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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA
IN AND FOR THE FIFTH APPELLATE DISTRICT

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**CERTIFIED
TRANSCRIPT**

BOWE CLEVELAND,)	VOLUME 16 of 22
Plaintiff/Respondent,)	Pages 1555 - 1680
)	Case No. S-1500-CV-279256
vs.)	Court of Appeal No. F079926
)	Bakersfield, California
TAFT UNION HIGH SCHOOL)	July 9, 2019
DISTRICT, ET AL.,)	
Defendant/Appellant.)	

APPEAL FROM THE SUPERIOR COURT OF KERN COUNTY
HON. DAVID LAMPE, JUDGE, DEPARTMENT 11

REPORTER'S TRANSCRIPT OF PROCEEDINGS

APPEARANCES:

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Reported By:	Virginia A. Greene, CSR 12270 Official Court Reporter
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SUPERIOR COURT OF THE STATE OF CALIFORNIA
IN AND FOR THE COUNTY OF KERN
METROPOLITAN DIVISION
HON. DAVID LAMPE, JUDGE, DEPARTMENT 11

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BOWE CLEVELAND,) VOLUME 16 OF 22
)
Plaintiff,) Pages 1555 - 1680
)
vs.) Case No. S-1500-CV-279256
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DISTRICT, ET AL.,)
) July 9, 2019
Defendant.)
_____)

REPORTER'S TRANSCRIPT OF PROCEEDINGS

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BAKERSFIELD, CA; TUESDAY, JULY 9, 2019

MORNING SESSION

DEPARTMENT 11 HON. DAVID LAMPE, JUDGE

--o0o--

THE COURT: We're in session. We're on the record in Cleveland versus Taft Union High School District. Counsel are present. Ms. Angelo is present.

I've had an off-the-record jury instruction conference with counsel to settle the instructions. I think the instructions are settled at this point. Do we have any proposed special verdict? The instructions as currently drafted and prepared may be subject to action by the Court on motion of the Defense. Mr. Herr has indicated he will be addressing some issues regarding who should be on the verdict form and who should be in the jury instructions with the Court at the conclusion of the evidence. But for that I think the instructions are settled. We have to complete the evidence this morning and then once we've completely settled the evidence we'll have argument.

Anything else we need to take up, Mr. Rodriguez?

MR. RODRIGUEZ: Yes, Your Honor. Thank you. We're also going to have a motion at the end of the presentation that will affect I think the special verdict.

THE COURT: As to what?

MR. RODRIGUEZ: That will affect the special

1 verdict.

2 THE COURT: All right.

3 MR. HERR: I just have a question, Your Honor.
4 And I'm not sure based on the Court's prior rulings. If
5 asked Ms. Angelo would say Doug Hallmark did not show up
6 on the day of the shooting. Is that --

7 THE COURT: I'm going to permit that because
8 it's in the -- I've already said I would permit that.
9 But it's in the body of evidence, but it's not the basis
10 to claim negligence of the police.

11 MR. RODRIGUEZ: First of all, we object, Your
12 Honor. I think I've stated before on the record.
13 Number one, it's not relevant. Number two, 352. It's
14 highly prejudicial. The fact he was there or not there,
15 how does that go as to a responsible school district
16 acting especially in light of the immunity. So our
17 position, our view, is that there is no relevance, and
18 it's highly prejudicial.

19 THE COURT: Yeah. I think we've been through
20 this on the motion addressing whether or not the
21 evidence could come in regarding the negligence of the
22 Taft police. And I indicated the whole issue for me was
23 completely reversed. Because the school district is
24 responsible for their independent contractor and whether
25 or not there is any negligence. But the plaintiff
26 waived presenting that argument to the jury. I think
27 it's part of the body of evidence and I will permit it.
28 I'll overrule the objection.

1 MR. RODRIGUEZ: And additionally it's going to
2 cause confusion with the jurors. It's going to make
3 them think oh, why wasn't he there. Did he just simply
4 decide to take the day off, was he lazy, did he not
5 care?

6 THE COURT: Right. That's the whole issue
7 that I have with the issue as it was presented to the
8 Court. But it is part of the body of evidence, and I'll
9 permit it. I'll overrule the objection.

10 MR. HERR: That's all I had, Your Honor, thank
11 you.

12 THE COURT: As soon as the jurors are
13 accounted for, we can begin. We're ready for the jury.

14 Court is in session. I took roll. We've been
15 in session with counsel. Now the jury is in the
16 courtroom properly seated in the jury box. I believe
17 we're ready to proceed. Ms. Angelo may retake the
18 witness stand remaining under oath.

19 All right. Mr. Herr, your further questions?

20 MR. HERR: Thank you.

21 RONA ANGELO (for the Defense)

22 having been previously duly sworn,

23 testified further as follows:

24 DIRECT EXAMINATION (RESUMED)

25 BY MR. HERR:

26 Q. Good morning, Ms. Angelo.

27 A. Good morning.

28 Q. How are you doing today?

1 A. I'm fine, thank you.

2 Q. Okay. I just want to follow up. Yesterday we
3 had talked about your activities as the assistant
4 principal. In your job as assistant principal, were you
5 required to work with other people in order to
6 accomplish your job?

7 A. Yes, I was.

8 Q. And can you tell the jury who are some of the
9 people that you relied upon to do your job as assistant
10 principal?

11 A. In most of the incidents that happened on our
12 campus I relied a lot upon our campus supervisors. Our
13 campus supervisors were at that time Mary Miller and Kim
14 Fields. They would bring information to us. Kim was
15 known throughout the community so a lot of times parents
16 would contact him at home and then he'd say hey,
17 Ms. Angelo, we had this incident. So we would start
18 that. Mary Miller also played the same thing. They
19 also -- type role. And she brought us students and
20 stuff like that also. Mr. Shoffner was our school
21 psychologist and we were able to take advantage of him
22 from the standpoint that most schools do not have a
23 school psychologist for their own students. And so we
24 relied upon him to do anything that had to do based upon
25 the psychological issues involving students. So a lot
26 of times we would refer non special ed students to him
27 that were having issues in their personal life or
28 whatever. We also had a lot of families that had death

1 and loss and stuff. So he handled those also. We also
2 had our principal or depending upon the year the
3 principal superintendent who supported us.

4 My job was mainly to deal with students, his
5 was to deal with teachers. And then we also had our
6 staff in our office that took care of the clerical
7 stuff, the attendance. And we had our SRO. And our
8 school resource officer, he was mainly there for truancy
9 issues. But he also sat in on interviews with students.

10 And the way that we worked together was that
11 whenever there became an issue where we weren't for sure
12 whether it crossed over into the realm of law
13 enforcement, he would be invited to sit in. And his
14 philosophy was he would sit in. And he said it's like
15 I'm not here. If I need to become involved and put on
16 my police hat, I will let you know. Otherwise it's a
17 school matter, it's left at the school site. One of the
18 reasons for that was that --

19 MR. RODRIGUEZ: Your Honor, excuse me, a
20 narrative.

21 THE COURT: It is a narrative.

22 A. Okay.

23 THE COURT: Your next question.

24 MR. HERR: Yes.

25 BY MR. HERR:

26 Q. Ms. Angelo, you were talking about an SRO.
27 Was there a particular officer that you were referring
28 to?

1 A. Deputy Collins.

2 Q. Okay. Were there times when Deputy Collins
3 explained to you the way he perceived his role as the
4 SRO?

5 A. Yes, he did.

6 Q. And what was it that he told you in terms of
7 his role as the SRO?

8 MR. RODRIGUEZ: Objection. Hearsay.

9 THE COURT: No, overruled, but admitted only
10 for the purpose of the -- that the statement was made,
11 not for the truth of the statement.

12 BY MR. HERR:

13 Q. And let me perhaps ask what I'll call a
14 foundational question. In doing your job, did you rely
15 upon, at least in part, upon what Officer Collins told
16 you he perceived his job to be?

17 A. Yes, I did.

18 Q. Okay. And what is it that he told you that
19 you utilized in doing your job as the assistant
20 principal?

21 A. As being a law enforcement officer he knew
22 when things moved over into the realm of having a penal
23 violation. And so he would advise us on those type of
24 things. But if it was a school matter, he just sat and
25 listened.

26 Q. Okay. I'd like to ask you some questions
27 about student discipline in general. First of all, if a
28 student received discipline at Taft Union High School

1 District, was some notation made in his or her file as
2 to the discipline that was imposed?

3 A. Yes. There was a discipline log that all
4 discipline was entered into.

5 Q. And was a record of the discipline contained
6 in what I'll call the student's cumulative file?

7 A. Yes.

8 Q. Now, were teachers informed when one of their
9 students were disciplined?

10 A. Yes, they were.

11 Q. How were they notified?

12 A. They were notified two ways. If a teacher
13 wrote the referral, then they got the referral back.
14 They also were notified electronically.

15 Q. Now, in terms of your workload can you tell us
16 how many discipline matters you would deal with on a
17 daily or weekly or monthly basis?

18 A. We were always busy. So we'd go from -- we'd
19 have interactions between 20 to 30 students. And if we
20 were working on investigation or different things, it
21 could be more students.

22 Q. Okay. You say 20 or 30 students. Can you
23 give us an idea of what timeframe you're dealing with
24 them?

25 A. Well, we could only deal with the students
26 during the school hours. So it was roughly 7:45 to
27 2:50.

28 Q. But with regard to this number 20 to 30, I'm

1 trying to find out is that how many you would deal with
2 on average on a day, per week or --

3 A. On a day. On a day.

4 Q. So you'd deal with 20 to 30 discipline matters
5 per day?

6 A. Yes.

7 Q. Okay. And you're familiar with Bryan Oliver?

8 A. Yes, sir.

9 Q. Okay. And you're familiar with some issues
10 that he had with his department or conduct at school?

11 A. Correct.

12 Q. Before I get to my questions about Mr. Oliver,
13 in terms of other students you dealt with, in terms of
14 discipline or department, how would Bryan Oliver rate in
15 terms of his conduct at the school?

16 A. Bryan was on the low end. We had some
17 frequent flyer as I called the students that we saw at
18 least twice a week. And Bryan, it was -- we would go
19 months without seeing Bryan.

20 Q. Okay. In terms of the quality -- you told me
21 about the quantity, number of times you might see. In
22 terms of quality of the discipline that Bryan received,
23 was his discipline more serious or less serious, where
24 would it fit in terms of the quality of the discipline?

25 A. He'd probably be in the middle range.

26 Q. Did you ever deal with students who were
27 serious threats at school?

28 A. Yes, we did.

1 Q. Can you give the jury an example of what you
2 considered a serious threat at school?

3 A. A student bringing a knife or brandishing a
4 knife.

5 Q. And was there actually an incident along those
6 lines?

7 A. Yes.

8 Q. And can you tell us what happened in that
9 instance?

10 A. Well, we had one instance that I remember our
11 students -- it was an open campus, so they could go off
12 campus for lunch. And two students got in an argument
13 at the mini mart, whatever you want to call it, the fast
14 food place, and we were called over. And one of the
15 students had pulled a knife on another student. And so
16 the officer responded and that student was arrested and
17 also expelled from our school.

18 Q. In terms of that student being expelled, as
19 the assistant principal was that something that you had
20 authority to do?

21 A. I did the paperwork and presented the case to
22 the school board. The school board decided whether the
23 student was expelled.

24 Q. And in terms of the expulsion, is there a
25 period of time for which a student can be expelled from
26 a public school in California?

27 A. Yes. There is two ways, two terms. One term
28 is you can only do it for two semesters. So if it

1 happens in one semester, that counts plus the following
2 semester. If it's something more violent like pulling a
3 knife or that type of stuff, it could be a calendar
4 year. But that's the longest that we can expel for.

5 Q. So is there any provision that you're aware of
6 in the Education Code that allows a public school to
7 expel a student forever, for example?

8 A. No.

9 Q. Now, I'd like to ask you some questions about
10 Bryan Oliver. First of all, do you recall there being
11 an incident that occurred in the gym of Bryan's first
12 year, his freshman year?

13 A. Yes, I do.

14 Q. And what do you recall about that incident?

15 A. We received a call to send the campus
16 supervisors down to the gym because there had been a
17 fight in the gym between two boys. It was Bryan and
18 another young man. And so the campus supervisors
19 brought the students to our office and then we began our
20 investigation talking not only to those two boys but any
21 witnesses that were around.

22 Q. And did you end up talking to Bryan Oliver?

23 A. Yes, I did.

24 Q. And what did you talk to him about?

25 A. Bryan told me -- he told me that -- his
26 version of the fight. And he said that there was
27 actually two altercations. The first one was he felt
28 that the other student Jake and him were having a

1 discussion and Jake was making him mad and making --
2 punching things. And they got into a fight. And Bryan
3 had Jake on the floor in a headlock. And one of Jake's
4 friends tried to break them apart. And the kids were
5 saying the teacher is coming and so he tried to pull
6 Bryan off of his friend. And Bryan said well, I think
7 he T-bagged me. And I said okay, are you sure. I said
8 -- this is the version that I heard from the other
9 student, that he was just trying to pull you off his
10 friend because you weren't letting go. And Bryan said
11 well, it could have happened that way.

12 Q. Now, did you get written incident reports from
13 all of the students?

14 A. Yes, we did.

15 Q. And is that a process that you follow when
16 you're investigating situations where discipline might
17 be imposed?

18 A. Yes, it is.

19 Q. In addition to getting written incident
20 reports do you also talk to the students?

21 A. Yes.

22 Q. Now, in this case was any discipline imposed
23 on Bryan Oliver?

24 A. Yes.

25 Q. What was the discipline?

26 A. Bryan was suspended from school and so was the
27 other person.

28 Q. When a student is suspended such as Bryan

1 Oliver was for the gym incident, do you also speak to
2 the mother?

3 A. Yes.

4 Q. Do you recall speaking to Bryan Oliver's
5 mother about the gym incident?

6 A. Yes. Bryan's mother worked, because we had
7 spoken with her before, at Rosewood. And so I called
8 her that she needed to come and pick up her son because
9 our policy is that we inform the parent of the issue.
10 We invite them to come to the school and tell them that
11 they have to come and pick up their student. And we
12 have a conference when they arrive discussing the issue.

13 Q. What was her response when you spoke to her?

14 A. Mrs. Oliver wasn't happy. She felt that Bryan
15 had been bullied and picked on and that was the reason
16 that he got into a fight. We had -- I remember now that
17 we had spoken to her one other time about Bryan's being
18 bullied. And she was saying that we didn't protect her
19 son. So it was our fault that Bryan got in a fight.

20 Q. Okay. After the gym incident were there any
21 other incidents involving Bryan Oliver his freshman
22 year?

23 A. There was an incident I believe in his art
24 class where he stole someone else's homework.

25 Q. What do you remember about that incident?

26 A. Well, I remember speaking to Bryan. And at
27 that time our principal superintendent said that any
28 type of theft was a five-day suspension. So I -- Bryan

1 said that he didn't have his work done, so he took it
2 and he copied the paper. And he admitted that he had
3 done wrong, but he still had the five days suspension.

4 Q. Now, what is the next discipline event that
5 you recall with regard to Bryan Oliver?

6 A. I'm trying to remember whether there was
7 any -- Bryan usually wasn't sent in on -- he wasn't sent
8 in a lot by teachers or anything. I believe the next
9 one had to do with the bus incident.

10 Q. Would it be correct to say that if there were
11 any other reported discipline events they would be found
12 in Bryan's cumulative file?

13 A. Yes, they would have been on his discipline
14 screen.

15 Q. Let's talk about the bus incident. When did
16 you first learn about the bus incident?

17 A. I first learned about the bus incident when I
18 arrived to work early that Monday morning. I arrive at
19 work early. So the teacher -- the aide knew and so she
20 came and met me in my office.

21 Q. Who was the aide that you met?

22 A. Dianne Kaszycki.

23 Q. And did you talk to her?

24 A. Yes. She told me what happened and she was
25 very worried about what happened on the bus. And she
26 said that Kelly Federoff also heard some of the
27 comments, so Kelly was going to bring me an incident
28 report also.

1 Q. When you got this information from these two
2 employees, what did you do?

3 A. Well, the first thing is we had to wait until
4 school started because we wouldn't get in contact with
5 any of the students until then. But when our school
6 resource officer came in I spoke to him about it and
7 told him that we were going to be starting an
8 investigation. And Kim was sent to wait for Bryan to
9 come to school.

10 Q. Did you get information from people about this
11 incident?

12 A. We got information from the aides that were on
13 the bus and also from the students that were in the
14 group in which Bryan was.

15 Q. In terms of the students that were in the
16 group, did you get this information in terms of written
17 incident reports?

18 A. Both verbal and incident reports.

19 Q. Did you interview the students after you got
20 the incident reports or before or at the same time?

21 A. It could be at the same time. What happens
22 would be is -- we would -- first of all, we would pick
23 up Bryan and then we would talk to Bryan and then we'd
24 isolate Bryan and then we'd pick up any of the named
25 students that he said or the ladies that were present.
26 And we would -- I would start interviewing them. And
27 while they were being interviewed the other ones would
28 be told to not to talk to anybody and to write up the

1 incident report. So some of them could have been
2 handing me the incident report as they came into my
3 office.

4 Q. Now, after you accumulated the information
5 from the students verbally and in writing as well as the
6 staff, did you speak to Mark Shoffner about the
7 situation?

8 A. Yes, I did. Whenever we have an incident like
9 that I usually notify the principal and Mr. Shoffner if
10 I think that we're going to need his help.

11 Q. With regard to the bus incident in particular,
12 what was your purpose in talking to Mark Shoffner?

13 A. One of the reasons I would speak with
14 Mr. Shoffner is because Bryan was a special ed student.
15 And also because I don't deal with the psychological
16 issues of the kids. I just deal with the discipline
17 part.

18 Q. Did you ask Mark Shoffner to do something with
19 regard to Bryan Oliver?

20 A. Yes. We asked him to do -- start -- be part
21 of the threat assessment, in other words, to test him
22 and to interview him and find out where we needed to go
23 from there.

24 Q. Did you understand that Mark Shoffner would
25 actually do psychological testing?

26 A. Yes. He had a test that he used as part of
27 his program that he had brought with him I believe when
28 he came to our district.

