

STATE OF OHIO, )  
 ) SS:  
 COUNTY OF LORAIN. )  
 IN THE COURT OF COMMON PLEAS  
 GIBSON BROS., INC., ET AL., )  
 PLAINTIFFS, )  
 VS. ) NO. 17CV193761  
 OBERLIN COLLEGE, ET AL., )  
 DEFENDANTS. )  
 \* \* \*  
 VOLUME II  
 A COMPLETE TRANSCRIPT OF PROCEEDINGS HAD IN THE  
 ABOVE-ENTITLED MATTER ON THURSDAY, MAY 9, 2019, BEFORE  
 THE HONORABLE JOHN R. MIRALDI, PRESIDING JUDGE OF SAID  
 Court.  
 \* \* \*

1 Proceedings - Thursday, May 9, 2019  
 2 \*\*\*  
 3 (A sidebar discussion was had as follows.)  
 4 \*\*\*  
 5 THE COURT: We're on the record. Attorney  
 6 Rarric.  
 7 MR. RARRIC: Sure. It's come to our attention  
 8 that Juror Number 28 and Juror Number 37 appear to have  
 9 falsified or not answered truthfully the juror  
 10 questionnaires that we submitted to them. For instance,  
 11 the question regarding whether they have prior  
 12 convictions, it appears to be answered  
 13 untruthfully. Number 28 appears to have convictions  
 14 for --  
 15 MR. HOLMAN: State their name.  
 16 MR. RARRIC: Johnene Wressel, W-R-E-S-S-E-L.  
 17 MR. PANZA: She's presently Juror Number 5.  
 18 THE COURT: Well, she's in seat number five, but  
 19 her jury number is 28.  
 20 MR. HOLMAN: Right.  
 21 MR. RARRIC: She has prior convictions of  
 22 identity fraud, disorderly conduct, disturbing the  
 23 peace. Also, Juror Number 37, Julius McGhee,  
 24 M-C-G-H-E-E, he answered the question "no" to whether he  
 25 had any prior convictions and "no" to whether he was a

1 APPEARANCES:  
 2 Appearing on behalf of the Plaintiffs:  
 3 Krugliak, Wilkins, Griffiths & Dougherty Co., LPA, by:  
 4 Owen J. Rarric, Esq.  
 5 Terry A. Moore, esq.  
 6 Matthew W. Onest, Esq.  
 7 Tzangas, Plakas, Mannos & Raies, by:  
 8 Lee E. Plakas, Esq.  
 9 Brandon W. McHugh, Esq.  
 10 Jeananne A. Ayoub, Esq.  
 11 James N. Taylor Co., LPA, by:  
 12 James N. Taylor, Esq.  
 13 Appearing on behalf of the Defendants:  
 14 Taft, Stettinus & Hollister, LLP, by:  
 15 Ronald D. Holman II, Esq.  
 16 Julie A. Crocker, Esq.  
 17 William A. Doyle, Esq.  
 18 Josh M. Mandel, Esq.  
 19 Wickens, Herzer, Panza, by:  
 20 Richard D. Panza, Esq.  
 21 Matthew W. Nakon, Esq.  
 22 Rachele Zidar, Esq.  
 23 ALSO PRESENT: Donica Varner, Esq.  
 24  
 25

1 prior party in a lawsuit. Those answers both appear to  
 2 be false. He has convictions for carrying a concealed  
 3 weapon, reckless operation, failure to stop, underage  
 4 consumption, and he also appears to be a party in a  
 5 lawsuit that went through a jury trial. He's not  
 6 identified on the jury questionnaire.  
 7 THE COURT: Does the questionnaire ask about  
 8 prior felony convictions, or any criminal conviction?  
 9 MR. RARRIC: Anything other than a minor traffic  
 10 violation.  
 11 THE COURT: All right. Any objection to the  
 12 Court removing Juror Number 28 and Juror Number 37?  
 13 MR. HOLMAN: The defense has no objection.  
 14 THE COURT: All right. Then that will be  
 15 done.  
 16 \*\*\*  
 17 (The sidebar discussion ended.)  
 18 \*\*\*  
 19 (A recess was had.)  
 20 \*\*\*  
 21 THE COURT: We're here this morning before jury  
 22 selection. It's been brought to the Court's attention  
 23 that Juror Number 9 has disclosed some mental health  
 24 issues to the Court. In addition, during questioning by  
 25 plaintiffs' counsel, she was -- she indicated the same

1 in the context of having her family go through a similar  
 2 injury action without recovery and admitted that she  
 3 would struggle mightily to be fair in this case. Based  
 4 on that the Court would ask -- the Court, on its own, is  
 5 going to excuse Juror Number 9 for cause.  
 6 Any objection from the plaintiffs?  
 7 MR. PLAKAS: No, your Honor.  
 8 MR. PANZA: No, your Honor.  
 9 THE COURT: So that's Number 9, which would you  
 10 bring Juror Number 38 to seat nine.  
 11 THE BAILIFF: I have 35, Judge.  
 12 THE COURT: Yes, you're right. Thank you.  
 13 Number 9 is now 35. That's Stephanie. And then.  
 14 MR. PANZA: Stephanie Dew.  
 15 THE COURT: 30 -- we're going to take care of  
 16 Juror Number 5 right now, and then we will move 38 into  
 17 that seat. So bring in Juror Number 28.  
 18 THE BAILIFF: Johnene.  
 19 THE COURT: No, she was in seat number five.  
 20 Her tag number is --  
 21 THE BAILIFF: Her tag is 28.  
 22 THE COURT: Her name --  
 23 MR. PLAKAS: Her name is Johnene Wressel.  
 24 \*\*\*  
 25 (A sidebar discussion was had as follows.)

1 says, "Other than a minor traffic, have you been  
 2 convicted of any criminal offense?" So it's not felony.  
 3 PROSPECTIVE JUROR: But I don't know what that  
 4 was. Like a foreclosure?  
 5 THE COURT: Identity fraud.  
 6 PROSPECTIVE JUROR: Oh, the utility bill in my  
 7 son's name. Yeah, there was. Electric bill in my son's  
 8 name. Yeah, I forgot about that.  
 9 THE COURT: It's okay, but I'm going to have you  
 10 excuse you for cause.  
 11 PROSPECTIVE JUROR: Okay. I'm sorry. I forgot  
 12 all about it.  
 13 THE COURT: It's all right. So you'll just  
 14 go -- don't take your seat, just go back.  
 15 PROSPECTIVE JUROR: I sit back here?  
 16 THE COURT: Go ahead and grab your number and go  
 17 back there.  
 18 PROSPECTIVE JUROR: Okay, so back here?  
 19 THE COURT: When you come in with the regular  
 20 jury, okay?  
 21 PROSPECTIVE JUROR: Okay.  
 22 THE BAILIFF: So I'm taking her back into  
 23 place?  
 24 THE COURT: Right. So she's going to grab her  
 25 number.

1 \*\*\*  
 2 THE COURT: Yes. So is your name --  
 3 PROSPECTIVE JUROR: Johnene.  
 4 THE COURT: Johnene Wressel. And you are Juror  
 5 Number 28.  
 6 PROSPECTIVE JUROR: Yes.  
 7 THE COURT: It's been brought to the Court's  
 8 attention you have had some criminal convictions that  
 9 you did not disclose.  
 10 PROSPECTIVE JUROR: What did I -- it said a  
 11 felony. I don't have any felonies.  
 12 THE COURT: No. It said any than other minor  
 13 traffic -- bring up the questionnaire, please.  
 14 PROSPECTIVE JUROR: What is it?  
 15 THE COURT: It's okay. You're not in any  
 16 trouble.  
 17 PROSPECTIVE JUROR: Okay. I don't know what it  
 18 is though.  
 19 THE COURT: Yeah, but they do.  
 20 PROSPECTIVE JUROR: Okay.  
 21 THE COURT: I need any documentation you have as  
 22 well.  
 23 MR. PANZA: Your Honor, could I approach -- I'm  
 24 sorry, I apologize.  
 25 THE COURT: So, counsel, what were the -- so it

1 \*\*\*  
 2 (The sidebar discussion ended.)  
 3 \*\*\*  
 4 THE COURT: So we're on the same page, Juror  
 5 Number 9 is Number 35, and we've replaced Juror Number  
 6 28 with Juror Number 38.  
 7 MR. PANZA: Shouldn't it be the other way  
 8 around?  
 9 THE BAILIFF: Juror Number 37 was --  
 10 MR. PANZA: Didn't you disqualify five before  
 11 you disqualified --  
 12 THE COURT: I disqualified nine first.  
 13 MR. PANZA: Okay. Yeah, if you say so.  
 14 THE COURT: I don't have room to make any more  
 15 marks. So if you would bring in Juror Number 37.  
 16 THE BAILIFF: Did you want me to take her out  
 17 the --  
 18 THE COURT: Yeah, that's fine. Juror Number 37,  
 19 Jamie.  
 20 THE BAILIFF: Okay.  
 21 \*\*\*  
 22 (A sidebar discussion was had as follows.)  
 23 \*\*\*  
 24 THE COURT: Good morning. You are not in any  
 25 trouble. Take a deep breath. You are in fact Julius,

1 is it, McGhee?  
 2 PROSPECTIVE JUROR: Yes.  
 3 THE COURT: All right. So on the questionnaire,  
 4 there was a -- "Have you ever been convicted of any  
 5 criminal offense?" You said, "No."  
 6 PROSPECTIVE JUROR: Yeah.  
 7 THE COURT: We've got to make sure this is you.  
 8 PROSPECTIVE JUROR: Okay.  
 9 THE COURT: Did you have a concealed carry?  
 10 PROSPECTIVE JUROR: It was a knife my wife had  
 11 bought me, but I didn't get arrested. I mean, I got --  
 12 THE COURT: Yeah, you got -- you got charged.  
 13 Did you get convicted of that?  
 14 PROSPECTIVE JUROR: No. I didn't do any jail  
 15 time or anything. I paid a fine.  
 16 THE COURT: It's got you guilty, which means you  
 17 got convicted of it.  
 18 PROSPECTIVE JUROR: Okay, okay. I got you.  
 19 THE COURT: We had reckless op.  
 20 PROSPECTIVE JUROR: Yeah, that was --  
 21 THE COURT: I'm going to have to excuse you for  
 22 cause.  
 23 PROSPECTIVE JUROR: Okay, that's fine.  
 24 THE COURT: The parties agreed to it. My  
 25 bailiff is going to escort you out the back. Okay?

1 PROSPECTIVE JUROR: Okay. Thank you.  
 2 THE COURT: Thank you.  
 3 \*\*\*  
 4 (The sidebar discussion ended.)  
 5 \*\*\*  
 6 THE COURT: So counsel -- off the record.  
 7 \*\*\*  
 8 (Discussion had off the record.)  
 9 \*\*\*  
 10 (Within the presence and hearing of the jury.)  
 11 \*\*\*  
 12 THE COURT: Good morning to you all.  
 13 PROSPECTIVE JUROR: Good morning.  
 14 THE COURT: Thanks for coming back. Make  
 15 sure -- I see everyone has their number on.  
 16 Remember that you are all still under oath as  
 17 prospective jurors in this matter. So Juror Number, I  
 18 think it's 30 -- you need to --  
 19 PROSPECTIVE JUROR: Put this back on?  
 20 THE COURT: Yes. You are 35. There you  
 21 go. Juror Number 35, you've been moved into the pool of  
 22 16. I know you were listening yesterday. Is there  
 23 anything you need to tell the Court, either in public  
 24 here or in private?  
 25 PROSPECTIVE JUROR: Yes, I do, in private.

1 THE COURT: Okay, sure. Why don't you  
 2 approach.  
 3 \*\*\*  
 4 (A sidebar discussion was had as follows.)  
 5 \*\*\*  
 6 PROSPECTIVE JUROR: Good morning.  
 7 MR. PLAKAS: Good morning.  
 8 MR. PANZA: Good morning.  
 9 THE COURT: We have to have a close huddle here.  
 10 PROSPECTIVE JUROR: With regard to the  
 11 defendant, the former law firm that I worked at, which  
 12 use to be Fauver, Tattersall and Gallagher, Oberlin  
 13 College was a client of ours.  
 14 THE COURT: How long ago was that?  
 15 PROSPECTIVE JUROR: I believe it was in the  
 16 '90s, and I believe we were general counsel for them.  
 17 THE COURT: You're currently employed by a law  
 18 firm?  
 19 PROSPECTIVE JUROR: Yes. I am with Seeley  
 20 Savidge in Westlake.  
 21 THE COURT: Okay.  
 22 PROSPECTIVE JUROR: And I'm a corporate  
 23 paralegal there.  
 24 THE COURT: Very good. Do you have any work  
 25 that you do with Oberlin College at this firm?

1 PROSPECTIVE JUROR: At this new firm, no.  
 2 THE COURT: Okay. Do you want to inquire?  
 3 MR. Plakas: Yes. And thank you for disclosing  
 4 that. Is there anything about that relationship in the  
 5 past that would affect you today in terms of your  
 6 interaction with the people at Oberlin College?  
 7 PROSPECTIVE JUROR: I don't believe so.  
 8 MR. PLAKAS: Okay.  
 9 PROSPECTIVE JUROR: No.  
 10 MR. PANZA: You can be fair and impartial?  
 11 PROSPECTIVE JUROR: Yes.  
 12 MR. PANZA: Listen to all the evidence?  
 13 PROSPECTIVE JUROR: Yes.  
 14 MR. PANZA: I don't have a problem.  
 15 PROSPECTIVE JUROR: My other issue is with  
 16 regard to the bullying.  
 17 MR. PANZA: Did you say bowing?  
 18 THE COURT: Bullying issue.  
 19 PROSPECTIVE JUROR: Bullying.  
 20 MR. PANZA: Bullying issue.  
 21 PROSPECTIVE JUROR: My former law firm, I had an  
 22 office manager that I worked for, for the last four  
 23 years, and she was very inconsiderate of me and unfair  
 24 as far as myself and the other two staff persons  
 25 went. So I mean, ultimately I was let go, but not for

1 cause.

2 THE COURT: So, Attorney Plakas, that was your  
3 area of questioning. Is there anything you want to  
4 follow up with this juror about?

5 MR. PLAKAS: When you were let go, was there any  
6 sort of contested unemployment compensation issues, or  
7 anything like that?

8 PROSPECTIVE JUROR: No. I actually started in  
9 the new law firm a week later.

10 MR. PLAKAS: Great.

11 MR. PANZA: How long have you been with the new  
12 law firm?

13 PROSPECTIVE JUROR: Since October of 2017.

14 MR. PLAKAS: You don't do any litigation  
15 matters?

16 PROSPECTIVE JUROR: No. I'm a corporate  
17 paralegal.

18 MR. PLAKAS: I understand.

19 PROSPECTIVE JUROR: The other issue I had, and I  
20 don't know if you want to is it discuss this now or  
21 later --

22 THE COURT: Yeah, might as well.

23 PROSPECTIVE JUROR: I'm head of household. I  
24 discussed with my office manager at night if I would be  
25 compensated if I were chosen, and he did say yes, but

1 opportunity, if you want to inquire as to 35 and 38  
2 only. Anything?

3 MR. PLAKAS: No, your Honor, since they both  
4 indicated you have nothing to further disclose or  
5 nothing to talk about. If you do I'd be happy to  
6 engage.

7 PROSPECTIVE JUROR: I'm okay, personally.

8 PROSPECTIVE JUROR: I'm fine, thank you.

9 THE COURT: Very good. Now, at this time  
10 counsel for the defense, Attorney Panza, will get an  
11 opportunity to question you all as prospective jurors.

12 MR. PANZA: Good morning.

13 PROSPECTIVE JUROR: Good morning.

14 MR. PANZA: You see me jump up a lot, I  
15 know. We haven't had the opportunity to discuss the  
16 case.

17 The delay in me speaking to you is not unusual,  
18 and it is going to be the custom during the course of  
19 the trial.

20 So a very, very important question to the  
21 defense is your ability to remain neutral until you hear  
22 all of the evidence, including the defendants. And  
23 that's made particularly difficult, because there is a  
24 technique in Ohio procedural trial law that allows the  
25 plaintiff to call a defense witness as if on

1 we're talking four weeks of --

2 THE COURT: I understand.

3 PROSPECTIVE JUROR: -- no work.

4 THE COURT: I understand.

5 PROSPECTIVE JUROR: I just thought I would bring  
6 it up.

7 THE COURT: Thank you. You obviously were very  
8 thoughtful yesterday to remember these issues to bring  
9 them up to us. So we're going to leave you on at this  
10 point.

11 PROSPECTIVE JUROR: Okay.

12 THE COURT: Thank you.

13 PROSPECTIVE JUROR: Thank you.

14 MR. PLAKAS: Thank you.

15 MR. PANZA: Thank you.

16 \*\*\*

17 (The sidebar discussion ended.)

18 \*\*\*

19 THE COURT: Juror Number 38, you're new to the  
20 pool of 16 as well. Is there anything you need to tell  
21 the Court or counsel, either in public or private, based  
22 all the questioning yesterday?

23 PROSPECTIVE JUROR: No, sir.

24 THE COURT: Very good. All right.

25 Attorney Plakas, I think I'll give you an

1 cross-examination. And after the plaintiff calls that  
2 particular witness, I do not have the opportunity, or  
3 one of the lawyers for the defense do not have the  
4 opportunity to question that witness, even though that  
5 witness is a defense witness, until my case in  
6 chief. So there may be a significant delay in the  
7 defenses' ability to ask questions.

8 I find neutrality and remaining neutral about  
9 anything one of the most difficult things I have to do,  
10 and I suspect my experience is not alone. In fact,  
11 yesterday, I almost piped up and said, in 1969 Sandy  
12 Koufax was a better ballplayer than Willie Mays, but  
13 then I realized that Mr. Plakas was entitled to his own  
14 opinion in regards to that. But nonetheless, you get  
15 the point.

16 We talked about Lady Justice. How many looked  
17 for the snake this morning? I did too. I never -- you  
18 know, I never saw a snake. But I looked for the snake  
19 and I saw it this morning. But what we didn't talk  
20 about yesterday is what Lady Justice means.

21 Everybody knows what a symbol is. I think we  
22 do, right? A symbol represents something; something  
23 important. In fact, if you look around the courtroom,  
24 there are many symbols: the great seal of the State of  
25 Ohio, the flag, the flag for Ohio. They're all

1 trappings of the court. And they're really there as the  
2 Court's desire, the state's desire to do justice, and to  
3 search for the truth. Now, I say this all by talking to  
4 you about neutrality and how hard it is, especially when  
5 you go second, and how fearful the defense is that you  
6 are not going to be able to maintain your neutrality  
7 until we present you with our evidence.

8 Now, the Court's going to tell you that  
9 everything Mr. Plakas said yesterday and everything I  
10 say this morning is not evidence. So you're required to  
11 maintain your neutrality yesterday and today. How are  
12 we so far in that very, very difficult task? Can we  
13 all -- can you assure me that so far you ain't seen  
14 nothing yet, folks?

15 PROSPECTIVE JURORS: Yes.

16 MR. PANZA: I want to thank you. That's really,  
17 really difficult and I really do appreciate it.

18 Back to Lady Justice. Equal before the law.  
19 Mr. Plakas used David and Goliath yesterday. Well, in  
20 this situation, David has sued Goliath for money. So  
21 equal before the law. Do you think Goliath deserves the  
22 same rights as David?

23 PROSPECTIVE JURORS: Yes.

24 MR. PANZA: Do you think simply because  
25 Goliath -- I'm getting too biblical here. I'm sure you

1 are better at this than I am. Simply because someone is  
2 large doesn't necessarily mean they have done anything  
3 wrong. Would you all agree with that?

4 PROSPECTIVE JURORS: Yes.

5 MR. PANZA: This is a very, very emotional  
6 situation. The Gibsons have had a hard time. The  
7 college has had a hard time. This has been a situation  
8 packed with emotion. People have expectations. We all  
9 have expectations. In a sense, they're part of our  
10 opinions that we develop. But sometimes expectations  
11 are absolutely contrary to the reality of the  
12 evidence. So if the reality of the evidence fails to  
13 meet your expectations, can you promise me that you will  
14 rely on the evidence rather than your expectations of  
15 what that situation should be?

16 PROSPECTIVE JURORS: Yes.

17 MR. PANZA: You seem to be shaking your head  
18 yes. What a great group.

19 You heard Mr. Plakas yesterday talk about crime.  
20 You do understand that the defendants aren't accused of  
21 a crime. The defendants -- the allegations in the  
22 complaint are several things. We talked about  
23 defamation yesterday, and I'm going to talk a little bit  
24 about that. And there's another thing called  
25 interruption of a business, and we will talk a little

1 bit about that. He also used the term "if the  
2 defendants did something wrong." That almost sounds  
3 moralist in particular. But really, I think the Judge  
4 is going to indicate to you that the plaintiffs' burden  
5 is not to prove that the defendants did something wrong,  
6 but to prove that they committed the defamation; that  
7 somehow they made a false statement of fact that was  
8 published that directly injured the plaintiff.

9 So the law sets up certain elements, and the  
10 plaintiff has got to prove those elements. You may not  
11 agree with the elements, but reality of the evidence is  
12 going to be directed to those elements and only those  
13 elements. Do you understand that?

14 If the evidence suggests that the defendants did  
15 nothing, did not defame the plaintiff, plaintiffs, if  
16 the evidence proves that the defendants did not  
17 interfere with the plaintiffs' business, can you assure  
18 me that you rely only upon that evidence, not the  
19 newspapers, not the noise, not the -- just the evidence?

20 And we've heard this term, become particularly  
21 popular, "fake news." Who can tell me what fake news  
22 is? Nobody can tell me what fake news is? Let me see  
23 if I can -- I'm sorry.

24 PROSPECTIVE JUROR: Like a rumor, someone just  
25 puts their opinion and maybe twists it around.

1 MR. PANZA: Bless you. I was going to have to  
2 give my own interpretation. It is a fact that someone  
3 takes and spins it to their own position. Do you think  
4 you can listen to the evidence, examine the witnesses,  
5 and use your common sense to try to figure out who is  
6 telling the truth and who is taking it back and spinning  
7 it for their own purpose?

8 PROSPECTIVE JURORS: Yes.

9 MR. PANZA: It's hard. It's hard, but that is  
10 the task that if as you sit here as a juror that you are  
11 going to be required to take on.

12 In regards to crime, is there anyone here who's  
13 been helped during the course of their life at a time  
14 when they really needed it? Maybe set back on the  
15 straight path? Could I see if that's occurred with  
16 anybody? It could be a parent, could be a friend.

17 We've heard the term "innocent until proven  
18 guilty." You know what that term is, don't you? It  
19 kind of -- it is a right. Accusations are simply that.  
20 Allegations and complaints are simply that, until proven  
21 true. If someone tries to help someone who's accused of  
22 committing a crime, anybody think that's a bad thing?

23 PROSPECTIVE JURORS: No.

24 MR. PANZA: Anybody think that makes the helper  
25 part of the crime? What if you are an educational

1 institution? What is -- what is the purpose of an  
2 educational institution?

3 PROSPECTIVE JUROR: To provide education for  
4 those who are attending that institution.

5 MR. PANZA: Right. And isn't that a form of  
6 help? Can we all think back to a teacher that made a  
7 difference in our lives, a math teacher or your English  
8 teacher or somebody that just gave you that extra boost  
9 to make it in life? Is there anybody that disagrees  
10 that's really what education is about, that's really  
11 what educational institutions are about?

12 I'm thinking about one other thing, but I'd like  
13 your opinion about it. We all -- I saw a show of hands  
14 yesterday, almost everybody has children, right? And we  
15 send our children to school, correct? And we've sent  
16 them to school to educate them, have we not?

17 Do you think it's up to the school, to keep them  
18 safe? I mean, in today's world, do you think it is up  
19 to the school to keep them safe? Is there anybody on  
20 this jury who doesn't think that an educational  
21 institution's job, at least in part, is to keep the  
22 students safe?

23 Yesterday we heard a lot about reputation, in  
24 conjunction with defamation. Well, everybody in the box  
25 has a reputation. Everybody in the jury has a

1 reputation. Reputations run both ways. Gibsons have a  
2 reputation. Meredith Raimondo, the dean of students,  
3 has a reputation. Oberlin College has a reputation.  
4 And those reputations, do you think the reputations of  
5 Meredith Raimondo or the reputation of Oberlin College  
6 is any less important to them than the Gibsons'  
7 reputation.

8 PROSPECTIVE JURORS: No.

9 We're talking about, in terms of reputation,  
10 Oberlin College. Oberlin College was in existence 50  
11 years before the Gibsons opened their bakery, or  
12 whatever they opened in 1885. Oberlin College has been  
13 in existence since the mid-1830s. Oberlin College was  
14 the first college to accept blacks for degrees. Now, I  
15 want you to think about that, 1830. Oberlin College was  
16 the first college to accept women for degrees. Oberlin  
17 College's reputation is national.

18 We talked about ballplayers yesterday. I don't  
19 know, 42 million dollars, I don't think anybody, I don't  
20 care what they do, is worth 42 million dollars. Maybe  
21 Lebron James, but we won't go there. But somebody is  
22 paid 42 million dollars because someone can earn a  
23 hundred million off that 42 million.

24 Oberlin College is what's known as a 501(b)(3).  
25 Anybody know what that is? It is a school that operates

1 nonprofit. Nonprofit. So Oberlin has a reputation,  
2 Meredith Raimondo has a reputation, and the issue is  
3 defamation, a false statement of fact.

4 Does anybody know one of the only places you can  
5 make a false statement of fact about an individual and  
6 not get sued? Anybody?

7 Do you know where it is? A court of law. A  
8 court of law. People can come in and make a false  
9 statement of fact about one of the defendants, and the  
10 defendants have no recourse.

11 MR. PLAKAS: Objection, Your Honor.

12 THE COURT: Let's approach.

13 \*\*\*

14 (A sidebar discussion was had as follows.)

15 \*\*\*

16 MR. PLAKAS: That statement that people can make  
17 a false statement of fact and have no resource is an  
18 incorrect statement of the law.

