
 3 and Cleavenger, with the guidance of Erik Hasselman, the other
 4 police officers from the Eugene Police Department, and myself,
 5 wrote the search warrant.
 6 Q. You didn't have probable cause for a search warrant,
 7 ultimately, it was decided; right? It was the wrong person?
 8 A. We did have probable cause for the search warrant; but,
 9 correct, it turned out that it was not the correct house and it
 10 was the wrong person.
 11 Q. You actually went into the wrong house in the middle of
 12 the night, correct, with the SWAT team, and it was based on
 13 Mr. Cleavenger's incorrect identification of the photo lineup?
 14 A. No.
 15 Q. What was Mr. Cleavenger's role in that search warrant?
 16 A. Mr. Cleavenger sat there with Erik Hasselman, Dan Rizzo,
 17 and several other of the Eugene Police Department
 18 investigators. We sat there, went over the evidence of the
 19 case, and we wrote a search warrant based upon the probable
 20 cause that we had from eyewitnesses who stated that they had
 21 saw the person that we wrote the search warrant for do the
 22 robbery and then flee the location. It was based upon more
 23 than one witness, and they named her. They named her.
 24 Q. In your opinion, sitting here today, did Mr. Cleavenger
 25 make any mistakes that led to that search warrant being

1 executed on the wrong house?
 2 A. No.
 3 Q. Have you ever been disciplined for putting false
 4 information into a -- I think a probable cause affidavit is
 5 what I'm thinking of.
 6 A. I've never been disciplined.
 7 Q. Do you know what incident I'm talking about?
 8 A. A PC affidavit?
 9 MS. COIT: Yeah.
 10 THE COURT REPORTER: I'm sorry, can you repeat that?
 11 THE WITNESS: "A PC affidavit" is what I asked. My
 12 disciplinary record is -- I've never been disciplined. There's
 13 nothing in my -- if anybody's got a copy of it, there's no
 14 discipline in my file at all.
 15 BY MS. COIT: (Continuing)
 16 Q. You told us a story about a kidnapping and a hostage
 17 situation. Do you recall that?
 18 A. Yes.
 19 Q. Is it your testimony that you had a volunteer reserve
 20 officer actually do hostage negotiations?
 21 A. I did not make that decision. I'm not sure if the chief
 22 who was also there and/or the sergeant did.
 23 Q. So somebody actually made the decision to have
 24 Mr. Cleavenger do the hostage negotiations?
 25 A. Correct.

1 Q. And you think it was Chief Chase?
 2 A. Or John Thornburg, who was a sergeant at the time.
 3 Q. Do you think that's an appropriate call?
 4 A. The laws --
 5 Q. I'm asking for your opinion.
 6 A. I can't testify to what their mindset was.
 7 Q. Why did Mr. Cleavenger suddenly resign from Junction City?
 8 A. I'm -- for an exact reason, I'm not sure. I know that the
 9 chief had suspended him, but outside of that, I didn't talk
 10 specifics.
 11 Q. Why did the chief suspend him?
 12 A. The chief suspended him because the University of Oregon
 13 had -- I don't know, suspended/fired, or whatever, taken some
 14 action against James, and then he had two of our officers
 15 conduct an investigation into the facts that were claimed in
 16 the U of O report. Our officers determined that they were
 17 unfounded and that he did nothing wrong and suggested that
 18 James be reinstated. And Mark, the chief, did not reinstate
 19 him and subsequently suspended him.
 20 Q. Well, isn't it true that Sergeant Salsbury did this
 21 investigation and he discovered that Mr. Cleavenger, while
 22 acting solo, had pulled over someone at a gas station, given
 23 them a ticket, completely beyond the authority of reserve
 24 officers at Junction City, and Mr. Salsbury went to him and
 25 told him that he was going to be fired, and Mr. Cleavenger

1 resigned at 12:02 a.m., in the middle of the night, on
 2 March 3rd?
 3 A. I was not aware of that.
 4 Q. Mr. Cleavenger was your best friend during this time
 5 period?
 6 A. He was a close friend, yes.
 7 Q. You never asked him why he resigned sudden ly in the middle
 8 of the night?
 9 A. It did not come up. I was not aware of the fact that you
 10 just told me.
 11 Q. Okay. But sitting here today, is it your testimony you
 12 had never asked Mr. Cleavenger, your best friend, why he
 13 resigned in the middle of the night from his job at Junction
 14 City?
 15 A. No. We've never discussed that, frankly, as far as -- I
 16 was not aware of that incident that you just described. I've
 17 never heard that story.
 18 Q. Well, are reserves at Junction City allowed to take solo
 19 enforcement action?
 20 A. Yes.
 21 Q. When did that become a policy?
 22 A. It's been hit and miss, depending on who the chief wants
 23 to do it or not or doesn't want to do it.
 24 Q. How about under Chief Chase, Mr. Cleavenger's chief?
 25 A. That's what I'm saying. It's a hit and miss. Sometimes

1 the chief let's repeat reserves do it and sometimes he doesn't.
 2 Q. Was Mr. Cleavenger, as far as you know, ever given
 3 authority by the chief to act as a solo officer while he's a
 4 reserve?
 5 A. I don't know.
 6 Q. You never discussed that with Mr. Cleavenger either?
 7 A. No. When we typically got together we did not talk about
 8 work.
 9 Q. So you talked about Mr. Cleavenger staying at Junction
 10 City for an extended period of time -- periods of time, excuse
 11 me, and then going to work at the University of Oregon. Do you
 12 recall talking about that?
 13 A. Yes.
 14 Q. Give me an estimate on the longest period of time you
 15 believe he worked at Junction City and then went to work for a
 16 full shift at the university. How long would he be up?
 17 A. I worked -- he rode with a variety of different people. I
 18 normally worked during the daytime, so he would -- if he was
 19 there, he wouldn't ride with me until we had our -- he had to
 20 go to work. He would frequently ride with other people. So --
 21 I mean, I know that when we worked one case he was there for
 22 over 24 hours that I personally observed. But as far as the
 23 longest? He was riding with a lot of different people during
 24 that time period.
 25 Q. So that 24-hour shift he worked, did he go to work at the

1 University of Oregon after that?
 2 A. I don't remember.
 3 Q. Do you recall him often working shifts at Junction City
 4 during the day and then going to work his night shift at the
 5 University of Oregon?
 6 A. I do. He was there a lot. Like I said, he was kind of
 7 the fixture. You know, some people, you walk in and you're
 8 surprised they're there. You walk into Junction City and
 9 you're surprised James is not there.
 10 Q. In your opinion, does it demonstrate good judgment for an
 11 employee to go volunteer his time somewhere for 10 to 12 hours
 12 and go to work sleep-deprived where he's working as a public
 13 safety officer? Does that show good judgment?
 14 A. I honestly did the same thing when I was a reserve. I
 15 wanted to be a police officer, and I felt volunteering my time
 16 and showing dedication was an opportunity to get my foot in the
 17 door, and it paid off when I got a job.
 18 Q. Would you agree with me that perhaps that shows dedication
 19 to his job at Junction City rather than the University of
 20 Oregon?
 21 A. It could, certainly.
 22 Q. When you were training Mr. Cleavenger, as his field
 23 training officer, were you aware of the law in Oregon that
 24 police officers and public safety officers have to advise
 25 people that they're recording them?

1 A. Yes.
 2 Q. Did you teach Mr. Cleavenger that law?
 3 A. I don't believe that I did, because I did not have a video
 4 camera, and so there was no point in it. And then, as through
 5 the FTO process and as an FTO, you don't go through every
 6 single ORS that's in the book and directly talk about them.
 7 And in addition to that, there were other FTOs
 8 that reserve officers rode with as well. So we kind of went
 9 through the book, parceled it out, and just kind of worked our
 10 way through it. Some of the officers would do one page, I
 11 would do one page, other officers would do four pages, and
 12 James would come ride with me and we'd do a page. So it was
 13 really hit and miss as far as -- you know, sometimes I would
 14 have reserves that showed up that I had no idea what they could
 15 do, if they were writing tickets, you know, were able to walk
 16 up and do a traffic stop or talk on a radio. It just -- it
 17 varied.
 18 Q. Okay. Do you recall ever talking with Mr. Cleavenger
 19 while he worked at Junction City about his legal obligation to
 20 record people -- to advise people that he's recording them?
 21 A. No, I do not.
 22 Q. Do you recall ever hearing him advise someone he was
 23 recording them?
 24 A. No. Because the cars that I drove and that he would have
 25 drove didn't have video cameras.

1 Q. He rode with other people; correct?
 2 A. Sometimes.
 3 Q. Did those other cars have video recorders?
 4 A. Some of them did. Some of them did not.
 5 Q. Do you ever advise people when you're recording them?
 6 A. I -- my camera is broke. I don't have a camera, so no.
 7 Q. In your 19 years of law enforcement, you've never recorded
 8 anyone?
 9 A. We didn't have our cameras until Mark came. And he got
 10 them in the new Tahoes in 2009, and mine immediately broke.
 11 When I did operate some of the other cars, yes, I did advise
 12 people that they were being recorded.
 13 Q. Was Mr. Cleavenger ever with you on those occasions?
 14 A. I don't remember.
 15 Q. Is it possible?
 16 A. It could be, yes.
 17 Q. Tell me when you have been involved in the hiring process
 18 for officers.
 19 A. I've been involved in the hiring process for dispatchers,
 20 full-time police officers, and reserve officers.
 21 Q. At Junction City?
 22 A. Yes.
 23 Q. What was your role?
 24 A. I have done background investigations. I've administered
 25 written tests. I've been on oral boards. And I've assisted

1 with the ORPAT, setting it up.
 2 Q. You said Mr. Cleavenger worked paid and unpaid shifts. Do
 3 you remember that?
 4 A. Yes.
 5 Q. Can you tell me how many times he worked as a paid officer
 6 at Junction City?
 7 A. I have no idea.
 8 Q. Would it be a handful?
 9 A. I don't -- I'm not sure. I mean, we have a large --
 10 fairly large group of reserves, and I -- and sometimes they
 11 work paid shifts. It doesn't necessarily -- I don't know if
 12 they're working paid or if they're not working paid. It's the
 13 chief, and he sets it up, and that's kind of how it is. We're
 14 not included in the loop a lot of times.
 15 Q. So you don't actually know if Mr. Cleavenger has ever
 16 worked a paid shift. The chief would know that. Is that your
 17 testimony?
 18 A. Chances are he has. But for a hundred percent fact, I do
 19 not know.
 20 Q. And you think Chief Chase would know that?
 21 A. Yes.
 22 Q. Did you ever ask Mr. Cleavenger how he was able to stay up
 23 for days at a time?
 24 A. I'm sorry. Did I ask him?
 25 Q. Yeah.

1 A. No. I --
 2 Q. Were you curious about that?
 3 A. I -- I mean, I didn't know he was -- he would stay up for
 4 days and days -- or days at a time, like you said. I was not
 5 aware of that.
 6 Q. Well, okay, maybe a day and a half.
 7 A. No, I did not ask him.
 8 Q. So you looked at -- it was Plaintiff's Exhibit 172, the
 9 letter you said you wrote on behalf of yourself and the acting
 10 chief and Officer Nicol. Do you remember that?
 11 A. Correct.
 12 Q. You -- did you actually write that letter?
 13 A. I -- I typed it out, and Eric Markell sat next to me at
 14 the office.
 15 Q. What were you looking at when you typed that up? What did
 16 you type it off of?
 17 A. A computer.
 18 Q. What were you using as your basis of knowledge when you
 19 were typing that up?
 20 A. I read the report that was sent over that -- what the
 21 U of O had written and submitted to the district attorney's
 22 office for having James listed on the *Brady* list.
 23 Q. Did Mr. Cleavenger send you a proposed draft or
 24 suggestions on what to write in that letter?
 25 A. I know that we discussed it. I do not believe -- I wrote

1 it. I sat there all day and wrote it. Eric and I did.
 2 Q. Did you look at any document prepared by Mr. Cleavenger as
 3 you were writing that?
 4 A. As far as timelines and stuff, possibly. As far as the
 5 substantive issues that were outlined in the document that I
 6 prepared and Eric Markell prepared, no, they were not -- I
 7 don't believe they were provided to me by Mr. Cleavenger.
 8 Q. What document was provided to you by Mr. Cleavenger?
 9 A. I do not remember.
 10 Q. But it was a document? Or was it an email?
 11 A. I do not remember.
 12 Q. Do you recall how long it was? Pages?
 13 A. Well, I mean, it was quite a while ago when it was
 14 written, and there was a lot of things going on in our
 15 organization. And I know that the district attorney had sent
 16 an email or letter that was attached. One that was asking for
 17 the response from Junction City Police Department in reference
 18 to the report that was submitted to the DA's office by the
 19 University of Oregon, and that's what led to this letter being
 20 written, is because I read it and there was errors in it. It
 21 was not correct.
 22 And so we wrote -- I and Eric Markell wrote the letter
 23 correcting the statements.
 24 Q. Okay. Is it your testimony, sitting here today, under
 25 oath, that Mr. Cleavenger did not provide you with any sort of

1 document or email for you to look at, for you to rely on, when
 2 you were writing that letter?
 3 MR. JASON KAFOURY: Object. That misstates his
 4 testimony, Your Honor.
 5 MS. COIT: I'm just asking the question. He can
 6 correct me.
 7 THE COURT: Overruled. You can answer.
 8 THE WITNESS: I said I don't remember. I -- I'm sure
 9 that he had some involvement in it, but as far as to say for
 10 sure, I don't remember.
 11 BY MS. COIT: (Continuing)
 12 Q. Okay. So once you wrote the document you wrote, did
 13 Mr. Cleavenger review it before it went to the district
 14 attorney?
 15 A. If I had to guess, I would say probably, yes.
 16 Q. Did Mr. Cleavenger make edits to the document?
 17 A. I'm not aware. He could have. But I do not remember
 18 specifically that he did. Eric Markell, who was a good writer,
 19 also was sitting there with me when we penned it.
 20 Q. So Mr. Cleavenger was actually there with you when you
 21 wrote it?
 22 A. Eric Markell.
 23 Q. I know, but you said it could have been Mr. Cleavenger or
 24 Eric Markell.
 25 A. If I said "Mr. Cleavenger," I misspoke.