1 Q. So did Mark Shoffner interview or spend some
2 time with Bryan Oliver?

3 A. The procedure was that Mr. Shoffner would call
4 the student in and his mother and speak to both of them.

5 Q. After Mark Shoffner met with Bryan Oliver, did
6 you and he chat further?

7 A. Yes. And while Mark was in the process of
8 doing his report we got information about a possible hit
9 list. And so I informed him of that we may have some
10 further information for him.

11 Q. What information did you get about a possible
12 hit list?

13 A. Well, we had rumors going around the school
14 that there was a hit list where several students were
15 going to be killed by Bryan Oliver. And so we started
16 looking into where it came from and investigated its
17 source and its validity.

18 Q. And what were some of the things to
19 investigate whether this was a hit list?

20 A. Well, we started talking to the students that
21 were talking about it in their classes as to where they
22 found out the information. And we started tracing it
23 back to the source.

24 Q. Did there come a point in time when you
25 reached some conclusion about the hit list?

26 A. Yes. We couldn't find any hit list. And also
27 as a result of the possible hit list the principal
28 superintendent and it was the decided that would we have

1 the school resource officer check the student's home
2 also.

3 Q. Who was the school resource officer at the
4 time?

5 A. Deputy Collins.

6 Q. Did you ask Deputy Collins to search the home
7 or did you ask someone to ask him?

8 A. I'm not positive, but I do believe it was
9 Dr. Richardson that I knew about that he was going to
10 ask him, but I don't believe it was myself.

11 Q. You don't believe what?

12 A. I don't believe it was me that asked him to go
13 search the home.

14 Q. Did someone tell you what the results of the
15 search of the home brought?

16 A. Yes.

17 Q. What did you learn?

18 A. That there were no weapons, lethal weapons,
19 that Deputy Collins had found I think some pellet guns I
20 believe they're called and stuff but there was no hit
21 list. There was nothing that he found that we could use
22 to further our investigation.

23 Q. During the course of the investigation did you
24 also have conversations with Kim Fields?

25 A. Yes.

26 Q. And what was your purpose in talking to Kim
27 Fields?

28 A. Well, Kim, he knew a lot about a lot of kids

1 and stuff like that. But also Kim was one of the people
2 that we would have go get students and bring them to us.
3 And a lot of times the kids would tell Kim, you know,
4 things that they knew about stuff. And then he'd let us
5 know so that we could, you know, ask the kids the
6 correct question.

7 Because with students if you don't ask them
8 the correct question, you don't get the answer.

9 Q. And did there come a point in time when you
10 and Mark Shoffner discussed what to do about Bryan
11 Oliver about the bus incident?

12 A. Yes.

13 Q. And can you tell us what that discussion
14 included?

15 A. The discussion included -- and I believe
16 Dr. Richardson was also part of that, is that according
17 to when we had checked with the SRO he hadn't broken any
18 laws. And so it was a decision because he didn't make a
19 direct threat, with the psychological part was the part
20 that decided whether Bryan would go up to expulsion or
21 he would return to our campus.

22 Q. And who made that determination?

23 A. Mr. Shoffner.

24 Q. Okay. Once a decision was made, did you have
25 any communication with Bryan Oliver's mother?

26 A. Yes.

27 Q. What was that communication?

28 A. Well, there was actually I think two

1 communications. One communication I had with her was
2 stating that we would allow Bryan to return. But part
3 of the conditions of his return was that he sign a
4 contract, a behavioral contract. And on that contract
5 he would be subject to search. The first time when
6 Mrs. Oliver came and met with me, she refused to sign
7 the contract. She thought that the other students
8 should be in as much trouble as Bryan because they had
9 told stories also. And so she -- there was a notation
10 in his discipline screen that said that she took the
11 contract with her. And then later when she met with
12 Mr. Shoffner and was discussing the test and stuff she
13 decided to sign it.

14 Q. Now, this contract that was signed, was a copy
15 of it provided to Bryan Oliver's counselor?

16 A. Yes.

17 Q. And who was the counselor at the time?

18 A. Jana Durkan.

19 Q. Why was a copy of the contract provided to
20 Jana Durkan?

21 A. All of the counselors receive information on
22 their students. And because she was his counselor, she
23 needed to know that he was on contract. And if there
24 were issues that came up, it could affect whether he
25 would remain on our campus.

26 Q. Now, after the bus incident were there any
27 other discipline issues with Bryan Oliver that semester?
28 And by that semester, I'm talking about the spring

1 semester of 2012.

2 A. I'd have to refer to the sheet. I can't
3 remember exactly.

4 Q. Did you recall there being an incident with
5 regard to a stabbing gesture with a pencil?

6 A. The incident with the pencil was on a day that
7 I was out of the office at a meeting. And Mr. Van
8 Roekal, he's -- we have people that stepped in that had
9 administrative credentials just to -- stepped for me and
10 he handled that issue. But I did notice when I came
11 back that Bryan's name was on the log so then and I went
12 to talked to Mr. Shoffner about it.

13 Q. How frequently would you and Mark Shoffner
14 discuss students?

15 A. Very frequently.

16 Q. And with regard to Bryan Oliver, how
17 frequently would you and Mark Shoffner discuss Bryan
18 Oliver?

19 A. Any time anything came across my desk that had
20 Bryan's name on it I would go and discuss it with Mark.

21 Q. What was your purpose in talking to Mark
22 Shoffner?

23 A. Well, I wanted to make sure that Bryan was
24 fine to be on our campus, whether in his opinion as a
25 school psychologist he thought we needed to do any more
26 interventions for Bryan.

27 Q. Now, do you recall in the fall of 2012, which
28 would be when Bryan became a junior, do you recall any

1 incidents involving Bryan Oliver when he was a junior?

2 A. I know he had a couple -- there was an
3 incident in his math class.

4 Q. What was the incident in his math class that
5 you recall?

6 A. Well, Dianne Kaszycki had told us that Bryan
7 had told her or was in the library and he said something
8 drastic is going to happen if I don't get out of my math
9 class. So that meant to me that I needed to call Bryan
10 in. And Bryan told me about incidents in that class.
11 It was a very loud class. It had a lot of students in
12 there that were chatting. And he didn't like the fact
13 that some of them whistled, some of them said -- he felt
14 they were disrespectful saying instead of America
15 Merica. And so he wanted to get out of that class. And
16 that he had gone to his counselor the week before to see
17 about changing his schedule. And because of the time
18 frame and stuff she told him that that was not an -- one
19 thing that they couldn't do.

20 So when he had come in, he had -- I talked to
21 him about that. And I said to him I will check into it.
22 I checked with his counselor. It would have meant -- to
23 change a schedule at that point in time would have meant
24 that he would have had change teachers in several of his
25 classes. We were less than a month before the semester
26 was over. And so that potentially could hurt a student
27 academically.

28 So I spoke to Bryan and I also called his

1 mother and I spoke with her. And I told her I will make
2 the change if you want to, but you need to understand
3 that if it does, it could affect his grades. It is your
4 choice. Because I can override the counselor because
5 the counselor could not make that change without
6 administrative permission.

7 And so the parent and Bryan -- I mean, Bryan's
8 mother and Bryan decided that he would remain in the
9 class to the end of the semester.

10 Q. Now, do you recall an incident involving Bryan
11 Oliver where he wasn't sort of the subject of discipline
12 that involved a backpack?

13 A. Yes, I do.

14 Q. What do you remember about what I'll call the
15 backpack incident?

16 A. The backpack incident we got a call from the
17 teacher saying that her student, which was Bryan,
18 couldn't find his backpack and there was some books
19 missing. And it was on a Friday. So Kim went over
20 there to check it out. And they ended up finding
21 Bryan's backpack. And then on Monday -- because it was
22 a Friday and school was already out -- we started to do
23 the investigation and we found out what happened with
24 Bryan's books and backpack.

25 Q. Did you identify the students who took or hid
26 his backpack?

27 A. Yes, I did. We found out and we interviewed
28 several students and the students admitted that they did

1 it as a joke. Some students said that these boys play
2 jokes on other people. But they did receive Saturday
3 school.

4 Q. I'm sorry?

5 A. They received Saturday school. They have to
6 come to school on Saturday and spend four hours doing
7 schoolwork.

8 Q. Is that a form of discipline?

9 A. Yes, it is.

10 Q. And was that discipline recorded in their
11 discipline or in their cumulative file?

12 A. Yes. It was also on my log when I interviewed
13 the students.

14 Q. Okay. Do you recall any other incidents
15 involving Bryan before January 10th, 2013?

16 A. Not that I can remember. But like I say, if
17 it's in the discipline screen, it would probably jog my
18 memory.

19 MR. HERR: And, in fact, why don't I do this,
20 Your Honor, I would move Exhibit 106 into evidence.
21 That's Bryan Oliver's cumulative file.

22 MR. RODRIGUEZ: May I see it, Your Honor? It
23 may be duplicative.

24 THE COURT: I'll let counsel look at it at
25 this point.

26 MR. HERR: And there are some that you have
27 already admitted.

28 MR. RODRIGUEZ: I think most if not all the

1 discipline log.

2 THE COURT: Well, let me reserve on that. If
3 you need to use it, Mr. Herr, to refresh recollection,
4 that is fine. But we won't admit it at this point.

5 MR. HERR: Okay. Thank you, Your Honor.

6 THE COURT: I'll need to see the entire
7 exhibit.

8 BY MR. HERR:

9 Q. Now, with regard to your relationship to
10 students at the school, how would you describe your
11 relationship with students?

12 A. The students knew that I was firm but fair.

13 Q. And in terms of the student population, about
14 how many students were there at the time?

15 A. We varied between 900 and maybe 950 students
16 on our campus.

17 Q. Did you know Bowe Cleveland?

18 A. Yes, I did.

19 Q. How would you describe your relationship with
20 Bowe?

21 A. I would say it was good. I spoke with him
22 several times in my office.

23 Q. Did you know a student by the name of Rebecca
24 Jackson?

25 A. Yes, I do.

26 MR. HERR: Your Honor, I'd move Exhibit 132
27 into evidence.

28 MR. RODRIGUEZ: No objection, Your Honor.

1 THE COURT: Admitted.

2 (Whereupon Defendant's Exhibit No. 132 was
3 received in evidence.)

4 MR. HERR: If I may, Your Honor, I'm going to
5 do this the old-fashioned way.

6 BY MR. HERR:

7 Q. Do you recognize Exhibit 132?

8 A. Yes, I do.

9 Q. And can you tell the jury who is depicted in
10 this photograph that we've entered into evidence as
11 Exhibit 132?

12 A. Rebecca Jackson.

13 Q. How would you describe your relationship with
14 Rebecca Jackson?

15 A. I dealt with Rebecca on one instance. But I
16 would see her quite frequently outside the school and
17 say hello to her and Bryan as I exited school.

18 Q. What were the circumstances under which you
19 would see Rebecca and Bryan?

20 A. Rebecca and Bryan, when I -- I wouldn't leave
21 until around 4:00 every day or later. And as I went out
22 my car was parked on that side. And Bryan and Rebecca
23 would stand by the tree and they would be talking. And
24 especially if there was an issue like his books being
25 taken or something or his schedule being changed, I
26 would make it a special point to say did this happen,
27 how was your day. But every day I'd walk by that I saw
28 them, and I'd say how are things going Bryan, how are

1 you, Rebecca. And she'd never really say anything about
2 than maybe hello. So I saw them almost daily.

3 Q. Now, before the school shooting do you recall
4 there being any occasions when Rebecca Jackson came to
5 you and told you things about Bryan Oliver?

6 A. No, I do not.

7 Q. Would there have been a record kept if a
8 student comes to the school office, to the
9 administration office?

10 A. Yes, there would.

11 Q. What record is kept?

12 A. Well, there would be possibly two forms. One
13 is any student that came into the attendance office was
14 required to sign in. And there would be -- they're
15 signing into the office. And then also if I spoke to
16 them and it was about an incident or anything there
17 would be an incident report. And I would have also if I
18 spoke to them it would have been entered on my log.

19 Q. Was it your process that whenever a student
20 came to your office and brought you information that
21 might result in discipline that you obtained an incident
22 report from the student?

23 A. Yes.

24 Q. And have you looked at your records to see if
25 there was an incident report that Rebecca Jackson signed
26 concerning anything about Bryan Oliver?

27 A. We pulled everything that had anything to do
28 with Bryan. And I have looked, and there is nothing.

1 Q. Now, do you know a student by the name of
2 Mariah Doty?

3 A. Yes.

4 Q. Is that how you pronounce her last name?

5 A. Doty.

6 Q. You know Mariah Doty?

7 A. Yes, I do.

8 Q. How do you know Mariah Doty?

9 A. Mariah Doty was called into our office in
10 December of 2012. I had received a phone call from the
11 principal over at Lincoln Junior High that one of their
12 students was afraid because they heard that there was a
13 hit list and that there might be a student that was
14 bringing a gun. And so I called Mariah in to find out
15 because her name was mentioned. Mariah's name was
16 mentioned by the principal.

17 And so I called her in and asked her about it.
18 And she said well, it's just I was talking to my friend
19 on Twitter and my friend scared me. And I said well, is
20 there any new information or anything. And she said no,
21 it was just from the spring. She never said anything
22 other than that to me.

23 Q. Now, this conversation you had with Mariah
24 Doty, are you the one who initiated it?

25 A. Yes.

26 Q. And you initiated it because you got
27 information from some other source?

28 A. Right, from the principal over at Lincoln.

1 Q. And Lincoln was?

2 A. Lincoln Junior High, I'm sorry.

3 Q. So Mariah Doty did not come in on her own and
4 report this, correct?

5 A. No, she did not.

6 Q. When she came in and talked to you, did you
7 have an understanding she was talking about new
8 information about a hit list?

9 A. No, she was just saying she was referring to
10 the information from the previous spring.

11 Q. Did she mention anything about Bryan having a
12 knife?

13 A. No, she did not.

14 Q. Now, with regard to this communication with
15 Mariah Doty, did you record that in any way?

16 A. I had a little notation in my log that I met
17 with her. And if there had been anything that she had
18 said about Bryan having a knife or anything, it would
19 have been in there. And it was just a short blurb
20 saying -- referring to this spring incident.

21 Q. And by the same token given the processes that
22 you followed, had Rebecca Jackson come in and told you
23 something about Bryan Oliver either what he did or how
24 he was treated, would that have been recorded in your
25 discipline log?

26 A. Yes, it would have been.

27 Q. Now, I'd like to ask you about these cameras
28 that were on campus. Are you aware that there are

1 cameras on campus?

2 A. Yes, sir.

3 Q. And what was the purpose of having the cameras
4 on campus?

5 A. The purposes of the cameras was so that we
6 would be able to -- if we had a fight or we had some
7 event happening on campus and we needed to review
8 footage, we could. We didn't have the manpower or the
9 time to monitor them all the time. But if we wanted to
10 check the hallways or something at any time we could do
11 that also.

12 Q. What do you mean you didn't have the manpower
13 or --

14 A. Right.

15 MR. RODRIGUEZ: Excuse me, Your Honor, may we
16 have a sidebar, please?

17 THE COURT: Yes.

18 (Outside the presence of the jury.)

19 THE COURT: Yes, Mr. Rodriguez.

20 MR. RODRIGUEZ: Two things. First thing, Your
21 Honor, it would be highly prejudicial. And it would be
22 against CACI 1117 of the parties if the next question,
23 the question is asking -- he's trying to elicit oh, did
24 you have the funding for it. So I didn't want to unring
25 the bell, have to unring the bell. So I would ask the
26 Court to caution against asking that question.

27 And, number two, I think we've already been
28 going 40 minutes and the estimate was 35 minutes

1 yesterday. When I put my case on in chief I was very
2 mindful of what the Court would say to us as to the
3 timing. And we even had to shave off four witnesses
4 that we had to put on that we didn't put on. And this
5 is impacting now the damages phase the longer this goes
6 on and on and on and on.

7 THE COURT: Well, I presume -- first, as to
8 your first objection, I think it's appropriate
9 cautionary objection. And so we're not going to go into
10 funding or the wealth or poverty of the district. So I
11 think that's appropriate.

12 As to the timing, I'm expecting this to
13 conclude fairly quickly, Mr. Herr, like in the next ten
14 minutes maybe.

15 MR. HERR: I intend to ask her about the bus
16 incident after this and that is it.

17 MR. RODRIGUEZ: I think you already have about
18 the bus incident.

19 THE COURT: Well --

20 MR. HERR: I'm sorry, your correct. I meant
21 to ask about the shooting, day of the shooting.

22 THE COURT: Yeah. Okay.

23 MR. HERR: That's the final subject matter.

24 THE COURT: Okay. Then I think we're coming
25 to a conclusion.

26 MR. RODRIGUEZ: Your Honor, may I just ask
27 counsel to advise the witness not to go into funding or
28 money or financial things like that. I don't want her

1 to blurt it out.

2 THE COURT: Right. I think that's
3 appropriate. But I'll do that however counsel wishes to
4 do it. I think, Mr. Herr, it's not inappropriate for
5 you to just briefly mention that to her on the stand,
6 but I'll bring her back here if you want.

7 MR. HERR: I was just going to ask her what I
8 meant by manpower.

9 THE COURT: Well, she's not a lawyer. So we
10 could then start talking about the resources or funding
11 of the school district. So I think you do need to
12 caution her. How do you want to do it? Do you want to
13 draw her -- you want to just briefly confer? It would
14 be in front of the jury. You want me to bring her back
15 briefly? Which I could do and let you confer with her
16 privately. Or sometimes ask me to if they can discuss a
17 matter with the witness in the alcove.

18 MR. HERR: Yes, may I do that? So just take a
19 short break.

20 (In the presence of the jury.)

21 THE COURT: Thank you, counsel, for the
22 conference.

23 And, Mr. Herr?

24 MR. HERR: Your Honor, could I have a short
25 conversation with Ms. Angelo in the alcove?

26 THE COURT: Yes, go ahead.

27 (Discussion off the record.)

28 THE COURT: All right. Thank you, Mr. Herr.

1 MR. HERR: Thank you, Your Honor.

2 BY MR. HERR:

3 Q. Mrs. Angelo, you had mentioned manpower with
4 regard to those surveillance cameras. What were you
5 referring to?

6 A. I was referring to tying somebody up watching
7 the cameras when they could be out supervising the
8 campus or handling some other things with our students.

