

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 11, 2015  
8 LEBRECHT, and SCOTT CAMERON, )  
9 Defendants. ) Portland, Oregon  
10  
11  
12 TRIAL DAY 4  
13 TRANSCRIPT OF PROCEEDINGS  
14 BEFORE THE HONORABLE DAVID O. CARTER  
15 UNITED STATES DISTRICT COURT JUDGE  
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1 TRANSCRIPT OF PROCEEDINGS  
2 THE COURT: We're back in session. The jury is  
3 present. Good morning to all of you. The counsel are present  
4 and the parties are present.  
5 Counsel, would you like to call your next witness please.  
6 MR. JASON KAFOURY: Assuming Brian Paterson is here,  
7 we will be calling him.  
8 THE COURT: Thank you, Counsel. What I'll do just  
9 informally and off the record --  
10 (Off the record.)  
11 THE COURT: Step forward. We're back on the record.  
12 Will you be kind enough now to raise your right hand for a  
13 moment.  
14 LARRY LARSON,  
15 called as a witness in behalf of the Plaintiff, being first  
16 duly sworn, is examined and testified as follows:  
17 THE WITNESS: I do.  
18 THE COURT: Thank you. Be seated in the witness box  
19 that's just to my right. Good morning.  
20 THE WITNESS: Good morning.  
21 THE COURT: Now, face the jury and state your full  
22 name and spell your last name.  
23 THE WITNESS: My name is Larry Lee Larson, Jr.  
24 L-A-R-S-O-N.  
25 THE COURT: This will be direct examination.

DIRECT EXAMINATION

BY MR. JASON KAFOURY:

Q. Good morning, sir. I'm Jason Kafoury. One of the attorneys for Mr. Cleavenger. I'm going to be asking from here, but please address the jurors in your responses.

Can you tell us a little about yourself; where you're from and your educational background?

A. I grew up in Washington. High school graduate. Moved to Eugene in 1980. I have an associate's degree from Lane Community College and then I became a reserve police officer. You want some of that information?

Q. Sure, yes. What's your law enforcement background?

A. I started January 12th of 1991 as a reserve police officer for Junction City. I went to the Eugene Police Reserve Academy in Eugene. December 1st of 1993 I was hired full time. I worked there as a patrol corporal, as a patrol sergeant, until October of 2008. At that time I went over to Iraq as an international police advisor, teaching Iraqis how to do police work. So I was over there for 18 months to do that.

I came back to the states. Junction City didn't have any openings at the time. Coburg had an opening, and I tested and got hired there July 31st of 2010. Then I became the chief about six to eight months later, and I'm still there today.

Q. Tell the jurors a little bit about the Coburg Police Department generally.

Larson - D

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A. It's a pretty small department. We -- they kind of had a checkered past. So, prior to me getting there, they were in the news for writing tickets out on the freeway, had a bad reputation. They had some evidence that ended up missing.

So I got there. Myself and another officer got hired at the same time. We had three police officers. One of them got let go for misconduct, I believe it was. So then shortly after that, they then hired me as the chief. He was actually the chief when I got there.

So since then we've worked really hard to get a better reputation. I hired some new reserve police officers; just pretty much have them understanding my philosophy. My philosophy is that we work for the citizens and that's who we take care of.

If we arrest them or we give them a ticket, we do it with dignity and respect.

For the evidence room, to overcome that, I have an annual audit. I have an outside agency come in and look at the evidence room every single year. We also do -- because we're on the freeway and there's all kinds of drugs going up and down the freeway. So interdiction stops, we're looking to stop those. And to make sure there's no profiling issues, we do what we call traffic stop data forms.

So for every single traffic stop we check the box. If it was on the interstate, city street, highway, the day/time, how

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much -- the time frame the traffic stop took, the race, the sex of who was stopped, whether there was a search or not. All those type of documentations.

For every arrest that we make or a citation in lieu of custody, I make the officers do what we call a use-of-force report. So, again, it's the check-the-box report to document when we do use force and when we don't use force.

Q. Now, you decided to hire Mr. Cleavenger May 31, 2013, right after he left the Junction City Police Department; correct?

A. That's correct.

Q. Prior to hiring my client, did you do a background investigation on him?

A. Yes. I have for -- I have two full-time police officers, counting myself. I have seven reserve officers. I've had up to 10. The current officers I have is I have probably three or four that have probably 16 to 17 years of full-time law enforcement experience. One of them teaches criminal justice down in Shasta County, was a patrol deputy down there; a sergeant for years. Another one used to work for Corvallis Police Department, Lane County Sheriff's Department, and Sweet Home Police Department. He actually is an accountant at the U of O. He works for me.

Then I have another one. Rod Teague. 16 years full-time police officer in Lincoln City, and he's the one that did

Larson - D

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James's background for me.

Q. Now, as part of that process, did my client sign a waiver allowing you to speak with all of his former employers as part of that background?

A. Yes, he did. That's part of the standard hiring practice that we have.

So for reserve police officers we do the same hiring as we would for a full-time police officer. So we have a physical agility test. It's a pass/no pass. We use the police officer selection testing test, which is from the Oregon Associations of Chiefs of Police. It's a standardized test. We use that. And then they do an oral board interview. They do the DPSST physical examination. We do a psychological exam and then hire them off of that, after the background.

Q. Did your department communicate with Junction City as part of that background to check on my client?

A. Yes, they did.

Q. And did they speak with multiple officers at Junction City?

A. From what I remember from the background, they spoke with multiple Junction City officers. Of course we also talked to the University of Oregon or tried to. We didn't really get much information from them regarding anything on James.

Q. When you reviewed his Junction City file, was there any discipline?

1 A. None.

2 Q. And if there was discipline at Junction City, you would

3 anticipate that would be part of his personnel file, wouldn't

4 you?

5 A. Correct. That's where it should be located if there's

6 discipline.

7 Q. As part of your process, did you do a psychological exam

8 on my client?

9 A. Yes, we did.

10 Q. Tell us about how that works.

11 A. We use a contract service out of -- I think they're out of

12 Georgia. Psychological Services. I got the information from

13 Cottage Grove Police Department. Cottage Grove has been

14 doing -- using them for years. So with a full-time officer, a

15 lot of times -- and reserves, we used to spend \$450 or \$550 and

16 have to come all the way up here to Lake Oswego to a

17 psychiatrist up here to do the examinations. Very

18 cost-prohibitive.

19 So talking to the Cottage Grove commander, they gave me

20 that information, and they used the company out in Georgia, and

21 it's like \$110, and it's pretty in depth. I've actually been

22 very pleased with that. It seems like they're very accurate on

23 their examination.

24 Q. Now, if someone contacted you and wanted to know about one

25 of your former officers as part of a background check, would

1 you feel obligated to tell them about officer safety concerns

2 or truthfulness concerns?

3 A. Yeah. We have nothing to hide, so if somebody -- if they

4 had a waiver that they were -- that we were able to disclose

5 that information, we'd just be up front and honest with whoever

6 was asking.

7 Q. But no one at the University of Oregon Police Department

8 participated as part of this process for the background of

9 Mr. Cleavenger?

10 A. I remember the background investigator was making multiple

11 phone calls and that there was no information that was coming

12 forth. So I didn't know if, you know, they had some -- there

13 was just no communication, so we just had nothing to go on from

14 the University of Oregon.

15 Q. What solo -- did my client pass a psychological exam?

16 A. Yes, he did.

17 Q. Okay. What is solo status?

18 A. So for our agency, we have reserves that are brand-new

19 recruits that pretty much ride with another officer because,

20 you know, they're in the learning phase and don't have much

21 experience. We can -- and we use the Department of Public

22 Safety Standards and Training as a big thick training manual

23 that all police officers use throughout the state of Oregon.

24 So we require our officers to go, whether they're full time or

25 reserve, to complete that training manual, which is, I'm going

1 to guess, maybe 60 pages long. It's very in depth. Criminal

2 law, search and seizure, officer safety, your general

3 geographic stuff; just everything that a police officer might

4 need to know.

5 So James has already completed his with Junction City. So

6 we moved him relatively quickly to what we have as a shadow

7 phase, where he can be in a patrol car as long as there's

8 another full-time police officer on duty, kind of watching,

9 making sure that they're okay, that they don't get in over

10 their head or they're -- you know, if they have any questions,

11 we're they're to help.

12 Then they can advance to what we call a solo phase or a

13 solo officer, which James is, to where he can just decide --

14 because a reserve police officer is a volunteer police officer,

15 so they come out and patrol. And I realize that all my

16 reserves have full-time jobs, so it's kind of whenever they're

17 available because they plan and help citizens.

18 So James is at the solo status, where, if he chooses, he

19 can come out and -- he has to call myself or another officer,

20 let us know, but he can come out and work a patrol shift by

21 himself, or if I need him to cover a shift for me or to take

22 on-call -- because, being small, we don't have 24-hour

23 coverage. So there's limited law enforcement in Lane County,

24 so myself, another officer, or one of the solo reserves, can

25 be -- can be put on call. So they take the police car home.

1 Then if they get called out for an alarm or a trespass at the

2 Shell gas station, or whatever, they can deal with that call.

3 Q. What's the difference between a reserve officer and a

4 full-time officer in terms of the job duties?

5 A. It's the same thing. It's the full-time officer gets

6 paid. The volunteer and the reserve officer does not. They

7 have full police sworn arrest powers throughout the state of

8 Oregon.

9 Q. So is my client currently on the highest reserve status

10 within your department?

11 A. Yes, he is.

12 Q. And is he sometimes the only police officer on duty?

13 A. He could be, yes.

14 Q. What is on-call? Explain that.

15 A. So on-call is -- we can only work so many hours. You

16 know, it takes 4.3 officers to cover a 24-hour shift, seven

17 days a week. We have two. So the other officer and myself,

18 we'll stagger our shifts to try to get as much police coverage

19 during the busy times of -- of the day in Coburg, or evening,

20 but if there's court or various, you know, vacations or sick

21 time, you know, we flex our schedule a lot to try to accomplish

22 that.

23 When we're not on duty, we're on call. So I take my

24 police car home. I always have my phone on. We will call in

25 to dispatch and say -- you know, 850 is my badge number. "I'm

1 secure. I'll be on call."  
 2 So if any calls come up between when I secure on call to  
 3 when I come into service the next day, then they call me, wake  
 4 me up in the middle of the night. I triage it over the phone  
 5 if I can, or if I have to get dressed and drive over to Coburg  
 6 to take care of the call, that's what we do.  
 7 So because I also like to have a personal life, we give  
 8 this to the other officer. We share it. He takes a lot of it,  
 9 but we share it. And we can also give it to some of the  
 10 reserve officers just because sometimes you don't get called at  
 11 all. Sometimes you might get called three or four times in one  
 12 night. So it just varies. That's police work.  
 13 Q. And is my client part of your team that's on call?  
 14 A. Yes, he is.  
 15 Q. Now, as part of on-call duties, does he take a marked  
 16 Coburg police car with him back to his house?  
 17 A. Yes, he does. So whoever is on call, myself and the other  
 18 officer have take-home cars. Whatever reserve officer is on  
 19 call, I also let them take a car home because it's quicker for  
 20 the citizens for them to respond. They throw on their uniform  
 21 at home, drive straight to the scene, versus have to get their  
 22 private vehicle, drive to the police department, and jump in  
 23 the police car. That's just time-consuming for the citizens.  
 24 So I let them take the car home to respond straight to the  
 25 location of whatever the call is.

1 Q. So -- and my client lives near the University of Oregon;  
 2 correct?  
 3 A. That is my understanding. He lives over there, kind of  
 4 the south Eugene area is kind of what we call it, but it's kind  
 5 of over by the university.  
 6 Q. That might explain why he was driving --  
 7 MS. COIT: Objection. Argumentative. Foundation.  
 8 THE COURT: He lives near the university -- I didn't  
 9 hear the last part.  
 10 MS. COIT: The question, Your Honor. Not the answer.  
 11 THE COURT: No, I didn't hear the question.  
 12 MR. JASON KAFOURY: I'll withdraw the question and  
 13 reask it.  
 14 BY MR. JASON KAFOURY: (Continuing)  
 15 Q. Would the fact he lives there and has -- and is on call  
 16 with a Coburg police car explain why he might be driving near  
 17 the University of Oregon with one of your vehicles?  
 18 MS. COIT: Objection. Foundation.  
 19 MR. JASON KAFOURY: No, I'm asking if he's --  
 20 THE COURT: I'm going to overrule that.  
 21 You can answer that question.  
 22 THE WITNESS: Yeah. That would explain why.  
 23 You know, also, if we have -- if somebody does a crime in  
 24 Coburg -- James was on call a couple of weeks ago that got  
 25 called out, I don't know, I think about 1:00 or 2:00 in the

1 morning for a disorderly female at the Shell gas station. He  
 2 dealt with that particular situation, took them to Buckley  
 3 House. They didn't have room for them at the detox center, so  
 4 he actually ended up having to take them to the Lane County  
 5 Jail.  
 6 He got called out shortly right after that to a burglary  
 7 in progress at one of our businesses. Showed up, guy jumps a  
 8 fence, and actually ends up getting away.  
 9 So the next -- four or five days later, I think, there was  
 10 me and James and Officer Lee and Officer Wilson, the four of  
 11 us, went all over Eugene and Springfield looking for the guy.  
 12 My philosophy is if they commit a crime in Coburg and we  
 13 have information we can follow up on, we were going to try to  
 14 solve that case and arrest them.  
 15 THE COURT: Perhaps both counsel can stipulate of the  
 16 distance or the approximate location of Coburg to the  
 17 University of Oregon. I'm not certain that I understand that.  
 18 I don't know what the location is.  
 19 BY MR. JASON KAFOURY: (Continuing)  
 20 Q. Do you know the miles, sir?  
 21 THE COURT: Perhaps the jury does.  
 22 THE WITNESS: Five or six miles, maybe. I'm not  
 23 sure.  
 24 BY MR. JASON KAFOURY: (Continuing)  
 25 Q. In terms of your relationship with my client, you have

1 never been to his house, have you?  
 2 A. I have not.  
 3 Q. How would you describe your professional relationship?  
 4 A. I think it's professional. I think it's a good  
 5 employer/employee relationship. I try to know my people and  
 6 try to take care of my people because I think that they step up  
 7 and do tremendous work for me.  
 8 Q. Tell us about my client's field DPSST training he had  
 9 earlier this year.  
 10 A. I'm not sure what training.  
 11 Q. The FTEP training.  
 12 A. So in a small agency I think it's easier for me to get my  
 13 people trained than it is the Eugene Police Department, as an  
 14 example, because they have 150, 200 sworn officers. I'm much  
 15 smaller, and I believe in training, so I like to send my people  
 16 to training.  
 17 I sent James to take a class on video cameras because I  
 18 know that he also has a law degree, so he can try to help me to  
 19 make sure I'm good on my policies and procedures. I sent him  
 20 to that class because --  
 21 MS. COIT: Your Honor, I object to the relevance of  
 22 this line of questioning. This is after the fact.  
 23 MR. JASON KAFOURY: Well, there's --  
 24 THE COURT: Overruled. You can answer the question.  
 25 THE WITNESS: So I like to have my people trained up

1 because, from the national staging, you can see that the body  
 2 cameras are coming, so I want to make sure that I was trained  
 3 up and had good advice on how that stuff works.  
 4 So I also sent James to that class and I sent him to a  
 5 field training evaluation programs class so he could actually  
 6 become one of my training officers for new or younger officers  
 7 because there's -- being small, I just can't do it all or can  
 8 my other officer, so I'm trying to empower other reserves. And  
 9 he would be my third -- I think my third or fourth training  
 10 officer. I have three openings currently, so I'm going to be  
 11 hiring some younger police officers.  
 12 BY MR. JASON KAFOURY: (Continuing)  
 13 Q. I'm going to ask some general questions regarding my  
 14 client in your work experience. In your time with him, has he  
 15 been a truthful person?  
 16 A. Yes, he has.  
 17 Q. Has he displayed good judgment?  
 18 A. Yes, he has.  
 19 Q. Has he ever been subject to any discipline within your  
 20 department?  
 21 A. No.  
 22 Q. How does he take critique and feedback? What's been your  
 23 experience?  
 24 A. There hasn't been a whole lot. He seems to be receptive  
 25 to it. I mean, nobody knows everything in law enforcement,

1 period. They just don't. And they never will. It's  
 2 ever-changing, and there's not -- there's all kinds of  
 3 different ways to do different things. There's not one way to  
 4 do a traffic stop. You can do a driver's side approach, a  
 5 passenger's side approach, you can stand between the car, you  
 6 can go around the back of your car. There's pros and cons to  
 7 every one of those approaches.  
 8 And we have open discussions about those because I just  
 9 think that we all kind of make each other better. If somebody  
 10 has a good idea, I'm all for it.  
 11 So we have open discussions. He's never been abrasive  
 12 or -- he's always been receptive to that kind of feedback.  
 13 Q. Ever felt unsafe working with my client?  
 14 A. I have not.  
 15 Q. Ever have any citizen complaints against my client?  
 16 A. I have not.  
 17 Q. How many hours -- do you have a rough idea of how many  
 18 hours he puts in in a given week or month there at Coburg?  
 19 A. You know, it varies because it always depends on their  
 20 personal schedules and also what I have for them. In the  
 21 summer months we have several community events that I require  
 22 them to do. Coming up in October and working helping the  
 23 sheriff's department at the University of Oregon football games  
 24 with some parking at one of the facilities across from Autzen  
 25 Stadium.

1 We're also going to be helping them with a corn maze event  
 2 that they have at Alpine Farms and whatever training or other  
 3 things that I have as a department. But James probably puts,  
 4 geez, normally like a minimum of 20 and up to 60, 70 hours a  
 5 month.  
 6 Q. In fact, he's working this weekend?  
 7 A. Yes, he is.  
 8 Q. As you said -- you talked about this patrolling I-5 as  
 9 part of your duties. Has my client made a lot of traffic stops  
 10 as part of his Coburg responsibilities?  
 11 A. Yes. So for Coburg, we're not really call-driven.  
 12 Sometimes we are. Sometimes we aren't. But that doesn't  
 13 mean -- we're not getting a bunch of 911 calls all the time. A  
 14 lot of times for us it's self-initiated, so I have officers  
 15 that are very -- you know, they're not retired on duty.  
 16 They're out there doing their job. They're looking for people  
 17 that are violating the law, and they're enforcing the law. And  
 18 I -- James is very active when he's out.  
 19 Q. Have you ever had situations where my client has, over the  
 20 radio, made problematic callouts, said things that weren't  
 21 actually happening, stuff like that?  
 22 A. No.  
 23 Q. Any complaints from any other Coburg officers relating to  
 24 my client whatsoever?  
 25 A. No.

1 Q. Do you think the size of the department determines the  
 2 type of police work, or do you think there's a lot of  
 3 similarity between big and small?  
 4 A. I think it's harder to be a police officer in a small  
 5 department. Eugene Police Department, as an example. I love  
 6 the Eugene Police Department, but if they have, let's say, a  
 7 rape case, they are going to -- the officer is going to show up  
 8 and take the initial report. Then they're going to hand it off  
 9 to the detectives. I don't have any detectives. My officers  
 10 are the detectives.  
 11 Junction City is an example. We had a young man that  
 12 stole a bunch of firearms, went to show his girlfriend, pulled  
 13 out a firearm, and shot her right square between the eyes.  
 14 So I get called out because I was home on call, so I come  
 15 out, interviewed the suspect, got him to confess. The next day  
 16 I'm the patrol officer. So we have the district attorney. We  
 17 have Oregon State Police Crime Lab that came out. I'm the lead  
 18 investigator. We have the chief, the lieutenant. I had to  
 19 leave that meeting to go take care of a dog-at-large call that  
 20 was at Laurel Elementary School.  
 21 So in a small town you do a dog-at-large -- and I couldn't  
 22 let it go because it was at the school scaring kids -- to a  
 23 homicide. So small town police officers have to do -- wear  
 24 mini hats, so I expect a lot of them.  
 25 Q. You talked about these traffic stop data forms. In

1 reviewing my client's traffic stops, have you noticed any  
 2 unusual patterns or --  
 3 A. I have not. And I review every traffic stop, traffic stop  
 4 data form. And all the citations and all the reports, all that  
 5 stuff goes through me. And if I saw a pattern I would have  
 6 already dealt with it, but I have not seen a pattern that  
 7 raises any kind of concern.  
 8 Q. Not racially profiling or gender profiling anyone?  
 9 A. Not at all.  
 10 Q. Did you allow my client to work for the Oakridge Police  
 11 Department for a couple of weeks while two of your officers  
 12 were at the academy?  
 13 A. Yes, I did. Oakridge's new chief, Chief Martinez, Kevin,  
 14 called me because they were very short handed and needed some  
 15 help. So I asked a couple of the reserves, solo reserve  
 16 officers who I felt confident in, if they wanted to go up there  
 17 and help, and then I put them in touch with Kevin, and he  
 18 scheduled them for whatever his needs were to cover some of  
 19 their patrol shifts.  
 20 Q. Any problems communicated to you from Oakridge about my  
 21 client when he was there?  
 22 A. No. Actually, Kevin called me and thanked me for that and  
 23 actually was going to hire James away from me. Of course, that  
 24 didn't happen. Thank goodness.  
 25 Q. The recording law, this ORS that requires you to notify,

1 over the last five years, what's your understanding about how  
 2 well-known that law has been within law enforcement?  
 3 A. Well, I had a video camera in 1995. So I knew to let the  
 4 people know. So whenever you make a traffic stop, you know,  
 5 license, registration, proof of insurance, and then just to  
 6 advise them that it's being recorded. And that was before body  
 7 cameras, and it was pretty much just a patrol camera out of the  
 8 car.  
 9 Q. Has there -- have the policies in relation to, you know,  
 10 when you have to notify and all that, has that been sort of  
 11 shifting and changing over the years?  
 12 A. I think it has. I mean, I haven't -- we don't have any --  
 13 we just recently got a body camera for Coburg. And at the time  
 14 when I was at Junction City we had that camera for a couple of  
 15 years. It broke, and they never did replace it. So when I was  
 16 there we didn't have any patrol cameras.  
 17 Q. Let's talk about *Brady* listing. Do you remember receiving  
 18 an email from the district attorney, along with a multipage  
 19 report with allegations against my client, in the summer of  
 20 2014?  
 21 A. I remember getting an email. I somewhat remember the  
 22 report.  
 23 Q. And what was the district attorney asking from you?  
 24 A. My understanding was just for me to be aware of it. There  
 25 was no action that I needed to take.

1 Q. Did you respond to the district attorney?  
 2 A. I did. I think he asked for personnel information from  
 3 James. Of course I contacted our city attorney. We provided  
 4 him with whatever he needed.  
 5 Q. I'd like to show you Plaintiff's Exhibit 244. Can you  
 6 identify what this document is, sir?  
 7 A. It's an email I sent to Patty Perlow, district attorney.  
 8 Q. And it's in response to the *Brady* materials written in  
 9 relation to Mr. Cleavenger; correct?  
 10 A. Correct.  
 11 Q. The date of this document is August 22, 2014?  
 12 A. That's correct.  
 13 MR. JASON KAFOURY: I'd offer 244, Your Honor.  
 14 THE COURT: Any objection, Counsel?  
 15 MS. COIT: No objection.  
 16 THE COURT: Received.  
 17 MR. JASON KAFOURY: May I publish it to the jury,  
 18 Your Honor?  
 19 THE COURT: You may.  
 20 MR. JASON KAFOURY: Can you blow up the top there,  
 21 Mr. Hess?  
 22 BY MR. JASON KAFOURY: (Continuing)  
 23 Q. This is an email that you sent to the district attorney  
 24 office on August 22, 2014, in relation to my client and the  
 25 *Brady* list; correct?

1 A. Correct.  
 2 Q. Can you go to the next paragraph, Mr. Hess?  
 3 I received your letter regarding the possible *Brady* issue  
 4 with one of my reserve police --  
 5 THE COURT: Counsel, go ahead and please read slower  
 6 so that the court reporter can take your reading.  
 7 MR. JASON KAFOURY: Okay.  
 8 THE COURT: Start again so there's continuity.  
 9 BY MR. JASON KAFOURY: (Continuing)  
 10 Q. I received your letter regarding a possible *Brady* issue  
 11 with one of my reserve police officers, James Cleavenger.  
 12 James Cleavenger has been a reserve officer with us for over a  
 13 year. James successfully passed a post-written test, physical  
 14 agility testing, oral boards, and background, along with the  
 15 psychological testing.  
 16 That was all accurate; right?  
 17 A. Yes.  
 18 Q. Next paragraph.  
 19 During the background, everyone who was contacted talked  
 20 very highly of James. The University of Oregon Department of  
 21 Public Safety never responded to our inquiries. During the  
 22 background, no one ever brought up any concerns regard ing James  
 23 being unethical or untruthful.  
 24 Next paragraph.  
 25 During James's time here as a reserve police officer,

1 James has never showed any signs of being unethical,  
 2 untruthful, or incompetent. He has always been a very  
 3 professional, dedicated, caring police officer.  
 4 Signed by you?  
 5 A. Correct.  
 6 Q. What does a *Brady* listing mean for my client's chances of  
 7 getting hired as a full-time paid police officer?  
 8 A. I think it would probably prohibit that from happening.  
 9 Q. And why do you think that is?  
 10 A. Well, you have to be truthful in law enforcement and be  
 11 able to testify under oath that you're being truthful and  
 12 honest.  
 13 Q. Is it your understanding that being *Brady*-listed would  
 14 qualify as a failed background check?  
 15 A. Yes.  
 16 Q. If -- after this proceeding is over, this court, the  
 17 district attorney will be making a determination about what  
 18 status of *Brady* listing my client will be on. Do you  
 19 understand the two tiers of *Brady*-listing?  
 20 A. I'm not that familiar with *Brady*-listing. My  
 21 understanding is -- I've never been exposed to that. And with  
 22 this case, I know that if that goes -- if that happens, I'm  
 23 going to have to get a hold of legal counsel to see what to do  
 24 next because I've never been faced with this situation.  
 25 Q. And if the district attorney decides that my client

1 deserves to be disqualified from testifying altogether, might  
 2 you have to terminate him?  
 3 A. That's correct.  
 4 Q. As the chief, if a group of your command staff was leading  
 5 a group of officers during briefings and talking about how  
 6 people in the community and around the country should eat a  
 7 bowl of dicks, how would you respond to that type of situation?  
 8 A. Well, I think, as a supervisor, it should be addressed  
 9 right then and there. You can't let that stuff go.  
 10 Q. In law enforcement, are you required to work really long  
 11 hours sometimes?  
 12 A. Sometimes.  
 13 Q. What's the longest you've ever had to work?  
 14 A. Pushing probably 48 hours. Worked swing shift, ended up  
 15 getting drug information, writing a search warrant, and  
 16 executing the search warrant, processing evidence, and then it  
 17 was time to work another shift. So roughly around that  
 18 particular time frame.  
 19 Q. Jurors are going to hear from University of Oregon  
 20 Lieutenant Andy Bechdolt. Did you work with Lieutenant  
 21 Bechdolt?  
 22 A. Very briefly, when I got hired at Coburg, Andy had worked  
 23 there just prior to me. My understanding was that he resigned  
 24 his position and was a reserve officer for a couple months, but  
 25 I never really worked with him. I don't think we ever worked a

1 shift together.  
 2 Q. Do you know if he -- if Lieutenant Bechdolt was putting in  
 3 the required hours at your department?  
 4 A. From memory, I don't remember seeing him. I don't believe  
 5 I was the chief at that time or I was the brand-new chief.  
 6 There was a lot of things going on. He was only there for a  
 7 period of time, and then I think he got hired at the U of O.  
 8 MR. JASON KAFOURY: Thank you, sir. That's all I  
 9 have.  
 10 THE COURT: Cross-examination, please.  
 11  
 12 CROSS-EXAMINATION  
 13 BY MS. COIT:  
 14 Q. Chief Larson, how big is Coburg?  
 15 A. Population?  
 16 Q. Yes.  
 17 A. 1,050.  
 18 Q. 1,050 residents?  
 19 A. Correct.  
 20 Q. And what is the -- how big is the physical boundary of the  
 21 city?  
 22 A. Maybe a mile square.  
 23 Q. One mile square?  
 24 A. Roughly.  
 25 Q. And your officers have authority to patrol or respond to

1 calls within that mile; correct?  
 2 A. Well, that's the city limits, so for venue that's where  
 3 we'd go. If we are, say, going to Lane County Jail in downtown  
 4 Eugene and we see a traffic offense and we feel it's egregious  
 5 enough to stop them and write them a ticket, we'll do that. So  
 6 the police power is through the whole state of Oregon.  
 7 Q. Understood. That's the same for police officers  
 8 throughout the state; correct?  
 9 A. That's correct.  
 10 Q. So the background that you did on Mr. Cleavenger, did you  
 11 do that personally?  
 12 A. No.  
 13 Q. Did you review it?  
 14 A. Yes.  
 15 Q. The psych test that you talked about, that's something you  
 16 order through the mail; correct?  
 17 A. Correct.  
 18 Q. It's multiple choice fill-out; correct?  
 19 A. It's a two, two and a half hour battery of questions.  
 20 Q. But it's a timed multiple choice fill-out; correct?  
 21 A. Correct.  
 22 Q. Have you ever known of someone to fail this particular  
 23 psych test?  
 24 A. No.  
 25 Q. What does the psych test at the Eugene Police Department

1 entail?  
 2 A. I don't know.  
 3 Q. How about the University of Oregon? Do you know what that  
 4 entails?  
 5 A. I do not.  
 6 Q. In your experience, do most psychological testings for  
 7 police officers include an actual interview with a psychiatrist  
 8 or a psychologist?  
 9 A. I think that's common for full time. For reserves, I  
 10 think it varies. That's why I -- Cottage Grove is using this  
 11 and has used this particular one for 15 years, and they were --  
 12 spoke very highly of it, which is why I made the switch to do  
 13 that.  
 14 Q. Have any of your reserves ever failed this mail order  
 15 fill-out psych test?  
 16 A. From Psychological Services, no.  
 17 Q. Did you do a criminal background check on Mr. Cleavenger?  
 18 A. Yes, we did.  
 19 Q. Did that reveal anything?  
 20 A. For criminal activity, no.  
 21 Q. How far back did that background check go?  
 22 A. Whatever the NCIC or the LEDS, Law Enforcement Data  
 23 System, that's maintained by Oregon State Police, it's however  
 24 back -- how far it goes back.  
 25 Q. So your background test at Coburg is limited to the state

1 of Oregon for criminal background history?  
 2 A. No. The NCIC is a national law enforcement data system  
 3 that we access also. So both systems were checked.  
 4 Q. Did it go back as far as Mr. Cleavenger's undergraduate  
 5 career?  
 6 MR. JASON KAFOURY: Your Honor, I'll object. I don't  
 7 know where this is going.  
 8 THE COURT: Overruled.  
 9 THE WITNESS: It only checks criminal history, so I  
 10 don't know how it would relate to a college.  
 11 BY MS. COIT: (Continuing)  
 12 Q. Criminal history that was obtained while he was in college  
 13 is my question. Did it go back that far?  
 14 A. If there was a conviction, I would have found it. If it  
 15 was put into the system -- if there was a fingerprint, it would  
 16 have been in the system and it should have found it.  
 17 Q. And it's your testimony that the background did not find  
 18 it?  
 19 A. That's correct.  
 20 Q. During your background, did you speak with Chief Chase at  
 21 Junction City?  
 22 A. I did not.  
 23 Q. Why is that?  
 24 A. Because I wasn't doing the background.  
 25 Q. Wouldn't it have been relevant to your background to

1 actually speak to the chief of the department he worked rather  
 2 than his fellow officers and best friends that worked there?  
 3 A. What they investigated is the background, and then I make  
 4 the final determination.  
 5 Q. Do you have any say in how your background investigator  
 6 does that background?  
 7 A. I do. That's how I chose to do it.  
 8 Q. To not call the chief of police from Junction City?  
 9 A. The background investigator is a 16-year veteran  
 10 investigator, and I let him do the investigation.  
 11 Q. Did Mr. Cleavenger ask that background investigator not to  
 12 talk to Chief Chase?  
 13 A. I don't believe that would happen, but I don't know.  
 14 Q. In your experience with that background investigator,  
 15 would it be his normal practice to contact the chief of the  
 16 department where the person just left employment?  
 17 A. The question one more time.  
 18 Q. In your experience in police operations and as the  
 19 supervisor of this department, would it be the normal practice  
 20 of a background investigator to contact the chief of the  
 21 department for an employee who has just left that department?  
 22 A. Possibly. If there was notice in the file that determined  
 23 there was a problem, I would say yes.  
 24 Q. Were you aware that Mr. Cleavenger had just suddenly  
 25 resigned from Junction City before he came to you?

1 A. Yes.  
 2 Q. Did you ask him why?  
 3 A. No. I was not doing the background.  
 4 Q. Did your background investigator ask him why?  
 5 A. I don't know.  
 6 Q. Do you recall reading that information in the background?  
 7 A. I do not recall.  
 8 Q. Wouldn't that be important to you to know suddenly why he  
 9 resigned from Junction City?  
 10 A. From what I got from the background and the background  
 11 investigator, is that there was no problem.  
 12 Q. So your answer is that is not of concern to you why he  
 13 left suddenly from his prior position?  
 14 A. It was not a concern at that time, correct.  
 15 Q. You testified you didn't hear from the University of  
 16 Oregon. Do you mean your background investigator didn't hear  
 17 from the university?  
 18 A. Right. The background investigator didn't hear from the  
 19 University of Oregon.  
 20 Q. Do you know who your investigator called?  
 21 A. I think it was multiple people, but I don't recall exactly  
 22 who they did try to contact.  
 23 Q. Can you identify one person that they called?  
 24 A. I think Andy Bechdolt.  
 25 Q. Are you aware -- was your background investigator aware



1 that Mr. Cleavenger had sued the university and the chief of  
 2 police and a lieutenant?  
 3 MR. JASON KAFOURY: Object. He had not sued them  
 4 then at that time point.  
 5 THE COURT: Continue on, Counsel, with your question.  
 6 MR. JASON KAFOURY: May of 2013, Counsel.  
 7 MS. COIT: Oh, my apologies. Thank you.  
 8 BY MS. COIT: (Continuing)  
 9 Q. Were they aware, if you know, that at that time  
 10 Mr. Cleavenger was engaging in active arbitration of his  
 11 termination?  
 12 A. I do not know.  
 13 Q. In your experience in law enforcement -- well, let me ask  
 14 a different question.  
 15 From your understanding from the background investigator,  
 16 did the University of Oregon say anything negative about  
 17 Mr. Cleavenger?  
 18 A. I don't think they said anything.  
 19 MR. JASON KAFOURY: Your Honor, I would like to have  
 20 a sidebar.  
 21 THE COURT: Not at this time, Counsel.  
 22 BY MS. COIT: (Continuing)  
 23 Q. Who was the background investigator?  
 24 A. I believe it was Rod Teague.  
 25 Q. I'm sorry. Say that again.

1 A. Rod Teague.  
 2 Q. Is he one of the two officers at Coburg?  
 3 A. He's a reserve police officer.  
 4 Q. What is his day job?  
 5 A. He is an investigator for SAIF.  
 6 Q. SAIF, the Workers' Compensation Board?  
 7 A. Correct.  
 8 Q. What does he investigate for SAIF?  
 9 A. Fraud.  
 10 Q. Criminal or civil?  
 11 A. I think both.  
 12 Q. Is he a paid reserve?  
 13 A. We don't have paid reserves.  
 14 Q. You said that the chief from the city of Oakridge wanted  
 15 to hire Mr. Cleavenger away.  
 16 A. Correct.  
 17 Q. Was he going to hire him away for a paid police officer  
 18 position?  
 19 A. I think it was more in jest; but, if he had an opening, he  
 20 was going to -- kind of intimate that he would hire him.  
 21 Q. As a paid police officer?  
 22 A. Correct.  
 23 Q. Do you plan on hiring Mr. Cleavenger as a paid police  
 24 officer at any point?  
 25 A. I don't have any openings, so no.

1 Q. What if an opening comes up tomorrow?  
 2 A. If he tested and passed the testing, then yes.  
 3 Q. What additional testing would he have to take?  
 4 A. It would have to be the complete process again.  
 5 Q. Including another psychological testing?  
 6 A. Correct.  
 7 Q. Would this one include an interview with a psychiatrist?  
 8 A. For a full-time position, yes.  
 9 Q. So how many officers -- full-time paid officers are  
 10 generally on duty at the City of Coburg?  
 11 A. I only have two, so it's either one or two.  
 12 Q. And how much supervision -- let's make it specific to  
 13 Mr. Cleavenger. How much supervision does Mr. Cleavenger get  
 14 on average during a shift at Coburg?  
 15 A. So if James comes out, normally Officer Lee or myself will  
 16 adjust our schedule. So we do work with him a lot; a lot more  
 17 than they work solo.  
 18 Q. How much -- say he works an eight-hour shift, how much of  
 19 that eight-hour shift is working solo?  
 20 A. It just depends on the -- there is no set schedule.  
 21 Q. Well, tell me, does working solo mean that when there's no  
 22 call going he's by himself but when a call comes in you respond  
 23 with him? Is that what you're saying?  
 24 A. Solo means that he can be out in the car by himself  
 25 patrolling and initiating traffic stops and doing his own

1 follow-up, doing what police officers do. James has worked  
 2 several shifts where he's the only one on duty, so there would  
 3 be no supervision, other than we're always available by phone  
 4 if he has any questions or needs any additional help.  
 5 Most of the time they come out when there's another  
 6 officer on duty because it's fun to work together, even though  
 7 you might be in separate cars. Still, there's two police  
 8 officers, so you can support each other.  
 9 Q. It's a benefit to the City of Coburg to have these  
 10 reserves out there patrolling, unpaid; correct?  
 11 A. Correct.  
 12 Q. And you take as much advantage of that benefit as you can;  
 13 correct?  
 14 A. The help is needed, yes.  
 15 Q. How many reserves are there?  
 16 A. Currently, I think I have seven.  
 17 Q. So you said that Mr. Cleavenger is allowed to take his  
 18 personal vehicle home? Is that what you said?  
 19 A. No. Well, he can take his personal vehicle home.  
 20 Q. Oh, I'm sorry. The patrol car.  
 21 A. The patrol car. The patrol car only when he's on call so  
 22 that he can respond quicker for the citizens in Coburg. I let  
 23 him take the police car home so he can respond straight to the  
 24 location of the call.  
 25 Q. How many patrol cars does the City of Coburg have?

1 A. Five.  
 2 Q. Is your city manager aware that you allow a reserve to  
 3 take his -- take a City of Coburg police car home overnight?  
 4 A. Yes.  
 5 Q. Are all the reserves allowed to do that?  
 6 A. Only the solo ones that are on call.  
 7 Q. Is Mr. Cleavenger insured on that vehicle when it's  
 8 outside the city?  
 9 A. Yes.  
 10 Q. Are you aware that Mr. Cleavenger drives that car around  
 11 the U of O campus?  
 12 A. No.  
 13 Q. Would that be appropriate?  
 14 A. Well, if he's going to and from work or doing follow-up on  
 15 a case, yes.  
 16 Q. Otherwise it wouldn't be?  
 17 A. I don't know why he would be doing that.  
 18 Q. That's not my question, sir. Would it be inappropriate?  
 19 A. If he's not doing Coburg business.  
 20 Q. Is he allowed to take that police car to work at the  
 21 federal courthouse?  
 22 A. Sometimes he'll be on call and have to respond from there.  
 23 Q. You know Mr. Cleavenger works as a law clerk at the  
 24 federal courthouse; correct?  
 25 A. I do.

1 Q. Is it appropriate for him to take that car to work when he  
 2 works at the federal courthouse?  
 3 A. Sometimes James is -- we've had this conversation. He'll  
 4 be at work but still being on call for us to respond to  
 5 emergency calls. So at that point in time, I would say yes.  
 6 Q. So when Mr. Cleavenger is at work at his real job, his  
 7 paid job, he will leave that to go answer calls as a reserve  
 8 volunteer for Coburg?  
 9 A. If needed. I don't know how his work relationship is as  
 10 far as how they feel about it, but for us, if he's, you know,  
 11 there and it's not a court day and he's able to do that, then  
 12 he will do that for us.  
 13 Q. You don't live in the city of Coburg?  
 14 A. I do not.  
 15 Q. Where do you live?  
 16 A. Junction City.  
 17 Q. How far is Junction City from Coburg?  
 18 A. It takes -- it's 19 miles to drive from Junction City to  
 19 Coburg.  
 20 Q. So if you're on call, do you generally call out a reserve  
 21 if it's possible for them to handle something rather than you  
 22 having to go?  
 23 A. If I'm on call, I take it.  
 24 Q. You take it?  
 25 A. That's why I'm on call.

1 Q. From your home in Junction City?  
 2 A. Correct.  
 3 Q. Has Mr. Cleavenger been to your house?  
 4 A. No.  
 5 Q. So you gave some testimony that you think Mr. Cleavenger  
 6 has good officer safety skills. Do you remember that?  
 7 A. Yes.  
 8 Q. Are you aware that Mr. Cleavenger gave a courtesy  
 9 transport to a distraught woman in the back of his patrol car  
 10 knowing that she had a loaded gun on her lap? Are you aware of  
 11 that?  
 12 A. I've never heard that.  
 13 Q. Would that be a safe situation?  
 14 A. Probably not, if the gun was illegal.  
 15 Q. Why would that make a difference to you?  
 16 A. Well, if -- if there's no crime committed -- I mean, I  
 17 would probably separate her from the firearm. I don't know the  
 18 information as far as why she was distraught, why she was in  
 19 the back of the car. Was she in custody? I don't know.  
 20 There's a lot more information that I would want to know.  
 21 Normally, in law enforcement, we do try to separate people  
 22 from firearms, but if somebody has a gun on their hip, I mean,  
 23 it's not necessarily illegal.  
 24 Q. Can you please give me a situation in which you personally  
 25 would take a distraught woman on a voluntary courtesy transport

1 when she's carrying a loaded firearm on her -- in her lap in  
 2 the back of your car?  
 3 A. If I knew the loaded firearm was there, I would have  
 4 probably separated the gun from her.  
 5 Q. It's not probably, is it, Chief Chase? You would always  
 6 separate it; correct?  
 7 MR. JASON KAFOURY: He's not Chief Chase.  
 8 BY MS. COIT: (Continuing)  
 9 Q. I'm sorry. Larson. My apologies.  
 10 A. I'm hoping that I would separate it, correct, if I knew  
 11 the firearm was there.  
 12 Q. If you had known Mr. Cleavenger had engaged in that  
 13 conduct, would you have hired him?  
 14 A. Possibly. I mean, sometimes things are a training issue.  
 15 I don't know what -- when that was in his career. I mean, it's  
 16 a hypothetical, so --  
 17 Q. What sort of training would you give someone to avoid that  
 18 situation?  
 19 A. Well, I would go over what the hazards would be and why we  
 20 do search people that go in the back of a car; that there are  
 21 officers that have been killed during prisoner transports, you  
 22 know. So you would go over all those things.  
 23 Q. Would you agree with me that that's kind of a commonsense  
 24 decision, more of a judgment issue?  
 25 A. Yeah. I would hope that he would have the experience to

1 be able to separate that.  
 2 Q. How many calls for service -- actual calls that came in to  
 3 Junction -- or, excuse me, Coburg, since Mr. Cleavenger was  
 4 hired, has he gone on?  
 5 A. Oh, I have no idea.  
 6 Q. Would it be more than 10?  
 7 A. Yes.  
 8 Q. How many, in an average night, do your officers respond  
 9 to; actual calls for service?  
 10 A. Sometimes zero; sometimes seven, eight, nine, ten.  
 11 Q. Is it more often than not zero?  
 12 A. It's not real call-driven. A lot of it is  
 13 officer-initiated stuff in Coburg, which is why it's a small  
 14 great community.  
 15 Q. When you're not on duty, are you generally monitoring the  
 16 radio, the Oak -- Coburg radio?  
 17 A. No. I always have a cell phone. Dispatch has my number  
 18 memorized, and the other officer -- if I'm not on call, the  
 19 other officer is either on duty or on call.  
 20 Q. Now, you said you reviewed Mr. Cleavenger's written police  
 21 reports; correct?  
 22 A. Correct.  
 23 Q. Have you ever reviewed his actual video of his encounters  
 24 with people?  
 25 A. We don't have video. We have one officer that has a body

1 camera. We just got that in the last couple of months.  
 2 Q. Have you ever gone out, just for your own curiosity, to  
 3 see how your reserves are doing and watch Mr. Cleavenger make a  
 4 contact with a citizen?  
 5 A. Yes, I have.  
 6 Q. Tell me about that.  
 7 A. I can't think of anyone specific, but I watch all the  
 8 reserves when they're out, so I see what they're doing and make  
 9 sure they're doing things appropriate. I've never seen  
 10 anything inappropriate from any of them.  
 11 Q. From any of your reserves?  
 12 A. Not when I've seen them out working the street, no.  
 13 Q. Do you agree with me police work is dangerous?  
 14 A. Yes, it is.  
 15 Q. Would you agree it's a -- it's a dangerous habit to be too  
 16 trusting in police work?  
 17 A. Correct.  
 18 Q. Mr. Cleavenger still works for you; correct?  
 19 A. Correct.  
 20 Q. All right. We talked about the email that you sent to  
 21 Alex -- or I think you sent it to Patty Perlow, the assistant  
 22 district attorney --  
 23 A. Correct.  
 24 Q. -- regarding the information that had been given to the  
 25 district attorney from the University of Oregon about

1 Mr. Cleavenger's credibility. Is that understanding -- your  
 2 understanding of why you were responding?  
 3 A. I believe so.  
 4 Q. When you wrote that response, had you reviewed  
 5 Mike Morrow's internal affairs investigation at the university?  
 6 A. I don't know who that is, so probably not.  
 7 Q. Did you speak to anyone at the University of Oregon about  
 8 why they had issues regarding Mr. Cleavenger's credibility?  
 9 A. No.  
 10 Q. Do you have any knowledge, sitting here today, of what  
 11 their concerns are regarding his credibility?  
 12 A. What I've seen in *The Register-Guard*.  
 13 Q. Other than that?  
 14 A. No.  
 15 Q. Did you attend any of the chief's meetings around late  
 16 2013, 2014 when Alex Gardner or Patty Perlow were there talking  
 17 about a *Brady* workgroup?  
 18 A. I'm not sure what meeting you're talking about. I attend  
 19 the quarterly chiefs luncheons that we have, so if they spoke  
 20 at that, I might have been there. I haven't attended every one  
 21 of them.  
 22 If there was additional training, I don't believe I was  
 23 there.  
 24 Q. Before you wrote that email back to Ms. Perlow,  
 25 Patty Perlow, did you discuss the issue with Mr. Cleavenger?

