

1 summary judgment. The purpose of this declaration is to
2 excerpt portions of the deposition of the plaintiff, Joseph
3 Kirby, which was taken on February 15, 2001. (NOTE: The
4 numerous misspellings herein were made by the court reporter.)

5 DISCRIMINATION AND DISPARATE TREATMENT

6 Lt. Kirby gave the following testimony regarding
7 disparate treatment, which supports his all of his claims,
8 especially claims for discrimination, intentional infliction of
9 mental distress and shows violations of his rights of free
10 speech and association, guaranteed by the First Amendment to
11 the United States Constitution:

12 P. 16, l. 17 - p. 18, l. 5:

13 Q You're talking about posttraumatic stress disorder
14 or related stress disorders?

15 A Yes. Basically I'm talking about the fact I was
16 put on disability leave for at least a six-month
17 period and some other extended periods. And
18 pursuant to that leave, I was disciplined for
19 exhibiting symptoms consistent with those disor-
20 ders.

21 Q During that six-month period that you were refer-
22 ring to, your doctor concluded that you suffered
23 from this disorder; is that right?

24 A In addition to the city's doctors. There are a
25 number of doctors that made that conclusion.
26 Actually it was initially a city doctor, then it
27 was my doctor, then it was a series of industry
28 doctors.

29 Q Your doctor is Dr. Lindsay; right?

30 A My personal physician is Philip Lindsay.

31 Q And he treated you during that six month-period?

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1 A Yes, he did.

2 Q When you talk about exhibiting symptoms consistent
3 with your PTSD disorder, what are you referring to?

4 A As has been explained to me, one of the reasons I
5 was disciplined by Jim Hairston was for making a
6 comment in a meeting where I initially refused to
7 divulge the contents of a privileged communication
8 I had as an executive board member with a union
9 member.

10 And that in so doing was investigated on the
11 charges of insubordination and disrespect. I think
12 you've got the file. And in my subsequent conver-
13 sations with my own personal physician, it was his
14 conclusion that at that time I was basically
15 suffering from symptoms consistent with a stress
16 disorder.

17 So that when I was subsequently punished for
18 exhibiting those symptoms, his analogy was that it
19 was sort of like I got in trouble for limping after
20 I broke my leg, that it would be expected that I
21 might limp. I shouldn't be punished for those
22 things. The department in the alternative chose to
23 disregard that analogy and decided to discipline
24 me.

25 P. 22, ll. 5 - 23:

Q You talk about other decisions you believe were
made based on your disability. What decisions are
you talking about?

A They removed me from the clandestine lab team where
I served for six or seven years, where I was
completely qualified. It was a lieutenant, they
removed me. I was actually the team commander.

And they told me the removal was because I was
a lieutenant and I was not in SID. Subsequent to
that, they allowed Lieutenant Ramsdell to remain
affiliated with the team as a lieutenant while not
assigned to SID.

So as I look at what they did to me and the
contradiction in Lieutenant Ramsdell's continued
affiliation with the team, it was apparent to me
there were two standards there. They were applying
a different standard to me. I would also say
nothing in my meth team career would merit the
removal from that team.

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2 P. 25, l. 10 - p. p. 26, l. 21:

3 Q To the extent that you do base any particular
4 action on solely disability -- and I understand
5 your answers to my previous question that's hard to
6 do -- is there anything else other than the
7 incidents we've talked about that you relate solely
8 to disability discrimination?

9 A They started -- there's a general pattern of
10 treatment which started after, basically I was --
11 actually it started before -- but it started with
12 the arrival of Arreola, but it got more pronounced
13 after I was diagnosed with a stress disability.

14 It seemed to me that the whole spectrum of
15 treatment I got at the Tacoma Police Department
16 radically changed after that.

17 Q Can you describe that pattern of behavior for me?

18 A I was isolated. I don't think that I was given
19 assignments commensurate with my skills, abilities,
20 my education, my tactical expertise, my previous
21 successes in the department.

22 And it was my impression that I was no longer
23 on the team. I felt pressure -- not necessarily so
24 subtle -- to leave, perhaps consider retirement.
25 There was a series of degrading behavior by Arreola
where he made rude and derogatory comments toward
me in meetings.

There was a series of actual intimidation
attempts by Areola, threatened to fire me for
asserting my union advocacy rules. And you see how
these things merge, they're not just disability,
but what happened and what the triggering thing
was, whether it was the union advocacy role as an
executive board member or their perception of the
fact that once I've been diagnosed with a stress
disorder, I was for some reason in a different
status.

