

1 deposition?
 2 A. Yes.
 3 Q. Okay. And did your attorney explain to you
 4 what your deposition would be like?
 5 A. Yes.
 6 Q. Okay. Do you know what a deposition is?
 7 A. Yes.
 8 Q. And do you understand what an oath is?
 9 A. Yes.
 10 Q. Okay. And an oath is what?
 11 A. Is to basically telling the truth and upholding
 12 the law and being a citizen of rank and status.
 13 Q. Okay. So could we agree that an oath is a
 14 promise to tell the whole truth and nothing but the
 15 truth?
 16 A. Yeah.
 17 Q. Okay. Do you understand that you must answer
 18 all questions truthfully and fully unless you are
 19 instructed by your attorney not to do so?
 20 A. Yes.
 21 Q. Okay. Do you understand that what you say,
 22 that is your testimony, will be taken down word for word
 23 and typed up as a transcription of your testimony?
 24 A. Yes.
 25 Q. Okay. And do you understand that the

1 question. Is that fair?
 2 A. That is quite fair.
 3 Q. Okay. And you understand that it is a crime to
 4 lie or provide false or misleading information under
 5 oath?
 6 A. Yes.
 7 Q. Okay. Now if I could get some additional
 8 background information from you. You've already given me
 9 your name. Have you ever had a name change or anything
 10 like that?
 11 A. No.
 12 Q. Okay. Any nicknames that you go by?
 13 A. Not officially, but they call me the fish man.
 14 Q. Okay. And what's your home address at the
 15 present time?
 16 A. 45-105 Mahalani Circle.
 17 Q. Okay. Do you have a business address?
 18 A. Yeah, but I'm not familiar with it. It's
 19 ThyssenKrupp Elevator, and I'm out on the field all the
 20 time. So basically I comment to them through phone. I
 21 don't really go to the office.
 22 Q. Okay. Do you know the business telephone
 23 number?
 24 A. No, but I have my boss's number. 216-2388,
 25 Darren Hamasaki.

1 transcript of your testimony may be used at trial should
 2 this case proceed that far?
 3 A. Yes.
 4 Q. Okay. Do you understand that you have an
 5 opportunity to review your deposition testimony before
 6 trial?
 7 A. I'm aware of that now.
 8 Q. Okay. So in other words, after we're finished
 9 here, the court reporter will type everything up and it
 10 will be provided to you through Mr. Wilkerson and you can
 11 review your transcript, and if there's any errors or
 12 anything like that, you can make changes to it. Do you
 13 understand?
 14 A. Yes, I understand.
 15 Q. Okay. But do you understand that if you do
 16 make any changes, these changes may be commented on at
 17 trial, if it goes that far?
 18 A. I understand.
 19 Q. Okay. If, at any time, you do not understand
 20 any question that I ask, please ask me -- or please tell
 21 me that you don't understand and you can ask me to
 22 rephrase it. Do you understand?
 23 A. Yes, sir.
 24 Q. Okay. If you do answer a question, I will
 25 assume that you have both heard and understand the

1 Q. Okay. And could I ask you for just the last
 2 four digits of your Social Security number?
 3 A. 4740.
 4 Q. Okay. Do you hold any licenses, such as a
 5 hunting license, fishing license, gun license?
 6 A. Yes.
 7 Q. Okay. Which kinds?
 8 A. The hunting, and I'm registered with the boat
 9 ramp so I can launch my boat, and I'm a yacht club
 10 member.
 11 Q. Is that the Waikiki Yacht Club?
 12 A. Kaneohe Yacht Club.
 13 Q. Okay. And what's your date of birth?
 14 A. July 19th, '56.
 15 Q. And that makes you how old in years?
 16 A. 56.
 17 Q. And was your name at birth the same that you
 18 gave us earlier today?
 19 A. Yes.
 20 Q. Okay. Where was your place of birth?
 21 A. Patterson, New Jersey.
 22 Q. Are you a U.S. citizen?
 23 A. Yes.
 24 Q. In what state are you registered to vote?
 25 A. Honolulu, Hawaii.

1 Q. How long have you lived at your present
2 residence address?
3 A. I believe it's a little over two months.
4 Q. Okay. Do you remember where you lived before
5 that?
6 A. Puahuula, 45-443, Kaneohe, Hawaii.
7 Q. Do you remember how long you lived there?
8 A. Just about eleven and a half years.
9 Q. Do you own the place you are at presently?
10 A. No. I'm renting.
11 Q. Okay. What about the Puahuula --
12 A. I was renting there, also.
13 Q. Before the Puahuula residence, where were you
14 living?
15 A. Cliff View. I think it was apartment 6.
16 Forgive me, I can't remember the name of the street, but
17 it's just off the main drag on Kaneohe town.
18 Q. Off of Kahekili Highway?
19 A. Yes.
20 Q. Okay. Are you presently married?
21 A. Yes.
22 Q. Okay. And what's your spouse's name?
23 A. Colette Desiree Fisher.
24 Q. Okay. How long have you been married?
25 A. Oh, man, I can't remember that kind of thing.

1 I believe it's been about 23 or 24 years.
2 Q. Okay. Did you ever get divorced and then
3 remarried?
4 A. No.
5 Q. Okay. Do you have -- let's see.
6 Where were you married?
7 A. It was Haiku Gardens in Kaneohe.
8 Q. When did you move to Hawaii?
9 A. '59.
10 Q. So you attended school in Hawaii?
11 A. Yes.
12 Q. Okay. Where did you go to high school?
13 A. Castle High.
14 Q. Okay. Did you graduate?
15 A. Summer school.
16 Q. Okay. What year was that?
17 A. '75.
18 Q. Did you go to take any college classes?
19 A. No.
20 Q. Did you begin working straight out of Castle?
21 A. Yes.
22 Q. Okay. What was your first employment?
23 A. Daycare center on base, Kaneohe Marine Corps
24 Air Station.
25 Q. So did you enlist in the Marines?

