

APPEARANCES: (Continued)

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I N D E X

<u>WITNESS (ES)</u>	<u>DIRECT</u>	<u>CROSS</u>	<u>REDIRECT</u>	<u>RECROSS</u>
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FOR THE PLAINTIFF:

Linda Desruisseaux	5	82/100	111/128	121
Mary Kimmel	135	149/174	--	--
Alan Givetz	179	185	--	--

FOR THE DEFENDANTS:

Peter Eyre	189	192	--	--
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EXHIBITS

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1 (Proceedings commence at 9:32 a.m.)

2 THE BAILIFF: All rise.

3 THE COURT: Good morning. Please be seated.

4 We're here in the matter of City of Keene versus
5 James Cleaveland, et al. If I could have counsel identify
6 themselves for the record?

7 MR. BAUER: Charles Bauer from Gallagher, Callahan,
8 and Gartrell on behalf of the City of Keene.

9 MR. DIETEL: Robert Dietel, Gallagher, Callahan, and
10 Gartrell, on behalf of the City of Keene.

11 MR. MULLINS: Tom Mullins, Your Honor, here as City
12 Attorney.

13 MR. MEYER: Your Honor, Jon Meyer. I'm here on
14 behalf of Defendants James Cleaveland, Garrett Ean --

15 UNIDENTIFIED SPEAKER: Your Honor, I suppose we're a
16 free state. That's all I want the people to know.

17 MR. MEYER: Kate Ager, Ian Freeman and Graham
18 Coleson.

19 And, Mr. Eyre, do you want to just stand up and
20 identify yourself?

21 THE COURT: Mr. Eyre, if you'd just stand and
22 identify yourself for the record? You don't have to stand, but
23 if you --

24 MR. EYRE: Yeah, my name's --

25 THE COURT: -- want to just identify yourself for the

1 record.

2 MR. EYRE: -- Pete Eyre.

3 THE COURT: I'm sorry?

4 MR. EYRE: My name's Pete Eyre. I'm here -- I was
5 told to be here. I don't know why, but I'm here. Otherwise,
6 men with guns would come after me, so figured I'd show up.

7 THE COURT: Thank you. As I've said in prior
8 decisions in this case, we're scheduled for an evidentiary
9 hearing on the City's request for preliminary injunctive
10 relief. And after we have the evidentiary hearing, I will
11 hopefully, time permitting, and if we don't, we'll schedule
12 additional time, I'll allow both sides time to argue some of
13 the legal issues that are pending before the Court.

14 Is the City prepared to call its first witness?

15 MR. BAUER: Yes. Call to the stand Linda
16 Desruisseaux. Swear her in?

17 THE COURT: Either way. Whatever --

18 MR. BAUER: Okay. Lynn, would you just raise your
19 right hand.

20 LINDA DESRUISSEAU, PLAINTIFF'S WITNESS, SWORN

21 MR. BAUER: Please be seated.

22 DIRECT EXAMINATION

23 BY MR. BAUER:

24 Q For the record, please state and spell your last name.

25 A My last name is pronounced Desruisseaux. It's spelled

1 D-E-S-R-U-I-S-S-E-A-U-X.

2 Q Okay. And you go by Lynn, don't you?

3 A Correct. My legal name is Linda.

4 Q Okay. And it's L-Y-N or N-N, for the record?

5 A My legal name is L-I-N-D-A.

6 Q I understand that.

7 A Okay. But L-Y-N-N.

8 Q Okay. You have some water there if you need it.

9 A Uh-huh.

10 Q Okay?

11 A Uh-huh.

12 Q You all right?

13 A Good.

14 Q Okay. Here we go.

15 Lynn -- I'm going to call you Lynn, if I may.

16 A Please.

17 Q Lynn, how long have you been working for the City of
18 Keene?

19 A Thirteen-and-a-half years. A little over 13-and-a-half
20 years. January of 2000.

21 Q Do you live in Keene?

22 A I do not live in the City of Keene, no.

23 Q Okay. Your business address is -- is what, for the
24 City of Keene?

25 A The station is 400 Marlborough Street.

1 Q Okay. What's your educational background, Lynn?

2 A High school diploma and some college.

3 Q Born and raised in what area of the country?

4 A The Lakes Region, of New Hampshire.

5 Q Okay. What other type of work background have you had
6 prior to working for the City? Just generically.

7 A Previously I worked, way back, retail, for several
8 years. More than several years. Probably about 20 years all
9 told, two, three different positions, before I started here.

10 Q And you've been working for the City for about 13
11 years. And what do you do for the City? What capacity?

12 A I work in the parking department as an enforcement
13 officer.

14 Q And what are your duties and responsibilities, Lynn,
15 over the last 13 years?

16 A Basically, patrolling the area for any violations in
17 parking to try to keep things from getting confusing, that type
18 of stuff.

19 Q What's the geographical area that you cover --

20 A The --

21 Q -- for work?

22 A -- City -- City limits.

23 Q Okay. I have a map here --

24 MR. BAUER: This is a map of the City in terms of the
25 parking enforcement. If I may use that, Judge?

1 THE COURT: Certainly.

2 BY MR. BAUER:

3 Q So, just with your finger, if you would, just show for
4 the Court the --

5 THE COURT: Attorney Meyer, if you need to stand to
6 see anything, you're certainly free to move around so you can
7 see what's being depicted.

8 MR. MEYER: Thank you.

9 BY MR. BAUER:

10 Q Just -- the metered parking is in green?

11 A Right, this area here.

12 Q Okay. Just indicating with your finger on the map.

13 A Right.

14 Q And this is the downtown parking map, for the record.

15 And then there's some unmetered two-hour parking as
16 well. Where is that?

17 A Correct. Up here, in Washington and Court Street.
18 Right here on Summer.

19 MR. BAUER: You okay with her here?

20 THE COURT: Yes.

21 MR. BAUER: Okay.

22 THE COURT: Ma'am, if you could just try to --

23 THE WITNESS: Speak up a little?

24 THE COURT: -- raise your voice --

25 THE WITNESS: Okay.

1 THE COURT: I can hear you, but I'm concerned that
2 the parties and counsel may not be able to hear you.

3 THE WITNESS: Oh, and Roxbury Street. And also
4 Railroad Street.

5 BY MR. BAUER:

6 Q Okay. Just for the Judge's sake, point to where we are
7 right now?

8 A We're on --

9 (Witness examines document)

10 A -- Winter Street.

11 Q Okay. So we're -- we're right here in the courthouse.
12 And the square -- the downtown square is where?

13 A Right here.

14 Q Right in the middle.

15 So, essentially, you're a perimeter?

16 A This area right here for me to patrol. Everything else
17 is just other violations.

18 Q Okay.

19 MR. BAUER: Your Honor, I'd just mark that as
20 Plaintiff's 1.

21 THE COURT: Any objection?

22 MR. MEYER: No objection, Your Honor.

23 THE COURT: Plaintiff's 1 is a full exhibit.

24 (Plaintiff's Exhibit 1 received)

25 MR. BAUER: May I proceed, or should I wait?

1 THE MONITOR: Go ahead.

2 MR. BAUER: Okay.

3 BY MR. BAUER:

4 Q So, okay, Lynn. So you've been -- how do you get
5 around in terms of checking the meters and interacting with the
6 public, that sort of thing? Do you do it on foot, do you do it
7 on bicycle? How do you get around?

8 A Foot. Supposed to be on foot. We don't use bicycles
9 or any other -- like Segways or anything like that.

10 Q Are there any motor vehicles that you ever use?

11 A Yes, we do.

12 Q Describe --

13 A We do have them.

14 Q -- that for the Judge, please.

15 A We have two vehicles that we use. They're a Ford
16 Transit. They're a type of vehicle that we can use to -- to
17 move things such as meters and equipment and different things
18 we need; we have room to put stuff in there, that kind of
19 thing.

20 Q About how many miles do you cover every day?

21 A People ask me that all the time. I assume you mean on
22 foot?

23 Q Yes, uh-huh.

24 A A long time ago somebody told me it was probably
25 between four and six miles.

1 Q Okay. And are you in pretty good shape because of
2 that?

3 A Yeah. That's like one of the best things, is the
4 outdoors and the exercise.

5 Q Yep. Do you like your job?

6 A I do.

7 Q You've been working for 13 years. Do you consider this
8 a -- do you work fulltime, part-time?

9 A Fulltime.

10 Q And approximately what are the hours?

11 A I worked -- Monday through Friday now, 7:30 to 3:30.
12 That's been different over the years, but currently that's what
13 I do.

14 Q Okay. And are you an hourly employee?

15 A Yes.

16 Q And what do you make per hour?

17 A \$20.

18 Q Okay. And are you also a union employee?

19 A Yes.

20 Q You're a member of which union?

21 A The AFT.

22 Q How long have you been a member of the union?

23 A Since 2006.

24 Q So as an employee for the City of Keene you have a
25 contractual relationship with the City of Keene to do your job,

1 and you get paid, right?

2 A Correct. Yes.

3 Q And you're also a union employee?

4 A That's correct.

5 Q And you have certain benefits and rights there?

6 A Right.

7 Q What other benefits and rights do you get from the City
8 of Keene besides getting paid for doing your job properly?

9 A As far as like medical benefits?

10 Q Yeah.

11 A Medical benefits.

12 MR. MEYER: Your Honor, objection. Relevance.

13 MR. BAUER: Establishing the employment relationship,
14 Judge.

15 MR. MEYER: Wait. There is an employment
16 relationship. It's already been testified to. If we had been
17 asked, I would have acknowledged the employment relationship.
18 I don't see what the benefits she receives or doesn't receive
19 have to do with any of the disputed issues in this case.

20 MR. BAUER: It's relevant to the claim that we're
21 asking this Court to issue an order to have people removed --
22 moved back 30 feet from her while she does her job, and the
23 sense -- and the sense that -- of her job being restricted,
24 limited or impaired.

25 MR. MEYER: How --

1 THE COURT: How does the benefit -- how do the
2 benefits that she receives from her employment relationship
3 bear on that question?

4 MR. BAUER: It bears in that she -- this is a career
5 job for her. It's a significant economic interest that she has
6 in her job.

7 THE COURT: And --

8 MR. BAUER: It's not just -- it's not just \$20 a day.
9 Or \$20 an hour, Judge. Significant.

10 MR. MEYER: Your Honor, the argument that from a
11 constitutional or statutory perspective that her rights are any
12 more or any less because of the amount of pay she receives and
13 the amount of benefits she receives is nonsensical. It
14 wouldn't matter here if she was a minimum wage worker or if she
15 makes \$100,000 a year. And certainly her benefits do not --
16 the idea that there's some connection between how many feet
17 somebody has to stay away from some employee --

18 THE COURT: The objection's sustained as to -- I
19 think you've established there's an employment relationship and
20 the pay that she receives, but in terms of the -- that it's by
21 contract, but I think in terms of the benefits or other -- I
22 don't see the relevancy. That objection's sustained.

23 BY MR. BAUER:

24 Q Lynn, other than work -- and you work a 40 hour -- do
25 you work overtime?

1 A No.

2 Q Okay. Other than 40 hours a week, what do you do in
3 your leisure time in order to unwind after work?

4 MR. MEYER: Your Honor, objection. Relevance.

5 MR. BAUER: Your Honor, this is an interference with
6 employment relationship and the impact or the damage to various
7 three employees that has been sustained. I need to establish
8 what damages, what impact it has had in terms of their work
9 life as well as their non-work life. It is relevant.

10 MR. MEYER: Your Honor, this is the preliminary
11 injunction hearing, it's not a damages hearing. It's an issue
12 -- what's an issue at this point is request for injunctive
13 relief. But even if -- to the extent damages are pertinent, I
14 don't see what she does in her personal life has to do with --
15 again, I mean, we're talking about certain fundamental rights
16 here. And it's not going to depend upon what the employee's
17 personal interests are or what her job benefits are.

18 MR. BAUER: Judge, this is -- we're talking about
19 personal rights, and we're talking about Lynn's personal
20 rights. We're going to be talking about Alan's personal
21 rights. We're going to be talking about Jane's personal rights
22 and the impact that their job has on each of them. Each of us
23 takes our jobs home. We all -- you can take judicial
24 recognition of that. So the impact that the Defendants'
25 conduct has had since December of 2012 on this woman is

1 relevant to this proceed.

2 MR. MEYER: Your Honor, if I can -- again, I don't
3 want to -- the Court's been generous in giving me time, but
4 this is an issue of more fundamental importance than just this
5 particular line of questioning.

6 Their personal rights don't exist just because a
7 lawyer says "personal rights." There has to be some legal
8 basis for those rights. If those rights are not based on law
9 they're not relevant in this proceeding. And there is no --
10 inasmuch as there are legal rights, they have to be based
11 either upon statute, on ordinance or upon the constitution, not
12 upon counsel's statement. There is no -- this is not a --
13 personal rights are not a legal category that we're dealing
14 with in this case. It's an attempt by Attorney Bauer to garner
15 the Court's sympathy, but it has no relevance to the legal
16 issues in this case. This is not a case of -- overall of -- of
17 sort of balancing subjective equitable considerations. This is
18 a case of the law and the application of legal rights and
19 constitutional rights.

20 MR. BAUER: Okay. Response briefly, Your Honor. I
21 don't want to debate this at this point in time. What I'd like
22 to do is put the evidence on and then we can debate it in terms
23 of moving forward. We've got a number of witnesses --

24 THE COURT: I'm going to allow -- I'm going to allow
25 the testimony.

1 MR. BAUER: Thank you.

2 And just for the record, this is a balancing of
3 equities.

4 MR. MEYER: But does that mean when my clients get up
5 there I ask them what their personal activities are?

6 MR. BAUER: Sure, you can do that, Jon.

7 THE COURT: Okay. Well, I want it take it one
8 witness, one question at a time. I'm going to allow this
9 inquiry --

10 MR. BAUER: Thank you.

11 THE COURT: -- in the context of this hearing.

12 MR. BAUER: All right.

13 BY MR. BAUER:

14 Q Come on back. Where we are --

15 A Oh.

16 Q Just trying to get you back --

17 A Thought was getting --

18 Q -- focused now.

19 So you're working, you work 40 hours a week. What do
20 you do in your off time. When you go home from work, how do
21 you relax, what do you like to do, Lynn?

22 A When I get home -- it's noisy down here in Keene, it's
23 -- you know, a lot going on, everything -- I just like to go
24 home and be quiet. I have gardens I take care of, I read a
25 lot, I have two dogs to care for. I have -- pretty simple --

1 that's about it.

2 Q Okay. Hobbies?

3 A Not really.

4 Q Now, prior to December of 2012, which is when the
5 activities began that bring us to this court, describe your
6 interactions with the citizens, with out-of-state people in
7 your position as a parking enforcement officer.

8 A Just type typical day?

9 Q Yeah.

10 A It gets pretty -- it's pretty much the same day to day
11 before that. I mean, you occasionally get people that were
12 upset but, I mean, you had the opportunity to talk to them and
13 discuss it. I would say that if that happened it was probably
14 on a scale of maybe once a week, or maybe not at all in a week.
15 It was very ran -- very random and not a lot. So sometimes it
16 could be very tedious because your job is walking a lot and
17 covering the same area, so.

18 Q So, in general, before December of this year, have you
19 been happy with your job?

20 A Oh, yes.

21 Q Have your interactions with merchant -- do you have
22 interactions with merchants on a regular basis?

23 A Oh, sure, yep.

24 Q Do you have interactions with out-of-staters on a
25 regular basis?

1 A Always. Yep, yep.

2 MR. BAUER: I have a job description that's attached
3 to the petition, Your Honor. And there's a number of duties
4 and responsibilities.

5 BY MR. BAUER:

6 Q Take a look at that, if you would.

7 And I don't need you to read each one of them, but
8 are you essentially an ambassador for the City?

9 A Yes, and I -- I actually --

10 MR. MEYER: Your Honor, objection. Leading.

11 THE COURT: Sustained.

12 BY MR. BAUER:

13 Q All right. Why don't you describe what you do for the
14 City in addition to checking parking meters.

15 A Yes, we do interact with many people from out of state,
16 out of town, whatnot, wanting directions, where to eat -- this
17 kind of thing -- about the area in general. That's -- that's
18 frequent. That happens a lot.

19 Q Okay. Have you -- can you give the Court an
20 understanding of whether your day is -- before December -- an
21 upbeat day, has it been generally productive for you and
22 satisfying?

23 A Before December -- yes.

24 Q Describe for the Court the various types of parking
25 meters that you have to take a look at.

1 MR. MEYER: And I have some photographs to assist the
2 Court with that understanding.

3 BY MR. BAUER:

4 Q So what kinds of meters are there?

5 A Well, there are actually four. We have one of one
6 particular type, and that's the kiosk that sits on top of City
7 Hall, and that's a pay-and-display. There are two-hour and
8 three-hour meters. The lots all have ten-hour meters, and
9 they're noted with a blue band around them that says "ten" on
10 them. And then the yellow bands are the two-hours, and those
11 are all on-street. And we have one lot now with three-hour
12 meters in it.

13 Q And when you talk about parking lots, are these multi-
14 story in some cases?

15 A No, one level. One level, except we only have one
16 garage, and it's only the bottom level that's available to the
17 public.

18 Q Okay. So you've got -- the City has parallel spaces,
19 right?

20 A Yes.

21 Q In terms of -- where are the meters located on the
22 parallel type spaces?

23 A At the -- normally, at the very front of the car.
24 There are exceptions though. On Winter Street they're located
25 almost midway. As far as when you parallel park your car. So

1 it's a little different.

2 Q Okay. One meter per car?

3 A One meter per. In some instance there are two-hours,
4 so -- two-hour meters -- two double meters, so the -- it would
5 be front and rear.

6 Q Okay. So sometimes there's a double meter.

7 A Uh-huh.

8 Q And that takes care of both spaces?

9 A Right.

10 Q So in other words, there's the every other meter
11 situation?

12 A Yes.

13 Q Okay. And how about the angled -- what I call the
14 angled meters.

15 A That's --

16 Q Ones that are diagonal.

17 A Those are normally the two-hour type. Just --

18 Q Okay.

19 A -- cuts down on posts.

20 Q All right. And this photograph shows the double meter
21 here taking place -- or, taking care of both sides of the
22 meter?

23 A That's right.

24 Q Okay. And the distance between the angled spaces is
25 ten feet, isn't it?

1 A Right.

2 Q And so every 20 feet there's a meter?

3 A Right.

4 Q Okay. And how about with regard to the perpendicular
5 -- that is, perpendicular to a sidewalk or a street?

6 A We have meters like that on Gilbo Ave., which is down
7 by where the old bus station was. And those are also double
8 meters, so it's just side to side.

9 Q Okay.

10 A Same thing.

11 Q And the space between each perpendicular parking spot
12 is eight feet?

13 A Could be a little bit more. That picture you have on
14 the bottom is the upper deck of the City Hall, so that's the
15 pay-in display.

16 Q Okay.

17 A There's no meter there except for the one --

18 Q So fair to say that these meters are either anywhere
19 from ten to 20 feet apart, the parking meters themselves?

20 A That sounds -- yeah, that's about right.

21 MR. BAUER: Your Honor, I would like to mark these
22 two sets of photographs as full exhibits.

23 THE COURT: Any objection?

24 MR. MEYER: Could I look at them, Your Honor?

25 THE COURT: Oh, certainly. I thought that you --

1 MR. MEYER: Yeah, unfortunately, the way this is set
2 up it's hard to --

3 THE COURT: It is tough space in this courtroom.
4 I'll concede that.

5 (Pause)

6 MR. MEYER: No objection, Your Honor.

7 THE COURT: Plaintiff's 2 and 3 are full exhibits.

8 MR. BAUER: Thank you.

9 (Plaintiff's Exhibits 2 and 3 received)

10 BY MR. BAUER:

11 Q So, Lynn, as you go about checking the meters, talking
12 to merchants, talking to citizens, et cetera, how many other
13 parking enforcement officers are out there on the street with
14 you?

15 A Now? One other.

16 Q One other?

17 A Uh-huh.

18 Q How many have there been from, say, December of this
19 year?

20 A December of this year, there's been two others.

21 Q Okay.

22 THE COURT: December of last year?

23 THE WITNESS: Right, December --

24 MR. BAUER: December -- I'm sorry.

25 THE WITNESS: -- of '12.

1 MR. BAUER: December of last year, yes, which is --
2 the rest is in the red.

3 BY MR. BAUER:

4 Q So there are three -- essentially, three parking-meter
5 people?

6 A Enforcement, yes.

7 Q Enforcement people.

8 What do you wear to do your job?

9 A We have uniforms. In the winter, of course, they're
10 long pants, BDU type pants, because we have a lot to carry.
11 Turtlenecks, fleeces, over jackets -- a uniform. In the summer
12 it's normally shorts, Polo shirt, with insignias for the City
13 on the shirts. And hats. I wear a hat anyway.

14 Q Okay. And these are -- are these issued by the City?

15 A Yes, they are, they're issued.

16 Q They're recognizable to everyone that you are a parking
17 enforcement officer?

18 A Yes.

19 Q Do you have any arrest powers or anything like that
20 under the police --

21 A No.

22 Q -- powers?

23 A No, no. No.

24 Q And the three of you, as parking enforcement officers,
25 do you have a set location where you go in section A and

1 somebody else is in B and somebody else is in C? How does it
2 work? Describe it.

3 A It really doesn't work that way, because the City
4 really isn't that big, so the area can be covered. And we try
5 not to walk all over each other, but it happens. But normally,
6 no, we don't have a designated area. At one point we had a
7 schedule where we would have someone that would do chalking for
8 an afternoon, say, but we don't do that anymore.

9 Q So is it fair to say that you're on your own out there?

10 A Yes.

11 Q And you don't go to one particular area, A street, and
12 then do B street, and then do --

13 A No, we --

14 Q -- C street?

15 A We don't have a set routine. It's totally random.

16 Q That may come as a surprise to a lot of us. We always
17 thought meter people were -- you know, ten minutes after the
18 meter was expired that they would be back. Is that the case or
19 not?

20 A Yeah, I -- like I said, I think in the -- there might
21 be a bigger area that -- other cities, but I think, considering
22 the size of Keene, and the area we're talking about per that
23 map, it's -- that's -- just wouldn't be practical. It would be
24 -- you'd be basically spending hours in one section, unless you
25 got called away to do something else, so.

1 Q So in other words, if Jane and you were working
2 together, are you working in tandem -- in other words, you're
3 in one area, she's in another -- or are you just sort of
4 sporadic or --

5 A It's just -- it's not planned at all. It's just -- we
6 cross paths, yes, that happens. But, no, we don't -- she's not
7 on the east side and I'm on the west side or north or south.
8 There's nothing like that.

9 Q Once you go to a street though, as describe -- as
10 depicted on these photographs -- once you go to a set of
11 parking meters, what do you do then?

12 A You do -- you complete the whole street. It's the same
13 with the lots. You do all the lots, too.

14 Q So while there's randomness in terms of where you're
15 going throughout the City, once you get to a particular area,
16 you do all those meters?

17 A Correct.

18 Q Why?

19 A Why? So you're covering the whole area, if you're not
20 missing anything. Some of them have streets that come off
21 them. We might walk down one of those to check on something,
22 but we always come out and finish it.

23 Q From your perspective, is there a fairness? Once you
24 hit one meter -- or, check one meter, to check them all, to
25 make sure that -- you know, whether they're expired or not?

1 A Yeah. Yeah, that -- we actually -- yes, it is fair.

2 Q And is there -- how about your -- how about chalking?
3 Do you do chalks on tires?

4 A Uh-huh. Yes, we do.

5 Q How do you do that?

6 A We do that. We have two-hour signed areas that I
7 pointed out earlier on a sign. And we'll go through and chalk
8 an area. Again, we can't really walk all over each other in
9 this case and chalk the tires in two -- two-hours. Ten, 15
10 minutes later we come back to check if the chalks are still
11 there.

12 Q How do you remember where to come back to?

13 A Well, again, the City's not big, it's limited areas,
14 and we note down the times that we completed the chalking.

15 Q You actually note it in a notebook that you carry?

16 A Yes.

17 Q Okay. So if you chalk an area or you take a look at an
18 area, you'll write down whatever particular street it is?

19 A Yes.

20 Q Okay. How about for lunch? Where do you take --
21 before December, before December of last year, where were you
22 taking lunches?

23 A I always leave my vehicle or park my vehicle in the
24 upper deck of the Wells garage, the City side parking; and I
25 used to sit there.

1 Q Do you --

2 A And just in my vehicle. Summer, winter or fall, didn't
3 matter.

4 Q Okay. And how about -- how about otherwise breaks?

5 A We don't really have specified breaks like that. We
6 don't have like a 15-minute in the morning and 15 in the
7 afternoon, it's just a half an hour.

8 Q Okay. How about bathroom -- how about bathroom breaks?

9 A Oh, yeah, you got to do that.

10 Q And before December -- before December of 2012 -- I
11 don't mean to get too uptight and personal but --

12 A Yeah, I know.

13 Q -- where would you take bathroom breaks?

14 A Usually using City facilities, such as the City Hall or
15 the public library. In other words, I wouldn't -- the station
16 is at Marlborough Street. I wouldn't drive down there just to
17 use the bathrooms.

18 Q Other than what you've just described in terms of
19 bathroom breaks and lunch, can you leave your area,
20 essentially?

21 A Yes.

22 Q Can you go home? Can you --

23 A Oh, oh. I'm not understanding.

24 Q Well, when I said "area" I think is what threw you.

25 Can you leave your workspace, your work area for

1 personal reasons?

2 A No. No. You mean like run home to -- no, no.

3 Q Go shopping?

4 A No.

5 Q Take care of personal things?

6 A No. We -- we -- our time is -- at the end of each day
7 we run off a report that has -- tracks our times. And
8 essentially it shows you where you've been and what time it
9 was. So it's all right there.

10 Q So some of us work behind a desk. That's our
11 workspace. Some of us work out in the field in a job
12 environment; that's their workspace. And your workspace is the
13 downtown area, Exhibit 1?

14 A The pavement --

15 MR. MEYER: Leading --

16 THE WITNESS: -- yeah.

17 MR. MEYER: Leading, Your Honor.

18 THE COURT: I'm going to allow that.

19 MR. BAUER: Thank you.

20 BY MR. BAUER:

21 Q Otherwise, as we said, you're expected to be in that
22 area doing your job?

23 A Right. In the City of Keene. That's what our
24 jurisdiction is. Whether it be the meters downtown or the
25 surrounding streets, those are the areas that we occasionally

1 do get called to go to. So it's not just walking the main
2 street.

3 Q Have you ever encountered somebody who's been
4 disgruntled about a ticket that you might have given, or that
5 Jane has -- might have given or that Alan might have given? Is
6 there ever -- come across a --

7 A Oh, yeah. Oh, yes. Yeah. Yep.

8 Q So tell us how often that occurs?

9 A I think I mentioned it --

10 Q On a monthly basis, a weekly basis?

11 A On a monthly basis, quite honestly, maybe two or three
12 times.

13 Q Two or three times a --

14 A A month.

15 Q -- a month?

16 And if you can, describe what kind of encounter that
17 is.

18 A A disagreement basically about why they're getting the
19 ticket and, you know, how we came up with it, how did we, you
20 know, do this, that type of thing.

21 Q Is it usually civil?

22 A People get -- I'm not going to -- people do get angry,
23 that's true, but, I mean, for the most part it's -- it's not
24 anything beyond what any of us can't talk to people and try to
25 come to an understanding.

1 Q And can you direct those people to your supervisors --

2 A Yeah.

3 Q -- or the court?

4 A Yes, if we can't -- if the argument can't be solved,
5 then I certainly do.

6 Q And, you know, generically, how often -- I mean, how
7 long did such an encounter -- has such an encounter occurred?

8 A Oh, probably five or ten minutes.

9 Q And after that it's --

10 A It's --

11 Q -- dissipated?

12 A -- either solved or they're going to, yeah, you know,
13 go and talk to my supervisor.

14 Q Now, what happened in December of last year with regard
15 to the Defendants -- the six Defendants in the courtroom?
16 Generically, what happened?

17 A What happened basically is that some of these
18 individuals would start following us around, whether
19 videotaping or not, talking to us on a regular basis,
20 initially. At least that was my experience. Trying to
21 basically -- I kind of figured out, was trying to just, you
22 know, stop me from doing what I was doing. And it just
23 continued and continued on a daily basis. And it hasn't let
24 up.

25 Q Have you experienced these people, these Defendants,

1 doing these things to you on an everyday basis?

2 A Yes, on an everyday basis, yes.

3 Q From your perspective, Lynn, since December -- the
4 lawsuit was filed in May. So from December through May did the
5 Defendants stop doing what they were doing to you?

6 A No. No.

7 Q Did you ask them?

8 A Yes.

9 Q Describe for the Court how you would ask them --

10 A I would ask them to please not speak to me and to
11 please stay away from me.

12 MR. MEYER: Your Honor, I would request -- we're
13 dealing with six named Defendants. And there's an issue
14 presumably with respect to each named individual. So I would
15 ask that the witnesses be asked to address which Defendants
16 they're referring to.

