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**COURT OF APPEALS
DECISION
DATED AND FILED**

July 27, 2021

Sheila T. Reiff
Clerk of Court of Appeals

NOTICE

This opinion is subject to further editing. If published, the official version will appear in the bound volume of the Official Reports.

A party may file with the Supreme Court a petition to review an adverse decision by the Court of Appeals. See WIS. STAT. § 808.10 and RULE 809.62.

Appeal No. 2020AP877

Cir. Ct. No. 2017CV277

STATE OF WISCONSIN

**IN COURT OF APPEALS
DISTRICT III**

RACHEL SLABEY,

PLAINTIFF-APPELLANT,

v.

**DUNN COUNTY, WISCONSIN, DENNIS P. SMITH, BRENDA LAFORTE,
MARSHALL L. MULTHAUF AND PAUL GUNNESS,**

DEFENDANTS-RESPONDENTS,

**DUNN COUNTY SHERIFF'S OFFICE, RYAN BOIGENZAHN, JOHN DOE
ONE, JOHN DOE TWO AND JOHN DOE THREE,**

DEFENDANTS,

WISCONSIN COUNTY MUTUAL INSURANCE CORPORATION,

INTERVENOR.

APPEAL from a judgment of the circuit court for Dunn County:
MAUREEN D. BOYLE, Judge. *Affirmed.*

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Before Stark, P.J., Hruz and Seidl, JJ.

¶1 HRUZ, J. Rachel Slabey appeals a grant of summary judgment in favor of Dunn County (“the County”), Dennis Smith, Brenda LaForte, Marshall Multhauf, and Paul Gunness (collectively, the “Individual Defendants,” and together with the County, the “County Defendants”), dismissing her claims under 42 U.S.C. § 1983 (2018).¹ Slabey was sexually assaulted by correctional officer Ryan Boigenzahn while she was incarcerated in the Dunn County Jail. The circuit court dismissed Slabey’s complaint after determining there was no evidence upon which a reasonable fact finder could rely to conclude the County Defendants were deliberately indifferent to a substantial risk that Boigenzahn would sexually assault an inmate.

¶2 Slabey challenges that determination on appeal, asserting it was sufficient that the County had notice of prior disciplinary conduct involving Boigenzahn and, therefore, the County must have known that its policies forbidding fraternization and sexual contact with inmates were insufficient to protect inmates. We disagree, as the prior conduct (for which Boigenzahn was temporarily suspended) was not of a sexual nature. We also reject Slabey’s arguments that the circuit court erred by dismissing her claims against Dunn County Sheriff Dennis Smith in his personal capacity. Accordingly, we affirm.

BACKGROUND

¶3 Dunn County employed Boigenzahn as a correctional officer between April 2011 and May 2016. While on duty at the Dunn County Jail on

¹ All references to the United States Code are to the 2018 version unless otherwise noted.

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March 25, 2016, Boigenzahn entered Slabey's dorm room and lingered there, talking to her and her cellmate for a considerable period of time. He then sexually assaulted Slabey while she was in the top bunk by touching her genital area underneath her clothing. The general area of the dorm room was under video surveillance, but the area where the assault occurred was outside of camera view.

¶4 Although Slabey did not immediately report the sexual assault, Boigenzahn was terminated from his employment in May 2016 after receiving a romantic note from another inmate without disclosing his receipt of that communication. When Slabey learned of Boigenzahn's termination, she reported the sexual assault that had occurred in March. Boigenzahn was later charged in Dunn County case No. 2016CF216, and he was convicted of second-degree sexual assault by a correctional staff member, in violation of WIS. STAT. § 940.225(2)(h) (2019-20).²

¶5 In 2017, Slabey commenced the present action against various parties, including the County and Smith. Slabey sued Smith both in his personal capacity and in his capacity as the sheriff. Chief deputy sheriffs Paul Gunness and Marshall Multhauf, and the captain of the Dunn County Jail, Brenda LaForte, were also sued in their personal and official capacities.

¶6 As relevant here, Slabey brought Eighth and Fourteenth Amendment claims under 42 U.S.C. § 1983, alleging that: (1) the conditions of her confinement exposed her to a substantial risk of harm; (2) the lack of appropriate correctional policies and training amounted to deliberate indifference to her civil

² All references to the Wisconsin Statutes are to the 2019-20 version unless otherwise noted.

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rights; and (3) the failure to protect her from unreasonable harm constituted a substantive due process violation. Slabey sought monetary damages, as well as declarative and injunctive relief in the form of training and policy changes.

¶7 The County Defendants filed a summary judgment motion seeking the dismissal of Slabey’s claims. The circuit court noted it was undisputed that Boigenzahn had received training regarding sexual misconduct, and also that he had been disciplined in a prior instance when he had violated the jail’s fraternization policy in 2015. Nonetheless, the court determined that no reasonable fact finder could conclude that the County Defendants should have inferred “that Boigenzahn’s [prior violations] would escalate to sexual assault” or that they demonstrated deliberate indifference to the risk that Boigenzahn would commit sexual assault. The court also concluded that “[t]here is no evidence that [the County’s] training practices were constitutionally deficient and that the County was aware of the deficiency and failed to abate the deficiency. Boigenzahn simply disregarded all of the training and policies when he made the decision to assault Slabey.” Finally, the court determined there was no evidence demonstrating that the Individual Defendants were personally involved in the assault on Slabey, and, in any event, the County Defendants were entitled to qualified immunity. Slabey now appeals.

DISCUSSION

¶8 We review a grant of summary judgment de novo. *Chapman v. B.C. Ziegler & Co.*, 2013 WI App 127, ¶2, 351 Wis. 2d 123, 839 N.W.2d 425. Summary judgment must be granted if the pleadings, depositions, answers to interrogatories, admissions and affidavits demonstrate that there is no genuine

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issue as to any material fact and that the moving party is entitled to judgment as a matter of law. WIS. STAT. § 802.08(2).

¶9 We apply the same two-step summary judgment methodology as the circuit court. *Chapman*, 351 Wis. 2d 123, ¶2. We first examine the pleadings to determine whether a claim has been stated and whether the pleadings join issue. *Id.* If so, we examine the parties' evidentiary submissions to determine whether there are any genuine issues of material fact. *Id.* Evidentiary materials, including the inferences to be drawn from them, are viewed in the light most favorable to the nonmoving party. *AccuWeb, Inc. v. Foley & Lardner*, 2008 WI 24, ¶16, 308 Wis. 2d 258, 746 N.W.2d 447.

I. Municipal Liability

¶10 Title 42 U.S.C. § 1983 authorizes private parties to bring suit against government entities and officials who violate their federal constitutional rights while acting under color of state law.³ Official-capacity suits against officers and officials are generally treated as suits against the entity. *Kentucky v. Graham*, 473 U.S. 159, 165-66 (1985). A proper analysis of local government liability under 42 U.S.C. § 1983 requires that we consider two separate issues. We must first ascertain whether the plaintiff's harm was caused by a constitutional violation.

³ Title 42 U.S.C. § 1983 provides, in pertinent part:

Every person who, under color of any statute, ordinance, regulation, custom, or usage, of any State or Territory or the District of Columbia, subjects, or causes to be subjected, any citizen of the United States or other person within the jurisdiction thereof to the deprivation of any rights, privileges, or immunities secured by the Constitution and laws, shall be liable to the party injured in an action at law, suit in equity, or other proper proceeding for redress.

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Collins v. City of Harker Heights, Tex., 503 U.S. 115, 120 (1992). If so, we must then determine whether the municipality is responsible for that violation. *Id.*

¶11 There are two constitutional predicates upon which Slabey relies. The first is the Eighth Amendment’s prohibition on cruel and unusual punishment, which encompasses treatments that are incompatible with “evolving standards of decency” or that involve the “unnecessary and wanton infliction of pain.” *Estelle v. Gamble*, 429 U.S. 97, 102-03 (1976) (citations omitted). The second is the Fourteenth Amendment’s guarantee that a person will not be deprived of life, liberty or property without due process, which has been held to include a guarantee that “when the State takes a person into its custody and holds [the person] there against his [or her] will, the Constitution imposes upon it a corresponding duty to assume some responsibility for [the person’s] safety and general well-being.” *DeShaney v. Winnebago Cnty. Dep’t of Soc. Servs.*, 489 U.S. 189, 199-200 (1989). As a practical matter, though, there is little difference between the standards developed to effectuate these two constitutional provisions. *Mayoral v. Sheahan*, 245 F.3d 934, 938 (7th Cir. 2001).

¶12 To demonstrate a constitutional violation related to the conditions of her confinement, Slabey needed to present evidence at the summary judgment stage that would allow a fact finder to reasonably conclude that one or more prison officials displayed a “deliberate indifference” to a substantial risk of serious harm to her. *See Farmer v. Brennan*, 511 U.S. 825, 828, 834 (1994). Deliberate indifference requires: (1) an objective showing that the person was incarcerated under conditions imposing a serious risk of harm; and (2) knowledge of, and disregard for, the risk on the part of the defendants. *Palmer v. Marion Cnty.*, 327 F.3d 588, 593 (7th Cir. 2003).

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¶13 Deliberate indifference requires more than a showing of mere negligence. *Farmer*, 511 U.S. at 835. The second prong is subjective and requires that “the official must both be aware of facts from which the inference could be drawn that a substantial risk of serious harm exists, and he [or she] must also draw the inference.” *Id.* at 837. In other words, the official must have actual knowledge of the risk of harm in order to be considered to have acted with callous disregard for the prisoner’s rights. See *Lewis v. Richards*, 107 F.3d 549, 554 (7th Cir. 1997). To draw the required inference, there must be a strong likelihood, rather than a mere possibility, that harm will come to the prisoner. *Pinkston v. Madry*, 440 F.3d 879, 889 (7th Cir. 2006).

¶14 As a result, we must examine what was known to Dunn County jail officials prior to Boigenzahn’s sexual assault of Slabey. It is undisputed that Boigenzahn was, at the time of the assault, certified as a jail officer by the Law Enforcement Standards Board. It is also undisputed that the jail had in place the following written policies: (1) Policy No. 200-17-0, which prohibited correctional staff from fraternizing or having a relationship with inmates (including personal contacts and communication or social, physical or romantic relationships); and (2) Policy No. DC1700.5, which prohibited sexual misconduct, including “indecent, profane or abusive language or gestures, inappropriate visual surveillance of inmates, making sexually offensive comments or gestures, [or] engaging in physical conduct of a sexual nature with an inmate.”

¶15 Boigenzahn acknowledged as recently as December 2015 that he had read and understood the sexual misconduct policy. He also received regular training on jail policies. Indeed, Boigenzahn had received training in the days immediately preceding his assault on Slabey that included a briefing on the provisions of the Prison Rape Elimination Act of 2003 (“PREA”), a law intended

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to deter the sexual abuse of prisoners. *See* 34 U.S.C. §§ 30301-30309. The briefing discussed four recent Wisconsin cases involving sexual contact between correctional staff and inmates—all in other counties—and noted “[t]here aren’t any reports of inmate-inmate sexual assaults or staff sexual misconduct” in Dunn County. The materials reminded attendees that sexual contact between staff and inmates was both a violation of administrative law and a criminal offense.

¶16 Slabey primarily focuses on “multiple allegations of Boigenzahn’s policy violations” prior to the March 25, 2016 assault. On August 6, 2015, Beth Mittelstadt, an inmate, informed sergeant Douglas Ormson that another correctional officer was “too chummy with some of the females, especially Inmate [Angela] Draxler.” She stated that she thought the officer was “in danger of ‘crossing the line.’” Ormson confirmed Mittelstadt was speaking about Boigenzahn, and he asked her to elaborate.

¶17 Mittelstadt told Ormson that she had witnessed Draxler playfully slap Boigenzahn on the chest while the two were speaking in the dorm. Mittelstadt did not believe anything else had happened between them, but she said that “if there was an opportunity where there were no cameras around she felt something might happen.” Mittelstadt noted that Boigenzahn seemed willing to talk to female inmates and speculated that because he was young, he might like their attention. Ormson again asked if Mittelstadt had witnessed or heard rumors of any type of sexual relationship between inmates and Boigenzahn, and she said “she hadn’t but again said her feeling was that was a possibility if things progressed.” She stated Boigenzahn was a good officer but appeared to be “playing favorites” amongst the inmates.

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¶18 Following Mittelstadt’s report, Ormson discussed the matter with sergeants Michael Owens and Rachel Vold. Owens advised Ormson that he had filed an incident report on July 31, 2015, regarding a complaint by inmate Jana Weaver-Blume. Weaver-Blume suggested that Owens “keep a close eye” on the male correctional officers. Owens asked if an officer was developing a relationship with an inmate, and Weaver-Blume responded, “[N]o, nothing like that.” She instead told Owens that one of the officers—she later confirmed it was Boigenzahn—was helping pass notes between a male inmate and a female inmate. Weaver-Blume said she had witnessed Boigenzahn enter the female inmate’s cell, which she thought was “weird.” He appeared to have something in his hand, which he placed in the cell door, and the inmate picked it up. Weaver-Blume had previously witnessed Boigenzahn place some request slips under the inmate’s cell door with messages from a male inmate. Owens reviewed camera footage and saw Boigenzahn enter the female inmate’s cell, but he did not notice anything out of the ordinary. Owens also listened to the relevant inmates’ phone conversations placed from the jail and determined that “[n]one of the lengthy conversations revealed any indication that an officer was involved in helping them communicate.” In all, Owens concluded the allegation was factually unsupported.

¶19 Sergeant Vold investigated Mittelstadt’s allegations of improper conduct between Draxler and Boigenzahn. Vold began by reviewing two weeks of camera footage. She discovered two incidents that raised concern. The first incident occurred on July 29, 2015, when Boigenzahn was in the dorm providing inmates with medications. Boigenzahn was outside of camera range for a few minutes, then returned to the camera view when another officer entered with the inmates’ breakfast. As Draxler grabbed her breakfast bag, Boigenzahn “reach[ed]

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out with his foot and step[ped] on her foot. She then step[ped] back on his foot. It appear[ed] to be something done in a playful sort of manner.”

¶20 The second recorded incident that Vold observed occurred on August 6, 2015, when Boigenzahn entered the dorm area with an officer in training. After the other officer left, Boigenzahn propped the dorm door shut and gestured with his head and right arm, as if motioning to someone to come in his direction. Draxler then came running to Boigenzahn. It was unclear from the video why Boigenzahn had motioned to Draxler, but as she walked away from him she brushed his shoulder and chest area with her hand. Boigenzahn then stood in the dorm for a few minutes before leaving.

¶21 Based upon the surveillance footage, captain LaForte directed Vold to interview Draxler. Vold advised Draxler that there should never be physical contact between inmates and jail staff. Upon further questioning, Draxler stated that Boigenzahn made her feel uncomfortable. She told Vold that three months earlier, she and Boigenzahn had accidentally bumped hands. Draxler apologized to Boigenzahn and pulled her hand back, and Boigenzahn responded that “it was alright” and he “didn’t mind.” Draxler stated that other female inmates had told her Boigenzahn seemed to be “obsessed with her” and he would sometimes stand and watch her sleep. She stated he sometimes “just lingered too long.” Vold asked Draxler if there had ever been any conduct other than Boigenzahn’s statements or watching her that made her feel uncomfortable, and Draxler said no. Vold then forwarded her report to LaForte.

¶22 LaForte and chief deputy Gunness interviewed Boigenzahn on August 10, 2015, about the allegations and investigation. Boigenzahn initially denied passing notes between inmates, but he admitted to doing so when he was

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reminded that being untruthful would result in termination. Boigenzahn was shown the surveillance footage of his interactions with Draxler. Boigenzahn denied engaging in inappropriate conduct with Draxler and explained he tried to have cooperation or a rapport with inmates, but he stated he understood he needed to be sterner if an inmate were to touch him. Boigenzahn stated he made a “dumb mistake” passing the note and it would not happen again.

¶23 Following the investigation, Gunness concluded that Boigenzahn had violated the jail’s fraternization and unbecoming conduct policies by his interactions with Draxler on July 29 and August 6, 2015, and by his passing of notes from a male inmate to a female inmate. As a result, he was suspended for three days without pay on August 26, 2015. Boigenzahn was also warned that if he failed to “observe all the rules and procedures of [his] job,” he would “subject [him]self to further disciplinary action, including discharge and termination of [his] employment with the County.” It is undisputed that no misconduct was observed by, or reported to, jail officials either prior to the July 29, 2015 incident or after Boigenzahn’s discipline in August 2015.

¶24 In Dennis Smith’s eighteen years as Dunn County sheriff, there had not been any prior incidents of “sexual interaction between a [correctional officer] and an inmate.” A correctional officer had previously been found to have violated the fraternization policy based upon intimate conduct with an inmate who had been released, but no misconduct occurred at the jail. That officer resigned rather than face discipline. Similarly, two female correctional officers had also previously resigned for violations of the fraternization policy. One officer resigned after an investigation into note passing revealed that she had been visiting a former Dunn County inmate after he was transferred to another county’s jail. The other officer resigned after she was discovered to have been in a car with an

inmate in the jail's parking lot. Smith testified that violations of the fraternization policy usually result in termination, but that he considered "the whole circumstances" when determining the appropriate punishment.

¶25 The circuit court correctly concluded that there was insufficient evidence to support a determination in Slabey's favor under the "deliberate indifference" standard. Taking all of the facts in the light most favorable to Slabey, no reasonable fact finder could conclude there was a serious risk that Boigenzahn's conduct would escalate to the sexual assault of an inmate. Although Mittelstadt had vaguely alluded to the possibility that Boigenzahn's conduct might cross a line, and Weaver-Blume suggested that staff "keep a close eye" on Boigenzahn, their comments did not suggest or indicate any sexual misconduct by Boigenzahn. Indeed, both inmates denied that they were aware of any improper relationships between inmates and jail staff. Jail officials were aware that Boigenzahn was somewhat flirtatious and would linger around female inmates, making them feel uncomfortable. Jail staff investigated these inmate concerns and discovered two recorded instances of seemingly "playful" physical contact between Draxler and Boigenzahn—conduct that, though proscribed, was not inherently sexual in nature, and certainly not akin to the assault Boigenzahn ultimately inflicted upon Slabey.

¶26 Slabey contends that the physical contact between Draxler and Boigenzahn was, in fact, a violation of the jail's sexual misconduct policy. She alleges that the only reason there was no documentation of sexual misconduct violations was because "Dunn County minimized and deliberately mischaracterized Boigenzahn's conduct." As Slabey notes, though, the policy defined sexual misconduct in broad terms, prohibiting not just sexual contact but also a range of behaviors including "inappropriate remarks, sexualized

name-calling, correspondence, conversations, [and] inappropriate displays.” That some of Boigenzahn’s conduct could arguably be categorized as “sexual misconduct” for purposes of a jail policy is not a fact from which a reasonable fact finder could conclude that the County was deliberately indifferent to a serious risk that Boigenzahn would commit sexual assault against an inmate.

¶27 Moreover, it is undisputed that Boigenzahn was punished for his fraternization violations. He was suspended for three days without pay and reminded of his obligations under jail policy. After his suspension, there were no further instances of misconduct observed by, or reported to, jail officials. Boigenzahn also continued to receive various training, including watching a PREA training video and completing a quiz in November 2015, reading and acknowledging his understanding of the sexual misconduct policy in December 2015, and attending a meeting with the County’s corporation counsel that included PREA training in March 2016. Even assuming that jail officials did view Boigenzahn’s conduct as creating a substantial risk of harm to female inmates, liability cannot be imposed “if they responded reasonably to the risk, even if the harm ultimately was not averted.” *See Farmer*, 511 U.S. at 844.

¶28 Slabey highlights several things she believes jail officials could have done to prevent her sexual assault. For example, she contends jail officials could have increased Boigenzahn’s supervision, more thoroughly investigated his conduct, or terminated his employment. But the question is not whether jail officials might have taken some other course of action that would have ensured Slabey’s safety. Rather, we assess whether the actions the officials actually took evidenced a deliberate indifference to a serious risk of harm of which they were aware. Merely pointing out that more could have been done does not necessarily demonstrate that the measures the County did take were unreasonable.

¶29 Slabey also notes that Boigenzahn did, in fact, engage in further flirtatious and sexual misconduct with an inmate after he was suspended in August 2015, but before her assault. During his deposition, Boigenzahn acknowledged flirting with a female inmate, which eventually resulted in her sending him topless photographs after she was released. There is no evidence, however, that the County was or should have been aware of this incident. Accordingly, it is not evidence from which a reasonable fact finder could conclude the County was deliberately indifferent to any serious risk of harm that Boigenzahn presented.

¶30 Circumstantial evidence can be used to establish subjective awareness and deliberate indifference. *Thomas v. Cook Cnty. Sheriff's Dep't*, 604 F.3d 293, 302 (7th Cir. 2010). But here, even the circumstantial evidence Slabey has offered is insufficient to support a determination that the County was deliberately indifferent to a substantial risk that Boigenzahn would sexually assault an inmate. Nor is this a case where the “single-incident” theory of liability is appropriate, and no risk of constitutional harm was “so obvious,” as amicus Wisconsin Association for Justice contends. Only in rare instances can liability based on a failure to train or supervise be predicated on an obvious risk without proof of a pre-existing pattern of violations. See *Connick v. Thompson*, 563 U.S. 51, 64 (2011).

¶31 Slabey argues that this case is factually analogous to two federal court decisions which upheld jury verdicts finding municipal liability based upon sexual assaults of inmates by correctional staff. See *Cash v. County of Erie*, 654 F.3d 324 (2d Cir. 2011); *J.K.J. v. Polk Cnty.*, 960 F.3d 367 (7th Cir. 2020) (en banc), cert. denied sub nom., *Polk Cnty., Wis. v. J.K.J.*, 141 S. Ct. 1125 (2021). In *Cash*, the Second Circuit determined that there was sufficient evidence of

deliberate indifference to the risk of a sexual assault based on a single prior allegation of sexual contact between a correctional officer and an inmate approximately three years prior. *Cash*, 654 F.3d at 336, 345. The court held that this prior instance of alleged sexual contact should have “alerted defendants that they could not rely simply on [correctional officers’] awareness of a no-tolerance policy to deter sexual misconduct.” *Id.* at 336. Moreover, the court held that even though the allegation may have involved less-egregious sexual contact than rape, the allegation was sufficient to demonstrate to correctional officials that their policies were inadequate to safeguard the inmates under their care. *Id.* at 337. The court noted expert testimony adduced at trial that highlighted the risk of “unmonitored one-on-one interactions” between male correctional staff and female inmates. *Id.* at 338.

¶32 *Cash* is factually distinct from Slabey’s case for two material reasons. First, *Cash* involved prior allegations of sexual behavior by correctional officers in the respective jail, one of whom later sexually assaulted an inmate. *Cash*, 654 F.3d at 336-37. The investigation revealed that “at best,” a female inmate repeatedly engaged in sexual exhibitionism in front of various correctional officers, all of whom failed to report the activity and some of whom may have paid for it. *Id.* at 336. Despite the inmate’s “dubious credibility,” the investigators thought it likely that prohibited sexual activity occurred. *Id.* Unlike in *Cash*, Slabey has not identified any previous instances of sexual behavior in the Dunn County Jail. As previously discussed, none of the previous instances of fraternization by other correctional officers in the Dunn County Jail involved sexual behavior within the jail. Moreover, Boigenzahn’s previous conduct—note passing, playfully touching his foot to an inmate’s foot, and allowing an inmate to brush his chest—was not inherently sexual in nature.

¶33 *Cash* is also distinguishable because the plaintiff in *Cash* presented expert testimony regarding the defendants' need to prohibit unmonitored one-on-one interactions between correctional officers and inmates, and how the previous allegations of sexual activity should have alerted the defendants that current policies were inadequate. *Id.* at 338. Slabey, however, did not submit any expert evidence in opposition to summary judgment that the County's policies were inadequate to prevent sexual assault. Nor did she submit any evidence that the previous fraternization allegations in the County should have alerted the County to any alleged inadequacies in the County's policies involving sexual misconduct.

¶34 *J.K.J.* also involved circumstances markedly different from those here. In *J.K.J.*, two female plaintiffs endured repeated sexual assaults at the hands of Polk County correctional officer Darryl Christensen over the course of three years. *J.K.J.*, 960 F.3d at 370-71. The court determined that sufficient evidence existed to "conclude that Polk County deliberately chose a path of inaction when that option was off the table." *Id.* at 384. In reaching this conclusion, the court discussed the inherent risk of sexual assault that female inmates face, but it also emphasized Polk County's awareness of sexual misconduct happening within its jail, rendering the risk of sexual assault "far from hypothetical." *Id.* at 382.

¶35 Specifically, the jury in *J.K.J.* heard testimony regarding the jail's culture and how a captain of the jail—someone responsible for creating and implementing the jail's policies and standards—knew about, and participated in, inappropriate talk about female inmates. *Id.* The jury also heard testimony that Polk County knew of a different correctional officer who sexually exploited a female inmate by watching her shower, asking her to expose herself, and forcibly touching her in a sexual manner. *Id.* In response to the officer's conduct, Polk

County issued a written reprimand, but it assured him that it was “not a big deal.” *Id.* at 383. With knowledge of sexual exploitation in the jail, Polk County “did not change its sexual abuse policy, institute a training, inquire of female inmates, or even call a staff meeting.” *Id.* Even if Polk County believed its policies and training to be adequate—and an expert testified they were not—the court concluded that such belief was untenable after learning about the other correctional officer’s sexual misconduct. *Id.*

¶36 Unlike in *J.K.J.* where the correctional officer’s assaults persisted for three years without detection or prevention, *id.* at 371, Slabey has not identified any previous sexual abuse by Boigenzahn toward her or any other inmate. Moreover, at the same time the sexual assaults occurred in *J.K.J.*, Polk County knew of another correctional officer engaging in sexual misconduct by watching an inmate shower and forcibly touching her waist and buttocks. *Id.* at 372-73, 382. Again, Slabey did not identify any previous instances of known sexual abuse or misconduct by a correctional officer in Dunn County. Finally, the court in *J.K.J.* relied on the jail’s culture and how sexually inappropriate banter between correctional officers—conduct known to Polk County—demonstrated an undeniable risk that a correctional officer would grow too comfortable and step over the clear line in the written policies. *Id.* at 382. Slabey did not submit any analogous evidence of a known, concerning culture among correctional officers in Dunn County that would be conducive to an officer violating written policies against sexual misconduct so as to lead to the strong likelihood that Boigenzahn would commit a sexual assault.

¶37 Slabey next argues the circuit court erred by making findings on disputed issues of fact. She fails to highlight, however, any disputed factual issues, citing only to her memorandum opposing the summary judgment motion,

which is not evidence. See *State v. Bean*, 2011 WI App 129, ¶24 n.5, 337 Wis. 2d 406, 804 N.W.2d 696 (“Trial court briefs are not evidence.”). We do not consider issues supported by only general statements. *State v. Pettit*, 171 Wis. 2d 627, 646, 492 N.W.2d 633 (Ct. App. 1992). In any event, as noted above, our review on a grant of summary judgment considers the facts in the light most favorable to the non-moving party, *AccuWeb, Inc.*, 308 Wis. 2d 258, ¶16, which we have done here. On this record, Slabey’s claim fails as a matter of law.

¶38 In *Monell v. Department of Social Services of City of New York*, 436 U.S. 658, 690-91 (1978), the Supreme Court concluded that municipalities and other local government units can be liable under 42 U.S.C. § 1983, though not under a respondeat superior theory. All told, to establish the County’s liability, Slabey must prove that: (1) she suffered a deprivation of a federal right; (2) as a result of either an express municipal policy, widespread custom, or deliberate act of a decision-maker with final policy-making authority for the County; which (3) was the proximate cause of her injury. See *Ienco v. City of Chicago*, 286 F.3d 994, 998 (7th Cir. 2002).

¶39 A substantial portion of Slabey’s arguments is directed toward establishing that there was an informal custom or policy of ignoring dangers to female inmates, so as to make the County liable under 42 U.S.C. § 1983. Although Slabey undoubtedly suffered serious harm during her confinement, she has not presented facts upon which a reasonable fact finder could conclude that officials acted with deliberate indifference to the risk of that harm. Accordingly, the County cannot be deemed responsible for the alleged Eighth and Fourteenth Amendment violations.

II. Personal Liability of Sheriff Dennis Smith

¶40 Slabey next argues that Smith is personally liable because he participated in Boigenzahn’s discipline and supervision. When a government official is sued in his or her official capacity, the suit is treated as though it is against the municipality. *Selerski v. Village of W. Milwaukee*, 212 Wis. 2d 10, 17, 568 N.W.2d 9 (Ct. App. 1997). “Personal-capacity suits, on the other hand, seek to impose individual liability upon a government officer for actions taken under color of state law.” *Hafer v. Melo*, 502 U.S. 21, 25 (1991). In a suit seeking the imposition of personal liability, the monetary damages are paid by the individual, not the government. *Id.* at 27, 30-31. Accordingly, a plaintiff need not establish that the governmental entity’s policy or custom played a role in the violation of federal law, unlike when a plaintiff brings an official-capacity suit. *Id.* at 25. A plaintiff must establish, however, that the individual “had some personal involvement in the alleged constitutional deprivation.” *Williams v. Shah*, 927 F.3d 476, 482 (7th Cir. 2019). An individual cannot be personally liable under a theory of respondeat superior. *Arnett v. Webster*, 658 F.3d 742, 757 (7th Cir. 2011).

¶41 Oddly, Slabey’s argument regarding Smith’s personal liability focuses almost exclusively on whether Smith had policymaking authority and what he did with that authority—a question that is irrelevant to a personal-capacity claim.⁴ The cases Slabey cites involve a government’s liability under *Monell*, not the personal liability of the government actor. See *Ball v. City of Indianapolis*,

⁴ In particular, Slabey notes that Smith was “directly and personally involved in the [C]ounty’s decision not to terminate Boigenzahn in August 2015 and not to modify Boigenzahn’s work schedule or increase his level of supervision upon his return to work.”

760 F.3d 636, 643 (7th Cir. 2014); *Valentino v. Village of S. Chicago Heights*, 575 F.3d 664, 675 (7th Cir. 2009). If Smith is a policymaker for the County, as Slabey contends and the County Defendants concede, then her claim truly does lie against the County, not Smith personally. See *Bradley v. Village of Univ. Park, Ill.*, 929 F.3d 875, 885 (7th Cir. 2019). Accordingly, her claim on this point fails.

III. Qualified Immunity

¶42 Slabey also appeals the circuit court's application of qualified immunity. Qualified immunity shields public officials from liability for civil damages if their actions were objectively reasonable, as evaluated in the context of "clearly established" legal rules at the time of the conduct in question. *Poe v. Leonard*, 282 F.3d 123, 132 (2d Cir. 2002). Qualified immunity is purely a function of personal liability; the Supreme Court has authoritatively determined that governmental bodies, as opposed to officials, do not enjoy qualified immunity from actions seeking damages. *Hedge v. County of Tippecanoe*, 890 F.2d 4, 8 (7th Cir. 1989).

¶43 Thus, to the extent the circuit court concluded the County was entitled to qualified immunity, we agree with Slabey and the amicus Wisconsin Association for Justice that such a determination was in error. However, because there was insufficient evidence to create a triable issue regarding the County's liability for Slabey's assault under 42 U.S.C. § 1983, the court's error does not undermine the validity of the court's grant of summary judgment.

¶44 To the extent Slabey argues the circuit court erred by determining that the Individual Defendants were entitled to qualified immunity, we have no need to reach that issue. Again, to establish a personal-capacity claim, the plaintiff

must allege the individual “had some personal involvement in the alleged constitutional deprivation.” *Shah*, 927 F.3d at 482.

¶45 Slabey has attempted—albeit unsuccessfully—to demonstrate only that Smith bore some personal culpability in the circumstances that led to her sexual assault. She has not provided any basis on appeal to conclude that any of the other Individual Defendants participated in the alleged deprivation of her constitutional rights. Accordingly, even if the circuit court’s qualified immunity determination was in error, Slabey’s failure to advance any argument that the remaining government officials were personally involved in the relevant events is fatal to her claims. We therefore need not determine whether the court properly applied qualified immunity to the Individual Defendants.

By the Court.—Judgment affirmed.

Not recommended for publication in the official reports.

FILED
04-28-2020
Dunn Co. Circuit Court
Dunn County, WI
2017CV000277

DATE SIGNED: April 28, 2020

Electronically signed by Maureen D. Boyle
Circuit Court Judge

STATE OF WISCONSIN
CIRCUIT COURT
DUNN COUNTY

RACHEL SLABEY

Plaintiff

v.

Case No. 17-CV-277

Case Code: 30107

Case Type: PI-Other

DUNN COUNTY, WISCONSIN
DUNN COUNTY SHERIFF'S OFFICE
DENNIS P. SMITH
BRENDA LAFORTE
RYAN BOIGENZAHN
MARSHALL L. MULTHAUF
PAUL GUNNESS
JOHN DOE ONE
JOHN DOE TWO
JOHN DOE THREE

Defendants

WISCONSIN COUNTY MUTUAL INSURANCE CORPORATION

Intervenor

ORDER ON MOTION FOR SUMMARY JUDGMENT

The above-entitled matter, having come for a hearing on December 20, 2019: Jeffrey A. Muszynski for the Plaintiff Rachel Slabey, Timothy M. Johnson for Defendants Dunn County, Wisconsin, Dunn County Sheriff's Office, Dennis P. Smith, Brenda LaForte, Marshall L.

Multhauf, and Paul Gunness; Defendant Ryan Boigenzahn did not appear;

The Court, having read the parties' submissions and heard the arguments of counsel, for the reasons stated on the record and contained in the Court's April 1, 2020 Decision on Summary Judgment, Dkt. #154, does hereby ORDER that the motion for summary judgment filed by Defendants Dunn County, Wisconsin, Dunn County Sheriff's Office, Dennis P. Smith, Brenda LaForte, Marshall L. Multhauf, and Paul Gunness is GRANTED. Any and all claims against Defendants Dunn County, Wisconsin, Dunn County Sheriff's Office, Dennis P. Smith, Brenda LaForte, Marshall L. Multhauf, and Paul Gunness are dismissed, on the merits, and with prejudice.

This is a final order for purposes of appeal.

FILED
05-01-2020
Dunn Co. Circuit Court
Dunn County, WI
2017CV000277

DATE SIGNED: May 1, 2020

Electronically signed by Maureen D. Boyle
Circuit Court Judge

STATE OF WISCONSIN CIRCUIT COURT DUNN COUNTY

RACHEL SLABEY,

Case No. 17CV277

Plaintiff,

v.

DUNN COUNTY, WISCONSIN,
DUNN COUNTY SHERIFF'S OFFICE,
DENNIS P. SMITH, BRENDA LAFORTE,
RYAN BOIGENZAHN, MARSHALL L. MULTHAUF,
in his personal capacity and as Chief Deputy Sheriff,
PAUL GUNNESS, in his personal capacity and as
Chief Deputy Sheriff, retired, JOHN DOE ONE,
JOHN DOE TWO and JOHN DOE THREE

Defendants,

WISCONSIN COUNTY MUTUAL INSURANCE
CORPORATION,

Intervenor.

JUDGMENT

This matter having come on for hearings before the court on December 20, 2019 pursuant to the Motion for Summary Judgment of Defendant's Defendants Dunn County, Wisconsin, Dunn County Sheriff's Office, Dennis P. Smith, Brenda LaForte, Marshall L. Multhauf and Paul

Gunness, and based on the court's decision on that motion dated April 1, 2020, as stated in the Decision on Summary Judgment;

NOW THEREFORE, on motion of Crivello Carlson, S.C., attorneys Defendant's Defendants Dunn County, Wisconsin, Dunn County Sheriff's Office, Dennis P. Smith, Brenda LaForte, Marshall L. Multhauf and Paul Gunness, IT IS HEREBY ADJUDGED AND DECREED that the Complaint of the plaintiff, Rachel Slabey, against the defendants, Defendant's Defendants Dunn County, Wisconsin, Dunn County Sheriff's Office, Dennis P. Smith, Brenda LaForte, Marshall L. Multhauf and Paul Gunness, is dismissed upon its merits;

IT IS FURTHER ADJUDGED AND DECREED that the defendants, Defendant's Defendants Dunn County, Wisconsin, Dunn County Sheriff's Office, Dennis P. Smith, Brenda LaForte, Marshall L. Multhauf and Paul Gunness, shall have judgment for costs and disbursements against the plaintiff, Rachel Slabey, an adult resident of the State of Wisconsin residing at 708 Elm Avenue E, Menomonie, Wisconsin in the amount of \$4,710.96.

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**DUNN COUNTY SHERIFF'S DEPARTMENT
JAIL DIVISION
INCIDENT REPORT**

Date of Incident: August 10th, 2015 **Incident #** N/A
Time of Incident: 5:50PM
Location: Dunn County Jail
Reporting Officer: Sergeant Rachel Vold, 723
RE: Fraternalization complaint

Names Mentioned:

Subject: Angela Joy Draxler
F/W, DOB: 12/18/1982

Accused: Correctional Officer Ryan Boigenzahn, 715

Officers involved: Sergeant Douglas Ormson, 704
Sergeant Rachel Vold, 723

Summary:

Complaints were made by inmate Beth Mittelstadt to Sergeant Douglas Ormson in regards to Correctional Officer Ryan Boigenzahn acting inappropriately towards a female inmate, Angela Draxler. This resulted in video tape footage to be reviewed. Follow-up was then conducted with inmate Angela Draxler.

Incident:

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On Friday, August 7th, 2015 I was working as a Correctional Sergeant at the Dunn County Jail. I was in full duty uniform, when at approximately 4PM information was being passed on in regards to potential misconduct of an employee, Officer Ryan Boigenzahn. I was working a late power on that date and indicated that night I would review video footage in regards to finding any information on whether or not the claim to be true.

When reviewing the video footage, over the span of two weeks, I found on two separate occasions two incidents that raised concern. I made a video copy of both of these incidents. The first incident occurred on July 29th, 2015, at approximately 5:15AM. It shows Correctional Officer Ryan Boigenzahn enter HD and appears to be giving medications. He remains in the back corner for a few minutes, out of camera range, and when Officer Robyn Stahlbusch enters with breakfast, he walks over to the door by Officer Stahlbusch. He remains standing there as female inmates in HD come to grab their bag. As inmate Angela Draxler grabs her breakfast bag, he reaches out with his foot and steps on her foot. She then steps back on his foot. It appears to be something done in a playful sort of manner. That completes the first incident.

The second incident occurred on August 6th, 2015, at approximately 5:15AM. It shows Officer Ryan Boigenzahn entering HD with Correctional Officer in training, Ashely Mueller. Officer Mueller is handing out breakfast bags, and when complete, she exits. Officer Boigenzahn then enters HD, propping the door shut behind him. At that time, he gestures with his head as if motioning someone to come in his direction, and also with his right arm. Inmate Draxler then comes running over to him. It is hard to determine why he motioned her over, but as she walks away she brushes him with her hand on his shoulder/chest area. Officer Boigenzahn then stands in HD for a few minutes. That then completes the second incident that was recorded.

After completing these recordings, the information was forwarded onto Captain Brenda Laforte on Monday, August 10th, 2015. Captain Laforte indicated later that day, that I

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should meet with Inmate Angela Draxler upon her return from work to see if there was further information from inmate Draxler in regards to conduct by Officer Boigenzahn.

When Captain Laforte left that evening, she called advising that inmate Draxler was currently in the parking lot at that time, if I wanted to make contact with her out there. This was at approximately 5:55PM.

At that point, I exited the jail, and met with inmate Angela Draxler in the parking lot. Inmate Draxler was walking towards the entrance, and I asked her to have a seat on the bench off to the left of the doors. There were no other inmates, officers, or pedestrians outside at that time. I advised inmate Draxler that at no time should there ever be any sort of contact with an officer, male or female, whatsoever. She indicated to me that she understood, but wanted to know why I was informing her of this. I advised her that any sort of allegation was taken very seriously, and that I needed her to be completely honest with me. I then went on to ask her if there was any instances where she felt uncomfortable by any male or female officer since being incarcerated. She indicated that there was. I asked her specifically when and who had made her feel this way. She immediately informed me Ryan made her uncomfortable. She went on to say that three months prior, when she was in C-block, they accidentally bumped hands. She told me she apologized and pulled her hand back, where he then responded that it was alright he didn't mind.

She went on to say that other female inmates in HD told her he seems to be "obsessed" with her and that they have observed him standing and watching her sleep. She informed me that it made her feel uncomfortable. She stated sometimes he just lingered too long. I asked Inmate Draxler if there had ever been anything more than statements made or him watching her. She indicated that there had not. I asked her if there was any other officer or instance she felt uncomfortable, she advised there was not.

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I informed inmate Draxler that if there was anything she needed to discuss further, to let a Sergeant know. She indicated she had wanted to say something sooner to a Sergeant about feeling uncomfortable, but did not want Ryan to treat her differently. I asked her what she meant by that, and she stated that she didn't want to be "treated like a piece of shit now." I informed her that would not be the case.