1 A. No.
2 Q. Were you a civilian worker?
3 A. Yes.
4 Q. Okay. Did you ever enlist in the Army or the
5 Marines or the Navy?
6 A. No.
7 Q. Do you have any children?
8 A. One.
9 Q. And --
10 A. Nicole.
11 Q. Okay. So a daughter?
12 A. Adopted.
13 Q. Okay. What's her date of birth?
14 A. Oh, boy. She's 30 now. Help me out. My math
15 is bad. That would be --
16 MR. WILKERSON: '83.
17 THE WITNESS: '83?
18 MR. WILKERSON: (Nods head.)
19 THE WITNESS: Thank you.
20 BY MR. DODD:
21 Q. Okay. And your spouse Colette, she lives with
22 you now?
23 A. Yes.
24 Q. Where does your daughter live?
25 A. Poipu on North Kalaheo, Kailua.

1 Q. Okay. Is Nicole married?
2 A. Yes.
3 Q. Okay. And what's her spouse's name?
4 A. Tracy Bottwell.
5 Q. All right. Okay. How old was Nicole when you
6 adopted her?
7 A. I believe she was 7.
8 Q. Okay. I'd like to ask you about your criminal
9 record other than the conviction for the incident in this
10 case. Have you ever been convicted of any other either
11 felony or misdemeanor?
12 A. I'm not entirely sure. I was riding at -- in
13 the rock quarry and I was in trouble up there. I don't
14 recall if they convicted me for trespassing or not.
15 Q. Were you riding a motorcycle?
16 A. Yes.
17 Q. Was that like a dirt bike?
18 A. Yes.
19 Q. Were you -- I won't say pulled over, but were
20 you stopped by the police?
21 A. Yes.
22 Q. Okay. Do you remember when this occurred?
23 A. I was probably about 14.
24 Q. Did you ever have to go to court or anything
25 for that?

1 A. I don't recall.
 2 Q. So you don't have a recollection of paying any
 3 fine or anything like that?
 4 A. No.
 5 Q. Okay. Any other arrests or anything like that?
 6 A. Does a DUI count?
 7 Q. If you -- were you arrested?
 8 A. Yes. There was an accident involved.
 9 Q. Okay. Do you remember what year that was?
 10 A. No.
 11 Q. Was it within the past ten years?
 12 A. No.
 13 Q. Was it more than 15 years ago?
 14 A. Yes.
 15 Q. Do you remember the circumstances of the
 16 accident?
 17 A. Yeah.
 18 Q. Okay. Could you describe what happened?
 19 A. I was circling Hotel Street. I was in the far
 20 left lane, persons were in the far right lane with a
 21 hooker on the hood of his car, and for whatever reason,
 22 he pulled severely to the left-hand side of the road, put
 23 his brakes on and I hit him. Such lady fell off the
 24 front and ran away. That part was not on the report.
 25 The person I hit was a Mainland person. My

1 truck was undrivable, had to get it towed, and I had a
 2 few beers, and because of that, I got arrested for a DUI.
 3 Q. Did you have to do the field sobriety test at
 4 the scene?
 5 A. No.
 6 Q. Did they bring you down to the station?
 7 A. Yes.
 8 Q. Did they have you blow into a Breathalyzer or
 9 something like that?
 10 A. I don't recall, but, yeah, I would assume so.
 11 No blood test was taken, so it must have been a breath
 12 test.
 13 Q. Was your license revoked or anything due to
 14 that incident?
 15 A. I do not recall.
 16 Q. Did you have to do any jail time as a result of
 17 that?
 18 A. No.
 19 Q. Did you pay a fine?
 20 A. Yes.
 21 Q. Do you remember how much that was?
 22 A. No, I don't remember. There was community
 23 service involved and some other criteria. I don't
 24 remember what it was.
 25 Q. Do you remember if there -- was there an

1 administrative driver's license revocation or anything
 2 like that?
 3 A. What do you mean by that?
 4 Q. Well, nowadays there's a -- driving under the
 5 influence, there's two unpleasant things that happen to
 6 you. One is the criminal case, and then there's also an
 7 administrative driver's license revocation. So they --
 8 there's two parts to it. So that's the one that takes
 9 your license usually is administrative.
 10 A. See, I don't remember them taking my license
 11 because I still got to drive in the daytime to work.
 12 Q. Okay. So there was a restriction, but you kept
 13 your license?
 14 A. Yes. That makes sense.
 15 Q. Okay. Any other arrests or anything like that
 16 that you can remember?
 17 A. No.
 18 Q. All right. Okay. Now I'd like to ask you some
 19 questions about this specific lawsuit. You are suing for
 20 an asserted violation of your Constitutional rights. Is
 21 that correct?
 22 A. Yes.
 23 Q. And your claim is that the City, through the
 24 Honolulu Police Department, violated your Constitutional
 25 rights. Is that correct?

1 A. Yes.
 2 Q. And if I understand correctly, this was due to
 3 the police department's denial of your application for a
 4 firearms permit?
 5 A. Yes.
 6 Q. Okay. What is your understanding of why the
 7 police department denied your application for a permit to
 8 acquire firearms?
 9 A. I believe it was a misunderstanding, an
 10 interpretation.
 11 Q. A misunderstanding of the law?
 12 A. Yes.
 13 Q. At the present time, the City has granted your
 14 application for a firearms permit. Is that correct?
 15 A. Yes.
 16 Q. And did you acquire a firearm after you
 17 received that permit?
 18 A. The ones that I've owned I received back.
 19 Q. Okay. Did you apply for an application to
 20 acquire an additional firearm?
 21 A. Yes.
 22 Q. Okay. Did you acquire an additional firearm?
 23 A. No.
 24 Q. Oh, okay.
 25 A. That's part of the process. You have to go

