

*Kenneth R. Woody, et al. v  
Big Horn County, et al.*

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*David T. Sweeney  
January 17, 2022*

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*Charles Fisher Court Reporting  
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Page 1

1 MONTANA TWENTY SECOND JUDICIAL DISTRICT COURT  
 2 BIG HORN COUNTY  
 3 -----  
 4 IN THE MATTER OF THE ESTATE  
 5 OF KENNETH R. WOODY, IV,  
 6 DECEASED, BY AND THROUGH HIS  
 7 PERSONAL REPRESENTATIVE  
 8 KENNETH R. WOODY AND CAUSE NO. DV-2015-9  
 9 LORRAINE WOODY, PERSONAL  
 10 REPRESENTATIVE, ON BEHALF OF  
 11 THE HEIRS OF KENNETH R.  
 12 WOODY, IV,  
 13  
 14 PLAINTIFFS,  
 15  
 16 VS.  
 17 BIG HORN COUNTY, A POLITICAL  
 18 SUBDIVISION OF THE STATE OF  
 19 MONTANA, AND THE BIG HORN  
 20 COUNTY SHERIFF'S OFFICE,  
 21  
 22 DEFENDANTS.  
 23  
 24 BIG HORN COUNTY, A POLITICAL  
 25 SUBDIVISION OF THE STATE OF  
 MONTANA, AND THE BIG HORN  
 COUNTY SHERIFF'S OFFICE,  
 THIRD-PARTY PLAINTIFFS,  
 VS.  
 DUSTIN WEGNER AND JOHN DOES  
 I-V,  
 THIRD-PARTY DEFENDANTS.  
 -----  
 VIDEOCONFERENCE DEPOSITION  
 UPON ORAL EXAMINATION OF  
 DAVID T. SWEENEY

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1 -----  
 2  
 3  
 4 BE IT REMEMBERED, that the  
 5 videoconference deposition upon oral examination  
 6 of DAVID T. SWEENEY, appearing at the instance of  
 7 Attorneys for Defendants and Third-Party  
 8 Plaintiffs, was taken at the offices of Fisher  
 9 Court Reporting, 2711 First Avenue North,  
 10 Billings, Montana on Monday, January 17, 2022,  
 11 beginning at the hour of 10:11 a.m., pursuant to  
 12 the Montana Rules of Civil Procedure, before  
 13 Jacqueline A. Hill, Court Reporter and Notary  
 14 Public.  
 15  
 16 APPEARANCES  
 17  
 18 ATTORNEY APPEARING ON BEHALF OF THE  
 19 PLAINTIFFS:  
 20  
 21 GREGORY PAUL JOHNSON  
 22 Attorney at Law  
 23 3623 Snowline Drive  
 24 Billings, Montana 59102  
 25  
 26 ATTORNEY APPEARING ON BEHALF OF THE DEFENDANTS  
 27 AND THIRD-PARTY PLAINTIFFS:  
 28  
 29 CALVIN J. STACEY  
 30 Stacey & Funyak  
 31 100 North 27th Street, Suite 700  
 32 P.O. Box 1139  
 33 Billings, Montana 59103-1139

Page 3

1 ATTORNEY APPEARING ON BEHALF OF THE  
 2 THIRD-PARTY DEFENDANT DUSTIN WEGNER:  
 3  
 4 RYAN HEUWINKEL (via Zoom)  
 5 Bohyer, Erickson, Beaudette & Tranel,  
 6 P.C.  
 7 P.O. Box 7729  
 8 Missoula, Montana 59807-7729  
 9  
 10  
 11  
 12  
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 14  
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 23  
 24  
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Page 4

1 I N D E X  
 2  
 3 EXAMINATION OF DAVID T. SWEENEY BY: PAGE:  
 4 EXAMINATION BY MR. STACEY 5  
 5 EXAMINATION BY MR. JOHNSON 164  
 6 EXAMINATION BY MR. STACEY 177  
 7  
 8 E X H I B I T S  
 9  
 10 DEPOSITION EXHIBITS: PAGE:  
 11 Exhibit 1 Curriculum Vitae of David 7  
 12 T. Sweeney  
 13  
 14 Exhibit 2 4/28/2021 Declaration of 7  
 15 David T. Sweeney  
 16  
 17  
 18  
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 20  
 21  
 22  
 23  
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 25

1 DAVID T. SWEENEY,  
2 having been first duly sworn, testified upon his  
3 oath as follows:

4 EXAMINATION

5 BY MR. STACEY:

6 Q. Mr. Sweeney, could you state your full  
7 name for the record, please.

8 A. David T. Sweeney, last name is spelled  
9 S-W-E-E-N-E-Y.

10 Q. And where do you reside?

11 A. Corvallis, Oregon.

12 Q. And that's where we're taking your Zoom  
13 deposition today; is that correct?

14 A. That's correct.

15 Q. Okay. My name is Cal Stacey. I'm a  
16 lawyer here in Billings, Montana. And I  
17 represent --

18 A. Nice to meet you, Cal.

19 Q. Nice to meet you.

20 I represent, as you probably know, the  
21 defendants in this case, one of which is Big Horn  
22 County, the other is identified as Big Horn County  
23 Sheriff's Department, it's just a department of  
24 Big Horn County. All of which is located in what  
25 I always refer to as the great state of Montana.

1 A. I -- I couldn't state with certainty.

2 Q. That's fine.

3 Mr. Sweeney, I have a couple exhibits  
4 that I'm going to talk to you about today, both of  
5 which came with your disclosure. I've separated  
6 them off. I have your CV marked as Exhibit 1.

7 (Exhibit No. 1 marked for  
8 identification.)

9 BY MR. STACEY:

10 Q. And the declaration of David T. Sweeney  
11 is marked as Exhibit 2.

12 (Exhibit No. 2 marked for  
13 identification.)

14 BY MR. STACEY:

15 Q. I assume you have copies of both those  
16 documents available?

17 A. Yes, I do.

18 Q. I'd like to start with Exhibit 1, which  
19 is your CV. And I'd like to go to the -- I guess  
20 it'd be the last page of that document, page 4, if  
21 I'm counting correct.

22 And you have had your deposition taken  
23 before, I know that.

24 A. Yes.

25 Q. So you know kind of the rules of the --

1 Have you ever been to the great state of  
2 Montana?

3 A. Yes, I have.

4 Q. Have you worked in the great state of  
5 Montana on any litigated matters?

6 A. No. No litigated matters that I can  
7 think of.

8 Q. I assume that your travels to Montana  
9 have been for personal reasons?

10 A. Recreation.

11 Q. Okay.

12 A. Hiking and -- and camping.

13 Q. Have you ever been to Hardin, Montana?

14 A. I don't think so.

15 Q. Okay. Been to Billings, Montana, where I  
16 live?

17 A. Yes. I've been to Billings.

18 Q. Okay. But maybe not gone further east  
19 down the interstate to Hardin; is that correct?

20 A. Correct.

21 Q. And Hardin is located in Big Horn County,  
22 my client, so I assume it's fair to say you have  
23 never been to Big Horn County, either?

24 A. Not that I'm aware of.

25 Q. Okay.

1 of a deposition, which are basically it's my  
2 opportunity to ask you questions, you are under  
3 oath.

4 I'll assume that -- unless you tell me  
5 you don't understand my question, I'll assume that  
6 you did understand my question.

7 We can't talk at the same time, that  
8 doesn't work out well for Jackie here in Billings.

9 Nodding of the head, it's great, I can  
10 see that through the Zoom connection, but we'll  
11 have to have an audible answer.

12 And if you need a break, let me know. It  
13 looks like we're taking this deposition perhaps  
14 from your home in Corvallis?

15 A. Yes.

16 Q. Okay. Going to page 4 of Exhibit 1, your  
17 CV, under, Expert witness cases --

18 A. Uh-huh.

19 Q. -- six plaintiff, one defendant, one  
20 civil case.

21 Did I read that correctly?

22 A. Yes.

23 Q. Is there any update to that?

24 A. Yes. I'm looking at my updated CV. One,  
25 two, three, four. I'm seeing four defendant

1 cases, and -- one, two, three, four, five  
2 plaintiffs' cases. And I leave the civil case off  
3 right now because really nothing happened, and I  
4 only gave advice.

5 **Q. Okay. When you said one civil case --**  
6 **and I'll work off of this exhibit, and you can**  
7 **later add to it.**

8 A. Sure.

9 **Q. What did you mean by "civil case"? What**  
10 **did that term mean to you?**

11 A. It was one party suing another, and it  
12 did not involve a municipality. So it was a civil  
13 case that an attorney asked me for advice on.

14 **Q. Okay. And what type of case was that?**

15 A. A harassment case, but again, it wasn't  
16 involving a harassment charge. It was a lawsuit  
17 from one party against the other, and the attorney  
18 wanted some background information. I basically  
19 leave it off right now because there was no  
20 deposition. I don't even have a case number,  
21 things like that.

22 **Q. And it did not involve police or**  
23 **municipalities or anything of that type?**

24 A. Correct.

25 **Q. Just a good old-fashioned harassment case**

1 A. Uh-huh.

2 **Q. And it says, 2021 expert opinion and**  
3 **written analysis for a lawsuit against Oregon**  
4 **Patrol, a security company.**

5 A. Right. I have that one. That -- I show  
6 that as March of '21.

7 Do you show any past that?

8 **Q. No. None. And I don't have a date.**

9 A. Okay.

10 **Q. I don't have the March part of it.**

11 A. All right. That tells me where we're at.

12 So in answer to your question, since then  
13 I've written a declaration, given a deposition,  
14 written a declaration, written a declaration, and  
15 written a declaration. So one, two, three,  
16 four -- I'm seeing five cases since the Oregon  
17 Patrol case that you asked me about.

18 **Q. Okay. Starting with the deposition, what**  
19 **kind of case was that?**

20 A. That was a fatal police pursuit Nampa,  
21 Idaho.

22 **Q. Let me ask you this: Is that -- on what**  
23 **I'm looking at, three bullet points ahead of the**  
24 **one I'm looking at, or above it --**

25 A. Uh-huh.

1 **between two people or more?**

2 A. There you go. That's correct.

3 **Q. All right. Well, looking at the list**  
4 **that I have here, I would like to talk briefly**  
5 **about them, the -- starting at the bottom, 2021,**  
6 **are there any new ones since the expert opinion**  
7 **dealing with the -- against the Oregon Patrol, a**  
8 **security company?**

9 A. I better find the deposition I sent to  
10 Attorney Johnson, just so I make sure that we're  
11 looking at the same thing.

12 **Q. And when you said "deposition," did you**  
13 **mean a deposition that you sent Mr. Johnson or --**

14 A. Sorry. No. CV.

15 **Q. I figured that.**

16 **The CV came along with your report, which**  
17 **I think is your declaration, which is dated**  
18 **April 28, 2021, if that helps.**

19 A. Well, I'm not finding the e-mail I sent  
20 him. So here's what I'll do, I'll put my -- I  
21 have my current CV up. And what's the date of the  
22 last case that you see?

23 **Q. Well, what you have is the last bullet**  
24 **point at the bottom before education, is what I'm**  
25 **looking at.**

1 **Q. -- it says, 2021 expert opinion and**  
2 **written analysis on Nampa Police pursuit.**

3 **Is that the same one?**

4 A. That's the same one. And since that time  
5 I gave a deposition, so I updated the date to July  
6 of '21 and listed it as a deposition for a  
7 plaintiff.

8 **Q. And Nampa --**

9 A. In Idaho District --

10 **Q. No. Go ahead. I'm sorry.**

11 A. Idaho District Court for district, and I  
12 have the case number if you need it.

13 **Q. I do.**

14 **That's, Nampa, Idaho outside of Boise; is**  
15 **that where that's at?**

16 A. Correct.

17 **Q. A town of how big?**

18 A. Nampa is not that large. I'm going to  
19 say under 50,000, but I don't know, honestly.

20 **Q. And what is the case name?**

21 A. Case name is Estate of De La Fuente --  
22 and that's D-E, L-A, F-U-E-N-T-E -- versus City of  
23 Nampa, it's filed in Idaho District Court, Third  
24 District. And the case number is CV, as in  
25 Victor, 14-20-01023.

1 **Q. Okay. And you were retained by counsel**  
2 **for the estate of De La Fuente?**

3 A. Yes. De La Fuente.

4 **Q. And who is the attorney that retained**  
5 **you?**

6 A. Evan Mortimer.

7 **Q. Can you spell the last name?**

8 A. M-O-R-T-I-M-E-R.

9 **Q. And where is Evan located at?**

10 A. Ooh, you got me there. Let's see.  
11 (Pause.)

12 **THE WITNESS:** He is with Lister Frost  
13 Injury Lawyers in Boise, Idaho. And Lister is  
14 spelled L-I-T -- S-T-E-R.

15 **BY MR. STACEY:**

16 **Q. Is that the first case that you have**  
17 **handled for that law firm?**

18 A. Yes.

19 **Q. And that deals -- it says in your CV,**  
20 **Expert opinion written analysis.**

21 **So you gave a written expert opinion or a**  
22 **declar- --**

23 A. Right.

24 **Q. You call it a declaration.**

25 **Is a declaration the same as an expert**

1 **opinion?**

2 A. Yes. Well, let me take that back.  
3 Sometimes I might write an expert opinion  
4 for an attorney that wants to know the basics of a  
5 case.

6 What I would call a declaration is a  
7 document now that is actually being submitted to a  
8 court.

9 **Q. Okay. Do you recall who it was and what**  
10 **law firm took your deposition on behalf of the**  
11 **City of Nampa?**

12 A. Let me see here.  
13 (Pause.)

14 **THE WITNESS:** I show M&M -- Mary and  
15 Mary -- I mean that -- for the M, you understand  
16 not Mary, actual name.

17 M&M Court Reporting Service. Phone  
18 number is 208-345-9611.

19 **BY MR. STACEY:**

20 **Q. Do you remember who the attorney was that**  
21 **asked you questions, just like I'm doing this**  
22 **morning?**

23 A. I see.  
24 Reading through the transcript.

25 **Q. So you have the transcript available; is**

1 **that correct?**

2 A. I do.

3 **Q. It should be on the first page, the name**  
4 **of the attorney.**

5 A. That's what I'm looking at.

6 Michael Kane & Associates. And he's  
7 located in Boise. I don't see a phone number. I  
8 can give you an address or an e-mail.

9 **Q. That's all right.**

10 **Is Kane C-A-N-E?**

11 A. K-A-N-E.

12 **Q. Okay.**

13 A. Mr. Michael J. Kane.

14 **Q. Okay. And you have the deposition right**  
15 **there. Would it be possible for you to e-mail**  
16 **that to Mr. Johnson so that I can get that from**  
17 **him?**

18 A. I will.

19 **Q. Can you do that? Thank you.**

20 **And that depo was taken in July of 2021?**

21 A. Let me fire off this e-mail and I'll give  
22 you the date.

23 **Q. Perfect.**

24 **MR. STACEY:** You know, Greg, you could  
25 just e-mail it to me and Ryan, too. Do you want

1 to do that?

2 **THE WITNESS:** Sure. I'm sorry. Your  
3 name again, sir?

4 **MR. STACEY:** My name is Cal, C-A-L,  
5 Stacey, S-T-A-C-E-Y. Can I give you my e-mail  
6 address? Then we could short circuit --

7 **THE WITNESS:** I would rather send this to  
8 Attorney Johnson.

9 **MR. STACEY:** That's fine. Greg just said  
10 he didn't have a problem if you want to send it to  
11 us.

12 **THE WITNESS:** Oh, is he there?

13 **MR. JOHNSON:** Yes. I'm sorry.  
14 David, can you see me?

15 **THE WITNESS:** Now I do.

16 **MR. JOHNSON:** Okay. I'm sorry. I didn't  
17 want you to think we were either Siamese twins or  
18 confused.

19 **MR. STACEY:** I'm dressed much differently  
20 than Mr. Johnson.

21 **MR. JOHNSON:** Well, we've seen that Odd  
22 Couple movie.

23 **MR. STACEY:** Yes, we have.

24 **THE WITNESS:** All right. Now, with his  
25 permission, I will --

1           **MR. JOHNSON:** Yes, you have my  
2 permission.  
3           **THE WITNESS:** All right.  
4 **BY MR. STACEY:**  
5     **Q. I'll give you -- you are going to have to**  
6 **do it for two of us. Also on the screen is**  
7 **Mr. Ryan Heuwinkel.**  
8           **And I apologize. I didn't know that you**  
9 **couldn't see Greg, but I should have figured that**  
10 **out.**  
11           **Greg Johnson is here in Billings with me,**  
12 **side by side, making sure I don't ask you to do**  
13 **stuff without his knowledge and permission.**  
14     A. That's why I was a little surprised, I  
15 thought, Well, you must trust me.  
16     **Q. Yeah. Yeah.**  
17           **And Mr. Ryan Heuwinkel, who represents**  
18 **Dustin Wegner in this case, is also participating**  
19 **by Zoom. I don't know if you can see Ryan.**  
20     A. I can.  
21     **Q. All right.**  
22     A. I can. I didn't know who he was.  
23     **Q. And I will -- I, again, apologize for not**  
24 **giving you the cast of the characters involved in**  
25 **this case.**

1 whatever, but that's pretty impressive.  
2           **THE WITNESS:** Ryan helped me out. He  
3 copied his e-mail into the chat room, and then I  
4 could easily copy and paste it.  
5 **BY MR. STACEY:**  
6     **Q. I would have done that, too. You should**  
7 **have just asked me to.**  
8           **On this case in Nampa, what -- I'll read**  
9 **your deposition, I obviously can't do that right**  
10 **now.**  
11           **Tell me just the short story of what**  
12 **happened.**  
13     A. There was a pursuit in Nampa, Idaho. The  
14 driver was driving a pickup truck, went through  
15 several city streets. The pursuit lasted, oh, I  
16 want to say seven to ten minutes, maybe a little  
17 less. Eventually reached speeds of over a hundred  
18 miles an hour, and the driver that was being  
19 chased hit, I believe it was a Ford Mustang with  
20 two people inside of it, and they were killed.  
21     **Q. Was that the estate of De La Fuente; is**  
22 **that the people in the Mustang?**  
23     A. Yes.  
24     **Q. And what happened to the driver of the**  
25 **pickup?**

1     A. That's okay.  
2     **Q. But my e-mail is the letter C, Stacey,**  
3 **S-T-A-C-E-Y at Stacey, S-T-A-C-E-Y, Funyak,**  
4 **F-U-N-Y-A-K, dot com.**  
5     A. All right.  
6     **Q. And I'll have Ryan give you his e-mail**  
7 **address.**  
8           **MR. HEUWINKEL:** Yes. I just shared it by  
9 the chat, my last name is difficult to spell.  
10           But for the record, I'll say it's  
11 RHeuwinkel@bebtlaw.com. R-H-E-U-W-I-N-K-E-L at  
12 B-E-B-T law dot com.  
13           Thank you.  
14           **THE WITNESS:** All right. I've just sent  
15 that off.  
16           Now, the copy I'm sending you has a few  
17 minor technical changes, so I did a change sheet  
18 after that, but there was nothing substantial that  
19 was changed. It might be a few words here and  
20 there, but nothing that affected the material  
21 evidence of the case.  
22 **BY MR. STACEY:**  
23     **Q. Fair enough.**  
24           **MR. STACEY:** And, Ryan, I have no idea  
25 what you said about putting it on chat or

1     A. He was okay. He went to jail, I believe  
2 he's there still.  
3     **Q. Do you recall what year that incident**  
4 **took place?**  
5     A. Let me bring up my file on that.  
6     **Q. Could it be back in 2014, by chance?**  
7     A. It's possible, but let me take a look.  
8           (Pause.)  
9           **THE WITNESS:** All right.  
10 **BY MR. STACEY:**  
11     **Q. And as you're doing that, was your --**  
12     A. It was --  
13     **Q. -- report attached as an exhibit to that**  
14 **deposition? Your declaration?**  
15     A. I assume so. But I don't know for sure,  
16 but I assume that's normally the case.  
17     **Q. Okay. Go ahead. I interrupted you.**  
18     A. That's okay.  
19           (Pause.)  
20           **THE WITNESS:** The pursuit was July 14th  
21 of 2018. The driver was Joseph Sena, S-E-N-A.  
22 The collision killed De La Fuente and a gentleman  
23 by the last name of Zamudio, Z-A-M-U-D-I-O.  
24           So to answer your question, 2018 was the  
25 pursuit.

1 **BY MR. STACEY:**

2 **Q. And do you recall what time of day that**  
3 **was?**

4 A. It was nighttime.

5 **Q. And nighttime in July would be 10:00 or**  
6 **later, when it was dark?**

7 A. Correct.

8 **Q. And did it involve any alcohol involved**  
9 **in the driving of the pickup?**

10 A. Yes. Mr. Sena was intoxicated, I  
11 understand.

12 **Q. Okay. And what was the reason the**  
13 **pursuit was initiated?**

14 A. It was a traffic violation. Mr. Sena  
15 left the -- a bar, drove out into the street,  
16 stopped for 20 or 30 seconds. I... and then the  
17 pursuit started shortly after that.

18 **Q. And is --**

19 A. Two turn signal violations as well. So  
20 stopping in the roadway briefly and two turn  
21 signal violations.

22 **Q. Coming out of a bar?**

23 A. Yes.

24 **Q. Would it be at closing time, for example,**  
25 **like 2:00 a.m.?**

1 that I would need to go through the notes and  
2 everything.

3 **Q. Okay.**

4 A. It seems that that was -- you know, now  
5 that I think about it, that's a fairly lengthy  
6 pursuit. It might even have been about five  
7 minutes. But to give you the best answer, I would  
8 have to look through the -- the case file and run  
9 the times and everything. But that's -- that's --  
10 I'm going off memory pretty much from July.

11 **Q. I'll ask another favor. I'm assuming in**  
12 **the deposition they attached the -- as an exhibit**  
13 **your declaration, but sometimes that may not be**  
14 **part of what you have sent to us.**

15 **If you can locate your declaration or**  
16 **report, and with Greg's consent here, send it to**  
17 **both Ryan and myself as well, that would be**  
18 **greatly helpful. Because I anticipate I'll get**  
19 **the deposition and it will refer to Exhibit 14,**  
20 **but we won't have a copy of it, and then I'll be**  
21 **circling back to Greg, asking you to send it. So**  
22 **if you can locate that and send it to us at that**  
23 **same e-mail addresses.**

24 A. I have it right here. Let me just make  
25 sure everything looks correct.

1 A. I believe so.

2 **Q. And was it a -- it was a city police**  
3 **officer who was involved?**

4 A. Correct. Nampa Idaho Police Department.

5 **Q. And was it just one officer in the patrol**  
6 **car that was involved in the pursuit?**

7 A. There were two officers involved in that  
8 pursuit, two -- two separate police cars.

9 **Q. That -- thanks.**

10 **I mean, there was an initial pursuit by**  
11 **one officer, a single officer in his patrol car,**  
12 **correct?**

13 A. Right.

14 **Q. Was this within the city of Nampa?**

15 A. Yes.

16 **Q. And then did it escalate into another**  
17 **vehicle pursuing, another police officer**  
18 **pursuing --**

19 A. Right.

20 **Q. -- pursuing in a second --**

21 A. The second police officer joined in the  
22 pursuit, and they pursued together.

23 **Q. And I think you mentioned the pursuit was**  
24 **anywhere between seven and ten minutes in length?**

25 A. I think to give you the best answer on

1 Yeah. Here is a signed copy, eight pages  
2 long. And I will send that to the e-mails that  
3 you just provided.

4 **Q. Thank you.**

5 **(Pause.)**

6 **THE WITNESS:** Okay. And declaration, you  
7 asked for.

8 There you go.

9 **BY MR. STACEY:**

10 **Q. Thank you.**

11 A. You're welcome.

12 **Q. And I'll take a look at it here, maybe at**  
13 **a break.**

14 **But in summary, what -- going back to the**  
15 **facts of the case, two officers are in pursuit.**

16 **Were there like rumble strips put down to**  
17 **stop the vehicle, or anything like that?**

18 A. No. The only thing that stopped that  
19 truck was hitting the Mustang.

20 **Q. Okay.**

21 A. It started in a -- city streets, went  
22 around, you know, residential neighborhood, and  
23 then came out onto a highway. And that's where  
24 the driver, Mr. Sena, accelerated to a much higher  
25 rate of speed. And if I remember right, somewhere

1 around a hundred miles an hour. And it just  
2 obliterated the Mustang when it hit it, and  
3 basically cut those people in half.

4 **Q. Did the pickup cross the centerline and  
5 hit a oncoming vehicle, or what?**

6 A. I believe it was an intersection  
7 accident, and the Mustang was coming from the  
8 right. And I -- I think he ran a red light when  
9 he hit them.

10 **Q. All right. And what is --**

11 A. Because I -- if you need -- that's my  
12 best answer I have at this point.

13 If -- if you would like I can go through  
14 the whole report and make sure that was the reason  
15 for the violation or the -- the reason for the  
16 collision, but I believe he ran a red light.

