

Steve Johansen
Lewis and Clark Law School
Reinventing the Second Semester
Appellate Brief Assignment

The documents below are the basis for an appellate brief assignment based on an actual case that was filed in Multnomah County, Oregon in 2010. Included are my instructions to my students and the actual record of the case. The case involved an attempt by the owner of a fur store to get an injunction against peaceful protesters based upon Oregon's Elder Abuse statutes. The actual case was not appealed.

In addition to the record attached, I directed my students to a YouTube video that shows the plaintiff interacting with the defendants outside the plaintiff's store. If you attended my session at the Storytelling Conference, this is the clip I showed there. Here's the link to that clip:

<http://www.youtube.com/watch?v=KfW0iWIHpdg>

**Appellate Brief Instructions
Duff Gordons 2010**

I. Partners and Side Represented

As you know, for this assignment you will work with a partner of your own choosing. There will be a sheet outside my office for each pair to sign up to represent either the Plaintiff, Horst Grimm, or Defendant, Justin Kay. Six teams will represent the Plaintiff and six teams will represent the Defendant. The sign-up sheet will go up Feb. 2, right after class. First come, first served.

The Defendant/appellant/petitioner is, Justin Kay;
The Plaintiff/appellee/respondent is Horst Grimm.

II. Issues

There are two issues in this problem – both involve the Oregon Elder Abuse statutes ORS chapter 124. Issue one is a statutory construction issue. Specifically, Kay asserts that the Elder Abuse statute does not reach the conduct at issue here, and consequently, the trial court erred in issuing a restraining order. Issue two includes two state constitutional issues. First, Kay alleges that the Elder Abuse statute infringes upon speech protected under Article I, Section 8 of the Oregon Constitution and is therefore unconstitutional on its face. Second, even if the statute is not facially unconstitutional, it is unconstitutional as applied here. Before class on February 11, you and your partner must decide who will address issue one and who will address issue two. I strongly encourage you to do your initial research together before dividing up the issues.

III Due Dates

Fri, Feb. 5 Choose which side you will represent. Sign-up on my door.

Tues, Feb. 9 Annotated draft of facts due.

Fri., Feb. 12 Partner Status Update. Research should be complete.

That means for issue one: You have the statutes, legislative history, any secondary sources, and you have read the statutes and legislative history and you have put together the potential evidence you might rely on for either side.

That means for issue two: You have the key constitutional cases for both the over breadth and as applied analysis, you have any secondary

sources, and you have read and outlined the analysis as you believe it is approached under Oregon law.

You should be prepared to discuss your topic in class and possible arguments. Upload to TWEN a list of key research, statement of the issues, questions you have, three possible arguments on your issue.

- Fri. . Feb. 19 Legal Analysis Workshop with Prof. or TA. Workshops will be split by issue. (More details later)
- Tues Feb. 23 Partner Status Update. Due: *Macro draft* of your Introduction (roadmap paragraphs), and a detailed outline or draft of Argument. **Bring 1 copy in paper form to class.**
- Fri. Feb. 26 Split class discussion on the issues.
- Tuesday Mar. 2 Oregon Supreme Court on Campus
Peer Review (out of class—details later).**
- Friday Mar 5 Peer Review Returned During Class.
- Tues Mar 9 Senior Partner Draft Submission Deadline. **Polished** draft of argument section including introduction, point headings and full argument.
- Mon. Mar. 9-
Fri. . March 20 NO CLASS: Conferences with Prof. Johansen. No classes on Tues. Mar. 10, Fri. Mar. 13 and Fri. Mar 20. (Practice Oral Arguments during this time, too; also, work on “joint sections” – summary of argument, compiling the appendix, etc.)
- Tue. Mar. 17 Final class before spring break.
- Mar. 22 to Mar. 26 Spring Break!
- Friday. Apr. 2 **If you want the campus copy center to copy and bind your briefs, they need them by 9:30 am Friday, April. 2.**
- Mon. Apr. 5 **Appellate briefs must be handed in by 6:00. NO EXCEPTIONS**
- Wed. Apr. 14 Oral arguments downtown at the Multnomah County Courthouse at 6:00 or 7:15

IV. Some Preliminary Details

1. **Page Limits: 26 pages, one and a half (1.5) line spacing (except for point headings which are single spaced).** Do not fiddle with fonts. Use 12 point, Times New Roman. These page limits exclude the title page (cover), table of contents, table of authorities, excerpt of the record and appendices. Use appropriate margins - one inch all around.
2. Make at least **5** bound copies to give away. Turn in **3** copies: 1 for each of three judges downtown. Give 1 copy to each of your opposing counsel. Opposing counsel will be announced in class on Friday, April 2. **Note: the group of three will need to make 1 additional copy and the team assigned to argue against the group of three will need to make 1 additional copy – I will assign these two teams in advance.**
3. **Covers:** Appellant/Defendant - Blue; Respondent/Plaintiff - Red. Use these terms, not “appellee.” The cover must be STIFF PAPER for all 5 copies.
4. **Binding:** All official copies must be bound with glue or a spiral or stapled all the way down the left side.
5. **NOTE: This appeal is taken from an actual case (though we have modified the record slightly to better fit our purposes). The parties are real people. Do NOT attempt to contact any of the parties, lawyers, judge, or anyone else having to do with this case. Unless later supplemented, the attached materials constitute the entire record for the purpose of our appeal.**

Horst Grimm v. Justin Kay, Jonathan Brooks, Jeffrey Wirth and Andrea Parson – DR09070587
DR 09080748
DR 09070001
DR 09080749

Judge: Representing the petitioner is who?

PT: Paul Trincherro and Gary Grenley

J: Okay

Gary Grenley: Good morning, Your Honor.

J: Good morning. And then we have Mr. LeClaire.

Wirth Edward LeClaire: Good Morning, Your Honor.

J: And who do you represent?

WEL: I represent Justin Kay.

J: Okay, and then finally

Jeffrey Seifman: Mr. Seifman, Jeff Seifman

J: And you represent the other three

JS: Yes, I represent the other three.

J: Okay, so in looking over the history of the case, it looks like there were restraining orders issued by Judge Stewart and then there was a court appearance on October 15th and the matter was continued so that Mr. Grimm could obtain counsel, is that correct?

PT: That is correct, Your Honor.

J: Then I believe the restraining order was modified at that time to remove the 150 feet restriction, is that correct?

PT: That is correct, Your Honor.

J: So, currently is there just the order that is restraining the derogatory comments?

PT: That is correct, Your Honor.

J: Okay. Alright, then before we get started then, you are ready to proceed, I assume?

PT: I am, Your Honor.

J: Okay, and both of you are ready to proceed? Alright, and did you wish to make any opening remarks before we get started with the merits of the case?

PT: I do, Your Honor.

J: Go ahead.

PT: I am representing Horst Grimm in these four cases under the elder abuse statute. We are here to have the four restraining orders issued by this Court modified and made permanent for one year as provided by the statute, ORS 1.4.020. We would like the restraining orders to be modified to require respondents, Jeffrey Wirth, Jonathon Brooks, Justin Kay and Andrea Parsons to stay at least 50 feet away from Mr. Grimm and 15 feet from the entrance of the store if Mr. Grimm is inside. The restraining orders are necessary because for approximately one year, Mr. Grimm has been the subject of abuse by the respondents, individually and together, on almost a daily basis. The abuse did not cease until the Court issued restraining orders to each of the respondents in July and August of this year. Mr. Grimm is the owner of Nicholas Ungar Furs, located on 12th and Yamhill in Downtown Portland. Mr. Grimm has owned Nicholas Ungar Furs since 1979 and worked there as an employee since 1959. The store has been there since 1906. Mr. Grimm is a resident of Clackamas County. For approximately 2 years Nicholas Ungar Furs has been the subject of animal rights protests by various groups. When the protests started they were generally peaceful and there were very few problems. Approximately one year ago, there was a changing of the guard in the group of protesters and a new group began protesting outside the store. This group includes each of the respondents. The group started protesting about one day a week and quickly ramped up to every day. They are there in the afternoon from 1 until closing. The protesting tactics of this group were much more aggressive than the prior group. In addition to the standard protesting tactics: picketing, chanting, shouting slogans, this group made it a practice to harass and intimidate customers outside the store. The police were

called out to Nicholas Ungar Furs on a regular basis on noise and harassment complaints by Mr. Grimm, his neighbors and customers. There were also a few incidents of vandalism at the store. I am not suggesting that I have any evidence it was the respondents, but this was what was going on around the time that the abuse was occurring. The most troubling tactic used by the respondents and others was the use of physical intimidation and abuse of language directed personally at my client, Horst Grimm. To paint a picture, prior to the restraining order, each day when Mr. Grimm left the store he was greeted by one or more of the respondents and usually several other protesters. It was a daily practice that one or more of the respondents would use abusive and profane language and shout at Mr. Grimm while standing inches away from him. The group would often stand in his path forcing him to jostle through as he tried to make his way from the store to his car, his parking garage about a block away. The insulting language level that Mr. Grimm usually had a little to do with @ 9:17:21 animal rights, if you will excuse my language, the respondents regularly called him an “asshole”, “a piece of shit” and other more egregious more profane names while standing inches from him. They often made fun of the way he looked, his clothing and his heritage while standing next to him or behind him. The respondents often used school-yard bullying tactics while video cameras were pointed at Mr. Grimm. The purpose of this use of behavior was to physical intimidate Mr. Grimm and to infuriate him to the point of retaliating, which to his credit, he never did. The abusive conduct quickly reached the point where Mr. Grimm was so distressed by the respondents’ abusive conduct that his son, Kai Grimm, was required to escort him each day from the store to his car - to ensure the trip was made without violent incident. In July and August, Mr. Grimm, on the advice of law enforcement, applied for and obtained restraining orders against each of the respondents. Since the restraining orders, the protests did not stop, but the incidence of abuse level at Mr. Grimm dramatically decreased. Unless the restraining order is made permanent there is no doubt that the respondents will quickly pick up where they left off. It is also important to say what we are not here for. We are not here to prevent the respondents, or anyone else, from lawfully protesting in front of Nicholas Ungar Furs. We are not here to suppress respondents’ ability to indicate their message on animal rights. We are here solely to obtain an order that will restrain respondents from further abusing the petitioner, Horst Grimm. To that end we are seeking a completely content neutral restraining order, that merely requires respondents to maintain a distance of 50 feet from Mr. Grimm; create a zone of safety around him so that he can make it safely from his store to his car without physical and verbal intimidation. In this case the abuse is not just the use of derogatory and abusive language, but the language coupled with the close proximity of the respondents to Mr. Grimm. It is the close proximity that not only threatens significant physical and emotional harm, but actually is causing it. Respondents’ challenge the constitutionality of the elder abuse statute on its face and as applied. This issue is laid out in our hearing memorandum, hopefully that you received yesterday, and can be more appropriately addressed in closing arguments.

J: Alright, thank you. Did you wish to give any opening remarks?

WEL: Let Mr. Seifman go first, if I might, Your Honor.

J: Sure.

JS: Good morning, Your Honor.

J: Good morning.