This is all the information I have at this time.

Conclusions:

A copy of the incidents from July 29th, 2015 and August 6th, 2015 were given to Captain Brenda Laforte for review.

Follow-up with inmate Draxler was made on August 10th, 2015.

Date and Time of Report:

August 13, 2015 at 7:30PM

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SERGEANT RACHEL VOLD
12/11/2018

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1 Q -- you need additional training?
2 A Correct.
3 Q You've also, as I understand it, implemented
4 different, more PREA compliant like signage?
5 A Correct.
6 Q Prior to this Educorr stuff, the implementation
7 of Educorr, there were some signs relating to
8 PREA that are posted?
9 A Posters, yep.
10 Q And my understanding is that you've increased the
11 number and location of such notices relating to
12 PREA?
13 A I would agree with that.
14 Q Has it been more than doubled?
15 A There's standards that -- in the block there's
16 you must announce that, you know, if you're
17 walking into a male dorm, female in the block at
18 every time you enter, so there's a sign saying
19 male or female in that regard.
20 I don't know, you know, there's 13, 14
21 different pods, so I guess probably more than
22 doubled with those signs.
23 Q As I understand it, there's also additional
24 signage that's been put up relating to reporting
25 incidents?

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1 A I believe so.
2 Q What other changes are you aware of that have
3 been made at the jail in relation to the Educorr
4 standards or the state standards?
5 A Correct. I'm not aware that anything else has
6 changed at this time.
7 Q What about your procedures has changed other than
8 maybe announcing the gender of the person coming
9 into the dorm and these additional signs, what of
10 your procedures has changed in relation to
11 wanting to meet the state DOC standards?
12 A I don't believe procedures have changed. I know
13 just in general more for officer safety, too, you
14 know, cell checks with two officers. I don't
15 think that directly correlates, though, with the
16 DOC state standards.
17 Q Cell checks, would that be like checking on
18 inmates?
19 A Correct.
20 Q Would that apply to Huber dorm as well?
21 A Generally. It's not a policy and procedure.
22 It's more of a, you know, officer safety.
23 Generally the pod areas is where they do the two
24 officer checks.
25 Q Is the two-officer check, is that something that

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1 is also instructed as being a good idea by
2 Educorr?
3 A That's not something that I've read in the
4 procedure through Educorr, no. Not a direct
5 correlation.
6 Q Do you know if all of the COs have gone through
7 the Educorr training at this point?
8 A It's a new thing. I know there's maybe five that
9 have actually completed it.
10 Q Do you know, when did you start the process of
11 engaging with Educorr to implement it?
12 A First contact with DeeDee was sometime in the
13 summer of 2018, and that was just the
14 conversation. And she sent me information on
15 what Educorr is, what they, you know, what they
16 do. They're also good resources, you know,
17 pamphlets or different things that other county
18 jails have or put in place in those facilities.
19 She sent over the contracts and the pricing.
20 By the time we actually submitted the contract
21 and Educorr training was up and live was November
22 15th.
23 Q Other than the Educorr training, have there been
24 any other changes to policies or procedures
25 related to sexual assault or sexual violence at

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1 the jail?
2 A Changes in policies, not that I'm aware of.
3 Q What about procedures?
4 A Procedures? Not that I'm aware of.
5 Q What about fraternization? In the last, well,
6 let's say in the 10 years that you've been
7 working as a CO, have there been any changes to
8 the fraternization policy?
9 A Not that I'm aware of.
10 Q Have there been any changes to procedures
11 specifically related to the fraternization policy
12 in the 10 years that you've been here?
13 A Not that I'm aware of.
14 Q Am I correct in understanding that the training
15 that you receive related to fraternization is to
16 be instructed on the policy itself? Is there any
17 other training that you get?
18 A No.
19 Q And prior to the Educorr training, am I correct
20 that the PREA training you'd get would be to be
21 informed about what the PREA policies are, and is
22 there something more than that before Educorr?
23 A We would do, let's say there's a training.
24 Usually they set it from anywhere from two to
25 four hours. Let's say there was a PREA and fire

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1 aware of in regards to how inmates felt about
2 Officer Boigenzahn in that regard.
3 **Q Got it. If I understand you correctly, you're**
4 **more likely to hear comments from inmates about**
5 **guards if they're upset with them?**
6 A Generally.
7 **Q Not if they're happy with them?**
8 A Correct.
9 **Q And in some instances I suspect if they're happy**
10 **with them and it's because of inappropriate**
11 **things, they don't want to tell you?**
12 MR. JOHNSON: Objection to form.
13 A No.
14 **Q (By Mr. Muszynski, continuing) Not necessarily?**
15 A I would not agree with that, no.
16 **Q Okay. Have you ever been informed by an inmate**
17 **of inappropriate conduct by a guard outside of --**
18 **A Boigenzahn?**
19 **Q -- outside of Boigenzahn, yeah.**
20 A No. I do not recall.
21 **Q Were you informed -- we know about an incident**
22 **with Ms. Draxler. We know about an incident with**
23 **Ms. Schindler. We know about the obvious**
24 **incident with Ms. Slabe.**
25 A Correct.

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1 **Q Other than those three specific incidents, I**
2 **think there was an incident with some notes**
3 **passing between two inmates.**
4 **Other than those maybe four incidents, do**
5 **you have any other knowledge of other times that**
6 **inmates would communicate with you with some**
7 **issue with Mr. Boigenzahn?**
8 A No.
9 **Q So there's an incident in July of 2015 involving**
10 **an inmate by the name of Driscoll and there was**
11 **notes being passed between maybe a male and**
12 **female inmate.**
13 **Do you have an understanding of that?**
14 A I did not do any investigations or follow-up in
15 that incident.
16 **Q Do you know about the incident generally?**
17 A I have heard about it.
18 **Q What have you heard?**
19 A There was allegations indicating that Officer
20 Boigenzahn was passing notes or letters or
21 correspondence between two inmates within the
22 jail.
23 **Q If that were borne out to be true, would that be**
24 **something that would be a violation of**
25 **policies?**

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1 A Yes.
2 **Q What would be wrong about it?**
3 A Correspondence between inmates goes through the
4 US mail, postal service, for officers to scan and
5 read over.
6 I guess something -- it's a small favor, so
7 in that terms it's if you're agreeing to pass
8 something for an inmate between inmates and it's,
9 you know, kept between certain people, it's a
10 violation. Small. Essentially I guess I'm not
11 sure how to phrase it.
12 **Q Let me ask it this way, Sergeant.**
13 **What specific policies would be violated by**
14 **a CO passing notes between one inmate and**
15 **another?**
16 A I would just say general rules of conduct.
17 **Q Would it violate fraternization as well?**
18 A I don't see the conduct -- it could, yeah.
19 **Q Let's talk about the August 2015 incident.**
20 **Now, this is the incident that involved**
21 **Ms. Draxler.**
22 **You were at least partially involved in**
23 **investigating that?**
24 A Correct.
25 **Q If I understand it, it was reported by one**

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1 **inmate, Ms. Mittelstadt?**
2 A That was my understanding.
3 **Q And then it was investigated by a variety of**
4 **people, including Sergeant Ormson?**
5 A I believe so.
6 **Q And yourself?**
7 A Correct.
8 **Q What did you personally do in the**
9 **investigation?**
10 A As I recall, I was coming in for my night shift,
11 and it was reported to me that an inmate had made
12 officer misconduct allegations against Officer
13 Boigenzahn. I was asked to review video footage
14 to kind of back up the claims or see if it was a
15 substantiated report.
16 **Q Did you view video?**
17 A I did.
18 **Q What did you see on the video?**
19 A There was two separate occasions. I believe one
20 is in July of 2015 where Officer Boigenzahn
21 enters the Huber D dorm and there's some sort
22 of -- he steps on inmate Draxler's foot and she
23 steps back on the foot. Appeared to be in a
24 playful sort of manner.
25 And then I believe it was August of 2015 he

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1 entered the Huber D dorm, and it was observed
2 inmate Draxler approached him and sort of ran her
3 hand cross his chest.
4 **Q If an affectionate manner?**
5 A Based off video it appeared.
6 **Q She wasn't attacking him it didn't look like?**
7 A It did not appear that way.
8 **Q And Huber D, is that the same location where**
9 **Ms. Slabey was when that incident happened?**
10 A That is my understanding of the reports, yes.
11 **Q My understanding is that there is video footage**
12 **of a majority, not all, but a majority of the**
13 **Huber dorm at all times?**
14 A 24-7 coverage, if that's what you're asking.
15 **Q Yes.**
16 A Of certain areas in the dorm, yes.
17 **Q And there are some areas, though, of specifically**
18 **the bunk area --**
19 A Correct.
20 **Q -- that are not covered by video at this time?**
21 A There's certain areas that you cannot see.
22 **Q That's known to COs?**
23 A Not specifically. I mean supervisors are able to
24 review video footage. Correctional officers can
25 see an observation, you know, in watching.

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1 **Q I mean --**
2 A If you're looking at the camera you can see that
3 they would be aware.
4 **Q Do you as a sergeant have a general understanding**
5 **of where the cameras do and don't actually view**
6 **in the Huber dorm?**
7 A Without looking at it -- I guess can you rephrase
8 the question.
9 **Q Sure. We both are on the same page that there**
10 **are portions of the Huber dorm where the video**
11 **cameras don't quite view?**
12 A Correct.
13 **Q Do you know where those locations are**
14 **generally?**
15 A Generally.
16 **Q If you took me right now to Huber dorm could you**
17 **walk me to a general area where you know that the**
18 **camera can't see me?**
19 A In Huber D, yes.
20 **Q And that's where Ms. Slabey was at the time?**
21 A Correct.
22 **Q And that's where the incident with Ms. Draxler,**
23 **or incidents I guess with Ms. Draxler happened?**
24 A In the Huber D dorm, correct.
25 **Q And generally as you've been employed as a CO,**

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1 **let's talk about before you became a sergeant,**
2 **could you have pointed out those specific spots**
3 **at Huber D where the cameras didn't quite**
4 **reach?**
5 A Specifically, no. Probably not.
6 **Q Since you've become a sergeant has it become**
7 **easier for you?**
8 A I review more video footage I would say than a
9 correctional officer.
10 **Q As a CO did you have a general understanding,**
11 **though, you knew --**
12 A Generally.
13 **Q -- that there were some spots that it didn't**
14 **cover?**
15 A Correct.
16 **Q My understanding is that there's supposed to be**
17 **someone stationed at, what's the word?**
18 A Central.
19 **Q Central, thank you, at central looking at video**
20 **footage at all times except if there's an**
21 **emergency that they need to attend to?**
22 A Generally, yes.
23 **Q And that's the case even at night?**
24 A Correct.
25 **Q And my understanding is the video in Huber D,**

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1 **even at night, you can see people moving around**
2 **in there, correct? It's like a night camera?**
3 A You can.
4 **Q How many video screens -- there's multiple video**
5 **screens showing video throughout the jail?**
6 A In central control, yes.
7 **Q How many video screens are dedicated, if any, to**
8 **Huber dorm D?**
9 A There is one specifically for Huber dorm. The
10 screen that it is on may have been a rotating
11 screen, if that makes sense.
12 In the pod area there's 10 dorms, so there's
13 not enough monitors for it to stay on a dorm.
14 It'll rotate through different blocks, and that's
15 the same as the Huber. It will rotate.
16 **Q How many dorms are rotated through, or how many**
17 **cameras are rotated through on that screen?**
18 A On the Huber D one specifically?
19 **Q Yes.**
20 A I cannot recall.
21 **Q How often do they rotate? Do you know? I mean**
22 **like how --**
23 A Seconds. Two to three seconds.
24 **Q So they stay on there for a couple seconds and**
25 **rotate to another one?**

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1 A Yes.
 2 **Q Safe to say if somebody is just walking through**
 3 **that area, I would see them on that rotation**
 4 **through the cameras?**
 5 A If you're watching that specific camera.
 6 **Q If I went to the camera and I wanted to watch a**
 7 **CO walk through Huber D, even as it changed, I**
 8 **would be able to probably visualize them walking**
 9 **through?**
 10 A It depends on how many rotating screens are on
 11 that. If it's three to four and where it's
 12 rotating, depending how fast they're in and
 13 out.
 14 **Q Let me ask it this way.**
 15 **If someone is standing in one location for**
 16 **15 minutes?**
 17 A Yes.
 18 **Q I would be able to see that person on the**
 19 **screen?**
 20 A Yes.
 21 **Q The person that's stationed at central watching**
 22 **those video cameras, among other things?**
 23 A Correct.
 24 **Q Is part of their responsibility to be monitoring**
 25 **those videos for anything suspicious or dangerous**

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1 **that's occurring?**
 2 A They should be aware of where officers are,
 3 correct.
 4 **Q Part of that is for officer safety I assume?**
 5 A Safety. Correct.
 6 **Q Part of that is for inmate safety?**
 7 A Inmate safety as well.
 8 **Q If inmates get in a fight or something like that,**
 9 **that would show up on those videos?**
 10 A Correct.
 11 **Q And then you'd want to respond?**
 12 A Correct.
 13 **Q Similarly, if an inmate attacked a CO, you'd want**
 14 **to see that on the video and respond?**
 15 A Correct.
 16 **Q Similarly, if a CO did something inappropriate to**
 17 **an inmate and it's visualized on the video, you**
 18 **could also respond if you were watching?**
 19 A Correct.
 20 **Q So going back I guess to the August 2015 incident**
 21 **with Ms. Draxler, you said you watched the video**
 22 **and you saw two different incidents where**
 23 **Mr. Boigenzahn and Ms. Draxler had some sort of**
 24 **inappropriate physical contact?**
 25 A I would agree with that.

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1 **Q You did what following the video? Watching the**
 2 **video?**
 3 A I made recordings of the video that raised
 4 concern, the two separate specific incidents,
 5 generated a report, follow-up was done with the
 6 captain advising her, and she asked me to make
 7 contact with inmate Draxler.
 8 **Q And did you?**
 9 A I did.
 10 **Q And what did inmate Draxler tell you?**
 11 A She had informed me that she was uncomfortable,
 12 that she felt as though he lingered too long,
 13 statements of that effect.
 14 **Q Did you ask her about when she touched his chest?**
 15 **She clearly reached out and initiated that**
 16 **contact?**
 17 A Correct.
 18 **Q Did you ask her about that?**
 19 A I do not believe I specifically asked her. I
 20 more advised her you understand that contact, any
 21 sort of touching, is prohibited, whether it be a
 22 male or female officer, and she advised she was
 23 aware.
 24 **Q I have to assume as a correctional officer part**
 25 **of your job is to assess the credibility of the**

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1 **people that are talking to you, particularly the**
 2 **inmates, whether they're being honest with you or**
 3 **not?**
 4 A Correct. Yeah.
 5 **Q Let's just --**
 6 A As you're having conversation.
 7 **Q -- call a spade a spade.**
 8 **Some of the inmates probably make some poor**
 9 **life choices, some of them involving honesty at**
 10 **times?**
 11 A What they're in there for I guess isn't what I
 12 judge them on.
 13 **Q Correct. I'm not asking you to judge them.**
 14 A Yep.
 15 **Q But then when they're talking to you as a**
 16 **correctional officer, part of your job is to**
 17 **assess whether they're being completely honest**
 18 **with you or not and respond appropriately,**
 19 **correct?**
 20 A If somebody makes a statement to me, an
 21 investigation would be done to determine the
 22 credibility.
 23 I guess if somebody said this happened, I
 24 wouldn't use my opinion to justify if they're
 25 being honest with me or not.

SLABEY v. DUNN COUNTY

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1 **Q Well, did you make an assessment as to whether or**
2 **not Ms. Draxler was being honest with you when**
3 **she said that she was uncomfortable by**
4 **Mr. Boigenzahn as opposed to that she was**
5 **initiating any of that contact?**
6 A Based off having reviewed video footage before
7 having a conversation with Draxler, it had shown
8 that there was, you know, behavior that was
9 observed between Boigenzahn and Draxler that
10 correlated probably her feelings as well.
11 **Q Correlated meaning that she was uncomfortable by**
12 **Boigenzahn?**
13 A Yes.
14 **Q Did you make any recommendations to Captain**
15 **LaForte as to what should happen in response?**
16 A I did not.
17 **Q Do you have an assessment as to what should have**
18 **happened to Mr. Boigenzahn?**
19 A I did not.
20 **Q Do you have any role in recommending or taking**
21 **part in discipline in your role as a sergeant?**
22 A It depends. In that particular one my -- after
23 the investigation and the conversation with
24 Draxler, I did not have any further.
25 **Q Do you have an independent thought as to whether**

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1 **or not Mr. Boigenzahn should have been retained**
2 **as an employee after that incident?**
3 A I do not. I believe the disciplinary was
4 appropriate.
5 **Q The three-day suspension?**
6 A I do.
7 **Q Do you know if Mr. Boigenzahn received any**
8 **additional training following that suspension?**
9 A I am not aware.
10 **Q Do you know if Mr. Boigenzahn was getting any**
11 **additional supervision by any other COs or**
12 **supervisors?**
13 A Not that I'm aware.
14 **Q Am I correct in understanding your knowledge is**
15 **that he was suspended for three days and then**
16 **came back to work and continued his job?**
17 A That is my understanding.
18 **Q And he, your assessment as a sergeant, is that he**
19 **clearly violated jail policies in that conduct**
20 **with Ms. Draxler?**
21 A I believe it was the start of -- there was
22 concerning behavior that was portrayed, yeah.
23 **Q His touching of Ms. Draxler was a violation of CO**
24 **policy, correct?**
25 A He didn't -- I didn't see him touch her beyond

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1 the footsie, if that's what you're asking.
2 **Q Correct. But then permitting Ms. Draxler to also**
3 **touch him and not reporting it or doing anything**
4 **about it was also a violation?**
5 A It's concerning. Correct.
6 **Q So what I'm asking you is, your view of that**
7 **video, I understand you weren't related to the**
8 **discipline?**
9 A Correct.
10 **Q But your view as a supervisor of people in**
11 **Mr. Boigenzahn's position was that he was**
12 **violating policies?**
13 A Correct.
14 **Q Those were policies that he would have been**
15 **given, correct?**
16 A That he should have reviewed, correct.
17 **Q And, nevertheless, he violated them, yes?**
18 A Correct.
19 **Q Did you have any involvement in investigating the**
20 **May 2016 incident involving Ms. Schindler?**
21 A Yes.
22 **Q Tell me about your involvement there.**
23 A I was going through the hallway past the Huber D,
24 and inmate Draxler was in custody at that time.
25 And she had made the comment that asking if I

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1 recalled the August 2015 incident and officer
2 misconduct, and she advised me that there was
3 something going on again at that time between
4 another inmate.
5 **Q Did you investigate then further?**
6 A I did.
7 **Q What did you find out?**
8 A She had advised me that Officer Boigenzahn had
9 been given a piece of pink paper from inmate
10 Schindler that was sexual in nature. She advised
11 that she had overheard conversations about him
12 taking her out, things in that nature, lingering
13 too long.
14 **Q And obviously the specific conversations were**
15 **something different than the prior year, correct?**
16 **The specific like I'm going to take you out.**
17 **You didn't hear those allegations in 2015?**
18 A I did not, no.
19 **Q But the lingering too long, that was something**
20 **that you viewed in the video in 2015, correct?**
21 A The only incidents that I recall would have been
22 the footsie and the touching.
23 **Q All right. Did you review the video or videos in**
24 **relation to the 2016 incident?**
25 A I did.

SLABEY v. DUNN COUNTY

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1 **Q And tell me about what you saw there.**
 2 A There was few incidents where I believe there
 3 were some that were hard to view due to the
 4 camera where you could not tell.
 5 I believe the longest periods of time were
 6 five minutes, but I did observe I believe a
 7 handful of times where he was having direct
 8 contact with her.
 9 **Q Schindler?**
 10 A Correct.
 11 **Q And based on just the review of the video, did**
 12 **you consider the amount of time or the way**
 13 **Mr. Boigenzahn was spending that time to be**
 14 **inappropriate?**
 15 A Based off just that, it was hard to make a
 16 general observation.
 17 **Q Let me ask it this way.**
 18 **Based on the prior knowledge you had of his**
 19 **August 2015 did it concern you, the video?**
 20 A Follow-up I believe would have needed to be
 21 conducted further.
 22 **Q The video in conjunction with the 2015 incident**
 23 **at least raised some red flags for you?**
 24 A It was concerning.
 25 **Q And certainly in conjunction with more reports of**

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1 **more inappropriate conduct?**
 2 A Correct.
 3 **Q What did you do following viewing the video?**
 4 A I made contact with some other inmates that were
 5 housed in Huber D without putting Draxler back in
 6 with them. Obviously, they were all separated,
 7 just to gather more information on what others
 8 have observed and to back up I guess other
 9 inmates.
 10 **Q And what did you find out?**
 11 A They all kind of correlated.
 12 **Q And what did they tell you about Mr. Boigenzahn**
 13 **and his conduct?**
 14 A It appeared as though he lingered too long.
 15 There was one inmate that reported she woke up
 16 from conversations that he was having with
 17 another inmate. Did not directly report what was
 18 being said, though.
 19 **Q One of those people wrote a statement, a Rose**
 20 **Kuehni, K-U-E-H-N-I?**
 21 A Correct.
 22 **Q That was one of the people you talked to?**
 23 A Correct.
 24 **Q What did you do following I guess taking a few**
 25 **written statements and talking to various other**

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1 **inmates?**
 2 A I reported my findings to the captain, and the
 3 sheriff was in the administration office at that
 4 time. She had informed me to contact Officer
 5 Boigenzahn and inform him due to an ongoing
 6 investigation, not to come in for his shift.
 7 **Q Did you have any further role in the**
 8 **investigation?**
 9 A I did not.
 10 **Q Do you know what the ultimate conclusion was?**
 11 A Ultimately he was terminated.
 12 **Q Did you have any role in that discipline?**
 13 A No.
 14 **Q At that point you're unaware of what happened**
 15 **with Ms. Slabey, correct?**
 16 A Correct.
 17 **Q Had you reviewed any -- how far back did you**
 18 **review video with Mr. Boigenzahn at that time?**
 19 A I don't recall. I believe it would have been --
 20 was that May of 2016?
 21 **Q Yes.**
 22 A I believe maybe it was a month prior.
 23 **Q So you wouldn't have reviewed back to when the**
 24 **Slabey incident occurred?**
 25 A I do not believe so.

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1 **Q When did you first become aware of the incident**
 2 **involving Ms. Slabey?**
 3 A I do not recall. I had no part in the
 4 investigation that I recall.
 5 **Q I wasn't a hundred percent sure if you had**
 6 **reviewed any video for that or not.**
 7 A I do not believe so. I don't have a report
 8 indicating that I had.
 9 **Q Do you have a knowledge of what happened?**
 10 A I have a general knowledge.
 11 **Q What's your general knowledge?**
 12 A It was reported by Ms. Slabey to an investigator
 13 that she had been inappropriately touched, and I
 14 don't remember if there was a specific time frame
 15 she gave, and the video was reviewed.
 16 **Q Do you have an understanding as to where that**
 17 **incident happened in the Huber dorm?**
 18 A I do.
 19 **Q And is that, am I correct in understanding that**
 20 **that specific area is an area that is not covered**
 21 **by the video camera?**
 22 A Correct.
 23 **Q So you could walk me there right now and you**
 24 **could tell me to stand right there and I would**
 25 **not be visible on a video?**

SLABEY v. DUNN COUNTY

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1 **Q Did you have any role in investigating that**
 2 **incident?**
 3 A I do not recall. I don't recall if I was there
 4 that day without reviewing a report, which I have
 5 not.
 6 **Q As a sergeant that would be a violation of**
 7 **policy, to send an inmate into the hallway in a**
 8 **towel I assume?**
 9 A Depends on the circumstances I guess. It would
 10 be concerning. I don't know if it's specifically
 11 a policy, but they should be clothed.
 12 **Q I'll show you what's numbered here 155 through**
 13 **158. Just take a look at it. I want to ask you**
 14 **a question or two about it.**
 15 A Do you want me to read all of it?
 16 **Q Just familiarize yourself with it I guess.**
 17 **Do you know what it is?**
 18 A It's PREA standards I guess.
 19 **Q Is that something that you would get as an**
 20 **employee?**
 21 A It's not the policy that I reviewed that we have
 22 in place.
 23 **Q It's different than what you have right now?**
 24 A It's different than the policy.
 25 **Q Would you have received one of these documents**

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1 **when you were first hired?**
 2 A I may have. I don't recall.
 3 **Q Would this be a document that you would be asked**
 4 **to sign on an annual basis, or would this be just**
 5 **something you signed when you were hired?**
 6 A Upon hire it would appear.
 7 **Q Have you been a part of any discussions involving**
 8 **a need for additional training to correctional**
 9 **officer staff relating to interactions with**
 10 **female inmates?**
 11 A Not that I recall.
 12 **Q Do you see that there is a need to have**
 13 **additional training and supervision relating to**
 14 **interactions with female inmates particularly in**
 15 **the Huber dorm?**
 16 A Do I think there's currently a need?
 17 **Q Yes.**
 18 A Not specifically for female inmates, no.
 19 **Q Is there specifically for just interactions with**
 20 **inmates in general?**
 21 A Every officer should have a professional
 22 communication course, which they do in the jail
 23 basic academy in general.
 24 **Q Following, I mean we have August 2015 there's an**
 25 **incident with inappropriate conduct with Draxler,**

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1 **correct?**
 2 A Correct.
 3 **Q Then we know about an incident in May where**
 4 **Mr. Boigenzahn gets terminated?**
 5 A Correct.
 6 **Q We have an incident in August where there's a**
 7 **female inmate that's sent into the hallway in a**
 8 **towel.**
 9 **Those three incidents taken together all**
 10 **involving Huber dorm, correct?**
 11 A No.
 12 **Q I'm sorry. The Sabrina Hair does not involve**
 13 **Huber dorm.**
 14 A Correct.
 15 **Q All involving female inmates.**
 16 **Did you at any point have a thought that we**
 17 **have a problem here with our male correctional**
 18 **staff and female inmates?**
 19 A No. The incident, whether it be males, it could
 20 have been the same situation involving the lice.
 21 That's not a specific correlation to officer
 22 misconduct with the Boigenzahn incidents is my
 23 opinion.
 24 **Q The Carl incident that happened as you were**
 25 **training, that involved a female inmate, correct?**

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1 A Correct.
 2 **Q I assume the jail has a zero tolerance policy for**
 3 **inappropriate relationships with inmates?**
 4 A Correct.
 5 **Q And a zero tolerance policy for anything of a**
 6 **sexual nature?**
 7 A Correct.
 8 **Q And despite that policy it still happened at**
 9 **least twice in the last 10 to 11 years,**
 10 **correct?**
 11 A Referring to the Boigenzahn incidents?
 12 **Q And the Carl incident.**
 13 A Correct.
 14 **Q And other than the Educorr thing there's been no**
 15 **significant changes to policies or procedures,**
 16 **correct?**
 17 A Correct.
 18 **Q Are there any policies that require a female CO**
 19 **to be present with a male CO when entering female**
 20 **dorms?**
 21 A No.
 22 **Q Are there any policies that require more than one**
 23 **CO to be present when entering any dorm?**
 24 A No.
 25 **Q The times that Mr. Boigenzahn, to your knowledge,**

Dunn County Sheriff's Office
Policy and Procedure

Subject: Fraternization

Policy # 200-17-0

Effective Date: March 17, 2010

Approved by: Sheriff Dennis P. Smith _____

POLICY

The policy is designed to eliminate any potential conflict of interest or impairment of the supervision and rehabilitation provided by the Dunn County Sheriff's Office and Jail employees to adult or juvenile inmates and prisoners. All Dunn County Sheriff's office employees are responsible for following this policy and procedure.

DEFINITIONS

1. Employee is any person employed by the Dunn County Sheriff's Office, the Dunn County Jail including supervisors, patrol & correctional officers, secretaries, reserve deputies, volunteers, interns and persons under contract with the Dunn County Jail.
2. Relationship includes:
 - a. Living in the same household with an inmate/prisoner.
 - b. Working for an inmate/prisoner.
 - c. Employing an inmate/prisoner with or without wages.
 - d. Extending, promising, or offering any special consideration or treatment to any inmate/prisoner.
 - e. Having personal contacts (other than those required by the employee's job duties) such as communicating through verbal or written means or being in a social, physical or romantic relationship with an inmate/prisoner.
 - f. Providing or receiving goods and/or services with or without wages for or to inmates/prisoners.
3. Inmate refers to any adult and juvenile offender under the legal custody or supervision (Huber, Electronic Monitoring) of the Dunn County Jail, and those on active probation/parole status.
4. Prisoner refers to any adult or juvenile that is taken into custody by any deputy for arrest or transport purposes.

Dunn County Sheriff's Office ***Policy and Procedure***

PROCEDURES

200-17-1

1. The Dunn County Sheriff's Office prohibits any fraternization/relationship (as described above) between employees and inmates/prisoners or spouses of same, for a period of not less than one year after their release.
2. Employees of the Dunn County Sheriff's Office shall not:
 - a. Have a relationship with an inmate/prisoner or the spouse of an inmate/prisoner under the supervision or custody of the Dunn County Jail, for one year after their release.
 - b. Have a relationship with individuals whom the employee knows is incarcerated in a state correctional facility or a county jail other than the Dunn County Jail, or under the supervision of the Wisconsin Department of Corrections (Probation/Parole), or for one year after their release.
 - c. Have personal contacts that are usually one-to-one such as dating, knowingly form close friendships, correspond without an exception granted or have visits that are not job related, for a period of one year after their release.
 - d. Accept or give gifts, provide services in exchange for work performed, for one year after their release.
 - e. Encourage or allow to occur, the exchange of personal or departmental information between the employee and an inmate.
3. Employees who have or are considering relationships or who have unplanned contacts with persons identified above must inform their immediate supervisor in writing of the circumstances and turn over any item received to a supervisor immediately. Employees that have unplanned contacts must keep them brief and businesslike.
4. There is no blanket exception for employees and their relationships with immediate family members. Employees must notify their supervisor when inmates or prisoners are family members. The Sheriff or their designee will review each situation on a case-by-case basis.

Dunn County Sheriff's Office ***Policy and Procedure***

5. The policy does not include relationships that employee's family members may have with an offender under supervision or custody. The Sheriff's Office cannot control the behavior of relatives of its employees; however such relationships should be reported to the affected employee's supervisor in case of any potential conflicts of interest.
6. This policy does not include employer-directed contacts or those contacts that are part of the employee's job duties.
7. Employees may be granted exceptions by following the procedures outlines below "Exception Procedure".

Exceptions Procedure

200-17-2

The procedure provides for the exceptions that are granted by the Sheriff or their designee after review of the specific circumstances.

1. Employees shall inform their supervisor in writing of any present relationship or any relationship being considered which has the potential of violating this policy.
2. Employees shall request exceptions to the policy through their supervisors.
3. Employees shall submit the specifics of their contacts and requests for exceptions to the Sheriff. The Sheriff will review all recommendations and either approve or deny the request.

DUNN COUNTY POLICIES AND PROCEDURES

JAIL DIVISION

NUMBER: DC1700.5

EFFECTIVE DATE: February 1, 2009

AUTHORITY: Sheriff Dennis P. Smith

REFERENCES: 303.13-15, 303.26

PAGE: 1 OF 4

SUBJECT: Sexual Misconduct / PREA

I. POLICY

In an effort to protect the inmates of the Dunn County Jail from sexual misconduct, there shall be no sexual activity between staff and inmates nor inmates and inmates.

Contact of a sexual nature between someone acting on behalf of or in cooperation with the Dunn County Sheriff's Department and a detainee, victim, witness or inmate is unacceptable and potentially unlawful. Sexual misconduct is not consistent with the professional and ethical principles of the law enforcement profession and will not be tolerated.

Staff sexual misconduct jeopardizes security and exposes the agency to civil liability. Such misconduct undermines the public support of law enforcement and creates a hostile environment.

The Dunn County Sheriff's Department policy is zero tolerance toward employee sexual misconduct and inmate sexual misconduct.

II. RESPONSIBILITIES

All jail staff and volunteers are responsible for following these procedures.

III. DEFINITIONS

A. **PREA** – Prison Rape Elimination Act. Federal law established in 2003 to address the elimination and prevention of sexual assault and rape in correctional systems. PREA applies to all federal, state, and local prisons, jails, police lock-ups, private facilities, and community settings such as residential facilities.

B. **Sexual Misconduct** is any behavior or act of a sexual nature directed toward an inmate, detainee, victim, witness, or complainant by any employee, volunteer, vendor, contractor, visitor or agency representative.

1. This includes acts or attempts to commit such acts including, but not limited to, sexual assault, sexual abuse, sexual harassment, sexual contact, conduct of a sexual nature or implication, obscenity and unreasonable or unnecessary invasion of privacy.

2. Sexual misconduct also includes, but is not limited to, conversations or correspondence that suggests a romantic or sexual relationship involving any person mentioned above.

**EXHIBIT
J**

3. Sexual misconduct is not limited to unwanted sexual contact. Sexual misconduct is also a range of behaviors or situations that include inappropriate remarks, sexualized name-calling, correspondence, conversations, inappropriate displays, fondling, inappropriate viewing, and sexual contact with individuals vulnerable to the authority of the justice system or any other person in a work setting. Such acts are inappropriate in a work setting and presumed to be unwelcome.
 4. Romantic relationships between supervisors and those under their supervision are presumed to be coercive and may be deemed sexual harassment or misconduct.
- C. **Inmate on Inmate Sexual Assault** is one or more inmates engaging in, or attempting to engage in, a sexual act with another inmate, or the use of threats, intimidation, inappropriate touching, or other actions and/or communications by one or more inmates aimed at coercing and/or pressuring another inmate to engage in a sexual act.
- D. **Inmate on Staff Sexual Assault** is any type of sexual assault that is defined in Wisconsin State statutes.
- E. **Inmate on Inmate Sexual Conduct** is any type of consensual sexual activity between inmates as defined by DOC 303.15. Sexual acts or contacts between inmates, even when no objections are raised, are prohibited acts.
- F. **Staff on Inmate Sexual Assault** is a staff member engaging in, or attempting to engage in, a sexual act or sexual conduct with any inmate or the staff member intentionally touching an inmate's genitalia, anus, groin, breast, inner thigh, or buttocks with the intent to abuse, humiliate, harass or degrade the offender or arouse or gratify the sexual desire of any person. **A pat search of an inmate conducted in conformity with the institutions procedures does not constitute sexual abuse or assault.**
- G. **Staff on Inmate Sexual Conduct** is sexual behavior between a staff member and inmate which can include, but is not limited to, indecent, profane or abusive language or gestures, inappropriate visual surveillance of inmates, making sexually offensive comments or gestures, engaging in physical conduct of a sexual nature with an inmate, or any solicitation of sexual activity through promises of favors or threatening an inmate for refusing sexual advance, including influencing, promising, or threatening an inmate's safety, custody, privacy, housing, privileges, work detail or program status in exchange for sexual favors.

IV. PROCEDURE

A. Reporting Requirements

1. Any employee or staff member who knows or reasonably suspects that any employee may be or has been involved in sexual misconduct is required to inform the Jail Captain. To protect the reputations and integrity of all persons engaged in such a process, including the accuser, the accused, and the alleged victim, all such reports shall be dealt with as matters of highest discretion both before and after they have been submitted to appropriate authorities.

2. Retaliation in any form against those who report misconduct is strictly prohibited.
3. False reports or allegations may result in discipline and potential prosecution.
4. Upon receiving a report of possible sexual misconduct or harassment, the Jail Captain shall notify the Chief Deputy. The Chief Deputy shall in turn notify the Sheriff and other Command Staff as appropriate and needed.

B. Investigation

1. All reported violations of sexual misconduct, including sexual assault and harassment, will be investigated and, as warranted, will be resolved through appropriate disciplinary processes and/or criminal proceedings in accordance with applicable state and federal laws.
2. The rights of both the accused and the complainant shall be protected, and the confidentiality of proceedings will be maintained to the fullest extent possible. A thorough and competent investigation into the allegations will be conducted to, where possible, clearly support or refute the allegations, by evidence, information gathered from witnesses, and documentation. Primary consideration will be to safeguard the well being and security of the complainant and the subject, thus ensuring the integrity and credibility of the process and the Sheriff's Office.
3. All allegations of staff sexual misconduct will be treated seriously. The response to allegations of staff sexual misconduct will be to determine the merits of the allegations consistent with the following goals:
 - a) Protection of victims from misconduct, retaliation or intimidation;
 - b) Protection of staff against false accusations of sexual misconduct;
 - c) Preservation of the integrity of criminal and administrative investigations;
 - d) Support for victims so that reporting of sexual misconduct is not deterred;
 - and
 - e) A fair and just resolution of allegations.

C. Classification

Staff will follow the current policy for inmate classification of inmates.

D. Mental Health and Medical Protocol

1. Any inmate claiming to be the victim of sexual contact by another inmate will be separated from the alleged perpetrator by housing assignment. The names of the victim and perpetrator will be entered into the no contact form and will be prevented from having further contact. The alleged perpetrator may also be placed on an appropriate confinement status to include disciplinary status if there is evidence to substantiate the inmate committed a prohibited act.
2. Inmates who claim to have been sexually assaulted or raped will be afforded prompt medical attention to include an examination by a physical and appropriate follow-up treatment and counseling as deemed necessary S.A.N.E nurse via Luther Hospital Eau Claire, WI.

3. Complete and detailed reports will be prepared by those employees having knowledge of the incident. These will then be forwarded to the Captain.
4. Allegations of employee or volunteer sexual contact with an inmate will be investigated immediately as such became known.
 - a) Inmate complaints alleging sexual contact by an employee or volunteer will be forwarded to the Jail Administrator who will arrange for the incident to be investigated.
 - b) Employees may be immediately relieved of duty by the Sheriff if such is deemed necessary.
 - c) An employee may be suspended pending the outcome of an investigation into an allegation of sexual contact and subjected to internal disciplinary procedures and criminal prosecution.

E. Sanctions

1. Employees who are found to have engaged in staff sexual assault of inmates will be disciplined, up to and including termination from employment. Employees criminally convicted of this offense may be fined up to \$100,000 and imprisoned up to 40 years.
2. Under the Wisconsin Statutes, consent is not an element in a criminal case of staff sexual assault of an inmate. The law presumes that consent is impossible because of the unequal power relationship between staff and inmates.
3. Inmates who are found to have engaged in sexual assault of staff or other inmates will be disciplined according to the Inmate Discipline and Due Process Policy (DC1701.20). Inmates criminally convicted of this offense will be dealt with by the courts.

F. Records

The jail will maintain statistical information concerning incidents of sexual contact in the case of a sexual assault or rape. Statistics on both inmate on inmate and employee on inmate contact will be maintained.

Approved by Sheriff Dennis P. Smith, January 2009

Reviewed and Renumbered from DC1701.14 to DC1700.5, Approved by Sheriff Dennis P. Smith, July 2009

Dennis P. Smith, Sheriff

Date

Dunn County Sheriff's Office *Policy and Procedure*

Subject: CTO Training and Evaluation Program

Policy # J100-6-0

Effective Date: May 16, 2007
Reviewed and Revised May 19, 2009

Approved by: Sheriff Dennis P. Smith _____

POLICY

It is the policy of the Dunn County Sheriffs Office to adhere to a rigorous Correctional Training and Evaluation program for new correctional officers. The curriculum of the correctional training and the amount of training for the new officer will be determined by the Correctional Training team and approved by the CTO Sergeant.

DEFINITIONS

1. Probationary Officer: A new officer recently employed by the Dunn County Sheriff's Office.
2. CTO: (Correctional Training Officer) A Correctional Officer assuming the responsibilities of a trainer and evaluator of probationary officers.
3. CTO Sergeant: A Sergeant whose responsibility is to ensure that the training and evaluation process is properly administered.
4. DOR: Daily Observation Reports.

PROCEDURES

100-6-1 Organization

1. CTO Sergeant
 - a. The CTO Sergeant shall be responsible for the general control and evaluation of the Correctional Training and Evaluation program.
 - b. When a probationary Officer and the CTO Sergeant are working the CTO Sergeant has the responsibility of shift supervisor and CTO Sergeant. The Correctional Training Sergeant shall inform the other shift supervisors of the progress of probationary officers.
 - c. The Correctional Training Sergeant must ensure that the training and evaluation process is properly administered and will monitor progress by reviewing all DOR's.
 - d. The Correctional Training Sergeant shall meet with the CTOs and the probationary officer regularly to monitor progress.
2. Correctional Training Officers

Dunn County Sheriff's Office ***Policy and Procedure***

- a. The Correctional Training Officer has two primary roles to fill; that of a correctional officer assuming full jail responsibilities and that of a trainer and evaluator of assigned probationary officers.
- b. All CTOs shall receive formal training in correctional training and evaluation.
- c. Correctional Training Officers may assist in the background investigation and oral interview process of officer candidates.
- d. Correctional Training Officers may be released from correctional training and evaluation duties as follows:
 1. At the request of the CTO concerned.
 2. By the removal of assignment from jail duties.
 3. At the direction of the CTO Sergeant.
 4. At the direction of the Captain.
- e. Correctional Training Officers are selected by criteria established by Jail Administration.

