

HONORABLE EDWARD F. SHEA

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UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF WASHINGTON

BRADLEY N. THOMA, a single
person,

Plaintiff,

vs.

CITY OF SPOKANE, a municipal
corporation in and for the State of
Washington; and ANNE E.
KIRKPATRICK, a single person,

Defendants.

Case No. CV-12-156-EFS

STATEMENT REGARDING
MASTER DEPOSITION
SUBMISSION

COME NOW Defendants, by and through their undersigned counsel, and
hereby submit this Statement Regarding Master Deposition Submission pursuant
to this Court's July 13, 2012, Scheduling Order.

1 Attached hereto are master deposition excerpts for the deposition of
2 Bradley N. Thoma and the deposition of Anne E. Kirkpatrick, cited to by both
3 parties in the pleadings relating to Defendants' Motion for Summary Judgment
4 (ECF 71, et seq.).
5

6 DATED this 3rd day of January, 2014.

7 PATTERSON BUCHANAN
8 FOBES & LEITCH, INC., P.S.

9 By: /s/ Sarah S. Mack
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CERTIFICATE OF SERVICE

I hereby certify that on the date provided below I served the foregoing **Statement Regarding Master Deposition Submission** via the Court's electronic CM/ECF filing system, which will provide notice to the following individual(s):

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Attorney for Defendants

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

Executed at Seattle, Washington, on January 3, 2014.

/s/ Karen L. Yun
Karen L. Yun
Paralegal/Legal Assistant to Sarah S. Mack

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UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF WASHINGTON

BRADLEY N. THOMA, A SINGLE)	
PERSON,)	
)	No. CV-12-156-EFS
Plaintiff,)	
)	
vs.)	
)	
CITY OF SPOKANE, A MUNICIPAL)	
CORPORATION IN AND FOR THE STATE)	
OF WASHINGTON; AND ANNE E.)	
KIRKPATRICK, A SINGLE PERSON,)	
)	
Defendants.)	

VIDEOTAPED DEPOSITION OF BRADLEY N. THOMA
TAKEN ON BEHALF OF THE DEFENDANTS
AT SPOKANE, WASHINGTON
APRIL 19, 2013, AT 9:30 A.M.

REPORTED BY:
PATRICIA L. PULLO, CSR
Notary Public



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A P P E A R A N C E S

MR. ROBERT A. DUNN and MS. SUSAN S. NELSON, Attorneys at Law, of the firm of Dunn & Black, P.S., 111 North Post, Suite 300, Spokane, Washington 99201, appearing for and on behalf of the Plaintiff;

MS. SARAH S. MACK, Attorney at Law, of the firm of Patterson, Buchanan, Fobes & Leitch, Inc., P.S., 2112 Third Avenue, Suite 500, Seattle, Washington 98121, appearing for and on behalf of the Defendants.

THE VIDEOGRAPHER: Lynn Powers Letsch
LVS Productions/Legal Video Services



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I N D E X

DEPOSITION EXHIBITS:	MARKED	IDENT'D
No. 1 Complaint for Damages	48	48
No. 2 Defendants' First Set of Interrogatories and Requests for Production to Plaintiff Bradley N. Thoma	57	57
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1 THE VIDEOTAPED DEPOSITION OF BRADLEY N. THOMA,
2 was taken on behalf of the defendants on this 19th day
3 of April, 2013, at the law offices of Dunn & Black,
4 P.S., Spokane, Washington, before Yamaguchi Obien
5 Mangio, LLC, by Patricia L. Pullo, Court Reporter and
6 Notary Public within and for the State of Washington, to
7 be used in an action pending in the United States
8 District Court for the Eastern District of Washington at
9 Richland, said cause being Case No. CV-12-156-EFS in
10 said Court.

11 THE VIDEOGRAPHER: Here begins Volume No. 1 in
12 Videotape 1 in the deposition of Bradley Thoma in the
13 matter of Bradley N. Thoma, a single person, plaintiff,
14 versus City of Spokane, a municipal corporation in and
15 for the State of Washington, and Anne E. Kirkpatrick, a
16 single person, defendants, in the United States District
17 Court for the Eastern District of Washington at
18 Richland, Case No. CV-12-156-EFS.

