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UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF OHIO  
EASTERN DIVISION

- - -

JAMES GRAY, :  
Plaintiff, :  
- vs. - : Case No. 2:09-cv-868  
VILLAGE OF MIDDLEPORT :  
OHIO, et al., :  
Defendants. :

-----  
TAMMY THOMAS, :  
Plaintiff, :  
- vs. - : Case No. 2:10-cv-139  
VILLAGE OF MIDDLEPORT, :  
OHIO, et al., :  
Defendants. :

- - -

The deposition of **JAMES M. GERLACH**, witness  
herein, taken as on Cross-Examination by the  
Plaintiff, pursuant to the Federal Rules of Civil  
Procedure, notice and agreement of counsel to take  
deposition at the law firm of Trenton J. Cleland,  
116 Mulberry Street, Pomeroy, Ohio 45769 on  
Friday, April 8th, 2010, 9:00 a.m. before Shandy  
Ehde, a court reporter and Notary Public within  
and for the State of Ohio.

1 APPEARANCES:

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Columbus, Ohio 43215

12 ALSO PRESENT: Mark & Lola McCoy, videographers

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It is stipulated by counsel for the  
respective parties that the foregoing deposition  
may be taken at the time and place stated pursuant  
to the Federal Rules of Civil Procedure and notice  
and agreement of counsel to take deposition, that  
proof of the official character and qualification  
of the notary is waived; that the deposition may  
be taken in stenotypy by Shandy Ehde, a Notary  
Public in and for the State of Ohio and  
transcribed by computer out of the presence of the  
witness and submission to the witness for  
examination and signature was required.

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1 JAMES MICHAEL GERLACH

2 Witness herein, being first duly sworn as  
3 hereinafter certified, was examined and deposed as  
4 follows:

5 CROSS EXAMINATION

6 BY MR. GERHARDSTEIN:

7 Q Good morning.

8 A Good morning.

9 Q My name's Al Gerhardstein. I'm one of  
10 the attorneys for the plaintiff in these cases.

11 State your full name, please.

12 A James Michael Gerlach.

13 Q Have you ever been deposed before?

14 A No.

15 Q Well, as I'm sure your attorney has  
16 explained, I will ask questions; you're under  
17 oath, you give answers. If anything I'm asking  
18 doesn't make sense, just ask me to repeat or  
19 rephrase or to do something to make it clear.

20 A Okay.

21 Q If you need to take a break, that's  
22 fine. Anything else that comes up, just raise  
23 your hand and we'll take a recess.

24 A Okay.

25 Q I hear you're a former teacher.

1 A Yes. Recess is okay.

2 Q All right. What's your current job?

3 A I'm mayor of the Village of Middleport.

4 Q When did you become mayor?

5 A Two years ago and four months. Started  
6 2008.

7 Q How did you get to being selected mayor?

8 A I was elected.

9 Q Elected by the council or by the people?

10 A By the people.

11 Q Had you ever run before or was that your  
12 first race?

13 A First time.

14 Q Had you served on council before?

15 A No.

16 Q How many people sit on council?

17 A Six.

18 Q Are you a member of the council as  
19 mayor?

20 A No, not really. Uphold in case of ties.

21 Q So if it's a three-to-three vote, you  
22 vote?

23 A Yes.

24 Q Do you preside over council meetings?

25 A Yes.

1 Q How often does the council meet?

2 A Under normal circumstances, twice a  
3 month.

4 Q Are you paid as mayor?

5 A Yes.

6 Q How much?

7 A Roughly \$7,000 a year.

8 Q How much are council members paid?

9 A I don't know.

10 Q What are your duties as mayor?

11 A Administer. That was kind of a summary.  
12 It's my job to administer the various departments.  
13 To enforce the laws, I suppose.

14 Q Are your duties set out in a charter or  
15 a code?

16 A The duties are laid out in the ORC.  
17 We're not a charter village.

18 Q Is there a Village administrator?

19 A We have what's called a Village  
20 administrator, the person who is over our  
21 water/sewer department, streets.

22 Q Is that comparable to a city manager?

23 A No, there is no city manager.

24 Q Okay. So you're the chief executive  
25 officer of the city?

1 A Yes.

2 Q And you also preside over the  
3 legislative branch of the city?

4 A Yes.

5 Q And you also preside over mayor's court?

6 A Yes.

7 Q Give me a little better picture of  
8 Middleport. How many people live in Middleport?

9 A About 2,600.

10 Q It's a village?

11 A Yes.

12 Q Is it incorporated?

13 A Yes.

14 Q How many employees?

15 A Maybe 20.

16 Q Describe the table of organization with  
17 starting at the top, if you would, please.

18 A As far as my branch of it? Council  
19 obviously makes the ordinances, makes the rules.

20 The mayor, I have departments underneath  
21 me.

22 We have a building inspector, Village  
23 administrator who does the streets, water/sewer,  
24 have a fiscal officer, and the police department.

25 Q So there are four direct reports to you

1 and that would be the police chief, the fiscal  
2 officer, the Village administrator and the  
3 building inspector?

4 A Yes.

5 Q Any other direct reports?

6 A Well, we have a volunteer fire  
7 department.

8 Q And that has a chief?

9 A It has a chief. They make a monthly  
10 report to the mayor and council.

11 Q Where are most of the employees, under  
12 police? Just run them through for me. How many  
13 police, if you know?

14 A Six full time, maybe. Then we have two,  
15 three, four that work part time.

16 Q Okay. And then under the fiscal  
17 department?

18 A Just one employee.

19 Q And then under the Village  
20 administrator, streets, water/sewer?

21 A Let's see. They have six, seven, eight,  
22 not counting the administrator, I think.

23 Q Okay. Do you have a city or Village  
24 water department?

25 A That would include, if you added the

1 water department, the office staff there's maybe  
2 two more in the water department. If you added  
3 dispatch, there would be a few more for the police  
4 department.

5 Q Okay.

6 A Have two custodians.

7 Q For the Village offices?

8 A Yes.

9 Q Who's their boss?

10 A They, I suppose in the end, answer to  
11 me, too.

12 Q Building inspector. How many work under  
13 that?

14 A Just him.

15 Q And is anybody paid with the fire  
16 department?

17 A No.

18 Q Do you have any staff of your own?

19 A No. I mean, technically I suppose all  
20 of these people could be considered --

21 Q Right. But there's no executive  
22 assistant?

23 A No. I don't have no executive  
24 assistant, no secretary.

25 Q Is there any staff connected to the

1 mayor's court?

2 A Have, there's a mayor's court clerk.

3 Q Does that person answer to you?

4 A Yes.

5 Q Is that a full-time job?

6 A No, part time, and right now it's being  
7 filled by the fiscal officer.

8 Q What's the budget?

9 A For the whole Village?

10 Q Uh-huh.

11 A I don't know. I mean, I just -- I  
12 couldn't tell you the total number.

13 Q Is it two to three million, three to  
14 four million?

15 A I would guess -- if you're asking for a  
16 guess, I would say three to four million. Without  
17 looking back, I don't know really.

18 Q And is there a budget passed each year?

19 A Yes. Council approves that budget.

20 Q And do you have some sense of the  
21 sources of income for the Village?

22 A Yes.

23 Q What are those?

24 A Village has income tax. The water  
25 department takes in money of course through their

1 fees. The building inspector takes in various  
2 monies through rental fees, permits, fines that  
3 might come from his department. Police department  
4 has fines that come in. There's income from the  
5 jail.

6 Q Is there any grant money from State or  
7 Federal sources?

8 A Oh, sure, when you can get them.

9 Q Any sense of percentage of your income  
10 that comes from other governmental sources versus  
11 these different categories you just mentioned?

12 A You mean like from grants and such as  
13 that?

14 Q Yes.

15 A No. I mean, right now we, we had  
16 \$3 million that came in through Federal stimulus  
17 package. Right now I would say, I mean, that's  
18 obviously a big chunk.

19 Q With respect to these various items you  
20 just mentioned, income tax, water department, the  
21 building inspector, the police department, jail,  
22 can you give me a ballpark on what percentage of  
23 your overall budget comes from each of those  
24 sources?

25 A No. Just off the top of my head, to say

1 a percentage, I really don't know.

2 Q Do you know what the largest single  
3 source of income is for the Village?

4 A Would be the income tax.

5 Q And I assume that all these questions  
6 I'm asking you are the subject of some kind of  
7 report that I could just read and get the answers  
8 to. So if I wanted to do that, what would the  
9 name of that report be?

10 A Well, you get to talk to the fiscal  
11 officer. I mean, you would have all those, the  
12 budgetary reports and then we have monthly  
13 financial reports.

14 Q So if I'm going to direct a question to  
15 your council, I'm asking for the monthly financial  
16 reports?

17 A Sure.

18 Q If you wanted it, is that what you'd  
19 call it?

20 A Yes.

21 Q Okay. And is there an annual report?

22 A Yes. I mean, there's running totals for  
23 all of those.

24 Q So if I got them from December for each  
25 year, I'd have annual?

1 A Yep. Yes, sir.

2 Q And would those, what you're calling  
3 financial reports, reflect the amount of income  
4 that is generated from each of the sources we were  
5 just discussing?