1 through all of that.
 2 Q. All of -- but you did acquire the permit to
 3 acquire an additional firearm or was the --
 4 A. It's kind of the same. The way I can explain
 5 it is to receive my properties back from the HPD, if you
 6 turn it into them or into a gunsmith and/or to a gun
 7 shop, you need to have all your papers in order to get
 8 them back. You need to show them the request to
 9 purchase.
 10 Q. Okay. Getting -- I guess, let me ask that
 11 question then. When there was the incident in 1997 and
 12 then the -- you were -- had a criminal case that arose
 13 out of that incident. Is that correct?
 14 A. Yes.
 15 Q. And you were required to surrender your
 16 firearms -- or let's say you had -- let me back up.
 17 At that time the incident occurred, you
 18 legally possessed certain firearms. Is that correct?
 19 A. Yes.
 20 Q. Okay. Could you describe which firearms you
 21 possessed at that time?
 22 A. Walther PPK .380 handgun.
 23 Q. Anything else.
 24 A. .22. It's called a Ruger 10/22 rifle. I have
 25 a bolt-action Winchester .22 as well.

1 Winchester pump .22 and the flintlock?
 2 A. I had laid them out for them to take and they
 3 left them.
 4 Q. Okay. So they informed you that they did not
 5 need to seize those?
 6 A. Yes.
 7 Q. Okay. And my understanding is that as a result
 8 of this lawsuit -- or during the pendency of this
 9 lawsuit, you acquired a firearms permit and that resulted
 10 in your -- how do I say it? That resulted in you getting
 11 back your -- the three guns that you had surrendered?
 12 A. Yes.
 13 Q. And have you -- you have not acquired any
 14 additional firearms?
 15 A. No.
 16 Q. So let me see if I -- please help me with --
 17 make sure I have -- strike that.
 18 Just so that I understand, is the lawsuit
 19 now about the violation of your Constitutional rights
 20 from the time of the denial of the permit until the time
 21 that you obtained your firearms permit? Is that correct?
 22 A. Yes.
 23 Q. Okay. So just some procedural stuff or some
 24 things. Do you believe that a person convicted of a
 25 crime of violence should be permitted to possess a

1 Q. My question was -- this is at that time in
 2 1997?
 3 A. Uh-huh.
 4 Q. Okay. Bolt-action .22 rifle. Was that a
 5 Remington?
 6 A. Winchester.
 7 Q. Oh, Winchester. Excuse me.
 8 Okay. Any other firearms?
 9 A. Not registered.
 10 Q. Okay. What are the unregistered firearms?
 11 A. Winchester pump .22.
 12 Q. Anything else?
 13 A. St. Etienne .70-caliber flintlock.
 14 Q. Anything else?
 15 A. No.
 16 Q. As a result of the criminal action in 1997
 17 through 1998, were you required to surrender all
 18 registered firearms?
 19 A. Yes.
 20 Q. And did you do so?
 21 A. Yes.
 22 Q. What about the unregistered firearms?
 23 A. They are antiques and they don't fall under
 24 that jurisdiction.
 25 Q. Okay. So you did not surrender those, the

1 firearm?
 2 MR. WILKERSON: Objection, irrelevant.
 3 You can answer.
 4 BY MR. DODD:
 5 Q. Your attorney can object -- I should have said
 6 that. Your attorney may object from time to time, but
 7 unless he tells you not to answer, then --
 8 A. I'm not really sure how to answer that because
 9 that would be a yes and no for me. Depends on the crime.
 10 MR. WILKERSON: I object to it. Vague and
 11 ambiguous. Calls for a narrative.
 12 BY MR. DODD:
 13 Q. There you go. It depends.
 14 So I'm just asking for your understanding,
 15 because it has to do with the allegations of the lawsuit.
 16 And so I'm not asking for a legal, you know, opinion,
 17 it's just your opinion.
 18 A. Yes.
 19 Q. Okay. What is your position on whether a
 20 municipality may deny a permit to acquire firearms or
 21 possess firearms to persons convicted of crimes of
 22 violence?
 23 A. What does that mean?
 24 Q. That is a little bit vague, isn't it?
 25 Do you believe it is legal for a

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1 municipality to deny a permit -- or firearms permit to a
2 person convicted of a crime of violence?

3 A. Yes.

4 Q. And so do you believe that it is legal for a
5 municipality to deny a firearms permit to persons
6 convicted of crimes of violence?

7 MR. WILKERSON: Objection, calls for a
8 legal conclusion.

9 A. Yes.

10 BY MR. DODD:

11 Q. Okay. We've already talked about the firearms
12 that you presently have.

13 And I believe you said you had a hunting
14 license?

15 A. Yes.

16 Q. Okay. What does that allow you to hunt, for
17 lack of a better term?

18 A. Pretty much anything that's on the menu. By
19 state, you have a catch limit and what you can catch
20 during the season.

21 Q. Okay. Is that for land and ocean or --

22 A. Yes.

23 Q. Okay. So is it -- is the fishing license
24 different from a hunting license?

25 A. I believe so.

1 need to get a hunting license?

2 A. Yes.

3 Q. So it's not so much what you use to kill it,
4 it's just that you're hunting animals?

5 A. Yes.

6 Q. So what do you -- what game do you typically
7 hunt?

8 A. Pheasant, deer, goat. We have a type of quail
9 here, and some geese.

10 Q. Okay. For the birds -- or, I guess, fowl, do
11 you use a shotgun for hunting?

12 A. No.

13 Q. How do you hunt those?

14 A. I hunt them with my .22.

15 Q. I would imagine that is more difficult to take
16 them down?

17 A. The challenge is there, yes. That's why I like
18 it.

19 I fish very much the same way. I use light
20 line. I only use small tackle. Give the prey a chance.

21 Q. What are the -- like the hunting license, does
22 it give you a -- you said bag limit. I guess that's a
23 number of animals you can take. Is that a per year limit
24 or per season?

