

Deposition of David T. Sweeney
Hartman v. State of Arizona, et al.

September 18, 2023



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THE SUPERIOR COURT OF THE STATE OF ARIZONA
FOR MARICOPA COUNTY

JULIETTE HARTMAN, a)
single woman,)
)
Plaintiff,)

No. CV2022-010880

vs.)

STATE OF ARIZONA, a)
governmental entity; JOSE)
AGUILAR-DELGADO and JANE)
DOE AGUILAR-DELGADO,)
husband and wife; JAIRO)
ALEJANDRO PEREZ and JANE)
DOE PEREZ, husband and)
wife; RACHEL CELESTE)
JENSEN and JOHN DOE)
JENSEN, wife and husband;)
JOHN and JANE DOES 1-5;)
and ABC CORPORATIONS 1-5,)
)
Defendants.)

VIDEOTAPED VIDEOCONFERENCE DEPOSITION
UPON ORAL EXAMINATION
OF
DAVID T. SWEENEY

Taken at 1325 Fourth Avenue, Suite 1500
Seattle, Washington

DATE TAKEN: SEPTEMBER 18, 2023

REPORTED BY: KIM DORE-HACKBARTH, RPR, CCR 2072

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A P P E A R A N C E S

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VIDEOTAPED DEPOSITION OF DAVID T. SWEENEY
EXAMINATION INDEX

EXAMINATION BY:	PAGE NO.
MS. ELLIOTT.....	6
MR. LADLEY.....	148
MS. ELLIOTT.....	165
MR. LADLEY.....	166

EXHIBIT INDEX

EXHIBITS FOR IDENTIFICATION	PAGE NO.
1 Declaration of David T. Sweeney....	8
2 An Abstract of the Capstone Project of David T. Sweeney, 6/1/23.....	65

1
2
3
4
5
6
7
8
9
10
11
12
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14
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16
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SEATTLE, WASHINGTON; SEPTEMBER 18, 2023

10:00 A.M.

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VIDEOGRAPHER: We are on the record. This is the deposition of David T. Sweeney in the matter of Juliette Hartman vs. The State of Arizona, et al., Cause No. CV 202-010880 in the Superior Court of the State of Arizona in and for the County of Maricopa. And was noticed by Stephanie Elliott.

The time now is approximately 10:25 a.m. on this 18th day of September 2023, and we are convening at 1325 Fourth Avenue, 15th Floor, Seattle, Washington 98101.

My name is Jason Neuerburg from Buell Realtime Reporting, LLC, located at 1325 Fourth Avenue, Suite 1840 in Seattle, Washington 98101.

Will counsel and all present please identify themselves for the record.

MS. ELLIOTT: Stephanie Elliott and Matt Kelly for the State of Arizona, with us is Michelle Thomas from the Arizona Department of Administration and Jose Munoz from the Arizona Attorney General's Office.

MR. LADLEY: This is Ed Ladley from Breyer Law Offices on behalf of plaintiff Juliette Hartman.

1 VIDEOGRAPHER: The court reporter may now
2 swear in the witness.

3
4 DAVID SWEENEY, witness herein, having been
5 first duly sworn on oath,
6 was examined and testified
7 as follows:

8
9 MS. ELLIOTT: Okay, before we get started, I
10 just want to put on the record that we've had a dispute
11 this morning. The State initially had a retained expert
12 witness Andy Anderson present at the deposition via
13 Zoom. Plaintiff's counsel expressed an objection, we
14 don't feel that objection is grounded in any legal
15 authority or rule, however, we have agreed to not have
16 Mr. Anderson present at this deposition.

17 MR. LADLEY: And as for our position for
18 plaintiff, it is our position that the rules do not
19 allow any other person to attend the deposition of a
20 witness other than the parties, that expert witnesses is
21 not allowed to attend the deposition.

22 As I mentioned to Ms. Elliott, it's an issue
23 that could have been resolved most likely or possibly if
24 we had known that they were going to request to have
25 their expert attend the deposition, or at least it could

1 have been addressed with the court earlier.

2 We made an attempt to contact the court and
3 the judge is in a bench trial and, therefore, we could
4 not hear the matter before starting the deposition. We
5 continue to object to the presence of defendant's expert
6 at this deposition.

7 E X A M I N A T I O N

8 BY MS. ELLIOTT:

9 Q. Good morning, sir.

10 A. Good morning.

11 Q. My name is Stephanie Elliott, we met earlier
12 before the deposition, but I'm from the Arizona Attorney
13 General's Office, I am representing the State of
14 Arizona. We are here for your deposition this morning.

15 A. Correct.

16 Q. Fair to say that you have done a couple of
17 depositions in your time?

18 A. I have.

19 Q. Okay, any idea how many?

20 A. As an expert witness, I believe I have
21 participated with six depositions.

22 Q. Have you been deposed as a police officer?

23 A. I don't believe so. Every time I went to court
24 it was just to give trial testimony, and generally
25 depositions weren't taken in any of those criminal cases

1 that I can think of. I don't believe I was ever
2 deposed.

3 Q. Have you ever been deposed in any other context
4 as other than an expert?

5 A. No.

6 Q. Okay, and you have done trial testimony too,
7 right?

8 A. Yes, I have.

9 Q. How many, can you even estimate how many times
10 you have testified at trial?

11 Actually, let me break it down.

12 How many times have you testified at trial as an
13 expert witness?

14 A. One.

15 Q. And what case was that in?

16 A. Nampa vs., I am sorry, Nampa was the defendant,
17 I can't remember the defendant's name, but you will see
18 it in my CV there. It was involving Nampa, Idaho and I
19 don't remember the plaintiff's name, but that went to
20 trial testimony and I went to Idaho to actually give
21 testimony. There was a deposition in that case prior
22 to --

23 Q. Okay.

24 A. -- testimony.

25 Q. To your knowledge, have you ever been excluded

1 from any court as an expert witness?

2 A. No.

3 Q. So normally I have a list of rules that I go
4 over for how depositions work, but I'm going to go out
5 on a limb and assume you know all of those?

6 A. I do.

7 Q. I am not going to go over them, but if you have
8 any issues or questions, let me know?

9 A. I will.

10 Q. Is there anything that would interfere with your
11 ability to testify this morning?

12 A. No.

13 Q. All right.

14 I am going to mark your report as Exhibit 1.

15 (Exhibit No. 1 was marked.)

16 BY MS. ELLIOTT:

17 Q. Feel free to refer to it at any point if you
18 need to.

19 Sir, where did you go to high school?

20 A. Enumclaw High School.

21 Q. Where is that located?

22 A. About an hour south of here.

23 Q. What year did you graduate?

24 A. 1982.

25 Q. And did you go into law enforcement right after

1 high school?

2 A. No.

3 Q. What did you to do right after high school?

4 A. I went to college.

5 Q. Where did you go?

6 A. My first university was University of Texas at
7 El Paso. And I then came back to Washington and
8 attended Green River Community College.

9 Q. Did you receive a degree from either of those
10 institutions?

11 A. I did not.

12 Q. Did you declare a major or anything?

13 A. I don't believe I even got to the stage of
14 declaring a major.

15 Q. And what did you do after you left the community
16 college?

17 A. I took a job as a security officer at Seattle
18 Pacific University.

19 Q. That's not a sworn position, right?

20 A. Correct, it's just a security guard. You do
21 wear a uniform but you are not sworn to enforce the law.

22 Q. And how -- did you do that for four years?

23 A. Correct.

24 Q. You can feel free to look at your resume too,
25 it's not a memory game, there we go.

1 I see the next job you had listed on your resume
2 is police officer for the Seattle Police Department.

3 When and where did you attend the police academy?

4 A. The police academy was in 1987. I believe I was
5 hired by Seattle on June 2nd of 1987. The academy
6 started soon after and graduated in August, I want to
7 say, August or September.

8 Q. Of 1987?

9 A. Yes.

10 Q. Okay.

11 And you were at Seattle PD for a long time,
12 right?

13 A. I was.

14 Q. Okay, I want to go through the different
15 positions that you held.

16 At Seattle PD, so what was your first position?

17 A. All officers when they graduate from the academy
18 are generally assigned to what we call a student
19 officer, so you are learning under a field training
20 officer, an FTO. And so I worked in a variety of
21 precincts as a student officer before being allowed to
22 then proceed out to work on my own. As a police officer
23 my first several years were spent at the North Precinct,
24 which is basically everything north of downtown.

25 Q. Okay.

1 And then at some point you became a field
2 training officer, right?

3 A. I did.

4 Q. And let's see, your next position was DUI
5 enforcement officer?

6 A. Yes.

7 Q. Seems pretty self-explanatory.

8 And what was your next position after DUI
9 enforcement officer?

10 A. I worked in special deployment, a unit in the
11 department tasked with staffing special events, movies,
12 protests, parades, sporting events. We handled large
13 events that required a large deployment of officers, I
14 think that's a good way to put it.

15 Q. So when you were in that position did you do
16 anything other than the special events or that was
17 solely your job duties?

18 A. That was solely my job duty.

19 Q. And did you just staff them as in, were you like
20 a supervisor or did you also work the events?

21 A. I was not a supervisor. My job was to create
22 staffing plans so that other supervisors would then have
23 personnel assigned to them and then to move out and run
24 the events themselves. So I didn't tell them how to run
25 it, but I made sure that they had the adequate number of

1 people there.

2 Q. And then were you out on the ground in the
3 events also or not?

4 A. Sometimes. WTO if you remember was in Seattle,
5 that was a pretty famous event here, and I was
6 responsible for staffing a lot of that.

7 Q. Okay.

8 A. And then I did go out in the field, to the
9 Sheraton hotel, which was kind of our base of
10 operations.

11 Q. Okay.

12 The next position you have listed is patrol
13 sergeant. Were you taking college courses while you
14 were working as a patrol sergeant?

15 A. I did.

16 Q. That's commendable.

17 How did you manage that?

18 A. Attending at hours other than work is the basic
19 idea. So I would attend in summer, in evenings, during
20 the daytime. As you know with a police officer our
21 schedules are varied, so I was able to return to
22 Shoreline Community College and get my two-year AA
23 degree in police sciences.

24 Q. Okay, so were you working full time as an
25 officer and going to school at the same time?

1 A. I was.

2 Q. Is that where you graduated from?

3 A. Yes, again, graduated with an AA from Shoreline
4 Community College.

5 Q. Okay, in police sciences?

6 A. Yes.

7 Q. Okay, so after two years as a patrol sergeant,
8 you moved on to be a detective sergeant in internal
9 investigations; is that right?

10 A. Yes.

11 Q. So what exactly were your job duties there?

12 A. As a detective sergeant in internal
13 investigations my job was to investigate claims of
14 misconduct, malfeasance, courtesy, anything that anyone
15 made a complaint about with a Seattle police officer
16 could potentially come to me to investigate. That also
17 included the intake for people that came into our office
18 or called on the phone to register a complaint.

19 So there was a couple different components
20 there, the intake component where you are gathering some
21 initial information to get a complaint started and then
22 the investigation component which the lieutenant might
23 assign a case out and they would say here, Sarg, here's
24 your latest case, I would like you to handle this one.

25 Q. So that was from 2003 to 2005, correct?

1 A. Yes.

2 Q. So during that time you were only doing internal
3 investigations, you weren't doing any in-the-field
4 patrolling or anything like that?

5 A. That's correct.

6 Q. I am going to ask you about the mediator
7 position but in a little bit. So I'm going to skip over
8 to, what do we have next, SWAT?

9 A. Detective sergeant in human resources.

10 Q. Oh, detective sergeant in human resources, tell
11 me about that position.

12 A. I was the equal employment opportunity
13 investigator for the Seattle Police Department. In that
14 role I investigated claims of harassment and
15 discrimination, quid pro quo, hiring standards, firing
16 standards, disputes between employees, that's also what
17 kind of got me into mediation, which we can get to
18 later.

19 That role also included a few other side jobs.
20 I was in charge of performance reviews for the
21 department and I was our early intervention coordinator,
22 designed to help employees who are suffering either
23 personal or professional crisis, manage that and return
24 to productivity within the department.

25 Q. Okay.

1 And so that position also wasn't in-the-field
2 patrolling or anything?

3 A. Correct.

4 Q. So from 2003 to 2010 you were not in the field?

5 A. Correct.

6 Q. Okay.

7 And you mentioned that's what got you into the
8 mediation, so let's go ahead and talk about that. Tell
9 me about how you got into mediation.

10 A. A lot of disputes between employees come down to
11 issues of power dynamics, issues of getting along with
12 one another, arguments, perceived slights and
13 injustices, it's not always that someone harassed me
14 because of my race, my creed, my religion, the color of
15 my skin. Sometimes it was because employees didn't
16 get along. I wanted to study that further, so I signed
17 up with King County to become a volunteer mediator with
18 the interlocal conflict resolution group.

19 In that role I would take on mediation cases
20 outside of the city. So, in other words, the department
21 would volunteer my services so that I could help, let's
22 say, Bellevue or maybe the Seattle Housing Authority or
23 something like that, something where I am not involved
24 with employees that I know. That helps me remain
25 unbiased so that I can listen to their complaints and

1 disputes and help them reach resolution.

2 Q. So would you only be mediating employment
3 disputes?

4 A. No, but that was a large part of them. I also
5 handled labor disputes, I handled landlord-tenant
6 disputes, but I would say 50% were probably employee
7 disputes, just people not getting along for one reason
8 or another.

9 Q. And are you still doing that now?

10 A. When I transferred to -- let me take that back.
11 When I retired from Seattle Police Department, I
12 am sure we will get to this, I spent one last year in
13 active law enforcement with Oregon State University.
14 Being that I was not in King County anymore, I signed on
15 with the Federal Executive Board, I have not done any
16 mediations with them, and since that time I left Oregon.
17 So my status, I think I am still active as a volunteer
18 there, potentially if I wanted to I could volunteer to
19 travel to Oregon and help with a dispute, but I have not
20 done that at this point. So I wouldn't say that I am
21 active there. I am a member, I will say that.

22 Q. And that's of the Oregon Federal Executive
23 Board?

24 A. Yes.

25 Q. So that was just another volunteer mediator

1 position, but you actually never did any mediations
2 there?

3 A. Correct.

4 Q. How about still as a King County mediator, are
5 you back to doing that?

6 A. I would say that I am not active with them at
7 this point.

8 Q. Okay.

9 A. But it's something I would certainly consider.
10 I think they would like to have me back.

11 Q. Okay.

12 So the next position up on your resume is SWAT.

13 A. Yes.

14 Q. What made you decide to switch to the SWAT team
15 from HR investigations?

16 A. It was something that I had always wanted to do,
17 and I thought if I don't do it now, I'm going to get too
18 old because it's a very physical position. And as a
19 sergeant you have to do everything that the officers do,
20 even if they are ten or 15 years younger than you.

21 So you have to do the obstacle course, you have
22 to be able to shoot, to run, to jump from moving
23 speedboats on the ferry boats to climb tall ladders, to
24 rappel, all the things that SWAT trains with, the
25 sergeant has to do as well.

1 So it's a challenging position and I talked it
2 over with people close to me and decided if I am going
3 to do it now is the time to do it. And so I transferred
4 into SWAT in 2010 and worked there for four years.

5 Q. And as a SWAT sergeant, you are out in the field
6 with your SWAT team, right?

7 A. I am.

8 Q. Okay.

9 So then I guess why did you decide to leave SWAT
10 in 2014?

11 A. I think it was time to do something else. I had
12 spent 14 years as an officer, and 14 years as a
13 sergeant, and my next goal was to be promoted to
14 lieutenant.

15 So I left SWAT and went into a role as a, as a
16 sergeant in the North Precinct here, something that
17 would give me a little bit more free time than I had in
18 SWAT and then I could study for promotional tests, which
19 I took and was promoted to lieutenant in 2015.

20 Q. All right.

21 So you were promoted to operations lieutenant,
22 and your CV says that you analyzed and reviewed pursuits
23 in this position, right?

24 A. That's correct.

25 Q. Were you also conducting pursuits in this

1 position or just reviewing?

2 A. Just reviewing.

3 Q. Okay, so your next position, well, it was one
4 you held since 2005, training; what is this, what is
5 this position?

6 A. I was an artillery trainer for the Seattle
7 Police Department. So I never physically was assigned
8 to the training unit, but in a large department like
9 Seattle you are going to need a wide variety of subject
10 matter experts who can then add on to the staffing and
11 training and help them with training requirements,
12 conduct training classes. And that's where I trained
13 probably thousands of SPD employees in a variety of
14 disciplines.

15 So I was relied upon to provide my knowledge and
16 experience and it helped to have a sergeant's and
17 lieutenant's experience as a trainer, because I wasn't
18 exactly a peer. I could provide insight from the
19 department as to how a particular tactic might be
20 perceived or how it might be reviewed within the
21 department, so I think I was pretty useful in that role.

22 Q. And you did that for the rest of your time with
23 Seattle PD?

24 A. I did.

25 Q. Okay.

1 So moving up to force investigation lieutenant,
2 were you doing any patrol work in that position?

3 A. At times. When we had large events in the East
4 Precinct, I would be relied upon to be the commanding
5 officer for several large events in the precinct.

6 Force investigation was my primary role, but I
7 wouldn't call it patrol per se, I would call it, I was
8 needed for special events.

9 Q. Okay.

10 So what were your main job duties in this
11 position?

12 A. The main job duties were to review the uses of
13 force by officers and sergeants at the East Precinct for
14 all three watches, and to conduct investigations of
15 those uses of force, to make sure that they abided by
16 department standards, Department of Justice standards,
17 training standards.

18 In that role I watched a lot of video because
19 Seattle had gone to body cameras somewhere around, maybe
20 2018, I want to say. And so in that role you are
21 watching a lot of work by patrol officers, and their
22 video cameras are on. So you are reading their reports,
23 you are watching the video camera, and conducting an
24 investigation of that use of force to determine if it
25 met our force guidelines, and then forward it along to

1 the captain with recommendations.

2 Q. So you would make recommendations as to whether
3 officers followed the policy or not?

4 A. Yes.

5 Q. Would you make recommendations as to whether or
6 not an officer should be disciplined?

7 A. No, but I would make a recommendation that they
8 possibly be investigated.

9 MS. ELLIOTT: I am going to take a quick
10 break because I have a note that the audio on the Zoom
11 is not working. Can we go off the record for a moment.

12 VIDEOGRAPHER: We are going off the record.
13 The time is 10:45 a.m.

14 (Break taken from 10:45 a.m. to
15 10:50 a.m.)

16 VIDEOGRAPHER: Back on the record at
17 10:50 a.m.

18 EXAMINATION (CONTINUED)

19 BY MS. ELLIOTT:

20 Q. Okay, sir, I think we finished talking about
21 force investigation lieutenant. The next position is
22 watch commander. Tell me what your job duties were as a
23 watch commander.

24 A. I was assigned to the North Precinct where I had
25 eight to ten sergeants and 60 to 65 officers that I

1 worked with and supervised. My job was to supervise the
2 sergeants who supervised the officers.

3 In that role I was responsible for active crime
4 scenes, large-scale disturbances, special events. I was
5 responsible for reviewing the work of others, whether
6 that be force investigations, collisions, pursuits,
7 complaints, you pretty much run the show on your watch.
8 You are in charge of it and you are in charge of those
9 people and you report to the precinct captain.

10 Q. Were you doing any in-the-field work in that
11 position?

12 A. Yes.

13 Q. Okay.

14 The whole time?

15 A. You are not out in the field on a day-to-day
16 basis taking 911 calls like the officers are, but like I
17 say, when you have large-scale events or something that
18 required your presence or was a complicated
19 investigation, let's say a homicide took place,
20 certainly a lieutenant would go out there and take
21 command of that event.

22 Q. Okay.

23 So then, so you retired from Seattle PD in 2021,
24 right?

25 A. Yes, I did.

1 Q. So tell me about the switch from Seattle PD to
2 Oregon State University Police Department.

3 A. I took a position at Oregon State University,
4 the department was brand new. They previously had a
5 contract with Oregon State Police that didn't work out
6 so well for the university and they wanted to have their
7 own police department.

8 So it just so happens that the two people they
9 brought in, the chief and myself, both had retired from
10 Seattle, and so we knew each other and worked there.

11 It was a challenging position, we were short
12 staffed, and I was responsible for a lot of events and a
13 lot of training and a lot of work for the employees
14 there. I was commuting on the weekends, though, and
15 found it to be pretty burdensome on the family and I
16 left that position in March of 2022.