17 **Q. That's fine. We can defer to your report  
18 later if necessary.**

19 **In summary, what was your opinion in that  
20 case?**

21 A. My opinion was that the officers pursued  
22 Mr. Sena unnecessarily, thereby creating danger  
23 for other people on the road, as evidenced by the  
24 high-speed collision that killed two innocent  
25 people.

1 **Q. Was there a certain point -- let me ask  
2 this: Was the initial pursuit acceptable in your  
3 opinion, the initial reaction and starting the  
4 pursuit?**

5 A. The -- the initial reason for the stop  
6 was definitely valid. So they had some legitimate  
7 traffic stop violations for Nampa, Idaho.

8 At some point, I gave my opinion that  
9 when you realize that Mr. Sena is not stopping, in  
10 fact, he's taking evasive action, he's speeding up  
11 unnecessarily, he's committing further traffic  
12 violation in his effort to get away from the  
13 officers, that's when they should have backed off  
14 the pursuit and stopped.

15 **Q. And did you quantify the point in time  
16 when that should have happened? Did you give an  
17 opinion as to a certain point -- let's say it's a  
18 five-minute pursuit, after three minutes you  
19 should stop? Or did you give any opinion of that  
20 type?**

21 A. No. The attorney and I kind of went;  
22 'round and 'round on that. And he wanted my  
23 opinion as -- as a police supervisor when would I  
24 have called off the pursuit, if I remembered his  
25 question correctly.

1 And I said, Look, I think it's fine if  
2 you drive with lights and siren after the violator  
3 for a while. They might not hear you, they might  
4 have headphones in, their back window might be  
5 blocked, they might not have mirrors in the  
6 vehicle.

7 There -- there is some reason sometimes  
8 when people don't know that the police are behind  
9 them.

10 However, when it seems apparent that  
11 Mr. Sena clearly sees it's the police and then  
12 takes further evasive action, dangerous actions,  
13 breaking the law in order to get away from the  
14 officers, that's the point where discretion needs  
15 to be the better part of valor and you need to  
16 shut that pursuit down.

17 So we did not sit down, both of us, with  
18 a video in front of us and me highlight a  
19 particular point in time when the pursuit should  
20 have been called off.

21 But my general observation of that  
22 pursuit was, when it's clear that the defendant's  
23 taking evasive action and trying to get away,  
24 that's the time to shut that pursuit down.  
25 Especially because it was in residential streets

1 when the pursuit started.

2 **Q. In that Nampa case, it sounds like the  
3 offenses -- and we'll look at the record -- were  
4 like without a signal indicator to make a turn,  
5 those kind of things; is that right?**

6 A. Correct. Minor traffic violations.

7 **Q. At closing time, when the bars are  
8 closing, roughly?**

9 A. Correct.

10 **Q. I assume, however, that there are times  
11 that the pursuit, even though it may result in  
12 that unfortunate result, the pursuit is -- is  
13 warranted to continue pursuing even at high  
14 speeds; is that fair to say?**

15 A. What I look at is, what's the danger to  
16 the public if the violator gets away versus the  
17 danger to the public if the pursuit continues.

18 There may be cases where the society says  
19 it's acceptable for the officer to continue that  
20 pursuit, especially if it's a dangerous felon who  
21 poses serious risk of danger or harm to the  
22 community. Society and me, as a police expert,  
23 might say, Yes, continue that pursuit, we realize  
24 this -- this will be dangerous.

25 But let's say, for example, this person



1 robbed a bank with a firearm, that's someone that  
2 society needs to be protected from, and therefore,  
3 a high-speed pursuit in the -- in chasing a  
4 violator such as that, a dangerous armed felon,  
5 would definitely be a risk that's worthy to take.

6 **Q. Have you found in your career that there**  
7 **are -- I guess, in all 50 states there are times**  
8 **that there are high-speed pursuits by law**  
9 **enforcement?**

10 A. Oh, yes. The Department of Justice keeps  
11 annual statistics on police pursuits across the  
12 United States. So yes, they occur in all 50  
13 states in -- in communities of all sizes.

14 **Q. Here in Billings, Montana, a town of a**  
15 **hundred thousand plus, I can report to you that**  
16 **the Billings newspaper reports pursuits on**  
17 **occasion.**

18 **It wouldn't shock you that there might be**  
19 **one or two pursuits per year that make the news**  
20 **here in this community?**

21 A. That would not shock me.

22 **Q. And that includes Montana Highway Patrol,**  
23 **sheriff's department, police departments, correct?**

24 A. Correct.

25 **Q. How about, have you ever dealt with**

1 **high-speed pursuits on Indian reservations? With**  
2 **dealing with the Bureau of Indian Affairs**  
3 **officers?**

4 A. No, I don't have any experience with  
5 that.

6 **Q. Okay. The pursuit that you had in Nampa,**  
7 **it's still ongoing litigation; is that right?**

8 A. To the best of my knowledge.

9 **Q. You don't know if there is a trial date**  
10 **approaching or not?**

11 A. I have not been notified of one.

12 **Q. In that case, was there an expert**  
13 **retained on behalf of the City of Nampa?**

14 A. I'm not aware.

15 **Q. You have not seen a report or declaration**  
16 **from anybody who might take an opposite view of**  
17 **your opinion in that case?**

18 A. I don't think so.

19 **Q. Okay.**

20 A. I don't remember anything like that.

21 **Q. At least in your deposition, you don't**  
22 **recall being asked any questions about a different**  
23 **report?**

24 A. Correct.

25 **Q. Are you the only expert in regard to the**

1 **pursuit in that case on behalf of the estate?**

2 A. As far as I'm aware, yes.

3 **Q. And Mr. Sena was the driver of the pickup**  
4 **in that case?**

5 A. Yes. S-E-N-A.

6 **Q. And he lived and he was criminally**  
7 **prosecuted, is your recollection?**

8 A. Yes.

9 **Q. In your report, did you assign any fault**  
10 **for the death of Mr. De La Fuente to Mr. Sena?**

11 A. I don't remember if that question was  
12 asked or not.

13 **Q. Do you believe --**

14 A. It certainly --

15 **Q. Go ahead.**

16 A. Certainly, I would think his efforts to  
17 get away from the police certainly played a part  
18 in those two deaths.

19 **Q. And so if you had to say, did Mr. Sena,**  
20 **was he at fault for the death of this individual**  
21 **or two individuals, the answer to that would be**  
22 **yes?**

23 A. Yes.

24 **Q. And -- all right.**

25 **That is the one that I had circled on**

1 **your CV as a Nampa Police pursuit.**

2 **Let's look at some of these other cases.**

3 A. All right.

4 **Q. First of all, off the top of your head,**  
5 **are any of the other cases deal with pursuits by**  
6 **law enforcement?**

7 A. I think that's the only -- this case and  
8 that case, I think, are the only fatality for  
9 police pursuits that I've been retained on.

10 **Q. And are there any that deal with nonfatal**  
11 **injuries, pursuits that you've worked on?**

12 A. Pursuits?

13 **Q. Yeah.**

14 A. I think it was just these two.

15 **Q. Okay.**

16 A. Yes.

17 **Q. Looking at the list that I'm looking at,**  
18 **starting at the top, 2017: Standby for deposition**  
19 **on Tacoma Police traffic collision. Did not**  
20 **testify.**

21 Is that just an accident?

22 A. Yeah. It was an accident. And I believe  
23 they were in arbitration. And so I went and just  
24 as -- as you just read, stood by in the attorney's  
25 office while they arbitrated. And I don't think

1 the arbitrator needed anything from me, and I  
2 believe they were able to settle the case.

3 **Q. Next one, 2017: Expert weapon opinion**  
4 **offered on civil handgun harassment case.**

5 A. Correct.

6 **Q. Next one --**

7 A. Was there a question on that one? Sorry.

8 **Q. No. It doesn't have anything to do with**  
9 **this case, right?**

10 A. Okay. No.

11 **Q. Next one, Expert opinion and report**  
12 **offered on Pierce County Sheriff liability case.**  
13 **What kind of liability case was that?**

14 A. It was a domestic violence suspect that  
15 ended up killing his estranged wife or girlfriend,  
16 I don't remember which. And Pierce County  
17 retained me for an opinion on whether there  
18 were -- was a necessity for the police officers to  
19 make an arrest in that case.

20 **Q. What did you conclude?**

21 A. That there was a necessity to make an  
22 arrest, but when they went to the house and  
23 knocked on the door, there was no answer. So I  
24 remember talking about them not having enough  
25 probable cause to go in the house at that time.

1 **Q. In -- in the Nampa pursuit case,**  
2 **obviously there is a need to pursue people,**  
3 **correct?**

4 A. There can be.

5 **Q. Right.**

6 **You are not -- are you of the opinion**  
7 **that -- that if a crime has been committed and**  
8 **they flee, there should not be a pursuit, kind of**  
9 **a no-pursuit rule no matter what the facts are?**

10 A. As I talked about before, what you really  
11 have to weigh is what is the danger to the public  
12 if the pursuit continues versus the danger to the  
13 public if the offender gets away. So we would  
14 have to look at the individual crime and determine  
15 what information the officers have at the time in  
16 order to then determine do they have enough cause  
17 to continue with that pursuit, or, as I said,  
18 would discretion be the better part of valor and  
19 we'll catch him another day, to have that type of  
20 attitude.

21 **Q. The Pierce County case we were just**  
22 **talking about, was there a claim made that had**  
23 **Pierce County Sheriff's Department made an arrest**  
24 **there wouldn't have been some following subsequent**  
25 **crime and damage occur?**

1 A. That was the allegation, yes.

2 **Q. And I assume in reality, had that person**  
3 **been arrested he or she would not have committed**  
4 **the next event that gave rise to the damage claim**  
5 **on -- at that time?**

6 A. That -- that's a bit of a guess. If  
7 someone is in jail generally they are prohibited  
8 from committing crimes.

9 **Q. There you go.**

10 A. However, you and I both know that people  
11 are released all the time. I'm -- I'm not sure if  
12 it would have stopped the eventual death or not.  
13 It's -- it's hard to say. But at that time, sure,  
14 if someone is in jail.

15 **Q. And I understand that there can be a**  
16 **delay in time.**

17 **But if I understand that case, and I**  
18 **haven't looked at it, but it sounds like had the**  
19 **police arrested this individual, then the**  
20 **arguments was, then that person wouldn't later,**  
21 **within a short period of time, killed someone? Is**  
22 **that what happened?**

23 A. Right. Right.

24 **Q. And did that person kill someone through**  
25 **a domestic abuse-type situation?**

1 A. Yes.

2 **Q. So the deceased, the State was saying,**  
3 **Boy, if you would have put this guy in jail,**  
4 **she -- I'm assuming it's a she -- would not have**  
5 **been killed?**

6 A. Yes.

7 **Q. Right?**

8 **And have you been involved in other cases**  
9 **where claims are made that had police**  
10 **investigated, arrested, acted maybe differently**  
11 **then the end result would have been different, no**  
12 **one killed or injured? Or is this the only one**  
13 **that you have worked on?**

14 A. I'm looking at my CV right now.

15 **Q. I notice that there is a Kent Police,**  
16 **failure to act lawsuit, 2020.**  
17 **Is that --**

18 A. Yes.

19 **Q. Is that a failure to arrest or act**  
20 **leading to a claim?**

21 A. In that one, there was a subject with  
22 mental illness, and he had a weapon in the house.  
23 He had scared and intimidated his family, and they  
24 had left. Various police reports were made, the  
25 Kent Police Department responded to the house.

1 However, they did not have probable cause to enter  
2 the house and take the subject into custody. They  
3 were also worried about the safety of him and  
4 themselves because he was said to be armed in the  
5 house.

6 Later, the subject exited his house and  
7 began shooting at the neighbors' houses. Of  
8 course, at this point, now they have enough  
9 probable cause. Kent Police arrived, the SWAT  
10 team arrived. They surrounded the house, and he  
11 was eventually shot by the SWAT team, and I  
12 believe he was killed.

13 And the claim in that case was the --  
14 the -- how do I state this?

15 The claim was, if Kent Police had  
16 arrested him in the first place, there never would  
17 have been the subsequent shooting of the  
18 neighbors' houses and then the subsequent fatal  
19 shots fired by the SWAT team.

20 And I offered the opinion to plaintiff's  
21 counsel that I did not believe the Kent Police had  
22 probable cause to enter the house at that time.  
23 They knew someone potentially was dangerous in the  
24 house and they knew he was armed, but there wasn't  
25 enough probable cause to go into the house. They

1 mental health was deteriorating.

2 **Q. And it was your opinion that the Kent  
3 Police Department acted properly?**

4 A. Yes, it was.

5 **Q. And I assume you addressed the issue of  
6 whether they had sufficient time to get a search  
7 warrant or an arrest warrant to establish probable  
8 cause?**

9 A. Yeah. Right.

10 **Q. And you concluded that they did not have  
11 a sufficient time, even though days had passed  
12 between the first incident and the death of this  
13 individual?**

14 A. I actually -- if I remember correctly, I  
15 told plaintiff's counsel that they didn't have  
16 enough for a search warrant. It doesn't mean that  
17 you couldn't apply for one, but they didn't have  
18 enough for it.

19 There was no -- his mental health was  
20 deteriorating. He forced his family out, but he  
21 hadn't committed, I don't believe, any crimes of  
22 assault or anything and -- and been violent  
23 towards someone. It was generally his behavior  
24 that made the -- the rest of the family leave the  
25 house.

1 needed something more.

2 And I -- I said they actually made  
3 excellent efforts at trying to apprehend him away  
4 from the house. He apparently would go to the  
5 convenient store down the street fairly often, and  
6 they staked that out and tried to catch him there.  
7 And they tried -- I believe they tried some type  
8 of ruses, too, get him out of the house. And  
9 nothing worked.

10 So I said to them, I said, They have made  
11 a good faith effort to get this guy in custody,  
12 but if they go in the house, he is either going to  
13 shoot at them and they are going to shoot back,  
14 and lives could to be lost.

15 So you have to, again, weigh -- the  
16 police department has a legal responsibility to  
17 make arrests. But we don't want to endanger  
18 unnecessarily in order to make that arrest. There  
19 might be times where discretion is the better part  
20 of valor. So there was a perfect indication of  
21 that.

22 **Q. Sounds like, though, that this took time,  
23 days passed from the initial report --**

24 A. Yeah. This was a multiday incident. He  
25 was spiralling out of control, and -- and his

1 So while certainly this is a concern, it  
2 was more of a mental health concern until he -- at  
3 such time he armed himself with a rifle and  
4 started shooting at the neighbor's house. Now a  
5 mental health issue -- a public health issue now  
6 becomes a police issue.

7 **Q. Is that case still pending, as far as you  
8 know?**

9 A. I have no idea. I -- I wasn't retained  
10 further because my opinion didn't agree with  
11 plaintiff's counsel.

12 **Q. So you were retained by plaintiff's  
13 counsel in that case?**

14 A. No. Well, just for an initial opinion.  
15 They wanted -- they wanted my take on this, what  
16 was my expert opinion. Were the actions of the  
17 Kent Police Department correct? And I said that  
18 they were.

19 **Q. Okay. The next one in your résumé,  
20 expert opinion --**

21 A. I'm going to get something to drink.  
22 Give me just 30 seconds.

23 **Q. Absolutely. You need a break or  
24 anything?**

25 **MR. JOHNSON:** No, I don't, either.

1 (Discussion off the record.)  
 2 **BY MR. STACEY:**  
 3 **Q. While we were off the record, Greg made a**  
 4 **point and -- go ahead and...**  
 5 **MR. JOHNSON:** Oh, yes. David, what I  
 6 talked to Cal about while you were getting  
 7 something to drink, that it was, I think,  
 8 understood by counsel -- all three counsel  
 9 attending and you that your declaration regarding  
 10 the deposition in the City of Nampa case would be  
 11 e-mailed directly to me, to Cal Sweeney, and to  
 12 Ryan Heuwinkel, whether or not it was attached as  
 13 an exhibit to your deposition in that case. But  
 14 it wasn't specified -- or it wasn't part of a  
 15 clear record that I was authorizing you to do so,  
 16 but I do authorize you to do so, just in case  
 17 there is some confusion about that.  
 18 **MR. STACEY:** Thanks, Greg.  
 19 **BY MR. STACEY:**  
 20 **Q. Going back to your résumé, Mr. Sweeney.**  
 21 **What I was going to finish up with, the next one**  
 22 **that I saw near the bottom is expert opinion**  
 23 **against King County in Seattle for not taking**  
 24 **appropriate police action.**  
 25 **Were you retained by King County?**

1 **Q. I was going to say, obviously nothing to**  
 2 **do with police pursuits?**  
 3 A. No.  
 4 **Q. Okay. All right. I've gone through my**  
 5 **CV. I've skipped a couple because they deal with**  
 6 **a security case where a student was assaulted at**  
 7 **the Seattle School District.**  
 8 **Oregon Patrol, a security company. Is**  
 9 **that -- is that in Corvallis? Is that --**  
 10 A. No. That was in Washington State. I  
 11 don't remember the city. No -- Oregon Patrol,  
 12 that must have been in Oregon, obviously. County  
 13 of Multnomah, so yes, that -- that was here in  
 14 Oregon.  
 15 **Q. Okay.**  
 16 A. I don't remember the city, though, right  
 17 offhand. I can look it up. But the basics of  
 18 that case was a homeowners' association, and a  
 19 security guard ended up arresting one of the  
 20 homeowners at one of the homeowners' association  
 21 meeting.  
 22 **Q. What's wrong with that?**  
 23 A. A security guard has --  
 24 **Q. Never mind. I know what's wrong with it,**  
 25 **but homeowners' association should be -- all of**

1 A. What's the date on that one?  
 2 **Q. 2021.**  
 3 A. Do you have a month?  
 4 **Q. No.**  
 5 A. I think I know which one that is.  
 6 Do you have a defendant name?  
 7 **Q. No. I just -- your CV's --**  
 8 A. That one I think the defendant is King  
 9 County.  
 10 Do you have a plaintiff's name?  
 11 **Q. Nope.**  
 12 A. Sorry.  
 13 **Q. That's all right. It's against King**  
 14 **County --**  
 15 A. I'm pretty sure I know what that one is,  
 16 and I'm surprised I'm not seeing it here.  
 17 I think I didn't include it -- I think I  
 18 don't include it on my current CV because it was  
 19 just an opinion offered. There was no legal  
 20 declaration nor deposition. But if I remember the  
 21 case correctly, this was a women with mental  
 22 health issues that was ignored at the King County  
 23 jail, and she subsequently died.  
 24 **Q. Okay. Obvious --**  
 25 A. No, I don't --

1 **them should be arrested, based on my experience in**  
 2 **litigation.**  
 3 **All right. I think we've covered all of**  
 4 **your cases that I can see here. Especially those**  
 5 **with pursuits. And that would include the Nampa**  
 6 **case, and the -- let's see, is that the only**  
 7 **pursuit one?**  
 8 A. Yes. The -- that arbitration one, that  
 9 was not a pursuit, it was emergency driving.  
 10 **Q. Okay.**  
 11 A. A Tacoma Police sergeant hit someone else  
 12 and caused damage to their car. I don't believe  
 13 there was any injuries as a result. But that was  
 14 involving going through a light with lights and  
 15 siren on and hitting another vehicle. But that's  
 16 it.  
 17 **Q. Okay. Moving on to education.**  
 18 **You mentioned earlier you're a Husky,**  
 19 **University of Washington, BA in law, societies,**  
 20 **and justice, 2004 --**  
 21 A. Yep.  
 22 **Q. Is that a one-year program?**  
 23 A. A BA, no. Four-year program.  
 24 **Q. Okay. It just says 2004?**  
 25 A. That's the date of graduation.

1 **Q. So you attended four years at U-Dub?**  
 2 A. Two years at Shoreline Community College  
 3 and then transferred to the U-Dub.  
 4 **Q. For the last two years?**  
 5 A. Yes.  
 6 **Q. And that's where you received your BA in**  
 7 **law, societies, and justice?**  
 8 A. Yes.  
 9 **Q. What is law, societies, and justice?**  
 10 **What does that entail, that degree?**  
 11 A. Studying constitutional law, civil law,  
 12 how the courts work, how the police department  
 13 works in the criminal justice system and civil  
 14 courts.  
 15 **Q. Okay.**  
 16 A. It's a lot of sociology, the study of  
 17 underrepresented groups in society and their  
 18 relation to the law, and who has power and who  
 19 doesn't.  
 20 **Q. Okay. I'm assuming they are not courses**  
 21 **on police pursuits?**  
 22 A. Correct. I don't remember any on that.  
 23 **Q. And of your education, what -- what**  
 24 **formal education under the CV would include police**  
 25 **pursuits, if any?**

1 A. Yes.  
 2 **Q. Tell me what you remember about those two**  
 3 **pursuits, please.**  
 4 A. How much detail do you want?  
 5 **Q. Well, they would be between '87 and '97,**  
 6 **so I don't know what your memory is like. But**  
 7 **that's a --**  
 8 A. It's -- it's actually pretty good, that's  
 9 why I asked.  
 10 **Q. All right.**  
 11 A. The full -- the full story would take us  
 12 several minutes, but I -- or I can give you a  
 13 synopsis.  
 14 **Q. Let's start with a synopsis, and we'll**  
 15 **work backwards if need be.**  
 16 A. All right. The first police pursuit I  
 17 was involved in, I was a brand-new officer,  
 18 probably would have been in 1987, possibly 1988.  
 19 And I saw a motorcycle driving on Lake City Way, I  
 20 believe it had expired tabs. So I pulled in  
 21 behind it and activated my lights and siren. The  
 22 vehicle -- the motorcycle turned right on  
 23 Northeast 95th and accelerated away from me. I  
 24 called out that I was in pursuit of a traffic  
 25 violator.

1 A. Northwestern School of Police Staffing  
 2 and Command. All of my 34 years of police  
 3 experience, 20 of that as a supervisor, that I  
 4 have had a variety of police training classes on  
 5 pursuits, reviewing of pursuits. I have offered  
 6 training to others on proper police procedures  
 7 when it comes to issues of police pursuits.  
 8 **Q. Have you ever been personally involved in**  
 9 **a pursuit?**  
 10 A. Yes.  
 11 **Q. How many times?**  
 12 A. There are two that come to mind early in  
 13 my career. I can't think of any since then. I  
 14 remember two police pursuits.  
 15 **Q. Would that be when you were a police**  
 16 **officer with the Seattle Police Department?**  
 17 A. Yes.  
 18 **Q. And I'm looking at your CV, your career**  
 19 **started in '83 through '87 as a security officer**  
 20 **at Seattle Pacific. And then '87 to '97, a**  
 21 **ten-year period where you are listed as police**  
 22 **officer, Seattle Police Department.**  
 23 **So that's --**  
 24 A. Correct.  
 25 **Q. -- when the two pursuits took place?**

1 We went eastbound on Northeast 95th. The  
 2 motorcycle rider came to an arterial at 35th  
 3 Avenue Northeast and drove right through the red  
 4 light. I wasn't comfortable doing that, so I  
 5 slowed down enough to make sure that there was no  
 6 cross traffic. And, again, my lights and siren  
 7 were going, so I continued eastbound through the  
 8 red light.  
 9 Northeast 95th is a downhill stretch  
 10 after that. And I estimate we were doing 70 to  
 11 75 miles an hour. The motorcycle rider came to a  
 12 street called Sand Point Way, which is a  
 13 T-intersection and a stop sign, so you have to  
 14 stop on Northeast 95th before entering Sand Point  
 15 Way. The motorcycle rider wiped out at the bottom  
 16 of the hill, and I was right behind him, so I  
 17 swerved around him to avoid running him over and  
 18 hit a stop sign. And the stop sign flipped over  
 19 the top of my car and landed behind me. And I  
 20 came to a stop in a dirt lot just east of Sand  
 21 Point Way.  
 22 So there is the -- the basics of the  
 23 case.  
 24 **Q. Okay. Thank you.**  
 25 **Do you remember what time of day this**

1 was?

2 A. Nighttime, but I don't remember the hour.

3 **Q. And was all the streets that you are**  
4 **discussing with me, are they in Seattle proper or**  
5 **a suburb?**

6 A. Yes. Yes, in Seattle.

7 **Q. And, you know, I'm not as familiar in**  
8 **Seattle as this question would suggest, but is**  
9 **that in the area of Seattle which I would call**  
10 **downtown, where there is high-rise buildings and**  
11 **hills and, you know, it's kind of a downtown San**  
12 **Francisco, or not?**

13 A. No. It's in North Seattle, which  
14 certainly is not rural, but it's more spread out  
15 than Downtown Seattle.

16 **Q. Gotcha.**

17 **On the way to --**

18 A. In a residential neighborhood.

19 **Q. And if I understand it, you were at times**  
20 **at speeds of 70 to 75 miles per hour?**

21 A. Correct.

22 **Q. And the motorcyclist just wouldn't pull**  
23 **over. And he wiped out at the T-intersection at**  
24 **the base of a hill?**

25 A. Yes.

1 So I started braking, and I think I would  
2 have been able to stop if it was just me, but then  
3 when he wiped out in front of me, I consciously  
4 remember swerving in order to avoid running him  
5 over. And that carried me into a bit of a slide,  
6 and I -- I ended up stopping across the street  
7 basically.