6 A Yes.

7 Q And would it also disclose where the  
8 money went, how much was paid for everything, all  
9 the expenses?

10 A Yes, you could get all that.

11 Q What is your role as mayor with respect  
12 to the responsibility to make sure that the  
13 Village is operating in a financially responsible  
14 manner?

15 A I suppose to try to make sure that we're  
16 being efficient with the money. We have a weak  
17 mayor system so I really -- The control of that is  
18 actually in council as far as the amounts of money  
19 and how they're spent.

20 Q Because council sets the budget?

21 A Yes.

22 Q How about on a day-to-day basis, are you  
23 the policymaker and the final decision-maker with  
24 respect to employee discipline?

25 A I mean, again, if there was a problem,

1 it comes to me, yes --

2 Q Do you have --

3 A -- eventually.

4 Q -- civil service?

5 A No.

6 Q So if someone is doing well, you  
7 probably don't hear much about it?

8 A No, we're actually small enough, you  
9 know, usually I'll hear about it because you can  
10 give them a pat on the back and say, you know,  
11 good job. So the department heads sometimes will  
12 tell me that, but I mean, it's mostly to police or  
13 water department, street, sewers, because that's  
14 where the bulk of the employees are. Otherwise  
15 I'm just patting the head of the department on the  
16 back.

17 Q And if someone is screwing up, making  
18 mistakes, has to be disciplined you'd sign off on  
19 it?

20 A Eventually. If the department head  
21 comes to me and says, this person is not  
22 functioning properly, then yes, they would bring  
23 that to me eventually.

24 Q Do you initiate discipline yourself  
25 without it coming through a department head?

1           A     I never have.

2           Q     Okay.  So in your experience  
3 discipline's going to come to you through the  
4 chain of command?

5           A     Yes.  I mean, so far in my experience  
6 that's been the case, yes.

7           Q     And ultimately you have the power, one  
8 way or the other, to decide whether somebody's  
9 going to get fired, right?

10          A     Yes.  I mean, there's obviously appeals  
11 beyond me.  You can appeal to council if you  
12 weren't happy with my decision, but yes, it  
13 would -- I'd be the first person to say, yes,  
14 you're fired.

15          Q     And if a person didn't choose to appeal,  
16 your decision would stand?

17          A     Yes.

18          Q     Do you have the power to spend money up  
19 to a certain level?  Do you have the power to  
20 enter into contracts, for example, that kind of  
21 thing?

22          A     I sign off for the Village, but I can't  
23 really go out and make a contract on my own, no.

24          Q     You mentioned that there's a fiscal  
25 officer that keeps track of all the money?

1 A Yes.

2 Q When these monthly financial reports are  
3 prepared, are you the final signatory on those?  
4 Are you presenting them to council?

5 A No.

6 Q So they're coming directly from the  
7 fiscal officer?

8 A They go to the fiscal officer. We have  
9 the -- Council has a finance committee. They go  
10 to the finance committee and then they present  
11 them to the council.

12 Q And do you sit ex officio or in any  
13 other way on the finance committee?

14 A I'm usually at the meetings if they have  
15 a question to ask me.

16 Q If there is a vacancy in any of the  
17 Village offices, do you fill it? How does that  
18 work?

19 A No. Final for hiring goes through the  
20 council. They have to approve.

21 Q Do you have any role in hiring new  
22 employees?

23 A I -- Yes. Kind of the same thing. If  
24 the department comes to me, they have a vacancy,  
25 they've taken applications, they come to me and

1 present who we think might be the right person for  
2 the job. They present their case to me. We put  
3 them on the council, and then we take it to  
4 council.

5 Q So is council voting on a recommendation  
6 by the mayor that this person be hired?

7 A Yes, I would say that they would take it  
8 that way.

9 Q And are you presenting a slate of  
10 candidates for an open position or are you  
11 presenting one?

12 A We would be presenting one; this is the  
13 one that we've found to be the best.

14 Q If a department head vacancy is open,  
15 would it be the same process?

16 A Yes, except obviously the department  
17 head wouldn't be recommending, so then it would be  
18 probably council and the mayor.

19 Q If there's a vacancy on council -- I  
20 take it the council positions are elected?

21 A Yes.

22 Q If there's a vacancy on council before  
23 the next election, how is that filled?

24 A I've not been through that. I believe  
25 that they -- they are -- that council would pick

1 somebody to fill that slot.

2 Q Is this a nonpartisan body or do people  
3 run with party labels?

4 A They can run with party labels, although  
5 they don't have to. We have -- A lot of times  
6 they run as independents just because then you  
7 don't have to pay for the primary.

8 Q So are you affiliated with any political  
9 party?

10 A Me personally?

11 Q Yes.

12 A I'm registered with a political party,  
13 yes.

14 Q And did you run as mayor on behalf of  
15 your political party?

16 A Yes. I mean, I would say there was a  
17 political party associated with my name when I  
18 ran.

19 Q And what was that party?

20 A Republican.

21 Q Would you say that you're the chief  
22 administrative officer of the city or the Village?

23 A Yes.

24 Q Do you provide any regular reports to  
25 council at council meetings?

1           A     The mayor has a report.  That's the  
2     financials of the mayor's office.

3           Q     And what are the usual contents of the  
4     mayor's report?

5           A     That would include the expenses that  
6     have come through the mayor's department and  
7     incomes that have come through the mayor's  
8     department.

9           Q     Is there any income that comes through  
10    the mayor?

11          A     Yes.  For example, the mayor's court  
12    fines would show up there.

13          Q     What's a typical amount of money per  
14    month that you show as income from the mayor court  
15    fines?

16          A     It could really widely vary, but I would  
17    say it could run as high as 5, \$6,000, sometimes  
18    as low as a thousand maybe.  I mean, there's been  
19    times it's even been higher than that.

20          Q     Is there a budget line on the Village  
21    budget for expected income from mayor's court  
22    fines?

23          A     Yes, probably there is.  Yes, that would  
24    be true.

25          Q     Do you know what the budgeted amount for

1 income from that source was for 2009?

2 A No.

3 Q Any idea?

4 A I was trying to think how much we may  
5 have taken in in fines in a year's time. Maybe  
6 roughly \$120,000.

7 Q If I wanted to see that, your reports to  
8 council for a selected period of time, what's the  
9 name of the document I'd be asking for?

10 A For the mayor's court?

11 Q Yes.

12 A Or for the mayor's office in general?

13 Q Yes.

14 A It's just called the mayor's report, I  
15 believe.

16 Q Okay. And those are issued for every  
17 council meeting, so two times a month?

18 A Those are once a month.

19 Q Okay. Is there a separate document  
20 which just reflects the budget of the Village or  
21 is that part of the monthly financial report?

22 A Well, yes, the monthly financial report  
23 is a collection of documents of all the different  
24 departments and totals thereof.

25 Q Would that include then the budget for

1 the Village?

2 A It would include the budget, too.

3 Q And year-to-date progress on the budget?

4 A Yes.

5 Q Okay. Is there -- You said there's no  
6 charter, right?

7 A No charter.

8 Q So you're operating directly off the  
9 Ohio Revised Code?

10 A Yes.

11 Q And are there local ordinances and  
12 administrative rules?

13 A Yes.

14 Q Are those online?

15 A Yes.

16 Q Is there a Middleport website where  
17 they're located?

18 A Yes.

19 Q Got to tell that to Google because it  
20 doesn't come up. I can find stuff in China. I  
21 wasn't able to find a Middleport website.

22 So you're saying there are local  
23 ordinances and there is a Middleport website and  
24 they're on there?

25 A Yes.

1 Q Have you received any training with  
2 respect to your duties as mayor?

3 A Yes.

4 Q Tell me about that.

5 A There's mayor's court training each  
6 year.

7 Q What else?

8 A Just whatever seminar that you might be  
9 able to attend that will help you with guidance  
10 with that.

11 Q Have you attended any other training  
12 other than the mayor's court training?

13 A We have mayor's partnership, which is  
14 mayors in southeastern Ohio that meet, discuss  
15 issues that mayors face. We've had -- I've been  
16 to training sessions for how administration of  
17 water/sewer departments go.

18 Q Have you saved the materials from your  
19 various training seminars?

20 A Yes.

21 Q Have you attended all those during the  
22 two years plus that you've been a mayor?

23 A Yes.

24 Q Would you agree that the police chief,  
25 Bruce Swift, is the final policymaker for the

1 Village with respect to police policies and  
2 practices?

3 A No.

4 Q So if the police department changes its  
5 rules about deadly force, is that something that  
6 you as mayor would sign off on or does the chief  
7 have the power to determine the rules on the use  
8 of deadly force?

9 A I don't know, to be quite honest.

10 Q Have you ever had occasion since you've  
11 been mayor to approve or disapprove the police  
12 policies and practices?

13 A No.

14 Q Have you ever read the policy manual for  
15 the police?

16 A Yes, I did once.

17 Q Do you know who created the policy  
18 manual for the police?

19 A I assume that it was probably -- Boy, I  
20 mean, it's been years ago when it was originally  
21 created. I assume that they sat down probably  
22 with their police officers and council and  
23 approved that.

24 Q And by council there, you mean their  
25 lawyer?

1           A     Yes, probably. Yes. No, I was actually  
2 referring to the Village council, but I'm sure  
3 that their attorney at the time would have had an  
4 input in it.

