

UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF WISCONSIN
GREEN BAY DIVISION

RENEE LANGE,)
)
) Plaintiff,) Case No. CR 18-821
) Green Bay, Wisconsin
 vs.)
) September 23, 2020
) 8:32 a.m.
CITY OF OCONTO,)
CITY OF OCONTO FALLS,)
) **DAY 3 OF 3**
)
Defendants.)

TRANSCRIPT OF JURY TRIAL
BEFORE THE HONORABLE WILLIAM C. GRIESBACH
UNITED STATES SENIOR DISTRICT JUDGE

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1 TRANSCRIPT OF PROCEEDINGS

2 Reported Via Zoom Video Conference

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4 P R O C E E D I N G S

08:32 5 **(Call to Order of the Court at 8:32 a.m.)**

6 THE COURT: Anything to take up before we bring in the
7 jury? Is Brandon here?

8 MS. ALCALDE: Yes, he's right here, Your Honor.

9 THE COURT: You can come up to the witness stand.

08:33 10 (Jury in at 8:33 a.m.)

11 THE COURT: Good morning, ladies and gentlemen. Go
12 ahead, be seated. And we'll continue then on day 3 of our
13 trial.

14 Plaintiffs may call their next witness.

08:34 15 MS. ALCALDE: Thank you, Your Honor. We call Brandon
16 Lovering.

17 THE COURT: Please raise your right hand.

18 BRANDON LOVERING, PLAINTIFF WITNESS, DULY SWORN

19 THE CLERK: Please state and spell your first and last
08:34 20 enemy for the record.

21 THE WITNESS: Brandon Lovering. B-R-A-N-D-O-N,
22 L-O-V-E-R-I-N-G.

23 THE COURT: Okay. Have a seat in the witness stand
24 then. And make sure you speak into the microphone, Brandon, so
08:34 25 we get a -- so the court reporter and the jury can hear you.

1 THE WITNESS: I can take my mask off?

2 THE COURT: Yes, you can take your mask off now. You
3 can take it all the way off if you want, but it's up to you if
4 you want to just put it under your chin. Just so we can see
08:34 5 your face. Thank you.

6 THE WITNESS: Thank you.

7 THE COURT: You may proceed with your examination.

8 DIRECT EXAMINATION

9 BY MS. ALCALDE:

08:35 10 Q. Good morning, Brandon. Can you tell us your age?

11 A. 18.

12 Q. You're currently 18, right?

13 A. Correct.

14 Q. And can you tell us what you do now, like are you in school?

08:35 15 A. I'm currently in school in Oconto Falls, New Path Falls.

16 Q. Okay. And you've been in school for 18 years?

17 A. Yes.

18 Q. And has your mom come with you to parent-teacher conferences
19 before?

08:35 20 A. Yes.

21 Q. And is there an ASL interpreter for those conferences?

22 A. Yes.

23 Q. Have you gone with your mom to her doctors' appointments
24 before?

08:35 25 A. Yes.

1 Q. Is there ASL interpreters for those appointments?

2 A. Yes.

3 Q. Now, you know American Sign Language?

4 A. Yes.

08:36 5 Q. And can you tell us how well you know American Sign
6 Language?

7 A. Not well. I still finger-spell and it's not as a
8 hundred percent as it should be.

9 Q. Can you tell me what you mean by "fingerspelling"? What's
08:36 10 the difference between fingerspelling and using regular sign
11 language?

12 A. It takes longer and sometimes people don't understand where
13 the space is or where the words end and start. So sometimes
14 it's very confusing for other people who don't really understand
08:36 15 me like how I always usually sign.

16 Q. Okay. And is it kind of like spelling out the words?

17 A. Yes.

18 Q. Using letters?

19 A. Yes.

08:36 20 Q. Now, in a lot of these encounters with your mom, and we'll
21 go through the specific ones today, but you have interpreted for
22 your mom, correct?

23 A. Yes.

24 Q. And is there sometimes words you don't understand?

08:37 25 A. Yes.

1 Q. That the police are telling you?

2 A. Yes.

3 Q. And what do you do when you don't understand a word?

08:37 4 A. I will look it up on a -- or try to sound it out on a iPad,
5 Google search.

6 Q. Okay. And then you just finger-spell it?

7 A. Yes.

8 Q. Okay. Is that like an easy way to communicate, do you
9 think?

08:37 10 A. No.

11 Q. Is it hard for you to do that?

12 A. Yes.

13 Q. Can you give me an example of a word you have to
14 finger-spell?

08:37 15 A. "Intimidate."

16 Q. Okay. Do you know how to finger-spell that word?

17 A. Not really, no.

18 Q. Okay. I won't put you on the spot. Now, I'm going to ask
19 you about three incident dates that you were used as an

08:38 20 interpreter, okay? November 13, February 2nd, and February 3rd.

21 I want to start with November 13th, 2016. That was the incident
22 with Jeremy. Okay? Did you call the police on that date?

23 A. No, I did not.

24 Q. Okay. The police arrived at your house?

08:38 25 A. Yes.

1 Q. Can you tell us a little bit about that day? Were you
2 scared on that day?

3 A. Yes.

4 Q. Okay. And did the police ask you to be an interpreter?

08:38 5 A. Yes.

6 Q. Would it have been easier for you if you weren't an
7 interpreter on that date?

8 A. Yes.

9 Q. And did they give you an option to not be an interpreter?

08:38 10 A. No, they did not.

11 Q. How old were you at that time?

12 A. Could you clarify the date, please?

13 Q. November 13th, 2016.

14 A. I believe I was 14 at the time.

08:38 15 Q. Okay. And did your mom want you to interpret?

16 A. No, she did not.

17 Q. Did your mom ask for an interpreter?

18 A. Yes, she did.

19 Q. Okay. If you remember. I don't want you to guess stuff,
08:39 20 okay?

21 A. Okay.

22 Q. On that date why were you scared?

23 A. I was scared because it was like a heated argument between
24 me and her boyfriend. And so I didn't -- I wasn't really like
08:39 25 calm. I was kinda like hyper and like nervous and just a bunch

1 of jumbled --

2 Q. Were you also worried for your mom?

3 A. Yes.

4 Q. And being asked to be an interpreter in that situation, were
08:39 5 you able to fully interpret everything that was being said?

6 A. No, I could not.

7 Q. And do you think it would have been better for you and your
8 mom if there had been an interpreter so you didn't also have to
9 interpret what was going on?

08:40 10 A. Yes.

11 Q. Would you have been able to better tell your story to the
12 police if they weren't using you as an interpreter to talk to
13 your mom?

14 A. Yes.

08:40 15 Q. Okay. I'm going to ask you about February 2nd, okay?

16 A. Okay.

17 Q. Let's move forward. That's the day before the search
18 warrant in your home.

19 A. Okay.

08:40 20 Q. Okay? On this date again you were used as an interpreter,
21 correct?

22 A. Correct.

23 Q. And earlier before the police arrived was there a video
24 phone interaction with you and Laurie King and your mom?

08:40 25 A. Yes.

1 Q. And did you sign something via video phone for Laurie King?

2 A. Yes, I did.

3 Q. And tell us what you signed to her.

4 A. I signed to her that she was stupid.

08:40 5 Q. Can you show me how that looks in sign language?

6 Demonstrate to me.

7 A. Okay.

8 MS. ALCALDE: Your Honor, can he stand up to
9 illustrate?

08:41 10 THE COURT: Yes.

11 MS. ALCALDE: Thank you.

12 (Witness demonstrates.)

13 THE WITNESS: You are stupid. Or dumb. You are
14 stupid.

08:41 15 BY MS. ALCALDE:

16 Q. So you can sit down again, Brandon. Thanks. The sign for
17 "stupid" is this (demonstrating)?

18 A. Yes.

19 Q. Hitting your head?

08:41 20 A. Yes.

21 Q. And Laurie King knows sign language, right?

22 A. Yes.

23 Q. Is that a pretty common sign?

24 A. Yes.

08:41 25 Q. So would someone that sees that that doesn't know sign

1 language think that you were, you know, threatening to hit
2 someone over the head?

3 A. Yes.

08:41 4 Q. Is that an example of some of the miscommunication that can
5 happen when there's no interpreters?

6 A. Yes.

7 Q. Now, you didn't threaten her that you were going to knock
8 her over the head, right?

9 A. No, I did not.

08:41 10 Q. She still probably shouldn't have called her stupid, but you
11 didn't threaten anything, right?

12 A. No, I did not.

13 Q. Now, on that date when the police showed up, Officer Kuhn,
14 your mom didn't want you to interpret?

08:42 15 A. No, she did not. Well, yeah, she didn't want me to
16 interpret.

17 Q. Did she tell you that?

18 A. Yes, she did.

19 Q. Okay. Did the police give you an option?

08:42 20 A. No, they did not.

21 Q. Did they force you to interpret on that day?

22 A. Yes, they did.

23 Q. Did your mom ask for an interpreter?

24 A. Yes, she did.

08:42 25 Q. And did they call an interpreter at any point?

1 A. No, they did not.

2 Q. And again, on this date did you want to be used as an
3 interpreter?

4 A. No, I did not.

08:42 5 Q. Now, I'm going to move forward to February 3rd, the search
6 warrant incident date. Okay?

7 A. Okay.

8 Q. Now, on February 3rd, did they once again use you as an
9 interpreter?

08:42 10 A. Yes, they did.

11 Q. And that day they came with a search warrant to your home,
12 correct?

13 A. Correct.

14 Q. And can you tell me, did you -- did your mom tell you to not
08:43 15 interpret?

16 A. Yes, she did.

17 Q. And did you finally listen to your mom?

18 A. Yes, I did.

19 Q. Did you stop interpreting that day?

08:43 20 A. On the day of the search warrant?

21 Q. Yes.

22 A. Yes.

23 Q. Okay. And did the police tell you to interpret?

24 A. Yes, they did.

08:43 25 Q. And what did you tell them?

1 A. I am not a legal interpreter.

2 Q. And you told them this because you didn't want to continue
3 to interpret for them?

4 A. Yes.

08:43 5 Q. And even after you told them you wouldn't interpret and your
6 mom had asked for an interpreter, did they get an interpreter?

7 A. No, they did not.

8 Q. Did they use a phone to try and see if they could get an
9 interpreter?

08:43 10 A. No, they did not.

11 Q. Do you remember what Olsen's demeanor was when he was
12 executing the search warrant?

13 A. He was kind of like smirking and grinning and kind of like
14 chuckling a little bit. That wasn't -- it was a slight notice.

08:44 15 Q. Did you feel that he was laughing at your mom?

16 A. Yes.

17 Q. Did that kind of hurt your feelings?

18 A. Yes.

19 Q. And I know your mom has filed complaints about the police
08:44 20 department and sometimes she's taken you --

21 A. Yes.

22 Q. -- to interpret for her?

23 A. Correct.

24 Q. Did you want to interpret for her?

08:44 25 A. No, I did not.

1 Q. And those weren't situations where it was an arrest or, you
2 know, or they were coming into your home, those were situations
3 where she went, correct?

4 A. Correct.

08:44 5 Q. Since they never provided an interpreter did she have any
6 options but to use you?

7 MR. CARLSON: I'm going to object.

8 THE COURT: Sustained.

9 MS. ALCALDE: I'll withdraw the question, Your Honor.

08:44 10 BY MS. ALCALDE:

11 Q. Can you tell me how having to interpret for her against your
12 will has impacted your relationship with your mom.

13 A. It has impacted it by making her frustrated, angry, and -- I
14 don't know the other word, but angry at me sometimes when I'm
08:45 15 used by police to be an interpreter or forced to be an
16 interpreter, an interpreter by the police.

17 Q. Okay. And did you like being forced to be an interpreter by
18 the police?

19 A. No, I did not.

08:45 20 Q. Do you wish that you and your mom's relationship could be a
21 little bit different?

22 A. Yes, I do.

23 MS. ALCALDE: I don't have any further questions,
24 Your Honor.

08:45 25 THE COURT: Mr. Carlson?

CROSS-EXAMINATION

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BY MR. CARLSON:

Q. Did you discuss what you were going to say today with your mother?

A. No, I did not.

Q. Not at all?

A. No, I did not.

Q. You said on November 13th you didn't call the police. Isn't it true you called your uncle about what was going on?

A. Yes, and he called the police.

Q. And what was going on was your mother and Jeremy Parmer were fighting and a knife was nearby?

A. No. They mistook that as my mom and Jeremy, her boyfriend fighting. They were not fighting. They were actually talking. And they couldn't understand that through the window, but they were talking about and trying to get the house fixed because we just recently moved in there.

And so the knife was between me and Jeremy. And I was too scared and I felt like I was moved out of the position to be able to tell my side of the story to the cops because they just automatically wanted me to be an interpreter for them.

Q. Why did you call your uncle about this?

A. Because I was in immediate danger and I couldn't just go and grab the phone. I didn't want it to cause more uproar. I wanted him to call the police and to kinda resolve it by him

1 calling them.

2 Q. Immediate danger from whom?

3 A. From Jeremy.

4 Q. Isn't it true that the police came to your house and
08:47 5 interviewed you about what happened?

6 A. Yes.

7 Q. And it wasn't to talk to your mother, it was to talk to you.
8 You were the victim and the police were asking you questions
9 about what happened.

08:47 10 A. They were talking about -- they were talking to my mom about
11 the situation and used me as an interpreter.

12 Q. And they were talking to you about the situation, too.

13 MS. ALCALDE: Objection, Your Honor. Counsel is
14 testifying.

08:48 15 THE COURT: It's a question. He can answer.
16 Overruled.

17 THE WITNESS: Yeah, they talked to me, but they didn't
18 talk to me for that long. They talked to my mom and tried to
19 figure out the situation because they focused on what they
08:48 20 thought was an argument between Jeremy and my mom. They focused
21 on that more than they focused on the knife incident.

22 BY MR. CARLSON:

23 Q. I'm going to read you what is in the police report, okay?

24 MS. ALCALDE: Objection, Your Honor.

08:48 25 MR. CARLSON: I want him to --

1 THE COURT: You can't read what's in the police
2 report. You can ask him questions based on the police report if
3 you want.

4 BY MR. CARLSON:

08:48 5 Q. Did you tell the police that Jeremy and Renee were in a bad
6 mood today and that started them fighting?

7 A. I do not remember that, no.

8 Q. You don't deny it, you don't remember it.

9 A. I do not remember it.

08:49 10 Q. Did you explain to the police that there were friends over
11 at the apartment and the friends left and the problems started?

12 A. I remember bringing up a friend. I do not remember bringing
13 up a problem had ever started.

14 Q. Do you remember if your mother said that they weren't
08:49 15 fighting, that they were just signing?

16 MS. ALCALDE: Objection, Your Honor, hearsay.

17 THE COURT: Is it hearsay? Are you offering this
18 for --

19 MR. CARLSON: I can't hear you, Your Honor.

08:50 20 THE COURT: The objection was hearsay. Do you have a
21 response? Just a brief one?

22 MR. CARLSON: My response -- I forgot the question
23 now. Why don't we move on.

24 BY MR. CARLSON:

08:50 25 Q. Do you remember that the police came the next day?

1 A. Yes, I do.

2 Q. And did you explain that Jeremy thought Renee was going to
3 take his speakers away so he was trying to move them while they
4 were fighting?

08:50 5 A. I do not remember that.

6 Q. Was your mom cooperative with the police that night?

7 MS. ALCALDE: Objection, Your Honor. Calls for
8 speculation.

9 THE COURT: Overruled.

08:51 10 THE WITNESS: Yes, she was.

11 BY MR. CARLSON:

12 Q. Was she yelling and screaming?

13 A. She was trying to talk and get attention, but no one was
14 trying to interpret and listen. Like there was no interpreter
08:51 15 for her to be able to understand what was going on. So that's
16 why she was trying to get the attention of me and the officers
17 so I could try to maybe at least briefly interpret what was
18 going on at the time.

19 Q. On the following day did you tell the officer that your mom
08:51 20 and Jeremy were pushing and shoving each other?

21 A. No, I do not remember that.

22 Q. Could have been but you don't remember?

23 A. Could you repeat what you said?

24 Q. That you told the officers that your mother and Jeremy were
08:52 25 pushing and shoving each other.

1 A. Yeah, no, I did not say that.

2 Q. Do you remember your mother admitting to the officer that
3 her and Jeremy had been pushing and shoving each other?

4 A. No, I do not remember that.

08:52 5 Q. And so if that was in a police report that would be a lie,
6 wouldn't it?

7 MS. ALCALDE: Objection, Your Honor.

8 THE COURT: Sustained.

9 THE WITNESS: What does that mean?

08:52 10 THE COURT: You don't have to answer. If I sustain an
11 objection don't answer.

12 THE WITNESS: Sorry about that.

13 THE COURT: That's all right.

14 BY MR. CARLSON:

08:52 15 Q. Where was the knife?

16 A. I do not remember.

17 Q. Is your mother volatile?

18 A. Could you be more clear on what that means, please?

19 Q. Does your mother get upset often?

08:53 20 A. For like what?

21 Q. Anything. You.

22 A. No, I do not think so.

23 Q. Does your mother yell and scream a lot?

24 A. No.

08:53 25 Q. Has she ever yelled and screamed at you?

1 A. No.

2 Q. Never.

3 A. Never.

4 MR. CARLSON: I've got no further questions.

08:53 5 THE COURT: Okay. Any follow-up?

6 MS. ALCALDE: Yes, Your Honor.

7 REDIRECT EXAMINATION

8 BY MS. ALCALDE:

9 Q. On November 13th, you know, you were -- defense counsel was
08:53 10 asking you questions about the issue was between you and Jeremy,
11 but the police said -- would it have been easier for you to
12 explain that the issue was between you and Jeremy and not Jeremy
13 and your mom had there been an interpreter?

14 A. Yes.

08:54 15 Q. And had they not used you in that moment as an interpreter?

16 A. Yes.

17 Q. When they got there and they start -- on November 13th and
18 they started talking to your mom, did you feel that you had had
19 a chance to fully tell your story before they asked you to just
08:54 20 be an interpreter?

21 A. No, I did not.

22 Q. And the next day when they came on November 14th, did they
23 bring an interpreter then?

24 A. No, they did not.

08:54 25 Q. They continued to ask you to be the interpreter?

1 A. Correct.

2 Q. And do you feel that -- I mean, there was a lot of questions
3 asking about your mom whether she gets loud and you said you
4 feel that's because no one was listening to her?

08:54 5 A. Correct.

6 Q. Do you think it's also frustration because they were using
7 her 14-year-old kid as an interpreter?

8 A. Correct.

9 MS. ALCALDE: Nothing further, Your Honor.

08:55 10 Thank you, Brandon.

11 THE WITNESS: Okay.

12 THE COURT: You can step down then.

13 MR. CARLSON: Wait a minute. Just a few recross.

14 THE COURT: I think you've had your chance. We go
08:55 15 cross and redirect.

16 MR. CARLSON: I also have him as an adverse witness.

17 THE COURT: Okay, with that understanding you can go.

18 RECROSS-EXAMINATION

19 BY MR. CARLSON:

08:55 20 Q. Brandon, do you lie?

21 A. No, I do not.

22 Q. Never?

23 A. Never.

24 MR. CARLSON: Thank you.

08:55 25 THE COURT: You can step down.

1 (Witness excused at 8:55 a.m.)

2 THE COURT: Your next witness? If you have one.

3 MS. ALCALDE: Your Honor, at this point the plaintiff
4 rests.

08:55 5 THE COURT: Plaintiff rests.

6 Mr. Carlson, are you ready to proceed with the defense
7 case? To the extent it already hasn't been in.

8 MR. CARLSON: Yes.

9 MS. ALCALDE: Your Honor, would you like us to make
08:56 10 the legal motions now or reserve to just bring them up?

11 THE COURT: Okay, you will reserve the motions for the
12 break.

13 MS. ALCALDE: Yes.

14 THE COURT: Okay.

08:56 15 MICHAEL REHBERG, DEFENSE WITNESS, DULY SWORN

16 THE CLERK: Please state and spell your first and last
17 name for the record.

18 THE WITNESS: First name is Michael, Rehberg,
19 M-I-C-H-A-E-L, R-E-H-B-E-R-G.

08:56 20 THE COURT: Thank you. Go ahead, Mr. Carlson, you may
21 proceed.

22 DIRECT EXAMINATION

23 BY MR. CARLSON:

24 Q. You're employed with the City of Oconto?

08:57 25 A. That's correct.

1 Q. What position do you hold there?

2 A. Chief of police.

3 Q. How long?

4 A. Two years.

08:57 5 Q. What did you do before you were chief?

6 A. I was a captain and then, previous, sergeant, and before
7 that a patrolman.

8 THE COURT: Mr. Carlson, would you pull your
9 microphone and speak into your microphone so we get a good
08:57 10 record? Thank you.

11 BY MR. CARLSON:

12 Q. How many years as a police officer in total?

13 A. 33.

14 Q. Is it routine for you to complete a report after each
08:57 15 notable contact with a citizen?

16 A. It is.

17 Q. And -- hold on a second here.

18 Have you had contacts with Ms. Lange?

19 A. Yes, I have.

08:57 20 Q. Multiple?

21 A. Probably close to 10.

22 Q. Has she ever requested an interpreter in any of those
23 contacts?

24 A. No.

08:58 25 Q. Have you had contacts where she was not with her children?

1 A. Yes.

2 Q. Can you explain that contact and how you communicated?

3 A. She had called on the neighbor that the neighbor was feeding
4 birds and there were seagulls in the road. She was very upset.

08:58 5 I drove up, took one step out of my squad car, she came out of
6 the house, verbally said there was birds flying around. I said,
7 "Well, the neighbors have a right to feed the birds." She got
8 upset and said, "Well, then I'm going to shoot the birds." I
9 said, "Well, please don't do that because then you'd get

08:58 10 arrested."

11 I went and talked to the neighbor, told the neighbor
12 not to feed the birds, it's upsetting to the neighbor. And she
13 said, "My daughter threw out bread, it won't happen again." End
14 of complaint.

08:59 15 Q. You communicated with Ms. Lange by speech?

16 A. I did.

17 Q. No written communication?

18 A. No.

19 Q. Has there been another contact that you have had with
08:59 20 Ms. Lange where her children weren't present?

21 A. (No response.)

22 Q. Let me refresh your recollection. How about McDonald's?

23 A. We were -- myself and Chief Faith at the time -- I was
24 probably a sergeant -- were dispatched to Ms. Lange's house
08:59 25 because there was discrepancy in a McDonald's bill. What

1 happened was she thought she deserved more change and that she
2 didn't receive it from the McDonald's employee.

3 We went and spoke to McDonald's. McDonald's said that
4 the kid, the cashier instead of punching in 10 or 20 punched in
08:59 5 a 5 instead. And Ms. Lange thought she deserved more change.
6 We talked to the manager, the manager counted back the till and
7 there was no extra money.

8 So we went back to Mrs. Lange and said, hey, listen,
9 we've spoken to McDonald's, we feel it's taken care of, if you
09:00 10 still have a problem you should take McDonald's to court
11 civilly.

12 Q. How did you communicate with Ms. Lange?

13 A. I talked to her that time.

14 Q. Did she speak back to you?

09:00 15 A. I couldn't recall.