8 **Q. I assume there was a lot of adrenaline**  
9 **flowing through your body during this pursuit?**

10 A. Yes.

11 **Q. And as you described it, do you remember**  
12 **about how long the pursuit would have lasted,**  
13 **roughly?**

14 A. A couple minutes.

15 **Q. And during that period of time, were you**  
16 **calling into dispatch reporting your position, or**  
17 **anything of that type?**

18 A. Yes.

19 **Q. And was dispatch monitoring you during**  
20 **this process?**

21 A. Yes.

22 **Q. Was there someone telling you what to do**  
23 **and what not to do?**

24 A. I don't recall any input from anyone  
25 else.

1 **Q. Do you know if he was trying to stop at**  
2 **that T-intersection, or do you have any idea?**

3 A. As we came down that hill and approached  
4 Sand Point Way, he would have had to take great  
5 lengths to slow down and stop to then either turn  
6 right or left to go northbound or southbound. And  
7 he was unable to negotiate that, and he ended up  
8 laying the motorcycle down. And then I remember  
9 the bike -- the motorcycle and the driver sliding  
10 on the ground as they -- as they both headed  
11 toward Sand Point Way.

12 **Q. And how far behind were you when this all**  
13 **occurs? He lays it down -- because you are coming**  
14 **to a -- I mean, you are coming to a**  
15 **T-intersection, you have got to start slowing down**  
16 **or you are going to have trouble, too, I assume?**

17 A. Yup. Yeah. We both were. And  
18 thankfully I was in a car. And I was probably  
19 still going too fast to negotiate that turn  
20 safely, but I at least knew the street well enough  
21 to know that it was -- we were coming to a  
22 downhill stretch and I better start applying the  
23 brakes if I'm going to -- because I knew the next  
24 main street coming up, I knew it was Sand Point  
25 Way.

1 **Q. And did any --**

2 A. There might have been, but I don't  
3 remember it.

4 **Q. Did anyone call you off the pursuit?**

5 A. No.

6 **Q. And it sounds like -- did the**  
7 **motorcyclist live or just -- as a result of this**  
8 **accident?**

9 A. Yes. He had several scrapes on his body  
10 from sliding along the ground. But other than  
11 that, he was uninjured, so I was able to handcuff  
12 him. And I can't remember if he had a warrant or  
13 a suspended license, that was basically the reason  
14 he ran. I think it -- I think he had a warrant of  
15 some type. He ended up going to jail.

16 **Q. Is that kind of typical why people run,**  
17 **they may fear that they are on probation or going**  
18 **to have a suspended license, or they are going to**  
19 **have more problems than just whatever the offense**  
20 **was that started it?**

21 A. I would say they basically don't want to  
22 get caught.

23 **Q. And there is a reason they don't want to**  
24 **get caught, which is usually some criminal**  
25 **repercussions?**

1 A. Correct.

2 **Q. So obviously, you missed him when you**  
3 **swerved. You hit the stop sign, it flipped over**  
4 **the back. You got out, you were safe, I take it?**

5 A. Yes.

6 **Q. And you were able to handcuff this guy as**  
7 **he was on the ground or off his motorcycle?**

8 A. Yes.

9 **Q. What was he charged with?**

10 A. Eluding, and I think he had a warrant. I  
11 don't remember what for.

12 **Q. As a result of this pursuit, was there an**  
13 **investigation as to whether you acted properly or**  
14 **not?**

15 A. I don't remember an investigation, per  
16 se, other than a standard traffic collision  
17 investigation. So -- which would generally  
18 involve -- again, I don't remember this, but I'm  
19 telling you in general my -- my best guess as to  
20 what would happen.

21 Another officer would have come out,  
22 taken a report, because the stop sign dented the  
23 top of the car, and the stop sign was broken,  
24 obviously. So he took a report for that. And  
25 generally a supervisor would have come out to both

1 A. Yes.

2 **Q. Still feel that way today?**

3 A. I wouldn't have pursued him today like  
4 that. I think I was a brand-new police officer,  
5 and my attitude was, get him at all costs, and why  
6 is this guy running from me, he doesn't have the  
7 right to do that, let's go get him.

8 That was my attitude at the time. It's  
9 changed since then.

10 **Q. Okay. What was your second pursuit, that**  
11 **you can remember?**

12 A. I actually remember three now.

13 **Q. What?**

14 A. So the second pursuit that I remember,  
15 there was a burglary in progress at the house with  
16 four suspects coming out of the house and loading  
17 stolen merchandise from that house -- the  
18 neighbors calling it in -- into the trunk of a  
19 Honda, I think it was a Civic.

20 And they went northbound on Third Avenue  
21 Northwest. So I was in pursuit as the second car.  
22 I don't remember who was in first position. But I  
23 remember calling out the pursuit. And that's  
24 generally best practice for police, that allows  
25 the driver of the first car in the pursuit to

1 screen the arrest and the officer-involved  
2 collision.

3 **Q. The property damage to your patrol**  
4 **vehicle and the stop sign, that would -- that**  
5 **would create some investigation, wouldn't it?**

6 A. Correct. Again, I don't remember it, so  
7 I'm going off best procedures at that time. I'm  
8 sure it would have been some sort of  
9 investigation, but I don't really remember it.

10 **Q. And based upon that answer and your**  
11 **previous answer, I assume that there was no**  
12 **discipline administered to you? You weren't**  
13 **written up for the -- the pursuit or --**

14 A. No.

15 **Q. There was nothing negative on your record**  
16 **for what you did that day?**

17 A. That's correct.

18 **Q. Do you know if there was any lawsuit**  
19 **filed by the motorcyclist claiming that you**  
20 **shouldn't have pursued him?**

21 A. I don't believe there was. I'm not aware  
22 of any.

23 **Q. And I assume, because no one criticized**  
24 **the pursuit, you were involved in it, you felt it**  
25 **was an appropriate pursuit?**

1 maintain best visual control and control of the  
2 vehicle as they follow the violator.

3 **Q. Mr. --**

4 A. While me, in the second car, would  
5 call --

6 **Q. Can I interrupt?**

7 A. Yeah.

8 **Q. Because -- before you go too far.**

9 **You said you "called out"? Is that what**  
10 **you said? I didn't hear the term.**

11 A. Yeah. I was calling the pursuit. So  
12 that's a term that would mean I am giving our  
13 directions and where we are headed and what  
14 streets we're crossing, things like that. So I am  
15 in contact with dispatch.

16 **Q. And you broke up just at the very**  
17 **beginning of that answer. You said you were -- is**  
18 **it "calling out," is that the term?**

19 A. Yeah. I was calling out the pursuit.

20 **Q. All right.**

21 A. C-A-L-L-I-N-G, calling.

22 **Q. Okay.**

23 A. And to me, that would mean I am the one  
24 broadcasting with the dispatch what we are doing  
25 in our pursuit.

1 **Q. Did this pursuit take place at night?**

2 A. No. This one was in the afternoon.

3 **Q. And you and one other vehicle were in the**  
4 **pursuit?**

5 A. Yes. As the number one was the other  
6 driver, me as number two. And then several other  
7 police cars joined in behind us. I don't remember  
8 how many. I would say in total probably four or  
9 five police cars.

10 **Q. All right. And I interrupted. So**  
11 **you're -- call in. You're the second in pursuit.**  
12 **You are chasing a Honda Civic.**

13 **Go ahead and tell the rest of the story.**

14 A. It's kind of a funny one.

15 We went northbound on Third Avenue  
16 Northwest. The city -- the Seattle city limits  
17 are at 145th. So as you cross 145th, you now  
18 enter a private property. And it's a housing  
19 complex, a very rich and elite housing complex.  
20 And I remember driving into this complex, and they  
21 had a security guard booth outside. And, of  
22 course, here we come, lights and siren, chasing  
23 these burglars. And the security guard in there  
24 puts the -- the little arm down in order to make  
25 them stop. And, of course, they bust right

1 **Q. So it's -- it sounds like a gated**  
2 **community?**

3 A. Right.

4 **Q. With a guard shack with those little arms**  
5 **there, correct?**

6 A. The Highlands. Yeah. The Highlands.

7 **Q. How is that -- how is it spelled?**

8 A. H-I-G-H-L-A-N-D-S.

9 **Q. Okay.**

10 A. And that's the Seattle Golf Club.

11 And if you drive northbound on Third  
12 Northwest past 145th you enter the Highlands and  
13 the Seattle Golf Club.

14 **Q. So you and how many other vehicles**  
15 **followed this vehicle into that residential area,**  
16 **would you say?**

17 A. I would say we had five. And we didn't  
18 really -- we didn't get into the residential area.  
19 The gate stopped the Honda from entering.

20 So he basically drove through the country  
21 club, the golf course, drove through the security  
22 guard gate, so to speak.

23 **Q. And where the wedding was in progress?**

24 A. Right.

25 **Q. What kind of speeds were involved in this**

1 through that.

2 I remember then we drove past the country  
3 club meeting hall there, and there was a wedding  
4 party out on the steps taking pictures. I'm sure  
5 to this day they still remember the police pursuit  
6 that went right through their -- their wedding  
7 photos.

8 It ended at a gate that you had to access  
9 with a key card. So at that point the vehicle  
10 stopped, and the burglars got out. We were able  
11 to grab three of them fairly rapidly. And then as  
12 we're wrapping it up and we're doing our reports  
13 and screening it with a supervisor, we look out  
14 onto the golf course where we're at, and here  
15 comes a guy that was clearly not a golfer, walking  
16 through the golf course trying not to be noticed.  
17 And we quickly recognize who he was, and the  
18 fourth guy was apprehended. So we got all four  
19 burglars.

20 **Q. When they entered that residential**  
21 **area -- and I've kind of got a picture in my**  
22 **mind -- and actually, do you recall what golf**  
23 **course it was that --**

24 A. Yeah. I -- I was -- I'm forgetting the  
25 name, so I'm going to look it up right here.

1 **chase?**

2 A. I seem to remember 70 to 75.

3 **Q. When that Honda went through the gate and**  
4 **knocked that arm down, would they be going those**  
5 **kind of speeds?**

6 A. No. They had slowed at that point. I  
7 would say they were probably doing 30 to 40,  
8 possibly.

9 **Q. Okay. And do you recall if they**  
10 **accelerated once they got through the gate and --**

11 A. No. The -- it narrows, and there is a  
12 parking lot there. And really, everything kind of  
13 ground to a halt when they -- they came to that  
14 gate that actually enters the Highlands area where  
15 the houses are.

16 **Q. And as a result of that pursuit, were**  
17 **there any investigation into whether or not the**  
18 **pursuit was proper, any discipline administered,**  
19 **or anything like that?**

20 A. I don't remember any type of  
21 investigation from that. There might have been,  
22 but I couldn't tell you at what point Seattle went  
23 to a more regulated system, for lack of a better  
24 term, to where we investigated a lot more than  
25 when I started in 1987.



1 So at this point I couldn't tell you what  
2 type of investigation.

3 I am guessing -- my best guess is that  
4 all we did was write a report about catching the  
5 burglars. We would have mentioned the driving in  
6 that report. But because no one was injured and  
7 there was no collisions, no property damage, other  
8 than the -- the gate arm, but we didn't cause  
9 that, so I don't think anything else was  
10 investigated, that I remember.

11 **Q. And obviously, if -- if they had hit  
12 somebody in the wedding procession and somebody  
13 was injured or killed, then that would have  
14 generated more investigation and more reports, I  
15 assume?**

16 A. Absolutely.

17 **Q. Yes.**

18 **And that time frame was, again, 1987 to  
19 '97 when this pursuit took place?**

20 **Do you recall, the first one was like  
21 '87/'88? Do you --**

22 A. Right.

23 **Q. Any rough time frame for this one?**

24 A. I would put this one in the early '90s.

25 **Q. All right. How about your third pursuit?**

1 A. The third one, we had a series of  
2 robberies that were taking place at 7-Elevens late  
3 at night. And there was an armed suspect or  
4 suspects, I can't remember if it was one or two,  
5 but they were going into 7-Elevens and basically  
6 sticking them up with a gun.

7 I had a 7-Eleven in my district at that  
8 time. And I remember backing my car into kind of  
9 a -- a visual area where I could see and somewhat  
10 conceal my car.

11 I saw a '67 Mercury Cougar southbound on  
12 Roosevelt Northeast drive slowly past the  
13 7-Eleven. And I could see, there was two people  
14 inside and they were looking intently at the  
15 7-Eleven. I -- this was fairly early in my career  
16 as well. I would say this was in the --  
17 probably -- probably 1988, maybe even 1987. I did  
18 not have enough experience at that point to  
19 realize just because you are driving past a  
20 7-Eleven looking in suspiciously didn't mean that  
21 you robbed the 7-Eleven.

22 So in any case, I pulled out after them  
23 and activated my lights. They turned off their  
24 headlights, made a series of turns through the  
25 residential neighborhood, and then the pursuit

1 really started when we went northbound on Fifth  
2 Avenue Northeast.

3 And, again, working in North Seattle,  
4 this was a pursuit that lasted, I would say,  
5 probably three -- probably four or five minutes.  
6 It went northbound on Fifth Avenue Northeast, and  
7 then, again, it went past 145th, which is the  
8 Seattle city limits. So now you are in King  
9 County sheriff's area. It's now Shoreline -- city  
10 of Shoreline, but I think at that time it was not  
11 incorporated.

12 So we went out into the county. They  
13 came to a stop somewhere on -- somewhere around  
14 probably 155th and Fifth Northeast. I don't  
15 remember the streets.

16 I parked my car. They -- they ended up  
17 on an incline driveway of some sort. And the  
18 driver and the passenger both got out of the car,  
19 and I was trying to determine which one to chase.  
20 Thankfully, they both got down on the ground when  
21 I gave them commands and was able to arrest both  
22 of them. And by this time some backup had  
23 arrived.

24 They had -- one guy was wanted for  
25 robbery, and they had a lot of stolen things from

1 burglaries, electronics I remember, in the trunk  
2 of the car. But to this day, I can't tell you if  
3 they actually were going to rob that 7-Eleven or  
4 not. I think they were looking for a target, but,  
5 again, in my inexperience -- again, you don't want  
6 a store to be robbed, but I should have realized  
7 that a crime has not yet occurred.

8 So -- but anyway, that was the reason for  
9 the pursuit and eventual arrest. I think it was  
10 a -- I think it was a good arrest. I'm -- I'm  
11 glad I was able to arrest them, but to this date,  
12 I still don't know if they actually would have  
13 robbed that 7-Eleven or not. They didn't even go  
14 into the parking lot. So I can't say that they  
15 definitely were, but they were definitely two  
16 individuals that were looking to victimize society  
17 in one way or another.

18 **Q. Bad guys, is what you are telling me?**

19 A. That's right.

20 **Q. So if I understand it, you saw them drive  
21 by. They had not committed a crime. They looked  
22 suspicious as hell. You went out behind them,  
23 activated your lights.**

24 **How about siren, do you remember that?  
25 Or just the lights?**

1 A. It was lights initially. And I believe  
2 as they went to the next arterial -- the store was  
3 on Roosevelt. The next arterial west of there is  
4 Fifth Avenue Northeast. When they got to Fifth  
5 Avenue Northeast and they really accelerated, at  
6 this point I realized they were trying to get  
7 away. So then from there on it was lights and  
8 siren.

9 **Q. So when they accelerated for -- and the  
10 chase goes for four to five minutes is --**

11 A. Uh-huh.

12 **Q. -- what I recall. What kind of speeds  
13 were you traveling on this one?**

14 A. We got up to around a hundred miles an  
15 hour, 95 to a hundred, I remember.

16 **Q. And they at one time -- initially they  
17 turned their headlights off and then --**

18 A. Yes.

19 **Q. -- then they turned them on, and is that  
20 when you started really going at high speeds?**

21 A. Correct. They went through some of the  
22 neighborhood streets that the -- the slower  
23 residential streets in between Roosevelt and Fifth  
24 Avenue Northeast. They tried to lose me, again  
25 turned the lights off for a while and then turned

1 **there two lanes going each way on that?**

2 A. Right. It's -- it's two lanes in each  
3 direction with a parking lane on both sides.

4 **Q. And is it controlled by traffic control  
5 devices at various locations?**

6 A. Yeah. There would have been a light at  
7 Northgate Way. There would have been a light at  
8 130. And there would have been a light at 145.

9 And I don't remember if they blew red  
10 lights or not, or if they were green, I couldn't  
11 tell you. And I honestly don't remember how I  
12 navigated those streets, whether I had to -- I  
13 know I had lights and siren on. My -- I honestly  
14 don't remember. I -- I don't know what the light  
15 conditions were.

16 **Q. That's fine.**

17 **And is that a busy -- Fifth Avenue  
18 Northeast, is that a busy street?**

19 A. It's -- it's an arterial, and it carries  
20 a lot of traffic for Northgate Mall and people  
21 that live in the residential area of North  
22 Seattle.

23 At that time of night, I remember being  
24 somewhere around 1:00 or 2:00 a.m. and traffic was  
25 pretty light.

1 them back on. And by the time they got to Fifth  
2 Avenue Northeast, that's when they really  
3 accelerated. I would say that -- that the pursuit  
4 commenced at that point. Prior to that it was  
5 just an attempt to make a traffic stop.

6 **Q. And when they had their lights off, were  
7 they going 30, 40, 50 miles an hour, or not?**

8 A. Not that fast, no. I would say more  
9 residential speeds.

10 **Q. Okay.**

11 A. And -- and I was trying to determine,  
12 okay, do they not know I'm here? I hadn't  
13 activated my siren, so I'm just following them  
14 with the lights on. And they made a couple turns,  
15 and then when they got out on Fifth Northeast,  
16 that's, like I say, when the pursuit officially  
17 began. And they really got on the gas and went  
18 northbound, and that's when I went lights and  
19 siren. And that -- and then Fifth Avenue  
20 Northeast is an arterial, it borders Interstate 5  
21 in Seattle. And that's when we eventually -- when  
22 we crossed, oh, I would say Northgate Way. Then  
23 we probably reached again, like I say, 95 to a  
24 hundred miles an hour.

25 **Q. Fifth Avenue Northeast is it a -- is**

1 **Q. As a result of this pursuit and the  
2 arrest, were there -- again, same deal, was there  
3 an investigation done concerning the pursuit, just  
4 the pursuit part?**

5 A. I remember notifying an acting sergeant,  
6 that's an officer that's working as a sergeant for  
7 that night, he wasn't an official sergeant. And I  
8 remember screening the arrest with him and told  
9 him about the pursuit. I -- I doubt there was a  
10 pursuit investigation. I don't think we had that  
11 policy at the time, but I couldn't swear to it.

12 **Q. Do you recall in the criminal case if  
13 these guys were convicted, or did they argue that  
14 you lacked probable cause to even initiate the  
15 pursuit?**

16 A. I don't remember this ever going to  
17 criminal trial. In fact, I know that it didn't go  
18 to criminal trial. At least as far as where I was  
19 called as a witness. You know, there -- there  
20 could have been, you know, a plea. I'm not sure.  
21 I -- I really don't know what happened with it  
22 after the arrest.

23 But I remember, like I said, one guy had  
24 warrants for his arrest. He was a felon. I think  
25 he was wanted out of Oregon, if I remember right.

1 And he went to jail.

2 I think the passenger -- I honestly don't  
3 remember if we arrested him or not. There was the  
4 stolen items in the trunk. I don't know if we  
5 were able to pin that on him or not. I don't  
6 remember.

7 I remember the driver being in the most  
8 trouble because he, obviously, was the one trying  
9 to get away. He had the warrants for his arrest.

10 I think -- I think I covered the stolen  
11 items in the report, but there was no charges for  
12 that, if I remember right.

13 **Q. Mr. Sweeney, do you recall if there was**  
14 **any discipline administered to you for the**  
15 **pursuit -- your pursuit activities?**

16 A. No.

17 **Q. And -- and I take that to say, no, there**  
18 **wasn't any disciplinary proceedings, correct?**

19 A. Correct.

20 **Q. And that pursuit took place after the**  
21 **first pursuit that we talked about earlier, or do**  
22 **you remember?**

23 A. I seem to have -- I seem to remember  
24 having a little bit more police experience than  
25 the -- with the motorcycle pursuit, but I still

1 remember being very new in my career. And as you  
2 can guess, when you are fresh out of the academy  
3 and you have completed your field training  
4 program, there is a lot you don't know about  
5 policing. There is a lot to learn. It -- it's  
6 a -- there is a lot of on-the-job training that  
7 occurs being a police officer.

8 So in answer to your question, I did not  
9 have a lot of experience at the time. I -- I am  
10 sure it was '87 or '88.

11 **Q. I assume at the time you felt that it was**  
12 **appropriate to pursue these people?**

13 A. I did.

14 **Q. Despite the fact that they hadn't**  
15 **committed a crime, correct?**

16 A. Yeah, exactly.

17 **Q. Okay. Is this one you still feel that**  
18 **way, it was an okay pursuit?**

19 A. No. If put into modern times, this would  
20 not be an authorized pursuit. At the time it was.  
21 But now, no, I would not make this pursuit.

22 **Q. And when you say "modern times," you are**  
23 **talking about now?**

24 A. Correct.

25 **Q. 2022 and we're taking your deposition?**

1 A. Right.

2 **Q. Let's take a quick break so people can**  
3 **stretch, and then we'll come back and finish you**  
4 **up, okay?**

5 A. All right. How long?

6 **Q. Five minutes?**

7 **MR. STACEY:** Is that okay, Jackie, for  
8 you?

9 **THE COURT REPORTER:** Perfect.

10 (A recess was taken.)

11 **BY MR. STACEY:**

12 **Q. Mr. Sweeney, we took a break. We had**  
13 **just been discussing your CV, Exhibit 1. And**  
14 **specifically the expert witness cases, education,**  
15 **and worked our way through essentially your three**  
16 **pursuits that you can remember today that took**  
17 **place in the 1987-1997 time frame when you were a**  
18 **police officer with the Seattle Police Department.**

19 **Looking at your résumé, starting above**  
20 **that, it's, Field Training Officer. I see that as**  
21 **a heading.**

22 A. Right.

23 **Q. And then DUI enforcement officer SPD**  
24 **traffic section, special deployment officer, a**  
25 **patrol sergeant to the SPD West Precinct -- SPD,**

1 **meaning Seattle Police Department, I assume?**

2 A. Correct.

3 **Q. Then 2003 through 2005, a detective**  
4 **sergeant, internal investigation section?**

5 A. Yes.

6 **Q. And that took us to 2005.**

7 **Is that -- no. Next page. I see you**  
8 **were a sergeant with the SWAT team, patrol**  
9 **sergeant SPD North Precinct, operations lieutenant**  
10 **North Precinct through 2016?**

11 A. Yes.

12 **Q. A detective sergeant SPD human resources.**

13 **And then on the first page of my résumé,**  
14 **we have you force investigation lieutenant East**  
15 **Precinct?**

16 A. Yeah.

17 **Q. And then a watch commander, 2019 through**  
18 **March of 2021.**

19 A. Yes.

20 **Q. Are you still a watch commander with the**  
21 **Seattle Police Department?**

22 A. No. I retired in 2021 from the City of  
23 Seattle and took a job as the second command. I'm  
24 a lieutenant here at Oregon State University  
25 Police Department.

1 **Q. Would that be in April of 2021, roughly?**

2 A. Yeah. March of 2021, sure.

3 **Q. So all of those positions that I just**  
 4 **went through, in looking at your résumé, many of**  
 5 **them appear to be dealing with administrative**  
 6 **issues, human resource issues, things that, I**  
 7 **guess I would say, are related to police work but**  
 8 **not like pursuits; is that fair to say?**

9 A. No. I would disagree with that.

10 **Q. Okay.**

11 A. As an operations lieutenant, as the  
 12 administrative use of force lieutenant, as a  
 13 patrol sergeant, as a SWAT sergeant. Basically in  
 14 all my roles as a supervisor, let's put it this  
 15 way, for the last 20 years have been spent  
 16 reviewing the work of others.

17 So while I'm not involved in pursuits  
 18 myself, per se, I am involved from a review  
 19 standpoint, looking at police pursuits and use of  
 20 force and a variety of other -- you name the  
 21 police procedure and I'm probably involved in  
 22 reviewing the work of others and making  
 23 recommendations on whether someone was within the  
 24 law and within department policy.

25 **Q. Okay. I think I understand your answer,**

1 that there would have been some pursuits  
 2 occasionally in my materials that I presented for  
 3 a case.