19 Today's date is Friday, April 19, 2013. The
20 time is now 9:32 a.m. The video operator today is Lynn
21 Powers Letsch, contracted by Yamaguchi Obien Mangio of
22 Seattle, Washington. This video deposition is taking
23 place at Dunn & Black, 111 North Post Street, Suite 300,
24 Spokane, Washington, and was noticed by Patterson,
25 Buchanan, Fobes & Leitch, Incorporated, P.S., for the



1 interrogatory answers that there were some occasions
2 where that was part of your job --

3 A. Yes.

4 Q. -- is that correct?

5 And can you tell me just a little bit about in
6 what instances that was part of your job?

7 A. In an undercover capacity.

8 Q. Okay. And so beyond where there were times
9 where it was required to drink on the job because of
10 your job duties, were there other times that you drank
11 while you were on the job?

12 A. No.

13 Q. Okay. Were you ever intoxicated at work while
14 you worked for the Spokane Police Department?

15 A. No.

16 Q. And have there ever been any times where you
17 were unable to perform your job duties as a police
18 officer because of your alcohol consumption?

19 A. Not that I recall.

20 Q. During the time that you were working for
21 Spokane Police Department when you were actively
22 drinking, and I don't mean necessarily on the job, how
23 did your alcoholism impact your daily life activities?

24 A. I seemed to plan everything around going out
25 and having drinks.



1 Q. Were there any activities that you engaged in
2 where you -- that you were unable to do because of
3 drinking?

4 A. I'm not sure about the question.

5 Q. Okay. Thinking about the types of things that
6 you do in your daily life, you know, whether it's a
7 recreational activity or going to work, were there times
8 that drinking alcohol impacted those types of
9 activities?

10 A. Yes.

11 Q. Which activities?

12 A. Working out.

13 Q. Okay. And how did -- how did your drinking
14 impact that particular activity?

15 A. Instead of going to the gym, I'd go have
16 drinks with friends.

17 Q. Okay. Are there other activities that your
18 drinking impacted?

19 A. Spending time with my daughter, family.

20 Q. How -- how was that impacted?

21 A. I chose to go have drinks as opposed to
22 spending time with family.

23 Q. And how often has that occurred?

24 A. Many occasion.

25 Q. And during the time -- I'll still use that



1 five-year time frame, 2004 to 2009, was that something
2 that was being impacted by your drinking?

3 A. Yes.

4 Q. And can you think of anything specifically
5 with relation to spending time with your daughter
6 that -- in that time frame that your drinking impacted,
7 a particular activity you couldn't do with her or
8 something of that nature?

9 A. There were times I couldn't take her somewhere
10 because I had been drinking.

11 Q. Okay. Can you think of anything else?

12 A. My patience with her was probably short at
13 times. I brought her to functions where there was going
14 to be drinking. Came home later than planned because I
15 had been out drinking.

16 Q. Did your drinking ever affect your ability to
17 go to work?

18 A. Not that I remember.

19 Q. And other than working out and spending time
20 with your family, I know we talked about your daughter
21 in particular, were there other family members that your
22 drinking impacted?

23 A. My ex-wife.

24 Q. Okay. How did that impact your relationship
25 with your ex-wife?



1 A. Not spending time with her like I should, not
2 coming home some nights until late, short temper,
3 emotionally detached, avoiding functions where there
4 wasn't going to be drinking.

5 Q. When did you get divorced?

6 A. I think around 2004. I'm not sure on the
7 date.

8 Q. Do you remember how long you had been married?

9 A. 13 years.

10 Q. Do you think that the alcoholism contributed
11 to the divorce?

12 A. Yes.

13 Q. So besides the impact on family and the effect
14 on working out, were there other activities that were
15 negatively impacted by your drinking?

16 A. Friendships.

17 Q. In what way?

18 A. Arguments, not making time for friends.

19 Q. Can you think of any other activities that
20 were negatively impacted?

21 A. Sleeping.

22 Q. Okay. How did your drinking impact your
23 sleep?

24 A. I had several years of horrendous sleep
25 problems.



1 Q. What kind of problems?

2 A. Unable to sleep.

3 Q. Anything else you can think of?

4 A. Whole work.

5 Q. Your whole work?

6 A. Work.

7 Q. Okay. How did it impact work?

8 A. I lost my job.

9 Q. Okay. And we'll get to talking about that
10 more specifically. How else did it impact your work?

11 A. I don't -- don't really know.

12 Q. Okay. When did you first tell your
13 employer -- well, strike that. I'll back up.

14 Did you ever tell your employer at any point
15 that you suffered from alcoholism?

16 A. In my IA interview.

17 Q. Was that the first time you had informed your
18 employer of your alcoholism?

19 A. Yes.

20 Q. Prior to that time do you believe that your
21 employer knew you suffered from alcoholism?

22 A. I do not know.

23 MS. MACK: I'm going to ask the court reporter
24 to mark an exhibit and then she'll hand it to you and
25 I'll ask a question about that. It will be Exhibit 1.