You have that time when it's not that they're
walking on eggs. They just like -- they have no use
for you anymore.

23 P. 28, l. 11 - p. 29, l. 14:

24 Q Do you believe that the pressure you felt to
25 consider retirement was based on your disability?

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1 A I think it was based on a combination of a whole
2 bunch of things.

3 Q What things?

4 A My disability, if you want to characterize it as
5 that. I chose to characterize it as the fact that
6 some members of the department have that impression
7 that if you stumble on the battle field, you're not
8 a worthy commander. Interestingly enough those
9 people have never been on the battle field. I have
10 yet to look over my shoulder and see them standing
11 with me. But that's their perception. I base it
12 on that.

13 (WITNESS: Could you read me back that question
14 again?)

15 (Question on Page 25, Lines 11 to 12 read by
16 the reporter.)

17 A And I believe it was only partly. I believe that
18 in addition to that, it was based on the fact that
19 I had assumed such an active union advocacy role in
20 a number of cases that put me basically in conflict
21 with senior members of the department.

22 I believe it was as a result of some investi-
23 gations that were conducted against me which I
24 believe were improper that came out and did not
25 reflect very well on the department. I believe
that it was a whole bunch of series of events, some
embarrassing to the department.

26 p. 39, l. 9 - p. 41, l. 11:

27 Q What's your understanding of the "rule of three"
28 selection process?

29 A It's always been a little bit of a confusing
30 process to me in that fire doesn't have it, city
31 water, other city agencies do not have it. The
32 union conceptually dislikes it. It's been a
33 sticking point at several bargaining sessions for
34 contract. The police department has tenaciously
35 held onto it for whatever agenda. I'm not sure I
have a good understanding of the "rule of three"
other than my observations on how it's been used.

36 Q What are your observations?

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- 1 A My observations are that they hold onto it that
2 tenaciously so they can preserve their option to
3 pass over someone like me who's, for whatever
4 reason, fallen out of favor with the current
5 administration.
- 6 Q Is it your understanding that the top three
7 candidates are interviewed?
- 8 A Yes.
- 9 Q And a selection is made from those three?
- 10 A That's apparently the protocol.
- 11 Q When you said "fire doesn't have it," what do they
12 have?
- 13 A "Rule of one."
- 14 Q What does that mean?
- 15 A That means when you participate in a process
16 similar to what I participated in. The city gets
17 to design and you finish first ahead of your peers,
18 that personality aside, you are selected because
19 the city gets to design the course, gets to design
20 how high the hurdles are, gets to design what your
21 performance will be.
22 When you compete in a fair process like that,
23 there's a reasonable expectation that everything
24 being equal, that -- after all they set up the
25 criteria -- that you will be selected. That's why
fire has it. And that's why the city unions have
gone to it because of the abuse potential.
- 26 Q So in that circumstance, number one is
27 automatically given the job when the position
28 becomes available?
- 29 A Prior Chief Fjetland was one that said absent some
30 very compelling circumstances, I will not deviate
31 from the list. Again, you know, you have leader-
32 ship perspectives on how that's applied.
- 33 Q Do you believe that the police department should
34 have a "rule of one" process?
- 35 A Do I personally believe?

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1 Q Yes.

2 A I not only personally believe, it was my advocacy
3 in the union to promote that because it was the
4 union's belief, Local 6 at the time, to preclude
the exact scenarios I've seen occur, and that I was
subjected to.

5 P. 44, l. 20 - p. 47, l. 1:

6 Q In your complaint you alleged that you were
7 retaliated against for participating in some
specific union activity.

8 What activity did you participate that you
feel precipitated that retaliation?

9 A I think an initial instance of that when I asked at
10 a staff meeting - I inquired - in my union advocacy
11 role, I was a lieutenant but I had union advocacy
12 role and I inquired in an open forum - which at the
13 time we were permitted to do - that there was a
great concern Local 6 about not only the disparity
of discipline but the length of time that it took
to administer the discipline, and in fact some
discipline cases had gone on for years and been
unresolved.

14 That was causing a great unsettling effect
15 among members of - as you can imagine it would.
16 And I brought that question up in a staff meeting
17 and he said you need to refer that to internal
affairs. And I countered, internal affairs is your
detail. It comes under you, so they do what you
mandate to be done.

18 And that degenerated, he told me to stand down
19 and threatened to terminate my employment because I
had the audacity to challenge him in an open forum
like that.

