

# **EXHIBIT T**

IN THE UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF ARKANSAS  
WESTERN DIVISION

TROY ELLISON, as Personal )  
Representative of the Estate of )  
Eugene Ellison, deceased and Eugene )  
Ellison, )

Plaintiff, )

vs. ) No. 4:11-CV-00752  
BSM

DONNA LESHER, TABITHA McCRILLIS, )  
individually and in their official )  
capacities, STUART THOMAS, )  
individually and in his official )  
capacity, THE CITY OF LITTLE ROCK, )  
a municipality and BIG COUNTRY )  
CHATEAU APARTMENTS, d/b/a BIG )  
COUNTRY CHATEAU, LLC, a )  
corporation, )

Defendants. )

DEPOSITION OF:

JEFFREY J. NOBLE

TUESDAY, OCTOBER 1, 2013

Reported by:

PAULA GOEHLE  
CSR No. 13616

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Defendants. )  
\_\_\_\_\_ )

DEPOSITION OF JEFFREY J. NOBLE, taken on  
behalf of Defendants, at One Park Plaza, Suite 600,  
Irvine, California, at 9:01 a.m., Tuesday, October 1,  
2013, before PAULA GOEHLE, CSR No. 13616, pursuant to  
Notice.

\* \* \*

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## I N D E X

Witness	Examination
JEFFREY J. NOBLE	
By Mr. Mann	5, 158, 176
By Ms. Wells	151
By Mr. Laux	159, 181

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1 - Jeffrey J. Noble's CV	10
2 - City of Irvine Police Department's website document regarding complaints	37
3 - Irvine Police Dept. Department Directory	46
4 - Expert Report of Jeffrey J. Noble	57
5 - Article from Chicago Sun Times regarding Richard A. Rizzo	116
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## INFORMATION REQUESTED

None

## UNANSWERED QUESTIONS

None

1 IRVINE, CALIFORNIA

2 TUESDAY, OCTOBER 1, 2013

3 9:01 A.M.

4  
5  
6 JEFFREY J. NOBLE,

7 having been first duly sworn, testified as follows:

8  
9 EXAMINATION

10 BY MR. MANN:

11 Q. Mr. Noble, I'm Bill Mann. We met out in the  
12 lobby about 20 minutes ago, I believe. I'm with the  
13 Little Rock City Attorney's Office. And I represent in  
14 this lawsuit Donna Leshner, Tabitha McCrillis, Stuart  
15 Thomas and the City of Little Rock.

16 And on the telephone -- Jennifer, do you want  
17 to go ahead and introduce yourself and who you  
18 represent.

19 MS. WELLS: Hi. This is Jennifer Wells. I  
20 represent the other defendant in this case, which is Big  
21 Country Chateau.

22 BY MR. MANN:

23 Q. If you would just for purposes of our record  
24 identify yourself.

25 A. Jeff Noble.

1 Q. And, Mr. Noble, you live here in Irvine?

2 A. I live in Rancho Santa Margarita.

3 Q. Is that like a suburb or --

4 A. Yeah. It's just south.

5 Q. Okay.

6 MR. LAUX: I guess I'll say I'm here for the  
7 record.

8 MR. MANN: Okay.

9 MR. LAUX: I'm Michael Laux, here for the  
10 plaintiff.

11 MR. MANN: Sorry about that.

12 MR. LAUX: That's okay.

13 BY MR. MANN:

14 Q. Mr. Noble, I'm here to ask you some questions  
15 today, as I'm sure you know, about the opinions  
16 expressed in your expert report in this case. And so  
17 that's what I'm going to be doing.

18 I want to go over just a couple of rules of  
19 depositions. I know you have given depositions before,  
20 because I've read some of them. So I'm not going to  
21 bore you with all of them.

22 But there are two that I want us to observe,  
23 if we can. If I ask you a question which you didn't  
24 hear or is confusing or you want me to repeat for any  
25 reason, please tell me to do so. And I will. Can we

1       agree to that?

2           A.     Sure.

3           Q.     And the other rule I want us to follow is  
4       this: If during the course of the deposition you recall  
5       something you would like to add to a previous answer or  
6       something you would like to change or modify, anything  
7       like that, I want you to stop me at that time. And  
8       we'll go back and let you address that. Is that  
9       acceptable?

10          A.     Okay.

11          Q.     All right. Other than the documents that you  
12       have identified in your expert report, which I have  
13       already reviewed for today, have you reviewed any other  
14       additional documents in order to prepare for your  
15       deposition?

16          A.     Yes, I have.

17          Q.     Can you identify those for me?

18          A.     The deposition of Sergeant Berthia and the  
19       deposition of Chief Thomas.

20          Q.     Okay. And are those the only documents?

21          A.     Yes.

22               MR. MANN: Okay. And, for the record and for  
23       the court reporter's benefit, Berthia is spelled  
24       B-e-r-t-h-i-a.

25          Q.     Okay. We'll get to those in a minute then.



1           In reviewing your expert report, I see you  
2       retired in 2012 from the Irvine Police Department; is  
3       that correct?

4           A.     Yes.

5           Q.     Now, other than serving as a consultant in  
6       lawsuits such as this, do you have any other employment?

7           A.     No.

8           Q.     I notice that you have a law degree from -- is  
9       it Western State University College of Law?

10          A.     Yes.

11          Q.     I'm assuming, from reviewing your report, that  
12       you must have attended law school at night when you were  
13       still working at the police department?

14          A.     Yes.

15          Q.     And how long did you attend law school prior  
16       to obtaining your J.D.?

17          A.     Three years.

18          Q.     So you took a full load in the evening then?

19          A.     We worked a 4/10 shift and I worked a swing  
20       shift. So I was able to go during the day, actually.

21          And they actually offered classes on Saturdays. So I  
22       was taking classes on Saturdays, as well.

23          Q.     And I see that you graduated with honors. Can  
24       you tell me what grade point you had to obtain in order  
25       to receive that designation?

1           A.    I think 3.0.

2           Q.    Now, you have been licensed to practice law in  
3 California since 1994; is that correct?

4           A.    Yes.

5           Q.    Is your license current?

6           A.    It is.

7           Q.    Did you or have you since you obtained your  
8 law license actually practiced law?

9           A.    When I first obtained my license back in '94,  
10 I was considering practicing law. And I worked for a --  
11 part-time for a friend of mine. I appeared at a few  
12 depositions, a few settlement conferences for just a few  
13 months. And that's the extent of it.

14          Q.    Okay. Was that while you were also with the  
15 police department?

16          A.    It was.

17          Q.    Okay. So just a few months, you say?

18          A.    Yes.

19          Q.    And what types of cases were you attending  
20 depositions on or attending settlement conferences on?

21          A.    Traffic collisions.

22          Q.    Personal injury law?

23          A.    Yeah. It was insurance defense.

24          Q.    So you were on the defense side of the bar at  
25 that time?

1           A.    Yes.  Again, it was just less than five things  
2           over the course of a couple of months many years ago.

3           Q.    Understood.  What does the state of California  
4           require in terms of continuing legal education to  
5           maintain your law license?

6           A.    Every three years I believe it's a total of 24  
7           continuing education units in a variety of areas.

8           Q.    Okay.  In your time as an attorney, what do  
9           you focus on in terms of CLE programs say in the last  
10          five years?

11               MR. LAUX:  Object to the form of the question.

12           BY MR. MANN:

13           Q.    You can answer.

14           A.    Well, I don't think I really focus on  
15           anything.  Again, there's certain requirements that have  
16           to be fulfilled.  And the -- I've attained many of the  
17           units over the years particularly while I was a police  
18           officer by attending police-related seminars that also  
19           gave CLE credit.

20           Q.    That's what I was grabbing at.

21               Okay.  I want to introduce as Exhibit 1 a copy  
22           of your CV.  And I'll hand it to you.

23               (Whereupon, Exhibit 1 was marked and  
24           attached hereto.)

25           MR. LAUX:  I have a copy.

1 MR. MANN: You have a copy. Okay.

2 Q. In looking over the list of cases that you  
3 have identified in your CV, it appears that you began  
4 your consulting work in 2005; is that correct? I'm  
5 looking over at page eight now, the first case you list.

6 A. Yes.

7 Q. Did you do any consulting work prior to 2005?

8 A. I don't think so.

9 Q. Okay. And this first case was the, what you  
10 call, the Fajitagate; is that right?

11 A. Yes.

12 Q. Is the case that we're here on today, the  
13 Ellison versus Leshner, et al., is that the only case  
14 that you have ever consulted on that is filed in a state  
15 which is part of the jurisdiction of the Eighth Circuit  
16 Court of Appeals?

17 A. You would have to tell me which states are in  
18 the Eighth Circuit.

19 Q. All right. Let's go through them. North  
20 Dakota?

21 A. No.

22 Q. South Dakota?

23 A. No.

24 Q. Nebraska?

25 A. No.

1 Q. Minnesota?

2 A. No.

3 Q. Missouri?

4 A. No.

5 Q. Arkansas?

6 A. No.

7 Q. Okay. Iowa?

8 A. No.

9 Q. Almost forgot one. So I got my civics lesson  
10 correct for the day. So this is the only case in the  
11 Eighth Circuit you have worked on as a consultant?

12 A. Yes.

13 Q. Assuming my representation of the states in  
14 that circuit is correct.

15 A. Yes.

16 Q. All right. In Exhibit 1 on pages three  
17 through eight you list all the cases in which you have  
18 consulted on; correct?

19 A. Yes.

20 Q. Beginning with -- and you go in reverse  
21 chronological order, beginning with Wade v. City of  
22 Fruitland?

23 A. Yes.

24 Q. Okay. Have you ever testified in court in any  
25 of these cases?

1           A.     Yes.

2           Q.     Okay.  We'll get to those in just a second.

3           I'm assuming that -- let's look at -- let me find an  
4     example here.  Over on page five, the third case down,  
5     Estate of Adgers v. City of Hartford, Connecticut --

6           A.     Yes.

7           Q.     -- you have there "plaintiff," which indicates  
8     that you consulted with the plaintiff; correct?

9           A.     Yes.

10          Q.     And you submitted an expert report; correct?

11          A.     Yes.

12          Q.     And then this "trial" indicates you testified  
13     at trial?

14          A.     Yes.

15          Q.     How many times would you say that you have  
16     testified in trial as an expert witness?  Or let me  
17     strike that.  How many times have you testified in court  
18     where you have been qualified as an expert witness?

19          A.     I believe five.

20          Q.     Okay.  Can you remember the first time you  
21     testified in court where you qualified as an expert  
22     witness?  Year is fine.

23          A.     I believe it was the Gilfand case in Chicago.

24          Q.     Okay.  That's 2010, it looks like, on page  
25     six, the fourth one down?

1           A.    Yes.

2           Q.    Okay.

3           A.    2010 would have been the year I started the  
4 case.  So I can't say I actually testified in 2010.  It  
5 may have been in 2011.

6           Q.    Okay.

7           A.    I don't recall.

8           Q.    But you didn't testify in any cases prior to  
9 that year?

10          A.    Not that I recall.

11          Q.    Okay.  That's good.  On each of the occasions  
12 in which you testified as an expert witness, were you in  
13 Federal District Court?

14          A.    No.

15          Q.    Now, let me clarify one thing.  On the first  
16 page of your CV, Exhibit 1, you note that the Irvine  
17 Police Department has, indicates there, sworn officers  
18 205; is that correct?

19          A.    Yes.

20          Q.    Was that the number of officers they had when  
21 you were there or is that current date?

22          A.    That's what they had when I was there.

23          Q.    And that was as of July 2012?

24          A.    Yes.

25          Q.    Has that number increased or decreased since

1       that time or do you know?

2           A.    It may have increased.   But if it has, it's  
3       only by a couple.

4           Q.    Now, it notes that you began your employment  
5       in September of 1984; is that correct?

6           A.    Yes.

7           Q.    And how old were you at that time?

8           A.    I would have been 23.

9           Q.    And can you tell me what you had to do in  
10       order to become a police officer for the City of Irvine?  
11       What I'm meaning there is, did you have to attend some  
12       sort of a training academy?

13          A.    Yes, I did.

14          Q.    Was that sponsored by the City of Irvine or  
15       was that a State of California academy?

16          A.    All academies in the State of California are  
17       certified by California POST.

18          Q.    Okay.   And what does that POST stand for?

19          A.    Peace Officer Standards and Training.

20          Q.    So the academy that you attended and graduated  
21       from, was that sponsored by Irvine or did you go  
22       somewhere else to attend the academy?

23          A.    I actually attended a reserve police academy  
24       first.   And that was through the Orange County Sheriff's  
25       Department.   I was a reserve police officer prior to



1       1984 for just a couple of months. I went through the  
2       entire academy and then was hired full-time and went  
3       back to a full-time academy, which was at the Golden  
4       West College in Huntington Beach.

5           Q.     Okay. And what were the -- how many hours of  
6       training did you have to attain prior to graduating?

7           A.     I recall at that time it was a four or five  
8       month academy. I couldn't tell you the hours. It was  
9       so long ago.

10          Q.     Was it a five-day-a-week course?

11          A.     Yes, it was.

12          Q.     And for four or five months?

13          A.     Yes.

14          Q.     And when you graduated from the academy, you  
15       were then a sworn police officer with the City of  
16       Irvine?

17          A.     Yes.

18          Q.     Now, you have listed each of the assignments  
19       or divisions in which you served with the City of  
20       Irvine, is that correct, looking at Exhibit 1?

21          A.     Yes.

22          Q.     How long did you serve as a patrol officer?

23          A.     In total about five years.

24          Q.     Was that the first five years of your career?

25          A.     No.

1           Q.    How long did you serve as a patrol officer  
2 when you were initially hired by the Department?

3           A.    Four years.

4           Q.    In that particular assignment what were your  
5 responsibilities just in general?

6           A.    General patrol uniformed services to the  
7 community, respond to calls, you know, preventative  
8 patrol.

9           Q.    And in those four years as a patrol officer  
10 did you ever have occasion to use deadly force?

11          A.    I did.

12          Q.    Okay. Can you tell me about that?

13          A.    Sure. In I think it was August of 1985 I was  
14 dispatched to a bank robbery in progress at Crocker  
15 Bank, which was located at 19000 MacArthur Boulevard,  
16 which is right across the street from the John Wayne  
17 Airport, if you flew into that airport. The building is  
18 still there. Obviously Crocker Bank no longer exists.

19                It was a bank robbery in progress. The  
20 suspect eventually was armed, came out of the bank with  
21 the bank manager as a hostage; had taken about, as I  
22 recall, about \$40,000.

23                I was immediately next to the building behind  
24 a large planter. He walked by me. He was confronted by  
25 another police officer who was in an underground parking

1 structure. And he drew -- the suspect drew his firearm,  
2 pointed at the other officer. The other officer and I  
3 both fired.

4 Q. And did you hit the suspect?

5 A. Yes.

6 Q. How many times did you fire?

7 A. Five.

8 Q. Is that the only occasion in which you --  
9 during your first four years of employment is that the  
10 only occasion in which you used deadly force?

11 A. Yes.

12 Q. Now, you said that you served as a patrol  
13 officer for four years about; is that correct?

14 A. Yes.

15 Q. And did you then transfer into narcotics as a  
16 detective?

17 A. I did.

18 Q. Was that an undercover assignment?

19 A. It was.

20 Q. How long did you serve in that role?

21 A. Four and a half years.

22 Q. And in that role were you ever called upon to  
23 use deadly force?

24 A. No.

25 Q. Then you moved apparently to the position of

1 traffic detective. I know what that sounds like to me.  
2 But can you tell me what your responsibilities were as a  
3 traffic detective?

4 A. Actually, I listed -- these aren't  
5 chronological.

6 Q. Okay.

7 A. So I actually went back to patrol for a short  
8 period of time, which made up that additional, I  
9 believe, a year, close to it. And then I went into  
10 traffic as a traffic detective.

11 Q. I apologize. I thought these were listed  
12 chronologically. That's my fault. So after four years  
13 or so of narcotics you moved back to patrol for another  
14 year?

15 A. Yes.

16 Q. During that year in patrol were you called  
17 upon at any time to use deadly force?

18 A. No.

19 Q. And then you moved to traffic detective?

20 A. Yes.

21 Q. And how many years did you serve in that role?

22 A. Only a couple months.

23 Q. What were your responsibilities?

24 A. As a traffic detective my responsibility was  
25 to review all the collisions, particularly our fatal

1 collisions, to respond out on fatal collisions and  
2 conduct investigations, to review collision reports by  
3 other officers within the department, our traffic  
4 officers within the traffic bureau.

5 Q. And you did that for a couple of months?

6 A. Just a couple of months.

7 Q. And during those two months did you ever use  
8 deadly force?

9 A. No.

10 Q. Where did you go next in your career?

11 A. I was promoted to sergeant and then went back  
12 to patrol.

13 Q. Training sergeant?

14 A. No. I went back to patrol.

15 Q. Let's see. All right. What is on Exhibit 1  
16 there next to "traffic detective," it says "training  
17 sergeant"?

18 A. Yes.

19 Q. Is that not for patrol?

20 A. No. We have a -- the training sergeant was a  
21 separate position that oversaw the training for the  
22 department. Not only training, but our policy manual.

23 Q. Let's just talk then about your role as a  
24 training officer for patrol. How long did you serve in  
25 that position?

1           A.    I believe that was about a year and a half,  
2 maybe two years.

3           Q.    Okay.  And I may have gotten this wrong, but  
4 did I hear you say you were serving the rank of sergeant  
5 at that time?

6           A.    Yes.

7           Q.    And what were your responsibilities in that  
8 position?

9           A.    You know, I was responsible for -- we do quite  
10 a bit of in-house training.  So I was responsible for  
11 coordinating that training, for ensuring that all of our  
12 officers attended the required training that they are  
13 required to attend in California, all the mandated  
14 training.

15                I would also give training.  I would teach  
16 officers different courses.  And our office would  
17 coordinate -- we were in a fortunate position where we  
18 were able to send a lot of officers to outside training.  
19 And we coordinated that through that office.

20           Q.    At that time how many hours of annual training  
21 were police officers required in the State of  
22 California, how many were they required to have?

23           A.    I can't recall at that time.  I believe that  
24 now it's 20 or 24 hours every two years.

25           Q.    Okay.  But you don't remember what it was at

1 the time you were a training sergeant?

2 A. No.

3 Q. Was part of the curriculum that you taught  
4 involving the use of force and the use of deadly force,  
5 either?

6 A. No, I don't recall specifically. I definitely  
7 taught firearms shooting, but not anything in a formal  
8 classroom on use of force.

9 Q. How did the Department give use of force  
10 training to its officers at that time when you were a  
11 training sergeant?

12 A. We would give classroom instruction and in  
13 combination with our range instruction. So I would give  
14 instruction on the range. And we would have typically a  
15 member of the Department giving the instruction.

16 Q. And I think I heard you say you served as a  
17 training sergeant in patrol for a year or two; is that  
18 right?

19 A. Yes.

20 Q. I'm not trying to misstate what you said.

21 A. Yeah. I can't recall exactly, but about that,  
22 yes.

23 Q. I won't hold you to a specific number of  
24 years. What did you do after that assignment?

25 A. I was transferred to Internal Affairs.

1           Q.    Okay.  And how many years did you serve in  
2   Internal Affairs?

3           A.    About four years.

4           Q.    And was your rank sergeant during all four  
5   years?

6           A.    Yes.

7           Q.    Can you tell me how Internal Affairs was  
8   organized at the time that you served as the sergeant?

9           A.    At the time we had one sergeant, one  
10   detective.  And I reported directly to the Chief of  
11   Police.

12          Q.    Okay.  Was a detective a subordinate to you?

13          A.    Yes.

14          Q.    So yourself and a detective.  Anyone else?

15          A.    We had a secretary.

16          Q.    Secretary.  And then you reported directly to  
17   the Chief of Police?

18          A.    Yes.

19          Q.    And who was the chief at that time?

20          A.    Chief Brobeck.

21          Q.    Did you have any other assignments other than  
22   being in Internal Affairs at that time?

23          A.    During this period of time that I was a  
24   sergeant, I was also a collateral.  For most of the time  
25   I was a collateral.  Our SWAT team was a part-time team.



1       So I was a sergeant on the SWAT team.

2           Q.    So how many years did you serve in the  
3       collateral assignment of SWAT sergeant when you were  
4       assigned to Internal Affairs?  The entire time or how  
5       many years?

6           A.    Most of the time, yes.

7           Q.    So if there was a need for the SWAT team to  
8       deploy, you were called out?

9           A.    Yes.

10          Q.    And you were a sergeant in the SWAT team?

11          A.    Yes.

12          Q.    How was it organized in terms of personnel and  
13       rank, the SWAT team?

14          A.    We had a SWAT commander, I believe at that  
15       time was a lieutenant.  We had two teams, which were  
16       both led by sergeants.  We had a third sergeant that was  
17       in charge of logistics and our negotiators.  And I  
18       believe we had a total of 16 police officers.

19          Q.    Okay.  Now, your CV says SWAT sergeant and  
20       commander.  Were you promoted to assume a commander's  
21       position in SWAT?

22          A.    At one time, yes.

23          Q.    Was it during this four years while you were  
24       --

25          A.    No.

1           Q.    Okay.  We'll get to that then.  During this  
2           time when you were a SWAT sergeant while also assigned  
3           to Internal Affairs, did you ever have occasion to use  
4           deadly force?

5           A.    No.

6           Q.    Kind of keep this chronological.  I don't want  
7           to assume anything by what you listed on your CV.  After  
8           your four and a half years in the IA, Internal Affairs,  
9           where did you go from that point?

10          A.    I was promoted to lieutenant.

11          Q.    Okay.  And what was your assignment as  
12          lieutenant initially?

13          A.    Initially I was assigned as a patrol watch  
14          commander.

15          Q.    And what were your duties as a patrol watch  
16          commander?

17          A.    Oversee a shift of officers.

18          Q.    Okay.  Did that assignment cause you to have  
19          to go out into the field or was that more administrative  
20          in nature?

21          A.    It was both.  I would wear a uniform.  So if a  
22          major call came up, I would go out in the field.  And I  
23          would occasionally go out in the field to ride with my  
24          supervisors.  But for the most part it was  
25          administrative.

1           Q.    For how many years did you serve as lieutenant  
2           over a watch?

3           A.    About two months.

4           Q.    During those two months did you ever have  
5           occasion to use deadly force?

6           A.    No.

7           Q.    Where did you go after those two months?

8           A.    I was promoted to commander.

9           Q.    And what division were you assigned to as  
10          commander?

11          A.    At that time the Department did a  
12          reorganization. And we went to what's called geographic  
13          policing. And the city was divided into three areas.

14                And I was made the commander of what we call  
15          the University area, which is essentially, since you're  
16          here in the city, it would have included this building  
17          that we're in, everything south up to the University of  
18          California Irvine, which has its own police department.  
19          But I would be responsible to coordinate with them,  
20          because their department is very small. So every time  
21          they would have protests, we would go in and assist  
22          them.

23                Everything on the west in the city up to -- we  
24          border the John Wayne Airport. So all that area of the  
25          city.

