

# The 2021-22 Arizona High School Mock Trial Case

*authored by the*

**SUBCOMMITTEE ON THE PROBLEM  
YLD HIGH SCHOOL MOCK TRIAL COMMITTEE  
STATE BAR OF GEORGIA**

## **IN THE SUPERIOR COURT OF ARIZONA COUNTY OF YAVAPAI**

**JEAN STUART,**

**Plaintiff,**

**v.**

**GARFUNKEL PROPERTY GROUP, INC., d.b.a.,  
THE MALL AT CARLEY CORNERS**

**Defendant.**

**CIVIL ACTION NO: 2020-MT**

***NOTE: All characters, names, events, places and circumstances in this mock trial case are fictitious or are used fictitiously. Any resemblance to any person (living or dead), place, thing or event is purely coincidental.***

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**The Subcommittee on the Problem gratefully acknowledges the team of writers and editors who produced this original case:**

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**INTRODUCTION**

*This introduction is of **no legal consequence** in terms of the trial and is **not admissible** for impeachment purposes or for any other purpose.*

Toni/Tony Jessep was a former Lieutenant for the Prescott Police Department. After leaving the Department, Lt. Jessep became the new head of security at The Mall at Carley Corners in Prescott. Lt. Jessep led the efforts to improve the security situation at the mall, much to the pleasure of mall management and tenants. However, it was the events of the morning of April 17, 2020, that undid all of the Lieutenant's goodwill.

Jean Stuart is a retired resident of Prescott who likes to spend time each morning walking the corridors of Carley Corners for exercise and relaxation. Max Truly, a former tenant at the Mall, is often a walking companion of Jean. On the rainy morning of the 17<sup>th</sup>, Jean and Max were taking their stroll when they were confronted by Lt. Jessep over Jean's parking of his/her Eldorado in a spot reserved for Delaney's Doggy Day Care. JD Delaney has dealt with this before. That morning, JD had seen Jean's car parked in the spot and called Lt. Jessep to report it. Lt. Jessep set out to find Jean.

Now, for a bit of context, it is important to understand that Lt. Jessep and Jean have not always gotten along. There have been confrontations in the past, but nothing rose to the level as to what happened outside Delaney's that morning.

After Lt. Jessep caught up with Jean and Max, words were exchanged. Jean wasn't going to move the car and told Lt. Jessep so in no uncertain terms. Feeling threatened by the confrontation, Lt. Jessep pulled out his/her Faser and gave Jean a significant electrical charge, knocking Jean to the floor. Jean went to the hospital with a fractured hip and Lt. Jessep was fired by Jamie Brook, the mall's manager.

Despite what one might think with this lawsuit, Jean is not suing Lt. Jessep for damages incurred in the confrontation. Instead, Jean is suing the mall management company for their hiring and retention of Lt. Jessep. Why? Could anything have predicted this unfortunate situation? Well, possibly. Realize, this is the same Lt. Jessep who was disciplined for excessive force with the Yavapai County High School marching band the previous fall and ultimately fired by Assistant Chief Exley for not conforming his/her ways afterwards. Was Lt. Jessep a menace who should never have been hired? Or was Lt. Jessep merely doing the job for which s/he was selected and Jean was an unfortunate, but necessary, casualty? The jury must decide.

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**STIPULATIONS**

1. All exhibits included in the problem are authentic and accurate in all respects, and no objections to the authenticity of the exhibits shall be entertained.
2. Stipulations cannot be contradicted or challenged.
3. The signatures on the witness statements and all other documents are authentic.
4. The Charge of the Court is accurate in all respects; no objections to the charge shall be entertained.
5. Chain of custody for evidence is not in dispute.
6. The **Introduction** provided is of **no legal consequence** in terms of the trial and **is not admissible** for impeachment purposes or for any other purpose.
7. Exhibits 1 and 2 fairly and accurately depict the scene, view or geography they purport to depict.
8. Exhibit 3 is a true, accurate and complete copy of the article appearing in the Saturday, September 28, 2019 edition of the *Prescott Ledger-News*.

9. Composite Exhibits 4, 5, 7 and 8, as well as Exhibit 6, are (1) records made at or near the time by — or from information transmitted by — someone with knowledge; (2) the records were kept in the course of a regularly conducted activity of a business, organization, occupation, or calling, whether or not for profit; and (3) making the records was a regular practice of that activity. Exhibits 4 and 5 were produced by the Prescott Police Department. Exhibits 6 and 7 were produced by Garfunkel Property Group. Exhibit 8 is a certified copy from the Clerk’s Office of the Yavapai County Superior Court.
10. Tony/Toni Jessep may be treated as a hostile witness by counsel for Plaintiff.

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## **WITNESSES**

*The following witnesses are available to be called by the parties. Plaintiff witnesses may not testify or be called on behalf of the Defendant. Defense witnesses may not testify or be called on behalf of the Plaintiff. All witnesses may be female or male.*

### **For the Plaintiff**

Jean Stuart, Plaintiff  
Assistant Chief Ted/Teddi Exley  
Lieutenant Tony/Toni Jessep

### **For the Defense**

Jamie Brook  
Justus “JD” Delaney  
Max Truly

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## **EXHIBITS**

*Teams in competition may use the following exhibits. Teams should only print and use exhibits in a black and white format. They are pre-marked and are to be referred to by number, as follows:*

<b><u>Exhibit No.</u></b>	<b><u>Exhibit Title/Description</u></b>
1.	Mall map
2.	Mall map – close-up
3.	Article – <i>Prescott Ledger-News</i>
4.	Termination Letter
5.	Exit Interview
6.	Memo from Jessep to Brook
7.	Customer Complaints
8.	Accusation and Sentence – Jean Stuart

**IN THE SUPERIOR COURT OF ARIZONA  
COUNTY OF YAVAPAI**

<b>JEAN STUART,</b>	)	
	)	
<b>Plaintiff,</b>	)	
	)	
<b>v.</b>	)	<b>CIVIL ACTION NO: 2020-MT</b>
	)	
<b>GARFUNKEL PROPERTY GROUP, INC., d.b.a., THE MALL AT CARLEY CORNERS</b>	)	
	)	
<b>Defendant.</b>	)	

**COMPLAINT**

COMES NOW Jean Stuart, Plaintiff in the above-styled action, and files this Complaint showing the Court as follows:

1. Defendant has an office and transacts business in Yavapai County and may be served with a copy of this Complaint within the confines of said county. Jurisdiction and venue are hereby appropriate in this Court.
2. On April 17, 2020, Plaintiff was an invitee on Defendant's property.
3. On said date, Defendant employed Tony/Toni Jessep as a security guard for Defendant's property.
4. On said date, Plaintiff was viciously and intentionally attacked by Jessep, in his/her capacity as Defendant's employee in charge of security.
5. Defendant failed to exercise ordinary care in hiring and retaining Jessep, as it knew or should have known s/he was unsuited for that employment.
6. As a result of Defendant's negligence, Plaintiff suffered serious bodily injury and tremendous pain and suffering, all for which Plaintiff is entitled to compensation from Defendant.

WHEREFORE, Plaintiff prays for the following relief:

- (a) that process issue and Defendant be served with a copy of this Complaint;
- (b) that Plaintiff have a trial by jury on all issues;
- (c) that Plaintiff be awarded special and general damages in an amount to be proven at trial and as determined by a fair and impartial jury; and

(d) That Plaintiff be awarded such other and further relief as the Court deems just and proper under the circumstances.

This 20th day of August, 2020.

Patrise Perkins-Hooker, LLC

By:   
Attorney for Plaintiff  
Yavapai County, Arizona

**IN THE SUPERIOR COURT OF ARIZONA  
COUNTY OF YAVAPAI**

<b>JEAN STUART,</b>	)	
	)	
<b>Plaintiff,</b>	)	
	)	
<b>v.</b>	)	<b>CIVIL ACTION NO: 2020-MT</b>
	)	
<b>GARFUNKEL PROPERTY GROUP, INC., d.b.a., THE MALL AT CARLEY CORNERS</b>	)	
	)	
<b>Defendant.</b>	)	

**ANSWER**

COMES NOW Garfunkel Property Group, Inc., Defendant in the above-styled action, and files this Answer showing the Court as follows:

1. The allegations of Paragraph 1 are admitted.
2. The allegations of Paragraph 2 are admitted.
3. The allegations of Paragraph 3 are admitted.
4. The allegations of Paragraph 4 are denied.
5. The allegations of Paragraph 5 are denied.
6. The allegations of Paragraph 6 are denied.

WHEREFORE, Defendant prays for the following relief:

- (a) that Defendant have a trial by jury on all issues;
- (b) that Plaintiff's complaint be dismissed; and
- (c) that Defendant be awarded such other and further relief as the Court deems just and proper under the circumstances.

This 18th day of September, 2020.

Edenfield Law, P.C.

By: Sharon Edenfield  
Attorney for Defendant

## Yavapai County, Arizona

## STATEMENT OF JAMIE BROOK

1. My name is Jamie Brook and I am the current manager of Carley Corners. I was born on June 21, 1968 and was raised in Brookhaven, Suffolk County, Long Island, New York. I went to the New York Community College and majored in Management. I worked at several malls in the New York metropolitan area from the time I graduated until I moved to Prescott in 2011. I eventually worked my way up to being one of the Assistant Managers at Macy's in New York City, located on 34<sup>th</sup> Street. Of course, I was only in that role for 6 months when I moved to Prescott. Still, those were the days. Living in such a large city, the city that never sleeps, and having such large management responsibilities, I never slept!

2. Why leave all of that behind for Prescott, you may ask. Well, I needed to move here as my mother was experiencing some health issues. My move here involved some cultural differences, too, but I do appreciate the slower pace of life that I have here now. I am practically retired!

3. When I first moved to Prescott, I worked at the Mall of Prescott, again as the Assistant Manager, and was very happy there. Unfortunately, shortly after moving here, the economy took a major hit. Fewer and fewer people were going shopping, the retail business dried up, and I was let go. I then had to take a large step-down and accept a job as the Mall Supervisor at West Orange Metro Mall. I was excited to finally be the one in charge. To drum up business, and to distract from issues at the mall in previous years, the Mall underwent a renovation and rebranding. The name of the mall was changed to Carley Corners. It was in anticipation of this rebranding that the owner of the mall wanted me to hire additional security personnel, especially a new security director.

4. I guess you will find this out anyway, but the previous head of security was very ineffective. Therefore, the mall was experiencing several security issues, like shoplifting (allegedly by teenagers after school), fights, and flash mobs occurring at the mall to the point that many patrons quit coming. That was a large reason for the rebranding effort. Part of that rebranding included forming a Mall Merchants' Association with the owners of individual stores in the mall having a vote in certain matters. For example, voting takes place before an offer of employment is made for any key, high-level positions. They seem to have started this process after I was hired.

5. Anyway, part of my responsibilities as the Mall Supervisor is to do the hiring, firing, and training of the mall personnel. When there is an open position, we post it in the local paper, the Prescott Ledger-News. Applicants fill out an application form and may also attach a résumé. After I review the applications, I then interview the qualified applicants. If the applicant passes the interview phase, either I call or my assistant will call the applicant's three references. I greatly dislike this part of my job responsibilities. I guess that you could say I am too introverted for my own good.

6. Of course, when Toni/Tony Jessep was hired, this process was turned around a bit. Instead of me vetting the potential employee first and then presenting candidates to the Mall Merchants'

Association, the process was reversed. The Mall Merchants' Association found Jessep and presented him/her to me. Because I loathe the hiring process, this made things easier for me. J.D. Delaney, the head of the Association, organized a meeting with the other members and Jessep. Everyone seemed impressed with Jessep. I remember telling J.D. that I was as well (especially after our previous head of security was so lousy) and that you couldn't touch Jessep's background and determination for security. So, I hired him/her a few days later. Of course, I called Captain Dudley Smith (formerly of the Prescott Police Department) before making the formal offer and Jessep received a glowing recommendation. Captain Smith said that it would be great to have Lt. Jessep at the mall, that s/he was a real good officer and would be a great asset for the security department. With such a stellar endorsement, that was enough for me and I didn't need to talk to anyone else. However, since Captain Smith was retired, I did want to check in with Jessep's previous commanding officer, so I chatted with Assistant Chief Exley for a few minutes. Exley said that Jessep was fine and didn't seem all that interested in talking about him/her. I asked the Assistant Chief if it would be a problem for him/her to send me anything about Lt. Jessep's time at the department that may be helpful and s/he said s/he would fax over Jessep's exit interview and anything else if it looked like it may be helpful. I did get a copy of Jessep's termination letter but never did receive the interview, so I don't know what happened. I remember seeing the story about the police confrontation with the BP marching band but didn't realize Jessep was involved until the problem with Mr./Ms. Stuart happened. Nothing was ever said about it in my conversation with Captain Smith.

7. Now, I know that Jean Stuart is suing the mall and the management company because s/he feels we should have seen this coming from Jessep and that we shouldn't have even hired him/her in the first place. Like I said earlier, I went through all of the proper steps in hiring Jessep. S/He ticked off all the boxes along the way and seemed to be a great fit for what we needed. I did my best to check out his/her references. If s/he was such a loose cannon at the police department, why didn't they say something when I called? Captain Smith never said anything about any "problems" with Jessep and Assistant Chief Exley didn't add anything to the picture either. How else was I supposed to know I was hiring a "problem"?

8. I really liked Jessep. We seemed to have a similar sense of humor and work ethic. I really appreciated how Jessep had ideas about how to spruce up the Security Department at the Mall. Within a week of being hired, s/he sent me a memo outlining a number of the upgrades and changes s/he wanted to make to the mall's security. At first, I appreciated it since that was an area in which I never had much interest.

9. Not long after getting the memo, I found Jessep to be a bit odd. On the one hand, I appreciated the can-do / take charge attitude. On the other hand, sometimes this got out of control. For example, Jessep created an oath of office and hung it up in the mall security office. This ruffled quite a few feathers. S/He also pushed to have the uniforms changed. This resulted in a rather large expense for the owner of the mall. Plus, I understand that the new uniforms are uncomfortable. They are 100% polyester which makes them very hot in the summer. Because the security personnel also patrol the outside of the mall, this has not been a popular change. But, the security team did appreciate the live-

feed video surveillance and getting new digitally encrypted radios with in-line repeaters. So, I guess it all evens out.

