

STATE OF NEW HAMPSHIRE

CHESHIRE COUNTY SUPERIOR COURT

CITY OF KEENE,)	Supreme Court Case No.
)	2013-0885
Plaintiff,)	
)	Superior Court Case Nos.
vs.)	213-2013-CV-00098
)	213-2013-CV-00241
JAMES CLEAVELAND, et al.,)	
)	September 30, 2013
Defendants.)	8:51 a.m.
_____)		
		Volume II of III;
		Pages 226 - 448

EVIDENTIARY HEARING (Day 2)
BEFORE THE HONORABLE JOHN C. KISSINGER, JR.
JUDGE OF THE SUPERIOR COURT

APPEARANCES:

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	- AND -
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APPEARANCES: (Continued)

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I N D E XWITNESSESDIRECT CROSS REDIRECT RECROSSFOR THE PLAINTIFF:

Alan Givetz	232	267	288/290	289
Jane McDermott	292	330	359	361
Elizabeth Fox	362	368	--	--
Garrett Ean	423	439		

FOR THE DEFENDANTS:

James Cleaveland	373	392	416	422
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EXHIBITSID EVD

Plaintiff's 5	Photographs	--	238
Plaintiff's 6	Videotape	--	254
Plaintiff's 7	Photographs	--	321
Defendant's A	Videotape	--	386
Defendant's B	Videotape	--	419
Plaintiff's 9	News Articles	--	436

1 (Proceedings commence at 8:51 a.m.)

2 THE COURT: Good morning. Please be seated.

3 MR. MEYER: Good morning.

4 MR. BAUER: Good morning.

5 THE COURT: We are here once again in the matter of
6 City of Keene versus James Cleaveland, et al. If I could just
7 have counsel identify themselves again for the record.

8 MR. MEYER: Your Honor, my name is Jon Meyer and I'm
9 here for five of the six Defendants.

10 THE COURT: Thank you.

11 MR. BAUER: Charles Bauer, Gallagher, Callahan, and
12 Gartrell of Concord, on behalf of the City of Keene.

13 MR. DIETEL: Robert Dietel, also Gallagher, Callahan,
14 and Gartrell, on behalf of the City of Keene.

15 THE COURT: Thank you. I'm prepared to continue it
16 with testimony. I know that there's a motion filed by Attorney
17 Meyer asking for permission to take one of the witnesses out of
18 order. I take it there's no objection?

19 MR. BAUER: No objection. And Jon and I have talked.
20 There's no objection.

21 MR. MEYER: Your Honor, I would also appreciate that.
22 I would like the opportunity at the Court's timing to argue the
23 motion to dismiss that's pending.

24 THE COURT: Absolutely, my plan is to have the
25 testimony and then, if there are any pending motions, address

1 them at that point.

2 MR. MEYER: Well --

3 MR. BAUER: Your Honor --

4 MR. MEYER: -- again, I accept whatever timing or
5 sequence the Court determines. I'd just state that I would --
6 the argument for making a motion to -- for arguing a motion to
7 dismiss for resuming the testimony is that, in terms of what
8 testimony is relevant and what testimony is not relevant, in
9 this particular Carol Goodman, which is admittedly an
10 unprecedented proceeding, it would help to have some
11 clarification of the legal issues so there could be a
12 determination as to what lines of testimony are pertinent and
13 what lines are not.

14 THE COURT: I understand. And let me just say that
15 the motion, so we're all clear, relates to the request for a
16 preliminary injunctive relief. I understand the Defense motion
17 is broader, gets to whether or not the case will continue at
18 all in any respects. And for the reasons that have been laid
19 out, and both parties have briefed, and I've reviewed the
20 pleadings, what I want to do -- and we had this discussion at
21 the last hearing.

22 I would like to have the testimony first and then we
23 can have arguments on those motions. I understand that the
24 Defense's position is that we don't even need this testimony
25 for the arguments that have been advanced in the motion to

1 dismiss. But because I'd like to have a broader understanding
2 of the specific facts before I rule on the pending motions,
3 we're going to have testimony today.

4 MR. MEYER: Thank you, Your Honor.

5 THE COURT: So in terms of order, I don't know,
6 Attorney Bauer, if -- I don't know how long your witnesses are,
7 if you want to take Mr. Cleaveland first or if you want to deal
8 with that later in the day, I'm happy to do it --

9 MR. BAUER: Okay.

10 THE COURT: -- either way.

11 MR. BAUER: I anticipate three witnesses today.

12 THE COURT: Okay.

13 MR. BAUER: And then the case-in-chief will close and
14 Mr. Cleaveland can then take the stand. And I think Mr. Meyer
15 will put him on. And we'll do cross of Mr. Cleaveland. And
16 I'm hopeful, frankly, that we can continue and perhaps conclude
17 the evidence today. I know that, if Attorney Meyer doesn't put
18 on certain witnesses, I'd like to call them. So that's why I'm
19 saying that I guess I should -- I guess the case-in-chief would
20 not close, because I do want to reserve the right to call a
21 couple of the Defendants.

22 THE COURT: I understand. I understand. So why
23 don't we do -- we'll see where we are as the day progresses.
24 And if it looks like we're not going to get through those
25 witnesses, I want to make sure that we give Mr. Cleaveland an

1 opportunity to be heard.

2 MR. BAUER: Certainly.

3 THE COURT: Okay. So you can call your first
4 witness.

5 MR. BAUER: Okay. I'll call Alan Givetz to the
6 stand, please. Would you swear the witness in, please?

7 THE COURT: I'd be happy to. Sir, if you would, just
8 stand and raise your right hand.

9 ALAN GIVETZ, PLAINTIFF'S WITNESS, SWORN

10 THE COURT: And if you could, just be seated, and
11 state your full name, and spell your last name again for the
12 record.

13 THE WITNESS: Alan Givetz, G-I-V-E-T-Z.

14 THE COURT: Attorney Bauer?

15 DIRECT EXAMINATION

16 BY MR. BAUER:

17 Q Alan, how old are you, sir?

18 A I'm sorry. What?

19 Q How old are you?

20 A I'm 35.

21 Q Are you married?

22 A Yes, sir.

23 Q Do you have children?

24 A Yes, sir.

25 Q Do you live in the Keene area, the Cheshire County

1 area?

2 A Yes.

3 Q Okay. Could you just give a brief description of your
4 educational background, please?

5 A High school diploma, some college education, military
6 training, some law enforcement training through a corrections
7 academy, and correspondence courses, and such.

8 Q And with regard to the military training, have you --
9 what service did you --

10 A Army, military police.

11 Q And did you see any action?

12 A Yes, sir.

13 Q And what timeframe?

14 A It was between 2002 and 2004.

15 Q With regard to employment for the City of Keene, when
16 did you start working for the City of Keene as a parking
17 enforcement officer?

18 A It was September of 2012, I believe.

19 Q Okay. We're in 2013 right now.

20 A Yeah, yeah.

21 Q Okay. So it was about a year ago?

22 A Uh-huh. Yeah. I think it was 2012, yeah.

23 Q Okay. And what hours -- how many hours would you work
24 approximately each week?

25 A I'd work about 34 hours every week.

1 Q Okay. And what type of schedule did you have?

2 A I worked Monday through Thursday, 9:00 to 5:30.

3 Q And with regard to your duties and responsibilities,
4 what were they essentially, as a parking enforcement officer?

5 A To maintain and enforce the rules and regulations
6 downtown as far as parking, whether it be the meters, the
7 two-hour parking, no-parking zones, handicap spaces, things
8 such as that.

9 Q The exhibits that we've marked -- Exhibit 2 shows some
10 photographs of various parking feeders and parking angles.
11 Exhibit 2, the very first top photograph -- what does that
12 show? What does that typically demonstrate?

13 A That just shows double-meter spaces, one meter in
14 between the two spaces that covers both spaces. Those are
15 angled spaces. I believe that's on Washington Street.

16 Q And is that a fair representation that there are three
17 angled spaces that are properly 30 feet apart?

18 A Yes, sir.

19 Q Okay. And down below, where is that photograph exhibit
20 taken?

21 A That's upper parking garage on City Hall.

22 Q Okay. With regard to Exhibit 3, top photograph, what
23 does that show?

24 A That shows the parallel spaces, the two-hour parking
25 zones.

1 Q And the below photographs?

2 A That shows single-meter spaces, again, on beginning of
3 Washington Street and right in front of City Hall.

4 Q And the distances that are depicted on here, two
5 parallel spaces approximately 44 feet apart -- is that accurate
6 from your point of view?

7 A Yes, sir.

8 Q And the same thing with regard to the one parallel
9 spaces 22 feet apart?

10 A Yes.

11 Q Okay. Now, in terms of your area of responsibilities,
12 we also submitted an overview of the City of Keene area
13 downtown parking, Exhibit 1.

14 A Uh-huh.

15 Q Can you just show with your finger to the Judge
16 approximately your area of coverage --

17 A Yeah.

18 Q -- as a PEO?

19 A We covered -- I believe this is lower Main Street down
20 by the college and we covered all the way up on Main Street.
21 Some of the side streets, like Winter Street, by the library
22 and stuff, that have meters, Railroad Street, Eagle Court. We
23 also did cover the outside, out. Like, the other side streets
24 and stuff are no parking, parking in front of fire hydrants,
25 and stuff like that. We also went out to, like -- what do you

1 call them -- where the stores are and stuff, the plazas.

2 Sorry. They're, like, handicap spaces and stuff.

3 Q Okay. And how would you get around most of the time?

4 A Most of the time, if we were on Main Street, we walked.
5 We also did have vehicles to use to go out to the side streets
6 and the plazas.

7 MR. BAUER: Now, I also have two more exhibits,
8 photograph exhibits. I'm going to ask that it be marked as 4.

9 BY MR. BAUER:

10 Q And what does this photograph depict?

11 A This --

12 THE COURT: If you need -- Attorney Meyer, if at any
13 point you need to move to see them --

14 MR. MEYER: I know. Thank you, Your Honor.

15 BY MR. BAUER:

16 Q Do it this way.

17 A This is Central Square. That's the gazebo and the
18 fountain in the middle.

19 Q Okay.

20 A And this is just --

21 Q And where is City Hall, just for the Court's
22 orientation?

23 A I believe it's right here.

24 Q Okay. And so where is this courtroom? I know it's not
25 on this photograph, but just for --

1 A It's right about here.

2 Q All right.

3 A Yeah.

4 Q And is this an area that you control?

5 A Yes, sir.

6 MR. BAUER: Okay. Your Honor, I'd ask that, that be
7 marked as 4, please.

8 THE COURT: And any objection?

9 MR. MEYER: No objection, Your Honor.

10 THE BAILIFF: You have to get outside. Remove
11 yourself.

12 UNIDENTIFIED SPEAKER: Excuse me? I'm in this.

13 THE BAILIFF: Oh, okay. Remove yourself.

14 UNIDENTIFIED SPEAKER: Can I ask you what I did?

15 THE BAILIFF: Yeah. Get rid of the apple or whatever
16 you're reading.

17 UNIDENTIFIED SPEAKER: It's a Daewoo --

18 THE BAILIFF: Yeah. When you're finished with it.

19 UNIDENTIFIED SPEAKER: That's a bit aggressive, but
20 okay.

21 MR. BAUER: Your Honor, that was Exhibit 5. I just
22 didn't grab it from the stenographer.

23 THE COURT: Exhibit 5 is a full exhibit without
24 objection?

25 MR. MEYER: No objection, Your Honor.

1 (Plaintiff's Exhibit 5 received)

2 BY MR. BAUER:

3 Q So are you presently employed by the City?

4 A I am.

5 Q And in what capacity?

6 A Just from my time in this case.

7 Q Okay. Did you tender a resignation?

8 A I did.

9 Q Why?

10 A I tendered a resignation because I couldn't deal with
11 the constant harassment and intimidation that started to boil
12 over into my personal life and my time off. It was just too
13 much. I didn't feel -- I didn't like how it was making me
14 feel. I didn't like how it was coming about, how it continued
15 day in and day out with no resolve, no break.

16 Q When did you resign, Alan?

17 A I believe it was in July. It was over the summer.

18 Q July of 2013?

19 A Yeah. It was either the end of June or the beginning.

20 I'm sorry.

21 Q Now, with regard to your work from September through
22 July, that is, September 2012 through July of 2013, you said
23 you were working 34 hours a week, Monday through Thursday,
24 correct?

25 A Yes.

1 Q Would you describe to the Court whether what your --
2 what interactions, if any, you had with the six Defendants in
3 this lawsuit?

4 A I had interactions varying from just following me with
5 the cameras, not saying anything, to the point where -- it got
6 to the point to where they were in my face and would not move
7 when I asked them to, calling me names, making remarks,
8 attacking my veteran status, attacking my belief in God,
9 attacking my religion, my faith.

10 They brought up my family. It was just provocative
11 statements just to get me to react a certain way. I had them
12 call me a coward, a bitch, say that I was a racist, I condone
13 the droning of brown babies because I was a veteran.

14 MR. MEYER: Your Honor, again, we're just dealing
15 with indiscriminate, vague, which doesn't help in terms of
16 attributing any individual.

17 MR. BAUER: I'll tie it together, Judge.

18 THE COURT: I agree.

19 MR. BAUER: I'm just doing an overview at this point.

20 THE COURT: I understand. I understand.

21 MR. BAUER: Okay.

22 BY MR. BAUER:

23 Q And in those kinds of behaviors that you've just
24 generally described on a Monday through Thursday basis of any
25 given week, how often would those occur?

1 A Daily.

2 Q I'm sorry?

3 A Daily, every day.

4 Q And of the hours that you were out patrolling as a PEO
5 officer, how many hours a day did you experience those kinds of
6 problems with these Defendants?

7 A The hours varied. Sometimes, it would be going on from
8 -- I would see people at 9:00. Sometimes, I wouldn't see them
9 until the afternoon. The hours did vary, but it was every day.

10 Q Did you like your job, Alan?

11 A I did up until December.

12 Q Why did you like your job?

13 A I liked it because I got paid to see the City, to walk,
14 to exercise. I got to interact with the good people of the
15 city. I got to know the city a little bit better, its history.
16 Like I said, I got to help people as far as citizens and stuff,
17 giving them directions. And some people would ask where a good
18 place to eat was, simple things like that. I've even jump-
19 started people's cars, helped push them out of the street when
20 they broke down. I generally liked helping people.

21 Q Was this a job that you expected to continue in?

22 A Yes.

23 Q And now, you said that your -- when I asked you whether
24 you're currently employed, would you explain to the Court what
25 you mean by that? Are you actually doing parking enforcement

1 responsibilities?

2 A No.

3 Q Okay. Would you explain to the Court what you meant by
4 your answer that you're employed?

5 A I'm employed by the City to just help with this case,
6 and to give my testimony, to help these ladies that are going
7 to continue the job.

8 Q In other words, you have a job now, correct?

9 A Yes, sir.

10 Q And you're taking some time off from that job?

11 A Yes.

12 Q And your current Employer is not paying you?

13 A No.

14 Q Okay. But the City is compensating you for the hours
15 that you're missing?

16 A Yes.

17 Q Okay. And is that the extent of it?

18 A Yes.

19 Q Okay. Now, Alan, if you're not working for the City
20 anymore as a parking enforcement officer, why are you
21 testifying on behalf of the City?

22 A Because I know how those individuals feel, I know what
23 it's like to be a public servant and to have this happen to you
24 day in, day out, to feel like there's no out, there's no way to
25 get away from it, there's no end in sight. I don't feel that

1 this should happen to anybody, regardless of their profession
2 or what job they're doing.

3 It's not right and I feel that somebody needs to give
4 their testimony, especially somebody that experienced it day
5 in, day out. It's not fair for an individual or human being to
6 experience what I experienced and to experience what they're
7 experiencing.

8 Q I'd like to talk to you a little bit about -- you said,
9 since December of 2012 through July of 2013, that you were
10 experiencing what you've described --

11 A Uh-huh.

12 Q -- as a PEO. Would you tell us what conduct Defendant
13 Graham Coleson directed at you?

14 A Uh-huh. Graham Coleson directed comments. He would
15 get in my way. And when I asked him to move, he would say
16 things like, "What are you going to do about it, boy? What are
17 you, huh? Boy, what are you going to do about it?" He would
18 yell at me and say that I was upset because of my own actions.
19 He would say that -- he would ask me, what am I going to do
20 about it, have my church buddies run him out of town with
21 shotguns? He was the one that said, "Are you -- you're a
22 racist. You condone the droning of brown babies." He's the
23 one that brought up my wife in conversation. He's the one that
24 called me the bitch and the coward when I would go into the
25 library to use the bathroom.

1 Q And is this while you were on duty?

2 A Yes. He's the one that followed me on my day off on a
3 Friday afternoon, on Main Street.

4 Q And would you just point out for the Court Graham
5 Coleson for us, please?

6 A Graham Coleson is the gentleman with the sunglasses and
7 the fake badge.

8 Q Thank you.

9 THE DEFENDANT/COLESON: It's just as real as yours.

10 THE COURT: Okay. I'm just going to say this one
11 time. If counsel want to speak for Defendants who are able to
12 do so, if there are further remarks from people who are not
13 counsel or who are -- if they're represented, the lawyer can
14 speak for them. If they're remarks from someone other than
15 counsel, then I'm going to have the person removed.

16 Mr. Coleson, that's the last remark unless you're
17 testifying. Understood? Thank you.

18 Attorney Bauer.

19 MR. BAUER: Thank you.

20 BY MR. BAUER:

21 Q So with regard to Mr. Coleson, you indicated he would
22 call you various names, I think you said, bitch, and boy,
23 and --

24 A Coward.

25 Q -- coward?

1 A Racist.

2 Q And these were all while you were doing your job?

3 A Yes.

4 Q Tell us about your testimony about day-off interactions
5 by Mr. Coleson?

6 A I had one person -- well, one one-on-one interaction
7 with Mr. Coleson. It was a Friday afternoon. I was in the
8 center of Main Street, where it divides Main Street and his
9 parking on both sides. And I was talking to a friend of mine.
10 And Mr. Coleson was standing -- it must have been two or three
11 meters away from me, watching me for about five to ten minutes.
12 And I had mentioned to my friend that this was one of the
13 gentlemen that has been following me around.

14 And I asked him to watch when I walked away and see
15 if he followed me. And when I walked away, I turned up north
16 towards Main Street, towards City Hall. I believe I crossed
17 Church Street. And he was following me, so I threw away my
18 coffee cup and I decided to turn around back the other way.
19 And I turned back around the other way and he was following me.

20 Q Would he following you on a regular basis? When I say
21 he, would Mr. Coleson follow you on a regular basis Monday
22 through Thursday?

23 A Yes.

24 Q And how close would he get to you?

25 A Close enough that, if I turn around really quickly, we

1 would bump into each other.

2 Q And did you tell Mr. Coleson that you wanted him to get
3 back away from you out of --

4 A Plenty of times.

5 Q -- your face, as you said?

6 A Yes.

7 Q How many times did you say that to Mr. Coleson,
8 approximately?

9 A Throughout the day or a total number? It was countless
10 how many times I told him, but throughout the day, it'd
11 probably be half a dozen times.

12 Q And what impact did that have on you, Alan, throughout
13 the day?

14 A Some days, some of the things that would happen, it
15 would just be so outrageous that I would have to laugh about
16 it. But other days, I'd just be so furious that my face would
17 be red. I'd be just wanting to get away. And I would have to.
18 I'd have to go away, like, and take a break, either get in the
19 car and leave or go in City Hall or the library and use the
20 bathroom just to get five, 10 minutes away from it, just as a
21 breather.

22 Q Now, did Mr. Coleson also -- was he also joined by
23 other of the Defendants?

24 A Yes.

25 Q By whom?

1 A Sometimes, he was joined by Kate Ager, I believe her
2 name is. Sometimes, it was Garrett Ean. Sometimes, it was
3 James Cleaveland. It varied day to day who was with him.
4 Sometimes he was by himself.

5 Q And when you say that he was joined by Kate Ager, for
6 example --

7 A Yeah.

8 Q -- tell the Court an example of those kinds of
9 interactions with Mr. Coleson and Ms. Ager?

10 A Usually, it was in the morning with Ms. Ager and it was
11 -- usually, she was just walking beside me. Sometimes, she
12 would ask questions. Sometimes, it would appear like she was
13 texting or talking on her phone. I didn't see too much
14 videotaping from her. She was actually one of the more quiet
15 ones.

16 Q And do you say, what interactions did you see between
17 Mr. Coleson and Kate Ager?

18 A Sometimes, they would be riding in the vehicle
19 together, working for us or following us in the vehicle.
20 Sometimes, they'd be walking next to each other, talking.

21 Q And just for the record, would you point out Kate Ager
22 for the Court, please?

23 A She's the lady between Garrett and Ian.

24 Q Thank you. How about with regard to Garrett Ean? And
25 first, would you just point him out for the Court, please?

1 A He's the gentleman in the plaid shirt.

2 Q The green?

3 A Yes, sir.

4 Q And what interactions did you encounter between Mr.
5 Coleson and Mr. Ean as it related to you doing your job?

6 A Same thing. Graham would usually be walking with him
7 or feeding meters in front of me while Garrett would be
8 videotaping. Sometimes, they'd be talking to each other on
9 their radios, if they weren't with each other at the moment
10 during that day.

11 And then you know, like, if I'd be walking down the
12 street with Mr. Coleson, he'd get on his radio or his phone and
13 call somebody. And then Mr. Ean would show up and, you know,
14 either Garrett would be filming and Mr. Coleson would be
15 feeding the meters or vice versa.

16 Q And again, how close would Garrett Ean be to you while
17 doing his activities?

18 A Most of the time, Garrett would give me some space. A
19 lot of times, he'd be following so close that, when I did turn
20 around, we would almost literally run into each other. And
21 when I asked him to give me some space, it would be the fact --
22 he would say something like, "Well, it's your fault you changed
23 directions." So he varied his distances. He was more sporadic
24 than Mr. Coleson would be.

25 Q Alan, why was giving you space important to you?

1 A Well, for one, I didn't like the fact that, if I did
2 turn around, I'd be constantly afraid of walking into somebody.
3 For two, it's just common decency. It's somebody's personal
4 space. Sometimes, they'd be so close where I couldn't even
5 make a phone call without them hearing what I was talking
6 about. I mean, there was a time on Main Street where I asked
7 Mr. Coleson to give me some space where I could continue this
8 phone call and he wouldn't. He'd stand right there. So I'd
9 have to end the phone call and walk away.

10 Q And how about -- you've also mentioned Mr. Cleaveland,
11 that he would also participate with Mr. Coleson in directing
12 conduct and activity towards you?

13 A I didn't see Mr. Cleaveland that often with Mr. Coleson
14 as much as I did with Mr. Ean. For a while, Mr. Cleaveland was
15 only doing it on Saturdays towards the end of my employment
16 there. So I didn't see him as much towards the end. But when
17 he was around, he would be the same thing. He would be -- they
18 would swap turns feeding meters, or they would both do it, or
19 one would feed meters, one would leave their cards on the
20 windshields. Their actions varied day to day, usually, as far
21 as who did what.

22 Q And how about -- you've testified, if you remember,
23 about a month ago with regard to some of the conduct that you
24 experienced with Pete? There's some water there if you want,
25 too. Pete --

1 A Eyre, I believe, is --

2 Q -- Eyre, yes.

3 A -- how you pronounce it.

4 Q Do you remember that testimony?

5 A Yeah. My interaction with Pete Eyre was limited, like
6 I said in that testimony, and I really didn't see him too much
7 interacting or working with the other individuals. It was more
8 of, like, a one-on-one basis type interaction with Mr. Eyre.

9 Q Now, how about -- did you have any -- did you
10 experience any problems over the internet with any of these
11 Defendants?

12 A Yeah. There was one post on Facebook that --

13 Q One what? What Facebook?

14 A It was -- I just saw it because I'm third-party friends
15 with somebody with one of the individuals here. And it tagged
16 my name. It had my name in it. And that's how I read it. And
17 it said that I apparently had a man-crush on Jay Prieveau,
18 whoever that is.

19 Q You had a man-crush?

20 A Yeah. That's what the post said.

21 Q What did you understand that to mean?

22 A That I liked that individual, I guess.

23 Q And who posted that?

24 A Mr. Coleson.

25 Q How do you know that?

1 A Because, like I said, I was tagged in it. So I read
2 it. And it also sends it to my email.

3 MR. BAUER: I'd like to show a videotape. And we're
4 going to submit this as evidence, Your Honor. And I want to
5 preface it by saying that this is going to be depicting
6 Mr. Givetz, Alan Givetz, as well as two of the Defendants,
7 Mr. Coleson and Mr. Ean, videotaping. And the purpose of this
8 -- I'm not going to ask any questions during it. The purpose
9 of this is to try to put us in the shoes of Alan Givetz on a
10 particular day. Is that all right?

11 THE COURT: Attorney Meyer, have you seen this
12 particular video?

13 MR. MEYER: No. I haven't seen it. I haven't seen
14 it.

15 THE COURT: You have not.

16 MR. MEYER: I haven't been offered the opportunity to
17 see it. But again, the witness has testified to his
18 experience. I don't understand what the purpose of the video
19 is or the relevance of it.

20 THE COURT: The objection is overruled.

21 MR. BAUER: Thank you.

22 THE COURT: You may play it.

23 MR. BAUER: Okay. So I'm not going to ask you any
24 questions. We're going to run this. And it's going to be some
25 time.

1 MR. MEYER: Wait. Well, Your Honor, you've overruled
2 my objection --

3 MR. BAUER: And then I'll --

4 MR. MEYER: -- to relevance. I haven't had a chance
5 to see it yet.

6 THE COURT: Well, could you pinpoint a little bit
7 more? When was this video taken?

8 MR. DIETEL: Your Honor, I can represent that this is
9 a video that we uncovered on YouTube. It is our belief that it
10 was created by Garrett Ean and Graham Coleson. And we believe
11 that simply watching the video will bear that out quite
12 clearly. But we can provide source details as to where it came
13 from, if that would be helpful for Attorney Meyer.

14 THE COURT: I guess what I'm looking for is, when?
15 Is this even for any of the timeframe that's --

16 MR. BAUER: Yes.

17 THE COURT: -- at issue in the case?

18 MR. BAUER: Yes. It is.

19 THE COURT: Okay. And has there been any editing
20 done to the video?

21 MR. DIETEL: This is an original video that was
22 downloaded in full from YouTube.

23 THE COURT: How long?

24 MR. BAUER: 20 minutes.

25 MR. DIETEL: It's 20 minutes.

1 THE COURT: Okay.

2 MR. BAUER: It's important, Judge. And I understand
3 that 20 minutes is 20 minutes and it's a long time, but it's
4 the only way that I think that I can provide testimony through
5 these people to put, frankly, you in the shoes of them in terms
6 of what they've experienced on a week-to-week basis.

7 THE COURT: Okay. What we're going to do is, we're
8 going to watch it. And then, if you want to make any
9 objections to it after we've seen it, any evidentiary
10 objections, I'll deal with them at that point.

11 MR. BAUER: Thank you.

12 THE COURT: But we'll watch the video now. And
13 Attorney Meyer, if you can't see it, if you need to move or
14 position yourself --

15 MR. MEYER: Well, I just -- thank you, Your Honor. I
16 can see from here.

17 THE COURT: Okay.

18 (A Videotape played at 9:30 a.m., ending at 9:51 a.m.)

19 BY MR. BAUER:

20 Q Mr. Givetz, is that you on the film?

21 A Yes.

22 Q Who was filming that?

23 A That was Mr. Coleson.

24 Q Who was the individual in front of you a lot of the
25 times?

1 A That was Mr. Ean.

2 Q And what timeframe is that taken?

3 A Obviously, it was wintertime. The snow bank is on the
4 ground, no leaves on the trees.

5 MR. BAUER: For the record, it was at least uploaded
6 March 5th, 2013.

7 BY MR. BAUER:

8 Q We saw a number of things on that. Is that a fair and
9 accurate description of one particular incident with you?

10 A Yeah. I mean, honestly, while I was watching the
11 video, it's been a few months since I have done this,
12 obviously, and you know, I can remember saying, obviously, that
13 when I would -- they were so close to me when I'd turn around,
14 they'd be -- I'd almost walk into them. But I honestly sitting
15 here forgot how close they were to me, just right in my face
16 with the video and everything. And it kind of made me feel
17 like I did that day, to be honest with you.

18 Q How is that?

19 A Just honestly ticked off and just wanting some space.

20 THE COURT: Before we go any further, Attorney Meyer,
21 I wanted to give you an opportunity. You wanted to address the
22 admissibility of this videotape. Do you want to make further
23 argument on that?

24 MR. MEYER: No, Your Honor. Just again, the
25 objection is based on relevance.

1 THE COURT: I understand. The objection is
2 overruled. You may proceed.

3 MR. BAUER: Thank you. I'd like to mark that as a
4 full exhibit. And I'll get those to you. I have two more
5 videotapes.

6 THE COURT: Again, the objection is preserved to the
7 admissibility, but subject to that objection, which I have
8 overruled, the videotape is admitted as a full exhibit.