4 **Q. And let's kind of -- rather than go**  
 5 **through each of these positions, and some overlap**  
 6 **in time. They look like you -- you know, let's**  
 7 **just say in law enforcement up to March of 2021 is**  
 8 **when you then went to Oregon State?**

9 A. Right.

10 **Q. Correct?**

11 **So up to that point in time, as a**  
 12 **supervisor, whatever the capacity might be, if I**  
 13 **understand it, there would be times in reviewing**  
 14 **reports, they may from time to time include a**  
 15 **pursuit as part of the report?**

16 A. Correct.

17 **Q. Were you ever just assigned to review**  
 18 **pursuits to determine whether they are reasonable**  
 19 **or not?**

20 A. Yes. Particularly as the operations  
 21 lieutenant and the administrative lieutenant.

22 **Q. Okay. And that --**

23 A. For both the East and the North  
 24 Precincts. So from roughly -- I was promoted  
 25 lieutenant in 2015. So -- oh, and as a watch

1 **but let me ask you this: Like 2005 to 2010**  
 2 **detective sergeant SPD human resources --**

3 A. Yes.

4 **Q. -- would that involve in any way**  
 5 **reviewing pursuits of others?**

6 A. No.

7 **Q. Okay. Then 2003 through 2005, detective**  
 8 **sergeant SPD internal investigation section.**

9 **Would that involve pursuits, review?**

10 **Review of pursuits?**

11 A. I believe that there were some cases that  
 12 came to me as an internal investigations detective  
 13 sergeant, that some of them did involve pursuits.  
 14 In general, and I -- I can't name you any  
 15 specifics, I don't remember any specifics, I'm  
 16 going off of generality here. But in general,  
 17 what would have occurred after that was a  
 18 complaint about an officers's conduct. And  
 19 sometimes in reviewing those cases, I think there  
 20 were times that I would have also included the  
 21 pursuit information, if a -- if a pursuit was  
 22 involved.

23 So -- but in answer to your question,  
 24 that would not have been my primary purpose. But  
 25 I seem to have a general -- general recollection

1 commander, too. So basically as a lieutenant from  
 2 2015 to 2021, I would have had regular review of  
 3 pursuits.

4 **Q. And do you have any idea, roughly, how**  
 5 **many -- this -- you are going to have to help me**  
 6 **out. I assume that there is reviews that you have**  
 7 **done in which pursuits were involved but the**  
 8 **pursuit really wasn't an issue?**

9 A. In Seattle, a pursuit always gets its own  
 10 investigation that then becomes part of the  
 11 overall larger investigation.

12 **Q. Okay.**

13 A. Whether it's a shooting, an internal  
 14 investigation like a police misconduct issue, or  
 15 just a general review for use of force. All those  
 16 different circumstances could involve a pursuit  
 17 review, which in and of itself is a separately  
 18 reviewed incident that is then combined sometimes  
 19 with other reports, depending on what was the  
 20 nature of the police call at the time.

21 **Q. Is every pursuit that's -- Seattle's**  
 22 **Police Department involved in, is it reviewed?**

23 A. Yes.

24 **Q. And then it --**

25 A. That's --

1 **Q. Go ahead.**  
 2 A. I seem to remember our pursuit policy  
 3 changing somewhere in the early 2000s, where we  
 4 would no longer pursue for traffic violations or  
 5 misdemeanors, and it became dangerous felons only.  
 6 **Q. Okay. And who reviews the pursuits for**  
 7 **the Seattle Police Department? Is there a team?**  
 8 A. Variety --  
 9 **Q. Is there a team of people that do it?**  
 10 A. The sergeant will have an initial review.  
 11 The lieutenant will have a review of the pursuit  
 12 and of the sergeant's pursuit. And then there was  
 13 some type of board that I did not serve on. It  
 14 primarily functioned out of the traffic unit. And  
 15 I believe they reviewed all police collisions and  
 16 pursuits, kind of as a collective. It's not that  
 17 they were delving into the details of each  
 18 pursuit, but more of a -- as an overall advisory  
 19 capacity.  
 20 **Q. Okay. Now, the pursuit policy in**  
 21 **Seattle, it's changed over times? Is what I --**  
 22 A. Yes.  
 23 **Q. And Seattle would be a city of what**  
 24 **population? In the last ten years -- ten years**  
 25 **ago.**

1 **pursuits as contrasted maybe with a town of**  
 2 **20,000? Does it make any difference?**  
 3 A. I'm sure there are differences between a  
 4 large jurisdiction and a small jurisdiction. In  
 5 fact, I think I was -- if you don't mind me  
 6 pulling it up, I was reviewing US Department of  
 7 Justice on police pursuits. And they talked about  
 8 that very thing that you want, if you would like  
 9 me to find the information.  
 10 **Q. Well, we can come back to it. But off**  
 11 **the top of your head, your opinion as an expert,**  
 12 **does it make any difference how big the city is?**  
 13 A. There are more pursuits per capita, I  
 14 believe, for smaller jurisdictions than there are  
 15 for the larger jurisdictions. You are likely to  
 16 engage in pursuit in that smaller jurisdiction, it  
 17 seems.  
 18 **Q. Why do you think that? Do you have an**  
 19 **opinion for that?**  
 20 A. It is my experience that sometimes the  
 21 smaller departments don't have the same level of  
 22 police supervision, the same level of training,  
 23 the same level of report writing, and the same  
 24 interaction with the criminal justice system. You  
 25 know, interacting with attorneys and judges and

1 A. Ten years ago, in the mid 600,000s,  
 2 650,000.  
 3 **Q. And that's grown since then, I assume?**  
 4 A. Yeah. I understand it's approaching  
 5 750,000.  
 6 **Q. And I notice that when you were like**  
 7 **watch commander of the North Precinct, that would**  
 8 **be a community of 235,000 people.**  
 9 A. Yeah. We had a large population that --  
 10 that lived and worked in the North Precinct, as I  
 11 call it. So there is five precincts in Seattle:  
 12 North, South, East, West, and Southwest which is  
 13 also called West Seattle. So these geographic  
 14 regions. North Seattle, that precinct is the  
 15 biggest and serves the largest community in  
 16 Seattle.  
 17 **Q. In police pursuits, is it -- does it make**  
 18 **any difference if you are in a city of 700,000**  
 19 **versus a city of 10,000 people?**  
 20 A. Does it make any difference?  
 21 **Q. Yeah. Police pursuits, which we -- we're**  
 22 **going to be talking about. But does the**  
 23 **population base where the pursuit takes place,**  
 24 **like King County, Seattle, town of 235,000 or**  
 25 **600,000, is -- is that factored in, in any way, in**

1 prosecutors.  
 2 Now, that being said, I -- I don't want  
 3 to disparage the smaller agencies. Sometimes they  
 4 don't have the funds, or they don't have the  
 5 number of officers involved in order to perform  
 6 extensive reviews.  
 7 As I talk about in Seattle, there is a  
 8 large number of people that get involved in  
 9 something like this. And it's my experience that  
 10 there is that greater level of accountability.  
 11 I don't have a lot of experience with  
 12 super large agencies. So, you know, would the Los  
 13 Angeles Police Department view Seattle as kind of  
 14 backwards in its thinking or lacking in some areas  
 15 of -- of procedural justice? I don't think so,  
 16 but it's possible.  
 17 So I don't want to view this answer as  
 18 disparaging to those smaller departments, but  
 19 sometimes the level of scrutiny certainly doesn't  
 20 exist as it does with a larger department.  
 21 **Q. Thinking out loud, in Seattle when a**  
 22 **pursuit takes place, you have got a lot of people,**  
 23 **a lot of traffic. You have streets, hills. You**  
 24 **have a lot -- a lot of action going on, so to**  
 25 **speak.**

1 **In a smaller community, you would lack**  
 2 **the number of people, lack the number of vehicles,**  
 3 **maybe not have the same geographical problems.**

4 **Does that -- does that -- have you**  
 5 **factored that into your opinions in this case, the**  
 6 **difference between Hardin, Montana and Seattle?**

7 A. I think certainly when you look at  
 8 driving in Seattle at high speed versus driving in  
 9 Montana, a state known for, at least in the past,  
 10 not having much of a speed limit, depending on  
 11 your highway, there could certainly exist  
 12 differences of driving through an area of higher  
 13 residential density as opposed to those of lower  
 14 density.

15 **Q. Okay. In your CV, you're currently a**  
 16 **lieutenant, Oregon State University Police**  
 17 **Department.**

18 **What -- is that a -- I call it campus**  
 19 **police. Would that be another term for it?**

20 A. Correct. The Oregon State University had  
 21 a contract with Oregon State Police that ended in  
 22 December of 2020. And at that point, the  
 23 university decided to form their own police  
 24 department and the chief and I both came from  
 25 Seattle Police Department, as a matter of fact.

1 So she was the chief, I was her second in command.  
 2 And so since -- she started a little bit before  
 3 than I did, but we both started in 2021, and since  
 4 then we're trying to add more officers, more  
 5 sergeants, public safety officers which are campus  
 6 security officers. So I think that answers your  
 7 question.

8 **Q. It does.**

9 **Is your jurisdiction basically the Oregon**  
 10 **State University campus?**

11 A. Correct.

12 **Q. And how many officers do you currently**  
 13 **have?**

14 A. Right now we have four officers, three  
 15 sergeants, a lieutenant, and a chief. No. We  
 16 have five officers, I think we hired -- we just  
 17 hired another one. Five officers, three  
 18 sergeants, a lieutenant, and a chief.

19 **Q. Lieutenant, being you?**

20 A. Yes.

21 **Q. And the chief, being your -- from Seattle**  
 22 **as well?**

23 A. Correct.

24 **Q. And how many patrol vehicles does Oregon**  
 25 **State have?**

1 A. We have seven police vehicles, and four  
 2 campus security trucks.

3 **Q. Have you had any pursuits on campus?**

4 A. No.

5 **Q. You also are an expert witness, DT**  
 6 **Sweeney Consulting, LLC, 2017 through the present?**

7 A. Yes.

8 **Q. That's how you are acting in this case?**

9 A. Yes.

10 **Q. And we've talked about some of the work**  
 11 **that you have done as a consultant.**

12 **Do you advertise that?**

13 A. I have a website, and I'm listed on, I  
 14 believe, three different expert witness services.

15 **Q. Okay. Now, do you have any other**  
 16 **occupations that keep you somewhat busy at the**  
 17 **present time?**

18 A. I have my real estate license in  
 19 Washington, but that's a very limited -- I use it  
 20 only on a limited basis. So I would -- I don't  
 21 know if I would call it -- it's definitely not  
 22 full time, it's -- it's maybe even less than part  
 23 time. So I have my real estate license in  
 24 Washington. But I do sell a few houses each year.

25 **Q. I saw a YouTube interview that you had**

1 **with some fellow who -- I can't even remember his**  
 2 **name. But he was -- he's somebody that you had**  
 3 **listened to and decided to get your real estate**  
 4 **license; is that correct?**

5 A. Correct.

6 **Q. And then you -- I think the article was**  
 7 **that you had bought some multifamily units?**

8 A. Correct.

9 **Q. And made a ton of money, as I recall the**  
 10 **article, right?**

11 A. I don't know about a ton. I was able to  
 12 use my real estate license in order to acquire  
 13 rental properties. So I have them professionally  
 14 managed, so I wouldn't call it a career, it's just  
 15 property ownership, I would say, at this point.

16 **Q. Is that in Washington that you do that?**

17 A. Yes.

18 **Q. Not in Oregon?**

19 A. No.

20 **Q. All right. Let's move on to your**  
 21 **opinions in this case, and specifically your**  
 22 **declaration. And a few questions on that, of**  
 23 **course. We've marked that as Exhibit 2, for the**  
 24 **record.**

25 **Do you recall when you got contacted in**

1 regard to this case?  
 2 A. It looks like April of 2021.  
 3 Q. And I assume that was by Mr. Johnson  
 4 getting ahold of you?  
 5 A. Yes. Yes.  
 6 Q. And looking at Exhibit 2, if we could go  
 7 to page 2, paragraph 4. I believe it summarizes  
 8 the information that you have reviewed in this  
 9 case?  
 10 A. Yes.  
 11 Q. And do you know if you have reviewed  
 12 anything more since signing your declaration on  
 13 April 28, 2021?  
 14 A. Yes. Since that time, Mr. Johnson sent  
 15 me DVDs and CDs that I wasn't able to review at  
 16 the time of my declaration, but I have been able  
 17 to listen and watch since then.  
 18 Q. Right.  
 19 As I read through the material that you  
 20 put together in order to submit your declaration  
 21 under oath as to your opinions, was it -- is it  
 22 correct that you had not seen the video of the  
 23 pursuit?  
 24 A. Correct.  
 25 Q. And you had not heard the conversation

1 A. Yes.  
 2 Q. And, of course, you had read all the  
 3 reports that had been submitted to you?  
 4 A. Yes.  
 5 Q. So as I go through that paragraph 6, that  
 6 seemed to mimic one of the reports, whether it was  
 7 Deputy Atkinson or somebody else. That's just  
 8 taking that information as true and putting it in  
 9 your declaration?  
 10 A. Correct.  
 11 Q. And after listening to the audio and  
 12 watching the video, I assume that still is  
 13 accurate, that paragraph?  
 14 A. Yes, it is.  
 15 Q. Okay. The -- your declaration starts out  
 16 with Deputy Atkinson seeing a pickup behind him  
 17 swerving in front of casino. He saw it swerve  
 18 into the northbound lane while driving south. It  
 19 then corrected in the southbound traffic lane.  
 20 That's your understanding of what started  
 21 this incident?  
 22 A. Yes.  
 23 Q. And now, if -- just want to make sure  
 24 we're on the same page.  
 25 That means the pickup driven by, we now

1 with dispatch or that; is that correct?  
 2 A. Yes.  
 3 Q. And you now have listened and watched?  
 4 A. Yes.  
 5 Q. And what else have you looked at, if  
 6 anything?  
 7 A. That's the only thing additional that  
 8 I've looked at.  
 9 Q. And after listening and watching, has  
 10 that altered your opinion?  
 11 A. No. My opinion has not been altered.  
 12 Q. And if I'm looking, again, at  
 13 paragraph 4, it lists the documents that you had  
 14 looked at in offering your opinions.  
 15 So go to paragraph 6 of your declaration.  
 16 A. All right.  
 17 Q. As I see paragraph 6, it is a summary of  
 18 what I'll call the facts of the case.  
 19 A. Yeah. Primarily based on Deputy  
 20 Atkinson's statements that he wrote, yes.  
 21 Q. I was going to ask you where you got that  
 22 information.  
 23 A. That's where.  
 24 Q. It came from the statement of Deputy  
 25 Atkinson?

1 know Mr. Wegner, you know that, of course?  
 2 A. Yes.  
 3 Q. He, for whatever reason, was driving --  
 4 he was heading south on what? What kind of a road  
 5 are we talking about; do you know?  
 6 A. Based on the video footage I saw, it  
 7 looks like it might be an arterial, but possibly  
 8 not a multilane arterial.  
 9 Q. And not multi, meaning just one lane  
 10 going north, one lane going south?  
 11 A. That's what it looked like to me.  
 12 Q. So this description of the pickup heading  
 13 south but then swerving over into the northbound  
 14 lane, that would be obviously crossing the  
 15 centerline, correct?  
 16 A. Yes.  
 17 Q. And there was no indication that it was a  
 18 passing maneuver or anything like that to explain  
 19 that move; is that right?  
 20 A. Correct.  
 21 Q. It's just a vehicle that, as law  
 22 enforcement, you would look at and say that is a  
 23 traffic violation in and by itself?  
 24 A. Correct.  
 25 Q. And it, by driving in the -- I'll call it

1 the opposite lane of traffic, that certainly could  
 2 cause a hazard to approaching traffic in that lane  
 3 of traffic; could it not?  
 4 A. Yes.  
 5 Q. And I'm sure you have investigated,  
 6 unfortunately, cases where they have been head-on  
 7 or accidents where someone has decided, for  
 8 whatever reason, to drive on the wrong side of the  
 9 road?  
 10 A. Correct.  
 11 Q. They could be drunk, they could be -- I  
 12 mean, they could be on drugs, they can -- there  
 13 could be a lot of reasons, but accidents do happen  
 14 when somebody is traveling in the oncoming lane of  
 15 traffic, I guess I would say?  
 16 A. Correct.  
 17 Q. And so Deputy Atkinson observed that  
 18 maneuver; is that your understanding?  
 19 A. Yes, it is.  
 20 Q. And that's a maneuver that, as law  
 21 enforcement, would you agree, cannot be ignored?  
 22 A. I would say unless there was something  
 23 more pressing, it should not be ignored. There  
 24 might be -- if you are on your way to, let's say,  
 25 a domestic violence call, I would say no other

1 A. Right.  
 2 Q. And did you confirm that in the video?  
 3 A. Yes. You can see that on the video.  
 4 Q. And then he pulled in behind?  
 5 A. Yes.  
 6 Q. Anything wrong with doing that, that you  
 7 see?  
 8 A. No.  
 9 Q. Now, this -- going across the centerline  
 10 into oncoming traffic, that -- if someone was  
 11 doing that, that could lead to a pretty serious  
 12 accident; could it not?  
 13 A. The potential exists, yes.  
 14 Q. Do you have any knowledge of what had  
 15 transpired earlier that night leading up to  
 16 12:30 a.m., when this all occurred, where  
 17 Mr. Wegner or Mr. Woody may have been or what was  
 18 going on or anything like that?  
 19 A. I was provided information that they were  
 20 at some type of function, a party perhaps, perhaps  
 21 a Christmas party. I -- it's been several months  
 22 since I read that information, but that's --  
 23 that's what I remember. It didn't have a direct  
 24 bearing on my declaration, so I didn't include  
 25 prior information like that.

1 traffic violation proceeds to the domestic  
 2 violence call, for -- that -- as just an example.  
 3 Q. Well, I --  
 4 A. But --  
 5 Q. No. I agree.  
 6 If he was going to respond to a murder or  
 7 a domestic abuse, you would take that one over  
 8 what you just saw?  
 9 A. Correct.  
 10 Q. And -- but there is no evidence in this  
 11 case there was anything other than this incident  
 12 occurring at that point in time?  
 13 A. Correct.  
 14 Q. Do you recall what time of day this  
 15 incident occurred?  
 16 A. I believe it was in the middle of the  
 17 night. The deputy's statement just indicates 15th  
 18 of December. The CAD indicates 00:41 hours, so  
 19 12:41 a.m.  
 20 Q. So it was in the early morning hours of  
 21 December 15th?  
 22 A. Yes.  
 23 Q. And in your report, you say, Deputy  
 24 Atkinson pulled into the Sinclair gas station to  
 25 let the pickup pass.

1 Q. In preparation today for your deposition,  
 2 in the last whatever period of time, what have you  
 3 done?  
 4 A. I have reviewed the CDs and DVDs. That  
 5 was the primary thing that I have spent my time  
 6 on. And then since that time, I pulled out the  
 7 most relevant documents that I thought you might  
 8 ask me about. So I have the officer's statement.  
 9 I have -- I reviewed department policy. I  
 10 reviewed the collision report. I think that's  
 11 probably the bulk of the things that I have spent  
 12 my time reviewing in -- in preparation for today's  
 13 deposition.  
 14 Q. Do you recall when you got the DVD and  
 15 the CD?  
 16 A. Attorney Johnson sent those to me, I want  
 17 to say last week or the week before.  
 18 Q. And just for the record, today is what,  
 19 January 17, 2022? So would you have gotten it  
 20 after Christmas of 2021?  
 21 A. It seems like it was after Christmas. If  
 22 you want, I could go find the packaging materials  
 23 and -- and get our exact date, but --  
 24 Q. No.  
 25 A. -- it seems somewhere around Christmas.



1 The end of the year, I think, maybe the beginning  
2 of January.

3 **Q. And you don't need to do that.**

4 **It sounds like you would have looked at**  
5 **and listened to those items sometime in the last**  
6 **two weeks or so?**

7 A. That's correct.

8 **Q. Do you know what the blood alcohol**  
9 **content reading was for Mr. Wegner?**

10 A. Not without going back and looking for  
11 that information, I couldn't tell you off the top  
12 of my head.

13 **Q. The -- some of the reports indicate it**  
14 **was .23.**

15 **Does that mean something to you?**

16 A. Yes. As a former DUI officer. Depending  
17 on your jurisdiction, when I started in DUIs the  
18 legal limit was .1, so you would be slightly over  
19 twice the legal limit. Later it was lowered to  
20 .08, so there you are approaching -- you are  
21 approaching three times the legal limit.

22 **Q. Right.**

23 **And in Montana it's .08, like what you**  
24 **were referring to.**

25 **And you referenced in your CV 1998 to**

1 I don't know. But it was -- it was fairly  
2 scientifically controlled with rides home for  
3 everyone, let's just say.

4 **Q. Sure. I'll bet it was.**

5 **So at .23, someone is impaired; are they**  
6 **not?**

7 A. Well, that's an interesting question.

8 Because legally you can be intoxicated at .23.  
9 But believe it or not, I have seen some people  
10 that function at .23 better than those that are at  
11 .05 or .07 or .10. So it's a matter of being  
12 conditioned to the alcohol.

13 **Q. You're the first expert that's ever**  
14 **agreed with me on that. But --**

15 A. Oh, it's absolutely true.

16 In fact, the drunkest person I ever  
17 pulled over was a .43.

18 Now, you think he would be dead and in  
19 the hospital. Now, this individual did not pass  
20 the field sobriety test, let's be clear about  
21 that. But they did a lot better than a lot of  
22 people at much lower levels.

23 So yes, your ability to be conditioned to  
24 alcohol is affected by the -- the length of period  
25 of time that you have been drinking, how

1 **1999 you were the DUI enforcement officer.**

2 A. Yes.

3 **Q. Correct?**

4 **And I assume you had training into what**  
5 **someone at .08 might be able to react to and do**  
6 **versus somebody at .23?**

7 A. Yes. From both personal experience and  
8 observing people that have been drinking and  
9 driving, as well as I conducted a drinking and  
10 driving -- a drinking lab, let's say, for -- there  
11 was no driving involved. A drinking lab where we  
12 brought in test subjects and basically had a  
13 social gathering for a period of time, and me and  
14 the other DUI officers would administer alcohol on  
15 a regular basis to voluntarily subjects, mostly  
16 from the police and prosecutor's office. And then  
17 we would test them periodically so that we could  
18 get an idea of the different amounts of alcohol  
19 and what affect that had on coordination and  
20 balance and -- and the ability to speak and think  
21 clearly.

22 **Q. I saw that, that drinking lab, that just**  
23 **sounds like a Friday night with those county**  
24 **attorneys and the cops, right?**

25 A. Well, it might have been a Friday night,

1 conditioned of a drinker you are, how much you  
2 drink, and do you drink every day.

3 So yeah, the conditioned alcoholic can  
4 learn to function and overcome some of those  
5 deficiencies that most people, it might cause them  
6 to fall over or be in a stupor. It's interesting.

7 **Q. Do you have any information in regard to**  
8 **Mr. Wegner, if he was a novice, experienced**  
9 **veteran or -- in regard to alcohol consumption and**  
10 **ability to maneuver?**

11 A. I don't have any personal knowledge. But  
12 what I will say is that it's really hard to get to  
13 a .23. You have to drink a whole lot. It -- you  
14 don't get that with two or three drinks, let's  
15 just say that, in my experience.

16 So in order to function at a .23, I would  
17 suspect -- and, again, I don't know him  
18 individually. I looked at a cursory  
19 investigation, the police investigation into this  
20 crash, it certainly has a bearing, but it didn't  
21 have much of a direct bearing on my findings.

22 But in any case, as I looked at that  
23 level -- and you have reminded me what it is, I --  
24 I haven't looked particularly at it, but I can  
25 find it if we need to. But yeah, in order to get

1 to a .23, you have to be someone that's fairly  
2 used to alcohol. A lot of people would easily  
3 become sick or pass out prior to that if they are  
4 not a conditioned drinker.

5 **Q. And it would take time to get to that**  
6 **blood alcohol level; would it not?**

7 A. Correct. You have to have -- you have to  
8 have been drinking a certain number of drinks over  
9 a certain time period in order for that BAC level  
10 to build up within the bloodstream to where you  
11 can get to that level of .23. Again, so we're  
12 talking almost three times the legal limit in  
13 Montana.

14 **Q. Would you, in this case -- and I don't**  
15 **know how much background information you have, but**  
16 **just assume this to be true, that Mr. Woody, who**  
17 **is deceased, was with Mr. Wegner that evening, and**  
18 **drinking with him and around him from, let's say,**  
19 **the beginning to, obviously, the accident. Let's**  
20 **just assume that to be the case.**

21 A. That -- that's what I seem to remember,  
22 yes.

23 **Q. So Mr. Woody would have had knowledge**  
24 **that Mr. Wegner was consuming a fair amount of**  
25 **alcohol?**

1 think ideally he would not have gotten in that  
2 car. I think in a perfect world.

3 However, I understand them to be friends,  
4 and sometimes friends like to drink and they like  
5 to party and they like to have fun. And, you  
6 know, Woody -- Woody. Would Woody have known how  
7 much he had to drink? It's possible.

8 I'm not sure how many drinks he had at  
9 that party and if that equated to the .23 or if he  
10 could have even been drinking earlier in the day;  
11 that's not unknown for people.

12 So I'm trying to answer your question,  
13 but I -- it's -- I think Mr. Woody would have been  
14 far safer and smarter not to get in the car with  
15 Mr. Wegner, I -- I do agree with that.