JS: As counsel said, he mentioned the school yard. I think that is a good place to start here. Yes, they were out there protesting Ungar Furs because they sell furs and my clients believe that selling furs is wrong and the methods in which these animals are killed and treated in order to get their furs is wrong and that is their constitutional right – to protest. Yes, the protest devolved to name calling. They called him an “asshole”, they called him some other names, but sticks and stones will break my bones, Your Honor, names will never harm me. There were no threats of sticks or stones, there were no threats of physical force, yeah, they called him an “asshole” and you know hurt feelings are not covered by the elder abuse protection. It talks about significant emotional harm, not hurt feelings. This is a misuse of the elder abuse protection act. The elder abuse protection act was designed to protect elderly people from being abused or harmed because of their class – classification as an elderly person. One of the reasons the Governor’s task force started this was because in 1992 an elderly Oregonian with Alzheimer’s was abandoned at a race track in Idaho. It is meant and designed to help with problems like that – Sweep Stakes Promotions, mistreatment in elderly care facilities. If you read the statute or the bench guide it is wrought with stuff pertaining to DHS and the mistreatment of elderly people. I don’t think that this is what the statute means. They talked about harassment and intimidation and vandalism, there is no proof that my clients vandalized anything, nor Mr. LeClaire’s client. They talk about the threat of physical force, well in reality the evidence will show that Mr. Grimm has partaken in everything that they say my clients have done. He has called my clients an “asshole”, he has assaulted at least 2 of the protesters, one causing physical injury, bruises, punched one of the respondents in the stomach. Additionally, has made anti-semitic remarks. I think if anyone should have a restraining order, it is the respondent (*sic*), my clients have never threatened physical injury, physical harm in any way. Yet, he has threatened to kick them and has physically harmed them in the past. This is a complete misuse of the statute and I think that when you see the evidence, you will see that he isn’t scared, he isn’t afraid, he is confronting the protesters, he is laughing, he is joking, he is talking about what kind of apples you like, he is sweeping the sidewalk and then, occasionally, he yells at them and called them an “asshole” and threatens to assault them and/or does in fact assault them and I think that is what the evidence will show and additionally, we do believe that this is constitutionally protected speech. This is not fighting words, calling someone an “asshole” is not designed to start a fight and Mr. LeClaire will cover that in his opening statement, all the constitutional law. Thank you, Your Honor.

J: Thank you.

WEL: Good morning, Your Honor.

J: Good morning.

WEL: May it please the court, I wanted to two things, I wanted to respond to the petitioner’s statement and also address the constitutional issues. First in response, he talked about this group and there has been a group, in that every day protesting there are people out there, but what we have is a collection of individuals each doing their own thing. They are not an organized group operating under any sort of umbrella, so you cannot attribute the actions of a different person who is there to anybody else. It is just a collection of individuals, as it were. He referred to the police being called a number of

times, but it is going to be clear that there were never any criminal charges against anybody and that is going to be very important when we look to the constitutional issues coming up ahead. Also, it appears that petitioner's assertion is that these are school-yard bullying tactics and that they are simply too personal to be politically protected free speech. Now we live in a day in age when the political is personal and for whatever reason, that is the day in age we live in when everything is personal and political all at the same time. Each of the respondents have a deeply held belief about animals and animal abuse and they find any abuse of animals morally reprehensible. In furtherance of that they seek to protest and they use many different mechanisms to protest, whether it be signs, or whether it be saying things. Now we are talking here, Your Honor, not just about free speech under the U.S. Constitution, but also Oregon's protections which is much broader under Article I, §8, which protects free expression. And free expression by its terms, not saying free speech is certainly broader, and the state constitutional analysis is importantly different from the analysis under the First Amendment protections, and I will get to that right now. I laid it out in my memorandum to the best that I could, but if you look to some of the case law you will see that in Delgado, in that case State v Delgado they were analyzing, I think it was an article 1 §21 @ 9:25:33 claim of whether or not a stopping of protective order is criminal such that you should get the protections of the jury. And what the Court there did in Delgado is they said you know back at the time of the adoption of the Oregon Constitution, there was this procedure where if a crime was about to be committed you could go to court and get an order to say don't commit a crime. And it is really important that that procedure, not just procedurally what substantively refers to a crime because in that they refer to the decision of Rangel which slightly before that defined the crime of stalking and said this is not overbroad, it is constitutional because we apply it narrowly. And here, when we look to this statute, we don't have a narrow statute. We have a statute that goes to harms that have never been found constitutional because what this statute talks about in 124005, I think it is 1(e) and I think this is what petitioner is getting at – is not just fear of significant physical harm, but also emotional harm and maybe the evidence will come out however it comes out. I don't know, but I anticipate that where they are going with this is truly emotional harm. And if you look to any of the case law that decides on these free speech/free expression grounds, we live in a dynamic free society. When you go out on the street that means people can call you names, people can say things that are offensive. Free speech is not often pretty, but we value it and free speech/free expression, when people hold their beliefs close to their heart, are going to get worked up and that is okay. That is okay in our country as long as it doesn't lead to violence, to – the only things that are excepted from free speech/free expression are something along the lines of threats or coercion and not just threats or coercion, the threats and coercion that are excepted have to be to the standard of, along the lines of imminent bodily injury. And what you are going to see here today is that there was never any fear on the part of Mr. Grimm of imminent bodily injury. And so we are really dealing with a statute that talks about emotional harm and to the extent that the statute talks about emotional harm, it is simply overbroad and not subject to a narrowing and it is for those reasons that these various restraining should not be granted. Thank you.

J: Thank you. You can go ahead with your proof.

PT: I call my first witness, Kai Grimm.

J: Alright, if you will step forward, please? If you will stand next to the witness chair, watch the

cords on the floor and if you will face the court clerk and raise your hand please.

CC: Under the penalty of perjury, do you swear or affirm that the testimony you are about to give in the matter now pending is the truth, the whole truth and nothing but the truth.

W-KG: Yes.

CC: Thank you. Please be seated. State your full name and spell your last.

KG: Kai Grimm – G-R-I-M-M.

J: Go ahead.

PT: Good morning, Mr. Grimm. Could you please state for the record your relationship to Mr. Horst Grimm?

KG: Horst Grimm is my father.

PT: Okay, and how old is your father?

KG: 75.

PT: Could you give me a little bit of background on Nicholas Ungar Furs?

KG: Mr. Nicholas Ungar, he came to Portland in 1906, started Nicholas Ungar Fur Company, actually Nicholas Ungar, it wasn't Nicholas Ungar Fur Company alone – it was just Nicholas Ungar, it was a ladies department store. 1960s, Nordstrom Company purchased Nicholas Ungar and Nicholas Ungar became a fur department in Nordstrom's for a while and then eventually Nicholas Ungar Furs became its own independent store.

PT: Thank you.

KG: My father became sole owner in 1979 after working there since 1959. And he is the owner as of today too.

PT: Do you work at Nicholas Ungar Furs?

KG: I do. I have, I was born in Portland, Oregon. Went to school in Portland and eventually worked at the company after school. Graduated from Portland State University – 4 year degree there in finance, marketing. I then went to work at Nicholas Ungar Furs basically after that. Also, I have a real estate license at Oregon Realty, a real estate license in the state of Washington, Sundon Realty at 9:30:26. I am also working there keeping busy. Last year I was top 10% of the Oregon Realty. Probably better year this year at Oregon Realty and that is my background.

PT: Great. Could you tell me a little about the history of protesting at Nicholas Ungar Furs?

KG: Well, up until the last 2 years, there was no history of protesting. That was since 1906. In the last 2 years, groups started showing up on Saturdays to protest, protest with signs, staying on the edges of the street corner, basically notifying everybody their views. They kept to themselves at the street corner, we were there from 10 to 1 on Saturdays, they were there from 11 to 1, every Saturday. Then we would leave at 1, they would leave, and that would be it. There were no police incidents, I don't believe. They didn't particularly make it personal attacks, allegations against my dad, they were just there to protest their cause and then we decided to close on Saturdays. They came on Mondays after that. And then eventually, I believe it was September of '08, they decided to stop their Monday protest. They sent us a letter to the effect that they were going to just stop for a while. And then, a new group showed up in November of '08 and that is the respondents basically who showed up. Not at all together, you know I think it was, you know what, I believe it was all four of them at the time, so then they basically took over from the previous group and they started one day a week – Fridays – then it was Mondays and Fridays, I believe. Then it was Monday, Wednesday, Friday. Then I believe in about March of last year, it was every day.

PT: And when you refer to respondents, your referring to respondents, Jeffrey Wirth ...

KG: Jeff Wirth, Justin Kay, Andrea Parsons and Jonathan Brooks. Then they had their protests out there. They would follow my dad to his – there is a parking garage that is a block away from the building where my father is and he parks there, it is a covered parking garage. He walks over there. They would follow him. They would wait for him to driver his car away, as the car is pulling out they would shout at him, they would taunt him, they would be within inches of the car, they would point things out that maybe was wrong or not with the car, like I think that he had a little flat tire or something like that, or something is wrong with the car, just to distract him. Traffic is one-way on this street, it is four lanes wide and a lot of cars coming there. They are there to distract him, it is a dangerous situation – I found it dangerous that they were doing that. That is why I was there with him to point out, to help with the distraction going on, and it is more than just the distraction, it is a dangerous situation. I was there to escort my father out of the safely.

PT: Thank you.

KG: And the protests themselves, at the sidewalk, they get – it is like an obstacle course trying to get through. They know where we are going every day, we go through the parking garage. We don't engage them at any time. If we are walking alone to the parking garage then it would just be us alone walking to the parking garage, we are not – the problem there, they are trying to go after us. So what happens then, they are within inches of my father's face shouting at him, trying to get a reaction out of him. That is their whole goal. They are videotaping everyday they're there. There is somebody with a video camera.

PT: And in the incidents is one or more of the respondents typically there?

KG: At least one or more is there.

PT: Okay.

KG: At least.

PT: I would like to show you a video. One of these incidents as produced by the respondents' attorney. Pause – whispering. Make sure I have the volume set on this. Can you see the video from there?

KG: I can.

PT: Okay.

(Showing Video)

PT: Is that video a fair depiction of what happened on that day?

KG: Yes.

PT: And is that typical of the behavior that respondents would engage in with your father?

KG: That is a typical day. There are untypical days where it is more aggressive. But that is a typical day out of an everyday event for six months and more so, and it is you know, they are all off to the side when Jeff, Jeff Wirth, Jonathan Brooks, Andrea Parsons and Justin Kay were there without restraining orders, they wouldn't just stay on the side of the road like that – on the sidewalk like this group was. They would be all around my dad, in front, behind him, walking next to him, filming him and then shouting in his face, anything they could think of. There was no limits, as profane as they wanted, usually they had a limited vocabulary as far as profanity goes, so it would just be over and over and over again – the same, I have a statement with the original restraining order, I mentioned what they said there, I can repeat that, I can read it out loud.

PT: If you could repeat that.

KG: I, you lying piece of shit, fuck you, asshole, over and over again. I don't have the statement in front of me, but ...

PT: ... and how close would the respondents be when they were shouting at ...

KG: ... oh within inches of him. And then as loud as they could. So loud, every evening I am locking the gate, just so my dad doesn't have to be out there to listen to that more so. So they do it for me and you know, as loud as they can, I wonder if I go deaf in one on certain days because of how loud they are shouting at me, within inches of me. And that was typical with my father.

PT: Did it appear to you that your father was distressed by this conduct?

KG: Is was obvious to them and myself, yes.

PT: And your father has a condition with his right eye, can you tell me about that?