100-6-3 Evaluation Process

1. The correctional training and evaluation process shall be completed as the current manual dictates.
2. Extension of Training

The probationary officer's correctional training and evaluation period may be extended upon recommendation of the Correctional Training Sergeant and with the approval of the Jail Captain during any step.
3. Termination from Training
 - a. At any time during the probationary period, if a probationary officer is not performing at a satisfactory level, a recommendation for dismissal may be forwarded to the Captain by the Correctional Training Sergeant. The Sheriff shall be informed of the recommendation.
 - b. All supporting training and evaluation documents shall be attached to the recommendation.
 - c. If the Sheriff and Captain concur with the recommendation, the probationary officer shall be relieved of duty by the Captain and a meeting will be scheduled with the officer.
 - d. All correctional training personnel and supervisors will be offered the opportunity to provide input in this evaluation.
4. Acceleration of Training
 - a. The probationary officer's correctional training and evaluation period may be accelerated based upon successful completion of all tests in a given step.

Dunn County Sheriff's Office
Policy and Procedure

- b. Any decision to accelerate an officer will be made upon recommendation of the CTO Sergeant and with the approval of the Jail Captain.
5. Evaluation Forms
- a. Daily Observation Report (DOR) - Completed by the Correctional Training Officer for each jail shift, and turned into the CTO Sergeant for approval.
 - b. The DOR's will be used to evaluate the progress of the Probationary Officer.

SLABEY v. DUNN COUNTY

SHERIFF DENNIS P. SMITH
12/12/2018

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1 what we had.
 2 **Q I'm not questioning that. I think that's the**
 3 **language there. What I'm asking you is you're**
 4 **the person in charge of all this stuff. I know**
 5 **you delegate it, and that's fair, but most**
 6 **entities do.**
 7 **I'm asking you, being in charge, looking at**
 8 **this now, I imagine you don't sit at your desk**
 9 **and stare at this document every day. But**
 10 **looking at it now, do you think it more**
 11 **appropriately should read does violate the**
 12 **constitutional rights of inmates?**
 13 **A Or will violate.**
 14 **Q Telling your COs this definitely violates their**
 15 **constitutional rights, yes?**
 16 **A Yes.**
 17 **Q Let's remove the question from it, correct?**
 18 **A Yeah.**
 19 **Q And then No. 3, exposes the county and staff to**
 20 **civil and criminal liability, monetary damages.**
 21 **There you're getting into kind of the**
 22 **financial or potential criminal liability of the**
 23 **sheriff's office, yes?**
 24 **A Yes. I guess what I paused for is this is a**
 25 **training thing for the staff so that they know**

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1 about it. It's not predicting that's going to
 2 happen, because we know it's going to happen.
 3 **Q Fair enough.**
 4 **You know what's going to happen?**
 5 **A Very likely that if something happens and an**
 6 **attorney is contacted, the attorney will jump on**
 7 **it as an opportunity. But the policy is for**
 8 **direction for the staff to try to get them to**
 9 **behave themselves and not expose the county to**
 10 **civil and criminal liability.**
 11 **Q Let me ask you this. You used the term as an**
 12 **opportunity.**
 13 **An opportunity for what?**
 14 **A Well, this is nothing negative towards attorneys,**
 15 **but it's always after the fact. I guess that's**
 16 **all I got to say. It exposes us to it, and**
 17 **that's a correct statement.**
 18 **Q After the fact, Sheriff, can you see the value in**
 19 **perhaps litigation helping the sheriff's office**
 20 **improve its policies and procedures to prevent**
 21 **this from happening again?**
 22 **MR. JOHNSON: Objection. Form.**
 23 **Go ahead.**
 24 **A I don't think it takes litigation to get us to**
 25 **try to do something better and use a better**

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1 practice or have a better policy.
 2 When we have something like that happen, we
 3 try to correct it without litigation.
 4 **Q (By Mr. Muszynski, continuing) What changes have**
 5 **you made to your policies or procedures as a**
 6 **direct result of Mr. Boigenzahn's sexual assault**
 7 **of Rachel Slabey?**
 8 **A I think that the supervision has probably been**
 9 **more alert and so forth, and the employees have**
 10 **been more alert to bringing information forward.**
 11 **We haven't had anything else happen, but our**
 12 **staff in our jail is very good about not having**
 13 **any kind of -- they let us know about stuff.**
 14 **Q Let me ask it this way. My specific question was**
 15 **policies or procedures that have changed.**
 16 **It sounds like you think they're more aware**
 17 **of it, but there's no change to a policy or**
 18 **procedure, is there?**
 19 **A I don't recall any change.**
 20 **Q In other words, it's basically just we hope that**
 21 **staff is going to be mindful of it and say**
 22 **something if they see it happen?**
 23 **MR. JOHNSON: Objection. Form.**
 24 **Foundation.**
 25 **Go ahead.**

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1 **A That's yes. And like I say, I guess I don't know**
 2 **if that specific part of the policy has been**
 3 **changed.**
 4 **Q (By Mr. Muszynski, continuing) Can you tell me,**
 5 **just as we're on the topic, Sheriff, you were**
 6 **obviously aware of what happened between**
 7 **Mr. Boigenzahn and Ms. Slabey after the fact?**
 8 **A Yes.**
 9 **Q Did you direct any of your subordinates to**
 10 **investigate the policies that were in place and**
 11 **make recommendations, if any, about changes?**
 12 **A I directed them to see which policies may have**
 13 **been violated because once the violation has been**
 14 **investigated by an outside agency, I was very**
 15 **sure that that would lead to a termination.**
 16 **Q And my question was not whether a policy was**
 17 **violated or not. My question is after the fact.**
 18 **Mr. Boigenzahn has been investigated. He's been**
 19 **charged. He actually gets convicted.**
 20 **At any point in that process do you tell**
 21 **your subordinates, Captain LaForte or anybody on**
 22 **the jail side, look into these policies and make**
 23 **recommendations, if any, about changes we need to**
 24 **make to make sure this doesn't happen again?**
 25 **A No. I don't recall doing that.**

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1 forth, tried to refresh them and correct things
2 or tried to make things better.
3 **Q What was that person's name?**
4 A Barbara Rhed.
5 **Q And she's currently retired, is that correct?**
6 A Retired and living in Nevada.
7 **Q Would it be your assumption then that the**
8 **earlier, that the PREA policy we looked at**
9 **earlier in your deposition was drafted by**
10 **Ms. Rhead?**
11 A I believe so, based on time period.
12 **Q That's fair. I suspect that different people**
13 **probably had different input into the final**
14 **version of it, but Ms. Rhead it sounds like**
15 **played a primary role in changing that in that**
16 **time frame?**
17 A Yeah. Her practice, from what I remember, was
18 that if somebody went to a specialized training,
19 that she would get input from them, or if
20 somebody had a special subject matter that they
21 were especially trained in, then she got. PREA,
22 I don't know what the input would have been
23 there.
24 **Q You don't know whether it was somebody going to**
25 **special training or somebody had special**

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1 **knowledge or just a decision to change it?**
2 A Just review it and change, if needed.
3 **Q You don't know, correct?**
4 A No.
5 **Q We'll talk about the Boigenzahn incidents in a**
6 **moment.**
7 **Any other incidents in your entire 18 years**
8 **that you've served as sheriff involving sexual**
9 **interaction between a guard and an inmate?**
10 A No. We had one who violated the fraternization
11 policy away from the jail.
12 **Q And who would that have been?**
13 A Carl. I can't remember his last name.
14 **Q McMillan?**
15 A McMillan, yeah.
16 **Q It's your understanding that that involved**
17 **fraternization how?**
18 A They're not allowed to have social contact,
19 personal contact, with an inmate for one year
20 from the time they're released, or if they're on
21 paper probation and parole, and that would have
22 been the violation.
23 **Q Do you have an understanding as to whether or not**
24 **Mr. McMillan was engaged in a physically intimate**
25 **relationship with that inmate?**

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1 A From what I understand and remember, he was.
2 **Q So that would be, is that just a fraternization**
3 **violation, or does that implicate other policies**
4 **as well?**
5 A I'm guessing there was probably other policies
6 for conduct and so forth.
7 **Q Are there any laws, to your knowledge,**
8 **prohibiting that sort of sexual interaction?**
9 **Assuming that it happened all outside of her**
10 **incarceration.**
11 A I don't know if there is or not. I don't believe
12 there is, but I don't know that for sure.
13 **Q Fair. Do you know whether or not there was any**
14 **violation of any policies between CO McMillan and**
15 **this inmate while she was still incarcerated?**
16 A I'm sure, I'm 99 percent sure there was not.
17 **Q And how do you know that?**
18 A Just from the reports I got back from the people
19 that interviewed him and talked to him about
20 it.
21 **Q He denied it?**
22 A Well, at first, but then -- denied it at work,
23 yeah.
24 **Q Denied it at work. And the girl, it was a**
25 **female. The girl denied it as well as happening**

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1 **at work, correct? Or in jail?**
2 A Correct.
3 **Q Did you conduct or did your office conduct any**
4 **further investigation into whether or not it**
5 **happened at the jail other than asking CO**
6 **McMillan and the one inmate?**
7 A The inmate in question I know was interviewed.
8 Whether or not they went door to door to check on
9 any other inmates, I don't know. I don't believe
10 so.
11 **Q To be fair, you'd agree with me that if it had**
12 **happened at work, at the jail, CO McMillan would**
13 **have been subject to criminal prosecution,**
14 **correct?**
15 A Yes.
16 **Q And you have an understanding that the inmate had**
17 **some sort of romantic feelings towards CO**
18 **McMillan? There was a relationship there that**
19 **was sexual at least, correct?**
20 A Something that was cultivated. I don't know what
21 those feelings were.
22 **Q Fair. And you know that CO McMillan was married**
23 **at the time?**
24 A Yes.
25 **Q So obviously if either CO McMillan or the inmate**

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1 indicated that it happened at work while she was
 2 incarcerated, it would have had far more
 3 significant consequences for at least CO
 4 McMillan, correct?
 5 A Absolutely. He would have been criminally
 6 investigated by an outside agency and charged.
 7 Q Are inmates informed that it is against the law
 8 for inmates and COs to have sexual relations?
 9 A I think in the PREA posting that we've had and so
 10 forth I think now it is. Earlier on I don't
 11 think it was, except jail staff has expectation
 12 to tell them that I can't have a social
 13 relationship with you. It's against policy.
 14 Q I'm looking at the incident report. I assume
 15 that is, it's numbered consecutively 396 through
 16 399.
 17 Is this the extent of the documentation that
 18 exists concerning CO McMillan's, the incident?
 19 A I don't know if there was any more than this.
 20 This is what you have. I assume that they pulled
 21 this out for you.
 22 Q Did you have any role in going through the
 23 documents that pertained to requests we made, or
 24 was that handled by Captain LaForte and others?
 25 A By Captain LaForte, and the chief deputy I'm

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1 pretty sure was involved.
 2 Q Did you review at all the documents that were
 3 sent to me by counsel in response to my
 4 questions, or did you trust Chief Deputy Multhauf
 5 and Captain LaForte?
 6 A I did not go through them.
 7 Q So this is what we have, whether it's all on CO
 8 McMillan's incident or not.
 9 In looking at that document it looks like in
 10 the first page of it inmate Jackie Peterson is
 11 the person that initially stated Mr. McMillan was
 12 having some sort of a relationship with
 13 another -- with inmate Megan Kegley, correct?
 14 A Correct.
 15 Q There's another inmate mentioned here. Well,
 16 it's the same, Jackie Peterson, and it says, I
 17 asked if these allegations, meaning the
 18 allegations about CO McMillan, were made up due
 19 to the fact that we had inmate Jackie Peterson
 20 here with a similar situation.
 21 Do you know what that similar situation
 22 is?
 23 A No, I do not.
 24 Q Do you have any knowledge of what Jackie Peterson
 25 may or may not have been involved in or an

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1 allegation?
 2 A All I recall is the one female that he was
 3 supposed to have been involved with.
 4 Q This document it looks like is filled out by now
 5 Captain LaForte, correct?
 6 A Correct.
 7 Q For whatever reason then Captain LaForte
 8 indicated that there was some sort of similar
 9 incident or similar situation involving inmate
 10 Jackie Peterson, you just have no knowledge of
 11 that, whatever that is?
 12 A Don't recall anything.
 13 Q Do you know, and I don't see it anywhere on this
 14 document, if any other inmates were ever
 15 interviewed regarding the circumstances of this
 16 incident involving CO McMillan and whether it
 17 happened at the jail or not?
 18 A I don't have any knowledge of that. I don't
 19 recall.
 20 Q As the sheriff would you want to know for certain
 21 whether or not CO McMillan engaged in that
 22 behavior at the jail?
 23 A I would, but my recollection was talking with
 24 Carl and talking with the female that she was the
 25 one he had contact with and it was away from the

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1 building.
 2 Q And that was based on both of their statements to
 3 you or the other investigators?
 4 A That's what I understood at the time. That's
 5 what I recall. What year was that, '08.
 6 Q '08. It's been a while.
 7 Do you recall ever directing any of the
 8 investigators to look into that further and to
 9 verify whether or not CO McMillan or the inmate,
 10 Ms. Kegley, were truthful about whether or not it
 11 happened at the jail?
 12 A No. I don't believe so.
 13 Q Did you just -- I mean Mr. McMillan resigned as a
 14 result of the incident, correct?
 15 A Correct.
 16 Q Rather than face discipline I assume?
 17 A Correct.
 18 Q Did you engage in that offer essentially to CO
 19 McMillan?
 20 A No, but historically fraternization turns into a
 21 termination, so I think that that's pretty
 22 well-known.
 23 Q And that's fine. I'm not suggesting that
 24 offering termination would be inappropriate
 25 necessarily.

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1 All I'm saying is clearly CO McMillan was
2 given an opportunity to resign as opposed to be
3 fired?
4 A I don't think it was that he was given that as an
5 ultimatum. I think it was more so he offered it
6 is how I would categorize what I remember.
7 Q And it was accepted?
8 A Yes.
9 Q Obviously, I think you would understand being in
10 charge of everything, including HR, his
11 resignation has different implications for his
12 future employment and/or unemployment as opposed
13 to being terminated for cause?
14 A Correct.
15 Q Can I safely assume that you considered this
16 issue closed then when CO McMillan resigned and
17 that became effective?
18 A Correct.
19 Q Did you at any point after the incident with
20 Mr. McMillan direct any staff to review or change
21 or suggest changes to any policies or procedures
22 to prevent this from happening?
23 A No. And I guess I'd add that I don't think the
24 policy was the problem. I think it was the
25 behavior.

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1 Q And just so we're clear, Mr. McMillan would have
2 received the same or similar policies prohibiting
3 that behavior, correct?
4 A Correct.
5 Q And Mr. McMillan presumably would have received
6 regular policy updates just like every other
7 CO?
8 A Correct.
9 Q And he would have received regular training just
10 like every other CO?
11 A Correct.
12 Q And PREA became effective in 2003, correct?
13 Roughly.
14 A If you say so. I don't know.
15 Q That's fine. I'll tell you it did.
16 A 15 years ago.
17 Q That's fair.
18 And for the 18 years you've worked here,
19 regardless of whether there's been a federal law
20 in place or not, you know that sexual
21 relationships between an inmate and a guard is
22 wrong, correct?
23 A Correct.
24 Q So presumably CO McMillan knew that as well?
25 A He definitely should have known that from his

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1 academy and from his policy review because it's
2 been illegal in Wisconsin long before PREA.
3 Q So we're clear, regardless of the policies and
4 procedures in place, CO McMillan did it anyway,
5 yes?
6 A Yes.
7 Q And to you, the problem was not a lack of
8 policies or supervision or training, the problem
9 was just simply CO McMillan?
10 A Correct. If I remember right, he acknowledged
11 that he knew that that policy was there and that
12 it was illegal.
13 Well, I should take that back. That he knew
14 it was against policy. At this point I still
15 don't know if it's illegal. Once they're out of
16 the building they're no longer --
17 Q Fair.
18 Other than the incident with CO McMillan,
19 any other incidents that you're aware of, any
20 incidents with Mr. Boigenzahn involving sexual
21 contact between an inmate and a guard?
22 A No other ones that I know of.
23 Q Any other incidents you're aware of other than
24 Boigenzahn and McMillan involving improper
25 fraternization between an inmate and a guard?

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1 A Yes.
2 Q Tell me about those other incidents that you're
3 aware of.
4 A The one that I'm thinking of is a female jailer,
5 I can't remember her name, became involved with,
6 fraternizing with an inmate, passing notes, from
7 what I understand.
8 While we're reviewing it we, if I remember
9 right, believe we had contact with her, one of
10 the supervisors did, and she denied that anything
11 was going on between the two of them.
12 We found out that she had been listed as
13 his, on his visitation list in Barron County
14 jail, and that she was making trips to Barron to
15 visit him in jail, which is again against the
16 policy.
17 I don't know if she resigned before she was
18 terminated, but she was on her way out the door
19 one way or the other.
20 Q Let me ask you a little bit about that incident.
21 I'll represent to you I think that's a CO by the
22 name of Amanda Jacobson.
23 A That sounds right.
24 Q My understanding that Ms. Jacobson was
25 corresponding with an inmate who for a time was

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1 **incarcerated in Dunn County, and then when it was**
 2 **discovered was incarcerated in Barron County?**
 3 A Yeah. He was from Barron and was down here as we
 4 contracted bed service, and when that was found
 5 out he was sent back, and then that's when we
 6 found the other part out about her being a
 7 visitor.
 8 **Q I see. So your understanding is that while the**
 9 **male inmate was here in Dunn County is when the**
 10 **written correspondence was taking place?**
 11 A I believe so.
 12 **Q And then once that was found out, Ms. Jacobson**
 13 **was or wasn't terminated at that point?**
 14 A I thought she had been terminated, but I thought
 15 I heard during some of these discussions that she
 16 resigned. I don't recall.
 17 **Q Fair. I don't mean to overstate it. I'm**
 18 **thinking more about the time line.**
 19 **Your understanding is that Officer Jacobson**
 20 **is passing notes while this inmate is still**
 21 **incarcerated in Dunn County, correct?**
 22 A Yes.
 23 **Q And then when that's found out, the inmate is**
 24 **removed back to Barron County, correct?**
 25 A Yes.

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1 A I believe it would be significant enough to
 2 terminate. Whether or not we would, the whole
 3 circumstances comes into play.
 4 **Q And then the third category it sounds like**
 5 **Ms. Jacobson was at least initially dishonest**
 6 **with jail staff when confronted with these**
 7 **issues, is that accurate?**
 8 A With the jail supervisors, yes.
 9 **Q Would that be sufficient grounds for on its own**
 10 **termination?**
 11 A Yes.
 12 **Q In your mind, if somebody is investigating a**
 13 **policy violation and the CO being investigated**
 14 **lies to the investigator, that's grounds for**
 15 **termination?**
 16 A Yes.
 17 **Q And that's communicated clearly to your**
 18 **supervisory staff? Do they know that do you**
 19 **think?**
 20 A For the supervisory staff? I think that they're
 21 pretty solid about knowing that.
 22 **Q If it comes across your desk that someone has**
 23 **been dishonest in the investigation process, but**
 24 **the supervisor is not recommending termination,**
 25 **what would you do?**

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1 **Q But Officer Jacobson is not terminated, nor does**
 2 **she resign immediately when the notes are found**
 3 **out, fair?**
 4 A I think he had been back and forth between Barron
 5 and Dunn County a couple times, so the time line
 6 I don't know for sure.
 7 **Q What in your mind was the issue with her**
 8 **termination? Was it the notes? Was it the**
 9 **visiting the guy? Or was it lying about it?**
 10 A All the above.
 11 **Q The notes themselves, would that have been**
 12 **grounds for termination of Ms. Jacobson?**
 13 A Yes and no. I guess it's not a hundred percent
 14 absolutely write one note you're gone. Could be
 15 that the note was for a purpose that was to do
 16 with their duties.
 17 *If it's something of a personal nature, it*
 18 *very likely would be termination, or a real*
 19 *strong discipline.*
 20 **Q And I'll represent to you based on testimony we**
 21 **had yesterday, nobody knows what's in those**
 22 **notes, at least nobody that we've talked to.**
 23 **Visiting the inmate when he was in Barron**
 24 **County, is that alone sufficient grounds for**
 25 **significant discipline or termination?**

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1 A I guess it kind of depends on what sparked the
 2 investigation. And if they lied and then 10
 3 minutes later they come back and said, hey, I
 4 didn't tell the truth 10 minutes ago, I want to
 5 tell you the truth, it might be just a discipline
 6 issue. But if they lie and they stick to the lie
 7 and we know that they're absolutely lying,
 8 they're gone.
 9 **Q Do you have knowledge of an incident involving CO**
 10 **Jodie Vena?**
 11 A I remember the name.
 12 **Q Do you have an awareness of an incident where**
 13 **Ms. Vena apparently was involved in transporting**
 14 **a Huber inmate and then spent some time**
 15 **socializing or fraternizing with the inmate in**
 16 **her vehicle?**
 17 A That sounds vaguely familiar.
 18 **Q I don't have any record pertaining to it. I just**
 19 **have knowledge of it because people have**
 20 **testified about it and because it's indicated in**
 21 **the answers to the questions that I sent.**
 22 **Do you know any more about that as to what**
 23 **happened in that incident?**
 24 A Not right offhand.
 25 **Q Do you have an understanding of the discipline**

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1 interview with Ms. Weaver-Blume, correct?
 2 A Correct.
 3 Q And Ms. Weaver-Blume indicates that a CO, she
 4 doesn't say who yet, a CO is involved in passing
 5 notes between one male inmate and one female
 6 inmate, correct?
 7 A And that's what the report indicates.
 8 Q And then when pressed Ms. Weaver-Blume indicated
 9 it was Officer Boigenzahn?
 10 A Correct.
 11 Q So now we know it's him that the allegation is
 12 about.
 13 And then basically this paragraph on the
 14 third page indicates, it goes through kind of the
 15 note passing process that Mr. Boigenzahn was
 16 going through in passing notes between these two
 17 inmates?
 18 A I haven't had a chance to read it, but if that's
 19 what you say it is.
 20 Q It looks like in this report then Sergeant Owens
 21 reviewed video to check on the truthfulness of
 22 the inmate's allegations?
 23 A Correct.
 24 Q And the end determination by Sergeant Owens is
 25 what?

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1 A Conclusion says the allegation is not supported
 2 on a factual basis. Did not notice any proof of
 3 support.
 4 Q Did you have any conversation with Sergeant Owens
 5 before becoming aware of the second incident in
 6 2015 about this particular one?
 7 A Was this the one that lines up with the date for
 8 the three-day suspension?
 9 Q No.
 10 A I do not.
 11 Q Well, I'll tell you that both of these, both this
 12 incident and an incident that happens shortly
 13 thereafter, both get kind of lumped together for
 14 the three-day suspension, but this investigation
 15 looks to have been completed before the other
 16 one.
 17 A Correct.
 18 Q And what I'm asking you is, would this, based on
 19 Sergeant Owens' determination, independently,
 20 would this have crossed your desk?
 21 A Most likely not. I believe it was talked about
 22 in a supervisors meeting. Everybody goes around
 23 the table and talks about whatever they have on
 24 their plate. I can't say that I specifically
 25 know about this.

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1 Q Would it be, looking at the investigation process
 2 that Sergeant Owens went through here, talk to
 3 the inmate who made the accusation themselves and
 4 then review video, I don't see any other
 5 investigation that actually took place in this,
 6 at least documented.
 7 Would that be an acceptable level of
 8 investigation into this particular incident in
 9 your eyes?
 10 A Based on the specifics of this particular
 11 incident I would think it is.
 12 Q Would it be inappropriate for a guard to be
 13 engaged in passing notes from one inmate to
 14 another?
 15 A Not appropriate.
 16 Q Would it be a violation of policies?
 17 A Yes.
 18 Q It would be a violation of fraternization
 19 policies?
 20 A Yes.
 21 Q It would be a violation of general conduct
 22 policies?
 23 A Very likely.
 24 Q And if asked and he was dishonest about it, it
 25 obviously would be a violation of truthfulness

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1 policies, correct?
 2 A Yes.
 3 Q Passing notes from one inmate to another could
 4 implicate potentially safety concerns based on
 5 the things we talked about before about inmate
 6 jealousy and violence and things like that,
 7 correct?
 8 A Yes.
 9 Q It also could obviously start to blur some lines
 10 between CO and inmate, correct?
 11 A Yes.
 12 Q Which could lead to further problems?
 13 A Yes. And I don't recall whether or not he
 14 admitted to it or not when you said about
 15 truthfulness. I didn't read that.
 16 Q That's fair.
 17 Would you have expected Sergeant Owens to
 18 actually talk to Mr. Boigenzahn in relation to
 19 this and see what his story was?
 20 A Based on the little bit I scanned that report
 21 over, not necessarily. It could be either way.
 22 If he saw him in the short-term and said,
 23 hey, we've been hearing these rumors possibly and
 24 that. Or sometimes what we'll do is we'll look
 25 at other video and see if it comes up again. If

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1 we think it's an actual violation and a dangerous
2 thing to have happen, definitely they would have
3 done more.

4 **Q I'll show you on the final page here, it sounds**
5 **like Sergeant Owens took the step of listening in**
6 **to phone calls of both of the inmates involved.**
7 **Do you see that?**

8 A Yep.

9 **Q And in some of the phone calls it looks like I**
10 **think the female inmate indicated romantic**
11 **feelings for the male inmate.**
12 **Do you see that?**

13 A The male corrections officer?

14 **Q No. The male inmate. So there's inmate Morrow.**
15 **Do you see that?**

16 A Yep.

17 **Q And inmate Driscoll. And the allegations are**
18 **that Mr. Boigenzahn is passing notes from inmate**
19 **Driscoll to inmate Morrow and back and forth.**
20 A Infatuated with him.

21 **Q But you understand that's the allegation for this**
22 **incident, yes?**

23 A Yes.

24 **Q So Sergeant Owens takes the steps to listen in,**
25 **eavesdrop in on phone calls between these two**

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1 **inmates to get the information we see on that**
2 **page, correct?**

3 A Correct.

4 **Q And in that information, in that eavesdropping,**
5 **Sergeant Owens finds out that Driscoll indeed has**
6 **romantic feelings for inmate Morrow.**
7 **Do you see that?**

8 A That's what's in his report. And I don't
9 categorize it as eavesdropping. It's
10 investigating.

11 **Q Fair.**
12 **Do you know that Driscoll knew that jail**
13 **staff was listening to that phone call?**

14 A I don't know that they knew that, but I'm fairly
15 certain it's still posted over there. It used to
16 be posted. And it was common knowledge for
17 inmates to know that.

18 **Q That anything they say on those phones can or may**
19 **be listened to by jail staff?**

20 A Correct.

21 **Q Fair.**
22 **Inmates having romantic relations between**
23 **each other is a violation of policies, correct?**

24 A Inmates having a relationship --

25 **Q Romantic relationship.**

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1 A -- romantic relations --

2 **Q In the jail?**

3 A -- in the jail -- I'm trying to think of how to
4 say this without confusing us all.

5 Them having romantic feelings towards each
6 other we can't stop. We don't allow them to have
7 a relationship in the jail as far as notes or
8 anything like that because if they want to write
9 a letter to somebody, they have to send it
10 through the post office. It comes back around
11 that way. We don't allow or participate in that.
12 That's not allowed.

13 **Q I probably stated it too broadly.**
14 **Obviously, you can't control what one inmate**
15 **feels at any given moment?**

16 A Right.

17 **Q But it is against jail rules and policies for an**
18 **inmate to pass private notes --**

19 A Yes.

20 **Q -- between other inmates, correct?**

21 A Yes.

22 **Q And certainly a CO who is acting as the**
23 **middleman, the mail service, from one inmate to**
24 **another is a violation of rules and policies?**

25 A Yes.

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1 **Q And the determination that Sergeant Owens makes**
2 **in this independent investigation is that the**
3 **inmates are the problem, we're going to transfer**
4 **an inmate, we're not going to say anything was**
5 **done wrong by CO Boigenzahn, yes?**

6 A I don't know what he was thinking at the time. I
7 guess, like I say, I don't recall having a
8 conversation about this particular incident.

9 **Q I'm asking you to just look at the document here.**
10 **The conclusion by Sergeant Owens is the**
11 **allegation is not supported by a factual basis.**
12 **I did not notice any proof to support inmate**
13 **Weaver-Blume's claim, correct?**

14 A Correct.

15 **Q And we know he didn't actually talk to CO**
16 **Boigenzahn, correct?**

17 A Doesn't say he did.

18 **Q And he didn't talk to inmate Driscoll or inmate**
19 **Morrow, correct?**

20 A Don't say nothing about that, either.

21 **Q What would be your expectation for discipline for**
22 **a CO that was passing notes between inmates?**
23 **Just that's what you know?**

24 A If it was a one-time thing or even maybe a few,
25 multiple times, my expectation would be is that

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1 somebody would, if I can get to the bottom of
2 who's doing the delivery back and forth and if
3 there was any particular possible reason which
4 would be acceptable, which is very unlikely, and
5 then take appropriate.

6 **Q And what would be appropriate disciplinary action**
7 **assuming that a CO was passing notes between a**
8 **male and a female inmate?**

9 A Probably a minimum of some days off up to
10 termination. If it was a one-time, maybe a
11 letter of reprimand.

12 **Q You have an understanding that there was a**
13 **subsequent incident in August of 2015 involving**
14 **CO Boigenzahn violating policy as well?**

15 A Correct.

16 **Q So we're talking about within a week or so of**
17 **that first incident that Sergeant Owens**
18 **determined was not an issue at that time,**
19 **correct?**

20 A Shortly thereafter.

21 **Q So I'll represent to you, this is 337 through 339**
22 **consecutively.**

23 This is kind of the first report we have
24 dated August 6th at about 4:35 a.m. It is
25 reporting officer Doug Ormson, correct?

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1 A Correct.

2 **Q And Sergeant Ormson indicates that there's a**
3 **report by an inmate by the last name of**
4 **Mittelstadt that CO Boigenzahn is engaged in some**
5 **inappropriate activity, correct?**

6 A I haven't read it, so I don't know that. I know
7 that that was the gist of the story that I was
8 told.

9 **Q Why don't you take some time and read through**
10 **that for a second to make the questions easier.**

11 A (Witness complies)

12 **Q Sheriff, you had a few moments to read through**
13 **these three pages.**

14 Are you satisfied that you had enough time
15 to know what's in there?

16 A I have a little bit of a grasp.

17 **Q So this is again an allegation by an inmate that**
18 **Mr. Boigenzahn is engaged in inappropriate**
19 **behavior towards another inmate, correct?**

20 A Yes.

21 **Q And Sergeant Ormson determines that there needs**
22 **to be further investigation done into these**
23 **allegations, correct?**

24 A Yes.

25 **Q Based on your reading of this document, what are**

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1 **the specific allegations that Sergeant Ormson was**
2 **provided?**

3 A That Boigenzahn is showing favoritism between
4 female inmates, that he apparently likes the
5 attention he gets when he's around the female
6 inmates, that he's a young lad, and that he
7 apparently takes it it's a compliment or makes
8 him feel good, and that there was concern that he
9 may cross the line at some point. Unlikely that
10 he had crossed the line and done something with
11 somebody, but that he -- the concern is there
12 that he might.

13 **Q So let's talk about those allegations. I think**
14 **we kind of talked about them with Sergeant Ormson**
15 **yesterday. As I understand it, there are really**
16 **two separate allegations there.**

17 One is the allegation that Mr. Boigenzahn is
18 engaged in inappropriate conduct with one
19 particular inmate, Ms. Draxler?

20 A Yes.

21 **Q The separate allegation would be that**
22 **Mr. Boigenzahn has, generally speaking,**
23 **inappropriate relations with female inmates where**
24 **he likes female attention as a male CO,**
25 **correct?**

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1 A Correct.

2 **Q And those are independent problems, correct?**

3 A I guess independent reports of a concern. The
4 independent problem is generally apparently could
5 be ongoing, and that's why the videos were
6 important to watch.

7 **Q And I mean independent in that CO Boigenzahn**
8 **liking female attention and that being something**
9 **that's being reported is a separate policy**
10 **violation potentially than CO Boigenzahn having**
11 **inappropriate conduct with one particular inmate,**
12 **correct?**

13 A Correct, if I understand the question right.

14 **Q If Mr. Boigenzahn was just having inappropriate**
15 **conduct with Ms. Draxler, that itself would be**
16 **independent, correct?**

17 A Yes.

18 **Q And if the allegation was only that CO Boigenzahn**
19 **was having inappropriate or was liking too much**
20 **female attention from the female inmates, that**
21 **would be an independent problem from his**
22 **interactions with Ms. Draxler?**

23 A Yes and no. It would be a lesser issue than
24 having a more definite relationship with somebody
25 else, something that could lead to the other.

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1 Q Fair. Let me ask it this way.
 2 If the only report here from Ms. Mittelstadt
 3 is I think Ryan Boigenzahn is having generally
 4 inappropriate relations with the female staff, he
 5 likes female attention too much, and if he hasn't
 6 crossed the line yet I'm concerned he will, that
 7 would still be something you would want to
 8 investigate even if Ms. Draxler was not
 9 involved?
 10 A Yes.
 11 Q So Sergeant Ormson follows up with this by
 12 suggesting there be additional investigation
 13 done, correct?
 14 A Yes.
 15 Q And would you expect that Sergeant Ormson would
 16 investigate both of those things, both the
 17 specific allegations into Ms. Draxler as well as
 18 the more general allegations that he's overly
 19 fond of female attention?
 20 A Well, it says the three sergeants talked.
 21 MR. JOHNSON: Object to form.
 22 Go ahead, Sheriff.
 23 A What I was going to say is since there was three
 24 sergeants and they were talking about it, they
 25 now feel that there could be something that is

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1 going to go astray or could become an issue, so
 2 then it was decided that there would be more
 3 investigations, more video watched, because on a
 4 particular date and time he could have been
 5 standing there for 10 minutes talking to
 6 somebody. At another time he might be there 20
 7 minutes talking to somebody. The farther along
 8 it goes, the more fearful we are of it becoming
 9 inappropriate.
 10 Q (By Mr. Muszynski, continuing) And I appreciate
 11 that answer, but that wasn't my question.
 12 My question is, would you expect that there
 13 be further investigation into both of those
 14 areas? Not just the specific allegations as
 15 related to Ms. Draxler, but also the more general
 16 allegations of Mr. Boigenzahn's interactions with
 17 the female inmates broadly?
 18 A Yes. Overall.
 19 Q I'll show you the next step I think in the
 20 investigation. It's consecutively numbered 340
 21 through 343.
 22 Would you like to take a few moments to
 23 review the document?
 24 A Sure.
 25 Q Okay. Go ahead, please.

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1 A (Witness complies)
 2 Q All right, Sheriff. So you've had some time,
 3 adequate time to look through these pages and be
 4 familiar with what's in here?
 5 A Yes.
 6 Q So this is further investigation by Sergeant
 7 Ormson, along with other correctional staff,
 8 correct?
 9 A Yes.
 10 Q And just in your review, what does this further
 11 investigation reveal regarding the conduct of
 12 Mr. Boigenzahn?
 13 A You know, I guess I would say that it indicates
 14 that Boigenzahn is being a little too comfortable
 15 with his environment and maybe pushing up against
 16 the line where he shouldn't go, but the contacts
 17 where she touched his hand and stuff like that
 18 may have been where she was actually the person
 19 that was doing something, but he didn't do
 20 nothing to stop it. I guess I think that -- just
 21 to try to fill in the blanks a little bit.
 22 Q Does it concern you that there are allegations of
 23 inappropriate familiarity or liking female
 24 attention and then you have video of a female
 25 touching that same CO?

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1 A It is a concern.
 2 Q And you have video of what at least is described
 3 I think in this report as playful physical
 4 touching between the feet of the CO and the
 5 inmate?
 6 A Say it again.
 7 Q I think this is the report where it's shown on
 8 video that there appears to be something done in
 9 a playful manner between CO Boigenzahn and inmate
 10 Draxler?
 11 A Uh-hum.
 12 Q Does it concern you that the allegations involve
 13 this CO liking female attention and now playful
 14 physical contact with a female inmate?
 15 A Yes.
 16 Q So obviously those prior allegations that there's
 17 at least some inappropriate relationship with
 18 inmate Draxler are being corroborated by video
 19 evidence, correct?
 20 A Yes.
 21 Q And would you take that to further corroborate
 22 the allegations that CO Boigenzahn has some
 23 interest in female attention from the female
 24 inmates?
 25 A Yes, but it appears primarily Draxler.

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1 **Q Do you know that from reading this document?**
 2 A Well, I guess I got that feeling that he tended
 3 to give her more attention.
 4 **Q Do you know if there was any further**
 5 **investigation done into whether or not there was**
 6 **inappropriate conduct with other female inmates**
 7 **outside of Draxler, at least at this time?**
 8 A I don't know.
 9 **Q Would you have wanted there to be further**
 10 **investigation now done into whether or not other**
 11 **female inmates were also involved with**
 12 **inappropriate relationships with CO Boigenzahn at**
 13 **this time?**
 14 A Would I want to? Yes and no. The jail staff is
 15 very thorough and does a good job, and usually I
 16 don't have to direct them to do things. They go
 17 above and beyond on their own.
 18 **Q I'll represent to you that at least pertaining to**
 19 **this 2015 incident I don't see any interviews**
 20 **with inmates other than Ms. Draxler.**
 21 **Do you think it would have been a good idea**
 22 **to talk to other inmates about their relations**
 23 **with CO Boigenzahn and their impressions of his**
 24 **conduct?**
 25 MR. JOHNSON: Objection. Form.

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1 Foundation.
 2 Go ahead.
 3 A You know, I guess I, from what's taking place and
 4 that we had no other complaints from other
 5 inmates, I would say not necessarily, but I would
 6 not have been surprised if they had, either.
 7 **Q (By Mr. Muszynski, continuing) Let me maybe point**
 8 **out something that you just said.**
 9 **You said no other allegations by other**
 10 **inmates, but you had Ms. Mittelstadt saying that**
 11 **in general Mr. Boigenzahn was liking female**
 12 **attention from the inmates.**
 13 **She did not limit it to just simply**
 14 **Ms. Draxler, correct?**
 15 A Correct.
 16 **Q So for purposes of making sure that the inmates**
 17 **are safe, if there's inappropriate relationships**
 18 **with a correctional officer, it would make some**
 19 **sense that the COs would investigate interactions**
 20 **with other inmates beyond Draxler, would it**
 21 **not?**
 22 A Depends on the extent of the inappropriate or not
 23 allowed behavior.
 24 **Q Let me ask it this way.**
 25 **Sergeant Ormson clearly knows at the point**

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1 **that he reviews the video that there's an**
 2 **allegation that CO Boigenzahn has inappropriate**
 3 **relations with Draxler, correct?**
 4 A Yes.
 5 **Q And he clearly sees some video evidence that**
 6 **corroborates that statement, correct?**
 7 A Sergeant Ormson didn't. Sergeant Vold monitored
 8 it and didn't like what she was seeing.
 9 **Q Fair enough.**
 10 **Based on the fact that Sergeant Ormson is**
 11 **involved in the investigation --**
 12 A Yes.
 13 **Q -- we presume that there's common knowledge there**
 14 **about the investigation, correct?**
 15 A Yep. Some discussion back and forth.
 16 **Q Fair enough.**
 17 **Staff knows that it's corroborated that**
 18 **there's inappropriate conduct between Draxler and**
 19 **Boigenzahn, correct?**
 20 A Correct.
 21 **Q At this point then staff has done no further**
 22 **investigation into whether or not Mittelstadt's**
 23 **other allegation, that Boigenzahn has**
 24 **inappropriate relations with other female**
 25 **inmates, correct?**

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1 MR. JOHNSON: Objection. Form.
 2 Go ahead.
 3 A I guess my comment is I thought there was more
 4 done. I guess from what I heard and saw in the
 5 report, it didn't sound like it was boom,
 6 decision is made that a whole big investigation
 7 should be. It was more subtle behavior there
 8 than that.
 9 But like I say, they use very good judgment.
 10 And normally if they feel that there's something
 11 that's going on that is very inappropriate that's
 12 going to lead to something else, they go farther
 13 and above.
 14 **Q (By Mr. Muszynski, continuing) Well, let me ask**
 15 **you this, Sheriff.**
 16 **I don't see anything in the two sets of**
 17 **documents you've looked at that says that jail**
 18 **staff interviewed or talked to or got statements**
 19 **from any inmates beyond Draxler and Mittelstadt.**
 20 A Correct.
 21 **Q And Mittelstadt is the one who says there's a**
 22 **problem here, yes?**
 23 A Yes.
 24 **Q And Draxler is the one that there's at least**
 25 **specific allegations there is a problem,**

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1 correct?