25 A. Per season.

1 Q. Okay. What -- I --

2 A. I have to say I'm not sure, because DLNR, you
3 know, they -- their jurisdiction is both forest and the
4 ocean. So I would kind of think they're the same.

5 Q. Okay. This is not to trick you up. I just
6 don't know about the hunting license. So --

7 A. Yeah, I'm not sure either, but when I went to
8 class for the hunting, the gauntlet was open.

9 Q. Okay. So does the hunting license -- let me
10 just see if I can clarify this. Does it allow you to
11 hunt, let's say, wild pigs?

12 A. Yes.

13 Q. Okay. And what are the -- what does it say
14 about, like, the restrictions or anything like that?
15 Like, what is permitted? Not legally, but, I mean, you
16 know, certain things are not permitted and certain
17 things --

18 A. It's a bag limit.

19 Q. And bag limit is how many you can take?

20 A. Yes.

21 Q. Okay. What is the limit?

22 A. Gosh, I don't hunt pig. They're way too
23 dangerous for me.

24 Q. Okay. If you know, when you -- the people who
25 hunt pigs with, like, a bow, bow and arrow, do they also

1 Q. So if you're hunting deer, what's the season
2 for that?

3 A. It's -- I think it's a four-month, mostly
4 during the summer.

5 Q. Is that done on Oahu?

6 A. Molokai.

7 We do have goat here.

8 Q. Goat, yes.

9 A. Big horn ram.

10 Q. Is the season for goat -- is that the same?

11 A. Yes.

12 Q. Okay. And is it -- the hunting license, do you
13 need, like, multiple hunting licenses for the different
14 animals or do you just get a hunting license?

15 A. I was told, the class I went to, covers
16 everything.

17 Q. Okay. And do you have to renew that every
18 year?

19 A. No.

20 Q. How long is a hunting license good for?

21 A. I don't know. I think I have it with me.

22 No. It's in my car.

23 Q. Okay. But it's not a yearly renewal?

24 A. No.

25 Q. Okay. Do you remember the last time you had to

1 renew it?
 2 A. No.
 3 Q. Okay. Did you take any formalized firearms
 4 training?
 5 A. Yes.
 6 Q. Can you describe for us what that was?
 7 A. You have to go into the field. There's a
 8 trainer. They give you -- and you can bring your own
 9 firearms to handle. They show you the safety and the ins
 10 and outs of the particular.
 11 Q. Is that -- do you have to show evidence of
 12 training when you apply for a firearms permit?
 13 A. No, but they asked me for my hunting license.
 14 Q. Okay. Do you remember where that training was?
 15 Was it -- do they have it over at Koko Head?
 16 A. It was at Koko Head, yes, but the classes were
 17 held off limits.
 18 Q. So there's two parts of this training, it was
 19 some classroom time and some field time?
 20 A. Yes.
 21 Q. Do you remember when you did that?
 22 A. No.
 23 Q. Was it within the past ten years?
 24 A. 20.
 25 Q. Maybe within the past 20 years?

1 Q. Okay. So do you remember in what time period
 2 you'd had the alcohol prior to 7:00 p.m.?
 3 A. During the day.
 4 Q. Okay.
 5 A. I was out fishing.
 6 Q. Oh, okay.
 7 So you went fishing that day?
 8 A. Yes.
 9 Q. What time did you go fishing? Like, when did
 10 you leave?
 11 A. Just after 8:30, right about that, close to
 12 9:00. 8:30 to 9:00, something like that.
 13 Q. In the morning?
 14 A. Yeah, that's when I usually leave. Go bright
 15 and early.
 16 Q. Did you go by yourself?
 17 A. Yes.
 18 Q. And where did you go fishing?
 19 A. Kaneohe Bay.
 20 Q. Did you go by boat?
 21 A. Yes.
 22 Q. Did you take your own boat?
 23 A. Yes.
 24 Q. And was your boat kept in Kaneohe?
 25 A. Yes.

1 A. (Nods head.)
 2 Q. Okay. And it was here, though?
 3 A. Uh-huh.
 4 Q. That's a yes. Right?
 5 A. Yes. Pardon me.
 6 Q. Okay. Thank you.
 7 Did you achieve or have you received any
 8 awards or anything like that or -- regarding proficiency
 9 with firearms?
 10 A. No.
 11 Q. Okay. I'd like to start and get into the
 12 incident of November 5, 1997. Do you remember that date?
 13 A. Yes.
 14 Q. Okay. And I'd like to start by asking you if
 15 you'd had any alcoholic beverages within the 24-hour
 16 period before the occurrence?
 17 A. Yes.
 18 Q. Okay. Can you describe the kind of drink?
 19 A. Beer.
 20 Q. Okay. Do you remember approximately how much?
 21 A. I believe about a six-pack.
 22 Q. Okay. My understanding of the events is it
 23 occurred at approximately 7:00 p.m. at night. Is that
 24 correct?
 25 A. Approximately.

1 Q. Okay. And what time did you return to --
 2 A. From fishing?
 3 Q. Fair enough.
 4 A. It was kind of late, 4:30, 5:00-ish. I usually
 5 spend the whole day out there.
 6 Q. And do you fish by trolling?
 7 A. Yes.
 8 Q. Okay. So that means you have a motorboat as
 9 opposed to a sailboat?
 10 A. Yes.
 11 Q. And what time did you get off the water?
 12 A. 4:30-ish.
 13 Q. And then you -- at some point, you arrived
 14 home?
 15 A. Uh-huh.
 16 Q. Do you remember what time -- that's a yes?
 17 A. No, I don't remember the time I arrived home.
 18 Q. Okay. So -- I'm sorry. I messed up my
 19 question. Do you remember what time you arrived home
 20 from fishing that day?
 21 A. No, I don't.
 22 Q. Okay. Was this day a -- do you remember if it
 23 was a weekend or a weekday, November 5th?
 24 A. No.
 25 Q. On November 5th, 1997, were you involved in an