19 MR. PANZA: I don't believe it is. There's  
20 immunity. There's absolute judicial immunity for any  
21 allegation in a complaint.

22 THE COURT: That's different than somebody  
23 getting on the witness stand and lying. I mean, come  
24 on. That's not the same thing.

25 MR. PANZA: I think it is.

1 THE COURT: If you have some case law or  
2 something. I was sitting here wondering what you were  
3 talking about.

4 MR. PANZA: No, you can --

5 THE COURT: I just told these people if they lie  
6 they could be in contempt of court.

7 MR. PANZA: I'm not talking about lying. I'm  
8 talking about allegations set forth in the complaint,  
9 Your Honor. I'm not talking about lying on the stand.  
10 I'm talking about Meredith Raimondo and Oberlin College  
11 has no recourse for any false statement of facts set  
12 forth in the complaint.

13 THE COURT: Attorney Panza, I heard you. You  
14 didn't say that. You said someone -- do you know the  
15 only place where you could come in --

16 MR. PANZA: I'll clear it up.

17 THE COURT: -- meaning a witness, and say  
18 something false.

19 MR. PLAKAS: I would like a curative  
20 instruction, Your Honor.

21 THE COURT: What was the nature of the  
22 instruction?

23 MR. PANZA: I object to that.

24 THE COURT: That's okay. What's the nature of  
25 the instruction?

1 MR. PLAKAS: The statement that he just  
2 identified, you can make a false statement of fact and  
3 there's --

4 THE COURT: I am going to cure that.

5 \*\*\*

6 (The sidebar discussion ended.)

7 \*\*\*

8 THE COURT: The Court's going to advise you that  
9 a person cannot come into a courtroom, take the witness  
10 stand, take an oath and say something false without any  
11 repercussions. What Attorney Panza was referring to  
12 correctly is the filing of a lawsuit and the allegations  
13 in a lawsuit, there's immunity for those statements. So  
14 it's a minor distinction, but it's important that you  
15 understand the difference.

16 Attorney Panza.

17 MR. PANZA: Thank you, Your Honor.

18 THE COURT: Sure.

19 MR. PANZA: Juror Number 13, you work for Ridge  
20 Tech?

21 PROSPECTIVE JUROR: Yes, sir.

22 MR. PANZA: Do you know any of the lawyers in  
23 the courtroom?

24 PROSPECTIVE JUROR: I do not.

25 MR. PANZA: Ms. Zidar, would you stand up. Do

1 noticed that Oberlin College does have a relationship  
2 with my company.

3 MR. PANZA: Oh.

4 PROSPECTIVE JUROR: We do have an associate who  
5 calls from the company for the purposes of securing  
6 business for the company, I guess the manufacturing  
7 company. I checked and we have maybe three or four  
8 projects pending with the college. I don't know the  
9 specifics about it because I don't deal directly with  
10 those projects.

11 THE COURT: So I do have a concern about that,  
12 because one of the questions was whether you had an  
13 interest with one of the other parties in -- a business  
14 interest, and it sounds like your company clearly does.

15 PROSPECTIVE JUROR: I apologize. We have  
16 thousands of customers and I just didn't know. I went  
17 home last night to check.

18 MR. PANZA: Mr. Gribble, don't be --

19 THE COURT: Right. You don't need to  
20 apologize. It's really important that you bring it out  
21 now and that you are not deliberating and then realize  
22 it, okay. So I'm going to excuse Juror Number 24, who  
23 is in seat number 16, for cause at this time.

24 PROSPECTIVE JUROR: Okay.

25 THE COURT: Thank you, sir. Juror Number 40.

1 you know Ms. Zidar?

2 PROSPECTIVE JUROR: I do not. Not that I'm  
3 aware of.

4 MR. PANZA: My law firm is Wickens, Herzer and  
5 Panza. Do you know anyone there? Has anyone at  
6 Wickens, Herzer, Panza ever represented you or Ridge  
7 Tech?

8 PROSPECTIVE JUROR: Not me personally. I don't  
9 know about Ridge Tech.

10 MR. PANZA: Okay, thank you.

11 THE COURT: Attorney Panza. Could you approach  
12 for a second.

13 MR. PANZA: Yes, sir.

14 THE COURT: In seat number, I'm sorry, in seat  
15 number --

16 MR. PANZA: Number 16.

17 PROSPECTIVE JUROR: 24.

18 MR. PANZA: Not 16.

19 THE COURT: Seat 16, Juror Number 24. I'm  
20 sorry, that's my mistake.

21 MR. PANZA: You may have a conflict?

22 PROSPECTIVE JUROR: Yes, sir. I'm not sure when  
23 it was appropriate to mention it, but I learned  
24 yesterday when I left, I went home and logged into work,  
25 and in my customer relationship management tool I

1 So you will have to call about future service.

2 THE BAILIFF: No.

3 THE COURT: No, they're done. You are all set.  
4 Thank you.

5 MR. PANZA: Thank you, sir.

6 THE COURT: Good morning, Juror Number 40.

7 PROSPECTIVE JUROR: Good morning.

8 THE COURT: Anything you need to tell the Court  
9 or counsel publicly or privately?

10 PROSPECTIVE JUROR: Yes, privately, please.

11 THE COURT: Sure.

12 \*\*\*

13 (A sidebar discussion was had as follows.)

14 \*\*\*

15 THE COURT: Good morning, sir.

16 PROSPECTIVE JUROR: Good morning. I don't know  
17 if this is going to mean anything. Years ago I had a  
18 car stolen right out of my garage. I had a nephew  
19 killed in a robbery, he was being robbed. I really  
20 can't do this. I'm a sole business owner. I'm a  
21 one-man band. I was up till two o'clock this morning  
22 working on my dump trucks. If you could take that into  
23 consideration. It's up to you.

24 MR. PANZA: It's okay with me to let him go.

25 MR. PLAKAS: You're the one-man band?

1 PROSPECTIVE JUROR: I'm the one-man band, only  
2 ten dump trucks.

3 THE COURT: If we do this, all right, I'm going  
4 to -- I don't want you mentioning it to anyone else in  
5 the pool because --

6 PROSPECTIVE JUROR: Right.

7 THE COURT: Everybody has hardships, but we are  
8 particularly sensitive to people who are their own man.

9 PROSPECTIVE JUROR: Just yesterday morning -- I  
10 own newer trucks, too, and they're two years or newer.

11 THE COURT: Yeah.

12 PROSPECTIVE JUROR: I had three breakdowns just  
13 before noon.

14 THE COURT: All right. So go ahead and take  
15 your seat back and remain in the courtroom until we  
16 select a jury.

17 PROSPECTIVE JUROR: That seat over there, the  
18 hard seat?

19 THE COURT: The hard seat, you got it.

20 \*\*\*

21 (The sidebar discussion ended.)

22 \*\*\*

23 THE COURT: Juror Number 41. Sir, before I even  
24 sit you down, is there anything you need to tell me -- I  
25 didn't mean it like that -- the Court and counsel or in

1 exercising their rights and they step over the line, who  
2 should pay the price?

3 PROSPECTIVE JUROR: It's their responsibility to  
4 stay within the line, I would imagine.

5 MR. PANZA: So would you agree that somebody who  
6 steps over the line should be the one paying the price?

7 PROSPECTIVE JUROR: Should be responsible for  
8 it, yeah.

9 MR. PANZA: I've got to ask this question.  
10 Anybody ever protest? I'm sorry, 41, you have a  
11 question. I'm sorry, 7. I thought you threw your  
12 voice.

13 PROSPECTIVE JUROR: What's the cost for stepping  
14 over the line?

15 MR. PANZA: I don't know. But it's a subjective  
16 thing, if in fact, let's say you, you step over the  
17 line, you go too far. Let's say you throw a brick  
18 through a window, you are walking down Euclid Avenue and  
19 you are protesting something, and you throw a brick  
20 through a window. Do you think the person who threw the  
21 brick through the window should be responsible for just  
22 that? Did I answer your question? Because I'm not sure  
23 I had.

24 PROSPECTIVE JUROR: I just wanted to --  
25 sometimes there's another side that makes you step over.

1 private or public?

2 PROSPECTIVE JUROR: No.

3 THE COURT: Thank you, sir.

4 MR. PANZA: Would you give me a second to --

5 THE COURT: Sure.

6 MR. PANZA: Thanks.

7 I'm going to start all the questioning again.

8 No, I'm only kidding. You've heard -- you've heard the  
9 questions, sir?

10 PROSPECTIVE JUROR: Yes.

11 MR. PANZA: Do you have any response to any of  
12 the things I've said, or for that matter, anything  
13 Attorney Plakas said yesterday, any comments?

14 PROSPECTIVE JUROR: No.

15 MR. PANZA: Can you remain neutral?

16 PROSPECTIVE JUROR: Yes.

17 MR. PANZA: Have you remained neutral?

18 PROSPECTIVE JUROR: Yes.

19 MR. PANZA: Thank you. Yesterday you heard a  
20 lot about rights. The right of free expression, the  
21 right to assemble. Things that are fairly fundamental  
22 in our democracy. We also heard about going too far  
23 with those rights, stepping over the line with those  
24 rights.

25 So my first question to you is, when somebody is

1 There's two sides to the story.

2 MR. PANZA: You are absolutely right about that.  
3 We've all seen it, right? How many of us have watched  
4 TV and seen protests out of control, people fighting  
5 with one another? And of course, Ohio is a carrying  
6 state now, at least I think it is. So violence can  
7 easily erupt in a protest. And I think you are right, I  
8 think that both sides can step over the line.

9 But the question is, who pays the price? If in  
10 fact the protest takes place and violence occurs on both  
11 sides, let's say crimes are committed, assaults are  
12 perpetrated, police arrive and they arrest people, they  
13 should arrest people on both sides, don't you think,  
14 whoever perpetrated the violence?

15 PROSPECTIVE JUROR: They're both being violent.

16 MR. PANZA: They're both being violent. You  
17 would agree, the police aren't part of that if the  
18 police are trying to enforce a safe situation. Even  
19 though it might spiral out of control, the people who  
20 are trying to keep everyone safe are not part of the  
21 problem. Would everybody agree with that?

22 Would you also agree with the fact that because  
23 people have the right to assemble under the Ohio  
24 Constitution, it's impossible to tell when they're going  
25 to step over the line? You don't know that until the

1 protest is in full swing. Does anybody think it's right  
2 to stop a constitutional right of assembly because they  
3 think something might happen?

4 PROSPECTIVE JUROR: No.

5 MR. PANZA: Unfortunately, we have to wait and  
6 see and then react to whatever that protest may be. And  
7 I have to ask, and perhaps I did before, has anybody  
8 ever been part of a protest?

9 PROSPECTIVE JUROR: Physical protest or opinion  
10 protest? I mean, you mean marching with signs?

11 MR. PANZA: Yes. I mean, the right to assemble  
12 is marching with signs.

13 PROSPECTIVE JUROR: No.

14 MR. PANZA: Have you ever been part of a small  
15 protest at work?

16 PROSPECTIVE JUROR: I actually -- I'm sorry, I  
17 did go to the -- I did go to the DC march the day after  
18 President Trump was elected.

19 MR. PANZA: It was peaceful, I would assume?

20 PROSPECTIVE JUROR: Yes.

21 MR. PANZA: There were people there to control  
22 the protest to make sure you stayed safe?

23 MR. PANZA: You know, they got five times more  
24 people than they thought they did. But I didn't see any  
25 problems. But I also didn't see a presence of anything

1 PROSPECTIVE JUROR: Yeah. It's just more -- a  
2 lot of it is, like we do the Martin Luther King walks in  
3 DC, Houston.

4 MR. PANZA: Do you -- do you work to make sure  
5 the protests stay calm and --

6 PROSPECTIVE JUROR: Yeah. We always try to, you  
7 know, just voice our opinion.

8 MR. PANZA: And as part of that, do you notify  
9 local authorities that a protest is going to take place?

10 Like, I would imagine sometimes you have to get a  
11 permit, don't you?

12 PROSPECTIVE JUROR: Yeah.

13 MR. PANZA: Would that be part of your job, or  
14 somebody else's job?

15 PROSPECTIVE JUROR: Well, we usually have  
16 meetings, but I'm not -- I'm a part of it, but that's  
17 not my responsibility to get permits. Like, we will  
18 make sure the city, it's okay with the routes we're  
19 taking.

20 MR. PANZA: But safety is a concern?

21 PROSPECTIVE JUROR: Yeah, definitely.

22 MR. PANZA: Anyone else? I don't think anybody  
23 has asked this question. I've got to. Anybody ever go  
24 into Gibson's Bakery?

25 Did you go in there on a regular basis?

1 else either.

2 MR. PANZA: Was safety a concern of yours?

3 PROSPECTIVE JUROR: No.

4 MR. PANZA: Why is that?

5 PROSPECTIVE JUROR: I was with people that I  
6 knew who lived in DC, and I figured if anything did  
7 occur, they would know where to go and what to do.

8 MR. PANZA: This was in Washington?

9 PROSPECTIVE JUROR: This was in Washington, DC,  
10 yes. This was the day after the inauguration.

11 MR. PANZA: Anybody else? Sir.

12 PROSPECTIVE JUROR: I've been to many.

13 MR. PANZA: I'm sorry?

14 PROSPECTIVE JUROR: I've been to many.

15 MR. PANZA: Many protests?

16 PROSPECTIVE JUROR: Yes.

17 MR. PANZA: I have to ask, what causes you to  
18 gravitate --

19 PROSPECTIVE JUROR: It's just the line of  
20 work. I'm the president on the committee on diversity  
21 for Teamsters. So I travel throughout the United  
22 States.

23 MR. PANZA: And the protests that you've  
24 attended were as a representative of the Teamsters  
25 Union, and they were Teamsters protests?

1 PROSPECTIVE JUROR: No, not on a regular basis.  
2 I grew up in Oberlin, so I visited them a lot, with all  
3 the other businesses in the town.

4 MR. PANZA: Where do you reside now?

5 PROSPECTIVE JUROR: I reside in Elyria. I have  
6 since 1976.

7 MR. PANZA: Did you go to high school in  
8 Oberlin?

9 PROSPECTIVE JUROR: Most of the way through.

10 MR. PANZA: The people who have visited  
11 Gibson's, you can still remain impartial, can't you?

12 PROSPECTIVE JUROR: Oh, I believe so because  
13 I've also taken advantage of what the college offers,  
14 too.

15 MR. PANZA: Which begs another question. The  
16 college has 2800 students, over a thousand faculty and  
17 employees. Anybody know a student who attends Oberlin  
18 or anybody know a faculty member or employee or a member  
19 of the administration? Yes, ma'am.

20 PROSPECTIVE JUROR: I know an employee, but I  
21 haven't spoken with her for years.

22 MR. PANZA: Okay.

23 PROSPECTIVE JUROR: I don't know. I might know  
24 them if you put the name in front of me.

25 MR. PANZA: We did yesterday.

1 PROSPECTIVE JUROR: Yes, yes.  
 2 MR. PANZA: We put so many names in front of you  
 3 yesterday, I'm surprised you can remember. 35, yes,  
 4 ma'am.  
 5 PROSPECTIVE JUROR: I believe I mentioned  
 6 yesterday about Ebihara. I think he's on the faculty at  
 7 Oberlin College.  
 8 MR. PANZA: Yes, you mentioned.  
 9 PROSPECTIVE JUROR: And Vitale.  
 10 MR. PANZA: Yes.  
 11 PROSPECTIVE JUROR: But I --  
 12 MR. PANZA: High school, right?  
 13 PROSPECTIVE JUROR: Yeah.  
 14 MR. PANZA: But not since high school?  
 15 PROSPECTIVE JUROR: Correct.  
 16 MR. PANZA: I appreciate that.  
 17 Number 7, your business is fairly structured, I  
 18 would assume. Who speaks for your organization? Is  
 19 there a particular executive counsel?  
 20 PROSPECTIVE JUROR: We have a president.  
 21 MR. PANZA: Is he the official voice of your --  
 22 PROSPECTIVE JUROR: Yeah.  
 23 MR. PANZA: -- organization?  
 24 PROSPECTIVE JUROR: Yeah, he is.  
 25 MR. PANZA: Would you say it was highly

1 centralized under his authority?  
 2 PROSPECTIVE JUROR: Yeah, everything.  
 3 MR. PANZA: And I would assume, given the nature  
 4 of your organization, there is a lot of delegation.  
 5 PROSPECTIVE JUROR: Yes.  
 6 MR. PANZA: He delegates authority to you or  
 7 other members of the Teamsters, correct?  
 8 PROSPECTIVE JUROR: Correct.  
 9 MR. PANZA: But in terms of the official  
 10 position, that comes from the president?  
 11 PROSPECTIVE JUROR: Yeah.  
 12 MR. PANZA: Even though you may have an opinion,  
 13 correct?  
 14 PROSPECTIVE JUROR: Yeah.  
 15 MR. PANZA: You are free to express your  
 16 opinion?  
 17 PROSPECTIVE JUROR: Right. Right.  
 18 MR. PANZA: But the word of your organization is  
 19 highly structured under the president's.  
 20 PROSPECTIVE JUROR: Yeah, we've got a book this  
 21 thick (indicating) of bylaws we have to follow.  
 22 MR. PANZA: I bet you do. I bet you do.  
 23 Anyone else work for a big company? Somebody  
 24 works for Norfolk Southern.  
 25 PROSPECTIVE JUROR: That would be me. I work

1 for Norfolk Southern.  
 2 MR. PANZA: That's a very big company out of  
 3 Norfolk?  
 4 PROSPECTIVE JUROR: We have them everywhere.  
 5 MR. PANZA: Big place in Bellevue.  
 6 PROSPECTIVE JUROR: Yeah. Yes, sir.  
 7 MR. PANZA: It's a highly structured  
 8 organization, I would imagine, that as a president. And  
 9 you get directives all the time?  
 10 PROSPECTIVE JUROR: Yes.  
 11 MR. PANZA: And of course, there's all sorts of  
 12 federal regulations with Norfolk and Southern, right?  
 13 PROSPECTIVE JUROR: Yes.  
 14 MR. PANZA: Demerge and other words that are  
 15 very difficult to understand.  
 16 PROSPECTIVE JUROR: Can be.  
 17 MR. PANZA: Yeah. But in a highly structured  
 18 organization like that, although everybody could have an  
 19 opinion, the official word comes from either Bellevue or  
 20 Norfolk, Virginia, or wherever the corporate  
 21 headquarters are, correct?  
 22 PROSPECTIVE JUROR: Correct.  
 23 MR. PANZA: Is it your understanding that  
 24 position comes from the president or board of trustees  
 25 or board of directors?

1 PROSPECTIVE JUROR: Divisional superintendents  
 2 pass down information.  
 3 MR. PANZA: Great. Anybody else work for an  
 4 organization that has a highly structured -- yes, ma'am,  
 5 22.  
 6 PROSPECTIVE JUROR: I work for The Reserves  
 7 Network. It's a temporary agency across the country.  
 8 MR. PANZA: In healthcare?  
 9 PROSPECTIVE JUROR: We have a healthcare  
 10 division, yes.  
 11 MR. PANZA: And that's a highly structured  
 12 situation as well?  
 13 PROSPECTIVE JUROR: Correct.  
 14 MR. PANZA: And I would assume you are free to  
 15 express your opinion, but in terms of the official  
 16 action of the company, that's something that comes down  
 17 to you indirectly?  
 18 PROSPECTIVE JUROR: Correct.  
 19 MR. PANZA: It's all pretty much the same. Does  
 20 anybody have a different experience? And of course it's  
 21 a little different with local businesses, small  
 22 companies, where you are the board of directors and you  
 23 speak for yourself.  
 24 I thought I heard yesterday that somebody had  
 25 some small business. Anybody have a small business?

1 Number 13, yours is ten people? Didn't you say that  
 2 yesterday?  
 3 PROSPECTIVE JUROR: (Nodding head.)  
 4 MR. PANZA: And is your organization, even  
 5 though it's ten people, highly structured under the  
 6 president?  
 7 PROSPECTIVE JUROR: No.  
 8 MR. PANZA: Are your opinions sought?  
 9 PROSPECTIVE JUROR: I'm sorry?  
 10 MR. PANZA: Because of the size of the company,  
 11 are your opinions sought about corporate matters?  
 12 PROSPECTIVE JUROR: I've only been there for  
 13 about a year, so not really.  
 14 MR. PANZA: Okay. Okay. Now, we have a police  
 15 officer, Number 41. I have got to believe that there is  
 16 a regimented structure within the Lakewood Police  
 17 Department. Am I wrong about that, or?  
 18 PROSPECTIVE JUROR: You are correct.  
 19 MR. PANZA: And you've been a police officer for  
 20 many, many years, correct?  
 21 PROSPECTIVE JUROR: Yes.  
 22 MR. PANZA: In your organization, what is it, is  
 23 the captain the central focus of the course?  
 24 PROSPECTIVE JUROR: The chief.  
 25 MR. PANZA: The chief. Is there a captain under

1 the chief?  
 2 PROSPECTIVE JUROR: Yes.  
 3 MR. PANZA: Does the chief set policies?  
 4 PROSPECTIVE JUROR: I would think he reviews it,  
 5 yes.  
 6 MR. PANZA: Where do you think the policy comes  
 7 from? Does it come from above or below? I mean  
 8 not -- you are the people on the street. I would  
 9 imagine your experience is often sent up the ladder.  
 10 But what I'm interested in is the structure and whether  
 11 or not official action comes from the chief down to the  
 12 captain, in to the lieutenants and throughout.  
 13 PROSPECTIVE JUROR: At times it does, yes.  
 14 MR. PANZA: Are there times when your opinion is  
 15 sought?  
 16 PROSPECTIVE JUROR: Basically at any time,  
 17 yes.  
 18 MR. PANZA: Okay. Opinions. Everybody has  
 19 them. Have there been times when you've heard people  
 20 express their opinions and keep the peace; you have  
 21 decided not to express yours? That's a pretty common  
 22 occurrence.  
 23 Do you think that's a good thing? 14, you don't  
 24 think that's a good thing?  
 25 PROSPECTIVE JUROR: No, I don't. But I've done

1 it.  
 2 MR. PANZA: I'm sorry?  
 3 PROSPECTIVE JUROR: But I've done it. But I  
 4 don't think it's a good thing.  
 5 MR. PANZA: Did you do it to keep the peace?  
 6 PROSPECTIVE JUROR: Yes.  
 7 MR. PANZA: And we agree it's at least a safe  
 8 thing?  
 9 PROSPECTIVE JUROR: It was a prudent thing.  
 10 MR. PANZA: That's a better word.  
 11 You heard a lot about damages yesterday.  
 12 Mr. Plakas talked about seven and eight figures and, in  
 13 fact, he went through each one of you and made you  
 14 assure him concerning the size of an award. If the  
 15 evidence, the reality of the evidence leads you to  
 16 conclude that any damages suffered by Gibsons were due  
 17 to things unrelated to the defendants, unrelated to the  
 18 defendants, could each of you bring back a verdict in  
 19 favor of the defendants?  
 20 PROSPECTIVE JURORS: Yes.  
 21 MR. PANZA: Could I see a hand for anyone who  
 22 doesn't think they could do that? I'm not going to poll  
 23 you one on one. I'm going to rely on that statement.  
 24 You've been asked a lot of questions by me and  
 25 by Attorney Plakas. Not every juror is right for every

1 case. There are many cases. There are criminal cases  
 2 in many aspects of civil law, of civil cases. Is there  
 3 anyone here sitting that thinks they're not right for  
 4 this case?  
 5 I can then assume that all of you think you can  
 6 serve, you can remain neutral, you can listen to the  
 7 evidence without regard of size of the defendant or the  
 8 plaintiff, you can separate your emotion and do what the  
 9 Lady of Justice with the blindfold demands. Thank  
 10 you.  
 11 Would you give me a moment?  
 12 THE COURT: Sure.  
 13 MR. PANZA: Gosh, I thank you for your patience  
 14 in listening to me for an hour and 15 minutes. Thank  
 15 you.  
 16 THE COURT: Defense, pass for cause?  
 17 MR. PANZA: Yes.  
 18 THE COURT: Counsel, if you would approach at  
 19 this point.  
 20 \*\*\*  
 21 (A sidebar discussion was had as follows.)  
 22 \*\*\*  
 23 THE COURT: So what I want to do after you  
 24 exercise your peremptories, but I think we could do it  
 25 now, is the plaintiffs indicated their desire to dismiss

1 the civil trespass count. I think the rules are cleaner  
2 when you do it before the commencement of the trial. So  
3 do you want to make just make an oral motion to dismiss  
4 that? Go ahead, I'm going to grant your leave to do  
5 that right now.

6 MR. PLAKAS: As previously indicated, it's the  
7 plaintiffs' desire to amend their complaint to dismiss  
8 the civil trespass count.

9 THE COURT: I assume there's no objection from  
10 the defense.

11 MR. PANZA: No, there's no objection.

12 THE COURT: It will be so granted. Now we are  
13 going to start with the plaintiffs. You are going to do  
14 it from only those 16 in the box.

15 MR. PANZA: Right.

16 THE COURT: If you each waive -- waive in  
17 sequence, then we are done.

18 MR. PLAKAS: Could we do that in chambers?

19 THE COURT: No, you are going to do it right  
20 now. They don't know who did what.

21 MR. PLAKAS: Because I know that some judges  
22 with the struck method go back there. We don't announce  
23 it.

24 THE COURT: No, no. You exchange this, bring  
25 the paper up to me when you are done.

1 MR. PANZA: How many you want on there?

2 THE COURT: Look. See this.

3 MR. PANZA: It's done differently, Judge,  
4 everywhere.

5 THE COURT: Sure. I didn't mean it  
6 condescending, pardon me. Plaintiffs go first.

7 MR. PLAKAS: One first and he goes.

8 MR. PANZA: Got it. That's right.

9 MR. PLAKAS: Should we -- are you going to give  
10 the jurors a short recess while we do that? We're going  
11 to have to be talking back and forth.

12 THE COURT: They're going to be in the  
13 courtroom. No, I usually let them sit there. It might  
14 take 15, 20 minutes and then swear them in, and then  
15 I'll give them a break.

16 \*\*\*

17 (The sidebar discussion ended.)

