

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 23, 2015
8 LEBRECHT, and SCOTT CAMERON,)
9 Defendants.) Portland, Oregon
10 _____)
11
12 TRIAL DAY 10
13 TRANSCRIPT OF PROCEEDINGS
14 BEFORE THE HONORABLE DAVID O. CARTER
15 UNITED STATES DISTRICT COURT JUDGE
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McDermid - D
1 TRANSCRIPT OF PROCEEDINGS
2 THE COURT: We're on the record. All counsel are
3 present. The parties are present. The jury is present.
4 Counsel, call your next witness, please.
5 MS. COIT: The defense calls Carolyn McDermid.
6 THE COURT: Thank you. Would you be kind enough to
7 raise your right hand, please.
8
9 CAROLYN McDERMED,
10 called as a witness in behalf of the Defendant, being first
11 duly sworn, is examined and testified as follows:
12 THE WITNESS: I do.
13 THE COURT: Thank you. Please be seated in the
14 witness box. And, once again, would you state your name to the
15 jury. You have previously done so. Would you please spell
16 your last name?
17 THE WITNESS: Carolyn McDermid, M-C-D-E-R-M-E-D.
18 THE COURT: Thank you. Direct examination.
19
20 DIRECT EXAMINATION
21 BY MS. COIT:
22 Q. Good morning, Chief.
23 A. Good morning.
24 Q. So you have been here through three weeks of testimony.
25 You have heard what all the witnesses had to say. Now it's

1 your turn to tell the jury what -- what your story is.
 2 So before we get into the details of this case, I just
 3 want to ask you -- can you just tell the jury a little bit
 4 about you? What kind of chief are you? What kind of a person
 5 are you?
 6 A. Good morning.
 7 A JUROR: Good morning.
 8 THE WITNESS: So I really had no idea what campus
 9 policing was like until I went to the University of Oregon. I
 10 worked for the Eugene Police Department. The university was in
 11 the middle of the city of Eugene, but I really didn't know what
 12 happened there.
 13 So when I went there, I learned that it is a very unique
 14 environment. Is truly is a city within a city, and it has a
 15 very unique population. At the time of this incident that
 16 we're discussing now, there was over 4,000 students living on
 17 campus, and we had students, faculty, and staff that came from
 18 over 80 countries in the world. A really diverse population.
 19 In addition to that, there -- there was really a
 20 vulnerable population, in that we had bright, young people
 21 coming to the campus sometimes for the first time leaving their
 22 homes and their families to learn how to live independently and
 23 achieve their academic goals.
 24 Some of those people came from other countries where their
 25 cultures were different, where there was a distrust of law

1 enforcement, and being millions -- not millions, but thousands
 2 of miles away from home, I'm sure, was a huge impact on them.
 3 So it was very apparent to me that the Department of
 4 Public Safety at that time had a huge responsibility to keep
 5 these people safe; to keep them safe so that they could achieve
 6 their goals and move on to independent living and fulfill their
 7 life dreams.
 8 In addition to that, we had public safety officers working
 9 at the campus. At that time, the impression of the Public
 10 Safety Department was not that good. They didn't have that
 11 great of reputation, and they basically were considered a
 12 security department.
 13 What I learned about when I got there was that there was
 14 some pretty special, talented people working in that
 15 department. People that had above-average skills in the area
 16 of communication and in -- being able to deescalate situations
 17 and really to engage and learn and to develop relationships.
 18 And that's really important in a campus environment.
 19 But, additionally, they had this title of public safety
 20 officer, which, if you look in the statute, under 352.385, it's
 21 a quasi police authority. They could do stop-and-frisk and
 22 probable cause, but they didn't have the same tools as police
 23 officers. They didn't have the same immunities and protections
 24 as police officers, and they definitely couldn't do enforcement
 25 off campus. And, in fact, sometimes they would get in foot

1 pursuant with people and they would have to stop on the
 2 boundary of campus because they had no legal authority to go
 3 off campus.
 4 So when I got there I was really concerned about their
 5 safety, as well as keeping the university safe. It really was
 6 of great concern to me, and I can't tell you how important it
 7 was to me that we transition the department to a full police
 8 department where they did have the ability to have those
 9 protections. They didn't have access to a police academy or
 10 proper training, and they needed to have those kinds of things
 11 to keep themselves safe.
 12 In the end, it is the people that work for you that make
 13 you able to do your job, and my job was to keep the campus safe
 14 and them safe. And without them, I wasn't going to achieve
 15 those goals.
 16 The other thing is that that reputation of being a junior
 17 department or, as I heard yesterday, a Mickey Mouse department,
 18 I absolutely disagree with that. In fact, I think that a
 19 campus police department requires that you select from the
 20 broad pool of qualified police officers only those officers
 21 that are willing to really engage with people, to really learn
 22 about them in this unique environment of diverse populations
 23 and cultures.
 24 It requires that they develop trust. And what was really
 25 important, going through this transition, after we went through

1 it, was the department needed to build legitimacy, and they had
 2 needed to have the campus believe that they were moral and just
 3 and that they could provide safety to them.
 4 Trust is important, because we can't work on -- on keeping
 5 people safe if we don't get information from them. We have to
 6 know what is it that's bothering them, what has happened to
 7 them, and what can I do to make them safe? I have to have
 8 information from them. They do that through trust.
 9 So it was really important to select people to work at the
 10 department that not only could keep themselves safe, but that
 11 could engage with this population to keep them safe.
 12 BY MS. COIT: (Continuing)
 13 Q. All right. Thank you, Chief. So can you tell us just a
 14 little bit about you personally? Where are you from?
 15 A. I was born in Oregon -- Prineville, Oregon -- but raised
 16 in the wilderness of British Columbia. I came back -- I -- I
 17 didn't have goals of being a police officer. In fact, it never
 18 entered my mind. I wanted to be a veterinarian. But I was in
 19 San Diego after college, and I couldn't get into that school
 20 right away, and I needed a job, so, on a dare, I applied to the
 21 city police department and got a job. And I truly love being a
 22 police officer. It's great.
 23 Q. What year did you get into law enforcement?
 24 A. 1983.
 25 Q. So 30 -- 32 years you've been in law enforcement?

1 A. Yes.

2 Q. When you got that job in 1983, how many female officers

3 were there?

4 A. Not very many. It was a time of affirmative action and

5 trying to get more women into law enforcement, but there's many

6 challenges to being a female officer. It's a tough job when

7 you're trying to balance family and work and shifts.

8 I recall when I first started they didn't make uniforms

9 and equipment to fit women. I had to buy my own ballistic

10 vest. I had to buy a shorter-barrel gun because the one I had

11 held me off the seat of my patrol car, and I had to -- I've

12 always had to work harder than a hundred percent to prove

13 myself, because people doubted if I could do the job. But it

14 made a better police officer.

15 Q. All right. Do you have a family?

16 A. I do. I have three children. I have two 19-year-old

17 twins and a 16-year-old son.

18 Q. They live with you in Eugene?

19 A. They do.

20 Q. How long have you been in Eugene?

21 A. I moved from the San Diego Police Department to the Eugene

22 department in 1991, as my mother was in failing health, and I

23 needed to be closer to her. So I worked there from 1991 until

24 I moved to the University of Oregon in 2008.

25 Q. All right. So give us just a background of your

1 professional career in law enforcement ; where you worked and

2 what positions that you held.

3 A. When I worked at the San Diego Police Department, just

4 like most every other police officer, I did basic patrol

5 duties, went through a probationary period, and then worked the

6 street.

7 I took a field training officer assignment and was a field

8 training officer for quite some time. And then I was able to

9 take a position as a foot patrol officer in one of the bad

10 areas of San Diego, so to speak, and it was there that I really

11 discovered my passion for community policing and for helping

12 people help themselves.

13 Q. How long were you in the San Diego police force?

14 A. I was there for eight years.

15 Q. Did you go there -- from there directly to Eugene?

16 A. I did.

17 Q. Tell us your position at the Eugene Police Department.

18 A. At the Eugene department, I started out as a police

19 officer and then moved to the rank of agent, which is like a

20 two stripe or a corporal, then sergeant, then lieutenant, and

21 then also held the position of acting captain for a time.

22 And I -- I had a variety of assignments. Although, the

23 majority of my work at Eugene Police Department was in patrol ;

24 was out on the streets for the most part.

25 I did manage the street crimes unit for a while and I was

1 what they called a sector commander, where I had responsibility

2 for one-third of the city, 24 hours a day. And that was a

3 great assignment. It was -- it was a good assignment.

4 And then just prior to coming to the University of Oregon

5 I held the position of Professional Standards and Training

6 Lieutenant, which encompassed training, policies, and internal

7 affairs.

8 Q. When you left the Eugene Police Department in 2008, about

9 how many -- how big was the department? Sworn officers, I

10 mean.

11 A. It was under 200 sworn officers.

12 Q. And how big was the city of Eugene?

13 A. Oh, sorry. It was the city of Eugene.

14 Q. No, I mean, the population of Eugene that you served.

15 A. 150,000 or so.

16 Q. So do you know how many female chiefs of police there are

17 in Oregon?

18 A. I don't. Not very many.

19 Q. Does one sound about right?

20 A. I know two.

21 Q. Including yourself?

22 A. That would make three.

23 Q. When did you -- well, tell us why you moved from the

24 Eugene Police Department to the University of Oregon.

25 A. In 2008 there was a posting for a deputy chief position at

1 the University of Oregon, and that opportunity to move up in a

2 higher command-level position appealed to me , and I thought it

3 would be a good new challenge for me.

4 In addition, in 2008 I was crossing a street as a

5 pedestrian, and I was hit by a car, and I -- I suffered some

6 injuries, including a mild traumatic brain injury.

7 MR. MCDUGAL: Objection. Your Honor, I have a

8 matter for the Court.

9 THE COURT: Pardon?

10 MR. MCDUGAL: I have a matter for the Court.

11 THE COURT: I can't hear you.

12 MR. MCDUGAL: Objection. Your Honor, I have a

13 matter for the Court.

14 THE COURT: Relating to this?

15 MR. MCDUGAL: Yes. I can't describe it more in the

16 presence of the jury, Your Honor.

17 THE COURT: And the question was why she had gone

18 from the University -- or Eugene to the University of Oregon

19 Police Department, and she's talking about crossing a street

20 and an injury. Is that your objection?

21 MR. MCDUGAL: No. The objection is part of the

22 answer, on something that Counsel and I discussed.

23 THE COURT: But you didn't inform me last evening.

24 MR. MCDUGAL: That's --

25 THE COURT: All right. Ladies and gentlemen, in this

1 rare occasion, I'm going to ask you to leave the courtroom for
 2 a moment. This will be the first and last. Trust me.
 3 (Jury not present.)
 4 THE COURT: Whatever this is, is this something
 5 discussed by the two of you that you two disagreed on --
 6 MS. COIT: Yes, Your Honor. Let me --
 7 THE COURT: -- that didn't come to my attention last
 8 night?
 9 MS. COIT: No, this came up earlier.
 10 In deposition, Chief McDermid testified that she suffered
 11 a traumatic brain injury in this accident and it caused her to
 12 have some issues with her memory.
 13 Mark McDougal talked to me earlier in the case and asked
 14 if we were going to be using that brain injury for some sort of
 15 excuse for the notes that she just found before trial, and I
 16 told him we were not, and we are not.
 17 THE COURT: This is solely one of the reasons she
 18 went -- I'm anticipating, because of her part of that answer,
 19 that she's going to say that because of that injury this is one
 20 of the reasons she transferred to the University of Oregon.
 21 MS. COIT: Yes. Yes.
 22 MR. MCDUGAL: Your Honor, my agreement was not
 23 limited to the notes. It was, "You're not going to get to the
 24 brain injury?" She said, "Yes." And I sent her a confirming
 25 email.

1 THE COURT: Thank you. Your objection is overruled.
 2 Please get the jury.
 3 It's my understanding also that these notes are not going
 4 to be then used as an excuse because of the brain injury. Is
 5 that your understanding between the two of you?
 6 MS. COIT: That's my understanding of the agreement.
 7 MR. MCDUGAL: Mine was broader, because I had some
 8 rebuttal evidence I would have gathered to bring in.
 9 MS. COIT: Well, she can --
 10 THE COURT: Well, Counsel, you didn't share this with
 11 the Court.
 12 MR. MCDUGAL: I apologize. I thought I could trust
 13 the email confirmation.
 14 THE COURT: Well, happy to meet you any time to deal
 15 with these issues. It's not an excuse for either one of you.
 16 (Jury present.)
 17 THE COURT: I apologize for the inconvenience. The
 18 objection is overruled.
 19 Counsel, restate your question.
 20 BY MS. COIT: (Continuing)
 21 Q. Chief, you were telling us why you moved to the University
 22 of Oregon in 2008.
 23 A. For the opportunity and because -- due to my injury, I was
 24 looking for -- it scared my kids, so I wanted to move to an
 25 assignment where my perception was it would be a little slower

1 pace and have an opportunity to do an administrative job and a
 2 new challenge.
 3 Q. Was that a hard decision to make?
 4 A. It was. I had been at the Eugene Police Department for 17
 5 and a half years, but it was close by. It was just down the
 6 road from -- the two departments are close to each other, and I
 7 would have the ability to continue relationships with
 8 colleagues at the Eugene Police Department and try a new career
 9 at the same time.
 10 Q. Was it the right decision for your family?
 11 A. It was the right decision for me. I -- I wish I had done
 12 it sooner. Campus policing is what I really enjoy doing. It's
 13 been a really great job.
 14 Q. What position did you move into when you started at the
 15 University of Oregon?
 16 A. I was hired as a deputy chief, which was number three in
 17 command at the time.
 18 Q. Who was above you?
 19 A. Above me was the assistant chief, Doug Tripp.
 20 Q. Who was the chief at that time?
 21 A. The chief at the time was Kevin Williams.
 22 Q. At some point did Kevin Williams leave?
 23 A. He did.
 24 Q. Do you recall when that was?
 25 A. Probably 2009.

1 Q. So did Doug Tripp take over as chief when Mr. Williams
 2 left?
 3 A. Yes.
 4 Q. Did you move into the position of assistant chief?
 5 A. No. I think it was about a year later I had assumed most
 6 of the duties of the assistant chief position. It eliminated
 7 the deputy chief position and made me the assistant chief.
 8 Q. So in 2009 were you second in command?
 9 A. I believe it was probably 2000 -- oh, yes, I was, sorry.
 10 Q. So how big was the department back then in 2009?
 11 A. Probably about 18 or so public safety officers, but I
 12 don't exactly recall how many. There were some security
 13 officers, as well. Noncommissioned officers that worked some
 14 different assignments.
 15 Q. How would you describe Doug Tripp's leadership of the
 16 department at that time?
 17 A. Doug Tripp was really difficult to work for. In fact,
 18 about a month after I got there I told him that I thought I
 19 made a really bad mistake coming to the university. He was
 20 very demanding and autocratic, demeaning of people,
 21 particularly women, including myself. He didn't -- he did
 22 nothing for himself. Everybody was tasked to do all his work
 23 for him.
 24 I even wrote part of his self-evaluation for his annual
 25 review for him because he didn't want to write it himself. You

1 couldn't please him. Whatever you did, it wasn't good enough.
 2 There was never any praise for what you did. And if you didn't
 3 stand by his orders to do something, he would let you know that
 4 he was not happy. It caused a lot of stress and tension in the
 5 department, because he absolutely lacked any empathy or people
 6 skills.
 7 Q. How would you describe yourself as a leader? What's your
 8 leadership style?
 9 A. I think the reason why it was so uncomfortable for me to
 10 work with Doug Tripp was that we appeared to be opposites. I'm
 11 a people person. I like to engage with people. I -- I
 12 empathize with people. I -- people is my passion. But that
 13 wasn't him, and so we clashed.
 14 Q. Are you a collaborative leader?
 15 A. Absolutely.
 16 Q. How do you come to decisions? How do you make decision s,
 17 big decisions?
 18 A. I -- I try to get input from everybody around me before I
 19 make a decision, because I don't have -- usually have all the
 20 information, maybe not the skills or expertise or knowledge to
 21 make the decision on my own, and I believe that a collaborative
 22 effort is the way that the best decision is made.
 23 Sometimes I just have to make a decision because the
 24 timing or a particular thing is important that that decision
 25 gets made. But, if possible, I believe in a collaborative-type

1 of process.
 2 Q. Was Doug Tripp a collaborative leader?
 3 A. Absolutely not. He dictated orders and we followed.
 4 Q. Did he have any law enforcement experience before he
 5 became chief for the Department of Public Safety?
 6 A. He had not been a police officer, but he did have
 7 experience working in higher education in some capacity of
 8 campus security.
 9 Q. All right. I want to talk about Casey Boyd just for a
 10 minute. Can you tell us your history with former-Lieutenant
 11 Casey Boyd? Professional history.
 12 A. So Casey Boyd was a really good employee at first. She
 13 worked really hard. She took a lot of abuse from Doug Tripp,
 14 and I tried to deflect some of that for her. I tried to be a
 15 buffer between them. She worked really hard, and I think she
 16 told you about all the things she did, and she did good work.
 17 But it -- at some point Casey began displaying behaviors that
 18 were concerning. Members of the department started complaining
 19 about her, and it ultimately -- I looked into several issues
 20 with her, and I had to give her a reprimand.
 21 Q. Was Ms. Boyd -- was she your friend when you were at the
 22 department?
 23 A. I -- I think that professionally, yes, we collaborated on
 24 things. We did a lot of work together as a -- as I did with
 25 the other lieutenants in the department. We just were a team

1 working together trying to meet the goals of the department.
 2 Q. Now, you heard Ms. Boyd testify that she was called into
 3 meetings with you and Doug Tripp and the both of you instructed
 4 her on how to get rid of people. Do you recall that testimony?
 5 A. I do.
 6 Q. Is there any truth to that?
 7 A. No. But I will say that when Doug Tripp made up his mind
 8 that somebody didn't belong in the department it was up to us
 9 to take care of that.
 10 Q. At some point did you do anything to try to protect
 11 Casey Boyd from Doug Tripp? Did you make a complaint about
 12 him?
 13 A. I did. I went to affirmative action and said how
 14 unbearable it was to work for him and how I didn't like the way
 15 he was treating, not just Casey, but some other employees in
 16 the department as well. We had a captain working for us by the
 17 name of Ed Rinne, who developed medical issues, which I believe
 18 was from stress related to working with Doug Tripp, and he
 19 eventually left the department. So there was a lot of tension
 20 and stress with Doug Tripp there.
 21 So I did go and say this man is hard -- very difficult to
 22 work with. You can't please him. And everything was about
 23 him. Everything was about him. Things had to make him look
 24 good.
 25 So I vented, basically. I was scared to do more than that

1 because I feared that there would be some kind of retaliation
 2 back on me or somebody in the department if I spoke -- filed a
 3 complaint.
 4 Q. Was Mr. Tripp eventually moved out of the department?
 5 A. He was.
 6 Q. Tell us, how did that come about?
 7 A. My recollection is that Doug Tripp was at the police
 8 academy. He was going through the basic police academy in
 9 early 2012, after we became a police department. And while he
 10 was gone one of the members of the department, administrative
 11 manager or director, administrative director by the name of
 12 David Landrum, set up a meeting with Jamie Moffitt, my boss,
 13 Vice President for Finance and Administration, and several of
 14 us went and spoke with her about our concerns related to
 15 Doug Tripp. She listened, and when Doug Tripp returned from
 16 the academy, he left the building.
 17 Q. All right. So going back to Ms. Boyd, when she testified,
 18 she -- she seemed angry at you. Did you -- do you know why
 19 she's angry at you?
 20 A. I know Casey really liked her job at the department, and I
 21 don't know why she ended up doing what she did, but I think no
 22 one likes to lose their job, and Casey was not renewed.
 23 And I frankly was disappointed in her as well. I -- I
 24 really believed in her and supported her until I couldn't do
 25 that any longer.

1 Q. Were you the person who did the internal affairs
 2 investigation that led to her being nonrenewed?
 3 A. Lieutenant Morrow and I conducted the investigation
 4 together.
 5 Q. Did you feel that her being nonrenewed was the right move
 6 to make at that point in her career?
 7 A. I -- unfortunately, I did. She had such a negative impact
 8 on the department that I -- I just didn't see how we could
 9 retain her.
 10 Q. Okay. So we saw the letter that Ms. Boyd wrote when she
 11 was nonrenewed, making some complaints about the department.
 12 Do you recall seeing that?
 13 A. Yes.
 14 Q. Were you shown that letter when it was sent in?
 15 A. My boss, Jamie Moffitt, provided me with that letter.
 16 Q. Was that in 2012?
 17 A. I don't recall. The note was after Ms. Boyd left.
 18 Q. Do you recall taking any action, looking into any of the
 19 complaints that Ms. Boyd raised in that letter?
 20 A. I know I had a conversation with Lieutenant Morrow about
 21 the text message that she attached to her letter to the VPFA.
 22 Q. And there's also been discussion about Mark Boyd, her
 23 husband, being trespassed from the University of Oregon. Can
 24 you just explain to us what happened in that situation, why he
 25 was trespassed?

1 A. My recollection is that Mark Boyd was attending a football
 2 game at -- at -- Duck football games, it requires a lot of
 3 staffing, and so the department -- the University Department is
 4 there, the Eugene Police Department is there, and sometimes
 5 Lane County sheriff's officers are there, too, just to make up
 6 enough staffing to manage that game of about 55,000 people.
 7 So Mark Boyd was attending a game and apparently got into
 8 some kind of altercation with other patrons while watching the
 9 game. And EPD responded with the Crowd Management Services and
 10 contacted Mr. Boyd, who was hostile and difficult to talk with.
 11 They eventually got him up to the stairs, and he was
 12 uncooperative. And I believe that they were trying to handcuff
 13 him and finally got him out -- out of the stands and out to a
 14 gate where they could talk with him. But it was an incident
 15 that was handled by Eugene police officers.
 16 MS. COIT: Permission to approach, Your Honor?
 17 THE COURT: You may.
 18 MS. COIT: These are Exhibits 413 and 410.
 19 THE COURT: Thank you.
 20 BY MS. COIT: (Continuing)
 21 Q. All right. Do you recognize what Exhibit 413 is?
 22 A. 413 appears to be a police report written by Eugene Police
 23 Department regarding this incident with Mark Boyd.
 24 MS. COIT: Defense offers 413, Your Honor.
 25 THE COURT: Received.

1 MS. COIT: Permission to publish?
 2 THE COURT: You may.
 3 BY MS. COIT: (Continuing)
 4 Q. So does this document describe the incident you just told
 5 us about where Mark Boyd was taken out of the stadium by Eugene
 6 police?
 7 A. It does.
 8 Q. Okay. Now, the second document that I've given you,
 9 Exhibit 410 --
 10 A. Yes.
 11 Q. -- what is that?
 12 A. It's an email that the commander of the Springfield
 13 detachment of Oregon State Police -- his name was
 14 Robert Edwards -- he sent me an email asking about the trespass
 15 letter that was provided to Mark Boyd. A trespass letter
 16 trespassing him from the University of Oregon property.
 17 Q. Tell us why Mark Boyd was trespassed as a result of this
 18 incident. What was the policy of trespassing or the practice?
 19 A. So all of my officers, public safety officers and police
 20 officers, have the authority to issue what they call a letter
 21 of trespass for incidents that provide, you know, some concern
 22 about a person being on campus.
 23 And we will often issue them for people that are really
 24 disruptive. And, in this case, Mr. Boyd was very disruptive
 25 during a football game, impacting several Eugene police

1 officers and Crowd Management Services, not to mention patrons
 2 watching the game.
 3 So it was consistent and our practice to issue a letter of
 4 trespass to someone like this who was disruptive. And the
 5 terms of the trespass letter, usually you cannot return to the
 6 University of Oregon property for 18 months unless you appeal
 7 it and get it reversed or get some accommodations to it.
 8 Q. And was Mark Boyd given a trespass letter?
 9 A. He was.
 10 Q. And the email that's Exhibit 410, is that addressed to
 11 you?
 12 A. Yes.
 13 Q. And what's the date of that?
 14 A. November 15, 2013.
 15 MS. COIT: Your Honor, Defendants offer 410.
 16 THE COURT: Received.
 17 MS. COIT: Permission to publish?
 18 THE COURT: You may.
 19 BY MS. COIT: (Continuing)
 20 Q. Tell us again who this email was coming from.
 21 A. Rob Edwards, who was the commander of the Springfield
 22 detachment of Oregon State Police.
 23 Q. And Mark Boyd was an Oregon state police officer?
 24 A. Yes.
 25 Q. Still is; right?

1 A. Yes.

2 Q. Were they in support of Mark Boyd being trespassed?

3 A. Yes. They asked if they could be provided with the letter

4 to give to Mr. Boyd.

5 Q. All right. Was Mark Boyd trespassed from the University

6 of Oregon in any way to get back at Casey Boyd?

7 A. No.

8 Q. And an exception was made for him, wasn't it, so he could

9 come on campus for his daughter?

10 A. Yes.

11 Q. And who made that decision?

12 A. Well, they -- they -- the process to appeal an LOT, a

13 letter of trespass, is to provide the consideration to me and

14 let me make a determination, but it -- it was instead delivered

15 to the office of the president, so I wasn't aware of the

16 appeal.

17 But when I was made aware of the appeal, they were asking

18 for accommodation to transport their daughter to and from the

19 University of Oregon. That seemed like a reasonable request,

20 so I granted it.

21 Q. All right. So when you -- when did you actually take over

22 as managing the department day to day when Tripp was gone at

23 the academy?

24 A. When Chief Tripp left in February of 2012 to attend the

25 police academy, which is 16 weeks, I became the acting chief.

1 He was still the executive director, as they called him, and

2 response -- responsible for the overall operations of the

3 department, but I was taking care of the working operations

4 while he was in the academy.

5 About the end of June he completed the academy and then

6 subsequently left, and so at that time I became the interim

7 chief of police and the university began a nationwide search

8 for a new police chief.

9 Q. Did you apply for that position?

10 A. I did.

11 Q. Did you go through a process?

12 A. I did.

13 Q. Tell us about that.

14 A. The process began, of course, with filling out an

15 application and then -- then telephone interview, followed by

16 an on campus series of interviews. I believe I met, over the

17 course of 12 hours, or so, with -- in excess of 10 or 12

18 different groups and engaged with them on -- on questions that

19 they had about a police chief coming to the University of

20 Oregon.

21 Q. Who made the ultimate decision on who to hire as police

22 chief?

23 A. Well, there was a search committee that was appointed by

24 my boss to look for a finalist, and so I -- I'm sure that they

25 all had input. And I know that the campus as a whole had input

1 because they allowed people to send in information via email

2 and other modes of messaging to provide input on selection. I

3 know they provided my resumé and experience online so that

4 people could read about it and make decisions. But,

5 ultimately, Jamie Moffitt was the one who decided who would be

6 the next police chief.

7 Q. So when did you officially take on the title of chief of

8 police for the University of Oregon Police Department?

9 A. I believe it was July 1, 2013.

10 Q. Tell us what your vision was for the department when you

11 took over.

12 A. So I wanted to develop a police department -- well, first

13 of all, because we were going through the police transition, I

14 had an opportunity to look at all the best practices of every

15 other police department I could read about and learn about and

16 learn from what they had done and build a police department

17 from the ground up in the best possible way. So it was a great

18 opportunity.

19 But my vision was that we create a department built on

20 trust, a community policing department where we engage with

21 people; we problem-solve. We taught them to help themselves.

22 We learned about shared responsibility. And we really were not

23 warriors, but guardians and caretakers for our campus

24 community. That was my vision.

25 Q. We've heard that term "community policing" a lot in this

1 case. Can you just tell us what that actually means? What

2 does that mean to you?

3 A. Well, if you Google it, you will probably find a number of

4 different definitions for community policing, but to me it --

5 what I talked about earlier, that building these trust-based

6 relationships were -- where you have built legitimacy and

7 people want to share information with you, they want to learn

8 from you, they want to change their behaviors, and they believe

9 that you're just and good and solve problems together, work

10 together, and really be transparent about what we're doing.

11 And it was really important to me that our officers just

12 didn't contact people and not take the time to really explain,

13 "Well, this is why I do this. You know, this is the way --

14 this is why I stand like this when I contact you at your

15 window. This is why I stand back, because I need to be

16 concerned about my safety. This is why I always want to see

17 your hands."

18 It's important to explain that to people because they

19 don't understand police work and tactics, and they have no idea

20 of the dangers and things that officers face on a regular day.

21 Q. When Doug Tripp was away at the academy, was he still

22 technically in charge of the department?

23 A. He was.

24 Q. Did you have to run decisions by him?

25 A. All the time.

1 Q. How did you do that?

2 A. Mostly either talking to him on the phone or via email.

3 Q. Let's talk about Sergeant Cameron for a little bit. Do

4 you like Sergeant Cameron as a person?

5 A. As a person, I do.

6 Q. Was he a good officer?

7 A. I believe he was. Sergeant Cameron -- Doug Tripp made

8 Sergeant Cameron a police sergeant without having to go through

9 any process or anything to become one, and so I don't know that

10 he had -- that we clearly knew that he would be a good fit as a

11 police sergeant, but he's a good person, I believe, but not one

12 that fit for the campus police department; not one that I

13 thought fit the vision I had for the police department.

14 Q. Did you ever have concerns about Sergeant Cameron

15 supervising or teaching his officers?

16 A. No. No. He was a good supervisor.

17 Q. What were the general concerns that you had with

18 Sergeant Cameron that made him ultimately not a good fit?

19 A. Ultimately, I think his ability to really engage a lot

20 with people, he was pretty black and white. Very good at

21 supervising in that, but I -- I'm not -- I wasn't confident

22 that he could engage with our campus community the way that I

23 wanted him to engage. And -- and he had had some complaints

24 that I thought were troubling in a community where we have a

25 very vulnerable population.

1 Q. And you are referring to the sexual harassment complaints?

2 A. Yes.

3 Q. All right. Now, I just want to talk about those for a

4 minute. You are aware of what the complaints were; correct?

5 A. Yes.

6 Q. None of the complaints dealt with any sort of physical

7 harassment?

8 A. No.

9 Q. What were they generally complaints about?

10 A. Generally, they were related to opinions he voiced about

11 women and how he talked about them, but he -- there was no

12 physical harassment or that kind of thing.

13 Q. Did you recommend that he not be renewed?

14 A. I did.

15 Q. What went into that decision for you?

16 A. My decision was based on the fact that even though he had

17 some of these instances in his past, that he recently had, yet

18 again, said something that was inappropriate, and so I believed

19 that there was a pattern of behavior that he either wasn't

20 willing to correct or couldn't be corrected.

21 Q. Do you believe it was the right decision?

22 A. I do.

23 Q. The decision not to renew Sergeant Cameron, did it have

24 anything to do with his interactions or treatment of

25 Mr. Cleavenger?

1 A. No.

2 Q. All right. So when were you first aware of Mr. Cleavenger

3 making a speech about Tasers?

4 A. Gosh, I don't recall. It was sometime during this -- this

5 lawsuit. I just was totally unaware of the Taser incidents

6 before I got to the University of Oregon, and we don't have

7 Tasers at our department.

8 Q. So before you made the decision to terminate

9 Mr. Cleavenger, were you even aware that he had made this

10 speech about Tasers?

11 A. No.

12 Q. Why doesn't the department have Tasers?

13 A. The decision to bring Tasers to the department is going to

14 be a community conversation. There's been misuse of Tasers

15 around the nation. And even in our local community, with

16 Eugene, one of our students, a Chinese student, was tased by a

17 Eugene Police Department and had a huge impact on the

18 community. It was definitely a community- impact situation. So

19 there would have to be thoughtful conversations about it.

20 There are good reasons to have Tasers. Right now my

21 officers have pepper spray and a firearm and nothing in

22 between. So in a community where we deal a lot with folks that

23 exhibit signs of mental illness, because of lack of services in

24 the county, Tasers might be a better option than firearms; but

25 it's going to have to be a community conversation before we

1 are -- have those kind of tools.

2 Q. Do you have an opinion on whether you should have Taser s,

3 one way or the other?

4 A. I believe if we have appropriate training and policies in

5 place about Tasers, that they would be a useful tool for my

6 officers to have.

7 Q. Before Mr. Cleavenger was terminated, did anyone ever

8 complain to you that Sergeant Cameron was mistreating him or

9 picking on him because of Mr. Cleavenger's position on Tasers ?

10 A. No.

11 Q. Let's make it more broad. Before Mr. Cleavenger was

12 terminated, did anyone come to you with complaints, include

13 Mr. Cleavenger, that Sergeant Cameron was harassing him or

14 retaliating against him?

15 A. No.

16 Q. All right. Let's go back now and -- to 2011, 2012, and I

17 want to know when you can recall first being -- first being

18 made aware that there were problems with Mr. Cleavenger in the

19 department.

20 A. Oh, my. I remember back in late 2011 hearing about

21 bizarre behavior that Mr. Cleavenger was displaying.

22 Q. Who do you remember getting reports from about

23 Mr. Cleavenger?

24 A. It might have been Lieutenant Lebrecht.

25 Q. Okay. As the chief -- or I guess you were the acting

1 chief at that time -- did you have direct supervision over any
 2 of the officers?
 3 A. No.
 4 Q. How did you get information about the officers?
 5 A. I had to rely on my command staff to provide me with
 6 information.
 7 Q. And, generally, what sort of information would command
 8 staff come to you with about their officers?
 9 A. Usually, you know, good things; things they were doing
 10 well; things that might be deserving of a commendation or what
 11 we called an attaboy. And then also some performance issues
 12 come through often about, you know, things that -- you might
 13 hear about this.
 14 Because I always told them if I'm going to read about
 15 something in the paper or my boss is going to tell me about
 16 something, I better know about it ahead of time.
 17 So those kinds of things.
 18 Q. Did your lieutenants at that time have the authority to
 19 issue discipline to officers without first running it by you?
 20 A. No.
 21 Q. How about letters of clarification?
 22 A. Usually they would give me a heads-up that they were going
 23 to do those, so I didn't always have to have immediate
 24 notification, but we -- we, as a command group, were trying to
 25 be consistent in how we applied constructive feedback to

1 people. A letter of clarification to me was a written
 2 counseling, and so the goal of those written counselings were
 3 to put someone on notice that you're not doing this quite right
 4 and you need to change your behavior.
 5 Q. So you said that in late 2011 you were made aware of some
 6 bizarre behavior.
 7 A. Yes.
 8 Q. Do you describe what you're talking about?
 9 A. Well, I recall one incident where I was told
 10 Mr. Cleavenger -- there was an incident with EPD chasing or
 11 having some people with a knife over by South Eugene High
 12 School, or something like that, and Mr. Cleavenger was hiding
 13 in the back of his patrol car, waiting for them to come his
 14 way, with the doors open, which sounded very odd.
 15 And I remember -- I don't remember when I heard about the
 16 angel wings and the beer and the machete and the ninja look in
 17 the diner, but those were all really concerning behaviors for
 18 me.
 19 Q. Were you informed around this time of an incident that
 20 Lieutenant Morrow had to speak to Mr. Cleavenger about bringing
 21 his Junction City firearm to the office?
 22 A. I do remember parts of that. I believe it was when
 23 Mr. Cleavenger was an auxiliary public safety officer, and he
 24 had been -- he had stored his firearm for Junction City reserve
 25 officer duties in his locker at work, which was of a concern.

1 And then, also, he had been overusing the visitor parking
 2 space outside of the department.
 3 Q. Were you involved in the issuing of the letter of
 4 clarification in 2011 to Mr. Cleavenger?
 5 A. I don't think so.
 6 Q. What about the decision to put him on weekly evaluations?
 7 A. I'm sure I was part of that discussion, because we were
 8 concerned about his behavior at that time.
 9 Q. Do you recall if Lieutenant Morrow consulted with you on
 10 that whole issue of putting him on evaluations and issuing the
 11 clarification?
 12 A. That would be something that I would want him to consult
 13 with me on. I don't independently recall that.
 14 Q. Is that something that Lieutenant Lebrecht and
 15 Lieutenant Morrow had the authority to handle on their own?
 16 A. Yes.
 17 Q. And did you trust their judgment on those issues?
 18 A. Yes. They were much closer to the employees than I was.
 19 Q. Do you remember being briefed on Mr. Cleavenger's progress
 20 during those weekly evaluations?
 21 A. I do.
 22 Q. And what do you recall being the general tone of those
 23 weekly evaluations?
 24 A. I recall that he was doing better; that he was
 25 performing -- moving to satisfactory with a little bit of

1 oversight and guidance.
 2 Q. All right. Let's move to April of 2012. In April were
 3 you informed of a complaint that had come in about
 4 Mr. Cleavenger by a student named Madeline Egan?
 5 A. I am.
 6 Q. How did you learn about that complaint?
 7 A. I believe a complaint came in to the office. There was a
 8 call into dispatch about it, and my recollection is maybe
 9 Lieutenant Lebrecht had a -- looked up, trying to find the
 10 incident that the caller was referring to, and found a video of
 11 it.
 12 Q. Did he show you the video?
 13 A. I did watch that video.
 14 Q. Did you also listen to the telephone call that we heard
 15 here in court?
 16 A. I did.
 17 Q. Did your review of the video and listening to that
 18 telephone call raise concerns for you?
 19 A. It did.
 20 Q. Tell us about those. What were your concerns?
 21 A. When I watched that video, I was really concerned; not
 22 just about the stop, but, more importantly, I was concerned
 23 about Mr. Cleavenger's motivation behind that stop.
 24 He -- I think in there, of some part of it, he commented,
 25 "I have to make you fearful for a while," and that was just a

1 very disturbing comment to hear.
 2 We need students to report things to us. We can't help
 3 them if we don't know what's happening. I'm sure you 've heard
 4 the statistics about sexual assaults. One in five college
 5 women will be sexually assaulted. Five percent of college men
 6 will be sexually assaulted. But they have to have trust that
 7 they can come forward and that you're going to help them.
 8 So I watched this video and I heard him say that, and I
 9 thought this woman is going to be one of those people that had
 10 what I thought was not a very pleasant interaction with one of
 11 my officers and would she be willing to report anything to us?
 12 Would she trust us to help her if she needed us? That's what
 13 was going through my mind.
 14 Q. What made this the sort of situation, the sort of issue
 15 that you felt needed to be referred for an internal affairs
 16 investigation?
 17 A. Well, the contact was just disturbing. You know, the
 18 questions he asked and -- and his behaviors were concerning for
 19 me. I wondered, Why is he acting like this? Why does he look
 20 so distracted?
 21 And I noticed his officer safety skills weren't good and
 22 his -- and the approach and the way he's looking off in
 23 different directions, and that kind of thing, and wondering,
 24 you know, is he okay?
 25 Q. So shortly after you found out about this Madeline Egan

1 stop, did Lieutenant Lebrecht come to you with another video, a
 2 stop of the dean?
 3 A. He did.
 4 Q. Did you watch that video?
 5 A. I did.
 6 Q. And did that also raise concerns for you?
 7 A. It did.
 8 Q. Tell us what about that interaction caused you the most
 9 concern.
 10 A. So he -- he said that the tags were -- looked like they
 11 were -- had been tampered with or -- I forget his exact words,
 12 but we don't cite for that. We don't have the authority to
 13 cite for that.
 14 He also, in my opinion, detained her, made a traffic stop,
 15 an unlawful traffic stop. That was concerning.
 16 When I listened to the video and he said it was the
 17 vehicle that looked suspicious and maybe it was stolen or she
 18 was a drunk driver or -- you know, I listened to the video and
 19 it -- as she is walking away with her passenger, I heard him
 20 tell -- I believe I heard this in the video -- the other
 21 officer that responded is I had a -- they looked -- "I had a
 22 suspicious feeling about them." Not about the vehicle, but
 23 about them, and that concerned me, because was this stop about
 24 the vehicle or was it a stop about the occupants of the
 25 vehicle?

1 Again, I didn't understand his motivation.
 2 Q. Did you also refer that stop to Lieutenant Morrow for an
 3 internal affairs investigation?
 4 A. I did.
 5 Q. Did you call Ms. Commissiong?
 6 A. I did.
 7 Q. Did you know her before you saw her on that video?
 8 A. I recognized her in the -- when I watched the video.
 9 Q. Why did you call her?
 10 A. I called her to tell her that that wasn't appropriate for
 11 our officers to do; that they are not allowed to do those kind
 12 of stops by law. And I -- and she -- we had a conversation
 13 about the incident.
 14 Q. What do you recall her telling you?
 15 A. I don't remember her exact words, but -- but the word
 16 "profiling" came up, "racial profiling," and I know she --
 17 something -- either she was racially -- either she felt it was
 18 racially profiling or she felt others like her would be
 19 racially profiled or something to that effect.
 20 I asked her if she wanted to file a complaint, and she
 21 said no.
 22 Q. Why did you -- if she didn't want to file a complaint, why
 23 did you pursue this in an internal affairs investigation?
 24 A. Because of the unlawful stop and, you know, stopping her
 25 for something that we can't enforce and it being an unlawful

1 stop.
 2 Q. Does there have to be a formal complaint before
 3 something -- you can make the decision to investigate something
 4 your officer has done?
 5 A. No. And it's my belief that we need to command and I need
 6 to, you know, be vigilant about addressing behaviors in our own
 7 department, regardless if there's a complaint or not. I mean,
 8 we should be managing our people in the most effective way.
 9 We shouldn't have to rely on a complaint to come in before
 10 a situation is addressed, because it might not be the first
 11 time by the time somebody complains about it.
 12 If we can catch it early, we can correct behavior, and
 13 then we have done the department and the officer a good
 14 service, I think.
 15 Q. During this time in April of 2012, were you keeping
 16 Doug Tripp updated on these two stops? Did you tell him about
 17 these?
 18 A. Yes.
 19 Q. Did you also keep him updated on the other behaviors that
 20 you talked about before? Was he aware of the concerns with
 21 Mr. Cleavenger?
 22 A. He was.
 23 Q. How -- and, again, were you communicating by telephone?
 24 By email?
 25 A. Yes.

1 Q. Both?

2 A. Yes.

3 Q. Did Doug Tripp have any suggestions to you about what he

4 wanted to do?

5 A. Well, I recall, after I told him about another incident,

6 he -- his reply was really strong. He -- in his mind "gross

7 negligence," I think he said, and "This -- you need to deal

8 with this" or "You have my support," or something like that.

9 He was pretty definite.

10 Q. All right. Do you recall during that time period -- we're

11 in April of 2012 -- having discussions with Lieutenant Morrow

12 about checking with Dr. Corey to see if he had any additional

13 insight into Mr. Cleavenger's behaviors or why he was acting

14 how he was?

15 A. I -- I -- I vaguely recall there was a discussion about --

16 how -- we were trying to think of what can we do to help

17 Mr. Cleavenger. We had some concerns. And I believe I -- we

18 did discuss with Dr. Corey an idea of what might be helpful to

19 address the issues.

20 Q. Was Lieutenant Morrow involved in these discussions?

21 A. Yes.

22 Q. Why was Lieutenant Morrow the person who was point with

23 Dr. Corey?

24 A. So Lieutenant Morrow's position with Professional

25 Standards and Training also included the hiring of our -- our

1 employees and the background process, and the background

2 process includes evaluations by Dr. Corey on psychological

3 fitness of a particular candidate.

4 Q. If you recall, was a fitness-for-duty examination or

5 evaluation discussed at that time, back in April of 2012?