5           Q     So have you received any training in the  
6 operation of police agencies?

7           A     No.

8           Q     And do you --

9           A     Not beyond, not beyond the mayor's court  
10 training.

11          Q     And do you claim any expertise with  
12 respect to the decision to use deadly force?

13          A     No.

14          Q     But it's your testimony that the  
15 decision as to what the policy is in Middleport on  
16 using deadly force would be yours and not the  
17 police chief's?

18          A     No. I would assume that that would be a  
19 policy determined by, at whatever point, by  
20 council, meaning the city council, the attorney at  
21 the time that represented the city council and the  
22 police. The mayor may very well have sat in on  
23 that. I have no idea.

24          Q     So your understanding is that -- How  
25 about the jail manual, is that something that you

1 would expect the city council to vote on?

2 A I would -- yes, that all that goes  
3 before city council. The jailer reports to city  
4 council on issues like that.

5 Q Have you seen the jail manual?

6 A Yes.

7 Q And have you had a chance to preside at  
8 a meeting where its contents were voted upon?

9 A Certainly I've been in a meeting where  
10 it's been discussed. I don't remember whether it  
11 has actually been voted on or not.

12 Q Do you see the reports from the Bureau  
13 of Adult Detention that evaluate the Middleport  
14 Jail?

15 A Yes. We were just inspected. You know,  
16 I'll see whether it was approved or not. If there  
17 was any details in that report, yes, I would see  
18 those.

19 Q And then if the Bureau of Adult  
20 Detention recommends changes in the jail  
21 operation, is that something that you as mayor  
22 supervise, make sure those changes occur, or is  
23 that done by somebody else?

24 A That would, immediately that would  
25 come -- you know, if they passed that down,

1 probably our jailer would tell us that first, and  
2 then he would bring it to the council.

3 Q You mentioned that if you sign off on a  
4 discharge for an employee, that employee has  
5 rights to appeal to council?

6 A Yes.

7 Q Where are those rights set out?

8 A In the ORC.

9 Q In February of 2009, Tammy Thomas was  
10 arrested at her home. Do you recall that  
11 incident?

12 A Yes.

13 Q And Ms. Thomas is here, right?

14 A Yes.

15 Q You recognize her, right?

16 A Yes.

17 Q Did you know her before then?

18 A Yes.

19 Q How do you know her?

20 A She was married to my next-door  
21 neighbor's son. I had her daughter in school as a  
22 student.

23 Q You were a teacher?

24 A Yes.

25 Q Where were you a teacher?

1           A     Meigs High School, Meigs Local School  
2 District here in Meigs County.

3           Q     What years did you teach?

4           A     1971 through 2004.

5           Q     What did you teach?

6           A     Social Studies and American History,  
7 mostly.

8           Q     At the same high school?

9           A     Yes.

10          Q     And then what did you do in 2004?

11          A     Retired.

12          Q     Have you had any paid employment since  
13 then other than mayor?

14          A     I was a project coordinator for a  
15 development group in the Village for a couple  
16 years right before I became mayor. So that would  
17 be 2004 maybe I started that. No. Bad math.  
18 2006.

19          Q     And you did that for a year?

20          A     Actually it was almost two years. It  
21 was just a little part-time thing.

22          Q     What's a project coordinator?

23          A     They were -- it was a Village  
24 development group. Citizens got together. They  
25 had some projects that they were trying to

1 accomplish, downtown revitalization for one,  
2 beautification kind of a thing, and they needed  
3 somebody to -- who had the time to try to oversee  
4 that.

5 Q How did it turn out?

6 A We didn't get it.

7 Q Didn't get funding?

8 A Yes, we didn't get funding.

9 Q Did you ever serve in any administrative  
10 roles when you were at the high school?

11 A No.

12 Q So what was your first contact with the  
13 issues surrounding Ms. Thomas' arrest?

14 A I believe she actually came to the  
15 office.

16 Q When was that?

17 A I assume it was about that time. It was  
18 close to the time of the arrest.

19 Q Okay. So after she was arrested, she  
20 came to your office?

21 A Yes.

22 Q And was this before or after her case  
23 was adjudicated?

24 A Before.

25 Q All right. So who was present when she

1 came to the office?

2 A Just she and I. She just came to the  
3 door.

4 Q All right. What did she say to you and  
5 what did you say to her?

6 A She had a complaint about the arrest.  
7 She wanted to discuss it, actually the details of  
8 it. I had not -- At that moment I didn't have any  
9 background on it except what she told me.

10 Because I was going to have to hear that  
11 case, I tried to tell her what the procedures were  
12 going to be and what she would have to -- the  
13 choices as far as pleas and such, but because she  
14 was upset about it, if she had a problem with the  
15 ruling in the case, that she should appeal it to  
16 county court.

17 Q Did she describe to you what her problem  
18 was?

19 A Yes.

20 Q What did she say?

21 A She said that she had been out, was  
22 coming back to her house, that she went into her  
23 house, that the police had arrived and they -- As  
24 I remember, there was something about a friend  
25 that was involved that she didn't want, she didn't

1 think it was right that the friend was involved,  
2 but anyhow, that she had been -- She was upset  
3 about it.

4 I'm not sure of anything else right off  
5 the top of my head as far as because I was trying  
6 not to have her tell me too much before I actually  
7 heard the case in court. So -- but it was, the  
8 gist of it was that, as I remember right, that the  
9 officer had, she didn't think it was right that he  
10 had pulled her or come to her house.

11 Q Did she claim he used excessive force?

12 A I don't remember her claiming excessive  
13 force.

14 Q Did she show you any bruises on her arm?

15 A No, I don't remember bruises, either.

16 Q Did she complain about a lost diamond  
17 bracelet?

18 A No.

19 Q You advised her -- Well, before that, is  
20 there anything else she told you that you do  
21 recall?

22 A Not right offhand, that I can think of.

23 Q Your focus was sort of steer it towards  
24 what the procedures are?

25 A Yes.

1 Q So you must have a stump speech about  
2 that. What did you tell her?

3 A Basically that when you come in, you're  
4 going to come in and the charges will be presented  
5 against you and you'll have certain rights and  
6 the, then one of those is obviously you're going  
7 to have to -- you can plead to this if you say  
8 guilty, not guilty, no contest and, but if you  
9 have a complaint, which she did, about it, and if  
10 she was not happy with the ruling, then she should  
11 appeal it to county court.

12 If she had a complaint about the  
13 officer, obviously that would be -- in my mind  
14 that would be something that would be taken to  
15 county court.

16 Q So you told her that she could come in,  
17 the charges would be presented against her, she  
18 could plea. Did you explain anything about  
19 whether a person has to have their case heard in  
20 mayor's court or can they just skip that and go to  
21 county court?

22 A Okay. First part, did I explain, could  
23 you just skip mayor's court?

24 Q Yes.

25 A I couldn't say for sure whether I did or

1 not.

2 Q Okay.

3 A Could you? Yes, you could have. You  
4 can just transfer it. I can transfer it. That  
5 happens.

6 Q And are people advised of that when the  
7 mayor's court proceedings open up?

8 A Yes. Yes. I mean, we have a set thing  
9 that we have that you read.

10 Q So you explain this process to her.  
11 What was your next contact you had with Ms.  
12 Thomas?

13 A Best I remember, she came to court.

14 Q Okay. Did you talk to the chief at all  
15 about her concerns before she came to court?

16 A Yes, probably I would have said  
17 something like, hey, she had come to me and said  
18 she didn't -- I mean, I generally do that probably  
19 with anybody that comes and complains. I'd say to  
20 the chief, she came and complained about being  
21 arrested.

22 Q Okay.

23 A I don't specifically remember any  
24 conversation, no.

25 Q So your practice would be to talk to the

1 chief, but you don't remember talking to him about  
2 this case?

3 A No. I mean, there's lots of cases.

4 Q Okay.

5 A And as a general rule, people don't like  
6 getting tickets. So if that was the case, you  
7 know -- but if somebody comes in and says that, I  
8 might have said something to the chief, yes.

9 Q As we sit here today, do you have any  
10 recollection of discussing the Tammy Thomas arrest  
11 with Chief Swift?

12 A Before court, no.

13 Q After court?

14 A After court, I'm sure we probably had.

15 Q Tell me about that.

16 A As I remember, it was because when she  
17 got to court, she was very upset and the issue, as  
18 I remember it in court, was that she said that the  
19 officer forced his way into her house, so I told  
20 him that.

21 Q You told the chief that?

22 A Yes, that that's what --

23 Q And when did you talk to the chief?

24 A I couldn't tell you when it was. I  
25 would assume it would have been within a few days

1 after. If not, the next day.

2 Q And what was your next contact with this  
3 issue?

4 A I don't know. I mean, in court? You  
5 mean beyond court, after court or --

6 Q No. As far as your contact with Chief  
7 Swift was after court, did you have anything else  
8 to do with this until this case came up?

9 A Until this came up now?

10 Q Right.

11 A No, not that I remember.

12 Q So did the chief ever get back to you  
13 about anything he did to investigate the matter?

14 A No.

15 Q Did you ever talk to Officer Koebel  
16 about the case, about the arrest?

17 A No, I don't remember talking to Koebel  
18 about it.

19 Q Did you ever talk to Officer Holter  
20 about it?

21 A No.

22 Q Did you ever talk to the dispatcher,  
23 Durst?

24 A No.

25 Q All right. So you heard the case in

1 court, and just run that process through for me.