18 \*\*\*

19 THE COURT: All right. Ladies and Gentlemen,  
20 the defense having passed for cause, this is what I can  
21 tell you, the jury in this case will come from the 16 of  
22 you. They are now going to exercise what are called  
23 peremptory challenges. They're going to do that  
24 privately. Your number may be called as a peremptory  
25 challenge. Each side gets three. If they exercise all

1 three, if each side exercises all three, then the 16  
2 will be reduced to ten, which is the number of jurors we  
3 are going to empanel in this case; eight jurors plus two  
4 alternates. I do not disclose the alternate until  
5 the -- just before deliberations. We do a random draw,  
6 and so I find that you all pay attention a little bit  
7 better if you don't know if you are the alternate. So  
8 this may take about 15 to 20 minutes.

9 Those of you who are seated in the hard bench  
10 seats, you will not be a part of this jury. And their  
11 service is done, as well, Bailiff?

12 THE BAILIFF: Yes.

13 THE COURT: So this will conclude your service.  
14 Thank you. Our county thanks you for your service.

15 \*\*\*

16 (Discussion had off the record.)

17 \*\*\*

18 THE COURT: If I call your number, please stand  
19 and go to my bailiff there. Juror Number 3, you are  
20 thanked but excused. This is going to be your Juror  
21 Number, not your seat number. Juror Number 7, you are  
22 thanked but excused; Juror Number 14, you are thanked  
23 but excused; Juror Number 26, you are thanked but  
24 excused; Juror Number 19, you are thanked but excused.

25 THE COURT: 3, 7, 14, 26 and 19. Take a look at

1 your numbers. Juror Number 2. Juror Number 2, good  
2 morning.

3 PROSPECTIVE JUROR: Good morning.

4 THE COURT: Would you move over to seat number  
5 one; Juror Number 33, would you move over to seat number  
6 two; Juror Number 38, move over to seat number three,  
7 please; Juror Number 22, over to seat number four; Juror  
8 Number 8 over to seat number five; Juror Number 35, you  
9 will stay in seat number six; Juror Number 20, if you  
10 move over to seat number seven; 32, over to eight; 13  
11 over to nine; 15 over to ten. This is our jury.

12 Number 41, you are also not a part of this jury,  
13 so you can go to the back of the courtroom.

14 So at this time I'm going to administer the oath  
15 to the ten jurors who will be empanelled. That will  
16 make this case official in the eyes of the Court and the  
17 law, and then the case will commence. If you would  
18 stand and raise your right hand.

19 \*\*\*

20 (The jury was duly sworn to hear the case.)

21 \*\*\*

22 THE COURT: All right. Please be seated.  
23 To the rest of you, thank you for your  
24 participation here over the past two days. Bailiff  
25 McCartney, all of their services are complete?

1 THE BAILIFF: Complete.  
 2 THE COURT: Thank you. You are free to  
 3 leave. Counsel, just so I can get a --  
 4 \*\*\*  
 5 (Discussion had off the record.)  
 6 \*\*\*  
 7 THE COURT: Okay. I do need to give you some  
 8 instructions. Here's what's going to happen, the reason  
 9 I'm speaking with counsel is after I instruct you, the  
 10 next step would be the opening statements. The  
 11 plaintiff anticipates taking an hour; the defense, an  
 12 hour and a half. So that's two-and-a-half hours. I  
 13 don't want to hold you here without eating for that  
 14 long. So I'm going to give you an instruction, we're  
 15 going to then let you break and come back here at  
 16 noon. And we will start at noon. We will have a short  
 17 day. You will be done by 2:30, if they keep their word.  
 18 So here's the instruction. Jury service may be  
 19 strange to you, so a short explanation is in order.  
 20 Those of you who participate in a lawsuit must  
 21 do so in accordance with established rules. This is  
 22 true of the witnesses, of the lawyers and of the judge's  
 23 part in the case. It is equally true of you as your  
 24 part as a juror. The lawyers present the evidence  
 25 according to the rules. The judge enforces the rules

1 and determines the admissibility of the evidence. You  
 2 will be the sole judges of the facts, the credibility of  
 3 the witnesses, and the weight to be given to the  
 4 testimony. Later, the Court will furnish you with the  
 5 law and you will apply the law to the facts. It is your  
 6 sworn duty to accept the law as it is given to you by  
 7 the Court.  
 8 The procedure for the trial is as follows.  
 9 First counsel outlines what they expect their evidence  
 10 will be. These are opening statements, and they are not  
 11 evidence, but they are a preview of the claims from each  
 12 party designed to help you follow the evidence as it is  
 13 presented. Then each side offers evidence to support  
 14 its claim. The plaintiff proceeds first, followed by  
 15 the defendant, and thereafter rebuttal evidence may be  
 16 offered.  
 17 The trial concludes with the arguments of  
 18 counsel, called closing arguments. And then the Court  
 19 instructs you as to the law. Thereafter, you will  
 20 deliberate until you reach a verdict.  
 21 It is important that you be fair and attentive  
 22 throughout the trial. Do not discuss this case among  
 23 yourselves or with anyone. Do not permit anyone to  
 24 discuss it with you or in your presence. Do not form or  
 25 express an opinion on this case until it is finally

1 submitted to you. The Court instructs you not to  
 2 converse with the attorneys in this case, the parties,  
 3 or any of the witnesses during the trial. Likewise, the  
 4 participants in the trial must not converse with  
 5 you. If anyone should attempt to discuss this case with  
 6 you, report the incident to the Court through the  
 7 bailiff immediately.  
 8 You must explain this rule to your family and  
 9 friends. When the trial is over, and when your jury  
 10 duty is completed, you will be released from this  
 11 instruction. At that time, you may, but you are not  
 12 required, to discuss this case and your experience as  
 13 jurors. Until that moment, control your natural desire  
 14 to discuss this case, both here and at home.  
 15 In this age of instant electronic communication  
 16 and/or research, I want to emphasize that in addition to  
 17 not conversing face-to-face with anyone about this case,  
 18 you must not communicate with anyone about this case by  
 19 any other means, including telephone, text message,  
 20 e-mail, internet chat, blog, social websites such as  
 21 Facebook, Twitter, et cetera.  
 22 Furthermore, you are not to do any homework.  
 23 You are not to -- in addition to not communicating about  
 24 this case, you are not to try to do any internet  
 25 research on this case. That is a direct order to each

1 of you. As I mentioned yesterday, if we find out that  
 2 you disobey a direct order of the Court, you could be  
 3 held in contempt. I'm asking for that commitment, that  
 4 you understand this instruction. Please answer audibly.  
 5 Juror Number 1.  
 6 PROSPECTIVE JUROR: Yes.  
 7 THE COURT: Juror Number 2.  
 8 PROSPECTIVE JUROR: Yes.  
 9 THE COURT: Juror Number 3.  
 10 PROSPECTIVE JUROR: Yes.  
 11 THE COURT: Juror Number 4.  
 12 PROSPECTIVE JUROR: Yes.  
 13 THE COURT: Juror Number 5.  
 14 PROSPECTIVE JUROR: Yes.  
 15 THE COURT: Juror Number 6.  
 16 PROSPECTIVE JUROR: Yes.  
 17 THE COURT: Juror Number 7.  
 18 PROSPECTIVE JUROR: Yes.  
 19 THE COURT: Juror Number 8.  
 20 PROSPECTIVE JUROR: Yes.  
 21 THE COURT: Juror Number 9.  
 22 PROSPECTIVE JUROR: Yes.  
 23 THE COURT: Juror Number 10.  
 24 PROSPECTIVE JUROR: Yes.  
 25 THE COURT: Thank you. During the course of the

1 trial, I'm one of the judges that does not permit  
2 notetaking. I find that jurors are smart enough and  
3 attentive enough, and between all of them, they get the  
4 facts. Sometimes I find that if people are taking a  
5 note down, they may think that their written word is  
6 always correct and that it has more force. And that's  
7 not always true. People can right write things down  
8 wrong. They also could be distracted by taking the note  
9 from things that are happening while they have their  
10 head down and are writing the notes. There's no  
11 notetaking.

12 We will go from 9:00 in the morning until 4:00  
13 in the afternoon, every day except Monday. On Monday  
14 you will come in at, and be ready to go, at 1:00. I  
15 have criminal matters all Monday morning, okay. So all  
16 day Tuesday, Wednesday, Thursday and Friday, half a day  
17 on Monday. Feel free to bring your lunch with you. We  
18 have microwaves, we have a refrigerator also. And if  
19 you have a seat cushion that makes it more comfortable  
20 for you, feel free to bring it. I know those chairs are  
21 really not that comfortable.

22 Any other questions, the bailiff will answer  
23 them. She's going to take you back now into the jury  
24 room and then she will discharge you for lunch, and then  
25 we will be back just before noon, okay. Any questions?

1 You are all set.

2 \*\*\*

3 (Out of the presence and hearing of the jury.)

4 \*\*\*

5 THE COURT: Anything on the record from  
6 plaintiffs' counsel before we break?

7 MR. PLAKAS: No. Thank you, Your Honor.

8 THE COURT: Anything from the defense?

9 MR. PANZA: No, your Honor.

10 THE COURT: Do we want to meet briefly in my  
11 chambers to go over the --

12 MR. PANZA: Paragraph.

13 THE COURT: -- legal conclusions? Does  
14 plaintiff have your paragraph?

15 MR. MATTHEW NAKON: Yes. It was sent last  
16 night.

17 THE COURT: Okay. Do you have any objection to  
18 it?

19 MR. PLAKAS: I think we --

20 THE COURT: Let's go in chambers, just the  
21 counsel who are going to handle this.

22 \*\*\*

23 (A lunch recess was had at 10:46 a.m.)

24 \*\*\*

25 (Out of the presence and hearing of the jury.)

1 \*\*\*

2 THE COURT: We're on the record.

3 MS. ZIDAR: First, Your Honor, Rachelle Zidar on  
4 behalf of the defendants.

5 First, we just need some clarification. There  
6 are several, appear to be, references to videotapes or  
7 video clips of disposition testimony.

8 MR. PLAKAS: There will be no playing of videos  
9 of any deposition testimony.

10 MS. ZIDAR: Okay. Then moving on. We do have  
11 some concerns with respect to, and if -- Your Honor, it  
12 might be easier if I give you a copy of what we have so  
13 we are on the same page.

14 Our first objection would be the -- I think it's  
15 the third page. That's a shot of police department  
16 reports of two individuals unrelated to this matter on  
17 Sunday, November 6th and Monday, November 7th.

18 MR. PLAKAS: Your Honor, part of our case is the  
19 recognition by the college and their choice to ignore  
20 the history and problematic history of shoplifting. And  
21 in fact, in that week prior to the shoplifting crimes of  
22 November 9th, there were several prior crimes, including  
23 one just two hours before that. All of those, that  
24 history is recognized in depositions and e-mails. That  
25 history is recognized and ignored. So the fact that --

1 and we've talked about the shoplifting history and the  
2 percentages, you know, being the last five years,  
3 student shoplifters, and we've talked about the racial  
4 makeup and all of that.

5 This is just a background that is relevant for  
6 several things, including but not limited, to the fact  
7 that, in fact, the college knew of this, but when the  
8 crimes occurred, they acted as if the crimes had not  
9 occurred. And even though they made reference in  
10 Krislov's meeting to -- or Krislov and Raimondo's letter  
11 to the community that went out to 3,000 people, that  
12 they would use all resources to investigate the  
13 situation, they chose to ignore it.

14 THE COURT: Was that after the fact? Krislov's  
15 deposition was after the fact?

16 MR. PLAKAS: No. Krislov's letter, yes.

17 THE COURT: His letter came after this?

18 MR. PLAKAS: Yes.

19 THE COURT: Okay.

20 MR. PLAKAS: But they knew -- the purpose of  
21 when we tell the -- when you ignore something and you  
22 have reason to know and understand that there is another  
23 side to the story and there's evidence of the other side  
24 to the story but you choose to ignore it, even though  
25 you represent to the entire community that's interested

1 that in fact you are going to put all resources into the  
2 investigation, that goes to several issues, including  
3 the negligence, the malice, and the motivations involved  
4 in doing this.

5 THE COURT: So I see it relevant to the issue of  
6 whether the college knew, assuming you can tie the  
7 college to the written statement --

8 MR. PLAKAS: Yes.

9 THE COURT: -- whether they knew whether or not  
10 it was false.

11 MR. PLAKAS: Yes, I think we can.

12 THE COURT: Attorney Zidar.

13 MS. ZIDAR: Your Honor, the written statements,  
14 the protests, the accusations of racism had nothing  
15 whatsoever to do with the, whoever these two individuals  
16 were that were targeted or that are subject of this  
17 police department report.

18 THE COURT: I'm going to assume these two people  
19 are Oberlin College students?

20 MR. PLAKAS: Yes, they are. And one is actually  
21 the editor of the Oberlin College newspaper that was  
22 reporting on this and continuing to spew out the  
23 defamatory remarks.

24 MS. ZIDAR: She's not a defendant in this  
25 matter.

1 screenshots of text messages. Lee, the only issue we  
2 have there is Jane Mathison is identified as a CEO.

3 THE COURT: Counsel, I'm not even there yet.  
4 Okay. All right.

5 MR. PLAKAS: Where is it? So in the timeline.

6 MS. ZIDAR: 11-10-16 at 9:30 a.m. text, VP  
7 Raimondo sends text.

8 MR. PLAKAS: Right. On the timeline where --

9 MS. ZIDAR: It's actually 9:44.

10 THE COURT: Folks, you have -- we need to speak  
11 one at a time for the clarity of the record, please.

12 MR. PLAKAS: We will correct that. She's the  
13 chief of staff for the president rather than the CEO.

14 THE COURT: Thank you.

15 MS. ZIDAR: And actually, I'm seeing pages on  
16 these now. It may be a little easier for Your  
17 Honor. If you page through to slide number -- on page  
18 32.

19 THE COURT: I don't have --

20 MS. ZIDAR: Do you see in the lower right-hand  
21 in the blue shaded? May I approach?

22 THE COURT: Please. I don't have any page  
23 numbers, so I'm struggling to follow this.

24 MS. ZIDAR: It's kind of hard to see. Your  
25 Honor, this in addition to several following, we can go

1 THE COURT: I understand. The issue, though, is  
2 they have to prove if they can tie the publication to  
3 the college that the statement in the flyer and in the  
4 senate resolution were false, and they knew they were  
5 false. And if there is -- I think this is relevant  
6 evidence, and I'm going to permit it.

7 MS. ZIDAR: Moving on, Your Honor. I'm sorry,  
8 these aren't numbered.

9 THE COURT: I was on page 3.

10 MS. ZIDAR: One, two, three -- four pages down,  
11 about four pages down.

12 THE COURT: From page 3 or total?

13 MS. ZIDAR: Total. I'm sorry.

14 THE COURT: This is what I have on the fourth  
15 page.

16 MS. ZIDAR: It's the conviction of Jonathan  
17 Aladin.

18 THE COURT: Okay.

19 MS. ZIDAR: Your Honor, really, our primary  
20 objection, there's a handwritten notation in the lower  
21 right-hand corner that's enlarged, the date 11-9-16.  
22 The conviction was almost a year after the events.

23 MR. PLAKAS: Can we electronically crop --

24 THE COURT: Crop it out.

25 MS. ZIDAR: And a few pages after that is the

1 through each of them, concern the motion in limine we  
2 had previously made with respect to people that were not  
3 agents of the college, have any e-mails containing  
4 inflammatory language, and as to whether that would be  
5 admissible on a number of grounds, both agency,  
6 relevance; even with respect to the publication of the  
7 flyer, the protests, allegations made at the time of  
8 publication. This really sheds no light onto those  
9 things. We would maintain they don't have the authority  
10 to speak on behalf of the college in any of that.

11 MR. PLAKAS: Your Honor, thank you for allowing  
12 me to share with you.

13 This is from two -- this is a communications  
14 between two high-ranking college administrative  
15 officials who were involved in all aspects of this. So  
16 this is an e-mail from Ben Jones, which is, I believe,  
17 the vice president of communications, the college's vice  
18 president of communications. He basically -- this is  
19 relevant to not only the state of mind and intent, but  
20 also to their involvement in the intentional  
21 interference with business relationships, because he  
22 basically is jumping in and saying in effect, let's  
23 boycott, let's give all the business to Leo. And even  
24 though he uses an expletive to emphasize the desire to  
25 boycott Gibsons, that is relevant to a number of issues,

1 including their motivation, their state of mind, the  
2 creation and the spewing of the, as we've already talked  
3 about, the hostile environment.

4 And the fact that Tita Reed, who is a  
5 high-ranking official, she's a special counsel to the  
6 president for community and governmental relations, she  
7 says "100 percent."

8 So the purpose of this is to show -- the college  
9 argues hey, look, the only one that can be responsible  
10 is the board of directors or the president; but when the  
11 president empowers and when these people are placed in  
12 high-ranking positions, it's obvious that they're  
13 running the show. And for a variety of our different  
14 causes of actions and different ways, these e-mails are  
15 relevant, Your Honor.

16 THE COURT: So the issue that I had in the  
17 motion in limine was that they may be admissible,  
18 assuming the foundation is set up that these people were  
19 making these statements within the scope of and in  
20 furtherance of their relationship with the college. So  
21 we're talking now about using this in opening  
22 statements, when I don't have any of that information.

23 MR. PLAKAS: May I make a representation to the  
24 Court?

25 THE COURT: Let me just say this on the record.

1 What I did tell both parties is that I would permit  
2 them, in opening statement, to use exhibits; if they had  
3 a good faith basis, they would be admitted. So that's  
4 what I'm going to need to hear right now.

5 MR. PLAKAS: Sure. I indeed have, Your Honor, a  
6 good faith basis that all of these will be permitted  
7 because these aren't just one-off interactions between  
8 two high-ranking administration officials.

9 You will see throughout our presentation, not  
10 only during opening, but in the coming days, that Ben  
11 Jones, in his position as the director of  
12 communications -- and they were trying to communicate  
13 and they were trying to set communication policies --  
14 and Tita Reed, they were directly and intimately  
15 involved in everything.

16 For example, there's going to be other e-mails  
17 or texts from Tita Reed talking about cutting off the  
18 business, talking about resuming the business only if  
19 the Gibsons would drop charges. In fact, when Meredith  
20 Raimondo unilaterally cancels the order, the contractual  
21 relation, in one of the e-mails she says, Well, let's  
22 hold on to this decision until we get Tita Reed's input.

23 So I will represent to you that this group of  
24 officials was all working in an interconnected way, and  
25 this comes directly from them and that's the case,

1 because their defense is, you know, if there is no board  
2 resolution, we didn't authorize it. But obviously --

3 THE COURT: Have you established in your  
4 deposition testimony, either directly or by inference,  
5 the requirement that the Court's requesting exists?

6 MR. PLAKAS: Yes, both.

7 THE COURT: Attorney Zidar.

8 MS. ZIDAR: Your Honor, we would dispute  
9 that. These are individuals that do not have  
10 decision-making authority on the behalf of the client --  
11 or on behalf of the college. They were not speaking for  
12 the college. It has no relevance whatsoever to the  
13 defamation claim.

14 THE COURT: Well, no, I understand that.

15 MS. ZIDAR: And as to the tortious interference  
16 claim, the actor's motivation is relevant as from a time  
17 and temporal standpoint would be when the orders were  
18 suspended. Those occurred a couple weeks before these  
19 e-mails of people who don't have authority to make  
20 decisions and speak on behalf of the college were  
21 rendered. The suspension of orders occurred on the 14th  
22 and/or on the 10th, or 11th, actually during the  
23 protests.

24 These are employees expressing their opinion and  
25 frustration over what was a very public protest and

1 event, and everybody was voicing opinion on this.

2 MR. PLAKAS: Your Honor, in response to that,  
3 it's not as if the orders were canceled and then they  
4 were immediately reinstated. As the Court knows, the  
5 orders were canceled within a day or so after the  
6 protests and -- or during the protests. And they  
7 continued to be canceled, and there was ongoing  
8 discussions.

9 And I will represent to the Court that there's  
10 going to be testimony from, for example, Mr. Ferdinand  
11 Protzman, who is the chief of staff, that he had three  
12 or four or five meetings with the president and with the  
13 chief of staff at that time, the former chief of staff,  
14 as to whether they should immediately resume. So --

15 THE COURT: All right. So is it correct that  
16 Tita Reed is special counsel to the president of the  
17 college for community relations?

18 MR. PLAKAS: Yes.

19 THE COURT: I'm going to -- I'm going to permit  
20 it. I made my decision. Next issue.

21 MS. ZIDAR: Your Honor, page 37. I believe  
22 Nancy German, this is the -- an e-mail concerning a  
23 witness that I believe has been disqualified as a result  
24 of a failure to identify pursuant to the Court's prior  
25 ruling.

1 THE COURT: Okay.  
2 MR. PLAKAS: We will withdraw it just to get on  
3 with that.

4 THE COURT: Thank you. All right.

5 MS. ZIDAR: Page 42, Your Honor. It says,  
6 "hostile environment - defamation. Creating a hostile  
7 environment." This causes us serious concern with  
8 respect to the discussion we had in chambers with  
9 respect to words and actions that can be interpreted as  
10 words that are constitutionally protected opinion,  
11 cannot form the basis of any claim.

12 THE COURT: Well, it depends what "spews"  
13 means. If it's the written word or verbal, oral  
14 statements, which I've held are opinion. So I am  
15 concerned by the word "spews."

16 MR. PLAKAS: Your Honor, it appears that there's  
17 a reference to the count of defamation. As the Court  
18 knows, there's several other counts. And in terms of  
19 the hostile environment, then it's not only the written  
20 words, but the actions. So --

21 THE COURT: Well, I understand that, but my  
22 concern is not with the slide in total, but with its  
23 reference, with reference to the defamation claim. I've  
24 already held that chants, words, et cetera at the  
25 protest are protected opinion. And now we have this

1 THE COURT: That's -- if we're talking again  
2 about the written defamation, if the jury finds they  
3 were injured by it, that's really the whole point of  
4 that count, if proven. I don't see a problem with  
5 that.

6 MS. ZIDAR: Your Honor, the next slide, page  
7 43. Again, profanity hurled. This is a direct  
8 reference to protected speech.

9 MR. PLAKAS: I'm not sure that profanity --

10 MS. ZIDAR: There's no profanity -- pardon me,  
11 Lee, for interrupting -- but there was no profanity in  
12 the resolution, there's no profanity in the flyer.

13 THE COURT: Right.

14 MR. PLAKAS: In terms of the consequences of  
15 creating the hostile environment, a reaction has a  
16 consequence. And if in fact Oberlin College was there  
17 and observing that the hostile environment that was  
18 created had gotten out of control, that is relevant to a  
19 number of things, including the failure to properly  
20 monitor the --

21 THE COURT: So the problem I have with this is  
22 that now we are talking again, just like in the other  
23 slide, about chants, oral and verbal methods of  
24 protesting which I held are protected. I don't have an  
25 issue with you saying that the written flyer, you know,

1 statement, "Oberlin College spews defamation." The only  
2 issue for the jury is whether the written flyer and/or  
3 the student resolution, written statements are  
4 defamatory. So I've held that chants are protected  
5 opinions. It cannot be the basis of a legal claim.

6 MR. PLAKAS: So we can, if the Court feels that  
7 the headline is problematic, we can immediately change  
8 it. But we did have a discussion, and the Court  
9 recognizes, that by certain actions that a hostile  
10 environment can be spewed forward, and we talked about  
11 the consequences of that. This is the attempt to  
12 introduce that concept. And if we haven't done it  
13 artfully in the headnote, we will of course change it  
14 instantly.

15 MS. ZIDAR: I think they have done it artfully,  
16 Your Honor, and it implicates the college as being the  
17 protester, holding the signs, chanting and causing  
18 distress.

19 THE COURT: I don't have any problem with you  
20 saying "Oberlin College's defamation creates a hostile  
21 environment" and argue that.

22 MR. PLAKAS: Can you change that to that,  
23 please?

24 MS. ZIDAR: Defamation is also referred to in  
25 that same slide in the second bullet point.

1 created a hostile environment. But not to allude to the  
2 other oral statements. So you can --

3 MR. PLAKAS: We can end after the word "hostile  
4 environment" and --

5 THE COURT: Yes.

6 MR. PLAKAS: -- wait for the testimony.

7 THE COURT: Right. Oberlin College encouraged a  
8 hostile environment, and you've got Jason Hawk, a  
9 reporter.

10 MR. PLAKAS: That's right.

11 THE COURT: That will be it for Hawk, the  
12 reporter. I'm assuming the technology people are taking  
13 care of this?

14 MR. MCHUGH: Yes, Your Honor.

15 THE COURT: Okay.

16 MS. ZIDAR: To the extent, based on the same  
17 reasoning, we would maintain that the implication  
18 carries through on a number of these slides, 44, 45.

19 THE COURT: Hold on. Again, I mean, she's just  
20 talking about a large crowd and angry people. These are  
21 observations that could result from the publication of  
22 the written material.

23 MR. PLAKAS: Yes, Your Honor.

24 THE COURT: I'm going to permit that.

25 MS. ZIDAR: Next page, 47, I believe. The

1 threatening gestures and the flipping off. That is  
2 speech, Your Honor.

3 MR. PLAKAS: If in fact --

4 MS. ZIDAR: Flipping somebody off is speech.

5 THE COURT: I'm going to make this quick because  
6 I want to get going. I'm going to permit "feeling  
7 unsafe." Remove "threatening gestures, flipping off."

8 MS. ZIDAR: Your Honor, quickly, pages 50 and  
9 51. I believe the Court made a preliminary ruling that  
10 it would not exclude the Oberlin Police Department  
11 study, but it had to be admitted and properly laid  
12 foundation, context, things of that nature.

13 THE COURT: Right.

14 MS. ZIDAR: This is putting it into evidence  
15 before that foundation has been laid.

16 THE COURT: If there is a good faith basis for  
17 it, it's a business record, it was compiled, it's  
18 exception to hearsay --

19 MR. PLAKAS: We have subpoenaed the appropriate  
20 people --

21 THE COURT: I'll permit it.

22 MR. PLAKAS: -- from the police department.

23 MS. ZIDAR: Last one, Your Honor, on page  
24 73. Again, now, this is a year after the protests  
25 almost. This is months after the college had resumed

1 received this, she didn't try to say, you know, calm  
2 down. And our theme of the case is at all times when  
3 the college had the opportunity to downplay the incident  
4 and calm everybody down, the administrators as a group  
5 fanned the flames.