17 Q. You were commuting from Seattle to Oregon?

18 A. Yes.

19 Q. That's a long commute.

20 A. Yes, about four hours.

21 Q. So what, I guess what were your primary job
22 duties there?

23 A. As the second in command I was in charge of
24 training, I supervised all the sergeants and officers,
25 and the security officers there at the university. I

1 functioned both in an administrative role and a patrol
2 role, so both operations and administrations, which made
3 it a large challenge. The workload was heavy and days
4 off were few.

5 Establishing a training program that had not
6 been in place before was a challenge. I was in charge
7 of staffing everyone, making sure that everyone had a
8 work schedule that worked for both the department and
9 the employees.

10 I was in charge of union negotiations, I was in
11 charge of staffing football games and all the things
12 similar that I had done in Seattle, all while
13 functioning as a basic patrol supervisor too because I
14 didn't always have a sergeant working on my shift.

15 So I guess that's the best way to put it, you
16 are doing a sergeant's job and a lieutenant's job, it
17 was a challenge.

18 Q. So when you were patrolling what area, are you
19 just patrolling the campus or what are you patrolling?

20 A. Yes, Oregon State University is a very large
21 university, it is a large campus where you have the
22 central function of campus with students living on
23 campus and they also have, it's a vo-tech university, so
24 you also have large expanses of farm animals and cows
25 and llamas and pigs. They do everything there at the

1 university, it's a great place. I really enjoyed my
2 time there.

3 So I guess in answer to your question, you are
4 responsible for a large-scale campus. It's not just a
5 downtown campus. Corvallis is a city of about 50,000
6 and the university makes up a large portion of that.

7 Q. And so I guess when you are patrolling on
8 university, what are you looking for; are you looking
9 for like underage drinking, traffic violations,
10 everything?

11 A. I would say you are -- my primary goal was
12 looking for things that would be harmful to the
13 university, to the students, to the faculty and the
14 staff. If that meant car prowlers on campus, I am
15 looking for that, if that meant people coming to steal
16 bicycles, I am looking for that. If it meant students
17 that were overdosing on edibles and getting them the
18 care they need, off to the hospital, it involved that.
19 If it involved students -- trying to think of the some
20 of the interesting things I saw -- dancing on top of a
21 balcony unrestrained outside of a window of a dorm, I
22 probably would need to be doing something about that and
23 taking care of that and making sure that they are safe
24 and back inside.

25 A lot of what involves policing of students, it

1 doesn't necessarily mean that they need law enforcement,
2 they don't need to go to court. Sometimes the best
3 court for them is to talk with their residential
4 advisor, or perhaps the vice president in charge of
5 student affairs, who might have a conversation with them
6 with expectations of how they are to be an Oregon State
7 University student.

8 And whatever behavior they were engaged in,
9 again, we probably don't need to be going to court for
10 this, but we need to correct some of those behaviors.

11 We had a challenge in that we had students that
12 had their senior year of high school but never were in
13 high school because they were home with COVID, and then
14 we had the sophomores that never really had a freshman
15 year at the university. So you combine these two groups
16 together and it was a challenging environment.

17 Q. A lot of possibilities there.

18 A. Yes.

19 Q. When did you go back to school for your master's
20 degree?

21 A. When I started at Oregon State University they
22 had an educational incentive plan for faculty and staff
23 and so I started my master's right when I got hired
24 there, March of 2021.

25 Q. At Oregon State University?

1 A. Yes.

2 Q. Okay, and you got a master's in public policy
3 just this year, right?

4 A. I did.

5 Q. Congratulations.

6 A. Thank you.

7 Q. So what made you decide to get a master's in
8 public policy?

9 A. I think, I was interested certainly in the
10 educational incentive for the employees, it made it
11 affordable. I knew that my police career was winding
12 down. I didn't know how much longer I would do it. I
13 thought I might do it for 40 years. I didn't make it
14 that far, I made it to 35.

15 And I felt that a master's might be educational
16 incentive for me personally as personal growth as well
17 as professional growth to increase my learning, my
18 experience, and to provide me that educational
19 background above and beyond a bachelor's degree. So I
20 think you put all those combination of factors together
21 and it seemed like a good idea to do.

22 Q. And you had a particular interest in public
23 policy?

24 A. Yes.

25 Q. What, where does that stem from?

1 A. It was the master's program at OSU that seemed
2 closest to what I was familiar with as a police
3 administrator. I am keenly interested in the debate and
4 discussion between government and the people it serves,
5 and how do we mix in justified equitable policing that
6 can then function within the community, be part of the
7 community and not be a separate law enforcement office
8 that just comes into your community, creates harm and
9 destruction, and then leaves.

10 I am interested in policing that is part of a
11 community that serves the community, that works
12 alongside the community, that was always what I was
13 interested in professionally with Seattle and Oregon
14 State University.

15 So public policy seemed to be the closest to
16 what I desired more information about, more learning.
17 To determine how are policies made, how are laws made,
18 why are they passed, and how to increase the trust of
19 the public with the police that should work alongside
20 them and should work for them, not necessarily as
21 opposed to them. They should be involved in the
22 community and that was of most interest to me and that's
23 why the master's in public policy seemed to align with
24 my interests.

25 Q. Is this type of cooperative policing that you

1 are sort of describing to me right now, is that
2 something that you see as lacking in current policing
3 across the country?

4 A. Yes. We are getting better at it, some
5 departments are. I would like to say Seattle does a
6 pretty good job of that. You will never have 100% trust
7 from the community that you serve, but there's certainly
8 steps that you can take to increase the amount of trust
9 between the citizens and the police.

10 And that involves this process of being part of
11 the community, not just being separate from the
12 community. Ultimately the power of the police comes
13 from the people that they serve, and whether we do that
14 through elections or appointments of our elected
15 officials or appointed officials, whether they be mayors
16 or county executives or city council or a, an executive
17 board of a university, let's say at OSU, that power
18 ultimately comes down to the police because it's granted
19 by the people that you are serving.

20 And if you have betrayed that trust, which law
21 enforcement has at times, if you betray that trust, it's
22 hard to win it back. And it's, it makes policing a lot
23 more difficult because people will not feel that the
24 actions that you might be taking as a department are
25 justified because they have lost trust in that.

1 Now, policing isn't alone in this and I can
2 probably stop at any point. There's a number of
3 institutions, whether it be the media, the military
4 still ranks fairly high, but the media, the police, and
5 sometimes lawyers, sometimes when we betray the trust of
6 the people, it makes it harder to do our jobs the way
7 they are designed to do.

8 Q. You also started teaching at Northwestern
9 University; is that right?

10 A. I did.

11 Q. Where is Northwestern University?

12 A. Evanston, Illinois.

13 Q. Okay, are you teaching from Evanston or are you
14 teaching online?

15 A. Mostly I teach online. If they need me in a
16 particular place they have flown me a couple times to
17 different sites where I teach in person, but primarily
18 that is online teaching.

19 And I was very much familiar with it because
20 that's how I earned my master's at OSU, it was all
21 online. Even though I was working on the campus, my
22 work was generally online when I was home in the
23 evenings and things like that.

24 Q. So it says "Instructor Northwestern University,
25 School of Police Staff and Command," is that like a

1 particular department within Northwestern?

2 A. The School of Police Staff and Command is a
3 nationally recognized, in fact, I would say even
4 worldwide recognized executive program for executives
5 primarily based in the United States that teaches them a
6 variety of different disciplines required of a police
7 executive, whether that be media relations, traffic,
8 staffing, use of force, personnel, labor contracts, all
9 those things that a police executive needs in order to
10 function well they can get through that program at
11 Northwestern University.

12 I attended myself and they, they were fairly
13 impressed with me and they invited me back to be
14 graduation speaker and offered me employment and I said
15 yes.

16 Q. So what do you teach there?

17 A. A variety of disciplines. Last week I taught
18 labor law. I also teach Equal Employment Opportunity, I
19 teach professional appearance, the ability to speak in
20 public, the ability to look professional in front of
21 your peers. Let me think. Let's look here, maybe I
22 listed them all out.

23 No, I just said a variety of police executive
24 disciplines.

25 Q. Well, let me ask you, are you teaching these in

1 the form of like a seminar or an ongoing course, like a
2 six-week course or how are you teaching them?

3 A. If a student attends, I will call it SPSC for
4 School of Police Staff and Command. So SPSC, if you
5 attend SPSC online it's a six-month program. Your
6 variety of classes run throughout that program. Some of
7 them last one to four weeks, others are just one week in
8 length, there's others that are two weeks in length.

9 As a student, they are generally doing two
10 classes a week, so you might be learning about staffing
11 and you might also have that same week in with a
12 separate instructor, separate class, perhaps you are
13 learning about labor law.

14 My job is to moderate discussion groups, to
15 grade papers, administer tests, and just encourage them
16 in their learning and provide sometimes outside
17 resources and things that I experienced from my time in
18 Seattle.

19 Q. Do you provide any written material in the
20 courses that you teach?

21 A. The written material comes from Northwestern
22 University.

23 Q. Okay.

24 And you are still teaching, right?

25 A. I am.

1 Q. Okay.

2 Up to the top now, expert witness.

3 A. Yes.

4 Q. So as an expert, you have been an expert witness
5 since 2017, how much of your work is on behalf of
6 plaintiffs?

7 A. I would say about 65%.

8 Q. Prior to this case, have you ever done work for
9 Mr. Ladley or anyone else from the Husband and Wife Law
10 Team?

11 A. Yes.

12 Q. When was that?

13 Well, actually, let me go back. Who did you
14 work with; what attorney did you work with?

15 A. Mr. Ladley.

16 Q. Okay.

17 What case was that?

18 A. I would have to look it up. It was that
19 accident involving a motor home that the guy took off in
20 the motor home, stolen motor home, and crashed in an
21 intersection involving several vehicles.

22 And I was asked to just review the initial
23 circumstances of the crash. I don't believe I provided
24 any written reports or deposition testimony.

25 Q. Is that on your list of expert witness cases?

1 A. I am not sure.

2 Let me take a look.

3 (Witness reviews document.)

4 MR. LADLEY: I can tell you just from the
5 description of the case, I believe it may be a case
6 where we consulted with you. You have not been retained
7 as an expert on the case.

8 THE WITNESS: I believe it's Ramirez vs.
9 City of Chandler.

10 MR. LADLEY: That sounds correct.

11 BY MS. ELLIOTT:

12 Q. Okay, so you were not retained by the plaintiff
13 in Ramirez?

14 A. Correct.

15 Q. Do you know why you were not retained in
16 Ramirez?

17 A. There was another expert that was consulted --

18 Q. Okay.

19 A. -- and I believe got the job.

20 Q. Okay.

21 Were you able to provide a favorable opinion
22 upon your evaluation?

23 A. I don't know if it was favorable. I provided my
24 opinion based on the facts that were given to me and the
25 evidence that I reviewed.

1 Q. Was that a pursuit case?

2 A. Yes, there was a gentleman inside a stolen RV
3 that was parked in a yard. The police went to
4 investigate it as a trespassing, the RV took off, a shot
5 was fired and the RV sped at high speed through an
6 intersection and collided with several cars. Fires
7 resulted and there was weapons involved, it was a quite
8 a case.

9 MR. LADLEY: It's an ongoing case.

10 MS. ELLIOTT: Okay.

11 BY MS. ELLIOTT:

12 Q. Did you feel that that pursuit was reasonable?

13 A. I don't believe I offered an opinion as to the
14 legality of the pursuit. Primarily I looked at the
15 actions of a lieutenant on the scene that fired shots at
16 the RV as it left.

17 Q. Okay.

18 So it seems like over your 34 years at Seattle
19 PD -- 34?

20 A. 34 at Seattle, one with OSU.

21 Q. Okay, it seems like in your 34, 35 years with
22 law enforcement you have held some positions that
23 involve patrolling and some that didn't, fair?

24 A. I think that's a great description. I have
25 operated in both operations and administration.

1 Q. Can you tell me how many pursuits you have
2 personally conducted?

3 A. Where I am driving?

4 Q. Yes.

5 A. I am going to say five.

6 Q. Five pursuits in 34 years?

7 A. Yes.

8 Q. Do you remember what precipitated those five
9 pursuits?

10 A. Some of them I remember and others I have a more
11 vague recollection. So yes, in answer to your question
12 I do remember some of the things.

13 Q. Can you tell me the ones you remember?

14 A. I certainly remember my first one because I was
15 brand new and you never forget, you are a brand-new
16 officer and I had a motorcycle in front of me with
17 expired tabs. The lights and siren went on, the
18 motorcyclist sped off, went down a street, went,
19 barreled right through a major intersection, an arterial
20 intersection, thankfully didn't get hit by anyone or get
21 hit. I stopped and slowed at the intersection and then
22 continued on.

23 We went downhill at such a speed that the
24 motorcyclist wiped out in front of me and I nearly ran
25 him over with the car. I swerved away, and hit a stop

1 sign, which flipped up over my car and then I came to a
2 stop on the far end of the intersection.

3 So that was definitely a memorable pursuit.

4 Q. What year was that?

5 A. 1987.

6 Q. That sounds like a very eventful pursuit.

7 A. That's the short version, yes.

8 Q. You said that you were trying to pull over this
9 motorcycle for exposed tabs?

10 A. Yes.

11 Q. In Arizona I think we call them tags, is that
12 right, are we talking about the same thing?

13 A. It's the same thing, depends on your state.

14 Q. Expired registration?

15 A. Right.

16 Q. Okay.

17 Okay, so under Seattle Police Department pursuit
18 policy at that time in 1987 were you required to
19 consider the safety of the public when you initiated a
20 pursuit?

21 A. I definitely was required to consider the safety
22 of the public when engaged in a pursuit, but I couldn't
23 tell you the exact nature of the policy at that time. I
24 know that it changed over the years, and I will state
25 this, that we had a much more relaxed pursuit policy in

1 '87 than we do now.

2 Q. I think you said you could remember a couple
3 others too, what are the other ones that you can
4 remember?

5 A. Me and a partner, a partner and I went to a
6 burglary, the neighbor was calling in some young males
7 that had broken into their neighbor's house and were
8 fleeing in a Honda Accord.

9 So as we got there they pulled away, and we
10 chased them, northbound -- here's an interesting story.

11 Northbound at the city limits there's a golf and
12 country club. As we are proceeding into the golf and
13 country club there's a security guard in a little booth
14 there and he puts down the arm to stop the pursuit and,
15 of course, the Honda just blasts right through the
16 security arm and splintered it.

17 I can still remember driving past the security
18 booth and on my left is a wedding party at the golf club
19 on the steps literally having their picture taken and
20 here we come lights and sirens chasing these burglars.

21 We get to the end of the parking lot there and
22 there's a gate, a more substantial gate that the
23 suspects knew they couldn't get through. They got out
24 of the car and they jumped the gate, you are now in the
25 housing community associated with this country club.

1 Q. They are on foot now?

2 A. They are on foot. Me and the other officers
3 start jumping over the gate, I get to the top, I snag my
4 pants and I fall down the other side and bash up my
5 knee.

6 At the same time a more veteran officer arrives
7 and he said, Guys, you can just run around. There was a
8 large opening right to the right of the gate, but you're
9 so focused with your tunnel vision I didn't even see it.
10 I thought I need to get over this gate to get the
11 suspects.

12 Q. Did you have body cam at that time?

13 A. No, there was no body cameras.

14 So we get inside, my partner and I go to a
15 woman's house and she lent us her Cadillac and we were
16 able to drive around in the Highlands, that's the name
17 of the place, and we got three of the four suspects, me
18 and other officers, I can't remember who arrested who.

19 So we are now back at the parking lot, I am sure
20 the wedding party is still watching all the excitement,
21 and we are going through our process and getting the
22 evidence and we see burglary victim's items in the trunk
23 and things like that.

24 We got three out of the four, we thought we had
25 done a pretty good job, when suddenly someone looks out

1 over the golf course and there's a guy obviously not a
2 golfer just trying, sauntering through the lot trying to
3 escape our notice. And said, Hey, that's him, get him,
4 and now a foot chase ensues and we got our fourth
5 suspect, so kind of an interesting pursuit story.

6 Q. I am shocked that the security arm didn't work.

7 A. I know.

8 Q. Can you remember any other of your five
9 pursuits?

10 A. Yes. Do you want more stories?

11 Q. Well, it could be brief, but yeah.

12 A. Another one, I will try to be brief about it.

13 Q. I do love the stories, though.

14 A. They are fun, they are interesting.

15 Particularly as a young police officer, these are
16 indelible things that generally remain with you.

17 We had had a number of robberies at 7-Elevens.
18 In the district where I worked was a 7-Eleven, and so I
19 got in my patrol car and backed down an alley and I was
20 just watching that 7-Eleven.

21 Two suspicious looking characters in a 1968
22 Cougar rolled by with their lights out, and I didn't
23 have enough experience, I thought well, these must be
24 the guys. And I took off after them and the pursuit
25 started and they drove off, and as we are driving I am

1 calling out the pursuit as we are going, and apparently
2 I had the wrong street the whole time.

3 I am, I was thinking of 5th Northeast where the
4 7-Eleven is and I kept saying I am northbound on 5th
5 Avenue Northeast and at 100 miles an hour it's really
6 hard to read street signs, so I'm trying to do my best
7 to call out street signs as I go.

8 And my fellow patrol officers are lining up
9 along 5th Northeast and they're saying I don't see him,
10 I don't see him, I don't see him. And I forgot when the
11 car left the area, it moved over five blocks and we are
12 now on Roosevelt and not 5th Northeast.

13 Anyway, the pursuit went out of the county.
14 They stopped their car at one point and it rolled back
15 into my car as I am stepping out of it with my gun at
16 the low ready and the car door closes on my arm and I
17 fired a shot off into the ground and I thought, wow, I
18 have really done it now, I have really messed up. But
19 thankfully I still was able to think on my feet a little
20 bit, I said get on the ground, there's more where that
21 came from. And they proned out and I was able to arrest
22 them.

23 They had committed no crime at that point but
24 one guy was wanted for robbery out of Oregon and they
25 had a bunch the stolen burglary victims's stereos and

1 things like that in the trunk. So obviously they were
2 up to no good, but they didn't commit a crime that night
3 other than running from me, so anyway.

4 Q. You didn't know about all the other stuff?

5 A. I didn't know about all that, it was I
6 discovered it later.

7 Q. Okay.

8 So I think that's three.

9 A. Yeah, that's three.

10 Q. The last two?

11 A. I know there's a couple more, but the memories
12 fade with those because, probably because, as I said, I
13 wasn't as young then, maybe not as impressionable. I
14 think there was, there was definitely one in SWAT, but
15 you are just looking at a much more different, more
16 professional sergeant at that point, more responsible,
17 make better decisions, and the details kind of fade.

18 Q. It sounds like you think that age has a lot to
19 do with how these pursuits are initiated or how they go?

20 A. I can tell you this: In my career, I certainly
21 became better as I became more seasoned, more
22 experienced. You slow down, you are able to think a
23 little bit, you are not so wrapped up in the immediacy
24 of what's happening in front of you.

25 And, you know, in my master's study of pursuits,

1 I found the same thing, that most pursuits involve
2 younger officers but that's not unexpected. Younger
3 officers primarily make up the officers we see out on a
4 daily basis in patrol cars patrolling and taking 911
5 calls.

6 As you become more seasoned, you get promoted or
7 you move into detectives or you get into some sort of
8 specialty unit. And it's just kind of the general
9 nature of policing and how that takes place.

10 So in answer to your question, I think I am
11 getting to it, younger officers generally are probably
12 going to be more involved in pursuits and there might be
13 a few more mistakes. And I do believe that some
14 seasoning, some experience is going to help you survive
15 those encounters and do a better job with them when they
16 do take place.

17 Q. So in the pursuits that you can remember, did
18 you ever have a situation where you initiated a pursuit
19 and either decided on your own to terminate or were
20 instructed to terminate the pursuit?

21 A. I don't believe I have ever self-terminated a
22 pursuit that I can think of. I have terminated maybe 30
23 or 40 pursuits for others as a supervisor, but as an
24 officer, again, I got in those, a few early in my
25 career, and in general, a supervisor would never call

1 you off and you were allowed to pursue. So I don't
2 believe I was ever told to call off a pursuit early in
3 my career.

4 Q. What do you mean in general a supervisor would
5 never call off a pursuit?

6 A. So I can approach this one of two ways: One, in
7 general policing terms, policing across the United
8 States, things that I have studied or I can give you
9 personal experience.