1 was occurring after you -- after your DUI.

2 A. Yes.

3 Q. Do you think there were other reasons that she
4 was giving you this letter?

5 A. Nope.

6 Q. Okay. I want to talk about your Loudermill
7 for the DUI-related incident as opposed to the
8 Loudermill about your pretextual stop.

9 At any time during the Loudermill process did
10 you ask Spokane Police Department to consider anything
11 other than a waiver of an interlock device in your
12 vehicle so that you could perform your duties as a
13 police officer?

14 A. I don't recall.

15 Q. Okay. I want to point you to your response to
16 interrogatory No. 19. And that is on page -- get to it
17 here ...

18 MR. DUNN: 13.

19 BY MS. MACK:

20 Q. 13. Thank you. Do you see that?

21 A. Mm-hmm. Yes.

22 Q. See that page? Okay. And there in your
23 response to interrogatory 19 there's a bullet list of
24 other reasonable accommodations that you've proposed.
25 Do you recall asking for any of those proposed



1 accommodations during your Loudermill process?

2 A. I don't recall.

3 Q. Do you think that you did ask and you just

4 can't remember whether or not you did or you -- you

5 really just don't remember whether you did or didn't?

6 A. I really don't remember.

7 Q. Okay. Do you -- and I'm done with that

8 exhibit for the moment.

9 Do you believe that there are other officers
10 at the Spokane Police Department that have been required
11 to use an interlock device in his or her vehicle as a
12 result of a DUI?

13 A. Can you restate that.

14 Q. Sure. Do you know of any officers at Spokane

15 Police Department that have been required to use an

16 interlock device as a result of a DUI, while they were

17 employed at the Spokane Police Department?

18 A. Not at the Spokane Police Department.

19 Q. Okay. Do you know whether you're the only
20 person has at least since you've been employed there,
21 since -- in the time that you were employed there?

22 MR. DUNN: Form of the question.

23 BY MS. MACK:

24 Q. And I can rephrase. I just want to know if
25 you know, only to your own knowledge, whether or not



1 Q. Okay. And this -- now you can go back to page
2 26 -- is a settlement agreement between the Human Rights
3 Commission, you and the City of Spokane in a complaint
4 filed 12/11/2009, correct?

5 A. Yes.

6 Q. Do you have the understanding -- sorry.
7 Strike that.

8 At the time that you signed that settlement
9 agreement, did you understand that it would not become
10 effective until the Human Rights Commission approved it?

11 A. Yes.

12 Q. Okay. And are you aware of whether the HRC,
13 Human Rights Commission, determined that it would not
14 approve the agreement?

15 A. No.

16 MS. MACK: Okay. I am going to mark another
17 exhibit. This is going to be Exhibit 3.

18 (Whereupon, Deposition Exhibit No. 3 was
19 marked for identification.)

20 MS. MACK: And this is going to be Exhibit 4.

21 (Whereupon, Deposition Exhibit No. 4 was
22 marked for identification.)

23 BY MS. MACK:

24 Q. Okay. And the court reporter's handed you
25 Exhibit 3 and Exhibit 4. Have you seen either of those



1 to your position in the demoted rank of sergeant. And
2 the specific paragraphs I think are 31 through 34 where
3 you make the -- that allegation. So I'll give you a
4 moment to take a look at that.

5 A. (Complying.)

6 Q. And I will give you a minute to look at those
7 paragraphs. But to give you some context, my question
8 is: Are you referring to a written agreement as far as
9 the breach of agreement in those paragraphs?

10 A. 31 through 34?

11 Q. Mm-hmm. 32 is -- 31 is more context. But 32
12 talks about defendants breached that agreement. And I
13 want to know if we're talking about a written agreement
14 or a verbal agreement.