10. But, you can't ignore that Jessep took responsibility for the safety and well-being of the customers and shop owners seriously. Jessep seems to care about the patrons who walk in the mall, mostly in the mornings. These folks will window shop as they walk, occasionally buying items for themselves or as gifts, or getting a donut or bagel from Devil Donuts or a freshly brewed cup of coffee from Tsarbucks. Jessep seemed to receive a number of periodicals that were security-oriented. Once s/he showed me an article in *Security Journal* which showed the correlation in increased security systems and the drop in theft. I said that if s/he would put together the proposal, someone would arrange for him/her to present the idea to the Mall Merchants' Association for consideration. Based on that presentation, there were several minor system upgrades made. I know Jean Stuart seems to think that Jessep is given everything that s/he wants and that Carley Corners has the same equipment that the regular police force has. This is just not true! Mostly because that additional security equipment would be too expensive.

11. For example, Jessep wanted to have an electronic security monitoring system installed at the mall. I agreed with him/her that I have seen a similar system at the larger malls. Basically, the mall security personnel have a swipe card that is used at security monitoring stations located at key security areas (such as the empty storefronts in Carley Corners) and at the far extremes of the mall. As the security officer passes a monitoring point, the card is swiped and the ID code and time of the swipe is transmitted to the central security office. This system is pretty sophisticated, and expensive. Generally, if the mall can afford this system, the mall is large enough to also support several Segues for use by the security team. I just never thought that this was necessary at Carley Corners and I doubt Jessep would think they would be befitting of his/her image as an authority figure at the mall.

12. Jessep was always espousing about the need for better crowd control techniques and supplies. Much as I dreaded it, I had to tell Jessep several times that the standard uniform for a position on the security force at the Mall does not include a rubber bullet gun, FAZER, or even a nightstick. Every now and then, Jessep would come to work with one of these things, saying that something might happen that day. Each time, I told him/her that s/he couldn't carry that kind of weaponry on mall property and s/he was supposed to lock it up in his/her office. Of course, it is possible s/he had it with him/her and I didn't know about it.

13. I do recall that in his/her spare time Jessep likes to head down to the Sitting Duck shooting range located just outside of town. S/he apparently likes to shoot skeet outside if the weather is nice or shoot at targets on the inside range if it is too cold or rainy outside. It seems to me that Jessep clocks time at the Sitting Duck nearly every weekend. I am not aware of any FAZER practice that Jessep may have engaged in at the Sitting Duck. Everyone should have a hobby. Jessep's hobby is shooting at things at the shooting range.

14. Anytime I needed to go over security concerns with Jessep, things would cool down for several months and all would be well again. Then, all of a sudden, I would have a complaint against him/her from anyone from a mall customer to the owner of one of the shops (and a member of the Mall Merchants' Association).

15. I remember this one time Jessep politely asked that a large group of after-school teenagers dress appropriately within the mall area. There have been incidents when girls are walking through the mall looking like they are auditioning for a Victoria's Mystery photo shoot. We have children in this mall and must set a proper example! Also, when people wear headphones or have in ear buds, they are unable to hear how loudly they are talking. This is all disruptive behavior which Jessep took on to correct. I support Jessep in his/her efforts to "scare straight" the teenagers who are clearly skipping school by being in the mall during school hours. Jessep utilized a few techniques that s/he learned in the police force, like taking a photograph of the repeat offenders and fingerprinting them. If these kids want to skip school, they should not come to the mall. Unfortunately, some of these troublemakers felt that a formal complaint was necessary. They filled out the complaint form which I then read aloud to Jessep. Based on a series of complaints, we eliminated the "Mall's Most Wanted" wall of photographs of the repeat violators.

16. When discussing this incident with Jessep, s/he responded "I have worked in some intense situations and I can tell ya that when you are dealing with crowds, things can turn ugly fast." A few weeks later, while we were in the break room eating lunch, s/he made a comment about a high frequency siren that can be used for crowd control. Jessep said that s/he had seen video of it used in other jurisdictions and s/he thought that it had real potential. I said, yeah right, here in Prescott, we have such a need for large scale crowd control. Jessep did not appreciate my tone of voice and went on to say that there is no clean up, like there is with tear gas and water cannons. S/he just went on and on. I don't remember all of the statistics that Jessep said, but I recall something about there being fewer injuries than with rubber bullets, which can kill if they hit in the wrong spot.

17. The owner of the mall and the Mall Merchants' Association have all agreed that aggressive action is beyond the scope of the mall security's responsibility at the mall. If there are crimes which require an arrest, the mall security personnel are trained to hold the person in the security office and to call 9-1-1.

18. I guess that you are correct that there were a few other complaints filed by the mall walkers. This group of mostly elderly people tends to complain about the teenagers and Jessep's interactions with them so frequently the complaints are like white noise to me at this point. There seems to be a bitter rivalry between the mall walkers and Jessep as well as between the teenagers and Jessep. Every time I receive a written complaint, I sit Jessep down and read the complaint aloud. What am I supposed to do? Theft and violence in the mall and the mall's parking lot are at an all-time low. I think this is a safe place now because of Jessep.

19. Jean Stuart never filed a formal complaint about all of this against Jessep. I don't know exactly what happened that day, but I did all that was expected of me as the manager of Jessep.

20. Up until the incident with Jean Stuart, Jessep was a valued member of the security team. So, if you are going to corner me into answering, yes, I kept Jessep around after all of these hiccups along the road. So sue me! Oh, oops, you are. Forget that I said that.

Signed,

Jamie Brook

Jamie Brook

SIGNED AND SWORN to me at 10:45 AM, October 13, 2020.

C.M. McCormack

C.M. McCormack, Notary Public

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**WITNESS ADDENDUM**

I have reviewed this statement, previously made by me, and I have nothing of significance to add at this time. The material facts are true and correct.

Signed,

Jamie Brook

Jamie Brook

SIGNED AND SWORN to me before 8:00 a.m. on the 15<sup>th</sup> day of October, 2020.

C.M. McCormack

C.M. McCormack, Notary Public

## STATEMENT OF JEAN STUART

1. I'm Jean Stuart. I was born in New Orleans in 1945, and raised on a steady diet of elbow grease, respect for elders, and vegetables treated with arsenic-based pesticides. I moved to Arizona in the 1960s to study civil engineering at Arizona State University and decided to stay. I retired to Prescott several years ago after a 40+ year career as a contractor with the Army Corp of Engineers. Phoenix was filled with tattooed knuckleheads getting high on the drugs, so suburban Prescott has been a nice change of pace.

2. Being retired has its perks, but it has given me more contact with the younger generation, and I'm here to tell you, I don't like what I see. It really gets my goat how these kids all think they are special and get to play by their own rules. In my day, we worked hard and sacrificed to make our way in the world. These days, sacrifice is last year's Blacktooths and Blueberries without an unlimited data plan. Plus, these feckless juveniles are too jazzed up on energy drinks and self-importance to commit themselves to activities more demanding than taking selfies, updating their Facebook statuses, and texting their delinquent hipster friends. A product of the parents, I say, buying their sniveling offspring the latest i-gadgets and feeding them local, organic yuppie food. The parents of my generation were too busy slapping the mustache off Hitler's face to care if we had erector sets, Slinkies, or supervision, which forced us to develop the things kids today lack, like imagination, a backbone, and some common sense.

3. Jessep in particular was a real piece of work. S/He sauntered around Carley Corners like s/he was the star of his/her own reality show. I've been walking at the mall for years now, and I don't like mouthy teenagers or shoplifting miscreants either, but Jessep's military-style rules and gratuitous security accessories were like squirrel hunting with a bazooka. Jessep had to be like a kid in a candy store with the police department getting all of this surplus military equipment these past several years. I don't like it and I have never been shy telling the mayor and city council about it. On top of this military mentality s/he had, Jessep was a poster child for what's wrong with youth today: a privileged twit who thinks the world is her/his oyster and no one else matters. After the violent over-stepping and aggression got him/her booted from the police force, s/he simply landed in an even sweeter gig with no rational oversight on behavior or spending.

4. The morning of the incident, I was sporting my powder blue tracksuit and my white tennies and was meeting Max Truly for our morning mall walk. I like to walk with Truly early in the mornings before her/his meat sweats get overwhelming. S/he's a carnivorous freak, but who couldn't have predicted a charcuterie wouldn't get off the ground in a mall food court? This is America! Our processed meat has a first name, a last name, a Wienermobile, and enough nitrites to barely need refrigeration, just like the good Lord intended. Since Truly's pâté-peddling days have been over, though, s/he's been a reliable, if somewhat salty, walking partner. I know everybody is saying I was drinking that morning, but nothing could be further from the truth. They probably just smelled my Mentholatum.

5. It was raining, so I put my directional on and turned my 1973 Cadillac Eldorado into a parking space close to the mall entrance. My candy-apple red convertible is simply glorious and drives like a dream, but it is most emphatically not a compact death trap like you see these young people zipping around in. Much like my generation, my car is bigger, tougher, and has less unnecessary distractions than the malarkey that passes for street-legal automobiles these days. I don't care how efficient these electric cars and hybrid vehicles are, people look like Fred Flintstone driving that close to the ground – not to mention the three ring circus of entertainment included to ensure your faculties never have to be troubled by what's happening on the road.

6. I don't remember pulling up so far that the Caddy's front end encroached on the fire lane, but more importantly, I didn't realize Delaney was watching. S/he is such a meddlesome fink. When I was younger we kept our noses too close to the grindstone to notice someone's imperfect parking, and even if we did, we had more productive things to do with our time than to go crying like a bottle-fed infant to the closest authority figure.

7. I've had run-ins with Delaney before; s/he's a thick-headed, spineless chicken liver with no respect for the older generation. The first and last time I got her/his unsolicited feedback on my parking was a few months back when s/he ran into the lot blathering about the Doggy Day Care parking spots. That Delaney probably ends sentences with emoticons and drinks \$5 lattes, so when s/he came out squealing like a howler monkey about my parking, I made sure s/he knew that if I wanted her/his opinion in the future, I would give it to him/her. We seemed to have an understanding, as my parking was never questioned again. That is, until the morning of April 17.

8. Now, I don't love the smell of disrespect and bad manners in the morning, so I don't venture past the Willis department store to avoid Jessep's security headquarters on our morning walks. I usually meet Max down by the main entrance and get something from the Slushie Prince while I wait for him/her. Then, we head out for the walk, starting a loop around the first floor and then heading up the escalator by the Tstarbucks. Then we loop around the second floor, winding up at the donut place in the food court. Unfortunately, Max and I had only been walking a few minutes towards Delaney's when Jessep approached us right in front of the PHX & Co., chirping angrily about—what else – my parking. I told him/her exactly what I thought about that, but Jessep wouldn't back down, and roared at me to move the Caddy. This was getting absurd — and all over a parking spot – so I told her/him to get out of my way. Since s/he had me backed against one of those chairs and was blocking my path, I gave her/him a poke to the shoulder as I passed and a “Get a grip, you rent a cop!” That is the only thing I said to him/her. And no, I didn't knock him/her down like s/he's claiming. S/He just stumbled backwards and bumped into another chair, shocked that someone finally stood up to him/her, jackboots and all.

9. Of course, in Jessep's world, the war on disorganized parking never takes a holiday. I was hit and instantly paralyzed as I got the business end of Jessep's Faser leads right in the back. I hit the ground hard, breaking my hip.

10. My hip wasn't the only thing replaced as a result of all this. The mall had no choice but to remove Jessep, but the problem was much deeper.

11. "Thus do I counsel you, my friends: Distrust all in whom the impulse to punish is powerful." This is just as true now as it was in the 19<sup>th</sup> Century, but these young people today don't read anything longer than 140 characters, so I am sure no one from mall management considered Nietzsche's wisdom. Jamie Brook and Co. offered Jessep power they knew s/he couldn't handle, and it ended with a retiree being senselessly tasered over a parking spot.

12. Jessep really put the "low" in megalomaniac. As a police officer, when Jessep didn't have actual law breakers to rough up, s/he took her/his aggression out on defenseless band students, as is well-documented in Jessep's personnel records and the civil rights suits. It was in all the papers!

13. Nevertheless, the mall bankrolled Jessep's fortification of Carley Corners with enough security equipment to subdue a herd of African bush elephants. They stood by without a disapproving word as Jessep and her/his Draconian method assaulted that teenager in the mall a little while back. If there was an award for cumulative, relentless blind eye turning, this mall would win. By signing off on Jessep's every whim and standing by her/his aggressive actions, the mall set up the exact conditions necessary for Jessep to abuse her/his seemingly limitless power and put innocent people at risk.

14. What really chaps my fanny is that, faced with my lawsuit, the mall now has the nerve to say that they "did not know nor could reasonably have known" about this side of Jessep, and s/he acted beyond the scope of his/her employment mandate. Sure, if by "beyond the scope of his/her employment mandate" you mean "eminently predictable given the unfettered power and unquestioned authority bestowed on her/him by this mall." As Dr. Phil would say, "The best predictor of future behavior is past behavior." Any cursory inquiry would have revealed that Jessep was horribly unsuited for this job. You can't turn a blind eye to obvious facts and then plead ignorance when trouble starts...none are so blind as those who will not see.

15. Negligent is hardly the word I would use to describe the hiring and retention of Jessep. I just hope the mall is held accountable for releasing this menace on unsuspecting mall patrons under the veil of "security." Truth is, his reign of terror was only possible because of the power vested in him by mall management.

Signed,  
**Jean Stuart**  

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**Jean Stuart**

SIGNED AND SWORN to me at 3:50 PM, October 7, 2020.

C. M. McCormack

C.M. McCormack, Notary Public

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**WITNESS ADDENDUM**

I have reviewed this statement, previously made by me, and I have nothing of significance to add at this time. The material facts are true and correct.

Signed,

**Jean Stuart**

Jean Stuart  
**Jean Stuart**

SIGNED AND SWORN to me before 8:00 a.m. on the 17th day of October, 2020.