10 Q. Start with the personal experience because you
11 said you have personally terminated 30 or 40 for others.

12 A. I have.

13 Q. But in your, when you were conducting them, they
14 would never be terminated by a supervisor?

15 A. I kind of talked about it before, the policy at
16 the time was much more lax and police were given much
17 more carte blanche ability to pursue. And if you were
18 running from the police, you shouldn't have been
19 running, there's something that you are doing wrong.
20 And the police we felt in general, and kind of giving a
21 we statement here, but there's also some I in there.

22 I felt that I needed to stop those people, that
23 they are dangerous to society, and my job is law
24 enforcement. By God, you are not going to run from me.
25 So I'm going to chase you even if, even if you get in a

1 crash up in the Highlands or I nearly run you over on a
2 side street, or what was the other one I gave, yeah,
3 anyway, that was more of my attitude.

4 And it matched that of the department and I
5 would say it also matched, the national mood was police
6 chase. Everyone knows the police stories in the media
7 and things like that, as well as fictional stories on TV
8 and movies, that's part of what police do, is they chase
9 people.

10 Q. And I understand, and we will get to this too, I
11 understand your feelings about this have changed and
12 Seattle's policies have changed.

13 A. They have.

14 Q. But are there still, is there still -- let me go
15 back. Do there still exist policies like that in
16 departments across the country, policies that are not
17 restrictive like Seattle's?

18 A. Yes.

19 Q. And do you see that as kind of a country-wide
20 thing that those policies still exist?

21 A. In my studies for my master's I found generally
22 four types of police pursuit policies: The unrestricted
23 policy where total authority rests with the officer.

24 A discretionary policy which allows for
25 supervisory intervention and warns the officer, Hey,

1 don't step over the bounds here, keep it reasonable if
2 you are going to pursue. There's also policies that
3 specify we will only pursue, it's very specific, we will
4 only pursue in certain cases and generally serious
5 felonies.

6 And then there's a fourth type of policy which
7 says we do not engage in pursuits at all. So those are
8 the general four types that you will find in the United
9 States.

10 And I will say that police departments in
11 general across the United States have moved from an
12 unrestricted to more restrictive policies as time has
13 gone on.

14 And again, that engages in that discussion you
15 and I had before about how does the police department
16 best serve the community. Well, they do that through
17 discussion and negotiation, as to when should police
18 pursuits happen and, yes, as a community we want you to
19 pursue the bank robber, let's say, but we don't want you
20 to pursue someone like the burglary, the burglars that I
21 chased, probably society says yes, we don't want people
22 breaking into our home and stealing our stuff and if you
23 see suspects fleeing, go after them and chase them.

24 But that motorcyclist with expired tabs,
25 probably too risky just for expired tabs. So society

1 has changed and I think I have changed along with it and
2 I try to instill that in the officers and sergeants that
3 I supervised.

4 I would tell them at roll calls, I remember
5 having several discussions, here's how we are going to
6 do pursuits. And if I hear a pursuit coming out, one,
7 sergeants, I expect you to answer up and monitor that
8 pursuit. If you don't, I as lieutenant will and we will
9 talk about later why you didn't get on the air
10 immediately and say you are monitoring that pursuit.

11 Then sometimes the officers might chafe at that,
12 but it was my job as lieutenant to instruct them in
13 justifiable, equitable policing that respects people in
14 the community and that might involve me saying don't
15 pursue that, let them go.

16 Q. In your studies for your master's degree, did
17 you look at departmental policies across the country?

18 A. Yes. Let me take that back. I looked at a
19 variety of educational studies conducted by scholars
20 that looked at police pursuit policies across the United
21 States. It doesn't necessarily mean I looked up the
22 Mobile, Alabama police policy, but I might look at a
23 study and read it where somebody else has studied that.

24 Q. How about for purposes of this case, did you
25 look at departmental policies around the country?

1 A. Not necessarily. I looked at the Arizona police
2 pursuit policy, it's under emergency vehicles in the
3 legislature, and then I looked at department policy.

4 Q. Okay.

5 Well, do you know, do any departments, if you
6 know, still have unrestrictive policies?

7 A. In the United States, yes, there still are.

8 Q. And that's where it's just totally up to the
9 officer, they do what they want and they can pursue when
10 they think they need to pursue?

11 A. Most of the policies that I have read, and don't
12 let me overstate this, I have not read a ton of pursuit
13 policies across the United States, but I have looked at
14 a few in a variety of different circumstances, some as
15 an expert witness, so if I am involved -- we talked
16 about Nampa, Idaho earlier, so I'm looking at that case,
17 so I better know Nampa police pursuit policy and how
18 that applies in that case, so that in that case I would
19 look at a pursuit policy for another department.

20 In my studies at Oregon State University I did
21 look at pursuit policies for a few departments across
22 the United States, but primarily I focused in Washington
23 State.

24 Q. So if there's still some departments across the
25 country that have unrestrictive policies and you said

1 society as a whole is shifting towards more restrictive
2 pursuit policies, is it fair to say then that there's
3 departments that run the gamut here from unrestrictive
4 to discretionary to specific cases only to no pursuits
5 at all?

6 A. I think you would find, and I couldn't tell you
7 which departments they are, but I have seen evidence of
8 all those four police pursuit policies across the United
9 States. Now, on the most restrictive -- I am sorry, let
10 me back that up.

11 On the unrestrictive policies, I can't say I
12 have seen one that just says chase anything you want
13 whenever you want. They don't state that. There's
14 generally going to be some caveats that responsibility
15 for the pursuit still rests with the employee conducting
16 the pursuit, you need to do it safely. I have never
17 seen one that doesn't warn the officer somewhat of the
18 consequences of their actions.

19 So it's, it's almost some of those are more
20 advisory in nature, and I couldn't tell you which
21 communities they are, but in general you will find
22 different styles of policing in different areas of the
23 country, so...

24 Q. And you reviewed Arizona DPS pursuit policy,
25 right?

1 A. I did.

2 Q. Which category would you, of the four you
3 listed, would you say that falls within?

4 A. Let's look at the report here.
5 So I am on --

6 Q. You are looking at Exhibit 1.

7 A. Exhibit 1, page 5, subcategory 8.

8 So we are looking at Arizona Department of
9 Policy Safety, pursuit policy.

10 So this mostly is a discretionary policy. It
11 says that personnel must continually evaluate the nature
12 and seriousness of the offense, but it also says in the
13 same paragraph, a sworn supervisor shall determine if
14 the pursuit should continue.

15 So without reading you the whole paragraph,
16 that's basically an advisory-type policy that tells the
17 officer you can pursue under certain circumstances but
18 we are going to make sure that we have some supervisory
19 intervention going on there and it's up to the
20 supervisor whether the pursuit will continue or not.

21 Q. And you don't take any issue with the DPS
22 policy; is that fair?

23 A. I would agree with you. If I had huge issues
24 with the policy, I think I would have written them in
25 the report. So I don't have a problem with the pursuit

1 policy. From what I read, the materials I was provided,
2 this is a discretionary pursuit policy, yes.

3 And it's similar to probably the, I am going to
4 guess here, I don't know this for sure, but my guess is
5 this is primarily almost one of the more common pursuit
6 policies is, you still have to be reasonable in your
7 pursuit efforts. And some departments want supervisors
8 involved and some don't mention them, so...

9 Q. So you don't take issue with the way the policy
10 is worded or the policy as a whole?

11 A. Correct.

12 Q. Just whether or not the policy was followed?

13 A. Correct.

14 Q. Okay.

15 You mentioned, you spent a lot of time as a
16 supervisor as well, and can you approximate how many
17 pursuits you have reviewed as a supervisor?

18 A. I would say personally I have called off 30 to
19 40, I think that's a good estimate. And reviews later,
20 early in my career we didn't have a pursuit review
21 policy unless there was a collision or a big arrest.

22 So if someone got in a pursuit and either the
23 suspect got away, or they called it off themselves or
24 another supervisor called it off, generally we wouldn't
25 have a report about that. So there's probably been a

1 lot of the pursuits that I am aware of but didn't
2 personally review.

3 But in answer to your question, as Seattle moved
4 from a less restrictive policy, certainly as I operated
5 under in 1987, to later years of an extremely
6 restrictive police pursuit policy, the opportunities for
7 review became less and less. Pursuits became more and
8 more rare and I will say I have probably reviewed 100.

9 Q. Have you ever disciplined officers for conduct
10 during pursuits?

11 A. I have never personally been involved in
12 administering discipline to an officer, so no.

13 Q. Have you recommended discipline?

14 A. I have recommended training. I can't remember
15 recommending discipline. I think the only thing -- no,
16 I think the best way to answer your question is no, I
17 don't remember recommending discipline for an officer
18 involved in a pursuit.

19 Q. Before Seattle started moving towards this more
20 restrictive policy, would you have classified the policy
21 as a discretionary policy like DPS's?

22 A. Yes.

23 Q. Okay.

24 Was it less restrictive than DPS's early on?

25 A. Seattle also had, and, again, it depends on the

1 year, so I am, my mind is shuffling through several
2 different iterations of our policy.

3 But the one that I probably operated under for
4 the longest period of time was a discretionary policy
5 which warned the officer to be reasonable in their
6 actions, to consider the nature of the crime that
7 someone was involved in before initiating that pursuit.

8 And the chief, trying to remember which chief it
9 was, early 2000s instituted a pursuit policy that
10 changed drastically and it moved it towards felonies
11 only.

12 Q. In the early 2000s?

13 A. I am going to say, yeah, maybe around, I
14 remember being in roll call when the policy was
15 announced, so that would have been during my time at the
16 West Precinct as a sergeant, a newer sergeant.

17 Yeah, I would say between 2001 and 2003 I can
18 still remember being in that roll call and discussing
19 the new policy with the officers and listening to their
20 complaints about bad guys now getting away because we
21 can't pursue, but yeah, that's when it changed to
22 felonies only.

23 So the wording of the policy didn't change too
24 much other than adding in that component, pursuits will
25 only be initiated for the following felonies, and we had

1 language that said pursuits will not be initiated for
2 misdemeanors or traffic violations.

3 Q. Okay, so in Seattle you were not, you have not
4 been pursuing for misdemeanors or traffic violations
5 since the early 2000s?

6 A. Correct.

7 Q. That's not the case in all departments, right?

8 A. That's correct.

9 Q. And it's not the case in the DPS's policy, is
10 it?

11 A. No, the policy in effect I believe was written
12 in 2020, if I remember right, was the date of the DPS
13 policy. And this collision was 2021, so it was still in
14 effect at that time. I don't know what it was before
15 that.

16 Q. But at that time, the DPS policy doesn't contain
17 a felony limitation, right?

18 A. Correct.

19 It just says you have to consider the
20 seriousness of the offense.

21 Q. Sure.

22 Have you, so in the 30 or 40 pursuits that you
23 terminated, just generally what types of things did you
24 terminate those pursuits for?

25 A. The most common thing would be an officer who

1 initiates a pursuit, and they say I have -- let's say I
2 have a suspect running from me, and running when we are
3 in a car and you hear lights -- well, you don't hear
4 lights -- when you hear sirens in the background you
5 generally know this is not a running foot pursuit, this
6 is a running vehicle pursuit and you can hear the noise
7 of the engine and braking and things like that, so that
8 was our most common phrase, Hey, I got one running from
9 me.

10 And I am listening and I would listen for them
11 to provide information. And then I might say something
12 like 223 is monitoring that pursuit, what are you
13 chasing them for. And have them answer up, what's your
14 speed, what's the traffic conditions.

15 And if I felt that, one, it was a minor issue or
16 minor violation -- now technically eluding the police
17 might be a felony, so you have some officers saying
18 well, he's eluding me, he's committed a felony. I say
19 what's the original violation. No headlights at night,
20 terminate the pursuit, right? So that might be the
21 general nature of, in answer to your question, of me
22 calling off a pursuit.

23 Because I'm looking for what are you originally
24 chasing them for, not that they have now committed the
25 crime of running from you. Who is this bad guy you are

1 trying to get, is he a bank robber, is he a murderer or
2 rapist or is he someone with expired tabs or ran a red
3 light.

4 Q. So when you are a supervisor for Seattle PD,
5 particularly after the early 2000s when you have a
6 felony-only pursuit policy, you are looking at did they
7 initially commit a felony that you are pursuing them
8 for, not that they committed the felony after the
9 pursuit began?

10 A. Correct.

11 Q. Okay.

12 What if an officer started pursuing someone for
13 something minor and then they committed like a dangerous
14 felony; what if while they are pursuing them they pulled
15 a gun out and started firing shots, does that change it?

16 A. We actually had that. I was not monitoring that
17 pursuit, I showed up later, but officers were
18 involved -- now, this guy was dangerous from the start,
19 he had gone in several businesses and pulled a gun and
20 waved it around at people, so officers are generally
21 going to pursue him anyway.

22 But during the pursuit, this is what made me
23 think of it, he's firing out the window at the officers
24 behind him and they said, he's shooting at us, he's
25 shooting at us. So, of course, so they back off, but

1 they don't want to let the guy go. That's part of the
2 risk of being a police officer, you need to protect the
3 public from this individual, but how do you do that to
4 keep yourself safe.

5 So they still pursued, but they increased their
6 following distance, so I am not sure that was an answer
7 to your question.

8 Q. Well, correct me if I am wrong, but what I am
9 hearing is that there are some instances where a felony
10 committed after the beginning of the pursuit would
11 justify continuing the pursuit even if it was for
12 something minor initially?

13 A. I can't -- I can think of scenarios that might
14 meet that definition. I can't think of an actual case I
15 was involved in that later a felony became something,
16 yes, now we will continue that pursuit, I can't think of
17 an instance like that. I can think of theoreticals.

18 Q. That's fair.

19 So as a police officer, though, if you are going
20 to pull somebody over because they ran a stop sign, or
21 they are speeding, you know, they are going five or ten
22 miles over the speed limit and they flee from you, you
23 are not assuming they are fleeing from getting a
24 speeding ticket, are you?

25 MR. LADLEY: Form, foundation. Go ahead.

1 THE WITNESS: There's any number of reasons
2 why someone might flee. The guy on the motorcycle that
3 fled from me had a warrant for his arrest and didn't
4 want to go back to jail; the burglars didn't want to go
5 to jail because they had stolen property in the trunk.
6 The individuals in the Cougar that fled from me, again,
7 warrant for robbery out of Oregon and they had stolen
8 property in the trunk.

9 I don't think those three cases are indicative
10 of every case, but certainly in the studies that I have
11 looked at, why do people run, in general, they don't
12 want to get caught. They may or may not know the
13 consequences of their actions, but in general they don't
14 like the police following them because the police equal
15 jail. And they think if they can get away, in general
16 they can avoid jail time, even though the consequences
17 might be greater for them because they are involved in a
18 pursuit or perhaps they injured someone or killed
19 someone in the pursuit, any number of reasons.

20 So, you know, I can't place myself in the mind
21 of those people, but I have done enough studies on
22 people that have run from the police and, you know,
23 again, a few personal anecdotes and stories that I
24 shared with you as to why those people ran from the
25 police. But in general, people want to avoid

1 consequences for their actions, I think that's probably
2 an easy way to say it.

3 BY MS. ELLIOTT:

4 Q. But in general as a 34-year police officer if
5 someone flees from you because they have expired tags,
6 would you assume that there's actually something more
7 serious going on?

8 A. It's hard to say. I think that's certainly a
9 possibility, but I remember supervising officers,
10 supervising officers who became involved in the pursuit
11 and they asked the guy why did you run, I didn't want to
12 stop. I didn't want a traffic ticket.

13 There was no warrant for their arrest, they
14 didn't have stolen property in the trunk, they just
15 didn't want to stop for the police. They don't like the
16 police, they don't want to see the police. The police
17 for them indicates something that, you know, might limit
18 their freedom or cause consequences for them later and
19 they just, they just ran, so I have seen it both ways.

20 Q. And now in Seattle no officer is going to pursue
21 you if you don't stop for a minor traffic violation,
22 right?

23 MR. LADLEY: Form, foundation.

24 THE WITNESS: Let me make sure I understand
25 your question correctly.

1 BY MS. ELLIOTT:

2 Q. Let me ask it again.

3 In Seattle, pursuant to the Seattle policy,
4 officers cannot pursue for a traffic violation?

5 A. That's correct.

6 Q. Okay.

7 So if an officer tries to pull someone over
8 because they have expired tags and that person just
9 doesn't stop, they are definitely not getting a ticket
10 for expired tags.

11 A. At least at that time, if you have the license
12 plate, you might show up at their house later and maybe
13 try to serve them with a ticket at that time, I know
14 that has happened. But at the time, generally, no, you
15 are going to turn the lights and siren off and go about
16 your business.

17 Q. So it's kind of at the option, at people's
18 option whether they want to get tickets for minor
19 traffic violations?

20 A. Well, that's an interesting way to put it. I
21 guess you could say it's their option. I know it's hard
22 because I think 90% of society behaves in a generally
23 societal acceptable way, there are the people that
24 don't. So it is their option, I guess it's their
25 option, yeah, that's one way to put it, yeah.

1 Q. I am not going to try it later, but...

2 A. Understood.

3 Q. Are you a member of any professional
4 organizations?

5 A. The three that I am still a member of I think
6 they are on my CV: National Tactical Officers
7 Association, I joined that when I was in SWAT and I have
8 always just enjoyed being a member. International
9 Association of Police Chiefs. And then, I think this is
10 probably expired actually, I probably need to change
11 this because I'm not at Oregon State University anymore,
12 I don't believe I am a member of International
13 Association of Campus Law Enforcement, IACLEA.

14 Q. The International Association of Police Chiefs,
15 doesn't that association recommend a discretionary
16 pursuit policy?

17 A. That's a great question.

18 Without reviewing it, I don't think I should
19 hazard a guess. I am not sure. That could be it, but I
20 don't know for sure.

21 Q. I usually ask this at the beginning but I
22 forgot. What did you do to prepare for this deposition
23 today?

24 A. I reviewed the report that I wrote, I reviewed
25 the transcript of the officers's radio communications.

1 Let me just look. Actually, I am going to go back to
2 page 3 in Exhibit 1 and I will just try to from memory
3 go through the things that I reviewed.

4 I obviously don't need to look at everything
5 again, I have already written a report about this. The
6 report is the key thing that we are probably talking
7 about today and that is where I spent most of my time.

8 I looked at B, the DPS pursuit policy.

9 I looked at E, the Board of Patrol's report.

10 I looked at F, the Arizona crash report.

11 I looked at L, the notice of claim, collision
12 reports. I did not review the medical documentation, I
13 just skipped the rest of that.

14 I looked at M, Arizona Department of Policy
15 Safety Trooper Report.

16 I looked at N, the Department of Public Safety
17 Call Detail Report.

18 I looked at O, the DPS dispatch transcript.

19 I listened to a radio transmission and I believe
20 it's R, I think that is the one that mostly covers the
21 radio transcription.

22 I think that's it.

23 Oh, and I reviewed -- I reviewed Arizona --

24 (Witness reviews document.)

25 Here it is.

1 I looked at Arizona Revised Statute, Title 28
2 regarding emergency vehicles.

3 Q. I think in your report you say 28 D. I think
4 it's supposed to be 28-264 D?

5 A. That's quite possible. If I look at the very
6 last page of my references.

7 Q. 624 D.

8 A. According to my references, I used fine law
9 regarding Title 28, authorized emergency vehicles.

10 Q. It's ARS 28-624, I have a copy of it, we can
11 look at it later, that's okay.

12 A. I think that sounds right, but I will verify
13 that when we look at it.

14 Q. Okay.

15 Did you look at any other Arizona statutes?

16 A. No. Oh, I also reviewed defense expert report
17 and my rebuttal report.

18 Q. I am sorry, you said you wrote a rebuttal
19 report?

20 A. Yes.

21 MS. ELLIOTT: Has that been disclosed yet?

22 MR. LADLEY: Yes.

23 MS. ELLIOTT: Okay, can we take a quick
24 break.

25 VIDEOGRAPHER: We are going off the record.

1 The time now is 11:48.

2 (Break taken from 11:48 a.m. to
3 11:59 a.m.)

4 VIDEOGRAPHER: Back on the record at
5 11:59 a.m.

6 EXAMINATION (CONTINUED)

7 BY MS. ELLIOTT:

8 Q. I think we took a break while you were telling
9 me what you reviewed to prepare for this deposition and
10 you mentioned that you reviewed your rebuttal report,
11 which we have located, so that's good.