1 Q. So Mr. Cleavenger was not there when you wrote it?
 2 A. Correct.
 3 Q. But you gave it to him at some point to review?
 4 A. I believe so. I do not know for sure.
 5 Q. Do you know what changes he made to the document?
 6 A. I do not. If any.
 7 Q. Did you send it to him in electronic form?
 8 A. I would imagine so.
 9 Q. And then he returned it to you in electronic form or a
 10 hard copy?
 11 A. I would imagine if I did send it to him that it would have
 12 been sent back and forth through an email.
 13 Q. How many times did it go back and forth?
 14 A. I don't know. I mean, to be quite honest, it was -- at
 15 the time I didn't realize all this was going on. I read a
 16 letter that there was mistakes in it, and it was prepared by
 17 another agency, and it was representing my agency incorrectly,
 18 and I wanted to correct it. I didn't -- I wasn't, you know,
 19 sitting there putting tons of thought into that this would end
 20 up in federal court. And so it was just something that I wrote
 21 to correct some mistakes.
 22 Q. Okay. My question was how many times did what you
 23 wrote -- did that document go back and forth between you and
 24 Mr. Cleavenger?
 25 A. I don't know.

1 Q. More than once?
 2 A. I don't know. I --
 3 MR. JASON KAFOURY: Asked and answered, Your Honor.
 4 THE COURT: One more time, Counsel. Your question is
 5 more than once.
 6 THE WITNESS: I don't know if it was once. None? I
 7 clearly do not remember.
 8 BY MS. COIT: (Continuing)
 9 Q. What authority did you have to send a document on behalf
 10 of the Junction City Police Department to the district
 11 attorney?
 12 A. Well, we -- he, acting chief in capacity, gave me
 13 permission to respond. He received it and requested that I
 14 respond to the -- to the letter.
 15 Q. So it's your testimony that Acting-in-Capacity
 16 Chief Markell asked you to prepare that letter?
 17 A. Markell, yeah. We were there together that day and when
 18 the letter was written.
 19 Q. And he asked you to prepare the letter?
 20 A. I would believe so, because it's not something that I
 21 would just arbitrarily start doing.
 22 Q. Even for your best friend?
 23 A. I would not -- it's not something I would arbitrarily
 24 start doing.
 25 Q. Do you still have the document that Mr. Cleavenger sent

1 you prior to you drafting that letter?
 2 A. No.
 3 Q. What did you do with it?
 4 A. I don't know.
 5 Q. You just know you don't have it anymore?
 6 A. It could be on my work email. I -- I don't know.
 7 MS. COIT: That's all I have. Thank you.
 8 THE COURT: Redirect?
 9
 10 REDIRECT EXAMINATION
 11 BY MR. JASON KAFOURY:
 12 Q. Markell was the acting chief because Chief Chase was
 13 suspended in August of 2014; isn't that correct?
 14 A. That's correct.
 15 Q. That suspension of Chief Chase was for six months, wasn't
 16 it?
 17 A. Correct.
 18 Q. That letterhead on that letter, Junction City letterhead,
 19 only one place to get that; right? Your department?
 20 A. Correct.
 21 Q. Counsel asked you about the MAV policy, the recording
 22 policy. You said Chief Chase was the one who implemented the
 23 recording. Is that correct?
 24 A. Yes.
 25 Q. Wasn't it a fact that at the time my client was working at

1 Junction City the policy at Junction City, in relation to
 2 recording, was all field contacts involving actual or potential
 3 criminal conduct. That's where there was a required activation
 4 of that system. Wasn't that the policy?
 5 A. I don't -- I don't know for sure. I would -- I mean, I
 6 guess I would have to see a date on the policy.
 7 MR. JASON KAFOURY: Is this an exhibit? I believe it
 8 is. This is from Exhibit 150. The *Brady* materials.
 9 BY MR. JASON KAFOURY: (Continuing)
 10 Q. Does that document look familiar to you?
 11 A. Yes, this document is actually a directive that was
 12 written in lieu of a policy that governs the use of MAV. I
 13 never understood what that stands for, but car video cameras.
 14 Q. What's the date on that document?
 15 A. That is February 12, 2011.
 16 Q. And doesn't it say on policy 446.3.1 the required
 17 activation of the MAV is all field contacts involving actual or
 18 potential criminal conduct? Correct?
 19 A. Yes.
 20 Q. So according to Junction City, back when this directive
 21 was given, you weren't required to hit the button and record
 22 unless you were looking into actual or potential criminal
 23 conduct; right?
 24 A. According to that, yes.
 25 Q. And actual or potential criminal conduct does not include

1 violations, does it?
 2 A. Correct.
 3 Q. Counsel asked you about the process of writing police
 4 reports. Did my client help edit police reports from time to
 5 time?
 6 A. Certainly. All reserves do.
 7 Q. And is that -- is writing police reports a common
 8 collaborative process when you get back to the station together
 9 generally?
 10 A. Absolutely. As an example, for a vehicle crash report,
 11 one officer will take the DMV face page, which is a bunch of
 12 information from all the vehicles, and the other officer will
 13 write the narrative for the report. Quite frequently, you
 14 know, we'll go to call four or five suspects, and each officer
 15 will write a part of the report involving their interview with
 16 the suspect. If you're working with people, that's just part
 17 of teamwork.
 18 Q. Was that the same teamwork that you, my client, the DA did
 19 when you wrote this warrant that we discussed earlier?
 20 A. Yes. I -- as part of my law enforcement career, I've
 21 written search warrants for other police officers on other
 22 cases that I had nothing to do with.
 23 Q. Wasn't the issue that it was the right house but the wrong
 24 person on that search warrant that went wrong?
 25 A. Correct. There's obviously a whole bunch of surrounding

1 stuff to that story.
 2 MR. JASON KAFOURY: We won't make it a subject of
 3 trial.
 4 We have four more witnesses. We only have an hour, so I
 5 think that's all I'm going to ask you. Thanks.
 6 THE COURT: Recross?
 7 MS. COIT: No questions.
 8 THE COURT: Can the witness be excused, Counsel?
 9 MR. JASON KAFOURY: Ken Jackson.
 10 THE COURT: Counsel?
 11 MR. JASON KAFOURY: Yeah.
 12 THE COURT: Counsel, may the witness be excused?
 13 MS. COIT: Oh, I'm sorry. Yes.
 14 DEPUTY COURTROOM CLERK: Mr. Jackson please raise
 15 your right hand.
 16
 17 KENNETH JACKSON,
 18 called as a witness in behalf of the Plaintiff, being first
 19 duly sworn, is examined and testified as follows:
 20 THE WITNESS: Yes, I do.
 21 THE COURT: Please be seated here at the witness
 22 stand. The door is closest to the wall. Thank you.
 23 Bring your chair as close as possible to the microphone so
 24 we can hear you. Sir, would you state your full name for the
 25 jury and spell your last name.

1 THE WITNESS: My name is Kenneth Edward Jackson ,
 2 J-A-C-K-S-O-N.
 3 THE COURT: Thank you. Direct examination, please.
 4
 5 DIRECT EXAMINATION
 6 BY MR. JASON KAFOURY:
 7 Q. We have four witnesses and one hour, so we have to make
 8 this really fast.
 9 Can you give me a brief overview for this jury of your
 10 background?
 11 A. Of my background in law enforcement?
 12 Q. Yes.
 13 A. So I have been in law enforcement since 2004. I started
 14 off as a reserve corrections deputy working for the Yamhill
 15 County Sheriff's Office. I eventually worked up to where I was
 16 a full-time corrections deputy, and then I went on to be a
 17 patrol deputy for the Yamhill County Sheriff's Office. And I
 18 left the sheriff's office in 2008, where I went to work as a
 19 public safety officer for the University of Oregon. And I
 20 stayed there for 18 months, until December of 2009, where I
 21 went on to work for the Junction City Police Department , where
 22 I'm currently employed.
 23 Q. And what's your position at Junction City?
 24 A. I'm a police officer.
 25 Q. Can you tell us about -- compare the duties of a

1 University of Oregon public safety officer and that as a police
 2 officer at Junction City?
 3 A. Well, the -- we have patrol, you know, as a police officer
 4 and as a public safety officer. We had briefings in both. We
 5 had dispatch. We carried radios. We patrolled. Whether as a
 6 police officer or as a public safety officer, we patrolled. We
 7 looked for, you know, suspicious activity, and we -- at each
 8 location you have stop-and-frisk authority to -- you know, for
 9 suspicious activity. I do that as a police officer and I did
 10 it as a public safety officer.
 11 Q. Writing reports, investigating crimes?
 12 A. Writing reports and investigating crimes, correct.
 13 Q. So, really, the major difference is one you have a firearm
 14 and one you don't?
 15 A. As far as equipment goes, yes.
 16 Q. Let's talk about your work with my client when he was
 17 there at Junction City. How often do you recall working with
 18 my client or being around my client during the time period of
 19 2010 to 2013?
 20 A. We're a pretty small department, so, you know, you're
 21 often having to do a lot of your -- I mean, work cases and a
 22 lot of reports and a lot of information, so I didn't always
 23 work directly with your client, but I know that at times when I
 24 was in the patrol room, which is a small patrol room, where,
 25 you know, I would have to work on reports or where we would

1 share information, that he was often there.
 2 You know, I've seen -- you know, I don't know exactly how
 3 much, but I just know there were, you know, several times. I
 4 got to know him and met him and we talked about cases or things
 5 that we were doing out in the field.
 6 Q. Did you get to observe him at times working out in the
 7 field?
 8 A. Not on a regular basis. I'll say that you know -- because
 9 when I'm in my patrol car, I'm usually in my patrol car by
 10 myself and I'm responding to a call. If somebody needs a cover
 11 unit or something like that, then I would go. There were times
 12 we crossed paths, but I don't have any -- I don't know of any
 13 specific, you know, cases or anything; but, yes, we -- we
 14 crossed paths on calls.
 15 Q. While working with him, did you ever see any big officer
 16 safety issues that -- by his conduct?
 17 A. Nothing that stood out to me or that wasn't -- that, you
 18 know, was abnormal or that caused me concern.
 19 Q. Did you hear -- were you on the same radio frequencies
 20 when you were working the same shifts?
 21 A. Yes.
 22 Q. Did you ever hear him calling out things that were
 23 inaccurate or not really happening?
 24 A. Nothing that I recall that I -- that stood out to me or
 25 that I did not hear him make any mistakes or errors during

1 radio traffic, no.
 2 Q. From your experience, did he seem to have good judgment as
 3 a police officer?
 4 A. Yeah. In my opinion, yes. I thought he had good
 5 judgment. As a matter of fact, I think James would -- or your
 6 client would be included in conversation, and I would accept
 7 his, you know, opinion and information just as I would, you
 8 know, another officer that I was discussing a case with.
 9 While, you know, speaking in the patrol room or even out on a
 10 call, maybe, if we were standing at the location and we start
 11 to discuss what the -- you know, the elements or what's going
 12 on there at the scene, I would, you know, appreciate his input.
 13 Q. Ever question my client's truthfulness throughout all the
 14 years you worked around him?
 15 A. No.
 16 Q. I'll show you what's previously been marked as Plaintiff's
 17 Exhibit 93. Did you sign onto this letter March 1, 2013?
 18 Signatures are on the back.
 19 A. Yes, I did.
 20 MR. JASON KAFOURY: That's all I have.
 21 THE COURT: Cross-examination.
 22
 23 ///
 24 ///
 25 ///

1 CROSS-EXAMINATION
 2 BY MS. COIT:
 3 Q. Mr. Jackson, why did you leave the Yamhill County
 4 Sheriff's Department?
 5 A. My wife and I, we originally lived in Eugene, and we
 6 wanted to live back down in that area. If you're familiar with
 7 McMinnville, Yamhill County area, it's a more conservative
 8 area, and it's -- you know, so we decided we wanted to live
 9 back in Eugene again, which is probably more of my wife's
 10 decision than mine.
 11 Q. The opinions that you just gave about Mr. Cleavenger's
 12 judgment and safety, officer safety skills, those are based on
 13 the few times you think you may have crossed paths with him in
 14 the field; is that correct?
 15 A. Correct.
 16 Q. Exhibit 93 that counsel just showed you, did you write
 17 that document?
 18 A. No, I did not.
 19 Q. Was it given to you by Mr. Cleavenger to sign?
 20 A. I do not recall exactly that it was handed to me by
 21 Mr. Cleavenger. I think, from what I recall, it was in the
 22 patrol room. Mr. Cleavenger, if I recall correctly, mentioned
 23 it to me. There were other officers that were -- you know,
 24 had -- were talking about it. I saw it. It seems like it
 25 might have been in the patrol room, and so I just -- you know,

1 I picked it up, I read it, and then I signed it.
 2 Q. Was it your understanding that Mr. Cleavenger had written
 3 that document?
 4 A. Yes.
 5 MS. COIT: Thank you.
 6 THE COURT: Redirect?
 7 MR. JASON KAFOURY: Nothing.
 8
 9 REDIRECT EXAMINATION
 10 BY MR. JASON KAFOURY:
 11 Q. I'll just say: When you read the letter, did you agree
 12 with it?
 13 A. Yes, I did.
 14 MR. JASON KAFOURY: Nothing further.
 15 THE COURT: Recross?
 16 MS. COIT: Nothing, Your Honor.
 17 THE COURT: May the witness be excused, Counsel?
 18 MS. COIT: Yes.
 19 MR. JASON KAFOURY: Yes.
 20 THE COURT: Officer, thank you. You're excused.
 21 Counsel, call your next witness, please.
 22 MR. JASON KAFOURY: We'll call Eric Markell to the
 23 stand.
 24 THE COURT: Thank you, sir. Raise your right hand
 25 please.