6 So for that, this is relevant because it shows  
7 this continuing animus and during that time we already  
8 have information that there was both direct and indirect  
9 efforts to boycott Gibsons, even though a portion of the  
10 orders had been resumed.

11 THE COURT: So you don't have -- I'm not going  
12 to permit this during opening because I'm not convinced  
13 of the good faith basis to get this in later on. But  
14 that could happen. And this is a text message to a  
15 member, to Dean Raimondo, it's a text message to Dean  
16 Raimondo from this person while observing some criminal  
17 proceedings down the hall. My concern for the defense  
18 is the term "we."

19 MS. ZIDAR: Thank you, Your Honor.

20 THE COURT: Just for opening.

21 MR. PLAKAS: I understand, Your Honor. Thank  
22 you.

23 THE COURT: Okay. If I could have counsel who  
24 are going to give opening statements approach for just a  
25 brief moment.

1 business with the college -- with Gibsons. This is  
2 purely inflammatory. There's no evidence that Ms. Myers  
3 speaks on behalf of the college for any purpose, for any  
4 claim at issue in this litigation.

5 MR. PLAKAS: Your Honor, this Toni Myers, which  
6 is -- was the assistant dean of students and director of  
7 the multicultural resource center, was involved in these  
8 proceedings from the beginning, from the night of the  
9 arrests. She was totally involved in meetings with the  
10 administration, with the students, and in fact, this  
11 e-mail is sent to, from the courtroom down the hall, to  
12 Meredith Raimondo, because Meredith Raimondo is getting  
13 updates in realtime from Toni Myers, and as, what -- it  
14 is relevant for several things.

15 Number one, it's relevant in terms of the  
16 malice, mental state, and motivation. Number two, it  
17 shows that the boycott was going to continue or there  
18 would be some action in some form, because she's saying,  
19 I hope we rain fire and brimstone on that store, and  
20 this is when the, at the point where the students  
21 actually got up in open court and admitted their guilt  
22 and made their statements. So she was texting in  
23 realtime what was going on.

24 The further relevance is that when the vice  
25 president and dean of students, Meredith Raimondo,

1 \*\*\*

2 (A sidebar discussion was had as follows.)

3 \*\*\*

4 THE COURT: We have an agreed comment that I'm  
5 going to make. I cleaned it up a little bit because I  
6 think it is important. That I distinguish between  
7 written material and verbal chants, and that at issue  
8 are two written statements, not just the flyer, the  
9 Student Senate Resolution, because in both they accused  
10 the owners of committing an assault, which is defamation  
11 per se. So I'm just going to -- I'm going to -- I added  
12 some words to clarify that.

13 MR. HOLMAN: In reference to the flyer?

14 THE COURT: Yes.

15 MR. HOLMAN: That's fine.

16 THE COURT: And I've used your paragraph on  
17 "chants are protected."

18 MR. HOLMAN: Okay. Great. Thank you, Your  
19 Honor.

20 THE COURT: Okay.

21 \*\*\*

22 (The sidebar discussion ended.)

23 \*\*\*

24 THE COURT: Before we begin opening statements,  
25 is there anyone in the gallery who has been subpoenaed

1 as a witness or is going to be called as a witness in  
2 this case? Please raise your hand. No hands are  
3 raised.

4 Counsel, if you would take a look at the room,  
5 make sure nobody that you are expecting to call as a  
6 witness, other than a party, is here. Plaintiffs?

7 MR. PLAKAS: Your Honor, we have scanned the  
8 courtroom, and we find no one.

9 THE COURT: Defense?

10 MR. HOLMAN: We agree, Your Honor.

11 THE COURT: Okay. Any other issue before I  
12 bring the jury in for opening. Plaintiffs?

13 MR. PLAKAS: No, your Honor. Thank you.

14 THE COURT: Defense?

15 MR. HOLMAN: No, your Honor.

16 THE COURT: Thank you. Okay. Bring the jury  
17 in.

18 MR. PLAKAS: I apologize. On the record. On  
19 the record, I apologize, Your Honor. We actually did  
20 have one -- just one comment and one concern with regard  
21 to the opening slides of the defendant.

22 MR. MCHUGH: Your Honor, may I approach? And I  
23 apologize, I don't have a printout of this. Your Honor,  
24 defendants' first slide in their presentation is a  
25 reproduction of the First Amendment to United States

1 Constitution. However, defamation is not protected by  
2 the United States Constitution.

3 This Court is going to be giving an instruction  
4 for opening statement, stating that it has found that  
5 the writ -- or the spoken word at the protests are  
6 protected opinion, and it's also going to be giving a  
7 statement at the beginning, before opening statements,  
8 that the written statements are not protected opinions.  
9 Any reproduction of the First Amendment is irrelevant  
10 and unnecessary, Your Honor.

11 THE COURT: For the defense.

12 MR. HOLMAN: Your Honor, Ron Holman. Our  
13 response is we have that there to provide the jury with  
14 context. It's also relevant because of Oberlin  
15 College's regulations. Those regulations were grounded  
16 upon constitutional principles. We obviously wish and  
17 want the jury to understand that, that the book itself  
18 that we're going to be discussing, Oberlin College's  
19 student regulations, policies and procedures are based  
20 upon constitutional provisions relating to freedom of  
21 speech and freedom of assembly.

22 THE COURT: Do you anticipate that the Court's  
23 going to give a jury instruction regarding the First  
24 Amendment or the right to assemble?

25 MR. HOLMAN: We do not. But again, we believe

1 this is a very important context for the jury to have to  
2 understand many of the principles, many of the themes  
3 that are contained in its regulation book, which we are  
4 going to go into in great detail.

5 THE COURT: Well, I'll permit you to talk about  
6 it, but I don't want them to see it as if it's the law  
7 in this case.

8 MR. HOLMAN: That is correct. And I understand  
9 it. We're not going to represent that it's the law in  
10 this case. What we will represent is that Oberlin  
11 College's student book -- Oberlin College student book  
12 is grounded upon the constitution and principles such as  
13 the First Amendment, principles are that contained as  
14 well within the Ohio Constitution. But I will not be  
15 arguing that this is the law in this case, and in fact  
16 only you can tell the jury what the law is. So that  
17 will not be an issue, Your Honor.

18 THE COURT: So we're not going to use these  
19 first two slides, right?

20 MR. HOLMAN: Well, we would like to use them.

21 THE COURT: I know you would like to. Just so  
22 we are on the same page.

23 MR. HOLMAN: What's the second slide of?

24 THE COURT: I prefer -- I prefer one at a time.

25 MR. PANZA: Sure.

1 THE COURT: So my ruling is that I don't want  
2 this up in opening statement. Plaintiffs haven't put, I  
3 don't believe, any law up there with respect to the  
4 case. This is law that doesn't apply to this.

5 MR. HOLMAN: Your Honor, with all due respect,  
6 that's incorrect. There are a number of slides that are  
7 contained with the demonstrative exhibit that plaintiffs  
8 have proposed using here that do restate the law.

9 THE COURT: But they're going to be part of the  
10 jury instructions.

11 MR. HOLMAN: And I'm not sure.

12 THE COURT: I made my decision on that. No, as  
13 to slide First Amendment, right to assemble. You can  
14 start with libel. And you know, you've laid out, you've  
15 laid out the elements of the claims, and I don't have  
16 any problem with that. They will be instructed on  
17 those.

18 MR. HOLMAN: Thank you, Your Honor.

19 MR. MCHUGH: Thank you, Your Honor.

20 THE COURT: Now are we ready?

21 MR. MCHUGH: Yes, Your Honor.

22 MR. PLAKAS: Yes, Your Honor.

23 \*\*\*

24 (Within the presence and hearing of the jury.)

25 \*\*\*

1 THE COURT: As I mentioned before we broke, we  
2 would return at this time for opening statements. I am  
3 advising you that opening statements are not evidence,  
4 but basically a roadmap for each party with respect to  
5 what they believe their evidence will show.

6 Before opening statements -- and the plaintiff  
7 will go first, followed by the defense -- I have some  
8 matters that I need to give you an instruction on.

9 The Court has determined that a written  
10 statement in a flyer that was at the protest and a  
11 written statement contained in an Oberlin College  
12 Student Resolution indicating that the owners of  
13 Gibson's Bakery committed an assault, a crime, if false,  
14 are defamatory statements per se. Meaning, that these  
15 written statements are of such a nature that it is  
16 presumed that they tended to degrade or disgrace the  
17 plaintiffs or hold the plaintiffs up to public hatred,  
18 contempt or scorn.

19 If you find that the defendants published these  
20 written statements, and if you find that the defendant  
21 acted with actual malice, it is presumed that the  
22 plaintiffs' reputation was harmed, and you may award  
23 plaintiffs an amount of money that you decide is  
24 reasonable and fair for the plaintiffs' injuries  
25 directly caused by the defendants' defamatory written

1 statements.

2 In addition to presumed damages, the law of  
3 defamation also recognizes a category of damages called  
4 special damages. Special damages are those direct  
5 financial losses resulting from the plaintiffs' harmed  
6 reputation. The Court also instructs you that for the  
7 purposes of the law of defamation, plaintiffs Gibson's  
8 Bakery is a private figure. As a result, the plaintiff  
9 is required to prove that the defendants were negligent  
10 with regards to the elements of their defamation claim.

11 Finally, as to any verbal or oral statements,  
12 chants or words that were made at the protests on  
13 November 10th and 11th of 2016, and that were directed  
14 at the plaintiffs, Gibsons or their employees, the Court  
15 has determined that those oral or verbal statements are  
16 constitutionally protected opinion, and therefore cannot  
17 form the basis of a legal claim.

18 And you will get this instruction in writing at  
19 the end of the case.

20 For the plaintiff.

21 MR. PLAKAS: Thank you, Your Honor.

22 Good afternoon, Ladies and Gentlemen.

23 THE JURORS: Good afternoon.

24 MR. PLAKAS: No one in this country is allowed  
25 to steal without consequences. Victims who stand up to

1 crime should not be defamed or retaliated against.  
2 Institutions should never be permitted to defame or  
3 retaliate against victims of crime as a tactic to  
4 protect their own business or philosophies.

5 Now, with your permission, may I tell you the  
6 story of this case?

7 THE JURORS: Yes.

8 MR. PLAKAS: Thank you. Come back with me to  
9 the Oberlin College campus in the winter of 2015,  
10 starting in December and the early months of 2016. The  
11 campus at Oberlin College was not a calm, peaceful  
12 place. There were things happening there. The students  
13 were not happy, and the administration knew that.

14 At the end of 2015, a student group, which was  
15 the African-American student group, Abusua, made a  
16 demand, numerous demands upon the administration to have  
17 things changed at the college. There's 14 pages of  
18 demand. The demands were well-publicized. The  
19 administration received the demands. The demands made  
20 the newspaper. Not only did the demands make the  
21 college newspapers, but the demands were reported in the  
22 local newspapers, the Chronicle Telegram. They were  
23 reported in cleveland.com, there was an article in the  
24 New York Times, there was further campus news articles.  
25 And when the administration told the black student group

1 no, we're not going to agree to those demands, then  
2 there were more articles. And it was publicized that  
3 the letter that then-president Marvin Krislov sent,  
4 saying no, we're not going to do that, it was clear that  
5 created more controversy and the students were not  
6 happy, and the administration knew it.

7 Marvin Krislov had a contract that would have  
8 allowed him to work at the college through into 2018.  
9 Soon afterwards, you will see that an agreement was  
10 signed with Mr. Krislov where he would step down as  
11 president effective July 1st, 2017. So he left the  
12 college or agreed to leave the college a year early. He  
13 notified the college, and it was recognized by everyone  
14 and understood, that he would be leaving and stepping  
15 down. And this creates a power vacuum.

16 There was no president at the college until the  
17 new president, Carmen Ambar, came in, in September of  
18 2017, a year after this document was signed.

19 So come with me further then. We have the  
20 president basically is a lame duck. He's going to be  
21 leaving, and everyone knows that. So now come with me  
22 to November of 2016.

23 In addition to this power vacuum, at that time  
24 it was well-known that there was another kind of problem  
25 on Oberlin's campus, and that was a history recognized

1 by the administration of Oberlin of the students  
 2 stealing or shoplifting from local merchants. They knew  
 3 that. They recognized the problem.  
 4 Stay with me to the middle of the beginning of  
 5 November, 2016. Tuesday, November 8th, 2016, was our  
 6 last presidential election. The students were  
 7 apparently not happy with the results, and you will see  
 8 some communications from the administration recognizing  
 9 they weren't happy with it. In fact, there were  
 10 meetings and campus meetings.  
 11 During that week, the issue with thefts and  
 12 shoplifting continued. With regard to Gibson's Bakery,  
 13 you will see that in fact, prior to the day after the  
 14 election, which is November 9th, prior to the incident  
 15 involving the three students that we will be talking  
 16 about, just that week, Gibson's Bakery had had prior  
 17 shoplifting. And you will see from the official police  
 18 department records that there is a shoplifting on  
 19 November 6th involving Oberlin College student Melissa  
 20 Harris, half gallon of ice cream, but it was stealing.  
 21 Melissa Harris happens to be on the editorial board of  
 22 the Oberlin student newspaper, which you will see has  
 23 been writing about the Gibsons and being critical of  
 24 them.  
 25 In addition, the next day, November 7th, there

1 was another Oberlin College student stealing, and this  
 2 time it was face moisturizer. In both cases, when the  
 3 students were stopped, they admitted their wrong and  
 4 they admitted their stealing.  
 5 This week continues on November 9th, the day of  
 6 the incident, which we will be talking about in greater  
 7 detail, another Oberlin College student was caught  
 8 stealing. And you see, it's -- the interesting thing is  
 9 this happened -- military time 1350, that's 1:50 in the  
 10 afternoon -- on Wednesday, November 9th.  
 11 And you will hear from numerous sources in the  
 12 administration that they were aware of the problem. We  
 13 know that, we know and we expect President Krislov to  
 14 confirm that local businesses had concerns about Oberlin  
 15 College students shoplifting at their stores. We know  
 16 that the people surrounding President Krislov and the  
 17 administration, like chief of staff Jane Mathison at  
 18 that time, chief of staff to the president, says, "I do  
 19 know that the downtown merchants are complaining about  
 20 the amount of theft going on -- not to say it's all our  
 21 students, but that's always the first line."  
 22 So we have this recognition in November. So now  
 23 what happens? The day after the election, three  
 24 students come in later in the afternoon with the intent  
 25 to steal. One of the students uses a fake ID to go to

1 the counter to improperly, using a fake ID, buy a bottle  
 2 of wine, and at the same time he's got two bottles of  
 3 wine concealed.  
 4 You will hear that shopkeepers have the right to  
 5 protect themselves and to protect their business and to  
 6 detain shoplifters and thieves and to actually even  
 7 follow them out of the store.  
 8 We're not going to go into great detail about  
 9 this incident because the important thing is that when  
 10 this incident occurred, no one has ever said, and you  
 11 will hear no evidence that the three students denied  
 12 their criminal intent. And you will see that all of  
 13 those cases are closed. So we're not going to  
 14 relitigate those cases because they're open-and-shut  
 15 cases, and starting with the police report, later that  
 16 afternoon, where the arrest was for robbery, assault by  
 17 the students on the shopkeeper, and petty theft. That's  
 18 the police report from November 9th. So there's no  
 19 mystery.  
 20 It's not as if the police say well, let us  
 21 really investigate because there is a question. There  
 22 was no question. And in fact, the case is closed, and  
 23 you see that all three of the students from Oberlin  
 24 were -- admitted their guilt, took their responsibility  
 25 and were convicted of charges, including attempted

1 theft, aggravated trespass, underage purchase or  
 2 consumption.  
 3 And this is Mr. Aladin, the student that  
 4 actually had the wine. You see the three charges which  
 5 he admitted and convicted. His fellow students, Cecelia  
 6 Whettston, convicted of attempted theft and aggravated  
 7 trespass.  
 8 And the significance of those convictions and  
 9 admissions are -- can be further found in what they  
 10 actually pled to. And to give you context as to what  
 11 these closed cases involved, the aggravated trespass  
 12 that they pled to basically says and you will see, "No  
 13 person shall enter or remain on the land or premises of  
 14 another with purpose to commit on that land or those  
 15 premises a misdemeanor. The elements of which involve  
 16 causing physical harm to another person or causing  
 17 another person to believe that the offender will cause  
 18 physical harm to them."  
 19 They pled guilty to that. They pled guilty to  
 20 aggravated theft by deception. And as to the young male  
 21 student, pled guilty to the ID. So you would think that  
 22 the story would have ended there. And it should have  
 23 ended there. But it didn't end there and that's why we  
 24 are here.  
 25 They were taken a block or two away to the

1 police station to be booked. You will see the police  
 2 report, you will see the result of the police report.  
 3 And immediately, officials from the college came to the  
 4 police department. In fact, one of the officials tells  
 5 the three -- we've got four deans here, four deans from  
 6 the college have come to the police department in  
 7 support of what? In support of the students, even  
 8 though no one will testify, none of the deans will  
 9 testify that, well, we were there because we thought  
 10 that this theft had not occurred. We were there because  
 11 we didn't think there was any stealing. No, no one will  
 12 say that. Everyone knew the crime had occurred. But  
 13 the deans went into action. Why? Only you will be able  
 14 to answer that.

15 They immediately guaranteed the students that  
 16 they would get attorneys for them and have the attorneys  
 17 paid for by resources within the college or by  
 18 high-ranking officials affiliated with the college,  
 19 including, you will see the communications went out to  
 20 the board of trustees at the college to ask the  
 21 high-ranking board of trustees to come up with money to  
 22 pay for the attorney fees and hire attorneys for these  
 23 three students.

24 You will see that these deans made arrangements  
 25 not only for attorneys, but they apparently selected one

1 at the top, "It has come to our attention that the war  
 2 on our community has already started. Due to recent  
 3 events and an attack on members of our community, it's  
 4 time to get in formation, for real." So a war has  
 5 started and the students are saying, "let's get in  
 6 formation." I don't think they're referring to the  
 7 marching band that gets in formation. Armies get in  
 8 formation.

9 So they go on. "Tomorrow we are boycotting  
 10 Gibson's and Allyn Gibson's racism. We are meeting at  
 11 11:00 tomorrow in front of Gibson's. Be there." And  
 12 now someone sat there and said not only boycott them and  
 13 brand them as racist, but "do not give them any more of  
 14 your money, stay strong, stick together, midst of all  
 15 this madness." Madness being where three students were  
 16 charged, were caught committing a crime.

17 The important thing is then, do high-ranking  
 18 administration officials know that these students are  
 19 ready to start a war, and are they going to use it as a  
 20 teaching moment, or is it going to be a moment where  
 21 they can appease the students because they know that  
 22 they're unhappy from ignoring their prior demands? So  
 23 what's the timeline?

24 So this declaration of war is sent on November  
 25 9th. That's how fast things happen when the students

1 attorney that they thought was a special attorney from  
 2 Columbus, and the administration officials made  
 3 arrangements for, to use college funds out of the  
 4 student services fund or whatever fund they had, to hire  
 5 a limousine service to transport at least one of the  
 6 students to an appointment with the attorney in Columbus  
 7 and back.

8 You will see that, although the deans and the  
 9 college and the administration had a choice at that time  
 10 and they could take a step back and use this as a  
 11 teaching moment, or they had a choice to do whatever it  
 12 took, regardless of the facts or the law, to make this  
 13 an event, to make this an issue, to consider this a  
 14 great injustice, even though there were no facts to  
 15 consider it a great injustice.

16 So when the deans are pushing this narrative, of  
 17 course the students are energized by it, because now  
 18 they have a cause, they have a reason to do whatever  
 19 they want to do. So what do the students do when they  
 20 know? And now in this day of cell phones, everyone  
 21 knows everything, especially on a campus, very quickly.

22 So when the deans encourage the students and  
 23 facilitate this confusion, what starts to happen and is  
 24 it foreseeable? The first thing that starts to happen  
 25 is that the students create a flyer. And the flyer says

1 are encouraged and facilitated. On November 9th at  
 2 10:34 p.m., this flyer that you saw is sent by one of  
 3 the employees of Oberlin College to the vice president  
 4 of the college and dean of students, Meredith Raimondo.  
 5 So they know. And Vice President Raimondo has already  
 6 been to the police station also. So they know what they  
 7 created. And they had the opportunity to recognize  
 8 that. There is a text to Tita Reed from Raimondo, Vice  
 9 President Raimondo that next morning saying, we better  
 10 have a meeting. And then Vice President Raimondo  
 11 recognizes those words, "the war has started." And  
 12 let's take a look at those texts.

13 So here is timeline that I referred to. The  
 14 next morning after that text being sent that evening to  
 15 her -- and I think Dr. Meredith Raimondo, vice  
 16 president, will say, "I don't know if I read it until  
 17 the next morning." That's fine. The next morning at  
 18 7:19, there's an e-mail, and she starts to set up a  
 19 meeting with the other high-ranking administration  
 20 officials and Oberlin College employees.

21 And at the top there it says, and she  
 22 recognizes, "The students have planned a protest for  
 23 11:00 at Gibson's."

24 Next e-mail. Remember, the first one was a few  
 25 minutes before. The next e-mail about six minutes

1 later, again from Vice President Raimondo, talks about  
2 the protest, and the e-mail says, "If they --" the  
3 students "-- block, interfere with sidewalks, they are  
4 subject to city action if they have not obtained a  
5 permit." Again, a teaching moment. They could have  
6 chosen to go to the city to say look, let's do this the  
7 right way, let's get a permit. There will be no  
8 evidence that anyone tried to get a permit. They did  
9 mention to the police that this would be started.

10 What next happened? Meredith, Vice President  
11 Raimondo basically circulating the call-to-war flyer and  
12 she says, "FYI, in case it's posted publicly, I'd like  
13 you to know what's coming." And who does she -- the  
14 participants, you will see it's Ben Jones, the vice  
15 president of communications; and Scott Wargo, who is  
16 also in the communication department. So these are the  
17 people that help craft the messages that Oberlin College  
18 is sending out to the students and the world.

19 So she says, this thing, "In case it's posted  
20 publicly, I'd like you to know what's coming." And then  
21 within minutes she follows up and says, "Whoops, not a  
22 question. It is coming." Because first step here,  
23 there's a question mark at the end of her sentence. And  
24 then she says, well, no, there's no question. "It's  
25 coming." The war that the students are planning is

1 coming, and this administration still has the  
2 opportunity to do something about it, or if they like,  
3 to fan the flames, to pour gasoline on a fire.

4 The arrangements for the meeting with a number  
5 of high-ranking officials go on a few minutes later.  
6 You see another e-mail, she's organizing the meeting at  
7 Wilder 105, that's in what most of us refer to as a  
8 student center building. Sets up the meeting.

9 Few minutes after that, another e-mail at 7:44,  
10 and Vice President Raimondo says, "I talked to MK last  
11 night to make sure he was aware of the situation." And  
12 MK is the former president, Marvin Krislov. And it  
13 says, "Posse students attested -- probably a typo, means  
14 arrested -- "after a situation at Gibson's." She goes  
15 on to say, "I have since learned there will be a protest  
16 today at 11:00 and perhaps other fallout." So the  
17 administration and high-ranking officials at that point  
18 were recognizing there could be other fallout from this.  
19 This isn't just a couple people protesting.

20 And she goes on to say -- she wants to know how  
21 much the president wants to be kept in the loop and goes  
22 on to further say, "I think all the key people are in  
23 consultation." So the administration, Oberlin College's  
24 administration has formed this key group that's in  
25 charge. And it's important, you will hear from

1 testimony from former President Krislov, that he never,  
2 during the course of all of these several days of  
3 protests, he never once left his president's mansion --  
4 that's what they call it there -- the college  
5 president's mansion, to go over and interact or observe  
6 what the students were doing. He delegated all of that  
7 responsibility to Vice President Raimondo and this group  
8 of high-ranking Oberlin College officials.

9 The students, of course, are energized. What  
10 happens next? By the next evening, the student senate  
11 had passed a resolution. And you will see an e-mail  
12 that Vice President Raimondo receives that resolution,  
13 and she starts to circulate it to the president of the  
14 college at that time.

15 It should be noted that the student senate has a  
16 faculty advisor. The faculty advisor was Vice President  
17 Raimondo.

18 What did the Student Senate Resolution  
19 say? Well, they first say, "We find it important to  
20 share with you key facts." Facts. They then go on to  
21 say, "Gibson's has a history of racial profiling and  
22 discriminatory treatment of students and residents  
23 alike. Charged as representative of the associated  
24 students of Oberlin College, we have passed the  
25 following resolution." Resolved. That the students of

1 Oberlin College immediately cease all financial --  
2 excuse me -- "cease all support, financial and  
3 otherwise, of Gibson's Food Market and Bakery, and be it  
4 further resolved that the students of Oberlin College  
5 call on President Marvin Krislov, Dean of Students  
6 Meredith Raimondo, all other administrators and the  
7 general faculty to condemn by written promulgation the  
8 treatment of students of color by Gibson's Food Market  
9 and Bakery." And they go on.

10 This resolution is actually, in addition to  
11 being circulated, it's posted in the student center.  
12 And interestingly enough, it stays up in a prominent  
13 location in the student center, where thousands of  
14 people go past that in the course of weeks and  
15 months. It stays up for over a year, broadcasting and  
16 defaming Gibson's Bakery. It doesn't go down until  
17 after the Gibsons finally were forced to file suit to  
18 try to save their name, their reputation and their  
19 business.