12 Is there anything else that you have reviewed in
13 preparation for this deposition?

14 A. That's all that I can remember.

15 Q. And you mentioned that one statute on authorized
16 emergency vehicles, did you review ARS 28-622 on felony
17 flight?

18 A. I don't believe so.

19 Q. Did you review ARS 41-1741 which provides the
20 authority of DPS troopers?

21 A. I don't believe so.

22 Q. Did you review ARS 28-2532 regarding vehicle,
23 requirements for vehicle registration?

24 A. No.

25 Q. Okay.

1 Did you do anything else to prepare for this
2 deposition today?

3 A. No.

4 Q. Okay.

5 I am going to mark as Exhibit 2 your capstone
6 project.

7 (Exhibit No. 2 was marked.)

8 MR. LADLEY: Did you guys disclose this?

9 MS. ELLIOTT: It's disclosed in his report,
10 so we haven't put it on our statement yet, but we will
11 be.

12 BY MS. ELLIOTT:

13 Q. We have already talked a lot about your master's
14 project, so I just have a couple of additional
15 questions.

16 What was the goal of this study; would you
17 classify it as a study?

18 A. I would.

19 Q. What was the goal of it?

20 A. I wanted to compare the pursuit, police pursuit
21 policies of all the police departments in Washington
22 State, originally, that was my original goal.

23 After talking it over with my advisor, we
24 narrowed it down to the pursuit policies for the
25 50 largest departments in the state of Washington, so

1 that would include some cities and some counties.

2 I then sent a policy disclosure request to each
3 of those 50 large departments looking for police pursuit
4 data with the goal of studying this data in order to
5 replicate some of the evidence uncovered by previous
6 scholars, as well as a new goal of the project became
7 when Washington State changed its police pursuit law
8 which then applied to all departments in Washington
9 State and I could look at, in a preliminary way, some of
10 the pursuit data both before and after changing of the
11 law and how did that affect the individual police
12 departments.

13 And then back to your question, my goal
14 obviously was to create this study, write a thesis paper
15 about it, present it to faculty, and to earn my
16 master's.

17 Q. Was, did you have the goal at all of making
18 recommendations or influencing policymakers with this
19 study?

20 A. I think in a grand esoteric way, I think the
21 potential exists for that. If this study were to be
22 more widely published or become known by different
23 government agencies, mostly counties and cities, I think
24 the potential exists, but again, I had to limit and
25 restrict the time period for this because it took so

1 long for the different departments to get their material
2 to me that I eventually could only rely on that for four
3 departments.

4 Even still with those preliminary results I
5 think they were quite striking from a reduction of
6 police pursuits down to negligible amounts.

7 So I think that's something that potentially
8 would have been useful to city and government
9 administrators in the state of Washington.

10 As the study was being finished, Washington
11 State changed the law, they went away from probable
12 cause for felonies only, which is an incredibly high bar
13 to clear for pursuits, and they changed it back to
14 reasonable suspicion to a more reasonable standard for
15 the police officers.

16 And it would be interesting to study it now and
17 see if police pursuits went back up to their levels both
18 before and after changing of the law.

19 Q. Well, it's not surprising that the number of
20 pursuits went down when they made the bar for pursuing
21 someone so high, right?

22 A. You are absolutely right.

23 Q. So if you were to make a recommendation,
24 regarding -- well, let me back up.

25 This study is really about pursuit policies as a

1 whole, right?

2 A. Yes.

3 Q. And whether they should be restrictive or
4 discretionary or move in one way or the other?

5 A. I think originally that was my goal. When I
6 found that there was really only two police pursuit
7 policies in Washington State, it more became a
8 comparison effort.

9 Q. So what was your ultimate conclusion then of
10 your research?

11 A. That police administrators as well as county and
12 city executives, whether they be mayors or county
13 executives or city councils, county councils, need to
14 consider the ultimate measure of what is the cost to
15 society if we let an offender go and vs. What is the
16 cost to society if we engage in the pursuant, knowing
17 that between a third and a fourth of them are going to
18 result in a crash.

19 So how does society then balance the effort of
20 the police officer doing the most good for the society,
21 with the least amount of harm, that's the ultimate
22 measure. How do we catch the bad guy while keeping the
23 good guy safe, in more simplistic terms, not that you
24 need simple terms, but that's how I might term it to the
25 layman, is it really looking at how do we, how do we do

1 the best without causing harm.

2 Q. And in your personal opinion, is the answer to
3 that by making pursuit policies more restrictive?

4 A. Not necessarily. Yes and no. I can expand on
5 that if you would like.

6 Q. Sure.

7 A. Sure.

8 My philosophy would be, and you'll see this in
9 the paper, that we pursue for serious felonies only.

10 Q. But that's more restrictive, right?

11 A. It is, but it also allows for a certain amount
12 of freedom. The officer knows ahead of time they are
13 not subjected to nebulous descriptions in a police
14 pursuit policy that you need to be reasonable.

15 How do you define that in the middle of a
16 pursuit, right? I told you I could hardly read street
17 signs at a 100 miles an hour, let alone try to think
18 about what does the policy say about what I am doing.

19 So it almost frees up the officer more to know
20 that, yes, society wants you to catch the bad guy, the
21 real bad guy, the one that robbed the bank or liquor
22 store or that assaulted that person and left them for
23 dead. Yes, pursue for those type of infractions --
24 those aren't infractions -- pursue for those types of
25 crimes but leave the infractions alone; it's just too

1 dangerous.

2 Go ahead.

3 Q. Doesn't that leave the officer, though, making a
4 determination as to what a serious felony is as opposed
5 to some other kind of felony?

6 A. It does but it's easier to define. It's easier
7 for them, because I can still remember being, as a
8 brand-new police recruit knowing what we called the BARK
9 felonies, burglary, assault, rape, robbery, and --

10 Q. Kidnapping?

11 A. Yeah, there you go, thank you. I was going to
12 say killing. No, kidnapping.

13 Q. Killing is a bad one.

14 A. That is a bad one too.

15 Q. So in your perfect world, departments move
16 towards a pursuit policy where you are only, officers
17 are only pursuing for serious felonies?

18 MR. LADLEY: Object to the form.

19 THE WITNESS: Not necessarily. That's my
20 personal recommendation. I think it works for our
21 community.

22 But originally you and I had a discussion a
23 while back, we were talking about how does the officer
24 best serve the public, and it's by working under the
25 established community norms for that community.

1 So if the community says, we think that the
2 police officers, we do not like people running from the
3 police, if they commit an infraction, by God go after
4 them and chase them. If the community says that and
5 gives the officers that freedom and that's then put into
6 their policy and the chief says, yes, this is what our
7 community leaders have established for us and it's in
8 policy, officers, we do not want anyone running from us,
9 so if someone takes off, you can go after them.

10 Maybe you can give them some things of -- don't
11 be unreasonable, don't chase through the middle of a
12 crowded school yard and things like that. But by and
13 large they are still going to reflect the standards of
14 the community, which states that we pursue for the
15 following issues and incidents.

16 I think communities can specify to the officers,
17 again, through government leadership, on how they want
18 that to operate.

19 So back to your question, in a perfect world, in
20 a perfect world, departments administer the codes, the
21 legislative codes, the department policy that they
22 expect the officers to operate under.

23 BY MS. ELLIOTT:

24 Q. So the standard is then looking like a community
25 by community thing?

1 A. It almost always is. Whether -- in Washington
2 State we operate under the Revised Code of Washington,
3 the RCWs, so that tells an officer by law when they can
4 and can't pursue. Some states don't do that, they might
5 only establish it through department policy, and the
6 state stays out of it and they let the department
7 establish what the policy is for the officers.

8 Q. So each state or each community may have a
9 different standard that works for it?

10 A. I think that's reasonable to say, yes.

11 Q. I think I saw in your paper that you did not
12 even request data from Washington State Patrol; is that
13 right?

14 A. That's correct.

15 Q. Why not?

16 A. I talked with my advisor, and what I wanted to
17 focus on was the day-to-day police officer. Now, State
18 Patrol provides a very valuable service in detecting
19 drunk drivers, investigating accidents, reducing speed
20 on the freeways, they are not involved in the day-to-day
21 operations that we might see out here in Seattle on a
22 daily basis. Someone's going to go on a bank robbery
23 today, someone's going to investigate a domestic
24 violence case, someone's going to make a traffic stop,
25 so all those variety of things.

1 I was looking for that, something that was more
2 akin to what we faced in Seattle on a day-to-day basis
3 from 911 calls and our responsibility to the community.
4 And we felt that State Patrol, although important and
5 certainly commissioned, they have the power of arrest
6 and citation and everything that comes along with that,
7 we felt that their law enforcement duties were too
8 restrictive and that it would be best to focus on police
9 and sheriff.

10 Q. So we have talked a lot about the standard in
11 Seattle and they went very restrictive requiring
12 probable cause of a violent felony or just a felony?

13 A. That was the whole state.

14 Q. The whole State of Washington?

15 A. Yes.

16 Q. Required probable cause of a felony to pursue?

17 A. Right.

18 Q. That didn't work out that well for them?

19 A. Right. A lot of people, society became upset.
20 And, again, we get back to that balance you and I were
21 talking about, people complain to high heaven that
22 offenders were being let go and that police weren't
23 investigating.

24 Q. And so then Washington backed off a little and
25 dropped the standard back down to reasonable suspicion?

1 A. They did.

2 Q. Is that still one of the most restrictive
3 policies in the country?

4 A. I'll have to hazard a guess at that, and I will
5 still say that it's probably at the forefront, absent --
6 there are some departments, and I can't name them for
7 you, but that have an absolute restriction on police
8 pursuits, but I can't tell you which those departments
9 are, but absent that, I think we are the high end of
10 restrictive pursuit policies, yes.

11 Q. It's certainly more restrictive than Arizona's?

12 A. I would say so.

13 Q. You have a list of cases in the back of your
14 declaration there, and it goes through March of this
15 year.

16 A. Yes.

17 Q. And I saw this list of cases online somewhere
18 and it has a few additional cases added since then; is
19 that accurate, that you have had a few more since March?

20 A. I have.

21 Q. I see one in April, Estate of Jones vs. Franklin
22 County and then August, Rebecca Fitzgerald vs.
23 Yellowstone County?

24 A. Yes.

25 Q. Any other ones aside from that?

1 A. I have a couple that are, I guess how would you
2 term it, that I have discussed with the attorneys. I
3 don't know if I have been retained or not. We are still
4 in the middle of discussions, let's just put it that
5 way. That's an easy way to put it, I have not reviewed
6 any other materials. I believe those two cases are the
7 only ones.

8 Q. Okay.

9 Estate of Jones, is that a pursuit case?

10 A. Tell me the name again.

11 Q. Estate of Jones vs. Franklin County, it's in
12 District Court in the Eastern District of Washington.

13 A. It's not a pursuit case.

14 Q. Okay.

15 And then I see two cases here in January of this
16 year, and it says "case reviewed defendant" on both of
17 them, one of them is State of Idaho Vs. George Dixon and
18 one is Estate of Killsnight vs. The United States; do
19 you see those?

20 A. Yes.

21 Q. When you say "case reviewed" does that mean you
22 did a review but you were not retained?

23 A. No, I would say I was retained, but there's
24 different things that attorneys might want when they
25 retain me. Sometimes they just want advice, Hey, look

1 this over and tell me what you think. Sometimes they
2 want a report, other times they just want me on standby.

3 So in those cases, I reviewed materials. I was
4 sent evidence and then discussed with the attorney what
5 I thought of the case.

6 Q. So were you retained in both of these ones in
7 January?

8 A. I would say I was retained, I did receive a fee.

9 Q. Okay.

10 You have a lot of cases on here, are a lot of
11 them pursuit cases?

12 A. Well, there's a few.

13 Do you want me to look them over?

14 Q. Yeah, just quickly. If you know off the top of
15 your head they are a pursuit case, just let me know.

16 A. Page 17, Estate of Kenneth Woody vs. Big Horn
17 County was a pursuit case.

18 Right below that, we have talked about this one,
19 Estate of Dellafuente vs. City of Nampa was a pursuit
20 case.

21 We discussed this one too, I didn't offer a
22 report or anything, but Ramirez vs. City of Chandler was
23 a pursuit case.

24 Obviously Hartman vs. State of Arizona right
25 below that.

1 Page 18, Estate of Killsnight vs. United States
2 was a pursuit case.

3 Those are the ones that I recognize right now as
4 being police pursuit related.

5 Q. Okay.

6 All right, let's talk about your opinion in this
7 case, it only took us an hour and a half to get there,
8 but we are there now.

9 A. Sure.

10 Q. So I'm looking at Exhibit 1, your declaration
11 that you submitted in this case.

12 A. Yes.

13 Q. On page 6 of your report, no, not page 6.

14 Let me see.

15 It's actually page 3 of your declaration, sorry,
16 No. 6 you list all the documents that you reviewed, that
17 you considered in forming your opinion. Is this a
18 complete list of everything that you reviewed?

19 MR. LADLEY: Form.

20 THE WITNESS: I am looking for -- let me
21 first answer your question, this is all of the items
22 that were provided by plaintiff's attorney.

23 I did look at the one thing that we also
24 talked about was the Arizona legislature on, and I am
25 not sure I see that on here.

1 I definitely -- but I included in my
2 references at the very end on page 20, references,
3 again, we talked about Arizona legislature authorized
4 emergency vehicles. And then I also referenced
5 something in the IACP on law enforcement code of ethics,
6 and I am not sure I see that here.

7 But again, No. 6 like you are talking about,
8 these are things that were provided to me. So those two
9 things were things I sought out on my own.

10 BY MS. ELLIOTT:

11 Q. Okay, so those two references, the statute and
12 the IACP document you considered in forming your opinion
13 also?

14 A. Yes.

15 Q. Okay.

16 All right, so let's turn, if you will, to
17 page 5, and it's No. 8. So in the first paragraph there
18 you say that, you state that Trooper Aguilar disregarded
19 Arizona DPS general order 4.1.20, and in subsection A
20 you have several paragraphs there that I want to kind of
21 go through one by one.

22 So in the first paragraph, you quote the portion
23 of the policy that says, "Personnel must continually
24 evaluate the nature and seriousness of the offenses."

25 And my first question is, in your opinion, how

1 does a trooper evaluate the seriousness of the offense?

2 A. It's by knowing who you are chasing and why you
3 are chasing them, so that helps you evaluate the
4 seriousness of the offense. Also I am sure there's a
5 police academy and on-the-job, real-world experience for
6 any trooper or police officer in Arizona to learn
7 certain crimes are more important than others.

8 And the legislature gives us a roadmap, and
9 generally I believe Arizona operates similar to
10 Washington, that we have the felonies that are the most
11 serious things, I believe you have gross misdemeanor and
12 misdemeanor, so those are how we might classify our
13 crimes, so the felony is going to be more serious than
14 the misdemeanor.

15 And then in Washington we have an Administrative
16 Code that covers violations, and I am sure Arizona seems
17 to have something similar, for the expired tags as you
18 said.

19 So we, I would expect a police officer or a
20 trooper in Arizona to evaluate the seriousness of the
21 offense by knowing how that offense is codified by the
22 legislature in order to then help them make decisions of
23 who they should pursue or not.

24 Q. And we talked about a couple of situations, one
25 I think was in your own experience, when you pursued

1 someone who ultimately had not committed a crime that
2 night but it turns out had warrants and various other
3 things.

4 A. Right.

5 Q. So those are situations that happen with
6 relative frequency in law enforcement, right?

7 A. Yeah. Sorry, go ahead.

8 MR. LADLEY: Form, foundation. Go ahead.

9 THE WITNESS: Yes, that can certainly
10 happen.

11 BY MS. ELLIOTT:

12 Q. And so given that there are times when an
13 officer just doesn't have all of the information, how
14 then can he evaluate the seriousness of an offense that
15 he might not know all the facts surrounding?

16 A. That's a very good question. It really can't be
17 done. You have to evaluate any time you are involved in
18 police work on what facts do I know at this time; what
19 information has been provided to me, whether it's been a
20 911 call, your own personal observations, something that
21 a witness told you, or something that's ongoing right
22 now, the officer has the responsibility to look at that
23 and determine then the best course of action that they
24 should take.

25 Q. And if we go on in the policy that you are

1 quoting here, the officer is, he's also evaluating the
2 risk of initiating and continuing the pursuit, right?

3 A. Are you in the same paragraph?

4 Q. I think so. "Personnel must continually
5 evaluate the nature and seriousness of the offenses" and
6 they balance them, right, against the risk of initiating
7 and continuing emergency vehicle operations?

8 A. Right.

9 Q. Okay, so if he's balancing the seriousness of
10 the offense, that he may or may not even fully know what
11 the offense is, right?

12 A. Well, I think I would disagree with you there,
13 because, again, you are not going to know the
14 seriousness of the offense if you are using guesswork.
15 So you need to base it on the facts that you know.

16 Now, a police officer can operate on hunches,
17 but the law is going to limit you in what you can do
18 based on that hunch. You might be able to ask
19 accusatory questions, let's say, but just because you
20 think someone committed a crime doesn't mean you
21 automatically get to arrest them. You still have to
22 work through the issues of probable cause, let's say.

23 Q. Okay, well, in our cause Trooper Aguilar is
24 trying to pull over a suspect with expired tags, and
25 then the suspect flees, which in the State of Arizona is

1 a felony, right?

2 A. Yes.

3 Q. You are aware of that, right?

4 A. Yes.

5 Q. So is it your opinion that Trooper Aguilar
6 cannot consider that felony at all in determining
7 whether to initiate or continue a pursuit?

8 A. The trooper should abide by what we see here in
9 the policy that we discussed. So you always have to
10 evaluate the nature and seriousness of the offense
11 against the risk of initiating continuing, but let me
12 put that in real world terms.

13 The trooper always has to evaluate who am I
14 chasing and why, what did this person do wrong, why am I
15 chasing them, as well as the supervisor needs to ask
16 that question as well, why are you chasing them, what
17 offense did they commit.

18 It's, a good supervisor doesn't just say oh,
19 well, if they are running they are automatically someone
20 that we need to chase. A good supervisor uses their
21 mind as well and the officer should do this at the
22 scene, or that's personally involved in the incident, is
23 evaluate the facts that you know right now. And that
24 should be the basis on whether you pursue or not.

25 Q. So is it your opinion then that Trooper Aguilar

1 could be considered a felony flight or not?

2 A. I think it is unreasonable for the trooper to
3 base their decision to pursue on just the idea that
4 someone's running from me because they --

5 Q. And that they had committed a civil traffic
6 violation.

7 A. You need to have something that started this
8 whole process, right? You need to have something that
9 we have an initial law violation, in this case, expired
10 tags, so you consider that.

11 There's a reason that the policy here asks the
12 supervisor to determine what's the offense, what are you
13 chasing him for, otherwise, you wouldn't need a policy.
14 If we just chased all felony flight or eluding, I am not
15 sure of the term in Arizona, but let's assume it's
16 called felony flight. If someone flees from you and you
17 now have a felony flight and that's your felony, then
18 you don't need a policy, you can chase anyone at any
19 time.

20 But in here they placed restrictions and, again,
21 it's going to be based on the facts known to the trooper
22 at the time, which was I have someone with expired tags
23 in front of me.

24 Q. Okay.

25 So he should have only been considering the

1 expired tags?

2 A. Correct.

3 Q. Okay.

4 So in the policy when it says "evaluate the
5 nature and seriousness of offense against the risk of
6 initiating and continuing emergency vehicle operations,"
7 what factors should an officer take into account when
8 they evaluate the risk of the pursuit?

9 A. This is a very good question because the policy
10 talks about that later.

11 And let's find where I reference that.

12 On page 6, subsection B.

13 The primary unit responsibility, so here's all
14 the things that they should be aware of: Location and
15 direction of travel, description of the pursuit vehicle,
16 speed of the pursuit vehicle, reason for the initial
17 contact, number of occupants known to be in the vehicle,
18 hazards to sworn personnel, traffic conditions, and
19 criminal or traffic violations. So those are all things
20 that the department is telling the trooper that you need
21 to be aware of before engaging in a pursuit.

22 I believe there's also some other language here,
23 in subsection C, and this comes down to the following
24 factors shall be considered when assessing conditions
25 during the pursuit.

1 So in answer to your question, this is kind of
2 providing a roadmap for the trooper to follow here. So
3 danger to life and property, the necessity to
4 immediately apprehend the suspect, whether the identity
5 of the suspect is known or unknown, the nature of the
6 crime or infraction prior to initiation of the pursuit.