16 Do I find fault with him? I don't know.  
17 It's not against the law to ride with a person who  
18 has been drinking and driving. It's not against  
19 the law to drink and drive. A lot of people  
20 misunderstand that.

21 What it's illegal to do is to be  
22 intoxicated and then drive, right? So you have to  
23 be over that legal limit.

24 So I don't know. It's a tough question  
25 to answer.

1 A. Based on the investigation report, I  
2 believe that to be true.

3 **Q. And do you -- let me ask you this: Do**  
4 **you see any fault with Mr. Woody after that much**  
5 **alcohol being consumed to get into a vehicle with**  
6 **Mr. Wegner that evening?**

7 A. Well, that's an interesting question.

8 I think in general, society would say  
9 it's well-known the dangers of drinking and  
10 driving and how alcohol affects the human body. I  
11 think that these are fairly common, generally  
12 understood principles by which most people in  
13 society seem to understand.

14 Yet, however, you and I both know that  
15 there is plenty of examples of people, even based  
16 on this knowledge, doing foolish things, whether  
17 it's driving themselves, whether it's getting in  
18 the car with someone who has been drinking and  
19 driving, or whether you are the person trying to  
20 stop someone from drinking and driving.

21 You know, I think everyone has a -- it's  
22 a generally accepted knowledge in society today  
23 that people recognize this danger.

24 So in answer to your question, though, do  
25 I find fault with Mr. Woody getting in the car? I

1 I -- I think -- I think if he were  
2 smarter, he should not have gotten in the car with  
3 Wegner; I agree with you on that.

4 Do I find fault with him? I don't know.  
5 That's had a hard thing for a police officer to  
6 answer. I mean, he's not broken the law, he's  
7 allowed to ride in the car. We don't know to this  
8 date how -- how he felt about this pursuit. Was  
9 he screaming, "Let me out" the whole time? Or was  
10 he going, "Drive faster, drive faster, get away  
11 from him."

12 We don't know unless someone maybe  
13 interviews Mr. Wegner about that.

14 But I don't know, I -- I'm trying to  
15 answer your question. I think I've probably  
16 talked enough about it.

17 Do I find fault with him? No, but he  
18 could have been smarter.

19 **Q. I appreciate that, and I think I**  
20 **understand.**

21 **From a police officer standpoint, there**  
22 **is no law for -- to be violated if you get in a**  
23 **car with somebody who is intoxicated, that's what**  
24 **I understand?**

25 A. Right.

1 Q. On the other hand, forget about the law  
2 that they -- I mean, it would be interesting if we  
3 had a law that said getting in a vehicle with  
4 somebody above .08, you are guilty of driving or  
5 passenger under the influence, or whatever it  
6 might be. You know what I'm talking about?

7 A. Of facilitating --

8 Q. Right.

9 A. -- drinking and driving or something like  
10 that. I don't know if there is any states that  
11 have that. That -- that would be an interesting  
12 question.

13 Q. It would be, but none in Montana that I'm  
14 aware of.

15 So from a police standpoint, strictly law  
16 enforcement and laws, you wouldn't give Mr. Woody  
17 a ticket for getting in the vehicle, so you can't  
18 fault him that way.

19 But I think I understood, you know, kind  
20 of in hindsight or even at that time, the more  
21 prudent, reasonable step would be to do something  
22 other than get in that vehicle?

23 A. I think that would have been more  
24 reasonable. Yet, however, I understand them to be  
25 friends. And if they, on a regular basis, like to

1 home or call on Uber.

2 Q. Right.

3 And there were options, now, in hindsight  
4 Mr. Woody could have not ridden home with  
5 Mr. Wegner, he could have possibly called for a  
6 ride, whether it's a cab, Uber. I don't think  
7 there was an Uber back then, this is --

8 A. No, you're right, I don't think there  
9 was.

10 Q. It might have been a cab or another  
11 friend who was sober or a family member. There  
12 are other options available?

13 A. That's correct. Almost always.

14 Q. But unfortunately, that's hindsight,  
15 that's usually 20/20.

16 So Mr. Woody -- and let's just assume  
17 that factually they both were drinking together,  
18 that -- from 6 o'clock that night or 7 o'clock  
19 that night -- forget about any previous drinking  
20 that day.

21 Let's just say the drinking started then  
22 and continued up to shortly before the accident.

23 So it would appear Mr. Woody, would you  
24 agree with me, was aware at a minimum that  
25 Mr. Wegner had been drinking a fair amount of

1 attend parties or like to go to bars or drink  
2 alcohol and Woody could easily say, Well, he's  
3 gotten me home safely all these other times,  
4 what's going to be different about tonight?

5 I don't really know. I'm just kind of --  
6 kind of guessing in his mindset there. But, yeah,  
7 I wish he would have been smarter. I bet if he  
8 were alive today and looking back on that, he  
9 would have said, Wow, I should not have gotten in  
10 that truck.

11 Q. Well, we all have been there and wish in  
12 hindsight we made different decisions, whether  
13 it's like this or business or whatever it might  
14 be. And so it's hard right now.

15 But in hindsight, it's -- it would appear  
16 to me that Mr. Woody, that night or any other  
17 nights, getting in a vehicle with Mr. Wegner after  
18 drinking that much, is probably not a prudent or  
19 reasonable thing to do, in hindsight?

20 A. Right. Yeah. In hindsight.

21 If someone came to me and asked, Hey,  
22 David, what's your opinion on this? Should I go  
23 home with this -- this guy, he's been drinking and  
24 driving?

25 I would say, No, don't. Take a cab right

1 alcohol, evidenced by the .23 blood alcohol?

2 A. I -- I understand that from the  
3 investigation. I don't really have much  
4 independent knowledge of that, other than what I  
5 read. And -- and based that you and I have the  
6 same information, I would agree with you that  
7 Mr. Woody was aware that Mr. Wegner had been  
8 drinking that evening.

9 Q. Now, at .23, and I know our discussion on  
10 some .23s are probably better drivers than people  
11 that aren't even under the influence of alcohol,  
12 but .23 would kind of explain why Mr. Wegner might  
13 drive in the opposite lane of traffic and then  
14 back over; would it not? That will be one  
15 explanation?

16 A. That certainly could, yes.

17 Q. Another explanation, he could have just  
18 done it on purpose just for the heck of it?

19 A. Yes.

20 Q. Crossing the centerline could cause a  
21 dangerous condition to other motorists. We talked  
22 about that. I don't think there is any dispute  
23 there.

24 Also, it could be pedestrians on the  
25 roadway or on the shoulder. That would be a

1 concern; would it not?  
 2 A. Yes.  
 3 **Q. Property damage, running into parked**  
 4 **vehicles or anything else that might be parked**  
 5 **alongside the road?**  
 6 A. Yes.  
 7 **Q. That would be another...**  
 8 **So they get in this pickup, and they're**  
 9 **heading, as you have seen on the video, and**  
 10 **Officer Atkinson gets behind them.**  
 11 A. Yes.  
 12 **Q. He doesn't do anything, as my**  
 13 **recollection, until they -- and, I mean "they," I**  
 14 **mean Mr. Wegner driving Mr. Woody inside the**  
 15 **vehicle -- fishtail and lose a little bit of**  
 16 **control of the pickup.**  
 17 **Do you recall that?**  
 18 A. Yes.  
 19 **Q. And you saw that on the video, did you**  
 20 **not, recently?**  
 21 A. I did see that.  
 22 **Q. And that is dangerous driving; is it not?**  
 23 A. Yes, it is.  
 24 **Q. And at that point, Officer Atkinson**  
 25 **activated his overhead lights?**

1 so we're --  
 2 A. There you go. That's -- that's exactly  
 3 what I see here, too.  
 4 **Q. Just about two minutes. And that**  
 5 **seems -- the pursuits we talked about previously,**  
 6 **less than the pursuits that you were involved in?**  
 7 A. Yes.  
 8 **Q. And that two minutes, do you have any**  
 9 **comment about the length of the pursuit, two**  
 10 **minutes, as being too long, pretty short,**  
 11 **moderate, average? Is there any way to quantify**  
 12 **the length of the pursuit timewise?**  
 13 A. Not really. I will say this: I believe  
 14 it would have gone on had Wegner not crashed the  
 15 truck. So I think that's why it came to such a  
 16 short stop, is the vehicle crashed, so therefore  
 17 we have a two-minute pursuit here.  
 18 **Q. And kind of going back to your pursuit**  
 19 **with the motorcyclist that -- I think we were**  
 20 **talking five minutes or something on that one, was**  
 21 **your best guess.**  
 22 A. Yeah. I might even be overestimating  
 23 there. If I think about it, how long does it take  
 24 to drive -- I mean, you don't know Seattle like I  
 25 do. But to drive from Lake City Way to Sand Point

1 A. That was the first thing he did, was  
 2 activate the emergency overhead lights, yes.  
 3 **Q. And, again, all of that seems to be**  
 4 **pretty proper, doesn't it, under the**  
 5 **circumstances?**  
 6 A. It does.  
 7 **Q. Now, in watching the video, we talked**  
 8 **about some of your pursuits and other pursuits.**  
 9 **Did you time how long this pursuit took**  
 10 **from about that point where the lights were**  
 11 **activated to the time the vehicle left the**  
 12 **roadway?**  
 13 A. It's interesting because the times on the  
 14 video don't seem to match up to the CAD, the  
 15 computer-aided dispatch, records.  
 16 But that being said, I think it's still  
 17 an accurate reflection of time passed. So the  
 18 lights and siren came on, according to the video,  
 19 at 2331 and 29 seconds, which is also known as  
 20 11:31 p.m. and 29 seconds.  
 21 The vehicle flipped at 2333 and  
 22 36 seconds. So we're looking at slightly over two  
 23 minutes, so two minutes and seven seconds, or  
 24 thereabouts.  
 25 **Q. Yeah. I think I had it at 126 seconds,**

1 Way -- yeah. That -- that was probably around two  
 2 minutes, now that I think about it.  
 3 **Q. Okay.**  
 4 A. You think about how fast it goes by, that  
 5 was probably a two-minute pursuit.  
 6 **Q. So it goes by pretty quick when you are**  
 7 **in the pursuit, right?**  
 8 A. It does.  
 9 **Q. You are paying attention to the road, you**  
 10 **are talking to dispatch at the same time,**  
 11 **you've -- you heard that; did you not? Deputy**  
 12 **Atkinson?**  
 13 A. Yes, I did.  
 14 **Q. Calling in.**  
 15 **And they're talking about back to him,**  
 16 **correct?**  
 17 A. Correct.  
 18 **Q. There is nothing on that audio that would**  
 19 **suggest they knew who was driving the pickup;**  
 20 **would you agree with me on that?**  
 21 A. No. I disagree. He gave the license  
 22 plate. So he --  
 23 **Q. But --**  
 24 A. -- he had the plate number and -- for the  
 25 truck.

1 **Q. But there is nothing reporting who the**  
2 **owner of the pickup is to Officer Atkinson?**

3 A. He didn't get a report from dispatch  
4 until later while investigating the -- the  
5 accident.

6 **Q. And that's a -- you said it better. My**  
7 **question is a poor one.**

8 **During the pursuit, there is no evidence**  
9 **that Deputy Atkinson knew who the owner of the**  
10 **pickup was?**

11 A. That's correct. Dispatch did not give  
12 him back the registration, if that -- if that's  
13 what you are talking about, correct.

14 **Q. Yeah. That's exactly what I was asking.**

15 **So the pursuit takes a route that you saw**  
16 **on the video. Up until a week or so ago you --**  
17 **you read the report of the pursuit and the**  
18 **description, now you saw it. Correct?**

19 A. Right. Right.

20 **Q. And it's dark out, it's -- we know it's**  
21 **midnight or it's 12:30 in the morning, I think, on**  
22 **December 15th?**

23 A. Correct. 12:41 a.m., if I remember  
24 right.

25 **Q. Right. And --**

1 A. I -- I believe that time more than I do  
2 the time that's listed on the video.

3 **Q. The video time seems an hour earlier;**  
4 **does it not? 11 -- I think your --**

5 A. Yeah. It seems like, you know, they  
6 didn't adjust for Daylight Savings, but the  
7 minutes are off, too.

8 **Q. Okay.**

9 A. And so I can't explain it.

10 **Q. In any event, when you now watched it,**  
11 **you saw the vehicle, the pickup, heading out of --**  
12 **going through a residential area at -- I don't**  
13 **know what the speeds are. They have to be**  
14 **fairly -- you know, not -- not 80 miles an hour**  
15 **because they are in a residential area; would you**  
16 **agree?**

17 A. Yeah. The -- the driver made several  
18 twists and turns, which would really preclude you  
19 from attaining the high speed that he did on  
20 Highway 313.

21 **Q. That's what I saw. When he was driving**  
22 **over curbs or cutting across the vacant lot, to me**  
23 **it was like 35 miles an hour, maybe 40, that kind**  
24 **of a range.**

25 **Would that be about right?**

1 A. I -- I agree with you. I think it was  
2 faster than the speed limit, but certainly not  
3 what we would call the -- the high speed that we  
4 see later on the straightaway.

5 **Q. And when he jumped the curb and went**  
6 **through a vacant lot or through private property,**  
7 **that's obviously a new crime that's being**  
8 **committed at that time by Mr. Wegner?**

9 A. Well, possibly.

10 Are you talking about trespass or  
11 reckless driving or...

12 **Q. I don't know. Just as a police officer,**  
13 **it seems to me if he had stayed on the road that's**  
14 **one thing, but when he starts going across private**  
15 **property where homes might be located, that may be**  
16 **different. But you tell me.**

17 A. As I understood it, it was public  
18 property behind the swimming pool. So --

19 **Q. Yeah. I think you are right.**

20 A. Yeah. So I don't know if there was  
21 property damage. I listened to the radio tapes  
22 and I heard about someone saying that they were  
23 going to go back to that scene and obtain photos.  
24 So you might see some grass torn up, it looked  
25 like it was made up of dead, brown grass and that

1 type of things in that field. So there might have  
2 been damage to that.

3 **Q. Hypothetically, had Mr. Wegner's pickup**  
4 **hit a tree as it went through this vacant lot,**  
5 **resulting in the death of Mr. Woody, would you be**  
6 **of the opinion that the pursuit was improper that**  
7 **lead to Mr. Woody's death?**

8 A. I have got to think about this one. You  
9 are giving me a hypothetical. Okay.

10 **Q. That's what lawyers do.**

11 A. Yeah. I understand.

12 Okay. Let me make sure I understand  
13 correctly. The -- the driving starts, and  
14 Atkinson pursues, and then they hit a tree in a  
15 residential area?

16 **Q. Yeah. Just real life, that video shows**  
17 **Atkinson activates the lights.**

18 A. Right.

19 **Q. They take off.**

20 A. Right.

21 **Q. This is after they fishtailed around that**  
22 **area there in Hardin. Goes down the streets at**  
23 **speeds. He won't pull over. You are okay with**  
24 **that pursuit, I take it, at that point?**

25 A. It's hard to define. I -- I looked at a

1 point where I think the pursuit should have been  
2 called off, but again, we are back to your  
3 hypothetical.

4 **Q. Well, let me run through that. He's on  
5 the street, you saw in the video --**

6 A. Just ask the question.

7 **Q. He's on the street, we're following him.**

8 A. Right.

9 **Q. He jumps the curb, he goes through a  
10 vacant -- a lot. There is no house there. And  
11 let's assume at that point he hits a tree or he  
12 hits a depression and flips the pickup, crashes  
13 the pickup, and Mr. Woody dies.**

14 A. Right.

15 **Q. Let's just stop there in the pursuit,  
16 which is real life, because that actually  
17 happened. But the accident didn't happen there.**

18 A. Sure.

19 **Q. Would it be your opinion that this was an  
20 improper pursuit at that point?**

21 A. How soon after lights and siren were  
22 activated did he hit the hypothetical tree?

23 **Q. Well, you saw the video. When he jumped  
24 the curb and went through that lot.**

25 A. Right.

1 **Q. He --**

2 A. What's he --

3 **Q. He does what you had just got done  
4 suggesting. Up to this point in time the pursuit  
5 is okay according to you. He's following him on  
6 the streets. The guy is kind of going across the  
7 curbs as he's making the turns. He's clearly  
8 fleeing at that point in time. And you're okay  
9 with the pursuit at that time, right?**

10 A. Yeah.

11 **Q. Or no?**

12 A. I think so. I -- I give them -- I give  
13 Deputy Atkinson a very short time to have that  
14 lights and siren on, a long enough time for Wegner  
15 to realize, hey, the police are behind me, and  
16 then to take evasive action.

17 And that evasive action seemed clear to  
18 me that he is leaving the road and going through  
19 the field. I -- I think that was an excellent  
20 time to think about calling off that pursuit.

21 **Q. Okay. And I'm bouncing around a little  
22 bit because you have seen the video.**

23 A. Uh-huh.

24 **Q. And I'll just take step by step, make  
25 sure I'm clear.**

1 **Q. That's when this happens under my  
2 hypothetical.**

3 A. That's an interesting -- interesting  
4 question, because that's exactly when I said this  
5 to myself, because I -- I figured you would ask  
6 me. But since you are kind of asking in a  
7 hypothetical, that's exactly the time when I  
8 thought this pursuit should be called off, when he  
9 leaves the road and goes through the field, that's  
10 the point, let him go and leave it alone, turn off  
11 lights and siren, discontinue the pursuit.

12 So now let's get to your question is: If  
13 there is a tree in that lot and then they hit it,  
14 is it improper pursuit? I would say yes, if the  
15 deputy is following into that field with lights  
16 and siren on, yes.

17 **Q. If the deputy, he jumps the curb, deputy  
18 halts the pursuit and he hits the tree, is it  
19 still a bad pursuit at that point?**

20 A. Okay. One more time, let me make sure I  
21 understand correctly.

22 The pursuit has been started. Wegner  
23 leaves the road and goes through the field and  
24 hits the tree. And what did you say the deputy  
25 did?

1 **Officer Atkinson had every right to turn  
2 on his lights and start the pursuit?**

3 A. Yes.

4 **Q. And the pursuit leads -- the pickup ahead  
5 of him starts accelerating, and Officer Atkinson  
6 starts accelerating. That's okay at that point?**

7 A. Yes. I'm okay with that.

8 **Q. And they're on the streets, and they're  
9 going around corners.**

10 **And do you recall in the video the pickup  
11 kind of cutting the corners tight, maybe hitting  
12 the curbs, going up on sidewalks or grass? Do you  
13 recall that?**

14 A. I did see the vehicle cut a couple  
15 corners, yes. Drive right over, you know, the --  
16 the intersection corner, yes.

17 **Q. And was it appropriate for Deputy  
18 Atkinson to continue the pursuit when watching  
19 those things happen in front of him?**

20 A. I think that was still okay. Because  
21 it's important to show that the driver -- if you  
22 are going to have a successful eluding  
23 prosecution, it is important to know, is the  
24 driver actually trying to elude from me or is he  
25 still just continuing his driving behavior that

1 I've seen earlier?

2 **Q. Okay. So then they -- do you recall how**  
3 **many turns they made before the pickup jumped the**  
4 **curb and went through this lot that we've been**  
5 **talking about?**

6 A. I didn't record all the times. My  
7 estimate would be three or four corners, possibly.  
8 Maybe two or three. I've got the video here, I  
9 can take a look at it if you want, but I'm  
10 thinking he did a couple -- two or three turns.

11 Here's what -- let -- let's just say  
12 this, here is what I put in my notes: That at  
13 2331 and 29 seconds, lights and siren came on. At  
14 2331 and 35 seconds -- so six seconds later -- it  
15 looks like he accelerates and cuts one corner.  
16 And at 2331 and 44 seconds -- so basically  
17 15 seconds after the pursuit begins -- that's when  
18 he hits the field.

19 And that's when I thought, that's enough  
20 time to show that this driver is clearly -- knows  
21 about the police, he knows the lights and siren  
22 are on, and now he's clearly taking evasive action  
23 in order to avoid being stopped by the police.  
24 And that's when I think the -- the time period, so  
25 that 15 seconds, I think -- I think at that point,

1 **Q. So at that point in the video, about**  
2 **15 seconds into the pursuit -- which you say goes**  
3 **by pretty quick. Well, 15 seconds is pretty quick**  
4 **anyhow. Right?**

5 A. It is.

6 **Q. So at that point, I guess your opinion is**  
7 **Deputy Atkinson should have, what, stopped his**  
8 **vehicle?**

9 A. Yeah. The -- the -- the Big Horn County  
10 policy states if you are going to stop the  
11 pursuit, you shut off the lights and siren. And  
12 then it allows, if you want to, legally follow  
13 without lights and siren, you can still kind of  
14 follow. And that means you disengaged from the  
15 pursuit at that time.

16 And I would agree with that assessment.  
17 If he shuts off lights and siren and stops  
18 chasing, if he wants to legally still see if he  
19 can determine where this guy is going, maybe there  
20 is other units that could stop him, maybe  
21 there's -- maybe he lives nearby or, you know,  
22 whatever. Insert anything here that there is any  
23 number of possibilities could exist.

24 But at that point, yes, he would be  
25 authorized by department policy to follow in --

1 it's -- and it goes by -- it's really fast, but  
2 that's a time period for them -- the officer to  
3 consider the options and go, you know what, I  
4 think I'm going to let this guy go. He's clearly  
5 trying to get away from me and it's too dangerous  
6 for him to do so. So I'm going to let him go at  
7 this point and call off the pursuit.

8 **Q. So these notes that you are talking about**  
9 **is when you watched the video here recently?**

10 A. Yeah, yes.

11 **Q. And if I understand it, after watching**  
12 **the video, which is after you prepared your**  
13 **declaration, it's your opinion that Deputy**  
14 **Atkinson, approximately 15 seconds into the**  
15 **pursuit should have stopped and disengaged; is**  
16 **that correct?**

17 A. Yes, yes.

18 **Q. All right. And that is not in your**  
19 **written declaration, that opinion; is that right?**

20 A. Correct. When I wrote that I didn't have  
21 that -- the capability to view those videos. And  
22 since that time I -- just from Mr. Johnson, I  
23 required a DVD player just so I could watch it.

24 **Q. Yeah. And I hope you charge him for it.**

25 A. No. I wouldn't do that.

1 without violating the law.

2 **Q. And getting back to my question.**  
3 **Had Deputy Atkinson disengaged at that**  
4 **point, turned off his lights and his siren, we**  
5 **have Mr. Wegner's pickup in this lot, this vacant**  
6 **lot at that point?**

7 A. Yes.

8 **Q. And going back to my question. If he hit**  
9 **a pole, a tree, depression, flipped and it**  
10 **resulted in the death of Mr. Woody, would it be**  
11 **under that hypothetical where this Deputy Atkinson**  
12 **stopped, disengaged, you would be of the opinion**  
13 **that Big Horn County is not liable?**

14 A. I -- I think I would. I would love --  
15 you know, it's always hard when you're talking  
16 hypotheticals. I understand the concept behind  
17 it, though, and I'm trying to do my best to answer  
18 it.

19 But it -- so if you take away everything  
20 that happened after the field and I just insert  
21 this imaginary tree there, and then I think of  
22 Deputy Atkinson being out on the street with no  
23 lights and siren, I would agree with you. I think  
24 Wegner is on his own at that point. You know, the  
25 lights and siren are off, but he still goes

1 through a dangerous field and crashes into a tree.

2 I would say he's on his own at that point.

3 **Q. And then after this field on the video,**  
4 **where did Mr. Wegner's pickup then travel; do you**  
5 **recall?**

6 A. You know, I didn't write down all the  
7 streets. I could -- I could read to you the  
8 officer's report, but he -- he goes through the  
9 field by the swimming pool and then reemerges on  
10 city streets and then continues on those city  
11 streets until he hits the highway.

12 **Q. Okay.**

13 A. But I don't have -- I didn't do a match  
14 up of, you know, exactly what the deputy report,  
15 exactly what I see on the video, and then try to  
16 time everything perfectly.

17 That's something I could do, but I didn't  
18 do for this deposition.

19 But in general, to answer your question,  
20 yeah. He emerges back on city streets, and the  
21 pursuit continues.

22 **Q. Would you agree with me that we don't**  
23 **know what would have happened to Mr. Wegner and**  
24 **his pickup had the pursuit been terminated at that**  
25 **point in the proceedings? We don't know if he**

1 **Q. Now, focusing on Mr. Wegner, we know he**  
2 **got behind the wheel drunk, intoxicated; do we**  
3 **not? Yes on that?**

4 A. I assume so, yes. There is no evidence  
5 that he had anything to drink after the accident.  
6 So I'll believe the officer's report there that he  
7 was processed through DUI afterwards and shown to  
8 be .23. So I'll assume at this point it would be  
9 a reasonable supposition that he was drunk at the  
10 time of the driving.