9 (Plaintiff's Exhibit 6 received)

10 MR. BAUER: Thank you.

11 BY MR. BAUER:

12 Q So Alan, how often would something like that happen to
13 you?

14 A It was daily.

15 MR. MEYER: Well, Your Honor, something like -- is
16 that referring to the videotape or referring to -- I don't know
17 what he said.

18 MR. BAUER: I'll withdraw the question.

19 BY MR. BAUER:

20 Q Alan, how long would activities by Mr. Ean, and
21 Mr. Coleson, and other Defendants -- how often would you endure
22 what we've just seen on the videotape, on a weekly basis?

23 A Well, like I said, it would happen daily. The length
24 of time throughout that day would vary, depending on a lot of
25 things, the weather, depending on, according to them, who was

1 available at the time. Sometimes, they would tell me, "Well,
2 I'm the only one available today, so that's why I only have one
3 person on me. Sometimes, there'd be a lot more people
4 available, so I'd have two or more.

5 So the length of time throughout each given day
6 varied. Sometimes, it would start from 9:30, from the time I
7 took the streets, until the time I left. Sometimes, it would
8 happen for a couple hours in the morning. Sometimes, it would
9 happen for a couple hours in the afternoon. But it was a daily
10 occurrence that somebody was with me at some point in the day.

11 Q And we saw the closeness or the proximity of both
12 Mr. Coleson and Mr. Ean to you on a couple of occasions in that
13 film. Does that fairly and accurately describe the proximity
14 that they would walk towards you?

15 A Yes.

16 Q There was also some indication of some bumping going on
17 and crowding. Was that also a fair representation of what
18 would happen to you on a regular basis?

19 A Mostly Mr. Coleson's, not as much with Mr. Ean to be
20 honest with you. Sometimes, he'd be at a greater distance,
21 maybe a meter or two ahead of me.

22 Q How long did you serve in the military?

23 A I served eight years.

24 Q And how many tours of duty?

25 MR. MEYER: Objection, relevance.

1 THE COURT: How is this relevant?

2 MR. BAUER: I'm going to ask -- the offer of proof is
3 that this man's been through a lot in terms of his military
4 service and weighing that with regard to what's going on here,
5 he's made certain determinations as to his job, the impact on
6 that.

7 MR. MEYER: Your Honor, I don't understand what the
8 military service -- how that relates to anything that's
9 pertinent in deciding this case, unless there's a different
10 standard for someone who's in the military versus someone who
11 doesn't have military service.

12 THE COURT: I understand. I understand the point.
13 You've already had him testify as to the reasons why he left
14 the position. I fail to see the relevance of it as well. The
15 objection is sustained.

16 BY MR. BAUER:

17 Q Describe for the Court, if you would, what statements,
18 if any, individual Defendants made to you with regard to
19 quitting your job?

20 MR. MEYER: Your Honor, again, can the question be
21 asked in terms of designating which particular Defendant made
22 the statement?

23 THE COURT: I think his -- Attorney Bauer, if you --
24 I don't mind it being asked in a general way, but frankly,
25 ultimately, it's only going to be useful to me if you can tie

1 it to a specific individual.

2 MR. BAUER: I understand.

3 THE COURT: So again, I'm allowing the question, but
4 I'm signaling that, ultimately, a statement like "the
5 Defendants did X" is not helpful unless it's tied to a specific
6 individual.

7 MR. BAUER: And I will.

8 BY MR. BAUER:

9 Q So Mr. Givetz, describe for the Court what statements,
10 if any, were made by the Defendants to you about quitting your
11 job.

12 A I would get statements from pretty much -- it was
13 Mr. Coleson, Mr. Ean, and Mr. Cleaveland. And they varied
14 from, you know, "We can help you find a different job. We can
15 help you find a real job that doesn't hurt people, that doesn't
16 steal from people, that doesn't take their cars away, that
17 doesn't hold them at ransom, or condone violence." I would get
18 comments from, you know, Mr. Coleson all the time, you know,
19 "Why don't you just quit? We're going to keep doing this.
20 We're not going to stop. You should just quit, find another
21 job. We can help you find another job."

22 Mr. Cleaveland would say the same thing when he was
23 out with me, you know, "We can help you find another job. Why
24 don't you find an honest job?" Mr. Ean would say the same
25 things, you know, "Why don't you find a different job? We can

1 help you find another job. We can help the others find another
2 job if they want." It was really those three that would say
3 those things to me.

4 Q And again, on a weekly basis, how many times per week
5 would those kinds of comments about quitting your job, finding
6 another job would be thrown at you?

7 A Honestly, it all seemed to be what the topic of the day
8 was for them. Sometimes, that would be the topic of the day.
9 Other times, it would be to attack me personally, to try to get
10 me to react a certain way. Sometimes, it would be reference to
11 my job. It would be all about the job that day. It would
12 happen probably two or three times a week, depending on who was
13 with me.

14 MR. BAUER: Your Honor, I've provided Attorney
15 Meyer -- I'm going to be moving that we submit -- yes. You
16 have it to yourself.

17 THE COURT: I'm guessing this is the binder with the
18 photographs that --

19 MR. BAUER: Photographs.

20 THE COURT: -- were submitted last time. I don't
21 know if they were ever marked.

22 MR. BAUER: I don't think they were, Your Honor.
23 That's why I'm moving right now.

24 THE COURT: Any objection, Attorney Meyer?

25 MR. MEYER: Your Honor, I don't object to them being

1 marked for ID. There is a description in here and I don't know
2 who that description comes from. It hasn't been identified or
3 verified.

4 THE COURT: So the specific objection is to the --

5 MR. MEYER: Some of these --

6 THE COURT: -- description that's contained next --

7 MR. MEYER: Right.

8 THE COURT: -- to the photographs --

9 MR. MEYER: Right. And some of these --

10 THE COURT: -- or above the photographs.

11 MR. MEYER: And some of these, I mean -- this witness
12 can testify to those pictures presumably in which he is
13 included, but the majority of these pictures do not relate to
14 him.

15 MR. BAUER: And if I may respond, we'll have
16 testimony from another PEO. We had previous testimony from
17 Linda on the first day as to several of these photographs. So
18 at the end of all three PEOs testifying, I'll move for a full
19 exhibit to be entered.

20 THE COURT: It can be --

21 MR. MEYER: Sure.

22 THE COURT: -- marked for ID right now.

23 MR. MEYER: Sure.

24 THE COURT: Once that's happened -- again, we can
25 deal with the description language, which is a separate matter,

1 but the photographs themselves -- it's IDed right now and we
2 can deal with whether it's a full exhibit at the end of the
3 testimony.

4 MR. BAUER: Thank you, Your Honor.

5 THE COURT: Attorney Bauer?

6 BY MR. BAUER:

7 Q So I'd like you to turn to page four, Mr. Givetz. And
8 would you describe what that photograph depicts, please?

9 A this is a photograph of me and Mr. Garrett Ean. We're
10 standing -- I believe we're at the crosswalk that's going to
11 cross West Street, going south on Main Street.

12 Q That was during your working hours as a PEO?

13 A Yes, sir.

14 Q And does this fairly and accurately describe how close
15 Mr. Ean was to you?

16 A Yes.

17 Q I think -- okay. And I've just been reminded to
18 authenticate the description. It says "Garrett Ean standing
19 directly next to you in a crosswalk". That's an accurate
20 description, isn't it?

21 A Yes.

22 Q Thank you. Take a look at photograph five, if you
23 would, please. And what does that show?

24 A That's an extreme close-up of me.

25 Q And who was taking that photograph?

1 A That was Mr. Coleson that day.

2 Q How about with regard to photograph six?

3 A That's another picture of me. I believe that's Mr.
4 Coleson, but I honestly can't remember. That looks like it's
5 in the parking garage. Wells is lower, I believe.

6 Q And is he standing almost next to you when that
7 photograph was taken?

8 A Yeah. The only thing really between us is that meter,
9 as you can see.

10 Q Take a look at photograph eight, please. What does
11 that show?

12 A That shows Mr. Coleson and Dave Burman walking behind
13 me.

14 Q and what are those things that they have in their
15 hands?

16 A They appear to be camera phones.

17 Q Take a look at -- I'm sorry -- number 17. Now, you are
18 not in that photograph, are you?

19 A No, sir.

20 Q But who is depicted in that photograph?

21 A That's Jane.

22 Q That's Jane. And how about any of the Defendants?

23 A That looks like James Cleaveland to the left.

24 Q With the -- to the very left, with the --

25 A Yeah. He's got a blue hat on --

1 Q Yeah.

2 A -- and gray coat.

3 Q Now, there are three individuals surrounding PEO Jane
4 McDermott there, correct?

5 A Yes, sir.

6 Q Did you have occasion to be surrounded by two, three,
7 and more of these Defendants at any given time?

8 A Yeah.

9 Q Okay. And does that photograph fairly and accurately
10 describe how people -- how these Defendants would follow you
11 around?

12 A Yeah, except for the fact that not only would they be
13 directly behind us, but at times in a large group like that,
14 they'd be all the way around us, 360 degrees.

15 Q Mr. Givetz, you described earlier for the Court some of
16 the impact that you experience as a result of the conduct that
17 you've described in terms of being flush.

18 A Uh-huh.

19 Q Did you have any physical symptoms or -- symptomology?

20 MR. MEYER: Your Honor, objection. The law in terms
21 of physical symptoms is, there has to be some medical testimony
22 to verify the causal connection. And I'd refer the Court to
23 State v. Thorpe.

24 MR. BAUER: Well, I'll -- I'm not asking for a
25 medical diagnosis. I'm asking for this gentleman's description

1 of whatever physical impact that he experienced.

2 MR. MEYER: Your Honor, my objection is not to the
3 question of a medical diagnosis. My question is -- my
4 objection is to the fact that the Supreme Court has said that,
5 if you're going to attribute physical symptoms to an emotional
6 trauma or other event, you need to have expert medical
7 testimony drawing the connection. It's not good enough for a
8 layperson to say, "Well, I was upset, and I had a headache, and
9 the headache was caused by So-And-So."

10 THE COURT: Okay. Just by way of offer of proof,
11 what's the response going to be?

12 MR. BAUER: The testimony would be that he
13 experienced redness in the face, that he had heart palpitations
14 when encountering this conduct by the Defendants, that he
15 became angry and anxious. And these are symptoms that he would
16 not have had, he did not experience on any other occasions
17 dealing with the public.

18 MR. MEYER: Your Honor, I don't object to him saying
19 that he felt anxious or angry, which he's already said. A
20 layperson can testify to that. But in terms of whether his
21 heart palpitations, as he describes them, were caused by this
22 scenario or some other physical or medical condition is not
23 something that he's competent to testify to.

24 THE COURT: I agree. I'm going to allow the
25 testimony with -- the objection is sustained in so far as the

1 objection is made. Please proceed.

2 BY MR. BAUER:

3 Q From your point of view, Alan, what problems did you
4 experience with the conduct that was --

5 MR. MEYER: Wait. Objection. This is simply
6 leading -- a more general question leading to the same answer.

7 THE COURT: But I think that, as I understand, if
8 there is testimony that goes beyond what I've deemed
9 admissible, it'll be stricken.

10 MR. BAUER: Thank you, Your Honor.

11 BY MR. BAUER:

12 Q What problems did you experience by the conduct that
13 was directed at you from those encounters?

14 A I felt, because of the constant basis that it was
15 happening, an anger that I had never felt before. And it was
16 on a consistent basis. And it was to the point where I knew
17 that, if either the actions stopped by the individuals or if I
18 didn't leave, I was afraid that something was going to happen.
19 I was either going to do something stupid or irrational and get
20 myself fired, or worse, or, you know, something physically more
21 could have happened to me.

22 That's all I can understand it. It was just an
23 outrageous anger that I had never felt before. And like I
24 said, I spent countless years in the military and corrections.
25 And I've had people in my face and aggravating me. And it

1 would be for a moment and they would go away. This was on a
2 constant, consistent basis and it made me so angry to the point
3 where I knew that, like I said, either the actions stopped or I
4 had to leave for my own good.

5 Q And what about the proximity or the closeness to you?
6 Did that exacerbate your problems?

7 A Absolutely, because it felt like I was backed into a
8 corner sometimes, when somebody was this close to my face and
9 they were saying comments to me like, "What are you going to do
10 about it, boy," and calling me the names like the bitch and the
11 coward. That was provoking and backing me into a corner.

12 Q Now, I'm going to show you an affidavit that's part of
13 the record, just Exhibit -- attachment B to the petition as
14 part of the Court record. This was signed by you under oath,
15 wasn't it, in April of 2013?

16 A Yes. It was.

17 Q And I'd like to direct your attention -- I'm sorry.

18 MR. BAUER: Your Honor, would you like a copy here?

19 THE COURT: I'm just pulling it out.

20 MR. BAUER: It might be easier if I just give you
21 this, a free-standing copy.

22 THE COURT: I found it. Thank you.

23 BY MR. BAUER:

24 Q Paragraphs four and five -- well, first of all, let me
25 ask you, is this affidavit that you swore to true and accurate?

1 A Yes.

2 Q With regard to paragraphs four and five, since December
3 of 2012, from your point of view, have you been harassed by the
4 Defendants?

5 A Yes.

6 Q Paragraph 18 indicated, back in April of 2013, that you
7 had been considering quitting your job and that you'd expressed
8 that to supervisors at the City. Is that true?

9 A Yes.

10 Q It also says that you didn't want to quit your job as a
11 PEO. Is that also accurate, sir?

12 A Yes.

13 Q So what led to the resignation? Why did you quit your
14 job?

15 A It just -- I didn't feel like there was an end in
16 sight. I didn't feel that these individuals would stop,
17 regardless. I didn't feel that any positive result would
18 happen in our favor. I just didn't honestly see the light at
19 the end of the tunnel. And just like I said, it got to the
20 point where it crossed over into my personal life. And I knew
21 that was a line I didn't want to deal with because, when it
22 crosses over into my personal life and my family, I get
23 defensive of my family. And I didn't want to put myself into
24 that or my family into that situation anymore.

25 Q If there were an injunction issued by the Court,

1 keeping these folks 30 feet back from you when you were
2 working, would it have made a difference to you?

3 A I think it probably would have. It would have allowed
4 me the freedom to walk without having to have interactions like
5 I said before, where people would not get out of my way, and
6 tempt me, and ask me what I was going to do about it. It would
7 give me -- it would have gave me the space where I didn't have
8 to hear the constant comments in my ear all the time. It would
9 at least be from a distance.

10 Q I don't have any further questions on direct. Thank
11 you.

12 THE COURT: Cross-examination?

13 MR. MEYER: Thank you, Your Honor.

14 CROSS-EXAMINATION

15 BY MR. MEYER:

16 Q Good morning, sir. My name is Jon Meyer.

17 A Good morning.

18 Q All right. Sir, are you -- aside from your testimony
19 here, are you currently employed?

20 A Where?

21 Q Are you currently employed?

22 A With the City?

23 Q No. So do you have any current employment aside from
24 being paid to testify here?

25 A Yes.

1 Q All right. Who is your current employer?

2 A Why is that relevant?

3 Q No. Sir, your job as a witness is to answer the
4 question.

5 THE COURT: Mr. Givetz, you have to -- I understand
6 you're -- if you have, you know -- can you just identify the
7 employer? It's a pertinent question and you have to answer the
8 question.

9 THE WITNESS: I'm employed by Apria Healthcare.

10 BY MR. MEYER:

11 Q What's the name of it, please?

12 A Apria Healthcare.

13 Q How do you spell the first name?

14 A A-P-R-I-A.

15 Q And what is your position?

16 A I'm a delivery technician.

17 Q What do you do?

18 A I deliver oxygen and homecare equipment to people in
19 need.

20 Q Is that a fulltime or part-time job?

21 A It's a part-time job with the possibility of fulltime
22 hours. It's not like it's cut off at a part-time-hour job.

23 Q And how much are you paid?

24 A I am paid \$15 an hour.

25 Q Do you enjoy your job?

1 A I do.

2 Q When did you begin work?

3 A I began work the next week after I left employment with
4 the City.

5 Q How many hours a week do you currently work?

6 A It varies. It varies from 32 to 40 plus hours,
7 depending on the jobs.

8 Q Do you see this job as being a career opportunity?

9 A I don't know. I mean, it could be.

10 Q And where is it located?

11 A It's located in Keene.

12 Q Now, in terms of your position as a parking enforcement
13 officer, what was your last employment prior to that?

14 A I'm sorry. What was my last --

15 Q When was your last employment prior to that, prior to
16 going to work for the City?

17 A I worked in corrections.

18 Q What was your position in corrections?

19 A I was a booking supervisor on third shift.

20 Q And when did you leave that position?

21 A I believe I left that in -- yeah. It was either the
22 end of August or the beginning of September of 2012. I'm not
23 sure of the exact day. I'm sorry.

24 Q Why did you leave?

25 A I left it for normal hours for my wife, and my family,

1 and I, because I was working 11:00 to 7:00 and I wanted a
2 normal schedule for my family and I.

3 Q And you began work in the City in December; is that
4 correct?

5 A I began working for the City in September.

6 Q September?

7 A Yes, sir.

8 Q Okay. And what was your rate of pay with the City?

9 A It was 16.62 an hour.

10 Q And in the context of your employment with the City,
11 did you have an employment contract?

12 A Did I have a -- yes. I signed a contract with them.

13 Q And did that contract have any term of employment?

14 A Yes. It did.

15 Q What was the term?

16 A It had a number of terms. I can't --

17 Q No. No. I'm saying -- I'm sorry.

18 A You mean for, well, the length of time?

19 Q Yes.

20 A I don't believe so. No. I'm sorry.

21 Q Is it your understanding that, in terms of your
22 employment with the City, that you were an employee at will?

23 A Uh-huh.

24 Q Is that a yes?

25 A Yes.

1 Q Meaning that you could choose to resign at any time you
2 wanted?

3 A Yes.

4 Q Meaning also that you could be fired at any time the
5 City wanted to fire or terminate your employment, correct?

6 A Yes.

7 Q Did you view the parking enforcement officer position
8 as a career opportunity?

9 A I viewed it as a job that, at the moment, provided a
10 great opportunity for my wife, and my family, and I to have a
11 normal schedule for once. I viewed it as a job that I was
12 going to do my best at. And where it led to after that, I was
13 going to go with it if the opportunity was right for myself.

14 Q Okay. But when you say "led to after that", am I
15 correct in including that your intention was to either, with
16 the City of Keene or with some other employer, move on to some
17 other position?

18 A I had no intention at that moment. I had worked less
19 than a year.

20 Q It was not -- I'm not asking that, but it was not your
21 intention when you took that position to stay as a parking
22 enforcement officer for the next 20 years, correct?

23 A Honestly, sir, I don't know.

24 Q Okay. So you had no career plans at that point?

25 A No. I was just happy to have a normal schedule after

1 eight years.

2 Q Sir, are you familiar with the ordinances of the City
3 of Keene?

4 A As far as which ones, sir, all of them?

5 Q Yes.

6 A No. I hadn't worked there long enough. I wasn't
7 familiar with all of them.

8 Q You're familiar with the ordinances involving parking?

9 A Yes.

10 Q Okay. Now, you also mentioned you had some law
11 enforcement background.

12 A Yes.

13 Q And what was that? What in particular was that law
14 enforcement background?

15 A I was a military police officer for eight years and I
16 also worked in corrections for eight years.

17 Q And what education did you have in terms of law
18 enforcement?

19 A I had the military police academy. I had the
20 corrections academy. I had, like you said earlier, various
21 correspondence courses. We had in-service training.

22 Q Now, sir, you are familiar that there are criminal laws
23 and ordinances that govern the conduct of people in public?

24 A I'm familiar. I'm not exactly sure what they are, no.

25 Q You're not familiar with what they are?

1 A No, no.

2 Q Did you ever, in the course of your experience with the
3 -- as a parking enforcement officer, with the Keene Police
4 Department about what you believed to be violations of
5 ordinances or criminal statutes?

6 A Only if it pertained to me. I would ask them questions
7 about what individuals were allowed to say and do to us.

8 Q Who did you speak to about that?

9 A I had spoke to a number of different officers.
10 Sometimes, it would be the captains. It depends who I saw when
11 I walked through the halls that day.

12 Q All right. So you raised questions with the captains
13 as to whether or not your rights were being violated.

14 A Yes.

15 Q And did you ever ask anybody in law enforcement to
16 initiate any charges against any of the Defendants?

17 A I did not. I asked their advice on what I should do.

18 Q Okay. And their advice was not to proceed with the
19 initiation of charges?

20 A Their advice was, honestly, at the time, to ignore and
21 it would go away.

22 Q Well, to your knowledge, was any criminal statute
23 violated by any of the Defendants?

24 MR. BAUER: Objection, Your Honor. Calls for a
25 conclusion that this individual doesn't have the background to

1 address.

2 THE COURT: Well, I think there's been some testimony
3 about a law enforcement background. I'm going to allow it.
4 It's cross-examination.

5 THE WITNESS: Could you repeat the question? I'm
6 sorry.

7 BY MR. MEYER:

8 Q Yes. To your knowledge, were any criminal laws
9 violated by any of the Defendants?

10 A To my knowledge, limited, although I was in law
11 enforcement, I didn't study the law, yes. I believed there was
12 and that's why I posed these questions.

13 Q Okay. And were you told, though, that -- did you ever
14 ask that charges be brought?

15 A I simply asked for what we're asking for today, for
16 some space.

17 Q All right. Was an -- well, were you ever asked whether
18 you had a legal right to that space?

19 A By who?

20 Q Did you ask? You said you had spoke to a number of law
21 enforcement officers about this.

22 A Uh-huh.

23 Q Did you ask whether you were legally entitled to this
24 space?

25 A Of course I asked them that.

1 Q What was the response?

2 A They said that -- honestly, I continued to get the same
3 answers of, "Just ignore it and they will go away."

4 Q So they were saying, "No, you are not,"?

5 A I didn't say they said that.

6 Q Well, you never got -- so you never got an answer at
7 all.

8 A I got -- I honestly, sir, got the same answers that was
9 just, "Ignore it and they will go away."

10 Q But my question to you was whether you ever -- were you
11 ever advised that people being in your space, as you described
12 it, was a violation of any criminal law, or any ordinance, city
13 ordinance?

14 MR. BAUER: Objection, asked and answered.

15 MR. MEYER: He hasn't answered the question.

16 THE COURT: Overruled.

17 THE WITNESS: I answered it to the best I possibly
18 can. That was the response I got when I asked the questions.

19 BY MR. MEYER:

20 Q So you were never told -- you never got an affirmative
21 answer that your rights in terms of violation of criminal law
22 or criminal statutes had been violated?

23 A I never got a definitive answer.

24 Q Affirmative answer?

25 A Affirmative answer.

1 Q You describe yourself as being furious. Is that a fair
2 summary of your emotional state?

3 A That's a fair summary, sir.

4 Q Okay. Did you ever do anything or say anything vis a
5 vis any of the Defendants in acting upon your answer?

6 A Yeah. I did, unfortunately. And that's why I left the
7 job.

8 Q All right. Can you describe some of the things that
9 you said to the Defendants in anger?

10 A I told Mr. Coleson on my day off if he didn't keep --
11 didn't stop following me, sorry, that I was going to knock him
12 out.

13 Q You were going to knock him out.

14 A Uh-huh.

15 Q Can you recall anything else you said to any of the
16 Defendants in anger?

17 A In anger? I can't.

18 Q Do you recall? You described the Defendants as arguing
19 with you about the value of your position and encouraging you
20 to quit. Do you engage in arguments with the Defendants on
21 that subject matter?

22 A As far as my employment?

23 Q Yes. Did you ever argue with them about your
24 employment?

25 A I told them that I enjoyed my employment until they

1 showed up.

2 Q Did you say anything else?

3 A As far as what?

4 Q Did you engage in any arguments with them? You
5 described the things they said to you. I want to understand
6 the things you said to them.

7 A I tried not to engage in any arguments with them. I
8 tried to ignore them.

9 Q Putting aside what you tried to do, I'm asking you what
10 you actually did. Did you engage in arguments with them?

11 A I don't remember.

12 Q Were you verbally abusive to them?

13 A Other than the fact of yelling and telling them to get
14 out of my face, no.

15 Q Now, you had indicated that you had identified an
16 internet posting --

17 A Uh-huh.

18 Q -- from Graham Coleson; is that correct?

19 A Yes.

20 Q All right. First of all, aside from that one internet
21 posting, did you identify any other internet posting about
22 yourself?

23 A From me or from other individuals?

24 Q From any of the Defendants.

25 A I don't remember seeing anything, not including me

1 directly.

2 Q So there was this one internet posting.

3 A Uh-huh.

4 Q And please say yes whether I --

5 THE COURT: You have to --

6 THE WITNESS: Sorry. Yes. I'm sorry.

7 THE COURT: No, not a problem.

8 BY MR. MEYER:

9 Q Okay. How did you locate that internet poster? Like I
10 said, I guess it's called -- I'm a little bit older, but I
11 guess it's called tagging, so my name came up. And because
12 we're third-party friends with somebody else, I saw it. And
13 that's how I saw it.

14 Q You said third-party friends. You mean it came up in
15 somebody else's Facebook page or what?

16 A I think because -- I'm not sure exactly how it works,
17 but I think, because we were friends with somebody else, but we
18 weren't friends together, but we had a mutual friend, I should
19 say, that I saw it because of that mutual friend.

20 THE COURT: Attorney Meyer, a logical breaking
21 point -- we'll take a short recess whenever.

22 MR. MEYER: I'm happy to do it right now, Your Honor.

23 THE COURT: Okay. We'll take a ten-minute recess.

24 Sit down.

25 (Recess at 10:26 a.m., recommencing at 10:44 a.m.)

1 THE COURT: Attorney Meyer?

2 MR. MEYER: Yes.

3 ALAN GIVETZ, PLAINTIFF'S WITNESS, PREVIOUSLY SWORN

4 CROSS-EXAMINATION CONTINUED

5 BY MR. MEYER:

6 Q Sir, did you ever seek to get a temporary restraining
7 order?

8 A I did not personally. I believe the City did. I'm not
9 positive.

10 Q The City -- well, you say -- tell me what the basis for
11 your belief is.

12 A There was something about Mr. Coleson not being allowed
13 in Central Square and I believe that, one day, when I walked
14 through Central Square, he followed me and I let the police
15 department know. And I believe that a temporary restraining
16 order came out from that while hat case was ongoing.

17 Q As to what -- you said you believe it was a temporary
18 restraining order?

19 A Yes. I'm not sure. You'd have to ask the City.

20 Q Now, you reported Mr. Coleson to the police department;
21 is that correct?

22 A I did.

23 Q For doing what?

24 A For following me through Central Square.

25 Q And what was the significance of Central Square?

1 A I had heard that he had a restraining order or I forget
2 what the exact term is. I believe it's a restraining order
3 from Central Square.

4 Q And who was it who told you he had a restraining order
5 from Central Square?

6 A I don't remember the law enforcement officer's name,
7 sir.

8 MR. MEYER: So may I approach the witness, Your
9 Honor?

10 THE COURT: Absolutely.

11 BY MR. MEYER:

12 Q Sir, I'm going to show you photograph number eight --

13 A Uh-huh.

14 Q -- which was -- were previously asked about Attorney
15 Bauer. And I guess you were asked about -- this is an example
16 of your being closely followed. Now, first of all, this source
17 says, "Travis Hobbs Taxed Robin Hooders". Is Travis Hobbs
18 pictured in this photograph?

19 A I don't know. I only know the two individuals to the
20 left and right of me.

21 Q Okay. Well, who is the individual to the right of you?

22 A If I'm looking at it, like --

23 Q Yeah, yeah.

24 A With the hat on, sir, or --

25 Q Correct.

1 A That's Mr. Coleson.

2 Q Okay. Now, who's the individual on the left?

3 A That's Dave Burman.

4 Q Okay. Now, is Mr. Burman a member of the Robin Hood
5 group?

6 A I don't believe so.

7 Q Well, let's -- so his participation has nothing to do
8 with any finding for -- or at least he was not protesting
9 against parking enforcement?

10 A No, sir.

11 Q Okay. Who is Mr. Burman?

12 A He is a pastor in a local church.

13 Q And is it fair to say that he's a pastor in a church
14 you belong to?

15 A Uh-huh.

16 Q Again, say yeah --

17 A Yes. Sorry, sorry.

18 Q -- or yes for the record.

19 A Yes.

20 Q And in fact, Mr. Burman, it appears from this
21 photograph, was walking close behind you with a video camera;
22 is that correct?

23 A Yes.

24 Q And this is on the same day as the film that we watched
25 earlier?

1 A I'm not sure if that was the same day. It looks around
2 the same timeframe, looking at the trees and the snow banks.

3 Q And in fact, Mr. Burman was verbally abusive?

4 A To who?

5 Q To, well, certainly the Robin Hooders, to Mr. Coleson?

6 A I don't believe he was, no.

7 Q He was in Mr. Coleson's face?

8 A He doesn't appear to be right there.

9 Q Well, you were there that day.

10 A Sir, I was walking away from them. They were behind
11 me.

12 Q This is not just one incident. During that day, you
13 saw Mr. Burman, the pastor of your church, confront
14 Mr. Coleson, correct?