1 ERIC MARKELL
 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, sir. Would you please be
 6 seated here in this box. The entrance is just to my right,
 7 closest to the wall. After you're seated, move your chair
 8 close to the microphone, so we can hear you. State your name
 9 and please spell your last name.
 10 THE WITNESS: Eric Markell, M-A-R-K-E-L-L.
 11 THE COURT: Thank you. Direct examination, please.
 12
 13 DIRECT EXAMINATION
 14 BY MR. JASON KAFOURY:
 15 Q. We have a short amount of time, so I'm just going to cut
 16 to the chase quickly. Can you just give a brief background to
 17 this jury of your law enforcement career?
 18 A. I've been a full-time officer for about 16 years and as a
 19 volunteer for about two years prior to that.
 20 Q. How long have you worked for the Junction City Police
 21 Department?
 22 A. Since November of 2008.
 23 Q. Tell us, what duties have you had at Junction City?
 24 A. Anywhere from a patrol officer to an acting sergeant to
 25 acting chief, and then I'm currently a sergeant.

1 Q. You were the reserve coordinator supervisor during my
 2 client's tenure there?
 3 A. Yes, I was.
 4 Q. What are the duties of the reserve coordinator supervisor?
 5 A. Just make sure everybody is getting their hours in and
 6 they're following our training plan. We had meetings mostly
 7 once a month, and I'd just be there as a liaison to make sure
 8 they're getting everything they need to do their job.
 9 Q. I want to talk about how -- how often did you interact
 10 with my client during those years, 2010 to 2013, that he was
 11 there at the department?
 12 A. I don't know the exact number. He rode with me several
 13 times, but we also worked a lot of shifts where he wasn't
 14 necessarily riding with me but we overlapped the time. I was
 15 in the office quite a bit when he was working on our
 16 accreditation.
 17 Q. Tell us, what is the whole accreditation process?
 18 A. I'm not familiar with it. It's a lot of paperwork to make
 19 sure our policies are up to date and we're doing the best
 20 practices. Mostly a lot of legal wording and documents.
 21 Q. From your observations of my client, did you ever have any
 22 officer safety concerns?
 23 A. No, I did not.
 24 Q. Did you ever hear him call out over the radio things that
 25 weren't actually happening or things that you -- that you had

1 concerns about?
 2 A. No.
 3 Q. Can you recall during those years how many -- what
 4 percentage of the time my client was working paid versus unpaid
 5 at Junction City?
 6 A. It seemed that he had more volunteer time; quite a bit
 7 more volunteer time than the paid shifts.
 8 Q. And in 2012 did my client work 829 hours at Junction City?
 9 A. I believe that's the number. It was over 800.
 10 Q. Since January of 2010, he contributed almost 2,000 hours
 11 as a reserve police officer within your department?
 12 A. Correct.
 13 Q. You were -- you were an acting chief. And what's your
 14 current title?
 15 A. Sergeant.
 16 Q. You're sergeant now.
 17 Was my client ever subject to any discipline at Junction
 18 City?
 19 A. Not that I'm aware of.
 20 Q. Was -- did my client have a big ego while he worked there?
 21 A. No.
 22 Q. Did he act like he knew more than everybody else about
 23 things?
 24 A. No.
 25 Q. Did my client ever do anything that you thought was

1 untruthful while he worked there?
 2 A. Not that I'm aware of.
 3 Q. We heard -- I'll show you Plaintiff's Exhibit 172. This
 4 is the *Brady* response letter. Do you recognize that document?
 5 A. Yes, I do.
 6 Q. Speak into the microphone so we can all hear.
 7 A. Sorry. Yes, I do.
 8 Q. That's your signature there on page 3?
 9 A. Yes, it is.
 10 Q. Officer Mertz testified just now that you and he --
 11 MS. COIT: Objection.
 12 MR. JASON KAFOURY: I'll just ask it differently.
 13 THE COURT: You can lay the foundation, but -- well,
 14 strike that. There's another way to do that counsel without
 15 suggesting to the witness.
 16 MR. JASON KAFOURY: Okay.
 17 BY MR. JASON KAFOURY: (Continuing)
 18 Q. Do you recall working with Officer Mertz to prepare this
 19 document?
 20 A. Yes.
 21 Q. What do you remember about putting this together?
 22 A. That Officer Mertz presented me with an initial draft.
 23 Myself and another officer reviewed that and made small changes
 24 to it before signing.
 25 Q. You agreed with everything in that letter?

1 A. Yes, I do.
 2 Q. You also signed Exhibit 93, the March 1, 2013, letter of
 3 reference for Mr. Cleavenger?
 4 A. Yes, I did.
 5 Q. I'll show it to you quickly. And you read that letter?
 6 A. Yes, I did.
 7 Q. Did you agree with everything in there?
 8 A. Yes.
 9 MR. JASON KAFOURY: That's all I have.
 10 THE COURT: Cross-examination?
 11
 12 CROSS-EXAMINATION
 13 BY MS. COIT:
 14 Q. I'm sorry. Sergeant? Sergeant Markell?
 15 A. Yes.
 16 Q. Thanks.
 17 It was Chief Chase that put you in the position of acting
 18 chief; correct?
 19 A. When he was away from the office, yes, the city
 20 administrator put me in as acting chief.
 21 Q. It was Chief Chase who made that recommendation that it
 22 was you that would be put in that position; correct?
 23 A. I'm not aware of that.
 24 Q. So you were the -- the coordinator for the reserve
 25 training program at Junction City? Is that what you said?

1 A. For about two years, yes.
 2 Q. Were you in that position when Mr. Cleavenger went through
 3 the training program?
 4 A. Yes.
 5 Q. As part of that training program, were reserves taught to
 6 always advise people when they're being audio-recorded or
 7 video-recorded?
 8 A. That's one of our policies. I'm not sure if they cover
 9 that in the reserve academy or not.
 10 MR. JASON KAFOURY: Your Honor, I'm going to object.
 11 Outside the scope.
 12 THE COURT: Overruled.
 13 BY MS. COIT: (Continuing)
 14 Q. Did they cover that in the training program at Junction
 15 City?
 16 A. I believe so. I can't say a hundred percent.
 17 Q. The car that you drove at Junction City between 2010 and
 18 2013, was that the same car, or did you get a new car?
 19 A. I believe it's been the same.
 20 Q. So in that car did you have a MAV recording system?
 21 A. Yes.
 22 Q. And when Mr. Cleavenger would ride with you in that car,
 23 was that system operating?
 24 A. Some of the times. We've had a lot of travel with him.
 25 Q. Do you recall advising people that you were recording

1 them?
 2 A. If we had the audio, the actual microphone that we wear on
 3 our uniform, we would do that upon initial contact with the
 4 person.
 5 Q. Do you recall Mr. Cleavenger ever being the one to advise
 6 people they were being recorded?
 7 A. I don't believe he ever wore the microphone when he was
 8 with me.
 9 Q. Now, you looked at Exhibit 172; correct?
 10 A. I forget.
 11 Q. I'm sorry.
 12 MR. JASON KAFOURY: Do you want a copy? You're going
 13 to ask him questions about it.
 14 MS. COIT: Yeah, I am. Thanks, Jason.
 15 Your Honor, may I put it on the screen?
 16 THE COURT: Has 172 been received yet?
 17 MR. JASON KAFOURY: Yes.
 18 THE COURT: Thank you. You may.
 19 Counsel, your question?
 20 BY MS. COIT: (Continuing)
 21 Q. Yeah. Can you look at the bottom of the first page? In
 22 the last sentence there it says, "So should he so choose to
 23 return to work with our department, we would gladly welcome him
 24 back without any reservations." Do you see that sentence?
 25 A. I do.

1 Q. Did you agree with that when you signed that letter?
 2 A. Yes.
 3 Q. When you made that statement, were you aware that
 4 Chief Chase was planning to terminate Mr. Cleavenger right
 5 before he resigned?
 6 A. I was not.
 7 Q. Are you aware of that sitting here today?
 8 A. I've heard rumors, but I don't know a hundred percent.
 9 Q. Are you aware of the reason Chief Chase was going to
 10 terminate him?
 11 A. No.
 12 Q. Have you heard rumors on that, or are you not aware at
 13 all?
 14 MR. JASON KAFOURY: Objection. Hearsay.
 15 BY MS. COIT: (Continuing)
 16 Q. Before making --
 17 THE COURT: Just a minute. This goes to his
 18 knowledge about Mr. Cleavenger when he signed this document.
 19 Ladies and gentlemen, the way that that question is asked
 20 makes you assume that that is a fact. We don't know that. We
 21 don't know what Chief Chase was or wasn't going to say, so
 22 listen carefully to the question.
 23 Counsel, I'll strike your question, and you're going to
 24 ask if there was testimony from a witness that -- not a
 25 conclusion that there was. We haven't heard from Chief Chase

1 Q. If you knew at the time you wrote exhibit -- or signed
 2 onto Exhibit 172 that Mr. Cleavenger had, in fact, been acting
 3 solo and pulled a car over while working for Junction City and
 4 issued a ticket, would that change your opinion on whether or
 5 not Junction City would gladly welcome him back?
 6 A. It would not change my opinion.
 7 Q. Would you agree with me that that would be a violation of
 8 Junction City policy?
 9 A. If it occurred, yes, it would be a violation.
 10 Q. Would it also be him acting outside of his authority as an
 11 officer at Junction City?
 12 A. It would depend on the severity of the traffic top. But
 13 if something is emergent, then outside the lines is acceptable
 14 in some circumstances.
 15 Q. Okay. Fair enough. Let's assume that it was a broken
 16 taillight that he wrote a ticket for. Would that be outside of
 17 his authority?
 18 A. I believe so, if he wasn't allowed to be doing that on his
 19 own.
 20 Q. And as far as you know, he wasn't allowed to act on his
 21 own; correct?
 22 A. As far as I know, yes.
 23 MS. COIT: Thank you, sir. I have no more questions.
 24 THE COURT: Redirect?
 25

1 yet.
 2 BY MS. COIT: (Continuing)
 3 Q. Let me ask it differently. Are you aware -- well --
 4 THE COURT: Counsel, would you have a seat?
 5 MR. JASON KAFOURY: Yeah.
 6 THE COURT: I think that distracts from counsel's
 7 presentation. You're to be seated from now on.
 8 Thank you, Counsel.
 9 Please.
 10 BY MS. COIT: (Continuing)
 11 Q. I'll ask you a background question first. The reserves at
 12 Junction City in 2013, did they have the ability -- the
 13 authority to ride solo?
 14 A. I don't recall. We haven't had a solo reserve in quite a
 15 while. We do have one reserve --
 16 THE COURT: "We have the authority to ride solo"?
 17 Reanswer the question.
 18 THE WITNESS: We don't have anybody currently that is
 19 solo; that we have an ordinance officer who is a reserve that
 20 can go out and do warrants.
 21 BY MS. COIT: (Continuing)
 22 Q. When Mr. Cleavenger was a reserve in 2013 at Junction
 23 City, did he have the authority to ride solo and enforce laws
 24 on his own?
 25 A. I don't believe so.

1 REDIRECT EXAMINATION
 2 BY MR. JASON KAFOURY:
 3 Q. Are you aware whether Sergeant Nicol or Salsbury allowed
 4 reserves to go out on their own?
 5 A. There was talk about it.
 6 I'm not sure exactly what the requirements were. Once I
 7 was done with the reserve program, I wasn't sure exactly what
 8 was going on.
 9 Q. You don't have any hiring authority at Junction City;
 10 correct?
 11 A. I'm involved in the process, but I don't have final say.
 12 Q. And you never had final say in any period since 2013;
 13 correct?
 14 A. Correct.
 15 MR. JASON KAFOURY: That's all I have. Thanks.
 16 MS. COIT: No questions.
 17 THE COURT: All right. May the witness be excused,
 18 Counsel?
 19 MR. JASON KAFOURY: Yes.
 20 MS. COIT: Yes.
 21 THE COURT: Thank you. Counsel, call your next
 22 witness, please.
 23 MR. JASON KAFOURY: We call Brandon Nicol.
 24 THE COURT: Thank you, sir. Raise your right hand,
 25 please.

1 BRANDON NICOL,
 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, sir. Please be seated near
 6 this box that's just to my right and the entrance is the
 7 stairway closest to the wall.
 8 Thank you, sir. Be seated.
 9 After you're seated, move your chair as close as possible
 10 to the microphone. And now would you state your full name for
 11 the jurors, please.
 12 THE WITNESS: My name is Brandon Nicol.
 13 THE COURT: Spell your last name, sir.
 14 THE WITNESS: N-I-C-O-L.
 15 THE COURT: Thank you.
 16 Direct examination.
 17
 18 DIRECT EXAMINATION
 19 BY MR. JASON KAFOURY:
 20 Q. One quick issue that just came up. Was it commonplace for
 21 sergeants to allow reserves to drive solo back in 2010 to 2013
 22 range?
 23 A. I would say it would be on a case -by-case basis. I wasn't
 24 a sergeant at the time, so I -- it would be up to each
 25 individual sergeant.