C. M. McCormack

C.M. McCormack, Notary Public

## STATEMENT OF JUSTUS “J.D.” DELANEY

1. My name is Justus Delaney, but pretty much everybody calls me “J.D.” I own and operate Delaney’s Doggy Day Care at Carley Corners, the big mall here in Prescott. And since I’m the largest single-owner tenant, I was elected president of the Merchants’ Association by the other business leaders at the mall.
2. Not that there are that many businesses at the mall anymore. Have you ever seen that cartoon that ran in *The New Yorker* magazine? The one where a man is sitting in front of his laptop computer and turns to his female companion, who is holding a tablet, and states: “Remember stores?” What with Internet sales, the off-price retailers at the strip shopping centers, and the recession, it’s been a tough time for malls. Long vacant stretches of storefronts between the JC Nickel and Rich’s—we need security guards to patrol the ghostly corridors.
3. But you know what they say about turning lemons into lemonade? The near death experience of the Carley Corners was my opportunity.
4. For years I’d been operating a small grooming parlor next door to the Prescott Veterinary Clinic, clipping Schnauzers and Shih Tzus and other pampered breeds. Then the Prescott Department Store announced it was leaving the mall, despite a multi-year lease, and was looking for a tenant to sublet. I decided this was my chance to realize my dream of opening a doggy day care type of facility, with related services that include boarding and grooming.
5. In so many cities, doggy day care is relegated to industrial areas where former warehouse space is converted into puppy playscapes. But that is inconvenient for the pet owners. How perfect to find enough space to set up Delaney’s Doggy Day Care at Carley Corners near the suburban bedroom communities of Prescott? Since I have so much space, I decided to work a new niche in the pet-boarding industry by taking in all sorts of pets. While most of our clients are cats and dogs, we also board birds, reptiles, snakes and even fish! Our guests can be dropped off early in the morning, before the stores open, when the owners are on the way to work.
6. I’ve had big dreams. As the economy continues its climb out of the recession, I even envision Delaney’s sparking a complete revitalization of the mall into a pet friendly entertainment center, with everything from cafes that welcome diners and their pets at the end of the workday to agility training courses and Frisbee competitions on the weekends. We could even convert the mall’s fountain into a canine swimming hole. I realize that’s probably never going to happen since it’s a big mall and it is making a turnaround. In the short term, I’ve got the ground floor as the boarding center and the upper level as the retail space. The boarding center is open to the mall side with a series of windows, giving mall patrons a chance to wander through and see all the different animals, kind of like Prescott’s own zoo. Kids love it! I’ve even considered calling the boarding center “Pet Kids” now that we take in so many different types of animals, but it just doesn’t have the alliterative ring of “Delaney’s Doggy Day Care”.

7. The improving economy is bringing new stores back to the old spaces. One of my new neighbors is Dillard's Den of Dastardly Deeds, kind of a real Weasleys' Wizard Wheezes, offering all sorts of gag gifts and practical joke supplies. Louis is in a trademark squabble with Dillard's department store due to their name similarities. He's obviously not part of that Dillard family from Little Rock, with him being of the Bibb County Dillards out of Georgia if memory serves. As VP of the tenant association, we are helping Louis figure out a settlement with Dillard's. I'm glad the mall is bouncing back, even though my dream may not happen.

8. But Carley Corners is not there yet. We underwent the rebranding effort a little while back trying to reinvent the facility. It's freshened things up but the mall still has lots of empty space that attracts only senior citizen mall walkers in the morning and teenage mall rats in the after school hours. There was even a time when many patrons seemed to be strung out on something, just looking for a chance to shoplift a pawnable item to get funds for their next high. That's why we needed better security—someone with real police training to head up the operation.

9. Then along came another opportunity to make some lemonade. Look, I felt as badly as anyone about Rags getting trampled when the marching band stampeded. After all, I'd been grooming the little guy ever since he wandered into the Big Pine County High School stadium all matted up and infested with fleas. But none of that was Lt. Jessep's fault and it seemed like a great opportunity when s/he was let go in the regime change to snap him/her up to be our head of security and bring a little law and order to the mall.

10. I organized a meet-and-greet event to introduce Lt. Jessep to the other tenants. S/He made a good first impression with his/her professional demeanor. S/He presented a comprehensive plan for beefing up security at the mall that was a variation on the so-called broken windows theory of crime prevention, i.e., maintaining a well-ordered mall environment would stop further decay and reduce the incidence of petty crimes. During the meet-and-greet, I had mentioned to Jamie Brook, the mall's General Manager, that I was impressed with Lt. Jessep's ideas and was ready to shake his/her hand and welcome him/her to the Carley Corner's family. Jamie said "You can't touch a person like Jessep," I guess talking about Jessep's credentials for security. When the tenants' association unanimously endorsed the plan, Jamie hired Lt. Jessep as head of security. I assume Jamie talked to folks at the police department about Lt. Jessep's past there. We weren't part of that process; that was all up to Jamie and the management company.

11. Thanks to Lt. Jessep's dedication—it seemed s/he was there day and night walking the beat, so to speak—there was a lot less riff raff at the mall. Lt. Jessep ordered those teenage mall rats to cover up, to take off their headphones, and to break up into groups of three or less if they start to loiter in congregations. Sure there were complaints when s/he started taking those who refused to cooperate into the mall office for photographing, fingerprinting and the issuance of a criminal trespass warning, but the mall became a better place without so many of those teenage hoodlums.

12. There are days I too think that we could do with fewer mall walkers. They come early in the morning and compete with my clients for parking. As one of the anchors, I've got dedicated spots which are clearly marked as reserved for my clients and a tow-away zone for interlopers, at the ground floor entrance to my space for clients to use to pick up/drop off their pets. I don't understand why if the walkers come here to walk, they have to take the parking spaces closest to the entrances.

13. It's even worse when it rains because some of the walkers think they should be able to park in my reserved spots so they can get in without an umbrella to lug around while they do their power walking. It's a real bone of contention for me. When I see it happening, I get a hold of Lt. Jessep right away so s/he can order them to move the car and call the tow truck if they refuse.

14. That's what got things started with Jean Stuart, who is notoriously cranky and probably needs to cut back on the Geritol. Jean pulled up in his/her 1973 Cadillac Eldorado convertible that s/he usually straddles across a couple of parking places to keep from getting door dings. But because it was raining, Jean parked in the last reserved spot of mine, with the front end hanging over in the fire lane next to it. It's not the first time this has happened. I tried to say something to him/her once before, but after getting screamed at like I did, I decided to let the hired professionals handle it.

15. On the morning of the confrontation, I was out there with my umbrella to assist a client whose German Shepherd has hip dysplasia, which makes it difficult for her to get in and out of the car. I saw his/her car parked there and called Lt. Jessep right away. S/He said "Don't worry JD, I'm on it! I'll get him/her this time. This'll be the last time we have a problem with him/her, I promise."

16. A few minutes later, I walked out the mall entrance of Delaney's on the upper level to see if I could spot Jean doing his/her power walk and help Lt. Jessep track him/her down. Like most malls, the second level has large areas cut out of the floor so you can see the ground level from up above. Out in front of Delaney's is one of the mall's seating areas with oversized leather chairs and low tables. A moment after I got to the rail, I see Jean and Max Truly, his/her walking buddy, walking towards Delaney's between Gators and the chairs. Then I heard Lt. Jessep bark at Jean to stop. Max took a few steps but Jean spun around to face Lt. Jessep. I hear Lt. Jessep tell Jean that s/he would have to move the Eldorado out of the Delaney's spot and the fire lane. Thankfully, I was behind Jean up on the Terrace Level so s/he couldn't see me watching because I knew s/he'd look to come after me for ratting him/her out to Lt. Jessep. Fortunately, all of Jean's focus was on Lt. Jessep, as was mine. Then, Jean's response certainly got my attention. S/He told Lt. Jessep: "Get out of my way you Robo-cop!" Next thing I know, s/he was trying to barrel past Lt. Jessep, yelling about wanting to get his/her walking done and feigning a little karate chop. Lt. Jessep then directed Jean to "Halt!" That's when I noticed Lt. Jessep had drawn his/her Faser and then deployed it as Jean hurtled past.

17. That sure took the giddy up out of Jean's step—the probes from the Faser hit Jean square in the back and s/he hit the ground like a fainting goat and started hollering about police brutality. Lt. Jessep got out a cell phone to call the EMTs, but I couldn't stick around to see what happened after that. I had a 95-pound German Shepherd to get checked in downstairs.

18. But I will tell you this. The mall's started to backslide since they let Lt. Jessep go. I would rehire him/her in a heartbeat.

Signed,

Justus Delaney

Justus Delaney

SIGNED AND SWORN to me at 12:35 PM, November 3, 2020.

C. M. McCormack

C.M. McCormack, Notary Public

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**WITNESS ADDENDUM**

I have reviewed this statement, previously made by me, and I have nothing of significance to add at this time. The material facts are true and correct.

Signed,

Justus Delaney

Justus Delaney

SIGNED AND SWORN to me before 8:00 a.m. on the 13<sup>rd</sup> day of November, 2020.

C. M. McCormack

C.M. McCormack, Notary Public

# STATEMENT OF LIEUTENANT TONY/TONI R. JESSEP

1. My name is Lieutenant Tony/Toni R. Jessep. I was born here in Prescott, but we moved around a lot because my Dad was a Colonel in the Marines. My Dad taught me "walk softly and carry an armored tank division". After high school, I attended the University of Georgia where I received a Bachelor's Degree in Criminal Justice. After college, I joined the Marine Corps and spent four years in the Marines in a security detail. After being honorably discharged from the Marine Corps, I attended the Regional Police Academy, and I am a P.O.S.T. Certified Peace Officer, originally obtaining my certification in Georgia. You bet I take my job seriously. I've always wanted to be a cop. I have two books at my bedside: *The Marine Corps Code of Conduct* and the *King James Bible*. The only proper authorities I am aware of are my commanding officer and the Lord our God.

2. After getting my P.O.S.T certification, my spouse, born and raised in Prescott Valley, wanted to return home so I applied for a job with the Prescott Police Department. I am proud of my time with the Prescott P.D. My initial commanding officer was Captain Dudley Smith, whose motto was "Our justice must be swift and merciless." I liked the way Captain Smith ran the precinct. You know, more military style, like the Marine Corps. Captain Smith liked me too. He told me on more than one occasion that he admired me as a policeman, particularly my adherence to violence as a necessary adjunct to the job. However, Captain Smith was terminated by the Mayor after the incident with the Big Pine County High School Marching Band. The civilian authorities decided it was excessive to use tear gas, rubber bullets and water cannons on the high school marching band. But, those band students were getting too rowdy after the Homecoming game and, in my professional opinion, posed a significant threat to the peace. Besides, I never understood why it was a big deal. So some teenagers got wet, some got bruises and some got teary eyed. I mean, nobody really got hurt, except for the marching band's mascot, a little white dog named Rags, who was trampled to death because the band couldn't make an orderly retreat facing a superior force.

3. After the marching band incident, the civilian authorities of Prescott caved to the Justice Department probe and the civil rights suits and decided it was necessary to restructure the police department. That's when they fired Captain Smith and promoted Ted Exley to Assistant Chief to oversee the precincts and organize a kinder and gentler police force. Exley's attitude was all "touchy/feely", not guns, FASERS and night sticks. You know, the right way to do police work. Exley told us, "If you remember one thing from today, it's this: The mind is the only weapon that doesn't need a holster". Maybe so, but my Mother taught me, "If you want something done right, waste them yourself." I'm paraphrasing, but you get the idea. I guess I didn't fit in with Exley's new psychobabble police department so he/she let me go. Unjustified, in my opinion, but terminated from the force nonetheless.

4. Right after being let go by Exley, I heard the West Orange Metro Mall was looking for a new head of security. I knew from my time with the Prescott P.D. that there had been many instances of teenage shoplifting, fights, and flash mobs at the mall to the point that many patrons quit going there. I applied

for the job and was interviewed by Jamie Brook. After the initial interview, I was called back to meet J.D. Delaney and some other shop owners. J.D. was the head of the Mall Merchants' Association and was asked by the mall company to organize a meet and greet to discuss my ideas for improving mall security. Jamie, JD, and others told me on more than one occasion how excited they were to have a real police officer in charge of security. And I was excited too to get my own department and do things my way. The right way. Throughout the interview process, I was forthright with Jamie, JD and others about my time with the Prescott Police Department and that Exley terminated me. After all, everyone in Prescott knew of the Justice Department probe and the civil rights suits filed after the marching band incident. Besides, as a public employee, my personnel file was subject to an open records request, redacted in accordance with the law, of course. Brook didn't seem concerned about any of that, and talked about my reputation preceding me and this interview was more of a formality.

5. Upon being hired as head of mall security, I took a sworn oath to protect this mall and all inside it. Well, they didn't have an oath, but I made one up and hung it in my office. I outlined a number of new policies and procedures in a big memo to Jamie to make needed security changes to the mall and worked with Jamie and the management company on implementing them. At about this time, the mall went through a rebranding effort, changing the name to The Mall at Carley Corners and doing a significant facelift. Since they were doing so much construction work, we had the mall upgrade a number of systems from the overall alarm system, to adding live-feed video surveillance and getting new digitally encrypted radios with in-line repeaters for the department. I upgraded the uniforms to look more professional and adopted some of the tools from the police force. Simply put, I wanted to shake the security department out of the Paul Blart mentality it had before my arrival and get it to a top-notch security force for the mall. A few of the security officers on the job at the time didn't appreciate what I was trying to do and whined about how they didn't like the changes, so I cut them loose pretty quickly.

6. After making the infrastructure improvements, one of my first priorities was to identify all potential security threats and perpetrators. Most wanted on my list were the teenage hoodlums hanging out playing their Lil' Nemesis "T" music and intimidating the good citizens patronizing the mall for consumer purchases. Sure, there were a few complaints, one by a teenager who claimed "I roughed him up" during a fight at the mall. I prefer to say the young man was effectively persuaded to find other uses for his free time besides loitering at the mall. There were a few complaints, too, from the mall walkers, including Jean Stuart. However, in discussing these complaints, Jamie simply laughed them off and told me what a good job I was doing. After all, my new security protocols were a success. Crime was down, law abiding citizens were returning, and retail sales were up. That's the important thing.

7. I wasn't successful in getting all of my desired upgrades approved, namely those that would have provided better self-defense for myself and officers. After a couple of my guys got hurt trying to break up one of the big fights right after I took control of the department, I tried talking Jamie into letting us protect ourselves from these hoodlums with some crowd suppression equipment. Crowds can turn violent fast, without warning, like a flock of birds shifting flight like they were one unit. Even though things like rubber bullets and tear gas works well on crowds, like it did with the band, the confined,

indoor space of a mall was the wrong field for their use. Instead, I liked the idea of high-pitch noise emitters that are really effective on teenagers. When Jamie nixed that, I pushed for outfitting everyone with a Faser, a top of the line X23. It is close range, so it won't affect innocent bystanders as a cloud of tear gas would or even a stray rubber bullet might. It's effective in subduing the offender quickly with its 50,000 volts of electricity but from a safe distance so the officer has little risk of injury from the probes and the flailing perp. And it does it quick. And hard. Again, Jamie didn't like the idea, saying it wasn't our place to be armed and if we needed that kind of assistance, we should get the police there quick. I wasn't happy with the decision, but had to live with it. However, there were times when I had a sense something may happen that day, and those days I brought my own Faser to work, just to keep myself safe on the job.

8. I mentioned the mall walkers. The mall walkers are generally an elderly group who come to the mall before business hours and walk for exercise. Since the mall merchants are not there yet, the alarm system has to be disabled to permit the entry of the mall walkers. The presence of the mall walkers presents an unacceptable security threat in my professional opinion. Further, some mall walkers feel they are entitled to have the run of the place, especially Stuart. I could clock Stuart as trouble from three clicks away, a hard-nosed crusty type with a problem with authority figures, like myself.