20 Q That was at a staff meeting?

21 A It was at a staff meeting and Dave Brame had to
22 physically get involved with him and say, that may
23 not be the way you do things in Milwaukee, but it
24 is in Tacoma. These guys have the right to do, so
25 that would be ill advised for you to take any
action. But he made the comments. And after that,
my relationship with Arreola deteriorated. I think
that was the opening event.

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1 Q When you said he threatened to terminate you, do
2 you recall exactly what he said?

3 A "I'll fire his ass if he thinks he can challenge me
4 in an open forum like this."

5 Q Did you have any action taken against you for those
6 comments?

7 A Subsequent to that I believe a good portion of what
8 happened to me in the department was a direct
9 result of those comments. Was any overt action
10 taken? Probably yes, and it spun into later
11 discipline.

12 Q What discipline are we talking about?

13 A The follow-up to that, which was what we character-
14 ized as the Ramirez incident where I was ordered to
15 divulge the nature of a private conversation I had
16 with a member of Local 6 which did not occur in the
17 city. It occurred in the city of Lakewood on the
18 telephone off duty.

19 I was told basically if I didn't divulge that,
20 I was in jeopardy of being terminated again, which
21 is not my understanding about what the RCW said.
22 Subsequently that led to PERC decision where the
23 city was sanctioned for interfering with union
24 activities of that nature.

25 P. 48, l. 12 - p. 49, l. 23:

Q I asked some questions similar to this in some
interrogatories, which you answered very com-
pletely. I just had some follow-up questions.
Maybe we could go over those.

A I might expand, you said I could expand from time
to time on that question about retaliation. I
think that the whole sequence of my being investi-
gated by internal affairs in the last several years
particularly in those instances where Chief Darland
recommended that not happen, where at the time a
deputy, or Assistant Chief Meinema recommended you
can't do this, these are witch hunts, that even
internal affairs personnel don't do this. These
cases do not merit internal affairs investigation
against anyone, let alone Kirby, pretty much show
that they went out of their normal protocol to

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1 retaliate against me for whatever they perceived
2 from my transgressions previous to that.

3 And that behavior never diminished or let up
4 because I delivered, and I'm sure you have in your
5 files a number of protest IDMs to Jim Hairston that
6 said this conduct has got to stop. And I think
7 that's got to be adequately embedded in your
8 records somewhere.

9
10 Q So it's your position that being investigated for
11 alleged misconduct relates directly to your labor
12 activities?

13 A It relates to what their perception was of my
14 status subsequent to being medically diagnosed with
15 a disability. It relates to my previous union
16 activities which put me directly counter to a
17 number of defendants in this case. It relates to a
18 whole bunch of stuff.

19 Like I said this stuff is so intertwined, it's
20 difficult to clinically isolate things for review.
21 They're not stand alone items. They're the totality
22 of the circumstances as you so aptly put 14 pages
23 ago.

24 P. 55, l. 15 - p. 56, l. 18:

25 Q We talked about your next answer which is you were
26 compelled under threat of termination to divulge
27 the contents of a private conversation. And that
28 you contend was in relationship to your union
29 advocacy; is that right?

30 A That's right. And I might add that while that
31 happened, Dave Brame, one of the defendants in this
32 case, also brought up the matter of the union
33 advocacy in that meeting with William Woodard who
34 ordered me to divulge that.

35 Q Were you present when Brame spoke to Woodard?

36 A Yes.

37 Q What did Brame say?

38 A He made a comment about this being part of be an
39 advocacy, a union advocacy. Woodard chose to
40 disregard that comment and ordered me to write that

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1 report, which I believe is a clear violation of the
2 RCW.

3 Q And then your answer to No. 4, "I was subsequently
4 disciplined for my initial refusal to provide this
5 information to Hairston."

6 A Actually it would have been to Woodard. Initially
7 I refused, then I thought even though it is a
8 violation of the RCW, even though I might get
9 terminated, it would probably be better to go ahead
10 and do it and protest it later than to get fired
11 over it and get my job back 18 months later. I'm
12 sure I could have prevailed in civil service. It
13 would not have been pleasant.

14 P. 61, l. 4 - p. 63, l. 7:

15 Q You also indicate that "Phil Arreola directly
16 threatened retaliatory action against you as a
17 result of exercising your rights as a recognized
18 member of the executive board of Local 6 when you
19 asked advocacy questions along the line of disci-
20 plinary investigations." And that is the staff
21 meeting we discussed previously?