6 A. I think -- I think it probably was, but I don't have an

7 independent recollection of that. But I think that was one of

8 the things that we were exploring.

9 Q. Were you exploring a lot of options on how to help

10 Mr. Cleavenger at this time?

11 A. Yes.

12 Q. Now, there's been discussion here about the performance

13 review that Lieutenant Lebrecht conducted. Were you aware that

14 Lieutenant Lebrecht was doing this performance review of

15 Mr. Cleavenger?

16 A. Yes.

17 Q. Did it stem from his initial review of the Madeline Egan

18 complaint?

19 A. It did.

20 Q. And what was your understanding of the purpose of

21 Lieutenant Lebrecht's review?

22 A. I -- I wanted him and he wanted to look at if there was a

23 pattern of behavior in -- in Mr. Cleavenger's work that would

24 help us better understand perhaps where there were training

25 deficiencies or something so we could address it, or was it

1 simply just a couple of instances where there was an issue or

2 wasn't there a pattern.

3 Q. Lieutenant Lebrecht was the patrol lieutenant in 2012?

4 A. Yes.

5 Q. Was part of his job to review the performance of his

6 officers and make sure they had an adequate -- were performing

7 adequately?

8 A. Yes.

9 Q. Was Lieutenant Lebrecht keeping you updated on what he was

10 finding in his performance review of Mr. Cleavenger?

11 A. Yes.

12 Q. How was he keeping you updated?

13 A. He would send me updates via email, kind of a -- just a

14 log of what he had looked at and what he had found.

15 Q. As he's doing this review, initially getting into it, was

16 he sharing his concerns he was finding?

17 A. Yes.

18 Q. And what do you recall those concerns being?

19 A. I remember a lot of officer safety concerns, also the fact

20 that Mr. Cleavenger wasn't always advising people that he was

21 recording them, and then there could have been some judgment

22 issues there too.

23 MS. COIT: Your Honor, permission to approach?

24 THE COURT: Do you have a document?

25 MS. COIT: I do. It's 403.

1 THE COURT: 403. You may. Has that been received

2 into evidence?

3 MS. COIT: No.

4 THE COURT: All right.

5 BY MS. COIT: (Continuing)

6 Q. Do you recognize what Exhibit 403 is?

7 A. Yes.

8 Q. What is this document?

9 A. This is Lieutenant Lebrecht's log of what he was reviewing

10 and what he learned from the review.

11 Q. What is the date of the email showing that being sent to

12 you?

13 A. May 12th.

14 MR. JASON KAFOURY: Counsel, we don't have that

15 exhibit --

16 MS. COIT: I'll get you a copy.

17 MR. JASON KAFOURY: -- with the date on top.

18 BY MS. COIT: (Continuing)

19 Q. All right. As these logs are coming in from

20 Lieutenant Lebrecht, are you reading them?

21 A. I did my best.

22 Q. Okay.

23 MS. COIT: All Right, Your Honor. Defense offers

24 403.

25 MR. MCDUGAL: Object, Your Honor. It's not the 403

1 that was given to us or the Court.
 2 THE COURT: We'll take that up during a recess.
 3 BY MS. COIT: (Continuing)
 4 Q. All right. So look at Exhibit 403 for us, and tell us --
 5 MS. COIT: Well, your Honor, may the witness testify
 6 about 403?
 7 THE COURT: Yes. Yes.
 8 MS. COIT: All right.
 9 BY MS. COIT: (Continuing)
 10 Q. On the last page, well, these running logs, were they
 11 updated with the most recent review at the end?
 12 A. Yes.
 13 Q. So on the last page of the review --
 14 THE COURT: Can I see 403 for a moment? Will
 15 somebody hand me 403?
 16 Thank you very much. I appreciate it.
 17 Well, Lebrecht testified -- strike that. Brandon Lebrecht
 18 testified, so I'm not going to receive the running log.
 19 I'll -- it's only important that she received the running log
 20 and obtain certain information from it, but all this isn't
 21 going to come in. It would be hearsay.
 22 MS. COIT: Okay.
 23 THE COURT: Let me give this back to you, Chief.
 24 BY MS. COIT: (Continuing)
 25 Q. All right. When you received this running log from

1 Lieutenant Lebrecht on May 12th of 2012, did you review the
 2 last three incidents that are listed on the second-to-last and
 3 last page?
 4 A. I did.
 5 Q. All right. Tell us what the -- the May 4, 2012, incident
 6 concerned.
 7 A. The 423?
 8 Q. No. The May 4, 2012.
 9 A. That is May 4th.
 10 Q. Oh, the 423 -- I thought you said number 423. Yeah, that
 11 incident.
 12 A. Yes, I did review that.
 13 Q. All right. Did anything that you read in the description
 14 of Lieutenant Lebrecht's review of this call raise concerns for
 15 you?
 16 A. It did. Officer safety concerns.
 17 Q. What were those concerns with this one?
 18 A. That, well, one, he didn't -- part of it was he didn't --
 19 he drove right past them and -- before he made contact with
 20 them, which is an officer safety concern, but then it was --
 21 the timing of how he did it was confusing. He called out
 22 his -- he needed a code one cover unit or -- it was a strange
 23 call.
 24 Q. Did Lieutenant Lebrecht give an opinion in this running
 25 log that he found no reason for the stop?

1 A. Yes.
 2 Q. The next incident that --
 3 THE COURT: Can you relate that stop to a particular
 4 incident? You have a date, but I don't think it's clear,
 5 without the introduction of this document, what that involves.
 6 BY MS. COIT: (Continuing)
 7 Q. Can you give us the -- the incident number for that
 8 incident?
 9 A. It's 12-05-04-518738.
 10 Q. All right. Then the next incident there that's described
 11 to you is the Whitney Harder incident; is that correct?
 12 A. Yes.
 13 Q. When you received this document from Lieutenant Lebrecht ,
 14 was this your first knowledge of the Whitney Harder incident?
 15 A. I believe so.
 16 Q. What went through your mind when you read
 17 Lieutenant Lebrecht's description of that incident?
 18 A. I had some serious concerns about his actions in this
 19 incident. Officer safety. Officer safety for himself and for
 20 our campus and our other officers.
 21 Q. And we're going to come back to that in a minute. I just
 22 want to talk about the last incident described in this log.
 23 And this involves a video that we saw yesterday, I
 24 believe, of the man Mr. Cleavenger claimed was digging through
 25 a garbage can?

1 A. Yes.
 2 Q. All right. What was it about that stop, that interaction
 3 that he had, that raised concern for you?
 4 A. I didn't understand why he stopped him, and then, you
 5 know, wanting to see his ID. I didn't see that the man was
 6 ever canning, but yet he stopped him.
 7 Q. What about the offer to give him cans in exchange for his
 8 ID?
 9 A. That also was a concern, because I -- he -- he says, "Hey,
 10 I'll give you some cans from my trunk if you let me see your
 11 ID." That's not how we do police work.
 12 Q. What's inappropriate about that?
 13 A. Well, to me it was like, you know, asking him to do
 14 something in exchange for a favor. It's wrong.
 15 Q. All right. So when you got this log on May 12 from
 16 Lieutenant Lebrecht, do you recall speaking with him in person
 17 shortly thereafter?
 18 A. I do.
 19 Q. Did you talk about the Whitney Harder incident at that
 20 time?
 21 A. I did.
 22 Q. What do you recall Lieutenant Lebrecht telling you about
 23 that incident?
 24 A. I remember him telling me that -- I believe it was Hermens
 25 had come to him and said -- talked about it in briefing, or

1 something, that, "Hey you know that transport that Cleavenger
2 did, the -- he put a -- he let her keep her firearm and gave
3 her a ride." And that's a huge officer safety issue. I -- our
4 officers -- when they first became police officers, they
5 weren't armed, and we wouldn't let them take anybody to jail
6 because of the inherent risk of taking a suspect, unarmed, to
7 jail for them. Because people do have access to weapons, and
8 they cleverly conceal them, and so it's a risk.
9 So the fact that he would put an armed woman, distraught,
10 obviously in a -- a difficult, even perhaps stalking situation,
11 in the back of his car, was unthinkable. I was shocked.
12 Q. There was some testimony in this case about an officer
13 shooting that occurred shortly before this. Officer Kilcullen.
14 A. Yes.
15 Q. Did you work with Officer Kilcullen?
16 A. I worked very closely with Officer Kilcullen.
17 Q. What happened with him?
18 A. Officer Kilcullen was on his way home from shift, tried to
19 stop a violator. She took -- took off. He followed her. She
20 stopped at a light. He pulled up alongside of her, and she
21 turned and shot him. Killed him.
22 Q. Did that -- that experience, that having happened, did
23 that play into your reaction to finding out about
24 Mr. Cleavenger's decision to take Whitney Harder with a gun?
25 A. It did. Over the course of my career, I've gone to way

1 too many police funerals. And this particular one in April of
2 2011 was a huge impact. I never want to go to another police
3 funeral. And I want to keep my officers as safe as I possibly
4 can so they get to go home at the end of the day. I -- I -- it
5 was terrible.
6 Q. Is it ever okay to take an unknown person in the back of
7 your patrol car with them having a loaded gun?
8 A. I would never do it. There's so many other options
9 available to choose from.
10 Q. Did you take this information to Doug Tripp when you got
11 it?
12 A. I did.
13 Q. Why did you go to Doug Tripp before you took action?
14 A. Because he was still in charge of the department.
15 MS. COIT: Permission to approach, Your Honor?
16 THE COURT: Do you have an exhibit?
17 MS. COIT: Exhibit 320.
18 THE COURT: Exhibit 320. Has that been received?
19 MS. COIT: No.
20 THE COURT: All right. You may approach.
21 BY MS. COIT: (Continuing)
22 Q. Do you recognize Exhibit 320?
23 A. I do.
24 Q. What is that?
25 A. It's an email correspondence with Chief Tripp.

1 Q. And yourself?
2 A. Yes.
3 Q. And what is the date on that?
4 A. May 14, 2012.
5 MS. COIT: Your Honor, defense offers 320.
6 MR. MCDUGAL: No objection.
7 THE COURT: Received.
8 MS. COIT: Permission to publish?
9 THE COURT: You may.
10 BY MS. COIT: (Continuing)
11 Q. I want to look at the last email in the chain. The most
12 recent.
13 A. Yes.
14 Q. Are you writing this email to Doug Tripp? Sorry.
15 All right. Let's just look on the screen. Start at the
16 bottom email, May 14, 2012, at 7:55 p.m.
17 A. Okay.
18 Q. You say, "I'm meeting with Brandon and Mike tomorrow, but
19 I'm seriously considering pulling JC from field duty due to his
20 extreme disregard for officer safety and unlawful stops. This
21 information comes reviewing his recorder and video contacting
22 people he contacts. A couple of nights ago he was flagged down
23 in the DPS east parking lot by a female who was frightened by
24 her boyfriend, that her boyfriend was stalking her. She was
25 carrying a gun on her side; had a concealed weapons permit.

1 Cleavenger gave her a ride to a downtown hotel, allowing her to
2 remain armed in his backseat. He did get permission for the
3 transport from Cameron, but he failed to tell him she was
4 armed."
5 Then you go on. "About that same day, Cleavenger observed
6 a guy at the recycling and tells him he thinks he saw him
7 canning."
8 Is that the video that we talked about?
9 A. Yes.
10 Q. "He tells the guy he'll make him a deal. Show him his ID,
11 and he'll give him cans from his trunk. The guy declined, and
12 then Cleavenger demanded the ID but said he would only get a
13 warning. He runs the guy. No record. Releases him. Hermens
14 contacts JC later and said he checked the guy JC ran and there
15 should have been a long record. JC wrote his name wrong. JC
16 hunts for the guy and detains. Runs him again. No warrant.
17 And while explaining, he allows the guy to walk along behind
18 him. I think we risk damage to the department reputation, as
19 well, as long as he's out there. By the way, Randy Wardlow was
20 in agreement for a written reprimand for past behavior."
21 What was the purpose of sending that email to Chief Tripp?
22 A. To tell him how alarmed I was by these incidents and how I
23 felt that to protect him and other officers we needed to pull
24 him from his assignment.
25 Q. Why did you think pulling him from his assignment was so

1 urgent at that point?

2 A. Because I didn't trust his judgment anymore. I didn't

3 know what was going to happen if I didn't pull him out of that

4 role he was in.

5 Q. Chief Tripp responded to you. He says, "I see this as

6 unlawful in nature and gross negligence. If true and supported

7 by facts, I really believe he needs to be released from

8 employment. Likewise, you have prior issues which I believe

9 are documented. There should -- these should be used to

10 support this action."

11 Then he goes on to tell you he would be open to negotiate

12 the settlement. However, this would be predicated on your

13 findings, as illegal activity and gross negligence are

14 unacceptable. Please take a firm stance. You have my

15 support."

16 What was Chief Tripp's recommendation at that point in May

17 of 2012?

18 A. I think in his mind Mr. Cleavenger should be terminated.

19 Q. And you respond 14 minutes later, "Copy. Thanks. I truly

20 believe we must remove him as soon as possible."

21 Did you mean terminate there or did you mean remove him

22 from enforcement duties?

23 A. Remove him from enforcement duties.

24 Q. "We will make sure to document everything. There is a

25 running log. And work swiftly."

1 Why were you making this statement that you would be sure

2 to document everything?

3 A. Because it would be important.

4 Q. "I have not ever heard of such bizarre behavior by a

5 uniformed officer."

6 Was that a true statement?

7 A. Absolutely.

8 Q. And then Tripp finally chimes in, "Well, you can't get it

9 right all the time. What is most important is how you react

10 when you realize the mistake. It is really unfortunate, as he

11 had something to offer, but that seems to be lost potential."

12 What did you do after you got this email from Doug Tripp?

13 A. I worked with Randy Wardlow and human resources to put

14 together a reassignment for Mr. Cleavenger.

15 Q. Let's look at Exhibit 411.

16 MS. COIT: Exhibit 411, Your Honor.

17 THE COURT: 411. Has that been received?

18 MS. COIT: Not yet.

19 BY MS. COIT: (Continuing)

20 Q. Do you recognize 411?

21 A. Yes.

22 Q. And what is Exhibit 411?

23 A. It's an email conversation between Doug Tripp and I, with

24 an attachment by Randy Wardlow as well.

25 Q. What is the date of the top email?

1 A. May 19, 2012.

2 Q. Okay. And then the first email, starting on the second

3 page, what is that date?

4 A. May 18, 2012.

5 Q. That's from Randy Wardlow?

6 A. The one at the top or the one from Doug Tripp to Randy?

7 Q. The one at the bottom.

8 A. Sorry. Yes, it's from Randy Wardlow.

9 MS. COIT: Defense offers 411.

10 MR. MCDOUGAL: No objection.

11 THE COURT: Received.

12 MS. COIT: Permission to publish?

13 THE COURT: You may.

14 BY MS. COIT: (Continuing)

15 Q. All right. Bottom email there from Randy Wardlow, he

16 says, "Good morning. I had a chance to speak with Linda" --

17 Is that Linda King?

18 A. Yes.

19 Q. -- "regarding Officer Cleavenger's behaviors yesterday,

20 and we agree that a fitness referral would be appropriate."

21 Do you know why they were discussing a fitness referral at

22 that point?

23 A. I think to see what might explain some of the behaviors

24 that Mr. Cleavenger was displaying.

25 Q. He continues, "In the interim, it is also appropriate that

1 you consider reassigning him to nonpatrol duty."

2 Had you informed Randy Wardlow at this point that that is

3 something that you wanted done?

4 A. Yes. Yes.

5 Q. Why was it that you needed to discuss that decision with

6 human resources?

7 A. Any decisions involving discipline or change of duties,

8 and that, were always vetted through human resources.

9 Q. All right. Then -- so Doug Tripp responds to Mr. Wardlow,

10 and he says, "Carolyn and I will discuss further and let you

11 know our preferred approach."

12 Was Doug Tripp's preference at that point to terminate

13 Mr. Cleavenger rather than go for a fitness-for-duty?

14 A. It was.

15 Q. Do you recall what your position was at that point; what

16 you wanted to do?

17 A. I didn't think we had enough information to make that

18 determination at that time.

19 Q. Okay. Then you respond to Doug on May 18th at 12:59 p.m.

20 and you tell Doug that you've discussed with Mike and

21 Brandon -- that's Mike Morrow and Brandon Lebrecht?

22 A. Yes.

23 Q. You said the three of you spoke with Randy Wardlow

24 regarding a discussion you had with Chief Tripp related to

25 preference for for-cause versus fitness-for-duty.

1 Do you recall what the outcome of that discussion was with
 2 Randy Wardlow?
 3 A. I -- I don't recall. I know that we were going to do a
 4 reassignment, and I know that there was a lot of discussion
 5 about fitness for duty, training, the reprimand, but I -- all I
 6 recall is a discussion about a lot of options.
 7 Q. Do you recall Randy Wardlow during this time period
 8 advising that there wasn't sufficient justification to move
 9 immediately to termination?
 10 A. I do know that Randy was concerned that that was a big
 11 step to take and to go to termination. That's why we were
 12 talking about other options.
 13 Q. After that discussion that you had with Randy Wardlow,
 14 were you in agreement that termination wasn't the right
 15 approach at that point?
 16 A. Well, I was, but Doug Tripp, in my conversation with him,
 17 he was pretty adamant about termination.
 18 Q. So you state in there, "I also told Randy I still felt the
 19 need to remove him from patrol duty was immediately necessary
 20 and that I felt parking enforcement could be a suitable
 21 reassignment to begin."
 22 Again, just explain. Why did you feel that was
 23 immediately necessary?
 24 A. I needed to pull him off assignments and see what we were
 25 going to be able to do. The safety concern was a huge issue

1 doing the investigating. Do you know why those details aren't
 2 in there?
 3 A. I don't.
 4 Q. Was this a thought-out document, or was this something
 5 that needed to be done quickly and given to Mr. Cleavenger?
 6 A. Oh, I needed to reassign him. I think in my email to
 7 Doug Tripp I said, "I need to hear back from you about the
 8 reassignment because he's scheduled to report for duty at
 9 1500."
 10 Q. And you were not comfortable putting him back out as an
 11 enforcement officer at that point?
 12 A. No.
 13 Q. Between the time you found out about his transporting
 14 Ms. Harder with the gun and when he's given this reassignment
 15 notice, did he work any shifts, that you know of?
 16 A. Not that I recall.
 17 Q. So you immediately took him off enforcement action?
 18 A. Yes.
 19 Q. With this notice, what were you telling him to stop doing ?
 20 A. My intent in this memo was that you are not to be acting
 21 in a commissioned capacity. We changed his uniform to one of a
 22 polo shirt, and he was not to do any enforcement.
 23 Q. Had you lost trust in him at that point?
 24 A. I didn't trust his judgment anymore.
 25 MS. COIT: Your Honor, this might be a good time for

1 for me, and I was afraid for him and everyone that worked
 2 around him.
 3 Q. All right. The date of that email is May 18, 2012. Did
 4 you reassign Mr. Cleavenger that day?
 5 A. I did.
 6 MS. COIT: Plaintiff's Exhibit 2, Your Honor. It's
 7 been received.
 8 THE COURT: All right. Exhibit 2.
 9 BY MS. COIT: (Continuing)
 10 Q. Is Exhibit 2 the reassignment notice that you gave to
 11 Mr. Cleavenger?
 12 A. Yes.
 13 Q. Did you draft this document?
 14 A. I don't believe I did. I think someone in HR did. I
 15 don't -- I don't recall drafting it. I may have.
 16 Q. On the top, is that Mr. Cleavenger's initials?
 17 A. I believe so.
 18 Q. Okay. Did you actually give this document to
 19 Mr. Cleavenger, or did Lieutenant Lebrecht?
 20 A. Lieutenant Lebrecht did that.
 21 Q. And why was Lieutenant Lebrecht the one to give it to him
 22 rather than you?
 23 A. It was just closer to the chain of command.
 24 Q. Now, the temporary reassignment notice, it doesn't give
 25 any details about the investigation that's discussed or who's

1 a break.
 2 THE COURT: All right. Ladies and gentlemen, we'll
 3 come get you in 20 minutes. Don't discuss this matter amongst
 4 yourselves. Don't form any opinions about this matter, and
 5 have a nice recess.
 6 Counsel, if you would remain for one moment.
 7 (Jury not present.)
 8 THE COURT: Chief, would you be kind enough to hand
 9 me Exhibit 403? Let's get a fair record concerning this
 10 document. What --
 11 Chief, you may step down.
 12 These are Mr. Lebrecht's notes. This would be the
 13 document you're objecting to, Counsel?
 14 MR. MCDUGAL: My objection was that --
 15 THE COURT: I can't hear you.
 16 MR. MCDUGAL: Oh, my surprise and offguard is that
 17 one different than the one I had marked as 403 was being given
 18 to the witness, and the material differences -- the 403 I was
 19 given doesn't have the date of the email on it.
 20 MS. COIT: We replaced those emails and produced them
 21 to you over the weekend because we discussed the archive date
 22 was on there, and so we discussed we would go find the email
 23 that had the actual sent date, and that's what we replaced over
 24 the weekend.
 25 MR. MCDUGAL: I don't have a problem now. I was

1 able to sort it out while he was testifying.
 2 THE COURT: Can this be received, then?
 3 MR. MCDUGAL: What?
 4 THE COURT: Can this be received then? I'm extending
 5 each of you the courtesy because here's another dispute between
 6 the two of you over discovery.
 7 MR. MCDUGAL: Hold on. I need to talk to counsel.
 8 I don't understand.
 9 THE COURT: Okay. Talk to counsel.
 10 MS. COIT: Your Honor, my apologies. I thought it
 11 was 10:30. I wouldn't have broke so early.
 12 THE COURT: That's fine.
 13 Counsel, why don't you two have that discussion.
 14 MR. JASON KAFOURY: Your Honor, at --
 15 MR. MCDUGAL: Hold on. He wants us to have a
 16 discussion.
 17 MR. JASON KAFOURY: Okay.
 18 THE COURT: It's as simple as this, Counsel: If you
 19 received this document before, but it just didn't have the
 20 date, there were a whole lot of conversations concerning
 21 archive dates versus dates. Is this essentially the same
 22 document you received?
 23 MR. MCDUGAL: This deals with Lebrecht and --
 24 THE COURT: I've got one attorney.
 25 MR. JASON KAFOURY: Okay.

1 THE COURT: You.
 2 MR. MCDUGAL: Okay. Apparently, in Mr. Lebrecht's
 3 deposition, he testified he did not have notes and he
 4 re-created them. And if these are a re-creation, we object to
 5 them. Lebrecht testified that he re-created his notes.
 6 Mr. Lebrecht was not asked about these when he was on the
 7 stand. If it's an after-the-fact re-creation, we object to
 8 them.
 9 MS. COIT: It's a completely different document.
 10 These are not his supervisory notes. I have not introduced his
 11 supervisory notes. This was the running log that was produced
 12 to you. It was turned into the performance evaluation. That
 13 is Exhibit 351. This document was produced as one of our
 14 exhibits at the very beginning of this -- this trial.
 15 THE COURT: I understand this now. The objection is
 16 overruled. They're received, Counsel. I'll receive this in
 17 front of the jury.
 18 Counsel, now are there any other discovery disputes that
 19 the two of you have that you haven't brought to my attention?
 20 MR. JASON KAFOURY: What other exhibits are you going
 21 to offer?
 22 MR. MCDUGAL: We have them, Jason.
 23 Not that I'm aware of.
 24 THE COURT: Counsel?
 25 MS. COIT: Not that I'm aware of.

1 THE COURT: No more surprises. Thank you very much.
 2 Have a nice recess.
 3 (Recess taken.)
 4 MS. COIT: Your Honor, I have a short issue. The
 5 document that I just offered, 403, and that was received, it's
 6 come to my attention it's not exactly what I thought it was.
 7 It does contain part of the supervisor notes, so I'm going to
 8 withdraw that exhibit.
 9 MR. MCDUGAL: One other short matter, Your Honor, an
 10 agreement between counsel and I that no question I ask, nothing
 11 I say, can open the door to them bringing in this traumatic
 12 brain injury that I thought I -- I let it --
 13 THE COURT: I hadn't heard that they -- I hadn't
 14 heard that they brought in her brain injury.
 15 MR. MCDUGAL: She testified --
 16 THE COURT: Other than -- no, just a moment. She can
 17 bring in the fact of her personal life and what's happening and
 18 the brain injury in terms of why the chief thought an
 19 administrative position would be better for her family, her
 20 health, or whatever, in terms of applying for the University of
 21 Oregon job.
 22 What I'm hearing is your great fear is that the brain
 23 injury that she suffered would lead to some reason or excuse
 24 concerning notes. I thought the representation was that there
 25 weren't going to be any discussions concerning that.

1 MR. MCDUGAL: No. Defense counsel -- my agreement
 2 with defense counsel is there will be no mention of the
 3 traumatic brain injury. I got that agreement in lieu of going
 4 to discover what she had said in her personal injury case about
 5 her traumatic brain injury if she went there. So there was
 6 going to be no mention.
 7 I just want the agreement that no matter what I --
 8 THE COURT: I disagree with you. I would never make
 9 that ruling.
 10 MR. MCDUGAL: No, she agreed to that.
 11 MS. COIT: I did not agree to that.
 12 THE COURT: The chief did not testify about anything
 13 concerning her traumatic brain injury other than that was the
 14 reason for her shifting to and wanting an administrative
 15 position. That's entirely appropriate.
 16 Now, whatever your personal agreements or disagreements
 17 are, I'm not present. I'm not going to sort out those personal
 18 conversations between the two of you. You didn't bring it to
 19 me, neither counsel, and I can't sort that out in hindsight.
 20 Now, where do we lie with this traumatic brain injury?
 21 MR. MCDUGAL: I thought we had a stipulation.
 22 THE COURT: No, apparently.
 23 MR. MCDUGAL: What?
 24 THE COURT: She's disagreeing with you. You do not
 25 have that stipulation or agreement. She just said she didn't

1 say that and she's denying it.
 2 Now, what are we going to do about it?
 3 MR. MCDUGAL: I just want her to confirm to my --
 4 THE COURT: Why don't you walk over and talk to her
 5 quietly.
 6 MR. MCDUGAL: I'm going to end this. She can just
 7 say what she thinks the agreement is.
 8 THE COURT: Get the jury please, Christy.
 9 (Jury present.)
 10 THE COURT: Jury is present, counsel are present, and
 11 the parties are present. Retake the stand, please.
 12 Continue your direct examination, please.
 13 BY MS. COIT: (Continuing)
 14 Q. In -- we just talked about the reassignment that occurred
 15 May 18th of 2012; correct?
 16 A. Yes.
 17 Q. In June of 2012 was Chief Tripp removed from his position
 18 of authority at the department?
 19 A. Yes. Late June 2012.
 20 Q. Around that time, did the discussions regarding
 21 Mr. Cleavenger focus more on finding ways to retrain him and
 22 make him a safe officer?
 23 A. It did.
 24 Q. Was human resources supportive of that -- that track for
 25 him?

1 A. Yes.
 2 Q. Were you supportive of that track for him?
 3 A. Yes.
 4 Q. Did you still have concerns at this point that he could
 5 safely operate as a public safety officer?
 6 A. I was hoping the retraining would address those issues.
 7 Q. So you were willing to give it a shot?
 8 A. Yes.
 9 Q. Were Lieutenant Lebrecht and Randy Wardlow handling that
 10 aspect of the discussions with Mr. Cleavenger?
 11 A. Yes. Yes.
 12 Q. And at that point Mr. Cleavenger also had a union steward
 13 representing him?
 14 A. Yes.
 15 Q. Did you help Lieutenant Lebrecht put together a retraining
 16 for Mr. Cleavenger?
 17 A. Not that I recall.
 18 Q. Did you see that retraining plan?
 19 A. I did.
 20 Q. Okay. Did you approve of it?
 21 A. Yes.
 22 Q. Did you think it was sufficient to address the needs that
 23 you saw with Mr. Cleavenger?
 24 A. I did. I felt Mr. Cleavenger needed to just go back,
 25 basically, to square one, build a new foundation, build on that

1 foundation.
 2 Q. There's been some testimony that on June 1, 2012,
 3 Lieutenant Morrow gave Mr. Cleavenger notice of his internal
 4 affairs investigation. Do you recall that?
 5 A. Yes.
 6 Q. Now there's also been testimony that Mr. Cleavenger had a
 7 meeting with you that same day. Do you recall that meeting?
 8 A. I do not recall that meeting.
 9 Q. I take it you don't recall anything he said in that
 10 meeting?
 11 A. I don't.
 12 Q. Do you recall at any time during June of 2012 -- and I
 13 know this was a long time ago -- Mr. Cleavenger coming to you
 14 with complaints that he was not being afforded his officer's
 15 bill of rights in these investigations that were occurring?
 16 A. No.
 17 Q. Do you recall him ever making that statement to you?
 18 A. No.
 19 Q. Do you remember Mr. Cleavenger asking you if you would
 20 handle his step one grievance of his written reprimand?
 21 A. I do remember that.
 22 Q. What was your response to that?
 23 A. I believe after we met -- my recollection is I -- I asked
 24 human resources about it, and Randy Wardlow felt that it would
 25 be better for him to sit in on that meeting. That was

1 something that he should do, rather than me.
 2 Q. Did you express that to Mr. Cleavenger?
 3 A. I did.
 4 Q. How did you do that?
 5 A. I believe it was by email.
 6 Q. If you had agreed to oversee the step one grievance
 7 hearing, would you have done it?
 8 A. Yes.
 9 Q. In 2012, the summer of 2012, what was going on at the
 10 University of Oregon?
 11 A. The U.S. Olympic trials was happening in Eugene.
 12 Q. Were you guys pretty busy during that time?
 13 A. We were very busy.
 14 Q. Now, there's been some testimony that Mr. Cleavenger was
 15 put back into a PSO role during the Olympic trials. Do you
 16 recall that?
 17 A. I do.
 18 Q. Did you approve of that?
 19 A. I didn't. We were caught in a dilemma where he had signed
 20 up for overtime for the Olympic trials, and we had asked for
 21 HR's guidance on whether we should allow him, because he was in
 22 this reassignment, to work the trials, and we didn't get an
 23 answer back. And I was concerned about keeping him from
 24 overtime that he signed up for; in other words, taking away
 25 some -- some money from him, some property right, and I also

1 weighed into my consideration that we were paired with Eugene
 2 police officers. And at that time, although we had some police
 3 officers, they weren't in an armed capacity, so they were
 4 really in a security function. So I felt like it would not be
 5 risk related to him working in that capacity.
 6 Q. When he worked those events during that summer, was he
 7 paired up with a Eugene police officer during the entire time?
 8 A. I'm not sure, but that was what we were going to strive to
 9 do. We had some other assignments, too. I recall some
 10 security of the residential halls, too, and I'm not sure if he
 11 was a part of that.
 12 Q. During the Olympic trials, while this was all going on,
 13 was Lieutenant Morrow continuing with his internal affairs
 14 investigation?
 15 A. He was.
 16 Q. And was Lieutenant Lebrecht also working on the
 17 performance review?
 18 A. Yes.
 19 Q. All right. Let's jump to August 13, 2012. We talked
 20 yesterday -- well, someday this week -- about a meeting that
 21 Lieutenant Lebrecht, Randy Wardlow, Mr. Cleavenger, and his
 22 union steward had on that date to discuss the performance
 23 review.
 24 A. Yes.
 25 Q. At that time, August 13, 2012, were you still supportive

1 of the retraining plan?
 2 A. Yes.
 3 Q. Were you aware that they were going to make the offer of
 4 what this training plan was and what it would entail during
 5 that meeting in August?
 6 A. I don't know that I knew that.
 7 Q. But did you know they were going to make the offer at some
 8 point?
 9 A. Yes.
 10 Q. And you were supportive of that?
 11 A. Yes.
 12 Q. This was before you had received the results of
 13 Mike Morrow's internal affairs investigation; right?
 14 A. Correct.
 15 Q. All right. Do you recall Mr. Cleavenger asking you to
 16 have a meeting with him that afternoon of August 13th?
 17 A. I do.
 18 Q. What did he ask you?
 19 A. He asked me, I think, did I have five minutes to talk.
 20 Q. And did you tell him you did?
 21 A. I did.
 22 Q. Do you recall where you two met?
 23 A. In my office.
 24 Q. And do you recall what time of day it was?
 25 A. Late afternoon.

1 Q. What do you recall Mr. Cleavenger discussing with you at
 2 that meeting?
 3 A. So I ended -- I recall that he talked about -- well, he
 4 came in. He was very frustrated, and he came in, and he -- he
 5 told me that he felt like Lieutenant Morrow and
 6 Lieutenant Lebrecht had been pointing and laughing at him while
 7 he was inside our building and they were standing outside. He
 8 felt that they were intentionally pointing and laughing at him.
 9 Q. Did he talk about anything else?
 10 A. He told me that he had ADHD, but that really wasn't
 11 relevant to me. My son has that, so I think that's why I
 12 remember it.
 13 Q. Did he talk to you about frustrations with the
 14 investigation process?
 15 A. Yes. He was very frustrated.
 16 Q. What did he say about that?
 17 A. He just felt that it had gone too far and he was really
 18 frustrated about where it had gotten to.
 19 Q. During that meeting, did Mr. Cleavenger tell you he didn't
 20 think he had gotten his officer's bill of rights during these
 21 investigations?
 22 A. No.
 23 Q. Did he tell you that he thought Sergeant Cameron and
 24 Lieutenant Lebrecht were retaliating against him because of his
 25 position on Tasers?

1 A. No.
 2 Q. Did he tell you that there was a discussion of a bowl of
 3 dicks list during briefings and he thought it was a waste of
 4 time?
 5 A. No.
 6 Q. Did he tell you that other officers had been disparaging
 7 the Occupy Movement during a briefing?
 8 A. No.
 9 Q. Did Mr. Cleavenger cry during this meeting?
 10 A. Not that I recall.
 11 Q. Would you recall that?
 12 A. I would hope I would. He was frustrated.
 13 Q. What did you say to him? What were your responses?
 14 A. I -- I told him that I would look -- well, I don't
 15 remember exactly what I told him, but I do know I talked to
 16 Lieutenant Lebrecht and Lieutenant Morrow about the pointing
 17 and laughing thing, because that was concerning to me.
 18 Q. Did you tell him anything about your thoughts on the
 19 investigation process, if you can recall?
 20 A. I think I may have talked to him about training
 21 possibilities or something. I don't recall specifically.
 22 Q. All right. So after that meeting, did you do any
 23 follow-up?
 24 A. I did.
 25 Q. What did you do?

1 A. I went and talked to Lieutenant Lebrecht and
 2 Lieutenant Morrow about my meeting with Mr. Cleavenger.
 3 Q. And what did you talk to them about?
 4 A. I talked to them about pointing and laughing and did that
 5 happen, because Mr. Cleavenger was on reassignment and I felt
 6 like, you know, it wouldn't be appropriate to point and laugh
 7 at him. That would be very unprofessional.
 8 And they explained to me that from where they were
 9 standing, because of the tint on the windows, it wasn't
 10 possible that he could have -- it wasn't possible they could
 11 have seen him inside the building.
 12 Q. Did you talk to them separately or at the same time?
 13 A. My recollection is I talked to Lieutenant Morrow first and
 14 then Lieutenant Lebrecht.
 15 Q. Did you believe them?
 16 A. I did.
 17 Q. All right. During that meeting, do you recall taking
 18 notes?
 19 A. Yes.
 20 Q. During this lawsuit, were you asked to find those notes?
 21 A. Yes.
 22 Q. Could you find them?
 23 A. No.
 24 Q. Do you believe you took notes of your follow-up
 25 discussions with Lieutenant Morrow and Lieutenant Lebrecht?

1 A. I do now.
 2 Q. All right. During this lawsuit were you asked to find any
 3 notes you had regarding this conversation?
 4 A. I was asked to provide any of those types of materials.
 5 And I remember that I thought I had probably destroyed my notes
 6 of my meeting with Cleavenger, and I -- I still believe I did.
 7 But, recently, in preparation for the trial, I located a
 8 pad of paper behind a file -- bottom file drawer in my office,
 9 and that notepad contained some notes which appear to be notes
 10 about my follow-up meeting I had related to a meeting with
 11 Mr. Cleavenger.
 12 I do not know when I prepared them, but there's
 13 information on that pad of paper that I didn't recall and that
 14 I felt I had a duty to provide it to this court, even though it
 15 calls into question my ability to recall, because there's some
 16 things on there that I didn't remember.
 17 Q. And did you give those notes that you found to me the
 18 weekend before we started this trial?
 19 A. I did.
 20 MS. COIT: Your Honor, permission to approach with
 21 Exhibit 436.
 22 THE COURT: 436?
 23 MR. MCDUGAL: Question in aid of objection,
 24 Your Honor.
 25 Do you have any idea when you took those notes?

1 THE WITNESS: I do not, sir. I don't believe I dated
 2 the page. I don't know when they were taken, sir.
 3 MR. MCDUGAL: Objection, Your Honor?
 4 THE COURT: Do these notes have a date on it?
 5 MS. COIT: They do not.
 6 THE COURT: All right. If these refresh your
 7 recollection, you can show them to her. I'm not going to
 8 receive them at this time.
 9 MS. COIT: Okay.
 10 BY MS. COIT: (Continuing)
 11 Q. Are these the notes that you found on that pad of paper
 12 and gave to me the weekend before trial?
 13 A. They are.
 14 Q. And just take a moment to look through those notes. Based
 15 on what's written there, do you have an opinion of when you
 16 created those notes?
 17 A. I -- I don't. I would -- it would be speculation, but I
 18 would assume sometime after I talked with Lieutenant Lebrecht
 19 and Lieutenant Morrow.
 20 Q. All right. Is there anything in those notes that discuss
 21 officers' bill of rights?
 22 A. No.
 23 Q. Retaliation by supervisors for his position on Tasers?
 24 MR. MCDUGAL: Objection. Leading.
 25 THE COURT: No, you can ask him that question.

1 Overruled.
 2 MS. COIT: Thank you.
 3 BY MS. COIT: (Continuing)
 4 Q. Is there anything in your notes about his position on
 5 Tasers?
 6 A. No.
 7 Q. How about this alleged bowl of dicks list?
 8 A. No.
 9 Q. How about the Occupy Movement?
 10 A. No.
 11 MS. COIT: Defense offers 436.
 12 MR. MCDUGAL: Same objection.
 13 THE COURT: Not received. They will not be received,
 14 Counsel.
 15 BY MS. COIT: (Continuing)
 16 Q. Do you recall being informed sometime in September that
 17 Mr. Cleavenger had declined the offer of retraining?
 18 A. I do.
 19 Q. How did you become aware of that?
 20 A. I believe I read an email that said he had rejected the
 21 offer.
 22 Q. Are you -- were you aware at the time that the retraining
 23 offer was made that it included a request that Mr. -- or term
 24 that Mr. Cleavenger drop his grievance of the written
 25 reprimand?

1 A. Yes.
 2 Q. Do you know why that term was included in that offer?
 3 A. I don't.
 4 Q. Did you believe that the written reprimand was warranted?
 5 A. Absolutely.
 6 Q. For Mr. Cleavenger to move forward and succeed in the
 7 department, did you believe that the adversarial nature of the
 8 relationship at that point needed to stop?
 9 A. Adversarial relationship?
 10 Q. The fighting of the reprimand of the discipline that was
 11 imposed because of the Spencer View incident and the grievance
 12 process with the union, would you describe that relationship at
 13 that point in time as getting to be adversarial?
 14 A. Yes.
 15 Q. In your opinion, for Mr. Cleavenger to go back through
 16 training successfully and become a successful member of the
 17 department again, was it important for that adversarial nature
 18 of the relationship to stop?
 19 MR. MCDUGAL: Objection. Leading.
 20 THE COURT: Repeat the question, Counsel.
 21 BY MS. COIT: (Continuing)
 22 Q. For Mr. Cleavenger to become an asset to the department,
 23 for him to become successful in the department again as a
 24 public safety officer, did you believe he needed to go through
 25 retraining and to -- for the adversarial nature of the

1 relationship to stop?
 2 THE COURT: It has to suggest the answer to be
 3 leading. With the volume of emails in this conversation, it's
 4 not leading.
 5 You can answer that question.
 6 THE WITNESS: Yes.
 7 BY MS. COIT: (Continuing)
 8 Q. So after you find out that Mr. Cleavenger won't agree to
 9 go back into retraining and drop his grievance of the written
 10 reprimand, were you still optimistic that this retraining plan
 11 was going to be successful?
 12 A. Not very much, because Mr. Cleavenger wasn't accepting
 13 responsibility that he had done anything wrong, and I didn't
 14 know how to provide effective training if you can't learn from
 15 feedback.
 16 Q. Also, during this time, September of 2012, were you
 17 becoming aware of Mr. Cleavenger using the radio to call out
 18 suspicious situations?
 19 A. Yes.
 20 Q. Tell us about that. What were you learning?
 21 A. Mr. Cleavenger was assigned to a nonenforcement role,
 22 where -- it was called parking enforcement, but it was a
 23 nonpublic safety officer enforcement role where I didn't want
 24 him using authority, and I was hope -- my reason for putting
 25 him on that assignment was that there wouldn't be instances

1 where he would put himself in an officer safety position or
 2 anyone else.
 3 I learned that these callouts that were of issue to me
 4 because he was redirecting staff and what appeared to me to be
 5 to try to do some of the public safety officer's role.
 6 Q. Why was this an issue for you?
 7 A. Because there were three specific instances where I had an
 8 issue. One was where he reported people drinking alcohol and a
 9 public safety officer responded. It was Officer Waggoner. And
 10 based on the information he had provided -- Mr. Cleavenger had
 11 provided Mr. Waggoner, he issued citations to these people and
 12 later found out that the citation was not valid and he needed
 13 to rescind them. That was a problem.
 14 Q. Was that the callout that we heard the audio of
 15 Mr. Cleavenger saying he could hear the liquid in the beer can?
 16 A. Yes.
 17 Q. Okay. So at some point did you decide that Mr. Cleavenger
 18 should be told not to report anything over the radio anymore
 19 unless it was really serious?
 20 A. Yes.
 21 Q. Tell us about that decision and what your intention was.
 22 A. My intent was that he stay off the radio. Parking
 23 enforcement officers, of which he was assigned to the duties
 24 of, don't regularly get on the radio and advise public safety
 25 officers of things that are occurring, and so I -- my intent

1 was that he stay off the air unless there was an emergency
 2 occurring that he needed to get information out.
 3 Q. Do you recall who you told to give this instruction to
 4 Mr. Cleavenger?
 5 A. I believe it was Sergeant Cameron.
 6 Q. Do you recall telling Sergeant Cameron to instruct
 7 Mr. Cleavenger that he couldn't report crimes in other ways?
 8 A. No.
 9 Q. You just told him to stay off the radio?
 10 A. Yes.
 11 Q. Are you familiar with the Clery Act?
 12 A. Yes.
 13 Q. Tell us what that is.
 14 A. The Clery Act is -- very generally, it requires us to do
 15 timely warnings to our campus community and emergency
 16 notification about issues that we think are an immediate or
 17 ongoing threat to the campus community so that they can keep
 18 themselves safe.
 19 Q. Did the instruction that you gave to Mr. Cleavenger to
 20 stop using the radio unless it was an emergency, did -- in
 21 that -- in your opinion, did that instruction violate the
 22 Clery Act?
 23 A. No. It -- you don't have to use a radio to report those
 24 types of crimes.
 25 Q. Did Mr. Cleavenger ever make a complaint to you that he

1 thought that that instruction was a violation of federal law?
 2 A. No.
 3 Q. All right. Let's talk about Lieutenant Morrow's internal
 4 affairs investigation. Do you recall when you reviewed the
 5 final investigation?
 6 A. About the middle of September.
 7 Q. Had Captain Deshpande already completed his review?
 8 A. Yes.
 9 Q. And is that the general chain of command for an internal
 10 affairs? You had to go through the captain?
 11 A. Yes.
 12 Q. Why is that?
 13 A. Just for an additional review. More eyes on it can detect
 14 issues, problems. Another example of collaboration.
 15 Q. Does the captain have the authority to send the review
 16 back to the investigator for additional investigation if he
 17 feels it's needed?
 18 A. Yes.
 19 Q. And that's supposed to be done before it gets to you;
 20 correct?
 21 A. Yes.
 22 Q. So you get the final document in September of -- middle of
 23 September 2012?
 24 A. Yes.
 25 Q. Did you review it at that time?