2 What does that mean? What happened?

3 A She came forward. Like I say, she was  
4 upset. As I remember, she was upset about the  
5 fact that he had forced his way in, but in the  
6 process she said the officer's report said that,  
7 as I remember that, that she came, she was asked  
8 to come to the door. She came to the door, was  
9 asked to step outside and retreated back into the  
10 house, and so the officer then arrested her.

11 Q And how did you learn those facts?

12 A From what she told me and then reading  
13 the officer's report.

14 Q So in court you had the charges?

15 A Yes.

16 Q And you also had the officer's report?

17 A Yes.

18 Q How do you get the officer's report?

19 A It's in the file when it's presented at  
20 court.

21 Q Okay. All right. So you had looked at  
22 all that and then what happened as far as the  
23 Court proceeding goes?

24 A I eventually asked her for a plea on  
25 the -- I believe she said not guilty, as I

1 remember.

2 Q Okay. Then what happened?

3 A She wanted to go to county court. I  
4 mean, she pleads not guilty, it goes to county  
5 court.

6 Q Now between the time she pled not guilty  
7 and the time it went to county court, did you make  
8 any findings on the case?

9 A Yes. I believe I found her guilty, is  
10 my memory of it.

11 Q And would you say you handled her case  
12 like any other case that comes before you in  
13 mayor's court?

14 A Yes.

15 Q So you acted consistently with your  
16 normal custom when you adjudicated Tammy Thomas'  
17 tickets, right?

18 A Yes. As far as I know, yes.

19 Q Okay. Take a look at Exhibit 33. I'm  
20 sorry, not 33. Exhibit 28 is a two-page document  
21 that contains three separate citations or tickets.  
22 What do you call these in Middleport?

23 A Tickets.

24 Q Tickets. Okay. This is both the ticket  
25 and the summons telling you when to go to court,

1 right?

2 A Yes.

3 Q And this is a typical way they would be  
4 filled out?

5 A Yes. Just at quick glance, yes.

6 Q Well, take your time. If there's  
7 anything unusual, let me know. And you, as the  
8 adjudicator, what do you get besides these tickets  
9 when you hear a case?

10 A Sometimes that's it.

11 Q You said there's a folder?

12 A Yes.

13 Q All right. It's just a manila folder?

14 A Yes.

15 Q And how is that labeled?

16 A Usually has the person's name on the  
17 tab.

18 Q And then it has the -- Does it just have  
19 the name?

20 A Yes. I don't think there's anything  
21 else there.

22 Q Okay. And in that folder is it just the  
23 current charge or do you have all the tickets that  
24 the person previously received?

25 A There would be the current charge,

1 obviously. There's a plea sheet, disposition  
2 sheet in there.

3 Q And those are blank when you start, I  
4 guess?

5 A Yes.

6 Q Okay.

7 A And the disposition sheet would have the  
8 charge at the top, the ORC numbers and such as  
9 that. There's a schedule there for like fine  
10 payments if you choose to make payments, anything  
11 else, you know, that might be pertaining to that  
12 case.

13 Q So in this case you recalled that there  
14 was a copy of the police incident report; is that  
15 right?

16 A Yes, it seems to me that there was,  
17 maybe.

18 Q Take a look at Exhibit 27.

19 A (Witness complied.)

20 Q And just look at these three pages, and  
21 my question's going to be whether this is the  
22 incident report.

23 A I've only got two here. Oh, are you  
24 counting this (indicating)?

25 Q No. Let me see what you're looking at.

1           Okay. Maybe this isn't part of it. All  
2 right. Look at those two pages, and my question's  
3 going to be whether that's what you mean when you  
4 say the incident report was in the folder.

5           A     Yes.

6           Q     And you recall that being the report  
7 that was there?

8           A     Yes.

9           Q     Was that report shared with Tammy  
10 Thomas?

11          A     I don't remember.

12          Q     Would it normally be your practice to  
13 share the police report with the accused?

14          A     If there was some question I could say,  
15 well, the officer said. Whether it would be  
16 actually handed to her or not, I don't remember.

17          Q     Does the accused get served a copy of  
18 the report from the officer?

19          A     I don't know. As far as I know, no.

20          Q     Do you make it a point to make sure that  
21 the accused gets a copy of the report from the  
22 officer?

23          A     They have -- if they want, they could  
24 have that. That's one of the things they read off  
25 at the start, that they have the right to copies

1 of the reports. It's part of the thing.

2 Q So you've got a litany of things you  
3 read in the beginning of mayor's court, right?

4 A Yes.

5 Q What's that called?

6 A I don't know that it has a name.

7 Q All right.

8 A It's the long speech that you read off  
9 at the start of mayor's court.

10 Q So the mayor's court mayor's speech is  
11 what I'll ask for. Okay?

12 A Yes.

13 Q And we know what we're talking about?

14 A Yes. I can get you it.

15 Q And that's written, written out?

16 A Yes. I just read it.

17 Q And where did that come from?

18 A It came from actually the mayor's court  
19 training. It was a judge -- I can't recall her  
20 name -- who said that this was a good, legal copy  
21 of making sure you covered all the bases.

22 Q All right. And how long have you used  
23 it?

24 A That actual -- I don't know because I  
25 didn't have that when I first started, so it would

1 have been sometime after that first training.

2 Q Did you use it on February 17th, 2009?

3 A I would have used it. If I didn't use  
4 the one I'm reading now, I would have used  
5 something similar to it.

6 Q Do you have a copy of what you read on  
7 February 17th, 2009?

8 A I don't know. I suppose, yes.

9 (Plaintiff's No. 44 was  
10 marked for identification.)

11 Q Okay. I'm going to show you what has  
12 been marked as Exhibit 44. Is this one of the  
13 documents that was in the folder that you were  
14 describing?

15 A Yes.

16 Q And this is what you referred to as the  
17 plea sheet?

18 A Yes.

19 Q And in this document Tammy Thomas has  
20 pled not guilty, right?

21 A Yes.

22 Q At what point in the proceedings do you  
23 have the accused fill this out?

24 A After you've read the charges, usually  
25 they have some discussion that they want, points

1 they want to bring up, and then you ask them to  
2 make a plea.

3 Q Is mayor's court like a cattle call? Do  
4 you have everybody in the room at once that has  
5 tickets that are ripe for that day?

6 A Yes.

7 Q How often do you have these proceedings?

8 A Every two weeks.

9 Q Do you have a set night?

10 A Usually it's Tuesday nights.

11 Q What time?

12 A 7:00 o'clock.

13 Q Where do you hold them?

14 A In the council chambers.

15 Q And are council chambers in the same  
16 building as the jail?

17 A Yes.

18 Q You pass through a hall and then you get  
19 into a room with a big table?

20 A Yes.

21 Q Is that the council room?

22 A Yes.

23 Q Are the proceedings recorded?

24 A Other than the documents, no.

25 Q There's no audiotape?

1 A No.

2 Q Are all the dealings with respect to  
3 each case done in open court?

4 A Yes, in most cases.

5 Q So would there ever be a situation where  
6 you would leave council chambers, go to another  
7 room and have the parties come to that room with  
8 respect to a case?

9 A Yes.

10 Q Tell me about that.

11 A What do you mean? Tell you what?

12 Q What would make you do that? What would  
13 be a situation where that would be done?

14 A If the person had an attorney present,  
15 wanted to discuss the issue. I don't know.  
16 Various nature, you know, of the types of cases,  
17 maybe. I don't know. Like, say, an OVI case  
18 could go -- I might ask them to come back.

19 Q Why is that?

20 A I don't know. Just they're more  
21 complicated, so we ask the people sometimes to  
22 step back to discuss it.

23 Q Is that your call to determine?

24 A Yes. I would say "yes." If there was  
25 some reason that I, you know -- Yes, I could ask

1 that.

2 Q And when you say step back, where are we  
3 going?

4 A Back usually to my office.

5 Q And where is that?

6 A The next room back.

7 Q When you have these proceedings in your  
8 office, who attends?

9 A Mayor's clerk, person accused, the  
10 police officer would go back, attorneys, counsel  
11 if they're present.

12 Q In your practice in mayor's court do  
13 police officers always come to the proceedings  
14 that are held on the tickets that they write?

15 A No.

16 Q How is it determined whether the police  
17 officer will be present or not?

18 A Unless there was some specific request  
19 for the police officer to be there, they wouldn't  
20 be there. We have police officers who's, on court  
21 nights they're assigned to be there to help with  
22 court, but unless it happened to be that  
23 particular officer that the ticket was about, he  
24 would not be there.

25 Q So you might have police officers for

1 court security?

2 A Yes.

3 Q But in terms of the police officer who  
4 wrote the ticket, that officer is not expected to  
5 be present when the ticket's heard?

6 A No.

7 Q Does it ever occur that you would hold a  
8 person guilty who contests their ticket without  
9 having heard any testimony from the police officer  
10 who wrote the ticket?

11 A Sure.

12 Q We have to take a minute to change the  
13 tape, and what we'll do is we'll organize our  
14 documents in the meantime. Okay?

15 A Okay.

16 Q (Short recess.)

17 (Plaintiff's Exhibit No. 33-1 was  
18 marked for identification.)

