

EXHIBIT T

1 IN THE UNITED STATES DISTRICT COURT

2 EASTERN DISTRICT OF ARKANSAS

3 WESTERN DIVISION

4

5 TROY ELLISON, as Personal)
6 Representative of the Estate of)
7 Eugene Ellison, deceased and Eugene))
8 Ellison,)
9 Plaintiff,)
10 vs.) No. 4:11-CV-00752
11) BSM
12 DONNA LESHER, TABITHA McCRILLIS,)
13 individually and in their official)
14 capacities, STUART THOMAS,)
15 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.)
16 _____)
17
18 DEPOSITION OF:
19 JEFFREY J. NOBLE
20 TUESDAY, OCTOBER 1, 2013
21
22
23 Reported by:
24 PAULA GOEHLE
25 CSR No. 13616

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19 a municipality and BIG COUNTRY)
20 CHATEAU APARTMENTS, d/b/a BIG)
21 COUNTRY CHATEAU, LLC, a)
22 corporation,)
23)
24 Defendants.)
25 _____)

16

17

18 DEPOSITION OF JEFFREY J. NOBLE, taken on

19 behalf of Defendants, at One Park Plaza, Suite 600,

20 Irvine, California, at 9:01 a.m., Tuesday, October 1,

21 2013, before PAULA GOEHLE, CSR No. 13616, pursuant to

22 Notice.

23 * * *

1 APPEARANCES OF COUNSEL:

2

3 For Plaintiff:

4

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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

E X H I B I T S

Defendants' EXHIBITS:

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1 - Jeffrey J. Noble's CV 10

2 - City of Irvine Police Department's website 37
document regarding complaints

3 - Irvine Police Dept. Department Directory 46

4 - Expert Report of Jeffrey J. Noble 57

5 - Article from Chicago Sun Times regarding 116
Richard A. Rizzo

6 - Article regarding Officer Keith Herrera 119
on 60 Minutes

7 - Article from the Huffington Post Chicago 121
regarding police misconduct settlements

— Written fee contract 151

INFORMATION REQUESTED

None

UNANSWERED QUESTIONS

None

1 IRVINE, CALIFORNIA

2 TUESDAY, OCTOBER 1, 2013

3 9:01 A.M.

6 JEFFREY J. NOBLE,

7 having been first duly sworn, testified as follows:

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 Lesher, 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 Lesher, 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.

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 Infernal 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.

20 MB 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 synonomous 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 courtesy, 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 secondhands 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 criminal 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 Lesher'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 Lesher'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 Lesher 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 Lesher 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 Lesher'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 Lesher 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 Lesher 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 Lesher 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 Lesher 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 Lesher said that she
8 had never seen Mr. Ellison before.

9 However, Officer Lesher 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 Lesher 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 Lesher, was, in fact, married to Officer
10 Donna Lesher; is that right?

11 A. Yes.

12 Q. But that Lieutenant King did, based upon your
13 review of the record, remove Sergeant Lesher 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 Lesher was the one who called
22 out all of his detectives. So Sergeant Lesher 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 Lesher 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 Lesher, 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 Lesher 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 Lesher 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 Lesher 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 Lesher
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 Lesher 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 Lesher"; 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 Lesher?

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 Lesher,
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 Lesher 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 Lesher 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 Lesher 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 Lesher, 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 Lesher 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 Lesher 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 -- Lesher 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. Lesher 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 Lesher 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 Lesher 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 Lesher 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 Lesher 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 Lesher 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

convicted. And he was sentenced to prison.

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

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

BY MR. MANN:

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

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

A. Okay.

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

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

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 Lesher 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 Lesher 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 Lesher'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 Lesher 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 Lesher 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 Lesher 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 ///

1 EXAMINATION
2

3 BY MS. WELLS:

4 Q. Okay. Mr. Noble, do you have a copy of your
5 written fee contract with you?

6 A. No.

7 Q. Mr. Webb (phonetic) provided us a copy of that
8 with his expert disclosure. Do you know what I'm
9 talking about?

10 A. Yes.

11 Q. It looks like it would be a contract between
12 you and the attorneys.

13 A. Yes.

14 MS. WELLS: Does anybody have an objection to
15 me making that an exhibit if I e-mail the court reporter
16 a copy of what Mr. Webb sent me?

17 MR. LAUX: I'm trying to locate a copy here.
18 The answer to your question, Jennifer, is no, I don't
19 have an objection.

20 MS. WELLS: If it's okay with the court
21 reporter, I'll just e-mail her a copy of that. And
22 we'll just make that an exhibit.

23 MR. MANN: No objection from me.

24 (Whereupon, Exhibit 8 was later marked
25 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.

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 Lesher 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 Lesher
13 from the investigation. And I think you said that the
14 only steps that he took, meaning Sergeant Lesher, 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 Lesher
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 Lesher 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 Lesher 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 Lesher'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.

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 Lesher 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 Lesher used force that Officer Lesher 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 Lesher 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 Lesher 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

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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4 I do solemnly declare under penalty of
5 perjury under the laws of the State of California that
6 the foregoing is my deposition under oath; are the
7 questions asked of me and my answers thereto; that I
8 have read same and have made the necessary corrections,
9 additions or changes to my answers that I deem
10 necessary.

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1 CERTIFICATION

2 OF

3 CERTIFIED SHORTHAND REPORTER

5 The undersigned certified shorthand
6 reporter so the State of California does hereby:

7 I, Paula Goehle, CSR No. 13616, Certified
8 Shorthand Reporter in and for the State of California,
9 do hereby certify:

10 That the foregoing deposition was taken
11 before me at the time and place therein set forth, at
12 which time the witness was duly sworn by me;

13 That the testimony of the witness and all
14 objections made at the time of the deposition were
15 recorded stenographically by me and thereafter
16 transcribed, said transcript being a true copy of my
17 shorthand notes thereof.

18 In witness whereof, I have subscribed my
19 name this date _____.

21 _____
22 Paula Goehle, CSR
23 Certificate No. 13616
24
25

1 DEPONENT'S CHANGES OR CORRECTIONS

2

3 NOTE: If you are adding to your testimony,
4 print the exact words you want to add. If you are
5 deleting from your testimony, print the exact words you
6 want to delete. Specify "Add" or "Delete" before each
7 entry.

8

9 PAGE LINE ADD/DELETE

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25 SIGNATURE: _____ DATE: _____