1 A. No.  
 2 Q. Did you discuss it with anyone before you responded?  
 3 A. Yes. I consulted the Coburg city attorney because I've  
 4 never dealt with a *Brady* issue before. I talked to him on, you  
 5 know, what we needed to do, to make sure that I did it right,  
 6 and that's who I talked to.  
 7 MS. COIT: All right. Thank you, sir.  
 8 THE COURT: Redirect?  
 9  
 10 REDIRECT EXAMINATION  
 11 BY MR. JASON KAFOURY:  
 12 Q. Let me add some more facts to this loaded-gun allegation.  
 13 Let's assume that a woman is fleeing a serious domestic  
 14 violence situation. She fears for her life. My client finds a  
 15 car with a gentleman in it a couple of blocks away from the  
 16 same small town of Creswell where she lives. She's at the  
 17 police station, she has a concealed weapons permit, and my  
 18 client asks his direct supervisor if he should give her a  
 19 safety escort, and the supervisor gives him permission.  
 20 Now, if all of that were true, what do you think about  
 21 that situation?  
 22 A. I would give the transport. I guess it would kind of  
 23 depend on her demeanor. I mean, normally you do still want to  
 24 separate. You could put her purse in the trunk. It doesn't  
 25 mean you necessarily have to. If they have an actual permit to

1 carry concealed, then there's no violation of law to really  
 2 force that to happen.  
 3 Q. You did receive information from the district attorney in  
 4 regards to *the Brady* materials submitted on my client; correct?  
 5 A. I did.  
 6 Q. Okay. And you reviewed that stuff before you responded to  
 7 the DA to give your opinion about my client's truthfulness;  
 8 right?  
 9 A. Correct. I did.  
 10 Q. This concept of my client leaving the federal job, do you  
 11 know if he's a salaried employee there?  
 12 A. I have no idea.  
 13 Q. The psychological testing that you do, same test that Lake  
 14 Oswego Police Department uses, isn't it?  
 15 A. That, I'm not sure.  
 16 Q. Multiple choice portion of it is?  
 17 A. It could be. It looks similar, from what I've seen in the  
 18 past.  
 19 Q. Who conducts the background check of my client at your  
 20 department? My client doesn't have any part of that process,  
 21 does he?  
 22 A. No, he does not. So if we have an application for a  
 23 reserve or another city employee, if the City is going to hire  
 24 somebody, I go to my secretary who runs the law enforcement  
 25 check with the LEDS, Law Enforcement Data Systems check, and

1 the NCIC, which is the national criminal database, and of  
 2 course run the DMV record, to see what type of applicant we  
 3 have and if there's any criminal history.  
 4 Q. Now, my client went through an additional FTEP program  
 5 through your department where he had to ride along and shadow  
 6 officers too, right, before he became a solo?  
 7 A. He had already completed his full training manual at  
 8 Junction City, so he already knew the radio codes and all those  
 9 because they're the same for Junction City as Coburg because  
 10 they dispatch for us, so it was a short period of time. I  
 11 don't remember exactly what it was, where he was kind of in the  
 12 shadow phase. We watched him perform. He seemed to perform  
 13 adequate. So then he was moved to the solo status for maybe  
 14 six, eight months a year. I don't remember.  
 15 Q. Throughout all your years working with my client, have you  
 16 ever felt that he was severely psychologically unstable?  
 17 A. No, I have not.  
 18 Q. Counsel asked you about being with my client during  
 19 particular actions. Do you remember a vehicle pursuit that you  
 20 were with him on?  
 21 A. I do.  
 22 Q. Tell us about it.  
 23 A. James was out on patrol. We were doing traffic  
 24 saturations, so I had four, five police officers out doing  
 25 traffic enforcement. James was on a traffic stop on the

1 interstate. I was actually in the office. Me and another  
 2 reserve officer, and Officer Lee was out. I think it was  
 3 actually on the beltline of Coburg Road, which is Eugene. He  
 4 had made a stop. And to turn around in Coburg, sometimes you  
 5 have to go four, five miles out of your way to come back.  
 6 So Officer Lee was on his way back. We knew that James  
 7 was on the traffic stop. I heard him say that he was in  
 8 pursuit. So the pursuit was southbound on I-5. So of course I  
 9 run out and get in my car, me and the other officer.  
 10 Officer Lee made it back around to the freeway, and the pursuit  
 11 ended up going southbound on the interstate, going through  
 12 Eugene, Springfield, south; took the exit right there at -- the  
 13 Highway 58 exit at Goshen, went through Goshen -- a little  
 14 town -- immediately went left on 99 south, and then took  
 15 another left right at the edge of the city limits of Goshen,  
 16 which is smaller than Coburg, and the guy ended up actually  
 17 driving through his house.  
 18 MR. JASON KAFOURY: Thank you, sir.  
 19 THE COURT: Recross.  
 20  
 21 RECCROSS-EXAMINATION  
 22 BY MS. COIT:  
 23 Q. Chief Larson, your background investigation, it includes a  
 24 personal history application that asks for any criminal  
 25 history; correct?

1 A. Yeah. I think that's on the standard form that we have.  
 2 Q. Now, if Mr. Cleavenger filled it out and failed to reveal  
 3 his criminal history background --  
 4 MR. JASON KAFOURY: Your Honor, I'm going to object.  
 5 This is totally irrelevant, and we've already dealt with all --  
 6 anything in relation to this.  
 7 THE COURT: Can you repeat the question?  
 8 MS. COIT: I'm asking him if the background  
 9 investigation asked Mr. Cleavenger to reveal any past criminal  
 10 history, and he said it does.  
 11 MR. JASON KAFOURY: Your Honor, may I have a sidebar  
 12 on this?  
 13 THE COURT: No. I'm going to excuse the jury for  
 14 just a moment. My apologies for taking such an early recess,  
 15 but let me speak to both counsel for just a moment.  
 16 (Jury not present.)  
 17 THE COURT: I'll ask the chief to wait outside for  
 18 just a moment, just in terms of the integrity of the testimony,  
 19 so you're not subject to a conversation I have with both  
 20 counsel.  
 21 Thank you, sir.  
 22 THE WITNESS: You're welcome.  
 23 (Witness not present.)  
 24 THE COURT: My memory from the in limine motions was  
 25 that there was an incident at the University of Oregon and a

1 charge of --  
 2 MR. JASON KAFOURY: It was a --  
 3 THE COURT: Don't interrupt me. Sit down, Counsel.  
 4 -- a minor charge of interference of some type. I want  
 5 you to correct me and refresh my recollection. I believe my  
 6 ruling was that was not to come into evidence.  
 7 My impression is you're going around my ruling without  
 8 notifying me. So if this is the surprise cross-examination,  
 9 that potentially would be in contravention of my ruling, and  
 10 the Court should be placed on notice.  
 11 I'll turn the lectern over to you for a moment for an  
 12 explanation.  
 13 MS. COIT: Yes, Your Honor. The criminal arrest was  
 14 while he was in college in Chicago.  
 15 THE COURT: In Chicago.  
 16 MS. COIT: In Chicago. It showed up on the  
 17 background in the University of Oregon's background check.  
 18 There were discussions with the police in Chicago during that  
 19 background check, and it was confirmed that Mr. Cleavenger was  
 20 throwing beer bottles at police officers. He was arrested  
 21 for -- I would have to look back. I believe it was criminal  
 22 mischief; perhaps an assault.  
 23 The bad acts ruling that was brought up in the motions in  
 24 limine, you did agree that this was not to come in unless the  
 25 door was opened.

1 THE COURT: I didn't agree. I made a ruling.  
 2 MS. COIT: Yes, Your Honor. I'm sorry. Unless the  
 3 door was opened. It was not --  
 4 THE COURT: Counsel, please sit down. It's  
 5 distracting. I'm tired of plaintiff's counsel moving around  
 6 the courtroom.  
 7 MR. GREGORY KAFOURY: Sorry.  
 8 THE COURT: That will be the last caution.  
 9 MS. COIT: Mr. Kafoury asked Chief Larson in detail  
 10 about the background investigation they did on Mr. Cleavenger  
 11 to confirm that it was a thorough background and there was  
 12 nothing in it that would prevent him from hiring him as an  
 13 officer. He opened the door for me to ask about the  
 14 background, and I did. And when I did that I asked if it  
 15 revealed a criminal arrest.  
 16 THE COURT: Does the NCIC or NCIS -- NCIC reveal this  
 17 criminal offense?  
 18 MS. COIT: That's how it --  
 19 THE COURT: Yes or no?  
 20 MS. COIT: Yes.  
 21 THE COURT: And, yet, the University of Oregon hired  
 22 Mr. Cleavenger anyway; is that correct?  
 23 MS. COIT: Yes.  
 24 THE COURT: And, therefore, the University of Oregon  
 25 was aware of this background and hired him.

1 MS. COIT: Yes. May I speak?  
 2 THE COURT: Not yet.  
 3 So therefore you believe because plaintiff's counsel asked  
 4 about a thorough background check that, without consulting the  
 5 Court, that gave you carte blanche to go into this area which  
 6 is contrary to my in limine ruling; is that correct?  
 7 MS. COIT: No, Your Honor. I was not --  
 8 THE COURT: Explain yourself then.  
 9 MS. COIT: I was not going to and had no intention of  
 10 asking -- bringing up the facts of the arrest.  
 11 THE COURT: Just a moment. I think the inference is,  
 12 from your questions -- although there's not going to be  
 13 evidence, unless I change my limine motion. The inference is  
 14 that there must be something in his background that the  
 15 University of Oregon didn't pick up, and that leaves you both  
 16 in this tactical and uneasy position.  
 17 If I don't allow this incident in, it makes the defense  
 18 look like this is unproven, and I would expect plaintiff's  
 19 counsel to ask the Court to argue that in front the jury.  
 20 If I do allow it in, it's something that the University of  
 21 Oregon was aware of and I've already made a ruling that this is  
 22 not appropriate and so the ground rules have changed for each  
 23 counsel in their presentation, without the courtesy of asking  
 24 this Court, and I think that you should be the one who should  
 25 have approached the Court for a sidebar. I don't think it

1 behooves plaintiff's counsel to have done that.  
 2 Now, how are we going to rectify this? Because now we're  
 3 getting into the fact that if I let this in, it changes what I  
 4 think was an appropriate ruling, but of course the Court  
 5 doesn't know all the facts in an in limine motion. I want to  
 6 be the first to say to you that courts don't know the case as  
 7 well as the parties do until we get into this, so things do  
 8 change. We can be right or wrong on an in limine motions. But  
 9 what we can't have is a discourtesy of an assumption on your  
 10 part that you can just delve into that and then politely argue  
 11 to the Court that the door has been opened.  
 12 MS. COIT: My apologies, Your Honor.  
 13 THE COURT: It's not enough.  
 14 MR. JASON KAFOURY: May I respond, Your Honor?  
 15 THE COURT: No. I'm going to take a recess for a  
 16 moment. I never make decisions hastily, so, Counsel, five  
 17 minutes.  
 18 (Recess taken.)  
 19 THE COURT: Back on the record. All counsel are  
 20 present. The parties are present.  
 21 I see this as a collateral issue. Have a seat, Counsel.  
 22 It was my understanding at the time of the in limine  
 23 motion that Cleavenger had disclosed this to the University of  
 24 Oregon, and I'll let you correct this record in just a moment.  
 25 Having done so, you -- the import of the question that

1 you're asking the chief is that Cleavenger must be untruthful  
 2 in not disclosing in a background check this incident of  
 3 throwing beer bottles at an officer in Chicago.  
 4 First, I'm having a difficult time in the issue of  
 5 credibility when Cleavenger has disclosed that to the  
 6 University of Oregon Police Department, which apparently  
 7 doesn't have a problem hiring him in 2010 or 2011. It appears  
 8 to this Court it has nothing to do with his eventual firing  
 9 because the University of Oregon was aware of it. And while I  
 10 believe that the question was broad in terms of a thorough  
 11 background check, I think the prejudicial value of this far  
 12 outweighs the probative aspects of it.  
 13 Now, it may come up again, but if this does come up again  
 14 when Cleavenger testifies, I'm going to have a thorough  
 15 conversation. In other words, I'm not closing this off  
 16 forever. But in this form I am. Because now we get into,  
 17 well, what did he do in the federal court? Did he disclose to  
 18 the judge whether, in fact, he had this prior conviction back  
 19 in Chicago? For instance, in my court I would want to know  
 20 that. I get into this never-ending, if you will, collateral  
 21 issue, and it doesn't seem to me it had any import to the  
 22 University of Oregon.  
 23 This witness, this chief, is being asked if this would  
 24 change his opinion, and I -- I don't at this time find --  
 25 although, I think it's at least an issue, that the value of

1 that in this collateral matter of his opinion about the  
 2 character or truthfulness is not appropriate to bring in a  
 3 rock-throwing or bottle-throwing incident in Chicago earlier,  
 4 apparently when he was a student.  
 5 So I'm going to preclude this at this time. Now, if  
 6 you're going to raise this again -- and I'm not closing that  
 7 door completely -- I want notice of that. Understood?  
 8 MS. COIT: Yes, Your Honor.  
 9 THE COURT: All right.  
 10 MR. JASON KAFOURY: I have two brief matters. I  
 11 think we need to have a clear record on this.  
 12 There was no conviction. There was no criminal charges  
 13 involved in this incident.  
 14 THE COURT: There was no conviction?  
 15 MR. JASON KAFOURY: No conviction.  
 16 THE COURT: No criminal charges?  
 17 MR. JASON KAFOURY: No criminal charges, and he did  
 18 disclose it to Coburg, and he did disclose it to Junction City.  
 19 He disclosed it to everybody he has ever worked for. So this  
 20 idea that he's hiding the ball or is untruthful has now been  
 21 put before the jury and now it's going to be as if it's just  
 22 hanging there if we just leave it. And defense counsel did  
 23 this.  
 24 THE COURT: I expect the jury to follow the Court's  
 25 instructions, and that is that it's not a piece of evidence,

1 frankly. There's no answer to it right now.  
 2 Now, if you want to, it leaves you tactically also in a  
 3 favorable position. Your client can bring that up when he  
 4 testifies. He can drive right at the inference of how silly  
 5 this is from his perspective.  
 6 Once again, I don't see the prejudicial effect to the  
 7 plaintiff at this time. You have all the leverage in terms of  
 8 leaving it or following it, but the jury doesn't have an answer  
 9 to this. It doesn't allow the defendant to argue that he has  
 10 any prior conviction. Apparently they tried to raise the  
 11 inference, and I agree with you. The inference is out there.  
 12 We don't judge cases by inference. We judge them by evidence.  
 13 MR. JASON KAFOURY: I would also like to put on the  
 14 record, as one of my motions in limine, there would be no  
 15 reference to other parties that were part of this lawsuit  
 16 previously, which you have ruled out, and defense counsel, in  
 17 open court, asked, "Didn't he sue -- hadn't he already filed a  
 18 lawsuit against the University of Oregon back when you hired  
 19 him?" Which is, A, untrue. He didn't file the lawsuit for six  
 20 months; and, B, that was explicitly not supposed to be part of  
 21 this case, and she violated two motions in limine in the first  
 22 hour. And I think that she should be cited before the jury for  
 23 prejudicial misconduct.  
 24 THE COURT: Thank you very much, Counsel.  
 25 Counsel, your response, so we have a complete record?

1 MS. COIT: First off, Your Honor, I sincerely  
 2 apologize for not taking this up with the Court before I  
 3 started my cross-examination of Chief Larson. That will never  
 4 happen again, and I sincerely apologize.  
 5 I -- I did misspeak when I said, "Were you" -- in response  
 6 to the allegation that the University of Oregon intentionally  
 7 failed to respond to the chief when he reached out for  
 8 background information from the university; the point of my  
 9 question was they were in ongoing -- "litigation" is what I  
 10 thought at the time, but it was arbitration, and I did misspeak  
 11 and say "University of Oregon -- had sued the University of  
 12 Oregon," and, again, unintentional, and I am extremely sorry  
 13 for that.  
 14 THE COURT: Let's go on with this lawsuit now. Get  
 15 the jury.  
 16 Would you ask the chief to come back in, please. Thank  
 17 you.  
 18 Counsel, you have the opportunity to clear that up on the  
 19 record also. In other words, you leave us in a tenuous  
 20 position. I haven't heard a request for a mistrial yet. I  
 21 don't know if counsel can absorb that. I don't know what the  
 22 financial arrangements are. I don't know if Mr. Cleavenger  
 23 wants that.  
 24 Are you requesting that at this time, Counsel? Do you  
 25 want to start over?

1 MR. JASON KAFOURY: You know, on our --  
 2 THE COURT: Counsel, consult with your --  
 3 (Jury present.)  
 4 Hold up the jury for one -- Christy, my apologies. Hold  
 5 up the jury for one more moment.  
 6 Ladies and gentlemen, just stand in the hallway for one  
 7 more moment.  
 8 (Jury not present.)  
 9 Find out what your position is so this isn't a later  
 10 request.  
 11 MR. JASON KAFOURY: Your Honor, I think the  
 12 appropriate remedy at this point --  
 13 THE COURT: Not the remedy. Are you requesting a  
 14 mistrial or not?  
 15 MR. JASON KAFOURY: No. I think we should have a  
 16 curative instruction.  
 17 THE COURT: What would that instruction be?  
 18 MR. JASON KAFOURY: Something to the effect of:  
 19 Ladies and gentlemen, there was a very minor incident back in  
 20 2000, in Chicago, when my client was an undergraduate student,  
 21 that did not result in any criminal charges. University of  
 22 Oregon Police Department was aware of this incident when they  
 23 hired him, and plaintiff has disclosed this matter to every  
 24 background investigator he's had. I had previously ruled it  
 25 was totally irrelevant to this matter and prohibited defense

1 counsel from mentioning it in any other fashion.  
 2 THE COURT: I want you to stop there. I'm not going  
 3 to chastise you in front of the jury as counsel.  
 4 MR. JASON KAFOURY: Okay.  
 5 THE COURT: I'm not going to chastise opposing  
 6 counsel for asking that question in front of the jury. You're  
 7 not litigants, you're not parties to this incident, and I think  
 8 that's prejudicial on the Court's part.  
 9 But the two of you could enter into that initially, or you  
 10 can simply say that you misspoke. But there is a curative way,  
 11 I think, that might be appropriate at this point. So read the  
 12 first part of that again.  
 13 MR. JASON KAFOURY: There was a very minor incident  
 14 back in 2000, in Chicago, when plaintiff was an undergraduate  
 15 student, that did not result in any criminal charges.  
 16 University of Oregon Police Department was aware of this  
 17 incident when they hired him and plaintiff has disclosed this  
 18 matter in every background investigation he's had.  
 19 THE COURT: Now stop right there. The chief's  
 20 testimony was that this -- he doesn't recall this being  
 21 disclosed or at least the inference was. Do you recall this  
 22 being disclosed, Chief; some incident in Chicago?  
 23 THE WITNESS: I don't recall.  
 24 THE COURT: Okay.  
 25 THE WITNESS: It's been a couple years.

1 THE COURT: And I haven't heard from your client yet,  
 2 you know, testifying to that. You two talk for a moment.  
 3 Let's see if we can cure this with a stipulation that isn't  
 4 harmful to either one of you but it's fair to the parties in  
 5 this.  
 6 Counsel?  
 7 MR. JASON KAFOURY: We're going to work on a joint  
 8 statement to cure both issues.  
 9 THE COURT: Work on it now while it's fresh in the  
 10 jurors' minds.  
 11 MR. JASON KAFOURY: Counsel is going to draft the  
 12 first draft.  
 13 THE COURT: Christy, ask the jury to be seated again  
 14 in the jury room. Tell them to enjoy a cup of coffee or  
 15 something. We'll be back with them. My apologies.  
 16 I'll let you two try to cure it first, if you can, before  
 17 the Court steps in. See if you can come up with a resolution.  
 18 If not, I'm certainly capable of it.  
 19 Counsel, your thoughts?  
 20 MS. COIT: Your Honor, my agreed-upon proposal would  
 21 be, when the jury comes back in, I speak to Chief Larson and  
 22 say, "I want to apologize if I misspoke earlier when I implied  
 23 that Mr. Cleavenger had a prior criminal conviction and that he  
 24 had sued the University of Oregon," and not ask him any more  
 25 questions, and leave it at that.

1 THE COURT: Counsel?  
 2 MR. JASON KAFOURY: I think it -- they should be two  
 3 separate statements. I misspoke about this, and I also  
 4 misspoke about this.  
 5 THE COURT: Well, you two talk again.  
 6 Try, if you can, between the two of you, before the Court  
 7 steps in. Once I make a ruling, that's final. I won't reverse  
 8 myself or change my opinion, so I'm giving you every  
 9 opportunity to sort this out.  
 10 (Pause-in-proceedings.)  
 11 THE COURT: Counsel, have you reached a resolution or  
 12 not?  
 13 MS. COIT: Yes. Would you like me to read it to you,  
 14 what I'm going to say?  
 15 THE COURT: No, I always trust my counsel. The glass  
 16 is always half full. Did you reach a resolution?  
 17 MS. COIT: I'm glad to still hear that.  
 18 THE COURT: Okay. It's no harm, no foul, in a sense,  
 19 but just don't go around my in limine motions without informing  
 20 me. You don't understand because you're not a part of my  
 21 world. Time means nothing. We'll spend until 11:00 together  
 22 if we need to. That's why we're having all the evidence given  
 23 to me the night before, with the exception of today, because I  
 24 wanted you fresh.  
 25 So if you're going to change on these in limine rulings,

1 I'm happy to reconsider them. It doesn't mean a court is  
 2 always right. Isn't that refreshing? We're wrong oftentimes.  
 3 Now, I'll look at that again and again. But what I don't want  
 4 is I don't want a surprise between the two of you where we get  
 5 into this kind of situation, okay?  
 6 MS. COIT: Yes.  
 7 THE COURT: It's embarrassing to you. You have to  
 8 backtrack in a sense. I don't think it's going to be  
 9 prejudicial. I think the jury is going to pass over it. But  
 10 it also protects the plaintiff.  
 11 And, quite frankly, if you would have requested a  
 12 mistrial, I don't know what I would have done.  
 13 Now, I personally enjoy Oregon, but I also have four other  
 14 cases back in California, so I don't know if I want to spend  
 15 the rest of my natural life here. But if I see prejudice here,  
 16 I will. Understood by both of you? We'll start over again.  
 17 MR. JASON KAFOURY: Yes, Your Honor.  
 18 THE COURT: I don't know if you can afford it. Your  
 19 client will enjoy spending the next year with me.  
 20 MR. CLEAVENGER: I've enjoyed it so far, Your Honor.  
 21 THE COURT: You may not. You're going to find out.  
 22 And I don't know if you gentlemen or the chief would enjoy  
 23 spending the rest of your natural life with me, but we'll start  
 24 over again until I think it's fair. Understood? Because when  
 25 I drive home at night, regardless of what you think the legal

1 standard is, I have to ask myself every day, "Was that a fair  
 2 trial?" Because I can beat up on both of you, but was that a  
 3 fair trial?  
 4 All right. Let's get the jury back in. Christy, thank  
 5 you.  
 6 I'll apologize. I'll take the blame on the Court's part  
 7 for them being inconvenienced. Not on yours. That protects  
 8 each of you if the Court states it was my issue, not a counsel  
 9 issue.  
 10 (Jury present.)  
 11 THE COURT: We're back in session. All parties are  
 12 present. Have a seat, Counsel, and parties.  
 13 First of all, we just wanted to give you some exercise  
 14 this morning of getting you up and down. I'm just kidding you.  
 15 Whatever has occurred was the Court's responsibility. Okay? I  
 16 needed to sort a few things out with counsel. So we've  
 17 resolved those issues, and we can continue on.  
 18 Counsel, your additional cross-examination, please.  
 19 BY MS. COIT: (Continuing)  
 20 Q. Chief Larson, earlier I believe I misspoke with you when I  
 21 implied that Mr. Cleavenger had a criminal conviction, and I  
 22 also believe I misspoke when I said the University of Oregon  
 23 had been sued by Mr. Cleavenger, and my apologies for that.  
 24 A. Okay.  
 25 MS. COIT: Thank you for your testimony today.

1 THE COURT: Redirect? Strike that. That was  
 2 recross, Counsel, and --  
 3 MS. COIT: Yes.  
 4 MR. JASON KAFOURY: Witness is excused.  
 5 THE COURT: May the chief be excused?  
 6 MR. JASON KAFOURY: Yes.  
 7 THE COURT: Counsel?  
 8 MS. COIT: Yes.  
 9 THE COURT: Chief, thank you very much for your  
 10 courtesy.  
 11 THE WITNESS: Thank you.  
 12 THE COURT: Counsel, your next witness, please.  
 13 MR. JASON KAFOURY: Brian Paterson, Your Honor.  
 14 THE COURT: Thank you. Thank you, sir. Be kind  
 15 enough to raise your right hand, please.  
 16  
 17 BRIAN PATERSON,  
 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 kind enough to be  
 22 seated in the witness box. The entrance is closest to the  
 23 wall. There's a series of steps. If you would be seated, sir.  
 24 THE WITNESS: Thank you.  
 25 THE COURT: Move the chair as close as possible to

1 the microphone so we can hear you. Face the jury, state your  
 2 full name, and spell your last name, sir.  
 3 THE WITNESS: My name is Brian Paterson,  
 4 P-A-T-E-R-S-O-N.  
 5 THE COURT: Thank you. Direct examination by  
 6 plaintiff's counsel.  
 7  
 8 DIRECT EXAMINATION  
 9 BY MR. JASON KAFOURY:  
 10 Q. Jason Kafoury for the plaintiff. Please address the  
 11 jurors, even though I'm talking to you from over here.  
 12 A. Certainly.  
 13 Q. Can you just give us a brief background on yourself, where  
 14 you're from and your educational background?  
 15 A. Where I'm from originally?  
 16 Q. Sure.  
 17 A. Well, I was born in San Francisco and grew up there. I  
 18 have lived in Oregon since 2001. I have been a police officer  
 19 in Oregon since 2002. First, at the City of Oakridge, and I've  
 20 been a police officer with the City of Junction City since June  
 21 of 2008. I'm assigned to patrol and have certain other  
 22 specialized duties as well.  
 23 Q. What other duties do you have there at the department?  
 24 A. I'm a field training officer; meaning I'm certified to  
 25 train new police officers once they've completed the academy



1 and they're out sort of getting the -- you know, showing them  
 2 the ropes, so to speak. There's a structured way in which  
 3 that's done. I'm also a drug recognition expert, which is an  
 4 additional training for when you have drug-impaired drivers  
 5 impaired on drugs other than alcohol, being able to figure out  
 6 what's going on with them. First of all, if they're impaired;  
 7 and, if so, what types of drugs they could be impaired on.  
 8 I'm also a patrol rifle instructor. I instruct in the  
 9 AR15M4 weapon systems. I'm a Taser instructor, and I've  
 10 attended the regional SWAT school.  
 11 Q. What is your role within the Officer Association Union?  
 12 A. I'm the current president of that.  
 13 Q. How long have you been the president?  
 14 A. It was -- I don't remember the exact date. It was  
 15 sometime last year.  
 16 Q. From your experience as an officer, how easy is it to  
 17 identify a driver's race or gender during a traffic stop before  
 18 you go and talk to them?  
 19 A. Well, depending on the conditions or time of day, it's  
 20 often actually impossible. Often, I have no idea how many  
 21 people are in a vehicle, just due to windshield glare,  
 22 lighting, depending on how you're sitting and how you actually  
 23 see that vehicle go; if you're stationary or driving past it,  
 24 opposite. Usually, I have no idea, myself, who is going to be  
 25 in a vehicle.

1 Q. Were you there, working at Junction City, during 2010 to  
 2 2013 when my client was there?  
 3 A. Yes, I was.  
 4 Q. Prior to hiring my client, did Junction City do a  
 5 background investigation on my client?  
 6 A. I've had no direct involvement in that, but it's routine  
 7 that everyone would be backgrounded, yes.  
 8 Q. If they don't pass the background, they don't get hired;  
 9 correct?  
 10 A. That's correct.  
 11 Q. Do you know of any discipline or suspensions that my  
 12 client has ever had while at Junction City Police Department?  
 13 A. No.  
 14 Q. And if there was such discipline or suspension, that would  
 15 be in his personnel file, wouldn't it?  
 16 A. It should be.  
 17 Q. Talk a little bit about my client as an officer. From  
 18 your experiences, did he have good judgment?  
 19 A. Yes. Absolutely.  
 20 Q. How did he deal with critique and feedback? What was your  
 21 memory?  
 22 A. There was -- there was actually very little sort of  
 23 critique or anything that I -- I remember having to give James,  
 24 but he was always very personable and very positive. I --  
 25 there -- I don't recall any issues around that at all.

1 Q. Did he act like he was smarter than everybody else?  
 2 A. Not in my opinion, no.  
 3 Q. Ever feel unsafe working around my client?  
 4 A. No, no.  
 5 Q. Ever have any actions which made you question my client's  
 6 truthfulness?  
 7 A. No.  
 8 Q. Did my client do activities there at Junction City above  
 9 and beyond what other reserves did?  
 10 A. Yes. Routinely.  
 11 Q. Tell us about them. What kind of things?  
 12 A. Well, some of it just due to his -- his educational  
 13 background and qualifications, he was able -- because of his  
 14 legal education, he was able to do a lot more advanced work, as  
 15 far as helping out with search warrants or, you know, kind of  
 16 legal -- technical legal processes than a lot of other officers  
 17 would be able to. But, just in general, his attitude was  
 18 always one of enthusiasm. He was always there and always ready  
 19 to do things.  
 20 I remember a few winters ago -- I live down a private road  
 21 that doesn't get plowed, and we had had a heavy snowfall and a  
 22 number of trees had come down. I wasn't going to be able to  
 23 make it to work, and so James got permission, got a patrol car,  
 24 and actually drove to my house to pick me up. I had to hike  
 25 out about a half mile over fallen trees and through snow. And

1 when I got there, James had driven in as far as he could drive  
 2 and then had to wait for me to hike out. And while he was  
 3 waiting, there he was, helping people who had the chainsaws and  
 4 were clearing the road.  
 5 So he was just always that type of guy; just always ready  
 6 to -- always ready to do something extra and always  
 7 enthusiastic.  
 8 Q. While on duty, working with my client, did he ever do  
 9 anything unprofessional, in your opinion?  
 10 A. Not that I saw, no.  
 11 Q. There were a couple of witnesses, defense witnesses, that  
 12 testified that my client came up behind a group of women while  
 13 on duty, in full uniform, and made pelvic thrusts towards them.  
 14 Have you seen him do anything like that?  
 15 A. No. Absolutely not.  
 16 Q. Is that consistent at all with the person you have known?  
 17 A. No. The exact opposite.  
 18 Q. Let's talk about how my client ended his tenure there at  
 19 Junction City. Did he resign or was he terminated?  
 20 A. My understanding is he resigned.  
 21 Q. Do you remember the moment that he came in to the station  
 22 when he resigned?  
 23 A. I do, actually. I happened to be on duty and he came in  
 24 and said that he was --  
 25 MS. COIT: Object to the hearsay.

1 THE COURT: Counsel?

2 MR. JASON KAFOURY: I -- I think it's -- it goes to

3 his state of mind at that time.

4 THE COURT: Overruled.

5 You can answer the question.

6 THE WITNESS: James came in and told me that he was

7 resigning and I remember that the chief, Mark Chase, actually

8 walked into the patrol room at that time and walked up to James

9 and said something similar to, "Oh, so you've decided to resign

10 then. Well, I thank you for your service."

11 BY MR. JASON KAFOURY: (Continuing)

12 Q. Was it your understanding he had to resign because of what

13 happened at the University of Oregon?

14 A. No. It was my understanding it was his decision.

15 Q. Were you upset when he resigned and ended up transferring

16 over to Coburg?

17 A. I was.

18 Q. Was it your decision -- back then, back in 2013, if you

19 had had the ability to hire and fire, would you have hired him

20 as a full-time officer?

21 A. Absolutely.

22 Q. I'll quickly show you a document. I've showed it to some

23 other Junction City officers. This is Exhibit 93. Do you

24 recall -- the back page has signatures on it.

25 A. Uh-huh.

1 Q. Do you recall signing this document?

2 A. I do.

3 Q. Did you read it?

4 A. Yes.

5 Q. And did you agree with everything in there?

6 A. I did.

7 Q. Do you know one way or the other whether this document was

8 ever sent to the University of Oregon?

9 A. I have no idea. I wasn't handling it. I just signed it

10 and handed it back.

11 Q. In 2012 did my client put in a lot of hours there at

12 Junction City?

13 A. I believe that he did. He always seemed to put in a lot

14 of hours.

15 Q. In fact, he worked 830 hours in 2012?

16 A. That wouldn't surprise me.

17 Q. 540 of them volunteering; 290 paid?

18 THE COURT: Counsel, are you testifying or is he?

19 MR. JASON KAFOURY: I can refresh his memory.

20 THE COURT: That's leading, Counsel.

21 BY MR. JASON KAFOURY: (Continuing)

22 Q. Do you know how many hours he worked volunteer versus

23 paid?

24 A. My recollection is that volunteer -- I believe it was 500

25 something. I don't remember paid.

1 Q. I'll show you this document. Who's Brandy Smith?

2 A. She's a dispatcher.

3 Q. Can you review that and the second page there? Without

4 getting into the contents of it, does this document help

5 refresh your memory about the number of hours that he worked

6 paid, in addition to the volunteer hours?

7 A. Yes, it does.

8 Q. How many hours did he work paid?

9 A. 289 and a half.

10 Q. Let's talk about driving solo at Junction City. Back in

11 2010 to 2013, were reserve officers allowed to drive reserve

12 cars alone by themselves if they had permission from the watch

13 commander?

14 A. Yes.

15 Q. Did you ever see my client driving a car solo without

16 permission from a watch commander?

17 A. Not that I could recall, no.

18 Q. Let's talk about search warrants briefly. Does a search

19 warrant have to be approved and signed by a judge?

20 A. It does.

21 Q. And if the search warrant is signed by a judge, is that

22 certifying there's probable cause?

23 A. Yes.

24 Q. Do you remember my client helping write search warrants in

25 cases when he worked on things?

1 A. Yes, I do.

2 Q. Is that a normal practice; officers get together and work

3 together to prepare search warrants?

4 A. Sure. Whoever happens to have the expertise in that

5 particular area, they'll sort of help each other out, depending

6 on the nature of the warrant and who's writing it and so forth.

7 Q. What's *Brady* listing?

8 A. *Brady* listing is an assignment given to an officer if he

9 or she has been found to be untruthful and prevents them from

10 being able to testify in court.

11 Q. How long have you known about this *Brady* listing?

12 A. I -- I don't remember exactly when I first heard of it.

13 Q. A long time?

14 A. Yes.

15 Q. Do you think being *Brady*-listed would affect my client's

16 chances of being hired full time as a paid officer?

17 A. It would pretty much eliminate them.

18 Q. What is the police officer's code of silence? Have you

19 heard the term?

20 A. Yeah. I guess in popular culture, sure.

21 Q. Is it rare for police officers to break that code and

22 speak out?

23 A. That's -- I guess I would -- I would have to know what

24 sort of definition of a code of silence you're looking at. As

25 far as being some sort of cloaked -- you know, cloaked the

1 chamber of secrecy or carte blanche to commit illegal  
 2 activities or something, no, absolutely.  
 3 Q. I'll ask it differently.  
 4 A. Okay.  
 5 Q. Generally, within law enforcement, if you stand up to your  
 6 superiors and challenge them, does it make it more difficult  
 7 when you attempt to leave to go to a different department to  
 8 get rehired?  
 9 MS. COIT: Object to the foundation and relevance.  
 10 THE COURT: Sustained.  
 11 Counsel, you can get into *Brady* listing certainly.  
 12 MR. JASON KAFOURY: Right.  
 13 THE COURT: Too broad.  
 14 MR. JASON KAFOURY: Okay.  
 15 BY MR. JASON KAFOURY: (Continuing)  
 16 Q. At Junction City, if a group of officers during shift  
 17 briefings were spending hours putting people on a list they  
 18 didn't like, calling it a bowl of dicks list, what do you think  
 19 would happen at Junction City?  
 20 A. Well, I think it would be -- I mean, it -- it would be an  
 21 issue that would be dealt with through the chain of command. I  
 22 mean, it's -- it's problematic for a number of points of view.  
 23 I mean, one, just, you know, wasting of time on something  
 24 unproductive; but, furthermore, if you're building a list that  
 25 could be potentially damaging and serves no official purpose,

1 it's problematic on a couple of fronts.  
 2 Q. Do you remember the time period in 2011 when Junction City  
 3 updated their policies in relation to recording people?  
 4 A. I don't specifically recall that update. We're getting so  
 5 many updates all the time.  
 6 Q. It was an evolving technology over the years, right; the  
 7 recording systems?  
 8 A. Yes.  
 9 Q. I'm going to show you Exhibit 150, pages 19, 20. See if  
 10 you recognize this document.  
 11 A. Yes. It appears to be a department directive from  
 12 February of 2011.  
 13 Q. Okay. Turn to page 2. Can you -- can you read for us  
 14 the -- that sentence there?  
 15 A. All field contacts involving actual or potential criminal  
 16 conduct within video or audio range, which includes: One,  
 17 vehicular pursuits; two, traffic stops; three, transports;  
 18 four, DUII investigations, including field sobriety tests; B,  
 19 any other contact that becomes adversarial after the initial  
 20 contact in a situation that would not otherwise require  
 21 recording; or, C, any -- any other circumstances where the  
 22 officer believes that a recording of an incident would be  
 23 appropriate.  
 24 Q. Okay. Now, was it your understanding at the time, back in  
 25 2011 and 2012, of what the policy was at Junction City in

1 relation to when the recording devices needed to be activated?  
 2 A. Yes.  
 3 Q. It involved all field contacts involving actual or  
 4 potential criminal contact; right?  
 5 A. Yes.  
 6 Q. Violations are not criminal conduct; right?  
 7 A. That's correct.  
 8 Q. I want to talk -- Chief Chase, in your department, is  
 9 coming in to testify next week, and I want to talk about that  
 10 for a couple of minutes.  
 11 Chief Chase never directly supervised my client, did he?  
 12 A. That wouldn't have been the chain of command. If he ever  
 13 gave him a direct order or something, that would be  
 14 conceivable; but he wouldn't have been James's direct  
 15 supervisor, no.  
 16 Q. He never would have seen him out in the field?  
 17 MS. COIT: Object to the foundation.  
 18 THE WITNESS: It's possible.  
 19 THE COURT: Overruled. You can answer that question.  
 20 THE WITNESS: It's certainly possible that he could  
 21 have seen him. If he happened to be driving around and James  
 22 was doing a traffic stop or something.  
 23 THE COURT: Will Chief Chase be testifying, Counsel?  
 24 MS. COIT: Yes, Your Honor.  
 25 ///

1 BY MR. JASON KAFOURY: (Continuing)  
 2 Q. But, generally, supervision of reserve officers is done by  
 3 sergeants; right?  
 4 A. Yes. Or the senior officer on duty.  
 5 Q. So, in terms of members of the Junction City Police  
 6 Department, Mark Chase, as the chief, probably would not be the  
 7 most qualified to assess my client's work out in the field in  
 8 comparison to his supervisors. Do you agree with that?  
 9 A. I would say that's a fair statement, yes.  
 10 Q. I'm not going to ask you any details about this, but is it  
 11 true that Junction City Police Department officers, as the  
 12 union president, you received a lot of complaints about  
 13 Chief Chase?  
 14 A. I did, yes.  
 15 Q. Did you form an opinion about whether Chief Chase is a  
 16 truthful person?  
 17 A. I did, yes.  
 18 Q. And what is that opinion, sir?  
 19 A. I believe that, in general, he's not.  
 20 Q. Is the Junction City -- it was Junction City Police  
 21 Department employees who prompted an outside investigation ?  
 22 MS. COIT: Object to the testimony of counsel.  
 23 THE COURT: Sustained.  
 24 BY MR. JASON KAFOURY: (Continuing)  
 25 Q. How did it come about that Chief Chase went on a six-month

1 leave of absence?  
 2 A. I believe it was closer to seven months, but it was after  
 3 numerous complaints to the city administrator, his supervisor.  
 4 Q. Has anyone in the department ever seen any reports from  
 5 the investigation done on Chief Chase?  
 6 A. Not from the outside investigation, no.  
 7 Q. Have -- has the union requested that?  
 8 A. We have.  
 9 Q. Has the news media requested it?  
 10 A. I believe they have, yes.  
 11 Q. And the Lane County district attorney has refused to  
 12 authorize its release; isn't that accurate?  
 13 A. I'm not sure where it stopped up at, but I know we didn't  
 14 see it.  
 15 Q. Were you surprised that Chief Chase was allowed to return  
 16 to the job this year?  
 17 A. I was, yes.  
 18 Q. How has the department morale been since he's come back?  
 19 A. It has continued to decline.  
 20 Q. Is it your understanding that Chief Chase -- well, what  
 21 are Chief Chase's authorities now to discipline; hire and fire?  
 22 A. I believe what they've always been. I think there was a  
 23 brief curbing of those or modifying of those, but I believe  
 24 he's back to his full authority at this point.  
 25 Q. Did city council members voice disapproval of Chief Chase?