20 So we know this war is coming, the students have  
21 said that, the administration recognizes that. So at  
22 that point there's another choice. Do you use this as a  
23 teaching moment? Do you try to stop this war, if that's  
24 what the students want to call it? Or do you appease  
25 the students, do you aid them and abet them? Which

1 means, do you encourage them, do you support them, and  
2 try to sit them down and say hey, look, we're a nation  
3 of laws? A crime was committed, there's no question it  
4 was committed. Let's take a step back. Let's not try  
5 to use our own agendas for any coverup or any excuses,  
6 and especially, let's not attack the victims who were  
7 subjected to this crime.

8 So faced with that choice, what does Oberlin  
9 College, through President Krislov and Vice President  
10 Raimondo, do? Remember, the student senate said, we  
11 want a written proclamation -- I think they called it  
12 a -- condemned by written promulgation. They want the  
13 administration to condemn Gibson's.

14 All right. So here's another point in time  
15 where you can be an adult in the room and take a stand  
16 and say wait, let's figure out why we are doing this  
17 here, why you students are doing this. Or you can  
18 encourage them, you can aid them, abet them, you can  
19 support them, you can praise them, which of course will  
20 fan the flames.

21 What do they do? Well, what you will see they  
22 do is by the next day, within, not even a full day goes  
23 by, they issue a proclamation. But the reason that  
24 proclamation or promulgation has the effect that it does  
25 of defaming and creating a hostile environment, is

1 19-year-old man, who now we know took responsibility.  
2 They also say, "If you have any additional information,  
3 video or photo evidence, please contact us." That's  
4 important because there's no evidence whatsoever to  
5 contradict the guilt of these people.

6 So we now have this flyer being circulated. And  
7 what's happening in terms of whether the college  
8 high-ranking administrative officials are involved in  
9 fanning the flames? You will here from a local  
10 reporter, Jason Hawk, who is a reporter and editor with  
11 the Oberlin News-Tribune. As reporters do, he went to  
12 the scene of something that was happening and  
13 newsworthy.

14 What will his testimony be? He was able to  
15 observe Vice President Raimondo, and in his words, she  
16 stood authoritatively and physically with students. She  
17 was on a bullhorn, and importantly, she was eager to  
18 distribute this flyer. And this flyer -- and I'm not  
19 sure if you can read it. I'm sure your eyes are better  
20 than mine. But under the "Don't Buy," it says, "This is  
21 a racist establishment with a long account of racial  
22 profiling and discrimination. Today we urge you to shop  
23 elsewhere in light of the particularly heinous event  
24 involving the owners of this establishment and local law  
25 enforcement. Please stand with us." When you see the

1 because now the demonstrations have already started.  
2 The demonstrations are serious, and the police are  
3 there. And you will hear from Officer Lett, and  
4 actually, she's sergeant, so forgive me. In terms of,  
5 if you heard that, well, this is just student action and  
6 we're not involved. From the beginning, as Sergeant  
7 Lett will tell you, Vice President Raimondo tells her  
8 that she is the liaison, she's the representative for  
9 the protesters, and if the police have any issues or  
10 questions, they're to come to her. So she's involved,  
11 and you will hear from President Krislov and Vice  
12 President Raimondo herself that she was doing that  
13 because she thought it was one of her job  
14 responsibilities. And Sergeant Lett says that Vice  
15 President Raimondo told her all this should be brought  
16 to her.

17 So what was going on at this time? In addition  
18 to the call-to-war flyer you've already seen, there's  
19 another flyer that was being circulated at the protest.  
20 And this flyer says, once again at the top, "Don't buy.  
21 A member of our community was assaulted by the owner of  
22 this establishment yesterday." By the owner of this  
23 establishment. The two owners of the establishment are  
24 Grandpa Gibson, who is in his 90s, and Dave Gibson, who  
25 is in his 60s. And it goes on to talk about this

1 flyer, which will be in evidence, you will see even the  
2 back of the flyer goes on to suggest other places for  
3 everyone to take their business to so the boycott at  
4 Gibson's could be successful.

5 So if the college says, well, we had nothing to  
6 do with the flyer, then as we take you back to those  
7 days during the protests, Jason Hawk will say Vice  
8 President Raimondo was eager to distribute the flyer.  
9 She wasn't a passive observer, and in fact, she did hand  
10 him a flyer.

11 So what other evidence might you hear in terms  
12 of whether or not Oberlin College, through its  
13 high-ranking officials, encouraged, aided and abetted,  
14 praised or orchestrated the demonstrations? Well, Rick  
15 McDaniel worked for Oberlin College for years as the  
16 chief of security. And he will say that he observed  
17 Vice President Raimondo on a bullhorn, directing the  
18 protests. He will say that in all his years, working at  
19 Oberlin College and living in Oberlin, the involvement  
20 that he saw from high-ranking administrative officials  
21 during this time was unprecedented.

22 He will also tell you that in addition to --  
23 you've already heard that Meredith Raimondo passed out  
24 one of these flyers to Jason Hawk, the reporter. That  
25 an assistant director of programs at the college who is

1 directly -- his line of command was up to Vice President  
2 Raimondo. He was distributing a stack of these same  
3 flyers that we just talked about.

4 You will hear from an employee of Gibson's,  
5 Clarence, they call him Trey, James, he saw the thing  
6 the others saw: Vice President Raimondo on the  
7 bullhorn. He characterized it as she was orchestrating  
8 the protest. She was out, she was passing out the  
9 flyers. In the event they ran out of flyers, she  
10 instructed the students which college office they could  
11 go to to use the copy machines to make more flyers so  
12 more people could receive this.

13 So in light of all of this happening -- and  
14 remember, the student senate with Vice President  
15 Raimondo as the faculty advisor had, in effect, demanded  
16 the administration to issue something in writing. So  
17 the administration had another choice at that  
18 time. They could have been the adult in the room. They  
19 could have tamped this down, or they could have said,  
20 okay, that's what students want, let's keep them  
21 happy. And President Raimondo will -- excuse me --  
22 President Krislov and others will refer to the students  
23 as their customers. You keep customers happy in a  
24 college teaching.

25 So what would it take to keep these customers

1 there's no evidence that would exonerate the three  
2 students from the crimes they committed.

3 "We will commit every resource to determining  
4 the full and true narrative." Does that mean they're  
5 actually going to try to get to the facts and get to the  
6 bottom of it? Sounds like it. Sounds like a reasonable  
7 thing to do.

8 But if we jump forward, we will find out that  
9 they never made an effort, and although this seems to be  
10 a promise to investigate, they chose not to.

11 "We will commit every resource to determine the  
12 full and true narrative, including exploring whether  
13 this is a pattern, and not an isolated incident." So by  
14 that language, do they in effect tell the students yeah,  
15 we believe this happened? We believe that Gibson's  
16 Bakery did something wrong, that they assaulted someone  
17 or they racially profiled? "We are dedicated to a  
18 campus and community that treats all faculty and staff  
19 fairly." Et cetera. Et cetera.

20 Third paragraph. "Accordingly, we have taken  
21 the following steps." They talk about "Dean Meredith  
22 Raimondo and her team have worked to support students  
23 and families affected by these events." So we're  
24 working to support students and family affected by these  
25 events. I presume that means -- I'm not sure if she's

1 happy? Well, here's a note. You can't possibly read  
2 that, but we're going to cut it. This is the response  
3 to the student demand to support them in their efforts  
4 against Gibson's, and it was issued to the entire campus  
5 community.

6 So several thousand e-mails went out. And this  
7 is signed, as you will see at the bottom -- or  
8 designated by Marvin Krislov, president, and Meredith  
9 Raimondo, vice president and dean of students. And  
10 there's -- I'll read you, with permission, what they  
11 say.

12 It says, "This has been a difficult few days for  
13 our community, not simply because of the events at  
14 Gibson's Bakery, but because of the fears and concerns  
15 that many are feeling in response to the outcome of the  
16 presidential election."

17 "We write foremost to acknowledge the pain and  
18 sadness that many of you are experiencing." So they're  
19 talking to adults in college. "We want you to know the  
20 administration, faculty and staff are here to support  
21 you as we work through this moment together."

22 Next paragraph. "Regarding the incident at  
23 Gibson's, we are deeply troubled because we had heard  
24 from students that there was more to the story than what  
25 had been generally reported." Although we now know

1 referring to the presidential election or the students  
2 having been apprehended for committing crimes.

3 "Tita Reed, special assistant for governmental  
4 and community relations --" and you will hear more about  
5 Tita Reed as we go forward "-- has reached out to  
6 Mr. Gibson to engage in a dialogue." And they end that  
7 paragraph by saying, "We will continue to work on these  
8 matters in the coming days to make sure that our  
9 students, staff and faculty can feel safe and secure  
10 throughout our town." Well, the students were the ones  
11 that were committing the crime.

12 And then finally, to show their support, they  
13 say, "We are grateful for the determination of our  
14 students and for the leadership demonstrated by the  
15 student senate." Apparently referring to that  
16 resolution that you already saw where they were  
17 attacking Gibson's.

18 "Thanks to all of us that have contacted us with  
19 suggestions and concerns."

20 What other support, what other show of support  
21 did the college do to show the students that the college  
22 is on their side? Well, I don't think you can read  
23 that, but you can read that. November -- second week of  
24 November, and apparently the students' hands were  
25 chilly. So they asked the vice president whether or not

1 the college would buy gloves for them, 75 or 100 more  
2 gloves, so the protesters could stay out there  
3 apparently without their hands getting chilled. I'm not  
4 sure that anyone ever bought me a pair of gloves in  
5 college for me to do anything.

6 What does vice president of the college  
7 say? "Yes. Bring the receipt to 105," which is the  
8 office. "Thanks for helping folks stay warm." Because  
9 if folks were chilly, maybe they wouldn't be as vigorous  
10 in the protesting. Maybe they would go back to their  
11 dorms and their studies.

12 At the same time, I've already told you that in  
13 addition to guaranteeing attorneys, they have a  
14 limousine service transport at least one of the students  
15 to an attorney in Columbus. This was Mr. Aladin who's a  
16 passenger. Who reserved the limousine service? Vice  
17 President Raimondo. What was the itinerary? Pick up at  
18 Wilder Hall and go to New Albany, Ohio, which is right  
19 there outside of Columbus.

20 So if the defamation and the flyers were not  
21 enough to attack the Gibsons and their 134-year-old  
22 business, what else could they do, in addition to  
23 ruining their name and reputation? They could, if they  
24 were strategic and if they used their leverage and  
25 clout, interfere with longstanding business

1 relationships.

2 The Gibson's Bakery, you will hear, has been  
3 serving the college and providing its products since  
4 before World War I. That's World War I. Gibson's  
5 survived World War I, they continued to provide the  
6 college with products and survived the Great Depression  
7 in the '20s. They continued to survive World War II and  
8 provide to the college. In more recent years, Gibson's  
9 Bakery made it through the great recession and providing  
10 the college.

11 But now the college chose to make a decision to  
12 interrupt that longstanding business relationship, even  
13 though everyone will testify that prior to this incident  
14 there was no hint of anyone complaining about Gibson's,  
15 their product, their service, or to be frank, there was  
16 no one complaining and there was no record in the  
17 college of them mistreating any minority or any race.  
18 Because if they had been, number one, they wouldn't be  
19 in business for 134 in a small community; and number  
20 two, the college would have cut them off. So the  
21 college has a choice.

22 What tactic or strategy do they use now to  
23 further support three students that we know never denied  
24 their guilt, but now they're becoming famous? So first  
25 you will see a string of e-mails with Vice President

1 Raimondo. And the date is -- remember, the 9th was the  
2 theft. By the next day she's talking about not serving  
3 any of Gibsons's product in the dining hall because  
4 that's where the products had been delivered, and for  
5 decades even Grandpa Gibson would physically take the  
6 products to dining halls and other places as part of  
7 that relationship.

8 The decision is being made and now they find out  
9 gee, not only are there pastries and doughnuts and  
10 things, but even the pizza dough is from Gibson's that  
11 they serve for students at dining hall. And Michele  
12 Gross is a longtime employee that for several decades  
13 has worked in food service. She's starting to question,  
14 why, "Why are we doing this?" And she says in her  
15 e-mail to Vice President Raimondo, "Do you really want  
16 no pizza?" I don't know if the kids -- if that causes  
17 further issues if they don't get their pizza.

18 Vice President Raimondo says, "Ugh. Is there  
19 anything else we can do? Students at the protests have  
20 already announced a call for CDS --" Campus Dining  
21 Services "-- to sever ties." She says, "I'm trying to  
22 buy time." Again, you have a choice as an adult, as the  
23 administration to say, wait a minute, let's stop  
24 here. But she makes reference to the students have  
25 announced a call for the campus dining service to sever

1 ties, to break this business relationship that's been  
2 going on for decades and decades, from before World War  
3 I.

4 How does the rest of the team get involved in  
5 that? Well, Vice President Raimondo said, well, before  
6 we take that step, let's get other people in this team  
7 of administrators involved. And she says, "Hold the  
8 order until we hear from Tita Reed." Remember, Tita  
9 Reed is a high-ranking official, she's a special  
10 assistant to the president for community affairs. This  
11 is a community affair now. Vice President Raimondo says  
12 maybe we should get her involved and get her input so we  
13 can make a decision.

14 Who else is involved? Well -- and before we get  
15 to that, now apparently the decision comes pretty  
16 quickly. By November 14th, she says, "Don't place the  
17 Gibson order today." What's the next thing that  
18 happens? So you've heard the name Ben Jones before. He  
19 was involved in some of the early e-mails and  
20 discussions. He's the vice president of Oberlin College  
21 for communications, the message that they want to send  
22 to the world, their students, everybody else. And where  
23 is his mind at this point? What does he say? "We  
24 should just give all business to Leo at IGA."

25 And if you -- when you see the back of the

1 flyer, the flyer that Vice President Raimondo passed out  
 2 to people and people who are under her and report to  
 3 her, passed out to people, on the back of it it shows,  
 4 everybody who gets a flyer, where they can go to help  
 5 this boycott of Gibson's. So here's the vice president  
 6 of communications saying, "We should just give our  
 7 business to Leo at IGA," and at the end this  
 8 high-ranking official, to show we believe how far off  
 9 the rails what their intent, what their state of mind  
 10 is, how they're being either intentionally malicious or  
 11 negligently malicious, he ends it with the F-word. It  
 12 says, "F 'em"." That's not my words. It's the vice  
 13 president of communications for the college.

14 And then we've already mentioned Tita Reed.  
 15 What does she do? Maybe there's going to be an adult.  
 16 Maybe she says, wait a minute, slow down. Special  
 17 assistant to the president says, "100 percent" when he  
 18 says "F 'em." And she has -- one, two, three, four,  
 19 five, six -- is that seven exclamation marks, agreeing  
 20 with him saying give all your business to someone else  
 21 and F the Gibsons.

22 So is that the outlier? Does the administration  
 23 not know that they're doing the wrong thing, that  
 24 they're recklessly or negligently or maliciously hurting  
 25 somebody and their business relationship?

1 Emily Crawford puts Ben Jones, the vice  
 2 president of communications, on notice when she hears  
 3 what's going on. This is even earlier on November  
 4 11th. She says, "I have talked to 15 county friends who  
 5 are POC -- " that's persons of color "-- and they are  
 6 disgusted and embarrassed by the protests. In their  
 7 view, the kid was breaking the law, period. Even if he  
 8 wasn't shoplifting, he was underage. To them this is  
 9 not a race issue at all, and they do not believe the  
 10 Gibsons are racist. They believe the students have  
 11 picked the wrong target."

12 So the purpose of this is that we now know that  
 13 other people, that the administration high-ranking  
 14 officials, like the vice president of communications, is  
 15 getting information from credible or reliable sources,  
 16 he knows that, disputes what the students or the factual  
 17 accuracy of what the students are doing or saying and  
 18 disputes the accuracy of the defamatory flyers that Vice  
 19 President Raimondo, Julio Reyes and others were passing  
 20 out.

21 And terms in the timing, just so that you  
 22 understand -- excuse me, I jumped there. I told you I  
 23 was an internet idiot. I'm also an electronic idiot.  
 24 So forgive me.

25 But when Vice President Jones gets this, we know

1 Emily Crawford, we think she's a reliable source, maybe  
 2 we should re-think this. So he starts to circulate this  
 3 e-mail to other members of the team that are involved in  
 4 the decisionmaking. And now we see special assistant to  
 5 the president, how does she respond when vice  
 6 president -- when Vice President of Communications Jones  
 7 sends this?

8 What does she say? Well, you see it. Her mind  
 9 is already made up. This is November 11th. This  
 10 incident occurred the evening of November 9th. So this  
 11 is in mid-afternoon. So within a day and a half, the  
 12 administration has made up their mind. They're going to  
 13 boycott. They're going to continue with this thing  
 14 because special assistant to the president says,  
 15 "Doesn't change a damn thing for me." That was her  
 16 choice.

17 So when you are Goliath, when you are the  
 18 800-pound gorilla in a community, you use your leverage.  
 19 You are able to bargain. So what's going on with this  
 20 administrative team? Obie dollars is something that's  
 21 almost like having a debit card in college. Your  
 22 parents put money or you put money in the account and  
 23 you go to either the college stores or local merchants,  
 24 you can give them your Obie card, your Oberlin card, and  
 25 then that money is taken out.

1 So what could the college do to further leverage  
 2 or hurt the Gibsons? Well, you will see, and we will  
 3 show you, a string of e-mails where the administrative  
 4 team was trying to figure out, what is the volume of  
 5 business that is done, how many different ways does the  
 6 Oberlin community do business with Gibson's? And in  
 7 addition to the standing orders that's been around for  
 8 generations of taking food in the dining hall and taking  
 9 care of special events, the students come in, obviously,  
 10 and that's a major source of income, and how they come  
 11 in is they pay with their Obie dollars.

12 What does special assistant to the president,  
 13 Tita Reed, say when she learns there's some significant  
 14 amount of student expenditures through Obie dollars?  
 15 What does she say? Obie dollars, another tool for  
 16 leverage. So when you control a town, when you are in  
 17 fact the Goliath, you use whatever you think you can  
 18 use, so they can cut off Obie dollars. And the  
 19 testimony will be that the students did, in almost all  
 20 of it, stopped doing business and there were no more  
 21 Obie dollars coming in.

22 You will see that this is the communications and  
 23 that the President Krislov was involved in this analysis  
 24 of the use of Obie dollars. You will see Vice President  
 25 Raimondo was involved in the discussion. You will see

1 one of the business people that pulled the numbers was  
2 involved in that. And as a result, the Obie dollars  
3 were cut off, but they weren't cut off without anybody  
4 thinking about it.

5 President Krislov wrote, "Students are talking  
6 about urging the college to cut off Obie dollars"  
7 because even though it was the students' money, the  
8 college had the power to cut off that program. So  
9 President Krislov identifies it, his special assistant  
10 Tita Reed says, "That's a great thing for leverage."

11 And not only is it leverage, they're talking  
12 about it further. What does she say? "I think it's a  
13 great bargaining chip." A bargaining chip for  
14 what? Well, you will see, and you've already heard,  
15 that immediately that the college made a commitment to  
16 support and defend those three students, even though all  
17 of the evidence was that they have committed the crimes.  
18 What did they want to happen?

19 You will hear that the college expected, because  
20 of its power and might and influence, for the Gibsons to  
21 drop charges against those three people. They expected  
22 special treatment for them or their students, because  
23 why else would you need leverage and bargaining chip?  
24 And you will hear evidence that there was a meeting, and  
25 you will actually see e-mails that support the

1 understanding of Dave Gibson and a friend of his that  
2 went to the meeting, and understood that the college  
3 wanted them to actually drop charges in return for the  
4 college resuming the business.

5 How does Vice President Raimondo weigh-in on  
6 this? Does she say that we can't do that, we can't ask  
7 someone to drop charges to treat our students  
8 differently? It's the law. It's a crime. What does  
9 she write? "We're talking about a strategy of resuming  
10 business with the Gibsons." And you will hear that  
11 President Krislov and Ferdinand Protzman, who now is the  
12 chief of staff, another high-ranking official, you will  
13 hear that the then-chief of staff, all disagreed with  
14 the strategy of cutting off Gibson's business. You will  
15 hear that they kept trying to circle back and resume the  
16 business. And you will hear that there was significant  
17 push-back and the business wasn't temporarily resumed  
18 until the beginning of February.

19 But as they're discussing this strategy, what  
20 does Vice President Raimondo write? And you will get  
21 all the e-mails and the line. She says, in effect, that  
22 "I have very serious reservations about this strategy."  
23 And the strategy is not the resumption, but how they're  
24 ever going to explain it to the students if they do  
25 resume.

1 "My support for this approach, which I know I  
2 voiced strongly, was based upon the assumption that some  
3 different outcome to the legal process might be  
4 possible." But if your three students steal and they  
5 have broken the law, what is the different outcome that  
6 might be possible? Do you, as Goliath, exert your power  
7 and bully somebody into dropping charges just because  
8 they're college students?

9 "My support for this approach" -- and this  
10 approach of resuming the Gibsons and trying to resurrect  
11 that relationship at that time -- "which I know I voiced  
12 strongly, was based upon the assumption that some  
13 different outcome for the legal process might be  
14 possible."

15 Jumping down, "Had the Gibsons been willing to  
16 support a resolution outside of the legal system, I  
17 would have supported the college moving forward in this  
18 way as a part of a restorative strategy." The  
19 restoration of normal business relationships have been  
20 going on for decades. Actually over a century. But if  
21 it's not going to be resolved outside of the legal  
22 system and the legal system is already in place, I don't  
23 know how you would expect the Gibsons to get it out of  
24 the legal system.

25 She goes on to say, "I'm not sure why the

1 college is obligated to provide concessions to the  
2 Gibson's under the circumstances, and would not be  
3 prepared to support resuming the CDS contract" -- the  
4 Campus Dining Services contract. So she recognizes  
5 there's a business relationship -- "with no clear  
6 indication that anything has or will change with  
7 Gibson's, which I have yet to see any evidence of. My  
8 inclination would be to say nothing publicly."

9 So at that point, is there a huddle? Even  
10 though the president of the college is trying to move it  
11 one way, these top-ranking administrators are resisting.

12 So when Tita Reed, and you will see in further  
13 subsequent discussions, hears about what's going on, and  
14 she's involved. The special assistant to the president  
15 chimes in. Remember, Vice President Raimondo wants to  
16 take it out of the legal system that all of us are  
17 subject to. Tita Reed says, "So can we draft a legal  
18 agreement clearly stating that once charges are dropped,  
19 orders will resume?" Once they drop charges, we will  
20 start giving them our business again. "I'm baffled by  
21 their combined audacity and arrogance to assume the  
22 position of victim." At this point the administrative  
23 team thinks the victims are arrogant for expecting  
24 people to apply to, to be subject to the law.

25 And that shows, as we've talked before, the

1 mental state of mind, the intention, the fault, the  
2 negligence of the administrative team. It's clear that  
3 Vice President Raimondo instructed Bon Appetit -- and  
4 Bon Appetit is a food service management company that  
5 interfaces with both the college and Gibson's and has  
6 for years. And you will hear that Bon Appetit and its  
7 employees have absolutely no complaints about the  
8 services or products of Gibson's.

9 And you will hear they knew Gibson's would bend  
10 over backwards and that the dean or president or vice  
11 president had forgotten about a morning meeting where  
12 they wanted to serve breakfast or rolls or whatever, and  
13 they called the Gibson's at midnight. The Gibson's  
14 would have that breakfast or rolls or products there  
15 early in the morning, and they were for decades a  
16 reliable and loyal supplier.

17 So as a result of the conduct of the college,  
18 what is a reasonable and natural result that might  
19 occur? And that's -- when you're doing these, all of  
20 these things in front of the students, who look to you  
21 for guidance, a hostile environment is created. And the  
22 hostile environment that's created against the Gibsons  
23 continues the humiliation, the ridicule and the shame,  
24 and makes it reasonably foreseeable that the Gibsons  
25 would suffer harm or loss or even personal injury, as

1 well as emotional distress.

2 In fact, you will see evidence that's what  
3 happened. Even though Oberlin is -- the community is  
4 generally a safe community, following these protests,  
5 you will hear that there was significant and numerous  
6 hostile acts of vandalism or violence. You will hear  
7 that the employees of Gibson's who parked behind  
8 Gibson's in the parking lot had their cars or tires  
9 vandalized. You will hear that the environment was so  
10 hostile that Grandpa Gibson had to be escorted home by  
11 the police on several occasions.

12 You will hear that although Grandpa Gibson has  
13 never had any hostile attacks on his home, that as this  
14 progress continued and when ultimately the students were  
15 actually convicted of their crimes, late one night there  
16 was a loud ruckus at his door. And when he came to see  
17 what was going on and because of the hostility involving  
18 the ruckus, he actually took a step back and fell and  
19 broke his neck. This condition is something that wasn't  
20 there before. It's an obvious condition. You see the  
21 brace he has to wear and the walker.

22 At that same time there was vandalism at Dave  
23 Gibsons's house. They tried to break through one of the  
24 access doors to his house.

25 You will hear evidence from a number of

1 observers as to the hostility involved.

2 You will hear Jason Hawk talking about the  
3 hostile environment and what he endured. Even current  
4 employees of Oberlin College have to admit. And to be  
5 frank, I admire them for their courage, because it would  
6 be natural to be afraid to say anything against your  
7 employer if you need a job. The assistant to the dean,  
8 she felt the hatred.

9 Another employee felt the intimidation and  
10 effect of a large, angry crowd. A longtime community  
11 member will testify as to the hostile environment.  
12 Gibson employees will talk about what it was like being  
13 inside that store when they were faced with the  
14 hostilities that were being fanned by Oberlin College,  
15 and feeling unsafe.

16 So we talked a little bit about the desire of  
17 Oberlin College to be treated specially, to be treated  
18 differently, and for their students not to have to be  
19 subjected to the criminal process. And that all started  
20 when there was an attempt at a meeting, and the people  
21 at that meeting, and you will get to hear testimony from  
22 all of them, and you will hear that the takeaway by  
23 Mr. Holoway and Mr. Gibson was that the college expected  
24 its students to be treated differently and that they  
25 interpreted the demand of the college to be, if one of

1 our students is stealing from you, call us. Call  
2 us. Because they wanted to handle it. Because maybe  
3 they believe that if the word gets out there's a culture  
4 of crime at Oberlin College and administrators make  
5 excuses and look away, that's not good for their  
6 business and they will lose some of their customers.