17 MR. BAUER: I will get to that, Judge.

18 THE COURT: I think it's a fair request. I mean,
19 there are six named people here and --

20 MR. EYRE: One who's never even had a problem with
21 her.

22 THE COURT: -- and I'm hoping that you'll get to the
23 specific allegations involving each of them.

24 MR. BAUER: I certainly will, Judge. I'm just doing
25 generic --

1 THE COURT: I understand.

2 MR. BAUER: -- questions right now, so I -- certainly
3 appreciate that.

4 MR. EYRE: If you could speak up. I'm -- I'm pro se.
5 I mean --

6 THE COURT: You're -- if you have -- do you have an
7 objection?

8 MR. EYRE: Yeah, I would just reinforce what
9 Mr. Meyer just communicated. I take offense to the accusations
10 that I've been involved in any behavior that's harassing. You
11 know, being collectivized is one thing, but JUST to make these
12 attacks against me as a person when I've never done anything, I
13 would like -- I'd like for her to be specific and not make
14 these overarching statements.

15 THE COURT: Okay. And the point was made by Attorney
16 Meyer. I think it's a fair point. And I take it Attorney
17 Bauer is going to direct the questioning to be more specific.

18 MR. BAUER: I will, Judge. We'll get to each
19 Defendant in time here, but I want to sort of just get an
20 overview of -- the sense of --

21 MR. EYRE: Is it a waste of my time to stay here
22 then? Do I have to listen to this?

23 THE COURT: Okay. Again, if you're going to speak
24 and you have a specific response, you have to stand and address
25 the Court.

1 Attorney Bauer -- and here -- and it's a problem that
2 I have. It's just the use of the word "them" is very broad and
3 -- and -- and you've used it a couple times, and I think it
4 would be helpful to me to really have greater specificity about
5 who is being referred to in the "them."

6 MR. BAUER: All right.

7 THE COURT: You haven't -- the witness hasn't
8 identified any of the individuals yet.

9 MR. BAUER: Right.

10 BY MR. BAUER:

11 Q So, Lynn, with regard to encounters with you, you've
12 said that these have occurred every day?

13 A Uh-huh.

14 Q And I was just trying to establish that since -- from
15 December until the lawsuit was filed, did the encounters
16 decrease or increase, from your perspective?

17 A They decreased somewhat, but it was the same actions
18 and behaviors.

19 Q And then from May, when the lawsuit was filed, until, I
20 guess, yesterday or the day before, from your perspective, has
21 there been an escalation or a de-escalation, or has it been the
22 same?

23 A I would say that it's been a mixture of both at
24 different times. It's always been on a regular basis, but the
25 actions have been sometimes more pronounced than other days.

1 But basically --

2 Q And you work when? Which days?

3 A Monday through Friday.

4 Q And from your perspective, Lynn, has there been, among
5 the Defendants -- and we'll get to the individual Defendants in
6 a second, but among and between the Defendants has there been
7 any type of organization or scheduling from your perspective?

8 A Concerning them?

9 Q Yes.

10 A Oh, yes. They carry radios. They've taken -- tell
11 each other where we are at -- from time to time. Phones.
12 Other than that, yes.

13 Q Give some examples of that. Give us some examples of
14 what you've observed in terms of coordination or scheduling or
15 organization among the Defendants.

16 A Well, I mean, I could be down in a parking lot off of
17 Gilbo Ave. and be by myself, and then have somebody on a
18 telephone and one of the Defendants would show up. The same, I
19 could be on the street by myself and one of them would see me,
20 and then they get on their own two-way radios, and then there'd
21 be -- a few of them would show up.

22 Q Have there been occasions when you've been walking and
23 one individual Defendant is following you and then another one
24 shows up?

25 A Yes.

1 Q How many times -- or, excuse me. How many Defendants
2 have surround -- have been around you when you're trying to do
3 your job?

4 MR. MEYER: Wait. How many Defendants or how many
5 individuals?

6 MR. BAUER: How many Defendants. Defendant
7 individuals.

8 MR. MEYER: Well, but they're -- well --

9 BY MR. BAUER:

10 Q Have all of the Defendants at one time or another been
11 around you, following you?

12 A All of them at once?

13 Q No, no.

14 A No. Yes, yes. Except for that gentleman there with
15 the white T-shirt.

16 MR. EYRE: There you go.

17 BY MR. BAUER:

18 Q Mr. Eyre?

19 A Yes.

20 Q Okay.

21 MR. EYRE: Thanks for being honest.

22 THE COURT: Mr. Eyre, let the witness respond to
23 questions. Certainly I'll give you an opportunity if you have
24 questions, but no side comments while the questioning is going
25 on.

1 Attorney Bauer.

2 BY MR. BAUER:

3 Q Describe for the Judge what types of activities --
4 generically, and then we'll get into the specifics of who's
5 doing what. But what type of activities have occurred to you
6 by the Defendants?

7 A Following along very closely at times. Taunting at
8 some times. Trying to -- if I was trying to talk to a citizen
9 or someone else concerning something, interfering with that.
10 Videotaping constantly. Playing loud music, walking behind me.
11 Just -- generally just -- just making themselves known and
12 heard.

13 Q And what have they -- what have individual Defendants
14 said to you with regard to your job, working for the City or
15 for the government?

16 A That they -- they'll get me another job. That they'll
17 get Jane a job, and they can get me another job, too.

18 Q Put it in context. What does that mean?

19 A That means they want me to quit my job.

20 Q How do you know that?

21 A Why would anyone do that? Why would they -- why would
22 they chase me around all day and say disparaging things and
23 demean me in public, in front of other people. Why would they
24 do that, other than they want me to go away.

25 Q Have you ever been bumped into by any of these

1 Defendants?

2 A There was one instant, yes. Only one.

3 Q Who was that?

4 A That was the gentleman right there. Stand -- I don't
5 know his name.

6 Q Describe -- describe clothing.

7 A He's sitting beside the guy with the orange T-shirt.

8 MR. BAUER: Would you stand up?

9 BY MR. BAUER:

10 Q That fellow?

11 A Uh-huh.

12 MR. MEYER: Can we just make clear for the record
13 that the person who stood up is not a Defendant.

14 THE COURT: The record will so indicate. I think
15 that the witness pointed to somebody who is seated in the back
16 of the courtroom and not one of the Defendants in this matter.

17 BY MR. BAUER:

18 Q Now, is he -- when he -- would you describe how that
19 occurred?

20 A I was just writing a ticket and he -- I was standing in
21 front of the meter, and he came up behind to put money, and he
22 just kind of stuck his hand and he touched me in the back.

23 Q And describe that. What do you mean "trying to stick
24 money in the meter"?

25 UNIDENTIFIED MALE: Your Honor, I would like to note

1 that the lawsuit states anybody associated with Robin Hooding
2 is a Defendant in this suit. Does -- does it have to be
3 listed?

4 THE COURT: People who are not counsel to the case or
5 parties who are representing themselves or witnesses are not
6 permitted to speak. The next time somebody speaks who's not
7 either counsel or Mr. Eyre, who is representing himself in this
8 case, they're going to be asked to leave the courtroom.

9 You may proceed, Attorney Bauer.

10 MR. BAUER: Thank you.

11 MR. MEYER: Your Honor, I do want to say that I don't
12 think it's appropriate for counsel to have asked an individual
13 to stand up, I mean, if they're not a party to this case. On
14 the one hand, if they're being asked to stand up -- I mean, I
15 think that encourages them to think that they are
16 participating.

17 THE COURT: Well, let me -- let me say that in this
18 particular instance it was helpful. I thought the witness
19 might have been pointing to one of the Defendants in the case.
20 And to have it be clear that she was not, in fact, pointing to
21 one of the Defendants was helpful to the Court.

22 MR. MEYER: Right. Your Honor, I --

23 THE COURT: But I take your -- your point is well
24 taken.

25 MR. MEYER: Right, and I agree -- I also say, I agree

1 with the Court that it was helpful. I'm just saying that that
2 perhaps led to the belief about participation.

3 THE COURT: Okay. Attorney Bauer.

4 BY MR. BAUER:

5 Q So I was trying to ask you about what -- the
6 circumstances when you were touched or bumped into by this
7 individual. What were the circumstances? You talking about
8 feeding the meter?

9 A I was just writing a ticket and I was standing in front
10 of it, and he just reached from behind the meter to put money,
11 because the -- the slot for the coins is in the front; and when
12 he did, he just had contact with me on my back.

13 Q Were there other Defendants around you as well during
14 that time period?

15 A No.

16 MR. MEYER: I object. Other Defendants? She already
17 made --

18 THE COURT: Sustained.

19 MR. MEYER: -- clear it wasn't a Defendant.

20 THE COURT: Sustained.

21 MR. BAUER: Oh, I didn't mean to -- I didn't mean the
22 implication that --

23 THE COURT: It was the way the question was framed,
24 it suggested that the person who actually bumped --

25 MR. BAUER: Yeah.

1 THE COURT: -- was one of the Defendants.

2 BY MR. BAUER:

3 Q So this -- let's talk about the individual Defendants
4 now. I don't know whether you know them by name, Lynn.

5 THE COURT: If I could see counsel at the bench very
6 briefly.

7 (Sidebar begins at 10:16 a.m.)

8 THE COURT: Attorney Bauer, one of your clients --
9 one of the people seated at table was -- was -- appeared to be
10 making some sort of a remark or sort of mouthing a comment.

11 Sure. I'm sorry. I just wanted to say that -- I
12 didn't mean to include you from the conference. I know you're
13 representing yourself.

14 I just wanted to say that I observed one of the other
15 officers, I believe, who appeared to be mouthing some comment
16 to the witness. If you could just tell your clients not to --
17 not to be mouthing something to a witness who's under oath
18 in --

19 MR. BAUER: Sure.

20 THE COURT: -- in the proceedings. Not an
21 appropriate conduct and --

22 MR. BAUER: Male or female person?

23 THE COURT: The male person in the green shirt.

24 MR. BAUER: Okay.

25 THE COURT: They can be advised not to do that.

1 MR. BAUER: Yep.

2 THE COURT: It's not appropriate. Thank you.

3 MR. BAUER: Thank you, Your Honor.

4 (Sidebar ends at 10:17 a.m.)

5 (Counsel and Plaintiffs confer)

6 MR. BAUER: May I proceed?

7 THE COURT: Yes, sir.

8 MR. BAUER: Okay.

9 BY MR. BAUER:

10 Q So with regard to the named Defendants, Lynn, I don't
11 know whether you know them all by name. I don't know whether
12 you know their full names. James Cleaveland. Do you know James
13 Cleaveland by sight?

14 A Yes.

15 Q And would you describe what Mr. Cleaveland has done to
16 you over the past several months?

17 A Well, Mr. Cleaveland has followed me around -- the last
18 couple months? No.

19 Q Well, when I say "the last couple months," I mean from
20 December --

21 A December, okay.

22 Q December through --

23 A Well, he's --

24 Q -- August.

25 A -- followed me around, he's -- he has taunted me. He

1 has -- even if I cross the street, he crosses with me. He
2 continually chatters and talks about anything and everything
3 and just -- just to try to confuse me.

4 Q Now, when you say that Mr. Cleaveland has taunted you,
5 tell the Court, what do you mean by that?

6 A A particular instant, you mean?

7 Q Yeah. Or -- or -- activity or instance. Activities or
8 words.

9 A Well, I can -- I remember one time pretty well that we
10 were on Summer Street here, and he started taunting me about
11 being poor Linda, stealing from the citizens of Keene for all
12 these years, poor Linda. And he went on and on with it.

13 Q When you -- when you say in close proximity to you -- I
14 mean, if you were to stretch your arms out --

15 A Yeah.

16 Q -- would you be able to touch these Defendants?

17 A At times, yes.

18 Q Okay. And at times were the Defendants even closer to
19 you than one foot away?

20 A Yes.

21 Q Have you told Mr. Cleaveland to back off, to get out of
22 your face, or words to that effect?

23 A And don't -- yeah, "don't talk to me" and "stay away
24 from me."

25 Q Lynn, how many times have you told Mr. Cleaveland to

1 stay away from you, get back, or words to that effect?

2 A I believe I just told him the once.

3 Q And did he get back, did he get out of your face?

4 A It was some days later, but it was the same thing
5 again. It was the same activities on his part again.

6 Q What are the same activities? You have --

7 A The talk -- the talking and the following behind and
8 videotaping, or in front of or walking by.

9 Q Lynn, do you recognize that people have rights to
10 videotape public employees?

11 MR. MEYER: Objection. What's the relevance?

12 MR. BAUER: Well, the relevance is, I want to
13 establish -- make an offer of proof that these employees
14 recognize that they have a right, that they're municipal
15 employees, and that individuals have a right to protest and
16 videotape and say what they want within the boundaries of the
17 law. So my point here is to establish through evidence that
18 these three folks are not against First Amendment rights.

19 MR. MEYER: Your Honor, whether these people are
20 against First Amendment rights or not against First Amendment
21 rights has no bearing on any issue this Court has to address.
22 It's not -- again, it's not a personal issue. It's not their
23 political philosophy.

24 THE COURT: I take it the answer to the question is
25 going to be, yes, that they -- for the limited purpose, I

1 agree, it's of marginal, if any, relevance, but I'll allow it.

2 BY MR. BAUER:

3 Q So, Lynn, with regard to individual rights, do you
4 recognize that people can, as a public employee, videotape you?

5 A Yes.

6 Q And do you recognize that people don't have to agree
7 with, you know, working for the government, for the City, or
8 whomever?

9 A Yes.

10 Q What are you asking this Court to do, Lynn?

11 A Basically I'm helping -- I'm asking for some assistance
12 to help me be able to do my job like I should be doing my job,
13 without being pursued and continually trying to keep me
14 unfocused or trying to make me, you know, leave altogether. I
15 need your help to let me do my job without having to deal like
16 this on a regular basis.

17 Q When you say "regular basis," is it every day?

18 A It's on a daily basis.

19 Q Have you -- when you say "do your job," have you --
20 from your perspective, have you been interfered with doing your
21 job by Mr. Cleaveland?

22 A Yes.

23 Q Have you been interfered with by Garrett Ean?

24 A Yes.

25 Q And point out Garrett Ean, please?

1 A Garrett Ean is wearing the black Polo shirt.

2 MR. BAUER: Do you need more recognition for the
3 record for that, Judge?

4 THE COURT: Attorney Meyer, do you dispute that the
5 witness has identified Mr. Ean?

6 MR. MEYER: No, Your Honor.

7 THE COURT: Okay. The record may so reflect.

8 BY MR. BAUER:

9 Q Have you, from your perspective, been interfered in
10 doing your job by Ian Bernard?

11 A Yes.

12 Q And would you point out Mr. Bernard, please?

13 A He's wearing a maroon Polo shirt.

14 THE DEFENDANT/FREEMAN: I go by Ian Freeman.

15 MR. BAUER: Ian Bernard Freeman?

16 THE DEFENDANT/FREEMAN: Ian Freeman. Thank you.

17 MR. BAUER: Freeman?

18 THE WITNESS: Ian Bernard, yeah.

19 THE COURT: Okay.

20 BY MR. BAUER:

21 Q And how about Graham Coleson? Has Graham Coleson
22 interfered with you in performing your jobs, from your
23 perspective?

24 A Yes.

25 Q And would you point out Mr. Coleson?

1 A Mr. Coleson is sitting by Garrett Ean, with the
2 sunglasses.

3 Q And how about Kate Ager? Has Kate interfered with you
4 doing your job since December --

5 A Yes.

6 Q And how about Kate, would you point out Kate?

7 A She's sitting beside Mr. Bernard.

8 THE DEFENDANT/FREEMAN: Freeman, please.

9 THE COURT: Mr. Freeman's name has been -- it's been
10 in other court pleadings that that is his name, and I take it
11 he's objecting to the reference. I think, ma'am, if you would
12 refer to Mr. Freeman --

13 THE WITNESS: Okay.

14 THE COURT: -- by his name.

15 THE WITNESS: Okay.

16 BY MR. BAUER:

17 Q And how about Pete Eyre? Has Pete Eyre, from your
18 perspective, interfered with you in doing your job?

19 A No.

20 Q And I think you've already recognized -- pointed him
21 out to the Court?

22 A Yes, he's wearing a white T-shirt.

23 Q Now, but for Mr. Eyre, Pete Eyre -- Peter Eyre, have
24 the five individuals from your perspective worked together to
25 interfere with you doing your job?

1 A That's correct, yes.

2 Q Describe it. How so?

3 A Working together? Normally Garrett and Graham would
4 team up, and earlier on it would be Kate -- and I can't
5 remember the other -- I believe it was -- was Kate and Graham
6 earlier on. It's been months since I've seen her.

7 Q It's been months since you've seen Kate Ager?

8 A Yeah. Weeks.

9 Q How about the video -- videotaping that you described?
10 Would you describe for the Judge how close individual
11 Defendants have gotten next to you or near you with regard to
12 the use of the video?

13 A Not that close.

14 Q Well, I'm asking. How close?

15 A Oh, from here to where the Judge sits.

16 Q Okay. So eight feet or so, or ten feet?

17 A At times. It varies.

18 Q Okay. And who have you seen videotaping?

19 A All of them at one point. Either with a camera or a
20 phone type device.

21 Q And have any derogatory comments been made to you such
22 as "thief" or "stealing" or anything in that regard?

23 A Yes.

24 MR. MEYER: Your Honor, we're moving back to, as far
25 as I can see, unidentified, unattributed -- questions not

1 limited to comments made by Defendants.

2 THE COURT: Sustained.

3 BY MR. BAUER:

4 Q Describe for the Court, Lynn, who has made any
5 derogatory comments to you by name of the individual and the
6 generic derogatory remarks.

7 A Mr. Cleaveland has accused me of being a thief, and
8 Graham Coleson, and I've been stealing from people.

9 Q And that's in the context of doing your job, checking
10 meters, et cetera?

11 A Right.

12 Q Lynn, from your perspective, has this taken on a
13 personal attack on you? Do you feel personally attacked by
14 what they've been doing?

15 A Yeah, I do.

16 Q Why so?

17 A Because I -- I know it's -- it's -- it's become
18 personal because I've become very unfocused in what I'm
19 supposed to be doing. I feel like I'm being moved around, that
20 I can't go out there and do the job I'm supposed to do in just
21 trying to avoid them, to stay away, to get away from it.
22 That's been an interference, of more or less running -- or, a
23 cat-and-mouse kind of game. That -- that's been a problem.

24 Or waiting for someone to show up. That awful
25 anticipation of, you know, here I am, I'm having a great

1 morning and then, boom, there's someone there. And it all
2 starts.

3 Q Now, this cat-and-mouse reference that you just made,
4 would you describe for the Court what you mean by making
5 arrangements or cat-and-mouse?

6 A Well, meaning, if I see someone that I'm going to -- if
7 I had a specific idea of what I was going to be doing, which is
8 -- I'm kind of an organized person like that. I would have to
9 change -- I would change my mind just to avoid having to come
10 across or be around them. So I would change directions, in
11 other words. Cross the street, go to a whole different area,
12 whatever I could. Remember, I'm on foot, so it's -- I mean,
13 it's limited success at doing that.

14 Q Limited success, did you say?

15 A Yes, because I am on foot. But I have had times, too,
16 when I'm driving that -- in the vehicle that I use for work,
17 where they have -- they have followed me in their vehicles.

18 Q And have they followed you with bicycles as well?

19 A Oh, yes.

20 Q Describe, please.

21 A Well --

22 Q Who'd you see on bicycles, first?

23 A Basically, Mr. Ean has done that while he's
24 videotaping. At least it appears that he's videotaping. It's
25 -- it's -- it's tough because he'll be behind, then in front;

1 and I'm driving and there's people, there's pedestrians,
2 there's other cars. It's very distracting, and it's worrisome
3 to me that I'm going to do something and ultimately it's going
4 to be my fault if I hit someone or a car or something. And the
5 whole time I'm just trying to figure out where this person is
6 and drive at the same time.

7 Q And do you get a similar sense when you're just walking
8 down a sidewalk street as well, where are they coming from?

9 A Oh, yeah. Always.

10 Q Would you describe that, please, for --

11 A Sometimes I just hear foot -- can just hear footfalls
12 behind me, and I just -- I just tense all up. It's just --
13 it's waiting -- waiting for this whole game to start.

14 Q What time do you start in the morning?

15 A 7:30.

16 Q Since December have you looked forward to coming to
17 work?

18 A Not like I used to, no.

19 Q What's changed, Lynn?

20 A What's changed is the anxiety that I feel and the
21 horrible anger that I've never, ever felt in my life.

22 Q How old are you?

23 A I'm going to be 57 years old in March.

24 Q Do you live by yourself?

25 A I do.

1 Q And describe what this anger is all about, Lynn.

2 A Well, I've just never experienced it. It's just -- I
3 just get so angry and so frustrated with -- you know, they
4 don't listen, they don't want to stop, and it just continues.
5 And it's -- it's having an effect. I mean, I'm just very tense
6 and uptight all the time. Becoming forgetful. And it's just
7 been over this period of time.

8 Q Have you -- from your perspective, has there been added
9 -- significant added stress on the job as a result of the
10 Defendants' activities?

11 A Oh, yes. Most definitely.

12 Q Well, you -- you laugh --

13 A Most definitely.

14 Q -- a little bit. Describe that.

15 A It's -- it's like night and day. It's -- it's nothing
16 like I've experienced before. Nothing at all.

17 Q You've never experienced that with other citizens,
18 out-of-staters?

19 A Not on a continual basis like this, no.

20 Q Well, if we were -- if we were to get into your shoes
21 and walk those four to six miles every day, Monday through
22 Friday, what would we experience from these Defendants?

23 MR. MEYER: Your Honor, objection. There have been a
24 number of specific questions that have been asked, and now this
25 is -- seems like it's rehashing everything in one big question.

1 Once again, making no effort to delineate between individual
2 Defendants.

3 THE COURT: And I do have -- I have that problem, is
4 that the petition is filed against specific individuals, and
5 the question is, you know, "what would you experience from
6 these Defendants."

7 MR. BAUER: Well --

8 THE COURT: And I'd like it to be more specific, to
9 be helpful for me to understand who the witness is referring
10 to.

11 BY MR. BAUER:

12 Q Lynn, if the Judge were in your shoes, or if any one of
13 us were in your shoes, Monday through Friday, working for the
14 City of Keene, what would they have -- what would they
15 experience? What have they -- what would they have experienced
16 from December to the first with regard to Garrett Ean's --

17 MR. MEYER: Your Honor --

18 BY MR. BAUER:

19 Q -- conduct?

20 MR. MEYER: Your Honor, I object to the form of the
21 question, "what would somebody else have experienced if they
22 were in your shoes." I mean, at best that calls for
23 speculation.

24 MR. BAUER: No, what I'm asking for, Judge -- and
25 maybe it was a poorly phrased question. Let me try it again.

1 BY MR. BAUER:

2 Q In your shoes, what have you experienced from Garrett
3 Ean?

4 A The pursuing. The videotaping. The trying to talk to
5 me, although I've asked him not to talk to me and he doesn't
6 really do that much. Talk to me, in other words.

7 Q Has Garrett Ean, from your perspective, interfered with
8 you and taunted you and harassed you?

9 A He -- just by his actions, yes.

10 Q What actions?

11 A The actions -- following me around, preventing me from
12 doing my job, trying to speak to me. You know, this kind of
13 stuff.

14 Q How -- how -- what has he done to prevent you from
15 doing your job properly?

16 MR. MEYER: Objection. Leading.

17 MR. BAUER: That's not a leading question.

18 THE COURT: Overruled. You can answer the question.

19 BY MR. BAUER:

20 Q What has he done?

21 A I'm sorry. Go ahead?

22 Q What has he -- what has Garrett Ean done to prevent you
23 from doing your job properly?

24 A Just being in front of me constantly.

25 Q And when you say "in front of you," are you talking

1 within 30 feet of you?

2 A It varies. It could be closer, it could be 30 feet, it
3 could be 50 feet.

4 Q Can it be three feet, five feet?

5 A At times.

6 Q And from your perspective, Lynn, the closer these
7 Defendants are to you, does that make any difference to you?

8 A Yes, because I don't want them around me. I just
9 don't. I don't want them --

10 Q Why not?

11 A Because I -- just their actions, just the things they
12 say at times. It's like I -- I just don't trust them. I don't
13 want them near me.

14 Q Have they caused stress to you on your job?

15 A Uh-huh.

16 Q And how is that manifested? How does it come out, that
17 stress?

18 A Just -- just be --

19 MR. MEYER: Your Honor, that was asked and answered
20 already.

21 THE COURT: I believe you did. Extensive testimony
22 about --

23 BY MR. BAUER:

24 Q How about -- how about after work? What effect do you
25 feel from the activities that you've just described when you go

1 home from work, what impact, if any, has there been?

2 A Just very keyed up, very frustrated as to, you know,
3 what -- what the point of all this is. A lot of strain, a lot
4 of tension, basically. Sometimes just getting home and just
5 sitting down and just not wanting to do nothing. And just try
6 to think this out all the time. It's just so consuming all the
7 time. It's like day in and day out. It's like I don't want to
8 think about this any more. I just don't -- I just don't
9 understand the reasons for their -- why they're doing this.

10 Q Did you try to tell Garrett and Kate and Ian and James
11 and Graham, the five Defendants that you've named, to please
12 back off and stop their conduct?

13 A In those words --

14 MR. MEYER: Your Honor, objection.

15 THE WITNESS: -- yes.

16 MR. MEYER: The way the question is phrased you can't
17 tell which person she is testifying she asked to back off.

18 THE WITNESS: Well --

19 THE COURT: Sustained.

20 THE WITNESS: -- I've already answered --

21 MR. BAUER: I'll go through each one.

22 THE COURT: Sustained.

23 BY MR. BAUER:

24 Q Have you told -- we're talking about Garrett right now.
25 Have you told Garrett Ean to back off and leave you alone?

1 A Yes, and please don't talk to me.

2 Q And has he done those things?

3 A He hasn't backed off. He doesn't really talk to me
4 much, but I don't -- I don't respond. I don't -- I don't
5 engage.

6 Q Have you tried different techniques to deal with
7 Garrett and Jim Cleaveland?

8 A No. No.

9 Q Were you ever talkative to them?

10 A No.

11 Q How about Kate now? Let's talk about Kate Ager.

12 A Uh-huh.

13 Q What -- what -- her -- from your perspective, what
14 taunting, what harassing has she engaged towards you?

15 A Just following behind, making comments -- offhand
16 comments now and again. But other than that, that would be
17 all.

18 Q Comments such as what?

19 A Like I said, it's been weeks since I've seen her. I
20 don't have them written down.

21 Q The comments disturb you?

22 A Just -- yeah, just things about the job, what I'm
23 doing, why do I do this, referring to that kind of thing.

24 Q Has Kate -- from your perspective, has Kate indicated
25 to you that you ought not to be doing your job for -- as a

1 parking enforcement officer, or words to that effect?

2 A Yeah. Yes.

3 Q Has Garrett Ean said similar things to you, that you
4 shouldn't be working for the City, parking enforcement work?

5 A Yes.

6 Q Has James Cleaveland said similar things to you about
7 not working for the City?

8 A Similar.

9 Q How about Ian Bernard -- how about Mr. Freeman?

10 A Mr. Freeman --

11 Q How about -- yeah. Ian Freeman, has he said anything
12 to you with regard --

13 A If he has, I don't recall.

14 Q Okay. Describe -- describe for us what Ian Freeman has
15 done to you, from your perspective, to interfere with your job
16 responsibilities.

17 A The same thing. Pursuing, with the camera, just trying
18 to be intimidating, catch me off my guard. I've asked him also
19 not to talk to me and to stay away, and his response was, "I
20 didn't hear you."

21 Q How about Graham Coleson? Describe what Graham Coleson
22 has done to you with regard to interfering with your job.

23 A Graham has continually chattered and talked. Cameras
24 at times, not constantly. Or a recording device at times. The
25 same. The same as all the rest. But more.

1 Q I'm sorry?

2 A He was -- I've seen him more than -- I would say than a
3 Kate or an Ian Freeman.

4 Q Now, you've talked about following you. Has there ever
5 been any -- have there been times when they're back -- you've
6 been chased?

7 A I've not been chased, but sometimes if they come from
8 behind they'll sweep by very close, especially Mr. Coleson
9 would do that.

10 Q When you say "sweep by very close," what do you mean?

11 A Well, come beside me to get in front of me, so they
12 would cut right across right in front. It's a little startling
13 at times.

14 Q Coming up from the side or behind you?

15 A Behind you, yes, to get in front.

16 Q Have you ever put your hands up to tell people to stop?

17 A Uh-huh. Yeah.

18 Q You said you've verbalized asking people to stop.

19 A Yes.

20 Q And has -- from your perspective, has the taunting and
21 the harassment and the intimidation stopped?

22 A From my perspective?

23 Q Yes.

24 A The taunting I don't hear too much. I -- I don't
25 engage. I haven't from the very beginning. And I think that

1 that has probably discouraged it and they don't do that as
2 much. I'm not saying it has stopped altogether, and I always
3 feel like it's a possibility, but -- no, the taunting and the
4 chatting is -- has, for me, personally, been much quieter.

5 Q Now, with regard to the City sidewalks, have you
6 observed congestion or interference with citizens by any of the
7 Defendants when you're trying to do your job?