KG: He is blind in his right eye. He has a detached retina, so he has no vision in his right eye. So he is, obviously he cannot see anything coming from the right. I have asked them to stay off the side of the building when we are leaving because that is his vision that he cannot see what is going on there. So if anyone is standing at the building, he cannot see that. So if someone is standing there, he is going to run into them. He has, on occasions, there is a corner right around the building, people can rush by, I am usually holding onto him just to make sure he is not running into the sidewalk. And then with the distractions going on, you are getting shouting from behind you, he is looking left so his field of vision to the right is even more so gone, so he really doesn't see anything in front of him anymore, as he is being screamed at within inches of his ear, just everything, every foul thing you can think of that is what they shout at him. So then there have been times when he has bumped into them and then they really let him have it. That they accuse him of assault.

PT: Now, talking about the respondents specifically. You've seen respondent, Jeffrey Wirth, engage in the activity that you have described?

KG: Yes.

PT: And you have seen the respondent, Jonathan Brooks, engage in the conduct that you have described?

KG: Yes. We even have a video that the their attorney provided to us that shows what kind of harassment he is willing to do.

PT: Okay. Do you have any other examples about respondent, Jonathan Wirth (*sic*) was there an incident with the bicycle?

J: Counselor, involving who?

KG: Jeffrey Wirth.

PT: Oh, I am sorry, yeah Jonathan Brooks.

KG: Jonathan Brooks. Well, he let's see, there was this bike incident – he has his bike, he is up against the building, my father cannot see him particularly well when he is up against the building, so his first encounter with him is basically crashing into him. So then, then assaults are accused, which are not, it is just he cannot see his way when he is being shouted at. So that was one incident with Jonathan Brooks. You have to keep in mind that this is over six months of daily, Monday through Friday, so there, didn't take notes on a daily basis, but certain events jump to mind and the videotape that it here today shows accurately what kind of situation we have going on there.

PT: And I am going to show you another video in a moment, but I have just a couple of more questions. Respondent, Justin Kay, have you witness him engaging in the conduct you have described before?

KG: With the car. One incident that comes to mind with the car. He would follow us over to the parking garage and he is the one shouting within inches of the car while my dad is trying to leave the parking structure. He is blind in the right eye, traffic comes from the right, they are shouting at him on the left side at the driver side. They are standing at the driver's side, he is driving, that is the left side of the car, he is looking to his right to see the traffic coming down 12th Avenue. They are shouting at him, I am hoping everything goes well as he goes into the intersection. I try to give him some extra advice about if a car is coming or not. Of course, he is in control of the car, so I can't just say stop, go, stop, go, he is going to be even more distracted. So I do as little as possible to make sure he is safe, but if there is an emergency, I can be there to stop the situation. So Justin Kay, that is what he is doing at that moment. He is trying to cause a car accident, I believe. I wouldn't know what else he is trying to do. He is certainly not trying to explain any kind of protest activity to him.

PT: And respondent, Andrea Parsons, have you seen her engage in the type of conduct you described before?

KG: She duplicates all what they do. The shouting, the screaming. She is rarely there alone, she was there usually with Jeff Wirth or Justin Kay or Jonathan Brooks. Usually Jeff Wirth.

PT: I am going to show you another video.

(Show video)

(During video:

KG: That is Jeff shouting.)

PT: Can you identify by voices any of the other respondents in that video?

KG: Justin Kay was the other voice that was in there. Jeffrey was the last voice that you just heard shouting. But before that the Carl Marx comment was Justin Kay.

PT: In July and August, your father went in to obtain some restraining orders. Can you tell me how that came about?

KG: My father had some idea that there must be something about elder abuse that should be helpful in dealing with this kind of situation. People would always come up to us and say "isn't there something you can do", "can't you call the police"? We told them we had done that, but the police they weren't sure what to do ever when they showed up because, and I asked them as such, maybe you need to have just lawyers come out instead of the police come out, and they laughed and "yeah, that would be helpful for them" because they really didn't know what they should do in that situation. Their police officers, they usually would show up for murder investigations, or such. So with regard to the restraining orders, we were contacted by the Portland Police Department by an internal person there to help us basically, kind of a guide, because calling the police all the time, they figured they needed to have someone talk to us directly, instead of just calling their non-emergency line all the

time. So this detective was assigned to us, his name is **Detective Joe Louis @9:47:39**. He spoke with the District Attorney's office in Portland and they guided him, speaking for him, but eventually they explained to us that my father could file a restraining order based on elder abuse. And that is what we did then. The first one was Jeffrey Wirth, he was served first. And then it was, basically delayed the other serving. They were all served eventually, the four, just when they would show up. For some reason, Andrea Parsons and Jonathan Brooks were not there for a while, so they were not served for a while, but then they showed later and then they were served as well.

PT: Can you tell me if the situation improved after the respondents were served the restraining order?

KG: Well, before the restraining orders, it was in your face, behind you harassment within inches daily. After the restraining order, well they stayed back 150 feet. Jeff Wirth, he was the first. Well he wasn't within inches anymore, it was 150 feet away. He did try to make his presence known anyway though from 150 feet, he would shout at the building, I heard him from 150 feet away, inside the building that he was shouting. Leaving the parking garage, he knew the route that the car was driving in the evening, so he would make a point to stand outside the 150 feet as the car was taking a curve and there would Jeff be. I didn't point out to my father because I told him afterwards. I am not there to distract my father driving, so he never did see Jeff, but I saw him there. And then, the next person to get served was Justin Kay. Even though Jeffrey was served, Justin still showed up and just as abusive as before, knowing what happened to Jeffrey, and then Justin was served, and then he stayed back 150 feet. And then Justin was back far beyond the 150 feet and then I did notice one day, looking outside, he was handing out flyers and directing other protesters to just shout at the door, even with the restraining order the way it was. I could see from 150 feet it was Jeff and Justin standing out there. There is an open parking garage across from the building. It is just an open lot and they would stand at the other end of the parking lot. The lot itself is about 200 feet wide, so they would just hang out at there. So then after Justin was served, it was much improved, obviously. My father didn't have to defend himself against the daily attack from Jeffrey Wirth and Justin Kay. And the third restraining order was served on, I believe it was Andrea Parsons. And then she stayed away and then thereafter, Jonathan Brooks was served too, and he stayed away. And those two didn't come within – that was the different thing there ...

PT: ... but in general ...

KG: ... it was much improved.

PT: ... much improved ...

KG: ... much improved. And even the people around the neighborhood were saying, "Oh, what happened" and "how come some people are standing so far away shouting from the other end of the street there? Why is that happening?" So we explained that they got 150 foot restraining order and then the neighbors – yeah, the neighbors noticed that it was a vast difference. The protesting was still going on, but the aggressive behavior from the four weren't in the mix anymore and then the other protesters that were standing there, they didn't want to go that route, I guess, to be abusive, aggressive based on what had already previously happened with the restraining orders. I guess they

didn't want to get served either. So they had a different tone conducting themselves with the protest and they have since.

PT: So now that the restraining orders have been in place, your father can get from the store and to his car with limited amount of hassle?

KG: Yes.

PT: I have no further questions.

JS: Your Honor, may I have a three minute recess to ask my clients a few questions pertaining to his testimony since [REDACTED], or a minute?

J: Sure go ahead and talk to him.

JS: Thanks. Can I use your jury room, Your Honor?

J: Yeah, we'll take a five minute break.

JS: Thank you, Your Honor.

(Recess)

J: Go ahead.

JS: Your Honor, do you mind if I sit while I address the witness?

J: Whatever your preference.

JS: Thank you. How is the fur business, Kai, Mr. Grimm?

KG: Locally, nationally, worldwide?

JS: Locally, your business.

KG: Well, we are the only one in town, so anyone that needs a fur thing done, they come to us. So, considering that the last 30 years, no competition, now, is that better? I know that more is the merrier usually, but I don't know, when there were more it was competitive.

JS: Wouldn't you say as a whole the fur industry is on the decline?

KG: Locally, nationally or worldwide, are you asking?

JS: Locally, nationally.

KG: Well, why don't we start worldwide. Worldwide, fur production is probably bigger than it ever, fur production is bigger than it has ever been. Let's see in 2007, mink production was a \$55 million skins, that was worldwide production. China is a big buyer. A lot of people thinks China just makes and ships, they have their own market. Out of a billion people, they probably have 10 million people that have \$1 million or more in a bank account. 10 million people, if all of the people that were in the market for mink cuffs in China go out to buy some, there would not be enough in the world to supply the demand just for the Chinese local market, let alone anything in the export. Russia, they are not a communist country anymore, so it is a cold place. They supply to their own market, like they have never done before, to their own population. Production is big in that sense. In the United States, there used to be 100,000 union workers in New York City in 1960, they are not there anymore. Unions, like so many unions, go away, changing. Rent is expensive for small business and the fur industry, small shops they have to pay high rents, so like any small business ...

JS: ... so as a whole it is doing alright?

KG: It's huge.

JS: Alright. Did your numbers include a illegal fur sales?

KG: Excuse me, what was the question?

JS: Did the numbers you gave the Court include illegal fur sales?

KG: No.

JS: Has your store ever sold illegal furs?

KG: Maybe you could describe what "Illegal" means?

JS: I mean "Illegal" as in against the law.

KG: The US Fish and Trade, the US Fish and Wildlife Department came to Nicholas Ungar Furs, someone had claimed that we were selling illegal furs at Nicholas Ungar Furs. I believe someone was thinking that like leopard skins or jaguar skins were being shipped to Nicholas Ungar Furs directly like from Africa and coats were being made. US Fish and ...

JS: ... so it was just a claim?

KG: That was what they came for. I'll finish there. That is why the US Fish and Wildlife Department showed up. When they arrived, like I described earlier, the company has been around since 1906, so sometime in the 70s the sale of leopard skins were made illegal.

JS: This is, yes or no?

KG: I am getting to it, I am explaining ...

JS: ... yes or no, have you sold illegal furs?

KG: That's, I had asked you about what illegal was. So anyway, when the US Fish and Wildlife showed up they found old stuff from before 1970 and the law says that you can sell old things, like even on Ebay, like leopard coats, old things ...

JS: ... yes or no ...

J: ... where are you going with this?

JS: May I approach the witness, Your Honor?

J: Well, no, what is your point?

JS: I'd like to show the witness, respondents' Exhibit 1, which says that they sold illegal furs and that they pled guilty ...

J: ... what does that have to do with anything in the hearing?

PT: Your Honor, I object on the relevancy.

J: I am giving you a chance to explain.

JS: It goes to the credibility of the witness, who cannot seem to answer the question.

J: The objection is sustained.

JS: The protesters have never touched you in a physically violent way, correct?

KG: They've pushed against me, I am locking the door, these four, with these four respondents, they've never pushed against me I don't believe, but they have a group that they encourage with them to be around them and anything goes with them.

JS: So, that was a no?

KG: That was a no with a ...

JS: ... okay thank you. And, yes or no, they have never physically threatened you?

KG: That is not true. They have shouted at me, for six months at the gate, I lock the gate every night ...

JS: ... right, I saw them call you "Smithers" in the video, but, yes or no, did they threaten you with physical violence?

KG: Why is just – this is one video of six months of daily video – yes they have.

JS: They have threatened you with physical violence?

KG: They, well, you mean like hit me over head?

JS: Yeah, hit you, stab you, shoot you, run you down with a car.

KG: They have said, “watch out, someone’s coming up behind you to hit you”.

JS: Who said that?

KG: One of the four, probably Jeff.

JS: But you don’t know which one? So it is just speculation?

KG: Jeff was the most vocal.

JS: The video, the first video that was shown from You Tube, when was that from?

KG: I don’t know the exact date on that. It was, I am not sure what day it was.

JS: You said there were two groups of protesters, the current group and a former group and you only started escorting your father once the new group came?