1           Q.    Now, as commander what were your  
2   responsibilities?

3           A.    My responsibilities as commander was to  
4   oversee all of the operational aspects that fell into  
5   that area; so all the patrol officers. We divided our  
6   detectives, as well, traffic officers, crime prevention.  
7   All of our aspects would be divided into areas. And my  
8   responsibility would be crime patrol and operational  
9   aspects and familiarization with the community in that  
10  area of the city.

11          Q.    Would it be fair to say that that position was  
12  administrative?

13          A.    Well, again, during the entire time I was in  
14  that position, which was seven or eight years, I would  
15  wear a uniform every day. Primarily administrative.

16          But, again, I would respond throughout my career on  
17  any, you know, call of importance, protests.

18                Again, we frequently interacted with the  
19  University of California Irvine. So they would often  
20  have protests. So it would be a mix. But primarily,  
21  yes, administrative.

22          Q.    And during your term or time as a commander,  
23  were you ever called upon to use deadly force?

24          A.    No.

25          Q.    And I'm assuming from that point you were

1 promoted to Deputy Chief of Police?

2 A. Yes.

3 Q. And that's the position from which you  
4 retired?

5 A. Yes.

6 Q. Tell me how long you served as Deputy Chief.

7 A. Just about two years.

8 Q. And was there only one Deputy Chief in the  
9 Department?

10 A. Yes.

11 Q. What were your duties and responsibilities in  
12 that position?

13 A. All operations for the police department.

14 Q. Did you wear a uniform?

15 A. Yes, I did.

16 Q. During those two years did you ever use deadly  
17 force?

18 A. No.

19 Q. So going back, it sounds like the one occasion  
20 in your career when you used deadly force was during  
21 that bank robbery in 1985?

22 A. Yes.

23 Q. That's the only time; correct?

24 A. Yes.

25 Q. After that incident where you and the other

1 officer shot the suspect, was there an investigation  
2 undertaken by the Department?

3 A. Yes.

4 Q. And, tell me, who conducted the investigation?

5 A. Well, I know that the --

6 Q. I'm not talking about individual people.

7 Just --

8 A. Yeah, because I couldn't remember.

9 Q. Don't worry about that.

10 A. We -- even at that time when the officers use  
11 deadly force, we have -- the district attorneys in  
12 Orange County, the district attorney has investigators.  
13 We hand off that investigation to the district attorney.  
14 And the district attorney investigators investigate it.

15 Q. Okay.

16 A. It was an outside investigation.

17 Q. So the Orange County district attorney has on  
18 his or her staff, are they law enforcement personnel?

19 A. Yes.

20 Q. So the police officers and the Irvine Police  
21 Department had nothing to do with the investigation?

22 A. Nothing to do with the criminal investigation.  
23 They would have conducted an administrative  
24 investigation. The criminal investigation would have  
25 been conducted by the district attorney's office.

1           Q.   And even back then when an officer used deadly  
2   force, you had a bifurcated situation where you had a  
3   criminal investigation and then an Internal Affairs  
4   investigation; is that correct?

5           A.   Yes, that's true.

6           Q.   And so the Internal Affairs investigation that  
7   was undertaken on the occasion when you used deadly  
8   force was conducted by the Irvine Police Department?

9           A.   Yes.

10          Q.   And was the IA division organized the same as  
11   when you were there, in other words, a sergeant and a  
12   detective?

13          A.   You know, at that time I had been a police  
14   officer for a year. I have no idea.

15          Q.   I understand. So you were questioned in that  
16   investigation -- strike that. Let me ask it a better  
17   way. You were questioned in the Internal Affairs  
18   investigation by an Irvine Police Department officer?

19          A.   No. Actually, I submitted to the -- I was  
20   questioned by the district attorney's investigators.

21          Q.   I'm talking about the Internal Affairs  
22   investigation.

23          A.   No. I think they just used the interview that  
24   was conducted by the district attorneys.

25          Q.   They didn't take a separate interview for

1       Internal Affairs?

2             A.     Not that I recall.

3             Q.     Now, I think in your expert report I recall  
4       you say that you had extensive experience in conducting  
5       Internal Affairs investigations into issues such as use  
6       of force and officer misconduct; is that correct?

7             A.     Yes.

8             Q.     And would that be the four and a half years  
9       that you talked about earlier whenever you were assigned  
10      to IA?

11            A.     It would be partially that, yes.

12            Q.     Describe for me another experience you had in  
13      actually conducting Internal Affairs investigations.

14            A.     I've done three cases as a consultant, one in  
15      San Francisco and two in Austin, Texas. The two in  
16      Austin, Texas were both officer-involved shootings where  
17      I've actually conducted the investigation. And I have  
18      reviewed literally thousands of Internal Affairs  
19      investigations as an expert witness.

20            Q.     Okay.

21            A.     The vast majority in Chicago.

22            Q.     I understand that. What I'm trying to focus  
23      on now is when you actually conducted an investigation  
24      yourself. I believe I understood you to say that there  
25      were three others, that being the San Francisco, the



1 Fajitagate, and two in Austin, Texas; is that correct?

2 A. Yeah. In both of those we conducted reviews  
3 of investigations that were conducted within the  
4 Department.

5 Q. In Austin, Texas?

6 A. Yes.

7 Q. So you were reviewing someone else's  
8 investigation?

9 A. Yes.

10 Q. What about in San Francisco, were you actually  
11 a part of the investigative team?

12 A. No. We came in to review. In San Francisco  
13 their Internal Affairs investigations, it's split. They  
14 do have an Internal Affairs division. But they also  
15 have what's called the Office of Citizen Complaints,  
16 which is civilian led and civilian investigated. That  
17 unit conducted an investigation of this particular  
18 incident. And we reviewed their investigation and made  
19 recommendations.

20 Q. Okay. When you were assigned to Internal  
21 Affairs in the Irvine Police Department, what kind of  
22 training did you receive in order to be an IA  
23 investigator?

24 A. I initially went to a one-week school -- I  
25 believe it was at Cal State Long Beach -- that was

1 designed for Internal Affairs investigations. During  
2 that four-year period I attended quite a few seminars.

3 There's a law firm called Liebert, Cassidy,  
4 Whitmore that puts on an annual conference. It's about  
5 24 hours of training every year. I probably attended  
6 that almost every year I was in there.

7 There were other seminars, as well, that I  
8 would attend that were directly related to Internal  
9 Affairs.

10 Q. What were the curriculum or the subject of the  
11 seminars put on by the law firm that you mentioned?

12 A. Well, the law firm put on -- they actually  
13 held -- it was more of a conference, because they put on  
14 so many classes at a time. But it would be a wide  
15 variety. They would put on classes for brand new  
16 investigators. They would put on classes for, you know,  
17 just a wide range of Internal Affairs types of issues of  
18 basic law, how to conduct interviews, interrogations,  
19 really a wide variety of topic matters.

20 Q. Now, when you were in Internal Affairs in  
21 Irvine, would you from time to time receive complaints  
22 about officer misconduct from citizens?

23 A. Oh, yes.

24 Q. Would you generate internal complaints or  
25 investigate complaints that were generated internally by

1 the Department?

2 A. Yes.

3 Q. And so in both of those situations you and the  
4 detective under you were responsible for investigating  
5 officers in your department; is that correct?

6 A. Yes.

7 Q. Other than the deadly force situation where  
8 the district attorney would provide investigators, while  
9 you were in IA, did you refer out any other  
10 investigations for independent or external investigators  
11 to handle?

12 A. We certainly had done that. We've done it  
13 several times. I can't recall whether that ever  
14 happened when I was in IA or whether it happened after  
15 that when I was a commander.

16 I know that several of those happened when I  
17 was a commander where we would hire an outside  
18 investigator, because we felt that we had some sort of  
19 internal conflict.

20 Q. And if you could give me examples of the  
21 internal conflicts which led to the decision to refer to  
22 external, that would be helpful.

23 A. Sometimes those conflicts were allegations  
24 were made against a member of the command staff where we  
25 felt that another member of the command staff wouldn't

1 be able to fairly investigate it or there may be some  
2 sort of, you know, personal relationship.

3 And we had in the Department 205 officers,  
4 which is quite a few, but still small enough where there  
5 may be some sort of relationship. And if we felt there  
6 was a relationship issue or some other issue that would  
7 cause a conflict, we would send it out.

8 Q. While you were employed in the Internal  
9 Affairs division -- well, strike that. While you were  
10 employed with the Irvine Police Department, were there  
11 certain officers that were employed at the same time who  
12 you regarded as friends?

13 A. Oh, of course.

14 Q. During the course of your career as an  
15 Internal Affairs sergeant, were you ever called upon to  
16 investigate any officer who you regarded as a friend?

17 A. No.

18 Q. Never have?

19 A. No.

20 Q. Was there ever a situation where an officer  
21 whom you regarded as a friend was going to be  
22 investigated and you referred that out to someone else?

23 A. No, I can't think of it. I'm the kind of  
24 person that I have very few, limited number of friends.  
25 And they just never had issues.

1           Q.    All right.  You have already told me that a  
2   deadly force incident at the Irvine Police Department  
3   was investigated by your Orange County district  
4   attorney's office; is that correct?

5           A.    Yes.

6           Q.    The criminal investigation?

7           A.    Yes.

8           Q.    But then the Internal Affairs investigation  
9   would have been conducted by the Irvine Police  
10  Department?

11          A.    Yes.  And, again, I don't really have any  
12  memory of an Internal Affairs investigation.  Again,  
13  that's almost 30 years ago --

14          Q.    Okay.  Understood.

15          A.    -- of my particular shooting.  I can say  
16  subsequent to that, yes.

17          Q.    Explain what you mean.

18          A.    Other officer-involved shootings that -- you  
19  know, when I became of a position where I was aware of  
20  what was happening, certainly when I was in IA or in  
21  command staff, if we had deadly force situations -- and  
22  fortunately we only had a few -- we would always  
23  bifurcate them.  The D.A.'s would always investigate the  
24  criminal and we would indeed conduct an internal.

25          Q.    You said in the course of your career with the

1       Irvine Police Department there were very few incidents  
2       of deadly force?

3               MR. LAUX: Object to the form.

4               THE WITNESS: Yes.

5       BY MR. MANN:

6               Q.    Could you ballpark it, a number? And I won't  
7       hold you to a specific --

8               A.    Less than five.

9               Q.    And that would be -- you were with the  
10      Department 28 years?

11              A.    Yes.

12              Q.    Okay. I'm going to hand you what I have  
13      marked as Exhibit Number 2 to your deposition.

14                    (Whereupon, Exhibit 2 was marked and  
15      attached hereto.)

16              MR. MANN: Mike, let me see if I can find  
17      another one here for you.

18              MR. LAUX: That would be great. I have the  
19      report and I have the CV.

20              MR. MANN: Bear with me a sec.

21              MR. LAUX: I would be a hypocrite if I got  
22      after you too hard. How many exhibits do you think  
23      you're going to be using?

24              MR. MANN: About four.

25              MR. LAUX: If you can't find it, I can

1       probably make due.

2               MR. MANN:   Bingo.   Let me get organized here.

3       Here you go.

4               MR. LAUX:   Thank you.   Three-pager?

5               MR. MANN:   Yeah.   Just two pages.

6               MR. LAUX:   Two pages.   You're marking this as  
7       2; right?

8               MR. MANN:   Yes, sir.

9               Q.    Okay.   Mr. Noble, I'll represent to you that  
10       Exhibit 2 is a document that I have printed off of the  
11       City of Irvine Police Department website.   If you will  
12       take my word for that.   Have you ever seen anything like  
13       this before?

14              A.    Yes.

15              Q.    While you were employed by the Department as  
16       recently as 2012, was Exhibit 2 or something like it  
17       available on your website?

18              A.    Yes, I believe so.

19              Q.    I'm going to look, if we could, on the first  
20       page.   And this apparently is a -- it would normally be  
21       in brochure format.   Obviously when we printed it off  
22       the internet, we got two pages here.

23                    Looking on the front of it there under the  
24       area that's blank entitled "Narrative," do you see that?

25              A.    Yes.

1           Q.   Down below that there's an area which says  
2   that, "You have the right to make a complaint against a  
3   police officer," et cetera. Do you see that?

4           A.   Yes.

5           Q.   And the complainant is required to sign this  
6   form; is that correct?

7           A.   No.

8           Q.   Not required to. Okay. I don't see anyplace  
9   in here where it indicates that you will accept an  
10   anonymous complaint. Would you accept an anonymous  
11   complaint at Irvine when you were there?

12          A.   Yes.

13          Q.   All right. Let's go over to page two.  
14   There's a message from the Chief. And the Chief's name  
15   at this time is David L. Maggard, M-a-g-g-a-r-d, Jr.  
16   Did you work with Chief Maggard while you were employed  
17   by the Irvine Police Department?

18          A.   Yes.

19          Q.   Did I pronounce his name correctly?

20          A.   Yes, you did.

21          Q.   Looking at the frequently asked questions, the  
22   third one down says, "Who would investigate my  
23   complaint?" Do you see that?

24          A.   Yes.

25          Q.   And the response is, "Either an investigator



1 from the Professional Standards Section or the officer's  
2 supervisor would investigate a complaint." Did I read  
3 that correctly?

4 A. Yes.

5 Q. Is the Professional Standards Section  
6 synonymous with Internal Affairs?

7 A. Yes.

8 Q. Is there any separation there? Is there just  
9 a different name to call Internal Affairs?

10 A. Just a different name.

11 Q. Okay. And when you were in Internal Affairs,  
12 what was it called?

13 A. Professional Standards.

14 Q. Okay. And so it says that either Professional  
15 Standards investigator or the officer's supervisor.

16 Tell me, if you will, when would an officer's  
17 supervisor investigate a complaint versus Professional  
18 Standards?

19 A. Generally we would have line supervisors  
20 investigate complaints of discourtesy, very minor  
21 allegations, things that we felt that the supervisors  
22 would be in a better position to investigate and easily  
23 resolve.

24 Q. Okay. And then what types of complaints would  
25 go to Professional Standards Section?

1           A.     Just about everything else.

2           Q.     Okay. Looking on down in that brochure, we  
3 get to the question about, "What will happen to the  
4 officer?" Do you see that one?

5           A.     Yes.

6           Q.     Okay. And it notes what will happen. And  
7 then the next question posed in the brochure is, "Will I  
8 find out the results of the investigation and the action  
9 taken against the officer"; is that correct?

10          A.     Yes.

11          Q.     And it indicates there that there are one,  
12 two, three, four possible outcomes of the complaint  
13 being not sustained, sustained, exonerated or unfounded;  
14 is that correct?

15          A.     That's what it says, yes.

16          Q.     And is that how it was whenever you were at  
17 the police department in Irvine?

18          A.     We actually have another category called  
19 frivolous.

20          Q.     Okay.

21          A.     So that is a fifth category.

22          Q.     It says, "The action taken against the police  
23 officer is confidential and may not be disclosed." Why  
24 is that? Is that some law here in California?

25          A.     State law.

1           Q.    Does it pertain to an Open Records Act or is  
2   it some other law?

3           A.    I believe it's section -- in the penal code --  
4   830.5, somewhere around that area; that peace officers'  
5   personnel records are confidential.

6           Q.    Okay. Next question is, "What if I am not  
7   satisfied with the result of the investigation?"

8                   And it indicates that if that's the case, the  
9   complainant has the option of contacting the Chief of  
10   Police, City Manager or, in some cases, the Orange  
11   County District Attorney or the Grand Jury; is that  
12   correct?

13          A.    Yes.

14          Q.    So if the citizen or whoever has made the  
15   complaint doesn't like the result and they contact the  
16   Chief of Police, what would the Chief of Police do? Is  
17   there some sort of formal process? Explain that to me,  
18   if you will.

19               MR. LAUX: Object to foundation.

20               THE WITNESS: No, there's no formal process.

21               But certainly under Chief Maggard and Chief Berkow  
22   before him and even Chief Brobeck, all three of these  
23   chiefs were very open people who would meet with anybody  
24   who had a concern or an issue.

25               So, first of all, if there was an

1 investigation, that particular chief would have read the  
2 investigation and would have approved it, because it  
3 could only be approved by the Chief of Police. So they  
4 would be very familiar with it.

5 In each of these cases I am aware of at least  
6 one case where an individual was unsatisfied with the  
7 result, and they came and they actually met with the  
8 Chief. And through discussions, the Chief was able to  
9 assure them or resolve it in some manner. But the Chief  
10 would meet with them and discuss what they could discuss  
11 with them.

12 BY MR. MANN:

13 Q. Okay. And when I ask you questions about  
14 this, I'm talking about when you were employed by the  
15 Irvine Police Department. Okay? I'm not asking you to  
16 say what they do today.

17 A. Yes.

18 Q. Now, if I have understood you correctly, the  
19 Chief would already have signed off approving the  
20 resolution of the complaint; correct?

21 A. Yes.

22 Q. But the citizen could still come and talk to  
23 the Chief if he or she wanted to?

24 A. Yes.

25 Q. What about the City Manager? How did that

1 work?

2 A. The City Manager, again -- I'm not familiar  
3 with anybody ever appealing to the City Manager. The  
4 City Manager would be a little bit different, because  
5 the City Manager would not have access to the personnel  
6 file even though he's the City Manager.

7 So they could go and kind of make their case  
8 to the City Manager. If the City Manager felt that it  
9 needed to be -- wasn't satisfied for whatever reason,  
10 the City Manager could actually order an outside  
11 investigation and have it reinvestigated.

12 Q. But the City Manager could not have access to  
13 the actual file that had been investigated by the  
14 Department?

15 A. No.

16 Q. Okay. What types of cases would permit the  
17 complaining party to go to the district attorney or to  
18 the Grand Jury? How did that work?

19 A. Well, if they felt that the officer had  
20 engaged in a criminal action, they could certainly go to  
21 the district attorney. The Grand Jury in Orange County  
22 accepts community member input and community member  
23 issues.

24 And our Grand Jury has investigated  
25 complaints. I'm not familiar with complaints about --

1 specific complaints about someone dissatisfied with an  
2 investigation. But I am aware that the Grand Jury has  
3 investigated issues of what they believe to be police  
4 misconduct.

5 Q. So a citizen could just go to some building or  
6 office where they could file a complaint or an appeal,  
7 for lack of a better term, and request that it be  
8 investigated by a Grand Jury?

9 A. Yes.

10 MR. LAUX: Object to the form.

11 THE WITNESS: Yes. My understanding is they  
12 absolutely could do that.

13 BY MR. MANN:

14 Q. Okay. The last question on the brochure,  
15 which is Exhibit 2, it says, "To whom should the  
16 complaint be reported?"

17 And it says complaints may be filed in person  
18 or they may be done by telephone or mail; is that  
19 correct?

20 A. Yes.

21 Q. During the time when you were employed by the  
22 Department, were you aware ever of anonymous complaints  
23 being investigated?

24 A. Yes.

25 Q. And so how would you handle those when you

1 didn't have a complainant to speak with, get their side  
2 of the story?

3 A. Well, there would be some kind of information.  
4 I mean, you know, obviously even an anonymous  
5 complainant has to communicate in some manner to let us  
6 know that an issue had arisen.

7 If there was sufficient information that would  
8 allow us to conduct an investigation, we certainly would  
9 look into the matter.

10 Q. Okay. I've got another exhibit I want to show  
11 you. I think I may have a copy. I may not. I do.

12 This is another document that I just pulled off of the  
13 website of the Irvine Police Department. And you're  
14 going to need that still (indicating).

15 A. Okay.

16 Q. I'll show it to you. It's Exhibit Number 3.

17 MR. LAUX: Thank you.

18 (Whereupon, Exhibit 3 was marked and  
19 attached hereto.)

20 BY MR. MANN:

21 Q. And this I'll represent to you, Mr. Noble, is  
22 a department directory of the Irvine Police Department.  
23 I printed this earlier in September.

24 And when you have had a chance to look it  
25 over -- take as much time as you like. I would like to

1 refer you to page three. Do you see where it references  
2 Office of Professional Standards?

3 A. Yes.

4 Q. It looks like they added a lieutenant to that  
5 division; is that correct?

6 A. Yes.

7 Q. Do you know Mr. Hallinan?

8 A. I do.

9 Q. Lieutenant Hallinan. Would you happen -- as I  
10 recall, when you were in Internal Affairs, you were the  
11 highest ranking officer? You were the sergeant; is that  
12 right?

13 A. Yes.

14 Q. Do you happen to know when they added a  
15 lieutenant to their staff?

16 A. It was a year or two after I left, they  
17 decided -- the Chief of Police, I believe it was Chief  
18 Brobeck at that time, decided to upgrade that to a  
19 lieutenant and a sergeant as an investigator rather than  
20 a sergeant and a detective.

21 Q. What is the management analyst position that  
22 is listed there? Do you know?

23 A. Yes. Chief Mazzio does all of our workers'  
24 comp issues.

25 Q. Okay. And then it says that Lieutenant



1 Hallinan is responsible for Internal Affairs and then  
2 risk management, Honor Guard. What is the risk  
3 management aspect of the position, if you know?

4 A. Risk management works with our workers' comp  
5 aspect and ensures that the Department's policies and  
6 the City's policies regarding risk management are  
7 followed, participates in the risk management meetings  
8 with the City administrators.

9 Q. Okay. I'll take that one back. You don't  
10 need that anymore. Thank you.

11 Okay. Looking again at your CV, which is  
12 Exhibit Number 1, I want to ask you, first of all, about  
13 one of the publications listed in the CV. And it's  
14 listed under the Articles section, page two. And it's  
15 about three quarters of the way down the page.

16 And it's written by you in 2003. "The  
17 Boomerang Employee - What to do When a Fired Employee  
18 Comes Back." And that was published in The Journal of  
19 California Law Enforcement.

20 Tell me about that. Give me a little bit of  
21 flow of what that article is about.

22 A. Well, sometimes the term "boomerang," where an  
23 employee will be fired, the City will feel, you know,  
24 appropriately so, that the employee engaged in some sort  
25 of misconduct where the employee was terminated from the

1 employment.

2 Then the employee still has rights. In  
3 California employees have rights to hearings. And  
4 ultimately they have rights to go to Superior Court if  
5 they feel they have been terminated improperly.

6 So an employee may be terminated and then  
7 through this process when they get to Superior Court or  
8 through some other hearing process, they actually may be  
9 reinstated to their position.

10 So the employee may be absent from their  
11 employment for sometimes six months, a year. I'm aware  
12 of cases where it's been several years because of, you  
13 know, the length of a particular court case.

14 And so what this article is really about is  
15 how do you handle this person in an appropriate and fair  
16 fashion when you bring them back into the organization,  
17 what do you need to do.

18 So I talk about things like, you know, first  
19 of all, dealing with the person fairly and  
20 professionally, ensuring that nobody treats them  
21 disparately because of what they went through; that they  
22 have been ordered back into the police department; that  
23 their training gets updated before they go back out into  
24 the field; that they are issued, you know, appropriate  
25 equipment; that they are not given secondhand things or

1       dealt with in an unprofessional manner.

2               So it really dealt with the more pragmatic  
3       hands-on kind of methodologies of what do you do with  
4       this, of how do you incorporate this person back in to  
5       make them a viable employee again.