9. On the morning of April 17, at approximately 9:45 A.M., I was getting ready for the morning security briefing when I got a call from J.D. Delaney about Stuart parking his/her car in one of Delaney's reserved spots and the fire lane. J.D. said this has happened before but I've never been able to catch Stuart in the act. Parking in a fire lane is a violation of Prescott ordinances. This also represents a public safety hazard since first responder vehicles would be impeded from close proximity access in the event of an emergency. And safety never takes a holiday. I told JD that I would handle it and set off to track Stuart down.

10. After hunting for him/her for about 5 minutes, I saw Stuart and Max Truly strutting along on the ground level heading towards Delaney's. As I caught up to them by the seating area, I confronted Stuart, instructing him/her that the vehicle was illegally parked in a fire lane, and I commanded him/her to immediately move the vehicle to an appropriately marked parking space. Stuart refused to follow my instructions responding, "It's no big deal. The mall's not even open, and it's raining and I didn't want to get wet." At this point, I repeated my instructions to Stuart to move the vehicle, but Stuart again shrugged off my command and, in an agitated tone, said "get out of my way!" I noticed a faint odor of alcohol coming from Stuart. By now, other walkers and a few store owners had seen what was going on and started gathering nearby. I gave Stuart a third, clear warning to immediately comply with my instructions to move the vehicle or else there would be consequences. Instead, Stuart attempted to circumvent this officer, walking towards me briskly and poking me in my left shoulder, knocking me down into one of the seating area's chairs. Fortunately, I was able to grab the chair back preventing myself from falling completely to the ground. As s/he did so, s/he said with a raised voice, "Get a grip Robo-cop!" Given the escalation of Stuart's hostility, which had now resulted in physical contact with this officer, I removed my Faser with my right hand and discharged it at the perpetrator, Stuart. By this

point, Stuart had moved approximately five feet beyond me towards Delaney's. The Faser discharge effectively subdued Stuart and deposited him/her on the ground.

11. Following the incident, and in accordance with protocol, I notified the Prescott Police Department and an ambulance was dispatched from Prescott Medical Center to check on Stuart's condition. The EMTs arrived first on the scene, checked Stuart's vitals, and transported him/her to Prescott Medical Center for further evaluation. A patrol car from the Prescott Police Department also arrived on the scene. A uniformed officer made a preliminary report, but apparently declined to take out an arrest warrant against Stuart. Additionally, Brook denied my request that the mall seek an arrest warrant against Stuart for disorderly conduct. Instead, Stuart filed another complaint against me with Brook who terminated my employment despite my success in turning around the security situation at the mall.

12. Why am I testifying for Stuart? Because I go by the book, and everything I did was appropriate, justified, and properly within the scope of my employment as head of mall security. Besides, the mall management company's attempt to hide behind some lawyer-contrived excuse that I was a "lone wolf" acting outside the scope of my authority is more repugnant to me than Stuart's unlawful conduct. The mall company liked the results and never questioned my methods until threatened with Stuart's lawsuit. Then, they tried to disavow me and make me the scapegoat.

13. The truth is, we live in a world that has malls, and those malls have to be guarded. Who's gonna do it? Jamie? Mr./Ms. Delaney? I had a greater responsibility than you could possibly fathom. You want to weep for Stuart and curse my security department. You have that luxury. You have the luxury of not knowing what I know. That Stuart's Fasing, while tragic, was necessary to preserve public safety. And my job performance, which the mall company now says was grotesque and incomprehensible, reduced crime. The mall company doesn't want to admit the truth, because deep down in places they don't talk about at Mall Merchants' Association parties, they want me in the mall, they need me in the mall. I use words like honor, code, loyalty. I use these words as the backbone of a life spent defending something. To the mall company, they're a punchline. I have neither the time nor the inclination to explain myself to mall merchants who rise and sleep under the blanket of the very security that I provide, and then question the manner in which I provide it. I would rather the mall merchants say, "Thank You", and went on their way. Otherwise, I suggest Jamie pick up a weapon and stand a post.

Signed,

**Tony/Toni R. Jessep**

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**Tony/Toni R. Jessep**

SIGNED AND SWORN to me at 2:35 PM, October 3, 2020.

C.M. McCormack

C.M. McCormack, Notary Public

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**WITNESS ADDENDUM**

I have reviewed this statement, previously made by me, and I have nothing of significance to add at this time. The material facts are true and correct.

Signed,  
**Tony/Toni R. Jessep**

\_\_\_\_\_  
**Tony/Toni R. Jessep**

SIGNED AND SWORN to me before 8:00 a.m. on the 8th day of October, 2020.

C.M. McCormack

C.M. McCormack, Notary Public

# STATEMENT OF MAX TRULY

1. My name is Max (Maxine/Maxwell) Truly, and I am – well, I *used* to be – the proprietor of Truly Offal, a charcuterie (and general sausage purveyor), at the Mall. After my Agronomy classes at UArizona, I moved around a bit in various agricultural ventures, finally finding myself at Melbourne Meat-packing, which specialized in commercial lamb, with my job being to monitor food being grown and supplied for the livestock. Eventually, I'd made enough contacts in the industry – firms supplying specialty meat and grinding it into sausages– that when I decided to leave corporate America and open my own small salumeria business, I decided on a boutique just off the mall. After all, the best pork comes from pigs being fed peanuts, and I love me some peanuts!

2. The business was never a gold mine, but we did all right until the recession. This isn't Europe, fine charcuterie is something of a luxury here, and local customers facing an economic downturn weren't ready to pay our prices. But diverse and top quality inventory are – were – the essence of our business, so it became difficult to make ends, uh, meet, in a manner of speaking. Besides, I was never the culinary artist, I was the businessperson, and a tight budget made it hard for me to retain the good employees I needed to keep going. Eventually, I closed shop in mid-Summer last year when I couldn't see an end to this COVID situation.

3. But I continued the habit I'd begun of walking all around the Mall on a regular basis. From the tenants' standpoint, Carley Corners Mall is a community, so one must stay involved – in partnership, as it were, through the Merchants' Committee (on which I'd been pleased to serve, until my lease terminated along with my business) – with management and one's fellow tenants. Since there were daily "slow" periods when customers weren't that eager to buy spicy sausage, I got in the habit of taking my "daily constitution" (kind of like Harry Truman, whom I've always admired: feisty and no-nonsense!) up and down the concourses of the mall. That's how I got to know Jean Stuart. I can't say that we were ever "friends" exactly – too many abrasive episodes for that; Jean's rather "spicy" personality, like my breakfast sausages, is sometimes improved and sometimes made worse by, shall we say, "marination" in whatever s/he brings to the mall in that travel cup – but it's important for a businessperson to establish relations with customers, too. Even after my retirement – perhaps particularly (since what else did I have to do?) – I still returned to walk the mall for exercise, window-shopping, and fellowship.

4. On the day in question, April 17, 2020, I met Jean and the others for our walk. Jean had already been to get his/her slushie, and it smelled like it was laced with a little "go-go juice" as Jean is occasionally wont to do. We were walking briskly from the parking lot towards Delaney's pet-shop when Lt. Jessep, the security guard approached us. I knew Tony/Toni Jessep; I'd been on the Merchants' Association when management had hired him/her as mall security, after the gossipy "incident" at Pig Pine H.S., so even if our approval wasn't really determinative, we'd been asked. We had a "meet and greet" with Lt. Jessep around the time s/he was hired, to give the advisory committee a chance to get a feel for him/her. I was talking to J.D. and Jamie about their impressions so far and J.D. said, "Jessep

sounds like a great candidate. I can't wait to pat him/her on the back and welcome him/her into the Carley Corners family." Brook chuckled and said, "Careful there, J.D. You can't touch a person like Jessep and expect to get away with it." I thought it was an odd thing to say until I got to know Lt. Jessep more. You see, Lt. Jessep is a bit of a hard-nose – I think police departments prefer recruits who naturally "need" to have the last word in any exchange – but s/he seemed just what the mall needed to keep order, and I'd always thought (from a tenant's perspective) that s/he did a good job of protecting my property. There are lots of "mall rats" wandering about – and often, the trouble-making adults are no better! No, I don't recall knowing specifically why Lt. Jessep transferred from the police department to private security; as best I remember, there may have been gaps in the resume, but we weren't encouraged to probe: employment "fairness" and personal privacy you know – you must be careful what questions you ask!

5. Lt. Jessep approached rather aggressively – "seizing the initiative," I suppose – and demanded that Jean remove his/her Eldorado from the reserved parking spaces closest to Delaney's. It was raining, and after all, who's going to buy a dog first thing in the morning? As we mall-walkers have gotten older in retirement, we've come to appreciate being able to take exercise in the warm and dry – damp clothing all morning or carrying around extraneous paraphernalia gets old very quickly! Jean wasn't eager to move. When I was a Carley tenant, myself, with property to protect from vandals, shoplifters, "snackers," slackers and teenaged "taggers," I was grateful for a strong arm, but (I confess, from the other side of the wrought iron benches) security can alienate the casual shopper – or mall walker – by being quicker on the attack than seems obviously necessary. Jean said something derisive about "Robo-Cops," and we all snickered as we pushed past the steaming Jessep.

6. There was a "discussion" – security had its questions, its mission – and Lt. Jessep wasn't one to let a perceived slight go easily; I've said s/he could be abrasive. Neither, too, was Jessep going to back down from a confrontation; there was the credibility of local authority to be defended. So the situation escalated. I confess I may not have helped much – I miss the old Merchants' Association, and I miss the cordiality that mall employees showed us when they needed to keep the rent flowing punctually – I tend to act a bit "entitled" in these situations (and, after all, we walkers weren't doing anything wrong). Of course, Jean had taken the lead in resisting Lt. Jessep; Jean is a bit of a hot-head – I know that well because Jean has long been a hot-head towards me. Back when I had my shop, Jean was constantly giving me a hard time about my "meat market" (as s/he insisted on calling it) and filing complaints with the mall management, citing a smell or "concern" about messy byproducts of the process. It never rose to the level of a full-on protest, but more of a public goading as s/he strolled by each day or harassing customers nearby. I think s/he felt that something like a fine sausage emporium in the mall was silly or fatuous; not that Jean was forced to become a connoisseur him/herself. While it didn't necessarily damage business, it certainly didn't help either. That's one reason I became a walker: I couldn't afford a paid public relations campaign, so I had to get out there, with the public, to improve the Emporium's image. Then, once I'd integrated the routine into my daily constitution, I just stayed (even after Truly Offal closed) and came to terms (sort of) with Jean, who thinks of the mall concourses as his/her territory.

7. Sort of like Delaney – cats and dogs aren't the only residents of the puppy palace who instinctively mark territory –and in some rather obnoxious (and, metaphorically, similar) ways!
8. With 20/20 hindsight, could the tension have been released without it coming to physical confrontation? I hope so, but we don't live in a perfect world. Jean wasn't going quietly, and Jessep wasn't going to let him/her go at all (although I tried, too late, to persuade the mall just to throw us out for the day); the guard was intent on a citation. (In fairness, I guess, had they threatened to just kick us out, I'd probably have refused. I'm too used to having my walks and the threat not to let us come back would've been...scary!) So, as Jessep reached to grab Jean by the elbow (not too harshly, just a reflex), s/he pulled back...and moved his/her arm as though...
9. Meanwhile, Jessep had almost taken a header over one of the soft chairs – off-balance and surprised, I guess – and plopped down in one of the big chairs. Embarrassed.
10. Well, no, I don't think Jean was going to use violence, but Jessep was...I guess "shocked" is the word, that anyone would have the temerity to resist. Around the mall, it's mostly teenagers and mischievous children and both can be intimidated by a uniform, especially when the uniform is supplemented by all that police surplus hardware! So, the next thing I knew, Lt. Jessep had reached to his/her belt and grabbed the Faser. (At least, the handbook being clear on that point, guards weren't allowed to carry *actual* pistols!) Reciprocally, I suppose, Jean was taken aback that a "mere" rent-a-cop would pull a (sort of) weapon.
11. There was that "High Noon" pause, then both sides began to move... and Jessep fired the Faser. Jean being in front – s/he was the one who'd been grasped by the elbow, so the rest of us had been able to take one instinctive step back – s/he took the darts. Jean seized as the electricity surged, Jessep was relentless in establishing control – restoring order – but that's the security guard's job; I saw nothing overdone – really – in the episode. Of course, as the paramedics made obvious, Jean did injure his/her hip.
12. After that (and all the attention it drew), a crowd gathered, the real police were called – by Delaney, maybe; I don't know, but s/he's that kind of controlling sort, Jean was "seen to" by some sort of medico, and I gave my statement. Never did get to finish my morning walk that day.

Signed,

**Max Truly**

---

**Max Truly**

SIGNED AND SWORN to me at 11:38 AM, November 10, 2020.

C.M. McCormack

C.M. McCormack, Notary Public

.....  
**WITNESS ADDENDUM**

I have reviewed this statement, previously made by me, and I have nothing of significance to add at this time. The material facts are true and correct.

Signed,

Max Truly

Max Truly

SIGNED AND SWORN to me before 8:00 a.m. on the 13<sup>th</sup> day of November, 2020.

C.M. McCormack

C.M. McCormack, Notary Public

# STATEMENT OF ASSISTANT CHIEF TED/TEDDI EXLEY

1. My name is Ted/Teddi Exley. I am currently the Assistant Chief of the Prescott Police Department, and have the responsibility to hire and fire officers, with the approval of our chief, of course. I am named after President Theodore Roosevelt, who is said to be a distant relative on my mother's side, and I wholeheartedly embrace his philosophy of talking softly and carrying a big stick. As you can imagine, in my line of work, there are people who misconstrue the meaning of that phrase.
2. Police departments these days are structured much like the military: we have ranks and a chain of command. Obviously, the buck stops with the Chief, and now that I am the Assistant Chief, a lot of administrative decisions are run through me. The ranks, going down, are Major, Captain, Lieutenant, Sergeant, Corporal, and Patrol officer. Pretty much everyone starts on patrol.
3. I can say without hesitation that former Captain Dudley Smith definitely did not understand that our job only requires force as a last resort. When I was hired onto the department, I quickly discovered Captain Smith's predilection for shooting first and asking questions later. He seemed to cultivate officers of a similar mindset, and I always gave them a wide berth. As a result, I had what could be described as a meteoric rise in the department, which Captain Smith greatly resented. We were going through a particularly uncomfortable period when I was a Lieutenant and had to answer to Smith directly. Then Lt. Tony/Toni Jessep came along.
4. Jessep was one of Captain Smith's favorites. I definitely respect his/her service to our country, but it seemed like Lt. Jessep might have been suffering from Post-Traumatic Stress Disorder or something. S/He was always quick to draw his/her weapon at the slightest provocation. I remember him/her drawing down on some kids coming out of the woods by a playground one time when we were speaking at Miltonville Elementary for Career Day. Nearly scared those kids to death. I am grateful I was there to make him/her holster his/her weapon. Jessep really didn't like to be touched, either. Any time someone even brushed past him/her in the muster room, s/he would grab his/her weapon. Nearly decked one of our administrative personnel the first day s/he was here. At first we thought s/he was just nervous, but after a while it started to become a morale problem with anybody s/he worked with. It became quite apparent that s/he had serious "personal space" issues. Nobody ever got hurt, but it seemed like only a matter of time before Jessep would actually un-holster the weapon s/he always reached for. That wasn't really the kind of thing you write someone up for, so the only place it was really documented was in his/her exit interview when s/he was let go, but I definitely noticed incidents like that.
5. The straw that broke the camel's back involved the Big Pine High School Marching Band. We officers were supplementing the Yavapai County Sheriff's Department for security for the big homecoming game against Knibb High. Most of us were acting as security around the field. It was a good, close game and Big Pine won. Naturally, the band got pretty rowdy before their post-game show,

but it wasn't their fault the fans tried to rush the field to tear down the goal posts and some started to get pinned against the fence.