11 **Q. So Mr. Wegner could have avoided this**  
12 **entire matter by, number one, not driving that**  
13 **night, saying, Hey, Mr. Woody, let's take a cab or**  
14 **walk or let's call a friend or family? That would**  
15 **be one way he could have avoided this occurring,**  
16 **correct?**

17 A. That's true.

18 **Q. He could have -- when he decided to**  
19 **drive, he could have driven down the road in his**  
20 **lane of traffic instead of swerving across the**  
21 **centerline into oncoming -- possible oncoming**  
22 **traffic, which gave rise to Deputy Atkinson**  
23 **saying, Hey, I'm going to follow this vehicle.**

24 **Right?**

25 A. That's true.

1 **would have made it home safely or ended up**  
2 **crashing or continuing to run, thinking somebody**  
3 **is behind him or other officers are going to show**  
4 **up at another intersection? We don't know what**  
5 **would have happened, do we?**

6 A. No. No one knows.

7 **Q. Okay. Would you agree with me that**  
8 **Mr. Wegner is at fault for the death of Mr. Woody?**

9 A. Well, I guess we have to define fault.

10 **Q. Not at -- I'll give you a -- not acting**  
11 **reasonable under the circumstances or prudent and**  
12 **responsible under the same circumstances.**

13 A. I think both Atkinson and Wegner were  
14 unreasonable in these circumstances, and both were  
15 at fault. And both actions lead to the death of  
16 Mr. Woody.

17 **Q. Now, Mr. Wegner, obviously -- we talked**  
18 **about Mr. Woody getting in the vehicle and all of**  
19 **that discussion of why he might -- I'll say this,**  
20 **why he might be at fault for his own death; would**  
21 **you agree with that?**

22 A. Yeah. Again, interesting definition of  
23 fault, but correct, that -- that, you know, if he  
24 had to do it all over again he might not have  
25 gotten in that truck.

1 **Q. The next thing he could have done is when**  
2 **Deputy Atkinson was behind him, he could have**  
3 **avoided all of this by not fishtailing and losing**  
4 **control of the vehicle which caused Deputy**  
5 **Atkinson to put on his lights, right?**

6 A. That's true.

7 **Q. He could have -- at the opportunity once**  
8 **the lights were on, he could have pulled over at**  
9 **any time between then and when he lost control of**  
10 **the vehicle?**

11 A. He could have, yes.

12 **Q. He could have, I guess, to sum it up, as**  
13 **a person driving a vehicle on the roads -- well,**  
14 **you're a police officer.**

15 **Did you anticipate that turning on lights**  
16 **behind a motorist would result in the motorist**  
17 **pulling over so that you could visit with that**  
18 **motorist?**

19 A. That's the general assumption. I would  
20 say 99 percent of the people pull over do so.  
21 It's -- it's -- there is -- you know, there's just  
22 a guess. There is one percent that say, I'm --  
23 I'm not getting stopped by the police. And off  
24 they go, but most people, sure, they'll pull over  
25 and -- and they'll realize their obligations under



1 the law.

2 **Q. And you did sum it up.**

3 **Mr. Wegner did not abide by the**  
4 **obligations of Montana law by -- he should have**  
5 **pulled over once the lights were on, right?**

6 A. Correct.

7 **Q. And had he pulled over, we might not be**  
8 **visiting this morning?**

9 A. That's true.

10 **Q. And he had that opportunity when the**  
11 **lights were turned on, when he went down the road,**  
12 **when he jumped the curbs, when he went across the**  
13 **vacant lot, when he went through some other**  
14 **streets, and he even had that opportunity as he**  
15 **was headed down the highway at high speeds,**  
16 **correct?**

17 A. He could have stopped, yes.

18 **Q. He could have disengaged at any time**  
19 **within those -- but let's just make it two minutes**  
20 **to round it out.**

21 **He had two minutes to say, Hey, I'm going**  
22 **to pull over. I'm going to stop. I'm going to do**  
23 **what a proper citizen should do with law**  
24 **enforcement behind me.**

25 A. Yes.

1 **the wheel drunk, not crossing the centerline to**  
2 **give Deputy Atkinson probable cause to get behind**  
3 **him, to create this whole situation, would you say**  
4 **Mr. Wegner is more at fault than anyone else in**  
5 **this tragic event?**

6 (Pause.)

7 **THE WITNESS:** That's a hard question to  
8 answer because I think what you are asking me to  
9 do is to assign percentages of fault. I'm not --  
10 but yet, you are asking my opinion, right?

11 **BY MR. STACEY:**

12 **Q. Absolutely. Yes, I am. I assume I'm**  
13 **paying for it, too.**

14 A. Man, that's a hard question to answer.  
15 And I want to give you a good answer. I want to  
16 give you the best answer, but it's -- it's very  
17 hard, and here is why.

18 You could look at both sides, and -- and  
19 you could say if all the things that you mentioned  
20 didn't happen, Mr. Woody would be alive. And --  
21 and we would agree on that.

22 But then how do we define a percentage of  
23 the responsibility lies with Mr. Atkinson, Deputy  
24 Atkinson, and a percentage rests with the driver  
25 who was attempting to get away from the police?

1 **Q. And he didn't do that, right?**

2 A. That's correct.

3 **Q. And as a result of all that two-minute**  
4 **opportunity, that he had many opportunities to**  
5 **pull over, but his failure to do so resulted in**  
6 **the death of Mr. Woody?**

7 A. Yes.

8 **Q. You mentioned previously that you kind of**  
9 **blame or place fault on both Mr. Wegner and Deputy**  
10 **Atkinson.**

11 **Is that what I heard you say?**

12 A. Well, we have to -- we have to define  
13 fault.

14 If we're talking about a hundred percent,  
15 or as my wife, a civil attorney, gets into  
16 percentages of fault.

17 **Q. Sure.**

18 A. So that's where I was kind of trying to  
19 determine your definition.

20 **Q. Would you say that Deputy Atkinson --**  
21 **well, let's start with this.**

22 **Would you say that Mr. Wegner, who had**  
23 **all those opportunities to avoid this tragedy from**  
24 **occurring, and he had all these opportunities, two**  
25 **minutes' worth of opportunities, not get behind**

1 Both are equally as determined in their  
2 actions that night. You know, there -- there  
3 is -- there is the -- the subject that's trying to  
4 get away from the police, Mr. Wegner seems  
5 determined that he will do whatever it takes to  
6 not stop for that deputy. He'll cut through  
7 fields, he'll cut corners, he'll speed at 95, a  
8 hundred miles an hour, he will blow stop signs.  
9 None of that matters, he will do whatever it takes  
10 to gets away.

11 And then you look at Deputy Atkinson, he  
12 will speed at 95 or a hundred miles an hour, he  
13 will blow stop signs, he will go through fields,  
14 he will -- I think his cornering was a little bit  
15 better than -- than Wegner.

16 But both sides will do whatever it takes  
17 either to escape or to stop the escape. Both --  
18 both are working hard within their limits of their  
19 vehicle and the limits of their mind to think,  
20 What am I capable of doing here?

21 And both think that they are going to be  
22 successful in their efforts. Mr. Wegner thinks,  
23 If I just drive faster, if I just keep going, I'm  
24 going to be able to lose him, I'm going to be able  
25 to get away.

1 And Deputy Atkinson thinks, If I just  
2 keep up with him, and keep the lights and siren on  
3 and we get enough officers, we'll eventually be  
4 able to get this guy stopped and get him off the  
5 road.

6 So how do you assign a percentage from  
7 that?

8 They -- I would say they both seem a  
9 hundred percent committed to doing whatever it  
10 takes, whatever they are physically capable of  
11 doing in those vehicles in order to either get  
12 away or -- or get that driver.

13 How do you define a percentage on that?  
14 I mean, I don't know that I can. I -- I guess  
15 that's why juries, you know, will sit down in --  
16 and in a civil trial assign dollar amounts in  
17 things. Because, you know, and they -- you have a  
18 room full of people trying to decide what  
19 percentage they are both equally capable.

20 So I am getting to a conclusion here in  
21 answering your question.

22 I think they are both equally at fault.  
23 Both took actions that lead to the death of  
24 Mr. Woody.

25 **Q. Okay. I appreciate --**

1 vehicle. Because we don't expect anything out of  
2 that driver, right? When someone reads about  
3 someone that got in a pursuit, whether they got  
4 away or whether they crashed or whether they --  
5 they got pulled over and cited or whether they got  
6 arrested and taken to jail, people just think,  
7 Well, there was some -- some guy that wasn't in  
8 his right mind. What's he doing running from the  
9 police?

10 Most citizens would never do that. And  
11 they're going to think, Well, of course, you  
12 shouldn't run from the police.

13 But then when you look at it from the  
14 perspective of what is a police officer trained to  
15 do? What is our prime directive? Is enforce the  
16 law, but don't do it while hurting others, I  
17 actually say that the more I think about this,  
18 Deputy Atkinson even has more responsibility than  
19 Mr. Woody for this collision.

20 **Q. So I understand your answer, it started  
21 out kind of 50/50, but then you have talked  
22 yourself into Atkinson being more at fault than  
23 Woody?**

24 A. I did.

25 **Q. So -- or not Woody, but Wegner?**

1 A. I think. And here's -- here's what I  
2 will say, though.

3 I think a police officer has a  
4 responsibility more so than the average citizen.  
5 A police officer has a responsibility to the  
6 public. And if you look at our -- our key. If --  
7 if you look all the way back at what the key  
8 component of what is a police officer's  
9 responsibility, and that is life saving. In all  
10 your actions you are doing whatever you can to  
11 keep people safe and avoid them being hurt,  
12 maimed, killed, et cetera, et cetera.

13 So in this case, I would say an officer  
14 even has greater responsibility because of our  
15 training, because of our experience, because I  
16 assume he was sober that night, because I assume  
17 that he has the mind that is able to use best  
18 judgement and trying to decide what am I going  
19 to -- what am I going to do here? Is what I'm  
20 doing, is the end result going to be successful  
21 for me? Is it going to be successful for the  
22 people in this car?

23 And I -- you know, the more I think about  
24 this, I think that -- that Deputy Atkinson even  
25 has more responsibility than the driver of the

1 A. Yeah, I did.

2 **Q. Now, as I heard you talking, I mean,  
3 Deputy Atkinson is trying to enforce the law.  
4 He's law enforcement. You are a law enforcement.  
5 Law enforcement takes a beating in today's world.**

6 **But law enforcement expects the public to  
7 abide by the law and respect law enforcement and  
8 do what law enforcement requests of them as long  
9 as it's reasonable.**

10 **Would you agree with that?**

11 A. I agree.

12 **Q. So in this case, Mr. Wegner, for whatever  
13 his motives were -- and do you know what his  
14 motives were, why he ran?**

15 A. No. I don't even remember -- this was  
16 not material that I reviewed right before our  
17 discussions today. I don't -- I couldn't tell you  
18 right today if they went and did an interview with  
19 him. And did he -- I couldn't tell you if he  
20 talked about, you know, Well, I was drunk and I  
21 don't want to get caught, or, I just don't like  
22 traffic tickets.

23 I'm not sure.

24 **Q. And does it matter to you, what the  
25 reason he ran?**

1 A. No. Exactly. It didn't matter to me. I  
 2 just know that he did.  
 3 **Q. In any event, your last answer of placing**  
 4 **more blame on Deputy Atkinson, it seemed to me**  
 5 **you're saying because he's trained and he's law**  
 6 **enforcement, that is more important than the**  
 7 **citizen out there, like myself, that I have to**  
 8 **abide by the law, but Mr. -- you are kind of**  
 9 **letting Mr. Wegner off the hook, aren't you? By**  
 10 **saying, Oh, you know, he can drive, he can do all**  
 11 **of this, he can not listen to -- not pull over**  
 12 **like everybody else should do, and that makes him**  
 13 **less responsible for what happened.**  
 14 **Is that what you are saying? Because I**  
 15 **don't think you are.**  
 16 A. No. I -- I don't think I'm saying that,  
 17 either.  
 18 I -- I think what I'm saying is, if you  
 19 look at society's expectation of the offender and  
 20 society's expectation of the officer is, are you  
 21 doing what you should be doing?  
 22 And in this case, clearly Wegner was not.  
 23 He was driving recklessly in trying to get away  
 24 from the police. That -- that's not legal. And  
 25 most people don't do that. Yet, you and I and

1 discretion and realize, you know what, I can't  
 2 shoot right now, it's too dangerous.  
 3 And -- and that's what I equate on this  
 4 case, too. In this case, I shouldn't be driving  
 5 this way, it's too dangerous. It's -- it's going  
 6 to cause harm to the public. Also, that I can get  
 7 my traffic violator.  
 8 **Q. And we don't know if Mr. Wegner would**  
 9 **have continued to drive in that fashion and try to**  
 10 **hit those speeds and lose control.**  
 11 **We have no way of knowing what would have**  
 12 **happened, do we?**  
 13 A. I agree. There is no way of telling for  
 14 sure.  
 15 **Q. Okay. Do you know where he was headed to**  
 16 **on that highway where they reached those speeds?**  
 17 **Any idea?**  
 18 A. No. No. I -- I could go back and review  
 19 that report and see if there was something that  
 20 one of the -- I believe the highway patrol ended  
 21 up being the primary investigator in this case.  
 22 And I know they did some interviews, but again,  
 23 I -- I don't know those details, in answering your  
 24 question.  
 25 **Q. So you don't know if -- there is an**

1 every one else on the planet, or at least everyone  
 2 else in the United States, reads about this all  
 3 the time, right? Oh, he ran from the police  
 4 and -- and whatever happened.  
 5 So anyway, I -- I guess to summarize, and  
 6 you can keep asking me, it's -- it's fine, but I  
 7 would say they both share some responsibility for  
 8 this collision. And if either one had stopped  
 9 their actions, Mr. Woody would be alive. Let --  
 10 let's say that.  
 11 And I -- I don't know that I can assign a  
 12 percentage here, but I do know that as law  
 13 enforcement, we have a responsibility to keep  
 14 people safe. We -- we do our law enforcement with  
 15 the idea that we shouldn't cause a greater harm in  
 16 order to enforce the law.  
 17 In other words, if -- if -- just because  
 18 there is someone with a gun doesn't mean we  
 19 automatically can shoot them.  
 20 There might be -- I'm going to give you a  
 21 hypothetical. There -- there might be a  
 22 schoolyard full of children, right -- let's insert  
 23 our worst hypothetical -- standing directly behind  
 24 him.  
 25 In that case, the officer has to have

1 **Indian reservation close to where this happened.**  
 2 **Do you know if that makes any difference**  
 3 **in regard to where he was headed to and what would**  
 4 **happen had he made it that far?**  
 5 A. No. I would have to go back and look at  
 6 that collision report in the investigator's notes  
 7 and things. So I -- I don't have a great  
 8 independent knowledge of that right now.  
 9 **Q. Another thing Mr. Wegner could have done**  
 10 **is he could have driven slower throughout this**  
 11 **whole process and kept control of the vehicle?**  
 12 **That -- I don't think we talked about --**  
 13 A. I've seen pursuits -- yeah. I've seen  
 14 that sometimes where people refuse to stop, but  
 15 they obey the traffic laws. It's kind of a  
 16 strange one, but I've seen that, yeah.  
 17 **Q. It would have been a little bit safer had**  
 18 **he elected to not travel at 90 miles an hour but**  
 19 **60 miles an hour, correct?**  
 20 A. That's certainly a possibility.  
 21 **Q. And not turn his lights off, correct?**  
 22 A. Sure. But --  
 23 **Q. And not cross the centerline, not run**  
 24 **through red lights, all of these things, correct?**  
 25 A. Those are all things that he could have

1 stopped doing or avoided doing.

2 **Q. So if we made a list of Mr. Wegner and**  
3 **all the things that he did wrong, when they went**  
4 **wrong, and how he could have stopped at any time,**  
5 **there would be a pretty good list of items; would**  
6 **there not be?**

7 A. Yes.

8 **Q. And then over with Deputy Atkinson, it is**  
9 **basically at a certain point you should just stop**  
10 **the pursuit because -- I mean, I'm just trying**  
11 **to -- based on his training, he should have**  
12 **stopped the pursuit, is your opinion, and that's**  
13 **what's on his side of this ledger, so to speak?**

14 A. He -- he has the opportunity to stop  
15 doing all the things that Wegner is doing. But  
16 they -- they both have opportunities to stop  
17 whatever it is they are doing. So yes, in answer  
18 to your question.

19 **Q. Okay. And although you are not**  
20 **allocating fault, if I asked you, would you agree**  
21 **that Wegner is at fault more than anybody else for**  
22 **this accident -- forget about percentages, but**  
23 **just more at fault, would you agree or disagree**  
24 **with that?**

25 A. I would disagree. And -- and you

1 hit a telephone pole, or if -- I think if I ran  
2 over him I would feel even worse than I would feel  
3 like I -- I had some, you know, personal  
4 responsibility for that.

5 Well, I don't know. In answer to your  
6 question, if he had died, I -- was that -- was  
7 that the question that you asked? Would I feel  
8 responsible?

9 **Q. No. My question is: Would you have felt**  
10 **that he was more responsible for his own death**  
11 **than you?**

12 A. Well, that's interesting because you come  
13 from two different frames of mind, right? You  
14 come from the brand-new rookie officer who thinks  
15 I need to -- if someone is running from you, they  
16 shouldn't have done that.

17 And I'll -- I'm thinking my -- my 1987  
18 police brain would probably say, Well, he  
19 shouldn't have run.

20 I have changed since then. And through  
21 my experience, my education, and my training as a  
22 supervisor, I have certainly done a 180 since  
23 then. So -- but at that time, you know, I might  
24 have said, He shouldn't have run.

25 But I would still feel bad about it. But

1 basically got some free-form thinking for a minute  
2 or two as I went through this. I actually -- I  
3 actually believe now that Deputy Atkinson is more  
4 at fault.

5 **Q. Okay. And that's because he is a deputy**  
6 **and he --**

7 A. To a greater responsibility.

8 **Q. How about when you chased that**  
9 **motorcycle, that we talked about, for a couple --**  
10 **or two or five minutes? Turned out okay, nobody**  
11 **really seriously harmed. You blame the**  
12 **motorcyclist in that situation, had he been --**  
13 **let's just say he would have been killed, would**  
14 **you blame him or blame yourself?**

15 A. That's a good question. I -- I think I  
16 would feel horrible.

17 **Q. Well, I'm sure you would. But --**

18 A. Yeah. Yeah.

19 **Q. But fault?**

20 A. To answer your question, I think I would  
21 feel horrible that I got involved in a police  
22 pursuit over something minor like expired tabs or,  
23 you know, I think he had a misdemeanor warrant of  
24 some sort. I mean, I would feel horrible if -- I  
25 would feel as bad if he died or, you know, if he

1 it -- you know, I wouldn't reveal my innermost  
2 feelings to people. But if they asked me about  
3 it, I would say, Yeah, I feel horrible about it,  
4 if he would have died. And I probably would try  
5 to absolve myself by saying, Yeah, but he  
6 shouldn't have run. While internally I would have  
7 felt personally responsible, I -- I think that's  
8 the best way I can answer that.

9 **Q. Is every pursuit that ends in a death or**  
10 **serious injury or something like that, are they,**  
11 **just because of that result, a bad pursuit?**

12 A. No.

13 **Q. Because it could have been avoided, I**  
14 **assume.**

15 **Let me start over.**

16 A. No.

17 **Q. Every pursuit can be stopped by law**  
18 **enforcement at some point?**

19 A. No. No. I -- I can think of plenty of  
20 people that got away.

21 **Q. Okay. Bad question.**

22 **A pursuit is initiated. Let's start with**  
23 **that fact.**

24 **At some point in time, whoever is**  
25 **pursuing, the law enforcement official, can stop**

1 the pursuit?  
 2 A. Yes. Yeah. And every policy I've ever  
 3 seen gives the officer the authority to withdraw  
 4 on that pursuit if they feel that it's unsafe.  
 5 **Q. So when a pursuit is, it goes all the way**  
 6 **through and it results in a bad result, like in**  
 7 **this one -- and by the way, a lot of pursuits end**  
 8 **up with somebody being kill or seriously injured,**  
 9 **correct?**  
 10 A. About one a day on average in the United  
 11 States.  
 12 **Q. One a day?**  
 13 A. Uh-huh.  
 14 **Q. That's a "yes" for Jackie?**  
 15 A. Yes. Sorry. Yes.  
 16 **Q. And not -- I assume not all of those**  
 17 **pursuits are, I'll call them "bad pursuits," where**  
 18 **the officer or law enforcement is responsible for**  
 19 **the bad result.**  
 20 **Would you agree with me on that?**  
 21 A. Sorry. You are going to have to ask that  
 22 question one more time.  
 23 **Q. Yeah.**  
 24 **If there is a pursuit every day in the**  
 25 **United States --**

1 **Q. And so that's 365 deaths per year,**  
 2 **roughly?**  
 3 A. Approximately.  
 4 **Q. One per day?**  
 5 A. Yeah. The -- I'm giving you an average.  
 6 If you need exact, I have the document here.  
 7 **Q. No.**  
 8 A. But that's -- that was the general  
 9 consensus that's on this paper.  
 10 **Q. No. I don't need the exact.**  
 11 A. Right.  
 12 **Q. I'm just talking out loud, like you are.**  
 13 A. You're on the right track, yeah.  
 14 **Q. So if we have one every day back then, is**  
 15 **every single pursuit that ends up like this one,**  
 16 **with Mr. Woody dying or somebody dying, is that --**  
 17 **because every pursuit could have been stopped at**  
 18 **some point in time.**  
 19 **Does that mean every time somebody is**  
 20 **killed or seriously injured it's a bad pursuit?**  
 21 A. No.  
 22 **Q. Should have been terminated?**  
 23 A. No.  
 24 **Q. And why is that?**  
 25 A. It depends. You have to compare what is

1 A. Right.  
 2 **Q. -- if I understood that statistic?**  
 3 A. No. There is one person that dies per  
 4 day. And this was 2012, but that's the last  
 5 Department of Justice statistics I was looking at,  
 6 because it was closest to the date of this  
 7 collision. I'm sure I could find more relevant  
 8 information.  
 9 But anyway, sorry, Cal, back to your  
 10 question.  
 11 **Q. No. You're fine. I appreciate that.**  
 12 **2012 data, about the same time this**  
 13 **happened, there is someone killed in a pursuit in**  
 14 **the United States on average every day?**  
 15 A. Yes.  
 16 **Q. Correct?**  
 17 **So on that day that Mr. Woody passed**  
 18 **away, he might have been that one for that day in**  
 19 **the United States, but the next day there would be**  
 20 **another Mr. Woody somewhere who was killed, if I**  
 21 **understand?**  
 22 A. Yes. Yes.  
 23 **Q. Now, those are all as a result of a**  
 24 **pursuit, those deaths?**  
 25 A. Yes.

1 of the greater harm to society if the criminal  
 2 were to escape versus the harm to society that --  
 3 as a result of the police pursuit.  
 4 In this case, even one that ended in  
 5 death. I -- society and let's say me specifically  
 6 will give some leeway depending on what the crime  
 7 is that we're trying to protect the public from.  
 8 So the greater threat to society that the  
 9 criminal is, then society in general, including  
 10 me, the courts, and in general most of the public  
 11 will say, Well, you know what, that was someone  
 12 the police really needed to pursue. I -- I  
 13 understand that the collision occurred, the death  
 14 occurred, but boy, we -- that -- that homicide  
 15 suspect had just killed his family, and I'm okay  
 16 with that. You know, the police did what they  
 17 needed to do to stop him. And it's unfortunate  
 18 that, you know, a death occurred, but society  
 19 needs to be protected from that individual.  
 20 And that's the police officer's job as  
 21 you are involved in these pursuits, is to think  
 22 about, okay, what's the worst thing that can  
 23 happen here and what's the best thing? As a  
 24 mediator, I call it BATNAA and WATNAA, best  
 25 alternative to negotiate an agreement and worse

1 alternative to negotiate an agreement.

2 In this case, obviously it's not  
3 negotiated.

4 But you have got to think about what's --  
5 what's the good that I can do here and what's the  
6 bad that I can do here? And that's what officers  
7 have to think about.

8 So I'm getting back to your question.

9 Are all pursuits bad when they end in  
10 death? No. Because we have to look at what crime  
11 were you protecting society from? And were your  
12 actions reasonable? That's really what we have to  
13 get down to. When you look at the officer's  
14 actions, were they reasonable in what they did?

15 I gave you a hypothetical before, an  
16 officer shooting at a bad guy standing in front of  
17 a schoolyard. Even though he's got a gun in his  
18 hand, your actions are not reasonable. You just  
19 can't blaze away because of who is standing behind  
20 him.

21 Same way when I was in SWAT. When we go  
22 to a house where a suspect is armed inside, we  
23 can't just shoot into the house. We don't know  
24 who else is in there. Our actions would be  
25 unreasonable to do that.

1 However, if someone were to come out and  
2 we have a good target and they aim at us and they  
3 intend to do us harm or kill us, then your actions  
4 are viewed as reasonable. It's reasonable then to  
5 shoot back at someone armed with a -- with -- with  
6 a handgun or a rifle.

7 So that's how -- that's how I would have  
8 to look at those deaths.

9 Was it reasonable what the officers were  
10 doing, or was it unreasonable? And that's my job  
11 as a police administrator, and -- and that's how I  
12 rule on those things. I try to decide the  
13 reasonableness of the officer's actions.