1 A. Yes. A number of them have directly to me.  
 2 Q. And has Chief Chase filed a lawsuit against the City of  
 3 Junction City?  
 4 A. He has.  
 5 Q. Testifying in this court, do you fear any retaliation by  
 6 your chief?  
 7 A. Absolutely, yes.  
 8 MR. JASON KAFOURY: That's all I have, sir.  
 9 THE COURT: Cross-examination, please.  
 10  
 11 CROSS-EXAMINATION  
 12 BY MS. COIT:  
 13 Q. Sergeant Paterson?  
 14 A. Officer.  
 15 Q. Officer Paterson, you're the union president; is that  
 16 right?  
 17 A. I am.  
 18 Q. How long have you been in that position?  
 19 A. Since last year.  
 20 Q. You said as that -- as the union president you have  
 21 received a number of complaints from officers about  
 22 Chief Chase.  
 23 A. I have, yes.  
 24 Q. How many of those complaints came from Mr. Cleavenger?  
 25 A. I -- the union doesn't represent the reserve officers, so

1 this is only the full-time officers.  
 2 Q. Are you aware of any complaints Mr. Cleavenger has made  
 3 against Chief Chase?  
 4 A. In -- in general. I don't know if it's specific formal  
 5 complaints. I mean, he may have, but they wouldn't have gone  
 6 through the union.  
 7 Q. But just in general -- a yes-or-no question -- are you  
 8 aware of any complaints he's made against Mr. Cleavenger -- or,  
 9 excuse me, Chief Chase?  
 10 A. When you say "complaints," you just mean his own opinion  
 11 or -- I mean, just voicing to other people or actually  
 12 something that was filed?  
 13 Q. Something more formal than just voicing his opinion.  
 14 A. I believe that he has, yes.  
 15 Q. Now you spoke about the background check that is done for  
 16 reserves. Are you aware of the contents of those background  
 17 checks? I mean, are they more or less extensive than the  
 18 background checks done for full-time officers?  
 19 A. I never directly participated in those, but I believe they  
 20 do basically the same background they would do for any officer.  
 21 They are usually done by an outside investigator.  
 22 Q. Okay. Now, when Mr. Cleavenger resigned from Junction  
 23 City, do you remember the time of day it was that he came in to  
 24 resign?  
 25 A. I do not.

1 Q. What shift do you work?  
 2 A. Right now I work swing shifts. 5:00 p.m. to 3:00 a.m.  
 3 Q. What shift did you work in 2013? March.  
 4 A. It changes every quarter throughout the years, so I -- I  
 5 would have to look back. I don't recall. I would have to look  
 6 back.  
 7 Q. When Mr. Cleavenger came in to resign, did you speak with  
 8 him personally?  
 9 A. I did.  
 10 Q. Did you ask him why he was resigning?  
 11 A. You know, I don't -- I don't specifically recall. I --  
 12 it -- my recollection is that it was more of -- I was just  
 13 telling him how -- that I was disappointed that it had come to  
 14 that. I don't recall if we went over the specifics at that  
 15 time.  
 16 Q. Was there a Sergeant Salsbury at Junction City at that  
 17 time?  
 18 A. There was.  
 19 Q. Was he the sergeant over the reserves?  
 20 A. I believe it would have been in his purview at that time,  
 21 yes.  
 22 Q. Did you ever have a conversation with Sergeant Salsbury  
 23 regarding him looking into whether or not Mr. Cleavenger had  
 24 acted outside of his authority as a Junction City reserve  
 25 officer?

1 A. Yes.  
 2 Q. And what was that conversation?  
 3 A. It was -- it was fairly cursory and Sergeant Salsbury did  
 4 not want to, you know, divulge details of something he had  
 5 done, but my recollection is that the way he summed it up to me  
 6 was, quote, "It's complete bullshit," closed quote.  
 7 Q. Did you get from that conversation that Sergeant Salsbury  
 8 had looked into a traffic stop Mr. Cleavenger had made?  
 9 A. Again, he didn't share the investigation itself with me.  
 10 Q. Now, you said that Chief Chase made a statement when  
 11 Mr. Cleavenger was resigning. Can you tell me again what that  
 12 statement was, as you recall it?  
 13 A. As best I could recall, he walked in and just walked over  
 14 to James and said something like: So you've decided -- you've  
 15 decided to resign, have you? Well, you know, thank you for  
 16 your service here. "Best of luck" type of thing. It was  
 17 fairly cursory.  
 18 Q. Chief Chase -- to you, did Chief Chase seem surprised by  
 19 that decision?  
 20 A. No.  
 21 Q. Now, counsel showed you Exhibit 93, which was a letter you  
 22 signed.  
 23 A. Yes.  
 24 Q. Did you write that letter?  
 25 A. I did not.

1 Q. Do you know who wrote that letter?  
 2 A. I believe -- I believe James did. I don't -- I don't  
 3 recall specifically.  
 4 Q. James Cleavenger?  
 5 A. Yes.  
 6 Q. Did he ask you to sign it?  
 7 A. He presented it to me and asked me if I was comfortable  
 8 signing it, and I told him that I was.  
 9 Q. Now, you talked about solos at Junction City. Do you  
 10 recall that?  
 11 A. Yes.  
 12 Q. Solo reserves?  
 13 A. Yes.  
 14 Q. Do you know if Mr. Cleavenger was ever given permission to  
 15 patrol and take action as a solo reserve? Do you have that  
 16 personal knowledge?  
 17 A. Well, it's not so much a bright-line rule as it might  
 18 sound. I mean, there's some reserves who absolutely they're  
 19 solo. There are other reserves who typically are not but under  
 20 certain circumstances they do go out by themselves and do  
 21 certain functions or they're out by themselves in a car. So in  
 22 that case they are sort of de facto solo. Whether or not you  
 23 would, you know, classify them as such -- I don't remember  
 24 specifically if he was designated as, you know, a solo officer  
 25 or not, but it would not be unusual to see him perform a number

1 of duties by himself, as it's not unusual to see most of the  
 2 reserve officers do certain duties by themselves.  
 3 Q. You talked about Mr. Cleavenger working -- well, you --  
 4 your memory was refreshed by a document that said  
 5 Mr. Cleavenger had worked 289.5 paid hours. Do you recall  
 6 that?  
 7 A. Yes.  
 8 Q. Do you recall over what period of time those hours  
 9 stretched?  
 10 A. I do not.  
 11 Q. Do you know how long Mr. Cleavenger worked for Junction  
 12 City?  
 13 A. I -- I can't remember the exact start and stop date  
 14 sitting here, no.  
 15 Q. Do you know if Mr. Cleavenger, while he worked at Junction  
 16 City, had some sort of expertise in writing search warrants?  
 17 A. I know he has legal training, which, to me, that would be  
 18 pretty much one in the same. I don't know that he had ever had  
 19 a search warrant writing class.  
 20 Q. So his expertise would have been developed from law  
 21 school. Is that your understanding?  
 22 A. I would think at least the foundation of it, yes.  
 23 Q. Okay. And how often did you actually supervise or observe  
 24 Mr. Cleavenger in the field partaking in contact with a  
 25 citizen?

1 A. Well, pretty regularly. He was out -- he was out a lot,  
 2 and I can't tell you exactly how many hours our shifts  
 3 coincided, but there were numerous times I was out in the field  
 4 with him or covered him on a stop, or something, and saw him do  
 5 some other action, and I -- I was out there with him whether or  
 6 not I was directly supervising him.  
 7 Q. When Mr. Cleavenger was working as a reserve for Junction  
 8 City, he was an armed officer; right? He had a gun?  
 9 A. Yes. Just uniform and a gun. Indistinguishable from any  
 10 other police officer.  
 11 MS. COIT: Thank you, sir.  
 12 THE WITNESS: You're welcome.  
 13 THE COURT: Redirect?  
 14 MR. JASON KAFOURY: Yeah.  
 15  
 16 REDIRECT EXAMINATION  
 17 BY MR. JASON KAFOURY:  
 18 Q. I want to clarify what hours my client worked paid and  
 19 what the time period was. Reviewing quickly all of these two  
 20 pages, does that help indicate for you what time period those  
 21 hours were compiled?  
 22 A. It looks like -- well, the documents that -- that comprise  
 23 them stretch from April to December.  
 24 Q. 2012?  
 25 A. Of 2012, yes.

Cameron - D

1 MR. JASON KAFOURY: That's all I have.  
 2 THE COURT: Recross?  
 3 MS. COIT: Nothing.  
 4 THE COURT: May the witness be excused, Counsel?  
 5 MR. JASON KAFOURY: Yes.  
 6 MS. COIT: Yes.  
 7 THE COURT: Thank you, sir.  
 8 THE WITNESS: Thank you.  
 9 THE COURT: Your next witness, please.  
 10 MR. JASON KAFOURY: I believe we're calling Sergeant  
 11 Cameron to the stand.  
 12 THE COURT: Sergeant Cameron, raise your right hand  
 13 and take the stand.  
 14 SCOTT CAMERON,  
 15 called as a witness in behalf of the Plaintiff, being first  
 16 duly sworn, is examined and testified as follows:  
 17 THE WITNESS: I do.  
 18 THE COURT: Sergeant Cameron, enter the witness box  
 19 that's just to my right, closest to the wall.  
 20 THE WITNESS: Thank you, Your Honor.  
 21 THE COURT: Face the jury and state your name and  
 22 spell your last name.  
 23 THE WITNESS: Scott Michael Cameron, C-A-M-E-R-O-N.  
 24 THE COURT: Direct examination, please.  
 25

1 Q. I want to start with Mr. Cleavenger's Taser speech. Were  
 2 you at that speech?  
 3 A. I believe so.  
 4 Q. Did you react when you heard it?  
 5 A. In what time frame?  
 6 Q. When you were there?  
 7 A. Not while I was there, no.  
 8 Q. Did it upset you?  
 9 A. Yes.  
 10 Q. Did you tell people that?  
 11 A. Yes.  
 12 Q. Do you recall what you said?  
 13 A. No.  
 14 Q. When do you recall that you were at the Taser speech?  
 15 A. Whenever it was. I don't know the date off the top of my  
 16 head.  
 17 Q. Do you recall at the time of your deposition you didn't  
 18 know if you were at the Taser speech?  
 19 A. There were lots of Taser speeches. I assume I was at one  
 20 of them. I know I was at one of them. I don't know if I was  
 21 at all of them.  
 22 Q. When did you connect Mr. Cleavenger coming to the U of O  
 23 to work as a peace officer, public safety officer, with his  
 24 speech?  
 25 A. Sometime after he was hired.

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Cameron - D

1 DIRECT EXAMINATION  
 2 BY MR. MCDOUGAL:  
 3 Q. Good morning, Sergeant Cameron. When did you start  
 4 working for the U of O?  
 5 A. 1999.  
 6 Q. And what was your capacity?  
 7 A. Public safety officer.  
 8 Q. And did you progress into other roles?  
 9 A. Yes.  
 10 Q. What were they?  
 11 A. Corporal and sergeant.  
 12 Q. And when did you become a sergeant?  
 13 A. I'm going to say 2011. Maybe '13.  
 14 Q. You're now a police officer?  
 15 A. No.  
 16 Q. Okay. During your time period at the U of O Public Safety  
 17 Department, how did it grow?  
 18 A. Basically, from a security department to a police  
 19 department.  
 20 Q. Number of employees when you first started there -- how  
 21 many -- as opposed to when you left?  
 22 A. I couldn't give precise numbers.  
 23 Q. 30 to 70, something around there?  
 24 A. I would say 30 staff, when I first started, to probably 70  
 25 now.

1 Q. Before Mr. Cleavenger was even hired, did you go to  
 2 internal affairs about Mr. Cleavenger?  
 3 A. Before he was hired as a public safety officer, yes.  
 4 Q. Yes.  
 5 A. But he was an auxiliary public safety officer in a  
 6 parking -- person that receives complaints from parking and  
 7 determined whether or not they were valid or not. A petitions  
 8 officer or something of that sort.  
 9 Q. What did you go to internal affairs about?  
 10 A. His use of the English accent while he was performing  
 11 duties as an auxiliary public safety officer.  
 12 Q. So that was fully known prior to him being hired as a  
 13 public safety officer?  
 14 A. I believe so.  
 15 Q. Around the time that Mr. Cleavenger was being hired, did  
 16 you have conversations with people about Mr. Cleavenger's Taser  
 17 speech?  
 18 A. Probably.  
 19 Q. Do you recall having conversations with Lieutenant  
 20 Lebrecht?  
 21 A. About his Taser speech?  
 22 Q. Yes.  
 23 A. Probably.  
 24 Q. Do you recall that Lieutenant Lebrecht was surprised he  
 25 was hired?

1 A. No.  
 2 Q. What was Lieutenant Lebrecht's response?  
 3 A. I don't remember.  
 4 Q. Do you recall being baffled that he was hired?  
 5 A. No.  
 6 Q. I'm going to hand you a copy of your deposition.  
 7 A. I'll have to put on my glasses.  
 8 Q. Can you go to page 47? And you use the word "baffled" at  
 9 line 13.  
 10 A. Which side, sir?  
 11 Q. Page 47. Sorry. These are mini transcripts. They're  
 12 four pages on the page. You have to look at the boxes.  
 13 A. I see. I see.  
 14 THE COURT: Counsel, just using the word "baffled"  
 15 is irrelevant. It's on page 46 as well as 47. Why don't you  
 16 read those two pages.  
 17 THE WITNESS: Do you want the question first, Your  
 18 Honor?  
 19 THE COURT: No just read those to yourself.  
 20 THE WITNESS: Okay.  
 21 BY MR. MCDUGAL: (Continuing)  
 22 Q. Okay. You can read whatever you want. I wanted to point  
 23 out you used the word. Does reading that refresh your memory  
 24 of what you were baffled about?  
 25 A. I believe your question was, "Were you baffled that the

1 department hired him?" I was baffled, but I wasn't -- I  
 2 wasn't -- yeah, the department hired him. I can see why they  
 3 would.  
 4 Q. And at the time that Cleavenger was hired at the  
 5 department, was his Taser speech and the fact he was hired a  
 6 big topic of discussion?  
 7 A. I wouldn't say a big topic, no.  
 8 Q. Can you take your deposition and look at page 44, line 21?  
 9 THE COURT: That's the question, Counsel. And you  
 10 have to read down through the answer, line 23.  
 11 MR. MCDUGAL: Yes.  
 12 THE WITNESS: Yes, that's what I said at the time .  
 13 BY MR. MCDUGAL: (Continuing)  
 14 Q. So you remember at the time of your deposition you said it  
 15 was a big topic of discussion when Mr. Cleavenger was hired?  
 16 A. I stand corrected.  
 17 Q. Did you pull up old articles about the Taser speech?  
 18 A. Yes.  
 19 Q. Did you ever tell Mr. Cleavenger that you never liked him  
 20 and thought he never should have been hired?  
 21 A. I don't believe so.  
 22 Q. Do you remember "I don't know"? Was that possibly your  
 23 answer at the deposition?  
 24 A. Okay.  
 25 Q. Did Mr. Cleavenger ever try to talk to you about his

1 position on Tasers?  
 2 A. There was one brief discussion I brought up.  
 3 Q. Was it known to others at the department that you didn't  
 4 think that Mr. Cleavenger should have been hired?  
 5 A. I don't know.  
 6 Q. When you were appointed as a supervisor, did you tell  
 7 anyone, you know, "This might not be a good idea. I don't  
 8 think he should have been hired"?  
 9 A. I don't know.  
 10 Q. Did you think it was a conflict of interest to be his  
 11 supervisor?  
 12 A. No.  
 13 Q. I want to talk to you about Spencer View for a second.  
 14 You heard Officer Hermens's testimony; correct?  
 15 A. Yes.  
 16 Q. Two weeks earlier, or so, he had gone to Spencer View and  
 17 pulled right up, and he had Officer Phillips with him.  
 18 Officer Hermens said that he had been around the department for  
 19 years, been out with many other officers, and at the time he  
 20 pulled straight up to the Spencer View Apartments he didn't  
 21 think there was anything wrong with that. Do you recall that?  
 22 A. I don't recall that in his testimony, no.  
 23 Q. Okay. And Phillips was with him; right?  
 24 A. I believe so. The video I saw, it looked like  
 25 Officer Phillips. I couldn't confirm or deny that.

1 Q. Did anyone ever talk to Officer Phillips about that  
 2 incident?  
 3 A. Not that I'm aware of.  
 4 Q. Why not?  
 5 A. I don't know.  
 6 Q. Well, you say it's an officer safety issue?  
 7 A. Sure.  
 8 Q. The department was fully aware he was there and  
 9 participated in it?  
 10 A. Okay.  
 11 Q. And nobody talked to him?  
 12 A. Not that I'm aware of, no.  
 13 Q. Did it ever cross your mind, with regard to Spencer View,  
 14 that, you know, at least three people at the time --  
 15 Mr. Cleavenger, Mr. Phillips, Mr. Hermens -- had drove in front  
 16 of or pulled right up to a place in response to a call; right?  
 17 A. At the time I was counseling Officer Cleavenger, I didn't  
 18 know that.  
 19 Q. You learned it later?  
 20 A. Sure.  
 21 Q. At the time that you learned it, did it cross your mind  
 22 that maybe the problem was the supervisors weren't doing a good  
 23 job at training?  
 24 A. I don't think that's a fair statement.  
 25 Q. I'm asking if it crossed your mind.

1 A. I can't say it did.  
 2 Q. Did you supervise Hermens?  
 3 A. From time to time, yes.  
 4 Q. Did you supervise Phillips?  
 5 A. From time to time, yes.  
 6 Q. Did Mr. Cleavenger tell you that he was going to appeal  
 7 the letter of reprimand?  
 8 A. I believe so.  
 9 Q. Did you take that as a threat?  
 10 A. I did.  
 11 Q. What's a threat about it?  
 12 A. Well, at the time he said it, it was when I was giving him  
 13 his performance appraisal.  
 14 Q. Still has every right to appeal it; right?  
 15 A. I believe I told him that. "You have every right to  
 16 appeal it."  
 17 Q. Have you ever said or agreed with the statement that you  
 18 can take any video of a public safety officer's response and  
 19 find things to critique and find problems with it?  
 20 A. I agree with it. I don't know that I ever said it.  
 21 Q. Did part of Mr. Cleavenger's job duties include looking up  
 22 stuff on the Internet?  
 23 A. I believe I asked him to look up stuff on the Internet.  
 24 Q. I'm handing you what's marked as Plaintiffs Exhibits 4, 5,  
 25 and 6. Can you identify them?

1 A. They appear to be rough drafts of Mr. Cleavenger's  
 2 performance appraisal.  
 3 Q. Okay.  
 4 A. And the final.  
 5 Q. All right. What was your role in those drafts?  
 6 A. I authored them.  
 7 MR. MCDOUGAL: I would offer 4, 5, and 6.  
 8 THE COURT: Each are received. 4, 5, and 6.  
 9 BY MR. MCDOUGAL: (Continuing)  
 10 Q. Do you recall being questioned about those three drafts at  
 11 your deposition?  
 12 A. Yes.  
 13 Q. And was the first draft referred to as the first draft?  
 14 A. I don't know.  
 15 Q. Okay. Did you ever, at your deposition, point out, "Hey,  
 16 there's another one of these"?  
 17 A. I don't know.  
 18 Q. I'll let you look at your deposition.  
 19 A. If you could refer me, sir, I would appreciate it.  
 20 Q. Certainly. It starts at page 68 and goes on for a couple  
 21 of pages. In fairness, I want you to take whatever time you  
 22 want.  
 23 THE COURT: Why don't you stand up, ladies and  
 24 gentlemen, and just stretch.  
 25 How much would you like him to read, Counsel?

1 MR. MCDOUGAL: To his satisfaction. I --  
 2 THE COURT: We'll call another witness.  
 3 MR. MCDOUGAL: It's only a few pages.  
 4 THE COURT: Okay.  
 5 THE WITNESS: Sorry. I forget what the question was .  
 6 BY MR. MCDOUGAL: (Continuing)  
 7 Q. Question was did you ever point out that there was yet  
 8 another draft?  
 9 A. I haven't read that part yet.  
 10 THE COURT: What page is that on?  
 11 MR. MCDOUGAL: It's not in there.  
 12 THE COURT: You're asking him to read the deposition.  
 13 Call another witness, so we're not wasting time, Counsel.  
 14 MR. MCDOUGAL: I'll go forward.  
 15 THE COURT: If it's not in there, he has to read the  
 16 whole deposition, and I think we've got better things to do.  
 17 He can sit over in the corner and read.  
 18 MR. MCDOUGAL: I'll skip that point, Your Honor.  
 19 THE COURT: You don't have to.  
 20 MR. MCDOUGAL: I --  
 21 THE COURT: It will be enjoyable. Sergeant Cameron  
 22 can read. It's just -- if he's going to get a negative out of  
 23 that. You can ask him the question certainly.  
 24 MR. MCDOUGAL: Okay.  
 25 THE COURT: You can ask him if there's any place he

1 recalls or if it's in his deposition. He should recall that.  
 2 BY MR. MCDOUGAL: (Continuing)  
 3 Q. Do you recall mentioning this first draft in your  
 4 deposition?  
 5 A. No. I -- I recall many drafts. There's at least three.  
 6 There may be more.  
 7 Q. There may have been more?  
 8 A. I don't know. We spent a lot of time on this performance  
 9 appraisal.  
 10 Q. Let me hand you what I think -- and I'll ask you: Is this  
 11 actually the very first draft?  
 12 THE COURT: What exhibit number, Counsel?  
 13 MR. MCDOUGAL: I'm sorry. Exhibit 166.  
 14 THE COURT: 166. Thank you.  
 15 So the question is was Exhibit 166 the first draft; is  
 16 that correct?  
 17 MR. MCDOUGAL: Yes.  
 18 THE COURT: If you want to bring that up, you're more  
 19 than welcome to.  
 20 MR. MCDOUGAL: I'll be here for a second.  
 21 THE COURT: Do you have a pen?  
 22 MR. MCDOUGAL: Yes, I do.  
 23 THE COURT: Can we see it? Is it legible?  
 24 MR. MCDOUGAL: It's a black Sharpie.  
 25 THE COURT: Thank you.



1 THE WITNESS: Well, I can't confirm. It's got an  
 2 email from me to the front of it -- stapled to the front of it  
 3 that says it's of my rough draft.  
 4 BY MR. MCDUGAL: (Continuing)  
 5 Q. I'll represent to you it was produced by your counsel.  
 6 A. Okay.  
 7 Q. Does that help you? Is that your first draft?  
 8 A. Okay.  
 9 Q. I don't want you to say "okay," because it's pretty  
 10 important.  
 11 A. Well, I can't confirm or deny this is my rough draft. I  
 12 don't know. It's been so long.  
 13 THE COURT: The question isn't "rough draft." The  
 14 question is, "Is this your first draft?"  
 15 THE WITNESS: It could very well be.  
 16 BY MR. MCDUGAL: (Continuing)  
 17 Q. If there's another one, you don't know where it is?  
 18 A. It could be on the computer.  
 19 Q. What's the date of that document?  
 20 A. Well, there's an email on the front that's dated  
 21 January 16, 2015.  
 22 Q. January 16th of what year?  
 23 A. 2015.  
 24 Q. No, no, no. That's the archive date.  
 25 A. Okay.

1 Q. You see it says "archive"? What's the actual date of the  
 2 email?  
 3 A. It doesn't say.  
 4 Q. I don't want to interfere with your personal space, but do  
 5 you mind if I walk up?  
 6 A. Yeah, if you can show me. Okay. I see. I see.  
 7 Q. All right. What's the date?  
 8 A. April 1, 2012.  
 9 Q. Okay. Could you tell me the dates of the first, second,  
 10 and third drafts that you have?  
 11 THE COURT: And that would be 4, 5, 6?  
 12 MR. MCDUGAL: Yes.  
 13 THE COURT: Are those in order?  
 14 MR. MCDUGAL: Yes.  
 15 THE WITNESS: They were in order, Your Honor, until I  
 16 changed them around. Sorry.  
 17 THE COURT: Next draft you're looking at would be  
 18 Exhibit 4, apparently.  
 19 BY MR. MCDUGAL: (Continuing)  
 20 Q. I'm sorry. I want to make sure I get this exactly right.  
 21 April 1.  
 22 The next date for the first --  
 23 A. The one marked "original first draft," sir?  
 24 Q. Yes.  
 25 A. Okay. I don't see a sent date. Just the -- it has a

1 reporting period from March '11 -- March 2011 to March 2012.  
 2 Q. So you don't see a date on it. Does the second one have a  
 3 date on it?  
 4 A. It is signed.  
 5 Q. Okay. What day is it signed?  
 6 A. Not by me.  
 7 THE COURT: Just a moment. That would be Exhibit 5;  
 8 is that correct?  
 9 THE WITNESS: Exhibit 4, Your Honor.  
 10 MR. MCDUGAL: Exhibit 4.  
 11 THE COURT: Just a moment. Exhibit 166 you have  
 12 dated April 1, 2012.  
 13 MR. MCDUGAL: Yes.  
 14 THE COURT: The next exhibit, Exhibit 4, which  
 15 apparently we're still on -- is that correct --  
 16 MR. MCDUGAL: Yes.  
 17 THE COURT: -- is dated -- was -- the next draft is  
 18 marked as a first draft, but it's a period of March of 2011 to  
 19 2012; is that correct?  
 20 MR. MCDUGAL: Yes.  
 21 THE COURT: All right. Now, are you asking about  
 22 Exhibit 4 now or the next exhibit, Exhibit 5?  
 23 MR. MCDUGAL: Still Exhibit 4.  
 24 BY MR. MCDUGAL: (Continuing)  
 25 Q. I know Exhibit 4 is not dated, but at some point somebody

1 signs it. And what date is that?  
 2 A. I see what you're asking now, sir. It's 5/31/12.  
 3 Q. I'll put it's signed that day so there's no -- and what's  
 4 the date of the what next one?  
 5 THE COURT: That's Exhibit 5, Counsel?  
 6 MR. MCDUGAL: That was Exhibit 4.  
 7 THE COURT: I know that was Exhibit 4. When you say  
 8 "the next one," is it something inside the document or is it  
 9 the next exhibit?  
 10 MR. MCDUGAL: The next exhibit. I'm sorry.  
 11 THE COURT: Exhibit 5; is that correct?  
 12 MR. MCDUGAL: Correct.  
 13 THE WITNESS: Correct.  
 14 BY MR. MCDUGAL: (Continuing)  
 15 Q. Okay.  
 16 A. It's not signed and there's no date on the back.  
 17 Q. Okay. What about Exhibit 6?  
 18 A. It's signed by me, but there's no date. However, the  
 19 other signatures have a date of 8/3/12.  
 20 Q. I'll put "signed" there, as opposed to the date it was  
 21 written.  
 22 Now, if you could, would you look at the original April 1,  
 23 2012, sent date evaluation?  
 24 THE COURT: That would be Exhibit 166?  
 25 MR. MCDUGAL: Yes. I move to offer Exhibit 166, 4,

1 5, and 6. I don't think I've done 166.  
 2 THE COURT: Received. 166, 4, 5, and 6 are received.  
 3 MR. MCDUGAL: Mr. Hess, can you publish 166?  
 4 BY MR. MCDUGAL: (Continuing)  
 5 Q. My question for you is on 166 how many categories is  
 6 Mr. Cleavenger ranked competent or higher?  
 7 A. Well, some of them don't have a competent.  
 8 Q. If they don't, you can skip it.  
 9 A. Okay. Well, let me go back and restart.  
 10 Q. If you could just say the name of the category and the  
 11 competency rating or higher.  
 12 A. Sure. Conduct patrol of campus: Competent performance.  
 13 Responds to calls of service: Competent performance. Writes  
 14 standardized reports: Competent performance. Building,  
 15 security, and parking: Performance is highly competent.  
 16 Training, court, and other duties assigned: Competent  
 17 performance.  
 18 And I believe that's all in the "competent performance."  
 19 There are some other ones that ask questions but not in  
 20 the form of competent performance.  
 21 Q. Now, how did he score in the other areas?  
 22 THE COURT: Part 2. Behavioral factors, Counsel?  
 23 Part 2?  
 24 MR. MCDUGAL: Yes.  
 25 THE WITNESS: Behavioral factors, attendance, arrives

1 on time, and begins work promptly.  
 2 BY MR. MCDUGAL: (Continuing)  
 3 Q. Highest rating possible?  
 4 A. Sure.  
 5 Dependability: Needs frequent supervision. Customer  
 6 service: Positive and supportive of department missions.  
 7 Q. Okay.  
 8 A. Product -- productivity: Consider quality, knows status  
 9 of tasks. Cooperation: Maintains courteous and cooperative  
 10 relationships with supervisors and co-workers. Safety  
 11 consider: Works or displays behavior that is not compliant  
 12 with federal, state, university, or department safety rules.  
 13 I believe that's it, sir.  
 14 Q. Now, let's go to the last one. How is he -- and before I  
 15 ask you that, do you know of any other person where it took  
 16 from April to August -- I mean, normally these things are just  
 17 done. There's a draft and it's over; right?  
 18 A. Correct.  
 19 Q. Here we've got four drafts that we know of and it takes  
 20 from April to August.  
 21 A. That was at Mr. Cleavenger's insistence.  
 22 Q. That it take to August?  
 23 A. Not that it take to August; that there be more than one  
 24 draft.  
 25 Q. Just to be clear, this appraisal, all the drafts are only

1 concerned with the same time period?  
 2 A. Correct.  
 3 Q. Okay. Final draft. Can you just go through the topics  
 4 and how he was rated?  
 5 A. Conduct patrol of --  
 6 THE COURT: Hold on. Let's be certain of the exhibit  
 7 number now. This is confusing. The final draft. You're  
 8 referring to Exhibit No. 6?  
 9 MR. MCDUGAL: There's some confusion, Your Honor.  
 10 One second. Let me clarify something.  
 11 BY MR. MCDUGAL: (Continuing)  
 12 Q. I'm sorry. I would like you to look at the May 31st  
 13 draft.  
 14 THE COURT: Exhibit No. 4; correct?  
 15 MR. MCDUGAL: Yes. I'm sorry.  
 16 BY MR. MCDUGAL: (Continuing)  
 17 Q. Now, is this the first draft that Mr. Cleavenger sees?  
 18 A. It appears so.  
 19 Q. He never saw the email April 1 draft; correct?  
 20 A. Not to my knowledge, no.  
 21 Q. Okay. What does this draft have to say about his  
 22 performance?  
 23 A. Conduct patrol of campus: Needs improvement. Responds to  
 24 calls of service: Competent performance. Writes standardized  
 25 reports: Needs improvement. Building, security, and parking:

1 Competent performance. Training, court, and other duties:  
 2 Needs improvement. Attendance, arrives on time, dependability:  
 3 Needs constant supervision. Customer service: Does not convey  
 4 a positive image of the department or university.  
 5 Productivity: Knows status of tasks. Cooperation: Has  
 6 occasional difficulty with supervisors, co-workers. Safety  
 7 considers: Work displays behavior that is not compliant with  
 8 federal, state, university, or department safety rules.  
 9 Q. I'm totally switching subjects now.  
 10 So several years ago was there a policy about dash cam  
 11 videos during the time that Mr. Cleavenger was under your  
 12 supervision?  
 13 A. You would have to be more specific. I don't know when the  
 14 policy actually came out.  
 15 Q. Could you turn to page 87 of your deposition? And I want  
 16 to be clear that at that time you didn't quite recall, but your  
 17 first answer -- was your first answer no?  
 18 A. I'm sorry. I'm on page 87.  
 19 Q. Page 87, line 25, to line 2, page 88.  
 20 A. I believe my answer was: No. Maybe. I don't quite  
 21 recall.  
 22 Q. I agree.  
 23 A. I believe I just said that as well.  
 24 Q. Did you tell James Cleavenger that his law degree was  
 25 worthless?

1 A. No.  
 2 Q. Did you ever talk at briefings or shifts about how Obama  
 3 wasn't born in America and that he was a Muslim?  
 4 A. I wouldn't say that's particularly true. I've heard  
 5 political talk in briefing, yes.  
 6 Q. Did you hear those kind of statements from him?  
 7 A. I can't say that.  
 8 Q. Can you go to page 101 of your deposition? Let me give  
 9 you the line number. Lines 10 through lines 15.  
 10 A. Then at the time I said I did.  
 11 MR. MCDUGAL: Permission to play that clip,  
 12 Your Honor.  
 13 THE COURT: You may.  
 14 MR. MCDUGAL: Page 101, lines 10 through lines 15.  
 15 MR. HESS: I apologize.  
 16 (Video played to the jury.)  
 17 BY MR. MCDUGAL: (Continuing)  
 18 Q. Do you recall Mr. Cleavenger being told that he could only  
 19 report felonies?  
 20 A. Yes. But that's an oversimplification of what was said.  
 21 Q. Okay. What was said?  
 22 A. I don't know word for word, but I believe it was to the  
 23 point that you could call out felonies or any major crimes.  
 24 Q. Okay. Do you know who gave that order?  
 25 A. No.

1 Q. Was the outcome of the meeting to only report felonies?  
 2 A. I don't understand the question.  
 3 Q. I'm asking at your deposition did you say the outcome of  
 4 the meeting was to only report felonies?  
 5 A. Okay. If that's what he took from it, yes. If that's  
 6 what he inferred, yes. Again, I don't recall exactly what I  
 7 said. I know the substance of it was to only felonies and  
 8 major crimes.  
 9 Q. In your deposition, did you mention major crimes when we  
 10 were talking about that subject?  
 11 A. I don't know. I don't have every line in my deposition in  
 12 memory.  
 13 Q. I don't expect you to.  
 14 A. Okay.  
 15 Q. At the time that you gave the order, were you familiar  
 16 with the Clery Act?  
 17 A. Yes.  
 18 Q. And did it cross your mind that that order might violate  
 19 the Clery Act?  
 20 A. Not at the time, no.  
 21 Q. And I -- I don't know, but some witnesses are given their  
 22 depo before they testify. Were you given your deposition  
 23 before you testified?  
 24 A. I'm sorry. Before I testified today?  
 25 Q. Yes.

1 A. Yes.  
 2 Q. Okay. Do you recall getting an email from Mr. Cleavenger  
 3 asking you to clarify your order that he only report felonies?  
 4 A. I believe so, yes.  
 5 Q. Did you ever respond to him?  
 6 A. I did not, no.  
 7 Q. You were checking your email every day; right?  
 8 A. Yes. I forwarded that email to the appropriate people.  
 9 Q. Did they ever share a response with you?  
 10 A. Not my knowledge, no. Maybe.  
 11 Q. Did Mr. Cleavenger ever get a response?  
 12 A. I don't know.  
 13 Q. Do you recall Mr. Cleavenger getting a letter of  
 14 clarification about grooming?  
 15 A. I did not give him a letter of clarification about  
 16 grooming.  
 17 Q. I didn't ask that. I asked if you recall him getting one.  
 18 A. Not until these proceedings started, no.  
 19 Q. You were his supervisor at the time; right?  
 20 A. That he got the letter of clarification or --  
 21 Q. That the letter of clarification was about.  
 22 A. Probably.  
 23 Q. Did Mr. Cleavenger have grooming problems more than  
 24 anybody else?  
 25 A. A little bit more, I'd say, yes.

1 Q. Can you go to your deposition, page 153?  
 2 MR. MCDUGAL: Permission to play, Your Honor, 153,  
 3 lines 6 through line 20.  
 4 THE COURT: Just a moment. You may.  
 5 MR. MCDUGAL: Mr. Hess, 153, line 6 through line 20.  
 6 (Video played for the jury.)  
 7 BY MR. MCDUGAL: (Continuing)  
 8 Q. Is it fair to say, generally speaking, that Mr. Cleavenger  
 9 had a sincere belief in helping the student body in the  
 10 community?  
 11 A. Definitely.  
 12 Q. I want to talk to you about the concealed handgun  
 13 incident.  
 14 Do you recall where you were -- well, strike that.  
 15 Do you agree Mr. Cleavenger called to ask you or put you  
 16 on notice somehow that he wanted to transport this woman?  
 17 A. I do, yes.  
 18 Q. Where were you when you learned that?  
 19 A. I believe I was in my office.  
 20 Q. And how did you get from your office to the scene?  
 21 A. I was just outside the station, but I still believe I  
 22 drove my patrol car.  
 23 Q. How far was that?  
 24 A. Where the car was or where my vehicle was?  
 25 Q. Where you drove to.

1 A. 150 feet.  
 2 Q. So you drove your car how far -- I guess I should ask  
 3 that. You go to your car and how far do you drive that?  
 4 A. My car was parked in the compound. I drove outside the  
 5 compound and to the parking lot adjacent to the department.  
 6 Q. About how many feet is that?  
 7 A. Again, best estimate, 150. Maybe less. Maybe more.  
 8 Q. Do you get out of your car?  
 9 A. I believe I got out of my car and stood next to it, yes,  
 10 when I talked to James.  
 11 Q. How many times did you go to that lot to talk to James  
 12 that night?  
 13 A. I don't recall.  
 14 Q. You don't --  
 15 A. It was a protracted incident. It wasn't -- it lasted a  
 16 long time.  
 17 Q. And how do you know that?  
 18 A. I -- just off the top of my head. I couldn't tell you how  
 19 long it really lasted; how many times we were there.  
 20 Q. This was, at least according to some people's testimony, a  
 21 big deal?  
 22 A. In hindsight. At the time it wasn't.  
 23 Q. Well, Officer Hermens's testified -- at least we can all  
 24 agree to this. There was clarification of this, that, and the  
 25 other; but, bottom line, you agree Officer Hermens's version is

1 there?  
 2 A. Several minutes.  
 3 Q. And then you left and did something else; right?  
 4 A. Correct.  
 5 Q. When did you learn that she had a gun?  
 6 A. I believe I learned several days later or weeks later when  
 7 someone told me.  
 8 Q. At that time did you say, "I'm going to do a report. This  
 9 is a serious matter"?  
 10 A. No.  
 11 Q. Why not?  
 12 A. Well, at the time I believe Mr. Cleavenger was under  
 13 investigation for other things, and I didn't feel it was  
 14 appropriate to impede on that. The other thing was I was mad.  
 15 I don't think it's a good idea to write a report when I was  
 16 mad.  
 17 Obviously, my supervisors knew about it. They were the  
 18 ones that inquired about it.  
 19 Q. Well, did they?  
 20 A. Yes.  
 21 Q. To who?  
 22 A. Lieutenant Lebrecht was the one that inquired about it to  
 23 me.  
 24 Q. To you. Anybody else?  
 25 A. I don't know.

1 he told you that night. You learned that in the parking lot;  
 2 correct?  
 3 A. That's his version, yes.  
 4 Q. What's your version?  
 5 A. I don't recall ever being notified that she was armed. I  
 6 recall being notified she had a concealed weapons permit. I  
 7 believe they said that over the radio. Just because someone  
 8 has a concealed weapon permit doesn't mean they're armed.  
 9 Q. These escort rides -- is that what you call them?  
 10 A. Safety escort, I believe, yeah.  
 11 Q. Safety escort.  
 12 Do you have to get permission to do a safety escort?  
 13 A. I prefer they do.  
 14 Q. But you don't have to?  
 15 A. No.  
 16 Q. So you're sitting in your office. You hear about a  
 17 concealed weapons permit. You go drive your car to the parking  
 18 lot nearby. Are you like, "Cleavenger, why are you wasting my  
 19 time?"  
 20 A. No. It was a protracted incident.  
 21 Q. You didn't know it at the time.  
 22 A. No. Again, I did at the time. Remember, I said it lasted  
 23 a long time. I believe we talked to her several times that  
 24 night.  
 25 Q. How long were you at the parking lot when you first got

1 Q. Okay. So all they had was your version?  
 2 A. I don't know if that's correct either.  
 3 Q. As far as you know, all they had was your version?  
 4 A. And I didn't give much of a version.  
 5 Q. Okay. If somebody had talked to Hermens at the time or  
 6 Mr. Cleavenger at the time, they may have learned that some  
 7 people say you were told that night in the parking lot.  
 8 A. I can't tell you what they would learn. I wasn't privy to  
 9 those conversations.  
 10 Q. You think Mr. Hermens would have told them something  
 11 different than he told this jury?  
 12 A. I don't know. I think Mr. Hermens is a truthful person,  
 13 if that's what you're inquiring.  
 14 Q. I wasn't asking about it, but I appreciate that that was  
 15 responsive to the question.  
 16 Do you know why Mr. Cleavenger was reassigned to parking  
 17 duty?  
 18 A. No. Well, in hindsight I do.  
 19 Q. What was it?  
 20 A. It was told to me later, but not at the time, no.  
 21 Q. Who told you?  
 22 A. I couldn't tell you off the top of my head.  
 23 Q. What were you told?  
 24 MS. COIT: I'm going to object to attorney-client  
 25 privilege.

1 THE COURT: Overruled.  
 2 Unless this is a conversation, Counsel, between you and  
 3 the witness. That would be privileged. I don't know what  
 4 I'm -- I thought that the question was designed to however he  
 5 received this information being a member of the police  
 6 department.  
 7 MR. MCDUGAL: I can rephrase it, Your Honor.  
 8 THE COURT: I'm just not sure. If this is a  
 9 conversation between counsel and client, it is privileged.  
 10 BY MR. MCDUGAL: (Continuing)  
 11 Q. I don't want you to tell me anything you learned from your  
 12 client.  
 13 THE COURT: From your counsel.  
 14 BY MR. MCDUGAL: (Continuing)  
 15 Q. Counsel.  
 16 It was my understanding that you didn't remember who told  
 17 you.  
 18 A. Correct.  
 19 Q. Right?  
 20 A. But I believe there was a meeting.  
 21 Q. Was there a lawyer at that meeting?  
 22 A. Not to my knowledge, no.  
 23 Q. Okay. Tell me what you learned.  
 24 A. It was a staff meeting and I believe they brought up he  
 25 was being reassigned because of officer safety concerns, and

1 of yours in a sexual nature?  
 2 A. Two, that I believe.  
 3 Q. Do you know if it was only two?  
 4 A. No.  
 5 Q. Okay. Did you ever ask, you know, "Who's made the  
 6 complaints against me?"  
 7 A. Yes.  
 8 Q. What were you told?  
 9 A. It's under affirmative action and it wasn't my right to  
 10 know.  
 11 Q. Did you ever learn?  
 12 A. Only in rumor and innuendo, yes.  
 13 Obviously, Officer Hayles, who came and testified.  
 14 Q. Were you ever asked what the women said?  
 15 A. During affirmative action, yes. I was asked about some of  
 16 the things with Officer Hayles.  
 17 Q. Anybody else?  
 18 A. No.  
 19 Q. Did you file a grievance?  
 20 A. With who?  
 21 Q. Anyone.  
 22 A. No, I have not filed a grievance.  
 23 Q. Do you recall writing a response to your termination?  
 24 A. Not my termination, no.  
 25 Q. Do you -- I'm sorry, to the allegations.

1 that was about as far as they went into it.  
 2 Q. Was the officer safety concern the fact that he had  
 3 transported the woman?  
 4 A. Not to my knowledge, no.  
 5 Q. Do you know what it was?  
 6 A. The officer safety concern?  
 7 Q. Yeah.  
 8 A. No. I wasn't given that information.  
 9 Q. Do you agree that -- give me one second -- I'm sorry --  
 10 Officer Cleavenger had a right to know if he was being  
 11 investigated?  
 12 A. Do I agree with it or is that what happened?  
 13 Q. Do you agree with it?  
 14 A. I agree that probably everyone should know that they're  
 15 being investigated; but, unfortunately, that's not the way it  
 16 works sometimes.  
 17 Q. Do you agree he had the right to know who the investigator  
 18 was?  
 19 A. Again, I -- I probably do. My own personal opinion, yes.  
 20 Q. Do you agree he has a right to know the topic of the  
 21 investigation?  
 22 A. Again, my own personal opinion, the situation would  
 23 dictate.  
 24 Q. I'm only going to touch on this briefly, and I -- how many  
 25 different women or men complained about any comments or conduct

1 A. Which allegations?  
 2 Q. Sexual harassment-type allegations.  
 3 A. For who?  
 4 Q. I'm grabbing that right now. I didn't know.  
 5 And do you know who the two women are, so far, that you've  
 6 mentioned? I know you said one because she testified in court  
 7 here.  
 8 You know, I'm not going to hold everybody's time up here.  
 9 It might take me too long to figure this out, but what role did  
 10 the police department -- or the public safety department have  
 11 with regard to strip clubs?  
 12 THE COURT: To strip clubs?  
 13 MR. MCDUGAL: Yeah.  
 14 THE COURT: Policy for strip clubs?  
 15 BY MR. MCDUGAL: (Continuing)  
 16 Q. No. Job duties. Any job duties about strip clubs.  
 17 A. There's a lot of criminal activity in strip clubs, not to  
 18 mention organized crime. Especially in the Eugene area.  
 19 Q. I'm talking about in your department.  
 20 A. Well, I think it's the benefit of the department to know  
 21 if there's organized crime going on around the campus, yes.  
 22 Q. Do you have any responsibilities in that regard?  
 23 A. No.  
 24 Q. What about Internet porn? Was that part of your job  
 25 responsibilities or anything?