1 A. I did.
 2 Q. What, if anything, in those findings concerned you?
 3 A. There was a finding of an unlawful stop which was
 4 concerning to me.
 5 Q. Did you review the section on fitness-for-duty?
 6 A. I did.
 7 Q. Did that section cause you concerns?
 8 A. It did.
 9 Q. Why was that?
 10 A. Because it called into question Mr. Cleavenger's ability
 11 to perform the duties of a public safety officer.
 12 Q. From your experience in internal affairs and as a police
 13 officer, if an officer is not fit for duty, can he be
 14 successfully retrained and put out into enforcement activities?
 15 A. It's dependent on the reason, but oftentimes not.
 16 Q. Did you begin to look into a fitness-for-duty exam?
 17 A. I believe Lieutenant Morrow did.
 18 MS. COIT: Permission to approach, Your Honor, with
 19 Exhibit 429?
 20 THE COURT: Has that been received into evidence?
 21 MS. COIT: Not yet.
 22 THE COURT: Just a moment. So we don't have a
 23 continuing issue, receive 429.
 24 MR. MCDUGAL: No objection.
 25 THE COURT: Counsel?

1 BY MS. COIT: (Continuing)
 2 Q. All right. Do you recognize Exhibit 429?
 3 A. Yes.
 4 MS. COIT: Permission to publish, Your Honor?
 5 THE COURT: You may. 429 is received and you can
 6 publish.
 7 BY MS. COIT: (Continuing)
 8 Q. What is 429?
 9 A. It's an email from Lieutenant Morrow to Dr. Corey. He's
 10 talking about a fitness-for-duty exam for Cleavenger and
 11 providing background information.
 12 Q. And what are the attachments that Mike Morrow sent to
 13 Dr. Corey at that time?
 14 A. It looks like his investigative report for his internal
 15 affairs and also the performance review of Lieutenant Lebrecht .
 16 Q. Were you -- you're copied on this email; correct?
 17 A. Yes.
 18 Q. Were you in support of the decision to move forward for a
 19 fitness-for-duty exam for Mr. Cleavenger at that point?
 20 A. Yes.
 21 Q. Tell us why you were supportive of that alternative.
 22 A. Due to the findings in Lieutenant Morrow's investigation
 23 and the -- the behaviors described in his report and also
 24 behaviors that Lieutenant Lebrecht had described in his
 25 performance review, I felt that that fitness review was

1 necessary.
 2 Q. Was that something that you felt needed to be decided
 3 before you could determine if retraining would be an acceptable
 4 alternative?
 5 A. I believed it would be a tool to help us perhaps structure
 6 his training in a different way, if it was determined that we
 7 could retrain him.
 8 Q. Okay. Now, look at the second page of 429. This is
 9 another email from Mike Morrow to Dr. Corey. This one is dated
 10 two days later. September 20th.
 11 In this email Lieutenant Morrow is canceling the
 12 fitness-for-duty. He says, "After additional discussions
 13 between personnel from the university's human resources and
 14 general counsel, it was decided to move forward with dismissal
 15 from duty, based upon poor performance, and not have the
 16 employee evaluated as arranged by your office."
 17 Do you recall seeing this email when it was sent?
 18 A. Yes.
 19 Q. Were you -- did you make that decision to not proceed with
 20 the fitness-for-duty?
 21 A. I didn't. I was participating in the discussion with
 22 general counsel and outside counsel, and it was determined that
 23 there was significant safety concerns and we should not
 24 continue with the fitness-for-duty exam.
 25 Q. Did you support that decision?

1 A. I did.
 2 Q. Who was involved in those discussions?
 3 A. I know human resources was there. Randy Wardlow . Perhaps
 4 Linda King, as well. I can't remember. General counsel and
 5 then outside counsel and me.
 6 Q. Was Lieutenant Morrow there?
 7 A. I believe so.
 8 Q. Was the -- was it everyone's consensus? Was everyone in
 9 agreement that termination should be pursued at that point?
 10 A. Yes.
 11 MS. COIT: Your Honor, permission to approach with
 12 Exhibit 358? It's the predismissal letter. I don't believe
 13 it's been received.
 14 THE COURT: It has not been received. I'm assuming
 15 counsel has that.
 16 MR. JASON KAFOURY: 358?
 17 THE COURT: Predismissal letter. I can't imagine how
 18 each party doesn't have that.
 19 MR. MCDUGAL: Oh, okay.
 20 THE COURT: Received.
 21 MS. COIT: Permission to publish?
 22 THE COURT: You may.
 23 BY MS. COIT: (Continuing)
 24 Q. Tell us what Exhibit 358 is.
 25 A. A notice of disciplinary suspension without pay and

1 predismissal hearing.
 2 Q. Did you prepare Exhibit 358?
 3 A. No.
 4 Q. Who did?
 5 A. Linda King.
 6 Q. Did you review Exhibit 358 before it was given to
 7 Mr. Cleavenger?
 8 A. Yes.
 9 Q. Did you provide Ms. King with information to include in
 10 this letter?
 11 A. I did.
 12 Q. Did you sign it?
 13 A. Yes.
 14 Q. The last page. What date did you sign this letter?
 15 A. October 1, 2012.
 16 Q. From your understanding, what is the purpose of a
 17 predismissal letter?
 18 A. To give them notice that they are going to be terminated
 19 but offer them a chance to come in and talk to human resources
 20 about it.
 21 Q. Is it your understanding that every reason that you have
 22 based your termination decision on needs to be included in this
 23 letter?
 24 A. I don't believe so.
 25 Q. Do you know why -- well, from your review of this letter,

1 did it encompass all of the considerations that you went into
 2 your decision to terminate Mr. Cleavenger's employment?
 3 A. No.
 4 Q. Do you know why all of those considerations were not
 5 included?
 6 A. I believe part of them, because I asked Linda King about
 7 it, was that with regard to the performance review done by
 8 Lieutenant Lebrecht, he hadn't had a chance to fully provide
 9 and discuss the information within that, so she did not put
 10 that in there.
 11 Q. The performance review that Lieutenant Lebrecht did, that
 12 included the review of the incident with Whitney Harder and the
 13 gun; correct?
 14 A. It did.
 15 Q. So that information is not in this predismissal letter?
 16 A. Not specifically.
 17 Q. Did you say Linda King prepared this?
 18 A. Yes.
 19 Q. Did you have discussion with Linda King about whether or
 20 not she felt the information contained in this letter was
 21 sufficient to satisfy the just cause standard for termination?
 22 A. Can you repeat that question?
 23 Q. Did you have a discussion with Linda King about this
 24 letter, whether or not she felt there was sufficient
 25 information contained here to satisfy the just cause

1 requirement of the union contract for termination?
 2 A. I don't remember having that discussion. That was -- that
 3 was the reason we work with human resources.
 4 Q. Okay. Now, are you aware that Mr. Cleavenger had a
 5 meeting with Brian Smith on October 2nd of 2012?
 6 A. Yes.
 7 Q. What are you aware -- when did you become aware of that
 8 meeting?
 9 A. I don't recall. I think after it happened.
 10 Q. Do you know what the purpose of that meeting was?
 11 A. I believe it had to do with his grievance, hearing about
 12 his grievance.
 13 Q. About the written reprimand?
 14 A. Or, sorry, the reprimand, yes.
 15 Q. Did you attend that meeting on October 2?
 16 A. No.
 17 Q. Do you recall Brian Smith or anyone from -- on behalf of
 18 Brian Smith discussing with you what was told to him by
 19 Mr. Cleavenger at that meeting?
 20 A. No.
 21 Q. The predismissal letter gave notice to Mr. Cleavenger that
 22 he could have a predismissal meeting; correct?
 23 A. Yes.
 24 Q. Did you attend that predismissal hearing?
 25 A. No.

1 Q. Did you have conversation with Linda King, or anyone on
 2 her behalf, about what Mr. Cleavenger discussed with her at
 3 that predissmissal hearing?
 4 A. No.
 5 Q. All right. So Mr. Cleavenger took his termination to
 6 arbitration; correct?
 7 A. Yes.
 8 Q. And did you attend that arbitration?
 9 A. I did.
 10 Q. You were there every day; right?
 11 A. Yes.
 12 Q. Was the evidence that the university presented to support
 13 his decision for termination limited to the information in that
 14 predissmissal letter?
 15 A. It was.
 16 Q. Do you know why additional evidence that went into your
 17 termination decision was not presented at the arbitration?
 18 A. Because it wasn't in that predissmissal notice.
 19 Q. And that -- having sat through the arbitration and heard
 20 the evidence, what additional evidence went into your
 21 termination decision that was not brought out at the
 22 arbitration?
 23 A. The information that Lieutenant Lebrecht had compiled, and
 24 the performance review, and, in particular, the incident with
 25 Whitney Harder, were of deep concern to me, and that played a

1 lot into my decision about termination.
 2 Q. Did the arbitration involve anything having to do with
 3 Lieutenant Morrow's findings that a fitness-for-duty was
 4 warranted?
 5 A. No.
 6 Q. Did you hear Mr. Cleavenger complain at that arbitration
 7 that he was not afforded his officer bill of rights?
 8 A. I don't recall that.
 9 Q. Did you hear him complain that he was ordered to violate
 10 federal law on September 7, 2012, when instructed not to call
 11 out over the radio?
 12 A. No.
 13 Q. Do you recall him saying at that arbitration that he felt
 14 the Occupy Eugene Movement was disparaged by the officers at
 15 the department?
 16 A. No.
 17 Q. All right. So let's move to the arbitration decision
 18 itself.
 19 MS. COIT: Your Honor, permission to approach with
 20 412.
 21 THE COURT: 412. That's been received, hasn't it,
 22 Counsel?
 23 MS. COIT: Yes, Your Honor.
 24 BY MS. COIT: (Continuing)
 25 Q. You can look through all the pages there. And tell me

1 what Exhibit 412 is.
 2 A. This is an email conversation between me and my command
 3 staff, also general counsel, about the arbitration decision.
 4 MS. COIT: All right. Permission to publish,
 5 Your Honor?
 6 THE COURT: You may.
 7 BY MS. COIT: (Continuing)
 8 Q. Okay. Can you look at the document? It has a number at
 9 the bottom 8009.
 10 All right. The bottom email there, do you see it being
 11 from Doug Park?
 12 A. Yes.
 13 Q. And is that to you?
 14 A. Yes.
 15 Q. Who is Doug Park?
 16 A. He's general counsel for the University of Oregon.
 17 Q. Was Doug Park telling you in this email that the
 18 arbitration decision had been rendered?
 19 A. Yes.
 20 Q. Before you got this email from Doug Park, were you
 21 already -- were you already aware of what the arbitration
 22 decision was?
 23 A. Yes.
 24 Q. How did you become aware of that?
 25 A. I think Lieutenant Lebrecht shared with me that an officer

1 had told him Mr. Cleavenger had advised some -- at least one
 2 employee at the department of the decision.
 3 Q. He had advised them that he had gained -- he had been
 4 awarded reinstatement rights; is that correct?
 5 A. Yes.
 6 Q. And do you recall how long before you got this email from
 7 Doug Park you were aware that Mr. Cleavenger had been given
 8 reinstatement rights?
 9 A. A few days prior.
 10 Q. All right. So I want to look at the -- sorry -- the
 11 second page of this email. Mr. Park closes with his -- some
 12 recommendations of how to proceed.
 13 A. Yes.
 14 Q. It states there, "Cleavenger already has a new job,
 15 however, and the arbitrator did find that he engaged in
 16 misconduct. Unless UOPD is interested in taking Mr. Cleavenger
 17 back, I suggest you pursue a global settlement." Then he says,
 18 "Let me know your thoughts."
 19 A. Yes.
 20 Q. Did you respond to Mr. Park?
 21 A. I did.
 22 Q. And that's the top email on 412 -- or 8009 of 412?
 23 A. Yes.
 24 Q. Now, you say in this email, second paragraph, "I'm
 25 concerned what precedent we set by this decision."

1 Mr. Cleavenger committed years -- unlawful stops, recording
 2 people without their knowledge, was untruthful, and allowed an
 3 armed woman displaying significant emotional distress to get in
 4 the backseat of his patrol car. If another officer exhibited
 5 similar misconduct, I would not want them employed with the
 6 department any longer. A written reprimand would not suffice.
 7 Not in a police department. I definitely don't want
 8 Mr. Cleavenger working for the department again. I value your
 9 expertise and what the U of O's next steps are. Just very
 10 concerned about how to deal effectively with future misconduct
 11 cases.
 12 Now, when you said you didn't want Mr. Cleavenger working
 13 for the department again, were you responding to Mr. Park's
 14 request that you let him know your thoughts on whether or not
 15 to bring him back or to pursue a global settlement?
 16 A. Yes.
 17 Q. Do you still -- at the time, was this an accurate
 18 reflection of your thoughts about Mr. Cleavenger coming back to
 19 the department?
 20 A. Yes.
 21 Q. Why were you concerned about him coming back?
 22 A. Because I had no idea what I would do with him. I would
 23 be faced with the same situation I was when I terminated him --
 24 or we terminated him. What options did I have to bring him
 25 back as a public safety officer? I didn't know how I would

1 determined a reprimand and a three-day suspension was
 2 appropriate discipline."
 3 Again, that's what you told Doug Park; correct?
 4 A. Yes.
 5 Q. And you told him "No police department would accept that."
 6 And then you reiterate again, "I also said we would not
 7 take him back."
 8 And, again, was that your response to Mr. Park's request
 9 for your input on whether or not to take him back or explore a
 10 global settlement?
 11 A. Yes.
 12 Q. Then it says "Jamie and Randy Geller have not weighed in
 13 yet."
 14 Who are Jamie and Randy Geller?
 15 A. Jamie Moffitt is my supervisor, the Vice President of
 16 Finance Administration, and Randy Geller was Mr. Park's boss.
 17 Q. He was general counsel of U of O at that time?
 18 A. Yes.
 19 Q. All right. And what did you anticipate they would weigh
 20 in on?
 21 A. What we would do based on what Doug had -- information
 22 Doug had provided them.
 23 Q. Okay. So you get a response from that email from
 24 Andy Bechdolt. And is Mr. Bechdolt a lieutenant at this time?
 25 A. Yes.

1 accomplish that.
 2 Q. Okay. Let's go to the document that's numbered 8001 at
 3 the bottom of 412.
 4 Now, this is an email that we've seen before. And is this
 5 you sending Doug Park's email and the arbitration decision to
 6 your command staff?
 7 A. Yes.
 8 Q. And you write on March 10, 2014, at 11:35 -- well, first,
 9 let me ask you: Why the delay between receiving the email from
 10 Doug Park on March 6th and sending it to your command staff on
 11 March 10th?
 12 A. I -- I don't know. It would be speculation, but
 13 probably --
 14 MR. MCDUGAL: Object, Your Honor.
 15 BY MS. COIT: (Continuing)
 16 Q. That's fine if you don't know.
 17 A. I don't.
 18 Q. You say, "Here's the opinion and award from the
 19 arbitrator. I responded to Doug Park's email that while I
 20 respected his expertise, I feared the precedent that would
 21 set."
 22 Now, that's true. That's what you responded to Doug Park;
 23 correct?
 24 A. Yes.
 25 Q. "Mr. Cleavenger committed crimes and the arbitrator

1 Q. So he's part of your command staff?
 2 A. Yes.
 3 Q. Lieutenant Bechdolt says, "There are also *Brady* issues to
 4 consider."
 5 A. Yes.
 6 Q. You respond to that?
 7 A. Yes.
 8 Q. You say, "Yep. I said that, as well, in my response."
 9 Now, we didn't actually see that in your response, did we,
 10 to Doug Park?
 11 A. Not the term "*Brady*," but I did say he was untruthful.
 12 Q. And that's what you were referring to in that email to
 13 Lieutenant Bechdolt?
 14 A. Yes.
 15 Q. Were you upset by the arbitration decision?
 16 A. I was. I didn't know what I would do.
 17 Q. But you knew that at some point you may have to take him
 18 back; correct?
 19 A. Absolutely. If they determined that was the course of
 20 action.
 21 Q. And, in fact, we worked on it and figured out what we
 22 would do with him; correct?
 23 A. We did.
 24 MR. MCDUGAL: Objection.
 25 ///

1 BY MS. COIT: (Continuing)
 2 Q. Are you aware --
 3 THE COURT: Okay. What's the objection?
 4 MR. MCDUGAL: She's saying "we".
 5 THE COURT: I cannot hear you, Counsel, unless you
 6 get that microphone closer. I apologize.
 7 MR. MCDUGAL: Counsel is purporting to testify as to
 8 what she did in a question.
 9 THE COURT: Restate the question, Counsel.
 10 BY MS. COIT: (Continuing)
 11 Q. You had conversations with your counsel about what would
 12 be done with Mr. Cleavenger when he came back to the
 13 department; correct?
 14 A. Yes.
 15 Q. And what options are -- what was being considered for
 16 Mr. Cleavenger when he came back?
 17 MR. MCDUGAL: Objection.
 18 THE COURT: Objection overruled.
 19 MR. MCDUGAL: Are they waiving privilege during
 20 trial?
 21 THE COURT: Well, that's my concern, also. If I let
 22 her get into this, the privilege is going to be waived between
 23 counsel, general counsel, and the chief.
 24 MS. COIT: Your Honor, they've already brought in my
 25 emails and everything, so I think those have been put at issue.

1 THE COURT: Well, they have. But I'm going to keep
 2 opening the box, so I want that clear.
 3 MS. COIT: Okay.
 4 THE COURT: So this is going to waive, I would think,
 5 the attorney-client privilege.
 6 MS. COIT: On this issue.
 7 THE COURT: No, just -- I'm not sure. But "on this
 8 issue" is a pretty broad term, so I'm not going to get trapped
 9 into that kind of response. It's going to waive a certain
 10 portion of this minimally, and I haven't sorted through that as
 11 we go down the road.
 12 So they've already waived a portion of that.
 13 MS. COIT: I understand.
 14 THE COURT: But I'm not sure if that opens up every
 15 attorney-client privilege, so I don't know what counsel has in
 16 mind.
 17 So if this is just a general scare tactic that opens --
 18 MR. MCDUGAL: It's not.
 19 THE COURT: -- up the entire privilege, I'm not
 20 enthralled with it. I just don't -- I don't think any of us
 21 know where this leads.
 22 MR. MCDUGAL: Exactly.
 23 THE COURT: There's the problem.
 24 So I'll let you ask the question. Overruled.
 25 We'll take it up in the future about what we think how

1 expansive this should be. That will give you both a fair
 2 opportunity.
 3 BY MS. COIT: (Continuing)
 4 Q. Did you make a decision as to what you would do with
 5 Mr. Cleavenger when he returned to work?
 6 A. Yes.
 7 Q. And what was that?
 8 A. Basically --
 9 THE COURT: This is based upon -- this isn't the same
 10 question you asked before.
 11 MS. COIT: I agree.
 12 THE COURT: I'm not chilling you on that question.
 13 MS. COIT: I understand.
 14 THE COURT: We've only gotten part of the
 15 attorney-client privilege, you know, voluntarily waived.
 16 You've got -- I'm not concerned about opening up that area.
 17 That area seems now to be appropriate, but I'm not going to let
 18 the plaintiff then seize upon that and make this an expansive
 19 all discussion concerning every conceivable area. But I think
 20 it should be limited. It should be limited to the
 21 conversations that involved counsel and the chief concerning
 22 Mr. Cleavenger's firing.
 23 What would be wrong with that ruling for me, from your
 24 perspective?
 25 MR. MCDUGAL: This is going to -- I -- I can't say

1 it out loud, Your Honor, in front of the jury.
 2 THE COURT: All right. Ask the question, Counsel.
 3 BY MS. COIT: (Continuing)
 4 Q. What were you -- what was the plan that you were going to
 5 put in place when Mr. Cleavenger returned to work?
 6 A. Basically, what we had in place for him when he would not
 7 accept that retraining plan that we had. So a new FTEP-type
 8 training, similar to what had been put together.
 9 THE COURT: When you say "we," this is you and your
 10 general counsel?
 11 THE WITNESS: Yes, sir.
 12 THE COURT: And his name is?
 13 THE WITNESS: Doug Park.
 14 THE COURT: Okay.
 15 BY MS. COIT: (Continuing)
 16 Q. Who else was involved in that decision?
 17 A. I don't independently recall.
 18 Q. Okay. Go ahead and explain what you were saying.
 19 A. A plan to bring him back, retrain him in a similar plan
 20 that we had put together prior to his -- his termination, and
 21 then address any other issues that might impact his ability to
 22 perform as a public safety officer.
 23 Q. Do you recall when Mr. Cleavenger was scheduled to come
 24 back to work?
 25 A. I recall at first he was scheduled to come back April 1.

1 My recollection is he had to give two weeks' notice. And then
 2 the date changed to perhaps April 21st.
 3 Q. Did Mr. Cleavenger report to work on April 21st?
 4 A. No.
 5 Q. Are you aware that a settlement agreement was reached
 6 between the union, Mr. Cleavenger, and the university?
 7 A. Yes.
 8 Q. Did you sign that settlement? Well, no. Did you see that
 9 settlement agreement before it was signed?
 10 A. No.
 11 Q. Have you seen it since then?
 12 A. Yes.
 13 MS. COIT: Your Honor, 376. It's the settlement
 14 agreement.
 15 THE COURT: Okay.
 16 MR. MCDUGAL: No objection.
 17 THE COURT: Received.
 18 BY MS. COIT: (Continuing)
 19 Q. Now, take a look at that settlement agreement.
 20 MS. COIT: Permission to publish, Your Honor?
 21 THE COURT: You may.
 22 BY MS. COIT: (Continuing)
 23 Q. On page 2, section 2B.
 24 A. Do you mean 3B?
 25 Q. Sorry. 3B.

1 All right. Section 3B, did that deal with the grievant;
 2 to keep Mr. Cleavenger's information confidential, his
 3 disciplinary information?
 4 A. Yes.
 5 THE COURT: Just a moment. Did you want that
 6 displayed? Because it's come off the screen. In other words,
 7 it went up for a brief moment and then it went off.
 8 MS. COIT: There's a sentence in there that -- if
 9 counsel is okay with me displaying it, I'm --
 10 MR. JASON KAFOURY: Well, no. It's --
 11 MS. COIT: It doesn't need to be displayed to ask my
 12 question.
 13 THE COURT: All right. Please continue.
 14 BY MS. COIT: (Continuing)
 15 Q. All right. So section 3B, part of the agreement was that
 16 we would not disclose -- excuse me -- that the university would
 17 not disclose Mr. Cleavenger's disciplinary history unless
 18 required to do so. Do you see that now?
 19 A. I do.
 20 Q. Were you aware of section 3B when you made the submission
 21 to the district attorney?
 22 A. No.
 23 Q. Did you inform -- well, who was handling, as far as you
 24 know, the negotiation of the settlement agreement with
 25 Mr. Cleavenger?

1 A. Both your office -- you and with -- I believe you were
 2 working also with Doug Park.
 3 Q. Did you inform me before you made the submission of the
 4 information to the district attorney?
 5 A. No.
 6 Q. All right. And part of the settlement agreement also
 7 called for Mr. Cleavenger to receive a neutral letter of
 8 reference. Do you recall that?
 9 A. Yes.
 10 MS. COIT: Permission to approach with 418? It's
 11 already been received.
 12 THE COURT: You may.
 13 Counsel, we also have Elmo. If you want to strike that
 14 sentence that's been agreed to, of 376, you can display 3B.
 15 MS. COIT: Okay.
 16 BY MS. COIT: (Continuing)
 17 Q. Is this the neutral letter of reference that you gave to
 18 Mr. Cleavenger as part of the settlement agreement?
 19 A. Yes.
 20 Q. Did you prepare this document?
 21 A. No.
 22 Q. The contents of the document, are they limited to a
 23 description of his job titles, dates he worked for the
 24 university, and his pay?
 25 A. Yes.

1 Q. Is there any reference in this letter to Mr. Cleavenger's
 2 abilities or his credibility or his honesty?
 3 A. No.
 4 Q. All right. Let's talk about the *Brady* submission. Tell
 5 us why you made the decision to submit information to the
 6 district attorney.
 7 A. I've known about *Brady* for a long time. Officers do know
 8 that. But there was a practice in Lane County, up until very
 9 recently, that if employees were terminated, submissions
 10 weren't done.
 11 In my experience with the Eugene Police Department, we had
 12 terminated officers that had been untruthful, but information
 13 hadn't been provided to the attorney's office. They were just
 14 terminated. Or district attorney's office.
 15 But in January 2014, I guess it was, I attended a
 16 conference where the then-District Attorney Gardner talked
 17 about how they were pulling a work group together to talk about
 18 *Brady* and that to look at putting together consistent
 19 practices.
 20 And then in April of 2014, at a chiefs conference,
 21 Chief Deputy Patty Perlow, who's now the district attorney,
 22 talked about that -- the product of that work group and was
 23 really compelling in the fact that we had a duty to disclose
 24 information about officers that we were aware of that had
 25 issues of truthfulness and possible *Brady* issues.

1 And so I -- at that meeting, I felt we had a duty to
2 disclose and submit information to the district attorney's
3 office for them to review. It was also my understanding that I
4 merely provided the information, and it's up to the district
5 attorney, his sole decision, on what happens with that
6 information.

7 MS. COIT: All right. Your Honor, I just wanted to
8 put up on the screen a document that's been received. It's
9 Exhibit 364.

10 THE COURT: 364?

11 BY MS. COIT: (Continuing)

12 Q. We heard Alex Gardner testify about this document as being
13 the product of the work group that he put together to make
14 *Brady* practices more uniform in the state.

15 Do you recall that testimony?

16 A. Yes.

17 Q. Do you recall receiving Exhibit 364 in 2014?

18 A. Yes.

19 Q. Did you read it?

20 A. I did.

21 Q. Did that document reinforce the understanding that you had
22 been given by Ms. Perlow and Mr. Gardner about your duties to
23 disclose *Brady* information?

24 A. It did.

25 Q. Do you recall receiving drafts of 364 from Mr. Gardner

1 Q. Did that play into your understanding of why you had a
2 continuing obligation to submit the information?

3 A. Yes.

4 Q. Did you believe you had information on Mr. Cleavenger that
5 the district attorney would -- would need to see to make a
6 credibility determination?

7 A. I did.

8 Q. What information did you believe you had?

9 A. I had the findings from Lieutenant Morrow's investigation
10 and also the performance review of Lieutenant Lebrecht, and I
11 felt that there were issues that raised concern that the DA
12 should review.

13 Q. What was your understanding of your role, as opposed to
14 the DA's role, in making a decision on *Brady*-listing an
15 officer?

16 A. I felt my role was to provide information to the district
17 attorney that he or she might not otherwise have access to,
18 because what I heard Gardner and Perlow say was that they're
19 responsible to provide information to prosecutors even if
20 they're not aware of it being out there. They needed us to
21 help them be aware that there's information out there that
22 should be considered.

23 Q. Why do DAs need this information on officers?

24 A. It is to provide for -- if there is evidence that a
25 witness may not be truthful, then that might help the defendant

1 prior to the final document coming out?

2 A. I don't.

3 Q. When you were told that Mr. Cleavenger was coming back to
4 work at the department, did that raise for you the issue of
5 whether or not you needed to submit the information you had on
6 him to the district attorney?

7 A. When we knew that he was coming back or we thought he was
8 coming back, we knew we were going to have to address *Brady*
9 concerns with Mr. Cleavenger. But that -- the conversation
10 that we had, when that came out, was in March, before
11 Ms. Perlow had spoke with us. So I at least was still in the
12 mindset that if he came back we'd have to deal with it, but if
13 he didn't -- if he came back, we would have to deal with it.

14 But if he stayed away, we wouldn't need to do anything. So we
15 were preparing to deal with it if he should come back.

16 Q. All right. Did that understanding change after the
17 meeting with Ms. Perlow?

18 A. After the meeting with Ms. Perlow, I felt that we had a
19 duty to submit it. And, in fact, at -- I believe that meeting
20 with Ms. Perlow was after the date -- it was after April 21st
21 when he said he was coming back, and he settled. So I -- I
22 knew at that point he wasn't coming back.

23 Q. Were you aware at that time that he was working as an
24 officer in Coburg?

25 A. Yes.

1 in a prosecution.

2 Q. So, in the end, it's to protect the rights of a criminal
3 defendant; correct?

4 A. Yes.

5 Q. Were you motivated in any way to give this information to
6 the district attorney about Mr. Cleavenger to retaliate against
7 him for complaints he had made about the department?

8 A. No. In fact, he wasn't even coming back, so it wasn't
9 that I didn't want him to come back. And I was doing it. I
10 was simply doing my duty to provide information to the district
11 attorney.

12 Q. Who did you ask to put together the information to give to
13 the district attorney?

14 A. I asked Lieutenant Lebrecht to do that.

15 Q. Why did you have Lieutenant Lebrecht do that?

16 A. Lieutenant Lebrecht had the most knowledge of what
17 information was there. He had done the whole performance
18 review.

19 Q. Did you have any concerns that Lieutenant Lebrecht was not
20 objective and couldn't do this job properly?

21 A. No.

22 Q. Were there any instructions or guidelines on how to
23 prepare a submission to the district attorney?

24 A. None.

25 Q. Did you tell Mr. -- or Lieutenant Lebrecht how to go about

1 preparing the information?
 2 A. I didn't.
 3 Q. Had you ever made a *Brady* submission before?
 4 A. No.
 5 Q. To the best of your knowledge, had Lieutenant Lebrecht?
 6 A. He told me he hadn't.
 7 Q. Did Lieutenant Lebrecht express his hesitation to do this ?
 8 A. Yes.
 9 Q. What did he tell you?
 10 A. He said he feared that it would look like retaliation. It
 11 had been a long time.
 12 Q. You were both named as defendants in this lawsuit at the
 13 time you made this decision; correct?
 14 A. Yes.
 15 Q. In your mind, that was enough? Was that a -- a
 16 justification for you to forego your duties and obligations to
 17 provide this information to the district attorney?
 18 A. No.
 19 Q. Despite Mr. -- Lieutenant Lebrecht's concerns, did you
 20 instruct him to go forward with the *Brady* submission?
 21 A. I did. I felt it was the right thing to do.
 22 Q. Did you tell him you felt it was the right thing to do?
 23 A. I did.
 24 Q. Did you review the information Lieutenant Lebrecht put
 25 together to submit to the district attorney?

1 A. I did.
 2 Q. Did you ask him to make any changes to that information?
 3 A. No.
 4 Q. Did you ask him at some point to make it more concise or
 5 smaller?
 6 A. I -- I did. It was a very large document, and I told him
 7 if we could provide information that was succinct, that would
 8 be better, and that they could always ask for more information
 9 if they needed it.
 10 Q. Do you recall if that first packet of material you looked
 11 at included a cover memo that Lieutenant Lebrecht had?
 12 A. I don't.
 13 Q. So the final packet that was submitted to the district
 14 attorney, did Captain Deshpande review it?
 15 A. Yes.
 16 Q. And you reviewed it?
 17 A. Yes.
 18 Q. Did you feel that it was fair and accurate?
 19 A. I did.
 20 Q. Did you instruct Lieutenant Lebrecht to take that
 21 information to the district attorney?
 22 A. I instructed both Captain Deshpande and
 23 Lieutenant Lebrecht to do that.
 24 MS. COIT: Your Honor, may I approach with 374 and
 25 375? They're letters with the district attorney. They're not

1 yet received.
 2 THE COURT: All right. You may.
 3 MR. MCDUGAL: No objection.
 4 THE COURT: Each are received, then, Counsel. 374
 5 and 375.
 6 BY MS. COIT: (Continuing)
 7 Q. Do you recognize 374 and 375?
 8 A. Yes.
 9 Q. Tell us what exhibit --
 10 MS. COIT: Permission to publish?
 11 THE COURT: You may.
 12 BY MS. COIT: (Continuing)
 13 Q. All right. Tell us what Exhibit 374 is.
 14 A. It's a letter from Alex Gardner to me.
 15 Q. What did you understand him to be requesting from you in
 16 this letter?
 17 A. He wanted to know -- or he wanted to confirm that -- that
 18 it was -- that -- I can just read it. "Writing to confirm the
 19 accurate and -- that this is accurate and that the unfavorable
 20 opinion is shared by you and your senior command staff,
 21 including Lieutenant Pete Deshpande."
 22 Q. Did you respond to that letter?
 23 A. Yes.
 24 Q. And that is Exhibit 375?
 25 A. Yes.

1 Q. Let's look at that.
 2 Now, the last paragraph here, you say, "At this point,
 3 based on the information referenced above" -- and that would be
 4 the -- I guess we should read that paragraph first. Sorry.
 5 Okay. You say, "UOPD provided your office with a
 6 looseleaf binder and a six-page summary, dated June 17, 2014,
 7 in response to your April 28, 2014, email reemphasizing a
 8 police department's reporting obligations to a district
 9 attorney under *Brady v. Maryland*. The six-page summary and the
 10 supporting materials accurately state concerns Captain
 11 Pete Deshpande, Lieutenant Brandon Lebrecht, and I share
 12 concerning Mr. Cleavenger's veracity in certain specific
 13 instances while he was employed by UOPD. At this point, based
 14 on the information referenced above, I believe your office will
 15 need to decide the impact of this information under *Brady v.*
 16 *Maryland* and whether the information must be disclosed to the
 17 defense in criminal cases in which Mr. Cleavenger is a
 18 witness."
 19 Now, in that last paragraph, was that your understanding
 20 of the district attorney's role in a *Brady* submission?
 21 A. Yes.
 22 Q. The decision was his not yours; correct?
 23 A. Yes. I would like to point out that the date in this
 24 letter is inaccurate. It should be April 30th, not April 28th,
 25 when I got the email from Alex Gardner.

1 MS. COIT: Okay. That's all I have. Thank you,
 2 Chief.
 3 THE COURT: Cross-examination?
 4
 5 CROSS-EXAMINATION
 6 BY MR. MCDUGAL:
 7 Q. Good morning.
 8 A. Good morning.
 9 Q. I'd like to start with the *Brady*-listing materials, while
 10 it's on your mind. Let's start with this concept that if
 11 somebody is terminated *Brady*-listing doesn't have to be done.
 12 Okay? Can you remind me the purpose of *Brady*-listing?
 13 A. To -- to identify officers who may have issues with
 14 untruthfulness.
 15 Q. Okay. And they have those issues whether they're
 16 terminated or not; right?
 17 A. Yes, sir.
 18 Q. So having a mindset that you don't have to protect the
 19 defendant's constitutional right if someone is terminated
 20 wouldn't make any sense, would it?
 21 A. I believe that's why the -- they put this work group
 22 together to change that practice of allowing people to resign
 23 or be terminated, because it wasn't good.
 24 Q. If that's the case, you would expect that to be talked
 25 about in the *Brady v. Maryland* document that you've been

1 THE COURT: Just a moment. 194.
 2 MR. MCDUGAL: I'm sorry. 195, line 22. I'm sorry,
 3 Your Honor. I see the confusion.
 4 THE COURT: Line 195, line 22.
 5 MR. MCDUGAL: And to the end of that answer.
 6 THE COURT: Now I can read it. So what's the
 7 question, Counsel?
 8 BY MR. MCDUGAL: (Continuing)
 9 Q. Isn't it a fact that you testified more than once that the
 10 first time you became aware of the obligation, according to the
 11 *Brady* case, is in January of the year the guidelines came out?
 12 A. I think when I was answering these questions, sir, either
 13 I was discussing it generally that they were -- they were
 14 discussing it. I don't believe that I thought that that was
 15 the case back then.
 16 MR. MCDUGAL: Permission to play the question and
 17 answer, Your Honor?
 18 THE COURT: Well, you can play it from 194, line 19
 19 through 196, line 3. That's complete.
 20 MR. MCDUGAL: May I go down to line 11?
 21 THE COURT: Well, no, line 11 on 190 -- I said 196.
 22 I mean 197 -- is just a question.
 23 MR. MCDUGAL: No. Line 11 on 196.
 24 THE COURT: No. It's incomplete.
 25 MR. MCDUGAL: May I play the complete answer?

1 signing your life on; right?
 2 A. I don't know, sir.
 3 Q. It's not in there?
 4 A. Okay.
 5 Q. And anybody who would have a few minutes to think about
 6 this issue would think that's just not common sense; correct?
 7 It wouldn't take a work group to figure it out; correct?
 8 A. I suppose.
 9 Q. And that would be yet another reason that you're giving
 10 for not *Brady*-listing Cleavenger earlier. Now for the first
 11 time on the stand today you're giving that reason; correct?
 12 A. That was my understanding when I went through this
 13 process, sir.
 14 Q. Let's look at what you said in your deposition.
 15 Can you give the witness and me a copy of the -- or a
 16 deposition to the witness?
 17 THE COURT: I need to see a copy as well.
 18 MR. MCDUGAL: You'll need both volumes, Mr. Hess.
 19 Is it okay if Mr. Hess approaches to give the --
 20 THE COURT: Yes. In fact, if it helps him to stand
 21 right there and find the pages, if you're going to use more
 22 than one page --
 23 MR. MCDUGAL: Page 94, line 22. December 2, 2014.
 24 Page 194, line 22.
 25 Permission to play it as a party opponent?

1 THE COURT: You can play the complete answer.
 2 You will start, Counsel, if I allow this to be played, on
 3 page 194, line 19, and it will conclude on page 197, at line 6.
 4 If that's not acceptable, don't play it.
 5 MR. MCDUGAL: 197, line 6.
 6 MR. HESS: Okay.
 7 (Attempt to play video for the jury.)
 8 MR. MCDUGAL: I don't want to hold things up. May I
 9 have those?
 10 THE COURT: All right.
 11 (Attempt to play video for the jury.)
 12 MR. HESS: Start over.
 13 THE COURT: Start over. Let's move on.
 14 MR. JASON KAFOURY: He's got it.
 15 MR. GREGORY KAFOURY: He's got it, Judge.
 16 MR. MCDUGAL: It's okay. We'll move on.
 17 THE COURT: That's an order. That's not a request
 18 now.
 19 BY MR. MCDUGAL: (Continuing)
 20 Q. You will agree that on December 2nd you were asked when
 21 you were -- first became aware of the *Brady* -- let me just ask
 22 the question.
 23 You'll agree in your deposition you said in January is
 24 when you first became aware of the obligation, according to the
 25 *Brady* case, that police officers were supposed to send

1 documents to the district attorney; correct?

2 A. Sir, I think if you read clear down, that's taken out of

3 context. I was aware that this discussion was occurring, and

4 then I go on to say that by the time the email had come out and

5 I talked with Patty Perlow I felt I needed to do that.

6 THE COURT: If you're set up now to play that

7 section -- are you?

8 MR. HESS: Yes, sir.

9 THE COURT: Then you can play that section that

10 counsel has requested.

11 Counsel, do you still want those sections played?

12 MR. MCDUGAL: I want to ask one other question here.

13 THE COURT: The problem is chopping off the answer

14 halfway through.

15 MR. MCDUGAL: I understand.

16 THE COURT: All right.

17 BY MR. MCDUGAL: (Continuing)

18 Q. Do you have volume two of your deposition?

19 A. Yes, sir.

20 Q. Can you look at page 331?

21 THE COURT: For the record, that's Volume 3,

22 January 28th. It's the second volume you have in front of you.

23 Page 331.

24 And what lines, Counsel?

25 MR. MCDUGAL: Line 22. Sorry. Somebody took the

1 pages out here. Can you hand me a fresh deposition copy,

2 Mr. Hess?

3 BY MR. MCDUGAL: (Continuing)

4 Q. Let me -- page 331. Okay. Okay. Page 331, line 11.

5 This is your second deposition on January 28, 2015; correct?

6 A. Yes, sir.

7 Q. Did I ask you the question: The first you knew about this

8 *Brady* disclosure was from the email you got from Gardner; is

9 that right?

10 And what was your answer?

11 A. "I think" --

12 Q. Do you remember?

13 A. You want me to read it?

14 Q. Yes.

15 A. "I think in my deposition previously I thought I said we

16 heard about it in a conference in a January Oregon Association

17 Chiefs of Police conference and then Alex and then

18 Patty Perlow spoke to us -- and then Patty Perlow had spoke to

19 us at a quarterly chiefs luncheon in Florence, I think, and

20 then an email with the material from Alex Gardner."

21 THE COURT: Counsel, you may also play the previous

22 answer, if would you like, that you requested, if you've got

23 it.

24 MR. MCDUGAL: Yes, Your Honor. I'm a little gun shy

25 about the technical difficulties.

1 Exhibit 375. Can you display that, Mr. Hess?

2 MR. HESS: I'm sorry. Which one?

3 MR. MCDUGAL: 375.

4 MR. HESS: You said 375?

5 MR. MCDUGAL: Yes.

6 BY MR. MCDUGAL: (Continuing)

7 Q. Who wrote that letter?

8 A. Counsel.

9 Q. Doug Park?

10 A. No.

11 Q. Who?

12 A. Ms. Coit.

13 THE COURT: Could you move that mic closer?

14 THE WITNESS: I'm sorry. Ms. Coit.

15 BY MR. MCDUGAL: (Continuing)

16 Q. Let's talk a little bit about this neutral letter of

17 reference.

18 A. Yes, sir.

19 Q. You've been involved in HR decisions?

20 A. Yes.

21 Q. You collaborated, fair enough to say, with Linda King,

22 Brian Smith, Doug Park?

23 A. Yes.

24 Q. HR decisions?

25 You share as much information about employees and their

1 complaints and the things that they bring to your attention --

2 you shared amongst yourselves; correct?

3 A. Probably.

4 Q. And the usual bits that you'll share something if it's

5 something of importance?

6 A. Yes.

7 Q. Okay. And that's between yourself and Linda King;

8 correct?

9 A. Yes.

10 Q. And same thing with Brian Smith? Between yourself?

11 A. I didn't really interact much with Brian Smith.

12 Q. Would he generally tell Linda King?

13 A. I don't know.

14 Q. Okay. Well, you know that when people get terminated

15 sometimes there has to be a decision about what's going to be

16 said about them, right, if somebody calls?

17 A. Yes.

18 Q. Okay. Tell me the types of range of options that you're

19 familiar with.

20 A. I think generally the -- the direction that we're given is

21 if the termination or issue was -- had any kind of information,

22 that we just direct them to human resources to handle the

23 response.

24 Q. And do you have an idea of the range of responses that

25 human resources gives?

