

# **EXHIBIT S**

1 Holly N. Boyer, SBN 221788  
2 *hboyer@ecbappeal.com*  
3 ESNER, CHANG & BOYER  
4 234 E. Colorado Blvd., Ste. 975  
5 Pasadena, CA 91101  
6 Telephone: (626) 535-9860  
7 Facsimile: (626) 535-9859

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Attorneys for Plaintiff  
ALEXA CURTIN

UNITED STATES DISTRICT COURT  
CENTRAL DISTRICT OF CALIFORNIA

ALEXA CURTIN,

13 Plaintiff,

14 vs.

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16  
17 COUNTY OF ORANGE; NICHOLAS  
18 LEE CAROPINO, individually and as  
19 Deputy Sheriff for the County of Orange;  
and DOES 1 through 50,

20 Defendants.

Case No.: 8:16-CV-00591-SVW-PLA

Assigned to Hon. Stephen V. Wilson

**DECLARATION OF HOLLY N.  
BOYER IN SUPPORT OF  
PLAINTIFF'S OPPOSITION TO  
DEFENDANT COUNTY OF  
ORANGE'S RENEWED MOTION  
AS A MATTER OF LAW ON THE  
ISSUE OF MUNICIPAL  
LIABILITY UNDER FED. R. CIV.  
P. 50(b)**

[Filed Concurrently herewith Plaintiff's  
Opposition to Defendant County of Orange's  
Renewed Motion as a Matter of Law]

21 Date: September 18, 2017  
22 Time: 1:30 p.m.  
23 Dept: 10A

24 Trial: August 2, 2017

**DECLARATION OF HOLLY N. BOYER**

I, Holly N. Boyer, declare as follows:

1. I am an attorney duly licensed to practice in all of the courts of the State of California and am a partner with Esner, Chang & Boyer, attorneys of record for Plaintiff, Alexa Curtin, along with Jass Law and Balaban Spielberger. The following is true of my own knowledge, and I am competent to testify hereto.

2. Attached as **Exhibit 1** is a true and correct copy of the Reporters Transcript of Daily Trial Proceedings for August 2, 2017, a.m. session.

3. Attached as **Exhibit 2** is a true and correct copy of the Reporters Transcript of Daily Trial Proceedings for August 2, 2017, p.m. session.

4. Attached as **Exhibit 3** is a true and correct copy of the Reporters Transcript of Daily Trial Proceedings for August 3, 2017, a.m. session.

5. Attached as **Exhibit 4** is a true and correct copy of the Reporters Transcript of Daily Trial Proceedings for August 3, 2017, p.m. session.

6. Attached as **Exhibit 5** is a true and correct copy of Trial Exhibit 12-1, entitled "Claim for Money or Damages Against the County of Orange" which was admitted into evidence.

7. Attached as **Exhibit 6** is a true and correct copy of Trial Exhibit 83-137, entitled "Follow-Up Report" which was admitted into evidence.

8. Attached as **Exhibit 7** is a true and correct copy of Trial Exhibit 38-1, entitled "Orange County Sheriff's Department Internal Memo," which was admitted into evidence.

I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct and that this Declaration was executed on August 28, 2017, at Pasadena, California.

/s/ Holly N. Boyer  
Holly N. Boyer, Esq.

UNITED STATES OF AMERICA  
UNITED STATES DISTRICT COURT  
CENTRAL DISTRICT OF CALIFORNIA  
WESTERN DIVISION

HONORABLE STEPHEN V. WILSON  
UNITED STATES DISTRICT JUDGE PRESIDING

ALEXA CURTIN, )  
 )  
 PLAINTIFF, )  
 )  
 VS. ) CASE NO.:  
 ) SA CV 16-591-SVW  
 COUNTY OF ORANGE, ET AL. )  
 )  
 DEFENDANT. )  
 )  
 \_\_\_\_\_ )

REPORTER'S TRANSCRIPT OF PROCEEDINGS  
(P.M. SESSION)

WEDNESDAY, AUGUST 2, 2017

LOS ANGELES, CALIFORNIA

23 LAURA MILLER ELIAS, CSR 10019  
FEDERAL OFFICIAL COURT REPORTER  
24 350 WEST 1ST STREET, ROOM 4455  
LOS ANGELES, CALIFORNIA 90012  
25 PH: (213)894-0374