9 Q. Did you have discussions with Officer Collins
10 and Officer Hallmark as to how you thought they could
11 best use their time on campus?

12 A. Yes, I did.

13 Q. And what did you tell them?

14 A. We liked the officers to be seen, because we
15 think that officer presence is a deterrent. And so we
16 wanted them out and around. We wanted them around,
17 especially when school started, at lunchtime, and to get
18 to know the students so they accepted them and would
19 feel free to talk with them.

20 Q. Now, I'd like to ask some questions about
21 January 10th, 2013. Do you remember that day?

22 A. Yes, I do.

23 Q. And what time did you get to school that day?

24 A. Probably before 6:30 on that day because we
25 had two staff meetings.

26 Q. And did there come a point in the day when
27 something unusual occurred?

28 A. Yes.

1 Q. What occurred that caught your attention?

2 A. A little before nine o'clock, maybe around
3 9:50, before 9:00 anyway, I heard on the radio that
4 there were shots or noises in the science building.

5 Q. And when you heard that, did you do anything?

6 A. Yes. I had been in IT checking with them
7 because we had -- in our meeting we had discussed in
8 case of a lockdown how to react and stuff. And we were
9 checking on making sure different areas were covered.

10 Q. And did you later learn what had occurred?

11 A. Yes. I heard on the radio, Kim and Mary on
12 the radio, and I believe it was Mary said that it was
13 Bryan Oliver, he had shot Bowe, and that Kim had him on
14 the ground.

15 Q. Now, did there come in a point in time when
16 you reviewed the surveillance videos?

17 A. Yes.

18 Q. And in reviewing those surveillance videos
19 were you able to determine the time when Bryan Oliver
20 came on campus?

21 A. Yes. It was what is it time stamped what are
22 they.

23 Q. And what was the time?

24 A. It was probably a little bit before 8:50.
25 Around 8:50 I think.

26 Q. Before 8:50 or nine o'clock?

27 A. Well, it was before nine o'clock, which is you
28 know between 8:50 and nine o'clock. I don't remember

1 what exact time it was. I'd have to look at the
2 footage.

3 Q. Okay. You watched the route that Bryan Oliver
4 traveled?

5 A. Yes.

6 Q. And were there any bathrooms along the route
7 of travel that Bryan followed on the day of the
8 shooting?

9 A. Yes. The way that Bryan when he went along
10 the side of the science building and then up the steps
11 and as he goes up to that center floor, there is a boys'
12 bathroom right there on the left.

13 Q. Okay. That's the floor that the science
14 classroom was in?

15 A. That's correct.

16 Q. That's the room that Bryan went into?

17 A. Yes.

18 Q. And in watching the video did Bryan go into a
19 bathroom on that floor?

20 A. No, he walked straight towards the classroom.

21 MR. RODRIGUEZ: Lack of foundation.

22 THE COURT: Overruled.

23 MR. RODRIGUEZ: The camera doesn't show that
24 floor, Your Honor, that part.

25 THE COURT: Oh, just a second. The reference
26 is being made to the video that's been in evidence.

27 MR. HERR: Yes.

28 THE COURT: All right. Well, the video is in

1 evidence. So this is cumulative. I'll sustain it on
2 that basis as to what this witness saw from the video
3 because we all saw the video.

4 MR. HERR: Thank you, Your Honor.

5 BY MR. HERR:

6 Q. Now, Ms. Oliver -- or, excuse me, Ms. Angelo,
7 were there processes in place at the school in January
8 of 2013 that had Sheryl Oliver called the school at,
9 say, 8:46 and said that Bryan -- she was very upset and
10 Bryan was suicidal and had access to a shotgun, what
11 processes were in place that would have dealt with the
12 situation like that?

13 MR. RODRIGUEZ: Excuse me. Argumentative and
14 incomplete hypothetical.

15 THE COURT: Overruled.

16 A. If Ms. Oliver had called the school, for one
17 thing, we would have called 911. The other thing is our
18 campus supervisors would be searching for Bryan. And
19 also our IT department would be starting to monitor the
20 cameras to see if they could identify where Bryan could
21 possibly be.

22 BY MR. HERR:

23 Q. Would the school have gone on lockdown?

24 A. Yes, we would have gone on lockdown.

25 Q. Now, since the day of the shooting have you
26 thought about what occurred?

27 A. Yes.

28 Q. And what are your thoughts about what

1 occurred?

2 MR. RODRIGUEZ: Your Honor, excuse me,
3 relevance.

4 THE COURT: Sustained.

5 BY MR. HERR:

6 Q. How often do you think about the school
7 shooting?

8 MR. RODRIGUEZ: Excuse me, relevance, Your
9 Honor.

10 THE COURT: Sustained.

11 BY MR. HERR:

12 Q. Do you think about Bryan Oliver?

13 A. Yes.

14 MR. RODRIGUEZ: Excuse me, relevance.

15 THE COURT: Yeah, I would sustain the
16 relevance objections to this line the questioning.

17 MR. HERR: Those are all the questions I have,
18 Mrs. Angelo.

19 A. Thank you.

20 THE COURT: Cross-examination?

21 MR. RODRIGUEZ: Yes, Your Honor. I'll be
22 brief.

23 THE COURT: All right.

24 CROSS-EXAMINATION

25 BY MR. RODRIGUEZ:

26 Q. Good morning, ma'am.

27 A. Good morning.

28 Q. Just a few questions, ma'am. During the time

1 that you were at Taft Union High School District you
2 took workshops on threat assessment, is that right,
3 ma'am?

4 A. That is correct.

5 Q. And at least one of those were taught by
6 Dr. Mohandie, correct?

7 A. Correct.

8 MR. RODRIGUEZ: May I approach, Your Honor?

9 THE COURT: You may.

10 MR. RODRIGUEZ: Thank you.

11 THE COURT: Well, you need to let counsel know
12 what you're doing.

13 MR. RODRIGUEZ: It is Exhibit 47-20 and
14 Exhibit 46-222 that --

15 THE COURT: Just let counsel see it.

16 All right. Thank you.

17 MR. RODRIGUEZ: Thank you, Your Honor.

18 (Whereupon Plaintiff's Exhibits Nos. 47-20 and
19 46-222 were marked for identification.)

20 BY MR. RODRIGUEZ:

21 Q. Ma'am, you recognize Plaintiff's
22 Exhibit 47-20? And that's the incident report filed by
23 Kelly Federoff, correct?

24 A. Correct.

25 Q. And she's one of the staff members that was on
26 the bus on that field trip, correct?

27 A. Correct.

28 MR. RODRIGUEZ: I would move in Plaintiff's

1 Exhibit 47-20 into evidence, Your Honor.

2 MR. HERR: Objection. Cumulative. It's
3 contained in the exhibit I just tried to move into
4 evidence.

5 THE COURT: Well, I will move -- I will
6 overrule. It's admitted for the fact that it was an
7 incident report and statements made, not for the truth
8 of the matter stated in the report. I'll -- I'm
9 reserving on the other.

10 (Whereupon Plaintiff's Exhibit No. 47-20 was
11 received in evidence.)

12 BY MR. RODRIGUEZ:

13 Q. And, ma'am, may I show you what's been marked
14 for identification purposes only as Plaintiff's
15 Exhibit 46-222?

16 A. Yes.

17 Q. Is that part of the discipline log that you
18 had at Taft Union High School District?

19 A. This is my personal log.

20 Q. And that's something you developed, right?

21 A. Correct.

22 MR. RODRIGUEZ: Okay. I would move in
23 Plaintiff's Exhibit 46-222, Your Honor.

24 MR. HERR: Your Honor, I object. That's
25 contained in the documents I moved into evidence. It's
26 cumulative.

27 THE COURT: Are you talking about 106?

28 MR. HERR: Yes, Your Honor. These are all --

1 may I be heard on this?

2 THE COURT: Sure.

3 (Outside the presence of the jury.)

4 MR. HERR: Your Honor, here's my problem. I
5 moved 106 into evidence. Plaintiff has cherry picked
6 certain documents out of that document and shown them to
7 the jury. I wanted to go over these documents with my
8 client with my Exhibit 106 which is the entire
9 cumulative file. The Court took my motion under
10 reservation so I wasn't able to go through those with
11 her. Now Plaintiff is again cherry picking some of
12 these documents he's going to show to the jury and then
13 he's going to object to 106 because he's already
14 introduced pieces of 106 into evidence.

15 THE COURT: Well, I don't know that that's
16 true. The only problem I have with introducing 106 -- I
17 have no problem reducing the whole, anything related to
18 the bus incident or other matters of discipline. The
19 whole 106 is the whole record of -- I mean, there is an
20 elementary cumulative record checklist. There is a lot
21 of material in 106. And typically unless it's testified
22 to I wouldn't admit an entire document like this. It's
23 like admitting an entire medical record. And the jury
24 is given this and they can peruse at their leisure when
25 it hasn't actually been testified to. But I have no
26 problem admitting the matters that relate to the issues
27 that have been testified about, which is why I reserved
28 on this.

1 MR. HERR: Well, for example, it contains the
2 records from Tennessee that there has been testimony on
3 concerning --

4 THE COURT: Right. I don't have any issue in
5 terms -- but I just couldn't -- in the time available as
6 we're trying to present the evidence, I couldn't go
7 through this whole thing and -- over objection and
8 determine what should come in of 106 and what shouldn't.

9 MR. HERR: Well, my -- he's introducing parts
10 of the discipline log. He's introduced some of the
11 incident reports for these incidents. So now I'm going
12 to go to have to go back. And I don't now -- want me to
13 mark these, Your Honor?

14 THE COURT: Well, they're already marked.
15 They're part of 106.

16 MR. HERR: Correct. So --

17 MR. RODRIGUEZ: Your Honor, may I be heard?

18 THE COURT: Yes.

19 MR. RODRIGUEZ: 106, the reason I objected is
20 one has got so much -- it's got duplicate stuff like the
21 threat assessment plan. As far as these two, this was
22 the only incident report that we inadvertently forgot to
23 move into evidence. So I was cleaning that up. It has
24 to do with Ms. Federoff on the bus. It's an incident
25 report.

26 THE COURT: Well, it's not part of whatever
27 record we have of the incident reports.

28 MR. HERR: It was the --

1 MR. RODRIGUEZ: It was the only one that we
2 left out because we thought we were going to call her
3 and she didn't respond to our subpoena, Ms. Federoff.

4 MS. TRUJILLO: No, we ran out of time.

5 THE COURT: No, but I mean, it's an exhibit.
6 There is no dispute that that's an incident report.

7 MR. RODRIGUEZ: Oh, yes. Yes.

8 THE COURT: Okay. Then I don't have to ask
9 this witness about it and it's just admitted as part of
10 the discipline log and the incident report.

11 MR. RODRIGUEZ: That's what --

12 THE COURT: And then counsel can argue the
13 matter, both sides. And I have no problem of admitting
14 all of it for counsel to argue to the jury.

15 MR. RODRIGUEZ: All of 106?

16 THE COURT: No, all of what's related to the
17 issues that have been testified about.

18 MR. RODRIGUEZ: Yes. I thought it would be a
19 very simple process.

20 THE COURT: But you don't have to do that. I
21 don't think there is an objection. There is an
22 objection to it being isolated and coming into the
23 evidence as an isolated document and questioning her
24 about it. But if all you're doing is establishing a
25 foundation with her about it, there is no need to do
26 that because it's a produced document. It's part of the
27 school record. It's that that will be admitted along
28 with I think everything that the school had available to

1 it to consider what they did with respect to Bryan
2 Oliver.

3 MR. HERR: Thank you, Your Honor.

4 THE COURT: Yeah. Let's just not waste time
5 on the foundation.

6 (In the presence of the jury.)

7 THE COURT: Thank you, counsel. I think we've
8 resolved the issue with respect to the exhibits you were
9 discussing, Mr. Rodriguez. So if you'll move on.

10 MR. RODRIGUEZ: And those two items were moved
11 into evidence, Your Honor?

12 THE COURT: Well, I'm reserving on those as we
13 discussed. But I've already given an indication of my
14 intent to counsel, so --

15 MR. RODRIGUEZ: Okay.

16 BY MR. RODRIGUEZ:

17 Q. Last question, ma'am. Before the school
18 shooting did Kim Fields ever tell you that he had been
19 told that one or two of the ROP employees were scared of
20 Bryan Oliver and had escape plans in case Bryan Oliver
21 attacked them?

22 A. No, sir.

23 Q. Okay. Thank you. Those are all the questions
24 I have.

25 THE COURT: You may step down.

26 MR. HERR: Your Honor, could she be subject to
27 recall after my issue with these exhibits?

28 THE COURT: Well, you can address that with

1 the Court, yes.

2 Subject to all the reservations that have been
3 put before the Court, do you have any further proffer?

4 MR. HERR: Yes, Your Honor. I would move into
5 evidence page 2-00247 of Exhibit 106.

6 THE COURT: Let me deal with those issues.
7 I'm reserving on the content of 106 and I'll deal with
8 that. You've already essentially moved that into
9 evidence because it's a portion of 106.

10 MR. HERR: Yes.

11 THE COURT: So I'm -- the motion of the
12 Defense is to admit 106, and then I'm going to address
13 that with counsel.

14 MR. HERR: Okay. Then that's all the evidence
15 and the Defense rests, Your Honor.

16 THE COURT: I don't believe there is a
17 rebuttal case or rebuttal evidence to present.

18 MR. RODRIGUEZ: That's correct, Your Honor.

19 THE COURT: In this phase. All right.

20 Then ladies and gentlemen, you've heard all
21 the evidence you're going to hear in this phase of the
22 trial. Let me -- I need some time to address some
23 matters with counsel. Let me -- I'm mainly concerned,
24 and I want to talk to them about scheduling. So what
25 I'm going to do, rather than send you out, I'm going to
26 ask to see counsel for a moment just to discuss
27 scheduling.

28 (A sidebar was held and not reported herein.)

1 THE COURT: All right. Thank you, counsel and
2 thank you, ladies and gentlemen. I think what I'm going
3 to do now, ladies and gentlemen, is recess for you. We
4 hate to lose the time. I've discussed with counsel.
5 Obviously we've had lots of discussions when you're not
6 here about the law, about how I'm going to instruct you
7 on the case because the attorneys need to know that so
8 that they can frame their arguments. The point of their
9 arguments is to discuss the evidence with you and the
10 law as I intend to instruct you to give you their views
11 to help guide you in your deliberations. But there are
12 some homework issues that we need to take care of and I
13 think in my experience will actually save time if we do
14 that so that everybody is ready and organized and ready
15 to make their closing arguments to you. And then I will
16 instruct you and the case will be delivered to you.

17 So in order for us to make sure we're ready to
18 proceed along those lines, I'm going to recess with you
19 until 1:30. That will give us time to get organized.
20 So you're excused until 1:30 this afternoon. Return at
21 1:30 and we'll get started with counsels' arguments.
22 Thank you. Don't discuss the case or form or express
23 any opinions.

24 All right. We remain on the record outside
25 the presence of the jury. There are some exhibits that
26 I reserved on, Exhibit 37-102 through 120, which are the
27 documents related to the school district's contract with
28 the City of Taft or the Taft Police Department. And I

1 reserved on Exhibit 106. I'm not sure -- I'll depend on
2 the clerk's record to determine if there are any other
3 exhibits that I've reserved on. And I can address that
4 in just a moment while she also checks her record for
5 any reserved exhibits.

6 But I believe that both counsel have motions
7 to make to me or application to me regarding the special
8 verdict form or otherwise. I'll take Plaintiff first.

9 MR. RODRIGUEZ: Yes, Your Honor. At this time
10 we'd like to make a directed verdict on a specific issue
11 pursuant to CCP Section 630.

12 And the specific issue is that the testimony
13 of the Defense expert on threat assessment, which was
14 Dr. Frederick Calhoun, and if the Court would recall, he
15 offered opinions on the standard of care as to what
16 threat assessment in a school setting, specifically a
17 high school setting. And we went back and looked at the
18 trial transcript. And nowhere in the trial transcript
19 was the testimony of Dr. Calhoun, was the Defense -- did
20 the Defense ever ask him whether his opinions rose to
21 more likely true than not or to a reasonable degree of
22 certainty in the field of threat assessment. Those
23 questions were never asked. So it is our view because
24 the Court is treating this as a professional negligence
25 case, at least the second part of the threat assessment,
26 that that wasn't met. That affirmative defense that the
27 standard of care that Dr. Meloy testified to. And I did
28 ask him those questions as to whether or not he -- all

1 the opinions he offered were more likely true than not.
2 That question was not put to Dr. Calhoun.

3 And because of that we would ask for a
4 directed verdict on the issue of standard of care that
5 the only evidence -- acceptable evidence before this
6 Court on the professional negligence part would be
7 Dr. Meloy's testimony and not Dr. Calhoun's testimony.
8 It didn't meet the threshold. So for that reason I
9 would ask for a directed verdict on that issue. Thank
10 you, Your Honor.

11 THE COURT: Mr. Herr?

12 MR. HERR: Just briefly. Dr. Calhoun said
13 there was no standard of care based on his training,
14 education and experience. I think he's certainly able
15 to give that opinion. Additionally, Dr. Mohandie said
16 there was no standard of care. So with regard to the
17 threshold issue as to whether there was standard of
18 care, there are two experts, one retained and one
19 nonretained, that said with regard to threat assessment
20 there is no standard of care. So I think that issue is
21 properly before the jury in this case.

22 MR. RODRIGUEZ: Same issue with
23 Dr. Mohandie. The Defense never asked what was the
24 standard of care -- it was never couched that way.

25 And, number two, again the question wasn't
26 asked was it more likely true than not this opinion. I
27 asked him questions as to the training he had done, what
28 he had taught. I didn't couch my questions in the form

1 of standard of care. So the threshold was not met with
2 regard to professional negligence that we objected to,
3 but nonetheless.

4 THE COURT: All right. I'm prepared to deal
5 with this. I think this is a matter that goes to the
6 weight. I think this is an issue for the jury's
7 consideration, not mine, at this stage of the evidence.
8 I would deny that motion for directed verdict.