1 A. I'm sure they say they were employed or I -- I don't know
 2 what -- a range, I'm sure.
 3 Q. Have you ever heard of this mechanism that a number of HR
 4 departments use where they'll say either "eligible for hire" or
 5 "not eligible for hire." Have you ever heard of that?
 6 A. I think so. I think, you know, sometimes people will say,
 7 "Would you hire them again?"
 8 Q. Okay. And you were giving Mr. Cleavenger a letter of
 9 reference that he could use in the community; correct?
 10 A. Yes.
 11 Q. Was there anything, in your mind, materially missing from
 12 the letter?
 13 A. There was no opinion about whether he should be hired or
 14 not.
 15 Q. Well, you are giving him a letter that talks about his
 16 employment. Now, at the time you're writing this letter isn't
 17 it your opinion that he's a danger to others and himself?
 18 A. It was my opinion. But the letter was supposed to only
 19 include specific things.
 20 Q. Well, isn't that a little misleading to people if it
 21 doesn't include the relevant things?
 22 A. I would assume they would ask if the information they were
 23 looking for wasn't there.
 24 Q. But I thought you were worried about public safety.
 25 A. I was.

1 Q. If you really thought he was a threat to public safety,
 2 you would say so in the letter; correct?
 3 A. Not in that letter.
 4 Q. So you were going to do a neutral letter of reference by
 5 agreement and then send out a different letter after somebody
 6 called about it. And that would be considered your settlement
 7 terms?
 8 A. I don't know what HR would do if someone else called.
 9 Q. It wouldn't be fair to send out a different letter when
 10 you agreed to a neutral letter, would it?
 11 A. We provided for him as -- information on his past job
 12 experience.
 13 Q. You listed a number of bizarre behaviors and I'll just go
 14 over them again. Let me know if I left any of them out. A
 15 knife by South Eugene was the first -- South Eugene High
 16 School. Angel wings was the second. The machete incident was
 17 the third. Help me out here. Overusing visitor parking was
 18 one of them. And then there was one about Mr. Cleavenger and
 19 the fire area; is that right?
 20 A. The fire area?
 21 Q. Oh, with the firearm. I'm sorry. With the firearm.
 22 A. Yes, sir.
 23 Q. Can't read my own handwriting. My apologies.
 24 And then right after you listed all of those, you were
 25 asked if in 2011 a letter of clarification went to

1 Mr. Cleavenger. Do you remember that?
 2 A. Yes.
 3 Q. Fair to say that not a single one of those is in the
 4 letter of clarification?
 5 A. Not that I recall.
 6 Q. Okay. So they're not there, to your memory; correct?
 7 A. No.
 8 MR. MCDUGAL: Now, Exhibit 411, Mr. Hess, please.
 9 MR. HESS: May we publish the exhibit?
 10 THE COURT: Yes. Well, strike that. Has it been
 11 received?
 12 MR. MCDUGAL: Yes.
 13 THE COURT: Yes, you may.
 14 BY MR. MCDUGAL: (Continuing)
 15 Q. You looked at this document a short while ago?
 16 A. Yes, sir.
 17 Q. Do you need a chance to reread it? I tell you what. Let
 18 me ask my question and see if you need it.
 19 MR. MCDUGAL: Mr. Hess, can you highlight the bottom
 20 paragraph of -- the first paragraph, starting with "Mike,
 21 Brandon."
 22 Right there at the bottom. Just go up. Starts with
 23 "Brandon has prepared a document." Okay.
 24 Go up to "a discussion." I'm sorry.
 25 ///

1 BY MR. MCDUGAL: (Continuing)
 2 Q. I'll just -- I want to ask you what -- about the first
 3 sentence here. "A discussion of the issues won't occur today,
 4 but in very near future, once he has time to digest, obtain a
 5 steward, if desired, or waive having a steward present."
 6 So at this time you -- did you write that, first?
 7 A. Yes.
 8 Q. So at this time you know that there's going to be charges
 9 or allegations made against -- about Mr. Cleavenger's
 10 performance or work and that he's going to have a chance to
 11 talk about them and even get a steward involved. You knew that
 12 at the time; right?
 13 A. Yes.
 14 Q. Okay. And the next one says, "Brandon has prepared a
 15 document for Randy with each allegation of misconduct noted in
 16 chronological order and the actions taken by his supervisors to
 17 correct, inform, and prevent future behavior included."
 18 Do you see that?
 19 A. Yes.
 20 Q. Fair to say that in May there was a very collaborative
 21 discussion going on between yourself, Doug Park,
 22 Brandon Lebrecht, Morrow, and perhaps even others; correct?
 23 A. Not Doug Park. Doug Tripp.
 24 Q. Doug Tripp. I'm sorry. Correct?
 25 A. Yes.

1 Q. Okay. Where is that document?
 2 A. I -- I believe that is Lieutenant Lebrecht's log.
 3 Q. That log doesn't have anything about action s taken by his
 4 supervisors to correct and inform him or prevent future
 5 behavior, does it?
 6 THE COURT: Counsel, we can't hear you.
 7 MR. MCDUGAL: Oh.
 8 BY MR. MCDUGAL: (Continuing)
 9 Q. Do you know what it is? Have you ever seen it?
 10 A. I don't recall now, sir.
 11 MR. MCDUGAL: Mr. Hess, can you pull up the --
 12 BY MR. MCDUGAL: (Continuing)
 13 Q. The reassignment notice doesn't mention Whitney Hardlow
 14 {sic}, does it?
 15 A. No.
 16 Q. And fair to say, in your mind, this is one of the key
 17 defining moments that sort of changed the arc for
 18 Mr. Cleavenger, as far as you would view him?
 19 A. From my point of view, yes.
 20 Q. And that was never disclosed to him?
 21 A. I believe Lieutenant Lebrecht did discuss it with him.
 22 Q. No. It was never put part of the reason for his
 23 termination?
 24 A. Oh, no, sir.
 25 Q. Or a reason for clarification even, as opposed to grooming

1 standards; correct?
 2 A. No, sir.
 3 Q. And that event was never investigated by IA; correct?
 4 A. No, sir.
 5 Q. And there was a dispute about what had happened; correct?
 6 A. I believe there was two different opinions about it, yes.
 7 Q. Do you have any documents still in front of you?
 8 A. Yes, I do.
 9 Q. Do you have the email exchange between yourself and
 10 Doug Tripp. Exhibit 320?
 11 A. May?
 12 Q. Yes. May 14, 2012.
 13 A. Yes, sir.
 14 MR. MCDUGAL: Mr. Hess, can you display that?
 15 BY MR. MCDUGAL: (Continuing)
 16 Q. I want to focus in on two things and I want to try to do
 17 it with my finger here and see.
 18 One thing that Doug Tripp responds when you say , "Look,
 19 there's this incident where this woman was carrying a gun. She
 20 had concealed weapons, and he gave her a ride, allowing her to
 21 remain armed," one of the responses that Chief Tripp had at the
 22 time is, "If true and supported by facts, I really believe he
 23 needs to be released from employment." Correct?
 24 A. Yes.
 25 Q. One of your responses is, "We will make sure to document

1 everything"; correct?
 2 A. Yes.
 3 Q. Okay. So your boss wants you to document and figure out
 4 if that allegation is true and you respond that you will
 5 document everything; correct?
 6 A. Yes.
 7 Q. Did you?
 8 A. I didn't personally.
 9 Q. Who documented what Hermens had to say about the incident?
 10 A. Lieutenant Lebrecht.
 11 Q. And why is there nothing in there about -- you were at
 12 trial; right? Hermens said that at the scene Cameron was told
 13 by Cleavenger that the woman had a gun. That's not in here.
 14 A. I don't recall that.
 15 Q. Okay. All right. Well, there was no formal investigation
 16 where everybody was questioned and able to give their side.
 17 There's not a document anywhere that says, "Cleavenger says
 18 this. Hermens says this. Cameron says that. This is what we
 19 conclude." Nothing like that?
 20 A. No.
 21 Q. And something like that would be useful not only to
 22 Chief Tripp, but would also be useful, not just to your
 23 superior, but your employee, so he would know and have a right
 24 to know and have input and see whether or not, quote, it's
 25 true. Fair enough? Afforded that opportunity?

1 A. Yes. Possibly.
 2 Q. Never was?
 3 A. Not to my knowledge.
 4 Q. You at a certain point -- what was the date of the Olympic
 5 trials? Do you remember?
 6 A. Last part of June, first part of July, of 2012.
 7 MR. MCDUGAL: Mr. Hess, can you pull up Exhibit 279?
 8 THE COURT: 279?
 9 MR. MCDUGAL: Yes.
 10 THE COURT: Has this been received?
 11 MR. JASON KAFOURY: Yeah.
 12 MR. HESS: Permission to publish, Your Honor?
 13 THE COURT: You may. It's been received.
 14 MR. MCDUGAL: Go to the next page, Mr. Hess. Next
 15 page, please.
 16 BY MR. MCDUGAL: (Continuing)
 17 Q. In May, prior to --
 18 MR. MCDUGAL: Go back one page. Sorry.
 19 BY MR. MCDUGAL: (Continuing)
 20 Q. In May, prior to the Olympic trials, you formed some
 21 opinions of Mr. Cleavenger; correct?
 22 A. Yes.
 23 Q. And was one of those opinions that he was unsafe?
 24 A. Yes, sir.
 25 Q. And was one of those opinions that he had committed

1 numerous crimes?
 2 A. I don't know about numerous.
 3 Q. But the dash cam, you want him -- it crossed your mind
 4 maybe we should get him convicted for each time he had a dash
 5 cam on and didn't tell somebody; right?
 6 A. I didn't have the thought of convicting him for each time
 7 back in May.
 8 Q. Okay. Did you have the thought in May that he had
 9 committed crimes?
 10 A. I'm not sure if I was aware of the illegal recording at
 11 that time.
 12 Q. Well, anyway --
 13 A. I was aware of the unlawful stop.
 14 Q. You said -- now, the Olympic trials at U of O, that was a
 15 big deal; right?
 16 A. Yes, sir.
 17 Q. Something that was going to spotlight the university in
 18 the international community; right?
 19 A. Yes.
 20 Q. And one thing that you were going to be looking for was
 21 safety; right?
 22 A. Yes.
 23 Q. And you were going to do everything in your power to make
 24 sure it was as safe as possible; correct?
 25 A. Yes.

1 Q. Okay. And the last thing you wanted to do was subject the
 2 university to possible embarrassment; correct?
 3 A. Yes.
 4 Q. The last thing you would ever do is put an officer that
 5 you thought was unsafe on duty; correct?
 6 A. I didn't put him out there alone, to my knowledge.
 7 Q. Well --
 8 A. He was basically in a security capacity.
 9 Q. Tell me exactly what you told -- did you pair him with
 10 someone?
 11 A. Yes, sir.
 12 Q. Who did you pair him with?
 13 A. An EPD officer, is my recollection. I don't -- I didn't
 14 do it directly.
 15 Q. Let me ask you something. This concept of he's unsafe but
 16 we'll use him anyway at an event with international attention,
 17 it doesn't make sense, does it, if that was really your
 18 mindset?
 19 A. I told you that we were -- had a dilemma that should we
 20 deny him some overtime money or let him go do the assignment,
 21 and it wasn't a good idea.
 22 Q. So deny overtime versus your version of unsafe. Let him
 23 be at an international spotlight event. Overtime won?
 24 A. That was -- that was the discussion. That was the
 25 discussion that we had, was, "What should we do?"

1 Q. Did you use him as a training experience?
 2 A. I don't understand the question.
 3 Q. Did you do a performance review of how he was at the
 4 events?
 5 A. Not to my recollection.
 6 Q. Did you ask for any evaluations of how he did?
 7 A. Not that I'm aware of.
 8 Q. And nothing unsafe happened?
 9 A. That's true. Nothing I'm aware of.
 10 MR. MCDOUGAL: Can you bring up Exhibit 403,
 11 Mr. Hess? After -- Exhibit 279. Is that what is on the
 12 screen? Can you highlight the portion you just found for me,
 13 Mr. Hess?
 14 BY MR. MCDOUGAL: (Continuing)
 15 Q. This is May 17th. Before the Olympic trials. There had
 16 been discussions of criminal charges, it appears.
 17 A. Yes, sir.
 18 MR. MCDOUGAL: Exhibit 403, please, Mr. Hess. I
 19 wanted our Exhibit 403.
 20 MR. JASON KAFOURY: That's theirs.
 21 MR. MCDOUGAL: Okay. Let me go with my hard copy.
 22 BY MR. MCDOUGAL: (Continuing)
 23 Q. I'll move on and go back to that.
 24 You testified that Mr. Cleavenger told you he had ADHD.
 25 A. Yes, sir.

1 Q. Would you be surprised to know that he doesn't?
 2 A. I only know what he told me. I don't know.
 3 Q. Now, with regard to your notes --
 4 A. Yes, sir.
 5 Q. -- you say you found some behind a cabinet. Is it fair to
 6 say your standard practice was to take notes --
 7 A. Yes, sir.
 8 Q. -- on a single notepad?
 9 A. Yes, sir.
 10 Q. All the notes of that month?
 11 A. Yeah. Pretty much.
 12 Q. And then at or around the end of each month you would go
 13 through that notepad, transfer information from it, and then
 14 destroy the notepad?
 15 A. True.
 16 Q. Okay. And this was your standard practice?
 17 A. Generally. Yes, sir.
 18 Q. You were asked to look for notes?
 19 A. Yes, sir.
 20 Q. You couldn't find notes?
 21 A. No, sir.
 22 Q. This note that you found the weekend before trial --
 23 A. Yes, sir.
 24 Q. -- was it in a notepad?
 25 A. Yes, sir.

1 Q. And now these notepads usually have your notes for the
 2 month; right?
 3 A. Yes, sir.
 4 Q. Did that notepad have any other notes?
 5 A. No, sir.
 6 MR. MCDUGAL: Exhibit 168, please, Mr. Hess.
 7 BY MR. MCDUGAL: (Continuing)
 8 Q. As of the date of the arbitrator's decision, you still
 9 believed Mr. Cleavenger committed crimes; right?
 10 A. Yes, sir.
 11 Q. That issue of whether or not Mr. Cleavenger did something
 12 inadvertently or knowingly was before the arbitrator, wasn't
 13 it?
 14 A. Yes, sir.
 15 Q. And he found it was inadvertent; correct?
 16 A. The unlawful stop?
 17 Q. Oh, that's what you're calling a crime?
 18 A. Yes, sir.
 19 Q. Oh, okay. I thought you were calling the crime not
 20 turning on the dash cam.
 21 A. No, sir.
 22 Q. Okay. You were here when Bechdolt testified; correct?
 23 A. Yes, sir.
 24 Q. Okay. You said that the order that you gave with regard
 25 to Mr. Cleavenger when he was on modified -- or parking duty,

1 clarified; right?
 2 A. I don't know if they did or didn't. I didn't.
 3 Q. You were cc'd on the email chain.
 4 MR. MCDUGAL: Can you go to page 1, Mr. Hess?
 5 Actually, at the top end on the second one.
 6 BY MR. MCDUGAL: (Continuing)
 7 Q. You didn't respond?
 8 A. No, sir.
 9 Q. Let's talk about this fitness-for-duty.
 10 A. Yes, sir.
 11 Q. We've already discussed how the *Brady* listing can be the
 12 death knell for someone's career; right?
 13 A. Yes, sir.
 14 Q. Fitness-for-duty is another way that someone can lose
 15 their career in law enforcement; correct?
 16 A. I would disagree. I think sometimes a fitness-for-duty
 17 can identify a problem that can be corrected and save an
 18 employee.
 19 Q. That's not my question. It can also be a way to make sure
 20 that they can't work in law enforcement again.
 21 A. It could be, yes.
 22 Q. And you were talking about fitness for duty way back in
 23 May of 2012. Dr. Corey, getting him on board.
 24 A. Yes. I believe Randy Wardlow said that he had discussed
 25 it with Linda and that they liked that option and that there

1 whatever you want to call it, was that it was only to do
 2 emergency callouts. That's your words?
 3 A. I don't recall what I specifically said, but of an
 4 emergency nature. So nothing like two people drinking alcohol
 5 or something like that.
 6 Q. Okay. But you didn't give order to Mr. Cleavenger, did
 7 you?
 8 A. No, sir.
 9 MR. MCDUGAL: Can you pull up Exhibit 57, Mr. Hess?
 10 MR. HESS: I apologize.
 11 MR. MCDUGAL: That's 55. 57.
 12 MR. HESS: My apologies.
 13 MR. MCDUGAL: Go to the next page.
 14 BY MR. MCDUGAL: (Continuing)
 15 Q. All right. Here we go. Do you recall Mr. Cleavenger
 16 actually writing down, in an email, what he was told to do? If
 17 your order was he was to call out an emergency, shouldn't
 18 somebody immediately have responded and said, "Only call out
 19 emergencies? That's not what we said. That's not what we
 20 meant"?
 21 A. I don't know what he was told by Sergeant Cameron. I just
 22 know that the intent of my directive was that he stay off the
 23 radio for the most part.
 24 Q. But that's not how he received it. And he made it clear
 25 what he received, and he asked for clarification, and nobody

1 were several doctors to choose from of which one could be
 2 Dr. Corey; although, they had a conflict that maybe his
 3 associate would have to do it.
 4 Q. All right. Correct me if I heard your answer wrong, but I
 5 thought you said that you didn't get the fitness-for-duty
 6 evaluation done out of safety concerns.
 7 A. It wasn't just the -- the discussion wasn't just about
 8 doing a fitness-for-duty thing. It was a decision to terminate
 9 versus going forward with a fitness-for-duty and that
 10 overwhelming concern was safety.
 11 Q. And so you went for --
 12 A. Termination.
 13 Q. And we're talking about -- what time frame are you
 14 talking?
 15 A. This was after the results of Lieutenant Morrow's IA
 16 investigation was brought forward.
 17 Q. So you decided to terminate. And there's this October 1,
 18 2012, predismissal letter; right?
 19 A. Yes, sir.
 20 Q. Now, the fitness-for-duty was going to be largely or based
 21 in large part upon the handgun incident, the lady with the
 22 handgun; right?
 23 A. I think it was going to be based on a number of behaviors
 24 that Mr. Cleavenger had demonstrated over the course of his
 25 employment.

1 Q. But that's the one, at least in your mind, as sort of the
 2 straw that broke the camel's back?
 3 A. It was for me, but others had input.
 4 Q. But you're the chief; right?
 5 A. I'm not the only decision-maker on employee issues.
 6 Q. I understand.
 7 So tell me every reason why one would not put that
 8 handgun -- the lady with the handgun event in the termination
 9 letter. Every good reason not to.
 10 A. Well, I believe it falls back on the fact that you talked
 11 about where there wasn't any documentation about it. It -- the
 12 predismissal letter did say -- did talk about safety concerns.
 13 Q. It didn't talk about this incident. In fact, he didn't
 14 even know what was going on; right? He just gets this letter
 15 and it doesn't outline why he's going down; right?
 16 A. I don't know.
 17 Q. Well, then that would have been -- you got HR involved.
 18 They're all about documenting stuff; right?
 19 A. Correct, sir.
 20 Q. And they chose not to document it?
 21 A. Yes, sir.
 22 Q. Now, you were asked about the arbitration and why all your
 23 reasons for firing weren't put in the arbitration. Well --
 24 A. Yes, sir.
 25 Q. The whole purpose of this whole process and for having HR

1 and for giving letters is to put somebody on fair notice of the
 2 reasons why they're being terminated; right?
 3 A. Yes.
 4 Q. It's not really fair if you don't tell them all the
 5 reasons, is it?
 6 A. It may not be.
 7 Q. And it wouldn't be fair to say, "Well, you know, you won
 8 the arbitration, but we really, really fired you for something
 9 else"; right?
 10 A. I don't know anybody said that.
 11 Q. I'm just saying it wouldn't be fair for someone to say it,
 12 correct, or do?
 13 A. No.
 14 Q. And this arbitrator, do you know how many decades he had
 15 done arbitrations with the National Labor Relations Board?
 16 A. I don't know anything about the arbitrator, sir.
 17 Q. Your email chain, right after you get the arbitrator's
 18 decision, when counsel was doing opening -- and we talked about
 19 this on your direct -- she said, "Well, look at that response.
 20 She's venting."
 21 I haven't heard any testimony from you that you were
 22 venting. Were you?
 23 A. I was -- I don't know what the appropriate term was, but I
 24 was really concerned.
 25 Q. Right. Well, the reason why I ask it is because now we've

1 learned that even before you heard from Doug Park, a few days
 2 before, you had heard through the grapevine that Cleavenger had
 3 told people that he won; right?
 4 A. I hadn't seen any decision sir. I didn't know what that
 5 meant. I didn't know that he was -- what the terms of the --
 6 it was. I didn't know that it -- we were bringing him back. I
 7 didn't know anything. I just knew what he had told somebody.
 8 That's all I knew.
 9 Q. One way not to have him back is if he's *Brady*-listed;
 10 correct?
 11 A. It depends. I think there are -- it depends. First of
 12 all, the DA would have to review it.
 13 Q. I'm just asking if it's one way. That's one way to do it.
 14 A. It wasn't my intent.
 15 Q. I asked if it was a way that it could be done.
 16 A. Yes, sir.
 17 Q. And the other way could be fitness for duty; right?
 18 A. It could be.
 19 Q. And both were considered?
 20 A. Yes, sir. As options for what we could do for
 21 Mr. Cleavenger, but we also looked at retraining.
 22 Q. I'm back to a note here about *Brady* disclosures. You were
 23 asked in your direct testimony about a Bowes and you remember
 24 the fraudulent parking pass and theft charges?
 25 A. Yes, sir.

1 Q. And she was terminated; right?
 2 A. Yes, sir.
 3 Q. You were asked why you didn't *Brady*-list her; right?
 4 A. Yes, sir.
 5 Q. You never once said because she was terminated, did you?
 6 A. I said there was a settlement agreement.
 7 Q. You can't settle the obligation to do a *Brady* disclosure,
 8 can you?
 9 A. Well, I didn't recall anything about this incident, but I
 10 heard Lieutenant Boyd testify. I didn't even recall that
 11 Patty Perlow had approached her and asked about whether we were
 12 interested in *Brady*. I have no recollection of that.
 13 Q. My point is you didn't say, "Well, we didn't *Brady*-list
 14 her because she was terminated."
 15 A. I didn't remember anything about Bowes. That was when
 16 Chief Tripp was in charge, and I know he was working directly
 17 with the district attorney and Lieutenant Boyd.
 18 Q. Well, it's fair enough to say that when Mr. Cleavenger was
 19 still employed you knew all the *Brady* list info; right?
 20 A. Could you repeat that question, sir?
 21 Q. All the information that you gave to the DA about
 22 Mr. Cleavenger's *Brady* listing, you knew at the time he was
 23 employed; right?
 24 A. Yes.
 25 Q. And when he was employed, before the arbitrator's

1 decision, you chose not to give the information to the DA;
 2 correct?
 3 A. I did not give it to the DA then.
 4 Q. Did it cross your mind that Lieutenant Lebrecht was not a
 5 neutral person to put together the *Brady*-listing materials?
 6 A. No.
 7 Q. Wasn't one of the conditions -- well, first, so you've got
 8 these grave concerns about Mr. Cleavenger and you're saying
 9 that you were going to think that retraining would be
 10 sufficient. Is that your testimony?
 11 A. I was hopeful that it could be.
 12 Q. And what time frame is this retraining discussion going
 13 on?
 14 A. My recollection, it was over the course of summer through
 15 to the latter part of September when he said he didn't want to
 16 do the retraining.
 17 Q. Well, did he say he didn't want to do it or did he say
 18 don't -- don't condition my retraining on me dropping my
 19 grievance?
 20 A. I believe that is what he said.
 21 Q. Okay. So he may have fully well have been willing to get
 22 retrained; right?
 23 A. My concern was was he willing -- it didn't appear he was
 24 willing to take responsibility for his actions related to the
 25 grievance -- or the reprimand.

1 Q. He had every right to file a grievance?
 2 A. Yes, sir.
 3 Q. And dropping his legal right in order to give you the
 4 option to retrain, he had every right to say, you know, I'll
 5 retrain, but I don't want to drop my legal right; right?
 6 A. Okay.
 7 Q. How many actual citizen complaints of officer safety
 8 concerns were ever filed by a citizen against James Cleavenger ?
 9 A. I'm only aware of the Madeline Egan stop.
 10 Q. You mean the call?
 11 A. The call in.
 12 Q. Who wouldn't return Morrow's calls?
 13 A. Yes, sir.
 14 MR. MCDUGAL: That's all I have. Thank you.
 15 THE COURT: Redirect?
 16 MS. COIT: No more questions.
 17 THE COURT: You may step down. Thank you.
 18 Counsel, you have one more additional witness?
 19 MS. COIT: Your Honor, I think we have a stipulation.
 20 THE COURT: You wanted me to read that. Is that
 21 correct? Both parties are stipulating to this?
 22 MR. MCDUGAL: Correct, Your Honor.
 23 THE COURT: All right. Can I have that? And make
 24 sure I read this correctly based on what you each submitted to
 25 me.

1 Ladies and gentlemen, the parties have reached a
 2 stipulation concerning a witness who was going to be called.
 3 They both consented, through the stipulation, that this would
 4 be a binding piece of evidence, and they've asked the Court to
 5 read that to you, and they refer to a couple of exhibits.
 6 That was done last evening.
 7 So, Counsel, track this closely, and make certain this
 8 meets with your agreement.
 9 The parties stipulate that after Junction City Police
 10 Department Officer Corey Mertz testified Chief Chase ordered a
 11 search of Officer Mertz's email and discovered these documents
 12 there. And these documents refer to Exhibit 432, Exhibit 433,
 13 and Exhibit 434.
 14 Now, just like any piece of evidence, if you want that
 15 read back, you can certainly have that read back to you as
 16 well.
 17 Now, Counsel, does that comport with your stipulation?
 18 MS. COIT: And, Your Honor, we would offer those
 19 documents: 432, 433, and 434.
 20 MR. JASON KAFOURY: No objection.
 21 THE COURT: Each of those are received into evidence .
 22 And with that stipulation, Counsel, on behalf of the
 23 defendant?
 24 MS. COIT: Defense rests.
 25 (Defense rests.)

1 THE COURT: Counsel, you had stated you have a
 2 rebuttal witness.
 3 MR. JASON KAFOURY: Yeah. We have one brief rebuttal
 4 witness.
 5 THE COURT: Where is that person? Let's see if that
 6 person is in the hallway. What time did you order them to be
 7 here? We may take a restroom break. And, if so, come right
 8 back into session, and then go to lunch. It's a very short
 9 witness.
 10 MR. JASON KAFOURY: Oh, my understanding is they
 11 thought that they -- that we were going to lunch now, so they
 12 just left the building.
 13 THE COURT: Why did they have that understanding?
 14 MR. JASON KAFOURY: I don't know.
 15 THE COURT: I don't know either. You're apparently
 16 resting your case now?
 17 MR. JASON KAFOURY: Well, we can get them here.
 18 THE COURT: Your cell phone is operating very rapidly
 19 to get them back here?
 20 MR. JASON KAFOURY: Yes, we can get them back here .
 21 THE COURT: I notice your cell phone is now operating
 22 very rapidly.
 23 Why don't we take a brief break while they operate their
 24 cell phone to get that witness back here very rapidly.
 25 Thank you very much. All right. We'll take 15 minutes.

1 (Jury not present.)
 2 MS. COIT: Your Honor, may I put one thing on the
 3 record?
 4 THE COURT: Not right now.
 5 (Recess taken.)
 6 THE COURT: Back in session. All counsel are present
 7 and the parties are present.
 8 Counsel, you stated that you wanted to have something put
 9 on the record.
 10 MS. COIT: Yes, Your Honor. Just as a placeholder at
 11 the end of defense's case, I want to renew my motion for
 12 judgment as a matter of law.
 13 THE COURT: I'm going to deem that that was made at
 14 the end of the defense case.
 15 Have we found that witness?
 16 MR. JASON KAFOURY: He's in security, coming up the
 17 elevator right now.
 18 THE COURT: Okay. The second thing is, with
 19 stipulations, there's been two things have occurred in the
 20 past. Some counsel want that stipulation typed out with the
 21 exhibits behind it. Other counsel believe that the reading is
 22 sufficient and the Court just receive the documents. I'm not
 23 going to put in a handwritten note, so right now the record
 24 should reflect that what you'll have is Exhibit 432 --
 25 Christy, there were two others.

1 We can do that when the jury goes to lunch.
 2 There's a very brief rebuttal witness. Counsel, in your
 3 rebuttal, would you like to call that witness, please?
 4 MR. JASON KAFOURY: Yes. We call Sergeant
 5 Chuck Salisbury to the stand, Your Honor.
 6 THE COURT: Thank you. Come forward, sir. Why don't
 7 you step into the well and raise your right hand.
 8
 9 CHARLES SALSBURY
 10 called as a witness in behalf of the Plaintiff, being first
 11 duly sworn, is examined and testified as follows:
 12 THE WITNESS: Yes, I do.
 13 THE COURT: Thank you, sir. Please be seated in this
 14 witness box. The entrance is closest to the wall.
 15 THE WITNESS: Okay.
 16 THE COURT: After you're seated, sir -- would you sit
 17 down, face the jury. Would you state your full name and spell
 18 your last name, please.
 19 THE WITNESS: Full name is Charles Edward Salisbury,
 20 S-A-L-S-B-U-R-Y.
 21 THE COURT: Thank you. Counsel, direct examination.
 22
 23 ///
 24 ///
 25 ///

1 DEPUTY COURTROOM CLERK: Oh, I'm sorry. These two.
 2 THE COURT: -- 433 and 434, and the reading of the
 3 stipulation into the record is sufficient. Is that acceptable
 4 to both parties, or do you want to type that out and have that
 5 as an actual exhibit?
 6 MS. COIT: It's acceptable to the defense.
 7 MR. JASON KAFOURY: Yes, that is fine.
 8 THE COURT: That's acceptable? Do you have your
 9 witness present?
 10 MR. JASON KAFOURY: Yes. Witness is ready.
 11 THE COURT: Would you be kind enough to get the jury,
 12 Christy?
 13 MR. GREGORY KAFOURY: What time do you anticipate
 14 arguments, Your Honor?
 15 THE COURT: We'll discuss that when this witness is
 16 done. Christy, get the jury. I want to discuss that and see
 17 what's fair with the parties, but that's a long discussion.
 18 MR. GREGORY KAFOURY: Okay.
 19 (Jury present.)
 20 THE COURT: We went over that last night also.
 21 The jury is present. Thank you. All counsel are present.
 22 The parties are present. The defendant has rested their case.
 23 And that's subject, Counsel, to once again going over the
 24 exhibits, making certain the court records are comporting with
 25 both the plaintiff and the defendant.

1 DIRECT EXAMINATION
 2 BY MR. JASON KAFOURY:
 3 Q. Sergeant Salisbury, we're calling you today -- there were a
 4 variety of statements that Chief Chase made about Junction City
 5 and my client and we would like to give -- and yourself that we
 6 would like to give you an opportunity to address. Okay?
 7 A. Okay.
 8 Q. Can you just very briefly tell us your prior work history
 9 and experience in law enforcement?
 10 A. Been in law enforcement for approximately 18 and a half
 11 years. Seventeen of those was spent with the Junction City
 12 Police Department. Currently, I'm employed by the City of
 13 Eugene Police Department, where I've been employed 18 months
 14 now.
 15 Q. What is your title there at Eugene?
 16 A. Police officer.
 17 Q. What was your title from 2010 to 2013, at Junction City,
 18 while my client was employed there?
 19 A. I was a police sergeant with the Junction City Police
 20 Department.
 21 Q. And what is -- how does a sergeant rank there at Junction
 22 City in comparison to the chief?
 23 A. It would be second-in-command.
 24 Q. Okay. Let's talk about -- so you, throughout those years,
 25 2010 to 2013, were there when my client was there, correct, at

1 Junction City?
 2 A. Yes. Correct.
 3 Q. Let's talk about the reserve officers and the policies and
 4 procedures.
 5 Let's start with reserve officers. Were they allowed to
 6 drive Junction City Police Department patrol cars by themselves
 7 if they had permission from a supervisor?
 8 A. They did, yes.
 9 Q. Okay. Were they allowed to make traffic stops when they
 10 did those?
 11 A. Yes, they were.
 12 Q. Who came up with these policies and procedures for reserve
 13 officers when they were on duty?
 14 A. It was verbal policies by the chief of police, Mark Chase,
 15 who gave that permission directly to myself and Officer Brandon
 16 Nicol -- that was the reserve coordinator -- to allow reserve
 17 officers on a case-by-case basis, as they were supervised by us
 18 on patrol -- a given patrol shift, if we felt that they were
 19 able and ready to go out on their own, to be allowed to do
 20 that.
 21 Q. Throughout your years of working with Mr. Cleavenger, did
 22 he ever disobey an order and just take a car out on his own to
 23 drive around on patrol without permission?
 24 A. Never.
 25 Q. Throughout his years, did you ever see him make any

1 Q. So you worked with Chief Chase. Chief Chase knew that my
 2 client was being investigated and knew that he was being
 3 terminated, and Chief Chase asked you to conduct a separate
 4 investigation afterward. That's all accurate?
 5 A. Correct.
 6 Q. Okay. Who assisted you with that project?
 7 A. Officer Brandon Nicol.
 8 Q. Do you remember my client providing you documentation from
 9 University of Oregon involving the discipline that he had had
 10 there?
 11 A. I do, yes. It was quite a large stack, yes.
 12 Q. A lot of paper?
 13 A. Yes. Correct.
 14 Q. What was the outcome of your investigation in relation to
 15 what you had been given from the University of Oregon?
 16 A. My task was to determine the --
 17 MS. COIT: Object to the foundation. He didn't
 18 receive anything from the University of Oregon.
 19 MR. JASON KAFOURY: I --
 20 THE COURT: His investigation was on behalf of the
 21 Junction City Police Department, and I thought this was a
 22 request to him -- I'm sorry -- to the sergeant -- my
 23 apologies -- to undertake an investigation, apparently pursuant
 24 to *Brady*, I'm guessing.
 25 ///

1 illegal stops while you were there at Junction City?
 2 A. Never.
 3 Q. I want to talk about my client and his termination from
 4 the University of Oregon and what your role was with that in
 5 relation to Junction City. Okay?
 6 A. Okay.
 7 Q. Did my client disclose that he was in trouble and under
 8 investigation while still employed at the University of Oregon
 9 Police Department?
 10 A. Yes, he did.
 11 Q. And did he disclose -- well, did he disclose that to you?
 12 A. He did, yes.
 13 Q. And did he disclose to you that he had been terminated
 14 from the University of Oregon?
 15 A. He did, yes.
 16 Q. Were you asked to investigate the allegations on behalf of
 17 Junction City that had been put forward by the University of
 18 Oregon Police Department?
 19 A. Yes, I was.
 20 Q. Okay. What were you tasked -- who tasked you to do this?
 21 A. Chief Mark Chase.
 22 Q. And what were you tasked to do?
 23 A. To look into the allegations that were being in--
 24 currently being investigated at that time by the University of
 25 Oregon.

1 BY MR. JASON KAFOURY: (Continuing)
 2 Q. Well, you tell us. What were you tasked to do by
 3 Chief Chase?
 4 A. I was tasked to look into that investigation to determine
 5 suitability of James remaining on as a reserve officer with the
 6 City of Junction City.
 7 THE COURT: Junction City?
 8 THE WITNESS: Yes, sir.
 9 THE COURT: All right. Thank you.
 10 BY MR. JASON KAFOURY: (Continuing)
 11 Q. Where did you get the information from the University of
 12 Oregon documents?
 13 A. Two ways.
 14 Q. Okay.
 15 A. I got it from the documentations provided by
 16 James Cleavenger and from phone calls I made to people at the
 17 University of Oregon.
 18 Q. And as part of your investigation did you look at the
 19 letter of reprimand, the letter of clarification, his
 20 termination letter, and the IA investigation?
 21 A. Yes.
 22 Q. Did you also look at various case reports and videos
 23 involving my client?
 24 A. I don't necessarily -- I recall that there were videos. I
 25 had requested those videos of -- I don't remember the

1 lieutenant's name at the university, but due to their -- I
 2 wasn't able to see the videos directly personally. I was only
 3 able to look at the documentation. I had requested those
 4 videos and was told that it was currently under litigation and
 5 I was not able to obtain those.
 6 Q. Tell us about what -- what was the outcome of your
 7 investigation?
 8 A. Based upon my investigation, I brought to the chief that I
 9 did not see that there was anything that was suitable for not
 10 retaining James on as a reserve officer with the City of
 11 Junction City.
 12 Q. How did Chief Chase respond when you told him that?
 13 A. He didn't make any comments to me that -- in regards to
 14 that. Basically, he said that he would take it into
 15 consideration and make a determination at the time of their
 16 conclusion of their investigation.
 17 He did say that James would need to be put on -- or I
 18 forget the exact term that he said, but some type of leave,
 19 indefinitely, until the outcome of that U of O investigation
 20 was completed.
 21 Q. So that indefinite leave that Chief Chase ordered, was
 22 that communicated to my client?
 23 A. There was a conversation that I had with him, along with
 24 Officer Brandon Nicol, yes, sir.
 25 Q. Okay. And what did my client decide to do as a result of

1 that?
 2 A. He decided to resign on his own.
 3 Q. So, to be clear, was my client ever suspended or
 4 terminated from Junction City?
 5 A. Absolutely not.
 6 Q. Did he ever have any discipline on his record while at
 7 Junction City?
 8 A. No, he did not.
 9 Q. It was fair to say that at the time my client decided to
 10 resign it was very unclear how long all this University of
 11 Oregon stuff was going to last?
 12 A. Correct.
 13 Q. Were you upset about the fact that you lost
 14 Officer Cleavenger there?
 15 A. Absolutely.
 16 Q. What kind of an officer was he?
 17 A. James was a very dedicated officer to the City of Junction
 18 City and the -- the --
 19 MS. COIT: Your Honor, I object. This is not
 20 rebuttal.
 21 MR. JASON KAFOURY: Chief Chase made a lot of
 22 allegations.
 23 THE COURT: Overruled.
 24 BY MR. JASON KAFOURY: (Continuing)
 25 Q. Go ahead.

1 A. I think his value to the Junction City Police Department
 2 was critical. He put in a lot of time. I know I utilized him
 3 quite a bit, with his skill level, with regards to policies
 4 and -- and working through reserve court stuff. I think that
 5 he was well-trusted. He was well-respected by the community,
 6 by his fellow officers, and he did a fantastic job for our
 7 community.
 8 Q. Ever have any questions about my client's truthfulness?
 9 A. Never.
 10 Q. Was my client a know-it-all with his law degree within the
 11 department?
 12 A. Oh, absolutely not.
 13 Q. Did he act like he was better than everybody else within
 14 the department?
 15 MS. COIT: Your Honor, I object. This is not
 16 rebuttal.
 17 THE COURT: I've allowed a certain amount of
 18 flexibility, Counsel, but I think the import of Chief Chase's
 19 testimony and the stipulation when Chief Chase was going to be
 20 called back is appropriate for rebuttal through
 21 Sergeant Salsbury, but this portion I think is not rebuttal.
 22 BY MR. JASON KAFOURY: (Continuing)
 23 Q. Okay. Let me ask you this question: Did you ever have
 24 any officer safety concerns about James Cleavenger while he was
 25 employed there?

1 A. Never.
 2 THE COURT: You'll have to each remind me, to be
 3 certain that I'm correct in that ruling, if Chief Chase ever
 4 testified about lack of credibility.
 5 MR. JASON KAFOURY: He did.
 6 THE COURT: I'm allowing this for -- Well, just a
 7 minute. I'm allowing this because there was a whole question
 8 about why he resigned at 2:00 in the morning abruptly and his
 9 fitness for duty or nonfitness at Junction City being called
 10 into question and the chief had one opinion; Sergeant Salsbury
 11 apparently has a different opinion.
 12 If credibility was called into question, then I may allow
 13 a question concerning character for truthfulness or veracity or
 14 reputation concerning that. I just don't recall from
 15 Chief Chase's testimony, quite frankly, if that was.
 16 MR. JASON KAFOURY: He did make comments regarding
 17 Mr. Cleavenger's --
 18 MS. COIT: I agree. Chief Chase did.
 19 THE COURT: All right. Then I'll allow that.
 20 Limited. You can ask the question about reputation for
 21 veracity and truthfulness, Counsel. Beyond that, many of those
 22 questions aren't character and are truly opinion testimony. So
 23 if you want to ask that question, then let's move on.
 24 BY MR. JASON KAFOURY: (Continuing)
 25 Q. Just so we have a clear record, ever have any concerns

1 about James Cleavenger's truthfulness throughout all the years
 2 you worked with him?
 3 A. No, I have not.
 4 Q. Why did you leave Junction City?
 5 A. Because of supervisor issues.
 6 Q. And, as you sit here today, are you fearful of retaliation
 7 by Chief Chase for your testimony even in this case?
 8 A. No, I'm not.
 9 MR. JASON KAFOURY: Okay. Thank you.
 10 THE COURT: Cross-examination.
 11
 12 CROSS-EXAMINATION
 13 BY MS. COIT:
 14 Q. Are you a sergeant at EPD?
 15 A. I am not, no. I'm a police officer.
 16 Q. Thank you. Officer Salsbury, so you conducted an
 17 investigation into Mr. Cleavenger's activities at the
 18 University of Oregon. Is that your testimony?
 19 A. Yes, it is.
 20 Q. And you created a report?
 21 A. Honestly, I don't -- it was a couple of years ago. I
 22 would assume that I might have wrote a memo or I talked to
 23 Chief Chase directly about my findings in regards to what I
 24 had -- what I was able to investigate into that -- into that
 25 case.

1 MS. COIT: Your Honor, may I approach with
 2 Defendants' Exhibit 437?
 3 THE COURT: You may. Has it been received into
 4 evidence?
 5 MS. COIT: It has not. I apologize. This is the
 6 only copy I have. I was given this last night.
 7 THE COURT: Do you want to see what it is, Counsel?
 8 Why don't you follow her up.
 9 Counsel, everybody else has done it. Why don't you just
 10 walk across the room?
 11 MR. JASON KAFOURY: May I walk through the well?
 12 THE COURT: Sure.
 13 MR. JASON KAFOURY: Fine with me.
 14 THE COURT: Okay. 437. 437. That's the exhibit?
 15 MS. COIT: Yes.
 16 THE COURT: The question?
 17 BY MS. COIT: (Continuing)
 18 Q. Does that refresh your memory of whether or not you
 19 created a report?
 20 A. It does.
 21 Q. And what is that document?
 22 A. It's an internal affairs investigation or an investigative
 23 control form in regards to what I looked into, the allegations.
 24 Q. And are you the author of that report?
 25 A. I would be, yes.