1 Q. Was there any clear policy one way or another back then?
 2 A. Just the policy that, you know, reserves would baker up
 3 together; but, again, a sergeant could change that if they felt
 4 that it fit the needs of the department.
 5 THE COURT REPORTER: Can I clarify? Did you say
 6 "baker up"?
 7 THE WITNESS: "Baker up." It means to have two
 8 officers in a vehicle.
 9 BY MR. JASON KAFOURY: (Continuing)
 10 Q. But sergeants have the authority to let someone go out on
 11 their own?
 12 A. Yes.
 13 Q. Quickly, because we still have to get his father on the
 14 stand, in a nutshell, tell is about your law enforcement
 15 career.
 16 A. Well, I started out in the Eugene Police Department for a
 17 couple of years and then I moved to -- took a little bit of a
 18 break and then went to Junction City PD, where I stayed for
 19 almost six years. Before that, I was a reserve myself for
 20 about a year and a half. So it's spanning about a 10-year time
 21 frame.
 22 Q. And what are you doing now?
 23 A. I'm a deputy chief at the fire department where I actually
 24 also volunteered prior to this for the last 21 years.
 25 Q. You were also reserve coordinator supervisor during part

1 of my client's tenure there?
 2 A. That's correct.
 3 Q. How often did you work with my client over those years,
 4 2010 to 2013?
 5 A. Quite a bit. We handled -- well, at least a couple of
 6 bigger cases together. He assisted on other ones that I was
 7 working on, you know. So we worked some long hours together.
 8 And usually it was -- the most memorable are the bigger cases,
 9 which for our town is -- they're pretty significant.
 10 Q. What was the memorable one?
 11 A. One of them was an identity theft case, and
 12 Officer Cleavenger at the time was pretty instrumental in, you
 13 know, helping to uncover a bunch of unauthorized entries into
 14 motor vehicles that ultimately ended up leading to multiple
 15 arrests for that crime and also Burglary I. Ultimately, it
 16 ended up in a prison sentence.
 17 Q. Any other big cases that stand out to you that you worked
 18 with my client on?
 19 A. I worked kind of -- it wasn't my case, but I worked with
 20 him on a fairly significant burglary case that we had -- or
 21 robbery case. I'm trying to recall. There was another one
 22 that stands out. Yes. There was another -- what was that?
 23 Q. That's all right.
 24 A. I'm having trouble recalling. Seems like there was one
 25 other.

1 Q. It's small potatoes.
 2 So throughout working with him over the years, any officer
 3 safety issues that ever arose?
 4 A. None that I noted.
 5 Q. Any discipline he ever faced?
 6 A. Again, not to my knowledge.
 7 Q. Any callouts over the radio that you thought were
 8 unwarranted?
 9 A. No.
 10 Q. Did he seem to exercise good officer judgment, in your
 11 opinion?
 12 A. I believe so. I enjoyed working with him because of that.
 13 Sometimes when you're an FTO out there it's tough with new
 14 trainees, and with his legal background, you know, and the
 15 skills that he was sharpening as a police officer, made it a
 16 little bit easier. We could kind of relate on the law level.
 17 Q. How did he take feedback and criticism?
 18 A. Always good.
 19 Q. Didn't try to act like he was smarter than everybody else?
 20 A. No.
 21 Q. Ever have an issue regarding my client being truthful?
 22 A. I haven't.
 23 MR. JASON KAFOURY: For time purposes, I think that's
 24 all I'll question you about.
 25 THE COURT: Cross-examination.

1 CROSS-EXAMINATION
 2 BY MS. COIT:
 3 Q. Did you ever give Mr. Cleavenger feedback in the field?
 4 Criticism?
 5 A. Yeah. Yeah.
 6 Q. Tell me about that.
 7 A. You know, there's -- the only time I could really -- the
 8 one that stands out is just a radio traffic as in speaking on
 9 the radio, and it was just to clarify maybe a procedural thing
 10 here and there. The way I like to see it done.
 11 Q. So it was something he called out over the radio that you
 12 found inappropriate?
 13 A. No. Not inappropriate. Just maybe out of order.
 14 Q. What did he say?
 15 A. When I say "out of order," I don't mean "inappropriate."
 16 There would be a procedure that I liked specifically that I
 17 would want, you know, like a traffic stop to be called out a
 18 certain way and, you know, that's -- so I would sometimes -- I
 19 would -- I know I corrected him before on that; but, again, he
 20 accepts that criticism well. And if he reversed that, I
 21 wouldn't have an issue and I wouldn't have to address it again.
 22 Q. Okay. Is that the only time you can recall?
 23 A. That's -- yeah.
 24 MS. COIT: That's all. Thank you.
 25 THE COURT: Redirect?

1 REDIRECT EXAMINATION
 2 BY MR. JASON KAFOURY:
 3 Q. You were the last supervisor for my client; correct?
 4 A. One of them. I mean, well, technically as the reserve
 5 coordinator, in addition to the sergeant that was on at the
 6 time.
 7 Q. Do you recall that Chief Chase, because of all this U of O
 8 stuff, was going to suspend my client before he resigned?
 9 MS. COIT: Beyond the scope of my cross. I asked one
 10 question about feedback.
 11 THE COURT: Well, you did, Counsel, but he's here,
 12 and -- I'm going to allow you to answer the question. You can
 13 go beyond the cross. I recognize it's beyond the cross,
 14 Counsel, but let's get as much information now as possible for
 15 both of you while he's here.
 16 THE WITNESS: Could you repeat that real quick?
 17 BY MR. JASON KAFOURY: (Continuing)
 18 Q. Yeah. Do you remember that time period in 2013 where my
 19 client was going to be suspended by Chief Chase because of what
 20 was happening with the University of Oregon situation? Do you
 21 remember that time period?
 22 A. Yeah.
 23 Q. Okay.
 24 A. I don't remember the dates specifically, but I do remember
 25 that.

1 Q. And wasn't it true that my client resigned before he was
 2 suspended?
 3 A. That's the way I remember it.
 4 THE COURT: Recross, Counsel? And you can go into
 5 any area as broadly as you would like to.
 6 MS. COIT: Tempting as that is, no thank you. No
 7 questions.
 8 THE COURT: May the witness be excused, Counsel?
 9 Sir, thank you very much.
 10 Call one other witness. Mr. Hoffman?
 11 MR. JASON KAFOURY: Not testifying.
 12 THE COURT: He will not be testifying. You can take
 13 him off the list.
 14 Thank you. Would you like to call Mr. Cleavenger?
 15 Thank you, sir. Please step forward and raise your right
 16 hand, sir.
 17 MICHAEL CLEAVENGER
 18 called as a witness in behalf of the Plaintiff, being first
 19 duly sworn, is examined and testified as follows:
 20 THE WITNESS: I do.
 21 THE COURT: Thank you, sir. Be seated here in the
 22 witness box. The entrance is closest to the wall. There's a
 23 stairwell.
 24 Sir, would you be seated and pull the chair as close as
 25 you can to the microphone so we're certain to hear you.

1 Sir, state your full name, please, to the jury.
 2 THE WITNESS: Michael Cleavenger.
 3 THE COURT: Spell your last name, sir.
 4 THE WITNESS: C-L-E-A-V-E-N-G-E-R.
 5 THE COURT: Thank you. Direct examination, please.
 6 MR. JASON KAFOURY: We've got thirty minutes. We
 7 promised the jurors, so we're going to try to make this short
 8 and punchy.
 9
 10 DIRECT EXAMINATION
 11 BY MR. JASON KAFOURY:
 12 Q. Where are you from, sir?
 13 A. I live in Bend, Oregon.
 14 Q. And tell us about -- a little bit about your family.
 15 A. Well, I come from a family of 13 children. Those 13
 16 children ended up with about a hundred immediate family
 17 members. I'm 63. Married 35 years. Four kids.
 18 Q. Kids? Four kids.
 19 Tell us a little bit about law enforcement background
 20 within your family.
 21 A. There are 12 members of my family that were in law
 22 enforcement, starting with my great grandfather, and ending
 23 with James, my son James Cleavenger.
 24 Q. How many family members are currently involved in law
 25 enforcement?

1 A. Let me think about that for a minute. Most are retired.
2 I still have a couple of nephews in California that are in law
3 enforcement. I have some limited contact still with law
4 enforcement in my current job in Bend, and most -- most
5 everyone is now retired or gone on to do some other -- doing
6 something else.

7 Q. Let's talk about your career. Can you sort of walk the
8 jurors through your career within law enforcement?

9 A. I started in 1970 when I was 18 years of age. I was an
10 explorer scout, which was a cadet, in Richland Police
11 Department in Washington state. I served there about a year
12 and at age 19 I took my first paid position with the Walla
13 Walla Police Department. I worked in the jail. I worked in
14 records. I worked in dispatch.

15 At age 21 I was appointed as a deputy sheriff in Walla
16 Walla County. I worked there a little over a year and then
17 returned home back to Richland, Washington, where I was
18 assigned to patrol as a police officer in Richland, Washington.

19 After two years, I was assigned to the detectives division
20 as the youngest detective in the history of the state. After
21 two years, I was eligible to take a promotional exam and became
22 the youngest sergeant in the history of the city.

23 After eight years of being a sergeant with the Richland
24 Police Department, I then left law enforcement and became a
25 state juvenile parole officer and a county juvenile probation

1 counselor with Benton County, Washington, a little over a year.

2 First -- back up just a minute. During that time, I was a
3 member and president of a public service club. I acquired my
4 AA degree and my bachelor's degree and then moved to Bend,
5 Oregon, where I was the manager of a -- of an in-custody
6 program. A new detention facility was built in Bend, and I was
7 the manager of an in-custody program for juveniles trying to
8 transition back into the community that had been charged and
9 convicted for sex abuse offenses.

10 I was a manager of that program for about a year and then
11 was hired by the state of Oregon.

12 For the past 28 years I've worked for the State of Oregon
13 in Child Protective Services.

14 Q. What have you done for Child Protective Services for the
15 last 28 years?

16 A. The first 15 years or so I was assigned a full caseload of
17 investigating allegations of child abuse and then became a
18 manager, a supervisor, and I supervised the Protective Services
19 Unit. I supervised the Child Abuse Reporting Hotline. I
20 transferred from Bend, up to Madras, for a couple years and
21 filled in there as the manager and was supervising the entire
22 branch for all the services that we provide to families with
23 children and care.

24 During that 28-year period of time, I served as a
25 volunteer with the Department of Police Standards and Training

1 as an instructor and traveled around Oregon and in our
2 tri-county area, which was Crook, Deschutes, and Jefferson
3 counties, teaching law enforcement officer s, defense attorneys,
4 prosecutors, judges, teachers, other Child Protective Services
5 workers, how to identify and respond to child abuse.

6 Q. Can we talk about some of the volunteer stuff that you and
7 your son were involved with growing up?

8 A. Well, I was the -- I was the president of a public service
9 club in Richland when I was a police officer there. James
10 quite often would help us when we were raising funds to -- to
11 raise money to do good things in the community, like work with
12 the elderly, work with child abuse prevention programs, fire
13 prevention programs, and just other community service projects.
14 We had a booth and on weekends we sold ice cream cones, and he
15 was volunteering there at a very young age in raising --
16 raising funds.

17 As he became an adult, he became a soccer official and was
18 promoted to level seven.

19 Q. What's level seven as a soccer ref?

20 A. Under the United States Soccer Federation Program in the
21 U.S., there's a number system, and you can be promoted up to a
22 certain level, and you get assigned a certain level of soccer
23 games that you are approved to officiate.

24 Level seven -- somewhere less than five percent of all
25 officials ever graduate to level seven. We were both level

1 seven soccer officials. We would meet at tournaments
2 throughout Oregon and referee youth soccer as well as adult
3 soccer. In high school we were both certified as high school
4 soccer officials, and we would -- we would officiate high
5 school soccer, including playoffs.

6 Q. Let's talk about when your son first told you he wanted to
7 get involved with law enforcement.

8 A. I thought he was -- I thought he was destined to be in law
9 enforcement because he -- way back when he was seven and eight
10 years old he would actually ride with me on patrol and loved to
11 come to the police department. That was back in the day when
12 there was a perception that you were safe around the police
13 department.

14 I'm not sure I would do that today, but he had -- he had
15 an interest in -- as a -- at a very young age of being in law
16 enforcement.

17 And later on, when he was in college and was going to law
18 school, I would quiz him about what he planned to do with his
19 law degree, what he wanted to do. I kind of wanted to steer
20 him in the direction of thinking he might be a prosecuting
21 attorney, but he always was set on wanting to be a police chief
22 somewhere.

23 Q. How important was that to him, being a police chief?

24 A. I think it was very important that he wanted to use his
25 law degree to become a police chief somewhere and knew that he

1 had to -- a lot of time was going to be spent going to college,
 2 between going to college and going to law school, but he knew
 3 he was going to have to start someplace and work his way up the
 4 ranks, and I think he -- from what he told me, he found his --
 5 he found that place in the work he was doing at Junction City
 6 and the University of Oregon Police Department.

7 Q. Was he excited to start at the University of Oregon Police
 8 Department?

9 A. Yes.

10 Q. When do you -- well, before we get into that, let's talk
 11 about your relationship with your son and the activities you
 12 guys did together before all this stuff happened at U of O.

13 A. It was very common for us to meet in different tournaments
 14 around Oregon to referee soccer. He has a younger brother, and
 15 he's also a soccer official, and at times the three of us would
 16 meet and we would referee youth soccer. Again, we did high
 17 school playoffs together.

18 When our association would get an assignment, a lot of
 19 times it was in the Eugene area and Corvallis, and we would
 20 meet up and form a team of four and referee these soccer
 21 matches.