8 A As far as them getting in the way of just somebody
9 walking? No, I don't recall anything like that.

10 Q Have there been any citizens that have come to your
11 assistance or intercepted any of these Defendants on your
12 behalf?

13 A There -- there are people that have said things to
14 them, such as, you know, "leave her alone, stop following her,
15 or "why are you doing this" or other things. Either just said
16 it to them and didn't, you know, walk after them. There's been
17 that kind of thing.

18 Q Say that again?

19 A They have -- people have said things -- comments like
20 that to them, but they usually say them and then they leave.

21 Q Okay. How about any merchants? Have any merchants
22 come to assist you with regard to what you've described?

23 A Yes, I have -- I have had one or two that try to
24 explain to them, you know, why we do -- why they want us to do
25 what we do as far as parking enforcement goes, and they listen

1 but they always seem to have a better explanation.

2 Q And when you're out on the street, if there's another
3 parking enforcement officer working, will you try to coordinate
4 with them to try to tell -- tell your colleagues -- your work
5 colleagues that any of the individual Defendants are in a
6 certain area and that they shouldn't go there?

7 A Yeah, we have done that, yes.

8 Q Describe that for us, please.

9 A Well, we have cell phones that we use; and I might call
10 Jane or call Alan and let them know. I mean, it could be, you
11 know, any time during the day. So I have no -- no way of
12 knowing. It's just giving them kind of a heads up, that's all.

13 Q With regard to crossing the street, from your
14 perspective, describe what, if any, safety concerns that you've
15 got -- that you have with regard to motorists, the Defendants,
16 yourself.

17 A I always use the crosswalks, so -- they don't.

18 Q Well, describe that for us.

19 A Just -- just --

20 MR. MEYER: Well, again --

21 THE WITNESS: -- cutting across to wherever --

22 MR. MEYER: Your Honor, again -- excuse me. The
23 question is nonspecific in terms of which Defendants.

24 MR. BAUER: All right.

25 THE COURT: Ma'am, if there's an objection, just stop

1 talking until I --

2 THE WITNESS: I'm sorry. Yep.

3 THE COURT: -- I've ruled on the objection.

4 The objection's sustained.

5 BY MR. BAUER:

6 Q Lynn, describe for us who you have seen following you
7 across the street out of the crosswalk areas.

8 A Graham Coleson, Garrett Ean, James Cleaveland, Kate
9 Ager.

10 Q How about Mr. Freeman?

11 A No, I've never noticed that.

12 Q Do you have any safety concerns when those folks are
13 following you across the street?

14 A For them or for me?

15 Q For everybody.

16 A It's a distraction, I think, when they're darting
17 across just to catch up with me. Yeah, it's worrisome. I
18 don't want to see somebody get hit, or worse.

19 Q From your perspective, Lynn, have those five
20 individuals that you've identified, have they been in your face
21 for many, many months now?

22 MR. MEYER: Your Honor, first of all, I mean, we're
23 going back and back over the same territory; but in any event,
24 that's, again, another nonspecific question.

25 MR. BAUER: I said the five that she has identified.

1 MR. MEYER: I know, but without delineating which
2 ones.

3 THE COURT: The objection's overruled.
4 You can answer the question.

5 THE WITNESS: I'm sorry, would you repeat it, please?

6 BY MR. BAUER:

7 Q The five people that you have identified, have they
8 been in your face for eight months now, while you're doing your
9 job?

10 A All -- all of them?

11 Q The five --

12 A From time to time, yes. From December until we're here
13 today, there have been -- at some point or other, there have
14 been one or many of them.

15 Q Now, where you're seated right there to the back of the
16 courtroom, where I'm standing, is about 30 feet. And my
17 question to you --

18 MR. MEYER: No, objection.

19 THE COURT: Why don't we have the question first and
20 then -- let me hear the question, and then before you answer --
21 I take it there's going to be an objection, and I'll rule on
22 the objection before you respond.

23 Pose the question.

24 BY MR. BAUER:

25 Q So, Lynn, from you to me in the courtroom is a distance

1 of about 30 feet, or ten yards. What we used to refer to in
2 football as a first down. Have the Defendants -- the five
3 Defendants that you've identified been closer to you within the
4 30 feet that we're separated right now?

5 MR. EYRE: Objection. Asked and answered numerous
6 times. This is a waste of our time.

7 MR. MEYER: Your Honor, objection to the question.
8 First of all, I'm objecting to the attorney informing the
9 witness as to how far 30 feet is, particularly without any
10 foundation here that in fact that is 30 feet. I mean, if he
11 wants to ask her which Defendants have been within 30 feet,
12 naming them, then I have no objection to that question.

13 THE COURT: I take it that your question, Attorney
14 Bauer, related to the five individuals about whom there's been
15 testimony, and not Mr. Eyre?

16 MR. BAUER: Correct.

17 THE COURT: And the objection's --

18 THE WITNESS: I've already --

19 THE COURT: -- overruled.

20 Do you understand the question? The question, as I
21 understand it, was have they been closer than the distance
22 between you and Attorney Bauer?

23 THE WITNESS: Yes.

24 MR. EYRE: I think that was already established.

25 ///

1 BY MR. BAUER:

2 Q Have they been closer than where I'm standing now,
3 which is approximately 20 feet?

4 MR. EYRE: Objection. He previously asked have they
5 been within three feet or a foot of you, and she at another
6 time mentioned that they had, you know, walked near her. So we
7 already know that -- this was asked and answered, and it's just
8 going on repetitively, to try to hammer home and create this --
9 you know, continue this circus.

10 THE COURT: Attorney Bauer, why isn't this asked and
11 answered? I think there has been testimony that -- that --
12 with the exception of Mr. Eyre, some of the other -- at least
13 some of the other Defendants were within a few feet of the
14 witness at the time of their engagement.

15 MR. BAUER: You know, Your Honor, I'm being
16 challenged every time I talk about the Defendants, so I'm
17 trying to specify for the record and for you the Defendants by
18 name, identity and the distance, the proximity; because that's
19 what this is all about, proximity.

20 MR. EYRE: This is about control.

21 THE COURT: Okay. There is -- the -- so now you're
22 talking about have each of the five, other than Mr. Eyre --

23 MR. EYRE: Yes.

24 THE COURT: -- been within the distance between you.
25 The objection's overruled.

1 You may respond.

2 THE WITNESS: Yes.

3 BY MR. BAUER:

4 Q And now about ten feet away from you. Have each of the
5 five named Defendants been within ten feet, or the distance
6 between you and me --

7 A Yes. Yes.

8 UNIDENTIFIED MALE: Because this could take a while,
9 can I use the restroom?

10 THE COURT: Okay. That's -- that's -- I've been
11 indulgent about people making comments. That's going to end.
12 Now either counsel or -- in the form of an objection, and we
13 can discuss the objection, or -- any other comments and people
14 will not be permitted to do that, they'll be asked to leave the
15 courtroom.

16 You may proceed.

17 MR. BAUER: Thank you.

18 BY MR. BAUER:

19 Q And Lynn, I'm about three feet from you right now as I
20 stand. Put your arm out, please. Have each of the named
21 Defendants, the five of them, been within approximately three
22 feet from you?

23 A At times, yes.

24 Q Is that disturbing to you?

25 A Yes.

1 Q From your perspective, is there any reason why anybody
2 has to be within 30 feet from you, all the way down to three
3 feet for you?

4 A There is no reason, no.

5 Q Whether -- if it was any of these five Defendants --
6 strike that.

7 If anybody else -- a soccer mom, a veteran, if
8 anybody else were within those feet from you while you were
9 doing your job, on an ongoing basis, day in and day out, would
10 you object to that as well?

11 MR. MEYER: Your Honor, objection. What -- whether
12 she would object to a soccer mom or a veteran being within
13 three feet of her has no conceivable relevance to this case,
14 unless we're now talking about somehow exempting soccer moms
15 and veterans from the requested relief.

16 MR. BAUER: My joint, Judge, is it's neutral --
17 neutral based.

18 MR. MEYER: Your Honor, it's -- I don't get --

19 MR. BAUER: Not contact --

20 MR. MEYER: -- Attorney Bauer making -- first of all,
21 your question would prove exactly the opposite.

22 But in any event, I don't object to him making
23 argument but not through this witness. We're going to have a
24 chance to talk, to make argument.

25 THE COURT: That is --

1 MR. BAUER: I'm asking her, from her perspective,
2 Judge. We can argue the fine legal points, but from her
3 perspective on the job.

4 THE COURT: I take it your point is that she would
5 have no -- she would object to anybody being that close
6 regardless of their position or status? If they're within a
7 certain distance that she would object to that?

8 MR. BAUER: On the ongoing basis that she's already
9 described.

10 THE COURT: I think you've -- I think that's more of
11 an argument point than a question for this witness.

12 MR. BAUER: But I need it as part of the evidence,
13 Judge.

14 THE COURT: Well, I'd like it to be rephrased. I
15 think the reference to -- the objection's sustained. You can
16 rephrase the question.

17 BY MR. BAUER:

18 Q If anyone were engaged in the conduct that you've
19 described that the five individuals have engaged in, would you
20 be impaired and object to their activities as well?

21 A Yes.

22 Q And the reason for that, Lynn, is why?

23 A Because it's preventing me to doing -- from doing my
24 job. And having peace while I'm doing my job.

25 THE COURT: Attorney Bauer, if there's a logical

1 point for a break --

2 MR. BAUER: Sure. This is fine.

3 THE COURT: I didn't know if you were close to
4 wrapping up with this witness or --

5 MR. BAUER: This would be an appropriate time.

6 THE COURT: Okay. Take a ten or 15-minute recess.

7 THE BAILIFF: All rise.

8 (Recess at 10:54 a.m., recommencing at 11:23 a.m.)

9 THE COURT: I apologize. It was a longer break than
10 I had wanted, but it was -- it was an important call that I
11 needed to take.

12 Attorney Bauer.

13 MR. BAUER: Thank you.

14 LINDA DESRUISSEAU, PLAINTIFF'S WITNESS, PREVIOUSLY SWORN

15 DIRECT EXAMINATION CONTINUED

16 BY MR. BAUER:

17 Q So, Lynn, you're still testifying under oath.

18 One of the things I'd like to cover with you, you
19 mentioned earlier where you would eat lunch and where you'd
20 take bathroom breaks. Remember that testimony?

21 A Uh-huh.

22 Q Since December of last year, with regard to the five
23 Defendants' conduct that you've described, what, if anything,
24 have you done differently with regard to taking bathroom breaks
25 or eating lunch?

1 A Now the difference would be, instead of just sitting in
2 my vehicle on the top of the Wells garage, that I -- I'll just
3 go back to the police station on Marlborough Street and park
4 there and have lunch.

5 Q And how about -- and why is that?

6 A Just to have a half an hour of peace and to myself just
7 to relax.

8 Q What was happening when you were having lunch in your
9 car?

10 A One or -- one or two of them standing around just
11 staring, watching, you know, waiting for me, I guess, to finish
12 lunch and get out and to start working again.

13 Q They wouldn't go away while you were taking a break?

14 A No.

15 Q You have to verbalize.

16 A No.

17 Q How about with regard to bathroom breaks? Have you had
18 any encounters with the five Defendants that you've talked
19 about in terms of bathroom breaks?

20 A Initially it would be -- like I said, I would use the
21 public library here on Winter Street. They would follow me,
22 and I would use the employee door, and they would --

23 MR. MEYER: Your Honor, objection --

24 THE WITNESS: Sorry.

25 MR. MEYER: -- again, to a question where -- I didn't

1 -- I think the question may have been permissible if the
2 individual -- if it was asked in terms of -- her answer, in
3 terms of individuals. But, again, we're getting this colloquy
4 back and forth about "they" without any delineation of
5 individuals.

6 MR. BAUER: Your Honor, we have --

7 THE COURT: Please --

8 MR. BAUER: -- moved for a conspiracy concept, as the
9 Court is well aware. And that is that two or more people
10 acting in concert and in an organized fashion. So, you know,
11 the -- I understand that Mr. Meyer would like to go through
12 every individual, and I'm happy to do that, but my point is
13 that there is not only tortious interference with employment,
14 contractual relations, but also there's a conspiracy -- civil
15 conspiracy in terms of organized activity. And that if there
16 is a joint and collective activity, then one is responsible for
17 the all.

18 MR. MEYER: Your Honor, technically, there has been a
19 motion to amend to add a conspiracy claim. That motion has not
20 been acted on. There is no conspiracy claim at this point
21 before the Court.

22 MR. BAUER: There has been no objection to that
23 motion which has been filed a month ago or so.

24 MR. MEYER: It hasn't been acted on. We're here
25 today based on what has been acted on.

1 THE COURT: Okay. For purposes of the preliminary
2 injunction hearing -- and again, this may be proper area for
3 cross-examination as to who did what, when; but I take it that
4 your question related to the five individuals other than
5 Mr. Eyre?

6 MR. BAUER: Yes.

7 THE COURT: You may respond.

8 The objection's overruled.

9 BY MR. BAUER:

10 Q The question was --

11 THE COURT: Wait, wait one second.

12 MR. BAUER: Oh, I'm sorry.

13 (Pause)

14 THE COURT: You may proceed.

15 BY MR. BAUER:

16 Q So, Lynn, the question was, with regard to the
17 activities that you described and the five individual -- with
18 regard to these five individual Defendants, what impact has
19 that had on you taking bathroom breaks?

20 A Well, initially they would follow me. As I said, I use
21 the library or Winter Street, and I would use the employee
22 entrance, and they would wait for me to come out. And I guess,
23 if I took too long, sometimes they would come in through the
24 regular public entrance and look for me, to see where I went.
25 And when I came out they would be somewhere in the vicinity and

1 pick up the following of myself around.

2 Q Have you talked to a counselor as it relates to what
3 you've had to endure over the last several months, since
4 December --

5 A Yes.

6 Q -- on the job?

7 A Yes.

8 Q And what's the counselor's name?

9 A Mary Kimmel.

10 Q Kimmel?

11 A Yes.

12 Q And what have you described to the counselor with
13 regard to your work environment?

14 A How I feel about what my work environment is?

15 Q Yes.

16 A Just the anger and the frustration, the --

17 MR. MEYER: Your Honor -- Your Honor, the witness has
18 been asked in detail about her experience in the work
19 environment, about how it affects her, how she feels about it.
20 We've gone on for considerable length on that. Unless there is
21 some difference in terms of what her response was to the
22 counselor versus what her response has been to the same
23 questions when asked by counsel, this is just -- this is just
24 rehashing. And at a certain point, given the fact that there
25 are -- we have six witnesses, and I understand the Defendant

1 has -- the Plaintiff claims to have six witnesses. I mean, it
2 just goes on forever.

3 MR. BAUER: Your Honor, the issue is hostile work
4 environment. It's the severe and pervasive conduct that I've
5 been trying to establish with the Court. I want to get
6 evidence into the record so that you can understand the impact
7 -- not just the superficial impact but the -- but the
8 significant impact that this witness has experienced and what
9 it has -- what steps she has had to take.

10 THE COURT: And I think, for that purpose, it is
11 relevant and I'm going to allow it; but the point about time
12 constraints -- and granted, I know, I'm not going to limit you
13 but we are kind of repeating some of the testimony. Unless --
14 so maybe if you could just move it along, unless there's a new
15 point that's going to be made through the therapist.

16 BY MR. BAUER:

17 Q So with regard to the therapist, why did you -- why did
18 you talk to a therapist or a counselor?

19 A To try to sort out why I was feeling as angry as I was.
20 And so unable to focus and to -- to understand these emotions
21 that are just -- I don't have to on a daily basis. I was just
22 -- I was -- it was just hard. I couldn't sort it out.

23 Q And do you have another appointment scheduled?

24 A Yes.

25 MR. MEYER: Your Honor, I want to -- again -- beyond

1 objecting on the other grounds, I want to make -- add this.
2 Hostile work environment is not illegal. Period. There is no
3 legal basis for that claim. And the attempt to continue to try
4 to convert this into matters of general, equitable principle
5 and personal rights, as opposed to legal rights, where there is
6 no underlying claim, is just to add one layer of irrelevancy
7 onto another layer of irrelevancy and trying to take this Court
8 and this proceeding -- not this Court but this proceeding, from
9 a matter of law to a matter of sympathy. So I do object on
10 that basis to this line of questioning. And I am at some point
11 going to ask this Court to make a ruling as to whether a
12 hostile work environment, per se, states a legal claim.

13 MR. BAUER: May I proceed, Your Honor?

14 THE COURT: Again, I think we're talking about the
15 request for injunctive relief and narrowly focused on the
16 elements that the City needs to establish. I believe it's
17 relevant, so you may proceed.

18 MR. BAUER: I'm sorry. I've been distracted now.
19 What was the question?

20 THE COURT: She won't be able to read back the
21 question to you.

22 MR. MEYER: The question was about her next
23 appointment, I believe.

24 MR. BAUER: Thank you.

25 THE WITNESS: And the answer was yes.

1 BY MR. BAUER:

2 Q And you've seen the counselor, Mary Kimmel, a couple of
3 times already?

4 A Twice.

5 Q Lynn, have you thought about filing a grievance through
6 your union?

7 A It's crossed my mind.

8 Q Have you thought about filing a workers compensation
9 claim for stress on the job?

10 A That's also crossed my mind.

11 Q Have you thought about not coming in to work, taking a
12 mental health day or a sick day as a result of the Defendants'
13 -- the five Defendants' conduct?

14 A I have. But I haven't done that.

15 Q Explain. I think I know what you mean but explain it.

16 A I have thought of that but, on the other hand, I --
17 this is my job. I want to go to work every day, I don't want
18 to be denied that. I want to do the job I was hired to, and I
19 don't want anyone to deny that other than the people that hired
20 me and tell me they don't want me any more.

21 Q You've talked about a couple of times an anger that
22 you've never experienced in your life. Have you actually
23 thought about working -- channeling that anger or acting out on
24 that anger in some fashion?

25 A No.

1 MR. MEYER: Objection. Relevance.

2 THE COURT: How is that relevant?

3 MR. BAUER: The impact that the Defendants' conduct
4 has been cause -- has caused this employee in terms of her
5 emotional wellbeing as it relates to the job.

6 THE COURT: For that purpose I'm going to allow it.
7 The objection's overruled.

8 BY MR. BAUER:

9 Q You've talked about anger a couple of times today.

10 A Uh-huh. Yeah.

11 Q Have you given thought about how to try to channel that
12 anger or acting out on that anger on occasion?

13 A How to challenge or how to act on it, I -- I believe --
14 you know, that's why we talked with Mary. Like I said, I've
15 not experienced this kind of thing before. I really didn't
16 know what to do with it. And it actually kind of frightened
17 myself to think that I could be -- get that angry. And it
18 worried me, so I was glad when we did -- I did talk to Mary
19 about it.

20 Q I'm going to show you a couple of photographs.

21 MR. BAUER: And Judge, I have them in a booklet which
22 I have not yet marked. I've given my brother a copy of it.

23 THE COURT: Attorney Meyer, have you seen these
24 photographs?

25 MR. MEYER: I have.

1 THE COURT: Mr. Eyre, have you seen these
2 photographs?

3 MR. EYRE: Yeah, but I would ask for my own copy, if
4 -- you know, if I'm not -- I'm going to speak in a moment.

5 MR. BAUER: And Lynn, you have a copy in front of
6 you.

7 We also had them up on the screen just for visual.

8 THE COURT: Let me say for the record that it does
9 appear Mr. Eyre was handed a copy of the photographs --

10 MR. BAUER: Thank you.

11 THE COURT: -- by counsel.

12 BY MR. BAUER:

13 Q So take a look at the first photograph on the screen
14 here, Lynn. Can you see it from there?

15 A I can, yeah.

16 Q Okay. It's number -- it's page number 9 in your
17 booklet. Who is that photograph of?

18 A That would be me.

19 Q And what is going on there?

20 A Well, it was wintertime, obviously; and I believe I was
21 just asking somebody to stay back, stay away from me.

22 Q Is this representative of what you had encountered in
23 terms of photographs and videographers taking your -- taking
24 your likeness in close proximity to you?

25 A Yes.

1 MR. MEYER: Wait, she didn't say "close proximity."
2 That wasn't the testimony.

3 BY MR. BAUER:

4 Q How close have people gotten to you, Lynn, with regard
5 to videotaping and photographing you while on the job? And
6 when I say -- the five Defendants that you've identified.

7 A I would say from here to this screen. That she's --

8 THE COURT: You're talking about the monitor screen?

9 THE WITNESS: The monitor screen.

10 BY MR. BAUER:

11 Q That's a distance of four to five feet; is that fair to
12 say?

13 A I --

14 Q And how about the next photograph on page 10?

15 (Witness examines document)

16 Q What does that photograph depict?

17 A That was not too long ago. That was Jane and I leaving
18 the area where there was some individual -- one individual and
19 -- and Garrett Ean, and there was some words and stuff going
20 back and forth, and I just -- we were just leaving.

21 Q This was an encounter between a citizen and Garrett Ean
22 and Coleson?

23 A I believe that was the day.

24 Q All right. So where -- you're walking across the
25 street here?

1 A From the middle section there's a -- middle section
2 here in Keene that are metered, and we're walking from that to
3 the -- to Church Street, which is on the east side of Main
4 Street.

5 Q And the -- Mr. Ean took your photograph or your
6 videotape while in the street?

7 A Yes.

8 Q Next photograph on page 11. That's you, is it?

9 A Yes.

10 Q And is that -- what does that show?

11 (Witness examines photograph)

12 A It's hard to tell if it's the same day or not, but it's
13 -- it's the same -- same activity, just trying to get away.

14 Q And what's the approximate distance that Defendant Ean
15 was from you when this was taken?

16 A Probably the same or perhaps a few feet farther.

17 Q How about the next photograph, number 12?

18 MR. BAUER: Page 12. Sorry, Judge.

19 THE COURT: Okay. The individual with the child,
20 you're going to have to leave with the child.

21 (Pause)

22 THE COURT: Okay. I'm going to ask the court officer
23 to -- it's --

24 UNIDENTIFIED MALE: Am I not going quickly enough for
25 you?

1 THE COURT: No, you're going to have to -- you're
2 going to have to leave with the child.

3 UNIDENTIFIED MALE: Did you not hear me? I said I
4 was leaving. I was trying to make that clear.

5 THE COURT: Would you leave?

6 UNIDENTIFIED MALE: I am leaving. Do you want to
7 make more of a scene over it and like, you know, scar a little
8 kid?

9 THE COURT: Okay. The next comment and you'll be
10 held in contempt of court.

11 (Pause)

12 THE COURT: Attorney Bauer.

13 MR. BAUER: Thank you.

14 BY MR. BAUER:

15 Q Page 12 of the booklet. This photograph, Lynn, where
16 are you in this area?

17 A This is Church --

18 Q I'm sorry.

19 A This is where Church Street is -- intersects Main
20 Street, and we're walking east, towards the Wells garage.

21 Q And who is the other individual in this photograph, is
22 that Jane?

23 A That would be Jane, yes.

24 Q Okay. And the next photograph, on page 13, what's that
25 show?

1 A That's us, again walking the same direction, just
2 approaching the garage.

3 Q Page 14 photograph, what does that show?

4 (Witness examines photograph)

5 A All the same instant. It's of -- some shouting going
6 on, and I was just putting my hand up, "please, just stop."

7 Q And how long ago did this incident occur?

8 A It was a week ago this past Friday.

9 Q And photograph 15? What does that show?

10 A That shows that we have -- are at the garage, and these
11 -- is the individual that was confronting Mr. Ean.

12 Q And that happened only several days ago?

13 MR. MEYER: What, 16?

14 THE WITNESS: A week ago from this --

15 MR. EYRE: Could you identify --

16 THE WITNESS: -- past Friday.

17 MR. EYRE: -- the other individual in that?

18 MR. BAUER: No, this is 15.

19 MR. MEYER: Fifteen.

20 MR. BAUER: Fifteen. Page 15, Judge.

21 I'm sorry, can we get this -- correct this?

22 BY MR. BAUER:

23 Q Page 15, the photograph that's on the monitor right
24 now, what does that show, Lynn?

25 A That's myself, and Jane is off camera, arriving at the

1 garage when the -- this confrontation with this gentleman in
2 the black T-shirt.

3 Q And this confrontation occurred only a few days ago?

4 A A week ago this past Friday.

5 MR. BAUER: I have nothing further on direct. Thank
6 you.

7 THE COURT: Cross-examination?

8 CROSS-EXAMINATION

9 BY MR. MEYER:

10 Q Ms. Desruisseaux -- Desruisseaux? I'm sorry.

11 A Desruisseaux.

12 Q My name is Jon Meyer, and I'm going to represent five
13 of the six Defendants here.

14 You testified earlier that you carried around a
15 notebook with you?

16 A Yes.

17 Q All right. And in that notebook did you make any
18 entries with respect to any of the events you've testified to?

19 A Did I note it down in my notebook?

20 Q Did you make any notes or -- in your notebook, about
21 any of the events that you have testified to?

22 A I could have, but not on a regular basis.

23 Q But you have on occasion?

24 A On occasion.

25 Q Do you have that notebook with you?

1 A No.

2 Q Now, in addition to that notebook, have you prepared
3 any type of written document to the City regarding any of these
4 events?

5 MR. BAUER: I'm going to object as it relates to
6 attorney-client communications from my clients to me.

7 BY MR. MEYER:

8 Q Putting aside any communication with Attorney Bauer,
9 have you made any communication to the City -- to your -- who's
10 your supervisor with the City?

11 A My immediate supervisor?

12 Q Yes.

13 A Ginger Hill.

14 Q Okay. Ginger Hill?

15 A Yes.

16 Q Have you made any report in writing to Ms. Hill or any
17 other supervisor about the events that you've testified to
18 today?

19 A Specifically to them?

20 Q Yes, to that --

21 A Specifically to those two individuals?

22 Q I said, to Ms. Hill or any other supervisor.

23 A No.

24 Q Have you submitted to the writing -- the union any
25 written report or documentation of what you testified to today?

1 A To the union? No.

2 Q Anybody employed by the City?

3 A Yes.

4 Q To who?

5 A Mr. Mullins.

6 Q The City attorney?

7 A Yes.

8 Q Nobody outside the City attorney?

9 A Outside?

10 Q Yes, nobody else?

11 A No.

12 Q In terms of your notes in your notebook, do you
13 preserve those?

14 A No.

15 Q Will you please -- so how -- well, how far does your
16 notebook go back at this point?

17 A It's mainly the notebook -- if I can explain -- is just
18 kept to do repair -- what we do for repairs on a daily basis.

19 Q But you said it also is --

20 A But I do make comments when instances come up, but I go
21 through them in like -- depends. I mean, it could be two
22 weeks, it could be a month.

23 Q And what happens to the notebook after you're finished
24 with it?

25 A I get a new one.

1 Q You understand, in the context of this proceeding, the
2 need to preserve those records and not destroy them?

3 A What was that?

4 Q Do you understand your obligation in this proceeding to
5 preserve those notebooks?

6 A Okay.

7 Q You testified that you walk four to six miles in a
8 typical day?

9 A Approximately, yes.

10 Q And most of that is in the downtown Keene area?

11 A Correct.

12 MR. MEYER: Your Honor, can I approach so I can use
13 that map, please?

14 THE COURT: Certainly.

15 (Pause)

16 MR. MEYER: Can I approach the witness, Your Honor,
17 please?

18 THE COURT: Absolutely.

19 BY MR. MEYER:

20 Q Does this map, which has been marked as Exhibit 1,
21 indicate what part of the City of Keene has sidewalks?

22 A Yes. Right here.

23 Q Okay. They're green?

24 A Well, that's -- this is the metered area. That's what
25 that says.

1 MR. EYRE: Could she speak up?

2 MR. MEYER: So she's saying that this is the metered
3 area.

4 BY MR. MEYER:

5 Q So the only sidewalk -- well, the green area is the
6 metered area, but is that also the same area where the
7 sidewalks are?

8 A Correct.

9 Q Are there any sidewalk areas that are not also metered
10 areas?

11 A Yes.

12 Q I have this upside down here.

13 A I know, I thought it was --

14 Q Let's try this way.

15 A Okay. That's much better.

16 See, metered area, metered area --

17 THE COURT: Hey, ma'am --

18 THE WITNESS: I'm sorry.

19 THE COURT: Ma'am, if you just try to raise your
20 voice. I can tell --

21 THE WITNESS: I'm sorry.

22 THE COURT: I'm having a hard time. I'm sure that
23 the parties and counsel are.

24 THE WITNESS: So the green on these is -- he was
25 asking if there were sidewalks. Yes.

1 BY MR. MEYER:

2 Q But are the sidewalk areas and the metered areas one
3 and the same, or are there some sidewalk areas without meters,
4 some metered areas --

5 A Right.

6 Q -- without sidewalks?

7 A There are some sidewalk areas without meters.

8 Q So are there -- is there any way to determine from this
9 map what areas have sidewalks but not meters?

10 A Having not done the map, no, I don't know. I would say
11 this does. This determines, in the blue, that those are
12 sidewalks.

13 THE COURT: Your voice is starting to trail off
14 again. If you could just try to --

15 MR. MEYER: Well, let me -- let me -- I think, if I
16 stand farther away, that will probably encourage --

17 BY MR. MEYER:

18 Q Is it fair to say that even though your territory
19 apparently is all of downtown Keene that you're -- you
20 basically -- there's some areas you're going to spend more time
21 than in other areas?