15 A I heard it from behind me, sir.

16 Q What did you hear?

17 A I heard him say, "Why are you doing this to people?
18 Why are you acting like an idiot?"

19 Q What else did you hear him say?

20 A That's what I remember hearing him say.

21 Q Well, I'm going to show you a video and see if that
22 refreshes your recollection.

23 A Sure.

24 MR. MEYER: Your Honor, can I have Mr. Cleaveland
25 approach so that he can use his video on his laptop?

1 THE COURT: Absolutely. And Attorney Bauer, if you
2 need to position yourself to see that the --

3 MR. DIETEL: Your Honor, my only objection is,
4 they're asking to use our projector --

5 MR. MEYER: No. I'm not.

6 MR. DIETEL: -- and our set-up.

7 MR. MEYER: We're going to go directly from the
8 laptop.

9 MR. DIETEL: Okay.

10 THE COURT: And that was my assumption as well. And
11 I just want to make sure that, Attorney Bauer, if you need to
12 see the video, just position yourself wherever you need to be.

13 MR. BAUER: We're going to take it up to the witness,
14 are we?

15 THE COURT: Absolutely. Mr. Cleaveland, you can
16 certainly approach. We're running into the limits of the space
17 in this courtroom?

18 MR. MEYER: Right. I understand. I'd like to make
19 sure that both the -- excuse me -- witness can see it and also
20 the Court is able to see it.

21 THE COURT: Yes. I can -- I'm happy to stand and
22 position myself.

23 MR. BAUER: I just -- can I come forward in here?
24 I'm sorry.

25 THE COURT: Again, just wherever we all need to be, I

1 think it's important that both the witness, Plaintiff's
2 counsel, and the Court can see it as well. Attorney Meyer, I
3 don't know if you need to, but you can certainly move around.

4 MR. MEYER: No. I'm fine, Your Honor. Thank you.

5 MR. BAUER: Could we just have a representation as to
6 who is doing this, just like you asked us?

7 THE COURT: Absolutely.

8 THE DEFENDANT/CLEVELAND: Do you want me to break it
9 out?

10 MR. MEYER: Yes, please.

11 THE DEFENDANT/CLEVELAND: Okay. So this is on March
12 5th. This is the same day as the earlier video. And Graham
13 Coleson is shooting this video with the same camera.

14 THE COURT: And March 5th of 2013, Mr. Cleveland?

15 THE DEFENDANT/CLEVELAND: Yes, sir.

16 THE COURT: Thank you.

17 (A Videotape played at 10:50 a.m., ending at 10:55 a.m.)

18 MR. MEYER: Okay. Jim, I think that's --

19 THE DEFENDANT/CLEVELAND: All set?

20 BY MR. MEYER:

21 Q Sir, that was, again, Mr. Burman; is that correct?

22 A Yes.

23 Q And he's pastor of your church?

24 A Yes.

25 Q And the person he was speaking to on camera was

1 Mr. Coleson?

2 A I believe so.

3 Q And how far away was Mr. Coleson when he was taking
4 that videotape, if you know?

5 A The only -- as you can see in that video, the only time
6 I saw them was when they were in front of me and when we were
7 stopped at the stoplight.

8 Q So you didn't see Mr. Burman?

9 A I was walking away from them. He was talking to them
10 and I was trying to get out of there.

11 Q Okay. Did you ask Mr. Burman to desist?

12 A Did I ask him? No.

13 Q Did you at any point complain about his conduct to the
14 police department?

15 A No.

16 Q Did you think his conduct was appropriate?

17 A Yes.

18 Q You thought what he did on that day was appropriate?

19 A Yes, because he stood up for somebody when nobody else
20 would up until that point.

21 Q Okay. So when you're engaging in that conduct, when
22 you're shoving a camera in somebody's face, when you're
23 insulting them, when you're attempting to provoke them to
24 fight, that is appropriate conduct?

25 MR. BAUER: Objection.

1 BY MR. MEYER:

2 Q When is --

3 MR. MEYER: No. Let me finish the question.

4 MR. BAUER: I thought you were done.

5 BY MR. MEYER:

6 Q When it's intended to stand up for somebody, but it's
7 not appropriate conduct when you don't agree with the cause the
8 person is advocating; is that correct?

9 THE COURT: Okay.

10 MR. BAUER: Objection, form, content, as well as
11 relevance. This gentleman wasn't doing any of those things.

12 THE COURT: It was a compound question, so the
13 objection to form is sustained.

14 MR. MEYER: Okay. Thank you, Your Honor.

15 BY MR. MEYER:

16 Q If the Defendants had engaged in the same conduct that
17 Mr. Burman engaged in on that day, would that have been
18 appropriate conduct in your opinion?

19 A If that was one incident like that was and then it
20 didn't happen again, I have dealt with incidents like that
21 before from other individuals.

22 Q I didn't ask you if you'd dealt with it.

23 MR. BAUER: Excuse me. He's answering the question.
24 Give him space to answer the question, please. Objection.

25 THE COURT: Why don't we have him finish his answer?

1 And then, if you wanted to ask a follow-up question, certainly,
2 you can finish your response.

3 THE WITNESS: Like I said, I've dealt with incidents
4 like that before, where it was a one-time thing. And people
5 walk away and they leave like Mr. Burman did. And so yes. I
6 felt that was appropriate. He stood up for somebody when he
7 thought that they were being wronged. And he walked away.

8 BY MR. MEYER:

9 Q In your opinion, was Mr. Burman trying to provoke a
10 fight?

11 A No. It was -- he was not trying to provoke a fight.

12 Q Not trying to provoke --

13 A No.

14 Q Was he being verbally abusive?

15 A I don't believe he was.

16 Q Was he engaging in taunting behavior?

17 A I don't believe he was.

18 Q Was he too close to Mr. Coleson?

19 A According to that video, sometimes, yes. He was.

20 Q Was his use of the video camera intimidating?

21 A I don't believe he was.

22 MR. MEYER: Thank you. I rest, no further questions.
23 Thank you.

24 THE COURT: Further questions for the witness?

25 MR. BAUER: Just a few.

REDIRECT EXAMINATION

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BY MR. BAUER:

Q Mr. Burman -- did you ask him to do any of those things?

A I did not.

Q And when you say that he stuck up for somebody --

A Uh-huh.

Q -- what did you mean by that?

A He gave an example of what it felt like to be in that situation all the time. That was, like, what, a two-minute example, a two-minute experience? That's what we experienced every day, almost sometimes for our whole shift, not just one incident, not just somebody being upset about a parking ticket, and walking away, and that was it. This was a constant day-to-day basis. And it wasn't name-calling such as idiot or knucklehead. It was name-calling that attacked you personally, that attacked your family. This was just a small example of what it felt like to be in those shoes every day.

Q So from your perspective, what was Mr. Burman doing?

A Like I said, he was giving an example of what it felt like to be on the other end of that camera every day, day in and day out.

Q How about if Mr. Burman did to you every day what we saw on that videotape with regard to Mr. Coleson and Mr. Ean? Would you consider that taunting and harassment, frustrating?

1 A Yeah, absolutely. Every day, absolutely. If it wasn't
2 just -- if it wasn't an example, if it wasn't trying to prove a
3 point, trying to get people to realize what was going on, what
4 they were doing to people day in and day out, absolutely.

5 Q And this was in, what, March of 2013?

6 A I believe so. I believe it was March 5th, as the video
7 said.

8 Q And you were being told by police officers, "Ignore it
9 and it will go away."?

10 A Yes.

11 Q And did it? Did you try to ignore it?

12 A I did on multiple occasions.

13 Q And did it ever go away?

14 A It never did, sir.

15 Q You signed an affidavit in April of 2013 which is the
16 basis for this injunctive relief?

17 A Yes.

18 MR. BAUER: Nothing further.

19 THE COURT: Recross-examination?

20 RECROSS-EXAMINATION

21 BY MR. MEYER:

22 Q Sir, did you ever engage in using a video camera
23 yourself while you were on duty?

24 A I believe I did once when I first met Garrett Ean and I
25 realized -- I thought that it would determine him from

1 videotaping me. And I realize that it didn't, so I didn't do
2 it ever again.

3 Q And how did you use it?

4 A I use it just -- I sometimes use it, like, over my
5 shoulder like this because he was walking behind me and
6 sometimes in front of me like this, if he was in front of me,
7 from what I recall. Like I said, that was, I believe, in
8 December.

9 Q So you filmed him during the course of your shift for
10 the purpose of making a point?

11 A I honestly thought it would determine him from filming
12 me. That was my point.

13 Q Okay. And Mr. Burman was using his video camera to
14 make a point.

15 A I believe so. You'd have to ask Mr. Burman.

16 Q Okay. The Defendants were using their video cameras to
17 make a point?

18 A I'm not sure. You'd have to ask them.

19 MR. MEYER: I will. Thank you, Your Honor.

20 MR. BAUER: One last thing --

21 FURTHER REDIRECT EXAMINATION

22 BY MR. BAUER:

23 Q And that is, what we saw with regard to Mr. Burman --
24 Mr. Burman is a private citizen, isn't he?

25 A Yes.

1 Q And did you see other private citizens in the City of
2 Keene interact with each of these six Defendants on occasion?

3 A Not each of them, but some of them.

4 Q Well, tell me who you saw.

5 A I remember, one time, for instance --

6 MR. MEYER: Your Honor, objection, beyond the scope
7 of cross-examination.

8 THE COURT: It is beyond. How is this to the subject
9 of the recross-examination? We're on round three. Now, this
10 is -- and I don't know, you know. We're going back into area
11 that relates to broader involvement with other members of the
12 public?

13 MR. BAUER: Well, it just came up that, you know, Mr.
14 Burman was using a video camera and interfacing with some of
15 the Defendants here. I just want to -- a couple of questions
16 with regard to whether this gentleman has seen similar
17 encounters by private citizens to stand up for Mr. Givetz.

18 MR. MEYER: Your Honor, Mr. Bauer has already had
19 recross- and redirect on this.

20 THE COURT: I agree. If there's -- the objection is
21 sustained. If there's something that relates to the recross-,
22 we have a number of witnesses. This is day two of a
23 preliminary injunction hearing. We're going to move this
24 along. You can step down, sir.

25 MR. BAUER: Thank you. I'd like to call Jane

1 McDermott. Your Honor, if you wouldn't mind swearing her in --

2 THE COURT: Certainly. Ms. McDermott, if you would,
3 remain standing.

4 JANE MCDERMOTT, PLAINTIFF'S WITNESS, SWORN

5 THE COURT: Thank you. You can be seated. If you
6 could, state your full name and spell your last name for the
7 record.

8 THE WITNESS: It's Jane McDermott, M-C-D-E-R-M-O-T-T.

9 DIRECT EXAMINATION

10 BY MR. DIETEL:

11 Q Good morning, Jane.

12 A Good morning.

13 Q You're a parking enforcement officer with the City,
14 correct?

15 A Correct.

16 Q And how long have you had that job?

17 A One year.

18 Q Approximately when did you take that job? Do you
19 recall?

20 A It was September of 2012.

21 Q Okay. So you're coming up on your one-year anniversary
22 now?

23 A I had it, yeah.

24 Q You've heard some testimony about what you do as a
25 parking enforcement officer. Would you mind putting in your

1 own words what it is that you do?

2 A Monitor the streets for parking violations, answer
3 questions from people on the street, give directions. People
4 sometimes ask for -- they ask me if I've lived here all my
5 life, and if I know of a good place to eat, and things like
6 that.

7 Q And on that point, are you from Keene?

8 A Yes.

9 Q Did you grow up here?

10 A Yes.

11 Q And what's your educational background?

12 A I have some college. I received a certificate for
13 office work at New Hampshire Vocational. I guess that's it,
14 graduated from high school.

15 Q And Jane, how old are you?

16 A Fifty-one.

17 Q And what were you doing before you took this job?

18 A I worked in human services, basically focusing on drug
19 and alcohol addiction.

20 Q What are your hours when you were hired? What were
21 your hours?

22 A 9:00 to 5:30.

23 Q And what days would you work?

24 A I worked Wednesday through Saturday.

25 Q Are you a part-time employee or a fulltime employee?

1 A Yes, part time.

2 Q Part time. Have you encountered the Defendants in this
3 lawsuit while you were doing your job?

4 A Yes.

5 Q And who have you encountered? Can you identify each
6 one?

7 A Let's see. There's Garrett Ean, Graham Coleson, Ian
8 Freeman, Mr. Cleaveland.

9 Q Have you ever encountered Peter Eyre when you were
10 doing your job?

11 A I didn't remember, but I found in my logs that I had,
12 had one brief encounter with him, but he wasn't Robin-Hooding.
13 I don't know if you want me to refer to that.

14 Q Why don't we --

15 MR. DIETEL: Your Honor, if I may, at this time, I'd
16 like to show a brief video. It's not --

17 THE WITNESS: I was going to say, then I found out
18 that there was a video with him in it.

19 MR. DIETEL: It's not, I'll represent, as long as the
20 videos that we've watched so far. I'd like to play it and then
21 the witness can talk about what she sees on the video.

22 THE COURT: Again, if Defense counsel wants to object
23 on an evidentiary basis after the video is shown, we can deal
24 with the objection at that time.

25 MR. DIETEL: I apologize. All right. We're going to

1 watch this and I'll stop it at some point. And then I'll ask
2 you some questions.

3 (A Videotape played at 11:07 a.m., ending at 11:10 a.m.)

4 BY MR. DIETEL:

5 Q Jane, can you identify who was in that video?

6 A It was Garrett Ean and Peter Eyre.

7 Q Were you here for the first day of testimony?

8 A Yes.

9 Q Do you recall Mr. Eyre telling you that he never
10 followed you or followed or videotaped any parking enforcement
11 officers?

12 A Yes. And I didn't remember because that's, like, at
13 the very -- one of the very first encounters that I had with
14 these back in December.

15 Q Yeah. Do you remember this was December 2012? Is that
16 correct? Is that what I understand what you're saying?

17 A I believe so. I would say that, that would be right.

18 Q Is that when these activities that we've been
19 discussing here started?

20 A Yes.

21 Q You heard Mr. Eyre say in that video something to the
22 effect of, "This is how you get paid. You steal money from
23 your neighbors."?

24 A Uh-huh.

25 Q How does that make you feel?

1 A I don't -- I try not to let it bother me because I have
2 had the same encounter with the others saying terrible things.
3 It's --

4 Q You're used to, when you're on the street, interacting
5 with the public, correct?

6 A Uh-huh.

7 Q When you interact with them, it's normally in response
8 to a ticket that you've given?

9 A Yes.

10 Q So when you were interacting with Mr. Eyre and Mr. Ean
11 here, were you able to do your job when you were talking with
12 them?

13 A No.

14 Q So they were interfering with your ability to do your
15 job?

16 A Uh-huh.

17 Q And you had to dedicate time to respond to them --

18 A Uh-huh.

19 Q -- on matters that didn't pertain to parking
20 enforcement?

21 A This particular day, I don't believe they were out on
22 the street following me. I believe they were around the
23 vehicle and I came up onto them. And I was either getting
24 ready to go to lunch or something. And they were around my
25 car. So I didn't -- I wasn't in the position where I had to

1 try to get away from them at that point because they were just
2 already there at the vehicle.

3 Q The Defendants have followed you, correct?

4 A Yes.

5 Q And who's followed you before?

6 A James Cleaveland, Garrett Ean, Graham Coleson, Ian
7 Bernard, Kate Eyre, and others that aren't named in this case.

8 Q And when they follow you, about how close are they to
9 you?

10 A It varies. When Kate would come out, she would usually
11 walk beside me. She was fairly quiet. She doesn't say too
12 much when she's out there. Garrett is a -- he has a little bit
13 more respect than the rest of them and does give the space when
14 I ask for it. And usually, when he's following me, he's at a
15 distance or in front of me. He's at a distance.

16 Graham has a tendency to get too close and I guess he
17 has problems seeing. And he squints a lot at the meters, so
18 he'll stop quick. And I just about run into him when he does
19 that. Or he'll back up because he'll miss a meter. And he'll
20 go back to get it before I'm approaching it. James is always
21 too close, within a couple of feet.

22 Q So describe -- when you say too close, let me ask you
23 this. Is this too close?

24 A No.

25 Q What about here? Is this too close?

1 A No. That's starting to approach my own space.

2 Q Is this too close?

3 A Yes.

4 Q Now, they got in this close to you?

5 A In closer, yes.

6 Q Each of the Defendants have?

7 A Yes.

8 MR. MEYER: Well, wait, wait, wait. For the purpose
9 of the record, at least there ought to be some paraphrase as to
10 how close you are to the --

11 THE COURT: I agree. The record's going to be a
12 mess. We're not going to have any idea of what the distance --
13 and if you would, just clean that up a bit.

14 MR. DIETEL: I'll clarify. I'll clarify.

15 THE COURT: Yes.

16 BY MR. DIETEL:

17 Q I'm at counsel's table right now. Is this too close?

18 A No. It's too close for me, but I understand what
19 you're saying and it's not interfering in my space.

20 Q So I'm approximately, let's say, a first down, 30 feet
21 or so from you. Let me jump up where you've testified the
22 Defendants have been. I can reach out right now and touch
23 you --

24 A And touch me.

25 Q -- when I'm doing that.

1 A Uh-huh.

2 Q Is that too close?

3 A Yes.

4 Q Do you find that upsetting?

5 A Yes.

6 Q Does it interfere with your ability to do your job?

7 A Yes.

8 Q So you said that you've seen each of the Defendants
9 follow you while you're doing your job? How often does this
10 occur?

11 A Daily.

12 Q And when you say daily, is this all day?

13 A It varies, so sometimes they'll come out in the
14 afternoon. It used to be, before James got a job, he would be
15 out every day. And he would spend the entire day out there if
16 he showed up. Now, it's just Saturdays that he comes out with,
17 well, the whole gang of them.

18 Q So if I understand you correctly, you say they come and
19 go throughout the day?

20 A Uh-huh.

21 Q Is that stressful in and of itself?

22 A Yes, because you're always looking over your shoulder,
23 wondering whether they're going -- when they're going to show
24 up, where they are.

25 Q And so you're dedicating some of your attention, as

1 you're doing your job, to having to monitor where they are?

2 A Yes.

3 Q I apologize if I asked you this, but just to clarify,
4 do they follow you in groups?

5 A Yes.

6 Q Have they ever run around you, run past you?

7 A Yeah. They used to do that quite often. And I say
8 "used to" because it's just been Garrett for the last few weeks
9 that comes out in the afternoon. And he doesn't tend to -- he
10 makes his presence known and he doesn't run past me. He's
11 always positioned himself in front of me. But when the groups
12 of them used to come out, they would be behind me and they'd
13 run past me really quick.

14 There's been times when they've bumped me and they
15 run into me. There was such a big crowd around me a few times
16 that the police would call me on the radio, because they would
17 go by and they couldn't see me in the middle of the gang that
18 was around me to check on my welfare.

19 Q So can you do your job when you're surrounded by, as
20 you said, a gang of people?

21 A No.

22 Q Have any other Defendants ever touched you?

23 A There was an incident with Graham Coleson grabbing my
24 arm when I went to take one of his cards off somebody's car.
25 He didn't hurt me or anything, but he did grab my arm. I told

1 him to let go of me and he did.

2 Q So he didn't have permission to touch you?

3 A No. And there's been other times when they've brushed
4 by me, bumped into me.

5 Q Now, there's different types of touching. There is,
6 like, a mother's caress when she's holding a baby and there's a
7 whole range. When Mr. Coleson touched you, was that a friendly
8 touching or was that something that put you in fear?

9 A No. He grabbed my arm to stop me from trying to take
10 the card off the car. And he grabbed my wrist.

11 Q Did you feel safe when that happened?

12 A No.

13 Q Can you focus on doing your job when somebody grabs
14 you?

15 A No.

16 Q Have any of the Defendants ever stopped in your path or
17 obstructed you from moving in any direction while you're doing
18 your job?

19 A Yes.

20 Q And who's done that?

21 A James Cleaveland is one particular incident. I don't
22 know if I -- it's in here somewhere. But he was walking in
23 front of me on Main Street. And it was a Saturday morning.
24 And he slowed down. And I asked him if he could either get out
25 of my way or speed up his pace and he said he was walking at a

1 comfortable pace that he was comfortable with and that he
2 wasn't bothering me. And I then again asked him again if he
3 would please get out of my path and he didn't, so I called the
4 Keene Police Department.

5 Q And what happened then?

6 A And they came and I didn't stay while they talked with
7 him. I left.

8 Q Have you ever been yelled at?

9 A Yeah. There was another incident of James yelling at
10 me on April 27th. We were in the calm lot (phonetic
11 throughout). I will -- and we were in the calm lot. No. It
12 was Gilbo West, where it's reserved parking. And it made him
13 angry because he couldn't stop me from writing those tickets,
14 because there's no meters there. He said to me, "Don't you
15 know that these people are at a funeral? You could make their
16 day a little better by not ticketing.

17 Look at all the empty spaces. They aren't hurting
18 anybody." I asked him to please go and leave me alone. He
19 goes, "Well, I have to stand here and give them the green
20 papers to tell them how to fight a ticket." His voice kept
21 getting louder and louder. And he kept using the F word. Yet,
22 the more madder he got, the more red in the face he got, the
23 more the F word was used.

24 And after I got done ticketing, I walked across the
25 street to Gilbo Ave -- I mean, to the calm lot where my car was

1 parked. And he followed me over and the kids at the skate park
2 approached him and told him to leave me alone. And he started
3 to talk with them and he was calling me an F'ing thief. And I
4 got into the car and I drove away while he stayed there to
5 talk. And I went to the police station and talked to one of
6 the officers.

7 Q So, Jane, if somebody's yelling at you, let's say
8 they're saying something nice, like, "You're a great parking
9 enforcement officer," and they're close to you, and they're
10 following you, and they're yelling and screaming at you, would
11 that be upsetting to you?

12 A If they were telling me I was great?

13 Q If they were screaming, and they're in your face, and
14 they're yelling at you, I mean --

15 MR. MEYER: Your Honor, objection, foundation.
16 There's been no discussion, no representation -- first of all,
17 it's a leading question, but beyond that, there was no
18 representation that he was yelling in her face.

19 MR. DIETEL: Well, then, I'll rephrase the question.

20 BY MR. DIETEL:

21 Q If somebody is yelling at you vocally or screaming and
22 they're following you, can you focus on doing your job?

23 A No.

24 Q Does it matter what they're saying?

25 A No.

1 Q So you can't focus on the job, regardless of the
2 content of their speech?

3 A Correct.

4 Q Thank you. Have you ever been followed on a bike?

5 A Yes.

6 Q And who has followed you on a bike?

7 A James Cleaveland has followed me to the police station
8 before on his bicycle. Garrett makes it a daily practice to
9 follow me on his bicycle. It's very distracting when we're
10 down in town, though, because I'm always looking in my mirror
11 to try to find out where he is because I don't want him to get
12 hurt and I don't want to run over him. And I try to stay on,
13 you know, the right side of the traffic, so that he's not
14 crossing into traffic and putting himself in danger.

15 Q So you have to dedicate a portion of your energy and
16 attention now to safety concerns.

17 A Uh-huh.

18 Q Have you ever been followed in a car?

19 A Yes.

20 Q And who has followed you in a car?

21 A James Cleaveland follows me all the time in his car
22 when I was working Saturdays.

23 Q Anybody else?

24 A Garrett has a few times. Usually, there's one car and
25 they're all in it. And they follow me around.

1 Q And when you say they're all in it, who are you
2 referring to, the Defendants?

3 A Usually, yes. Usually, with the exception of Peter and
4 Ian.

5 Q When they're following you on a bike or following you
6 in a car, have they ever tried to stop you from going anywhere,
7 gotten in your way?

8 A No. I don't believe they have.

9 Q We just watched a video when Mr. Givetz was testifying.
10 Unfortunately, you didn't have the opportunity to come up and
11 look at it, but I'll represent and Defense counsel can chime in
12 if he has any objections to this. In the video, Garrett Ean
13 was wearing a radio, a walkie-talkie. Have you seen Garrett
14 Ean wear that?

15 A Yes.

16 Q Have you seen any other Defendants use radios?

17 A Yes.

18 Q And what do you see them do with the radios?

19 A They usually will walk up to me and then, especially
20 Graham does it all the time. They'll walk up to me, and
21 they'll get on the radio, and say, "I'm with Jane in wherever,"
22 whatever the location is.

23 Q Have you seen Ian Freeman use the radio?

24 A I think there was only one day when there was a whole
25 group of them out, that he had a radio.

1 Q And he was radioing back and forth with them?

2 A Yeah.

3 Q We talked earlier about Graham Coleson grabbing your
4 arm. That had to do with you removing a card from the
5 windshield of -- a card from the windshield of a car, correct?

6 A Uh-huh.

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

8 THE WITNESS: Yes. Sorry. Yes.

9 BY MR. DIETEL:

10 Q Can you describe what that card was?

11 A They have these little -- it looked like little
12 business cards that tell people that they've been saved from a
13 parking ticket. And they put them on the windshields of the
14 cars that they put meter in the money -- money in the meter.

15 Q And for the record, do you recall seeing Exhibit 4 in
16 the first day of this hearing, which was an exhibit labeled
17 "Robin Hood of Keene Card"?

18 A Uh-huh.

19 Q And I'll show it to you.

20 A Yes.

21 Q Do you need me to come closer or can you see this okay
22 from here?

23 A I can see that.

24 Q Is that the car that you've seen the Defendants place
25 on the cars?

1 A Yes.

2 Q To be clear, who have you seen using these cards?

3 A All of them.

4 Q All of them, all of each --

5 A All of the Defendants.

6 Q Each of the individual Defendants -- is that what
7 you're saying?

8 A Yes.

9 Q Have you ever been followed across a street?

10 A Yes.

11 Q Have you ever been followed across a street on a
12 crosswalk?

13 A Yes.

14 Q What about outside of a crosswalk?

15 A Yes.

16 Q When you're crossing a street, do you consider that a
17 safety risk if you're being followed?

18 A Yes.

19 Q Have you ever had to run away from any of the
20 Defendants?

21 A In the beginning, when there was a whole gang of them -
22 - and like I said, there's been some that aren't listed in this
23 proceeding. And I would. I would run.

24 Q If I may, I'd like to turn your attention to the
25 pictures that we've been reviewing this morning. If you could,

1 open that up for me to the first page.

2 THE COURT: Have you given any exhibit number to the
3 book of pictures yet?

4 THE MONITOR: Yes, 7.

5 THE COURT: 7. Thank you.

6 MR. BAUER: I'm sorry. Exhibit 7 for ID?

7 THE COURT: Exhibit 7, yes, for ID.

8 MR. BAUER: Thank you.

9 BY MR. DIETEL:

10 Q So we're looking at the page that's marked page one.
11 Can you tell me what this picture is a picture of?

12 A It looks like it was crossing the street on Roxbury
13 Street at the crosswalk.

14 Q And is that you?

15 A Yes.

16 Q Do you know who is taking this bit or who is filming
17 this, who captured this image?

18 A Well, just that it says here it was Garrett. I don't
19 remember that particular day. They all kind of run together.

20 Q When they're crossing the street with you, any one of
21 the Defendants, is this about the proximity that you've
22 observed?

23 A Uh-huh.

24 Q Is this characteristic of that?

25 A Yeah.

1 Q Let's turn to page two. Again, if you could, just
2 identify who this is for the record and what it is that you're
3 seeing.

4 A It looks like it's the same place. It's Roxbury
5 Street. And I've made it across the street.

6 Q It looks like you're looking at the camera.

7 A He was probably talking to me, so I was listening to
8 what he had to say.

9 Q Are you able to monitor the cars that are coming and
10 the traffic when you're looking at the camera?

11 A No. But I'm assuming that the cross light was on, but
12 no. If I'm looking at the camera, I wouldn't particularly be
13 paying attention to traffic. It takes my attention away.

14 Q Let me ask you this. You've been doing this job, I
15 understand, for about a year now.

16 A Uh-huh.

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

18 THE WITNESS: Yes.

19 THE COURT: Now go.

20 BY MR. DIETEL:

21 Q How many parking meters are there in the middle of
22 roads?

23 A In the what?

24 Q In the middle of a crosswalk, how many parking meters
25 are there?

1 A In a crosswalk, there's none.

2 Q Yeah. You've never encountered a meter in a crosswalk?

3 A No.

4 Q But they still follow you in the crosswalks --

5 A Yes.

6 Q -- closely, too?

7 A Uh-huh.

8 Q Let's look at page three. And again, could you please
9 describe who is in this picture and what it is that you
10 observe?

11 A Well, it's Graham Coleson. I'm not sure what I'm doing
12 there, but I was -- it says I'm working on a meter.

13 Q Do you find it distracting to have Graham leaning over
14 you like that?

15 MR. MEYER: Right. That's number three?

16 THE WITNESS: Yes. And that's typical of --

17 THE COURT: Yes.

18 THE WITNESS: -- Graham.

19 MR. MEYER: Number three, leaning over, standing
20 straight -- I mean, it's a really long picture.

21 MR. DIETEL: Let me rephrase. I'll rephrase the
22 question.

23 BY MR. DIETEL:

24 Q Based on Graham Coleson's positioning in that picture,
25 do you find that distracting when you're trying to do your job?

1 A Yes. And that's typical of him. He will stand very
2 close and wait for me, even when I am doing a ticket, because
3 he wants to put these papers on. So he'll stand very close to
4 me, and just stand there, and wait for me to finish.