KG: With Jeffrey, Justin and Angela (*sic*) and Jonathan. Yeah, that it when I made the habit of walking him to the car because I felt for his safety that it was in danger.

JS: Okay. In the video with the yellow shirt comments, you stated that they called your father Carl Marx?

KG: No I didn’t state that.

JS: Isn’t it true that your father calls Jeff “Hitler” and calls Justin “Carl Marx” in that video?

KG: Jeff showed up one day with his new hair cut, a Mohawk he called it. It was kind of shorn on the sides, just explaining what brought the comment. Shorn on the sides and then long in the front and then comb over. It looked like Adolf Hitler, that’s what my dad, he is 75 years old, he is a history buff so his history comments come out, so he called Jeff Adolf Hitler, because the comment. Justin Kay, he had a big shaggy beard at the time and at the same time period, I am thinking Carl Marx was appropriate metaphor for the two just because of the way they looked. It wasn’t some kind of political statement. Jeff did make some comments of trying to speak German to my father, tried it out on my dad. I didn’t think it was too interesting for him to say ...

JS: ... okay thank you. And also in that video, didn't your father threaten them with physical violence? Yes or no?

KG: No, I don't, no he didn't.

JS: So, if I play that video again, your father won't have threatened them with physical violence?

KG: I don't know what he had threatened there.

JS: Oh, please. Oh, let's watch it one more time.

(Replay video #1)

JS: Yes or no, did your father threaten one of the protesters with physical violence?

KG: One of those protesters made a comment to them, but I don't think it was any of the four respondents here today.

JS: So he threatened to kick a protester in the balls in the video.

KG: He has arms tucked under ...

JS: ... yes or no?

KG: Yes, he might have said that ...

JS: ... thank you.

KG: ... he said that.

JS: Which of the four respondents did you tell your father, or tell that your father was blind in his right eye?

KG: None of them.

JS: So they did not know?

KG: I am not there to give them ideas of what to do with him.

JS: But you are there to protect him?

KG: Yes, I am. And I am telling them his faults, his weaknesses, maybe I should tell them all sorts of things so they would maybe avoid him, maybe avoid doing things to him in the future. I did ask them nicely ...

JS: ... so you wanted them to avoid doing things to your father?

KG: I did and I asked them please step away from the building ...

JS: ... well then isn't it possible ...

KG: ... and you know what they said ...

J: You are going to have to let each other finish, okay. So why don't you start again.

JS: Okay. Well then isn't it possible, if you wanted to protect your father and wanted them to stay away from him, if he had told them that you wanted them to stay away from the right side because your father can't see and that they would run into him that they would have?

KG: I asked them to stay away from the side of the building so he could walk safely to the car. I didn't tell them that he was blind in the right eye. I figured that that was enough to tell them. If told them, I thought, that he was blind in the right eye they would make a habit of being on his right side because that is what they would do, they were there to taunt like in the video, telling those people on the video that my father is blind in the right eye would just increase the taunting. That is what I perceived would happen and especially from the right side, they do all sorts of things to him. And I think anyone would expect that from the behavior.

JS: You testified that you don't engage the protesters so you never engage them, start conversation with them, you always just walk away.

KG: That is what I try to do. They desperately want to engage conversation with me and my father because they are recording all the time and I try to avoid it all the time. Like I said over six months maybe a few times, I have spoken to them. It is useless to talk to them because once you start talking to them, Jeff says "I don't want to hear what you have to tell me". So how do you talk to somebody that does not want to hear what you have to tell them? He just wants to tell his point of view so I just let him and I don't try to talk to him. That is the usual situation.

JS: Is it a true statement that the temporary orders you received made both you and your father feel safer?

KG: It's a true statement.

JS: And you felt less afraid of the four respondents?

KG: Well, they are still there, so I am still concerned. They would, like I said earlier, like Jeff would show up outside 150 feet just to make a point that he is still downtown Portland. So I don't know what he is planning next, so I still was afraid even with the restraining orders because they were still hanging around.

JS: If you were so scared why didn't you employ security guards?

KG: It costs money.

JS: You never hired any security guards or off-duty police?

KG: We never hired any security guards or off-duty police.

JS: And those temporary orders made you feel safer from Mr. Brooks and Ms. Parsons?

KG: Definitely.

JS: Even though Mr. Brooks and Ms. Parsons were only restrained from entering the premises and were free to protest in exactly the same manner as they had before they received that order?

KG: That wasn't the original intent, but because the way they were written they stayed across the street, so my dad and I felt a little, we felt a little better that they weren't up into his face ...

JS: ... that order didn't require him to stay across the street, did it?

KG: That's what they did.

JS: Alright. Have you or your father ever assaulted any of these protesters?

KG: No.

JS: Really? Never touched them?

KG: Touching is not assault.

JS: Well, we won't get into the legal definition of "assault", but you've never physically grappled with one of these people causing them to be bruised?

KG: One of the protesters, like I said they film every day, so one had a camera in my face, I grabbed her camera, I pulled it out of her hand and at the moment I had it in my hand, I gave it back to her. Never touched her in that incident.

JS: Your Honor, I apologize these videos won't play on the DVD player, but I would like to show Mr. Grimm here a video and I will bring that over then.

J: Well, why don't you, I assume you want me to see it, too.

JS: I do.

J: Why don't you stand over here by the jury bar. You can play it, unless if your cord will reach, or if your battery is strong enough and then the two of us can see and if counsel you need to walk over

here, please feel free to do so.

(Show Video on laptop)

JS: Yes or no, Mr. Grimm, did that video depict you engaging the protesters?

KG: Well, first you asked if I assaulted her.

JS: You had already answered that question with a no.

KG: I didn't ...

JS: ... and then I asked you a new question ...

KG: ... and she said, she said my father assaulted her.

JS: I asked you a new question. The question was did that video depict you engaging the protesters?

KG: Yeah.

JS: Did the video also depict you assaulting a girl holding a camera?

KG: No.

JS: No.

KG: No because she said my father assaulted her. She even wasn't ...

JS: ... so it depicted your father assaulting her?

KG: Well, he didn't, obviously, because he had his hands in his pockets the whole time.

JS: So then who assaulted her?

KG: Nobody.

JS: Nobody. So, I just watched a video and I was completely wrong and it didn't show ...

KG: ... as I explained before, I took her camera from her because she is filming me daily and that one day, I decided to take the camera. But then I gave it back to her. Never touched her, she says I touched her, I don't think I did. Just the camera. And she mentioned the personal property. And then she then later on said that it was my father that assaulted her and that obviously ...

JS: ... but you physically grabbed her camera, just to be clear. You will at least admit to that?

KG: Yeah.

JS: Thank you. You say you and your father are frightened?

KG: I am very much so.

JS: Isn't it true in all of these videos you guys are smiling, laughing, engaging the protesters?

KG: In these videos that are shown, yeah, but it is like I said, they are videotaping every day and the other videotapes would show that we are fearful, we don't approach them and, even in these videos, the laughing and gestures, I am afraid walking, I dread every day walking by there.

JS: Why didn't you videotape any of this then, if the videotapes would show that?

KG: I don't have a camera that videotapes that well. So I didn't, I have just a still camera, I took some still pictures, but that doesn't show anything that fearful.

JS: Did your dad fill out the forms for the restraining orders on his own?

KG: He had some help with the Portland Police.

JS: He had some help with the Portland Police?

KG: I wasn't there when they were filled out.

JS: And the Portland Police gave you the advice to take out this restraining order?

KG: Yeah.

JS: No further questions from me, Your Honor.

J: Mr. LeClaire.

WEL: I just have a few and I will try to be brief Your Honor. Your father is blind in his, is it his right eye?

KG: His right eye, yeah.

WEL: He is 75 years old?

KG: Correct.

WEL: He still drives back and forth every day?

KG: He does.

WEL: And when he drives, he pulls out on to a street that is one-way?

KG: Correct.

WEL: Four lanes?

KG: I think that it is four lanes.

WEL: What street is that?

KG: 12th Avenue.

WEL: 12th Avenue, four lanes. Where your office is or your business is, it's right on the Max tracks, or thereabouts, isn't it?

KG: Correct.

WEL: A couple of blocks behind Nordstrom's, downtown Portland?

KG: Right.

WEL: A lot of foot traffic around there?

KG: Um, yeah.

WEL: And it is your contention that normally in that situation it is safe for your father drive, blind in his right eye, turning left onto a four lane busy street with other foot traffic around, that's safe?

KG: When he can pay attention to the foot traffic, yes.

WEL: Okay, but your contention is that it is not safe when there is protesters on the sidewalk?

KG: When, it's what they are doing that is when it is unsafe.

WEL: Yelling at the car?

KG: And yelling at him, screaming, distracting, pointing out things, throwing up on the car in pretend.

WEL: Okay.

KG: So that is some kind of distraction that you really can't think straight anymore for a moment.

WEL: But there's never been an accident?

KG: Are we waiting for one?

WEL: But there has not been an accident?

KG: No, I hope there never is one.

WEL: I do too. To date, it's your father who drives every day and you ride with him.

KG: That is usually the case.

WEL: But you haven't taken over the driving?

KG: He drops me off, he drives home with his car.

WEL: But you are wearing glasses today.

KG: I always wear glasses.

WEL: And you have two eyes, you have vision in both your eyes?

KG: Yes

WEL: Is your vision with two eyes with glasses better than your father with one eye where he is blind in his other eye?

KG: You know, actually, he can see pretty well in the one eye that he has. He can see better without glasses, than I can with glasses in his one eye. When I take, I cannot drive without glasses. So, we about even.

WEL: Wow. Thank you, no further questions.

J: Any redirect?

PT: No, Your Honor.

J: You may step down, thank you. And your next witness?

PT: I call my next witness, the petitioner, Horst Grimm.

J: If you step forward up here please. And if you will face the clerk and raise your right hand, please.

CC: Under the penalty of perjury, do you swear or affirm that the testimony you are about to give

in the matter now pending is the truth, the whole truth and nothing but the truth.

W-HG: I do.

CC: Thank you. Please be seated. State your full name and spell your last.

HG: My name is Horst Grimm. Grimm G-R-I-M-M.

J: Go ahead.

PT: Mr. Grimm could you tell me a little bit about your history?

HG: Well, I was born in Germany. I lived, I spent my childhood during the war. Great deal in bunkers surviving massive bombing. We were bombed twice direct, I was attacked by low-flying fighter plane one time and that was my childhood. I immigrated to Canada when I was 21 after I served 3 ½ year apprenticeship to become a furrier. I arrived in Canada in March of 1956. I looked at Canada if I would have had the money, I wouldn't have gotten off the train. Okay? So I decided that I was going to make every effort to get out of Canada and immigrate to United States. I got myself job, a job at a exploration company in Northern Canada. I spent two winters in Northern Canada in 60 below, cold and snow, but I survived. When I came out of the second winter, I had \$5000.00 which was ??? price of ??? @ 10:26:53. So, I was able to sponsor myself to come to the United States and that is what I did. I arrived here in, first I took a trip to Europe because I was ??? with \$5000.00 and, but then in March of 1959, so I came to United States. First down to San Francisco with a friend of mine and we spent two weeks down there looking around, but we weren't excited about San Francisco either, so he went, took the next bus out of town to Philadelphia and I took the next bus up to Portland. I came to Portland and I stayed here for the spring and I made a lot of friends and it was very nice and I almost decided to stay. But then, I bought myself a ticket to go to Alaska because I just like the northern country. But people discouraged me and there was an older gentleman, he was the general manager for the Langdoff Bakery, which was a huge operation at that time and he said "stay here, I get you a job and then you look". Well, I sold my ticket and stayed.