1 APPEARANCES OF COUNSEL:

2 ON BEHALF OF PLAINTIFF:

3 BALABAN SPIELBERGER

4 BY: DANIEL K. BALABAN, ESQ.

5 HOLLY N. BOYER, ESQ.

6 11999 SAN VICENTE BOULEVARD

7 SUITE 345

8 LOS ANGELES, CA 90049

9

10 JASS LAW

11 BY: MR. JEREMY JASS, ESQ.

12 4510 PACIFIC COAST HIGHWAY

13 SUITE 400

14 LONG BEACH, CA 90804

15 ON BEHALF OF DEFENDANT COUNTY OF ORANGE:

16 LEWIS BRISBOIS BISGAARD AND SMITH

17 BY: DANA A. FOX, ESQ.

18 633 WEST 5TH STREET

19 SUITE 4000

20 LOS ANGELES, CA 90071

21 ON BEHALF OF DEFENDANT CAROPINO:

22 THOMAS R. CHAPIN, ESQ.

23 232 E. GRAND BOULEVARD, SUITE 204

24 CORONA, CA 92882

25

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2 INDEX

3 WITNESSES FOR  
4 THE PLAINTIFF:

5 DIRECT CROSS REDIRECT RECROSS

6 ASUNCION, VIRGIL

7 BY: MR. BALABAN 4 27  
BY: MR. FOX 10 40

8

9 NOBLE, JAMES

10 BY: MR. BALABAN 42 79, 103  
BY: MR. FOX 63 101

11

12 EXHIBITS RECEIVED

13 38 5  
14 12 7  
15 46 15

16

17

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19

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1 LOS ANGELES, CALIFORNIA; WEDNESDAY, AUG. 2, 2017; 1:05 P.M.

2 — — —

3 THE COURT: Mr. Balaban, you are in your  
4 examination; correct?

5 MR. BALABAN: Yes, Your Honor. Thank you.

6 DIRECT EXAMINATION (RESUMED)

7 BY MR. BALABAN:

8 Q. Good afternoon, Sergeant.

9 A. Good afternoon.

10 Q. If you could, can you turn to your left there? There's  
11 some binders. I'm not sure which one it will be in, but it's  
12 Exhibit 38. It may be in the first one or the second one.

13 Do you have Exhibit 38, Sergeant?

14 A. I do, yes.

15 Q. Okay. And Exhibit 38 is an internal memo drafted by  
16 yourself to Lieutenant Danks; correct?

17 A. Yes, sir.

18 Q. And who is Lieutenant Danks?

19 A. He would be my supervisor.

20 MR. BALABAN: Any objection to publishing  
21 Exhibit 38?

22 MR. FOX: No objection, Your Honor.

23 MR. BALABAN: Can we get page 1 of Exhibit 38?

24 THE COURT: Is 38 being offered in evidence?

25 MR. BALABAN: Yes, Your Honor.

1 A. I have.

2 Q. And the contents of this claim are the allegations that  
3 set forth what you all are supposed to investigate; correct?

4 A. Yes, sir.

5 Q. And it's essentially putting you on notice of what this  
6 claimant is alleging to have occurred to her; correct?

7 A. Yes.

8 MR. BALABAN: Your Honor, I'd offer Exhibit 12  
9 under the notice exception to hearsay.

10 THE COURT: Received.

11 MR. FOX: Your Honor, there's an objection to  
12 hearsay.

13 THE COURT: This is what the complainant said;  
14 correct?

15 MR. FOX: It's what her lawyer wrote she claimed.  
16 It's not written by her.

17 THE COURT: It's received for the limited purpose  
18 that you just maintained notice.

19 MR. BALABAN: Thank you, Your Honor.

20 THE COURT: Not for anything else.

21 MR. BALABAN: Correct.

22 MR. FOX: Thank you, Your Honor.

23 (Exhibit 12 was admitted.)

24 MR. BALABAN: Can we display Exhibit 12, please?

25 Q. And the claim on the top right, we see that the claim

1 was received on February 28, 2014; correct?

2 A. Yes, sir.

3 Q. And then it's got the claimant's name; correct?

4 A. Yes.

5 Q. And identifying information; correct?

6 A. Yes.

7 Q. Date of birth, address, et cetera.

8 And if we go down, uh, it tells us who, uh,

9 correspondence responding to this claim should be from;

10 correct, Mr. Hughes?

11 A. Yes.

12 Q. And it tells you the date of alleged occurrence or  
13 transaction. And that date was September 4, 2013; correct?

14 A. Yes, sir.

15 Q. And if we go down to No. 7, it tells us the location of  
16 the allegation where the transaction happened; correct?

17 And what you all are put on notice of is that  
18 there's an allegation that in the patrol car during arrest at  
19 jail at Ms. Lamb's residence is where this offense happened;  
20 correct?

21 A. Yes.

22 Q. And if we go down to No. 8, it indicates during  
23 Ms. Lamb's arrest, Deputy Caropino uncuffed Taylor Lamb or  
24 Ms. Lamb and forced her to touch his penis through his  
25 uniform, intimidated her, coerced her, sexually harassed her,

1       called and text messaged her when she was released, and went  
2       to her residence on duty and had sex with her in violation of  
3       her 4th, 5th and 14th Amendment rights; correct?