15 A. (Witness examining document.)

16 Q. And I'm referencing those paragraphs because
17 they seem to be all referring to the -- they just say
18 "the agreement," so they seem to be referring to the
19 same agreement. And that's all I'm trying to understand
20 is what agreement we're talking about there.

21 A. I was verbally told what the agreement was by
22 my union. I was verbally read a written agreement that
23 Lieutenant Meidl had over the phone that I was -- for me
24 to sign. But I was not in town, so I couldn't sign it.

25 As far as me actually ever seeing any written



1 agreement, I have not seen a written agreement.

2 Q. Okay. So are the agreements -- or agreement
3 that you're referring to here in paragraphs 32 through
4 34 different than the agreement attached at Appendix C
5 that we were talking about a moment ago, the settlement
6 agreement involving the HR --

7 A. Yes.

8 Q. -- C. Okay. So when you allege the breach of
9 the agreement -- let's just look at No. 32, paragraph
10 32. "On January 5th, 2011, Defendants offered to
11 reinstate Plaintiff Thoma to the demoted rank of
12 Detective." You agreed. Was that a written agreement
13 or a verbal agreement?

14 A. (Nonresponsive.)

15 Q. Or a verbal offer, I guess, or a written
16 offer.

17 A. That was a verbal.

18 Q. Okay. And so the allegation goes on there,
19 after defendants breached that agreement, while offering
20 instead to reinstate you at a demoted rank only if you
21 agreed to waive legal and equitable remedies, the breach
22 there that you're referring to is the breach of that
23 verbal offer to reinstate you to a demoted rank of
24 detective?

25 A. I had a verbal -- or a written agreement read



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CERTIFICATE OF WITNESS

I, BRADLEY N. THOMA, being first duly sworn,
depose and say:

That I am the witness named in the foregoing
deposition; that I have read said deposition and know
the contents thereof; that the questions contained
therein were propounded to me; and that the answers
therein contained are true and correct except for any
changes that I may have listed on the Change Sheet
attached hereto.

DATED this _____ day of _____,
20____.

BRADLEY N. THOMA

SUBSCRIBED AND SWORN to before me this _____ day of
_____, 20____.

NAME OF NOTARY PUBLIC
NOTARY PUBLIC FOR _____
RESIDING AT _____
MY COMMISSION EXPIRES _____



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REPORTER'S CERTIFICATE

I, Patricia L. Pullo, Certified Shorthand Reporter, do hereby certify:

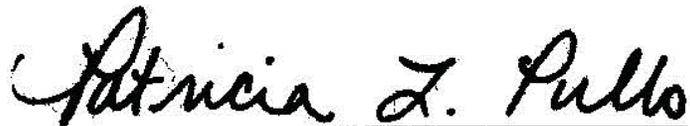
That the foregoing proceedings were taken before me at the time and place therein set forth, at which time any witnesses were placed under oath;

That the testimony and all objections made were recorded stenographically by me and were thereafter transcribed by me or under my direction;

That the foregoing is a true and correct record of all testimony given, to the best of my ability;

That I am not a relative or employee of any attorney or of any of the parties, nor am I financially interested in the action.

IN WITNESS WHEREOF, I have hereunto set my hand and seal this 6th day of May, 2013.



PATRICIA L. PULLO, C.S.R. #1967
Notary Public
816 Sherman Avenue, Suite 7
Coeur d'Alene, ID 83814

My Commission Expires 12/26/2016.



In The Matter Of:

*Thoma v.
City of Spokane*

Anne E. Kirkpatrick

Vol. I

June 21, 2013

*Snover Realtime Reporting
505 N. Argonne Rd., Ste A-201
Spokane Valley, WA 99212*

Original File Kirkpatrick Anne.txt

Min-U-Script® with Word Index

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UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF WASHINGTON

BRADLEY N. THOMA, a single person,
Plaintiff, NO. CV-12-156-EFS
v.
CITY OF SPOKANE, a municipal
corporation in and for the State of
Washington; and ANNE E. KIRKPATRICK,
a single person,
Defendants.