22 A Yes, it is.

23 Q Did he ever follow through with his threat of
24 action against you?

25 A I think he followed through when he seized my
email. I think he followed through when he had me
investigated for whatever he had me investigated
for, insubordination, I insubordinate in bringing
that question which is an interesting concept if
you think about it. I think he followed through
all the way up to the end basically.

Q So to your knowledge, did he take any steps to have
you terminated?

A I am not aware of any conversations he may or may
not have had with Ray Corpuz or anybody else about
that. I know he chose to disregard advice of the
senior commanders on a number of occasions where it
concerned me, that he pursued investigations
against me that he was advised were witch hunts,
inappropriate.

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1 Q In answers to Interrogatory No, 4, which discuss
2 your participation in protected union activity, I
3 asked you to describe the harassment or discrimina-
4 tion you were subjected to. We've talked about
5 some of those, so I'm going to highlight the ones
6 we haven't already talked about.

7 You indicate that the department through
8 Arreola and in addressing the local media as well
9 his daily administration of the police department
10 created a hostile work environment and specifically
11 you indicate he related you and other members of
12 the chief's staff regarding your abilities. Can
13 you explain the circumstances?

14 A There's two explanations. The first is we were at
15 a meeting of the Quality Meal Expeditors on Martin
16 Luther King Street, where he looked down at me in
17 front of my peers and captains and lieutenants and
18 said, Do you still work here? You are you still
19 working here? Or something of that nature. Which
20 people came up to me, and one of the people was a
21 defendant in this case, Bill Woodard said, "I hope
22 you write that in the notebook. That was clearly
23 an inappropriate comment.

24 I believe Charley Meinema said something to
25 me. Chuck Howard he said "Jesus, what did you do
to deserve that?" That was demeaning. A number of
people - I just thought that's the way he is. He
was a bad guy. Other people thought that was
pretty bad. That was demeaning. It was embarrass-
ing.

17 P. 74, l. 16 - p. 75, l. 21:

18 Q The hostile work environment you're claiming
19 occurred in the police department.

20 A Again, what we've discussed the whole sequence of
21 events that started to occur when Arreola came that
22 were perpetuated by - subsequently by named
23 defendants in this case, where I was continually
24 investigated against their own internal advice,
25 which I viewed as strictly as a reprisal, the fact
they could do it, they would.

Those are degrading processes no matter what
the ultimate outcome, they still run you through
the ringer. It's a very emotionally upsetting to
know you're being investigated by your own depart-
ment for some violation of the rules.

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1 Q Let's take that piece and make sure I understand.
2 Can you outline for me the times you were investi-
3 gated by IA during this time period and what the
4 claims were?

5 A I'm not sure what Arreola claims. I guess it was
6 insubordination for generating that liability memo
7 I did. I think we've adequately covered my basis
8 for wanting to do that. Certainly wasn't any
9 agenda on my part.

10 Q And the outcome of that investigation was what?

11 A Outcome was that there was no foul other than the
12 fact I had used the department's email system to
13 send a one-sentence message to Sergeant Dave Frost.
14 Heinous crime. And that was the some total of it.
15 I was counseled on not doing that, which was
16 interesting since I can probably drop on your desk
17 a thousand instances arrive from the city every day
18 about the union and not for city purposes.

19 P. 76, l. 9 - p. 78, l. 2:

20 Q And what other investigations are you referring to?

21 A Then was the investigation where Ray Roberts, one
22 of the defendants, demanded I be investigated by
23 internal affairs for unsatisfactory job performance
24 and truthfulness in regards to the posthumous
25 awards of the Metal of Valor to William Lowry's
26 widow. That investigation was against the advice
27 of Darland, against the advice of internal affairs,
28 and Jim Hairston went ahead and did it anyway.

29 That was a kind of very unsettling investiga-
30 tion for lot of a collateral issues spinning around
31 Bill Lowry's death. And I felt the only really
32 unsatisfactory performance was Ray Roberts mailing
33 those awards to Jolin Lowry with reasonable
34 expectation they might arrive undamaged.

35 They didn't. When she got them the glass was
36 broken. I thought if there was unsatisfactory
37 performance, probably should he be investigated for
38 that, not me. I said it was difficult for me to
39 participate. And I think you know the whole story
40 on that. And they decided to drag me through and
41 make me a suspect.

42 And the outcome of that was not sustained, not
43 sustained. I wasn't untruthful and I wasn't

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1 unsatisfactory performance. Outcome would have
2 been known but I still got drug through the
3 process.

