

EXHIBIT S

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ALEXA CURTIN

**UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA**

ALEXA CURTIN,

Plaintiff,

vs.

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

Defendants.

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

Assigned to Hon. Stephen V. Wilson

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

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

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

Trial: August 2, 2017

DECLARATION OF HOLLY N. BOYER

I, Holly N. Boyer, declare as follows:

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

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

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

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

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

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

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

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

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

/s/ Holly N. Boyer

Holly N. Boyer, Esq.

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

ALEXA CURTIN,
PLAINTIFF,
VS.
COUNTY OF ORANGE, ET AL.
DEFENDANT.

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) CASE NO.:
) SA CV 16-591-SVW
)
)

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

2 - - -

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

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

6 DIRECT EXAMINATION (RESUMED)

7 BY MR. BALABAN:

8 Q. Good afternoon, Sergeant.

9 A. Good afternoon.

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

13 Do you have Exhibit 38, Sergeant?

14 A. I do, yes.

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

17 A. Yes, sir.

18 Q. And who is Lieutenant Danks?

19 A. He would be my supervisor.

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

22 MR. FOX: No objection, Your Honor.

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

24 THE COURT: Is 38 being offered in evidence?

25 MR. BALABAN: Yes, Your Honor.

1 A. I have.

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

4 A. Yes, sir.

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

7 A. Yes.

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

10 THE COURT: Received.

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

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

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

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

19 MR. BALABAN: Thank you, Your Honor.

20 THE COURT: Not for anything else.

21 MR. BALABAN: Correct.

22 MR. FOX: Thank you, Your Honor.

23 (Exhibit 12 was admitted.)

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

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

1 was received on February 28, 2014; correct?

2 A. Yes, sir.

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

4 A. Yes.

5 Q. And identifying information; correct?

6 A. Yes.

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

8 And if we go down, uh, it tells us who, uh,
9 correspondence responding to this claim should be from;
10 correct, Mr. Hughes?

11 A. Yes.

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

14 A. Yes, sir.

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

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

21 A. Yes.

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

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

4 A. Yes, sir.

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

8 A. Yes, sir.

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

11 A. Yes, sir.

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

14 A. Yes, sir.

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

18 A. Yes, sir.

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

22 A. Yes, sir.

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

1 County until the criminal investigation was completed?

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

3 Your Honor.

4 THE COURT: Overruled.

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

6 MR. BALABAN: Sure.

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

10 A. That is correct.

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

12 A. Yes, sir.

13 MR. BALABAN: No further questions.

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

18 THE COURT: Yes.

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

20 Thank you, Your Honor. Appreciate that.

21 CROSS-EXAMINATION

22 BY MR. FOX:

23 Q. Okay. Is it sergeant?

24 A. Yes, sir.

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

1 A. I would say grainy.

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

4 A. I did not.

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

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

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

13 A. No.

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

18 A. Yes.

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

23 A. Uh, criminal was looking at it.

24 Q. I'm sorry?

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

1 videos.

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

5 A. Yes, sir.

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

9 A. Yes, sir.

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

13 A. Yes, sir.

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

16 A. I believe so.

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

19 A. Yes, sir.

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

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

24 A. Yes, sir.

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

1 REDIRECT EXAMINATION

2 BY MR. BALABAN:

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

7 A. Yes, sir.

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

12 A. It's past practice, yes.

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

15 A. Yes, sir.

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

20 A. Yes, sir.

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

24 A. Yes, sir.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

1 Police Conduct, Internal Affairs and External Oversight.

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

5 A. Yes, it does.

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

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

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

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

16 Is that what you were going to say?

17 THE WITNESS: Yes, sir.

18 THE COURT: Where has it been cited?

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

22 BY MR. BALABAN:

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

1 nature?

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

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

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

8 BY MR. BALABAN:

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

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

18 Q. Los Angeles as well?

19 A. Yeah, absolutely Los Angeles.

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

22 A. Yes.

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

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

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

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

5 THE WITNESS: I've never seen one.

6 BY MR. BALABAN:

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

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

14 THE COURT: I think that you can argue that.
15 That's really not within his expertise. We don't need him to
16 tell us that.

17 MR. BALABAN: Okay.

18 THE COURT: Okay.

19 BY MR. BALABAN:

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

22 A. Yes, sir.

23 Q. What organizations are you a member of?

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

1 Officers Association.

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

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

11 BY MR. BALABAN:

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

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

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

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

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

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

1 improper.

2 THE COURT: I'll sustain that objection.

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

6 MR. BALABAN: Thank you, Your Honor.

7 BY MR. BALABAN:

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

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

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

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

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

19 BY MR. BALABAN:

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

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

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

25 A. No.

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

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

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

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

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

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

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

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

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

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

18 A. Oh, 50 or 60 hours.

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

20 A. I do.

21 Q. How much do you charge?

22 A. \$295.00 an hour.

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

24 A. I do.

25 Q. And how much do you charge?

1 A. 2950 per calendar day.

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

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

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

8 A. Yes, I do.

9 Q. What's your opinion?

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

13 A. Oh, yes, absolutely.

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

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

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

20 A. Yes.

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

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

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

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

1 was in September, wasn't it?

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

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

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

9 THE COURT: Okay.

10 BY MR. BALABAN:

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

13 A. Yes.

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

17 A. Yes.

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

20 A. Yes.

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

25 A. Absolutely.

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

2 A. Yes.

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

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

7 BY MR. BALABAN:

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

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

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

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

21 THE COURT: Have you gone through his testimony?

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

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

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

2 A. Yes.

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

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

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

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

21 BY MR. BALABAN:

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

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

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

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

7 BY MR. BALABAN:

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

11 A. No.

12 Q. Why not?

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

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

23 A. Yes, that's true.

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

25 A. Certainly, in sexual assaults and domestic violence

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

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

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

10 MR. BALABAN: Redirect, Your Honor.

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

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

14 BY MR. BALABAN:

15 Q. Why not?

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

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

23 MR. BALABAN: Yes.

24 THE COURT: So let him answer that question.

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