9 Mr. Herr, you had some issues?

10 MR. HERR: Yes, Your Honor. I, too, am moving
11 for a directed verdict under Section 630, specifically
12 with regard to William McDermott, Marilyn Brown and to
13 the extent Mark Richardson is being included in this. I
14 believe there is no evidence that -- as to what Marilyn
15 Brown did or should have done or what William McDermott
16 did or should have done or Mr. Richardson for that
17 matter.

18 So with regard to those three named -- to the
19 extent they're named Defendants, I would move for a
20 directed verdict on their behalf.

21 THE COURT: Let me note something, and then
22 I'll hear from the Plaintiff. I note that in the
23 Plaintiff's version of the instructions that were
24 submitted this morning, which are obviously the product
25 of our jury instruction conferences, and noting that --
26 this is already probably on the record, but we'll make a
27 full record. There is actually a written objection that
28 the Plaintiff has objected to the proposed instructions

1 for the Court as essentially divided the Plaintiff's
2 theories of liability based upon the evidence needed to
3 support those in -- I'll call it ordinary negligence
4 under CACI 400 and professional negligence under CACI
5 600.

6 I do note that the instructions proposed now
7 by Plaintiff, the general negligence under 400, includes
8 Rona Angelo, Mark Richardson and Marilyn Brown. I had
9 indicated that I thought a separate 400 negligence
10 instruction essential factual elements should be
11 prepared on the Plaintiff's claim for negligence in
12 conducting threat assessment or threat management and
13 that's not in the Plaintiff's package.

14 So all I'm noting for right now is that the
15 only employees either as parties or otherwise addressed
16 in the evidence that are in Plaintiff's proposed
17 instructions are Rona Angelo, Mark Richardson and
18 Marilyn Brown. So there is no instruction related to
19 Mr. McDermott. And I'll let counsel confer briefly
20 before you address the Court.

21 MR. RODRIGUEZ: We were going to agree that
22 the state of the evidence wasn't sufficient for
23 Mr. McDermott, Your Honor, and that's why we prepared
24 that in that regard the way we did.

25 THE COURT: All right. Then my tentative
26 would be to grant the directed verdict with respect to
27 Mr. McDermott.

28 Would you address the state of the evidence

1 regarding Mr. Richardson being named in the instructions
2 and on the special verdict form? I note and I have
3 already done this at the very beginning of the case
4 noted that the school district can be liable only for
5 the conduct of its employees. It is vicariously liable
6 for the conduct of its employees if they are negligent,
7 but those employees do not have to be named parties.

8 However, they do have to be identified and the
9 scope of their employment or their actions within the
10 course of employment have to be apparent in the
11 evidence. So I would ask you to address -- I would ask
12 the Plaintiff to address Mr. Richardson being included
13 in the instructions and upon the special verdict form.

14 MS. TRUJILLO: Yes, Your Honor. Thank you.
15 As to Mr. Richardson, he was the superintendent, slash,
16 principal from 2008 through 2012. And -- 2012 like
17 August. So he was there through the relevant time of
18 the threat assessment that took place in February of
19 2012. The state of the evidence comes from two sources.

20 First, Ms. Angelo, we played her video
21 deposition testimony where she stated that
22 Mr. Richardson was to be part of the threat assessment
23 team and involved in the discussion. When the state of
24 the evidence coming from Mr. Richardson, he was asked
25 were you responsible for the overall safety of the
26 campus. Yes, I was. You're familiar with the threat
27 assessment process? Yes, I am. What kind of training,
28 what kind of guidelines are used by the school district

1 by Ms. Angelo? I don't really know. Okay. Were you
2 informed about a risk or were you informed about some
3 threats by Bryan Oliver, your student? Yes, I was. Did
4 you ever do anything to follow up to find out what is
5 going on if there is an actual threat assessment
6 happening, what that process is, how the investigation
7 was going? Did you notify anyone like the parents or
8 other staff members?

9 And the reason that's important is because he
10 wrote an e-mail out to all the staff including the ROP
11 staff where he says it's being investigated, the parents
12 have been notified, everything is taken care of, squash
13 the rumors. And that is in direct violation of our
14 expert testimony about communication and how it's
15 essential to communicate the threat. And that way it's
16 see something, say something. And I believe even
17 Dr. Mohandie testified to that yesterday.

18 THE COURT: All right. Well, I've already
19 indicated I'm inclined to grant the motion for directed
20 verdict on Mr. McDermott. Before I forget, that means
21 we have to include the CACI instruction on deleted
22 claims.

23 MR. RODRIGUEZ: I'm sorry, on what claims,
24 Your Honor?

25 THE COURT: The deleted claims don't consider
26 because they had heard he's a party and they're not
27 going to hear it in argument or on the special verdict
28 form. So he'll have to be -- to the extent he's on it,

1 he'll have to be taken off the special verdict form.

2 At this point, Mr. Herr, I am not allowed to
3 weigh the evidence in consideration of either a -- I
4 will style the motion as a being motion by the district
5 for directed verdict -- that the state of the evidence
6 is that they not be held liable for any conduct of Mark
7 Richardson. And I think counsel is correct that just
8 looking at a sufficient evidence standard, I think I
9 would deny that motion.

10 Your comments, your final comments?

11 MR. HERR: Just briefly, they haven't made the
12 causal connection between a shooting that occurred in
13 January of 2013 with anything Mark Richardson did in
14 March of 2012. There is no evidence that had Mark
15 Richardson done this or had he not done that the school
16 shooting wouldn't have occurred.

17 Even Dr. Meloy doesn't implicate Mark
18 Richardson. So I think the big problem is causation. I
19 think it rises to the level of proximate cause. Did a
20 school administrator in 2012 do something or fail to do
21 something that caused a student to come on campus ten
22 months later? So those are my thoughts on it, Your
23 Honor. I have nothing further to add.

24 THE COURT: And I think with respect to
25 causation I've already stated in the context of the
26 other proceedings that I think that's an issue for the
27 jury to determine as a question of fact.

28 And so I would grant the motion for directed

1 verdict as to William McDermott, deny in other
2 particulars.

3 Now, as to the -- may we proceed to the
4 reserved exhibits?

5 MR. RODRIGUEZ: Your Honor, we're also going
6 to ask the Court the state of the evidence as to Kim
7 Fields. Kim Fields as the Court will recall is the
8 campus supervisor, slash, security guard working under
9 Ms. Angelo. We heard testimony from Chief Ed Whiting
10 that he, being Mr. Fields, had information about the
11 Regional Occupational Program employees who had an
12 escape plan, a plan, in case Bryan Oliver attacked. We
13 also heard testimony from Mr. Fields that he had
14 numerous conversations with Bryan Oliver because of
15 concerns. He denied that information. He said the
16 information I got was from Ms. Kaszycki regarding the
17 Regional Occupational Program when I cross-examined him.
18 And today I asked Ms. Angelo was that information ever
19 given to you by Mr. Fields, and she said no.

20 We would submit that that is sufficient
21 evidence to show that he is within the universe of tort
22 feasers in this case, and we would want to put him on
23 the special verdict form, sufficient evidence for that.

24 THE COURT: Mr. Herr?

25 MR. HERR: I don't believe -- obviously the
26 Court's recollection of the evidence carries today. I
27 don't think there is the evidence to implicate Kim
28 Fields, and he shouldn't be on the verdict form. That's

1 all I have.

2 MR. RODRIGUEZ: And with the Court's
3 permission, another piece I would add to that, I was
4 just reminded that Ms. Angelo testified today that
5 Mr. Fields often if not most of the time was involved in
6 the threat assessment discussions. Or process I should
7 say.

8 THE COURT: Well, based upon Plaintiff's
9 argument, I will permit his inclusion in the
10 instructions as well as -- I don't know how he would be
11 necessarily included on the instructions. I guess it
12 would be in the general negligence category because he
13 wasn't part of this professional -- what I've called a
14 professional school administration threat assessment.
15 But -- so I will permit that with a statement on the
16 record that be careful what you ask for. I think there
17 may be sufficient evidence. But I have in mind that if
18 there is an assignment of negligence to Mr. Fields, I'm
19 just anticipating I could get post trial motions at
20 which point I do evaluate and weigh the evidence.

21 So I make that comment for the record, but I'm
22 not weighing the evidence at this time. I will include
23 it at Plaintiff's request. Okay.

24 MR. HERR: Your Honor, if I may add, I think
25 given the evidence we should probably include Bowe
26 Cleveland on the verdict form in terms of assigning
27 comparative fault.

28 THE COURT: Well, then I'd have to have a

1 comparative fault instruction. But this was dealt with
2 I think at the very beginning of the case. I was told
3 -- that would change the entire complexion of the case.
4 Because I was told that -- at the very beginning that
5 there would be no assignment of blame of Bowe Cleveland,
6 that was withdrawn.

7 MR. RODRIGUEZ: We were always operating under
8 that assumption. I even asked the Court why is this
9 evidence being relevant when counsel has represented to
10 all of us that there is no comparative negligence.

11 THE COURT: Well, I thought it was relevant
12 for reasons other than the comparative fault of Bowe
13 Cleveland. But I won't include Mr. Cleveland. I think
14 that changes the entire character of the case. And the
15 entire presentation of the liability case as been based
16 on the assumption that no assignment of blame would be
17 ascribed to Bowe Cleveland.

18 MR. RODRIGUEZ: That is highly prejudicial.
19 Had we known that, we would have put on different --

20 THE COURT: You just won, Mr. Rodriguez.

21 MS. TRUJILLO: Yes. He can't hear.

22 MR. RODRIGUEZ: I'm going to invest in a
23 hearing aid as soon as this trial is over, Your Honor.

24 THE COURT: Then I'll make my comments, if I
25 may. I'll turn to the exhibits that have been reserved
26 upon. The record indicates I reserved on the contract
27 issues that are in 37. And I'm inclined to sustain the
28 objection to their admission with the exception of --

1 I'm inclined to admit 37-104 and 37-105 and 37-113.
2 These are essentially face sheets of the agreements that
3 demonstrate they were in place but don't really discuss
4 material terms such as compensation indemnity, all those
5 other terms. But I would allow those portions to be
6 admitted as demonstrative of the fact that there were
7 security agreements entered into.

8 MR. HERR: Your Honor, if I may, 37-104, 105
9 -- did you say -- what was the next one?

10 THE COURT: It's the face sheet of the county
11 contract which is 113.

12 MR. HERR: Would the signature page, which
13 would be Exhibit 112, be appropriate?

14 THE COURT: Let me look at it. I don't have
15 any problem with 112 or 117.

16 MR. HERR: In terms -- I think the signature
17 page is something that most people think should be part
18 of a contract. So I think at least --

19 THE COURT: I'm fine with that. This is being
20 admitted for evidence that the contracts existed.

21 MR. RODRIGUEZ: We would have no objection as
22 the Court has outlined, 37-104, 37-105, 37-112 and
23 37-117 and 37-113.

24 THE COURT: All right. Then with respect to
25 the other reserved exhibits I have the request to admit
26 106. And included within that is it Plaintiff's request
27 to admit 47-20 and 46-222? Or it may be 47-222. I'm
28 not sure which one, but the clerk has a record of that.

1 I reserved on that. The issue being that those two
2 exhibits are part of 106. So what I've indicated, and
3 this is on the record at sidebar, is that I'm inclined
4 to admit those portions of 106 that are related to
5 testimony provided in the case. But I'm not inclined to
6 have the entire document go back to the jury for their
7 perusal. I mean, it includes a tuberculosis test. It
8 includes grades which I don't know that there has been
9 any testimony regarding his grades. It may be related
10 to his IEP.

11 But in other words, I think the wholesale
12 admission of this document I would not agree to. There
13 is a language survey. There is a whole host of material
14 that I don't think would be appropriate to admit for the
15 jury's perusal in deliberations in the jury room without
16 it being directly related to testimony. So I'm going to
17 ask that counsel meet and confer and -- on the issue of
18 106 and Plaintiff's motion to admit their copies of
19 portions of 106 in light of the Court's comments, and
20 then I will deal with any controversy that comes about
21 after counsel have conferred on the admissibility of
22 portions of 106. If there is -- but for that meet and
23 confer by counsel, if there is nothing further to place
24 on the record, we can have a brief informal discussion
25 further on the jury instructions.

26 Anything further?

27 (Whereupon Plaintiff's Exhibits Nos. 37-104,
28 37-105, 37-112, 37-113 and 37-117 were

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received in evidence.)

MR. HERR: Not for the Defense, Your Honor.

MR. RODRIGUEZ: Nothing here, Your Honor,
thank you.

THE COURT: Okay. Then we're in recess.

(Whereupon the noon recess was taken.)

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1 BAKERSFIELD, CA; Tuesday, July 9, 2019

2 AFTERNOON SESSION

3 DEPARTMENT 11 HON. DAVID LAMPE, JUDGE

4 --o0o--

5 THE COURT: We're in session. We're on the
6 record in Cleveland versus Taft Union High School
7 District. Counsel are present except we don't have
8 Mr. Thompson. Oh, there he is hiding behind the screen.
9 Okay. He is here. Counsel are present.

10 All right. Anything we need to take up before
11 we have the jury in?

12 MR. HERR: Just briefly, Your Honor. Over the
13 lunch break I did go over these instructions again. And
14 just had two matters I'd like to note. 431 is causation
15 and it has multiple causes. And I believe that Bryan
16 Oliver, Tyler Oliver and Sheryl Oliver should probably
17 be included in 431.

18 THE COURT: As some other person, you want to
19 put them in that slot Bryan Oliver, Sheryl Oliver and
20 Tyler Oliver?

21 MR. HERR: Yes, because some other person --

22 THE COURT: Including --

23 MR. HERR: Yes.

24 THE COURT: I don't have a problem with that.
25 I'll put that in.

26 MR. RODRIGUEZ: That's fine, Your Honor.

27 THE COURT:

28 MR. HERR: And then finally, Your Honor, the

1 Court is giving 3703 where the legal relationship is not
2 disputed. If the Court is giving 3703, then I don't
3 think the Court should give 3701 where tort liability is
4 asserted against principal. Because I believe 3701
5 should be given where there is some dispute as to
6 whether the principal is responsible for the conduct of
7 the agent or the subordinate.

8 THE COURT: Well, the distinction would be --
9 as I read the instructions would be whether or not --
10 these instructions if provided admit the employment
11 relationship, they don't admit the course and scope of
12 employment. The jury still has to find that they were
13 acting within the scope of their employment. If that's
14 conceded, then essentially that's stipulated, and then I
15 would modify -- I would -- then there would be no reason
16 to give 3700 or 3703. It would just be stipulated that
17 any verdict rendered against the stipulated employees
18 would be vicarious liability of the district, and then I
19 would modify 3703 slightly to take care of that.

20 MR. HERR: I'm prepared to stipulate that the
21 conduct of the -- what I'll call the named employees was
22 within the course and scope of their employment.

23 MR. RODRIGUEZ: That's fine, Your Honor.

24 THE COURT: Okay. Then I'll accept that
25 stipulation, and that will take out 3700 and I think
26 3701. And then I'll just have to do some modification
27 to 3703. The way I'll modify it -- probably show it to
28 counsel before I give the instruction. But I would

1 modify it to essentially establish to the jury that
2 there is no dispute. That if liability is found against
3 these named employees, that Taft Union High School
4 District is responsible.

5 MR. HERR: Thank you. Those are the comments
6 I had.

7 THE COURT: Well, with that, then, I think
8 we're ready for the jury.

9 MR. RODRIGUEZ: Your Honor, does the Court
10 preinstruct?

11 THE COURT: No.

12 MR. RODRIGUEZ: Okay.

13 THE COURT: Court is in session. I took roll.
14 The jury -- we've been briefly in session. And now the
15 jury is in the courtroom properly seated in the jury
16 box. We're ready to proceed, ladies and gentlemen.

17 Mr. Rodriguez, your closing argument.

18 MR. RODRIGUEZ: Good afternoon. We started
19 this journey together about three weeks ago. And at the
20 time we were basically completely strangers to each
21 other. But with the time we've gotten to know a little
22 bit about each other and gotten to learn to care a
23 little bit about each other, okay.

24 So the part now where you folks -- your next
25 job in this case is to make some decisions, deliberate,
26 okay. And let me tell you something. It's not like on
27 TV, and it's not like in the movies. You know how in
28 Law & Order there is -- in the episode there is always a

1 scene where the jury walks in and that music duhn, duhn,
2 duhn, duhn. They walk in and they sit down and the
3 court clerk says something like what is your decision or
4 what say yea. And the foreperson stands up and says in
5 a criminal case guilty or not guilty.

6 Okay. Well, it doesn't work that way in real
7 life in a criminal or a civil case. Because what
8 happens in real life is that there is a questionnaire
9 that has to be filled out. It's called a special
10 verdict, okay. And it's five pages long in this case
11 and it's 11 questions. So that's what happens in a real
12 trial, whether it be a criminal or a civil trial.
13 Jurors are asked to go through a questionnaire.

14 Now, I have to go over a couple of things with
15 you, because most of us are most familiar with criminal
16 cases. Why? Because they usually get most of the media
17 attention and movies and that kind of thing. But there
18 is a difference between criminal and civil cases that we
19 need to know about. In a criminal case, for example,
20 how much proof has to be put on, it's called the burden
21 of proof. And in a criminal case the person who files a
22 criminal lawsuit is the prosecutor, the DA. And if this
23 were a weighted scale and the amount of evidence was put
24 on either side, in order for the prosecutor, the
25 Plaintiff in the criminal case, they'd have to prove
26 their case beyond a reasonable doubt. That's a criminal
27 case.

28 But we're in a civil case. In a civil case

1 the Plaintiff who files the lawsuit, in this case Bowe
2 Cleveland, okay, the law says that it is more likely
3 true than not. What does that mean? It means just a
4 teeny hair, okay. More likely true than not, that's
5 what it says. And another way of saying it is it
6 probably true, probably true, okay.

7 And a party must persuade you by the evidence
8 presented in Court that what he or she is required to
9 prove is more likely to be true than not true. This is
10 often referred to as the burden of proof. After
11 weighing all of the evidence, if you cannot decide that
12 something is more likely to be true than not true, you
13 must conclude that the party did not prove it. You
14 should consider all the evidence no matter which party
15 produced the evidence. So in a civil case more likely
16 true than not.