7 So, again, they are talking about not the
8 eluding fact, they are talking about what did the person
9 do before you decided to chase them.

10 Q. Can I ask you a quick question before you go on?

11 A. Sure.

12 Q. The fact that this says "the nature of the crime
13 or infraction," sort of inherently assumes that a
14 pursuit may be initiated for an infraction, doesn't it?

15 A. I believe that the law and the department policy
16 in Arizona allows the trooper to pursue for an
17 infraction. It doesn't mean they should, but it allows
18 for them to do that.

19 Q. Okay, and then also on, when you read from your
20 paragraph B here.

21 A. Yes.

22 Q. Sort of towards the end of the first paragraph
23 it says, "Hazards to sworn personnel, traffic conditions
24 and criminal/traffic violations," which sort of
25 inherently assumes that some pursuits anyways will be

1 rightfully initiated in response to a traffic violation.

2 A. I can see that, yes.

3 Q. Okay.

4 Let me ask you about traffic conditions. How do
5 traffic conditions play into this?

6 A. Certainly the more traffic on the road, there's
7 more hazards that both the offender has to negotiate as
8 well as the officer and any backup officers, so when --
9 and we also have to consider pedestrians in there.

10 So pedestrian and vehicular traffic is generally
11 unwise to pursue, let's say, in a, I gave the
12 theoretical of pursuing through a school yard full of
13 children.

14 Q. That's a bad idea.

15 A. That's a bad idea. You need to consider the
16 possibility that others could be injured.

17 Q. So certainly a pursuit through the middle of the
18 city, during rush hour, more dangerous than a pursuit in
19 a rural area on a highway with no other vehicles?

20 A. I agree.

21 Q. And I think that I cut you off while you were
22 talking about different factors so I am going to let you
23 finish that. Go ahead.

24 A. I don't remember where I stopped. Let's say
25 it's the nature of crime or infraction prior to

1 initiation of the pursuit.

2 The trooper's training abilities and experience,
3 the suspects and the trooper's vehicle capabilities, the
4 location, terrain, population, traffic congestion,
5 weather and the presence of intersections.

6 The trooper's familiarity with the area, the
7 presence of law enforcement aircraft to assist with the
8 pursuit, the presence of unmarked canine or tactical
9 units to assist in the apprehension and the availability
10 of law enforcement personnel to provide assistance.

11 Now, I don't remember exactly where you stopped
12 me before, if I could have the court reporter look back
13 prior to her question and make sure I covered everything
14 that a trooper should be considering.

15 Q. I think you stopped at infraction prior to the
16 initiation because that prompted my question about
17 infractions.

18 A. All right, I think I am good with that.

19 Q. You listed them all out here in your report, in
20 any event, right?

21 A. I believe so, yes, I certainly have, based on
22 what I read.

23 Q. So these are all factors that an officer has to
24 take into account when he's determining whether or not
25 to pursue someone, right?

1 A. Yes.

2 Q. And this is the officer who is involved in the
3 pursuit in those moments, right?

4 A. Yes.

5 Q. And when it's unfolding, the supervisor back at
6 the station, he's not evaluating those factors yet
7 because it's this officer determining whether in his
8 discretion he's going to initiate this pursuit, right?

9 MR. LADLEY: Form, foundation.

10 THE WITNESS: Yes and no. The supervisor's
11 responsibilities are also spelled out and I believe this
12 goes back to page 5, Section 8. So it talks about the
13 responsibilities of the officer, but then there is also
14 the responsibility of the supervisor is also stated
15 here. And some of that is based on getting the
16 broadcast from the officer or the trooper in this case.

17 BY MS. ELLIOTT:

18 Q. Okay.

19 So in this case I think you said that you have
20 no information that a sworn supervisor was ever notified
21 of the pursuit, right?

22 A. That's correct.

23 Q. And so, you said you listened to the radio
24 transmission and you looked at the CAD log and the
25 affidavit of the dispatcher, right?

1 I think I saw that in the brief moment I looked
2 at your rebuttal report.

3 A. I am not sure it was an affidavit, I thought it
4 was just a transcript of the dispatch. So it's
5 transcript of the dispatcher as well as different units
6 that are answering up on radio.

7 Q. Have you seen the Affidavit of Margaret
8 Critchley who was the dispatcher on duty that day?

9 A. That doesn't ring a bell with me, and I don't
10 see it in my report, so I don't believe I have seen
11 that.

12 Q. Okay.

13 So the point, from the point when Trooper
14 Aguilar called in and said this is going to be a
15 pursuit, to the point when he said I am not going to
16 pursue was about eight seconds; would you agree with
17 that?

18 MR. LADLEY: Form.

19 THE WITNESS: It was a short period of time
20 and I couldn't tell -- sometimes when you listen to
21 radio they take out the pauses, other times they leave
22 the pauses in, so it was hard to tell for sure if that
23 was actual realtime, if I had my own police radio and I
24 was listening to it, is that exactly what I would have
25 heard. I think it is, but I'm not sure.

1 In answer to your question, I think it's most
2 likely that it was a very short period of time that they
3 were communicating on the air, but I couldn't tell
4 absolutely for sure.

5 BY MS. ELLIOTT:

6 Q. Okay.

7 I am going to, you can believe me or not believe
8 me, I am going to tell you now it was about eight
9 seconds and that the dispatcher is going to confirm it
10 was eight seconds.

11 Is it your opinion that in that eight seconds
12 between when he declared a pursuit and then said forget
13 it, I am not going to pursue, that he should have had
14 some conversation with his supervisor and he should have
15 been telling his supervisor all of those factors you
16 have discussed?

17 MR. LADLEY: Form, foundation.

18 THE WITNESS: In eight seconds that's not
19 going to be possible. What I would be looking for more
20 is the supervisor to come up on air and verify that the
21 officer is no longer in pursuit and what are your speeds
22 right now.

23 Q. Okay, so you would have liked to see a
24 supervisor come on air after the pursuit had been
25 terminated and confirm --

1 A. Yes.

2 Q. -- but not during that eight seconds Aguilar
3 should have gotten on the radio and had a conversation
4 with his supervisor?

5 A. I need to be reasonable in my expectations of
6 the supervisor. And in that short conversation between
7 the dispatcher and the trooper, and I will take your
8 word for it that that's an actual time, in other words,
9 no giant breaks of time there, so I am going to assume
10 that was a short conversation.

11 So, yeah, he comes up on the air, talks about
12 the pursuit, gives a description and later says no, it's
13 not a pursuit. It does seem like a short period of time
14 and it would be difficult for a supervisor to answer up
15 within that eight seconds.

16 Because as a supervisor, sometimes you have to
17 be cautious that you are not cutting off the officer who
18 might be giving vital information that others need to
19 know. So there's a time for you to come up on the air
20 and clarify and ask questions and make sure that proper
21 procedures are followed, it's sometimes is not
22 immediately in the heat of the moment when someone's
23 engaged in a particular type of police activity.

24 So in this case, in answer to your question, I
25 think that the supervisor probably didn't have a great

1 opportunity to interject within those eight seconds.

2 Q. And after Aguilar had terminated the pursuit,
3 dispatch came on and confirmed that he had terminated
4 the pursuit and he verbally confirmed that that had
5 happened to the dispatcher.

6 A. Not exactly.

7 Q. Okay, why do you say "not exactly"?

8 A. When I read the initial report, and I read the
9 CAD, there was different information. When I later
10 listened to the radio report and they are now verifying
11 where did you last see the vehicle, I saw that actually
12 the pursuit did not last from milepost seven to milepost
13 five, it actually, they last saw the vehicle at milepost
14 three, which tells me this is a much longer pursuit,
15 maybe four miles at this point.

16 Q. So let me ask you a question.

17 Do you remember them asking him when he last saw
18 the vehicle or what was your last milepost?

19 A. I can't tell you specifically without looking at
20 the transcript. I think to best answer that I would
21 want to look at the transcript.

22 Q. Okay.

23 So let's assume that she said what was the last
24 milepost and that what Aguilar was telling her was the
25 last milepost he had passed long after he had terminated

1 the pursuit and lost sight of the vehicle; is that a
2 possibility?

3 MR. LADLEY: Form, foundation.

4 THE WITNESS: It didn't sound like it to me,
5 it sounded like to me he's still right there with the
6 offender at milepost three and I think the last known
7 speed was 110.

8 BY MS. ELLIOTT:

9 Q. Okay.

10 If that's the case, is it, are you implying that
11 the officer is somehow being untruthful in both his
12 reports and his testimony?

13 A. Let me say this: I don't want to call the
14 officer a liar, but I do believe, and I think I have
15 wrote this in my report, that there seems to an effort
16 at minimizing the officer's actions during this pursuit.
17 So I don't believe a full accounting was given over the
18 air, which also shows why you don't see a supervisor
19 involved.

20 If he's still following at milepost three and
21 the offender is still at high speed, that's something he
22 should be talking about on the air, and a supervisor
23 should be hearing this. And then you get to ask
24 questions of the supervisor like wait a second, I
25 thought you called this off, why are you still chasing

1 him at milepost three and that didn't happen.

2 So, again, I am not going to call the officer a
3 liar, but I will say that some facts were not emphasized
4 enough that would help a supervisor make proper
5 decisions in this case.

6 Q. I understand you are skirting around the
7 wording, but Trooper Aguilar testified that by milepost
8 five he had lost sight of Perez; that's also what is in
9 the police reports, right?

10 MR. LADLEY: Form.

11 THE WITNESS: That's what was written.

12 BY MS. ELLIOTT:

13 Q. That's what was written?

14 A. Right.

15 Q. And if that's not the truth, then is your
16 opinion that he was not being truthful both in those
17 reports and then later when he testified under oath?

18 A. It's a great question. And here's how I dealt
19 with it in the report: Initially, if you read my
20 report, you will see me talk about this pursuit from
21 milepost seven to milepost five, and then later when I
22 actually listen to the radio broadcast, that's when I am
23 now getting new information that I had not seen before
24 that had been left out of his report, but I'm hearing it
25 on the air so I know it existed, I know it's there.

1 And you will see the nature of the wording of my
2 report change because I say, and I didn't go back and
3 correct the original, because I thought it was important
4 to cover the evidence as I found it, so if I am
5 reviewing something, and oh, okay, let me list this fact
6 and this fact and here's my opinion of that, and then
7 later new information comes up, it doesn't render the
8 first information invalid, but it's certainly something
9 that should have been referenced initially and it
10 wasn't.

11 And it left me with a question of why wasn't it.
12 I am not going to say the officer was dishonest, but I
13 do believe that not enough information was broadcasted
14 and this allowed for a lack of supervisory intervention
15 in this case, as well as potentially a four-mile pursuit
16 as opposed to two.

17 Q. Okay.

18 We don't have to resolve that issue today,
19 that's what we have a jury for.

20 A. Sure.

21 Q. If a jury determines that this pursuit was from
22 approximately milepost seven to approximately milepost
23 five, two miles or even slightly less than two miles,
24 does that change your opinion?

25 MR. LADLEY: Form, foundation.

1 THE WITNESS: As I said, I wrote my initial
2 opinions, and I am going to refer back to the report
3 just to make sure that I am being the most accurate
4 about what I wrote.

5 (Witness reviews document.)

6 So page 7, No. 9, I talk about the facts of
7 the pursuit reflect reckless behavior on the part of the
8 trooper. And I won't read all of this word for word but
9 basically it does talk about the pursuit from milepost
10 seven up to milepost five.

11 And I offered an opinion, and I still believe
12 it's true right now, that the pursuit is unnecessary
13 based on the seriousness of the offense, which is only
14 license tags. So that opinion did not change, I think
15 that's the best answer to your question.

16 BY MS. ELLIOTT:

17 Q. Okay, would any of your opinions change if this
18 was determined to be a two mile or less pursuit of eight
19 seconds rather than a four mile?

20 A. No. The additional information that I gained
21 via other sources furthered my belief that the pursuit
22 was unnecessary and unreasonable --

23 Q. And you would --

24 A. -- and added to it.

25 Q. And you would think that whether it was four

1 miles or two miles; is that what you are saying?

2 A. Yes, my initial opinion still stands the same
3 for this two-mile pursuit. It is made even more so, my
4 opinion is even stronger for four-mile pursuit that ends
5 at milepost three.

6 Q. And so we talked about the supervisor for a
7 minute and that, you know, the eight seconds there
8 really wasn't enough time for a supervisor to answer up
9 on air. And you had quoted in your report or said in
10 your report that a supervisor should make a
11 determination as to whether or not a pursuit should
12 continue and that wasn't done here?

13 A. That's what policy states, yes.

14 Q. In your opinion, if that wasn't done here, would
15 be, would require it being a four-mile pursuit, right?
16 Because the two-mile pursuit had been terminated already
17 at milepost five when he said he terminated it, right?

18 MR. LADLEY: Form.

19 THE WITNESS: I believe if I understand you
20 correctly, you want my opinion as to if the
21 supervisor -- I will agree --

22 BY MS. ELLIOTT:

23 Q. Let me start again because you don't understand
24 my question because it was not a very good question.

25 A. That's okay.

1 Q. So let me try it again.

2 A. I will try again.

3 Q. Because we are going back and forth between this
4 two-mile and four-mile pursuit.

5 A. Right.

6 Q. But if you look at the two-mile pursuit, and the
7 eight seconds on air, there wasn't enough time for a
8 supervisor to come on air and say terminate this pursuit
9 in those eight seconds, right?

10 A. I agree with you on that, it wasn't the right
11 time.

12 Q. So your opinion that a supervisor should have
13 come on and made a determination of whether a pursuit
14 would continue or not -- is based on this four-mile
15 pursuit that you think occurred?

16 A. No.

17 Q. Okay, help me understand that.

18 A. Even when the officer calls off the pursuit, if
19 I am the supervisor, I am going to make sure that
20 pursuit is over; are you still following. Because I
21 have seen this, officers will try to, oh, I just
22 followed along and I wasn't really in pursuit. And
23 when, in fact, they are in pursuit and they are still
24 trying to catch the guy or they are hoping that he gets
25 out and runs, something like that.

1 So there's a number of reasons that officers
2 will continue to do that. So myself personally, I come
3 on the air and I say did you terminate the pursuit, what
4 speed are you traveling right now.

5 Q. And you think the supervisor still should have
6 done that even if the dispatcher had confirmed and
7 Aguilar had verbally confirmed?

8 A. Well, the dispatcher and the supervisor have
9 different responsibilities, so --

10 Q. So yes, you do?

11 A. Do I believe that the supervisor should have
12 come on even after he terminated the pursuit? Yes,
13 absolutely.

14 Q. And even after he had confirmed that he
15 terminated the pursuit?

16 A. I want to hear it for myself, and I want to
17 verify what they are doing, so yes.

18 Q. Okay.

19 Are there any other, do you have any other
20 issues with the actions or inactions of a supervisor in
21 this case that aren't in your report and we haven't just
22 talked about?

23 A. No, if I had opinions, I would write them in the
24 report, so I have no other opinions about supervisory
25 action or inaction.

1 Q. Okay.

2 A. I mean, we can certainly talk and expand on
3 things as depositions do, but in general, my opinions
4 stand as the report that I wrote here.

5 Q. Okay.

6 So moving to page 6, paragraph B, you talked
7 about the primary unit responsibilities and you said
8 that Aguilar didn't broadcast the required information
9 to operational communications pursuant to these
10 responsibilities?

11 A. Yes.

12 Q. You reviewed the CAD logs, right?

13 A. Yes.

14 Q. And you listened to dispatch audio, right?

15 A. I did.

16 Q. So are you aware that after Aguilar entered the
17 traffic stop into his computer he reported certain
18 information to dispatch, right?

19 A. I listened on air as to what he said.

20 Q. Are you aware that he reported that he had a
21 failure to yield?

22 A. I believe that's how he initially reported it,
23 yes.

24 Q. And that the failure to yield happened on State
25 Route 85 at milepost seven?

1 A. Yes.

2 Q. And that traffic conditions were slow?

3 A. Yeah, I was confused about that one, but yes.

4 Q. You were aware he reported that, though, right,
5 to dispatch?

6 A. Yes.

7 Q. And the suspect was driving 110 miles an hour?

8 A. Yes.

9 Q. Are you aware that Aguilar also reported that
10 the suspect vehicle was a white Honda with a green tow
11 strap in the back?

12 A. Yes, the dispatcher had asked for that, but yes,
13 he eventually offered that up. I think he initially
14 said something about it's the one I just ran, so he ran
15 the plate on the MDC and probably got a hit from the
16 Arizona DOL.

17 Q. Okay, so tell me how he violated this policy
18 then in regards to what information he needed to
19 provide?

20 A. Location and direction of travel, we have
21 description of the pursued vehicle, we have the speed of
22 the pursued vehicle. I thought it was interesting that
23 the reason for the initial contact was the last thing
24 given rather than the first. And, again, my belief is
25 that that's an attempt to minimize the involvement in

1 the pursuit.

2 Q. The reason for the initial contact being?

3 A. Yeah, tags.

4 Q. Okay, but he did provide it, right?

5 A. He did at the end.

6 Q. You just don't like the order in which he
7 provided it?

8 A. He had to be asked for that.

9 Q. Okay.

10 A. He didn't willingly offer that up and, again, I
11 believe this is an effort to minimize, that's also the
12 reason why he says this is a failure to yield.

13 Q. Okay.

14 A. That's police speak for I don't want to call
15 this a pursuit, let's just call it a failure to yield
16 because it doesn't sound as bad.

17 Q. That's your opinion why he was doing something?

18 A. It is, right.

19 Q. So my initial question though was --

20 A. Let's get back to your question.

21 Q. How did he violate this portion of the policy?

22 A. That one I am a little concerned about but I
23 will agree with you he eventually did say that it was
24 for expired tags. He did not broadcast the number of
25 occupants to be known in the vehicle, he did not

1 broadcast hazards to sworn personnel. And then to
2 traffic conditions, I didn't get slow. I don't think
3 he's offering the right information there, so I will say
4 that he didn't offer that.

5 Q. Okay, even though he said traffic was slow,
6 that's not traffic conditions to you?

7 A. No. From what I understand, the individual was
8 driving regular speed, puts on lights and sirens, he
9 passes another vehicle, and I don't know where slow came
10 from, I am not sure, but I listened to that a few times
11 trying to decipher.

12 Q. Are you taking issues with the definition of
13 slow?

14 A. Yes.

15 Q. Okay.

16 A. Yeah, we are on State Route 85, I am not sure
17 anyone was going slow here. In fact, certainly not slow
18 during the pursuit.

19 Q. You assume slow means slow speeds?

20 A. Yes.

21 Q. As opposed to not a lot of traffic, traffic's
22 slow, traffic's heavy today?

23 A. Well, again, it says "traffic conditions slow."
24 I don't know, to me it didn't seem accurate, so --

25 Q. Okay.

1 A. -- but that might be my subjective understanding
2 of the word slow. But I will state again that I didn't
3 understand why he said slow when we are traveling on
4 State Route 85 and now we are doing 110, that's not slow
5 to me, so that's why I didn't think he broadcasted the
6 correct information.

7 Q. Okay, it's possible he was using a different
8 definition of slow, right?

9 A. It's possible, you know, if slow means light,
10 like there's not a lot of cars out here, that's a
11 possibility, but I have never heard it used that way.

12 Q. Well, and that would be relevant to a pursuit,
13 right, whether the freeway is jam packed or whether
14 traffic is light or slow? You can stick with light if
15 you want.

16 A. I can't agree with it, but I see your point, but
17 I don't agree with it.

18 Q. So is it your position that in order to comply
19 with the primary unit responsibilities, an officer needs
20 to hit every single one of these bullet points or they
21 are not in compliance?

22 A. That's the nature of a policy, isn't it?
23 Someone writes a policy and it's up to the officer to
24 follow the policy. So if they don't follow it, you have
25 still violated the policy.

1 Q. Okay.

2 A. Yes, in answer to your question, yes, that means
3 he didn't broadcast the required information.

4 Q. So in failing to hit at least two categories and
5 a potential third, if you don't like the traffic
6 conditions --

7 A. Right.

8 Q. -- in failing to hit three out of, out of one,
9 two, three, four, five, six, seven, eight, nine, and
10 failing to hit three out of nine he's violated the
11 policy?