14 So in final, to answer your question,  
15 that's what I would do in those cases, too. I  
16 have to look at were the actions -- actions of the  
17 officer reasonable in their efforts to stop that  
18 offender?

19 And then we have to look to -- in order  
20 to judge reasonableness, we need to look at what  
21 was the level of crime that you were trying to  
22 pursue them for or -- and what did you do during  
23 this incident that caused that -- the death?

24 So -- so I -- I guess that's a -- that's  
25 a longwinded answer to answer your question.

1 **Q. I appreciate that.**

2 **And couple follow-ups. I'll be brief.**

3 **Obviously, if the chase involved chasing**  
4 **somebody who may have been suspected of a**  
5 **homicide, that would be a situation in which the**  
6 **chase would be initiated, and weighing all these**  
7 **factors, if it resulted in the death of an**  
8 **innocent pedestrian or a T-bone a vehicle at an**  
9 **intersection, that is just -- that's justified**  
10 **pursuit with a bad result?**

11 A. You know, it depends on the case. In --  
12 in general, I'll -- I'll agree with you that --  
13 that that's true. And still we have to insert the  
14 hypothetical children's schoolyard, right? That's  
15 always what comes to mind.

16 Does that mean that I can drive as fast  
17 as I want through a school zone with kids crossing  
18 the road in order to get the homicide suspect?

19 Even though it's a homicide suspect, at  
20 that point I would say, No, that's unreasonable.  
21 You still have to slow down and make sure those  
22 kids are safe and then go get your guy.

23 So there are still even limits there,  
24 right?

25 And sometimes we have to think

1 hypothetically in order to -- to create some of  
2 these. But, you know, if we look back at the last  
3 50 years of policing, I'm sure there is still  
4 plenty of examples to find actions that we think,  
5 Well, even though it was a horrible person that's  
6 a danger to society, we still think that the  
7 officer's actions were unreasonable.

8 But in general -- back to your question.

9 I still think in general, society and me,  
10 as an expert, as a police administrator are still  
11 going to give more of the benefit of the doubt  
12 depending on how serious the crime is.

13 **Q. And that benefit of the doubt is in**  
14 **hindsight, reviewing the facts after they**  
15 **occurred?**

16 A. It is. It -- when it comes to judging  
17 reasonableness, you always have to remember that  
18 you are relying best on hindsight.

19 **Q. And at the time, under the circumstances,**  
20 **sometimes it's hard to make those judgement calls**  
21 **correctly?**

22 A. It is hard. You know, and I gave you an  
23 example before. My police brain in 1987 was not  
24 very well-developed, right?

25 And -- and years of experience, training,

1 education, and leadership certainly can give me a  
2 greater ability to think critically about some of  
3 these incidents. I mean, I have been trained to  
4 do that. My -- my -- most of my -- most of my  
5 career in policing has been spent as a supervisor.  
6 So I have to think critically about the actions of  
7 my officers, even in a minor incident all the way  
8 up to, you know, a fatality-type accident. So  
9 yes.

10 **Q. And that homicide example, a suspect is**  
11 **being chased, that doesn't mean the person is**  
12 **going to commit another homicide, does it? It**  
13 **just means they were a suspect in a previous**  
14 **homicide, haven't been convicted or anything like**  
15 **that.**

16 A. Right.

17 **Q. Under that example, correct?**

18 A. Well, sure. There -- there is -- you  
19 never know completely, a hundred percent, the mind  
20 of the offender, right? We don't know exactly  
21 what is in their minds. In general -- we make  
22 generalizations. Well, we think they were trying  
23 to get away. Why? Well, they -- they just killed  
24 someone and they don't want to go back to jail.  
25 Right?

1 So those -- those are circumstances where  
2 we -- we're making guesses as to -- as to what's  
3 their mindset. You know, they might later reveal  
4 in interviews, or maybe there was witnesses or  
5 victims in the car that could give us information.

6 But other -- other than that direct  
7 information, we're -- we're -- we're making  
8 guesses at that point sometimes.

9 **Q. With Mr. Wegner in the evening at issue,**  
10 **we're in a small town, Hardin, Montana, correct?**

11 A. Yes.

12 **Q. And he is exhibiting driving techniques**  
13 **which are dangerous to the motorists and**  
14 **pedestrians who might be out at that time of**  
15 **night, correct?**

16 A. Correct.

17 **Q. And so he is someone -- well, let me ask**  
18 **you this: If you just let him go, you don't even**  
19 **try to stop him, and he causes an accident down**  
20 **the road, in your experience, wouldn't you say Big**  
21 **Horn County would have liability exposure for not**  
22 **having tried to stop him?**

23 A. I think if enough information was  
24 presented that an officer knew about his driving  
25 behavior and failed to stop it, yeah, I think

1 potentially there could be liability there.

2 I -- I think you and I discussed that  
3 earlier in -- in our -- our discussions today.

4 You know, if the officer had a greater  
5 responsibility to get to, then we would expect him  
6 to move towards that. You know, we -- we inserted  
7 a domestic violence call. Sure. You have to  
8 examine that and think, Well, that's -- that might  
9 be an extenuating circumstance that would prevent  
10 him from doing the traffic stop.

11 But we also have to remember that  
12 officers have discretion, and they frequently  
13 utilize it.

14 And if -- let's just say if -- if police  
15 officers spent all their day enforcing every  
16 single violation that they saw, I think that would  
17 be time not well spent. There is probably better  
18 things that you can be doing to protect the  
19 public. You want to include some traffic  
20 enforcement in your efforts that day as a -- as a  
21 good productive police officer or deputy. Traffic  
22 enforcement might be one of the responsibilities  
23 that you have.

24 If you are a traffic officer, like I was,  
25 it might be your primary responsibility.

1 In any case, I -- I think in answer to  
2 your question, there always exists the possibility  
3 that liability could be placed on Big Horn County  
4 for failure to enforce the law.

5 However, I think that a lot of leeway  
6 would be given just because we still give officers  
7 that discretion on, you know, it -- it's just  
8 physically not possible to write or pull over --  
9 stop everyone for every single violation you see  
10 on the road. It's -- it's a bit of a mixed  
11 answer, some caveats there.

12 **Q. Well, I understand your answer.**

13 **But in this case we have evidence that**  
14 **Mr. Wegner was crossing the centerline into**  
15 **oncoming traffic, had there been.**

16 **That's more than not having a brake light**  
17 **on or a right-turn signal. To me, that's much**  
18 **more serious than those type of --**

19 A. I think I was talking in generalities  
20 before.

21 **Q. Okay.**

22 A. So if we -- if we look back at the  
23 specifics of this case, I think there is a chance  
24 for liability in that hypothetical you discussed  
25 that the officer avoided making the traffic stop

1 and now, Mr. Wegner continues to drive, like you  
2 said, he crosses the centerline or he takes  
3 corners at high speed, or whatever he's doing.  
4 Sure, there is -- there is always the possibility  
5 for liability there.

6 **Q. The -- and I'm getting close to being  
7 done, if we can just go a little bit longer here.**

8 A. I'm -- I'm fine.

9 **Q. Thank you.**

10 **There is always reference between  
11 misdemeanors and felonies, you always see that  
12 distinction.**

13 A. Yes.

14 **Q. You would agree with me that, you know,  
15 sometimes -- well, first of all, the terminology  
16 felony versus misdemeanor. At least my  
17 recollection is misdemeanor you don't go to  
18 prison, you do less than a year in an county jail,  
19 while felonies you can end up in a prison.**

20 **Is that one distinction that you are  
21 aware of in law enforcement?**

22 A. Yes.

23 **Q. Okay. And there are felonies that can be  
24 misdemeanors, such as assault, theft. The act  
25 itself is the same, but one can be treated a**

1 **Q. It's the same act of stealing with a  
2 different tag to it: Misdemeanor versus felony,  
3 correct?**

4 A. Yes. Yeah.

5 **Q. So when I looked at this case, when we  
6 talk traffic violations, like misdemeanors,  
7 sometimes -- I mean, not having the right license  
8 plate or an up-to-date tag would be a misdemeanor  
9 offense; would it not? In traffic world.**

10 A. Yes.

11 **Q. A brake light out, that will be another  
12 example?**

13 A. I think that will be violations, not --  
14 not misdemeanors.

15 **Q. Okay.**

16 A. At least in Washington and Oregon, I  
17 assume Montana is similar.

18 **Q. All right. So there are certain things  
19 that are kind of, I'll call them ticky-tack  
20 violations that can be misdemeanors or not, like  
21 the ones we just talked about? Or are they  
22 important? Tell me what your view is on that.**

23 A. They are all important, but some have  
24 greater importance than others.

25 And that -- and that's why, you know, the

1 **misdemeanor, one can be treated a felony.**

2 **You are aware of that? Maybe they don't  
3 have that in Washington.**

4 A. No, they do. I -- I can think of several  
5 examples. It -- it really depends on your  
6 actions, right? And yeah, the assault is a -- is  
7 a perfect one to talk about. If -- if someone  
8 punches someone else in the face, it might be a  
9 misdemeanor. It was a light blow, there was very  
10 little injury that resulted, and they threw a very  
11 weak punch, right? Might be a misdemeanor.

12 **But if a professional MMA fighter throws  
13 a punch, and their pounds per square inch is a lot  
14 greater than someone else's, and now the person  
15 has suffered fractures of the jaw and lost some  
16 teeth and the orbital bone is broken on the side  
17 of the face, both people threw a punch, but one  
18 gets a misdemeanor and the other one gets a felony  
19 because of the amount of damage that resulted.**

20 **Q. And I agree with you.**

21 **So there -- sometimes when we talk  
22 misdemeanors versus felonies, they can be the same  
23 type of event with different results?**

24 A. Yeah. With theft. A candy bar,  
25 misdemeanor; but a fur coat could be a felony.

1 legislative branch writes the laws that they do.  
2 The things that they feel are most important, they  
3 say it's a felony if you violate that.

4 If it's not quite as important, let's  
5 just call it a misdemeanor.

6 And if it's just a minor violation  
7 that -- well, there -- there is the definition.  
8 If it's something minor that an everyday citizen  
9 could commit and -- but it doesn't mean that they  
10 are a criminal or anything, let's just call that a  
11 violation and give them a traffic ticket.

12 **So there is different levels that society  
13 will deal with different levels of, you know --  
14 those are all statutes, the -- the law defines all  
15 of them. But it also generally defines the -- the  
16 punishment. And the more seriousness of the  
17 offense, then the more serious the penalty or --  
18 or punishment from the state.**

19 **Q. Not having an up-to-date tag on your  
20 license plate doesn't really cause a lot of harm  
21 to others, does it?**

22 A. Right. That -- that's a good example.  
23 It doesn't cause a lot of harm to others. It --  
24 it means that you are avoiding paying your share  
25 of the licensing fees that -- that most people



1 willingly pay.

2 **Q. Then on the other hand, crossing the**  
3 **centerline into oncoming lanes of traffic, that**  
4 **can potentially cause a lot of harm?**

5 A. There is always that potential, yes.

6 **Q. I'm going to -- we might take a break in**  
7 **just a minute.**

8 **But I just want to ask you this general**  
9 **question: In your declaration --**

10 A. Uh-huh.

11 **Q. -- your report or declaration, we had**  
12 **left off after paragraph 6. Paragraph 7, 8 --**  
13 **well, actually, really paragraph 7 kind of sets**  
14 **forth certain policy provisions and then has a**  
15 **short statement of your opinion after each one; is**  
16 **that what I understand?**

17 A. Yes.

18 **Q. And then paragraph 8 is short.**

19 **Let me ask you about that paragraph. It**  
20 **says, No pursuits for misdemeanors, only felony**  
21 **incidents.**

22 **That's what we were just talking about.**

23 **In this case, you know, like a theft of a**  
24 **candy bar versus a fur coat, they are treated**  
25 **differently?**

1 answer your question, yes.

2 **Q. Which means there had been a pursuit**  
3 **initiated, which I took to mean you had no problem**  
4 **with the first 15 seconds of the pursuit, but you**  
5 **had a problem with the rest of the pursuit, right?**

6 A. I would agree with you on that.

7 **Q. Okay.**

8 A. I think that there is -- that is a very  
9 brief time in order to dispel the later idea, I  
10 didn't know it was the police behind me.

11 Right?

12 So I think -- and I -- I think a  
13 prosecutor could look at that and go, Well, I see  
14 you speeding up, and I see you heading, you know,  
15 across this corner and things, I think you knew  
16 the police were there.

17 And I could also see a defendant saying,  
18 No, I didn't, I was -- you know, yes, I was drunk,  
19 but I was just driving that way. I really didn't  
20 know it was the police. I -- I had no idea at  
21 all.

22 So I think that's why it's important to  
23 give some leeway for an officer or deputy, and in  
24 this case specifically Atkinson, to drive with  
25 lights and siren, to try to keep up with someone.

1 A. Right.

2 **Q. They are both theft?**

3 A. Right.

4 **Q. In this case, Mr. Wegner driving as he**  
5 **was observed by Deputy Atkinson is different than**  
6 **having an expired license tag on it, it's more**  
7 **serious?**

8 A. Yes.

9 **Q. And because it's more serious, you don't**  
10 **have any problem with the initiation of the**  
11 **pursuit, only that it continued too long?**

12 A. I guess overall I would disagree with  
13 that. I have no problem with the activation of  
14 lights and siren. I think those are reasonable in  
15 order to notify the driver, hey, I'm the police  
16 department, and you need to pull over for me.  
17 That's -- that's what lights and siren accomplish.

18 But your question was regarding the  
19 pursuit.

20 So when the pursuit begins, that's where  
21 I believe it needs to be called off.

22 **Q. Well, the pursuits, I think you told me**  
23 **that about 15 seconds into the pursuit it should**  
24 **have been called off, correct?**

25 A. That's -- that's my -- yes. Let's just

1 What you're saying is, Hey, I'm the police, you  
2 need to stop right now.

3 And I think 15 seconds is reasonable to  
4 dispel the notion, I didn't know it was the  
5 police.

6 But when he heads through that field, he  
7 knows that the police are behind him, and that's  
8 the time for the pursuit to cease.

9 **Q. And I think you just answered the**  
10 **question because earlier I -- it was okay to start**  
11 **a pursuit, but the pursuit should have ended when**  
12 **he went through the field; that's what you are**  
13 **saying?**

14 A. Correct.

15 **Q. Okay. Let me just check something here.**

16 **MR. STACY: You need a quick break? I**  
17 **think I'm done.**

18 **BY MR. STACEY:**

19 **Q. Let me just look at my notes here. I**  
20 **don't know if there is going to be any other**  
21 **questions asked of you, but let me just check**  
22 **something here.**

23 (Pause.)

24 **BY MR. STACEY:**

25 **Q. I do have one last thing to ask you.**

1 I couldn't tell from your declaration  
2 if -- I mean, we've talked about Deputy Atkinson  
3 at length, and I think we've covered, in essence,  
4 your opinions in regard to him.

5 I didn't see any opinion dealing with  
6 anyone other than Deputy Atkinson in your  
7 declaration.

8 Is that correct, or not?

9 A. I believe that I gave some information  
10 that I would have liked to have seen -- like --  
11 would have liked to have seen greater supervisory  
12 intervention in the stop. Because Atkinson never  
13 broadcasted the reason that he was in pursuit, nor  
14 did a supervisor ask, Why are you in pursuit?

15 Those -- that's a vital question that  
16 needs to be asked and answered. Even though there  
17 is a lot going on, even though it's noisy, and  
18 even though you are driving fast, those -- that  
19 question needs to be asked and answered.

20 Q. So you take issue with the fact that that  
21 question wasn't asked and the information wasn't  
22 provided, correct?

23 A. Correct.

24 Q. Okay. Anything else that comes to mind  
25 in your opinions that we haven't talked -- I think

1 judgement in order to decide if you are going to  
2 use your lights and siren in order to drive above  
3 the speed limit, right?

4 So in Hardin and -- and everywhere else,  
5 the -- the city or state generally specifies your  
6 speed limits and other rules of the road, let's --  
7 let's talk about all of them. The law in every  
8 state that I'm aware of also allows police  
9 officers to violate those laws as long as they  
10 have lights and siren on.

11 So to basically tell the deputy, We have  
12 no speed limits as long as you are pursuing for a  
13 certain misdemeanor, I think would almost  
14 encourage a deputy to drive too fast rather than  
15 what they really should be focusing on is  
16 judgement and reasonableness of their decisions.  
17 And -- and that's how I find their policy seems  
18 deficient there.

19 Q. Mr. Sweeney, thanks for your time.  
20 That's all that I have for you.

21 A. Thank you, Cal.

22 Q. I don't know if anyone else has --

23 MR. STACEY: Ryan? If you have any  
24 questions or not.

25 MR. HEUWINKEL: I don't have any

1 we've covered everything, but is there something  
2 that in preparation for your --

3 A. No. You asked if I had problems or  
4 concerns with anyone. I had a few questions and  
5 concerns about the way they write the policy, but  
6 that's -- those are -- but as to any other  
7 individuals, no.

8 Q. And with the policy, what was your  
9 concern about the policy? The way it's written?

10 A. 2-4-02.04, Subsection 2, Pursuits For  
11 Misdemeanor Violations. No specific speed limits  
12 are specified.

13 And I wrote, It allows deputies to drive  
14 as fast as they want within physical limitations  
15 of the vehicle in order to pursue a suspected  
16 driver having committed a misdemeanor.

17 So -- and it relies on the deputy's sound  
18 judgment and discretion. So I -- I think that's  
19 insufficient policy.

20 Q. Are you suggesting there should be a  
21 speed limit put in there so you can't go past  
22 50 miles an hour or 80, or whatever the number is?

23 A. No. You probably shouldn't talk about  
24 speed limits at all. You should ask the deputy or  
25 officer to use that sound discretion and -- and

1 questions for this witness at this time. Thank  
2 you.

3 MR. STACEY: Thanks, Ryan.

4 MR. JOHNSON: Are you guys --

5 MR. STACEY: Greg, do you have questions  
6 of your own expert?

7 MR. JOHNSON: Yes. I have some  
8 questions, David.

9 EXAMINATION

10 BY MR. JOHNSON:

11 Q. It's my understanding that you reviewed  
12 the Big Horn --

13 A. Do you guys want to either change seats  
14 or refocus the camera?

15 MR. STACEY: And, Greg, do you know about  
16 how long you are going to be? I'm just thinking  
17 of Jackie's hands.

18 (Discussion off the record.)

19 BY MR. JOHNSON:

20 Q. Hello. David and Ryan, can you see me?

21 A. Yes.

22 Q. For the record, I'm Greg Johnson. I  
23 represent the plaintiffs in this case. And  
24 Mr. Sweeney is the expert retained on behalf of  
25 the plaintiffs, who is being deposed.

1 David, it's my understanding that before  
2 this deposition today you reviewed the Big Horn  
3 County Sheriff's Office policies in effect at the  
4 time of this incident, in 2011, regarding pursuit  
5 and emergency driving; is that correct?

6 A. As I wrote in my declaration, I'll assume  
7 that the policies that you sent me were in effect  
8 at the time, but I didn't see a date on the  
9 policies. But -- so I wrote with the assumption  
10 that those policies were in effect at the time of  
11 the pursuit and the collision.

12 Q. And among those policies that you  
13 reviewed that you presume were in effect at the  
14 time is what you note in your declaration under  
15 No. 8 about a 2009 memo from Sergeant Kruger  
16 advising deputies that the pursuit policy is still  
17 in effect, there are no pursuits for misdemeanors,  
18 only felony incidents.

19 Did you review that as well?

20 A. I did. I have that here as Exhibit A.  
21 And it's a May 8, 2009, memo to all  
22 deputies from Sergeant Kruger regarding pursuits,  
23 Due to a recent incident, I'm advising everyone  
24 that the no-pursuit policy is still in effect. We  
25 will not -- and "will not" is bold, capitalized,

1 opinion and based upon your experience in law  
2 enforcement, that you believe Deputy Atkinson's  
3 actions in regard to this pursuit that he  
4 initiated were unreasonable?

5 A. I do.

6 Q. In your expert opinion, based on your  
7 review of the policies you presumed were in effect  
8 at the time, implemented by Big Horn County  
9 Sheriff's Department for whom Deputy Atkinson was  
10 employed and the applicable patrol car video and  
11 audio recording between Atkinson and the  
12 dispatcher, how would you define or characterize  
13 the driving behavior of Mr. Wegner that was  
14 exhibited in that patrol car video? How would you  
15 characterize that?

16 A. I would characterize it as someone who  
17 has violated the law. He crossed the line, he cut  
18 corners, he blew stop signs, he drove through  
19 fields.

20 So some of the -- some of the driving  
21 that I observed you might think would just be  
22 violations. However, when you combine it with  
23 when I do believe that he definitely knows the  
24 police are behind me, now you move it -- those  
25 driving actions now become part of eluding. So

1 and underlined -- pursue vehicles for misdemeanor  
2 offenses, i.e., no license plate, lights, no front  
3 plate, et cetera, et cetera.

4 And again, in bold, capital letters  
5 underlined, Only felony incidents if we know it's  
6 a felony offense. We were extremely lucky this  
7 time.

8 Q. Based upon your review of the patrol car  
9 video and the related audio recording between  
10 Deputy Atkinson and the dispatcher at the time of  
11 this incident, based upon that, did you, in your  
12 expert opinion, observe any driving behavior shown  
13 by Mr. Wegner that would constitute a felony?

14 A. I did not.

15 Q. Based upon your review of those policies  
16 that you presume were in effect at the time of the  
17 Big Horn County Sheriff's Office and the patrol  
18 car video and related audio recording between  
19 Deputy Wegner and the dispatcher, did you conclude  
20 that -- or do you conclude that Deputy  
21 Wegner [sic] violated the policy of the Big Horn  
22 County Sheriff's Office by pursuing Mr. Wegner's  
23 vehicle in regard to this incident?

24 A. Yes, I do.

25 Q. You testified earlier that in your expert

1 he's now trying to elude the deputy, and certainly  
2 increasing his speed on Highway 313 which resulted  
3 in loss of control of the vehicle. But driving  
4 too fast for the conditions, obviously. He drove  
5 past the speed limit and probably his own driving  
6 abilities and possibly the capabilities of the  
7 vehicle.

8 Q. Would those violations you talked about,  
9 not including the eluding, would those be traffic  
10 offenses only, in your opinion?

11 A. Yes.

12 Q. Would the eluding be a misdemeanor, a  
13 criminal misdemeanor, in your opinion and not a  
14 felony?

15 MR. STACEY: Object. Lack of foundation.  
16 Lack of expertise.

17 MR. JOHNSON: You may answer the  
18 question, with the objection in mind.

19 THE WITNESS: Okay. Sure. So prior to  
20 our discussions today I brought up Montana Code  
21 61-8-316: Fleeing From or Eluding a Police  
22 Officer. I can read the whole policy here, but I  
23 think I can -- and if you want me to, I will.

24 But I will just answer your question. In  
25 fact, let me make sure of your question. Do I

1 believe that Mr. Wegner committed the crime of  
2 eluding?

3 **BY MR. JOHNSON:**

4 **Q. Yes. Do you?**

5 A. Yes, I do.

6 **Q. And based upon your review of that**  
7 **Montana law section you quoted, is that a felony**  
8 **or a misdemeanor?**

9 A. Well, it's interesting. It doesn't  
10 really say. But, here's what it does say. That  
11 if you are convicted of this, you are impressed by  
12 a term not to exceed one year or fined an amount  
13 not to exceed \$2,000 or both.

14 Now, in my experience, that equals a  
15 misdemeanor. And Cal and I talked about that  
16 earlier, that -- that misdemeanor generally you  
17 are going to a city jail, you are there for less  
18 than a year.

19 So although it doesn't specify a  
20 misdemeanor, I'm going to assume that it is.

21 **Q. You talked about your concern regarding**  
22 **what I think would be fairly characterized as**  
23 **insufficient supervision from Big Horn County**  
24 **dispatch or other authority to Deputy Atkinson**  
25 **during the course of his pursuit.**

1 **Horn County Sheriff's Office pursuit policy at the**  
2 **time, when Deputy Atkinson turned on his overhead**  
3 **lights and siren and began following the vehicle,**  
4 **was that pursuit, in terms of the -- if pursuit is**  
5 **a term of art, or was that just following?**

6 A. I think the best way to answer your  
7 question is, when he activates lights and siren,  
8 it's his intention to get the driver to pull over  
9 and stop.

10 And most police officers generally start  
11 with lights. And if lights are enough to get  
12 someone to stop and pull over, then that's fine.  
13 We would rather not wake up the neighborhood and  
14 just have some lights on. That's enough signal to  
15 get most people to pull over.

16 He activates the siren when it seems  
17 that -- either one of two things: Either Wegner  
18 doesn't know he's there; or two, he knows he's  
19 there and he's intending not to stop. We -- we  
20 don't know exactly at this point.

21 So then he activates the siren,  
22 completely normal, rational police behavior. So  
23 now you have got lights and siren going.