2 A After she was asked.

3 Q No other inmates by any documentation were talked

4 to, correct?

5 A None that I see.

6 Q And I would assume if a CO spoke with an inmate

7 about those allegations relating to

8 Mr. Boigenzahn, that they would document that

9 somewhere in here, whether it corroborated or

10 didn't corroborate?

11 A Very likely.

12 What was the date on that last one?

13 Q That last one, Sheriff, was August 10th of 2015.

14 A Was it like August 17th when the ball started

15 rolling? I don't remember for sure.

16 Q We'll talk about it.

17 I'll show you now what's consecutively

18 numbered 344 through 345. This is another

19 investigation report or incident report, yes?

20 A Yes.

21 Q And it lists a whole series of folks, Boigenzahn,

22 Stahlbusch, S-T-A-H-L-B-U-S-C-H, Sergeant Vold,

23 Sergeant Owens, Sergeant Ormson, and then chief

24 deputy at the time Guinness?

25 A Correct.

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1 Q So all of those people presumably would know

2 about what's going on in this investigation,

3 correct?

4 A Yes.

5 Q Okay. Do you want to take a minute to read

6 through those two pages, please.

7 A (Witness complies)

8 Q You've had an opportunity to look through this

9 document?

10 A Yes.

11 Q And so this is kind of I think the wrap-up of

12 some of the investigation process into what

13 happened in the August incident.

14 Now, this is I think it's the first time

15 that we see Sergeant Owens listed as one of the

16 involved officers.

17 Can we assume that Sergeant Owens, who

18 investigated the earlier July incident, is now

19 aware that there are other allegations involving

20 Mr. Boigenzahn?

21 A I would assume so.

22 Q If he's listed on here there's obviously

23 communication with him then, correct?

24 A Maybe some discussion or something.

25 Q Tell me what you gather from reading this as far

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1 as what's the wrap-up of the investigation into

2 this particular set of incidents.

3 A The conclusion?

4 Q Yeah.

5 A Just that they're communicating with each other,

6 and that Captain LaForte was made aware of the

7 conversation that Sergeant Vold had with Draxler,

8 and that it's of more concern than it initially

9 was.

10 Q When I read this document I see it completely

11 focused on the conduct between Draxler and

12 Boigenzahn, yes?

13 A Primarily, yes.

14 Q I mean there's nothing about inappropriate

15 interactions with any other inmates other than

16 talking about there's a policy against it,

17 correct?

18 A Yes.

19 Q So at this point all of the investigation and

20 discipline that follows is focused entirely on

21 the conduct with Ms. Draxler?

22 A I believe so, yes.

23 Q And it looks like I think, we'll look at the

24 discipline in a second, but it looks like it may

25 also now implicate the stuff that Sergeant Owens

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1 investigated and concluded earlier that didn't

2 have any validity to it.

3 Is that your recollection?

4 A My thought is that the second part validates that

5 there actually probably was more to the initial

6 thought, that that was very nonchalant or not

7 concerning, and now this adds to that and ties it

8 together.

9 Q Because now you have a CO who is engaged in

10 physical contact with another inmate in a playful

11 manner following allegations that that same CO is

12 passing notes between two male and female inmates

13 that may be involved in a romantic relationship,

14 right?

15 A Yes.

16 Q I don't see your name listed on here.

17 Do you know if you were made aware of it at

18 this time, August 10th of 2015, or when you

19 became aware of it?

20 A No. I can't say I recall one way or the other

21 about it.

22 Q Do you know if you were made aware of this

23 incident involving Mr. Boigenzahn at any point in

24 the process?

25 A I was made aware that there was viewing videos

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1 and talking to inmates investigating his
2 behavior.
3 **Q I'm going to show you now what are documents**
4 **consecutively numbered 117 through 119.**
5 **Have you ever seen these before?**
6 A Yep.
7 **Q You know what they are?**
8 A Yeah.
9 **Q So this is a disciplinary form and a letter**
10 **confirming the discipline to Mr. Boigenzahn**
11 **following the 2015 incidents, yes?**
12 A Yes.
13 **Q And as I look at the first page here, 117, it**
14 **actually does list both the July incident and the**
15 **August incident now?**
16 A Yes.
17 **Q So in other words, when this discipline is levied**
18 **to Mr. Boigenzahn, they are taking into account**
19 **both his violations of policy in August -- or I'm**
20 **sorry, in July, as well as in August, correct?**
21 A Yes.
22 **Q And so even though the initial investigation**
23 **concluded there wasn't merit for discipline for**
24 **Mr. Boigenzahn from July, now we're saying there**
25 **is?**

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1 A Yes. It's part of the mixture going into the
2 cake.
3 **Q In other words, the August incident somewhat**
4 **corroborates that there was probably a problem in**
5 **July that didn't get caught in July?**
6 MR. JOHNSON: Objection to form.
7 Go ahead.
8 A I guess I, my thought is is that there was
9 concern in July, and this helps substantiate what
10 came up in August.
11 **Q (By Mr. Muszynski, continuing) Well, when we**
12 **looked at the documents before, Sheriff, the July**
13 **incident said there was no basis for it other**
14 **than a problem between the inmates.**
15 **That's obviously incorrect if it's included**
16 **here now as a policy violation, correct?**
17 MR. JOHNSON: Objection. Form.
18 Go ahead.
19 A I guess I disagree with the way you say it.
20 Again, there was nothing to substantiate that he
21 was actually doing something wrong.
22 I'm sure there was a thought that we did not
23 like the behavior, but that then was tied in with
24 the new information they had that substantiated
25 that yes, this is going on.

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1 **Q (By Mr. Muszynski, continuing) Sheriff, I'll read**
2 **from you here page 336, which is the end of**
3 **Sergeant Owens' report. It says --**
4 A The allegation is not supported on a factual
5 basis.
6 **Q Correct. So if it's not supported on a factual**
7 **basis, that means that Sergeant Owens meant that**
8 **it had no actual basis to be a policy violation**
9 **at that time, did it not? He concluded it was**
10 **untrue?**
11 A Yes. Just literally looking at it.
12 **Q Based on his investigation, correct?**
13 A Correct.
14 **Q Now in document 117 we see that jail staff has**
15 **now concluded that it does have some validity to**
16 **it because it's being used as partially a basis**
17 **for discipline, correct?**
18 A Correct.
19 **Q The policies that are listed as violated by**
20 **Mr. Boigenzahn in 2015 are fraternization and**
21 **unbecoming conduct, correct?**
22 A Correct.
23 **Q Just as you sit here today, can you think of any**
24 **other policies that were violated based on the**
25 **facts that you know?**

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1 A I'd have to look through the policy manual and
2 check and see.
3 **Q Do you agree that the fraternization policy and**
4 **the unbecoming conduct policy were violated based**
5 **on what we know about the July and August 2015**
6 **incidents?**
7 A Based on the totality of the information, yes.
8 **Q There's a detailed description of the violation,**
9 **and it talks about I guess some physical**
10 **interactions and physical conduct that took**
11 **place.**
12 **And then on the second page there's the**
13 **discipline, and basically it's unpaid suspension,**
14 **which we see on page 1, as well as following all**
15 **policies, work rules, and procedures, correct?**
16 A Try that again.
17 **Q Yep. So the action to be taken says he's going**
18 **to be suspended for three days?**
19 A Yes.
20 **Q And also it says action to be taken in the**
21 **future, employee will follow all policies, work**
22 **rules, procedures, and current laws regarding**
23 **employment, etc.?**
24 A Yes.
25 **Q There is no other action that was taken**

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1 concerning these incidents, correct?
 2 A Not that I know of.
 3 Q I do not see your signature anywhere on this
 4 document, but I do see deputy, Chief Deputy
 5 Gunness.
 6 A Correct.
 7 Q Is that acceptable policy?
 8 A Yes. He normally -- normally I do the discipline
 9 and the stuff, I sign off on it. But in this
 10 particular case, I don't know if I was there that
 11 day or not, and he normally calls me and says
 12 what should I do. Go ahead with it and take care
 13 of it.
 14 Q This particular discipline, three days of unpaid
 15 suspension for Mr. Boigenzahn in 2015, was that
 16 something that was discussed with you as far as
 17 the discipline that was appropriate for the
 18 conduct?
 19 A Yes.
 20 Q And you agreed with the discipline?
 21 A Well, my initial thought I remember was to
 22 terminate. And then after a brief discussion it
 23 was decided that we would give him the
 24 opportunity to learn from it and discontinue that
 25 behavior.

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1 Q That steps were taken to ensure that
 2 Mr. Boigenzahn would learn from this?
 3 A Part of the discipline was that he was to follow
 4 all policies and rules and regulations.
 5 Q What steps were taken to ensure that
 6 Mr. Boigenzahn followed those rules?
 7 A I don't know what you're looking for, but
 8 monitoring his behavior and so forth.
 9 Q What monitoring was put in place to make sure
 10 that Mr. Boigenzahn followed the rules following
 11 this incident?
 12 A I guess I don't recall.
 13 Q Did you make any specific requirements of your
 14 staff, look, if you're going to keep this guy on,
 15 you've got to keep an eye on him?
 16 A I believe that was discussed that, you know, we
 17 have to keep an eye on him, make sure nothing
 18 else takes place. And that if he hasn't learned
 19 from this, then we're going to revisit it.
 20 Q Do you have an understanding that Mr. Boigenzahn
 21 works the night shift?
 22 A Yes.
 23 Q Or worked the night shift.
 24 And my understanding is at least from about
 25 1:30 in the a.m. until sometime later that

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1 morning, a couple hours after that, 5:30, 6:30,
 2 there are no sergeants on staff, there are just
 3 COs?
 4 A I don't think it's 1:00, 1:30. I think it's more
 5 like 2:00, but there is a few hours that's not
 6 covered.
 7 Q And that would be Mr. Boigenzahn's shift,
 8 correct?
 9 A Yes.
 10 Q Did you have any discussions with jail staff that
 11 maybe we should move Boigenzahn off the night
 12 shift so that he's more appropriately supervised
 13 by a sergeant at all times?
 14 A I think there was some discussion about doing
 15 that, but then it would affect somebody on day
 16 shift that would be bumped off from that shift
 17 and be forced onto the night shift.
 18 Q So the choice was made --
 19 A And I'm not a hundred percent sure. We discussed
 20 that a couple of different times. I don't recall
 21 if it was specifically discussed in this case.
 22 Q So you can't tell me one way or another whether
 23 that change was discussed in relation to this
 24 discipline or not?
 25 A Not a hundred percent.

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1 Q Can you tell me any policies or procedures that
 2 were specifically put in place to monitor
 3 Mr. Boigenzahn after these incidents.
 4 A I can't tell you any.
 5 Q Can you tell me any documentation that was made
 6 to specifically document Mr. Boigenzahn's
 7 conduct, whether it's appropriate or not, after
 8 these incidents?
 9 A Not offhand.
 10 Q Can you tell me any changes of any sort to the
 11 job that every CO was performing after
 12 Mr. Boigenzahn's incidents as far as monitoring
 13 him, keeping an eye on him, any change?
 14 A There was some discussion, but I don't recall
 15 what was decided.
 16 Q Do you recall specifically directing Captain
 17 LaForte to assign someone to keep an eye on
 18 Mr. Boigenzahn?
 19 A Not directly.
 20 Q Who talked you out of terminating him?
 21 A What's that?
 22 Q Did somebody specifically talk you out of
 23 terminating him, or was it a group thing?
 24 A There was a discussion that took place from I
 25 imagine the sergeants from what I remember and

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1 the captain and the chief deputy, and basically
 2 termination isn't the answer to all questions.
 3 If you have somebody who steals, it's a done
 4 deal, you know, they're terminated. If you have
 5 somebody that's doing something that's on the
 6 edge of being dangerous or bad, you have
 7 different ways you could go with it, and we
 8 decided we wanted -- he was a pretty good
 9 employee, so we wanted to try to see if we could
 10 save him.
 11 **Q Let me ask you this.**
 12 **You just gave me stealing as an example of**
 13 **that's no question in your mind immediate**
 14 **termination, yes?**
 15 **A** If they stole from somebody and they were caught,
 16 they'd be gone. Just some things are more
 17 defined. I guess that would be a word I could
 18 use.
 19 **Q On the last page of this, it's the letter from**
 20 **deputy, Chief Deputy Guinness to Ryan Boigenzahn**
 21 **acknowledging his discipline, correct?**
 22 **A** Yep.
 23 **Q And in this it states, I expect you will take**
 24 **this opportunity to correct your improper conduct**
 25 **in the future, fully meet the duties and**

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1 **responsibilities required of you, and observe all**
 2 **the rules and procedures of your job, correct?**
 3 **A** Correct.
 4 **Q Can you tell me any additional training or**
 5 **classes or instruction or anything that**
 6 **Mr. Boigenzahn was given to ensure that he**
 7 **adhered to the policies he had already violated.**
 8 **A** None that I recall.
 9 **Q Nothing that's any different than any other**
 10 **employee would have received, correct?**
 11 **A** I don't recall.
 12 **Q I'm going to show you here now what's numbered**
 13 **consecutively 107 through 112.**
 14 **Do you recognize this as a performance**
 15 **evaluation?**
 16 **A** Yes.
 17 **Q You're familiar generally with these documents?**
 18 **A** Yep.
 19 **Q And I'll show you on the back, last page here,**
 20 **this is the performance evaluation for Ryan**
 21 **Boigenzahn.**
 22 **There's a 2015 that's indicated on the first**
 23 **page, but the date on the document is actually**
 24 **April of 2016, correct?**
 25 **A** Correct.

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1 **Q So this, we can read this document to mean that**
 2 **Mr. Boigenzahn is getting this formal review**
 3 **sometime in April of 2016?**
 4 **A** Correct.
 5 **Q In this review it states on page 109, Ryan had an**
 6 **incident last year that compromised safety and**
 7 **security of the facility.**
 8 **Do you know if that's referencing the July**
 9 **and August incidents?**
 10 **A** No, I don't.
 11 **Q And then it says, be careful and mindful of**
 12 **inmate manipulation.**
 13 **Do you think that Mr. Boigenzahn was**
 14 **manipulated in the incidents that we just looked**
 15 **at?**
 16 **MR. JOHNSON:** Objection. Form.
 17 **A** I think that the thought was when they did this
 18 document was that they wanted to bring that to
 19 his attention that some kinds of behavior could
 20 be doing that. If I'm extra nice to you, then
 21 you might be extra nice to me. So I'm thinking
 22 that's where they were leaning, but it doesn't
 23 explain any more.
 24 **Q (By Mr. Muszynski, continuing) And I'm asking**
 25 **you, looking at what you read of all those**

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1 **documents just now of the July and August**
 2 **incidents of 2015, did you see any indication**
 3 **that Mr. Boigenzahn was being manipulated in**
 4 **those incidents?**
 5 **A** Again, that's a guess. I think that he was being
 6 paid quite a bit of attention, which could be
 7 the, long end of it could be that they wanted
 8 something for that, that behavior. You know,
 9 somebody that's really mean and ugly towards you,
 10 you have no problem saying go sit down, get out
 11 of my face.
 12 When somebody is nice to you, that might
 13 have been for the purpose of trying to get
 14 something in return. I don't know that for sure.
 15 **Q We know, though, based on the discipline involved**
 16 **and the things that you just read that**
 17 **Mr. Boigenzahn had some choice in actually**
 18 **initiating physical contact with Ms. Draxler as**
 19 **well as passing those notes, correct?**
 20 **A** Yes.
 21 **Q So it's not just manipulation that's going on,**
 22 **it's also Mr. Boigenzahn's choices?**
 23 **A** Oh, absolutely.
 24 **Q And there's nothing in the evaluation and comment**
 25 **section there that talks about Mr. Boigenzahn**

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1 making inappropriate choices.
 2 It focuses on inmate manipulation, does it
 3 not?
 4 A Try that one more time.
 5 Q I don't see anything in here in evaluation and
 6 comments, what we just read, that whole
 7 paragraph, that talks about Mr. Boigenzahn making
 8 poor choices related to policies, do you?
 9 A Let me just read it through here a little bit.
 10 Q For sure.
 11 A No. I don't see that.
 12 Q The evaluation essentially blames the inmates for
 13 manipulation of Mr. Boigenzahn, does it not?
 14 MR. JOHNSON: Objection to form.
 15 A I don't believe so. I think it's pointing out to
 16 staff that you need to make good choices and
 17 control that kind of behavior.
 18 Q (By Mr. Muszynski, continuing) We know by looking
 19 at the document that this evaluation takes place
 20 nine months after those incidents where he was
 21 disciplined, correct?
 22 A Correct. We do an end of year, which they start
 23 working on usually first of February about the
 24 previous year. And then after they piece
 25 everything together, then they sit down with the

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1 employee.
 2 Q Did you at any point suggest that Mr. Boigenzahn
 3 should be on a more regular supervision or
 4 evaluation process because of the incidents he
 5 was involved in in 2015?
 6 MR. JOHNSON: Asked and answered.
 7 Go ahead.
 8 A No.
 9 Q (By Mr. Muszynski, continuing) Do you think it
 10 was -- strike that.
 11 Just so we're clear, the date on this 4-8 of
 12 '16, you have an understanding of when Ms. Slabey
 13 was assaulted, yes?
 14 A I don't recall the date.
 15 Q If I told you it happened in March of 2016, would
 16 you have any reason to disagree with that?
 17 A No.
 18 Q So in other words, this evaluation that
 19 Mr. Boigenzahn is getting is actually happening,
 20 or being given to him, after Ms. Slabey has
 21 already been assaulted?
 22 A Right, but it's for the information that was
 23 about his 2015 behavior.
 24 Q In other words, nobody talked -- they didn't talk
 25 to him, they didn't evaluate his 2015 behavior

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1 formally other than the discipline we already saw
 2 until after he's assaulted Ms. Slabey?
 3 MR. JOHNSON: Objection. Misstates
 4 prior testimony.
 5 Go ahead.
 6 A I'm confused.
 7 Q (By Mr. Muszynski, continuing) This document
 8 presumably is given to Mr. Boigenzahn and
 9 discussed with Mr. Boigenzahn on the date it is
 10 signed?
 11 A Correct. That's how I would take it.
 12 Q So in other words, this document, and all of the
 13 detailed evaluations that are contained therein,
 14 is not given to Mr. Boigenzahn until after he has
 15 assaulted Ms. Slabey?
 16 A Correct. But the point I make with that is is
 17 that the discipline doesn't have nothing to do
 18 with the evaluation.
 19 I would assume that the discipline would be
 20 noted in the evaluation for something that
 21 happened in 2015, but I haven't read the whole
 22 thing, and I would not say that they're
 23 definitely tied together.
 24 Q Let's do this. I know you want to take a break
 25 for a moment. Why don't you take your break, and

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1 then I want you to come back and read through
 2 that because I want you to be comfortable about
 3 where you think the discipline is actually
 4 mentioned in that document.
 5 (Off the record)
 6 Q (By Mr. Muszynski, continuing) Sheriff, you had
 7 some time now to review the 2015 performance
 8 evaluation form.
 9 Can you tell me where in this document you
 10 see reference to the 2015 discipline other than
 11 what we've already talked about.
 12 A It talks about getting three days off for his
 13 behavior.
 14 Q Just references it, correct?
 15 A Yes.
 16 Q No other corrective action noted? No other
 17 criticisms of his performance? Nothing like
 18 that?
 19 A I think it did talk a little bit about
 20 behavior.
 21 Q Can you show me where that is.
 22 A One incident resulted in days off without pay for
 23 inappropriate nonsexual behavior with a female
 24 inmate. No other issues.
 25 Then down here it talks about, someplace I

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1 saw about being aware of manipulation and small
2 things can turn into larger things. I see that
3 on the front page here, second page.
4 **Q Do you agree with this overall evaluation of**
5 **Mr. Boigenzahn's performance following the 2015**
6 **incident? Obviously, taking out that we don't**
7 **yet know maybe about the assault of Ms. Slabey?**
8 A I don't believe we knew about the assault at that
9 time, but it could have been a little more
10 critical on him.
11 **Q Let's go back to your earlier testimony.**
12 **You advocated for terminating the guy,**
13 **correct, Mr. Boigenzahn?**
14 A Yes.
15 **Q And this evaluation makes it sound like he's**
16 **largely a glowing employee?**
17 MR. JOHNSON: Objection. Form.
18 Go ahead.
19 A Like I say, he was a good employee when it comes
20 to a lot of things. He could communicate with
21 people, keep people calm. I remember people
22 talking about that he would have an inmate that
23 would be very irate and he'd calm them down and
24 stuff, so he did a lot of things well.
25 **Q (By Mr. Muszynski, continuing) And I'm asking**

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1 **you, correct that you initially recommended**
2 **termination following the incidents in 2015**
3 **because you felt they were significant enough to**
4 **warrant termination?**
5 A I discussed that normally -- sometimes I've done
6 terminations. Frankly, some of the employees
7 that that's happened with didn't have a lot of
8 skills otherwise. I mean they weren't a good
9 employee on the other hand. It was they were a
10 so-so employee. There wasn't much hope that they
11 were going to learn from something.
12 In Ryan's case, I remember we talked about
13 that this would hopefully be a wake-up call and
14 that he would not have any more issues.
15 **Q And I'm asking you, I think your testimony**
16 **earlier was that your initial position, you come**
17 **to the meeting --**
18 A That was my initial thought.
19 **Q -- wanting to terminate him, yes?**
20 A My first thought was to terminate.
21 **Q Correct. And that employment review, is that an**
22 **overall positive employment review, or would you**
23 **characterize it as something different?**
24 MR. JOHNSON: Objection. Form.
25 Go ahead.

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1 A I guess some of the stuff that was discussed
2 about communication skills, booking release and
3 so forth, was very positive.
4 **Q (By Mr. Muszynski, continuing) And correct, you**
5 **don't sign off on those employment reviews.**
6 **This one is signed by Captain LaForte and by**
7 **Sergeant Owens, correct?**
8 A Correct.
9 **Q Would you have been involved in drafting this**
10 **employment review for Mr. Boigenzahn?**
11 A No. I would not have been.
12 **Q Do you recall having any conversations with jail**
13 **staff about Mr. Boigenzahn and his performance**
14 **between the discipline in 2015 and this**
15 **employment review?**
16 A None that I recall. I regularly will say, you
17 know, how's Ryan doing or somebody like that when
18 there's been an issue. And I'll usually get
19 yeah, he's doing good or we're still watching him
20 or whatever, but I don't recall anything like
21 that. That's kind of a common practice for me.
22 **Q When do you first become aware that there's**
23 **another incident?**
24 A I don't recall the date.
25 **Q Just roughly.**

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1 A Which incident are you talking about? The one
2 with the sexual contact?
3 **Q Well, we know that the timing, it seems like the**
4 **timing, based on the documents, is that jail**
5 **staff finds out about an issue with Ms. Schindler**
6 **that chronologically happened after the assault,**
7 **that you find out about that incident first, is**
8 **that correct?**
9 A I'd have to lay it out in a time line to say for
10 sure.
11 **Q Did you have knowledge of an incident that**
12 **ultimately led to Mr. Boigenzahn's termination?**
13 A Yes.
14 **Q And do you have an understanding of whether or**
15 **not that involved the assault of Ms. Slabey?**
16 A Yes.
17 **Q What is your understanding?**
18 A That how I recall it is is that our drug
19 investigator from the Menomonie Police Department
20 that works with our drug investigator was talking
21 to her about a drug investigation, and that
22 during that process it came up that she felt she
23 had been sexually assaulted, or however it was
24 put, and then I was told about it.
25 And I says, we need to have an outside

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1 agency investigate it because we want to be
 2 transparent and not slanted at all. And they
 3 checked with Menomonie PD, and the Menomonie PD
 4 volunteered or offered to take care of it, help
 5 us, subsequently leading to his being charged.
 6 **Q And I'm really not trying to trick you here,**
 7 **Sheriff.**
 8 **Is it your recollection that Mr. Boigenzahn**
 9 **is terminated because of the sexual assault or**
 10 **because of something else?**
 11 A We had no knowledge of the sexual assault when he
 12 was terminated.
 13 **Q Okay. Maybe I misheard what your statement just**
 14 **was.**
 15 **What is your understanding of the incident**
 16 **that led to Boigenzahn's termination?**
 17 A Well, from the first one when he got, the first
 18 couple of things that were learned that led to
 19 his days off, like I say, it was a wake-up call
 20 to correct behavior.
 21 Then we heard that there was still some
 22 hanging around, lingering in the female section.
 23 Had the sergeants watch video, and there was a
 24 lengthy period of time that he was out of sight
 25 of the camera. I said, that's it. He knows

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1 **Q And it indicates that he was terminated on May**
 2 **31st of 2016?**
 3 A Yep. He signed it that he accepted it.
 4 Notified.
 5 **Q This incident is involving then what you just**
 6 **talked about, knowledge of inappropriate conduct**
 7 **again with female inmates in the Huber dorm and**
 8 **that you became aware that he spent some time**
 9 **outside the view of the cameras, you don't know**
 10 **what he's necessarily doing, correct?**
 11 A Correct.
 12 **Q Did you have a conversation with Mr. Boigenzahn**
 13 **about what he was doing when he was outside the**
 14 **view of the cameras?**
 15 A Not me personally.
 16 **Q Do you know if anyone did?**
 17 A I believe the chief deputy and Captain LaForte
 18 had a conversation.
 19 **Q Do you have an understanding as to what was**
 20 **happening while he was outside the view of the**
 21 **cameras in relation to these incidents that he's**
 22 **terminated for?**
 23 A I believe the chief deputy informed me that he
 24 said he was talking to the females, but I don't
 25 know for sure.

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1 better. He's been counseled on it, and he knows
 2 better.
 3 **Q I'm going to show you what's consecutively**
 4 **numbered 122 through 126. These are now signed**
 5 **by you.**
 6 A Yep.
 7 **Q Do they look familiar to you?**
 8 A Yep.
 9 **Q So the first page is the letter that's actually**
 10 **sent to Ryan Boigenzahn kind of documenting the**
 11 **policy violations, and then asking him to come in**
 12 **for a meeting essentially that may result in his**
 13 **termination, yes?**
 14 A Yeah. I don't think they were mailed. I think
 15 it was delivered to him, if I remember right.
 16 **Q That's fine. I don't know that that matters.**
 17 A Instead of sending it certified mail, we want to
 18 make sure they get it, so we normally deliver
 19 them.
 20 **Q The next page here numbered 123 is the actual**
 21 **disciplinary action, correct?**
 22 A Correct.
 23 **Q And this one is the one that you signed at the**
 24 **end, correct?**
 25 A Correct.

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1 **Q You considered it, based on your earlier**
 2 **statements and your approval of his termination,**
 3 **you considered it that these are similar**
 4 **violations, he's having inappropriate**
 5 **relationships with female inmates?**
 6 A Inappropriate contact with them.
 7 **Q I'm not saying he's dating them. I don't know.**
 8 **But that the interactions between the two are**
 9 **inappropriate?**
 10 A Yeah. The conduct is becoming a relationship
 11 past the scope of what he's supposed to be
 12 doing.
 13 **Q And I note general rules of conduct or unbecoming**
 14 **conduct, those were listed as policies violated**
 15 **in 2015, correct? I think the general rules of**
 16 **conduct was.**
 17 A Well, I think it gives here the dates in 2016.
 18 **Q I'm asking you if those are the same policies**
 19 **that were violated back in 2015.**
 20 A I think they're all the same.
 21 **Q And I think truthfulness is added, but**
 22 **fraternization and conduct were certainly listed**
 23 **before, correct?**
 24 A Yep.
 25 **Q So same pattern of behavior, correct?**

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1 A Correct.

2 **Q Same policies are in place, correct?**

3 A Yes.

4 **Q Same trainings in place, correct?**

5 A Yes.

6 **Q No additional training has been provided to him. He just simply violated the same policies as before?**

7

8 MR. JOHNSON: Objection. Form.

9 Foundation.

10 Go ahead.

11

12 A I disagree that no training was provided. The

13 being disciplined is a slap alongside the face

14 like pay attention, you're not supposed to do

15 this, so he was given training.

16 **Q (By Mr. Muszynski, continuing) Let me ask you**

17 **this, Sheriff.**

18 **The period of incarceration for the inmates**

19 **is supposed to be punishment or punitive, it's a**

20 **denial of freedom as a punitive or justice**

21 **function, correct?**

22 A Correct.

23 **Q It's also supposed to be rehabilitative for the**

24 **inmate to hopefully when they get out of prison**

25 **or jail to make better choices, correct?**

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1 A Yes.

2 **Q Not reoffend?**

3 A Yes.

4 **Q And there are specific trainings and classes and**

5 **pamphlets and things like that that you give to**

6 **the inmates in an effort to rehabilitate them,**

7 **correct?**

8 A Yep. Counseling pamphlets, programs, classes.

9 **Q That's all separate from and apart from the**

10 **actual justice-seeking side, the actual**

11 **incarceration, correct?**

12 A Correct.

13 **Q The incarceration is not designed to get them to**

14 **change their ways.**

15 **That's the rehabilitation stuff, correct?**

16 MR. JOHNSON: Objection. Form.

17 Foundation.

18 Go ahead.

19 A In years past I would think it was all punitive.

20 Now part of the reason of incarcerating them

21 is to curb their behavior, and the reason of

22 doing programs in the middle is to give them

23 tools to try to change their behavior so that

24 they don't keep coming back.

25 In 1975 we had five to seven people in jail,

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1 in 1995 we had 45 people in jail, and in 2005 we

2 had 80 people in jail. So yes, our goal is to

3 try to get them to not reoffend.

4 **Q (By Mr. Muszynski, continuing) Because they don't**

5 **have, the assessment I think, generally the**

6 **consensus is that the people that are offending**

7 **don't have some sort of necessary skills to make**

8 **choices that keep them out of illegal behavior,**

9 **correct?**

10 A Correct. We don't know how they were raised,

11 what they had for an example.

12 **Q And whatever the reason is, part of your job**

13 **function here is to provide them with additional**

14 **resources and skills to try and help them do**

15 **better in the future?**

16 A Yes.

17 **Q So I assume you were told about this, did you**

18 **immediately, the Schindler incident we're back**

19 **at, did you immediately say Boigenzahn is done,**

20 **he's terminated, or was there discussion?**

21 A There was a discussion that we wanted to have

22 information that would corroborate that, so they

23 watched videos and put together a package of

24 information basically saying, yeah, he's up to

25 the same thing. We're not going to tolerate it.

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1 And then I said, okay, he's done. Get the

2 paperwork done. We're going to be done.

3 **Q I have a question for you about the specific**

4 **policies here. It's listed here that immoral**

5 **conduct was one of the violations.**

6 **What specific part of immoral conduct do you**

7 **think was violated?**

8 A I'd have to look at the policy to see. My

9 recollection of it was he had a, I believe a

10 live-in girlfriend, I don't think they were

11 married yet or not, fiancee', and then here he is

12 out having a relationship with somebody else, or

13 wanting to have a relationship with somebody else

14 when he already had a commitment, supposed

15 commitment.

16 **Q So it's a policy that goes to your, or the**

17 **staff's moral judgment about whether or not**

18 **Mr. Boigenzahn should be even engaging in a**

19 **romantic relationship, aside from who it is?**

20 A It's discussed both on-duty and on off-duty

21 behavior.

22 **Q I get it.**

23 **And was it your conclusion that that policy**

24 **was not violated when it came to Ms. Draxler?**

25 A I don't recall.

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1 **Q** If that policy is not listed as one of the
 2 violations, would it have been your assessment
 3 that that was not violated in the incident with
 4 Ms. Draxler?
 5 A I'm trying to figure out what you're trying to
 6 say there.
 7 **Q** Can we assume that you did not make a conclusion,
 8 or someone did not make a conclusion that
 9 Boigenzahn was violating the immoral conduct
 10 policies in 2015 if it's not listed on his
 11 discipline?
 12 A Yes. I would believe that they did not have
 13 information to see that that applied.
 14 **Q** Do you know if they investigated into that?
 15 A No, I do not.
 16 **Q** Do you know if Mr. Boigenzahn was asked at any
 17 point during the investigation into the incidents
 18 that led to his termination if he had been
 19 involved with any other female inmates?
 20 A Not that I can recall.
 21 **Q** Did you instruct the investigating staff to ask
 22 if he had been involved in any other incidents
 23 with anyone else at that time?
 24 A Not that I recall.
 25 **Q** Obviously, you become aware of the sexual assault

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1 allegations sometime after Mr. Boigenzahn has
 2 been terminated?
 3 A Correct.
 4 **Q** How does it come to your attention?
 5 A As I said earlier, I believe the chief deputy
 6 said that Menomonie investigator Dan Westlund had
 7 contact with her about a drug investigation, and
 8 during that time a statement was made or
 9 information came out that he supposedly had
 10 sexually assaulted her.
 11 And like I said before, I said we're going
 12 to have it investigated by an outside agency, and
 13 what happens happens. If he's guilty, he's going
 14 to get arrested, and that's what happened.
 15 **Q** And you turned it over to them essentially, or
 16 let them handle it?
 17 A Yeah.
 18 **Q** You have a general understanding of what followed
 19 and what turned up in the investigation,
 20 correct?
 21 A Yeah. They came back and said that she had said
 22 this is what happened. During the investigation
 23 he went down and interviewed him. And I guess
 24 from what I recall he admitted that yes, he had
 25 done that, and he was arrested and brought to

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1 jail.
 2 **Q** Just so we're clear on the record, your
 3 understanding is that he admitted that he
 4 touched -- that Mr. Boigenzahn admitted that he
 5 touched Ms. Slabey underneath her clothes in the
 6 general area of her --
 7 A Privates.
 8 **Q** -- privates, her genitals, correct?
 9 A That's what I recall being told.
 10 **Q** Do you have an understanding of where that
 11 occurred in the jail?
 12 A I think it was in Huber D, but I'm not a hundred
 13 percent sure.
 14 **Q** That would be the same place where the incident
 15 that he got terminated for occurred, correct?
 16 A Correct.
 17 **Q** And my understanding in the incident he got
 18 terminated for, he goes into an area that is not
 19 covered by a video camera, correct?
 20 A Correct.
 21 **Q** And in the incident involving Ms. Slabey, do you
 22 have an understanding of whether he went into an
 23 area that was not covered by a video camera?
 24 A I believe so.
 25 **Q** Does it concern you as sheriff that there are

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1 portions of Huber D that are not covered by video
 2 surveillance?
 3 A Well, I know that there's requirements that there
 4 has to be a certain amount of privacy.
 5 Bathrooms, rest rooms they can't. They have to
 6 have a place to be able to change without, you
 7 know, being on camera and so forth. But I think
 8 our cameras cover the jail fairly well, but it
 9 does concern me, and there's work being done on
 10 that.
 11 **Q** My understanding is they're installing new
 12 cameras, and I'm specific to this particular
 13 area.
 14 This particular area that's not visible on
 15 camera where Ms. Slabey was assaulted, and I
 16 think Ms. Schindler was, is a bunk area of Huber
 17 D?
 18 A Correct.
 19 **Q** Not a bathroom?
 20 A Correct.
 21 **Q** All of the other bunk areas in Huber D are
 22 covered by video, correct?
 23 A Yep. Pretty well.
 24 **Q** Does your CO staff know that that particular area
 25 was not covered by video at the time?

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1 A Yeah. I'm sure they do, you know, from watching
2 the cameras.

3 **Q Did you know at the time?**

4 A I guess at the time when I viewed it the lights
5 had been on during the daytime. When I viewed it
6 after this happened it was dark and the lights
7 were all off and it was not as visible as I
8 recalled.

9 **Q My understanding is the camera doesn't at all go
10 anywhere to where the incident with Ms. Slabey
11 happened because Mr. Boigenzahn is not visible on
12 any camera --**

13 A Right. But it was at night when the lights were
14 off.

15 **Q But if the lights were on, are you telling us we
16 would have seen Mr. Boigenzahn?**

17 A I think we might have seen some portion of him
18 that would have caused concern, or cause us to
19 know more about what's happened.

20 **Q I see. Before the assault of Ms. Slabey happened
21 did you know that that particular area was not
22 fully covered by video?**

23 A I already answered that. I said I had seen it
24 during the daytime and thought it was pretty
25 visible, but I had not went over and watched it

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1 in darkness.

2 **Q Clearly Mr. Boigenzahn, if he's going there on
3 multiple occasions out of camera view, knew that
4 it was not fully visible?**

5 MR. JOHNSON: Objection. Form.

6 A I can't tell you what he thought, but likely he
7 could have thought that.

8 **Q (By Mr. Muszynski, continuing) Makes sense,
9 correct?**

10 MR. JOHNSON: Objection. Form.

11 A Can't speak for him.

12 **Q (By Mr. Muszynski, continuing) Fair enough.
13 Did you at any point make any
14 recommendations prior to this incident to make
15 sure that that particular area of Huber D was
16 fully covered by video, or better covered by
17 video?**

18 A No.

19 **Q Since this incident, though, we are making better
20 sure that that area is video covered, correct?**

21 A Correct.

22 **Q Now, you know that investigation was done to
23 review video that determined that Mr. Boigenzahn
24 was not visible for about 40-some minutes a time
25 when he assaulted Ms. Slabey?**

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1 A Yes. I believe it was 42 minutes.

2 **Q Sounds good to me.**

3 **Were you aware that review of video
4 determined there was some other time besides
5 Ms. Schindler where he got terminated and besides
6 Ms. Slabey where Mr. Boigenzahn was not visible
7 by camera in the Huber D area for some 25
8 minutes? Were you aware of that?**

9 A I don't recall that number. I remember 17
10 minutes being out of sight, but I don't know if
11 it was in that particular area. I don't
12 recall.

13 **Q So let's make sure we're clear about what we're
14 talking about.**

15 **You know about the time frame where he's not
16 visible involving Ms. Schindler and he got fired,
17 yes? That's one?**

18 A Correct.

19 **Q Or maybe multiple, but at least one incident,
20 yes?**

21 A Yes.

22 **Q We know about the time where he is not visible
23 that he was assaulting Ms. Slabey, correct?**

24 A We know that there was a time when he was not
25 visible. I couldn't say that that was exactly

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1 when it happened. But basing on the reports that
2 I've read at different times, I believe you're
3 correct.

4 **Q And the fact that he was convicted of it,
5 correct?**

6 A Yep.

7 **Q And so you're saying you agree that you know that
8 there was at least a third time in the
9 investigation that determined that Mr. Boigenzahn
10 was not visible for some significant portion of
11 time on camera, yes?**

12 A That he was not visible for a portion of time. I
13 won't say significant. That's in the eye of the
14 beholder.

15 **Q Well, 17 minutes you used the number, correct?**

16 A Yeah.

17 **Q And I don't know the exact timing. Sergeant
18 Ormson gave us one number yesterday. You're
19 telling me 17.**

20 **That's more time, though, than when he was
21 not visible when he got terminated, yes?**

22 A That's less time than when he got terminated I
23 think.

24 **Q Well, the time that he got terminated it was
25 about 12 minutes I'll tell you.**

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1 A Oh, was it?
 2 Q Yeah.
 3 A I thought that was the long one.
 4 Q No. The long one was Ms. Slabey.
 5 So if he's terminated for not being visible
 6 in part for more than 12 minutes, 17 minutes
 7 would be equally concerning, would it not?
 8 A Yep.
 9 Q Did you ever ask staff to investigate what
 10 happened during that third incident, whatever it
 11 was?
 12 A The supervisors?
 13 Q Anybody.
 14 A Well, the staff doesn't investigate other staff.
 15 The supervisors do the investigating. I don't
 16 recall specifically saying go and do this, go and
 17 do that.
 18 Q And I'm asking you, you are clearly aware a third
 19 time where Mr. Boigenzahn is not visible by
 20 cameras, correct?
 21 A Yes. That would be the time that you're talking
 22 about that he was terminated?
 23 Q No. I'm talking about Ms. Slabey is one, and the
 24 Schindler incident where he's terminated is two.
 25 Do you know that Sergeant Ormson found

1 know that Mr. Boigenzahn has assaulted Ms. Slabey
 2 while she's in the jail, correct?
 3 A On that particular case, yes.
 4 Q Correct. What I'm asking you is, you also know
 5 at some point in this process that there is an
 6 unaccounted for time when Mr. Boigenzahn is not
 7 visible by cameras and it's not associated with
 8 Ms. Slabey or Ms. Schindler, correct?
 9 A Correct I would say, from what I remember.
 10 Q From what we know.
 11 Did you direct any staff to investigate into
 12 what Mr. Boigenzahn was doing in that unaccounted
 13 for time not related to Ms. Schindler or
 14 Ms. Slabey?
 15 A I didn't direct anybody to because I had heard
 16 that they had talked to a couple or a number of
 17 female inmates and given the opportunity to make
 18 a report or to discuss that.
 19 And I had heard that, you know, Mittelstadt
 20 in particular had said that she didn't care
 21 for -- she thought there was concern that he may
 22 cross the line at some point.
 23 Q That's the 2015 incident, correct?
 24 A I think so.
 25 Q I'm going to show you a portion of the Menomonie

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1 another incident where he was not visible on
 2 cameras?
 3 A I knew there was someplace between two and four.
 4 Q Did you direct any staff to conduct any
 5 additional investigations into what may have
 6 happened in the times that we haven't already
 7 talked about, Slabey or Schindler?
 8 A I recall telling them to do what they have to do
 9 to find out what he's been doing and document it
 10 so that we can take appropriate discipline.
 11 Q Did you have concerns that he may have assaulted
 12 someone other than Ms. Slabey?
 13 A Based on the conversations that I've heard
 14 basically a report on verbally from the
 15 supervisors, I didn't have any reason to believe
 16 that there was any kind of assault taking place
 17 with anybody other than just his behavior of not
 18 staying visible and having lengthy conversations
 19 with them.
 20 Q Obviously, after the investigation is done by
 21 Officer Westlund and the rest of the Menomonie
 22 Police Department, you know that Mr. Boigenzahn
 23 has admitted to an assault?
 24 A Yep.
 25 Q No question in your mind at that point that you

1 Police Department incident report.
 2 When this all came about, Mr. Boigenzahn
 3 gets charged and eventually tried, did you review
 4 the full report by the Menomonie Police
 5 Department?
 6 A No, I did not.
 7 Q Do you know if anyone at your office did?
 8 A I believe Chief Deputy Multhauf and I both were
 9 briefed on it and given the information. We knew
 10 he was sending it to the district attorney's
 11 office to have it reviewed for charges.
 12 Q But you did not independently ask to actually
 13 review it yourself?
 14 A No, I did not.
 15 Q I'm going to show you here, this is numbered 307,
 16 and at the bottom of it this is an interview with
 17 Mr. Boigenzahn by Dan Westlund, correct?
 18 A Yes.
 19 Q And it says, I then asked Boigenzahn if he had
 20 done this in the past with Slabey or any other
 21 inmates. However, he stated that he couldn't
 22 remember if he had done this before telling that
 23 he was foggy.
 24 Did I read that right?
 25 A Yep.