17 Now, why is that important. Well, probably
18 the first thing when you get back into the deliberation
19 room probably, the first thing you probably want to do
20 is select a foreperson amongst yourself, okay. Probably
21 the foreperson should have everybody around the table
22 kind of share their general thoughts before you dive
23 into the questionnaire, okay. And once you dive into
24 the questionnaire, let's say you get to the first
25 question, was Rona Angelo negligent. And somebody says
26 I'm not a hundred percent sure. The jury foreperson is
27 going to say -- you're going to get all these jury
28 instructions, by the way, a packet. The jury foreperson

1 should turn to them and say the burden of proof says
2 more likely true than not. You can have all the doubts
3 you want as long as it's probably. And if that person
4 still insists I've got to be a hundred percent sure, the
5 jury foreperson says well, this is what the law is, and
6 we're supposed to follow the rules, right.

7 Can you imagine living in a society where we
8 didn't have rules? Can you imagine the chaos that we
9 would have?

10 And if that doesn't work, the jury foreperson
11 will be given these note forms that you can fill out.
12 The bailiff will get it, bring it to the Judge's
13 attention and the Judge will address that issue. Does
14 that make sense?

15 Here's the other difference between a criminal
16 case and a civil case. In a criminal case in order for
17 the Plaintiff, the prosecutor, to win, you've got to
18 have an unanimous verdict, all 12 people on the jury.
19 But this is a civil case. In a civil case it's nine out
20 of 12, nine out of 12. And it doesn't have to be the
21 same nine on every question. It can be different, but
22 there have to be nine. So that's a couple of
23 differences that we need to take into account.

24 And before we get into reviewing the evidence,
25 I have to tell you something. This is probably the most
26 important case in my career. Why? Because it has to do
27 with kids, our kids, the safety of our kids. And --
28 because we send our kids off to school and we expect

1 them to come home safely at the end of the day. And we
2 expect our kids to be safe and protected at school.
3 Especially when there is a known danger and all kinds of
4 warning signs, all kinds of leakage, all kinds of red
5 flags. So -- and the school administrators in charge of
6 the student safety, did they choose to ignore all these
7 warning signs.

8 And by the way, it is a choice. If you'll pay
9 attention to what you're supposed to be doing, the
10 warning signs or you ignore them. Or did school
11 officials, school administrators, choose to deny the
12 existence of all of those warning signs, all of that
13 leakage, all of those red flags? So there is so much
14 information in this case, so much evidence that we have
15 to kind of organize it. So we're going to put it up on
16 the screen, too.

17 What did they know about Bryan Oliver before
18 they made their threat assessment plan? So this is a
19 timeline, 2011. And then it's split up after the threat
20 assessment plan was made on March 2nd, 2012. So this
21 board is what they did know about Bryan Oliver after
22 they made their threat assessment plan, okay. So -- and
23 what we've done is we've put up all this information.
24 We didn't put it up all. We've put up some of the more
25 salient or some of the more important ones. So -- and
26 for each one of these we have evidence to back it up.

27 For example, take the first one. Let's stick
28 to the before. Bryan gets T-bagged in P.E. We have

1 Exhibit 46-145, and that is the discipline log. And
2 you'll see the date up there, March 15th, 2011. And
3 you'll see where T-bagged up there. Casey T-bagged me.
4 Okay. That's the administrator.

5 Now, the Exhibit 46-143 is Bryan Oliver's own
6 handwriting in the incident report. The date
7 March 15th, 2011, T-bagged me. Okay. Let's look at
8 this one. February 27th, I am very concerned for the
9 safety of the students and the staff. Exhibit 47-121,
10 that's Dianne Kaszycki. And that's the one that
11 Ms. Kaszycki filled out, okay. And it's dated
12 February 25th. There it is. And the last paragraph she
13 says the conversation was very disturbing and stressful.
14 I am very concerned for the safety of the students and
15 staff as well as Bryan. So everything that we have up
16 here we have proof to back it up, either a document or
17 testimony, every one of these things.

18 Let me give you another example. How about
19 this one? February 28th Bryan Oliver tells Shoffner
20 that Jacob Nichols and Billy Wolfe are bullying him.
21 That's Exhibit 47-30. And you can see Jacob at times
22 bullied a lot. Jacob Nichols, Billy. So everything we
23 put up there we have proof to back it up. So I won't go
24 through all of them. But we have proof for every one of
25 those items that we have up there.

26 Oh, and before I forget, here's the deal.
27 This is the threat assessment plan. Mark Shoffner, the
28 information he had was right here. He didn't have all

1 of the February 29th incident reports and reporting. He
2 just had the one -- remember the threats on the bus
3 where Saturday, February 25th, 26, 27, Monday and the
4 students and staff went in, Ms. Kaszycki, Ms. Federoff,
5 okay. Mr. Shoffner had this information when he came up
6 with the threat assessment plan. This was given to Ms.
7 Angelo. It was never given to Mr. Shoffner.

8 So when he came up with the threat assessment
9 plan, and we know it was by no later than March 2nd
10 because Bryan Oliver was allowed to come to school that
11 following week, so it had to be finished by that Friday,
12 March the 2nd. So when he came up with the threat
13 assessment plan, he didn't have all the information.
14 But who had all the information? Who knew about all of
15 it? Ms. Angelo. And we'll go over that.

16 So let me give you an example. Let's say
17 November 9th. That would be Exhibit 37-392. That's the
18 one incident report by Dianne Kaszycki. I overheard
19 Bryan tell Rebecca, quote, if I don't get out of
20 geometry something drastic will happen, unquote. He had
21 a look on his face that scared me. So everything we
22 have up here, we have something to back it up.

23 For example, things really started to heat up
24 in the month of December. Let's take this one for
25 example, Exhibit 46-184. This is the discipline log.
26 Mariah Doty, she's that student -- Mariah Doty, she came
27 in to testify. Do you remember her? The young lady
28 kind of small in stature. She says up there she, Mariah

1 Doty, and there is a date of December 17th, 2012, we can
2 see the date up there. December 17th, 2012. And she
3 says here boy was going to bring a gun, girl scared.
4 This is not Mariah writing this down. This is
5 Ms. Angelo writing this down, or somebody from the
6 school, in the discipline log. Mariah Doty writing and
7 talking about something, shooting. Mariah said she was
8 scared. Mariah said she was scared. I saw on Twitter
9 that last year Bryan threatened to bring a gun, and it
10 seemed real. Now, that's that document.

11 Then we have the trial testimony that Virginia
12 has already done for us. So we know -- and I didn't
13 want to put it all up there. But this is where Mariah
14 Doty says and then I think there was -- question: And
15 then I think there was another part that you said you
16 told Ms. Angelo. And that was you were afraid that he
17 was going to bring a gun to school. Did I state that
18 right? Answer: Yes. Question: Okay. Did you include
19 that in the incident report? Answer: Yes. Remember
20 she testified that when she was got called in, she
21 filled out the incident report. Is that consistent with
22 what we've been told, when somebody would get called in
23 they would do an incident report? Where is that
24 incident report?

25 So and by the way, the lawyer for the other
26 side didn't ask her a single question. Do you remember
27 that? Didn't ask her a single question. So everything
28 we put up here we have documents, testimony to back

1 everything up.

2 Now, warning signs. What did we learn that
3 school officials, school administrators, school
4 employees are taught and trained on? Remember
5 Dr. Mohandie? And do you remember that Ms. Angelo as
6 well as Mr. Shoffner attended training by Dr. Mohandie.
7 What did he say that he trained? He said warning signs
8 are not subtle. Bells and whistles, the bells and
9 whistles go off. Humans do not erupt. Humans do not
10 snap. It's an evolution. Do you think this is an
11 evolution? Ten months from here to here. Those are the
12 red flags. And those are the only ones that we know
13 about.

14 So what else are they trained on?
15 Dr. Mohandie said it's a huge issue to come up with a
16 great plan and then they don't follow up on. They don't
17 monitor it. Okay. But here the plan wasn't so great to
18 begin with, because Mr. Shoffner didn't have the
19 February 29th, okay. So the plan was flawed. It was
20 wrong to begin with. And then you add ten months.
21 Where was the monitoring?

22 Now, one of the jury instructions that you're
23 going to hear from Judge Lampe is called the standard of
24 care. What is the standard, whose care should we have?
25 It's 600 is the name of it -- or the number of it. And
26 you'll see it when you get it. Unfortunately I couldn't
27 have a slide made up in time. It says a school
28 administrator, slash, employee if negligent if he or she

1 fails -- is negligent if he or she fails to use the
2 skillful care that a reasonably careful school
3 administrator, slash, employee would have used in
4 conducting threat assessment or threat management. This
5 level of skill, knowledge and care is sometimes referred
6 to as the, quote, standard of care.

7 What was the evidence here as to what the
8 standard of care was? Who did it come from? It came
9 from two people supposedly. One of them was Dr. Meloy,
10 and the other one was Dr. Calhoun, okay. Who had worked
11 on the case the longest? Dr. Meloy had worked on it for
12 how long? Five-and-a-half years. Dr. Calhoun, it was
13 either four or five-and-a-half months. Who was given
14 all the police reports? Who was given the criminal
15 trial transcripts? Who was given summaries,
16 transcripts, that Rona Angelo gave to DA Investigator
17 Herman Caldas? Who had testified in more cases
18 involving threat assessment? Remember, Dr. Calhoun said
19 this was the first time he ever testified. Who was
20 familiar with the book guidelines for responding to
21 threats of student violence? Do you remember
22 Dr. Mohandie was aware of that book back in 2008 when he
23 gave that lecture in San Diego? He's been around for
24 some time. It was published in 2006. Who had trained
25 school administrators in threat assessment, threat
26 management at least since 2010?

27 Why did we word it this way. Because
28 Dr. Calhoun said the last I remember was 2010. Whereas

1 Dr. Meloy had, what, the most recent one where it was
2 exclusively for school administrators because in New
3 Mexico where he had 500 school personnel show up. Who
4 knew who Mr. Romo was? Who knew who Jasmine Sanchez
5 was? Who had seen the IEP? Who knew who Mariah Doty
6 was? Who had asked what the standard of care?

7 I asked Dr. Meloy point blank, you know, this
8 opinion, you know, is it more likely true than not, sir.
9 I went through every one of them, and he said yes. We
10 went through all the testimony, trial testimony,
11 prepared by Virginia, and Dr. Calhoun was never asked
12 that question, more likely true than not. Flat out
13 wasn't ever asked that question.

14 So who is more on the standard of care? And
15 what did Mr. Meloy say the standard of care was? Threat
16 assessment team, three core members, communication. He
17 said other things. And he said that book, the
18 guidelines, he said that's the standard along with his
19 professional opinions. The other side, Dr. Calhoun, he
20 was never asked that question. But in a case -- by the
21 way, here's the book if you don't remember. But, you
22 know, you don't have to be a rocket scientist. When is
23 it enough is enough?

24 Here's another jury instruction you're going
25 to get that's kind of related to this one. It's called
26 number 602. A school administrator, slash, employee is
27 not necessarily negligent just because his or her
28 efforts are unsuccessful or if he or she makes an error

1 that was reasonable under the circumstances. You know
2 what, fair enough. Under the circumstances if there had
3 been one red flag or two red flags, maybe three strikes.
4 But in a case like this, that's not reasonable, okay.

5 First question. First question is was Rona
6 Angelo negligent? So before we get into that, can I ask
7 you a question? Does the truth matter? Does telling
8 the truth matter? Is a man's word his bond? Is a
9 woman's word her bond? We heard that threat assessment
10 team, the administrator, the one -- in this case the
11 assistant principal is the leader of the threat
12 assessment team. Says who? Dr. Meloy. Even
13 Dr. Calhoun said it. Dr. Mohandie said that's what I
14 taught and trained on. Second member, SRO officer.
15 Third member, core member, is the mental health
16 professional.

17 So let's talk about the SRO officers. There
18 were three of them, remember. It was Deputy Collins.
19 It was Sergeant Kevin George and it was Officer
20 Hallmark. What interaction did the first SRO have with
21 Ms. Angelo? What was the nature of the interaction in
22 general? Rona was in charge of me. Okay. Next one,
23 please. This is from the trial testimony. What
24 information did they give their first SRO before the
25 shooting? While you were out there at the house
26 searching for the hit list did it dawn on you to search
27 for anything else on your own? Because he was told to
28 go out there to look for a hit list. When he ran into

1 some paint balls, he decided he would look for weapons.
2 Had he ever had any personal contact? He said no, I
3 never spoke to Bryan Oliver after I did that. Now,
4 before you went out to the house, did you participate in
5 any kind of risk evaluation of Bryan Oliver. No. So
6 you've never had any kind of personal contact with Bryan
7 Oliver up until today's date, the date he came in to
8 testify? And he said to my recollection I didn't have
9 any contact with Bryan Oliver after I visited the home.
10 And before there may have been some conversations that I
11 was privy to. He may have heard some conversations he
12 said. But never had any personal contact with him.

13 Next question. Okay. And did you participate
14 in any threat assessment that had to do with Bryan
15 Oliver, sir? What was his answer? No. Can go on to
16 the next slide? And then I asked him specific questions
17 about these incidents here. I won't go every one of
18 them. But do you see his answers? No. No. No. No.
19 We had testimony that he knew about the T-bagging
20 incident. And I asked him were you ever told about the
21 T-bagging incident. Because remember what we heard? We
22 had heard that he had been told about. He had been
23 involved in. What was his answer? No.

24 Now, what did Ms. Angelo say about all this?
25 She was asked -- I won't go through all of these. But
26 she said that -- Your Honor, I just thought of
27 something. I'm walking through the well. Do I have the
28 court's permission?

1 THE COURT: Oh, no, you're in argument.

2 MR. RODRIGUEZ: Okay. Thank you. Now,
3 earlier I think that you said that Officer Collins was
4 involved in the alleged threat assessment of Bryan
5 Oliver, correct. As far as I remember, correct. I just
6 want to know if you discussed with the witnesses what
7 the witnesses told you if you had asked for his opinion.
8 His opinion being Deputy Collins. Yes, I did. And what
9 did he tell you? You know, I don't remember exactly
10 what he said because we conversed on numerous things.
11 And he would say whether he needed to arrest Bryan or
12 whether he needed to cite Bryan or whether it was still
13 a school issue. He would make the determination whether
14 it became a police issue.

15 What did the second SRO officer say? And that
16 was Sergeant Kevin George, retired. And when you worked
17 there, who did you report to there at the campus? Rona
18 Angelo. How frequently would you say you dealt with
19 her? Daily. Next slide. And then I went through every
20 one of -- not every one, but a lot of these red flags.
21 And what did he say? No, not that I recall. No. No.
22 No. No, I did not. No, I did not. And remember, he
23 started there -- Deputy Collins retired March 27th,
24 2012. By the way, do you have a right for a lawyer to
25 be straight with you? Why am I asking you that
26 question? When Deputy Collins was up here, the question
27 was when did you retire. And he said -- he's trying to
28 give a best answer. He said 2011. And it's like oh, so

1 you retired 2011. No. It's not about tricky questions.
2 It's about getting to the truth.

3 Same thing with Jasmine Sanchez. The question
4 was asked oh, what date was it. It's not about asking
5 cute questions or tricky questions. What information
6 did they give the second SRO? I asked him about these
7 the time that he was there. His answers were no. No.
8 No. You get the idea. I'm not going to go over all of
9 these.

10 How about the third SRO officer? That was
11 Officer Hallmark. Before the shooting, before, had you
12 ever heard the name of the shooter, Bryan Oliver?
13 Remember he started in August, which would have been
14 four months after the threat assessment plan. Before
15 the shooting, had you ever heard the name of the
16 shooter, Bryan Oliver? No, sir. Before the day of the
17 shooting were you aware that Bryan Oliver had threatened
18 to shoot students, blow up the school auditorium, kill
19 his brother and punch crying babies? No. Before the
20 shooting were you ever told by Mrs. Angelo or anyone
21 else before the shooting that it had been reported that
22 Bryan Oliver was drawing pictures of shooting little
23 kids and talking about shooting a student because he was
24 black? No, sir.

25 Ms. Angelo, her testimony was before the
26 school shooting did you ever inform School Resource
27 Officer Hallmark of the alleged threat assessment? I
28 really don't remember. Do you have any documentation

1 one way or the other? There is no documentation.
2 Jana Durkan. Why do I bring up Jana Durkan?
3 She's the guidance counselor. And the testimony from
4 Ms. Angelo was before the school shooting did you
5 discuss the reasons why Bryan Oliver was being placed on
6 a behavior contract with Ms. Durkan. This is testimony
7 under oath. Yes. What did you tell her? She would be
8 told what the incident was about and what the conditions
9 of this contract was. Is that what you told her? This
10 is Ms. Angelo being asked this. And she says yes.
11 Before the school shooting did you discuss the reasons
12 with Ms. Durkan as to why Bryan would be subject to
13 random searches? Answer: I had to. That would be yes.
14 Yes, there would be a reason to tell her, and it's on
15 the discipline screen. Besides it being on the
16 discipline screen, did you actually have a conversation
17 with her discussing the reasons why Bryan would be
18 subject to random searches? Answer: I would assume I
19 have. I do not recall -- recollect when that was.
20 Question: And I just want to know after the incident
21 and after the threat assessment, this incident and after
22 the threat assessment, did you ask Ms. Durkan to keep a
23 closer eye on Bryan Oliver? Answer: I do not recall.
24 What did Ms. Durkan say to us?
25 And remember, her name is on the threat
26 assessment plan. And I just read you what Ms. Angelo
27 said about giving her information. And what did
28 Ms. Durkan say? And Ms. Angelo never contacted you

1 about the threat assessment report prepared in
2 connection with Bryan; is that right? I was never aware
3 of the threat assessment. And that would also be true
4 for Mr. Shoffner, he never contacted you about the
5 threat assessment report done for Bryan Oliver; is that
6 right? Correct. He never contacted me.

7 Next one, please. And if they had asked you
8 to keep a close eye on Bryan Oliver because of possible
9 threats he made, you would have done so; is that
10 correct? Yes, I would have. You would have checked in
11 with him; is that correct? Correct. So we're told that
12 she was told about all these things. What did she say?
13 SRO officers, guidance counselors -- switching gears
14 here a little bit.