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1 argument or disagreement with your wife or daughter?
 2 A. With my wife.
 3 Q. Okay. And approximately what time did the
 4 argument or disagreement begin?
 5 A. I don't recall the exact time. Around
 6 dinnertime, as close as I can get.
 7 Q. Were you in your residence?
 8 A. Yes.
 9 Q. Okay. And what was the address of that?
 10 A. If I can remember that. Been there for ten
 11 years.
 12 Don't recall the address. That was off Kam
 13 in Kaneohe.
 14 Q. Okay. But it was not the Puahuula one?
 15 A. No.
 16 Q. Was that a house or an apartment?
 17 A. Apartment.
 18 Q. And who was living there at the time?
 19 A. My daughter, my wife and myself.
 20 Q. Do you remember what the argument was about?
 21 A. No.
 22 Q. Do you remember, was there -- was it a verbal
 23 argument?
 24 A. Yes.
 25 Q. Do you remember what the -- do you have any

1 Q. Do you know what she was frustrated about?
 2 A. She had been drinking.
 3 Q. Do you remember anything that she said?
 4 A. Mostly the nasty stuff.
 5 Q. Were there acts by your wife which incited the
 6 argument?
 7 A. I'm not sure what you mean by acts that excited
 8 her.
 9 Q. I said incited.
 10 A. Incited?
 11 Other than the alcohol driven.
 12 Q. Did she -- I mean, did she -- was she making
 13 verbal attacks at you?
 14 A. Yes.
 15 Q. Okay. Do you remember anything that she said?
 16 A. It was nasty, some swear words.
 17 Q. Was it -- I mean, was she saying things like
 18 she wanted you to help around the house?
 19 A. No.
 20 Q. Was she complaining that you were staying out
 21 late?
 22 A. No.
 23 Q. Was she complaining that you were working
 24 excessive hours?
 25 A. No.

1 recollection of what you were arguing about?
 2 A. No.
 3 Q. Okay. So you don't remember the substance of
 4 the conversation between you and your wife?
 5 A. It was frustration.
 6 Q. Was it frustration on your part or her part?
 7 A. I would -- on her part.
 8 Q. And do you know what she was frustrated about?
 9 A. No.
 10 Q. What about tone of voice? Was there yelling
 11 and screaming?
 12 A. Stern on my half, screaming on her half.
 13 Q. Do you remember any specific gestures that she
 14 made?
 15 A. I'm not quite sure what you mean by gestures.
 16 Q. Okay. Was the argument -- was it merely verbal
 17 in nature or were there gestures -- physical gestures --
 18 A. Yes.
 19 Q. -- things like that?
 20 Do you remember? Does anything stand out
 21 for you at this point?
 22 A. She had kicked me and punched me and I had
 23 pushed her away.
 24 Q. Do you know why she kicked and punched you?
 25 A. Frustration.

1 Q. Was she complaining of adultery or something
 2 like that?
 3 A. No.
 4 Q. Was she complaining about money?
 5 A. No.
 6 Q. Anything else -- I mean -- but anything you can
 7 remember that she was specifically upset about?
 8 A. Just basically alcohol-induced anger.
 9 Q. Okay. And you mentioned that she punched and
 10 hit you.
 11 A. Yes.
 12 Q. So did she physically attack you?
 13 A. Yes.
 14 Q. Okay. Anything other than what you just
 15 described, the physical --
 16 A. No.
 17 Q. Okay. How did she kick you?
 18 A. With her foot to my groin.
 19 Q. And this occurred inside the house?
 20 A. Yes.
 21 Q. Do you remember what room it was in?
 22 A. The living room.
 23 Q. Did that cause you pain?
 24 A. Yes.
 25 Q. Did you -- did it cause you to fall over,

1 anything like that?
 2 A. No.
 3 Q. Okay. Did she do it more than once?
 4 A. No.
 5 Q. What did you do in response to her kicking you?
 6 A. When she kicked me, she then striked me with
 7 her fist and I proceeded to push her by her chest away
 8 from me.
 9 Q. Describe how she hit you with the fist.
 10 A. Just like a boxer.
 11 Q. What part of --
 12 A. Closed fist to my cheek.
 13 Q. Was it the right or left side?
 14 A. Don't recall. She's right-handed, though.
 15 Q. And did her fist physically contact your cheek?
 16 A. Yes.
 17 Q. Did you feel pain?
 18 A. No.
 19 Q. And then in response to her doing that, then
 20 you pushed her away?
 21 A. Yes.
 22 Q. Was any -- did you do anything else to
 23 physically -- was there any other physical contact
 24 initiated by you against her?
 25 A. No.

1 A. Yes.
 2 Q. What happened with that -- or how did she get
 3 involved? How did Nicole get involved?
 4 A. I had gestured to my daughter to move away and
 5 my wife had grabbed her and pulled her to her.
 6 Q. Was this after your wife had kicked and then
 7 punched you and then you pushed her?
 8 A. Yes.
 9 Q. Okay. Then your wife invited Nicole to come to
 10 her?
 11 A. Yes.
 12 Q. And did Nicole do that?
 13 A. Yes.
 14 Q. Okay. At that point, was there any physical
 15 contact between you and Nicole?
 16 A. No.
 17 Q. Was there any physical contact between you and
 18 Nicole of any kind that -- you know, during that
 19 incident?
 20 A. Just me gesturing to her to move away.
 21 Q. But no physical contact?
 22 A. If I touched her -- you know, Nicky, go over
 23 there.
 24 Q. Okay. You didn't push Nicole or anything like
 25 that?