4       A.    Yes, sir.

5       Q.    And therefore what you all you were notice that you were  
6       investigating was one, whether he had assaulted her against  
7       her will in the parking lot; correct?

8       A.    Yes, sir.

9       Q.    Whether he had sexually harassed her by sending these  
10      messages back and forth; correct?

11      A.    Yes, sir.

12      Q.    And whether he went to her home and had sex with her in  
13      violation of these constitutional rights; correct?

14      A.    Yes, sir.

15      Q.    And you understood when it indicates in violation of her  
16      4th, 5th and 14th Amendment rights that this was against her  
17      will; correct?

18      A.    Yes, sir.

19      Q.    And so this is the allegation that comes in to the  
20      Department. This is what sets off this investigation;  
21      correct?

22      A.    Yes, sir.

23      Q.    And by everything that you've told us, you were unable  
24      to investigate this to look into his administrative  
25      investigation based on the policy that was in place at Orange

1 County until the criminal investigation was completed?

2 MR. FOX: It's cumulative and asked and answered,  
3 Your Honor.

4 THE COURT: Overruled.

5 THE WITNESS: Can you ask that one more time?

6 MR. BALABAN: Sure.

7 Q. You were unable to look into this -- these serious  
8 allegations as the Internal Affairs investigator until the  
9 criminal investigation was completed?

10 A. That is correct.

11 Q. And all the while Deputy Caropino was still on the job.

12 A. Yes, sir.

13 MR. BALABAN: No further questions.

14 MR. FOX: Your Honor, if I may, I was remiss. I  
15 didn't introduce to the Court and the jury my client who is  
16 here, Ms. Janet Hayes with the Sheriff's Department. If I  
17 can just do that now?

18 THE COURT: Yes.

19 MR. FOX: Ms. Hayes is here, right here.

20 Thank you, Your Honor. Appreciate that.

21 CROSS-EXAMINATION

22 BY MR. FOX:

23 Q. Okay. Is it sergeant?

24 A. Yes, sir.

25 Q. Um, let's go to Exhibit 12 which is now in evidence. I

1 A. I would say grainy.

2 Q. When you looked at the parking lot video, did you see  
3 any evidence of improper behavior by Caropino in that video?

4 A. I did not.

5 Q. The dash cam video, when did you first become aware that  
6 there was even dash cam video of Caropino's vehicle at  
7 Ms. Lamb's residence?

8 A. After Ms. Lamb gave her statement to criminal.

9 Q. Before Ms. Lamb gave her statement to the criminal  
10 investigators at your Department, did you have any reason to  
11 believe that he had been out at her house on that specific  
12 day, whatever it was, September 4th or September 6th, 2013?

13 A. No.

14 Q. Once she gave that interview, did the criminal  
15 investigators and ultimately you then have the ability to  
16 look for dash cam video on the day she identified when she  
17 sat down with her interview?

18 A. Yes.

19 Q. Now, is there a reason -- set aside the dash cam video  
20 for a second. The parking lot video, the video from his  
21 patrol car is there a reason you did not look at it earlier  
22 than whenever you did?

23 A. Uh, criminal was looking at it.

24 Q. I'm sorry?

25 A. Criminal, the criminal investigator was looking at the

1       videos.

2       Q.     Now, when you finally do sit down and get a statement  
3           from Caropino, is it correct that originally he was not  
4           forthcoming with you?

5       A.     Yes, sir.

6       Q.     During your interview, did you slowly start making it  
7           known to him that you had gathered facts and information  
8           about the claim?

9       A.     Yes, sir.

10      Q.     After you started making it clear to him that you knew  
11           what had happened with Ms. Lamb, did he then become more  
12           forthright?

13      A.     Yes, sir.

14      Q.     When you finally sit down with him, that date was I  
15           believe January 13, 2015. Does that sound about right?

16      A.     I believe so.

17      Q.     Okay. It's the document, whatever we put on the screen  
18           before, the Lybarger and the Miranda; right?

19      A.     Yes, sir.

20      Q.     Okay. After you -- withdraw that.

21                   When you go to sit down with him on January 13,  
22           2015, do you have enough information to now interview him and  
23           call him essentially on his story?

24      A.     Yes, sir.

25      Q.     I want to take you back to June 27, 2014. Okay?

1 REDIRECT EXAMINATION

2 BY MR. BALABAN:

3 Q. Sergeant, you were asked the reason why you didn't do an  
4 investigation, Internal Affairs investigation, and you  
5 testified that the reason you didn't is you didn't want to  
6 interfere in the criminal investigation. Do you recall that?

7 A. Yes, sir.

8 Q. The reason why you didn't do an investigation is because  
9 that's the policy is not to do an investigation Internal  
10 Affairs until the criminal is exhausted. That's the policy;  
11 right?