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1 **Q** Would that concern you, that Mr. Boigenzahn isn't
 2 sure whether he assaulted any other inmates?
 3 **Would that concern you as the sheriff?**
 4 A Yeah, it would.
 5 **Q** Knowing that we have an unaccounted for time that
 6 we don't know what he was doing, do you think
 7 that should have been further investigated to
 8 determine whether or not any other inmates were
 9 assaulted like Ms. Slabey?
 10 A It doesn't concern me that something should have
 11 been done, but it wouldn't have been a bad
 12 idea.
 13 **Q** Show you another portion of the Menomonie Police
 14 Department record numbered 310. This is an
 15 interview by Officer Pollock with Danica Smith,
 16 who was an inmate at the time. And, in fact, I
 17 think was in the bunk below Ms. Slabey while the
 18 assault occurred.
 19 Do you recall having inmate Smith in the
 20 jail?
 21 A Oh, yeah. A number of times.
 22 **Q** Now, here on page 310 it states, Smith said
 23 Boigenzahn was what she considered a,
 24 quote/unquote, inappropriate jailer, correct?
 25 A That's what it says, yes.

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1 **Q** It says, Smith thought that Boigenzahn liked the
 2 attention he was getting from women at the jail.
 3 That's the same allegation that we heard in
 4 2015, is it not?
 5 A Same discussion, yes.
 6 **Q** Different person stating it, but same exact
 7 allegation, correct?
 8 A Yes.
 9 **Q** And that's the one that didn't get fully
 10 investigated by talking to other inmates at the
 11 time in 2015, correct?
 12 MR. JOHNSON: Objection. Form.
 13 Go ahead.
 14 A I guess I don't -- at the time I don't know. I
 15 believe you're correct.
 16 **Q** (By Mr. Muszynski, continuing) Okay. Because we
 17 know that although both of those allegations were
 18 made by Mittelstadt in 2015, only the allegation
 19 pertaining specifically to Ms. Draxler was
 20 actually followed up on based on the reports,
 21 correct?
 22 MR. JOHNSON: Objection. Form.
 23 Go ahead.
 24 A I believe so.
 25 **Q** (By Mr. Muszynski, continuing) Following all this

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1 stuff coming out where he assaulted Ms. Slabey,
 2 did you go back and review any of the discipline
 3 or the investigations that concerned
 4 Mr. Boigenzahn?
 5 A Did I read individual reports, no. I had a
 6 discussion with Captain LaForte and the chief
 7 deputy at different points.
 8 **Q** Did you go over and look back on any of the
 9 investigations that were done to conclude whether
 10 or not any of your supervisors maybe should have
 11 done more to investigate Mr. Boigenzahn?
 12 A No.
 13 **Q** Did you make any conclusions as to any policies
 14 or procedures that should change because of what
 15 happened when Mr. Boigenzahn assaulted
 16 Ms. Slabey?
 17 A I do recall saying that we definitely need to
 18 reinforce the policies about fraternization and
 19 proper conduct be reiterated when they're doing
 20 the training.
 21 **Q** In other words, just keep repeating the same
 22 policies. Make sure they're more repeated?
 23 A Well, make sure the person has no doubt that they
 24 understand what's being said.
 25 **Q** Did you have any doubt that Mr. Boigenzahn

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1 understood the policies when he violated them in
 2 2015?
 3 A I had no doubt he understood them.
 4 At one point Sergeant Ormson was the
 5 training officer, and he described to me a couple
 6 different occasions that there's like four
 7 different policies that he sits down and says
 8 now, this is this and this and this, do you
 9 understand.
 10 The reason he was doing it is so that if we
 11 had something happen, we didn't have any regrets
 12 that we failed to get the point across.
 13 **Q** My understanding is that there is supposed to be
 14 always a person at central taking a look at,
 15 among other things, the video cameras that are
 16 throughout the jail, correct?
 17 A Correct.
 18 **Q** Presumably if someone had been at central and
 19 looking at the monitors while he was assaulting,
 20 while Boigenzahn was assaulting Slabey, they
 21 would have noticed that Mr. Boigenzahn
 22 disappeared from camera view for some significant
 23 period of time, correct?
 24 MR. JOHNSON: Objection. Object to
 25 form.

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1 Go ahead.

2 A I can't say that's a conclusive answer because

3 they're answering the telephone. They got people

4 that are coming in, they booked in, they're

5 letting people in the garage. So he could step

6 out of camera and not be seen, not knowing he was

7 there, and then later be back in camera and not

8 have the person see him come and go because of

9 other duties.

10 During the night shift we have nobody in the

11 pod, so the central person is monitoring

12 everybody in the jail.

13 **Q (By Mr. Muszynski, continuing) If someone were to**

14 **go in the main entrance to Huber they would have**

15 **to walk right by central, correct?**

16 A Down that hallway, yes.

17 **Q So in other words, if Mr. Boigenzahn went into**

18 **Huber the night he assaulted Slabey, presumably**

19 **he would have been visible when he went into**

20 **Huber to the person in central if he went in the**

21 **main entrance?**

22 A They very likely could have seen him. He

23 wouldn't have been off camera.

24 **Q When a CO is engaged in wellness checks, is that**

25 **something that needs to be reported to central so**

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1 **that central knows what they are doing?**

2 A Usually they'll advise central they're going to

3 be doing cell checks, and then they have a tool

4 that they use when they get there so it records

5 that they were there so they can't say that they

6 were there. It shows that they were actually

7 there.

8 **Q Does that get reported to central kind of real**

9 **time or does it just make a digital record?**

10 A It makes a digital record.

11 **Q Presumably, though, the policy would have been if**

12 **Ryan Boigenzahn was going to Huber to do a**

13 **wellness check the night he assaulted Ms. Slabey,**

14 **he would have informed central that he was going**

15 **to Huber to do a wellness check?**

16 A I can't say that. I've heard them say several

17 times that I'm going to be doing cell checks. I

18 can't say that they actually say I'm going to be

19 in a particular part of the jail.

20 **Q Would you expect that someone at central, if they**

21 **didn't know where a CO was for 45 minutes, they**

22 **weren't visible on any camera and they hadn't**

23 **communicated with central, that central should be**

24 **concerned about that?**

25 MR. JOHNSON: Objection. Form.

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1 Go ahead.

2 A Actually, I would hope that they would be

3 concerned.

4 **Q (By Mr. Muszynski, continuing) Both for I assume**

5 **the safety of the COs as well as inmates**

6 **potentially?**

7 A Absolutely. Safety is foremost.

8 **Q Do you know if there was any communication**

9 **between central and Boigenzahn during the time,**

10 **the 40-some minutes that he was engaged in the**

11 **assault of Ms. Slabey?**

12 A No, I don't. I don't believe it's recorded in

13 the jail. All the radio traffic for field

14 services on the road and that is all recorded.

15 But jail, I don't believe it is.

16 **Q Did you ask or did you direct anyone to ask**

17 **whether or not the person at central that night**

18 **had any communication with Boigenzahn while this**

19 **assault was happening?**

20 A I think it was reported to me that they had met

21 with that person, those people that were working

22 that night and talked, but I don't recall exactly

23 what the conversation was.

24 **Q And I didn't see it recorded anywhere what that**

25 **conversation was.**

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1 **Do you know anything about what was**

2 **discussed or what the person at central may or**

3 **may not have known about Boigenzahn's whereabouts**

4 **while he assaulted Slabey?**

5 A I don't recall offhand.

6 **Q Do you think that's something that should be**

7 **reviewed by the sheriff's office as a way to**

8 **prevent this from happening again as to what were**

9 **you doing for those 45 minutes at central?**

10 A If I recall correctly there was, I don't know if

11 it was an email or a discussion with the night

12 crew because there's not always a supervisor

13 there, that if you don't see somebody for a

14 period of time, you need to find out where

15 they're at and make sure that they're safe,

16 because I know there was some discussion about

17 having some training about that.

18 **Q Did that training or additional training --**

19 **A I don't recall.**

20 **Q -- happen?**

21 **A I don't know.**

22 **Q Until the Menomonie Police Department gets**

23 **involved, did you have any indication that**

24 **Mr. Boigenzahn had engaged in any sexually**

25 **inappropriate conduct with any inmate?**

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1 **time, as a CO?**
 2 A As a CO, yeah, I should have.
 3 **Q Do you remember speaking with Inmate Driscoll in a**
 4 **cell for a length of time surrounding this incident,**
 5 **going into her cell and spending some time talking to**
 6 **her?**
 7 A I guess I don't really -- I don't recall that. I
 8 mean --
 9 **Q If -- so if some of this incident was initiated by**
 10 **some complaint by an inmate with the last name of --**
 11 **well, her name is Janna Weaver Bloom (ph). Did you**
 12 **know Janna Weaver Bloom?**
 13 A Yes, I did.
 14 **Q And if Janna Weaver Bloom said that you went into**
 15 **Driscoll's cell in July of 2015 and just started**
 16 **talking to her and she thought that was odd, would**
 17 **you disagree with her statement?**
 18 A I was in the cell block. You know, I would very
 19 rarely ever step into individual cells in lockup
 20 blocks. I would, you know, be outside the -- the
 21 sliding doors.
 22 **Q Would you disagree that it happened, that you stepped**
 23 **into Inmate Driscoll's cell?**
 24 A I -- honestly, I do not remember stepping into her
 25 cell.

Page 14

1 **Q Okay. Ms. Weaver Bloom said that during this time**
 2 **frame, you put something in Driscoll's cell door and**
 3 **then Driscoll picked it up.**
 4 **Do you recall doing that?**
 5 A I remember passing, yeah, passing a note to her.
 6 **Q That would be the note?**
 7 A Yeah.
 8 **Q Okay. Do you -- Ms. Weaver Bloom indicated also**
 9 **that you provided Ms. Driscoll a stack of request**
 10 **slips.**
 11 **Do you recall doing that?**
 12 A I could have. I mean, everybody asks for a packet
 13 of request slips when they -- their dorm runs out.
 14 **Q Do you recall that there were multiple messages to**
 15 **Ms. Driscoll in those request slips?**
 16 A In the request slips? The request slips were from
 17 behind booking. They were -- I -- when you see like a
 18 tear-off folder of notes and there may be 75 pieces
 19 in the tear-off.
 20 **Q So -- and I'm looking at -- this is from the DA file,**
 21 **and the numbering on the DA file is page No. 135.**
 22 **Do you see that?**
 23 A Yeah.
 24 **Q Okay. These are statements from Ms. Weaver Bloom,**
 25 **and Ms. Weaver Bloom says here that she indicated**

Page 15

1 **that a stack of request slips were slid under the**
 2 **door.**
 3 **Do you see that?**
 4 A Yes.
 5 **Q Okay. And it says, when she picked them up, she**
 6 **noticed a bunch of messages from Inmate Morrow to**
 7 **Inmate Driscoll.**
 8 **Did I read that right?**
 9 A Yeah.
 10 **Q Do you recall that at all, or do you disagree with --**
 11 **A I --**
 12 **Q -- Ms. Weaver Bloom?**
 13 A I disagree with that. I did not give a stack of notes
 14 to her. It was the one note.
 15 **Q Do you recall an investigation being done into the**
 16 **note-passing situation?**
 17 A Yeah, there was some investigation with that.
 18 **Q Did Sergeant Owens -- do you know Sergeant Owens?**
 19 A Yes, I do.
 20 **Q Okay. Did Sergeant Owens ever talk to you about this**
 21 **investigation?**
 22 A He could have. I guess I don't remember exactly who it
 23 was.
 24 **Q Have you ever seen an incident report before from the**
 25 **jail?**

Page 16

1 A Yes.
 2 **Q Okay. I want you to take a look at this, and it's**
 3 **numbered page 133 to 136. I'm not going to number it**
 4 **as a separate exhibit, but I just want you to look**
 5 **through it, familiarize yourself with it, and then I**
 6 **have a question for you about it.**
 7 A (Complies).
 8 **Q Mr. Boigenzahn, you had an opportunity to read through**
 9 **these pages?**
 10 A Yes, I did.
 11 **Q Okay. At no point in these pages do I see any notation**
 12 **of conversation with you. Did you see anything in**
 13 **there?**
 14 A With me from whom?
 15 **Q Anybody. Like I don't see any indication that the**
 16 **investigating officer spoke with you in any way.**
 17 A Correct. Yeah. And on the -- on the bottom of that
 18 last paragraph, it says no -- I can't remember what
 19 it said, but it was --
 20 **Q Yeah. It says, the allegation is not supported on a**
 21 **factual basis, and then it goes through some other**
 22 **stuff --**
 23 A Yeah.
 24 **Q -- right?**
 25 A Yep.

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1 **Q Okay.**
 2 A So --
 3 **Q So no notation that they ever approached you and**
 4 **discussed this with you?**
 5 A Yeah, according to that.
 6 **Q And there was no disciplinary action that followed**
 7 **it; correct?**
 8 A Yeah, according to that, yeah, there's nothing.
 9 **Q But you violated policies; correct?**
 10 A On that, yeah, I did.
 11 **Q So essentially, the investigating guard looked the**
 12 **other way as far as your violations of policies?**
 13 MR. JOHNSON: Objection. Form. Go ahead.
 14 **Q (By Mr. Muszynski, continuing) He has to state an**
 15 **objection.**
 16 A Okay. Yeah, I mean, I guess, I mean, what he --
 17 according to what he said, I guess he found what he
 18 found, and he must not have seen any factual basis to
 19 do a, I don't know, like a reprimand or anything like
 20 that. I mean, that's --
 21 **Q But you're -- you're admitting, though, that you passed**
 22 **a note --**
 23 A Yeah.
 24 **Q -- right?**
 25 A Yeah.

Page 18

1 **Q And you're admitting that that's against policy;**
 2 **right?**
 3 A Yes. I --
 4 **Q All right. Let's go forward a little bit to August**
 5 **of 2015. Do you recall an incident involving an**
 6 **inmate by the name of Draxler?**
 7 A Yes, I do.
 8 **Q Tell me about what happened in that incident.**
 9 A That was the incident that I got -- received the
 10 suspension from on that one. It -- what happened
 11 was there was one day I went in the block and she
 12 did not have her shoes on, so I pointed to her -- to
 13 her shoes -- my shoes, and said, hey, you know, you
 14 need to wear shoes. And that was it, and that was
 15 looked at as being flirtatious through the camera's
 16 eyes. And I believe there was a different day that I
 17 was in the block serving breakfast and she brushed my
 18 shoulder with her hand, and I just ignored it and
 19 walked out, and that was, you know, found to be
 20 flirtatious as well, fraternization, and that's what
 21 that was.
 22 **Q Okay. Did you know an inmate by the name of Beth**
 23 **Mittelstadt?**
 24 A Mittelstadt, yes.
 25 **Q Okay. Were you aware that Beth Mittelstadt was kind**

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1 **of the initial person that discussed these issues with**
 2 **other jail staff?**
 3 A Eventually, yeah, I was made aware of that.
 4 **Q Okay. Were you aware that Ms. Mittelstadt stated you**
 5 **were in danger of, quote/unquote, crossing the line?**
 6 **Do you recall -- do you know that?**
 7 A Yeah, I remember reading that.
 8 **Q Okay. Do you recall that Ms. Mittelstadt stated that**
 9 **you were too chummy with some of the females?**
 10 A Yeah, she did say that.
 11 **Q Okay. Do you agree or disagree with those statements**
 12 **by Ms. Mittelstadt?**
 13 A I guess it could be seen as being chummy, but, I mean,
 14 it wasn't -- I don't know. It wasn't strictly females.
 15 I was kind to all, and I guess, you know, sometimes
 16 too kind, and that could be seen as chummy.
 17 **Q Did you have -- well, did you have an inappropriate**
 18 **relationship, and inappropriate, I mean that in**
 19 **the context of a jail employee with an inmate,**
 20 **inappropriate relationship with Inmate Draxler in**
 21 **August of 2015?**
 22 A I wouldn't say I had any type of relationship outside
 23 of the norm. I mean, it was, you know, CO to inmate,
 24 and as you mentioned, there were a few incidents that
 25 were seen as, you know, flirtatious or whatever, but,

Page 20

1 I mean, to me, I don't know, I guess I was just
 2 being -- I don't know how to say it. Trying to be --
 3 be the nice guy, I guess, you know, and that -- that's
 4 what --
 5 **Q Did you like that the female inmates liked you?**
 6 A Well, everyone likes to be -- be liked. I mean, I
 7 guess I could say it wasn't -- you know, like I said,
 8 it wasn't just females. Most of the jail population,
 9 I got along with them. I was younger. You know, I was
 10 willing to talk to people instead of just blowing them
 11 off.
 12 **Q Were you aware that there are more than one inmates**
 13 **that indicated that you liked female attention more**
 14 **than the other guards?**
 15 A Well, I'm -- I guess they could say that, but, I mean,
 16 I was one to talk with everybody.
 17 **Q So you would disagree with that assessment by the**
 18 **inmates, that you liked female attention more than**
 19 **the other guards?**
 20 A I guess I -- I don't know. I liked attention from
 21 everybody. I mean, it wasn't -- so, yeah, I do
 22 disagree. It wasn't especially just the females.
 23 **Q I'm not aware of any discipline issues with you**
 24 **involving inappropriate conduct with male inmates.**
 25 **Are you?**

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1 mind.

2 Do you recall that at all?

3 A Not at all.

4 Q Any reason to disagree that that happened?

5 A Well, I mean, I -- yeah, I don't remember it. I mean,

6 I wouldn't --

7 Q Then it goes on to say that Ms. Draxler stated that

8 you were, or seemed to be, quote/unquote, obsessed with

9 her.

10 Were you obsessed with Ms. Draxler?

11 A I was not obsessed with her.

12 Q Other inmates stated they observed -- or Ms. Draxler is

13 saying other inmates observed you standing and watching

14 her sleep.

15 Did that ever happen?

16 A I did -- did not sit there and watch people sleep.

17 Q Are you denying that that happened as indicated in

18 this report?

19 A Yeah, I don't sit there and watch people sleep.

20 Q These are pages, I think -- it looks like 145 to 148

21 in the DA's file.

22 Do you remember Chief Deputy Gunness meeting

23 with you about this issue or these issues in August?

24 A Yes, I do.

25 Q Okay. Do you remember watching the videos of this

Page 26

1 incident as well as -- as well as a July incident?

2 A With Draxler?

3 Q No. A video of the incident involving the note

4 passing.

5 A I -- yeah, I do remember watching a video about

6 Draxler, but the note passing, I'm not --

7 Q Okay.

8 A -- exactly sure. That was a, kind of a sidebar in

9 with the whole penalty -- or the -- the meeting,

10 so --

11 Q Okay. All right. So looking at page 146, it says

12 that you, CO Boigenzahn, met with Chief Deputy Gunness;

13 right?

14 A Yes.

15 Q It says you were shown both DVDs; correct?

16 A Yes.

17 Q All right. And it says that Chief Deputy Gunness

18 discussed with you the notes being passed between

19 Driscoll and Morrow; correct?

20 A Yes.

21 Q You denied it initially, didn't you?

22 A Initially, yes, I was, you know, I guess --

23 Q Lying?

24 A -- scared by the incident, yeah, lying about it.

25 Q Okay. So you lied about it, and then Chief Deputy

Page 27

1 Gunness told you you had to be truthful or you'd be

2 fired?

3 A Yeah.

4 Q Do you remember him saying that to you?

5 A Yeah.

6 Q And so then you admitted that you lied to him and

7 you admitted what you had done about passing the

8 notes?

9 A Yes.

10 Q Okay. Then you were asked if you saw anything

11 inappropriate in the video with Ms. Draxler.

12 Do you remember Chief Deputy Gunness asking

13 you about that?

14 A Yep.

15 Q And you denied that there was anything inappropriate?

16 A Exactly, yes, I did.

17 Q So then Chief Deputy Gunness goes over -- do you

18 remember him going over with you what was inappropriate

19 about that situation?

20 A Yeah. He went over, you know, detail by detail how I

21 should have acted in the situation.

22 Q Did you ever talk to a Sergeant Vold about these

23 issues?

24 A I guess it seems -- I guess I could have. Exactly who

25 I talked to as far as the sergeants, I do not really

Page 28

1 exactly recall.

2 Q Do you know if Chief Deputy Gunness ever talked to you

3 at this time, this August time of 2015 --

4 A Okay.

5 Q -- about the fact that the girls, the female inmates,

6 were saying that you were watching them or watching

7 Draxler and appeared obsessed with Draxler?

8 A I guess I don't -- I don't recall exactly everything

9 he said to me, you know, outside of, you know, the

10 incidents and the reprimand.

11 Q We certainly do have a lot of other detail about what

12 Chief Deputy Gunness told you --

13 A Okay.

14 Q -- at that meeting; correct?

15 A It appears that way, yeah.

16 Q Yeah. Right. It goes into length about that you

17 lied about the first issue and then you admitted it;

18 right?

19 A Yep.

20 Q And it goes into length about talking about the

21 touching incident and why that's a problem and all

22 that sort of stuff; right?

23 A Yes.

24 Q But there's no mention of any discussion with you in

25 this document about these allegations that you were

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1 **Q** Yeah. You tell them what happened, and all that
 2 testimony is all in the record and everything like
 3 that.
 4 A Yes.
 5 **Q** You don't disagree with anything that came in in your
 6 criminal trial?
 7 MR. JOHNSON: Objection. Form.
 8 **Q** (By Mr. Muszynski, continuing) I mean what Officer
 9 Westlund said or what Rachel said about what happened?
 10 A Like, I mean, if I disagree with what was said in the
 11 trial?
 12 **Q** Yeah. I'm not talking about the arguments by the
 13 lawyers --
 14 A Oh.
 15 **Q** -- but just the statements of the facts.
 16 A In general, yes, you know, there -- it was, you know,
 17 I -- I made a mistake and I -- you know, it came
 18 through and --
 19 **Q** And the jury determined what happened, and that's where
 20 we are today?
 21 A Yes.
 22 **Q** Okay. Do you recall Officer Westlund at a later time
 23 during the investigation, not at your house --
 24 A Okay.
 25 **Q** -- but now you've been arrested, asking you whether or

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1 not there were other women that there was inappropriate
 2 conduct with besides Rachel? Do you remember him
 3 asking that?
 4 A I -- since -- after he talked to me and arrested me?
 5 **Q** Yeah.
 6 A I guess I'm not really sure what you're --
 7 **Q** Let me ask it this way: I'm going to show you portions
 8 of the Menomonie --
 9 A Yeah.
 10 **Q** -- Police Department investigation.
 11 Okay?
 12 A Okay.
 13 **Q** As part of your criminal defense, did you have access
 14 to this information?
 15 A Yeah, I believe I did, but --
 16 **Q** Okay. I'll show it to you. You can refamiliarize
 17 yourself with it. It's labeled, for the County
 18 purposes, 307 and 308.
 19 All right. And in particular, I'm asking about
 20 portions of this that are on the bottom of 307. So
 21 this incident report, it's conducted by Officer
 22 Westlund and it's done in jail.
 23 A Okay.
 24 **Q** Which means it's after he spoke to you at your house;
 25 right?

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1 A Yeah. He went from the house to the interview cell.
 2 **Q** Yeah.
 3 A Okay.
 4 **Q** So while he's talking to you in jail, he asks you if
 5 he had done this in the past with Slabey or any other
 6 inmates.
 7 Did I read that right?
 8 A Yes.
 9 **Q** Okay. And you knew what this means in this context;
 10 right, touching Ms. Slabey?
 11 A Yes.
 12 **Q** Okay.
 13 A Okay.
 14 **Q** And it says you stated that he couldn't remember if he
 15 had done this before, stating that he was foggy.
 16 Did I read that right?
 17 A Yes.
 18 **Q** Do you remember telling Mr. -- or Officer Westlund that
 19 statement?
 20 A I -- yeah, I do. I mean --
 21 **Q** Okay.
 22 A -- as it says there, I was foggy at the time, so, I
 23 mean --
 24 **Q** Yeah. You did admit at that time that Slabey had
 25 exchanged Facebook messages with you?

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1 A Yeah.
 2 **Q** Is that the one issue that you told me about earlier,
 3 where she says hi and you say hi, or were there others?
 4 A That was the one time that she ever reached out to me
 5 and --
 6 **Q** And then it says you also told Officer Westlund that
 7 other female inmates had sent you topless photos.
 8 You told him that?
 9 A Yes.
 10 **Q** Okay. And that happened with other female inmates;
 11 correct?
 12 A With -- yeah.
 13 **Q** Who were those other female inmates?
 14 A It was one incidence -- I can't remember her first
 15 name. Giglio was her last name.
 16 **Q** Can you spell that, or try to?
 17 A Boy. G-I-G-L-I-O.
 18 **Q** Okay. When did that happen?
 19 A Gosh, I don't remember the exact dates. I mean, it was
 20 a --
 21 **Q** Was it happening in that --
 22 A -- a friendship.
 23 **Q** Was it happening in that year between the August/July
 24 incidents and when you touched Ms. Slabey?
 25 A It -- yeah, I think that's about the time, you know, I

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1 was talking to her. It was --

2 **Q Probably in that same time frame?**

3 A Excuse me.

4 **Q Yes?**

5 A Yeah.

6 **Q Okay. Was this someone who was an inmate and then was**

7 **discharged and then she sent you these photos?**

8 A Yeah, something, you know, we talked and --

9 **Q Why would she send you a topless photo?**

10 A I guess our conversations were, you know, attractive

11 in nature to each other or whatever, just --

12 **Q You were flirting?**

13 A Yeah, I was flirting.

14 **Q Okay.**

15 A You could say that.

16 **Q And is that a relationship that started when you were**

17 **a CO? In other words, were you having conversations**

18 **with her of a flirtatious nature while she was an**

19 **inmate?**

20 A I guess while she was an inmate, I mean, I -- I could

21 have talked to her, but, I mean, you know, once she was

22 released, it was somebody I knew. You know, that first

23 step of talking to somebody was over with. You know,

24 it was just -- it was like a -- it was easier -- easier

25 for me to talk to her because I knew her.

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1 **Q Certainly there was some sort of connection, though,**

2 **while she was an inmate with you and her such that you**

3 **would have a flirtatious, sexual nature after she was**

4 **released; correct?**

5 A Yeah, I mean, as far as, you know, talking to people

6 and knowing people, you could say. I mean --

7 **Q Well, let me just be frank with you. I'll represent**

8 **to you that I don't just have flirtatious or sexual**

9 **conversations with people I don't know because I don't**

10 **know them. People don't send me topless photos --**

11 A Yeah.

12 **Q -- just out of the blue. So, obviously, there had to**

13 **have been some sort of a connection prior to her just**

14 **sending you a topless photo or engaging in flirtatious**

15 **conduct; right?**

16 MR. JOHNSON: Objection. Form. Go ahead.

17 A I mean, we -- like I said, we -- we knew each other

18 from jail. She got out and we were able to talk to

19 each other, and that led up to, you know, photos.

20 **Q (By Mr. Muszynski, continuing) Did you ever give any**

21 **of those photos or show any of the messages to Officer**

22 **Westlund?**

23 A No.

24 **Q Did he ever ask for them?**

25 A He did take possession of my phone.

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1 **Q But did he ever ask for them?**

2 A I guess I don't recall him actually asking specifically

3 for those.

4 **Q Did he ever ask you -- I just asked you who this person**

5 **was.**

6 A Yeah.

7 **Q I don't see that anywhere in this report. Did you**

8 **ask -- did you tell him who this woman was, Giglio?**

9 A Yeah. I -- that was like one of the last things I said

10 before we ended our -- our interview, so it might be on

11 the audio. I'm not sure.

12 **Q Do you have any knowledge about why her name is**

13 **mentioned nowhere in these reports that I have ever**

14 **found?**

15 A I guess that wasn't the -- what the issue was at the

16 time. The issue at the time was between me and Slabey,

17 and that -- that's what he was investigating.

18 **Q Do you recognize, Ryan, that it's inappropriate that**

19 **a former inmate sent you topless photos after she was**

20 **released?**

21 MR. JOHNSON: Objection. Form. Go ahead.

22 A I mean, according to policy, yeah. I mean, we were

23 both adults. I mean, it's --

24 **Q (By Mr. Muszynski, continuing) Let me ask it this**

25 **way: While she's an inmate, there is a clear power**

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1 discrepancy; right?

2 A Yes.

3 **Q You're in charge; right?**

4 A Yes.

5 **Q She is subject to your authority and the rest of the**

6 **COs; correct?**

7 A Yeah.

8 **Q Okay. And I assume, by virtue of all the training that**

9 **you had as a CO, you understood that, in that power**

10 **dynamic, she doesn't have full choice to engage in an**

11 **appropriate or inappropriate relationship with you;**

12 **right, because she has less power than you?**

13 MR. JOHNSON: Objection. Form. Go ahead.

14 A While she was incarcerated, yes, but --

15 **Q (By Mr. Muszynski, continuing) Yes. Fair. Once she's**

16 **free, she's not subject to your authority --**

17 A Exactly.

18 **Q -- directly. That's fair.**

19 Ms. Giglio, is she like Ms. Slabey, where she

20 had been in and out of Dunn County during your time

21 there?

22 A A time or two, yeah. I mean, I don't remember exactly

23 how many times, but --

24 **Q Sure. But she had been released and then came back and**

25 **then been released?**

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1 A Yeah.

2 Q At least once?

3 A At least -- yeah. I mean, I was there for five years,

4 so, I mean, many faces returning --

5 Q Sure.

6 A -- you know.

7 Q So it could be assumed that Ms. Giglio might possibly

8 return to Dunn County Jail at some time after she was

9 released; right?

10 MR. JOHNSON: Objection. Form. Go ahead.

11 A That she might return? I mean --

12 Q (By Mr. Muszynski, continuing) It certainly was within

13 the possibilities, wasn't it?

14 A Yeah, it's -- it was a possibility.

15 Q And the fact that she had engaged in a sexual nature

16 of conversation with you, sent you topless photos, that

17 would be very inappropriate if she were to return as an

18 inmate, would it not?

19 MR. JOHNSON: Objection. Form. Go ahead.

20 A If she returned, yeah. I mean -- I mean, at that

21 point, it would have been a separate issue.

22 Q (By Mr. Muszynski, continuing) And, again, you've

23 looked through -- I know you looked through these

24 documents some time ago. I won't ask you to recall

25 everything in there, but I've never seen that woman's

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1 name mentioned anywhere in here.

2 Did you ever remember seeing it?

3 A I -- I guess I do not.

4 Q Were you aware that in the context of this

5 investigation, Dunn County sheriff's officers reviewed

6 video from the Huber dorm to see whether or not you

7 were, you know, on camera doing anything inappropriate?

8 Did you know that?

9 A I knew they were -- just like -- I knew they were

10 investigating the Slabey incident?

11 Q Yes.

12 A I --

13 Q Yes.

14 A I had no idea until Westlund showed up at my door.

15 Q Fair. And let's maybe forward a little bit.

16 A Okay.

17 Q By the time trial rolls around, you have a knowledge

18 that they've --

19 A Okay.

20 Q -- looked at video; right?

21 A Yes. Yeah.

22 Q Did you know that they looked at video and found other

23 incidents before you were fired, between Ms. Slabey and

24 before you were fired, where you were off camera for

25 some significant amount of time?

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1 A I guess I didn't see those reports. I mean --

2 Q Sure. You weren't ever talked about that -- or talked

3 to about that?

4 A No.

5 Q You weren't ever asked what other female inmates may

6 have been involved when you were off camera at those

7 incidents?

8 MR. JOHNSON: Objection. Form. Go ahead.

9 A As -- as far -- like as far as their investigations

10 about me and Slabey, I mean, it was what trial was

11 was about that incident.

12 Q (By Mr. Muszynski, continuing) It was just focused

13 on Ms. Slabey; right?

14 A Yes.

15 Q Yeah. And my question is you weren't ever asked by

16 Officer Westlund or anybody else about other times

17 where you were not visible on camera besides the

18 Schindler one?

19 A No.

20 Q I'm correct? My statement is correct?

21 A I believe that's correct, yeah. I --

22 Q Okay. You're aware, though, that there were other

23 times where you were not visible on camera? I mean,

24 you did it; right?

25 MR. JOHNSON: Objection. Form. Go ahead.

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1 A I guess I could have been off camera, but nothing that

2 I guess I would need to be aware of.

3 Q (By Mr. Muszynski, continuing) Did you ever talk,

4 actually talk to Officer Pollock?

5 A I think -- she was just in the back seat. I mean,

6 we -- you know, it was Westlund and me in the front

7 and she was in the back seat. I -- I don't think --

8 I don't remember her asking me questions or anything

9 like that.

10 Q When they did training as a CO with you about sexual

11 assault, that was a specific topic, was it not?

12 A When I was going through CTO with the jail?

13 Q Yeah. Yep.

14 A I mean, that was -- it would have been a policy

15 signed --

16 Q Was that --

17 A -- during training.

18 Q Was that a specific topic that was actually covered,

19 like somebody talked about it and went over the

20 policies with you, or was something just handed to

21 you and read this and sign it?

22 A I -- a lot of the stuff during the in-house training

23 was policies, read it, initial it, sign it. I mean --

24 Q Do you recall any type of classwork or instruction

25 where they talked to you as a training CO about the

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1 **risks and dangers of sexual assault?**
 2 A During training at the jail, no, but, I mean, that was
 3 something that was later covered when I went to that
 4 academy --
 5 **Q Okay.**
 6 A -- in 2012.
 7 **Q Let's talk about that. At the academy, was that**
 8 **something that was like taught as a portion of**
 9 **instruction where, you know, you had a teacher that**
 10 **talked to you about sexual assault?**
 11 A Yeah. They had -- I mean, that was a -- it was a
 12 very in-depth, thorough class. I mean, they did have
 13 a section in there about, they call it the PREA, you
 14 know, what not to, you know, subject yourself to and
 15 stuff like that.
 16 **Q What do you mean, what not to subject yourself to?**
 17 A Try to -- combination between that and ethics. You
 18 know, keep yourself in a professional manner at all
 19 times and -- you know.
 20 **Q What were you told as to why you should do that?**
 21 A Why? I mean, because it's -- you're not supposed to.
 22 I mean --
 23 **Q Why?**
 24 A The whys, I -- I don't remember exactly what they said,
 25 but, I mean, for me, you know, you need to keep that

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1 professional personal barrier, you know, keep that
 2 barrier up. It's --
 3 **Q Why?**
 4 A Why? To -- I don't know. I guess it's, you know, it's
 5 inappropriate to cross -- you got to keep that barrier
 6 up because you're expected to be viewed as, you know,
 7 the person in charge and things like that, you know.
 8 **Q And that's how you were trained? Yes?**
 9 A Yeah, you're supposed to, you know, keep the higher
 10 standard, I guess.
 11 **Q All right. That's all I have.**
 12 **EXAMINATION**
 13 BY MR. JOHNSON:
 14 **Q Ryan, you said before we started that you were moving**
 15 **back home after you're released?**
 16 A Yes.
 17 **Q And is that back home with your parents?**
 18 A No. That's actually at -- living with my girlfriend
 19 in Menomonie.
 20 **Q And what's the address?**
 21 MR. MUSZYNSKI: Thank you.
 22 A It's N1697 County Road Y.
 23 **Q (By Mr. Johnson, continuing) Okay. In Menomonie?**
 24 A Well, yeah, it's between Menomonie and Durand.
 25 **Q It's a Menomonie address?**

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1 A Menomonie address, yeah.
 2 **Q Okay. Is that a house that you own or that she owns,**
 3 **or do you rent it?**
 4 A It's, yeah, it's her house, Jennifer's house, my
 5 girlfriend's.
 6 **Q And she owns it?**
 7 A Yeah.
 8 **Q All right. Does she have a job?**
 9 A Does she have a job? Yes.
 10 **Q Where does she work?**
 11 A She works for the Wisconsin Telcom. Or the credit
 12 union, I mean.
 13 **Q In Menomonie?**
 14 A In Menomonie.
 15 **Q Okay. And you said that you had about a week break**
 16 **before you were going to go back to work?**
 17 A Before I go back to work, yeah. I mean --
 18 **Q And what's your -- what will be your employment?**
 19 A Go back to the family dairy farm down in Durand.
 20 **Q Okay. And what's the address of the -- what's the main**
 21 **address of the farm?**
 22 A The dairy farm, numbers, I don't know, but it's County
 23 Road V.
 24 **Q Okay. And that's -- your parents are still there?**
 25 A It's actually a married uncle that's in the family.

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1 My -- I would say my dad's sister's married husband.
 2 It's his family, so it's like my uncle, but, you
 3 know, married uncle, not like a blood uncle type of
 4 deal.
 5 **Q Okay. He lives on site?**
 6 A He lives on Highway 10, just down the road.
 7 **Q Is there anybody who lives on the farm?**
 8 A The other brother, Rick Bauer, he lives on site.
 9 **Q Okay. Rick Bauer lives on site. And then what's**
 10 **your -- what's your uncle's name that you mentioned?**
 11 A Gary.
 12 **Q Bauer?**
 13 A Gary Bauer, yes.
 14 **Q Okay. At the time of -- well, in 2015, 2016, when**
 15 **you're a CO, you worked third shift; right, or the**
 16 **overnight shift?**
 17 A Yes.
 18 **Q Okay. And just, what was the process for rounds,**
 19 **checking the cells for the hourly rounds every night?**
 20 A You would -- you know, every hour, you're required to
 21 go through and make sure they're, you know, they're
 22 not -- I don't know. Basically, we just -- we call
 23 it a wellness check, make sure they're alive and
 24 breathing is what you're supposed to do.
 25 **Q And would you do that by yourself, or was it done in**

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1 **pairs?**
 2 A Some blocks were singles. Some blocks were doubles.
 3 It just depended on what was going on in booking.
 4 You know, usually -- there's four Huber dorms. One
 5 guy does A/B, one guy does C/D, and then they go to
 6 the pod and they each take their half and meet in the
 7 middle.
 8 **Q There's -- other testimony from other COs in this case**
 9 **I think described that when officers would do rounds**
 10 **and when they would get to the part of the rounds**
 11 **where they were by themselves, or single rounds, and**
 12 **if they would be -- if they would stop for any reason**
 13 **for longer periods of time, that central would check**
 14 **in with them by radio, or I suppose another officer**
 15 **could come and check on you, whatever. That's been**
 16 **the testimony before this.**
 17 **Have you -- do you generally agree with that, or**
 18 **is that a -- is that inaccurate somehow?**
 19 A Generally, you know, if you're doing solo rounds and
 20 you're not out of a block, a radio check would be what
 21 would be done to make sure you're okay.
 22 **Q On an average night, and, I mean, I think that the**
 23 **population sometimes differs day-to-day, but on an**
 24 **average night, how long would it take you to complete**
 25 **rounds?**

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1 A I think it was roughly 10-minute rounds, I mean,
 2 walking through the whole jail.
 3 **Q And that's all --**
 4 A With --
 5 **Q -- types of cells?**
 6 A Yeah. Yeah. That's two officers, about 10 minutes.
 7 **Q Okay. And then in that scenario then, if it takes**
 8 **you about 10 minutes, if one officer doesn't return**
 9 **in the average amount of time to do it, was the**
 10 **process then for central or someone from central to**
 11 **check in?**
 12 A Usually it'd be a radio call.
 13 **Q Okay.**
 14 A I mean --
 15 **Q From central?**
 16 A From central to whoever was out and about, or whoever
 17 was doing the checks at that time, to --
 18 **Q Okay. And do you remember, during your time performing**
 19 **rounds in 2015 and 2016, receiving check-ins or calls**
 20 **from central?**
 21 A I -- I think there was one time they asked if
 22 everything was okay, and I responded, you know,
 23 everything was under control, I mean, everything
 24 was -- I don't know. I don't remember my exact
 25 words, but I responded that I'm okay.