7 Let's talk a little bit about the Gibsons.

8 I told you they have been around longer than  
9 almost all the businesses we recognize. Talked about  
10 Smuckers and Hershey's and Ford. 1885. These are the  
11 Gibson's business, family business pictures from the  
12 days that they used horses and buggies. They're in  
13 their fifth generation, and the evidence will be that  
14 the sons of David Gibson want to continue what their  
15 fathers and grandfathers and great-grandfathers  
16 started. And that even Dave Gibson will tell you that  
17 his 11-year-old grandson comes in on weekends or special  
18 days to start work in the business.

19 You will hear that although, and see, that  
20 although Oberlin College did what it did, in terms of  
21 the flyers and boycotts and the leverage and the  
22 bargaining, if you click on Oberlin College's website,  
23 you will see that under its mission and values, they  
24 have a picture of Downtown Oberlin. This is pretty  
25 blurry. But right in the middle, in those white

1 letters, they prominently show Gibson's Bakery. So if  
 2 they're ashamed of Gibson's Bakery or if it's bad, why  
 3 did they use it in their advertisement?  
 4 As to -- remember, we talked about the letter  
 5 where Vice President Raimondo and President Krislov said  
 6 we're going to devote all the resources.  
 7 A newspaper at the time of this incident, to  
 8 determine what the facts were, asked the Oberlin Police  
 9 Department to say, well, is there anything to this? Is  
 10 there, as the students said, some sort of long history  
 11 of profiling? And the results of this study created by  
 12 the police department, and you will have a police  
 13 department representative come in and verify, the  
 14 results of the studies were available to everyone and  
 15 actually published in the newspaper, and the  
 16 administrative team from Oberlin College -- several of  
 17 them will admit, yeah, they read the results of the  
 18 study -- the results of the study were for the last five  
 19 years of the 40 shoplifting convictions of adults at  
 20 Gibson's, 33 of those 40 were college students.  
 21 And then they break it down further in terms of  
 22 those, how many were persons of color? Fifteen percent,  
 23 which is approximately the percentage of minorities, of  
 24 African-American minorities in Oberlin. And the rest  
 25 were white.

1 What is the racial makeup? The statistics will  
 2 show, and we will continue to present to you, and the  
 3 Court can take judicial notice of the accuracy of the  
 4 United States census data. And remember, so the data  
 5 shows 15 percent of Oberlin city residents are black, 15  
 6 percent of the arrests were black. So this information  
 7 was available.  
 8 Now, in the interest of full disclosure, if you  
 9 use young people that are not adults, younger than  
 10 adults, the percentages change. There's a higher  
 11 percentage of under-18-year-olds that have been caught  
 12 stealing at Gibson's over the last five years. Just so  
 13 you know that. But in terms of the college students,  
 14 because this is an issue about the college or some of  
 15 their students complaining, they're all 18 or over. And  
 16 those are the statistics.  
 17 So you can say, well, statistics can say  
 18 anything you want them to say. But the college had  
 19 available to it numerous sources of potential  
 20 information from people that did not have an agenda, and  
 21 you will see in this courtroom very shortly, people that  
 22 have known Gibson's Bakery and have lived in Oberlin and  
 23 interacted with Gibson's come in and testify. They have  
 24 no agendas and they have significant positions. And to  
 25 this, you will hear from Sharon Patmon, you will hear

1 from Henry Wallace, you will hear from Vicky Gaines,  
 2 Oberlin College nurse, you will hear from -- one of the  
 3 jurors made mention of Dr. Ebihara. You will hear from  
 4 him. In 2018, just last summer, he received a community  
 5 award from Oberlin College.  
 6 You will hear from people that worked at Oberlin  
 7 College for years and had been in the community.  
 8 Professor Piron, 46 years, professor of economics;  
 9 current professor Robert Shannon, 42 years at Oberlin  
 10 College; Eric Gaines, who's lived in Oberlin all his  
 11 life and is a member of the Oberlin City Planning  
 12 Commission; Eddie Holoway, who was at the meeting. You  
 13 will hear all of them say that there was no hint of  
 14 racial profiling or any hint of a history of racial  
 15 profiling by the Gibsons. The college and the students,  
 16 for their agenda, chose to ignore it. That was their  
 17 choice. But the information from a variety of sources  
 18 was there.  
 19 So why are we here? What are we suing for? And  
 20 why? So just to be clear, we are making no claim  
 21 against the three Oberlin College students who committed  
 22 the crimes. Even as young adults, they took  
 23 responsibility for their crimes. They admitted their  
 24 crimes in open court. They also admitted, and the  
 25 administration for the college received this report,

1 that the three students confirmed they did not believe  
 2 that they were victims of racial profiling, and you will  
 3 hear the administrators confirm that.  
 4 And you will hear that even at that hearing,  
 5 it's in Judge James Miraldi's courtroom just down the  
 6 hall here, I believe the first courtroom, that the three  
 7 students came in, took responsibility as young adults  
 8 and admitted that they were wrong and that the Gibsons  
 9 had not done anything wrong.  
 10 So you would think that at that point, if there  
 11 is any doubt at all, the college would say, we got it  
 12 wrong. Because from the first meeting David Gibson had  
 13 begged with them to -- our name is ruined. You helped  
 14 ruin our name. We need a retraction, a correction, an  
 15 explanation, you know. And the college said, no, no,  
 16 no. We're not responsible for issuing any retractions  
 17 or explanations.  
 18 Libel is one of our civil claims, and libel is  
 19 written defamation. We believe that both the flyer that  
 20 was being passed out and also the Student Senate  
 21 Resolution, which has been distributed throughout the  
 22 college, are examples of defamation.  
 23 In addition to defamation, there's tortious  
 24 interference with business or contractual relationships.  
 25 We've done it both ways. You saw the e-mail from Vice

1 President Raimondo referring to the Gibson's Bakery  
2 contract. Whether there was a written contract or an  
3 oral contract, you are able to find there's a contract.  
4 But regardless of whether there was a contract, there  
5 was clearly a century's-old business relationship, and  
6 the Gibsons had performed that.

7 So when the college forces Bon Appetit to cut  
8 off the relationship with the Gibsons, obviously that  
9 has consequences. And that's why there's counts of  
10 interference with the longstanding business  
11 relationship.

12 In addition, we talked about all of the actions  
13 of the college and the consequences of their actions,  
14 and we believe that their actions have constituted an  
15 intentional infliction of emotional distress. You will  
16 hear evidence of how it affected Grandpa and how it  
17 affected David Gibson.

18 There was a cause for negligent hiring,  
19 retention and supervision. And every company has the  
20 responsibility to make sure that the individuals who  
21 have been empowered to act on behalf of the company, who  
22 are in charge of certain things, and it's anybody who is  
23 providing services in the course and scope of their  
24 employment with a company.

25 So it's, for example, by way of example, if

1 MR. PLAKAS: You didn't -- you didn't toss the  
2 negligence against the college. You tossed it as to  
3 Raimondo being responsible, but the college is still  
4 there.

5 MR. PANZA: If you are talking about the  
6 negligent hiring, you can clear it up. He's talking  
7 about the hiring as opposed to defamation.

8 COURT REPORTER: Hold on.

9 THE COURT: Guys, you can't come up here and  
10 have three people talking at once. One at a time.  
11 Clear it up and finish this up.

12 MR. PLAKAS: I will.

13 THE COURT: Thank you.

14 \*\*\*

15 (The sidebar discussion ended.)

16 \*\*\*

17 MR. PLAKAS: If there is any -- if there is any  
18 confusion about this negligent hiring, retention and  
19 supervision, you will have the opportunity to determine  
20 if there was negligence in the hiring or retention or  
21 supervision as further instructed by the Court.

22 But basically, you're required to hire  
23 appropriate people. And once they're there, you are  
24 required to make sure they are properly supervised in  
25 doing their job.

1 there is a trucking company with a thousand trucks out  
2 there and there's a president and a board to hold the  
3 trucking company responsible if they crash into you, it  
4 doesn't have to be the president of the trucking company  
5 that's driving the truck.

6 If we're on an airplane, a Boeing 737x or  
7 whatever it is, and if it crashes, Boeing can't say the  
8 president or the board of directors weren't flying the  
9 plane, so we're not responsible. They weren't the ones  
10 that did the design. If the designer didn't do their  
11 job for Boeing, if the mechanic didn't do their job for  
12 Boeing, then the company is responsible because that was  
13 part of their job. You just do your job.

14 In a hospital case, the chairman of the board of  
15 a large hospital isn't going to do the surgeries.

16 MR. HOLMAN: We object.

17 MR PANZA: Objection, Your Honor.

18 THE COURT: Approach.

19 \*\*\*

20 (A sidebar discussion was had as follows.)

21 \*\*\*

22 THE COURT: I thought I tossed that claim. Go  
23 ahead.

24 MR. PANZA: That's a negligent. There's no  
25 negligence cause of action in this thing.

1 So to wrap this up then, as you -- I am not  
2 going to take the time and go through numbers and do  
3 calculations or do charts or graphs. There are experts  
4 for each side that know much more than I do about  
5 financial analysis. You will hear from 415 Group, a  
6 very qualified expert, who will compute for you the  
7 harms and the losses for the Gibson's Bakery as a  
8 business. They have their own expert who will dispute  
9 that. And you are going to have to weigh and see who  
10 makes the most sense.

11 In addition to the economic damages, we're going  
12 to be asking for non-economic damages. We've talked  
13 about that in voir dire, and we won't further talk about  
14 that now. But there is both economic and non-economic  
15 components. And you will hear that in terms of the  
16 damages and -- and the reasons that the Gibsons felt  
17 they had no alternative but to bring this case to you,  
18 is that the college refused to take any action to  
19 correct any of the consequences of what it did, and you  
20 will see Mr. Protzman, who was a higher-ranking official  
21 then and is now the chief of staff, confirm that the  
22 college never considered retracting or curing any  
23 defamatory statements.

24 So, Ladies and Gentlemen, I know I've gone over  
25 my time. I apologize for that. But we believe at the

1 end of the case all we're asking you to do is to weigh  
2 the facts and evidence, and determine if the causative  
3 actions that we have brought are supported by the  
4 evidence, and if it has affected a business and a family  
5 that has for, since 1885, tried to do nothing other than  
6 be a good citizen and a good business.

7 We thank you for your time. Again, I apologize  
8 for the length. I apologize. I already talked about my  
9 throat. I think it's getting worse. But thank you for  
10 your courtesies.

11 THE COURT: Attorney Holman, will you approach,  
12 please?

13 MR. HOLMAN: Yes, of course.

14 \*\*\*

15 (A sidebar discussion was had as follows.)

16 \*\*\*

17 THE COURT: So I'm really disappointed. I was  
18 told an hour. It's almost double that and that put you  
19 in a pinch. Are you literally going to be hour an hour  
20 and a half or two hours or two-and-a-half hours?

21 MR. HOLMAN: It's a good question, a very good  
22 question.

23 THE COURT: Here's the thing. I've got sheriffs  
24 that want to shut this building down just after 4:00.

25 MR. HOLMAN: My suggestion is it will be at

1 \*\*\*

2 THE COURT: At this time the attorney for the  
3 defense will give their opening statements. Attorney  
4 Holman.

5 MR. HOLMAN: Good afternoon. What's the  
6 difference between a lawful protest -- a lawful  
7 protest -- and one that spirals out of control and  
8 becomes an unlawful protest? The answer: it's a  
9 calming influence. Calming influence. It's a  
10 go-between. A go-between protesters, law enforcements,  
11 merchants and others.

12 Ladies and Gentlemen -- and I'm going to  
13 embarrass her for a moment and hopefully she won't mind.  
14 Meredith, would you stand up for a moment.

15 Ladies and Gentlemen, Oberlin College and  
16 Meredith Raimondo, Dean Raimondo, dean of students at  
17 Oberlin College were that calming influence. They were  
18 the calming influence at the protests. They were the  
19 go-between, the go-between for protestors, protesters,  
20 merchants, onlookers and others.

21 Thank you.

22 They were there. Dean Raimondo was there  
23 because she had to be there. She was required to be  
24 there. It wasn't voluntary. Meredith Raimondo was  
25 present at the protest in front of Gibson's Bakery

1 least an hour-and-a-half. It could be an hour and 45  
2 minutes.

3 THE COURT: Can't be any longer. That's what he  
4 took. That's what he took. He took an hour and 45.  
5 I'll give you an hour and 45. Give them a 15-minute  
6 break. They have to get up. That will take us to 4:15.

7 MR. HOLMAN: That's fine, Your Honor.

8 \*\*\*

9 (The sidebar discussion ended.)

10 \*\*\*

11 THE COURT: Ladies and Gentlemen, we will take a  
12 break now and stretch, get ready for the defense to make  
13 their opening. Remember my admonition not to speak to  
14 anyone about the case. Back at 2:30.

15 \*\*\*

16 (Out of the presence and hearing of the jury.)

17 \*\*\*

18 THE COURT: Anything on the record from  
19 plaintiffs before the break?

20 MR. PLAKAS: No, thank you Your Honor.

21 THE COURT: Anything from the defense?

22 MR. HOLMAN: No, your Honor.

23 THE COURT: Thank you.

24 \*\*\*

25 (A recess was had.)

1 November of 2016, because it was mandatory for her to be  
2 there. Why was it necessary and required for her to be  
3 there? It's an easy question to answer.

4 Oberlin College and Dean Raimondo were required  
5 to be there because of the book. This is a book. And  
6 we're going to spend some time talking about the  
7 book. The book has an official name. It's called  
8 "Oberlin College's Students Regulations, Policies and  
9 Procedures." And it lays out a number of policies and  
10 procedures for students, but also administrators, senior  
11 administrators, like Dean Raimondo.

12 And as we will find out, the book here required  
13 her to be at the scene of those protests on November  
14 10th and 11th. She had no choice whatsoever. And the  
15 reason why the book required her to be there was to keep  
16 the peace and to make sure that that protest environment  
17 was a safe environment, safe for everyone, safe for the  
18 people demonstrating, safe for local merchants, safe for  
19 onlookers, and safe for local police. Her job was to  
20 follow the book, to do her job, and to help make sure  
21 that the protest was a safe one.

22 So let's spend a few moments now of going  
23 through some of the sections of the book, and you will  
24 see what I'm talking about.

25 The book actually has a letter from the dean of

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1 students as sort of an introduction. And I'm going to  
 2 read it. It says, "This published version of the  
 3 'Oberlin College Student Regulations, Policies and  
 4 Procedures' is intended to be a guide to the principles  
 5 and policies that shape and regulate our community.  
 6 Those who matriculate at Oberlin, have entered into a  
 7 unique community, dedicated to the pursuit of knowledge  
 8 and academic excellence. By joining this community, you  
 9 are expected to understand and abide by the principles  
 10 and policies that enable us to thrive as learners,  
 11 educators, and scholars."  
 12 It's actually signed by one of Dean Raimondo's  
 13 predecessors, Mr. Estes.  
 14 The book makes clear that the students that come  
 15 to Oberlin are part of a special community. And as with  
 16 most special communities, there are principle and rules  
 17 and guidelines that they are expected to follow.  
 18 Now, the book has a section that deals with  
 19 student regulations, policies and procedures, and here's  
 20 something important. It says, "It's important that  
 21 students acquaint themselves with the published rules  
 22 and regulations in order to understand the principles  
 23 that govern our community. Although, upon joining our  
 24 community, students will acquire an enormous amount of  
 25 freedom to make their own decisions, it is important to

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1 be informed of the possible consequences -- intended and  
 2 unintended -- of these decisions, and to be prepared to  
 3 accept the consequences. Students remain accountable to  
 4 the laws of the city of Oberlin, the State of Ohio, and  
 5 the federal government, and the college will not protect  
 6 students from the consequences of breaking these laws."  
 7 So the book makes it abundantly clear that where  
 8 there is great freedom, there also comes great  
 9 responsibility. And at the end of the day, it's college  
 10 students of Oberlin College who are responsible for  
 11 their actions, and they're also responsible for the  
 12 possible consequences of their actions. And it says,  
 13 "and to be prepared to accept the consequences."  
 14 "Students remain accountable to the law" and "the  
 15 college will not protect students."  
 16 You will learn in this case the three students  
 17 who were involved in shoplifting at Gibson's Bakery were  
 18 made to account for their crimes. They had their day in  
 19 Court. They actually pled guilty in Court, and the  
 20 judge who was assigned to that case declared them to be  
 21 guilty, he convicted them, and they sentenced them, and  
 22 they got exactly what they deserved.  
 23 This next section actually deals with protests  
 24 and demonstrations. And actually add to that. The book  
 25 deals with a lot of different subjects, but the one

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1 that's relevant to our case, and the reason why we are  
 2 here today, relates to protests and demonstrations. So  
 3 there are actually ten pages of the book that relate to  
 4 that subject. But we're going to touch base on just a  
 5 couple of those.  
 6 So the book says that, "The general faculty  
 7 adopted the following statement on December 17,  
 8 1991." So you might ask, wow, this obviously was done a  
 9 long time ago, nearly three decades ago, and you might  
 10 ask, "Who is the general faculty?" The general faculty  
 11 is a body that's made up of faculty members, professors,  
 12 students, even staffers at Oberlin College, and they  
 13 come together from time to time to adopt statements and  
 14 policies that are binding upon Oberlin College. And so  
 15 the general faculty back in 1991, came together and  
 16 adopted this statement to be binding upon everyone at  
 17 Oberlin College.  
 18 "Within this context, Oberlin College  
 19 emphatically affirms the right of all its members to  
 20 protest and demonstrate. Both civil authority and  
 21 college regulations reflect the obligation to balance  
 22 rights of free speech and expression against such other  
 23 rights as privacy and normal conduct of business. Thus,  
 24 the college deems inappropriate any actions that intrude  
 25 upon the rights of other members of the community,

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1 including reasonable expectations of peace and privacy,  
 2 and tactics or behavior that include coercion,  
 3 intimidation, or harassment."  
 4 So the book speaks in terms of the importance of  
 5 free speech and expression. And that's all known to us  
 6 and common to us because it's quintessentially American  
 7 to be able to speak freely and to express our views.  
 8 But it also says that there are other rights.  
 9 Those who are engaged in free speech and expression  
 10 cannot cross those bright lines, cannot essentially  
 11 break the law.  
 12 Go to the next slide, please.  
 13 So give you some context here. The book  
 14 actually, at this point, talks about the role of  
 15 students. It talks about the role of law enforcement,  
 16 the officers. It also talks about the role of college  
 17 officials, like Dean Raimondo.  
 18 This first section discusses the role of  
 19 students.  
 20 "Consistent with the faculty statement on Social  
 21 and Political Unrest that was adopted on February 27,  
 22 1968, students are encouraged to consult with the Office  
 23 of the Dean of Students prior to sponsoring  
 24 demonstration, protest, or other activity where First  
 25 Amendment rights are exercised, whether on or off the

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1 central campus."  
 2 So the book underscores that students have First  
 3 Amendment rights. But the book also suggests that  
 4 students who are interested in demonstrating and  
 5 protesting, that they first check in with the dean of  
 6 students. Strong recommendation from Oberlin College.  
 7 But it also says this, "The college recognizes that  
 8 students may choose to participate in spontaneous  
 9 demonstrations and that prior notification from students  
 10 may not occur. Whether the advice of the dean of  
 11 students has or has not been sought, students  
 12 participating in a protest or demonstration should be  
 13 prepared to assume the consequences of their  
 14 behavior."  
 15 So the book recognizes the reality of certain  
 16 situations that things may happen. Students may decide  
 17 quickly and spontaneously to demonstrate and protest,  
 18 which is exactly what happened here, and that in those  
 19 situations, they may not do what the college requests  
 20 them to do; and that is, to go to the dean of students  
 21 to make Dean Raimondo aware that they are planning a  
 22 protest.  
 23 But the book also makes it clear that,  
 24 regardless of whether they give a heads up to the dean  
 25 of students or not, they must be prepared to assume the

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1 consequences of their behavior.  
 2 So this next section deals with the role of  
 3 college officials, such as the dean of students, Dean  
 4 Raimondo.  
 5 "In the event of student demonstrations, both on  
 6 and off campus, the office of the dean of students or an  
 7 authorized designee from that office will serve as the  
 8 responsible official and spokesperson at the scene for  
 9 the college."  
 10 So the book is stating there that regardless of  
 11 whether -- where the students are demonstrating, whether  
 12 it's on campus or across the street at Gibson's Bakery,  
 13 the dean of students is the person who is the official  
 14 college representative, and she should be at the scene  
 15 for the college.  
 16 So in this case, Dean Raimondo didn't have a  
 17 choice. She wasn't at the protests on November 10th and  
 18 11th, 2016 because she had nothing else to do; she was  
 19 required to be there. She was mandated by the book to  
 20 be there as the responsible official and spokesperson at  
 21 the scene for Oberlin College.  
 22 This next section deals with the role of the  
 23 police. Here's what it says. "The college recognizes  
 24 that the city police have authority. To enforce laws  
 25 according to their best judgment, and without

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1 consultation with college officials. It is urged,  
 2 however, that before taking action at any student  
 3 demonstration, the civil authorities would communicate  
 4 with the responsible college official who would normally  
 5 be expected to be present at the scene. The purpose of  
 6 this communication is to allow, when possible, the dean  
 7 of students or an authorized representative an  
 8 opportunity to ameliorate the situation."  
 9 So what's the book saying here? The book is  
 10 saying that law enforcement can't intervene in protests;  
 11 however, it encourages them actually to communicate  
 12 with, you guessed it, the dean of students, in this case  
 13 Dean Raimondo. And it also reaffirms, once again, that  
 14 the dean of students is expected to be present at the  
 15 scene. And again, that's exactly why Dean Raimondo  
 16 spent all day there Thursday, all a Friday, November  
 17 10th and 11th, 2016, outside of Gibson's Bakery. She  
 18 was required to be present at the scene.  
 19 It goes on to say, "Why is this communication  
 20 between the college and the police important?" Well,  
 21 it's important because the dean of students may be in a  
 22 very unique position to ameliorate the situation, to  
 23 make it better, to make it less tense, to make it less  
 24 hostile, to keep everyone safe: law enforcement,  
 25 protesters, merchants, onlookers.

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1 So the dean of students is encouraged to be  
 2 there and to do whatever she can to lower the  
 3 temperature.  
 4 Now, this next session deals with the venue or  
 5 location for protests. As you will see, it talks about  
 6 protests that may occur on campus. It's called "central  
 7 campus." It also talks about protests that may take  
 8 place off campus, which is Gibson's Bakery. And then  
 9 finally it talks about protests that occur at Tappan  
 10 Square.  
 11 "Demonstrations on the Central Campus."  
 12 "College authority and procedures for handling  
 13 demonstrations on the central campus fall under the  
 14 auspices of the office of the dean of students. The  
 15 dean or the authorized representative may summon civil  
 16 authorities to the campus on behalf of the college and  
 17 request appropriate action should circumstances warrant  
 18 such a response."  
 19 The book states that where there's a  
 20 demonstration on campus, central campus, essentially  
 21 anywhere on campus, who's in charge? In this case it's  
 22 Dean Raimondo. And she has the ability to request help  
 23 from others, if necessary.  
 24 Section G here talks about off-campus  
 25 demonstrations. At this point you probably won't be too

1 surprised about what it says.  
2 "When aware in advance of such demonstrations in  
3 Oberlin, the dean of students or the authorized  
4 representative will notify the city police and remain  
5 available at the scene in an advisory role and will  
6 invoke college judicial procedures if warranted."

7 This is a really important section. So the book  
8 states that if the dean of students becomes aware of a  
9 demonstration, she's required to notify the Oberlin  
10 police. And in this case, that's exactly what happened.  
11 You've heard the name Tita Reed. She's the special  
12 assistant to the president for community and  
13 governmental relations.

14 Working with Dean Raimondo, Tita Reed actually  
15 went to the Oberlin City Police and told them that the  
16 Oberlin College students were assembling and planning on  
17 protesting outside of Gibson's Bakery. And up until  
18 that point, they didn't know. And you will learn that  
19 Tita Reed talked to someone named Sergeant Michael  
20 McCloskey. At the time, he was acting police chief for  
21 the entire department. And he was very pleased that he  
22 had this heads up. Why? So he could staff this protest  
23 appropriately. He thanked Tita Reed for doing that.

24 The book also says that the dean of students is  
25 required to remain available at the scene in an advisory

1 Oberlin. I think I can touch it. This building is  
2 owned by Oberlin. And then all of the buildings -- not  
3 tall enough -- all the building up that way are owned by  
4 the college as well. So Tappan Square is a very special  
5 place; the center of Oberlin college.

6 So the book talks about demonstrations that may  
7 occur at Tappan Square.

8 "A court decision has found Tappan Square to be  
9 in the city domain and subject to normal city police  
10 procedures because it has open access for all citizens.  
11 At the same time, Tappan Square is also college-owned  
12 property and the site of official college functions such  
13 as Commencement. Therefore, it may, on occasion, be the  
14 focus of student demonstrations. When the Office of the  
15 dean of students learns in advance of demonstrations on  
16 Tappan Square such demonstrations will be treated  
17 procedurally by the college as central campus  
18 demonstrations. Again the college urges that police  
19 action would be taken only after communication with the  
20 responsible college official at the scene."

21 And as you now know, and you could probably  
22 predict what I'm saying, if that area is treated as part  
23 of central campus, you know who's in charge whenever  
24 there is a demonstration or protest. It's the dean of  
25 students. It's Dean Raimondo.

1 role.

2 Dean Raimondo followed the book. She did her  
3 job. She was present at the scene of these protests.  
4 As I said before, she was there all day Thursday; in  
5 fact, she arrived at about 11:15 a.m. She didn't leave  
6 until literally 11:15 p.m. By that time the protests  
7 had ended and the very last person to leave the scene  
8 was Meredith Raimondo. She was doing her job. And  
9 likewise, on Friday, day two of the protests, she was  
10 there most of the day as well, as required by the  
11 book.