12 A. It's past practice, yes.

13 Q. You didn't do anything different in this case than you  
14 did for every other case; right?

15 A. Yes, sir.

16 Q. This wasn't your decision not to interfere in the  
17 criminal. This was the Department's decision that you don't  
18 do investigative -- Internal Affairs investigation until the  
19 criminal is exhausted; correct?

20 A. Yes, sir.

21 Q. Can we see Exhibit 12, please? And there was some  
22 discussion about the date on this form September 4, 2013. Do  
23 you recall that?

24 A. Yes, sir.

25 Q. And counsel asked you isn't it true that's not the date

1 investigation. And the purpose of the administrative  
2 investigation is to determine whether or not the employee  
3 violated our policies.

4 Q. How does that differ from what a criminal investigation  
5 is?

6 A. A criminal investigation, you know, as far as the steps  
7 of the investigation themselves, they're actually quite  
8 similar as far as you're collecting evidence, you're  
9 interviewing people, you're doing similar types of actions,  
10 but they're very different investigations.

11 In a criminal investigation, you're trying to  
12 determine solely whether somebody committed a crime. So  
13 there are times where, obviously, committing a crime is a  
14 violation. You know, all police departments have a policy  
15 you can't commit a crime. Administratively, there are other  
16 policies. So where you can have a criminal investigation and  
17 it turns out they didn't commit a crime, but they may well  
18 have violated other department policies.

19 And there's also the standards are different. So  
20 in a criminal investigation to prove somebody's committed a  
21 crime, you have to prove it beyond a reasonable doubt which  
22 is a high standard. In an administrative investigation, you  
23 just have to prove it by a preponderance of evidence. It is  
24 more likely than not this occurred.

25 So the standards are different. So you're looking

1 at different things. You're looking at the employee's  
2 behavior. And also from an administrative standpoint, you  
3 review every investigation to see, you know, are our policies  
4 good, is our training good, you know, so these are -- there  
5 is a combination of things going on in these administrative  
6 investigation. It's very different than a criminal  
7 investigations.

8 Q. Can you tell us how many Internal Affairs investigations  
9 you personally have conducted?

10 A. Uh, during that two-and -- or four-and-a-half years, I  
11 personally have conducted probably close to 250 Internal  
12 investigations.

13 Q. And how many in your career have you reviewed?

14 A. I've reviewed as an expert well over 2000 Internal  
15 investigations. Um, I've been involved where cities have  
16 retained me to review, uh, a single investigation that was  
17 not part of the lawsuit. And I have been retained in a large  
18 number of lawsuits where there's a large sampling of internal  
19 investigations, and the issue is whether the sampling of the  
20 investigations were reasonably conducted. So, you know,  
21 throughout the course of that, I've -- I can show reports and  
22 give you case numbers of literally over 2000.

23 Q. You shared with us that you've published a book in this  
24 field. Can you tell us the name of that book?

25 A. Yes. It's called Managing and Accountability Systems of

1 Police Conduct, Internal Affairs and External Oversight.

2 Q. And does that book also include what we're talking about  
3 in this case doing parallel or concurrent investigations of a  
4 criminal nature and an Internal Affairs investigation?

5 A. Yes, it does.

6 Q. Uh, do you know how widely your textbook is in the  
7 policing world?

8 A. You know, I don't know. I mean, these textbooks are out  
9 there. You know, whether the people use it? I've certainly  
10 been to conferences. It's been cited in literature that's  
11 been produced by the Department of Justice --

12 MR. FOX: Your Honor, it lacks foundation given the  
13 witness.

14 THE COURT: He said it's been cited, and he was  
15 going to say where, I don't know.

16 Is that what you were going to say?

17 THE WITNESS: Yes, sir.

18 THE COURT: Where has it been cited?

19 THE WITNESS: The Department of Justice issued a  
20 report on Internal Affairs, and it cited my text in order to  
21 support their position.

22 BY MR. BALABAN:

23 Q. Are you also aware of the community at large, the  
24 policing community, and whether generally, there are  
25 concurrent investigations of a criminal and administrative

1 nature?

2 MR. FOX: Relevance, Your Honor, and foundation.

3 THE COURT: Well, given what he said so far, you  
4 can probe that, but I think there's enough of a foundation  
5 for him to answer.

6 THE WITNESS: Yes. There is a generally accepted  
7 standard in policing to conduct concurrent investigations.

8 BY MR. BALABAN:

9 Q. Okay. Can you tell us the departments you're aware of  
10 that actually do this, conduct concurrent, criminal and  
11 administrative Internal Affairs investigations?

12 A. There's about 15,000 police departments across the  
13 county so obviously, I'm not familiar with the vast majority  
14 of them. Most of 'em are very small. But I am familiar with  
15 agencies like the City of Seattle, the City of Chicago, uh,  
16 in New York, Miami, major cities like Austin and numerous  
17 other smaller cities across the nation.