19 Q In those situations where you would hold  
20 a person guilty without hearing testimony from the  
21 officer who wrote the ticket, would you ever hold  
22 a person guilty in that situation who has  
23 contested the ticket? In other words, they pled  
24 not guilty, the officer doesn't testify, you've  
25 got the ticket in front of you and then you hold

1 the person guilty?

2 A Yes. I could find a person guilty, yes,  
3 based on what I saw.

4 Q And so in those situations it would be  
5 the statements on the ticket versus the testimony  
6 of the citizen?

7 A Yes.

8 Q Okay. And in those situations you have  
9 still been able to find people guilty beyond a  
10 reasonable doubt?

11 A Yes.

12 Q Take a look at 33 and 33-1.

13 A (Witness complied.)

14 Q Would you agree that those documents are  
15 the disposition sheets for Tammy Thomas?

16 A Yes.

17 Q And do those disposition sheets take  
18 care of all the charges that were pending against  
19 her on the tickets you looked at at the beginning  
20 of the deposition?

21 A As best I remember.

22 MR. GERHARDSTEIN: Did I give away my  
23 33-1's? Are there any extras laying around?  
24 Here we go. Thanks.

25 Q So who fills out this disposition

1 worksheet?

2 A Actually writes it up?

3 Q Yes.

4 A Court clerk.

5 Q And whose writing is that that circles  
6 not guilty then the finding of guilty?

7 A Hers.

8 Q In this, Tammy Thomas's case, did you  
9 hear the testimony in the council chamber room or  
10 did you take her to the back?

11 A I don't remember.

12 Q Now she did have a charge of OVI. Does  
13 that refresh your memory as to whether you would  
14 have heard this in the back or not?

15 A No, I don't recall.

16 Q Would it surprise you to learn that you  
17 had talked to her in the back?

18 A No, it wouldn't surprise me.

19 Q Okay. In a case like this where the  
20 citizen challenges the statement of the officer,  
21 is there, do you ever hear the testimony of the  
22 officer?

23 A I suppose it's possible, yes. If the  
24 officer was there, you could hear what the officer  
25 had to say.

1 Q Do you ever delay the proceedings, put  
2 the case on like for another night and then have  
3 the officer appear so that you can receive that  
4 testimony?

5 A I've never had that happen that I  
6 remember.

7 Q So in this case, in Tammy Thomas' case,  
8 would you agree that you found her guilty based on  
9 her testimony and the written report of the  
10 officer?

11 A Yes.

12 Q And would you agree that her testimony  
13 dramatically differed from the written report of  
14 the officer?

15 A I don't know. I'm not sure what you  
16 mean by dramatically so --

17 Q Well, she didn't agree with the charges,  
18 right?

19 A She was, she was upset --

20 Q Okay.

21 A -- with, you know, with that, yes. I  
22 don't know as far as the -- I don't remember  
23 necessarily as far as the testimony that she may  
24 have, if you want to call it that, that she was  
25 giving at the time that she was upset that she was

1 disagreeing that or if she was just angry about  
2 the fact that it had happened but --

3 Q Did she claim that she had not been  
4 drinking?

5 A I don't remember.

6 Q And is there a written record anywhere  
7 of what she said?

8 A No.

9 Q Do you keep notes with respect to the  
10 testimony of the citizen?

11 A No.

12 Q About how many cases are typical for a  
13 court session?

14 A Probably anywhere from four or five, up  
15 to maybe 30, possibly.

16 Q On average in each court session, how  
17 many people do you acquit?

18 A Sometimes you wouldn't acquit any.  
19 Depends how many -- what the situation is. I  
20 don't know. I wouldn't -- I'd say maybe on  
21 average probably averages out to less than one.

22 Q And if I wanted to look at the  
23 dispositions of all the cases that you've heard,  
24 what would be a good way to do that? Is there any  
25 kind of database or record?

1           A     You'd have to go back through the files,  
2 probably, as far as I know. All these have to be  
3 reported to the State Supreme Court, so it's  
4 possible that in that program that they could  
5 print that off.

6           Q     You mean the dispositions of the mayor's  
7 court cases are reported to the State Supreme  
8 Court?

9           A     (Witness nodded.)

10          Q     You have to say yes.

11          A     Oh, I'm sorry. Yes.

12          Q     Okay. Do you know what that's called?  
13 Just State Supreme Court report?

14          A     Yes. It's done by computer.

15          Q     Is that online?

16          A     That's a good -- I don't know if that's  
17 online.

18          Q     How frequently is that prepared?

19          A     It has to be done for all the -- We have  
20 to report all the cases.

21          Q     Okay.

22          A     So it's going -- you know, when they  
23 can, whenever they get them all in the computer.

24          Q     So is that done quarterly, monthly?

25          A     I believe that it's probably done

1 within -- before, usually before the next court.

2 Q Oh, okay.

3 A We don't have that many cases.

4 Q And do you sign off on those reports?

5 A No. It's all done by the mayor's clerk.

6 Q Continuing with the look at Document 33,  
7 there's a statement down there that says, bond  
8 posted, yes, and it says, check or cash, date  
9 posted, 2/14/09, amount \$240. Do you see that?

10 A Yes.

11 (Plaintiff's Exhibit No. 45 was  
12 marked for identification.)

13 Q I'm going to show you what has been  
14 marked as 45. This is a receipt, and the middle  
15 receipt looks like it's made to Tammy Thomas and  
16 your name is on there as mayor. Do you see that?

17 A Oh, yes.

18 Q And I take it that this is a receipt for  
19 the bond that was received; is that right?

20 A It would appear so, yes.

21 Q And can you tell from this document  
22 whether this was paid in cash or check?

23 A I can't, no.

24 Q Where are these receipts maintained?

25 A The mayor's court clerk and the dispatch

1 offices could be writing these.

2 Q And then it's the information from these  
3 receipts that's transferred to your disposition  
4 worksheet, right?

5 A Yes.

6 Q How is the bond set for a person who's  
7 charged and then awaiting adjudication in mayor's  
8 court?

9 A The amount? I don't know. I believe  
10 that they have a chart that's made up that has,  
11 here's this type of charge, this type of charge,  
12 here's the cash amount, and this is what the bond  
13 would be for it.

14 Q Is that a chart that you prepared?

15 A No.

16 Q Is that a chart that's issued by the  
17 Ohio Supreme Court or --

18 A I don't know for sure.

19 Q Do you have the power to alter the bond  
20 for someone?

21 A I don't know for sure.

22 Q If a person doesn't have the money to  
23 pay the bond that's set on the chart, do they have  
24 to go to jail?

25 A Or they could work it off, if that's

1 what -- if I'm understanding what you're asking.

2 Q Well, the bond is set before they're  
3 ever found guilty, right?

4 A Yes.

5 Q What's the purpose of the bond?

6 A If they want to -- if they wanted to  
7 stay out of, you know, jail. It goes towards  
8 their fine on the charge until they appear.

9 Q So it's an appearance bond?

10 A Yes.

11 Q And the bond is set in order to make  
12 sure they appear, right?

13 A Correct.

14 Q So do you have any -- Have you made any  
15 determinations as to what the appropriate amount  
16 of money a person should be charged in order to  
17 insure their appearance?

18 A No, not that I remember.

19 Q The chart that you recall that sets  
20 these bonds, the amount of bond is based on the  
21 charge, right?

22 A (Witness nodded.) Yes.

23 Q It's not based on the ability to pay?

24 A As far as I know. (Witness shook head.)

25 Q So a really poor person who gets charged

1 with a traffic violation could be charged the same  
2 bond as a person who's got lots of means, right?

3 A As far as I know.

4 Q Have you ever had any training about the  
5 rational for bonds and how much money should be  
6 set for bonds?

7 A No.

8 Q Do you have any idea whether you as  
9 mayor have the power to determine that schedule  
10 that officers use when they require bonds of  
11 people?

12 A Say it again. I'm sorry.

13 Q Have you ever determined that you have  
14 any power over setting bonds?

15 A No.

16 Q And have you ever given any instruction  
17 to officers who require the bonds be posted?

18 A Not that I remember.

19 Q And of course it is the officer who  
20 determines the bond, right?

21 A As far as I know.

22 Q So we've seen the plea sheet, which was  
23 44, and then we saw the disposition sheet, which  
24 was 33, and we saw the tickets, which were  
25 exhibits, which were Exhibit 28.

1           Are there any other documents related to  
2 Tammy Thomas' adjudication that we should have if  
3 we wanted to have all the documents related to her  
4 case?

5           A     Not that I can think of.

6                     (Plaintiff's Exhibit No. 46 was  
7                     marked for identification.)

8           Q     I'm going to show you what has been  
9 marked as 46, which appears to be a handwritten  
10 appeal of the conviction of Tammy Thomas. My  
11 question is, is this the type of document that  
12 would be filed with you or not?

13          A     It would go in her file, I'm sure.

14          Q     So this is -- This document, 46 --

15          A     I wouldn't necessarily see it, though,  
16 if that's what you're asking.

17          Q     All right. So they're advised they have  
18 the right to appeal. Do they need to file the  
19 appeal with you or does it matter?

20          A     With me personally? No. They just need  
21 to come in with the mayor's clerk and make -- I  
22 mean, it's just a handwritten thing saying they  
23 want to appeal.