1 MS. COIT: Your Honor, I offer 437.
 2 THE COURT: Any objection?
 3 MR. JASON KAFOURY: There's highlights on it.
 4 THE COURT: Take out the highlights, of course. Any
 5 objection?
 6 MR. JASON KAFOURY: I'd like to read the whole thing.
 7 I gave it a quick glance, but no objection in asking the
 8 question.
 9 THE COURT: Give that to counsel. Go ahead and just
 10 walk across the well, Counsel.
 11 I assume Chief Chase must have also had this, Counsel,
 12 so -- Counsel?
 13 MR. JASON KAFOURY: Yeah, I don't have any objection.
 14 THE COURT: Received. Any further questions of the
 15 witness, Counsel?
 16 MS. COIT: Yes. Your Honor, permission to publish?
 17 THE COURT: You may.
 18 BY MS. COIT: (Continuing)
 19 Q. Officer Salsbury, is this your report that you created
 20 after you looked into this investigation at the University of
 21 Oregon?
 22 A. It is.
 23 Q. And the due date says 12/14/2012. Is that the date you
 24 turned it in?
 25 A. Can you repeat that question? I'm sorry.

1 Q. On the bottom it says date due, December 14, 2012.
 2 A. Yes.
 3 Q. Is that the date you turned this in to Chief Chase?
 4 A. Yes, ma'am.
 5 Q. On page 3 there's an interview summary of an interview
 6 done by Mr. Cleavenger. The highlighted area says, "Officer
 7 Cleavenger explained that his reprimand and eventual firing
 8 ultimately resulted from a dispute loud noise complaint call
 9 where he compromised other officers' safety by driving past the
 10 location."
 11 Is that what Mr. Cleavenger told you of why he was
 12 terminated from the University of Oregon?
 13 A. Yes.
 14 Q. Now, you also testified that Mr. Cleavenger told you he
 15 was terminated from the University of Oregon; correct?
 16 A. Yes, he did.
 17 Q. When did he tell you that?
 18 A. I don't recall.
 19 Q. Was it right after he was terminated?
 20 A. I don't recall. I remember him showing me a piece of
 21 paper, a documentation of his termination.
 22 Q. All right. You write in your report, "The one issue I did
 23 have with this entire incident was the fact that
 24 Officer Cleavenger was slow to brief his supervisors on this
 25 pending action at the university."

1 Did you counsel Mr. Cleavenger on his failing to report
 2 his termination?
 3 A. I'm sure we talked about it if it's in there, yes.
 4 Q. Who did you talk to at the University of Oregon when you
 5 were doing this investigation?
 6 A. I don't recall. Is it in the report?
 7 Q. No.
 8 A. I remember talking to a lieutenant and a few other people
 9 I attempted to call. You're talking, like I said, 2012, and I
 10 don't recall exactly who I talked to specifically.
 11 Q. Did you call Lieutenant Morrow who did the internal
 12 affairs investigation?
 13 A. I believe that would be his name, yes.
 14 Q. Didn't you get counseled by Chief Chase after you turned
 15 in this investigation for failing to talk to Lieutenant Morrow
 16 about the investigation?
 17 A. I never got counseled by Chief Chase in regards to
 18 anything in this investigation, that I recall.
 19 Q. Chief Chase never talked to you about this investigation
 20 and your failure to investigate by actually talking to the
 21 investigating officer at the University of Oregon?
 22 A. I don't ever recall that, ma'am.
 23 Q. What documents did the university give you?
 24 A. The university gave me no documents.
 25 MS. COIT: That's all I have. Thank you.

1 THE COURT: Redirect?
 2
 3 REDIRECT EXAMINATION
 4 BY MR. JASON KAFOURY:
 5 Q. The evidence you looked at was the termination letter,
 6 which was dated 10/25/12; correct?
 7 A. Yes.
 8 Q. Okay. And the date that you opened this investigation was
 9 11/1/12. Six days later; right?
 10 A. Correct.
 11 Q. Mr. Cleavenger told you he believes he was being
 12 specifically targeted by two supervisors who did not like him.
 13 That's what he told you when you interviewed him in relation to
 14 why he was terminated; right?
 15 A. Correct.
 16 Q. And it's fair to say, though, you weren't there to
 17 investigate any claims of retaliation he might have against
 18 these folks. You didn't dig any further than just documenting
 19 that issue?
 20 A. Correct.
 21 Q. And Mr. Cleavenger did not get into the details of why
 22 those people didn't like him, did he?
 23 A. Not that I recall.
 24 Q. It was your conclusion that after reviewing all these
 25 materials "these issues seemed to -- to me" -- being you -- "in

1 my opinion, a training issue. These issues seem to me, in my
 2 opinion, a training issue in order to make a person
 3 successful."
 4 So that -- after looking at all of this, you thought that
 5 helping him, training, would be the best way to deal with it?
 6 A. Yes. Absolutely.
 7 Q. And you do not find -- you do not find, in your opinion,
 8 that there are concerns of unethical, unprofessional, or
 9 untruthful behavior that may reflect poorly upon Junction City
 10 Police Department.
 11 That was your determination after reviewing all these
 12 materials; right?
 13 A. Yes, sir. That's correct.
 14 MR. JASON KAFOURY: That's all I have.
 15 THE COURT: Recross?
 16
 17 RECROSS-EXAMINATION
 18 BY MS. COIT:
 19 Q. So fair to say you reached this conclusion that everything
 20 at U of O was a training issue based on Mr. Cleavenger's
 21 representation to you that he was terminated because of a noise
 22 complaint at the Spencer View Apartments?
 23 A. That was based upon my investigation, yes.
 24 Q. Did you leave Junction City because you were going to be
 25 demoted from sergeant?

1 A. Absolutely not.
 2 MS. COIT: Okay. No more.
 3 THE COURT: All right. May the witness be excused?
 4 All right. Thank you, sir. You may step down.
 5 THE WITNESS: Thank you.
 6 THE COURT: Now, Counsel, on behalf of the defense?
 7 MR. JASON KAFOURY: I'm not the defense, even though
 8 you think I am.
 9 THE COURT: Well, it's because you two switched
 10 tables. You are sitting in the wrong location.
 11 MR. JASON KAFOURY: Yeah. No -- I just --
 12 THE COURT: Ladies and gentlemen, what you should
 13 know is, before I came into this humble court, apparently
 14 there's a different way of doing business here. The plaintiff
 15 is supposed to be seated closest to the jury, and the defendant
 16 is supposed to be seated where the plaintiff is seated. So
 17 this has been a constant source of amazement to me, and I
 18 thought this must be the local culture here, but apparently
 19 it's not.
 20 Now, Counsel, are you resting or do you have any more
 21 rebuttal?
 22 MR. JASON KAFOURY: No. The only thing I would like
 23 to do is just make sure we have a clear record of the evidence,
 24 if I could read it here from this document that --
 25 THE COURT: I think I received the document, didn't

1 I?
 2 MR. JASON KAFOURY: You received it, yes.
 3 THE COURT: 137?
 4 MR. JASON KAFOURY: Yes.
 5 THE COURT: Then it's received.
 6 MR. JASON KAFOURY: Okay.
 7 THE COURT: If you'll clean up the yellow underline,
 8 which is appropriate.
 9 MR. JASON KAFOURY: Yes.
 10 DEPUTY COURTROOM CLERK: Judge, can you repeat the
 11 number, please?
 12 THE COURT: 437. I already received it.
 13 Your concern was it was highlighted. We'll take the
 14 highlighting out, and it's received.
 15 Now, is there anything further?
 16 MR. JASON KAFOURY: I don't know if Christy got the
 17 thing about 403 was withdrawn. We need to add that.
 18 THE COURT: You're withdrawing 403?
 19 MR. JASON KAFOURY: No. They withdrew 403.
 20 THE COURT: 403 is withdrawn. Is there anything
 21 further?
 22 MR. JASON KAFOURY: No.
 23 THE COURT: Any surrebuttal?
 24 MS. COIT: No, Your Honor.
 25 THE COURT: Would you like to go to lunch?

1 I'll tell you what we're going to discuss. I previously
 2 represented that I would instruct first and then the parties
 3 would argue, but if I do that, I'll be done with the
 4 instructions by -- if we started at 1:45, I would be done
 5 reading them to you by five after 2:00. I don't want to split
 6 the arguments. In other words, they should be arguing to you
 7 at one time, so I'm going to be talking to counsel about
 8 arguing first, filling our afternoon with that argument.
 9 Now, you also told Christy this morning, or one of you
 10 did, that you're willing to stay later so the case gets to you.
 11 Is that true? If so, if you would raise your right hand? One
 12 of you has your hand kind of up.
 13 All right. Now, how late? Because that will make a
 14 decision -- one of the counsel asked me, you know, just --
 15 well, how late can you stay? In other words, I always would
 16 rather read the instructions first if I can, but if I have to
 17 make a value choice, we'll fill the afternoon with argument,
 18 and I'll read the first instructions first thing tomorrow
 19 morning when you come in so we fill that time.
 20 A JUROR: We determined 6:00.
 21 THE COURT: Until 6:00. Maybe we can do it, then.
 22 So can you take five minutes to go to lunch? I'm just kidding.
 23 I want you to take an hour, okay? Take your full hour. We've
 24 got plenty of things to do. We're not going to lunch. And
 25 we'll see you at quarter to 2:00. And I'll figure out if I'm

1 reading first or if they're arguing first.
 2 (Jury not present.)
 3 THE COURT: Counsel, the case is concluded now, and I
 4 gave you some tentative thoughts yesterday. I want you to
 5 remain. I'll give you one more chance to argue what you
 6 submitted last evening and then make the final decision. Okay.
 7 (Recess taken.)
 8 THE COURT: Counsel are present. Parties need not be
 9 present. Mr. Cleavenger is not here, nor is the chief or the
 10 lieutenant or the sergeant.
 11 Thank you for your submissions last evening. I've
 12 considered the parties' objections sent to the Court last
 13 night. And, Counsel, if you would like to read your objections
 14 into the record, you're more than welcome to. In other words,
 15 I want to make certain that there's an adequate record for
 16 appellate review for either of you, and I want to preserve that
 17 record for the circuit.
 18 MR. MCDUGAL: I believe we filed ours with the
 19 court, so they're preserved.
 20 THE COURT: Okay.
 21 MS. COIT: Ours were filed today as well.
 22 THE COURT: You have them filed today?
 23 MS. COIT: We did file it.
 24 THE COURT: As long as you have an accurate record.
 25 Do any of you wish to restate your argument? You're more

1 than welcome to.
 2 MR. MCDUGAL: I don't wish to restate my argument.
 3 I might reply to one issue that's pending, but it's one of
 4 their arguments.
 5 I think that on cross of McDermid, it was clear that a
 6 jury could find that Linda King would communicate to McDermid
 7 things that she was told from Cleavenger. And Brian Smith.
 8 THE COURT: Counsel, you can state your argument.
 9 You can argue against any of their submissions.
 10 MS. COIT: Linda King was here, and she was not asked
 11 the question if she told Chief McDermid or any of the
 12 defendants about it. The defendants have all testified that
 13 they had no conversations with Linda King about what was
 14 discussed at the predismissal.
 15 They have the burden of proof. The jury can't just make a
 16 jump off a cliff because of something that could possibly have
 17 happened.
 18 There's no -- no evidence from which they could conclude
 19 that they had the knowledge of what Linda King was told in that
 20 meeting. Same with Brian Smith.
 21 THE COURT: All right. Anything else that each of
 22 you or either of you would like to state for the record?
 23 MR. MCDUGAL: One other thing. Mr. Kafoury says
 24 that the chief said that she talked to Brian Smith.
 25 THE COURT: I can't hear you.

1 MR. MCDUGAL: Mr. Kafoury believes that the chief
2 said that she talked to Brian Smith after the meeting.
3 THE COURT: Okay. Anything else, Counsel?
4 MS. COIT: No, Your Honor.
5 THE COURT: Counsel, anything else?
6 MR. MCDUGAL: On a different instruction, we have an
7 agreement with defense counsel, but we can wait on that if you
8 wish.
9 THE COURT: Well, before I make my rulings, you
10 might -- if it affects my rulings at all, you may want --
11 MR. MCDUGAL: It doesn't affect your rulings on this
12 matter.
13 THE COURT: Okay. Then as to the September 2002
14 order about felonies, the Court disagrees with the plaintiff
15 that the speech and email at the time of the incident related
16 to a matter of public concern. The latter reports of the
17 allegedly illegal order, however, was a matter of public
18 concern.
19 As to the filing of the lawsuit itself, the Court
20 disagrees that the filing of the lawsuit was protected because
21 it related to a matter of public concern. This Court believes
22 that the present jury instruction on the topic is sufficient
23 but has modified the verdict form to reflect the filing of the
24 lawsuit as a category of speech. And you'll see that on
25 page 3 -- sorry, page 2.

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1 Did I say "disagrees"? My apologies. I did. I misspoke.
2 As to the filing of the lawsuit itself, I misspoke. The Court
3 agrees that the filing of the lawsuit was protected because it
4 related to a matter of public concern. I apologize for
5 misreading that.
6 Once again, I've modified the verdict form to reflect the
7 filing of the lawsuit as a category of speech. I'm going to
8 allow the plaintiff to present an alternative, if you desire,
9 in a few moments, and I'll show you what we've done.
10 MR. MCDUGAL: All right.
11 THE COURT: Third, as to defendants' objection
12 regarding the sufficiency of the evidence on a matter of public
13 concern, this Court finds that there's sufficient evidence to
14 conclude that speech about the list and about the Occupy
15 Movement was an order -- was on a matter of public concern.
16 I still need to resolve the issue of the affirmative
17 defense instruction, so I'm going to hear argument on that
18 issue. And, in fact, I'm going to give you the Court's working
19 copy right now with the verdict form and refer you all to also
20 page 1.
21 Would somebody put page 1 up on the list -- I'm going to
22 have to do this by memory, because this -- up on the Elmo,
23 because I'm going to do this by memory.
24 On page 1, so we can put that up --
25 MR. JASON KAFOURY: Which section, Your Honor?

1 THE COURT: I want you to go down to -- go down, go
2 down, go down. Right there, where it's highlighted in yellow.
3 I'm reluctant to have the Court look like it's making a
4 finding when the two of you are debating that this is just a
5 silly list or if it's a bowl of dicks list that's specifically
6 being spoken about. And if I start labeling that in my
7 instructions, it would appear to the jury like the Court has
8 made a determination, and you two have had a constant battle
9 and disagreement over whether this was just a list kept on a
10 cell phone, added to on occasion, which is the defendants'
11 position, or specifically a bowl of dicks list that was the --
12 and I can't get used to you sitting on this side -- plaintiff's
13 position.
14 I just drew a line for the present time, but if you read
15 that it reads list/bowl of dicks list. Unless you are reading
16 that carefully -- so I don't quite know what to do about that.
17 And I talked to you about that at 11:00 the other evening when
18 we got together and raised that for the first time I was
19 concerned about that kind of labeling. I don't want to give
20 either one of you an advantage.
21 So how do I list this? Complaints about the alleged list?
22 MR. MCDUGAL: How about "list or bowl of dicks
23 list"? That works for the plaintiff.
24 THE COURT: How about list or -- use the disjunctive
25 "or"?

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1 MR. MCDUGAL: Yeah.
2 THE COURT: What do you think, Counsel?
3 MS. COIT: That's fine.
4 THE COURT: Everybody knows there's a list of some
5 kind.
6 MS. COIT: Right.
7 THE COURT: It's how it's referred to.
8 MR. MCDUGAL: I think she said she's fine with "or."
9 MS. COIT: Yes.
10 THE COURT: Is that okay with you?
11 MS. COIT: Yes.
12 THE COURT: Okay. Or. We'll use the disjunctive.
13 Marie is trying to word process this for you so you don't
14 have to go back to your offices.
15 MS. COIT: Thank you, Marie.
16 THE COURT: Turn to -- I've got to do this by memory,
17 but turn to page 3 on that -- put it up on the Elmo, and it may
18 be page 2. Let me see.
19 No. Go back to page 2. My apologies. Thank you.
20 Go down to the last box. Yeah. Now go down. Move it
21 down. Right there. This is what has been added that you
22 didn't have last evening. You see the bottom: Filing the
23 lawsuit on October 2013? We think that's much clear and
24 comports with the jury instruction in light of my ruling. So
25 we put that in as well.

1 MR. JASON KAFOURY: Didn't you previously have the
2 contents, you know, of the lawsuit that were protected and the
3 lawsuit itself?
4 THE COURT: Yes. We think this is much clearer.
5 MR. JASON KAFOURY: Okay. Well --
6 THE COURT: You divide it in two and we --
7 MR. JASON KAFOURY: Could we add that into it, so the
8 filing of the lawsuit and the content within the lawsuit
9 itself?
10 THE COURT: Write it down for me. Handwrite that.
11 That way we're not bouncing back verbally.
12 I will tell you what I'm willing to do: Upon reflection,
13 I'm willing to try -- if you really think we can get done by
14 6:00 -- with no pressure on you to curtail your time. I don't
15 want that. I'll make the effort. In other words, I'll make
16 the effort to read the instructions first.
17 MR. JASON KAFOURY: Let me ask you, as a veteran, you
18 know the number of pages, how many minutes do you really think
19 it's going to be for your --
20 MR. MCDUGAL: Jason, you're wasting time.
21 THE COURT: As I was litigating I always used to go
22 over my argument by verbally making me pronounce the argument
23 usually in my bedroom or the hallway, and I used to know those
24 times. But when I'm sitting here on the bench reading these
25 mentally, I can read them much quicker. So I just don't know.

1 My job isn't to speed through the instructions. It's to try to
2 make them understandable. This is a relatively complex area,
3 the First Amendment. Speech.
4 The courts, quite frankly, have been in quite disarray
5 about this.
6 Now, Counsel?
7 MR. MCDUGAL: Yes. We would add filing a lawsuit on
8 October 13th and its contents.
9 THE COURT: Give that back to me, then. I'll
10 reconsider it.
11 So I'm willing to try to read these instructions first.
12 And, quite frankly, maybe 6:00 doesn't mean 6:00 on the bell.
13 I just don't know if they have child care problems. Maybe it
14 means 6:05. But what I'm not willing to do is shorten their
15 break between the arguments. They need some rest, and it's
16 fair to the other party. So I don't want to rush them in and
17 out while you prepare for the defense argument.
18 Now, what about the resolution of the issue of the
19 affirmative defense instruction? Let me hear your argument.
20 MR. MCDUGAL: It's been resolved by counsel,
21 Your Honor. The agreement is to delete the affirmative defense
22 instruction and then on the damages instruction replace the
23 wording to wages -- dot, dot, dot -- that were lost after
24 June 16, 2013.
25 THE COURT: All right. Now, write that down because

1 we're going to go back and word process that for you so you
2 don't have to go back to your office.
3 Now, tell me what else do we need to do in the next 35
4 minutes because I'm trying to give you some time.
5 MR. MCDUGAL: I'm not aware of anything.
6 THE COURT: Are you okay, Counsel?
7 MS. COIT: Yes.
8 THE COURT: Are you okay?
9 MR. GREGORY KAFOURY: Well, are we on when you're
10 going to instruct, Your Honor? We might --
11 THE COURT: I just said I was going to try to do it
12 at the beginning. I changed my mind. I was going to make the
13 attempt.
14 MR. GREGORY KAFOURY: Okay. But does the math work?
15 THE COURT: Pardon me?
16 MR. GREGORY KAFOURY: Does the math work?
17 THE COURT: I don't know.
18 MR. JASON KAFOURY: I tell you what. I would be
19 willing to take a five- or ten-minute break before my rebuttal.
20 MR. MCDUGAL: That's for the jury. Not us.
21 THE COURT: That would work.
22 MR. JASON KAFOURY: Okay.
23 MR. GREGORY KAFOURY: Okay.
24 THE COURT: But you call it. If that's not fair at
25 the end and you need a chance to talk as a team, I don't want

1 to be a judge who cuts you off because of five minutes that you
2 need for conversation. Okay? And if I can get them and nurse
3 them and manipulate them into a little bit after 6:00, then I
4 want to give you the time. But if you can make that attempt,
5 then I think we can make it.
6 MS. COIT: Jason, I think I'll be an hour.
7 MR. JASON KAFOURY: Just an hour?
8 THE COURT: Okay. Let us word process this and then
9 let us do the work processing now so you can go to lunch and
10 rest a little bit, and we'll have a set of instructions on the
11 table.
12 Marie, is that convenient?
13 Counsel, Marie pointed out to me, and I haven't looked at
14 this -- and that's why we want it in writing. The reasonable
15 value of wages which with reasonable probability --
16 MR. MCDUGAL: "Were" lost, it should be, instead of
17 "was." I changed the tense.
18 THE COURT: Were lost after June 16, 2013. That
19 doesn't make any sense to me.
20 THE LAW CLERK: No, it makes sense. It's just that
21 "was" is not "were."
22 THE COURT: Take out the "was" and make it "were."
23 MR. GREGORY KAFOURY: To the present, should it say,
24 Your Honor?
25 THE COURT: What?

1 MR. GREGORY KAFOURY: To the present.
 2 MR. MCDUGAL: Stay out of the jury instructions,
 3 too.
 4 MR. GREGORY KAFOURY: Well, "were lost" doesn't
 5 include the future, Mark.
 6 THE COURT: Could it read this way: The reasonable
 7 value of wages which with reasonable probability were lost
 8 after June 16, 2013?
 9 MR. MCDUGAL: Yes. Would that work?
 10 THE COURT: Does that work?
 11 MS. COIT: Yes.
 12 THE COURT: Okay. That's what we'll do, then. That
 13 takes into account your -- that takes into -- Counsel --
 14 Counsel, that takes into account your argument if we phrase it
 15 that way.
 16 MR. GREGORY KAFOURY: Thank you, sir.
 17 THE COURT: My pleasure. Okay. Go get some lunch.
 18 Is there any further argument, Counsel, about the jury
 19 instructions?
 20 MS. COIT: No, Your Honor.
 21 THE COURT: Any further argument, Counsel?
 22 MR. MCDUGAL: No, Your Honor.
 23 THE COURT: Have a nice lunch.
 24 (Recess taken.)
 25 (Jury present.)

1 and not single out some, ignore others -- or ignore others.
 2 They are all important.
 3 When a party has the burden of proof on any claim, by a
 4 preponderance of the evidence, it means that you must be
 5 persuaded by the evidence that the claim or affirmative defense
 6 is more probably true than not true. You must base your
 7 decision on all the evidence regardless of which party
 8 presented it.
 9 Let me read that again.
 10 When a party has the burden of proof on any claim by a
 11 preponderance of the evidence, it means that you must be
 12 persuaded by the evidence that the claim is more probably true
 13 than not true. You should base your decision on all of the
 14 evidence regardless of which party presented it.
 15 You should decide the case as to each defendant
 16 separately, unless otherwise stated. The instruction applies
 17 to all parties.
 18 The evidence you are to consider in deciding what the
 19 faults are consists of, first, the sworn testimony of any
 20 witness; second, the exhibits which were received into
 21 evidence; and, third, any facts to which the lawyers have
 22 agreed.
 23 In reaching your verdict, you may consider only the
 24 testimony and the exhibits received into evidence. Certain
 25 things are not evidence and you may not consider them in

1 THE COURT: Counsel, would you be seated, please.
 2 Thank you for the courtesy, along with the parties. I'm going
 3 to read a set of jury instructions to you. I'm required to
 4 read these to you at one place and at one time. That's why
 5 they're being read to you, but you'll have a copy of my
 6 instructions in the jury room, so you'll have the law in front
 7 of you. Please return those to me when you're done.
 8 Members of the jury, now that you've heard all of the
 9 evidence and the arguments of the attorneys -- in a few
 10 minutes -- it will be my duty to instruct you as to the law of
 11 the case.
 12 A copy of these instructions will be sent with you to the
 13 jury room when you deliberate. You must not infer from these
 14 instructions or from anything that I have said or may say or
 15 did or may do as indicating that I have an opinion regarding
 16 the evidence or what your verdict should be. It is your duty
 17 to find the facts from all the evidence in the case. To those
 18 facts, you'll apply the law as I give it to you. You must
 19 follow the law as I give it to you, whether you agree with it
 20 or not. And you must not be influenced by any personal likes,
 21 dislikes, opinions, prejudices, or sympathy. That means that
 22 you must decide the case solely on the evidence before you.
 23 You will recall that you took an oath to do so at the beginning
 24 of the case.
 25 In following my instructions, you must follow all of them

1 deciding what the facts are. I'll list them for you.
 2 First, arguments and statements by lawyers are not
 3 evidence. The lawyers are not witnesses. What they have said
 4 in their opening statements and will say in their closing
 5 arguments and at other times is intended to help you interpret
 6 the evidence, but it is not evidence.
 7 If the facts as you remember them differ from the way the
 8 lawyers have stated them, your memory of them controls.
 9 Second, questions and objections by lawyers are not
 10 evidence. Attorneys have a duty to their clients to object
 11 when they believe a question is improper under the rules of
 12 evidence. You should not be influenced by the objection or by
 13 the Court's ruling on it.
 14 Third, testimony that has been excluded or stricken or
 15 that you have been instructed to disregard is not evidence and
 16 must not be considered -- and must not be considered. In
 17 addition, sometimes testimony and exhibits are received only
 18 for a limited purpose. When I have given a limiting
 19 instruction, you must follow it.
 20 And, fourth, anything that you may have seen or heard when
 21 the court was not in session is not evidence. You are to
 22 decide the case solely on the evidence received at the trial.
 23 Some evidence may have been admitted for a limited purpose
 24 only. When I have instructed you that an item of evidence has
 25 been admitted for a limited purpose, you must consider it only

1 for that limited purpose and for no other.

2 Evidence may be direct or circumstantial. Direct evidence

3 is direct proof of a fact, such as testimony by a witness about

4 what that witness personally saw or heard or did.

5 Circumstantial evidence is proof of one or more facts from

6 which you could find another fact. You should consider both

7 kinds of evidence. The law makes to distinction between the

8 weight to be given to either direct or circumstantial evidence.

9 It is for you to decide how much weight to give to any

10 evidence.

11 There are rules of evidence that can control what can be

12 received into evidence. When a lawyer asked a question or

13 offered an exhibit into evidence and a lawyer on the other side

14 thought that it was not permitted by the rules of evidence,

15 that lawyer may have objected. If I overruled the objection,

16 the question was answered or the exhibit received. If I

17 sustained the objection, the question could not be answered and

18 the exhibit could not be received. Whenever I sustained an

19 objection to a question, you must ignore the question and must

20 not guess what the answer might have been.

21 I ordered that some evidence be stricken from the record

22 and you disregard or ignore the evidence. That means that when

23 you are deciding the case, you must not consider the evidence

24 that I told you to disregard.

25 In deciding the facts in this case, you may have to decide

1 which testimony to believe and which testimony not to believe.

2 You may believe everything a witness says or part of it or none

3 of it. Proof of a fact does not necessarily depend on the

4 number of witnesses who testify about it.

5 In considering the testimony of any witness, you may take

6 into account, first, the opportunity and ability of the witness

7 to see or hear or know the things testified to; second, the

8 witness's memory; third, the witness's manner while testifying;

9 fourth, the witness's interest in the outcome of the case and

10 any bias or prejudice; fifth, whether other evidence

11 contradicted the witness's testimony; sixth, the reasonableness

12 of the witness's testimony in light of all the evidence; and,

13 seventh, any other factors that bear on believability.

14 The weight of the evidence as to a fact does not

15 necessarily depend on the number of witnesses who testify about

16 it.

17 During your deliberations, you will have to make your

18 decision based on what you recall of the evidence. You will

19 not have a transcript of the trial, but we have a court

20 reporter, so if there's something you disagree about or

21 something you're not certain of, we can have that testimony

22 reread, but you don't have a transcript that you can look at.

23 And please be patient with us because it may take some

24 time if you make that kind of request.

25 The plaintiff brings his claims under Federal Statute

1 42 USC section 1983, which provides that any person or persons

2 who under color of law deprives another of any rights,

3 privileges, or immunities secured by the Constitution, our laws

4 of the United States, shall be liable to the injured party.

5 In order to prevail on his section 1938 claims against the

6 defendants, the plaintiff must prove as to each individual

7 defendant each of the following elements by a preponderance of

8 the evidence: First, the defendant acted under color of law;

9 and, second, the acts of the defendant deprived the plaintiff

10 of his right to freedom of speech under the First Amendment of

11 The United States Constitution as explained in later

12 instructions.

13 A person acts under color of law when the person acts or

14 purports to act in the performance of official duties under any

15 state, county, or municipal law, ordinance or regulation. The

16 parties have stipulated that the defendants acted under color

17 of law.

18 If you find the plaintiff has proved each of these

19 elements and if you find that the plaintiff has proved all the

20 elements he is required to prove as to each particular

21 defendant under other instructions I have given you, your

22 verdict should be for the plaintiff.

23 If, on the other hand, the plaintiff has failed to prove

24 any one or more of these elements to a particular defendant,

25 then your verdict should be for that particular defendant.

1 In order to establish that the acts of the defendant --

2 Scott Cameron, Brandon Lebrecht and Carolyn McDermed --

3 deprived the plaintiff of his particular rights under the

4 United States Constitution as explained in later instructions,

5 the plaintiff must prove by a preponderance of the evidence

6 that the acts were so closely related to the deprivation of the

7 plaintiff's rights as to be the moving force that caused the

8 ultimate injury.

9 To help you follow the evidence, I'll give you a brief

10 summary of the position of the parties. The plaintiff,

11 James Cleavenger, was formerly employed as a public safety

12 officer for the University of Oregon Police Department. The

13 three defendants are Carolyn McDermed, who is the chief of

14 police of the department; Brandon Lebrecht, who's a police

15 officer lieutenant in the department; and Scott Cameron, who

16 was a police officer sergeant in the department.

17 The plaintiff's claims arise from his employment as a

18 public safety officer at the department.

19 The plaintiff alleges that each of the defendants violated

20 his right to freedom of speech under the First Amendment to the

21 United States Constitution. He alleges that they violated his

22 right to freedom of speech by retaliating against him for

23 engaging in protected free speech. He alleges that he -- that

24 they retaliated against him by taking certain adverse

25 employment actions against him during and after his employment.

Jury Instructions

1 He seeks compensatory and punitive damages from the defendants.
 2 The plaintiff has the burden of proving his claims.
 3 The defendants deny the plaintiff's claims.
 4 The elements of the plaintiff's claim against Defendants
 5 Carolyn McDermid and Brandon Lebrecht are different than the
 6 elements of his claims against Defendant Scott Cameron.
 7 I will now instruct you on the elements of the plaintiff's
 8 claim against Defendants McDermid and Lebrecht.
 9 The plaintiff alleges that Defendants McDermid and
 10 Lebrecht violated his First Amendment right to freedom of
 11 speech by taking adverse employment actions against him in
 12 retaliation for specific protected speech which the plaintiff
 13 had engaged in.
 14 The Court will instruct you on the protected speech in the
 15 next instruction.
 16 Plaintiff claims that in retaliation for engaging in this
 17 protected speech, Defendant s McDermid and Lebrecht took adverse
 18 employment actions against the plaintiff. As previously
 19 explained, the plaintiff has the burden to prove as to each
 20 defendant that the acts or acts -- I'm sorry -- that the act or
 21 acts of the defendants deprived the plaintiff of particular
 22 rights under the United States Constitution.
 23 In this case, plaintiff alleges each defendant deprived
 24 him of his rights under the First Amendment to the Constitution
 25 by retaliating against him for engaging in protected speech.

Jury Instructions

1 Under the First Amendment, a public employee has a
 2 qualified right -- qualified right to speak on matters of
 3 public concern. In order to prove that Defendants McDermid
 4 and/or Lebrecht deprived him of his First Amendment right, the
 5 plaintiff must prove the following additional elements by a
 6 preponderance of the evidence: First, the plaintiff spoke as a
 7 citizen and not as part of his official duties; second, the
 8 speech was on a matter of public concern ; third, the defendant
 9 took an adverse employment action against the plaintiff; and,
 10 fourth, the plaintiff's speech was a substantial or motivating
 11 factor for the adverse employment action.
 12 I will instruct you as to plaintiff's speech that was on a
 13 matter of public concern and, therefore, the second element
 14 requires no proof.
 15 An action is an adverse employment action if a reasonable
 16 employee would have found the action materially adverse, which
 17 means it might have dissuaded a reasonable worker from engaging
 18 in protected speech. A substantial or motivating factor is a
 19 significant factor.
 20 Plaintiff alleges that the following speech took place.
 21 If you find that this speech occurred, the Court instructs you
 22 that the topics were matters of public concern and was
 23 therefore protected speech as addressed in the previous
 24 instruction.
 25 First, when he spoke about Tasers in 2008.

Jury Instructions

1 Second, when he complained to Chief McDermid on June 1,
 2 2012, (a) that he thought he was being afforded his rights
 3 under the Public Safety Officers Bill of Rights, in violation
 4 of state law; (b) that he thought he was being retaliated
 5 against by his supervisors because of his Taser speech.
 6 Three, when he complained to Chief McDermid on August 12,
 7 2012 (a) that he thought he was not being afforded his rights
 8 under the Public Safety Officers Bill of Rights; (b) that he
 9 thought he was being retaliated against by his supervision --
 10 by his supervisors because of the Taser speech; (c) about the
 11 list or bowl of dicks list and the time it wasted; (d) about
 12 the disparagement of people in the Occupy Movement.
 13 Four, when he complained to Brian Smith on October 2,
 14 2012, (a) that he thought he was not being afforded his rights
 15 under the Public Safety Officers Bill of Rights; (b) that he
 16 thought that the instruction he received on September 2012 not
 17 to call out crimes other than felonies was a violation of
 18 federal law; (c) about the list or bowl of dicks list and the
 19 time it wasted; (d) about the disparagement of people in the
 20 Occupy Movement.
 21 Five, when he complained to Linda King on October 12,
 22 2012, (a) that he thought he was not being afforded his rights
 23 under the Public Safety Officers Bill of Rights; (b) that he
 24 thought the instruction he received on September 2012 not to
 25 call out crimes other than felonies was a violation of federal

Jury Instructions

1 law.
 2 Six, when he filed a lawsuit in October of 2013 with
 3 allegations, (a) that he thought he was not being afforded his
 4 rights under the Public Safety Officers Bill of Rights; (b)
 5 that he thought the instruction he received in September of
 6 2012 not to call out crimes other than felonies was a violation
 7 of federal law; (c) about the list or bowl of dicks list and
 8 the time it wasted; (d) about the disparagement of people in
 9 the Occupy Movement.
 10 Seven, when he complained in the arbitration in November
 11 and December 2013 (a) that he thought he was not being afforded
 12 his rights under the Public Safety Officers Bill of Rights; (b)
 13 that he thought the instruction he received in September of
 14 2012 not to call out crimes other than felonies was a violation
 15 of federal law; (c) about the list or bowl of dicks list and
 16 the time it wasted.
 17 If you found that speech on these topics occurred, that
 18 speech is protected speech on a matter of public concern, as
 19 addressed in the previous instruction.
 20 I'll now instruct you on elements of the plaintiff's claim
 21 against Defendant Cameron. The plaintiff alleges that
 22 Defendant Cameron violated his First Amendment right to freedom
 23 of speech by taking adverse actions against him in retaliation
 24 for specific protected speech which the plaintiff had engaged
 25 in. Specifically, the plaintiff alleges that he engaged in

Jury Instructions

1 protected speech before he was employed by the University of
 2 Oregon Police Department on the subject of what -- of to what
 3 extent and subject to what safeguards public safety officers in
 4 the department should be armed with Tasers.

5 As previously explained, the plaintiff has the burden to
 6 prove that the acts of the defendant deprived the plaintiff of
 7 particular rights under the United States Constitution.

8 In this case, the plaintiff alleges the defendant deprived
 9 him of his rights under the First Amendment to the Constitution
 10 by retaliating against him.

11 Under the First Amendment, a citizen has the right to free
 12 expression. In order to prove that Defendant Cameron deprived
 13 him of his -- of this First Amendment right, the plaintiff must
 14 prove the following additional elements by a preponderance of
 15 the evidence: First, the plaintiff engaged in speech protected
 16 under the First Amendment; second, Defendant Cameron took
 17 adverse action against the plaintiff; third, the adverse action
 18 was reasonably likely to deter protected speech; and, fourth,
 19 retaliating against the plaintiff's protected speech was a
 20 substantial or motivating factor for the defendants' action.

21 I instruct you that the plaintiff's speech in this case
 22 about Tasers in the University of Oregon Police Department was
 23 protected under the First Amendment and, therefore, the first
 24 element requires no proof.

25 It is your duty -- it is the duty of the Court to

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Jury Instructions

1 instruct you about the measure of damages. By instructing you
 2 on damages, the Court does not mean to suggest for which party
 3 your verdict should be rendered. If you find for the
 4 plaintiff, you must determine the plaintiff's damages. The
 5 plaintiff has the burden of proving damages by a preponderance
 6 of the evidence.

7 Damages means the amount of money that will reasonably and
 8 fairly compensate the plaintiff for any injury you find was
 9 caused by the defendant. You should consider the following.
 10 First, the mental and emotional pain and suffering experienced
 11 and which, with reasonable probability, will be experienced in
 12 the future; and, second, the reasonable value of wages which
 13 with reasonable probability were lost after June 16, 2013.

14 It is for you to determine what damages, if any, have been
 15 proved. Your award must be based upon the evidence and not
 16 upon speculation, guesswork, or conjecture.

17 The law which applies to this case authorize s an award of
 18 nominal damages. If you find for the plaintiff, but you find
 19 that the plaintiff has failed to prove damages, as defined in
 20 these instructions, you must award nominal damages. Nominal
 21 damages may not exceed one dollar.

22 The plaintiff has the duty to use reasonable efforts to
 23 mitigate damages. To mitigate means to avoid or reduce
 24 damages. The defendant has the burden of proving by a
 25 preponderance of the evidence, first, that the plaintiff failed

Jury Instructions

1 to use reasonable efforts to mitigate damages ; and, second, the
 2 amount by which damages would have been mitigated.

3 If you find for the plaintiff, you may but are not
 4 required to award punitive damages. The purpose of punitive
 5 damages are to punish a defendant and to deter similar acts in
 6 the future. Punitive damages may not be awarded to compensate
 7 a plaintiff. The plaintiff has the burden of proving by a
 8 preponderance of the evidence that punitive damages should be
 9 awarded, and, if so, the amount of any such damages.

10 You may award punitive damages only if you find that the
 11 defendants' conduct that harmed the plaintiff was malicious,
 12 oppressive, or in reckless disregard of the plaintiff's rights.

13 Conduct is malicious if it is accomplished by ill-will or
 14 spite or if it is for the purpose of injuring the plaintiff.

15 Conduct is a reckless disregard of the plaintiff's rights if
 16 under the circumstances it reflects complete indifference to
 17 the plaintiff's safety or rights or if the defendant acts in
 18 the face of a perceived risk that its actions will violate the
 19 plaintiff's rights under federal law.

20 And that is oppressive if the defendant injures or damages
 21 or otherwise violates the rights of the plaintiff with
 22 unnecessary harshness or severity, such as by the use -- strike
 23 that -- such as by the misuse or abuse of authority or power or
 24 by taking advantage of some weakness or disability or
 25 misfortune of the plaintiff.

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Jury Instructions

1 If you find that punitive damages are appropriate, you
 2 must use reason in setting the amount. Punitive damages, if
 3 any, should be in an amount sufficient to fulfill their purpose
 4 but should not reflect bias, prejudice, or sympathy toward any
 5 party.

6 In considering the amount of any punitive damages,
 7 consider the degree of reprehensibility of the defendants'
 8 conduct, including whether their conduct that harmed the
 9 plaintiff was particularly reprehensible because it also caused
 10 actual harm or posed a substantial risk of harm to people who
 11 are not parties to this case. You may not, however, set the
 12 amount of any punitive damages in order to punish the defendant
 13 for harm to anyone other than the plaintiff in this case.

14 In addition, you may consider the relationship of any
 15 award of punitive damages to any actual harm inflicted on the
 16 plaintiff. You may impose punitive damages against one or more
 17 of the defendants and not others and may award different
 18 amounts against different defendants.

19 Punitive damages may be awarded even if you award the
 20 plaintiff only nominal and not compensatory damages.

21 Any award for future economic damages must be for the
 22 present cash value of those damages. Noneconomic damages, such
 23 as pain and suffering, are not reduced to present cash value.
 24 Present cash value means the sum of money needed now which when
 25 invested at a reasonable rate of return will pay future damages

Jury Instructions

1 at the times and in the amounts that you find the damages would
 2 have been received.

3 The rate of return to be applied in determining present
 4 cash value should be the interest that can reasonably be
 5 expected from the safe investment that can be made by a person
 6 of ordinary prudence who has ordinary financial experience and
 7 skill. You should also consider decreases in the value of
 8 money which may be caused by future inflation.

9 Some of you have taken notes to help you remember the
 10 evidence. Whether or not you have taken notes, you should rely
 11 on your own memory of the evidence. Notes are only to assist
 12 your memory. You should not be overly influenced by your notes
 13 or those of your fellow jurors.

14 When you begin your deliberations after argument of
 15 counsel, you should elect one member of the jury as your
 16 presiding juror. That person will preside over the
 17 deliberations to speak for you here in court. You will then
 18 discuss the case with your fellow jurors to reach agreement if
 19 you can do so. Your verdict must be unanimous. Each of you
 20 must decide the case for yourself, but you should do so only
 21 after you have considered all the evidence, discussed it fully
 22 with the other jurors, and listened to the views of your fellow
 23 jurors. Do not hesitate to change your opinion if the
 24 discussion persuades you that you should. Do not come to a
 25 decision simply because other jurors think it is right. It is

Jury Instructions

1 important that you attempt to reach a unanimous verdict, but of
 2 course only if each of you can do so after having made your own
 3 conscientious decision. Do not change an honest belief about
 4 the weight and effect of the evidence simply to reach a
 5 verdict.

6 If it becomes necessary during your deliberations to
 7 communicate with me, you may sign a note through the clerk
 8 signed by your presiding juror or any one or more members of
 9 the jury. No member of the jury should ever attempt to
 10 communicate with me except by signed writing.

11 Now, I haven't gotten all that uppity. I enjoy all of
 12 you, and I enjoy greeting you. For this part, though, I won't.
 13 I have to be very careful. If you ask me something, I probably
 14 will only respond in writing or bring you back into court. I
 15 have to keep a very careful record.

16 I'll communicate with any member of the jury on anything
 17 concerning the case only in writing or here in open court. If
 18 you send out a question, I'll consult with the parties before
 19 answering it, which may take some time.

20 You may continue your deliberations while waiting for the
 21 answer to any question. Remember, that you are not to tell
 22 anybody, including me, how the jury stands, numerically or
 23 otherwise, until after you have reached a unanimous verdict or
 24 you have been discharged. Do not disclose any vote count in
 25 any note to the Court.

Jury Instructions

1 A verdict form has been prepared for you. I'll explain
 2 that after argument by counsel tonight because I want to make
 3 certain that that takes place at one time. The verdict form is
 4 very simple. It's self-explanatory. There are seven
 5 questions. Every answer to every question must be unanimous.
 6 After you have reached a unanimous agreement on a verdict, your
 7 presiding juror will fill in the form that's been given to you,
 8 sign it, and date it, and advise the Court that you are ready
 9 to return to the courtroom.

10 Now, one just further comment: Don't read about this
 11 case. Don't go to the Internet. Don't go to the dictionary.
 12 Don't Google or I have to start all over. Okay? You are the
 13 only eight people that will hear all the facts in this matter.

14 Now, Counsel, we will take a five- or ten-minute recess.
 15 I think that's fair. Just so you can get set up. We spent a
 16 half hour of reading. I want them fresh.

17 After you argue on behalf of the plaintiff, I'll take
 18 another recess before the defendant starts.

19 Five or ten minutes to stretch, Counsel.

20 (Jury not present.)

