

**Deposition of David T. Sweeney**  
**Richmond v. Spokane County, Washington**  
**February 15, 2022**



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IN THE UNITED STATES DISTRICT COURT  
 WESTERN DISTRICT OF WASHINGTON  
 AT SPOKANE

ANDREW M. RICHMOND, a )  
 Washington Resident, )  
 )  
 Plaintiff, )  
 )  
 v. ) No. 2:21-cv-00129-SMJ  
 )  
 SPOKANE COUNTY, )  
 WASHINGTON, a Washington )  
 State County, )  
 )  
 Defendant. )

VIDEOTAPED VIDEOCONFERENCE DEPOSITION  
 OF  
 DAVID T. SWEENEY

SEATTLE, WASHINGTON

9:29 A.M.

(All participants appearing via videoconference.)

DATE TAKEN: FEBRUARY 15, 2022  
 REPORTED BY: CRYSTAL R. McAULIFFE, RPR, CCR 2121

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 2 DAVID T. SWEENEY  
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 4 February 15, 2022

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1 A P P E A R A N C E S  
 2 (All participants appearing via videoconference.)  
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18 The videographer: Jason Neuerburg

1 SEATTLE, WASHINGTON; FEBRUARY 15, 2022  
 2 9:29 a.m.  
 3 -o0o-

4 THE VIDEOGRAPHER: We are on the record.  
 5 This is the deposition of David T. Sweeney  
 6 in the matter of Andrew M. Richmond versus Spokane  
 7 County Washington, Cause No. 2:21-CV-00129-SMJ, in the  
 8 United States District Court Eastern District of  
 9 Washington at Spokane and was noticed by Michael T.  
 10 Kitson.

11 The time is now approximately 9:29 a.m. on  
 12 this 15th day of February, 2022, and we are convening  
 13 via Zoom.

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

17 Will counsel please identify themselves for  
 18 the record.

19 MS. BARDEN: I'm Heather Barden. I'm the  
 20 attorney that represents the plaintiff, Andrew Richmond.

21 MR. KITSON: Mike Kitson, representing the  
 22 defendant, Spokane County.

23 THE VIDEOGRAPHER: The court reporter may  
 24 now swear in the witness.  
 25 //

1 DAVID T. SWEENEY, witness herein, having been first  
2 duly sworn on oath, was examined  
3 and testified as follows:

4 DIRECT EXAMINATION

5 BY MR. KITSON:

6 Q. Good morning, sir.

7 Could you please state and spell your full name  
8 for the record?

9 A. Sure. It's David T. Sweeney. D-a-v-i-d. T.  
10 And Sweeney is S-w-e-e-n-e-y.

11 Q. Thank you.

12 Do you want me to refer to you as Lieutenant  
13 Sweeney? as Mr. Sweeney? David?

14 How do you want me to refer to you today?

15 A. As far as I'm concerned, David and Mike are  
16 fine, if you're good with that.

17 Q. That works for me.

18 A. All right. Me too.

19 Q. All right. David, a couple of just housekeeping  
20 issues and ground rules today.

21 First off, as I'm sure you're aware, having  
22 testified before in other depositions, we need to make  
23 sure that any answer you provide today is audible. The  
24 court reporter can't pick up nods of the head or  
25 nonverbal gestures. So please make sure to verbalize

1 download.

2 Do you have access to that here on your computer  
3 today?

4 A. Yes. Ms. Barden sent that to me. And I have  
5 not accessed those files, but I see a link here.

6 Q. Why don't you go ahead and access the link.  
7 I'll direct you once you are there which documents to  
8 open and when to open them. But let's make sure you're  
9 able to access the link.

10 A. Looks good. I see Sweeney deposition exhibits.

11 Q. Okay. I believe it is labeled Documents A  
12 through, I believe, F.

13 Do you see those in there?

14 A. Yes, I do.

15 Q. Okay. Today, I'm going to show you some of  
16 those exhibits and refer to them throughout the day.

17 If at any point in time you want to pursue those  
18 on your own on your computer, please feel free. I'm  
19 also happy to share them with you.

20 That being said, sometimes, you know, sharing on  
21 the screen and me scrolling makes it hard for you to --  
22 to view everything that you might feel you need to  
23 review.

24 So if at any point in time you feel a need to  
25 pursue yourself, feel free.

1 all of your answers for me today.

2 A. I will.

3 THE WITNESS: And are you hearing me fine?

4 MR. KITSON: I do hear you fine.

5 And, Jason, let us know if you have any  
6 problems hearing us, and also, Crystal, as well.

7 BY MR. KITSON:

8 Q. I don't expect that we're going to be here for a  
9 real long time today, but if you do need a break at all  
10 throughout today's deposition, feel free. Please let me  
11 know as long as there is no question pending, we can  
12 make that happen. I will likely need one before we're  
13 done today myself.

14 A. Sounds fine.

15 Q. If you don't understand a question of mine for  
16 any reason, please let me know. I mean, you're the  
17 expert in this field. I might bungle terms or, you  
18 know, ask you questions that are totally phrased  
19 confusing to you. Feel free to ask me to clarify. If  
20 not, I'll assume you understood the question.

21 Does that work for you?

22 A. Sure.

23 Q. Now, I sent Ms. Barden and her office a link  
24 last night to a location where there's some documents  
25 downloaded -- or documents that are available for you to

1 A. I assume -- I have not opened them yet, but I  
2 assume they have page numbers and paragraph numbers or  
3 line numbers we can refer to.

4 Q. Well, they are all -- I mean, for example,  
5 Document A, which we'll open in a second, is your  
6 report.

7 I mean, they are various documents that you have  
8 referred to or are relevant to the case.

9 They should all be numbered in some way or  
10 another. So I -- I'll help us stay on track with page  
11 numbering as we go forward.

12 A. Great. So just clarifying, are you going to be  
13 sharing your screen or am I going to be opening these  
14 documents individually. And then we'll -- we'll locate  
15 together the passage that we want to talk about.

16 Q. Sure. I will be sharing my screen with you when  
17 I want you to look at an exhibit.

18 A. Okay.

19 Q. That being said, if at any point in time you  
20 say, look, I want to look at this exhibit on my own,  
21 feel free to look at it -- open it up and look at it on  
22 your computer as well.

23 A. That makes sense.

24 Q. And, in particular, your report, if you need to  
25 reference your report -- I won't be looking at your

1 report the whole day, but if you need to reference your  
 2 report to refresh your recollection, feel free.  
 3 A. Thank you.  
 4 Q. Yep.  
 5 David, what is your current work address? Is  
 6 that the address that is -- and when I say work address,  
 7 I mean for purposes of your consulting work and your  
 8 testimony here in this case for DT Sweeney Consulting,  
 9 is the current address 4616 25th Avenue Northeast,  
 10 No. 156?  
 11 A. Yes, it is.  
 12 Q. What did you do to prepare for your deposition  
 13 today?  
 14 A. Originally, Ms. Barden sent me a variety of  
 15 documents last year for me to review for the case. The  
 16 documents that I reviewed I listed at the top of my  
 17 report, and then my opinions followed after that.  
 18 In preparation for today's deposition, I looked  
 19 over the more key documents, specifically ones I thought  
 20 you might ask about or that I made opinions based on  
 21 those documents.  
 22 So I have not done as thorough of a job as I did  
 23 last year in reviewing everything, because hopefully  
 24 I've identified what I thought was most relevant for me  
 25 and my testimony and what the attorneys might ask about.

1 Q. And is that employee that was -- was identified  
 2 Sergeant Thurman?  
 3 A. Yes, it is.  
 4 Q. Okay. Did -- did that review of any of the  
 5 additional documents of the depositions and then the  
 6 newspaper article in any way change or impact the  
 7 opinions as they are stated in your December 16th, 2021,  
 8 report?  
 9 A. No.  
 10 Q. In preparation for your deposition today, did  
 11 you speak with anyone?  
 12 A. I talked to Ms. Barden.  
 13 Q. Okay. When did you and Ms. Barden speak?  
 14 A. We spoke yesterday on the phone and quickly this  
 15 morning.  
 16 Q. Okay. How long did you speak yesterday?  
 17 A. Probably around a half an hour, 45 minutes.  
 18 Q. Okay. Other than speaking with Ms. Barden, did  
 19 you have any other conversations in preparation for  
 20 today's deposition?  
 21 A. No.  
 22 Q. You said you also spoke this morning.  
 23 How long did you speak this morning?  
 24 A. Five to ten minutes.  
 25 Q. Okay. I'm going to go ahead and ask you some

1 So in preparation for today's deposition, I  
 2 looked over the original complaint; I looked over my  
 3 report. I skimmed over depositions from Mr. Richmond  
 4 and the Sheriff, as well as an HR specialist. But I  
 5 didn't read them in great -- in a complete, thorough  
 6 manner, if that makes sense.  
 7 Q. Okay. So if I'm hearing you correctly, since  
 8 authoring your report back in December, which is dated  
 9 December 16th, 2021, there is some additional documents  
 10 that you were provided by Ms. Barden, including Andrew  
 11 Richmond's deposition and what was a 30(b)(6) deposition  
 12 of the Sheriff and then the County's HR Director.  
 13 Is that a fair summation of additional documents  
 14 you've reviewed?  
 15 A. Yes, it is.  
 16 Q. Other than those deposition transcripts, are  
 17 there any additional documents that you've reviewed that  
 18 are not identified in your report?  
 19 A. I reviewed a newspaper article. But I think  
 20 I've also looked at that last year. So there was  
 21 nothing new from the newspaper article.  
 22 Q. What was the -- what was the newspaper article  
 23 about?  
 24 A. It was an interview with the Sheriff describing  
 25 the circumstances that led to him firing an employee.