22 A No.

23 Q Well, isn't it fair to say that you spend -- you spend
24 most of your time in the area where there are parking meters?

25 A I would say, yeah, 75 percent of my time.

1 Q And most of the areas where there are parking meters
2 are also areas where there are sidewalks, correct?

3 A Correct.

4 Q And what is the typical width of a sidewalk in Keene?

5 A I have no idea.

6 Q No idea?

7 A How wide the sidewalks are?

8 Q Yeah.

9 A It varies. Depending on where you are, four feet --

10 Q Four to six feet in width?

11 A Six feet seems excessive but four feet --

12 Q But something -- most of the sidewalks are something
13 less than six feet in width?

14 A Okay.

15 Q Now, if you're headed one way on a sidewalk and I'm
16 headed on the other way on the sidewalk and the two of us pass,
17 typically how much distance is there going to be between you
18 and me?

19 A Two or three feet.

20 Q Now, during the course of your typical workday, how
21 many people do you encounter on sidewalks?

22 A Many.

23 Q Hundreds?

24 A Possibly a hundred.

25 Q And those people would typically be within two or three

1 feet of you, correct?

2 A If we're passing each other, yes.

3 Q And there's nothing objectionable in itself to let
4 another person get two or three feet away from you, correct?

5 A Correct.

6 Q Now, if somebody came up to you on the sidewalk, two or
7 three to -- two or three feet away and said, "You're doing a
8 great job," would you find that obnoxious or objectionable?

9 A No, of course not.

10 Q But if someone came up and told you you were doing a
11 bad job, particularly if that was a frequent occasion, do you
12 react differently to that; is that correct?

13 MR. BAUER: Objection. Based on the form, it's
14 ambiguous. When he says "frequent," are we talking about the
15 repeated daily or are we talking about a one-off or a two-off
16 situation?

17 THE COURT: Overruled.

18 You may answer the question, if you understand it.

19 BY MR. MEYER:

20 Q I think the problem -- my question again --

21 A Yeah.

22 Q -- just -- just -- is that if somebody, you know,
23 again, from the two to three-foot distance, came up to you and
24 told you that you were doing a bad job, would you regard that
25 as being obnoxious or objectionable?

1 A Initially my reaction would be guarded, but if it
2 continued, yes, it would be objectionable.

3 Q If it happened every day, that would be objectionable,
4 correct?

5 A Yes.

6 Q Now, Attorney Bauer asked you earlier about your
7 understanding of what -- of the rights of demonstrators. Do
8 you have any -- do you have any background or training in what
9 people's First Amendment rights are?

10 A No.

11 Q Now, is it fair to say that in any given day you are
12 likely to be -- cover at some point during the day virtually
13 every part of downtown?

14 A Do I cover every part of the downtown?

15 Q Yeah, in any given day.

16 A Yes.

17 Q And is it fair to say in terms of like the areas around
18 -- sidewalks around sort of -- near the courthouse, sort of
19 around the Central Square area, that in those areas you're
20 likely to be there multiple times in a given day?

21 A Yes.

22 Q And if this Court were to issue an injunction
23 prohibiting certain designated persons from ever being within
24 30 feet of you, or 50 feet of you, during your workday, is
25 there any place -- any sidewalk, any public street in the Keene

1 area where they could safely remain without being at risk of
2 violating a court order?

3 MR. BAUER: Objection, Your Honor. It's a
4 hypothetical question that doesn't have facts related to this
5 case in it. We're ask -- we're talking about within the
6 proximity of taunting, harassing, intimidating, interfering
7 with jobs. If it's premised on that, I withdraw my objection.

8 In other words, we're not asking for a blank --

9 THE COURT: So the City's not asking for an
10 injunction to prohibit the Defendants from being within the
11 proximity of the officers, it's just to be in their proximity
12 and engage in the behavior?

13 MR. BAUER: Yes.

14 MR. MEYER: Your Honor, could I have a minute,
15 please --

16 THE COURT: Excuse --

17 MR. MEYER: -- before I respond to that?

18 THE COURT: Absolutely.

19 MR. BAUER: What? I didn't hear.

20 THE COURT: He wanted a minute.

21 MR. BAUER: Oh.

22 (Counsel and Defendants confer)

23 MR. MEYER: All right. This is from the petition --
24 "The Petitioner respectfully requests that this Court, A, issue
25 appropriate orders of notice; B, schedule a hearing on the

1 within injunction; and C, after hearing issue a preliminary
2 injunction restraining Respondents or anyone under their
3 direction, supervision, employment or control from coming
4 within a safety zone of 50 feet of any PEO while that PEO is on
5 duty performing his or her employment duties as required by the
6 City of Keene."

7 MR. BAUER: Well, it's certainly within the context,
8 Your Honor, of this -- of the petition that's been filed. The
9 proposed court order, which I provided to Mr. Meyer and to you,
10 specifically states -- and I'll read it into the record, if
11 you'd like. "The Defendant shall not engage in touching,
12 taunting, obstructing, detaining, hindering, impeding,
13 blocking, intimidating or harassing any parking enforcement
14 officer within 30 feet of any PEO during the performance of her
15 or his employment."

16 THE COURT: So I take it, as now proposed, the City
17 is narrowing the scope of the requested preliminary injunctive
18 relief?

19 MR. BAUER: Well, yes. Yes. I mean, that -- this
20 was --

21 THE COURT: Okay. So that this is -- the relief on a
22 preliminary basis that you're requesting is relief that's set
23 forth in the proposed order?

24 MR. BAUER: Yes, sir.

25 THE COURT: Okay. Attorney Meyer, with that

1 understanding --

2 MR. MEYER: Well, Your Honor, let me say --

3 THE COURT: -- do you want to rephrase your question?

4 MR. MEYER: Well, I guess I'd say this, Your Honor.

5 This is something I received when I was in Colburn this
6 morning. I haven't had a chance to read it yet. Could I have
7 two minutes to read it, please?

8 THE COURT: Absolutely.

9 MR. MEYER: Thank you.

10 (Pause)

11 MR. MEYER: Your Honor, I would like to make sure I
12 understand whether or not the City of Keene, through this
13 request, is withdrawing all of the other injunctive relief that
14 they've previously requested.

15 MR. BAUER: Your Honor, I'd have to look -- I'd have
16 to look at the petition during a break to answer that question.

17 THE COURT: Well, then, for purposes -- we now have a
18 witness' testimony. I don't know if you want to -- at least in
19 terms of the breadth of the question, I think you can narrow
20 that question.

21 MR. MEYER: But, Your Honor, nevertheless, quite --
22 not necessarily pertinent to this witness' testimony, it would
23 be helpful to have a statement from the City --

24 THE COURT: I agree.

25 MR. MEYER: -- that, in fact, this is the only

1 preliminary relief they're now requesting.

2 THE COURT: I agree. We're certainly not going to
3 conclude this before the lunch break, so I'm sure the City can
4 have an opportunity to look at that and see whether there's
5 been any further narrowing.

6 (Pause)

7 BY MR. MEYER:

8 Q You testified earlier that certain -- certain
9 Defendants had told you that you should leave your job; is that
10 right? Something along those lines?

11 A Something along those lines. Yes, something along
12 those lines.

13 Q Now, in your mind, does that constitute taunting?

14 A Well, it's not something that I would consider a
15 friendly thing to say to someone, so. It was definitely
16 negative.

17 Q Would you -- again, I'm just trying to understand your
18 perspective. Would you consider this to be taunting? Or do
19 you not understand what the word "taunting" means in that
20 context?

21 A I don't -- I don't consider that taunting.

22 Q Has the -- any of the Defendants said anything to you
23 that you regard as actually being taunting?

24 A Yes.

25 Q What>

1 A This -- James Cleaveland saying the "poor Linda"
2 routine. "Poor Linda. Poor, poor Linda, robbing from all
3 these nice citizens of Keene all these years; poor, poor
4 Linda."

5 Q Anything else that's been said to you at any point that
6 you regard as taunting by any Defendant?

7 A When I've been chalking, told I'm vandalizing people's
8 cars, that kind of thing.

9 Q Did any Defendant tell you that you were vandalizing
10 vehicles?

11 A Yes, while I was chalking.

12 Q Which one?

13 A Garrett -- I'm sorry, excuse me. Graham Coleson.

14 Q Any other comment that was made to you by any Defendant
15 in regards to taunting?

16 A It's such a fine line there. No. I'm going to say
17 no --

18 Q When you say --

19 A -- and yes.

20 Q -- fine line -- you say --

21 A Well, I -- I mean, things like -- comments like, you
22 know, "I'm morally superior to you" or "do you know you work
23 for people that" -- excuse me -- "work for people that solve
24 everything with guns and violence?" Is that taunting? Yeah.
25 I guess. It's rude but --

1 Q Is it fair to say it's not clear to you whether a
2 particular comment is taunting or not taunting, what that
3 means?

4 A I guess I associate it with more of a -- like using my
5 name, being more personal, using -- particularly my name, when
6 they address me with stuff like that.

7 Q Any other comment that you regard potentially as being
8 taunting that was addressed to you by any Defendant?

9 A No.

10 Q Do you have a certain quota of tickets that you're
11 supposed to issue every -- every day?

12 A No.

13 Q Have you been -- faced any type of criticism from your
14 supervisors for not issuing enough tickets?

15 A Criticizing for not issuing enough tickets? We don't
16 have a quota, so what would enough be?

17 Q Well, that's what I'm asking you. Have you ever been
18 faulted for issuing too few tickets?

19 A No. I don't recall that, no.

20 Q Has -- how often do you receive job evaluations?

21 A Every year.

22 Q What -- when? When -- what time of year?

23 A January.

24 Q So your most recent evaluation was in January?

25 A Correct.

1 Q And what was the quality of that evaluation?

2 A It was fine.

3 Q Your supervisors thought you were doing a good job?

4 A Yes.

5 Q And have you received any subsequent feedback from
6 anybody in a supervisory capacity indicating you're doing
7 anything less than a good job?

8 A Recently?

9 Q Any time since that evaluation in January.

10 A I guess I don't understand what -- what --

11 Q You said you had a good evaluation in January. I'm
12 asking, has anything from your supervisor -- from a supervisory
13 feedback perspective, has anything changed since January?

14 A No.

15 Q Do you regard being videotaped as something that's
16 intimidating to you?

17 A In my capacity as what, on my personal time or my
18 working hour --

19 Q No, when you're -- when you're -- I take it the
20 videotaping of you has been done when you were in your work
21 capacity, correct?

22 A Okay.

23 Q Is that true?

24 A Yes.

25 Q And do you regard that as being intimidating?

1 A Yes.

2 Q Why?

3 A It just seems like such an invasion of your space.

4 Q When you say "invasion of your space" -- you also
5 testified that most of the videotaping occurs from a greater
6 remove in terms of distance. So why do you --

7 MR. BAUER: Objection.

8 MR. MEYER: That was her testimony. She can change
9 it if she wants.

10 THE COURT: What's the basis of the objection?

11 MR. BAUER: The objection was "a greater distance"
12 without any specificity. Her testimony was very clear in terms
13 of the approximate feet people were standing from her during
14 videotaping.

15 THE COURT: I've taken good notes on it. The
16 question's proper. You may proceed. It's cross-examination.

17 BY MR. MEYER:

18 Q You're saying that videotaping is intimidating across
19 the board or only when it's within a certain periphery of you?

20 A Well, it's intimidating to the sense if they're this
21 close or where you are, they're still -- they're still
22 capturing me.

23 Q And is that intimidating to you?

24 A Yes.

25 Q So you're saying, regardless of distance, the fact that

1 you're being videotaped is intimidating to you?

2 A Yes.

3 Q And why is it intimidating?

4 A It just -- I just find it -- it's just -- I don't have
5 any peace. I don't have anyplace I can go. It's like somebody
6 looking in your window all the time.

7 Q All right. But you're on duty, correct?

8 A Yes, sir.

9 Q They're not intimidating -- they're not videotaping you
10 in your home or on your private time, correct?

11 A Right. No. I hope not.

12 Q You testified earlier that certain of the Defendants
13 walked across the street without using a crosswalk; is that
14 correct?

15 A Uh-huh.

16 Q Did you ever report their activities to -- well, let me
17 ask you, does the City of Keene have an ordinance that requires
18 you to use crosswalks?

19 A There's no jaywalking.

20 Q Is there some ordinance that requires the use of --

21 A Use --

22 Q -- use of crosswalks?

23 A Yeah, you should use the crosswalk.

24 Q And is it fair to say that there are lots of people,
25 quite apart from the Defendants, who don't use crosswalks?

1 A I would say so.

2 Q And have you ever reported within your department or
3 within the city any of the Defendants for engaging in
4 jaywalking?

5 A No.

6 Q If any of the Defendants did something which you
7 thought created a danger to themselves or others, should you
8 not report it to the City?

9 A I would report it to the City.

10 Q And have you had occasion to make any such report?

11 A No.

12 (Pause)

13 MR. MEYER: Thank you. I have no further questions.

14 THE COURT: Redirect?

15 MR. BAUER: Briefly.

16 THE COURT: Actually, I should say, Mr. Eyre.

17 MR. BAUER: Oh, I'm sorry. Yeah.

18 THE COURT: I did not mean to forget you. Do you
19 have any questions for this witness?

20 MR. EYRE: Yes.

21 CROSS-EXAMINATION

22 BY MR. EYRE:

23 Q Good afternoon. You noted earlier that when you go out
24 in your official capacity as a parking enforcement officer you
25 wear a uniform; is that correct?

1 A That's correct.

2 Q You noted the dress that's usually wore, what -- based
3 on the weather. I'm also curious, are there electronics that
4 you have with you as part of that uniform?

5 A A two-way radio.

6 Q Okay.

7 A Yes.

8 Q A two-way radio?

9 A A cell phone. Yeah.

10 Q And you use that radio to communicate with your
11 colleagues?

12 A Both, yes.

13 Q Okay. And you noted earlier as well that you use a
14 cell phone to sometimes give the heads up to your colleagues as
15 well, correct?

16 A Yes.

17 Q And so might that accurately be defined as a
18 conspiracy?

19 A I don't understand the question.

20 Q I'm just using the definition of conspiracy as it was
21 levied earlier, being organized communication with two or more
22 people.

23 A No.

24 Q Okay. Well, moving on.

25 You noted derogatory -- you used the words

1 "derogatory" and "disturbing, taunting," to describe some of
2 the actions that some of the folks told to be here have
3 allegedly done. But I guess -- are you -- is there a job
4 responsibilities that's -- that you're familiar with when you
5 took the position as a PEO that states expectations and -- and
6 roles and responsibilities?

7 A That's correct. It's in that job description. But I
8 don't think, when it -- when that was put in the description,
9 it was to this level.

10 Q Right. So you're familiar -- I guess, kind of jumped
11 my question. You're familiar with the bullet point in that job
12 description that notes parking employment (sic) officers are to
13 endure verbal and mental abuse when confronted by hostile views
14 and opinions?

15 A Yes, I know that.

16 Q And so you would define some of the things that -- that
17 -- these derogatory, disturbing and taunting as hostile views
18 and opinions?

19 A Yes.

20 Q And so you are -- when you took your position as a PEO,
21 you knew that that might be part of the job?

22 A Correct. But like I said, when it was written I don't
23 think it was meant to be on a daily basis.

24 Q Right, but to your knowledge there's no frequency or --
25 or timeline that specifies that, is there? It's -- it just

1 says "endure verbal and mental abuse when confronted by hostile
2 views and opinions," correct?

3 A Correct.

4 Q Okay. Third, I want to point to the picture number 15
5 that Mr. Bauer shared, which showed an individual that was
6 identified with a black shirt on the left of the -- left side
7 of the picture.

8 THE COURT: Do you have that picture in front of you,
9 ma'am?

10 THE WITNESS: I do now, yes.

11 THE COURT: You may proceed --

12 THE WITNESS: Okay.

13 THE COURT: -- Mr. Eyre.

14 MR. EYRE: Okay.

15 BY MR. EYRE:

16 Q Could you identify that person by name?

17 A No. I don't know him.

18 Q Can -- you mentioned -- you were using the word
19 "confrontation." Can you give a brief description of what
20 unfolded after that picture was taken? Or --

21 A Verbal confrontation.

22 Q There was merely a verbal confrontation that occurred?

23 A That's what I witnessed, yes.

24 Q You didn't see any physical confrontation?

25 A No.

1 Q Did you later learn of a physical confrontation?

2 A Later.

3 Q Did you -- so you yourself were present on the scene
4 when the --

5 A I did not witness anything but verbal.

6 Q Would you describe that verbal confrontation as
7 aggressive before you left the scene?

8 A It was heated.

9 Q Is one of your roles and responsibilities listed in the
10 PEO that -- that's -- you acknowledged having seen when you
11 took the position to aid individuals who are in danger of
12 physical harm?

13 A Correct. And so --

14 Q Did you do that --

15 A -- in order to --

16 Q -- at that time?

17 THE COURT: Okay. Wait. We need to have -- and I
18 understand, you're representing yourself, Mr. Eyre, but -- but,
19 ma'am, you need to let the question be finished before you
20 respond.

21 And Mr. Eyre, if you would let the witness finish her
22 answer before -- before -- otherwise you're talking over each
23 other, so.

24 MR. BAUER: So -- she was not complete with her --
25 her answer, Judge.

1 THE COURT: If -- did you have anything further that
2 you wanted to say?

3 THE WITNESS: Yes. Yes. When this picture was
4 taking (sic) there was the heated, loud voices. I was walking
5 away in order to do that, because I couldn't hear anything that
6 was going on, and I wasn't going to key my mic with all that
7 noise going on. As I got away, these other things, finding out
8 afterwards, occurred. At that time I heard Jane radio. So
9 there's no reason for both of us to do that.

10 BY MR. EYRE:

11 Q Okay. Thanks for the clarification.

12 So before you left that scene that you acknowledge
13 there was some heated verbal exchanges, I guess, as a public --
14 public employee, did you think it might be wise to try to
15 defuse the situation rather than leave the situation?

16 A In this case, I thought it was wiser to remove myself
17 so I could report it and hear the responses that were coming,
18 that I don't think in my physical capacity that I was going to
19 be able to stop anything and I needed to call people and ask
20 them for help.

21 Q So you thought aiding individuals who were in danger of
22 physical harm would better be served by removing yourself from
23 the situation --

24 A In order to --

25 Q -- than being there and being a witness and trying to

1 diffuse the situation?

2 THE COURT: You have to let the question be finished.
3 Yes, please finish your question.

4 BY MR. EYRE:

5 Q Sorry, I was just asking, you thought in keeping with
6 your roles and responsibilities, that aiding individuals who
7 are in danger of physical harm can better be served by removing
8 yourself in a situation and not being a witness and not trying
9 to diffuse it?

10 A I was removing myself in order to call.

11 Q Okay. I guess I'm curious, so it seems like you noted
12 that you have -- when you're traveling, you're satisfied with
13 your job. You know, you have -- you're content and you might
14 say that you have pride in being able to provide that, to be in
15 that position; is that correct? I mean is integrity a
16 characteristic that you would point to?

17 A I think anyone that's assigned any job should take
18 pride in what they do.

19 Q If you saw a colleague doing something that you thought
20 out of line, would you bring that to the attention of others?

21 A That I thought it was out of line? Yes.

22 Q Well, having noted that I, myself, haven't participated
23 in these activities, why, then, did you not speak out when you
24 learned that I was named in this preliminary injunction?

25 A I did.

1 Q You let them know that I wasn't involved?

2 A Yes.

3 Q Okay. I appreciate it. And some of the comments you
4 made specifically about James Cleaveland taunting and I guess
5 some of the other -- I'll just leave it with James Cleaveland,
6 but about James Cleaveland's comments that he allegedly said --
7 I wasn't there, so I'm paraphrasing, but equating here your job
8 as stealing from people; is that correct?

9 A Uh-huh.

10 Q I'm sorry, was there a verbal answer?

11 A Yes.

12 THE COURT: If you would say yes or no because the
13 record can't pick up --

14 THE WITNESS: Okay. I apologize.

15 BY MR. EYRE:

16 Q And, again, you've been employed as a parking
17 enforcement officer since early 2000, correct?

18 A January.

19 Q How is your salary, your \$20 an hour salary, paid for?

20 A Through the parking fund.

21 Q And how is the parking fund -- where does that money
22 come from?

23 A The meters and the fines.

24 Q So it's entirely contingent on fines generated. The
25 parking enforcement officers are completely self-sufficient in

1 that respect?

2 A Uh-huh.

3 THE COURT: You have to say yes or no.

4 THE WITNESS: Yes. Yes.

5 BY MR. EYRE:

6 Q There's no money that -- taxpayer money?

7 A No.

8 Q Okay. Earlier you were asked by Mr. Meyer, I believe,
9 if there was a quota system, a daily quota system; is that
10 correct?

11 A I was asked that, yes.

12 Q And you indicated that there was not a daily quota,
13 correct?

14 A Yes.

15 Q Is there an annual document that notes the number of
16 parking tickets given per year and the projected number of
17 parking tickets sought?

18 A As compared to the previous year?

19 Q Correct.

20 A Yes.

21 Q Is that then not a quota applied to an annual basis,
22 rather than a daily basis?

23 A No. It's not like this is how many you have to go out
24 and get in order to achieve this, it's just the amount that you
25 did arrive at compared to the year before.

1 Q Right. But metrics are identified as potential goals,
2 correct?

3 A I don't know.

4 Q The numbers roughly of 24-, 25,000 tickets given in one
5 calendar year versus 28 -- or 9,000 sought the next calendar
6 year, those are metrics sought as goals, correct?

7 A No, I don't think they're goals. I think they're just
8 comparisons.

9 Q So if you went into one of these annual meetings and
10 they said hey, we gave out 24 or 5,000 tickets this year, but
11 next year we're going to give 5,000, you wouldn't -- that
12 wouldn't cause you to act differently?

13 MR. BAUER: Objection. Relevance, Your Honor. I
14 haven't objected before, but now we're really getting far
15 afield.

16 THE COURT: Response? How is this relevant to the
17 request for preliminary injunctive relief?

18 MR. EYRE: Well, this is specifically -- the numbers
19 are mentioned in the affidavit, so it is relevant. And I'm
20 bringing it up because of -- to demonstrate that statements,
21 that quotas aren't in existence, I used daily quotas, I want to
22 point out that in fact we can infer them from a yearly number
23 arrived at by maybe not the individual testifying right now,
24 but her colleagues.

25 THE COURT: Where's the reference to the number of

1 tickets in the affidavit?

2 MR. EYRE: One moment, please.

3 (Parties confer)

4 MR. EYRE: Okay. I guess I should correct my other
5 statement. I don't see that specific -- the numbers mentioned
6 in the affidavit, but it was mentioned in the City of Keene
7 budget and indicated as a goal. That was the verbiage used for
8 it.

9 BY MR. EYRE:

10 Q Has your specific ability to perform your job --

11 (Parties confer)

12 Q Would you acknowledge that in the City of Keene budget
13 in the metrics given for the parking enforcement is listed as a
14 goal?

15 MR. BAUER: Object to the relevance.

16 MR. EYRE: The relevance is that if 25,000 roughly
17 tickets were said to have been --

18 THE COURT: The objection's overruled. The
19 question's proper.

20 MR. EYRE: Thank you.

21 THE WITNESS: I think you're going to have to explain
22 a little bit more exactly what you're looking for. I don't
23 understand the question. Is it a goal -- a goal to me is this
24 is what we'd like to do, that's our goal. But if we don't,
25 then we've fallen short or if we'd done better, we've done

1 better. I don't --

2 BY MR. EYRE:

3 Q So has your job -- well, I'll just leave it at that,
4 then. You would acknowledge that these numbers were listed as
5 a goal in the City of Keene budget, correct?

6 A They're numbers that I don't create.

7 Q Right. But you would acknowledge that between this
8 calendar year and what was given in the last calendar year was
9 grown -- a goal was grown by roughly 20 percent in this
10 calendar year?

11 A No. I can't acknowledge that. I don't know that for
12 sure.

13 Q You're not familiar with the goals set for the parking
14 enforcement office?

15 A I'm not -- I don't know those specific numbers, no.
16 That's not my responsibility.

17 MR. EYRE: Just a second, please.

18 (Parties confer)

19 MR. EYRE: All right, no further questions. Thank
20 you for your time.

21 THE COURT: Redirect?

22 MR. BAUER: Very briefly four areas.

23 REDIRECT EXAMINATION

24 BY MR. BAUER:

25 Q First of all, Linda, would you describe the difference

1 between the activities that the five Defendants that you've
2 identified have engaged in towards you on the job, as opposed
3 to what's in your job description with regard to putting up
4 with some difficult people once in a while?

5 A Like I said, I mean it's occasional in the past, not on
6 a regular daily basis of being, you know, hauled around and --
7 it's just I've never had this much negativity from any person
8 the whole time that I've done this, other than maybe, you know,
9 once or twice in a week or a month, not on a regular basis.

10 Q You are asking for an injunction to keep people away
11 from -- the five individuals that you've identified, keep them
12 a reasonable distance from you; aren't you?

13 A Yes.

14 Q And is part of that request a videotaping of you within
15 30 feet of you?

16 A Yes.

17 Q Is there any reason that you know of why someone has to
18 be within four feet of you or ten feet of you or 20 feet of you
19 or even 30 feet of you to videotape you in a public place?

20 MR. MEYER: Your Honor, objection. The requested
21 order by the City of Keene does not ask that videotaping be
22 prohibited from within 30 feet, that they would be clearly
23 unconstitutional. But that's not the request that's being
24 made.

25 So when Attorney Bauer says to this witness, you are

1 asking, he must be referring to some personal request outside
2 the scope of this hearing.

3 Again, it goes to the underlying issue here about the
4 lack of clarity as to exactly what the City of Keene is asking
5 for in this proceeding.

6 MR. BAUER: To be clear, what we're asking for is to
7 stop the intimidation, the harassment, the taunting, the
8 interference with the public employees doing their job within a
9 30 feet distance. Videotaping is one of those types of
10 instances of taunting, detaining, harassing, and even blocking,
11 et cetera.

12 THE COURT: I think the specific question was can you
13 think of any reason why somebody would need to be closer than
14 30 feet to do videotaping?

15 MR. BAUER: Right.

16 THE COURT: The objection's overruled. You can
17 answer that question.

18 THE WITNESS: I've lost track, please.

19 THE COURT: Can you think of any reason why somebody
20 would need to be within 30 feet to do videotaping?

21 THE WITNESS: Need to be closer than 30 feet?

22 THE COURT: Yes.

23 THE WITNESS: No.

24 BY MR. BAUER:

25 Q And is that one example of what you deem to be

1 harassing and intimidating and threatening?

2 A Correct.

3 Q Mr. Eyre, Peter Eyre, has just brought up the issue of
4 economics. From your perspective is this case -- does this
5 injunction have anything to do with the economics of the Town
6 or the City?

7 A No.

8 Q Do you object to anybody, including the five Defendants
9 or the six Defendants, plugging meters if they want to for
10 somebody else?

11 A No.

12 Q They can do that?

13 A Yes.

14 Q And they can videotape 30 feet away from you?

15 A Right.

16 Q And they can tell you that you should quit your job 30
17 feet away from you?

18 A Yes.

19 Q You wish they wouldn't, I understand.

20 A I know.

21 Q You also brought up this encounter recently and I guess
22 now's as good a time as any. There was some discussion on
23 cross. Let's go to the -- what is this -- let it roll and then
24 you can describe it after.

25 THE COURT: Hold on one second. Is there any

1 objection to this being played?

2 MR. MEYER: Yes, yeah, yeah. Well, I mean I don't
3 understand at this point that they're requesting that this be
4 admitted. I mean I think it depends on -- it depends on the
5 question. I think it should be -- this witness did not take
6 this to a videotape.

7 MR. BAUER: This videotape comes from one of the
8 Defendants taking videotaping. There's been discussion on
9 cross about the incident. Mr. Eyre brought it up. Now's as
10 good a time as any to show what that incident was about and we
11 will get into further discussions after --

12 THE COURT: Maybe just lay some foundation. This
13 witness can say what was on the videotape.

14 MR. MEYER: I want some representation from this
15 witness -- from Attorney Bauer that this is the raw video and
16 not an edited video.

17 MR. BAUER: This is the raw video. It's an excerpt
18 and there's hours and hours of videotape.

19 MR. DIETEL: Your Honor, if I can clarify. This is
20 an excerpt from a video that's on YouTube. The information at
21 the bottom has been added for identification purposes for the
22 Court to label where it comes from, what the source is.
23 AquaKeene ParkingForce is the YouTube user. "Travis Hobbs
24 Attacks Robin Hooders" is the name as listed on YouTube, and
25 that's the website.

1 The first image that you saw, and we can go back, is
2 a screen shot of the YouTube page where this is located.

3 THE COURT: Just so we're clear about this, beyond
4 that particular section there's been no further editing or
5 splicing of the video?

6 MR. BAUER: That's correct.

7 THE COURT: Okay. You may proceed.

8 MR. BAUER: All right. Can we show the videotape?

9 THE COURT: Yes.

10 MR. MEYER: At this point, Your Honor, the
11 representation would be, and maybe we need to bring another
12 witness here who actually took the video, that this is an
13 edited video taken from the raw video. This is not the
14 original raw video.