15 Communication between and amongst the threat
16 assessment members. We were told that Dr. Mohandie, he
17 said he trained them that failure to communicate was a
18 bad thing among threat assessment. Dr. Meloy called it
19 the silo effect. Now, I'm originally from the Texas
20 panhandle so I know what a silo is. I came out to
21 California. You don't see too many of them, okay. But
22 it's grain. You put all of it in there. Well -- and,
23 oh, Dr. Calhoun called it silo and bunkers.

24 And by the way, speaking about Dr. Calhoun.
25 Why did the school district hide all this information
26 from him? He's a professional. He knows what he's
27 doing. Why wasn't he given -- he was given this much
28 information.

1 So who did Ms. Angelo communicate Bryan
2 Oliver's threats to? The bus threats she told
3 Mr. Shoffner about it. She didn't tell any of the SRO
4 officers, and she didn't tell Ms. Durkan. The
5 playground drawing. She didn't tell anyone about it.
6 The reports of the hit list. She told -- not she. By
7 the way, she didn't tell him, Mark Shoffner did. But I
8 put it up there any way. Threat to kill student because
9 he is black. So report by another student of hit list,
10 report that Bryan wants to shoot up assembly, psychopath
11 story, report of Bryan acting threatening towards the
12 female students, report that Bryan is getting worse,
13 report by Bryan that he wants to punch another student.
14 School library tech report, Bryan is extremely upset
15 because his books and backpacks are stolen. Why is that
16 important? Because remember the evolution, people don't
17 just give up. Threat assessment people know. Report by
18 student that Bryan pulled a knife on friend, report by
19 student that Bryan told her to kick and punch Bowe
20 Cleveland, report by student that she's scared that
21 Bryan will shoot up school. Who held all the
22 information?

23 There is a movie one of my favorite actors,
24 Paul Newman, and I don't know if you know who I'm
25 talking. Paul Newman did a movie called Cool Hand Luke.
26 He's got in there that I never forget. What we have
27 here is a failure to communicate. Do you remember
28 Mr. Romo, the parent? I told her I was concerned for my

1 son. I was scared. She said not to worry, that the
2 cops would handle it. They'd take care of it. You had
3 no problem going to talk to the police and reporting it?
4 Not to worry about him, they'll take care of it. That
5 you had no problem going to talk to the kid's parent or
6 family. What did she say to you? Not to worry, that
7 she'll take care of it. Were you upset when you went in
8 to talk to her? I wasn't happy. I was nervous and
9 scared for my son.

10 What did Ms. Angelo say about that? I won't
11 read all of it. But during this conversation did you
12 tell student number three, Fernando Romo, to not report
13 this incident? No, I would never have done that. They
14 always have the right to do that. So it's your
15 testimony you never told Mr. Romo to not report this
16 incident concerning his son to the police? Correct.

17 Does the truth matter? This is your house.
18 Does the truth matter in this house? Jasmine Sanchez.
19 Do you remember her, she was on the very first day a
20 long time ago, three weeks ago, okay. She came in to
21 testify, okay. When you spoke to Ms. Angelo in her
22 office, did she ask you how you felt when you saw this
23 drawing that you turned in to Mr. Greer? Yes. And was
24 that Ms. Angelo? Yes. How many times did you talk to
25 Ms. Angelo About the drawing? Twice. And what did you
26 tell her? Scared, disturbed. And did Mrs. Angelo ask
27 you if you felt threatened for your life? Yes. And
28 what did you say to her when she asked you that? And

1 what did you say -- and did Mrs. Angelo tell you
2 anything about what they had been doing, they being the
3 school for Bryan Oliver? That he was getting help from
4 the counselor at school. And did she say anything about
5 they had it covered? Yes, not to worry about it. It
6 was getting taken care of. At that time did Ms. Angelo
7 ask you how you were feeling? Yes. And what did you
8 tell her? That I didn't feel safe with him around, and
9 that he needed help. That who needed help? Bryan. And
10 when you said that he needed help, Bryan needed help,
11 did Ms. Angelo say anything to you? Yes, that he was
12 getting help from the counselor.

13 By the way, what did we hear? Mr. Shoffner
14 said I never counseled him. No sessions. Where were
15 you at school the day of the shooting January 10th,
16 2013? Or were you, not wear. Yes. Did you see
17 Mrs. Angelo on that date? Yes, I did. Before or after
18 the shooting? Yes. And where is that you saw her? In
19 the auditorium. Did you say anything to her at that
20 time? Yes, I did. What is it that you said to her? I
21 told you something was going to happen. And we asked
22 her what did Ms. Angelo say to you. She didn't say
23 anything. She walked away.

24 Now, why is that important? Because one of
25 the jury instructions that you'll get is call adoptive
26 admissions, 213. You have heard evidence that Jasmine
27 Sanchez made the following statements. One, I don't
28 feel safe with Bryan, and he needs help. Two, I told

1 you something was going to happen. You may consider
2 that statement as evidence against Rona Angelo only if
3 you find all of the following are true: One, the
4 statement was made to Rona Angelo or made in her
5 presence. Rona Angelo heard and understood the
6 statement. Rona Angelo would under all the
7 circumstances naturally have denied the statement if she
8 thought it was not true. It's called adoptive
9 admission. And Rona Angelo could have denied it, but
10 did not. If you decide that these -- these conditions
11 are not true, you must not consider for any purpose
12 either the statement or Rona Angelo's response.

13 But that's what the evidence was. More likely
14 true than not. You heard from -- a cry for help from
15 Dr. Mohandie, explained about this inappropriate
16 behavior, some of it may be a cry for help. And so the
17 threats reported to you by the staff and by students
18 regarding Bryan Oliver's comments on February 25th, 2012
19 were not considered by you to be a cry for help from
20 Bryan Oliver? I stand by my answer. I don't -- I don't
21 care for the word cry. I'm not for sure that that's a
22 true description of how I would describe it. How I
23 described it would be better than the word cry and the
24 word cry. Okay. I just want to know if whether or not
25 you actually informed Bryan Oliver's junior year
26 teachers. We have 900 students, and that would be a lot
27 of notification. So Bryan was not any different than
28 any other student. How many students do you think were

1 at Taft High School were saying they were going to blow
2 up the auditorium, kill people? And what we heard was
3 he's no different than any other student.

4 Was Ms. Angelo negligent? In this case it's
5 not more likely true than not, it's huge. So the answer
6 would be, I would suggest to you, yes.

7 By the way, the questions that -- I'm sorry.
8 Let me stay on track, otherwise I'll never finish.

9 Next question, question number two, is
10 substantial -- was the negligence of Rona Angelo a
11 substantial factor in causing harm to Bowe Cleveland?
12 Jury instruction you're going to get says a substantial
13 factor in causing harm is a factor, it doesn't have to
14 be the only factor, that a reasonable person would
15 consider to have contributed to the harm, contributed to
16 the harm. It must be more than a remote or trivial
17 factor. It does not have to be the only cause of the
18 harm.

19 And by the way, just to jump ahead and we'll
20 come back, the last question talks about percentage of
21 fault. So you're not being asked is Ms. Angelo the only
22 person that contributed to this fault. I just wanted to
23 clear that up. At the end you're going to be asked to
24 assign percentages of a different number of people.

25 So did her conduct -- because remember, threat
26 assessment is what? It's a preventive tool. Type two
27 events she was taught and trained are the most
28 preventable. Remember type two? More likely true than

1 not that she was not the only but a substantial factor.

2 Question number three, was Mark Shoffner
3 negligent? Bryan Oliver had reported two bullies to
4 him, Jacob Nichols and Billy Wolfe. We looked at the
5 discipline logs. There was never anything done to those
6 two students. The IEP, I'm not going to show it to you,
7 but do you remember the box that said about Bryan
8 Oliver's behavior what it said? This is not an area --
9 do you remember that box that said this is not an area
10 of concern? Really? In that IEP when they met with her
11 was five days after this, March the 7th. And they had
12 all this. They suspended him and they said his behavior
13 -- that's what they told Ms. Oliver, his mom when they
14 met with her to exit him out of the IEP, remember they
15 moved him out.

16 So -- and before I forget, with all of this
17 happening, remember one of the -- remember the
18 intervention tactics available through the threat
19 assessment team was what? Referral, recommendation to
20 the mom for counseling, cry for help, people saying he
21 needs help. And then Mr. Shoffner, here's what I call
22 it, throwing gas on a fire. This wasn't counseling.
23 This was just him recommending books to him. What kind
24 of books did the school psychologist give to Bryan
25 Oliver to read? Mind Hunter and Anatomy of Motive.
26 Like a how to book, a recipe.

27 Mark Shoffner, was he negligent? I would
28 suggest to you yes. Was the negligence of Mark Shoffner

1 a substantial factor -- question number four -- a
2 substantial factor in causing harm to Bowe Cleveland?
3 Remember, just contributed, not the only. More likely
4 true than not. Do you think recommending to somebody
5 who you know has been saying bombs, bringing bombs in a
6 backpack and put it under the chairs -- because he made
7 that recommendation June 6th. We have the notes for
8 him. Everything we put up here, we have the document or
9 testimony to back it up. I was just checking my notes
10 to make sure I got the right date. June the 6th.

11 Question number five, was Marilyn Brown, Kim
12 Fields and/or Mark Richardson negligent? Marilyn Brown,
13 she's the principal. One of her responsibilities -- I'm
14 not going to read all the testimony. I'll just
15 summarize it for you. One of her responsibilities was
16 to supervise Ms. Angelo. And she knew at the time that
17 Bryan Oliver was a danger. And she never followed up on
18 it. I mean, how many students do you have at school
19 were threatening to kill 50 people who were saying all
20 these things? How much worse does it have to get? And
21 she didn't do anything about it. Like I said, I'm not
22 going to read you the detailed testimony that she gave.

23 Mr. Fields, he had information. I mean, he
24 denies it. But you heard from Chief Whiting that he had
25 a conversation with Mr. Fields. Mr. Fields told him
26 about these escape plans. And Mr. Fields, when he was
27 up on the witness stand here he said oh, I really don't
28 -- didn't have much issue with Bryan Oliver, something

1 to that effect. But I had his transcript from the
2 statement he gave to Detective Wahl where he said I had
3 had numerous conversations. Remember, that statement
4 was given that same day, the day of the shooting.

5 Mr. Richardson, he was a superintendent at the
6 time. He's the one that wrote that e-mail. Instead of
7 telling his staff -- do you remember what Dr. Meloy said
8 Dr. Mohandie said that he thought, you encourage people,
9 students and staff, especially staff, if you see
10 something, you say something. He said squash the
11 rumors. You authored that, correct? Yes. Did you ever
12 identify to the Buena Vista faculty or staff or the ROP
13 department or Taft Union High School District faculty or
14 staff that Bryan Oliver had made the threats on the
15 school bus? No. You never gave teachers a heads up to
16 keep an eye on him because of these comments he made?
17 No. Substantial factor, more likely true than not, I
18 would suggest that the answer is yes.

19 Question number seven, was Sheryl Oliver
20 negligent, Bryan Oliver's mom, okay? Let me -- was
21 information kept from her? Was Bryan's mom notified?
22 March 15th, the T-bagging incident. No. Here's what we
23 have heard. We heard Ms. Angelo say well, the report
24 was there on the desk between us. No. Did you give it
25 to her, talk to her? No. But she could have gotten it
26 there. Discipline log. Student reports Bryan picked
27 on. Was she notified? No. Was she notified about the
28 paper theft, the plagiarism? Yes. How about the bus

1 threats? They say yes. But does that make sense that
2 they would when the IEP on March the 7th said what? Not
3 an area of concern. What's more consistent? Was she
4 told about Jasmine Sanchez at the playground drawing?

5 You know, the other thing, the reason we
6 brought the playground drawing to your attention is
7 because when we asked Ms. Angelo about it she said I
8 don't know who drew it. I don't know anything about it.
9 The reason we brought Detective Caldas in, Investigator
10 Caldas from the DA's office, because he spoke to her and
11 she said -- she confirmed that that drawing was done by
12 Bryan Oliver. That's why we brought it to your
13 attention. The threats to kill a student by the name of
14 Bobbitt, multiple reports of hit lists. Can we go on to
15 the next one, please?

16 The threat assessment plan. Was she ever
17 given a copy? Was she ever told? I keep coming back to
18 this. March the 7th when she went in for the IEP, she
19 was told there was not an area of concern his behavior.
20 Do you think if they would have told her about that they
21 would have said not an area of concern? This is what I
22 mean about there is so much stuff in this case. You've
23 got to organize it. They did tell her about the
24 attendance academic behavior contract. She signed it.
25 Bryan exits from the IEP March 7th. They did tell her
26 this is not an area of concern.

27 Can we go on to the next page, please? I
28 won't go through all of them. But like I said, we have

1 documents or testimony for every one of these. Was she
2 told on December 17th about three weeks before the
3 shooting when Mariah Doty was brought in? Were Bowe
4 Cleveland's parents told when Mariah Doty told them
5 about that? So was she negligent if she wasn't given
6 all this information, hardly any information?

7 Question number eight was if you say yes, that
8 she was negligent, you go on to the next question was
9 the negligence of Sheryl Oliver a substantial factor in
10 causing harm to Bowe Cleveland.

11 Question number nine, was Tyler Oliver
12 negligent? Can I say something about him? He owned up
13 to his responsibility from the get-go. When he was
14 interviewed by the sheriff's department on the date of
15 the shooting, he spoke to that detective voluntarily,
16 and he admitted -- he told the officer, the deputy, I
17 should have had it secured. In his deposition, he owned
18 up to it. And here at trial he said yes, he made a
19 mistake. Compare that, his answers and his behavior, to
20 the school employees who deny everything? It's a big
21 conspiracy. All the SRO officers are lying. Ms. Durkan
22 is lying. Everybody is lying except according to them
23 Ms. Angelo and Mr. Shoffner. When they were up there,
24 especially Mr. Shoffner, do you think he was being
25 forthright, straightforward, or was he evasive and
26 ducking?

27 If you say yes, he was negligent, the next
28 question is was it a substantial factor. Did he

1 contribute.

2 Question number 11. Question number 11 is
3 what percentage of responsibility for Bowe Cleveland's
4 harm do you assign to the following? Ms. Angelo, Mark
5 Shoffner, Marilyn Brown, Kim Fields, Mark Richardson,
6 Bryan Oliver, Sheryl Oliver, Tyler Oliver.

7 Here's what I'm going to suggest to you. Can
8 I back up? Two ways that the employees, school
9 district, are negligent. By the way, negligence doesn't
10 mean intentional. For the way they did the threat
11 assessment, the threat management, we went through all
12 that. What's the other piece? They had a gate, a
13 perimeter fence, and they tried to run away from it and
14 say oh, we had an open campus. But what did their own
15 written documentation say? It's a closed campus. It's
16 only open at lunch. The rest of the time -- I won't
17 read it all to you -- said should be locked at all other
18 times. It's in black and white. That's what they said.
19 The 90 seconds lock down that gate would have been
20 locked. You had the surveillance cameras. What good
21 does it do to have 43 surveillance cameras and not
22 monitor them? 43. Through the PA system they would
23 have said they see something like that, lock down,
24 teachers lock. That's the other way they can prevent
25 it.

26 So question number 11 I didn't have a slide
27 made up for. So if it's okay with you, I'm going to use
28 the ELMO. You may want to write notes on this one.

1 Question number 11, what percentage of responsibility
2 for Bowe Cleveland's harm do you assign to the
3 following? Ms. Angelo, 49 percent. Why? Who is the
4 person who was the leader of the threat assessment? Who
5 called the shots? Who was the quarterback? Who had all
6 the information? Who knew about all of the red flags?
7 Who knew the most?

8 Mr. Shoffner, 15 percent. Why? Among other
9 things -- oh, let me make it perfectly clear for you.
10 Mr. Shoffner wears two hats. One hat that he wears he
11 is the school psychologist, okay. We're not being
12 critical of him as to whether or not he tested or didn't
13 test. That's off limits. But as part of the threat
14 assessment team, as an administrator, that's a different
15 story. That's what we're being critical of. So we're
16 not criticizing him as to whether he did the test or
17 didn't do the test. The evidence was that he didn't,
18 but that doesn't matter. It's communication, threat
19 assessment team.

20 Marilyn Brown, 3.5. She was Ms. Angelo's
21 supervisor. She knew about Bryan Oliver's threats,
22 never spoke to Rona Angelo about it. And she said she
23 involved herself in all the serious threat assessments.
24 Can you get much more serious than this? What's that
25 old saying, serious as a heart attack?

26 Kim Fields. He knew about the escape plans,
27 didn't relay it to Rona Angelo, when that was part of
28 his job, security. And then he tried to minimize it by

1 saying when he came in here and said oh, I didn't know
2 much about him, and -- but then we had the transcript.

3 Mark Richardson, supposed to be in charge.
4 He's the one that says squash the rumors instead of see
5 something, say something.

6 Bryan Oliver. Did you see a question up there
7 whether he was negligent or not? Do you know why not?
8 Because he is. In fact, he did it intentionally, okay.
9 But you know what? He took responsibility. We played
10 his videotape. We said when you pled no contest, you
11 knew that was the same thing as pleading guilty. By the
12 way, he wrote that letter of apology the very next day.

13 What have we heard from the school district
14 and the employees? Denial, denial, denial, denial.
15 It's everybody else's fault, but not there's. And you
16 know in some ways, the system failed him. People kept
17 saying he needs help. Ms. Kaszycki said I'm concerned
18 for the safety of the students and staff as well as
19 Bryan. Jasmine Sanchez, all these people, have said he
20 needs help. He needs help. Yet no referral, no
21 recommendation was ever made to Bryan Oliver's mother.

22 Ms. Oliver. Working, single mom. I showed
23 you how they kept her in the dark and minimized. And
24 remember, she was supposed to be kept in the loop
25 according to the threat assessment, another set of ears,
26 another seat of eyes. The information was kept from her
27 by Mr. Shoffner, by Ms. Angelo.

28 Tyler Oliver. He owned up to his mistake

1 every time he was questioned about it. I got the gun to
2 shoot clay pigeons. I had it there. I had most of the
3 ammunition there. But when they asked him did you have
4 two rounds in the bathroom? He said yes. He owned up
5 to it, his mistake.

6 You've been very, very patient. Thank you for
7 listening.

8 THE COURT: Ladies and gentlemen, we'll take
9 our afternoon recess. We'll be in recess for
10 15 minutes. Don't discuss the case or form or express
11 any opinions. We're in recess for 15 minutes.