1 A. No.  
 2 Q. Are strip clubs and porn sites a big part of your job?  
 3 A. I would say that there is some aspect of that that  
 4 pertains to law enforcement, yes.  
 5 Q. That was talked about?  
 6 A. Yes.  
 7 MR. MCDUGAL: That's all I have.  
 8 THE COURT: Cross-examination?  
 9  
 10 CROSS-EXAMINATION  
 11 BY MS. COIT:  
 12 Q. Sergeant Cameron, I just want to --  
 13 MS. COIT: Your Honor, I'm going to put up a few of  
 14 the exhibits that were referred to.  
 15 BY MS. COIT: (Continuing)  
 16 Q. Can you look at Exhibit 4? On the top right corner of  
 17 that exhibit, there's some handwriting on there?  
 18 A. Yes.  
 19 Q. Is that your handwriting?  
 20 A. No.  
 21 Q. Do you know whose handwriting that is?  
 22 A. I do not.  
 23 Q. Exhibit 5, same thing. Do you see that handwriting?  
 24 A. Yes.  
 25 Q. There's also handwriting lower on that first page.

1 MS. COIT: My apologies.  
 2 BY MS. COIT: (Continuing)  
 3 Q. You were asked to read a section of page 101 of your  
 4 deposition.  
 5 Your Honor, I would like him to be able to read the rest  
 6 of that for context.  
 7 THE COURT: You can. Was that section played,  
 8 Counsel?  
 9 MS. COIT: He was asked to read from page 101. I  
 10 would like him to read.  
 11 THE COURT: You can put that up on the screen,  
 12 Counsel, and read that portion that you would agree would cause  
 13 completeness.  
 14 THE WITNESS: From which line, ma'am?  
 15 MS. COIT: Sorry. Something just happened to our  
 16 screens.  
 17 MR. MCDUGAL: Counsel, I don't mean to interfere,  
 18 but do you have the capability to put up those lines, or would  
 19 you like Mr. Hess to do that?  
 20 MS. COIT: That would be great.  
 21 MR. MCDUGAL: Mr. Hess, can you put up page 101 --  
 22 do you want line 16 through 19, or you want the whole thing  
 23 over?  
 24 MS. COIT: Page 101 and 102.  
 25 MR. MCDUGAL: The entirety of it?

1 Looking at that, do you -- does that refresh your memory of who  
 2 wrote on that document?  
 3 A. I don't know who wrote on it, but I -- if I had to guess,  
 4 it would be Lieutenant Lebrecht's.  
 5 Q. That's a guess?  
 6 A. That's a guess, yeah, at best.  
 7 Q. It's not your writing, though?  
 8 A. It's not my writing, no.  
 9 Q. Same question for Exhibit 6. The top right corner, the  
 10 final third draft, is that your writing?  
 11 A. No.  
 12 Q. The Spencer View incident where Mr. Cleavenger drove in  
 13 front of the apartment, do you recall that one?  
 14 A. Yes.  
 15 Q. Do you recall what time of night -- excuse me, what time  
 16 of -- what time that happened?  
 17 A. It was early afternoon or late afternoon. The sun was  
 18 still up.  
 19 Q. You were asked a few questions about your deposition. Can  
 20 you -- well, you can look on the screen.  
 21 A. Okay.  
 22 Q. Sorry.  
 23 MR. MCDUGAL: Your Honor, I ask it not be published  
 24 to the jury until it's identified.  
 25 THE COURT: Counsel, would you take that down?

1 MR. HESS: Sorry. Which lines do you want again?  
 2 MS. COIT: I can do it here.  
 3 MR. HESS: There we go.  
 4 BY MS. COIT: (Continuing)  
 5 Q. All right. Sergeant Cameron, you were asked to read,  
 6 starting, I believe, at line 10, on 101. Do you see that?  
 7 A. Yes, ma'am.  
 8 Q. Can you just -- and you stopped at line 15, I believe.  
 9 Can you just read further down, starting at 16, to page 102,  
 10 line 11?  
 11 THE COURT: Would you put up page 101 and just put up  
 12 page 102, for completeness purposes, Counsel?  
 13 THE WITNESS: I'm going to start at 101.  
 14 BY MS. COIT: (Continuing)  
 15 Q. 101, line 16.  
 16 A. 16? That's common knowledge that that's Lebrecht's  
 17 opinion.  
 18 No. This is my answer. I'm sorry. No. I believe it was  
 19 in jest at most times.  
 20 Question: Okay. So when did you have discussions with  
 21 Lebrecht about those facts?  
 22 Answer. I'm not sure I understand the question. I've  
 23 never had a discussion with him. I've heard discussions, yes;  
 24 but we've never had a discussion and sat down and talked about  
 25 politics, no.

1 THE COURT: Well, if you would put up 102, please.  
 2 Now it's up on the screen. Thank you.  
 3 BY MS. COIT: (Continuing)  
 4 Q. Then line 1 through 11, please.  
 5 A. Question: Okay. But have you heard Lebrecht make those  
 6 kind of statements?  
 7 Yeah.  
 8 Question: Okay. And why do you think that when you heard  
 9 him make those statements that they were made in jest?  
 10 Answer: Mostly because Ken Abbott -- and, I'm sorry, but  
 11 that's not -- not the correct spelling of his name. It was  
 12 "Kent Abbott" -- would be poking him on it. They would talk  
 13 about -- Kent would say something along the lines of  
 14 Republicans ruin the world, and it would go back and forth like  
 15 that as play.  
 16 Q. Thank you.  
 17 And then, finally, I want to turn to the incident that you  
 18 were questioned about with the female with the gun; the  
 19 courtesy transport.  
 20 A. Yes, ma'am.  
 21 Q. Would you ever have given Mr. Cleavenger permission to  
 22 transport a woman in his car with a loaded gun, if you had  
 23 known she had a loaded gun with her?  
 24 A. No.  
 25 Q. And you said you were mad when you found out. Why were

1 you mad?  
 2 A. He put himself in an insane risk, in my opinion,  
 3 especially at the time when the department wasn't armed. He  
 4 would have no way to defend himself if she did decide to commit  
 5 suicide via cop or whatever the case would be.  
 6 At that time we did not have the capability nor the  
 7 training to be -- to allow that type of action. And, as other  
 8 officers have pointed out here, even with that training and  
 9 that capability, it's a big judgment call and one that I  
 10 wouldn't make, no.  
 11 MS. COIT: Thank you, sir.  
 12 We'll be bringing him back in our case.  
 13 THE COURT: Any questions on redirect?  
 14  
 15 REDIRECT EXAMINATION  
 16 BY MR. MCDUGAL:  
 17 Q. Just a question on Spencer View. You viewed that as a  
 18 dangerous call; the incident with Mr. Cleavenger going to  
 19 Spencer View?  
 20 A. I think giving the answer did I view that as a dangerous  
 21 call is an oversimplification of a very complex issue.  
 22 Q. Let me simplify it, then.  
 23 A. My -- my answer is going to be all calls have the  
 24 potential to be very dangerous.  
 25 Q. Sure. We never know what's going to happen at any time.

1 A. No.  
 2 Q. But on the range of calls, you thought this was one where  
 3 you shouldn't drive to the front; right?  
 4 A. Correct.  
 5 Q. Was this one where only one person should respond?  
 6 A. No.  
 7 Q. Do you know why Mr. Cleavenger was back there alone  
 8 himself that night?  
 9 A. Yes.  
 10 Q. You never sent him?  
 11 A. It could have been me. It could have been dispatch. I  
 12 don't know.  
 13 MR. MCDUGAL: That's all I have.  
 14 THE COURT: Redirect?  
 15 MS. COIT: None.  
 16 THE COURT: Thank you, sir. You may step down.  
 17 THE WITNESS: Thank you. I have a lot of documents  
 18 here.  
 19 THE COURT: Counsel, your next witness, please. Your  
 20 next witness?  
 21 on.  
 22 MR. JASON KAFOURY: Your Honor, do you have a copy of  
 23 Lieutenant Lebrecht's deposition? I'm sure we'll be going over  
 24 that with him.  
 25 THE COURT: I'm not sure I have the deposition, but I

1 could. I don't know that I do, Counsel, but it's possible.  
 2 Kent Abbott deposition. Now I have a chance to clean up. But,  
 3 no, I thus far don't see it, but that doesn't mean I might not  
 4 have it. I just don't see it, which means I don't have it.  
 5 A JUROR: Your Honor, can we take a five-minute --  
 6 THE COURT: Please don't discuss this matter amongst  
 7 yourselves or form or express any opinions. Just go out this  
 8 door. We'll be sitting here.  
 9 (Jury not present.)  
 10 THE COURT: What I think I'll do, counsel, is return  
 11 to you at the end the day all the exhibits we may have gone  
 12 through witnesses concerning that you didn't call, that you  
 13 have them all back. So if you need them again and you organize  
 14 them and give them back to me.  
 15 You won't have to give them another duplicate. I'll  
 16 return to both sides exhibits. If you have witness X, Y, Z for  
 17 the plaintiff, you get those together.  
 18 MR. JASON KAFOURY: My office is grabbing two copies  
 19 of the deposition. It will make things go much smoother.  
 20 THE COURT: What I'll do is at the end of the day is  
 21 return all the exhibits to you, both sides. If you're calling  
 22 a witness, you can give me that same exhibit back, and we  
 23 organize, and you don't have to go back and duplicate it again.  
 24 I have a lot of exhibits that weren't used that you may want to  
 25 use.

1 By the way, for both of you, when I growl at you, I don't  
2 have a memory. In other words, nothing is ever held by me. Do  
3 you understand? I don't hold those things against counsel. It  
4 just sweeps. Okay? I say what I have to say. That's it. We  
5 move on.

6 (Jury present.)

7 THE COURT: All right. We were in session. The jury  
8 is present, all counsel, and parties.

9 Counsel, call your next witness, please.

10 MR. JASON KAFOURY: Yes. Just in time.

11 Lieutenant Lebrecht, please take the stand.

12 DEPUTY COURTROOM CLERK: Lieutenant, please raise  
13 you're right hand.

14

15 BRANDON LEBRECHT,

16 called as a witness in behalf of the Plaintiff, being first  
17 duly sworn, is examined and testified as follows:

18 THE WITNESS: I do.

19 THE COURT: Thank you, sir. Be kind enough to be  
20 seated in the witness box. The entrance is closest to the  
21 wall. There's a series of steps. If you would be seated, sir.

22 THE WITNESS: Thank you.

23 THE COURT: Be seated, sir. State your full name for  
24 the jury, please, and spell your last name.

25 THE WITNESS: Brandon Lebrecht, L-E-B-R-E-C-H-T.

1 THE COURT: Thank you.

2 THE WITNESS: You're welcome.

3 THE COURT: Direct examination, please.

4 MR. JASON KAFOURY: One second, Your Honor.  
5 Housekeeping matters. Can my staff give you a copy of the  
6 deposition?

7 THE COURT: Thank you very much.

8

9 DIRECT EXAMINATION

10 BY JASON KAFOURY:

11 Q. You've read your deposition, haven't you, sir?

12 A. Yes, I have.

13 Q. You were under oath in that deposition, just as you are  
14 here today; correct?

15 A. Correct.

16 Q. Let's start off talking about the bowl of dicks.

17 You brought the term "bowl of dicks" to the University of  
18 Oregon department; isn't that correct?

19 A. I believe that's correct.

20 Q. And, in fact, it wasn't just a bowl of dicks. It was --  
21 the phrase was "a big bowl of dicks." That's what you brought?

22 A. That's what I said. That's correct.

23 Q. Now, you heard Officer LeRoy testify that sometimes you  
24 guys would talk about people or things you didn't like out in  
25 the world, and people would say, "Let's put that thing on the

1 bowl of dicks list"?

2 MS. COIT: Objection. Mischaracterizes Officer  
3 LeRoy's testimony.

4 THE COURT: I don't know if it's the exact  
5 phraseology; but, Counsel, you can reask the question.

6 BY MR. JASON KAFOURY: (Continuing)

7 Q. Do you recall him generally agreeing about the concept  
8 that you talk about people during the shift briefings, said  
9 they can eat a bowl of dicks, and they would end up on  
10 Eric LeRoy's cell phone? You heard him say that that happened?

11 A. I never heard him say that there was a bowl of dicks list.

12 Q. You -- that's because you'd never heard it called the bowl  
13 of dicks list; isn't that right?

14 A. In my opinion, from my memory, before this lawsuit, I  
15 don't remember it ever being referred to as "the bowl of dicks  
16 list."

17 Q. Now, there was a lot of media attention about this bowl of  
18 dicks list in the summer July 2014, wasn't there?

19 A. I believe that's the time frame.

20 Q. It got picked up by *Huffington Post*, *Gawker*, didn't it?

21 A. It got picked up by many sources.

22 Q. You heard John Ahlen testify at the arbitration you  
23 described it as the bowl of dicks list?

24 A. Yeah, what was the question you asked him specifically?

25 Q. "Do you recall Sergeant Lebrecht saying 'the bowl of dicks

1 list' at the arbitration?"

2 THE COURT: I'm sorry. Sergeant?

3 BY MR. JASON KAFOURY: (Continuing)

4 Q. Sergeant. Lieutenant Lebrecht.

5 A. I believe that's the way you asked him, and I think that  
6 may have been misleading, because in what context would I have  
7 said that? Maybe in the form of a question? Such as: Why are  
8 you referring to this as a bowl of dicks list?

9 Because I made adamantly clear here, abundantly clear, at  
10 the arbitration that the two things were never connected. The  
11 "bowl of dicks" phrase and "the list." They were separate.

12 Q. On this bowl of dicks list, people would throw out a name  
13 or two one night and a day or two later more names would be put  
14 on the list. Regardless of whether it was called the bowl of  
15 dicks list or just the list, that's generally how it would go;  
16 right?

17 A. I believe I said that before, yes; but, like, again, not  
18 called "the bowl of dicks list."

19 Q. Now, Lieutenant Lebrecht, do you agree it's inappropriate  
20 to be putting people on such a list during shift hours, don't  
21 you?

22 A. Yeah, I would agree that's inappropriate. I made a  
23 mistake.

24 Q. You remember Officer Abbott closing the door to the shift  
25 briefings so that Casey Boyd couldn't hear what was going on?



1 Do you remember that?

2 A. I remember there were a couple of times that Abbott closed  
3 the door.

4 Q. And Boyd got mad about that, didn't she?

5 A. She got mad about quite a bit of things.

6 Q. She got mad about you guys closing the door on her ; isn't  
7 that correct?

8 A. I believe the email was actually addressed to me from her  
9 wondering why then-Sergeant Bechdolt had someone in his shift  
10 briefing close the door, and that's when she first expressed  
11 her frustration.

12 Q. She complained to the chief, didn't she?

13 A. Not that I'm aware of.

14 Q. Let's talk about your relationship with Mike Morrow. He's  
15 running internal affairs; correct?

16 A. He was correct.

17 Q. You took over internal affairs after he left; right?

18 A. That's correct.

19 Q. You considered him, while he worked there, a personal  
20 friend; isn't that accurate?

21 A. Yes. He still is a friend of mine.

22 Q. And you socialized with him outside of work?

23 A. Yes. On a few occasions. That's correct.

24 Q. You went to the gym with him?

25 A. Correct.

1 Q. Now, you would agree that IA, internal affairs, should be  
2 a totally separate division within a police department, right,  
3 from the rest of the department?

4 I'll ask it differently. Internal affairs is where you're  
5 supposed to go within a police department if you have concerns  
6 about things happening with other departments so that you can  
7 complain about those. Isn't that one of the purposes of IA?

8 A. One of the purposes of IA is to investigate complaints.

9 Q. Correct. And as an internal -- as the head of internal  
10 affairs, which you've done, you're supposed to be independent ly  
11 investigating complaints; right? That's your job?

12 A. Well, sometimes there's actually more than on e person that  
13 assists in the investigations. Sometimes you are doing them  
14 independently.

15 Q. Correct. But if someone says, "Lieutenant Lebrecht is  
16 doing X to Mike Morrow," back when my client was there, Mike  
17 Morrow is supposed to at that point do an independent  
18 investigation of your conduct. Isn't that the way it's  
19 supposed to work?

20 A. I think it would be whoever the chief determines it go to .  
21 It depends on what the complaint was, if there's any merit to  
22 it whatsoever, and then who she would assign it to -- he or  
23 she.

24 Q. Do you see any problem within a department of a lieutenant  
25 having a close personal friendship with the head of internal

1 affairs?

2 A. I don't see any problem with that if it's another  
3 lieutenant or above.

4 Q. Let's talk timelines. You started at the department  
5 January 2011; correct?

6 A. That's correct. January 3, 2011.

7 Q. Where had you come from?

8 A. Lincoln Police Department.

9 Q. Which part of California is that?

10 A. It's near the Sacramento area.

11 Q. You didn't like your former boss there, did you?

12 A. I had more than one former boss there.

13 Q. Brian Vizuzu?

14 A. Brian Vizuzi.

15 Q. Vizuzi.

16 A. We were friends at first. There were times that I didn't  
17 like him and then I actually came across him about a year ago  
18 and had a nice conversation with him.

19 Q. But at the time my client was working there, Brian Vizuzi  
20 was on the bowl of dicks list, wasn't he?

21 A. I saw the name Brian Vizuzi on something called "the list"  
22 on Eric LeRoy's phone. Let me clarify. I never saw it on his  
23 phone. I saw the pictures that were on his phone of the list.

24 Q. Let me put it differently. Only one person in that  
25 department would have put that man on that list; is that right?

1 A. Totally agree.

2 Q. And that would be you?

3 A. That would be Eric LeRoy.

4 Q. Eric LeRoy put your former supervisor on that list? He  
5 came up with that on his own?

6 A. I never touched his phone, sir.

7 Q. I understand that. But you came up with the idea, didn't  
8 you?

9 A. I don't believe I suggested he be added to the list, to  
10 tell you the truth. I remember telling Mr. LeRoy, Eric LeRoy,  
11 that -- he was explaining some problems he was having with  
12 Casey Boyd. You know, he felt he was being harassed, and I had  
13 disclosed some stuff with him about my former boss Brian  
14 Vizuzi, and I believe Eric LeRoy took it upon himself to put  
15 him on the list.

16 Q. Eric LeRoy would never have known the name Brian Vizuzi  
17 unless you brought it up. That's my point.

18 A. Yeah. I told him the name, yeah.

19 Q. And you started supervising my client March of 2011; is  
20 that right?

21 A. I believe that's accurate.

22 Q. During that first six to eight months, your relationship  
23 with my client, you guys got along great; right?

24 A. Yes. A really fun guy.

25 Q. You used to ride bikes with him on patrol; right?

1 A. Correct.

2 Q. Let's talk about the Occupy time period . October of 2011.

3 Now, you don't dispute that my client stood up and

4 explained during one of these briefings what the Occupy

5 movement was all about.

6 A. I don't dispute it, but I believe at my deposition I said

7 I don't recall him doing that.

8 Q. He could have done it. You just don't recall?

9 A. That's possible.

10 Q. Do you remember him talking about the moment being the top

11 1 percent taking the lion's share of the wealth created by the

12 99 percent of the American economy?

13 MS. COIT: Object to be testimony.

14 THE COURT: Sustained.

15 BY MR. JASON KAFOURY: (Continuing)

16 Q. Do you recall something along those lines?

17 A. I don't recall him standing up and saying anything, so I

18 wouldn't have any recollection of that.

19 Q. Let's talk about what you do remember during that

20 briefing. Do you remember somebody relating the Eugene Occupy

21 movement on campus to the movie District 9; right?

22 A. Oh, yes. Absolutely.

23 Q. And that's a movie involving aliens --

24 MS. COIT: Object to counsel testifying.

25 THE COURT: Overruled.

1 Q. Turn to your deposition, page 48, line 14.

2 A. Okay.

3 Q. Your voice was elevated more than it is now.

4 A. Is that the question?

5 Q. Yes. Was your -- did you state in your deposition that

6 your voice was elevated?

7 A. It says: My voice was elevated -- or was a little

8 elevated at the time. More so than it is right now. But I did

9 not yell.

10 Q. You agree my client at his deposition gave a completely

11 different version of what happened during that?

12 A. Oh, yes. I definitely agree.

13 Q. He said that you were poking him in the chest; right?

14 A. No. I believe you said that in your opening. That's

15 actually the first time I ever recall hearing that.

16 Q. That you were -- it was in the hallway. That's his memory

17 of where it happened?

18 A. Correct.

19 Q. And you were asking him why he wasn't laughing during this

20 Occupy briefing; right? Do you remember that?

21 A. I remember him saying that, correct.

22 Q. You deny that ever happened; right?

23 A. I deny there was any conversation in the hallway and any

24 conversation outside the presence of Sergeant Cameron.

25 Q. Now, during these Occupy discussions, a rape joke could

1 MR. JASON KAFOURY: I'm cross-examining.

2 THE COURT: Overruled.

3 BY MR. JASON KAFOURY: (Continuing)

4 Q. It's a movie about aliens of two societies where people

5 are living in a military controlled ghetto. Would you agree

6 with that general description?

7 A. I wouldn't say "ghetto." I mean, it was a shanty town. I

8 did see the movie before someone had made that comment.

9 Q. Comparing these people camped out on campus to a shanty

10 town was funny to you; right?

11 A. I believe in the context it was said it was funny.

12 Q. Everybody was laughing about it, in fact. Do you remember

13 that?

14 A. There were people laughing.

15 Q. But my client, you remember seeing him upset during that

16 briefing, don't you?

17 A. Oh, yes. I definitely remember seeing him upset.

18 Q. In fact, your memory is he got up and walked out on that

19 briefing; right?

20 A. Absolutely.

21 Q. You had a discussion with him afterwards; right?

22 A. Yes, I did. In an office with Sergeant Cameron.

23 Q. Do you remember raising your voice during that discussion?

24 A. No, I don't remember raising my voice. I remember he

25 raised his voice and yelled at both of us.

1 have happened; right?

2 A. I believe you did ask me about that in my deposition.

3 Q. Yeah. And you said that could have happened; right?

4 A. I believe I said: If that happened, I felt that would be

5 inappropriate. I don't remember hearing one.

6 MS. COIT: Your Honor, I'm going to object to him

7 impeaching without asking the question about what he said.

8 THE COURT: Sustained. Counsel, you're looking at

9 page 49?

10 MR. JASON KAFOURY: 49.

11 THE COURT: 11 through 16 is where the question was

12 asked, and the answer is 17 through 20.

13 THE WITNESS: I said I don't remember a rape joke.

14 BY MR. JASON KAFOURY: (Continuing)

15 Q. You don't remember a rape joke.

16 A. That's correct.

17 Q. That means it could have happened, but you don't recall;

18 correct?

19 A. That's right. I don't remember hearing any rape joke.

20 Q. You don't remember hearing someone's teenage daughter --

21 MS. COIT: Object. Asked and answered.

22 THE COURT: Overruled.

23 BY MR. JASON KAFOURY: (Continuing)

24 Q. You don't remember hearing that someone's teenage daughter

25 could go to that Occupy effort if that -- that -- sending

1 someone's teenage daughter to the Occupy effort to get them  
 2 raped, you don't remember anything like that?  
 3 A. My memory from that briefing does not have that memory in  
 4 it, but after all these court documents and hundreds and  
 5 thousands of documents, I remember seeing that somewhere.  
 6 Q. You don't dispute that my client told you that he didn't  
 7 feel comfortable discussing politics at working; right?  
 8 A. No, I don't recall that.  
 9 Q. He might have told you that. You don't remember?  
 10 A. No. I have absolutely no memory of that ever happening.  
 11 Q. Before Sergeant Cameron became my client's supervisor, you  
 12 did know that my client had worked for the democratic  
 13 presidential campaign; right?  
 14 A. I remember he showed a picture of himself and President  
 15 Obama at one point. I believe Mr. Cleavenger is dressed in a  
 16 suit.  
 17 Q. But you remember he not just showed you that photo, he  
 18 actually worked on democratic presidential campaigns. You knew  
 19 that?  
 20 A. He told me he worked with President Obama on a campaign.  
 21 No other campaign.  
 22 Q. You told Sergeant Cameron, right when he started, being my  
 23 client's supervisor, not to say anything anti-democratic  
 24 because Cleavenger might take it personal ly. Do you remember  
 25 telling him that?

1 A. Yes. That's in my deposition as well.  
 2 Q. And you recall my client getting irritated and upset when  
 3 you talked about President Obama not having a birth  
 4 certificate. Do you remember that?  
 5 A. That's part of the context of it. That's correct.  
 6 Q. Did you ever make a statement that Obama is a Muslim?  
 7 A. I don't recall saying that.  
 8 Q. Let's talk about the Taser speech my client gave back in  
 9 2008. You weren't around back then, obviously?  
 10 A. That's correct.  
 11 Q. Do you remember someone showing you news articles about my  
 12 client describing his opinion on Tasers; right?  
 13 A. I saw some article at some point. I don't remember the  
 14 time frame.  
 15 Q. It was sometime after you were hired in 2011.  
 16 A. Definitely sometime after I was hired.  
 17 Q. And from those, you thought my client was opposed to  
 18 Tasers at the department; is that right?  
 19 A. No. That's not my opinion after seeing what I saw.  
 20 Q. Okay.  
 21 A. I think there's a little more to it than that.  
 22 Q. I'd like to turn your attention to page 58 of your  
 23 deposition. Lines 18 and 19.  
 24 A. Okay.  
 25 Q. Okay.

1 A. Yep.  
 2 Q. Isn't it a fact in your deposition you said: I felt he  
 3 was opposed to the department having Tasers by what I saw at  
 4 the time.  
 5 That was your opinion; right?  
 6 A. It is what I said on that date.  
 7 Q. It was accurate, wasn't it; what you said?  
 8 A. Well, I've had more time to think about it, so I actually  
 9 think a little bit differently.  
 10 Q. Well, let me ask you: Your deposition was taken  
 11 November 12, 2014; correct? That's what the front of the  
 12 document says?  
 13 A. That's what it says; correct.  
 14 Q. Okay. At that point you had been a defendant in this  
 15 lawsuit for over a year. Isn't that accurate?  
 16 A. That's correct.  
 17 Q. You read his lawsuit?  
 18 A. Yes, I have. All the versions of them.  
 19 Q. And did you not have enough time to think about the Taser  
 20 speech to prepare for this deposition? Is that what you  
 21 testified?  
 22 A. I wouldn't have thought some Taser speech would have come  
 23 up in my deposition.  
 24 Q. Well, you knew at the time of your deposition that my  
 25 client was claiming that because of him speaking out on Tasers

1 that he was retaliated against. You understood that was part  
 2 of his claim, didn't you?  
 3 A. I don't remember that being part of the claim initially.  
 4 I was wondering what the First Amendment Freedom of Speech  
 5 claims were, to my recollection. At some point I was made  
 6 aware they were Tasers. I don't remember when it was the Taser  
 7 speech.  
 8 Q. You read the lawsuit. And the very first lawsuit, First  
 9 Amendment Free Speech claim, you read that?  
 10 A. What did it say in relation to that? Was Tasers  
 11 referenced in that? I don't really recall.  
 12 Q. The document was 60 pages of stuff; right? I mean, it was  
 13 a long document.  
 14 A. Oh, sure.  
 15 Q. And in that he described the Tasers. You read that in the  
 16 lawsuit, didn't you?  
 17 A. I would have to have my memory refreshed about what it  
 18 specifically said about Tasers.  
 19 Q. I'll move on for now to expedite things.  
 20 So back when you saw the news articles, you thought that  
 21 my client was -- his political beliefs, that he was opposed to  
 22 the department having Tasers. That's what you testified to at  
 23 your deposition?  
 24 A. That is what it says there.  
 25 Q. Now, you had worked at other departments for years where

1 you had a Taser; right?

2 A. That's correct.

3 Q. And liked having a Taser, didn't you?

4 A. I think it gives police officers another option other than

5 going straight to deadly force.

6 Q. My question was: You liked having a Taser, didn't you?

7 A. I don't know that liking or not liking a Taser is

8 relevant. I never really thought of liking a Taser or liking a

9 gun. It's just part of equipment.

10 Q. Page 58, line 256, your deposition.

11 THE COURT: Counsel, that's not impeaching. I'm not

12 going to allow that. The word "like," it's ambiguous.

13 It wasn't an appropriate question at the deposition. It

14 was too broad.

15 BY MR. JASON KAFOURY: (Continuing)

16 Q. Okay. You do remember Sergeant Cameron telling you

17 sometime in 2011 that Cleavenger should never have been hired

18 there; right? You do recall that?

19 A. I do recall that when I walked into the lobby shortly

20 after I started working, something -- he said something like

21 that. Correct.

22 Q. What did he say?

23 A. I don't remember the exact. It was almost five years ago .

24 But it was something along the lines of, "This guy shouldn't

25 have been hired."

1 Q. Because of his position on Tasers; right?

2 A. I don't remember him saying that. I remember telling him,

3 "I'm going to give him a fair shot," and I walked away. I

4 don't recall ever having any interaction with Sergeant Cameron

5 prior to that.

6 Q. Well, you would agree that when Sergeant Cameron took over

7 being my client's supervisor in 2011, within weeks he was

8 facing discipline with that letter of clarification; right?

9 A. A letter of clarification is not discipline.

10 Q. Well, we'll talk about this in a few minutes. A letter of

11 clarification is a written piece that goes into your personnel

12 file for one year; isn't that right?

13 A. I don't really know where it goes. We just turn it into

14 Deb Pack, our administrator of administrative services, and

15 they now go into a supervisor binder in the sergeant's office.

16 Q. Well, parts of what's in the letter of clarification are

17 in my client's termination file. Are you aware of that?

18 Things that were in the letter of clarification are referenced

19 in part of his termination.

20 A. I remember him presenting his letter of clarification in

21 the internal affairs file. That was used as part of the

22 termination.

23 Q. Okay. And that same -- well, a letter of clarification,

24 your general understanding, they're supposed to be purged out

25 of someone's system in a year; right?

1 A. That's correct, generally.

2 Q. Okay. And three years later that letter of clarification

3 was sent to the district attorney as part of the *Brady*

4 materials, wasn't it?

5 A. Again, he presented that in the internal affairs

6 investigation that went to the district attorney's office.

7 Q. Right. You, though, decided to include it, because you

8 were the person making that packet?

9 A. It was part of the internal affairs investigation, because

10 he had presented it. That's how I recall it. So, therefore,

11 it went to the district attorney's office with the internal

12 affairs investigation.

13 Q. Did you ever say that Rodney King had it coming?

14 A. Rodney King?

15 Q. Yeah. The African-American who was --

16 A. No. Absolutely not.

17 Q. You never said that because you knew some of the

18 California police officers involved in that beating?

19 A. I wouldn't know anyone involved in the beating. I was not

20 an officer at the time, from what I recall.

21 Q. Let's talk about the *Brady* materials while we're here.

22 A. Sure.

23 Q. The decision to send *Brady* materials to the district

24 attorney, that decision was made by Chief McDermid ; isn't that

25 right?

1 A. Correct.

2 Q. She asked you to prepare a *Brady* report regarding

3 Cleavenger; right?

4 A. Right.

5 Q. And when she told you that, you were uncomfortable being

6 asked to do that, weren't you?

7 A. Yes.

8 Q. You were uncomfortable because it had been two years since

9 any of the alleged dishonest acts had happened; right?

10 A. That's one of the aspects to it.

11 Q. You were also uncomfortable because you were a defendant

12 in this lawsuit; right?

13 A. That's another aspect, that's correct.

14 Q. Now, my client, by filing this lawsuit, you would agree,

15 put in the public record 60, 70 pages of material that were

16 quite embarrassing to the department . Do you agree with that?

17 A. I would agree with that.

18 Q. Embarrassing to the University of Oregon?

19 A. Correct.

20 Q. Embarrassing for you?

21 A. Oh, definitely.

22 Q. Embarrassing for the chief?

23 A. Correct.

24 Q. And you realized that something like this might get media

25 attention, I imagine, after it was filed, didn't you?

1 A. Well, I don't know necessarily after it had been filed,  
 2 but if somebody contacts the media, sure, that can happen.  
 3 Q. Well, he's -- he listed in his lawsuit various prominent  
 4 people that he claimed were on this bowl of dicks list. You  
 5 saw that in the lawsuit when it was filed; right?  
 6 A. Again, it was never referred to as that in my presence,  
 7 but I did see his allegations of what he said was on that list.  
 8 Q. Well, you realize, since you're the person who brought  
 9 that term to the department, that when the lawsuit was filed,  
 10 that could be publicly embarrassing for you. Right? You  
 11 realized that?  
 12 A. I don't know necessarily that because I brought a term to  
 13 the department, no. There's more to it than that.  
 14 Q. Okay. Well, you spoke to the chief and you voiced your  
 15 concerns, didn't you, about the -- about doing this *Brady*  
 16 material on my client?  
 17 A. Yes, I did.  
 18 Q. And you told her the reason you didn't want to do this  
 19 *Brady* material is because you told her it might look like  
 20 retaliation. Isn't that true?  
 21 A. That's absolutely correct.  
 22 Q. And in fact you didn't just tell the chief, you also  
 23 complained about this *Brady* assignment to Captain Deshpende,  
 24 didn't you?  
 25 A. I voiced some concern to him, correct.

1 Q. You said you didn't feel like doing this because it would  
 2 look like retaliation, didn't you?  
 3 A. Because it could look like retaliation. That's correct.  
 4 Q. Captain Deshpende agreed; right?  
 5 A. I believe he didn't want to be involved in a potential  
 6 lawsuit is what it would be.  
 7 Q. So you guys decided to wait around for a few weeks to see  
 8 if the chief changed her mind; right?  
 9 A. That's correct.  
 10 Q. But she didn't change her mind, did she?  
 11 A. No. It made its way to the district attorney's office via  
 12 me.  
 13 Q. Now, she came back and said: Draft that report, submit  
 14 it, and set up a meeting with Patty Perlow at the DA's office.  
 15 Right?  
 16 A. In a nutshell, but that wasn't the entire conversation.  
 17 Q. Well, you were -- I want to make sure we're accurate with  
 18 our timeline.  
 19 MR. JASON KAFOURY: Can you pull up Exhibit 168,  
 20 please, Mr. Hess?  
 21 THE COURT: Let's find out. Is 168 in evidence?  
 22 THE WITNESS: I do see this.  
 23 THE COURT: It's not yet, Counsel, so it won't be  
 24 pulled up.  
 25 MR. JASON KAFOURY: Okay.

1 BY MR. JASON KAFOURY: (Continuing)  
 2 Q. Is this an email chain that relates to my client's  
 3 prevailing arbitration award between you and various members of  
 4 the command staff?  
 5 A. Yeah. I don't comment on this, but my name is in the  
 6 email chain.  
 7 MR. JASON KAFOURY: I'd offer 168, Your Honor.  
 8 THE COURT: Received.  
 9 THE WITNESS: Not that I'm not commenting on that. I  
 10 wasn't involved in the contents of that email conversation.  
 11 BY MR. JASON KAFOURY: (Continuing)  
 12 Q. Right. But you were cc'd on it.  
 13 A. Correct.  
 14 Q. Let's go to page 1. Can you blow up the very bottom,  
 15 starting with -- from "Doug Park" all the way to the redacted  
 16 portion. Yes. That whole portion.  
 17 So this is the original email sent March 6, 2014. The  
 18 subject is, "Cleavenger arbitration decision." This -- who's  
 19 Doug Park?  
 20 A. He was the acting lead general counsel for University of  
 21 Oregon. He's still one of the general counsel. I don't know  
 22 his title there.  
 23 Q. He's a lawyer for the University of Oregon; correct?  
 24 A. Correct.  
 25 Q. Now, he's sending this email to Chief McDermid ; correct?

1 A. Correct.  
 2 Q. And Jamie Moffitt. Who's Jamie Moffitt?  
 3 A. The vice president of finance and administration. She  
 4 might have another title.  
 5 Q. She's one of the top officials at the University of  
 6 Oregon; correct?  
 7 A. Correct.  
 8 Q. Oversees your department?  
 9 A. Correct.  
 10 Q. Who's Randy Geller?  
 11 A. I believe at the time he was another person in general  
 12 counsel. I don't know if he's there anymore.  
 13 Q. Do you know where Randy Geller works now?  
 14 MS. COIT: Object. Relevance.  
 15 THE COURT: I don't know the relevance, Counsel.  
 16 MR. JASON KAFOURY: I'll bring it up with a different  
 17 witness.  
 18 THE COURT: We'll discuss it during lunchtime. Move  
 19 on.  
 20 BY MR. JASON KAFOURY: (Continuing)  
 21 Q. So it was this email, Doug Park, that we can't see the  
 22 contents of, because it's redacted. This is the email that was  
 23 forwarded to you on March 10, 2014; is that correct?  
 24 Blow up the next section.  
 25 A. It says March 6.

1 Q. Right. That's the original email.  
 2 A. Got it.  
 3 Q. Cleavenger arbitration decision. And then if we go to the  
 4 next email from -- yeah, upwards. From Chief McDermed.  
 5 Okay. Now, the original email was sent Thursday,  
 6 March 6th, with the decision, and you received this email --  
 7 did you receive this email on Monday March 10th at some point?  
 8 A. That's what the record shows.  
 9 Q. Do you remember reading the arbitrator's decision at this  
 10 point when you got this?  
 11 A. I read it at some point. I don't remember exactly when.  
 12 It was definitely after that email, because I believe it was  
 13 attached to it.  
 14 Q. Let's go through it. This is an email to you from the  
 15 chief. She said: Here's the opinion and award from the  
 16 arbitrator. I responded to Doug Park's email that, while I  
 17 respected his expertise, I fear the precedent that would be  
 18 set. Mr. Cleavenger committed crimes, and the arbitrator  
 19 determined a reprimand and a three-day suspension was  
 20 appropriate discipline. No police department would accept  
 21 that. I also said we would not take him back, exclamation  
 22 point. Jamie and Randy Geller have not weighed in yet.  
 23 So as of March 10, 2014, the chief was telling you and  
 24 other command staff -- Captain Deshpande, Lieutenant  
 25 Bechdolt -- she was not going to take James Cleavenger back;

1 A. It was that performance investigation that I put together.  
 2 Q. And in that performance investigation you said something  
 3 about *Brady* listing?  
 4 A. I did reference *Brady v. Maryland*. I didn't say that --  
 5 Q. Did you ever say that my client should be *Brady*-listed?  
 6 A. No. I did not make that determination.  
 7 Q. You said there's a case out there, but you didn't say,  
 8 "James Cleavenger should be *Brady*-listed"; right?  
 9 A. No, I did not. Correct.  
 10 Q. This is the first time in writing there's a connection  
 11 between my client and possible *Brady* listing; right?  
 12 A. As best as I recall.  
 13 Q. Can we go to the next email?  
 14 So about 20 minutes later Chief McDermed responds and  
 15 says: Yep. I said that -- it says "a." I'm assuming it means  
 16 "as well" -- in my response.  
 17 You got that email too?  
 18 A. Yes.  
 19 Q. So I'm assuming it was shortly after this series of emails  
 20 that you were assigned this task of putting together these  
 21 *Brady* materials.  
 22 A. I don't remember time frame, but it was definitely after  
 23 the emails.  
 24 Q. So when did you first learn about *Brady v. Maryland*?  
 25 A. Well, I've been in law enforcement since 1995, so probably

1 correct?  
 2 A. That's what it says, correct.  
 3 Q. Can we go to the next email.  
 4 Now, when you received this email with the arbitrator's  
 5 decision, March 10, 2014, this is the first you knew that  
 6 Cleavenger had won the arbitration in terms of getting  
 7 reinstated; right?  
 8 A. Somewhere around March 6th, by that email, yeah. Of  
 9 course, I did hear it via rumor.  
 10 Q. Okay. But this is the first time you get official notice  
 11 of it; right?  
 12 A. That's correct.  
 13 Q. All right. So then four minutes later, at 11:39 a.m.,  
 14 Lieutenant Bechdolt sends an email. There are also *Brady*  
 15 issues to consider.  
 16 Is this email right here the first reference to anything  
 17 about my client and *Brady* issues in writing?  
 18 A. I don't believe so.  
 19 Q. You believe there's something about my client and *Brady*  
 20 prior to March 10, 2014, in all these tens of thousands of  
 21 pages in this case?  
 22 A. I do remember putting it in a report that I had it once.  
 23 Q. A report that you had once?  
 24 A. Yes.  
 25 Q. What was the date of this report?

1 sometime around then.  
 2 Q. 20 years or so?  
 3 A. Yes, correct.  
 4 Q. So let's go back to your conversation with the chief. She  
 5 says you wait a couple weeks hoping she might change her mind,  
 6 concerned about retaliation, and she says: No. Draft it. Set  
 7 up a meeting with the DA.  
 8 You spent more than 50 hours working on this project to  
 9 put together this *Brady* submission materials; right?  
 10 A. At the deposition you were trying to get me to guess an  
 11 estimate, so it was a guess. You were giving me ranges of  
 12 hours.  
 13 Q. Okay. Are you saying it was more than 20, maybe 50?  
 14 That's what you said at the depo?  
 15 A. Yeah. I don't have any idea how long it was, but I did  
 16 say that.  
 17 Q. It took you months to put it together; right? It wasn't  
 18 turned into the DA until June?  
 19 A. I don't know how long it took me. I don't know when I was  
 20 assigned to do it.  
 21 Q. And you kept Chief McDermed up to date, kept her abreast  
 22 of what was going on through the writing of it; right?  
 23 A. Definitely.  
 24 Q. She reviewed the final letter you wrote; correct?  
 25 A. I handed it to her.

1 Q. Now let's talk about *Brady* listing. This concept you've  
 2 known for 20 years. Do you agree that to be a law enforcement  
 3 officer you need to be able to testify in court with people  
 4 you're charging with crimes?  
 5 A. Depending on your assignment.  
 6 Q. A regular?  
 7 A. For patrol, definitely, yeah.  
 8 Q. That's an essential of an officer's duty if they're out in  
 9 the field; right?  
 10 A. Correct.  
 11 Q. And being on the *Brady* list basically meant you couldn't  
 12 testify; right?  
 13 A. Well, I believe there's different layers of this thing  
 14 referred to as the *Brady* list.  
 15 Q. Right. There's automatic disqualification; right?  
 16 A. Yeah, there's three different layers.  
 17 Q. We'll let district attorney tell us the various layers.  
 18 A. All right.  
 19 Q. You knew when you were writing this document about my  
 20 client that this could be the death knell of his law  
 21 enforcement career. You knew that, didn't you?  
 22 A. I knew it was the district attorney's decision to make.  
 23 Q. You know in your experience of *Brady* listing that this  
 24 could be the death knell of his legal career. You knew that;  
 25 right?

1 A. I would say it would be difficult for law enforcement in  
 2 certain capacities. Something referred to as a *Brady* list, I  
 3 don't know that there's actually ever a list.  
 4 Q. What I'm asking you is when you wrote the document, you  
 5 knew the consequences of being put onto a *Brady* list could end  
 6 his career. You knew that, didn't you?  
 7 A. There's potential of that, but it depends on the layers;  
 8 the different levels. Excuse me.  
 9 Q. And as far as you know, University of Oregon Police  
 10 Department has never done this to anybody else; isn't that  
 11 correct?  
 12 A. I haven't been made aware of it ever happening.  
 13 Q. So let's talk about things you did as part of preparing  
 14 these materials. You went and talked to Chief Chase; right?  
 15 A. I spoke with him on the phone.  
 16 Q. And Chase didn't make any comments on that phone call  
 17 about my client's behavior; right?  
 18 A. Not that I recall.  
 19 Q. During this time period, there were a lot -- while you  
 20 were preparing this, there were negotiations back and forth  
 21 going on about my client coming back to work at the University  
 22 of Oregon; right? All of that was happening while you were  
 23 writing it?  
 24 A. I wasn't made aware of exactly what was going on. I knew  
 25 there was some negotiation at some point.