6. Of course, there was a safety issue at that point. Captain Smith ordered myself and several other officers to try to calm the band and we had things mostly under control, saying, "Remain calm. All is well." The band director was on the loudspeaker and the PA announcer was trying to get the crowd calmed down. Next thing I know, Jessep had tossed a tear gas canister into the band, and everyone was running in all directions. We didn't even get a warning, and I didn't have my gas mask on. As soon as my eyes cleared, I could see Jessep taking aim at band members. I didn't even know the shells were bean bags at that point. I was panicking, but our Supervisor, Captain Smith was yelling and pointing, "Get that one over there!" They didn't do a necropsy on the dog that died, Rags, but I would bet he got nailed by one of those bags, too.

7. Anyway, the investigation into the band incident resulted in Captain Smith getting fired. Turns out he had been involved in some graft on the side, too. I guess the Justice Department felt my actions under the circumstances were appropriate, and I was promoted all the way to Assistant Chief. We kept Jessep on for a little while, to see if his/her behavior would improve after Captain Smith left. For the most part Jessep was a decent officer. A little nitpicky about things we generally don't get uptight about, but s/he did have the highest number of jaywalking citations we ever had during his/her tenure. We had to let Jessep go, though, when we got too many complaints about his/her attitude towards people parking improperly. You simply can't get in peoples' faces like a drill sergeant if they park crookedly. Also, I never felt like Jessep had a healthy respect for the chain of command. When it came time to review his/her file and make a determination about his employment I was surprised to find that there were no reprimands in the file. None. I guess former Captain Smith didn't believe in them. The lack of documentation ended up not mattering, because Jessep took the termination decision in stride, and that was that.

8. After we let Jessep go, I got a call from someone at Carley Corners named Brook. That is when I learned that Jessep had applied to be a mall cop. Brook asked me what I thought of Jessep, but there was something about the way the question was asked that led me to believe Brook really didn't care about my opinion. At first, I tried to be diplomatic. I told Brook that Jessep played by all the rules, and that s/he would enforce any rules they wanted enforced. I said that Jessep had a passion for law enforcement and took his/her job very seriously. Brook didn't really ask any questions about Jessep being high strung or anything and I didn't really think about it at first...I was just coming off a swing shift, I had lots of people vying for attention, and I was pretty tired. Also, Brook seemed to be in a hurry to get off the phone. Just as the brief conversation was about to end, the acetylcholine started to (finally) kick into overdrive. I told Brook that I really didn't have time to go into details, but s/he should probably read Jessep's exit interview. Brook said, "If you really think it is that important, fax it to me." As I scribbled down the fax number, I casually mentioned something about Jessep and the marching band incident. Brook had no idea what I was talking about! I said something like, "It was in all the papers – look it up!" And that was the end of the conversation.

9. After the chaos died down, I asked my secretary to get Jessep's personnel file so I could fax what Brook needed. The only relevant information I could find to send to Brook were the termination letter and the exit interview, but there was a page missing from the exit interview. I went ahead and faxed the letter first, and the transmission sheet said it went through. I found the missing page from the exit interview about 30 minutes later (it was stuck to the back of the previous page...like I said, I was tired), and I faxed that as well. The transmission sheet said it went through too, so I put the two transmission sheets in the file and went home. Of course, once I heard about this Fasing thing, it left me grateful that we had let Jessep go. I could just see him/her doing something like that to Jean Stuart.

10. I do know Stuart from around town, too. After all, I grew up here. Stuart can be counted on to be a thorn in the town council's side on police matters, so I can see the two of them clashing. Shoot, I even remember arresting Stuart for public drunkenness some years back. They let him/her plead to disorderly conduct, even though s/he was screaming at an empty police car parked down the street from his/her house. The responding officer tried to get him/her to go back home but Stuart kept going on and wouldn't stop until s/he was finally put in the backseat of that car. I know Stuart won't back down from a confrontation, but maybe s/he and Jessep could have just talked it out.

11. Someone called 911 after the confrontation between Stuart and Jessep and an officer did respond. No one was arrested and Stuart was transported to Prescott Medical Center. I believe s/he was released within a day or so with a fractured hip. Again, I'm not really that surprised that something like this happened. I don't know why the mall management let Jessep run around that place with a Faser like that. I figured Brook would know better than to give Jessep high powered weaponry like that after what happened with the band. Going from shooting kids with a bean bag shotgun to electrocuting a senior citizen with over 50,000 volts is not a big jump. I don't know about Jessep's claims of self-defense, I thought everybody knew you didn't touch Toni/Tony Jessep without permission. All Brook had to do was read my comments on the exit interview.

Signed,

**Ted/Teddi Exley**  
Ted/Teddi Exley

SIGNED AND SWORN to me at 3:15 PM, October 29, 2020.



C.M. McCormack, Notary Public

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**WITNESS ADDENDUM**

I have reviewed this statement, previously made by me, and I have nothing of significance to add at this time. The material facts are true and correct.

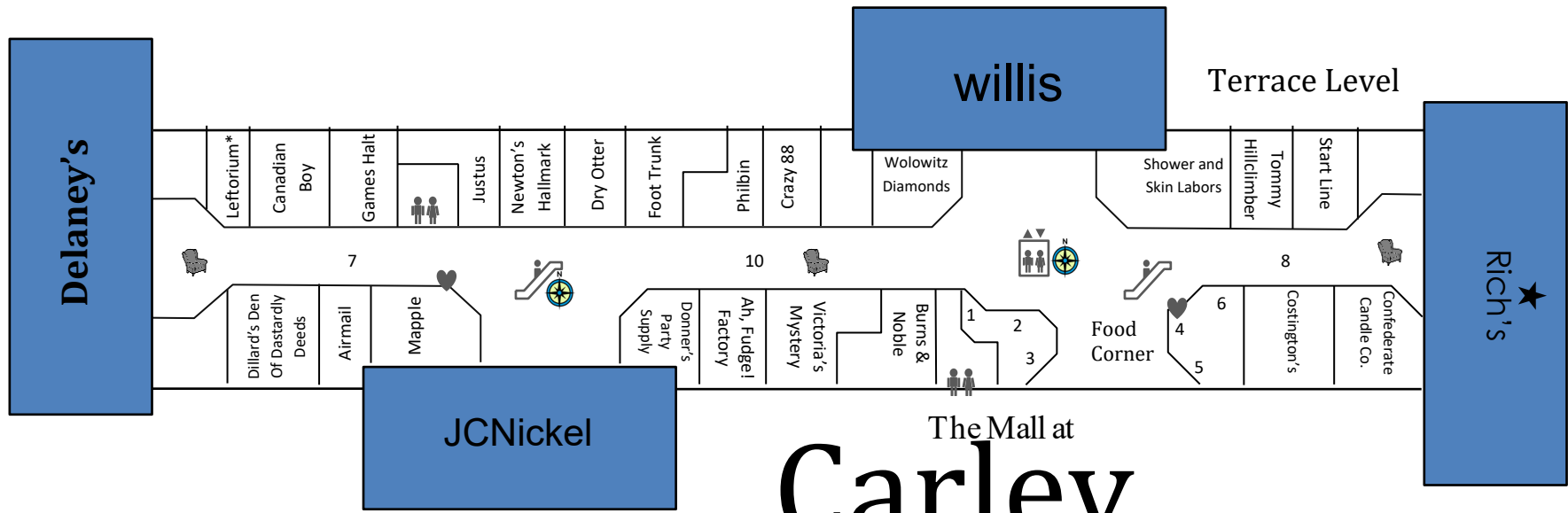
Signed,

~~Ted/Teddi Exley~~  
Ted/Teddi Exley

SIGNED AND SWORN to me before 8:00 a.m. on the day of this 30<sup>th</sup> day of October, 2020.



C.M. McCormack  
C.M. McCormack, Notary Public



	Escalator		Restrooms
	Elevator		Wheelchairs
	Stroller Rental		ATM
	Soft Play Area		AED
	Soft Seating Area		Mail Directory
	Kiosk Location		Mail Security
* = stores coming soon			

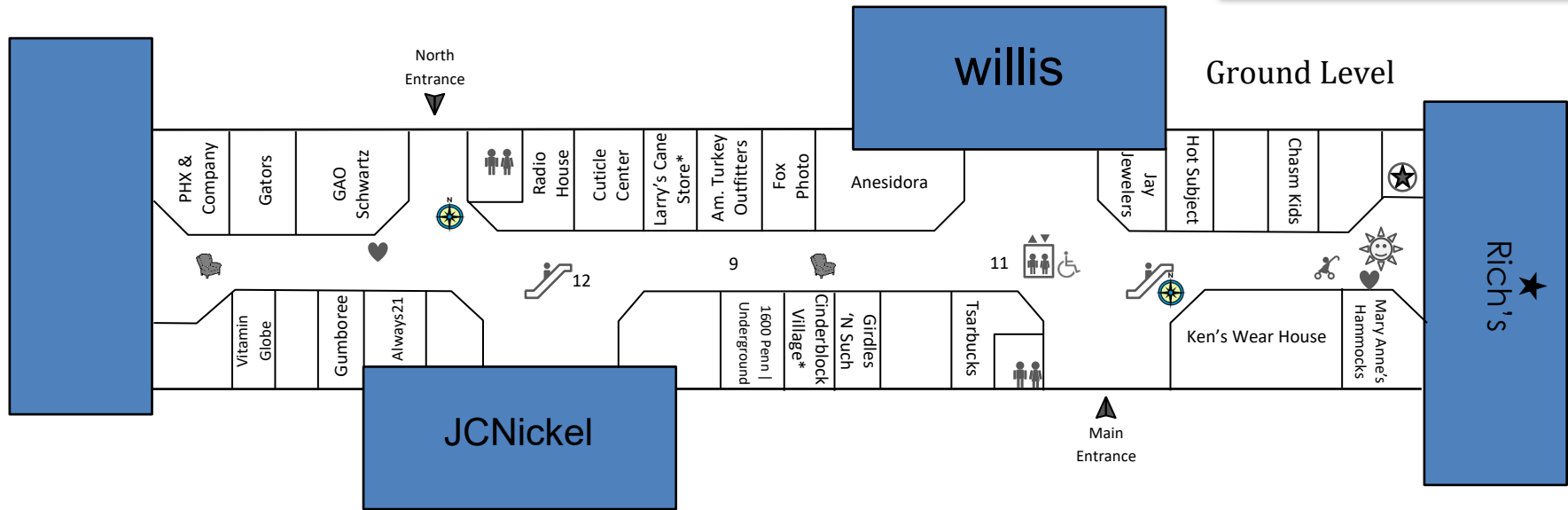
**Food Corner:**

1. Devil Donuts	4. Nick 'N Nat's Pizza
2. Bob's Burgers	5. Tube
3. The Hunger Games	6. Uncle Andy's

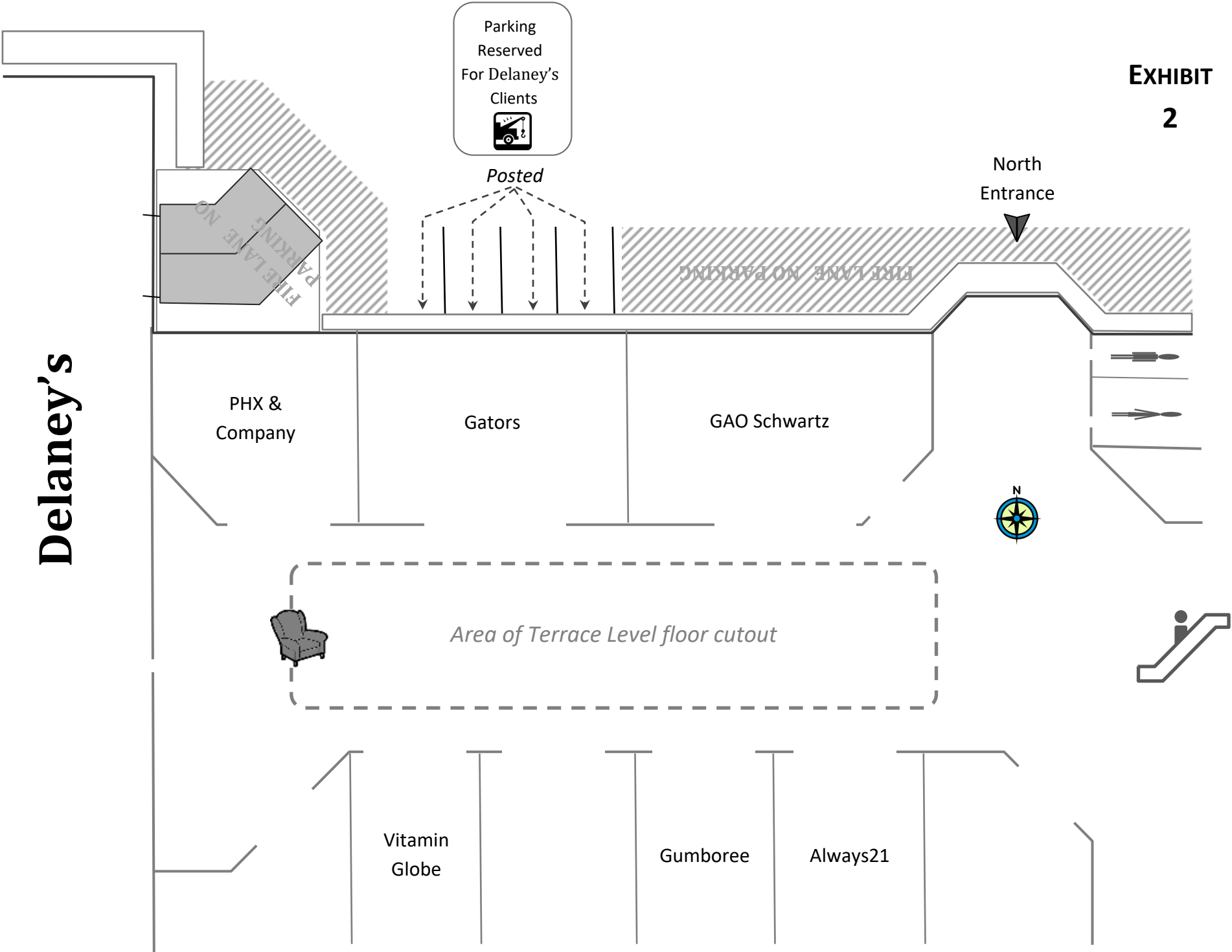
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**Kiosks:**

7. Cookie Colossus	10. Reactive
8. The Jerky Hut	11. Slushie Prince
9. Quick-Fix	12. Yogurt Nook



**EXHIBIT  
2**





# Prescott Ledger-News

48



Detailed Forecast

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Posted: 7:15 a.m. Saturday, September 28, 2019

## Big Pine High School faculty, students claim officers used excessive force

By [Jessica Lindley](#)

Prescott Ledger-News Staff

The use of excessive force by the Yavapai County Sheriff's Department and Prescott Police Department currently is under investigation after mayhem broke out at the Big Pine High School homecoming game last night.