6               Q.     You mentioned that an officer who is  
7       terminated has an appeal to some body. I'm not sure if  
8       I heard you say what that body is called. The initial  
9       appeal, let's say an Irvine police officer is  
10      terminated, where would he or she appeal?

11              A.     Their first appeal would be a Skelly hearing.  
12      And that would be in front of either the Chief of Police  
13      or the Chief may designate somebody. And if the  
14      termination is upheld at that point, they will actually  
15      be separated from the organization.

16              After that they have -- different  
17      organizations are different. For Irvine they would have  
18      a right to appeal to the City Manager.

19              In termination cases what our City Manager has  
20      done in my experience, which they would hire -- in  
21      California we call them JAMS judges, retired judges that  
22      work in a private practice that hold a quasi trial. And  
23      then the JAMS judge would make a recommendation. It  
24      wouldn't be binding. The JAMS judge would make a  
25      recommendation to the City Manager. The City Manager

1       could either take the recommendation or he could not  
2       take it. And then ultimately they would have a right to  
3       go to Superior Court.

4               MR. LAUX: Briefly, did you say a skillet  
5       hearing?

6               MR. MANN: Skelly.

7               THE WITNESS: Skelly, S-k-e-l-l-y.

8               MR. LAUX: Thank you.

9       BY MR. MANN:

10            Q. And then from there they could go to court if  
11       they were still dissatisfied?

12            A. Yes.

13            Q. And you said that was Superior Court; correct?

14            A. Yes.

15            Q. Is that like a trial level in the state, trial  
16       court?

17            A. Well, I was kind of got brought up on the  
18       Municipal and Superior Court. In California all we have  
19       is Superior Court anymore. They did away with Municipal  
20       Court.

21            Q. Okay. Understood. Looking at the list of  
22       cases which go from the bottom on page three all the way  
23       over to page eight, I counted -- subject to you checking  
24       me -- I counted 11 cases where you consult for the  
25       defense in lawsuits brought against the City of Chicago;

1 is that correct?

2 A. That sounds about right.

3 Q. Again, you're free to check on that. But I  
4 have counted 11 of them. Since you have handled that  
5 many cases in Chicago, have you become familiar with how  
6 that city will handle investigations of officer-involved  
7 shootings?

8 A. Yes.

9 MR. LAUX: Object to the form.

10 BY MR. MANN:

11 Q. Can you tell me how they are handled in  
12 Chicago?

13 A. In Chicago -- Chicago's an agency of 13,000  
14 police officers. So those investigations are handled  
15 internally.

16 They will have a criminals investigation and  
17 a -- excuse me -- a criminal investigation. And it  
18 would be bifurcated. And they would also do an Internal  
19 Affairs investigation.

20 The Internal Affairs investigation would be  
21 conducted by what's now called IPRA, I-P-R-A, the  
22 Independent Review Authority in Chicago. It used to be  
23 called The Office of Professional Standards. It's  
24 civilian run, civilian managed and civilian staffed.

25 Q. Does the Chicago Police Department have an

1 Internal Affairs division?

2 A. Yes, they do.

3 Q. What does that division investigate?

4 A. That division -- by statute in Chicago IPRA  
5 investigates all use of force incidents, residency  
6 issues, I believe domestic violence and one other area.

7 I just can't think of it off the top of my head. They  
8 have a limited area.

9 All complaints initially get taken by IPRA.

10 And then the complaints that are within their  
11 jurisdiction are maintained there. And then they send  
12 every other investigation over to Internal Affairs  
13 within the police department.

14 Q. Okay. And is there also -- say a citizen or  
15 an officer or someone has an appeal from a decision made  
16 by -- you said IPRA --

17 A. Yes.

18 Q. -- is there a body to where that appeal is  
19 taken? And if so -- let me strike that and try it a  
20 better way.

21 Say a police officer is disciplined, does that  
22 officer have an appeal?

23 A. Yes.

24 Q. And where is that? Is there a body that he or  
25 she can appeal to?

1           A.    Yes.  There is a police board.

2           Q.    What about a citizen who is aggrieved by a  
3    decision by either IPRA or the Internal Affairs  
4    division, do they have an appeal to anybody?

5           A.    I believe their only appeal would be to file a  
6    lawsuit or go through some other type of advocacy group.

7           Q.    So there's no board or body or anybody that a  
8    citizen can go to above the police department or IPRA?

9           MR. LAUX:  Object to the foundation.

10          BY MR. MANN:

11          Q.    As far as you know from working on 11 cases in  
12    Chicago.

13          A.    Yeah.  And that issue never really came up.  
14    So I can't recall looking at that.  And I just can't  
15    recall whether the police board would take a look at  
16    that or not.

17          Q.    Okay.  Now, you've got -- it looks like you've  
18    got a case pending right now in 2013 involving an  
19    individual by the name of Fuery, F-u-e-r-y, versus the  
20    City of Chicago.

21          A.    Yes.

22          Q.    And below that you have indicated -- this is  
23    page --

24          A.    Four.

25          Q.    -- four I'm reading from.  Sorry.  I marked

1 over it. You indicated below the style of the case.

2 And I assume this is the areas that you're consulting  
3 on, "reasonableness of Internal Affairs investigations  
4 and discipline."

5 A. Yes.

6 Q. Tell me a little bit about the case, if you  
7 would.

8 A. That particular case was an off-duty officer  
9 who was involved in some type of incident while driving  
10 a vehicle that resulted in a physical altercation.

11 I don't know too much about the details of  
12 that. I didn't review the facts of the underlying  
13 incident. That wasn't part of the material that I  
14 reviewed.

15 Q. What was your charge in the case? What is  
16 your charge in the case on behalf of the City?

17 A. Well, the plaintiff, as part of their  
18 complaint, made a Monell claim alleging that due to poor  
19 Internal Affairs investigations, unreasonable Internal  
20 Affairs investigation and a lack of disciplinary actions  
21 that police officers in Chicago could violate the  
22 constitutional rights of others with impunity.

23 Q. And in your work what have you reviewed in  
24 order to come to a conclusion expressed in your expert  
25 report which you noted there? What information have you



1 reviewed so far in that case?

2 A. I would have to look at my report to tell you  
3 what I reviewed. I reviewed a large number of  
4 documents.

5 Q. Have you reviewed prior disciplinary actions  
6 in the city of Chicago?

7 A. Yes.

8 Q. I'm assuming since you're testifying for the  
9 defense in that case that you have concluded that there  
10 is no viable Monell claim in that case?

11 A. Yes, that's true.

12 Q. Is that based upon your opinion that the city  
13 of Chicago adequately disciplines its officers?

14 A. In part, yes.

15 Q. What else have you based that on?

16 A. My opinion is based on reviewing literally  
17 over 2000 Internal Affairs investigations that I have  
18 read over the years. A number of them -- there was a  
19 number that were provided in a specific case from my  
20 review.

21 It's from reviewing really a wealth of  
22 information of different depositions of people who have  
23 been involved in the disciplinary process and the  
24 investigatory process in the city of Chicago.

25 Q. Okay. It looks like your first case in the

1 city of Chicago, looking on page seven -- I'm sorry --  
2 page eight, it looks like the first case that you worked  
3 on on behalf of the city of Chicago occurred in 2006.

4 And that's the -- I guess it's Hobley, H-o-b-l-e-y, or  
5 Hobly (phonetic)?

6 A. Hobley, yes.

7 Q. Hobley v. Burge; correct?

8 A. Yes.

9 Q. And then all the way up to 2013 and then cases  
10 in between; is that correct?

11 A. Yes.

12 Q. And in your work for the City of Chicago and  
13 in your review of prior disciplinary actions and the  
14 Internal Affairs investigations, you have always  
15 concluded that there was no viable Monell claim against  
16 the City of Chicago where one was made against the City?

17 A. That's correct.

18 Q. All right. I'm going to show you Exhibit  
19 Number 4, which I believe will be the last exhibit.

20 It's a copy of your expert report in this case that I  
21 have bound just for ease of flipping through.

22 (Whereupon, Exhibit 4 was marked and  
23 attached hereto.)

24 BY MR. MANN:

25 Q. If you can look through it and make sure I

1 haven't missed pages or anything. I don't believe I  
2 have.

3 MR. LAUX: I would just note that it does lack  
4 the signature page that was used for the motion for  
5 summary judgment in compliance with the Federal Rules.

6 MR. MANN: What I did was insert the signature  
7 page.

8 MR. LAUX: Well, there are actually two. One  
9 I submitted with the motion for summary judgment  
10 response, which is just procedural for admissibility  
11 purposes. I don't dispute the completeness of the  
12 report.

13 MR. MANN: Okay. Good.

14 Q. If you could take a look at that, Mr. Noble.  
15 I'm going to refer to pages three through six, which  
16 would be paragraph seven of your report.

17 If you will find page three, first of all.  
18 Paragraph seven you say you reviewed the following  
19 material in making your opinions in this case; is that  
20 correct?

21 A. Yes.

22 Q. And we would add to that the deposition of  
23 Sergeant Berthia and Chief Thomas; correct?

24 A. Yes.

25 Q. Any other documents that you reviewed since

1       you prepared this report and reached your conclusions?

2           A.     Not that I recall.

3           Q.     And, again, over on page 58, just so I'll make  
4       note of this, that is your signature with the date of  
5       July 27, 2013; is that correct?

6           A.     Yes.

7           Q.     Okay. Does Exhibit 4 contain all of the  
8       opinions you have reached on this case up to today's  
9       date?

10          A.     Absent any opinions that I may have regarding  
11       Chief Thomas and Sergeant Berthia's depositions.

12          Q.     Okay. Well, that's what I'm asking. Has your  
13       review of their depositions caused you to reach  
14       additional opinions which we would need to add to this  
15       report?

16          A.     Yes.

17          Q.     Okay. Let's go through them, however many  
18       there are.

19          A.     I think primarily with Chief Thomas's  
20       deposition what caused me concern, a couple of things.  
21       First, he made a statement regarding -- when he was  
22       talking about truthfulness, sustained allegations of  
23       untruthfulness for the police officers, he made a  
24       statement in his deposition that just because a case is  
25       sustained doesn't mean that it happened.

1           I found that statement to be somewhat  
2       incredible, because it was his agency that conducted  
3       the investigation. It was his agency that sustained the  
4       allegation. And it was his agency that imposed  
5       disciplinary actions based on those sustained  
6       violations.

7           And there was no evidence in those particular  
8       cases that those officers appealed or that there was --  
9       somehow those actions were overturned. So I felt that  
10      his statement that somehow sustained allegations of  
11      untruthfulness within his own police department may not  
12      have actually occurred to be just incredible.

13          He made statements -- apparently he sat  
14      through a majority of depositions in this matter. He  
15      made statements that he seemed as though he didn't  
16      really have an understanding of all the facts in this  
17      case even though he sat through all those depositions.

18          You know, after sitting through those  
19      depositions and listening to some of the facts that  
20      were brought out, I think a reasonable Chief of Police  
21      would have taken some additional action, some additional  
22      investigatory action, particularly when it came to the  
23      fact of both McCrillis and Officer Leshner's statements  
24      that changed over time, to investigate those changing  
25      statements to try to find out why those statements had

1 changed as far as what the facts were.

2 It just seems that there were other factors,  
3 you know, factors that came out. For example, in  
4 Leshher's deposition that she spoke with Sergeant  
5 Phillips and Captain Bartsch -- I don't know if that's  
6 the correct pronunciation.

7 Q. That's correct.

8 A. -- and Captain Bartsch prior to her interview,  
9 which is a violation of Department policy. It's a  
10 violation of policy for both Officer Leshher to do it --  
11 it was certainly a violation for both those supervisors  
12 and for Captain Bartsch to tell her everything would be  
13 okay prior to her interview.

14 So those were the first two interviews of  
15 Officer Leshher regarding this incident. We have no  
16 evidence of what was said during those interviews.

17 Those officers -- those supervisors were required to  
18 write reports.

19 Chief Thomas sat through that deposition. He  
20 heard that evidence. He apparently took no action to  
21 investigate misconduct on Captain Bartsch's part or on  
22 Sergeant Phillips' part or even Officer Leshher's part  
23 for engaging in those conversations.

24 I think a reasonable Chief of Police at that  
25 point would have directed those supervisors to write

1 reports regarding what those statements were, you know,  
2 and attempted to determine the truth of the matter of  
3 what was being said and what had actually occurred.

4 So I think that another issue was --  
5 throughout the deposition, quite frankly, I was very  
6 impressed with Chief Thomas. The first three quarters  
7 of the deposition he seemed like -- I have never met  
8 him. I have never spoken with him. But he seemed like  
9 a bright articulate man.

10 He seems that he understands policing. When  
11 he made a comment that he is not required to notify the  
12 prosecutor's office of sustained findings of  
13 untruthfulness of his police officers, I found that also  
14 to be a little incredible.

15 He was able to cite Giglio, G-i-g-l-i-o, by  
16 name, a federal court case. And he knew Brady by name,  
17 another federal court case that mandates this.

18 Now, neither of those cases specifically  
19 require a police department to do that. But the fact  
20 that he had knowledge, specific knowledge in those  
21 areas, it's well known within the law enforcement  
22 community the many many articles, that indeed that that  
23 information is discoverable and is inappropriate for  
24 police departments to withhold exculpatory information  
25 from the prosecutor, to say, you know, they need to come

1 to us, and sort of turn a blind eye to the fact that  
2 he's got so many officers that have these untruthfulness  
3 findings and he's not notifying his prosecutor, I just  
4 find that a little unconscionable. I find that frankly  
5 unconscionable that he would not be notifying.

6 I mean there are cases out there that these  
7 officers may have testified in that could frankly be  
8 overturned because they weren't allowed proper  
9 discovery.

10 And I can only assume that these attorneys'  
11 offices have since notified the prosecutor regarding  
12 those particular officers and any matters that they have  
13 been involved in.

14 And I think that's the extent of it.

15 Q. What about with respect to Sergeant Berthia?

16 A. If I could have a moment. Let me take a look  
17 at my notes.

18 Q. Sure. Take your time. In fact, do you want  
19 to go off the record for just a minute while you do  
20 that?

21 I don't care.

22 MR. LAUX: I'm going to see what the password  
23 is to get online. So that would be fine with me.

24 MR. MANN: Okay. We'll go off the record for  
25 a moment.



1 MR. LAUX: What time do you have?

2 THE REPORTER: 10:10.

3 MR. MANN: 10:30?

4 THE REPORTER: 10:10.

5 (Recess taken.)

6 MR. MANN: Back on the record. If you could  
7 give us the time, too.

8 THE REPORTER: 10:13.

9 BY MR. MANN:

10 Q. Okay. Mr. Noble, we are back on the record.

11 And the question I had asked you was if you had formed  
12 any other opinions that you had expressed in this case  
13 after having read the deposition of Sergeant Stephanie  
14 Berthia?

15 A. Yes. And one of the issues was that she  
16 believed that Officer Leshar gave a warning prior to the  
17 shooting. I don't think a reasonable Internal Affairs  
18 investigator would have concluded in that manner.

19 There was a statement that it was followed  
20 immediately by a shot. There was no opportunity to, you  
21 know, heed that warning. You know, in my mind that a  
22 warning not only requires the statement, but it requires  
23 some opportunity to comply with that statement, if  
24 possible.

25 And, also, her failure to follow up on the

1 different statements that were made by the officers. As  
2 I recall, not a single question was asked during the  
3 course of her Internal Affairs investigation to either  
4 Officer Leshar or Officer McCrillis about their changing  
5 statements regarding this incident.

6 Q. Okay. Anything else?

7 A. No.

8 Q. Let me talk about those additional opinions  
9 just a little bit later. I want to make sure, first of  
10 all, that I understand a couple of things. First, the  
11 organization of your report, as I understand it -- and  
12 please correct me if I am wrong -- beginning on page 31,  
13 I believe, is the first opinion you've expressed; is  
14 that correct?

15 A. Yes.

16 Q. And the way you've organized your report is  
17 you will list the opinion you've reached in boldface  
18 font, and then below that you will add paragraphs which  
19 elaborate or provide support for that opinion; is that  
20 correct?

21 A. Well, I don't know that -- you know, those are  
22 headings. So I didn't think of them as complete  
23 statements of opinion, but rather headings that separate  
24 to make it a little bit easier, particularly when it's a  
25 long document as in this case, so to kind of separate

1 subject areas.

2 Q. Right. Well, for this one on page 31, "Clear  
3 conflicts made this investigation flawed and created the  
4 opportunity for actual bias," is that an opinion you  
5 have reached in this case?

6 A. Yes.

7 Q. All right. And then it goes on -- and we'll  
8 go through each one of them. That's how I sensed that  
9 you organized it, that you have expressed opinions and  
10 you provided support in the paragraphs that follow those  
11 opinions?

12 A. Yes.

13 MR. LAUX: Object to the extent that he's  
14 already addressed that. But go ahead.

15 THE WITNESS: And there are opinions within  
16 that support.

17 BY MR. MANN:

18 Q. Right.

19 A. I guess that's the point I was trying to make.

20 Q. That's a good way to put it. I was not trying  
21 to mislead you in any way.

22 Okay. And I gather from your report that --  
23 well, we'll just go through them each one at a time.  
24 That's the best way to handle them.

25 Okay. Let's first look at -- before we get

1 the first opinion, I'm going to look at one question  
2 about page four of your report. And if you will look  
3 down, it's about the -- I think it's about the eighth  
4 entry from the bottom.

5 One of the documents you say that you reviewed  
6 in preparing your report is something you call the  
7 Little Rock Police department Policy Manual; is that  
8 correct?

9 A. Yes.

10 Q. I'm having a little trouble understanding what  
11 you're talking about there. Can you describe the manual  
12 that you reviewed?

13 A. It seems as though it had the rules and  
14 regulations and policies for the police department  
15 contained within that manual.

16 Q. Little Rock Police Department, I will  
17 represent to you, has something called general orders.  
18 Did you review the Little Rock Police Department general  
19 orders?

20 A. Yes. It may have been -- for me the term  
21 "policy manual" is kind of an encompassing term, but  
22 yes.

23 Q. So if you say "policy manual," you mean  
24 general orders, to the best of your knowledge; is that  
25 correct?

1           A.     Yes.

2           Q.     Was this document, this manual you reviewed  
3 rather lengthy?

4           A.     Yes.

5           Q.     And do you remember how many general orders  
6 were in the manual?

7           A.     No.

8           Q.     But you read them all?

9           A.     No.

10          Q.     Okay. Which ones did you read?

11          A.     I skimmed through them all. I was looking for  
12 -- through the use of force policies, policies that  
13 pertain to weaponless defense, anything that is related  
14 to use of force, policies related to Internal Affairs  
15 investigations and investigations of shootings, policies  
16 that would in my mind be involved in the facts of this  
17 particular set of circumstances.

18          Q.     Okay. And below that you say you read the  
19 Little Rock Police Department rules and regulations; is  
20 that right?

21          A.     I believe that's the title of it, yes.

22          Q.     Did you read that entire document?

23          A.     Again, no. I would be looking for -- I would  
24 skim through the entire document, but looking  
25 specifically for -- I mean these documents contain, you

1 know, what a proper uniform is. I certainly didn't  
2 spend time reading that.

3 Q. Okay. On page number five there's a bullet  
4 point which indicates "Internal Affairs reports." And  
5 then you list numerous Internal Affairs file numbers  
6 there. Do you see that?

7 A. Yes.

8 Q. When you say "Internal Affairs reports," did  
9 you read the entire Internal Affairs file in each of  
10 these particular cases?

11 A. Yes. They were fairly large. They came in --  
12 they had rubber bands.

13 Q. Right.

14 A. I mean they were three or four inches thick of  
15 material.

16 Q. And for each of these particular file numbers  
17 you've listed on page five you read the entire file?

18 A. Again, I would skim through it. Depending on  
19 the file and depending on what the facts are and, you  
20 know, whether -- you know, those that are discussed  
21 later were probably read much more thoroughly than  
22 others.

23 Q. Okay. Well, that first one there, 2010-4414,  
24 that's an Internal Affairs file in this case, the  
25 Ellison case. Did you read that one cover to cover?

1           A.     Yes.

2           Q.     All right. On page seven of your report you  
3 begin with the recitation of the "facts"; is that  
4 correct?

5           A.     Yes.

6           Q.     And it says in one point, paragraph 14b, the  
7 last sentence or next to the last sentence, it notes  
8 there that "Officer Leshar was not wearing a bullet  
9 resistant vest nor was she carrying her Department  
10 issued baton." Do you see that?

11          A.     Yes.

12          Q.     In your review of Little Rock Police  
13 Department rules, investigations and general orders, did  
14 you find one that would have required Officer Leshar to  
15 carry a baton?

16          A.     No, I don't recall that I did.

17          Q.     Based upon your knowledge and experience as a  
18 police officer, is there a requirement for an officer to  
19 carry a baton?

20          A.     Many agencies, many reasonable police agencies  
21 do indeed meet that requirement.

22          Q.     What about when you were at the Irvine Police  
23 Department, was there a requirement that you carry a  
24 baton when you were a police officer?

25          A.     There was a small time under one particular

1 Chief where it was not required. And then it became  
2 required again.

3 Q. A baton is an intermediate weapon in the  
4 continuum force, is it not?

5 A. It is.

6 Q. And there are other intermediate weapons that  
7 are available to a police officer, aren't there?

8 A. If they have them, yes.

9 Q. One of those being OC or pepper spray?

10 A. Yes.

11 Q. In your review of Little Rock Police  
12 Department's general orders you mentioned that you  
13 focused on -- strike that. You mentioned that you did  
14 pay particular attention, I believe, to the use of force  
15 general order; is that correct?

16 A. Yes.

17 Q. And do you recall anything in your review of  
18 that order which addressed intermediate weapons?

19 A. I'm sure there was.

20 Q. Okay. Now, given your experience, describe  
21 for me just very briefly the continuum of force a police  
22 officer has at his or her disposal.

23 MR. LAUX: I would object to the form of that  
24 question.

25 MR. MANN: Okay.



1 MR. LAUX: But go ahead.

2 THE WITNESS: There are different types of  
3 continuums of, you know, whether it's a ladder or how  
4 it's described in a circle.

5 But essentially the continuum will generally  
6 begin with an officer's presence, their command  
7 presence, their ability to take commands verbally of the  
8 situation, what we call soft hands by simply grabbing  
9 somebody, hard hands, which may include a punch or a  
10 kick, intermediate tools, which would include a baton,  
11 pepper spray, Taser, beanbag, a 40 millimeter, less  
12 lethal type devices that there are a variety of, and  
13 deadly force.

14 BY MR. MANN:

15 Q. Now, in your experience is an officer required  
16 in a situation to strictly follow the various elements  
17 of the continuum force?

18 A. No.

19 Q. And can you say why not?

20 A. Well, if an officer is confronted with  
21 somebody that is pointing a gun at them, then it's a  
22 deadly force situation. And they should immediately  
23 respond to deadly force.

24 There's no need to put the officer's life or  
25 somebody else's life at risk if it's indeed in imminent

1 danger by requiring an officer to go through some type  
2 of continuum.

3 So the officers are trained, depending on the  
4 situation, they can pick the tool that is most  
5 appropriate for the situation.