12 A. Yeah, a third, yes.

13 Q. Okay.

14 And you say he failed to broadcast the required
15 information, it's a violation of policy, which would be
16 inappropriate and unreasonable and not consistent with
17 police training and procedures, right?

18 A. Yes.

19 Q. Are you referring to DPS training?

20 A. My training that police officers have policies
21 applied to them and you need to follow the policies,
22 that's one of the basic elements of training. If you
23 decide to veer from policy, you are not in compliance
24 anymore and, therefore, you are not following the
25 standard.

1 Q. So you haven't reviewed any DPS training manuals
2 or anything?

3 A. No, I have not.

4 Q. And you are not aware of how DPS troopers are
5 trained on these policies, right?

6 A. I could only speak in general terms, I am not
7 familiar with Arizona-specific training.

8 Q. Okay.

9 A. In general police terms, though, if you specify
10 a policy, then you expect the officers to follow it,
11 otherwise, you wouldn't write it.

12 Q. Maybe, but who knows how they have been trained,
13 right, because we haven't looked at those policies or
14 those training manuals?

15 MR. LADLEY: Form.

16 THE WITNESS: I'll state that my training is
17 you follow department training and procedure. I am
18 going to assume they have the same training standard,
19 but I can't state it for sure, I don't know it.

20 Q. Moving down to paragraph C, you note that "sworn
21 personnel" -- and this is the, this is a quote from our
22 policy, DPS policy?

23 A. Yes.

24 Q. "Sworn personnel shall terminate pursuits when
25 the risks outweigh the need for immediate apprehension

1 of the suspect."

2 And if we move down, I think go to page 7, on
3 the second paragraph, you note that Trooper Aguilar
4 attempted a traffic stop for expired tabs.

5 A. Yes.

6 Q. Which for us are tags.

7 A. Yes.

8 Q. So if I say "tags" we will know they mean the
9 same thing?

10 A. We know what we mean.

11 Q. I know we talked about this before, but just
12 refresh my memory, in Seattle officers will initiate a
13 traffic stop for expired registration, they just won't
14 pursue, right?

15 A. Correct.

16 Q. Okay.

17 And before the change in policy, which I think
18 you said was the early 2000s, officers would pursue for
19 traffic violations in Seattle, right?

20 A. Yes, in fact, I gave you an example from my own
21 life.

22 Q. From your own experience, right?

23 A. Yes.

24 Q. So in this case, we kind of already covered
25 this, but in this case Perez fled which in Arizona is

1 felony flight.

2 A. Yes.

3 Q. And you would agree Trooper Aguilar didn't know
4 why he fled?

5 A. That's correct, he doesn't know the reason the
6 individual fled.

7 Q. It's reasonable to assume that he may have fled
8 at least for a reason other than expired tags, right?

9 MR. LADLEY: Form, foundation.

10 THE WITNESS: I think we talked before that
11 I have actually seen some pursuits that that's the only
12 reason they fled, they just don't want to get involved
13 with law enforcement. Now, certainly sometimes there's
14 criminal behavior --

15 BY MS. ELLIOTT:

16 Q. Sure.

17 A. -- that's present.

18 Q. But do you think that's --

19 A. But in this case we don't know.

20 Q. I'm sorry for interrupting you.

21 Do you think that's a reasonable assumption,
22 though, to assume that if somebody has fled for expired
23 tags that it's something more serious than that?

24 A. Is it unreasonable to think that someone might
25 have committed a more serious offense? A police officer

1 has to rely on facts. There are times for intuition. A
2 police pursuit might not be one of those. Use of force
3 might not be one of those, arrests.

4 So now that I think through it in answer to your
5 question, you have to rely on the facts that you know,
6 so without that information, you are hazarding guesses,
7 which is not advised.

8 Q. What if Aguilar had received a tip from border
9 patrol that Perez was driving a vehicle that wasn't his
10 and had no license, would that, would those facts change
11 your opinion?

12 A. Well, it certainly adds to it. It might form
13 the basis of reasonable suspicion that possibly you have
14 an auto theft in process or someone driving a stolen
15 vehicle, that's a possibility, or that they don't have a
16 license, yeah, I suppose those are always possibilities.

17 Q. And what if he had been told by border patrol to
18 be on the lookout for Perez because he may have picked
19 up undocumented immigrants, would that change your
20 opinion?

21 A. That would certainly add to it, but now you are
22 going to have to use all of your senses and try to
23 determine, Hey, do I see anyone else in this vehicle.
24 If you don't see anyone, maybe they are in the trunk,
25 maybe I shouldn't pursue.

1 Again, these kind of guesswork, we are talking
2 theoretically, but these are all things that would go
3 through my mind as I am trying to evaluate whether I am
4 going to engage in a pursuit or not. So given the
5 theoretical facts you offered, I would be cautious about
6 getting in a pursuit if I thought there were people in
7 the trunk.

8 Q. And when we are talking about all these factors,
9 we are talking about Trooper Aguilar who is weighing out
10 all these factors in his head and using the discretion
11 that's given to him via the DPS policy, right?

12 A. Yes.

13 Q. Okay.

14 So I want to make sure that I am 100% clear on
15 all of your opinions, sometimes I kind of have been
16 going back, but is it your opinion that Trooper Aguilar
17 should not have initiated this traffic stop at all?

18 A. No.

19 Q. So I'm trying to figure out exactly what moment
20 this event became unreasonable in your opinion. So was
21 it reasonable for Aguilar to run his plates?

22 A. Yes.

23 Q. Okay.

24 Once he saw that Perez's registration was
25 expired, was it reasonable for him to attempt a traffic

1 stop?

2 A. Yes.

3 Q. And enforcing traffic laws is his job, right?

4 A. Yes.

5 Q. And those are his duties, right?

6 A. Yes.

7 Q. And so at that point was it reasonable for him
8 to turn on his lights?

9 A. Yes.

10 Q. And when Perez looked like he was trying to find
11 a place to pull over was it reasonable for Aguilar to
12 stay behind him with his lights on?

13 A. Yes.

14 Q. And when it seemed like Perez wasn't going to
15 pull over after all, was it reasonable for Aguilar to
16 then flip his sirens on?

17 A. I think sirens always provide extra added
18 emphasis to a traffic violator that I need you to pull
19 over right now.

20 So let me make sure I answer your question
21 correctly; is it reasonable for him to use the siren?

22 Q. Yes.

23 A. Yes.

24 Q. Sometimes people don't see you if you just have
25 your lights on, right?

1 A. That's true.

2 Q. So it was reasonable when Perez looked like
3 maybe he wasn't going to pull over for Aguilar to flip
4 his sirens on?

5 A. Yes.

6 MR. LADLEY: Form.

7 BY MS. ELLIOTT:

8 Q. Okay.

9 When Perez accelerated and passed that first
10 vehicle, was it reasonable for Aguilar to also pass the
11 first vehicle?

12 A. That's the time to call off the pursuit. No.

13 Q. Okay.

14 So that's the point in your opinion when this
15 became unreasonable, when Aguilar passed that first
16 car -- I am sorry, let me go back.

17 It's your opinion that it became unreasonable
18 when Perez accelerated and passed that first vehicle?

19 A. That's when the trooper knows that the driver's
20 trying to get away from him and that's the time to call
21 off the pursuit.

22 Q. Okay.

23 And he should have called off the pursuit at
24 that moment because the offense wasn't serious enough?

25 A. Correct.

1 Q. Any other reasons he should have called it off
2 at that exact moment?

3 A. Safety of the other motorists, the vehicle that
4 was passed. And, again, at this point, what DPS policy
5 requires the trooper to engage in, we have already
6 covered this so I won't read them all again, but this is
7 where the failure takes place, where the personnel have
8 to continually evaluate the nature and the seriousness
9 of the offense, tags in this case, against the risk of
10 initiating and continuing emergency vehicle operations.

11 I think that's a good summary. I could read
12 more, but I think that's the key part where the DPS
13 trooper has to think to himself okay, what just
14 happened. I tried to pull this guy over for tags, I
15 used lights and sirens and now he's passing vehicles at
16 high speed and continuing on away from me. I am not
17 going to pursue this one, it's unreasonable.

18 Why do I engage in dangerous behavior for
19 myself, for other motorists and the offender in order to
20 catch someone for tags. It's way out of balance, that's
21 the problem I have.

22 Q. And the fact that Aguilar passed one vehicle and
23 when Perez passed the second vehicle, Aguilar called off
24 the pursuit, so...

25 A. Let me state this: I need to go back and review

1 that in more detail, so if you want to talk about which
2 vehicles were passed and when, you know, in reviewing
3 for this, I obviously want to keep it reasonable, my
4 time spent reviewing, so I can't say I spent enough time
5 with that to determine for sure were two vehicles
6 passed, that doesn't seem quite right to me, but I want
7 to review to make sure that we are both talking about
8 the same thing.

9 Q. Sure, I understand that.

10 If it was the case that Perez passed the
11 vehicle, Aguilar passed the first vehicle, Perez passed
12 the second vehicle and accelerated, Aguilar lost sight,
13 did not pass the second vehicle and called off the
14 pursuit, if that's the case, does that change your
15 opinion?

16 A. No, it doesn't change my opinion, and that
17 wasn't the case because he didn't lose sight, we have
18 already talked about that too.

19 Q. Are you aware that the plaintiff alleged in her
20 complaint that he lost sight of him?

21 A. No, I don't have that information.

22 Q. Okay.

23 A. But no, based on the milepost three thing is
24 where I last see him, that seems to me where he lost
25 sight.

1 Q. Okay.

2 A. And, in fact, he stated so.

3 Q. Well, he didn't state that.

4 MR. LADLEY: Form, just there's no question.

5 THE WITNESS: -- understood.

6 BY MS. ELLIOTT:

7 Q. Okay, so I think that we have narrowed down the
8 point at which you have determined this became
9 unreasonable; as soon as Perez passed a vehicle,
10 anything after that was unreasonable?

11 A. Yes.

12 Q. Anything between that time and when the trooper
13 terminated the pursuit was an unreasonable pursuit?

14 A. Yes.

15 Q. Okay.

16 And this balancing of the need to apprehend and
17 the risks, that's subjective; would you agree?

18 A. It is subjective, I would agree.

19 Q. So your opinion is that the balancing towards
20 this pursuit being too risky shouldn't have been done,
21 right?

22 A. Right.

23 Q. That's in your opinion?

24 A. The benefits did not outweigh the costs.

25 Q. And what are you basing that on?

1 A. My overall opinion that the pursuit was
2 unreasonable; you want to go through all the facts?

3 Q. Not necessarily the facts, but you are
4 substituting your subjective balancing for his.

5 A. Yes.

6 Q. So what do you base your balancing on?

7 A. I think I get your question.

8 Without going into all the facts that we have
9 already talked about, it's the balancing between a minor
10 violation -- in fact, it would be hard to come up with
11 even more minor violations than having expired tabs.
12 That's not a rule of the road that threatens anyone's
13 life, let's say like a stop sign or a red light could,
14 so you have got one of the lowest violations potentially
15 out there.

16 And the need to capture that offender is low,
17 the harm to society is low. What, we have received a
18 few less tax dollars because the car didn't get
19 registered; very low harm to society based on the
20 violation that occurred.

21 So now I weigh that and I balance that. Okay,
22 so the scale did not tip very far here, in fact, it
23 hardly went down at all.

24 Now, I look at the other side, what are the
25 potential risks, what are the costs to society, and,

1 again, I am going to use the manual that I read, and
2 looking at the nature of the wording here and how it
3 specifies the responsibility of a trooper to weigh those
4 costs and benefit, to basically conduct a cost-benefit
5 analysis while you are engaged in a pursuit.

6 It sounds complicated but that's what police
7 officers are trained to do. And that's why it's
8 important for the trooper to recognize my scale went
9 down oh so slightly on the right, but I'm going to
10 engage in a high level of police interaction on the
11 left. And I am going to do this by driving at high
12 speed, by passing vehicles, I am going to go 110 miles
13 an hour, I am still trying to catch this guy.

14 In answer to your question, that's where I find
15 the balance, I found the scale way out of whack. It's
16 out of balance and the risks were so high for this
17 lowest level of violation, and in answer to your
18 question that's why I find it unreasonable.

19 Q. And that's in your experience as a 34-year law
20 enforcement officer, right?

21 A. It is. It's also based on what they write for
22 the manual here, the guidelines for the trooper, and
23 that's why I feel they weren't followed.

24 Q. And so it's all based on your interpretation of
25 DPS policy?

1 A. It is.

2 Q. Okay.

3 And then is it based on any other policies?

4 A. No, I won't say it's based on any other policies
5 because as I stated before, I recognize that different
6 communities are going to have different policies.

7 So whether I agree or not with the Seattle
8 current policy, I can't necessarily take that and apply
9 it to the State of Arizona, different department,
10 different policy. So what I have tried to do is, in
11 fact, you don't see, I don't believe you see any
12 reference to Seattle policy here. I only rely on the
13 policies that are applicable to the trooper in this
14 case, so that's what I am relying on.

15 Q. Okay.

16 And is it your opinion also then that the DPS
17 policy is the standard of care that's applicable to this
18 pursuit?

19 A. Yes, I think it provides guidelines for the
20 trooper to follow and I think that's why they have put
21 it in policy and put that language into their policy and
22 that's what they expect the troopers to follow.

23 Q. So if DPS changed its policy, does that change
24 the standard of care?

25 A. Trying to think theoretically here. I suppose

1 that does seem to make my mind lean in that way. If the
2 department were to change the policy, certainly the
3 troopers now have a new policy to follow, could be more
4 restrictive, could be less restrictive, and yes, I
5 believe that at that point that the department then is
6 specifying a standard of care for them, this is how we
7 expect you to act, this is how we expect you to care for
8 the public and catch the offender while limiting harm,
9 so yes, I will agree with that question.

10 Q. And so then also different departments would
11 really have different standards of care then since they
12 all have different policies?

13 MR. LADLEY: Form, foundation.

14 THE WITNESS: That kind of gets back to that
15 earlier topic that you and I were discussing. When we
16 talk about the community's ability to develop policies
17 and procedures and laws, how they expect society to
18 function, some of those refer to how they expect their
19 police to function.

20 So yes, I would think certainly the community is
21 expressing -- was that your question, are they
22 expressing a standard of care?

23 BY MS. ELLIOTT:

24 Q. Yeah, my question was if the standard of care is
25 based on the departmental policy, then there would be a

1 different standard of care in different departments
2 based on their individual policies?

3 A. I think, yes, because that gets back to what I
4 talked about earlier today, where some communities are
5 saying, catch the offender, we don't care, we expect you
6 to catch them, and here's how you do it and here's the
7 guidelines we are providing to you, but yeah, we don't
8 like traffic violators running from the police and
9 here's how we go about getting them.

10 So, yeah, they are going to express a standard
11 of care based on their community standards or based on
12 that particular police chief or sheriff.

13 Q. Okay.

14 And on page 9 of your report in the middle
15 paragraph you cite to ER S 28-624 D, I can show it to
16 you on a break.

17 A. I believe you.

18 Q. You have quoted it here also.

19 A. I am sure that's what it is.

20 Q. And you have quoted the section of this statute
21 that says "This section does not relieve the driver of
22 an authorized emergency vehicle from the duty to drive
23 with due regard for the safety of all persons and does
24 not protect the driver from the consequences of the
25 driver's reckless disregard of the safety of others";

1 did I read that correctly?

2 A. Yes.

3 Q. You say this is also the standard of care that
4 applies to Trooper Aguilar in this case?

5 A. Yes.

6 Q. That, and again, that standard of care is that
7 he not act with reckless disregard for the safety of
8 others?

9 A. Correct.

10 Q. And it's your opinion that standard of care is
11 also what's spelled out in the DPS policy?

12 A. Yes.

13 Q. Okay.

14 MR. LADLEY: Can we take a break?

15 MS. ELLIOTT: Yeah.

16 VIDEOGRAPHER: We are going off the record.

17 The time is now 1:11.

18 (Break taken from 1:11 p.m. to
19 1:28 p.m.)

20 VIDEOGRAPHER: Back on the record. The time
21 is 1:28 p.m.

22 EXAMINATION (CONTINUED)

23 BY MS. ELLIOTT:

24 Q. Sir, I am looking at page 7 of your report,
25 which is Exhibit 1. In the middle paragraph here you

1 say, "Trooper Aguilar Delgado disregarded the need for
2 capture of Alejandro Perez, he weighed the risk of
3 public caused by the pursuit and the risk to the public
4 if the offender were to be let go."

5 Where are you getting that from?

6 A. You know, as you read that over and I read it, I
7 have to say that that's a bit of my subjective opinion
8 of his actions during this pursuit. And you are right,
9 I cannot positively state that that was what was in his
10 mind.

11 Q. Okay.

12 A. It would seem natural that that's what's in his
13 mind based on my 35 years of experience and supervising
14 a lot of different officers and in a lot of different
15 situations, that I am hoping that that's what he's
16 doing, but I did make a bit of an assumption there.

17 Q. Okay.

18 And then two lines down you say, "He did not
19 factor in the harm that could result from a pursuit."

20 So I have the same question, where are you
21 getting that from?

22 A. Now, that one I think has a little bit more
23 behind it. Because he engaged in the pursuit, the
24 offender drives off at high speed and we are still
25 following at high speed, and then a few minutes later we

1 have this serious accident.

2 So I would like to have seen, this seems, this
3 seems proven to me by his actions engaging in the
4 pursuit, if he had actually used the scale as I tried to
5 describe earlier, I know my hands won't be visible in a
6 deposition transcript, but I tried to describe the idea
7 of using the scale, and that the scale has been
8 depressed slightly by this minor traffic violation, but
9 the harm, the weight and seriousness of what harm could
10 come to the public because of the pursuit, that's what
11 seems quite obvious to me.

12 And, again, I base it on that. It seems obvious
13 that he did not factor in the harm that could result
14 from a pursuit; if he had, why engage in it. We are
15 talking about the most low level of violation, it's hard
16 to find even a lesser level.

17 Q. So you are not basing that on his testimony,
18 though?

19 A. I think to best answer that question I would
20 want to look back at the report and I did talk about
21 some of the key components that I found within that
22 deposition testimony.

23 So I think that's the best way for me to answer
24 that question is let's go back and look at the things
25 that I found in the report. But I would like to answer

1 your question but I think that's the best way to answer
2 that.

3 Q. Well, I guess, let me ask you this: You don't
4 think it's at all possible in the brief period of time
5 that Trooper Aguilar attempted to pursue Perez that he
6 was just weighing the factors differently than you did;
7 you think the only answer is he just didn't think about
8 the harm at all?

9 A. I don't know that I can answer that
10 definitively, I think both possibilities are there. He
11 either weighed them and disregarded them or he didn't
12 consider them in the first place. I can't state at this
13 time which it was.

14 I would, you know, I'll stand by this phrase,
15 "he did not factor in the harm that could result from a
16 pursuit." Again, I can't state specifically how his
17 mind works. I would like to think that he's a
18 reasonable person or a reasonable trooper, but I don't
19 know that for sure.

20 Q. Well, isn't it true that most suspects will slow
21 down and return to a more normal driving pattern when
22 they believe they are not being followed?

23 MR. LADLEY: Form and foundation.

24 THE WITNESS: In my studies I have found
25 research that does indicate that when the suspect who is

1 fleeing the police feels that they are not being
2 followed anymore, and there's varying distances for
3 this, but when they feel the risk is over, they will
4 generally return back to a more normal speed.

5 BY MS. ELLIOTT:

6 Q. So you also note, let me see where you note it.

7 I think it's on the next page, on page 8,
8 page 8, sort of towards the bottom of the second
9 paragraph, you say, "In my expert opinion, the resulting
10 collision was a direct result of the trooper engaging in
11 an unnecessary police pursuit."

12 What do you base that opinion on, that the
13 pursuit caused the accident?

14 A. I base it on the evidence that was presented to
15 me of both the deposition that I read, the radio
16 transcription that I read and listened to, obviously the
17 accident itself, and then weighing those potential
18 negative outcomes against what is the trooper trying to
19 get accomplished here. And that's to issue a warning or
20 a traffic citation for expired tabs, so that's how I
21 based it. Looking at, again, it comes back to that
22 call.

23 Q. Well, let me go back because I'm not trying to
24 revisit the scale and the balancing test, I am just
25 trying to figure out what you are basing your opinion on

1 that the pursuit caused the accident.