18 Q. Los Angeles as well?

19 A. Yeah, absolutely Los Angeles.

20 Q. And all of those departments do concurrent  
21 investigations, criminal and Internal Affairs?

22 A. Yes.

23 Q. Are you aware -- not to say that there isn't one other  
24 than this one, but as a distributor, are you aware of any  
25 other department that doesn't do it that way, that actually

1       stops the Internal Affairs investigations pending a criminal  
2       investigation?

3                    MR. FOX: Lacks foundation, Your Honor. 15,000?

4                    THE COURT: Well, I mean, he can answer.

5                    THE WITNESS: I've never seen one.

6        BY MR. BALABAN:

7        Q.    Can you share with us your expert opinion about what the  
8        dangers are to the public when an officer who has been  
9        accused of a serious crime doesn't have any administrative  
10       investigations into him until the criminal investigation is  
11       complete?

12                    MR. FOX: It's not relevant to this case,  
13                    Your Honor. It's overbroad.

14                    THE COURT: I think that you can argue that.

15                    That's really not within his expertise. We don't need him to  
16        tell us that.

17                    MR. BALABAN: Okay.

18                    THE COURT: Okay.

19        BY MR. BALABAN:

20        Q.    Are you also a member of any organizations in your  
21        field?

22        A.    Yes, sir.

23        Q.    What organizations are you a member of?

24        A.    The International Association of Chiefs of Police, the  
25        Police Executive Research Forum and the National Tactical

1 Officers Association.

2 Q. It's been represented that the first time that you'll  
3 ever testify in a quote unquote Monell case in the State of  
4 California is here today. Is that -- is that true?

5 THE COURT: You've used the term Monell. I guess I  
6 should tell you maybe that Monell is the lawyers' shorthand  
7 for pattern and practice. When you hear the name Monell, it  
8 refers to a pattern and a practice of a police force. It's  
9 named after some case. That's the way lawyers talk. But  
10 that's what it is.

11 BY MR. BALABAN:

12 Q. Have you testified in other jurisdictions on pattern and  
13 practice?

14 A. I don't think I answered your first question. The  
15 answer to your first question is no, I've never testified in  
16 California, but yes, I've testified in other jurisdictions,  
17 other states.

18 Q. Okay. Can you give us an idea?

19 A. Um, I've testified in federal court in Chicago three  
20 times on Monell cases, in Georgia and once in Tennessee.

21 Q. And having reviewed thousands of these cases and  
22 been the Head of the Internal Affairs Department and written  
23 a text book on it, do you think you're sufficiently qualified  
24 as an expert to talk about this stuff today?

25 MR. FOX: That's not for him to determine. That's

1       improper.

2                   THE COURT: I'll sustain that objection.

3                   And don't ask the next question because I don't  
4       like that practice. Just ask him questions. If I allow him  
5       to testify, it goes without saying he can testify.

6                   MR. BALABAN: Thank you, Your Honor.

7       BY MR. BALABAN:

8       Q.    Um, it's been -- there's been discussion about whether  
9       there's a rule that requires that an Internal Affairs  
10      investigation and a criminal investigation happen at the same  
11      time. You were asked about that at your deposition.

12                  MR. FOX: Improper question or form about  
13      deposition.

14                  THE COURT: Well, the form of the question, the  
15      objection is sustained.

16                  You can just ask him now what he -- what his  
17      opinion is in that regard if that's your desire.

18                  MR. BALABAN: Yeah. Thank you, Your Honor.

19       BY MR. BALABAN:

20       Q.    Is there a specific law that requires a department to do  
21      investigations simultaneously?

22       A.    There's no statute. There's no specific law.

23       Q.    Okay. And are there specific laws that tell police  
24      departments how to do their -- their job in general?

25       A.    No.

1 Q. Um, can you tell us what your opinion, the best practice  
2 in the standard that you're familiar with in conducting  
3 criminal and administrative investigations?

4 A. In policing -- and I always compare it this way so if I  
5 were an engineer and I wanted to build a bridge, I can go to  
6 a text book, and if I wanted to cover a certain span, I would  
7 know what strength of steel to use. In policing like many  
8 other professions, there's no textbook. There's no -- this  
9 isn't engineering. That exactitude isn't there.

10 So what we look at is what's generally accepted or  
11 what was called generally accepted police practices. What  
12 are other agencies doing? What's the Department of Justice  
13 doing when they come in and give consent decrees? Uh, what  
14 is the literature? What -- what is -- what is being accepted  
15 within the policing? And when I say within policing, we're  
16 talkin' about across the United States.

17 Q. Can you share with us why you believe that's the best  
18 practice, to do these investigations concurrently?

19 A. The reason you want to do it concurrently is because if  
20 you have an officer who is engaging in serious misconduct,  
21 um, particularly a case where the officer has used his  
22 position of authority by wearing a uniform, and there's a  
23 likelihood that they could do that again, you want to conduct  
24 a concurrent investigation to remove that person from the  
25 field to protect the community. Um, you know, whether you

1 send the person home or you put 'em on some kind of desk  
2 duty, their overarching goal is to get this person out of the  
3 field.