22 We would meet at Odell Lake in the summer for fishing and
 23 camping. A family friend had a cabin there. When I did a
 24 little maintenance work, then I got to stay at the cabin for
 25 free. We fished the Columbia for salmon and steelhead

1 regularly. I spent a couple of summers at the -- as a guide,
 2 fishing guide, at the East Lake Resort in Central Oregon, and
 3 he would -- he was there for that.

4 Every winter while he was in law school at the University
 5 of Oregon our house would be inundated with 10 to 15 students,
 6 most of which he didn't know, I didn't know, but I did after a
 7 couple of days. A couple of vans of kids would show up,
 8 students would show up and just take over the place with
 9 sleeping bags and pillows and ski Mt. Bachelor. That was
 10 something that just happened every winter.

11 So our opportunities to meet each other, including Duck
 12 football games, probably a dozen to 15 times a year we would
 13 get together and do things somewhere around Oregon.

14 Q. So even though you guys were in Bend and the Eugene area,
 15 you would still get together a dozen to 20 times a year? Is
 16 that roughly --

17 A. Yes.

18 Q. How would you describe your relationship? How often would
 19 you communicate with your son even if you weren't seeing him in
 20 person?

21 A. Well, are you talking about before this happened?

22 Q. Yeah, before all this happened.

23 A. It was common to have email contact and cell phone
 24 contact, and when I was at work I could use the phone to make
 25 long distance calls, so we talked regularly; mostly

1 coordinating things that we were planning, that were coming up.
 2 Q. When do you remember first hearing that problems were
 3 starting with his work at the University of Oregon?

4 A. Well, first, in the summer -- summer of 2011, he told me
 5 that he thought he was on his road to meeting his goal because
 6 he was appreciated and welcomed and that his work was -- well,
 7 his work was well appreciated at the -- at Junction City as
 8 well as the University of Oregon. He thought he was on his
 9 way.

10 And then towards the fall I was having a hard time getting
 11 ahold of him. I'd call sometimes three or four times before I
 12 would hear back or a short email back. And then during that
 13 winter, during that fall and winter, I was restoring my dad's
 14 1954 Chevy, which we all grew up in and took our first driver's
 15 tests in. 13 kids were really raised in the '54 Chevy. I took
 16 it down to the nuts and bolts and was completely restoring that
 17 for my 60th birthday, which was coming up in May of 2012. I
 18 asked him to come over and help out, and he was enthusiastic
 19 about that, but that didn't happen.

20 I just thought he was busy and trying to do good work at
 21 the University of Oregon and didn't have time, but then
 22 Thanksgiving came along and I didn't hear from him. I -- and I
 23 couldn't find him. Christmas came along. I didn't hear from
 24 him. I couldn't reach him. That's when I -- I thought
 25 something was wrong.

1 Q. When did you first -- when did you first realize that, you
 2 know, something was seriously wrong with that job?

3 A. Well, I think the first time I had asked him I didn't get
 4 a very good answer about anything being wrong, so I asked his
 5 three siblings to do some -- do a little recon for me, and they
 6 got back to me and told me things weren't going very well, and
 7 I got back in touch with him, and he was able to share with me
 8 some things that weren't going very well and actually asked me
 9 for some advice on what to do about it. And that was somewhere
 10 -- somewhere in that Thanksgiving, Christmas period of time in
 11 2012.

12 Q. So this was right after he'd been terminated, basically?

13 A. It would -- it would have been before that. Actually, I
 14 talked to him before he was fired.

15 Q. What do you remember about that call?

16 A. He said that he --

17 MS. COIT: I'm going to object to the hearsay.

18 THE COURT: Overruled.

19 MR. JASON KAFOURY: You can answer.

20 THE WITNESS: He said that he was finding that he was
 21 second-guessing all of his decisions because none of his
 22 decisions seemed to be correct and that he was disliked by a
 23 couple individuals because of his political affiliation and
 24 because of a YouTube -- something on the YouTube about a
 25 position that he took in law school where a group of law school

1 students took a position about the use of Tasers by -- I can't
2 remember if it was Eugene Police Department's use of Tasers on
3 students on campus or if it was the new University of Oregon
4 Police. One or the other. But it was an issue of -- basically
5 an argument that was presented to prevent the use of Tasers on
6 students.

7 BY MR. JASON KAFOURY: (Continuing)

8 Q. When do you remember first seeing your son after he was
9 terminated? Just for time purposes, he was terminated end of
10 October of 2012.

11 A. Well, I'm not sure I saw him during that period of time.
12 He really checked out. A couple of important things came up
13 that he wasn't there. I expected him to be there and was
14 hoping that he would be there. One was my 60th birthday in May
15 where the '54 Chevy came out of the garage and everybody saw it
16 for the first time and then the death of -- of a sister-in-law,
17 who was really the matriarch of the family and kind of the
18 center of the hub, and everything kind of circled around -- a
19 hundred family members really circled around her. She
20 coordinated and organized everything. She came down with
21 cancer and died, and he didn't make those events.

22 I'm not even sure I saw him during the -- during that
23 whole period of time.

24 Q. What would happen when you would reach out to him?

25 A. Well, he -- he just seemed really flat, and he seemed

1 without emotion. He seemed like a different person. He
2 assured me everything was okay and he was working on issues.
3 Not to worry. But we -- I couldn't coordinate anything with
4 him. I couldn't get together with him. I couldn't make
5 anything happen. There was -- there was no soccer or fishing
6 trips or camping. Just everything went from multiple contacts
7 a year to maybe one. Just -- it just wasn't happening, and
8 I -- I would come to -- have to come to Eugene to make that
9 happen, and that was a couple of -- couple football games.

10 Q. How has your son been doing since you've seen him in the
11 last year or so?

12 A. Well, I'm worried about how he looks. I don't think he
13 looks very healthy. I don't think he looks well. He's lost
14 his spark. He's lost his free-spirited, kind of, jovial self.
15 He's not himself. He's -- at football games -- best example,
16 he'll sit through an entire football game and I'm not sure he's
17 even watching it. He's just emotionless. And it's very
18 difficult for him to talk about it when I encourage him to talk
19 about it and try to get him to talk about it. I encouraged him
20 to actually seek professional help.

21 Q. Looking as a father, how do you think all this stuff has
22 affected him overall?

23 A. Well, I lost my son, and his -- sorry -- his siblings have
24 lost their brother. I have seven grandchildren that have lost
25 their uncle. Thirteen members of my family, there's 11 still,

1 they've lost their nephew. And he's -- he's checked out. It's
2 a huge loss for us.

3 Q. What happens when my client sees police officers now when
4 you've been with him?

5 A. Well, that could be -- it could have something to do with
6 it, but I have a fear that he is going to get himself hurt. I
7 cautioned him about even having a beer and driving a car. When
8 I've been with him in a car, if he sees -- he's got his head on
9 a swivel. He's a little paranoid.

10 I told him that -- that as serious as this is, that I have
11 that same worry something is going to happen to him and it's
12 going to be bad.

13 Q. Let's talk about *Brady* listing.

14 A. I'm sorry. I didn't hear that.

15 Q. *Brady* listing. Do you -- throughout your career, you
16 understand -- did you learn about what *Brady* listing was?

17 A. Yes.

18 Q. Did you have -- did you do background investigations as
19 part of your work?

20 A. Yes. As a -- as a sergeant, I did background
21 investigations to determine fitness for hiring employees as
22 police officers.

23 Q. If someone is on a *Brady* list, how do you think that
24 affects their legal career -- or their law enforcement career?

25 A. They're unemployable.

1 Q. You were talking about seeing your son at a football game
2 and concern about his physical well-being. Is that because the
3 University of Oregon Police Department folks are there at the
4 games? Is that part of the problem?

5 A. Yes. And, in fact, he pointed a couple out to me and he
6 said, "Let's go this way," and he would avoid them by going a
7 hundred yards down to a different entrance to the stadium and
8 go a different way.

9 Q. Have you seen retaliation before within law enforcement?

10 A. Yes.

11 Q. Have you communicated that with your son?

12 A. Yes.

13 Q. Tell us about that.

14 A. Well, when I was --

15 MS. COIT: Object to the relevance of this.

16 MR. JASON KAFOURY: It goes to his damages.

17 THE COURT: Sustained. It's general retaliation,
18 Counsel. Sustained. If it's specific as to this case, if
19 there's a nexus to this case, you can present that, but not
20 general.

21 BY MR. JASON KAFOURY: (Continuing)

22 Q. Was it experience that you personally went through?

23 A. Yes.

24 Q. Okay. Had -- have you discussed over the years with your
25 son that experience?

1 A. Yes, I did.
 2 Q. And while --
 3 THE COURT: Counsel, if there's a nexus to a *Brady*
 4 violation or a *Brady* list or something like that, I'll allow
 5 it. If it's just generally speaking, I'm not.
 6 BY MR. JASON KAFOURY: (Continuing)
 7 Q. Does any of it involve honesty and *Brady* listing?
 8 A. No.
 9 MR. JASON KAFOURY: Thank you.
 10 THE COURT: Cross-examination.
 11
 12 CROSS-EXAMINATION
 13 BY MS. COIT:
 14 Q. Mr. Cleavenger, did your son ever tell you that he was
 15 offered a job as a police officer somewhere in the Seattle
 16 area?
 17 A. No. I don't think so.
 18 Q. Do you know any --
 19 A. Can I back up for just a second?
 20 Q. Uh-huh.
 21 A. His sister was an officer in Seattle, and she was married
 22 to an officer in Seattle that was recruiting, and I think I
 23 encouraged him to apply, but I don't know -- I don't know the
 24 result of that, but I know that that was being discussed.
 25 Q. Okay. Thank you. Are you aware of the facts underlying

1 the discipline at issue in Mr. Cleavenger's -- in your son's
 2 case and why he was disciplined at the University of Oregon?
 3 A. I know some of it, and I read the -- got online and I read
 4 pleadings, and I'm aware of some of it.
 5 Q. The pleadings being Mr. Cleavenger's complaint in this
 6 case?
 7 A. Yes.
 8 Q. Are you aware that your son transported a distraught woman
 9 in the back of his car while she had a loaded gun in her lap?
 10 A. I think I did hear that that happened, yes.
 11 Q. Is that concerning to you as a father?
 12 A. Well, it happened to me as a police officer. I've missed
 13 it.
 14 Q. You missed it, having the gun?
 15 A. I missed things, and I've had -- I've taken over prisoners
 16 that were armed, and I've -- I've missed things and I've had
 17 things missed that others have missed. Mistakes are made.
 18 Q. So when it happened to you, your experience is something
 19 you didn't know the person was armed. Is that what you're
 20 saying?
 21 A. I've missed weapons on people that I've taken into
 22 custody. I didn't know they had -- they had a weapon.
 23 MR. JASON KAFOURY: Your Honor, what's the relevance
 24 of this?
 25 MS. COIT: I'll move on.

1 BY MS. COIT: (Continuing)
 2 Q. You said that Mr. -- your son is paranoid and you're
 3 worried that something is going to happen to him. Something
 4 bad?
 5 MR. JASON KAFOURY: Object. Misstates testimony.
 6 BY MS. COIT: (Continuing)
 7 Q. I wrote it down. Something is going to happen to him and
 8 it's going to be bad. Do you recall giving that testimony?
 9 A. Yes.
 10 Q. What you mean by that?
 11 A. I think that as serious as this is and the number of
 12 people involved, that I have a fear -- and I related that fear
 13 to him -- that I had a fear -- I gave him an example that he
 14 was going to get stopped some night and end up beat down or in
 15 a hospital over this.
 16 Q. Do you have any personal knowledge of the three defendants
 17 in this case? Have you ever met them?
 18 A. No.
 19 Q. Never met Chief McDermid?
 20 A. Is that the chief at the University of Oregon?
 21 Q. Yes.
 22 A. I have not met her.
 23 MS. COIT: All right. Thank you, sir.
 24 THE COURT: Redirect.
 25

1 REDIRECT EXAMINATION
 2 BY MR. JASON KAFOURY:
 3 Q. Have you seen physical retaliation, someone getting hurt ,
 4 in whistleblower cases within law enforcement?
 5 A. Yes, I have.
 6 Q. Is that a personal experience?
 7 A. Yes.
 8 MR. JASON KAFOURY: That's all I have.
 9 THE COURT: Recross.
 10 MS. COIT: No questions.
 11 THE COURT: May the witness be excused, Counsel?
 12 MR. JASON KAFOURY: Yes.
 13 THE COURT: Counsel?
 14 MS. COIT: Yes.
 15 THE COURT: Sir, thank you very much. You're excused
 16 from the proceedings.
 17 THE WITNESS: Dismissed?
 18 THE COURT: Well, not dismissed. Just excused.
 19 Thank you, sir.
 20 Counsel and I have been discussing a very sensitive
 21 subject, and I think that this would be an appropriate time
 22 just to alert you. There's been prior press coverage about
 23 this case and on occasion -- this, of course, centered in
 24 Eugene. The case is being heard here in Portland. I could
 25 have moved it to Seattle, quite frankly, but I thought, for

1 economy sake, the case was better presided over here in
2 Portland or Seattle, but not Eugene. My concern was there
3 would be so many jurors who might know so many witnesses on
4 both sides, and so, therefore, here we are in Portland.

5 The press has picked up this case again in the Eugene
6 press, but there's been some notoriety about this case in the
7 past in *The Oregonian*, and therefore I expect from that press
8 in the Eugene press that soon *The Oregonian* will write an
9 article of some kind. Whether it's on page 35 or the first
10 page, I have no idea. And I think being transparent about that
11 and in the past cases I have been involved in, at least my part
12 of the country and different parts I've visited as a visiting
13 judge, the press then follows.