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1 **Q Do you remember one way or the other whether on the**
 2 **night in question with Slabey, that central checked**
 3 **in with you?**
 4 A I do remember them checking in one time that I
 5 remember.
 6 **Q Do you remember, on -- I mean, you were asked about**
 7 **other instances when you may have been off camera, I**
 8 **guess particularly -- particularly between the night**
 9 **that -- of the incident with Slabey --**
 10 A Okay.
 11 **Q -- and then when you were terminated.**
 12 A Okay.
 13 **Q Okay. Do you remember during any of those -- during**
 14 **any time in that time period, where central checked in**
 15 **with you during rounds?**
 16 A I mean, on -- on the nights that were mentioned before,
 17 I mean, I guess I wouldn't remember. You know, it
 18 was -- that one report said it was 12 minutes I was in
 19 there. I mean, I guess I do not recall them actually
 20 checking in with me that night.
 21 **Q And I'm not asking you to make something up.**
 22 A Yeah.
 23 **Q If you don't recall one way or the other, that's --**
 24 **that's fine.**
 25 A Yeah, I really don't.

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1 **Q Okay. But that was the standard -- that was the**
 2 **standard procedure, though?**
 3 A Yeah. It was a, I don't know, kind of a, you know,
 4 cover each other's back type of thing.
 5 **Q Since your incarceration following the criminal trial,**
 6 **have you spoken with any other investigator or anyone**
 7 **else about the -- about your employment at the County,**
 8 **besides the two depositions you've -- you've sat**
 9 **through?**
 10 A Spoken with anyone about it?
 11 **Q Spoken with any other investigators or --**
 12 **A Investigators?**
 13 **Q -- lawyer who you were not considering retaining or**
 14 **anyone else seeking information or statements or**
 15 **anything like that from you about your employment at**
 16 **the County besides, again, the attorneys during these**
 17 **two depositions?**
 18 A No. I mean, I haven't had any conversation about it
 19 with anybody.
 20 **Q Have you had any contact with Slabey whatsoever?**
 21 A Nothing. None.
 22 **Q Any plans of yours to move from the house that your**
 23 **girlfriend owns in the near future, or any plans to**
 24 **move from the area, anything like that?**
 25 A No. I plan on, you know, living there and, you know,

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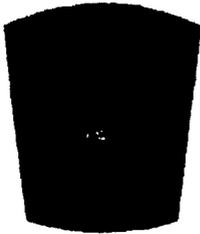
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1 I mean, talking to my uncle, he's willing to give me --
 2 you know, it's hard times on the farms right now, so
 3 he's willing to give me some time to get back on my
 4 feet, you know. And then I've been -- I've been
 5 looking here at the Job Center for possible, you know,
 6 future employment and stuff like that, so -- but as far
 7 as living, I'll probably stay there as long as -- you
 8 know, I don't plan on moving.
 9 **Q It's not -- you're not getting a full week at the farm**
 10 **right now? You're not going to get a full week of**
 11 **hours at the farm, is that what you're saying?**
 12 A You mean like when I get out?
 13 **Q Yeah.**
 14 A When I get out, I plan on, what do you say, getting
 15 things back in order. We've been -- so we -- okay.
 16 My house, the house that we live in was her parents'
 17 house, so, I mean, there's stuff left in the house.
 18 She just wants a week to get things cleaned up. She's
 19 been -- you know, Jen's been living by herself for two
 20 years now. I mean, she's -- I'm planning on, you know,
 21 getting that cleaned up, getting repairs around the
 22 house that have been, you know, neglected the past two
 23 years, just a little time to, I don't know, adjust to
 24 not being incarcerated, you know, spending time with
 25 Jen and family and reuniting with people and -- you

1 **of the other COs and sergeants and whatnot that at**
 2 **some point in the evening, maybe around 1:30 to 2 a.m.,**
 3 **there's no sergeant on anymore; is that right?**
 4 A I know when they switched, I think it was like 1:30
 5 or something like that, a sergeant -- because the
 6 sergeants only had two shifts throughout the day.
 7 **Q Yeah.**
 8 A And one left at 1:30, and the next one wouldn't come
 9 back in, it was after I left for the day, because I
 10 leave at seven in the morning.
 11 **Q So, basically, from 1:30, two o'clock-ish, something**
 12 **like that, in the morning until the end of your shift,**
 13 **there is no sergeant on; is that right?**
 14 A Correct. There's just --
 15 **Q Just other COs?**
 16 A Just the three COs in the jail.
 17 **Q And that never changed throughout your employment;**
 18 **correct?**
 19 A I mean, I know when I first started, there -- I don't
 20 remember the exact schedule, but the last couple years,
 21 they went to that.
 22 **Q Fair. And let me ask it this way: It never changed**
 23 **after the July and August incidents until you were**
 24 **terminated; right?**
 25 A Correct. It was same schedule.

1 know.
 2 **Q No, I get it. What I want to know is if you're going**
 3 **to be able to be located when this goes to trial?**
 4 A Oh, yeah, absolutely.
 5 **Q I didn't mean to beat around the bush. That's why**
 6 **I'm asking those questions.**
 7 A Yeah, that address will be my address.
 8 **Q Okay. Thank you.**
 9 A Okay.
 10 FURTHER EXAMINATION
 11 BY MR. MUSZYNSKI:
 12 **Q Just a couple more questions.**
 13 A Okay.
 14 **Q The July and August incidents that happened, you were**
 15 **suspended for three days?**
 16 A Yeah.
 17 **Q You stayed on third shift; correct?**
 18 A Yeah. I was third shift --
 19 **Q The whole time?**
 20 A -- all five years I worked there.
 21 **Q Third shift is the lightest staffed shift; right, as**
 22 **far as COs go?**
 23 A Yeah, so I think first and second had four and third
 24 had three, as far as --
 25 **Q Okay. And it's my understanding from talking to some**

1 **Q Okay. And the Slabey incident occurred after the**
 2 **sergeants would have been gone; right, we know what**
 3 **time that occurred?**
 4 A Yeah, I think.
 5 **Q Okay. And the Schindler incident occurred after the**
 6 **sergeants would have left; right?**
 7 A Yes, time-wise.
 8 **Q All right. That's all I've got. Thanks.**
 9 MR. JOHNSON: Thanks, Ryan. Good luck.
 10 MR. MUSZYNSKI: Yeah.
 11 THE COURT REPORTER: Transcript orders?
 12 MR. MUSZYNSKI: Electronic's fine for me,
 13 please.
 14 MR. JOHNSON: That's fine. Thanks.
 15 (The deposition of RYAN BOIGENZAHN came to
 16 a close at approximately 9:42 a.m.)
 17 * * * * *



Dunn County Sheriff's Office

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DUNN COUNTY EMPLOYEE DISCIPLINARY ACTION

INSTRUCTIONS: This form is designed to be completed electronically and printed for signature. Copies should be: given to the employee; retained by the department and filed, electronically, with the Department of Administration, Human Resources Division.

Employee Name: Ryan Boigenzahn **ID #** **Today's Date:** August 26, 2015

Location, Date & Time of Violation: 7/29/15 & 8/6/15

- This action is a(n):
- Performance Counseling (Not a disciplinary action) (Copies do not need to be filed with the Administration)
 - Oral Reprimand
 - Written Reprimand
 - Unpaid Suspension Of (3) Three days**
 - Termination

This action is being taken as a result of a violation of the Dunn County: Collective Bargaining Agreement, Personnel Ordinance, work rules, policies, procedures, specifically:

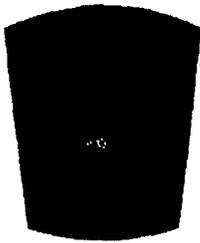
- Excessive Absenteeism or tardiness
- Incompetence or inefficiency in the performance of duties
- Carelessness or negligence in handling County property
- Other (Describe) Violation of Policies and Work Rules**

Agreement, Rule, Policy, or Procedure Violated:

200-17-0 (1) (2) c-Fraternization & J200-1-0 (1) (2) Unbecoming Conduct

Detailed Description of the violation:

On July 29th and August 6th Ryan Boigenzahn interacted with an inmate in a physical/playing manner and further allowed the inmate to rub her hand across his shoulder. This is in direct violation of Sheriff's Office Policies concerning Fraternalization and Unbecoming Conduct. This sort of Fraternalization can destroy the safety and integrity of the jail. Boigenzahn further was found to be passing notes from a female inmate to a male inmate which not only violates policy and procedure but can fall within a violation of State Statute.



Dunn County Sheriff's Office

*Sheriff Dennis P. Smith
Chief Deputy Paul Gunness*

615 Stokke Parkway Suite G300
Menomonie, WI 54751
Communications Center: (715)232-1348
Business Office: (715)232-1584
Fax: (715)232-3900
www.DunnCountySheriff.com

Description of prior occurrences, training, counseling, or other actions relative to this behavior:

Ryan is a training officer and has been trained regarding this type of conduct and how it can pose a threat to the safety of inmates, staff and the security of the jail. He also has acknowledged receiving department policies, work rules and guidelines.

Action to be taken in future:

Employee will follow all policies, work rules, procedures and current laws regarding his employment as a correctional officer with the Dunn County Sheriffs Office.

Supervisor or Department Head taking action: **Chief Deputy Paul Gunness**

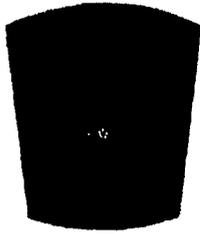
Date of Issuance: **August 26, 2015**

Department Head or Supervisor's Signature *Paul Gunness*

Employee's acknowledgement: I, **Ryan Bolgenzahn**, acknowledge that I received a copy of this **Dunn County Employee Disciplinary Action Form**.

Signature: *Ryan Bolgenzahn*

Date: 8-26-2015



Dunn County Sheriff's Office

*Sheriff Dennis P. Smith
Chief Deputy Paul Guinness*

815 Stokke Parkway Suite G300
Menomonie, WI 54751
Communications Center: (715)232-1348
Business Office: (715)232-1564
Fax: (715)232-3900
www.DunnCountySheriff.com

August 26, 2015

Ryan Boigenzahn
Dunn County Correctional Officer

Ryan,

I am, by this letter, suspending you from work for a period of Three (3) working days, without pay, as disciplinary action, commencing August 26, 2015.

The attached Dunn County Disciplinary Action Form issued August 17, 2015, describes the reason for this action.

You will report back for work on August 29, 2015 at 10:30 pm.

I expect you will take this opportunity to correct your improper conduct in the future, fully meet the duties and responsibilities required of you and observe all the rules and procedures of your job. If you fail to do so, you will subject yourself to further disciplinary action, including discharge and termination of your employment with the County.

Respectfully,

Paul Guinness
Chief Deputy Paul Guinness

I ACKNOWLEDGE RECEIPT OF THE FOREGOING LETTER THIS 26 DAY OF August 2015.

Ryan Boigenzahn
Employee Signature

cc: Department of Administration, Human Resources Division

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1 you were provided you needed to get PREA
2 certified by some agency of some sort?
3 A Correct.
4 Q And so you directed the sergeants, and in
5 particular it sounds like Sergeant Vold?
6 A Yes. We discussed it because we had several
7 sergeants available when we met at this meeting.
8 I pretty much asked if anybody could start making
9 this follow-up and give me some
10 recommendations.
11 Q Do you know if more than one vendor was
12 contacted?
13 A I don't.
14 Q When you were presented with the option or
15 options, were you presented with just here's
16 Educorr and the costs and this will work?
17 A I think what had happened is there was some
18 contacts with other jail facilities, and they
19 indicated I believe that Educorr was someone that
20 they had contracted with and they were pleased
21 with their services.
22 Q What was your understanding about what, if
23 anything, is deficient or lacking in your PREA,
24 shall we call it, PREA, I guess conforming to
25 PREA before without Educorr as opposed to with

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1 Educorr?
2 A There wasn't any discussion as far as being
3 lacking. The state just indicated that if we
4 wanted to be able to sign a contract with them,
5 this is the route we had to take to obtain this
6 outside training with the certification or the
7 status that would come with doing that
8 training.
9 Q Do you have an understanding as to what
10 additional instructions or policies or procedures
11 Educorr is helping you implement?
12 A No, I do not.
13 Q Do you know what the cost of Educorr is on an
14 annual basis let's say?
15 A My understanding, it was basically a per employee
16 cost for the testing portion of it. And I don't
17 know that there's a continuing education-type
18 thing with it. I just know that there's an
19 individual testing when somebody signs up and
20 completes, then we'd be billed for that
21 employee.
22 Q Was it a relatively modest expense, or are we
23 talking about hundreds of thousands of dollars?
24 A Oh, no. It was just several thousand dollars.
25 Q Do you know, have any knowledge of how long

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1 Educorr has been providing this service?
2 A No.
3 Q Since 2016 since you took on the role of chief
4 deputy, do you have any understanding or any
5 knowledge that it's been discussed that your PREA
6 training policies need to be revised or changed
7 or added to?
8 A No.
9 Q Before you took the job as chief deputy did you
10 even have any interaction with PREA?
11 A No.
12 Q That's just the prison side, right?
13 A Correct.
14 Q If I had asked you back then if you knew what
15 PREA was, would you know?
16 A No. From what I remember back when I was a
17 correctional officer, I never knew of --
18 Q Fair enough.
19 A -- the existence of it.
20 Q I think it's safe to assume we don't need PREA to
21 know that sexual violence in a jail is a bad
22 thing?
23 A Oh, it's unacceptable. It's a liability issue.
24 It's unacceptable period, you know, separate from
25 being a liability in a department issue.

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1 Q Correct. We can agree that absent the federal
2 law, PREA, we know that it's wrong and a
3 violation of the inmates' rights, yes?
4 A Absolutely.
5 Q Or the correctional officer if it happened to a
6 correctional officer?
7 A Yes.
8 Q And particularly when it comes to the inmates,
9 the inmates are at the mercy essentially of the
10 correctional officers in giving up their freedom,
11 they're particularly vulnerable in those
12 instances, correct?
13 A Correct.
14 Q And the county has an additional obligation as
15 the people incarcerating these folks to make sure
16 that they're safely incarcerated, correct?
17 A Yeah. In several different ways.
18 Q Not just sexually, but physically, mentally,
19 emotionally, et cetera?
20 A Correct.
21 Q Any of which I suppose can be implicated in a
22 sexual violence situation?
23 A Correct.
24 Q What is your role as chief deputy, if any, in
25 making hiring decisions for COs?

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1 A I'm involved with working with the human
2 resources department basically from start to end.
3 I request human resources department to place
4 ads, recruitment process. They develop a list of
5 those that applied.
6 Myself in connection with the jail
7 corrections staff, the captains, sergeants, in
8 reviewing these applications, doing the vetting
9 process of criminal history records, financial,
10 all of that, I assign investigators out to do
11 background investigations on possible hires,
12 assuming that the background check doesn't bring,
13 you know, bring anything to light.
14 I also go through the process of scheduling
15 them for drug testing, physical, basically having
16 a physical done where the document is signed off
17 that they have the physical ability to complete
18 the job descriptions, and also scheduling
19 psychological exams for them prior to hire.
20 **Q Object being you want to find any red flags**
21 **before you hire them?**
22 A Yes. Because, obviously, it's a position of
23 trust. Same as patrol is.
24 As a manager, you don't want to hire
25 somebody that's going to be a liability that you

1 Barrow that if we see anything in our background
2 check that we may want to highlight that he
3 should be concerned about, he willingly takes it
4 on and delves into that within the interview.
5 After he does the interviews, if he has any
6 concern at all, even if they -- some of the
7 concerns can be just like with maturity or, you
8 know, some people internalizing stress, he lets
9 us know that because someone may be approved to
10 work, but things that you want to watch during
11 the process. Field training process is
12 stressful. If they internalize stress, that's
13 something we want to keep an eye on that it
14 doesn't build and cause them mental health
15 issues.
16 **Q Got it.**
17 A So I think it's a very in-depth, complete process
18 prior to hire.
19 **Q Got it. Did you review any documents pertaining**
20 **to this incident or Mr. Boigenzahn before today's**
21 **deposition?**
22 A The Slabey incident?
23 **Q Yeah.**
24 A No. What had happened, you know, I dealt with
25 the incident where he was terminated.

1 can't trust, that has prior issues. It's just
2 not smart business.
3 **Q And again, it's because they have access to a**
4 **whole bunch of people in potentially vulnerable**
5 **situations, yes?**
6 A Yes. It's a large responsibility. A lot of
7 self-supervising. You have to make decisions,
8 smart decisions, and not everybody can do that.
9 **Q Got it. Do you personally sign off on like we're**
10 **hiring this new CO or something like that, or do**
11 **you just review it in conjunction with the**
12 **others?**
13 A It's kind of a group effort. There's several
14 layers. Ultimately, it's the sheriff's decision
15 to hire anybody.
16 **Q Sure.**
17 A We can only recommend based on the backgrounds.
18 I believe we do a pretty thorough background. I
19 know our investigators complete an extensive
20 background check on every employee.
21 You also have to place a lot of trust in the
22 psychological exam completed by Campion Barrow
23 because they have a certain skill set that sees
24 things that we don't.
25 We also have a working relation with Campion

1 **Q Yep.**
2 A I did not deal with the incident where he was
3 suspended for three days.
4 The only knowledge I have of the Slabey
5 incident was when the sheriff and the captain
6 brought it to my attention based on Investigator
7 Westlund's information, and the decision was
8 Investigator Westlund to follow up on it as an
9 independent investigator in the department, and
10 pretty much I was hands off because --
11 **Q Yep. I get it. Let's talk about a few of those**
12 **things.**
13 **Do you have any knowledge of a July 2015**
14 **incident involving Mr. Boigenzahn passing notes**
15 **between inmates or anything like that?**
16 A No.
17 **Q Do you have any knowledge of an August 2015**
18 **incident involving Mr. Boigenzahn, I guess there**
19 **was some playful or inappropriate physical**
20 **contact between Mr. Boigenzahn and a female**
21 **inmate.**
22 **Do you know about that?**
23 A Was it Ms. Slabey?
24 **Q No.**
25 A No.

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1 **Q So on the time line then the next incident**
 2 **timing-wise would be the incident with**
 3 **Ms. Slabey.**
 4 **You have an understanding of what happened**
 5 **there, obviously, just generally at least,**
 6 **right?**
 7 A Generally when he was in his trial process. You
 8 can't not hear it.
 9 **Q Correct. You weren't involved in the**
 10 **investigation. I understand that.**
 11 A No.
 12 **Q Do you have a general understanding where the**
 13 **incident took place?**
 14 A Yes.
 15 **Q In the Huber dorm?**
 16 A Correct.
 17 **Q Do you know specifically within the Huber dorm**
 18 **which bunk Ms. Slabey was in?**
 19 A No.
 20 **Q And then there's the incident in May of 2016 with**
 21 **Ms. Schindler?**
 22 A Correct.
 23 **Q Where Mr. Boigenzahn is terminated.**
 24 **You have an involvement in that?**
 25 A Correct.

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1 **Q And what's your understanding of what occurred**
 2 **leading to his termination?**
 3 A I was contacted by Sheriff Smith and Captain
 4 LaForte. They indicated that I believe Sergeant
 5 Vold had been approached by a female inmate that
 6 had been involved in his 2015 incident, indicated
 7 that there was a continuation of behavior is the
 8 way she presented it to Sergeant Vold.
 9 Obviously, Sergeant Vold told Captain
 10 LaForte. She briefed me on it. Basically the
 11 information was that he had been given a note by
 12 Ms. Schindler, it was supposed to be something
 13 sexual in nature, and that he had not turned it
 14 over to supervisory staff as he should. He
 15 should have refused the note. But if he took it
 16 and it was somehow sexual in nature, obviously,
 17 it's a violation. To protect himself and protect
 18 the inmate, he should have turned it over to
 19 supervisory staff.
 20 Basically after that was made known, he was
 21 immediately placed on administrative leave, not
 22 to work any longer in the jail until this was
 23 investigated.
 24 I believe it was approximately May 19th
 25 myself and Captain LaForte did a brief interview

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1 on him questioning him. He did admit to
 2 receiving a note from Ms. Schindler. Captain
 3 LaForte indicated, you know, what would have been
 4 the proper route to take with that. He did
 5 indicate I should have turned it over to
 6 supervisory staff.
 7 My interaction was very limited. I know the
 8 one question I did ask him is what color was the
 9 note because it was specifically said that it was
 10 a pink piece of paper. And I thought, well, if I
 11 can get him to say it was pink it would
 12 corroborate the other inmate's information,
 13 because pink is kind of a different color. And
 14 he did say it was pink.
 15 And at that point, like I said, the
 16 interview wasn't very long. I was not involved
 17 in the second follow-up interview for violation
 18 of policy, and then the ultimate -- he was
 19 ultimately terminated.
 20 **Q Did you make the decision to terminate him, or is**
 21 **that a decision by Sheriff Smith?**
 22 A That's a decision made by Sheriff Smith, and then
 23 most -- well, all termination has to be basically
 24 run by our human resources and our county
 25 administrator because termination obviously is

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1 very serious. And that was run by downtown, and
 2 my understanding confirmed, and he was
 3 terminated.
 4 **Q I think when I looked at a document before it had**
 5 **your signature on it for like the actual**
 6 **termination agreement.**
 7 **Would that be standard practice?**
 8 A I don't believe mine was. The only thing, maybe
 9 the recommendation sent downtown for termination
 10 may have been signed by me.
 11 **Q I'm not asking you if anything unusual happened.**
 12 A I do a lot of paperwork for the sheriff. I can't
 13 recall if I would have signed it in his
 14 absence.
 15 **Q And that would be an appropriate or valid thing,**
 16 **correct?**
 17 A Yes. There's a process actually, you know,
 18 completing a form, recommending levels of
 19 discipline which has to be forwarded.
 20 **Q Did you take part in the recommendation to the**
 21 **sheriff to terminate Mr. Boigenzahn?**
 22 A I believe so. I would have been in the group of
 23 people, and I would have said absolutely. I was
 24 not aware of his prior, you know, discipline
 25 based upon the same factors because that was

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1 before my time. As soon as I was made aware of
2 that, obviously, I think it's a zero tolerance
3 issue.
4 With the past corrective action with the
5 discipline, obviously I didn't believe that
6 corrective action was good enough, and with the
7 second incident, I believe termination was very
8 appropriate.
9 **Q So if I understand you correctly, I just want to**
10 **clarify.**
11 **You weren't originally aware of**
12 **Mr. Boigenzahn's incidents in 2015?**
13 **A Correct.**
14 **Q Correct?**
15 **A Correct.**
16 **Q But as you were investigating the 2016 incident**
17 **in May you became aware of it, and that**
18 **influenced your decision to terminate him, or**
19 **your recommendation to terminate him?**
20 **A It was a contributing factor, yes.**
21 **Q Because some of the conduct was similar as far as**
22 **inappropriate familiarization with inmates and**
23 **things like that?**
24 **A It's a similar action. Like I said, and a lot of**
25 **disciplinary action is corrective in nature. You**

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1 want to correct the misbehavior and educate the
2 employee and hope that they complete on as a good
3 employee without the same action.
4 **Q Do you know what, if any, action was taken in**
5 **2015 following those incidents?**
6 **A Other than the three-day suspension, I am not**
7 **aware.**
8 **Q I'll show you this, which is numbered 117 through**
9 **119. This is the corrective action I think**
10 **pertaining to the 2015 incident, or incidents I**
11 **guess.**
12 **These look like the official documents,**
13 **right?**
14 **A Yes. Appears to be.**
15 **Q And did you have access to these documents when**
16 **you were ultimately reviewing the 2016**
17 **incident?**
18 **A I don't know if I saw these or not. I may have**
19 **been just informed that there was a prior and**
20 **there was a three-day suspension.**
21 **Q Just looking at the disciplinary action itself,**
22 **it's got two separate incidents on there, 7-29 of**
23 **'15 and 8-6 of '15, correct?**
24 **A Correct.**
25 **Q And then we know that the discipline was unpaid**

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1 **suspension of three days, correct?**
2 **A Yes.**
3 **Q And it's related to violation of policies and**
4 **work rules and then there's a narrative of what**
5 **happened, right?**
6 **A Correct.**
7 **Q Now, I don't see anything else anywhere on here**
8 **other than Mr. Boigenzahn is informed of what the**
9 **policies are again and the three-day suspension.**
10 **Is that your understanding of the extent of**
11 **discipline that was given?**
12 **A From this paperwork, yes.**
13 **Q You weren't the supervisor at that time because**
14 **that was Chief Deputy Gunness?**
15 **A Correct.**
16 **Q That's shortly before you took the position.**
17 **If you were in charge at that instance would**
18 **you have recommended additional training for**
19 **Mr. Boigenzahn?**
20 **MR. JOHNSON: Objection. Foundation.**
21 **Go ahead.**
22 **A I guess I would. I'd have to staff it with the**
23 **correctional officer staff because I don't know**
24 **him like they do. They work with him. They**
25 **supervise him. They see what he's like.**

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1 Sometimes employees, even myself, everybody
2 will make a mistake and when you do corrective
3 action, it won't happen again. I would have to
4 have some understanding what type of person he
5 is.
6 If he's one of those people that reacts
7 immediately to corrective action or if he's one
8 of those that probably isn't going to react
9 properly, every individual is the same, so I
10 would really have to staff it with staff to see
11 what kind of person he is, what they believe
12 would be the better route of action because every
13 employee is different. If they felt something
14 more would have to be done, I think we'd have to
15 discuss that.
16 Training-wise, we have policy and procedures
17 in place to prevent such actions. No matter how
18 much training you give some people, if they
19 choose to act in a certain way outside of policy
20 and procedure without your knowledge, it's either
21 going to occur, or if it happens with your
22 knowledge, you terminate their employment.
23 **Q (By Mr. Muszynski, continuing) So in this**
24 **instance, Mr. Boigenzahn, two instances, violated**
25 **polices and procedures of the jail, correct?**

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1 A Correct.

2 **Q And it was specifically related to female inmates**

3 **and safety and things like that, correct?**

4 MR. JOHNSON: Objection. Form.

5 Go ahead.

6 **Q (By Mr. Muszynski, continuing) I can show you the**

7 **document.**

8 A Yeah. I'd have to know the individual things.

9 But if he's having longer than acceptable contact

10 with inmates, that --

11 **Q Let's look at it. I'll read it to you. Make**

12 **sure I read it correctly here.**

13 **On July 29th and August 6th, Ryan Boigenzahn**

14 **interacted with an inmate in a physical playing**

15 **manner, and further allowed the inmate to rub her**

16 **hand across his shoulder.**

17 **That would be inappropriate, correct?**

18 A Well, yeah. Him -- he would have to let her know

19 that's not appropriate contact, report it to a

20 supervisor and say I did not allow this.

21 **Q And that would be a violation of jail policy if**

22 **he, A, allowed it to happen, and B, didn't report**

23 **it after the fact?**

24 A Correct. Yes.

25 **Q And do you agree that these would be in violation**

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1 **of policies concerning fraternization and**

2 **unbecoming conduct?**

3 A Yes.

4 **Q So my question would be, knowing that, and I**

5 **understand you didn't have full access**

6 **necessarily to the investigation file, but I'll**

7 **represent to you that it's a female inmate and**

8 **there were more than one instance where there was**

9 **physical conduct that Sergeant Vold considered**

10 **inappropriate, you would say that's a violation**

11 **of jail policies, yes?**

12 A Yes.

13 **Q And would you want that officer to have**

14 **additional supervision maybe by another officer**

15 **when he comes back to work?**

16 A It would be difficult to supervise a correctional

17 officer in all aspects of their work in the jail

18 just because of a manpower issue. I think you

19 would have to have a clear understanding with

20 him, again, how he's going to react to it. Maybe

21 he just let his guard down, allowed this to

22 happen, and make him realize that this is your

23 career. Your standing with them is in a position

24 of power. If you let that position, you know,

25 get into that gray area, you can be affected.

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1 Your career can be affected, much less violate

2 policy and all that.

3 It may be just as simple as speaking with

4 them and explaining to them you see where this

5 has gone, no gray areas, anything close to this

6 needs to be reported to us immediately or

7 termination.

8 This was one step of progressive discipline,

9 three-day suspension, if it occurs. Some people,

10 if you basically have that talk with them, it

11 will never happen again. And I would hope that,

12 not knowing Ryan at all, I would hope jail staff

13 would tell me he's going to react to that

14 properly if you tell him.

15 We also have employees, sometimes you can

16 tell them that and they'll say yes and turn

17 around and you know they're probably not going to

18 take it.

19 **Q Obviously, we know in this instance**

20 **Mr. Boigenzahn did not respond as hoped to that**

21 **corrective action, correct?**

22 A Yes.

23 **Q Let me ask this. You talked about having a**

24 **conversation with the officer about their career**

25 **and their impact.**

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1 **What about the impact conduct like that**

2 **might have on the safety of inmates?**

3 A Well, it's the safety of the entire population.

4 **Q And obviously a corrective -- or a corrections**

5 **officer who blurs that line of appropriate**

6 **conduct can put other inmates at risk, correct?**

7 A Inmates and staff.

8 **Q Yes. Correct. I'm talking just specifically**

9 **about inmates.**

10 **It is a risk to inmates, correct?**

11 A Yes.

12 **Q And if there are lines blurred, whether that's**

13 **romantic or not, friendship or not, that can**

14 **endanger safety of inmates, yes?**

15 A Overall status, yes.

16 **Q And you're telling me it would be impossible to**

17 **have some sort of additional supervision over a**

18 **corrections officer like Mr. Boigenzahn who was**

19 **engaging in multiple instances of inappropriate**

20 **conduct with an inmate?**

21 MR. JOHNSON: Objection to form.

22 Go ahead.

23 A I wouldn't say impossible. It would be

24 difficult. You would hope that the corrective

25 action would resolve the situation. Under any

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1 working environment, if you have employees that
2 are violating policy, you would hope that the
3 corrective action, the discipline, would correct
4 that.
5 We don't always have increased supervision
6 over people that are disciplined. We hope that
7 other employees help. We also, that's what the
8 policy -- most workplaces don't have the policy
9 and procedures in place that we do. They're very
10 strict. They're very black and white. They're
11 reviewed yearly on an ongoing basis. He signed
12 off for them.
13 You have to hope that the supervision of
14 other employees, the supervision of supervisors
15 on duty, and the policy and procedures, along
16 with the corrective action, will take care of
17 itself.
18 **Q (By Mr. Muszynski, continuing) It's a hope?**
19 **A** Yes. It's like anybody. If an employee is going
20 to decide to act outside the scope of his
21 responsibilities and policy and procedure, that
22 can happen one time. It could happen two times.
23 Without you being present of the knowledge, a lot
24 of things can happen. I believe we take
25 corrective action when we're made aware of it

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1 immediately.
2 **Q And I guess I'm asking in this instance we have**
3 **two incidents in 2015 where the corrective action**
4 **is go home, don't get paid, come back, and**
5 **nothing else has changed, correct?**
6 **A** I guess I'm not sure what you mean by nothing
7 else has changed.
8 **Q There's no new training, correct?**
9 **A** I don't know if there was or not.
10 **Q Nothing in that document?**
11 **A** Nothing in that document.
12 **Q There's no new supervision of him, correct?**
13 **A** Not that I'm aware of.
14 **Q There's no changes to his job responsibilities,**
15 **correct?**
16 **A** No.
17 **Q There's no changes to other employees being**
18 **instructed to keep an eye on this guy, to your**
19 **knowledge, correct?**
20 **A** Not to my knowledge.
21 **Q And seeing as what we know eventually happened,**
22 **that's something that probably would have come**
23 **out if it were the case, yes?**
24 **MR. JOHNSON:** Objection. Form.
25 **A** I don't know.

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1 **Q (By Mr. Muszynski, continuing) Well, I mean let's**
2 **be honest. The guy was accused and ultimately**
3 **convicted of sexually assaulting someone and**
4 **there was a full investigation done.**
5 **If correctional officers were instructed to**
6 **keep a close eye on his conduct, with the amount**
7 **of correctional officers that were investigated**
8 **in this case, don't you think that would have**
9 **come out?**
10 **MR. JOHNSON:** Objection. Form.
11 **Q (By Mr. Muszynski, continuing) You can answer to**
12 **the best you can.**
13 **MR. JOHNSON:** What would have come out?
14 **Q (By Mr. Muszynski, continuing) That some officer,**
15 **correctional officer, was instructed to keep an**
16 **eye on him, Boigenzahn?**
17 **A** I think it's part of their duties that they keep
18 an eye on each other just in normal work.
19 Whether they bring it to our attention is a whole
20 different thing.
21 We have to trust that they keep an eye on
22 other employees if they see something wrong.
23 There's many factors why employees don't.
24 **Q And I guess what I'm asking you is nothing**
25 **additional other than every other employee was**

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1 **likely instructed to keep an eye on Boigenzahn?**
2 **A** I don't know. They could have had some informal
3 training. There could have been increased
4 supervision by the supervisors, and they could
5 have asked other people to watch.
6 From the documentation, I don't know whether
7 there was or not informally or formally. I don't
8 know.
9 **Q Fair enough. Those were all viable options after**
10 **the 2015 incident, correct?**
11 **A** Yeah. Any incident you can have increased. If
12 we have somebody that doesn't write enough
13 citations or doesn't do something or doesn't
14 check in or out, there's always every instance
15 has a litany of possibilities of how to make sure
16 the corrective action takes hold.
17 **Q Fair. Do you have an understanding of whether or**
18 **not -- the part of the Huber dorm, you know**
19 **generally where this happened, right? Not the**
20 **specific location, but the area, correct?**
21 **A** Generally, yes.
22 **Q There are video cameras that cover that space in**
23 **general, yes?**
24 **A** Correct.
25 **Q Do you have an understanding as to whether or not**

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1 **the video cameras cover all of Huber dorm?**
 2 A I'm sure there are blind spots somewhere all over
 3 the place.
 4 **Q Does that create a safety problem for purposes of**
 5 **not being able to observe inmates and/or**
 6 **correctional officers?**
 7 A Anywhere there's a dark spot something could
 8 happen. People learn that they're there.
 9 **Q When did you become aware, if you are aware, that**
 10 **there are blind spots in the Huber dorm where**
 11 **this incident happened?**
 12 A Just when this was being investigated.
 13 **Q What steps, if any, did you take to change**
 14 **that?**
 15 A Prior to this I had taken on the task of
 16 completing an upgrade of the surveillance system
 17 in the courthouse complex as well as the jail.
 18 We had already been investigating vendors for
 19 that. It's actually in the process of being
 20 upgraded complex-wide now.
 21 After that I asked correctional staff to let
 22 the vendor know of any blind spots within the
 23 jail so when we do the upgrade, these can be
 24 corrected.
 25 **Q Correctional officers generally had an**

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1 **understanding of where the blind spots were?**
 2 A Much better than me.
 3 **Q When you found out that there were blind spots,**
 4 **did that concern you?**
 5 A It would always concern me. The camera positions
 6 where they are now are where they were when the
 7 building was built. I don't fault the people
 8 that designed it then, but it wasn't what they
 9 felt adequate at the time.
 10 **Q I'm not asking you to point the finger to**
 11 **somebody who installed a camera or something like**
 12 **that. I'm asking you, you're the number two in**
 13 **the whole county sheriff's department.**
 14 **As that person, did it concern you that you**
 15 **had portions of your county jail that are not**
 16 **covered by video surveillance where inmates and**
 17 **guards can interact?**
 18 A Of course it concerned me, but I'm well aware
 19 that you can't protect everybody from everything
 20 all the time.
 21 **Q Okay.**
 22 A It's like cutting down every tree on the side of
 23 the road so nobody runs into it.
 24 **Q Sure. Let me ask you this.**
 25 **Has it ever been discussed to have a jail**

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1 **policy where there needs to be more than one**
 2 **guard present at a time when interacting with**
 3 **inmates?**
 4 A Not that I'm aware of.
 5 **Q Has there ever been a policy discussed where**
 6 **there needs to be at least a female guard**
 7 **present, at least one female guard present when**
 8 **there are female inmates?**
 9 A No.
 10 **Q Have you ever been to any training or seminars,**
 11 **classes, where they've talked about policies**
 12 **requiring more than one guard present,**
 13 **particularly involving female inmates?**
 14 A No.
 15 **Q This incident with Ms. Slabej happened while**
 16 **Mr. Boigenzahn was kind of doing rounds, like**
 17 **checking on inmates and things like that,**
 18 **correct?**
 19 A That's my understanding, yes.
 20 **Q Do you know whether it would have been possible**
 21 **to have two guards doing that check as opposed to**
 22 **just one? Two doing it at the same time**
 23 **together?**
 24 A Tell you the truth, I don't know. The night
 25 staffing of three, three correctional officers

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1 for the entire complex depending on what's
 2 occurring. Obviously, you've got to make your
 3 checks on a timely basis if one is in central
 4 patrol and the other one could be tied up
 5 booking. There's a lot of variables involved.
 6 **Q Fair.**
 7 A You don't want to miss a check trying to have two
 8 officers when somebody could be injured or
 9 whatever by not completing that check. It's just
 10 a manpower issue.
 11 **Q Now, there are video cameras, though, going on to**
 12 **keep an eye on things from central, correct?**
 13 A Yes.
 14 **Q If somebody is at central like they're supposed**
 15 **to be watching the video cameras, in theory, two**
 16 **other folks could monitor, correct? Two other**
 17 **folks could be traveling together?**
 18 A Could be. Yes.
 19 **Q Staffing-wise is it a budget problem that you**
 20 **guys couldn't put four people on at night? Is**
 21 **that an issue?**
 22 A I wouldn't qualify it as budget-wise. It's
 23 manpower -- the state -- the recommended capacity
 24 of 80 percent capacity to be safe, and that's
 25 facility-wide. And then the state also looks at

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1 the manpower you have on per shift. There's
2 really no magic number. It's always going to
3 come back to dollars.
4 I mean you're not going to have 10 more
5 correctional officers for a night shift just
6 because. The staffing has been for the 80
7 percent for -- that's just busy. Daytimes are
8 busier. At night the pod is locked down. It's
9 acceptable manpower.
10 I don't want less than three, but at what
11 point do you -- I mean you could say it would be
12 safer with 10 more people.
13 **Q Right. I mean I understand. I'm not suggesting**
14 **that you have 30 guards and one inmate. That**
15 **seems silly.**
16 **How many guards do you have on during the**
17 **day shift?**
18 A I couldn't tell you. Between sergeants and on
19 duty, I couldn't tell you the overlay and
20 different sergeants' shifts and all that. I
21 couldn't tell you.
22 **Q Well, obviously, it's going to be more than**
23 **three?**
24 A Yes, because the pod is open.
25 **Q Are we talking like 5 to 10?**

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1 A I would say 5, 4 to 5.
2 **Q Have you seen any of the video involved in any of**
3 **these incidents with Mr. Boigenzahn?**
4 A No, I have not.
5 **Q Are you aware of any other incidents involving**
6 **inappropriate conduct by correctional officers**
7 **and inmates?**
8 A Just what I've heard talked about in the past
9 prior to my time.
10 **Q Are you aware of an incident involving an inmate**
11 **by the name of Sabrina Hair?**
12 A Yes.
13 **Q What do you know about that incident?**
14 A If it's the one I believe you're speaking of,
15 there was a situation where I believe there was,
16 it was lice or something outbreak in one of the
17 cells and they were changing bedding, clothing,
18 and all that.
19 And someone had called her up to front
20 booking, and she was allowed to leave the cell
21 block and walk to the booking area wrapped in a
22 towel.
23 **Q I assume that you'd find that unacceptable?**
24 A Yes. It's not something we want to happen.
25 **Q Do you know if the person or the CO involved was**

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1 **disciplined in any way?**
2 A I believe so, yes.
3 **Q Were you involved in that discipline?**
4 A It was brought to my attention. I recommended
5 that there be discipline because of the action.
6 **Q My understanding is that took place in August of**
7 **2016? Roughly.**
8 A That sounds right.
9 **Q So I want to walk through the time line here and**
10 **then ask you a question. I've got July and**
11 **August 2015 incidents with Mr. Boigenzahn and a**
12 **female inmate.**
13 **We've looked at those, correct?**
14 A Yeah.
15 **Q Then I have April I think of 2016 with the**
16 **incident with Ms. Slabey, yes?**
17 A Correct.
18 **Q May of 2016 the incident with Ms. Slabey and his**
19 **ultimate termination -- I'm sorry, with**
20 **Ms. Schindler and Mr. Boigenzahn's termination,**
21 **correct? I guess he's terminated in June.**
22 A Did you say April '16?
23 **Q Yeah. April and May. The incidents involving**
24 **Ms. Schindler I believe take place in May.**
25 A Oh, I look at them as one incident. It was

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1 brought to us, then it was found out, yes.
2 **Q Well, but the incidents with Ms. Schindler when**
3 **Mr. Boigenzahn is terminated, you guys didn't**
4 **know about the Slabey incident at that point, did**
5 **you?**
6 A No, we did not.
7 **Q So there's an April incident that you guys**
8 **claimed to not know about, and then there's a May**
9 **incident where you find out and you terminate**
10 **him, yes?**
11 A Which April incident that we didn't know about?
12 **Q The Slabey incident.**
13 A Okay. I wasn't sure of the time line of that.
14 **Q I think it's April. Maybe it's March.**
15 A I was confusing the April and the May with the
16 Schindler incident.
17 **Q Got it.**
18 **And then in August, so a few months after**
19 **that we have an incident, I know it's not in**
20 **Huber, but an incident involving a female inmate**
21 **and a male correctional staff, yes?**
22 A Yes.
23 **Q So I've got one, two, three, four, five,**
24 **approximate, incidents involving male**
25 **correctional staff, admittedly most of them are**

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1 **Boigenzahn, with female inmates, correct, in a**
 2 **year's time frame? Roughly.**
 3 A Correct.
 4 **Q Is that a problem to you?**
 5 A I don't think -- Boigenzahn was the bulk of them.
 6 That was addressed as they became aware and he
 7 was terminated.
 8 The one with Correctional Officer Grimm,
 9 that was, I don't know that you can directly
 10 relate that. Yes, it was a female inmate that
 11 left in a towel, but it could have been just as
 12 well a male inmate. It wasn't male-female
 13 connected. It was a lack of observation seeing
 14 that somebody leaving a pod was not properly
 15 dressed, and that was also addressed and
 16 corrective action was taken.
 17 So no, they're all separate incidents all
 18 handled appropriately through progressive
 19 discipline.
 20 **Q And each one is handled independently?**
 21 A Correct.
 22 **Q So at this point you haven't determined that**
 23 **there's an ongoing need for any additional**
 24 **training or supervision in relation to the way**
 25 **these COs interact with the female inmates?**

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1 A In my mind, no.
 2 **Q Have there been any other incidents since the**
 3 **incident involving Sabrina Hair where there's any**
 4 **disciplinary action to a correctional officer for**
 5 **conduct with an inmate?**
 6 A Not that I'm aware of, no.
 7 **Q Did you have any conversation with Captain**
 8 **LaForte when you're talking to her about**
 9 **terminating Boigenzahn in May of 2016, you're**
 10 **having conversations with her about that,**
 11 **right?**
 12 A Right.
 13 **Q Did you have any conversation with her about why**
 14 **did we keep him in 2015?**
 15 A No.
 16 **Q Did you conduct any review as to how you could**
 17 **prevent this from happening again? The**
 18 **Mr. Boigenzahn issue.**
 19 A I look -- knowing what I know, to be blunt, I
 20 think it's an aberration. I believe
 21 responsibility, again, our policy and procedures
 22 are excellent. I have a hundred percent
 23 confidence in my jail correctional supervisory
 24 staff. I have an excellent jail captain, jail
 25 supervisor, which allows me to focus my time in

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1 other areas because I do trust them. They run a
 2 very tight ship.
 3 I know how policy and procedures are
 4 reviewed on a monthly basis. I believe I have an
 5 outstanding jail staff, so no. Sometimes you
 6 just have people that act outside of their --
 7 it's like we've had them other places. You have
 8 people that for whatever reason act outside their
 9 official capacity.
 10 When those situations happen, which I
 11 believe happened here that we knew of, they were
 12 reported, they were immediately placed on
 13 administrative suspension, they were investigated
 14 either internally, externally, discipline,
 15 progressive or termination was completed, and
 16 again corrective action taken, either corrective
 17 action or termination.
 18 **Q Let me ask it this way.**
 19 **By the time Mr. Boigenzahn is terminated, in**
 20 **the span of a year he engages in two**
 21 **inappropriate physical conduct with one inmate,**
 22 **he sexually assaults another, and he's engaged in**
 23 **inappropriate fraternization with a third.**
 24 **You're saying that's acceptable supervision**
 25 **of his conduct?**

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1 MR. JOHNSON: Objection. Form.
 2 Go ahead.
 3 **Q (By Mr. Muszynski, continuing) That's just an**
 4 **aberration?**
 5 A It is. If any employee decides to act outside
 6 their scope, they can hide it from you.
 7 **Q I'm not talking about acting outside their scope.**
 8 **That's a legal issue.**
 9 I'm just asking, you have an employee who
 10 engaged in at least, to our knowledge, five
 11 inappropriate contacts with three different women
 12 in the span of a year, and you only found out
 13 because an inmate told a correctional officer.
 14 **Does that speak well of your correctional**
 15 **staff during that time frame?**
 16 MR. JOHNSON: Objection. Form.
 17 A I still have a hundred percent in my staff. If
 18 somebody is going to do something -- you can't
 19 supervise somebody all the time. You have to
 20 hope you hire the right people, train them,
 21 hopefully they live within your policies and
 22 procedures.
 23 And the two separate situations may be
 24 encompassing multiple incidents. When we were
 25 made aware of, we reacted appropriately.