Authorities said officers used tear gas, a water hose and fired beanbag rounds into a large crowd of disorderly high school students and band members on Sept. 27 following a 39-38 home victory over No. 3 ranked Knibb High.

"The band was being marshaled behind the end zone to prepare for the post-game show when the game ended and they ran out onto the field. I expect the band to behave in a much better fashion and obey the commands of the directors and drum majors," said BPHS Band Director Marion Roberts. "However, for the police department to use tear gas and water hoses against the band is completely out of line. I understand teenagers can be easily excitable, but this is no way to treat this award-winning program. I look forward to the results of the investigations."

The celebration shifted to panic moments after the 221-member Big Pine High School Marching 76ers prepared to take the field for its post-game show. The band was positioned behind the east end zone waiting to take the field when the home crowd began to surge against a chain-linked fence circling the track moments after David Moss, the junior placekicker for BPHS, kicked the game winning field goal with :04 left in the game.

Police said spectators jumped the fence and rushed the field just as the band ran onto the field to celebrate. Reports indicate that Roberts and the stadium announcer attempted to gain control over the crowd, to no avail.

Officers with the Yavapai County Sheriff's Department, which usually handles security for the football games, escorted game officials and Knibb High players from the field as Prescott Police performed crowd control by the home stands.

Authorities said officers were able to keep most of the crowd behind the fence; therefore, Prescott Police Capt. Dudley Smith reportedly ordered Lt. Bonnie Douglas and Lt. Ted/Teddi Exley to shift their focus on addressing the band.

The lieutenants reportedly urged the crowd to stay calm and clear the field, but because the noise level had nearly doubled with the crowd cheering, the band playing and the announcers giving commands over the PA system, attempts to control the situation were unsuccessful.

Witnesses reportedly overheard Smith order Lt. Tony/Toni Jessep to retrieve the tear gas and fire on his command. Jessep reportedly complied with the order and widespread mayhem started as the tear gas began to affect the band members on the field. Authorities said the gas drifted to the sidelines, also impacting the Big Pine football players and cheerleaders.

As the crowd began to scatter, several players reportedly ran into others on the field, causing injuries to several band members and a cheerleader.

Dr. Nicholas Barker, attending physician at Prescott Medical Center, said three students were transported to the hospital and admitted to the emergency department for treatment.

"We had one student with a broken arm, one student with a sprained ankle and three broken ribs, and a third student with a mild concussion. All are expected to recover fully with home supervision," Barker said, adding that the students have been released to their parents.

Samantha Winthrop, a sophomore trumpet player, was one of the students injured at last night's game. She stated that the tear gas caused her to "choke" and made her "eyes tear up" and she suffered a broken arm.

"Everyone panicked, and we started to run away from the cloud in the air," she recounted. "My friend and I ran into each other and we both fell down, and I got stepped on by a bunch of people. I'm sad I won't be able to play for the rest of the season."

Heather Setzer, the injured cheerleader, said she witnessed one of the officers "acting all crazy" and "yelling at everyone to get out of the area or be shot."

"It was nuts," she added. "All of us (cheerleaders) were stuck between the band and the fence, trying to get away from the gas. A few of the officers were trying to help push us back so we'd be able to get off the fence and move."

The student also claimed that the same officer was using a water hose on the band and was soon after shooting a shotgun into the crowd; however, officials have clarified that the officer was shooting beanbag rounds in an attempt to get the crowd to disperse.

"A few seconds later, s/he had a shotgun raised and shot at the crowd," Setzer said. "I heard a kid behind me in the band yell and he kind of slumped down, holding his side. I looked at the officer and it looked like s/he was almost grinning. S/He was about to shoot again when the crowd broke, and I was able to get away from him/her."

Setzer's head injury occurred when she attempted to get away.

"I think I got a cut on my head when a tuba fell down and whacked me," she said.

Gary Tyrell, a senior BPHS trombone player, also was injured in the incident but did not comment.

In addition to the three students transported to the hospital, 14 band members were treated for minor injuries. Rags, the band's small white terrier mascot, was killed after being trampled by the band during the chaos.

BPHS saxophone player Jack Long, who came out of the incident unscathed, said he was saddened by Rags' death.

"Thankfully, I didn't really get hurt, except for my eyes and throat from the gas," she said. "My section was on the side by the visitor's stands, so when we all started to scatter, I was able to get out pretty quickly. I hate that Rags got killed, though. He was a great dog. We're going to miss him."

The U.S. Department of Justice is expected to launch a civil rights investigation and Big Pine High School Assistant Principal, Rachel Jackson, said the school is cooperating with all investigations.

“The school will cooperate fully with the investigations into what happened after yesterday’s game,” she said. “We expect better of our law enforcement partners at school events.”

Smith was contacted for this article but refused to comment due to the ongoing investigation.



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224



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## MORE NEWS

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[Yavapai County Senior Center offers underwater basket weaving classes](#) 

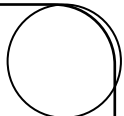
# Prescott Police Department

<b>To:</b>	Jamie Brook	<b>From:</b>	Ted/Teddi Exley
<b>Fax:</b>	928 - 555- 4665	<b>Pages:</b>	2
<b>Phone:</b>	[Type the recipient phone number]	<b>Date:</b>	1.8.20 20
<b>Re:</b>	Jessep Letter	<b>CC:</b>	[Type text]

<input type="checkbox"/> Urgent	<input type="checkbox"/> For Review	<input type="checkbox"/> Please Comment	<input type="checkbox"/> Please Reply	<input type="checkbox"/> Please Recycle
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**Comments:**

Here is the termination letter for Lt. Jessep. I'll send his/her exit interview in a few minutes; I'm looking for the second page.



# Prescott Police Department

222 S Marina St ♦ Prescott, AZ 86303

**EXHIBIT 4(B)**

*CHIEF OF POLICE*  
*Eric Lassard*

*ASSISTANT CHIEF OF POLICE*  
*Ted/Teddi Exley*

---

December 19, 2019

Tony/Toni Jessep  
438 Waleska Avenue  
Prescott, AZ 86303

Dear Lt. Jessep,

This letter is to inform you that your employment with the Prescott Police Department is being terminated for the following reason(s):

1. Failure to respect the integrity of the command structure
2. Failure to follow orders of immediate supervisor

You may contest this termination by filing an appeal within ten (10) days by filling out the appropriate portion of this letter and sending it to the above-listed address. This appeal will be heard by the Prescott Civilian Review Panel. Failure to file said appeal will result in the loss of your ability to administratively contest or review your termination.

Very truly yours,

**T. Exley**

Assistant Chief Ted/Teddi Exley

- I wish to file an appeal to the Prescott Civilian Review Panel.  
 I do not wish to contest this decision.

**TRJ**

\*\*\*\*\*  
\*\*\* FAX TRANSMISSION REPORT \*\*\*  
\*\*\*\*\*

TRANSMISSION OK

JOB NO : 15562  
DESTINATION NUMBER : 928-555-4665  
SENT AT : 01/08/2020 08:43  
USAGE TIME : 0:48  
PGS. SENT : 2  
RESULT : OK

\*\*\*\*\*

EXHIBIT 4(B)

Prescott Police Department

222 S Marina St ♦ Prescott, AZ 86303

CHIEF OF POLICE  
Eric Lassard

ASSISTANT CHIEF OF POLICE  
Ted/Teddi Exley

December 19, 2019

Tony/Toni Jessep  
438 Waleska Avenue  
Prescott, AZ 86303

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Very truly yours,

**T. Exley**

Assistant Chief Ted/Teddi Exley

- I wish to file an appeal to the Prescott Civilian Review Panel.  
 I do not wish to contest this decision.

**TRJ**

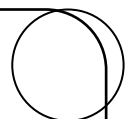
# Prescott Police Department

To: Jamie Brook From: Ted/Teddi Exley  
Fax: 928 - 555-4665 Pages: 3  
Phone: Date: 1.8.20 20  
Re: Jessep Exit Interview CC:

<input type="checkbox"/>	Urgent	<input type="checkbox"/>	For Review	<input type="checkbox"/>	Please Comment	<input type="checkbox"/>	Please Reply	<input type="checkbox"/>	Please Recycle
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**Comments:**

Here is the Exit interview for Lt. Jessep. Sorry it took so long. Feel free if you need any other information about Lt. Jessep or discuss this any further.



# Prescott Police Department

## Exit Interview

Your opinion is important to us. Additional comments and suggestions are encouraged.

Name (optional)	Tony/Toni Jessep	Department	Patrol
Supervisor (optional)	Assistant Chief Ted/Teddi Exley	Position	Lieutenant
Date/time of interview review	December 19, 2019 / 1300 hours	Reviewer	Assistant Chief Ted/Teddi Exley

1	Why are you leaving the company?	<input type="checkbox"/> Personal Reason <input type="checkbox"/> Medical Benefits <input type="checkbox"/> Quality of Supervision <input type="checkbox"/> Work Environment <input checked="" type="checkbox"/> Terminated
2	<p>Please explain your reason(s) for leaving in more detail.</p> <p>After Captain Smith "retired", the management style change dramatically for the worse. The new commanding officers were micromanaging too much and didn't let the patrol officers do their job without nitpicking everything we did. I feel like my enthusiasm and dedication to the job wasn't appreciated and I was marginalized, especially after what happened with the marching band. Everything was turned upside down after that and it just became an very uninspiring, frustrating place to work.</p>	
3	<p>What suggestions for improvement do you have for us?</p> <p>Let the trained, dedicated police officers be police officers and not social workers! We're not out there to give hugs and make everyone feel better about themselves. We're there to protect the public and prosecute the criminals.</p>	
4	If we implemented those suggestions, would you return to work here?	<input checked="" type="checkbox"/> Yes <input type="checkbox"/> No
5	Would you recommend this company to your friends as a good place to work?	<input type="checkbox"/> Yes <input checked="" type="checkbox"/> No
6	I believe that I was treated like a valuable member of the company.	<input type="checkbox"/> Strongly Agree <input type="checkbox"/> Somewhat Agree <input type="checkbox"/> Somewhat Disagree <input checked="" type="checkbox"/> Strongly Disagree
7	My immediate supervisor let me know when I was doing a good job.	<input type="checkbox"/> Strongly Agree <input type="checkbox"/> Somewhat Agree <input checked="" type="checkbox"/> Somewhat Disagree <input type="checkbox"/> Strongly Disagree
8	I felt free to suggest to my supervisor changes that would improve my department.	<input type="checkbox"/> Strongly Agree <input type="checkbox"/> Somewhat Agree <input type="checkbox"/> Somewhat Disagree <input checked="" type="checkbox"/> Strongly Disagree
9	My job duties and responsibilities were clearly defined.	<input type="checkbox"/> Strongly Agree <input checked="" type="checkbox"/> Somewhat Agree <input type="checkbox"/> Somewhat Disagree <input type="checkbox"/> Strongly Disagree
10	I received the proper training in order to perform my job effectively.	<input checked="" type="checkbox"/> Strongly Agree <input type="checkbox"/> Somewhat Agree <input type="checkbox"/> Somewhat Disagree <input type="checkbox"/> Strongly Disagree
11	Employee problems and complaints were resolved fairly and promptly in my department.	<input type="checkbox"/> Strongly Agree <input type="checkbox"/> Somewhat Agree <input type="checkbox"/> Somewhat Disagree <input checked="" type="checkbox"/> Strongly Disagree
12	If I had questions or concerns, I felt comfortable speaking with:	
	My immediate supervisor	<input type="checkbox"/> Strongly Agree <input type="checkbox"/> Somewhat Agree <input type="checkbox"/> Somewhat Disagree <input checked="" type="checkbox"/> Strongly Disagree
	Upper management	<input type="checkbox"/> Strongly Agree <input type="checkbox"/> Somewhat Agree <input checked="" type="checkbox"/> Somewhat Disagree <input type="checkbox"/> Strongly Disagree

	Human resources	<input type="checkbox"/> Strongly Agree	<input type="checkbox"/> Somewhat Agree
		<input checked="" type="checkbox"/> Somewhat Disagree	<input type="checkbox"/> Strongly Disagree
13	I was kept well informed about the company, its policies and procedures, and other important information.	<input type="checkbox"/> Strongly Agree	<input type="checkbox"/> Somewhat Agree
		<input checked="" type="checkbox"/> Somewhat Disagree	<input type="checkbox"/> Strongly Disagree
14	I felt that the company provided me with job security.	<input type="checkbox"/> Strongly Agree	<input checked="" type="checkbox"/> Somewhat Agree
		<input type="checkbox"/> Somewhat Disagree	<input type="checkbox"/> Strongly Disagree
15	Please rate the benefits that you received at the company (keeping in mind the benefits offered by other companies that you have worked for):		
	Medical	<input checked="" type="checkbox"/> Excellent	<input type="checkbox"/> Good
		<input type="checkbox"/> Fair	<input type="checkbox"/> Poor
	Dental	<input type="checkbox"/> Excellent	<input checked="" type="checkbox"/> Good
		<input type="checkbox"/> Fair	<input type="checkbox"/> Poor
	Vision	<input type="checkbox"/> Excellent	<input checked="" type="checkbox"/> Good
		<input type="checkbox"/> Fair	<input type="checkbox"/> Poor
	Paid time off	<input type="checkbox"/> Excellent	<input checked="" type="checkbox"/> Good
		<input type="checkbox"/> Fair	<input type="checkbox"/> Poor
	401(k) plan	<input type="checkbox"/> Excellent	<input type="checkbox"/> Good
		<input checked="" type="checkbox"/> Fair	<input type="checkbox"/> Poor
17	Please list any additional benefits that you would have wanted the company to offer [Click here to enter text.]		
18	Do you consent for this interview document to be shared with future employers?	<input checked="" type="checkbox"/> Yes	<input type="checkbox"/> No

Use the space provided below for any additional comments:

Reviewer addendum:

At the above-stated date and time I conducted the exit interview with Tony/Toni Jessep. After reviewing his/her exit interview questionnaire, I asked Jessep if there was anything s/he wanted to add that wasn't written down. Jessep declined to add anything to the questionnaire. I then discussed the reasons for termination, which included (1) morale problems with co-workers, (2) "personal space" issues, (3) the difficulty transitioning to a new command staff after the departure of Captain Smith, and (4) perceived overzealous attitude when dealing with parking violations. Specifically, I outlined my observations concerning Jessep's threatening and potentially dangerous overreactions to seemingly innocuous physical contact as well as the incident involving the Yavapai County High School football game, and the poor decision-making that was exhibited. Finally, I communicated my impression that when Jessep is faced with any adverse situation (and even in situations that are not adverse to average individuals in our position), s/he tended to respond with more force than necessary to equalize the situation. When asked for any comment on these issues, Jessep remained silent. After about 20 seconds of silence, s/he said, "Is that all, Assistant Chief?" Jessep was dismissed, and the interview terminated.