4 But you also want to do it because, you know, you  
5 may -- you may identify other problematic employees. You may  
6 identify problematic practices. There are a lot of good, um,  
7 management reasons to conduct it, um, immediately.

8 Q. Can you tell us what you've done in this case? The work  
9 that you've done.

10 A. Sure. I've reviewed quite a bit of material. I've  
11 reviewed all the police reports and depositions in this  
12 matter. Um, I've prepared an expert report and a  
13 supplemental report. I've reviewed, um, the defense expert's  
14 reports and his depositions. I've reviewed all the  
15 depositions in this case. And I had my deposition taken.

16 Q. About how much time do you think you've put into this  
17 case?

18 A. Oh, 50 or 60 hours.

19 Q. Okay. And you charge for your time; correct?

20 A. I do.

21 Q. How much do you charge?

22 A. \$295.00 an hour.

23 Q. Okay. And do you charge to testify as well?

24 A. I do.

25 Q. And how much do you charge?

1 A. 2950 per calendar day.

2 Q. Did you do any other work on this case?

3 A. No, I think that's it.

4 Q. In this case, do you have an opinion whether there was  
5 sufficient information to put Mr. Caropino on a desk job,  
6 remove him from the field or place him on administrative  
7 leave prior to the assault on our client, Ms. Curtin?

8 A. Yes, I do.

9 Q. What's your opinion?

10 A. Uh, he should have been placed on some type of desk  
11 duty. He should have been removed from the field.

12 Q. Can you tell us what's the basis of that opinion?

13 A. Several factors. So this is a case that was received by  
14 a claim for damages which is the pre-cursor to a lawsuit.  
15 It's a short form that basically tells the police department,  
16 you know, something happened, and this is what happened, and  
17 you know, we're asking for money, and a lawsuit's likely to  
18 follow.

19 So in a claim for damages, the Sheriff's department  
20 learned of Ms. Lamb's arrest. They were told -- uh, they  
21 were given a brief overview of that she was making  
22 allegations that a sexual assault had occurred. So  
23 immediately --

24 The police department, they received it on  
25 February 28th, 2014. On March 5th, I believe Sergeant

1       Thompson compiled a file. The file included the police  
2       report, the mobile video from Deputy Caropino's vehicle. And  
3       so early on, they had the video and the police report so they  
4       knew that, in fact, this arrest occurred. This wasn't just  
5       made up. And they had that video.

6                   And from a quick review of the video, what they  
7       knew is that when Deputy Caropino first approached Ms. Lamb,  
8       his microphone wasn't working outside the car so the field  
9       sobriety test, that was not recorded. Sometimes that  
10      happens. Sometimes these things malfunction. Sometimes they  
11      don't get turned on. Sometimes that happens. You know,  
12      we're looking at everything as it goes along.

13                  The next thing we know is that he transports her to  
14      the Dana Point police substation where she uses the restroom.  
15      And during that transport, there's a camera, not only a front  
16      facing camera, but in police cars, there's also a camera that  
17      faces the back seat of the car. So the camera in the back  
18      seat, that was recording so you can see Ms. Lamb, and you can  
19      hear the conversation between Deputy Caropino and Ms. Lamb  
20      during the transportation from the scene to the Dana Point  
21      facility.

22                  When they leave the Dana Point facility in order to  
23      go to jail, the rear camera is now not working, and the audio  
24      inside the car is not working so again, this is a red flag.  
25      It doesn't tell us absolutely any -- it's just -- it's just

1 we're looking at this case because, you know, anything could  
2 have happened in that car not being recorded.

3 The next thing that video shows us is when they  
4 arrived at the rear parking lot of the jail, they park there,  
5 and that they were in the parking lot for 40 minutes. In  
6 policing, that's unusual. So it's not unusual to sit there,  
7 and, you know, fill out the face of your jail booking form.  
8 Those things take a few minutes, to fill out some forms.

9 It is unusual to sit there for 40 minutes,  
10 particularly when you're conducting a DUI investigation  
11 because even though you have what we call a PAS or a  
12 preliminary alcohol screening in the field, a PAS isn't  
13 admissible in court. So you want to get a blood test. And  
14 blood evidence for DUIs dissipates. It goes away over time.  
15 So you want to get that as soon as possible.

16 So it's not recommended to sit inside, you know, to  
17 sit there and wait for 40 minutes before you go in and get  
18 this blood test, particularly if there's no reason to do so.  
19 And in the video, you can see other deputies coming and going  
20 and going inside the jail. So that's the first thing you  
21 have.