1 questions about your CV.  
 2 So if you'd like, you can go ahead and pull up  
 3 Document A, which is your report, and it includes your  
 4 CV.  
 5 A. All right.  
 6 Q. And I'll go ahead and share my screen so that  
 7 you can follow along there.  
 8 Can you see my screen okay?  
 9 A. Yeah, that looks fine.  
 10 Q. All right. So I'm going to start out by asking  
 11 you some about your educational background.  
 12 It looks like -- let me first ask you about your  
 13 undergraduate education. It looks like you went back to  
 14 school at some point and received your B.A. in Law  
 15 Societies and Justice from the University of Washington;  
 16 is that accurate?  
 17 A. I was. I was at Shoreline Community College  
 18 when the Seattle Police Department hired me. And I  
 19 always told myself I would go back. So I finished my  
 20 A.A. at Shoreline. And at that time there was an  
 21 automatic entry into the University of Washington. So I  
 22 thought, I might as well continue on and finish the B.A.  
 23 so, yeah, I was a late-in-life -- I was usually the  
 24 oldest in my class, let's say.  
 25 Q. We -- I think we -- when I was in college, we

1 called them adult learners or ALs?  
 2 A. Right.  
 3 **Q. Right. So you graduated in '04.**  
 4 **Did -- did obtaining your degree at all change**  
 5 **your -- your career trajectory?**  
 6 A. No. It wasn't required in the Seattle Police  
 7 Department that you have a degree for any position.  
 8 However, I think getting my degree in 2004  
 9 certainly meant more to me than if I had done it in the  
 10 '80's after I finished high school. I think things  
 11 meant more to me as an adult. I think I had some  
 12 real-world experience. I had 16 or 17 years on the job  
 13 at that point.  
 14 So you combine that with -- as we talked about,  
 15 adult education, and I think it gave me somewhat of a  
 16 different outlook on life than if I were 20 or 21 years  
 17 old and still in school. I think it makes a difference  
 18 in how you look at things, maybe a more mature view.  
 19 Certainly, my eyes were different than -- than they  
 20 would have been in the '80s as a young man. I  
 21 definitely believe that.  
 22 **Q. Thank you. And sorry. Just for the record,**  
 23 **we --**  
 24 MR. KITSON: Crystal, we'll go ahead and  
 25 mark Document A as Exhibit 1 to the deposition.

1 **Q. You said you graduated number one in your class.**  
 2 **How many were there in your class?**  
 3 A. I believe there was around 30. I had, I  
 4 believe, a 99 percent after the six months.  
 5 **Q. You say you aspire to leadership or to, I guess,**  
 6 **higher positions.**  
 7 **What are your aspirations in that way?**  
 8 A. When I left the Seattle Police Department, I  
 9 retired in March of 2021 and I'm currently the number  
 10 two in charge at a brand-new police department at Oregon  
 11 State University. They had never had a police  
 12 department before. They had a contract with the Oregon  
 13 State Police.  
 14 So I have signed on there and have been  
 15 instrumental in getting that police department up and  
 16 running, training people, hiring, putting together,  
 17 pretty much, a whole package to make sure that the  
 18 employees -- and it's -- it's interesting because  
 19 there's both police officers there and sergeants that I  
 20 supervise, as well as security personnel.  
 21 So you have a wide variety of people at  
 22 different points in their life and different points in  
 23 their careers coming together to work at Oregon State  
 24 University and help get that police department started.  
 25 I don't know if that will be my final outcome.

1 (Exhibit 1 was marked.)  
 2 BY MR. KITSON:  
 3 **Q. Your education section says you graduated number**  
 4 **one at Northwestern School of Police Staffing and**  
 5 **Command last year.**  
 6 A. Yes.  
 7 **Q. What is the Northwestern School of Police**  
 8 **Staffing and Command?**  
 9 A. Did you say what is it?  
 10 **Q. Yeah. What is that?**  
 11 A. It's a six-month course developed by  
 12 Northwestern University for police executives across the  
 13 country. In my studies of successful police managers, I  
 14 saw more and more of them that had that accreditation  
 15 from Northwestern.  
 16 And so I pursued it for myself and completed the  
 17 six-month program in 2021, I believe in the spring. So  
 18 it was quite extensive. And it really covers all  
 19 aspects of upper police management from personnel to  
 20 hiring to discipline, investigations, traffic  
 21 management, political underpinnings of the job.  
 22 **Q. Okay.**  
 23 A. Everything that makes a good police  
 24 professional, especially upper level, which is what I  
 25 aspire to. Sure.

1 As you can see in my CV there, I took the opportunity to  
 2 enroll for my master's degree in public policy at OSU,  
 3 and I'm currently about halfway through that.  
 4 And upon completion of that, I have determined  
 5 that that, again, having your master's is one of the key  
 6 components of being a chief of police somewhere, and  
 7 that might be my next career move. But I'm not  
 8 committing at this time.  
 9 **Q. Sure. Okay. Let's look at your -- come back to**  
 10 **the case list. I'm going to go over your -- your**  
 11 **employment experience, hopefully, fairly quickly here.**  
 12 **Starting at your latter experience. At this**  
 13 **point, you're a security officer at SPU. I attended**  
 14 **SPU, but I graduated significantly later than when you**  
 15 **were there, so that --**  
 16 A. Our paths would not have crossed then.  
 17 **Q. No. But I'm glad to see that you were helping**  
 18 **keep the nice students at SPU safe.**  
 19 A. That's right.  
 20 **Q. Yeah. The first experience that I wanted to ask**  
 21 **you specifically about is your mediation experience.**  
 22 **Let me see here.**  
 23 **Looks like you serve as a King County mediator**  
 24 **and it looks like on the Oregon Federal Executive Board.**  
 25 **Tell me what kind of mediations you perform and**

1 for whom.  
 2 **Are these usually part of the civil legal**  
 3 **process or some other type of process?**  
 4 A. Mostly, these are workplace conflicts issues  
 5 between employees. And it might be co-workers or it  
 6 might be a supervisor or an employee. Sometimes you can  
 7 have different groups. I also have experience mediating  
 8 union issues as well as landlord-tenant.  
 9 So most of my experience is with the King County  
 10 ADR. And I kind of gave that up when I took the job in  
 11 Oregon.  
 12 And so I transferred -- in fact, interviewed as  
 13 was -- I don't want to say hired. Let's say appointed  
 14 to the Oregon Federal Executive Board, which fulfills  
 15 the same function, and I have not mediated for them yet.  
 16 However, back to King County. When different  
 17 organizations around King County were in need of  
 18 mediation expertise, they would contact the King County  
 19 ADR. And they had a panel of volunteers, of which I was  
 20 one, and you would volunteer your services to sit down  
 21 as a neutral to hear both parties and help them express  
 22 their viewpoints and hopefully help them negotiate some  
 23 type of settlement.  
 24 It could be something as simple as an argument.  
 25 It could be a sexual harassment case. It could be a

1 agreements are much more longstanding.  
 2 **Q. Sure. And so that position was volunteer? You**  
 3 **would volunteer your time?**  
 4 A. Yes.  
 5 **Q. Okay. How many mediations do you estimate that**  
 6 **you've done?**  
 7 A. Twenty-five, possibly.  
 8 **Q. I want to ask you about your time as a detective**  
 9 **sergeant in the Spokane PD Human Resources Department.**  
 10 A. Seattle PD?  
 11 **Q. I'm sorry. I said Spokane. Seattle PD. Yes.**  
 12 A. Right.  
 13 **Q. So tell me about that role.**  
 14 **What was your role as a Detective Sergeant**  
 15 **within the Human Resources Department?**  
 16 A. I was the primary, in fact, the only EEO  
 17 investigator for the Seattle Police Department.  
 18 So when we have a complaint of harassment,  
 19 discrimination, sexual harassment, bias, unfair -- I  
 20 don't want to say unfair labor practice. I didn't  
 21 really get into labor issues. Anything related to EEO,  
 22 Equal Employment Opportunity, I was the investigator for  
 23 the department.  
 24 So my -- I considered myself a fact-gatherer. I  
 25 would go to people, obtain information -- whether it be

1 bias case; an unfair firing. So there's any number of  
 2 things.  
 3 But most of them were employee-related and  
 4 usually would take four to eight hours -- a couple of  
 5 them took two days. But that's my experience there.  
 6 Just helping primarily government employees, I will say,  
 7 from -- you would not mediate -- in Seattle -- a Seattle  
 8 case, because I was with the Seattle Police Department.  
 9 Even though I might not work with someone in  
 10 another agency within Seattle, I would only mediate for,  
 11 let's say, King County or Bellevue or, you know, a  
 12 landlord-tenant thing in Seattle that obviously the  
 13 Seattle Police had nothing to do with.  
 14 So you want to be able to remove yourself from  
 15 the situation and in order to be neutral that you don't  
 16 have any vested interest in the outcome and help those  
 17 parties achieve a -- hopefully, a settlement.  
 18 The best settlements come from the parties, I  
 19 found. Generally, I can sit down pretty fast and figure  
 20 out what the problem is. But if the solution comes from  
 21 me, it won't last.  
 22 So my best goal is to help the parties recognize  
 23 for yourselves what the solution might be and then  
 24 propose alternatives to help them arrive at that  
 25 conclusion. And I've found that those settlements and

1 in an interview or some actual physical evidence -- I  
 2 would then prepare reports on the information that I  
 3 gathered, and then forward those, usually, to the chief  
 4 of police or an assistant chief of police who then were  
 5 in the function of a fact-finder to make a ruling --  
 6 again, this wasn't court, but within the department --  
 7 as to what they believe happened.  
 8 In general, I would not offer an opinion in my  
 9 writings. I generally remained -- I would like to say  
 10 that I remained neutral; that I presented the facts to  
 11 the decision-makers of what I uncovered, what I found  
 12 during my investigation and allow them to have, then,  
 13 some decision-making process as to what happened then.  
 14 And at that point, sometimes the chief or the  
 15 assistant chief might ask my opinion about what happened  
 16 and what might be a successful resolution to the  
 17 problem.  
 18 And I would often rely on the victim statements  
 19 and what they wanted to see happen and possibly offer  
 20 some solutions to the command staff in order to achieve  
 21 a successful outcome for the case.  
 22 **Q. So in -- in this lawsuit, you're aware that the**  
 23 **plaintiff, Andrew Richmond, made a complaint that he**  
 24 **felt that he was discriminated against in his selection**  
 25 **for an Air Support Unit position, and this was**