16 Q. On your other contacts, have you ever had Brandon as an
17 interpreter?

18 A. I don't believe so. Probably her daughter. But I don't
19 think I ever had Brandon.

09:00 20 Q. Did you ever ask any of her kids to be an interpreter?

21 A. No. Strangely enough, cops are very good at taking over the
22 calls. But when it came to Mrs. Lange we kinda let her dictate
23 how things were going to go. If she wanted to write on paper we
24 let her write on paper. If she used her kids we'd let her use
09:01 25 her kids. We kind of just followed her choice of how she wanted

1 to handle this.

2 Q. So if you arrived and she had a pen and paper in hand that's
3 how you responded.

4 A. That's correct.

09:01 5 Q. And if she had her child nearby and nodded -- would she give
6 any kind of signal to her kids?

7 A. I wouldn't recall. I wouldn't.

8 Q. But did it appear to you that she wanted her kids to
9 interpret?

09:01 10 A. That's correct.

11 Q. And that she never told you not to use her kids to
12 interpret.

13 A. No.

14 Q. Did you have any experience with respect to lip-reading?

09:01 15 A. I was told by her daughter that she can lip-read, but you
16 need to face her and you need to speak clearly and you need to
17 speak slowly.

18 Q. Had you ever witnessed how adept or not she was at
19 lip-reading?

09:01 20 A. No, I couldn't tell.

21 MR. CARLSON: Adriana, will you stipulate to the
22 policies?

23 MS. ALCALDE: Pardon?

24 MR. CARLSON: The policies.

09:02 25 MS. ALCALDE: Yes, we stipulate.

1 MR. CARLSON: Your Honor, may we approach?

2 THE COURT: You may.

3 Are you looking for an exhibit?

4 MR. CARLSON: Yes.

09:02 5 THE COURT: Which exhibit? Is it the policy?

6 MR. CARLSON: The Oconto --

7 THE COURT: 1151. I can give the witness the copy I
8 have if you wish.

9 MR. CARLSON: I believe it is Exhibit 1128.

09:03 10 THE COURT: The policy?

11 MR. CARLSON: Yes.

12 THE COURT: There was the policy -- which policy are
13 you talking about? Maybe I got the wrong one. This is not the
14 policy you moved for admission of. Unless you have two copies
09:03 15 of it in there.

16 MS. ALCALDE: The policy yesterday, Your Honor, was
17 Oconto Falls.

18 THE COURT: That's Oconto Falls? I see. Okay. So
19 are the parties stipulating then to the Oconto Police
09:03 20 Department's policy, Exhibit 1128?

21 MS. ALCALDE: Yes.

22 MR. CARLSON: Correct.

23 THE COURT: Then 1128 is received into the record and
24 may be shown to the witness.

09:04 25 (Exhibit 1128 received in evidence.)

1 BY MR. CARLSON:

2 Q. Do you have Exhibit 1128?

3 A. Yes.

4 Q. City of Oconto Police Department policies with respect to
09:04 5 persons with disabilities, specifically deaf people?

6 A. That's correct.

7 Q. And these were adopted -- do you remember when they were
8 adopted?

9 A. When Chief Faith took over. I would say 2016 maybe. I'm
09:04 10 not positive.

11 Q. And these are the policies that are now in effect in the
12 City of Oconto?

13 A. That's correct.

14 MR. CARLSON: No further questions.

09:04 15 THE COURT: Cross?

16 MS. ALCALDE: Thank you, Your Honor.

17 CROSS-EXAMINATION

18 BY MS. ALCALDE:

19 Q. Good morning, Chief.

09:05 20 A. Good morning.

21 Q. Is it Rehberg?

22 A. It is.

23 Q. Now, the policy -- that's not the policy that was in effect
24 at the time, correct?

09:05 25 A. That's correct.

1 Q. You agree that under this policy it would be a violation of
2 this current policy to use her children, correct?

3 A. I agree that if it was a serious offense that it would be --
4 it would be against the policy.

09:05 5 Q. Okay.

6 A. The problem is with a majority of these complaints we had
7 with the Lange family, they were 10 to 15 minutes.

8 Q. And I'm not talking about all those other McDonald's
9 complaints and all of that. I want to focus specifically on the
10 arrest.

09:05

11 A. Okay.

12 Q. The May complaint.

13 A. Okay.

14 Q. Okay? Because, you know, the other complaints, the

09:06

15 McDonald's and the birds, and she didn't, you know -- you didn't
16 provide an interpreter for any of those, correct?

17 A. No.

18 Q. And I'm not asking if that's a violation of the policy. I'm
19 asking for the May 30th, you agree that to behave that way
20 currently would be a violation of this policy.

09:06

21 A. I believe -- once again, I wasn't there. I don't know how
22 their communication was going. But I think if they're doing the
23 communicating and it's going properly and they're getting the
24 right responses, that they didn't necessarily need an

09:06

25 interpreter.

1 Q. Would you agree that you said previously that it would be a
2 violation of your current policy?

3 A. I may have said that.

4 Q. Okay. And you also currently wouldn't use children if the
09:06 5 suspect and the interpreter are on the same complaint, correct?

6 A. That's correct.

7 Q. Such as the incident with -- in May which involved
8 her daughter and Ms. Lange.

9 A. I agree, correct.

09:06 10 Q. So currently like an interpreter would be used for that.

11 A. I would say under the policy I probably would have an
12 interpreter.

13 Q. Okay. And you agree that -- I mean, you don't think note-
14 writing is an effective way to interrogate, correct?

09:07 15 A. Absolutely.

16 Q. You also agree that you don't think note-writing is an
17 effective way to read Miranda.

18 A. That's correct.

19 Q. And you never used notes with her, right? You just used one
09:07 20 of her kids? In other incidents.

21 A. I don't believe I ever -- I'm telling you it was a long time
22 ago, if I'm making a mistake I apologize, but I don't remember
23 if I ever used written. I personally don't have any notes.

24 Mrs. Lange would always provide a book and write in her own
09:07 25 book. I never had a notepad and kept my own notes.

1 Q. She may not have requested an interpreter for the McDonald's
2 incident or the birds incident, but you do know and you do
3 acknowledge that she did request one on the May 30th incident,
4 correct?

09:08 5 A. After listening to the court hearing I'm assuming that's so,
6 but I didn't know that personally because I wasn't there.

7 Q. Right, but you supervised Officer Olsen?

8 A. No, I did not.

9 Q. Did you at the time?

09:08 10 A. No.

11 Q. Oh, that's right, he's retired. I apologize.

12 A. No.

13 Q. But you are aware that on --

14 A. I understood.

09:08 15 Q. Sorry. It's early in the morning. I apologize. You
16 understood what I meant? Let the record reflect I meant Officer
17 Sowle, not Chief Olsen. You obviously do not supervise Chief
18 Olsen.

19 A. That's correct.

09:08 20 Q. So again, she did request one on May 30th, right?

21 A. If that's what you're telling me I'll trust that you're
22 telling me the truth.

23 Q. Okay. And, I mean, Officer Sowle said that she requested
24 one, would you have any reason to doubt that?

09:08 25 A. I would not.

1 Q. And you also agree that it's a risk using a family member to
2 interpret because they may not give interpretations that are
3 always accurate?

4 A. I believe that they're not always accurate, but I do also
09:09 5 believe that sometimes you can use them if it is a minor
6 incident like the birds or McDonald's.

7 Q. The birds or McDonald's, right. Do you know
8 Mr. Wusterbarth? Is that how you pronounce his name?

9 A. I know him. He's a businessman in town. I don't know him
09:09 10 personally.

11 Q. Because he owns a body shop?

12 A. That's correct.

13 Q. And you weren't there on the May 30th incident so you don't
14 know what happened.

09:09 15 A. No.

16 Q. You agree that Ralene was probably not the best person to
17 use as an interpreter on that incident.

18 MR. CARLSON: I'm going to object. He wasn't there.
19 He said he wasn't there.

09:09 20 THE COURT: Sustained.

21 BY MS. ALCALDE:

22 Q. You agree that using Ralene, a minor child who was involved
23 in the incident, would be inappropriate under your policy, your
24 current policy, correct?

09:10 25 A. I agree that under the policy it would probably be.

1 Q. And this was a noise disturbance that Officer Sowle was
2 reporting?

3 A. That's what I believe, yes.

4 Q. It wasn't a weapon or an assault. She was arrested for
09:10 5 disorderly conduct, correct?

6 A. I believe that's correct.

7 Q. For a noise disturbance.

8 A. That's correct.

9 MR. CARLSON: I'm going to object to this line of
09:10 10 questioning. If she's asking him about this incident, he wasn't
11 there.

12 THE COURT: I'll sustain the objection. It's late
13 from the answer, but let's move on. If he wasn't there --

14 BY MS. ALCALDE:

09:10 15 Q. And there were -- do you know if you -- are you aware of
16 video remote interpreter services that can be used now?

17 A. I am now.

18 Q. But you weren't aware of them back then.

19 A. I was not.

09:10 20 Q. And they weren't available back then, that you know of.

21 A. That I know of, that's correct.

22 Q. Do you think that that's a good alternative to use in
23 situations?

24 A. Absolutely.

09:11 25 Q. And do you think now that's something that should have been

1 used in that arrest?

2 MR. CARLSON: I'm going to object. Again, you're
3 talking about the arrest on May 30th, he wasn't there.

4 MS. ALCALDE: I'll withdraw the question.

09:11 5 No more questions.

6 THE COURT: Do you have anything further?

7 MR. CARLSON: No.

8 THE COURT: You may step down.

9 MS. ALCALDE: Thank you very much.

09:11 10 (Witness excused at 9:11 a.m.)

11 THE COURT: Next witness?

12 MS. LEHOCKY: He's in the restroom, Your Honor.

13 THE COURT: Okay, he's in the restroom. Anyone need a
14 break? Let's take a short break. Restroom break is fine. This
09:12 15 will be relatively short. Okay?

16 (Jury out at 9:12 a.m.)

17 THE COURT: Do you wish to proceed with your motions?
18 At this point?

19 UNIDENTIFIED SPEAKER: Can we reserve for a longer
09:12 20 break?

21 THE COURT: A longer break? I mean, I take it your
22 motions are for a judgment as a matter of law.

23 MS. LUBIN: Yes, Your Honor. We are moving for a
24 judgment as a matter of law.

09:13 25 THE COURT: On each of the incidents?

1 Go ahead. Be seated. The jury is not here. Go
2 ahead, Ms. Lubin. You were saying.

3 PLAINTIFF MOTION FOR JUDGMENT AS A MATTER OF LAW

4 MS. LUBIN: Your Honor, the plaintiff is moving at
09:13 5 this time for a judgment as a matter of law on each incident:
6 the May 30th incident; the November 2016 incident; and both of
7 the February 2017 incidents.

8 THE COURT: Go ahead, summarize your argument.

9 MS. LUBIN: For the May 30th incident, as the
09:13 10 testimony has reflected, the Oconto Police Department only views
11 Ralene as an interpreter and also wrote a couple of notes with
12 Ms. Lange.

13 The testimony has shown that Ms. Lange did not
14 understand the notes, did not understand the interpretation and
09:13 15 thus there was no effective communication in violation of the
16 ADA and of the Rehabilitation Act.

17 Additionally, under the ADA guideline the ADA
18 specifically prohibits the use of minor children in situations
19 where Title II entities are the entity providing the services.
09:14 20 And in that case the Oconto Police Department, in fact, used
21 Ralene, who was a minor, to interpret. And so we are asking for
22 a judgment as a matter of law on the May 30th incident.

23 Going to the November incident. As was just stated by
24 Brandon, Brandon was used as an interpreter during the November
09:14 25 incident. He, again, is a minor child. The ADA regulations

1 expressly prohibit the use of minor children as interpreters.
2 And that was the only use of communication in the November
3 incident. There was no effective communication for the November
4 incident as well.

09:14 5 In both of the February instances again Brandon was
6 used as an interpreter. Brandon states himself, as was stated,
7 that he doesn't sign correctly all the time; he finger-spells;
8 that it's hard for his mom to understand. In many occasions
9 that he has to look up words and that he doesn't feel like he
09:14 10 provides effective communication.

11 And, again, the ADA expressly states that minor
12 children should not be used as interpreters. And in both the
13 February instances Brandon was used as an interpreter.

14 Additionally, Ms. Lange requested over and over for an
09:15 15 interpreter to provide effective communication and in all
16 requests, from the May incident through the February instances,
17 there was no interpreter provided from either of the police
18 departments.

19 THE COURT: (Inaudible audio.)

09:15 20 MS. LUBIN: Yes, Your Honor. And dealing with the May
21 30th incident with the City of Oconto, the city admits that she
22 did, in fact, ask for an interpreter and that request was not
23 granted.

24 And in accordance with Title II, the entity is
09:15 25 supposed to give deference to the preferred method of

1 communication, and the preferred method of communication was an
2 interpreter.

3 And as Ms. Lange's testimony has aptly pointed out,
4 her preferred method of communication in every single instance,
09:16 5 all four instances, was an interpreter and every time an
6 interpreter was not provided for her.

7 THE COURT: Okay. Mr. Carlson?

8 MR. CARLSON: May 30th attempts were made to
9 communicate with Ms. Lange in a number of ways, including her
09:16 10 preferred way using her children.

11 Attempts were made with a notepad. Attempts were made
12 with lip-reading. She was uncooperative. She admits she was
13 drunk. That's why there was no effective communication.

14 November 13th, she was totally uncooperative again.
09:16 15 The police had talked to Brandon as a victim. She herself
16 interjected in that interview with the police. She was
17 uncooperative, belligerent, yelling and screaming. Any
18 communication difficulties were self-created.

19 On February 2nd the police came to arrest Jeremy.
09:17 20 They did that. It was not a matter of discussion. And
21 Ms. Lange again was uncooperative, belligerent, yelling and
22 screaming. That made communication impossible.

23 The search warrant. Again, Ms. Lange yelling and
24 screaming. The search warrant is not a matter of debate, it is
09:17 25 a paper that we believe the evidence shows that Ms. Lange

1 understood. It is not an arguable document. It's not a
2 debatable document.

3 The police had a right to search her apartment, and
4 her to sit aside or step aside or stand aside while they
09:18 5 executed the search warrant. Whether or not Brandon talked to
6 them and asked them questions is a matter of Ms. Lange's
7 preference.

8 THE COURT: Okay. I'm going to take plaintiff's
9 motion under advisement. Is there any motion from defense?

09:18 10 (No response.)

11 THE COURT: Okay. Let's bring the jury in and
12 proceed.

13 (Brief pause.)

14 THE COURT: I assume the witness is ready.

09:18 15 MS. LEHOCKY: I would hope so.

16 THE COURT: You can go right through the gate and
17 remain standing. We'll administer the oath and then you'll have
18 a seat right there, okay?

19 (Jury in at 9:19 a.m.)

09:19 20 THE COURT: Okay. Go ahead and be seated, ladies and
21 gentlemen. And this witness is whom now? Go ahead, swear the
22 witness.

23 DOUGLAS WUSTERBARTH, DEFENSE WITNESS, DULY SWORN

24 THE CLERK: Please state and spell your first and last
09:20 25 name for the record.

1 THE WITNESS: Doug Wusterbarth, D-O-U-G,
2 W-U-S-T-E-R-B-A-R-T-H.

3 THE COURT: Thank you, Mr. Wusterbarth.

4 Go ahead, Mr. Carlson, you may proceed.

09:20

5 DIRECT EXAMINATION

6 BY MR. CARLSON:

7 Q. Mr. Wusterbarth, what's your address?

8 A. 319 Pecor Street, Oconto, Wisconsin, 54153.

9 Q. How long have you lived there?

09:20

10 A. Over 30 years.

11 Q. What do you do for a living?

12 A. Businessowner in Oconto, a mechanic. Self-employed.

13 Q. And how long have you been doing that?

14 A. 36 years.

09:20

15 Q. So it's like an auto repair shop?

16 A. Yes.

17 Q. Do you do any business with the Oconto County Police
18 Department?

19 A. No.

09:21

20 Q. Do you do any business with the City of Oconto?

21 A. No.

22 Q. Do you have any social relationships with any of the Oconto
23 Police Department officers?

24 A. No.

09:21

25 Q. So you're not -- you don't consider you're a friend with any

1 of the police officers.

2 A. No. I know them, that's about it. I don't socialize with
3 them or anything.

4 Q. You have no business relations with any of them?

09:21 5 A. Nope.

6 Q. At your address was there a time that you lived next door to
7 Renee Lange?

8 A. Yes.

9 Q. Could you describe how the buildings are set up? Was it
09:21 10 right next door and how far away?

11 A. It's right next door. There's like a little maybe a half
12 lot in-between the two houses.

13 Q. You can take your mask off. Sorry, I should have told you
14 that earlier.

09:22 15 A. Okay.

16 Q. Can you --

17 A. Their house is right next door to mine. There's just grass
18 in-between, you know, like a half a lot in-between the two
19 houses.

09:22 20 Q. Maybe about 50 feet away or something like that?

21 A. Yeah.

22 Q. And were you familiar with Ms. Lange living next door to you
23 when she was --

24 A. Yes.

09:22 25 Q. -- residing there?

1 A. Yes.

2 Q. Were you aware of any disturbances?

3 MS. ALCALDE: Objection, Your Honor, relevance.

4 THE COURT: Sustained.

09:22 5 BY MR. CARLSON:

6 Q. Had you ever called the police department on any activity
7 that was going on in the Lange residence?

8 A. Yes.

9 Q. About how many times?

09:23 10 A. I believe --

11 MS. ALCALDE: Objection, Your Honor. Relevance.

12 THE COURT: Sustained.

13 BY MR. CARLSON:

14 Q. Do you remember activities at the Lange house on May 30th,
09:23 15 2016?

16 A. Yes.

17 Q. Could you explain in detail what you saw and heard.

18 A. There was --

19 Q. Take your time.

09:23 20 A. There was a lot of people in the backyard. There was a lot
21 of yelling and arguing. And then later after a while the cops
22 were called there and one of the people that were there, a guy
23 was arrested.

24 And then later on I think that's when I called the
09:23 25 cops. And then -- cause Renee and her daughter were out on the

1 front porch fighting. So I called the cops and then the cops
2 came there and she ended up getting arrested.

3 Q. Was Renee Lange hitting her children?

4 A. Yes.

09:24 5 Q. Was it just Ralene or was it Ralene and Brandon?

6 A. Just Ralene.

7 Q. Can you describe how she was hitting her?

8 MS. ALCALDE: Objection, Your Honor. Relevance.

9 THE COURT: Sustained.

09:24 10 BY MR. CARLSON:

11 Q. What did you see of the fight?

12 MS. ALCALDE: Objection, Your Honor. Again,
13 relevance.

14 THE COURT: Sustained.

09:24 15 BY MR. CARLSON:

16 Q. What did you -- what did the officers do when they came?

17 A. Renee and her daughter were outside. And when the cops come
18 they were trying to talk to her. And Renee and her daughter was
19 signing back and forth. The officer offered them a pad of
09:24 20 paper, which they did before when they showed up there. And it
21 just got louder and louder. Renee wouldn't listen to her
22 daughter. Her daughter was trying to get her to go back in the
23 house and she wouldn't go. And then finally the cops just told
24 her that if she didn't stop -- you know, settle down, then they
09:25 25 were going to take her to jail.

1 Q. Did the police ask her to be quiet?

2 A. Yes.

3 Q. Did the police ask her to go back in the house?

4 A. Yes.

09:25 5 Q. Did she comply?

6 A. No.

7 Q. Was she yelling and screaming?

8 A. Yes.

9 Q. Was she swearing?

09:25 10 A. I can't -- she doesn't speak, she just kinda makes noises,
11 loud noises when she gets mad.

12 Q. Do you remember how many times the police offered a notepad
13 to Ms. Lange?

14 A. I believe he had it in his hand pretty much the whole time.
09:26 15 At least a couple times.

16 Q. And was he trying to also communicate by talking?

17 A. Yeah, they were talking and then the daughter would sign to
18 the mother. And then at one point Brandon came out of the house
19 too.

09:26 20 Q. And so we had Brandon there, was he signing to his mother
21 too?

22 A. He was trying to get her to go back in the house.

23 Q. And so Ralene was there, Brandon was there, Officer Sowle,
24 and was there another officer?

09:26 25 A. I believe it was Officer Belongia.

1 Q. And they were all trying to communicate with Ms. Lange?

2 A. Yes.

3 Q. And that would be to be quiet and go inside the house?

4 A. Yes.

09:26 5 Q. Did Officer Belongia have a notepad as well?

6 A. I think just Mr. Sowle did. There was only one of them that
7 had the notepad.

8 Q. Did she appear intoxicated to you?

9 A. Yes.

09:27 10 Q. Did you see her get arrested?

11 A. Yes.

12 Q. Do you recall where she was -- how she was handcuffed?

13 A. I don't recall for sure.

14 Q. You don't have any recollection at all?

09:27 15 A. All I remember is that the daughter kept telling the
16 officers that she needs to be handcuffed behind so that she can
17 sign and she kept telling them that. Kept telling them that.

18 Q. Did you hear Ms. Lange request an interpreter?

19 A. No.

09:27 20 MR. CARLSON: No further questions. Thank you.

21 THE COURT: Cross?

22 MS. ALCALDE: Yes, Your Honor.

23 CROSS-EXAMINATION

24 BY MS. ALCALDE:

09:27 25 Q. You answered previously that you couldn't hear everything

1 the officers were saying, correct?

2 A. Correct.

3 Q. So is it possible that you just didn't hear when she
4 requested an interpreter?

09:28 5 A. Possible.

6 Q. Cause you didn't hear everything that was being said,
7 correct?

8 A. Correct.

9 Q. Now, you said, and correct me if I'm wrong, that she didn't
09:28 10 want the pen and paper.

11 A. Correct.

12 Q. Cause she didn't want to communicate that way.

13 A. I guess so.

14 Q. Okay. And you know most of these officers prior to this
09:28 15 incident, correct?

16 A. Yeah, pretty much.

17 Q. Okay. You also -- you don't know sign language, right?

18 A. No.

19 Q. And you don't know what her daughter was saying back and
09:28 20 forth.

21 A. No.

22 Q. So you don't really know what she understood whatever the
23 police were trying to say.

24 A. Correct.

09:28 25 Q. And you said when she was speaking you couldn't hear because

1 she just makes noises, right?

2 A. You can kinda understand some of the times what she's
3 saying, but, yeah, lots of times it's just kind of noise and
4 she's signing at the same time.

09:29 5 Q. You said noise and then for the record you made some
6 gestures with your hand?

7 A. Yeah.

8 Q. Like sign language?

9 A. Right.

09:29 10 Q. Okay. But it's not articulate speaking like you and I.

11 A. No.

12 MS. ALCALDE: Nothing further.

13 THE COURT: Any redirect?

14 MR. CARLSON: No.

09:29 15 THE COURT: Okay. Thank you, Mr. Wusterbarth, you may
16 step down.

17 (Witness excused at 9:29 a.m.)

18 THE COURT: You're free to go, yeah. Probably want to
19 put your mask back on though.

09:29 20 Mr. Carlson, your next witness?