1 Q. Well, the arbitration said three days off is the  
 2 punishment. Put him back to work. Right? That's, in essence,  
 3 30 pages of what the arbitrator decided?  
 4 A. Three days off unpaid. A reprimand.  
 5 Q. Right.  
 6 A. I remember that, yeah.  
 7 Q. But put him back to work. That's what the arbitrator  
 8 held; right?  
 9 A. I believe that's a summary of it; correct.  
 10 Q. Now, after preparing all these materials, you had an  
 11 in-person meeting with the district attorney to submit these  
 12 materials, didn't you?  
 13 A. Yes, I did.  
 14 Q. Chief McDermid gave you another assignment while you were  
 15 at that meeting, didn't she?  
 16 A. She wanted me to ask the question.  
 17 Q. Right. She wanted you to ask the question would the  
 18 district attorney criminally prosecute my client for the  
 19 tape-recording, didn't she?  
 20 A. It wasn't "will they." It was asked "would they consider  
 21 that."  
 22 Q. She's the one, the chief, who not only wanted them to have  
 23 the *Brady* materials. She wanted to see if the DA would  
 24 criminally prosecute James Cleavenger. Isn't that correct?  
 25 A. She asked me to ask if they would consider prosecution

1 based on what was found in investigations.  
 2 Q. And that was for failure to advise the suspect that he was  
 3 being -- that they were being tape-recorded; right? That was  
 4 the criminal misdemeanor charge she wanted them to charge him  
 5 on?  
 6 A. It was more like 27 instances of that. Not just the two  
 7 listed. There was 27 instances of that, from what I recall,  
 8 from 2012, not just the two listed in the internal affairs  
 9 investigation.  
 10 Q. So Chief McDermid approved you giving all these materials  
 11 to the district attorney; correct?  
 12 A. Correct.  
 13 Q. And, in fact, general counsel, Doug Park, at the  
 14 University of Oregon, approved these materials being sent on  
 15 Mr. Cleavenger, didn't he?  
 16 A. Well, the chief had told me that. I never heard him say  
 17 that.  
 18 Q. Okay. Now, let's talk about the *Brady* policy. I would  
 19 like to show you Plaintiff's Exhibit 158.  
 20 Do we have a copy for the Court?  
 21 THE COURT: Thank you.  
 22 BY MR. JASON KAFOURY: (Continuing)  
 23 Q. Do you recognize this document?  
 24 A. Yes. Policy 612. *Brady* material disclosure.  
 25 Q. And what is this a policy -- who is it a policy for?

1 A. University of Oregon Police Department.  
 2 Q. Okay. And what's the date on this policy?  
 3 A. Looks like it could be 6/1/2013, but it's -- it definitely  
 4 says 2013 on the bottom.  
 5 Q. Okay. So this was -- is it your testimony that this  
 6 policy, 612, *Brady* material disclosures, Exhibit 158, was the  
 7 policy in effect while you were doing the *Brady* materials?  
 8 THE COURT: Excuse me for just a moment. I'll let  
 9 you ask the question, but where is that date on my copy?  
 10 MR. JASON KAFOURY: It is, Your Honor --  
 11 THE COURT: Counsel, why don't you take my copy. Is  
 12 it down on the first page?  
 13 MR. JASON KAFOURY: Very lower left, there on the  
 14 bottom. It's very hard to read.  
 15 THE COURT: Oh, thank you. My apologies. Reask the  
 16 question.  
 17 BY MR. JASON KAFOURY: (Continuing)  
 18 Q. Okay. Was this *Brady* material disclosure the policy of  
 19 your department a year later, 2014, while you were drafting  
 20 these materials?  
 21 A. I believe so.  
 22 Q. Okay.  
 23 MR. JASON KAFOURY: I'd offer 158, Your Honor.  
 24 THE COURT: Received.  
 25 ///

1 BY MR. JASON KAFOURY: (Continuing)  
 2 Q. Let's talk about what the policy was about *Brady*  
 3 materials. Now, for that policy to be in effect in your  
 4 department in 2013, Chief McDermid would have had to approve  
 5 that policy; right?  
 6 A. I believe she would have seen that at one point.  
 7 Q. She has final say of what the policies and procedure are?  
 8 A. The policy manuals are very large. I couldn't testify  
 9 whether she had read that policy or not.  
 10 Q. Well, let's talk about it. When you did this *Brady*  
 11 material on my client, you wanted to be fair, didn't you?  
 12 A. I put together information the best I could.  
 13 Q. You didn't answer my question. You wanted to do it in a  
 14 fair way, didn't you?  
 15 A. Yes.  
 16 Q. You wanted to be impartial, didn't you?  
 17 A. Yes.  
 18 Q. You took your job seriously when you did this, didn't you ?  
 19 A. Yes.  
 20 MR. JASON KAFOURY: I'd like to turn -- Mr. Hess, can  
 21 you -- under 612.4, can you publish -- publish this, Your  
 22 Honor?  
 23 THE COURT: That's disclosure of personal  
 24 information.  
 25 MR. JASON KAFOURY: Correct.

1 THE COURT: You may publish it.  
 2 BY MR. JASON KAFOURY: (Continuing)  
 3 Q. So this is one of the policies; right?  
 4 A. That's correct.  
 5 Q. And you were the Lieutenant Professional Standards and  
 6 Training at this time; is that correct?  
 7 A. Correct.  
 8 Q. You ran IA at this time? IA?  
 9 A. That was one of my assignments.  
 10 Q. So the obligation to provide *Brady* information is ongoing.  
 11 And if any *Brady* information is identified, the district  
 12 attorney, the Eugene city attorney -- and can you turn it to  
 13 the next page -- general counsel should be notified. The  
 14 officer will also be notified.  
 15 Now, while you were drafting these materials, I'd like you  
 16 to list every step you took to notify my client before you  
 17 turned these materials over to the district attorney that you  
 18 were *Brady* listing him.  
 19 A. I made no steps to notify your client.  
 20 Q. Can we go to policy 6.12.2? University of Oregon Police  
 21 Department will conduct fair and impartial criminal  
 22 investigations and will provide the prosecution with both  
 23 incriminating and exculpatory evidence.  
 24 What's exculpatory evidence?  
 25 A. Something that may lead to the innocence of the accused.

1 Detrimental to the plaintiff, traditionally; prosecution, I  
 2 guess.  
 3 Q. Since you did not notify my client, as was required, due  
 4 to policy, name every step you took to include exculpatory  
 5 evidence before you submitted that to the district attorney.  
 6 A. I don't see in the policy where it says the Lieutenant  
 7 Professional Standards and Training is supposed to notify  
 8 Mr. Cleavenger or whoever this *Brady* material is alleged to  
 9 have been submitted about.  
 10 Q. Okay. So on -- under Disclosure of Personal Information ,  
 11 it says: Lieutenant Professional Standards of Training should  
 12 periodically examine the personnel files, et cetera.  
 13 A. Uh-huh.  
 14 Q. And you think that it wasn't your responsibility to have  
 15 told my client?  
 16 A. He was no longer with our department, and he had a lawsuit  
 17 against me. It wouldn't feel appropriate for me to contact him  
 18 personally, no.  
 19 Q. Huh. Did -- was there --  
 20 THE COURT: Counsel, we'll strike the uh-huh or  
 21 whatever that was.  
 22 MR. JASON KAFOURY: I was just --  
 23 THE COURT: It doesn't matter. That's stricken.  
 24 BY MR. JASON KAFOURY: (Continuing)  
 25 Q. So at this time he had been reinstated -- in the spring



1 after that arbitration decision, he had been reinstated by the  
 2 department by an independent mutual arbitrator; correct?  
 3 A. The award stated reinstatement, but he never returned.  
 4 Q. Okay. But at that point, once he's reinstated, he is  
 5 technically an employee of the department at that point, isn't  
 6 he?  
 7 MS. COIT: Object. He's mischaracterizing evidence.  
 8 THE COURT: Overruled.  
 9 THE WITNESS: I personally would not consider him a  
 10 member of the department until he actually returned to work.  
 11 BY MR. JASON KAFOURY: (Continuing)  
 12 Q. Okay. So back to my other question. Name every step you  
 13 took to include exculpatory evidence in that packet of  
 14 materials before you handed it over to the district attorney.  
 15 A. I included the information I found in the IA and the other  
 16 information I put together with it, so I don't really know how  
 17 to answer that question.  
 18 Q. Okay.  
 19 A. I don't know what you're determining would be exculpatory.  
 20 Q. Well, how about contacting other members of law  
 21 enforcement that my client worked with to find out about his  
 22 truthfulness?  
 23 A. I -- I'm not aware that that's done in *Brady* procedures.  
 24 This is the first one I've ever been asked to do.  
 25 Q. Okay. Well, let's talk about new things that you put into

1 the *Brady* materials that my client never even had a chance to  
 2 respond to. Okay?  
 3 A. Okay.  
 4 Q. Let's start with Internet. You put in over 100 pages of  
 5 my client's Internet history into these *Brady* materials;  
 6 correct?  
 7 A. I believe there was more than that. I think there were  
 8 digital files that had many more pages on a disk.  
 9 Q. Well over 100, whatever it was. It was a huge stack of  
 10 paper of Internet history; right?  
 11 A. Correct.  
 12 Q. Did it ever cross your mind that it might not be fair to  
 13 put this huge stack of Internet stuff into the materials going  
 14 to the district attorney when my client never had a chance to  
 15 respond to it?  
 16 A. My understanding was that he would have a chance to  
 17 respond during part of the district attorney's review, and he  
 18 will cover that. That was my understanding.  
 19 Q. Let's go back to the policy again. 612.2. The department  
 20 is supposed to provide to the prosecution both incriminating  
 21 and exculpatory evidence; right?  
 22 That's not the DA's burden to go find the exculpatory  
 23 evidence. That's your burden within the department; isn't that  
 24 right?  
 25 A. Yeah. I still don't know what exculpatory evidence you're

1 referring to. That's what it says, though.  
 2 Q. Let's talk about some of it, shall we, while we're on that  
 3 topic.  
 4 I'd like to give you a copy of 178. The whole point of  
 5 *Brady* listing somebody is that they're dishonest; right?  
 6 That's the whole gist of materials; right?  
 7 A. In a nutshell, correct.  
 8 Q. So let's -- can we show -- I think it's already in  
 9 evidence, the *Brady* materials, 150, page 2.  
 10 THE COURT: And I'll let you call the recess. I  
 11 don't want to interrupt your flow, so I purposefully have  
 12 delayed lunch.  
 13 MR. JASON KAFOURY: Can you give me five minutes?  
 14 THE COURT: You call for the break.  
 15 MR. JASON KAFOURY: I'll call for lunch.  
 16 THE COURT: Call for a break when you're satisfied on  
 17 the plaintiff's side. I don't want to interrupt you.  
 18 BY MR. JASON KAFOURY: (Continuing)  
 19 Q. I want to show two sentences that were included in the  
 20 arbitrator's opinion there in the *Brady* materials. I believe  
 21 it's the first sentence.  
 22 A. On page 2?  
 23 Q. This is Exhibit 150.  
 24 THE COURT: 160?  
 25 MR. JASON KAFOURY: No. 150. The actual --

1 MR. HESS: First two lines?  
 2 MR. JASON KAFOURY: Yeah, first two lines.  
 3 THE COURT: Now, I'll caution the jurors that I'm  
 4 allowing in the totality of the documents concerning the  
 5 arbitrator's decision, but the arbitrator's decision does not  
 6 reflect upon your eventual decision. In other words, this is  
 7 part of the process that they went through, but ultimately  
 8 you'll decide these issues about First Amendment and whether  
 9 it's applicable or not. Okay? But I want you to have as much  
 10 evidence as possible.  
 11 So, Counsel, these are the first two sentences from the  
 12 arbitrator's award.  
 13 MR. JASON KAFOURY: Correct. This is from the actual  
 14 *Brady* materials. I jumped over for one minute.  
 15 BY MR. JASON KAFOURY: (Continuing)  
 16 Q. This is page 2 of the document you produced; correct? The  
 17 *Brady* submission?  
 18 A. It appears to be correct.  
 19 Q. Okay. And what you stated was the arbitrator upheld  
 20 aspects of the written reprimand and findings from the internal  
 21 affairs investigation, but felt the punishment was too severe.  
 22 That sentence is the only conclusion about anything in  
 23 this 30-page document, isn't it?  
 24 A. I believe so.  
 25 Q. Okay. Well, let's take a look at this document.

1 A. Other than that very next line that says --  
 2 THE COURT: Move that microphone close. You've got a  
 3 voice now.  
 4 THE WITNESS: Other than the next line where it says:  
 5 Cleavenger was awarded reinstatement rights with backpay per  
 6 the arbitrator's decision.  
 7 BY MR. JASON KAFOURY: (Continuing)  
 8 Q. You were here during opening statement; correct?  
 9 A. Correct.  
 10 Q. Okay. And in her opening statement she said that there  
 11 was actually a first draft of the *Brady* materials which include  
 12 the arbitrator's decision. Do you remember that?  
 13 A. Yes.  
 14 Q. Now, you were deposed for 250 pages; correct?  
 15 A. I believe about eight hours or so.  
 16 Q. Okay. And in those 250 pages I asked you questions, a  
 17 first draft, which included the arbitrator's decision, was  
 18 never mentioned, was it?  
 19 A. I recall saying I had -- I was trying to figure out why it  
 20 wasn't included. I don't remember the exact phrase I used.  
 21 Q. You didn't have any explanation as to why the arbitrator's  
 22 decision wasn't part of this material at your deposition; is  
 23 that accurate?  
 24 A. That is accurate.  
 25 Q. Now, defense counsel also said the reason the arbitrator's

1 decision was not in this material given to the DA was that  
 2 there was too many pages and the chief wanted you to eliminate  
 3 some of the pages. Do you remember that? Do you remember  
 4 hearing that?  
 5 A. Yeah. I also remember what I had said in a nutshell when  
 6 you summarized what the chief had said to me. That actually  
 7 was discussed as part of our discussion, once I had material,  
 8 that there was too many things.  
 9 Q. Okay. So let me ask you: If you had taken 30 pages less  
 10 of his Internet search history and included the independent  
 11 neutral arbitrator's decision, would you have had the same  
 12 number of pages, wouldn't you, in the document to give the DA?  
 13 A. Yeah. I believe that it was to the effect of we weren't  
 14 aware that we were allowed to release that at the time. That's  
 15 why there was a line that they could contact me with any other  
 16 questions.  
 17 Q. Okay. You didn't make any comment about the arbitrator's  
 18 decision on my client's honesty in your hundreds of pages of  
 19 *Brady* materials, did you?  
 20 A. About his honesty in the arbitrator decision, no.  
 21 Q. Let's see what the DA would have had. Go to page 20 of  
 22 this document.  
 23 MR. JASON KAFOURY: Mr. Hess, can you --  
 24 MR. HESS: Page 120. I don't think -- it's 170?  
 25 MR. JASON KAFOURY: This is Exhibit 178. I'd offer

1 the arbitrator's decision if it's not officially --  
 2 THE COURT: Received.  
 3 MR. JASON KAFOURY: May we publish, Your Honor?  
 4 THE COURT: You may.  
 5 BY MR. JASON KAFOURY: (Continuing)  
 6 Q. Can you blow up the first sentence? The last paragraph  
 7 there. In the first actual sentence, all the way down, three  
 8 lines. Okay. Arbitrator said: On the other hand, I find  
 9 insufficient evidence to support the employer's argument that  
 10 grievant was dishonest when during the April 7th interview he  
 11 claimed Hermens's car was visible from the apartments. In this  
 12 regard -- that was his conclusion; right?  
 13 A. I think that was part of what he said, but I thought there  
 14 was more to the effect of, "I don't think that he would lie  
 15 knowing it's on video," or something like that.  
 16 Q. Okay. Let's go to the next page, 21. First paragraph.  
 17 Last sentence. Starting with "accordingly." So the next  
 18 portion that the DA would have had: Accordingly, even though  
 19 grievant had a arguable motive to defect blame on others,  
 20 there's simply insufficient evidence to support the  
 21 employer's --  
 22 THE COURT REPORTER: I'm sorry. Slow down, please.  
 23 THE COURT: Strike the entire reading. Start over.  
 24 BY MR. JASON KAFOURY: (Continuing)  
 25 Q. Accordingly, even though grievant had an arguable motive

1 to defect blame on others, there's simply insufficient evidence  
 2 to support the employer's burden of establishing a finding of a  
 3 purposeful intention to mislead.  
 4 A. It says that, correct.  
 5 Q. That's what it says. Let's go to page 23.  
 6 Last paragraph. On the other hand, nothing on the record  
 7 suggests anything other than inadvertence by grievant. Meaning  
 8 my client. That conclusion is supported by the evidence that  
 9 grievant did in fact record on numerous other similar  
 10 occasions. Under these circumstances, the record, in its  
 11 entirety, leads me to conclude that on April 1st and 2nd  
 12 grievant unintentionally violated ORS 165.40 and the employer's  
 13 policy on notification to the parties, and a conversation --  
 14 that -- to the -- to the parties that a conversation was being  
 15 recorded.  
 16 Next page. 24. First sentence.  
 17 These are in regard to the problematic callouts he's  
 18 alleged to have done.  
 19 There are no critical credibility issues regarding what  
 20 grievant expressed to dispatch during --  
 21 THE COURT: Hold on. Counsel, slow down. Start  
 22 again. Slower.  
 23 BY MR. JASON KAFOURY: (Continuing)  
 24 Q. There are no credibility issues regarding what grievant  
 25 expressed to dispatch during the three callouts; correct?

1 A. That's what it says.  
 2 Q. Now, you put in allegations of my client's dishonesty  
 3 about that April 1st, April 2nd stop, and about the recording  
 4 violations in all of your materials; right?  
 5 A. He was dishonest.  
 6 Q. You put it in there and you didn't include this document  
 7 right here to the district attorney which would have been  
 8 exculpatory evidence; isn't that right?  
 9 A. That was not included in the final draft that was sent to  
 10 the DA's office. That's correct.  
 11 Q. Would you agree that this document right here, an  
 12 independent neutral arbitrator who's making findings of no  
 13 dishonesty, that would be exculpatory evidence. Don't you  
 14 agree with me?  
 15 A. I remember there's other things in there, as well, you  
 16 didn't point to that talked about his story changing numerous  
 17 times and he confused the arbitrator, so I didn't feel that  
 18 overall it would be exculpatory.  
 19 Q. You didn't think this document was exculpatory at all. Is  
 20 that your testimony?  
 21 A. I think there may be things in there that are or aren't.  
 22 It's kind of neutral.  
 23 Q. It wasn't enough pages to include -- or too many pages.  
 24 30 pages was too much to include for the DA; is that right?  
 25 A. It's not my final decision what exactly went to the DA's

1 office. Like I said, there was a discussion.  
 2 Q. You drafted the document?  
 3 A. Oh, yes.  
 4 Q. You selected what went into the initial draft?  
 5 A. Yes, I did.  
 6 MR. JASON KAFOURY: That's all I have for the moment.  
 7 We'll take a lunch break.  
 8 THE COURT: You're coming back for more questions  
 9 after the lunch break?  
 10 MR. JASON KAFOURY: Correct.  
 11 THE COURT: Ladies and gentlemen, take an hour today.  
 12 See you about 1:30. If it's 1:35 or 1:40, that's fine. Don't  
 13 discuss this matter or express any opinions concerning this  
 14 matter.  
 15 (Jury not present.)  
 16 THE COURT: Counsel, we'll see you at 1:30.  
 17 (Lunch recess taken.)  
 18 (Jury present.)  
 19 THE COURT: Jury is present, all counsel are present,  
 20 and the parties are present. Thank you for your courtesy.  
 21 The witness is back on the stand. Lieutenant Lebrecht.  
 22 Counsel, continue your examination, please.  
 23 MR. JASON KAFOURY: Thank you, Your Honor.  
 24 BY MR. JASON KAFOURY: (Continuing)  
 25 Q. Lieutenant Lebrecht, we left off talking about *Brady* list

1 materials you submitted about my client. Do you remember?  
 2 A. Yes.  
 3 Q. I asked why you did not notify my client about these *Brady*  
 4 materials, and you said because there was a lawsuit pending, or  
 5 something along those lines. Do you recall that?  
 6 A. Yes. Along those lines.  
 7 Q. Okay. Since you were a defendant in the lawsuit, did you  
 8 ever go to the chief and say, "Maybe I'm not the best person to  
 9 be preparing all these materials. Maybe we should have someone  
 10 not involved with this litigation do this"?  
 11 A. I didn't think about it at the time.  
 12 Q. Well, you could have brought in an outside entity to do  
 13 the *Brady* investigation, couldn't you?  
 14 A. That probably would have been an option.  
 15 Q. Law enforcement does that all the time when there's a  
 16 conflict within the department; they bring in outside entities  
 17 to review things?  
 18 A. I haven't experienced anything like that.  
 19 Q. For example, the Eugene Police Department could have taken  
 20 all the materials, come with their own independent decision,  
 21 done an investigation, and then decided why there was merit to  
 22 turn that over to the district attorney. That's an option that  
 23 was before the department, wasn't it?  
 24 A. It was an option, but it wouldn't be my option. It  
 25 wouldn't be my call to make.

1 Q. I understood that. But all I was asking is you never  
 2 brought that up to the chief and said, "Hey, maybe we should  
 3 have somebody else deal with this." That never happened;  
 4 right?  
 5 A. That's correct. I don't believe that happened.  
 6 Q. Now, I want to go back to this Internet surfing. Do you  
 7 agree that you occasionally surfed the Internet for your own  
 8 personal use at times at work; right?  
 9 A. I did testify in a deposition that I occasionally got  
 10 distracted and clicked on other articles. That's correct.  
 11 Q. And what is the specific policy that my client was  
 12 dishonest about in relation to his Internet searching?  
 13 A. In relation to the Internet searching had to do with a  
 14 statement he had made in the internal affairs investigation  
 15 that he never intentionally violated any policy. There was no  
 16 maliciousness to his activities.  
 17 Q. And what's the Internet policy? What was it at the time?  
 18 A. You want to bring it to me so I can read it to you, or --  
 19 Q. Do you know off the top of your head what the Internet  
 20 policy was in terms of employees being allowed to surf the  
 21 Internet at work?  
 22 A. I'm sure there's probably a -- an exception if a  
 23 supervisor allows them to. There's -- I don't remember the  
 24 exact policy. I would have to see it.  
 25 Q. Well, let's talk about it for a moment. On the scale of

1 dishonesty, how would you compare surfing the Internet to  
 2 theft, for example?  
 3 THE COURT: To what? To sex? Sex or theft? I  
 4 couldn't --  
 5 MR. JASON KAFOURY: I realize it's Friday afternoon,  
 6 but "theft." Theft.  
 7 THE COURT: Theft, T-H-E-F-T?  
 8 MR. JASON KAFOURY: Correct.  
 9 THE COURT: Okay. Pardon me.  
 10 THE WITNESS: Yeah, I don't feel a breach in the  
 11 Internet policy by itself is that serious in nature.  
 12 BY MR. JASON KAFOURY: (Continuing)  
 13 Q. Okay. Because you did it too?  
 14 A. Absolutely.  
 15 Q. In fact, you ordered people's Internet history to be  
 16 pulled, didn't you?  
 17 A. I think you're referring to when Casey Boyd directed me to  
 18 order Andy Bechdolt's Internet history shortly after I began  
 19 working there.  
 20 Q. Right. We saw the email. Judge has seen the email. You  
 21 ordered the Internet history of Lieutenant Bechdolt to be  
 22 pulled; right?  
 23 A. That's correct.  
 24 Q. But no other officer's Internet search history has ever  
 25 become part of *any Brady* submission; right?

1 A. No. My reasoning for that is because he did say in the  
 2 statement he had never intentionally violated any policy.  
 3 That's the reason that's attached.  
 4 Q. So you thought the DA and every criminal defense attorney  
 5 should be given 150 pages of my client's Internet search  
 6 history because at one point he said he never violated any  
 7 policies. That's why you included it; right?  
 8 A. That's not true. I don't know what they provide d people.  
 9 I'm not familiar with the actual *Brady* process, as far as what  
 10 they disclose, what they give people. I don't know if it's  
 11 verbal.  
 12 Q. You said Casey Boyd ordered you to do that. You were both  
 13 lieutenants; correct?  
 14 A. I don't know if "ordering" would be the correct term. It  
 15 was advised me to do it.  
 16 Q. But you thought it was important for the district attorney  
 17 to get 150 pages of my client's Internet search history? You  
 18 thought that was important to include in the *Brady* material; is  
 19 that right?  
 20 A. Like I said before, there's digital files that contain  
 21 many more pages, and that was merely included because of the  
 22 statement he had made in the internal affairs investigation.  
 23 If he had never made that statement, I wouldn't have included  
 24 it.  
 25 Q. Isn't the true, Lieutenant Lebrecht, that everybody

1 violates that policy at the workplace; everybody surfs the  
 2 Internet?  
 3 A. I couldn't speak for everybody.  
 4 Q. Most people surf the Internet, at least some; right?  
 5 A. I'm sure it happens often, but I don't know if everybody  
 6 does that.  
 7 Q. Grooming. The grooming standards. That was in a letter  
 8 of clarification that is now with the *Brady* materials, isn't  
 9 it?  
 10 A. Yes. That is one of the items in that clarification.  
 11 Q. You have never written up anybody in your time at the  
 12 University of Oregon related to grooming, have you?  
 13 A. I haven't written up anyone other than Mr. Cleavenger for  
 14 that in the 20 years.  
 15 Q. Correct. And you don't ever remember confronting anybody  
 16 else about their grooming standards during your entire time  
 17 there; right?  
 18 A. I don't remember seeing anyone else ungroomed. And it  
 19 wasn't brought to my attention like it was for Mr. Cleavenger.  
 20 Q. And in the letter of clarification the grooming he's  
 21 written up for is on two occasions of one to two days that he  
 22 didn't shave. That's what he was written up?  
 23 A. I can't remember if it was two or three, but it was  
 24 somewhere around there.  
 25 Q. Let's talk about supervisory notes that you took. You

1 generally -- you testified in your deposition that you took  
 2 supervisory notes within a couple of days of when things  
 3 happened; right?  
 4 A. A couple of days. Sometimes it could be a week or more.  
 5 I believe that's what I said.  
 6 Q. And you used these supervisory notes to document things  
 7 you then put in people's annual evaluations; is that correct?  
 8 A. That may or may not go as to basically capture patterns or  
 9 potential patterns.  
 10 Q. You try to be as accurate as possible in your notes;  
 11 right?  
 12 A. That's the intention.  
 13 Q. Now let's talk about what you did with your supervisory  
 14 notes in 2012 with relation to Mr. Cleavenger. 2011 and 2012.  
 15 Some of them were handwritten; right?  
 16 A. There were some, yes.  
 17 Q. Some were on computer?  
 18 A. Yes.  
 19 Q. And in July of 2012, you decided to compile all of them  
 20 into one document, didn't you?  
 21 A. I don't know month, but eventually I did compile them all  
 22 into one document.  
 23 Q. And then you took all the original handwritten and  
 24 computer files, and what did you do with them?  
 25 A. I probably tore them up and threw them in the garbage.

1 Q. So when you did this and destroyed this -- these  
 2 supervisory original notes, you knew that my client was in the  
 3 grievance process over his letter of reprimand; correct?  
 4 A. Possible.  
 5 Q. You knew that you had just given him a very negative  
 6 annual evaluation. May 31st.  
 7 A. I didn't -- well, I handed it to him.  
 8 Q. You handed it to him?  
 9 A. Yes.  
 10 Q. But you knew it was a negative annual evaluation?  
 11 A. Oh, sure. Yes.  
 12 Q. And as a law enforcement officer, you deal with evidence  
 13 all the time, don't you?  
 14 A. Not necessarily in my current position, but I have.  
 15 Q. So -- and you admit that in these supervisory notes you  
 16 got dates wrong that you allege things happened, didn't you?  
 17 A. I know there was at least one date wrong, yeah.  
 18 Q. After you compiled all these supervisory notes, you put  
 19 them in my client's file; right? You gave it to Deb Pack to  
 20 put in his file?  
 21 A. My notes were requested, from what I recall, so they  
 22 eventually went to Deb Pack.  
 23 Q. When did you realize that you had a date wrong, at least  
 24 one, in that compilation you put together?  
 25 A. I think Mr. Cleavenger brought it to my attention or him

1 to HR to me. It was one or the other.  
 2 Q. That was because in your supervisory notes you alleged my  
 3 client attended certain meetings where the audio recordings  
 4 were discussed; isn't that right?  
 5 A. Oh, yeah, he did attend certain meetings where they were  
 6 discussed.  
 7 Q. And he's denied that. He's denied that to this day. You  
 8 know that; right?  
 9 A. And I say that he was there, so I guess we're at odds with  
 10 that.  
 11 Q. Understood. But the specific dates that are wrong, that  
 12 you allege he attended, in this document, you now admit some of  
 13 those dates, at least one, are wrong; right?  
 14 A. I'd say the one that's listed in as 5/14/12 is wrong.  
 15 Q. Okay. And these were notes that you took close in time ?  
 16 A. That's what my recollection was, yeah.  
 17 Q. In fact, at the step two hearing, didn't my client provide  
 18 evidence that all three of those dates not the people that you  
 19 said were there were there at the same time?  
 20 A. I don't know what evidence you're saying he provide d, but  
 21 he probably didn't provide the evidence that I actually was  
 22 there.  
 23 Q. Well, let's talk about -- my client's six-month  
 24 evaluation. You scored him competent at the time on every  
 25 single category, didn't you?

1 A. Yeah. I thought he was doing a really good job.  
 2 Q. In fact, after he was put on this week-to-week  
 3 supervision, you stopped that; right?  
 4 A. I thought he was doing a good job then, as well.  
 5 Q. Showing you Plaintiff's Exhibit 31, is this a copy of  
 6 your -- of the weekly evaluations done on my client after the  
 7 letter of clarification in the end of 2011?  
 8 A. Yes.  
 9 MR. JASON KAFOURY: Okay. I'd offer 31.  
 10 THE COURT: Any objection, Counsel?  
 11 MS. COIT: No objection.  
 12 THE COURT: Received.  
 13 BY MR. JASON KAFOURY: (Continuing)  
 14 Q. This is a document that you, the chief, Officer  
 15 Cleavenger, and Lieutenant Morrow all signed?  
 16 A. Looks like all the signatures are on there.  
 17 Q. At this point, December of 2011 --  
 18 MR. JASON KAFOURY: Mr. Hess, can you blow up the  
 19 past on Exhibit 31? May we publish it to the jury, Your Honor?  
 20 THE COURT: You may.  
 21 MR. JASON KAFOURY: Last page. Last paragraph,  
 22 Exhibit 31.  
 23 BY MR. JASON KAFOURY: (Continuing)  
 24 Q. So, by this point, Cleavenger's overall performance  
 25 continues to improve in all areas. I don't see it as necessary

1 to continue weekly evaluations at this point, as  
 2 Officer Cleavenger immediately took it upon himself to quickly  
 3 correct the points that were to be addressed. He's working at  
 4 a level that is equal to that of his peers; right?  
 5 A. I totally agree with that.  
 6 Q. Okay. Now, as part of this litigation, we asked for your  
 7 Internet search history, didn't we?  
 8 A. Yes.  
 9 Q. I'd like to show you Plaintiff's Exhibit 175. Is that an  
 10 email in relation to our request to get your Internet search  
 11 history?  
 12 A. Yes, it is.  
 13 MR. JASON KAFOURY: Offer 175.  
 14 MS. COIT: No objection.  
 15 THE COURT: Any objection?  
 16 MS. COIT: No objection.  
 17 THE COURT: Received.  
 18 MR. JASON KAFOURY: Can we publish 175, the response ?  
 19 Exhibit 175. The top. Just the top email there.  
 20 BY MR. JASON KAFOURY: (Continuing)  
 21 Q. So this was the response from IT to that request to get  
 22 your Internet search history; right?  
 23 A. That's correct.  
 24 Q. That all officers' computers were replaced in September  
 25 2013 and mobile data terminals were wiped as part of our domain

1 upgrade in November of 2014. Your personnel work station was  
 2 replaced in September 2014. The old computer doesn't have any  
 3 browsing history prior to September 2014. Right?  
 4 A. Yes.  
 5 Q. So sometime in April or May 2014 you get all of my  
 6 client's Internet search history from 2011 and 2012; right?  
 7 A. I believe that was requested back in 2011, 2012.  
 8 Q. You believe that that was requested back in -- have you  
 9 ever seen any documents?  
 10 A. His Internet search history, is that what you're referring  
 11 to?  
 12 Q. Yeah.  
 13 A. I requested that.  
 14 Q. Have you ever seen this piece of paper with his Internet  
 15 search history request?  
 16 A. I don't know if it was produced or not.  
 17 Q. Okay.  
 18 A. I don't know if --  
 19 Q. Have you ever seen it as part of this litigation?  
 20 A. I haven't looked at all the documents associated with this  
 21 litigation.  
 22 Q. But --  
 23 A. Actually, I did provide an email regarding that to the  
 24 attorneys.  
 25 Q. Okay. Well, as of September 2014, all the computers were

1 wiped, and so there was no ability to get your Internet search  
 2 history; right?  
 3 A. That's what it says.  
 4 Q. Let's talk about my client's annual evaluation. You  
 5 received that email from Sergeant Cameron on April 1st. Have  
 6 you reviewed that annual evaluation?  
 7 A. Not recently.  
 8 Q. Well, you would agree that between April 1st and the  
 9 document my client was handed on May 31, my client's scores go  
 10 down in seven of 11 of those categories. Do you agree with  
 11 that?  
 12 A. I think you established that earlier, or Mr. McDougal did.  
 13 Q. Now, let's talk about your role in that annual evaluation.  
 14 Sergeant Cameron sent you a draft of it; correct?  
 15 A. He sent a draft.  
 16 Q. You and he had some back and forth editing on it; right?  
 17 A. I don't know if I ever actually edited anything. We did  
 18 sit at my desk once when he was typing stuff. At least I  
 19 remember one time.  
 20 Q. After that you sent it up the chain of command; right?  
 21 A. It was sent up the chain of command at one point.  
 22 Q. And then HR became involved with the writing of the annual  
 23 evaluation? Randy Wardlow got involved?  
 24 A. It got sent to him as well.  
 25 Q. When my client was actually given the document, you told

1 him there would be no discussion about it; that he just had to  
 2 sign it. Right? That happened at that meeting?  
 3 A. That's what the chief told me to do. That's correct.  
 4 Q. Normally, annual evaluations don't go through HR, do they?  
 5 A. No, not normally. I wouldn't believe so.  
 6 Q. And you waited, you testified at your deposition, until  
 7 May 31st, because you didn't want it to look like retaliation  
 8 after he was demoted in mid-May; right?  
 9 A. I don't know that he was demoted. He was reassigned.  
 10 Q. Okay.  
 11 A. If you involve HR when there's a lot of stuff going on,  
 12 they would review it, and then -- really, they would give us  
 13 input on what can and can't go in there based on if someone had  
 14 filed a grievance or said they were going to do an appeal or  
 15 something like that.  
 16 Q. The delay in giving him his annual evaluation, you  
 17 testified in your deposition it was because you didn't want it  
 18 to look like retaliation that you were giving him this negative  
 19 evaluation at the same time that he was being demoted and given  
 20 a letter of reprimand. Right? That's why there was a delay?  
 21 A. A delay because -- well, I remember saying I didn't want  
 22 it to look like retaliation. I think that's why I said HR was  
 23 involved.  
 24 Q. Mike Morrow, IA, was also involved in my client's  
 25 evaluation, wasn't he?

1 A. It got sent to him, from what I remember. I don't know  
 2 that he ever provided any input.  
 3 Q. Let's talk about the Spencer View incident.  
 4 Sergeant Cameron began drafting a letter of reprimand for my  
 5 client, involving Spencer View, within days of that incident.  
 6 4/1, didn't he?  
 7 A. I believe he did.  
 8 Q. Okay. Randy Wardlow, HR, got involved with that process  
 9 of drafting that letter of reprimand that same first week,  
 10 didn't he?  
 11 A. I know he was involved. He got it sent to him. I don't  
 12 know if he was involved in drafting it or not. I don't  
 13 remember.  
 14 Q. At your deposition you testified you had a meeting with  
 15 Wardlow and Cameron to discuss the letter of reprimand. Do you  
 16 remember that?  
 17 A. There was definitely a meeting. It's been a long time.  
 18 It's hard for me to remember what was discussed.  
 19 Q. That meeting happened before you ever met with my client a  
 20 week later to go over that, didn't it?  
 21 A. It's possible. I don't remember.  
 22 Q. Will you look at page 138 of your deposition?  
 23 A. Okay.  
 24 Q. Does this refresh your memory about the fact that you,  
 25 Cameron, and HR, were all working on this letter of reprimand

1 before you met with my client a week later?  
 2 A. Does it say the date here somewhere?  
 3 Q. Well, I'm happy to read it to you.  
 4 A. Do you want to read it to me or read it myself.  
 5 Q. Go ahead and read it yourself, and let me know if it  
 6 clarifies the fact you, HR, and Cameron were all working on a  
 7 letter of reprimand before you ever met with my client.  
 8 A. I know that Cameron had drafted one before. I remember  
 9 that for sure.  
 10 MR. JASON KAFOURY: Your Honor, I would like to play  
 11 page 137, line 24, through 138, line 21.  
 12 THE COURT: You may do so.  
 13 MR. HESS: 138, line 24 through --  
 14 MR. JASON KAFOURY: 137, line 24, through 138, line  
 15 21. 137, line 24, through 138, line 21. Lieutenant Lebrecht's  
 16 deposition.  
 17 BY MR. JASON KAFOURY: (Continuing)  
 18 Q. I'll read it, just so we're clear. Page 137, line 24.  
 19 Okay. So before you had the meeting with Mr. Cleavenger to  
 20 talk about the incident, Cameron had already drafted a letter  
 21 of reprimand.  
 22 Answer: He drafted a letter of reprimand?  
 23 Yes.  
 24 Okay. Did you ask him to do that?  
 25 Answer: I might have. I don't remember.

1 Okay. Well, you got in -- just timeline, I want to  
 2 understand. There's the incident that happened at Spencer  
 3 View. Cameron sends you an email saying he talked to  
 4 Cleavenger, and Cleavenger doesn't get it. Then all within  
 5 these few days Cameron is drafting a letter of reprimand and  
 6 you're communicating with HR.  
 7 Yes.  
 8 All that happened?  
 9 That's correct.  
 10 Okay. All right. So -- and then after all that's  
 11 happened is when you actually have your first meeting with  
 12 Mr. Cleavenger to discuss this incident; right?  
 13 Answer: That's correct.  
 14 Now, at that meeting to discuss Spencer View --  
 15 A. Okay. You keep saying "meeting," but I just remember --  
 16 it's saying here "communicating" with HR.  
 17 Q. I'm talking about the meeting with Mr. Cleavenger.  
 18 A. Well, that's what was throwing me off, because I thought  
 19 you were saying there was a meeting with human resources before  
 20 we met with Mr. Cleavenger.  
 21 Q. My point is you, Cameron, HR are drafting a letter of  
 22 discipline for my client before you ever met with him?  
 23 A. I do remember Cameron drafted a draft.  
 24 Q. Right. And HR --  
 25 A. So potential discipline.

1 Q. And HR was involved already?  
 2 A. Yes, they were.  
 3 Q. That was the first time that HR was involved with my  
 4 client, wasn't it?  
 5 A. Give me a moment to think about the timeline here. I  
 6 don't recall if they were involved in an eval before that or  
 7 not. So it was somewhere within that time frame. Sure.  
 8 Q. Okay. So when you have this meeting with my client where  
 9 you allege he made untruthful statements about where Hermens's  
 10 car was, distance to the apartment, all these things, you had  
 11 the ability at that initial meeting to review my client's dash  
 12 cam video and take a look at the incident right then and there,  
 13 didn't you?  
 14 A. I would believe that, if we knew there was any at that  
 15 time. And he didn't tell us there was.  
 16 Q. Okay. You had had the technology for months in officers'  
 17 cars, hadn't you?  
 18 A. Probably months.  
 19 Q. You had HR. You're already writing him a letter of  
 20 reprimand in that. If you wanted him to have a fair meeting  
 21 with someone a week later and ask him questions about what  
 22 happened, wouldn't the fair way of doing it be to say, "Hey,  
 23 let's review the dash cam video and talk about the officer's  
 24 safety concerns we have when he's driving by."  
 25 THE COURT: Excuse me. Did you get that flying

1 question? Counsel, let's ask that question a little bit more  
 2 slowly.  
 3 BY MR. JASON KAFOURY: (Continuing)  
 4 Q. Okay. My client, when he goes to meet with you, doesn't  
 5 know you've already drafted -- you're in the process of  
 6 drafting his letter of reprimand for this incident; correct?  
 7 A. I don't believe he knew that, no.  
 8 Q. Okay. And at this meeting you asked him questions about  
 9 positions of cars and where people were a week later; correct?  
 10 That's all correct?  
 11 A. Well, that's kind of correct. Sergeant Cameron did send  
 12 me an email the night of the incident, saying he counseled him  
 13 on it that night.  
 14 Q. Yes. That's -- where is that email?  
 15 A. That was -- it was produced.  
 16 Q. Okay. Well, we'll go through it throughout this case.  
 17 Here is my question for you: You're preparing discipline on  
 18 someone and you allege that untruthful statements my client  
 19 made in that meeting are worthy of being on the *Brady* list, and  
 20 that's stuff you submitted to the district attorney. Isn't  
 21 that all accurate?  
 22 A. We didn't know he was going to make any untruthful  
 23 statements. He was being talked to about a potential officer  
 24 safety issue. We had no idea there was even videos, and we  
 25 wouldn't expect there to be for officers to leave their

1 vehicles and walk to apartments.  
 2 Q. Lieutenant Lebrecht, a letter of reprimand, you knew at  
 3 that time, would go into his personnel file for three years;  
 4 right?  
 5 A. I knew there was potential for a letter of reprimand. It  
 6 was a draft, as I said.  
 7 Q. Okay. But you are already working with HR. You've got a  
 8 letter. You're now meeting with him to talk about it a week  
 9 later, and at that meeting you never offered, right then and  
 10 there, to take a look at the videos. Isn't that all accurate?  
 11 A. That's accurate, because I didn't know they existed, like  
 12 I said before. Had I known they existed, he likely would have  
 13 been shown them right then.  
 14 Q. Well, you knew this was a meeting to discuss discipline,  
 15 because you had him sign a *Garrity* notice waiving his right to  
 16 have union counsel at this meeting; right?  
 17 A. He signed that, yeah.  
 18 Q. So now you've seen the video?  
 19 A. Correct.  
 20 Q. Zach Hermens and Chris Phillips pulled right up to the  
 21 exact same apartment, same noise complaint, five weeks earlier.  
 22 Have you seen that video?  
 23 A. Chris Phillips pulled his car up to the front?  
 24 Q. Zach Hermens, and I believe he was with Phillips.  
 25 A. I remember seeing Phillips walk up in the video. I don't

1 remember where he parked or if it even showed that.  
 2 Q. But you've seen that video?  
 3 A. Yes.  
 4 Q. Five weeks earlier. Same apartment. And you would agree  
 5 with me that pulling right up to the front door is more of an  
 6 officer safety issue than driving past the apartment and  
 7 parking out of the -- out of view. You would agree with that?  
 8 A. Absolutely.  
 9 Q. Yet, Hermens never had a letter of reprimand drafted about  
 10 it, did he?  
 11 A. No. Your client is actually the one that brought that  
 12 video to my attention, and Officer Hermens was counseled,  
 13 accepted that he made a mistake, and we never saw him to have  
 14 done that again.  
 15 Q. Now, let's talk about this investigation you launched into  
 16 my client's video, surveillance video.  
 17 You found out a week or so after this voicemail was left  
 18 by this student about this interaction my client had with  
 19 someone. Do you recall this?  
 20 A. It might have been around April 12th or something. I  
 21 don't remember exact date.  
 22 Q. About 10 days later you get an email from  
 23 Lieutenant Morrow; right?  
 24 A. I don't know if it was an email or if it was a voicemail  
 25 from Matt Fischer, who was a professional standards

1 administrator, but it was kind of like Mike Morrow's assistant.  
 2 Q. That's when you went and reviewed my client's video from  
 3 that incident; right?  
 4 A. That's where I located it, based on the information that  
 5 was given to me. That's correct.  
 6 Q. And that's when you started looking at all the other  
 7 videos that my client had done in 2012; right?  
 8 A. After I saw certain behavior on that video that I  
 9 determined I felt was troubling, I brought it forward, and I  
 10 did start to look at other videos for similar behaviors,  
 11 correct.  
 12 Q. Huh. But you never looked at anybody else's videos. You  
 13 never went through any other officer and look through dozens of  
 14 their video, did you?  
 15 A. I definitely say I didn't look at it as much as I did for  
 16 Mr. Cleavenger.  
 17 Q. Up to that point, you had never done that for any officer;  
 18 isn't that right?  
 19 A. The Watch Guard system was new, and that is the first time  
 20 I used the videos to review things for performance  
 21 investigation purposes.  
 22 Q. Huh. Well, you didn't just look at some of my client's  
 23 videos. You actually looked at every single video he had from  
 24 2012, didn't you?  
 25 A. From what I recollect, I believe I did.