15 THE COURT: I take it that -- again, I think we're --
16 I'm not sure how long this excerpt is.

17 MR. DIETEL: Your Honor, this is a five-minute
18 section from a larger video. I don't recall exactly off the
19 top of my head how long the video was, but there is material
20 before and material after and this is simply a section of the
21 video. Under 1006 when we have voluminous documentary evidence
22 in digital form, picture form, we can provide the Court with a
23 summary of that evidence through an excerpt. That's what this
24 is.

25 MR. MEYER: This isn't -- well, again, I think we

1 need to have testimony from the person who did this video and
2 put it onto YouTube. As I understand it, this is -- the
3 testimony's going to be this is more -- that this is an excerpt
4 from an edited video. And that the edited video itself comes
5 from a raw video, which would presumably be the best evidence
6 here.

7 Am I correct?

8 UNIDENTIFIED SPEAKER: Correct.

9 MR. MEYER: So I mean and I don't understand how
10 counsel for the Defendant -- counsel for the Plaintiff here,
11 who has had no access to this video except through YouTube, is
12 in a position to testify as to what it represents or what it
13 doesn't represent.

14 MR. DIETEL: I'm not testifying as to what it
15 represents. It doesn't represent -- this is simply information
16 as to where the video is located.

17 MR. MEYER: I'm not even at this point objecting to
18 the caption. I'm saying the substance of this is an excerpt
19 from an edited version of any raw -- of the raw video. I think
20 at least we'd like the opportunity to make sure that this is --
21 that this is in fact -- is not restored what actually occurred
22 before we talk about admissibility or before showing it to the
23 witness.

24 THE COURT: Well, let me ask the witness, have you
25 seen this video?

1 THE WITNESS: No.

2 THE COURT: So that counsel has not shown this to the
3 witness in advance?

4 MR. BAUER: The answer is yes and she did see the
5 video. It was on my iPhone.

6 THE WITNESS: Oh, yeah, okay. With a few others.
7 All right. I can't tell by just looking at that one part.

8 THE COURT: Does the video fairly and accurately
9 depict what took place during a portion of the encounter?

10 THE WITNESS: Yes.

11 MR. MEYER: I thought her testimony was she didn't
12 see most of it, she was walking away.

13 THE COURT: Well, I think that's subject to cross-
14 examination. I'm going to allow it and then, seriously, we do
15 need to move this proceeding. We're not even finished with the
16 first witness. So we'll play it. And I don't know how much
17 longer you have, Attorney Bauer, but if it's more than a minute
18 or two, I don't know if there's going to be further
19 recross-examination by either of the Defendant's, but we'll
20 conclude this witness and then we'll move on. But, yes, you
21 can play it subject to it being authenticated by the witness.
22 You can play the video.

23 MR. EYRE: Could I object briefly.

24 THE COURT: Yes.

25 MR. EYRE: This video is admittedly the edited

1 version and everyone acknowledged that much, but the raw video
2 also -- I'm not sure if this video does, but I know the raw
3 video shows the individual that was pictured in picture number
4 15 having a conversation with the individual testifying and her
5 colleague. So I think that shows some background that happened
6 minutes before, you know, whenever this video might describe.

7 So I just think if this is going to be shown, it's
8 relevant to show the back story to show it wasn't just a spur
9 of the incident kind of thing. To show that there was
10 knowledge --

11 THE COURT: I need an offer of proof. And now we're
12 on redirect examination. I feel like we're kind of heading
13 down a tangent. What's so critical about this video that needs
14 to be shown by counsel at this time?

15 MR. BAUER: This was several days ago -- as an offer
16 of proof, this was several days ago. It encounters Lynn, as
17 well as Jane, trying to do their jobs. There's a confrontation
18 you heard some testimony about or some questions about from
19 Mr. Eyre in some testimony. And this is going to show the
20 escalation of what has been going on on the street, and an
21 unfortunate encounter just several days ago that involves these
22 two people trying to do their job and an encounter with a
23 citizen that they have nothing to do with, and Mr. Coleson and
24 Mr. Garrett -- Ean, and this is fair and accurate.

25 THE COURT: Okay. I'm going to allow it and I'm also

1 going to allow, if there's additional portions of that that the
2 Defendants want to offer, to put it in more context, that
3 certainly I'll give them latitude to offer that -- that as
4 well. The objection's overruled. We'll see it.

5 (A videotape played at 12:35 p.m., ending at 12:40 p.m.)

6 REDIRECT EXAMINATION CONTINUED

7 BY MR. BAUER:

8 Q So, Lynn, you were part of that encounter, weren't you?
9 You have to verbalize.

10 A Yes.

11 Q And who else was part of that encounter of the named
12 Defendants?

13 A Garrett Ean initially.

14 Q Garrett Ean was the videographer?

15 A Yes.

16 Q And who was the other person who --

17 A Well, from --

18 Q Pardon me?

19 A Graham Coleson.

20 Q Did you put up these citizens, these other kids or
21 other people to do any of that?

22 A No.

23 Q Has that been one of the most harrowing days of your
24 job experience?

25 A That was -- that was upsetting.

1 MR. BAUER: Nothing further.

2 THE COURT: Recross examination?

3 MR. MEYER: I have no further questions, thank you.

4 RECCROSS-EXAMINATION

5 BY MR. EYRE:

6 Q Since the portion of the video that preceded what we
7 saw involved a conversation between yourself and Travis -- and
8 I'm not sure, was your colleague present with that as well?
9 There was a conversation had in the median, in that center area
10 first?

11 A Not initially, no.

12 Q So before the video started, had you minutes before
13 talked with that individual who assaulted --

14 A He approached me when I was in the middle section of
15 Main Street, right across from the Church Street.

16 Q Right. Can you give a brief recount of what the
17 conversation was about?

18 A What he was telling me?

19 Q Sure.

20 A No. I have no idea. There was another woman in front
21 of me that I know and have for years that I was talking to and
22 he came up from behind me and was saying, "Hey, hey, hey," and
23 she left, so I turned around and he started talking to me about
24 -- I really wasn't -- wasn't listening. I still figured, well,
25 what I had just talked to her, and then Jane came across from

1 the EF Lane side to the middle section where we were and she
2 asked me if I knew this guy and I said, "No, I don't know him."

3 And then Mr. Ean was there with his camera and I said
4 this was a private conversation. And then this gentleman here,
5 the big younger guy, started talking and asked him to go away.
6 And he started videoing and to stay away and he stayed. And
7 then I said to Jane, "Let's leave. Let's get out of here, and
8 cross the street." And we crossed the street and started down
9 Church Street.

10 Q So the limited conversation that you're saying you were
11 around with that individual, was -- I mean he wasn't talking
12 about the weather or sports, he was talking about the
13 activities in that area; is that correct?

14 A I don't know.

15 Q You don't recall?

16 A No.

17 Q You don't recall if he was hostile or --

18 A No, he wasn't hostile, but I don't recall any specific
19 things that he said. He was just kind of leaning there on the
20 meter.

21 Q You acknowledge that he asked Garrett Ean to stop
22 filming and to move away, correct?

23 A Right.

24 Q And then minutes later, as you all headed east down
25 Church Street and Garrett and Graham east of you and these

1 other individuals around you --

2 A No, not around us.

3 Q They were nearby following --

4 A Behind by a few minutes.

5 Q So you didn't sense any hostility before -- what made
6 you leave that scene?

7 A The words that were passed back and forth. We remove
8 ourself (sic), perhaps they'll go away.

9 Q So that was the first time over by the parking garage
10 that you had any inkling that there was any hostility between
11 that individual levied at some of the folks, levied and Garrett
12 and Graham; that was the first time you had any inkling that he
13 might have some hostility?

14 A When they came up behind us after we reached the garage
15 and voices started escalating, yeah, then I was thinking well,
16 wait a minute, this is too much. I was just -- or we -- and I
17 asked Jane to come with me, was just trying to get away hoping
18 they would disperse if we weren't there, what was the point.
19 And it didn't.

20 We went -- Mr. Ean came with us on the opposite side
21 videotaping and we proceeded down to the garage. And they came
22 behind, but it was not right with us. They weren't walking
23 right behind us. We weren't like a group of people walking.

24 Q I'm sorry if I misstated. I'm not trying to say that
25 that was the case. I'm just trying to -- I'm trying to

1 demonstrate that the preceding conversation before this all
2 happened should have -- for someone who's role and
3 responsibility is to aid in the public safety, it should, I
4 would hope, raise some flags and that you'd be on the lookout
5 and you would try to diffuse that before it was escalating.

6 A Well, you know, and I think in this case I would have
7 said and I did say to him that this is not necessary and that's
8 when I said Jane, let's get out of here. But Mr. Ean didn't
9 remove himself, either, and he could have walked away.

10 Q Right. But the question is, did you follow your rule
11 and responsibility of aiding in the public --

12 A I didn't feel --

13 THE COURT: You have to let that question be finished
14 before you respond.

15 THE WITNESS: I'm sorry.

16 BY MR. EYRE:

17 Q In retrospect would you have handled yourself
18 differently?

19 A No.

20 Q Would you say that Garrett and Graham are responsible
21 for the actions of that aggressive individual?

22 MR. BAUER: I'm going to object, Your Honor.

23 THE COURT: Sustained. You can ask the next
24 question. I sustained the objection.

25 ///

1 BY MR. EYRE:

2 Q Have you ever witnessed any violence, any initiation of
3 force, from any of the six of us named as Defendants?

4 A Violence?

5 Q Have you ever witnessed myself or any of the other
6 individuals named collectivized as Robin Hood by some entity
7 called the City of Keene, have you ever witnessed any of us six
8 initiating force against somebody?

9 A Force, no.

10 Q Okay. In fact, have you seen this video you would say
11 -- would you admit that Travis, the individual who was
12 aggressive, initiated force?

13 A I couldn't say that, no. I think there was words going
14 back and forth between both.

15 UNIDENTIFIED MALE SPEAKER: You knocked me off my
16 bike.

17 BY MR. EYRE:

18 Q The action that that individual Travis had towards
19 Graham Coleson -- admittedly you said you were on the scene.

20 A That's the part I wasn't there.

21 Q Right. You weren't on the scene, but watching the
22 video, which is objective, is that -- was Travis aggressive in
23 that situation; would you admit that?

24 MR. BAUER: Objection, Your Honor.

25 MR. EYRE: The relevancy is --

1 THE COURT: I think the video -- I watched the video,
2 that portion. I understand your point, Mr. Eyre.

3 BY MR. EYRE:

4 Q Okay. So taking that instance, plus other instances
5 you may be aware, are you aware of other instances when
6 individuals not in this courtroom have approached one of these
7 five or more of these five individuals and threatened them and
8 hit them?

9 A No, not like that.

10 Q So picture number seven, the description is individual
11 punching James Cleaveland. Are you familiar with that
12 situation?

13 A No.

14 Q You've not seen the video or --

15 A No.

16 Q This is the first you've ever learned of it?

17 A No. I learned of it verbally from Jane. That wasn't
18 me.

19 Q Okay. So based on what you -- are you aware -- so in
20 the instance with Graham Coleson as depicted on the video, it
21 seemed clear that Travis was aggressive, yet Graham, you know,
22 he might have been justified using defensive force that he did,
23 but my point here is that if you're unable to point to any
24 instances where the Defendants have been aggressive or
25 initiated force, then it shows, you know, that they're not --

1 that we as individuals haven't been aggressive, hostile, in the
2 community. You wouldn't go so far as to say that these
3 individuals have been -- have initiated force against you,
4 correct?

5 MR. BAUER: Objection to the compound part of that
6 question.

7 MR. EYRE: I was trying to clarify it at the end.
8 Everything is stricken from -- except what I said.

9 MR. BAUER: I think you were just taking a breath.

10 THE COURT: I think the last part of it was I think
11 he was trying to formulate a question the last part of it, his
12 question. I took it that the last statement was really the
13 question.

14 MR. EYRE: Yes.

15 THE COURT: Do you recall the question, Mr. Eyre?

16 BY MR. EYRE:

17 Q Sorry. To clarify the question is, have any of us six
18 named as Defendants initiated force against you?

19 A No.

20 Q So we've not caused a victim?

21 MR. BAUER: Objection. Objection, Your Honor. A
22 victim? What relevance does that have to do with it.

23 THE COURT: I missed the -- what was the last
24 question, Mr. Eyre? I didn't hear your full question.

25 ///

1 BY MR. EYRE:

2 Q I was asking if you acknowledge that none of us six
3 named as Defendants have initiated force against you, correct?

4 A Physical force? Physical force?

5 Q Right.

6 A No.

7 MR. EYRE: Okay. No further questions.

8 THE COURT: Yes, one more.

9 FURTHER REDIRECT EXAMINATION

10 BY MR. BAUER:

11 Q Okay. Mr. Eyre is talking about physical force. What
12 emotional abuse have you suffered?

13 THE COURT: I think we've been over this ground. I
14 understand the point, but this is -- this really is your third
15 bite. It covers ground that we've already covered fairly
16 extensively.

17 MR. BAUER: As long as you understand the point.

18 THE COURT: I do understand. I understand the point.
19 Ma'am, you may be excused. We will resume in an hour at ten
20 minutes of 2.

21 If I can just see counsel and Mr. Eyre at the bench,
22 I want to talk a little bit about scheduling. I want to wait
23 for Mr. Eyre. Mr. Eyre, did you want to be present?

24 MR. EYRE: Yes, sir.

25 (Sidebar begins at 12:52 p.m.)

1 THE COURT: It's pretty clear to me that we're not
2 going to conclude the evidentiary portion of this hearing
3 today. But -- well, I don't know.

4 MR. BAUER: Well, I mean, you know, I was trying to
5 summarize the questions. I was trying to move it along. I
6 understand the objection, I understand your points of the
7 issues. I've got two other PEO's I'm going to put on the
8 stand, Jane and Alan. They're not going to be as long. I
9 think we can now -- if we go through all six of them, we're
10 going to get bogged down again, but if we have to get bogged
11 down, we'll get bogged down. Peter is part of it.

12 THE COURT: Sometimes people -- sometimes it just
13 takes longer to do things. I'm willing to take the time that
14 we need to take, but let me ask this. Is there -- are any of
15 the officers going to offer testimony about Mr. Eyre?

16 MR. BAUER: Yes.

17 THE COURT: Okay. See you back at ten minutes of 2,
18 then. Yes?

19 MR. EYRE: If I could just note about scheduling,
20 tomorrow I'm flying out of Shire.

21 MR. BAUER: It's not going to be tomorrow.

22 MR. EYRE: No. I'm just going to say, I'm flying
23 out. I will be gone for at least four to six months, so.

24 THE COURT: We'll talk about that when we get there.

25 MR. EYRE: Your Honor, does the Court close at 4:00;

1 is that right?

2 THE COURT: And if we were a 4:10 or 4:15 that we
3 might wrap up, I'd be willing to talk about it, but I don't
4 think that's going to be the case. Thank you. We'll see you
5 back in an hour.

6 (Sidebar ends at 12:54 p.m.)

7 (Recess at 12:54 p.m., recommencing at 1:59 p.m.)

8 THE COURT: Let me see counsel and Mr. Eyre at the
9 bench to talk about scheduling.

10 MR. MEYER: Will we need our cell phones, calendars?

11 (Sidebar begins at 1:59 p.m.)

12 THE COURT: Well, my -- I have Jim Peale here with
13 me, the clerk of court, just looking at the calendar I have a
14 proposal, and then if that -- that's not going to work, we'll
15 have to talk about alternatives.

16 The -- this Friday is supposed to be an
17 administrative day for the courts. There's nothing that's
18 scheduled. I'm happy to make it available to do the
19 continuation of this hearing on Friday, but I know that that's
20 short notice for -- for counsel.

21 And, Mr. Eyre, I know you said you have -- you're
22 going to be away for the next four to six months. Probably not
23 going to be possible to accommodate a completion -- I'm not
24 going to let four to six months go before we complete the
25 hearing.

1 MR. MEYER: Your Honor, in terms of Mr. Eyre --

2 THE COURT: Yes.

3 MR. MEYER: -- what I would suggest, at least in
4 terms of part of that issue, is that he be permitted to testify
5 out of order this afternoon to get that done.

6 THE COURT: I was going to make that same proposal.
7 If Mr. Eyre wanted, he could testify, to give him that
8 opportunity to do that this afternoon so that -- so that he has
9 a chance to be heard.

10 MR. BAUER: That's fine.

11 MR. MEYER: Your Honor, in terms of the -- the
12 concern about -- my concern about Friday, is that this was a
13 week that I was supposed to be on vacation. I didn't want to
14 disrupt today because it was -- you know, a lot of people
15 involved in it. But I don't -- I mean, that's why I don't want
16 to do Friday as well. I don't have a problem scheduling this
17 for next week, but Friday is really a problem.

18 THE COURT: What we're running into, this is a -- for
19 the most part, a one judge court with pretty much -- there's
20 some things scheduled pretty much every day. That's why --

21 MR. MEYER: Right.

22 THE COURT: That's the beauty of Friday was that
23 that's a day where nothing's scheduled. If that's not going to
24 work, then we're probably looking, you know, at some distance
25 down the road. I don't know.

1 MR. MEYER: Your Honor, the other thing is, is I
2 would like to file -- we planned to -- intend to file a motion
3 to dismiss. And I think, regardless of whether -- I mean,
4 assuming it will not be granted, at least it would identify, I
5 think, in a way what the -- what facts are relevant and what
6 facts are not relevant. And right now we're sort of laboring
7 under a chicken and egg situation in terms of it's not -- you
8 know, the relevant facts depend on what the legal issues and
9 claims are. And -- and I just think getting further
10 clarification of what is -- what, in fact, is being -- you
11 know, we've now gotten a revised request for relief, which I
12 don't -- you know, I still don't know if that's here --
13 represents the City's withdrawal of its earlier request or
14 whether that's just for this, purposes of today.

15 There's also been -- you know, there remains this
16 issue of what exactly are the legal claims that are being made,
17 the legal standards. And, I think -- I can certainly present
18 my case much quicker if I have, you know, some guidance on
19 that. So I think that getting some -- some legal -- addressing
20 -- and I still -- I also personally believe that this case is
21 like mostly of legal issues; not factual. So if that can get
22 resolved, I think that would help us along the way. So that's
23 one reason why pushing this thing, you know, back may not be a
24 bad thing.

25 Now I understand that from the City's point of view,

1 it doesn't give them any immediate relief, but --

2 THE COURT: Can we agree on some temporary relief?

3 MR. MEYER: No. No.

4 MR. EYRE: I'd be more inclined to go ahead and
5 dismiss. I mean, this is pretty frivolous claims. I as soon
6 that you enjoy your vacation. You guys, I'm sure, all do other
7 things, too. You might as well have -- criminally would be
8 pull their preliminary injunction so it just -- there's no
9 victim, there's no crime.

10 THE COURT: Scheduling.

11 MR. BAUER: Scheduling right now, I've been hired as
12 a mediator in federal court on Friday starting at 10:00.

13 THE COURT: Okay. So I think -- I think we've
14 answered the, you know -- I'm very reluctant to -- I know how
15 important it is for people to take vacation. I appreciate you
16 making your schedule to be here today for this. And we'll just
17 have to -- we'll have to work on trying to identify additional
18 time, and perhaps as we near the end we'll know how much
19 additional time a little bit better. And then we can talk
20 about where we go --

21 MR. BAUER: Okay.

22 THE COURT: -- where we go from here.

23 MR. BAUER: Yeah. We'll work with Jim and his
24 schedule, so.

25 MR. MEYER: Try -- but it's okay to have one witness

1 out of order? I don't know if --

2 MR. BAUER: Yeah. I'd like to put on Mary Kimmel,
3 and then we'll put on the two PEOs. Then it will be like more
4 -- hopefully it will be a lot more succinct and to the point, I
5 mean, for a lot of it.

6 THE COURT: And just it's a little bit after 2:00
7 now.

8 MR. BAUER: Yeah. We'll get her on at the end.

9 THE COURT: I'm wondering whether we'll get there.

10 MR. BAUER: Well, let's -- you know, let's see
11 after --

12 MR. MEYER: Well, why don't we do Ms. Kimmel because
13 she's got to be short.

14 MR. BAUER: Right.

15 MR. MEYER: And then let Mr. Eyre --

16 THE COURT: Well, do Ms. Kimmel, and then let
17 Mr. Eyre testify, and then we'll -- that way we'll make sure we
18 don't conclude today's proceedings without -- without allowing
19 him a chance to testify.

20 MR. MEYER: Okay.

21 THE COURT: And then we'll proceed from there. So
22 we'll do Ms. Kimmel and then, Mr. Eyre, you can testify.

23 (Sidebar ends at 2:05 p.m.)

24 MR. BAUER: Call to the stand Mary Kimmel, please.

25 Ms. Kimmel, would you raise your right hand.

1 MARY KIMMEL, PLAINTIFF'S WITNESS, SWORN

2 MR. BAUER: Please be seated.

3 DIRECT EXAMINATION

4 BY MR. BAUER:

5 Q And if you can talk into the microphone, and try to
6 keep your voice up.

7 State your name, please.

8 A Mary Kimmel.

9 Q And spell it.

10 A K-I-M-M-E-L.

11 Q Would you give a brief overview of your background,
12 training and experience, maybe starting with education, please?

13 A Sure. I have master's degree in counseling psychology
14 from New -- Antioch, New England Graduate School. My
15 background in the last ten years is in the employee assistance
16 and human resource consulting field where I've helped deliver
17 employee assistance programs and done organizational
18 development and consultation.

19 Q And what license, if any, do you have?

20 A I have a license -- clinical mental health counseling
21 license.

22 Q Do you have any certifications as well?

23 A Yes, I'm a certified employee assistance professional.

24 Q And who -- for whom do you work at this point?

25 A MKS Performance Solutions.

1 Q And where are they located?

2 A In Concord and Exeter.

3 Q Okay. And your company and you, personally, provide
4 support for organizations?

5 A Yes.

6 Q Okay.

7 A Yes.

8 Q So it's in the organizational consulting area that
9 we're talking about?

10 A Right. Right.

11 Q And you also have the personal background in terms of
12 the mental health?

13 A Yes.

14 Q Okay.

15 A Uh-huh.

16 Q How did you first become involved with Jane, Alan and
17 Lynn?

18 A I received a phone call Bill Prokop explaining the
19 situation to me and saying that he would like to provide
20 support for the three officers as a group, that they were under
21 a great deal of stress, and that he would like for me to come
22 in and support them, as I said, as a group, facilitate a group
23 for training purposes in terms of managing stress and managing
24 different -- difficult interpersonal situations. And also to
25 just give them a forum to come together as a group, support

1 each other and do kind of debriefing around what they've been
2 experiencing.

3 Q And how many times have you see all three people
4 together?

5 A Two times.

6 Q And do you have another one scheduled?

7 A Yes, this Thursday.

8 Q This Thursday?

9 A Uh-huh.

10 Q Okay. Would you describe for the Court what each of
11 these people have told you, Jane, Alan and Lynn, when you've
12 met with them?

13 A Yes. As we've talked about primarily the type of
14 stress that they're under, they've talked about how this stress
15 has impacted them, the different aspects of the stress.

16 MR. MEYER: Your Honor, the -- as I understand the
17 rules, that the hearsay testimony by a medical provider in
18 regard to what he or she was told by the patient is admissible,
19 and that's being done for the purpose of providing medical
20 care. I don't know yet from the testimony leading up to this
21 whether or not this witness is providing medical care to these
22 individuals. I'd like to see a foundation in terms of exactly
23 what -- I understand this --

24 THE COURT: Sustained. If you could lay some
25 additional foundation.

1 BY MR. BAUER:

2 Q Well, what -- what was the -- what did you see as your
3 role in terms of providing counseling to this group --

4 A Right.

5 Q -- as you were called in by Mr. Prokop? And, now, he's
6 the HR person --

7 A Right.

8 Q -- for the City, right?

9 A Right.

10 Q So what was your role?

11 A My role would be characterized in the way of what we
12 would consider critical incident; although, these -- this was a
13 series of incidents. It was not one incident. Critical
14 incident briefing and ongoing support.

15 Q And in terms of how -- did you have to get information
16 from the three individuals for you to provide that kind of
17 counseling and support?

18 A No. I met with -- when I met with them as individuals
19 -- I mean, as a group, we talked about the situation. They
20 shared individually their experiences of those situations. But
21 I never met with them as individuals, nor did I evaluate them
22 in a --

23 Q Yeah. And --

24 A -- medical sense.

25 Q -- you met with them for two sessions in a group?

1 A Yes.

2 Q Okay. I would ask you, again, what did -- what did
3 Alan tell you --

4 MR. MEYER: Your Honor --

5 BY MR. BAUER:

6 Q -- with regard to his job --

7 MR. MEYER: Your Honor -- Your Honor, I would --

8 BY MR. BAUER:

9 Q -- job -- what did Alan tell you with regard to the --
10 his job environment?

11 MR. MEYER: Objection. Two grounds. First of all,
12 Your Honor, I think the grounds previously stated. But
13 secondly, I think more importantly, one of the three parking
14 attendants has testified. Two more are slated to testify.
15 Surely -- and they've been asked and presumably will be asked
16 about how they reacted emotionally, how they feel, et cetera,
17 et cetera. Surely that is the best source of information for
18 whatever emotional upset they have experienced.

19 As the Court knows, I don't believe this is -- this
20 is legally relevant in the first place. But assuming for a
21 minute that I'm incorrect and that it is legally relevant, the
22 need in a preliminary injunction hearing to rehash through this
23 witness what the -- I'm not -- I'm not saying that they told
24 her anything inconsistent what they're -- then what they're
25 going to testify to in court. I don't see the point to it.

1 MR. BAUER: This witness --

2 THE COURT: How -- if you're going to call the -- I
3 assume you're going to ask each of the other parking
4 enforcement officers about the -- the issues involving stress
5 or -- or consequences of the alleged conduct here. How is this
6 not just repetitive of that testimony?

7 MR. BAUER: Well, first of all, we're putting
8 Ms. Kimmel on out of order. She was scheduled to be after the
9 two PEO -- two other PEOs. So I'm trying to establish a lead
10 up to her impressions from -- from her professional point of
11 view. And she needs the background in order to provide that
12 foundation.

13 THE COURT: So I take it we're going to have --
14 what's her testimony going to be on that point?

15 MR. BAUER: In terms of what her impressions?

16 THE COURT: What -- of her impression, yes.

17 MR. BAUER: She is going to testify that she has seen
18 in these three people what she has seen in other clients; and
19 that is a cumulative work-environment stress that is
20 significant, that's ongoing, the feeling of helplessness and
21 hopelessness by these three individuals from a -- from a
22 professional point of view.

23 MR. MEYER: Well, Your Honor, first of all, I'm not
24 going to -- Attorney Bauer says he needs to -- he needs to ask
25 what they told her in order to lay a foundation. I'm not going

1 to complain about lack of foundation, first of all.

2 Secondly, if this witness, in reaching -- in
3 responding to those questions wants to relay specific things
4 that were told to her that led to her -- those conclusions, I
5 have no objection to that either. But just to sort of randomly
6 summarize everything that she was told by them, which is what
7 the question asked for, seems to me, again, to be unnecessary.

8 THE COURT: I think -- so I'm not sure -- so you're
9 not objecting to the -- that's it's improper hearsay. You're
10 not objecting that --

11 MR. MEYER: Well, I've got a --

12 THE COURT: -- she's not qualified.

13 MR. MEYER: Well, I have a separate objection to the
14 improper hearsay. But I'm saying, in terms of the other --
15 yeah, which is still pending. But the other -- the issues I'm
16 raising now is essentially redundancy. And I'm saying with
17 respect to that -- well, with respect to both objections, I'm
18 not going to complain about lack of foundation.

19 THE COURT: Okay. The objection is overruled. You
20 may proceed.

21 MR. BAUER: Thank you.

22 BY MR. BAUER:

23 Q What has -- what did Alan tell you -- we're going to
24 take these three people individually. So what's your -- what's
25 your recollection of what Alan was conveying to you?

1 A About the impact of the stress.

2 Q Of the impact of the stress in the job situation?

3 A Right. Right. I think -- you know, from what Alan
4 explained, that this created a real internal conflict for him,
5 where he was in this position working on the street, and when
6 he felt that people were in close proximity saying harassing
7 and taunting things to him, that he could not respond to them.
8 Given his role he could not respond to them in a way that would
9 be natural. I think, particularly when some of the comments
10 that he explained to me involved his family. And, also, a
11 separate incident that he explained of being observed as his
12 family -- observing his family when he was off duty.

13 Q Could you describe that so we know what you're talking
14 about?

15 A Yes. He was in a park with his family, a park here in
16 town, and one of -- and I'm not sure who the individual was,
17 was standing within a proximity that was -- that he could see
18 observing him and his family while he was there at the park.
19 So this created for him an internal conflict of a natural
20 instinct to want to defend himself, defend his family. And
21 when I say defend, I'm not talking about a physical violence,
22 but I'm talking about verbally defend himself. But, yet,
23 within the constraints of his role, not being able to do that;
24 therefore, causing emotions such as anger, frustration,
25 anxiety.