6 Q. So I guess what I hear you saying is -- tell  
7 me if this is correct -- is that the officer's  
8 perception in the situation dictates what level of force  
9 they will go to in the continuum?

10 MR. LAUX: Object to the form of the question.

11 BY MR. MANN:

12 Q. Okay. You can answer.

13 A. I think a reasonable officer's perception,  
14 yes.

15 Q. And a reasonable officer's perception and the  
16 level of force that they choose to use in a continuum is  
17 also dictated, I think I understand from you, by the  
18 actions of the person who the officer is confronting?

19 A. Yes.

20 Q. As part of your work, do you make a site visit  
21 to the Big Country Chateau Apartments?

22 A. No.

23 Q. So your only information about the layout of  
24 Mr. Ellison's apartment is based upon photographs you  
25 have seen?

1           A.    And descriptions given through depositions.

2           Q.    All right.  Now, another one of the facts that  
3   you articulate in your report -- so we're on page number  
4   11.  Up there at the top, subsection F, there it's  
5   referenced that -- you reference there -- let me just  
6   read it for ease.

7                   It says, "Officer Leshar said that she  
8                   had never seen Mr. Ellison before.

9                   However, Officer Leshar and Officer  
10                  McCrillis completed a March 25, 2010,  
11                  security activity log for the BCC where  
12                  she noted that she had contacted  
13                  Mr. Ellison and counseled him regarding  
14                  driving a vehicle into the complex  
15                  through the exit, rather than the  
16                  entryway."

17                  Did I read that correctly?

18           A.    Yes.

19           Q.    Have you since read, reviewed any document  
20   that would contradict that statement in your preparation  
21   for your deposition today?

22           A.    No, I don't believe so.

23           Q.    So it's still your understanding and belief  
24   that Officers Leshar and McCrillis had, in fact,  
25   encountered Mr. Ellison driving; is that correct?

1           A.     Yes.

2           Q.     As part of your review of the record -- I  
3     didn't notice in here -- did you review the deposition  
4     of Troy Ellison, the plaintiff in this case?

5           A.     No.

6           Q.     Did you review the deposition of an individual  
7     by the name of Nancy Hamlin, H-a-m-l-i-n?

8           A.     No.

9           Q.     Did you review any documentation that was  
10    submitted in support of the motion for summary judgment  
11    filed by the City of Little Rock?

12           MR. LAUX: Can you read that question back?

13           MR. MANN: I'll ask it again.

14           Q.     Did you review any documentation that was  
15    submitted in support of the motion for summary judgment  
16    filed by the City of Little Rock?

17           MR. LAUX: Foundational objection.

18    BY MR. MANN:

19           Q.     I am just asking if you read it, if you  
20    reviewed any.

21           MR. LAUX: Well, the problem is that he could  
22    have reviewed it without knowing it was attached to the  
23    document.

24    BY MR. MANN:

25           Q.     Okay. To your knowledge.

1           A.    No.

2           Q.    All right.  In your review of the materials in  
3   this case that you have identified in your expert  
4   report, it's your understanding that both Officers  
5   Vincent Lucio and Brad Boyce instructed Eugene Ellison  
6   to get on the ground before he was shot; is that  
7   correct?

8           A.    Yes, I believe so.

9           Q.    And I believe that you listened to a recording  
10  that was made from the microphone of Officer Boyce as  
11  part of your review in this case?

12          A.    Yes.

13          Q.    And when you listened to that portion of the  
14  incident that was recorded from the microphone carried  
15  by Officer Boyce, did you hear Eugene Ellison say that  
16  he was not going to get on the ground?  Do you recall  
17  that?

18               MR. LAUX:  Object to foundation.

19  BY MR. MANN:

20          Q.    Okay.

21          A.    I transcribed that portion of the tape.  He  
22  said something similar to that.

23          Q.    Look at that page.

24          A.    There it is.

25          Q.    Okay.  It looks like we're looking at

1 paragraph 36, the DVR recording.

2 A. Yes. I believe he said -- what I transcribed  
3 was he was told to "Get on the ground now, get on the  
4 ground."

5 "I ain't getting on no --" and that was the  
6 extent of what I could hear.

7 Q. You didn't hear anything after that?

8 A. No, I did not.

9 Q. And then Lucio says in the fourth entry down,  
10 "I'm gonna tell you one time get on the ground";  
11 correct?

12 A. Yes.

13 Q. Now, look over at page 21 of your report.  
14 Actually, I think we're looking at paragraph -- excuse  
15 me -- page 21 at the top, number one there where it  
16 says, "Ms. Harris"; do you see that?

17 A. Yes.

18 Q. You apparently were referring to a deposition  
19 of Christy Harris there; is that correct?

20 A. I don't recall her last name. I cited to it.

21 Q. You cited in one of your footnotes there or  
22 several of your footnotes --

23 MR. LAUX: First name?

24 MR. MANN: Christy.

25 Q. Is Miss Harris's deposition one of the

1 documents you reviewed in this case in order to prepare  
2 your expert report?

3 A. Yes.

4 Q. Okay. Do you recall in your review of the  
5 deposition that Miss Harris was the next door neighbor  
6 to Eugene Ellison?

7 A. Yes.

8 Q. And at one point during the evening of  
9 December the 10th -- excuse me -- December the 9th of  
10 2010,

11 Ms. Harris heard what she thought was fighting or  
12 wrestling next door. Do you recall that?

13 A. Yeah. I write about it in my report, yes.

14 Q. And she also heard a knocking sound. Do you  
15 recall that?

16 A. I don't specifically recall that, no.

17 MR. LAUX: Object to the form.

18 BY MR. MANN:

19 Q. That's all right. We can pull her deposition  
20 out. And I'll just ask you the questions then.

21 She also described what she heard as somebody  
22 fighting or thumping against the wall. Do you recall  
23 that testimony in her deposition?

24 MR. LAUX: Object to the form, also.

25 THE WITNESS: I don't recall it specifically.

1 But I do recall the -- you know, I quoted the word  
2 "'tussling' next door" as though somebody was in a  
3 fight, yes.

4 BY MR. MANN:

5 Q. You recall that particular word "tussling"?

6 A. Yes.

7 Q. And she also described the noise that she  
8 heard as being nonstop, didn't she?

9 A. It seems to me, yes.

10 Q. And did you also read an affidavit that  
11 Ms. Harris gave that Mr. Laux filed in federal court as  
12 part of your review?

13 A. I don't specifically recall it. I may have.

14 Q. And do you recall anywhere in your review of  
15 Ms. Harris's deposition where she stated that she looked  
16 out of her apartment and saw two female police officers?

17 A. Yes.

18 Q. And she testified at her deposition, as I  
19 recall, that she knew they were police officers because  
20 she saw the uniform that they had on, didn't she?

21 MR. LAUX: Object to the form.

22 BY MR. MANN:

23 Q. Okay. You can answer.

24 A. It seems like that. I can't recall  
25 specifically.



1           Q.    Okay.  Now, she did recognize Officer  
2   McCrillis, didn't she, specifically?  Do you recall  
3   that?

4           A.    I don't recall.

5           Q.    Okay.  But you did read Ms. Harris's  
6   deposition?

7           A.    Yes, I did.

8           Q.    Okay.  On page 22 of your expert report,  
9   Exhibit 4, you reference -- in the beginning of  
10   paragraph 24 you represent -- excuse me -- you reference  
11   Garland Camper; is that correct?

12          A.    Yes.

13          Q.    He is a former Pulaski County coroner.  Do you  
14   understand that?

15          A.    Yes.

16          Q.    And you reference the fact that Mr. Camper  
17   stated that he did not detect an odor of pepper spray on  
18   Mr. Ellison's body when he reviewed it.  Do you recall  
19   that?

20          A.    Yes.

21          Q.    Now, you read Mr. Camper's entire deposition;  
22   is that correct?

23          A.    Yes.

24          Q.    And you're aware that the first time that  
25   Mr. Camper actually saw Mr. Ellison's body was

1 approximately 7:00 a.m. the morning after his death; is  
2 that correct?

3 A. Yes.

4 Q. And were you aware -- well, I think you  
5 reference in there somewhere that Mr. Camper did not  
6 attend the autopsy of Eugene Ellison, did he?

7 A. No, he did not.

8 Q. And Mr. Camper did not personally perform any  
9 sort of a test in order to establish there was no pepper  
10 spray present on Mr. Ellison's body, did he?

11 MR. LAUX: Object to the foundation.

12 BY MR. MANN:

13 Q. Okay.

14 A. Not to my knowledge, no.

15 Q. And you read his deposition?

16 A. I did.

17 Q. If you look at page 25, Mr. Noble, for a  
18 second. I'm interested in at the top, subsection J.

19 You refer to Detective White. And that's J.C. White;  
20 do you understand that?

21 A. Yes.

22 Q. You state there, make the statement that he  
23 said, "Detective Dewana Phillips was disciplined for  
24 being insubordinate with Internal Affairs as she was  
25 critical of the investigation"; is that correct?

1           A.    Yes.

2           Q.    Is your entire understanding of that -- is  
3 your entire basis for that statement Detective White's  
4 deposition?

5           A.    Yes.  That's why I cited to it.

6           Q.    That's all you looked at in order to form the  
7 basis for that statement?

8           A.    Yes.

9           Q.    Let's look at page 31.  And go to your where I  
10 believe I understand to be the first opinion in this  
11 case.  And we referenced this earlier.  That's the  
12 heading where it says, "Clear conflicts made this  
13 investigation flawed and created the opportunity for  
14 actual bias."

15                  Okay.  When you say "investigation," are you  
16 referring to the criminal investigation, the Internal  
17 Affairs investigation or both?

18           A.    Both.

19           Q.    Okay.  Now, you agree that all of our P.D.  
20 properly bifurcated the two investigations; is that  
21 correct?

22           A.    Yes.

23           Q.    And that's consistent with the field of police  
24 practices; is that right?

25           A.    Yes, that's true.

1           Q.    Now, I also believe that -- and I think you  
2   understand from your review of the record in the  
3   documents that you reviewed that Lieutenant Glenn King  
4   was the actual commander of the homicide division for  
5   Little Rock Police Department on the night of this  
6   incident?

7           A.    Yes.

8           Q.    And that one of the sergeants who served under  
9   him, James Leshner, was, in fact, married to Officer  
10   Donna Leshner; is that right?

11          A.    Yes.

12          Q.    But that Lieutenant King did, based upon your  
13   review of the record, remove Sergeant Leshner from any  
14   supervisory authority in this matter; is that right?

15               MR. LAUX:  Object to the form.

16   BY MR. MANN:

17          Q.    Okay.  You can answer.

18          A.    Not completely.

19          Q.    Okay.  And tell me how you qualify that when  
20   you say "not completely."

21          A.    Well, Sergeant Leshner was the one who called  
22   out all of his detectives.  So Sergeant Leshner was the  
23   first line of contact that responding detectives had  
24   regarding this incident.

25               So he should have been completely removed,

1       because any conversations that he may have had with  
2       those detectives could create a perception of bias or an  
3       actual bias.

4           Q.     And so that's the one aspect that Sergeant  
5       Leshner was involved in this matter that you say created  
6       a supervisory role for him?

7           MR. LAUX:   Object to form.

8       BY MR. MANN:

9           Q.     Okay.   You can answer.

10          A.     Yes.   That's the only steps that Sergeant  
11       Leshner, to my knowledge, took in this investigation was  
12       those initial notifications and when he responded to the  
13       scene, if he had any conversation with anyone else at  
14       the scene.

15          Q.     Okay.   Sergeant Mike Durham was placed in  
16       charge of the investigation by Lieutenant King, was he  
17       not?

18          A.     That's true.

19          Q.     Okay.   Now, you say that this investigation  
20       being -- I guess we're talking now about the criminal  
21       first; correct?

22          A.     Yes.

23          Q.     That's what we've been talking about.   You say  
24       that the conflicts created the opportunity for an actual  
25       bias.   What is the actual bias you have identified that

1       you can tell me about?

2           A.     Well, the concern -- my concern with this  
3     investigation, with this set of facts is the  
4     truthfulness of the officers. By conducting an  
5     investigation in this way -- I mean the goal of any  
6     investigation is to determine the truth in the matter.

7           And when you have biases throughout the  
8     investigation -- no investigation is perfect. I  
9     certainly understand that. And I would never argue  
10    anything different. But investigations do need to be  
11    reasonable.

12           In this case there were such a number of  
13    factors that created either a bias or a perception of  
14    bias by the individual detectives, by the relationships,  
15    by detectives' actions, by what they did, by what they  
16    said, that it undermined the credibility of the overall  
17    investigation.

18           Q.     I understand. And I understand the perception  
19    of bias that you're talking about. But I'm talking  
20    about actual -- are you aware of any actual bias in this  
21    case that made the investigation flawed?

22           MR. LAUX: Object to the form.

23           THE WITNESS: You know, really that's the rub  
24    is that you don't know. The problem is that because of  
25    the way the investigation was conducted, we don't know

1 facts.

2 There were interviews that were conducted  
3 without being recorded, without being, you know, reports  
4 written about. There were interviews where there was  
5 large gaps in time where there was no statements made on  
6 the recording about the reason for these gaps.

7 There were many many personal relationships  
8 that would lead for cause, you know, for that perception  
9 or perhaps a natural bias, including -- you know, I  
10 believe that even Sergeant Durham made a comment -- I  
11 mean he's the lead sergeant -- made a comment to Officer  
12 Leshner that everything would be okay out at the scene.  
13 Well, his job is to investigate it.

14 You know, you have another detective who --  
15 the very first -- you know, the lead detective,  
16 Detective Hudson, the very first thing he does is call  
17 for an attorney for the officers. He's the guy that's  
18 supposed to be the lead investigator to find out whether  
19 these officers committed a crime. And the first thing  
20 he does is get an attorney for the officers. He would  
21 never do that in any other criminal case. I mean, you  
22 know, if it were a citizen, it's not possible.

23 And not only that, but he's a member of the  
24 association of the Union Board. So he wears these dual  
25 hats. One hat is an association leader. He has a

1 responsibility to take care of his members. And on the  
2 other hat he has a responsibility to criminally  
3 investigate them. And the hat he chose was to take care  
4 of his employee by making his first step seeking counsel  
5 for the officer.

6 Q. So by calling a lawyer and saying go down  
7 there and be with the officer, that creates a bias in  
8 your mind?

9 A. Well, it certainly creates a bias or a  
10 perception of a bias that he's not focused on what he's  
11 supposed to be doing. And you have these interpersonal  
12 relationships.

13 You know, again, this is a unique case. But  
14 looking at the facts of this case, you have three  
15 different detectives who all stood up. You have  
16 Detective White who said he didn't want to be involved  
17 in the investigation because he felt it wasn't being  
18 handled properly.

19 You have Detective Phillips who was very upset  
20 over the turning off of the video. There may well be a  
21 legitimate reason for turning off that video. But when  
22 you do things differently, it creates -- and for  
23 Detective Phillips to become so upset -- I don't know  
24 Detective Phillips. But for someone that's a detective  
25 who is assigned in a homicide unit, you would think that



1       that would be a professional person, a person that has  
2       some skills and some knowledge. And when they speak up,  
3       that brings a concern.

4                You have Detective Vaughn who said that there  
5       were red flags in this investigation. So when you have  
6       people at the line level identifying issues, certainly  
7       the supervisors and managers should have been  
8       identifying those issues.

9                Q.    Going back to a statement that you made about  
10       Detective Tommy Hudson, do you recall that, about  
11       calling for the lawyer --

12              A.    Yes.

13              Q.    -- based upon your knowledge and experience, a  
14       police officer involved in an officer-involved shooting  
15       like this, he's entitled to legal counsel; is that  
16       correct?

17              A.    Oh, absolutely.

18              Q.    Okay. You also fault, I believe, Sergeant  
19       Durham for calling Sergeant James Leshner to check on his  
20       wife while he's driving to the scene of the shooting.

21       Do you recall that?

22              A.    Yes.

23              Q.    How does that create a perception of bias,  
24       simply calling to ask if everything is okay?

25              A.    Well, you know, and I even write in my report

1     that it's certainly understandable that a colleague --  
2     these are two individuals who work closely together --  
3     you know, would be concerned. I mean I empathize with  
4     the situation, particularly someone who has been  
5     involved in such a situation, who has worked with other  
6     officers. I completely empathize with this.

7             MR. LAUX: By that you mean a police-involved  
8     shooting?

9             THE WITNESS: A police-involved shooting. By  
10    the fact that he would be concerned with his co-worker's  
11    wife.

12            But, again, because he has this close personal  
13    relationship -- when you are a police detective, a  
14    police supervisor and you are charged with a task of --  
15    his job was to investigate his partner's wife for a  
16    potential criminal act. That's what his job was, to  
17    find out whether or not Officer Leshar committed a  
18    crime.

19            And when you have they are more concerned  
20    about the -- you know, when you have this crossover,  
21    this is the time where reasonable supervisors and  
22    reasonable managers say, "you know what, we have a large  
23    department and normally we could do this. This  
24    situation is unique in the fact that this officer's  
25    husband is a member of the very team, who is the

1 supervisor of the very detectives that are going to  
2 investigate this. We need to either call Sergeant  
3 Durham's detectives, other detectives or go outside."

4 Q. So, in your opinion, the fact that Sergeant  
5 Durham made that one call to check on Officer Leshar  
6 negatively impacted his ability to investigate this  
7 case?

8 MR. LAUX: Object to the form.

9 THE WITNESS: As I recall, not only that one  
10 call, but I think Sergeant Durham also made a comment or  
11 made a statement that when he was on scene, that he had  
12 a brief conversation with Officer Leshar and told her  
13 that everything would be okay.

14 BY MR. MANN:

15 Q. And that in your mind, in your opinion,  
16 negatively impacted his ability to participate in this  
17 investigation?

18 A. Yes.

19 Q. There's a lot of discussion in this case and  
20 you made reference to one aspect of it on page 32 of  
21 your report where in Subsection E you say, "Detective  
22 Nelson" -- who is Matt Nelson -- "admitted he is a  
23 'Facebook friend' of Officer Leshar"; is that correct?

24 A. Yes.

25 Q. Does the fact that an officer is a Facebook

1 friend of another officer negatively impact an officer's  
2 ability to participate in an investigation?

3 MR. LAUX: Just object to the incomplete  
4 hypothetical.

5 BY MR. MANN:

6 Q. Okay. Go ahead.

7 A. It really depends. I mean what you're really  
8 concerned about is their actual relationship. I don't  
9 use Facebook. I'm aware of what it is. But I do use  
10 LinkedIn, which is a business site. Many people connect  
11 with me whom I don't even know who they are, but they  
12 have similar interests. You know, so I accept their  
13 connection.

14 So certainly I understand where people can be  
15 Facebook friends, but not personal friends. So my  
16 concern is whether they have this personal relationship,  
17 which I saw throughout this case.

18 Q. So you think Detective Nelson had a close  
19 personal relationship with Officer Leshar?

20 A. I don't know.

21 Q. Again, on page 32, continuing with this first  
22 opinion you reached and continuing to talk about the  
23 criminal investigation now, you note that once  
24 detectives learned that Mr. Ellison's sons were a  
25 current and a former Little Rock Police Department

1 officer, they should have immediately seen the need to  
2 hand it off to -- hand the investigation off to another  
3 agency; is that correct?

4 MR. LAUX: Object to the misreading of the  
5 phrase "immediately." But you can answer.

6 THE WITNESS: Well, actually, what I wrote was  
7 that it added to the list of conflicts.

8 BY MR. MANN:

9 Q. Okay.

10 A. So it wasn't the sole conflict, but it added  
11 to the list of conflicts and furthered my opinion that  
12 it should have been handed off, yes.

13 Q. Are you aware that Chief Thomas had requested  
14 or later subsequently requested the Arkansas State  
15 Police to assume control of the investigation?

16 A. I'm aware of that, yes.

17 Q. And that they would not do it?

18 A. Well, they wouldn't do it later on. Whether  
19 or not they would have done it at the initial stage is  
20 something different. I don't know whether they would  
21 have done it or not.

22 These are issues that police agencies work out  
23 before a shooting occurs. You know, we have a  
24 long-standing agreement with the D.A.'s office, an  
25 external investigation.

1           When you have police officers, there's always  
2     the potential for conflict. And reasonable Chiefs of  
3     Police always have backup plans and thoughts in place.

4     So my understanding is Arkansas State Police wouldn't  
5     do it, but it was because it was later in the  
6     investigation. But --

7           Q. Did you -- I'm sorry. Go ahead.

8           A. No. That's all. I'm sorry.

9           Q. Do you know in the process when it actually  
10    became apparent that Mr. Ellison was the father of Troy  
11    and Spencer Ellison?

12          A. I think that Detective White said it was a  
13    couple of hours after they responded.

14          Q. Detective White, he is the -- he, I believe,  
15    if you recall in his deposition, I think testified that  
16    he was good friends with Troy Ellison?

17          A. Yes.

18          Q. And that he thought his father lived somewhere  
19    in Oklahoma; is that right?

20          A. Yes.

21          Q. All right. Continuing on with these questions  
22    about the relationships that you see here, looking at  
23    paragraph -- excuse me -- page 33 of your report, you  
24    note in Subsection H, referring to Officer Donna Leshner,  
25    you said that she "vacationed with Detective Hudson and

1       maybe a few others."   Do you see that?

2           A.    Yes.

3           Q.    Based upon your review of the depositions in  
4       this case, being Officer Leshner's and Detective  
5       Hudson's, is that in reference to them going deer  
6       hunting together?

7           MR. LAUX:   Just object to misstating the words  
8       including -- or the opinion including, quote, "maybe a  
9       few others," end quote.

10          You can answer.

11          THE WITNESS:   I recall there being a  
12       discussion about deer hunting.   I can't recall exactly  
13       what the vacation was, but just that they were social  
14       friends and that they had gone on trips together.

15       BY MR. MANN:

16          Q.    What other trips besides the deer hunting  
17       trip? Can you recall?

18          A.    I don't recall.

19          Q.    Have you ever been deer hunting?

20          A.    No.

21          Q.    Do you know how a deer camp works?

22          A.    No.

23          Q.    You understand that when an investigation of  
24       this nature is completed, that being a criminal  
25       investigation of an officer involved in a shooting, that

1       that file is then submitted to the Pulaski County  
2       Prosecuting Attorney's Office?

3           A.     Yes.

4           Q.     And do you also understand that that office  
5       possesses the authority to order an additional  
6       investigation?

7           A.     It doesn't surprise me.

8           Q.     Are you aware of the fact that the Pulaski  
9       County Prosecuting Attorney's Office can actually  
10      conduct an independent investigation in addition to what  
11      the police department has done?

12          A.     It doesn't surprise me.

13          Q.     And you're aware in this particular case  
14      involving Mr. Ellison that the prosecuting attorney's  
15      office did not conduct any additional investigation?

16          A.     That's true.

17          Q.     Okay. Now, it appears that all of the  
18      paragraphs under that heading "Clear conflicts made this  
19      investigation flawed," they all appear to refer to or  
20      pertain to the criminal investigation, as far as I can  
21      tell; is that correct?

22          A.     Yes.

23          Q.     Nothing underneath there to deal with the  
24      Internal Affairs investigation, under that particular  
25      heading?