1 investigated by the Spokane County Sheriff's Office  
 2 Internal Affairs Unit; is that -- is that knowledge  
 3 familiar to you?  
 4 A. Yes, it is.  
 5 Q. And Sergeant Tim Hines, who was the only person  
 6 in the Office of Professional Standards for Spokane  
 7 County at the time, was the assigned investigator.  
 8 Does that -- is that also accurate to your  
 9 recollection?  
 10 A. Yes, it is.  
 11 Q. So -- just so I have a better idea of what you  
 12 do and what your role was at Seattle Police Department,  
 13 would your role be similar to what Tim Hines' role was  
 14 in conducting an investigation related to Andrew  
 15 Richmond's claims for discrimination?  
 16 A. I read --  
 17 MS. BARDEN: I'm going to -- just a moment.  
 18 Thank you.  
 19 I just want to state my objection to form.  
 20 Go ahead.  
 21 THE WITNESS: I read his investigation last  
 22 year, and it seemed like our positions would be very  
 23 similar to what I did earlier in my career.  
 24 BY MR. KITSON:  
 25 Q. Okay. So when you were at SPD in this position

1 within the Department had due process rights either by  
 2 virtue of the policies themselves or through collective  
 3 bargaining that you were responsible in some ways for  
 4 helping, I guess, observe and make sure were preserved  
 5 through your investigation process; is that accurate?  
 6 A. Yes, that is accurate.  
 7 Q. Okay. Would that include things like -- were  
 8 you responsible for providing member notifications to  
 9 somebody against whom a complaint was made?  
 10 A. Yes. That was part of my duties there to  
 11 provide those notifications.  
 12 Q. Okay. And I'm assuming you are familiar with  
 13 the Loudermill process, for example?  
 14 A. Yes, I am.  
 15 Q. And was part of your role to make sure that --  
 16 that the Loudermill process was observed within the  
 17 department with regards to when potential discipline was  
 18 taken against an employee?  
 19 A. That's correct. I was aware of those timelines  
 20 and -- the timeline to notify an employee as well as the  
 21 timeline to finish an investigation. And then, of  
 22 course, I have to leave time for command staff to review  
 23 my investigation in order to then make decisions in a  
 24 timely manner.  
 25 Q. Sure. Do you have any estimate -- or can you

1 for about five years, were your investigations conducted  
 2 under Sheriff -- excuse me, SPD policies or City of  
 3 Seattle policies or both?  
 4 A. I would say both. Because we had our internal  
 5 policies which were in our Seattle Police Manual. We  
 6 also had some contract language in the Collective  
 7 Bargaining Agreement. And there was also the City of  
 8 Seattle Human Resources, which I didn't interact with  
 9 very much but, yet, there were rules in place for the  
 10 City of Seattle that I had to follow as well.  
 11 Now, the rules that I followed were primarily  
 12 laid down by the Police Department. And those rules  
 13 tried to mimic or follow everything that the City did in  
 14 their role as an overall HR department, if that makes  
 15 sense.  
 16 Because we were so large, we probably had 1300  
 17 to 1400 sworn and maybe 5- or 600 civilian employees.  
 18 Because we were so large, we kind of had our own Human  
 19 Resources Department, our own EEO investigator, even  
 20 though those roles were mimicked and patterned after  
 21 roles established by the City of Seattle.  
 22 Does that make sense?  
 23 Q. Yeah, that does.  
 24 So fair to say that, you know, deputies and  
 25 maybe other folks within the -- or officers, I guess,

1 estimate for me during that five-year period how many  
 2 EEO investigations you performed?  
 3 A. I believe it's in my report. And I estimated  
 4 that I did 40 EEO investigations.  
 5 Q. What experience do you have during that period  
 6 of time conducting investigations to allegations that  
 7 you would say are similar to the allegations that  
 8 Mr. Richmond has made in this case?  
 9 A. The allegations made by Mr. Richmond were very  
 10 familiar to me in the form that they were presented. It  
 11 would be very common for me to sit down with an employee  
 12 who felt that they had received unfair treatment based  
 13 on a particular protected class. Sometimes it was based  
 14 on their race. So that type of complaint was very  
 15 familiar to me.  
 16 Q. What about complaints of retaliation. You  
 17 mentioned complaints related to race-based treatment.  
 18 Did you investigate complaints related to  
 19 perceived retaliation?  
 20 A. I did have some retaliation complaints. The  
 21 facts escape me at this point, but I remember talking  
 22 with employees and warning them -- and I would say, you  
 23 know, sometimes bad stuff happens in the workplace. But  
 24 let me give you a piece of advice, if you engage in  
 25 anything related to retaliation -- and, of course, this

1 would come in conjunction, let's say a memo, HR memo I  
2 would read to them about retaliation. Then I would kind  
3 of talk to them on the record. I would record the whole  
4 thing.

5 I would say I have seen cases where relatively  
6 minor misconduct could have been handled simply by the  
7 department. But an employee chose to retaliate against  
8 someone that made a complaint and it made things far  
9 worse.

10 It was kind of similar to my parents. When I  
11 did something wrong when I was a youngster, I got in  
12 more trouble for lying than I did for the original  
13 event. I would kind of share that advice with people  
14 that retaliation can really cause what could be a simple  
15 issue to become much more serious for them in their  
16 career.

17 There were some retaliation points that I  
18 handled. But I don't remember any of them after I gave  
19 that piece of advice. I think most of them happened  
20 outside my purview, but then they ended up being  
21 something that I investigated in conjunction with  
22 another investigation with related charges, if that  
23 makes sense.

24 **Q. Okay. Scroll up on your CV here.**  
25 **Your CV indicates that since 2017 you've had**

1 **the Defense News last fall.**

2 **Is that the only publication still that**  
3 **you have -- that's attributed to you?**

4 A. That's correct.

5 **Q. And the Defense News, is that -- that's a**  
6 **criminal defense bar publication; is that right? In**  
7 **general.**

8 A. It's put out by Washington Defense Trial Lawyers  
9 Association, yes.

10 **Q. Oh, great. Okay. So it's the Washington --**  
11 **okay.**

12 A. Do you know WDTL?

13 **Q. I do. Yeah, I'm a member.**

14 A. My wife is the Executive Director.

15 **Q. Oh, I -- I know your wife fairly well. Tell her**  
16 **hi.**

17 A. I will.

18 **Q. She's probably mad at me because I was -- I'm**  
19 **supposed to be chairing the labor and employment section**  
20 **and doing a very poor job of it.**

21 A. Let's get busy.

22 **Q. Yeah.**

23 **So let me ask you, I'm going to switch gears a**  
24 **little bit here. I want to talk to you about your list**  
25 **of cases.**

1 **your consulting business, DT Sweeney Consulting, LLC; is**  
2 **that correct?**

3 A. Yes, it is.

4 **Q. And in terms of your work as a consultant, are**  
5 **you the sole -- is that -- is that LLC something where**  
6 **you have other members or are you the sole member of**  
7 **that LLC?**

8 A. I'm the sole member.

9 **Q. Do you -- so I assume -- but I'll just ask**  
10 **you -- you don't work with or associate with any other**  
11 **professionals or people, in general, as part of that**  
12 **consulting work?**

13 A. No, I do not.

14 **Q. How much would you estimate annually you make**  
15 **from your consulting work at DT Sweeney Consulting?**

16 A. Business seems to have really picked up last  
17 year. I started advertising in some of the expert  
18 websites and that seems to have increased business.

19 I would guess last year I might have made  
20 \$20,000. I honestly don't know, because I haven't done  
21 my taxes yet. But I would guess it was around \$20,000  
22 last year. Probably less in years prior to that.

23 **Q. Okay. Before I forget, one -- you indicated**  
24 **that you have one publication from 2021, kind of the**  
25 **need for police de-escalation, which was published in**

1 **I'm going to direct you to the third page of**  
2 **your --**

3 A. I think it is down from there.

4 **Q. Yeah. Up here -- here we go.**

5 **So here's your listed --**

6 A. Oh, okay. Right.

7 **Q. There's two lists. And that's part of my -- a**  
8 **little bit of my confusion, too, is there's two lists.**  
9 **There is one here and then there's one at the end.**

10 **So just for frame of reference, I'm on page 3 of**  
11 **your report. And on page 3 you've indicated here a case**  
12 **list identifying cases you've been involved in in the**  
13 **last four years.**

14 A. Yes.

15 **Q. So I want to ask you about a couple of these.**

16 **One identified in C is a 2017 case where you**  
17 **offered expert opinion and/or reports on a Pierce County**  
18 **Sheriff liability case.**

19 **Can you expound for me on what that case**  
20 **involved?**

21 A. It was a domestic violence case. And the  
22 suspect had, I believe, a no-contact order against his  
23 wife. He had made threats to her. And it seems like  
24 Pierce County deputies went to his house to knock and  
25 possibly make an arrest. But they didn't have a warrant