5 Q Do you find it uncomfortable to have people stand that
6 close to you when you can't monitor them?

7 MR. MEYER: Wait. There's been no testimony as to
8 how close he is to her in that picture.

9 MR. DIETEL: I'd be happy to clarify.

10 BY MR. DIETEL:

11 Q How close was Mr. Coleson to you in that picture?

12 A Just a few feet away.

13 Q Do you consider Mr. Coleson to be standing over you in
14 that picture?

15 A Yes.

16 Q Do you find it uncomfortable to have somebody stand
17 over you when you can't look at them or monitor what they are
18 doing?

19 A Yes.

20 Q Thank you. Let's turn to page seven. Again, can you
21 please describe to me what it is that you're seeing in this
22 picture and to the extent you can identify who?

23 A I remember this, but I wasn't actually witnessing this
24 because I was inside the library. But this individual had come
25 out of the library as I was going in and asked me how many

1 quarters I would give him to punch the Defendant. And I told
2 them to please stop with it, you know, don't get themselves in
3 trouble, and it wasn't worth it.

4 Q So what is this a picture of --

5 A But --

6 Q -- if you could be specific?

7 A It's Ian holding his fist up towards James Cleaveland.

8 Q Is this a picture of a fight?

9 A Well, I know he got punched that day, but like I said,
10 I wasn't outside to witness it. When I came out later and
11 walked down the street, James came up to me and said, "That man
12 hit me."

13 Q Have you seen any of the Defendants get into fights
14 with members of the public?

15 A Yes.

16 Q And when have you -- who have you seen get into fights
17 with members of the public?

18 A Well, there was a -- there's been a few incidents.
19 There's this one. And this guy continued to follow us for a
20 while because he was -- Graham was wearing a Robin Hood hat and
21 this guy kept saying he was going to steal the hat off his
22 head. There was another incident down in the Wells garage with
23 Graham, and Garrett, and a group of teenagers that --

24 Q Have you seen a video of that incident?

25 A I did see that video the last time that we were here,

1 but that one, I witnessed.

2 Q Okay. Did you call the police when you saw that fight?

3 A I did.

4 Q Did you believe that there was a safety concern?

5 A I did.

6 Q These fights that you've described -- is it your
7 understanding that they relate to the public being upset with
8 what the Defendants are doing?

9 A Yeah. The one down in the garage was the -- the kids
10 didn't want to be videotaped and they had asked that --

11 MR. MEYER: Your Honor -- Your Honor, objection,
12 relevance. First of all, there's a doctrine of heckler's veto.
13 So whatever was -- the fact that, that particular point of view
14 may be unpopular and may engender whatever is not a -- is
15 certainly not a valid basis for undermining a First Amendment
16 right to expression. Secondly, whether a point of view is
17 popular or unpopular has certainly no legal bearing on the
18 First Amendment protection. Thirdly, this witness's
19 speculation as to what the public thinks or doesn't think is
20 without foundation and not relevant.

21 THE COURT: Just on the relevance issue, we're going
22 to have legal argument on the Constitutional issues in at the
23 end of the hearing, but on the relevance, what does it matter
24 whether their activities are popular or unpopular with members
25 of the public?

1 MR. DIETEL: Your Honor, respectfully, this is very
2 relevant. The reason why this is relevant is because, if the
3 parking enforcement officers encounter safety concerns above
4 and beyond what they normally are encountering doing this job.
5 That's relevant to whether or not they feel safe and secure in
6 the position.

7 And therefore, it's relevant to whether or not they
8 want to continue in the position. And therefore, it's relevant
9 to whether or not there's intentional interference with
10 contractual relations. To the extent that the Defendants can
11 create conditions where the parking enforcement officers don't
12 feel safe, that encourages them to resign.

13 MR. MEYER: Your Honor, if there is anything that can
14 better encapsulate the complete violation of Constitutional
15 rights embodied by this proceeding, it's that last answer from
16 counsel. To imply that it's okay to do something because it's
17 popular but not okay to express a point of view that's
18 unpopular because it might distract the parking enforcement
19 officers is essentially to acknowledge that this whole
20 proceeding is nothing more and nothing less than a violation of
21 Constitutional rights. But I understand the Court is reserving
22 that issue. My objection at this point is that, quite apart
23 from relevance or except in terms of as it amplifies the
24 Constitutional violation, this witness's knowledge as to what
25 the, you know, general public reaction is speculation.

1 THE COURT: Let me put it this way. If you want to
2 ask the witness what specifically took place in this incident
3 in question, that's fine, but questions about her understanding
4 of the public sentiments -- the objection is sustained as to
5 that. But what she specifically observed, that's -- I'll allow
6 that.

7 MR. DIETEL: That's perfectly fine. And if I may
8 simply clarify quickly, since Attorney Meyer had an opportunity
9 to argue --

10 THE COURT: No. I want you to move on. I don't want
11 this to be a protracted legal argument about this. Ask the
12 question.

13 MR. DIETEL: Okay.

14 BY MR. DIETEL:

15 Q Jane, if conditions exist around you when you are doing
16 your job that make you feel unsafe, regardless of why the
17 conditions exist, meaning regardless of what the motivations or
18 intentions of the parties are, if you feel unsafe when you're
19 doing your job, does that make you not want to do your job?

20 A Yes.

21 Q Thank you. And so just to be abundantly clear here, it
22 has nothing to do --

23 MR. MEYER: Wait, wait, Your Honor. This is leading.

24 MR. DIETEL: I'm sorry. I'll withdraw --

25 THE COURT: Okay. If you could, rephrase the

1 question.

2 MR. DIETEL: -- the question.

3 BY MR. DIETEL:

4 Q Let's go back to the pictures here. If you could, look
5 at page 10. And again, please describe what you're seeing here
6 and who is in the picture.

7 A This is Lin and I crossing the street on Main Street.
8 This happened to be the day that I previously was just talking
9 about, the fight that happened in the Wells garage.

10 Q Is that description above the picture correct?

11 A Yes.

12 Q Let's look at page 11. If you can, can you identify
13 what this picture is and who is in it?

14 A That's Linda, crossing the street on Main Street.

15 Q Is this the same day as the picture that we just looked
16 at, page 10?

17 A I assume so.

18 MR. MEYER: Objection, foundation. How would she
19 know?

20 MR. DIETEL: She can explain how she knows. That's
21 what I'm asking her.

22 THE WITNESS: If it's the same day, then yes. I
23 don't know if this is the same day.

24 BY MR. DIETEL:

25 Q Okay. That's fine. That's fine.

1 THE COURT: Okay.

2 BY MR. DIETEL:

3 Q Let's look at page 12. Can you describe who's in this
4 picture and what it is that you're seeing?

5 A Yeah. That's Linda and I. And we are going down
6 Church Street toward the Wells garage.

7 Q Do you know why your back is to the person taking this
8 image?

9 A Because they're behind me. It looks like I'm -- this
10 particular picture -- I was facing the other way. I was going
11 to go in another direction. And Lin had just spoken to me, so
12 I turned around to answer her.

13 Q When you say you were going to go in another direction,
14 do I understand that correctly to mean that you had to change
15 course?

16 A Yes.

17 Q And let's look at picture 13, page 13. Again, who is
18 in the picture and what is it that you see?

19 A That's Lin and I and we are in the Wells lot still
20 heading toward the Wells garage.

21 Q So if I can reference you back to page 12 that we just
22 saw, we were talking about how that image is taken from behind
23 you. Is this image taken from behind you or in front of you?

24 A In front of me.

25 Q How is it, if you recall, that the person taking the

1 picture was able to take one from behind you and then in front
2 of you?

3 A They ran down the street.

4 Q So they ran around you?

5 A Yes. They were running away from the kids that were
6 also there.

7 Q And let's look at picture 14. What is it and who is in
8 the picture?

9 A That's Lin and I and Lin has her hand up, telling
10 Garrett not to talk to her.

11 Q And let's look at picture 15. Who is in this picture
12 and what is it?

13 A This is Lin in the parking garage of Wells and --

14 MR. MEYER: You know, first of all, I thought
15 these --

16 THE WITNESS: -- that's one of the teenagers. I'm
17 not sure which one it is.

18 MR. MEYER: Objection. I believe a lot of these --
19 first of all, I think some of these pictures have already been
20 identified. Secondly, there's no foundation in terms of this
21 witness having any personal connection to this picture.

22 THE WITNESS: I was there.

23 MR. MEYER: Well, there's been no foundation yet.

24 THE COURT: I think that supplies the necessary
25 foundation.

1 MR. DIETEL: Yeah. That would --

2 THE COURT: You may proceed.

3 MR. DIETEL: -- have been my follow-up question.

4 BY MR. DIETEL:

5 Q Let's go to page 16. What's this picture, who is in
6 it, and how do you know?

7 A It's me writing a ticket. And I don't know who was
8 filming. I'm assuming this was in the wintertime. It was a
9 long time ago. So I'm not really sure.

10 Q Let's go to page 17. What's this a picture of, who is
11 in it, and how do you know?

12 A Let's see. Well, it's a picture of me walking down
13 Main Street going north, I think. James Cleaveland is in it
14 and I'm not sure of the names of the other two individuals.

15 Q You testified earlier about being followed in groups.

16 A Yes.

17 Q Is this picture characteristic of that type of
18 activity?

19 A Yes.

20 Q Let's turn to page 18. What's this a picture of, who's
21 in it, and how do you know?

22 A I'm really not sure if that's me. I'm assuming it's
23 me. On West Street, heading toward Federal Street, it looks
24 like I just crossed the street. It looks like I'm running
25 and/or walking very fast. And James Cleaveland is one of the

1 people. And I'm not sure of the identity of the other person
2 with the camera.

3 Q You testified earlier that you have been chased across
4 a street before.

5 A Uh-huh.

6 Q Is this characteristic of what you were describing?

7 A Yes.

8 Q And let's turn to page 19. Can you tell me what this
9 is a picture of, and who the people are that are in it, and how
10 you know?

11 A This is the typical Robin Hood gang and it's James
12 Cleaveland, Kate Ager, Garrett Ean, Ian Bernard, and Graham
13 Coleson.

14 Q Have each of these individuals followed you on your
15 job?

16 A Yes.

17 Q Have each of these individuals taken actions that
18 prevent you from doing your job?

19 A Yes.

20 MR. DIETEL: Your Honor, I believe that every picture
21 within this document has now been identified by one of our
22 witnesses. I'd like to enter it as a full exhibit.

23 THE COURT: Any objection?

24 MR. MEYER: I have no objection to the pictures. I
25 do object to the captions.

1 THE COURT: I agree. The exhibit, with the exception
2 of the caption, in all other respects can be marked as a full
3 exhibit.

4 (Plaintiff's Exhibit 7 received)

5 MR. DIETEL: Just to clarify, when we're talking
6 about the caption, there are -- and if I may describe what
7 we're seeing, if we were to look at the first picture, page
8 one --

9 THE COURT: I mean both the source and description
10 parts of that. There's been testimony with respect to a number
11 of them bearing a description. It's repetitive to have the
12 additional evidence regarding the description, the text, come
13 in, but in all other respects, it's a full exhibit.

14 MR. DIETEL: Thank you, Your Honor.

15 BY MR. DIETEL:

16 Q Have you ever been followed on any of your breaks?

17 A I have -- when I used to take a break in my car, I've
18 had them sit outside my car before, waiting for me. When you
19 go into the library or City Hall to use the restroom, they
20 follow me and wait.

21 Q Now, your break -- is that your own time or are you
22 expected to do things on behalf of the City during that period
23 of time?

24 A That's my own time.

25 Q Do you ticket any meters during your breaks?

1 A No.

2 Q Do you patrol the streets during your breaks?

3 A No.

4 Q Have you ever been followed into any buildings?

5 A Yes.

6 Q Who has followed you into buildings?

7 A They've all at one time or another have followed me
8 either in or out of the library or City Hall. And there was
9 one a few Saturdays ago where I go into the post office to pick
10 up the mail for the police department and James Cleaveland went
11 into the building as I did. He went over to get stamps. But
12 it was when the building was closed. The lobby was empty. So
13 it was very intimidating to have him follow me in the building.

14 Q Are there any parking meters inside buildings?

15 A No.

16 Q Has anybody ever told you that they'd help you -- or
17 let me rephrase. Have any of the Defendants ever told you that
18 they would help you find another job or words to that effect?

19 A Yes.

20 Q And who has done that?

21 A Ian Bernard, James Cleaveland.

22 Q Is there anything else that they've done to you that we
23 haven't discussed this morning?

24 A Just the name-calling, calling me a liar and a thief.
25 Ian Bernard at one point asked me how I slept at night from --

1 and they've said to me that I hold cars hostage, and have said
2 to me, "You can't even -- you can't actually like your job, can
3 you, with the things that you do?"

4 Q In addition to the Defendants encouraging you to quit
5 your job, has Ian Freeman ever told you he'll help you get a
6 different job?

7 A Yes.

8 Q Has anybody else ever told you that?

9 A I don't believe so.

10 Q Have you ever asked the Defendants to stop this?

11 A Yes.

12 Q And what have you asked them to do?

13 A I've asked them to go down the street, and fill meters,
14 and to leave me alone.

15 Q What happens when you ask them to stop?

16 A They say they have to follow me to make sure I don't
17 write any tickets.

18 Q We can go back to something you just said a question
19 back. If I recall correctly, you said you asked them to go
20 down the street and fill meters.

21 A To go down the street --

22 Q Down the street.

23 A -- downtown.

24 Q Are you asking them that so you can get distance from
25 them?

1 A Yes. I don't care if they fill meters. They just need
2 to do it away from me.

3 Q How long has this been going on?

4 A A year. I had three months of normalcy of my job and
5 then, in December, they came out and they haven't been missing
6 since.

7 Q Okay. Do you see any signs of it slowing down?

8 A No.

9 Q Do you see signs of it increasing?

10 A Yeah.

11 Q On the first day of this hearing, we heard testimony
12 from Mary Kimmel about the stress that this has caused you.
13 Was her description accurate?

14 A Yes.

15 Q Have you tried to avoid them when you're doing your
16 job?

17 A Yes.

18 Q Why do you do that?

19 A Because when they are around me like that, I have that
20 feeling of not being able to get away. And so I have had times
21 where I've hid behind dumpsters, and in doorways, and gone
22 through alleys, and behind buildings just to try to avoid them.

23 Q How does it make you feel hiding behind a dumpster?

24 A Not very good.

25 Q Before all this started -- and by all this, I mean the

1 activities we just described -- did you like going into work?

2 A Yes.

3 Q Do you like going into work now?

4 A I still enjoy my -- try to enjoy my job. I am very
5 proud of what I do, but it's harder to appreciate.

6 Q When you say you are proud of your job, I take it
7 that's a general feeling you have about your job.

8 A Uh-huh.

9 Q What about on a daily basis? Do you like it?

10 A Not right now.

11 Q Do you feel safe when you're being followed like this
12 with these activities we've described?

13 A No. And it's one reason why I have refused to work
14 Saturdays, because with James Cleaveland and Graham Coleson
15 being out, I don't feel safe.

16 Q So tell me about that. You said you refused to work
17 Saturdays. Can you explain?

18 A I've changed my schedule. I have -- Saturdays is a big
19 day for them to be out. They start from the minute I get out
20 on the streets at 8:00 in the morning and they're there until I
21 leave. And it just got to be too much to -- it gets to the
22 point where, at lunch time, I'll go to the police station to
23 eat. And they'll sit in the parking lot and wait for me to
24 leave again so that they can follow my car.

25 Q Let me ask you a question. I'm looking for your

1 impressions. DO you perceive their actions as being harassing?

2 A Yes.

3 Q Do you perceive their actions as being intimidating?

4 A Yes.

5 Q Do you perceive their actions as preventing you from
6 being able to do your job?

7 A Yes.

8 Q Do you perceive their actions as interfering with your
9 job?

10 A Yes.

11 Q Do the activities we've described this morning, those
12 activities, caused those feelings that we've just referred to?

13 A Yes.

14 Q Have the activities we've discussed made you think
15 about quitting?

16 A Yes.

17 Q Can you talk about that a little bit?

18 A Just recently, I've started to go onto the State of New
19 Hampshire website and City of Keene website to find another
20 position.

21 Q One more question -- if you were looking for a job now,
22 would you consider taking this position in light of the
23 activities that have been described?

24 A No.

25 MR. DIETEL: Thank you. No further questions.

1 THE COURT: Cross-examination?

2 MR. MEYER: Your Honor, the witness made reference to
3 her logs and notes. Could I have a chance to read them,
4 please?

5 MR. BAUER: Sorry. I didn't hear that.

6 THE COURT: Okay.

7 MR. MEYER: Yes. The witness made reference to her
8 logs and notes. And I'd like a chance to review them.

9 THE COURT: Okay. There was a -- I can't recall the
10 exact question, but there was a question and I heard some
11 ruffling of papers next to me in the witness box. So do you
12 have that log that's been discussed? Is there any objection?

13 MR. BAUER: Well, the reason is attorney-client
14 privilege that I'd like to suggest to Your Honor.

15 THE COURT: I agree, but if she's referring to
16 material in the course of her testimony, she went up there to
17 the stand. She's brought some documents with her to the stand.
18 If she's referencing them during her testimony --

19 MR. BAUER: I don't disagree. I would just like a
20 chance to take a look at the document.

21 MR. DIETEL: And if I can -- if I may also add --

22 THE COURT: Why don't we just -- I'm sorry?

23 MR. DIETEL: If I may also add --

24 THE COURT: Yes.

25 MR. DIETEL: -- just like any client communication,

1 client communications are privileged. If she refers to her
2 notes about a client communication, that is a privileged piece
3 of information and it's not disclose-able.

4 THE COURT: Not if she's referring to it while she's
5 testifying. I disagree and my ruling is, to the extent that
6 she was referring to that in the course of answering questions
7 as a guide to assist her in answering questions, I'm going to
8 permit Defense counsel to look at them. I'm ruling against you
9 on that issue.

10 MR. DIETEL: Well, if I may add, Your Honor, to
11 clarify, with respect to whatever it was that she referenced --
12 correct? If this were a dictionary and she looked up a single
13 word, it wouldn't be entitled to the entire dictionary.

14 THE COURT: Okay.

15 MR. MEYER: Your Honor --

16 THE COURT: Let's do it this way. Attorney Meyer,
17 would you -- if there is this -- ma'am, what document -- when
18 you were referring to that question, what specific document
19 were you referencing?

20 THE WITNESS: We keep a log in our computer of when
21 we're dealing with the Robin Hoods. And we come in every day
22 and do documentation. And this is all of our experiences with
23 them.

24 MR. BAUER: Your Honor, I don't think this is going
25 to be a problem, if I could just take a look at the document.

1 THE COURT: Absolutely.

2 MR. BAUER: Okay. And just for the record, if I may,
3 this is an activity log that was kept at the direct -- at the
4 request, not necessarily the direction, of counsel, both
5 Attorney Tom Mullins and myself. And it goes from March 13th,
6 2013 through September 28th, 2013. And it incorporates
7 comments by all three PEOs that you've heard from over the
8 course of this matter. And I'd be happy to have it marked as
9 an exhibit.

10 MR. MEYER: Your Honor, before I can take a position
11 on whether it should be marked as an exhibit or not, I need to
12 review it.

13 THE COURT: Well, we can -- we should mark it as
14 an -- if they're offering it for identification purposes --

15 MR. MEYER: If we're going to mark it for ID, I would
16 agree, yes.

17 THE COURT: -- I think it should be marked.

18 MR. MEYER: Right, right. Your Honor, because it
19 looks like -- I don't know how many pages it is. It looks like
20 it's 20, 30 pages, whatever. Rather than spending the Court's
21 time reading it, I guess what I'd like to do is, maybe we start
22 with my cross-examination of this witness. We're moving
23 towards the lunch break. And then, during the lunch break, we
24 can look at it.

25 THE COURT: I agree. Why don't we start? And then,

1 when you're ready to take a -- at a logical point, some point
2 before 12:30. I wouldn't want to go beyond 12:30. But then
3 you can review it --

4 MR. MEYER: Thank you.

5 THE COURT: -- at the break.

6 CROSS-EXAMINATION

7 BY MR. MEYER:

8 Q Ms. McDermott, my name is Jon Meyer. You've been, I
9 understand, a parking enforcement officer for one year; is that
10 correct?

11 A Correct.

12 Q And what are the primary duties of your position?

13 A To write tickets for parking violations, expired
14 meters, reserved spaces, handicap spaces, emptying the meters,
15 bringing the money to City Hall.

16 Q And have you performed those duties during the entire
17 period of your one year of employment?

18 A Yes.

19 Q And have you performed them competently?

20 A Yes.

21 UNIDENTIFIED SPEAKER: What's your competence?

22 BY MR. MEYER:

23 Q So the fact that you made contact referencing your
24 testimony having your work interfered with, you still did your
25 work, correct? And you've done it consistently for a year, day

1 in, day out?

2 A To the best of my ability, yes.

3 Q Okay. Have your supervisors ever complained that you
4 were not doing the job competently?

5 A No.

6 Q You have a written job description, correct?

7 A Correct.

8 Q And I take it that job description is --

9 MR. MEYER: Your Honor, may I approach the witness?

10 THE COURT: Certainly.

11 MR. MEYER: Your Honor, the document I'm questioning
12 the witness on is the parking enforcement officer job
13 description, revision date April 20th, 2013. It's attached to
14 the affidavits of the witnesses. It's part of the petition.
15 So I assume that it's already part of the court record. If
16 not --

17 THE COURT: It is part of it, if that's the document.
18 It is part of the court record, yes.

19 BY MR. MEYER:

20 Q Ms. McDermott, have you seen this document before?

21 A Yes.

22 Q Now, is that an accurate -- and you're welcome to read
23 it -- description of your job duties?

24 A Yes.

25 Q All right. If I can draw your attention to under the

1 category "essential duties and responsibilities" on page two --
2 and it's underlined here, but not in the original. Am I
3 reading correctly where it says that one of your essential
4 duties is to endure verbal and mental abuse when confronted
5 with the hostile views and opinions of the public and other
6 individuals often encountered in an antagonistic environment?

7 A Yes.

8 Q Okay. And you were aware of that job duty when you
9 took the position; is that correct?

10 A Yes.

11 Q Now, has the City of Keene given you any type of
12 training or assistance in meeting those standards?

13 A No.

14 Q Have you ever requested that?

15 A No.

16 Q Do you agree that enduring verbal and mental abuse when
17 confronted with the hostile views and opinions of the public
18 and other individuals often encountered in an antagonistic
19 environment is an essential function of your job duties?

20 A Yes.

21 Q You were asked some questions earlier about a video in
22 which Mr. Eyre was seen speaking to you in the parking lot. I
23 do not believe, at the time, that you were asked to identify
24 the distance between yourself and Mr. Eyre. Do you have a
25 recollection of what that is?

1 A I didn't hear what you said.

2 Q I do not believe you were asked during your direct
3 examination to identify the distance between yourself and
4 Mr. Eyre. So for the record, when he was speaking to you from
5 the parking lot, in the parking lot, how far away was he?

6 A Maybe three or four feet away.

7 Q That was three or four feet?

8 A Give or take, because I was standing by the door of my
9 car and he was standing by the meter. So I'm assuming that was
10 probably three or four, maybe even five feet away.

11 Q So he was standing by the meter and you were by the
12 front door of your car.

13 A Yes.

14 Q And in your opinion, is that an appropriate or
15 inappropriate distance by which you converse with somebody?

16 A In which to converse with somebody, that was
17 appropriate.

18 Q Now, you were earlier asked to opine about --
19 Plaintiff's counsel came up to within what was described as
20 being arm's length from you and asked you if that was an
21 uncomfortable distance. Now, is it fair to say that he was
22 approximately three or four feet away from you?

23 A That's more like two feet.

24 Q Well --

25 A I don't know. I'm not good at measurements. I'm just

1 guessing.

2 Q But is that inappropriate? When he was speaking to you
3 and asking you questions, was he standing too close to you or
4 were you comfortable with just this --

5 A The arm's length -- if somebody is talking to you and
6 they're asking me a question or something, that would be fine
7 because it's only going to be a second. But if they're
8 antagonizing me, and yelling at me, or calling me names, or
9 sticking a video camera in my face, that is too close.

10 Q Wow. So you're saying that the distance which is too
11 -- the distances that -- it's not that they were too close to
12 you intrinsically. You felt that they were too close to you
13 given what they were doing. Is that a --

14 A Exactly.

15 Q -- summary of your testimony? Now, just to follow up
16 on that point, it sounds like a lot of your work occurs in the
17 area of downtown Keene; is that correct?

18 A Yes.

19 Q And my more limited experience with downtown Keene is,
20 it can be fairly crowded.

21 A Uh-huh.

22 Q And there are --

23 THE COURT: You have to say --

24 THE WITNESS: Yes. Yes.

25 ///

1 BY MR. MEYER:

2 Q Yes. And isn't it fair to say, if you're walking up
3 and down the sidewalk, there routinely are people following
4 close behind you?

5 A Yes.

6 Q It's not an unusual event?

7 A No.

8 Q And in fact, there may be people close in front of you
9 as well, correct?

10 A Yes.

11 Q I mean, there are crowds there, correct?

12 A Uh-huh. Yes.

13 Q If Mr. Eyre had not been talking to you about ransom
14 notes or stealing money, but instead had been asking you
15 directions as to how to get to the next town over, would you
16 have regarded him as being too close to you?

17 A No. And I think I have already said he wasn't too
18 close to me. He was at a comfortable distance away, even
19 considering what he was saying and doing.

20 Q Since there was -- you had no problem, at least in that
21 interaction, with the distance he was to you?

22 A Correct.

23 Q So to understand, you described that distance as being
24 approximately five feet; is that right?

25 A Maybe five feet, yeah.

1 Q Okay. So five feet is for you a comfortable distance
2 even when the person is making hostile statements, but two feet
3 is too close?

4 A Yes.

5 Q Now, is it fair to say that, then, in downtown Keene,
6 at least, it's difficult not to, from time to time, be within
7 two feet of somebody?

8 A Well, yeah, if you're passing by somebody --

9 Q Right.

10 A -- in a -- but you're limiting that closeness to a
11 short time because you're passing somebody or you're walking in
12 the opposite direction of somebody that's walking.

13 Q Okay. And that's going to be my next question, which
14 is -- you delineate it based upon how -- not just the distance,
15 but also the timeframe, correct?

16 A Correct.

17 Q So how long -- if you're two feet away from somebody,
18 how long is too long?

19 A If they're screaming at you and spitting on you, that's
20 too long.

21 Q But screaming at you or spitting at you --

22 A You know, when they're talking and they're spitting on
23 you because they're too close.

24 Q Well, does it matter what they're saying?

25 A Well, of course it does.

1 Q I mean, if somebody comes up to you and asks you for
2 directions -- and I take it that happens to you from time to
3 time, correct?

4 A Uh-huh.

5 Q Because you're wearing a uniform --

6 A Yes.

7 Q And is it not -- is it unusual for someone to come up
8 within two feet of you and ask you for directions?

9 A Sometimes, people will come up to me and ask me
10 directions. And I'll even take a step back because they come
11 into your personal space.

12 Q But they may come up to within two feet of you,
13 correct?

14 A Uh-huh.

15 Q Now, you were asked a number of questions relating to
16 feelings of safety. What equipment do you carry with you?

17 A My radio and my telephone.

18 Q And tell me how you use the radio.

19 A I use it to contact the dispatcher at the police
20 department.

21 Q Okay. Is it, like, essentially a walkie-talkie?

22 A Yes.

23 Q So just like the Defendants have those type of
24 communications and walkie-talkies, so do you.

25 A Uh-huh. And that's what I used the day that they were

1 in their fight.

2 Q Okay.

3 A I used the walkie-talkie.

4 Q So now, can you only contact dispatch or can you
5 contact individual officers?

6 A You can ask for the individual officer to --

7 Q Well, is it fair to say that you're plugged into a
8 frequency so that your communication is heard by other officers
9 as well or not?

10 A Yes.

11 Q Okay. Now, is it fair to say that, typically, there
12 are officers patrolling downtown Keene?

13 A Yes.

14 Q And how many?

15 A I don't know. Well, through the course of the day,
16 they drive through --

17 THE COURT: Ma'am, do you have something in your
18 mouth?

19 THE WITNESS: Yes. I do. I have a cough drop.

20 THE COURT: Okay. If you would, just not while
21 you're testifying -- if you would just put that in the tissue,
22 thank you. Please continue.

23 MR. MEYER: Thank you.

24 THE WITNESS: Throughout the day, they drive through.
25 And then there's usually a foot patrol at different times of

1 the day. And you can hear on your radio who is going down to
2 foot patrol.

3 BY MR. MEYER:

4 Q All right. We've had maps, several maps, admitted as
5 exhibits, of downtown Keene. I take it the area that you -- is
6 it fair to say the area you patrol is not patrol, but the area
7 where you do your duties is a fairly small area geographically?

8 A Yeah. It is, but it's spread out. I mean, there's
9 other parts of it that are on the side streets, and back
10 parking lots, and stuff.