1 Q And this is on the job as well?

2 A Yes. Yes.

3 Q How about with regard to Lynn, whom you've heard
4 testify? What -- what did she tell you?

5 A I think for Lynn this was particularly frustrated --
6 frustrating because Lynn, as you've seen, is a soft-spoken
7 person who's just very committed to doing her job and being on
8 the street and minding her own business. So to constantly have
9 her personal space invaded and having people say things to her
10 that were distressing, that was frustrating in that it's so
11 outside of her general demeanor and how she would deal day-to-
12 day in life. And I think very much for Lynn, this involved the
13 frustration of not being able to get away from it or escape it.

14 You know, I think for Alan it's not being able to
15 respond. For Lynn there's no escape, nowhere to go. And --
16 and I think for Lynn, too -- and both talked about taking this
17 home, and how difficult this was, that this is the job
18 experienced. And overtime -- going home, for Alan, you know,
19 there's only so much that you can talk about this with your
20 partner, but after six months the relationship can't hold that
21 any longer. It's frustrating for the partner to not be able to
22 help you.

23 I think for Lynn, living alone, going home, not
24 having anyone to debrief this, so she's just left with these
25 intrusive thoughts, and -- and continual thoughts about this

1 situation.

2 Q And how about with regard to Jane?

3 A And I think for Jane was in a position where, she
4 described from time to time actually attempting to engage and
5 attempting to have reasonable conversations with some of the
6 Defendants. And talk this through. And I think ultimately
7 that did not work for her. And there were situations that I'm
8 sure she will talk more about, but where she felt threatened.
9 And so it became scary for her to be there on the street, to be
10 isolated. And Jane, too. And I think for all three of them,
11 but talking about difficulty sleeping. You know, stressing a
12 partner at home of wanting to debrief this. So it's their work
13 environment, but it's impacting every aspect of their lives.

14 Q From your point of view, is that cumulative stress --

15 A Absolutely.

16 Q -- environment?

17 A Absolutely. There's -- there's several things about
18 this situation that are specific to this situation. It's one
19 thing when there's one incident, and we come across that
20 incident, and it's stressful, and we deal with it, and then we
21 go on our way. And, you know, we can accommodate that within
22 our coping mechanisms.

23 When it's something that is persistent, it's everyday
24 that we're working, and it's pervasive, it's throughout the
25 day, there's nowhere to go to escape this that they won't be

1 found or followed, or have the potential to be found or
2 followed. I think that when it becomes persistent and
3 pervasive it takes on the chronic, ongoing stress at that
4 point, and makes it very difficult to recover. You know, we
5 have mechanisms to recover from cope -- from stress, and when
6 it's persistent and pervasive the recovery becomes very
7 difficult, and then begins to impact things like sleep, ability
8 to focus. We heard Lynn talk about difficulty focusing,
9 difficulty with her memory. And even just modulating our own
10 emotions in response, whether it's crying or the urge to
11 respond in an angry manner. Things like that.

12 Q What professional advice were you able to provide to
13 Alan, Lynn and Jane?

14 A Well, we talked about just relieving that stress, and
15 with each of them about what -- some things that I asked them
16 were, what are some things that you can do when you leave here
17 that you do at home. You had asked this morning about
18 activities and their personal lives. What are activities that
19 can distract you from these intrusive thoughts. What are
20 activities that help you kind of reach a place of feeling
21 calmer.

22 For instance, Lynn had mentioned that reading is
23 something that's very relaxing and calming to her. However,
24 given the accumulation of all of this, I think the reading
25 became difficult for her just in terms of trying to focus on

1 the written page. So it was impact -- impacting even some of
2 their natural coping mechanisms.

3 Q And based on your background, your training and
4 experience, and your relationship with these three individuals,
5 do you have a concern -- a professional concern about the
6 impact on their wellbeing, on their emotional wellbeing --

7 A Absolutely.

8 Q -- as it relates to the job?

9 A Absolutely. I have a concern about the impact on their
10 emotional wellbeing, their mental and their physical wellbeing.
11 Certainly the emotional wellbeing is being tested each day that
12 they're having encounters, and we watched the video. You know,
13 certainly emotional distress at dealing with situations like
14 that, but just even -- I think if anyone in this room imagined
15 having someone following you day in and day out for six plus
16 months, you can begin to imagine what their experience has been
17 in terms of the emotional anxiety that that has a potential to
18 cause.

19 In terms of the mental, when someone is exposed to
20 prolonged stress, it does have an impact on our mental
21 functioning. Things like concentration, focusing, memory. And
22 then certainly if people are not sleeping, that has a
23 cumulative effect and, you know, can lead to all kinds of --
24 potentially lead to all kinds of physical problems.

25 Q And what significance do you understand the proximity

1 of the Defendants' conduct -- in proximity to them has in the
2 -- in regard to these stressors that they're experiencing?

3 A Well, I think just culturally we have a proximity that
4 we're comfortable with, which is at arm's length. If people
5 are within that arm's length, which Lynn had testified that at
6 times that was the case, that that can cause discomfort. It
7 can cause fear. I think, also, with the proximity, if there
8 are things being said, it can be anywhere in that range, from
9 being negative to being harassing or tauntive -- taunting. And
10 that's a continuum. Is it -- is it merely negative? Is it
11 taunting? Is it harassing? That's a continuum.

12 But if someone is in close proximity saying things
13 along that continuum, that can cause emotional distress. I
14 think where that's, once again, as specific to this situation
15 is that if someone is in close proximity saying things that are
16 emotionally distressing, that can trigger a fight or flight
17 syndrome. And that's where our nervous system is heightened
18 and we're ready to respond in some way.

19 In their roles they had neither option available to
20 them. They could not fight. Whether that be verbally
21 responding or even pushing someone away, they couldn't -- that
22 was not an option for them. Yet fleeing was not an option
23 either. They could be followed. Their job is within a
24 perimeter that was shown on the streets. So fight or flight
25 was not an option for them. They're held captive in this

1 environment with people in close proximity that, once again,
2 could potentially cause any individual a great deal of
3 distress.

4 Q And from your professional point of view, would it be
5 helpful to these three people to have whatever activities the
6 Defendants want to engage in be done from a removed -- a 30-
7 foot removed, or something like that, from a professional point
8 of view?

9 A Absolutely. Absolutely. I think, when someone is in
10 close proximity and you don't know that person, you don't know
11 what they're capable of, it can cause fear in knowing where is
12 this going, could this escalate, what is this person capable
13 of, and no way of knowing the answers to that; and, therefore,
14 if there is space, then at least they're not -- it doesn't
15 trigger that response of the -- the kind of physical fear that
16 would come with that.

17 You know, as we talked about -- even at 30 feet or 50
18 feet, it's still possible to hear what's being said. But I
19 think --

20 MR. MEYER: Wait, wait, wait.

21 Your Honor, this is way off the question. I mean,
22 this is -- this witness consistently has been arguing the case
23 and not answering. But this -- at this point, when she talks
24 about what you can hear or not hear from 30 or 50 feet --

25 THE COURT: I agree. We're beyond -- I think we're a

1 bit beyond the confines of the question. And now we're going
2 to --

3 MR. BAUER: The question was the content -- in the
4 context of proximity, and would it be helpful from a
5 professional point of view.

6 THE COURT: The last part of the response is
7 stricken.

8 MR. BAUER: All right.

9 THE COURT: You may continue.

10 BY MR. BAUER:

11 Q Last question is this. From your experience,
12 background and training with these folks, were they faking it?

13 A No.

14 THE COURT: Cross-examination.

15 CROSS-EXAMINATION

16 BY MR. MEYER:

17 Q Ms. Kimmel --

18 A Uh-huh.

19 Q -- my name is Jon Meyer.

20 A Yeah.

21 Q And you were -- were you personally retained by the
22 City of Keene, or was your organization retained?

23 A I was personally. Well, it was with the organization,
24 but for me to do the work.

25 Q And what was the nature of your -- what is the nature

1 of your contract with the City?

2 A Well, I'm not sure what you mean.

3 Q Do you have a contract?

4 A Yes.

5 Q Your organization has a contract? What does that
6 contract provide for?

7 A It provides for training and support.

8 Q Does it provide for medical care?

9 A No.

10 Q And what is the terms of compensation?

11 A Do you mean --

12 Q Payment.

13 A Yes. That's at 225 an hour.

14 Q \$225 an hour?

15 A Yes.

16 Q Yeah.

17 A Uh-huh.

18 Q And how does that compare to your private EAP rate now?

19 A You can't really compare the two. Our private EAP rate
20 is with the organizations. For instance, the City of Keene is
21 covered under the New Hampshire Interlocal Trust. That's a per
22 employee, per month rate. So the two have no relationship.

23 Q And there's no charge in terms of per-hour of
24 consultation?

25 A No. Well, that's how this rate -- if we were to do

1 over and above the EAP contract then it would be this 225 rate.

2 Q Now you are -- I take it you're charging at your \$225
3 an hour rate for today's testimony? 225 --

4 A For the testimony.

5 Q Yeah. And also for the meetings with the attorneys for
6 the City?

7 A Yes.

8 Q And how many meetings have you had with them?

9 A One.

10 Q And how long was that meeting?

11 A About an hour and a half.

12 Q And how long did you meet with the three parking
13 enforcement officers for?

14 A For an hour and a half the first meeting, and one hour
15 after that.

16 Q So you've met with the parking enforcement officers for
17 a total of two-and-a-half hours?

18 A Uh-huh.

19 Q And you met with the attorneys for an hour and a half?

20 A Uh-huh.

21 Q And what other preparation, if any, have you done, that
22 you charged for, for your testimony today?

23 A None.

24 Q Now are any of the three parking enforcement officers
25 receiving individual counseling?

1 A Not to my knowledge.

2 Q All right. Do those parking enforcement officers have
3 the option through the City of Keene EAP program to receive
4 individual counseling?

5 A Well, the way that the EAP program would work through
6 the City of Keene is that if they would want individual
7 counseling, they would call, they would get a referral to a
8 counselor using their medical insurance.

9 Q So the answer to that question is, yes, they are
10 entitled to access the counseling through the EAP program using
11 their health insurance; is that correct?

12 A To a referral to counseling, yeah.

13 Q And to your knowledge, none of the three individuals
14 have -- in the nine months covered here --

15 A Uh-huh.

16 Q -- have utilized that option?

17 A To call and ask for a referral, to my knowledge, no.

18 Q None of them have received, to your knowledge, any form
19 or shape of medical treatment for this situation; is that
20 correct?

21 A I wouldn't know about medical treatment. I haven't
22 asked them.

23 Q You didn't ask them whether they've received any
24 medical treatment?

25 A Whether they've been to a doctor, no.

1 Q You didn't -- you don't think that was a pertinent
2 question you would ask them about this?

3 A They didn't indicate to me that what they were
4 experiencing they had sought help for. That wasn't within the
5 context of our conversations.

6 Q Their medical condition and treatment was not within
7 the context of your conversation; is that correct?

8 A In the context of our conversations they did not
9 indicate that they were having a medical issue.

10 Q So you did not perceive them, any one of the three of
11 them, as having medical issues relating to this controversy; is
12 that correct?

13 A Not at this time. If you mean a medically diagnosable
14 issue, not at this time. Given our conversations, I did not
15 hear anything from them that indicated they had a medically
16 diagnosable issue.

17 Q Now in terms of seeing all three of them together --

18 A Uh-huh.

19 Q -- was that a choice you made or a choice the City of
20 Keene made?

21 A That was an agreement that Bill and I made in terms of
22 how best to support them.

23 Q And when did you and he make this agreement?

24 A On June 30th.

25 Q Now did those -- did these three individuals have any

1 -- in your opinion, have a doctor/patient privilege in terms of
2 their communication with you?

3 A And I just want to go back and correct. That was May
4 30th that we made that agreement. Right.

5 Q You want me to just repeat the question?

6 A No. I know the answer to the question.

7 In this setting I was operating as a consultant. So
8 when we sat down to talk, I set up with them that what we talk
9 about is confidential and stays in this room so that you feel
10 safe sharing with me. This was not a HIPAA regulated
11 agreement.

12 Q But let me -- it seems to me that when you're dealing
13 with three separate people it wouldn't be -- you would lose
14 confidentiality just from that ground alone; isn't that
15 correct?

16 A Well, that's why it was agreement between us. It was
17 sitting down and saying, "We're going to meet together as a
18 group. We want this to be effective." And, therefore, the
19 three of them agreed that that would be confidential.

20 Q Confidentiality or no confidentiality, did they
21 understand that you would be testifying at this proceeding?

22 A No, that wasn't known at that time.

23 Q When were you asked to testify?

24 A About two weeks ago.

25 Q And when was your most recent meeting with these three

1 individuals?

2 A On June 20th.

3 Q Did you disclose to them that you were going to be
4 breaching a confidentiality of your discussions?

5 A This --

6 MR. BAUER: Objection, Your Honor. There's no breach
7 of the confidentiality. There's a release that's been signed.

8 THE WITNESS: Uh-huh. Yes.

9 BY MR. MEYER:

10 Q You said there was a confidentiality agreement; that
11 even though it wasn't a HIPAA agreement, you and the three
12 individuals made a confidentiality agreement with them; is that
13 right?

14 A A verbal agreement.

15 Q Yeah. And I'm asking you, you understand this -- you
16 received authorization from them --

17 A Yes.

18 Q -- to disclose what you're saying here?

19 A Yes.

20 Q And was that done -- what form was that done in?

21 A In a release.

22 Q Now -- and the release permits you to talk about --
23 talk to anybody about their situations?

24 A I don't -- I would have to look at it. But --

25 Q Now you said that you were a consultant in this case.

1 A Uh-huh.

2 Q Consultant to whom?

3 A Consultant within the City to meet with this group.

4 Q So you were essentially serving as a consultant to the
5 City?

6 A Yes.

7 Q Did you prepare at any point a report to the City?

8 A No.

9 Q Did you maintain notes of your two sessions with the
10 three parking enforcement officers?

11 A Very brief notes.

12 Q And you have those notes?

13 A Yes, I do.

14 Q Now you talked about the continuum from negative to
15 taunting to harassing, right?

16 A Uh-huh.

17 Q Now when you're testifying to that, are you -- is that
18 based on an organizational theory, based upon psychological
19 theory, based upon legal theory; where does that come from?

20 A That's based on just plain psychological theory, that
21 it would be a case of perception.

22 Q Right. Is there any -- is there any sort of written
23 text that that's based or is that of your own personal
24 assessment?

25 A That's my own personal assessment.

1 Q So to just better understand --

2 A Uh-huh.

3 Q -- that this personal set of criteria, I take it that
4 -- that when you said negative, taunting, harassing being sort
5 of the three part of the spectrum --

6 A Uh-huh.

7 Q -- that negative would be considered the least severe
8 and harassing would be considered the most severe?

9 A I'm not sure that I would -- once again, this is a case
10 of perception. So in terms of taunting and harassment, if you
11 want to talk about a continuum, negative being at one end, at
12 the other end, at what point is it considered harassment.

13 Q Okay. I'm -- again, it wasn't --

14 A Yes.

15 Q It was --

16 A I understand.

17 Q It wasn't that I wanted to talk about that continuum.

18 I understood that to be the continuum --

19 A Yeah.

20 Q -- that you testified to in your direct examination.

21 A Right.

22 Q What -- what is your definition of harassment?

23 A Harassment would be some type of behavior that causes a
24 person to experience psychological distress. And that would be
25 to cause a reasonable person to experience psychological

1 distress.

2 Q So any type of behavior that would cause a reasonable
3 person to experience emotional distress is, in your mind,
4 harassment?

5 A I think that's a very broad definition. We would have
6 to keep whittling that down.

7 Q Okay. How do you whittle that down? That's what --
8 again, it's not for me to define.

9 A Yeah. Right.

10 Q I'm asking about your definition.

11 A Right.

12 Q How do you whittle down --

13 THE COURT: Okay. You're both -- both talking over
14 each other.

15 MR. MEYER: I'm sorry.

16 THE WITNESS: Yeah.

17 THE COURT: I think you're both doing it. If you
18 could just try your best to let the --

19 THE WITNESS: Yeah. Right.

20 THE COURT: -- Attorney Meyer finish the question.

21 THE WITNESS: Yeah. Yeah.

22 THE COURT: And I'm sure Attorney Meyer will try
23 harder to let you finish your response.

24 THE WITNESS: Okay. All right.

25 BY MR. MEYER:

1 Q So if my restatement of --

2 A Uh-huh.

3 Q -- what I thought was your earlier testimony --

4 A Yeah.

5 Q -- is overly broad --

6 A Uh-huh.

7 Q -- how would propose to whittle down the term
8 harassment?

9 MR. BAUER: Well, I'm going to -- I'm going to object
10 at this point. It's not relevant. We're talking about
11 workplace harassment. You haven't premised the question based
12 on that. If the question is workplace harassment, then I would
13 withdraw my objection. But otherwise, it's overly broad.

14 THE WITNESS: Right.

15 THE COURT: Overruled. There's -- there is, you
16 know, testimony about the -- about from negative to harassing.
17 I think it's a fair cross-examination.

18 THE WITNESS: Uh-huh.

19 THE COURT: You may proceed.

20 MR. MEYER: Thank you.

21 THE WITNESS: In terms of the harassing, the aspects
22 of it that would cause the personal distress, the psychological
23 distress --

24 BY MR. MEYER:

25 Q Just my question was --

1 A Yeah.

2 MR. BAUER: No, I'm sorry.

3 MR. MEYER: No, my question --

4 MR. BAUER: No, objection.

5 MR. MEYER: It's nonresponsive.

6 MR. BAUER: Objection.

7 BY MR. MEYER:

8 Q My question was, how do you whittle down the
9 definition?

10 MR. BAUER: I know. I'm going to object, Your Honor.
11 Mr. Meyer and I know each other pretty well. And I object when
12 he starts to interject when a witness is testifying.
13 Objection.

14 MR. MEYER: Your Honor, I --

15 THE COURT: That's sustained. I think the witness
16 was answering. You can ask a follow-up question. If you think
17 the question (sic) is not responsive, you can address it at
18 that point. But in fairness, the witness was in the process of
19 responding.

20 You may proceed.

21 THE WITNESS: Yeah. So I'm a little confused at what
22 you're asking me. Are you asking me to whittle it down or
23 what would whittle it down?

24 BY MR. MEYER:

25 Q Yeah. Again, just where we started on this.

1 A Yeah.

2 Q And it's an important issue because the City has asked
3 for a preliminary injunction precluding my clients from
4 engaging in harassment. So --

5 A Uh-huh.

6 Q -- I've done -- and that's a term used in that
7 injunction. I'm trying to understand here if we have an
8 understood meaning of this concept of harassment in this --
9 and, again, in this context.

10 A Uh-huh.

11 Q And you're obviously somewhat knowledgeable about it,
12 so.

13 A Uh-huh.

14 Q And I asked you what you meant by harassment, and you
15 said basically -- you started -- my understanding of your
16 response --

17 A Uh-huh.

18 Q -- was any behavior or statements that cause a
19 reasonable person to experience emotional distress --

20 A Uh-huh.

21 Q -- is harassment. And then at some point shortly
22 thereafter you acknowledged that that was a somewhat broad
23 definition, and that it needed to be whittled down.

24 A Right.

25 Q So my question to you now is, can you -- again, we're

1 talking about your understanding --

2 A Right.

3 Q -- of that concept.

4 A Right.

5 Q Can you whittle it down, the concept of harassment, or
6 do you want to stick with your original definition?

7 A No, I would whittle that down to say someone's behavior
8 that was directed at another person that in -- that is directed
9 to them personally with the intent of causing harm -- some
10 level of harm.

11 Q What if the intent of the behavior is to communicate a
12 political message but, at least from the point of view of a
13 therapist, the behavior causes harm? Is that still harassment?

14 A I guess in that case I would want to evaluate that
15 intent a little further.

16 Q Okay. What do you mean by that?

17 A Well, someone can make a political statement and say,
18 "I'm merely making a statement." But when you look at what was
19 the tone of that statement, how was that statement directed at
20 the person -- Lynn had talked about using a personal name.

21 Q Uh-huh.

22 A There's tone. There's the way that the words are said.
23 It's not just merely a political statement.

24 Q No, we were on the point of intent.

25 A Right.

1 Q And you were defining harassment in terms of the
2 intent --

3 A Right.

4 Q -- of causing harm.

5 A Yes.

6 Q And I would ask you, what if the intent of the behavior
7 is to promote a political message, does that still amount to
8 harassment?

9 MR. BAUER: Objection. Asked and answered.

10 THE COURT: Overruled.

11 THE WITNESS: If the intent was purely to convey a
12 political message, with no other intent -- intent involved, then
13 the intent was not necessarily to harass the person. But what
14 was the impact of the message would then be the question.

15 BY MR. MEYER:

16 Q Now, I don't know if you go back this far, but when the
17 American-Nazi party marched in Skokie, Illinois, a suburb of
18 Jewish holocaust survivors, was that harassment?

19 MR. BAUER: Objection, Your Honor. It's irrelevant.
20 We're talking about permits, time, place and manner. We're
21 completely off this case now.

22 THE COURT: Overruled.

23 THE WITNESS: That -- I'm not familiar with that
24 situation, but you describe a group marching --

25 ///

1 BY MR. MEYER:

2 Q Uh-huh.

3 A -- in a public area. That does not sound to me like
4 behavior that was directed at an individual.

5 Q How about the displaying a Nazi salute to someone who's
6 a survivor of the holocaust?

7 A I can't comment on that.

8 Q You made reference in your testimony to the issue of
9 physical fear.

10 A Uh-huh.

11 Q Now you heard Linda's testimony this morning; is that
12 correct?

13 A Uh-huh.

14 Q And you heard her being asked repeatedly about whether
15 or not there was any physical contact or attempted physical
16 contact against her?

17 A Right.

18 Q And you heard her testify that the only incident she
19 was aware was from some other individual, not one of the
20 Defendant's here, touched her when he was trying to -- touched
21 her back when he was trying to get at the parking meter?

22 A Uh-huh.

23 Q Now, after you -- would you -- after -- would you agree
24 that that demonstrates a pattern of nonviolence?

25 MR. BAUER: Objection.

1 THE WITNESS: I don't -- yeah.

2 BY MR. MEYER:

3 Q Six months she hasn't been touched except once
4 inadvertently. Is that not a pattern of nonviolence?

5 A Well, I guess I would want to know how you define
6 violence.

7 Q Nonphysical violence. You talked about an activity
8 that's gone on every day for six months.

9 A Right.

10 Q And you were focused on the fact that it occurred every
11 day.

12 A Right.

13 Q And at least from the first attendant we've had only
14 one instance of inadvertent physical contact, not by one of the
15 Defendants here.

16 A Uh-huh.

17 Q Now you've been the one that raised the issue of
18 physical violence --

19 A Right.

20 Q -- and fear in your testimony. And I'm asking you now,
21 whether the -- and you haven't claimed that whether the -- and
22 you haven't claimed that neither of the other parking
23 attendants expressed to you any incident -- I think actually
24 you did say one scenario, we'll get to that a little later --
25 but in terms of at least the first, the testimony of the

1 officer you heard this morning --

2 A Uh-huh.

3 Q -- does that not demonstrate a pattern of nonviolence
4 on the part of the demonstrator's nonphysical violence?

5 A It demonstrates that to this point, they have not
6 exercised physical violence.

7 Q Well, if you -- it's clearly -- isn't it true that over
8 the course of six months, a more than six months of pattern has
9 been demonstrated? That's -- wasn't that intrinsic in your
10 earlier testimony?

11 A What do you mean wasn't that intrinsic in?

12 Q Yes. That you seem -- that your testimony is going to
13 be premised upon the fact that the same thing is occurring
14 every day over a --

15 A Right.

16 Q -- significant period of time.

17 A Right.

18 Q And given the fact that every single day has occurred
19 without any sign or aspect of violence, actual or intended, at
20 least with respect to the one --

21 A Right.

22 Q -- parking enforcement officer who has testified, at
23 that point, wouldn't any expectation of physical violence,
24 which is qualitatively different from the past experience, be
25 unreasonable?

1 A Physical violence from one of the Defendants, I can't
2 really speak for them, and say, no, they have no fear or that
3 would demonstrate for them a lack -- or a pattern of non-
4 violence. Yes, there's been no violence in that period of
5 time. There have been situations created that have become
6 violent.

7 Q But not directed against them?

8 A No, but they're in the vicinity. They're in -- they're
9 in the mix.

10 Q Wouldn't you realize -- wouldn't you agree that based
11 upon the history of this scenario, there's no reasonable
12 expectation on the part of at least the one parking attendant
13 who has testified of being the victim or subject to physical
14 violence?

15 A At this point in time, given what the Defendants --
16 what they have told me that they have demonstrated, that I
17 would not think that they would expect one of the six of them
18 to be violent toward them directly.

19 Q Have you ever, in terms of your organizational work or
20 your EAP work, worked with police officers?

21 A Yes.

22 Q And do police officers routinely experience stress in
23 the context of their work?

24 A Yes, they do.

25 Q And have you worked with them just in EAP context, or

1 also in an organizational context?

2 A Just the EAP.

3 Q And that's the context of individual counsel?

4 A Yes.

5 Q And in terms of your police officer clients, were they
6 provided any --

7 A Uh-huh.

8 Q -- medical treatment, as counseling treatment, what
9 types of steps do you recommend that they address, that they
10 deal with -- that they do to address the stress?

11 A That is really -- it depends on case to case. I can't
12 say there is a protocol that you advise to policemen who are
13 under stress. There is a big difference between someone who is
14 involved in a lethal encounter versus, you know, someone who's
15 in some other type of situation. Someone who's abusing alcohol
16 and they need treatment, you know, there's a lot of different
17 situations. It's not a one-size-fits-all.

18 Q So there's no standard protocol that you have for
19 dealing with stress?

20 A What kind of stress are you referring to?

21 Q Of a police officer in terms of his work-related
22 stress.

23 A All right. And that's where -- you're saying so
24 there's not one standard procedure; no, because there's not one
25 standard stress.

1 Q Now, you testified that you were retained to give
2 guidance to these three individuals? Is that a fair -- that's
3 not what you said, but is that inaccurate?

4 A These three within the group context.

5 Q So what did you recommend they do with them through
6 context?

7 A I recommended that -- as I said, we discussed the three
8 of them individually, just different ways that they had of
9 coping, reinforcing that, talking about just some stress-
10 relieving techniques that they could do, some cognitive
11 reframing of when they're out on the streets that if they do
12 not have control over the situation, like I said, they can't
13 fight, they can't flee. The one thing they have control over
14 is their own internal response. So some cognitive type of,
15 kind of, reframing that they could do around the situation to
16 control their own response to the situation.

17 I also reminded them that the EAP was available to
18 them.

19 Q And have you received any feedback from them as to
20 whether these insights were helpful or not to them?

21 A No, not in those two sessions.

22 Q And the most recent time you've met with them was in
23 June?

24 A Yes, June 20th.

25 Q Now, you talked about the fight and flight -- fight or

1 flight scenario --

2 A Right.

3 Q -- and the lack of control, so on and so forth. Isn't
4 the inability to engage in either fight or flight
5 characteristic of almost any public employee in their work?

6 A No. Not at all.

7 Q Well, a police officer --

8 A Police officer.

9 Q -- when provoked cannot engage in fight or flight --

10 A Right.

11 Q -- correct?

12 A Right.

13 Q Now, a town manager --

14 A Uh-huh.

15 Q -- when provoked cannot engage in fight or flight,
16 correct?

17 A Correct.

18 Q I mean, it --

19 A A town manager might have a little more control over
20 the environment that they're not talking about the entire town.

21 Q Well, the -- I mean, isn't it true that generally it's
22 inappropriate for any public employee to engage in fight as a
23 response to pressures from outside individuals?

24 MR. BAUER: Objection.

25 THE COURT: Basis?

1 MR. BAUER: Relevance. And for now, I'm talking
2 about -- we're talking about these three individuals, and her
3 interactions with those three individuals.

4 THE COURT: Response?

5 MR. MEYER: Yeah. Your Honor, this witness said that
6 the issues with the parking attendants were essentially unusual
7 and unusual here in their severity because of the fact that
8 they couldn't respond by -- at least one of them couldn't
9 respond by their fighting or flighting -- not flighting, by
10 either fight or flight, I think that was specifically
11 referenced to the male officer. And I guess the question I'm
12 really raising is is this situation unique, or isn't it really
13 more representative of public employment in general?

14 THE COURT: Overruled. You may respond.

15 THE WITNESS: Okay. And let me clarify here what is
16 unique about this situation. As you said, any public official
17 could be encountered -- could encounter a situation of someone
18 approaching them, something that is very uncomfortable for
19 them. As we've established, they cannot -- they cannot say
20 things verbally back in a fighting kind of manner, and they
21 can't walk away and ignore the person.

22 So in that case, yes. But those are generally one-
23 off situations. Those -- it's an incident here, an incident
24 there. A police officer has power in the situation. If it
25 goes over a line that the police officer feels is appropriate,

1 they can arrest the person, or they can get in their cruiser
2 and drive away.

3 BY MR. MEYER:

4 Q Okay. But is --

5 A But for these individuals, this was going on
6 constantly. It's the persistence of it, of being in these
7 situations, is the cumulative stress is what causes the
8 problem.