1 and he didn't come to the door, so they left. And then  
 2 I believe the next day he ended up killing his wife.  
 3 **Q. Okay.**  
 4 A. That's what I remember about the case. So --  
 5 **Q. Obviously, not a -- not a -- not an**  
 6 **HR-related --**  
 7 A. No, not an HR case.  
 8 **Q. -- not an HR-type-related case.**  
 9 A. No, it was a police liability case.  
 10 **Q. Okay. The case specified in -- at item E is a**  
 11 **2020 case where it says, "Expert opinion provided for**  
 12 **lawsuit versus Kent Police, failure to take appropriate**  
 13 **action."**  
 14 **Was that an HR- or EEO-related case?**  
 15 A. No.  
 16 **Q. Are there any cases on this list that are what**  
 17 **we call HR-related or any way related to harassment,**  
 18 **discrimination, or retaliation?**  
 19 A. No. The only one that we mentioned for  
 20 harassment would be B, but that was two civilians that  
 21 got in an argument with each other and one brandished a  
 22 firearm. So the charge was harassment. But it's a  
 23 different kind of harassment. So, no, other than -- no,  
 24 there are no other cases.  
 25 **Q. Okay. And is this case list under G on page 3**

1 **Q. Prior to this case, have you been retained by --**  
 2 **had you ever been retained by Heather Barden or her law**  
 3 **firm?**  
 4 A. No, I have not.  
 5 **Q. And I understand you've got a little bit of a**  
 6 **variable rate structure.**  
 7 **But is it accurate that you charge \$300 per hour**  
 8 **for most of the work that you performed in this case?**  
 9 A. That is correct.  
 10 **Q. How much have you billed to date for this case?**  
 11 A. I could look it up, if you want.  
 12 **Q. That would be great.**  
 13 A. So we've estimated 2.5 hours for the deposition  
 14 today. And the previous invoice was for \$2700. It  
 15 involved five hours of case review, one-hour phone call,  
 16 and three hours for writing the final expert opinion.  
 17 **Q. When were you first contacted by Ms. Barden**  
 18 **regarding this matter?**  
 19 A. Let me just do a quick search here.  
 20 The first email I'm seeing is December 10th of  
 21 2021.  
 22 **Q. Do you know how she identified you as a**  
 23 **potential expert?**  
 24 A. Not off the top of my head, no.  
 25 MS. BARDEN: Just hold on. Objection to

1 **of your report, is this current and up-to-date?**  
 2 A. How far down does it go? I can see down to L.  
 3 **Q. It goes down to L. L is the last one.**  
 4 A. Okay. L is the last one.  
 5 There might be one or two more since then. And  
 6 I think there's one that was a report and an opinion and  
 7 now might be a deposition. That's -- that seems likely.  
 8 But, overall, I would say it's fairly accurate  
 9 as to recent work.  
 10 **Q. Does the case that you just mentioned that's not**  
 11 **listed here where you've given a deposition, did that**  
 12 **relate at all to complaints of discrimination,**  
 13 **harassment, or retaliation?**  
 14 A. No, it did not.  
 15 **Q. So fair to say that most of your expert work has**  
 16 **related to your expertise outside of the context of, you**  
 17 **know, HR or EEO type of issues?**  
 18 A. Correct.  
 19 MS. BARDEN: I'm going to object to form.  
 20 Thank you.  
 21 BY MR. KITSON:  
 22 **Q. Are there any cases where you've been retained**  
 23 **as an expert to opine on any issues similar to those**  
 24 **presented in this case?**  
 25 A. No. I believe this was the only one.

1 form.  
 2 BY MR. KITSON:  
 3 **Q. When you initially -- I'll strike that.**  
 4 **Did you have an initial conversation with**  
 5 **Ms. Barden about this case before you were retained?**  
 6 A. Yes, I did.  
 7 **Q. What were you told about the case when you were**  
 8 **asked to potentially work as -- as an expert witness?**  
 9 A. We talked about a harassment complaint from a  
 10 client of hers that felt that he had been treated  
 11 unfairly due to his race.  
 12 We talked about my past experience as an  
 13 investigator and some of my work as an expert witness.  
 14 And we basically determined that we could work  
 15 together. That I had information that would be of  
 16 assistance in the case.  
 17 **Q. What were you asked to do in terms of, you know,**  
 18 **your -- your work on the case?**  
 19 A. After the initial phone call, Heather sent me a  
 20 variety of documents to review that she had collected  
 21 and some that she had written, the complaint obviously.  
 22 And I was asked to review that information and  
 23 create a report for her that listed some of my opinions  
 24 about the case, as well as my CV, which we discussed,  
 25 and to write this report -- to send it back to her. And

1 I think that was pretty much the extent of it.  
 2 **Q. There are -- there's -- let's see, in your**  
 3 **report there's opinions A through E; so, essentially,**  
 4 **five different areas where you've offered opinions.**  
 5 **Were those areas issues that Ms. Barden**  
 6 **specifically asked you to address in your report or are**  
 7 **those opinions something that you came up with on your**  
 8 **own volition?**  
 9 A. Certainly in our discussions on the phone, she  
 10 outlined the case that she had. The facts that she had  
 11 gathered and certainly the evidence that she felt was  
 12 most helpful to her client to -- and then provided me,  
 13 again, with all of that documentation that I'm sure are  
 14 in the exhibits here that we might be discussing here  
 15 today.  
 16 After that, when I write my report, it's largely  
 17 without counsel's assistance. In other words, I -- I  
 18 review the information there. You can see I spent some  
 19 time with it and went through it fairly thoroughly.  
 20 And then when it comes to my report and my  
 21 opinions, I have to state things that I believe that I  
 22 can testify in court about; that I can maintain some  
 23 independent knowledge about.  
 24 Independent meaning that I don't necessarily  
 25 want to say that I take a side.

1 **documents you've identified; correct?**  
 2 A. That's correct, as best as I remember. I could  
 3 potentially look in my collection of documents and try  
 4 to compare these, but I believe that this was pretty  
 5 much everything.  
 6 And the reason, if there's any hesitation on my  
 7 part, is that some of these documents were large scans  
 8 of different information all put together in one  
 9 document.  
 10 But I believe that everything that you see there  
 11 was everything that I was provided.  
 12 **Q. Okay. I'm going to ask you a couple questions**  
 13 **about what each of these categories of documents are and**  
 14 **it might be useful for you and you may need to look at**  
 15 **your file to answer.**  
 16 A. All right.  
 17 **Q. Number 7 in your list here is Spokane County**  
 18 **Sheriff's Office Internal Affairs Report No. 2019-0014,**  
 19 **written by Sergeant Hines, Office of Professional**  
 20 **Standards.**  
 21 **And No. 8 is Spokane County Sheriff's Office IA**  
 22 **reports 2019-0023 and 2019-0014.**  
 23 **So specifically with regards to Sergeant Hines'**  
 24 **reports, I will represent to you that there is a report**  
 25 **that he wrote that is approximately 20-something -- or**

1 Ideally, I would think that my opinions would be  
 2 factual. They are based on my experience and my  
 3 training. And when I write these opinions down, I know  
 4 that they could end up in court; they could end up in  
 5 the deposition. But they have to be things that I can  
 6 testify to that I feel strongly about. So my report is  
 7 my own.  
 8 **Q. At any point, did -- so my understanding is that**  
 9 **Ms. Barden sent you an initial set of documents.**  
 10 **At any point in time did you request any**  
 11 **additional documents from Ms. Barden in order to**  
 12 **formulate your opinions?**  
 13 A. I don't recall asking for anything else. I  
 14 think I received everything I needed.  
 15 **Q. Let's go ahead and look at the first page of**  
 16 **your report.**  
 17 A. Are you able to make that a little bigger?  
 18 **Q. Sure.**  
 19 A. That's better.  
 20 **Q. Yep. This is Exhibit 1 of your deposition,**  
 21 **which is your report.**  
 22 **And you specifically state here on the first**  
 23 **page the documents that you were provided that formed**  
 24 **the basis of your opinion in this lawsuit. And it's --**  
 25 **I guess it's 1 through 11. And those are the only**

1 **close to 30, maybe, pages long, but then there's also a**  
 2 **file that contains hundreds of pages of documents,**  
 3 **including transcription of recorded interviews, you**  
 4 **know, Loudermill notices, all of the investigation**  
 5 **documents that he created as part of his investigation.**  
 6 **Did you review just Sergeant Hines' report or**  
 7 **additional records that were part of the investigative**  
 8 **file?**  
 9 A. I remember reading the full investigation  
 10 report. You and I talked earlier about was it similar  
 11 to previous work that I have done, and it is similar.  
 12 When you put together a case file, it can be a  
 13 three-ring binder full of information in paper form,  
 14 mostly electronic now. But back in my day, we pretty  
 15 much had three-ring binders. So that case file is not  
 16 something that you would prepare and give to a chief.  
 17 You would present a summary that highlights key  
 18 information. You don't want them reading 300 pages of  
 19 material. You want them reading a 20-page report. And  
 20 even then, that's a lot. So -- but that's what you want  
 21 them reading. And I think that's what you're referring  
 22 to.  
 23 So yes, I did read both the memos as well as the  
 24 full investigation file.  
 25 **Q. Okay. Well, when you say you read the full**

1 investigation file, I guess I want to make sure I  
 2 understand.  
 3 **So within that file, there are transcripts of**  
 4 **various recorded interviews.**  
 5 **Did you review any of the transcripts of**  
 6 **recorded interviews conducted by Sergeant Hines?**  
 7 A. I remember reading transcribed interviews, yes.  
 8 **Q. Do you recall -- sorry. Go ahead.**  
 9 A. Go ahead.  
 10 **Q. No, go ahead.**  
 11 A. You first.  
 12 **Q. Do you recall with any specificity which**  
 13 **recorded interviews you reviewed?**  
 14 A. There was definitely an interview with Deputy  
 15 Richmond. There was an interview with -- you know, to  
 16 be sure, I should probably pull these up so I make sure  
 17 I'm looking at the right thing.  
 18 **Q. Sure. If you want to look at your file to**  
 19 **determine --**  
 20 A. I'm going to do that right here.  
 21 **Q. Okay.**  
 22 A. So I just pulled up a 343-page document, and it  
 23 referred to the case numbers that you mentioned. And  
 24 I'm betting that this is a scan, and I cannot search it  
 25 individually.