11 Q Is it more than a mile from one end to the other?

12 A I believe it would be.

13 Q Two miles, more than two miles --

14 A Probably two miles at most from one -- I really don't
15 know.

16 Q And there's always going to be a fairly significant
17 Keene Police Department presence, correct?

18 A Yes.

19 Q And any time a situation that occurs that is
20 potentially threatening to your safety, you can always use your
21 walkie-talkie to contact the Keene Police Department, correct?

22 A Correct.

23 Q Now, I believe that you've testified to two occasions
24 in which you contacted the Keene Police Department. One of
25 them involved, I believe, somebody assaulting Mr. Cleaveland;

1 is that correct?

2 A Correct.

3 Q And one of them involving this other scenario, where --

4 A No, no, no. No. I didn't contact the police
5 department when he got assaulted because I asked him if he was
6 okay and he said yes.

7 Q So how many times have you contacted the Keene Police
8 Department while on patrol regarding the Defendants?

9 A I contacted them when there was the fight in Wells
10 garage.

11 Q Okay.

12 A I contacted them when James Cleaveland blocked my way
13 and wouldn't let me pass.

14 Q Any other times?

15 A And I have -- they have contacted me more than to --

16 Q No. Any other times that you've contacted them?

17 A There was another time when Garrett was walking with me
18 and they had a friend that introduced himself as a friend from
19 Wisconsin, I guess, or something like that. And he had a gun
20 on his side. And I didn't know who the person was, or his
21 mental capacity, or anything and I did radio the police at that
22 time.

23 Q Any other times?

24 A Not that I can recall.

25 Q Okay. So now, the fight was not something that was

1 initiated by any of the Defendants, correct?

2 A Not really, no.

3 Q Okay. And then there was one instance where you felt
4 that Mr. Cleaveland was blocking you, correct?

5 A Yes.

6 Q And then there was the one instance where you said that
7 another gentleman, another unidentified individual had a -- was
8 carrying a weapon?

9 A Yes.

10 Q And those are the only three times when you have
11 contacted the Keene Police Department because of concerns about
12 your safety; is that correct?

13 A I believe so.

14 Q Now, you testified that Mr. Coleson grabbed your arm at
15 some point when you were trying to remove a card from a
16 windshield wiper. Now, is removing -- and I take it the card
17 we're talking about is a card that says "Robin Hood" or
18 something of that nature?

19 A Uh-huh.

20 Q Is removing cards from windshield wipers part of your
21 job duties?

22 A No.

23 Q Why did you do that?

24 A I just had enough that day of them harassing me and I
25 figured I'd turn around and harass them for a little while.

1 Q Okay. Fair enough. I take it that you haven't done
2 that since then?

3 A No.

4 Q And I take it that, that engagement between you and
5 Mr. Coleson was resolved peacefully when he withdrew his arm
6 when you told him to?

7 A Yes.

8 Q And you didn't call the police department in that
9 situation?

10 A I did not. I did file a report later on, but I didn't
11 call them at that moment.

12 Q Now, you also described a scenario where I think you
13 went -- Mr. Cleaveland followed you in a parking lot and
14 accused you of being a thief; is that correct?

15 A I don't know exactly where it was. This is something
16 that him and, when Ian Bernard was around, he'd say the same
17 thing. I mean, it's just repetitive stuff that they would say.

18 Q But I think the particular context in which you gave
19 the testimony was that you then talked to a Keene police
20 officer about that.

21 A I'm not recalling what -- the one when he was yelling
22 at me?

23 Q Yeah. What -- I believe your testimony was -- it
24 started that Mr. Cleaveland was unhappy because you were
25 ticketing cars at a funeral. And --

1 A Well, he told me they were at a funeral while I would
2 have no way of knowing that. Yes.

3 Q Well, right. And anyway, then you went towards the
4 parking lot. He followed you --

5 A Yes.

6 Q -- called you a thief, and then you contacted the
7 police department?

8 A I didn't contact on my radio. I went to the police
9 department because --

10 Q Right.

11 A -- I was going for lunch and I talked to them while I
12 was there.

13 Q I understand. It wasn't a -- again, at some point
14 later, you had a conversation with a police officer about this?

15 A Correct.

16 Q Okay. Who was the police officer you talked to?

17 A You know, I don't recall. I don't recall which one it
18 was that I spoke with.

19 Q And do you remember what the conversation was?

20 A I just told him that he was shouting at me, and that I
21 had, had enough, and I just couldn't take it anymore, that type
22 of behavior. And he said, "The next time, hold your microphone
23 open so that we can hear what he's saying."

24 Q Have you ever done that?

25 A I did it the day of the fight.

1 Q So somewhere, you have a recording of what was said?

2 A I guess they do, yeah. The dispatcher would probably.

3 Q So you gave that to the City?

4 A But -- yeah. It was just the noise, and the commotion,
5 and the yelling, and the hollering from the teenagers and the
6 Defendants.

7 Q Has there been any other time that you've used your
8 microphone?

9 A I mean, I've used it to -- I've had citizens come up to
10 me and need a police officer. And I've called.

11 Q Now, just to understand, you said earlier that you had
12 a walkie-talkie. Are you also equipped with a video camera?

13 A No.

14 Q Where does the microphone come in?

15 A The radio has the microphone attached.

16 Q The radio has a microphone.

17 A I have it. I wear it on my shoulder.

18 Q So you can record on there as well as --

19 THE COURT: A little bit talking over each other, if
20 we could just let the -- just if you could both try harder, if
21 you could, just let the question be finished before you answer
22 and if you could, let the answer finish before you pose the
23 next question. Please proceed.

24 MR. MEYER: I'm sorry, Your Honor.

25 ///

1 BY MR. MEYER:

2 Q So the microphone, am I correct in understanding, is
3 part of your walkie-talkie?

4 A Correct.

5 Q But it does give you the capacity to record?

6 A No.

7 Q You can't record.

8 A No. I assume dispatch records everything that goes
9 over the radio, but I don't record anything.

10 Q So aside from that one incident in the parking garage,
11 have you had any other occasion to use your microphone because
12 you thought things that were being said were inappropriate?

13 A No.

14 Q Now, you said that you were being -- I think, at one
15 point, you said in your direct examination that you were being
16 chased. What do you mean by being chased?

17 A Well, in the earlier days, when I was first being
18 followed, I would run across the street, usually in the
19 direction of wherever my vehicle was, and I would run, and they
20 would run and follow me. They would chase me.

21 Q But you -- well, you were running and they were trying
22 to keep up with you. Is that a fair statement?

23 A Yes.

24 Q And there was some statement about using a crosswalk or
25 not using a crosswalk. Is it my assumption -- do I correctly

1 assume that, when you're on duty, you use crosswalks?

2 A We go across the crosswalk, yes.

3 Q I mean, you wouldn't go across the road without using a
4 crosswalk.

5 A I have at times to get away from them. I have checked
6 the traffic, made sure I had a clear path, and I have run
7 across the street without using the crosswalk.

8 Q Now, you've testified that other people, in addition to
9 the six Defendants, have also engaged in Robin Hood activity.

10 A Yes.

11 Q How many other people?

12 A It's numerous.

13 Q What does numerous mean?

14 A But people that I'm not familiar with, so --

15 Q Well, give me a number. Can you ask -- if you can, I
16 don't want you to guess. Can you estimate? If you can, I
17 don't want you to guess. Can you estimate?

18 A That have actually done Robin Hooding, maybe five or
19 six. And on different days, there's people I've never seen
20 before that still come down and do Robin Hooding. And I know
21 that they're Robin Hooders because they have the cards and they
22 leave them on cars.

23 Q So is it fair to say, then, even if the named
24 Defendants were enjoined from doing something, rather, there'd
25 still be a number of other people who would potentially be able

1 to engage in the same activity?

2 A They could, but those particular individuals don't
3 usually follow us. They just go down and fill the meters down
4 away from us.

5 Q Now, you also cited -- you were asked whether you were
6 ever followed when you were not -- to a building. And you
7 described Mr. Cleaveland going into the post office; is that
8 correct?

9 A Yes.

10 Q But do I correctly understand he was going to the post
11 office to get stamps?

12 A He went in, and he followed me in the building, and
13 then he went over to the stamp machine, I guess. I'm assuming
14 that's what he was doing. He was over at that machine. So I'm
15 assuming he was buying stamps.

16 Q So isn't it at least possible that he went into the
17 post office for reasons unrelated to you?

18 A Well, he probably did, but the fact was, he was
19 following me and he decided to --

20 Q But he was behind you, correct?

21 A He was following me in his vehicle. He had been
22 following me all around the city that day. And I pulled into
23 the post office and he followed me.

24 Q Now, were you on duty that day or not?

25 A Yes.

1 Q And you would use your vehicle to go to one part in the
2 area to another, correct?

3 A Sometimes, I do, not all the time.

4 Q But on that day, that's what you're using your vehicle
5 for?

6 A Yes. I believe I was collecting what we call the red
7 boxes. And I was using the vehicle to go around all the red
8 boxes to collect the tickets, paid tickets.

9 MR. MEYER: Your Honor, I'd like to have the
10 opportunity to look at the logs and perhaps this would be a
11 good opportunity.

12 THE COURT: Okay. We'll take our lunch break now and
13 we'll reconvene at 1:15, if I could just see counsel at the
14 bench first before we -- but we'll -- you can step down, ma'am.
15 Thank you.

16 THE WITNESS: Thank you.

17 THE COURT: We'll reconvene at 1:15. All right. If
18 I could just see counsel briefly, it's really just to talk
19 about scheduling.

20 (Sidebar begins at 12:20 p.m.)

21 THE COURT: I'm just trying to get a sense of --

22 MR. MEYER: Uh-huh.

23 THE COURT: I know. You raised my expectations and
24 hopes probably through much earlier in the day when you said
25 there was a possibility of finishing. You know, what I wanted

1 to do is just to make sure that we have time for Mr.
2 Cleaveland's testimony. And I don't know if you have any
3 additional witnesses after this witness.

4 MR. BAUER: The answer is yes. We have one more
5 witness and we have some witnesses who are some of the
6 Defendants.

7 THE COURT: Okay.

8 MR. BAUER: If Jon could tell me who he's going to
9 put on, then I could tell you who I will put on or cross-.

10 MR. MEYER: Well, you told me you wanted -- as I
11 recall it, you want to question Mr. Cleaveland, Mr. Coleson,
12 Mister --

13 MR. BAUER: Freeman?

14 MR. MEYER: -- Freeman, so basically all, Mister --

15 MR. BAUER: And Ian?

16 MR. MEYER: So four of the six are going to testify.
17 The fifth one isn't here.

18 MR. BAUER: Well, you're putting Cleaveland on.

19 THE COURT: So you basically --

20 MR. BAUER: It's limited testimony.

21 THE COURT: Okay.

22 MR. MEYER: No. I'm not complaining. I'm just
23 saying that, except for Kate, I mean, he'll probably want to
24 testify just so she doesn't feel stigmatized by being left out
25 of this.

1 THE COURT: I'm sure it won't ruin her day if --

2 MR. MEYER: Well, you'd be surprised, Your Honor.

3 So --

4 THE COURT: This is the first lawsuit, I think, where
5 Defendants are chomping at the bit to -- potential Defendants
6 are chomping at the bit to be involved.

7 MR. MEYER: I think that's -- that's the way I'm
8 feeling, too. So Your Honor, realistically, I don't -- how
9 long is your next witness going to be?

10 MR. BAUER: Twenty minutes.

11 THE COURT: Okay. Okay.

12 MR. BAUER: Fifteen minutes.

13 THE COURT: So we could -- I just want to make sure I
14 didn't (indiscernible) with Mr. Cleaveland.

15 MR. MEYER: Cleaveland will get on --

16 MR. BAUER: We'll finish Mr. Cleaveland.

17 MR. MEYER: Yeah. We'll get Cleaveland on here.

18 I've been -- I mean, I think -- but I don't think realistically
19 we'll --

20 MR. BAUER: No. I don't --

21 THE COURT: I realized that probably about two and a
22 half hours ago. So we'll take that break. Take a look at the
23 log during --

24 MR. MEYER: Okay. With regard to --- could we just
25 address --

1 THE COURT: Yeah.

2 MR. MEYER: -- the argument issue?

3 THE COURT: Yes.

4 MR. BAUER: I mean, I don't think that's going to
5 happen today, if that's --

6 THE COURT: No. I understand.

7 MR. BAUER: Okay. And secondly, do you really want
8 oral argument or would you like something in writing?

9 THE COURT: Well, you've got -- first of all, we've
10 gotten -- I mean, both sides have already submitted detailed
11 arguments.

12 MR. BAUER: Right.

13 MR. MEYER: So it's not like -- but I mean, in my
14 mind, as the testimony has gone on and as I've had more of a
15 chance to think through these issues, they've been more -- I
16 mean, I definitely would like the opportunity to oral argue. I
17 think the issues in this case are very important and some of
18 them are complex. And I think that oral argument would be
19 important and useful.

20 MR. BAUER: I don't disagree in terms of the
21 complexity, but it makes, from my perspective, sense for us to
22 think about what we're going to say before we get on our feet
23 after two days of testimony.

24 MR. MEYER: Well, I've been doing it for the last
25 month. But I mean, I don't see why -- I mean, if you want to,

1 if you want an opportunity to further brief this after oral
2 argument tomorrow, I don't know that I would necessarily object
3 to that, but I would like the opportunity for oral argument at
4 some point.

5 THE COURT: Let me put it this way. I would like to
6 have argument. And my concern is -- and we can talk about
7 leave to submit additional memos after that, but I would like
8 the opportunity to, particular while the testimony is fresh, to
9 -- it doesn't have to be very lengthy, but I would like to have
10 some arguments. And I may have some questions --

11 MR. BAUER: Uh-huh.

12 THE COURT: -- for counsel during that argument.

13 MR. BAUER: Can we agree on a timeframe in ten
14 minutes or something like that?

15 MR. MEYER: No. I don't (indiscernible) any
16 timeframe. I think it's up to --

17 MR. BAUER: Well, the Supremes give you 15 minutes,
18 so.

19 MR. MEYER: Well, wait. Wait, wait, wait. First of
20 all --

21 MR. BAUER: I mean, it's --

22 MR. MEYER: First of all -- I mean, look. I mean, if
23 at any point the Judge feels the argument is going too long and
24 is not helpful, he will certainly let us know. And this is
25 obviously not going to be a marathon argument and I don't --

1 but I suspect, as the Court said, the Court may have some
2 questions. I don't know how long it's going to take to answer.
3 I don't see when we -- the evidentiary part of this has not
4 been limited in terms of timeframe. The oral argument part of
5 it, which is going to be a tiny fraction of the evidentiary
6 part of it, is the reason to look at that.

7 THE COURT: I agree, you know. I don't expect hours
8 of argument on this. I would think probably, you know, this
9 would be closer to a half an hour, but I don't want to put
10 artificial constraints on that. I'd rather give both sides --
11 I mean, this is a matter in which both sides have put a fair
12 amount of opportunity and thought into -- these are serious
13 issues and I want to make sure that I give both sides of you a
14 full opportunity within reason. And the constraints of -- this
15 can't become the Robin Hood court, you know. We need to at
16 some point wrap this up.

17 So I do think that things are moving along fine. And
18 we have tomorrow just for planning purposes. I think we're
19 going to start at 10:00 a.m. because there's some criminal
20 final pretrials that I need to address. In the middle of the
21 day, I have drug court responsibilities. But I think we can
22 wrap this up. But if we -- and if it turns out we reach --
23 it's 3:45 tomorrow, you know, I think we'll address it then.
24 But I think we're on track.

25 MR. BAUER: Who do you see as starting off this oral

1 argument? You know, I don't know whether this is part of the
2 motion to dismiss or --

3 THE COURT: This is your -- this is the City's
4 petition for --

5 MR. MEYER: Okay.

6 THE COURT: -- preliminary injunction. I think the
7 City -- in the first instance, I would take -- I think you
8 would address that. And I agree. People don't need to repeat
9 the arguments that are set forth in their pleadings. I'm going
10 to look at those very thoroughly. But I think, in light of the
11 testimony and, now, I will say it's very -- it's an interesting
12 case on a lot of levels. It's been well presented by both
13 sides.

14 And you know, I appreciate having skilled counsel
15 involved in this. It makes things much easier. So don't feel
16 you need to restate arguments that are set forth in the motion
17 for preliminary injunction or in, you know, any of the further
18 pleadings. But if you could kind of summarize your legal
19 positions, then I may have some questions for you.

20 MR. MEYER: Well, of course, but Charles's question
21 was another point, which is, what are we arguing about?

22 MR. BAUER: Right.

23 MR. MEYER: I mean, are we arguing the motion to
24 dismiss or are we arguing the preliminary injunction?

25 THE COURT: Both.

1 MR. MEYER: I gather, yes, then --

2 THE COURT: Yes, yes, yes. Yes, yes, because I would
3 think that I, probably first in terms of how I will address
4 these, won't even get to the injunction request if I grant the
5 motion to dismiss. But if I deny the motion to dismiss, then
6 I'd like to, you know -- then we're talking about the scope of
7 injunctive relief. Then I'd like to have some argument on both
8 of those things.

9 MR. BAUER: There has been a civil action filed and I
10 don't know whether you're aware of that.

11 THE COURT: I am aware of it. I don't know if you've
12 had an opportunity to respond to that --

13 MR. BAUER: Well, I've read it. I haven't had time
14 to respond to it yet.

15 THE COURT: Well, how we want to proceed on that, we
16 can deal with. Other than the fact that it has been filed, I
17 haven't gone through it to compare the differences between the
18 allegations and the prayers for relief on one versus the other.

19 MR. BAUER: And we will be moving to consolidate the
20 two.

21 THE COURT: And I thought that might be the case.

22 MR. BAUER: Okay.

23 MR. MEYER: Okay.

24 THE COURT: Yeah. I'll see you back -- I know it's
25 not a lot of time, but I really do want to keep this thing

1 moving along, so 1:15 if we can. Thank you.

2 (Sidebar ends at 12:28 p.m.)

3 (Recess at 12:28 p.m., recommencing at 1:18 p.m.)

4 THE COURT: Yes. You would resume the stand. Thank
5 you.

6 Attorney Meyer?

7 MR. MEYER: Thank you.

8 JANE MCDERMOTT, PLAINTIFF'S WITNESS, PREVIOUSLY SWORN

9 CROSS-EXAMINATION CONTINUED

10 BY MR. MEYER:

11 Q Ms. McDermott, you have testified about verbal
12 exchanges you've had with some of the Defendants in which they
13 were critical of the job you were doing and of the parking
14 enforcement in general. Isn't it also true that you've had a
15 number of exchanges with them which have been friendly and even
16 humorous?

17 A Yes.

18 Q So the ones that you're outlining or essentially being
19 asked about are the ones that have been hostile, but there are
20 many others that haven't been hostile or critical, correct?

21 A There's one other that hasn't been hostile.

22 Q Pardon?

23 A Just one that hasn't been hostile.

24 Q So you only got -- you had one conversation with them
25 that was --

1 A No, one person. There's one person in the group that I
2 can have conversations with.

3 Q And who is that?

4 A Garrett.

5 Q And what type of conversations have you had with them?

6 A We've had conversations about religion, and
7 videotaping, and I think some political conversation?

8 A And in your opinion, have those conversations
9 interfered with your doing your work?

10 A Well, I'm still being interfered with, but I'm trying
11 to make the best out of the situation.

12 Q Are you still doing your job?

13 A To the best of my ability to having somebody with me.
14 I still can't focus on my job, even though I'm having a normal
15 conversation with him.

16 Q Well, you have plenty of normal conversations with
17 other citizens during the course of the day, don't you?

18 A They come and go, yes. They're not -- it's not
19 constant.

20 Q Now, you testified to a scenario where you said that
21 Mr. Coleson grabbed your arm when you were trying to remove a
22 card from a windshield wiper, a windshield. Did you feel
23 threatened on that occasion?

24 A The initial reaction that he had when he grabbed me was
25 -- for a minute, it took me off guard, but he didn't hurt me

1 and he let go immediately when I said, "Don't touch me." So to
2 say I felt threatened, initially, when it first started I did,
3 but then when I realized he wasn't actually trying to hurt me,
4 it was a reaction for him trying to stop me from reaching for
5 the card. Once I realized exactly what was transpiring, no. I
6 did not feel threatened.

7 Q Now, it's your testimony that these Defendants make it
8 harder for you to do your job. Is that a fair summary?

9 A Yes.

10 Q And have you ever asked any assistance from the City of
11 Keene in terms of how to address that?

12 A The only conversations that I had was with the police
13 department themselves.

14 Q Have you asked or requested any type of training?

15 A No.

16 Q Who is your direct supervisor?

17 A Ginger Keller.

18 Q And what is -- him or her?

19 A Her, Ginger.

20 Q And what's her position?

21 A She's the supervisor of parking.

22 Q Now, there's a number of references in your notes.
23 It's those part of your notes I read, to somebody called
24 Sturdy. Do you know who that is?

25 A Yes. He's a retired police officer.

1 Q And what's his name?

2 A Sturdy. That's all I know him as, Sturdy. I'm sorry.

3 Q Is that a gentleman named Peter Thomas?

4 A Is that -- I don't know if that's his name or not.

5 Q All right.

6 A I just knew him as Sturdy.

7 Q Okay.

8 A And I knew --

9 Q And he was somebody who was retained by the City of
10 Keene?

11 A Correct.

12 Q And one of the things he was doing was videotaping?

13 A Yes.

14 Q Okay. And he was regularly following you and
15 videotaping; is that correct?

16 A Correct.

17 Q And did you view that videotaping as being harassing or
18 intimidating?

19 A No.

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

21 THE COURT: Further direct examination?

22 MR. DIETEL: Very brief redirect, Your Honor.

23 REDIRECT EXAMINATION

24 BY MR. DIETEL:

25 Q Just a couple questions about safety -- previously, you

1 testified that you called the police department on three
2 occasions. Were those the only time that you felt unsafe?

3 A No. There has been other times, but I just don't feel
4 that I need to call the police at every moment, so I go
5 somewhere. I either go into City Hall, where there's -- the
6 Bailiffs are right there or I get in my car and I leave.

7 Q So I understand you're describing measures that you
8 take when you feel unsafe.

9 A Yes.

10 Q Okay. Are your safety concerns for yourself?

11 A Yes.

12 Q And do you have any safety concerns for the public?

13 A There's a lot of times when -- especially when people
14 are -- there's been a few times when it'd be down street.
15 There was one incidence where a man chased Garrett with --
16 well, he pretended it was pepper spray. It turned out that it
17 wasn't pepper spray after all. But it got kind of physical.
18 And when there's, you know, a lot happening on the street, a
19 number of things could happen. Someone could step out in front
20 of a car or somebody on the sidewalk get knocked over. And it
21 does get kind of chaotic at times.

22 MR. DIETEL: Thank you. No more questions.

23 THE COURT: Further recross-examination?

24 MR. MEYER: Yeah.

25 ///

RECROSS-EXAMINATION

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BY MR. MEYER:

Q Just to follow up on that last theme, you've testified this has now been going on for a year, correct?

A Yeah. Well, eight months, yeah.

Q Eight months. And during that --

A Or nine months.

Q -- eight months, you're saying it's been going on essentially every day.

A Correct.

Q And in your case, that means, like, four days a week; is that right?

A Yes.

Q And in that -- over that time, which I guess amounts to several hundred days at this point, the only physical contact you've experienced has been the one time that your hand, you said, your arm was grabbed by Mr. Coleson, correct?

A In that manner, there's been other times when I've been bumped, or run into, or I've run into them because they stopped quick. But as far as that --

Q But the only person's safety who's really been compromised here has been the Defendants, correct? You've described how they've been chased, how they've been punched, et cetera, et cetera. Their safety has been compromised, but not yours. Isn't that true?

1 A But if they're being attacked, we could be in the way
2 of that as well as people that are on the street. They can get
3 run into or hit.

4 Q So your concern is that other people may physically
5 attack the Defendants and, in so doing, may inadvertently cause
6 damage to you or other bystanders.

7 A Yes.

8 MR. MEYER: Okay. Thank you. I have no further
9 questions.

10 THE COURT: Okay. Thank you, ma'am. You can step
11 down.

12 THE WITNESS: Thank you.

13 MR. BAUER: I call to the stand Beth Fox, please.
14 Ms. Fox, if you would, just remain standing and raise your
15 right hand.

16 ELIZABETH A. FOX, PLAINTIFF'S WITNESS, SWORN

17 THE COURT: Thank you. If you could, be seated, and
18 state your full name, and spell your last name for the record.

19 THE WITNESS: Sure. Elizabeth A. Fox. Fox is F-O-X.

20 DIRECT EXAMINATION

21 BY MR. BAUER:

22 Q Ms. Fox, how are you employed by the City?

23 A I am employed as the City's finance director.

24 Q And what's your brief background, training, and
25 experience, your educational background?

1 A I have an undergraduate degree in public management,
2 went to the University of Maine at Orono, and graduated some
3 time ago, wanted to work in local government, and have worked
4 in local government in New Hampshire since my graduation in
5 1984.

6 Q So for 30 years plus, I guess --

7 A Almost, not quite.

8 Q Okay. All right. Fair enough. And at this point in
9 time, you are the finance director for the City.

10 A Yes. I am.

11 Q All right. Have you been here through some of the
12 testimony with regard to Alan and Jane, have you not?

13 A Yes.

14 Q What I'd like you to do is to identify various areas of
15 financial impact on the municipality --

16 A Uh-huh.

17 Q -- as it relates to employment turnover and employment
18 problems --

19 A Uh-huh.

20 Q -- in general?

21 A Sure. I think, you know, one of the first and most
22 obvious impacts at this point is, we've had a parking
23 enforcement officer resign. That's reduced the ability to
24 manage parking by approximately a third. We've got -- we had
25 previously about 108 hours' worth of -- previously, we had

1 approximately 108 hours' worth of staffing and now we're down
2 to, I believe, 74 with only two parking enforcement officers on
3 the streets. That has had an impact, reducing the number of
4 tickets that are written, which has resulted in a financial
5 impact to the community's parking fund.

6 Q And with regard to the loss of employment --

7 A Uh-huh.

8 Q -- Alan resigned --

9 A Yes.

10 Q -- in July of 2013. What financial impact does the
11 City experience with regard to replacement costs?

12 A Well, we are going to have to launch a recruitment
13 process that is fairly extensive. Typically, we will incur
14 costs for advertising which are approximately \$200. These
15 particular employees go through both a written interview --
16 written test process as well as an interview process. So we
17 have testing and exam costs of approximately \$1,000.

18 We'll then have -- that process in itself takes about
19 a day, the written test. And then typically, the interview
20 process -- and the number of candidates the City likes to see
21 when they fill positions will take about two days. So we would
22 estimate probably other staff time because we do team
23 interviews. We'd be involved in that and probably with a value
24 of somewhere in the area of, you know, \$5,000 to \$5,500.

25 We will need to do background checks on any candidate

1 who was given a conditional offer of employment and that incurs
2 a cost, approximately \$125 to do two tests. And then, assuming
3 we are successful in hiring someone, they'll need to be
4 uniformed and trained. And uniforms are approximately \$1,000
5 as well. And training a couple weeks with, you know, an
6 outside assistant will probably run the City about \$1,200 or
7 so.

8 Q Those areas or buckets of --

9 A Uh-huh.

10 Q -- financial impact have to do with the resignation of
11 Alan, correct?

12 A Yeah. Yes.

13 Q Okay. Now, with regard to the change in the hours that
14 we've heard testimony about from Jane, how does that impact the
15 City financially?

16 A Well, with a change, they're no longer doing parking
17 management on Saturdays. We've seen a loss in that revenue and
18 that activity. Typically about 280 tickets a month will be
19 issued on Saturday. Assuming they were all \$5 tickets, that's
20 about \$2,800 a month.

21 Q Okay. And how about with regard to the administrative
22 costs of trying to cover those hours? How does the City
23 anticipate handling that issue?

24 A Trying to cover the Saturday hours?

25 Q Yes.

1 A I mean, at this point, without more staffing, I don't
2 -- you know, we're going to have to address the staffing issue
3 and then fill those Saturday hours accordingly.

4 Q Now, there are going to be administrative costs
5 associated --

6 A There will be.

7 Q -- with covering that?

8 A You know, we have, you know, put significant
9 administrative effort in both HR and in the supervisory staff
10 to try to help manage the transition for the employees. And
11 that will continue.

12 Q Have you been aware of administrative costs with regard
13 to, you know, what I'll call administrative counseling of the
14 three PEOs over the course of the last numerous months because
15 of the Defendant's conduct?

16 A They have received -- we have done some counseling, had
17 some counseling provided to those employees in the hopes that
18 it will help them manage their situation more effectively. The
19 cost incurred for that to date has been about \$750. We
20 anticipate moving forward that those sorts of supports will
21 continue to need to be provided.

22 Q And are you specifically talking about the type of
23 counseling and support that we heard testimony from Ms. Kimmel
24 the last day of trial?

25 A I would expect it would be similar to that sort of

1 effort, yes.

2 Q How about anticipating -- you've been here for some of
3 the testimony of Jane.

4 A Uh-huh.

5 Q You've heard the testimony that she has been looking
6 for other employment on the web.

7 A Uh-huh.

8 Q What are your concerns as a financial director for the
9 City's financial impact if you lose Jane as you've lost Alan
10 because of the Defendant's conduct?