9 Q Isn't it true that a police officer can only arrest
10 because of a violation of a law, not because just out of
11 provocation?

12 A Right. And that's why I said if a behavior rose to a
13 level that they felt was in violation of a law, they have that
14 power.

15 Q Okay. And isn't it equally true that these three
16 individuals, if they can find that a situation where a law is
17 violated, they also have the right to contact the police
18 officer and have the individual arrested, correct?

19 A Well, at one point, they did call for help. The other
20 thing is they may not have the same knowledge of the laws as
21 the police officer has.

22 Q But there's nothing that prevents the City from
23 training them about their legal rights, correct?

24 A I -- you would have to consult with the City.

25 Q But speaking more broadly, isn't it true that any

1 public employee with inexperience needs to demonstrate needs to
2 demonstrate self-restraint?

3 A Yes.

4 Q That's an important characteristic, and that's true
5 here as well as in the other situation?

6 A Yes.

7 Q And that sometimes you have to deal with people who are
8 frustrating, aggravating, irritating, obnoxious, and you have
9 to deal with them day after day after day, but that's a part of
10 the job; isn't that true?

11 A When you said sometimes they have to deal -- if they
12 had to deal with a person day after day after day after day,
13 then there would be some conflict that would need to be
14 resolved. In this case, we're here. I think the point that
15 I'm getting at is that for most public officials, yes, I would
16 say most public officials, at one time or another, have
17 irritating situations, and in certain departments might be more
18 frequent than others.

19 Q But isn't it true that in many ways, this -- at least
20 he have to deal with it again -- deal with it every day, and
21 not occasionally, because over time, you develop as you need to
22 over time, you develop skills, and capabilities, and training,
23 and other techniques for dealing with the situation where as it
24 occurs on an occasional, shocking basis, you may not have the
25 resources or the experience or the training to deal with it as

1 well?

2 A In this situation, which is different from what I think
3 you're describing, it has become very personal, number one; and
4 number two, I don't think the persistence of this could be
5 compared to what any other city official is experiencing, or
6 has experienced.

7 Q Have you had a -- don't you counsel employees, public
8 employees, that face stress every day on their jobs?

9 A Not this -- I have not seen in my years of experience
10 this kind of persistence.

11 MR. MEYER: Thank you. I have no further questions.

12 THE COURT: Mr. Eyre, any questions?

13 CROSS-EXAMINATION

14 BY MR. EYRE:

15 Q Good afternoon.

16 A Hi.

17 Q That most of the questions I was going to ask were
18 already covered in Mr. Meyer's -- my -- or the questions that I
19 have, you -- you mentioned perception a number of times.

20 A Uh-huh.

21 Q Would you admit that perception is subjective to the
22 individual?

23 A Yes. Yes.

24 Q As opposed to something objective; for example, if I
25 were to walk down the street and shoot somebody for no reason,

1 that would be -- clearly I initiated force, correct?

2 A Right.

3 Q So in this instance, the subjective perceptions, the
4 feelings of anger and frustration, anxiety were those
5 individuals alone? It wasn't, I guess, generally -- you know,
6 it was their interpretation of the situation, correct?

7 A Right. But I think a question that you have to ask
8 here is would a reasonable person feel or perceive distress in
9 this situation.

10 Q Would you admit that most people in -- no matter what
11 career industry they're in, or lack thereof, experience
12 frustration and anxiety at times?

13 A At times.

14 Q And would admit that individuals do not have a right to
15 a job?

16 A So you're saying individuals do not have a right to a
17 job. I do -- I'm not sure what you mean by that.

18 Q Do you think that an individual simply -- who he -- is
19 existing, who lives and breathes, do they have a right to a
20 job?

21 A I don't believe it's --

22 Q Is somebody -- does some --

23 A -- a legislative right.

24 Q Does somebody have an obligation to employ them in some
25 capacity?

1 A No. No. No one has an obligation.

2 Q Okay.

3 MR. EYRE: No further questions.

4 THE WITNESS: Okay.

5 THE COURT: Redirect?

6 MR. MEYER: Nothing further, Your Honor.

7 THE COURT: Okay. Thank you, ma'am. You may be
8 excused.

9 THE WITNESS: Thank you.

10 MR. BAUER: Your Honor, can we just approach the
11 bench?

12 THE COURT: Yes.

13 MR. BAUER: And can Ms. Kimmel be excused?

14 THE COURT: Yes. Absolutely can be excused.

15 Thank you, ma'am.

16 MR. BAUER: Thank you very much.

17 THE COURT: Mr. Eyre, if you want to come as well.

18 (Sidebar begins at 2:58 p.m.)

19 MR. BAUER: In fairness to Mr. Eyre, I can put Alan
20 on who will identify him. I don't want him not to be available
21 to hear the testimony against him. So what I'm thinking about
22 is if I put Alan on and then let Peter -- he will still be in
23 the courtroom.

24 THE COURT: Here's my -- I think that's a problem,
25 Mr. Eyre. Maybe we could have the witness -- I think part of

1 your issue is you could be wrongly named as a party in the
2 case. Am I correct?

3 MR. EYRE: That's a pretty accurate statement.

4 THE COURT: Okay. And I think what Attorney Bauer is
5 suggesting is that in fairness to you, to give -- let you hear
6 that testimony, so that you know and can respond --

7 MR. EYRE: Sure.

8 THE COURT: -- to the specific allegations that
9 relate to you. So maybe if we could just have him --

10 MR. BAUER: Yes.

11 THE COURT: -- keep it tightly focused on that, and I
12 understand, though, you can -- may call him later, too. And,
13 Attorney Meyer, but my real problem is since you don't
14 represent Mr. Eyre, not -- I want him to have an opportunity to
15 respond to the specific allegations that involve him.

16 MR. MEYER: Your Honor, I agree. The only -- the
17 only -- their only asking -- I don't object, and I don't
18 disagree with this is. The another alternative here would be
19 you have -- this is after our preliminary hearing, would be you
20 have Attorney Bauer make an offer of proof on the witness'
21 behalf as to his part, whatever his testimony would be
22 regarding this witness. I'm only a little concerned if we
23 bring on the parking enforcement officer to testify himself, I
24 mean, I'm a little worried of where the time center is, will
25 take us.

1 THE COURT: I'm concerned about that as well.

2 MR. MEYER: And, Charles, can you just give an offer
3 of proof in terms of testimony --

4 THE COURT: As to what the witness is -- what's the
5 witness going to say about Mr. Eyre?

6 MR. BAUER: I don't have all the details. I --

7 THE COURT: I understand. I understand.

8 MR. BAUER: That --

9 MR. MEYER: So is that -- is he going -- are you
10 going to testify -- are we going to call him just for the
11 purposes of his testimony?

12 MR. EYRE: Yeah.

13 MR. BAUER: Okay.

14 THE COURT: I just, again, and he can be recalled to
15 the stand.

16 MR. BAUER: Sure.

17 THE COURT: And we can continue, but I think Mr. Eyre
18 should hear what the witness has to say before he testifies.
19 Okay? And if it's okay with everybody, we'll keep going rather
20 than take an afternoon break --

21 MR. BAUER: Sure.

22 THE COURT: -- so you can keep the time.

23 (Sidebar ends at 3:00 p.m.)

24 ///

25 ///

1 ALAN GIVETZ, PLAINTIFF'S WITNESS, SWORN

2 DIRECT EXAMINATION

3 BY MR. BAUER:

4 Q Please be seated. State your name for the record, and
5 spell your last name.

6 A Alan Givetz, G-I-V-E-T-Z.

7 Q And, Mr. Givetz, just -- you understand that you're
8 going to be testifying primarily with regard to Mr. Eyre.
9 Do you understand that?

10 A Yes, sir.

11 Q And then you'll be recalled later on just for further
12 testimony?

13 THE COURT: Absolutely. And I'll just state for the
14 record that this is in recognition of the fact that Mr. Eyre
15 indicated he may not be available -- we're not going to
16 conclude the proceeding today, and give him an opportunity to
17 understand some of the specific testimony in regards to him.

18 Attorney Bauer.

19 MR. BAUER: Thank you.

20 BY MR. BAUER:

21 Q Just for the record, though, before you get started,
22 just background and some experience.

23 A As far as?

24 Q Educational background.

25 A High school diploma, some college, some military

1 training, law enforcement training.

2 Q Okay. And your employment status with the City of
3 Keene, from when to when?

4 A It was from, I believe, September of 2012 until
5 mid-July, I believe, sometime around there.

6 Q Okay. And so you're no longer working for the City of
7 Keene?

8 A No, sir.

9 Q And succinctly, because we're going to talk about Peter
10 Eyre, but succinctly, what was the significant force or factor
11 that caused you not to work for the City of Keene anymore?

12 A Just a hostile work environment. I wasn't able to
13 express myself. I wasn't able to defend myself, whether
14 verbally -- I wasn't able to leave the situation because I
15 couldn't leave my -- my office was downtown. I had nowhere to
16 go but downtown.

17 Q So are you saying that due to the conduct that -- by
18 the Defendants was a significant factor in your leaving the
19 City of Keene employment?

20 A Absolutely.

21 Q All right. Let's talk about Mr. Eyre.

22 A Yes, sir.

23 Q Would you describe what conduct Mr. Eyre participated
24 in with you --

25 A Sure.

1 Q -- while trying to do your job?

2 A Is it Eyre? I just want to be respectful.

3 Q Yes.

4 A Mr. Eyre was more sort of behind the scenes. He wasn't
5 right there next to me. I could see him, witness him in
6 Central Square on one occasion when I would walk by or drive
7 by, pull out his radio and I would find it odd that as soon as
8 I would walk by him with his radio that one of the Defendants
9 would show up. There was also another occasion when I couldn't
10 figure out why I kept getting followed on Lower Main Street
11 when I would get in my vehicle and drive away, and then 20
12 minutes later go on to Lower Main Street, and then all of a
13 sudden being followed again until I saw Mr. Eyre at the bench
14 by the roundabout in front of the post office again talking on
15 his radio. And shortly thereafter, I'm being followed.

16 There's also -- the last incidence that I can
17 remember was when I walked past Subway, heading south on Main
18 Street, Mr. Eyre came out and I'm not sure where he was headed.
19 I think it was just a coincidence at that point, to be honest
20 with you. But he decided to follow me up Main Street, trying
21 to engage me in conversation, asking me questions and also
22 taking pictures of me at that point. I declined to answer any
23 questions and at that point, after taking his photographs, he
24 left.

25 Q What types of questions or comments was he making to

1 you?

2 A Primarily if the individuals -- the Defendants were
3 being out there were boosting our morale by giving us something
4 to do.

5 Q Was that in a sarcastic tone?

6 A I'm not sure to be honest with you. I honestly didn't
7 have many speaking occasions with Mr. Eyre.

8 Q Okay. And, I'm sorry, on those three occasions that
9 you've just described, can you give us a timeframe on
10 Mr. Eyre's participation?

11 A I believe they were both in -- or all three were in the
12 afternoon, early afternoon, late afternoon.

13 Q And I'm talking in terms of months. Which months?

14 A Oh. I have no idea.

15 Q What time or timeframes?

16 A I don't believe there was snow on the ground, if that
17 helps. I believe I remember him being in at least short
18 sleeves and maybe shorts.

19 Q Of this year?

20 A Yes, sir.

21 Q Okay. Now, from your -- from your vantage point, from
22 your perspective, was Mr. Eyre part of this group of Defendants
23 that label themselves --

24 A Only from seeing him with those Defendants at times in
25 Central Square and out and about, and seeing, you know, certain

1 videos and stuff on YouTube and whatnot.

2 Q Okay. Let's take -- let's break that down. Who have
3 you seen Mr. Eyre with of the other five named Defendants?

4 A I've seen him with Mr. Freeman, I've seen him with
5 Mr. Coleson at times, I've also seen him with Mr. Ean that I
6 can remember specifically.

7 Q Okay. And what is this document that I'm showing you?

8 A This is a card that they would leave on car windows.
9 It basically has a picture of, I believe, it's Disney's Robin
10 Hood on the front, and on the back it -- do you want me to read
11 it?

12 Q Sure.

13 A I mean, it says, "Your meter expired; however, we saved
14 you from the king's tariff, Robin Hood and the Merry Men."
15 Goes on to say, "Please consider paying it forward or sending a
16 donation to Keene Activity Center, 75 Leverett Street, Keene,
17 New Hampshire 03431." And it continues, "For more information,
18 visit RobinHood.FreeKeene.com, KeeneCopBlock.org, or
19 ShireSociety.com.

20 Q And what affiliation are you aware of that Mr. Eyre has
21 with Cop Block?

22 A I believe, just from, you know, things on the internet
23 and reading statements from him on the internet, he heads up
24 Keene Cop Block.

25 Q So where does this card -- where is this card found on

1 occasion? Under the -- on the car's window?

2 A On car -- under car windshield wipers.

3 MR. BAUER: I would move this as the next exhibit,
4 Your Honor.

5 THE COURT: Any objection?

6 MR. MEYER: No, Your Honor. We have no objection.

7 THE COURT: Plaintiff's 4, it's a full exhibit.

8 (Plaintiff's Exhibit 4 received)

9 BY MR. BAUER:

10 Q And then lastly, with regard to this limited window of
11 testimony, what impediments, what impairments, what emotional
12 problems have you experienced as it relates to Mr. Eyre, or
13 Peter Eyre?

14 A The only emotional problems was the fact that when I
15 saw him on his radio, which is a pretty predominant radio, it
16 had one of those big antennas, I felt like, okay, somebody's
17 coming to follow me, somebody or some group. And nine times
18 out of ten, that would happen, so.

19 Q Thank you. Lastly, I guess, you heard Ms. Kimmel
20 testify. You were part of that group session, were you?

21 A Yes, sir.

22 Q All right.

23 MR. BAUER: I'll reserve all other questions at this
24 point.

25 THE COURT: Attorney Meyer, anything on this --

1 MR. MEYER: None.

2 THE COURT: Mr. Eyre, anything for this witness?
3 Again, stay on this limited topic area, please.

4 MR. EYRE: Yes.

5 CROSS-EXAMINATION

6 BY MR. EYRE:

7 Q Good afternoon.

8 A Sure.

9 Q You gave two examples Mr. Bauer's inquired of you of
10 our interactions, and one of them, you noted, was outside the
11 post office, correct?

12 A Uh-huh.

13 Q And can you give a little overview of how that
14 interaction went down, please?

15 A Honestly, it was, you know, it was pleasant. We both
16 waved to each other.

17 Q Did you say anything to me, or did I say anything to
18 you?

19 A I honestly don't remember. I don't think you said
20 anything to me, and I can't recall if I said anything to you.

21 Q If you think it'd be -- do you remember yelling, "Here
22 I am," out the window as you drove south on Main Street?

23 A Actually, yes, I did say that. Thank you.

24 Q Would it be -- would it be surprising to you to learn
25 that I wasn't aware of your presence, that I may not have been

1 aware of your presence until that, in fact, happened?

2 A It would be, sir, because those transits kind of stick
3 out like a sore thumb.

4 Q Okay. The -- you mentioned another example when I was
5 on the radio in Central Square. I don't remember that specific
6 incident, but it could have happened, I had the radio on, I
7 talk to my friends.

8 A Uh-huh.

9 Q But the -- another -- the third and final example you
10 mentioned was, I believe, you stated that the interaction began
11 outside of Subway; is that correct?

12 A I believe that's where you started following me from,
13 yes.

14 Q Are we on -- were we on foot or bicycle?

15 A We were on foot. I believe your vehicle was parked
16 somewhere around there.

17 Q Okay. And where did the conversation we had happen?

18 A I believe you tried to ask me some questions, was it,
19 right by Roxbury Street, waiting to cross, and I respectfully
20 declined, and you respected my wishes and walked away.

21 Q Right. And you responded to Mr. Bauer about my
22 demeanor at the time, or was it done out of -- in a demeaning
23 tone?

24 A I don't believe it was, but having limited interactions
25 with you, I can't fully say.

1 Q Would you say somebody is -- I mean, I'm not even going
2 to say what my friends are accused of is an offense, but would
3 you say another person is guilty by association of somebody
4 else's actions?

5 MR. BAUER: I'm going to object. It calls for a
6 legal conclusion with regard to the --

7 THE COURT: Sustained.

8 MR. BAUER: -- law.

9 THE COURT: You don't have to answer that question.

10 BY MR. EYRE:

11 Q So you haven't thus stated that you and I have had
12 necessarily hostile conversations, or that I've threatened you
13 in any way?

14 A No, I have not.

15 Q If you saw me on the street, do you -- I mean, would
16 you be surprised if I said hi, and that was the extent of our
17 conversation?

18 A I would not. Also, I'd like to add, though, that a lot
19 of times, when people say hi, they're trying to get you to
20 interact with them, to see how you're going to interact and to
21 see how you will react to their hi, whether it's ignoring you
22 or saying something, or not.

23 Q So going back to the conversation that you stated
24 happened around Main Street and Roxbury, to the best of your
25 recollection, it was a question of how is your job morale based

1 on the Robin Hooding that's happening, and you responded that
2 you would prefer not to engage with me in conversation, and I
3 said, okay, I respect your opinion, is that roughly how you
4 remember the situation?

5 A Yes, I believe I stated that earlier.

6 Q Okay.

7 MR. EYRE: No further questions.

8 THE COURT: Okay. Any questions?

9 MR. BAUER: Nothing further on this.

10 THE COURT: Okay. You can step down now, sir.

11 Mr. Eyre, did -- okay, you would like to testify?

12 MR. EYRE: Sure.

13 THE COURT: If you would, just take the stand.

14 If you could just raise your right hand.

15 MR. EYRE: I always tell the truth, so.

16 THE COURT: Are you willing to do so under oath?

17 MR. EYRE: I've always act as if I'm under oath. So

18 I will tell the truth today to the best of my knowledge, for

19 sure.

20 PETER EYRE, DEFENDANT/EYRE'S WITNESS, SWORN

21 THE COURT: Okay. Do you swear --

22 THE WITNESS: It will be the truth.

23 THE COURT: -- the testimony will be the truth?

24 THE WITNESS: It will be the truth. Yes.

25 THE COURT: Okay. Thank you. You can be seated. If

1 you would state your full name and spell your last name for the
2 record.

3 THE WITNESS: My name is Pete Eyre, the last name is
4 E-Y-R-E.

5 THE COURT: Sir, and, again, since you're
6 representing yourself, if you want to respond factually --
7 again, this is not a time for legal argument. That's -- that
8 is going to be done at the conclusion of the proceedings, but
9 if you want to address any of the factual allegations against
10 you, please go ahead and do so.

11 TESTIMONY

12 THE WITNESS: I was, as you all know, one of the six
13 people included in this preliminary injunction. I was a bit
14 surprised by it, seeing as I don't choose to allocate my time
15 in Robin Hooding. It's not that I'm opposed to it. I think
16 it's a peaceful action, and it's a free speech issue. And just
17 as if somebody takes issue with a police employee who might be
18 kidnapping, engaging someone for a victimless action, I see the
19 Robin Hooders as just a peaceful way to just, you know, express
20 their dissent or maybe, you know, their preference for a better
21 alternative, and how parking enforcement is currently
22 structured, I don't believe -- I've never heard any of my
23 friends named in this preliminary injunction say, we have to
24 get this person or that person, you know, just as it's -- so I
25 want to make that clear. It's not a personal thing against

1 anybody, whether it was any of you three individuals or
2 everybody else in those positions, I think, like, if these
3 individuals, co-Defendants of mine, think that it's an
4 effective tactic and it's a peaceful tactic, no one's yet
5 testified that there's been any, you know, any initiation of
6 force upon them, any physical force and things like that. A
7 better way people to express stress and frustration, which I
8 understand. If I was in your situation, maybe I would as well,
9 but that's not tantamount to a criminal activity, and thus, to
10 try to pursue the restraining of someone's free speech and
11 their rights is ludicrous in my opinion.

12 So, to go back, you know, I was surprised to learn
13 that I was named as preliminary injunction. Alan mentioned,
14 you know, he noted the term in the background, and, you know,
15 maybe that's the perception, but, you know, I can't -- I can't
16 control what other people's perceptions are in my activities.
17 You know, it's just -- that's just what's up. I mean, on the
18 affidavit, there's three parking enforcement officers, and one
19 -- only one of whom named me in this preliminary injunction,
20 and the statements made about the rationale for my involvement
21 involved me using a radio a couple times to indicate to my
22 friends the whereabouts, and asked me a question that was
23 declined to have a conversation, which I respected. So, you
24 know, to try to say that my location and proximity to any
25 public employee when they're operating on, you know, money

1 that's taken from other folks is, you know, it's ridiculous.
2 You know, it's why I call this "legaland" because I shouldn't
3 have to waste all of my time and to come here and try to
4 justify myself and to clear my name because, you know, there
5 wasn't ever any attempt made by anybody to approach me and say,
6 hey, Pete, we'd prefer if you don't do this, and it's kind of
7 getting to us or anything. It was just the next thing I know,
8 I'm told to show up in "legaland."

9 So I don't really understand why I'm here. There's
10 been no objective evidence on part of my involvement with Robin
11 Hood, you know, as a -- and, you know, I believe someone --
12 Alan, I believe, or maybe it's -- maybe it's Mr. Bauer. It is
13 Mr. Bauer, sorry, mentioned, you know, how we self-define or
14 whatever, but, I mean, that's a collective term. I don't self-
15 define as a Robin Hooder. And I take -- you know, I take an
16 objection to that, that, you know, you, sir, would place
17 anybody, you know, you would categorize anybody, like not view
18 people's actions as their own, and not ascribe their actions as
19 somebody else. Individuals are responsible for their actions,
20 so that's all I'd say. Again, I mean, if you can point to a
21 victim or someone I harmed, please do it and I'll try to make
22 right. But I know I didn't do anything wrong.

23 THE COURT: Cross-examination?

24 MR. BAUER: Yes, please.

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CROSS-EXAMINATION

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BY MR. BAUER:

Q May I call you Peter?

A Sure.

Q Peter, what's your educational background?

A In terms of community specify?

Q Where'd you go to high school?

A I mean, real education, I hope is that I'm 33 now, so I have hopefully 33 years of education. I'm trying to learn every day. That's what it's about.

Q Where'd you go to high school?

A I went to high school in Minnesota.

Q Minnesota?

A Uh-huh.

Q Graduate?

A Sure.

Q Go to -- had any college?

A Yep.

Q Where'd you go to college?

A I went to undergrad, Minnesota, went to grad school in Illinois.

Q Okay. University of Minnesota, or what?

A I started there, went to Mankato State University, Mankato.

Q Okay. And you said that's some master's work, or a

1 degree?

2 A Uh-huh. Yeah. I did two years of a master's, law
3 enforcement and justice administration at Western Illinois
4 University.

5 Q And you have a degree?

6 A Well, I did all the coursework, but I didn't -- it's a
7 long story, but it's a story with a thesis board. The thesis
8 was proposed and sent out and returned and submitted in the
9 timeframe, but the thesis committee, the chair had some time
10 schedule issues, and after jumping through some hoops a number
11 of years later to, you know, bring my thesis to a satisfactory
12 conclusion, there were still time issues on his end and
13 eventually I just said it's not worth -- I know I did the work,
14 and I'm not going to continue to allocate my scarce time to try
15 to justify to this guy. So I just, you know, proceeded to move
16 on.

17 So to answer your question, I've done all the work
18 necessary for that, yes.

19 Q For a criminal justice degree and a master's?

20 A That's correct, and law enforcement and justice
21 administration.

22 Q Law enforcement. Have you ever worked as a law
23 enforcement officer?

24 A I haven't gotten paid to work in law enforcement. I've
25 done an internship with St. Paul Police, and I've done, you

1 know, other related things.

2 Q Have you had a bad experience in law enforcement?

3 A I haven't -- I've had negative experiences with some
4 individuals who work in -- as police employees.

5 Q In New Hampshire?

6 A Yes.

7 Q What is this Cop Block -- what is Cop Block all about?

8 A Cop Block's a decentralized project. People who
9 advocate for police accountability who believe badges don't
10 grant extra rights.

11 Q Are you -- what is your affiliation with Cop Block?

12 A I'm just one of the many people involved with the
13 decentralized projects. It's more of an ideal than an
14 organization, if that makes sense.

15 Q Does your -- who set up this KeeneCopBlock.org?

16 A I set it up -- well, yeah. I set it up.

17 Q Okay. You maintain that website?

18 A I post content. I'm one of the content contributors
19 there.

20 Q Okay. How long has it been going on, approximately?

21 A A year maybe. Who knows?

22 Q And is this supportive of law enforcement, that is
23 KeeneCopBlock.org? Is it in supportive of law enforcement or
24 anti-law enforcement? How do you --

25 A Well, again, I'm just one individual involved with Cop

1 Block because it's decentralized. But that -- so I'm only
2 speaking for myself here --

3 Q Yeah.

4 A -- not anybody else. I personally support people who
5 prefer peaceful coexistence, peaceful interactions, and, you
6 know, I recognize there's -- so to answer your question, no,
7 I'm not anti-law enforcement. I'm pro-accountability,
8 responsibility, and I see that issues that are all-too-often
9 surrounding police employees' double standards are brought
10 about by the perverse incentives that are built in to that
11 institution, which is based on violence that says this group of
12 people has a right to steal from this other group of people to
13 protect them. So once that double-standard is established, you
14 know, people might hearken back to the peace officer of
15 yesteryear, but when you -- once you allow for that double
16 standard, it grows into what we have today, which is more of a
17 police state.

18 And so my goal is to reach out to current police
19 employees as a welcomed leader as page of Cop Block to them, to
20 reach out to current police employees and say, hey, if you're a
21 good police employee, and people -- and you're providing a good
22 service, and you'd prefer not to work with heavy-handed
23 colleagues or corrupt people, then people will voluntarily hire
24 you to provide that service, because there is a demand for
25 safety and security. So at -- and at the same time, while

1 trying to reach out to current police employees, I hope to
2 share ideas with other people to help empower them so that they
3 know their rights and they know that somebody just doesn't have
4 the right to control them based on their title. I don't
5 believe in arbitrary authority. I believe in earned authority.

6 And so I'm just trying to share ideas. That's what I
7 try to do.

8 Q Do you respect the law -- or the jobs that the three
9 parking enforcement officers are tasked to do on a daily basis?
10 Are you in a -- do you support that, or are you against that
11 concept?

12 A I mean, I'll -- you're getting at a deeper question.
13 Ultimately I think it's a property rights issue, and if the
14 businesses on Main Street, for example, have an -- they have an
15 incentive, obviously, to not have someone's -- the parking
16 spots for them by derelict cars left there for -- you know,
17 abandoned for weeks, they have incentive to have turnover,
18 timely turnover so customers can get in their stores and to,
19 you know, handle situations, keep the street clean, and stuff
20 like that. I would think that's a property rights issue, and
21 that could better be addressed, not from an institution that's
22 -- that claims a coercive monopoly that says we have the sole
23 ability to provide this good or service but through
24 competition. So I -- yes, I would think there's a need for
25 this type of services that these three individuals have use, I

1 would just think that they could be provided more efficiently
2 and through other mechanisms.

3 Q So you're supportive of the parking enforcement
4 officers doing their jobs on a daily basis, then?

5 A Well, I -- you know, I respect them as individuals, but
6 I'd prefer that any person, you know, there's a number of other
7 people in this room who have badges on or are sitting to my
8 left here, you know, at the end of the day, they're salary is
9 paid for by money taken from other people. And I don't think
10 that that's a good -- that doesn't -- that's not conducive to a
11 free society. I think that, you know, law, for example, the
12 idea of the rule of law is false, because, you know, it says
13 that some people have the authority to create -- to write up
14 text on paper, and then to interpret it so the incentive is for
15 them to protect their own, to conflate legislation as law to
16 say more actions that are -- were once legal are illegal, you
17 know, to -- it's -- that there's the built-in incentives.

18 So, again, I'm -- to answer your question, if there's
19 -- there would be a demand for people to have, you know, a
20 safe, clear streets, but the question is how could it be better
21 provided.

22 Q Well, do you agree with this sentiment? Quote, "It
23 would be nice to shut down parking enforcement. People who own
24 businesses downtown instead of city government should own the
25 parking spaces." Do you agree with that? Want me to read it

1 again?

2 A I mean, I --

3 Q Do you want me to read it again?

4 A Sure.

5 Q Okay. "It would be nice to shut down parking
6 enforcement." Do you agree with that concept?

7 A Well, not necessarily. I mean, I don't agree with --
8 like, so shutting down, that, to me, you know, evokes, like,
9 someone flipping the switch, or from the top down saying you're
10 shut down or this agency is no more. I prefer to work from the
11 bottom up, sharing ideas. So I think these institutions are
12 built on people's, like, the authority they grant them, and so
13 it would be eroded one mind at a time, as it were.

14 Q You know that Mr. Freeman espouses that kind of a
15 concept, don't you? You know that Mr. Freeman has said it
16 would be nice to shut down parking enforcement. You've heard
17 him say words to that effect, haven't you?

18 A I don't want to speak -- I don't -- I mean, I don't
19 want to answer in the affirmative if I don't -- I don't
20 specifically recall an instance where he said that in my
21 presence.