24 And then we look at the next 15 seconds.  
25 I think it's reasonable to follow him with lights

1 **Do you think if -- if that**  
2 **characterization by me is accurate, do you think**  
3 **that that insufficient supervision constitutes**  
4 **some failure of responsibility on the part of Big**  
5 **Horn County Sheriff's Office?**

6 A. Yes, I do.

7 **Q. In your responses to questions by Cal**  
8 **Stacey, you stated that it was all right, in your**  
9 **expert opinion, for Deputy Atkinson to activate**  
10 **his overhead lights and siren as he began**  
11 **following Mr. Wegner's vehicle; is that correct?**

12 A. Yes -- yes, it is.

13 **Q. And then you also said that approximately**  
14 **15 seconds after Deputy Atkinson began following**  
15 **Mr. Wegner's vehicle, at the point in time when**  
16 **Mr. Wegner left the road and drove over an open**  
17 **field, that's when Deputy Atkinson should have**  
18 **stopped following Mr. Wegner and the pursuit**  
19 **should have terminated; is that correct?**

20 A. Almost. I said he could still follow if  
21 he turned off lights and siren. Policy allows for  
22 that. But in answer to your question, that's when  
23 he should have terminated the pursuit. Yes.

24 **Q. So if pursuit is a term of art, and**  
25 **Deputy Atkinson was prohibited by applicable Big**

1 and siren on in order to show the driver,  
2 Mr. Wegner, Hey, I need you to pull over. And  
3 I'm -- I'm telling you, you really need to pull  
4 over.

5 That's what the siren adds, that audible  
6 in -- in addition to the -- the visual, which is  
7 the lights.

8 So now I've got two things that are --  
9 and I'm following you closely, I am staying right  
10 on you, you're not getting away from me, I need  
11 you to pull over. So it's a -- it's a language of  
12 communication, the art that you talked about. And  
13 the officers communicate in one thing, and you  
14 never know from the driver, are they receiving my  
15 communication, or are they receiving it and are  
16 they doing something unexpected?

17 An officer is always exposed to that  
18 level of danger and great uncertainty. He doesn't  
19 know for sure. And that's why when I -- when I  
20 talked about Wegner intentionally leaving the road  
21 and going through the field, that's clearly  
22 irrational behavior, and also clearly designed to  
23 show, Hey, I've received your communication and  
24 I'm disregarding at this point. In fact, not only  
25 am I not going to drive any further on the road

1 here, I'm going to go through this field. I've  
 2 got this big truck, and maybe I can make it  
 3 through this field and you can't follow me. So  
 4 I'm going to -- I'm going to use this tactic to  
 5 try to get away from you.  
 6 That's my best guess as to what he was  
 7 thinking at that time, why he went through the  
 8 field. And that's -- that's a good time to -- his  
 9 communication to the officer now is, Sorry, I'm  
 10 not stopping. And I'm going to -- I'm going to go  
 11 out this way.  
 12 And that's the time for the officer to  
 13 stop that person.  
 14 **Q. So in other words, in your opinion,**  
 15 **Atkinson had the right to follow with lights and**  
 16 **then lights and siren?**  
 17 A. Yes.  
 18 **Q. But after 15 seconds, he did not have the**  
 19 **right to conduct a pursuit of Wegner?**  
 20 **MR. STACEY:** Object. Misstates the  
 21 testimony of this witness.  
 22 Go ahead and answer.  
 23 **THE WITNESS:** I -- Greg, you better ask  
 24 me one more time because then I think about  
 25 objections and stuff. Ask me one more time.

1 **BY MR. JOHNSON:**  
 2 **Q. As I understand it, in your expert**  
 3 **opinion, Atkinson had the right to activate lights**  
 4 **and then lights and siren for approximately**  
 5 **15 seconds while following Wegner?**  
 6 A. Correct.  
 7 **Q. But Atkinson, based on Wegner's driving**  
 8 **behavior at that time, did not have the -- did not**  
 9 **have the authority, under the applicable pursuit**  
 10 **policy that you presume was in effect at the time,**  
 11 **to conduct a pursuit as that term is a state of**  
 12 **art in capital letters?**  
 13 A. I believe you are correct on that.  
 14 Knowing department policy, and I -- I don't have  
 15 knowledge if he knew of Sergeant Kruger's memo.  
 16 But that memo clearly is an effort to highlight  
 17 department policy, and it's important to this  
 18 supervisor.  
 19 So I don't know if he read it. I don't  
 20 know. But I'll -- I'm going to assume that he  
 21 did, and it's important -- the memo is important,  
 22 obviously, but it's almost more important to know  
 23 department policy.  
 24 Because here the memo is now -- is now  
 25 improving your memory of department policy, it's

1 reinforcing it. So it's saying, Hey, remember  
 2 this policy. This is important.  
 3 Right? Police manuals are known for  
 4 being lengthy and sometimes hard to remember  
 5 everything that's in there.  
 6 But what the sergeant is saying is, This  
 7 is really important, and I want to highlight this  
 8 for you. For anyone that reads this memo, this is  
 9 important for you to know.  
 10 But he's not rewriting policy. He's  
 11 emphasizing policy. He's saying, This is  
 12 important for us as a department. This is  
 13 important for liability, this is important for  
 14 personal safety, both for us, for the people that  
 15 we're pursuing, and innocent citizens on the  
 16 street.  
 17 So that's the effort of the memo.  
 18 So yes, in answer to your question, I  
 19 believe that Deputy Atkinson then violates the  
 20 policy by not using sound discretion and  
 21 judgement, and his actions were unreasonable to  
 22 continue to pursue at all speeds. Particularly if  
 23 you look at the 95 to a hundred miles an hour.  
 24 Clearly Wegner is not going to stop, he's tried a  
 25 variety of things. He drives through the field,

1 he drives with his headlights off, he drives so  
 2 fast he overcomes the capabilities of the vehicle,  
 3 making it spin out.  
 4 Finally, he gets the straightaway, and  
 5 now he is busting through stop signs and then  
 6 increasing the speed as he gets on the highway.  
 7 So all these actions are clear that he  
 8 has no intention of stopping. So why is Atkinson  
 9 pursuing at that point? What's the point? So you  
 10 can give him a traffic ticket? That's what's  
 11 unreasonable about this whole thing is that I  
 12 will -- I will mimic your driving, Mr. Offender,  
 13 Mr. Wegner, in order to stop you and give you a  
 14 citation. That's what I find unreasonable.  
 15 **MR. JOHNSON:** I have no further  
 16 questions. Thank you very much.  
 17 **MR. STACEY:** I do have short follow-up.  
 18 Jackie, you okay?  
 19 **THE COURT REPORTER:** Uh-huh.  
 20 **MR. STACEY:** Ryan, you okay to hang in  
 21 there for a couple more minutes? And then I'll be  
 22 done.  
 23 **MR. HEUWINKEL:** Yes, Cal, go ahead.  
 24 **MR. STACEY:** Thanks. I'll be brief.  
 25 It's just a quick follow-up.

**EXAMINATION**

**BY MR. STACEY:**

**Q. Mr. Sweeney, Mr. Johnson was trying to make a distinction between following and pursuit.**

**And I thought we kind of were on the same page earlier that -- that Deputy Atkinson, when he turned on his lights and you saw in the video the vehicle immediately took off. It sped up.**

**At that point there was a pursuit, correct?**

A. Let me find the policy that they have. I think this might help us define this.

**Q. And as you are doing that, tell me if --**

A. Uh-huh.

**Q. -- tell me if this is true --**

A. I have it right here.

**Q. All right. Tell me if this is true.**

**I understood that you felt 15 seconds into the pursuit it should have been terminated; is that accurate or not?**

A. That is accurate. I think that's a great time to consider your options and to think, This is not working, this guy is not stopping. And here is a great point for me --

**Q. Can he --**

1 need to spend some more time researching Montana law to determine where is the differentiation between what are violations and what -- what are misdemeanors.

2 So I'm kind of basing this on my experience in Washington and Oregon. I assume Montana is similar in the Western State, it doesn't have to be, but a lot of the Western States generally kind of following these general principles.

3 So we might consider those infractions that we're talking about: License plate lights and no front plates.

4 According to the way I'm reading this, those are misdemeanor offenses. Because he's saying, We will not pursue vehicle for misdemeanor offenses, i.e., no license plate lights, no front plate, et cetera, et cetera.

5 So those are misdemeanors, the way I'm reading this.

6 However, the second part of your question is: Are those driving infractions, or are those vehicle equipment issues?

7 And I read those as vehicle equipment issues.

A. -- to shut off my lights and sirens in this pursuit.

**Q. So 15 seconds into the pursuit it should have been terminated, is your opinion?**

A. That's my opinion.

**Q. Okay. Now, that Sergeant Kruger memo that you referred to?**

A. Yes.

**Q. It -- if you look at it, he talks about examples of offences for no pursuit, it's no license plate lights.**

**Do you see that?**

A. I do.

**Q. No front plate.**

**Do you see that?**

A. Yes.

**Q. And then it says, Et cetera.**

**Now, those two examples are examples of violations, I would say, but nothing to do with how the vehicle is being operated or driven safely or unsafely; would you agree?**

A. Well, I -- I have -- there is kind of two parts of that question that you asked.

The -- the first one is: Are those violations or not? To be honest with you, I would

**Q. Okay. I do, too.**

**So with Mr. Wegner, we don't have a vehicle violation, an equipment violation, we have him operating the vehicle in a manner that potentially could be dangerous to pedestrians or other vehicles, correct?**

A. I do agree with you on that.

**Q. And so this memo, if you look at the memo and the use of the term "misdemeanor," which is a term of legal art, and we've talked about misdemeanors, some of which can be felonies and all of that, it depends on what we're talking about at the time?**

A. I would disagree that misdemeanors can be felonies. You and I talked about how a same action can result in a misdemeanor, or it could result in a felony. But I still think that when you break them down, as let's say a prosecutor might in determining charges, you're going to -- it's either a misdemeanor or it's a felony. I don't know if it can be both.

**Q. And I misspoke.**

**An assault can be a misdemeanor or a felony?**

A. Yes.

1 **Q. And if it's a felony, you can pursue it**  
 2 **under this memo, but if it's a misdemeanor, if you**  
 3 **interpret that memo, you can't pursue, right?**

4 A. Correct. Correct.

5 **Q. So you would agree with me, that's kind**  
 6 **of a -- it's pretty vague, and you got to have a**  
 7 **lot more information than just making a line in**  
 8 **the sand and saying, Misdemeanors you can't**  
 9 **pursue, felonies you can.**

10 **It depends on what you are looking at?**

11 A. Well --

12 **Q. What the facts are?**

13 A. I -- I kind of would disagree with you  
 14 there.

15 **Q. Okay.**

16 A. I think the sergeant was very clear in  
 17 what we will pursue for and what we will not.

18 **Q. Well, he was clear that you are not going**  
 19 **to pursue if a license -- no front license plate,**  
 20 **that's clear?**

21 A. That's clear.

22 **Q. Let them go.**

23 **No license plate lights; let them go?**

24 A. Right.

25 **Q. But there is nothing in here that says if**

1 serious things.

2 **Q. Okay.**

3 A. So what he is saying is don't pursue for  
 4 minor issues.

5 **Q. Okay. Now, do you think what Deputy**  
 6 **Atkinson saw Mr. Wegner do was a minor thing?**

7 A. Was it a minor thing?

8 **Q. As you just got done saying --**

9 A. Well, it certainly was -- go ahead.

10 **Q. No. You used that terminology, so I'm**  
 11 **just going to mimic your term.**

12 **Was it minor?**

13 A. Yeah. I was -- I was trying to  
 14 characterize his memo because we were talking  
 15 about that. But now we're back to driving.

16 So were the violations that Mr. Wegner  
 17 committed minor? Is that your question?

18 **Q. Yes.**

19 A. Let's just call them what they are. They  
 20 were more than equipment violations, but they are  
 21 clearly not felonies. They are in that in-between  
 22 stage.

23 **Q. Okay.**

24 A. So --

25 **Q. That's fine.**

1 **a guy is crossing the centerline at 12:30 in the**  
 2 **morning and potentially causing an accident with**  
 3 **oncoming traffic or running over a pedestrian or**  
 4 **hitting a parked vehicle or other object, that --**  
 5 **that isn't -- you don't see that in this memo,**  
 6 **something like that?**

7 A. Well, the way I'm reading Montana law,  
 8 those are misdemeanors, and he says, We're not  
 9 going to pursue for misdemeanors.

10 **Q. Okay. Al right --**

11 A. But his examples include equipment  
 12 violations.

13 So I could only read what -- what I see  
 14 there. And that's -- that's what I see. That's  
 15 how I see it.

16 **Q. We would have to ask him what he meant by**  
 17 **that terminology, correct?**

18 A. Yes.

19 **Q. And what everybody else understood it to**  
 20 **be, probably more important?**

21 A. Well, you know, even -- even the most  
 22 basic rookie police officer knows that it's --  
 23 they teach you that in the police academy. Here's  
 24 your misdemeanors, and here is your felonies. And  
 25 misdemeanors are minor things. Felonies are

1 A. Yeah. That's -- that's how I would  
 2 characterize them.

3 **Q. And the last thing I am going to ask you**  
 4 **is another hypothetical.**

5 A. Uh-huh.

6 **Q. Now, we talked about potential liability**  
 7 **to Big Horn County if the stop hadn't been made or**  
 8 **the -- pursued and something happened down the**  
 9 **road. You remember all that line of question?**  
 10 **Another hypothetical.**

11 **What if in this community there --**  
 12 **unfortunately, there are missing young children,**  
 13 **it's a -- it's close to the reservation. You have**  
 14 **probably seen a lot of publicity in the recent**  
 15 **past about missing Native Americans.**

16 **Hypothetically, what if this pickup --**  
 17 **and we didn't know Mr. Wegner was driving it,**  
 18 **there is no evidence of that. We don't know who**  
 19 **is inside of it. But what if he took off, and**  
 20 **Deputy Atkinson, you know, put the lights on and**  
 21 **the siren, he took off and he had a young Native**  
 22 **American girl kidnapped in that vehicle and took**  
 23 **off, and we just said, Done, we're not going to do**  
 24 **anything?**

25 **Do you see some potential liability**

1 **exposure to Big Horn County, to the parents of**  
2 **that Native American girl who ends up dead off the**  
3 **side of the road, found a week later?**

4 A. The question you asked is one that is  
5 very difficult to answer because -- and -- and  
6 these cases happen, you will see it happening.  
7 How much risk are you willing to subject a  
8 potential innocent victim to in order to save  
9 them? It's -- it's a question that has been on  
10 the forefront of a lot of police training, police  
11 administrator memos, articles, studies. How much  
12 risk are you willing to subject someone to in  
13 order to save them?

14 And I could really get into this, and we  
15 could have long and lengthy discussions, but back  
16 to your hypothetical question: Native American  
17 girl is in the car, and are you saying that Deputy  
18 Atkinson in this hypothetical knew the girl was in  
19 the car?

20 **Q. No. I'm going to -- my hypothetical is:**  
21 **Same case that we're talking about, but he**  
22 **discontinues the pursuit after 15 seconds, like**  
23 **you've suggested, and it's later determined --**

24 A. Ah.

25 **Q. -- that this person driving the pickup**

1 Now how hard and how fast do you pursue  
2 someone in order to save them? It's a very  
3 subjective call, and I -- I can't give a  
4 definitive answer there.

5 But it makes the question much harder to  
6 answer when you consider knowledge. What -- what  
7 did the officer know at the time of the pursuit?

8 **Q. Well, if he knew that, you would have no**  
9 **problem whatsoever with him pursuing, would you?**

10 A. See, I -- no. Exactly, because now you  
11 are talking about kidnapping, right? And you are  
12 talking about a true innocent.

13 So that's -- that's -- I don't have a  
14 problem with the pursuit, but you still have to  
15 bring reasonableness into there.

16 You still have to say, Even though I knew  
17 someone was kidnapped in there, does that mean I  
18 can drive a hundred miles an hour? What if my car  
19 will do 150? Can I drive 150 miles an hour? Can  
20 I push them off the road with my vehicle and cause  
21 them to crash in order to save someone inside?

22 So see, that -- that -- there are so many  
23 questions that come in there where then you have  
24 to look at the reasonableness of the officer's  
25 actions, and was it reasonable that they did

1 **had someone, Native American or otherwise, that's**  
2 **why he was fleeing, didn't want to get caught, we**  
3 **learned that story after the fact.**

4 **Do you think Big Horn County would have**  
5 **some liability exposure to the family of that**  
6 **young girl?**

7 A. You just made the question much easier to  
8 answer.

9 Because if he -- if he lacked that  
10 knowledge but it was later discovered she was in  
11 the car, no fault on the Big Horn County or the  
12 deputy. Right?

13 **Q. Okay.**

14 A. Because he's following department  
15 procedure and he gets himself involved in a  
16 pursuit and says, Hey, this is too dangerous. I'm  
17 just looking at a guy who crossed the centerline.  
18 He didn't hit anyone, there was no one near him.  
19 Might be drunk, but, boy, I just -- I'm not going  
20 to pursue in this case.

21 I would find no liability on behalf -- on  
22 behalf of Big Horn County because it was later  
23 discovered that someone was in the car.

24 The really hard question to answer is:  
25 What if he knew she was in the car?

1 whatever they did in order to stop potential  
2 kidnapping?

3 So me, as an expert, societies in  
4 general, courts are going to say, Yes, we're going  
5 to give you some leeway there. We are going to  
6 allow you to violate the law. We are going to  
7 allow you to pursue and allow you to go faster  
8 than the speed limit.

9 But there is still going to be that top  
10 end limit, isn't there? There is going to be  
11 something that says, now, wait a second. In -- in  
12 order to save this person you had to kill them?  
13 That's unreasonable.

14 So -- and -- and -- and the measurements  
15 that we're talking about are -- are, again, very  
16 subjective and they range in between them.

17 There is a variety of circumstances, and  
18 we almost have to look at each case on a  
19 case-by-case basis. Were the officer's actions  
20 reasonable in order to stop the violator?

21 Sometimes yes, sometimes no. That's -- that's --  
22 that's the really tough question.

23 If he didn't know she was in there, no  
24 liability.

25 If she [sic] knew, there is one where you



1 need to -- you need to follow and pursue. But you  
 2 don't want to do it so dangerously that you have  
 3 now killed the person that you were trying to  
 4 save.  
 5 **Q. So in this situation we just put in a**  
 6 **kidnapped young girl in that pickup that Deputy**  
 7 **Atkinson knew, is there some point in time under**  
 8 **the facts of this case he should have backed off**  
 9 **even though he knew and --**  
 10 A. Like I said, there is going to be  
 11 circumstances that say -- you know, I don't know  
 12 what he was driving. But let's say he could do  
 13 150 miles an hour. Are you -- you know, are you  
 14 really going to drive 150 now, three times the  
 15 speed limit, in order to save her? I would think  
 16 that's probably unreasonable.  
 17 **Q. So you're --**  
 18 A. You have to make good attempts to --  
 19 to -- to save that person --  
 20 **Q. Your answer is, then, there would be a**  
 21 **point where Deputy Atkinson, under that**  
 22 **hypothetical, should stop the vehicle, leave, and**  
 23 **so that the vehicle doesn't crash and nobody is**  
 24 **killed, but the innocent kidnapped victim is gone?**  
 25 **And you would not find criticism for**

1 At that point -- let's say -- let's say  
 2 it reached 120, 130 miles an hour, someone is  
 3 going to die, right? Including the innocent.  
 4 What do you have? You have the license  
 5 plate, you have a description of the vehicle, and  
 6 you have something that is faster than any vehicle  
 7 being pursued, and that's a police radio.  
 8 Let's set up road blocks, let's get other  
 9 departments to get involved, let's get more  
 10 backup, let's cordon off an area, and let's have  
 11 someone go to the registered owner's house.  
 12 There is other investigative steps you  
 13 can take in order to save this person without  
 14 unnecessarily endangering them.  
 15 **Q. Final question.**  
 16 **What Montana laws did you look at? You**  
 17 **referenced you looked at Montana laws.**  
 18 **Was it the eluding a police officer**  
 19 **statute? Is that what you --**  
 20 A. Yeah. The two laws I -- I really looked  
 21 at were eluding and reckless driving.  
 22 **Q. Did you look at careless driving as well,**  
 23 **or just reckless?**  
 24 A. I think I just looked for reckless. I  
 25 don't remember looking up careless.

1 **Deputy Atkinson under those circumstances if the**  
 2 **family later finds the young child dead and then**  
 3 **complains about Deputy Atkinson not pursuing and**  
 4 **saving their daughter? Is that what you're**  
 5 **saying?**  
 6 A. Exactly. And we would still have to look  
 7 back at the facts of the case and what was  
 8 presented -- what was presented at the time, what  
 9 does Deputy Atkinson know, and was he reasonable  
 10 in his actions? And was there reasonable pursuit  
 11 in the first place? Probably. Was it reasonable  
 12 to, let's say, Well, I needed to shoot into the  
 13 truck to stop the driver? Probably unreasonable.  
 14 You -- you are going to hit the innocent person in  
 15 there. Or you are going to kill the driver who  
 16 now loses control and both people die anyway.  
 17 Right?  
 18 So there -- there is always going to be  
 19 limits. The law does not allow you to do anything  
 20 in your power to stop someone, no matter the  
 21 crime. We can always think of circumstances where  
 22 you should not do everything in your power to stop  
 23 someone, because by doing so you have now created  
 24 a danger that was greater than existed at the time  
 25 of pursuit.

1 **MR. STACEY:** All right. That's all I  
 2 have. Thank you.  
 3 **THE WITNESS:** Thank you, Cal.  
 4 **MR. STACEY:** Thank you.  
 5 Ryan, you got anything?  
 6 **MR. HEUWINKEL:** I don't have any  
 7 questions for this witness at this time.  
 8 **MR. STACEY:** Thank you.  
 9 You going to have him read and sign?  
 10 **MR. JOHNSON:** Sure.  
 11 **MR. STACEY:** Okay. All right. That ends  
 12 the deposition. Thank you so much.  
 13 **THE WITNESS:** Thank you, Cal.  
 14 **MR. STACEY:** You bet.  
 15 **MR. JOHNSON:** Thank you, David.  
 16 (The deposition was concluded at  
 17 2:19 p.m. Witness excused; signature  
 18 reserved.)  
 19  
 20  
 21  
 22  
 23  
 24  
 25

DEPONENT'S CERTIFICATE

I, DAVID T. SWEENEY, the deponent in the foregoing deposition, DO HEREBY CERTIFY, that I have read the foregoing - 192 - pages of typewritten material and that the same is, with any changes thereon made in ink on the corrections sheet, and signed by me, a full, true and correct transcript of my oral deposition given at the time and place hereinbefore mentioned.

DAVID T. SWEENEY, Deponent

Subscribed and sworn to before me this \_\_\_\_ day of \_\_\_\_\_, 2022.

PRINT NAME: \_\_\_\_\_  
Notary Public, State of  
Montana  
Residing at: \_\_\_\_\_  
My commission expires: \_\_\_\_\_

JH - Woody v. Big Horn County

C E R T I F I C A T E

STATE OF MONTANA )  
COUNTY OF YELLOWSTONE ) : ss

I, Jacqueline A. Hill, court reporter and Notary Public for the State of Montana, residing in Billings, Montana, do hereby certify:

That I was duly authorized to and did swear in the witness and report the deposition of DAVID T. SWEENEY in the above-entitled cause; that the foregoing pages of this deposition constitute a true and accurate transcription of my stenotype notes of the testimony of said witness, all done to the best of my skill and ability; that the reading and signing of the deposition by the witness have been expressly reserved.

I further certify that I am not an attorney nor counsel of any of the parties, nor a relative or employee of any attorney or counsel connected with the action, nor financially interested in the action.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my notarial seal on this the 29th day of January, 2022.

	<b>according (3)</b> 106:18;115:5;179:14	23:23	<b>agreed (1)</b> 95:14	184:15
<b>§</b>	<b>accountability (1)</b> 80:10	<b>adds (1)</b> 172:5	<b>agreement (2)</b> 144:25;145:1	<b>among (1)</b> 165:12
<b>\$2,000 (1)</b> 169:13	<b>accurate (5)</b> 87:13;106:17;170:2; 177:20,21	<b>adjust (1)</b> 110:6	<b>Ah (1)</b> 185:24	<b>amount (4)</b> 97:24;103:25; 154:19;169:12
<b>[</b>	<b>acquire (1)</b> 84:12	<b>administer (1)</b> 94:14	<b>ahead (11)</b> 11:23;12:10;20:17; 31:15;41:4;57:13;77:1; 116:4;173:22;176:23; 183:9	<b>amounts (2)</b> 94:18;129:16
<b>[sic] (2)</b> 166:21;188:25	<b>across (9)</b> 29:11;51:6;91:9; 110:22;111:14;115:6; 123:20;125:12;159:15	<b>administered (3)</b> 54:12;60:18;69:14	<b>ahold (1)</b> 85:4	<b>analysis (3)</b> 11:3;12:2;13:20
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