21 MR. CARLSON: Nicole Crocker.

22 MS. LUBIN: Your Honor, at this time the plaintiff
23 renews their objection as to the relevancy of this witness.

24 Nicole Crocker was not at the May 30th incident and that was the

09:29 25 only incident involving Oconto Falls. Excuse me, the City of

1 Oconto.

2 THE COURT: I don't have any idea. Do you want to
3 come forward and give me your offer of proof, Mr. Carlson?

4 MR. CARLSON: Ms. Crocker --

09:30 5 THE COURT: No, come forward. And if that witness is
6 out there --

7 (Off-the-record discussion outside the presence of the
8 jury.)

9 THE COURT: Okay. The record should reflect that we
09:32 10 had a brief off-the-record conference about the scope of
11 testimony and the witness will go ahead and be sworn.

12 NICOLE CROCKER, DEFENSE WITNESS, DULY SWORN

13 THE CLERK: Please state and spell your name for the
14 record.

09:33 15 THE WITNESS: Nicole Crocker, N-I-C-O-L-E,
16 C-R-O-C-K-E-R.

17 DIRECT EXAMINATION

18 BY MR. CARLSON:

19 Q. Ms. Crocker, what is your address?

09:33 20 A. 301 Sixth Street, Oconto, Wisconsin, 54153.

21 Q. By whom are you employed?

22 A. The City of Oconto Police Department.

23 Q. What do you do there?

24 A. My current position is detective.

09:33 25 Q. How long have you been detective?

1 A. Two years.

2 Q. What did you do before then?

3 A. I was a patrol officer for the City of Oconto.

4 Q. For how long?

09:33 5 A. From 2012 until I moved into the detective position,
6 beginning of 2019.

7 Q. Had you worked as a police officer in any other place?

8 A. Yes, sir.

9 Q. Where?

09:33 10 A. I worked for the City of Gillett and the City of Seymour
11 prior to the City of Oconto.

12 Q. How many years of experience do you have as a police
13 officer? In total.

14 A. 10.

09:34 15 Q. And how many of those years are in Oconto?

16 A. Eight.

17 Q. Have you had multiple contacts with Ms. Lange?

18 A. Yes.

19 Q. More than a dozen?

09:34 20 A. Yes.

21 Q. I want you to describe the nature of your communications
22 with Ms. Lange with respect to sign language interpreting. Did
23 she ever request a American Sign Language interpreter on any of
24 your contacts?

09:34 25 A. Not any of my contacts, no.

1 Q. Did she ever use her children on any of your contacts?

2 A. Yes.

3 Q. Approximately what's the proportion?

4 A. I would say in the contacts I had with Ms. Lange, probably
09:35 5 75 percent of the time she would use one of her children to
6 interpret and the remainder of the time we communicated by
7 notepad and pen.

8 Q. Did she ever tell you she didn't want you to communicate
9 with her children as an interpreter?

09:35 10 A. No.

11 Q. Did it appear to you that she offered her children as an
12 interpreter?

13 A. Yes.

14 Q. Did you ever force any of her children to interpret?

09:35 15 A. No.

16 Q. Did you ever communicate with her by pen and paper?

17 A. Yes.

18 Q. And who would initiate communication by pen and paper?

19 A. From my recollection the nature of our communication,
09:36 20 whether we used the children or whether we used pen and paper,
21 was initiated by Ms. Lange.

22 Q. So she made the choice.

23 A. Yes, sir.

24 Q. So if you had contact with her and she was sitting there
09:36 25 with a pen and paper that you would respond in kind?

1 A. Correct.

2 Q. And if she was standing there with one of her children you
3 would go ahead and communicate with her through her children.

4 A. Correct.

09:36 5 Q. Do you recall her ever calling her children over to help
6 communicate, to interpret?

7 A. Yes, there were occasions that she called them over.

8 Q. Specifically to interpret.

9 A. Yes.

09:36 10 Q. Do you believe she is adept at lip-reading?

11 A. Yes.

12 Q. What leads you to believe that she is adept at lip-reading?

13 A. On one of the earliest contacts I had with her I recall her
14 adult son being there, and he had said to look at his mother and
09:37 15 make eye contact with her because she could read lips.

16 Q. And have you had a contact where you concluded that she was
17 reading lips?

18 A. Just based off of how she would make eye contact with me
19 when I was speaking and pay attention to the way that my mouth
09:37 20 was moving, it seemed at times she was paying more attention to
21 me speaking than to her children signing.

22 Q. Have you ever heard Ms. Lange speak?

23 A. Yes.

24 Q. Was that common to hear her speak?

09:37 25 A. No.

1 Q. Could you make out what she was saying when she did speak?

2 A. Yes, definitely.

3 Q. So you, yourself could fully understand what Ms. Lange was
4 saying.

09:38 5 A. Yes.

6 Q. Do you know Ms. Lange as being volatile?

7 A. There have been occasions that she was volatile, yes.

8 Q. Prone to screaming and yelling?

9 A. I would say the only times I ever heard her speak is if she
09:38 10 were screaming or yelling.

11 Q. Swearing?

12 A. Yes.

13 Q. Tell me, is it possible to communicate with Ms. Lange when
14 she is agitated?

09:38 15 A. Not effectively.

16 Q. Because of her demeanor.

17 A. Yes. If she was in a situation where she was very agitated
18 and to the point of yelling and screaming, no one could really
19 get through to her. It was very difficult to get her to calm
09:38 20 down.

21 Q. Does the Oconto County Sheriff's Department have available
22 to you contacts, the total contacts with Ms. Lange with Oconto
23 and Oconto Falls?

24 A. We have a shared computer system called Spillman which every
09:39 25 agency in Oconto County uses, and that would record every

1 contact that we've had with her.

2 Q. And the sheriff's department would be the repository of that
3 information?

4 A. Yes.

09:39 5 Q. And have you looked on this Spillman?

6 A. Yes, I have.

7 Q. And approximately how many contacts has Oconto and Oconto
8 Falls had with Ms. Lange let's say through 2017?

9 A. The total number of involvements with Ms. Lange that were
09:39 10 listed in Spillman is for any agency in Oconto County, so it may
11 be Oconto, it may be Oconto Falls, or the sheriff's office, or
12 any other small agency, was around 115.

13 MR. CARLSON: Okay, thank you.

14 THE COURT: Cross?

09:39 15 MS. LUBIN: Yes, Your Honor.

16 CROSS-EXAMINATION

17 BY MS. LUBIN:

18 Q. You stated that Ms. Lange had not used an ASL interpreter on
19 any of your contacts with her, correct?

09:40 20 A. Correct.

21 Q. But you are aware of all of the contacts as you just
22 described about the system, correct? And you said that there's
23 about 115 contacts, correct?

24 A. When I looked under her name, yes, there was about 115 in
09:40 25 the timeframe he was referring to.

1 Q. Are you aware of any contacts in which Ms. Lange did use an
2 ASL interpreter?

3 A. Yes.

4 Q. And so your office has provided -- excuse me, your
09:40 5 department has provided a ASL interpreter for her before.

6 A. Yes.

7 Q. And was that situation serious?

8 A. I was not involved in any of those complaints.

9 Q. And in your review of the complaints would you say that
09:40 10 those were serious contacts?

11 A. I reviewed the number of complaints. I did read the reports
12 other than the ones that were specific to my involvement.

13 Q. Do you remember taking a deposition in this case?

14 A. Yes.

09:40 15 Q. In which you were asked about all of the reports including
16 the report in which she had made an ASL contact with Oconto
17 Falls? And you described that contact?

18 A. My deposition had nothing to do with Oconto Falls.

19 Q. Excuse me, in Oconto County.

09:41 20 A. There was a time when Detective Bastian requested an ASL
21 interpreter for Renee. I was not present for that.

22 Q. But you do know the situation that was involved because you
23 read the report, correct?

24 A. Yes.

09:41 25 Q. And you would agree that that was a serious situation,

1 correct?

2 A. No.

3 MR. CARLSON: I'm going to object. She's referring to
4 a report and I can't refer to a report?

09:41 5 THE COURT: You can refer to it. If she opens the
6 door you can ask about it.

7 BY MS. LUBIN:

8 Q. You don't believe that that was a serious situation.

9 A. No.

09:41 10 Q. Would seeing the report refresh your recollection?

11 A. Sure.

12 Q. Just a moment.

13 MR. CARLSON: I'm going to object. It's not in the
14 claims here.

09:41 15 THE COURT: Let's see. Let's take our morning recess.
16 This will be about 20 minutes. We'll try to clear this up.
17 Okay?

18 (Jury out at 9:42 a.m.)

19 THE COURT: Might be a little later because I have to
09:42 20 give the attorneys a break too and the court reporter. Okay, go
21 ahead and be seated. Let's see the report. What is this about?

22 MS. LUBIN: Yes, Your Honor. This is a report in
23 which Ms. Lange requested an interpreter from Oconto and a
24 interpreter was provided. This was for a situation involving
09:42 25 her daughter Ralene in which Ralene was involved in -- she was

1 complaining about sexual harassment allegations.

2 THE COURT: By whom?

3 MS. LUBIN: By another male. Not Jeremy Parmer or
4 anybody related in this Lange family.

09:43 5 MR. CARLSON: This is something that I deliberately
6 avoided and you told me to, Your Honor. This is about a sexual
7 assault claim, sexual abuse, and I stayed away from that because
8 obviously it's sensitive.

9 THE COURT: Well, the ruling that I've had is that
09:43 10 you're free to go into evidence of the communication ability and
11 the interaction with the law enforcement concerning the -- that
12 reflects the ability and interest and desire of Ms. Lange's use
13 of ASL or other means of communication and to show that she's
14 able to communicate.

09:43 15 I have directed you not to introduce evidence of other
16 acts by Ms. Lange that would unduly prejudice her in the eyes of
17 the jury. The issue here is whether or not the police
18 departments violated her rights under the ADA and Rehabilitation
19 Act by failing to provide an interpreter.

09:44 20 And that -- you know, the fact that she may have been
21 drunk on other occasions or that she was arrested for
22 shoplifting or other things would just -- and I don't want to
23 suggest that's what the reports show because I don't know.

24 What I've made clear is that we don't want to simply
09:44 25 prejudice the jury against defendant by pointing out that she's

1 had -- in making allegations, we don't have the witnesses to
2 these events, that she's been charged with these things.

3 Now, this is an incident involving where an
4 interpreter was provided. If you think that the context of some
09:44 5 of these other cases where an interpreter wasn't provided is
6 relevant, you can certainly bring that out.

7 MR. CARLSON: This witness has no firsthand knowledge
8 of this. This witness was not involved in this incident. This
9 witness has no personal knowledge of this.

09:45 10 THE COURT: This witness has testified from records
11 she has reviewed. And it sounds like she reviewed this record.
12 If she didn't review it, if she doesn't recognize the record
13 that's fine.

14 MS. LUBIN: The witness has also testified about this
09:45 15 record in her deposition testimony which Mr. Carlson was present
16 for.

17 THE COURT: I don't see the prejudice here is what I'm
18 saying. The reason for not going into the other actions was to
19 avoid undue prejudice. I don't see the prejudice here,
09:45 20 Mr. Carlson. Am I missing something?

21 She was interviewed regarding a -- you know, a
22 different investigation. She was a witness to a different
23 investigation. She was interviewed, I take it, at the police
24 department?

09:45 25 MR. CARLSON: This could be where an ASL interpreter

1 was required by some agency. It's not necessarily that
2 Ms. Lange preferred this. This is prejudicial. This is a
3 situation where an ASL interpreter -- she was forced to use an
4 ASL interpreter. It wasn't her own choice.

09:46 5 THE COURT: So the department wanted to use a ASL
6 interpreter.

7 MR. CARLSON: Not the police department, another
8 agency.

9 THE COURT: Oh, okay. What other agency was that?

09:46 10 MR. CARLSON: Human Services.

11 THE COURT: So Human Services -- so this doesn't
12 involve the police department.

13 MR. CARLSON: It's tangentially --

14 THE COURT: So this is a -- and it's not a police
09:46 15 investigation, it's social services investigation.

16 MR. CARLSON: Correct.

17 THE COURT: All right. It's out. Forget it. No.

18 MS. LUBIN: That's not correct, Your Honor. In fact,
19 the witness just testified that the detective involved in the
09:46 20 case wanted to use an ASL interpreter and that she has nothing
21 to do with that detective in that case.

22 THE COURT: Let me see the report.

23 (Document tendered to the Court.)

24 (Brief pause.)

09:47 25 MS. LEHOCKY: Reyna, which exhibit number is that?

1 MS. LUBIN: This is your exhibit.

2 MR. CARLSON: We don't have that exhibit.

3 MS. LEHOCKY: She said she pulled it out of your
4 binder. Which number is it?

09:47 5 MS. LUBIN: Let's see.

6 MS. LEHOCKY: It was yours.

7 THE COURT: This says nothing about an ASL. This
8 is --

9 MS. LUBIN: The report doesn't state an ASL
09:48 10 interpreter was provided on that, but when I asked her if she
11 remembered -- if the report would jog her memory if an ASL
12 interpreter was provided, she said yes. And she does know, in
13 fact, that a ASL interpreter was provided on that date.

14 THE COURT: By social services in a different type of
09:48 15 interview.

16 No. It's completely different circumstances when a
17 interview is conducted by social services separate and an
18 investigation is ongoing. These are incidents that occur.
19 Police are dispatched to a location. It's not the same.
09:49 20 It's -- so it's not relevant. It's prejudicial. You can take
21 it back. We're not going there. Anything else?

22 MS. LUBIN: No, Your Honor.

23 THE COURT: Okay. Let's take our break.

24 MR. CARLSON: Well, Your Honor, the toothpaste has
09:49 25 sort of come out of the tube there. It's hard to put back in.

1 Are you going to instruct the jury to disregard that?

2 THE COURT: Disregard what?

3 MR. CARLSON: This question --

4 THE COURT: I'm going to sustain the objection. I
09:49 5 give the jury the normal instruction that when I sustain an
6 objection they should ignore the question.

7 MR. CARLSON: Okay.

8 THE COURT: That'll be part of the instructions.

9 All right. Let's take our break. We'll pick up at no
09:49 10 later than 5 after.

11 MR. CARLSON: Thank you.

12 THE COURT: We're in recess.

13 (Recess taken at 9:50 a.m., until 10:07 a.m.)

14 THE COURT: Okay, go ahead and be seated. We're
10:08 15 outside the presence of the jury still.

16 Detective Crocker, among the -- you testified that
17 there were 115 or so incidents that you looked at, and I think
18 you testified that none of them involved an interpreter. Was
19 this one of those incidents that showed up on the system?

10:08 20 THE WITNESS: The way that our system works is any
21 time somebody is involved in a complaint it generates what's
22 called a law screen. And then the law screen is then attached
23 to that person's name.

24 So I was able to just run a report that shows the
10:08 25 incident number, the date, and the type of incident. And that's

1 where that 115 number came from. From the entire county.

2 Now, I would have to open and read the complaints in
3 the entirety to get the content of each one. I did not read 115
4 police reports.

10:09 5 THE COURT: So you're not saying that all 115 didn't
6 involve --

7 THE WITNESS: I'm not saying anything other than 115
8 exist.

9 THE COURT: 115 contacts.

10:09 10 THE WITNESS: Correct.

11 THE COURT: And this contact appears to have involved
12 -- the use of ASL was during a custodial interview?

13 THE WITNESS: The incident that I referred to in my
14 deposition, Detective Bastian's report specifically stated that
10:09 15 an ASL interpreter was there. So if the report that was given
16 to you by counsel didn't include that information, we're talking
17 about two different reports.

18 THE COURT: Okay. I think the report she gave me was
19 kind of an initial report of maybe the incident. But it wasn't
10:09 20 the full investigative file.

21 But am I correct that the interview in which an ASL
22 interpreter was used was a custodial interview?

23 THE WITNESS: No. It was not related to anybody's
24 arrest, no.

10:09 25 THE COURT: I don't mean arrest. I mean was there an

1 appointment made where she came into the police department, sat
2 down -- or to the social services department, they sat down and
3 conducted an interview prearranged?

4 THE WITNESS: I don't know the answer to that
10:10 5 question.

6 THE COURT: Okay.

7 THE WITNESS: I don't know how she came to be with
8 Detective Bastian or what their plans were.

9 THE COURT: Okay. This witness doesn't know enough
10:10 10 that would at all help. And she didn't testify that all 115 did
11 not involve ASL. She testified there were 115 contacts.

12 So my ruling stands. But if you want to introduce
13 your -- or want me to hold onto your report as part of the
14 record, I can do that.

10:10 15 MS. ALCALDE: Your Honor, if my co-counsel could
16 rephrase the question and just ask flat out: you don't know if
17 ASL interpreters were provided for any of these 115.

18 THE COURT: That's fine. That's fine.

19 Okay. Are we ready to bring the jury in?

10:10 20 Let's bring the jury in.

21 (Jury in at 10:11 a.m.)

22 THE COURT: Okay. Please be seated. And I just want
23 to remind you that when I sustain an objection that means you
24 disregard the question. And I sustained the last objection, but
10:12 25 there's another question now from Ms. Lubin.

1 Go ahead. You may proceed.

2 MS. LUBIN: Thank you, Your Honor.

3 BY MS. LUBIN:

4 Q. You stated earlier that you --

10:12 5 MR. CARLSON: Can you speak into the microphone,
6 please?

7 MS. LUBIN: Excuse me. Let me get the microphone a
8 little closer.

9 BY MS. LUBIN:

10:12 10 Q. You stated earlier that you have communicated the written
11 communication with Ms. Lange in the past, correct?

12 A. Correct.

13 Q. And you stated also that you personally have used her minor
14 children to communicate as well, correct?

10:12 15 A. Yes.

16 Q. They've interpreted for her.

17 A. Correct.

18 Q. So you agree that in your experiences with Ms. Lange she's
19 communicated differently on different occasions, correct?

10:12 20 A. Yes.

21 Q. And isn't it fair to say that effective communication is
22 dependent on the circumstances?

23 A. Yes.

24 Q. You believe that an interpreter might be necessary for a
10:13 25 circumstance involving an arrest, correct?

1 A. Yes.

2 Q. And would you agree that when a person's liberty is at stake
3 it's a very serious situation?

4 A. Yes.

10:13 5 Q. Do you agree that when a person is requesting for an
6 interpreter a police officer should take that under
7 consideration?

8 A. Yes.

9 Q. In all the times you interacted with Ms. Lange you never
10:13 10 attempted to secure an in-person interpreter with Ms. Lange,
11 correct?

12 A. I never did, correct.

13 Q. And you've never attempted to secure a virtual interpreter
14 with Ms. Lange either, correct?

10:13 15 A. Correct.

16 Q. But you do know how to secure a virtual interpreter, right?

17 A. A virtual interpreter? No.

18 Q. Haven't you testified that you -- previously that you have
19 secured a virtual interpreter in the past?

10:14 20 A. Are you talking like a by-phone interpreter?

21 Q. Yes.

22 A. Yes, I have for a foreign language.

23 Q. And what foreign language was that?

24 A. I believe it was Russian.

10:14 25 Q. And you know that Russian and English are different

1 languages obviously, right?

2 A. Yes.

3 Q. And you also know that American Sign Language and English
4 are different languages, right?

10:14 5 A. Yes.

6 Q. And so you've secured a Russian interpreter, but you haven't
7 secured an American Sign Language interpreter.

8 A. Correct.

9 Q. And you're aware that your department, Oconto Police
10:14 10 Department, is involved in only one situation in the suit,
11 correct?

12 MR. CARLSON: I didn't -- I can't hear the question.

13 MS. LUBIN: I can get closer and rephrase the
14 question.

10:14 15 THE COURT: Go ahead.

16 BY MS. LUBIN:

17 Q. Are you aware that your department is only involved in one
18 incident before the Court and that incident arised on May 30th,
19 2016?

10:15 20 A. No.

21 Q. So do you know anything about an incident on May 30th, 2016
22 involving your department?

23 A. I would have to review the reports to see which incident
24 that was.

10:15 25 Q. So you were never at an incident on May 30th, 2016 at

1 Ms. Lange's home, correct?

2 A. I would have to review the reports to see which incident
3 that was.

4 Q. Okay. Do you have your reports with you?

10:15 5 A. I do not. I left them out there.

6 THE COURT: Can we stipulate that she wasn't there?

7 That's obvious.

8 BY MS. LUBIN:

9 Q. Yes. You were not at the May 30th --

10:15 10 MR. CARLSON: We'll stipulate she was not there.

11 THE COURT: Good. Let's move on then.

12 BY MS. LUBIN:

13 Q. Would you consider English to be your primary language?

14 A. Yes.

10:15 15 Q. If you were arrested by a Russian-speaking officer would you
16 want to speak English?

17 MR. CARLSON: I'm going to object, Your Honor.

18 THE COURT: Sustained.

19 BY MS. LUBIN:

10:15 20 Q. You stated earlier that you have written notes with

21 Ms. Lange, correct?

22 A. Correct.

23 Q. Do you ever remember writing notes with Ms. Lange outside?

24 A. Outside of her home?

10:16 25 Q. A building, outside of a home, outside of a building.

1 A. It's possible.

2 Q. Do you know if you've ever written at 10 p.m. at night?

3 A. It's possible.

4 Q. And you would agree that 10 p.m. at night it's dark outside?

10:16 5 A. Yes.

6 Q. Have you arrested Ms. Lange before?

7 A. No.

8 Q. Have you ever put handcuffs on Ms. Lange before?

9 A. Not to my recollection, no.

10:16 10 Q. So you've never had any communication with Ms. Lange
11 involving her being under arrest.

12 A. Correct.

13 Q. And the 115 interactions that you described before, you
14 don't know if an ASL interpreter was ever provided.

10:16 15 A. Correct.

16 Q. And you would agree that all the 115 interactions are
17 different interactions, correct?

18 A. Correct.

19 Q. In your interactions with Ms. Lange whenever you used her
10:17 20 children, was there a policy at the time and place that stated
21 that you were not to use a minor child?

22 A. Not that I'm aware of.

23 Q. Has that policy changed now?

24 A. Yes.

10:17 25 Q. And so now you would not use a minor child.

1 A. Unless there was extenuating circumstances.

2 Q. And that would be a serious emergency situation, right?

3 A. Right. Cause our primary concern is to make sure that
4 everybody is safe. And unfortunately geographically when we're
10:17 5 requesting a sign language interpreter it may be over an hour
6 before someone gets there. If there's a concern for life safety
7 we're going to communicate however we can to get the situation
8 under control.

9 Q. Absolutely. But you've also testified that you can simply
10:17 10 request a sign language interpreter virtually, correct?

11 A. I can request one, but it doesn't mean I'm going to get it
12 immediately.

13 Q. But you can get one on your phone. Someone does not have to
14 come in person.

10:17 15 A. I could request one. It doesn't mean I'm going to get it
16 instantly. And if there's a concern for life or safety, we're
17 going to use whatever means necessary to communicate until a
18 situation is safe.

19 Q. So you've requested a Russian interpreter before on a phone.

10:18 20 A. That was on a traffic stop.

21 Q. So it was a small interaction and you requested an
22 interpreter on the phone.

23 A. Yes. And it was not instantaneous. But there was not an
24 immediate threat to life or anything like that. It was a
10:18 25 traffic stop of a truck driver who did not speak English.