4 Q Who conducted that investigation?

5 A Internal affairs.

6 Q Any other investigations?

7 A There was an investigation against me, which is an
8 interesting investigation about leaking material in
9 the Seahawks ticket internal affairs bribery case
10 involving James Walker, who was a lieutenant at the
11 time and some other members of the internal affairs
12 details.

13 It was an interesting investigation because I
14 was the focus of the investigations as a suspect,
15 yet I received a letter from Mike Darland after the
16 investigations I was never the focus. It was just
17 an investigation to determine where the leak might
18 have been, how the leak came. Which I found very
19 interesting because it wasn't closed out in one of
20 the three normal fashions; unfounded, not sustained
21 or sustained. They breached their own protocol.

22 Regarding the Ramirez incident, Lt. Kirby stated further
23 regarding the actions of defendant William Woodward:

24 P. 97, l. 11 - p. 99, l. 5:

25 Q So he asked you to write an administrative report?

 A No, he ordered me to do it.

 Q Am I right he was a captain at the time?

 A I think he was a bureau commander, assistant chief,
 and I think I was there as a lieutenant. And we had
 division commanders there from investigations and
 also from special investigations.

 I think he would have been the bureau com-
 mander. He was subsequently demoted and somebody
 else, Ray Roberts took his job or something.

 Q And you initially refused?

25

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- 1 A Yes. And there was some discussion about whether I
2 could refuse or not and they recommend termination.
3 They said you can refuse all you want, but we can
4 terminate you.
- 5 Q Who said that?
- 6 A I believe Woodard.
- 7 Q How did you respond to that?
- 8 A On that level? Emotionally I thought it was pretty
9 distressing. I was asserting my RCW rights
10 guaranteed to me under revised code of Washington
11 for union advocacy and he was telling he was going
12 to disregard that and fire me anyway.
13 He was an assistant chief and there was no
14 doubt in my mind - you asked an earlier question
15 about the chain of command - he wouldn't influence
16 the decision made by the chief to terminate my
17 affiliation with the Tacoma Police Department on a
18 number of levels.
19 Crystal clear to me that would have been the
20 outcome had I refused to do that. I was faced with
21 the dilemma to determine what am I going to? I'm
22 going to stand up? And I going refuse?
- 23 Q What did you say to him in response to his order to
24 write the report?
- 25 A First I said I'm not going to do it. And then I
said, fine, I'll do it. You probably won't like
it.
- Q You used profanity in that statement?
- A Absolutely. I was to say, the least, pretty
torqued that somebody would violate my rights like
that, that would force me into a corner.
- Q And that is the same discipline we've been talking
about where you were disciplined for insubordina-
tion?
- A Actually because I was disciplined for my initial
refusal to do that, what they chose to characterize
it as was insubordination.

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1 Lt. Kirby's testimony of the Seahawk tickets incident are
2 lengthy and found in his deposition at pages 130 - 141, which
3 are attached hereto.

4 P. 153, l. 15 - p. 154, l. 21:

5 Q When Dave Brame was your bureau commander, at some
6 point did you throw a notebook down a hallway
because you were unhappy?

7 A Yes.

8 Q Explain to me the circumstances of that.

9 A I walked out of his office, I threw a notebook down
10 the hallway.

11 Q What precipitated that event?

12 A A meeting we had where he assigned people basically
13 contrary to their wishes, not only affected me, but
14 it affected Darell Hughes and some other people.
Dave Brame had me meet him for lunch before I came
back from my disability leave and asked me where I
thought I would like to go when I came back as
temporary captain.

15 I told him what I wanted to do and he had that
16 meeting, and I was led to believe that other people
17 had done the same thing. And he had that meeting
and basically they were reverse of my list. And I
18 was frustrated and propelled the notebook down the
hallway after I left the meeting.

19 Q Was there anyone present when you did that?

20 A No. There wasn't anyone in the hallway, maybe
somebody saw it. There wasn't anybody present.

21 Q Did assistant Chief Brame come and talk to you
22 about that incident?

23 A I think he talked to other people about it.

24 Q Were you investigated by internal affairs for that?
25

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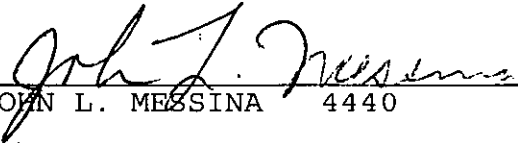
A I don't think internal affairs. It was a big internal investigation. I had to write a statement.