DEPOSITION OF ANNE E. KIRKPATRICK
FRIDAY, JUNE 21, 2013
Pages 1 to 240

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LIC. NO. WA 3114 / LIC. NO. ID 939

1 BE IT REMEMBERED that on the 21st day of June at
2 the hour of 9:00 a.m., the deposition was taken of Anne
3 E. Kirkpatrick, before Jody K. Pope, Notary Public and
4 Registered Professional Reporter, CSR No. 3114 (WA) 939
5 (ID), at the Office of the City Attorney, 5th Floor
6 Municipal Building, 808 W. Spokane Falls Boulevard,
7 Spokane, Washington, pursuant to Washington Federal
8 rules.

9
10 A P P E A R A N C E S:

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1 alcoholism had been raised by Sergeant Thoma as an issue
2 in his particular situation?

3 A. When he was going for deferred prosecution.

4 Q. Okay. And when was that?

5 A. I don't know.

6 (Exhibit No. 7 was marked.)

7 BY MR. DUNN:

8 Q. Okay. We've got to put this one under seal, and
9 this is Exhibit No. 7. I will try to be generic in my
10 questions, so we don't have to seal this part of the
11 deposition record. This is a document entitled
12 "Colonial Clinic", it's confidential, dated October
13 12th, 2009. Have you seen this document prior to today?

14 A. Yes.

15 Q. When you say that you learned of the issue of
16 alcoholism related to Sergeant Thoma's situation, in and
17 around the time frame that he was pursuing deferred
18 prosecution, is this the time frame that you're talking
19 about, the early to mid October 2009 time frame?

20 A. Yes.

21 Q. Okay. And so is this the time frame that you
22 think you saw this report?

23 A. I must qualify, I have a vague memory of this, I
24 don't know.

25 Q. Okay. Well, let me ask it this way, do you think

1 that you saw this report in and around the same time
2 frame that he was pursuing a deferred prosecution?

3 A. I saw a report from Colonial Clinic. I don't
4 know if it was this report.

5 Q. Okay. Let me ask you a different way then. You
6 think that you learned of the issue of alcoholism
7 relating to Sergeant Thoma in and around the time frame
8 of him pursuing deferred prosecution?

9 A. Yes.

10 Q. And is the time frame of pursuing deferred
11 prosecution, to your recollection, in the early to
12 mid-October 2009 time frame?

13 A. Yes.

14 Q. Okay. All right. And are you aware then from
15 having seen a report from the Colonial Clinic in and
16 around the early to mid-October 2009 time frame that he
17 had been diagnosed as suffering from alcoholism?

18 A. I don't have a memory of that.

19 Q. Okay. If you hadn't -- If you don't have a
20 recollection of him being diagnosed as having been
21 diagnosed with alcoholism, do you have some recollection
22 that he was diagnosed as having suffered from moderate
23 chemical dependency, alcohol dependency?

24 A. No.

25 Q. Tell me then, in what context are you aware that

1 alcoholism was raised as an issue in the pursuit of his
2 deferred prosecution?

3 A. It's required to get the deferred prosecution to
4 say that you're an alcoholic.

5 Q. Okay. All right. And how do you know that?

6 A. I believe I read the deferred prosecution letter,
7 the elements to be able to get a deferred prosecution.
8 It's defined.

9 Q. All right. Now, you said to say you're an
10 alcoholic. Is that how you just said it?

11 A. You have to allege alcoholism I believe.

12 MR. DUNN: Can you go back and read that? I
13 think it's like this much back.

14 (The court reporter reads back as
15 requested.)

16 BY MR. DUNN:

17 Q. Got it. Thanks. So your testimony was, to say
18 that you're an alcoholic, and maybe I'm reading more
19 into your answer than there is, but I get from that
20 answer that you believe that Sergeant Thoma just said he
21 suffered from alcoholism as opposed to actually
22 suffering from it. Am I misreading it?

23 A. No, that's what I think.

24 Q. You think he is not an alcoholic?

25 A. I don't know. I know it's a strategy to get the

1 deferred prosecution.

2 Q. Okay. So is that what you thought happened here,
3 was this was a strategy?

4 A. I do.

5 Q. And did you have some understanding that or
6 belief that he was not an alcoholic?

7 A. Yes.

8 Q. Okay. And when do you think you reached that
9 conclusion that he was not an alcoholic?

10 A. Because he had performed as a functioning police
11 officer, so his life at work was not impacted. He was
12 also engaged, and so that showed in his private life
13 that he had a stable relationship. So the main life
14 functions were not impacted.