2 A. If he had not continued in his pursuit of Perez,
3 it's very likely that the accident would not have taken
4 place.

5 Q. Okay, why not?

6 A. Because studies show that most offenders when
7 they realize they are not being pursued will slow down
8 and return to a more normal driving speed, probably
9 something similar to the way he was driving when the
10 trooper initially saw him.

11 Q. So if the trooper couldn't see him anymore, then
12 it's likely Perez couldn't see the trooper anymore;
13 would you agree?

14 MR. LADLEY: Form, foundation.

15 THE WITNESS: I can't really state for sure.
16 That one is an impossible to know for sure. I don't
17 know.

18 BY MS. ELLIOTT:

19 Q. Given that we can't talk to Perez, a lot of
20 things are hard to know for sure in this case.

21 A. Uh-huh.

22 Q. If this is the case, that Aguilar can't see
23 Perez and Perez can't see Aguilar, wouldn't it be
24 reasonable to assume that Perez would return to normal
25 driving behavior at that point?

1 MR. LADLEY: Form, foundation.

2 THE WITNESS: As I stated before, studies
3 show that most drivers will return to a more normal
4 speed. And when the offender was first noticed he was
5 driving at, I think it sounded like a more normal
6 driving speed. So I would assume once he feels he's not
7 being pursued anymore and, again, studies show a certain
8 period of time will pass, certain period of distance,
9 and then most offenders will return to their normal
10 driving speed.

11 BY MS. ELLIOTT:

12 Q. And I understand that we have a discrepancy
13 between when you think the pursuit ended and when we
14 think the pursuit ended, but in either situation, this
15 accident happened at least a couple miles and a couple
16 minutes after the pursuit, right?

17 A. That's correct.

18 Q. And are you aware that Aguilar had already
19 turned off of, turned off of State Route 85 onto
20 Interstate 8 heading back to the substation?

21 A. I didn't remember that it was, what did you say,
22 Highway 8?

23 Q. Yes.

24 A. But I remember that testimony that he was
25 either, he was going to the police station, yes.

1 Q. Okay, so let's assume they have lost sight of
2 each other, how do you rule out some other causation;
3 how do you rule out anything, Perez being on drugs or
4 maybe he went to text somebody that he had just almost
5 gotten stopped, any other causation element; how do you
6 rule those out?

7 MR. LADLEY: Form, foundation.

8 THE WITNESS: It comes down to weighing the
9 evidence that was provided to me. I don't have any
10 evidence of that. What I do have evidence of, though,
11 is the trooper engaged in a pursuit at 110 miles an hour
12 for what I believe to be four miles and a couple minutes
13 later Perez crashes into the victim's car, so that seems
14 the most likely cause.

15 BY MS. ELLIOTT:

16 Q. It might be a correlation, right?

17 A. It's possible.

18 Q. And we don't have any evidence from Perez at
19 all, right?

20 A. I have not been provided with any.

21 Q. You don't have his testimony, don't have a
22 statement; we are never going to get one, right?

23 A. I don't know. I don't know anything about that.

24 Q. So where does, in your opinion, where does the
25 chain of causation end? Let's assume the pursuit was

1 unreasonable, where does that chain of causation end?

2 MR. LADLEY: Form, foundation.

3 BY MS. ELLIOTT:

4 Q. Do you understand my question?

5 A. I do, but I don't think we are going to find a
6 bright line explanation of where that ends.

7 Q. If he got in an accident ten minutes later,
8 would it be your opinion that it was caused by the
9 pursuit?

10 MR. LADLEY: Form, foundation.

11 THE WITNESS: I don't know. I would need
12 more evidence in order to make that decision.

13 Again, you are going to have to look at each
14 individual circumstance, and I can't find a bright line
15 definition that's going to explain your question the
16 best way that I can do it, other than by stating I
17 looked at the evidence that I had here and it seemed
18 clear to me. Was it five minutes later, ten minutes, a
19 day, next week, and he sees the police behind him and
20 now he runs, I can't answer that. It's too varied and
21 too subjective.

22 BY MS. ELLIOTT:

23 Q. Is there any time when you could say, well, it
24 definitely wouldn't be this, a week later it definitely
25 wouldn't be that, three hours later, you have

1 intervening causes?

2 MR. LADLEY: Form, foundation.

3 THE WITNESS: Yeah, I am trying to consider
4 all those possibilities. It's a, I want to answer the
5 question, but the best way that I can answer it is I
6 don't have that information.

7 I can base it on what I see here. If we are
8 going to add components to that, and rewrite what
9 happened here, I suppose I could offer you another
10 opinion. But there's not going to be an easy bright
11 line method of determining what that is, there is no
12 specified time, nor distance.

13 BY MS. ELLIOTT:

14 Q. So there's no point at which for you Perez's
15 actions go from being Trooper Aguilar's fault to Perez's
16 fault?

17 MR. LADLEY: Form, foundation.

18 THE WITNESS: I believe that both parties
19 certainly play a role in this collision.

20 BY MS. ELLIOTT:

21 Q. Certainly Perez bears some of the fault for this
22 collision in your opinion?

23 MR. LADLEY: Form, foundation.

24 THE WITNESS: I believe that he does.

25 BY MS. ELLIOTT:

1 Q. In paragraph D on page 9, you state that "the
2 injuries and property damage suffered by Ms. Hartman are
3 prima facie evidence that there were hazards to
4 uninvolved motorists, because of the suspect's desire to
5 avoid capture and the trooper engaging in unnecessary
6 pursuit in violation of the Arizona DPS manual."

7 Can you explain this statement to me?

8 A. Let's say theoretically that the trooper engaged
9 in a pursuit and the trooper and the offender are the
10 only ones involved in it, there could be an argument
11 made, well, this is an allowable pursuit, there's
12 absolutely no risks to anyone else in public.

13 But now, again, that's a theoretical discussion.
14 There's still even risk to the public because even
15 though he's an offender, he's a member of the public,
16 Perez still has a risk here. The trooper still has a
17 risk, even though he's commissioned law enforcement and
18 authorized, so there's still elements of risk possible.

19 Now, if we get into the facts of this, and this
20 is what I am kind of trying to summarize here, that
21 Ms. Hartman has severe injuries and a totalled car.
22 With her being present there, with Perez coming around
23 the corner, coming into Gila Bend, fleeing from the
24 trooper, that to me that's evidence. I have to consider
25 the damages that she suffered both personally and to her

1 vehicle, and, again, that weighs on me as I try to
2 consider is this pursuit reasonable or not.

3 And I believe that this paragraph shows that
4 there are other people on the road, and that we cannot
5 engage in frivolous pursuits unnecessarily. And that by
6 being unreasonable in the pursuit, it led directly prima
7 facie, led directly to the injuries she suffered.

8 So that's, I can see you want me to end the
9 question, or end the answer, but that's what this
10 paragraph is trying to explain. That because of what
11 happened to her, it further yields my belief that this
12 unreasonable pursuit should not have taken place.

13 Q. You have no reason to believe Trooper Aguilar
14 knew that Ms. Hartman was up there, where she was
15 located?

16 A. I think law enforcement and, in fact, the manual
17 specifies for DPS that you must consider that this is a
18 dangerous act and that others can be involved and hurt
19 by what happens. You have to consider that, the manual
20 requires you to consider those factors.

21 Q. But don't you think he considered those factors
22 when he terminated the pursuit?

23 A. Well, that's the part you and I were trying to
24 discuss 20 minutes ago, did he or did not factor that.
25 I don't know, I am not sure if he thought about it and

1 disregarded it, or never thought about it in the first
2 place, I don't know.

3 Q. He initiated a pursuit.

4 A. Yes.

5 Q. But whether he terminated the pursuit at
6 milepost five or milepost three, he on his own accord
7 terminated the pursuit, right?

8 A. No one told him to.

9 Q. No.

10 A. So I would say he terminated of his own accord.
11 There's varying information on when that took place.

12 Q. Sure.

13 A. But I agree with you that he terminated it on
14 his own accord.

15 Q. He did terminate it in a relatively short period
16 of time, no?

17 A. Again, there's a variety of information here,
18 and you would be surprised how much distance you cover
19 at 110 miles an hour. It's, time and distance pass
20 rapidly I shall say.

21 Q. He obviously considered something when he
22 terminated the pursuit and he's testified that he
23 considered --

24 A. Yes.

25 Q. He testified that he considered various factors

1 when he did terminate the pursuit.

2 A. I am going to agree with you on that, he did
3 testify to that.

4 Q. And he testified that one of those factors was
5 that he had accelerated, right, that he was passing
6 vehicles, and that he was headed towards Gila Bend,
7 right?

8 A. I would have to look back at his testimony to
9 absolutely agree with you there. I know that he offered
10 testimony in his deposition as to why he terminated, but
11 I don't remember those specific elements, I didn't study
12 them super hard before coming here today, so I would
13 have to look at that transcript.

14 Q. The exact wording of the transcript
15 notwithstanding, he did consider the conditions and he
16 did consider public safety when he terminated this
17 pursuit, didn't he?

18 MR. LADLEY: Form, foundation.

19 THE WITNESS: I can't state for sure. I
20 think I will try to answer the question by stating I
21 don't know if he knew them and disregarded them or
22 didn't regard them in the first place and I will stand
23 by that. I still don't know for sure.

24 BY MS. ELLIOTT:

25 Q. That's in the initiation portion, though, not in

1 the terminating.

2 A. I think it also goes to termination. Again, you
3 are asking me to put myself in his mind and that's not
4 something that generally is recommended.

5 Q. You did it a couple times in the report, though.

6 A. Yeah, but it's also based on my opinions of the
7 pursuit and the evidence that I was provided, so -- and
8 I tried to offer, you know, a couple explanations here,
9 either he knew and disregarded or he didn't regard in
10 the first place.

11 Q. And I understand it, and it's, to me that's,
12 that goes towards his initiation of the pursuit. When
13 he terminated the pursuit he obviously considered
14 something.

15 MR. LADLEY: Form, foundation.

16 BY MS. ELLIOTT:

17 Q. Or is it your opinion that he just terminated
18 the pursuit because he was tired or bored with it?

19 A. Well, one of the other explanations he offered
20 was that he couldn't catch the vehicle, that the Chevy
21 Tahoe was not as fast as the Honda Accord, so that's
22 another factor it potentially could be.

23 So I read those things, but I can't state for
24 sure what the real answer is. I can state some
25 possibilities, I can state what's in my mind, but I

1 don't know specifically what's in his mind.

2 Q. Okay.

3 And going back to when you said that the
4 injuries and property damage were prima facie evidence
5 that there was hazards, and you explained that to me and
6 I appreciate that. And it sounds to me like what you
7 are saying is that because there were injuries and
8 damages, obviously there were hazards?

9 A. Correct.

10 Q. That injuries and damages mean there were
11 hazards?

12 A. Yes.

13 THE WITNESS: G-I-L-A, B-E-N-D. It's a town
14 in Arizona. It's where the pursuit and collision
15 terminated.

16 Let me rephrase that, it's where the
17 collision took place, the pursuit was terminated prior
18 to that.

19 Q. So looking at paragraph G on page 11, you
20 reference the Maricopa County sheriff's office CAD
21 report.

22 A. Yes.

23 Q. And you, again, seem to imply that the trooper
24 somehow is not being accurate in his reporting of the
25 pursuit.

1 Is it your understanding that MCSO, that an MCSO
2 officer witnessed the accident?

3 A. If I remember correctly, they came upon it or it
4 was reported. I don't think they saw the actual
5 accident. I believe Ms. Hartman was the only one that
6 actually could describe what happened.

7 Q. And is it your understanding that MCSO witnessed
8 the pursuit?

9 A. No, they became aware that the trooper was in
10 pursuit of this vehicle and what they are trying to do
11 is complain -- if you are going to pursue him, there's a
12 phrase if law enforcement "you catch him them, you clean
13 them."

14 What that means is that if you are going pursue
15 this, you better come investigate the accident that
16 resulted and that didn't happen in this place, let's
17 stick with that, and that's what they are saying is
18 right, why am I investigating this.

19 Q. So MCSO is complaining because they had to do
20 some work?

21 A. Well, yes, but again, I am just trying to give
22 you a bit of law enforcement background, that's --

23 Q. Fair.

24 A. It's a very common phrase in law enforcement,
25 and you need to take care of the problems that you

1 cause.

2 Q. And the MCSO CAD report also said that the guy
3 turned into the Circle K and hit another vehicle. Is
4 that your understanding of how the accident happened?

5 MR. LADLEY: Form.

6 THE WITNESS: Did I write that?

7 BY MS. ELLIOTT:

8 Q. No, no, no, it's from the MCSO CAD report.

9 A. If I saw that, I disregarded it.

10 Q. Well, you quoted it here in your report in
11 paragraph G, from the CAD report.

12 A. Oh, obviously then I did see it and copied it
13 over here best I could word for word. I am not sure
14 where the Circle K comes from, other than I know that
15 when you get into Gila Bend looking, I have never been
16 there, but when you look at the GPS map ahead you can
17 see there's a truck stop there and I am assuming it's a
18 Circle K, I don't know.

19 Q. I will tell you this didn't happen at the
20 Circle K in the parking lot and this is just inaccurate.

21 A. You and I both know the collision occurred on
22 85, you know, it was more of a head-on coming around
23 that curve. So I am not sure why Circle K, but, again,
24 I have to put what they wrote down, so I am putting that
25 down in there.

1 Q. So MCSO CAD report as to the pursuit, what DPS
2 did, how the accident happened, this is not from any
3 MCSO officer witnessing any of these events, right?

4 MR. LADLEY: Form, foundation.

5 BY MS. ELLIOTT:

6 Q. To your knowledge.

7 A. Depends on what you are going to describe as
8 witnessing. Did they see the actual accident, it seems
9 clear they did not.

10 Q. And they didn't see the actual pursuit?

11 A. No, they did not. I believe that is true as
12 well.

13 Q. And so when they say, so they are saying that
14 they terminated the pursuit even though DPS was still
15 behind the vehicle, they don't have any way to know
16 that, do they?

17 MR. LADLEY: Form, foundation.

18 THE WITNESS: I do believe they have a way
19 of knowing that and we would have to probably sit down
20 and talk to them. But, again, as I read this, it seemed
21 very apparent what they are complaining about is you
22 pursued this guy, he came into Gila Bend and crashed and
23 now I have to investigate.

24 And yes, they are complaining about having
25 to do work, you are right about that, but they are also

1 complaining that you should take this accident is what
2 they are saying. So their facts, you know,
3 realistically, some of the facts are wrong here it does
4 seem, but I can understand their sentiment, let's state
5 that.

6 BY MS. ELLIOTT:

7 Q. Okay.

8 I saw in your capstone project paper somewhere
9 that you said that police are twice as likely to use
10 stopping methods than to call off pursuits, and you said
11 that it shows the reluctance on the part of the police
12 to give up on pursuits, right?

13 A. Yes.

14 Q. That's not what happened in this case, though,
15 is it?

16 A. That's correct.

17 Q. Because Trooper Aguilar did call off his pursuit
18 shortly after it began, right?

19 A. He did call off the pursuit.

20 Q. And I think you also had mentioned in your paper
21 that you expected veteran officers to slow down more
22 than newer officers?

23 A. Yes.

24 Q. And what is that based on, just age?

25 A. Certainly personal history and then looking at

1 the statistics that were given by the different
2 departments, I did find that high proportion did seem to
3 come from the newer officers, but I also offered
4 explanations why that might be.

5 And we previously talked about that, but yeah,
6 as you get more veteran you are going to slow down a
7 little bit, you are not going to drive as fast. I found
8 that personally, but I know that from a wealth of law
9 enforcement experience.

10 And also like I said, they will promote and/or
11 move into specialized units where they are not doing as
12 much traffic enforcement.

13 Q. And, but that's what Aguilar did here as well,
14 right, he slowed down, he terminated the pursuit?

15 MR. LADLEY: Form, foundation.

16 THE WITNESS: I will disagree -- I can't
17 agree with that statement 100%. I am not sure what
18 happened between milepost five and milepost three.

19 What I do know is that based on what he
20 stated in his deposition and his report, that he called
21 off the pursuit at milepost five, yet I'm hearing on
22 radio I last saw him at milepost three.

23 So I only know what I read, and I think I
24 explained why I addressed both possibilities in my
25 report. The initial information I was given, as well as

1 what I later discovered, and -- I think I will leave it
2 at that, that there's different versions from the
3 information that was given to me when this pursuit
4 actually terminated.

5 BY MS. ELLIOTT:

6 Q. Have you testified in any case where you opined
7 that the pursuit was reasonable?

8 A. Never testified, I am fairly sure about that.
9 What did we find in my CV, five or six cases.

10 I don't believe any of the ones there ever
11 reached the stage of testimony. I have testified in one
12 trial and given, I think this is my seventh deposition.

13 Q. Have you ever had a pursuit case where you
14 opined that the pursuit was reasonable, whether or not
15 you testified?

16 A. You know, as I think back about those cases that
17 we looked at earlier, I don't remember any of those
18 offering evidence or information from me that yielded a
19 belief that a pursuit was reasonable.

20 So in answer to your question, I can't remember
21 ever testifying or offering an opinion that a pursuit
22 was reasonable.

23 Q. Have you ever turned down a plaintiff's case
24 because a pursuit in your opinion was actually
25 reasonable?

1 A. I have turned, I have never turned down a case.
2 I have given attorneys information that they sometimes
3 don't agree with, but I have to stay true to what I
4 believe. I don't believe, though, however, any of those
5 involved pursuit, generally those were use-of-force
6 cases.

7 Q. Do you think that your personal feelings about
8 the propriety of police pursuits color your opinions in
9 pursuit cases?

10 MR. LADLEY: Form.

11 THE WITNESS: It's an interesting question
12 because how does any of us ever come to any opinions on
13 anything. We all have different life experiences,
14 professional experiences, personal experiences. We all
15 have different levels of education. We all were raised
16 differently in different locations.

17 That's a widespread answer of stating that
18 any time anyone is going to make a decision for
19 themselves, whatever the case might be, a minor decision
20 or a major one, you are going to rely on your past
21 experiences. Sometimes you go with a hunch, sometimes
22 you get advice from a trusted advisor or friend, and
23 other times you follow a department policy, other times
24 you think what did I learn back in school about that.

25 So to answer your question, I think people

1 make their decisions based on a huge variety of factors
2 and that's very widespread as to where that information
3 comes from to help you make decisions.

4 BY MS. ELLIOTT:

5 Q. Do you have any opinions on this case that are
6 not in your written report or rebuttal or that we have
7 not discussed here today?

8 MR. LADLEY: Form.

9 THE WITNESS: No, my report stands. I, as
10 we have looked it over today, I don't find anything I
11 disagree with, and I stand by my report and I have no
12 new opinions.

13 We did discuss a few items of evidence that
14 I might not have been privy to. I didn't hear anything
15 that would radically change my mind about my decisions
16 and what I think of the trooper's actions in this case.

17 BY MS. ELLIOTT:

18 Q. And kind of along those same lines, but just to
19 be exhaustive, is there anything else that you think was
20 done wrong in this case that we haven't discussed or
21 that you didn't put in your written report or your
22 rebuttal?

23 MR. LADLEY: Form.

24 THE WITNESS: No, I can't think of anything
25 like that.

1 BY MS. ELLIOTT:

2 Q. And real quick back on page 6 of Exhibit 1 of
3 your report under the primary unit responsibilities,
4 these updates that the, the facts that the officer is
5 supposed to transmit to operational communications, the
6 policy says that these are, calls them updates, right,
7 provide updates on the following information, is what it
8 says, right?

9 A. It does, yes.

10 Q. To me the use of the word "updates" implies that
11 these should be provided as updates during a pursuit,
12 but not necessarily facts provided before pursuit is
13 initiated; is that your understanding?

14 MR. LADLEY: Form, foundation.

15 THE WITNESS: I will rely on the language
16 here and how it states. And this, my understanding it
17 follows very closely, notify the respective operational
18 communication centers a pursuit is under way, so that's
19 your first responsibility, I am in pursuit, and then,
20 provide updates on the following information. So what
21 the manual then is requiring them to do is to then
22 provide the following information.

23 So, I guess there might be different
24 definitions of updates, but to me in plain speak it
25 seems pretty clear that the trooper then is required to

1 report the following items over the air so that
2 supervisors can hear, because I believe the next section
3 gets into supervisory responsibilities. So that's the
4 idea behind this. One, so other officers know what's
5 going on, other troopers, and then two, supervisors
6 know. So that's the updates that we are talking about.
7 So I can only take it with its plain language meaning
8 here to me what it means.