\*\*\*\*\*  
 \*\*\* FAX TRANSMISSION REPORT \*\*\*  
 \*\*\*\*\*

TRANSMISSION OK

JOB NO : 15565  
 DESTINATION NUMBER : 928-555-4665  
 SENT AT : 01/08/2020 09:17  
 USAGE TIME : 1:36  
 PGS. SENT : 3  
 RESULT : OK

\*\*\*\*\*

**EXHIBIT 5(B)**

### Prescott Police Department

**Exit Interview**

Your opinion is important to us. Additional comments and suggestions are encouraged.

Name (optional)	Tony/Toni Jessep	Department	Patrol
Supervisor (optional)	Assistant Chief Ted/Teddi Exley	Position	Lieutenant
Date/time of interview review	December 19, 2019 / 1300 hours	Reviewer	Assistant Chief Ted/Teddi Exley

1	Why are you leaving the company?	<input type="checkbox"/> Personal Reason <input type="checkbox"/> Medical Benefits <input type="checkbox"/> Quality of Supervision <input type="checkbox"/> Work Environment <input checked="" type="checkbox"/> Terminated
2	Please explain your reason(s) for leaving in more detail. After Captain Smith "retired", the management style change dramatically for the worse. The new commanding officers were micromanaging too much and didn't let the patrol officers do their job without nitpicking everything we did. I feel like my enthusiasm and dedication to the job wasn't appreciated and I was marginalized, especially after what happened with the marching band. Everything was turned upside down after that and it just became an very uninspiring, frustrating place to work.	
3	What suggestions for improvement do you have for us? Let the trained, dedicated police officers be police officers and not social workers! We're not out there to give hugs and make everyone feel better about themselves. We're there to protect the public and prosecute the criminals.	
4	If we implemented those suggestions, would you return to work here?	<input checked="" type="checkbox"/> Yes <input type="checkbox"/> No
5	Would you recommend this company to your friends as a good place to work?	<input type="checkbox"/> Yes <input checked="" type="checkbox"/> No
6	I believe that I was treated like a valuable member of the company.	<input type="checkbox"/> Strongly Agree <input type="checkbox"/> Somewhat Agree <input type="checkbox"/> Somewhat Disagree <input checked="" type="checkbox"/> Strongly Disagree
7	My immediate supervisor let me know when I was doing a good job.	<input type="checkbox"/> Strongly Agree <input type="checkbox"/> Somewhat Agree <input checked="" type="checkbox"/> Somewhat Disagree <input type="checkbox"/> Strongly Disagree
8	I felt free to suggest to my supervisor changes that would improve my department.	<input type="checkbox"/> Strongly Agree <input type="checkbox"/> Somewhat Agree <input type="checkbox"/> Somewhat Disagree <input checked="" type="checkbox"/> Strongly Disagree
9	My job duties and responsibilities were clearly defined.	<input type="checkbox"/> Strongly Agree <input checked="" type="checkbox"/> Somewhat Agree <input type="checkbox"/> Somewhat Disagree <input type="checkbox"/> Strongly Disagree
10	I received the proper training in order to perform my job effectively.	<input checked="" type="checkbox"/> Strongly Agree <input type="checkbox"/> Somewhat Agree <input type="checkbox"/> Somewhat Disagree <input type="checkbox"/> Strongly Disagree
11	Employee problems and complaints were resolved fairly and promptly in my department.	<input type="checkbox"/> Strongly Agree <input type="checkbox"/> Somewhat Agree <input type="checkbox"/> Somewhat Disagree <input checked="" type="checkbox"/> Strongly Disagree
12	If I had questions or concerns, I felt comfortable speaking with:	
	My immediate supervisor	<input type="checkbox"/> Strongly Agree <input type="checkbox"/> Somewhat Agree <input type="checkbox"/> Somewhat Disagree <input checked="" type="checkbox"/> Strongly Disagree
	Upper management	<input type="checkbox"/> Strongly Agree <input type="checkbox"/> Somewhat Agree <input checked="" type="checkbox"/> Somewhat Disagree <input type="checkbox"/> Strongly Disagree

The Mall at  
**Carley  
Corners**

**TO:** Jamie Brook, manager, Carley Corners  
**FROM:** Tony/Toni Jessep, Chief of Security, Carley Corners<sup>TRJ</sup>  
**SUBJECT:** Requested Security Upgrades  
**DATE:** January 30, 2020  
**CC:** Paul Arthur, VP of Mall Operations, Garfunkel Properties

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After a few weeks of time at the mall as the new Chief of Security, I have been able to take stock of the facility's current security situation and formally request the following changes and improvements be adopted:

1. **Uniforms** – As professional security officers, the department personnel need to look the part. The current uniforms are cheaply made and look unprofessional. The department uniforms should be upgraded to either the LawPro or Flying Cross line of uniforms. This should include long-sleeve shirts and matching pants, as well as appropriate footwear and outdoor winter gear.
2. **Officer Equipment** – Each officer needs to be outfitted with the following:
  - 26" ASP Air Weight Expandable baton
  - ASP Tactical Rigid Handcuffs (black)
  - Streamlight Pro Tac HL Flashlight
  - LawPro Neoprene Cut-Resistant Uniform Gloves with carrying pouch
  - Sabre Red MK-9 Crowd Management pepper spray
  - FASER X2 Conducted Electrical Weapon (CEW) with accompanying holster
3. **Radio upgrade** – The current department radios are out of date and unreliable. They are easy to hack and are subject to several blind spots around the facility. The department needs to upgrade to Motorola's MOTOTRBO line of handheld radios. In addition, necessary repeaters (XPR 8380) need to be installed throughout the facility as necessary to maintain appropriate radio communication between officers and with the department command.
4. **Video Surveillance** – As officers cannot be in all places at all times, a video surveillance system is needed to help monitor both inside and outside areas of the facility, provide video recording to be used to prosecute criminal behavior, and help keep an eagle eye on everything. To this end, Gentec's Omnicast surveillance system should be installed throughout the facility.
5. **Access Control** – To keep unoccupied storefronts secure as well as securing non-public areas of the facility, Gentec's Synergis system needs to be installed to maintain a proper level of physical security throughout the facility. This system can be programmed to unlock designated doors remotely or on a set schedule and creates a log of access whenever a key card is used.

6. License Plate Recognition System – In an effort to track and prosecute shoplifters, loiterers and other criminal elements at the facility, Gentec’s AutoVu system is needed to monitor and track vehicles in the facility’s parking areas. This will allow a log to be created for all vehicles coming and going from the facility’s property and be useful in tracking and prosecuting suspects. This will help reduce the amount of organized retail theft that may be taking place at the facility.
7. Crowd Control – To help quickly disperse crowds without the need of tear gas or weapon firing, both of which are impractical in an enclosed setting, the facility needs a handheld acoustical device, such as the LRAD 100X, that can be deployed by officers at appropriate times. This will help break up fights the facility has seen recently, as well as disperse crowds during a high security event.

I understand that these upgrades and procurements may seem excessive, but the safety of facility patrons and security of facility property should be of the utmost priority. Without the requests above, the facility management risks damage to facility property, injury of a patron and ultimately opening the management company to a lawsuit from an incident that could otherwise have been averted.

∞  
Garfunkel Property Group

**Patron Contact Report**

*Date of Contact:* February 5, 2020

*First Name:* Philip

*Last Name:* Newton

*E-mail Address:* pnewton.bphs@studentserver.com

*Phone Number:*

*Inquiry Type:* Customer Complaint

*Property:* The Mall at Carley Corners

*Message:*

There was a fight in the food court. The security guards came in trying to break it up and one of them, Jessep, grabbed me and threw me to the ground, digging his/her knee in my back. I wasn't part of the fight and was walking by when the fight started. I got a bloody lip and my back hurts. I would have gotten out of the way if s/he'd given me the chance instead of tackling me.

---

**Report Action**

*Date Report forwarded to on-site management:* February 8, 2020

*Manager:* Jamie Brook

*Action taken:*

I discussed incident with Lt. Jessep. Lt. Jessep said Newton looked like he was part of the fight and needed to subdue him. Newton didn't comply with demands to leave the food court. We discussed mall liability when patrons get hurt on mall property, especially at the hand of a property employee. Lt. Jessep acknowledged the concern and promised to modify future responses.

  
**Garfunkel Property Group**

**Patron Contact Report**

*Date of Contact:* February 16, 2020

*First Name:* Jean

*Last Name:* Stuart

*E-mail Address:* jeanstuart37@gmail.com

*Phone Number:*

*Inquiry Type:* Customer Complaint

*Property:* The Mall at Carley Corners

*Message:*

I was waiting to meet someone to start our walk and was waiting by the bottom of the escalator in front of Willis. The security guard started yelling at me to move away from the escalator, saying I was blocking foot traffic and creating a safety hazard. I was the only one near the escalator and wasn't in anyone's way. I don't know who this guy/gal is but they were way out of line yelling at me like that.

---

**Report Action**

*Date Report forwarded to on-site management:* February 17, 2020

*Manager:* Jamie Brook

*Action taken:*

Discussed incident with Lt. Jessep. Discussed importance of customer service from all property personnel.

  
**Garfunkel Property Group**

**Patron Contact Report**

*Date of Contact:* March 3, 2020

*First Name:* Sharon

*Last Name:* Sutton

*E-mail Address:* suttonfam11@yahoo.com

*Phone Number:*

*Inquiry Type:* Customer Complaint

*Property:* The Mall at Carley Corners

**Message:**

My 3 year old son had just gotten a plain helium balloon from the Yogurt Nook and we were walking towards the escalator when he accidentally let it go. Of course he starts crying and I could not get him to stop. As we were about to get on the escalator, a security guard approached me and asked me to quiet my son. I told him what had happened with the balloon. The guard looked up and saw the balloon up on the ceiling and got agitated, saying something about this causing a security issue blocking the cameras or detectors. S/He then got angry with me and my son, demanding that I either get him to stop crying or we would have to leave the mall. I was able to get him quieted down upstairs in the bathroom. I don't appreciate his/her attitude and demands made of my upset son.

---

**Report Action**

*Date Report forwarded to on-site management:* March 5, 2020

*Manager:* Jamie Brook

*Action taken:*

Discussed incident with Lt. Jessep.  
Discussed importance of customer service from all property personnel.

  
**Garfunkel Property Group**

**Patron Contact Report**

*Date of Contact:* March 20, 2020

*First Name:* Jean

*Last Name:* Stuart

*E-mail Address:* jeanstuart37@gmail.com

*Phone Number:*

*Inquiry Type:* Customer Complaint

*Property:* The Mall at Carley Corners

*Message:*

When I came out to my car, I found a “parking ticket” under my windshield wiper, left by Jessep. S/He can’t give me a parking ticket! S/He’s not a real cop!! On the ticket, Jessep said my left front tire was on the line of the handicapped parking space and I was in “violation of illegally parking in a reserved spot”. I’m not paying this. If s/he wants to go write tickets, s/he needs to get back on the force somehow.

---

**Report Action**

*Date Report forwarded to on-site management:* March 22, 2020

*Manager:* Jamie Brook

*Action taken:*

Discussed complaint with Lt. Jessep. Security office will stop writing tickets but will address parking concerns with patrons verbally on as-needed basis.

  
**Garfunkel Property Group**

**Patron Contact Report**

*Date of Contact:* March 30, 2020

*First Name:* Jean

*Last Name:* Stuart

*E-mail Address:* jeanstuart37@gmail.com

*Phone Number:*

*Inquiry Type:* Customer Complaint

*Property:* The Mall at Carley Corners

*Message:*

Jessep got up in my face about talking too loud in the seating area in front of Delaney's. This was at 11:30 in the morning. I wasn't yelling or causing a scene (like s/he did in yelling at me about me "yelling"). This is crap. This guy's/gal's gotta go!

---

**Report Action**

*Date Report forwarded to on-site management:* April 2, 2020

*Manager:* Jamie Brook

*Action taken:*

Discussed complaint with Lt. Jessep. Customer is habitual complainer and confrontational.

ACCUSATION	18-CR-0559-2
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Prosecutor:  
Jennifer Mann

State of Arizona, Yavapai County Superior Court

**State of Arizona**  
*versus*  
**Jean Stuart**

Offenses:

**Count 1: PUBLIC DRUNKENNESS**  
**(A.R.S. § 16-11-41)**

\_\_\_\_\_  
We the jury find the defendant

\_\_\_\_\_  
The defendant herein waives a copy of indictment, list of witnesses, formal arraignment and pleads not guilty.

\_\_\_\_\_  
This 15<sup>th</sup> day of April, 2012.

**Jean Stuart**

\_\_\_\_\_  
Defendant

Sharon Edenfield  
Attorney for the Defendant

\_\_\_\_\_  
Foreperson

Jennifer Mann  
Assistant District Attorney

\_\_\_\_\_  
This \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_\_.