24          Q     All right. So it has to be filed with  
25 the mayor's court?

1 A Yes.

2 Q But --

3 A Not necessarily the mayor.

4 Q Okay. Are there any other documents  
5 that would typically be included in a person's  
6 mayor's court record?

7 A I mean, probably lots of things that  
8 might end up being in there, but as far as the  
9 typical thing, not that I recall.

10 Q Would you agree that since you've been  
11 presiding over mayor's court more than 95 percent  
12 of the people who come before you get convicted?

13 A I don't know.

14 Q Would you agree that since you've been  
15 presiding over mayor's court you have not had an  
16 officer testify on a case where the citizen is  
17 found guilty?

18 A Has there ever been a case where an  
19 officer was there and made a statement when we  
20 were discussing with that citizen? Yes, there  
21 have been officers there at times.

22 Q And was that the officer who wrote the  
23 ticket?

24 A Yes, sometimes that would be the case.  
25 If the officer happened to be on duty, yes.

1 Q Okay. So if the officer happened to be  
2 assigned to security of the court and also  
3 happened to write the ticket, he might volunteer  
4 some information; is that right?

5 A Yes.

6 Q Okay. Tell me the last time that  
7 happened.

8 A I don't recall.

9 Q Would there be a record in the case  
10 files, in the mayor's court case files of cases  
11 where the officer testified?

12 A Other than the written reports, no.

13 Q Well, the written reports are written at  
14 the time of the charge, right?

15 A Yes. Or, yes, at some point shortly  
16 thereafter.

17 Q Right, but they're not written for  
18 court?

19 A No.

20 Q So aside from those, would your mayor's  
21 court case file hold any notes or transcript or  
22 worksheet that shows what evidence was received?

23 A Well, I guess I'm not clear as if you're  
24 saying evidence. We don't -- if you're talking  
25 about an object as evidence, other than the

1 documents, no.

2 Q I'm talking about testimony.

3 A Okay. Testimony.

4 Q Is there any record at all as to what  
5 testimony you heard when you hear a case?

6 A No, just the plea.

7 MR. DORGAN: Al, I'm sorry to interrupt,  
8 but we're using the word testimony. Maybe,  
9 could you describe what you mean by  
10 testimony?

11 Q What do you understand testimony to  
12 mean?

13 A Testimony could be, I suppose is from  
14 the person charged. Testimony -- I'm not really  
15 allowed to swear in witnesses and hear witnesses  
16 so, you know --

17 Q You're not allowed to?

18 A No.

19 Q Why not?

20 A I'm a mayor, I'm not a judge.

21 Q So it's your understanding that you're  
22 not allowed to take sworn statements?

23 A Yes.

24 Q And yet you're adjudicating people as  
25 guilty of violations?

1           A     Yes.  If they, if they have a problem,  
2 then I would assume -- I would advise them to  
3 appeal to county court.

4           Q     Are you -- Have you ever considered  
5 appointing a magistrate to hear your cases?

6           A     It wouldn't be my decision.

7           Q     Has that ever come up as a topic among  
8 counsel?

9           A     I would assume -- I don't know.  Yes, as  
10 far as I know.  Must have.

11          Q     Have you ever participated in any  
12 discussions about the propriety of appointing a  
13 magistrate?

14          A     Me personally?

15          Q     Yes.

16          A     Yes, I've discussed the issue.

17          Q     With whom?

18          A     Mayors.

19          Q     And what do you --

20          A     Some towns have magistrates, some towns  
21 don't.

22          Q     What do you see as the pros and cons of  
23 that option?

24          A     I'm not sure what the pros and cons  
25 might be.  Counsel would have to determine that.

1 Some towns do, you know. If they've got the money  
2 to afford it, I would think would be a major  
3 concern for counsel.

4 Q Would you agree that from the  
5 documentation that we see in Tammy Thomas' case  
6 one would have no idea what facts you considered  
7 in finding her guilty, right?

8 A No. I mean, you have the statements  
9 that are written on the ticket.

10 Q Okay.

11 A And the statement, so that's --

12 Q So you have the statements on the  
13 ticket?

14 A Yes.

15 Q But there's no place in your court file  
16 to report and summarize the statements of the  
17 accused, right?

18 A No.

19 Q And why not?

20 A We have no facilities to record.

21 Q Are you satisfied that you in mayor's  
22 court provide people with a fair hearing?

23 A Yes.

24 Q The officer who wrote the ticket for  
25 Tammy Thomas was Officer Koebel, right?

1 A Yes.

2 Q There came a time when you participated  
3 in discipline that led to the discharge of Officer  
4 Koebel, right?

5 MR. MORDINO: Objection.

6 A Yes.

7 Q So would you agree as a normal matter  
8 you have ultimate disciplinary authority over the  
9 officers who write a ticket that come before you  
10 in mayor's court?

11 A Yes.

12 Q The discipline that led to Officer  
13 Koebel's discharge involved a man named Dwayne  
14 Qualls. Do you recall that?

15 A Yes.

16 Q You have --

17 MR. DORGAN: Al, Officer Koebel was not  
18 discharged.

19 MR. GERHARDSTEIN: Okay.

20 Q The discipline that led to the  
21 separation of Officer Koebel from the department  
22 involved a man named Dwayne Qualls. Do you recall  
23 that?

24 A Yes.

25 Q And did you personally observe the

1 videotape of the use of force between Officer  
2 Koebel and Dwayne Qualls?

3 A Yes.

4 Q And why did you do that?

5 MR. MORDINO: Can we go with the same  
6 running --

7 MR. GERHARDSTEIN: You want an objection  
8 to questions about Qualls?

9 MR. MORDINO: Yes.

10 MR. GERHARDSTEIN: Yes. No problem.

11 MR. MORDINO: Thank you.

12 MR. DORGAN: Thank you.

13 Q Go ahead.

14 A I'm sorry. Now what was the question  
15 again?

16 Q Why you looked at the video.

17 A It was brought to my attention that  
18 there had been use of force by Chief Swift.

19 Q And did Chief Swift talk to you about  
20 this use of force before he suspended Koebel?

21 A Yes. I'm sure it was before.

22 Q And did you participate then in the  
23 decision to discipline Koebel?

24 A Yes.

25 Q Take a look at Exhibit 11.

1 A (Witness complied.)

2 Q Do you recognize that?

3 A Yes.

4 Q Also take a look at Exhibit 12.

5 A (Witness complied.)

6 Q Do you recognize that?

7 A Yes.

8 Q So Exhibit 11 is the notice to Koebel  
9 that he is suspended, right?

10 A Yes.

11 Q And did you receive a copy of that  
12 notice at the time you got 12?

13 A Yes. I would assume I did, yes.

14 Q And did you see Exhibit 11 at the time  
15 it was issued to Officer Koebel?

16 A At some point. I don't know if I saw it  
17 right when it was presented, but --

18 Q Did you approve of the wording of the  
19 allegations against Koebel that are used in  
20 Exhibit 11?

21 A I don't recall making any suggestions to  
22 a correction. So, no, I guess, no, I did not make  
23 any ruling on it as far as wording.

24 Q Do you agree with the wording of the  
25 statements in Exhibit 11?

1 A Yes.

2 Q And since Officer Koebel was suspended  
3 on June 12th, 2009, you haven't learned any facts  
4 that make you disagree with the wording of the  
5 statements in Exhibit 11, right?

6 A No.

7 Q One of the statements in this notice of  
8 suspension is the last sentence of the second  
9 paragraph, which says, "Your use of the taser was  
10 unjustified and your written report of the  
11 incident includes false statements about the  
12 incident." Did I read that correctly?

13 A Yes.

14 Q Take a look at Exhibit 10.

15 A (Witness complied.)

16 Q Would you agree that that is, Exhibit 10  
17 is the written report from Koebel about the tasing  
18 incident?

19 A Yes.

20 Q And it's statements that were in Exhibit  
21 10 that Bruce Swift is referring to when he says  
22 your written report of the incident includes false  
23 statements about the incident, correct?

24 A Yes.

25 Q And you agree that that incident report

1 labeled Exhibit 10 includes false statements,  
2 right?

3 A Yes. That was my determination.

4 Q And that was one of the reasons that  
5 Officer Koebel was suspended?

6 A Yes.

7 Q So he was determined not to be truthful  
8 with respect to the statements he made in his  
9 report about the tasing, right?

10 A Yes. Looking at the video of that and  
11 his statement, it did not seem to bear out.

12 Q And Officer Koebel was given the  
13 opportunity to have a hearing, right?

14 A Yes.

15 Q Was he notified that he was going to be  
16 discharged?

17 A If he was -- Yes, he would have -- When  
18 he came before me, he would have been told then  
19 what decision was made.

20 Q Well, do you recall following this  
21 notice of suspension advising him that he was  
22 subject to discharge?

23 A Oh, he certainly would have been --  
24 That's certainly one of the options, yes.

25 Q And he eventually resigned, right?

1 A Yes.

2 Q Did he indicate to you why he resigned?

3 A As I remember, he didn't like the idea  
4 that he was being questioned so much about things  
5 on this.

6 Q "This" being the Qualls --

7 A The Qualls case.

8 Q Anything else?

9 A Not that I know of.

10 Q Okay. Take a look at Exhibit 13.

11 A (Witness complied.)

12 Q Is that your signature on 13?

13 A Yes, it is.

14 Q Did you prepare this document?

15 A Yes.

16 Q Why did you prepare this document?

17 A Coming to a decision, some kind of  
18 resolution on his disagreement with him.

19 Q Did he say anything to you beyond the  
20 fact that he didn't like being questioned? Did he  
21 tell you his side of the facts with respect to  
22 Qualls?