9 Q. So a pursuit has been initiated first, and then
10 a trooper provides updates on the following factors?

11 A. Yes.

12 Q. And if this pursuit only lasted eight seconds,
13 Trooper Aguilar would not really have had time to
14 provide all of these updates in that eight seconds,
15 right?

16 MR. LADLEY: Form, foundation.

17 THE WITNESS: I agree with you within eight
18 seconds that could not be done. You would then provide
19 following information afterwards. If you are going to
20 get on the air and broadcast information, whether for
21 yourself or maybe to write a report later, whether for
22 other troopers so they can be aware of the vehicle or
23 danger factors or hazards, whatever the case might be,
24 or three, so that a supervisor is aware, all three of
25 those different groups, both the, actually four if you

1 think about it, it's for yourself, it's for your fellow
2 troopers and we will consider fellow law enforcement
3 agencies, it's also for the supervisor who has different
4 responsibilities, and it's also to keep a record later
5 so that you and I can sit around and talk about it in
6 cases like today, right.

7 So all these reasons are important why that
8 information needs to be in there.

9 MS. ELLIOTT: Okay.

10 I don't want anybody to get excited but I
11 think I might be done but I am going to take just a
12 minute to scroll through my notes to make sure I didn't
13 miss anything. So we will go off the record just a
14 minute.

15 VIDEOGRAPHER: Going off the record. The
16 time now is 2:02 p.m.

17 (Break taken from 2:02 p.m. to
18 2:04 p.m.)

19 VIDEOGRAPHER: We are back on the record.
20 The time is 2:04.

21 MS. ELLIOTT: Sir, I am done for right now.
22 I think your attorney probably has some questions for
23 you, but I am finished for right now and I really
24 appreciate your time today, thank you.

25 THE WITNESS: Thank you as well.

EXAMINATION

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BY MR. LADLEY:

Q. First of all, Mr. Sweeney, you understand I am not your attorney, correct?

A. I was going to say something about that and I though that's not my job.

MS. ELLIOTT: I just got you a new client.

BY MR. LADLEY:

Q. I do have some questions for you in follow-up.

A. Yes.

Q. One of the things I wanted to ask you about, there was a whole discussion about balancing and balancing different criteria for initiating and continuing a pursuit; do you remember that discussion?

A. Yes.

Q. And at one point I thought I heard you say that the, all of that, it's all subjective criteria that's looked at; did you recall something like that?

A. Yes, I do recall.

Q. And I wanted to ask you in follow-up to that, is that truly your opinion that it's all really just subjective criteria, that there's no objective standards or criteria that's looked at?

MS. ELLIOTT: Form.

THE WITNESS: I think that what the manual

1 is trying to do here is in objective form provide
2 information that must be considered when engaging in a
3 pursuit.

4 BY MR. LADLEY:

5 Q. When you say "the manual," what are you
6 referring to?

7 A. The DPS manual. So what they have tried to do
8 in their policy here is to provide objective information
9 that tells an officer, tells a trooper what they need to
10 consider when they are evaluating the seriousness of a
11 crime vs. The pursuit itself.

12 So in and of itself, they are providing
13 objective information, yet they are not going to, let's
14 say, codify and restate every law that's on, the Arizona
15 legislature has put on the books. What they are then
16 going to provide is a way to evaluate this and they are
17 going to say subjectively trooper, we need you to
18 evaluate what level of crime has this person potentially
19 committed or traffic violation, and then you need to
20 weigh that against the risks that are present with the
21 pursuit. And they provide a number of other factors
22 too.

23 So I think that they have used both objective
24 and subjective information for the trooper in order to
25 help them make a decision on whether their pursuit is

1 reasonable or not.

2 Q. And you can look objectively at what happened to
3 evaluate that, correct?

4 MS. ELLIOTT: Form.

5 THE WITNESS: Yes, the, their manual tries
6 to eliminate unnecessary pursuits by stating that you
7 need to weigh all the following evidence, and I won't
8 read them all again, we have read them before.

9 BY MR. LADLEY:

10 Q. No, go ahead.

11 A. Okay.

12 Q. And you are referring to your report.

13 A. Yeah, so we talked about this on page 6, updates
14 on the following information, so we need to know the
15 location and direction of travel.

16 Q. Is that subjective information?

17 A. That's going to be objective.

18 Q. Right.

19 A. That's pretty specific.

20 A description of the pursuit vehicle, again,
21 that's objective information. There could be different
22 interpretations based on distance or the ability to see
23 or things like that, but by and large that's objective
24 information.

25 The speed of the pursued vehicle is objective.

1 The reason for the initial contact, I have heard
2 a lot of different descriptions about why someone's
3 trying to contact someone. In this case, though, the
4 facts seem to be clear that the trooper wanted to stop
5 this person because they had expired tags, so that's
6 fairly objective.

7 The number of occupants known to be in the
8 vehicle, that can be hard to determine, especially at
9 speed. It's all you can do to just concentrate on
10 staying behind the vehicle, let alone now counting how
11 many heads do I see, things like that, that can be a
12 difficult thing to do. So there might be some
13 subjectivity on the part of the trooper by saying it's a
14 carload of people or it looks to be just one driver or
15 maybe they have a passenger. So there's different
16 levels of description that a trooper might be able to
17 offer.

18 Hazards to sworn personnel, this one sounds a
19 bit subjective to me. If there's a construction zone,
20 let's say you have been on this road before and ahead,
21 you know, there's a construction zone with flaggers out
22 and work vehicles and things like this, that's pretty
23 factual information that that's a hazard that others
24 should be aware of.

25 That didn't happen in this case, but that's

1 something that might, I am trying to find something that
2 might fall into that. I think that's fairly objective
3 that if there's a hazard ahead, here's what it is, an
4 oil spill, that's something that people need to know
5 about.

6 Other hazards might be a little more subjective.
7 What's scary for me and hazardous to me might not be for
8 the other person, we don't know.

9 Traffic conditions, we went around and around
10 about that with the description of slow vs. Light vs.
11 Heavy, fast. I don't know, there are different
12 explanations there, so I will say that that one is
13 subjective, that could be subjective information.

14 What might be heavy traffic to me someone else
15 might say is slow or vice versa, I don't know, because
16 of the subjectivity involved, how are you defining these
17 words.

18 Criminal traffic violations, that's pretty
19 objective. The law spells out what's a criminal
20 behavior, what level that is and what's a violation.

21 Q. And, in fact, that's something that the trooper
22 should be trained up on and know and understand just to
23 be out on the road, correct?

24 A. Absolutely. I can't think of any law
25 enforcement agency that would allow an officer or a

1 trooper or deputy go out on the road and enforce the law
2 without studying it and knowing it first. And probably
3 being tested on the material to show that you know it
4 and then watch you do it in person, that's the field
5 training officer program.

6 There were some other factors. On the same page
7 in 6 under C, so it tells DPS personnel when to
8 terminate pursuits, and it states when the risks
9 outweigh the need for immediate apprehension of the
10 suspect.

11 Again, you and I just mentioned this, I tried to
12 describe this earlier with the scale that's in the
13 trooper's brain, and while I can't put myself into his
14 brain, I can put myself into an experienced supervisor
15 that's trained a lot of officers and supervised a lot of
16 officers on how we need to always evaluate our actions
17 as law enforcement. We never operate blindly.

18 Q. You talked about standards, how do we, where do
19 we find different standards or are there different
20 standards that apply?

21 MS. ELLIOTT: Form.

22 BY MR. LADLEY:

23 Q. Let me strike that and let me state it again.

24 We talked about standards during your
25 deposition, correct?

1 A. We did.

2 Q. That apply to situations like this one involved
3 in this case, correct?

4 A. Yes.

5 Q. And you mentioned there are community standards,
6 correct?

7 A. Yes.

8 Q. Is there not also a national standard?

9 MS. ELLIOTT: Form.

10 THE WITNESS: Some in law enforcement have
11 argued that there should be a national standard. And
12 when you see more and more evidence on the news or the
13 latest body cam video of a controversial police use of
14 force or shooting many people will argue that there
15 needs to be a national system of regulating our police
16 activity and what they are allowed to do and what not to
17 do. As of now that does not exist. Nevertheless, there
18 are professional organizations, we talked about a few of
19 them. International Association of Campus Law
20 Enforcement might have specific occasions on how they
21 believe campus law enforcement should operate. The NTOA
22 might specify, they have a set of guidelines as to how
23 they would like to see your SWAT team operate. The
24 International Association of Chiefs of Police has their
25 own guidelines how they think law enforcement should

1 operate in today's society.

2 Those groups, though, however, are advisory.
3 They might offer their opinions, they might offer what
4 should be the law of the land. And some of them are
5 plain and obvious, you know, like the idea of the
6 doctor, do no harm, same thing exists in law
7 enforcement.

8 We recognize that there are risks present
9 with law enforcement, we know that you need to undertake
10 those risks in order to do your job and catch the
11 criminal and protect society. How do they do that?
12 It's by weighing those elements of the possible actions
13 that law enforcement can take.

14 And you describe a situation for me and I
15 can tell you ten or 15 different ways to handle it.
16 Some of them will be clear violations of law, others
17 might be a little bit more esoteric and maybe it
18 violates policy but not state law.

19 And other things you might say, well, that
20 seems very reasonable what the officer did there and
21 sure enough the manual finds that as well and state law
22 finds that.

23 So back to your question, is there a
24 national guideline, there is not, however, there are
25 nationally recognized standards that officers should

1 abide to.

2 The ability to be honest is one of the
3 primary, it doesn't need to be stated, it's known in law
4 enforcement if you are not honest, if you are dishonest,
5 you cannot serve the public. Your testimony is thrown
6 out, your reports are thrown out. You can't say that
7 you work for justice when you are committing injustices,
8 right, that's another standard.

9 The standards might be how do we best
10 protect the public and do that safely. And that kind of
11 gets back to the idea of the doctor, you shall do no
12 harm, that's a quick easy summation. In law enforcement
13 it might be a little bit more difficult to define, but
14 yet the standards are out there.

15 If you took a whole room full of law
16 enforcement across the United States and you asked them
17 a few basic questions, some of the things will be
18 unequivocal and true and everyone will agree because of
19 course that's how you do it.

20 Q. Wouldn't one of those be that you should not act
21 with reckless disregard for the safety of others?

22 A. Absolutely. Everyone in law enforcement will
23 recognize if you continue to serve the public in a
24 proactive way, but yet disregard the safety of the
25 public, how can you be effective; that whole discussion

1 we started with today, how can you perform effective law
2 enforcement if by your actions you are harming the
3 community you are supposed to be there to protect.

4 Q. And would you agree with me that's exactly what
5 was violated here, that standard was violated here and
6 that Trooper Aguilar acted in a way that was with
7 reckless disregard for the safety of others?

8 MS. ELLIOTT: Form.

9 THE WITNESS: Yes, I would.

10 BY MR. LADLEY:

11 Q. And that's the opinion you have expressed in
12 this case, correct?

13 A. Yes, it is and that's why I also quoted from the
14 International Association of Chiefs of Police, so the
15 Law Enforcement Code of Ethics. And if you will let me
16 find it, I can find it in here, oh, it's on page 9 under
17 C.

18 So I stated that department policy spells out a
19 basic standard of care applicable to police officers in
20 Arizona. In addition, the law enforcement code of
21 ethics published by the IACP states as a law enforcement
22 officer, my fundamental duty is to serve the community,
23 safeguard life and property.

24 And I wrote this in the same paragraph, this
25 standard of care is widely known in law enforcement

1 agencies across the United States. And that is true, I
2 have seen it in articles, I have seen it in discussions,
3 I have seen it in studies, I have seen it in
4 conversations with fellow law enforcement officers.

5 Our primary duty is safeguard lives and
6 property. One of the ways we do that is by arresting
7 offenders. One of the ways we do that is by pursuing in
8 certain cases, but what we don't want to do is tip the
9 balance of a scale so far where the actions that you
10 take as a department -- I'll try to take this even out
11 of the arena of the pursuit -- whatever actions that you
12 are going to take as a police officer, even if the law
13 allows you to do, does it mean you should do that? Not
14 always.

15 Sometimes just because I am allowed to shoot
16 into a house because someone shot at me, that's probably
17 something you shouldn't do because there could be
18 innocent people over there.

19 Same thing here with this collision, we were
20 allowed to pursue this, it says we can pursue for
21 violations, but yet the department covers itself by
22 saying you always have to balance it, balance the need
23 for capture against the need for what happens if there
24 is a tragedy, which is what happened in this case.

25 Q. The opinions that you have expressed in your

1 declaration, your report marked as Exhibit 1, which is
2 dated June 23, I believe, let me see.

3 June 29, 2023, correct?

4 A. Yes.

5 Q. You hold these opinions today still, all of
6 them, correct?

7 A. I do.

8 Q. And that's your, on page 12 of your report,
9 that's your signature, correct?

10 A. Yes, it is, electronic, but yes.

11 Q. You also authored a rebuttal report, correct?

12 A. I did.

13 Q. And that's dated August 24, 2023?

14 A. Yes.

15 Q. And that report, all the opinions in your
16 rebuttal report you hold today as well, correct?

17 A. Yes, I do.

18 Q. There was discussion about, a lot of discussion
19 about, you know, the trooper terminating the pursuit.
20 When the trooper terminates the pursuit, does the
21 suspect's vehicle just stop right on a dime and that's
22 it, that's the end of the story?

23 A. No.

24 Q. Does that ever happen?

25 A. The closest thing I have seen both in real life

1 and in my research is that some suspects believe that
2 their best chance of escape is to stop the vehicle and
3 run on foot. So that's the closest thing I can think
4 that comes to what you said.

5 Vehicles never stop immediately, there's always
6 going to be some braking and slowing down.

7 Q. If they choose.

8 A. If they choose to stop.

9 Let me take that back, there is also the
10 possibility of crashing into something and that can
11 immediately stop a vehicle, but even then you are going
12 to have a little bit of balance.

13 But technicalities aside, I think to answer your
14 question, vehicles never immediately stop, there's a
15 period of time that takes them to slow down and come to
16 a stop.

17 Q. So even if Trooper Aguilar decided within eight
18 seconds of calling the pursuit to terminate it, is there
19 some magic information that's conveyed to the suspect
20 that oh, the pursuit is terminated, I am just going to
21 slow down now?

22 A. No. The information that I am going to assume
23 that Perez would have seen or not seen would be possibly
24 I am not hearing the sirens now, I might not see the red
25 and blue lights or flashing lights, and potentially, we

1 don't know, potentially they might not see the vehicle
2 anymore. So they are looking potentially in the
3 rearview mirror.

4 Again, I am kind of making guesses here, but
5 those would be the signals to Perez that the pursuit is
6 over. I don't see the police car, I don't see lights
7 and I don't hear a siren.

8 Q. If Perez is already fleeing however, and it's
9 only a couple miles, is that likely to happen where he's
10 just going to slow down all of a sudden?

11 MS. ELLIOTT: Form, foundation.

12 THE WITNESS: There was a 1998 study, if I
13 think about it long enough I can come up with the title,
14 actually, it's right here.

15 Looking at Exhibit 2, my master's thesis.

16 Oh, there's some pages missing. The
17 references aren't here.

18 That's okay.

19 Let's do it this way, if you want me to find
20 more specificity, I can do that.

21 MS. ELLIOTT: Sir, I have one with the
22 references and we will trade that out for the exhibit.

23 THE WITNESS: Unless they are out of order,
24 yeah, I don't see it here.

25 Thank you.

1 MS. ELLIOTT: There you go.

2 THE WITNESS: Thank you.

3 I believe it's Alpert's 1998 study, "A
4 factorial analysis a police pursuit driving decisions."

5 You know, it also could be the 1989 Alpert
6 study, he's well known as one of the leading researchers
7 about police pursuits.

8 Let me find it in here because I think
9 that's the best way to do this.

10 (Witness reviews document.)

11 Here we go.

12 Page 10, again, these are averages. This is
13 from a well-known researcher in police pursuits. It
14 doesn't mean it happens 100% of the time, but on average
15 it says, it's talking about he went to interview
16 suspects who had fled from the police and were under
17 arrest, and wanted to know all the decisions that they
18 were making while they were fleeing from the police.
19 Why did they flee, what crime did they commit, what were
20 they hoping to accomplish and things like that.

21 He also got into the questions of when did
22 you think that you could stop running from the police,
23 and on average this is what they said. So 75% of the
24 respondents said that they would stop only when they
25 feel safe, so in other words, they are viewing law

1 enforcement as a threat to their safety or most likely a
2 threat to their ability to function in free society.

3 And I kind of talked about that earlier,
4 that there's the fear of law enforcement because that
5 often ends up with me back in jail, that is their
6 safety, what they are talking about, which means that
7 they did not see or hear police lights and siren, in
8 town this equated to a two-block distance. On the
9 freeway and rural roads this meant not seeing or hearing
10 the police officer for two to 2.5 miles.

11 So on average if you are talking about a
12 rural road or a freeway or highway, and I think based on
13 my, you know, here's a source that I did not mention in
14 my report, I actually looked at Google Maps for, I
15 followed the pursuit route as best I could on Google
16 Maps.

17 But while following that, I saw the
18 distance, the distances that we are talking about, and
19 from the end of the pursuit at milepost three to where
20 the collision occurs in town, so what the, what the
21 highway does there is the numbers get bigger as you head
22 southbound, I believe toward the border. I believe that
23 in town there it starts at milepost zero.

24 So if you ended at milepost three, and the
25 collision occurs at milepost zero, we are talking about

1 three minutes later. Now, if he is still doing 110
2 miles an hour -- I don't know, we don't have that
3 evidence, I am just talking theoretically -- but if
4 Perez is still going that fast or something even close
5 to that fast, he's going to cover that distance in a
6 couple of minutes.

7 Which I think, again, we are talking about
8 averages here, but that seems to follow along the trend
9 that we see from the research, we see from Alpert's
10 studies that in general they are going to keep fleeing
11 until they are quite sure there's no police behind me, I
12 don't see any lights, I don't hear the siren, I don't
13 see the police car, now I'm going to slow down.

14 Perez had not reached that yet or we
15 wouldn't have such serious damage from this high speed
16 collision it sounds like.

17 BY MR. LADLEY:

18 Q. You were asked some questions about or related
19 to Perez and information about Perez; do you recall
20 those questions?

21 A. Yes.

22 Q. You may not be aware that he passed away of
23 unrelated matters.

24 A. I was unaware.

25 Q. Okay.

1 MR. LADLEY: I believe those are all the
2 questions I have at this time.

3 MS. ELLIOTT: I just have a couple follow-up
4 questions for you, sir.

5 EXAMINATION (CONTINUED)

6 BY MS. ELLIOTT:

7 Q. Is it your opinion that by trying to pull him
8 over Aguilar forced Perez to flee?

9 A. By trying to pull him over did he force him to
10 flee? No, Perez still had the ability to make an
11 individual decision based on seeing the police car
12 behind him, seeing lights and/or hearing a siren, so I
13 would say he did not force him to flee.

14 Q. Perez could have just pulled over, right?

15 A. He could have.

16 Q. But he chose to flee, right?

17 A. He did.

18 Q. And is it your opinion that any time a pursuit
19 results in injuries the standard of case has been
20 violated?

21 A. No.

22 Q. Okay.

23 And is it your opinion then that any time a
24 pursuit results in injuries that the law enforcement
25 code of ethics has been violated?

1 A. No.

2 MS. ELLIOTT: I don't have anything else.

3 MR. LADLEY: I just have one follow-up
4 question to the questions related to choices.

5 EXAMINATION (CONTINUED)

6 BY MR. LADLEY:

7 Q. Trooper Aguilar made the choice to pull, to
8 attempt to pull Perez over for not having his tags
9 registered, correct?

10 A. Yes.

11 Q. And Trooper Aguilar made the choice to initiate
12 a pursuit for that purpose, correct?

13 A. Yes, he did.

14 MR. LADLEY: Those are all the questions I
15 have.

16 MS. ELLIOTT: I think we are done. Thank
17 you very much, sir.

18 THE WITNESS: Thank you.

19 MS. ELLIOTT: You have the option, I am sure
20 you know, to read and sign your deposition; would you
21 like to read and sign?

22 THE WITNESS: I think that would be a good
23 idea.

24 VIDEOGRAPHER: This concludes the
25 deposition. The time now is 2:28 p.m., we are off the

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record.

(Deposition concluded at 2:28 p.m.)

(By agreement between counsel and
the witness, signature was
reserved.)

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