21 THE COURT: The jury is not present. Counsel, was
 22 that reading appropriate? In other words, by that, I mean, did
 23 I read those instructions correctly?

24 MS. COIT: Yes.

25 THE COURT: Counsel on behalf of defense?

Jury Instructions

1 MS. COIT: Yes.

2 THE COURT: Counsel on behalf of the plaintiff?

3 MR. JASON KAFOURY: You did. However, there's a
 4 typo. The meeting with Chief McDermid everyone agrees is
 5 August 13th, not August 12th.

6 THE COURT: Just a moment. Let me find that.
 7 Let's correct that immediately when the jury comes back
 8 out.

9 Thank you. Go down the instruction. That would be
 10 August 13th, not August 12th?

11 MR. JASON KAFOURY: Yes.

12 THE COURT: We'll correct that in the verdict form
 13 also.

14 Okay. Any other misreading, Counsel?

15 MR. JASON KAFOURY: No.

16 THE COURT: All right. We'll see you in 10 minutes.

17 (Recess taken.)

18 THE COURT: Okay. All right. Now, Counsel, we're
 19 going to use a lecturn?

20 MR. JASON KAFOURY: Correct. Yes.

21 THE COURT: You are both welcome to use it. Okay.

22 MS. COIT: Okay.

23 THE COURT: All right. Christy, go get the jury.
 24 Counsel, you have said you want me to inform them that the
 25 complaint was -- that the Court had misread that the complaint

1 to Chief McDermid was August 13, 2012, and not August 12th?

2 MR. JASON KAFOURY: Yes.

3 (Jury present.)

4 THE COURT: The jury is present. All counsel are
5 present. Parties are present.

6 Thank you for your courtesy. Counsel pointed to a mistake
7 in the reading and asked the Court to inform you that it should
8 read properly in the First Amendment free speech instruction,
9 number three, that the complaint to Chief McDermid was on
10 August 13, 2012, not August 12th. It was a one-day difference.

11 Counsel, your concluding argument -- arguments, please.

12
13 PLAINTIFF'S CLOSING ARGUMENT

14 MR. JASON KAFOURY: Your Honor, opposing counsel,
15 ladies and gentlemen of this jury, first, on behalf of my
16 client, we want to thank you for spending three weeks of your
17 life with us here. You, the community, have been gathered and
18 we are here because James Cleavenger exercised his First
19 Amendment free speech rights. His supervisors were displeased.
20 They targeted him. They dug through his files, went through
21 his videos, searched for anything they could use to paper his
22 files to terminate him, and when he was finally able to
23 challenge their claims in front of a neutral professional
24 arbitrator, over three days, that arbitrator rejected every
25 claim of dishonesty against my client and determined that

1 fairness demanded no more than a three-day suspension from his
2 job. But rather than accept that decision, the chief refused
3 to take him back. She and Lieutenant Lebrecht filed what's --
4 we all know now, a very well-known procedure called
5 *Brady*-listing, branding him with that, and ruined his law
6 enforcement career.

7 What's clear is that once that accusation was done, he
8 can't challenge it, and that's the heart of this case. That's
9 why we've all been brought here.

10 Who did they do this to?

11 My client is obviously extremely well-educated. He was
12 number one in his class in the police reserve academy.
13 Chief Tripp told us he was a ten and that's why he wanted him,
14 despite people's disagreements over his Taser position.

15 You heard from more than a dozen people, fellow officers
16 that have worked with him now and worked with him historically.
17 What did they say? Hardworking. Volunteered for extra shifts.
18 Honest. Absolutely good judgment. Professional, routinely
19 went above and beyond his duties. He even helped plow snow on
20 roads outside of his job duties.

21 And many of those people that came before you eight folks
22 had a lot of courage to come up here and say what they did. A
23 lot of them fear retaliation for getting on that witness stand,
24 and we heard from them.

25 My client, when you're weighing his testimony, he went

1 through three days of depositions, hundreds and hundreds of
2 pages of questions, and when he got on that witness stand for a
3 day and a half there wasn't one thing defense counsel pulled
4 from his deposition contradicting anything he said. Not once
5 did that happen.

6 We just heard from Sergeant Salisbury. James Cleavenger:
7 Fantastic job. He's the number two guy at Junction City.
8 Critical value to the community. Respectful. Trusting. And
9 you'll have this document. This is his review of materials.
10 He looked over everything, along with Nicol, at Junction City,
11 in relation to this University of Oregon firing. He looked
12 through the termination letter, the notice of pending
13 discipline letter, the written reprimand, the temporary
14 reassignment, the SEIU grievances, and the internal affairs
15 investigation narrative. He looked through all of that stuff,
16 and he states, "I never found any concern regarding
17 James Cleavenger's performance. Never questioned his ethical
18 standards. He's shown high moral ethics. I never witnessed or
19 heard him being untruthful at any point."

20 James Cleavenger told Sergeant Salisbury that he believes
21 he was being specifically targeted by two supervisors who did
22 not like him. That's what he -- before we ever knew we were
23 going to be here, that's exactly what, after a full
24 investigation, Sergeant Salisbury just came and told us.

25 Well, what are the questions that you have to decide?

1 You, the community. Well, did any of the defendants take an
2 adverse employment action against my client for which
3 James Cleavenger's speech on a matter of public concern was a
4 substantial or motivating factor? That's the key. Was it a
5 substantial or motivating factor in any of the adverse actions?

6 Well, what does that mean? That means in any of their
7 actions were they retaliating against him?

8 What is a substantial or motivating factor? The judge
9 just told you it doesn't have to be the only factor. It just
10 has to be a significant factor.

11 As you go through all of the evidence, you only need to
12 find that one of the many adverse actions that happened to him
13 related to something to his free speech rights, and that's it.
14 That's liability on that one claim for one person. And it
15 doesn't have to be the only factor. It just has to be a
16 significant factor.

17 What is an adverse employment action?

18 Well, the judge just told you. If a reasonable employee
19 would have found the action materially adverse, which means it
20 would have dissuaded a reasonable worker from engaging in
21 protected activity, well, let's look at all the things that
22 happened to him. Letter of clarification. Was that adverse?
23 They say, "Oh, it wasn't discipline." Except it ended up in
24 his termination letter. Letter of reprimand. Obvious.
25 Downgrading his annual evaluations seven of the eleven

1 categories from the last draft to the draft he first gets in
 2 his hands. All done after the time period that the one year
 3 was. This was all done in April and May, downgrading his
 4 scores.
 5 Taking away his job duties. Ordering secret
 6 investigations. The internal affairs investigations.
 7 Lebrecht's investigation. The investigation into the
 8 problematic callouts. None of these things, throughout this,
 9 is he told what he's being investigated for; who's doing these
 10 investigations. None of the things, as he tells loudly over
 11 the course of that summer, the -- the State Public Safety
 12 Officers Bill of Rights. He is supposed to be given notice of
 13 who is investigating him and what they are investigating, what
 14 are the allegations, so he can defend himself. And he's
 15 supposed to be able to record all of those meetings while he's
 16 being investigated.
 17 Do you think after everything you've learned about
 18 James Cleavenger in this case that he wouldn't have been
 19 protesting loudly about that all summer long, every meeting,
 20 every opportunity he could? There's one thing we've learned
 21 about him. He's clearly a tenacious guy.
 22 And obviously the two big ones: Terminating him and
 23 *Brady*-listing him.
 24 Now, I'm going to go through a lot of evidence, and I only
 25 have an hour and a half, so I'm going to stick to chapters, and

1 I'm going to throw out some exhibits, and, as I do, take notes
 2 or mental notes, because you're going to get a stack of
 3 exhibits this high and you're going to want to be able to go
 4 back and find stuff easily.
 5 So when you're weighing the circumstantial evidence, was
 6 my client's speech a substantial or motivating factor? When
 7 you go back there, here are some factors that I would suggest
 8 you use: First of all, what's the timing? When do the adverse
 9 actions take place in relation to the speech? That's number
 10 one. Number two: Is my client being singled out? Is this not
 11 happening to everybody else, or is it only -- or is it
 12 happening? That's the second factor. Number three: Now that
 13 we're this far along and they had to provide explanations over
 14 these years, do their explanations change? Do they shift? Do
 15 they make any sense? And, fourth, when you go through their
 16 explanations, is there evidence of bad faith?
 17 And I present there's a lot of evidence of bad faith in
 18 this case.
 19 You know, big picture themes: Challenging authority and
 20 speaking up. How authority figures react when you do that.
 21 These are big picture themes. We've seen this throughout the
 22 weeks. Standing up for your constitutional free speech rights.
 23 Our rights. This is our Constitution. Think about what
 24 happens to our rights if we don't stand up and try to defend
 25 them. You have learned an enormous amount about police

1 departments and especially this police department. We've heard
 2 a lot about community policing versus a paramilitary
 3 organization.
 4 I thought it was interesting -- you may recall in opening
 5 statement defense counsel got up and said my client believed in
 6 community policing, and this is a paramilitary organization,
 7 and he just didn't get it. Do you remember that? Suddenly,
 8 today, Chief McDermed says, "Well, my police department. I run
 9 it with a community policing background." That's the first
 10 time anybody, in three weeks, from the defense, has said, "We
 11 believe in community policing. That's how we do it within our
 12 department" was today.
 13 What other big picture themes? The right of a public
 14 safety officer to be critical of things within their department
 15 versus just shutting up and falling in line. Do we want our
 16 officers to be serious professionals, people whose ideas and
 17 thoughts matter, or are they just frontline infantry people?
 18 Which is healthier for our society?
 19 Remember what Casey Boyd said about this department?
 20 Dysfunctional and toxic. Those were her words. She was there
 21 nearly every month my client was there.
 22 Let's start with the *Brady* listing when we go through the
 23 evidence, because I suggest you -- as you go through the
 24 evidence, start your deliberations on this, because it's the
 25 cleanest, easiest way to the correct verdict. As the judge

1 instructed you, we, as a society, our Constitution, protect
 2 people for exercising their First Amendment free speech rights.
 3 They can speak up about violations of laws. They can put that
 4 into their lawsuit. They can speak up during arbitration about
 5 things they don't like. They can -- the act of filing the
 6 lawsuit itself is protected speech. They can't be retaliated
 7 against for going into a court and filing a public document.
 8 We, as a society, don't allow that to happen.
 9 Now, preliminarily, before we go through the *Brady*
 10 material, he signed his resignation September 4, 2012. There
 11 was a lot of talk about he had been reinstated and the
 12 negotiations going on back and forth, but he was, by an
 13 arbitrator's ruling, an employee until he wasn't, and he was
 14 until September 4, 2012. Months after he's *Brady*-listed. So
 15 there should be no debate about whether he was an employee when
 16 he was *Brady*-listed.
 17 Okay. Let's go through the factors. Number one: Timing.
 18 Ladies and gentlemen, does anybody here really believe that if
 19 my client hadn't made all those statements and fought this at
 20 arbitration, hadn't won the arbitration, hadn't filed a
 21 lawsuit, hadn't sued these defendants personally, does anybody
 22 think he really would have been *Brady*-listed two years later?
 23 No. It's obvious. And their emails speak for themselves.
 24 There is not a word about *Brady*-listing my client, not a
 25 word in writing, and I'm sure you would have seen it, with all

1 the tens of thousands of pages in this case. Until that
 2 arbitrator's decision comes down, not a word in writing about
 3 *Brady*-listing him.
 4 What do we get? Within 15 minutes of emails , *Brady*, and
 5 the chief says, "Yep, I've already commented or thought about
 6 that."
 7 Two years later. Timing. It's obvious.
 8 Now, was he singled out? Factor number two. Well, nobody
 9 else in their 30 years of their department have they ever put
 10 on a *Brady* list. These -- this is a department where we've
 11 shown evidence that they had people that stole money from
 12 parking meters, people that made fraudulent parking passes,
 13 people that admitted to cheating on tests, fraud, theft,
 14 dishonesty. Nobody *Brady*-listed ever.
 15 Now let's go through their explanations and see do they
 16 make any sense or is it further evidence of bad faith?
 17 What was the bombshell dropped on us yesterday by
 18 Lieutenant Lebrecht? You'll recall he was on the stand two
 19 weeks ago, and I showed you his testimony. He said: Oh, well,
 20 that email on March 10th, I didn't participate in that email
 21 chain. I didn't write anything about *Brady*-listing my client.
 22 Well, things change. Over the two weeks of this trial,
 23 suddenly we've got new documents, and in that document we saw
 24 Lieutenant Lebrecht putting out *Brady* issues and other issues
 25 to consider. Right? Right in writing, within 15 minutes, he's

1 putting that out there. We didn't know that two weeks ago. We
 2 do now.
 3 So what's his explanation? Well, I was trying to force a
 4 global settlement. Excuse me? A global settlement of my
 5 client's lawsuit he's filed against you? That's why you're
 6 *Brady*-listing him? That's true. That's a smoking gun. Can
 7 you think of a bigger example of chilling free speech than
 8 saying, "I know what will force a global settlement. Let's
 9 *Brady*-list him."
 10 That's exactly what our First Amendment forbids people
 11 from doing.
 12 So why would that make sense at the time? Well, you've
 13 got to remember the timing of all of this. My client has filed
 14 a lawsuit; won the arbitration. This is March of 2010. The
 15 media, *Gawker*, *Huffington Post*, national publicity for the bowl
 16 of dicks list, all these claims my client -- none of that
 17 happens until July, until after he's *Brady*-listed.
 18 Now, if you were trying to stifle free speech, the threat
 19 of *Brady*-listing somebody, before it comes out in the press,
 20 before you are publicly embarrassed, that makes sense, doesn't
 21 it?
 22 And they admit this was embarrassing stuff. My client put
 23 50-plus pages of material detailing everything that happened on
 24 the public record. Well, something changed in those months,
 25 right, because they didn't ever tell him they were

1 *Brady*-listing him. They never told him, despite the fact their
 2 duty as a department says notify the person before you do it,
 3 they didn't notify him. No explanation for why they didn't
 4 notify him before they did it.
 5 What else shows bad faith? Well, what were they doing?
 6 Can we bring out 266, please, Mr. Hess?
 7 What were they doing after they *Brady*-listed him?
 8 July 2010. July 2014. I'm sorry. Remember two weeks ago I
 9 showed you this email from July? This portion down here was
 10 actually redacted -- we didn't have it -- of what the chief
 11 said. And what did the chief say? Remember her saying, "Oh,
 12 that July 11th email from 2014, I think that just dealt
 13 generally with *Brady* stuff. I don't think that related to
 14 Mr. Cleavenger himself."
 15 Well, now it's unredacted. Now you have it. Who is
 16 mentioned first on the first line? "Received a letter from DA
 17 Gardner regarding *Brady* review. Mr. Cleavenger -- the review
 18 of Mr. Cleavenger."
 19 So she's sending this to her command staff; Doug Park,
 20 general counsel; and defense counsel in this case, Andrea Coit,
 21 about Mr. Cleavenger on July 11, 2014. Talk about bad faith.
 22 July 23rd -- I've shown you the emails a number of times,
 23 July 23rd my client is being told, "You got your neutral letter
 24 of reference. We're ready to sign a settlement agreement. And
 25 we have a check for you."

1 And the next day, July 24th, Ms. Coit says, "Well, I
 2 recently learned that you've been *Brady*-listed." And so here
 3 is this new information.
 4 What else shows bad faith? Well, not including the
 5 arbitrator's opinion that makes findings about his honesty.
 6 When they're -- when you think about this case, what are their
 7 excuses for why they didn't include the arbitrator's decision?
 8 Well, we had it in the first draft. Although,
 9 Lieutenant Lebrecht doesn't remember a first draft. We've
 10 never seen a piece of paper of a first draft; but, oh, there
 11 was a first draft. It -- it just was too many pages to include
 12 the arbitrator's decision. It's okay to put a-hundred-plus
 13 pages of his Internet search history, but not enough to give
 14 the district attorney, when you're going to ruin somebody's
 15 career, an independent neutral arbitrator's decision comment ing
 16 on his honesty. Is that good faith?
 17 What else shows bad faith? Lieutenant Lebrecht. I showed
 18 you just three examples. He took -- he selectively took stuff
 19 out of the IA report and then he changed it from what Morrow
 20 said and Morrow concluded and then he called my client a liar
 21 in a public document going to be going to criminal defense
 22 lawyers out there.
 23 What's the first example? Morrow says, "You can't
 24 identify the race or gender of the driver on the dean stop."
 25 Lebrecht says "Oh, no, you can. Cleavenger was lying when he

1 said he couldn't."
 2 Morrow says she accelerates after that turn.
 3 Lieutenant Lebrecht says, "No, I reviewed the video. She
 4 doesn't accelerate." Powerful evidence that he's dishonest.
 5 His claim that she accelerated. Right? That's something that
 6 should be included.
 7 Funniest darn thing happened. Obviously, didn't talk to
 8 the dean, because the dean came up on the witness stand
 9 yesterday and admitted, "Yeah, I did accelerate after that
 10 first turn." Bad faith. Not even interviewing witnesses
 11 before you put something in a public record calling my client a
 12 liar about it.
 13 Let's explore the explanations we've been given for why it
 14 took two years and see if they make any sense.
 15 Well, remember, big problem for them in this case is why
 16 are the only written words about *Brady* listing coming right
 17 when the arbitrator's decision comes out? Why didn't it happen
 18 two years earlier?
 19 So Chief McDermid was on for not one but two days of
 20 deposition, on two different days. Did she ever say in any of
 21 those depositions, "Oh, yes, you know, I've known about *Brady*
 22 lists forever, but we just usually would" -- like she said
 23 today -- "usually people would get terminated, and we wouldn't
 24 *Brady*-list them afterward."
 25 Did you hear that in opening statement? First time we

1 heard that was today in this courtroom.
 2 Why? Well, because there's a mountain of evidence that we
 3 dug up that Chief McDermid did know about *Brady* listing before
 4 2014.
 5 Let's go through this. Chief McDermid gets up and says,
 6 "Well, those other things that happened in our department about
 7 theft and fraud," she said, "I didn't know threat and fraud
 8 amounted to dishonesty." She said that a week and a half ago
 9 in this courtroom.
 10 Are you kidding me? The chief of police, that long of a
 11 career, she gets up on that witness stand and she says, "I
 12 didn't know fraud and theft involved dishonesty for *Brady*
 13 listing." If someone is not telling you the truth, you can
 14 disregard everything else they say about these key events.
 15 How else do we know that Chief McDermid knew about *Brady*
 16 listing before 2014? Casey Boyd came in and said, "No, that
 17 fraudulent parking pass, I had meetings with the district
 18 attorney back in 2011 and I briefed Chief McDermid on the
 19 *Brady*-listing possibility for that back in 2011." Let that
 20 sink in.
 21 What else? Exhibit 215. Chief McDermid says, "Well, 2014
 22 there was all this movement towards *Brady*-listing people."
 23 Well, it's funny. Chief Chase, do you remember what he said,
 24 unprepared for the question? Oh, this has been going on since
 25 2009, 2011; this big push to get people *Brady*-listed. How do

1 we know that's true? March 5, 2012, from the DA. "If one of
 2 your officers, troopers, deputies is facing a well-supported
 3 allegation of untruthfulness, please advise us at your earliest
 4 convenience."
 5 Why is that date critical?
 6 In the next few months that's exactly when Chief McDermid
 7 says that she came to all these conclusions about my client
 8 being a liar and dishonest.
 9 Now, what else? She can't stick with 2014 when she
 10 learned about *Brady*, because we brought in more than a dozen
 11 officers. Even Lieutenant Lebrecht said he knew about *Brady*
 12 materials since he was first there in 1995.
 13 So what's defense counsel's explanation in opening
 14 statement about why Chief McDermid sent that email? "She's
 15 upset, venting, and sends an email to her command staff."
 16 Well, what's the problem with that? There's a couple of
 17 problems with that explanation. First, she sends that email to
 18 her command staff four days after she gets the decision and
 19 days before that she knows about the decision. That's not
 20 venting. This was a calculated email discussing what they were
 21 going to do next.
 22 What else is problematic?
 23 Defense counsel, in opening, said, "Well, no one was
 24 supposed to see that email. That's her private email to her
 25 command staff."

1 Wait a second. She's a public officer. She's a chief of
 2 police. She's a defendant in a lawsuit. Does that make any
 3 sense? No.
 4 Exhibit 168, with that email string, that is the heart of
 5 the *Brady* case right there. That's real evidence, not
 6 manufactured evidence, and when you're going through this case
 7 look at what people said back at the time to figure out their
 8 state of mind, not what they come in after three weeks of
 9 prepared testimony to say.
 10 What else? Well, you know, I was just submitting to the
 11 DA. It's the DA's obligation after that to investigate and
 12 determine if they should be put on the list.
 13 Well, what did we hear from the DA? A, doesn't have the
 14 resources to do much investigation, especially if you hand him
 15 500 pages. What else did he say? No. The moment he got that
 16 material, he's got a database. James Cleavenger has been
 17 red-flagged in that database. He is -- any time he's called,
 18 red-flagged. It's like a summary execution the moment they
 19 handed that over. No hearings. No appeals.
 20 What else shows bad faith? Exhibit 158. They have a
 21 policy from 2013. This is their written policy on *Brady*.
 22 2013.
 23 Can you get the date, Mr. Hess, at the bottom?
 24 Their own policy says they'll conduct a fair and impartial
 25 investigation and will provide incriminating and exculpatory

1 evidence. That's what they're supposed to do if they're acting
 2 in good faith.
 3 Well, can we bring up, Mr. Hess, 178?
 4 They're defendants in this lawsuit. Fifty pages of really
 5 embarrassing things have just been put out on the public
 6 record. They know in March, April, May -- someday this is
 7 going to get out. They know all of that. What's the fair,
 8 impartial thing to do at this point? The fair, impartial thing
 9 to do is you say, "You know what? Before I ruin someone's law
 10 enforcement career, why don't I step back, have an outside
 11 agency, another law enforcement, have a second look at this,
 12 look through the materials, make their own independent judgment
 13 before I ruin someone's career?" That's the fair and impartial
 14 way to do it. Not when you're a defendant in the case.
 15 Alex Gardner told us he would want everything. Now, he
 16 said some things about arbitrator's decisions; but, come on,
 17 this arbitrator heard three days. He's a professional. He's
 18 trained. He came to conclusions on exactly what they're
 19 calling my client a liar about. It should have been included.
 20 What's in there?
 21 "On the other hand, I find insufficient evidence to
 22 support the employer's argument that the grievant was dishonest
 23 when during the April 7th interview he claimed that Hermens'
 24 car was visible from the apartments. In this regard, I
 25 observe" -- and then he explains it.

1 Next. "An arguable motive to deflect blame on others.
 2 There is simply insufficient evidence to support the employer's
 3 burden of establishing a finding of a purposeful intention to
 4 mislead."
 5 Next. This is Exhibit 178. The arbitrator's decision.
 6 "On the other hand, nothing on the record suggests anything
 7 other than inadvertence by grievant. That conclusion is
 8 supported by the evidence that the grievant did, in fact,
 9 record on numerous other similar occasions under these
 10 circumstances" -- he goes on.
 11 Nothing about dishonesty. Every page.
 12 What else? Well -- what else shows really bad faith in
 13 this? It's not just that the chief two years later says, "Hey,
 14 go meet with the DA. Bring him the materials." What else did
 15 the chief push for? She pushes Lieutenant Lebrecht to ask if
 16 my client can still be charged criminally two years later for
 17 these misdemeanors.
 18 Now, can we go to 179? I believe it's the -- 279, the
 19 last page, and the email from Morrow.
 20 How do we know this is bad faith when she's asking two
 21 years later to criminally prosecute my client? What did she
 22 know two years earlier, back in May of 2012? They're
 23 discussing criminal charges back in May of 2012. What did
 24 Morrow say? "I suggest not pursuing criminal charges, in that
 25 the actions are minor compared to what generally is pursued

1 against LEOs and what DAs prefer to present to a jury.
 2 Eggregious misconduct. Plus, it will likely open the door for
 3 counter-allegations against other PSOs who may have failed to
 4 advise someone of a recording or stop off campus property and
 5 now besieged with the possibility of numerous allegations of
 6 similar activities and expected to open and investigate all for
 7 consistency and fairness." Right?
 8 If you're going to go after James Cleavenger for not
 9 recording -- not advising people of recordings and you want to
 10 criminally prosecute him, how many other officers were doing
 11 it? They didn't spend one minute looking into any other
 12 officers and whether they were failing to record people.
 13 Didn't spend one minute looking into it; but, yet, two years
 14 later, she wants to ask the DA to charge my client with crimes.
 15 This hundred pages of his Internet use, Lieutenant --
 16 Lieutenant Lebrecht said, "Oh, well, there's examples of him
 17 buying things online." Really? Is there anything more bad
 18 faith than saying: Years ago he said he would follow all
 19 rules, and in our thousand-page document of all the rules, one
 20 of them was involving Internet use at work. And why? He said
 21 he wouldn't violate any rules. So therefore I think all
 22 district attorneys, criminal defense lawyers should know that
 23 my client is a liar because he surfed the Internet at times.
 24 Really? Is that -- is that really what should have been
 25 included in that material? But not the arbitrator's decision?

1 Is that how we want to ruin someone's law enforcement career?
 2 Let's talk about Lieutenant Lebrecht. This is a person
 3 who admits that he is the person who brought the big bowl of
 4 dicks concept -- he doesn't admit it was a list, but it was the
 5 concept -- to the department.
 6 Now, we heard from John Ahlen, my client's union steward,
 7 who said, "I distinctly remember Lieutenant Lebrecht at the
 8 arbitration admitting it was the bowl of dicks list."
 9 Suddenly, Lieutenant Lebrecht, at deposition, in court,
 10 never heard anybody call it the "bowl of dicks list." It just
 11 was "the list."
 12 First, when you're talking about this back there, what's
 13 the point of having something just called "the list"? Why keep
 14 hundreds of names on something if it's just "the list." Does
 15 that make any sense? Or does it make sense that it was a bowl
 16 of dicks list and that's why people were going on, because it
 17 was funny and entertaining and whatever else to them on those
 18 countless hours spent doing it.
 19 The point is they were wasting time. Casey Boyd told us
 20 sometimes these briefings went on for hours. Graveyard shift
 21 hours. She would be there until 1:00 or 2:00 in the morning.
 22 She complained about it. What happened? They closed the door
 23 on her.
 24 Now, after all these countless hours wasted, they attack
 25 in enormous minutia every single thing they could have trained

1 my client for.

2 But what's Lieutenant Lebrecht's true personality? That's

3 what you're going to have to decide. Did he have a retaliatory

4 mindset throughout this process?

5 Well, he admits that the statements my client puts into

6 that lawsuit, the statements he says at arbitration, those are

7 embarrassing. They've embarrassed him now. It explains why he

8 wasn't given a fair shot in that *Brady* report. Why would he

9 alter what's in the IA report? Change conclusions?

10 Casey Boyd. Read her rebuttal letter. It's Exhibit 119.

11 Read it. Read all 10 pages of it when you want to absorb what

12 this place is like. Boyd said Lieutenant Lebrecht called one

13 of the university athletes a faggot pussy. The same man who my

14 client says was arm in arm, outside, pointing at him with

15 Lieutenant Morrow and laughing at him in July 2012.

16 Let's talk about this Occupy briefing. Well, there's a

17 lot of intensity around this campus at this moment. There's a

18 camp of folks. My client, obviously very well educated, very

19 political, stands up finally and makes a statement about the

20 99 percent, about the Movement.

21 Well, Lieutenant Lebrecht wanted to know why my client

22 wasn't laughing. What sounds more like the true

23 Lieutenant Lebrecht? Confronting him in the hallway and

24 saying, "Why weren't you laughing like everybody else?" What

25 did James Cleavenger say? He thought he was going to get hit.

1 That's a pretty intense supervisor-to-employee relationship

2 moment.

3 What do we know? Within days of that briefing, my client

4 is being met with and told he's getting a letter of

5 clarification, including his grooming standards. Something

6 that never happened at this department before and something

7 that Lieutenant Lebrecht has never done to anybody else.

8 What fits with the timing of that? Somebody who stands up

9 and complains and angers their superiors, or is it just a big

10 coincidence that for three days he didn't shave and suddenly

11 he's getting written up for grooming standards?

12 What happens with this conversation about the training

13 requests and Morrow? My client will tell you he's brought into

14 a room by Lieutenant Lebrecht. He feels threatened. And

15 Lieutenant Lebrecht says, "What are you doing going behind my

16 back to Lieutenant Morrow? Don't you know we're friends?" --

17 which we now know is true -- "if you tell him anything, I'm

18 going to find out about it."

19 You know why this fits? Look at all their emails

20 together. The way they write stuff in May. They're working

21 together, coming up with stuff to attack James Cleavenger.

22 Is this the real Brandon Lebrecht? "I'm gonna mother-fuck

23 them before they mother-fuck me." He denies he ever said that.

24 Never heard the phrase. I guess Casey Boyd and my client just,

25 poof, came up with that out of thin air.

1 No, the truth is Lieutenant Lebrecht knew IA. You saw his

2 email where he points out he's done an illegal recording

3 investigation for IA before back in California. He knew how to

4 put together a file and that's what he did against

5 James Cleavenger.

6 One of the big picture themes I talked about in this case

7 is this police mentality. Why were they picking on

8 James Cleavenger?

9 Well, it starts because he had a different philosophy

10 about policing than they did. We've seen that in this case.

11 It starts with the Taser speech back in 2008. Lebrecht and

12 Cameron are old-school police. You do what you're told. This

13 is a paramilitary organization. That's their style. And you

14 saw it throughout this court. My client, they didn't like the

15 fact that he gave unnecessary warnings to college students.

16 They didn't like the fact he didn't cite people enough.

17 We heard a lot of officers, a lot of my client's fellow

18 officers, but when you look at who was the most impressive

19 person that testified in this courtroom as a police officer,

20 hands down, in terms of political philosophy as a police

21 officer, Chief Larson, from Coburg. What was his philosophy?

22 "We work with the citizens. That's the best way to take care

23 of them. If you arrest or give them a ticket, you do it with

24 dignity and respect." That's Chief Larson's philosophy, and

25 that's the philosophy that my client has as well.

1 Caring, protecting, serving people.

2 And you heard, Chief Larson said my client is

3 automatically disqualified on this *Brady*. He'll have to talk

4 to his city attorney. My client may not be able to remain as a

5 reserve police officer.

6 What's critical when you sort of analyze these two police

7 worlds? Not one discipline problem at one other department

8 except massive problems at the University of Oregon. When

9 you're weighing that fact, really let that sink in for a

10 minute. Something went wrong bigtime with how my client and

11 what he believed meshed with his superiors.

12 Let's -- I think this is critical. This is really

13 critical when you look at this case. Look at

14 Officer Kent Abbott. He's been there 30 years. Okay? He came

15 in -- how pained was he up there answering questions? "Ask it

16 differently," he kept saying. Remember? This is a guy who's

17 seen it all, but before he had to come in and testify with his

18 chief looking at him, before he knew he was going to do that,

19 he was interviewed back in 2012, and he was honest.

20 What did he say? What's the culture of the department?

21 Conservative, age discrimination, gender discrimination,

22 philosophical discrimination, not much respect for women

23 officers. Cameron, just an ass, condescending, discriminates

24 against women, belittles women officers; just flat out doesn't

25 trust him.

1 That's the real heart of this case. The people that get
 2 up on that stand and tell the truth versus the people that
 3 don't and the power dynamics. Kent Abbott, in a nutshell,
 4 personified that with what he said back in 2012, before he knew
 5 he was going to have to be up here telling the truth about what
 6 he believed about the department.

7 Think of the courage of all the people that are still at
 8 this department that came into this courtroom and told you the
 9 truth. Black. Royce Myers. Can we show 204? Michael Drake.
 10 This is critical. When you talk about punitive damages --
 11 Michael Drake was deposed. He was the only officer before this
 12 lawsuit -- before this courtroom, that testified on behalf of
 13 my client that was deposed in this case, and what happened
 14 after his deposition?

15 MS. COIT: Your Honor, I object. This is improper
 16 punitive damages argument. This is Michael Drake.

17 MR. JASON KAFOURY: Retaliation. It's in evidence.

18 THE COURT: This is not towards punitives. This
 19 would be your argument concerning credibility.

20 MR. JASON KAFOURY: Okay. So April 1, 2015, does the
 21 pattern of retaliation continue for speaking up in this
 22 department? Look at what it says in his annual evaluation
 23 given out shortly after his March 2015 deposition. "Michael
 24 needs to drastically improve in this area and immediately cease
 25 and all -- any and all negative and disparaging comments

1 regarding this department and any department employees.
 2 Failure to do so will result in further disciplinary action up
 3 to and including termination."

4 Is that a threat in an annual evaluation?

5 This case is important on many levels, but continuing
 6 retaliation is a big one to consider.

7 Let's go back to Tasers. I think this is really
 8 important. When you think about Tasers and my client's speech,
 9 remember this: People that have strong visceral feelings about
 10 something from back in 2008, that are still with them years
 11 later, that's a very strong emotional reaction. That's not
 12 something that goes away. Think of it as a seed that's planted
 13 and sprouts, as an analogy for how people feel about other
 14 folks first talking and saying what they believe. How many
 15 officers came in here and said they can't trust Officer Cameron
 16 and Officer Lebrecht? Many.

17 Now, this Taser speech was a huge deal. The --

18 Can you put up 235?

19 You'll have all the news articles back there. It's
 20 Exhibit 235. The chief of police at the time, Williams, said
 21 this whole debacle regarding Tasers, this was a huge thing on
 22 campus, a huge thing at this department, high profile, tons of
 23 media attention, going on for months. And James Cleavenger, as
 24 you'll see, is one of the chief spokes-folks interviewed in all
 25 these news articles.

1 Really, what this is, it's a story of power and authority.
 2 Cameron and other folks in the department wanted Tasers ; but,
 3 more importantly, they didn't want some law student getting out
 4 on his high horse telling them they couldn't have Tasers.

5 How do we know that's true? Well, what do we hear from
 6 Officer Nix and Royce Myers, the ones that were there in 2008?
 7 They said everybody was talking about James Cleavenger and that
 8 speech, but for -- remember what Myers said? Cameron was
 9 different. He just wouldn't let it go. For weeks, that's what
 10 he kept talking about; adamant that James Cleavenger didn't
 11 know what he was talking about when it came to Tasers. What
 12 did Nix tell us? Cameron took it personally -- he took it
 13 personally -- my client's stance on Tasers.

14 But Boyd said the chief was adamant he must be hired. Do
 15 you know who else was adamant? Cameron was adamant then that
 16 he should not be hired, and he told that to everybody. Think
 17 about how many witnesses said, "Oh, yeah, I remember Cameron
 18 said, 'James Cleavenger should never have been hired in this
 19 department.'" It's an us-against-them mentality. That's what
 20 you're seeing throughout this. James Cleavenger is over here
 21 because he doesn't believe police officers here at the
 22 department should have Tasers. He's not like the rest of us.

23 So let's look at the timing of all this as we go through
 24 the evidence. I told you timing is critical. My client is
 25 getting along with Lieutenant Lebrecht. He's getting along

1 with everyone in the department for the first six months as a
 2 full-time officer. No negative evaluations. Morrow says he
 3 has good judgment. Nothing is going wrong until Scott Cameron
 4 becomes his direct supervisor in October of 2011. Suddenly,
 5 everything changes, and it changes quickly.

6 Now, did my client do some shenanigans in those first six,
 7 seven months? Sure. He admits it. My client is a quirky guy.
 8 He did some weird stuff. But you know what? He cleaned it up.
 9 He didn't do any more shenanigans. There's no evidence there
 10 were any more shenanigans by my client after the first six
 11 months.

12 In fact, the weekly evaluations say he's cleaned it up.
 13 He's doing everything like the rest of the officers. That's
 14 the end of 2012 -- or the end of 2012. Evaluations.

15 But, yet, he's written up and given a letter of
 16 clarification for things including not shaving. Really? Does
 17 he deserve to have something put in his file that then goes
 18 into his letter of termination, which then gets put in the
 19 *Brady* materials, because he doesn't shave for three days? That
 20 just doesn't make any sense. Put your commonsense cap on.
 21 Something was going on in the minds of Lebrecht and Cameron to
 22 give him that letter of clarification.

23 Now, we know that my client stood up and went around
 24 Cameron and Lebrecht's back to ask for these training requests
 25 to Morrow, and we know that that displeased Cameron and

1 Lebrecht in early 2012.
 2 So let's look at the timeline of how quickly things happen
 3 at the beginning of April of 2012.
 4 Mr. Hess, 166. The first draft.
 5 This timeline, April 1 to April 2, is really critical to
 6 get the steps of what goes down here.
 7 So at 3:08 the first annual evaluation draft is sent by
 8 Cameron to Lebrecht. April 1st. Spencer View incident happens
 9 that night around 6:00. Then April 2nd, the next day -- first
 10 time I've ever seen this document -- a fifth copy of the annual
 11 evaluation. You see it on the board over there. I told you at
 12 the beginning there were four drafts. Suddenly, yesterday, we
 13 got handed a fifth draft, from April 2nd. And look at that
 14 email between Lebrecht and Cameron on 4/1, 4/2. Lebrecht is
 15 saying put more stuff in this evaluation. Look at that email
 16 from April 2nd.
 17 What else happens on April 2nd? Well, a letter of
 18 reprimand is sent by Scott Cameron to my client -- not to my
 19 client, sent to -- the draft -- before there's allegedly
 20 anything my client says that was inaccurate about Hermens' car,
 21 all that, April 2nd, a letter of reprimand with a laundry list
 22 of issues is put in.
 23 What else happens in that first week in April? Before my
 24 client has ever met with Cameron and Lebrecht to discuss the
 25 Spencer View incident, what else has happened? HR is involved.

1 Drafts are being put together. Meeting with Randy Wardlow.
 2 Lebrecht said there was a meeting with Randy Wardlow before
 3 April 7, 2012. Something is going on here. Things are
 4 happening really quickly, and it's against my client.
 5 What else do we know? Exhibit 280.
 6 I showed you this yesterday. 31. This is on
 7 April 23rd -- April 27th. I'm sorry. April 27th
 8 Lieutenant Lebrecht sends to a psychologist -- Morrow sends it ,
 9 but Lebrecht tells him what to put in it. But they send it to
 10 a psychologist and say my client is deficient in 31 of 37
 11 categories. Are you kidding me? Academic learning problems?
 12 Really? Talk about bad faith.
 13 So weeks go by. Then my client is suddenly reassigned.
 14 His job duties are taken away, and he is put on a letter of
 15 reprimand. All that happens within those weeks.
 16 We have seen this a lot, that the defense has attacked
 17 James Cleavenger's character in a whole variety of ways
 18 throughout this trial, and I want to respond to a few of them
 19 before we go through the rest of the timeline here.
 20 In 2012 did my client act defensive when he was brought
 21 into meetings? You bet he did. When you feel like you're
 22 being retaliated against and you feel like you're being singled
 23 out and nobody else is getting called into the office to talk
 24 about things, you're going to be defensive and you're going to
 25 get angry sometimes about being retaliated against.

1 He didn't feel like he was being treated like everybody
 2 else. And there's a power dynamic here. His superiors are
 3 looking for things to go after him on.
 4 Now, defense counsel played a bunch of audio clips in the
 5 last few days from meetings with my client. What is important
 6 about those? People, when they know they're being audio
 7 recorded, don't put their retaliatory intent into audio
 8 recordings. Okay?
 9 What is real evidence is what they said at the time and
 10 what they did. Look at that when you're trying to debate what
 11 was going through their minds.
 12 My client has got this huge ego. He's always right;
 13 smarter than everybody else. We heard from so many witnesses
 14 that have worked with my client. None of them that know him
 15 well testified that that is the kind of person he is.
 16 You got to see him for a day and a half on the witness
 17 stand. He, just as all the folks talked about him, is a nice,
 18 caring, thoughtful guy. Did he think that this department was
 19 a bit of a Mickey Mouse operation? Well, this is a guy who is
 20 really energetic, who really wants to get out there and work
 21 and doesn't want to waste time. That's pretty clear from his
 22 statistics. We're going to go through those in a second.
 23 He shows up at this department and he's put on a graveyard
 24 shift, and what do they do? They sit around for hours,
 25 throwing people on a bowl of dicks list.

1 He didn't take his job seriously. That's one of the
 2 themes. Sure. He had a few pranks, but let's look at his
 3 stats. Exhibit 33. You'll have the full -- they -- defense
 4 counsel questioned, "Oh where did those stats come from?"
 5 These were stats discussed with Cameron. They had this since
 6 Cameron was talking about his annual evaluations. Look at the
 7 comparators of his statistics and how much he did throughout
 8 that eight-month period, after his training, up until the end
 9 of his annual evaluation period. March. 1,700 initiations --
 10 officer-initiated activities. 224 subjects contacted. 147
 11 police reports written. You know, the truth is this guy would
 12 have been valuable at their department -- he worked hard and he
 13 wrote a lot of stuff -- if they ever would have given him a
 14 chance and trained him correctly.
 15 The other thing we've seen throughout this case, defense
 16 counsel keeps pointing out all their witnesses say, "Boy,
 17 you've got to be ready for anything. Someone could get shot.
 18 This is a dangerous place."
 19 Ladies and gentlemen, this is not Chicago. This is the
 20 University of Oregon. There are mostly students that they are
 21 dealing with on this campus. He's working graveyard. 11:00 to
 22 7:00. The vast majority of his contacts are going to be young
 23 people, sometimes drunk and inebriated. These are our kids,
 24 our college kids. We don't need a paramilitary force on
 25 campus. We need people looking out for the students.

1 Now, you saw a lot of videos of my client, a lot of
 2 nitpicking of various things. We don't get to go look at every
 3 video of everybody else out there. But when you're back there
 4 talking about officer safety issues and the videos of my
 5 client, take a deep breath and say, "Let's watch Zach Hermens
 6 video again." This guy -- is that the least safe thing you've
 7 ever seen? He's told the guy has a knife. He's told the guy
 8 has robbery -- he's a robbery suspect. He comes into that
 9 video, grabs at the guy while the guy is smoking a cigarette,
 10 and then goes on a four-minute run around the parking lot
 11 spraying pepper spray everywhere. What happens at the end of
 12 the video? He doesn't even catch the guy. He doesn't even
 13 stop him from smoking. The guy gets on his bike, still smoking
 14 a cigarette, and takes right on off.

15 All the videos of my client that you saw, he might have
 16 been lighthearted at moments, he might have joked around with
 17 people, but did you ever see anything unsafe like that Hermens
 18 video? I mean Hermens really could have gotten killed by a guy
 19 with knife.

20 Hermens has been there 10 years. Hermens is now a police
 21 officer. He now carries a gun at that department. Let that
 22 sink in.

23 One other big picture theme: Think about how many times
 24 in this case we've had accusations thrown out by the defense
 25 without any paper to back them up. So when you go back there

1 look at the paper we have, look at what they accused him of
 2 back then, look at what's in his termination letter. Not what
 3 over three weeks and years they pulled to attack my client on
 4 every piece. Because back then the things they put in their
 5 documents that they disciplined him for, that's why they
 6 terminated him.

7 They brought in -- they brought in Chief Chase.
 8 Chief Chase attacks my client's credibility. Are you kidding
 9 me? He has 11 accusations of misconduct within his own
 10 department, and he's suspended for six months, and that's who
 11 they bring in -- the one officer from another department -- to
 12 attack my client's credibility? You heard from the union
 13 president chief is -- Chief Chase is not honest, and he feared
 14 retaliation coming in and telling you that.