Q Were you ever disciplined for that?

A No.

I certify under penalty of perjury under the laws of the State of Washington that the foregoing is true and correct.

DATED this 6 day of December 2002, at Tacoma, Washington.


JOHN L. MESSINA 4440

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- 1 Q That was my follow-up question. Under what
2 circumstances are command duty officers supposed to
3 notify the chief?
- 4 A Again, I think they're incident driven. If you're
5 referring to the incident I was involved in with the
6 Seahawk tickets, the command duty officer had in the
7 past had the latitude to decide how far to proceed
8 with an investigation before it went by the chief,
9 whether he should call and make an initial
10 notification.
- 11 I think it's also driven by the personality of
12 the command duty officer. Someone might be timid and
13 want to call the chief at everything, and another
14 person might have had some command experience or some
15 other leadership or supervisory experience, might want
16 to set certain things into motion before he notified
17 the chief.
- 18 Q So is there an MRP that covers the command duty
19 officer's duties?
- 20 A I'm sure there is. The MRP covers everything. I
21 can't recall it specifically. I'm certain there
22 probably is some written guidance somewhere.
- 23 Q How many times were you command duty officer?
- 24 A Let's see, I was basically a temporary captain for six
25 months. Command duty officer rotates, so there's five

- 1 captains and three assistant chiefs, so every eight
2 weeks, so that would be roughly every eight weeks.
- 3 That is -- that's the basic math, but reality is
4 I could have also filled in for other people.
5 Sometimes you're allowed to exchange your duties
6 between -- all they want is somebody responsible. So
7 there could be certain times, like other people would
8 have obligations and they would ask you to cover for
9 them. So sometimes I did it for the whole week,
10 sometimes I might have done it for two or three days
11 covering for somebody else. Sometimes there were
12 changes in shifts, but I think as a general rule, you
13 could expect it once about every eight weeks.
- 14 Q Prior to this Seahawk ticket incident in August '99,
15 had you notified the chief in your role as commanding
16 duty officer?
- 17 A I don't recall. My recollection is that very few
18 things would be beyond the abilities of a Tacoma
19 Police Department captain to make a decision and to
20 start the sequence of events in motion that would
21 entail waking the chief up at 2:00 in the morning to
22 tell him whatever.
- 23 That's personality driven, depending on how
24 confident you are in yourself.
- 25 Q When did you first learn that an allegation had been

- 1 made by IA personnel?
- 2 A My recollection was I was at home, and I got a
3 telephone call from sergeant Peter Habib that laid it
4 out. I told him I needed to probably come in and talk
5 to him about it.
- 6 Q And that was what day of the week?
- 7 A I'm not sure, might have been Friday, Saturday. It
8 might have been Friday night. I'm not sure. It was
9 early on part of the weekend.
- 10 Q It happened at night that you got the information?
- 11 A My recollection it was at night.
- 12 Q What did he tell you?
- 13 A He just basically told me that officer Bundy had come
14 to him with an allegation from an alleged victim who
15 was, I think Christy Mayo, that there had been what
16 she perceived as inappropriate conduct, perhaps
17 bribery by members of the Tacoma Police Department
18 internal affairs section, regards to a case they were
19 investigating where she was the complainant. And
20 there were some gratuities exchanged or given to her
21 that were questionable.
- 22 Q What did you do with that information?
- 23 A I told Sergeant Habib that -- first I asked him -- I
24 told him I needed to come in and talk to you about
25 this. I didn't want to discuss it on the phone. I

- 1 didn't know if he was on a hard line or cell phone. I
2 knew I was on a hard line. I don't consider the
3 telephone a secure instrument. And thought it would
4 best be served if I went and talked to him in person.
5 So I got up, got dressed and went in and talked to
6 him.
- 7 He pretty much related what I just told you.
8 And I told him that my instructions at the time
9 were -- sounded pretty serious to me. What I wanted
10 him to do was to get a statement, a written statement
11 from the victim. And I wanted him to, if possible, to
12 secure evidence, which was in the form of the Seahawk
13 tickets from the victim.
- 14 What I set in motion is what any competent
15 police officer at the basic level would do, which was
16 I don't know if we've got a problem. Sounds like we
17 might. What I want you to do is go forward, I want
18 you to secure the evidence, I want you to secure a
19 statement because we always -- I don't need to explain
20 to you the relevancy of signed statements by a
21 complainant.
- 22 I also instructed him to write a statement on
23 what he knew and Officer Bundy write a statement. And
24 when he was able to accomplish this -- because it was
25 in the middle of the night, I didn't expect him to go

1 out and wake her up -- when he was able to accomplish
2 this and put this material packet together I had
3 instructed him to do, he was to recontact me, and I
4 would take it from there.