22 But we also know the next thing that we have is  
23 Investigative Quilantan called Mr. Hughes, and Mr. Hughes was  
24 Ms. Lamb's attorney. And he was trying to arrange an  
25 interview of Ms. Lamb. And he and Mr. Hughes gave him,

1 Quilantan, some additional facts. In the claim for damages,  
2 it talks about that some time after the arrest, that while  
3 the deputy was on duty and in uniform, he went to her home  
4 and had sex with her. In the interview of Hughes, he said it  
5 was not too long after the arrest.

6 So now, they have some additional facts that they  
7 can be looking at. They also had this jail video. I mean,  
8 it's a jail. It's gonna have videos so they go, and they can  
9 pull that jail video. They didn't do it for five-and-a-half  
10 months, but they could have pulled the jail video. It was  
11 available to 'em. It was in their possession.

12 And the jail video essentially shows the parking  
13 lot. It's a grainy video. It's not a good video. But it  
14 shows Caropino coming around to the passenger side of the car  
15 and standing on the passenger side of the car. So it's not  
16 like he's sitting in his car writing a report. It appears  
17 that he's on the passenger side of the car which is a little  
18 bit more unusual. Again, just another factor.

19 So now we know from Mr. Hughes that this sexual --  
20 that Caropino -- this allegation that Caropino went to her  
21 home happened not to long after the arrest, and that he text  
22 her and called her. And during this time to the deputy's  
23 credit, he's trying to call. He's trying to get an interview  
24 for a long time. He makes a lot of efforts to try and get an  
25 interview from, uh, Ms. Lamb, and he's unsuccessful.

1                   But they have these videos. And they know that one  
2 of -- the allegation is that he went to her home, um, and he  
3 did it when he was on duty. So they have the ability to pull  
4 his work records. And, in fact, they did pull the work  
5 records, and they even pulled those on the day that the  
6 original reports were taken which was on March 5th, 2014.  
7 There's a copy in the file with his work schedule and what  
8 days he worked. So they knew he worked which days, and, in  
9 fact, he worked, you know, the days after her arrest.

10                  So it was a relatively simple matter to go and pull  
11 their mobile videos that record all the time and take a look  
12 and say, you know, does he work in this area? Where does she  
13 live? We know where she lives. It's on her arrest report.  
14 Uh, where was he assigned to? Um, was that within his area?  
15 And look at these videos.

16                  And once you look at the videos, you see sure  
17 enough, he went to her house, and he was there for an hour.  
18 And he was out of his area. He had no business there. He  
19 didn't report. He didn't log that he was there for some kind  
20 of call. He didn't tell a supervisor that he was there. All  
21 the things that are available to the Sheriff's department.

22                  So certainly, once you find that video that says  
23 that yes, he went to her home, then at that point, there's no  
24 question that he should have been taken out of the field, and  
25 that all could have been done within days.

1 Q. Going to the jailhouse video, the view from the top,  
2 your review of the video, when he approaches the passenger  
3 side door, do they remain in the parking lot for some  
4 considerable time after that?

5 A. Yeah, it was a total of 40 minutes from the time that he  
6 arrived until the time he took her inside.

7 Q. It's not like, as you viewed the video, that he opened  
8 the passenger door to bring her into the jail?

9 A. No, no, no. He went to the passenger door and he was at  
10 the passenger side for a lengthy period of time.

11 Q. So just based on what you just told us, that was  
12 sufficient to take him out of the field?

13 A. Oh, yes, absolutely.

14 Q. Did they learn additional things that would have also  
15 justified taking this officer out of the field?

16 A. Well, those are the primary factors. At some point they  
17 interviewed him and he made statements.

18 Q. So let's talk about that. Did you review the statements  
19 taken by this deputy?

20 A. Yes.

21 Q. And what did you glean from that statement?

22 A. Well, he admitted that he went there.

23 MR. FOX: This is beyond -- it's cumulative. It's  
24 beyond what's relevant to this witness.

25 THE COURT: Well, I mean, I thought the interview

1 was in September, wasn't it?

2 MR. FOX: It was in January of 2015.

3 THE COURT: 2015. So I mean if he has the  
4 foundation for responding to any questions regarding -- well,  
5 he did assert the Fifth Amendment, didn't he, during the  
6 period of the criminal investigation?

7 MR. BALABAN: I think I can lay a foundation,  
8 Your Honor.

9 THE COURT: Okay.

10 BY MR. BALABAN:

11 Q. You saw that during the criminal investigation  
12 Deputy Caropino declined to be interviewed; correct?

13 A. Yes.

14 Q. And in the request for the interview during the Internal  
15 Affairs investigation, ultimately, he was compelled to give  
16 that interview; correct?

17 A. Yes.

18 Q. And that interview happened after the assault of Curtin;  
19 correct?

20 A. Yes.

21 Q. Now, the Internal Affairs Department had they had opened  
22 an investigation prior to the criminal being closed, they  
23 could have interviewed this deputy whenever they felt they  
24 wanted to; correct?