12 (A recess was taken.)

13 THE COURT: We're in session and on the record
14 in Cleveland versus Taft Union High School District.
15 Appearances are as previously noted.

16 Anything we need to take up before we have the
17 jury in?

18 MR. RODRIGUEZ: No, thank you, Your Honor.

19 MR. HERR: No, thank you, Your Honor.

20 THE COURT: All right. Mr. Herr, you get
21 equal time if you need it. And, Mr. Rodriguez, I may
22 have to ask that you be as brief as possible with your
23 rebuttal. I do think all of us want to get this jury
24 instructed this afternoon.

25 Court is in session. I took roll. The jury
26 is now in the courtroom properly seated.

27 Mr. Herr, your closing argument.

28 MR. HERR: Thank you, Your Honor. Thank you,

1 ladies and gentlemen, of the jury for your kind
2 attention throughout this case. I know you've taken
3 this very seriously. You understand this is an
4 important case. It's very important to Rona Angelo who
5 has been here throughout the trial. Obviously it's
6 important to Mr. Rodriguez. And I suspect it's
7 important to Bowe Cleveland. But I want you to also
8 know how important it is to Mark Shoffner, Kim Fields,
9 the students and teachers and administration at Taft
10 Union High School District.

11 I'm going to tell you what I think the
12 evidence has shown. And I want to emphasize that what
13 I'm going to tell you is what I think was left out of
14 the Plaintiff's opening that's very important for you to
15 consider in your deliberations.

16 First of all, ladies and gentlemen, I want you
17 to look at this chart, this chart that was referenced
18 numerous times in Plaintiff's opening statements. I
19 want you to look at this because each and every incident
20 on this chart was investigated by Taft Union High School
21 District. Each and every one of these incidents was
22 investigated and documented, personally went through a
23 process that Rona Angelo followed at Taft Union High
24 School District.

25 The second very important thing for you to
26 keep in mind -- and you may remember when documents were
27 introduced, these incident reports were introduced into
28 evidence, Judge Lampe told you something very, very

1 important that got lost in the Plaintiff's opening
2 argument. And that is these documents are being
3 introduced for the limited purpose of showing that the
4 school district had information. They are not -- they
5 are not being introduced to prove the truth of what's in
6 the document. In other words, the truth of the matter
7 asserted.

8 And I think that's very important because
9 there were no people who came in and said half of these
10 things that are on these documents. In other words, the
11 people who were the witnesses of these things, Bryan
12 shooting up and killing 50 students, you never heard
13 from those people. So you never got an opportunity to
14 assess their credibility, which is very important in a
15 trial like this. That's your role, assessing the
16 credibility of witnesses.

17 So as you look at all this list of things that
18 Plaintiff has very artfully put together, he's
19 absolutely right. There is evidence to support every
20 one of these things. The evidence is the records that
21 the school put together pursuant to a process. And the
22 fact that the actual witnesses were not called by
23 Plaintiff in this case should tell you that there have
24 may have been another version or explanation to these
25 things for people whose statements that are presented.

26 But let me get to what I think really this
27 case is about. And first of all, were Taft Union High
28 School employees Rona Angelo and Mark Shoffner

1 negligent. Was Mark negligent in his mental examination
2 of Bryan Oliver? Was Rona Angelo negligent in relying
3 on Mark Shoffner's mental examination of Bryan Oliver?
4 These are the things that I think you need to keep in
5 mind in your assessment of the evidence in this case.

6 Should they have been able to reasonably
7 foresee that Bryan Oliver would bring a gun to school
8 and shoot Bowe Cleveland. That's sort of the ultimate
9 question throughout this. Should they have been able to
10 reasonably prevent this shooting from happening. Ladies
11 and gentlemen, that is sort of the ultimate question in
12 this. And the ultimate question but the real irony in
13 all this when you think about it, because as I preparing
14 for this, there is a thought that came to. Should Mark
15 Shoffner have known before Bryan Oliver knew that Bryan
16 Oliver was going to come to school and shoot Bowe
17 Cleveland? Think about it. When did Bryan Oliver first
18 determine he was going to shoot Bowe Cleveland? Most of
19 the evidence indicates it's in December after the
20 shotgun was brought into the home. All of this stuff
21 that Plaintiff put on their piece of paper, this is all
22 before Bryan Oliver decided he was going to shoot Bowe
23 Cleveland.

24 So the thrust of the Plaintiff's case
25 throughout this is Mark Shoffner should have known that
26 Bryan Oliver was going to shoot Bowe Cleveland before
27 Bryan Oliver knew he was going to shoot Bowe Cleveland.
28 You'll get a definition as to what is negligence, and

1 these instructions will be there for you to read. Keep
2 them in mind. And when you look at it, it's a
3 reasonably careful person. That is the standard. It's
4 not a hyper-technical standard. That's why you are
5 making this decision. Because you are going to decide
6 what is reasonable under all of the circumstances.

7 But in this case, again, I want to mention
8 something I mentioned in my opening statement. And that
9 is be careful of hindsight bias. And Dr. Mohandie was a
10 very clear witness on that issue. In other words, he
11 evaluated the threat assessment that Mark Shoffner did
12 and Rona Angelo in their assessment. And he said, you
13 know, in hindsight I might have rated it a three instead
14 of a four. But that's with the benefit of all of this
15 information. So as you're reviewing the events in this
16 case, please keep in mind the issue is what was
17 available to the people at Taft Union High School
18 District at the time, and evaluate if they followed a
19 process for each and every one of those events that you
20 think was reasonable. The case must be decided on
21 evidence. And evaluate what happened in this case by
22 looking at what was known and done at the time by all of
23 the individuals involved in this case.

24 And the two critical witnesses that you heard
25 were Rona Angelo and Mark Shoffner and the work they did
26 and why they did what they did. Avoid using hindsight
27 bias and the benefit of what we know today which is
28 essentially what Dr. Meloy did. With the benefit of

1 knowing what happened on January the 10th, it's easy for
2 him to come here in July of 2019 and tell you how things
3 should have, could have, might have done better.

4 And as you do this, please keep in mind the
5 oath. It's the oath that I mentioned to you when you
6 were being selected as jurors. And really it's the
7 touchstone. It's the most critical aspect of your role
8 as jurors. Because if you keep that oath and you follow
9 the law as Judge Lampe gives you the law, then you'll be
10 able to faithfully fulfill really one of the most
11 important responsibilities of citizens of our country.

12 I want to go through some of the claims that
13 the Plaintiff asserted and note whether he's made --
14 he's met his burden of proof on these. First of all,
15 that this shooting should have been reasonably foreseen.
16 Second, were Rona Angelo, Mark Shoffner, the school, did
17 not care about safety. That was implicit throughout
18 this case that Rona and Mark just simply didn't care.
19 The school did not follow its practices and procedures.
20 There was no internal or external communication. And,
21 again, this is replete throughout the Plaintiff's case
22 in this you've heard for the last three weeks.

23 First, that this shooting -- and I forgot the
24 last one, that there was this implication that the
25 school ignored mistreatment of Bryan Oliver. Let me
26 address each one of these in order.

27 First of all, foreseeability. You have heard
28 no evidence that Bryan Oliver was planning to shoot Bowe

1 Cleveland. There has been no evidence introduced in
2 this case except the day before the shooting when
3 Rebecca Jackson said that Bryan told her. And Rebecca
4 Jackson reported it to her mom. She did not report it
5 to anyone else. The evidence suggests that Bryan did
6 not consider committing the shooting until the day
7 before. And that's evidence that we received again from
8 Rebecca Jackson. This all occurred after the shotgun
9 was brought into the home. Bryan Oliver had no access
10 to a weapon until December of 2012. That evidence is
11 without dispute. Tyler Oliver and Bryan Oliver both
12 testified that weapon came into the home in December of
13 2012.

14 Again, should Mark Shoffner have anticipated
15 that Bryan Oliver would shoot Bowe Cleveland for these
16 many months when there was no shotgun in the home.

17 Finally, the Plaintiff argues the school
18 should be able to predict which students will commit
19 crimes before the students themselves even consider it.
20 That's the gist of this case, ladies and gentlemen. Did
21 the Plaintiff prove these claims? First of all, that
22 the shooting should have been reasonably foreseen. And
23 I would submit to you they have not. There is no one
24 who's come in and said that had they done something
25 different with the pencil incident or had they done
26 something with any one of other these incidents that
27 this shooting would not have occurred. The only
28 evidence that we've heard is that had the shotgun not

1 been in the home, according to Dr. Mohandie, if the
2 shotgun had not been in the home, the shooting would not
3 have occurred.

4 Second, with regard to school safety. Did the
5 school take reasonable efforts to keep students safe?
6 They contracted with an SRO. They contracted with both
7 Kern County Sheriff's Office and the City of Taft to
8 have a full-time armed, uniformed police officer on
9 campus. Was that reasonable? They had campus
10 supervisors, Kim Fields and Mary Miller, on campus at
11 all times. You heard the testimony of Kim Fields. You
12 should be able to evaluate how he cared for the
13 students, how he cared for the students on the day of
14 the shooting, how Kim Fields put his own life in
15 jeopardy for these students. Because of the conduct of
16 people like Kim Fields Bryan Oliver and Bowe Cleveland
17 are probably alive today. These are the types of people
18 that Taft Union High School District had working with
19 the students.

20 People like -- there were meetings with staff
21 about active shooting scenarios. Rona Angelo and Mark
22 Shoffner went to classes on school shootings on threat
23 assessments. The day of the shooting they were even
24 having training on that.

25 Finally they had a school psychologist on
26 staff. You were able to evaluate Mark Shoffner's
27 testimony. You were able to determine whether he really
28 genuinely sincerely cared about all the 900 students at

1 the school, not just Bryan Oliver. You were able to
2 hear what he did and why he did it. He's the only
3 person, not Kris Mohandie, not Reid Meloy, it was Mark
4 Shoffner who studied the IEP, who talked to Sheryl
5 Oliver, who knew about Bryan's conduct in Tennessee. It
6 was Mark Shoffner who took this information and
7 evaluated whether Bryan was a danger to himself or
8 others in February and March of 2012. The process that
9 he followed was legitimate and it's well-established,
10 and I don't think anybody can reasonably question his
11 good-faith in doing it.

12 Finally, the school did have a threat
13 assessment program. They went beyond what -- the bare
14 minimum. They had a program that they followed. And if
15 you'll look at each every one of those incidents, Rona
16 Angelo did what she was supposed to do. She took in
17 information. She shared it with Mark Shoffner. And
18 they evaluated the situation as it came in. Did the
19 Plaintiff prove that Rona Angelo and Mark Shoffner and
20 the school did not care about safety? I submit they did
21 not. The school did not follow it's practices and
22 procedures.

23 Ladies and gentlemen, the evidence is clear
24 that in this case practices and procedures were in place
25 and diligently followed as evidenced by all the records
26 that the Plaintiff has shown you in this case today.

27 Second, incident reports were prepared and
28 reviewed. That's the evidence that Rona Angelo

1 accumulated and shared with Mark Shoffner so he could do
2 his job in evaluating whether it changed the threat
3 assessment for Bryan Oliver. Students were called in
4 for interviews. So you have both a written statement
5 plus the actual interview of the students.

6 Then I want to just pause and note Rona Angelo
7 knew every one of those students. Rona Angelo is there
8 at 6:30 in the morning. This is a small campus, 900
9 students. People like Kim Fields, Mary Miller, Rona
10 Angelo and Mark Shoffner knew those students. They knew
11 the community. The documentation of discipline in
12 permanent records. You will see in evidence if you want
13 to review that evidence the discipline records for all
14 of these incidents are contained both in Rona Angelo's
15 records, also in the students what's know as their cume
16 file. And then they also have a very clear-cut threat
17 assessment program that they followed.

18 Next point, that there was no internal or
19 external communication. Ladies and gentlemen, it is
20 absolutely clear that Rona and Mark spoke and
21 communicated with each other regularly. In fact, there
22 is no evidence they didn't. No one has stated,
23 suggested or implied that Mark and Rona did not talk
24 regularly. Rona spoke with Bryan and Rebecca frequently
25 while she waited for her mother to pick her up from
26 school. Rona was concerned about Bryan and as was Kim
27 and they spoke.

28 Next point. The staff spoke to and regularly

1 interacted with students. Mark checked with Bryan
2 throughout the year. You heard Mark's testimony about
3 talking to Bryan, the situation about him recommending a
4 book. You heard Kris Mohandie's testimony about that.
5 Kris Mohandie who is a very distinguished practitioner
6 explained how the books talk about how FBI investigators
7 look at crimes. And Mark was doing that to try to
8 encourage Bryan. It was not to throw gasoline on the
9 fire as has been suggested.

10 Sheryl Oliver was interviewed after the bus
11 incident. And as a side you remember, she was also
12 talked to you after the P.E. incident. And she got very
13 upset that the other students weren't disciplined. So
14 Sheryl Oliver was interviewed after the bus incident.
15 Not only that, she walked with Greg Collins from the
16 school to her house where her house was searched.
17 You've got to believe that any person who's having their
18 house searched by a uniformed law enforcement officer
19 would be concerned about something that happened.
20 Sheryl Oliver also testified that she read the
21 description of the bus incident on the threat assessment
22 and that's what she understood occurred. So she was
23 informed what was going on. So there was communication
24 that took place.

25 The school ignored mistreatment of Bryan
26 Oliver. Ladies and gentlemen, I don't think that point
27 was proven either. The school had a clear policy
28 against bullying. Bryan's freshman year was

1 investigated and evaluated and discipline handed out to
2 all the students involved, not just Bryan Oliver. Taft
3 has a high school policy against bullying. If you look
4 at Exhibit 108, that's where the students would have to
5 sign that they attended an anti-bullying. Bowe
6 Cleveland was aware of it. They were all aware of it.
7 There were reports to the staff about bullying
8 throughout the administration at Taft. They have not
9 proven that the school ignored Bryan Oliver. You think
10 about it, this image that the Plaintiff is trying to
11 portray sort of calls you into question what type of
12 school should have been back in 2012 and 2013. And
13 what's the role of a school? And you've heard testimony
14 that with 900 students it wasn't just about Bryan
15 Oliver. There were a lot of other issues that the
16 school dealt with.

17 For example, the school has to educate all
18 students. There are students that want to be there.
19 There is students that don't want to be there. There
20 are students who are talented. There are students who
21 are not talents. The school wants to make sure that the
22 under performing who have learning disabilities or have
23 behavior issues still get a chance to learn. Keep that
24 in mind when you're evaluating whether Rona and Mark and
25 Kim were acting reasonably. What is a safe school?
26 What are their responsibilities? The school's primary
27 job should be educating all students as best they can.
28 Or is it the school's job to be a law enforcement

1 officer, to be a parent, to criminally profile students?

2 I would submit to you, ladies and gentlemen,
3 that's not the role of schools in 2012 and 2013 and
4 that's not the standard that you should impose on the
5 school in this case.

6 There is evidence as to what Taft Union High
7 School's vision statement is and mission statement. You
8 can review that, but I think that's consistent with what
9 Dr. Blanca Cavazos testified to and to what Kim Fields
10 and the others testified to. Specifically the school is
11 concerned about all students receive the best possible
12 education in a safe and secure environment. Taft takes
13 these duties seriously. You can -- that's clear from
14 the testimony of the Taft employees that testified in
15 this case. Bowe was one of the students at Taft. And
16 everybody cared very much about Bowe and what happened
17 to him. And to suggest that the people at the school
18 did not seriously misrepresents what the testimony and
19 the feeling of these witnesses was.

20 I want to pause for a minute and just talk
21 about the actual day of the shooting. On January 10th,
22 2013, the shooting took place. The shooting took
23 everyone by surprise. The shooting took everyone by
24 surprise. And the evidence is without dispute Bryan
25 Oliver's mother, who knew him best, was surprised by the
26 shooting. Bryan's brother, Tyler Oliver, was surprised.
27 He would have never left a shotgun unsecured in the
28 bedroom if he thought his brother was going to use it.

1 Bryan's friends were surprised. Rebecca Jackson -- even
2 when Bryan said the day before something bad was going
3 to happen, Rebecca Jackson testified she thought she
4 didn't think he was going to hurt anyone. The school
5 based on what Kim Fields, Rona Angelo, Mark Shoffner,
6 the threat assessment, their analysis, they never
7 thought Bryan Oliver would hurt anyone.

8 Remember, Rona Angelo testified Bryan Oliver
9 was not a frequent flyer. Bryan Oliver wasn't in the
10 office regularly. Bryan Oliver was doing well in his
11 classes. Bryan Oliver was doing so well he got out of
12 the IEP. Bryan Oliver was in college preparatory
13 classes. Even Bryan himself cannot tell you why he shot
14 Bowe Cleveland. He cannot explain why he ultimately
15 pulled the trigger.

16 What information did Taft have at the time?
17 The ultimate question is when did Bryan decide he was
18 going to commit the shooting. I would submit to you,
19 ladies and gentlemen, that the Plaintiff has not come up
20 with any evidence to answer that question. And as I
21 told you in my opening statement, Bryan Oliver doesn't
22 know why he shot Bowe. He doesn't know when he decided
23 that. And without that information, it's very unfair to
24 blame the people at Taft Union High School District.
25 Taft did not know and could not have known that a weapon
26 and ammunition had entered into the home. No one told
27 them, and there is no evidence to suggest otherwise.
28 They did not know that Bryan had access to that weapon

1 and ammunition and that Bryan -- or the fact that Bryan
2 had told his friends the day before the shooting not to
3 come to school. That Bryan said he was going to shoot
4 Bowe Cleveland was never communicated to anyone at the
5 school.

6 All of these events that occurred before
7 January the 10th dealt with Bryan Oliver's dreams, with
8 generalizations. There was not a specified target
9 identified at any time before January the 10th. Bryan
10 called his mother right before the shooting and spoke to
11 her for about a minute and 40 seconds. Taft did not
12 have that information. Had Sheryl Oliver called the
13 school, then we get into sort of this hindsight bias of
14 what might have happened, and I'll get to that in a
15 minute.