1 Q. Okay. How many times did you push her?
 2 A. Just the once.
 3 Q. Please describe how you pushed her?
 4 A. Well, just as you showed, both hands on her
 5 chest away.
 6 Q. Two hands to her chest?
 7 A. Yes.
 8 Q. When you pushed her, what happened to her?
 9 A. She fell backwards on the ground.
 10 Q. Was this in the living room?
 11 A. Yes, on -- in the living room on the carpet,
 12 nothing in her way.
 13 Q. She didn't fall on a table or anything like
 14 that?
 15 A. No.
 16 Q. Did anything get knocked over during the
 17 struggle?
 18 A. No.
 19 Q. Was your -- was Nicole present at this time?
 20 A. Yes.
 21 Q. What was she doing while this was occurring?
 22 A. As little kids do to distract the parents from
 23 their argument, crying.
 24 Q. Did she get involved in a physical manner in
 25 the altercation at any point?

1 A. No.
 2 Q. Do you know if Nicole was pushed into a wall or
 3 anything like that?
 4 A. I don't recall.
 5 MR. DODD: Okay. We've been going about an
 6 hour. You want to take a five-minute break.
 7 (Discussion off the record.)
 8 (Recess.)
 9 BY MR. DODD:
 10 Q. Was your wife injured as a result of the
 11 actions between you and her on November 5, 1997?
 12 A. No.
 13 Q. Do you know if she claimed any injuries?
 14 A. No.
 15 Q. Does that mean you don't know whether she did
 16 or not or you know that --
 17 A. She didn't claim any.
 18 Q. She did not claim any?
 19 A. (Nods head.)
 20 Q. Do you remember if there were any witnesses to
 21 the incident other than yourself, Colette or Nicole?
 22 A. No.
 23 Q. Do you know a woman named Valerie Cloe?
 24 A. Yes.
 25 Q. Did she come to the apartment that evening?

1 A. Yes.
 2 Q. What did she do?
 3 A. Other than just run over and console my wife.
 4 Q. Did she do anything other than that?
 5 A. No.
 6 Q. Did you have any physical contact with her?
 7 A. No.
 8 Q. Okay. Did you push her?
 9 A. No.
 10 Q. Had this -- Ms. Cloe called 911 regarding
 11 fights you had had with your wife previously?
 12 A. Not of my knowledge. I don't know.
 13 Q. Was that incident November 5, 1997 -- was that
 14 the --
 15 MR. WILKERSON: I'll object to that last
 16 question, assuming facts not in evidence.
 17 MR. DODD: Okay.
 18 BY MR. DODD:
 19 Q. Had the police been called to any incident
 20 between you and your wife or you and Nicole prior to
 21 November 5, 1997?
 22 A. No.
 23 Q. Okay. Do you know a Lisa Demeris?
 24 A. Yes.
 25 Q. Did she -- was she present during that incident

1 A. No.
 2 Q. Do you remember how many officers arrived?
 3 A. I think there were three.
 4 Q. Were they all males?
 5 A. No. There was one woman.
 6 Q. Do you remember their names?
 7 A. No.
 8 Q. Did they talk to you?
 9 A. Yes.
 10 Q. What did they talk to you about?
 11 A. They wanted my side of the story.
 12 Q. Did you speak with a male or female officer?
 13 A. It was one of the male officers.
 14 Q. Do you remember what you were doing when the
 15 police arrived?
 16 A. No.
 17 Q. Do you -- were you packing a suitcase when the
 18 police arrived?
 19 A. No.
 20 Q. Were you placed under arrest?
 21 A. No.
 22 Q. So you were not placed under arrest that
 23 evening?
 24 A. I don't think so. I don't recall them
 25 arresting me for that.

1 on November 5, 1997?
 2 A. Don't recall. Most likely. Those two girls
 3 live together. They're my next-door neighbors.
 4 Q. Did you have any physical contact with her?
 5 A. No.
 6 Q. Did Lisa -- was she involved in separating you
 7 and Colette?
 8 A. No.
 9 Q. Did Lisa come over to the apartment?
 10 A. I don't recall.
 11 Q. Okay. So other than what you've already
 12 described for us, which is Colette kicking and then
 13 punching you and then you pushing her in response, was
 14 there any other physical contact between you and her?
 15 A. No.
 16 Q. Okay. Do you remember the police arriving
 17 that -- it was about 7:00 p.m.?
 18 A. (Nods head.)
 19 Q. Was it dark already?
 20 A. Yes.
 21 Q. Okay. So I'm going to refer to it as that
 22 evening. Were the -- did the police arrive that evening?
 23 A. Yes.
 24 Q. Do you remember approximately what time the
 25 police arrived?

1 Q. You didn't -- you weren't taken from the
 2 apartment that night by the police?
 3 A. No.
 4 Q. Okay. Was there a criminal matter instigated
 5 as a result of the events that evening?
 6 A. Explain, please.
 7 Q. Was a -- did the -- excuse me. Did the -- you
 8 know, did the State file criminal action against you as a
 9 result of the events that evening?
 10 A. I think so, yes.
 11 Q. Okay. So do you remember what you were charged
 12 with?
 13 A. No, I don't remember what the charge was.
 14 Q. Okay. Do you remember what the prosecutor
 15 alleged that you had done?
 16 A. As close as I can get to it, spouse abuse.
 17 Q. Do you remember being charged with harassment?
 18 A. Yes.
 19 Q. And you were not -- you were not charged with
 20 abuse. Is that correct?
 21 A. That is correct.
 22 Q. Okay. So you were charged with --
 23 A. It was -- I don't exactly know how that process
 24 went. So I don't know how to explain it to you, but it
 25 was reduced to what you said.

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1 Q. Reduced to harassment?
 2 A. Right.
 3 Q. How did that criminal matter resolve?
 4 A. In what aspect of --
 5 Q. Well, it terminated at some point, the criminal
 6 action. Correct?
 7 A. Right.
 8 Q. And did you go to trial?
 9 A. Yes. I guess the -- in promise of -- to take
 10 some classes -- it was a management class, a substance
 11 class and something else I'm not --
 12 Q. Let me see if I can ask you some questions,
 13 maybe help you out. Did you enter a plea to the charge?
 14 A. Yes.
 15 Q. Do you remember what that plea was?
 16 A. I think it was guilty.
 17 Q. Okay. So -- and that was the charge of
 18 harassment?
 19 A. Yes.
 20 Q. Okay. And were you sentenced as a result of
 21 that plea?
 22 Well, the plea leads to the conviction. So
 23 is it your understanding that you were convicted of the
 24 charge of harassment?
 25 A. Yes.