1 numbers in the bottom right-hand corner of the documents  
 2 that you're referencing?  
 3 A. There are. Like, the page I'm on right now is  
 4 "Richmond 0139."  
 5 **Q. Could you just give me a start and end number**  
 6 **for those Bates numbers for that document that you are**  
 7 **referencing?**  
 8 A. I will. The first page that I see is a case  
 9 finding notice and it shows "Richmond 0016." The very  
 10 last page is an email from Tim Hines -- no. It is an  
 11 email to Tim Hines and it is entitled "Richmond 0384."  
 12 **Q. And that Bates number, it doesn't have an**  
 13 **additional specification of -- is it SC Richmond or is**  
 14 **it just Richmond?**  
 15 A. I only see Richmond and then the number.  
 16 **Q. Okay. Gotcha.**  
 17 **So in that range of documents, did you closely**  
 18 **review every document or did you do something else?**  
 19 A. To the best of my recollection, I did not read  
 20 all 343 pages. What I was looking for was material that  
 21 would be most relevant to what I was being asked to  
 22 review, which was the investigation document itself.  
 23 So I paid close attention to the interviews and  
 24 the findings. But I didn't read every single Human  
 25 Resources document. There was a large personnel file.

1 So, obviously, you don't want me going  
 2 through 343 pages right now, but I do have right at the  
 3 beginning of this a summary report. And -- let me make  
 4 sure it's by the right author that I think it is. Oh,  
 5 no, it's not. It's by Lieutenant Jones.  
 6 **Q. I believe that would have been related to IA**  
 7 **No. 2019-0023, which was a separate report related to**  
 8 **investigation into allegations against Sergeant Bloomer?**  
 9 A. I agree. But would it be 343 pages?  
 10 **Q. Likely, no.**  
 11 A. Again, I'm only part way through this. But,  
 12 like, I'm seeing a memorandum from Undersheriff Knowles  
 13 to Sergeant Thurman that he's on paid admin leave.  
 14 Here's a memo from Sergeant Hines.  
 15 I think what I'm looking at is what I referred  
 16 to earlier might have been a three-ring binder at some  
 17 point. So this is a lot of material. Let me see if I  
 18 can quickly scan and get to any interviews in this  
 19 document.  
 20 I've got Standards of Conduct.  
 21 Here's an interview of Deputy Richmond conducted  
 22 by Sergeant Hines.  
 23 Do you want me to keep going through this?  
 24 **Q. Yeah, let me ask you this. Maybe this is a**  
 25 **better way to -- are there numbers -- are there Bates**

1 So I -- I didn't read everything in that. I kind of  
 2 scanned through that, if that makes sense.  
 3 MR. KITSON: So, Heather, to short-circuit  
 4 me having me to go through all the documents in detail,  
 5 I would ask that we get a copy either from David  
 6 directly or from you of exactly what was provided.  
 7 Without Bates numbers related to these documents, I just  
 8 can't tell which versions of the documents he's saying  
 9 that he relied upon for his report.  
 10 So we'd ask that you facilitate that,  
 11 Heather, as part of this process.  
 12 MS. BARDEN: Yeah. I can provide the Bates  
 13 numbers for you for the documents that he received.  
 14 MR. KITSON: Sure.  
 15 BY MR. KITSON:  
 16 **Q. Okay.**  
 17 A. I think there was some duplication too.  
 18 **Q. Sure. Yeah. Did you review any Sheriff's**  
 19 **Office policies and procedures as part of your Spokane**  
 20 **County Sheriff's Office policies and procedures in**  
 21 **preparing your report?**  
 22 A. I do remember --  
 23 MS. BARDEN: I'm going to object to the  
 24 form. Just because we didn't even have those when he  
 25 did his report. You know that, Mr. Kitson.

1 MR. KITSON: I don't know the timing of  
2 everything when you provided it to him and when you  
3 didn't but --

4 MS. BARDEN: I didn't provide it to him  
5 because I didn't have it. I can tell you that.

6 MR. KITSON: Well, you've had time since  
7 then. So I'll just ask it this way.

8 MS. BARDEN: Okay.

9 BY MR. KITSON:

10 **Q. Have you reviewed any policies and procedures as**  
11 **part of your work in review -- in providing your**  
12 **opinions in this case?**

13 A. It seems to me that there were bits and pieces  
14 of some parts [sic] and procedures interspersed  
15 throughout the number of documents that I received.  
16 That's what I remember the most.

17 **Q. In -- let me --**

18 A. I could look through the titles if you want.  
19 That might help.

20 **Q. That's okay. I'll ask you specific questions as**  
21 **we go through this stuff.**

22 A. Okay.

23 **Q. Did you ask Ms. Barden at any point for access**  
24 **to policies that you didn't have as you were, you know,**  
25 **forming your opinions that are stated in your report?**

1 **My question for you is whether or not these ASU**  
2 **documents are something that you reviewed as part of**  
3 **your -- or in preparation for -- for rendering your**  
4 **opinions in this case.**

5 **And if it is easier, again, you're welcome to --**

6 A. Let me -- let me try that.

7 Would this be part of the IA investigative  
8 report?

9 **Q. Yeah. I'll represent that these documents were**  
10 **collected as part of that investigative process.**

11 **I don't know whether those are documents that**  
12 **were provided to you by Ms. Barden or not.**

13 A. Well, if I go to the large document again that  
14 we talked about previously, the 343 page one, I'm  
15 betting that I will find what it is you're looking on,  
16 which means that I would have reviewed it.

17 **Q. Okay. Do you -- let me ask it more broadly.**

18 **Do you remember, as part of your review, looking**  
19 **at documents related to the 2018 Air Support Unit**  
20 **selection process that Mr. Richmond claims he was**  
21 **discriminated against in?**

22 A. Yes, I do remember that.

23 **Q. Okay. I'm going to go through a couple of the**  
24 **documents here with you.**

25 **The first --**

1 A. No.

2 MR. KITSON: All right. We've been going  
3 for an hour. I'm going to jump into your opinions here.  
4 Let's take a break. Probably the one and only break  
5 here today. And we'll come back on record in just five  
6 minutes.

7 Does that work for everybody?

8 THE VIDEOGRAPHER: We're going off the  
9 record. The time is now 10:27 a.m.

10 (A break was taken.)

11 THE VIDEOGRAPHER: We are back on the  
12 record. The time now is 10:35 a.m.

13 MR. KITSON: All right. David, I'm going to  
14 direct you to -- I'm going to -- I'm going to open up  
15 Document B. We'll share Document B, as in boy.

16 THE WITNESS: All right.

17 (Exhibit 2 was marked.)

18 BY MR. KITSON:

19 **Q. This is Exhibit 2 to your deposition today.**

20 **And this document is a 36-page document, which**  
21 **I'll represent is a collection of records that were**  
22 **collected by Sergeant Hines in investigating Andrew**  
23 **Richmond's claims related to the ASU unit. I'm**  
24 **going just scroll through here and you're welcome to**  
25 **open this up.**

1 A. I think I can look at your screen, because --  
2 I'm sure I have this, but it's going to take me a while  
3 to find.

4 **Q. Okay. This first page is -- it says, "Spokane**  
5 **Regional Air Support Unit Tactical Flight Officer**  
6 **Opening."**

7 A. Can you make it a little larger?

8 **Q. Yep.**

9 A. Thanks.

10 **Q. It lays out or, essentially, advertises this**  
11 **position within the Sheriff's Office.**

12 **It talks about, basically, what will be required**  
13 **of applicants; what type of skills successful applicants**  
14 **would need. It lists preferred skills for the position,**  
15 **including things like strong geographic orientation,**  
16 **strong patrol skills, and a number of bullet-pointed**  
17 **items here.**

18 **And then it gives a deadline. It says,**  
19 **"Applicants must submit a letter of interest, résumé,**  
20 **and supervisor's endorsement form to Deputy Dan Knight**  
21 **via their chain of command by no later than 1/23/18.**  
22 **Final applicants are tentatively scheduled for oral**  
23 **boards on 2/7/18."**

24 **My question for you, David, is this, I guess,**  
25 **type of advertisement -- internal advertisement common**

1 for these type of specialty positions in your  
 2 experience?  
 3 A. Yes. This is a very common application  
 4 notification to tell people if you want to get into the  
 5 specialized unit, we are looking to add people to our  
 6 cadre.  
 7 And, again, as you pointed out, it's going to  
 8 give some recommended skills that they want to see and a  
 9 notification of an interview.  
 10 **Q. Okay. This second page here is titled "Tactical**  
 11 **Flight Officer Oral Examination Questions 2018."**  
 12 **And proceeding from there, there is a list of**  
 13 **questions for over two pages, numbered 1 through 11.**  
 14 **Are -- is this list of questions something that**  
 15 **you recall reviewing as part of your -- I guess, as you**  
 16 **formulate your opinions in this case?**  
 17 A. I remember reviewing the ASU position  
 18 announcement. I do not remember reading all of these  
 19 questions at this time.  
 20 **Q. Okay. Is it fairly standard, if you know, to**  
 21 **have a set of questions that is used for these oral**  
 22 **boards that is -- that is -- that is utilized for each**  
 23 **of the applicants by the board that is doing the**  
 24 **interviewing?**  
 25 A. That's a very common procedure.