1 Q. So it was a traffic stop so you were on the side of the
2 road.

3 A. Yes.

4 Q. And you probably got -- time, correct?

5 (Court Reporter Interruption.)

6 BY MS. LUBIN:

7 Q. And during that small traffic interaction you were able to
8 request an interpreter.

9 A. I requested an interpreter through dispatch using my radio,
10:18 10 and then they had someone call my cell phone. But it did take
11 time. It was not immediate.

12 Q. Okay. So it just depends on the circumstances.

13 A. Yes.

14 MS. LUBIN: Thank you.

10:18 15 THE COURT: Anything else?

16 REDIRECT-EXAMINATION

17 BY MR. CARLSON:

18 Q. Detective Crocker, would you describe every one of your
19 contacts with Ms. Lange as having effective communication?

10:19 20 A. Yes.

21 MR. CARLSON: No further questions.

22 THE COURT: All right. You can step down. Thank you.

23 THE WITNESS: Thank you.

24 THE COURT: Is there another witness from the defense?

10:19 25 MR. CARLSON: Yes. Retired Chief Faith.

1 THE COURT: Okay. And we'll sanitize the witness
2 stand.

3 Would you please raise your right hand, sir. The
4 clerk will administer the oath.

10:20 5 BERNARD FAITH, DEFENSE WITNESS, DULY SWORN

6 THE CLERK: Please state and spell your first and last
7 name for the record.

8 THE WITNESS: Bernard D. Faith. B-E-R-N-A-R-D.
9 Faith, F-A-I-T-H.

10:20 10 THE COURT: Please have a seat. You can take your
11 mask off when you testify though.

12 THE WITNESS: It's a lot more comfortable.

13 THE COURT: Yeah, and it's good to see a face when we
14 hear testimony.

10:20 15 All right, go ahead, Mr. Carlson.

16 DIRECT EXAMINATION

17 BY MR. CARLSON:

18 Q. Please state your name?

19 A. Bernard D. Faith.

10:20 20 Q. Address?

21 A. Current address?

22 Q. Yes.

23 A. 610 Rolling Green Drive, Green Bay, Wisconsin.

24 Q. Are you employed?

10:20 25 A. Yes, I am.

1 Q. Doing what?

2 A. I'm retired and working at Cabela's Bass Pro Shops.

3 Q. Were you at one time employed by the City of Oconto?

4 A. Yes.

10:20 5 Q. Doing what?

6 A. I was a police officer, a detective, and retired as a police
7 chief.

8 Q. How many years in total?

9 A. About 12 approximately.

10:21 10 Q. And how long were you chief?

11 A. Two, I believe.

12 Q. I'm presuming your career went upwards instead of downwards
13 so the chief would have been your last position?

14 A. That is correct.

10:21 15 Q. How long were you an officer?

16 A. Total time? Over 20 years.

17 Q. And did you -- were you a police officer in other
18 communities?

19 A. I started in the military and worked my way through the
10:21 20 civilian process.

21 Q. How long were you detective?

22 A. Approximately two years. 2 1/2 years with the city of
23 Oconto.

24 Q. So your police career was entirely in the city of Oconto?

10:21 25 A. Civilian police, yes.

1 Q. Chief Faith, is it routine for you to complete a report
2 after each notable contact with a member of the public?

3 A. Yes.

4 Q. And do those reports contain notes from each notable
10:22 5 contact?

6 A. It's our field notes that we write into the report, yes.

7 Q. And are these reports made by you when the contact was fresh
8 in your memory?

9 A. Yes.

10:22 10 Q. And do they accurately reflect what transpired during that
11 contact?

12 A. Yes.

13 Q. Have you had any contacts with Ms. Lange and her son
14 Brandon?

10:22 15 A. I had contacts with both of them, yes.

16 Q. And did you complete a report?

17 A. Yes.

18 Q. Did you at one time have a contact with Ms. Lange when she
19 came in to file a complaint?

10:22 20 A. Yes.

21 Q. And did you make a report of that?

22 A. Actually we just took the statement because it was a
23 different style complaint. I logged the date that she came in,
24 which I believe was June 1st of 2016, which would have been a
10:23 25 Wednesday. She asked for a statement form, which we provided

1 her, and she said she'd take it home and return it in a few
2 days. She returned it the very next morning.

3 MR. CARLSON: May I approach, Your Honor?

4 THE COURT: You may.

10:23 5 MR. CARLSON: I would like Exhibit 1102. And there
6 would be the log part of that exhibit. And it would be page 634
7 and 635. Page 11 in the exhibit, I believe. 11 and 12.

8 BY MR. CARLSON:

9 Q. Do you have that in front of you, sir?

10:24 10 A. Which page was it?

11 Q. That's page 11 in the exhibit. Might also have a Bates
12 stamp of 0634. Pardon me. 0657.

13 A. I believe I have it, yes.

14 Q. Is this the report that you prepared?

10:25 15 A. Yes.

16 Q. And it looks familiar to you?

17 A. Yes.

18 Q. Can you recall what happened?

19 A. If I'm reading the correct one here, it's on Wednesday, June
10:25 20 1st, 2016, approximately 3:25 p.m.

21 MS. LUBIN: Objection, Your Honor. I would ask the
22 witness to refresh his recollection and testify after his
23 recollection is refreshed.

24 BY MR. CARLSON:

10:25 25 Q. Can you remember the report at all?

1 A. Yes. I took this statement from Renee.

2 Q. But that's it, you don't remember the details of the report?

3 A. No.

10:26 4 MR. CARLSON: I'm going to ask that he be allowed to
5 read the report.

6 THE COURT: Any objection to that?

7 MS. LUBIN: No, Your Honor.

8 THE COURT: Okay. Go ahead.

10:26 9 THE WITNESS: Would you like me to read it aloud or
10 just myself?

11 THE COURT: No, you can read it out loud.

12 THE WITNESS: Thank you, Your Honor.

13 (Quoted as read) "I, Chief Bernard D. Faith, was
14 radioed by Oconto dispatch that my 3:30 appointment was here. I
10:26 15 was not aware of any appointment. I checked with Sergeant
16 Vanhulle to see if there was an appointment coming in. He did
17 not return to the Oconto Police Department.

18 "Upon arrival, Renee Lange was at the window who I
19 knew from past police contact, with her son. Renee requested
10:26 20 statement forms and stated her son -- and stated through her son
21 that she was -- she had four witnesses she wanted us to talk
22 about an incident the other night.

23 "I gave Renee statement forms. She stated through her
24 son she had to go to meet a social worker at her home and stated
10:26 25 she would return the statements tomorrow.

1 "On June 2nd at approximately 8:30 a.m., Renee stopped
2 at the police department. She gave me a statement. I asked her
3 if that was her statement, she nodded it was. I asked her if
4 she had the information about her witnesses, she stated she did
10:27 5 not and she would drop them off sometime later today as she has
6 to work until 2:30 p.m. And then I attached the statements."

7 BY MR. CARLSON:

8 Q. Did you call her in?

9 A. No.

10:27 10 Q. Did you have any need for her to be reporting to the police
11 department?

12 A. No.

13 Q. This was totally voluntarily?

14 A. Yes.

10:27 15 Q. By Ms. Lange?

16 A. Yes.

17 Q. And like I said, there was no request or need for you to
18 talk to her.

19 A. None by us, no.

10:27 20 Q. If you look at your report, it says Wednesday, June 1st, at
21 approximately 3:25.

22 A. Correct.

23 Q. And did you give her a complaint form?

24 A. I gave her four or five different statement forms.

10:27 25 Q. And then it says on Thursday, June 2nd, 2016, at

1 approximately 8:30, she stopped and she gave you a completed
2 form?

3 A. She gave me one completed form and I asked her about if she
4 had the other ones of her witnesses and she never returned them.

10:28 5 Q. But nevertheless she returned the complaint form filled out
6 the next day at 8:30.

7 A. Yes.

8 Q. And if she would have -- if she would say that it took her
9 three or four days to complete this complaint form, you would
10:28 10 disagree with that?

11 MS. LUBIN: Objection, Your Honor.

12 THE COURT: Sustained.

13 BY MR. CARLSON:

14 Q. This is -- in any event, she returned the complaint form the
10:28 15 next day early in the morning.

16 A. Correct.

17 Q. Okay. Have you had other contacts with her?

18 A. Yes.

19 Q. Has she ever requested an American Sign Language
10:29 20 interpreter?

21 A. No. Most of my contacts were more when she was a
22 complainant and she would get her children a lot of times to
23 translate for her.

24 Q. Getting back to this, when she came in the police station,
10:29 25 did she use Brandon as an interpreter?

1 A. That morning, yes.

2 Q. Did she use Brandon -- did you ask that Brandon interpret?

3 A. No.

4 Q. She just voluntarily had Brandon interpret?

10:29 5 A. With her, yes.

6 MR. CARLSON: Okay. No further questions. Thank you.

7 THE COURT: Cross?

8 MS. LUBIN: Thank you, Your Honor.

9 CROSS-EXAMINATION

10:29 10 BY MS. LUBIN:

11 Q. I want to talk about the -- good morning, by the way. Hope
12 everything is great.

13 A. Good morning.

14 Q. I want to talk about the --

10:29 15 MR. CARLSON: Talk in the microphone.

16 BY MS. LUBIN:

17 Q. I want to talk about the complaint form that we were just
18 speaking about, okay?

19 A. Yes.

10:29 20 Q. So you were chief at the time, May 30th, 2016, right?

21 A. Correct.

22 Q. And you were aware that Ms. Lange was arrested on May 30th,
23 2016, correct?

24 A. Yes. Just from reading the reports.

10:30 25 Q. And you're aware that she was released from custody on May

1 31st, 2016, correct?

2 A. That I wouldn't know without going back to the jail records.

3 Q. Okay. And so you did not see Ms. Lange at all on May 31st,
4 correct?

10:30 5 A. No.

6 Q. And you have no idea what Ms. Lange was doing on May 31st,
7 correct?

8 A. Correct.

9 Q. So she could have been working on a complaint against you
10:30 10 guys on May 31st.

11 A. I would not be aware of that.

12 Q. Right. So you saw her then on June 1st in the afternoon,
13 correct?

14 A. Correct.

10:30 15 Q. And she asked for a form, correct?

16 A. She asked for forms for her witnesses.

17 Q. And then she left.

18 A. Correct.

19 Q. And you have no idea what she was doing earlier in the day
10:30 20 on June 1st either.

21 A. No.

22 Q. Or in the afternoon on June 1st.

23 A. No.

24 Q. And then the next time you saw her was June 2nd at 8:30 in
10:30 25 the morning, right?

1 A. Approximately, yes.

2 Q. And so between May 31st and June 2nd, that's about three
3 days, correct?

4 A. June 1st to June 2nd?

10:31 5 Q. Excuse me, May 31st to June 2nd.

6 A. I had no contact on May 31st.

7 Q. Isn't that three days between May 31st and June 2nd?

8 A. Yes.

9 Q. Thanks. So I want to talk a little bit about your prior
10:31 10 contacts with Ms. Lange. You stated that you have written notes
11 to Ms. Lange before?

12 A. That's how we would communicate with each other, is I'd
13 write a note and then she would a lot of times just get her kids
14 to translate because it was easier.

10:31 15 Q. So you used notes and her children.

16 A. I used notes, she used her children.

17 Q. And you used your -- you got the interpretation from her
18 children interpreting.

19 A. Correct.

10:31 20 Q. And those were various situations.

21 A. A few. I wouldn't say like every day type of thing, but
22 there was a few, yes.

23 Q. And did any of those situations involve an arrest by you?

24 A. By me? Not of Renee, but of her daughter.

10:32 25 Q. Okay. But for you specifically you never arrested

1 Ms. Lange.

2 A. Not that I'm aware of, no.

3 Q. You never put handcuffs on Ms. Lange.

4 A. Never, no.

10:32 5 Q. So you never communicated with her under these
6 circumstances. Correct?

7 A. Correct, not under where she was under arrest.

8 Q. Do you think that being under arrest is a very serious
9 situation?

10:32 10 A. Yes.

11 Q. Do you think that effective communication depends on the
12 circumstance in which the individual is involved?

13 A. Could you repeat that?

14 Q. Yes, of course. Do you believe that effective communication
10:32 15 between two people depends on the circumstances which the two
16 people are involved in?

17 A. Yes.

18 MS. LUBIN: Thank you. No further questions.

19 THE COURT: Mr. Carlson, any questions?

10:32 20 MR. CARLSON: No.

21 THE COURT: Thank you, Chief Faith. You may step
22 down.

23 (Witness excused at 10:32 a.m.)

24 THE COURT: Any other evidence?

10:32 25 MR. CARLSON: No.

1 THE COURT: Do you wish to introduce or offer the
2 exhibits?

3 MR. CARLSON: Yes, I do.

10:33

4 THE COURT: Which exhibit? This most recent one, the
5 portion of 1102?

6 MR. CARLSON: Yes.

7 THE COURT: And just that one page?

8 MR. CARLSON: Yes.

9 THE COURT: Okay.

10:33

10 MS. LUBIN: Just to be clear 1102 is the police
11 report?

12 THE COURT: Right. That's the one he just read. So
13 1102, that page of 1102 is received.

14 MR. CARLSON: Right.

10:33

15 (Exhibit 1102, Bates 0657 only, received in evidence.)

16 THE COURT: And any other evidence from the defense?

17 MR. CARLSON: No.

18 THE COURT: Is there going to be any rebuttal?

19 MS. LUBIN: No, Your Honor. We have no rebuttal

10:33

20 witness.

21 THE COURT: The evidence is complete?

22 MR. CARLSON: Yes.

23 THE COURT: We're going to close this afternoon,
24 ladies and gentlemen. So what looked like a five- or seven-day
10:33 25 trial I think we're going to be able to complete in three.

1 We're going to take a break. We have to go over jury
2 instructions. We've done that preliminarily. And you've
3 ordered your lunch, I take it? You're free to walk around,
4 enjoy the fresh air until that arrives, and we're going to start
10:34 5 up at 1:00, but at 1:00 we're going to do the closings. I don't
6 think we're going to be able to -- well, I wonder if we could
7 start at 12:30. Let's try at 12:30. If you're back in the jury
8 room at 12:30 we'll try to start up then to shorten the --
9 because it's still a pretty long break, but we want to make sure
10:34 10 we go over the jury instructions and are ready to go then.

11 Okay? All right. Okay. One more warning: Don't
12 talk about the case. You can take your notepads with you.
13 Leave them in the jury room. You've heard the evidence, there's
14 no more evidence to take down. When you come back you'll
10:34 15 receive instructions and you'll hear arguments and then you'll
16 receive the case for your deliberation. Jury is excused then.

17 (Jury out at 10:34 a.m.)

18 THE COURT: Okay. Go ahead, be seated. We're outside
19 the presence of the jury.

10:35 20 Chief Faith, you're free to go. You can have a seat
21 and watch or you're free to go. Thank you.

22 JURY INSTRUCTION & VERDICT CONFERENCE

23 THE COURT: In terms of the jury instructions, we did
24 receive plaintiff's proposed revisions. Do you have any comment
10:35 25 on them, Mr. Carlson?

1 MR. CARLSON: Yeah, I disagree with them.

2 THE COURT: Okay.

3 MR. CARLSON: The entire tone and tenure of the guts
4 of the case.

10:36 5 THE COURT: Other than telling me you disagree, do you
6 have any authority you want to cite or do you have any argument
7 to make?

8 MR. CARLSON: Well, I think that the Court's
9 understanding of what the preference of the deaf person is
10:36 10 central to the issue in this case, and I don't see anything in
11 any of the authorities cited by them addressing this specific
12 issue. And I think it's correct that a deaf person can choose
13 or can prefer to use her own children or family as an
14 interpreter.

10:36 15 THE COURT: Let me go through the plaintiff's proposed
16 revisions.

17 Page 9. "Police departments do not have to arrange
18 for a sign language interpreter every time an officer interacts
19 with a person who is deaf. However, if an interpreter is
10:37 20 requested or the need for one is known or obvious, the
21 requirements of Title II are subject to the bounds of
22 reasonableness."

23 I think all those concepts are conveyed in the
24 original draft. Not in specifically that way. But I don't
10:37 25 think I'm going to change anything based upon that. I'll take

1 another look at page 9, but my sense is that's taken care of.

2 Page 10. "An emergency situation involving an
3 imminent threat," I think that's supposed to read, "requires
4 truly exigent circumstances; for example, where any delay in
10:37 5 providing the immediate services to the individual could have
6 life altering or life ending consequences."

7 I don't think -- and I recognize that comes from the
8 U.S. Department of Justice or some handbook that's cited, but
9 I'm satisfied that that's inconsistent with the regulation. The
10:38 10 regulation indicates that an emergency involving imminent threat
11 to the safety or welfare of an individual or the public is
12 what's key.

13 Safety and welfare is broader than life altering or
14 life ending consequences. That's way too restrictive. I don't
10:38 15 think if a building is burning down, even if police know there's
16 nobody is inside the building, they can grab whatever access
17 they have to somebody who can interpret to ask where the
18 entrance is or where the fire was started or however they want
19 to do it.

10:38 20 So that just seems to me too extreme. I think the
21 manner in which the regulation states it, "imminent threat to
22 the safety or welfare of an individual or the public where there
23 is no interpreter available," and "readily available" I think is
24 the key. So I'm rejecting your proposed change on page 10.

10:39 25 You also state on page 10, "Even if a citizen prefers

1 to use his or her own child to facilitate communication, the
2 police must still provide competent interpreter services to the
3 citizen in place of the citizen's child."

4 Well, ultimately the question is effective
10:39 5 communication. And as I said before, the way I've phrased this
6 is, that the police --

7 Well, I'm going to go get my copy of the instructions.
8 I think I left them in back. I'll use those. I'll run back.
9 I'll be right back.

10:40 10 (Brief pause.)

11 THE COURT: Okay. Go ahead, be seated.

12 And the way I phrased it in the instructions is:
13 "Police officers should not rely on a minor child to interpret
14 or facilitate communication except in an emergency situation
10:41 15 involving an imminent threat to the safety or welfare of an
16 individual or the public where there is no other interpreter
17 readily available."

18 Then I go on to state -- the instruction states:
19 "Police need not interfere, however, in the decision of a
10:41 20 private citizen to use his or her own child to facilitate her
21 communication."

22 I think a reasonable view of the evidence that the
23 jury may adopt here is that it was Ms. Lange who used her
24 children to interpret, not the police who directed it. It does
10:41 25 seem to me that if she doesn't want her child to interpret she

1 shouldn't sign to them. If you sign to them you're
2 suggesting -- and in communicating to the officer you're
3 suggesting by signing, answering the officer in signing to your
4 child that you wish to use your child.

10:41 5 Now, and then whether that's effective or not I don't
6 know. But I think the statement permitting a minor child to
7 interpret, I don't think the police should be preventing a deaf
8 person from communicating with them in the manner they choose.
9 I think that's also part of the regulation.

10:42 10 And it does strike me that someone who a deaf person
11 has known and has really talked sign language to, that person
12 has learned to communicate with their mother through 18 or 14
13 years is probably a pretty good interpreter. I recognize that
14 there can be conflicts. And that's always true. When police
10:42 15 arrive on a scene, often when they interview people there are
16 conflicts. Police don't ultimately make determinations of who
17 is guilty or who is not guilty, they simply determine probable
18 cause and we rely on courts and proceedings to ultimately get
19 there.

10:42 20 But it seems to me clear that this regulation, while
21 it does not -- it requires that a public entity not rely on
22 children for interpretations, it does not require that they
23 immediately stop or prevent a child from interpreting where the
24 adult is using that child to communicate with them.

10:43 25 So I recognize that's a disagreement on the law. And

1 I think we will make sure that we make plaintiff's proposed
2 revisions part of the record here and I'll certainly give you
3 another opportunity to add to that record. But that's my
4 determination on that aspect of it.

10:43 5 MS. LUBIN: May I have the opportunity now or --

6 THE COURT: Let me go through and then we'll give you
7 the opportunity.

8 MS. LUBIN: Thank you, Your Honor.

9 THE COURT: Uh-huh.

10:43 10 I think that's also part of the argument on page 11.
11 You also say, "If you find a violation of the ADA or
12 Rehabilitation Act, Plaintiff is entitled to nominal damages."

13 That's already part of the damage instruction. I
14 think it says, "If you return a verdict for Plaintiff but
10:44 15 Plaintiff has failed to prove compensatory damages, then you
16 must award nominal damages of a dollar." And that's on page 13.
17 It might not be 13.

18 I did want to -- I did adjust your comment on
19 page 4 -- page 11, number 4, and changed the discrimination, the
10:44 20 intentional element to: "In failing to provide an interpreter
21 the defendant intentionally discriminated against plaintiff
22 based on her disability." And I think that's your last comment
23 there. So that's the one I've adopted.

24 The others, though, I do say that: "A determining
10:45 25 public entity shall give primary consideration to the requests

1 of the individual with the disability unless it can demonstrate
2 another effective method of communication exists."

3 And to find effective communication the element does
4 include the Defendant requested an interpreter or the need for
10:45 5 an interpreter was known or obvious. Number one.

6 So I think those things are covered.

7 Go ahead, Ms. Lubin.

8 MS. LUBIN: Okay. Thank you, Your Honor.

9 One thing that I wanted to point out is that the last
10:46 10 page of the proposal, page 11, we added "an intentional
11 discrimination does not require personal animosity or ill will."
12 There is lots of mention about intentional discrimination and we
13 --

14 THE COURT: I'll add that.

10:46 15 MS. LUBIN: Thank you, Your Honor.

16 THE COURT: We'll add then that -- and you say that in
17 your proposal and I didn't include that, but I will. Where is
18 that again?

19 MS. LUBIN: It is on the last page of the proposal.
10:46 20 It's under page 11.

21 THE COURT: Right.

22 MS. LUBIN: Intentional discrimination. It's the
23 second sentence. It could have been a different paragraph to
24 make it easier, but we would like to have a definition about
10:47 25 intentional discrimination.

1 THE COURT: All right. "Intentional discrimination
2 does not require personal animosity or ill will."

3 And we'll add that to the number 4. We'll just add it
4 right there.

10:47 5 MS. LUBIN: Okay. And as far as keeping in that
6 Ms. Lange could have used her children as interpreter for
7 primary consideration, plaintiff adamantly objects to this. The
8 plaintiff believes that the Department of Justice has made it
9 very clear in their regulations -- in their Technical Assistance
10:47 10 Manual, excuse me -- that minor children should not be used at
11 all.

12 In fact, just to make the record clear -- I'm sorry
13 for the lengthy record -- but in the Technical Assistance Manual
14 that was cited in the proposal --

10:48 15 Which I have copies of. That can be a part of the
16 record as well.

17 -- the first page says, "The Department of Justice
18 published revised final regulations implementing the Americans
19 with Disabilities Act, Title II. These requirements or rules
10:48 20 clarify and refine issues that have arisen over the past 20
21 years. They contain new and updated requirements."