1 Q. Okay. Can you turn to the second page of the
 2 document?
 3 Near the bottom of that page, do you see
 4 your signature?
 5 A. Yes.
 6 Q. Okay. And just to the left of that, does it
 7 say "Defendant's Signature"?
 8 A. Yes.
 9 Q. Okay. Is there a date right above your
 10 signature?
 11 A. Yes.
 12 Q. What is that date?
 13 A. 12-3-97.
 14 Q. All right. Now I'd also like to show you what
 15 I'm going to have marked as Exhibit 2.
 16 (Exhibit 2 marked.)
 17 BY MR. DODD:
 18 Q. Have you had an opportunity to look at
 19 Exhibit 2?
 20 A. Yes.
 21 Q. Okay. Could you read the title of Exhibit 2?
 22 A. "Acknowledgement of Receipt of Conditions of
 23 Probationary AGP/DANCP Supervision."
 24 Q. Yeah, it looks -- I'm sorry. It's a little
 25 bit -- looks like there was --

1 Q. Okay. Were you sentenced as a result of that
 2 conviction?
 3 A. Not to a jail of sort, just those things I told
 4 you that I had to do.
 5 Q. So you didn't have any jail time?
 6 A. No.
 7 Q. Were you sentenced to appear at a probation?
 8 A. Only those courses.
 9 Q. Okay. So -- actually, I'd like to ask you
 10 about certain parts of a probation. Let me show you what
 11 I've had marked as Exhibit 1.
 12 (Exhibit 1 marked.)
 13 A. And this is what I'm supposed to look at?
 14 BY MR. DODD:
 15 Q. I'm going to ask you some questions on this.
 16 Could you read the title of what has been
 17 marked as Exhibit 1?
 18 A. Say that again, please.
 19 Q. Could you read the title of this document?
 20 A. "Terms and Conditions of Probation."
 21 Q. Okay. And above that, what does it say?
 22 A. "State of Honolulu Family Court of the First
 23 Circuit."
 24 Q. I believe it says "State of Hawaii."
 25 A. "State of Hawaii," yes.

1 A. Yeah, I don't know what that is.
 2 Q. I think it says "Probation/DAGP/DANCP
 3 Supervision."
 4 A. Yes.
 5 Q. Okay. Does Exhibit 2 -- does your signature
 6 appear on Exhibit 2?
 7 A. Yes.
 8 Q. Okay. Did you sign this -- or is there a
 9 date -- there is a -- well, is there a date on this
 10 document?
 11 A. Yes.
 12 Q. What's that date?
 13 A. December 3rd, 1997.
 14 Q. Do you remember if you signed Exhibit 2 on that
 15 date?
 16 A. That's my signature.
 17 Q. I understand it's your signature, but do you
 18 have a recollection of signing it on December 3, 1997?
 19 A. I don't recall, but I must have signed this,
 20 yes.
 21 Q. Okay. Did you sign Exhibit 2 at the same time
 22 you signed Exhibit 1, if you remember?
 23 A. No, I don't remember the two at the same time,
 24 but I must have signed them, yes.
 25 Q. Okay. Fair enough.

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1 Looking back at Exhibit 1, on the second
2 page, do you see a -- either an X or a check mark on the
3 upper left side of the page?

4 A. Yes.

5 Q. Okay. Could you read what is just -- is right
6 next to that?

7 A. The first X?

8 Q. The first X.

9 A. "You shall complete a domestic violence
10 counseling at your expense as decorated by your
11 probationary officer."

12 Q. I think it's "directed," but thank you for
13 that.

14 Do you remember being required to complete
15 domestic violence counseling as a condition of your
16 probation?

17 A. Yes.

18 Q. Okay. Do you have an understanding of why you
19 were required to complete domestic violence counseling as
20 part of your probation?

21 A. Yes.

22 Q. Okay. What is that understanding?

23 A. It was part of the judgment handed down by the
24 courts.

25 Q. What did the domestic violence counseling

1 A. Oh, yeah.

2 Q. Okay. Below -- looking back at Exhibit 1, just
3 below that first X, do you see a check mark on the left
4 side of the page?

5 A. Yes.

6 Q. Could you read the writing that is just next to
7 that check mark?

8 A. "You should complete a parental" -- "parenting
9 class at your expense as decorated by your probationary
10 officer."

11 Q. Okay. Again, I think it's "directed."

12 A. Directed. Sorry I keep pronouncing it that
13 way.

14 Q. No problem.

15 So is it your understanding that you were
16 required to complete parenting classes as a condition of
17 your probation?

18 A. Yes.

19 Q. And did you have an understanding of why you
20 were required to complete the parenting classes?

21 A. Yes.

22 Q. And what was that understanding?

23 A. It was a judgment handed down by the courts.

24 Q. Okay. And do you remember what those parenting
25 classes entailed?

1 entail?

2 A. It was more or less an anger management.

3 Q. Were they classes?

4 A. Yes.

5 Q. Was there --

6 A. A certain amount of hours, I believe, that went
7 on with it.

8 Q. Do you remember how many hours?

9 A. No.

10 Q. Was it one session?

11 A. No.

12 Q. Was it --

13 A. It was several. I think, if I recall, a few
14 weeks.

15 Q. Was it something -- or the type of thing where
16 you went several times a week in the evening?

17 A. Yes.

18 Q. Okay. And there was a number of hours that you
19 had to take?

20 A. Yes.

21 Q. Okay. Did you successfully complete the
22 domestic violence counseling?

23 A. Yes.

24 Q. Okay. Did you feel that the domestic violence
25 counseling helped you?

1 A. They're very similar to the other class and
2 there was a certain amount of hours that went with that.

3 Q. Did you -- were you able to take the classes at
4 the same time, the domestic violence and the parenting
5 classes?

6 A. No. They were separate, I believe.

7 Q. Okay. So it was like a different instructor?

8 A. Yes.

9 Q. Okay.

10 A. Yes, indeed.

11 Q. Did you successfully complete the parenting
12 classes?

13 A. Yes.

14 Q. And do you see another X below that line?

15 A. Yes.

16 Q. Okay. Could you read that for us, please?

17 A. "You shall undergo a substance abuse assignment
18 and immediately undergo and complete any recommended
19 treatment, whether residential or" -- what is that?