15 Let's talk about Spencer View for just one moment. We
 16 noticed a theme in this case. The defense wants to make this
 17 whole case about the loaded-gun incident and not Spencer View.
 18 You know why? It's pretty obvious from any angle you look at
 19 it, Spencer View was not a big deal. Cameron's and Davis' cars
 20 were within view. Both people called. There was no element of
 21 surprise involved. James admits, yeah, I got that wrong at the
 22 meeting about where Hermens' car was. He actually -- my client
 23 actually goes back out to Spencer View that night and deals
 24 with the same people. And you know what happened the next
 25 morning? My client was called and said -- the lady he went

1 there and dealt with for hours at Spencer View said, "Thank
 2 you. You're the first officer who's ever treated me like a
 3 human being."

4 This is the incident he's fired for? How else do we know
 5 that it's just not a big deal? They're there hundreds of
 6 times. Look at the document on Spencer View. There's hundreds
 7 of visits to Spencer View. Okay? Five weeks earlier my client
 8 just happened to find, throughout this process, a video, the
 9 exact same noise disturbance at the exact same apartments where
 10 Phillips and Hermens report. What do they do? They pull right
 11 up to the front door. Way more dangerous than parking down the
 12 street.

13 They say it -- defense says, well, no, the letter of
 14 reprimand was really about him being untruthful. Really?
 15 Well, then why was the letter of reprimand drafted on
 16 April 2nd, before you even met with him to discuss it? And if
 17 they wanted to have a fair meeting -- if they want to have a
 18 fair meeting, they should have said, "Let's go review the dash
 19 cam videos. We've had the technology for months. Before you
 20 make statements about where cars were, let's sit down and go
 21 through this." So if they wanted to be fair, that would have
 22 been the fair way to do it. Not interrogate him, get answers
 23 about things, and then use it to call him a liar down the road.

24 Loaded-gun incident. What do we know for sure about this?
 25 Well, she's got -- she's certified to carry a concealed weapons

1 permit. Number two? Incredibly unusual situation. No good
 2 options, like James Cleavenger tells us. What is critical,
 3 though, about this incident? He's trying to help her.
 4 Everything he did, there was a scary guy after her, stalking
 5 her. She's got all of her possessions in a trailer.

6 They now want to say that this is the reason that he's so
 7 unsafe.

8 Well, they didn't interview Zach Hermens at the time that
 9 this happened, and Zach Hermens was honest in his deposition at
 10 first. He said, "Yep, what happened when we got -- when I got
 11 there, James Cleavenger told Scott Cameron she had a gun."
 12 That's what he said in his deposition. Well, then we take a
 13 break, and that needs to get fixed, so we come back and
 14 suddenly it's, "No, there was a second get-together where that
 15 happened."

16 You know what's funny about that second get-together that
 17 they supposedly do?

18 Can you put up, Mr. Hess, Exhibit 234?

19 It's after my client's shift is over. And do you know who
 20 didn't testify that there was a second get-together where this
 21 happened? Sergeant Cameron. He was here yesterday. Did he
 22 say, "Oh, no, that loaded-gun incident, we had a second meeting
 23 with us after she had been dropped off and that's where Hermens
 24 said that"? No. It's not easy to keep your story straight
 25 when it's a story.

1 Let's think about this from my client's point of view. He
 2 knows he's being written up and he knows he's being
 3 investigated for Spencer View. He knows his superiors have it
 4 out for him. Why on earth would he bring Cameron all the way
 5 out there, into this very well-lit parking lot, and not say --
 6 which unfortunately we don't have on video. We don't have the
 7 audio or video of that first interaction with them, with
 8 Cameron there, but why would he not say, "Hey, you okay if I
 9 give this lady a ride? She's got a concealed weapons permit
 10 here."

11 They don't want to talk about Spencer View, because, A, it
 12 was turned over by the arbitrator. They found that -- the
 13 arbitrator found that my client did something wrong, but did
 14 not find he was lying and was not -- did not merit termination.

15 I have to move quickly here because we only have an hour
 16 and a half. The IA stops, the dean, and -- and the young gal,
 17 Madeline Egan. What do we know about this? Number one, again,
 18 my client is acting trying to keep people safe. One person is
 19 running a stop sign in an area where people ride bikes a lot.
 20 He gives her a warning. The dean had bad tags. She's driving
 21 erratically. You guys be the judge of that video, but she goes
 22 left and then goes right and accelerates quickly. He doesn't
 23 know who she is. He has no idea at that moment who she is.

24 But when you think about this case, ask yourself, do those
 25 two stops, do they merit a 175-page internal affairs

1 investigation for two women that never filed a complaint and
 2 they had to go dig to find -- Lebrecht had to go dig through
 3 videos to find these incidents to then start investigations.

4 And what else? Morrow concludes officers were doing
 5 traffic stops. It was happening -- 243 times this was
 6 happening. There was no written policy about traffic stops, no
 7 written policy about this audio recording. And Bechdolt told
 8 us, yes, a public safety officer has a right to stop people for
 9 anything in the ORS statute book. That's their own witness.

10 The bottom line is this department wants to blame my
 11 client when they don't have written policies and they don't
 12 train him effectively and now they want to say that he's unsafe
 13 and doesn't do his job right about all these incidents, and
 14 they don't look up anybody else.

15 One note I will give you -- defense has a new exhibit that
 16 they got. My client did send a draft of the letter to the
 17 district attorney to Corey Mertz. Corey Mertz said he had
 18 taken a draft of it. He got a draft from my client. And
 19 you'll see that. That's after the *Brady* materials. It doesn't
 20 relate to retaliation. Corey Mertz got that wrong.

21 So let's go through the timeline really quickly. My
 22 client meets June 1st. He's under secret investigations. He
 23 doesn't know what they're about. He doesn't know who's doing
 24 them. There's two of them. You bet he's going to go to that
 25 chief on June 1 and say this is a violation of my state public

1 safety officer rights. You bet he would do that. He wants to
 2 know who's doing this. Look at how hard he worked through that
 3 time period.

4 Number two: The Public Safety -- the Public Officer Bill
 5 of Rights says he's got a right to record interviews.

6 He's not allowed to record most of those interviews that
 7 he goes through over that summer.

8 The August 13th meeting. Think of the timing of this
 9 meeting with the chief. He knows he's being retaliated against
 10 by superiors. He knows he has very secret investigations. He
 11 knows he's going out of town for two weeks. He knows he's been
 12 reassigned to parking duties. He believed in the chief at this
 13 moment. He really did. He thought she was sympathetic to his
 14 cause. He cried in that meeting. He told you he hadn't cried
 15 in years.

16 The chief has no memory of tears. She doesn't know where
 17 her notes are; thinks she destroyed them. Then she brings some
 18 note she finds right before this trial, from that meeting.
 19 Critical meeting. My client told you he told her about wasting
 20 time, the briefings, the bowl of dicks, the overcharging of the
 21 students, that he felt like he was being retaliated against
 22 about his beliefs on Tasers. He told you all that stuff that
 23 he told the chief.

24 Now, why is the timing of this important? He comes back
 25 and suddenly, September 7th, he's brought into a meeting with

1 Lebrecht and Cameron. In that meeting he is told explicitly,
 2 "You will not report any crimes unless they're felonies."

3 What do we know about that order? It's illegal. A public
 4 safety officer can't be told -- he's been working regular
 5 events for them all summer. The Olympics. Football games.
 6 He's being told now, "You can't report anything but felonies."

7 So he starts sending emails. His emails -- and the
 8 timeline on this is critical. September 7th he's given that
 9 order. September 10th he puts it in writing back to them,
 10 "Please confirm. This is my understanding of what I've just
 11 been ordered to do."

12 No response. They won't respond in writing.

13 What happens next? September 18th his union steward sends
 14 an email to Wardlow HR and the chief: Please confirm in
 15 writing my client was given this order. They won't respond.

16 And Lois Yoshishige says in that email, "I want a response
 17 by September 21, in writing, that that is the order that was
 18 given."

19 What happens on September 20th? He's given his
 20 pre-dismissal administrative leave.

21 Think about the timing of all of this. They say, "Oh, we
 22 wanted to retrain him. That was our plan." Well, he speaks up
 23 to the chief and lays out some things about what's really going
 24 on. Then he's given an order. Then he's obviously causing
 25 trouble, saying, "You're giving me an illegal order." He's

1 putting it in writing. Does that fit with the timing of,
 2 "Okay, it's now time for James Cleavenger to end his employment
 3 here at the department!"?
 4 How do we know these problematic callouts were just
 5 another piece of paper for the file? Andy Bechdolt
 6 investigated them. He said at the arbitration, he said at his
 7 deposition, and he said here in court he didn't find anything
 8 wrong with these callouts. The guy from their own department
 9 who investigated them.
 10 He has a meeting with Brian Smith on October 2nd. My
 11 client obviously at that meeting laid it all out. And we just
 12 heard from the chief today. She said she talked to Brian Smith
 13 after that October 2nd meeting. What do you think they talked
 14 about that my client laid it all on the floor for an hour for?
 15 He tells it to Linda Smith {sic} in his predismissal hearing.
 16 And then he's terminated.
 17 I want to talk just for a couple of minutes about how this
 18 has impacted my client. In terms of his economic damages, what
 19 do we know for sure? He has a job for at least a year and a
 20 half as a law clerk. It's really clear he's not going to work
 21 in law enforcement anymore. Once you've been *Brady*-listed,
 22 nobody is going to hire you. We've heard from many, many
 23 officers who all agreed with that. We don't know what's going
 24 to happen with him down the road, but I'll tell you this: You
 25 eight people are the only jury that will get to hear his

1 economic damages in relation to this First Amendment claim, and
 2 I am certain that this is going to be a tattoo on him, marked,
 3 this *Brady* listing, for the rest of his life.
 4 What else do we know? He's lost his dream of being a
 5 police chief. That's for sure. How else has this impacted
 6 him? Well, he used to be a really fun guy. He used to be
 7 outgoing. He used to be the life of the party. He was
 8 charismatic, energetic. He used to organize things, huge
 9 outdoor activities, camping trips. His dad -- his dad came
 10 into this courtroom and told you 12 to 20 times a year they did
 11 outdoor stuff together. He's barely seen his son in the last
 12 few years. This has completely and utterly consumed my
 13 client's life. Completely. It's a nightmare. It's an
 14 absolutely nightmare.
 15 He's obviously in and has been very depressed about it.
 16 We heard from some of his friends and colleagues. He's gotten
 17 a little bit better recently. He still doesn't go to lectures
 18 and movies. He even had nightmares where Lebrecht and Cameron
 19 were trying to kill him.
 20 Ten years from now, this is all going to be a distant
 21 memory for us, but not for him. He is going to remember this
 22 day for the rest of his life. This decision. This trial.
 23 These people, by *Brady*-listing him, have changed the arc of his
 24 life. It's not the same anymore. And you're the only one with
 25 any power to do anything.

1 Punitive damages. We've heard some really disturbing
 2 things about this department in the last three weeks. Let's
 3 look at Casey Boyd's story. Toxic place. Full of fear.
 4 Dysfunctional. Hours to burn on bowl of dicks list. Lebrecht
 5 and Morrow working together on IA with McDermid to ruin her
 6 career. You know what's amazing about her story? You don't
 7 normally have people that knew the playbook. She did it with
 8 McDermid and Tripp for years. She got rid of close to a dozen
 9 people in that department. She knew how they wrote people up,
 10 and then they flipped the script on her when Lebrecht got
 11 there. Remember her phrase for the place? It was a pack of
 12 wolves. She told you she feels bad for all the families she
 13 hurt, all the people she ran out of there.
 14 What did they get rid of her for? Her son stood on the
 15 dugout of a baseball game? She bartered with somebody over \$5
 16 for a T-shirt. Read her 119. Have you ever seen a bigger load
 17 of nonsense for getting rid of somebody? You saw her. She got
 18 emotional in this courtroom.
 19 Is wasn't mean enough or spiteful enough to get rid of
 20 her. Two years later, a week after the event, they trespassed
 21 her husband for 18 months from the entire campus. You know the
 22 sad part about it, though? McDermid used to call Boyd her
 23 superwoman. Suddenly, McDermid and Lebrecht crush her.
 24 Morrow's IA investigation gets rid of her. Does that script
 25 sound familiar to you?

1 What's left at this department? There are no female
 2 officers left. In opening, defense counsel said McDermid was
 3 very concerned about the female student that my client stopped
 4 on 4/2. How concerned was McDermid when the first complaint of
 5 sexual harassment against Cameron came in? How concerned was
 6 she on the second one? How concerned was she on the third one?
 7 The guy was there for five years. Four allegations of sexual
 8 harassment. What's going on at this department, ladies and
 9 gentlemen? It's got serious problems -- this department does.
 10 It's clear.
 11 If you feel in the last three weeks that what you've heard
 12 about this department is unacceptable and its leaders, if you
 13 don't think that they're leaders of a public institution and
 14 this is the way they should act, only you can let them know
 15 with your verdict. I can tell you this right now. Chiefs of
 16 police around this state, good and bad, are watching this.
 17 Honorable officers around this state are watching this. The
 18 media is watching this. The community is watching. As jurors,
 19 you have the power of a thunderbolt but the lifespan of a gnat.
 20 I suggest you use your power wisely.
 21 THE COURT: We're going to take a recess, then, for
 22 15 minutes or so. Would that be acceptable? I'll let the
 23 party get prepared for their argument. Please don't discuss
 24 this matter. Don't even form or express an opinion. Thank
 25 you.

1 Christy, please take the jury out.
 2 (Jury not present.)
 3 THE COURT: Counsel, I think it might be wise if --
 4 when you finish your arguments tonight, if I leave a discussion
 5 of the verdict form until tomorrow morning at 8:00 when they
 6 come in, and the reason for that is it's a nice bookend. It
 7 ties together the instructions today, which is a long time ago
 8 in their mind after your arguments. And by going over the
 9 verdict form, it shows them what they have to respond to. Or I
 10 can do that tonight. So I'll seek the wisdom after your
 11 argument. Go prepare for your argument, and we'll see you in
 12 15 minutes.
 13 (Recess taken.)
 14 (Jury present.)
 15 THE COURT: We're back in session. Counsel are here.
 16 Parties are still present. Counsel's concluding argument. You
 17 can argue from the lectern if you want to or from the table.
 18 MS. COIT: What?
 19 THE COURT: You can argue from the lectern if you'd
 20 like to or the table.
 21 MS. COIT: Okay. Thank you.
 22
 23 DEFENDANTS' CLOSING ARGUMENT
 24 MS. COIT: Good afternoon, ladies and gentlemen.
 25 A JUROR: Good afternoon.

1 MS. COIT: Before I talk to you today about the
 2 evidence, I think you should pay attention to, in this case --
 3 I think I'll start by talking about evidence I don't think
 4 warrants your attention.
 5 The first thing I want to start with is the exhibit that
 6 was entered into evidence today. You haven't seen that
 7 document yet, so I'm going to give you some context.
 8 Mr. Cleavenger put his best friend, Officer Corey Mertz,
 9 from Junction City, on the stand first week of trial. He put
 10 him on the stand to testify to you about a letter that
 11 Mr. Mertz, Acting Chief Markell, and Brandon Nicol submitted to
 12 the district attorney in response to the district attorney's
 13 request for information from Junction City. Mr. Cleavenger put
 14 his friend Officer Mertz on the stand, to tell you that he read
 15 that letter, he felt it was incorrect, he did the research, and
 16 he sat there all day with Sergeant Markell and typed that
 17 letter up.
 18 Now, I asked Officer Mertz on the stand if Mr. Cleavenger
 19 wrote what letter, and he said, "No, he didn't." And I said,
 20 "Did he send you a document to look at while you wrote the
 21 letter?" He said, "He might have. He might have sent me an
 22 email that had an outline of dates, but that's it. He did not
 23 send me anything of substance." That's what he told you.
 24 That's what Mr. Cleavenger put him up there to tell you.
 25 He said, "I sat there with Sergeant Markell all day. We wrote

1 that letter. I did the research, and then we sent it to the
 2 district attorney."
 3 After Officer Mertz testified, we asked Chief Chase to
 4 look into that Junction City email account that Officer Mertz
 5 told you there may be a document still in.
 6 Chief Chase found this email from Mr. Cleavenger. It's
 7 dated August 13, 2014. The day before the information was sent
 8 to the district attorney on behalf of Junction City.
 9 He says in this email -- and the exhibit number is 432.
 10 I'm not going to read it to you, but he basically says: U of O
 11 sent in this -- he calls it a bunch of crap -- to the district
 12 attorney. It's full of lies. I need somebody on my side.
 13 Here is a draft of what I want you to send. You don't have to
 14 do it, but you know what? I would do it for you.
 15 And attached to that email is the draft -- this is what
 16 Mr. Cleavenger sent to Officer Mertz. And this, ladies and
 17 gentlemen, is document 172, the document Mr. Cleavenger put his
 18 friend on the stand to tell you he did -- he wrote all by
 19 himself. You can compare the documents. They are almost
 20 identical.
 21 Mr. Cleavenger has told you a number of things in this
 22 case that do not warrant your belief or your trust. He
 23 advised -- he told you that he advised Sergeant Cameron the
 24 day -- the moment he called and said, "Can I give this woman a
 25 courtesy transport," he said he told Sergeant Cameron again,

1 "This woman is carrying a loaded gun," and Sergeant Cameron
 2 said, "You have to take her. Give her that transport." But he
 3 said you couldn't hear that part of the call because it was on
 4 unrecorded line 3. Mr. Cleavenger forgot, again, that his dash
 5 cam was recording that entire time. You heard the entire
 6 conversation he had with Sergeant Cameron. He did not tell him
 7 that that woman was carrying a loaded gun. Sergeant Cameron
 8 did not tell him to transport a woman with a loaded gun.
 9 That's Exhibit 351G.
 10 Mr. Cleavenger put in his lawsuit and he testified to you
 11 in this trial that Federal Judge Ann Aiken was on this list.
 12 Every officer, with the exception of Michael Drake,
 13 Mr. Cleavenger's other friend, testified that they did not even
 14 know who Ann Aiken was before this lawsuit was filed.
 15 Officer LeRoy sat on that stand under oath. He's a police
 16 officer now. He has everything to lose by lying under oath.
 17 He sat up there and he told you he didn't know who Ann Aiken
 18 was before this lawsuit was filed. He never removed a person
 19 from that list other than Doug Park. That's what he told you.
 20 He told you Mr. Cleavenger never saw his phone, never asked him
 21 if Ann Aiken was on that list. Mr. Cleavenger worked for the
 22 other federal judge. He thought Ann Aiken was going to hear
 23 this case.
 24 Mr. Cleavenger told you for the first time ever in this
 25 case here that he was assaulted by Brandon Lebrecht in the

1 hallway after a briefing. All these other officers milling
2 around. Now he says, "I didn't say I was assaulted. I said I
3 was poked in the chest." He's a lawyer, ladies and gentlemen.
4 The definition of criminal assault is a physical, offensive
5 touching. That's what he's complaining of. Yet, he forgot to
6 put that in his 50-page lawsuit? Not one person testified that
7 they witnessed this poking, this assault.

8 Sergeant Cameron testified he was with Lieutenant Lebrecht
9 when they left that briefing. They went directly to his office
10 and they talked in his office on separate sides of the desk
11 about the briefing. Mr. Cleavenger tried to make -- say that
12 there was offensive joking going on in briefings about sending
13 your daughter to Occupy camp to get raped.

14 Nobody testified that there was ever a rape joke going on
15 in these briefings. Sergeant Cameron explained to you what was
16 said. One of the officers was upset because somebody's
17 daughter was sexually assaulted at that camp. He was voicing
18 his concern and said something to the effect of, "Why would you
19 send your 16-year-old daughter to Occupy?" Sergeant Cameron
20 testified there was no way you could interpret that as a joke.
21 Yet, when Mr. Cleavenger is trying to make this lawsuit a
22 little more salacious, he put that in there.

23 He even changed his testimony towards the end, when the
24 poking wasn't working, to say that that was an example of
25 Lieutenant Lebrecht taking a joke too far.

1 Lieutenant Lebrecht wasn't even there when that statement
2 was made.

3 Mr. Cleavenger told you, "I never ate lunch at the
4 Occupy." Not a big deal, but the fact of the matter was when
5 he called out that he was eating lunch at Occupy, he was called
6 on it by his supervisors, and he told them he wasn't doing it.
7 That's why he had to keep up this lie about "Never ate lunch at
8 Occupy." He wouldn't have gotten in trouble for that. But,
9 again, he comes into this court and he tells you it didn't
10 happen because my lunch was at 3:00 and nobody can prove that
11 they were serving lunch at 3:00 at the Occupy.

12 Well, Officer Phillips came in and he told you he saw
13 Mr. Cleavenger eating the plate of food. Mr. Cleavenger told
14 him, "Got it from the Occupy. Go get you some if you want."
15 Officer Phillips is a police officer. If he lies on the stand,
16 he loses his job as well.

17 Mr. Cleavenger testified that it was Cameron who
18 strong-armed him into giving this woman in the parking lot, who
19 lost her phone, into writing her a ticket for disorderly
20 conduct, and Officer Cleavenger stood up to Sergeant Cameron ,
21 and said, "I'm not going to do it."

22 You heard in the audio yesterday. The audio of the
23 meeting with -- was Sergeant Cameron and Mr. Cleavenger.
24 Mr. Cleavenger expressly stating, "It was Officer Drake who
25 wanted me to do that." It wasn't Sergeant Cameron.

1 Sergeant Cameron says, "Well, I understand you standing up to
2 Drake." Sergeant Cameron wasn't even there.

3 Mr. Cleavenger testified that he was never talked to about
4 the Whitney Harder incident until this lawsuit came about. He
5 said we made that up.

6 Well, you saw Lieutenant Lebrecht's report. You heard
7 Lois Yoshishige, his union steward, say, "Yep, we talked about
8 it in a meeting with Lieutenant Lebrecht twice." You heard
9 Lois Yoshishige also say that Mr. Cameron talked to her about
10 this and told her he didn't think he had done anything wrong.

11 Mr. Cleavenger also said he was never talked to about this
12 Spencer View call until he was dragged into a surprise meeting
13 on April 7, 2012. We showed you Sergeant Cameron's notes. He
14 testified he came back to the department; he met with
15 Mr. Cameron -- Mr. Cleavenger that night. He prepared those
16 notes, and he sent them in an email to Lieutenant Lebrecht.
17 You saw the email. The sent and the receive date was on there.
18 He was talked to about that. He knew there was going to be a
19 meeting coming.

20 And then this August 13th meeting he claims he had with
21 Chief McDermed. We agree there was a meeting. But
22 Mr. Cleavenger claims it was the meeting where he let the cat
23 out of the bag. This is the one where he sat down with her and
24 spilled everything. He told her about this bowl of dicks list.
25 He told her about wasting time; that his supervisors were

1 harassing him.

2 Well, you saw the email. That's Exhibit 423. Over a
3 month later he sends to his union steward and says, "Are you
4 sure you want to let the cat out of the bag on this bowl of
5 dicks thing?" That never happened in the meeting with
6 Chief McDermed. She told you what happened in that meeting.

7 We also saw the email from Mr. Cleavenger. On October 1,
8 2012, two months after he says he spilled the beans to
9 Chief McDermed, this one he says, "Nobody but you three, my
10 union stewards, have any idea I'm being harassed by my
11 supervisors." Earlier in that chain his other steward,
12 Donna Laue, says, "Is this the time we're finally going to talk
13 about Lebrecht's football tapes? Wasting time about the bowl
14 of dicks list?" They even say the bowl of dicks phrase. It
15 wasn't even determined to be a list by Mr. Cleavenger.

16 This was October 1st he's writing this to his union
17 stewards. The people he's supposed to be telling everything
18 to. Lois Yoshishige testified he never came to her and told
19 her, "Oh, by the way, I went to Chief McDermed and I told her
20 everything." He never told her that because it didn't happen.

21 Mr. Cleavenger testified that he accepted this offer of
22 retraining. He was all ready to do it and we revoked it. We
23 took it off the table without telling him why. You saw the
24 email from Lois Yoshishige to Randy Wardlow. They declined the
25 training offer. They said, "We will do what we're ordered to

1 do." That is not the person that you think is now going to be
 2 receptive to your teaching and your training. He is going to
 3 do what he's ordered to do, but "I'm going to keep fighting
 4 you." Again, he's a lawyer. That's a rejection.

5 Then the whole issue of the recording -- the advising of
 6 the audio recordings. I cannot tell you, standing here today,
 7 after three weeks of trial, what position Mr. Cleavenger is
 8 taking on whether or not he knew he had to advise of
 9 recordings. He told Mike Morrow, "I always -- it's part of my
 10 initial introductory comments. I always tell them I'm
 11 recording."

12 Well, that proved not to be true when Lieutenant Lebrecht
 13 did the performance review and there were 27 examples of him
 14 not recording. So then, when we got to the arbitration and
 15 this issue of failure to record came up, his testimony then
 16 changed to "Well, Lieutenant Lebrecht didn't train me on it, so
 17 I didn't know I had this obligation to record."

18 Again, I'm not sure what position he's taking here today,
 19 but it has not been consistent. The fact remains he advised
 20 sometimes that he needed to -- that he was recording. He knew
 21 what the law was.

22 Mr. Cleavenger testified and he put in his lawsuit some
 23 hateful things about Lieutenant Lebrecht. His -- his position
 24 on politics and the statements he -- he made to him. He
 25 testified in this court to you that Lieutenant Lebrecht

1 harassed him continually by disparaging liberals and Democrats
 2 to get at him. Every single officer who came in here and
 3 testified, including Mr. Cleavenger, told you nothing
 4 Lieutenant Lebrecht ever said about politics could be
 5 interpreted as anything other than a joke.

6 Mr. Cleavenger told you he would never disparage females
 7 and he made complaints to others about disparagement of females
 8 in the department. You heard him on two separate occasions
 9 talking about the drunken stripper. You heard Officer LeRoy
 10 tell you that Mr. Cleavenger jumped out from behind the bushes
 11 and did hip thrusts at some young female students. You heard
 12 Officer Hermens tell you he stood up on a table and was doing
 13 the same thing towards students. He's complaining about things
 14 when he thinks it fits the moment.

15 And then, finally, and I think most -- well, almost most
 16 disturbing to me is throughout this lawsuit he has attacked
 17 Lieutenant Lebrecht. He sent an email to the DA, and he admits
 18 to this, that this email -- it calls him the most vindictive
 19 person he's ever met. It says he's a liar and he's
 20 untrustworthy. Lieutenant Lebrecht is a police officer. This
 21 is a district attorney in the county that he works in. He's
 22 putting this information out to that district attorney and the
 23 entire office. But then we get here and he tells you on the
 24 stand, "Well, I -- I guess I made a mistake. I didn't have all
 25 the information when I made that statement, so I take it back.

1 I don't really think those things about Lieutenant Lebrecht."

2 Well, you know what? The damage is done.

3 I asked him, "Have you told the DA that you no longer
 4 believe this about Lieutenant Lebrecht?" And he says he's
 5 going to when this lawsuit is over.

6 That's not enough.

7 So why do I tell you all this? I tell you this first
 8 because it's important for you to know and to understand that
 9 Mr. Cleavenger has not been forthright with you throughout this
 10 trial. He has put on evidence that he knows -- he knew it was
 11 false. He put on a witness to lie to you. And he himself has
 12 manipulated the facts. There's always a tiny bit of truth in
 13 what he says. But he manipulates the facts to fit the claim
 14 he's trying to prove.

15 If he's not telling you the truth about what he -- what --
 16 these things I've just talked about, you cannot trust the other
 17 things he's told you in this case.

18 So let's move on to what I do find is worth your attention
 19 in this case.

20 Despite what Mr. Kafoury keeps arguing, I just want to
 21 remind you that opening statements and closing arguments are
 22 not evidence. You sat here and you heard all the evidence that
 23 came in through the witnesses and the documents and the audio.
 24 That's the evidence. But let's look at what I told you three
 25 weeks ago.

1 First, I said that Mr. Cleavenger came into this job
 2 believing it to be a Mickey Mouse operation. Michael Drake,
 3 his -- one of his best friends and his field training officer
 4 told you that that, in fact, was true. He thought it was a
 5 Mickey Mouse operation. This was a stepping stone until he
 6 could find a real job.

7 His wife, Chelsea Brandenburg -- his ex-wife -- testified
 8 that that was the discussion that she had with Mr. Cleavenger
 9 prior to him starting work there. This wasn't an opinion he
 10 gave once he came and sat through briefings, as Mr. Kafoury
 11 tried to tell you. This was his opinion coming in. He looked
 12 at this as a Mickey Mouse operation and a stepping stone to get
 13 where he wanted to go.

14 I told you the evidence would show that Mr. Cleavenger did
 15 not take his job seriously and that he did not respect
 16 Sergeant Cameron and Lieutenant Lebrecht.

17 Again, both Mr. Drake and Chelsea Brandenburg confirmed
 18 that. Mr. Drake testified during field training, his first six
 19 months working at the department, they would sit around and
 20 make fun of Lieutenant Lebrecht and Sergeant Cameron.
 21 Chelsea Brandenburg testified that Mr. Cleavenger did not
 22 respect Sergeant Cameron and Lieutenant Lebrecht and both of
 23 them told you that Mr. Cleavenger thought he was smarter than
 24 them. Officers Black, Hermens, LeRoy, and Phillips all told
 25 you that Mr. Cleavenger's antics went too far.

1 Mr. Cleavenger testified that this ninja incident when he
 2 snuck into the restaurant with a machete down his back,
 3 everybody laughed. Nobody here who came and testified about
 4 that told you they laughed. They were mortified.
 5 Lieutenant Bechdolt even told you that he was embarrassed
 6 by the game day antics.
 7 I told you that the evidence would show that it was
 8 Mr. Cleavenger's lack of respect for the job and for his
 9 supervisors. His inability to accept feedback and to accept
 10 that sometimes he did not have all the answers, it was that
 11 inability that would prove to be his downfall at the
 12 university.
 13 I told that you his ego held him back. By saying that, I
 14 never meant to claim that he walked around acting as if he was
 15 better than other people. What we meant by that is his ego
 16 shows itself in his inability to understand that he's the new
 17 guy. He doesn't know the right way to do everything, and he's
 18 coming in at the bottom of the totem pole. There are people in
 19 place who are there to teach him, and he needs to learn from
 20 them. He needs to be able to acknowledge the fact that he
 21 makes mistakes and to learn from them. Not everyone is picking
 22 on him all the time.
 23 The evidence showed numerous and inconsistent -- excuse
 24 me, numerous and consistent instances of unsafe behavior.
 25 Specific examples were given by many of his co-workers. You

1 heard discussion on audiotape. You saw videos of numerous
 2 examples of the kind of safety concerns that were going on at
 3 the department with Mr. Cleavenger.
 4 The evidence supported the defendants' positions that they
 5 have taken all through this case that the problem they
 6 encountered with Mr. Cleavenger was figuring out a way to
 7 correct his unsafe behavior when he refused to acknowledge that
 8 it even existed.
 9 To this day, Mr. Cleavenger still claims he did nothing
 10 wrong at Spencer View. Everyone agrees him driving in front of
 11 the apartment was not a huge deal, but everyone else, other
 12 than Mr. Cleavenger, agrees that it's an unsafe act.
 13 Lois Yoshishige testified that to this day Mr. Cleavenger
 14 does not believe that transporting Whitney Harder in the back
 15 of his car with a loaded gun was unsafe.
 16 Mr. Cleavenger denies doing anything unsafe when he
 17 allowed the man who was reported by police to be known to be
 18 aggressive with officers and to carry a weapon, nothing unsafe
 19 about allowing him to dig through his backpack, because he says
 20 he could see his phone on the top of the pack. Well, common
 21 sense tells you that that's not safe, and he -- his inability
 22 to acknowledge that fact is troubling, and it was troubling to
 23 his supervisors.
 24 As Lieutenant Morrow told you, Mr. Cleavenger simply could
 25 not understand how the two females he stopped in those stops

1 that Lieutenant Morrow investigated -- Mr. Cleavenger could not
 2 understand how his actions made them uncomfortable. He
 3 couldn't put himself in their position. With the Madeline
 4 Eagan stop, Mr. Cleavenger kept asking Lieutenant Morrow,
 5 "What's the problem? I was being too friendly?" Well, no.
 6 She was a young 18-year-old college student, and she felt he
 7 was doing something inappropriate. Maybe he wasn't. Maybe he
 8 was asking these questions for a valid reason. But if he so
 9 wants to follow this community policing, maybe he should have
 10 realized that he should have told her why he's asking those
 11 questions. But instead of acknowledging, yes, maybe I made her
 12 uncomfortable, he simply says, "I did nothing wrong."
 13 You heard from Ms. Commissiong. She came in yesterday and
 14 testified. She felt Mr. Cleavenger was mocking her. She felt
 15 he was condescending and, yet, he took the position --
 16 Mr. Cleavenger took the position with Lieutenant Morrow that
 17 they were being -- his words were "snippy." They were being
 18 snippy with him.
 19 Mr. Cleavenger still can't understand why Ms. Commissiong
 20 was questioning his authority for the stop. The fact of the
 21 matter is she was right to question his authority. He had no
 22 jurisdiction to pull her over for expired tags. Once he made
 23 that stop, he committed an lawful detention. He violated her
 24 Fourth Amendment rights.
 25 Mr. Cleavenger's interviews with Lieutenant Morrow, if you

1 want to look back at them, they're in Exhibit 331, Exhibits 13
 2 and 14.
 3 Now, I also told you in my opening that the evidence would
 4 show Mr. Cleavenger's supervisors tried to help him succeed,
 5 and the evidence did show that. Mr. Cameron testified that he
 6 was hard on Mr. Cleavenger. He admits to that. But he also
 7 admits that he was hard to all -- on all of his officers.
 8 There were a lot of people that came in here and testified that
 9 Sergeant Cameron was a hard supervisor, but not one person came
 10 in and testified that he was an unfair supervisor.
 11 Lieutenant Lebrecht spent hours with Mr. Cleavenger going
 12 over his videos, trying to give him suggestions of what he was
 13 doing wrong, trying to help him to learn how to safely perform
 14 his job. They both testified they tried many times to give
 15 Mr. Cleavenger feedback, but he was defensive. They went so
 16 far as to get Officer Phillips to try to help Mr. Cleavenger.
 17 They brought him into the office and said, "We are worried
 18 about this guy. Can you help him out? Because he's not taking
 19 feedback from us." Officer Phillips told you on the stand he
 20 agreed to do that because he himself also felt that
 21 Mr. Cleavenger was not being safe.
 22 The training plan that was ultimately devised for
 23 Mr. Cleavenger was put together with thoughtfulness, with care,
 24 and with the intent that he be successful. He was given the
 25 two most-senior training officers. Lieutenant Lebrecht was not

1 going to oversee this program. It was going to be Mr. --
 2 Officer Lillengreen and Officer Brathwaite. Mr. Cleavenger was
 3 told all this at the meeting he had on August 13th.
 4 But by that time in the process, Mr. Cleavenger was in
 5 such a fight mode, which I -- I think was not helped at all by
 6 his union supervisor s, Lois Yoshishige, who told him she agreed
 7 that maybe he was trying to set him up, despite the fact that
 8 she's had 28 years of experience with Randy Wardlow and had no
 9 basis to have that opinion.
 10 But they both testified that Mr. Cleavenger would not
 11 agree to this training plan, despite the fact that he says he
 12 wanted to be retrained and wanted to become a -- a functioning
 13 and successful part of this department. He wouldn't give it up
 14 if it required him to stop fighting this written reprimand.
 15 If Mr. Cleavenger -- if they were going to move forward,
 16 they had to put all of this behind them. His supervisors to
 17 this day, five supervisors -- Chief McDermid;
 18 Lieutenant Lebrecht; Sergeant Cameron; Randy Wardlow, not a
 19 supervisor, but Randy Wardlow; and Mike Morrow -- all felt this
 20 written reprimand was justified before it was issued. They
 21 felt it was justified after it was issued. This written
 22 reprimand was litigated at the arbitration in depth. The
 23 arbitrator felt it was justified.
 24 Mr. Kafoury's statement to you that the arbitrator
 25 overturned the written reprimand is not true. You can read the

1 arbitration decision. It is also an exhibit. The written
 2 reprimand was upheld on all aspects.
 3 But my point is, to move forward at that point in his
 4 career, Mr. Cleavenger had to agree to put this behind him and
 5 start -- start cooperating with -- with his supervisors, with
 6 the department, but he -- he wouldn't do that.
 7 Now, the chief testified this morning that some of
 8 Mr. Cleavenger's behaviors were simply too much for her to
 9 accept. She testified that it's her personal -- she feels it's
 10 her personal responsibility to ensure the safety of her
 11 officers and the safety of the people that they're there to
 12 protect. This is a vulnerable community. This is a community
 13 of young adults who are for the first time away from home, but
 14 they're not alone out there. As Lieutenant Bechdolt testified,
 15 this is an open campus right in the middle of Eugene. There
 16 are people, other than students, on campus, and they have to be
 17 aware of the safety concerns at all times.
 18 Chief McDermid testified that she instructed
 19 Lieutenant Morrow to do this internal affairs investigation of
 20 the two stops because she questioned Mr. Cleavenger's motives.
 21 The female student that called in was highly suspect of why
 22 Mr. Cleavenger pulled her over. She said in that phone call
 23 that you heard that she drove by and he didn't start following
 24 her until he made eye contact and, in her opinion, saw that she
 25 was a female and she was alone. That is what she said on the

1 recording that Chief McDermid heard. She has to investigate
 2 that.
 3 The stop with Nicole Commissiong, she told you yesterday
 4 she felt there was no jurisdiction for that stop. She felt
 5 Mr. Cleavenger was mocking and belittling to her. And she said
 6 if someone else in my position, who looks like me, was involved
 7 in this stop, they would probably accuse him of racial
 8 profiling. The chief has to look into that.
 9 At some point the chief finally said enough is enough, and
 10 she came to that conclusion in September. Mr. Cleavenger had
 11 rejected the training offer. He would not follow instructions
 12 to stop engaging in public safety officer enforcement
 13 activities. He kept calling out over the radio. You heard
 14 some of the officers come in and testify, they thought
 15 Mr. Cleavenger -- he was wearing a body camera. He would show
 16 up to these calls. They thought they were -- he was trying to
 17 set them up. These are the complaints they're getting. She
 18 has a department to run. She made the decision that enough was
 19 enough, and that's when she recommended termination.
 20 Now, plaintiff's counsel spent the better part of an hour
 21 talking to you about bad faith. This is not a bad faith case.
 22 This is a First Amendment case. This is a case based on
 23 retaliation that they claim was done to get back at
 24 Mr. Cleavenger for engaging in protected speech.
 25 The claim against Lieutenant Lebrecht, to prove that

1 claim, Mr. Cleavenger has the burden of showing you, by the
 2 preponderance of the evidence, that he spoke on a matter of
 3 public concern, that Lieutenant Lebrecht took an adverse action
 4 against him, and that he took that adverse action motivated in
 5 substantial part -- that's a big thing. That's not just a
 6 cause -- motivated in substantial part to retaliate against him
 7 for the protected speech.
 8 The judge read to you what the protected speech is, and
 9 you'll have all of that in your jury instructions.
 10 For Lieutenant Lebrecht and Chief McDermid, the protected
 11 speech at issue is this 2008 Taser speech. Chief McDermid
 12 testified she didn't even know about this Taser speech until
 13 this lawsuit was filed. There's been no evidence presented by
 14 plaintiff that Lieutenant Lebrecht knew about this Taser speech
 15 when he issued the letter of clarification or had assistance in
 16 the written reprimand.
 17 The other protected speech did not occur, at the earliest,
 18 until June 1, 2012, when Mr. Cleavenger claims he told
 19 Chief McDermid that he complained about not getting his
 20 officer's bill of rights. No adverse actions were taken by
 21 Lieutenant Lebrecht after that date, other than submitting the
 22 information to the district attorney.
 23 So unless you find that Lieutenant Lebrecht issued the
 24 letter of clarification to Mr. Cleavenger or assisted in the
 25 written reprimand that was given to Mr. Cleavenger to retaliate

1 against him for speaking out about Tasers in 2008, then you
 2 have to find for Lieutenant Lebrecht on that claim.
 3 Now, certainly, there was more than sufficient evidence
 4 that the letter of clarification was warranted. Each of the
 5 incidents that are discussed in that clarification have been
 6 testified to here in court. There has been evidence to support
 7 every single one of those issues. The issue with the grooming
 8 isn't the fact that he was working a lot and he came to work
 9 unshaven a couple of times. The issue with the grooming is
 10 that he was told three times -- well, two times -- excuse me.
 11 Two times. The first time he's told orally. The second time
 12 he's called into a meeting with Lieutenant Lebrecht and
 13 Sergeant Cameron and reminded, "This is a police organization.
 14 We have" -- at the time it was a public safety organization.
 15 "We have policies that have to be followed. One of those
 16 policies is that you have to be clean shaven. Do you need a
 17 copy of the policy?" Mr. Cleavenger said, "I know the policy."
 18 Well, he knows the policy, and, yet, he did it again. He
 19 didn't care. The policy didn't apply to him. That's why that
 20 grooming is in that letter of clarification.
 21 The other incident involved a man digging through his
 22 backpack and making a cell phone call. There's evidence that
 23 that was completely warranted to be in the letter of
 24 clarification.
 25 And the other issues had to do with the judgment. And I

1 think there have been seven, maybe eight witnesses who came in
 2 here and told you all of the antics that Mr. Cleavenger engaged
 3 in. And, yes, now he says, okay, maybe I took it too far. But
 4 the fact of the matter is in 2011 he was still engaging in this
 5 conduct. The letter of clarification was to tell him to stop
 6 engaging in this conduct. That's why it was issued.
 7 Now, the written reprimand. This was issued by
 8 Sergeant Cameron, but primarily because he was his supervisor.
 9 By union contract, Sergeant Cameron had to sign that document.
 10 You heard testimony from numerous people that there were a lot
 11 of hands in this document. And all of them agree that it
 12 should be issued.
 13 The April 2nd reprimand that Sergeant Cameron initially
 14 drafted, that came out of his conversation with Mr. Cleavenger
 15 on the night of the Spencer View incident when he refused to
 16 acknowledge that three officers responded to this as a -- as an
 17 active call. Mr. Cleavenger is the only one who did not and,
 18 yet, Mr. Cleavenger took the position that all three of those
 19 officers were wrong.
 20 That's why Sergeant Cameron was going to issue that
 21 initial written reprimand. If you look through that
 22 document -- and it's also an exhibit -- it has nothing to do
 23 with him being dishonest and trying to get Zach Hermens in
 24 trouble. That didn't come until later.
 25 At the meeting that was held on April 7th, Mr. Cleavenger

1 knew there was going to be a meeting. He had been talked to
 2 about this. He didn't tell Sergeant Cameron on the 1st that
 3 Zach Hermens had tipped off, you know, the apartment people
 4 that there was police presence. He didn't tell
 5 Sergeant Cameron that that night because he hadn't thought of
 6 that yet. When he gets to the meeting on April 7th, he says,
 7 "Don't look at me. You need to look at Officer Hermens because
 8 he was parked in direct view of the apartments. When I drove
 9 by his car, I could read the apartment numbers."
 10 Two witnesses told you -- Sergeant Cameron and
 11 Lieutenant Lebrecht told you that that's specifically what he
 12 said. You saw the video. It is impossible to see the
 13 apartment numbers until you turn the corner. There's no way
 14 that was a mistake. Mr. Cleavenger didn't think he could get
 15 caught for that. He didn't know there was dash cam video.
 16 When we went to the arbitration, the arbitrator said that,
 17 "I don't think Mr. Cleavenger was dishonest in this Spencer
 18 View incident because why would somebody lie about something so
 19 easy to figure out?" What the arbitrator didn't know and
 20 didn't appreciate was the fact that Mr. Cleavenger didn't know
 21 that there was dash cam video. He didn't know he could be
 22 found out. Lieutenant Lebrecht didn't even know there was dash
 23 cam video until he went and talked to Officer Hermens. Had
 24 there not been dash cam video, it may have been Officer Hermens
 25 that got that written reprimand.