1 Q. And as part of that investigation into all of his videos,  
 2 that is how you found the video about the assistant law dean  
 3 from admission; right?  
 4 A. Yeah. I had no idea who she was.  
 5 Q. But that video with the law school dean, she never  
 6 complained to anybody at the department about that stop?  
 7 A. Not that I'm aware of.  
 8 Q. So if you hadn't have started this surfing through all my  
 9 client's videos, that incident never would have come to light?  
 10 A. I don't know that that is the case.  
 11 Q. Well, you have no evidence that it would have; right?  
 12 A. I don't have any that it wouldn't either.  
 13 Q. Well, she hadn't complained, and it had been weeks since  
 14 the incident; isn't that accurate?  
 15 A. I don't know when she was contacted.  
 16 Q. But it was after April 12, because you didn't start this  
 17 effort until after April 12. You know that.  
 18 A. Definitely after April 12th.  
 19 Q. Now, your big issue -- one of the big issues with my  
 20 client and that stop was he conducted a traffic stop; right?  
 21 A. Which one are you referring to now?  
 22 Q. The dean stop.  
 23 A. Those were investigated by Mike Morrow and his internal  
 24 affairs investigation.  
 25 Q. Correct. And isn't it true that as part of that



1 investigation Morrow discovered that over the last year there  
 2 had been 240 traffic stops done by officers.  
 3 A. Not to my knowledge. I think maybe that's a question for  
 4 him.  
 5 Q. And I am correct that neither the student that left the  
 6 voicemail on April 2nd or the law school admissions dean from  
 7 April 1st ever filed any formal complaint about my client's  
 8 behavior?  
 9 A. I know the student left a voice message with some  
 10 concerns. That's the most I know.  
 11 Q. You never heard that either of them filed any formal  
 12 complaint about my client and those interactions?  
 13 A. That's correct.  
 14 Q. Okay. Let's talk about what happened. You go review  
 15 dozens and dozens of my client's videos for the whole year and  
 16 eventually that summer you have a meeting with my client, HR,  
 17 and my client's union steward; right?  
 18 A. Talking about July 13 or August 13?  
 19 Q. Well, you had two meetings?  
 20 A. Correct.  
 21 Q. Okay. And the August 13th meeting, the meeting was around  
 22 11:00 a.m.; is that right?  
 23 A. I don't recall the hours.  
 24 Q. Late morning?  
 25 A. Sometime in the morning.

1 Q. And you guys spent hours reviewing all of my client's  
 2 videos; right?  
 3 A. No. There's basically four separate audios, so it's fair  
 4 to assume it was more than two hours.  
 5 Q. Now, let's talk about what was going through your mind and  
 6 the department's mind as of August 13, 2012.  
 7 At that meeting with my client, it was audio-recorded;  
 8 right?  
 9 A. Correct.  
 10 Q. Both you and Randy Wardlow, from HR, were in agreement  
 11 that the department was going to take my client and do a  
 12 retraining; right?  
 13 A. That was the goal at that time; correct.  
 14 Q. Termination was not the goal as of August 13, 2012, after  
 15 that meeting; right?  
 16 A. Not as far as myself and Randy Wardlow were involved at  
 17 that point.  
 18 Q. And, in fact, you drafted a letter with a plan for how to  
 19 retrain my client; right?  
 20 A. Yes.  
 21 Q. Who asked you to draft that plan?  
 22 A. I don't know if it was Randy Wardlow or the chief. I  
 23 don't remember.  
 24 Q. I'd like to show you Plaintiff's Exhibit 169. Now, the  
 25 date at the top is when I believe the archive came from it.

1 A. Okay.  
 2 Q. There's no date on that email; correct?  
 3 A. That's correct.  
 4 Q. Okay. Do you have --  
 5 MR. JASON KAFOURY: Well, let me offer it.  
 6 Plaintiffs offer 169.  
 7 THE COURT: Any objection?  
 8 MS. COIT: No.  
 9 THE COURT: Received.  
 10 BY MR. JASON KAFOURY: (Continuing)  
 11 Q. On the second page there, what was the date for  
 12 retraining? When was it supposed to start?  
 13 A. Effective September 13, 2012.  
 14 Q. Okay. So do you know when you wrote this email?  
 15 Obviously, it was sometime between September -- August 13 and  
 16 the meeting you had and September 13.  
 17 A. I don't know. It doesn't have a date on it. I wouldn't  
 18 know.  
 19 MR. JASON KAFOURY: Can we publish the 169 please,  
 20 Your Honor?  
 21 THE COURT: You may.  
 22 MR. JASON KAFOURY: Mr. Hess, can you take 169 and  
 23 just --  
 24 MR. HESS: Which page?  
 25 MR. JASON KAFOURY: The first page. Blow it up.

1 Can you blow this email up, Mr. Hess?  
 2 BY MR. JASON KAFOURY: (Continuing)  
 3 Q. So sometime between that meeting on August 13th with HR  
 4 and September 13th, you drafted this email sent to the chief  
 5 and Mike Morrow; correct?  
 6 A. I don't know what the date was, but I know I worked on a  
 7 draft of that training plan prior to that, too, so I don't  
 8 know.  
 9 Q. Hi, Chief, what do you think of this? We can get him  
 10 started on about the 13th with Lillengreen. I want him to work  
 11 20 shifts with each FTO. The extra wording had to be added due  
 12 to Jim's propensity to regularly take off each month. I know  
 13 Randy was talking about not having this as the equivalent to a  
 14 pay sanction as offered to Jim, but I have not heard anything  
 15 back, and Randy has not either, as of last week. I would have  
 16 to touch base with Randy again this week. I should be done  
 17 with my final report in the next couple of days. I have about  
 18 40 minutes of audio to review from the HR meeting. Then I can  
 19 wrap it up.  
 20 THE COURT: Now, just a moment. Did you get all  
 21 that?  
 22 THE COURT REPORTER: I did, yes.  
 23 THE COURT: Thank you, Counsel.  
 24 MR. JASON KAFOURY: I'm trying to read slower.  
 25 ///

1 BY MR. JASON KAFOURY: (Continuing)  
 2 Q. Aside from that last sentence, "I have about 40 more  
 3 minutes of audio to review from the HR meeting," that means  
 4 this was sent after this August 13th HR meeting, doesn't it?  
 5 A. Yes.  
 6 Q. So before my client -- before September 13th, the plan  
 7 within the department and HR was to retrain my client; right?  
 8 A. As I was working with Randy Wardlow, that's what me and  
 9 him were discussing. Morrow had a separate investigation going  
 10 on, and I don't know what effect that would have had on this.  
 11 Q. Now, this letter was never given to my client until after  
 12 this litigation began; isn't that right?  
 13 A. I don't know when it was given to him.  
 14 Q. You never gave it to him, this retraining plan?  
 15 A. I don't recall giving it to him, no.  
 16 Q. So sometime over the coming weeks after you drafted this,  
 17 you got an email from the chief saying she was leaning towards  
 18 termination; right?  
 19 A. Correct.  
 20 Q. And you responded to the chief and with Mike Morrow that  
 21 you agreed with termination, didn't you?  
 22 A. Yes, I did.  
 23 Q. Now, I want to skip gears for a second. There was a  
 24 meeting that occurred that you had with my client about his  
 25 training requests. Do you remember that back in --

1 A. Yes.  
 2 Q. -- early 2012?  
 3 A. Yes, I remember a meeting.  
 4 Q. And this is a meeting where my client had sent an email to  
 5 Lieutenant Morrow. Do you remember that?  
 6 A. Yes.  
 7 Q. And you remember meeting with my client?  
 8 A. And Sergeant Cameron.  
 9 Q. That's your version of it.  
 10 A. That's the correct version of it.  
 11 Q. Okay. And you agree that during that meeting you might  
 12 have said, "Why did you go behind my back"; correct?  
 13 A. I may have said something about going behind my back.  
 14 You're correct.  
 15 Q. Isn't it a fact what you said was, "Don't think you can go  
 16 behind my back and complain to Morrow. I'll always know what  
 17 you do because I'm friends with Mike"?  
 18 A. I don't recall saying anything like that.  
 19 Q. Well, you were friends with Mr. Morrow, weren't you?  
 20 A. Sure. That doesn't mean I'd make some statement like  
 21 that.  
 22 Q. Let's talk about -- do you remember counseling my client  
 23 on multiple occasions that he needed to take more enforcement  
 24 actions instead of giving too many warnings?  
 25 A. I don't remember me counseling on that. I thought that

1 was Sergeant Cameron.  
 2 Q. Well, you agree he was more apt to issue warnings than  
 3 citations; right?  
 4 A. I never really reviewed all of his activity as far as  
 5 citations and whatnot, so I don't know if I could accurately  
 6 answer that. I know he wrote a lot of reports, bike impounds,  
 7 graffiti, that sort of thing.  
 8 Q. I'd like to go to page 229 in your deposition.  
 9 A. Okay. Okay.  
 10 Q. Okay. That's what you stated at your deposition; right?  
 11 A. What were you referring to?  
 12 Q. Bottom of page 229, top of 230.  
 13 A. Let's see. "I think he was more apt to issue a warning  
 14 than a citation."  
 15 Q. And that was different than other officers; right?  
 16 A. I don't know what -- how often other officers issued  
 17 warnings and citations. I know there was the general feeling  
 18 that that was probably the case, but without actually analyzing  
 19 it myself, I wouldn't really know.  
 20 Q. Let's talk about the meeting that you had with my client  
 21 on September 7, 2012. This is the meeting with Scott Cameron.  
 22 Do you remember that meeting?  
 23 A. What was it regarding?  
 24 Q. This was regarding the order to not report crimes other  
 25 than felonies. Do you remember that meeting?

1 A. I remember standing -- asking to stand by as an  
 2 observer -- or him asking me to stand by as an observer.  
 3 Q. Isn't it a fact that Scott Cameron gave my client an order  
 4 that he could not report any crimes unless they were felonies,  
 5 didn't he?  
 6 A. I don't remember what he told him, but I know that was one  
 7 of the things said -- that was said in the meeting.  
 8 Q. And you didn't come up with that policy; right?  
 9 A. Correct. I did not.  
 10 Q. A policy like that, only reporting felonies, would have  
 11 had to have come from the chief; right?  
 12 A. I don't know if it was Mike Morrow or the chief or  
 13 whoever.  
 14 Q. And in all of your time working, you've never heard of a  
 15 public safety officer being told they could not report  
 16 violations or misdemeanors; isn't that right?  
 17 A. I think at the time he was acting as a parking officer.  
 18 Q. My question was: In all of your time there, you have  
 19 never heard of a public safety officer being told they could  
 20 not report violations or misdemeanors; isn't that true?  
 21 A. During my time there, that is accurate, yes.  
 22 Q. And my client sent emails to you and Sergeant Cameron  
 23 clarifying that that was the request that he was now under; to  
 24 not report anything but felonies. Right?  
 25 A. Well, I remember he sent an email, yeah.

1 Q. Okay. And you would not respond to him in email?  
 2 A. Well, I told him he could have a meeting, and he said, "I  
 3 don't believe that would be necessary unless these bottom  
 4 contents aren't what I was told," or something to that effect.  
 5 "The contents below," or whatever he said in the email. He did  
 6 say, "I don't believe a meeting would be necessary."  
 7 Q. I'll move on to expedite things.  
 8 How many of the -- you were there at the arbitration;  
 9 correct?  
 10 A. I was there at least the day I testified. I don't  
 11 remember if I was there for anything else.  
 12 Q. And you were there at the step two hearing, right?  
 13 A. I was there for at least one grievance hearing, yeah.  
 14 Q. Now, we heard from Casey Boyd. Did you use the phrase,  
 15 while at work, "They tried to mother fuck me, so I'm going to  
 16 mother fuck them"?  
 17 A. Not to my recollection.  
 18 Q. You could have said it?  
 19 A. I don't believe I did.  
 20 Q. Just not a phrase you use; right?  
 21 A. Not in front of women, no.  
 22 Q. Do you find it credible, Lieutenant Lebrecht, that  
 23 Chief McDermid, if she ran internal affairs with the Eugene  
 24 Police Department, would be unfamiliar with the *Brady* term?  
 25 A. I didn't hear her testimony.

1 conduct fair and impartial criminal investigations and will  
 2 provide the prosecution with both incriminating and exculpatory  
 3 evidence, as well as information that may adversely affect the  
 4 credibility of a witness.  
 5 Q. Okay. When you were putting together the information to  
 6 submit to the district attorney, were you conducting a criminal  
 7 investigation of Mr. Cleavenger?  
 8 A. No, I was not.  
 9 Q. Do you believe the information that you provided may  
 10 adversely affect the credibility of Mr. Cleavenger should he  
 11 testify as a witness?  
 12 A. As a witness? I thought it's the DA's decision to  
 13 determine whether somebody would have no credibility.  
 14 Q. In your opinion, did you comply with this policy?  
 15 A. I believe I did.  
 16 Q. And let's go to the Internet issue.  
 17 A. Okay.  
 18 Q. The credibility issue that was turned over to the district  
 19 attorney, did that deal with his actually using the Internet in  
 20 violation of policy, or did it deal with his credibility in the  
 21 internal affairs investigation?  
 22 A. It was during the internal affairs investigation, like I  
 23 tried to explain -- maybe it didn't come across right -- that  
 24 because he made a statement in the internal affairs  
 25 investigation he never intentionally violated any policies.

1 Q. I'm asking you a different question. Do you find it  
 2 credible that she would be unfamiliar running internal affairs  
 3 at the Eugene Police Department of the concept of *Brady v.*  
 4 *Maryland*?  
 5 A. If that's what she meant during such testimony, I wouldn't  
 6 really find that to be accurate, I guess.  
 7 MR. JASON KAFOURY: That's all I have.  
 8 THE COURT: Cross-examination?  
 9 MS. COIT: Thank you.  
 10  
 11 CROSS-EXAMINATION  
 12 BY MS. COIT:  
 13 Q. Lieutenant Lebrecht, just a couple of things.  
 14 MS. COIT: Your Honor, may I show Exhibit 158 that  
 15 plaintiff used?  
 16 THE COURT: You may.  
 17 BY MS. COIT: (Continuing)  
 18 Q. Now, Lieutenant Lebrecht, this is the policy you discussed  
 19 earlier with Mr. Kafoury. Do you recall this?  
 20 A. Yes.  
 21 Q. Now, I just want to take you back to 612.2, the policy,  
 22 and can you read that first sentence for us?  
 23 A. Under the 612.2?  
 24 Q. Yes.  
 25 A. Okay. The University of Oregon Police Department will

1 That's why it was included.  
 2 Q. And when reviewing the internal affairs investigation, it  
 3 was his interview, correct, that he had with Mike Morrow, where  
 4 he made that statement?  
 5 A. That's correct.  
 6 Q. From your reading of that interview, did you develop an  
 7 opinion as to why he was making that statement to  
 8 Lieutenant Morrow?  
 9 A. I thought possibly embellishing, misleading.  
 10 Q. And from your prior involvement in having pulled that  
 11 Internet history, you knew that statement, made in the internal  
 12 affairs investigation, to be false; is that correct?  
 13 A. That's correct.  
 14 Q. Now let's go to the April 7th meeting that you had with  
 15 Sergeant Cameron and Mr. Cleavenger to discuss what happened at  
 16 Spencer View. Okay?  
 17 A. Okay.  
 18 Q. Going into that meeting, did you have any reason to  
 19 suspect that the position of Officer Hermens' vehicle was even  
 20 an issue?  
 21 A. No.  
 22 Q. When did that become an issue?  
 23 A. When Mr. Cleavenger said he was parked in view of the  
 24 apartment and we should be talking to him instead of -- we  
 25 should be talking to Officer Hermens instead of Mr. Cleavenger .

1 Q. And you left that meeting with Mr. Cleavenger to go review  
 2 that video and talk to Officer Hermens; correct?  
 3 A. That's correct.  
 4 MS. COIT: Thank you. No more questions. We will be  
 5 recalling him.  
 6 THE COURT: Redirect?  
 7  
 8 REDIRECT EXAMINATION  
 9 BY MR. JASON KAFOURY:  
 10 Q. You said you weren't conducting a criminal investigation  
 11 on the *Brady* material. Is that what you just testified to?  
 12 A. My intention was not to conduct a criminal investigation.  
 13 Q. Well, the chief had intention for you to be conducting a  
 14 criminal investigation because she asked the district  
 15 attorney --  
 16 THE COURT: I didn't get your question, Counsel.  
 17 Would you just reask it?  
 18 BY MR. JASON KAFOURY: (Continuing)  
 19 Q. The chief wanted you to be conducting a criminal  
 20 investigation because she had you to tell the district attorney  
 21 if they could press criminal charges on my client?  
 22 A. To ask -- well, there was no criminal report written, so  
 23 that wasn't any intention. That was a question that was just  
 24 going to be asked. It had nothing to do with the *Brady*  
 25 materials I had. It would have been a completely separate

1 report if it were to go through, which was never even started  
 2 to be written.  
 3 Q. Okay. You talked about -- so my client basically made a  
 4 statement during the IA investigation saying, "I've never  
 5 knowingly violated any policies within the department"; right?  
 6 A. He made the statement along those lines and added a few  
 7 other things, yeah.  
 8 Q. How many policies are within the department?  
 9 A. Well, there's a lot.  
 10 Q. Right. *Brady* is just 612 of many; right?  
 11 A. I don't know what -- it's entitled 612, but I don't know  
 12 if that's the 612th policy. But I get what you're saying,  
 13 yeah.  
 14 Q. Right. It's hundreds and hundreds and hundreds of pages;  
 15 right?  
 16 A. Yes.  
 17 Q. So once he's made that statement, the he's never knowingly  
 18 violated it, you could have gone into the entire stack of  
 19 policies and found anything in the universe that he could have  
 20 violated and then said that that was *Brady* material; right?  
 21 A. I guess somebody could do that, but my intention was based  
 22 on something I had already known of and based on what he had  
 23 already produced as evidence in the internal affairs  
 24 investigation.  
 25 Q. Right. And that is because you had already gone and

1 searched people's Internet search history and you knew how easy  
 2 it was to show that someone could violate that policy?  
 3 A. That wasn't even taken into consideration.  
 4 Q. So violation of grooming standards, that's a policy?  
 5 A. Yes, it is.  
 6 Q. He could have been dishonest about that, too; right?  
 7 A. That was in the *Brady* material.  
 8 MR. JASON KAFOURY: Nothing further.  
 9 Donna Laue, Your Honor. We call --  
 10 MS. COIT: No questions.  
 11 THE COURT: All right. Sir, you may step down, and  
 12 you will be calling Lieutenant Lebrecht in your case?  
 13 MS. COIT: I will be calling Lieutenant Lebrecht.  
 14 THE COURT: Counsel your next witness, please.  
 15 MR. JASON KAFOURY: The plaintiffs call Donna Laue to  
 16 the stand.  
 17 THE COURT: Thank you.  
 18 MR. JASON KAFOURY: She went to the restroom, so  
 19 we'll start with the chief.  
 20 THE COURT: Do you want her as your next witness?  
 21 MR. JASON KAFOURY: No, it's okay. We'll start with  
 22 the chief.  
 23 THE COURT: Chief McDermid, be kind enough to raise  
 24 your right hand, please.  
 25

1 CAROLYN MCDERMID,  
 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: Would you please be seated in the witness  
 6 box just to my right. After you're comfortably seated, pull  
 7 the chair closer to the microphone.  
 8 THE WITNESS: Yes.  
 9 THE COURT: Now, would you state for the record your  
 10 full name, please.  
 11 THE WITNESS: Carolyn McDermid, M-C-D-E-R-M-E-D.  
 12 THE COURT: Thank you. Direct examination by  
 13 plaintiff's counsel.  
 14 MR. MCDUGAL: Yes.  
 15  
 16 DIRECT EXAMINATION  
 17 BY MR. MCDUGAL:  
 18 Q. Good afternoon.  
 19 A. Hi.  
 20 Q. Can you give me a brief overview of your professional  
 21 experience; what you did before you got to the UOPD that has to  
 22 do with law enforcement?  
 23 A. I was hired by San Diego Police Department in 1983 and  
 24 then served as a patrol officer, a field training officer, and  
 25 a foot patrol officer there. And in 1991 I moved from there to

1 the Eugene Police Department, and I worked at the Eugene Police  
 2 Department as an officer, agent, sergeant and lieutenant and  
 3 acting captain, in a variety of positions, and then in 19 -- or  
 4 in 2008 I moved to the University of Oregon, what was then the  
 5 Department of Public Safety and is now the University of Oregon  
 6 Police Department.  
 7 Q. And when did you become acting chief?  
 8 A. I became the acting chief, I believe, February of 2012.  
 9 Q. And prior to being active chief, were you basically  
 10 running the place, just checking in with Tripp?  
 11 A. No, sir.  
 12 Q. Okay. That's when you were acting chief?  
 13 THE COURT: The question? That's confusing. Reask  
 14 the question.  
 15 BY MR. MCDOUGAL: (Continuing)  
 16 Q. The time period when you were acting chief, were you still  
 17 communicating with -- I don't know his title. I'd like to use  
 18 his title.  
 19 A. We called him "Chief."  
 20 Q. Chief Tripp.  
 21 A. Chief Tripp was at the police academy, beginning, I  
 22 believe, in February of 2012, and so I would communicate with  
 23 him, but he was not physically there most of the time.  
 24 Q. You received Casey Boyd's letter complaining about  
 25 Lebrecht?

1 A. I don't recall it, sir. I heard her speak of it.  
 2 Q. Let me get you -- do you have copies of the depositions?  
 3 There's two volumes, the higher numbered pages will be in the  
 4 second volume.  
 5 Can I direct you to page 362?  
 6 THE COURT: December 2nd or January 28th?  
 7 MR. MCDOUGAL: January 28th.  
 8 THE COURT: Thank you. 352?  
 9 MR. MCDOUGAL: 362.  
 10 THE COURT: 362.  
 11 MR. MCDOUGAL: 362, line 4. You can read anything  
 12 before or after. Don't feel rushed.  
 13 THE WITNESS: Okay. I've refreshed my memory.  
 14 BY MR. MCDOUGAL: (Continuing)  
 15 Q. All right. Do you recall testifying at the deposition  
 16 that you read Casey Boyd's letter at around the time it was  
 17 sent?  
 18 A. For a little context, just to make sure I know what we're  
 19 talking about, are we talking about the one she provided to --  
 20 when she left the university?  
 21 Q. Yes.  
 22 A. Thank you, sir. Yes, I did read it.  
 23 Q. There was not any sort of investigation of  
 24 Lieutenant Lebrecht, was there?  
 25 A. No.

1 Q. When is the first time you heard the phrase "bowl of dicks  
 2 list"?  
 3 A. I heard the phrase commented on in the arbitration hearing  
 4 in November of 2013.  
 5 Q. And was it bothersome to you?  
 6 A. Yes, sir.  
 7 Q. Did you know any names that were put on the list?  
 8 A. I don't recall hearing names at the arbitration hearing  
 9 in -- I may have to refresh my memory, but I don't  
 10 independently recall names from the arbitration hearing.  
 11 Q. You recall it being called the "bowl of dicks list" at the  
 12 hearing, though; correct?  
 13 A. No, I do not. I heard that -- someone asked the question  
 14 about a bowl of dicks list, but I didn't hear anybody calling  
 15 it that.  
 16 Q. Did you take it upon yourself, as chief, to find out about  
 17 this?  
 18 A. I did.  
 19 Q. Did you get the list in November?  
 20 A. No, I did not.  
 21 Q. When did you get the list?  
 22 A. I'm trying to remember when that was. I'd have to refresh  
 23 my memory. That's when I was meeting with my supervisor.  
 24 Q. Was it -- just to help in the timeline, was it after the  
 25 newspaper articles?

1 A. Yes, sir.  
 2 Q. And about -- do you know how long it was between November ,  
 3 when you heard about it in the arbitration, and the newspaper  
 4 articles?  
 5 A. A couple of months. Two, three months probably.  
 6 Q. Was it July of 2014 that the newspaper article came out?  
 7 A. That sounds right, sir.  
 8 Q. So that would be eight months later?  
 9 A. Yes, sir.  
 10 THE COURT: July of 2014?  
 11 MR. MCDOUGAL: Yes, sir.  
 12 BY MR. MCDOUGAL: (Continuing)  
 13 Q. Would you agree that -- did you ever find out whether or  
 14 not people were talking about people eating bowls of dicks?  
 15 A. No.  
 16 Q. Did you, in November, find out why it was at least  
 17 referenced by someone as a bowl of dicks list?  
 18 A. I spoke to Lieutenant Lebrecht after the arbitration  
 19 hearing. I asked him, "What is this?" because I was really  
 20 concerned, and he explained to me -- he basically said: We  
 21 talked about a list and a bowl of dicks, but not together.  
 22 They were not one entity. They were two separate things.  
 23 Q. That's what he told you?  
 24 A. He did.  
 25 Q. That he -- did he make it clear that nobody was ever

1 talked about as eating a bowl of dicks or in relation to a bowl  
 2 of dicks and then put on a list?  
 3 A. No, he did not.  
 4 Q. So he made it clear that that never happened?  
 5 A. He was adamant they were two separate things.  
 6 Q. When you got the list, did you inquire how the first  
 7 person got on the list?  
 8 A. I did not.  
 9 Q. Did you notice any notable people on the list that were  
 10 involved in U of O student body?  
 11 A. Not that I recall.  
 12 Q. Notice any former employees?  
 13 A. Yes, sir.  
 14 Q. Did you find out why they were put on the list?  
 15 A. I did not.  
 16 Q. Why not?  
 17 A. I contacted one former employee. Technically, I think he  
 18 might have still been our employee, but we were in two separate  
 19 buildings. Anyway, I contacted him to let him know he was on  
 20 the list, because I thought it was fair for him to know in case  
 21 his name was published in the paper, and I asked him, "Do you  
 22 know why you might be on the list," and he says -- he asked me,  
 23 "Why am I on the list?"  
 24 Q. Did you ask Mr. Lebrecht to talk to Mr. LeRoy, the person  
 25 maintaining the list, to ask him if the list had anything to do

1 Q. Do you know if Officer Lebrecht talked to Officer Hermens ?  
 2 A. I believe he did.  
 3 Q. Would there be a written report?  
 4 A. I don't think there was a written report made.  
 5 Q. Why not? There was a dispute, and a serious action was  
 6 going to be taken against Mr. Cleavenger.  
 7 A. There was no report, that I'm aware of.  
 8 Q. And did anyone talk to Mr. Cleavenger?  
 9 A. I don't know.  
 10 Q. Did you ask him?  
 11 A. No.  
 12 Q. And so I'm -- was Mr. Cleavenger even told that this  
 13 decision was being made based on that event?  
 14 A. Not that I'm aware of.  
 15 Q. Why wouldn't he be told?  
 16 THE COURT: I'm sorry?  
 17 BY MR. MCDUGAL: (Continuing)  
 18 Q. Why wouldn't he be told?  
 19 A. Sir, if you could put a little context about this. Do you  
 20 mean did he ever learn this was a reason?  
 21 Q. No. I mean, at the time.  
 22 A. At the time? I don't know. I don't know if he was or  
 23 wasn't.  
 24 Q. Spencer View Apartments. Officer Hermens was a senior  
 25 public safety officer; correct?

1 with people eating bowls of dicks or a bowl of dicks?  
 2 A. No.  
 3 Q. The incident with the handgun and the lady being  
 4 transported, when you learned that, did you also learn that  
 5 there was a dispute about whether Cleavenger had told Cameron  
 6 that the woman was armed?  
 7 A. No.  
 8 Q. May I turn to your deposition, page 135?  
 9 A. Line?  
 10 Q. The question starts at line 5 and ends at line 16.  
 11 A. Well, correction, sir. Apparently, I thought there might  
 12 have been some dispute about whether he told him or not.  
 13 Q. Your words: There was dispute about whether  
 14 Officer Cleavenger had told him that the woman was armed.  
 15 Correct?  
 16 A. Yes.  
 17 Q. Did you direct anyone to talk to Officer Hermens?  
 18 THE COURT: I'm sorry. You dropped your voice. You  
 19 dropped your voice.  
 20 MR. MCDUGAL: Sorry. I stood away from the mic.  
 21 BY MR. MCDUGAL: (Continuing)  
 22 Q. Did you direct anyone to talk to Officer Hermens, the  
 23 other witness?  
 24 A. No, I did not, but I learned that Officer Lebrecht was  
 25 looking into it.

1 A. Yes.  
 2 Q. Officer Fields -- Phillips was a senior public safety  
 3 officer also; correct?  
 4 A. Yes.  
 5 Q. And Officer Phillips even conducted field training for  
 6 other officers; correct?  
 7 A. Correct.  
 8 Q. And you heard -- or when you were presiding over this  
 9 matter at the time, you then knew that one of your officers  
 10 that provides field training just drove right up to the house?  
 11 A. Yes.  
 12 Q. Was he disciplined?  
 13 A. Not that I'm aware of.  
 14 Q. Did anybody even talk to him about it?  
 15 A. I don't know that.  
 16 Q. Did it cross your mind he might not be training people to  
 17 do it right?  
 18 A. No.  
 19 Q. Well, it's an officer safety issue; right?  
 20 A. It could be, yes. It's important not to pull up in front  
 21 of the house or an apartment.  
 22 Q. It's really important not to have instructors do it;  
 23 right?  
 24 A. Yes.  
 25 Q. And nobody talked to him?

1 A. I don't know.  
 2 Q. Did you say, "We've got a field training officer pulling  
 3 directly up to a house. We better put something in writing"?  
 4 A. No.  
 5 Q. Did you review other videos of your field training  
 6 officer --  
 7 A. I did not.  
 8 Q. -- to see if he had done that on numerous occasions?  
 9 Did you direct anyone to do it?  
 10 A. No.  
 11 Q. How many videos did Lieutenant Lebrecht review of  
 12 Mr. Cameron -- Mr. Cleavenger? Sorry.  
 13 A. Many. I don't know the number for sure.  
 14 Q. Over 25?  
 15 A. Yes, sir.  
 16 Q. Okay. Are you aware of any other officer that has had 25  
 17 of their videos reviewed ever?  
 18 A. No.  
 19 Q. Anybody having 10 reviewed?  
 20 A. Not that I can think of.  
 21 Q. Five or more?  
 22 A. No. And, sir, just to add to that, our --  
 23 Q. I --  
 24 A. Can you --  
 25 Q. Is it a continuation of an answer to that question?

1 Is it possible that Lebrecht reviewed over 50 videos of  
 2 Mr. Cleavenger?  
 3 A. I don't know the number.  
 4 Q. Do you know whether or not you ever had a written policy  
 5 that public safety officers couldn't do traffic stops?  
 6 A. There was a written policy.  
 7 Q. When?  
 8 A. I believe Chief Tripp issued it in 2010.  
 9 Q. Were you aware of that when your deposition was taken?  
 10 A. I believe that I have since found the policy.  
 11 Q. Okay. But you weren't aware of the policy? Even though  
 12 it was involved with Mr. Cleavenger and asked at your  
 13 deposition, you didn't learn about it until after your  
 14 deposition?  
 15 A. I didn't know the specifics of the policy. I knew we had  
 16 a policy, but I wouldn't have been able to tell you exactly  
 17 what it said.  
 18 Q. May I please direct you to page 192 of your deposition?  
 19 A. Yes.  
 20 Q. Line 11. Were you asked if there was a written policy?  
 21 A. Yes.  
 22 Q. And your answer is, "I don't know that we ever found a  
 23 written policy"?  
 24 A. Yes, sir.  
 25 Q. Okay. And you went on further -- I don't want to

1 mischaracterize -- to say that, you know, we expect this to be  
 2 told in briefings. Okay. But if you weren't aware of the  
 3 written policy, do you know if Mr. Cleavenger was at briefings  
 4 where it was discussed?  
 5 A. No. That would be something his supervisors would know.  
 6 Q. Is that documented?  
 7 A. I don't know, sir.  
 8 Q. Some organizations, I'm sure you're aware, have people  
 9 sign training manuals.  
 10 A. Yes.  
 11 Q. And they make sure that everything that is in writing is  
 12 gathered in one place so that an employee can be on fair notice  
 13 of what the rules are.  
 14 A. Yes.  
 15 Q. Do you think Mr. Cleavenger had a right to know, when he  
 16 was being suspended, the days and times of problematic  
 17 callouts?  
 18 A. I think that would be fair.  
 19 Q. Do you know why he wasn't given dates and times before he  
 20 was suspended?  
 21 A. No.  
 22 Q. He was sent to traffic duty; correct? Parking duty. I'm  
 23 sorry. Parking?  
 24 A. Parking, yes.  
 25 Q. And, once there, was he able to do anything that would be

1 able to earn his way back?  
 2 A. I think it depends on what he was doing. I think you can  
 3 demonstrate good work ethic and initiate -- self-initiated  
 4 activity and -- and work in a different way than -- than what  
 5 his previous assignment was. I think there could be a way to  
 6 get back into that position.  
 7 Q. Can I have you look at page 275 of your deposition, line  
 8 17? 276, line --  
 9 THE COURT: Just a minute. 272?  
 10 MR. MCDUGAL: 276.  
 11 THE COURT: 276, line 19?  
 12 MR. MCDUGAL: Lines 8 through 20.  
 13 THE COURT: All right. Just a moment.  
 14 THE WITNESS: I said no at the time, but, as I think  
 15 of it now, I think there is other ways you can earn -- try to  
 16 win your place back or improve. I think in any position you  
 17 can demonstrate things.  
 18 BY MR. MCDUGAL: (Continuing)  
 19 Q. Okay. But you agree at your deposition you were asked  
 20 very plainly that question, and you said no?  
 21 A. Yes.  
 22 Q. Did you write a letter to Mr. Cleavenger about the fact  
 23 that he was being investigated?  
 24 A. No. Can I change that?  
 25 Q. Certainly.

1 A. There was a letter that included, I think, in his -- I  
 2 don't know. I may need it to refresh my memory. But I believe  
 3 in his reassignment memo it may have alluded to an  
 4 investigation occurring.  
 5 Q. Okay. And there was no explanation of what he was being  
 6 investigated for; right?  
 7 A. No, sir.  
 8 Q. And he wasn't told who was doing the investigating; right?  
 9 A. No.  
 10 Q. And you agree those are two things he should know, he  
 11 should be informed of?  
 12 A. Yes.  
 13 Q. And it's very easy to put that information in writing and  
 14 give it to him; correct?  
 15 A. Yes.  
 16 Q. Was that ever done?  
 17 A. I don't know. There were different processes going on  
 18 with HR and my lieutenant and sergeant, and I -- I was working  
 19 on things with Linda King at the same time, so --  
 20 Q. So there was a lot of people who could have done it?  
 21 A. Yes.  
 22 Q. And, to your knowledge, it was never done?  
 23 A. Not to my knowledge.  
 24 Q. Are you aware of any other public safety officer who  
 25 didn't receive an annual evaluation for six months after an

1 Q. When did you first become aware of the obligations imposed  
 2 by *Brady v. Maryland*; the *Brady* case?  
 3 A. I would really like to change my answer on that, sir. I  
 4 must have misunderstood the question when I was asked the last  
 5 time.  
 6 Q. Let's look at it.  
 7 A. I would like to.  
 8 Q. Okay. Let's go to page 195.  
 9 THE COURT: 195?  
 10 MR. MCDOUGAL: Yes.  
 11 BY MR. MCDOUGAL: (Continuing)  
 12 Q. Line 22, to page 196, line 6.  
 13 A. Yes.  
 14 Q. Actually, let's go down to line 11.  
 15 THE COURT: Just a minute. Repeat those lines again  
 16 clearly. 195.  
 17 MR. MCDOUGAL: 196, line -- oh, I'm sorry. The  
 18 question begins on 195, line 22, to as far down as 196 and onto  
 19 197 as she'd like to go.  
 20 THE WITNESS: Okay. So I misunderstood the question  
 21 in that when you -- when I was asked about *Brady* I immediately  
 22 skipped to the fact that for Oregon they had just in the  
 23 last -- in '13 and '14 put a task group together or a work  
 24 group together and have really looked at standardizing and  
 25 making consistent the policies and procedures for reporting

1 initial draft was done?  
 2 A. No.  
 3 Q. Are you familiar with the Clery Act?  
 4 A. Yes.  
 5 Q. Do you agree that he was just being told not to report  
 6 anything but felonies. If he was being told not to report  
 7 anything but felonies, that would be a violation of the Clery  
 8 Act; at least a concern?  
 9 A. It depends, sir. Reporting doesn't require that you get  
 10 on a radio to report it, and I don't know what instruction he  
 11 was given, because I wasn't there. I don't know in what  
 12 context the conversation that he was provided with instruction  
 13 was.  
 14 Q. He asked for written instructions. Do you know if he ever  
 15 got them?  
 16 A. I don't.  
 17 Q. Do you know any reason why someone wouldn't simply put  
 18 that in written form if there was a federal law concern that  
 19 could be implicated?  
 20 A. I don't.  
 21 Q. Do you know who ordered that he be told he could only do  
 22 felonies?  
 23 A. No.  
 24 Q. It would have to come from command staff; correct?  
 25 A. It would.

1 potential *Brady* issues to have the -- so prosecutors have that  
 2 information, and so that's why I said it was fairly new.  
 3 Q. Well, one second. You said, "I didn't really have any  
 4 knowledge about *Brady*"; correct?  
 5 A. And what I'm trying to tell you is that what I meant is I  
 6 didn't have much of an idea about *Brady* procedures, and that is  
 7 true.  
 8 Q. You said, your words, "Prior to that, in my law  
 9 enforcement career, we really didn't -- I didn't really have  
 10 any knowledge about *Brady*."  
 11 A. And I'm trying to say that -- I'm meaning *Brady* procedures  
 12 and policies, like how to submit or do a *Brady* submission. I  
 13 know about *Brady*. They teach us in the academy. It's just  
 14 foundation for police work.  
 15 Q. One second. I'm sorry. I have a page reference that's  
 16 wrong. It's going to take me one second.  
 17 You also said, "It's a fairly new thing in the state of  
 18 Oregon to look at"; right?  
 19 A. Yes, sir. I can't recall anyone at the Eugene Police  
 20 Department, even when I worked in internal affairs, that  
 21 processed a *Brady* submission.  
 22 Q. That's different than knowing about it?  
 23 A. I didn't know how to do one, because I never had.  
 24 Q. And do you recall saying when you learned about it --  
 25 *Brady* -- when you learned about the *Brady* matter, *Brady* issue,



1 or *Brady* listing?  
 2 A. Did I -- I don't understand the question, sir.  
 3 Q. You even related that you were at a convention.  
 4 A. Oh.  
 5 Q. Do you remember? And that's when you heard about it?  
 6 A. I learned about the work group that was working on putting  
 7 together policies and procedures for the application of *Brady*  
 8 first at a convention, January '13, I guess, where  
 9 DA Alex Gardner spoke about it, and then there was further  
 10 discussion in June of '13, I guess, by Chief Deputy  
 11 Assistant -- now the district attorney -- Patty Perlow, who  
 12 spoke some more about it.  
 13 Q. Fair to say that you're aware that one issue in this case  
 14 is if you thought it was a *Brady* matter why did you wait so  
 15 long?  
 16 A. Well, we were -- as you know, we were working on  
 17 investigations for what I think was too long. It took too  
 18 long. And so there wasn't a lot of material done yet.  
 19 Q. One possible excuse could be, "I wasn't aware of *Brady*  
 20 until January." That's correct?  
 21 A. I was aware of *Brady*, sir.  
 22 Q. Do you remember a Bowes who worked for the department?  
 23 A. Yes, sir.  
 24 Q. And what did she do that might be untrustworthy?  
 25 A. She committed theft.

1 Q. She made a fraudulent parking pass?  
 2 A. She did.  
 3 Q. Was she *Brady*-listed by you?  
 4 A. She was not. To my knowledge, that's a case that we had  
 5 assigned out to the Eugene Police Department, and they  
 6 conducted the investigation and eventually -- they did not  
 7 file. The settlement agreement was reached.  
 8 Q. You didn't *Brady*-list her?  
 9 A. No.  
 10 Q. Do you recall in your deposition, page 296, giving a  
 11 reason for not doing a *Brady* listing of her?  
 12 A. I do remember my answer.  
 13 Q. What was your answer?  
 14 A. That was correct. I didn't know theft applied. I always  
 15 thought about untruthfulness, and I'd forgotten the application  
 16 of fraud, theft.  
 17 Q. "Well, I don't recall there was a dishonesty issue."  
 18 That's almost immediately after you testified on the page above  
 19 that the issue was theft of services creating a parking pass  
 20 fraudulently.  
 21 A. I -- that's what I just said. I had forgotten that theft  
 22 was an application of *Brady* -- or applied to *Brady*.  
 23 Q. How about fraud?  
 24 A. And fraud.  
 25 Q. So with her you didn't think there was a dishonesty issue;

1 correct?  
 2 A. Yes. I made a mistake.  
 3 Q. Let's look at -- fair to say that by the time you  
 4 testified today you knew we had a lot of documents showing that  
 5 you knew of *Brady* earlier?  
 6 A. Can you repeat the question?  
 7 Q. Fair to say that before you testified today you knew that  
 8 our side had documents that could show that you knew of *Brady*  
 9 earlier?  
 10 A. I still don't quite understand the question, sir. Can you  
 11 just rephrase it a little differently?  
 12 Q. Before you testified, were you aware that I have documents  
 13 that show you knew of *Brady* before January of 2014?  
 14 A. I don't know. I -- I think there was an exhibit that we  
 15 put *Brady* into our police hiring pack announcement.  
 16 Q. That would be evidence that you knew?  
 17 A. Okay. That's one I can think of.  
 18 Q. All right. I'm going to hand you a few exhibits.  
 19 THE COURT: What exhibits are they, counsel?  
 20 MR. MCDOUGAL: They're going to be 63.  
 21 THE COURT: Exhibit 6 and Exhibit 3. Thank you.  
 22 MR. MCDOUGAL: 63.  
 23 THE COURT: Just a moment. 6 and 3?  
 24 MR. MCDOUGAL: 63.  
 25 THE COURT: 63. Thank you.