22 That's on the first page of the Technical Assistance
23 Manual. When we turn to the fifth page of the Technical
24 Assistance Manual there's an entire section dedicated to the use
10:48 25 of accompanying adult or children as interpreters. The manual

1 clearly states that: "In an emergency involving an eminent
2 threat, the safety or welfare of an individual or the public, an
3 adult or minor child accompanying a person who uses sign
4 language may be relied on to interpret or facilitate
10:48 5 communication only when a qualified interpreter is not
6 available."

7 And so even in this emergency situation the department
8 is saying that you can only use a minor only when a qualified
9 interpreter is not available.

10:49 10 In turning to point 2, the department states:

11 "In situations not involving an imminent threat an
12 adult accompanying someone who uses sign language may be relied
13 upon to interpret or facilitate communication when three things
14 are present:

10:49 15 "1. The individuals request this.

16 "2. The accompanying adult agrees. And,

17 "3. The reliance of that accompanying adult is
18 appropriate under the circumstances."

19 Following that sentence it states: "This exception
10:49 20 does not apply to minor children."

21 We believe that a lower standard should not be made
22 today for minor children. And if the Department of Regulations
23 is stating that three steps must be had to even have an adult
24 who is accompanying a person not a qualified interpreter be
10:50 25 qualified to interpret, that there should be not a lower

1 standard for minor children to interpret.

2 If the department decided to put these three
3 provisions in there to make sure that we were certain that an
4 adult is able to interpret, there has to be -- there can't be a
10:50 5 lower standard logically for a minor to be used for primary
6 consideration in such situations.

7 We believe that the overt use of this exception does
8 not apply to minor children from the department, and both the
9 regulations and the Technical Assistance Manual makes it clear
10:50 10 that minor children are not allowed to interpret.

11 THE COURT: Mr. Carlson?

12 MR. CARLSON: Well, we have here a pattern of conduct
13 too, over three years and 115 contacts.

14 THE COURT: Well, what's that got to do with whether
10:51 15 minor children should interpret?

16 MR. CARLSON: Well, I think some of the stuff is
17 written in a single traumatic instance. We have the pattern of
18 conduct here that --

19 THE COURT: The question isn't the pattern of conduct,
10:51 20 the argument is over the law.

21 MR. CARLSON: Yeah, but I think the law should also
22 recognize what the facts are.

23 THE COURT: Well, the law actually is supposed to be
24 applied to the facts and not changed by facts. That's what a
10:51 25 rule of law means.

1 MR. CARLSON: If it was one incident or something like
2 that, you know, there's -- she was the one using her children.
3 You could say we can't use your children and that is a hard and
4 fast rule, but she's the one that used them. It wasn't the
10:51 5 police. I think they're flipping this around and she's the
6 one -- if that is a hard and fast black letter rule of law, she
7 is the one that didn't comply with it.

8 THE COURT: Well, I think there's a question of who is
9 relying on the children here, whether it's she's relying on the
10:52 10 children or the law enforcement agency is relying on the
11 children. And when she brings the child in to interpret it
12 seems to me she's relying.

13 And the way the reg reads is that "A public entity
14 shall not rely on a minor child to interpret or facilitate
10:52 15 communication." Where she's doing the relying and she uses
16 that, I think frankly police would be in trouble if they
17 prohibited her children from translating. And the fact it seems
18 to me that she is signing to her children in a clear intent to
19 use them to communicate with the police, is an indication that
10:52 20 it has been her choice.

21 I recognize Brandon testified he was forced to. But,
22 of course, what does "force" mean to him?

23 Again, I would say if Mrs. Lange didn't want Brandon
24 to interpret, you simply don't sign to him. You don't respond
10:53 25 to the requests and to the comments.

1 So I think I recognize the Department of Justice --
2 and what is the manual?

3 MS. LUBIN: The Technical Assistance Manual.

4 THE COURT: The Technical Assistance Manual is
10:53 5 entitled to some deference, but it's not a regulation. It is
6 entitled to very slight deference, if any at all frankly. And I
7 find it inconsistent with the language of the regulation and the
8 logic of the situation.

9 So I'm satisfied this is the way to go forward. This
10:53 10 is a correct statement of the law. It's consistent with the
11 requirement of reasonableness.

12 So your record is made. And if you wish to supplement
13 it with copies of the manual itself you're free to do that. I
14 certainly recognize that this is an important issue for you and
10:53 15 want you to be able to make the full record, but I'm ruling that
16 I'm going to give the instruction as indicated.

17 MS. LUBIN: And I would just further, for the record,
18 make it clear that in none of the instances that we are here
19 today, the four instances, did Ms. Lange go to the police
10:54 20 department; rather, the police officers came to her for various
21 different situations. And so in those situations her family was
22 there. She was there at the police department. She did not
23 willingly bring her children in to interpret.

24 THE COURT: I understand that. But she did sign
10:54 25 through her children and that was seemingly her choice. But, in

1 any event, your record's made. The facts are what they are.

2 Okay?

3 I also asked and sent out the regulation. And this is
4 35.164. It says, "This subpart --"

10:54 5 And this is the part on using interpreters for the
6 deaf.

7 "-- does not require a public entity to take any
8 action that it can demonstrate would result in a fundamental
9 alteration of the nature of a service, program, or activity, or
10:55 10 in undue financial and administrative burdens. In those
11 circumstances where personnel of the public entity believes the
12 proposed action would fundamentally alter the service, program,
13 or activity or would result in undue financial and
14 administrative burdens, a public entity has the burden of
10:55 15 proving that compliance with this subpart would result in such
16 alterations or burdens."

17 That's also consistent with *Tucker v. Carlson*, the
18 Sixth Circuit case that I've cited a number of times which says:

19 "If plaintiff meets the requirements --"

10:55 20 And that's the requirement of showing she has a
21 disability, she is otherwise qualified, and she was excluded
22 from participation. In this case under these circumstances,
23 denied an interpreter.

24 "-- the burden shifts to the defendant to show that
10:56 25 the accommodation provided was either effective or that the

1 accommodations sought and not provided would have resulted in a
2 fundamental alteration of the procedures or an undue financial
3 or administrative burden."

4 And that's also consistent with *Tennessee vs. Lane*.

10:56 5 Actually that language is pretty much right out of *Tennessee vs.*
6 *Lane* which is at 541 U.S. at 532, the U.S. Supreme Court
7 decision on the applicability of the ADA. I think it was
8 wheelchair access to courthouses was at issue there. But it
9 does have that same language: that the act does not require an
10:56 10 entity to take on an accommodation that would -- that would
11 result in the fundamental alteration of the procedures or an
12 undue financial or administrative burden.

13 What is your comment on that?

14 MS. LUBIN: Yes, Your Honor. The subpart goes on to
10:57 15 state that: "If such alteration or burden were to happen, the
16 decision that compliance would result in such alteration of
17 burden must be made by the head of the public entity or his
18 designee after considering all resources available for use in
19 the funding and operation of the service, program, or activity,
10:57 20 and must be accompanied by a written statement of reasons for
21 reaching that conclusion."

22 All of the 30(b)(6) witnesses in this case have
23 testified and none of them have stated that this would result in
24 such. And there's definitely no evidence of any written note
10:57 25 detailing that it would result in the fundamental alteration.

1 And, in fact, I don't believe any of the testimony considered
2 whether an interpreter would have or would not have.

3 THE COURT: Mr. Carlson, she's right, you never made
4 that argument, you never presented such a statement, correct?

10:58 5 MR. CARLSON: Ms. Lange -- well, I didn't hear all of
6 what she said.

7 MS. LUBIN: I can briefly repeat.

8 THE COURT: She points out the rest of the regulation
9 requires that if you're going to -- that the public entity --
10:58 10 "The decision that compliance would result in such alteration or
11 burdens must be made by the head of the public entity or his or
12 her designee after considering all resources available for use
13 in the funding and operation of the service, program or activity
14 and must be accompanied by a written statement of the reasons
10:58 15 for reaching that conclusion.

16 "If an action required to comply with this subpart
17 would result in such alteration or such burdens, a public entity
18 shall take any other action that would not result in an
19 alteration or such burdens, but would nevertheless ensure that
10:58 20 to the maximum extent possible individuals with disabilities
21 receive the benefits or services provided by the public entity."

22 No such statement has been made, no such decision has
23 been made by your clients; is that right?

24 MR. CARLSON: Correct. That might apply to the
10:59 25 Department of Revenue. But what we're talking about is police

1 going on a call at 1:00 in the morning and having the discretion
2 to handle a situation which is fluid, which is dangerous, which
3 is potentially unsafe. And I don't see how you could have any
4 kind of policy that's going to dictate exactly what you have to
10:59 5 do. That's part of being an officer, is evaluating the
6 situation, responding to it, trying to prevent it from
7 escalating, trying to deescalate.

8 THE COURT: Okay. Let me ask you this. Do you have
9 any objection then to the instruction -- the substantive
10:59 10 instruction then after hearing my comments on the plaintiff
11 proposed revisions?

12 MR. CARLSON: I have no objection.

13 THE COURT: And are you asking for anything
14 additional?

11:00 15 MR. CARLSON: No. I favor it.

16 THE COURT: Okay. So I won't add that part at all.
17 That part of that regulation. But we'll keep what we have.

18 All right. Any other additions or modifications of
19 the instructions?

20 (No response.)

21 THE COURT: Any other proposed instructions?

22 I'm going to have a copy of what we now have, because
23 we made some changes after yesterday and we've made some changes
24 today.

11:00 25 And I think we've redone the verdict. I don't think

1 the verdict has changed any from what we gave you last night.

2 MR. CARLSON: I think we have some --

3 THE COURT: Any objection to the form of the verdict
4 from plaintiff?

11:00 5 MS. LUBIN: There is no objection from plaintiff.

6 MR. CARLSON: Not the form. We thought that there
7 were --

8 MS. LUBIN: The numbering.

9 MR. CARLSON: -- still some typos and changes that we
11:00 10 agreed to that aren't in it yet.

11 THE COURT: Okay. We'll go over that then. We'll run
12 copies. I'll have the clerk one more time go through it and
13 eliminate any typos. What typos are you thinking of? Is it
14 numbering?

11:01 15 MR. CARLSON: One that references --

16 What was that, Ashley? It references the wrong
17 question number.

18 We thought the Court was going to take out "upon her
19 request."

11:01 20 THE COURT: We did, didn't we?

21 MR. CARLSON: Not all the way through.

22 MS. LEHOCKY: For the ADA questions it was taken out.

23 THE COURT: Not the other.

24 MS. LEHOCKY: Not the other.

11:01 25 And then question 9, the instruction that followed:

1 If you answered --

2 Well, I'm not sure whether it is now yes or no,
3 however it was set -- this has to go back to question 7, it
4 should be question 10.

11:01 5 THE COURT: We'll clarify or correct those.

6 MS. LEHOCKY: Thank you.

7 THE COURT: It shouldn't take long to get you clean
8 copies of everything just so you can look it over one more time,
9 and then I think that will conclude our instruction and verdict
11:02 10 conference.

11 MR. CARLSON: Okay. But the request thing appears
12 throughout that. We understood that you were going to eliminate
13 it throughout.

14 THE COURT: Yes, we intended to. If we didn't --

11:02 15 MS. LEHOCKY: On question 3, 7, 11 and 15.

16 THE COURT: I'll check it. All right. We'll have a
17 short recess and then get that out to you. And I think this
18 will be about 10 minutes.

19 MS. ALCALDE: Your Honor, this doesn't need to be on
11:02 20 the record. I was wondering for closing arguments we could take
21 off our masks?

22 THE COURT: Yes.

23 MS. ALCALDE: Thank you.

24 THE COURT: And if you're at the podium if you want to
11:02 25 take off your masks for closings -- let me think about that.

1 Well, we're going to set you way back. We'll set the
2 podium back. I think if we do that I think we'll allow you to
3 take off your masks.

4 MS. ALCALDE: Ms. Lubin said how difficult it was for
11:03 5 her.

6 THE COURT: I appreciate that. I know it's difficult.
7 We're trying to -- you know, like I said, we're trying to
8 conduct a trial under circumstances in which none of us have
9 done this before. This is the first one in the district and
11:03 10 we're doing our best.

11 MS. ALCALDE: Also one of the first ones in the
12 country, Your Honor.

13 THE COURT: We're in recess.

14 (Recess taken at 11:03 a.m., until 11:19 a.m.)

11:20 15 THE COURT: Go ahead, be seated.

16 We're back on the record outside the presence of the
17 jury.

18 And I provided counsel with copies then of the
19 instructions, final instructions and the special verdict. Other
11:20 20 than -- you know, you'll see in the instructions we have
21 citations, footnotes, those will be taken out of the copy -- out
22 of the original that goes to the jury, but I wanted you to have
23 those and those should be made part of the record so that the
24 authority for the decisions made are apparent.

11:20 25 Ms. Lubin, did you have something else you wanted to

1 add?

2 MS. LUBIN: Yes, Your Honor. Just for the record.

3 THE COURT: Right.

4 MS. LUBIN: Your Honor has mentioned 28 C.F.R.

11:20 5 35.16(c) throughout these jury instructions and in many of our
6 communications regarding, you know, the formulation of these
7 instructions.

8 And I would point the Court's attention to Subsection
9 (c) (2). In these regulations they state the exact same thing as
11:21 10 the Technical Assistance Manual in that there are three steps in
11 which an adult who is accompanying a deaf person is allowed to
12 interpret. And those three steps are also stated in the
13 regulations.

14 The only difference between the regulations and the
11:21 15 Technical Assistance Manual is that the Technical Assistance
16 Manual expressly put that this exception does not apply to minor
17 children. Which plaintiff's contention is that the Department
18 of Justice believes that minor children are so serious and that
19 the situation is so serious that they had to make sure that they
11:21 20 put in a Technical Assistance Manual that this regulation does
21 not apply to minor children.

22 THE COURT: Okay. Mr. Carlson, do you want to
23 respond?

24 MR. CARLSON: Well, we're beating a dead horse here.
11:22 25 I just think, again, it's Ms. Lange's preference.

1 THE COURT: You need to speak into the microphone.

2 MR. CARLSON: I think we're beating a dead horse here.

3 It was Ms. Lange who used the children. Cite as many
4 regulations as you want, and then Ms. Lange is just not
11:22 5 complying with additional regulations.

6 MS. LUBIN: The reason why we're citing the
7 regulations is because the Title II entity is responsible for
8 the communication. And the Title II entity is held to a higher
9 standard in which they are supposed to give deference and
11:22 10 primary consideration and held to a higher standard than the
11 Title III entity, and here in the police department they did not
12 do such.

13 THE COURT: Okay. Your record's made.

14 MS. LUBIN: Thank you.

11:22 15 THE COURT: Yes. Okay, anything else? And your
16 proposed revisions, like I said, those will be made a part of
17 the record. They should be docketed if they're not already. I
18 think you sent those by email, Ms. Lubin, but if you wish to
19 docket those?

11:23 20 MS. LUBIN: Yes, Your Honor.

21 THE COURT: That would be good. And if you wish to
22 add or attach to it the authority, the cite in the manual to the
23 extent you haven't already -- you've cited it so I suppose
24 that's sufficient.

11:23 25 MS. LUBIN: But I do have a copy on hand.

1 THE COURT: I trust your record's made then. And I
2 recognize the vigorousness of your advocacy and appreciate that
3 it's a significant issue. So I gave you my best call and we'll
4 go from there.

11:23 5 MS. LUBIN: Thank you. I appreciate it.

6 THE COURT: Okay. Anything else now that we've given
7 you final copies of the instructions and verdict that you need
8 to put on the record?

9 MS. LUBIN: I just see a typo on page 9. One of the
11:24 10 last sentences: "Police departments do not have to arrange for
11 a sign language interpreter every time."

12 I think that's supposed to be after "deaf" maybe a
13 semicolon, however, comma? Because after "however" it's a
14 period, and then it says, "The requirements of Title II..." Or
11:24 15 if "however" is taken out.

16 THE COURT: "Police departments do not have to arrange
17 for a sign language interpreter every time an officer interacts
18 with a person who is deaf, however."

19 MS. LUBIN: I think that maybe "however" needs to be
11:24 20 semicolon, comma, and "the" should be lowered?

21 THE COURT: I use "however" at the end of -- that's
22 more stylistic. I can live with that.

23 MS. LUBIN: Sorry.

24 THE COURT: Okay? And then please be back ready to go
11:24 25 at 12:30. And as I said, I will instruct the jury all up to

1 page 12. The bottom of page 12 you can see procedure for jury
2 deliberation. And then I'll give those instructions after the
3 completion of argument. Plaintiff first, then defense.

4 Plaintiff has the burden of proof, so plaintiff has rebuttal.

11:25 5 And we'll see you all at 12:30 then.

6 MS. ALCALDE: Thank you very much, Your Honor.

7 MR. CARLSON: Thank you.

8 THE COURT: And with respect to masks, you know, the
9 record should reflect I think that's about 15 to 20 feet between
11:25 10 the podium and where the jurors will be with their masks. And I
11 think that will be adequate to -- so you can remove your masks
12 during closing.

13 MS. ALCALDE: Thank you very much, Your Honor.

14 THE COURT: Okay. We're in recess.

12:34 15 (Recess taken at 11:25 a.m., until 12:34 p.m.)

16 THE COURT: Okay. Before we bring the jury back, go
17 ahead, be seated. I just want to make note of one other change
18 we made.

19 Page 2, prior testimony, 1.05. And there wasn't any
12:35 20 prior testimony that I recall, so we took that out. Any
21 objection to that?

22 MR. CARLSON: No.

23 MS. LUBIN: No, Your Honor.

24 THE COURT: That's it then. Okay. Then let's bring
12:35 25 the jury in.

1 (Brief pause.)

2 THE COURT: Go ahead, be seated again. I was advised
3 by a court security officer that one of the jurors had a family
4 emergency. They have a child in school and they have to go get
12:36 5 the child. And they're trying to make arrangements for someone
6 else to do so.

7 (Discussion with bailiff.)

8 THE COURT: We can wait a couple minutes. We have
9 eight, so if we end up with seven we're still okay. But, you
10 know, she's sat through this much, I don't think it makes sense
11 to not wait a few minutes and give her an opportunity. So let's
12 just wait to do that. Let her know, though -- Tom, let her know
13 that if, you know, that we can continue even if she can't. If
14 it's really an emergency and she can't do anything we'll release
12:37 15 her to go.

16 (Off-the-record discussion.)

17 THE COURT: Okay, good.

18 (Jury in at 12:38 p.m.)

19 THE COURT: Okay. Please be seated, ladies and
12:38 20 gentlemen.

21 What will happen now is I will read most of the
22 instructions to you including the substantive instructions, then
23 you'll hear the arguments of the attorneys, then I'll have some
24 brief instructions, and then you'll go back to the jury room for
12:39 25 your deliberations. So, I'll also give you copies of these

1 instructions, as I said earlier, so you'll be able to read along
2 and refer to them during your deliberations.

3 FINAL JURY INSTRUCTIONS

4 THE COURT: Members of the jury, you have seen and
12:39 5 heard all the evidence and are about to hear the arguments of
6 the attorneys. Now I will instruct you on the law.

7 You have two duties as a jury. Your first duty is to
8 decide the facts from the evidence in the case. That is your
9 job, and yours alone. Your second duty is to apply the law that
12:39 10 I give you to the facts. You must follow these instructions,
11 even if you disagree with them. Each of the instructions is
12 important, and you must follow all of them. Perform these
13 duties fairly and impartially. Do not allow sympathy or
14 prejudice to influence you. You should not be influenced by any
12:40 15 person's race, color, religion, national ancestry, or sex.

16 The evidence consists of the testimony of the
17 witnesses and the exhibits admitted in evidence.

18 Certain things are not to be considered as evidence
19 and I will list them for you:

12:40 20 First, if I told you to disregard any testimony or
21 exhibits or struck any testimony or exhibits from the record,
22 such testimony or exhibits are not evidence and must not be
23 considered.

24 Second, anything that you may have seen or heard
12:40 25 outside the courtroom is not evidence and must be entirely

1 disregarded.

2 Third, questions and objections or comments by the
3 lawyers are not evidence. Lawyers have a duty to object when
4 they believe a question is improper. You should not be
12:41 5 influenced by any objection, and you should not infer from my
6 rulings that I have any view as to how you should decide the
7 case.

8 Fourth, the lawyers' opening statements and closing
9 arguments to you are not evidence. Their purpose is to discuss
12:41 10 the issues and the evidence. If the evidence as you remember it
11 differs from what the lawyers said, your memory is what counts.

12 Any notes you have taken during this trial are only
13 aids to your memory. The notes are not evidence. If you have
14 not taken notes, you should rely on your independent
12:41 15 recollection of the evidence and not be unduly influenced by the
16 notes of other jurors. Notes are not entitled to any greater
17 weight than the recollections or impressions of each juror about
18 the testimony.

19 In determining whether any fact has been proved, you
12:41 20 should consider all the evidence bearing on the question
21 regardless of who introduced it.

22 You should use common sense in weighing the evidence
23 and consider the evidence in light of your own observations in
24 life. In our lives, we often look at one fact and conclude from
12:42 25 it that another fact exists. In law we call this "inference."

1 A jury is allowed to make reasonable inferences. Any inference
2 you make must be reasonable and must be based on the evidence in
3 the case.

4 You may have heard the phrases "direct evidence" and
12:42 5 "circumstantial evidence." Direct evidence is proof that does
6 not require an inference, such as the testimony of someone who
7 claims to have personal knowledge of a fact. Circumstantial
8 evidence is proof of a fact, or a series of facts, that tends to
9 show that some other fact is true.

12:42 10 As an example of direct evidence that it is -- as an
11 example, direct evidence that it is raining is testimony from a
12 witness who says, "I was outside a minute ago and I saw it
13 raining." Circumstantial evidence that it is raining is the
14 observation of someone entering a room carrying a wet umbrella.

12:43 15 The law makes no distinction between the weight to be
16 given to either direct or circumstantial evidence. You should
17 decide how much weight to give to any evidence.

18 In reaching your verdict, you should consider all the
19 evidence in the case, including the circumstantial evidence.

12:43 20 You must decide whether the testimony of each of the
21 witnesses is truthful and accurate, in part, in whole, or not at
22 all. You also must decide what weight, if any, you give to the
23 testimony of each witness. In evaluating the testimony of any
24 witness, including any party to the case, you may consider,
12:43 25 among other things:

1 the ability and opportunity the witness had to see,
2 hear, or know the things that the witness testified about;
3 the witness's memory;
4 any interest, bias, or prejudice the witness may have
12:43 5 had;
6 the witness's intelligence;
7 the manner of the witness while testifying;
8 and the reasonableness of the witness's testimony in
9 light of all the evidence in the case.

12:44 10 You have heard testimony from plaintiff in American
11 Sign Language. Witnesses who do not speak English or who are
12 not more proficient in another language qualify through a
13 qualified interpreter. Although some of you may know American
14 Sign Language, it is important that all jurors consider the same
12:44 15 evidence. Therefore, you must accept the interpreter's
16 translation of the witness's testimony. You must disregard any
17 other meaning. You must not make any assumption about a witness
18 or a party based solely on the use of an interpreter to assist
19 that witness or party.