20 Q. "Outpatient."

21 A. -- "outpatient, all at your own expense and as
22 directed by your probationary officer."

23 Q. Okay. So was it your understanding that you
24 needed to do a substance abuse assessment as a condition
25 of the probation?

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1 A. Yes.
 2 Q. Okay. Did you undergo a substance abuse
 3 assessment?
 4 A. Yes.
 5 Q. What was that? What was that assessment? How
 6 did that work?
 7 A. That was interesting. That went really well.
 8 Q. How did they conduct that? Like, how did they
 9 do that?
 10 A. It was a classroom.
 11 Q. Did you take a test or something?
 12 A. I don't recall.
 13 Q. Did they have a counselor there talk to you?
 14 A. Yes. And it was also a certain time period
 15 like the other classes.
 16 Q. So there were classes?
 17 A. Yeah.
 18 Q. Okay. Do you remember what the assessment --
 19 like, what the conclusion was?
 20 A. I passed the course.
 21 Q. Okay. So you -- did you -- were you required
 22 to take substance abuse counseling?
 23 A. Yeah, I believe that was part of the criteria
 24 here. All of this was counseling.
 25 Q. Okay. And you remember taking some classes for

1 questioning about the substance abuse assessment, now,
 2 you've never been diagnosed as being an alcoholic.
 3 Correct?
 4 A. That is correct.
 5 Q. And when -- just for clarification, this order,
 6 State's Exhibit Number 1 here, is -- refers to a
 7 substance abuse assessment and undergo and complete
 8 treatment if recommended.
 9 A. There was no recommendation of me going through
 10 another treatment.
 11 Q. Okay. So did you just go through an assessment
 12 or were you assessed and told that you needed to get
 13 treatment after that?
 14 A. Was never told that I had to get treatment
 15 after that.
 16 Q. So would it be fair to say that you just got
 17 the substance abuse assessment and the assessment
 18 concluded that you did not need treatment?
 19 A. Yes.
 20 MR. WILKERSON: Nothing further.
 21 MR. DODD: No further questions.
 22 You're going to have an opportunity to sign
 23 your transcript. I assume that the transcript will be
 24 given to your attorney who will then make it available
 25 for you to review and sign. Do you wish to retain the

1 the substance abuse counseling?
 2 A. Yes.
 3 Q. Do you remember how many?
 4 A. But it -- like I said, it was, you know,
 5 several weeks.
 6 Q. Were they all about the same amount of hours,
 7 each of the three?
 8 A. I believe so, yes.
 9 Q. So they all completed around the same time?
 10 A. Yes.
 11 Q. Okay. Were you given certificates for -- when
 12 you completed these courses or classes?
 13 A. I think so. I'd have to go through my records
 14 and look. I'd have to show them something of completion.
 15 Q. Okay. And is it your understanding that you
 16 successfully completed all of the classes?
 17 A. Yes.
 18 Q. Okay. Mr. Fisher, I think that is all of the
 19 questions I have for you today. For the signature --
 20 MR. WILKERSON: I've got a couple.
 21 MR. DODD: Oh, you've got a couple
 22 questions. Okay. Excuse me.
 23 EXAMINATION
 24 BY MR. WILKERSON:
 25 Q. Mr. Fisher, with regard to this last line of

1 right to review and sign your transcript?
 2 MR. WILKERSON: Yeah.
 3 MR. DODD: Okay.
 4 THE WITNESS: Yes.
 5 MR. DODD: Fair enough. Thank you very
 6 much for your time, sir.
 7 (Deposition concluded at 10:32 a.m.)
 8
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WITNESS CERTIFICATE

I, KIRK C. FISHER, hereby certify that I have read the foregoing typewritten pages 1 through 54, inclusive, and corrections, if any, were noted by me, and the same is a true and correct transcript of my testimony.

Dated this ____ day of _____, 2013.

KIRK C. FISHER

Signed before me this ____ day of _____, 2013.

Deposition of: KIRK C. FISHER
Taken on: April 17, 2013
Fisher v. Kealoha, et al.
CV11 00589 ACK-BMK
By: Leigh Anne Meeks, RPR, CSR 483

CERTIFICATE
STATE OF HAWAII)
) SS.
CITY AND COUNTY OF HONOLULU)

I, LEIGH ANNE MEEKS, do hereby certify:
That on April 17, 2013, at 9:00 a.m.,
appeared before me KIRK C. FISHER, the witness whose
54-page deposition is contained herein; that prior to
being examined, he was, by me, duly sworn or affirmed
pursuant to Act 110 of the 2010 Session of the Hawaii
State Legislature; that the deposition was taken down by
me in machine shorthand and was thereafter reduced to
typewritten form under my supervision; that the foregoing
represents, to the proceedings had in the foregoing
matter; that pursuant to Rule 30(e) of the Hawaii Rules
of Civil Procedure, a request for an opportunity to
review and make changes to this transcript was made by
the deponent or a party prior to the completion of the
deposition.

I further certify that I am not an attorney
for any of the parties hereto, nor in any way concerned
with the cause.

DATED this 29th day of April, 2013, in
Honolulu, Hawaii.

LEIGH ANNE MEEKS, RPR, CSR NO. 483

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