14 I'm hopeful that that decreases during the lawsuit, but I
15 want to forewarn you that you might read or you may be subject
16 to even radio. Has that occurred, Counsel, in the past down in
17 Eugene? Radio, Counsel?

18 MS. COIT: Not that I know of.

19 THE COURT: Not the radio. Mostly the press; is that
20 correct?

21 MS. COIT: And the Internet.

22 THE COURT: And the Internet.

23 I'm not cutting off your First Amendment right to read,
24 okay? Go home and read, but not about this case. The
25 newspapers can be accurate or inaccurate, but sometimes -- you

1 great country. I won't even hesitate. Okay? So I trust you.
2 Fair enough?

3 Now I want to speak to the one juror. You have a wife who
4 has a doctor's appointment on Thursday?

5 A JUROR: The 17th.

6 THE COURT: The 17th. Is that Thursday?

7 A JUROR: Yes.

8 THE COURT: Could you stay for just a moment? I want
9 to inquire about the time and make sure it's comfortable. I
10 think we're going to recess the entire day. I just don't think
11 it makes sense to come in for a couple hours and then send you
12 on the way because we're bringing in witnesses. But let me
13 speak to you just for a moment with counsel present. I'll --
14 stay right with us.

15 A JUROR: I'm making arrangements for someone to take
16 her to the doctor.

17 THE COURT: Oh, you are? Okay. That may change
18 things. Okay. All right. You still may be in recess that
19 day, but I'm not sure. Now I've got to change some flights,
20 and I'm going to try to do that as soon as I leave the bench
21 today. And if I can, I will. I'll take that midnight flight
22 out across the country. Yes, sir.

23 A JUROR: Are you implying that we're going to be
24 free Friday?

25 THE COURT: You're going to be free Friday no matter

1 know, I told you once before I had a nine-month case involving
2 the Aryan Brotherhood and 30 murders. The press came in when
3 we got to John Gotti because he was a high publicity figure,
4 but the other 29 murders weren't of much interest, apparently.
5 Now, I'm joking a little bit, but I'm not.

6 We're not governed by what somebody is writing. You're
7 the only eight jurors who are ever going to hear these facts at
8 one time. Trust me. Nobody else is going to get the panoply
9 of these facts. There may be bits and pieces that people pick
10 up and viewpoints that they share in their private lives or the
11 press. That's not our concern.

12 So if you start to read something that looks like it's
13 anything about this, just put it away. I just have to trust
14 you. Just turn it down or give it to somebody for future
15 reading if you want to, and don't go to the Internet.

16 In case it does get picked up on some radio program,
17 that's usually the next step in some of the cases I presided
18 over, and even TV, put it aside. Okay?

19 Now, afterwards, you can read anything. You can go to the
20 Internet after your deliberations and you've reached a
21 decision. You can talk to anybody. You have all these First
22 Amendment rights, but I'm just imploring you. And if you do, I
23 have to start the case all over again.

24 Let me just make it very simple. It's your time, your
25 money. You're the taxpayers. You're the citizens of this

1 what. I've got to be in New York. And I apologize to you.
2 Months ago I made that commitment, and I didn't want to delay
3 this case over one day or maybe one evening redeye flight. I
4 just didn't want to start again.

5 A JUROR: I just thank you for that because that's my
6 birthday.

7 THE COURT: Is Friday your birthday?

8 A JUROR: Next Friday.

9 THE COURT: We're definitely not in session. I have
10 this incredible need to not be here, so Happy Birthday to you.
11 Maybe we'll celebrate on Thursday.

12 Now, 8:00 tomorrow. Let me tell you where we're at. I
13 think tomorrow you're going to hear from Lieutenant Bechdolt,
14 who will be called -- Lebrecht. I'm sorry. I think that the
15 chief is going to be called tomorrow. Maybe Sergeant Cameron.
16 And I want you to remember what I said and that is these are
17 normally witnesses who would be called by the defense, but the
18 plaintiff is entitled by law and it's absolutely appropriate
19 that the plaintiff can call a witness even though they're not,
20 you would say, a favorable witness, but they're entitled to
21 call an adverse witness or a person on the other side. And
22 adverse does not mean not truthful, by the way. It's just
23 somebody on the other side. That's entirely appropriate.

24 So where are we? We're about on schedule. We're about
25 four to five hours -- three to five hours, maybe, behind

1 schedule. Okay? And if we can get through Sergeant Cameron
2 tomorrow and Lieutenant Lebrecht and possibly Chief McDermid,
3 we're doing very well. But these are all critical witnesses,
4 and I'm not going to push in terms of time. I've let counsel
5 know, both counsel, and they've done exceedingly well, and I've
6 paid both sides the compliment, but getting through most of
7 these witnesses has been rather short, but with main players in
8 this, let's give them the time that they need. So we're not
9 going to be on a time clock.

10 I think -- it's my best guess that the plaintiff will
11 probably conclude their case on Tuesday sometime because
12 Mr. Cleavenger is going to testify, obviously, and counsel
13 informed us on both sides that he's going to be subject for at
14 least half a day on direct examination and I imagine a
15 significant amount of time on cross-examination.

16 What I'm hoping, out of fairness, is we hear him at one
17 time as well as most of these witnesses in a block. What I
18 don't want to do is hopefully recess halfway between a witness
19 so you're coming back on Monday to hear the remainder. Now,
20 that may not be possible. But certainly with Mr. Cleavenger, I
21 imagine he will be testifying on Monday.

22 After the plaintiff rests, the defendant is going to be
23 entitled to present their case in an orderly fashion. So don't
24 be frustrated or concerned if the defendant brings back some of
25 the witnesses you've heard and maybe for some of the testimony,

1 it, so I think my flight goes from \$300 to \$1,200, believe it
2 or not. Yeah. That's why you may be in recess that day. It's
3 your taxpayer dollar. That extra money may just put you out of
4 business, so let me check with the State Department.

5 Let me tell you what it's about for a moment. I go across
6 the world in conflict zones. So you know I'm not just out
7 playing hooky. We've been involved in Afghanistan and Pakistan
8 and Indonesia with a lot terrorism, and we decided to try to
9 write a complex bench book on terrorist case s, bombings. How
10 do you handle those? Some countries in the world, they don't
11 even know how to gather bomb materials and create a chain of
12 credibility concerning a piece of evidence. In Pakistan the
13 Chief Justice shares with me they've had 200 acquittals out of
14 210 cases. Not because the judges are soft or lazy. The
15 evidence isn't being gathered.

16 So in ten sessions across the world, we've gathered in
17 southeast Asian countries and tried to sit down with the judges
18 and write a complex manual of how do you try a really complex
19 terrorist case. That's what this is all about in a joint
20 presentation with the United Nations and the United States
21 Judiciary in New York.

22 So I'm not one-upping you. I'm just telling you, after
23 all that effort, that's why Friday I'm not here. And if I can
24 take the 12:00 and stumble around to get there at 6:00, I'll do
25 it. If it costs money, guess what? You'll be out of session.

1 but they have the right to put on an orderly case, just as the
2 plaintiff does, and they can call witnesses who are favorable
3 or they can call adverse witnesses, witnesses who might not be
4 favorable. And right now they're estimating about two to three
5 days. We're not holding either side to that, but that's a
6 rough estimate.

7 And I want to compliment both counsel. They've been
8 extremely competent and professional. Both sides are trying to
9 get these witnesses on and not have them return, and that's why
10 you've heard a courtesy being displayed between counsel. And
11 they're not personal advocates. They weren't there. They
12 weren't at the scene. They're just putting on evidence.
13 Trying to get some of these folks on the stand, as you've seen
14 a lot of. The Junction City police, for instance, would have
15 been called by the plaintiff, and I think equal courtesy has
16 gone out to the plaintiff -- to the defendant and defendant
17 back to the plaintiff.

18 So hopefully tomorrow we'll be through those three
19 critical witnesses. If we're not, then there may be some
20 carryover of those witnesses to Monday, but I think you'll get
21 the case rested, as far as the plaintiff is concerned, by -- by
22 Tuesday. That's my best guess.

23 That means we'll probably have Wednesday, and I'm going to
24 start working on my plane flight in about 10 minutes. I think
25 there's a redeye out. But the State Department is paying for

1 If it's triples the cost, I imagine they'll say, "You did what?
2 \$300 to \$1,200?" So let me see. So you may be taking your
3 wife anyway, and it may simply be my responsibility. Not
4 yours. Okay? But let me see if I can change that and get a
5 decent price.

6 Now, that's as much as I know. Okay? You're going to
7 help me by returning at 8:00 tomorrow? You're not going to
8 speak to anybody about the case. You're not going to read
9 anything about the case. You're not going to do any
10 independent research. You're not going to go on the Internet.
11 I don't want to have to start the case over.

12 Goodnight and please drive safely.

13 DEPUTY COURTROOM CLERK: You're welcome to leave your
14 notes in the seat or bring them to the jury room. Whatever you
15 want to do.

16 (Jury not present.)

17 THE COURT: Counsel, have a seat. My wisdom says
18 tonight I'm going to send you home right now. You've finally
19 gotten to some very critical witnesses. I want you well
20 rested. I want your best performance. I want you sharp
21 tomorrow. And this is a rather short trial for me, but you'll
22 start wearing down after a while. You've done enough to help
23 the Court. It's much appreciated. I'll state that on the
24 record with the evidence coming in tomorrow. But I would
25 encourage you to get to it. I don't know how important Officer

1 Brian Paterson is. He may be critical. You're more than
2 welcome to call him. I question, you know, when -- when you've
3 got people like Sergeant Cameron and you're focusing on the
4 chief who may be testifying and Lieutenant Lebrecht, but I
5 leave that up to you. Presentation is yours. But you want a
6 fair shot for both sides.

7 Now, do you have any questions of me? If so, I'm happy to
8 answer them if it can make the trial move more smoothly for
9 you. Counsel, thank you. You've complied with the Court's
10 wishes. We're right at 5:00.

11 MR. JASON KAFOURY: We could potentially use Officer
12 Paterson as a rebuttal witness. He's another Junction City
13 person with personal knowledge of the --

14 THE COURT: Rebuttal is -- if it's truly rebuttal,
15 you know I allow that. You know I backtracked from my original
16 position. I said to you if you really want to present Junction
17 City as rebuttal, but you know I was probably going to cut it
18 down. A lot of it is redundant. Counsel represented on the
19 defendant's side that he was going -- or she was going to go
20 into that area. I've given you a lot of latitude to present
21 six or seven witnesses, if you wanted to, from Junction City.
22 Normally, I would have cut that down, frankly, to two to three.
23 It would have been unduly consumptive of time and redundant. I
24 would have stopped it.

25 But here you've had complete latitude. You don't have to

1 stipulated to them.

2 THE COURT: Thank you. That's very helpful.

3 Well, Counsel, 149. It's a police officer one. It's
4 archived. It's a classification. And is this apparently
5 his -- one of the evaluations, Counsel?

6 MR. MCDOUGAL: No. 149 is actually a job posting.

7 THE COURT: A job posting about the duties in the
8 position?

9 MR. MCDOUGAL: Yes. It says you have to be *Brady*
10 qualified.

11 THE COURT: Counsel, any objection to 149?

12 MS. COIT: No.

13 THE COURT: 168 is the --

14 MR. MCDOUGAL: We've already gone over this with
15 other -- we talked about it. I didn't use it, but we talked
16 about it. This is the *Brady* listing.

17 THE COURT: Opinion and award from the arbiter. This
18 is from Andrew Bechdolt.

19 MR. MCDOUGAL: From Carolyn McDermed.

20 THE COURT: And is this what defense counsel referred
21 to as the vetting?

22 MR. MCDOUGAL: Yes.

23 THE COURT: 168. Any objection?

24 MS. COIT: No.

25 THE COURT: 170, 171, and 173 are agreed upon. Is

1 curtail him if you don't want to. You are certainly going to
2 be able to call him, but I'm not representing to you he's
3 rebuttal at this time at all. We've heard from Junction City.

4 MR. JASON KAFOURY: Okay.

5 THE COURT: If you want to, you're more than welcome
6 to.

7 Chief Larry Larson, fine. You can keep your order. But
8 what may happen to you is you may get the chief's testimony
9 split, and you have to consider tactically for both of you if
10 that's an advantage or not. It may not be.

11 Any more questions?

12 MS. COIT: Did we talk about the exhibits that they
13 were going to put on during Chief McDermed's case?

14 THE COURT: Not yet.

15 MS. COIT: If we can do that, that would be great.

16 MR. MCDOUGAL: I have them right here.

17 MS. COIT: And Scott Cameron. I didn't get that
18 either.

19 THE COURT: Scott Cameron you've already got. You
20 can have the Court look at it if you would like to. Just
21 return these to me in this order. These were the exhibits
22 given to me for Cameron.

23 MS. COIT: Thank you.

24 MR. MCDOUGAL: Your Honor, these are the exhibits for
25 Chief McDermed. Underlined means that the defense has

1 that correct?

2 MS. COIT: 170, 171, and 172?

3 THE COURT: No. 170, 171, and 173.

4 MS. COIT: Oh, 3. Yes.

5 THE COURT: 178. I believe that that is the *Brady*
6 material, isn't it?

7 MR. MCDOUGAL: No. It's the arbitration award.

8 THE COURT: The arbitration. I'm sorry. There's
9 been quite a tussle. I gave you an all-or-nothing call on
10 that, didn't I?