15 Q. So who did you confer with that had the expertise
16 to assist you in reaching the conclusion that this was
17 just a strategy and that he did not suffer from
18 alcoholism?

19 A. Who did I confer with?

20 Q. Right.

21 A. I counseled with Erin Jacobson a lot during these
22 proceedings.

23 Q. Okay. Because I thought you told me, ma'am, that
24 you didn't have the expertise to address issues of
25 alcoholism. Correct?

Anne E. Kirkpatrick - Vol. I - June 21, 2013

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1 Right?

2 A. Yes.

3 Q. And that you had no report whatsoever prior to
4 December 9th that he had violated any conditions of his
5 deferred prosecution. Right? You didn't know of
6 anything?

7 A. I don't know that. I don't recall that.

8 Q. Well, do you know of something that put him in
9 violation of his deferred prosecution by December 9th?

10 A. Not by December 9th. I don't recall.

11 Q. All right. So by December 9th, you have no
12 indication that he's ever abused his duties and
13 responsibilities as a patrol officer, why were you
14 unwilling to allow him to have a waiver to drive a
15 patrol car by December 9th?

16 A. One of my functions and responsibilities as the
17 chief of police is to manage risks, and it was
18 determined by me, the mayor, the city administrator, and
19 the counsel of others, as well as the city legal staff,
20 that it was a risk they were not willing to go forward
21 with.

22 Q. What was the risk?

23 A. That he would drink and drive in a patrol car.

24 Q. Well, that's a risk that you take with every
25 employee. Right?

Anne E. Kirkpatrick - Vol. I - June 21, 2013

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1 MS. MACK: Objection to form.

2 BY MR. DUNN:

3 Q. I mean, what am I missing here?

4 A. No, not with every employee.

5 Q. Okay. How many alcohol abusers were in your
6 department when you were here?

7 A. I do not know.

8 Q. How many alcoholics were in your department?

9 A. One for sure I was told.

10 Q. Okay. Is that the woman?

11 A. Yes.

12 Q. All right. And other than that, you don't know
13 of anybody else who suffered from alcoholism?

14 A. No one who shared it with me.

15 Q. And didn't suspect anybody to be an alcoholic?

16 A. I had no reason to suspect anyone.

17 Q. All right. So Brad Thoma, who had -- who had
18 been in this incident, who claims he was an alcoholic,
19 and on December 9th who was alcohol free, was assumed to
20 be a risk that you couldn't afford to take. Right?

21 A. That's not one I would take.

22 Q. Okay. Were there, during your tenure while you
23 were still chief here, were there any other individuals
24 who you were aware of who had been arrested for a DUI?

25 A. Yes.

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1 Q. Who?

2 A. Jeff Barrington was the first one --

3 Q. Uh-huh.

4 A. -- who was arrested shortly after I got here.

5 Q. Yeah, and what happened to him?

6 A. He -- His charges, either they were dropped or
7 they were not actually charged. He was arrested and
8 didn't go anywhere. His charges were dropped or the
9 charges did not go through.

10 Q. All right. And this was during your tenure?

11 A. Yes.

12 Q. And I take it he was no longer allowed to drive a
13 vehicle because he was a risk for a DUI?

14 A. He did not claim to be alcoholic.

15 Q. Whether he claimed to be an alcoholic or not, he
16 was drunk and driving. Right?

17 A. Well, it was determined there was no probable
18 cause, so I can't tell you that.

19 Q. Okay. You didn't think he was at risk being
20 arrested for a DUI?

21 A. No, not like this situation that he did not have
22 a deferred prosecution that made it a legal issue to put
23 an interlock device on a car.

24 Q. All right. And when you say he didn't claim to
25 be an alcoholic, Thoma did. Right?

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1 A. Yes.

2 Q. But you didn't believe him?

3 A. I believed he was at least an alcohol abuser.
4 Whether or not he was an alcoholic, I don't know if he
5 is or he isn't.

6 Q. Well, if you had another officer arrested for
7 DUI, even though there wasn't probable cause, don't you
8 believe that he posed a potential risk as well?

9 A. I do not.

10 Q. Okay. And what vehicle was he driving in?

11 A. He was driving a truck. I don't recall if it was
12 state-owned because he was in a task force or if it was
13 his private vehicle.