11 A Well, we'll incur, of course, obviously more costs
12 associated with employee recruitment, but we also are, you know
13 -- the parking fund is a special revenue fund. It is designed
14 to be self-supporting. And without the revenue that the
15 activity generates through the parking enforcement personnel,
16 it won't be self-supporting, and could become a burden on the
17 community at large, and through general taxation.

18 Q What kind of administrative or financial impact do
19 claims of workers compensation, disability claims, sick time
20 that may be incurred?

21 MR. MEYER: Objection, objection. There's no
22 foundation. There's no foundation of a claim for workers comp,
23 or sick leave, or anything else related to this case.

24 THE COURT: Well, let me ask a question. Is there
25 going to be testimony that any claim has been made with respect

1 to any of the parking enforcement officers involved in this
2 case?

3 MR. BAUER: No. But that's one of the things we're
4 trying to prevent with the injunction, Your Honor. So let me
5 rephrase the question, if I may.

6 THE COURT: Yes.

7 BY MR. BAUER:

8 Q Are you concerned from a financial point of view for
9 the municipality that claims of workers' compensation, or
10 disability, or sick time may be incurred by at least the two
11 PEOs that we've heard testimony from?

12 A I am concerned. I think that, you know, employee
13 morale is important and I'm concerned that their situation may
14 be negative. And that may cause some erosion in their morale.
15 We are very fortunate the City has typically had very good
16 workers compensation experience and experienced low claims. We
17 have a favorable rating. But if that were to change, it would
18 affect us negatively financially.

19 MR. BAUER: Thank you. I have nothing further on
20 direct. You may inquire.

21 THE COURT: Cross-examination?

22 CROSS-EXAMINATION

23 BY MR. MEYER:

24 Q Ms. Fox, Mr. Alan Givetz resigned in July, correct?

25 A Yes.

1 Q Has any effort been made to replace him from July to
2 September?

3 A We have not yet initiated a recruitment, no.

4 Q How many employees does the City of Keene have?

5 A Approximately 225.

6 Q And on an annual basis, what is the turnover typically?

7 A We are fairly fortunate. We have pretty low turnover.
8 In fact, you know, the balance, you know -- the parking
9 enforcement unit, frankly, is a good demonstration of how low
10 our turnover typically is. Until we had a long-time employee
11 retire, we hadn't hired any new parking enforcement officers.
12 The remaining employees in that department all have ten years,
13 in excess of ten or 15 years, so.

14 Q All right. Well, what is the average turnover rate for
15 the City?

16 A Typically, turnover is attributable to retirement and
17 we have had, I think, probably six or eight people retire since
18 the first of the year this year.

19 Q So extrapolating it, that would mean typically you
20 replace about 12 people a year; is that right?

21 A Well, we'd like to do that, but one of the fiscal
22 challenges that we've had is when people retire. We haven't
23 had the luxury of replacing them, so we aren't replacing as
24 many people. I think, this year, we have done recruitments for
25 maybe three positions or four positions.

1 Q All right. But in terms of recruitment --

2 A Uh-huh.

3 Q -- and training, that's part of the HR function,
4 correct?

5 A Yes. Well, a portion of the recruitment is part of the
6 HR function and then a portion of the training is shared
7 between HR, INS, and the Department who might be recruiting.

8 Q Now, the -- so when you talk about administrative
9 costs, you're talking about people who are already employed,
10 correct?

11 A Yes. They are employed by the City currently, but
12 they're --

13 Q And if they're not going to be hiring a new parking
14 enforcement officer, they're going to be doing something else,
15 correct?

16 A There are usually lots of things that we can be doing,
17 so yes. They will be.

18 Q All right. They're not going to get paid more because
19 of their having to attempt to locate a new parking enforcement
20 officer, correct?

21 A The direct administrative staff will not be there.
22 Efforts will be focused on that task instead of some other task
23 that needs to be done.

24 Q But at the end of the day, all the tasks will be
25 completed, correct?

1 A In priority order, we hope that we hit the most
2 important, yes.

3 Q Now, you know an individual named Peter Thomas.

4 A Yes. I do.

5 Q Okay. And Mr. Thomas was hired by the City of Keene
6 earlier this year, correct?

7 A It's my understanding he was, yes.

8 Q Okay. And from your perspective as finance director,
9 what was his cost of his contract?

10 A Uh-huh. The cost of Mr. Thomas's contract with the
11 City?

12 Q Yeah.

13 A My recollection is, it was approximately \$1,200.

14 Q And he was hired for the purpose of basically engaging
15 in surveillance of the Defendants in this case, other
16 demonstrators?

17 A Well, I think he was hired for the purpose of trying to
18 see what the actual working conditions that the employees were
19 under were, you know. We had, had some observations and there
20 were some concerns expressed. And his role, I think, was
21 really to do fact-finding on that in a way that, you know,
22 wasn't casual.

23 Q And he did videotaping, correct?

24 A That's my understanding. Yes. He did.

25 Q And he videotaped, in fact, the Defendants, correct?

1 A I have not seen the videotapes, so I don't know.

2 Q Okay. Is it fair to say that the videotape involved
3 hundreds of hours of videotaping of him -- by him of the
4 Defendants?

5 A I cannot comment on that.

6 Q Now, lastly, you expressed concern about a workers'
7 compensation scenario. There has been no claim made yet, as I
8 understand it.

9 A To the best of my knowledge, no.

10 Q Okay. And I take it that the City has a workers'
11 compensation carrier that covers workers' comp claims?

12 A We are statutorily required to, so yes. We do.

13 Q Okay. So the only potential conceivable financial
14 effect on the City would be effect in terms of potentially on
15 the City's rate.

16 A Well, it would affect our experience modification
17 factor, which would increase our premiums, yes.

18 Q Might increase your premiums, correct?

19 A It has the potential to increase our premiums, yes.

20 MR. MEYER: Thank you. I have no --

21 THE WITNESS: Uh-huh.

22 MR. MEYER: -- further questions.

23 THE COURT: Further examination?

24 MR. DIETEL: Nothing further.

25 THE COURT: Thank you, ma'am. You may step down.

1 MR. BAUER: Your Honor, at this point, I will yield
2 to Attorney Meyer to put on Mr. Cleaveland without closing
3 in-chief.

4 THE COURT: I understand. And just so we're clear,
5 this was discussed at the very beginning. Attorney Meyer asked
6 for permission to take Mr. Cleaveland out of order. I
7 indicated earlier that I would grant that motion. And it was
8 gracious of counsel to -- it wasn't imposed, so we'll have Mr.
9 Cleaveland testify. Mr. Cleaveland? Attorney Meyer, would you
10 like to swear in the witness or would you like me to?

11 MR. MEYER: I'm comfortable either way, whichever the
12 Court prefers.

13 THE COURT: You can do it if you'd like.

14 MR. MEYER: Sir, if you would, please, raise your
15 right hand.

16 JAMES CLEAVELAND, DEFENDANTS' WITNESS, SWORN

17 DIRECT EXAMINATION

18 BY MR. MEYER:

19 Q Thank you. You may be seated. James, could you state
20 for the record your full name and your current address?

21 A Yes. James Cleaveland, spelled C-L-E-A-V-E-L-A-N-D. I
22 currently reside at 173 Washington Street, Apartment 9, Keene,
23 New Hampshire.

24 Q Okay. And sir, are you employed?

25 A Yes. I am.

1 Q And what is your employment?

2 A I'm an accountant, a cost accountant.

3 Q And who employs you?

4 A The Lane Corporation does.

5 Q And --

6 A Sorry.

7 Q -- do you, sir, in terms of on the political front,
8 have any type of political affiliations?

9 A No, not really. I'm registered undeclared, so --

10 Q So you're neither a Democrat, nor a Republican, nor
11 anything in between?

12 A I mean, I would say I try to avoid politics for the
13 most part. I am running for City Council at the moment, so.

14 Q Are you a member of any other group with political
15 beliefs?

16 A I mean, I blog at FreeKeene.com, but I wouldn't argue
17 that that's a political group. It's just a website --

18 Q Okay.

19 A -- with people who share similar ideals, so --

20 Q Well, what is Keene.com?

21 A FreeKeene.com?

22 Q FreeKeene.com.

23 A I guess you could -- most people probably would
24 classify it as a political organization. It's really just a
25 website where people who hold, I would say, liberty-oriented

1 views -- it's a place for them to blog and get their views out.

2 Q Are you familiar with the Free State Project?

3 A Yes. I am.

4 Q And what is the Free State Project?

5 A The Free State Project is an idea to get people who
6 like liberty to move to New Hampshire and, you know, basically
7 -- I guess the idea is, people who believe in liberty are too
8 spread out. And so if we can concentrate ourselves in a
9 particular geographic area, our views may have more weight to
10 them.

11 Q Now, you said "we". Are you affiliated with the Free
12 State Project?

13 A Yes. I am a Free State Project participant.

14 Q Now, there's been testimony about activity referred to
15 as Robin Hood activity. First of all, where does that name
16 Robin Hood come from?

17 A Well, I guess originally, there was a Free State
18 Project participant named Lauren Canario. And it was either
19 late 2008 or early 2009. I can't remember exactly. But she, I
20 guess, had the bright idea to go out and fill parking meters so
21 that tickets wouldn't be issued. And the idea kind of is, you
22 know, the story of Robin Hood. Everyone knows the classic
23 story, where -- steal from the rich and give to the poor. But
24 he was actually stealing from the government and giving it back
25 to the taxpayers, so I think that's kind of where the name was

1 derived from.

2 Q And is the -- does the -- is there such a thing as the
3 Robin Hood project or is there any sort of organizational
4 structure associated with that term?

5 A I mean, not really. Over the years, it's been various
6 people. There was a gentleman who lives in Nashua now. I
7 don't remember the -- I'm not clear on the entire history, but
8 for a good number of years, he would Robin Hood. And you know,
9 he moved to Nashua, so he moved away, so you know, I guess it
10 kind of -- I really didn't go out Robin Hooding in December. I
11 started in January myself, so you know, to say that anyone is
12 in charge wouldn't be inaccurate.

13 Q Is anybody in charge?

14 A No.

15 Q Okay.

16 A We constantly have various views on how, let's say, we
17 should proceed and there's no consensus usually. You know,
18 it's --

19 Q Your views are different?

20 A Yes. We all have differing views. We're all
21 individuals, so.

22 Q Is there any type of financial basis to the
23 organization? Well, first of all, would you call it an
24 organization?

25 A I guess you could classify it as an organization.

1 Q Does it have any sort of corporate existence?

2 A No. I mean, on the Facebook page, which I didn't set
3 up, someone called it a nonprofit, founded, I think, in either
4 2008 or 2009. But it's not registered with the State. It's
5 not incorporated in any way, so --

6 Q There's been reference to a Robin Hood card that I
7 think's been marked as an exhibit. What's the history on that?

8 A There is a local graphics artist here in town. And we
9 expressed interest in making a card. And so he went ahead, and
10 he took the initiative, and he designed it. He put the text on
11 it. It was none of the Defendants. We had nothing to do with
12 the card. However, we do use them.

13 Q What about -- again, let's call it a group.

14 A Okay.

15 Q Does the group have any type of a financial basis, bank
16 account, or treasury, anything? You're an accountant.
17 Anything on the financial side?

18 A There is no Robin Hood of Keene bank account. There is
19 a bank account and a bank for the Keene Activists Center. And
20 that indicates on the card. There is a mailing address and a
21 name. And so occasionally, people do send donations. I think,
22 probably right now, I have five checks I need to put in the
23 bank account. And primarily, we use the donations to buy more
24 change.

25 Q And how does it come about that people make donations?

1 A Typically, we are downtown. We fill a meter. I call
2 it a save, a meter that would have been ticketed. We'll leave
3 a card under the windshield wiper blade. And then
4 occasionally, people receive said card. And if they like what
5 we're doing, they send us a donation.

6 Q How would you categorize what Robin Hooding is?

7 A I mean, I guess it's different for everyone. I don't
8 want to speak for everyone. But for me, it's the idea that,
9 you know, I personally don't believe that parking a vehicle is
10 a criminal act because I don't think it -- there's no damage.
11 No one else is harmed by that activity. And I feel like it
12 lacks, like, criminal intent. Like, I'll give you an example.
13 Like, you could be downtown. You could want to get a haircut.
14 You could intend -- let's say you put 45 minutes in the meter.
15 It's busy. You're in the middle of a haircut. You're issued a
16 ticket because you couldn't get back out to your meter. So I
17 don't agree that it should be a criminal act. I don't think
18 the courts should be involved with parking, I guess.

19 Q Well, do you think the parking should be essentially a
20 government function or private function?

21 A I mean, I would prefer it be private, but if the
22 government is going to run it -- and I've told the City Council
23 this -- I feel like a better solution would be -- instead of
24 issuing tickets, perhaps you could build more parking spots or
25 find other solutions to address the parking situation downtown.

1 Q So getting back to Robin Hooding, what is your
2 understanding of what that activity involves?

3 A I would define it as, you perform saves, which I would
4 say is, you get in front of the parking attendant, because you
5 only want to fill a meter that would have been ticketed. My
6 goal personally is not to give any unnecessary funding to the
7 City of Keene, so it wouldn't meet my goal to just go around
8 and fill parking meters, so I only want to fill a meter if it
9 would have been ticketed. So it's the idea that -- I disagree
10 with this, the way that parking is done, so I'm showing my
11 displeasure by not allowing the ticket to be issued, if I can.

12 Q Now, to your knowledge, are you paid at all for
13 performing this Robin Hooding activity?

14 A No. I receive no personal gain from doing this
15 activity.

16 Q Has there been any payment at all to anybody, to your
17 knowledge, to engage in Robin Hooding?

18 A There has been in the sense that, if the donations
19 exceed the change costs, some of the other volunteers will get
20 a payment, if you want to call it that.

21 Q And have those payments been substantial or nominal?

22 A They've been very minimal. I mean, at the end of the
23 day, the donations we receive, I would say, are not that much.

24 Q Okay. Can you estimate what we're talking about?

25 A I mean, maybe a few hundred dollars, but I feel like

1 their net earnings would probably be less than \$400 this year.

2 So --

3 Q Now, as I understand the prior testimony from the
4 parking enforcement officers, the primary complaint is that
5 they are being followed too closely or videotaped too closely.
6 Now, let's start with the videotaping.

7 A Uh-huh.

8 Q Have you yourself done any videotaping?

9 A Yes. I do videotape and I do it for three reasons.
10 Number one, if something is interesting happening downtown, you
11 know, it's interesting to get footage. Number two, I do it
12 because I'd want to get the word out about my political
13 message. I want people to know what I'm doing. And most
14 importantly, I videotape for accountability reasons. I feel
15 like, if there is ever an incident between any of the parking
16 enforcement officers, or myself, or even members of the public,
17 I'd like there to be an objective record that, you know, as
18 we've been hearing throughout this hearing, eyewitness
19 testimony can be unreliable. So even with Pete Eyre, he didn't
20 recall the one incident between Jane and himself.

21 Q In terms of when you're videotaping a parking
22 enforcement officer, typically how far away from that person
23 are you when you're videotaping?

24 A I mean, I typically -- I guess my ideal distance would
25 be -- I'd like to be ten feet in front of them. And on a given

1 day, I can show videos. I don't even have the camera pointed
2 at them for the most part. I'm just holding it down by my side
3 and my hand. So I'm just running it so there'll be an audio
4 record. Or if I do need video, that will be available to me.

5 Q Uh-huh. Now, in terms of the filling of meters, you
6 said you only want to fill the meters that in fact might
7 potentially lead to somebody getting a parking ticket.

8 A Yes, sir.

9 Q Okay. How are you -- how do you go about doing that?
10 How do you know which meters are likely to lead to the issuance
11 of the parking ticket?

12 A I would say a lot of it has to do with experience, so
13 for the most part, I know that, if a vehicle is not marked with
14 a handicap placard and it's in a two-hour time limit, a
15 two-hour meter, and the meter is expired, it doesn't have time
16 left on it, that vehicle is likely to receive a ticket.

17 Q Do you typically walk in front of, or behind, or next
18 to the parking enforcement officer?

19 A I would like to be in front of them so I can fill
20 meters along the path, if you will.

21 Q Is there some reason why that doesn't necessarily work?

22 A Unfortunately, the parking enforcement officers often
23 will change directions. I believe it's an attempt to issue
24 tickets where, you know, they have in the past walked in a
25 straight line and sometimes they've even told me where they're

1 going. Like Alan and Jane have both done that to me or for me,
2 I guess. But you know, I'd like to be in front of them. And
3 if they come to, like, a corner or something where there's,
4 let's say, three ways they can go, you know, I may slow down
5 and wait to see which way they're going to go.

6 Q If they followed regular, predictable routes, as you
7 said they have on occasion, would you need to be behind them?

8 A That's one remedy that I have talked to Jane about in
9 the past. I feel like, if they had an established route that
10 they were required to follow, generally speaking, I realize
11 that it's quite impractical to have a route that is set in
12 stone, but if they kind of did a loop or something that was
13 very predictable, you know, I wouldn't mind being in front of
14 them because, ultimately, my goal is to prevent or reduce the
15 number of tickets being issued by the City. Actually, I think
16 I've talked to Alan about that, too, and I think I have a
17 record of that.

18 Q Now, can you describe the types of verbal exchanges
19 you've had with the three officers?

20 A I would say, for the most part, I typically don't talk
21 to the PEOs. As Jane mentioned, generally Jane will often
22 start conversations with me. And I have a video that I'd like
23 to play later of some of that going on, where I'm just walking
24 doing my thing and she's talking to me, she's starting the
25 conversations. I would say, initially, Alan was not very

1 talkative. He eventually kind of opened up and he began
2 talking to me. Linda has said maybe a few words to me. I
3 generally don't speak to her at all. I would say I do the most
4 talking with Jane, so.

5 Q When you say Jane starts conversations, what does she
6 start conversations about?

7 A You know, just whatever, like, you know, maybe she'll
8 see something interesting, or she asks me my view. As she's
9 mentioned, she's also talked about religion with me. That was
10 one interesting conversation that I've had with her. She's
11 asked me about my views and political beliefs, so I would say
12 that, besides the one exchange she mentioned on April 27th, I
13 believe, for the most part, it has been very positive. And you
14 know, I try to be -- I'm generally kind of a soft-spoken guy,
15 but you know, if they want to talk, I'll talk to them.

16 Q And what happened in that conversation on April 27th?

17 A So earlier in that morning, I had seen some people park
18 in the Gilbo lot and they were very nicely dressed. And I
19 could hear, like, bells going off at St. James Church. So I
20 asked them what was going on and they told me it was a World
21 War II veteran's funeral. And so later on in the day, I
22 encountered Jane issuing tickets to their vehicles. And it was
23 a lot of out-of-towners, people not even in New Hampshire.

24 A lot of people had come. And so I informed Jane
25 that, "You're issuing tickets to people who are at a funeral."

1 At that point, she told me that the reason that she was doing
2 that was because she can't -- because of me, she couldn't issue
3 tickets at metered spots, because I would put money in and not
4 let her do that or something to that effect.

5 Q So where did the conversation go from there?

6 A I would say it deteriorated quite a bit. I don't
7 remember exactly what was said, but at some point, Jane called
8 me a terrorist and she told me that I need to look up the word
9 anarchy in the dictionary, that I'm an anarchist. And I asked
10 her, you know, "Have I ever told you I'm an anarchist?" And I
11 would say it was definitely a very heated, verbal exchange. I
12 don't remember exactly what was said, but I was recording at
13 the time, so I suppose we could retrieve the video if --

14 Q Now, you mentioned an earlier conversation with Jane
15 that you recorded.

16 A Uh-huh.

17 Q And what was that conversation about?

18 A Which one? I'm sorry.

19 Q You mentioned an earlier conversation. Was there a
20 conversation you had with her about her interaction with
21 Mr. Coleson?

22 A There was. So one day, I don't remember where it was.
23 It was definitely after the lawsuit was filed. I had kind of
24 brought up the topic of Graham allegedly grabbing Jane's arm.
25 And I indicated to her that, if that did occur, you know, I

1 thought it was unacceptable. And actually, the day that it
2 happened, I guess my understanding is, it happened on Roxbury
3 Street. I actually went down there and I looked for security
4 footage, security cameras, because I wanted footage of it.
5 Like, if Graham had done something, you know, I don't want to
6 associate with the guy. So unfortunately, to the best of my
7 knowledge, there are no security cameras on Roxbury Street, but
8 I did make an attempt. I was hoping there would be a bank or
9 something that would possibly have footage of it, but --

10 Q Did you make a video of your conversation with Jane
11 about that?

12 A I did.

13 Q Could you please play that for us?

14 A Yes.

15 THE COURT: Can I just position --

16 MR. MEYER: He'll do it so you can see it.

17 THE COURT: Yeah. If counsels just want to move to
18 get into position to be able to see it as well. Would you mind
19 turning it, just tilting it a little bit?

20 THE WITNESS: I'm sorry, sir.

21 THE COURT: Thank you.

22 THE WITNESS: I'm going to turn the sound up, too.

23 (A Videotape played at 2:00 p.m., ending at 2:05 p.m.)

24 THE COURT: I understand.

25 MR. MEYER: It's more about the tone as much as the

1 substance. Thank you, Your Honor.

2 THE COURT: Okay.

3 MR. MEYER: Your Honor, can I have that admitted as
4 Plaintiff's Exhibit 1?

5 THE COURT: Any objection?

6 MR. BAUER: No, sir.

7 THE COURT: Is there a separate -- Mr. Cleaveland, is
8 it contained in a disc that you have?

9 THE WITNESS: I can provide that to the Court. I
10 don't have a disc with me.

11 MR. MEYER: We'll provide it additionally.

12 THE COURT: Okay. Defendant's Exhibit A --

13 THE WITNESS: That shit's on my phone. I don't know
14 what --

15 THE COURT: -- is -- it'll be Defendant's Exhibit A.
16 It's a full exhibit.

17 (Defendant's Exhibit A received)

18 BY MR. MEYER:

19 Q James, the City is essentially proposing in this
20 proceeding that the Court order some type of distant limitation
21 between you and other Robin Hood activists and parking
22 enforcement officers. And there's been suggestions at various
23 times that, that distance should be 50 feet, 30 feet, ten feet,
24 et cetera. What would be the practical effect of a distance
25 limitation on your ability to engage in your Robin Hood

1 activity?

2 A I think it would make it a lot more difficult to
3 effectively fill the meters and, you know, prevent tickets from
4 being issued, because like I said, in that one example, if I
5 come up to a corner, where there is, let's say, three ways they
6 can go, since I don't know where they're going, you know, I
7 have to wait for them. And you know, if they -- a few times,
8 they have indicated to me in the past where they're going.
9 Like, I remember once out in City Hall, Alan told me that he
10 was going to cross the street and go in front of the white
11 church. And so you know, I just continued on my way because he
12 told me where he was going. I mean, my goal is to fill the
13 meters that would have been ticketed.

14 Q The conversation that you had with the parking
15 enforcement officer in the video would just watch.
16 Approximately how far away from her were you when you had that
17 conversation?

18 A I was pretty close, I would say, maybe within five
19 feet.

20 Q If you had been -- were required by court order to stay
21 20, 30 feet away from the parking enforcement officers, could
22 you have that type of communication with them?

23 A I don't think we could actually have a good
24 conversation, you know, between the two parties. It'd be more
25 difficult to, you know -- I guess I would be tempted to raise

1 my voice in an attempt to make sure that they can clearly
2 understand me and hear me. So I don't think it would be
3 conducive for that.

4 Q Have you ever suggested to a parking enforcement
5 officer that he or she should resign from their jobs?

6 A I don't recall any specific instances. I know that,
7 one time, I spoke to Jane about Graham and some of his
8 behavior. And she was saying that she used to be a counselor
9 and she knew that Graham had problems. I don't want to get
10 into it too much, but you know, I said, "Have you ever
11 considered maybe doing some counseling again?" And she said,
12 "That's what I was trained to do," so.

13 Q You mean doing some counseling as opposed to being a
14 parking enforcement officer?

15 A Correct. And I actually prefaced it. I think there's
16 a video I have of it. I prefaced my statement with, you know,
17 "I know this is a point of contention, but have you ever
18 considered doing counseling again," or something to that
19 effect.

20 Q Now, do you have familiarity with the use of videotape?

21 A I would say yes. I'm not -- I don't have any technical
22 training or anything like that, but --

23 Q Okay. In the context of your Robin Hood activity, have
24 you yourself been subject to being videotaped?

25 A Yes. So as you are aware, an individual named Peter

1 Thomas, you know -- I think it was late March 2013. He came
2 out and he began videotaping us, you know. I guess I initially
3 asked him, you know -- I introduced myself to him and he
4 refused to give me his name, but you know, I told him it's
5 customary in introduction to give people -- each other -- each
6 party to introduce themselves. So he eventually told me his
7 name was Peter, so.

8 Q Okay. And how much -- when you say videotaping, do you
9 mean like, for 30 seconds, a minute? What were the lengths of
10 time?

11 A So when I was about in the downtown area doing Robin
12 Hooding, he would generally follow us with a video camera and
13 there were a few occasions where the parking enforcement
14 officers had left and he was still walking around, asking us
15 questions, and videotaping us.

16 Q So you were videotaping or somebody would be
17 videotaping the parking enforcement officers and then he would
18 be videotaping people videotaping the parking enforcement
19 officers?

20 A Correct.

21 Q And for how long was he doing that?

22 A I think, for maybe two weeks, if I had to take a guess
23 at it. I'm not entirely sure.

24 Q Did he ask you any questions?

25 A He did. He asked me a lot of questions and --

1 Q About what sort of things?

2 A You know, kind of why I was out there. He asked me,
3 "Is there a schedule for it," and then the City actually edited
4 it to make it -- I said the schedule is basically Monday
5 through Saturday. I think I said 9:00 to 5:00, but really, the
6 parking enforcement schedule is kind of when I want to be out
7 there. And you know, he asked some other questions, too. I
8 don't recall everything.

9 Q Did you ever see those videotapes?

10 A Yes. I actually filed a 91-A request and the City of
11 Keene did issue me the videotapes. I'm not sure they provided
12 all the tapes because there were some dates when he was out
13 that I never received the videos for. And perhaps he deleted
14 them. I'm not sure.

15 Q And what was the length of the tapes that you received?
16 Do you know? Can you estimate?

17 A I honestly have no way of knowing that. It was
18 probably over 30 hours of footage.

19 Q How close or far away from you was he when he was doing
20 the videotaping?

21 A He would get pretty close to us. I mean, he would --
22 there was a few occasions where I was walking. And there is
23 one point in particular, I remember, where I was at Michael's,
24 or Michelle's, or whatever that is at Railroad, I stopped
25 because Jane had stopped. And I turned and he was, like, right

1 there. And then Jane walked in front of me. And I think I
2 actually have footage of this. So he was, I don't know, two
3 feet from me, behind me.

4 Q Uh-huh. Was there any discussion with him or anybody
5 else from the City of Keene in terms of the appropriateness of
6 his investigative activities?

7 A I don't think -- I never had any conversations with the
8 City of Keene regarding Peter Thomas, no.

9 Q With him?

10 A I asked him if he was acting as a private citizen or
11 being paid by the government and he refused to answer that
12 question.

13 Q Did you ultimately find out the answer to that
14 question?

15 A I did. So --

16 Q How did you find out?

17 A Initially, I found out because someone within the City,
18 I guess, leaked to Ian that the City had hired him to, you
19 know, follow us around. And I'm not sure who that was. It was
20 secondhand information to me, but at one point, I guess I
21 suspected it, too. Another very strong indicator was, the
22 first day I ever met Peter Thomas, he was at Wells Street
23 parking garage and it was, like, the end of the day. He
24 actually got into the parking enforcement van with Jane, so I
25 guess I figured, like, "He must be," --

1 Q Did you ever receive a copy of his contract with the
2 City?

3 A I did. I also filed a 91-A for that.

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

5 THE COURT: Cross-examination?

6 CROSS-EXAMINATION

7 BY MR. BAUER:

8 Q Mr. Cleaveland, you've been told numerous times by Jane
9 to back off from her, haven't you?

10 A That's incorrect. I've been told twice that I can
11 remember, both times with Peter Thomas present. And it was
12 obviously a staged speech that she had prepared to give to me.
13 And both times, I told her why I disagreed with it.

14 Q You've been told numerous times by Lynn to back off,
15 haven't you, and you've refused to?

16 A I don't recall any time that Lynn has told me that.

17 Q You've been told numerous times by Alan to back off and
18 you've refused to do that, haven't you?

19 A I mean, he may have told me once or twice, but I don't
20 recall specifically.

21 Q Now, when you do what you do, you do that with other
22 people, as you have suggested with Attorney Meyer, correct?

23 A I mean, occasionally, I do it by myself, but generally
24 speaking, the ideal configuration would be two people, one to
25 fill a meter and one to place a card on the vehicle.

1 Q That's the ideal, but you also have had more than two
2 people surrounding these parking enforcement officers, haven't
3 you?

4 A I mean, when you said that you've had it, you're
5 implying that, somehow, I'm leading these people and I'm not.
6 And I would say, initially, January and February was when we
7 had the most groups. And I actually had a conversation with
8 Alan that I have a recording of, where I ask him, "What is your
9 biggest complaint towards my activities," and he specifically
10 says, "I don't like the large groups."