1 So the written reprimand was an example of Mr. Cleavenger
 2 trying to deflect blame off of himself rather than simply
 3 accepting the fact that, "I made a mistake. I won't do it
 4 again." He's trying to get Officer Hermens in trouble. That's
 5 why it was issued, and that's why it was justified.
 6 So -- and, again, none of that is relevant unless you find
 7 that Lieutenant Lebrecht issued or played a role in that
 8 written reprimand to retaliate against Mr. Cleavenger for his
 9 speech about Tasers in 2008. That is the only protected speech
 10 at issue for that claim.
 11 Now, we move on to the *Brady* submission. And at this
 12 point everything has been said. All the protected speech is
 13 out there. The lawsuit has been filed. So on that claim we
 14 have to look at why did Lieutenant Lebrecht do what he did.
 15 The chief testified that she asked him to do it. She told
 16 him to do it. Captain Deshpande testified that
 17 Lieutenant Lebrecht did it because the chief instructed him to
 18 do it. He said Lieutenant Lebrecht was hesitant because he
 19 feared being sued again by Mr. Cleavenger and that
 20 Mr. Cleavenger would claim it was retaliation.
 21 Lieutenant Lebrecht himself told you that he did it
 22 because he believed the chief's order was not immoral,
 23 unethical, or illegal. He believed what she told him, that she
 24 did it because she felt she had an ethical and a legal
 25 obligation to submit this information to the district attorney.

1 Mr. Cleavenger himself testified he doesn't think that
 2 Lieutenant Lebrecht made that submission to retaliate against
 3 him. He sat there on that stand and said I don't -- "I think
 4 it was retaliation, but I don't believe Lieutenant Lebrecht did
 5 it. I think Chief McDermid was behind it." That in and of
 6 itself should convince you that Lieutenant Lebrecht -- that
 7 Mr. Cleavenger can't prevail on this claim.
 8 Now, the contents of the submission itself have been
 9 questioned. Whether or not putting together a document is an
 10 adverse employment action is up to you to decide. You will
 11 have the definition of what an adverse employment action is.
 12 It's our position that there is no adverse employment action
 13 until the document itself was delivered to the district
 14 attorney.
 15 It was Chief McDermid who made that decision. But the
 16 document itself, if we do want to look at its contents,
 17 Lieutenant Lebrecht testified he's never done this before.
 18 There were no guidelines on what to do. Chief McDermid said
 19 she didn't give him instructions. She said, "Put together the
 20 information we had." Lieutenant Lebrecht testified he did the
 21 best he could. He did what he thought would be helpful to the
 22 district attorney to have to review to make his determination
 23 about Mr. Cleavenger's credibility.
 24 Now, did Lieutenant Lebrecht add too much opinion to his
 25 summary? Perhaps he did. Did he not include all of the

1 information that may have been relevant to the district
 2 attorney? Perhaps. But the fact of the matter is no evidence
 3 was given to you by Mr. Cleavenger that him doing that was done
 4 to retaliate for anything. He did the best he could. That's
 5 the information that you were given.
 6 Now, there's a lot of argument that this arbitration
 7 decision should have been included. DA Gardner was here and he
 8 told you he didn't want that arbitration decision. He said the
 9 reason all this work group -- one of the main reasons they had
 10 to convene and set out new levels of *Brady* guidelines is
 11 because these labor arbitrators are putting police officers who
 12 have been dishonest and terminated for dishonesty, they're
 13 putting them back to work. They needed to come up with a way
 14 to figure out how those officers could continue in their jobs.
 15 The DA didn't want that arbitration decision. DA Gardner
 16 further explained to you what the reference to exculpatory
 17 information is with regard to a *Brady* submission. Plaintiff
 18 keeps trying to argue that the arbitration decision had some
 19 good information about Mr. Cleavenger in it so, by definition,
 20 it was exculpatory to him and needed to be submitted, pursuant
 21 to their own policy. DA Gardner explained to you that
 22 exculpatory in this context has to do with the criminal
 23 defendant. That's the whole purpose of *Brady*. You need to
 24 give this criminal defendant everything that is exculpatory and
 25 helpful to his case, which includes information about the

1 officer who's involved in the case who may have credibility
 2 issues.
 3 There is no requirement under *Brady* that you have to --
 4 that if you have concerns about an officer's credibility, that
 5 when you turn that over to the DA, you also have to go and dig
 6 up examples of all the times that that officer has been
 7 truthful. That is not the purpose of the *Brady* rules.
 8 Now, the arbitrator also made the decision, and you have
 9 been informed of it numerous times, that he didn't find
 10 Mr. Cleavenger was dishonest when he failed to record or failed
 11 to advise the two stops that he was recording.
 12 All the arbitrator was given in this -- in this
 13 arbitration as the basis for termination, the just cause basis,
 14 was the internal affairs investigation into the two stops, the
 15 finding that he had -- failed to advise on two occasions in
 16 those two stops, and then these three problematic callouts.
 17 That was the basis given for termination. That was HR's
 18 decision that that was sufficient just cause to satisfy the
 19 union requirements.
 20 My clients had nothing to do with that decision; what goes
 21 into that HR letter. That is why the University of Oregon has
 22 an entire HR department.
 23 But if the arbitration -- the arbitrator was not told that
 24 there -- there were 27 additional instances of him failing to
 25 advise that he was recording. The arbitrator found that two

1 instances is probably just a mistake. We can't find that that
 2 rises to the level of dishonesty.
 3 The arbitrator did not reinstate Mr. Cleavenger, as
 4 they're trying to claim. He was not an employee when the *Brady*
 5 information was submitted. The arbitration -- and you have the
 6 award again. He's given reinstatement rights. It is a right
 7 he has to exercise. He never came back to work at the
 8 University of Oregon. He was not an employee after
 9 October 25th of 2012.
 10 Again, this is a First Amendment claim against Mr. --
 11 Lieutenant Lebrecht. Whether or not you think he didn't put
 12 together the right packet of information to send to the DA
 13 doesn't matter. To find against Lieutenant Lebrecht on the
 14 issue of the *Brady* submission, you have to determine that he
 15 was motivated to make that submission in substantial part to
 16 retaliate against Mr. Cleavenger for a complaint that was made.
 17 The evidence in this case all support the finding that
 18 Lieutenant Lebrecht did what he did because he was told to do
 19 so by his chief. He followed the order that he found to not be
 20 unethical, immoral, or illegal. He didn't want to do this.
 21 And he certainly didn't do it to retaliate for any complaint
 22 that had been made.
 23 Now, the claim against Sergeant Cameron the judge told you
 24 is a bit different. This is based on speech, just the Taser
 25 speech that was made while Mr. Cleavenger was not a public

1 employee. He was a private citizen.
 2 So to prove his claim against Mr. -- Sergeant Cameron, he
 3 has to prove that Mr. Cleavenger engaged in protected speech,
 4 which he did. The Taser speech was protected. And that
 5 Sergeant Cameron took an adverse action against him, that the
 6 adverse action was reasonably likely to deter speech, and that
 7 retaliating against Mr. Cleavenger's protected speech was a
 8 substantial or motivating factor for Sergeant Cameron's
 9 actions.
 10 The two adverse actions that are at issue here with
 11 Sergeant Cameron are the performance evaluation and the written
 12 reprimand. Did he issue those two documents to retaliate
 13 against Mr. Cleavenger for making a speech four years before?
 14 There's been evidence in this case that Sergeant Cameron
 15 didn't agree with Mr. Cleavenger's position on Tasers. He was
 16 baffled, in his own words, about why Mr. Cleavenger wanted to
 17 come to work for the department.
 18 Sergeant Cameron has First Amendment rights, too. He can
 19 say what he wants to say. That is not a violation of
 20 Mr. Cleavenger's First Amendment rights. There has to be an
 21 action, an adverse action, taken against Mr. Cleavenger that is
 22 motivated by that protected speech.
 23 You heard the audio of the performance evaluation meeting.
 24 You didn't hear all of it. But if you want to listen to it,
 25 there's more. In that audio, Sergeant Cameron is nothing but

1 polite. He listens to Mr. Cleavenger. He takes his feedback.
 2 He makes the changes that are requested. This was over a
 3 six-month period. There were, I think, three drafts he
 4 testified went back and forth to Mr. Cleavenger for him to
 5 again comment on to make changes to. Sergeant Cameron again
 6 made changes for him.
 7 For one thing, the performance review is not adverse.
 8 It -- it's -- there's some bad things in there, but, as
 9 Sergeant Cameron testified, there's also some good things in
 10 there. So it's not an adverse action in and of itself, but,
 11 beyond that, there's no evidence, no evidence whatsoever, that
 12 that was issued to retaliate against Mr. Cleavenger for that
 13 Taser speech.
 14 And the second adverse action is this written reprimand.
 15 Sergeant Cameron was in favor of it. He was the supervisor.
 16 He had to sign it. But, as we heard, there were many hands in
 17 it. Sergeant Cameron believes that the written reprimand was
 18 justified. He testified that he did not -- he could not
 19 continue to accept the fact that Mr. Cleavenger would not
 20 acknowledge that he had made mistakes. That is an unsafe
 21 officer because he cannot learn and move forward. There was no
 22 evidence, other than the people coming in saying
 23 Sergeant Cameron had voiced concerns about Mr. Cleavenger
 24 coming to the department, no other evidence that
 25 Sergeant Cameron took that action to retaliate against

1 Mr. Cleavenger for engaging in the 2008 Taser speech.
 2 You cannot return a verdict against Sergeant Cameron based
 3 on guesswork. There has to be something, some evidence. He
 4 has the burden of proof in this case.
 5 Now, we heard a lot about mistakes. Sergeant Cameron made
 6 sexual harassment complaints that were made against him by
 7 female officers. Sergeant Cameron was nonrenewed at the
 8 department. He has paid for those mistakes. None of those
 9 mistakes -- none of that evidence had anything to do with
 10 Mr. Cleavenger.
 11 Finally, we have the claim against Chief McDermid. It's
 12 based on the same -- same items of protected speech, but with
 13 her there are two adverse actions at issue. The first being
 14 her recommendation for termination and the second being the
 15 *Brady* submission.
 16 Now, you've seen the predismissal letter. It is dated and
 17 signed October 1, 2012. You saw emails in her testimony today
 18 from Chief McDermid that the decision to terminate was made
 19 sometime in September of 2012. They cancelled the
 20 fitness-for-duty exam with Dr. Corey on the 20th of September
 21 because they had decided to go for termination rather than
 22 fitness for duty.
 23 So the complaints we are looking at, the protected speech
 24 we are looking at, had to occur, at a minimum, before
 25 October 1st of 2012. So that brings into play the 2008 Taser

1 speech. There's no evidence Chief McDermid had any idea that
 2 he had engaged in this speech until this lawsuit was filed.
 3 Then it brings into play the June 1st meeting where
 4 Mr. Cleavenger says he told Chief McDermid -- he admits this
 5 was a very brief meeting, but I remember I told her I wasn't
 6 getting my officer's bill of rights. I wasn't being allowed to
 7 record my meetings or given notice who was investigating me.
 8 What Mr. Cleavenger didn't provide to you was any example
 9 of a meeting where he was told he couldn't record. We've heard
 10 a lot of audio of meetings that were recorded. So whether or
 11 not he's making this complaint, the complaint itself has to be
 12 in good faith.
 13 But you heard Chief McDermid testify that she has no
 14 recollection of Mr. Cleavenger making that complaint to her on
 15 June 1st.
 16 So that leaves us with the August 13th meeting. And,
 17 again, there is no evidence, other than Mr. Cleavenger's
 18 testimony, that he told her about some bowl of dicks list, of
 19 wasting time in the department, not getting his officer's bill
 20 of rights, being harassed by his supervisors for this Taser
 21 speech, no evidence of that in the record other than his
 22 testimony of that being told to Chief McDermid on August 13th.
 23 Lois Yoshishige testified none of that was informed to
 24 anyone until they met with Brian Smith on October 2nd. That is
 25 too late.

1 Mr. Cleavenger's own email supports this. He said, "I
2 really want to get it out there. No one else knows. They're
3 going to make their decision, just like Randy Wardlow did,
4 without having all the information." But, beyond that, even if
5 the speech occurred, if we assume it occurred, you heard
6 Chief McDermed tell you why she terminated Mr. Cleavenger.
7 This was a long process. She gave consideration after
8 consideration to him. They went and looked at many different
9 avenues, and, in the end, she did what she felt she had to do
10 to protect her officers and to protect her community.

11 Mr. Cleavenger wasn't going to be a successful part of the
12 University of Oregon Police Department. At some point she has
13 to say enough is enough, and she got to that point. It had
14 nothing to do with her -- with his complaints he made about it.

15 Now, the other adverse action is, of course, the *Brady*
16 submission. The chief testified that she -- she's passionate
17 about being a police chief. She understands the import of
18 making a *Brady* submission. She's not going to do this lightly.

19 We showed you the entire email chain that occurred after
20 the arbitration decision came out, including the parts that
21 plaintiff failed to show you.

22 Doug Park, general counsel for the University of Oregon,
23 came to -- through this email, came to Chief McDermed and said,
24 "This is the arbitration decision. He's been awarded
25 reinstatement rights. I understand your concerns with him. I

1 understand the department doesn't believe that he is a safe
2 officer. Unless you want him back" -- this is what the email
3 says, "Unless you tell me you want him back, I'm going to look
4 at negotiating a global settlement."

5 To that email, she responds, "We don't want him back."

6 There's nothing dishonest, retaliatory about that
7 statement.

8 She tells you on the stand she didn't want him back. She
9 didn't know what to do with him. This is the same officer who
10 left her department -- who was immediately taken off of
11 enforcement duties when she found out about the transport with
12 the gun. He has not engaged in enforcement activities since
13 May 18th of 2012. And now she's being told, over two years
14 later, you have to take this person back and put him into a
15 uniform and put him out there on the street. She has concerns,
16 and those concerns were justified.

17 But she knows he's coming back. He has these rights.
18 He's indicated through his union attorney he wants to come
19 back. So she begins to move forward. They make a decision to
20 put him back into retraining. He's not going to be given
21 enforcement duties right away. The plan is in place for him to
22 come back. But with him coming back, he's going to be an
23 officer. And so she needs to know what his limitations are
24 going to be. She testified about why she felt information on
25 an employee, such as this, needed to be turned over to the

1 district attorney. She gave you her reasons about why she did
2 it, and her reasons was that she felt she had the obligation to
3 turn this information over. The obligation was there because
4 Mr. Cleavenger was coming back. The obligation remained there
5 when he decided not to come back. He's still an officer at
6 Coburg.

7 Chief McDermed knew she was a defendant in this lawsuit.
8 She knew she was being personally sued for retaliation. She
9 knew that turning this information over to the district
10 attorney would likely result in additional claims. Her own
11 lieutenant told her that he feared that. Despite that, even
12 maybe because of that, she did what she felt she had an ethical
13 obligation to do.

14 You have not heard one person, other than Casey Boyd, come
15 into this court and tell you anything negative about
16 Chief McDermed. She is a good person who cares about her
17 officers. She felt she had an obligation as the chief of
18 police to turn this information over to the district attorney.
19 It is not in her character to do something like this just to
20 punish someone. He's gone at that point? What does she gain?
21 She has everything to lose.

22 Now I have to talk to you about damages. If you get to
23 that point, you're going to be asked to make an award for
24 future lost wages, and that claim is based on Mr. Cleavenger's
25 dream of becoming a chief of police. There has been evidence

1 submitted in this case by Mr. Cleavenger, by Mr. Cleavenger's
2 father, by Mr. Cleavenger's ex-wife, that he has applied -- by
3 Chief Chase, that he has applied at position after position to
4 become a police officer. He has never been hired as a police
5 officer.

6 You cannot just speculate that one day he would have
7 become a police chief if you award damages. He has the
8 burden -- a preponderance of the evidence of proving to you
9 that he has suffered future lost wages as a result of the *Brady*
10 submission. He's presented no evidence that he could even be
11 hired as a police officer, let alone make it to a police chief.

12 You will be given an instruction on punitive damages.
13 Read that instruction because Mr. Kafoury has argued to you
14 facts that imply that you can award punitive damages to punish
15 the defendants for actions taken against others. Specifically,
16 Casey Boyd they keep bringing up. That is not the law, and
17 you'll see that when you read that instruction. You cannot
18 award punitive damages for damage to other people. It has to
19 be based on damage these defendants caused to Mr. Cleavenger.

20 And, finally, you cannot hold my defendants, these three
21 people, liable for anything that was done by someone else.
22 There has been extensive testimony about this terrible
23 culture in the department all under Chief Tripp's watch. You
24 cannot punish them for what was done by somebody else.

25 So when you're looking at whether or not they retaliated

1 against Mr. Cleavenger by doing an adverse action based on --
 2 to get back at him for protected speech. You can only consider
 3 the actions that they took against Mr. Cleavenger.

4 If you do not find that my clients retaliated against
 5 Mr. Cleavenger for making a speech on Tasers, for complaining
 6 about not getting his officer's bill of rights, for wasting
 7 time talking about a list of people, for disparaging the Occupy
 8 Movement, or for complaining that he could not call out
 9 felonies, then you have to find in favor of my clients.

10 I want to talk to you just a minute. I forgot about this
 11 violation of federal right.

12 Mr. Kafoury has not accurately stated the law of what the
 13 Clery Act requires. Telling Mr. Cleavenger that he cannot
 14 report out anything other than felonies over the radio is not a
 15 violation of the Clery Act. That is what the evidence is in
 16 this case. That's the instruction he was given.

17 There is by no means any instruction that he cannot report
 18 Clery reportable crimes in other ways. You can do it orally
 19 under the Clery Act.

20 So what has been presented to you as being a violation of
 21 the Clery Act is not a violation of the Clery Act. I just
 22 wanted to clear that up.

23 All right. So we thank you for your time here over the
 24 last three weeks, and we ask that you return the verdict in
 25 favor of Chief McDermed, Lieutenant Lebrecht, and

1 Scott Cameron. Thank you.

2 THE COURT: All right. Thank you. We're going to
 3 take another recess. Counsel has 12 minutes, by our clock, for
 4 rebuttal. But I want them to have a chance to make a
 5 presentation. The plaintiff has the burden by a preponderance,
 6 so they're given two opportunities to argue. That's why you'll
 7 see one more argument.

8 Counsel, how long would you like? 20 minutes or 15?

9 MR. JASON KAFOURY: Oh, 15 minutes is fine.

10 THE COURT: I'll say 15. We'll come back and get you
 11 in 15 minutes. Please don't discuss this matter or form or
 12 express any opinion concerning this case.

13 (Jury not present.)

14 THE COURT: Counsel, if it's acceptable, 5:30? Go
 15 use the restrooms and we'll see you at 5:30.

16 (Recess taken.)

17 (Jury present.)

18 THE COURT: We're back in session. Counsel is
 19 present. The jury is present. The parties are present.

20 Counsel, if you would like to proceed with your closing
 21 argument in rebuttal?

22

23 PLAINTIFF'S REBUTTAL ARGUMENT

24 MR. JASON KAFOURY: I've only got 12 minutes. Let's
 25 make this really quick.

1 Number one, look at the big picture here. The
 2 constellation. 18 officers from four different departments
 3 came and told you about my client. Talked about his honesty,
 4 talked about his officer safety. None of them had bad things
 5 to say about him. Who are the only people that criticized him
 6 in the courtroom? It is the same people that are the
 7 defendants and the people that got promoted to be police
 8 officers within this department. Those are the people that
 9 attacked his credibility. Everybody else backed him up.

10 Now, defense says, "Well, gosh, we really wanted to
 11 retrain him in September and August, and it was he who pulled
 12 out of these negotiations for retraining."

13 Wait a second. They wanted him to take away his legal
 14 rights. They wanted to have him take away his legal rights to
 15 fight that grievance for Spencer View, which I finally heard
 16 for the first time just now Spencer View, as defense counsel
 17 said, really wasn't a very big deal incident. Well, it was to
 18 them, and this is how you know it was retaliation. Cameron,
 19 the day afterward, had already drafted a three-page letter of
 20 reprimand for that Spencer View incident. You'll have that
 21 exhibit.

22 Now, take a look at this. This is in May. Are they
 23 targeting this guy, trying to get rid of him, or are they just
 24 trying to help him? Look at what they both said. "Leaning
 25 towards dismissal." Lebrecht agrees. Agrees with dismissal.

1 Lebrecht then sends something to a psychologist saying 31
 2 of 37 categories he's deficient in. Attacks him in every
 3 possible way.

4 No. He had a target on his back. They didn't like his
 5 beliefs. They didn't like it, and it started with Tasers. It
 6 was us-against-them mentality, and that's where my client got
 7 off on a bad foot with these folks.

8 Let me go through this stuff quick. Number one, bowl of
 9 dicks. Judge Ann Aiken wasn't on the list. Well, isn't it
 10 funny that every name my client put into the lawsuit didn't end
 11 up on the final list that came off Eric LeRoy's cell phone
 12 after all the media and after the lawsuit was in the media? Do
 13 you think that's just a big coincidence that none of the names,
 14 like Aiken, made it in there?

15 She says, "Oh, officers didn't know who Judge Ann Aiken
 16 is." Are you kidding me? They're police officers in Eugene.
 17 She's the head of the Eugene Federal Court. Of course
 18 everybody knows who the judge is there.

19 This August 13th meeting, did it happen? Well, we did
 20 hear from his ex-wife, the written record. What did I ask her?
 21 "Do you remember an emotional meeting in August? What did he
 22 say?"

23 "I do remember that."

24 What else? This idea of, oh, my client didn't agree to
 25 retraining. No, he was fine with retraining. But when you

1 look at these emails -- he didn't even know it at the time, but
 2 when you look at these emails, does anybody in this room really
 3 believe that if he had gone back to retraining that they
 4 weren't going to get rid of him within the next few months for
 5 something? I mean, look at what they did. Look at the amount
 6 of paper they generated at that point. He was out of there,
 7 and they were just trying to paper their file because HR needed
 8 it to look right. That's what this case is about.

9 He didn't respect Cameron and Lebrecht. Well, when people
 10 are picking on you, when they're retaliating, when they're
 11 picking all little stuff, everything you do, yes, you're not
 12 going to have respect for those people. But he had respect for
 13 a lot of people.

14 Look at Officer Black. He's still there. Said -- came in
 15 and said my client is honest. No officer safety issues. Look
 16 at Officer Royce Myers. He's still there. With his chief
 17 sitting here, said my client is honest, no truthfulness
 18 problems.

19 This -- these stops by the dean and everything. First of
 20 all, this is manufactured evidence. The dean never complained.
 21 Nobody would ever know that stop ever happened if Lebrecht
 22 doesn't go watch videos, find out about it, show it to the
 23 chief, the chief calls her, and all of a sudden we have a
 24 175-page annual -- IA report.

25 Think about that. This is completely manufactured

1 evidence. And you know what? Nobody likes getting pulled over
 2 by a police officer. Nobody is happy when they get pulled
 3 over. It is understandable that a young girl is wondering why
 4 she's getting asked eleventy-four questions, James Cleavenger
 5 didn't create the FI -- field identification card he's supposed
 6 to fill out. He's just doing his job.

7 The meeting with -- after Spencer View, James Cleavenger
 8 told you he didn't think Hermens should get in trouble. He
 9 didn't think anybody should get in trouble. This was no big
 10 deal.

11 The attacks on my client. Think about how many thousands
 12 of hours he was on that radio that was recorded. And what did
 13 they bring into this courtroom? One statement where he calls
 14 himself "Cle-Avenger" and another one where he says there was
 15 a -- a drunk stripper the other night, trying to find out.
 16 That's it. That's the only radio that they pulled to show that
 17 my client is a liar or has other issues in this whole case.
 18 Think about how many hours they must have gone through to find
 19 that stuff.

20 This global settlement idea came up again here. Wait a
 21 second. Doing the -- we've heard so many different reasons why
 22 they -- why they *Brady*ed him; right?

23 Well, we all have to agree that if they're trying to force
 24 him to give up the rights to this lawsuit by doing a global
 25 settlement, that is chilling speech. That is a confession.

1 That is a confession that they were trying to stop him from
 2 being here and doing this.

3 Next, Lois and these meetings that are happening. My
 4 client obviously, as the emails show, starting in June, is
 5 working really hard not to go outside of the department to
 6 complain about all the things happening within the department.
 7 That's why he says in June, "I don't want to air the dirty
 8 laundry." That's why he meets with Chief McDermid right after
 9 he has just been shown four hours of his videos from a secret
 10 investigation. And the timing of it fits with that being the
 11 reason that they want to get rid of this guy. He comes in. He
 12 spills the beans to the chief. Chief then goes on -- he goes
 13 on -- my client goes on vacation for two weeks, comes back,
 14 suddenly he's given this order: "Do not report any crimes."

15 Defense counsel says, "Oh, he could have reported these in
 16 other ways." No. He wrote a very explicit email of what he
 17 was told. His email doesn't say, "Don't report any crimes but
 18 felonies only over the radio, but do it other ways." That's
 19 not what he was told. And how do we know that? If that wasn't
 20 the order, they would have respond in writing and said, "No,
 21 Mr. Cleavenger, that's not the illegal order that we gave you."

22 Next, exculpatory evidence on the *Brady* materials. Well,
 23 their own policy says "provide exculpatory evidence for the
 24 person that they're *Brady*-listing." It's not what the DA
 25 wants, and it's not the DA's interpretation of exculpatory.

1 It's their own policy. That's what they violated when they
 2 picked and choosed what to give the district attorney.

3 Next, the DA -- DA. Well, he might not, you know, want to
 4 read the arbitrator's report because of his opinion about
 5 arbitrators. No. Wait a minute for a second, ladies and
 6 gentlemen. They didn't know what Alex Gardner thought about
 7 arbitrators' opinions because they already put together the
 8 materials, already met with him, and handed over the materials.
 9 They made all those decisions about what to include before they
 10 ever talked to the DA about what should be included. So think
 11 about that when you're talking -- when you're thinking about
 12 their intent.

13 And the district attorney himself said on the witness
 14 stand, "I would want everything." That's what he said.

15 My client said Lebrecht wasn't responsible on the witness
 16 stand. That's what they just said for the *Brady* materials.
 17 No. Check your notes. What he said was when he -- when he
 18 sent the information to the district attorney, he thought
 19 Lebrecht was the only one involved, and he said he was the most
 20 vindicative person in the world.

21 What he didn't -- what my client didn't realize, until we
 22 got through depositions and into this trial, was actually
 23 Chief McDermid had ordered it, and Lebrecht had said, whoa,
 24 this might look like retaliation, not once, but twice, and he
 25 did it anyway. He didn't know those facts. The chief is

1 clearly the most responsible person for it. But Lebrecht
2 selected very selectively what went into that material. He did
3 the draft. And if you find that he picked things out with bad
4 faith, like putting 100-plus pages of Internet search history
5 and not the arbitrator's decision in there, then he's
6 retaliating for my client filing a lawsuit and laying this all
7 out to the public.

8 No one admits to retaliating. But when you're looking for
9 the smoking gun in this case, Exhibit 168, where they're all
10 responding to the arbitrator's opinion within 15 minutes,
11 there's a second exhibit you'll -- I don't know the number,
12 where Lebrecht, we found out halfway through this trial, had
13 chimed in on that. That is the main document showing the
14 intent for the defense. That's 276.

15 The union contract requires just cause for getting rid of
16 people. And they've come up with a laundry list of things they
17 say that were problematic about my client. But just remember
18 they didn't put it in any of their written materials to get rid
19 of him. He never had a chance to -- they didn't investigate
20 any of them and he never had a chance to confront any of them.
21 So it's not fair now to claim that all these things are the
22 real reason he was terminated when they selected what they were
23 going to put in there.

24 I only have a minute.

25 My client, in terms of his employment, only has this job

1 express an opinion. I'll take a very short verdict form and
2 walk through it with you at 8:00 tomorrow morning.

3 For a number of reasons, I don't want to do it tonight
4 because it will tie nicely back to the instructions I read four
5 hours ago; number two, it gets us off to a very professional
6 start tomorrow; and, number three, it let us work tonight
7 getting all that evidence back in the jury room so it's waiting
8 for you tomorrow morning when you've come in and you're not
9 waiting for us. Okay?

10 So I think that's a great guarantee. Forget about this
11 case tonight. We'll see you tomorrow at 8:00. Please don't
12 discuss this matter or form or express any opinion until you
13 start your deliberations.

14 (Jury not present.)

15 THE COURT: Counsel, have a seat for a moment. There
16 was some additional documents received today by the Court. I
17 want to make sure you've gone over those with Christy and
18 you're satisfied. So you do that now in just a moment.

19 Once again, now when you sign, this is the final
20 signature.

21 What that signature means is that you're satisfied that
22 all of the documents are included. They're in the proper form,
23 with redactions. Okay? And, therefore, you know I won't grant
24 a new trial.

25 I think that's counsels' responsibility.

1 for the next year and a half. It's really uncertain what's
2 going to happen. A legal job with all this *Brady* stuff over
3 him, signing documents, putting that into the public record,
4 going before judges, uncertain. This is very unchartered
5 territory. But I'll tell you right now, after a year and a
6 half, you're the only people in this world that can give him
7 any justice for the economic damages, future lost income that
8 this might impact him. He told you chiefs of police, \$100,000,
9 \$200,000 a year.

10 You set the standard. The freedom of police to speak
11 their mind on matters of public importance. You guys decide.
12 It's your decision here. You set the standard for what chiefs
13 can do to protect their turf, to protect their community. No
14 one but you is big enough to change the culture within the
15 department. It's not a time to speak softly. This verdict
16 should match what we, as a community, will accept, and what
17 we've heard, and we thank you for all your time and energy
18 throughout these three weeks.

19 THE COURT: Well, ladies and gentlemen, I'm going to
20 send you home tonight, and I want to thank you for being
21 willing to stay and notifying Christy of that.

22 A JUROR: 8:00?

23 THE COURT: I thought it was 6:00. 8:00. I'm just
24 joking with you.

25 Now, don't discuss this with anybody. Don't form or

1 Come up with Christy and work with her and that way she
2 can get them back this evening and the jury is not waiting for
3 us.

4 (Recess taken.)

5 THE COURT: We're on the record. Counsel, I need to
6 make a brief record to make certain I have that record. Have
7 each of you had time to consult with Christy, who's the clerk
8 of the court, concerning all of these exhibits on behalf of the
9 defendant?

10 MS. COIT: Yes.

11 THE COURT: Are you satisfied?

12 MS. COIT: Yes.

13 THE COURT: Have you signed the back of this exhibit
14 form?

15 MS. COIT: Yes.

16 THE COURT: You understand that that means that if
17 there's a missing document or if the document isn't in the
18 appropriate condition, in terms of redactions, that that is
19 your responsibility? And I'll ask the same questions of the
20 plaintiff in just a moment.

21 MS. COIT: Yes.

22 THE COURT: Now, Counsel, same questions to you.
23 That is you understand I'm not going to grant a new trial over
24 a missing document or a document that wasn't thoroughly
25 redacted. Are you satisfied with these documents?

1 MR. JASON KAFOURY: Yes. Just for the record,
 2 there's one additional exhibit, 376, that needs a redaction.
 3 We will bring a redacted copy tomorrow morning at 8:00.
 4 THE COURT: 7:45 a.m.
 5 MR. JASON KAFOURY: That too.
 6 THE COURT: And the reason for that is these exhibits
 7 are going back in that jury room, and they'll be waiting for
 8 them.
 9 MR. JASON KAFOURY: I see.
 10 THE COURT: That doesn't happen at 8:00. That
 11 happens earlier. Jurors are going to be brought in here.
 12 7:45. Everyone is ordered to be present at 7:45 tomorrow
 13 morning. Clients, counsel, everybody.
 14 All right? Anything else this evening, then?
 15 MR. JASON KAFOURY: No.
 16 THE COURT: Well, then, just a brief statement: I
 17 think Chief, Lieutenant, and Mr. Cleavenger, each of you
 18 respectfully were very fortunate to have your respective
 19 counsel. Huge amount of documents to absorb. So, therefore,
 20 on the way out the door, thank these two gladiators on the
 21 respective sides because just an outstanding presentation, I
 22 think, with the volume of material. I wanted to put that on
 23 the record. I don't have to. But I think it's well deserved
 24 on both of your parts.
 25 So now we wait for members of the public, and I don't

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1 think anybody can claim that you haven't had a pretty complete
 2 and thorough trial.
 3 If you're missing some documents, it's got to be very few.
 4 Good night.
 5 MS. COIT: Thank you.
 6 MR. JASON KAFOURY: Thank you, Your Honor.
 7 (Trial Day 10 adjourned.)
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1 C E R T I F I C A T E
 2
 3 Cleavenger v. McDermed, et al.
 4 6:13-cv-01908-DOC
 5 TRIAL DAY 10
 6 September 23, 2015
 7
 8 I certify, by signing below, that the foregoing is a true
 9 and correct transcript of the excerpted record, taken by
 10 stenographic means, of the proceedings in the above-entitled
 11 cause. A transcript without an original signature, conformed
 12 signature, or digitally signed signature is not certified.
 13
 14 /s/Jill L. Jessup, CSR, RMR, RDR, CRR
 15
 16 Official Court Reporter Signature Date: 12/28/15
 17 Oregon CSR No. 98-0346 CSR Expiration Date: 9/30/17
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<p>A JUROR: [4] 2592/6 2753/19 2828/24 2873/21</p> <p>DEPUTY COURTROOM CLERK: [2] 2732/25 2752/9</p> <p>MR. GREGORY KAFOURY: [11] 2703/14 2733/12 2733/17 2762/8 2762/13 2762/15 2762/22 2763/22 2763/25 2764/3 2764/15</p> <p>MR. HESS: [9] 2703/5 2703/11 2704/7 2706/1 2706/3 2710/8 2715/11 2721/9 2721/11</p> <p>MR. JASON KAFOURY: [65] 2631/13 2631/16 2648/13 2648/16 2648/24 2649/19 2672/15 2689/9 2703/13 2715/10 2718/19 2730/19 2731/2 2731/9 2731/13 2731/16 2731/19 2732/15 2733/6 2733/9 2734/3 2738/18 2741/20 2743/4 2743/15 2744/8 2745/10 2745/12 2746/2 2746/5 2746/12 2750/13 2751/6 2751/10 2751/21 2752/1 2752/3 2752/5 2752/8 2752/15 2752/18 2752/21 2757/24 2759/25 2760/4 2760/6 2760/16 2762/17 2762/21 2763/6 2783/2 2783/10 2783/14 2783/19 2784/1 2784/13 2808/16 2808/19 2865/8 2865/23 2875/25 2876/4 2876/8 2876/14 2877/5</p> <p>MR. MCDOUGAL: [103] 2599/6 2599/9 2599/11 2599/14 2599/20 2599/23 2600/21 2601/6 2601/11 2631/24 2638/5 2642/9 2647/13 2647/15 2647/24 2648/2 2648/6 2648/14 2648/22 2649/1 2649/21 2650/8 2650/14 2650/25 2651/9 2651/20 2651/22 2652/2 2652/5 2661/22 2662/2 2662/23 2663/11 2664/18 2669/23 2672/18 2681/13 2683/23 2684/3 2684/6 2684/16 2684/18 2685/17 2685/21 2686/24 2688/15 2698/2 2701/17 2701/22 2702/1 2702/4 2702/15 2702/19 2702/22 2702/24 2703/4 2703/7 2703/15 2704/11 2704/14 2704/24 2705/23 2706/2 2706/4 2710/7 2710/11 2710/18 2712/6 2712/10 2713/13 2715/6 2715/8 2715/13 2715/17 2718/9 2718/17 2718/20 2720/5 2721/8 2721/10 2721/12 2722/3 2729/13 2729/21 2754/17 2755/1 2755/22 2755/25 2756/5 2756/10 2757/9 2758/21 2758/25 2759/7 2760/19 2761/6 2761/19 2762/4 2762/19 2763/15 2764/1 2764/8 2764/21</p> <p>MS. COIT: [111] 2591/4 2600/5 2600/8 2600/20 2601/5 2601/8 2609/15 2609/17 2609/23 2609/25 2611/14 2611/16 2630/22 2630/24 2631/2 2631/15 2631/22 2632/4 2632/7 2632/21 2637/14 2637/16 2637/18 2638/4 2638/7 2641/15 2641/17 2642/8 2642/11 2645/5 2646/24 2647/19 2648/9 2649/8 2649/24 2650/3 2651/10 2661/19 2662/4 2662/8 2663/1 2663/10</p>	<p>2669/17 2669/20 2670/3 2672/10 2672/20 2677/18 2677/22 2678/3 2684/23 2685/2 2685/5 2685/12 2686/10 2686/12 2688/12 2688/19 2689/7 2689/10 2690/9 2690/14 2692/6 2697/23 2698/9 2699/25 2729/15 2729/18 2730/17 2730/23 2732/1 2732/9 2733/5 2738/16 2741/18 2742/14 2743/17 2744/25 2745/4 2745/14 2745/25 2746/15 2748/24 2751/1 2752/23 2754/20 2754/22 2755/9 2756/3 2759/2 2759/5 2759/8 2759/10 2759/14 2762/6 2763/5 2764/10 2764/19 2782/23 2782/25 2783/21 2808/14 2828/17 2828/20 2828/23 2828/25 2875/9 2875/11 2875/14 2875/20 2877/4</p> <p>THE COURT: [268]</p> <p>THE LAW CLERK: [1] 2763/19</p> <p>THE WITNESS: [13] 2591/11 2591/16 2592/7 2661/25 2665/5 2687/10 2687/12 2706/13 2734/11 2734/14 2734/18 2739/7 2751/4</p> <hr/> <p>\$</p> <p>\$100,000 [1] 2873/8</p> <p>\$200,000 [1] 2873/9</p> <p>\$5 [1] 2826/15</p> <hr/> <p>'</p> <p>'James [1] 2810/18</p> <hr/> <p>/</p> <p>/s/Jill [1] 2878/14</p> <hr/> <p>0</p> <p>0346 [1] 2878/16</p> <hr/> <p>1</p> <p>1,700 [1] 2815/9</p> <p>10 [8] 2588/13 2613/17 2681/8 2783/16 2804/11 2816/20 2877/7 2878/5</p> <p>10/25/12 [1] 2749/6</p> <p>100-plus [1] 2872/4</p> <p>1000 [1] 2589/21</p> <p>10:30 [1] 2648/11</p> <p>10th [4] 2589/8 2681/11 2792/20 2823/9</p> <p>11 [6] 2702/20 2702/21 2702/23 2705/4 2794/21 2817/9</p> <p>11/1/12 [1] 2749/9</p> <p>119 [2] 2804/10 2826/16</p> <p>11:00 the [1] 2758/17</p> <p>11:00 to [1] 2815/21</p> <p>11:35 [1] 2681/8</p> <p>11th [1] 2794/12</p> <p>12 [10] 2613/17 2613/17 2635/15 2749/6 2749/9 2774/6 2774/21 2825/10 2865/3 2865/24</p> <p>12-05-04-518738 [1] 2634/9</p> <p>12/14/2012 [1] 2746/23</p> <p>12/28/15 [1] 2878/15</p> <p>12:59 p.m [1] 2643/19</p> <p>12th [6] 2631/13 2633/1 2783/5 2783/10 2784/1 2784/10</p> <p>13 [6] 2656/19 2656/25 2784/1 2784/10 2830/7 2843/1</p>	<p>137 [1] 2752/3</p> <p>13th [10] 2657/16 2761/8 2783/5 2783/10 2822/8 2834/20 2844/3 2859/16 2859/22 2867/19</p> <p>14 [6] 2638/4 2638/16 2640/19 2713/12 2747/1 2843/2</p> <p>147 [1] 2815/10</p> <p>15 [12] 2611/14 2731/25 2792/4 2792/25 2827/22 2828/12 2865/8 2865/9 2865/10 2865/11 2872/10 2878/15</p> <p>150,000 [1] 2598/15</p> <p>1500 [1] 2646/9</p> <p>158 [1] 2799/20</p> <p>16 [5] 2612/25 2761/24 2763/18 2764/8 2777/13</p> <p>16-year-old [2] 2596/17 2832/19</p> <p>166 [1] 2812/4</p> <p>168 [3] 2720/6 2799/4 2872/9</p> <p>17 [3] 2602/4 2699/6 2878/16</p> <p>172 [1] 2830/17</p> <p>175-page annual [1] 2868/24</p> <p>175-page internal [1] 2820/25</p> <p>178 [2] 2800/3 2801/5</p> <p>179 [1] 2801/18</p> <p>17th [1] 2718/15</p> <p>18 [8] 2603/11 2611/6 2642/4 2645/3 2735/10 2735/13 2826/21 2866/2</p> <p>18-year-old [1] 2842/6</p> <p>18th [4] 2643/19 2652/15 2823/13 2861/13</p> <p>19 [3] 2642/1 2702/18 2703/3</p> <p>19-year-old [1] 2596/16</p> <p>190 [1] 2702/21</p> <p>1938 [1] 2770/5</p> <p>194 [4] 2701/24 2702/1 2702/18 2703/3</p> <p>195 [2] 2702/2 2702/4</p> <p>196 [3] 2702/19 2702/21 2702/23</p> <p>197 [3] 2702/22 2703/3 2703/5</p> <p>1983 [3] 2595/24 2596/2 2770/1</p> <p>1991 [2] 2596/22 2596/23</p> <p>1995 [1] 2798/12</p> <p>1:00 or [1] 2803/21</p> <p>1:45 [1] 2753/4</p> <p>1st [7] 2812/8 2821/22 2835/16 2850/2 2858/25 2859/3 2859/15</p> <hr/> <p>2</p> <p>20 [3] 2647/3 2825/10 2865/8</p> <p>200 [2] 2589/5 2598/11</p> <p>2000 [1] 2603/9</p> <p>2002 [1] 2756/13</p> <p>2008 [14] 2596/24 2598/8 2598/25 2599/4 2601/22 2773/25 2806/11 2809/10 2810/6 2847/11 2848/1 2851/9 2858/1 2858/25</p> <p>2009 [4] 2602/25 2603/8 2603/10 2797/25</p> <p>2010 [4] 2735/17 2735/25 2793/14 2794/8</p> <p>2011 [11] 2619/16 2619/20 2621/5 2622/4 2637/2 2709/25 2797/18 2797/19 2797/25 2811/4 2849/4</p> <p>2012 [71] 2607/9 2608/16 2612/24 2619/16 2623/2 2627/15 2628/11 2629/5 2630/3 2633/1 2633/5 2633/8</p>
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