12:44 20 You may have noticed that during her testimony,
21 plaintiff used what appears to be exaggerated facial expressions
22 or hand gestures. This is a necessary part of American Sign
23 Language because grammar is conveyed through these facial
24 expressions and gestures. You should not place any negative
12:45 25 implications on these expressions or gestures even if they

1 appear to be exaggerated or unusual to persons who do not
2 communicate using American Sign Language.

3 You may consider statements given by the parties
4 before trial as evidence of the truth of what he said in the
12:45 5 earlier statements, as well as in deciding what weight to give
6 his or her testimony.

7 With respect to other witnesses, the law is different.
8 If you decide that, before the trial, one of these witnesses
9 made a statement not under oath or acted in a manner that is
12:45 10 incompatible with his testimony here in court, you may consider
11 the earlier statement or conduct only in deciding whether his
12 testimony here in court was true and what weight to give to his
13 testimony here in court.

14 In considering a prior inconsistent statement or
12:45 15 conduct, you should consider whether it was simply an innocent
16 error or an intentional falsehood and whether it concerns an
17 important fact or an unimportant detail.

18 You may find from the testimony of one witness or a
19 few witnesses -- Strike that.

12:46 20 You may find the testimony of one witness or a few
21 witnesses more persuasive than the testimony of a larger number.
22 You need not accept the testimony of the larger number of
23 witnesses.

24 The law does not require any party to call as a
12:46 25 witness every person who might have knowledge of the facts

1 related to this trial. Similarly, the law does not require any
2 party to present as exhibits all papers and things mentioned
3 during the trial.

4 Nothing I say now, and nothing I said or did during
12:46 5 the trial, is meant to indicate any opinion on my part about
6 what the facts are or about what your verdict should be.

7 You must give separate consideration to each claim and
8 each party in this case. Although there are two defendants –
9 the City of Oconto and the City of Oconto Falls – it does not
12:46 10 follow that if one is liable, the other is liable.

11 In considering a claim against a particular defendant,
12 you must not consider evidence admitted only against the other
13 defendant or only as to other claims.

14 When I say a particular party must prove something by
12:47 15 a preponderance of the evidence, or when I use the expression
16 "if you find," or "if you decide," this is what I mean: When
17 you have considered all the evidence in the case, you must be
18 persuaded that it is more probably true than not true.

19 Plaintiff has brought this lawsuit under a federal law
12:47 20 called the Americans with Disabilities Act, which is often
21 referred to by its initials, the ADA. The ADA is a federal
22 civil rights law that gives protections to individuals with
23 disabilities and guarantees equal opportunity for individuals
24 with disabilities in state and local government services, public
12:47 25 accommodations, employment, transportation, and

1 telecommunications. The parties agree that plaintiff is a
2 qualified person under the ADA because she is deaf.

3 Title II of the ADA provides that no qualified person
4 with a disability shall, by reason of such disability, be
12:48 5 excluded from participation in or be denied the benefits of the
6 services, programs, or activities of a public entity, or be
7 subjected to discrimination by any such entity. The parties
8 agree that the Defendants are considered public entities that
9 are required to comply with Title II of the ADA. Title II of
12:48 10 the ADA requires that a public entity, such as a police
11 department, take appropriate steps to ensure that communications
12 with members of the public that are deaf or hard of hearing are
13 as effective as communications with others. Stated differently,
14 public entities are required by the ADA to ensure effective
12:48 15 communication with individuals who are deaf or hard of hearing.

16 Plaintiff has also asserted a claim under a federal
17 law called the Rehabilitation Act. Section 504 of the
18 Rehabilitation Act likewise protects qualified individuals from
19 discrimination based on their disability. It forbids excluding
12:49 20 or denying individuals with disabilities an equal opportunity to
21 receive government benefits and services in any program or
22 activity. The parties agree that Defendants are subject to the
23 Rehabilitation Act and that plaintiff is a qualified individual
24 under Section 504 of the Rehabilitation Act. The elements of
12:49 25 the claims under the ADA and the Rehabilitation Act are nearly

1 identical.

2 A police department must furnish appropriate auxiliary
3 aids and services where necessary to afford individuals with
4 disabilities an equal opportunity to participate in, and enjoy
12:49 5 the benefits of, a service, program, or activity of a public
6 entity.

7 Auxiliary aids, or communication aids, include
8 qualified interpreters, note takers, transcription services,
9 written materials, telephone handset amplifiers, assistive
12:50 10 listening devices, and other similar services and actions.
11 Police departments do not have to arrange for a sign language
12 interpreter every time an officer interacts with a person who is
13 deaf, however.

14 The requirements of Title II are subject to the bounds
12:50 15 of reasonableness. Whether a qualified sign language
16 interpreter or other communication aid is required to ensure
17 effective communication depends on the method of communication
18 used by the individual; the nature, length, and complexity of
19 the communication involved; and the context in which the
12:50 20 communication is taking place.

21 In determining what types of auxiliary aids and
22 services are necessary, a public entity shall give primary
23 consideration to the requests of the individual with the
24 disability unless it can demonstrate that another effective
12:51 25 method of communication exists.

1 Effective communication means that an individual is
2 able to convey the information he or she seeks to convey to a
3 police officer and understands the information the police
4 officer seeks to convey to him or her.

12:51 5 Police officers should not rely on a minor child to
6 interpret or facilitate communication, except in an emergency
7 situation involving an imminent threat to the safety or welfare
8 of an individual or the public where there is no other
9 interpreter readily available. Police need not interfere,
12:51 10 however, in the decision of a private citizen to use his or her
11 own child to facilitate her communication.

12 An officer is not required to seek the accompaniment
13 of a sign language interpreter when responding to an emergency
14 call involving a person or persons who are deaf. A police
12:52 15 officer's priority in such a situation is to maintain order and
16 protect the public. If an officer has probable cause to
17 effectuate the arrest of a deaf person, the officer may make the
18 arrest and call for an interpreter to be available at the
19 booking station.

12:52 20 In order to prevail on her discrimination claim under
21 the ADA against defendant, Plaintiff must prove by a
22 preponderance of the evidence that:

23 1. Plaintiff requested an interpreter or the need for
24 an interpreter was known and obvious;

12:52 25 2. The Defendant unreasonably failed to give primary

1 consideration to her request for an interpreter;

2 3. As a result, Plaintiff was unable to effectively
3 communicate with the officers, and;

4 4. The failing to provide an interpreter, the
12:52 5 Defendant intentionally discriminated against Plaintiff based on
6 her disability. Intentional discrimination does not require
7 personal animosity or ill will.

8 If you find that Plaintiff has proven each of these
9 elements as to any of the incidents at issue, then you must
12:53 10 proceed to consider the question of damages. If, on the other
11 hand, you find that the Plaintiff has failed to prove any
12 violation, then you must decide for Defendants, and you will not
13 consider the question of damages.

14 If you find in favor of Plaintiff on one or more of
12:53 15 Plaintiff's claims, then you must determine the amount of money
16 that will fairly compensate Plaintiff for any injury that you
17 find she sustained.

18 Plaintiff must prove her damages by a preponderance of
19 the evidence. Your award must be based on evidence and not
12:53 20 speculation or guesswork. This does not mean, however, that
21 compensatory damages are restricted to the actual loss of money;
22 they include both the physical and mental aspects of injury,
23 even if they are not easy to measure.

24 You should consider the following types of
12:53 25 compensatory damages, and no others:

1 The mental and emotional pain and suffering that
2 Plaintiff has experienced. No evidence of the dollar value of
3 emotional or pain and suffering has been or needs to be
4 introduced. There is no exact standard for setting damages to
12:54 5 be awarded on account of these factors. You are to determine an
6 amount that will fairly compensate Plaintiff for the injury she
7 sustained.

8 If you return a verdict for Plaintiff, but Plaintiff
9 has failed to prove compensatory damages, then you must award
12:54 10 nominal damages of \$1.

11 That concludes my initial instructions. You'll hear
12 the arguments of the attorneys. Plaintiff will go first because
13 Plaintiff has the burden of proof, and then the defense will
14 follow and Plaintiff will then have short rebuttal.

12:54 15 So, Counsel for Plaintiff, Ms. Alcalde?

16 MS. ALCALDE: Thank you, Your Honor.

17 THE COURT: And I'll tell the jury, I've granted the
18 attorneys the right, if they wish, to remove their masks during
19 closing argument. And they're 15 to 20 feet from you, you're
12:55 20 with masks, and I think it's important to them to convey their
21 views of the evidence. So I know our Green Bay ordinance has an
22 exception for people talking to an audience. You are the
23 audience.

24 Go ahead, Ms. Alcalde.

12:55 25 MS. ALCALDE: Thank you very much, Your Honor.

PLAINTIFF CLOSING ARGUMENT

1
2 MS. ALCALDE: Good afternoon, ladies and gentlemen of
3 the jury. McDonald's, bird feedings, drunk, loud, belligerent,
4 hard to understand, makes noises. So many contacts with her.
12:55 5 Complaints.

6 Ladies and gentlemen of the jury, that's all noise.
7 That's what defense counsel has talked about. All these other
8 things, all these other times, all these other 115 times, it's
9 all noise. We don't know about these other 115 times. We don't
12:56 10 know if there were the ASL interpreters. We know some of them
11 because they talked about them. It's noise.

12 What we're here about is four days. Four days. And
13 in those four incidents the police failed her. *I am deaf. I*
14 *need an interpreter. Interpreter. I need an interpreter.*
12:56 15 *Interpreter.*

16 Let's not be confused by the noise and let's focus on
17 what we're here for which is those four days. The jury
18 instructions. You're not going to see anywhere on the verdict
19 forms or the jury instructions about any of those other
12:57 20 incidents. The City of Oconto failed her and the City of Oconto
21 Falls failed her.

22 Now, let's kill the noise. Ironically enough, we're
23 talking about noise and this is a case involving a deaf person.
24 There's two separate defendants – the City of Oconto and the
12:57 25 City of Oconto Falls. I'm going to go in order so that we can

1 keep focused and kind of forget the noise.

2 The City of Oconto is here only on the incidence of
3 May 30th.

4 The City of Oconto Falls is here for the incidents of
12:57 5 November 14th, 2016, February 2nd and 3rd of 2017. And they
6 must all be looked at individually.

7 Now, from the City of Oconto. Going to the May 30th
8 incident. Ms. Lange says she asked for an interpreter. Officer
9 Sowle, who was kind enough to testify via Zoom -- I mean, I
12:58 10 submit to you, you all saw how everyone testified. You were
11 able to see their faces. I think Officer Sowle was very
12 forthcoming. He said, "Is this something I would do now? No.
13 But back then we didn't have training. Would I have used her
14 daughter? No. I would have done things differently."

12:58 15 I think his candor is very refreshing. He admits that
16 the way things were done on that day were not appropriate.

17 Officer Sowle said -- he said she did ask for an
18 interpreter. So on May 30th we know not only did she say she
19 asked for an interpreter, but he again, very forthcoming, said,
12:58 20 "Yes, she asked for an interpreter."

21 He said that he went there the first time and said,
22 "If I have to come back here you're going to get arrested."

23 And let's focus again. This incident is a noise
24 disturbance. Which, yes, can be annoying. But it's a noise
12:59 25 disturbance. This isn't -- he's not responding to an assault.

1 This isn't a case involving weapons. This is a noise
2 disturbance.

3 And I think one of the questions I asked him if you
4 think maybe it's difficult for a deaf person to gauge their
12:59 5 level of noise, and he agreed. That doesn't mean she's entitled
6 to make noise. Okay? But he's there for a noise disturbance.
7 And he says, "If I have to come back you are getting arrested."

8 He didn't write this. He didn't even interpret it
9 through her daughter. He said it verbally, at night, and you
12:59 10 heard he has a mustache.

11 Now, I just mouthed all of that. That's what she
12 sees, at night, when she's had some drinks, with a man wearing a
13 mustache. And she's told you that she can read lips if someone
14 speaks slowly, if they don't have a mustache, if they're very
01:00 15 clear and focused in a calm setting. This is not a calm
16 setting.

17 And he admits, "No, I didn't write it down. I just
18 told her."

19 He admits he didn't know if she understood or not.
01:00 20 And I imagine he was frustrated because he'd only leave and now
21 he's gotta come back. And again, we're not faulting him. I
22 mean, like I said, he was very -- his candor was refreshing, "I
23 shouldn't have done that."

24 When he returned for this noise complaint, not a DUI
01:00 25 complaint, not anything else, he asked her how much she's had to

1 drink in her house. There's still no real danger. An
2 interpreter is not brought in, even though the need for one is
3 obvious. He knows she's deaf, he's had prior interactions with
4 her. He doesn't bring an interpreter. He says he used his
01:01 5 notes to write back and forth, but those notes are destroyed.

6 She is a defendant in this case because she got
7 arrested. And I think even Chief Olsen said you don't destroy
8 communication between a defendant and a police officer because
9 obviously that could be evidence.

01:01 10 But again, he -- Officer Sowle hadn't had any training
11 on that. He didn't even know how to get an interpreter. So
12 even if he wanted to get an interpreter, the City of Oconto
13 didn't give him the tools to get one, which he said had he had
14 them he would have used them. He didn't have them.

01:01 15 He didn't know her daughter had drug issues. He
16 wouldn't have used her. I said are you aware, you know, you can
17 use a phone? No, he's not aware of any of that. Because again,
18 he told us, "I didn't have that training."

19 Chief Rehberg, also, from the City of Oconto -- and I'm
01:02 20 trying to keep the incidents to the separate defendants -- came
21 up here and, again, I would say was very forthcoming. "No, we
22 didn't have those, you know, in place." He didn't have access
23 to that. "We should have. Absolutely we would not use her
24 daughter. We should not have used her daughter." Not only
01:02 25 because it's an arrest, but the daughter's part of the whole

1 incident that's happening. He agreed that things should have
2 been done differently. He agreed.

3 And he also talked about some of his prior encounters
4 with her, you know, and how he didn't use an interpreter and
01:03 5 we're not here about those. We're not saying she needs an
6 interpreter for her dispute with McDonald's. We're not saying
7 she needs an interpreter for the bird complaint. That's noise.
8 And let's forget that noise and let's focus on what he said that
9 is relevant to what we're here for. Things should have been
01:03 10 done differently. And he admitted that.

11 Now, you heard from the neighbor, Mr. Wusterbarth.
12 And, you know, he didn't say a lot because he said he couldn't
13 really hear -- he admitted he couldn't really hear what was
14 going on. He admits he doesn't know ASL. He also said she's
01:03 15 not intelligible, you can't understand her. She makes a lot of
16 noises when she's angry. Because she's been deaf from birth.
17 So she doesn't know how to articulate words. So what we did get
18 from him is that she made a lot of noises.

19 And another thing we get from him is, he says that the
01:04 20 detective kept giving her a notepad and paper and she kept
21 pushing it away. He asked him that twice. And he said, "Yeah,
22 she pushed it away."

23 Defense counsel asked him, "She pushed it away." Of
24 course she pushed it away; she did not want to use that as a
01:04 25 method of communication. That was not her preferred method of

1 communication in this serious situation. She wanted an
2 interpreter. And she said, "I want an interpreter."

3 And, again, the City of Oconto failed her. And the
4 representatives of the City of Oconto have been forthcoming and
01:04 5 they've come here and they admitted they failed her; that if
6 they had training, if they had known, if they had access, this
7 would not have happened. But it did. It did happen.

8 Now, I'm going to move on to Oconto Falls and the
9 other incidents involving Oconto Falls. November 14th, 2016.

01:05 10 And I think this is a very concerning incident because
11 no interpreter was provided. She said she asked for one.
12 Brandon said she asked for one. Officer -- and here's where I
13 ask you to remember the demeanor of the people testifying. We
14 talked about the City of Oconto and the demeanor and how
01:05 15 forthcoming they were. It wasn't combative. I asked a
16 question, they answered it. Now we have Oconto Falls.

17 "Would you do things different?"

18 "No, I would not do things differently.

19 "Well, how old do you think is too old?"

01:06 20 Officer Rank: "A five-year-old. I would do it again
21 in a heartbeat. I would use a kid."

22 He says, "I feel I could evaluate the maturity level
23 of the child and I decide if they should be used as an
24 interpreter or not."

01:06 25 Okay. "And what kind of training have you had in

1 order to evaluate maturity levels of children?

2 "None."

3 Well, with a few minutes of talking he feels he can
4 evaluate children. And just to show how contentious it was, I
01:06 5 asked him:

6 "Well, do you think you're qualified to evaluate
7 children?

8 "I didn't say I was qualified.

9 "So you aren't qualified?

01:07 10 "Define qualified."

11 I mean, I think he knows what qualified means. And I
12 don't want to get into bickering, but the judge says and the
13 instructions say you can look at the demeanor of witnesses and
14 you can use that. There wasn't any of that back and forth with
01:07 15 the City of Oconto.

16 "Does your current policy say not to use family
17 members?", I asked Officer Rank.

18 "It could refer to that.

19 "Does it say it or doesn't it?

01:07 20 "Yes, it says it."

21 That's the way he was answering questions. This
22 wasn't a witness that was forthcoming. This was a witness that
23 was here to just *this is my point and I'm not changing it, I*
24 *don't care how many new policies there are, I don't care what*
01:07 25 *you say.*

1 And he does admit, though, that he doesn't know if the
2 child interpreted. And, now, let's talk about the actual
3 incident. He agreed the child would not be impartial. He used
4 the minor child anyway. But the minor child here wasn't just
01:08 5 some minor child that was there. Brandon was here and we heard
6 he's a special needs kid, he goes to special ed, he goes to
7 school. He's 18 years old. And he called his uncle because he
8 was scared and the police show up. And he said, "I wish they
9 would have just talked to me and got an interpreter to talk to
01:08 10 my mom."

11 But they didn't. They didn't even give this
12 14-year-old child the opportunity to speak because they started
13 using him as an interpreter with mom. Because mom wanted to
14 know what's going on.

01:09 15 And like, oh, and she was pulling him and she was
16 belligerent and she was --

17 This is her 14-year-old kid. She wants to know what's
18 going on. She's another potential victim in this case. And
19 they're saying no. And they know she's deaf, because he also
01:09 20 says at this point they already know she's deaf. They don't
21 bring an interpreter. They don't even try to pick up the phone
22 and see if they can use -- I mean, we're not living in times
23 when you actually need a live interpreter to come to the scene.
24 There's tools.

01:09 25 They don't give Brandon this chance and he's scared.

1 And this is -- you know, he says, "I used Brandon as a
2 spokesperson." Had to be reminded that he said that but, you
3 know, a spokesperson. So this 14-year-old child who is in fear
4 because him and his mother may be in some kind of danger, is now
01:10 5 being told *hey, you know, hold off on your story, let me -- come*
6 *here and interpret for your mom.* Mom says she doesn't want him
7 to interpret.

8 And, of course, mom's talking to him because it's her
9 son and he's interpreting. The police are telling him to
01:10 10 interpret. He's a 14-year-old special needs kid who feels like
11 he has to interpret. Mom wants to know what's going on and her
12 only lifeline is her 14-year-old child. That's it. It's either
13 that or she just in silence doesn't know what is going on.

14 That's the position she's in. It's not that she
01:10 15 chooses to use Brandon; it's that since the police give her no
16 other option, it's either talk to Brandon and see what's
17 happening or stay in silence while all of this is going on
18 around her.

19 I asked him, "Would you do this again? Is this how
01:11 20 you would still behave?" And unlike the City of Oconto, who
21 admits that that's not how they should behave and that's not how
22 they would behave now, he says, "Absolutely, 100 percent. I
23 would use the child."

24 He never asked her if it was okay to use her child.
01:11 25 He said it's very difficult to communicate with her. He could

1 sense there was animosity.

2 And we're not here about a trial, by the way, on
3 whether Ms. Lange is a malcontent, whether you like her, whether
4 she's a great person; we're here about whether she's entitled,
01:11 5 as the law requires, to have communication, to be able to
6 understand what's happening.

7 It's very difficult to communicate with her.

8 "Do you think an interpreter might have made it easier
9 to communicate with her?" I mean, that's a softball question.

01:12 10 "I don't know. I don't know." It seems like *I don't*
11 *know. I don't care. I'd use her kid again. Who cares about*
12 *this woman? She's belligerent, she drinks, and I'm using her*
13 *kid again 100 percent. I don't care if he's scared, I don't*
14 *care if he's the one that called the police, I don't care.*

01:12 15 That's what the attitude was from the officer on that
16 incident in November.

17 She didn't want to participate in notes, she was
18 uncooperative.

19 He did at one point acknowledge it's not appropriate
01:13 20 to use children, but then said he would use it again anyway.

21 And he didn't know his actions were inappropriate back
22 then, he does now. He did say that at the end, "But I'd still
23 do it again."

24 On that day Brandon deserved better, Ms. Lange
01:13 25 deserved better. The department failed her. City of Oconto

1 Falls failed her. And they failed Brandon, too. And this
2 mother was now in a position where she was possibly the victim,
3 he was possibly the victim, and nothing was discovered.

4 And then, you know, we're not talking about other
01:14 5 dates because that's not the other incident. But they talk
6 about we went back the next day. Well, the next day did you
7 bring an interpreter? So, I mean, now you know she's deaf, you
8 know she prefers to speak with an interpreter, now there's not
9 an emergency, this is the next day. *No. Sorry. She's*
01:14 10 *annoying, she's belligerent, she's loud, she curses, so no use*
11 *in trying to communicate with her. Well, did you even try an*
12 *interpreter? Nope.*

13 Now let's move forward to the February 2nd incident.
14 Officer Kuhn. She also used the 14-year-old son to interpret.
01:14 15 He did not want to interpret. She was pretty forthcoming. She
16 didn't even try to use notes. She wouldn't use her phone
17 because she said that it might pose a danger, even though she's
18 not responding to a scene, she's not responding to a crime
19 occurring; she's going there to inquire of the subject that's
01:15 20 there. And she's not there alone. *Nope. I wouldn't use the*
21 *phone. Wouldn't use an interpreter. I'm using her son.* She
22 also knew Ms. Lange was deaf and she refused to call an
23 interpreter.

24 We have the City of Oconto Falls' just refusal to call
01:15 25 interpreters, to use a phone, to use any auxiliary services for

1 a woman who clearly needs it. Clearly.

2 Again, Brandon felt like he needed to interpret. The
3 police were there. She didn't want him to interpret. She asked
4 for an interpreter and it wasn't provided.

01:16 5 February 3rd, the next day. Sergeant Fischer and
6 Chief Olsen were there. Sergeant Fischer. Let's go with his
7 testimony first.

8 He never received any training on what to do with a
9 deaf person. Chief Olsen confirmed that there was no training.
01:16 10 He didn't even know of any that exists. *I don't know if that*
11 *exists. Hasn't looked it up. No, no training on how to handle*
12 *dealing with a deaf person.*

13 He doesn't know why she was agitated, she was just
14 agitated. "Do you know why she was agitated?"

01:16 15 And Sergeant Fischer wasn't as combative as the other
16 officer, but "I don't know why she was -- I don't know why she
17 was agitated."

18 Is it possible she's agitated because she still can't
19 get an interpreter and she keeps requesting one? Is it possible
01:17 20 she's agitated because her 14-year-old son is being used as an
21 interpreter continuously against her wishes, against his wishes?