11 Q This is my question. You've been out there with more
12 than two people on numerous occasions surrounding these three
13 PEOs, haven't you?

14 A I mean, I've been out in public --

15 Q Excuse me?

16 A -- with some of the Defendants, yes.

17 Q Yes. Surrounding the three PEOs individually, haven't
18 you?

19 A I mean, I don't feel like I surrounded anyone, sir.

20 Q Well, you've been out there with Mr. Coleson, haven't
21 you, surrounding the PEOs --

22 A I guess a point of clarification --

23 Q -- haven't you? Answer my question --

24 MR. MEYER: No, no.

25 ///

1 BY MR. BAUER:

2 Q -- and then you can explain.

3 MR. MEYER: No. He asked -- you responded -- you
4 can't say the question -- the answer's nonresponsive until he's
5 had a chance to make it.

6 MR. BAUER: I'll defer to the Judge on this one.

7 THE COURT: I think that we're going to do is what
8 we'll -- why don't you pose a question? You're both talking
9 over each other a little bit. Please, Mr. Cleaveland, I'll ask
10 Attorney Bauer to let you finish your answer, to pose your
11 question. If it turns out that, that witness is not being
12 responsive to the questions, we'll address it at that point.

13 MR. BAUER: Thank you.

14 THE COURT: Why don't you pose a question?

15 BY MR. BAUER:

16 Q So Mr. Cleaveland, on occasions since January, and
17 February, and March, and April, all the way up through
18 September, you've been out surrounding the PEOs with
19 Mr. Coleson, haven't you?

20 A I mean, what do you mean by surrounding?

21 Q Being within 30 feet of the PEOs, with Mr. Coleson.

22 A Well, in that case, yes.

23 Q Okay.

24 A I've been within 30 feet with Graham Coleson. Correct.

25 Q And you've also been with Garrett Ean, within 30 feet

1 of the PEOs over those series of months, correct?

2 A I'm not sure every month, but generally speaking, yes.

3 Q Okay. And also, with Kate?

4 A Yes.

5 Q And also with Ian Freeman?

6 A Yes.

7 Q And with Peter Eyre?

8 A I have never -- Peter Eyre has never, to the best of my
9 knowledge, been within 30 feet of a parking enforcement officer
10 while I have been.

11 Q While you have been. Okay. Now, your goal is not just
12 to plug meters, is it?

13 A No. My goal is not to plug meters.

14 Q Right.

15 A It's to fill a meter that would have been ticketed.

16 Q Right. I mean, you've gone on record that you want to
17 shut down the parking department, haven't you?

18 A I mean, what do you mean by "I've gone on record"?

19 Q Well, I'm asking you the question. You've gone on
20 record. You have said, you've admitted that your goal is to
21 shut down the parking department for the City of Keene.

22 A I mean --

23 Q That's your ultimate goal, isn't it?

24 A That's not my goal Robin Hooding per se. I have spoke
25 to the City Council on March 7th about a three-year proposal to

1 phase out the parking department.

2 Q And part of that phasing out -- you want to stop the
3 parking enforcement officers from doing their jobs as they are
4 currently defined, don't you?

5 A That's incorrect. So my three-year proposal would be,
6 I think, a phase 1, year 1, would be -- the City of Keene
7 issues bonds to build more parking spots, you know. Phase 2, I
8 think there was even a parking structure. I don't remember
9 exactly what I told them. And then phase 3 was a three-year
10 phasing out of the parking department.

11 Q And one way to do that is to prevent the PEOs from
12 doing their day to day jobs of checking and handing out parking
13 tickets, isn't it?

14 A I have never prevented them from writing a ticket
15 besides putting the coin in the meter, an expired meter.

16 Q Why do you want to shut down the parking department of
17 the City of Keene?

18 A I mean, I would say that I think that parking -- is it
19 possible that it could be handled in other ways? And I think
20 it is. There are -- there is a city in Connecticut that, you
21 know, had a dying downtown. And they actually removed the
22 parking meters and they kind of freed it up. And then the
23 marketplace went in and solved it. And now, it's no longer an
24 issue, so they just build more spots. And it worked, so --

25 Q And under your proposal, there would not be any parking

1 enforcement officers for the City of Keene under your version,
2 correct?

3 A Under my three-year proposal?

4 Q Yes.

5 A I would say that's accurate.

6 Q Okay. And so in the interim, as part of that plan, as
7 part of that design to eliminate the parking department for the
8 City of Keene, you believe that you want to plug meters to
9 prevent these folks from doing their jobs, right?

10 A I mean, I don't view it as preventing them from doing
11 their jobs. I view it as, I'm helping my neighbor out. And
12 you know, I'm saving someone from the \$5 and possibly court if
13 they had chose to challenge the ticket.

14 Q Now, why do you need to be within 30 feet of these
15 parking enforcement officers to do whatever you want to do?

16 A So there, suppose I went downtown and I just randomly
17 fed expired meters. There's a chance -- let's say I put 12
18 minutes in a vehicle in the meter and then the vehicle owner
19 leaves at 15 minutes. And the parking enforcement officer
20 never walked by. That's not truly a save, in my opinion. So
21 therefore, you know, I don't want to give the City of Keene
22 money. That's not my goal. My goal is to fill the meters so
23 that parking tickets will not be issued.

24 Q Right. Your goal is that parking tickets not be issued
25 by the PEOs, right?

1 A Well --

2 Q Isn't that what you just said?

3 A My goal is -- I don't --

4 Q Isn't that what you just said, sir?

5 A -- believe that the time limits necessarily should be
6 enforced. The parking enforcement officers have chalked tires.
7 They've come back in, let's say, two-and-a-half hours. And you
8 know, they'll see that the cars are still there. I'm not as
9 opposed to that.

10 Q Now, you can protest and do all the activities that you
11 want to do about where I'm standing, which is about ten yards
12 away, can't you?

13 A Not really. Like I mentioned with Attorney Meyer, it's
14 very difficult to have a conversation with one of the enforcers
15 if they want to initiate one or I want to.

16 Q But you've been told by these three people, haven't
17 you, time and time again that by and large what you do is to
18 frustrate them, to irritate them, and to harass them? They've
19 said that to you time and time again, haven't they?

20 A No, not really.

21 Q Were you here for the testimony of these three folks?

22 A I mean, I was, but it was very vague and they didn't
23 specifically say, "James Cleaveland told me this on this date,"
24 which I have tried to do with my testimony. I've tried to be
25 as specific and honest as I possibly can be.

1 Q Page 17 of the photographs, which have been marked as a
2 full exhibit -- I think it's seven. Thank you. Are you in
3 that photograph?

4 A Let me make sure I'm on the right one, this one.

5 Q Yes, sir. Page 17.

6 A Yes. I'm on the left side of the screen there.

7 Q And what do you have in your hand?

8 A I have a Sony camera.

9 Q And how close are you to Jane?

10 A I mean, it's difficult to tell. I would guess six
11 feet.

12 Q And who is the individual to your left?

13 A His name is Chris.

14 Q And what is Chris doing?

15 A Chris is running a video camera and talking to parking
16 Enforcement Officer Jane.

17 Q Do you know who Chris is?

18 A I do.

19 Q What's Chris' last name?

20 A Cantwell.

21 Q Okay. And is he one of these volunteers that you've
22 spoken about?

23 A Not really. He indicated that, to me, his purpose on
24 going out there was just to talk to the parking enforcement
25 officers. I don't believe that he actually put any change into

1 meters, so he didn't have any Robin Hood cards. To my
2 knowledge, he had no change, so --

3 Q And who was the other individual to Chris's left?

4 A That is Daryl.

5 Q And what's Daryl's last name?

6 A Perry.

7 Q And who is Daryl Perry?

8 A He's a gentleman that lives here in town.

9 Q And is he a friend of yours?

10 A I would say yes.

11 Q Okay. And so this is one photograph of three people
12 who are videotaping Jane here. And would you agree with me
13 that Jane does not look like she wants you within the proximity
14 that you three folks are?

15 A Well, on that particular day, sir, she did not tell us
16 at any point that she wanted more space.

17 Q How about on page 18? Are you in the photograph on
18 page 18 of Exhibit 7?

19 A Yes.

20 Q Where?

21 A I'm on the left side.

22 Q And are you running across the street?

23 A Yes. I am.

24 Q And you're running after Jane?

25 A And that appears to be what's going on.

1 Q Okay. And who's the fellow in front of you who's also
2 running after Jane?

3 A That is Mr. Chris Cantwell, Mr. I'm sorry.

4 Q And you are approximately 30 feet from Jane there,
5 aren't you?

6 A I mean, I have no way of knowing how far I am.

7 Q Did you ever play football?

8 A No.

9 Q Don't know what a first down is?

10 A Huh-uh.

11 Q It's 30 feet or ten yards.

12 A I know it's ten yards, but --

13 Q Okay. You're about ten yards away from Jane there,
14 aren't you?

15 A I guess.

16 Q And you're running after her?

17 A I'm running after her because she is trying to get to
18 Federal Street and she mentioned to issue more tickets.

19 Q She's trying to get away from you, isn't she?

20 A Incorrect. She's trying to get to Federal Street to
21 issue more tickets, which she indicates in the video if we'd
22 like to watch it.

23 Q Now, how do you communicate with your other Defendant
24 volunteers?

25 A I mean, as mentioned, we do have handheld radios that

1 we use. Sometimes, you know, we'll use cell phones, text
2 messaging, things like that.

3 Q And so you'll be next to, for example, Lin in her
4 vicinity, and you'll call somebody and say, "Come on in. She's
5 over here on Such-and-Such Street." Right?

6 A I mean, sometimes. Sometimes, I may be the only one
7 out there, though.

8 Q But rarely -- isn't that what your testimony was?
9 Rarely, you're out by yourself?

10 A Well, let's say Saturday morning. I would be the only
11 one out there at 8:00 in the morning.

12 Q And have you heard today's testimony under oath by Jane
13 that, because of your activities, she will not work on
14 Saturdays? Did you hear that testimony?

15 A I did.

16 Q Because of you.

17 A Well, you know, she's never expressed that to me in
18 person in the past, so --

19 Q You thought --

20 THE COURT: Attorney Bauer, we're at a logical
21 breaking point. We'll take our afternoon recess whenever --
22 whatever line you're working on.

23 MR. BAUER: Now is good, Judge.

24 THE COURT: We'll take a short recess.

25 THE BAILIFF: All rise.

1 (Recess at 2:28 p.m., recommencing at 2:46 p.m.)

2 THE COURT: If you would resume the stand. Please
3 have a seat.

4 Attorney Bauer.

5 MR. BAUER: Yes, sir.

6 BY MR. BAUER:

7 Q So Mr. Cleaveland, since January over the last several
8 months how many times have you and your colleagues, these
9 Defendants been out on the street following the PEOs? How many
10 times? Let's do it on a weekly basis.

11 MR. MEYER: Your Honor, I'd object to the question.
12 It was compound. First he said you and then he said and your
13 colleagues. Ask to be separated.

14 THE COURT: I think that's fair. I think that's --
15 if you would just rephrase the question.

16 MR. BAUER: I'll break it down.

17 BY MR. BAUER:

18 Q Mr. Cleaveland, how many times have you been out
19 following the three PEOs on a weekly basis since January?

20 A So in January and February, I was in between work. so
21 as Jane had mentioned, I would typically go out Monday through
22 Friday, you know, just kind of whenever. I guess initially I
23 kind of had this -- I'd go to the library and I'd go read at
24 some point but you know I would say it was very consistent
25 those first two months.

1 Q So five days out of -- Monday through Friday?

2 A That's probably accurate.

3 Q And how about Saturday?

4 A Saturday, initially I don't think I was going out that
5 much on Saturdays. I definitely did go out January and
6 February.

7 Q So January and February about five times a week and
8 this was I think you've already said whenever the PEOs were out
9 there, you would go out there with and follow them, right?

10 A Well I mean I'd go out there and try to put change in
11 the meters to prevent tickets, yes.

12 Q And during that timeframe, you had other Defendants
13 with you, didn't you?

14 A I mean occasionally. Sometimes I guess initially I
15 would -- like in early January, I'd pretty much do it myself.
16 But I guess --

17 Q Well tell us who else you had out there with you in
18 January and February of the Defendants?

19 A I would say probably Garrett was out there in January.

20 Q Garrett Ean?

21 A Garrett Ean.

22 Q Who else?

23 A I don't recall when Graham began Robin Hooding but I
24 don't believe it was in January.

25 THE DEFENDANT/COLESON: It was late January.

1 THE COURT: Okay. Attorney Meyer, that's the --
2 there have been a couple -- Mr. Coleson, if there's another
3 outburst, you're --

4 THE DEFENDANT/COLESON: It won't happen again, Your
5 Honor.

6 BY MR. BAUER:

7 Q And so then moving into the springtime, how often were
8 you out there in the spring?

9 A Typically you know I'd work Monday through Friday.

10 Q When did you get a job?

11 A Probably March, early March.

12 Q So how often were you out there on a weekly basis in
13 the spring?

14 A Usually I was just out on Saturdays. Sometimes I
15 would, you know, come home from work and you know maybe do an
16 hour or so but.

17 Q Okay. And so then most of your days were on Saturdays,
18 right?

19 A Correct.

20 Q So most of your interactions were dealing with Jane,
21 haven't they been?

22 A Yeah and then occasionally you know I guess since then,
23 you know, March through September, you know, there have been
24 some weekdays that I've gone out.

25 Q Okay. And you've been out there with the other

1 Defendants, too, haven't you?

2 A Yes.

3 Q And that includes Garrett Ean, correct?

4 A Uh-huh.

5 Q I'm sorry.

6 A Yes.

7 Q Graham Coleson?

8 A Uh-huh. Yes.

9 Q Okay. And Ian Freeman?

10 A Yes.

11 Q And Kate?

12 A Yes.

13 Q And how about Peter, you said no?

14 A Peter, he was not very interested in going out and
15 trying to fill parking meters. So not really, no.

16 Q Now you've been involved in, what, two fisticuffs,
17 haven't you, where you've been involved in them? One is
18 photographed and the other one's down by this parking lot?

19 A I'm not sure -- I'm only aware of one.

20 Q Which one is that?

21 A The one that Jane refers to in her affidavit.

22 Q And that's the one that's depicted in the photograph?

23 A Correct.

24 Q Okay. And so you weren't there -- who was at that
25 other one? Was that Garrett Ean and Graham Coleson, right?

1 A Yes.

2 Q Okay. And you've acknowledged in your answer that the
3 PEOs asked you to stay 15 feet back from them, haven't you?

4 A Yes, but I feel like it was not their request per se.
5 It was obviously a staged event. The only time they've ever
6 made a request like that has been with Peter Thomas standing
7 there.

8 Q And when did Peter Thomas --

9 A I don't recall the exact date, it was late March.

10 Q Okay. Your answer on page 6 of your answer says the
11 PEOs initially asked James Cleaveland and that's your
12 signature, isn't it, sir?

13 A Yes.

14 Q To remain 15 feet away from them, right?

15 A Yep.

16 Q Isn't that what you said?

17 A Yes.

18 Q And then it goes on to say that even after asking James
19 to stay 15 feet, none of the PEOs seemed to have a problem of
20 you entering within 15 feet?

21 A It doesn't say me, it says of -- I'm talking about them
22 entering within 15 feet.

23 Q You didn't state --

24 A So they made this request --

25 Q Excuse me. Let me ask the question.

1 A Okay.

2 Q You didn't stay 15 feet back, did you?

3 A I mean there were times when I'm sitting there and the
4 answer is even after they made that request, there were
5 multiple occasions when the PEOs on their own volition entered
6 within 15 feet of me.

7 Q Well let me ask you the direct question. Sir, are you
8 willing to stay 30 feet away from these PEOs as they have
9 requested you to do so?

10 A No.

11 Q So with regard to the use of these cards, which are
12 Exhibit 4, is this the type of card that you were testifying
13 about with Mr. Meyer that you would use?

14 A Yes.

15 Q And would Kate use these cards?

16 A Yes.

17 Q And would Ian use these cards?

18 A I mean I believe so. I don't know for sure.

19 Q And would Coleson use these cards?

20 A Yes.

21 Q And would -- who have I missed here? Garrett?

22 A Garrett.

23 Q Right?

24 A Yes.

25 Q And he would use these cards?

1 A That's right.

2 Q Okay. And so where did everybody get these cards?

3 A Well as I mentioned in my testimony with Attorney
4 Meyer, there was a local graphics artist who we had mentioned.
5 So in the past they -- when Robin Hooders used, they'd leave
6 envelopes on vehicles and I made a request to him would he help
7 us design a business card because I thought that --

8 Q And who is this person?

9 A His name is Marcus.

10 Q Marcus what?

11 A Connor.

12 Q Okay. Go ahead.

13 A He -- I made a request to him that -- I thought
14 business cards would be a better thing for a variety of reasons
15 because they're easier to carry, you can carry more of them,
16 you don't have to pack the envelope. They're easier to slide
17 into wiper blades. You know, as opposed to lifting the wiper
18 blade and then putting an envelope, you can just slide the card
19 in there.

20 Q And you can slide these cards in any vehicle anywhere
21 and stay 30 feet back from these PEOs, can't you?

22 A I mean I can, however, I still want to exercise my
23 freedom of speech to have a conversation with them if I prefer.

24 Q And you can videotape the PEOs 30 feet back, can't you?

25 A I mean I can, you're correct.

1 Q And you can make saves as you've said 30 feet back from
2 these PEOs, can't you?

3 A I can except that they will change directions and then
4 I don't know where they're going. So I can't stay in front of
5 them which I would prefer to do and I only as I previously
6 mentioned, I only want to fill parking meters that would have
7 been ticketed.

8 Q And the reason you only want to fill those meters is
9 because your ultimate goal is to shut down the parking
10 enforcement for the City, right?

11 A I mean my goal in filling meters is as I mentioned, I
12 don't believe that parking should be a crime. I don't think it
13 harms anyone. I don't agree that a ticket should be issued if
14 there is one spot taken and ten empty spots. I feel like that
15 the ticket should not be issued at that point. And you know,
16 I've expressed in the pasta to the parking enforcement officers
17 if they only enforced at peak hours and I would define peak
18 hours as maybe 95 percent or more occupancy. That's just my
19 definition where it could be difficult to find a spot. Then
20 they could enforce and I would be a little more okay with it.

21 Q And one of the things you've already said is that you
22 in shutting down the parking enforcement whether it days then
23 or more immediate is to put the parking enforcement people out
24 of work?

25 A I mean that's not my intention.

1 MR. MEYER: Your Honor, that was asked and answered.

2 THE COURT: I think we are covering some of the same
3 ground. But the objection is overruled. You can -- but I
4 think we have gotten an answer.

5 THE WITNESS: My intention in Robin Hooding, I mean I
6 would say that I hold no personal animosity towards any of the
7 parking enforcement officers. I think that you know they're
8 okay people. I don't agree with the job that they're doing per
9 se. But I've never followed them off duty. To my knowledge,
10 I've never chatted with them off duty. I know Linda has seen
11 me, she goes to the library some Saturdays. I've never talked
12 to her. I don't want to talk to them.

13 You know, my goal -- I guess it would be like if you
14 wanted to privatize the trash collection of a city, you may
15 have that goal because you think it would run better. Not
16 because you want to put the trash collectors out of work. So
17 my goal in Robin Hooding is not necessarily to put these people
18 out of work. It's a protest against something that I see as an
19 injustice. I don't agree with parking tickets. I don't -- I
20 think that they're bad for business downtown because the
21 argument is if there is no parking enforcement, that people
22 will take the spots all day and maybe that's a valid argument,
23 but I would argue the people who do come and shop downtown, you
24 know, they may let's say park their vehicle, eat a meal, get
25 issued a ticket, their incentive is not to come back. Not to

1 mention people who are visiting Keene. I've got a lot of
2 letters in the mail, you know, when I leave my little green or
3 emails, green flier, you know basically I was visiting out of
4 town. This soured my experience of Keene. So I feel that it's
5 bad for the City, it's bad for the small businesses in Keene.

6 And I don't propose to know the perfect solution for
7 parking. I do think that there are a few things that could be
8 done in the interim. Ultimately I would like to as I mentioned
9 have more spaces built. I would like to phase out the parking
10 department. But I don't do that because -- I don't advocate
11 that position out of spite for the enforcers, you know, I have
12 no I guess personal feelings against them in any way. And you
13 know, I've had really good conversations with them. I've
14 enjoyed being around them.

15 BY MR. BAUER:

16 Q And you can do all of those things from the distance
17 that you and I are, can't you?

18 A No, because if I'm trying to have a conversation with
19 Jane at 30 feet, it's almost like I'm involving everyone within
20 earshot because I'd have to raise my voice.

21 Q So you know, you know that Jane doesn't want to have a
22 conversation with you anymore. You know that now, don't you?

23 A Well, sir, I would say that she is a government
24 employee and if she does not wish to have a conversation with
25 me when she is off duty, I can understand that. However, I

1 reserve my right under Article 8 of the New Hampshire
2 Constitution to have a conversation with said employee when
3 they're on duty acting in their official capacity. And I also
4 reserve my right to have a speech whether that speech is
5 hostile which I don't think I've been that hostile personally.
6 Or just mundane just talking about let's say the weather with
7 Jane.

8 Q You sound like you're a student of the law in this
9 area. Have you come across the case of Glick versus -- in the
10 First Circuit?

11 A I think I mentioned it in my answer.

12 MR. MEYER: Your Honor, I do not see -- oh, I'm
13 sorry. I'm going to say relevance and then if the Court wants
14 amplification, I'll amplify it.

15 THE COURT: Okay.

16 MR. BAUER: He's brought up the Constitution. I just
17 want to see whether he's familiar with a comfortable removed
18 away from government officials doing their job. That's all I'm
19 asking.

20 MR. MEYER: Wait, wait, wait, that wasn't the
21 question.

22 MR. BAUER: I said are you familiar --

23 MR. MEYER: If he wants to ask the question, that's
24 not what he -- are you familiar with Glick?

25 MR. BAUER: Right. That's what Glick stands for.

1 MR. MEYER: That's not what -- that's not what Glick
2 stands for.

3 THE COURT: Okay, I think we're off the point of
4 that --

5 MR. MEYER: That's the most absurd characterization
6 of Glick.

7 THE COURT: Okay. That's not necessary. You can
8 make your arguments as to the evidence without --

9 MR. MEYER: I'm sorry, Your Honor. Right but, Your
10 Honor, I guess my point is we get immediately get into
11 arguments over what Glick stands for. And it's fine for me to
12 argue with Attorney Bauer on that point. But it's not fine for
13 Attorney Bauer to start arguing with the witness.

14 MR. BAUER: I'm not arguing. I'm asking questions,
15 Your Honor.

16 MR. MEYER: You are when you're going to characterize
17 it that -- inevitably you're going to characterize the case
18 that way and the witness is going to respond. He's not a
19 lawyer.

20 THE COURT: How is the witness' understanding of the
21 Glick case relevant to the issues before the Court?

22 MR. BAUER: I want to know whether he -- if he's well
23 versed on the law as he's suggesting he is in the last answer,
24 whether he knows the principles of Glick out of the First
25 Circuit which is directly relevant to this case.

1 THE COURT: Well, we'll have legal argument at the
2 end of proceedings to argue the law and if you have a specific
3 question and Attorney Meyer, it's really only because there was
4 an indication of the Constitution that I'm even allowing this
5 exchange. If you have a brief -- if you have brief areas you
6 want to examine him on, I'm going to allow it. But not to
7 debate the law on First Amendment. That's for argument.
8 That's for the pleadings at the end.

9 MR. MEYER: We have a related point. If Attorney
10 Bauer is going to ask this witness about Glick and what Glick
11 stands for or what Glick doesn't stand for, at a very minimum,
12 the witness is entitled to review a copy of that opinion.

13 THE COURT: Can we move on, counsel? How -- I want
14 to have a further discussion at the bench. Honestly, if -- I'm
15 not really sure how debating these issues with the witness is
16 going to be helpful or enlightening about the issues before the
17 Court.

18 BY MR. BAUER:

19 Q Let me ask you a factual question then. Moving on.
20 You said you're a registered voter?

21 A Yes.

22 Q Do you understand that there are regulations that
23 individuals who have political persuasion one way or another
24 have to be a certain feet or distance from the polling places?

25 A I'm not aware of that, no.

1 Q Are you familiar with abortion clinics and the
2 limitations that the Courts have imposed on individuals who
3 protest with regard to abortion advice? Are you aware of those
4 factual situations?

5 A I wasn't really aware. I've done some very minimal
6 reading online about such issues as that.

7 Q Have you -- are you aware of requirements that Courts
8 impose on individuals wanting to videotape in the courtroom?

9 A Yes.

10 MR. BAUER: Thank you. Nothing further.

11 THE COURT: Redirect?

12 MR. MEYER: Thank you, Your Honor.

13 REDIRECT EXAMINATION

14 BY MR. MEYER:

15 Q Sir, you were cross-examined again in some length about
16 the fact that Jane allegedly doesn't want to have conversations
17 with you. Has that in fact been your experience that she
18 doesn't want to converse with you?

19 A Not really. I have a lot of footage of --

20 Q Do you have a video that can demonstrate the
21 conversational?

22 A Yes, I do.

23 Q All right. Please I'd like to --

24 THE COURT: Yeah, I think he -- I mean I get that the
25 witness has testified to this. What more is the video going to

1 add to that?

2 MR. MEYER: Well, Your Honor, I think it's --

3 THE COURT: You've played a particular video
4 showing --

5 MR. MEYER: Right.

6 THE COURT: -- a fairly pleasant exchange.

7 MR. MEYER: But there's two different -- yes, I have.
8 But I think at this point and I agree that arguably every
9 pleasant exchange is redundant. But the argument -- I mean
10 this is fairly central to this case. I mean the claim is that
11 they're engaging in verbal harassment, harassing the witness by
12 approaching too closely, following around, that she's you know
13 miserable and upset and needs counseling. And generally it's
14 so bad that she can't even do her job anymore and she wants to
15 leave. And I think that the actual interactions between the
16 individuals involved in Robin Hooding and the parking
17 enforcement officers without editorializing on either side are
18 the best evidence on what to me is really a central point.

19 Now there are hundreds of -- I'm only asking to show
20 one more -- one -- how long is it, James?

21 THE WITNESS: I think it's six minutes.

22 MR. MEYER: One six minute thing.

23 THE COURT: Not a problem. That's fine.

24 MR. MEYER: Thank you, Your Honor.

25 THE COURT: And Attorney Bauer, if you --

1 MR. BAUER: Yep.

2 THE WITNESS: This is on June 29th of this year.

3 (A Videotape played at 3:06 p.m., ending at 3:13 p.m.)

4 BY MR. MEYER:

5 Q All right, James, in that tape there's a lot of heavy
6 breathing. What's that all about?

7 A Like I said the parking enforcement officers would walk
8 very quickly, change directions and as you -- and as this kind
9 of mentioned, it's almost as an attempt to make what I'm doing
10 more difficult.

11 Q Well who's doing the heavy breathing?

12 A Oh, that's me.

13 Q All right. Why are you heavy -- why are you doing the
14 heavy breathing?

15 A Well as you can see from the video, I'm running to try
16 to be ahead of them and check meters before they can get to
17 them.

18 Q Now there's a lot of laughing going on. Who's doing
19 the laughing?

20 A I have a really bad habit where I do a lot of laughing
21 and Jane is doing laughing as well.

22 Q And you're both laughing at your being out of shape?

23 A I would say that's accurate.

24 Q Yeah.

25 MR. MEYER: Your Honor, I'd like to have that marked

1 as Defendant's Exhibit B.

2 THE COURT: Any objection?

3 MR. BAUER: No objection.

4 THE COURT: Defendant's B is a full exhibit.

5 (Defendant's Exhibit B received)

6 THE COURT: And again, we're going to need --

7 MR. MEYER: We will.

8 THE COURT: At some point after --

9 MR. MEYER: Yes.

10 THE COURT: -- if you'd just supply the discs with --

11 BY MR. MEYER:

12 Q James, there's been testimony about and you've been
13 asked about approaching parking enforcement officers. Have
14 there been ever any circumstances where they've approached you?

15 A Yes, there is one case in particular I remember. I was
16 shooting video. I was at the edge of Gilbo. I was on the west
17 side kind of -- I was at the edge of it and Linda was parked
18 and she was on the telephone so I was kind of standing back and
19 she actually approached me and put her back almost like right
20 against my camera. I didn't say a word to her. I was like I
21 don't know what's going on. But I just kept filming and
22 eventually she did move away from me but it was very odd
23 behavior.

24 Q Now in terms of this 30 foot proposal, how would that
25 operate when you got into a crosswalk?

1 A It would be very difficult to stay in front of them.
2 If I'm required to stay a certain distance away, I would in
3 theory not be able to pass them on sidewalks even if I wasn't
4 Robin Hooding I think. I don't know. But also there are
5 circumstances where I may be impeded from crossing the street
6 because of traffic. An example of that would be at a
7 crosswalk. There have been multiple occasions over these last
8 nine months when I'm walking, I'm in front of them and I come
9 to a crosswalk and because of traffic I have to stop and
10 there's really nowhere for me to go because of the
11 configuration of downtown Keene.