23 A I'm sure he did in the process of that,  
24 that he felt like that it was what happened.

25 Q Well, what did he say?

1           A     That he felt threatened, that Qualls was  
2 about to charge him, as I remember.

3           Q     And you did not accept that as truthful?

4           A     Based on what I saw on the film, it  
5 didn't appear that that happened.

6           Q     Okay. Exhibit 14, is that your  
7 signature on 14?

8           A     Yes.

9           Q     And you're accepting his resignation; is  
10 that right?

11          A     Yes.

12          Q     Did there come a time when you learned  
13 that Officer Koebel had used his firearm and shot  
14 at Mr. Gray?

15          A     Yes.

16          Q     That was on April 15th, 2009.

17          A     Okay.

18          Q     What was your first involvement with  
19 that event?

20          A     I was informed by one of the officers.  
21 It seems, if I remember right, Ben Davidson called  
22 me after the incident.

23          Q     And was that -- what time of day was  
24 that?

25          A     It was early morning.

1 Q How soon after the shooting was that?

2 A I don't recall. When I got up to the  
3 police station, Officer Koebel was back at the  
4 police station at that point.

5 Q Okay. So Ben Davidson called you. What  
6 did he say to you and what did you say to him?

7 A That an officer had to use his weapon.

8 Q What else did he say?

9 A Asked if I could come up to the police  
10 station, as I remember right.

11 Q Did he tell you anything about the  
12 details of the shooting?

13 A No, not really.

14 Q Did he tell you if the subject was alive  
15 or dead?

16 A No.

17 Q Did he tell you if the officer was  
18 harmed?

19 A Not on the initial phone call.

20 Q He just told you to come on up to the  
21 station?

22 A Right. So I went up to the station.  
23 That's when I started learning some of those  
24 details.

25 Q So you went to the station, and who was

1 present?

2 A The dispatcher was there. Bruce Swift  
3 was already there. Officer Koebel was there.

4 Q Anybody else?

5 A I don't recall if there was anybody else  
6 there or not.

7 Q With whom did you speak when you got  
8 there?

9 A Officer Swift, Chief Swift.

10 Q And what did the chief say to you and  
11 what did you say to him?

12 A I asked what had happened. He said that  
13 there had been a chase, that Officer Koebel had to  
14 use his weapon and there was an investigation. I  
15 asked him about, as I remember, about the  
16 investigation and how that, you know, what all  
17 that were like, and that was pretty much it.

18 Q Did he tell you about with respect to  
19 any details as to why the officer used his weapon?

20 A No.

21 Q Did you know where the chase ended?

22 A I'm not sure. I knew that -- Yes, maybe  
23 he might have said that it was someplace on out on  
24 Union Avenue.

25 Q Did you speak with Officer Koebel?

1 A Yes.

2 Q Where were you and where was he when you  
3 spoke with him?

4 A He was in the dispatch room.

5 Q Was anyone else present when you spoke  
6 to him?

7 A Chief Swift was there. Dispatcher was  
8 there.

9 Q And who was the dispatcher?

10 A Mike Klein, I believe.

11 Q And what did you say to Koebel and what  
12 did he say to you?

13 A I asked him if he was all right and told  
14 him to try to relax as best he could. That was  
15 about it, I think.

16 Q What was his response?

17 A I'm doing okay, something to that  
18 effect.

19 Q Did he say anything to you about the  
20 shooting of Mr. Gray?

21 A I don't remember him saying -- I don't  
22 remember specifically asking too much.

23 Q Did you ask him anything about the  
24 shooting?

25 A I don't remember asking anything about

1 the shooting.

2 Q Did you make any notes of any of the  
3 conversations you had regarding the Gray shooting?

4 A No.

5 Q You mentioned that --

6 A You mean -- No. The answer would be no.

7 Q You mentioned that Chief Swift told you  
8 about the investigation. What did he say about  
9 that?

10 A That the -- as I recall, the sheriff's  
11 department would be involved in the investigation,  
12 and BCI. I think BCI had already been called. I  
13 don't know if they were on the scene yet or not.

14 Q Whose decision was it to involve the  
15 sheriff's department and BCI?

16 A Assume that -- I got the impression from  
17 Chief Swift when I asked about that, that it was  
18 the sheriff's -- that was protocol, that the  
19 sheriff's department would handle that.

20 Q What was the purpose of the sheriff's  
21 department investigation?

22 A Assumed to find out whether it was a  
23 good shoot, I guess, if that's the right term,  
24 good use of the weapon.

25 Q And in your view, what standard should

1 be used to determine if the use of force was  
2 appropriate?

3 A My view?

4 Q Yes.

5 A I don't know what those judgments would  
6 be as far as that. That's why they have these  
7 investigations.

8 Q Did you ever see the results of the  
9 investigation?

10 A No.

11 Q Did you ever read any of the BCI  
12 reports?

13 A No, they were -- That didn't come  
14 through me. Those were submitted to the attorneys  
15 involved.

16 Q What attorneys?

17 A I would assume it went through the  
18 county prosecutor.

19 Q Well, what was the role of the county  
20 prosecutor in this?

21 A I would have no idea. I mean, just that  
22 that -- those reports have to go someplace.

23 Q Well, you looked at the videotape of  
24 Koebel tasing Qualls?

25 A Yes.

1 Q Why?

2 A Because Bruce Swift brought it to me and  
3 asked me to look at it because he felt like it was  
4 something to -- that I needed to see.

5 Q And because you were the ultimate  
6 decisionmaker if Mr. Koebel were to be fired for  
7 tasing inappropriately, right?

8 A Yes.

9 Q So you're right in the line of  
10 decisionmaking regarding that appropriate use of  
11 force?

12 A Yes.

13 Q So when he discharged his weapon several  
14 months before --

15 A Now are you back to the Gray?

16 Q Yes.

17 A Okay.

18 Q Was there not also some duty that you  
19 would see for you to be involved in determining  
20 whether shooting the gun was appropriate just like  
21 tasing, the tasing was appropriate?

22 A Well, I suppose the difference being the  
23 difference between the pistol and how much lethal  
24 force is involved, but in that particular case  
25 protocol apparently didn't, but otherwise it was

1 going to be decided by taking it to a Grand Jury,  
2 whether there was a problem in the actual shooting  
3 in the Gray case.

4 Q In your view if a Grand Jury determined  
5 that it would not recommend criminal charges  
6 against Koebel, is that enough to satisfy you that  
7 Koebel should also not be disciplined under the  
8 Middleport discipline policies?

9 A Yes.

10 Q Okay. We're going to take a short  
11 break. I'll have a little cleanup. You may want  
12 to call the next witness.

13 (Short recess.)

14 Q We have a few more questions related to  
15 mayor's court. Go back to Exhibit 33, if you  
16 would, please.

17 A (Witness complied.)

18 Q Is this disposition worksheet the only  
19 form you used to record what happens to the  
20 tickets that are brought before you?

21 A Yes. As far as the disposition, yes.  
22 As far as I know, yes.

23 Q So if a citizen comes in to mayor's  
24 court and says, I don't want you to hear this  
25 case, I want to take it to county court, what do

1 you write down on your disposition sheet?

2 A Transfer.

3 Q And where do you do that?

4 A They would probably write it across  
5 right about where it says, wants to appeal to  
6 county court.

7 Q Okay. So it would say transfer? If a  
8 citizen is found guilty like Tammy Thomas was and  
9 then appeals, do they have to pay an appeal fee?

10 A We have an appeal fee now. It's fairly  
11 new. I don't know if it was in at that time or  
12 not. Twenty-dollar appeal fee.

13 Q And is that a fee collected by  
14 Middleport?

15 A Yes.

16 Q So that would be paid at the time of the  
17 appeal; is that right?

18 A Yes.

19 Q Take a look at 45.

20 A (Witness complies.)

21 Q Tammy Thomas' receipt shows a \$20 number  
22 off to the right. Do you see that?

23 A Yes.

24 Q Is that a record of her paying an appeal  
25 fee?

1           A     I have no idea. I would hope not, that  
2 it would be something other than that. She would  
3 have to have a separate receipt for that.

4           Q     Do you know whether in February of 2009  
5 Middleport was charging appeal fees?

6           A     No.

7           Q     Is it your understanding that the record  
8 of an appeal fee now would be a separate receipt  
9 like the one we're looking at in 45?

10          A     Yes.

11          Q     Now I just want to understand a little  
12 bit more about the money going back to 33. I see  
13 on the first page of 33 it says costs, 90. What  
14 does that mean?

15          A     Court costs.

16          Q     And how much are court costs? Is it 90  
17 for each case?

18          A     No, just 90 for whatever tickets one  
19 time. So for on those three charges it's \$90.

20          Q     If she had seven charges, would it still  
21 be \$90?

22          A     All at the same time, yes.

23          Q     And if it's one charge, it would still  
24 be \$90?

25          A     Yes.

1 Q Does a person pay court costs if the  
2 case is transferred?

3 A If a person -- We could possibly ask for  
4 setup -- In case the person chooses not to appeal,  
5 we could set up what those amounts would be, but  
6 if they transfer it, it just goes.