1           A.     That's true.

2           Q.     Okay. All right. Let's go to page 34. This  
3 is what I am going to term your second opinion. And  
4 where it states at the top "The Investigation Into the  
5 Use of Deadly Force by Officer Leshar was  
6 Unreasonable" -- did I read that correctly?

7           A.     Yes.

8           Q.     On this instance are we talking about both  
9 criminal and IA investigations?

10          A.     Yes.

11          Q.     All right. Well, let's look at paragraph  
12 number 40.

13                 You say there, "The investigation into  
14 the use of deadly force by Officer  
15 Leshar was unreasonable as it failed to  
16 address the core issue of the  
17 investigation, whether or not the  
18 officers had a lawful right to enter  
19 Mr. Ellison's apartment, whether their  
20 use of force was objectively reasonable  
21 and due to a number of investigative  
22 deficiencies."

23                 Did I read that correctly?

24          A.     Yes.

25          Q.     And are you saying that neither the criminal

1 nor the Internal Affairs investigation addressed the  
2 issue of whether the officers had a lawful right to  
3 enter Mr. Ellison's apartment?

4 A. I don't believe so, not to the extent that I  
5 felt was reasonable.

6 Q. And you read both the criminal investigative  
7 file and the entire Internal Affairs investigation file?

8 A. Yes.

9 Q. You also have concluded that neither of those  
10 investigations addressed the issue of whether the use of  
11 force was objectively reasonable; is that correct?

12 A. Correct, based on the prior -- you know, based  
13 on -- they certainly discussed their opinions on the use  
14 of force. But I don't believe that they appropriately  
15 addressed the entry, which would have made the -- if the  
16 entry was unlawful, the use of force would have been  
17 unreasonable.

18 Q. If the entry to the apartment was unlawful,  
19 the use of force against Mr. Ellison would be  
20 unreasonable?

21 A. Yes.

22 Q. What's the legal basis for that opinion, if  
23 you can tell me?

24 A. There never would have been a need to use any  
25 force on Mr. Ellison if they would have -- if they had

1 not entered the apartment and created the circumstances  
2 that made Mr. Ellison stand up and order them out of his  
3 apartment, there would never have been any contact if  
4 they would have just walked away. You know, but for  
5 their entry, but for their starting this set of  
6 circumstances, there never would have been a need for  
7 use of force.

8 Q. Okay. In your career as an attorney and as an  
9 expert consultant, have you ever read any decisions of  
10 the Eighth Circuit Court of Appeals as they relate to  
11 the use of deadly force?

12 MR. LAUX: Object to the form of the question.

13 BY MR. MANN:

14 Q. You can answer.

15 A. Again, I don't see my -- when you say my  
16 "career as an attorney," although I'm licensed, I have  
17 never really practiced law and I have certainly done  
18 nothing for it in nearly 20 years.

19 And yes, I have read an Eighth Circuit Court  
20 of Opinion. I cite to it in an article that I wrote  
21 regarding officer created jeopardy.

22 Q. Is that the State Created Danger article you  
23 wrote with Dr. Alpert?

24 A. Yes, it is.

25 Q. That's the one where you talk about the frames

1 of the situation, file frame being the actual use of  
2 force?

3 A. Well, versus the totality of the  
4 circumstances, yes.

5 Q. Okay. Do you remember the name of that case,  
6 perhaps?

7 A. I can't recall, but it's cited in the article.

8 Q. That's okay. I've got it. That's fine. I'll  
9 look it up. I just thought you would remember it.

10 Okay. You agree that it was appropriate for  
11 Officers Leshar and McCrillis to actually approach the  
12 open door of Mr. Ellison's apartment, don't you?

13 A. Yes.

14 Q. And it was also okay for them to knock on the  
15 door and ask if he was okay?

16 A. Yes.

17 Q. And it's your opinion that once Mr. Ellison  
18 said he was okay, the officers were then obligated to  
19 walk away and leave; is that correct?

20 A. I think once he said was okay and he told them  
21 to leave, that they needed to leave.

22 Q. Okay. And so any perception they might have  
23 had about Mr. Ellison's demeanor and whether they  
24 thought that something else was going on is irrelevant  
25 and that they should just have left when he told them to

1 leave?

2 A. It depends on what their perception was and  
3 whether they had a reasonable perception that would  
4 allow them to make entry under exigent circumstances  
5 which would be allowable without a warrant.

6 Q. And you're basing your opinions on the  
7 unlawfulness -- are you actually saying that the entry  
8 here was unlawful or are you saying that the  
9 investigation was inadequate?

10 A. I'm saying the --

11 MR. LAUX: Object to the form of the question.

12 MR. MANN: That's fine.

13 Q. Go ahead.

14 A. I'm saying the investigation was inadequate.

15 And whether the entry was unlawful is -- you know, I  
16 don't think -- well, I guess if a judge allows me to  
17 testify to credibility, I will do that. But ultimately  
18 that will be an issue of credibility because of  
19 conflicting statements. That will be left to the jury.

20 Q. I'm trying to distinguish between opinions you  
21 have reached in your opinion -- excuse me -- in your  
22 report versus those that Dr. Alpert has reached. And  
23 what I am driving at here is I gather that your focus is  
24 in part on the inadequacies of the investigations, not  
25 necessarily the underlying entry into the apartment and

1 the use of deadly force?

2 MR. LAUX: Object to the foundation and the  
3 form. Go ahead.

4 BY MR. MANN:

5 Q. I said inadequate. You can answer.

6 A. I think that's fair, yes.

7 Q. Okay. As part of your -- or have you read  
8 Dr. Alpert's report?

9 A. I don't remember. I may have.

10 Q. Okay. Now, you recall during your reading of  
11 the various depositions and documents in this matter  
12 that the officers, being McCrillis and Leshner, expressed  
13 some concern about the broken coffee table in the  
14 apartment? Do you recall that?

15 A. Yes.

16 Q. And I guess I take it from your opinions in  
17 this report that you don't believe they were correct in  
18 being concerned about that; is that right?

19 MR. LAUX: Object to the form.

20 BY MR. MANN:

21 Q. That's fine. You can answer.

22 A. Again, this is an issue of credibility. What  
23 I saw in the photographs is the glass of the coffee  
24 table was broken. It appeared to be directly below the  
25 table. The table didn't appear to be askew from the

1 sofa. It appeared to be in a position that people would  
2 normally have coffee tables.

3 Detective White said he couldn't see the fact  
4 that the coffee table was broken until he actually made  
5 entry. So the fact that this coffee table being broken  
6 alone to me does not justify an entry.

7 Q. Okay. And, of course, you weren't there that  
8 night. So you can't really testify as to Mr. Ellison's  
9 demeanor and the tone of his voice, can you?

10 A. Of course not.

11 Q. The only people that can do that are Officers  
12 Leshner and McCrillis?

13 A. That's true.

14 Q. And possibly Officer Lucio and Boyce; correct?

15 A. To the point of what they heard, yes. Only  
16 those people that were there can testify to what they  
17 actually heard. Unfortunately Mr. Ellison can't  
18 testify.

19 Q. Do you know anything about the crime  
20 statistics in the area of the BCC Apartments during that  
21 time?

22 A. Well, there was some discussions in some of  
23 the depositions that those particular apartments had a  
24 higher crime level. And that's why, as I recall, a new  
25 ownership or a new management came in and began to hire

1       these off-duty officers as security, installed some  
2       monitors or some cameras in order to monitor the  
3       activities in the complex.

4           Q.    Okay.  Do you have any knowledge about Troy  
5       Ellison's involvement with the BCC Apartments and what  
6       they call the abatement process in Little Rock?  Do you  
7       have any knowledge of that?

8           A.    No.

9           Q.    You say that the investigation into whether  
10      there was a lawful right to enter the apartment was not  
11      addressed.  What more in your review of the file needed  
12      to be done to adequately address that issue?

13          A.    Well, the issue of concern is that you have  
14      two officers who are saying two different things.  You  
15      have Officer McCrillis who said he's sitting calmly on  
16      the sofa.  You have Officer Leshar who says that he was  
17      twitching uncontrollably.

18                You have both officers who say when they asked  
19      him if he was okay, he said he was okay, that they  
20      believe he was okay.  You have the officers who say that  
21      he had -- Leshar said that he had the legal right to  
22      say, "don't come in my apartment" and close the door.

23                You have these factors where, you know, as  
24      Mr. Leshar got up in order to -- apparently in an  
25      attempt to close his door to keep the officers out of



1 the apartment, that it was Officer McCrillis that  
2 actually made first contact with Mr. Ellison.

3 You know, you have statements by the officers  
4 that they were concerned somebody else was inside the  
5 apartment, that somebody could be at risk. You have, in  
6 my opinion, no basis for that.

7 And certainly after the shooting, nobody  
8 immediately went through the apartment, through the rest  
9 of the apartment. They testified that they didn't go  
10 check the rest of the apartment out of this grave  
11 concern that somebody else may be in there.

12 They didn't call for medical help right away.

13 If they truly believed that Mr. Ellison was in need of  
14 some sort of medical assistance -- which they actually  
15 admitted that they didn't believe that he was in need of  
16 medical assistance.

17 So when the officers acknowledged that he's  
18 not in need of medical assistance, that he wants them to  
19 leave their apartment -- their experience from a prior  
20 occasion is that someone leaves their door open because  
21 the oven gets hot, not because of crime, but just  
22 because they want to leave their door open. There's no  
23 crime in that. They weren't investigating a crime. I  
24 found it particularly disturbing that Officer McCrillis  
25 later said, "We were investigating a burglary" -- which

1       that statement later is in -- I believe it was in a  
2       deposition -- I found incredulous. You know, never such  
3       a statement before. No basis for that statement. And  
4       it just seemed to me just a vain attempt to justify  
5       their actions.

6               So I don't see where they have a lawful right  
7       to make entry.

8               Q.    You mentioned some prior situation with a door  
9       being open. Is that the one where they went in and  
10      where they went up to talk or to investigate that and  
11      the person said that they had been cooking and it just  
12      got hot?

13              A.    Yes.

14              Q.    And so you're saying that that particular  
15      incident or that particular situation or encounter, from  
16      then on you don't need to worry about open doors out  
17      there when it's in December and it's very cold? Don't  
18      worry about it?

19              MR. LAUX: Object to the foundation and to the  
20      form of the question.

21              MR. MANN: That's fine.

22              THE WITNESS: No, that's not what I'm saying  
23      at all. You know, I brought that up mostly because the  
24      Deadly Force Review Board relied on that in some way in  
25      making their decision. It seemed to me that it was

1 appropriate for them to go up and make entry as though  
2 some sort of crime or some sort of action.

3 And, in fact, there are many innocent causes  
4 for doors to be left open. And I think that they should  
5 have recognized that. In fact, it was their experience  
6 that not that crimes are being committed because of  
7 doors left open, but there are many innocent reasons  
8 like somebody is leaving their oven on.

9 For whatever reason Mr. Ellison had his door  
10 open. There was no evidence of a crime.

11 BY MR. MANN:

12 Q. You don't mention in your report, so I'm  
13 assuming that you have never reviewed any documents that  
14 pertain to Mr. Eugene Ellison's mental health; is that  
15 correct?

16 A. I am not familiar with it.

17 Q. Looking on page 38 of your report,  
18 subsection -- well, the first "d" at the top, do you  
19 see where I'm talking about where it says, "The evidence  
20 in this matter"?

21 A. Yes.

22 Q. The third sentence down there you make the  
23 statement that "they" -- assuming that you are referring  
24 to Officers Leshar and McCrillis -- "made entry simply  
25 because Mr. Ellison was uncooperative with them and he

1       became 'mouthy' or 'smart,' as Officer McCrillis  
2       described, or 'smart,' as Officer Leshar described." Am  
3       I reading that correct?

4             A.     Yes.

5             Q.     So that's your opinion as to why they went  
6       into the apartment is because he was mouthy?

7             A.     I think that's my opinion why they didn't  
8       leave the apartment. They had already gone into the  
9       apartment when he made these comments to them. I mean  
10      these are their words, not mine, that he became "mouthy"  
11      and "smart."

12            Q.     But that's your conclusion, that that's the  
13      only reason they went into the apartment? You said they  
14      made entry simply because he was uncooperative with them  
15      and became smart or mouthy?

16            MR. LAUX: I would just object to an  
17      incomplete recitation of the statement.

18      BY MR. MANN:

19            Q.     I thought you just said that that's why they  
20      didn't leave. Here you say they made entry.

21            A.     They had already gone into the apartment when  
22      they engaged in this conversation, he became mouthy and  
23      smart. So that was a misstatement.

24            Q.     Okay. When you make that conclusion, draw  
25      that conclusion, aren't you simply substituting your

1 perception of what was going on there for that of the  
2 officers who were there?

3 A. I think I'm looking at it based on the  
4 evidence. And, again, ultimately the jury will  
5 determine credibility on this. I think you look at it  
6 from what a reasonable police officer would look at it.  
7 And I don't believe a reasonable police officer would  
8 have believed that there was some sort of criminal  
9 activity or that Mr. Ellison was in need of some  
10 immediate medical aid.

11 Q. And that's something you say a jury is going  
12 to make a decision on; right?

13 A. Yes.

14 Q. You're not applying any special knowledge,  
15 skill or experience in drawing this conclusion, are you?

16 MR. LAUX: Objection. That misstates the  
17 testimony and the bases for his opinions, which are  
18 featured here in this report as well as in his  
19 curriculum vitae.

20 BY MR. MANN:

21 Q. Okay.

22 A. No. I think I am applying my knowledge,  
23 skills and experience as to what a reasonable police  
24 officer would do in those circumstances.

25 Q. So you are saying a juror or a jury cannot

1 make this conclusion about why they entered that  
2 apartment or remained there without expert testimony  
3 about what a reasonable officer would do or wouldn't do?

4 MR. LAUX: Object to the form.

5 THE WITNESS: It's really not up to me to make  
6 a decision of whether or what the court will allow me to  
7 testify to.

8 BY MR. MANN:

9 Q. Page 40 of your report. Up there in  
10 subsection L, if you could, sir, read that to yourself  
11 and let me know when you're through.

12 A. Okay.

13 Q. Are you saying -- and I'm just asking, are you  
14 saying that or making, drawing the conclusion that  
15 perhaps Mr. Ellison didn't know that Officer Leshar and  
16 Officer McCrillis were police officers?

17 A. I don't think that there is any way of us  
18 knowing what Mr. Ellison knew. Obviously he is  
19 deceased.

20 Q. Right.

21 A. I am concerned about this outfit that Officer  
22 Leshar was wearing. I don't think that she was readily  
23 identified as a police officer. Even Chief Thomas said  
24 that she was not wearing a police uniform. It did say  
25 "police" on the back of her t-shirt. But there's no

1 evidence that she ever turned her back that would lead  
2 anyone to believe that she was a police officer.

3 Mr. Ellison may have thought that she was a  
4 security guard. He may have thought any number of  
5 things. I have no idea what Mr. Ellison thought.

6 Q. Sure.

7 A. But I don't think that based on the  
8 description of the uniform and the photographs that I  
9 have seen that it would be immediately identifiable as a  
10 police uniform. And, in fact, it's not a police  
11 uniform, according to Chief Thomas.

12 Q. What about the uniform that Detective  
13 McCrillis was wearing?

14 A. Well, I think Detective McCrillis's uniform  
15 wasn't either an official uniform and wouldn't be  
16 recognized as such. But she wasn't the first one in the  
17 apartment. Officer Leshar was.

18 Q. What about Officers Lucio and Boyce, were they  
19 wearing official police uniforms?

20 A. Yes.

21 Q. I want to read a sentence on page 41 of your  
22 report. And I will confess I don't quite grasp it.

23 Maybe you can elaborate on it and help me. It's  
24 subsection R. It's in the middle where you begin the  
25 sentence, "A reasonable finder of fact." Do you see

1       that?

2           A.     Yes.

3           Q.     I'm going to read that into the record and I'm  
4 going to ask you a question about it.

5                    You say, "A reasonable finder of fact  
6                    may find that there was a causal  
7                    connection between the unreasonableness  
8                    of the investigation and the conflicts  
9                    of interest between the investigators  
10                   and the involved parties."

11                   What do you mean? I really don't understand.  
12 It's probably just me. If you could help me a little  
13 bit.

14           A.     Let me read the whole paragraph.

15           Q.     Please do. Please do, because I don't get it.

16           A.     I may not get it either.

17                   MR. LAUX: I understand it.

18                   MR. MANN: You do? We'll depose you.

19                   THE WITNESS: Yeah, I think I may even  
20 understand my own words, as well. I think what I'm  
21 saying is that because of the connection between the  
22 unreasonableness, the finding that the overall  
23 investigation's unreasonableness is connected with this  
24 fact of all of these relationships among the various  
25 investigators and the subject officers.



1 BY MR. MANN:

2 Q. Is it possible despite all of the  
3 relationships and all of the issues you see with the  
4 criminal investigation that they still got it right?

5 MR. LAUX: I'm going to object to the form of  
6 that.

7 MR. MANN: Sure.

8 MR. LAUX: And the foundation.

9 MR. MANN: That's fine.

10 THE WITNESS: No, I don't think so. I don't  
11 think they got it right. But, you know, I'm very  
12 concerned about the issue of the entry. And if they got  
13 the issue of the entry wrong, they got the rest of it  
14 wrong.

15 BY MR. MANN:

16 Q. So if the entry was unlawful, everything else  
17 that flowed from that afterwards was unlawful, the use  
18 of deadly force?

19 MR. LAUX: Object to the form.

20 THE WITNESS: Yes, I believe so.

21 BY MR. MANN:

22 Q. Let's move to page 41, the next heading in  
23 boldface, bold font. Are you with me there?

24 A. Yes, I am.

25 Q. That appears to be a couple of opinions, if I

1 am reading that correctly, the first one being that "the  
2 Little Rock Police Department has a pattern and practice  
3 of allowing police misconduct by failing to terminate  
4 the employment of police officers who lie in an attempt  
5 to prevent their misconduct from being discovered."  
6 That's one opinion; is that correct?

7 A. Yes.

8 Q. And then a second opinion is that the Little  
9 Rock Police Department has a "pattern and practice of  
10 failing to appropriately discipline those officers who  
11 have used excessive and sometimes unlawful force." Is  
12 that a second opinion?

13 A. Yes.

14 Q. I guess maybe a third would be that "these  
15 patterns and practices would lead an unprincipled  
16 officer to believe that they could violate an  
17 individual's constitutional rights with impunity." Three  
18 separate opinions there?

19 A. Yes.

20 Q. You state in paragraph 41 of your report and  
21 in a lot of the articles that you have written that if  
22 there is a finding of deception or lying by an officer,  
23 that they must be terminated, no questions asked; is  
24 that correct?

25 MR. LAUX: Object to the foundation and the

1 form.

2 BY MR. MANN:

3 Q. You can correct me and elaborate. Is that not  
4 what I understood you to have said in your report?

5 A. What I have said in my report and what I have  
6 said in my articles and particularly the reason that I  
7 wrote the articles is to really define what deception  
8 and what type of lying that we're concerned about in  
9 policing. And those are malicious, deceitful,  
10 intentional acts, you know, to cover up, to engage in  
11 the code of silence, to prevent their misconduct from  
12 being found.

13 And when you do that, in one of three  
14 circumstances, when you do it to engage in the code of  
15 silence to protect another officer, when you do it  
16 during an official process either in court or during an  
17 Internal Affairs investigation or when you do it, you  
18 know, in order to plant false evidence of a crime upon  
19 somebody else, that under those circumstances in every  
20 occasion the only possible result is termination of  
21 employment, because, you know, a police officer's  
22 trustworthiness is a core function of their employment.  
23 And they simply can't be a police officer.

24 Q. While you were employed at the Irvine Police  
25 Department, did the Department have a policy of

1       automatic termination for a lie like you have just  
2       described?

3           A.    I don't know that there was a written policy.  
4       Certainly I can't speak for the entire time that I was  
5       there. I can speak that each of the Chiefs that I  
6       worked for made it very clear to the employees what  
7       would happen if they engaged in that type of conduct.

8           Q.    But you can't testify here today based upon  
9       your best memory that that always occurred in each case?

10           MR. LAUX: Object. It misstates the  
11       testimony.

12           THE WITNESS: No, I didn't talk about --

13       BY MR. MANN:

14           Q.    Correct me if I am wrong --

15           A.    No. You asked me what the policy was. And  
16       then you asked me whether that occurred in each case.

17       And I can't think of any case where it occurred where  
18       that wasn't the result.

19           Q.    Okay. In your extensive work with the Chicago  
20       Police Department, have you found or has it been your  
21       observation in any of the cases that you have worked on  
22       and in the documents that you have read that the City of  
23       Chicago will automatically terminate a police officer  
24       who intentionally maliciously lies?

25           MR. LAUX: Object to the form and foundation.

1 MR. MANN: Okay. That's fine.

2 THE WITNESS: I am not aware of anything in  
3 their policies. It would be their practice.

4 BY MR. MANN:

5 Q. Have you ever heard of an Officer Richard  
6 Rizzo in the course of your work for Chicago?

7 A. No.

8 Q. I just have done my research on Chicago,  
9 because you have done so much work for them. I wanted  
10 to ask you a couple of questions about this guy.

11 MR. LAUX: Object to the form.

12 MR. MANN: Okay. I'm going to try to refresh  
13 his -- or perhaps refresh his memory. Maybe not.

14 Q. I want to show you, Mr. Noble, an article that  
15 I printed off the internet from, it looks like, the  
16 Chicago Sun Times. And it looks like August 19, 2013.  
17 It's very difficult to read.

18 I'll ask you to take a look at that. You're  
19 free to read the whole thing. But I want to ask you  
20 just a couple of questions. Just tell me when you have  
21 finished reviewing it.

22 MR. LAUX: I'll read the whole thing, too.

23 MR. MANN: Sure. Go right ahead. That's no  
24 problem. Off the record.

25 (Whereupon, Exhibit 5 was marked and

1 attached hereto.)

2 (Off-the-record discussion.)

3 MR. MANN: Back on the record.

4 Q. Mr. Noble, I guess my question is: You have  
5 been working, consulting in cases in Chicago since 2006.  
6 And I think you testified earlier you have reviewed  
7 thousands of documents in connection with your work for  
8 Chicago; is that correct?

9 A. Yes.

10 MR. LAUX: Object to the form of the question.

11 MR. MANN: That's fine.

12 Q. You never heard of Officer Rizzo?

13 A. No.

14 Q. Looking down towards the middle of that first  
15 page where it says, "Rizzo is among the fraternity"; do  
16 you see?

17 A. Yes.

18 Q. "Is among the fraternity of Chicago cops who,  
19 despite repeated run-ins with the law, have continued  
20 working for the Department." Did I read that correctly?

21 A. That's what it says.

22 Q. In your experience, does the Chicago Police  
23 Department have on its force officers who have had  
24 continued run-ins with the law, but remain employed?

25 MR. LAUX: Object to the foundation.

1 BY MR. MANN:

2 Q. Based upon your review of documents and in the  
3 course of your consulting work.

4 A. Not in the documents that I have seen.

5 Q. Okay.

6 A. Well, let me rephrase that. I mean "run-ins  
7 with the law," I'm not even sure what that means.

8 Q. Okay.

9 A. Certainly there are instances where officers  
10 have engaged in misconduct and I may have disagreed with  
11 the amount of discipline. And in some cases there were  
12 cases where I believe that individuals should have been  
13 terminated and they weren't terminated. So, again, it's  
14 a 13,000 officer department.