PT: Is that when you began to work at, for Nicholas Ungar?

HG: No. I went to work for the Langdoff Bakery. And then one day, in the restaurant I met a lady and she asked what I was doing. I explained what I was doing and my problems that I had, that I had to work in a bakery, she says you know "I am the secretary to Nicholas Ungar, do you know who he is?" No, I said "no idea". So she said "you should come and see him, he owns a fur business." So she arranged a meeting with Mr. Ungar and Mr. Ungar was a person, he came to Portland from South Africa on a sail ship. First to San Francisco and then up here and I told him my story and he told me his story. So, he liked my story, so he says if you weren't working in a bakery, I would hire you and you could go to work tomorrow. So he say, "well, let me think that over" and he called me two days later and he says "what hours do work in a bakery". Well, I said "I start at 5:30 in the evening to Midnight". He says "there is no reason why you couldn't work for me during the day" and the next day I started for Nicholas Ungar to work.

PT: Okay. And skipping ahead, you worked there for 50 years and then ...

HG: That was 50 years ago.

PT: Okay and you have owned Nicholas Ungar Furs since 1979?

HG: Yes, in November, this week, 30 years ago.

PT: And how old are you?

HG: I am 75.

PT: Okay. And you have a medical condition that would ...

HG: ... I have high blood pressure, yes.

PT: High blood pressure. Any other medical conditions?

HG: No.

PT: About your right eye, as well?

HG: My right eye, yes. But that's, I can live with that.

PT: Okay, and you live in Clackamas County?

HG: I live in Clackamas.

PT: Can, we heard of some of the history of the protesting, could you, could you describe to me the protesting as it occurred with the respondents involved?

HG: Well, they are very obnoxious, they are coming right into my face, when I come out in the evening they form a half-circle around my door and they make all kinds of remarks, like they are imaging my accent, which is not very successful and they are making comments on the shoes I wear, or what jacket I have on and always something. And then, of course, they call me "jackass" or "asshole" and, but I have learned to ignore this, see, I even learned to ignore the dropping of bombs when I was a kid and when they think that I am laughing when I come out, when I was eight years old I did a lot of crying, believe me. And, my mother she taught me to laugh when the bombs were falling. I still laugh when I am in trouble.

PT: And when the respondent, just to be clear the respondents that are here, Jeffrey Wirth, Jonathan Brooks, Justin Kay and Andrea Parsons, have all participated in the behavior?

HG: They all are nasty, they are nasty critters.

PT: And when they are insulting you, calling you derogatory names, how close to you are they?

HG: Well, Mr. Brooks is the one that, on his bicycle, managed to come the closest to me and he would come right next to me on my right side and then he would scream into my face and holler “this man tortures animals” and this is his line over and over and over.

PT: And has Mr. Brooks used foul language?

HG: All the time, yeah.

PT: I would like to show you a video right now, if I can figure out how to get this back. I seem to have... (whispering)

(Show Video #3)

PT: Is that video an accurate depiction of what happened on that date?

HG: I did not hit him, I touched his ...

PT: ... my question was, was that video an accurate depiction ...

HG: ... yes, that is the standard affair.

PT: Was that Mr., respondent Jonathan Brooks?

HG: That was Brooks with the signs under his arm.

PT: Okay and was that Mr. Wirth with the video camera?

HG: Yes.

PT: And at the time, in this video, you were by yourself?

HG: Yes.

PT: And why was that?

HG: Well, there were days when I was by myself, and there were days when my son was on vacation and was gone. I mean we are running two businesses here. He runs his and I running the fur business. He does the books and I do the work.

PT: And were you distressed ...

HG: ... that is an under statement that I was distressed.

PT: Did you feel like Mr. Brooks was physically intimidating you?

HG: Yes. And I had to control myself to punch him nose because he is just, in a civilized society this should not be repeated year in and year out.

PT: In general, is this typical of the behavior from respondents?

HG: Yes, it's very typical.

PT: How frequently would respondents be outside your business at the end of the day?

HG: Everyday from 1-1:30 to 5:00, when we went home, Monday through Friday, the last six, seven, eight months.

PT: Did the respondents ever tell you their names?

HG: No. So, I gave them names, so to keep them apart.

PT: Okay. But you've asked them for their names and they refused to give them to you?

HG: No, phst, you can't talk to these, you couldn't, there is, they have their own, you know screaming at me that was it. Mr. Wirth, I tried to talk to him one time and he would go do this and says "I don't want to hear anything from you", "I don't want to hear anything from you". So that was it.

PT: Can you tell me about the days when respondents followed you to your car?

HG: They follow me to the car. There was a point about four or five months ago when it became less aggressive. Following to the car. They only, at first they followed us all the way almost into the garage and screaming into the garage and I would come out in the car, they would be there on both sides of the car and screaming into my face and Mr. Wirth he especially a good actor, and he would then, acting like he was throwing up on the car and leaning over the car and made a total ass out of himself. But, you know.

PT: Was that behavior distracting to you while you were driving?

HG: Well, I was distracted, but I had to be, you know, I was aware of this. I expected them to jump in front of the car or even on top of the car. You know, that's what they were, or throwing their signs at me and you know.

PT: Do you have a valid driver's license?

HG: Yes.

PT: And have you recently taken a driver's test?

HG: Yes. I am, I can, I am allowed to drive. I have almost 20/20 vision in the, I didn't lose my eye to disease. I fell into the hands of another group of folks like that. They poked my eye out.

PT: Okay, well we'll leave that story for another day. Can you, have you seen a doctor for your high blood pressure?

WEL: Objection, Your Honor. Relevance and this is getting to, I believe, science, this is hearsay and also I think that we may be getting into some scientific relevance here.

J: Well, I will see where it goes. The relevancy objection is overruled. Go ahead.

HG: I see a doctor on a regular basis. I was there, not every month, but every, I was there oh, about two months ago.

PT: Okay and are you under treatment for high blood pressure?

HG: Yes, I take pills every day.

PT: Does your doctor give you any advice regarding the protests?

HG: Yeah, I should get out of this, he says.

WEL: Objection, hearsay.

J: Oh, I am going to receive it for something other than the truth of the matter asserted. So, could you repeat the question and then go ahead and answer it?

PT: Does your doctor give you any advice regarding the protests?

HG: Well, he is always asking how I am doing with the demonstrator and he says that I should get out of this.

PT: Now, in July and August, you went and obtained restraining orders against the four respondents?

HG: Yes, I did.

PT: Okay. Can you tell me has the protesting, or at least your trip from the store to your car, has that improved since the TROs?

HG: It has become less. These four demonstrators, they are not there anymore, but there is a new group developing. One sits down there next to Ms. Andrea, the smiling one there. So, and they are forming a new group and there is a young man with her we call him the skinny guy and ...

PT: ... okay well we'll, but in general is it better with the restraining order?

HG: It is more bearable, but there is almost hysteric screaming there – it drives the neighbors nuts.

PT: Do you think if you had a restraining order that required the respondents to be 50 feet away that you would feel safer on your ...

HG: ... yes, definitely.

PT: No further questions.

J: Cross-examination.

WEL: If I might go first, Your Honor?

J: Whatever your preference.

WEL: Thank you. Mr. Grimm you said these people wouldn't tell you their names.

HG: No.

WEL: How did you get them?

HG: We got them from the police.

WEL: So the police helped you investigate and then gave you their names?

HG: Right.

WEL: And in fact, you went and the police helped you fill out these forms, is that correct?

HG: That is correct.

WEL: Did you read them before you signed them?

HG: Yes.

WEL: Now you, yourself, did not fill them out, but you just signed them?

HG: I had the police fill them out for me, yes.

WEL: Okay, and did you read the part that says, I filled this out myself?

HG: Well, if you order someone to write on the typewriter for you that is like if you filled out yourself.

WEL: So, you ordered the police to write the things that they wrote?

HG: Yes, yeah.

WEL: And they wrote them for you because you can't write them?

HG: Of course, I can write them.

WEL: Why did you have the police do it for you then?

HG: That is the way it came up.

WEL: Okay. And you did that on all four petitions?

HG: Yes.

WEL: You're currently blind in your right eye?

HG: Yes.

WEL: You never told any of these four respondents?

HG: I have no conversation with them, just shouting, nothing else.

WEL: Okay. Sometimes you shout back at them?

HG: Sometimes it was just too much.

WEL: And sometimes ...

HG: ... most of time I just walk away.

WEL: And used the laughter technique you learned in the bunkers?

HG: Yes.

WEL: Sometimes you can't laugh, and it erupts in you saying things to them?

HG: I guess, yes.

WEL: Such as you calling them an "ass" or a "jackass".

HG: Yeah.

WEL: Or an “asshole”.

HG: I don’t think I called somebody an “asshole”, did I?

WEL: In that mail incident that you saw, you saw that on the video, correct?

HG: If you are under that much pressure, you call people almost anything. I would call you a “jackass” too, then.

WEL: (Laughing) Thank you, Mr. Grimm. You did watch this video, correct?

HG: I did, sorry.

WEL: Do you remember that incident?

HG: The incident like this were all the time there.

WEL: Okay.

HG: Because this is not one incident, there were 200 of them, 500 incidents like that.

WEL: But do you remember that specific incident?

HG: No, I don’t.

WEL: Having seen it, does it refresh your recollection ...

HG: ... but there were more than one like that.

WEL: Okay. When the gentleman in the video handed you the envelope before he pulled it away, did you say something to him?

HG: No, I didn’t say anything.

WEL: You didn’t call him a name?

HG: I said, “Give me my mail.”

WEL: You didn’t erupt and either call him a “jackass” or an “asshole” or something else ...

HG: ... I never called him a “jackass”.

WEL: And that is why he perhaps pulled the mail away?

HG: No.

WEL: Oh. Okay. But then you did strike at him?

HG: I did not strike at him. I knocked at his signs there. I did like this with the back of my hand. Look at it. I never strike anybody.

WEL: Okay, you only struck his signs.

HG: I said "Come on, give me my mail." And then he threw it at me at one point. Then I walked away from him. That is not on the video. I says "keep the mail". And then he threw it at me. That was on the other side of the street. Yeah.

WEL: That wasn't on the video?

HG: No.

WEL: You did get your mail in that video though.

HG: I got some of it, yes.

WEL: There was only one piece on the the video that actually dropped though, correct?

HG: No, there were more, that was all the mail for the day that I had got from the mailman.

WEL: Okay.

HG: There were five or six pieces.

WEL: Now, you said these protests, protests have been going on at your store for approximately two years, correct?

HG: At least two years.

WEL: In some form or another?

HG: Yeah. But these people have been there almost two years.

WEL: When you say "these people", who do you mean?

HG: These four and then there, these four that's the core of these demonstrators. And then there are always new one coming and going.

WEL: Okay.

HG: Like the young lady that **he brought along today @10:47:02**. That is not a lady that has some

ornaments in her nose, she's there too always screaming, but she didn't show up today.

WEL: Okay.

HG: But there is a whole group there, that is coming and going.

WEL: So, you were sitting her listening when Kai Grimm testified, correct?

HG: Yeah.

WEL: And he testified that the protest went on for a while and then they stopped in September of 2008, is that correct?

HG: They didn't really stop, they just became calmer.

WEL: And then a new group took over?

HG: Well, but then there were these, this core, these trainees from the other group that were there, it is family affair there somehow.

WEL: And a little bit earlier you said that these four have been there for the last six, seven eight months.