25 A. Absolutely.

1 Q. They're the ones that chose to do it late; right?

2 A. Yes.

3 MR. FOX: This is not expert testimony. It's not  
4 opinion testimony from an expert.

5 THE COURT: Well, he's -- it's within his realm.  
6 He can answer.

7 BY MR. BALABAN:

8 Q. Why is it your opinion that they could have done an  
9 interview of Deputy Caropino at any point in an  
10 administrative investigation had they chosen to open one?

11 A. Well, anybody, including a police officer, has a right  
12 to decline to give an interview regarding a criminal  
13 investigation where you're the focus of that investigation.  
14 Police officers who are employed, if they're being ordered to  
15 give an interview, they have to answer questions or, uh, they  
16 would be deemed insubordinate and they can be fired for  
17 refusing to answer questions.

18 Q. And ultimately when he gave the interview, he admitted  
19 to inappropriate contact.

20 MR. FOX: Your Honor, this is not expert testimony.

21 THE COURT: Have you gone through his testimony?

22 MR. BALABAN: Yes. I'll move on, Your Honor.

23 Q. Do you feel it's necessary to interview the victim of  
24 the crime or alleged crime before the Department makes a  
25 decision to take an officer who's alleged to have committed

1 Q. And do you go to conferences as well?

2 A. Yes.

3 Q. And in any of that research that you've done, reading  
4 your literature, professional, the books, going to  
5 conferences, have you ever heard or seen where a department  
6 says we are gonna toll the administrative investigation of  
7 Internal Affairs pending the criminal investigation?

8 MR. FOX: Objection, Your Honor. Hearsay and  
9 foundation.

10 THE COURT: Well, I'll allow it. You can probe it,  
11 but you can answer.

12 THE WITNESS: No. Not only have I not heard it,  
13 but this is something I wrote about in my textbook. This is  
14 something a gentleman named Lou Ryder wrote in a textbook on  
15 Internal Affairs in 2006. This is something the Department  
16 of Justice wrote in a letter to the Seattle Police  
17 Department. And these are letters that are reviewed by  
18 police departments routinely as the City of Seattle was going  
19 under a consent decree. So all the information is just the  
20 opposite.

21 BY MR. BALABAN:

22 Q. This is the first time that you've ever heard that the  
23 policies in place to at a department to toll an  
24 administrative investigation pending a criminal investigation  
25 is this department here?

1 Affairs investigator Sergeant Asuncion about what his  
2 attitude was towards doing a criminal investigation?

3 MR. FOX: Objection, Your Honor. Beyond the scope.

4 THE COURT: Now you're using him as a sounding  
5 board for your argument. Let's not do that. You can make  
6 that argument when you have the opportunity.

7 BY MR. BALABAN:

8 Q. Do you think it is an appropriate policy to rely on a  
9 criminal investigator to do your Internal Affairs  
10 investigation?

11 A. No.

12 Q. Why not?

13 A. Because, again, they're looking at it for something  
14 different. They're looking to see whether or not the person  
15 committed a crime. The standard they're using is much higher  
16 than what an administrative investigator is looking at.  
17 They're looking at very different things. That's why we have  
18 these two different things. It wouldn't exist if it was okay  
19 for criminal to do both.

20 Q. Going to the issue of getting a statement from Ms. Lamb,  
21 you told us it's not unusual to get -- not to get a statement  
22 from a sexual assault victim. Do you recall saying that?

23 A. Yes, that's true.

24 Q. Can you tell the jury why that's not unusual?

25 A. Certainly, in sexual assaults and domestic violence

1 cases, victims don't like coming forward. They're  
2 embarrassed. There are all sorts of issues. Often it's  
3 difficult to get statements from sexual assaults and domestic  
4 violence.

5 Q. Do you think it's an appropriate policy not to take  
6 administrative action against an officer unless and until you  
7 have a statement from the victim?

8 MR. FOX: This is cumulative, Your Honor. It's  
9 argumentative.

10 MR. BALABAN: Redirect, Your Honor.

11 THE COURT: Well, you can ask him that question.

12 THE WITNESS: Yeah, it would absolutely be wrong to  
13 not take any action.

14 BY MR. BALABAN:

15 Q. Why not?

16 A. Because, again, you need to if the allegations are  
17 founded or there's evidence that makes them appear to be  
18 founded, you need to remove this person who has a badge and a  
19 gun and a uniform from the field.

20 THE COURT: I mean the way you posed the question  
21 was simply whether if he can if the victim is not available,  
22 interview the officer. Wasn't that what you asked?

23 MR. BALABAN: Yes.

24 THE COURT: So let him answer that question.

25 MR. BALABAN: Can you answer the Court's question?