15 Q. Sure. I understand. Have you ever heard of  
16 a -- I'm sorry. I'm done with that. Have you ever  
17 heard of an Officer Keith Herrera, H-e-r-r-e-r-a?

18 A. Yes.

19 Q. Okay. Tell me how you became familiar with  
20 Officer Herrera.

21 A. As I recall -- and, again, I have read so many  
22 cases -- Officer Herrera was the subject of a 60 Minutes  
23 episode. And I believe Officer Herrera -- well, I know  
24 Officer Herrera was arrested for committing crimes as a  
25 Chicago police officer. He was arrested. He was

1 convicted. And he was sentenced to prison.

2 Q. Okay. That's a pretty good description. I'm  
3 going to show you Exhibit 6, which, again, I printed off  
4 the internet.

5 (Whereupon, Exhibit 6 was marked and  
6 attached hereto.)

7 BY MR. MANN:

8 Q. It talks about Officer Herrera. The heading  
9 of the article is "Chicago Police Officer Says He Was  
10 Encouraged To Lie - 60 Minutes."

11 Take a moment to read over that one. And let  
12 me know when you're finished.

13 A. Okay.

14 Q. Officer Herrera -- looking down at the bottom  
15 of Exhibit Number 6, the last sentence on the first page  
16 of that article, it reads, "Herrera and six fellow SOS  
17 members" -- SOS standing for Special Operations Section  
18 -- "were charged with crimes including armed robbery and  
19 aggravated kidnapping - many against suspected drug  
20 dealers. They have all pled not guilty. They were also  
21 accused of routinely lying on police reports."

22 And it quotes Officer Herrera saying,  
23 "Creative writing was a certain term that bosses used to  
24 make sure that the job got done."

25 In the course of your work for Chicago, based



1       upon the records you have reviewed, nothing else, did  
2       you become aware of officers routinely lying on police  
3       reports?

4               MR. LAUX: Object to the form.

5               THE WITNESS: As a widespread and pervasive  
6       practice or the individual officers?

7       BY MR. MANN:

8               Q. Individual officers.

9               A. I'm certainly aware of Officer Herrera doing  
10      it.

11              Q. Any other officers?

12              A. I'm sure I have seen cases of other officers  
13      that had done it and were terminated for it.

14              Q. Were terminated?

15              A. I can't recall the specific cases.

16              Q. Okay. That's fine. Do you need a break or  
17      anything?

18              A. Not right now.

19              Q. Bear with me one second. In the course of  
20      your work in the city of Chicago defending the police  
21      department as a consultant in these cases you have  
22      identified on your CV, have you ever become familiar  
23      with an Alderman there by the name of Howard Brookins,  
24      Jr.?

25              MR. LAUX: I'm just going to object to the

1 form of the question.

2 MR. MANN: Sure. That's fine.

3 Q. You can answer.

4 A. The name sounds familiar, but I don't know  
5 anything more. It just sounds familiar.

6 Q. Sure. I'm going to introduce one more exhibit  
7 and just ask if --

8 MR. LAUX: I better not be in that article.

9 MR. MANN: You're not, Mike.

10 Q. It shows to be page one of two. I'll  
11 represent to you that the second page is blank. So I'm  
12 not withholding anything.

13 I've handed to you what has been marked as  
14 Exhibit Number 7 to your deposition.

15 (Whereupon, Exhibit 7 was marked and  
16 attached hereto.)

17 BY MR. MANN:

18 Q. And it is an article from the Huffington Post  
19 Chicago. And the heading is "Chicago Police Misconduct  
20 Settlements Surge as the City Pays Out Millions in  
21 Taxpayer Dollars."

22 MR. LAUX: You meant Brookins, Jr.; right?

23 MR. MANN: I did. If I didn't say "junior," I  
24 meant to.

25 MR. LAUX: He's a colorful guy.

1 THE WITNESS: Okay.

2 BY MR. MANN:

3 Q. Okay. Down about seven paragraphs from the  
4 bottom of that article, the sentence beginning "Alderman  
5 said that while," do you see that?

6 A. Yes.

7 Q. I'm going to read that, if I could.

8 "Alderman said that while they believed  
9 the three settlements last week were  
10 fair, they're angry that such cases  
11 continue to come before the council.  
12 They said they still hear that the  
13 officers involved remain on the payroll  
14 or continue to receive their pension,  
15 including" -- this individual named --  
16 "Burge."

17 In quoting Mr. Brookins, "'These guys  
18 are untouched and unscathed, and they  
19 keep their jobs by and large and they  
20 keep getting a paycheck,' said Alderman  
21 Howard Brookins, Jr. 'It has to stop.'"

22 Based upon your work with the City of Chicago  
23 Police Department and the documents you've reviewed in  
24 consulting on lawsuits, are you aware of any officers in  
25 the city of Chicago who engage in misconduct, yet keep

1       their jobs, as Mr. Brookins said?

2               MR. LAUX: Object to the form.

3               MR. MANN: Sure.

4               THE WITNESS: I think there are many many  
5 officers who have engaged in misconduct in the Chicago  
6 Police Department who have kept their jobs. And just  
7 because you engage in misconduct doesn't mean that it  
8 rises to the level of termination.

9 BY MR. MANN:

10           Q. All right. You testified -- I'm sorry. You  
11 didn't testify I don't believe. Maybe you did. You  
12 worked as a consultant in a case in DeKalb County,  
13 Georgia, Oakes, O-a-k-e-s, versus Anderson; is that  
14 right?

15           A. Yes.

16           Q. Do you recall that case?

17           A. Vaguely.

18           Q. Did you testify in that case? It's on page  
19 six, fourth from the bottom.

20           A. I did depositions.

21           Q. Does that mean you didn't testify in court?

22           A. Did not testify in court.

23           Q. Now, that case involved an allegation of use  
24 of excessive force that resulted in the death of an  
25 individual, didn't it?

1           A.     Yes.

2           Q.     And, as I recall from your deposition in that  
3     case, I think that the DeKalb County Police Department  
4     had a policy that provided for progressive discipline  
5     for infractions that related to not telling the truth.  
6     Do you recall that?

7           A.     Vaguely.

8           Q.     Didn't it have some sort of a process -- and  
9     we can get your deposition withheld. But didn't that  
10    police department have sort of a discipline matrix that  
11    said if you lie the first time you got X days, second  
12    time, a third time, up to a fourth time when you were  
13    terminated? Do you recall that?

14           MR. LAUX: Object. Foundation.

15           THE WITNESS: I know there was a case where  
16    they had a policy. And, again, I have done over 50  
17    cases. This was several years ago. I can't say that  
18    that was definitely the Oakes case. I would have to go  
19    back and look at all my reports.

20           BY MR. MANN:

21           Q.     Do you recall in whatever case that may have  
22    been, if it was not the Oakes case, do you recall  
23    testifying that such a policy was unconstitutional in  
24    your opinion?

25           MR. LAUX: Object to the foundation.

1 BY MR. MANN:

2 Q. Okay. We'll pull out the deposition then.  
3 I'm not going to make it an exhibit, Mr. Noble. But I  
4 just want to be fair with you and show you what I'm  
5 talking about and see if maybe we're on the same page.

6 This is on page 187 of your deposition in the  
7 deposition in the case called Oakes versus -- actually,  
8 it's Anderson, et al., but it also includes DeKalb  
9 County.

10 And I want to refer to page 187, line number  
11 16. Actually, if you back up to page 186 and start with  
12 line 21 and read down through about 188, line 9.  
13 Actually, go down to line through 21 on page 188. I'm  
14 sorry.

15 MR. LAUX: I would just object to the  
16 foundation as it describes a policy that is not before  
17 us.

18 MR. MANN: Sure. Right. I understand.

19 THE WITNESS: Okay.

20 BY MR. MANN:

21 Q. Does that refresh your memory?

22 A. Yes. In part, yes.

23 Q. And apparently in DeKalb County, they did have  
24 some sort of a disciplinary matrix based upon offenses  
25 where an officer was found to have lied; is that

1 correct?

2 A. Yes.

3 Q. Okay. And so they didn't have an automatic  
4 termination for lying; is that correct?

5 A. That's correct.

6 Q. Okay. But, in your opinion, a reasonable  
7 Police Chief or manager for the police department would  
8 terminate an officer for telling an intentional  
9 malicious lie; is that correct?

10 A. Yes.

11 MR. LAUX: As defined previously by you;  
12 correct?

13 THE WITNESS: Yes.

14 BY MR. MANN:

15 Q. Sure. And you did testify that you felt like  
16 this policy in DeKalb County was unconstitutional,  
17 didn't you?

18 A. I did.

19 Q. And you didn't testify in that case, you said  
20 earlier. Are you aware of the resolution of that case,  
21 disposition of it?

22 A. No.

23 Q. You don't know. You conclude in your expert  
24 report that the City of Little Rock Police Department  
25 has engaged in a pattern and practice of not terminating

1 officers who lie in an attempt to prevent their  
2 misconduct from being discovered; correct?

3 A. Yes.

4 Q. Okay. Are you saying that this alleged  
5 pattern and practice is somehow the moving force behind  
6 this alleged unlawful entry into Mr. Ellison's apartment  
7 on the night of December 9, 2010?

8 MR. LAUX: Object to the form.

9 MR. MANN: Sure.

10 THE WITNESS: I think that this pattern and  
11 practice created an environment and a culture within the  
12 Little Rock Police Department where officers knew that  
13 they could -- if they engage in misconduct, that they  
14 could lie about it in an attempt to avoid being held  
15 responsible for the misconduct.

16 And should the Department discover that indeed  
17 they did indeed engage in that misconduct and that they  
18 lied, that there would be no serious consequences. They  
19 wouldn't lose their jobs.

20 Officer Lesher herself had been untruthful in  
21 the past. There are many statements here that are in  
22 such conflict that there is certainly a reasonable  
23 belief that there may be some truthfulness issues  
24 regarding what happened here.

25 So yes, I believe that because of this culture



1       that Chief Thomas admits that he allows to be within the  
2       organization, that that creates that environment.

3       BY MR. MANN:

4           Q.     Would the same be true for the use of deadly  
5       force? You're saying that this culture that was created  
6       at the Department where an officer could lie and avoid,  
7       I guess, a punishment would be in part the moving force  
8       behind the use of deadly force in this case?

9           A.     I think it's certainly in part about the use  
10      of force. Because if you look at these 12 cases that I  
11      cited in my report --

12          Q.     Right.

13          A.     -- several of them involved use of force  
14      incidents that were excessive force. Some of them were  
15      sustained as excessive force.

16                 There were indeed criminal acts that weren't  
17      reported as criminal acts. So yes, I think the culture  
18      is that you can engage in excessive force with impunity.

19          Q.     Let's take a look at those 12 specific cases  
20      you cite, first one being found on page 42. And it's  
21      number 44. And that's the one involving Captain Tom  
22      Bartsch; correct?

23          A.     Yes.

24          Q.     And you indicate in subsection A there that  
25      this particular situation or incident occurred at the

1       2004 Riverfest event in Little Rock; is that correct?

2           A.     Yes.

3           Q.     Based upon your review of records in this  
4       case, do you understand that Stuart Thomas did not  
5       become Police Chief until April of 2005?

6           A.     Yes, I believe that that -- yes, he left the  
7       organization for about a year.

8           Q.     Now, you have testified earlier that -- well,  
9       let me ask you this: Did you read the entire Internal  
10      Affairs file on this particular matter? Is this one of  
11      the ones you referenced earlier that you read the whole  
12      file --

13          A.     Yes.

14          Q.     -- or did you skim it?

15          A.     I read through it.

16          Q.     Is it your understanding that Captain Bartsch  
17      employed any level of force in this matter?

18          A.     No. It was the officers that he was with  
19      engaged in some sort of physical altercation with some  
20      gentlemen.

21          Q.     Okay. But your recollection is that Captain  
22      Bartsch was not involved in terms of using force?

23               MR. LAUX: Objection to the extent that it  
24      misstates the report.

25               MR. MANN: Sure.

1 THE WITNESS: I don't recall.

2 BY MR. MANN:

3 Q. You don't recall. That's fine. I just want  
4 to get your recollection.

5 And you say that the only punishment that  
6 Captain Bartsch received was a 30-day suspension; is  
7 that correct? That's subsection C.

8 A. Yes.

9 Q. All right. You understand that that  
10 suspension is without pay; correct?

11 A. Yes.

12 Q. If you know, in your review of the files in  
13 this matter, are you aware of the range of punishments  
14 that are available for police personnel who have been  
15 found to violate the Little Rock Police Department's  
16 rules, regulations, and general orders, termination  
17 down? Do you know what those range of punishments are?

18 A. No.

19 Q. Are you aware if this particular incident  
20 involving Captain Bartsch in 2004 Riverfest resulted in  
21 a lawsuit? Do you have any information about that?

22 A. No.

23 Q. And, again, you alluded to this earlier and  
24 spoken to it, and I won't belabor it, but on page 43,  
25 subsection E at the top, you make reference to Captain

1 Bartsch's speaking with Officer Leshar after the Ellison  
2 event; correct?

3 A. Yes.

4 Q. Assuming -- and it's an assumption -- that  
5 that conversation was nothing more than inquiring about  
6 her welfare, do you still find that to be a problem?

7 A. Yes.

8 Q. With respect to your statement that Captain  
9 Bartsch should have been terminated for this incident,  
10 in your opinion, should his previous record have  
11 factored into the decision to terminate him?

12 A. No.

13 Q. Look at page 43. I want to go to the next  
14 citation you have among the 12 you mentioned, this being  
15 Officers Metcalf and Barton. Do you see that one?

16 A. Yes.

17 Q. Both of these gentlemen were suspended from  
18 duty for 30 days without pay for their misconduct in  
19 this matter; is that correct?

20 A. Yes.

21 Q. Okay. Do you know from your review of the  
22 file in this matter whether this incident involved an  
23 illegal search?

24 A. I don't recall.

25 Q. Okay. Do you know if it involved the use of

1       deadly force?

2           A.     No.

3           Q.     It did not involve the use of deadly force; is  
4       that correct?

5           A.     No.

6           Q.     Okay.

7                   MR. LAUX:   Just a belated objection to the  
8       foundation of the question.

9       BY MR. MANN:

10          Q.     Okay.  Let's look at paragraph 46 involving  
11       Officer Thompson.  And, again, you reviewed this entire  
12       file IA #05-3515; is that correct?

13          A.     Yes.

14          Q.     And you reviewed a videotape?

15          A.     I don't know if the videotape was part of that  
16       file.

17          Q.     Okay.  Next one is paragraph 47 involving  
18       Officer Daily.  And you have gone through her violation  
19       for which she was given a 30-day suspension without pay;  
20       is that correct?

21          A.     Yes.

22          Q.     You make reference in subsection E to Officer  
23       Daily trying to circumvent department procedure by  
24       approaching the prosecuting attorney.  Do you see that?

25          A.     Yes.

1 Q. How did you come across that information?

2 A. That was within the report.

3 Q. And do you know -- strike that. I want to  
4 look at number 48 at the bottom of page 44, which is the  
5 Sergeant Cristie Phillips IA file. And you have gone  
6 over to the second page.

7 In subsection C at the top of page 45, the  
8 last sentence where it says "Sergeant Cristie Phillips  
9 recanted her statement the following day and admitted  
10 that she had been untruthful."

11 A. Yes.

12 Q. If an officer does that, based upon your  
13 knowledge and experience and your beliefs obviously,  
14 does that emolliate the situation and cause termination  
15 not to be the only available option?

16 MR. LAUX: Objection. Incomplete hypothetical  
17 in terms of the reason for her recantation, whether she  
18 was caught or not.

19 THE WITNESS: There's a lot of different  
20 factors that may come into play. And in my article I  
21 put deceitful conduct on a continuum where lies are  
22 justified and acceptable on one end and where they're  
23 absolute termination on the other and then this  
24 essential gray area. You know, so her untruthfulness  
25 didn't fall into one of the three categories

1 specifically. She wasn't lying in court, but she lied  
2 to a supervisor.

3 But the issue with her is that she was given  
4 -- this isn't the kind of conduct that just happened.  
5 She was given a direct order not to engage in this  
6 particular type of conduct. And then she did it. And  
7 then she lied about it. So for me, no, this would be a  
8 termination case.

9 BY MR. MANN:

10 Q. You go on to refer in subsection E to a 2011  
11 incident where she was terminated; correct?

12 A. Yes.

13 Q. And that one, that particular incident  
14 obviously occurred after the Eugene Ellison shooting in  
15 2010?

16 A. Yes.

17 Q. I'm going to look at one. I want to look over  
18 on page 48, if you would, paragraph 53. And it involves  
19 at the bottom there Officer Josh Hastings and makes  
20 reference to a September 23rd, 2010, incident.

21 And over on the next page 49 in subsection B  
22 you say that the suspension letter did not include a  
23 reference to an Internal Affairs file; is that correct?

24 A. That's correct.

25 Q. Is it your belief that this particular

1 situation involving Officer Hastings was not  
2 investigated by Internal Affairs?

3 A. No, I didn't have that material.

4 Q. But you had the letter of suspension?

5 A. All I had was the letter of suspension.

6 Q. Okay. I'm not going to make it an exhibit.

7 But I'm just going to show you a copy of the letter  
8 itself. And I have highlighted on the third page a  
9 reference to an Internal Affairs file.

10 MR. LAUX: Is it the --

11 MR. MANN: It's September 23rd, 2010. Is that  
12 not the one we're referring to?

13 MR. LAUX: I just want to make sure.

14 THE WITNESS: Yeah, I see the confusion. And  
15 I did write in my report that it did not include that  
16 reference. My memory is that all I had was the  
17 suspension letter. I didn't have the actual Internal  
18 Affairs file. And that's why I couldn't come to a  
19 conclusion.

20 BY MR. MANN:

21 Q. Okay.

22 A. So my report is incorrect in that.

23 Q. Okay. Thank you. I overlooked another one.

24 Page 47, number 51 involving Officer Roy. Do you see  
25 that one?



1           A.    Yes.

2           Q.    It says in subsection A that allegations of  
3 excessive force were sustained against Officer Sexton,  
4 which I believe you meant to be Sexson, S-e-x-s-o-n. Do  
5 you recall from your review of the file what punishment  
6 that Officer Sexson received?

7           A.    I don't recall.

8           MR. LAUX: Can you read that question back,  
9 please.

10               (Whereupon, the following record was  
11 read: "Q. It says in subsection A that  
12 allegations of excessive force were  
13 sustained against Officer Sexton, which  
14 I believe you meant to be Sexson,  
15 S-e-x-s-o-n. Do you recall from your  
16 review of the file what punishment that  
17 Officer Sexson received? A. I don't  
18 recall.")

19           MR. LAUX: It should be spelled S-e-x-s-o-n.

20           MR. MANN: Correct.

21           MR. LAUX: The report makes reference to  
22 S-e-x-t-o-n; is that correct?

23           MR. MANN: That's correct.

24           MR. LAUX: Thank you.

25           ///

1 BY MR. MANN:

2 Q. Okay. Let's look on page 49. And I'm looking  
3 at the Curtis file in paragraph 54. And you described a  
4 particular incident involving Mr. Curtis. And then down  
5 at the bottom in subsection E you note that:

6 "The LRPD found the allegations of  
7 excessive force and untruthfulness to be  
8 not sustained, but there is a  
9 preponderance of evidence that both  
10 allegations should have been sustained.  
11 Indeed, the City of Little Rock later  
12 settled a lawsuit with Mr. Curtis  
13 regarding this incident without  
14 admitting liability."

15 Did I read that accurately?

16 A. Yes.

17 Q. You read this whole file, I take it?

18 A. Yes.

19 Q. And are you aware that at the conclusion of  
20 this particular matter involving -- let me strike that.  
21 Are you aware at the conclusion of the investigation  
22 into Mr. Curtis's allegations that he saw a review of  
23 that decision by the police department, by the Little  
24 Rock Civil Service Commission?

25 A. I don't recall.

1           Q.    In any of your -- in any documents that you  
2    have reviewed in order to prepare your expert report in  
3    this case, have any of them included a description of  
4    the role, if any, of the Little Rock Civil Service  
5    Commission in reviewing decisions of the police  
6    department on citizen complaints?

7           A.    No.

8           Q.    Does the fact that the City of Little Rock  
9    settled a lawsuit with Mr. Curtis, is that part of the  
10   basis for you concluding that the preponderance of  
11   evidence is that his allegation should have been  
12   sustained?

13          A.    No.

14               MR. MANN:   Can we take a break and get a drink  
15   of water.

16               (Recess taken.)

17               MR. MANN:   Back on the record.

18          Q.    Mr. Noble, on page 51 of your expert report,  
19   paragraph 56, you say, "The pattern and practice of the  
20   LRPD as shown by these twelve disciplinary actions"  
21   which precede that sentence; correct?

22          A.    Yes.

23          Q.    Ending with David Green on page 50.   And then  
24   you say, "and many others prior to the shooting would  
25   place a reasonable LRPD officer on notice," etc.   What

1 are the "many others" that you're referring to? I need  
2 to find out which ones, which files you are talking  
3 about.

4 MR. LAUX: While Jeff is thinking about that,  
5 can I just get a start time for us when we started  
6 again, Miss Court Reporter?

7 THE REPORTER: 12:05.

8 MR. LAUX: Thank you very much.

9 THE WITNESS: What I was talking about is the  
10 -- I knew it had occurred with Officer Leshner in the  
11 past and that this was such a pattern that it's my  
12 assumption that this occurred beyond these 12 files.  
13 And I didn't review all their files obviously. So I  
14 don't know how many there are.

15 BY MR. MANN:

16 Q. So when you say "many others," that's an  
17 assumption on your part?

18 A. Yes.

19 Q. Okay. In these 12 disciplinary -- excuse me.  
20 In these 12 IA files you reviewed which -- for the 12  
21 disciplinary actions you reviewed that caused you to  
22 form the opinion that there's a pattern and practice, as  
23 you discussed, in those particular matters, there was  
24 discipline meted out by the Department; is that correct?

25 A. Yes.

1 Q. And you believe the discipline was inadequate?

2 A. Yes.

3 Q. But you don't contend that the allegations  
4 against the officers were not investigated, do you?

5 A. No.

6 Q. Okay. Let's look over on page 52, which I  
7 believe to be your next opinion. There in the middle  
8 there in the bold font, "The Little Rock Police  
9 Department maintained Officer Leshner's employment  
10 despite clear warnings that she was unreliable, a  
11 liability to the Department and untruthful"; am I  
12 reading that correctly?

13 A. Yes.

14 Q. And the first thing you make reference to is  
15 in paragraph 61. And that is the December 28, 1992,  
16 memo from a gentleman by the name of Lowell Capoot,  
17 C-a-p-o-o-t, to then Captain Stuart Thomas; is that  
18 correct?

19 A. Yes.

20 Q. And then also you refer to now Chief Stuart  
21 Thomas's memo the next day, December 29, 1992; is that  
22 correct?