7 Q So they don't pay any court costs?

8 A No.

9 Q Does a person pay any costs like a fee  
10 to transfer it?

11 A Now, like I say, there's a \$20 fee for  
12 the transfer. I don't recall exactly when that  
13 fee started.

14 Q So the same cost whether they're  
15 appealing or transferring, you still got to pay  
16 Middleport \$20?

17 A That's a good question. I don't know if  
18 in the case of a transfer, if that's come up. I  
19 don't know for sure.

20 Q Are you the one who determines the  
21 costs?

22 A Like the court costs?

23 Q Yes.

24 A Yes, I think the mayor can set court  
25 costs. It's somewhat under guidelines because the

1 State requires certain amounts of that money is  
2 designated to the State.

3 Q So there's a schedule as to what the  
4 court costs ought to be?

5 A There's a schedule of what the State  
6 wants for indigent situations, different fees, so  
7 that a certain amount of the court costs goes to  
8 the State. So they have their amounts, yes.

9 Q These fines, are they set? Who sets the  
10 fines?

11 A The upper and lower limits are set by  
12 ORC.

13 Q Even when the charges are brought under  
14 a Middleport ordinance?

15 A Yes. Most of them, as far as -- yes --  
16 minor misdemeanors or whatever go from A to B, so  
17 there's an upper and lower limit.

18 Q So you just look to the State law for --  
19 like if it's a misdemeanor 1, you look at the  
20 State law misdemeanor 1?

21 A Yes. Say for example, yes.

22 Q You don't have the power to incarcerate  
23 anybody, right?

24 A To put anybody in jail?

25 Q Right.

1 A At all?

2 Q Right.

3 A Yes, I could assign somebody to jail.

4 Q And what situations can you do that?

5 A Number of things. I mean, I could put  
6 them in jail if they were misbehaved in court,  
7 say, for example.

8 Q All right. What about as a punishment  
9 for their ticket?

10 A Yes.

11 Q So all the same --

12 A If --

13 Q -- same things that I see in the State  
14 criminal code, you can also impose as a penalty?

15 A I don't know what all you see in the  
16 State criminal code so, but --

17 Q Well, you were saying -- You said you  
18 looked at the State criminal code for the fine  
19 amounts. Do you also look at the State criminal  
20 code for the jail time?

21 A Yes. There's upper and lower limits on  
22 what I could possibly charge, yes.

23 Q And have you adjudicated cases where  
24 you -- Oh, I see it's right here that you can give  
25 jail time (indicating). So sometimes you do that?

1 A Yes.

2 Q What's the longest you've incarcerated  
3 anybody for?

4 A I don't know. Less than 12 days.

5 Q Do you have discretion as to how much to  
6 impose as a fine?

7 A Yes, within those ORC Guidelines.

8 Q And I notice in this case Tammy Thomas  
9 had posted a bond of \$240. What happens to that  
10 bond if they are acquitted?

11 A Get it back.

12 Q Do you get all of it back?

13 A Yes, as far as I know.

14 Q And do you have to issue a specific  
15 order that says that?

16 A If somebody's acquitted? No, I assume  
17 it would automatically happen.

18 Q And if I wanted to see how many people  
19 were acquitted, that should be part of the report  
20 to the State Supreme Court, right?

21 A Yes.

22 Q In Tammy Thomas' case, did she give you  
23 oral testimony when you heard the case on  
24 February 17th, 2009? Did she tell you her side of  
25 the story?

1           A     Yes.  She was -- I mean, yes, she made  
2 statements at the time.

3           Q     Did you give her full and fair  
4 opportunity to tell her facts?

5           A     Yes.

6           Q     In Tammy Thomas' case did she ask to  
7 present witnesses?

8           A     I don't recall that she did.  If  
9 she did, I can't hear witnesses.  I would have  
10 to -- She would have to take it to county court.  
11 That would be part of the appeal, which is what  
12 she did.

13          Q     Well, if somebody says, I have an  
14 eyewitness who will tell you that the officer's  
15 story is totally wrong, then what do you do with  
16 that situation?

17          A     Advise them to take it to county court.

18          Q     Okay.  So since you never had a chance  
19 to hear from this eyewitness, would you just  
20 transfer it to county court?

21          A     It would depend on the situation,  
22 whether I -- It would end up being a transfer and  
23 appeal.

24          Q     Well, how could you hold anybody guilty  
25 if they say they have an eyewitness and you say,

1 I'd like to hear him but I can't, I'm not allowed  
2 to? I mean, how could you hold anybody guilty in  
3 that set of facts?

4 A I just could. I could say that, you  
5 know, and say, well, based on what I'm seeing  
6 here, I find you guilty.

7 Q And have you done that in the past?

8 A Found people guilty? Yes.

9 Q Even though they say they have a  
10 witness?

11 A I suppose. I don't recall.

12 Q Is there anyplace in your record of a  
13 hearing where you record that they said they had a  
14 witness but you told them you couldn't hear from  
15 that witness?

16 A No.

17 Q And your policy, with respect to not  
18 hearing witnesses, is consistent with how you were  
19 trained to run mayor's court?

20 A Yes.

21 Q Okay. All right. You're the -- You  
22 heard her case. I don't know whether you would  
23 have seen this or not, but I want to show it to  
24 you.

25 (Plaintiff's Exhibit No. 47 was

1                   marked for identification.)

2           Q       What I'm showing you is from county  
3 court and it is a judgment entry dismissing Tammy  
4 Thomas' case. Did you have an opportunity to see  
5 this at any point?

6           A       No.

7           Q       Would you in the normal course of your  
8 work see dispositions like this on documents that  
9 have gone to county court?

10          A       No.

11          Q       All right. Do you have any question as  
12 to the authenticity of that document?

13          A       No.

14          Q       Now because you're the chief  
15 administrative officer, you're also ultimately the  
16 keeper of the records in Middleport, right?

17          A       I suppose.

18          Q       So your counsel has produced a few  
19 records that we have talked about in other  
20 depositions, and I simply want to put them into  
21 our deposition record here. One is the phone log  
22 from June 10th.

23                   (Plaintiff's Exhibit No. 48 was  
24                   marked for identification.)

25          Q       That's June 10. And this radio log,

1 you've seen these Middleport radio logs before,  
2 haven't you, Mayor?

3 A Yes.

4 Q And you have used those in the normal  
5 course of your work as mayor, right?

6 A Yes, from time to time I see them.

7 (Plaintiff's Exhibit No. 49 was  
8 marked for identification.)

9 Q All right. I figured it out.

10 MR. GERHARDSTEIN: Those are the second  
11 two pages of that one, I think.

12 Q And next, 49, is the April 23rd phone  
13 log, and I haven't seen that name before, Randall  
14 Carpenter. Who is that?

15 A Randall Carpenter was one of our  
16 dispatchers. He's retired.

17 Q Get fired?

18 A No, he retired.

19 Q And when did he leave employment?

20 A I don't remember exactly. It's not been  
21 too long.

22 Q How long did he work there?

23 A He was working there when I became  
24 mayor.

25 (Plaintiff's Exhibit No. 50 was

1                   marked for identification.)

2           Q       I'm showing you Exhibit 50, and that is  
3 the radio log from June 9th, right?

4           A       Yes.

5           Q       And then have you ever had occasion to  
6 look at daily activity reports from officers?

7           A       Not that I recall.

8           Q       Are you aware that sometimes officers  
9 record the work they do as they move from task to  
10 task patrolling the Village?

11          A       I'm sure. I mean, it's possible they  
12 keep logs.

13                   (Plaintiff's Exhibit No. 51 was  
14                   marked for identification.)

15          Q       I'm showing you what has been marked as  
16 51, and would you agree that's the daily activity  
17 report for Davidson for April 14th, 2009?

18          A       Yes, it appears.

19                   (Plaintiff's Exhibit No. 52 was  
20                   marked for identification.)

21          Q       And I'm showing you the daily activity  
22 report for Holter, and that's his daily activity  
23 report for February 14th, 2009, correct?

24          A       Yes.

25          Q       Okay. I don't have any more questions.

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MR. DORGAN: We would like to read,  
please.

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JAMES M. GERLACH

(Deposition concluded.)

1 C-E-R-T-I-F-I-C-A-T-E

2 STATE OF OHIO :  
3 COUNTY OF CLERMONT : SS

4 I, Shandy Ehde, court reporter and Notary  
5 Public in and for the State of Ohio, do certify  
6 before the giving of his deposition, JAMES M.  
7 GERLACH was by me first duly sworn to depose the  
8 truth, the whole truth, nothing but the truth,  
9 that the foregoing deposition was given at said  
10 time and place by notice and agreement of counsel,  
11 that said deposition was taken in stenotypy and  
12 transcribed by computer under supervision, and  
13 submission to the witness for signature was  
14 expressly required.

15 I certify that I am neither a relative of, nor  
16 attorney for any of the parties to this cause, nor  
17 relative or employee of any of their counsel, and  
18 have no interest whatever in the result of this  
19 action.

20 IN WITNESS WHEREOF, I have set my hand and  
21 seal at Cincinnati, Ohio this 26th day of April,  
22 2010.

23  
24 My Commission Expires: Shandy Ehde, RPR  
25 August 26, 2012 Notary Public - State of Ohio