11 MR. MCDOUGAL: Yes.

12 THE COURT: And you decided to put that in?

13 MR. MCDOUGAL: Yes.

14 THE COURT: And then you were objecting, but it came
15 in, all of it came in.

16 MS. COIT: Yes.

17 THE COURT: Then you changed your position and you
18 would like all of it in?

19 MS. COIT: Yes.

20 THE COURT: So you both have reached a consensus that
21 it all comes in?

22 MR. MCDOUGAL: Yes.

23 THE COURT: At least the plaintiff started in the
24 position that you wanted it all in and then you changed your
25 position that you wanted part of it in.

1 MR. JASON KAFOURY: Could I change it again?
 2 THE COURT: You can.
 3 MR. JASON KAFOURY: No, I think we're -- I think
 4 we're going to offer it.
 5 THE COURT: Okay. 183, 209, and 215 I have as
 6 underlined, and so, by representation of counsel, you agree to
 7 183, 209, and 215?
 8 MS. COIT: Yes.
 9 THE COURT: 230 is not underlined. Let me look at
 10 230. It's an email from Carolyn McDermid to Douglas Park,
 11 dated July 11, 2014.
 12 MS. COIT: Oh, that's fine, Your Honor.
 13 THE COURT: Okay. So that's in also.
 14 Counsel, I suggest you get home, get some rest, get some
 15 food, and get prepared for tomorrow.
 16 MR. MCDUGAL: Thank you, Your Honor.
 17 THE COURT: Anything further?
 18 MR. MCDUGAL: Can I confirm with your clerk, did you
 19 get an email from my office with jury instructions?
 20 THE LAW CLERK: Yes. And I replied with a
 21 confirmation.
 22 MR. MCDUGAL: Okay. And here's a hard copy,
 23 including what he gave me yesterday.
 24 THE COURT: Very much appreciated.
 25 MR. MCDUGAL: You're welcome.

1 THE COURT: Anything further?
 2 MS. COIT: No, Your Honor.
 3 THE COURT: Goodnight. We're not resuming until
 4 8:00. So unless you have another issue come up, I'll see you
 5 just before 8:00. If not, I'll see you at 7:30. So do we have
 6 any other issues?
 7 MR. JASON KAFOURY: The only issue that I think we
 8 need to deal with by the end of the day tomorrow is just this
 9 question of she wants to talk about the infidelity allegation
 10 and I -- I can get the transcript, but I think she elicited --
 11 THE COURT: I'll deal with that at the end of direct
 12 examination. I'll see how you handle that in terms of damages
 13 first. I can't make a good decision about that. Obviously,
 14 it's prejudicial. But, obviously, when you're claiming
 15 damages, I need to know the weight and gravity of what's going
 16 through Mr. Cleavenger's personal life at the same time and if
 17 this is the sole reason, if it's the firing, or if he has other
 18 stress.
 19 Of course I recognize the prejudicial effect, but, also,
 20 when you're claiming damages, there's the appropriate value.
 21 And that's a judgment call for the Court.
 22 I won't make that until after direct examination, and a
 23 lot of that depends upon your presentation.
 24 MR. JASON KAFOURY: Of Mr. Cleavenger?
 25 THE COURT: Absolutely.

1 MR. JASON KAFOURY: Okay.
 2 THE COURT: Counsel, have a good night.
 3 Oh, Counsel, also, if you pick up more articles coming out
 4 of Eugene and any of the parties, let me know what those are
 5 okay, just so I can keep track. Because *The Oregonian* will
 6 follow in close pursuit and they'll probably duplicate the
 7 article.
 8 MR. JASON KAFOURY: Can you let me know by tomorrow
 9 your witness schedules?
 10 MS. COIT: It will depend on the date. Do you think
 11 you'll finish Monday?
 12 THE COURT: Let's see how far we get tomorrow
 13 afternoon.

(Trial Day 3 adjourned.)