23 A. Yes.

24 Q. Do you understand from your review of those  
25 two memoranda that they were written at a time when

1       Officer Leshar was serving in the cadet program of the  
2       Little Rock Police Department?

3           A.     Yes.

4           Q.     And you understand that she was not a sworn  
5       police officer at that time?

6           A.     Yes.

7           Q.     And it's your view that this memorandum or  
8       these two memoranda that were generated some 18 years  
9       prior to the incident involving Mr. Ellison established  
10      that -- in part established that Officer Leshar was  
11      unreliable?

12          A.     Yes.

13          Q.     Okay. Do you understand that before she could  
14      become a police officer, a sworn police officer, she had  
15      to apply and to go through the police training academy  
16      in Little Rock?

17          A.     Yes.

18          Q.     And then the other reference that you make  
19      under that opinion concerns a suspension for five days  
20      that Officer Leshar received on April 7th, 1995; is that  
21      correct?

22          A.     Yes.

23          Q.     And that's when she was outside her area and  
24      indicated -- or was untruthful in that respect; correct?

25          A.     Yes.

1           Q.    And that particular incident, which was some  
2           15 years before Mr. Ellison's death and the incident  
3           which led to that, again, that's part of your basis for  
4           saying she's unreliable and a liability to the  
5           Department?

6           A.    Yes.

7                   MR. LAUX:  Well --

8           BY MR. MANN:

9           Q.    In your next opinion, which is on page 53,  
10           that's where you refer to the Deadly Force Review Board  
11           reports that you reviewed.

12           A.    Yes.

13           Q.    Do you see that one?

14                   MR. LAUX:  I would like to make just a brief  
15           interjection slash objection.

16                   MR. MANN:  Okay.

17                   MR. LAUX:  When you refer to "your next  
18           opinion," you know, based on prior testimony about  
19           opinions perhaps being within these paragraphs.

20                   MR. MANN:  That's fair.

21           Q.    The next heading which contains opinions which  
22           refer to the review of the Deadly Force Review Board  
23           reports -- would that be a better way to put it?

24           A.    Sure.

25           Q.    -- you cite several particular reports that

1       you reviewed.   And --

2               MR. LAUX:   I'm sorry to interrupt you.   I'm  
3       not saying that it's not an opinion.   I'm just saying  
4       that it may be not be the next opinion.

5               MR. MANN:   Okay.   I understand.

6               Q.    I gather from the particular IA files that you  
7       reviewed and you have cited here under that particular  
8       heading that you believe that or it's your opinion that  
9       the issue cited in each Deadly Force Review Board report  
10      somehow impacts or -- I'm trying to think the best way  
11      to ask you this.

12              You're saying that the issues outlined or  
13      stated in these Deadly Force Review Board reports  
14      somehow have an impact or effect the Ellison  
15      investigation; is that correct?

16              A.    What I'm saying is that these issues, many of  
17      the deficiencies that resulted in the Ellison  
18      investigation being unreasonable, some of those issues  
19      were pointed out to the Little Rock Police Department by  
20      its Deadly Force Review Board in the past.

21              And yet they didn't take actions in order to  
22      correct these concerns, legitimate concerns.   And they  
23      happened over and over again.   And, thus, they continue  
24      to conduct investigations that are compromised.

25              Q.    Can you tell me -- and I understand your



1 testimony about the criminal investigation. Can you  
2 tell me, sort of summarize as best you can why you found  
3 the Internal Affairs investigation to be unreasonable in  
4 your opinion?

5 A. Well, it's unreasonable to the extent that it  
6 relied on -- when cases -- when these investigations are  
7 bifurcated, nothing can go from the Internal Affairs  
8 investigation to the criminal, but things can go from  
9 the criminal to the Internal Affairs.

10 So to the extent that Sergeant Berthia or  
11 anybody in the Internal Affairs relied on the criminal  
12 investigation in forming their conclusions, that was  
13 unreasonable.

14 Moreover, what was unreasonable is -- I think  
15 we talked about it before -- was specifically as to  
16 Sergeant Berthia, her failure to engage in follow-up  
17 questions to elicit responses to inconsistent statements  
18 and inconsistent actions of the officers.

19 Q. So when you say in the IA investigation it  
20 would be unreasonable or was unreasonable for the  
21 investigators to rely upon things taken from the  
22 criminal investigation; is that what you're saying or  
23 did I mishear that?

24 A. What I said was I believe the criminal  
25 investigation to be unreasonable. So if they relied on

1       that unreasonable investigation, then that would make  
2       their investigation unreasonable.

3           Q.     But in the course of the Internal Affairs  
4       investigation, they took statements from all of the  
5       officers who were involved; is that correct?

6           A.     Yes.

7           Q.     And the file also contains, I believe, other  
8       information that was not contained in the criminal  
9       investigation; would you agree with that?

10          A.     Yes.

11          Q.     So it was not -- so the IA investigation was  
12       not simply taking the criminal investigation and that  
13       was all they did? They did an independent  
14       investigation, also?

15          A.     Yes, that's correct.

16          Q.     Anything else about the Internal Affairs  
17       investigation which you could tell me that's the basis  
18       for your conclusion that it was unreasonable?

19          A.     No.

20               MR. LAUX: I'm sorry. Can I have the last  
21       question and answer, please.

22               (Whereupon, the following record was  
23       read: "Q. Anything else about the  
24       internal affairs investigation which you  
25       could tell me that's the basis for your

1 conclusion that it was unreasonable? A.

2 No.")

3 MR. LAUX: Thank you.

4 BY MR. MANN:

5 Q. And you make reference to the early warning  
6 system --

7 A. Yes.

8 Q. -- Early Identification and Intervention  
9 System. I can't recall whether you said in your report  
10 or not, but did you read a memorandum generated by  
11 Lieutenant Mary Cook in which she outlined problems with  
12 the City of Little Rock's or Little Rock Police  
13 Department's Early Intervention System in a memorandum  
14 to Chief Thomas?

15 MR. LAUX: Object to the form of that  
16 question.

17 BY MR. MANN:

18 Q. Let me ask it again, because that was a poor  
19 question. In the course of your review of documents in  
20 this case, do you recall ever seeing a memorandum from  
21 Lieutenant Mary Cook to Chief Thomas in regard to the  
22 Early Intervention System?

23 A. No.

24 Q. During your time in the Irvine Police  
25 Department when you were working in Internal Affairs,

1 would the Internal Affairs division use as part of its  
2 investigation into -- well, strike that.

3 When you were in Internal Affairs, I believe I  
4 recall you saying that that division did not investigate  
5 officer-involved shootings; is that correct?

6 A. No, that's not correct.

7 Q. That's not correct. You did do the Internal  
8 Affairs investigation in the incident, but the office of  
9 the district attorney did the criminal investigation?

10 A. That's correct.

11 Q. Did you all in Internal Affairs take  
12 additional statements from the officers who were  
13 involved in the matter or did you simply use the ones  
14 they gave in the criminal investigation?

15 A. We would take the statements.

16 Q. So you would take a second statement?

17 A. Yes.

18 Q. And that would be after they, of course, had  
19 given their criminal investigation statements; is that  
20 correct?

21 A. Yes.

22 Q. And that's because of the Garrity Rule?

23 A. Yes.

24 Q. Now, we mentioned you had testified in, I  
25 believe, five of these cases that are identified in

1 Exhibit 1, your CV, as I recall; is that correct?

2 A. Yes, I believe so.

3 Q. In any cases that you have listed here, other  
4 than those has a federal court or a federal judge or a  
5 state judge, as the case may be, ever declined to  
6 recognize you as an expert witness?

7 A. Not to my knowledge.

8 Q. Other than the deposition of Stuart Thomas and  
9 Sergeant Stephanie Berthia, is it your intention at this  
10 time to review any additional documents prior to  
11 testifying at trial, should we get that far?

12 A. No.

13 Q. Other than those opinions you told me about  
14 earlier in connection with your review of Chief Thomas's  
15 deposition and Sergeant Berthia's deposition, any other  
16 opinions that are not expressed in your expert report or  
17 in that testimony?

18 A. Not that I can think of.

19 Q. Bear with me one second. You talked earlier  
20 about a code of silence. Can you explain to me what you  
21 mean by that?

22 A. Code of silence is a set of circumstances  
23 where, when applied to policing, where police officers  
24 will not bring information forward regarding misconduct  
25 of other police officers.

1           Q.    Okay.  And would you agree with me that if a  
2   code of silence existed within a police department,  
3   there would be evidence that few, if any, officers would  
4   be subject to disciplinary action?

5           MR. LAUX:  Object to the incomplete  
6   hypothetical.

7           THE WITNESS:  No.  I believe that a code of  
8   silence probably exists to some extent in every police  
9   department, in every organization, in every law firm, in  
10  every business.  It's just the act of individuals who  
11  don't want to speak out regarding their co-workers.

12           The fact that there may be a code of silence  
13  going on may or may not relate to, you know,  
14  disciplinary actions.  If there were a widespread and  
15  pervasive code of silence, I would agree that I would  
16  not expect to see many disciplinary actions.

17  BY MR. MANN:

18           Q.    Okay.  In your experience in working as a  
19  consulting expert in these types of cases that we're  
20  involved in today and others that relate to police  
21  practices, have you observed whether it is more typical  
22  for police departments to conduct investigations of  
23  officer-involved shootings internally or to refer them  
24  out to an external investigator?

25           A.    I think it really depends on the organization

1 and particularly the size of the organization. When you  
2 have an organization like the organization I worked for  
3 with 200 officers, which is really in terms of police  
4 agencies considered a midsize police agency, actually --  
5 one of the larger -- most agencies across our nation  
6 have less than five police officers. But even when you  
7 have a couple hundred, it becomes very difficult to  
8 conduct those type of criminal investigations fairly.

9 So I typically see across the nation where  
10 midsize, small agencies will refer those out; where  
11 larger agencies like Chicago, like Los Angeles, like San  
12 Diego and even like Little Rock -- I don't have an issue  
13 with Little Rock in and of itself investigating its own  
14 officers in this manner. It's just in this particular  
15 case the particular relationships were so intertwined,  
16 it made this particular case untenable.

17 MR. MANN: I think I'm going to pass you over  
18 to Ms. Wells who is on the telephone.

19 MS. WELLS: Hi, Mr. Noble.

20 THE WITNESS: Hi. Make sure you're still  
21 there.

22 MS. WELLS: I'm here. Are you guys ready for  
23 me to go ahead?

24 MR. MANN: Fire away.

25 ///

EXAMINATION

BY MS. WELLS:

Q. Okay. Mr. Noble, do you have a copy of your written fee contract with you?

A. No.

Q. Mr. Webb (phonetic) provided us a copy of that with his expert disclosure. Do you know what I'm talking about?

A. Yes.

Q. It looks like it would be a contract between you and the attorneys.

A. Yes.

MS. WELLS: Does anybody have an objection to me making that an exhibit if I e-mail the court reporter a copy of what Mr. Webb sent me?

MR. LAUX: I'm trying to locate a copy here. The answer to your question, Jennifer, is no, I don't have an objection.

MS. WELLS: If it's okay with the court reporter, I'll just e-mail her a copy of that. And we'll just make that an exhibit.

MR. MANN: No objection from me.

(Whereupon, Exhibit 8 was later marked and attached hereto.)



1 BY MS. WELLS:

2 Q. Okay. So, Mr. Noble, looking at that  
3 contract, it's my understanding that your fee  
4 arrangement is \$245 per hour; is that correct?

5 A. Yes.

6 Q. And you bill in quarter hour increments?

7 A. Yes.

8 Q. And you bill costs and expenses at the actual  
9 rate?

10 A. Yes.

11 MR. LAUX: For the record, a copy cued up on  
12 my laptop.

13 MS. WELLS: Okay.

14 Q. If you need to refer to that, Mr. Noble,  
15 please feel free.

16 A. Okay.

17 Q. Do you have any other terms of payment that  
18 are not included in that fee arrangement?

19 MR. LAUX: Object to the form.

20 THE WITNESS: No.

21 BY MS. WELLS:

22 Q. Okay. So you have no fee arrangement that  
23 would be contingent on an outcome in this case?

24 A. No, absolutely not.

25 Q. And do you have any fee sharing arrangement

1 with anyone else in this matter?

2 A. No.

3 Q. How much have you been paid by the plaintiffs  
4 to date?

5 A. \$6,000.

6 Q. And do you have any outstanding amount owed?

7 A. Yes.

8 Q. Can you hear me?

9 A. Yes. I said, yes, there is an outstanding  
10 amount owed.

11 Q. Okay. And how much is that?

12 A. About \$8,400.

13 Q. Is that including today's deposition or not  
14 including today's deposition?

15 A. Not including. Mr. Mann paid for me for  
16 today's deposition.

17 Q. When were you first contacted about this case?

18 A. Sometime in June or July.

19 Q. June or July of last year?

20 A. No. This year.

21 Q. This year. And who contacted you?

22 A. Mr. Laux.

23 Q. Okay. And did he discuss this case with you?

24 A. Yes.

25 Q. And what did he tell you?

1           A.    He gave me a brief overview of the facts.  I  
2   don't recall the details.

3           Q.    Okay.  And did you talk to anybody else  
4   besides Mr. Laux?

5           MR. LAUX:  Object to the form of the question.

6           THE WITNESS:  Yes.  There was a conference  
7   call with a couple other attorneys.

8   BY MS. WELLS:

9           Q.    Okay.  And do you remember who was on that  
10  call?

11          A.    No, I don't recall their names.

12          Q.    Do you remember when that call was?

13          A.    It was before I was engaged to do any work.

14          Q.    Okay.  Prior to writing your report, did you  
15  discuss this matter with anyone else?

16          A.    Other than Mr. Laux?

17          Q.    Other than Mr. Laux and the attorneys on the  
18  conference call that we discussed.

19          A.    I may have had a brief conversation with Geoff  
20  Alpert.

21          Q.    Okay.  Do you recall when that was?

22          A.    No.  I speak to him -- he's a -- I speak to  
23  him all the time.  So no.

24          Q.    And do you recall what you talked about?

25          A.    No.

1 Q. And do you recall anyone besides Mr. Alpert?

2 A. No.

3 Q. All right. Since you have written your  
4 report, have you discussed this case with anyone besides  
5 any of the people we have already talked about?

6 A. No.

7 Q. Okay. In your report -- was that marked as an  
8 exhibit? I'm sorry. I didn't catch that.

9 MR. MANN: The expert report was marked as  
10 Exhibit 4.

11 MS. WELLS: Four. Okay.

12 Q. Looking at that exhibit, was that your first  
13 and only draft?

14 A. Well, what I do is I write and rewrite as I go  
15 along. So I don't have any other drafts of the report,  
16 if that makes sense.

17 Q. Okay. In between those writings and  
18 rewritings, did anybody else review any other -- well,  
19 we'll call them drafts. I understand what you're  
20 saying. But has anybody else reviewed your document as  
21 you were writing it?

22 A. No.

23 Q. I'm sorry? I didn't hear you.

24 A. No.

25 Q. Okay. Other than Mr. Laux or any of the

1 attorneys on the plaintiff's side, have you shared your  
2 report with anyone else?

3 A. No.

4 Q. Is that including Dr. Alpert?

5 A. I have not shared it with him, no.

6 Q. And it's my understanding that you did not  
7 review the affidavit of Tiffany Anthony prior to today;  
8 is that correct?

9 A. I'm sorry. Of Tiffany --

10 Q. Anthony.

11 A. I don't know who that is.

12 Q. Okay. We'll assume that's a no then; is that  
13 fair?

14 A. Yes.

15 Q. Okay. Have you ever consulted as an expert on  
16 a case that involved officers working off duty?

17 A. No.

18 Q. During your time as a police officer, did you  
19 ever work off duty?

20 A. Yes.

21 Q. Okay. When was that?

22 A. Doing consulting like this.

23 Q. And about how often did you do -- if you've  
24 already answered this, I'm sorry. But when did you  
25 start doing that? When did you stop doing that?

1           A.    I started in 2005.  And the cases that I was  
2 engaged in are listed on my CV.  And I stopped when I  
3 retired -- I mean I've continued through.  But obviously  
4 between 2005 and 2012 is when I was still working.

5           Q.    And besides that, have you done any other  
6 off-duty work?

7           A.    No.  Excuse me.  I practiced law for the month  
8 we talked about in the '90s.  That was off-duty work.

9           Q.    Okay.  Anything else?

10          A.    No.

11          Q.    Other than reviewing the case or preparing a  
12 report, have you been asked to perform any other  
13 services related to this case?

14          A.    No.

15          Q.    Okay.  I think Mr. Mann asked you about being  
16 disqualified before.  And I understand your answer was,  
17 no.  This question is a little bit different.  Have you  
18 ever had any portion of your testimony or opinion  
19 excluded in a case?

20          A.    Not to my knowledge.

21                MS. WELLS:  I think that's all I've got.  
22 Thank you.

23                MR. LAUX:  Bill, you got anything?

24                MR. MANN:  No.

25                MR. LAUX:  I would like to take a 15-minute

1 break. And then I've got just a few questions. And  
2 then we can probably get out of here.

3 MR. MANN: Fine.

4 MR. LAUX: It might be 10 to 15 minutes. It  
5 won't be longer than that. Okay?

6 MS. WELLS: Okay.

7 MR. LAUX: Okay. Great.

8 (Recess taken.)

9 MR. MANN: Back on the record.

10

11 FURTHER EXAMINATION

12

13 BY MR. MANN:

14 Q. Mr. Noble, I did want to ask you about one of  
15 the other cases you consulted on for the City of  
16 Chicago, that I neglected to do in my initial  
17 examination. For that I apologize.

18 But it's on the last page of your CV. It  
19 appears to be the very first one that you consulted on  
20 for Chicago. And that's involving the *Hobley v. Burge*.  
21 Can you tell me what you did in that particular case for  
22 the City of Chicago?

23 A. Yeah. It was quite some time ago. That case  
24 was also related toward the sufficiency of Internal  
25 Affairs investigations and disciplines, as I recall.

1           Q.    So the opinion you expressed in that  
2   particular case, I'm assuming, was in support of the  
3   City of Chicago, that they did, in fact, appropriately  
4   discipline officers?

5           A.    Yes.

6           Q.    All right. Can you recall the outcome of that  
7   particular case?

8           A.    Well, Burge/Hobley eventually settled.

9           Q.    Was this Burge, the defendant in the case  
10   along with the City of Chicago, was he the one that the  
11   Department of Justice prosecuted and he was ultimately  
12   sentenced to prison?

13          A.    Yes.

14               MR. MANN: Okay. That's all I have. Thank  
15   you.

16                               EXAMINATION

17          BY MR. LAUX:

18               Q.    Okay. Jeff, I'm going to just jump around a  
19   little bit and cover some areas that I wanted to talk to  
20   you about. And then I might ask you some questions at  
21   the end. Okay?

22               A.    (Nods head.)

23               Q.    You gave testimony pursuant to Mr. Mann's  
24   questioning regarding the process for the investigation  
25   of police-involved shootings by the Irvine -- strike



1       that -- the process for Irvine police officer  
2       police-involved shooting investigations; correct?

3           A.     Yes.

4           Q.     And I think you indicated that the district  
5       attorney always investigated the police involved  
6       shootings; is that true?

7           A.     Yes.

8           Q.     Does the same go for non-deadly excessive  
9       force allegations?

10          A.     No.

11          Q.     Do you know how those were handled?

12          A.     They are handled internally.

13          Q.     It sounds like you don't necessarily have a  
14       problem with internal investigations as long as they're  
15       impartial and reasonable; is that true?

16               MR. MANN: Object to the form.

17               THE WITNESS: Yes, that's correct.

18       BY MR. LAUX:

19          Q.     Had you identified instances in your  
20       professional opinion of non- -- strike that.

21               Have you reviewed in this case instances at  
22       the Little Rock Police Department wherein Detective  
23       Division or Internal Affairs division investigations  
24       prior to Eugene Ellison's shooting were, in your  
25       opinion, partial?

1 MR. MANN: Object to the form.

2 THE WITNESS: I'm not sure what you mean by  
3 "partial." Whether the investigations were unreasonable  
4 or --

5 BY MR. LAUX:

6 Q. Well, I guess what I'm looking at is you  
7 indicated that the problems with the internal  
8 investigation in the Ellison matter was these conflicts  
9 in these relationships; correct?

10 A. Yes.

11 Q. Did you see any evidence of similar types of  
12 issues in any of the materials that you reviewed which  
13 featured investigations of police misconduct or  
14 excessive force?

15 A. No, I can't -- I mean there were issues as  
16 defined by the Use of Force Review Board. I can't think  
17 of other cases.

18 Q. I see. You were more concerned with the  
19 outcomes of these investigations and what they -- and  
20 the findings of the Little Rock Police Department  
21 Internal Affairs investigations mostly; is that true?

22 A. Yes.

23 MR. MANN: Object to the form.

24 THE WITNESS: I'm sorry. Yes.

25 ///

1 BY MR. LAUX:

2 Q. You testified that you thought that Sergeant  
3 Berthia did not appropriately address some of the  
4 inconsistencies of the statements of the officers in the  
5 Ellison matter; is that correct?

6 A. Yes.

7 Q. Would one of those be the lack of any mention  
8 of the struggle going outside during the Detective  
9 Division statement of Donna Lesher versus her  
10 representations that they were outside during the  
11 Internal Affairs investigation questioning?

12 MR. MANN: Object to the form. Leading  
13 question.

14 THE WITNESS: Yes.

15 BY MR. LAUX:

16 Q. Did you ever read anything about Mr. Ellison  
17 being bitten by one of the officers?

18 A. Yes.

19 Q. Where did that appear, if you recall?

20 A. That Officer Lesher said that she bit him on  
21 the arm.

22 Q. Do you know in what format or during what  
23 event she said that? Strike that. Do you know in which  
24 investigation she made that allegation?

25 A. I think it was during the Internal Affairs,

1 not during the original investigation.

2 Q. When you say "the original," you mean the  
3 Detective Division?

4 A. That's correct.

5 Q. When you make reference to skimming through  
6 documents, does that mean to say that you are looking --  
7 what do you mean by "skimming" through documents?

8 A. Well, I have a lot of experience of  
9 particularly policy manuals. And policy manuals are  
10 very thick and voluminous. And I'm very familiar with  
11 policy manuals, how they're set up.

12 And when I was looking through the policy  
13 manuals, I would skim through certain sections, again,  
14 because many sections are important to police  
15 departments. Like, for example, I came up with a list,  
16 you know, the type of uniform you wear. Although, in  
17 this case that had some relevancy. But there are a lot  
18 of policies that, you know, come to work on time, basic  
19 procedural kinds of things that weren't relevant in this  
20 case. So what I was looking for were those policies  
21 that I believed would be relevant. And that's where I  
22 spent my time.

23 Q. Once you identified a policy that was  
24 relevant, did you skim it?

25 A. No. I read it.

1                   MR. MANN: Belated objection to the form as to  
2                   what was relevant. But go ahead.

3                   BY MR. LAUX:

4                   Q. Towards the end of Stephanie Berthia's  
5                   deposition she talks about failures. Do you recall  
6                   that? Do you recall she refers to her failures? Does  
7                   that ring a bell with you?