12 Q And then what happens?

13 A Usually the parking enforcer will approach me and
14 they'll push the little button, the crosswalk signal or
15 whatever you call it.

16 Q And so that they come up and they're side walking next
17 to you?

18 A Yes.

19 Q Okay. You were asked by Attorney Bauer about whether
20 you could videotape from 30 feet away. Would videotaping from
21 30 feet away in your opinion affect the quality of the
22 videotaping vis-à-vis the three goals that you outlined
23 earlier?

24 A Absolutely. Especially as you saw in this last video,
25 you are moving. So it can be difficult to film. And this was

1 a good video where I'm kind of -- I had a local helping me that
2 day. But I was basically on my own. So I'm trying to film
3 just so I'll have it running. But if more of us are out, I can
4 definitely film better, more stable shot. From 30 feet away,
5 that's almost to the -- you would need a tripod to get a stable
6 shot. Even with the zoom feature, there's going to be a lot of
7 shaking involved. And I've had videos where I have filmed not
8 even the parking enforcement officers but police or whoever
9 else at 30 feet and it is very difficult without a tripod even
10 if you try to push the camera against you or whatever else to
11 keep a stable steady shot.

12 Q Is the risk that your view is going to be interfered
13 with by something between you and the person you're filming?

14 A That's another concern and another concern on that --
15 so I guess there's three concerns I have. Stability, as you
16 mentioned something coming between the shot and if you're 30
17 feet away, there could even be circumstances where because of
18 the environment, you can't move to get a better shot. And then
19 the last one I have a concern about is audio. Even as you saw
20 with Jane let's say 15 feet behind me, I had to add subtitles.
21 It's very difficult to make out what exactly is being said.

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

23 THE COURT: Further cross-examination?

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REXCROSS-EXAMINATION

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BY MR. BAUER:

Q Mr. Cleaveland, you would agree, wouldn't you, that this is really a balancing of interests? Your interests to do what you want to do and the interests of the PEOs to perform their responsibilities?

A No.

Q You wouldn't agree with that?

A Nope.

MR. BAUER: Thank you. Nothing further.

THE COURT: I think you can step down, sir.

Attorney Bauer, in terms of additional witnesses?

MR. BAUER: I'm going to call Garrett Ean and it's going to be very brief and then Mr. Meyer can examine him as he wishes.

THE COURT: We'll have Mr. Cleaveland just move the videotape -- or I'm sorry, the laptop. Mr. Ean, if you would raise your right hand.

GARRETT EAN, PLAINTIFF'S WITNESS, SWORN

THE COURT: Thank you. You can be seated and state your full name and spell your last name for the record.

THE WITNESS: My name is Garrett Ean, last name E-A-N.

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DIRECT EXAMINATION

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BY MR. BAUER:

Q How old are you, sir?

A Twenty-four.

Q What's your educational background?

A I graduated from Concord High School. I did two years and got an associate's degree in criminal justice from New Hampshire Technical Institute and I spent two years in Sarasota, Florida where I received a bachelor's degree in criminology from the University of South Florida.

Q In what year?

A 2010 was my graduating year from college.

Q Mr. Ean, you've gone on record that you want to shut down the parking department of the City, haven't you?

A I don't recall ever going on record saying that. Are you referring to something in particular?

Q Let me show you an article in which you are quoted. I just put an X next to it.

MR. BAUER: I'll get you a copy, Jon.

BY MR. BAUER:

Q Take a moment to look at that please.

A Uh-huh. I have read it.

Q Okay. You were -- you gave an interview to a news reporter, didn't you?

A Uh-huh.

1 Q You have to verbalize your answer.

2 A Yes.

3 Q And you were quoted as saying and if you'll read along
4 with me, quote, "This is one instance when you can physically
5 prevent an enforcement mechanism of government from occurring.
6 The idea that you can physically shut down an enforcement arm
7 of the government and we're not at that level of success yet,
8 but it's a goal to shoot for," end quote.

9 A Uh-huh.

10 Q Those are your words, aren't they?

11 A Yes.

12 Q Like to show you also a videotape and this is you
13 giving an interview, isn't it?

14 A That's what it appears to be. This was after the
15 lawsuit was filed.

16 (A Videotape played at 3:22 p.m., ending at 3:23 p.m.)

17 Q So this is you saying that your goal, your personal
18 goal is to shut down the parking enforcement in the City, isn't
19 it?

20 A Yes, to the extent of enforcing the meter violations.

21 Q Right. And you have said on occasions to Lynn and to
22 Jane and to Alan that you're out there to prevent them from
23 giving out tickets?

24 A That is my goal, to prevent the issuance of tickets.

25 Q And you've said that to them?

1 A I'm not sure if I've relayed that to Linda since I
2 haven't done much talking to her. But yes, we've probably
3 conversed about it, myself and Jane and Alan.

4 Q And so you have told -- you've at least told -- let me
5 put it this way. You acknowledge that you have said to Alan
6 and Jane that your goal is to shut down the parking enforcement
7 of the City and one way to do that is to do what you've been
8 doing, right?

9 A Well the parking enforcement of the City, I'm only able
10 to stop them from writing the meter violations. I have never
11 really made any effort to prevent the issuance of two hour
12 violations. So yeah, there's only so much enforcement that you
13 can physically shut down by the action.

14 Q And you've told them that one of the ways to do that is
15 to have these folks quit their job, haven't you?

16 A I don't know if I've ever relayed that specifically.

17 Q Have you heard the testimony today?

18 A Yes. Most of it.

19 Q In fact you have told people that you'd actually find
20 them another -- when I say people, PEOs, that you'd find them
21 another job, haven't you?

22 A I've heard other Defendants in this case talk about
23 that. I don't believe I've ever offered job referral services
24 or suggested that I do.

25 Q The black binder that you have in front of you, Exhibit

1 7, page 1. You are photographing and videotaping Jane there,
2 aren't you?

3 A That is what is depicted.

4 Q That is you were --

5 A Yes.

6 Q -- videotaping Jane there, aren't you?

7 A Yes, I was holding a video camera, February 6th, I may
8 or may not have had it mounted on an X Grip. I believe at
9 about that time I had bought a new stabilizer for it which made
10 holding it a lot more convenient. If I didn't have that
11 stabilizer, I was likely holding the camera by hand maybe
12 having --

13 Q And you are within several feet of her, aren't you?

14 A We could actually pull out the video camera I filmed it
15 on and see how far away one would be if Jane is framed this
16 much in the frame. I would estimate that this is at least
17 several feet. Because as you can see most of her upper body
18 and her head is in the frame. Which means that you're at a
19 considerable distance if you're getting most of someone in the
20 frame.

21 Q And by several feet, you mean three feet, don't you?

22 A No, this would be further away than three feet. Three
23 feet I would estimate would maybe get from her chest to the top
24 of here. So that's why I'm estimating this is further away.
25 If you like, I have the camera. We could actually frame

1 someone up and see how far away they are.

2 Q How close were you --

3 THE COURT: No, we're not going to do that.

4 BY MR. BAUER:

5 Q -- to Jane -- how close were you when you took the
6 photograph number 1?

7 A I would estimate between five and eight feet.

8 Q And how about with regard to photograph number 2?

9 A It looks like maybe there's a tad bit more distance
10 there. As we see more of the top of Jane's head. So maybe I'd
11 estimate this one to be 6 to 12.

12 Q And how about with regard to 3? Who's doing the
13 recording of Graham Coleson and Jane?

14 A Yes, in this instance --

15 Q Is that you?

16 A Yes.

17 Q Thank you.

18 A According to the tags here, this came from Freeman to
19 get raw video that I uploaded --

20 Q And how about with regard --

21 A -- the video that I filmed. And as you can see from
22 the way this is framed, we have most of Graham in the frame.
23 We can see from just above his knees to almost the top of his
24 head. And here Jane is considerably closer to the camera. I'm
25 probably about the same distance from her in this photograph as

1 Graham is. And I would estimate that Graham was maybe further
2 than was stated earlier based on the framing in this photo.

3 Q Okay. So you were about three or four feet away from
4 Jane, correct?

5 A Yeah, I'd say that's a safe estimate.

6 Q And how about photograph 4? Who's taking that
7 photograph?

8 A This is labeled as having come from Graham's camera and
9 as I am in the frame, I am being filmed, you can see I'm
10 holding my camera at the bottom of the frame.

11 Q And were you part of Exhibit 5 or photograph 5? Were
12 you in the vicinity when that photograph was taken of
13 Mr. Givetz?

14 A Based on the timestamps, yes, this photograph is a cap
15 from 1:06 in the video. And page 5 is a cap from the same
16 video at 1:39. So I couldn't have been too far away. But I
17 wasn't taking the photo nor am I in it.

18 Q But you were there?

19 A I was in the vicinity.

20 Q And all of these photographs, you are in the vicinity
21 of all of these photographs, aren't you? Either taking --

22 A I can verify that if you want me to look through them.

23 Q Take a look, sure. You're either taking --

24 A I captured -- you want me to flip through and just say
25 which ones I captured or was in?

1 Q Sure.

2 A First image, I captured this image, I uploaded it.

3 Q Which number, by number?

4 A Page 1. I captured it, I uploaded it.

5 MR. BAUER: We've already done that.

6 THE COURT: We've already gone through 5. Let's not
7 repeat 1 through 5.

8 BY MR. BAUER:

9 Q We're up to 6.

10 A All right, page 6, this was filmed by Graham. It's the
11 same video as the last two photos. But it's a considerable
12 time later. I may or may not have been nearby at the time. We
13 probably could check the video and find out.

14 Page 7, this is identified as having come from an
15 edited video. The raw video is available online. I can get
16 that information for everyone so we're using the best evidence.

17 Q Is that you --

18 A But yes --

19 Q Is that you photographing the fight?

20 A No, Graham took this video and I was standing maybe at
21 Graham's 4:00 so considerably to the right of where this is
22 being shot.

23 Q Now there's two physical altercations that you've been
24 a part of or been a witness of?

25 A I've witnessed three at least.

1 Q Three. This one.

2 A Yep.

3 Q One in the --

4 A This is Nick McAllister. So the confrontation with
5 Nick McAllister is one.

6 Q What are the other two?

7 A Another man named Travis Hobbs attacked myself and
8 Graham at a later date. In that instance, Jane called the
9 police. I think it's been spoken about earlier. And there was
10 another incident referenced which Jane was a partial witness to
11 where a man named Bradford Hutchinson came up and waved
12 something presumably pepper spray in my face. It started
13 deescalating and then he grabbed me or something and I just
14 pushed him away. He was following myself and Jane for a
15 considerable distance. I believe maybe like four or five more
16 minutes before he eventually wandered off. So there were three
17 -- there are three times that I've either been either attacked
18 or witnessed an attack involving someone like a member of the
19 public.

20 Q And you've also had citizens come up to you and tell
21 you to stop interfering with the PEOs doing their job, haven't
22 you?

23 A Sure. There's been a variety of people that come up to
24 us with a variety of responses. Some people love us. Some
25 people don't like us. Some people are neutral, have concerns

1 and just want to learn more.

2 Q Uh-huh. And so you are -- your area of expertise in
3 all of this is primarily videotaping, isn't it?

4 A Well I'd say I'm one of the more prolific videography
5 activists in Keene, yes. I upload a lot of -- almost
6 everything I shoot, I upload raw to the Internet. Creating an
7 archive.

8 Q And you can do these videotaping from 30 feet back,
9 can't you?

10 A Well if you're -- if the subject --

11 Q Can't you?

12 A -- of your photography is 30 feet away, you're a
13 considerable distance from the subject. You're not getting the
14 greatest video.

15 Q And you can do the videotaping 30 feet away, sir, can't
16 you?

17 A It is physically possible to videotape something from
18 30 feet away.

19 Q And you can get your message across 30 feet away, can't
20 you?

21 A I'm not sure that I can say that I can get my message
22 across from a certain distance because the nature of the
23 question frames it in such a way that I'm automatically
24 limiting the effectiveness, and my ability to get my message
25 out initially from the starting point of just being 30 feet

1 away. So, yes, I'd say it is a considerable infringement.

2 Q I'm sorry. It's a what?

3 A It's a considerable infringement on my ability to get
4 any message across.

5 Q But you can do it, can't you?

6 A I can try. And I probably wouldn't be too successful
7 at it. My voice gets very coarse if I have to yell. And I
8 don't want to yell, honestly. I don't want to try and talk to
9 people from 30 feet away. If I can't have a normal
10 conversation with them, I'm really not interested.

11 Q And you would agree with me, wouldn't you, that this is
12 a balancing of your interests in terms of doing what you want
13 to do, and the PEO's interest of trying to do their job? You
14 would agree that it's a balancing of interests, wouldn't you?

15 A In the sense that every human interaction is a
16 balancing of interests, yes. I mean every human being that we
17 all inter with, you know, we respect their rights and, you
18 know, we converse with them or whatever it is. However we
19 interact with people is always a balancing of other people's
20 interests. If someone's occupying a space, you can't put
21 yourself into occupying that space. You have to respect, you
22 know, the bubble around people, things like that.

23 Q And you know that they have asked you to expand that
24 bubble many, many times?

25 A Many, many times would be an incorrect statement. I

1 could list the specific instances in which I've been asked for
2 space, if you'd like.

3 Q Go right ahead.

4 A Okay. I believe the first time I was ever asked to
5 give more space or to keep distance was from Parking Enforcer
6 Linda. And it was in the Gilbo parking lot, and this was in
7 February. Myself and Kate were in the Gilbo lot. And she had
8 -- she was walking. I was trying to, I believe, crossing the
9 street in Gilbo, north to south. I started going that way, and
10 she turned around. And after she passed by me, she passed by
11 at maybe a distance of six to ten feet. She said, please keep
12 your distance and put her hand up. And so I stopped advancing,
13 and let her, you know, put some distance between us before I
14 continued on. So in that instance, I would say I totally
15 respected that request. She's also asked me not to talk to
16 her, and I haven't for that reason.

17 Another instance of more space being asked, Alan
18 referenced an incident in which we almost collided. There was
19 only one instance I recall of us ever nearly colliding. I have
20 never bumped into any of the parking enforcers or had any
21 unprivileged physical contact with them, nor have I observed
22 any of the other Robin Hooders or anybody just on the streets,
23 from what I understand. I don't think I've ever seen an
24 assault on the parking enforcers from anyone.

25 Another instance where more space was asked. When

1 Peter Thomas came out, he gave -- when you see the videos of
2 his -- when he first meets each Robin Hooder on video, he
3 instructs or sorts of suggest to the parking enforcer that they
4 read a statement or make a statement. So it was clear that
5 this was a prepared statement. And the one time in which when
6 I first met Mr. Thomas, it was when I was out parking -- when I
7 was out Robin Hooding and Jane was out. And he prompted her to
8 give a -- deliver a message. And she said that I would like
9 you to please not be within or to keep a distance of 15 feet.
10 And I said, well, 15 feet, that seems like a considerable
11 distance, or something like that. And then she also said, oh,
12 and also don't talk to me. So I tried to respect that as best
13 I could. I questioned in my mind the validity of the request.
14 And but I believe it was within 20 or 30 minutes, I was again
15 having a conversation with Jane, and we were within 15 feet.
16 And there was no issue of space invasion or anyone making any
17 other point.

18 So aside from those instances of being told that I
19 may have been within the space, I've always respected the space
20 of the parking enforcers. And for that reason, none of them,
21 other than those three instances I've pointed out, have they
22 asked for space.

23 Q How many times -- excuse me. How many people have --
24 how many Defendants have you been with when you have been
25 around the parking enforcement officers?

1 A Well, I've seen all of the people that are here as
2 Defendants have been out Robin Hooding. I can't say for sure
3 that each of them has been Robin Hooding while each particular
4 enforcer is out per se. But --

5 Q Do you -- do you use a radio or some type of
6 walkie-talkie to communicate with your other Defendants?

7 A Yeah. My radio is dual purpose. I have my MP3 player
8 plugged into an FM transmitter so while I'm not getting calls
9 from people if anything's going on, I'll also be playing music.

10 Q And do you tell the other -- the other Defendants to
11 come back or to come down because Jane is at a certain street or
12 that Lynn is at a certain street?

13 A Well, relaying a message, I wouldn't really say I'm
14 telling anyone to do anything because it isn't like if I put
15 out the notice that there's a parking enforcer at a particular
16 place that anyone's necessarily going to hear it or show up.
17 So telling people to come down? No. But putting out over the
18 radio, hey, Garrett is down here Robin Hooding at Roxbury
19 Street if somebody wants to come down. So, you know, I'd say
20 it's not telling anyone to do anything.

21 Q And do you -- do you follow around the parking
22 enforcement officers up to 25 hours a week or so?

23 A No. I'd say it's more like ten to 12 hours a week.

24 Q Well, let me -- let me again point your -- point your
25 attention to the news article. And I'll show you where. Just

1 where I've checked off, why don't you just read that into the
2 record please.

3 A Uh-huh.

4 "Ean who makes a living landscaping and cooking
5 in addition to the 24 hours or so per week he
6 volunteers with Robin Hood of team, said he plans to
7 defend himself against the City's claims using video
8 evidence."

9 MR. BAUER: Thank you. Your Honor, I'm going to
10 mark -- ask that that be marked as a full exhibit.

11 THE WITNESS: Now, I would say at that -- at the time
12 that interview was --

13 MR. BAUER: Hang on, hang on, hang on.

14 THE COURT: Any objection.

15 MR. MEYER: Your Honor, I have no objection.

16 THE COURT: Can you mark this as a full exhibit.

17 THE WITNESS: Can I speak to --

18 THE COURT: Not yet. Thank you.

19 Is it Plaintiff's 8? It's 9. Plaintiff's 9 is a
20 full exhibit.

21 MR. BAUER: I'm sorry, Your Honor?

22 THE COURT: Plaintiff's Exhibit 9 --

23 MR. BAUER: 9, thank you.

24 THE COURT: -- is a full exhibit.

25 (Plaintiff's Exhibit 9 marked for identification and

1 received)

2 BY MR. BAUER:

3 Q Mr. Ean, you were here in August --

4 MR. MEYER: Wait a second. He hasn't had a chance to
5 answer the question. You asked him a question. The question
6 was pending, and he hasn't had a chance to respond yet.

7 THE WITNESS: Right. Yeah. I would like to address
8 the --

9 MR. BAUER: I don't remember any pending question.

10 MR. MEYER: The question was about the 24 hours. You
11 asked him about the 24 hours --

12 THE COURT: Oh.

13 MR. MEYER: -- and halfway through answering the
14 question --

15 BY MR. BAUER:

16 Q You spend 25 hours or so a week --

17 A That statement was accurate at the time that it was
18 delivered --

19 Q And this was May --

20 A -- but I'd say --

21 Q -- May of 2013?

22 A I was under the impression that when you asked me the
23 question right now, you're speaking to presently. And I'd say
24 for the past few weeks, it's been more like ten to 12 hours.

25 Q Okay. And is Monday through Friday?

1 A Or Saturday.

2 Q I'm sorry. Monday through Saturday?

3 A Yes.

4 Q And you have personally followed Alan, haven't you?

5 A While he was working, yes.

6 Q Jane?

7 A Yes.

8 Q Lynn?

9 A Yes.

10 Q Could you agree with me that you can do all of the
11 activities that you want to do 30 feet back from these folks to
12 give them peace?

13 A I could attempt to do the activities I'm doing, but
14 they would be considerably limited.

15 Q I'm not sure whether you -- whether I asked you. Do
16 you work?

17 A Yes.

18 Q What do you do for work?

19 A I cook food for people. I mow lawns. I shovel snow.

20 MR. BAUER: Thank you.

21 THE COURT: Attorney Meyer, and again, it's about 20
22 minutes of 4. We'll go to about 4. If there's a logical --
23 I'd like to start, but I'll defer to you. If there's a point
24 as we -- as we reach nearly 4 that you'd like to stop, we can
25 do it.

1 MR. MEYER: Yeah. I appreciate that. In addition,
2 Your Honor, I think there was some miscommunication between
3 Attorney Bauer and myself. And I thought that Mr. Ean wasn't
4 going to testify until tomorrow. So there's a video that I was
5 asking him to bring that he hasn't had a chance today.

6 THE COURT: Not a problem.

7 MR. MEYER: So -- but I'll certainly start the
8 redirect.

9 THE COURT: Absolutely.

10 CROSS-EXAMINATION

11 BY MR. MEYER:

12 Q Garrett, you were asked some questions about your
13 proposal about shutting parking enforcement. You said -- I
14 think you specifically said shut down the enforcement arm.
15 Now what did you mean by that and why?

16 A What I meant was through the act of Robin Hooding --
17 and Robin Hooding, I mean, filling meters, not harassing
18 parking enforces as the City tries to characterize. By the act
19 of going out and filling meters, one is physically able to
20 prevent there from being enforcement for this violation.
21 You're able to bring everyone into compliance with this law
22 pretty much.

23 Q Okay.

24 A So by bringing everyone into compliance with their
25 meter, you're making it so that there is no enforcement that

1 needs to happen. There is -- there is nothing to collect upon.
2 There's nobody doing anything wrong pretty much. So that's
3 what I mean by shutting down the enforcement. No enforcement
4 needs to happen when the meters are all filled.

5 Q And what is -- what is your reasoning for wanting to do
6 that?

7 A What -- I guess what motivates me to be in the streets
8 more often, I'd say it's the experiences that I have when I'm
9 out there that the few times I've done this activism prior to
10 this but prior to becoming very consistent, I've found it's
11 very rewarding. People like it. It garners attention both
12 positive and negative, as I've found out, but it's something
13 that I feel raises a lot of consciousness about people's
14 ability to protect each other from this enforcement mechanism
15 of government. I don't think the parking enforcers are bad
16 people because they're out writing tickets, but I don't think
17 tickets need to be written. So to me, I find it rewarding to
18 prevent that from having to happen. And I'm motivated to
19 continue doing that by the positive response I've gotten from
20 it.

21 Q Do you believe that parking should be -- essentially be
22 a private enforcement than a government function?

23 MR. BAUER: I'm sorry?

24 BY MR. BAUER:

25 Q Do you believe that parking should be a private

1 enforcement rather than a government function?

2 A To be honest, I don't really believe in government
3 functions fundamentally. So I kind of say yes, but I'm not
4 really of the opinion that -- like my activism is motivated
5 towards turning parking over to the market or anything like
6 that.

7 Q Would you describe it as being wanting to privatize
8 government across the board, or is that not a fair description?

9 A Well, privatize can mean different things. I like the
10 idea of voluntary interaction. I think the way government
11 fundamentally functions is through course of means, the funding
12 mechanism through taxation, is people not choosing to
13 contribute. If people thought that the services were valuable,
14 I'd like them to voluntarily be able put their money into those
15 services rather than just being forced because there's a
16 monopoly that's just been in place for so many years that we're
17 all born into. And I don't think it's something that people
18 chose necessarily. It's something that an older generation
19 did, and we've just kind of been mixed into. So yeah. I'd say
20 I have certain views about government that motivate my
21 activism.

22 Q Is there a label that would require your philosophy,
23 your political philosophy?

24 A There's several. I'd say some are controversial, and
25 because of that, like all sort of different meanings and

1 meaning different things to different people. I find it very
2 difficult to find a label that can really sum up one's views.
3 I'd say that I believe in self-ownership, if there was a word
4 that -- self-ownershipism. That's what I'd believe in. Some
5 people would say anarchism is similar to that, and I think
6 there's all different sorts of people who associate themselves
7 with different labels. So I'd be careful to not want to
8 associate with people I don't agree with. But I believe in
9 people own themselves fundamentally and should be the total
10 masters of their own existence to the extent that they're not
11 infringing upon others' abilities to do the same.

12 Q You were asked by Attorney Bauer to move from the
13 philosophical to the more mundane about the practicality of
14 videotaping at 30 feet. And you responded, I think, that you
15 could -- well, essentially your response was, I think, that it
16 could physically be done, but it would be less effective. Am I
17 -- am I accurately summarizing what you were saying?

18 A Right. Well, I mean I guess the question also assumes
19 certain goals about the videography, the acting -- the action
20 of video, being videotaped.

21 Q From your perspective, what are the goals of the
22 videotaping you're doing?

23 A There's several goals. One is creating an objective
24 record of what goes on, that's something that only the
25 technology can do, and no human being can create an objective

1 record with just their eyes and their ears. Another thing is,
2 it's part of the activism, is creating the record for other
3 people to see and for it to be shared. I'm someone who
4 believes that words and media should be creative commons. That
5 people should share the things that they produce rather than
6 trying to control them. So that's the reason that when I go
7 out and videotape things. Whether it's parking enforcement
8 activism or whether it's just walking around downtown Keene, I
9 like the idea of creating a record for people to see. And that
10 being an art project, you know, a creative commons project like
11 an archive for a video.

12 Being -- having to be limited at certain feet, also
13 presumably of having to be aware of where a parking enforcer is
14 so as to note inadvertently enter 30 feet would definitely
15 create many concerns. I've been doing video for so many years
16 I've gotten used to being able to multitask, run a video
17 camera, hold it at my side, or have it -- be wearing it and be
18 doing multiple things. But as it was mentioned earlier, you
19 can't converse with someone from 30 feet away. You can't --
20 you can't have any -- you can't have any sort of normal verbal
21 interaction with them. And it seems like a 30-foot boundary
22 would create an antistic (sic) environment if you were trying
23 to communicate with someone, because it's inherently kind of
24 antagonizing to try to communicate with someone from 30 feet
25 away.

1 Q Would the quality of the videotape be compromised if
2 you're 30 feet away?

3 A Yes.

4 Q How?

5 A As you can hear in the video for -- that has been
6 played already, people are just several feet from the video
7 camera, and the audio still isn't all that great. I mean
8 microphones nowadays are much better than they were just a few
9 years ago. But still, I mean, downtown Keene is loud. If
10 you're a considerable distance from someone, even just like
11 maybe 20 feet, you probably can't hear them if they're speaking
12 in normal conversational tone.

13 Q If you're videotaping from 30 feet away, is there a
14 greater risk that you're going to include in the videotape
15 private citizens who may be unrelated to this?

16 A Yes. You're -- because you're putting more space
17 between yourself and the subject, it means that there's a lot
18 more ground to be filled with other things.

19 Q Now in terms of communication, verbal communication,
20 what has been the nature of your verbal communication with the
21 parking enforcement officers?

22 A From the start of Robin Hooding, I actually didn't
23 speak much at all the parking enforcers. The first few times I
24 went out, it was kind of a silent activity where me and my
25 friends would talk amongst each other, be a little ways ahead

1 of them and be filling meters. I actually began having
2 conversations with them after a day that was referenced where
3 there was people visiting and it was -- they're saying there
4 was grouping. The word "surrounding" was used. That
5 particular day, this person visiting town, name Chris Cantwell,
6 began -- his purpose was to go out and interact with the
7 parking enforcers. And he made videos of himself doing that.

8 And over the course of, I guess, the video he was
9 making, I was in the area. And it was -- it was mentioned that
10 myself and other people had been out before. And one of the
11 parking enforcers said that -- one of the parking enforcers
12 pointed out, I guess to myself and James, and said that like
13 neither -- we weren't -- we had nothing intelligent to
14 contribute or that we had nothing intelligent to say without
15 myself interacting with the enforcers. That was this other
16 person speaking with the enforcers about the people that she
17 knew.

18 So from that point on, that actually motivated me to
19 be more talkative to the enforcers. And I asked the parking
20 enforcer who said that why she thought she -- why she believed
21 that. And through talking with her, she eventually took it
22 back and said that she no longer held the position that I had
23 nothing intelligent to say or contribute.

24 Q Which officer is this?

25 A That was Jane.

1 Q Okay. And what's been the nature of your communication
2 with her?

3 A It's always been friendly, I'd say, since it started.
4 I wouldn't -- I don't think there's any event I can point to
5 and say that was a negative interaction or something or
6 antagonistic or anything like that.

7 Q What's been the subject matter of your communication
8 with her?

9 A It varies on the day. The majority of the day, if I'm
10 out, I'm not communicating with the parking enforcers. But,
11 you know, every few minutes you may just be walking alongside
12 them and talking. The nature of the conversations varies. I -
13 - like since the lawsuits happened, I've -- I haven't talked to
14 them specifically about the lawsuits. So I figured that there
15 are probably were limitations on the City's wanting of them to
16 do that.

17 So I try and be conversational about other things.
18 We'll talk about current events. We've had several
19 conversations about religion and philosophy and free will and
20 ideas, like different ideas that we have. And yes, I'd say
21 very -- like normal conversations that people would have
22 socially.

23 MR. MEYER: Your Honor, it's now, I guess 3:50. I
24 think this is probably a good time for us to break.

25 THE COURT: So a logical breaking point. Okay. You

1 can -- you can set down from the stand, Mr. Ean.

2 We'll resume tomorrow at 10 a.m. because I have some
3 matters -- some criminal pretrials that I need to deal with at
4 8:30. And if I could just see counsel at the bench, and this
5 can be off the record.

6 (Proceedings adjourned at 3:50 p.m., recommencing in
7 Volume III, October 1, 2013 at 10:00 a.m.)

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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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