12 This next section deals with Tappan  
13 Square. Tappan Square is a nice square that is part of  
14 Oberlin's campus. And this picture tells you exactly  
15 where it is. In the center you see Tappan Square. It's  
16 actually owned by the college. And if you look at the  
17 buildings to the left of that, all of those buildings  
18 are owned by Oberlin College. And I'm very bad with  
19 directions. Somebody might have said, well, it's to the  
20 east or the west. I have no idea. I'll just say that  
21 the buildings on the left of Tappan Square are owned by  
22 Oberlin College, and the buildings to -- or next to  
23 Gibson's Bakery, that's actually -- yes, thank you --  
24 that's the Oberlin Bookstore. Then you have the world  
25 famous music conservatory that's obviously owned by

1 So the book is important. It's so important,  
2 there's one section that I almost forgot to read. This  
3 may be the most important part of the different policies  
4 that we've just reviewed together. This section is  
5 called "Time, Place and Manner."

6 "The Oberlin College community emphatically  
7 affirms the right of all its members to speak out and  
8 demonstrate. Restraints regarding time, place and  
9 manner reflect the need to balance the rights of free  
10 speech against other rights such as privacy and the  
11 normal conduct of business.

12 A. "Actions that intrude upon the rights of other  
13 members of the Oberlin College or town community,  
14 including reasonable expectations of peace and privacy,  
15 will be considered inappropriate.

16 "Obstruction of the normal conduct of business  
17 of members or guests of the community and disruptions of  
18 the essential operations of the college will be  
19 considered inappropriate.

20 "Tactics or behavior that include coercion,  
21 intimidation or harassment will be considered  
22 inappropriate."

23 So again, the book lays out the rules and  
24 regulations and policies that everyone is required to  
25 follow.

1 And so it wasn't by chance that Dean Raimondo  
2 was there outside Gibson's Bakery on November 10th. It  
3 also wasn't by chance that she was outside Gibson's  
4 Bakery on November 11th. She was required to be here by  
5 the book. She was doing her job. Nothing more, nothing  
6 less.

7 So at this time, why don't we spend a few  
8 moments going a different direction. Let's talk about a  
9 timeline. I think that will help you to understand what  
10 happened and what didn't happen.

11 And I have to warn you, some these events  
12 occurred very, very quickly, and because of that, Dean  
13 Raimondo and others had to work fast, with limited  
14 information, and they were required to do the very best  
15 that they could do with limited information and with  
16 events swirling around them very, very quickly.

17 Let's go back in time. It's a Wednesday,  
18 November 9th, 2016. It's a pretty typical early  
19 November day at Oberlin College. But then it wasn't.

20 4:58 p.m., Oberlin College students and  
21 bystanders and people who just happen to be around see  
22 something that's amazing. They see two men wrestling  
23 outside -- on the ground outside of Gibson's Bakery. We  
24 know one is a shopper, a customer of Gibson's Bakery.  
25 We know the other is a Gibson himself. He's actually

1 about it.

2 So what do they do? A group of students sends  
3 out an e-mail, 10:18 p.m. The e-mail sent out to  
4 probably 50 other Oberlin College students. And it  
5 says, "Tomorrow we are boycotting Gibsons and Allyn  
6 Gibson's racism. We are meeting at 11:00 a.m. tomorrow  
7 in front of Gibson's. Be there. Do not give them any  
8 more of your money."

9 Staff at Oberlin College gets wind that Oberlin  
10 College student are protesting. This staff member sends  
11 a text message to Dean Raimondo. It's sent at  
12 11:00 p.m. that night within roughly 45 minutes of this  
13 e-mail. Dean Raimondo doesn't get it because she's in  
14 bed. She's sleeping. But she wakes up, and things  
15 really happen fast now.

16 The next day -- the next day is Thursday,  
17 November 10, 2016. Dean Raimondo wakes up and she gets  
18 this text that she reads for the very first time. She  
19 reads this text for the very first time that tells her  
20 that the students are protesting. And what does Dean  
21 Raimondo do? She's thinking about the book. She's  
22 thinking about doing her job.

23 So within minutes of getting this, Dean Raimondo  
24 springs into action. What does she do? She sends an  
25 e-mail out to her colleagues to make them aware of the

1 Allyn D. Gibson, the son and grandson of Allyn and David  
2 Gibson. These witnesses see the two wrestling on the  
3 sidewalk.

4 Moments later they see the customer, who is a  
5 Oberlin College student, race across the street, and  
6 they see Allyn Gibson following him. And then they see  
7 the two fall on the ground, wrestling. Wrestling. Then  
8 there are two girls joining. There's yelling and  
9 screaming, and they're fighting, and no one knows what's  
10 going on and no one knows who's right, no one knows  
11 who's wrong, no one knows who started it. All they see  
12 is this horrific scene outside of Gibson's Bakery, and  
13 they're disturbed by what they saw.

14 The police arrive and the police decide to  
15 arrest the three Oberlin College students. But to those  
16 who witnessed this, some of them were surprised they did  
17 not arrest Allyn Gibson. This was not an event that  
18 normally takes place at Oberlin College.

19 And so news of this event spread like wildfire.  
20 Spread like wildfire. As a result, hours later,  
21 10:18 p.m., guess what? Individual students who learn  
22 about this horrific event, this physical altercation,  
23 decide they're going to plan a protest, and so they  
24 begin to get the word out. Oberlin College students  
25 decide this was horrible and they need to do something

1 protests, and decides that she is going to convene a  
2 meeting two hours later.

3 Thursday morning, 7:35 a.m. Here's what it  
4 says. "Good morning, everyone. Let's gather at 9:30 to  
5 discuss a student protest planned for an Oberlin  
6 business at 11:00 today. I can share a bit of the  
7 content when we meet. Please let me know if there are  
8 others who should be included.

9 "Barb, please check on conference room  
10 availability.

11 "Best, Meredith."

12 Dean Raimondo doesn't waste any time. She gets  
13 the word out. We need to talk about this. We need to  
14 talk about the three Oberlin College students who were  
15 arrested, who are in jail. We need to talk about this.  
16 We need to get together and figure out what our game  
17 plan is going to be.

18 9:15 a.m., two hours later. Working in  
19 conjunction with Dean Raimondo, Tita Reed, special  
20 ambassador for the community, starts doing her job. She  
21 goes to the police station. She speaks to Sergeant  
22 McCloskey. She tells him that students are planning on  
23 protesting. And, again, he appreciates this warning.

24 But Tita Reed actually goes farther than  
25 that. She goes beyond her job duties. She then walks

1 to all the local merchants that are open. She then goes  
2 and tells them the students are planning on protesting.  
3 They're organizing, they're going to be gathering  
4 outside of Gibson's Bakery. So she thinks it's  
5 important not only the police know about this, but local  
6 merchants who are part of the community, who are  
7 integrated, if you will, with Oberlin College, that they  
8 know as well what is going on.

9 9:30 a.m., Dean Raimondo meets with her  
10 colleagues, and they talk about what they're going to  
11 do, how they're going to deal with this, how they're  
12 going to respond, how they're going to follow the  
13 book.

14 11:00 a.m., the students gather as promised  
15 outside Gibson's Bakery. There are signs. They are  
16 chanting. The students are fired up. They're also  
17 passing out the flyer that you've heard about. They're  
18 already there. They're passing out the flyer to anybody  
19 who will take the flyer.

20 Minutes later, 11:15, Dean Raimondo arrives on  
21 the scene. She sees the protesters. She sees the  
22 noise. She hears the chants. There's a lot going  
23 on. Within minutes she's given a flyer herself. She  
24 glances at it, but her attention isn't on the flyer,  
25 it's on the protesters who are out there criticizing

1 Gibson's Bakery. She glances at it, she puts it in her  
2 pocket. Literally within minutes of that, she spots  
3 trouble.

4 Trouble not far from where she is. She sees a  
5 group of students who are in a heated verbal altercation  
6 with a big man, a stranger. She walks over there. And  
7 what does she do? She separates the sides. And the  
8 students listen and they back up, and so she starts  
9 talking to the man.

10 She introduces herself and says, "Hi. I'm  
11 Meredith Raimondo, dean of students at Oberlin  
12 College." He wants to know what's going on. What's the  
13 purpose of this? Dean Raimondo says, "I can't speak for  
14 the protesters, but I was just handed this flyer. And  
15 if you want it, you can have it, and it may explain why  
16 they are there. But again, I don't speak for them."

17 The significance of this is Dean Raimondo  
18 spotted a very volatile situation, perhaps a dangerous  
19 situation, the students were mad, this strange man was  
20 mad, this was not a pretty picture at all. And she did  
21 her job. She interceded. She intervened. She  
22 separated the sides. She gave this man a flyer. When  
23 he asked what was going on, she helped to lower the  
24 temperature.

25 She helped to keep the peace. She helped to

1 keep everyone safe: this strange man, the protesters,  
2 everyone. She was doing her job. She was following the  
3 book.

4 1:15 p.m. Meredith Raimondo discusses pulling  
5 Gibson's baked good from the dining halls. Why is  
6 that? Well, clearly, there was a protest going on. The  
7 students were mad. They were chanting. They were  
8 yelling. They were even using some bad words. They  
9 were very upset at Gibson's Bakery. A lot of the  
10 students knew that Oberlin College was serving Gibson's  
11 food in the dining halls. And to her credit, Dean  
12 Raimondo knew that that could be a problem, that that  
13 could create an explosion of other problems, lead to  
14 other protests.

15 She began to try to figure out what she could do  
16 to deescalate this conflict, to lower the temperature.  
17 So -- and I think this text message that Dean Raimondo  
18 exchanged with one of her colleagues reflects and  
19 expresses the stress that she was under in this very  
20 difficult situation. Things are moving quickly. She  
21 was trying to figure out a way to deescalate this  
22 crisis.

23 November 10. I think that's 1:40 p.m. She  
24 goes, "Ugh. Is there anything else we can do? Students  
25 at the protest have already announced a call for CDS,"

1 the dining services, to sever ties, trying to buy time.  
2 The students had come up to Dean Raimondo and said,  
3 we're going to do something and it's not going to be  
4 pretty, and we want you to stop serving Gibson's food in  
5 our dining halls.

6 Let's go on.

7 Something I should say is this. And this is  
8 important. During the time that Dean Raimondo was there  
9 at the protests, she actually went and introduced  
10 herself to all the police officers. She identified  
11 herself as an official Oberlin College representative  
12 and asked them to a person to let her know if was there  
13 anything she could do to help with the protests, and the  
14 police responded.

15 There were problems with the students taking up  
16 too much space on the sidewalk. There were problems  
17 with the students blocking the door, the front door of  
18 Gibson's Bakery. There were problems at times with the  
19 students actually in the street and obviously putting  
20 themselves in harm's way. And each time the police  
21 asked for Dean Raimondo's help, she did it. What did  
22 she do? She helped keep the sidewalks clear so that  
23 non-protesters could walk up and down the street.

24 What else did she do? She helped clear a path  
25 into Gibson's Bakery. She also kept the streets clear

1 and encouraged students to get out of the street. You  
 2 can be on the sidewalk, you could be on the Tappan  
 3 Square side, but you can't be in the middle of the  
 4 street. Why did she do those things? Because the  
 5 police wanted her to do it. She did those things  
 6 because it was part of her job, it was part of the book.  
 7 And by doing those thing, Dean Raimondo -- and you will  
 8 remember the phrase -- she helped to ameliorate or  
 9 improve the situation. And by doing that, she made sure  
 10 that the protest was safe for everyone. That it was  
 11 safe for everyone.

12 So we're now up to 2:53 p.m.

13 I mentioned earlier that Tita Reed had gone to  
 14 all the local merchants to warn them. That morning she  
 15 also went into Gibson's Bakery. She thought they should  
 16 know as well, and maybe particularly so, that they were  
 17 going to be targeted by students protesting. When she  
 18 went to Gibson's Bakery at around 9:15 or 9:30 in the  
 19 morning, she hoped that she would talk to David Gibson,  
 20 one of the owners, or Allyn Gibson, one of the other  
 21 owners, but they weren't there.

22 But that didn't deter Tita Reed. She told one  
 23 of the employees working at Gibson's Bakery that morning  
 24 that the students were assembling and they were  
 25 protesting Gibson's Bakery.

1 Raimondo a heads up about what they had just done.  
 2 Let's pull that up.  
 3 Kam Dunbar, who is a student at Oberlin College  
 4 and one of the leaders the student senate, sends  
 5 President Krislov, Dean Raimondo this e-mail. "FYI,  
 6 senate passed this resolution tonight." And they  
 7 attached, obviously, a copy of the resolution. So this  
 8 was the very first notice that Oberlin College had that  
 9 the students had assembled and they had passed a  
 10 resolution. And this is the FYI they received from one  
 11 of the student leaders, Kam Dunbar.

12 So the evidence will show that during the time  
 13 that Dean Raimondo was present outside Gibson's Bakery,  
 14 she was in constant communication with the police. She  
 15 was in constant communication with the students. She  
 16 directed the students according to the instructions she  
 17 had received from the Oberlin City Police. She helped  
 18 to keep the peace, and she helped to keep everybody  
 19 safe. She deescalated numerous conflicts, including the  
 20 conflict with that strange man.

21 By the way, she would later learn, and we would  
 22 later learn, that strange man was a reporter, a reporter  
 23 for a local newspaper. Never identified himself as a  
 24 reporter. Each of you is wearing a badge that says you  
 25 are a juror. So we know you are jurors. But he wasn't

1 So at 2:53 Tita Reed had not heard back from  
 2 David Gibson or Allyn Gibsons. So what does she do?  
 3 She's diligently reaches back out to David Gibson and  
 4 sends him an e-mail. 2:53 p.m., Thursday afternoon,  
 5 "Can you call me?" And then she gave him her number.  
 6 She sent this text to David Gibson because she thought  
 7 that he definitely should know about the protests.

8 You will learn that David Gibson never called  
 9 her back Thursday. He never called her back Friday. He  
 10 never called her back Saturday. He never called her  
 11 back Sunday. Actually, he never called her back at  
 12 all.

13 11:15 p.m. at night. It was about this time the  
 14 protests were winding down. As I said, Dean Raimondo  
 15 made sure that everybody was safe and she was the very  
 16 last one to leave. But 11:15 p.m., the student senate  
 17 sends out a message to president Marvin Krislov and to  
 18 Dean Raimondo.

19 And I should say that the student senate is  
 20 exactly what it sounds like. It's a group of students  
 21 who have a senate, a governmental body, and the student  
 22 senators represent the students. These are the leaders  
 23 of Oberlin College.

24 And so they apparently had gotten together  
 25 earlier, and they decide to give the president and Dean

1 wearing a badge saying that he was a reporter. Didn't  
 2 have anything around his neck, no press credentials,  
 3 nothing at all. But later she learned that he was a  
 4 reporter.

5 So Meredith Raimondo did her job. And as a  
 6 result of her efforts, you will learn there was no  
 7 property damage, and there are probably two or three  
 8 hundred students and others protesting outside. There  
 9 was no property damage. There were no arrests. Not a  
 10 single person was injured.

11 Let's move on. Day two of the protests. It's  
 12 now Friday, November 11th, 2016. The night before Dean  
 13 Raimondo finds out that two of the three students who  
 14 were involved in the shoplifting incident are going to  
 15 be arraigned in court. They're going to have their  
 16 first day in criminal court. She learns about it the  
 17 night before. And she also learns that the students are  
 18 planning on protesting at the courthouse. And guess  
 19 what Dean Raimondo does? She springs into action once  
 20 again.

21 She goes to the Oberlin Municipal Court to make  
 22 sure that it's safe for everybody. She goes there, she  
 23 introduces herself to the students. She says she's Dean  
 24 Raimondo. She explains that she is there to keep the  
 25 peace and make sure everybody is safe.

1 With that in mind, she actually walks inside the  
2 courthouse, she talks to a security guard, and the guard  
3 tells her what the students can do and what they can't  
4 do, and the guard even shares with her how many students  
5 can come inside the courtroom and watch the proceedings.  
6 Dean Raimondo comes back out and explains all of that to  
7 the students; again, to deescalate the potentially  
8 volatile, dangerous situation. She's doing her job.  
9 And she stayed there for a while monitoring the  
10 protest.

11 As you will learn, students were actually upset  
12 at Gibson's Bakery, but they were also upset at the  
13 police. The students apparently didn't understand why  
14 the three Oberlin College students were arrested and why  
15 Allyn Gibson was not arrested. They didn't understand  
16 that. You arrested three students, but you didn't  
17 arrest Allyn Gibson.

18 11:00 the students are back in front of Gibson's  
19 Bakery. They're charged up. They're fired up. They're  
20 angry. They're chanting. They're yelling. They're  
21 screaming. There's some profanity that is used as  
22 well.

23 But as you just heard a short time ago from  
24 Judge Miraldi, the words that were spoken at the  
25 protests, the verbal declarations, the words that were

1 screamed and shouted, that's all constitutionally  
2 protected and permitted activity. That's not wrongful.  
3 It's not unlawful.

4 The constitution allows people to get together  
5 like that and to yell things and to scream things. So I  
6 want to be clear, that's not the reason why we are here.  
7 What they did and what they said, the words that they  
8 spoke were protected and permitted by the constitution.

9 11:00, again, students are in front of Gibson's  
10 Bakery and they're upset. Meredith Raimondo goes from  
11 the Oberlin Municipal Court back to the bakery to  
12 monitor things. Remember, she's the official  
13 spokesperson and representative at the scene for the  
14 college.

15 12:07 p.m. The Oberlin City police chief  
16 actually thanks Meredith Raimondo for her help. He  
17 thanks her. He has heard what she has done. He  
18 acknowledges that she was an important role in keeping  
19 this protest safe. He sends her a thank you message.

20 Let's bring it up.

21 The Oberlin police chief was someone named Juan  
22 Torres. And Chief Torres sends this e-mail to Dean  
23 Raimondo.

24 "Hello, Meredith. Thank you for your e-mail and  
25 for your support and assistance. Please do not hesitate

1 to contact me if you need anything."

2 "Thank you for your e-mail and for your support  
3 and assistance." Even the police chief recognized that  
4 the protests were a runaway train. It was a runaway  
5 train, and Dean Raimondo did everything within her power  
6 to keep everybody off the tracks, to keep everybody  
7 safe. That e-mail was a response to an e-mail that Dean  
8 Raimondo sent to the police chief a little bit earlier  
9 in the day.

10 Dean Raimondo wrote, "Dear Juan, I'm headed back  
11 downtown shortly and in communication with students who  
12 are committed to a peaceful and lawful presence. Please  
13 thank all of the officer who were present yesterday and  
14 are today. It was a wonderful collaboration."

15 Dean Raimondo writes, it was a wonderful  
16 collaboration between local police and Oberlin  
17 College. Dean Raimondo was doing her job. The book  
18 requires her to collaborate with local police and to  
19 partner with them to make sure that things are safe and  
20 that everyone is safe. And she recognizes it, and the  
21 police chief later acknowledges it and he says "thanks."

22 So as a result -- once again, Dean Raimondo was  
23 there on day two. She introduced herself to all of the  
24 police officers who were there. She said that she was  
25 available to help and to interact with the students. It

1 was important to keep the peace. She did that. And as  
2 a result, she helped to deescalate, deescalate a  
3 conflict. And once again, because of Dean Raimondo's  
4 presence and because of her intervention, talking to the  
5 police and talking to the students, there was no  
6 property damage, there were no arrests, no one was hurt.

7 So at this point, let's answer a question that's  
8 very critical for this case. Who speaks for Oberlin  
9 College? Who has the authority to be the official voice  
10 for Oberlin College?

11 There are 1,000 faculty members, staffers and  
12 administrators who work at Oberlin College; about 350 of  
13 them are actually involved in teaching, that's the  
14 faculty. And I can tell you that each of these blue  
15 dots here represents each and every one of that 1,000  
16 group of faculty, staff or administrators.

17 I actually counted the blocks and the dots in  
18 one of these and did some quick math, and 1,000 dots are  
19 there.

20 So do the faculty, staff and administrators have  
21 the ability to be the official voice of Oberlin  
22 College? The answer is no. None of them or some of  
23 them or all of them can speak for Oberlin College.

24 This dot right here represents someone. He or  
25 she can't speak for Oberlin College. This dot over here

1 represents someone else connected with Oberlin  
 2 College. He or she can't speak for Oberlin College.  
 3 So you might ask, well, a faculty can't speak  
 4 for Oberlin College, the staff the can't, the  
 5 administrators can't, what about the students? Do they  
 6 have the authority to be the official voice of Oberlin  
 7 College? And there were 2,800 students who attend  
 8 Oberlin College. These are students who come from all  
 9 around the country and all around the world. And I can  
 10 assure you, I've counted up the dots in one of those  
 11 boxes, and there are precisely 2,800 dots represented by  
 12 that graphic.  
 13 Can the students speak as the official voice of  
 14 the Oberlin College? And the answer is no.  
 15 And you are probably asking, what are the  
 16 purple dots for? The purple dots represent the roughly  
 17 200 or 300 students who were present at the  
 18 demonstration. And as you can see -- as you can see,  
 19 there are far more students who did not go to the  
 20 demonstrations in front of Gibson's Bakery than that  
 21 did. So when you look at that, you have the students  
 22 who did not participate in the protest, and you've seen  
 23 that those who did, and none of them actually have the  
 24 ability to speak for Oberlin College.  
 25 So the students can't speak for the college, the

1 faculty can't do it, the staffers can't do it, the  
 2 administrators can't do it. Who does? There's actually  
 3 three answers to this question.  
 4 The first person that can speak for Oberlin  
 5 College is -- there it is -- the board of trustees.  
 6 What's the board? Well, the board is made up of roughly  
 7 about 30 individuals. Most of them have gone to Oberlin  
 8 and graduated from Oberlin. They love Oberlin College,  
 9 and they are honored to serve the college long after  
 10 their graduation days. So that group had the ability to  
 11 decide important matters for the college. This is the  
 12 top governing body for Oberlin College.  
 13 The board makes all the big decisions. They  
 14 decide on the strategic vision of the college, where it  
 15 should be in five years or twenty years. They decide  
 16 the vision of the college should be, or the mission.  
 17 Not everybody on the board can speak for Oberlin  
 18 College. There's one person that had that power.  
 19 That's the board chair. The board chair stands apart  
 20 from all the other trustees, that he or she can speak  
 21 for Oberlin College.  
 22 But there's someone else who can speak for  
 23 Oberlin College. And who is that? That's the  
 24 president. The president of Oberlin College is  
 25 responsible for the day-to-day operations of the

1 college. The board sets big policies, and the president  
 2 implements that policy and makes sure that things run  
 3 smoothly.  
 4 So president of Oberlin College can speak for  
 5 the college. You've heard the name Marvin Krislov.  
 6 During the time of the protests in front of Gibson's  
 7 Bakery, he was the president. And you will hear  
 8 testimony from him. He's currently at Pace University  
 9 in New York City, the big school in Manhattan. He's  
 10 going to come in and talk about what happened.  
 11 There's a new president, though, at Oberlin  
 12 College. Her name is Carmen Twillie Ambar. President  
 13 Ambar has been there for a short time now, and she is  
 14 the current president. She's going to take the stand  
 15 right here as well and tell you about her testimony and  
 16 her experiences at Oberlin College. So we have two  
 17 individuals who can speak authoritatively and officially  
 18 as the voice of Oberlin College. But there's one  
 19 more.  
 20 The president has the ability to appoint and  
 21 designate individuals who act as the official voice of  
 22 Oberlin College. Typically, the president does that for  
 23 specific topics and at specific times. It's a very  
 24 important delegation of authority. So the president can  
 25 appoint individuals. And as you know, the book actually

1 has already appointed the dean of students as the  
 2 official representative for protests and demonstrations  
 3 regardless of where they may take place. But the  
 4 president has the ability to appoint people, too; again,  
 5 for very specific issues and at very specific times.  
 6 So at this point, you probably are thinking  
 7 there are two sides here. You have the plaintiffs side,  
 8 you have the side of Allyn Gibson and David Gibson and  
 9 Gibson's Bakery. And you are probably thinking you have  
 10 the side of the defendants here, Oberlin College and  
 11 Meredith Raimondo. And you've heard the saying that  
 12 there are two sides to every story. Well, for this case  
 13 there are actually four sides. There are four sides to  
 14 this. You have a plaintiff side, you have the defense  
 15 side, you have the business side, the business side of  
 16 Gibson's Bakery, and you also have the legal side.  
 17 Let's spend a few moments looking at the legal side of  
 18 this case.  
 19 As you know from Mr. Plakas, the other side, the  
 20 plaintiffs' side has made a number of legal claims  
 21 against Oberlin College and Meredith Raimondo, and you  
 22 are going to get lots of testimony and lots of documents  
 23 and e-mails relating to these various claims, both from  
 24 the plaintiffs' side as well as from our side of the  
 25 courtroom here.

1 In order for the plaintiffs to win with their  
2 libel claim, they have to put the pieces of their claim  
3 together. I liken it to a puzzle. You don't solve a  
4 puzzle unless and until all the pieces fit. Similarly,  
5 the plaintiffs don't win on their libel claim unless and  
6 until the pieces fit. They have to fit. If one piece  
7 doesn't fit, then that I haven't won their case.

8 So there are five legal elements that make up a  
9 libel claim, and at the end of the case, Judge Miraldi  
10 is going to share the law with you in detail. I want to  
11 share this information.

12 To win on libel, the plaintiffs here have to  
13 prove that Oberlin College and Meredith Raimondo made a  
14 false statement of fact.

15 So what's a false statement of fact? Let's use  
16 my puzzle analogy again. Let's say I go to the store, I  
17 buy a puzzle that has 500 pieces in it. I know that  
18 because the puzzle maker has said this puzzle contains  
19 500 pieces. If I then go to one of you and say there  
20 are only 420 pieces in that puzzle, that would be a  
21 false statement of fact. Why? Because the puzzle  
22 manufacturer has said there are 500 pieces and anything  
23 other than that would be false. It wouldn't be a  
24 statement of fact.

25 The plaintiffs also have to prove something

1 temporary suspension too. It wasn't permanent; it was  
2 temporary. That's what the plaintiffs have the prove.