HG: No, they have been there last year in April. I remember them being there in April last year because one of our employees came in to see us, ex-employees, and I remember that they were out there and she said, "Do you want me to talk to them." I says, "Forget it".

WEL: So you told your staff never to talk to these people?

HG: Well, the staff, the lady that I have there is, she is very deeply religious and that is the wrong combination here.

WEL: Let me ask you about the bicycle incident. You said that it was Mr. Wirth had his bicycle?

HG: No, that is Mr. Brooks.

WEL: Mr. Brooks, I am sorry. Mr. Brooks has a bicycle, right?

HG: Yes, yeah.

WEL: And he had it leaning up against the side of the building.

HG: Not leaning up against, he was on the bicycle.

WEL: And, so, I am confused. So you walk along the right side of your building, correct?

HG: Yeah.

WEL: And somehow he snuck up between you and the building while riding his bicycle?

HG: He was there all of a sudden. He had the habit of coming on his bicycle a number of times.

WEL: You didn't see how he got there because you are blind in your right eye?

HG: I was up against the wall and there were probably six or seven people around me on all sides. And I was walking along, and then they moved along and he came there, so all of a sudden he was there, screaming like a mad man.

WEL: Okay, and you watched the mail incident that we just saw here, right?

HG: Yes.

WEL: And in that incident, as you walk along one individual comes around and walks backwards in front of you, correct?

HG: He walked into me, yes. He was not one of the demonstrators.

WEL: Oh, there was another individual who you guys collided?

HG: Yes.

WEL: But the protester was walking backwards in front of you as you walked forward?

HG: They were all around me. There was not one demonstrator, there were seven or eight of the them there.

WEL: And at least one videotaping it, correct?

HG: Well, you have to take that with a grain of salt here, what you are showing.

WEL: Sure. But in the mail incident, in the video that we just saw, the protester is walking backwards as you walk forward, correct?

HG: I walked away and I tried, I reached my hand out and he all the way across the street he was teasing me with the mail.

WEL: Okay. These four respondents have never physically threatened you, have they?

HG: They have pushed me, they have, they have come so close that is not even funny, they always sat on my shoulder ...

WEL: ... let's be clear. They have not physically threatened you, have they?

HG: They have screamed into my face.

WEL: The screams into your face were not personal threats, were they?

HG: These were personal threats.

WEL: What were the personal threats?

HG: When somebody comes on the street that close up to my face with his one hand the signs and this, I feel threatened.

WEL: You feel threatened when it happens every day over the course of a year or two, correct?

HG: Yeah.

WEL: And none of these four has ever attacked you?

HG: They have been very close to it.

WEL: You felt that they were very close to it?

HG: Well, this is a plan, an operation there. Let's face it, you know they are well trained to scare me or to, the main thing is, I mean they are laughing here, but this is a planned thing to get under my skin to punch in nose and then you two gentlemen show up to sue me. This has happened with my competition. He sued, he sued these demonstrators and he lost and then he had to pay the attorneys.

WEL: So you feel like we are suing you?

HG: Not yet, that is why I am, I am aware that this could happen if I touch any of these gentlemen and the lady. There is a new one coming there that is sitting there in the corner, he seems to be a new demonstrator there. Oh boy.

WEL: Are you pointing at the guy with the camera?

HG: No, with the glasses there, sitting there.

WEL: And you have seen him before?

HG: Yeah.

WEL: But you say when they yell that you torture animals and call you names you feel threatened by that?

HG: I do not torture animals.

WEL: You just ...

J: Let's go ahead and take a five minute break and let's, if you'll concentrate on the question that's asked and just answer the question, please.

WEL: Thank you, Your Honor.

(Break)

J: Go ahead.

WEL: Thank you, Your Honor. Mr. Grimm, I was asking you about threats and let's be clear. None of these respondents has ever raised a fist at you, have they?

HG: It was never a fist fight.

WEL: None of them has ever said that they're going to get you and you're not going to come back the next day?

HG: It was all psychological warfare there, with screaming and hollering and insulting on a regular basis for almost two years.

WEL: Now, you were so upset about this that you went to the police a number of times?

HG: Yes.

WEL: You went to the police so many times they specifically assigned a detective to work with you to try and solve this situation, correct?

HG: That is how bad it was, yes.

WEL: And as far as you are aware in spite of all that, there were never any criminal charges against these four?

HG: The police came out and talked to them and explained to them what they could do and what they could not do.

WEL: And as far as you are aware, there were never any criminal charges?

HG: Then they were quiet for ten minutes and when the police were around the corner, it started in all over again.

WEL: Were there ever any criminal charges against these four?

HG: No, there were no criminal charges for something like that @11:02:34.

WEL: Okay. And because the police said they couldn't charge them with crimes, they told you the most you could do is an elder abuse prevention act, is that correct?

HG: That is what was recommended.

WEL: Thank you, Mr. Grimm, I have no further questions.

J: Counsel

JS: Mr. Grimm, I just have a couple brief questions for you. Mr. LeClaire was going over the petition you filed to get the temporary restraining orders and how you signed that you prepared it. In multiple spots you listed 111 SW 2nd, Portland, Oregon, 97204 as your address. Can you tell me what address that is?

HG: That is the police headquarter.

JS: And can you tell me what the phone number 503-823-0335 is?

HG: That is the police.

JS: Is it, who specifically?

HG: That is, when you call there, the city police.

JS: Isn't it true that is the detective's direct line, Detective Louis?

HG: Yes, yeah.

JS: Thank you. No further questions, Your Honor.

J: Any re-direct?

PT: Yes, Your Honor. I just have one or two brief questions. Mr. Grimm, can you tell me how respondents' conduct affected you emotionally over the course of the protests?

HG: Well, there were times when I had trouble sleeping and I had to take sleeping pills that I bought over the counter. But I couldn't tolerate that stuff so I went off again. I had some real problems and I gained weight and I was a total mess.

PT: And that's improved since the restraining orders?

HG: Yes, this was last year real bad.

PT: Thank you, no further questions.

J: Any questions in light of those questions?

WEL: I don't have any, Your Honor.

J: Okay

JS: No, thank you, Your Honor.

J: Alright, thank you. You may step down. Other witnesses?

PT: That was all my witnesses, Your Honor.

J: Okay, then we will turn to the other side. Did you wish to call witnesses?

JS: Yes, Your Honor.

J: Okay, go ahead.

JS: The respondents' first witness is Kayla Hanson.

J: Alright if you will step forward, please. Watch your step on the cord. And if you will stand next to the witness chair, face the court clerk and raise your right hand please.

CC: Under the penalty of perjury, do you swear or affirm that the testimony you are about to give in the matter now pending is the truth, the whole truth and nothing but the truth.

W-KH:I do.

CC: Thank you. Please be seated. State your full name and spell your last.

KH: Kayla Hanson. H-A-N-S-O-N.

J: Go ahead.

JS: How long have you been protesting Ungar Furs?

KH: Since June, late June.

JS: Have you ever physically touched them?

KH: No.

JS: Have you ever threatened them with physical violence?

KH: No.

JS: Have you ever been threatened by the Grimms with physically violence?

KH: I was assaulted by Horst.

JS: Your Honor, may I approach the witness with the video?

J: Yes.

JS: Did you happen to catch that assault on video?

KH: Yeah.

JS: Were you the one videotaping **in the first place @ 11:06:04**?

KH: Yes.

PT: Your Honor, may I approach ...

J: Sure you can step forward and take a look.

JS: Why don't we view this video and you can tell us what happens in this video when we're done?

(replay video on laptop)

JS: Can you tell us what happened in that video?

KH: We were following them with strawberries that we got from the food cart across the street. And as soon as I called Kai a murderer, he turned around, grabbed my camera and then while the camera was tumbling, Horst grabbed my arm to try and like get me to not take my camera back.

JS: And were you injured in this?

KH: I was left with a bruise.

JS: May I approach, Your Honor, with respondents' Exhibit 2 and 3?

J: Yes.

JS: Showing you respondents' Exhibit 2 and 3 for identification. Can you tell me what those are?

KH: Those are bruise, that is one bruise from the, from Horst grabbing me.

JS: And when those photos taken?

KH: Those were taken about a day or two, one day and then two days after the incident.

JS: And is that a true and accurate depiction of the injury you received?

KH: Yes.

JS: Your Honor, I would like to offer respondents' Exhibits 2 and 3 as evidence.

J: Any objection?

PT: No, Your Honor.

J: They will be received.

JS: Was that video of you being assaulted a true and accurate depiction of the event that day?

KH: Yes.

JS: Your Honor, I would also like to offer that into evidence as respondents' Exhibit 1.

J: Any objection to that?

PT: No, Your Honor.

J: Okay, it will be received.

JS: Thank you, Your Honor. While you were, in your time as a protester, have you witnessed the Grimms assault anyone else?

KH: I've witnessed Horst running into another activist and not to any of my recollection, anything else. Just force, like words and laughing and getting really close to our faces.

JS: Have you had any interactions with the police while you've been protesting?

KH: Yes.

JS: Can you tell us about those?

KH: Usually they just come down and tell us that there have been complaints, but we are not really doing anything wrong just we can just continue what we are doing.

JS: They tell you you are not breaking the law?

KH: Yeah.

JS: May I approach Your Honor with another video here?

J: Yes.

JS: Was there some incident where someone had entered the store?

KH: No.

JS: No.

KH: Oh, oh, oh, of, um, one of the activists entering the store?

JS: Or someone was trespassed from the store?

KH: Not that ...

JS: ... no. You didn't talk to the police about them being trespassing.

KH: Oh, there was a passerby that went in and that was about it.

JS: And what happened that day?

KH: The police came by and after the passerby left and said that he, that he was trespassed and that he was not allowed back and that if he did, he would be arrested.

JS: And did the cops arrest any of the protesters?

KH: No.

JS: And the person who trespassed wasn't a protester?

KH: No.

JS: Do you have (video begins playing) ...

(2nd video on laptop)

JS: Did the police issue any citations to you guys that day?

KH: No.

JS: Did they accuse you of violating any laws?

KH: No.

JS: Did you feel scared and threatened when the Grimms attacked you?

KH: Yeah, I thought that they were going to break my camera or dislocate my arm or something.

JS: Did the bruise hurt?

KH: Yeah.

JS: Cause you physical pain?

KH: Uh-huh.

JS: Have you heard him threaten any of the other protesters?

KH: Yeah.

JS: Can you give us some examples, please?

KH: He like threatens to like obviously kick protesters in the balls or just that he is going to get them, or get their "ass" in certain ways, I don't know how like he means by that, but it is seems pretty threatening.

JS: Have you ever heard him threaten to turn anyone into a coat?

KH: Oh yes. He threatened one protester to, that he was going to skin her and turn her into a coat and that she would make a fine garment.

JS: Have you ever threatened him with physical violence?

KH: No.

JS: Have you ever heard any of the other protesters threaten him with physical violence?

KH: No.

JS: Have you ever seen any of the protesters commit a physical act of violence against the Grimms?

KH: No.

JS: To your knowledge, have any of the respondents vandalized Ungar Furs?

KH: No.

JS: Have you, yourself, done any of that?

KH: No.

JS: Is there anything else you would like to share with His Honor?

KH: No.

JS: No further questions.

J: Mr. LeClair?

WEL: I am fine, thanks, Your Honor.

J: Cross-examination.

PT: Thank you, Your Honor. Bear with me for a second. I was watching the video, where in the video did it show Mr. Horst Grimm grabbing your arm?