1 MR. MCDOUGAL: And 215.  
 2 THE COURT: 2-1-5. 215.  
 3 MR. MCDOUGAL: Yes. And 170.  
 4 THE COURT: 170.  
 5 MR. MCDOUGAL: And that's it.  
 6 THE COURT: 63, 215, and 170?  
 7 MR. MCDOUGAL: Yes.  
 8 BY MR. MCDOUGAL: (Continuing)  
 9 Q. Can you tell me -- excuse me for talking not facing you.  
 10 Can you tell me what Exhibit 63 is?  
 11 A. It is an email from me to my command staff.  
 12 Q. Can you tell me what 171 is?  
 13 THE COURT: Just a moment. 171?  
 14 MR. MCDOUGAL: Oh, did I not mention that?  
 15 THE COURT: 63, 215, and 170.  
 16 MR. MCDOUGAL: Oh, I think -- I think I might have  
 17 given you a deposition exhibit number, Your Honor. Give me a  
 18 second.  
 19 THE COURT: Certainly. That's why I'm re-calling out  
 20 the numbers to you, Counsel. What exhibit are you giving now?  
 21 MR. MCDOUGAL: I'm not. I'm making sure it was a  
 22 mistake.  
 23 DEPUTY COURTROOM CLERK: 63 is number 168 on the  
 24 exhibit list.  
 25 THE COURT: 63 is number 168, so we stop the

1 confusion. You have 215 and you have 170. You just referred  
 2 to 171. Do you want her to have that as well?  
 3 MR. MCDUGAL: Yes.  
 4 THE COURT: Then why don't you hand that to her.  
 5 MR. MCDUGAL: The only copy I have is highlighted,  
 6 and I didn't want to do that, so I'll move on so I don't waste  
 7 any time here.  
 8 THE COURT: Don't worry about time.  
 9 MR. MCDUGAL: All right. Mr. Hess, I need another  
 10 copy of that.  
 11 THE COURT: Counsel, why don't I give you back the  
 12 copies, to save time, that you gave me. That way you may have  
 13 it inside the packet. Just hand me a copy each time you refer  
 14 to it. That way we can proceed.  
 15 These are the packets you gave me last evening.  
 16 MR. MCDUGAL: All right. Make sure I don't waste  
 17 any more time, as usual.  
 18 THE COURT: That's not a problem, Counsel. Just make  
 19 sure the exhibits are correct.  
 20 MR. MCDUGAL: My apologies. What numbers do you  
 21 have?  
 22 THE COURT: She has 63 and 168, which is the same --  
 23 DEPUTY COURTROOM CLERK: Judge, 63 is actually 168.  
 24 THE COURT: Yes. 63, which is also 168. She has  
 25 215, according to my records, and 170.

1 Is that correct, Chief?  
 2 THE WITNESS: I'm waiting for 170.  
 3 THE COURT: You don't have 170 yet.  
 4 MR. MCDUGAL: There's 170.  
 5 THE COURT: You have 170 -- and what else are you  
 6 giving her?  
 7 MR. MCDUGAL: 173. Although, I may not have  
 8 questions about it.  
 9 THE COURT: 173?  
 10 MR. MCDUGAL: Yes.  
 11 THE COURT: You also mentioned 171. Do you want her  
 12 to have that?  
 13 MR. MCDUGAL: I'll give her 171.  
 14 THE COURT: Did you give her 171?  
 15 MR. MCDUGAL: Do you have 230?  
 16 THE WITNESS: No, sir.  
 17 MR. MCDUGAL: And 230 as well.  
 18 THE COURT: Let's be certain. 63, which also 168.  
 19 It's the same document. 215, 1-7-0, 170, 173, 171, and 230  
 20 should be before you. Is that correct?  
 21 THE WITNESS: Yes, sir.  
 22 THE COURT: Counsel?  
 23 BY MR. MCDUGAL: (Continuing)  
 24 Q. Are you familiar with all these documents?  
 25 A. Just a moment. Yes, sir.

1 Q. Yes. I want you to have access to those documents,  
 2 because I'm going to be asking you some questions about them.  
 3 A. Okay.  
 4 Q. If you feel you need to be able to explain your answer  
 5 better by having them shown to the jury, I'm glad to do that.  
 6 A. Okay.  
 7 Q. At some point are you trying to resolve matters with  
 8 Mr. Cleavenger when -- when I say you, I'm sorry, I mean the  
 9 department -- through potential settlement?  
 10 A. Context?  
 11 Q. Context: Are there settlement negotiations going on at  
 12 some point?  
 13 A. There was some going on after the arbitration decision.  
 14 Q. Okay. And that was before he was *Brady*-listed; right?  
 15 A. Yes, sir.  
 16 Q. And parts of those discussions were that you were going to  
 17 give him a letter of recommendation; correct?  
 18 A. Yes.  
 19 Q. You actually signed a letter of recommendation; correct?  
 20 A. Yes.  
 21 Q. And that you were going to keep his employment file  
 22 confidential.  
 23 A. I don't recall that part.  
 24 Q. Okay. The letter of recommendation -- it was a letter of  
 25 recommendation?

1 A. It was a neutral reference letter, I believe.  
 2 Q. Now, would it be an act of dishonesty to give somebody a  
 3 reference letter if you thought they should be *Brady*-listed?  
 4 A. I was told to write that letter.  
 5 Q. You signed it?  
 6 A. I was told to sign it.  
 7 Q. You would allow other people to tell you to do something  
 8 that might be dishonest?  
 9 A. It was general counsel.  
 10 Q. Did you say, "Hey, I can't do this. What are you doing  
 11 telling me to do this?" How loudly did you object?  
 12 A. I don't remember objecting.  
 13 Q. On that topic, did I give you your email that you wrote  
 14 right after the arbitration decision -- the Monday after the  
 15 arbitration decision? Is that one of the ones I gave you?  
 16 A. It's 168.  
 17 Q. Okay. Now, there was some talk about this email in  
 18 opening. Do you recall that?  
 19 A. I -- I don't specifically, sir.  
 20 Q. You were upset and venting your personal email?  
 21 A. Yes.  
 22 Q. First, is this in any way, shape, or form your personal  
 23 email?  
 24 A. No.  
 25 Q. In fact, there's something called the Public Records Act;

1 right?  
 2 A. Yes, sir.  
 3 Q. You have to keep this?  
 4 A. Yes.  
 5 Q. You have to give it to somebody if they ask for it?  
 6 A. Yes.  
 7 Q. And you had learned about the arbitrator's award on a  
 8 Thursday; correct?  
 9 A. Yes, sir.  
 10 Q. And this email that was referred to as venting was four  
 11 days later?  
 12 A. Yes, sir.  
 13 Q. Were you so upset about the arbitration that four days  
 14 later you were still venting?  
 15 A. I was very concerned about what I would do if  
 16 Mr. Cleavenger came back.  
 17 Q. Did the DA ask you to provide any information that you  
 18 were aware of relevant to assessing the veracity of  
 19 Mr. Cleavenger?  
 20 A. I don't recall that.  
 21 Q. Can you take a look at Exhibit 170.  
 22 MR. MCDUGAL: I would offer 170 at this point,  
 23 Your Honor.  
 24 THE COURT: Received.  
 25 MR. MCDUGAL: Please publish 170, Mr. Hess.

1 If you're aware of any other information relevant --  
 2 I'm sorry. I can't read the rest.  
 3 THE COURT: Oh, it's cut off.  
 4 THE WITNESS: -- relevant to assessing the veracity  
 5 of Officer Cleavenger or you are aware of his local reputation  
 6 for veracity, please share whatever you can with me, Patty  
 7 Perlow, or Paul Graebner, so we can make the best possible  
 8 decision.  
 9 BY MR. MCDUGAL: (Continuing)  
 10 Q. Do you remember a police officer?  
 11 A. Yes, sir.  
 12 Q. Do you know what exculpatory evidence is? Can you  
 13 describe it?  
 14 A. Something that would bring forth evidence that some person  
 15 was innocent of something.  
 16 Q. And so he's asking for information. You would -- if you  
 17 had it, you would provide information both ways; right?  
 18 A. Yes.  
 19 Q. Okay. Did you ever ask anybody what his reputation for  
 20 truthfulness was among the staff?  
 21 A. No, I didn't. I forwarded this to general counsel. We  
 22 submitted our whole packet and I forwarded it to general  
 23 counsel for further instruction.  
 24 Q. Did you ever get any further instruction?  
 25 A. I don't recall any.

1 BY MR. MCDUGAL: (Continuing)  
 2 Q. I would like you to take your time to read 170, and I  
 3 would have you point out some portion to the Court and to the  
 4 jury.  
 5 THE COURT: You can publish 170, Counsel.  
 6 BY MR. MCDUGAL: (Continuing)  
 7 Q. Have you had a chance to read it?  
 8 A. I believe so.  
 9 MR. MCDUGAL: Okay. Mr. Hess, can you pull up the  
 10 last sentence of the first paragraph?  
 11 BY MR. MCDUGAL: (Continuing)  
 12 Q. Okay. Does it say: We're asking for your help in  
 13 gathering relevant information bearing on his training,  
 14 experience, veracity, and credibility?  
 15 A. Yes.  
 16 MR. MCDUGAL: Mr. Hess, can you pull up -- down at  
 17 the bottom, the -- I guess it's the second full sentence,  
 18 starting with "since," and highlight it?  
 19 No. Second paragraph. Second full sentence. Thank you.  
 20 BY MR. MCDUGAL: (Continuing)  
 21 Q. Can you read that to the jury?  
 22 A. Since you supervised Officer Cleavenger and your agency  
 23 contributed to his experience and training, we're asking you to  
 24 review the attached report and provide any additional relevant  
 25 background you can share.

1 Q. He's asking for as much information as you can give him,  
 2 that goes both ways, and there's no response?  
 3 A. Not that I know of.  
 4 Q. Can you read out loud the exhibit numbers in front of you?  
 5 A. All of them?  
 6 Q. Yes.  
 7 A. 168, 170, 215, 171, 173, 230.  
 8 MR. MCDUGAL: I would move that all of those  
 9 exhibits that have not yet been admitted, be admitted.  
 10 THE COURT: First of all, 170 has already been  
 11 received into evidence. 215 is received into evidence. 168 is  
 12 received into evidence, which has already been marked as 63.  
 13 So there's no confusion with the jurors, it's a double  
 14 marking.  
 15 MR. MCDUGAL: The --  
 16 THE COURT: 173 is received into evidence. 171 is  
 17 received into evidence. And 230 is received into evidence.  
 18 MR. MCDUGAL: May I confer with counsel for just two  
 19 seconds?  
 20 THE COURT: You may.  
 21 BY MR. MCDUGAL: (Continuing)  
 22 Q. When you were chief, the department had agreed that it  
 23 would arbitrate disputes; right?  
 24 A. You mean with the local union?  
 25 Q. Yeah.

1 A. Yeah.  
 2 Q. Okay. And it was understood that a neutral person would  
 3 be the arbitrator; correct?  
 4 A. Yes.  
 5 Q. And you agreed to what's called binding arbitration;  
 6 correct?  
 7 A. I believe so.  
 8 Q. It means you can't even appeal it because you're going to  
 9 go with what that person says?  
 10 A. Yes.  
 11 Q. Are you're bound to do that, by your agreement?  
 12 A. Yes.  
 13 Q. Were you mad at the arbitrator for saying the things he  
 14 said about Mr. Cleavenger's honesty?  
 15 A. No.  
 16 Q. Were you venting about that?  
 17 A. No.  
 18 Q. You've got a document that you just read where somebody  
 19 says he's an honest man. Wasn't your first reaction, the very  
 20 first time you learned of the arbitration award, to say he  
 21 should be *Brady*-listed?  
 22 A. No, sir.  
 23 Q. When did you first learn of the arbitration decision? You  
 24 can look at some of those documents there.  
 25 A. Thursday, March 6th.

1 Q. What document number are you looking at?  
 2 A. 168.  
 3 MR. MCDOUGAL: Permission to publish 168?  
 4 THE COURT: You may.  
 5 MR. HESS: Which page?  
 6 MR. MCDOUGAL: First page.  
 7 MR. HESS: Which paragraph?  
 8 MR. MCDOUGAL: Go from the bottom.  
 9 BY MR. MCDOUGAL: (Continuing)  
 10 Q. So just correct me if I'm wrong. I'm trying to summarize  
 11 here. You know it was March 6th because we see that part of  
 12 the email right there.  
 13 A. Yes, sir.  
 14 Q. You got it from Douglas Park. He's a lawyer. Okay? And  
 15 he sends you that. And you have a conversation with him;  
 16 right?  
 17 A. I don't believe I had a -- you mean a phone conversation?  
 18 Q. Yeah.  
 19 A. I don't believe so. I don't remember.  
 20 Q. Let's move up. Go to the next one. You get that on  
 21 Thursday. You send out your -- on Monday: Here's the opinion  
 22 and award from the arbitrator. I responded to Doug Park's  
 23 email that while I respected his expertise --  
 24 THE COURT REPORTER: I'm sorry. Could you --  
 25 THE COURT: Read it slowly, Counsel, please. It's

1 fine that you read it. Just slowly.  
 2 MR. MCDOUGAL: I read the part that I want.  
 3 THE COURT: Just read it again, because the court  
 4 reporter didn't get it.  
 5 MR. MCDOUGAL: Oh, I'm sorry.  
 6 THE COURT: Just read it again. Read it again.  
 7 BY MR. MCDOUGAL: (Continuing)  
 8 Q. Here is the opinion and award from the arbitrator. I  
 9 responded to Doug Park's email.  
 10 Do you know when you responded to Doug Park's email?  
 11 A. I don't know.  
 12 Q. It was before this email, though, obviously, though;  
 13 right?  
 14 A. It appears like that.  
 15 Q. Move up the page, Mr. Hess.  
 16 A. Okay.  
 17 Q. Then Monday, March 10, literally four minutes after you  
 18 send your email, Lieutenant Bechdolt responds, "There are *Brady*  
 19 issues." So that's his immediate response?  
 20 A. Yes.  
 21 Q. Did you write him back and say, "Oh, the arbitrator found  
 22 that he was honest"?  
 23 A. No, I didn't.  
 24 Q. Okay. Then what happens next?  
 25 A. Then I -- then I respond back to him.

1 Q. And your response back to him -- what did you tell him?  
 2 A. I'm telling him, "Yes, I said that in my response."  
 3 Q. Your response to Doug Park?  
 4 A. I can only assume that. I don't recall that.  
 5 Q. But you had told somebody that before you had sent your  
 6 10:30 email. You're not suggesting that --  
 7 A. What 10:30 email?  
 8 Q. I'm sorry. Your Monday morning email to -- might have  
 9 been 10:00 -- it was, sorry, 11:35.  
 10 A. Oh, okay.  
 11 Q. Yeah.  
 12 A. Oh, I would assume, yes, it was before that.  
 13 Q. And this was a very serious matter, *Brady*-listing someone;  
 14 correct?  
 15 A. Yes, sir.  
 16 Q. You knew it could end their career?  
 17 A. Yes, sir.  
 18 Q. You knew there was somebody neutral who disagreed with  
 19 you?  
 20 A. Yes, sir.  
 21 Q. And you didn't give them the arbitration award with the  
 22 *Brady* list materials. You didn't give them to the DA?  
 23 A. I did not provide them to him.  
 24 Q. Doug Park, he was aware of the opinion and award of the  
 25 arbitrator; right?

1 A. Yes.  
 2 Q. You gave him the letter asking for any other information  
 3 regarding veracity; correct?  
 4 A. Yes.  
 5 Q. And he never sent it?  
 6 A. I don't know that.  
 7 Q. Randy Geller also knew?  
 8 A. I don't know.  
 9 Q. If it is a matter of throwing somebody out of a career  
 10 basically -- you'd agree that's what it is if they get  
 11 *Brady*-listed?  
 12 A. Not necessarily.  
 13 Q. It's --  
 14 A. It depends what they're going to do. I do know officers  
 15 who are still employed.  
 16 Q. For a young officer?  
 17 A. Pardon me?  
 18 Q. Let's just go to your deposition, perhaps.  
 19 A. Yes, sir.  
 20 Q. It will take me one second. Page 206, lines 1 through 5.  
 21 A. Yes.  
 22 Q. You were asked: Question: Well, you knew this was a  
 23 serious decision that Officer Cleavenger's career as a police  
 24 officer was on the line; right?  
 25 And what was your answer?

1 A. "Sir, I actually do know that. I know how I would feel."  
 2 Q. Now, you say you know how you would feel. If there was a  
 3 document saying you were honest about a number of matters in  
 4 the *Brady* materials and the person who reported the *Brady* knew  
 5 it and had it and didn't give it to him, how would you feel?  
 6 A. I don't know that wasn't given to him. I didn't give it  
 7 to him.  
 8 Q. And you initiated the *Brady* listing?  
 9 A. I did. It was my decision.  
 10 Q. And you were in charge? You could have?  
 11 A. It was --  
 12 Q. In fact, it was in the first draft.  
 13 A. Correct.  
 14 Q. Who would take it out?  
 15 A. We -- I wasn't sure if it should be submitted, and we  
 16 thought that we could have the DA ask for it if they -- or if  
 17 the investigator team --  
 18 Q. You're dealing with a man's career and you are editing out  
 19 stuff that's favorable to him?  
 20 A. I didn't edit out, sir.  
 21 THE COURT REPORTER: I'm sorry. I can't get you both  
 22 at the same time.  
 23 THE COURT: I think you two spoke over each other.  
 24 Reask the question.  
 25 ///

1 BY MR. MCDOUGAL: (Continuing)  
 2 Q. Who decide to pull the arbitration award from the *Brady*  
 3 materials?  
 4 A. I don't recall. I told Lieutenant Lebrecht that the  
 5 report was very big and it needed to be summarized.  
 6 Q. So you told him not to give it, but instead to give a  
 7 summary?  
 8 A. I -- it wasn't specific to the arbitration award. I told  
 9 him his whole report was very long and it needed to be  
 10 summarized.  
 11 Q. Well, it isn't part of the report; this attachment?  
 12 A. Yes, sir.  
 13 Q. It could have been attached; right? So what was he  
 14 summarizing?  
 15 A. His investigation, which I assumed that the -- he had  
 16 included that settlement in.  
 17 Q. You mean the arbitration award?  
 18 A. Yes.  
 19 Q. At a certain point, a lot of people review the final  
 20 materials that are going to be submitted; right?  
 21 A. Yes.  
 22 Q. Why don't you look at the email and tell me how many  
 23 people were involved in the decision not to give arbitration  
 24 award -- not -- to give the *Brady* materials without the  
 25 arbitration award. How many people reviewed that final draft?

1 A. I'm not sure who reviewed the final draft. I know  
 2 Lieutenant Lebrecht and I did and probably Captain Deshpande .  
 3 Q. You have an email there where the final draft is emailed  
 4 out to a bunch of people.  
 5 A. Can you direct me to the right --  
 6 Q. Let me make sure I'm not mistaken that you have it. It  
 7 has some black boxes on it. You have to look at the subject  
 8 line to see what's -- excuse my reach. That's it.  
 9 Exhibit 230.  
 10 A. Okay.  
 11 MR. MCDOUGAL: Mr. Hess, can you publish Exhibit 230?  
 12 THE WITNESS: Sir, I didn't know we were talking  
 13 about this document.  
 14 BY MR. MCDOUGAL: (Continuing)  
 15 Q. Okay. What is this -- does this document have the *Brady*  
 16 materials attached to it?  
 17 A. This was the best practices document, from Alex Gardner,  
 18 they sent out to all the chiefs of police.  
 19 Q. So you're just forwarding it?  
 20 A. Yes, sir.  
 21 Q. My mistake. I misunderstood because of the title of the  
 22 document. It said *Brady*.  
 23 Who was on the committee? Or let me back up. That  
 24 assumes something. Were there a group of people, not just  
 25 yourself, involved in putting the *Brady* materials together?

1 A. Lieutenant Lebrecht did put the report together.  
 2 Q. Who reviewed it?  
 3 A. Captain Deshpande.  
 4 Q. And who else? I want to know --  
 5 A. Me.  
 6 Q. -- anybody else who reviewed it before it was sent to the  
 7 DA.  
 8 A. Not that I recall.  
 9 Q. Did Doug Park review it?  
 10 A. No.  
 11 Q. Did Andrea Coit review it?  
 12 A. No.  
 13 Q. Was it your testimony that the lawyers weren't involved  
 14 with sending out the original *Brady* materials, but they were  
 15 involved when there was requests made about them?  
 16 A. I believe so.  
 17 Q. They were involved with your letter of recommendation,  
 18 correct, for Mr. Cleavenger? The reference letter.  
 19 A. The neutral reference letter, yes.  
 20 Q. They were also aware, when drafting that reference letter,  
 21 that you all -- the department was going to *Brady* list  
 22 Mr. Cleavenger; correct?  
 23 A. I don't believe so.  
 24 Q. You don't believe -- I'll cover that with someone else.  
 25 MR. MCDUGAL: That's all I have.

1 Oh, hold on one more moment.  
 2 THE COURT: That's fine.  
 3 MR. MCDUGAL: That's all I have. Thank you.  
 4 THE COURT: All right. Ladies and gentlemen, I'll  
 5 ask you to take a recess and stretch for a minute. We'll get  
 6 you in 20 minutes. Take a recess. Don't discuss this matter  
 7 amongst yourselves. And, counsel, remain for the moment.  
 8 Chief, you may step down.  
 9 (Jury not present.)  
 10 THE COURT: Counsel, I want to go back on the record,  
 11 outside the presence of the jury.  
 12 You may step down, Chief. Thank you.  
 13 THE WITNESS: Oh.  
 14 THE COURT: Thank you. I want you to put Exhibit  
 15 No. 168 up on the stand -- or up on the Elmo again, so all of  
 16 you can see that. I'm curious about the attorney-client  
 17 privilege or what the redactions are and if they're appropriate  
 18 or not.  
 19 I want you to go down to the next portion, under the  
 20 redacted portion, and I'm going to summarize it. It basically  
 21 is a beginning sentence that says, "To whoever the general  
 22 counsel is" -- and I'm not certain if it's Doug Park or  
 23 somebody else, because it's redacted, I'm going to assume it's  
 24 Doug Park.  
 25 Basically, it appears that the chief has received some

1 kind of information from somebody who purports to be somebody  
 2 who's general counsel and has decided potentially or  
 3 hypothetically or speculatively not to follow it.  
 4 So let's read together, because I don't know what that  
 5 redacted portion is yet. What I'm eventually going to ask you  
 6 is if the Court made a ruling that caused this redaction or  
 7 whether this was an agreement based upon the attorney-client  
 8 privilege.  
 9 So let's read together.  
 10 Would you pull up that next paragraph?  
 11 MR. JASON KAFOURY: Page 2?  
 12 THE COURT: Yes, page 2. I want to see the first  
 13 line. No. Go back for a moment. Not what I'm looking for.  
 14 Yes, could you blow it up? Here's the opinion. Okay.  
 15 This is from the chief to her -- Pete Deshpande, who I believe  
 16 is the captain; Brandon Lebrecht, who's the lieutenant; and  
 17 Andrew Bechdolt, who we've heard from.  
 18 "Here's the opinion and award from the arbitrator. I  
 19 responded to Doug Park's email that while I respected his  
 20 expertise, I feared the precedence that would be set."  
 21 Now, I don't know what was said in that first portion,  
 22 because I've never seen that.  
 23 MR. JASON KAFOURY: Neither have we, Your Honor.  
 24 THE COURT: Well, I understand that, Counsel.  
 25 So it could be that there's some advice being given by

1 Doug Park, who I assume is general counsel --  
 2 MS. COIT: Yes.  
 3 THE COURT: -- for the University of Oregon.  
 4 MS. COIT: Yes.  
 5 THE COURT: And it could be that the chief has gone  
 6 against that advice and acted independently.  
 7 Now, before, during the testimony, there was a discussion  
 8 earlier today about why give a letter of recommendation while  
 9 sanctions were being filed concerning *Brady* violations. In  
 10 other words, you drove at the point that settlement  
 11 negotiations were going on after arbitration and you pointed to  
 12 a number of documents, Counsel, and you were trying to point  
 13 out that apparently you believe that this wasn't in good faith  
 14 when there was a *Brady* violation taking place and settlement  
 15 negotiations were going on, and the chief's response was  
 16 general counsel instructed her.  
 17 On one hand, your testimony, Chief, involves general  
 18 counsel instructing you, which you seemed to have submitted to ;  
 19 on the other hand, it appears -- and I haven't read this  
 20 redacted portion yet -- and I'm about to -- that you were going  
 21 against explicit instructions from general counsel.  
 22 How did this information get redacted? Was this a ruling  
 23 that the Court made instructing you to do this, or was this an  
 24 agreement between the two of you?  
 25 MR. MCDUGAL: No, Your Honor, it wasn't an

1 agreement. It was produced redacted.  
 2 THE COURT: It was produced redacted.  
 3 MS. COIT: It was produced redacted.  
 4 THE COURT: Why was this produced redacted?  
 5 MS. COIT: Because it was attorney-client privilege  
 6 between Chief McDermid and Doug Park.  
 7 THE COURT: Doesn't this become highly relevant now?  
 8 MS. COIT: Your Honor, if you would like, I'm more  
 9 than happy to produce the unredacted version.  
 10 THE COURT: Let's unredact that for a moment. I  
 11 would like to see what that says, because, in a sense, if the  
 12 chief is on one hand acquiescing and submitting to general  
 13 counsel but on the other hand disregarding general counsel,  
 14 then I think that the defense and the plaintiff are both  
 15 entitled to know that. And if this is simply your choice of  
 16 redaction, this never came before this Court for a ruling.  
 17 This is something simply given to counsel on plaintiff's side.  
 18 So let's unredact that and see what this says.  
 19 MS. COIT: My associate is going to get the document.  
 20 Your Honor, may also --  
 21 THE COURT: No, I prefer that you may not. I want to  
 22 see the unredacted portion. It may not be a problem at all.  
 23 Where is Mr. Park, by the way?  
 24 MS. COIT: He's --  
 25 THE COURT: Is he alive?

1 So I leave that to you initially whether this is  
 2 attorney-client privilege; but, of course, I become concerned  
 3 if Doug Park is giving a recommendation that the chief doesn't  
 4 follow and then the chief testifies that she's submitting to  
 5 his recommendation on another occasion. And the chief should  
 6 have a chance to explain that.  
 7 So is this attorney-client privilege? And, if so, I want  
 8 to hear that.  
 9 MS. COIT: May I talk?  
 10 THE COURT: Please.  
 11 MS. COIT: The -- yes, the attorney-client privilege  
 12 portion that's been redacted is just Doug Park sending his --  
 13 and I will right now waive the attorney-client privilege on  
 14 this email -- sending the arbitration decision with his take on  
 15 it, which came from me. He was cutting and pasting an email  
 16 from me.  
 17 THE COURT: Now, just a moment. Hold on. I want to  
 18 get the chain correct.  
 19 MS. COIT: Okay.  
 20 THE COURT: We've got the chief in 168 hypothetically  
 21 going against Doug Park's recommendation, but Doug Park's --  
 22 MS. COIT: There's no recommendation made in this  
 23 email.  
 24 THE COURT: Let's see what it is, so I'm not  
 25 speculating. But that direction is coming from you?

1 MS. COIT: Yes.  
 2 THE COURT: Okay.  
 3 MS. COIT: May I step out and help my paralegal find  
 4 that?  
 5 THE COURT: Counsel, while we're waiting, I have a  
 6 matter back in my court.  
 7 (Pause-in-proceedings.)  
 8 THE COURT: Counsel, do you have that document?  
 9 MS. COIT: Your Honor, not yet.  
 10 THE COURT: Let me state on the record to both of you  
 11 I'm not impugning the integrity -- Counsel, sit down.  
 12 I'm not impugning the integrity of counsel. Let's be  
 13 clear about that. Number two, this may be brought in good  
 14 faith because it's believed to be attorney-client privilege,  
 15 but the Court has to be concerned if there's relevant evidence  
 16 or information -- I'm not a decider of that. If you're  
 17 claiming the attorney-client privilege, I want you to clearly  
 18 state that, and then we'll do some research and we'll rule in a  
 19 workmanlike manner whether it is or it isn't. But if it's not,  
 20 then it needs to be turned over immediately and unredacted.  
 21 And I don't want the Court drawn into a conversation,  
 22 Counsel, by a question when the jury comes back in: Well,  
 23 didn't Judge Carter cause you to turn that over? Well, just a  
 24 moment. I've been around a long time. I think I've seen it  
 25 now. So I know you won't -- trust me. Lots of things happen.

1 MS. COIT: There's no direction. It's just turning  
 2 it over. He's saying, "What is in it?" And what the  
 3 arbitrator has advised and that the global settlement --  
 4 THE COURT: Let me say this again. Are you giving  
 5 input to Doug Park about what Doug Park should be relaying to  
 6 the chief?  
 7 MS. COIT: No.  
 8 THE COURT: Okay. That was confusing. It sounded to  
 9 me like, for a moment, you were directing counsel.  
 10 So this is Doug Park's independent -- whatever we're about  
 11 to read?  
 12 MS. COIT: Yes.  
 13 THE COURT: Okay. That was confusing. It sounded  
 14 like you might be giving direction.  
 15 MS. COIT: No. What I was saying is I sent the  
 16 arbitration decision to Doug Park with my summary of what is  
 17 said. He took that summary and forwarded it to the people who  
 18 needed to know about it.  
 19 THE COURT: Okay.  
 20 MS. COIT: May I also -- I think there's a lot of  
 21 confusion being had about the neutral letter of reference that  
 22 was part of the settlement agreement.  
 23 That letter -- and, I apologize. It will be an exhibit on  
 24 Monday. And I have it on my associate's iPad if you want to  
 25 see it. All it says is the dates Mr. Cleavenger was employed

1 and what positions he was in. There's no recommendation or  
 2 statement about his qualifications or his anything.  
 3 THE COURT: Just a moment. I leave that to you in  
 4 the presentation as counsel and the adversarial system. I'm  
 5 not intruding with that. My only concern, as the judge, is  
 6 what is appropriate evidence. And I was a little concerned  
 7 that I might have made a ruling based upon attorney-client  
 8 privilege, and it might have come before me, and that's why I  
 9 raised this concern.  
 10 MS. COIT: I understand.  
 11 THE COURT: Apparently, this was already redacted by  
 12 the defense and given to plaintiff's counsel as a redacted  
 13 portion.  
 14 MR. JASON KAFOURY: Correct.  
 15 THE COURT: And that was never brought before me.  
 16 MS. COIT: May I hand you the email?  
 17 THE COURT: Is it on the screen.  
 18 MS. COIT: I apologize. My office is in Portland --  
 19 or Eugene.  
 20 THE COURT: Well, why don't you just read that  
 21 portion into the record. I don't want to be a part of that  
 22 proceeding. This is adversarial. But I think from the second  
 23 line it may appear to some of them that the chief was going  
 24 against the advice of Mr. Park, and that may not be true. So  
 25 let's find out what that advice was.

1 MS. COIT: The body of the email: Douglas Park,  
 2 Thursday, March 6th, 2014, 2:04 p.m., to Carolyn McDermed,  
 3 Jamie Moffitt, cc: to Randy Geller. Subject: Cleavenger  
 4 arbitration decision. Content: Colleagues --  
 5 THE COURT: Colleagues?  
 6 MS. COIT: "Colleagues, the accompanying  
 7 attachment is the arbitrator's decision in the SEIU Cleavenger  
 8 case. This is an unfortunate result for us. In short, the  
 9 arbitrator agreed with us on practically everything except the  
 10 imposed discipline. Accordingly, Cleavenger is entitled to  
 11 backpay and reinstatement to his former position."  
 12 THE COURT: And then what follows is the chief's  
 13 response of March 10, 2014, at 11:35 a.m. So I'm certain I  
 14 have the sequence --  
 15 MR. MCDUGAL: No, Your Honor.  
 16 THE COURT: Here is the opinion and the award of the  
 17 arbitrator.  
 18 MR. MCDUGAL: That's not the sequence.  
 19 THE COURT: No, I don't think that's the sequence  
 20 either. That doesn't make any sense to me.  
 21 MR. MCDUGAL: There's a separate email that  
 22 Carolyn McDermed sent to Doug Park, and we know that from the  
 23 top with the things that I told him not to.  
 24 THE COURT: Counsel, let's get the totality of this  
 25 now.

1 MR. JASON KAFOURY: That email has never been  
 2 produced.  
 3 THE COURT: Well, it's about to be produced, unless  
 4 counsel is claiming attorney-client privilege, and we'll find  
 5 out.  
 6 The Court doesn't want to be a part of holding evidence  
 7 out, and I'm thankful that this apparently didn't come in front  
 8 of me and that the Court didn't make a mistake on this.  
 9 Because apparently what I call redactions by the defense,  
 10 given to the plaintiff, as I understand it, this wasn't brought  
 11 to my attention by the plaintiff. Apparently, this might be  
 12 attorney-client privilege in good faith, and it could be. But  
 13 now this is very much a contention because of 168. And the  
 14 statement that the chief, on one hand, is subservient,  
 15 acquiescent, compliant -- whatever the word is -- on a letter  
 16 of recommendation because quote/unquote general counsel  
 17 instructed her to do so, and then as, if you will, the  
 18 independence to strike down, potentially, independent counsel's  
 19 instruction, and I'm not certain what that instruction is yet.  
 20 We'll wait for that now.  
 21 (Pause-in-proceedings.)  
 22 THE COURT: Counsel, come in for a moment. I'll  
 23 speak to both of you on the record.  
 24 We're on the record. The parties are present.  
 25 Lieutenant Lebrecht come in.

1 My thoughts are this: When I entered into this  
 2 discussion, I was deeply concerned that this Court might have  
 3 made a ruling. Remember I have tried 400 cases. You're one of  
 4 400 to 500 cases. I couldn't remember if the Court had made a  
 5 ruling where attorney-client privilege had come before the  
 6 Court and I had caused this redaction. I didn't know.  
 7 I don't wish to enter into any further discussion about  
 8 this, from the Court's perspective. In other words, if this is  
 9 attorney-client privilege, I encourage you to assert that. Is  
 10 that understood, Counsel?  
 11 MS. COIT: Yes.  
 12 THE COURT: Number two, this is not a mark on your  
 13 credibility or noncredibility. That's for the jury to  
 14 determine. This is outside the presence of the jury. I have  
 15 no thoughts about that.  
 16 And for the plaintiff, also, I want to make certain that  
 17 as you're presenting your case, if there's relevant  
 18 information, that you have access to that. And the same for  
 19 the defendant. I'm a gatekeeper. That's all I am.  
 20 So when I saw this, these redactions, I was wondering,  
 21 quite frankly -- which is why I had the discussion with you  
 22 outside the presence of the jury -- if the Court had made a  
 23 ruling based upon attorney-client that caused these redactions  
 24 or if it had come before the Court or if there had been  
 25 stipulations in light of the chief's testimony. Therefore, I



1 don't find it credible or noncredible. That's for the jury to  
2 decide. I'm only concerned about the availability of evidence.

3 So at this point I'm not going to do anything further with  
4 it. In other words, I'm not causing you to disclose that. I  
5 don't want to be concerned or not concerned. That's your  
6 independent judgment as counsel. But if you're asserting the  
7 attorney-client privilege, you should do so. If you're not,  
8 then you're waiving that, and counsel should have access to it.

9 And I want you to take a few moments with co-counsel, your  
10 clients, or whatever, to decide that. And, therefore, even  
11 though you've said you waived the attorney-client privilege, I  
12 want you to take a few moments. And if you're asserting it,  
13 we're going to do a lot of research on that.

14 But the problem is it leaves everybody speculating with  
15 that second line on 168. And I'm certainly not going to  
16 foreclose, Counsel, if you make an objection, from arguing that  
17 there must have been information, from your perspective,  
18 because the jury can see now that that portion is redacted, and  
19 they have to be wondering why it's redacted, what it is, and I  
20 don't think in good faith I can foreclose you from arguing  
21 every type of speculation.

22 And, by the way, this may be completely harmless, because  
23 nobody knows what's in there. Okay. And I -- it may be easily  
24 explained or it may be devastating. I just don't know. I  
25 haven't seen it.

1 So why don't you take a few moments with your clients.  
2 Why don't you thoughtfully discuss that with whomever you want  
3 to and tell me how you would like to proceed.

4 Beyond this, I won't go any further with this. I'm not  
5 making any finding. I'm just concerned that there's redacted  
6 portions and whether they're appropriate or not.

7 MS. COIT: May I ask a question, Your Honor?

8 THE COURT: Certainly.

9 MS. COIT: Are you referring to the document that I  
10 just read the redacted portion into the record? Is that what  
11 you're -- because that's the only email that I know of at this  
12 point that has to do with this email chain. And if -- if  
13 that's the question, then I'm absolutely waiving the privilege.

14 THE COURT: Exactly. And counsel, remember, also,  
15 though, is making the accusation. I don't know.

16 MS. COIT: I understand. I just don't know --

17 THE COURT: If there's another email out there that  
18 allegedly -- you see they can run wild with speculation on this  
19 what the chief might have said, causing redaction, which leads  
20 to 168 and the second sentence, "I responded to Doug Park's  
21 email that while I respected his expertise, I feared the  
22 precedence that would be set."

23 I can't foreclose nor will I foreclose the plaintiff from  
24 arguing under this set of circumstances that there was  
25 communication between Doug Park and the chief that Doug Park

1 must have given some advice that would then cause this second  
2 sentence that looks like the chief is going against Doug Park's  
3 advice and then comparing that to the response concerning the  
4 letter of recommendation where the chief said she was order ed  
5 to do so and instructed by general counsel.

6 So what it does is it leaves the plaintiff to have the  
7 ability to argue something that may not, in fact, be correct,  
8 but they don't know. They don't have the information.

9 Therefore, when you object, I'm going to be placed in the  
10 position of overruling your objection. Frankly, you're  
11 probably going to be able to speculate as to what this was and  
12 why the chief was responding in this way. So I leave that to  
13 your wisdom. I'm not entering into this any further.

14 I just became concerned, and will repeat to each of you,  
15 that the Court might have made a ruling that caused these  
16 redactions. And apparently this was a self-imposed redaction.  
17 Apparently, the defense didn't call that to the Court's  
18 attention, and now we're in the position of the chief  
19 responding to the letter of recommendation and you've got the  
20 second sentence in 168. That's what raised all of this.

21 So I leave that to you. Why don't you consult your client  
22 and decide what you want to do.

23 Counsel, Kristi informed me that the jury was having  
24 trouble hearing you at the podium. That's why she moved  
25 another microphone over there.

1 MR. MCDUGAL: Thank you, Your Honor.

2 MS. COIT: Your Honor, we are waiving the  
3 attorney-client privilege on the redacted portion. Sitting  
4 here right now, I have never seen another email that would be a  
5 response from Carolyn to Doug. She does not remember one.

6 THE COURT: Well, that gives you each a fair  
7 opportunity. In other words, instead of resting your case  
8 or -- I'm not going to preclude this evidence, so when the  
9 chief takes the stand, someone can simply ask her if there's  
10 another email. If her response is no, if this is the response  
11 from Doug Park to her and how she dealt with it.

12 But the Court does not want to be drawn into this. While  
13 I can speak to you in terms of this outside the jury, I do not  
14 expect to hear, unless you want me to enjoy Oregon for the rest  
15 of my life, Counsel, with a new trial, that the Court has  
16 ordered, caused, or anything else -- you pay attention to me  
17 now.

18 MR. GREGORY KAFOURY: I am, Your Honor.

19 THE COURT: No, you're not. You're speaking.

20 MR. GREGORY KAFOURY: No, I'm not.

21 THE COURT: Did you hear me, Counsel? That's your  
22 lead counsel right there. Did you hear me?

23 MR. MCDUGAL: Yes.

24 THE COURT: Fine. Now you can have a conversation  
25 quietly.

1 Counsel, I'm also not precluding you from going on.  
 2 Although, you stopped your direct examination, you can reopen ,  
 3 if you decide to, in this particular area.  
 4 MR. MCDUGAL: I have an inquiry for the Court.  
 5 I asked the witness about the document and whether or not  
 6 it had the *Brady* materials attached. It's Exhibit 230. And it  
 7 says there's a *Brady* final corrected PDF, and that, in fact, is  
 8 the *Brady* memo from the DA.  
 9 THE COURT: I see. This has been quite an  
 10 interesting discovery process between the two of you.  
 11 MS. COIT: Yeah. I've explained all of this to Jason  
 12 about the *Brady* material.  
 13 MR. MCDUGAL: What is the attachment?  
 14 THE COURT: Why don't you two have a private  
 15 conversation and try to resolve this before we have the  
 16 University of Oregon up here.  
 17 Have you had enough time to discuss a resolution between  
 18 the two of you?  
 19 MR. MCDUGAL: Yes, Your Honor.  
 20 THE COURT: I always wanted to control my opposing  
 21 counsel and never wanted a judge to decide. You two may not  
 22 heed that wisdom. What are your thoughts?  
 23 MR. MCDUGAL: We're going to let Ms. Coit actually  
 24 look at the documents we have a question about. The other  
 25 document. She doesn't have access to it right now. I don't

1 THE COURT: I'll turn over to cross-examination,  
 2 please.  
 3 MS. COIT: I have no questions. I'll recall chief  
 4 then.  
 5 THE COURT: Chief, you may step down. Thank you very  
 6 much.  
 7 Well, Counsel, this is the first time in the history of  
 8 this Court where we've ever recessed before 5:00. I'm just  
 9 kidding you.  
 10 I don't think it would be wise -- I think Mr. Cleavenger  
 11 is your next witness; is that right?  
 12 MR. MCDUGAL: Yes.  
 13 MR. JASON KAFOURY: Correct.  
 14 THE COURT: I don't think that, in my humble wisdom,  
 15 that I want to start Mr. Cleavenger's testimony for 40 minutes  
 16 and then break for the weekend. I would like to hear that and  
 17 have you hear that at one period of time, and I think that's  
 18 wise on Monday. Not when you're tired. Okay?  
 19 By the way, we're right on schedule. Well, kind of.  
 20 We're about half a day off of schedule, but that's no fault of  
 21 counsel. They've been cooperating and getting witnesses in  
 22 here very quickly. And, as you can see, try to cooperate and  
 23 try to not have people come back.  
 24 Has anybody talked to anybody about the case so I get to  
 25 start all over again? Don't do it. After the case is done,

1 want to hold up the jury. I asked her to please just let me  
 2 know before Carolyn McDermed's direct exam when she calls her.  
 3 THE COURT: Okay. Fair enough?  
 4 MS. COIT: Yes.  
 5 THE COURT: Is that fair enough for your side?  
 6 MS. COIT: It is.  
 7 THE COURT: Basically fair for your side?  
 8 MR. MCDUGAL: Yes.  
 9 THE COURT: Okay. If you both agree, we'll get the  
 10 jury back in here. If you want to keep Chief McDermed on  
 11 direct examination at this time or turn it over to chief --  
 12 MR. MCDUGAL: I'll turn it over.  
 13 THE COURT: Pardon me?  
 14 MR. MCDUGAL: I'll turn it over.  
 15 THE COURT: Counsel, when the jury comes back in,  
 16 start the cross-examination.  
 17 Thank you for your courtesy, Chief.  
 18 (Jury present.)  
 19 THE COURT: Please be seated. Thank you for your  
 20 patience. That long delay is entirely my fault and I  
 21 apologize. Counsel is very well prepared. We're back in  
 22 session. The parties are present, counsel is present, and the  
 23 jury is present.  
 24 Do you have any further questions on direct examination ?  
 25 MR. MCDUGAL: No, Your Honor.