1 Richmond's letter of interest. And also his résumé.  
 2 And finally, this is for another applicant named  
 3 Deputy Ennis, and his supervisor approval and rating, as  
 4 well as an email expressing an interest in the position  
 5 and his résumé.  
 6 So to your knowledge, are those -- those are the  
 7 documents -- I guess, strike that.  
 8 As you reviewed this and as you looked at the  
 9 notice, applicants were required to submit a letter of  
 10 interest, their résumé/CV, and could also provide  
 11 letters of recommendation, but also had to have a  
 12 supervisor recommendation; correct?  
 13 A. Correct.  
 14 **Q. And is that also fairly standard in terms of law**  
 15 **enforcement applications for these types of specialty**  
 16 **positions?**  
 17 A. Yes, that's very common.  
 18 **Q. Okay. And, obviously, we have these documents,**  
 19 **so they were archived as part of the process; correct?**  
 20 A. Yes. As far as I understand it, they were  
 21 archived and able then to be retrieved for our purposes  
 22 for today.  
 23 **Q. Okay. There's some additional documents here**  
 24 **from -- emails between Sergeant Hines and others related**  
 25 **to his investigation.**

1 **Q. Excuse me.**  
 2 A. Bless you.  
 3 The panel or the primary hiring authority will  
 4 write the questions ahead of time. And then  
 5 generally -- it's been my experience -- the panel will  
 6 ask different questions. And each panelist gets a  
 7 different question. And it just gets everyone involved.  
 8 And you ask the questions of the applicants and allow  
 9 them to answer the questions.  
 10 **Q. Sure. Okay. So following this list of**  
 11 **questions there is a collection of -- of submitted**  
 12 **materials from those who were -- who decided to apply.**  
 13 **So are you familiar with the fact that there**  
 14 **were four applicants for this position?**  
 15 A. Yes, I am.  
 16 **Q. Okay. So I'm going to scroll through this for**  
 17 **you. Here is a copy of Corporal Jeff Welton's letter of**  
 18 **interest as well as his résumé. Here is a supervisor**  
 19 **approval form with a rating related to Corporal Welton.**  
 20 **Here's Krystal Bitzer's letter of interest and**  
 21 **résumé. Here is a letter of recommendation from**  
 22 **somebody related to Deputy Bitzer, as well as her**  
 23 **supervisor approval and rating.**  
 24 **Here is a rating or approval for, I believe,**  
 25 **this is for Deputy Richmond, himself, as well as Deputy**

1 I'm going to direct you to page 32, though, of  
 2 this packet of documents. And on page 32 -- sorry. 31  
 3 and 32 here -- 32, Bates stamped 48321 and 322.  
 4 There's an email here from Sergeant Patrick  
 5 Bloomer to Undersheriff Ellis on Wednesday,  
 6 February 7th, 2018 at 7:28 p.m.  
 7 Sergeant Bloomer says, "Undersheriff Ellis,  
 8 Below is the initial applicant rankings from our TFO  
 9 Oral Boards held today:  
 10 "1. Welton  
 11 "2. Bitzer  
 12 "3. Richmond  
 13 "4. Ennis  
 14 "Please advise which two are selected for the  
 15 current openings."  
 16 Did I read that correctly?  
 17 A. Yes.  
 18 **Q. Do you recall reviewing this email from Sergeant**  
 19 **Bloomer to Undersheriff Ellis regarding the selection --**  
 20 **or the ranking by the committee?**  
 21 A. My best recollection is that this was part of  
 22 the packet that was sent to me by Heather. And I do  
 23 remember reviewing the ASU application position -- for  
 24 the position. This particular email, word for word, I  
 25 do not remember.

1 But I know that I -- in order to make things  
2 manageable, I'm not going to read every single --

3 **Q. Sure. Yeah.**

4 A. -- word and every page of every document. Some  
5 things I'm going to scan.

6 And this was one that I probably scanned. You  
7 know, this was the selection process. And I remember  
8 seeing the ranking. But I also remember seeing the  
9 ranking elsewhere too. So I'm not sure if I'm  
10 remembering it from this email or -- I believe I also  
11 read it somewhere else. I think probably in response to  
12 the complaint, if I remember correctly.

13 **Q. Okay. So this email goes out from Bloomer to  
14 Ellis at 7:28 p.m. on February 7th.**

15 **And then if we go up to the next email in the  
16 chain here, it's from Dave Ellis to Pat Bloomer on  
17 February 8th, 2018, at 1:52 p.m.**

18 **And Ellis says, "Welton and Bitzer are approved,  
19 thanks."**

20 **Did I read that correctly?**

21 A. Yes, you did.

22 **Q. And do you understand that Dick Ellis was  
23 Undersheriff at the time who was -- who had oversight or  
24 it was within his span of control to oversee the ASU?**

25 A. Yes, I do remember that.

1 they interviewed the subjects, and some internal  
2 thoughts about the subjects that they felt were best.

3 It could include things that they felt a  
4 candidate did well as well as things that they feel they  
5 didn't do too well in. As well as, possibly, an  
6 evaluation of their résumé.

7 In other words, you might say this candidate  
8 seems to lack experience or education. It depends on  
9 what the job requirements are or what's been posted.

10 But those rankings from the internal candidates  
11 seem to be missing.

12 **Q. I'm going to refer you now to Document D, as in  
13 dog. And we'll mark this as Exhibit 3 to the  
14 deposition.**

15 **(Exhibit 3 was marked.)**

16 BY MR. KITSON:

17 **Q. This is a recorded interview of Deputy Dan  
18 Knight conducted by Sergeant Hines on June 4th, 2019.**

19 **I'll represent that Deputy Knight was the  
20 deputy who was in charge of the Air Support Unit at this  
21 time supervised by Sergeant Pat Bloomer.**

22 **Do you recall, specifically, if you reviewed  
23 Deputy Knight's recorded interview?**

24 A. At this time, I can't say that I read this word  
25 for word. This might have been a document that I

1 **Q. So just to get our timeline straight here, based  
2 on this initial packet we see here that the oral boards  
3 were scheduled for February 7th. And then on  
4 February 7th, same day that the oral boards were  
5 scheduled, Pat Bloomer sent an email saying here's what  
6 the rankings were from the boards. And the next day  
7 those were approved by Undersheriff Ellis; correct?**

8 A. That is correct.

9 **Q. Is that a fairly standard process in your  
10 experience in terms of how selection goes for a  
11 specialty unit; meaning, oral boards are conducted,  
12 materials are review, the group submits a ranking that  
13 then somebody in the command staff has ultimate  
14 oversight or authority to approve or deny?**

15 A. That is very common, sometimes by email or  
16 sometimes by phone.

17 **Q. Okay. Other than the documents that we've  
18 looked at in this packet -- so the notice, application  
19 materials, as well as the questions that were asked  
20 during the oral boards and then documentation showing  
21 the rankings and selection, what documents, in your  
22 opinion, if any, should also be a part of the archive  
23 that are not here?**

24 A. You should have notes from the internal  
25 reviewers that document that they were present, that

1 scanned.

2 I -- I'm leaning that way, but I can't tell you  
3 for sure.

4 **Q. Okay. I'm going to -- I'm going to point you to  
5 some of the -- of the specific areas of testimony that I  
6 want to ask you about here.**

7 **So Tim Hines, Sergeant Hines is denoted by "TH,"  
8 and Dan Knight, Deputy Knight, is "DK" in our  
9 transcript; correct?**

10 A. Correct.

11 **Q. Okay. So Tim Hines asks Deputy Knight, "So, how  
12 were the candidates scored or rated during the oral  
13 board interview?"**

14 **Deputy Knight says, "If you look at that form,  
15 there's no rating really. Each person just ends up  
16 making some notes. At the end, we all personally rate  
17 those people in order and then we come together as a  
18 group and decide what that order is gonna be."**

19 **Sergeant Hines then asks, "Okay. So, there was  
20 no score sheet used?"**

21 **And Deputy Knight says, "No, uh-huh (no).  
22 That literally that's what you get and you write notes  
23 on it. The raters get those notes, and we write notes."**

24 **"Okay. So, no numerical scores for each  
25 particular question were given?"**

1 "Uh-huh (no). No, the only time I've done  
 2 numerical scores was when we were testing mechanics."  
 3 And Tim Hines says, "Okay. And so the raters  
 4 would write notes on the question sheet" --  
 5 And Deputy Knight said, "uh-huh (yes)."  
 6 There's some interruption here.  
 7 Moving down, Sergeant Hines asked, "Were those  
 8 question sheets with the comments kept?"  
 9 And Deputy Knight says, "Since I've been  
 10 involved in this thing since 2010 or whatever, 2008,  
 11 whenever it was, they've never been kept. They've been  
 12 destroyed usually. We make our notes, make our  
 13 recommendations, those things get thrown way."  
 14 Tim Hines says, "Okay. So that's" -- and then  
 15 Deputy Knight interrupts and says, "That's pretty  
 16 standard what we've done."  
 17 So I know I read you a lot there, but did I  
 18 generally read everything correctly?  
 19 A. Yes, you did.  
 20 Q. Okay. So according to Deputy Knight who was on  
 21 the oral boards and was the supervisor at the time,  
 22 there were no scoring sheets -- there's no formal  
 23 scoring rubric; correct?  
 24 A. That's what he said, yes.  
 25 Q. Okay. So what I understand from this interview

1 Q. Okay. I'm going to move us to page 5 here of  
 2 the same transcript.  
 3 And Sergeant Hines says, "Okay. So, my  
 4 understanding is that ultimately the ratings or the  
 5 ranking of the four candidates were Welton was number  
 6 one, Bitzer was number two, Richmond, number three, and  
 7 Ennis, number four?"  
 8 Deputy Knight says, "That was the ultimate  
 9 result. That's correct."  
 10 Sergeant Hines then says, "Okay. And so my  
 11 question is what all went in, what all was taken into  
 12 the consideration in those rankings? Obviously the oral  
 13 board performance" --  
 14 Deputy Knight says, "Uh-huh (yes)."  
 15 Sergeant Hines then says, "-- was involved, but  
 16 did you also take into consideration other things like  
 17 their résumé, their supervisor recommendation score,  
 18 their experience --"  
 19 Deputy Knight said, "Personal experiences, sure.  
 20 Yep. All of that came into it, yeah."  
 21 So Sergeant Hines then says, "Okay. So, the  
 22 ranking, the numerical ranking that I just mentioned  
 23 took into consideration all of those different things as  
 24 opposed to just their performance on the oral board?"  
 25 Deputy Knight said, "Correct."