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INVESTIGATOR DAN WESTLUND

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1 sort of a report verbally to Dunn County.
 2 Do you recall whether or not you told them
 3 that Mr. Boigenzahn did not fully remember
 4 whether he did or didn't assault other women and
 5 that that wasn't looked into as part of your
 6 investigation?
 7 A No. I can't recall words I used that long ago.
 8 Q Is that something that you would have informed
 9 them, or was that something that you considered
 10 outside the scope of telling them about your
 11 investigation?
 12 A My job is to do drug investigation, so I can't
 13 say if I would have because I've established no
 14 pattern of investigating jail staff for sexual
 15 assault, so I can't tell you one way or the
 16 other.
 17 Q In the course of your investigation you were
 18 informed that Mr. Boigenzahn had been previously
 19 disciplined for improper fraternization with
 20 inmates, correct?
 21 A Correct.
 22 Q Do you recall being informed that inmates,
 23 particular female inmates, had sent
 24 Mr. Boigenzahn nude or partially nude
 25 photographs?

Page 22

1 A Yes.
 2 Q That was something that Mr. Boigenzahn told you,
 3 correct?
 4 A I'd have to read the report.
 5 Q Sure. Let's do this.
 6 These are consecutively numbered 307 and
 7 308, and it looks like this is an interview with
 8 Mr. Boigenzahn, correct?
 9 A Correct.
 10 Q And towards the bottom of page 307 it says
 11 Boigenzahn did admit, and then it goes on onto
 12 the next page.
 13 A Yes.
 14 Q So Mr. Boigenzahn told you, Ryan told you some
 15 female inmates sent me topless photos?
 16 A Yes.
 17 Q Did you report that information verbally to Dunn
 18 County staff?
 19 A Like I said, I can't recall my verbal
 20 conversations.
 21 Q But obviously you included it in your report,
 22 correct?
 23 A Correct.
 24 Q And to your knowledge, would that have been
 25 criminal activity, receiving topless photos from

Page 23

1 inmates?
 2 A No. The best I can respond to that is I present
 3 the information to the district attorney's
 4 office. They take the appropriate actions.
 5 That's not up to me.
 6 Q Obviously, though, you felt it was important
 7 enough to include within the report, correct?
 8 A Yes.
 9 Q What was your reasoning, if you can recall, about
 10 why you felt it was important enough to include
 11 within the report as it's not particularly
 12 relating to Slabey?
 13 A Well, it's information during an investigation
 14 potentially involving others. It's something
 15 that should be included in the report for a
 16 criminal investigation.
 17 Q And potentially to be followed up on by someone
 18 else or something else if it was a problem,
 19 correct?
 20 A If it was a problem.
 21 Q Presumably, if Mr. Boigenzahn had engaged in the
 22 same behavior he did with Ms. Slabey, that would
 23 also be criminal with other people, correct?
 24 A If it was in a jail setting.
 25 Q Yes. I know from looking at the investigation

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1 file that there was a warrant that was issued by
 2 the circuit court to get access to Facebook
 3 messages, anything related to a Facebook account
 4 associated with Ryan Boigenzahn, correct?
 5 A So a subpoena for records.
 6 Q I'm sorry. I thought it was a warrant, but a
 7 subpoena?
 8 A It depends what you're referring to, because
 9 there should be a warrant for a phone, but then
 10 it would be a subpoena for Facebook Messenger,
 11 that kind of thing, to hold the records.
 12 Q I apologize. Maybe it's just semantics
 13 confusion.
 14 This looks like a request for a search
 15 warrant --
 16 A That's a search warrant for Facebook.
 17 Q Okay. To authorize the subpoena?
 18 A Yeah. However they want it done.
 19 Q Fair enough.
 20 Do you recall going through the information
 21 that was gathered from Facebook?
 22 A Not particularly.
 23 Q And I'll represent to you I don't have, I haven't
 24 been able to locate any of that information.
 25 Do you recall at all whether it contained

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1 within the jail?
 2 A Pod and central.
 3 Q And are there any PREA-related postings at the
 4 pod or central?
 5 A Well, it's on the computer, which is in those
 6 work stations.
 7 Q But a CO would have to access it, correct?
 8 A Correct.
 9 Q Seek it out?
 10 A Correct.
 11 Q Are there places where other signs are posted in
 12 the pod or central? Other postings of some sort
 13 that are of import to the correctional
 14 officers?
 15 A In regards to PREA?
 16 Q Anything. In regards to anything other than
 17 PREA?
 18 A There's signs everywhere.
 19 Q That's kind of what I thought. I haven't gone
 20 through the jail, but that's why I asked the
 21 question.
 22 A Sure.
 23 Q I should say this. If at any time you want to
 24 take a break or need to take a break, please do
 25 so. We've been going at this for about 40

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1 minutes. This is not designed to be any more of
 2 a torture session than it is, so bathrooms or
 3 just to stretch or whatever, just say so and you
 4 can do it.
 5 Okay?
 6 A Thank you.
 7 Q Other than PREA, what specific policies do you
 8 think are implicated in the incident with
 9 Ms. Slabey?
 10 MR. JOHNSON: Objection. Form.
 11 Go ahead.
 12 Q (By Mr. Muszynski, continuing) I'm going to
 13 acknowledge your counsel's objection. Let me
 14 state it this way.
 15 Ms. Slabey was sexually assaulted in the
 16 jail, yes?
 17 MR. JOHNSON: Objection. Form.
 18 Go ahead.
 19 A Yes.
 20 Q (By Mr. Muszynski, continuing) He was convicted
 21 of that. I think we know that.
 22 A Yes.
 23 Q What policies did Mr. Boigenzahn violate, jail
 24 policies did he violate, in what was done to
 25 Ms. Slabey?

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1 A He violated PREA. He violated general rules of
 2 conduct.
 3 Q Is that a specific policy document?
 4 A Yes, sir.
 5 Q What else?
 6 A He violated fraternization.
 7 Q And that's a specific policy document?
 8 A Yes, sir.
 9 Q What else?
 10 A He violated untruthfulness.
 11 Q I saw that in the records. We can talk about it.
 12 Is that something you think he violated in
 13 the actual commission of the incident as well as
 14 in the investigation, or one or the other, or
 15 you're not sure?
 16 A I would say -- well, I don't know about the
 17 investigation, but I would say in the beginning
 18 he did.
 19 Q What do you mean by that, in the beginning?
 20 A Through another incident he admitted that he did.
 21 He tends to be untruthful.
 22 Q I see. Through investigation of a separate
 23 incident?
 24 A Yes, sir.
 25 Q Okay. Was that the subsequent incident where he

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1 was ultimately terminated, or was it one of the
 2 prior incidents? If you recall. We'll talk
 3 about them.
 4 A It was a prior incident, not the one with
 5 Ms. Slabey.
 6 Q A prior -- well, we'll talk about those specific
 7 ones.
 8 So the policies we think he violated, and
 9 feel free to add if I've missed something, the
 10 PREA policy, yes?
 11 A Yes, sir.
 12 Q Fraternization policy?
 13 A Yes, sir.
 14 Q A general conduct policy?
 15 A Yes, sir.
 16 Q Truthfulness policy?
 17 A Yes, sir.
 18 Q And I don't think I asked this question.
 19 Is there a specific truthfulness document
 20 policy?
 21 A There's a subsection.
 22 Q Is that part of the general conduct, or is that a
 23 separate something?
 24 A It's under the general rules of conduct. There's
 25 five different main policies, and then there are

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1 subsections.

2 **Q Let's talk about, before we get into the**

3 **standards here, or what happened here, let's talk**

4 **about what your general procedures would be.**

5 **So, for instance, if you became aware of an**

6 **allegation that one of the COs violated PREA,**

7 **what would your expectation be of how that would**

8 **be handled?**

9 A I would outsource that.

10 **Q To whom?**

11 A I would report it to my supervisor and recommend

12 that we outsource it either to the police

13 department or Wisconsin State Patrol. We would

14 have someone else investigate it.

15 **Q So at this time that would be reporting it to**

16 **Chief Deputy Multhauf?**

17 A Yes, sir.

18 **Q And when this incident happened that would still**

19 **have been Chief Deputy Multhauf?**

20 A Yes, sir.

21 **Q And then your expectation would be, or your**

22 **recommendation would be, that either the**

23 **Menomonie Police Department investigate it or**

24 **that the state police investigate it because**

25 **there's a conflict between one CO investigating**

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1 **another CO?**

2 A Absolutely.

3 **Q Fair enough.**

4 **What about your expectation of how an**

5 **allegation of a violation of the fraternization**

6 **policy would be handled?**

7 A I would have, again, I would report it to my

8 supervisor, but I would have a sergeant go and

9 obtain a report from the inmate, from the CO, and

10 then report that back to my supervisor, and then

11 either he could handle it or we could both handle

12 it, talk with them.

13 **Q A fraternization violation, just in the abstract,**

14 **something you feel comfortable with Dunn County**

15 **itself investigating?**

16 A Yes, sir.

17 **Q And I assume at some point if it became obvious**

18 **that there was something of a sexual nature**

19 **involved, that's when you would refer it out?**

20 A Yes, sir.

21 **Q That's kind of the red line there.**

22 **Once we've implicated PREA, something that**

23 **Dunn County itself should not investigate?**

24 A Yes, sir.

25 **Q What would be, I mean fraternization runs a gamut**

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1 **of things, correct?**

2 A Yes, it does.

3 **Q I mean something as minor as being overly**

4 **friendly to an inmate just verbally, that would**

5 **be pretty minor, right?**

6 A Yes, sir.

7 **Q What would be a more significant violation of the**

8 **fraternization policy without implicating PREA?**

9 A I would say touching another inmate.

10 **Q In a nonsexual way?**

11 A Yes, sir.

12 **Q Or allowing an inmate to touch you in a nonsexual**

13 **way?**

14 A Yes, sir.

15 **Q Obviously, outside the bounds of needing to**

16 **restrain an inmate or something like that?**

17 A Yes, sir.

18 **Q Would special treatment like extra privileges or**

19 **things like that to a specific inmate, would that**

20 **be a violation of a fraternization policy?**

21 A Yes.

22 **Q Would spending an unusual amount of time**

23 **socializing with an inmate, would that be a**

24 **violation of a fraternization policy?**

25 A It depends on if they were discussing

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1 something.

2 **Q Related to being an inmate or something like**

3 **that?**

4 A Yes, sir.

5 **Q If it's just socializing, purely social, the**

6 **Packers won this weekend and we're just talking**

7 **about the football game and then we talk about**

8 **sports and we go on for a while, would that be a**

9 **violation of the fraternization policy, or does**

10 **it depend?**

11 MR. JOHNSON: Objection. Form.

12 Go ahead.

13 A I wouldn't consider that.

14 **Q (By Mr. Muszynski, continuing) It's a little bit**

15 **more of a judgment call when we're getting into**

16 **oversocialization, is that fair?**

17 A Yes, sir.

18 **Q But clearly the things we've talked about,**

19 **touching in a nonsexual manner, violation?**

20 A Yes, sir.

21 **Q No question, correct?**

22 A Yes, sir.

23 **Q And is that fairly standard throughout the**

24 **correctional world?**

25 A Yes, sir.

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1 **Q** Your fraternization policies, are they designed
2 off of the state's policies and things like
3 that?
4 A Yes, sir.
5 **Q** And that's consistent then throughout the
6 state?
7 A Yes, sir.
8 **Q** And consistent with all the training you've had,
9 right?
10 A Yes, sir.
11 **Q** Inmates should not be touching guards in an
12 affectionate way even if it's not sexual,
13 correct?
14 A Correct.
15 **Q** Guards should not be touching inmates in an
16 affectionate way even if it's not sexual?
17 A Correct.
18 **Q** Got it. The other area of policies we talked
19 about was the general conduct policies.
20 What would be your process for investigating
21 an allegation of a general conduct policy
22 violation?
23 A I would have -- so, for instance, are you asking
24 if an inmate reported, or how are you asking?
25 **Q** Does it make a difference? Tell me if it makes a

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1 difference first, and then we'll figure that out.
2 Does it make a difference whether an inmate
3 reports a conduct violation versus a CO does?
4 A Well, there's just like probably one extra
5 step.
6 **Q** Okay. So tell me about that. Let's assume an
7 inmate reports it.
8 What happens?
9 A So if an inmate reported it, you would want to
10 get a report from that inmate. You would ask a
11 CO to get -- obviously, the inmate would
12 hopefully tell a CO that it happened.
13 The CO is going to write a report. The
14 inmate is going to write a report. The CO is
15 going to tell a sergeant what happened. It's
16 going to start going up the chain.
17 **Q** And the expectation would be that both the CO and
18 the inmate would draft a document of some sort?
19 A Yes.
20 **Q** You want it in writing?
21 A Yes, sir.
22 **Q** And I assume then if a CO observes or wants to
23 report a conduct violation, we're just leaving
24 the inmate out of the process, but the CO should
25 still write something?

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1 A Absolutely.
2 **Q** And then it escalates as needed up the chain of
3 command depending on the seriousness of the
4 violation?
5 A Yes, sir.
6 **Q** Ultimately when discipline is involved, from the
7 minor discipline all the way up to termination,
8 is that a you decision, or would the sergeants be
9 involved or someone else?
10 A Say that again, please.
11 **Q** Let's assume somebody violates a policy, and then
12 there's discipline involved sometimes, correct?
13 A Yes.
14 **Q** Who makes the decision about what discipline is
15 appropriate?
16 A I would report my suggestions to my supervisor,
17 which would be the chief deputy. He and the
18 sheriff would discuss that.
19 **Q** At the time of this incident in 2014 that would
20 have been the case as well, that discipline would
21 have ultimately been decided by Chief Deputy
22 Multhauf and the sheriff?
23 A Yes.
24 **Q** Based on maybe your recommendation?
25 A Yes, sir.

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1 **Q** And what would be the most minor form of
2 discipline for a policy violation by a CO?
3 A An oral reprimand.
4 **Q** And could you give an oral reprimand without
5 checking with Chief Deputy Multhauf or the
6 sheriff, or would you have to run it through
7 them?
8 A Depending upon how minor it is, I wouldn't have
9 to run it through them.
10 **Q** What's the next step up in discipline?
11 A Suspension.
12 **Q** With or without pay?
13 A Yes, sir.
14 **Q** And that you would have to run through the
15 sheriff?
16 A Yes, sir.
17 **Q** And then what's the next step up?
18 A Termination.
19 **Q** So there's really only three levels of discipline
20 for officer misconduct?
21 A Yes, sir. There's a --
22 **Q** Go ahead.
23 A There's a written, but you write down what you're
24 going to do and then so when you give an oral
25 it's wrote down what's going to happen. It's

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1 A No. I believe there's a few.
 2 **Q Are there particular screens that are dedicated**
 3 **just to Huber dorm, like multiple screens?**
 4 A Yes, sir.
 5 **Q So presumably, as long as an officer was paying**
 6 **attention and it was visible on the screen, an**
 7 **officer would have been able to see this incident**
 8 **happening as it happened?**
 9 A No, because if they were doing something else.
 10 **Q And I said assuming the officer were paying**
 11 **attention to the screens, correct?**
 12 **If there was a camera that could view where**
 13 **Ms. Slabey was when she was touched, presumably**
 14 **it would have come up on the video at some point,**
 15 **correct?**
 16 A I'm not sure if the camera reached the bunk she
 17 was in.
 18 **Q I understand that. I'm probably asking a poor**
 19 **question here, so let me try this again.**
 20 A Okay.
 21 **Q I think we know that there wasn't a camera that**
 22 **actually viewed the bunk she was in at the time.**
 23 A Yes, sir.
 24 **Q I'm asking you to assume there was a camera that**
 25 **could view the bunk she was in.**

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1 **Okay?**
 2 A Okay.
 3 **Q Assume that. Can we safely assume that it would**
 4 **have been viewable while Mr. Boigenzahn was**
 5 **touching Ms. Slabey on a screen?**
 6 A Given the lighting in there, because it would
 7 have been dark, you may or may not have been able
 8 to see him.
 9 **Q So was it dark at the time that this incident**
 10 **happened? Do you know?**
 11 A I would assume so. It was in the middle of the
 12 night.
 13 **Q Are the cameras set up so that people are**
 14 **viewable when it's dark?**
 15 A It's like night-light lighting in there.
 16 **Q So you could see people, right?**
 17 A Yes, sir. Shadows, things, yes.
 18 **Q You might not be able to see exactly what he was**
 19 **doing with his hand?**
 20 A Correct.
 21 **Q But you would have been able to see him standing**
 22 **for a while at her bunk?**
 23 A In that area, yes.
 24 **Q Is that something, if a CO would have seen a**
 25 **correctional officer standing at a bunk like that**

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1 **for a length of time, that would have raised a**
 2 **red flag to a CO?**
 3 A The CO could have been talking with the inmate
 4 for any number of issues.
 5 **Q And I'm not asking you to assume the most**
 6 **innocent of reasons.**
 7 **I'm asking, would it have potentially or**
 8 **would you expect it to raise a red flag at least**
 9 **that might require some additional looking into?**
 10 MR. JOHNSON: Objection. Form.
 11 Go ahead.
 12 A It depends on what was happening. If there was a
 13 medical emergency, if there was -- you just don't
 14 know.
 15 **Q (By Mr. Muszynski, continuing) Okay. Fair**
 16 **enough. We know what happened in this incident.**
 17 **We don't know what it would have looked like**
 18 **on the video camera because there was no camera**
 19 **pointing there?**
 20 A Correct.
 21 **Q And I assume -- do you know there will be a**
 22 **camera pointing at Ms. Slabey's bunk whenever**
 23 **they're installed?**
 24 A Yes, sir.
 25 **Q I'm going to show you what is numbered 57. It's**

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1 **a Dunn County Employee Disciplinary Action.**
 2 **I believe this pertains to Mr. Boigenzahn,**
 3 **correct?**
 4 A Yes, sir.
 5 **Q And it's dated September 28th, 2011?**
 6 A Yes, sir.
 7 **Q So that would have been the date that this form**
 8 **is filled out.**
 9 **The date of violation is September 16th it**
 10 **looks like?**
 11 A Yes, sir.
 12 **Q Did you have any role in filling out this**
 13 **document?**
 14 A I believe I did.
 15 **Q And just tell me generally what this document**
 16 **tells us.**
 17 A He was late to work, and I believe this was the
 18 same incident where he missed training.
 19 **Q Do you know what training he missed?**
 20 A He overslept.
 21 No, I don't recall what it was without
 22 looking at some documents.
 23 **Q What is the discipline that's assigned for him**
 24 **missing training and showing up late?**
 25 A He was given an oral reprimand, which is a

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1 warning to pay attention and you can't miss
2 training. It's mandatory.
3 **Q Mr. Boigenzahn at this point is a pretty**
4 **brand-new employee, correct?**
5 A Yes, sir. Yeah.
6 **Q Does that cause you any concern as a brand-new**
7 **employee that they're right off the bat not**
8 **showing up for trainings or showing up late?**
9 A Not a serious concern, but I would think you'd
10 want to be on your best.
11 **Q Get off to a better start?**
12 A Right.
13 **Q So it's just an oral reprimand.**
14 **Presumably you or someone else talked to him**
15 **about it and then wrote this document?**
16 A Yes.
17 **Q Do you remember if there were any other problems**
18 **after this with attendance or fictitious sick**
19 **leave it says?**
20 A I don't believe so, no.
21 **Q And if I understand correctly, the fictitious**
22 **sick leave was he showed up late and then tried**
23 **to retroactively say he was sick to get paid for**
24 **it or get out of it?**
25 A Yeah.

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1 **Q Which is not honest, correct?**
2 A Correct.
3 **Q And that would pertain again to some of that**
4 **truthfulness requirement, correct?**
5 A Correct.
6 **Q If I understand it correctly, I mean we all hope**
7 **our employees are truthful, but it's particularly**
8 **important in a correctional facility where you're**
9 **dealing with inmate safety and a whole lot of**
10 **different potentially illegal activity that could**
11 **be happening?**
12 A Correct.
13 **Q And the inmates are, for lack of a better way of**
14 **saying it, at the, I don't want to say at the**
15 **mercy, they're under your watch for their own**
16 **safety and well-being, correct?**
17 A Yes, sir.
18 **Q And so if a guard, a guard has a great deal of**
19 **power I guess or authority over those inmates and**
20 **their safety and their well-being?**
21 A Yes, sir.
22 **Q So honesty being important, yes?**
23 A Yes.
24 **Q I'm going to show you a document here that's**
25 **labeled County 107 through 109.**

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1 A Okay.
2 **Q I think this is an annual employee evaluation for**
3 **Mr. Boigenzahn?**
4 A Yes, sir.
5 **Q I don't see any dates on it other than there's a**
6 **handwritten note of 2015.**
7 **Do you know who wrote that?**
8 A I do not, no.
9 **Q I didn't see any --**
10 A There should be one more page.
11 **Q Maybe it goes through -- sorry. It goes through**
12 **112.**
13 A Okay.
14 **Q So it looks like we have a date of April of 2016.**
15 A Okay.
16 **Q Is that fair?**
17 A Yes.
18 **Q And whose supervisor signature is that?**
19 A Sergeant Mike Owens.
20 **Q And then your department head signature is there**
21 **as well?**
22 A Yes, sir.
23 **Q Did you take part in this performance evaluation**
24 **in 2016?**
25 A We all sit down as a group and pull all various

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1 documents. Everyone draws a CO out of a bowl,
2 hat, whatever you want to call it, because we try
3 to mix it up so you don't get the same person
4 every year.
5 We go through and discuss each question
6 about each staff person, if anybody has any
7 comments about them, good or bad, going over
8 everything, or as many documents as we can think
9 of.
10 Then the sergeant writes this review, gives
11 it to the employee, signs off on it, and then I
12 get it in the end.
13 **Q So you would be part of the drafting of this**
14 **document potentially, or at least the discussion**
15 **of what goes into it?**
16 A Sure.
17 **Q And then Sergeant Owens would be the one that**
18 **communicated directly with Mr. Boigenzahn about**
19 **it?**
20 A Yes.
21 **Q So this would be, if I understand it correctly,**
22 **although it's occurring in April of 2016, would**
23 **be a review of the 2015 employment, is that**
24 **correct?**
25 A Yes.

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1 **Q And what reason would there be to wait until**
 2 **April to do a review of the 2015 employment?**
 3 A We go through these in January or so, it depends
 4 on whenever we sat down as a group and went over
 5 it, and then we're given a couple of months
 6 because depending on people's time off, workload,
 7 you're given a time frame to meet with the staff
 8 person.
 9 **Q Got it. How many COs, I didn't ask this in the**
 10 **beginning, but how many COs were employed in**
 11 **2016, roughly, at any one time?**
 12 A I'm assuming 25.
 13 **Q Is that still the case?**
 14 A Yes, sir.
 15 **Q So in this document here on page 109 is what it's**
 16 **numbered, in evaluation and comments it says,**
 17 **Ryan had an incident last year that compromised**
 18 **safety and security of the facility.**
 19 **Did I read that right?**
 20 A Yes, sir.
 21 **Q We'll talk about I think what that incident was**
 22 **in a minute, but do you recall what that was?**
 23 A Not off the top of my head, no.
 24 **Q That's fine. If I look at the document itself**
 25 **there's a space for like corrective action and**

1 **Q And based on what you told me before, it would**
 2 **ultimately get approved by Sheriff Smith,**
 3 **right?**
 4 A Yes.
 5 **Q Reading through this now, do you have a**
 6 **recollection of this incident or incidents I**
 7 **guess with Mr. Boigenzahn?**
 8 A Yes.
 9 **Q Tell us about what you recall of that incident.**
 10 A This incident was involving an inmate Draxler.
 11 He allowed her to touch him, rub her hand across
 12 his chest, which is in violation of a
 13 fraternization policy. And then it was also
 14 found out that he passed a note from a female to
 15 a male inmate.
 16 **Q So he's allowing nonsexual perhaps, but**
 17 **affectionate physical contact with an inmate,**
 18 **yes?**
 19 A Yes.
 20 **Q And he's also essentially engaging as a middleman**
 21 **between a male and a female inmate, yes?**
 22 A Yes.
 23 **Q Both of which are violations of jail policy?**
 24 A Yes, it is.
 25 **Q Did you have a conversation with Mr. Boigenzahn**

1 things like that?
 2 A Yes, sir.
 3 **Q And in this particular evaluation there was no**
 4 **action plan or corrective action taken,**
 5 **correct?**
 6 A Yes.
 7 **Q I'm going to show you here documents 117, 18, and**
 8 **19. I think they are documents relating to the**
 9 **incident that's being discussed in that**
 10 **evaluation. I don't know for sure.**
 11 A Okay.
 12 **Q This is a disciplinary action related to**
 13 **Mr. Boigenzahn, correct?**
 14 A Yes.
 15 **Q And it was filled out on August 26th of '15?**
 16 A Yes.
 17 **Q And it looks like the violations or the problems**
 18 **occurred in July and August of 2015?**
 19 A Yes.
 20 **Q And the discipline that was eventually assigned**
 21 **was unpaid suspension of three days?**
 22 A Yes.
 23 **Q Would you have been involved in this**
 24 **discipline?**
 25 A Yes.

1 about these violations?
 2 A Yes, I did.
 3 **Q And tell me about that conversation.**
 4 A I remember telling him to -- asking him about the
 5 note and what he should have done about the note.
 6 He told me that he should have turned it in, not
 7 passed it along.
 8 I also talked to him about allowing
 9 Ms. Draxler to touch him, and he -- I said -- I
 10 asked him if that was appropriate or not, and he
 11 said no.
 12 **Q Were you engaged at all in the investigation of**
 13 **these allegations that led to the discipline?**
 14 A If I recall, yes.
 15 **Q Do you recall whether or not Mr. Boigenzahn was**
 16 **initially honest about what happened in these**
 17 **incidents?**
 18 A In one portion of the interview he commented that
 19 he, and I don't want to misquote, but I want to
 20 say he said he tends to not tell the truth.
 21 **Q That's the incident where that particular**
 22 **statement came up?**
 23 A Okay.
 24 **Q Yes?**
 25 A Yes.

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1 Q To your recollection?

2 A Yes.

3 Q Is that a red flag for you as a chief?

4 A Yes.

5 Q Or captain. I'm sorry.

6 A That's okay. I'll take the promotion.

7 Q Did I just give you a promotion?

8 A Thank you.

9 Q Who decided or who recommended a three-day unpaid

10 suspension?

11 A Chief deputy and the sheriff.

12 Q And the chief deputy at the time was who?

13 A Paul Gunness.

14 Q So it wasn't Chief Deputy Multhauf at that

15 time?

16 A Correct.

17 Q Did it change back and forth?

18 A He retired.

19 Q Oh, okay. So we know that the retirement

20 happened sometime after August of 2015, and based

21 on your testimony earlier, before the incident

22 with Ms. Slabey?

23 A Yes.

24 Q Okay. Got it. Did you have any discussion with

25 the chief deputy about what the discipline should

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1 be? You're captain at this time, correct?

2 A I would assume I did, yes.

3 Q Did you agree with the discipline?

4 A I would assume I did, yes.

5 Q Did you consider termination at that point? He's

6 being dishonest with you and admitting that he

7 has a hard time being honest sometimes?

8 A And so what was your question?

9 Q Did you consider termination as an option?

10 A I don't recall if that was brought up or not.

11 Q Has any other CO in your experience ever admitted

12 to being dishonest to you when you're talking to

13 them about an incident?

14 A I recall a CO who I thought had misspoke in a

15 report, but it turned out he was honest.

16 Q So am I hearing your testimony correctly that

17 Mr. Boigenzahn might be the only person who's

18 admitted to you to your face I have a problem

19 being honest sometimes?

20 A That was very blatant, yes.

21 Q And you thought that it was appropriate to

22 suspend him for three days without pay and then

23 have him back as an officer?

24 A It was a group. Discussed as a group I would

25 assume.

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1 Q Was there any additional training or supervision

2 that was given to Mr. Boigenzahn following these

3 incidents?

4 A I want to say that he was advised to follow

5 policy, procedure, and not to do it again.

6 Q And he would have already been given all of the

7 policies and procedures that he violated,

8 right?

9 A Yes.

10 Q So essentially the discipline here was to send

11 him home for three days and not pay him and

12 remind him of the things that he knew about that

13 he violated?

14 A Correct.

15 Q And this sort of thing can impact security and

16 safety at the jail, correct?

17 A Yes.

18 MR. JOHNSON: Objection. Form. It can

19 stand.

20 Q (By Mr. Muszynski, continuing) I mean this sort

21 of thing involves essentially preferential

22 treatment to one or more inmates, yes?

23 MR. JOHNSON: Objection. Form.

24 Go ahead.

25 A He was treating her differently than someone

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1 else, yes.

2 Q (By Mr. Muszynski, continuing) Letting

3 Ms. Draxler having more, without being sexual,

4 intimate relationship than other inmates?

5 A Correct.

6 Q Which can then create problems with other inmates

7 who perceive that there's unfairness?

8 A Correct.

9 Q Which creates tension among the inmates?

10 A Correct. It could.

11 Q And that can lead to disputes or fights and

12 things like that?

13 A It could.

14 Q It's also just not right.

15 I mean everybody has the same rights to fair

16 treatment while they're incarcerated, correct?

17 A Correct.

18 Q And similarly, the passing the notes thing, that

19 can be a safety issue as well depending on what's

20 in the notes, right?

21 A Correct.

22 Q The document here, page 119, so this would have

23 been a letter that was given to Mr. Boigenzahn

24 signed by Chief Deputy Gunness?

25 A Yes.

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1 Q So Sheriff Smith doesn't have to sign off on this
2 letter, the chief deputy did?
3 A Correct.
4 Q And again, this reiterates what the discipline
5 was, three days, and a reminder, follow the
6 policies?
7 A Correct.
8 Q I'm going to show you pages 122 through 126.
9 This I think is pertaining to the discipline that
10 ultimately had Mr. Boigenzahn terminated in May
11 of 2016, am I correct about that?
12 A Yes.
13 Q I understand this may not be the actual
14 termination letter, but this is the incident that
15 led to his termination?
16 A Yes.
17 Q And as you understand it, this incident actually
18 happened after Ms. Slabey, the incident with
19 Ms. Slabey?
20 A Correct.
21 Q Do you have a familiarity with this incident?
22 A Yes.
23 Q Or incidents?
24 A Yes.
25 Q Tell me about what you know about what happened

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1 that ultimately led to Mr. Boigenzahn's
2 termination, and feel free to look through the
3 documents to help you remember if you need.
4 A Mr. Boigenzahn had two incidents where he
5 discussed personal, got too personal with an
6 inmate.
7 Q Both female inmates?
8 A Yes.
9 Q And similar in getting too personal with
10 Ms. Draxler previously?
11 MR. JOHNSON: Objection. Form.
12 Q (By Mr. Muszynski, continuing) Well, similar kind
13 of just fraternization policy violations?
14 A Yes, sir.
15 Q And Ms. Draxler was involved in the first
16 incident, the one we just looked at in 2015,
17 correct?
18 A Yes.
19 Q And Ms. Draxler kind of shows up in these reports
20 as well, does she not?
21 A Yes.
22 Q Now, I don't know that the inappropriate behavior
23 is specifically with Ms. Draxler, but I think it
24 sounds like, and correct me if I'm wrong,
25 Ms. Draxler is now jealous that Mr. Boigenzahn is

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1 giving preferential treatment to a different
2 female inmate?
3 MR. JOHNSON: Objection. Form.
4 Go ahead.
5 Q (By Mr. Muszynski, continuing) Is that what you
6 recall?
7 A It indicates that, yes.
8 Q I'm not asking you to read Ms. Draxler's mind.
9 A Sure.
10 Q But based on the documents there, it seems like
11 Ms. Draxler is at least upset that Mr. Boigenzahn
12 is now fraternizing with a different inmate?
13 A Yes.
14 Q And we're getting to the head of the problem of
15 fraternization in the first place, correct?
16 A Yes.
17 Q It pits inmates against each other?
18 A Yes.
19 Q And it makes the inmates think that they can do
20 certain things to get preferential treatment from
21 the guards?
22 MR. JOHNSON: Objection. Form.
23 Go ahead.
24 Q (By Mr. Muszynski, continuing) It encourages that
25 behavior, does it not?

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1 A Yes.
2 Q To be honest, the inmates, they give up their
3 freedom, they're here, they're looking for
4 whatever comforts they can get if they can get
5 them, correct?
6 MR. JOHNSON: Objection. Form.
7 Foundation.
8 A That's a possibility, yes.
9 Q (By Mr. Muszynski, continuing) That's a fairly
10 typical inmate behavior, correct? They're
11 looking for additional comforts that they can't
12 get because they've given up their freedom?
13 MR. JOHNSON: Same objections.
14 Go ahead.
15 A Yes.
16 Q (By Mr. Muszynski, continuing) On page 124 it
17 states that Mr. Boigenzahn spends some time with
18 Ms. Schindler, an inmate, out of camera view, is
19 that correct?
20 A Yes.
21 Q Adjacent to Ms. Schindler's bunk?
22 A Yes.
23 Q Do you know if Ms. Schindler's bunk was the same
24 bunk that Ms. Slabey was in at the time she was
25 touched by Mr. Boigenzahn?