1 you can talk to anybody. I don't care who you talk to. But,  
 2 in the meantime, you're the only eight people that will ever  
 3 hear all this wisdom.  
 4 How's your neck?  
 5 A JUROR: It's okay.  
 6 THE COURT: Okay. If you need anything, ice or  
 7 whatever, you bring it with you. Is it okay if we reconvene on  
 8 Monday?  
 9 THE JURY: Yes.  
 10 THE COURT: What should I do on Friday night in  
 11 Portland? I hear you have a place called Voodoo Doughnuts.  
 12 A JUROR: That's a good place.  
 13 THE COURT: That's a good place? You think I should  
 14 go there? I'm just kidding you.  
 15 You have a nice weekend. Please don't discuss this  
 16 matter, and we'll see you on Monday at 8:00. Okay?  
 17 Counsel, is that acceptable to excuse the jury?  
 18 MR. MCDUGAL: Yeah.  
 19 THE COURT: All right.  
 20 (Jury not present.)  
 21 THE COURT: Have a seat. I sincerely want to thank  
 22 both of you. I'm involved in long, complex cases, but I really  
 23 appreciate each counsel. I want to state that on the record.  
 24 I can growl at you, but I think you're doing every effort to  
 25 make it a good presentation, and I appreciate your cooperation

1 in not having some people come back. But, remember, time is  
2 not the essence. I virtually walked into the case thinking I  
3 would give you some time period like 10 or 12 hours. The more  
4 I realized it, it's an all or nothing case. It's a lengthy  
5 case or it's a short case. If it's short, it's arbitrary, and  
6 you would be picking and choosing between pieces of evidence.

7 With Mr. Cleavenger, you may be half a day, at least,  
8 Counsel, on direct.

9 MR. JASON KAFOURY: Yeah. I mean, frankly, there's  
10 so much to talk about, so many exhibits, I think I'll probably  
11 go into the early afternoon.

12 We also have one witness who was unavailable until Monday  
13 morning.

14 THE COURT: That's right. And that witness, I think,  
15 was Michael Drake; is that correct?

16 MR. JASON KAFOURY: Michael Drake, yes.

17 THE COURT: You can call him out of order, if you  
18 would like to. You can call him first thing, or you can call  
19 him after Mr. Cleavenger. That's your choice. I won't  
20 interfere in the presentation.

21 MR. JASON KAFOURY: There was one other short  
22 witness. That would be a five-minute witness. Donna Laue that  
23 we had for today. She was unavailable when we needed her, so I  
24 told her if we would call her it would be very quick on Monday.

25 THE COURT: As long as counsel is informed. So

1 THE COURT: So they're the ones who are producing the  
2 exhibits. And then you're going to give them the same  
3 courtesy.

4 MS. COIT: Absolutely.

5 THE COURT: You're going to do the same thing for  
6 each witness you call. You will be setting out each exhibit  
7 the night before.

8 So what are you comfortable with? You two talk for a  
9 moment. And, if so, let's maybe read those exhibits and get  
10 them marked tonight and see what they are.

11 MS. COIT: I don't understand.

12 MR. MCDUGAL: I do.

13 THE COURT: Okay. You've been here every night until  
14 7:00 doing the same thing.

15 MR. MCDUGAL: I think the parties are comfortable --  
16 correct me if I say it wrong. We will confer over the weekend.  
17 We don't think there's going to be any issues. We will give  
18 her a list, and she'll look at it and let us know.

19 THE COURT: If there's an issue, that doesn't leave  
20 me in a position of confidence that I know what the disputes  
21 are. Therefore, you're in here at 7:00 in the morning on  
22 Monday, and we're wrestling with that.

23 MR. JASON KAFOURY: Well, let's just do it.

24 THE COURT: Okay. Let's get out the exhibits.  
25 Now, the second thing is -- let me just ask you a basic

1 you're aware of all this morass of information and what you  
2 have to prepare for over the weekend.

3 Now let's start -- first of all, you've been here until  
4 7:00 most of the evenings, which is rather early for us,  
5 believe it or not, because I demand all the evidence before  
6 witnesses the next day, and, in some cases, it's been more  
7 complex.

8 With Cleavenger, are you fairly comfortable that each of  
9 you, now, after your four days of trial, what that evidence is,  
10 or are there surprises? And if there are going to be any  
11 surprises for the Court, then let's go over each exhibit, as we  
12 have before. So I -- I really leave that to the defense.  
13 You're the ones who have to do the cross-examination. That  
14 cross-examination will come sometime Monday. And the only  
15 reason I insist on knowing every piece of evidence the night  
16 before is because then I don't have sidebars and we're not  
17 wasting the jury's time.

18 There's nothing wrong with getting these exhibits out in  
19 front of you.

20 MS. COIT: Your Honor, I don't have my -- what  
21 exhibits I will use with Mr. Cleavenger.

22 THE COURT: Oh, not you.

23 MS. COIT: Oh, I'm sorry.

24 THE COURT: You're not representing Mr. Cleavenger.

25 MS. COIT: Okay.

1 fairness question. As the defense -- the defense really has  
2 two opportunities to present a witness. You understand that.  
3 But that's your tactical choice. For instance, you called the  
4 chief, you've called the lieutenant, you've called the  
5 sergeant. So we hear from them after their testimony, or, by  
6 choice of counsel, to wait until the beginning of her case.

7 But then we hear from those witnesses again, potentially.  
8 Now, what potentially is unfair about that is that I've  
9 indicated to you my distaste for rebuttal, because rebuttal is  
10 oftentimes a regurgitation, and that's not going to happen.

11 By the same token, perhaps we'll hear from Mr. Cleavenger  
12 twice also. I mean, the meat of this case, the gravitas of  
13 this case are, quite frankly, the lieutenant, the chief, the  
14 sergeant -- not that any other witnesses are unimportant -- and  
15 Mr. Cleavenger, by the time we get all done with this case.

16 If you have two opportunities, I may be much more  
17 sympathetic towards limited rebuttal by Mr. Cleavenger in areas  
18 raised because there's been two opportunities, but I'm not  
19 sympathetic to going through what I call some of the rehashing  
20 by some of the other witnesses.

21 So let's discuss this after Mr. Cleavenger's testimony and  
22 then let's discuss this thoroughly after the chief retestifies  
23 or the lieutenant or Sergeant Cameron does. Okay?

24 MR. JASON KAFOURY: No problem.

25 THE COURT: Just in fairness. But, if so, it will be

1 very limited.  
 2 Now, Counsel, what would make your case flow smooth er?  
 3 What could we do better as a court? I humbly ask that, and I'm  
 4 not -- believe me, I've got a hard shell, so tell me what would  
 5 make your presentation better.  
 6 MR. MCDUGAL: Just -- oh, I'm sorry.  
 7 THE COURT: I'll let you perceive it's excellent.  
 8 MR. JASON KAFURY: You gave Mr. Hess a schedule for  
 9 Tuesday and Wednesday. We have that. Has that changed at all?  
 10 MS. COIT: I have four witnesses coming Monday,  
 11 so I'm --  
 12 MR. JASON KAFURY: I highly doubt we'll get to four  
 13 witnesses.  
 14 THE COURT: That's okay. Where are they coming from?  
 15 In other words, I don't want to inconvenience people coming up  
 16 from Eugene and driving back needlessly, but I don't want to  
 17 get here and, you know, we have the surprise at 4:00 and not  
 18 have a witness who could take 10 or 15 minutes.  
 19 MS. COIT: That's one of my fears. I don't want to  
 20 put one of my clients on. That's why I have four people.  
 21 Three people coming from Eugene. Ms. Brandenburg, the ex-wife;  
 22 Andrew Bechdolt that testified earlier; Chris Phillips, one of  
 23 the officers; and Brian Caufield is here in Portland.  
 24 So I can have him here for sure.  
 25 THE COURT: Why don't you ask the gentleman from

1 you subpoenaed her, it's not fair that she decides she's not  
 2 going to attend on Tuesday, when you subpoenaed her for Monday.  
 3 So if you need her up here, we'll get her up here. She's under  
 4 the jurisdiction of the Court, and I'll just have to order her  
 5 back on Tuesday. That's just the way it is.  
 6 MS. COIT: Okay. That's good. I'll just talk to her  
 7 and tell her those options.  
 8 Thank you, Your Honor.  
 9 MR. MCDUGAL: Your Honor, one thing they do locally  
 10 here, and I don't know if the federal judges do it, or just  
 11 state court, but the court can order just -- the court just  
 12 orders the subpoena continued a day, and you tell the witness  
 13 that the court has ordered you --  
 14 THE COURT: I did that when I was a state court  
 15 judge, also. It's a pretty loose practice. I don't want to  
 16 throw somebody in a contempt situation, but I think most  
 17 witnesses are decent people and they will attend voluntarily.  
 18 I'd encourage a phone call, Counsel. We know where she  
 19 lives; right?  
 20 MS. COIT: Yes.  
 21 THE COURT: She's going to be here.  
 22 Now, let's discuss a little bit more this evening, while  
 23 we're gathering these documents, the issue about the affair  
 24 versus a divorce. Let's try to sort out where we're at on that  
 25 issue because that's the most explosive potential issue, and

1 Portland to attend.  
 2 MS. COIT: Okay.  
 3 THE COURT: Why don't you hold off on the witnesses  
 4 from Eugene. And if we need them or think we do, maybe we  
 5 could call them at noon, but then they're not driving up the  
 6 freeway. And you can pick and choose. I seriously doubt that  
 7 we'll get to them, so why inconvenience them. Okay?  
 8 MS. COIT: And my only concern is with  
 9 Ms. Brandenburg. She's obviously not a friendly witness.  
 10 She's under subpoena for Monday. So I don't want to not be  
 11 able to have her Tuesday if she doesn't want to voluntarily  
 12 accept another subpoena between now and then.  
 13 THE COURT: Once she's under subpoena -- oh, is she  
 14 Mr. Cleavenger's former wife?  
 15 MS. COIT: Yes.  
 16 THE COURT: Oh, I didn't recognize the name. I  
 17 apologize.  
 18 Where is she located? In Eugene?  
 19 MS. COIT: She's in Eugene.  
 20 THE COURT: I don't think it's appropriate I take her  
 21 out of order; in other words, during Mr. Cleavenger's  
 22 testimony.  
 23 MS. COIT: Oh, no, no.  
 24 THE COURT: By the same token, if she would  
 25 voluntarily come, I don't wish to inconvenience her. But if

1 perhaps you need my thoughts and I need your argument before  
 2 Mr. Cleavenger testifies because, without knowing that, you  
 3 don't know whether to take away the sting on your direct  
 4 examination and therefore you kind of anticipate, "If the judge  
 5 has ruled against us, should we bring it out? And if the judge  
 6 is ruling for us, do we have a good faith belief that the  
 7 affair isn't coming in?"  
 8 Tentatively, my thought is the fact that he's going  
 9 through a divorce, if this is true, during this period of time,  
 10 is relevant. The real question is why he's going through the  
 11 divorce. What are the factors that led to the divorce? What  
 12 are the factors? And you have indicated to me informally, and  
 13 formally on the record, that it's because -- or a partial  
 14 reason is because of an affair.  
 15 Now, that gets very interesting for a jury. There are  
 16 divorces because we just don't like each other and there are  
 17 divorces that cast a character trait on us. Having an affair;  
 18 i.e., you're a bad person.  
 19 I take it that perhaps the relationship between  
 20 Mr. Cleavenger and his former wife might not be good. Most  
 21 people who go through a divorce don't have a good thought about  
 22 the opposite spouse, and, therefore, whatever the Court's  
 23 ruling is, she needs to be counseled about what she can speak  
 24 to and not just blurting out and not having me start the case  
 25 over and enjoying Oregon for another couple of weeks. Okay?

1 So what are your thoughts, Counsel? Let me turn to you  
2 first, because if you tend to get into the affair -- I'm not  
3 precluding that. I just need to hash that out with you today.  
4 And if we're going to not get into the divorce, we need to talk  
5 about that.

6 So you don't want any of this in, do you?

7 MR. JASON KAFOURY: No.

8 THE COURT: You don't want the divorce in. But  
9 doesn't it seem --

10 MR. JASON KAFOURY: Can I confer with counsel?

11 THE COURT: Yes. Confer with your client first.  
12 Because obviously his former wife is going to take the stand  
13 with a different name and it doesn't take a great amount of  
14 intelligence to figure out something is wrong, because she's  
15 probably going to glare at him, and, remember, 30 percent of a  
16 trial is what you don't record on the record.

17 MR. MCDUGAL: Your Honor --

18 MR. JASON KAFOURY: My inclination, after thinking  
19 about it -- defense counsel already got up in opening statement  
20 and said, "His ex-wife is coming as our first witness."

21 THE COURT: The cat is out of the bag. It's not like  
22 it isn't there. It's like the elephant in the back of the  
23 courtroom.

24 MR. JASON KAFOURY: I think that the infidelity  
25 allegation gets into he said/she said. My client denies. Said

1 MR. MCDUGAL: No. It was on cross. It was not  
2 on direct --

3 MS. COIT: I have the transcript right here. It's on  
4 page 6. The question says: You talked about how he was a  
5 happy energetic person. Since all this happened with the  
6 University of Oregon termination, have you noticed a difference  
7 in him as a person?

8 His answer was: I believe that between losing his job,  
9 his personal life and stuff has made him quite less -- less  
10 happy, yeah.

11 So his personal life has been brought into the mix of  
12 damages.

13 THE COURT: I have no disagreement with that. It's  
14 the question of divorce versus the addition of an affair.

15 MS. COIT: And I guess that -- the question, then, is  
16 what does he blame the divorce on? The stress from his losing  
17 his job or -- and, if he does, then I think I need to be able  
18 to have Ms. Brandenburg say if he had not had the -- like she  
19 did in her deposition, "If he had not had that affair, I think  
20 we would still be married."

21 THE COURT: I wonder if the wisest thing to do is  
22 this, to have Ms. Brandenburg continue up here, but have that  
23 late on Monday. We can have a hearing outside the presence of  
24 the jury and to hear the questions that would actually be asked  
25 by you in relation to this alleged divorce or alleged affair.

1 they were separated at the time. So it just opens up a huge --  
2 THE COURT: In other words, if he has another person,  
3 if he was separated versus not separated.

4 MR. JASON KAFOURY: Exactly.

5 THE COURT: If he was separated, obviously it's not  
6 the same intonation of an affair. And as soon as you say  
7 "affair," it has the perception of sneaking around.

8 MR. JASON KAFOURY: Exactly. So my inclination would  
9 be to allow them to point out that he did have a divorce and  
10 that obviously divorce may cause other emotional strain or  
11 issues. But a prior bad act alleged of infidelity, I think, is  
12 beyond the scope.

13 THE COURT: Let me get your thoughts, Counsel. In  
14 other words, if I have to have a hearing, I'll do it outside  
15 the presence of the jury. But it is rather explosive when you  
16 have an affair.

17 MS. COIT: Well, okay.

18 THE COURT: What does that mean? Does that mean he  
19 was legally separated or separated out of the house? When does  
20 the affair occur? Now, if he's married and happily in the  
21 house, that's an affair. If he's separated and he has, you  
22 know, a girlfriend, that's questionable. "Affair" is a big  
23 word.

24 MS. COIT: Larry Black, on direct -- Larry Black, the  
25 witness on direct, was asked a question --

1 And maybe I can judge by that time more thoughtfully, rather  
2 than just making an arbitrary decision, because I don't know,  
3 quite frankly, if this did occur, and, if it did, certainly an  
4 affair might be more stressful in a divorce, but a divorce is  
5 stressful in and of itself.

6 And if Mr. Cleavenger doesn't have the opportunity to say  
7 we just -- but I was legally separated or I was separated or I  
8 moved out of the house, that word "affair" has a whole  
9 different connotation. He has the right to say that the  
10 relationship was after he moved out of the house, if that's the  
11 case, and not call it an affair. That word "affair" is just  
12 too broad.

13 And I don't know that, so let's have her continue up.  
14 Let's have a hearing on Monday evening, and let's make a  
15 thoughtful decision.

16 MR. JASON KAFOURY: I think we would be perfectly  
17 fine not making any allegation that the stress of the work and  
18 losing the job caused the divorce.

19 THE COURT: No, but the -- the issue is it's already  
20 out that he had a personal issue. He had a professional issue.  
21 You have the right to ask about additional stressors in his  
22 life besides the firing in the workplace. You have the right  
23 to ask if a divorce is going on, when plaintiff is asking for  
24 damages, if those damages are somewhat caused by a divorce  
25 taking place at that time.

1 You may even have the right to get into an affair, but  
 2 that is a huge word, and I'm reluctant to ever have that word  
 3 used unless I have more information.  
 4 And, therefore, it may simply be, at the best, that he had  
 5 a girlfriend after he had moved out of the house and it's not  
 6 an affair. I just don't know.  
 7 Plus, I can somewhat gauge the hostility, or lack thereof,  
 8 of this witness, and I haven't seen her before.  
 9 MS. COIT: Okay.  
 10 THE COURT: And sometimes, in a divorce situation,  
 11 you get spouses who carry that on, and she takes that stand,  
 12 and what happens if she vents? I don't think you can afford  
 13 another trial, unless your client is rich, and I don't think  
 14 the university -- or, strike that, that your clients  
 15 necessarily would enjoy this process for a second time, and I  
 16 won't hesitate to start over. Okay?  
 17 So be careful with this.  
 18 So let's just keep her coming on Monday.  
 19 MS. COIT: Monday?  
 20 THE COURT: Monday. We'll have a little hearing  
 21 during the evening. Let's find out what she's going to say and  
 22 what you're going to ask. That way you each have a chance to  
 23 talk to her also.  
 24 Now, I take it, from your comments, that you believe,  
 25 based upon your client's statements to you, that there's now a,

1 MS. COIT: Well, I guess, for timing purposes, I  
 2 should bring up that I will be making motions at the end of  
 3 their case.  
 4 THE COURT: Right.  
 5 MS. COIT: Okay.  
 6 THE COURT: Absolutely.  
 7 MS. COIT: Still bring the witness up for Monday  
 8 night? And she'll anticipate coming back Tuesday to testify?  
 9 Is that okay?  
 10 THE COURT: Yes. Because otherwise -- it depends on  
 11 when you want to call her. If you're not calling her on  
 12 Tuesday, for instance, if she would be a Wednesday, then I  
 13 would bring her up Tuesday night. Do you see what I mean? Or  
 14 even Tuesday morning. I can start a little bit late.  
 15 I don't wish to inconvenience her. But you control that.  
 16 And if you're planning on putting her on, for instance, first  
 17 thing Tuesday morning, then I don't have any ability to conduct  
 18 a hearing.  
 19 MS. COIT: Okay. I think perhaps counsel and I can  
 20 work this out that we won't get into that area and be able  
 21 to --  
 22 THE COURT: You tell me.  
 23 MS. COIT: Okay.  
 24 THE COURT: You both are wise counsel. You tell me  
 25 and guide the Court.

1 quote/unquote, affair; that an affair is a girlfriend and that  
 2 this girlfriend occurs after he moves out of the house, and, if  
 3 not, then we're going to rectify that.  
 4 Your client may be on the stand testifying on Monday  
 5 evening also, so I have a full picture. Okay?  
 6 I think that's the fairest way to handle that.  
 7 MS. COIT: Okay.  
 8 THE COURT: Okay. We can do the rest of this without  
 9 the court reporter tonight. And what -- is there anything else  
 10 we need to resolve legally before we go over the items of  
 11 evidence for Monday?  
 12 Counsel on behalf of the plaintiff, is there some legal  
 13 issue we need to resolve tonight? Some question you have about  
 14 your presentation with Mr. Cleavenger on Monday?  
 15 MR. JASON KAFOURY: I'm happy to go through a bunch  
 16 of exhibits.  
 17 THE COURT: We're going to off the record, though,  
 18 without the court reporter, just like we've been doing every  
 19 evening.  
 20 MR. MCDUGAL: No.  
 21 THE COURT: Okay? Counsel, are you okay?  
 22 MR. JASON KAFOURY: Yeah.  
 23 THE COURT: Are we good? Okay. Counsel, what about  
 24 you? Do you have any additional legal issues tonight that we  
 25 can help you with?

1 MS. COIT: All right.  
 2 THE COURT: All right. Then can I have the court  
 3 reporter go home?  
 4 MR. JASON KAFOURY: Yes.  
 5 MS. COIT: Yes.  
 6 THE COURT: Rest your hands. Thank you very much.  
 7 (Trial Day 4 adjourned.)

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

Cleavenger v. McDermid, et al.

6:13-cv-01908-DOC

TRIAL DAY 4

September 11, 2015

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

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

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

<p><b>A JUROR: [3]</b> 1090/4 1230/4 1230/11  <b>DEPUTY COURTROOM CLERK: [3]</b>  1091/11 1194/22 1195/22  <b>MR. CLEAVENGER: [1]</b> 1027/19  <b>MR. GREGORY KAFOURY: [3]</b>  1016/6 1226/17 1226/19  <b>MR. HESS: [9]</b> 1071/14 1085/25  1086/2 1129/25 1132/23 1151/12  1161/23 1204/4 1204/6  <b>MR. 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COIT: [123]</b> 980/6 980/9 980/17  982/20 989/14 999/6 1010/6 1014/7  1015/12 1015/15 1016/1 1016/8  1016/17 1016/19 1016/22 1016/25  1017/6 1017/8 1018/11 1020/7  1021/25 1025/19 1026/12 1026/16  1027/5 1028/24 1029/2 1029/7  1034/24 1039/8 1041/16 1041/23  1042/21 1050/10 1051/2 1051/5  1078/23 1083/12 1084/25 1085/8  1085/14 1085/19 1085/23 1086/1  1088/10 1089/14 1093/1 1099/12  1099/23 1102/5 1102/20 1114/13  1127/6 1145/10 1146/13 1146/15  1161/7 1168/8 1168/13 1171/3 1173/9  1173/12 1214/1 1214/3 1215/2 1215/4  1215/7 1215/18 1215/23 1215/25  1216/2 1216/8 1217/8 1217/10  1217/18 1217/21 1217/25 1218/6  1218/11 1218/14 1218/19 1219/9  1219/15 1219/17 1219/25 1220/5  1222/10 1224/6 1224/8 1224/15  1226/1 1227/10 1228/3 1228/5 1229/2  1232/19 1232/22 1232/24 1233/3  1233/10 1235/9 1235/18 1236/1  1236/7 1236/14 1236/18 1236/22  1237/5 1237/19 1240/16 1240/23  1241/2 1241/14 1243/8 1243/18  1244/6 1244/25 1245/4 1245/6  1245/18 1245/22 1245/25 1246/4  <b>THE COURT REPORTER: [4]</b>  1133/21 1162/21 1204/23 1208/20  <b>THE COURT: [378]</b>  <b>THE JURY: [1]</b> 1230/8  <b>THE WITNESS: [57]</b> 970/16 970/19  970/22 980/21 981/21 982/24 996/8  1014/21 1024/22 1024/24 1029/10  1029/19 1029/23 1030/2 1035/5  1041/17 1041/19 1050/11 1051/7  1051/16 1051/19 1051/22 1055/16  1055/19 1056/11 1061/4 1062/25  1063/14 1064/14 1065/8 1066/12  1067/24 1085/13 1086/12 1089/16  1091/17 1091/21 1091/24 1092/1  1102/12 1112/21 1113/8 1127/8  1131/3 1139/9 1174/3 1174/7 1174/10  1176/12 1186/13 1189/19 1196/1  1196/15 1196/20 1201/3 1210/11  1212/12</p> <hr/> <p><b>\$</b></p> <p><b>\$110 [1]</b> 975/21  <b>\$450 [1]</b> 975/15  <b>\$550 [1]</b> 975/15</p> <hr/> <p><b>'</b></p> <p><b>'11 [1]</b> 1065/1  <b>'13 [4]</b> 1052/13 1189/23 1191/8  1191/10  <b>'14 [1]</b> 1189/23  <b>'14 put [1]</b> 1189/23  <b>'the [1]</b> 1093/25</p> <hr/> <p><b>/</b></p> <p><b>/s/Jill [1]</b> 1247/14</p> <hr/> <p><b>0</b></p> <p><b>0346 [1]</b> 1247/16</p>	<p><b>1</b></p> <p><b>1 percent [1]</b> 1099/11  <b>1,050 [2]</b> 993/17 993/18  <b>1-7-0 [1]</b> 1196/19  <b>10 [15]</b> 973/16 1007/6 1071/9 1071/14  1086/6 1114/23 1115/23 1116/5  1116/20 1156/22 1183/19 1205/17  1220/13 1231/3 1235/18  <b>100 [2]</b> 1128/4 1128/9  <b>1000 [1]</b> 968/21  <b>101 [10]</b> 1071/8 1071/14 1085/3  1085/9 1085/21 1085/24 1086/6  1086/11 1086/13 1086/15  <b>102 [4]</b> 1085/24 1086/9 1086/12  1087/1  <b>10:00 [1]</b> 1206/9  <b>10:30 email [2]</b> 1206/6 1206/7  <b>10th [2]</b> 968/8 1115/7  <b>11 [8]</b> 967/7 1086/10 1087/4 1102/11  1148/10 1184/20 1189/14 1247/6  <b>11:00 [1]</b> 1026/21  <b>11:00 a.m [1]</b> 1159/22  <b>11:35 [2]</b> 1206/9 1220/13  <b>11:39 a.m [1]</b> 1116/13  <b>12 [6]</b> 1066/2 1066/19 1105/11  1158/16 1158/17 1231/3  <b>12/28/15 [1]</b> 1247/15  <b>120 [1]</b> 1132/24  <b>12th [3]</b> 971/13 1156/20 1158/18  <b>13 [8]</b> 1055/9 1159/18 1159/18 1160/6  1160/14 1161/13 1161/15 1161/16  <b>135 [1]</b> 1180/8  <b>137 [4]</b> 1151/11 1151/14 1151/15  1151/18  <b>138 [5]</b> 1150/22 1151/11 1151/13  1151/14 1151/15  <b>13th [6]</b> 1159/21 1162/3 1162/4  1162/10 1163/4 1163/6  <b>14 [1]</b> 1101/1  <b>15 [6]</b> 995/11 1071/9 1071/14 1086/8  1235/18 1247/15  <b>150 [8]</b> 982/14 1040/9 1075/7 1129/9  1129/23 1129/25 1140/5 1140/17  <b>150 feet [1]</b> 1075/1  <b>153 [3]</b> 1074/1 1074/2 1074/5  <b>158 [4]</b> 1122/19 1123/6 1123/23  1168/14  <b>16 [9]</b> 973/17 973/24 1063/21 1085/22  1086/9 1086/15 1086/16 1102/11  1180/10  <b>16-year [1]</b> 997/9  <b>160 [1]</b> 1129/24  <b>165.40 [1]</b> 1134/12  <b>166 [10]</b> 1062/13 1062/14 1062/15  1065/11 1066/24 1066/25 1067/1  1067/2 1067/3 1067/5  <b>168 [20]</b> 1112/19 1112/21 1113/7  1194/23 1194/25 1195/22 1195/23  1195/24 1196/18 1198/16 1202/7  1202/11 1204/2 1204/3 1212/15  1217/20 1221/13 1223/15 1224/20  1225/20  <b>169 [4]</b> 1160/24 1161/6 1161/19  1161/22  <b>16th [1]</b> 1063/22  <b>17 [4]</b> 973/17 1102/12 1186/8 1247/16  <b>170 [19]</b> 1132/24 1194/3 1194/4</p>
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<b>1</b> <b>170... [16]</b> 1194/6 1194/15 1195/1 1195/25 1196/2 1196/3 1196/4 1196/5 1196/19 1199/21 1199/22 1199/25 1200/2 1200/5 1202/7 1202/10 <b>171 [9]</b> 1194/12 1194/13 1195/2 1196/11 1196/13 1196/14 1196/19 1202/7 1202/16 <b>173 [5]</b> 1196/7 1196/9 1196/19 1202/7 1202/16 <b>175 [4]</b> 1146/9 1146/13 1146/18 1146/19 <b>178 [2]</b> 1129/4 1132/25 <b>18 [2]</b> 971/19 1104/23 <b>19 [5]</b> 1040/9 1085/22 1104/23 1175/3 1186/11 <b>19 miles [1]</b> 1004/18 <b>192 [1]</b> 1184/18 <b>195 [4]</b> 1189/8 1189/9 1189/16 1189/18 <b>196 [3]</b> 1189/12 1189/17 1189/18 <b>197 [1]</b> 1189/19 <b>1980 [1]</b> 971/9 <b>1983 [1]</b> 1174/23 <b>1991 [2]</b> 971/13 1174/25 <b>1993 [1]</b> 971/15 <b>1995 [2]</b> 988/3 1117/25 <b>1999 [1]</b> 1052/5 <b>1:00 or [1]</b> 980/25 <b>1:30 [2]</b> 1136/12 1136/16 <b>1:35 or [1]</b> 1136/12 <b>1:40 [1]</b> 1136/12 <b>1st [6]</b> 971/15 1134/11 1135/3 1148/5 1148/8 1159/7	1123/19 1147/1 1147/2 1147/3 1147/5 1147/25 1178/6 1178/10 1193/13 1220/2 1220/13 <b>2015 [4]</b> 967/7 1063/21 1063/23 1247/6 <b>206 [1]</b> 1207/20 <b>21 [5]</b> 1056/8 1133/16 1151/11 1151/15 1151/15 <b>215 [9]</b> 1194/1 1194/2 1194/6 1194/15 1195/1 1195/25 1196/19 1202/7 1202/11 <b>22 [4]</b> 989/11 989/24 1189/12 1189/18 <b>229 [2]</b> 1165/8 1165/12 <b>23 [2]</b> 1056/10 1134/5 <b>230 [9]</b> 1165/12 1196/15 1196/17 1196/19 1202/7 1202/17 1210/9 1210/11 1227/6 <b>24 [6]</b> 1134/16 1151/11 1151/13 1151/14 1151/15 1151/18 <b>24-hour [2]</b> 977/22 978/16 <b>240 [1]</b> 1159/2 <b>244 [2]</b> 989/5 989/13 <b>25 [3]</b> 1070/19 1183/14 1183/16 <b>250 [2]</b> 1131/14 1131/16 <b>256 [1]</b> 1107/10 <b>27 [2]</b> 1122/6 1122/7 <b>272 [1]</b> 1186/9 <b>275 [1]</b> 1186/7 <b>276 [3]</b> 1186/8 1186/10 1186/11 <b>289 [1]</b> 1037/9 <b>289.5 [1]</b> 1049/5 <b>28th [2]</b> 1176/6 1176/7 <b>290 [1]</b> 1036/17 <b>296 [1]</b> 1192/10 <b>2:00 [1]</b> 980/25 <b>2:04 [1]</b> 1220/2 <b>2nd [4]</b> 1134/11 1135/3 1159/6 1176/6	<b>5</b> <b>5/14/12 is [1]</b> 1144/14 <b>5/31/12 [1]</b> 1066/2 <b>50 [3]</b> 1118/8 1118/13 1184/1 <b>500 [2]</b> 1036/24 1222/4 <b>503 [1]</b> 968/22 <b>540 [1]</b> 1036/17 <b>58 [3]</b> 1013/13 1104/22 1107/10 <b>5:00 [1]</b> 1229/8 <b>5:00 p.m [1]</b> 1046/2
<b>2</b> <b>2-1-5 [1]</b> 1194/2 <b>20 [14]</b> 985/4 1040/9 1074/3 1074/5 1102/12 1117/14 1118/2 1118/13 1119/2 1132/21 1141/14 1162/11 1186/12 1212/6 <b>200 [2]</b> 968/5 982/14 <b>2000 [2]</b> 1023/20 1024/14 <b>2001 [1]</b> 1030/18 <b>2002 [1]</b> 1030/19 <b>2008 [4]</b> 971/17 1030/21 1104/9 1175/4 <b>2010 [5]</b> 971/22 1019/7 1032/1 1037/11 1184/8 <b>2011 [19]</b> 1019/7 1040/2 1040/12 1040/25 1052/13 1065/1 1065/18 1097/5 1097/6 1098/19 1099/2 1104/15 1107/17 1108/7 1142/14 1145/7 1145/17 1147/6 1147/7 <b>2012 [25]</b> 1036/11 1036/15 1040/25 1050/24 1050/25 1064/8 1065/1 1065/12 1065/19 1066/23 1122/8 1142/14 1142/14 1142/19 1147/6 1147/7 1157/7 1157/24 1160/6 1160/14 1161/13 1164/2 1165/21 1175/8 1175/22 <b>2013 [11]</b> 973/8 999/6 1009/16 1032/2 1035/18 1037/11 1046/3 1123/4 1124/4 1146/25 1177/4 <b>2014 [22]</b> 988/20 989/11 989/24 1009/16 1093/18 1105/11 1113/17 1114/23 1115/23 1116/5 1116/20	3 <b>30 [5]</b> 1052/23 1052/24 1121/3 1132/9 1135/24 <b>30 percent [1]</b> 1239/15 <b>30-page document [1]</b> 1130/23 <b>300 [1]</b> 968/9 <b>301 [1]</b> 968/21 <b>31 [6]</b> 973/8 1145/5 1145/9 1145/19 1145/22 1148/9 <b>31st [4]</b> 971/22 1069/12 1143/6 1149/7 <b>326-8191 [1]</b> 968/22 <b>352 [1]</b> 1176/8 <b>360 [1]</b> 968/8 <b>362 [4]</b> 1176/5 1176/9 1176/10 1176/11 <b>3:00 a.m [1]</b> 1046/2	<b>6</b> <b>6.12.2 [1]</b> 1125/20 <b>6/1/2013, but [1]</b> 1123/3 <b>60 [4]</b> 977/1 985/4 1106/12 1110/15 <b>612 [4]</b> 1122/24 1123/6 1172/10 1172/11 <b>612.2 [3]</b> 1128/19 1168/21 1168/23 <b>612.4 [1]</b> 1124/21 <b>612th [1]</b> 1172/12 <b>63 [14]</b> 1193/20 1193/22 1193/24 1193/25 1194/6 1194/10 1194/15 1194/23 1194/25 1195/22 1195/23 1195/24 1196/18 1202/12 <b>68 [1]</b> 1060/20 <b>6:13-cv-01908-DOC [2]</b> 967/5 1247/4 <b>6th [5]</b> 1115/6 1116/8 1203/25 1204/11 1220/2
	<b>7</b> <b>70 [4]</b> 985/4 1052/23 1052/24 1110/15 <b>7:00 doing [1]</b> 1233/14 <b>7:00 in [1]</b> 1233/21 <b>7:00 most [1]</b> 1232/4 <b>7th [2]</b> 1133/10 1170/14	<b>8</b> <b>8/3/12 [1]</b> 1066/19 <b>8191 [1]</b> 968/22 <b>830 [1]</b> 1036/15 <b>850 [1]</b> 978/25 <b>87 [3]</b> 1070/15 1070/18 1070/19 <b>88 [1]</b> 1070/19 <b>8:00 [1]</b> 1230/16
	<b>9</b> <b>9/30/17 [1]</b> 1247/16 <b>911 [1]</b> 985/13 <b>93 [2]</b> 1035/23 1047/21 <b>97204 [2]</b> 968/5 968/21 <b>97401 [1]</b> 968/9 <b>98-0346 [1]</b> 1247/16 <b>99 [1]</b> 1013/14 <b>99 percent [1]</b> 1099/12	<b>A</b> <b>a moment [1]</b> 1219/3 <b>a.m [4]</b> 1046/2 1116/13 1159/22 1220/13 <b>Abbott [5]</b> 1087/10 1087/12 1090/2 1094/24 1095/2 <b>ability [5]</b> 1035/19 1148/1 1153/11 1225/7 1245/17 <b>able [20]</b> 976/4 991/11 1004/11 1007/1 1031/5 1033/13 1033/14 1033/17 1033/22 1038/10 1085/5 1119/3 1184/16 1185/25 1186/1 1197/4

<b>A</b>	1120/3 1127/10 1131/11 1132/6 1144/21 1147/23 1148/17 1148/25 1152/11 1156/11 1157/23 1165/18 1169/19 1189/14 1195/23 1197/19 1208/1 1227/23 1241/24 <b>ADAM [1]</b> 968/3 <b>adamant [1]</b> 1179/5 <b>adamantly [1]</b> 1094/9 <b>add [2]</b> 1010/12 1183/22 <b>added [3]</b> 1098/9 1162/11 1172/6 <b>addition [2]</b> 1037/6 1241/14 <b>additional [9]</b> 1001/3 1002/4 1009/22 1012/4 1028/18 1031/4 1200/24 1242/21 1244/24 <b>address [2]</b> 971/5 1030/10 <b>addressed [3]</b> 992/8 1095/8 1146/3 <b>adequate [1]</b> 1012/13 <b>adjacent [1]</b> 1075/5 <b>adjourned [1]</b> 1246/7 <b>adjust [1]</b> 1001/16 <b>administration [1]</b> 1114/3 <b>administrative [1]</b> 1108/14 <b>administrator [3]</b> 1043/3 1108/14 1157/1 <b>admission [1]</b> 1158/3 <b>admissions [1]</b> 1159/6 <b>admit [2]</b> 1143/15 1144/12 <b>admitted [2]</b> 1202/9 1202/9 <b>advance [1]</b> 977/12 <b>advanced [1]</b> 1033/14 <b>advantage [1]</b> 1002/12 <b>adversarial [3]</b> 1040/19 1219/4 1219/22 <b>adversely [2]</b> 1169/3 1169/10 <b>advice [7]</b> 983/3 1213/25 1214/6 1219/24 1219/25 1225/1 1225/3 <b>advise [2]</b> 988/6 1122/2 <b>advised [2]</b> 1140/15 1218/3 <b>advisor [1]</b> 971/18 <b>affair [22]</b> 1237/23 1238/7 1238/14 1238/17 1239/2 1240/6 1240/7 1240/16 1240/20 1240/21 1240/22 1241/14 1241/19 1241/25 1242/4 1242/8 1242/11 1242/11 1243/1 1243/6 1244/1 1244/1 <b>affairs [27]</b> 1009/5 1054/2 1054/9 1095/15 1095/17 1096/1 1096/4 1096/10 1097/1 1108/21 1109/5 1109/9 1109/12 1122/8 1130/21 1138/14 1140/22 1158/24 1167/23 1168/2 1169/21 1169/22 1169/24 1170/2 1170/12 1172/23 1190/20 <b>affect [3]</b> 1038/15 1169/3 1169/10 <b>affirmative [2]</b> 1081/9 1081/15 <b>afford [2]</b> 1027/18 1243/12 <b>African [1]</b> 1109/15 <b>African-American [1]</b> 1109/15 <b>after [61]</b> 972/7 973/9 974/14 981/6 982/22 991/16 1040/19 1043/2 1053/25 1095/17 1103/4 1104/15 1104/16 1104/19 1107/20 1110/25 1111/1 1115/12 1117/19 1117/22 1121/10 1127/1 1136/9 1139/18 1143/18 1145/2 1145/6 1148/20 1149/8 1152/10 1156/17 1157/8 1158/16 1158/17 1158/18 1160/14 1163/4 1163/11 1163/16 1174/6	1176/12 1177/24 1178/18 1184/13 1187/25 1192/18 1197/13 1198/14 1198/14 1205/17 1214/11 1229/25 1231/19 1232/9 1234/5 1234/21 1234/22 1239/18 1242/10 1243/5 1244/2 <b>afternoon [5]</b> 1084/17 1084/17 1139/5 1174/18 1231/11 <b>afterwards [1]</b> 1100/21 <b>again [42]</b> 973/6 990/8 999/25 1001/4 1019/13 1019/13 1020/6 1021/6 1022/4 1022/12 1024/12 1025/13 1026/5 1027/3 1027/3 1027/16 1027/24 1047/9 1047/11 1072/6 1075/7 1076/22 1080/19 1080/22 1086/1 1090/13 1090/23 1094/17 1109/5 1111/6 1128/19 1134/22 1156/14 1162/16 1189/15 1205/3 1205/6 1205/6 1212/15 1218/4 1229/25 1234/7 <b>against [17]</b> 984/15 988/19 1021/18 1044/2 1045/3 1045/8 1081/6 1091/3 1106/1 1126/17 1181/6 1214/6 1214/21 1217/21 1219/24 1225/2 1238/5 <b>agency [4]</b> 972/18 976/18 982/12 1200/22 <b>agent [1]</b> 1175/2 <b>agility [2]</b> 974/9 990/14 <b>ago [5]</b> 980/24 1033/20 1070/10 1097/17 1107/23 <b>agree [48]</b> 1006/23 1008/13 1008/15 1015/24 1016/1 1021/11 1036/5 1042/8 1059/20 1070/22 1074/15 1075/24 1075/25 1080/9 1080/12 1080/13 1080/14 1080/17 1080/20 1085/12 1094/19 1094/22 1096/1 1098/1 1100/5 1101/10 1101/12 1108/6 1110/14 1110/16 1110/17 1119/2 1135/11 1135/14 1138/7 1146/5 1148/8 1148/10 1156/4 1156/7 1164/11 1165/2 1178/13 1186/19 1187/10 1188/5 1207/10 1228/9 <b>agreed [7]</b> 1025/20 1059/17 1112/4 1163/21 1202/22 1203/5 1220/9 <b>agreed-upon [1]</b> 1025/20 <b>agreeing [1]</b> 1093/7 <b>agreement [7]</b> 1160/10 1192/7 1203/11 1213/7 1214/24 1215/1 1218/22 <b>ahead [2]</b> 990/5 1151/5 <b>Ahlen [1]</b> 1093/22 <b>al [1]</b> 1247/3 <b>alarm [1]</b> 978/1 <b>alcohol [1]</b> 1031/5 <b>Alex [4]</b> 1008/21 1009/16 1191/9 1210/17 <b>aliens [2]</b> 1099/23 1100/4 <b>alive [1]</b> 1215/25 <b>all [149]</b> <b>allegation [4]</b> 1010/12 1022/6 1239/25 1242/17 <b>allegations [6]</b> 988/19 1081/25 1082/1 1082/2 1111/7 1135/2 <b>allege [4]</b> 1143/16 1144/12 1153/9 1154/18 <b>alleged [7]</b> 1110/9 1126/8 1134/18
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1022/8 1023/24 1024/18 1030/13 1030/14 1032/5 1032/8 1033/13 1045/15 1045/16 1045/18 1045/20 1200/25 <b>backgrounded [1]</b> 1032/7 <b>backpay [2]</b> 1131/5 1220/11 <b>backtrack [1]</b> 1027/8 <b>bad [4]</b> 972/3 1015/23 1238/18 1240/11 <b>badge [1]</b> 978/25 <b>baffled [6]</b> 1055/4 1055/8 1055/14 1055/24 1055/25 1056/1 <b>bag [1]</b> 1239/21 <b>ball [1]</b> 1020/20 <b>base [1]</b> 1162/16 <b>based [10]</b> 1122/1 1149/13 1157/4 1172/21 1172/22 1181/13 1213/7 1219/7 1222/23 1243/25 <b>basic [1]</b> 1233/25 <b>basically [12]</b> 1045/20 1052/18 1119/11 1142/8 1160/3 1172/3 1175/9 1178/20 1207/10 1212/20 1212/25 1228/7 <b>battery [1]</b> 994/19 <b>be [289]</b> <b>bearing [1]</b> 1200/13 <b>beat [1]</b> 1028/2 <b>beating [2]</b> 1109/18 1109/19 <b>became [7]</b> 971/10 971/22 1012/6 1103/11 1148/22 1175/8 1225/14 <b>because [110]</b> 972/19 976/19 977/14 977/17 977/22 979/7 979/10 979/19 982/6 982/14 982/17 982/20 983/1 983/7 984/8 984/19 986/14 986/22 987/14 991/24 996/24 1002/6 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<b>email [87]</b> 988/18 988/21 989/7 989/23 1008/20 1009/24 1063/2 1063/20 1064/2 1069/19 1073/2 1073/7 1073/8 1095/8 1113/2 1113/6 1113/10 1113/17 1113/25 1114/21 1114/22 1115/1 1115/4 1115/5 1115/6 1115/7 1115/12 1115/14 1115/16 1116/3 1116/4 1116/8 1116/14 1116/16 1117/13 1117/17 1139/20 1139/20 1146/10 1146/19 1147/23 1148/5 1152/3 1154/12 1154/14 1156/22 1156/24 1161/2 1161/14 1162/1 1162/4 1163/17 1164/4 1166/25 1167/1 1167/5 1194/11 1198/13 1198/17 1198/20 1198/23 1199/10 1204/12 1204/23 1205/9 1205/10 1205/12 1205/18 1206/6 1206/7 1206/8 1209/22 1210/3 1213/19 1217/14 1217/15 1217/23 1219/16 1220/1 1220/21 1221/1 1224/11 1224/12 1224/17 1224/21 1226/4 1226/10	<b>entire [4]</b> 1112/16 1133/23 1141/16 1172/18	
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