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1 C E R T I F I C A T E
 2
 3 Cleavenger v. McDermid, et al.
 4 6:13-cv-01908-DOC
 5 TRIAL DAY 3
 6 September 10, 2015
 7
 8 I certify, by signing below, that the foregoing is a true
 9 and correct transcript of the record, taken by stenographic
 10 means, of the proceedings in the above-entitled cause. A
 11 transcript without an original signature, conformed signature,
 12 or digitally signed signature is not certified.
 13
 14 /s/Jill L. Jessup, CSR, RMR, RDR, CRR
 15
 16 Official Court Reporter Signature Date: 12/28/15
 17 Oregon CSR No. 98-0346 CSR Expiration Date: 9/30/17
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<p>A JUROR: [7] 801/22 953/4 953/6 953/14 953/22 954/4 954/7</p> <p>DEPUTY COURTROOM CLERK: [8] 746/9 746/11 747/24 801/1 819/13 833/4 909/13 958/12</p> <p>MR. HESS: [1] 827/25</p> <p>MR. JASON KAFOURY: [129] 663/18 664/15 682/4 687/9 695/13 696/14 697/2 697/6 705/18 705/25 706/6 712/6 716/18 720/15 727/8 727/20 728/10 729/6 729/12 732/17 740/22 746/1 746/14 746/17 746/25 747/4 747/16 748/18 749/8 749/16 750/3 750/18 750/23 751/3 751/11 751/13 751/16 751/21 751/23 752/4 774/6 790/18 794/8 800/8 800/12 800/19 800/22 800/24 801/4 801/6 801/16 819/10 845/3 848/6 853/3 853/17 853/20 854/12 867/24 868/7 869/4 869/7 869/16 869/19 869/21 869/23 870/2 870/6 871/23 872/5 872/7 873/2 873/10 873/22 874/15 876/7 876/16 876/19 877/13 879/17 879/25 880/13 880/16 881/3 881/5 881/12 882/13 882/17 885/14 903/2 905/2 907/6 909/1 909/8 909/10 913/19 915/6 915/13 915/18 915/21 919/11 919/15 920/8 921/9 922/11 922/16 923/13 924/4 926/14 926/18 926/22 930/22 933/10 934/5 942/18 946/15 947/8 948/22 949/4 950/7 950/11 959/10 960/3 962/25 963/2 964/6 964/23 964/25 965/7</p> <p>MR. MCDOUGAL: [46] 663/6 663/9 802/12 803/13 803/15 806/5 806/10 806/16 806/20 816/23 819/2 819/4 820/22 821/13 822/11 826/10 827/8 827/18 827/21 827/24 828/3 828/5 828/9 828/11 828/21 831/3 831/8 831/10 832/14 832/17 853/11 960/15 960/23 961/5 961/8 961/13 961/18 961/21 962/6 962/10 962/12 962/21 963/15 963/17 963/21 963/24</p> <p>MS. COIT: [154] 670/25 671/2 677/12 682/1 687/7 689/21 690/2 690/4 690/25 694/17 697/3 705/16 711/13 711/15 711/25 715/13 716/14 716/16 719/17 722/18 723/2 725/11 727/24 728/5 728/8 728/11 728/16 728/20 728/23 729/1 729/14 739/21 740/7 740/10 740/13 740/17 740/19 741/5 741/7 741/9 746/2 746/6 746/12 746/22 747/6 748/14 749/24 750/9 750/13 750/24 751/10 751/12 751/19 751/22 751/24 753/3 754/1 754/25 774/10 793/1 797/23 800/10 800/14 806/8 812/7 813/24 814/9 818/25 819/6 826/8 830/13 831/5 831/12 837/22 839/21 840/17 845/2 852/17 853/6 853/10 856/13 865/6 867/1 867/25 869/1 869/12 871/18 872/14 875/4 875/15 876/5 876/10 876/13 881/2 881/4 881/11 881/17 881/19 881/21 882/2 882/4 882/9 883/15 883/20 883/24 884/1 884/4 884/7 884/16 885/1 885/6 885/13 885/16</p>	<p>885/20 886/6 886/13 893/8 903/4 906/6 909/6 909/12 915/4 915/15 915/17 919/10 922/13 925/22 926/15 926/19 931/23 932/8 933/5 942/16 946/14 948/24 949/22 950/9 950/13 951/17 951/20 960/11 960/14 960/16 960/22 961/11 961/23 962/1 962/3 962/15 962/18 963/7 963/11 964/1 965/9</p> <p>THE COURT REPORTER: [2] 893/9 928/4</p> <p>THE COURT: [366]</p> <p>THE LAW CLERK: [1] 963/19</p> <p>THE WITNESS: [88] 664/3 664/10 683/6 691/4 691/10 695/11 695/14 695/16 695/18 697/25 698/2 705/10 715/16 717/14 719/21 720/17 722/21 723/4 725/13 732/20 790/21 801/10 802/9 802/18 803/3 803/8 806/13 807/4 807/7 814/2 814/10 814/12 819/19 819/24 823/13 825/1 826/17 831/23 832/21 833/3 833/9 845/4 848/8 852/18 853/4 853/7 853/14 854/3 854/9 866/6 870/10 871/4 871/7 871/9 872/1 875/17 876/25 877/3 877/5 882/12 882/18 882/21 882/23 883/1 883/6 883/9 884/12 884/14 885/21 886/3 893/10 903/7 905/5 909/19 909/25 916/3 916/9 924/17 927/3 927/11 927/13 928/6 932/15 933/19 934/1 934/3 942/19 950/16</p> <hr/> <p>\$</p> <p>\$1,200 [2] 957/1 958/2</p> <p>\$10 [1] 707/1</p> <p>\$15 [1] 707/1</p> <p>\$20 [2] 707/3 742/9</p> <p>\$300 [2] 957/1 958/2</p> <p>\$5 [1] 707/4</p> <hr/> <p>'</p> <p>'14 [1] 874/14</p> <p>'54 [2] 941/15 943/15</p> <p>'54 Chevy [1] 943/15</p> <p>'89 [1] 665/17</p> <hr/> <p>/</p> <p>/s/Jill [1] 966/14</p> <hr/> <p>0</p> <p>0346 [1] 966/16</p> <hr/> <p>1</p> <p>10 [15] 659/7 748/1 780/6 783/18 794/5 824/21 824/22 824/22 825/1 825/2 886/16 897/11 940/5 956/24 966/6</p> <p>10-year [1] 928/20</p> <p>1000 [1] 660/21</p> <p>10:30 [2] 728/1 728/5</p> <p>10th [2] 660/8 794/15</p> <p>11 [2] 944/25 963/11</p> <p>119 [6] 704/21 740/21 751/16 754/20 801/7 801/8</p> <p>11:00 [2] 671/12 780/1</p> <p>11:00 or [2] 780/3 782/17</p> <p>11:00 p.m [2] 671/7 671/11</p> <p>11:00 to [1] 780/13</p>	<p>11:10 [1] 780/3</p> <p>12 [6] 667/20 667/20 874/14 897/11 907/15 934/21</p> <p>12/28/15 [1] 966/15</p> <p>120 [4] 726/25 727/9 800/19 800/25</p> <p>12:00 and [1] 957/24</p> <p>12:02 a.m [1] 895/1</p> <p>13 [4] 824/22 934/15 934/15 941/15</p> <p>14 [9] 824/11 824/15 824/18 824/22 824/22 825/1 825/2 868/19 872/25</p> <p>141 [1] 800/21</p> <p>149 [3] 961/3 961/6 961/11</p> <p>15 [8] 727/24 783/15 783/18 886/17 936/16 940/5 940/12 966/15</p> <p>150 [10] 801/3 869/20 869/21 870/6 870/7 870/9 870/22 871/16 871/22 907/8</p> <p>16 [2] 864/20 916/18</p> <p>168 [2] 961/13 961/23</p> <p>17 [4] 827/5 827/6 827/25 966/16</p> <p>170 [3] 961/25 962/2 962/3</p> <p>171 [3] 961/25 962/2 962/3</p> <p>172 [17] 867/15 867/25 868/2 868/9 869/7 869/15 869/23 869/24 870/18 870/20 871/13 901/8 919/3 922/9 922/16 925/2 962/2</p> <p>173 [2] 961/25 962/3</p> <p>178 [1] 962/5</p> <p>17th [2] 953/5 953/6</p> <p>18 [4] 665/24 738/21 910/20 935/9</p> <p>183 [2] 963/5 963/7</p> <p>19 [5] 825/4 862/19 863/1 899/7 935/12</p> <p>1954 [1] 941/14</p> <p>1970 [1] 935/9</p> <p>1989 [2] 665/3 855/1</p> <p>1993 [2] 665/15 666/5</p> <p>1994 [1] 666/6</p> <p>1996 [1] 855/2</p> <p>1997 [1] 854/23</p> <p>1998 [3] 665/16 666/11 834/10</p> <p>1:00 witness [1] 801/13</p> <hr/> <p>2</p> <p>2,000 [2] 855/3 918/10</p> <p>20 [7] 707/5 823/12 846/22 880/21 882/24 884/24 940/15</p> <p>200 [2] 660/5 957/13</p> <p>2000 [3] 673/11 719/15 758/16</p> <p>2004 [1] 910/13</p> <p>2005 [3] 667/14 834/25 836/25</p> <p>2006 [3] 835/8 836/13 840/25</p> <p>2007 [1] 668/4</p> <p>2008 [9] 668/6 668/11 834/25 836/25 837/4 838/9 841/1 910/18 916/22</p> <p>2009 [9] 668/25 690/25 691/5 691/7 699/5 721/3 762/2 899/10 910/20</p> <p>2009/2010 [1] 721/12</p> <p>2010 [18] 673/12 673/18 677/20 721/3 721/12 820/16 841/16 841/17 855/14 856/9 859/24 864/14 911/19 917/10 918/10 921/17 927/21 929/4</p> <p>2011 [33] 671/9 671/12 672/2 673/18 697/13 699/3 699/5 699/5 708/5 712/15 713/5 741/11 756/23 757/1 794/6 794/12 795/1 795/3 795/6 795/10 797/9 820/16 823/8 823/14</p>
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2	60th [2] 941/17 943/14 63 [1] 934/17 6:00 [1] 957/24 6:13-cv-01908-DOC [2] 659/5 966/4	839/20 840/1 840/2 840/6 840/11 840/14 840/17 accents [1] 840/3 accept [4] 812/1 812/5 885/20 913/6 acceptable [3] 727/24 891/12 925/13 acceptance [1] 830/6 accepted [1] 849/9 accepts [1] 931/20 access [2] 872/21 878/14 according [3] 849/21 907/20 907/24 accountability [2] 689/2 690/14 accountable [2] 688/25 789/17 accreditation [5] 857/20 857/23 878/17 917/16 917/17 accuracy [1] 795/13 accurate [8] 685/18 695/6 713/19 714/4 760/5 873/21 878/20 951/25 accused [1] 768/1 acquaintance [1] 861/16 acquired [1] 936/3 acquittals [1] 957/13 acronym [1] 795/24 across [4] 675/7 953/22 957/5 957/16 act [5] 815/24 896/3 918/22 925/20 930/19 acting [23] 811/7 829/9 829/12 868/13 868/15 868/17 877/23 877/23 878/23 878/24 882/7 894/22 901/9 905/12 905/15 906/12 916/24 916/25 918/13 920/17 920/20 925/2 925/10 acting-in-capacity [3] 868/15 868/17 905/15 action [9] 762/7 762/11 762/13 762/14 779/15 779/17 779/19 894/14 895/19 actions [3] 688/25 774/11 830/8 activation [2] 907/3 907/17 active [1] 822/5 actively [1] 791/10 activist [1] 790/14 activities [2] 846/17 939/11 activity [5] 822/15 822/19 822/25 911/7 911/9 actual [17] 708/24 712/18 718/11 746/21 751/1 766/21 788/7 789/5 814/24 866/13 869/18 871/2 907/2 907/17 907/22 907/25 922/2 actually [54] 674/22 680/12 681/12 681/13 684/20 693/23 722/16 726/2 733/9 734/11 735/8 736/5 739/20 743/11 743/14 745/23 759/22 762/22 763/16 767/21 772/6 783/5 785/2 785/19 786/3 786/8 787/1 799/10 800/3 834/2 834/6 837/18 840/4 840/4 840/8 846/24 849/17 863/2 873/16 891/10 892/11 893/20 893/23 900/15 901/12 903/20 907/11 917/25 928/23 938/10 942/8 942/13 944/20 961/6 ADAM [1] 660/3 adamant [2] 680/1 703/24 adamantly [3] 679/21 679/24 770/17 Adams [2] 836/17 846/10 add [3] 701/4 701/5 885/22 added [1] 714/11 addition [2] 898/7 932/5 additional [4] 713/7 766/12 873/13 874/2 address [5] 664/20 833/18 854/18
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3 30 [3] 829/23 846/22 952/2 300 [1] 660/9 301 [1] 660/21 326-8191 [1] 660/22 35 [3] 874/3 934/17 951/9 360 [1] 660/8 3:00 p.m [1] 671/11 3rd [2] 823/12 895/2	9 9/30/17 [1] 966/16 90 [8] 820/23 820/25 821/5 821/6 821/16 821/20 822/4 829/18 91 [5] 820/24 820/25 821/5 821/7 821/16 914 [1] 662/6 93 [4] 879/6 913/17 914/16 920/2 97204 [2] 660/5 660/21 97401 [1] 660/9 98-0346 [1] 966/16 9:00 and [1] 862/1	acting-in-capacity [3] 868/15 868/17 905/15 action [9] 762/7 762/11 762/13 762/14 779/15 779/17 779/19 894/14 895/19 actions [3] 688/25 774/11 830/8 activation [2] 907/3 907/17 active [1] 822/5 actively [1] 791/10 activist [1] 790/14 activities [2] 846/17 939/11 activity [5] 822/15 822/19 822/25 911/7 911/9 actual [17] 708/24 712/18 718/11 746/21 751/1 766/21 788/7 789/5 814/24 866/13 869/18 871/2 907/2 907/17 907/22 907/25 922/2 actually [54] 674/22 680/12 681/12 681/13 684/20 693/23 722/16 726/2 733/9 734/11 735/8 736/5 739/20 743/11 743/14 745/23 759/22 762/22 763/16 767/21 772/6 783/5 785/2 785/19 786/3 786/8 787/1 799/10 800/3 834/2 834/6 837/18 840/4 840/4 840/8 846/24 849/17 863/2 873/16 891/10 892/11 893/20 893/23 900/15 901/12 903/20 907/11 917/25 928/23 938/10 942/8 942/13 944/20 961/6 ADAM [1] 660/3 adamant [2] 680/1 703/24 adamantly [3] 679/21 679/24 770/17 Adams [2] 836/17 846/10 add [3] 701/4 701/5 885/22 added [1] 714/11 addition [2] 898/7 932/5 additional [4] 713/7 766/12 873/13 874/2 address [5] 664/20 833/18 854/18
4 408 [3] 746/3 746/5 746/5 409 [10] 741/6 741/7 741/8 741/9 746/12 746/13 746/21 751/16 754/18 801/8 411 [1] 660/4 44 [3] 827/3 827/6 827/25 446.3.1 [1] 907/16 45 [2] 801/20 801/21 45-minute [1] 832/14 4:00 [1] 777/12 4:00 a.m [1] 799/2 4:00 or [1] 841/7	A a base [1] 703/3 A-H-L-E-N [1] 807/8 a.m [3] 671/7 799/2 895/1 AA [1] 936/4 Abbott [17] 684/6 690/17 690/19 701/14 725/1 781/21 781/25 782/4 782/6 782/19 782/21 782/22 783/1 792/1 792/5 792/8 792/11 abeyance [6] 815/5 815/12 815/14 876/25 877/11 877/12 abilities [2] 680/3 742/24 ability [6] 680/24 691/23 739/11 793/7 889/24 924/12 able [23] 668/4 668/5 686/22 692/5 717/8 725/16 726/12 763/17 810/19 811/5 811/19 811/22 813/11 813/17 813/18 834/18 841/8 864/4 885/9 898/15 900/22 942/7 960/2 abnormal [1] 912/18 about [369] above [3] 697/21 857/3 966/10 above-entitled [1] 966/10 absolutely [9] 723/21 750/3 805/20 836/9 845/10 891/2 908/10 954/18 964/25 abuse [5] 936/9 936/17 936/19 937/5 937/12 abusive [4] 811/6 811/10 813/3 813/9 academy [22] 678/22 679/6 679/7 680/10 680/13 684/10 684/10 719/13 758/13 758/18 758/20 759/5 759/8 759/11 759/13 760/1 799/15 799/17 855/13 855/15 890/3 921/9 accent [16] 805/5 805/7 805/8 805/15 838/21 838/22 839/1 839/4 839/13	5 50 [1] 835/16 503 [1] 660/22 56 [2] 824/11 824/12 58 [2] 824/13 824/15 59 [3] 824/21 824/22 825/1 5:00 [7] 801/22 801/23 801/25 801/25 832/11 841/7 959/10 5:00 tonight [1] 801/14
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<p>W</p> <p>went... [24] 793/8 800/17 811/3 834/2 835/5 837/5 855/19 859/10 875/24 879/2 892/11 892/18 894/24 896/15 898/8 903/13 908/24 910/16 910/18 910/21 921/2 928/18 944/6 946/22</p> <p>were [420]</p> <p>weren't [35] 668/5 670/23 672/23 675/15 687/15 694/8 708/14 713/19 715/22 716/13 725/21 733/22 733/24 738/9 741/18 756/14 763/21 763/23 776/12 779/22 780/18 791/5 791/16 795/17 797/6 801/4 846/17 907/21 917/25 940/19 942/6 942/8 952/4 956/11 956/12</p> <p>west [1] 757/5</p> <p>what [354]</p> <p>what's [21] 696/24 697/21 724/6 727/5 754/15 771/12 807/18 814/17 820/9 843/14 851/11 881/2 882/11 907/14 910/23 913/11 913/16 918/13 937/19 948/23 964/15</p> <p>whatever [11] 691/25 706/3 707/1 756/5 772/12 776/20 782/17 832/5 844/11 894/13 958/14</p> <p>whatsoever [3] 775/3 866/23 866/24</p> <p>Wheels [1] 706/16</p> <p>when [237]</p> <p>whenever [1] 681/19</p> <p>where [68] 664/23 666/19 667/2 671/24 673/20 673/21 674/13 675/17 675/18 681/4 684/8 685/5 685/25 691/22 699/21 702/2 705/15 705/24 708/9 723/14 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804/11 806/19 808/9 808/13 809/11 817/19 829/24 832/12 835/14 836/10 840/8 841/24 853/16 860/3 860/9 867/8 868/10 869/11 877/10 887/22 891/22 892/1 892/20 893/22 894/2 895/22 903/18 906/22 920/21 924/19 943/17 951/3 952/7 953/3 954/14 954/17 956/2 956/3 959/4</p> <p>who's [11] 668/14 714/24 717/25 748/8 753/9 760/25 810/3 832/4 840/4 876/21 876/24</p> <p>whoever [1] 710/3</p> <p>whole [23] 688/22 701/10 704/8 709/6 739/7 739/10 755/23 774/8 776/10 776/14 783/3 785/4 787/14 791/6 792/9 816/15 839/13 847/21 861/7 877/19 908/25 917/17 943/23</p> <p>whom [2] 733/17 756/3</p> <p>whose [2] 756/21 781/14</p> <p>why [60] 671/14 693/25 693/25 694/5 695/23 700/10 711/16 711/23 711/25 712/11 715/3 718/21 719/16 720/8 724/13 727/22 728/21 735/18 745/4 747/19 748/25 749/1 752/3 756/8 758/2 758/4 761/5 761/15 770/14 770/21 771/2 777/10 781/25 784/19 784/20 793/10 797/15 835/8 836/12 849/2 852/10 866/4 866/17 869/23 871/21 880/13 881/18 883/16 883/20 884/23 885/4 894/7 894/11 895/7 895/12 914/3 948/2 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950/4</p> <p>without [15] 670/6 670/12 685/2 687/25 696/12 696/19 704/21 815/15 856/17 858/22 886/12 919/14 922/24 944/1 966/11</p> <p>witness [75] 663/9 663/18 664/2 664/5 697/8 728/7 729/7 729/10 730/3 740/10 740/16 741/4 746/16 749/4 749/4 749/12 774/9 800/12 801/13 802/7 802/12 803/2 803/13 806/16 806/19 807/3 808/10 819/4 819/10 819/18 819/21 819/22 820/23 822/13 831/7 831/10 832/4 832/4 832/9 833/2 853/9 853/14 854/2 854/5 854/6 869/9 871/17 871/18 877/15 883/22 886/21 892/23 909/8 909/12 909/18 909/21 915/17 915/21 916/2 919/15 923/24 926/17 926/22 927/2 933/8 933/10 933/18 933/22 950/11 954/19 954/20 954/21 955/18 959/12 965/9</p> <p>witnesses [34] 661/2 662/3 729/8 729/17 749/14 812/17 831/18 831/18 831/19 831/20 831/21 831/21 832/10 832/12 832/18 864/8 892/1 909/4 910/7 951/3 953/12 954/17 955/3 955/7 955/17 955/25 956/2 956/3 956/3 956/9 956/19 956/20 958/19 959/21</p> <p>wolves [1] 688/17</p> <p>woman [5] 770/9 770/15 771/5 771/6 948/8</p> <p>women [1] 773/17</p> <p>won't [8] 747/12 816/10 835/6 876/2 886/7 909/2 953/1 964/22</p> <p>wondering [1] 787/23</p> <p>word [5] 736/20 742/3 742/3 864/7 864/7</p> <p>wording [1] 917/20</p> <p>words [5] 683/6 750/22 852/16 871/17 876/22</p> <p>wore [1] 922/7</p> <p>work [84] 665/17 667/15 667/24 668/7 670/5 671/12 677/6 680/4 680/18 680/22 680/24 681/20 684/15 684/17 685/8 687/1 688/11 702/18 703/2</p>
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<p>W</p> <p>work... [65] 703/9 714/2 715/7 715/9 733/25 756/6 758/2 767/6 773/7 778/24 780/2 785/18 785/25 792/3 793/24 795/20 801/22 808/25 815/21 817/19 822/8 834/7 834/18 835/2 841/22 843/16 852/4 852/11 856/25 860/6 861/5 861/6 862/12 865/2 865/13 874/19 896/8 896/11 896/15 896/20 896/25 897/4 897/12 900/11 906/6 910/18 910/21 911/16 911/21 911/23 911/25 918/8 922/23 929/3 937/11 937/12 939/3 939/5 939/24 940/24 941/3 941/6 941/7 941/20 945/19</p> <p>worked [60] 665/2 666/21 669/14 670/11 671/21 675/13 688/2 692/9 698/25 698/25 699/2 699/6 699/9 699/14 699/21 723/10 723/18 758/11 766/8 767/20 776/6 796/7 796/13 798/17 817/20 834/22 841/15 863/2 864/16 865/3 867/5 872/22 874/11 887/9 887/19 896/15 896/17 896/18 896/21 896/25 898/9 898/19 900/2 900/5 900/16 910/15 913/14 916/20 917/13 918/20 919/1 929/7 929/17 929/19 929/19 935/13 935/13 935/14 935/16 936/12</p> <p>worker [4] 686/16 710/12 711/7 717/8</p> <p>workers [3] 669/20 862/11 937/5</p> <p>working [61] 666/8 671/18 677/2 681/1 689/25 690/11 700/5 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