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1 A I do not know.
 2 **Q Is it possible or do you know whether there is**
 3 **more than one bunk that is outside the view of**
 4 **your cameras in the Huber dorm?**
 5 A It could be possible, sure.
 6 **Q Do you know whether Mr. Boigenzahn knew that that**
 7 **area was not visible?**
 8 A I don't know.
 9 **Q Did you ask him about that?**
 10 A Not that I recall. I did not.
 11 **Q Mr. Boigenzahn spoke with you directly about this**
 12 **incident, correct?**
 13 A I believe so, yes.
 14 **Q And he admitted that he violated the policies**
 15 **that he violated, correct?**
 16 A Yes.
 17 **Q And then in the document itself here it talks**
 18 **about actually the 2015 incidents, correct?**
 19 A Yes.
 20 **Q So the 2015 incidents it says, this behavior is**
 21 **consistent with violations now being alleged,**
 22 **meaning the 2015 behavior is consistent, it's a**
 23 **repeat of sorts?**
 24 A Fraternalization.
 25 **Q Yep.**

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1 A Yes.
 2 **Q And so based on the fact that he's got repeat**
 3 **behavior of violating fraternization policies, it**
 4 **was decided to terminate Mr. Boigenzahn,**
 5 **correct?**
 6 A Yes.
 7 **Q Were you involved in that decision?**
 8 A Yes.
 9 **Q Did you recommend it?**
 10 A Yes.
 11 **Q Show you, these are numbered 333 through 336.**
 12 **This an incident in July of 2015. I think we**
 13 **kind of saw this mentioned in the discipline**
 14 **where he was suspended.**
 15 A Okay.
 16 **Q I think. I'm not a hundred percent sure.**
 17 **Have you seen this before, this incident**
 18 **report?**
 19 A Yes.
 20 **Q And this incident report, if I read it correctly,**
 21 **does not recommend any discipline or that there**
 22 **was any actual violation, am I correct about**
 23 **that?**
 24 A Yes.
 25 **Q So in other words, I would expect that after this**

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1 **incident there's no follow-up that's actually**
 2 **done particular to this one?**
 3 A As in?
 4 **Q That this was the investigation, and then there**
 5 **would be no follow-up with Mr. Boigenzahn**
 6 **directly following this incident?**
 7 A I don't recall who, if it was only the duty
 8 sergeant that spoke, the author of this that
 9 spoke with him. I don't know if there was
 10 anybody else. I don't recall.
 11 **Q So I should ask Officer Owens?**
 12 A Yes, sir.
 13 **Q Okay. The date on this one, though, is July**
 14 **31st, correct?**
 15 A Yes.
 16 **Q So now here's one August 6th, another incident**
 17 **involving Mr. Boigenzahn, correct?**
 18 A Yes.
 19 **Q And now this one gets more investigation, and**
 20 **it's determined that they're going to take some**
 21 **additional action, correct?**
 22 A Yes.
 23 **Q And so this one is happening, it's a separate**
 24 **incident, it's happening after the one we just**
 25 **looked at with Mr. Owens?**

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1 A Yes.
 2 **Q So now we're doing some separate action about a**
 3 **week later on a second incident, correct?**
 4 A Yes.
 5 **Q Then here's an incident report from August 10th,**
 6 **so a few days later.**
 7 **This is the same incident, but now it's the**
 8 **further investigation, correct?**
 9 A Yes.
 10 **Q And eventually this reaches your attention once**
 11 **there's further investigation done?**
 12 A Yes.
 13 **Q And that's how it ultimately gets to you when the**
 14 **suspension happens?**
 15 A Yes.
 16 **Q Were you given all of the information about that**
 17 **first incident that Sergeant Owens said is not --**
 18 **or that didn't get followed up on?**
 19 A I would assume he sent out his report.
 20 **Q So you'd have access to it?**
 21 A I would assume so.
 22 **Q Did it enter into your evaluation of how to**
 23 **appropriately discipline Mr. Boigenzahn?**
 24 A Did this particular one?
 25 **Q The first one that went nowhere, that other 2015**

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1 **one.**
 2 A Not every issue that comes up is -- they're all
 3 on different levels of severity or different
 4 situations. Not every one needs an oral
 5 reprimand. Not every one needs three-day
 6 suspension. Not every one needs a termination.
 7 Sometimes it could just be a reminder to not do
 8 something. Everything is a different issue.
 9 **Q Sure. And in this instance with those incidents**
 10 **combined and seeing the severity of the**
 11 **fraternization, you decided that it warranted**
 12 **discipline?**
 13 A Yes, sir.
 14 **Q And not termination?**
 15 A Yes.
 16 **Q How did you first become aware of the incident**
 17 **involving Ms. Slabey?**
 18 A An investigator from, I believe at the time Dan
 19 Westlund was with Menomonie Police Department,
 20 and he was at the jail for a different issue, and
 21 it was reported then to him.
 22 **Q And he reported it to you?**
 23 A Yes, sir.
 24 **Q Would that be standard process would be to report**
 25 **it to you?**

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1 A If he didn't report it to me, to report it to a
 2 sergeant, but report it to somebody, yes.
 3 **Q What did you do when you found out?**
 4 A I immediately called my supervisor.
 5 **Q Which would have been Chief Deputy Multhauf?**
 6 A Yes, sir.
 7 **Q Did you also call the sheriff, or did you leave**
 8 **that to Deputy Multhauf?**
 9 A I don't recall if I notified him or left the
 10 chief to do it.
 11 **Q What was done immediately following that? Do you**
 12 **know?**
 13 A I would assume we would have gotten statements
 14 from her or had it outsourced.
 15 **Q And I'll represent to you I think the police**
 16 **department did most of the --**
 17 A Yes.
 18 **Q -- the investigation in this instance.**
 19 **Did you play any role in the investigation**
 20 **at all?**
 21 A Because of its seriousness, I'm not sure if I had
 22 a whole lot to do with it because it was
 23 outsourced to the police department.
 24 **Q Did you have any role in deciding to terminate**
 25 **Mr. Boigenzahn? Strike that. We did already.**

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1 **He had been terminated by the time you**
 2 **became aware?**
 3 A Right.
 4 **Q Did you go back and review any video from the**
 5 **time of the incident involving Ms. Slabey?**
 6 A I had my sergeants do that.
 7 **Q And do you recall what they viewed or didn't**
 8 **view?**
 9 A At first we started looking in a certain time
 10 frame that she was indicating it happened. We
 11 were trying to find it.
 12 Then he was on vacation I believe, took some
 13 time off, so we assumed it didn't happen then.
 14 We were looking, couldn't find anything in the
 15 time frame mentioned.
 16 I want to say late in the afternoon the one
 17 sergeant was looking, and he went back later even
 18 farther and that's when he started to find
 19 things.
 20 **Q Did he find more than one day where**
 21 **Mr. Boigenzahn was, shall we say, it looked**
 22 **suspicious?**
 23 MR. JOHNSON: Objection. Form.
 24 Go ahead.
 25 **Q (By Mr. Muszynski, continuing) Let me rephrase so**

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1 **that it's clear for the record.**
 2 **We know that it wasn't visible, the actual**
 3 **assault was not visible on camera, correct?**
 4 A Correct.
 5 **Q But we know that video showed that Mr. Boigenzahn**
 6 **was at the Huber dorm and out of camera view for**
 7 **an unusual amount of time?**
 8 A Correct.
 9 **Q Do you know if that was viewed on more than one**
 10 **occasion where -- and that's suspicious,**
 11 **correct?**
 12 A Correct.
 13 **Q Do you know if there was more than one instance**
 14 **on video where there was something suspicious**
 15 **where Mr. Boigenzahn was at Huber dorm for an**
 16 **unusual amount of time or out of camera view for**
 17 **an unusual amount of time other than the incident**
 18 **with Ms. Draxler? Or Ms. Schindler, I'm sorry.**
 19 A Or do you mean Slabey?
 20 **Q We know it was suspicious in the incident with**
 21 **Ms. Slabey.**
 22 A Yes.
 23 **Q They found that particular day.**
 24 A Yes.
 25 **Q We know what day that happened.**

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1 A Yes.
 2 Q I'm asking in the review of video, were there
 3 other days where the video showed something
 4 suspicious about where Mr. Boigenzahn was in
 5 relation to the Huber dorm?
 6 A With Ms. Slabey there was, if I recall.
 7 Q More than one?
 8 A Yes. I believe there was two occasions.
 9 Q Who viewed that? Do you know?
 10 A I want to say Sergeant Ormson and Sergeant Walker
 11 found two longer time frames.
 12 Q My understanding is that Mr. Boigenzahn was
 13 charged that time to go check on the Huber dorm,
 14 make sure everything is going okay?
 15 A He was a floater at that time, yes.
 16 Q So part of his job would be to go to Huber dorm
 17 and visualize it, go inside, and make sure that
 18 the inmates are okay?
 19 A Yes, sir.
 20 Q That takes a certain amount of time to do
 21 appropriately, correct?
 22 A Yes, sir.
 23 Q Assuming there's no incident?
 24 A Yes, sir.
 25 Q And what we're saying is the amount of time he

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1 spent at Huber dorm on at least one, if not two
 2 occasions, was an inappropriately long period of
 3 time, yes?
 4 MR. JOHNSON: Objection. Form.
 5 Go ahead.
 6 A He could have been discussing something with
 7 them.
 8 Q (By Mr. Muszynski, continuing) And I'm not asking
 9 what he was doing.
 10 A Okay.
 11 Q I'm just asking to your recollection, the video
 12 shows, particularly on the night at issue where
 13 Ms. Slabey was touched, he was at the Huber dorm
 14 for an unusual amount of time to do that job?
 15 A Yes.
 16 Q And you said that there was at least one other
 17 night you think where the video showed something
 18 unusual as well, yes?
 19 A With her, yes.
 20 Q With Ms. Slabey.
 21 Do you know if it showed him and her
 22 together in some way?
 23 A I don't recall.
 24 Q But you know it involved Ms. Slabey?
 25 A Yes.

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1 Q Do you know if it was before or after the actual
 2 assault?
 3 A That I don't recall.
 4 Q And we could ask either Officer Ormson or
 5 Walker?
 6 A Yes.
 7 Q I should say deputy, right?
 8 A Sergeant.
 9 Q Sergeant?
 10 A Yes.
 11 Q You said there's supposed to be always a CO
 12 stationed at central, correct?
 13 A Yes, sir.
 14 Q Is that person at central expected to be kind of
 15 in charge?
 16 A Yes.
 17 Q If someone were spending an unusual amount of
 18 time say at Huber dorm, is that something that
 19 central should be addressing with that officer,
 20 hey, what's going on, what were you up to?
 21 A They certainly could, yes.
 22 Q Something that should raise concerns for the
 23 person at central if somebody, if another CO is
 24 there for a long time?
 25 A Yes, sir.

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1 Q And it might be completely innocuous like inmate
 2 A had a question for me?
 3 A Right.
 4 Q It might also not be innocuous and thus it needs
 5 attention?
 6 A Right.
 7 Q Do you know if anyone ever brought to your
 8 attention that Mr. Boigenzahn was spending an
 9 unusual amount of time at the Huber dorm?
 10 A Not that I recall, no.
 11 Q Do you know if the people that are stationed at
 12 central are trained and instructed to address
 13 those things directly with a CO that might be
 14 spending an inordinate amount of time at Huber
 15 dorm?
 16 A They all work as a team. They should all be for
 17 safety knowing where their coworkers are,
 18 self-reporting anything of a concern.
 19 Q Has any officer ever brought to your attention,
 20 other than the incidents we've talked about
 21 already, ever brought to your attention another
 22 CO spending too much time out of view or in a
 23 dorm or something like that?
 24 A Not that I recall, no.
 25 Q Did you have any conversations with

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1 **Mr. Boigenzahn about this incident after you**
 2 **became aware?**
 3 A With Ms. Slabey?
 4 **Q With Mr. Boigenzahn?**
 5 A In regards to Ms. Slabey?
 6 **Q Yes. Thank you.**
 7 A I don't recall.
 8 **Q Did you have any conversations with Ms. Slabey**
 9 **about the incident after you became aware of**
 10 **it?**
 11 A No. Not that I recall.
 12 **Q Did you have any knowledge, or do you have any**
 13 **knowledge that the inmates saw Mr. Boigenzahn as**
 14 **kind of the friendly inmate that you could**
 15 **manipulate essentially? Do you have any**
 16 **knowledge of that?**
 17 MR. JOHNSON: Objection. Form.
 18 Go ahead.
 19 A I believe there was a comment from Ms. Draxler
 20 that --
 21 **Q (By Mr. Muszynski, continuing) In one of the**
 22 **written statements?**
 23 A I believe so.
 24 **Q Did you have a conversation with Mr. Boigenzahn**
 25 **specifically about that, that that's**

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1 **inappropriate?**
 2 MR. JOHNSON: Objection. Form.
 3 Go ahead.
 4 A We -- he has been, or was, refreshed on
 5 fraternization.
 6 **Q (By Mr. Muszynski, continuing) The policy**
 7 **again?**
 8 A Yes, sir.
 9 **Q Show you what's numbered 396 to 399. This is an**
 10 **incident that occurred in 2008, and you are the**
 11 **reporting officer.**
 12 **At the time you were a sergeant?**
 13 A Yes.
 14 **Q Do you recall this incident involving I guess**
 15 **it's CO McMillan?**
 16 A I do.
 17 **Q As I read it, I'm just going to summarize so we**
 18 **don't go through all of it.**
 19 A Sure.
 20 **Q As I read it, Mr. McMillan, or CO at the time**
 21 **McMillan, had an inappropriate relationship with**
 22 **an inmate. I can't make sense of whether the**
 23 **inappropriate relationship was while she was an**
 24 **inmate or after.**
 25 **Do you know?**

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1 A After.
 2 **Q So it was someone who was an inmate at one time,**
 3 **a female inmate, and then after she was released**
 4 **he engaged in a sexual relationship with her?**
 5 A I'm guessing so, yes.
 6 **Q Or at least a romantic relationship. Let's state**
 7 **it that way.**
 8 A Yes.
 9 **Q That is a violation of policy, correct?**
 10 A Yes, it is.
 11 **Q And presumably, I mean I guess the way that would**
 12 **work out is, hey, when you get out I'm going to**
 13 **take you out.**
 14 **That's obviously, while they're not engaging**
 15 **in the relationship while incarcerated, it's**
 16 **still inappropriate?**
 17 A Correct.
 18 **Q And presumably, do you know if that's what**
 19 **happened in this incident, that they essentially**
 20 **planned it, they just didn't engage in it until**
 21 **she was released?**
 22 A That's what I'm gathering.
 23 **Q That's based on what you found out after the**
 24 **fact?**
 25 A Yes.

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1 **Q Other than this incident with Mr. McMillan, do**
 2 **you have a knowledge of any other incidents**
 3 **involving COs where they engaged in inappropriate**
 4 **romantic relationships with other inmates?**
 5 A I wouldn't call an incident with a female staff
 6 person romantic, but she was in a car with an
 7 inmate up in the parking lot.
 8 **Q We'll talk about that.**
 9 **With Jodie Vena I think it was?**
 10 A Yes, sir.
 11 **Q We'll talk about that in a second.**
 12 A Yes, sir.
 13 **Q Any other romantic relationships?**
 14 A And then there was a female who was writing to an
 15 inmate who was in Barron County, but I don't
 16 recall if that was a romantic.
 17 **Q That was an Amanda Jacobson?**
 18 A Yes, sir.
 19 **Q Other than Mr. McMillan, Ms. Jacobson, and**
 20 **Ms. Vena, any other what you would call**
 21 **inappropriate relationships? We'll take the word**
 22 **romantic out of there.**
 23 A Not that I recall.
 24 **Q I assume Mr. McMillan, Ms. Jacobson, and Ms. Vena**
 25 **were all given the same or similar policies as**

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1 Mr. Boigenzahn?
 2 A Yes, sir.
 3 Q And the same or similar training?
 4 A Yes, sir.
 5 Q And all of those incidents, best I can tell,
 6 maybe not the Jacobson one, I don't know, but I
 7 think they all happened generally after PREA was
 8 in place?
 9 A Yes, sir.
 10 Q And if not, I assume before PREA there was
 11 generally a prohibition on sexual assaults and
 12 things like that in the jail?
 13 A Yes, sir.
 14 Q Didn't need the federal law to tell you that?
 15 A Correct.
 16 Q Do you recall any of the specifics, I'll show
 17 you, this is the only document I have, 402 is the
 18 number on it, any specifics about this incident
 19 with Ms. Jacobson?
 20 A Only from the rumor mill.
 21 Q Tell me what you know. I understand it might be
 22 just the rumor mill, but what do you have an
 23 awareness of?
 24 A The only thing that I know of about this is that
 25 she was corresponding with an inmate who was in

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1 the Barron County jail, and he was a lease inmate
 2 of ours.
 3 Q Meaning he was here for some time or something
 4 like that?
 5 A And we house for other jails.
 6 Q Space restrictions?
 7 A Yes, sir.
 8 Q And it sounds like she resigned as opposed to
 9 receive discipline?
 10 A Yes, sir.
 11 Q Do you know if she was going to receive
 12 discipline?
 13 A I don't recall.
 14 Q Were you at all involved in the incident in any
 15 way?
 16 A I don't remember.
 17 Q Let's talk about the -- this here seems to
 18 suggest you might have had some involvement with
 19 Ms. Jacobson. Jail Administrator Reed and
 20 Sergeant LaForte spoke with Amanda Jacobson
 21 regarding some work issues.
 22 A Okay.
 23 Q Does that refresh your memory at all?
 24 A Other than the date is the same. It was a long
 25 time ago.

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1 Q I get it.
 2 The issue with Ms. Vena, so Ms. Vena ended
 3 up in a vehicle with an inmate?
 4 A Yes, sir.
 5 Q And her vehicle or his vehicle or somebody else's
 6 vehicle?
 7 A I don't recall.
 8 Q And how did this get discovered?
 9 A I want to say one of the other staff saw her.
 10 Q And reported it to somebody?
 11 A I would assume so, yeah.
 12 Q Were you involved in the investigation?
 13 A I don't recall on that one.
 14 Q Do you know what happened to Ms. Vena? Did she
 15 quit? Was she disciplined? Do you know?
 16 A I want to say she was probably offered the same
 17 thing, resign or you're going to be terminated.
 18 Q Why, if you know, was Mr. Boigenzahn not offered
 19 that same opportunity when he was engaged in the
 20 inappropriate conduct in 2015?
 21 A I would assume those staff were on the one-year
 22 probation. They were fairly new. And he was not
 23 on probation, so there is a documentation
 24 disciplinary process you have to go through in
 25 order to terminate someone.

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1 Q Is there a union?
 2 A We were in a union, and then it was dissolved.
 3 Q Was Mr. Boigenzahn -- Mr. Boigenzahn was not in
 4 the union, though, or the union was not in effect
 5 in 2016, correct?
 6 A I don't believe so, no.
 7 Q It was not effect in 2015, correct?
 8 A I don't believe so.
 9 Q Because I'll tell you, I think Act 10, if I'm
 10 remembering that name correctly, I think Act 10
 11 happened in the first term of the Walker
 12 administration, which would have been 2010
 13 through 2014 sometime, fair?
 14 A Uh-hum.
 15 Q And I assume that the dissolution of the union
 16 would have happened shortly thereafter?
 17 A Yes.
 18 MR. JOHNSON: Objection. Form.
 19 Foundation.
 20 Q (By Mr. Muszynski, continuing) Is that your
 21 recollection of the time frame?
 22 A I would say yes.
 23 Q Were you a member of the union at the time it was
 24 dissolved?
 25 A I don't recall if the sergeants were in a union

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1 A Not that I recall.

2 **Q Did it concern you the conduct that you were made**

3 **aware of?**

4 A Absolutely.

5 **Q What concerned you specifically about it?**

6 A What concerned me is that I had an inmate that

7 approached me that said that somebody was acting

8 on what she felt was an unprofessional manner,

9 and that it was substantiated, you know, we were

10 able to look at the video and see, yeah, he's

11 acting in a way that he shouldn't act.

12 **Q Other than that one instance, had there ever been**

13 **any other time where an inmate, not necessarily**

14 **Mr. Boigenzahn, but another inmate came to you**

15 **and said, hey, this CO is acting inappropriate or**

16 **something like that and you followed up and**

17 **investigated?**

18 A A couple different times. Not that the inmate

19 approached me directly, but the inmate approached

20 other people, and in my duty as a supervisor I

21 followed up on it, yes.

22 **Q Had it ever before been substantiated like**

23 **this?**

24 A Not in the exact same way as this. Had it been

25 substantiated, yes. In different times. Not

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1 inside the jail in the other instance that I'm

2 thinking of directly right now.

3 **Q Tell me about that other instance.**

4 A That was Carletus McMillan was a correctional

5 officer that we had employed, and we found out

6 that after somebody had gotten released from

7 jail, then he contacted her and they had a

8 relationship, for lack of a better term.

9 **Q I'm aware of that incident. I think it happened**

10 **in 2008 maybe, something like that?**

11 A Right around there. It's been a while.

12 **Q Do you know if that conduct began while she was**

13 **still an inmate?**

14 A She said no. The sheriff and I interviewed her I

15 think it was like one o'clock in the morning, and

16 we interviewed her at that time to make sure that

17 nothing had happened in the jail, and she said

18 no.

19 **Q Did you ever find out anything to the contrary?**

20 A No. Never did.

21 **Q Obviously, though, they had some sort of**

22 **connection while they were still -- while she was**

23 **still incarcerated, otherwise he wouldn't have**

24 **reached out to her?**

25 A I can't testify to that. I don't know. She said

Page 19

1 no, so.

2 **Q So she said that out of the blue this CO just**

3 **reached out to her and said, hey, do you want to**

4 **get together, and they started a sexual**

5 **relationship?**

6 A Yes. I don't want to say out of the blue because

7 I don't know the involvement of that. Neither

8 one of them said -- both of them said nothing

9 happened in jail, and I never heard anything

10 outside of that.

11 **Q Fair enough. Any other incident that you can**

12 **think of where an inmate informed you of conduct**

13 **by a CO that was concerning?**

14 A Me directly, not that I can recall.

15 **Q What about you indirectly?**

16 A I was involved a little bit in a couple other

17 incidents. We had an Amanda Jacobson that was a

18 correctional officer for a little while. She was

19 a limited term correctional officer.

20 She was relieved of duty because she was

21 corresponding with an inmate in one of our

22 housing units.

23 And prior to me being a supervisor we had

24 another officer that resigned because she was in

25 the upper parking lot with a Huber inmate, and

Page 20

1 she had given him a ride back and forth to work

2 and they were up in the parking lot talking.

3 **Q Did you consider -- essentially both of those**

4 **other incidents, I assume the correctional**

5 **officer was given the option to resign or be**

6 **fired?**

7 A Correct.

8 **Q Did you consider that discipline to be**

9 **appropriate under those circumstances?**

10 A Yes.

11 **Q Now, the writing back and forth with Ms. Jacobson**

12 **I think it was, was it sexual or romantic?**

13 A We never saw the letters.

14 **Q So you don't know what the correspondence was.**

15 **You just know that there was correspondence?**

16 A Correct.

17 **Q It could have been how's your day going. I love**

18 **the Packers.**

19 **We don't know?**

20 A Correct.

21 **Q How long was she employed for?**

22 A That's going in the wayback machine. I honestly

23 don't know. A number of months. Three or four

24 maybe.

25 **Q She was still on probation?**

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1 A She was actually never a full-time employee. She
2 was a limited term employee, an LTE.
3 **Q And so was that part of the reason she was given**
4 **the option to be terminated, or was that just**
5 **simply that's the appropriate action to take?**
6 A That's the appropriate action to take.
7 **Q Similarly, the sitting in a car with a Huber**
8 **inmate and having a conversation, that was the**
9 **appropriate sanction to take, termination or you**
10 **can resign?**
11 A I wasn't a supervisor at that point, so I don't
12 have the inside knowledge of that.
13 But if you're asking me today if the same
14 thing happened, yeah, that would be the right
15 action to take.
16 **Q To your knowledge, did anything sexual or**
17 **romantic take place between that Huber inmate and**
18 **it was a female CO?**
19 A Right. Correct. Not to my knowledge.
20 **Q Do you know if there was even any physical**
21 **contact between the Huber inmate and the female**
22 **correctional officer?**
23 A No, I don't know.
24 **Q And there obviously was no physical contact to**
25 **anyone's knowledge between Officer Jacobson who**

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1 was just writing to an inmate?
2 A Correct. As far as I know, yes.
3 **Q Then we fast-forward to Mr. Boigenzahn in July,**
4 **and then there's a separate incident in August of**
5 **2015.**
6 So we have note passing in July, and then we
7 have actual physical contact with Ms. Draxler in
8 August of 2015, correct?
9 A Yes.
10 **Q And you were involved some in that investigation,**
11 **yes?**
12 A Yes.
13 **Q You have an understanding of what the physical**
14 **contact was?**
15 A If I remember right from the reports, in one
16 instance it was, for lack of a better term,
17 footsie, and in the other one I think she like
18 touched him in the chest or something, yes.
19 **Q The footsie thing I assume, when I think footsie**
20 **I think something playful and affectionate. I'm**
21 **not saying romantic.**
22 A From the report I read, yeah, that's what I would
23 characterize it as.
24 **Q And then the contact across the chest, I**
25 **similarly read that in the reports to be somewhat**

Page 23

1 **affectionate, whether, I'm not saying sexual, but**
2 **at least friendly?**
3 A Friendly I think is a good term.
4 **Q She didn't hit him?**
5 A No.
6 **Q And based on that conduct and conversation -- did**
7 **you have conversation with Mr. Boigenzahn about**
8 **that conduct?**
9 A No, I did not.
10 **Q Were you informed that Ms. Mittelstadt says**
11 **Boigenzahn likes female attention?**
12 A She made that comment to me, yes. That she felt
13 that he might like the female attention.
14 **Q Did you get any corroboration on that or did**
15 **other inmates similarly suggest that?**
16 A I did have a couple other inmates that we talked
17 to. I'll be honest, I want to make sure I get my
18 incidents correct, because we reviewed so much
19 stuff on that post.
20 I believe, I don't want to say a hundred
21 percent for sure because I want to make sure.
22 Because we reviewed video on Boigenzahn -- I
23 reviewed video on Boigenzahn extensively prior to
24 him being charged criminally, and I want to make
25 sure that I don't screw it up.

Page 24

1 **Q I'm going to show you what's been numbered as 337**
2 **through 339. It's an incident report, and I**
3 **think this is one you filled out.**
4 A Yes, it is.
5 **Q Take a look through there and just refresh your**
6 **memory about that sort of stuff and I'll ask you**
7 **some questions.**
8 A Okay.
9 **Q So you looked through it.**
10 **Did it refresh your memory a little bit?**
11 A Yes.
12 **Q So did other inmates tell you -- well,**
13 **Ms. Mittelstadt told you that Officer Boigenzahn**
14 **maybe liked attention from females?**
15 A Yes.
16 **Q Did you talk to other inmates to kind of check**
17 **that assertion out?**
18 A I didn't in that case, no.
19 **Q Did you later?**
20 A For a separate incident, yes.
21 **Q What would that separate incident be?**
22 A When he was, the note passing incident with
23 inmate, she passed away now. It's bad that I
24 don't remember her name.
25 **Q Schindler?**

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1 A Schindler. Brooke Schindler.
 2 **Q Can I ask -- well, I'm asking.**
 3 A Sure.
 4 **Q Why you did not go talk to other inmates to see,**
 5 **hey, is this a widespread problem, or is this**
 6 **just something Ms. Mittelstadt is reporting?**
 7 A I think once it became substantiated through the
 8 watching of video and the discipline was levied,
 9 that we did not talk to other inmates. At least
 10 I shouldn't say we. I didn't talk to other
 11 inmates.
 12 **Q You were, at least in this context, you were one**
 13 **of the investigating people, correct?**
 14 A I was one of the people that took the complaint.
 15 I didn't do much for investigation on that. I
 16 didn't watch the video. It happened in the
 17 afternoon, if I remember right, or whatever
 18 happened. It was passed on to the night sergeant
 19 that was relieving me and she started watching
 20 video.
 21 **Q This says that you spoke with Sergeant Owens and**
 22 **Sergeant Vold, and that Owens told you he had**
 23 **some similar allegations, but with a different**
 24 **set of inmates.**
 25 **Do you recall that?**

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1 A Yeah. I think he was referring to the note
 2 passing incident.
 3 **Q The one involving Driscoll?**
 4 A Correct.
 5 **Q Now, is it a different concern to you if there is**
 6 **perhaps one, a CO and one inmate engaged in**
 7 **inappropriate conduct versus all of the women are**
 8 **saying, hey, Boigenzahn likes attention.**
 9 **Is that a different level of problem, or do**
 10 **you see that as the same?**
 11 A Depends on the context. I think it's a different
 12 level overall, but it depends on what other
 13 things you're going to put on there.
 14 **Q So let's do it this way.**
 15 **Obviously you concluded that there was**
 16 **physical touching between Schindler and, or it**
 17 **was concluded that there's physical touching of**
 18 **an inappropriate nature between Schindler and**
 19 **Boigenzahn, yes?**
 20 A Between Draxler and Boigenzahn when he was
 21 suspended?
 22 **Q Or Draxler and Boigenzahn. I'm sorry. Yes.**
 23 A Yes.
 24 **Q Part of the allegations in this report that you**
 25 **made was that the females in the jail talk about**

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1 **Ryan's willingness to talk to them and maybe he**
 2 **likes the attention from other females.**
 3 **That is a separate --**
 4 A Correct.
 5 **Q -- problem, correct?**
 6 A Yes.
 7 **Q And am I correct in understanding that that's a**
 8 **larger problem than two incidents of physical**
 9 **touching with one inmate?**
 10 A I think again it depends on your context. I
 11 think it's a larger problem if it's substantiated
 12 why he's doing it.
 13 The thing about Officer Boigenzahn, he
 14 talked to everybody. He talked to males. He
 15 talked to females. Which was in some ways his
 16 strong point. He could talk people down pretty
 17 well. But obviously --
 18 **Q Obviously, it ended up being a problem?**
 19 A Correct.
 20 **Q Looking back, had you talked to other inmates,**
 21 **female inmates, do you think they would have**
 22 **corroborated the fact that we think that Ryan**
 23 **Boigenzahn likes female attention?**
 24 A I can't guess.
 25 **Q There was nothing preventing you from following**

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1 **up with other inmates about that, though, is**
 2 **there?**
 3 A No.
 4 **Q And had other inmates corroborated that**
 5 **statement, had other inmates told you, you know**
 6 **what, Sergeant Ormson, yeah, I think Ryan**
 7 **inappropriately likes female attention, do you**
 8 **think there would have been different action**
 9 **taken?**
 10 A Possibly, but I -- that's a lot of speculation.
 11 It depends. I think the reason what happened
 12 happened was because it was able to be
 13 substantiated what was going on.
 14 **Q I guess my question is, you investigated and**
 15 **substantiated one aspect, but not the other**
 16 **aspect of what Mittelstadt was complaining about,**
 17 **correct?**
 18 A Yes. It could be seen that way.
 19 **Q And the aspect that was not investigated further**
 20 **was potentially the more problematic aspect if**
 21 **corroborated?**
 22 A Hindsight being 20/20, yes.
 23 **Q I know there was then discipline that was given.**
 24 **Mr. Boigenzahn was suspended for three days**
 25 **following substantiation of the physical conduct.**

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1 Did you find that that discipline was
2 appropriate for those facts?
3 A I thought so.
4 Q Are you aware of anything other than the
5 three-day suspension with no pay that was done in
6 relation to corrective action with Mr. Boigenzahn
7 following August of 2015?
8 A Not that I'm aware of, no.
9 Q He was not given any additional training other
10 than the standard that everybody else gets,
11 right?
12 A Correct.
13 Q He was not given any lesser responsibilities for
14 a time being?
15 A No.
16 Q He was not watched more closely?
17 A No.
18 Q No one assigned him like a buddy or a shadow to
19 keep an eye on him?
20 A No.
21 Q Nobody at central or any other COs were told,
22 hey, keep an eye on him just to make sure on the
23 video cameras if he's okay?
24 A No.
25 Q All of those things could have been done, yes?

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1 A Having other officers watch him, no. That's
2 against county policy. Employees aren't supposed
3 to supervise other employees.
4 Q A supervisor could have, though, right? A
5 sergeant?
6 A A supervisor could have, but we only have
7 supervisor coverage until two o'clock in the
8 morning. 1:30 actually now.
9 Q At this time was it 1:30 or 2:00? Do you know?
10 A I think it was 1:30 at this time.
11 Q Was there anything other than simply staffing
12 preventing the county from putting a sergeant on
13 with Mr. Boigenzahn to supervise him for a time
14 after this incident to make sure he's making
15 appropriate choices?
16 A I'm not sure how to -- I think realistically if
17 it was a situation where you had to have a
18 sergeant basically supervising him all the time,
19 then he should have been terminated.
20 So I think it was looked at that he can, you
21 know, he did something wrong. He was punished
22 for it. And in theory, he should know how to
23 correct his actions.
24 Q Are there educational classes that inmates go
25 through as part of their time with the

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1 incarceration?
2 A There's lots of classes, yes.
3 Q All part of the rehabilitation part, right?
4 A Hopefully.
5 Q And they're supervised and instructed by jail
6 staff on making better choices and all that kind
7 of stuff, right?
8 A Some jail staff. A lot of it's volunteers that
9 come in from different wherever.
10 Q That's fair. I didn't mean to overstate.
11 A That's okay.
12 Q I understand it's part of the process of
13 incarceration is actual active rehabilitation?
14 A Yes.
15 Q And I assume that your education tells you that
16 that active rehabilitation is designed to
17 discourage repeat offenses?
18 A That's what its goal is. I think from my
19 perspective a lot of times is what it does is it
20 keeps inmates occupied while they're
21 incarcerated.
22 Q Fair. And let's take the policy decision out of
23 it for a second.
24 The goal is we want to give them more
25 training, more supervision, more direction to

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1 help them make better choices in the future?
2 A Yes.
3 Q You have a degree or a certificate from CVTC,
4 right?
5 A Yes.
6 Q I assume during that education, and during
7 continuing education courses, it's discussed at
8 length that people tend to engage in criminal
9 activity due to a lack of coping skills and
10 decision-making processes and things like that,
11 correct?
12 A That's some of the reasons for some of the
13 people. Other people do it for take your pick.
14 Q I get it. I have to assume that the general
15 wisdom out there is not that people are bad or
16 criminal by nature. It's they came to make bad
17 decisions through a whole host of reasons that
18 happened beforehand?
19 A Sure.
20 Q And so the goal of incarceration is to try and
21 get them on a different path through a variety of
22 mechanisms, including education, supervision, and
23 punishment?
24 A Punishment is not part of it, but otherwise.
25 There's a punitive aspect, but that's only for

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1 sentenced people, otherwise they're pretrial and
2 it's not supposed to be punishment.

3 **Q Right. Because punishment doesn't change**
4 **behavior necessarily?**

5 A No, it's because pretrial they're innocent until
6 proven guilty, so you can't use a punishment
7 component for it.

8 **Q Right. But once they're found guilty, is that**
9 **punishment component -- punishment is you give up**
10 **your freedom.**

11 **That's punishment, is it not?**

12 A Yes.

13 **Q Is that punishment component in your eyes**
14 **designed to change their behavior, or is it just**
15 **simply a justice seeking function?**

16 A I think it's a justice seeking function.

17 **Q Fair. So let's go back to Mr. Boigenzahn again.**
18 **He is sent home for three days without pay and**
19 **then comes back to work.**

20 **The next time you have of knowledge of a**
21 **problem is when?**

22 A Spring of 2016.

23 **Q And which incident is that?**

24 A The Brooke Schindler note.

25 **Q How do you become aware of it?**

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1 A I believe I was briefed by one of the other
2 sergeants.

3 **Q What, if any, role do you have in investigating**
4 **the incident with Ms. Schindler?**

5 A I did talk to, because it happened in the Huber D
6 block again, and I do end up talking to one of
7 the female Hubers that was at work at the time.

8 And I called her just to ask, because she
9 had a bunk directly, I don't remember if it was
10 directly below or in the same quadrant, but she
11 had a bottom bunk that was close to Schindler's
12 just to see if she had seen anything.

13 **Q Which inmate was that?**

14 A Challe was her last name.

15 **Q C-H-A-L-L-E?**

16 A Yes. Colleen Challe.

17 **Q And what did she tell you?**

18 A She told me that she had noticed different times
19 when Boigenzahn would be in the block talking to
20 Schindler in the middle of the night, and
21 sometimes it actually woke her up.

22 **Q And did you find that to be unusual?**

23 A Yes, I did.

24 **Q Why?**

25 A Because Ryan had a reputation talking to inmates.

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1 And like I said before, males or females. But to
2 do it often enough to where another inmate is
3 noticing it and it wakes the person up, that
4 seemed a little odd.

5 **Q Was it part of the job in overnight to have**
6 **conversations with the inmates when you're**
7 **walking through the dorm?**

8 A It can be if they're awake. Being in jail is
9 stressful.

10 **Q Understandable. But the expectation would be**
11 **that he's performing a check to make sure**
12 **everybody is okay, and that's about it?**

13 A Correct.

14 **Q For him to spend over 10 minutes doing that check**
15 **would be an unusual thing, would it not?**

16 A Yes.

17 **Q Or at least the expectation would be?**

18 A Outside of having a relatively good, I shouldn't
19 say relatively, having a good reason, yeah, it
20 would be unusual.

21 **Q Now, my understanding is the Schindler incident,**
22 **some of the time there is some portion where**
23 **Mr. Boigenzahn is not viewable on video?**

24 A Correct.

25 **Q And that's I think over 10 minutes?**

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1 A Yes.

2 **Q You have an understanding that there are parts of**
3 **Huber D that are not viewable on the video**
4 **camera?**

5 A Correct.

6 **Q And that happens to be the bunk where**
7 **Ms. Schindler was?**

8 A Yes.

9 **Q And that also happens to be the bunk where**
10 **Ms. Slabey was at the time of the incident?**

11 A Yes.

12 **Q For how long have you known that that bunk is not**
13 **covered by video?**

14 A To be honest with you, I never really thought
15 about it. That's not a great answer. I'm sorry.
16 I never really looked for the blind spots.

17 **Q Did you have an awareness that there were blind**
18 **spots?**

19 A There's blind spots all over the jail.

20 **Q Any other bunks in Huber D that you know of that**
21 **are a blind spot?**

22 A No. There's only eight, eight bunks in there.
23 There's two quadrants of four.

24 **Q So safe to say that of the bunks, the only one**
25 **that's a blind spot is 1 and 2, or 1 maybe?**

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1 A 1 and 2.
 2 **Q Where Schindler and Slabey were?**
 3 A Actually, I think that Schindler's bunk was in a
 4 spot that was actually more accessible. I'd have
 5 to look at it again. But where he was standing
 6 you couldn't see him.
 7 **Q That's fair. He's standing in the incident**
 8 **involving Schindler somewhere near bunks 1 and 2**
 9 **where he's not visible?**
 10 A Yes.
 11 **Q Clearly, Mr. Boigenzahn knew that those areas**
 12 **were not visible on video?**
 13 MR. JOHNSON: Objection. Form.
 14 A I'm assuming yes, he knew.
 15 **Q (By Mr. Muszynski, continuing) Do you know if --**
 16 **well, what's your assessment as Huber sergeant**
 17 **whether that's a problem or not?**
 18 A Which part? That it's not accessible?
 19 **Q That it's not accessible by video?**
 20 A It's an issue.
 21 **Q Is it something that you ever brought to any**
 22 **supervisor's attention before this incident?**
 23 A Not before, no.
 24 **Q Since?**
 25 A Well, actually, I didn't have to bring it up

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1 because it's been brought up.
 2 **Q I understand there's been revisions being done or**
 3 **in the process of?**
 4 A Yeah. Actually, the whole building is getting
 5 rewired, not just the jail, but the whole
 6 complex.
 7 **Q As sergeant of Huber you recognize, though, that**
 8 **it's a safety concern that there's a portion of**
 9 **the Huber dorm that's not covered by video,**
 10 **yes?**
 11 A Yes.
 12 **Q I mean it's safety not just of inmates, but also**
 13 **of correctional officers, right?**
 14 A Staff, yes.
 15 **Q Because an inmate could take them into that area**
 16 **and do whatever the heck to them and you wouldn't**
 17 **know?**
 18 A Correct.
 19 **Q Let me ask you this.**
 20 **Somebody on the night shift with**
 21 **Mr. Boigenzahn is supposed to be stationed at**
 22 **central watching the videos?**
 23 A Not just watching videos, but stationed at
 24 central, yes. There should always be somebody in
 25 central.

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1 **Q Doing a whole host of things, but part of that**
 2 **job is to monitor the video?**
 3 A Yes.
 4 **Q And part of that is to see if any inmates are**
 5 **causing any problems?**
 6 A Yes.
 7 **Q And part of it I would assume would be to notice**
 8 **if any correctional officers are in any trouble**
 9 **or anything like that?**
 10 A Yes.
 11 **Q And is it safe to say that if a correctional**
 12 **officer disappears from view for over 10 minutes,**
 13 **that's something that should raise a red flag to**
 14 **the person at central?**
 15 A If they notice it, yes, it should raise a red
 16 flag.
 17 **Q On the night shift, what else is central expected**
 18 **to be doing?**
 19 A All officers have other tasks assigned to them.
 20 I couldn't tell you what they all are. Some
 21 people do print cards. Other people do files.
 22 Even in the middle of the night you have officers
 23 coming in and out with new arrests and things
 24 like that.
 25 **Q Let me ask it this way.**

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1 **Mr. Boigenzahn, when the assault of**
 2 **Ms. Slabey occurs, is doing like a routine check**
 3 **of some sort I think?**
 4 A Correct. A wellness check.
 5 **Q How often are those wellness checks done**
 6 **throughout the night?**
 7 A At least every hour.
 8 **Q Is the typical thing that the officer would have**
 9 **been at central and then left central to conduct**
 10 **that wellness check?**
 11 A No. The central officer is there all the time.
 12 The floaters do the wellness checks.
 13 **Q What I'm asking is, Mr. Boigenzahn as the**
 14 **floater, where would he have been before the**
 15 **wellness check typically?**
 16 A Booking somewhere. It depends what else is going
 17 on. They might be sitting in central. But if
 18 there's people to book in or something like that,
 19 they'll be out in booking.
 20 **Q Would the officer conducting the wellness check**
 21 **notify central that they were conducting a**
 22 **wellness check?**
 23 A No. But central usually figures it out because
 24 they have to walk right by central in order to
 25 get to the Huber spot.