8                   A. I'm sorry. Yeah, vaguely. But I can't recall  
9                   what the details were.

10                  Q. Does the fact that she was involved in a  
11                  police-involved shooting, Stephanie Berthia, a couple of  
12                  years or a few years prior, does that speak to her  
13                  suitability to be a person who is in part determining  
14                  whether officers violated policy in their use of force  
15                  incidents?

16                  MR. MANN: Object to the form.

17                  THE WITNESS: The fact that she was involved  
18                  in the shooting, no, that really isn't relevant. You  
19                  know, the shooting that she was involved in, there was a  
20                  large number of officers that shot, you know. And I  
21                  just don't have enough information that would lead me to  
22                  believe that that would create some kind of conflict.

23                  BY MR. LAUX:

24                  Q. It's your understanding that she was  
25                  exonerated in that shooting?

1           A.    Yes.

2           Q.    Are you familiar with the phrase "pay it  
3 forward"?

4           A.    Yes.

5           Q.    And does that notion ever come into play when  
6 you have an officer who is exonerated from a  
7 police-involved shooting subsequently investigating  
8 other police-involved shootings?

9           MR. MANN:  Object to form.

10          THE WITNESS:  No.  I mean I was involved in a  
11 police officer-involved shooting.  And I've investigated  
12 people.  No.

13       BY MR. LAUX:

14          Q.    Fair enough.  Whether or not Donna Leshner and  
15 Tabitha McCrillis had any contact with Mr. Ellison on  
16 March 25th of 2010, as appears in one of those reports,  
17 does that matter to you in terms of your opinion  
18 regarding the entry of those two into Mr. Ellison's  
19 apartment?

20       MR. MANN:  Object to form.

21       THE WITNESS:  No, it has no impact on that at  
22 all.

23       BY MR. LAUX:

24          Q.    Does it have any impact as to the propriety of  
25 the use of force used against Mr. Ellison by them?

1           A.    No.

2           Q.    You read Stuart Thomas's deposition. Did he  
3 not also speak to Dewana Phillips in the subordination  
4 charge based on her problems with the Ellison  
5 investigation?

6           A.    Yes, there was some discussion on that. And  
7 my understanding was there was some -- that Detective  
8 Phillips was investigated for her conduct during the  
9 investigation.

10          Q.    And I think you said earlier in your  
11 testimony -- and I may be mistaken, but you said that  
12 Lieutenant King didn't completely remove James Leshar  
13 from the investigation. And I think you said that the  
14 only steps that he took, meaning Sergeant Leshar, were  
15 to call his subordinates, to notify them of the  
16 occurrence; correct?

17               MR. MANN: Object to form.

18               THE WITNESS: Yeah, that's the only actual  
19 step. He was also -- you know, his presence would have  
20 an impact on his investigators.

21               BY MR. LAUX:

22          Q.    That's what I was going to ask you. Would it  
23 be more fair to say that was the only formal step that  
24 he took?

25          A.    Yes.

1           Q.    But we have testimony in the file about him  
2   leaving with his wife; correct?

3           MR. MANN:  Object to the form.

4           THE WITNESS:  Yes.

5   BY MR. LAUX:

6           Q.    And going to the scene, for instance?

7           A.    Yes.

8           Q.    And is it your understanding that Donna Leshner  
9   was actually in his homicide division office during part  
10   or most of her questioning?

11          MR. MANN:  Object to form.

12          THE WITNESS:  Not during her questioning.  But  
13   while she was waiting in order to be questioned, she was  
14   there, yes.

15   BY MR. LAUX:

16          Q.    Okay.  When Mr. Mann asked you about the fact  
17   that the Prosecuting Attorney's Office reviews the  
18   Detective Division file in order to reach the charging  
19   decision, whether or not to criminally charge, do you  
20   have an understanding of how that file that is reviewed  
21   is compiled?

22          A.    No.

23          Q.    But it is compiled by the Little Rock Police  
24   Department is your understanding?

25          A.    I don't know how it's compiled.



1           Q.    What's your understanding of the internal  
2           investigation?  What's your understanding of the  
3           Detective Division investigation based on your reading  
4           of it?  The authors of reports and whatnot, do you have  
5           an opinion as to who creates that file?

6                   MR. MANN:  Object to the form.

7                   THE WITNESS:  I think I misunderstood your  
8           prior question.  Yes, that file is created by the  
9           members of the criminal detectives of the Little Rock  
10          Police Department.  And obviously that file gets sent  
11          over to the prosecutor's office.

12                   Whether there's additional things that are  
13          added to that file, I don't know, or what the prosecutor  
14          actually relied on in making their opinion, I don't  
15          know.

16                   BY MR. LAUX:

17                  Q.    It's your understanding that the prosecuting  
18          attorney's office is reviewing a file that was created  
19          by the Little Rock Police Department; is that true?

20                  A.    Yes, at least in some part.  Whether there's  
21          other things there, I don't know.

22                  Q.    Got you.  You said a little bit earlier that  
23          if the entry was unlawful, then the subsequent use of  
24          force was unreasonable.  Do you recall making a  
25          statement like that?

1           A.     Yes.

2           Q.     There are instances where an entry can be  
3 unlawful -- well, strike that. If the entry was lawful  
4 or unlawful, there is something that serves to -- what's  
5 the word I'm looking for? Well, strike that. Strike  
6 it.

7                     Whether or not Leshar and McCrillis created  
8 the circumstances that ultimately led to the use of  
9 force in this case, do you have an opinion as to the  
10 reasonableness of the use of force of Mr. Ellison's  
11 shooting?

12                    MR. MANN: Object to the form.

13                    THE WITNESS: Yes.

14 BY MR. LAUX:

15           Q.     What is that?

16           A.     It's objectively unreasonable.

17           Q.     Does it make any difference to you in terms of  
18 your opinions on the entry into Mr. Ellison's apartment  
19 whether Tabitha McCrillis said that he was mouthy before  
20 she entered or after she entered?

21           A.     No.

22           Q.     Mr. Mann was asking you a lot of questions  
23 about your role as a consultant with the City of  
24 Chicago. You're not employed by the City of Chicago;  
25 correct?

1           A.     Just for those individual cases.

2           Q.     You were retained for individual cases, not  
3     unlike you were retained in this matter; is that true?

4           A.     That's true.

5           Q.     You're not a spokesperson for the Chicago  
6     Police Department?

7           A.     No.

8           Q.     And the cases that you reviewed were each  
9     specifically tailored to some issue or some incident  
10    that you were looking at; correct?

11          A.     Yes.

12          Q.     Do you recall your involvement specifically in  
13    the Burge case or in that case called Hobley versus  
14    Burge anymore than you've testified?

15          A.     No. I'd have to go back and look at my  
16    reports. It's been six or seven years.

17          Q.     The fact that the former Commander Burge was  
18    criminally charged doesn't speak to the opinions that  
19    you gave in that case, does it?

20          A.     No. I didn't have anything to do with the  
21    underlying facts of that case.

22          Q.     Were Leshner and McCrillis separated  
23    immediately after the shooting of Mr. Ellison?

24          A.     No. It's my understanding, no.

25          Q.     Do you have any opinions as to the propriety

1 of that in terms of an internal investigation or any  
2 investigation?

3 A. Well, officers and witnesses should always be  
4 separated.

5 Q. Is it your understanding that there was no use  
6 of force report generated as a result of the shooting of  
7 Mr. Ellison?

8 A. That's correct.

9 Q. And why is that significant, if it is  
10 significant to you?

11 A. Well, the purpose of the use of force  
12 reporting, particularly in the Little Rock Police  
13 Department, is its their system of -- well, it's a  
14 couple of things. It gives them an opportunity to  
15 review the facts of the shooting, which they did through  
16 their investigations. But it also is a factor for their  
17 Early Identification and Intervention System.

18 And if those reports aren't being completed,  
19 then people aren't being entered into that system  
20 appropriately. You know, if you don't have that correct  
21 data and you're not compiling the data, then the data  
22 can't be put into the system.

23 Q. And are you familiar with that phenomenon ever  
24 occurring based on your review of documents at the  
25 Little Rock Police Department?

1           A.    Well, I saw on one case -- there was a case  
2   involving Josh Hastings where he was on an Early  
3   Identification and Intervention System. And there was a  
4   file that listed the issues that he had. And there was  
5   some information that three months prior he had been  
6   involved in a use of force. And that use of force  
7   wasn't included on the list.

8                    So whether it was inadvertent or whether  
9   because the use of force form wasn't completed, I don't  
10   know. But the data wasn't complete.

11           Q.    Are you familiar with the Hawkins (phonetic)  
12   case where a man by the name of Landers Hawkins was shot  
13   and killed in his home back in 2009?

14                   MR. MANN: Object to form.

15                   THE WITNESS: Yes.

16   BY MR. LAUX:

17           Q.    And did you review any materials related to  
18   that matter or any of the individuals involved in that  
19   matter?

20           A.    Yes.

21           Q.    Can you elaborate on that, if you recall?

22           A.    It seems to me I reviewed the Internal Affairs  
23   investigation and a video, mobile video.

24           Q.    Do you know if a use of force report was  
25   generated in that case?

1           A.    I don't recall.

2           Q.    But it sounds like your testimony is that the  
3    use of force reports are important because they serve as  
4    memorializations in and of themselves, but they are also  
5    important because they might serve as a basis for  
6    identifying an Early Intervention System candidate?

7           MR. MANN:  Object to form.

8           THE WITNESS:  Yes.

9    BY MR. LAUX:

10          Q.    Did you come to understand anything about  
11    Donna Leshner's physical fitness testing or scores in  
12    this matter in the materials that you reviewed?

13          A.    Yes.  There were some documents that she took  
14    some physical fitness tests, that she failed several  
15    portions of those tests.

16          Q.    And does that -- strike that.  Do you think  
17    that a person who fails physical fitness testing at the  
18    Little Rock Police Department is appropriately -- do you  
19    think it's appropriate for them to be doing off-duty  
20    security work in high crime areas?

21          MR. MANN:  Object to the form.

22          THE WITNESS:  I can't really give an opinion  
23    on that.  As I recall, I looked at their policy, and  
24    there were no consequences.  I don't know what the  
25    reason for them setting up their physical fitness

1 testing was.

2 I know that very few agencies across the  
3 country do any type of physical fitness testing  
4 whatsoever. So I can't render an opinion on that.

5 BY MR. LAUX:

6 Q. Fair enough. You were asked a little bit  
7 about occasions that use of force events occurred prior  
8 to Stuart Thomas's tenure as Police Chief. Do you  
9 understand that this case names both Stuart Thomas and  
10 the City of Little Rock as defendants?

11 A. Yes.

12 Q. And if Stuart Thomas was not named as a  
13 defendant, is it your understanding that the City of  
14 Little Rock could be liable for any Monell claim no  
15 matter who the chief is?

16 MR. MANN: Object to form.

17 THE WITNESS: Yes.

18 BY MR. LAUX:

19 Q. We talked a little bit about post Ellison  
20 shooting uses of force investigations. Do you believe  
21 in terms of Monell analysis that those can be relevant?

22 MR. MANN: Object to the form.

23 THE WITNESS: Well, generally obviously  
24 something that happened post the incident couldn't be in  
25 the officer's mind in order to be a moving factor for an

1 officer to engage in a particular type of conduct. But  
2 they do show a pattern of conduct within the police  
3 agency. So I believe that there is relevance.

4 I believe it was the -- I cited a single case  
5 Green on untruthfulness that occurred afterwards.

6 BY MR. LAUX:

7 Q. It also goes to -- does it not also go to --  
8 well, strike that. Did you ever review any documents  
9 related to Tabitha McCrillis's triggering Early  
10 Intervention Systems based on the use of force?

11 A. I don't recall those documents.

12 Q. Is the seriousness with which Early  
13 Intervention System triggers and alarms are handled any  
14 indication of the seriousness with which a police  
15 department takes its excessive force allegations?

16 MR. MANN: Object to form.

17 THE WITNESS: Well, obviously the point of an  
18 Early Identification and Intervention System is to  
19 identify officers who are engaged in problematic  
20 behavior in order to give them -- it's a nondisciplinary  
21 system in order to give them some sort of either  
22 training or counseling to prevent future similar  
23 misconduct.

24 So if there were concerns that an officer was  
25 engaging in excessive force and they are not being



1 identified or not being given counseling or training,  
2 you are assuming that risk of future incidents, then you  
3 are defeating the purposes of an Early Identification  
4 and Intervention System.

5 BY MR. LAUX:

6 Q. Are all the opinions in your expert report to  
7 a reasonable degree of certainty in the field of police  
8 practices?

9 A. Yes.

10 Q. Can the same be said for the opinions you've  
11 given today at deposition?

12 A. Yes.

13 MR. LAUX: I think that's all I have.  
14

15 FURTHER EXAMINATION  
16

17 BY MR. MANN:

18 Q. I do have a follow-up based upon one question  
19 Mr. Laux asked you of an opinion being expressed. I  
20 think I heard you say that you do have the opinion or  
21 are of the opinion that the use of deadly force by  
22 Officer Leshar against Mr. Ellison was objectively  
23 unreasonable; is that correct?

24 A. Yes.

25 Q. Now, I don't see that opinion expressed in

1 your expert report.

2 A. No. I was not asked to write about that  
3 opinion.

4 Q. Right. Okay. So, therefore, I want to ask  
5 you what the basis for your opinion is.

6 A. The basis for my opinion is that looking at  
7 the circumstances, the totality of the circumstances of  
8 the initial contact that we've discussed, the  
9 circumstances of the statements being in conflict,  
10 Officer Lesher's statements that initially -- that it  
11 went through several different forms of that she was  
12 never out or she couldn't remember ever being out on the  
13 balcony to she was out on the balcony to she was fearful  
14 that she was going to be thrown over the balcony, the  
15 conflicting statements of the officers.

16 And primarily when at the moment that deadly  
17 force was used, Officer Lesher made the statement that  
18 Mr. Ellison was holding the cane like a baseball bat;  
19 that he never swung it at her; that he was inside the  
20 apartment; that she had been pulled outside by Officer  
21 Lucio; that Officer Lucio said he didn't draw his baton  
22 because there wouldn't have been any room to swing a  
23 baton in that alcove as you entered the apartment; that  
24 she did not give a reasonable warning to Mr. Ellison  
25 because she said "drop the cane" and immediately shot,

1 not giving Mr. Ellison any opportunity to obey her  
2 command; that based on her description that she was  
3 not -- it was not reasonable that she was in imminent  
4 fear of great bodily injury or death at the time that  
5 she used deadly force.

6 Q. It's your opinion that she was not -- why  
7 don't you say that last thing again. I'm sorry.

8 A. It's my opinion that a reasonable police  
9 officer would not have believed that at the moment that  
10 Officer Leshar used force that Officer Leshar would have  
11 been at risk of great bodily injury or imminent risk of  
12 death.

13 Q. And you mentioned that you don't believe that  
14 she gave a reasonable warning; is that correct? Is that  
15 what you said? I'm sorry.

16 A. Well, part of it was, you know, she attempted  
17 to give a warning, but the warning -- and you don't  
18 necessarily have to give a warning depending on the  
19 circumstances.

20 Q. Right.

21 A. But in this case the warning was immediately  
22 followed by a shot. There was no opportunity for him to  
23 comply to a warning. So I don't think that -- you know,  
24 Officer Leshar would have to have been -- he would have  
25 had to have been -- Mr. Ellison would have had to have

1       been in such imminent contact with her that the warning  
2       would have been ineffective.

3           Q.     And, to be honest, you don't know where he was  
4       whenever she gave the warning, do you?

5           MR. LAUX:   Object to the form and the  
6       foundation of the question.

7           THE WITNESS:   There's no way that I could  
8       personally know that.   I could only base it based on  
9       what Officer Leshar and Officer McCrillis have stated.

10       BY MR. MANN:

11           Q.     Right.

12           A.     And they've offered conflicting statements.

13           Q.     Did you also consider Officer Brad Boyce's  
14       statements in this case in his deposition in reaching  
15       your conclusion that the use of deadly force was  
16       objectively unreasonable?

17           A.     Yeah, I certainly considered that.   And  
18       Officer Boyce was in a position where he was able to  
19       see.   But, again, he was an inexperienced officer.

20                   And, again, the issue is whether or not how he  
21       was holding this cane, which she described in different  
22       ways from holding it over his head to holding it like a  
23       baseball bat to holding it 45 degrees to the ground,  
24       that he never swung the cane at her or in her direction,  
25       I don't believe that based on those statements that a

1 reasonable police officer believed that they were in  
2 imminent risk of death.

3 Q. Based upon your review, do you have an  
4 understanding of how long this incident lasted?

5 MR. LAUX: Object to the form.

6 MR. MANN: Sure.

7 THE WITNESS: Yeah. Basically on the MVR it  
8 was a couple of minutes.

9 BY MR. MANN:

10 Q. Okay. And in reaching your conclusion that  
11 the use of deadly force was objectively unreasonable,  
12 did you consider the statement of an individual by the  
13 name of Bryce Goodwill (phonetic)? Have you ever heard  
14 of that person?

15 A. Yes, I have. I have to go back and look at my  
16 notes.

17 Q. Okay.

18 MR. LAUX: "Yes, I have" is in answer to the  
19 question whether you have heard of that individual?

20 THE WITNESS: Yes. Yes. I recall reading  
21 their statement, but I can't recall it offhand.

22 BY MR. MANN:

23 Q. So then am I correct then that you would not  
24 have relied upon his statement in reaching your  
25 conclusion that the use of deadly force was objectively

1       unreasonable?

2               MR. LAUX: Object to the form.

3               THE WITNESS: No, I would have to go back and  
4 look at that.

5 BY MR. MANN:

6       Q. You can't say right now?

7       A. I can't say it right now.

8       Q. That's what I need. Thank you. And you  
9 mentioned that -- well, strike that. Anything else you  
10 can tell me that you haven't already relayed that forms  
11 the basis for your opinion that the use of deadly force  
12 was objectively unreasonable?

13       A. No.

14               MR. MANN: Thank you. I appreciate it.

15               MR. LAUX: Just quickly in follow-up --

16               MR. MANN: Jennifer.

17               MR. LAUX: I'm sorry. Jennifer, go ahead if  
18 you need to --

19               MS. WELLS: No. I'm good.

20

21                               FURTHER EXAMINATION

22

23 BY MR. LAUX:

24       Q. Mr. Noble, you said -- you read the deposition  
25 of Donna Leshner; correct?

1           A.     Yes.

2           Q.     And do you recall an exchange where she stated  
3     that in the second or seconds before shooting  
4     Mr. Ellison she could have walked away?

5           A.     Yes.

6           Q.     Did that testimony factor into your opinions?

7           A.     Yes. She could have easily moved away and  
8     de-escalated the situation.

9           Q.     When we talk about her giving a warning,  
10    you're referring to what is heard on -- the voices on  
11    the MVR?

12          A.     Yes.

13          Q.     She doesn't ever indicate that she has a gun,  
14    does she?

15          A.     No.

16          Q.     And she doesn't ever indicate that she's going  
17    to shoot; correct?

18          A.     That's correct.

19          Q.     By her account, if she's to be believed at  
20    this point -- or strike that. If she's to be believed,  
21    if her story is to be believed, Mr. Ellison had been  
22    pepper sprayed twice and was not wearing his glasses  
23    when she shot him; true?

24                 MR. MANN: Object to the form.

25                 THE WITNESS: Yes, according to their

1 statements.

2 BY MR. LAUX:

3 Q. Was the shooting of Mr. Ellison part of the  
4 pattern that you've been describing today and in your  
5 report?

6 MR. MANN: Object to the form.

7 THE WITNESS: I'm sorry. I don't understand  
8 the question.

9 BY MR. LAUX:

10 Q. Skip it. Who -- strike that. I've got  
11 nothing more.

12 MR. MANN: That's it for me.

13 Are you done, Jennifer?

14 MS. WELLS: Yes, I'm finished.

15 MR. MANN: Do you need to ask her about a copy  
16 or anything?

17 THE REPORTER: Yes, a copy.

18 MR. MANN: The court reporter is wanting to  
19 know if you will like a copy of the deposition.

20 MS. WELLS: If I could get an electronic copy.  
21 I'd also like to get her e-mail so I could send her that  
22 exhibit.

23 MR. MANN: I'll give you the e-mail, Jennifer.  
24 It's info@dwcourtreporting -- all one word -- .com.

25 MS. WELLS: That was AW?



1 MR. MANN: DW.

2 MS. WELLS: DW.

3 MR. MANN: D as in dog.

4 MS. WELLS: Okay. I got it.

5 MR. MANN: All right. I guess we'll see you  
6 later.

7 MS. WELLS: Sounds good. Bye-bye.

8 MR. MANN: Bye.

9 MR. LAUX: So you have an opportunity to  
10 review. Are you going to do the spiel?

11 MR. MANN: I'm sorry? What?

12 MR. LAUX: You have an opportunity to review.  
13 You know, you can review it or you can reserve  
14 signature, all that stuff. Do you know what you want to  
15 do?

16 THE WITNESS: Whatever you guys want.

17 MR. LAUX: Why don't you reserve signature.  
18 And she'll give it to you. And you'll have a look at  
19 it.

20 THE WITNESS: Okay.

21 MR. LAUX: Great.

22 MR. MANN: And I had asked for either six or  
23 seven day delivery.

24 THE REPORTER: Who gets the original? You're  
25 going to get the original and one?

1 MR. MANN: Yes.

2 THE REPORTER: Okay. And you get a copy?

3 MR. LAUX: Yes.

4 (Whereupon the deposition of JEFFREY J.  
5 NOBLE concluded at 1:08 p.m.)

6 (Declaration under penalty of perjury on  
7 the following page hereof.)

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I do solemnly declare under penalty of perjury under the laws of the State of California that the foregoing is my deposition under oath; are the questions asked of me and my answers thereto; that I have read same and have made the necessary corrections, additions or changes to my answers that I deem necessary.

In witness thereof, I hereby subscribe my name this \_\_\_\_\_ day of \_\_\_\_\_, 2013.

\_\_\_\_\_  
JEFFREY J. NOBLE

CERTIFICATION

OF

CERTIFIED SHORTHAND REPORTER

The undersigned certified shorthand reporter so the State of California does hereby:

I, Paula Goehle, CSR No. 13616, Certified Shorthand Reporter in and for the State of California, do hereby certify:

That the foregoing deposition was taken before me at the time and place therein set forth, at which time the witness was duly sworn by me;

That the testimony of the witness and all objections made at the time of the deposition were recorded stenographically by me and thereafter transcribed, said transcript being a true copy of my shorthand notes thereof.

In witness whereof, I have subscribed my name this date \_\_\_\_\_.

\_\_\_\_\_  
Paula Goehle, CSR  
Certificate No. 13616

NOTE: If you are adding to your testimony, print the exact words you want to add. If you are deleting from your testimony, print the exact words you want to delete. Specify "Add" or "Delete" before each entry.

This image shows a blank sheet of white paper with horizontal ruling lines. The lines are evenly spaced and run across the width of the page. There are no margins, text, or other markings on the paper.

SIGNATURE: \_\_\_\_\_ DATE: \_\_\_\_\_