14 Q. It was a police vehicle, wasn't it?

15 A. My memory is vague on it.

16 Q. Was he armed at the time?

17 A. I think so, yes.

18 Q. Was Thoma armed?

19 A. I don't know.

20 Q. Okay. Who else? Who else during your tenure was
21 arrested for a DUI?

22 A. Amy Ross.

23 Q. And Ms. Ross, what happened to her?

24 A. She -- Well, she did not take a deferred
25 prosecution. She got -- I don't know what she got as

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1 far as a sentence or whatever. I don't recall.

2 Q. Okay. I do not intend to embarrass Ms. Ross on
3 the record, but I'm going to show you some documents to
4 see if that refreshes your recollection of what happened
5 to Ms. Ross. All right. The first document I'm going
6 to show you is an Internal Affairs investigation dated
7 December 15th, 2010, where there's an allegation of a
8 DUI and an allegation of conduct unbecoming an officer.
9 Do you see that?

10 A. Yes.

11 Q. Okay. And as a result of the IA, both of those
12 allegations were sustained. Right?

13 A. Yes.

14 Q. And then you conducted a Loudermill for Ms. Ross,
15 did you not?

16 A. Yes.

17 Q. All right. And do you remember -- Do you
18 remember any of the facts concerning her being stopped
19 by the state patrol for a DUI?

20 A. Some of them.

21 Q. Do you recall what she blew in terms of her
22 alcohol content?

23 A. I do not.

24 Q. And you suspended her for a period of time, did
25 you not?

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1 A. I did.

2 Q. For 80 hours?

3 A. Yes.

4 Q. Without pay?

5 A. That's correct.

6 Q. And because of her past record, she was allowed
7 to take her suspension in blocks of time that wouldn't
8 interfere with her ability to maintain her benefits?

9 A. That's correct.

10 Q. And allowed to drive?

11 A. Yes.

12 Q. And did you consider her to be a risk?

13 A. I did not.

14 Q. Even though she drove drunk?

15 A. Yes.

16 Q. And what's the difference in her situation
17 between her driving drunk and being given discipline and
18 that of Sergeant Thoma?

19 A. The difference is that his involved an essential
20 function of the job, which was the interlock ignition
21 device restriction and the high risk restriction on his
22 driver's license. That's the difference between the
23 two.

24 Q. No, I'm talking about the fact that you
25 considered him to be a risk and wouldn't sign a waiver.

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1 retest to come back to the police department?

2 A. Well, that's why the layoff status was given, was
3 so he wouldn't have to retest.

4 Q. Was there any discussion about him having to
5 actually do a retest if he came back and accepted this
6 deal?

7 A. No, that would not happen.

8 Q. And then you said, "You would be able to come
9 back as a police officer, but during the two-year
10 period, you would be noncommissioned." And it says that
11 the city would support you in trying to find a different
12 job within the department -- or not within the
13 department you say, but dispatch, records, places like
14 that.

15 A. That's correct.

16 Q. So did you think -- Did you think that when he
17 came back, he would not be in a driving position?

18 A. No. When he came back, he would have an
19 unencumbered driver's license. He would have gotten the
20 help he needed, and he would have been fully
21 commissioned and a full police officer with all duties.

22 Q. Help me understand what you're saying when you
23 say, "In addition to that, the City desires to be able
24 to help you by supporting you in --- you obviously can
25 compete for different jobs within the department -- not

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1 solution that was going to be discussed coming out of
2 his Loudermill. I have that wrong?

3 A. He had an opportunity to address what my
4 intentions were.

5 Q. Yeah.

6 A. But my intentions were, unless I heard something
7 otherwise, which was his opportunity to tell me what he
8 wanted to tell me, but we didn't get there because of
9 the essential functions.

10 Q. But your intention going into the Loudermill,
11 ma'am, was to at least, at a minimum, demote him?

12 A. That's the intention.

13 Q. Okay. And nothing in the hour and-a-half, from
14 the time it commenced, to the time you're now talking
15 about an offer, changed your mind about the demotion
16 part of this resolution?

17 A. Before it was finalized, the decision was we
18 don't need to go there, no need to make a decision, we
19 will only deal with the essential functions of the job.
20 So it became moot after the Loudermill.

21 Q. Well, not really because the offer that you made
22 him was one that included a demotion. Right? Hang on.

23 (Exhibit No. 12 was marked.)

24 BY MR. DUNN:

25 Q. Now, this is dated the 17th, the same day as the