1 is that the oral board participants, meaning those who  
 2 were conducting the interview, were provided a list of  
 3 questions that they asked. And on that list of  
 4 questions, they wrote their notes if they chose to do  
 5 so.  
 6 Is that your understanding as well from this  
 7 transcript?  
 8 A. Can you go back up a little bit?  
 9 Q. Sure.  
 10 A. Prior page? So right there.  
 11 "If you look at that form, there's no rating  
 12 really. Each person just ends up making some notes. At  
 13 the end, we all personally rate those people in an order  
 14 and then we come together as a group and decide what  
 15 that order is gonna be."  
 16 So yes, according to Deputy Knight's interview  
 17 here, the way they do it, you just write your own notes  
 18 and then they decide who is progressing forward in the  
 19 interview process -- or in the selection process.  
 20 Q. And according to Deputy Knight, he says -- well,  
 21 going back to 2008 or 2010, we've always -- we've always  
 22 just, we've destroyed our notes.  
 23 That's what he testified to or what he said in  
 24 his interview; correct?  
 25 A. Yes.

1 "The position" -- then Sergeant Hines says, "The  
 2 position that they came out in, was that ranking your  
 3 personal choice?"  
 4 Deputy Knight said, "The way it ended up is the  
 5 way I had documented my choices. That's correct."  
 6 And then he goes on to say, "I picked Welton,  
 7 then Bitzer, then Drew, then Matt."  
 8 And Hines says, "Okay."  
 9 And Deputy Knight says, "That wasn't unanimous  
 10 though."  
 11 Sergeant Hines says, "Okay. Do you know why it  
 12 wasn't unanimous or who" --  
 13 And Deputy Knight interrupts, "Yeah. Jeff put  
 14 Drew second."  
 15 And Hines says, "Okay."  
 16 And Deputy Knight says, "Welton was number one  
 17 for everybody. Jeff Thurman was the holdout of putting  
 18 Richmond second. The other three of us had Bitzer as  
 19 second but majority rule so Jeff lost."  
 20 That was a mouthful but did I generally read  
 21 that correctly?  
 22 A. Yes, you did.  
 23 Q. Okay. So based on Deputy Knight's interview, he  
 24 said the -- the group took into account the résumés,  
 25 supervisor recommendation score, experience, all of

1 those things, in addition to the oral board, when they  
 2 made their selection; correct?  
 3 A. Yes.  
 4 **Q. And according to Deputy Knight, the group -- the**  
 5 **consensus ranking was Welton, Bitzer, Richmond, and then**  
 6 **Ennis; correct?**  
 7 A. Yes.  
 8 **Q. And that would match up with the email that we**  
 9 **just looked at that Sergeant Bloomer sent to**  
 10 **Undersheriff Ellis where he says, here is how the group**  
 11 **ranked people; correct?**  
 12 MS. BARDEN: Hold on just a second. Object  
 13 to form.  
 14 Go ahead.  
 15 THE WITNESS: Yes, that would match up to  
 16 the email.  
 17 BY MR. KITSON:  
 18 **Q. Okay. And according to Deputy Knight, Thurman**  
 19 **was a holdout, meaning he -- he ranked Richmond second,**  
 20 **whereas the other three had Bitzer as second. So**  
 21 **majority won out.**  
 22 **And according to this, Jeff Thurman -- Jeff**  
 23 **Thurman's, I guess, ranking did not win the day; is that**  
 24 **accurate?**  
 25 A. Yes, it is.

1 appears were taken on the questions that were handed out  
 2 to the -- the oral board participants, meaning those who  
 3 were asking the questions, it's your opinion that those  
 4 should have been saved as part of the archive?  
 5 A. That is my opinion, yes.  
 6 **Q. And you're basing that opinion on your**  
 7 **understanding of the Washington State Archives**  
 8 **CORE requirements. And I'll -- we'll just refer to them**  
 9 **for purposes of your deposition as the CORE**  
 10 **requirements.**  
 11 **It's your -- is your opinion based solely on**  
 12 **those Washington State Archives CORE requirements?**  
 13 A. I would say it's based on the CORE requirements,  
 14 but I'm also relying on my experience with both Seattle  
 15 and Oregon State University having participated in  
 16 interview panels and been a panelist and writing  
 17 questions, that upon completion of the interview process  
 18 the notes of the panelist are collected.  
 19 And in both cases -- in Seattle and Oregon State  
 20 University, we felt best practice was to collect those  
 21 notes and give them to an HR specialist to retain in  
 22 order to comply with -- and Oregon has similar laws to  
 23 Washington. I don't know what the retention period is,  
 24 but there is a similar law in Oregon regarding  
 25 retention.

1 **Q. Okay. So is this -- is this a fairly standard**  
 2 **description of a process for selection for a specialty**  
 3 **unit within an agency like the Spokane County Sheriff's**  
 4 **Office?**  
 5 A. Yes. It's very common that the interview  
 6 panelists won't always agree one hundred percent.  
 7 So there's some give-and-take and some  
 8 back-and-forth at the end of the process in order to  
 9 arrive at the final candidate list.  
 10 **Q. Okay.**  
 11 A. Or majority rules here. That's another method  
 12 mentioned here.  
 13 **Q. Okay. So I'm going to refer back to your report**  
 14 **and your opinions. I'm going to first look at Opinion A**  
 15 **here. The last two sentences you state: "In this case,**  
 16 **the internal ranking documents based on the interview**  
 17 **panels for ASU were destroyed. In my opinion,**  
 18 **destroying these records does not allow the Plaintiff**  
 19 **full access to the results of the interview process."**  
 20 **What ranking documents are you referring to**  
 21 **there in that portion of your opinion?**  
 22 A. The internal notes from the candidates regarding  
 23 the qualifications and results of the oral board  
 24 interview of the candidates.  
 25 **Q. So it's your opinion that the notes which it**

1 So we give those results to the HR specialist,  
 2 who then retains them for a certain period of time. And  
 3 then the records are destroyed.  
 4 MR. KITSON: I'm going to pull up Document  
 5 C.  
 6 And I'll represent that this is the  
 7 "Washington Local Government Common Records Retention  
 8 Schedule" or CORE.  
 9 And we're going to mark this as Exhibit 4 to  
 10 your deposition today.  
 11 (Exhibit 4 was marked.)  
 12 BY MR. KITSON:  
 13 **Q. Is this the document that you're referring to**  
 14 **when you refer to the CORE -- or record retention CORE**  
 15 **schedule in your report?**  
 16 A. Yes, it is.  
 17 **Q. Okay. And I'm going to move us all the way to**  
 18 **page 142.**  
 19 A. A little larger, please.  
 20 **Q. Sure. Is that better?**  
 21 A. Thank you.  
 22 **Q. In your opinion in Opinion A, you refer, I**  
 23 **believe, to this section, which is Section GS50-04B-22,**  
 24 **which is the section related to recruitment and hiring.**  
 25 **Is that correct? Is that in your -- in Opinion**



1 **A, is this the section that you're referring to?**  
 2 A. Yes, it is. The numbers match up. This was the  
 3 document I looked at.  
 4 **Q. Was this a document that was provided to you by**  
 5 **Ms. Barden?**  
 6 A. No, it was not.  
 7 **Q. Okay. What is your experience, if any, related**  
 8 **to these Local Government Common Record Retention**  
 9 **Schedule?**  
 10 A. When I was an internal investigator and an EEO  
 11 investigator and as a police manager with Seattle Police  
 12 Department, I had specific training classes on records  
 13 retention.  
 14 I was not the one retaining the records, but it  
 15 was important that I knew that the standards existed and  
 16 not to destroy records and to make sure that we kept  
 17 those records for a certain period of time.  
 18 And in -- whether I worked for internal affairs  
 19 or whether I worked with human resources as the EEO  
 20 specialist, after periods of time I would go in and  
 21 destroy records if they had met the guidelines outlined  
 22 in CORE.  
 23 So I was basically following my training that we  
 24 kept everything for a certain period of time. Three  
 25 years is very common. Some things are more sensitive

1 **Q. This section says that the -- under the**  
 2 **description of records, it lists a number of different**  
 3 **types of records that are to be retained for three years**  
 4 **after the position is filled or the recruitment effort**  
 5 **is terminated.**  
 6 **The first bullet point is for employment**  
 7 **requisitions. So position specifications, needs**  
 8 **analysis and authorizations, requests to fill, desired**  
 9 **qualifications, et cetera.**  
 10 **In this case would you agree we have that?**  
 11 **We have the notice of posting related to the**  
 12 **position; correct?**  
 13 A. Correct. We do have that advertisement that you  
 14 are talking about, or that notice, yes.  
 15 **Q. Okay. And then down a couple points we have two**  
 16 **bullet points for the third one, job announcements and**  
 17 **postings. We have the job announcement and posting**  
 18 **related to this position; correct?**  
 19 A. Yes.  
 20 **Q. The next bullet point is applications, résumés,**  
 21 **test results, and background checks of successful**  
 22 **applicants, including applicants screened but not**  
 23 **interviewed.**  
 24 **So we have applications. We have the résumés.**  
 25 **Correct?**

1 and you get a five-year retention. Some things you  
 2 never get rid of in any case. And then I would destroy  
 3 those documents.  
 4 So I was using my training and experience to  
 5 find the CORE requirements that pertained to this HR  
 6 recruiting and hiring for the ASU position.  
 7 **Q. When was the last time you received training**  
 8 **related to CORE?**  
 9 A. It probably would have been in the late 2000s.  
 10 I don't remember anything between late 2010 and now.  
 11 **Q. Looking back at this -- this section that you've**  
 12 **cited, do you know that this section -- it talks about**  
 13 **records relating to process of recruiting, interviewing,**  
 14 **selecting, and hiring of employees.**  
 15 **Do you know if this applies to only employees**  
 16 **who are applicants to a new position or also to internal**  
 17 **positions such as the ASU unit?**  
 18 A. The way I read this and the way I've been  
 19 trained, is that this applies in this case. It does  
 20 apply for an internal job posting where you are giving  
 21 employees an opportunity to apply for a position that  
 22 you're going to keep those records in accordance with  
 23 what's written here.  
 24 **Q. What do you base that conclusion on?**  
 25 A. My training and experience.