22 They knew Brandon was a minor. He admits her speech
23 is not clear. So this whole like, oh, she spoke and she said
24 this and -- her speech is not clear. I mean, you heard some of
01:17 25 her speech here. And I think when all the witnesses when asked

1 about it, it's not like she speaks clearly. She's been deaf her
2 whole life, from birth.

3 Chief Olsen was also here as what we call a 30(b)(6)
4 witness and a fact witness. He talked about *I don't have the*
01:17 5 *officers obtain any training on this new policy.* It was a new
6 policy. It was submitted to evidence. By the way, that policy
7 wasn't in effect back then. Maybe it should have been, but it
8 wasn't.

9 And he agrees that the new policy says don't use
01:18 10 family members as interpreters. The new policy says get an
11 interpreter if that's their preferred method of communication;
12 if that's what they request, get an interpreter.

13 He even talked about that there's something in the car
14 that they can use. There's a tablet that no one had training
01:18 15 on. "There's more important training" was one of his responses.
16 "This isn't an important training."

17 So they can change their policy and manuals all they
18 want. But if there's no training on how to implement these
19 changes, might as well burn that policy manual. I mean, it's
01:18 20 irrelevant that there's changes afterwards. Because -- but at
21 least the City of Oconto changed it and has that training and
22 they acknowledge that there was a mistake made. The City of
23 Oconto Falls was like, yeah, we made changes to our policy, but
24 we're not training. We basically don't care.

01:19 25 "Why did you make this new policy?"

1 "For situations like this."

2 Situations like this? So when the policy changed to
3 -- so you wouldn't have to be called out and answer for why
4 you're not following the law? Well, a policy manual is useless
01:19 5 if it's not implemented.

6 They didn't have these policies back then. And I
7 would submit to you, ladies and gentlemen of the jury, that the
8 City of Oconto Falls doesn't even have these policies in effect
9 now. Because all their officers were like, I'm not using it. I
01:19 10 don't care. I'd still do it the same way. Not an ounce of
11 regret. Not an ounce of what we saw from the City of Oconto
12 when they're like, yeah, you know, I wish I had these tools.

13 Officer Sowle, he almost seemed remorseful at the end.
14 "I really wish I had them." Their chief was like, absolutely,
01:20 15 that's not what we would do now; it's not what we should have
16 done back then. But the City of Oconto Falls was like, I don't
17 care. The chief is like, well, you know, it is what it is.
18 It's in our policy, but I'm not wasting money on training for
19 this. I don't care.

01:20 20 No training on how to implement it, no training on
21 video services, no training on what to do if they encounter a
22 deaf person, even though they know that there's a deaf person
23 there.

24 A five-year-old's fine to interpret. *If they call*
01:20 25 *911, if it's a five-year-old I'd use a five-year-old.* I mean,

1 they couldn't even give or budge on something as ridiculous as
2 using a five-year-old as an interpreter. I mean, that's again
3 another softball: no, I wouldn't use a five-year-old. "I'd use
4 a five-year-old." That's what his answer was.

01:21 5 At no time -- they knew she was deaf, they knew she
6 wanted an interpreter, and at no time on that February 3rd
7 incident, which is the next day after February 2nd, when they
8 absolutely had time to get an interpreter.

9 He also agreed. Now let's get to the actual incident.
01:21 10 Chief Olsen agreed he doesn't know what Brandon was translating.
11 When asked: "Do you think effective communication requires that
12 both parties understand?"

13 "A lot of my police officers are understanding.
14 That's it. I think that's effective."

01:21 15 Well, that's not how communication works. It seems
16 like he only cares if his police officers know what's going on.
17 But he sat there and was like, as long as the police officers --
18 he even shrugged his shoulders, as long as the police officers
19 are understanding I guess it's effective. But that's not what
01:22 20 the law requires.

21 You know, Ms. Lange said no one's listening to her.
22 Brandon said on that February 3rd date she kept saying
23 "interpreter" and no one was listening to her. And finally she
24 had enough and signed to him "stop interpreting." Because even
01:22 25 though they hadn't asked his mother's permission and they hadn't

1 asked his permission and they kept telling him to interpret, he
2 would do it. But this time his mom is like, I've had enough,
3 stop interpreting. Stop it.

4 He said he was scared. He stopped interpreting. And
01:22 5 he said that he told them, "I'm not a legal interpreter. My mom
6 says I'm not a legal interpreter. You can't keep using me."
7 She said that Chief Olsen was laughing at her and that "I felt
8 like I was nothing." He thought it was funny; that her
9 situation was funny.

01:23 10 And then Brandon said that "they laughed at my mom.
11 He laughed at her. I saw him smirking and laughing at her."
12 And, you know, at first when I heard this I was like, oh. But I
13 ask you to use your demeanor of how he answered questions here
14 and ask if you could see him smirking at her while he's at her
01:23 15 home. *I don't care. Five-year-old's fine. Those policies are*
16 *there to prevent situations like this.*

17 Now, you know, the judge has read you all these
18 instructions. Preponderance of the evidence – more likely than
19 not. This isn't a hard burden. It's slightly in our favor.
01:24 20 It's more likely than not that what she's telling you is true;
21 that what Brandon is telling you is true; that even what the
22 police officers themselves were telling you, especially the City
23 of Oconto Falls, is true.

24 We've proven our case, ladies and gentlemen of the
01:24 25 jury. We've proven our case against the City of Oconto and the

1 City of Oconto Falls. They both failed her. The City of Oconto
2 seems to have some remorse for it, the City of Oconto Falls
3 seems to shrug and not care.

4 You know, and in the instructions that the judge said,
01:25 5 public entities are required -- it's it not a suggestion, it's
6 not a if you feel like it -- required to ensure effective
7 communications.

8 The Rehabilitation Act prohibits -- it says "must
9 furnish appropriate auxiliary aids and services." Not they
01:25 10 should if they feel like it. Not they should have a policy that
11 they don't follow. But they must furnish them. And that they
12 have to give primary consideration to what her preferred method
13 is.

14 And they're like, oh, before, you know, she's fine
01:25 15 with notes. Well, maybe when she's making a complaint about
16 McDonald's she's fine with notes, and that's not what we're here
17 about that day. Maybe when she's complaining about birds she's
18 fine with notes and she can speak slowly and try to make do and
19 use her kid. But maybe when it's more serious she doesn't want
01:25 20 that and she's made it clear to them she doesn't want that in
21 serious situations.

22 Effective communication means that an individual is
23 able to convey the information he or she seeks to convey. And
24 that they also understand the information that the police
01:26 25 officers are seeking to convey to them. There has been no

1 evidence of effective communication. As a matter of fact, most
2 of the police officers said, "I couldn't communicate with her.
3 She's just loud, she's upset, she's agitated." Well, she's all
4 those things because she can't get an interpreter and she keeps
01:26 5 asking for one.

6 The elements.

7 "Plaintiff requested an interpreter or the need for an
8 interpreter was known or obvious."

9 I think in these four incidents -- and again, let's
01:26 10 block out the noise of McDonald's and birds, block out the
11 noise, on these four incidents she requested an interpreter and
12 the need for an interpreter was known and obvious.

13 "2. The Defendant unreasonably failed to give primary
14 consideration to her request for an interpreter."

01:27 15 I will submit to you they didn't even try. They
16 didn't even try. They didn't even make an attempt. They just
17 went "sorry."

18 "As a result, Plaintiff was unable to effectively
19 communicate with the officers."

01:27 20 And I think a lot of the officers said you can't
21 communicate with her. She's loud, she's agitated. So there's
22 no effective communication going on.

23 "In failing to provide an interpreter, the Defendant
24 intentionally discriminated against Plaintiff based on her
01:27 25 disability. Intentional discrimination does not require

1 personal animosity or ill will."

2 And I think the personal animosity or ill will really
3 applies even more to the City of Oconto because the City of
4 Oconto doesn't seem to have personal animosity or ill will. The
01:27 5 City of Oconto Falls kind of does, I would submit to you, from
6 the demeanor of the witnesses. But the City of Oconto still has
7 to answer for that May 30th incident where they admit that they
8 were in the wrong. "I felt like I was nothing. They laughed at
9 my mom. They laughed at her."

01:28 10 Ladies and gentlemen of the jury, I ask that you tell
11 the City of Oconto Falls and the City of Oconto that she is not
12 nothing. You tell the defendants that you hear her, that you're
13 her voice. And that it's not okay, no matter how much dislike
14 someone, to treat someone this way. And that they must follow
01:28 15 the law, because they didn't on these four occasions.

16 Thank you very much.

17 THE COURT: Thank you, Ms. Alcalde.

18 Mr. Carlson? Sometimes it it's helpful to stretch
19 in-between arguments. If you wish to do so, go right ahead.

01:29 20 (Brief pause.)

21 THE COURT: Yeah. Let's take a short restroom break.
22 Is that all right? We'll take a short break. Okay. Go ahead,
23 we'll take about a 5, 10-minute break.

24 (Jury out at 1:29 p.m.)

01:29 25 THE COURT: All right. I have copies -- pink copies

1 or whatever -- salmon -- of the special verdict. Extra copies.
2 And jury instructions. Sometimes I -- I usually put the verdict
3 on the chair. Any objections to that?

4 MS. ALCALDE: No, Your Honor.

01:30 5 THE COURT: You've referred to it in your closing.
6 Mr. Carlson, you in your rebuttal. Yeah. We're in recess.

7 (Recess taken at 1:30 p.m., until 1:37 p.m.)

8 THE CLERK: Please raise. Court is again in session.

9 (Jury in at 1:38 p.m.)

01:38 10 THE COURT: Okay. Go ahead and be seated.

11 We put copies of the verdict that you'll receive and
12 that's the verdict you'll fill out. You don't have to look at
13 it now because I want you to hear from the attorneys, unless
14 they refer to it. But I'll refer to it in the closing
01:38 15 instructions, too.

16 Go ahead, Mr. Carlson, you may proceed.

17 DEFENSE CLOSING ARGUMENT

18 MR. CARLSON: Ms. Lange has only presented you with a
19 lecture on policies and a policy quiz and a scolding for our
01:39 20 officers. It should be clear to you this is not a case about
21 complying with Oconto policies and it is not a case about
22 complying with Oconto Falls policies. The judge just read to
23 you the law and he said, "Police need not interfere, however, in
24 the decision of a private citizen to use his or her own child to
01:39 25 facilitate her communication."

1 All this stuff about the policy of Oconto, you can't
2 use kids, you shouldn't use kids, a policy about Oconto Falls
3 about you shouldn't use kids or you can't use kids, this is the
4 law, the judge has just told you what the law is, and it's not
01:40 5 what the previous performance basically said the law was.

6 This complaint, the prior performance, is based on a
7 false premise. The law also says:

8 "An officer is not required to seek the accompaniment
9 of a sign language interpreter when responding to an emergency
01:40 10 call. A police officer's priority in such a situation is to
11 maintain order and protect the public."

12 And a plaintiff must prove by a preponderance of the
13 evidence that the plaintiff requested an interpreter. What
14 evidence has Ms. Lange produced to you supporting the fact, her
01:41 15 assertion that she requested an American Sign Language
16 interpreter? One time. One time. And she is totally drunk
17 when she does it. Totally drunk.

18 At all times here Ms. Lange chose the method of
19 communication. She used her children to interpret. She could
01:41 20 also communicate by pen and paper. She could lip-read. She
21 could speak. She chose the method. As retired Chief Faith
22 said, "I used notes, she used her kids."

23 It's got this thing flipped totally upside-down. "The
24 police are using my kids as an interpreter." She's the one
01:42 25 that's offering and initiating the kids as an interpreter.

1 She's calling the kids down to interpret.

2 She stood before you and testified that she had
3 material limitations regarding writing. You saw samples of her
4 writing. By my recollection she later testified an hour later
01:42 5 that paper and pens are her best friends. This woman cannot be
6 truthful, does not understand the truth, and cannot tell the
7 truth.

8 She testified that she routinely requested an ASL
9 interpreter. That is simply not true. Simply not true. We had
01:43 10 the officers come up here because we needed a spectrum of
11 examples of her never requesting an ASL interpreter, having an
12 ability to communicate by note and pen. Effective communication
13 was never an issue unless Ms. Lange got agitated, screamed,
14 yelled, and simply failed to cooperate.

01:43 15 Let's look at May 30th. Ms. Lange is yelling and
16 screaming at Ralene thinking Ralene called the cops because of
17 noise. Ralene asked Officer Sowle to tell Ms. Lange that Ralene
18 didn't call the cops.

19 That's pretty sorry right there, to add that. Officer
01:44 20 Sowle used his notepad, he tried to communicate that Ralene did
21 not call the cops. He used his notepad to tell Ms. Lange to be
22 quiet. He used his notepad to ask her how much she had to
23 drink. She refused to look at it.

24 When everybody was settled down he left. He was
01:44 25 called again 15 minutes later. He heard yelling and screaming

1 from inside the house.

2 Douglas Wusterbarth told him Ms. Lange beat Ralene in
3 front of the house. Douglas Wusterbarth told you that Ms. Lange
4 beat Ralene in the front of the house. Ms. Lange lies when she
01:44 5 denies that.

6 Officer Sowle repeatedly attempted to communicate with
7 Ms. Lange by notepad, to be quiet, to go in the house. That's
8 all she had to do is just shut up and go in her own house. She
9 couldn't do it. She was told multiple times, shown the pad
01:45 10 multiple times, she was signed by Ralene. She just goes in the
11 house and shuts up, there's no arrest. She can't do it. And
12 she gets arrested. After she gets arrested she demands an ASL
13 interpreter.

14 That was just weaponizing the ADA, and you should all
01:45 15 be able to see that. She understood what was going on. The
16 communication was impossible because of Ms. Lange's behavior:
17 stone-faced drunk.

18 Her complaint afterwards is a complete denial and a
19 departure from reality. And she brings Brandon to the police
01:46 20 department to interpret when she asks for a complaint form. She
21 finishes it in less than a day. And she tells you that it took
22 three to four days. And she tells you she doesn't want her kids
23 ever involved in any of this stuff. There is not any truth in
24 anything Ms. Lange says.

01:46 25 November 13th. This is where Brandon calls an uncle

1 about being threatened by a knife. The uncle calls 911. Now,
2 you think why would Brandon call an uncle and not call 911
3 himself? Because he's risking getting beaten by Ms. Lange.
4 Because of the nature of the call, the seriousness of the call,
01:47 5 two sheriff's deputies assist. Ms. Lange claims the police were
6 there down the street and somehow happened to gaze up through
7 the Lange window and happened to see Jeremy and Renee laying
8 electronics cable that looked like fighting. That is not only a
9 lie, it is a really bad lie.

01:47 10 Officer Rank gets in there. Of course Officer Rank is
11 going to talk to Brandon, he was the one that called his uncle
12 about the situation. He was the victim. And when Brandon was
13 talking to the officer, Officer Rank, that Renee and Jeremy were
14 fighting, he was signing to Renee. She wanted to know what he
01:47 15 was telling Officer Rank.

16 That's why she got agitated, that's why she was
17 yelling and screaming at Brandon, and that's why she was pulling
18 and pushing Brandon. She didn't want Jeremy to go to jail or be
19 arrested.

01:48 20 She was totally uncooperative. That is the words of
21 Officer Rank: "Totally uncooperative." And she is sitting
22 before you and saying that she could not effectively
23 communicate. Brandon's testimony today is an untruthful
24 tragedy. It's not even worth talking about. It makes me sick.
01:48 25 Certainly it's involving kids. It's a tragedy.

1 The Lange train now moves to February 2nd and February
2 3rd. Jeremy Parmer punches Laurie King. She has injuries. She
3 identifies Parmer. Detective Kuhn went to the Lange residence
4 to arrest Parmer. Lange already knew there was an allegation
01:49 5 that Parmer punched Laurie King in the face. Ms. Lange
6 testifies that she had no idea why the police came.

7 Ms. Lange says Detective Kuhn forced entry into the
8 apartment and used Brandon as an interpreter and she didn't know
9 what he was saying or what was going on. I thought Detective
01:49 10 Kuhn specifically and in very detail described how she entered
11 the Lange apartment, and that it was Brandon let her in on the
12 bottom part and Ms. Lange and Brandon let her in the top part.

13 So we have Ms. Lange and Parmer yelling and screaming
14 and threatening Detective Kuhn. And Ms. Lange again stands
01:50 15 before you and says she could not communicate, there was no
16 effective communications, Ms. Lange threatening Laurie King and
17 also threatening Detective Kuhn.

18 Ms. Lange then creates a fake Facebook account that
19 same night. The dust hasn't even settled. She creates a fake
01:50 20 Facebook account and fake message purportedly from Laurie King
21 that she lied about Parmer punching her in the face. That's
22 that obscenity-laced message that's been read to you twice now.

23 She wants the police to come out right away to her
24 apartment to show her this harassing message by Laurie King.
01:51 25 The police don't come out. Ms. Lange goes in the next morning

1 with son Brandon to interpret and show Chief Olsen the fake
2 message from Laurie King that she lied about Parmer punching
3 her.

01:51 4 She was not invited there, not needed there, not
5 requested there. She brings Brandon to interpret. She tells
6 you that Brandon was needed there to be a witness. A witness to
7 what is questionable. And she testified again to you that she
8 doesn't want to involve her kids.

01:51 9 When it clearly appeared that Ms. Lange created a fake
10 message from Laurie, the police got a search warrant and
11 executed that warrant the exact same day later in the afternoon.
12 They show it to Ms. Lange. She says she didn't understand it.
13 It says "Search Warrant" right on it. It says what they're
14 looking for.

01:52 15 Now, a search warrant is a unique thing. It's already
16 signed by a judge. There's no debate about it, there is no
17 argument about it. You don't have a say in it. It doesn't make
18 any difference if you understand it. What you are supposed to
19 do is you're just supposed to sit aside or stand aside and let
01:52 20 the police execute the search warrant. What would an ASL
21 interpreter do if one had been called? Nothing.

01:53 22 So we have three contacts that involved volatility,
23 hostility, uncooperation, safety an issue. It is the officers'
24 call. If they think it is unsafe for an ASL interpreter, that
01:53 25 is their call. If they think it is unsafe for any person or

1 under any condition, they are the ones that control the
2 situation and they make the call, not Ms. Lange.

3 Ms. Lange had a video phone set up in her own
4 apartment for her own use that she could have used herself.

01:53 5 This idea about the police using their smartphones as some sort
6 of video interpreter is just -- can be flipped on its head and
7 why doesn't Ms. Lange use her own. To have the officers use
8 their phones is unrealistic and unsafe. As Detective Kuhn said,
9 "I don't want to have one hand tied up with my smartphone with
01:54 10 an interpreter for Ms. Lange."

11 These officers did a good job. They were all
12 truthful. They're officers that you would want patrolling and
13 protecting your communities.

14 MS. ALCALDE: Objection, Your Honor.

01:54 15 THE COURT: It's argument.

16 MR. CARLSON: There was effective communication in
17 every aspect of these claims that Mrs. Lange is bringing. And
18 if there weren't, it was directly the fault of Ms. Lange for
19 being hostile, screaming, and making it impossible to
01:54 20 effectively communicate. Don't let her do this. Don't let her
21 weaponize the ADA. Shut her out on all the claims.

22 The ADA is a good law. We all might need it. We all
23 might need its protections and safeties. If it's misused, if
24 it's abused, it's not going to get support. It's not going to
01:55 25 get credibility. Don't let Ms. Lange weaponize this and misuse

1 and abuse this important and beneficial law.

2 THE COURT: Thank you, Mr. Carlson.

3 MS. ALCALDE: Thank you, Your Honor.

4 THE COURT: Ms. Alcalde?

01:55 5 MS. ALCALDE: Thank you.

6 REBUTTAL CLOSING ARGUMENT

7 MS. ALCALDE: *She's a drunk. She's a stone-faced*
8 *drunk. She's an annoyance. She doesn't deserve communication*
9 *cause she's loud.* And just like I said, when counsel got up
01:56 10 here he'd talk about all these other incidents. We're here
11 about four. Not the day she went after. Not when she brought
12 her kid to interpret for her because she knew the police
13 department just doesn't have interpreters for her. We don't
14 know in these incidents what was provided, what wasn't provided.
01:56 15 We're here about four.

16 She is weaponizing her disability? She's weaponizing
17 it? Do you think she enjoys that she has to fight for her right
18 to have an interpreter? That she has to fight for her right to
19 not have her children be used? What a fun way to live.

01:57 20 She doesn't deserve these rights because, you know,
21 she called the police, because she's involved in all these
22 things. Well, that's exactly what these laws were made for, for
23 people -- I mean, we're not saying she lives in a white picket
24 fence. But the fact that they're attacking her as a drunk and a
01:57 25 belligerent and as someone who doesn't rise to the level of

1 deserving these services is astounding.

2 That I got up here in a performance of scolding the
3 officers? If that's how he took it, yes. The reason we're here
4 is to scold these officers. This is who you would want
01:58 5 patrolling your streets. Well, you know what? Maybe the City
6 of Oconto, who has recognized that they did wrong. And, you
7 know, we'll get to the policy.

8 No, this isn't about policy. This is about the
9 judge's ruling. "Officers should not rely on a minor child to
01:58 10 interpret or facilitate communication." The judge has read you
11 the instructions and you'll get a packet and you'll be able to
12 see that.

13 But these policies acknowledge that they made a
14 mistake. So are these the police officers you would want?
01:58 15 Maybe in the City of Oconto Falls where they recognize they've
16 made a mistake, they've done training, they acknowledge they
17 shouldn't behave this way. The City of Oconto has. The City of
18 Oconto Falls has just basically said we don't care. So are
19 these the police officers we want patrolling? Well, maybe not
01:58 20 if you're a deaf person. Maybe not if you're a person who is
21 going to be in need of services.

22 I mean, someone will call for a traffic ticket but not
23 for an arrest? For an interpreter for someone who speaks
24 Russian or Spanish but a person --

01:59 25 And they've acknowledged that ADA is a different

1 language. Their new policies acknowledge that they know they
2 were mistaken in what they did.

3 In an emergency call she requested an interpreter.
4 They keep saying that she wanted to use Brandon, but none of the
01:59 5 officers testified to that, for those four incidents. Talked
6 about the other times where she may have gone to the police to
7 submit a complaint or whatever and they made a big deal about
8 whether it was one day or two days.

9 She was arrested on May 30th, and that was submitted
01:59 10 on June 2nd. She told you she worked on it for a couple of
11 days. And even when you read it, you'll see it's full of
12 mistakes. And this was with the help of Google, with the help
13 of her kids.

14 But we're not here about whether she brought her kids
02:00 15 on those other days. We're here about those four days. Forget
16 the noise. You heard not a single ounce of testimony from any
17 of the officers that she chose to use her kid on those four
18 days.

19 At one time she requested an interpreter, but she was
02:00 20 totally drunk. You're not going to -- when you get this packet
21 nowhere is it going to say, and, oh, by the way, if the person
22 is drunk they're not entitled to effective communication. So
23 you're not gonna read that because that's not the law. The law
24 doesn't say that if someone has had drinks or is drunk they're
02:00 25 not entitled to rights. Their rights don't get flushed down the

1 toilet. Noise, ladies and gentlemen of the jury. Noise. Let's
2 block out the noise.