KH: It didn't like show him like physically grabbing it because Kai was grabbing my camera and fumbling around to, obviously, like, um, like take away the evidence that would have been shown if they hadn't grabbed my camera. But I'm you can like hear me, telling him that he his grabbing me.

PT: Other than this incident that you just spoken to, have you Mr. Grimm actually assault any other protester?

KH: I've seen him shove a protester that was standing against the wall when Horst was approaching the store. He was standing there just minding his own business and Horst went behind him to, and like shoved him out of the way.

PT: Was the, what was the name of this protester?

KH: Um, I don't feel comfortable giving his full, I don't even know his full name.

PT: What's his first name?

KH: Um, Avocado.

PT: Is that is his nickname, is Avocado?

KH: Yeah, I don't know his real first name.

PT: You don't know his real first name?

KH: No.

PT: He has never told you his real first name?

KH: No. We don't ...

PT: ... how well do you know him?

KH: I just know him from protests.

PT: Was he standing up against the wall of the building?

KH: He wasn't touching the wall, he was standing near the wall.

PT: Was he near Mr., in front of Mr. Horst on his right hand side?

KH: He was, if the building is right here and the entrance is here, he was standing like right there and Horst like came like straight on so he would have seen him with at least his left eye, definitely.

PT: Was this Avocado shouting at Mr. Grimm?

KH: No.

PT: Have you ever seen Avocado shout at Mr. Grimm?

KH: Stuff like, you know, for information, but never, he's never said any derogatory comments.

PT: You've seen the respondents stand very close to Mr. Grimm, though, correct?

KH: Yes.

PT: And you've seen the respondents use derogatory names towards Mr. Grimm, correct?

KH: Yes.

PT: And you've seen the respondents shout at Mr. Grimm?

KH: Yes.

PT: Would you give me the name of the protester that Mr. Grimm purportedly said he wanted to make them into a coat?

KH: Her name is Ashes.

PT: Is that her nickname?

KH: Yes.

PT: Do you know her real name?

KH: No. Oh, yes, but I cannot say, I don't feel comfortable giving her real name without her consent.

PT: Your Honor, could you ask the witness to answer the question?

J: What is the relevancy of it?

PT: Trying to find out who this protester was that she claims was assaulted by Mr. Grimm.

J: Why? Why do you want to know.

PT: If the protester is here, I would like to call them as a witness in rebuttal.

J: Is the protester that you are referring to in the courtroom?

KH: No. She is not.

J: I don't see any relevancy to it.

PT: Mr. Grimm didn't take any violent actions towards that protester, did he?

KH: No.

PT: No further questions.

J: Any else over on this side?

JS: Just two brief questions. Were you aware that Mr. Horst had a bad right eye?

KH: No.

JS: And I guess, or Mr. Grimm, I am sorry. And can you tell me when you were assaulted by Horst Grimm what his position in relation to you was?

KH: He was standing straight ahead. I don't ...

JS: ... thank you, no further questions.

J: Alright, you may step down. Thank you.

KH: Thank you.

J: And your next witness?

WEL: I would like to call Justin Kay.

J: Alright, if you will step forward please and watch your step on the cord and if you'll stand next to the witness chair, face the court clerk and raise your right hand, please.

CC: Under the penalty of perjury, do you swear or affirm that the testimony you are about to give in the matter now pending is the truth, the whole truth and nothing but the truth.

W-JK: Yeah.

CC: Thank you. Please be seated. State your full name and spell your last.

JK: My name is Justin Kay. Last name is spelled K-A-Y.

J: Go ahead.

WEL: Thank you. Mr. Kay do you protest Ungar Furs?

JK: I did up until my restraining order and since the recent modification from Judge Stewart I have been there across the street.

WEL: Why do you protest?

JK: I protest because I believe that the exploitation of animals for something as vain as fur is wrong.

WEL: How does that translate into, how do you feel about humans?

JK: Humans are animals. I also believe in the equality of humans and of, I've done other work with other groups. I have been involved in feminist groups and such because I believe that humans have an equal claim to freedom, just like animals do.

WEL: Would you ever hurt a human to protect animals?

JK: No.

WEL: Have you ever threatened Mr. Horst Grimm?

JK: I have not threatened Mr. Horst Grimm.

WEL: Have you called him a murderer?

JK: I have.

WEL: In what way is he a murderer?

JK: I obviously don't know the legal definition of murderer, so the way I use it is I think he's complicit in an industry that is killing animals needlessly for a status symbol of fur, the garment, a clothing and I think that complicity is, means he is as guilty as the person whose skinning them or killing them.

WEL: And is that also why you call him a torturer?

JK: Yes.

WEL: Have you used other names at him?

JK: Yes.

WEL: Various vulgar phrases?

JK: Yes.

WEL: Why did you do that?

JK: In the beginning of these protests and I should say for the record that the other group in the beginning before the other respondents were involved, I had been at the protests and I know that people had tried to contact the store to open a dialog about furs, at meetings. I know various letters were sent to see if they would be open to have a dialog about how people in Portland feel about fur. They never responded and have always been very closed off and would never talk about the subject. And the protests never started off with vulgar language, that was really just a mechanism to try to annoy them so they would engage us in some way so we could, also to highlight the fact that they were the first store in Portland, and people don't know that and so by creating a scene outside we kind of create, I guess a scene for passersby or for media or something like that to know that there's still a fur store and people are still protesting.

WEL: Did you, do you have any sort of organized group or name to your group?

JK: No.

WEL: How did you figure out who would be there and when?

JK: I mean, I have been involved in various different animal rights protests over the last couple of

years and have known people who are against fur and just talking with them and seeing if they want to take a day to come down, stand outside with a sign, chant, shout and you know, try and get other people so we can create the most consistent campaign. Various people walk by, some people hear about it and want to come by and we just tell them like it would be nice if you came by on Monday, not very many people are available on Monday, etc.

WEL: If somebody came to you and said, I want to join the protest, would you tell them about protest standards, what would you tell them?

JK: Yeah, almost always, if someone came by on the street or contacted one of us at, you know, because they've seen us at the protests, or they have seen us at a restaurant where there is flyer put up and they'll ask about these protests or whatever. Tell them, you know, come down, you know 1-5 Monday through Friday, that is when these are happening, this is what we do, don't stand in front of the door, you know ...

WEL: ... why not stand in front of the door?

JK: Because in the beginning there was kind of habit of people carelessly just kind of standing around and eventually the police told us that could be interpreted as blocking the door. So, that was pretty early, probably earlier this year and we since then have told people yeah, you know don't stand in front of the door. We are not here to block the door. That's one thing. We told them not to threaten anybody, don't ever touch Horst or Kai, don't ever threaten to touch Horst or Kai and, you know, the same thing with their customers, don't threaten them, don't touch them and, you know, tell them, you know, we have literature if you want to pass out that. Here are some chants that we do, things like that.

WEL: Was it your goal to make Horst Grimm physically afraid of you?

JK: No.

WEL: If another activist came up to you and said "I love animals, I don't like what they're doing, I am going to get him, you know, let's get him to fight us", what would you tell them?

JK: Well, I mean, unfortunately that has happened and people have come up, walking by, getting off the Max, something like that and be like, hey, do you want me to throw a brick threw the window or something, and we'll tell that person "absolutely not, that is not what we are here to do, we are to do peaceful, lawful protesting". "No one has ever been arrested, we want to keep it that way." "If that is your mentality it's probably best that you don't join these protests."

WEL: And how many people have you told something like that to?

JK: A handful. I wouldn't be surprised if it was ten people even since this last year.

WEL: When did you first find out that Horst Grimm was blind in his right eye?

JK: Today.

WEL: Did Kai Grimm ever tell you not to approach the building?

JK: He told us not to touch the building and we didn't, we hadn't

WEL: Was there a context about that, was that part of a discussion where he was blaming you for vandalism?

JK: Yeah, it's an old building and it has some scuffs on the white paint and he said that, he attributed those to us leaning on it, or setting our signs on it, or something like that, which was not true because what we did was stand in front building with our signs in our hands. We didn't kick the paint. He always said that we were chipping paint and things like.

WEL: Have your tactics of yelling, swearing at Horst Grimm, have they changed?

JK: Since, what do you mean exactly?

WEL: Since, say July?

JK: Yeah, I mean, personally, I can only speak for myself, I wasn't there since my restraining order is protesting and since I've been back and I now that people have changed because of the restraining orders, since the four restraining orders were served. Those tactics have definitely changed for the better, and I haven't, since I've been back, since October 15, after Judge Steward modified the restraining orders, I haven't, I mean I haven't even engaged Mr. Grimm at all.

WEL: Okay. What have you learned from this process about protesting?

JK: There, I mean, there is better ways to get attention and I think that we distracted the public from the real issue, which is the fur industry and it is not about Horst Grimm or Kai Grimm so much. And we should have focused a little bit more on the industry and not created a media spectacle, so to speak.

WEL: And is that in regards to ...

JK: ... regards to, I mean, regards to the restraining orders, the violence that has occurred, which is not, it was never an intent. We don't want our activists to get punched, or have their cameras taken away. The cameras are there because those kind of the incidents have happened in the past and we want to be able to catch it if it does happen. It is not there to provoke anything, so ...

WEL: ... protect yourselves ...

JK: ... protection, yeah. I mean any experienced activist should carry a camera.

WEL: Thank you, I have nothing further.

J: Any questions for him?

JS: Have you ever had any interactions with the police about this matter?

JK: I have had countless interactions with the police.

JS: Have they ever arrested you?

JK: No.

JS: Have you been cooperative with them?

JK: Yes.

JS: Have you ever done anything aggressive or violent towards the petitioner or his son?

JK: No.

JS: Now, we have heard a lot about these interactions where maybe you are calling Mr. Grimm and “asshole” and he is calling you an “asshole”, but have there just been any casual normal, every day chats.

JK: Absolutely. I mean there have been a number of times where we have talked about fur and either Kai or Horst have shared their view and we will try to argue, I mean we, honestly it’s the last five minutes of the day that we even see them and so they usually don’t speak to us, but when they do we’ll try to have a conversation. At least I can speak for myself, I try to have a conversation. I have talked about, I mean I have talked about fur with Horst, personally. I have talked about fur with Kai personally. I have talked about random things. I have talked to Horst about what kind of apples he prefers.

JS: So you have had just every day conversations?

JK: Absolutely.

JS: Thank you, no more questions, Your Honor.

J: Cross-examination.

PT: Thank You, Your Honor. Your ultimate goal is to drive Nicholas Ungar Fur out of business, is that correct?

JK: More ultimate goal is to stop the exploitation of animals.

PT: And is part of that goal is to drive Nicholas Ungar Fur out of business?

JK: We are out there to educate the public and let people know that there is a fur store in town. Honestly, for myself if the store were to close, I mean it's hard to avoid the topic that would be beneficial to our goal. The ultimate goal is to see the fur industry not exist. Mine. I should speak for myself.

PT: Do you think it would be threatening if somebody were to walk up to you, within say six inches and call you an "asshole"?

JK: I do think it would be threatening. I never walked six inches of ??? @ 11:29:43, in fact walked up to mine and called me an "asshole" several times.

PT: You were standing in front of him when he walked up to you though, is that correct?

JK: I was standing near him and he just turned around, or he has walked up to me and within six inches of my face. I've never gotten six inches within his face out of my own will. It was him who got into mine.

PT: You follow Mr. Grimm around?

JK: I walked, I walked behind him, you know, chanting or even calling him names as I will attest to, but I've never gotten up in six inches in his face out of my own will. When I speak of him being within six inches of our faces, it's because he usually walks up to us.