16 There was no profile of the school shooter.
17 As of today we still don't know what's a profile of a
18 school shooter. How do we look out at the student body
19 population and say this person or this person or this
20 person is somebody who is going to shoot another
21 student? Bryan did have some occasional behavioral
22 problems but was showing significant improvement. To
23 Sheryl Oliver, Bryan openly communicated with her and
24 never hinted that he would become violent. To Tyler
25 Oliver Bryan was someone that was safe to leave an
26 unlocked gun around the house. And then finally to
27 Bryan's friends, Bryan liked to push the envelope and
28 say weird scary things to get a reaction out of people

1 but would never hurt anyone.

2 We want to convince ourselves that somehow we
3 could have, should have, stopped this. That's sort of a
4 natural human reaction. But it's critical as you go
5 through this deliberation you separate speculation from
6 a reasonable interpretation of the evidence.

7 Let me get to the verdict form. And I can go
8 through the verdict form I just want to play a quick
9 clip for Bryan Oliver. On second thought, I'll tell
10 you, and I'm sure you remember it. I wanted to just
11 play for you the portion of the video where Bryan Oliver
12 admitted that he went in there and shot Bowe Cleveland
13 and shot at Jacob Nichols. And the reason I think
14 that's important is because the Court is going to give
15 you a jury instruction. I think it's an important one
16 for your consideration. It's jury instruction 433. And
17 it says Defendants are not responsible for Bowe
18 Cleveland's harm if a criminal act is the superseding
19 cause of the act.

20 In this case, ladies and gentlemen, Bryan
21 Oliver should Bowe Cleveland. Bryan Oliver is
22 responsible for shooting Bowe Cleveland. Bryan Oliver
23 shooting Bowe Cleveland was a criminal act. And the
24 school district, Mark Shoffner, Rona Angelo, are not
25 responsible because there was a superseding cause in
26 this case.

27 You'll also receive a jury instruction on
28 substantial factor. And a substantial factor in causing

1 the harm is a factor that a reasonable person would
2 consider to have contributed to the harm. It must be
3 more than a remote or trivial factor. It does not have
4 to be the only cause of the harm.

5 But in this case, ladies and gentlemen, when
6 you evaluate the threat assessment that Mark Shoffner
7 did, the work that Rona Angelo did, it was not
8 reasonable for them to assume that a shotgun had come
9 into the home and Bowe Cleveland was going to be shot by
10 Bryan Oliver.

11 I want to tell you about a very important jury
12 instruction the Judge is going to give you, an
13 instruction that was not mentioned by the Plaintiff.
14 This instruction is critical for your analysis. And
15 that's Government Code Section 855.6. And if you excuse
16 me, I'm going to read it to you, because I think it's so
17 important. It provides that neither a public entity
18 such as Taft Union High School District nor a public
19 employee such as Mark Shoffner, Rona Angelo, for
20 example, acting within the scope of their employment,
21 that means while they're acting as school administrators
22 Mark Shoffner as a credentialed school psychologist,
23 Rona Angelo as a credentialed assistant principal, is
24 liable for injury caused by failure to make a mental
25 examination or to make an adequate mental examination of
26 any person for the purpose of determining whether such
27 person has a mental condition that would constitute a
28 hazard to the health or safety of himself or others.

1 Ladies and gentlemen of the jury, in this case
2 I think that this jury instruction is critical to your
3 analysis and assessment of what Mark Shoffner did and
4 Rona Angelo did in relying upon the work that Mark
5 Shoffner did. What they did as part of the threat
6 assessment was to determine if Bryan Oliver had a mental
7 condition that made him a threat or hazard to himself or
8 others. If that's what you find they did, then I
9 commend for your consideration Section 855.6 of the
10 Government Code, which says neither a public entity nor
11 a public employee is liable for the injury caused by the
12 failure either to make the assessment or do it
13 correctly. That means the injuries that Plaintiff's
14 attorney is claiming in this case that happened to Bowe
15 Cleveland should not be the responsibility of Mark
16 Shoffner and Rona Angelo.

17 So what I think the evidence has shown and
18 what I think supports the appropriate verdict is was
19 Rona Angelo negligent. The answer is no. Was Rona
20 Angelo a substantial cause? No. Was Mark Shoffner
21 negligent? No. He wasn't a substantial factor either.
22 Were Kim Fields, Marilyn Brown, Mark Richardson
23 negligent? No. And they were a substantial cause. And
24 honestly I don't think Sheryl Oliver should be found
25 negligent or the cause. I don't think Tyler Oliver
26 should be found negligent or the cause.

27 Ladies and gentlemen of the jury, I submit to
28 you that Bryan Oliver should be found 100 percent

1 responsible for the cause.

2 Now, I tell you this, and one thing lawyers do
3 is we sort of have to deal with alternative situations.
4 So I just wanted to comment briefly assuming you don't
5 agree with me that Bryan Oliver is the cause or you
6 don't agree with me that Government Code Section 855.6
7 does not apply to the actions of Rona Angelo and Mark
8 Shoffner. So if you believe this is preventable, I just
9 want to pause and tell you what I think, one way you
10 could divide up the liability, the responsibility.

11 Look at the timeline of the shooting. Bryan
12 wakes up at 6:00 A.M. First period begins at 8:30.
13 Bryan calls his mother at 8:45 for one minute and
14 46 seconds. He says you were a good mother. Sheryl
15 Oliver told Tyler Oliver she was very upset. Tyler
16 thought she was hysterical. Tyler Oliver said he
17 thought something bad was happening. He raced home.
18 Sheryl calls Tyler about 8:47, two minutes later. 8:56
19 Bryan Oliver walks onto campus. And you can tell that
20 by looking at the surveillance video. Bryan enter the
21 classroom at 8:58.

22 In looking at this timeline, again engaging in
23 perhaps hindsight bias, you have to ask yourself had
24 Sheryl Oliver called the police department, how long
25 would it have taken them to get to the school. Had
26 Sheryl Oliver called the school, how long would it have
27 taken. You ask yourself had Tyler Oliver locked up the
28 shotgun like he knew he should. Had any number of

1 different things had happened, then this shooting would
2 not have occurred. If it was preventable, it had to be
3 prevented by preventing Bryan from having access to a
4 firearm. Bryan did not plan or consider a shooting
5 until the gun was in the home. The family knew that the
6 home had been searched for weapons before. Bryan told
7 Rebecca the day before the shooting he would shoot Bowe.
8 911 was not called the morning of the shooting after
9 Bryan called his mother.

10 So if we're going to go down this road and try
11 to lighten the load that Bryan Oliver caused all of
12 these people, then I would submit to you that
13 percentages should be 75 percent for Bryan Oliver, five
14 percent for Rona, for Mark, if you find 855.6 does not
15 apply. Zero percent for Marilyn Brown.

16 And I really want to pause about Kim Fields.
17 Because Kim Fields put his life on the line for these
18 students. And to suggest that somehow he's negligent,
19 to suggest he didn't care about these students, I think
20 really is a very sad way to present this evidence.

21 Finally I would submit that Sheryl Oliver is
22 ten percent at fault because she knew these things. She
23 could have called 911. And that Tyler Oliver is five
24 percent at fault for not securing the shotgun. Sheryl
25 also knew the shotgun was in the home and knew about
26 Bryan's many issues.

27 Ladies and gentlemen of the jury, it really is
28 a tremendous privilege to be able to present cases to

1 people like you. On behalf of Rona Angelo, the people
2 at Taft Union High School District, Alex Thompson, thank
3 you very much for your time and I look forward to your
4 verdict.

5 THE COURT: Thank you, Mr. Herr.

6 Mr. Rodriguez, your rebuttal argument.

7 MR. RODRIGUEZ: I mentioned to you, I told you
8 in opening statement at the beginning of the case that
9 the reason we filed a lawsuit is that the school
10 district is refusing to take any responsibility. You
11 just heard that. After all this evidence they're still
12 refusing to take responsibility. And talk about talking
13 out of both sides of your mouth. Zero, zero, zero, a
14 hundred percent. And then oh, by the way. You've got
15 to take a stand. If you really believe in your
16 position, you've got to take a stand. None of this
17 talking out of both sides of your mouth.

18 This argument about not shoot Bowe Cleveland.
19 That's not what the law says. It's like -- let me give
20 you an example. It's like the man who is driving down
21 the road and blows a stop sign, negligent. And hits a
22 mini van and hurts a ten-year-old little boy in the back
23 seat. And he says well, I was negligent, but I didn't
24 know that the little boy was in the back seat. I didn't
25 know.

26 Here's what the law says. Here the threat
27 assessment was to protect all students at school. You
28 can't come in and say oh, you had to predict. That's

1 not the rule, that's not the standard of care, predict.
2 The driver who runs the stop sign and hits and hurts
3 that ten-year-old little boy can't come in and say you
4 know what, I didn't predict that this little boy was
5 going to be in the car. The law says you broke the
6 rule. And anyone who was using the road is protected by
7 the law.

8 Here every student at Taft Union High School
9 District was protected, was supposed to be protected.
10 It's not about prediction. And you heard me ask
11 Dr. Calhoun, ask Dr. Meloy, everybody. Even Mohandie
12 said it's not about prediction. I don't even use that
13 word. So they don't get a free pass by saying oh, it
14 wasn't Bowe Cleveland or it was Bowe Cleveland. They
15 don't not get a free pass. Just like that man who runs
16 the stop sign and hurts that little boy and says well, I
17 get a free pass because I didn't know that little boy
18 was supposed to be in the van.

19 Let me make some other corrections real quick
20 like. Said that Ms. Angelo shared information. I
21 showed you that -- and I told you that there is -- for
22 all that. Does that look like she shared information
23 with Mr. Shoffner about everything? Does that look like
24 she shared information with the SRO? Part of the
25 fundamental principal is you share information with
26 everybody. Failure to communicate. Dr. Mohandie said
27 that he underestimated the threat, and he didn't even
28 know about all of this. He just knew about some of

1 this. And even then he said it was underestimated.

2 Here's a jury instruction you're going to get.
3 This is about superseding acts, intentional criminal
4 acts. Taft Union High School District employees claim
5 they are not responsible for Bowe Cleveland's harm.
6 They have to prove two things. One, that the criminal
7 conduct of Bryan Oliver -- they have to prove both of
8 the following. That the criminal conduct of Bryan
9 Oliver happened after the conduct of the high school.
10 They proved that. They proved that. But they didn't
11 prove the second one, that Taft Union High School
12 employees did not know and could not reasonably foresee
13 that another person would be likely to take advantage of
14 the situation created by the school district employees'
15 conduct that committed this act.

16 Here's the response. They are responsible
17 because the school district employees knew and could
18 have reasonably foreseen from Bryan Oliver's repeated
19 threats to shoot and kill students, including Bowe
20 Cleveland, that Bryan Oliver would be likely to harm
21 another student because they did not come up with a
22 proper assessment plan to begin with in the first place.
23 They chose -- that was a choice. They chose not to
24 communicate. They chose not to monitor Bryan Oliver.

25 So every incident was investigated. I don't
26 want to go through all this. Mariah Doty, when she was
27 called in. They didn't follow up with Allison Biagioni.
28 They didn't follow up with Bowe Cleveland. They didn't

1 follow up with his parents. They did not follow up with
2 the investigation for most of this.

3 Did I bring in every witness? Can you imagine
4 how long we'd be here if I brought in every witness? By
5 the way, they have subpoena powers, too. Okay. As it
6 was, it's almost a four-week long trial. Do you know
7 how long we'd have to be here? The law does not require
8 that we have to bring in every witness.

9 Okay. Mental examination by Mark Shoffner.
10 Where is the beef? Did they bring in the test? There
11 was no testing, but that's neither here nor there,
12 because again Mark Shoffner under that 855.6 we're
13 saying we're not being critical of him mental
14 examination. He never did one, never counseled him.
15 We're saying as a member of the threat assessment team,
16 okay.

17 What is a safe school? They told us in that
18 what is a safe school? Remember, the gates are to be
19 locked. Taft Union High School is a safe and secure
20 campus. Why is it? Because the open campus is
21 surrounded by an exterior fence which is locked at all
22 times except during lunch. It's in black and white.
23 It's in black and white. The open campus is surrounded
24 by an exterior fence which is locked at all times. How
25 do you get around something like that? You tell the
26 public that you filed to get accredited? And then you
27 come in here and you say oh, no. Come on. They were in
28 denial throughout this entire ordeal. And they're in

1 denial now.

2 You know what's the best -- that kind of
3 attitude, you know what's the best antidote for that?
4 The best antidote is the jury verdict. That corrects a
5 lot of attitude. That takes care of a lot of attitude.
6 When they have the arrogance to stand before us and say
7 things that are just flat out not true. Enough is
8 enough. Enough is enough. Thank you.

9 THE COURT: All right. Members of the jury,
10 you've now heard all the evidence and closing arguments
11 of the attorneys in this phase of the trial.

12 It's my duty to instruct you on the law that
13 applies to this case. You must follow these
14 instructions -- oh, let me ask. Counsel, we have
15 written instructions. This is a civil case. Do you
16 wish the reading to be reported or is -- it's up to you.

17 MR. HERR: I do not need it reported. Thank
18 you.

19 THE COURT: The way I do it is as long as I'm
20 just reading this I don't report it. And then if
21 something occurs and we need to go back on the record I
22 do that.

23 MR. RODRIGUEZ: We will not require it, Your
24 Honor, thank you.

25 THE COURT: Thank you very much. All right.
26 (The reading of the jury instructions.)

27 THE COURT: Let me see counsel.

28 (Outside the presence of the jury.)

1 THE COURT: Okay. We're back on the record as
2 I was reading the instructions I reached a point where I
3 was reading the one 400 negligence, essential factual
4 elements regarding the negligent threat assessment or
5 threat management. And I realized that Mark Shoffner
6 should be included in this one. So I will go back
7 reread it and add Mark Shoffner's name.

8 MR. RODRIGUEZ: Thank you, Your Honor.

9 (In the presence of the jury.)

10 (Reading of the jury instructions.)

11 THE COURT: We'll go back on the record.

12 We'll give the oath to Ron to take charge of
13 the jury.

14 (Swearing in the bailiff.)

15 THE BAILIFF: I do.

16 THE COURT: All right. Ron, I want to let you
17 know I'm not sure there is enough chairs in the jury
18 room right now. So we may have to make sure everybody
19 has a seat. We distributed them throughout the
20 courtroom a little bit. So -- but Ron will take care of
21 you, ladies and gentlemen, jurors one through 12.
22 Again, you're free to convene and reconvene your
23 deliberations in the ordinary course of the court's
24 business. It's 4:37 so you're free to adjourn if you
25 wish once you've been shown the jury room. That's up to
26 you. Although we do end the business of the Court at
27 five o'clock. So keep that in mind. Also, you do have
28 to notify Ron when you're taking a break or want to take

1 a break or when you're ready. Because we have to keep
2 track of when you're in deliberations and you're not in
3 deliberations.

4 Jurors one through 12 if you'd go with Ron and
5 he'll show you to the jury room. Ms. Bratu and
6 Ms. Reyna, the jury is now deliberating. Both of you
7 are still alternate jurors so you continue to be bound
8 by my instructions about your conduct until the jury is
9 discharged. You must continue not to communicate about
10 the case or about any of the people or any subject
11 involved in it with anyone. Again, that includes
12 everyone, family, friends. Do not have any contact with
13 the deliberating jurors. Importantly, continue to keep
14 an open mind. You're not participating in the
15 deliberations. You don't have the benefit of the other
16 jurors' comments. So do not decide how you would vote
17 if you were deliberating. So continue not to form or
18 express an opinion about the issues in this case unless
19 you are substituted for one of the deliberating jurors.

20 At this time I'm going to release you. You
21 can go about your business. Leave your jury badge and
22 leave a telephone number where you can be reached to
23 return promptly if you are needed. And then we will
24 also call you -- if you're not needed, we'll call you
25 and tell you that you're discharged from your duties.
26 So if you would step forward, write the phone number
27 down on a piece of paper, give it to Veronica and leave
28 your jury badge and your notes with her.

1 All right. I'm handing the clerk of the court
2 the instruction packet as finally read to the jury.
3 She'll make a copy. One will go back as the original
4 for the jury one for my reference. I'm doing the same
5 with the jury packet and request for assistance forms
6 and also doing the same, handing her the special verdict
7 form that has been agreed upon.

8 I'll take a stipulation from counsel that the
9 jury may convene have reconvene its deliberations the
10 ordinary course of the Court's business without taking
11 roll in open court and outside the presence of the
12 counsel and parties.

13 MR. RODRIGUEZ: So stipulated, Your Honor.

14 MR. HERR: Yes, Your Honor, we agree.

15 THE COURT: Okay. We do need to make a record
16 of our jury instruction conference. We don't have time
17 to do that this afternoon. So we'll do that tomorrow.

18 I should be finished with my calendar tomorrow
19 about 9:00. So if you'll be here about 9:00, we'll make
20 a record of that.

21 MS. TRUJILLO: Thank you, Your Honor.

22 MR. HERR: Thank you.

23 (Whereupon no further proceedings were heard
24 in this matter on this date.)

25 --o0o--

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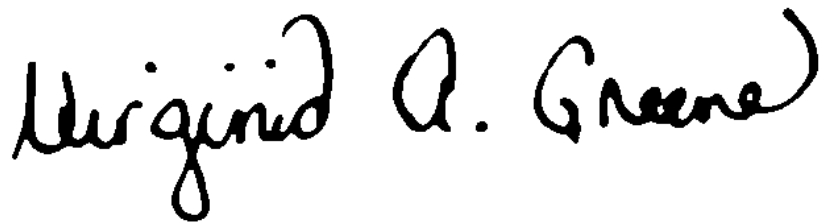
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1 STATE OF CALIFORNIA)
2) SS.
3 COUNTY OF KERN)

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6 I, Virginia A. Greene, CSR No. 12270, Official
7 Certified Shorthand Reporter of the State of California,
8 Kern County Superior Court, do hereby certify that the
9 foregoing transcript in the matter of BOWE CLEVELAND vs.
10 TAFT UNION HIGH SCHOOL DISTRICT, ET AL., Case No.
11 S-1500-CV-279256, July 9, 2019, consisting of pages
12 numbered 1555 through 1680, inclusive, is a complete,
13 true, and correct transcription of the stenographic
14 notes as taken by me in the above-entitled matter.

15 Dated this 13th day of January, 2020.

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21 _____
22 Virginia A. Greene, CSR
23 Certified Shorthand Reporter No. 12270
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