5 Q Did you believe that if what he told you turned out to
6 be true, it was a serious offense?

7 A What I believe at the time was that considering the
8 nature of the allegations and considering the Seattle
9 Police Department had just been drug through a big
10 bribery scandal, law enforcement was suffering a black
11 eye.

12 What I wanted to do was, one, I didn't want to
13 jump up and cry fire and wolf if we had nothing. That
14 wasn't the professional way to proceed. And, two, I
15 didn't want to proceed in such a fashion I prematurely
16 had not done the proper ground work and that might
17 have resulted in closing down this investigation by
18 either Corpuz or Jim Hairston because it was going to
19 be -- it had the potential to extremely embarrass the
20 department.

21 Q Did you think this was something that the media might
22 be interested in?

23 A At the time, I didn't pay much attention what I
24 thought it would do the media. I think I
25 thought -- I don't know what I thought at the time.

1 believe that I probably ought to go in and have it my
2 hands. If the chief is going to ask me questions
3 about it, I need to have reviewed it and I needed to
4 establish whether it was all there. Whether my verbal
5 instructions to Pete had been taken care of and
6 whether he got all that information.

7 Q When Peter Habib called you, did he tell you what
8 Christy Mayo had said in the written statement?

9 A No. My recollection was -- When he called me then? I
10 think he said -- my recollection of it was that he
11 said, the stuff is together and I've gotten everything
12 you told me to do. And I think he ticked it off for
13 me; the statements, Joe's and mine, Christy's
14 handwritten statement, and I've got the tickets.

15 Q Did he tell you the content of the statement?

16 A I don't have a recollection that we discussed that and
17 I don't think we would have on the phone. I don't
18 think we would have. He basically said it's there and
19 I've got it.

20 Q We touched on this a little bit earlier, but you made
21 a decision not to contact the chief; is that right?

22 A I made a decision not to contact the chief, a decision
23 which I communicated to one of the defendants in this
24 case, David Brame, at about 7:30 on Monday morning. A
25 decision which David Brame looked me in the eye and

1 Q So as I understand it, you did not inform the chief
2 that evening?

3 A Not that evening.

4 Q Did you inform him the next day?

5 A No, I did not because I didn't have the information
6 packet the next day.

7 Q How long was it before you got the packet?

8 A My recollection was that sometime on Sunday evening
9 Habib called me and told me that, okay, we have got
10 the information together, we've got her statement, Joe
11 and I have written our statements, I've got the
12 Seahawk tickets, got it all together.

13 And my recollection was that it was very late
14 and I thought okay, I'm thinking they've done
15 everything they needed to do. My recollection was it
16 was late and I told Pete, I'm going to be in in the
17 morning, what I want you to do -- I gave him
18 instructions for securing these items and didn't
19 retrieve those items until I came into work the very
20 next day sometime after 7:00.

21 Q That would have been Monday?

22 A Monday when I normally return for work.

23 Q Once Peter Habib called you and told you he gathered
24 information, did you contact the chief?

25 A No, because I hadn't seen the information. And I

1 said "I agree with that decision." Dave said "Why
2 didn't you call the chief?" And I said "Frankly,
3 Dave, I was concerned that the chief would be
4 influenced by Ray Corpuz and would prematurely shut
5 this investigation down before it saw the light of
6 day. And if we were ever going to be absolved,
7 whether they did or didn't do it, it needed the proper
8 look. As a law enforcement agency we'd have some
9 credibility we were going to be able to resolve the
10 allegations which were very serious in nature.

11 And Dave Brame looked at me and said "I agree
12 with that." At that point it became immediately
13 obvious to me that Dave Brame had three options. If
14 Dave Brame thought the chief should have been notified
15 at 7:30 in the morning, he had three options.

16 The first option was, "Joe, can't believe you
17 didn't call the chief," pick up of the phone, Chief, I
18 got to tell you this. Second option was, "Joe, I need
19 to tell the chief right now." Third option was, "Joe
20 come with me, we need to go brief the chief."

21 In the alternative Dave Brame said, we must
22 proceed very cautiously with this information because
23 I just related to you he shared my belief. And then
24 he said, I intend to present it to Chief Hairston
25 myself this afternoon after the staff meeting, which I

1 took to be probably six, seven hours from that point
2 on.