Count 1

On behalf of the people of the State of Arizona, the undersigned, as prosecuting attorney for the county and State aforesaid, does hereby charge and accuse **Jean Stuart** with the offense of **PUBLIC DRUNKENNESS (A.R.S. § 16-11-41)** in that the said accused, in the State of Arizona and County of Yavapai, on the 23<sup>rd</sup> day of March, 2018, did appear in an intoxicated condition in a public place, which condition was made manifest by boisterousness, contrary to the laws of said State, the peace, good order and dignity thereof.

Charles L. Ruffin  
Charles L. Ruffin, District Attorney

**IN THE SUPERIOR COURT OF ARIZONA, YAVAPAI COUNTY**

**STATE OF ARIZONA versus**  
**JEAN STUART**

*Clerk to complete if incomplete:*

**CRIMINAL ACTION #:**

OTN(s): 996545122541  
DOB: 10/27/1945  
Az.. ID#: 026595741

**18-CR-0559-2**  
**JUNE TERM**

**Final Disposition:**  
**MISDEMEANOR**

**PLEA:** **VERDICT:**

Negotiated  Non-negotiated  Jury  Non-jury

**The Court enters the following judgment:**

Count; CTN; Warrant #	Charge (as indicted or accused & code section)	Disposition (Guilty, Guilty- <u>Alford</u> , Guilty- Lesser Included & code section, Not Guilty, Nolo, Nol Pros, Dead Docket)	Sentence	High & Aggravated	Fine	Concurrent/ Consecutive, Merged Suspended
1 001 08w5614 7	DISORDERLY CONDUCT (A.R.S. 16-11-39)	Misdemeanor – Guilty	12 months' probation		\$1,000	

The Defendant is adjudged guilty for the above-stated offense(s); the Court sentences the Defendant to confinement in the County Jail, with the period of confinement to be computed as provided by law.

**SENTENCE SUMMARY**

The Defendant is sentenced for a total of TWELVE (12) MONTHS PROBATION,  with the first \*\*\* to be served in confinement and the remainder to be served on probation; or  to be served on probation.

The Defendant is to receive credit for time served in custody:  from \*\*\*; or  as determined by the custodian.

- 1. The above sentence may be served on probation provided the Defendant shall comply with the Conditions of Probation imposed by the Court as part of this sentence.
- 2. Upon service of \*\*\*, the remainder of the sentence may be served on probation; PROVIDED, that the Defendant shall comply with the Conditions of Probation imposed by the Court as part of this sentence.

**GENERAL CONDITIONS OF PROBATION**

The Defendant is subject to arrest for any violation of probation. If probation is revoked, the Court may order incarceration. The Defendant shall comply with the following General Conditions of Probation: 1) Do not violate the criminal laws of any governmental unit and be of general good behavior. 2) Avoid injurious and vicious habits, especially alcoholic intoxication and narcotics and other dangerous drugs unless lawfully prescribed. 3) Avoid persons or places of disreputable or harmful character. 4) Report to the Probation Officer as directed and permit the Probation Officer to visit you at home or elsewhere. 5) Work faithfully at suitable employment insofar as may be possible. 6) Do not change your place of abode, move outside the jurisdiction of the Court, or leave ARIZONA without permission of the Probation Officer. If permitted to move or travel to another state, you agree to waive extradition from any jurisdiction where you may be found and

not contest any effort by any jurisdiction to return you to this State. 7) Support your legal dependents to the best of your ability. 8) When directed, in the discretion of the Probation Officer: (a) submit to evaluations and testing relating to rehabilitation and participate in and successfully complete rehabilitative programming; (b) wear a device capable of tracking location by means including electronic surveillance or global positioning satellite systems; (c) complete a residential or nonresidential program for substance abuse or mental health treatment; and/or (d) agree to the imposition of graduated sanctions as defined by law. 9) Make restitution as ordered by the Court.

**OTHER CONDITIONS OF PROBATION**

The Defendant is advised that violation of any Condition of Probation may subject the Defendant to a revocation of probation and the Court may require the Defendant to serve up to the balance of the sentence in confinement. The Defendant shall comply with all other Conditions of Probation as follows:

**The Defendant shall report to the Probation Office as directed by Probation.**

Sharon Edenfield Attorney at Law, represented the Defendant by:  
 employment; or  appointment.

**SO ORDERED** this 7<sup>th</sup> day of September, 2018.

*George H. Carley*

Honorable George Carley, Judge  
Yavapai County Superior Court

Prosecutor: Charles J. Ruffin  
Court reporter: Jeff Smith

**HABEAS CORPUS NOTICE**

Should the defendant seek to challenge this legal proceeding, a Petition for Habeas Corpus must be filed: within four (4) years for a Felony conviction; within twelve (12) months for a Misdemeanor conviction; within 180 days for a Misdemeanor Traffic conviction; from the date the sentence becomes final. The defendant has been so advised.

**ACKNOWLEDGMENT**

I have read the terms of this sentence or had them read and explained to me. If all or any part of this sentence is probated I certify that I understand the meaning of the order of probation and the conditions of probation. I understand that violation of a special condition of probation could result in revocation of all time remaining on the period of probation.

Jean Stuart

Defendant

September 7, 20 18

Date



**IN THE SUPERIOR COURT OF ARIZONA  
COUNTY OF YAVAPAI**

<b>JEAN STUART,</b>	)	
	)	
<b>Plaintiff,</b>	)	
	)	
<b>v.</b>	)	<b>CIVIL ACTION NO: 2020-MT</b>
	)	
<b>GARFUNKEL PROPERTY GROUP, INC., d.b.a., THE MALL AT CARLEY CORNERS</b>	)	
	)	
<b>Defendant.</b>	)	

**THE CHARGE OF THE COURT**  
[Not to be read in open court]

**Pleadings**

You have been considering the case of Jean Stuart v. Garfunkel Property Group, Inc. d.b.a. The Mall at Carley Corners, Inc. You have heard the evidence and the allegations of the parties, and I will not repeat them here. It is now my duty to instruct you on the law which you will use to render a verdict in this case.

**Burden of Proof; Generally; Preponderance of Evidence, Defined**

Plaintiff has the burden of proof, which means that the plaintiff must prove whatever it takes to make out his/her case, except for any admissions by the defendant. Plaintiff must prove his/her case by what is known as a preponderance of the evidence, that is, evidence upon the issues involved which, while not enough to wholly free the mind from a reasonable doubt, is yet sufficient to incline a reasonable and impartial mind to one side of the issue rather than the other.

Your verdict will only deal with liability – the issue of damages will be reserved for a later time.

**Credibility of Witnesses**

The jury must determine the credibility of the witnesses. In deciding this, you may consider all the facts and circumstances of the case, including the witnesses' manner of testifying, their intelligence, means and opportunity of knowing the facts to which they testify, the nature of the facts to which they testify, the probability or improbability of their testimony, their interest or lack of interest, and their personal credibility as you observe it. While you may consider the number of witnesses on each side, you are not required to decide in favor of the side with the most witnesses. You make all decisions as to the facts of this case, under the law as given you in this charge.

**Stipulations**

The parties have entered into certain stipulations that have been approved by the court. Where parties stipulate facts, this is in the nature of evidence. You may take that fact or those facts as a given without the necessity of further proof. However, you are not required to do so, and even such matters may be contradicted by other evidence. You make all decisions based on the evidence in this case.

**Conflicting Evidence; Reconciliation**

Any conflicts in the evidence are to be reconciled wherever possible. All witnesses are presumed to speak the truth and, if possible, you should not attribute a false statement to any of them. If you find that this cannot be done, then you should believe the evidence that is most reasonable and believable to you and decide the case by the

preponderance of the evidence as you find it to be.

### **Circumstantial Evidence; Direct Evidence**

Direct evidence is evidence, which immediately points to the question at issue. Indirect or circumstantial evidence is evidence, which only tends to establish a fact; it must be such as to reasonably establish that fact rather than anything else. The comparative weight of circumstantial and direct evidence on any given issue is a question of fact for you to decide.

Stated differently, direct evidence is the testimony of a witness who has seen or heard the facts to which the witness testifies and which, if believed, is sufficient to prove or establish these facts.

Circumstantial evidence is the testimony of a witness who has seen or heard the facts to which the witness testifies where from such facts, if believed, you may find other facts to exist, which are reasonable and believable to you in the light of your experience.

Where circumstantial evidence is relied upon to establish a fact or theory, it must be such as to reasonably establish that fact or theory rather than anything else.

### **Admissions**

An admission is a statement by a party, which tends to aid the cause of the opposing party. All admissions shall be carefully considered.

### **Impeachment of Witnesses**

To impeach a witness is to prove the witness is unworthy of belief. A witness may be impeached by:

- a. Disproving the facts to which the witness testified;
- b. Proof of general bad character;
- c. Proof that the witness has been convicted of a crime involving dishonesty or false statement; or
- d. Proof of contradictory statements, previously made by the witness, as to matters relevant to the witness's testimony and to the case.

If it is sought to impeach a witness by "b," "c," or "d," above, proof of the general good character of the witness may be shown. The effect of the evidence is to be determined by the jury.

If any attempt has been made in this case to impeach any witness by proof of contradictory statements previously made, you must determine from the evidence:

- a. First, whether any such statements were made;
- b. Second, whether they were contradictory to any statements the witness made on the witness stand; and
- c. Third, whether it was material to the witness's testimony and to the case.

When a witness is successfully contradicted as to a material matter, the witness's credibility as to other matters shall be a question for the jury.

Since believability of witnesses is a matter to be determined by the jury under proper instructions from the court, if an effort is made to impeach a witness, it is the duty of the jury to determine whether the effort has been successful and whether the witness is to be believed.

### **Prior Statements**

You may determine whether there was evidence that a witness testified falsely about an important fact during the course of the trial as opposed to some other time before this trial.

In doing so, you may make a determination whether the misstatement was because of an innocent lapse in memory or an intentional attempt to deceive. You should consider all the facts and circumstances of any prior statements.

### **Negligence**

The case before you is one in which the plaintiff must prove by a preponderance of the evidence that the negligence of the defendant, if any, was a proximate cause of the injuries to the plaintiff. Ordinary negligence means the absence of or the failure to use that degree of care that is used by ordinarily careful persons under the same or similar circumstances. Before a plaintiff can recover damages from a defendant in a case such as this, there must be injury to the plaintiff resulting from the defendant's negligence.

The plaintiff must prove that the defendant was negligent in one or more ways alleged in order to recover. It is not necessary for the plaintiff to prove that the defendant was negligent in every way that the plaintiff claims. If you find no negligence at all on the part of the defendant, then the plaintiff's case against the defendant ends.

An employer may be liable for hiring an employee the employer knows or in the course of ordinary care should have known was not suited for the particular employment, or by retaining them after knowledge of incompetency. However, absent a causal connection between the employee's particular incompetency for the job and the injury sustained by the plaintiff, the defendant employer is not liable to the plaintiff for hiring an employee with that particular incompetency

Proximate cause is that which, in the natural and continuous sequence, unbroken by other causes, produces an event and without which the event would not have occurred. Proximate cause is that which is nearest in the order of responsible causes, as distinguished from remote, that which stands last in causation, not necessarily in time or place, but in causal relation.

A defendant may be held liable for an injury when that person commits a negligent act that puts other forces in motion or operation resulting in the injury when such other forces are the natural and probable result of the act that the defendant committed and that reasonably should have been foreseen by the defendant. When the injuries could not reasonably have been foreseen as the natural, reasonable, and probable result of the original negligent act, then there can be no recovery. If the chain reaction that resulted from the defendant's alleged negligence, if any, meets the above tests, then the plaintiff may recover.

#### **Torts; Equal Negligence; No Recovery**

If you find that the defendant was negligent, that the plaintiff was also guilty of negligence that contributed to the plaintiff's injury and damages, and that plaintiff's negligence was equal to or greater than that of the defendant, then the plaintiff cannot recover.

#### **Torts; Comparative Negligence**

If you find that the defendant was negligent so as to be liable to the plaintiff and that the plaintiff also was negligent, thereby contributing to the plaintiff's injury and damage, but that the plaintiff's negligence was less than the defendant's negligence, then the negligence of the plaintiff would not prevent the plaintiff's recovery of damages but would require that you reduce the amount of damages otherwise awarded to the plaintiff in proportion to the negligence of the plaintiff compared with that of the defendant. The burden of proof is on defendant to prove that plaintiff was negligent, and how that alleged negligence impacts plaintiff's right of recovery.

#### **Form of Verdict**

If you believe from a preponderance of the evidence that the plaintiff is entitled to recover, you would find for the plaintiff and the form of your verdict would be: "We, the jury, find for plaintiff and against defendant on the issue of liability."

If you believe the Plaintiff is not entitled to recover, your verdict would be ""We, the jury, find for defendant.""

#### **Verdict in Writing**

Whatever your verdict in the case, it must be agreed to by each juror, it must be in writing, dated and signed by your foreperson, and it must be returned and read in court. You may write your verdict on the back of plaintiff's petition.

#### **Verdict; Unanimity**

Your verdict must be unanimous. If you cannot unanimously agree on a verdict, the judge is required by law to

declare a mistrial and retry the case before another jury. Jurors should carefully consider all the evidence in the case, consult with one another, and deliberate with a view toward reaching a unanimous verdict, consistent with your consciences and oaths as jurors.

Avoid premature fixed opinions. Do not hesitate to reexamine your views and change your opinions if, after fair and impartial discussions and deliberations with your fellow jurors, you are honestly convinced that your opinion should be changed. However, no juror is required to surrender an honest opinion differing from that of another juror merely for the purposes of reaching a unanimous verdict.

### **Court Has No Interest in Case**

I want to emphasize that anything the court did or said during the trial of this case was not intended to, and did not intimate, hint, or suggest to you which of the parties should prevail in this case. Whichever of the parties is entitled to a verdict is a matter entirely for you to determine, and whatever your verdict, it must be agreed upon by all of you.

The court's interest in the matter is that the case be fairly presented according to law and that you — as honest, conscientious, impartial jurors — consider the case as the court has instructed you and return a verdict that speaks the truth as you find the truth of the case to be.

### **Jury; Final Instructions**

One of your first duties in the jury room will be to select one of your number to act as foreperson, who will preside over your deliberations and who will sign the verdict to which all twelve of you freely and voluntarily agree.

You should start your deliberations with an open mind. Consult with one another and consider each other's view. Each of you must decide this case for yourself, but you should do so only after a discussion and consideration of the case with your fellow jurors. Do not hesitate to change an opinion if convinced that it is wrong. However, you should never surrender honest convictions or opinions in order to be congenial or to reach a verdict solely because of the opinions of the other jurors.

You may now go to the jury room, but do not begin your deliberations until I send you the pleadings and exhibits, which I will do shortly. Then you may begin your deliberations.