PT: Did you feel threatened by Mr. Grimm?

JK: Yes, I have felt threatened by Mr. Grimm.

PT: And you felt threatened by Mr. Grimm because he was up close to you because he was up close to you and shouting at you?

JK: I felt threatened because I've seen him push people and he has threatened me. He even threatened to "beat the shit out of me" once.

PT: Did he ever beat you up?

JK: He never beat me up. I have seen him assault people?

PT: You have followed Mr. Grimm out to his car, haven't you?

JK: I have walked behind him while he walks to his car, continuing I guess the shouting, engaging people on the street, saying things like, "this man murders animals", etc.

PT: And you're within a few feet of him while you are shouting at him?

JK: I am within maybe the t.v.'s distance.

PT: You have never been closer than the t.v.'s distance to him?

JK: I've never walked up to him, I mean sure I've been closer, but that's usually because he walks up to me.

PT: Every day Mr. Grimm walks from his store straight to the parking garage, isn't that correct?

JK: He walks from the store to the parking garage, the details on how he gets there specifically are not always the same.

PT: He always walks along the sidewalk though?

JK: Yeah, he'll walk along the sidewalk, walk across the street, but I mean it's not a straight pattern. He almost always engages people in some form or another. Or, he did in the past, before I got my restraining order.

PT: And you've been outside the parking garage when Mr. Grimm has left the parking garage?

JK: Yes.

PT: And you have shouted at him while he was in his car?

JK: Yeah.

PT: No further questions, Your Honor.

J: Any re-direct?

JS: Have you ever threatened to, violence, say to "beat the shit out of Mr. Grimm"?

JK: I have never ...

J: Are you referring to an exact quote that he has used?

JS: No, I was just saying something along those lines.

J: Well, let's avoid the vulgarity unless we are referring to a quote that was used by somebody.

JK: I want to clarify that he say that he would "beat the shit out of me".

J: That is what I thought, it is how I took your answer. Thank you.

JS: And have you ever physically touched him?

JK: Never.

JS: Thank you. No further.

J: Anything else?

WEL: Nothing further, Your Honor.

J: Anything else?

PT: No, Your Honor.

J: Okay, you may step down. Thank you. Next witness.

WEL: I call John Brooks.

J: Alright, if you'll step forward please and as I mentioned to the others, watch your step on the cord there and if you'll face the court clerk and raise your right hand please.

CC: Under the penalty of perjury, do you swear or affirm that the testimony you are about to give in the matter now pending is the truth, the whole truth and nothing but the truth.

W-JB: Yes, I do.

CC: Thank you. Please be seated. State your full name and spell your last.

JB: Jonathan Waylon Brooks. B-R-O-O-K-S.

J: Go ahead.

WEL: Thank you. Mr. Brooks, you've been here all morning, correct?

JB: Yes.

WEL: And you listened to Mr. Kay testify?

JB: Yes.

WEL: About his philosophy of animals?

JB: Yes.

WEL: Are you, do you differ with him in your philosophy of animals significantly in any way?

JB: No, I see humans as another animal and don't see to have harm come to any animals. So, if it's avoidable the exploitation should be avoided.

WEL: Would the trade-off of saving animals be worthwhile to harm a human?

JB: No.

WEL: You saw the episode on the video with the mail?

JB: Yes.

WEL: Was that you?

JB: Yes, it was.

WEL: What happened there?

JB: Outside of the first store and Horst walked out with mail. I wasn't sure it was mail or what it was. He had papers with him. He said it was mail, so I assumed he was telling the truth and he dropped a piece on the ground and I picked it up and walked up to him and I was handing it to him and he was saying things to me.

WEL: What types of things was he saying?

JB: I think at one, one statement he did say, he called me "asshole" and I somewhat recoiled and it was a situation like I was uncomfortable and then suddenly the next thing I knew, Horst had hit me in the stomach and ...

WEL: ... why did you offer him the piece of mail and then take it away?

JB: That was, just, um, ah ...

WEL: ... was it in response to something he was doing?

JB: ... it was a spur of the moment thing and I may have just been doing it to annoy him and it apparently ...

WEL: ... was he calling you names at the time?

JB: Yes, yes. He had said a couple of things. He had said "asshole" to me.

WEL: So it was in response to that and then you offered it to him again?

JB: Yeah, I was going to hand it to him and, feeling like I was like doing a favor to him, and him calling me an "asshole" and that gesture didn't fit and set me off guard.

WEL: Okay. In spite of you being part of this protest where you've guys have yelled names at him.

@11:36:35

JB: Oh, I feel that, he doesn't often address me in that way. He usually has been quiet and not talked to me, so it was somewhat of an abnormality.

WEL: Now, you were here earlier when I think, I can't remember who it was, testified, I think it was Horst Grimm, testified that you attacked him with a bicycle, was there ever an incident with a bicycle?

JB: I never recall having contact with him with a bicycle. I at times was sitting on my bike and he had walked into me a few times and I never was intentionally in his way.

WEL: Okay. Did you ever try to like, you know, use your bicycle and your physicality to corner him so you could yell at him some more?

JB: No, not like a riot cop would, no.

WEL: Did you do it in some other way (Laughing) unlike how a riot cop would?

JB: No, not in any way, no.

WEL: Okay. How long have you been there protesting?

JB: It goes back, I was there last year, I think, April, May, up until there was a break they talked about the letter they received and started back up in December or November of '08 and I have been going since, except for a brief period when I was out of town.

WEL: Okay. Have you ever physically threatened Mr. Grimm?

JB: No.

WEL: What is your goal in protesting and yelling at him?

JB: It is mostly annoyance and mostly addressing the issue to the public so that people know we're there protesting a fur store and that the animals who suffer to make that luxury item available to the public do so needlessly.

WEL: Over the course of being there over a year, did you ever have any conversations with, casual conversations with Horst Grimm?

JB: None that come to mind, no.

WEL: Okay. Thank you, I have nothing further. Hold on there may be a few other questions.

J: Any questions?

JS: Did you ever threaten Mr. Grimm or his son with physical violence?

JB: No.

JS: Did you ever have any physical contact with him?

JB: No, except for receiving a fist in the stomach by Mr. Grimm.

JS: What? And you mean when you got punched?

JB: Yes.

JS: How hard did he punch you?

JB: It threw me back a little bit. I was more surprised than anything. But it was painful. Something akin to like, I don't really know how to describe it on like a pain scale. It was a mild pain, but there was pain and like my wind was knocked out of me.

JS: Thank you.

J: Cross-examination.

PT: Thank you, Your Honor. Mr. Brooks I'd like to show you the video of the mail incident. Please watch.

(Replay video #3)

PT: So watching that video, is it your testimony that you were trying to hand Mr. Grimm his mail?

JB: Oh yes, I picked it up with the intention of handing it to him?

PT: And where in that video did you hear Mr. Grimm call you a name?

JB: When I first walked up to him and got his attention with it?

PT: And what name did he call you?

JB: I think he called me an "asshole", I couldn't really hear it in the video and it was a long time ago.

PT: And it would appear that you pulled the mail away from him two or three times.

JB: Yeah, that was, like I said, I was, I felt being annoying to him.

PT: So, you were taunting Mr. Grimm? (Pause) Correct?

JB: Oh. I suppose you could say taunting.

PT: Now did you see anywhere in the video where you pushed back by Mr. Grimm?

JB: As in like, pushed?

PT: You testified before that he “knocked the wind out of you”.

JB: Oh, with his fist.

PT: Is that correct, he knocked the wind out of you?

JB: Indeed.

PT: Didn't I just see in the video right after he touched you, you said “he just punched me”?

JB: He did.

PT: So you had your ...

JB: ... it was as ...

PT: ... breathe to be able to say that, correct?

JB: Yes. As I was punched I was saying it, “He just punched me” as I had been punched.

PT: Did you feel threatened by Mr. Grimm?

JB: In that instance, yes. I felt threatened numerous times other than that too, hearing talk with another person who was frequently coming, someone who, I am not sure running errands for them, who had mentioned shooting activists and that he felt they should be shot. So, I don't know, they kill thousands of animals, I don't know where they define animals different than human, or not.

PT: Mr. Grimm has never said those things directly to you, has he?

JB: No, he has walked right up to me and like, I am standing on the sidewalk, he walks right up and looks right at me, getting closer and closer and called me an “asshole” and keeps walking. I mean that is kind of his standard.

PT: And you find that conduct threatening, correct?

JB: No. That particularly wasn't very threatening, but in an overall sense, I think there is a fear that lingers from experiences that we see there where I never really feel like I can be totally safe, not knowing what he wants to do or what, with talk of people being shot, like them talking about activists

should be shot.

PT: Have you ever pressed criminal charges against Mr. Grimm?

JB: No, I have not.

PT: How about Kai Grimm?

JB: No, I have not.

PT: You've gotten close to Mr. Grimm and called him derogatory names and used foul language, correct?

JB: Yes.

PT: And you've seen the other respondents get close to Mr. Grimm and use foul language as well, correct?

JB: Yes. I am not sure close, would you redefine what you mean by close?

PT: A foot?

JB: Um, yes within a foot, possibly, but it's usually him walking, not someone walking up within a foot of him. I've never seen someone actually walk right up within a foot of him and call him names.

PT: Mr. Grimm takes the same path each day from his door down the sidewalk to his parking garage, correct?

JB: No. I've seen him go out the doors and the other way and he does walk out and depending, he'll walk close to the wall. Some days he'll walk out and walk in the middle, it is varying day to day.

PT: Were you protesting at the time that someone vandalized Mr. Grimm's store, throwing red paint on the wall?

JB: No, I don't think it happened during protest time.

PT: Did you see the red paint on the wall?

JB: I did, the next day.

PT: Do you know who did that?

JB: No.

PT: To your knowledge it was not one of the protesters?

JB: To my knowledge, it was not.

PT: No further questions.

J: Anything further?

WEL: No, Your Honor.

J: Alright, you may step down. Thank you.

WEL: (not sure; guessing about the attorney speaking) And Your Honor it is approaching the Noon hour and I do know this was only set for, I think, half-day and in the interest of time, we purpose to stipulate that our remaining witnesses would be substantially similar to the first two in terms of philosophy and substance. We could proceed that way if ...

J: ... if that's your choice only because it is set for half-day doesn't mean that we stop at Noon. So, I am available and we will take however much time we need. So if you prefer to put a witness on, you can certainly do that.

WEL: Can we have just a quick minute to confer with our clients who are ...

J: ... sure. We'll take another five minute break and then let us know how you wish to proceed.

(Break)

WEL: We're satisfied and we're not going to call anyone else, Your Honor.

J: Okay.

WEL: And we are ready to proceed however would desire. It is now just a few minutes to Noon. I anticipate, I don't know about the petitioners, they might have other witnesses to call, but I think we would at least talk at least a little bit in terms of closing in discussing the law perhaps we should come back after lunch. I don't know what your schedule is or if you just want to charge on through the Noon hour, we're happy to do either.

J: Are you going to call any other witnesses?

PT: Your Honor, the only thing we have left to do, is we'd like to offer the videotape, the DVD, into evidence.

J: Okay, is there any objection to that?

WEL: No, Your Honor.

J: Okay, that'll be received. So it is your preference to take a break and collect your thoughts and then make your argument after lunch? I am getting a nod of the head, yes.

WEL: That would be my preference, Your Honor.

J: Okay. Why don't we do that then, why don't we resume at 1:15, does that give you enough time?

JS: That would be fine, Your Honor.

PT: Thank you, Your Honor.

J: Alright. We will see you at 1:15.