22 Q But you've heard him say that in not so many words, or
23 in as many words, haven't you?

24 A I've heard him --

25 MR. MEYER: Your Honor --

1 THE COURT: One second. There's an objection.
2 Attorney Meyer?

3 MR. MEYER: Objection, relevance. First of all, I
4 don't understand why this witness remains a party in this case
5 when there is no evidence of any significant involvement on his
6 part. But, again, that's ultimately an issue that the City's
7 going to have to decide whether to withdraw it or the Court
8 will have to act. But even assuming at this point that he's a
9 proper party, technically, he clearly is, I don't understand
10 how the -- his -- any differences between his ideology and that
11 of another Defendant here has any bearing whatsoever on
12 establishing any of the elements of the claim that the City of
13 Keene needs to establish against him.

14 THE COURT: I thought it was being offered for a
15 different purpose.

16 But, Attorney Bauer, if you can respond to that?

17 MR. BAUER: Well, it's very relevant, both to the
18 concept of tortious interfere -- interference with employment
19 relationships as well as the conspiracy theory.

20 THE COURT: The objection's overruled. You may
21 proceed.

22 MR. BAUER: Okay.

23 BY MR. BAUER:

24 Q So, Mister -- Peter, you would like to see the City
25 parking enforcement shut down in some manner over a period of

1 years or time, wouldn't you?

2 A I would ask you to define what the City of Keene is.

3 Q Excuse me?

4 A I said I'd ask you to define what the City of Keene is.
5 I've heard that referenced a number of times, and I've not -- I
6 don't know what the City of Keene is. You know?

7 Q Well, I mean, City of Keene is a political body of
8 government, isn't it, that employs people to work for the
9 social good of the rest of the citizens and out-of-staters?

10 A Would you say what's been going on is -- has been for
11 the social good of the community? I mean, I would ask you have
12 you -- can you point to a contract --

13 THE COURT: This is not --

14 THE WITNESS: -- I've signed with the City of Keene?

15 THE COURT: This is not -- this is not a dialogue
16 back and forth. This is not a question where you both pose
17 questions. If you have an objection to the specific question
18 as posed, we can deal with it. But -- and if you don't
19 understand a question, you can ask for it to be clarified. But
20 this is not a time for you to ask questions of Attorney Bauer.

21 BY MR. BAUER:

22 Q So would you answer my question?

23 A Yeah, I mean --

24 Q You would like --

25 A -- I can't answer that question based on the responses

1 you're looking for, because I don't believe that the City of
2 Keene has any legitimacy upon which your question is based.

3 Q Okay. Let's assume that the City of Keene has the
4 lawful authority to regulate parking and safety. Can we assume
5 that just for the sake of this discussion? You don't have to
6 agree, but can we assume it?

7 A I wouldn't will it on myself to be pigeonholed into a
8 paradigm that I don't think makes sense. I don't want to
9 believe an institution based on violence should exist, and I
10 don't want to perpetuate it by buying into it.

11 Q Okay. Well, let's try this. These three folks right
12 here, you know Lynn and Jane and Alan, don't you?

13 A I mean, I --

14 Q You've said --

15 A Yeah. I've had a conversation with Alan that was
16 expressed. Linda and Jane, I honestly, you know, up to a few
17 weeks ago, I didn't know who Linda and who Jane were. I mean,
18 the names, but I had not interacted with them to the extent
19 that I was on a personal basis, and that I would be able to
20 recognize them and call them out by name, so.

21 Q You know they work for the City of Keene, right?

22 A Sure.

23 Q And you know that their jobs are to read meters, chalk
24 meters -- or chalk tires, and basically enforce the parking
25 laws and regulations in the City of Keene. You know that,

1 don't you, Peter?

2 A Well, I also know that their job is supposed to --

3 Q Well, just answer my question first, and then you can
4 throw in whatever you want. You know that, don't you?

5 A I know their job is also entailed providing -- you
6 know, aiding the public, and that's not happened. I know
7 things like that haven't been done. So I wouldn't give you an
8 affirmative to the question you're asking as you seek.

9 Q And this concept about shutting down parking
10 enforcement, that's something that you agree with, isn't it?

11 A Not necessarily. I mean again, I'm not -- the question
12 you're asking doesn't allow me to answer my -- with my own
13 thought on the issue on the larger question.

14 Q Well, let's do the specific question. You would agree
15 and you would espouse to shut down parking enforcement,
16 wouldn't you?

17 MR. MEYER: Your Honor, I --

18 MR. BAUER: I'm so tired of asking it, too, John,
19 but I've got to get an answer.

20 MR. MEYER: Objection. First of all, it was asked
21 and answered and the witness answered the question directly.
22 But I have a second objection, Your Honor, which is it's this
23 type of ideological interrogation which, under the First
24 Amendment, the courts are not supposed to be getting into. I
25 mean the issue here is not what this gentleman's ideas are. I

1 mean the laws don't vary -- if you believe in the laws -- don't
2 vary --

3 THE COURT: Let me -- let me say this.

4 MR. MEYER: -- depending on the ideology.

5 THE COURT: I agree that -- that the -- that the
6 issue of what people's ideas or beliefs are is not the issue
7 before the Court. The issue before the Court really is, is,
8 and specifically I take it, Attorney Bauers (sic), is -- is
9 going there to try to establish some link in the conspiracy
10 allegation or some allegation along those lines. I understand
11 your point. This --

12 MR. BAUER: Okay.

13 THE COURT: I do not mean this to turn -- turn this
14 into a discussion about or a debate about what people's
15 individual and political beliefs are. That is not -- that is
16 not what I intend from this hearing.

17 MR. MEYER: Nor I. I'm here on a -- you know, on an
18 employment issue that has something to do with overlapping
19 issues of -- of rights.

20 BY MR. BAUER:

21 Q So back to you, Mr. Meyer -- I'm sorry -- Mr. Eyre.
22 With regard to my questions, "It would be nice to shut down
23 parking enforcement. People who own businesses downtown
24 instead of the city government should own those parking spots
25 -- spaces." Agree?

1 A I agree that's the text on that paper. I don't know
2 what else I'm agreeing to.

3 Q Is that part of why your business, your organization,
4 is part of this card which has been marked as Exhibit 4?

5 A I can't -- again, it's definitely not a business, and
6 I'm speaking for myself, not an organization. And as for this
7 particular quote that you reference, again, it's part of a
8 larger question. I mean I would say yes, property owners
9 should have the say on how the property gets used, and that
10 would create the proper incentives for them to employ people
11 who provide this service that the parking enforcement officers
12 are doing now.

13 Q Well, don't you recognize that the city streets are not
14 private property, they are public property?

15 A Yeah. Hence, my constant harkening back to this is
16 part of the bigger question.

17 Q Uh-huh. And the bigger question is social contact,
18 isn't it? That we all live together in an organized society
19 and give up some rights in order for everybody to benefit, the
20 whole. You agree with that, don't you?

21 A I have not signed that contract. Can you show it to
22 me?

23 Q So let's get back to -- let's get back to a
24 KeeneCopBlock.org. That's your website, isn't it?

25 A It's again, cop blocks to centralize. There's over 140

1 groups, Cop Block, Cop Watch, Peaceful Streets listed at
2 CopBlock.org. They're all the centralized -- everybody's
3 responsible for their actions. If I go out and do something
4 wrong, it doesn't mean everybody else involved is in the wrong.
5 and again, KeeneCopBlock is one of many groups of a lot -- of
6 people who advocate the simple fact that nobody has extra
7 rights. We're all people. And, you know, I mean to get to the
8 larger question, you know, you here, yourself, are being paid
9 for by monies stolen from Keene taxpayers. And so, I mean
10 that's how I view the situation. And so to say let's shut it
11 down, you know, what I'm trying to do is be involved in -- with
12 a peaceful evolution where are in power --

13 Q Evolution or revolution? Evolution?

14 A An evolution.

15 Q Okay.

16 A It's peaceful.

17 Q Yeah.

18 A It's about ideas, because ideas have consequences. And
19 right now bad ideas are allowing these violent institutions to
20 exist and perpetuate and to cage millions of people who haven't
21 caused any victim, you know. And if -- and if -- you know,
22 what would happen if I don't come here today? Some men with
23 guns would potentially come after me at some point, and that's
24 that violent institution at work, and I don't want to -- I
25 don't want to support that.

1 Q I'm going to shift gears for a second and we'll come
2 back to what we were just talking about. I want to ask you,
3 what do you do for work?

4 A Can you clarify by that -- what you mean by that?

5 Q How are you employed?

6 A What -- and what does -- what does employed mean?

7 Q How do you obtain money for wages?

8 A I mean if people think I create value, they might, you
9 know -- you know. I have no W-2 job if that's what you're
10 asking.

11 Q You pay taxes?

12 A I try to live simply, and that's what I do.

13 Q You pay taxes?

14 A I don't want to fund a violent organization.

15 Q So answer my question.

16 A I just answered your question, sir.

17 Q You paid taxes?

18 MR. MEYER: Your Honor --

19 THE COURT: Okay. Your Honor, I have a little
20 concern here. We're getting into an area that -- Mr. Eyre is
21 here without -- without counsel, and I'm a little concerned
22 about his Fifth Amendment rights, quite frankly.

23 MR. BAUER: I'll withdraw that. I'll withdraw.

24 BY MR. BAUER:

25 Q I'm trying to establish, don't you believe here that

1 these three folks who were employees have a right to work
2 without being subjected to a harassing, hostile work
3 environment? Do you and I agree at least on that?

4 A Not necessarily. I would say, you know, just -- I'm
5 involved with Cop Block Because I see police employees as the
6 teeth of this bad idea of the State --

7 Q I'm talking about these people.

8 A Right. I'm trying to draw an analogy, a parallel
9 between police employees, who, if I see somebody out there --
10 you know, I know if I were stopped I'd want someone to come and
11 be there to create an objective record through a video camera
12 just as I would try to do that for them. And, you know -- and
13 a similar example to a lesser -- you know, so I wouldn't say a
14 police employee has any right not to be frustrated or whatever
15 term you just -- you just noted. And, you know, similarly,
16 these three individuals, you know, I'm not -- again, it's not a
17 personal thing, it's the -- they're working for this
18 institution that is -- has all these misallocations and, you
19 know --

20 Q Are you done?

21 A Sure.

22 Q With regard to this card, you -- there's no doubt that
23 you are CopBlock.org, aren't you? I mean you've talked about
24 it. You know, there's a lot of people but -- Cop Block is your
25 organization, isn't it?

1 A No, that's not correct.

2 Q Your website rather.

3 A No, that's not correct.

4 Q That's not your website?

5 A I am not CopBlock.org. I am not KeeneCopBlock.org.

6 Q Did you put --

7 A That's not correct.

8 Q -- put the website up?

9 A I put KeeneCopBlock up.

10 Q Okay. So how does -- what arrangements have you made
11 with Ean, Graham, or the other Defendants in terms of putting
12 your name on this card?

13 A I don't know. It ended up on the card. I wasn't
14 involved with the creation of the card.

15 Q Did you say, hey, yeah, that's -- you've seen this card
16 before, haven't you?

17 A Yes.

18 Q Okay. And you've never raised any objection to you
19 being affiliated with the activities that have been undertaken
20 in which this card is used. You haven't --

21 A Right.

22 Q You haven't objected, have you, to anybody?

23 A Right. Again, Cop Blocks is centralized and I --

24 Q Answer my question first.

25 A -- I raised objection --

1 Q Have you raised objection with any of the Defendants
2 about being associated with this card?

3 A With what being associated?

4 Q With your KeeneCopBlock.org?

5 A It's not my organization, sir.

6 Q So you have a radio. Have you called Garrett on your
7 radio?

8 A Probably.

9 Q Have you called Mr. Freeman on your radio?

10 A Probably.

11 Q Have you called Mr. Carlson on your radio? Coleson,
12 sorry.

13 A Yeah, I'm sure I've probably talked to the other five
14 folks lumped together collectively as Robin Hood on my radio at
15 some point. Not necessarily related to Robin Hood activities,
16 but just to say hey, what's going on, or hey, I'm over here. I
17 mean nothing criminal with that.

18 Q And you've also talked on your radio to the five other
19 Defendants somewhere along the line about where the parking
20 enforcement officers are, too, when asked --

21 A No, not --

22 Q -- haven't you?

23 A -- necessarily.

24 Q Not necessarily?

25 A Or I would say no, I haven't -- I know I haven't talked

1 to each of them individually about the locations of the parking
2 enforcement officers.

3 Q Haven't they called you and asked where they achieved
4 expectations?

5 A No.

6 Q If you've seen any?

7 A No.

8 Q And you've not called any of the other folks, other
9 Defendants, and told them where parking enforcement officers
10 are?

11 A No. Maybe I misspoke or you misheard me. I said I
12 have not called them all in totality about the locations of --

13 Q Oh.

14 A -- these individuals.

15 Q I'm sorry. Let me parse that out as you would. You
16 haven't called all five of them at the same time, is that what
17 you're saying?

18 A Yeah. And I haven't -- and I haven't called each of
19 them individually either.

20 Q But --

21 A I haven't -- I haven't -- if you're trying to -- trying
22 to get at my use of the radio, the incident that Alan had
23 brought up about me sitting outside the post office, for
24 example, I was out on a -- on a walk and decided to sit on a
25 bench and get some sun as I read a book. And then I heard

1 someone yell and I tried to figure out what was going on, and I
2 see someone waiving, here I am, out the window, and I see Alan
3 drive around the circle. So I say, hey, Alan's on South Main
4 by the post office. You know, that's the extent of that. I
5 don't -- I don't go out and -- looking for parking enforcement
6 employees in order to ascertain their locations and to transmit
7 that on, no.

8 Q But you have on occasion, haven't you? On occasion?

9 A I have admitted to that, have I not?

10 Q I really can't understand whether you've admitted it to
11 it or not.

12 A Then you should listen, sir.

13 Q Okay. Well, there's a lot of discussion going on. I'm
14 trying to --

15 THE COURT: Okay. Let's keep it to questions and
16 answers.

17 BY MR. BAUER:

18 Q So my next question is this. Have -- do you have any
19 of these cards, Exhibit 4?

20 A I don't believe so.

21 Q Okay. Have you ever had any in your pocket or in your
22 possession?

23 A Potentially.

24 Q Potentially. And have you potentially placed them on
25 vehicles?

1 A No, I never have.

2 Q Have you handed them out?

3 A No.

4 Q Is there anything with regard to activities against the
5 parking enforcement officers on your website?

6 A Again, which website? It's not my website, sir. It's
7 -- Cop Blocks is centralized.

8 Q Yeah. I said on the website.

9 A There is a Robin Hood page at KeeneCopBlock.

10 Q Okay. Well, let me ask you this. Since you say that
11 you really haven't been participating too much, would -- you
12 would agree then, wouldn't you, to stay 30 feet back from each
13 of these people and not engage in any touching or taunting or
14 obstructing or detaining or hindering or impeding or blocking
15 them, or intimidating them in any way while they do their jobs,
16 if you --

17 MR. MEYER: Your Honor --

18 BY MR. BAUER:

19 Q If you have not engaged in those activities, as you
20 say, then you wouldn't have any objection to staying 30 feet
21 back, would you?

22 MR. MEYER: Objection, relevance.

23 THE COURT: Overruled.

24 THE WITNESS: Okay. I'm going to piece out your
25 question. I would not -- I would not, and I have not, and I

1 don't foresee myself in the future, engaging in an action that
2 detains somebody that -- because to me, if it's initiatory
3 force, I would not do that to anybody. If I see somebody, for
4 example, out on the street beating up some people, I might try
5 to detain them and say -- you know, diffuse the situation, yes.
6 So I'm not going to come to some absolute statement with you.

7 But as to the first part of your question, will I --
8 is it an issue for me to stay 30 feet from these individuals, I
9 would most definitely not be willing to accept that because
10 that would -- you know, why would I want to -- that's -- I'm
11 not harming anybody by being in the proximity. I'm not -- I'm
12 not victimizing anybody. I will not -- I will definitely not
13 set that precedent and be complacent with a claimed right
14 usurpations that Thomas Mullins and the rest of you all are
15 trying to do.

16 BY MR. BAUER:

17 Q So you would -- you would agree then not to be within
18 30 feet of the three PEOs --

19 A No.

20 Q -- and taunt them?

21 A I -- sir, I don't -- I don't --

22 Q Just listen to my question. Let's just take it one
23 step at a time. You will agree not to taunt them within 30
24 feet, wouldn't you?

25 A No. It's my free speech right. If I want to -- it

1 depends what your definition of taunt is as well. But again,
2 my purpose is not to create -- to cause anybody -- I don't -- I
3 don't go out with a goal in mind to cause someone frustration
4 or stress, but if I see someone wronging another, then yes, I
5 will call them out. And whether -- if that call makes a
6 certain police employee frustrated or they consider that
7 subjectively to be a taunt, then so be it. But I'm going to
8 speak my mind because I feel like if you don't, then that's
9 allowed to get away for and it becomes difficult to do so in
10 the future when those rights, claims are, you know, maybe even
11 more such.

12 MR. BAUER: Nothing further.

13 MR. MEYER: I have no questions of this witness, Your
14 Honor.

15 THE COURT: I do have. Mr. Eyre, I have a couple
16 questions.

17 Mr. Eyre, I just want to make sure that I understand
18 your position factually on some of the allegations because
19 you've said a couple times in hearings that you feel that, you
20 know -- obviously you take issue with -- because you've said
21 this several times, with the -- with the action overall. But
22 you feel in particular to involve you is not correct because
23 you've had no involvement in -- in the activities that are --
24 that are complained of. If you can just elaborate as to why
25 you feel that you in particular should not have been named in

1 this action.

2 THE WITNESS: I mean I think -- I think it's pretty
3 clear, the -- there's three individuals, parking enforcement
4 officers, who stated, you know, five to six people, and only
5 one -- you know, one of the three, Alan, who just testified,
6 noted myself. And the overview of the interactions we've had,
7 the number and the type, have, you know, definitely not equated
8 to me being in the wrong for anything, you know. None of these
9 folks have done anything in the wrong, but I most cert -- I
10 mean none of my -- none of these folks, to my knowledge,
11 obviously I haven't been around all them while they're out
12 doing whatever, I can't speak to everything they do, but to my
13 knowledge, no one's, you know, caused anything that I would say
14 is a criminal action. Therefore, there's no -- there's no
15 claim anybody can make to say, you have to make me whole
16 because you harmed me. And most certainly my -- I mean myself,
17 I haven't -- you know, I'm online. I'm doing other things.
18 And then I get this -- all this paperwork saying I have to show
19 up, and for what, you know? It's -- it's guilt by -- I mean
20 it's ridiculous.

21 THE COURT: And the reason I'm going there is because
22 in the -- one of the very things you said when you took the
23 stand this afternoon was that you were -- that you chose not to
24 be involved in the activities of Robin Hooders, and I just
25 wanted to make sure that I understood. Was that in fact your

1 testimony?

2 THE WITNESS: I mean I support them. I just prefer
3 to allocate my time to other activities.

4 THE COURT: So to the extent they've been involved
5 in, for lack of a better term, Robin Hooding, you haven't --
6 other than the -- the occasion that you -- that you talked
7 about and perhaps some contact with some of the others
8 regarding location, you deny any involvement in Robin Hooding
9 activity.

10 THE WITNESS: Yeah. I mean I think that's a factual
11 statement. There's been no other testimony or objective
12 evidence pointed to -- to demonstrate otherwise.

13 THE COURT: I'm asking you whether you specifically
14 deny any direct involvement in that -- in their activities.

15 THE WITNESS: Sure. I mean the extent of my
16 involvement has been -- I'm happy to state and I have stated,
17 and it's come to, you know, come out here today, so that's the
18 extent of my involvement.

19 THE COURT: Any further questions from any -- either
20 counsel?

21 MR. MEYER: No, sir.

22 THE COURT: Anything further that you want to of a --
23 of a factual matter, Mr. Eyre?

24 THE WITNESS: I mean I just encourage the people who
25 work for the City that are involved in this to think about -- I

1 mean just this -- obviously the motions are set in gear, but
2 just in the future I hope you would speak out when you see a
3 lot of ridiculous things happening, you know, about allocation
4 of funds and mischaracterizations of people and things like
5 that. I mean we're all humans and, you know, we want to look
6 out for each other. We don't want to create these divisions
7 and -- perpetuated by, you know, claims of authority and
8 things.

9 THE COURT: You can step down.

10 I think it's -- it's now quarter of 4. I think
11 practically even if we were try to resume Mr. Givetz, pretty
12 clear that we wouldn't even complete his direct examination,
13 further direct examination. What I'm -- what I'm really
14 looking for now is a sense from counsel of how much additional
15 time -- is this -- is this another full day?

16 MR. MEYER: Well, Your Honor, I can't speak to the
17 case presented by the City.

18 THE COURT: Yes.

19 MR. MEYER: But I'm anticipating on the Defense case,
20 for at least planning purposes, that we're going to have -- all
21 five Defendants will likely testify. Now, first of all, their
22 testimony -- direct testimony I expect to be, you know,
23 considerably more extensive than the -- than the last witness
24 because of the certainly much greater involvement with the
25 Robin Hood program. But more importantly, if we continue with

1 this course about philosophy in the detail that it's -- it's
2 been, I mean easily imagine some of these witnesses taking a
3 couple hours each. So I mean that's -- and again, it goes back
4 to my concern about trying to limit the scope of what's really
5 at issue here, just -- partly just they get us done in a
6 reasonable timeframe. I just -- you know, I would think that
7 our case, you know, alone would probably be, you know, a day
8 and a half maybe, and again, at least half of that would --
9 judging by this afternoon, would be cross-examination.

10 MR. BAUER: Your Honor, I'm sorry that it's taking so
11 long.

12 THE COURT: You know, let me add though this -- and I
13 recognize there are strong feelings on both sides of this
14 question. I don't mean to constrain the presentations here. I
15 want to give both sides a fair opportunity to present the case.
16 If it might take another two or three days, then so be it.
17 That's just how long sometimes these things take.

18 And I think as a practical matter, for example, one
19 of the -- one of the issues was the identification of
20 individual Defendants and a description of their roles. I
21 thought that was a fair objection. And that has resulted in
22 the presentations taking longer, but that's okay. I would
23 rather have the facts and have everything laid out and give all
24 parties an opportunity to present.

25 So I think what I'm hearing is that this is probably

1 another two to three days to complete. And, you know, maybe --
2 you know, maybe if -- optimistically, two days, maybe you have
3 another half-day, Attorney Bauer, I don't know. But a day and
4 a half -- it's at least another two days. So to plan for
5 anything less would not be realistic, is that fair?

6 MR. BAUER: I think it's fair to say. I have Alan
7 I'm going to put on and finish his testimony, and then Jane,
8 who is one of the Plaintiffs, and then I do have some
9 supporting witnesses as well. We got through one of the --
10 counselor.

11 And Judge, with regard to the Scott case which has
12 been cited to you in the briefing, it was a nine-day bench
13 trial. So my point is that we're --

14 THE COURT: You're actually quicker and more
15 efficient.

16 MR. BAUER: Fishing for a compliment.

17 MR. MEYER: Your Honor, if I can just follow-up with
18 that. It's true that if you look at many of the abortion
19 cases, Scott case is one of the abortion cases, they do talk
20 about trials of two weeks, three weeks and whatever. But if
21 you look at the opinions, the appellate court opinions, I mean
22 they take this, you know, three-week trial and put it down, it
23 has like one-page significance. So I guess my point again is
24 that although there is, I agree, potential here for -- and we
25 even talked about the hundreds of hours of videotapes that are

1 available here. I'm just saying that I still continue to
2 believe that if we got the legal issues clarified now, and
3 maybe there's been some progress on that today -- and I said, I
4 do intend to file a motion to dismiss -- I do think that that's
5 going to enable us to proceed with more speed in getting this
6 resolved.

7 MR. BAUER: Well, I would like -- I mean it's obvious
8 we're not going to conclude today. But I would like to,
9 frankly, request of my brother that we can have some type of
10 good-faith agreement that some of the test -- some of the
11 evidence that came in today, that that not continue during this
12 hiatus until we come back in here, not with prejudice. It's an
13 understanding, it's not a court order. But that we have some
14 peace and tranquility out on the job --

15 MR. MEYER: Well, if I can, Your Honor, just make --

16 MR. BAUER: -- between now and them.

17 MR. MEYER: -- make our position clear. That is,
18 that nothing has occurred to date on behalf of any of my
19 clients that is improper, that there has been no verified
20 testament today of any legally improper activity, and that
21 accordingly, I would not recommend to them anything in terms
22 of, you know, any type of modification of their activities,
23 which I view as being something that is well within their First
24 Amendment rights to determine.

25 THE COURT: I see. I'm not -- and I think I said

1 this to counsel before we got started today -- I'm not -- I'm
2 not going to issue any kind of temporary or permanent
3 preliminary order right now. I think there are -- there are
4 very significant legal and constitutional issues that I have
5 yet to resolve regarding the claims in -- in this case. So I'm
6 not prepared to issue any even temporary injunctive relief
7 right now. I will say though that obviously, you know, if it's
8 some period of time and some event should take place between
9 now and then, and it bears on some of the issues, you know, I
10 wouldn't be surprised if -- if the City tries to introduce any
11 of that evidence as we -- as we go forward. But I'm not going
12 to -- I mean, I think these are -- as I've said, I have yet to
13 find a single analogous case from another jurisdiction where --
14 involving a tortious interference with a contractual relations
15 claim in a context like this.

16 And secondly, I do think there are very serious
17 constitutional issues that are raised by this case, and I want
18 to take my time and make sure I get it right rather than rush
19 to any kind of -- any kind of decision before I'm prepared to
20 do that. So, you know, I apologize. These things take some
21 time, but that's just the reality of how long it's going to
22 take. And we'll get you in as soon as we possibly can. And I
23 made a proposal for this Friday, but it's clear from talking to
24 counsel that that's -- that that date is not going to work.
25 But I'll talk to the clerk, and as soon as we can get a couple

1 of days that will work with counsel we'll get this thing in and
2 complete the proceedings.

3 MR. MEYER: And we'd be -- I think we'd be happy to
4 get on the phone with the clerk --

5 THE COURT: Yeah.

6 MR. MEYER: -- to try to coordinate that.

7 THE COURT: I -- I would expect that Clerk Peale will
8 be in touch with --

9 MR. MEYER: Okay.

10 THE COURT: -- both counsel in the case.

11 And Mr. Eyre, you would be involved, but I understand
12 you're going to be away, from what you represented at the
13 bench, for the next four to six months. Is that correct?

14 MR. EYRE: Yes.

15 THE COURT: Okay. Thank you.

16 And you have counsel, so if you want to say something
17 to your counsel so -- Ms. Ager has --

18 (Counsel and Defendant/Ager confer)

19 MR. MEYER: The question was -- and I think -- I
20 think it's a reasonable question, partly going to the fact that
21 she lives a long way away, but whether -- if we need two days,
22 whether those two days can be done in a way that's consecutive.
23 If that's possible, that would be beneficial.

24 THE COURT: If there's any way to possibly make that
25 happen, we'll do that. That would be my preference as well,

1 rather than to do this in chopping -- chopping it up. It's
2 already perhaps chopped up more than I would have liked. I
3 think it would be better for all concerned if we can just
4 continue, but I recognize that the hearing's taking longer than
5 at least -- at least I had hoped we would be. I had hoped that
6 we'd be at a point where we could have legal argument this
7 afternoon. Clearly, that -- that did not happen. So we'll do
8 everything we can to make sure it's two consecutive days, and
9 hopefully that will be sufficient to conclude things.

10 MR. MEYER: Thank you, Your Honor.

11 THE COURT: Mr. Eyre?

12 MR. EYRE: Yeah, if I could, I'd like to motion to
13 strike my name from this preliminary injunction at this time.

14 THE COURT: Okay. And I take it that Mr. Eyre is
15 basically moving to dismiss based on the evidence. Attorney
16 Bauer, do you want to -- if you want to address that in
17 writing, you can do so. If you want to briefly address that
18 right now, that's fine as well.

19 MR. BAUER: I'll respond in writing, Judge.

20 THE COURT: Thank you. Thank you. But that is a
21 pending motion made by Mr. Eyre. I think it is. Given that
22 he's -- is there anything further that you want to say in
23 support of your motion that you haven't already said, Mr. Eyre?

24 MR. EYRE: No. Just there's no evidence --

25 THE COURT: If you would stand when you're -- when

1 you're addressing --

2 MR. EYRE: There's no evidence. I mean I just
3 reference what I stated before.

4 THE COURT: I understand your position. And so it's
5 made today. Attorney Bauer will have ten days from today to
6 file a written objection to that -- to that motion.

7 And I think that's -- reality, we're not -- I know
8 what the docket's like for the next couple weeks. It's not
9 going to happen before Labor Day. Just given everything else,
10 we just don't have two days that we can allocate to that before
11 then.

12 Thank you all, and I will see you back hopefully --

13 THE BAILIFF: All rise.

14 THE COURT: -- before too long.

15 (Proceedings adjourned at 3:57 p.m., recommencing in
16 Volume II, September 30, 2013)

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CERTIFICATE

I, Tami S. Mayes, CET**D-547, a court approved proofreader, do hereby certify that the foregoing is a correct transcript from the official electronic sound recording of the proceedings in the above-entitled matter, to the best of my professional skills and abilities.

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