3 I'm thinking I guess I did okay because my boss,
4 Bureau Commander Dave Brame says, I'll take the
5 information to Jim and I gave him my copy and said
6 here's the information, Dave. I hadn't finished
7 reading through the information when he walked in.
8 And as soon as he walked in I said "we've got a big
9 problem here, Dave" because now I had it in front of
10 me and I had read parts of it.

11 And that's when I talked to him and he said I
12 agree with you.

13 Q So you would agree with me that this is the type of
14 incident that the chief wants to be notified of from
15 the command duty officer?

16 A I wouldn't agree with you. At the time I believe my
17 conduct was validated by Assistant Chief Dave Brame
18 who said I had proceeded in a proper fashion.

19 Q I'm talking about before you spoke so Assistant Chief
20 Brame, Friday or Saturday when you had this
21 information.

22 A I think this is the kind of information that needs to
23 be communicated to Chief Hairston, but I think that my
24 problem with it is in the way, the fashion you asked,
25 that at what point? At the point, it's just wild

1 him to do something that ultimately would have been
2 inappropriate.

3 Q And why do you believe that Ray Corpuz would have
4 taken an active role in this investigation?

5 A It was -- it had the potential to be embarrassing to
6 the city. After the Arreola fiasco where Ray Corpuz
7 brings this guy in as his bright shining star and he
8 falls on his sword and Ray Corpuz has to dismiss him.
9 He's had enough embarrassment. And now what do we
10 have in light of the Seattle Police scandals, the
11 bribery allegations up there? We have a regional
12 scandal now? It couldn't reflect anything but
13 negatively on the Tacoma Police Department.

14 Q It was your belief that Ray Corpuz would do what?

15 A I believe that had I notified Chief Hairston at that
16 point, he would have notified Ray Corpuz and Ray
17 Corpuz would have stopped that investigation or at
18 least, at least taken it out of my ability to
19 influence it in a positive way.

20 And by that I mean, secure documents that might
21 be essential later on. As a matter of fact, the
22 Washington State Patrol conducted their investigation
23 after they interviewed me the first time, I was
24 approached by one of their interviewers who said, I
25 want to personally thank you for your intercession in

1 speculation and a rumor at the point I actually have
2 physical documentation to substantiate my case and
3 allow me to intelligently talk to the chief of police
4 about the particulars of the case if he so chose to
5 question me over the phone.

6 I'm not the kind of guy that runs up and says
7 we've got a big problem basically and he says, what is
8 it? And I say, I'm really not quite sure. Again,
9 that's a comfort level with how you decide to be the
10 command duty officer.

11 Q Now, you've told me before that you chose to not
12 notify the chief because of what had happened with Ray
13 Corpuz in the Safeco investigation?

14 A Because of my understanding about Ray Corpuz's
15 involvement in the Safeco incident and my
16 understanding of the way that I believed he would
17 issue instructions to Jim Hairston.

18 Let me make one point perfectly clear: There
19 wasn't any doubt in my mind that Jim Hairston wouldn't
20 ever do what he believed to be right. I don't have
21 that same feeling nor have I had that since Safeco
22 about Ray Corpuz.

23 What I'm telling you is, I wasn't in fear that
24 Jim Hairston would do something inappropriate, I was
25 in fear that Ray Corpuz would instruct him or order

1 this, for your personal involvement in getting those
2 tickets nailed down. So they validated my course of
3 action, in addition to David Brame's validation.

4 I did what I thought was necessary in order to
5 preserve the reputation and integrity of the Tacoma
6 Police Department, and if that had the potential to go
7 sideways, then that is something that you still need
8 to do. I did what I did out of conscience that it was
9 the best way to handle the situation. I did what I
10 did knowing I would have to ultimately explain why I
11 did it.

12 Q What is your belief that Ray Corpuz would have stopped
13 or impeded the investigation based on?

14 A I think I just articulated that. I don't know how I
15 could do it in another way.

16 Q I don't see the connection between the Safeco thing
17 and this IA issue.

18 A I think Ray Corpuz was guilty of insurance fraud. I
19 think the documents I have right now in my possession
20 would substantiate that before a jury. There would be
21 reasonable doubt as to whether or not Ray Corpuz was
22 actually innocent.

23 I think considering that nexus and considering
24 what Ray Corpuz and Philip Arreola were involved in
25 where Arreola had divulged specifics of an internal