3 None of the officers he says, and then he admits
4 except one, admits that she asked for an interpreter. Maybe
02:01 5 he's the only one that was honest enough to admit it.

6 And I submit to you, I said from the beginning, look
7 at the demeanors of these officers. And Officer Sowle, even
8 though he was via video phone, I think you could tell how honest
9 he was and how he admitted she wanted an interpreter. He wasn't
02:01 10 fighting with any of our questions, he was answering them. He
11 was forthcoming, he said he made a mistake. He said he wishes
12 he could do it differently and he would do it differently. The
13 other officers that said she didn't request one are the ones
14 that said they would use five-year-olds as interpreters and
02:01 15 that's fine.

16 So let's look at the credibility. She said she
17 requested an interpreter every single time. Brandon, her son
18 said she requested an interpreter every single time.

19 You know, that May 30th incident, *just shut up and go*
02:02 20 *in and you won't get arrested. Shut up and go in.* No one
21 communicated that to her. And yes, she pushed away the note and
22 paper because she didn't want to communicate that way. They
23 never requested one.

24 Weaponizing her disability.

02:02 25 I mean, it would be laughable if it weren't so

1 insulting.

2 Stone-faced drunk. She doesn't deserve these rights.

3 We might need these rights. We are upstanding citizens, we --

4 It's not a pie, ladies and gentlemen of the jury.

02:02 5 Just because someone's rights are enforced doesn't mean anyone
6 else loses any more rights. As a matter of fact, if you tell
7 them here today that the ADA matters, that these rights matter,
8 it makes it stronger. It tells police departments and it tells
9 agencies that they have to honor the law; that they can't just
02:03 10 *too bad* and ignore it.

11 That November incident that he talks about, he's like,
12 oh, they wanted to talk -- the officer even -- Officer Rank said
13 he -- she might have been a victim too. He says he saw
14 fighting. Well, if that's the case, I mean, isn't it even more
02:03 15 important to make sure you get an interpreter?

16 You have the potential where a 14-year-old child is a
17 victim and his mother's a victim in a domestic violence case,
18 which we all know involves a lot of dynamics. And instead of
19 saying, you know what, let's make sure we get the right story
02:04 20 right now when it happened -- and we don't have to call in
21 someone to come in and be in danger, let's see if we can get
22 someone to interpret for her on the phone -- because, you know
23 what? I saw fighting between her. Brandon said he's afraid.

24 Instead of using him as an interpreter when he's a
02:04 25 child and a victim in a domestic violence issue in which his

1 mother is potentially also a victim, *no, come on, Brandon,*
2 *you're going to interpret now and I'm gonna make you the*
3 *spokesperson for the scene.*

02:04 4 That's not okay. That's just not okay. Using
5 children in this way is not okay. And I think all the incidents
6 are disturbing, but this particular incident is heartbreaking.

7 You know, bringing him here is a tragedy. Bringing
8 him here to recount what happened, what happened was a tragedy.
9 Him being forced into an administrative role of interpreter when
02:05 10 he was just a victim, that's the tragedy.

11 You know, he talked about Facebook account.
12 Facebook -- we don't have any evidence of that. And again,
13 that's more noise. That's not what's relevant here. We don't
14 have any evidence of any Facebook account. That's not what
02:05 15 we're here about. We're here about the incidents and the fact
16 that she didn't have effective communication; the fact that they
17 show up at her home with a warrant and tell her child to
18 interpret. They knew they were going. I mean, February 2nd's
19 bad enough because they're showing up at this house where they
02:06 20 know it's a deaf person and they're like, oh, you know,
21 14-year-old kid, we'll use you to interpret.

22 But February 3rd, I mean, they had just been there the
23 the night before. She had requested an interpreter and that's
24 why I think she finally had enough and told Brandon stop it.

02:06 25 That's the tragedy. The tragedy is that Brandon has

1 to sit there while they're rummaging through the home and have
2 the chief of police where him and his mother reside smirking and
3 laughing at his mother. That's the tragedy.

4 Defense counsel said what would an interpreter do if
02:07 5 one had been called, you know? What would they do? Remember,
6 ladies and gentlemen of the jury, civil rights are rights,
7 they're not privileges. They're not doing her a favor by
8 calling interpreters, they're supposed to call interpreters.
9 That's where we have to begin.

02:07 10 This wasn't an emergency situation going on. None of
11 these were really emergency situations. Even the arrest, which
12 is I guess -- you know, is -- the arrest was a noise complaint.
13 This isn't an emergency situation.

14 The November 14th incident, it's probably as close to
02:07 15 some kind of emergency, but even then when he arrived it's not
16 an emergency situation going on. And the child was the victim
17 in that situation. The mom was the victim in that situation.
18 As the victim of that situation they should absolutely -- they
19 should be entitled, even if they are the defendant like they
02:08 20 were on the May 30th incident, but on the November incident
21 they're the victims of the situation.

22 I mean, this isn't a situation she created. This is a
23 situation where she's a victim and they're still like, come
24 here, kid, you're going to be the spokesperson. He told you how
02:08 25 scared he was.

1 And I know defense counsel didn't want to even address
2 him during his closing because he's a kid who came here, a
3 special needs kid who came here and told you guys the truth.
4 Told you guys the truth. If he didn't remember he said I didn't
02:08 5 remember. He didn't make anything up. But he remembers he was
6 scared that day and he remembers especially that day he didn't
7 want to interpret.

8 "What would an interpreter do if they had been
9 called?", defense counsel said. We'll never know, ladies and
02:09 10 gentlemen of the jury, because the police department never
11 bothered to call. They never bothered to find out how they
12 could call. They just didn't even bother to see if that was an
13 option. It's not like it was thought of as an option and then
14 discounted because it was so hard or cumbersome. "No, I didn't
02:09 15 even think about it."

16 He came up here now, defense counsel, and said, "Well,
17 why can't she use her own phone?" Well, first of all, that's
18 not how it works. She's not supposed to provide the
19 interpretation. But for argument sake let's say she could use
02:09 20 her own phone. Chief Olsen told you something which I think
21 every police officer will agree with when I asked him:

22 "You don't let witnesses or defendants or people that
23 are potentially there use their cell phones, right?"

24 He even looked -- "No," because it's ridiculous.

02:10 25 "No." Police officers do not let them use their phones. They

1 start taking out their phones, it could be a weapon. They don't
2 let them take out their phone. So, no, she couldn't bring out
3 her phone and pull out services. What could happen to Brandon
4 if he decides to pull out a phone to help his mom? Someone
02:10 5 mistakes it for a weapon.

6 No, the police are supposed to provide the
7 interpreters. The police are supposed to provide the -- they're
8 the agency, they're the government agents. You're not going to
9 see anywhere in the instructions that, oh, well, unless they're
02:10 10 available to provide their own interpretation. That's not going
11 to be there.

12 It's unsafe for an ASL interpreter to go to the scene.
13 Well, they don't have to go. We have a lot of modern
14 technologies. As you saw, Zoom, they can testify through it.
02:11 15 There's phones.

16 You know, you're gonna get a verdict form. And I
17 submit to you that the answer to Question 1 is "Yes."

18 "Did the City of Oconto violate the Americans with
19 Disabilities Act on May 30th, 2016, by failing to provide an ASL
02:11 20 interpreter and thereby preventing Renee Lange from effectively
21 communicating with police?

22 "Yes."

23 Then you're going go down to Question 2. And that's a
24 different question. Damages. And she told you the reason she's
02:11 25 here is because she wants to make sure this doesn't happen and

1 that her grandkids have access to this. Damages is up to you to
2 decide.

3 We submit that Questions 1, 2, 3 -- we submit to you
4 that -- sorry, Questions 1, 3, 5, and 7, and 9, and 11, and 13,
02:12 5 and 15 are all answered yes. They violate both of these acts.

6 As to damages, you decide. You decide. But it's two
7 separate issues. You hold them accountable for what they did
8 wrong. You hold them accountable for just basically shrugging
9 their shoulders. *The ADA doesn't apply to drunk people. The*
02:13 10 *ADA doesn't apply to belligerent people. What good would an*
11 *interpreter have done?*

12 Those aren't the correct answers and that's not what
13 the law requires. No one's weaponizing the law, they just chose
14 to ignore it. And at least the City of Oconto has chosen not to
02:13 15 continue ignoring it, but the City of Oconto Falls seems to
16 completely ignore it, even now.

17 As far as damages are concerned, you decide what that
18 is. You decide what it's worth to feel like nothing. She says
19 she has anxiety; that she gets nervous when she sees police;
02:13 20 that her relationship with her kids is strained. Brandon's is
21 strained.

22 Ladies and gentlemen of the jury, you decide what the
23 value of a mother's relationship with her kids is worth. Even a
24 drunk. Even someone who from time to time has a drink. Even
02:13 25 someone who might not have been the perfect parent, who might

1 have been forced at some times when she went to the police
2 department to use her kid. You decide what her relationship
3 with her kids is worth. You decide what being made to feel like
4 nothing is worth. You decide what having the chief of police in
02:14 5 your town laughing at you like you were a nothing in front of
6 your child is worth.

7 But let's not confuse the two issues. One is damages
8 and you decide the worth of that, and the other is they did
9 wrong and they know it. One of the defendants admits it and the
02:14 10 other one doesn't, but they both did wrong.

11 And forget the noise and forget all the other
12 incidents. And forget Facebook and forget she's a drunk and
13 McDonald's and the birds. And forget all of that and focus on
14 what the judge is telling you to focus on, which is those four
02:15 15 days. We're not here about other days, we're here about those
16 four days.

17 And Ms. Lange deserves justice. And what these
18 departments did is not justice. What these defendants did is
19 not justice. They need to follow the law. They don't get to
02:15 20 pick and choose when they follow it. They don't get to pick and
21 choose what citizens get to have these rights and what citizens
22 don't get to have these rights.

23 Tell them that they have to follow the law because
24 this is a country of laws. And whether they like one or not or
02:15 25 shrug your shoulders, *I shouldn't have to provide*, it's not up

1 to them. That's what the law is.

2 And Ms. Lange, as much as they dislike her, deserves
3 to be able to understand, deserves to not have her kids used,
4 deserves a voice. Be her voice. Be her voice.

02:16 5 Thank you so much for all your time, ladies and
6 gentlemen of the jury.

7 THE COURT: Thank you, Ms. Alcalde.

8 CONCLUDING JURY INSTRUCTIONS

9 THE COURT: Now, members of the jury, this case is
02:16 10 ready to be submitted to you for your serious deliberation.
11 It's an important case. And it's important to the plaintiff,
12 Renee Lange, and it is important to the defendants, the City of
13 Oconto and the City of Oconto Falls. Consider the case fairly,
14 honestly, impartially, and in the light of reason and common
02:16 15 sense. Give each question in the verdict your careful and
16 conscientious consideration. In answering each question, free
17 your minds of all feelings of sympathy, bias, and prejudice.
18 Let your verdict speak the truth, whatever the truth may be.

19 Your verdict must represent the considered judgment of
02:17 20 each juror. In order to return a verdict, it is necessary that
21 each juror agree. Your verdict, in other words, must be
22 unanimous.

23 It is your duty, as jurors, to consult with one
24 another, and to deliberate with a view to reaching an agreement,
02:17 25 if you can do so without violence to individual judgment. You

1 must each decide the case for yourself, but only after an
2 impartial consideration of the evidence in the case with your
3 fellow jurors.

02:17 4 In the course of your deliberations, do not hesitate
5 to re-examine your own views, and change your opinion, if you
6 are convinced it is erroneous. But do not surrender your
7 honest conviction as to the weight or effect of the evidence
8 solely because of the opinion of your fellow jurors or for the
9 mere purpose of returning a verdict.

02:17 10 Remember, at all times that you are not partisans.
11 You are judges – judges of the facts. Your sole interest is to
12 seek the truth from the evidence in the case. And I remind you
13 that you may not bring into the jury room any research materials
14 or additional information; that includes dictionaries,
02:18 15 computers, electronic communication devices, or other reference
16 materials. You may not communicate in any way with anyone other
17 than jurors until you have reached your verdict.

18 There's no written transcript of the trial testimony
19 readily available for use during your deliberations. So we urge
02:18 20 you to rely primarily on your memory of the evidence and
21 testimony introduced during the trial as well as your notes.

22 As we've discussed, a form of the verdict has been
23 prepared for your convenience.

24 Certain questions in the verdict are to be answered
02:18 25 only if you have answered a preceding question in a certain

1 manner. Therefore, read the introductory portion of each
2 question very carefully before you answer it. Do not needlessly
3 answer questions.

02:18 4 Upon retiring to the jury room, you will select one of
5 your members to act as your foreperson. The foreperson will
6 preside over your deliberations, and will be your spokesperson
7 here in court.

8 You will take to the jury room the verdict form that
9 has been prepared for you. You must reach a unanimous verdict;
02:19 10 that is, all eight of you must agree on the answer to each
11 question. When you have reached unanimous agreement as to your
12 verdict, your foreperson will write in the verdict the answers
13 you have agreed upon and will date and sign the verdict, and
14 then all of you will then return with your verdict to the
02:19 15 courtroom.

16 I do not anticipate that you will need to communicate
17 with me. If you do, however, the only proper way is in writing,
18 signed by the foreperson, or if he or she is unwilling to do so,
19 by some other juror, and given to the bailiff. To have a
02:19 20 complete record of this trial, it is important that you not
21 communicate with me except by a written note.

22 If you have any questions, I will talk with the
23 parties before I answer, so it may take some time. You should
24 continue your deliberations while you wait for my answer. I
02:19 25 will answer your questions in writing or orally here in open

1 court.

2 You will note from the oath about to be taken by the
3 bailiff that he too, as well as all other persons, are forbidden
4 to communicate in any manner or way with any member of the jury
02:20 5 on any subject touching the merits of the case. Bear in mind
6 also that you are never to reveal to any person how the jury
7 stands, numerically or otherwise, until after you have reached a
8 unanimous verdict.

9 So at this time we will have the clerk swear the
02:20 10 bailiff or the court security officer.

11 (Bailiff sworn.)

12 THE COURT: We have extra copies of the instructions
13 and then the white is the form of the official verdict. That's
14 what you'll fill out. You may retire to the jury room to begin
02:21 15 your deliberations.

16 (Jury out for deliberations at 2:21 p.m.)

17 THE COURT: Be seated. The jury is now retired to the
18 deliberation room.

19 Anything to put on the record concerning instructions
02:21 20 as read, or argument, anything like that?

21 MS. ALCALDE: Just renew our previous arguments and
22 they're already on the record, Judge.

23 THE COURT: Okay. And in terms of exhibits now, I
24 think we should staple the pieces together, but how many
02:22 25 exhibits do we have? Are these the exhibits?

1 MS. LEHOCKY: We have clean copies.

2 THE COURT: Show them to the plaintiff and make sure
3 they're in agreement. And then I suggest assuming you're -- we
4 just send the exhibits in. Is that fine with everyone?

02:22 5 MS. LUBIN: That's fine, Your Honor.

6 THE COURT: We'll go in recess and if there's a
7 dispute you can let me know if there's any problem.

8 Let me just say now that we've completed the case,
9 it's going to the jury, thank you all for cooperating in this.

02:23 10 We got what could have been a much lengthier trial in much
11 faster. I appreciate the hard work. I hope we've done this
12 safely. But we're going to have to try cases, and I appreciate
13 the fact that you're willing to go ahead and do that.

14 MS. ALCALDE: I think this was as well done as it
02:23 15 could possibly be, Your Honor.

16 THE COURT: Good. Well, thank you all. We're in
17 recess.

18 (Recess taken at 2:23 p.m., until 3:21 p.m.)

19 THE COURT: Be seated.

03:21 20 So the jury sent out a note, two questions.

21 Question No. 1 is: "When did plaintiff file suit?"

22 Question No. 2 is: "Can we review the complaint?"

23 Signed by what I assume is the foreperson, Kelly

24 Kelly. If I recall right, was an attorney.

03:21 25 My inclination is to say you must decide the case on

1 the evidence in the record. Neither the date of filing nor the
2 complaint are part of the record. Any objection?

3 MR. CARLSON: No.

4 MS. ALCALDE: No.

03:22 5 THE COURT: Okay. We'll send in that note, I signed
6 it, and then we'll wait to hear from them. The clerk will
7 interpret my writing.

8 (Recess taken at 3:25 p.m., until 4:16 p.m.)

04:16 9 THE COURT: Okay, we've been advised that the jury
10 reached a verdict.

11 (Jury in at 4:17 p.m.)

12 THE COURT: Go ahead, be seated, ladies and gentlemen.
13 I understand the jury has reached a verdict. And Ms. Kelly, you
14 are the foreperson?

04:18 15 THE FOREPERSON: I am.

16 THE COURT: And you gave the verdict to the bailiff
17 and he's given it to me.

18 Okay. I'll read the verdict.

19 **VERDICT**

04:18 20 THE COURT: We, the jury, for our verdict, answer the
21 questions submitted as follows:

22 Question 1. Did the City of Oconto violate the ADA
23 act on May 30th, 2016, by failing to provide an ASL interpreter
24 and thereby prevent Renee Lange from effectively communicating
04:18 25 with police?

1 The answer is: No.

2 Question 3 then: Did they violate the Rehabilitation
3 Act by failing to provide effective communication on May 30th,
4 2016, when it did not provide an ASL interpreter to Renee Lange?

04:19 5 Answer: No.

6 Question 5: Did the City of Oconto Falls violate the
7 ADA on November 13th, 2016, by failing to provide an ASL
8 interpreter and thereby prevent Renee Lange from effectively
9 communicating with police?

04:19 10 Answer: No.

11 Question 7: Did the City of Oconto Falls violate the
12 Rehabilitation Act by failing to provide effective communication
13 on November 13th, 2016, when it did not provide an ASL
14 interpreter to Renee Lange?

04:19 15 Answer: No.

16 Question 9: Did they violate the ADA on February 2nd,
17 by failing to provide an ASL interpreter?

18 The answer is: No.

19 Question 11: Did they violate the Rehabilitation Act
04:19 20 by willfully failing to provide effective communication on
21 February 2nd, 2016, when they did not provide an ASL
22 interpreter?

23 The answer is: No.

24 Question 13: Did the City of Oconto Falls violate the
04:20 25 Americans With Disabilities Act on February 3rd, by failing to

1 provide an ASL interpreter and thereby prevent Renee Lange from
2 effectively communicating with police?

3 The answer is: No.

4 And Question 15: Did they violate the Rehabilitation
04:20 5 Act by willfully failing to provide effective communication on
6 February 3rd?

7 The answer is: No.

8 It's dated the 23rd of February (sic), 2020, and
9 signed by our foreperson, Ms. Kelly.

04:20 10 Ladies and gentlemen of the jury, is this your
11 verdict?

12 JURORS IN UNISON: Yes.

13 THE COURT: Anyone want to have the jury polled
14 further?

04:20 15 MS. ALCALDE: Yes, please, Your Honor.

16 THE COURT: Okay. What that means is I need to ask
17 you to state individually if this is your verdict. And we'll
18 start right here. Just say if this is your verdict say "yes,
19 this is my verdict"; if not, tell me otherwise.

04:20 20 A JUROR: Yes, this is my verdict.

21 A JUROR: Yes, this is my verdict.

22 A JUROR: Yes, this is my verdict.

23 A JUROR: Yes, this is my verdict.

24 A JUROR: Yes, this is my verdict.

04:20 25 A JUROR: Yes, this is my verdict.

1 A JUROR: Yes, this is my verdict.

2 A JUROR: Yes, this is my verdict.

3 THE COURT: Satisfactory?

4 MS. ALCALDE: Thank you, Your Honor.

04:20 5 THE COURT: Okay. Let me tell you, ladies and
6 gentlemen, your service in this case is complete. I want to, on
7 behalf of the parties and the Court, give you my very heartfelt
8 thanks for your participation in the process under the
9 circumstances where you're wearing a mask all day.

04:21 10 I know you gave the case very careful consideration,
11 and I certainly appreciate your willingness to serve under these
12 circumstances, under any circumstances frankly, but especially
13 under these.

14 You don't have to answer any questions about what went
04:21 15 on in the jury room, but you're no longer bound to remain silent
16 about it. You can talk about the case to anyone that you want
17 to, but you don't have to. So it's all up to you.

18 But you're free to go at this time with the thanks of
19 the Court as well as the parties. Appreciate your service.

20 A JUROR: Thank you.

21 THE COURT: Stay safe, everyone.

22 JURORS IN UNISON: You too.

23 (Jury discharged at 4:21 p.m.)

24 THE COURT: Okay. Anything to put on the record?

04:22 25 MS. ALCALDE: No, Your Honor, not from the plaintiffs.

1 THE COURT: Okay. I withheld ruling on the motion for
2 judgment. And I know that can be renewed and if there are
3 motions after verdict it can be renewed.

4 At this time I'll deny it, though. I'm satisfied that
04:22 5 there was a basis for this case to go to the jury; that there
6 was a reasonable basis for the jury to reach the verdict it did.

7 I think there were disputes over whether the defendant
8 asked for an interpreter. Even in the initial one from Oconto,
9 the request for an interpreter was after the arrest was made and
04:22 10 when she was being directed to the jail, taken to the jail.

11 The officer did notify dispatch that she had requested
12 an interpreter and there was no further interrogation. The
13 booking process -- I'm not sure who handled the booking process.
14 Normally it's the jail, but I'm not sure.

04:23 15 In any event, there was a basis upon which the jury
16 could find that there was effective communication in all of
17 these instances, and there was certainly a basis upon which the
18 jury could find that the officers did not rely on the child
19 interpreter. I'm not sure if that's a violation if there's
04:23 20 effective communication -- I mean, a violation that would be of
21 her rights.

22 But, in any event, there was a basis for the jury to
23 conclude that they acquiesced when the defendant requested an
24 interpreter that her children assist her in interpreting, and
04:23 25 didn't so much rely on it as she relied on it and as she

1 apparently has relied on her children as interpreter in many
2 interactions with police.

3 So I'm satisfied there's a basis here for the verdict
4 and so I'm going to deny the motion for a directed verdict.

04:24 5 I'll file the verdict with the clerk, direct entry of
6 judgment dismissing all claims against the defendants.

7 Anything else today?

8 MS. ALCALDE: No, Your Honor. Thank you very much.
9 We were told we could leave these in a particular room and we
04:24 10 could have our paralegal have a service pick them up on Friday?

11 THE COURT: Sure. Do you know where the room is?
12 Clerk will tell you. Sure.

13 MS. ALCALDE: Thank you.

14 THE COURT: Anything else?

04:24 15 MS. ALCALDE: No, Your Honor.

16 THE COURT: All right, thank you all.

17 MS. ALCALDE: Thank you very much.

18 THE COURT: We are concluded.

19 (Proceedings concluded at 4:24 p.m.)

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C E R T I F I C A T E

I, JOHN T. SCHINDHELM, RMR, CRR, Official Court Reporter for the United States District Court for the Eastern District of Wisconsin, do hereby certify that the foregoing pages are a true and accurate transcription of my original machine shorthand notes taken in the aforementioned matter to the best of my skill and ability.

Signed and Certified November 4, 2020.

/s/John T. Schindhelm

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