3 There's another related claim. Interference  
4 with business relationships. So the plaintiffs have to  
5 prove that there was a business relationship between two  
6 parties and that a wrongdoer, allegedly Oberlin College  
7 and Dean Raimondo, did something to adversely interfere  
8 with that relationship; and again, that Oberlin College  
9 and Dean Raimondo did so without privilege or without a  
10 good reason for interfering with that relationship.

11 Something else I'll bring to your attention, and  
12 Judge Miraldi will explain this in great detail at the  
13 end of the case, if the plaintiffs can't prove number  
14 one, there's no need to get to number two, number three,  
15 number four, number five.

16 If the plaintiffs do not prove number one, game  
17 over. The plaintiffs have not proven their case. And  
18 that is true for the other two claims that we had on  
19 slides as well.

20 So let's now talk about the business side of  
21 things. So this is a chart. And bear with me a little  
22 bit. I have to explain it for you to understand it.  
23 This is a chart that shows the relationship between  
24 Oberlin College and Gibson's Bakery. And this chart  
25 will show the sources of revenue that Oberlin College

1 else. They have to prove, in the third element, they  
2 have to prove that Oberlin College and Dean Raimondo,  
3 sitting here, published the statement. And, again, the  
4 Judge is going to explain what that means. But they  
5 have to prove that the defendants published the  
6 statement. And we believe that glancing at a flyer,  
7 giving it to someone else is not publication. And you  
8 will hear testimony about that during the course of this  
9 trial. There are a couple other claims that are  
10 important, and Mr. Plakas here referred to them in his  
11 opening.

12 There's a claim for unlawful interference with  
13 contract. Well, this claim -- and, again, Judge Miraldi  
14 is going to spell out everything at the end of the  
15 case.

16 The plaintiffs have to prove that there was a  
17 contract. They have to prove there was a contract  
18 between two parties. They also have to prove something  
19 else. They have to prove that the contract was breached  
20 or interfered with, and they also have to prove that  
21 there was no justification for it.

22 You will learn that the reason why Oberlin  
23 College suspended ordering food from Gibson's Bakery was  
24 to deescalate the situation, was to avoid inflaming the  
25 students in making them angry. And it was just a

1 provided to the bakery. And the center you can see  
2 there is a calendar. And don't strain your eyes to read  
3 the dates because they will become easier in just a few  
4 moments.

5 So, Oberlin College had essentially three  
6 different sources of relationships with Gibson's  
7 Bakery. One relationship between the college and the  
8 bakery involved campus dining services. You heard about  
9 the dining halls that used Gibson's Bakery foods.

10 Another relationship or line between the college  
11 and Gibson's Bakery is the Obie dollars, the prepaid  
12 debit cards that Oberlin College students can use on  
13 campus and off campus to buy things. They could even  
14 use it at Gibson's Bakery.

15 And the third line connecting the college and  
16 the bakery was the departmental catering. Departments  
17 at Gibson's Bakery have events and special programs.  
18 And each of them has the ability to call Gibson's Bakery  
19 and order a food tray, bagels, maybe even doughnuts.

20 So now that we have that background, let's run  
21 through some of the critical dates here.

22 So going back in time up to November 13th, 2016,  
23 Oberlin College turned to Gibson's Bakery for dining  
24 food, it allowed students to use their Obie dollars,  
25 and departments could order foods directly from Gibson's

1 Bakery.

2 On November 14th, things changed. Let me back

3 up a little bit. On Friday, because of the conflict and

4 because of the anger expressed by students, Dean

5 Raimondo decided that even though it had, even though

6 Oberlin College had food on that Friday, which I believe

7 was Friday, November 11th, Dean Raimondo made the

8 decision not to serve the food in the dining hall.

9 Again, she was struggling and looking for ways to

10 deescalate things, to tamp down the temperature and to

11 avoid having, among other things, a protest at Oberlin

12 College itself; or she had received word that the

13 students were thinking about doing inappropriate things

14 with the food. So she decided not to serve the food on

15 that Friday, that Saturday and that Sunday.

16 Tensions were still running high on campus on

17 Monday. So Dean Raimondo, in consultation with other

18 high-level Oberlin College officials, decided to

19 temporarily suspend ordering food from the Gibson's

20 Bakery for the dining services, for the dining halls.

21 They decided it was really important to hit the

22 pause button. Students were fired up. They were

23 mad. No one knew what had happened outside of Gibson's

24 Bakery and in Tappan Square. So they decided it was in

25 the best interest of all concerned to temporarily

1 Now, the students were not completely pleased

2 with President Krislov. A lot of them were angry. We

3 know that because a lot of them went to Dean Raimondo

4 and a lot of them went to President Krislov. They did

5 not understand why the school would lift that temporary

6 suspension, but the president did. So the relationship

7 between the college and the bakery resumed for all of

8 February, March, April, May, June, July, August,

9 September, October, and then for six days in November.

10 And the green squares end there because

11 something important happened on November 7th, 2016

12 [sic]. On November 7th, 2016, David Gibson, Allyn

13 Gibson and Gibson's Bakery filed a lawsuit against

14 Oberlin College and Dean Raimondo. And as a result of

15 that, Oberlin College made the decision to stop ordering

16 food from Gibson's Bakery.

17 So let's go to the -- point out a couple of

18 things here. During this entire year-long period -- and

19 the chart goes from November 2016 to November 2017.

20 Oberlin College students were free to use their Obie

21 dollars with the Gibson family and Gibson's Bakery. And

22 the college never suspended or terminated that

23 relationship between the college and Gibson's Bakery.

24 And during the time that there was that brief

25 suspension or dining hall food, Oberlin College students

1 suspend food orders for the dining hall. So that

2 suspension lasted from November 14th, 2016 until January

3 29th, 2017.

4 Significantly, most of that time, again, between

5 November 14th and January 29th, the school was on winter

6 break. Oberlin College essentially shuts down for much

7 of December, and it definitely shuts down in January.

8 We also had the Thanksgiving Day break in there.

9 So that during most of that period, which I

10 think is about a six-week period, under no circumstances

11 would Oberlin College have ordered food from Gibson's

12 Bakery, because the college was closed. Nobody was

13 there. And if you count up the days in pink, I know

14 they're rather small. You will see that the pink days

15 are -- there are 28 pink days. Those days, again,

16 reflect the days when Oberlin College was on break,

17 either Thanksgiving break or winter break.

18 Let's go to the next slide, please.

19 January 23rd, 2017, President Krislov decides

20 that he wants to try to move forward. He wants to

21 resume orders from Gibson's Bakery. So he lifts that

22 temporary suspension and begins ordering food from

23 Gibson's Bakery. And as you will see, the green

24 represents the days and indeed the months when that

25 relationship was resumed and restored.

1 could use their Obie dollars in departments at Oberlin

2 College, were free to order food whenever they wanted to

3 from Gibson's Bakery. So, again, the Obie dollars could

4 have been used, and were used, during this entire

5 period.

6 I want to back up and just share a couple of

7 things with you.

8 President Krislov was very interested in moving

9 forward with Gibson's Bakery. As a result, he had a

10 meeting at his home on November 21. And on that date,

11 who was there? David Gibson was there; someone named

12 James Leo Walsh, who was a former prosecutor; president

13 Krislov was there; and Tita Reed was there. And the

14 purpose of the meeting was to try to figure out how to

15 bridge this gap between the students and Gibson's

16 Bakery. President Krislov wanted to restore the

17 relationship and get everybody back on the same track.

18 There was another meeting that you will hear

19 about. That meeting took place in early January, 2017

20 at a restaurant called Quick and Delicious. It's sort

21 of an interesting name. At that meeting there were a

22 number of people who were assembled. They included

23 David Gibson himself; Dean Raimondo; Ferd Protzman, who

24 is the chief of staff to the president; and one of

25 Mr. Gibson's friends. The purpose of that meeting was

1 to try to move forward; how to, again, bridge this  
2 divide between the students and Gibson's Bakery.

3 As jurors, you have a very important job. Your  
4 job is to listen to all of the evidence. And  
5 unfortunately, over the next three or four weeks you are  
6 going to hear lots of evidence, going to be lots of the  
7 witnesses who sit in this chair and who will tell their  
8 stories.

9 One of your important jobs is to not only  
10 listen, but to sort emotion from evidence. Evidence  
11 from emotion. And it's important that you remain  
12 neutral throughout the trial, because as I believe you  
13 have heard, the plaintiffs have the right under our  
14 legal system to go first. So they're going to present  
15 their evidence, they're going to present their  
16 documents.

17 And when they're done, only when they're done,  
18 will Oberlin College and Dean Raimondo get a chance to  
19 put on their witnesses, our witnesses and our evidence.  
20 And one or two weeks may go about by before we have the  
21 opportunity to put on our evidence. And during that  
22 time, I'm going to ask you to scrutinize everything.

23 It's really important that you do that because  
24 in terms of the libel claim -- in terms of the libel  
25 claim, there are only two documents that are important,

1 only two. This is the flyer; this is the Student Senate  
2 Resolution. You are going to see lots of papers. You  
3 are going to see e-mails that seem mean-spirited. Some  
4 use profanity. But the libel claim relates to just  
5 these two pieces of paper. Nothing else; nothing more.  
6 So your verdict on libel will be based just upon these  
7 two pieces of paper.

8 We believe that at the end of the case you are  
9 going to learn some important things. We believe the  
10 evidence will show that there is actually no evidence  
11 that Oberlin College and Dean Raimondo planned,  
12 organized or endorsed the protests. And you've already  
13 seen evidence of that from the student group that sent  
14 out a communication saying that they -- that they were  
15 planning to protest Gibson's Bakery. That didn't come  
16 from President Krislov, that didn't come from Dean  
17 Raimondo; it came from the students. And you will get a  
18 chance to take a very close look at that.

19 There is no evidence that Oberlin College and  
20 Dean Raimondo provided pizza and mittens to the  
21 protesters. That did not happen. And you will hear  
22 that from a few people, including Dean Raimondo when she  
23 takes the stand and testifies under oath.

24 You will also hear that there is no evidence  
25 that Oberlin College and Meredith Raimondo created,

1 approved or published the flyer. The protesters did  
2 that. As you will learn, the very first time that  
3 Meredith Raimondo even knew about the flyer was when she  
4 arrived at the protest to do her job and to follow the  
5 book that mandated that she actually be there. She had  
6 nothing to do with writing it, editing it, approving it,  
7 sanctioning it. The protesters did that.

8 There's no evidence that Oberlin College and  
9 Meredith Raimondo created, approved or published the  
10 Student Senate Resolution. How do we know that? Well,  
11 we know that from the e-mail that Kam Dunbar, a student  
12 leader on the student senate, an e-mail that he sent to  
13 President Krislov and Dean Raimondo. The student senate  
14 did that. And as we know from all the dots we've looked  
15 at this afternoon, the students of Oberlin College do  
16 not speak for Oberlin College. And even the student  
17 senate does not speak for Oberlin College.

18 Oberlin College and Meredith Raimondo did not  
19 condone the protests or the boycott of Gibson's Bakery.  
20 Their only concern was keeping things safe, maintaining  
21 a safe environment at the protests. And as you now know  
22 , there was no violence, there was no vandalism, no  
23 property damage, no arrests, and not a single person was  
24 injured.

25 At the end of the case, you are going to have

1 lots of pieces of the puzzle in front of you. Lots of  
2 pieces of the puzzle. And you will have to decide  
3 whether the pieces of the puzzle fit or don't fit. At  
4 the end of the case, we will -- I'm going to come back  
5 to you and I'm going to ask that you enter a verdict on  
6 all counts for all claims for Oberlin College and for  
7 Dean Raimondo.

8 Thank you very much for your time this  
9 afternoon, Ladies and Gentlemen.

10 THE COURT: Thank you. All right.

11 MR. HOLMAN: Actually, Your Honor. I forgot one  
12 thing. My closing was premature. Can I have five more  
13 minutes?

14 THE COURT: Sure.

15 MR. HOLMAN: Lawyers never knows when to sit  
16 down.

17 So one graph -- actually two graphs that are  
18 really important.

19 So I also wanted to spend a few moments talking  
20 about Gibson's Bakery. And the bakery has been a  
21 struggling business. It has had declining sales. This  
22 is a graph that shows the bakery's declining sales. The  
23 blue line shows revenues that have come into the bakery.  
24 But as you have probably gathered, the red lines  
25 represent a decline in those revenues.

1 It's a pretty powerful graph. But what's really  
2 important to know is this. This is a graph of Gibson's  
3 Bakery revenues before -- before the protests occurred.  
4 Gibson's Bakery was a struggling business. It was a  
5 business in distress well before the protests occurred  
6 on November 10th and 11th, 2016.

7 There's another point that I'd like to make,  
8 too. This is another important graph that says the same  
9 thing in a slightly different way. This is the average  
10 net business income for Gibson's Bakery. And as you can  
11 see here, the gray represents the years when Gibson's  
12 Bakery made money.

13 For example -- I have to get up close because I  
14 think my seeing is going bad. 2010, the bakery made  
15 \$7,000. The next year it made approximately \$24,000.  
16 Now, the red columns mean years when the bakery did not  
17 make money. The bakery was operating at a loss; in the  
18 red. And the year of the protests, the bakery lost all  
19 of \$55,000.

20 If you look closely, if you study this, you will  
21 come to one conclusion. If you look at the seven-year  
22 period, the average net income of Gibson's Bakery was  
23 not a profit. It was not a profit. It was actually a  
24 loss. The average business loss for the bakery was  
25 \$3,697.

1 This was a business in distress. This was a  
2 business fighting to stay alive before, before, before  
3 there were any protests.

4 Lastly -- maybe I shouldn't say "lastly."

5 Lastly -- I believe I'm correct this time --  
6 even plaintiffs' financial expert, who is going to take  
7 the stand here at some point in the next couple of  
8 weeks, even the plaintiffs only financial expert will  
9 tell you this business was in distress. In fact, he  
10 will tell you that the bakery's revenue in 2016 was the  
11 worst year for the bakery in the last six years  
12 regardless of the protests. The bakery's revenue of  
13 2016 was the worst year for the bakery in the past six  
14 years regardless of the protests. And you will hear  
15 that from an expert who the plaintiffs have hired to  
16 support their story and their claim of damages. This is  
17 their expert, not mine and not ours.

18 You've been very generous with your time. Thank  
19 you very much. I look forward to speaking to you again  
20 at the end of all of the evidence. Thank you.

21 THE COURT: Thank you.

22 MR. HOLMAN: Thank you, Your Honor.

23 THE COURT: Ladies and Gentlemen, that will  
24 conclude today. Remember my admonition not to speak  
25 with anyone about what you've heard in Court. Do not

1 read the local papers there's media here from the local  
2 papers. I'm instructing you not to read the papers. Do  
3 not go online. Again, people who are sitting here  
4 during this and writing something in the paper or  
5 online, what their perception of what occurred doesn't  
6 matter. The only thing that matters the only thing you  
7 can consider is the evidence that comes in during this  
8 trial. That's why you need to go nowhere else for the  
9 information other than this courtroom. Okay?

10 We will be back ready to go just before 9:00  
11 tomorrow. We will start with the plaintiffs'  
12 case. They will present testimony and witnesses and  
13 evidence. Be ready to go about 8:50 to be brought up.

14 Are you having them report to the jury room.

15 THE BAILIFF: Downstairs.

16 THE COURT: Have a good evening.

17 \*\*\*

18 (Out of the presence and hearing of the jury.)

19 \*\*\*

20 THE COURT: Anything from plaintiffs' counsel on  
21 the record?

22 MR. PLAKAS: Your Honor, pursuant to the  
23 stipulated procedure in terms of notification of the  
24 witness I would like to notify the defense of witnesses  
25 tomorrow. Several that we've subpoenaed. We've

1 subpoenaed Ferd Protzman; we would like him here at  
2 9:00. We've subpoenaed Tita Reed; we'd like her here at  
3 9:30. We will be calling those two witnesses as if upon  
4 cross-examination. Our other witnesses for the day,  
5 depends upon their schedule, I believe in this general  
6 order will be Sharon Patmon, Jason Hawk, Officer Ortiz,  
7 Mr. Wallace. And tell me, team, who am I missing?

8 We're calling Marvin Krislov as if upon  
9 cross-examination with the selective video clips that  
10 have been submitted, and I believe there's only one or  
11 two objections on the record of the videotape for the  
12 record Mr. Krislov, as we had confirmed in opening  
13 statement, resides in New York and beyond the subpoena  
14 powers of the Court.

15 THE COURT: Is that trial deposition or  
16 discovery deposition?

17 MR. PLAKAS: That's --

18 MR. HOLMAN: Discovery.

19 THE COURT: Has it been filed?

20 MR. PLAKAS: Yes, we filed it.

21 MR. HOLMAN: We take issue with that, Your  
22 Honor.

23 THE COURT: That's okay. We will handle it.  
24 It's not going to be until end of the day.

25 MR. PLAKAS: That would be in the -- probably

1 after the lunch hour.  
 2 MR. HOLMAN: Judge.  
 3 THE COURT: Go ahead.  
 4 MR. HOLMAN: Thank you, Your Honor. We would  
 5 suggest -- it's really an important issue. We think  
 6 that playing a discovery deposition videotape is  
 7 improper and not permitted by the rules and not  
 8 permitted by abundance of case law.  
 9 We actually have a brief that we can share with  
 10 the Court, either today or first thing tomorrow morning,  
 11 addressing that. But I wanted to just give the Court --  
 12 literally, this is an issue, significant issue on which  
 13 the parties agree, and we believe that case law either  
 14 requires that the plaintiffs not show any of the  
 15 videotape or that they show all of it. It's sort of  
 16 all-or-nothing situation. Case law does not support,  
 17 does not support playing excerpts. And also make the  
 18 Court aware that it is our intention to call Mr. Krislov  
 19 to the stand. So while he is not available tomorrow, he  
 20 will be available with sufficient notice at some point  
 21 during this trial.  
 22 MR. PLAKAS: Your Honor, I'd like to respond on  
 23 those two points. Both are incorrect. As everyone  
 24 knows, the civil rules do not differentiate between a  
 25 discovery and trial deposition. In fact, in the civil

1 rules, I don't believe anyone can find the words  
 2 "discovery deposition." If we read the civil rules, we  
 3 will see that the civil rules provide that a deposition  
 4 can be used by for any purpose whatsoever.  
 5 In terms of the procedure in playing excerpts of  
 6 a deposition, there is no mandatory requirement that we  
 7 play the entirety of the deposition. It would be  
 8 ridiculous. The deposition is 14 hours. We are  
 9 permitted to designate those portions of the deposition.  
 10 And then during their case, if they have the option of  
 11 either bringing in the witness if they like or  
 12 alternatively, they can play any remaining portions of  
 13 the deposition that we didn't play.  
 14 MR. HOLMAN: Your Honor, several things, if I  
 15 can address the Court.  
 16 THE COURT: I'm looking at Rule 32, not that I'm  
 17 ignoring you.  
 18 MR. HOLMAN: Thank you. I wanted to make  
 19 sure. First of all, there's been no -- there's been no  
 20 evidence, Your Honor, no evidence of efforts the  
 21 plaintiffs have made to actually bring President Krislov  
 22 here to Lorain County. They have not proven that he is  
 23 unavailable. All we have is a conclusory statement he  
 24 is unavailable. Again, he will be here -- he will be  
 25 here during our case.

1 THE COURT: I understand. Let me see your bench  
 2 brief on the issue.  
 3 MR. PLAKAS: May I see a copy of it?  
 4 THE COURT: Reading Rule 32.  
 5 MR. MANDEL: These are notes for now. This is  
 6 the bench brief and then the case law.  
 7 MR. HOLMAN: And Your Honor, we can submit to  
 8 the Court within the next hour or two a bench brief  
 9 identifying an abundance of authorities supporting the  
 10 idea that it's either all or nothing.  
 11 THE COURT: (A)(4) says, "If only part of a  
 12 deposition is offered in evidence by a party, the  
 13 adverse party may require him to introduce all of it  
 14 which is relevant to the part introduced."  
 15 MR. HOLMAN: And --  
 16 THE COURT: It doesn't say that you just  
 17 blanketly play 14 hours of deposition testimony.  
 18 MR. HOLMAN: Well, actually, we believe, Your  
 19 Honor, all of it is relevant. You can't pick and  
 20 choose --  
 21 THE COURT: It's hard for me to believe that 14  
 22 hours of a deposition is going to be relevant to a --  
 23 how many parts are attempting to play?  
 24 MR. PLAKAS: I think -- I think it will take --  
 25 I think it's total, like, 10 minutes, 15 minutes, max.

1 MR. HOLMAN: The other problem, Your Honor,  
 2 there has been no evidentiary showing he is unavailable.  
 3 I think it's.  
 4 THE COURT: Why is that a requirement? I don't  
 5 see that in Rule 32. It says simply that it has -- "any  
 6 deposition intended to be presented at evidence needs to  
 7 be filed the day before the trial." And it says, "A  
 8 deposition --"  
 9 MR. HOLMAN: Your Honor, I would say --  
 10 THE COURT: "-- may be used by any party for the  
 11 purpose of contradicting or impeaching the testimony of  
 12 the deponent as a witness."  
 13 MR. HOLMAN: I think Mr. Plakas, Your Honor, has  
 14 already indicated he is unavailable, thereby conceding  
 15 that availability or unavailability is a condition  
 16 precedent to -- condition preceded, that is, to being  
 17 able to have him appear via videotape. And Evidence  
 18 Rule 804 also applies.  
 19 THE COURT: I don't see the word "unavailable"  
 20 in Rule 32.  
 21 MR. HOLMAN: It's in 804, Your Honor.  
 22 THE COURT: 804.  
 23 MR. HOLMAN: Yes. Evidence Rule 804. That rule  
 24 requires that the witness be unavailable.  
 25 MR. HOLMAN: Your Honor, I would also point out,

1 if you look at the staff rules to Rule 32(A)(4), we  
 2 believe that the staff rules of 32(A)(4) supports  
 3 defendants' position.  
 4 MR. PLAKAS: Your Honor, I was remaining silent,  
 5 but since opposing counsel isn't while you're looking at  
 6 that, if we read Civil Rule 32(A)(3), it says the  
 7 deposition of a witness, whether or not a party may be  
 8 used by any party for any purpose if the Court finds,  
 9 and then it goes through, that the witness is beyond the  
 10 subpoena power of the Court.  
 11 The filed deposition confirms that Mr. Krislov  
 12 works and lives in New York. As an officer of the  
 13 Court, Mr. Holman just told me in opening statement that  
 14 Mr. Krislov is working in New York at Pace College. So  
 15 unless he's secretive, and I would ask you as an officer  
 16 of the Court, if he is in this county, subject to the  
 17 subpoena power today and we can subpoena him, we will be  
 18 happy to subpoena him into this courtroom tomorrow.  
 19 But the record now as it stands shows that he's  
 20 unavailable to the subpoena power of the Court, and  
 21 that's off 32(3) requires. But if he's here for trial  
 22 preparation or anything else, as long as you don't  
 23 conceal him because the rule prevents you from  
 24 concealing a witness --  
 25 MR. HOLMAN: That doesn't apply.

1 that. In fact, one of the things you told the jury was  
 2 we're not going to get a chance for a week or two to  
 3 handle some of these issues.  
 4 MR. HOLMAN: Right.  
 5 THE COURT: Please keep an open mind.  
 6 MR. PLAKAS: Thank you, Your Honor.  
 7 THE COURT: That's the way I'm going to handle  
 8 it.  
 9 MR. HOLMAN: Thank you, Your Honor.  
 10 THE COURT: What else do we have?  
 11 MR. PLAKAS: Nothing from the plaintiff.  
 12 MS. CROCKER: Just a point of clarification.  
 13 You said Mr. Wallace was one of your witnesses. Was  
 14 that Henry Wallace?  
 15 MR. PLAKAS: Yes.  
 16 MS. CROCKER: Thank you.  
 17 THE COURT: See you tomorrow morning.  
 18 \*\*\*  
 19 (The Court adjourned for the day.)  
 20 \*\*\*  
 21 (See Volume III.)  
 22  
 23  
 24  
 25

1 MR. PLAKAS: -- we would be happy to subpoena  
 2 him.  
 3 MR. HOLMAN: Our point, Your Honor, President  
 4 Krislov will be here in this courtroom. We will be  
 5 calling him on our case in chief.  
 6 THE COURT: I understand that. But (A)(3) is on  
 7 point on this issue. And based on that, I will permit  
 8 the plaintiffs to use his deposition as they intend to  
 9 use it. Okay?  
 10 MS. CROCKER: Your Honor, may we have the  
 11 opportunity to submit the relevant portions we believe  
 12 that the excerpt that they are presenting the Court are  
 13 misleading, because portions before and after that are  
 14 relevant to what they cited are being omitted.  
 15 MR. PLAKAS: Your Honor, we're permitted to try  
 16 our case. We're calling him as if on cross-examination.  
 17 And they have the right, they can bring, as with any  
 18 other witness, they can bring him in or his deposition  
 19 excerpts in their case in chief.  
 20 MR. HOLMAN: Your Honor.  
 21 THE COURT: Hold on. In fact, you could play  
 22 the excerpts that the plaintiffs play in their case in  
 23 chief and ask Dr. Krislov to explain it or rather than  
 24 trying to parse together 14 hours of deposition  
 25 testimony by video. You will get an opportunity to do

1 C E R T I F I C A T E  
 2 The State of Ohio, )  
 3 ) SS:  
 4 County of Lorain. )  
 5 I, Cathlene M. Camp, Official Court Reporter in the  
 6 Court of Common Pleas, Lorain County, Ohio, duly  
 7 appointed therein, do hereby certify that this is a  
 8 correct transcript of the proceedings in this case on  
 9 May 9, 2016.  
 10 I further certify that this is a complete  
 11 transcript of the testimony.  
 12 IN WITNESS WHEREOF, I have subscribed my name this  
 13 11th day of May, 2019.  
 14  
 15  
 16  
 17  
 18 Cathlene M. Camp, RPR  
 19 Official Court Reporter  
 20 Lorain County, Ohio  
 21 225 Court Street, 7th Floor  
 22 Elyria, OH 44035  
 23 (440) 329-5564  
 24  
 25 My Commission expires August 3, 2020