1 A. One correction there. You said "successful"  
 2 applicants and this says "unsuccessful."  
 3 **Q. I'm sorry. You are correct.**  
 4 **So you're supposed to say -- if this applies,**  
 5 **you are supposed to save the materials for both those**  
 6 **who are successful and those who are unsuccessful;**  
 7 **correct?**  
 8 A. Correct.  
 9 **Q. Okay. And here we have the applicant materials;**  
 10 **correct? So the applications and the résumés --**  
 11 **correct? -- for each of the four applicants.**  
 12 A. Are you on bullet point five?  
 13 **Q. No. I'm still on four. So I just want to make**  
 14 **sure that -- so we looked at -- there were four**  
 15 **applicants here: Welton, Bitzer, Richmond, and Ennis,**  
 16 **and we have the materials that they submitted as part of**  
 17 **that process; correct?**  
 18 A. Yes.  
 19 **Q. And there weren't any test results? This wasn't**  
 20 **a position where there was actually testing; correct?**  
 21 **So that wouldn't be applicable here.**  
 22 MS. BARDEN: I'm going to object to the  
 23 form.  
 24 Go ahead.  
 25 THE WITNESS: I guess it depends on how you

1 define test results.  
 2 Could that be the results of the oral board  
 3 interview that -- that might be part of your process of  
 4 testing someone to see if they are going to be  
 5 successful in the position.  
 6 Although, I do see a bullet point later --  
 7 later with interview questions and tests.  
 8 So I think the results of that would be  
 9 applicable, yes.  
 10 BY MR. KITSON:  
 11 **Q. There wasn't a test; correct?**  
 12 **I mean, there was no, like -- applicants didn't**  
 13 **have to sit down for, like, a civil service exam or**  
 14 **anything like that as part of this process; correct?**  
 15 A. Again, I think it depends on your definition of  
 16 test.  
 17 Having taken and given a lot of oral boards,  
 18 there's some studying that goes on and you have to know  
 19 your material. Whether you are going to write it down  
 20 on a paper form, on a computer, or if you are going to  
 21 give an oral presentation. It's very similar that you  
 22 need to know what you're talking about. You need to be  
 23 able to answer questions, you need to be smart about  
 24 your subject matter, and you need to do well in the  
 25 scoring of those answers.

1 your knowledge and your ability to then communicate that  
 2 information back to a panel.  
 3 So in that way, it is absolutely a test.  
 4 If we're thinking back to school children  
 5 sitting down with a piece of paper and a pencil -- and a  
 6 No. 2 pencil, that's another type of test. A Scantron  
 7 is another type of test. An oral board. A writing  
 8 essay. These are all tests that can be used to  
 9 determine when someone is suitable for a position.  
 10 So yes, it is absolutely a test.  
 11 **Q. So going down here, there's also a bullet point**  
 12 **of screening, scoring, ranking, and selection criteria.**  
 13 **You would agree that we have the screening,**  
 14 **scoring, and ranking criteria in terms of documentation**  
 15 **that is part of the archive that we've reviewed as part**  
 16 **of Exhibit 2; correct?**  
 17 MS. BARDEN: Objection to form.  
 18 THE WITNESS: Sorry. I think that is  
 19 lacking at this point.  
 20 I believe that what you and I discussed  
 21 earlier, we looked at an email where the undersheriff is  
 22 notified of the ranking order and the two that the panel  
 23 would like to see considered to move forward in the  
 24 process and the Undersheriff agreed.  
 25 However, I think what you're missing, unless

1 So to me, it's all related. It's -- I would  
 2 call it a test, absolutely.  
 3 **Q. I mean, here -- there's a distinction between**  
 4 **interview questions and tests.**  
 5 **You would agree that what we have here is a list**  
 6 **of interview questions; correct? Not a test.**  
 7 A. I'm going to define test as the ability to  
 8 regurgitate information that you have stored in your  
 9 brain. Again, whether you are doing it on paper or  
 10 computer or orally, it's all a test of your knowledge  
 11 and your ability to relate that information and to  
 12 communicate it. It's all about communication. And,  
 13 again, whether written or oral, to me, it's all related.  
 14 **Q. Okay. So in your opinion, any time -- well,**  
 15 **strike that.**  
 16 **In your opinion, any time there's an interview,**  
 17 **that's the same thing as a test for purposes --**  
 18 MS. BARDEN: Objection to form. That was  
 19 not the testimony. Sorry.  
 20 MR. KITSON: I'll state it again.  
 21 BY MR. KITSON:  
 22 **Q. So I understand your opinion correctly, under**  
 23 **these CORE guidelines, you don't make a distinction**  
 24 **between an interview and a test; correct?**  
 25 A. I think an oral board interview is a test of

1 there was something I missed, is where is the screening,  
 2 scoring, and selection criteria. We did see the  
 3 ranking. I agree with you there.  
 4 BY MR. KITSON:  
 5 **Q. Well, if you -- if you -- if we go back to**  
 6 **Deputy Knight's testimony, which we examined a few**  
 7 **minutes ago, Deputy Knight said we interviewed them, we**  
 8 **looked at the application materials that they submitted,**  
 9 **and then we as a group came up with the ranking. There**  
 10 **was not -- there's not a scoring -- there's not a box**  
 11 **checked. There is not -- like, this isn't a**  
 12 **position where -- they didn't fill out those rankings.**  
 13 **We have that testimony where Deputy Knight described**  
 14 **that process.**  
 15 **So my question for you is -- I mean, let me just**  
 16 **ask it this way. Other than the notes that were**  
 17 **specified that were taken on the test questions, is**  
 18 **there anything that you can point to that in your**  
 19 **opinion should have been saved but were not as part of**  
 20 **this process?**  
 21 A. I think you've highlighted the thing that's  
 22 missing is how did they score those candidates in order  
 23 to arrive at those rankings.  
 24 **Q. Was there anything that would require them to --**  
 25 **I guess -- I think there's a disconnect here.**

1 **The way I hear Deputy Knight's, I guess,**  
2 **testimony in his interview -- let me know if you think**  
3 **differently -- is he said there wasn't scoring. We each**  
4 **went around and talked about how we viewed the**  
5 **applicants in terms of their candidacy and we came up**  
6 **with a consensus list.**

7 **When you say scoring, I'm not sure what you're**  
8 **talking about. That doesn't seem to be something to me**  
9 **that they did as part of this process.**

10 A. In my opinion, we should have the notes that  
11 everyone took in order to basically do what we're doing  
12 today or in a court of law where we now look back and  
13 let's say someone is contesting the results of an  
14 interview process. Other than an internal email, how do  
15 we then discern what everyone felt were the strengths  
16 and weaknesses of the candidates' answers? We don't  
17 have any idea at this point because no one kept a record  
18 of that. That's what's missing.

19 **Q. Sorry. Go ahead.**

20 A. I was pretty much done.

21 But that's what we're missing is how do we know  
22 how well each person answered.

23 How would you -- you know, hypothetically, how  
24 would you prove, wait a second, I answered those  
25 questions spot on. There wasn't a single information --

1 if they had already pre-decided. Again, I'm going  
2 hypothetically here. What if they had already  
3 pre-decided who their favorite was or their two  
4 favorites. And anyone else, it doesn't matter how well  
5 they scored, they have already pre-decided that someone  
6 else is going to get the position.

7 You're -- you're denying the ability of that  
8 person that didn't get the position to -- to say, wait a  
9 second, I would like some proof.

10 These are government records. Where are they?  
11 The law says they need to be kept. I would like to  
12 examine them. And that's lacking in this case.

13 **Q. You would agree that there was no requirement**  
14 **that any of the folks who were conducting the interviews**  
15 **take notes; correct?**

16 MS. BARDEN: Object to form.

17 THE WITNESS: I think if you look back again  
18 at CORE -- and in my training and experience and the way  
19 I'm reading it right now, that -- that all this material  
20 needs to be retained.

21 And I think the law --

22 BY MR. KITSON:

23 **Q. I'm going to stop you because that wasn't my**  
24 **question.**

25 **My question is --**

1 there's no way that someone could have answered better  
2 than me. I'm just giving a hypothetical here.

3 Well, how do we prove that? How do we show, no,  
4 actually, if you look at this candidate's answers, look  
5 here, they talked about this aspect and this safety  
6 protocol and this patrol procedure and they had a better  
7 answer than you. And in this question, look here, they  
8 answered better than you in this question, too.

9 So we don't have that information. All we have  
10 is this -- this ranking that occurs at the end.

11 So how are we to tell with what criteria did the  
12 panelists come up with their final ranking?

13 I agree we have the final ranking, but we don't  
14 have any information about how they arrived at that  
15 decision.

16 We just have Deputy Knight, like you and I  
17 discussed, with his interview talking about, yeah, you  
18 know, after it was done, we came up with our final  
19 results.

20 Which is absolutely true. That is the way it  
21 happens. There is this discussion. It's give and take  
22 that I mentioned earlier, back and forth, where the  
23 panelists then arrive at the final selection process.

24 But what we're lacking is what -- how do we know  
25 that anyone even paid attention to the panelists? What

1 A. I thought it was. Sorry.

2 **Q. My question is not whether -- I understand your**  
3 **position on their retention.**

4 **But my question for you is are you aware of any**  
5 **policy or procedure within the Sheriff's Office or from**  
6 **elsewhere that would require that the folks that were**  
7 **conducting the interviews take notes?**

8 **They don't have to take notes; correct?**

9 **They can sit and conduct interviews and rely on**  
10 **their own recollection.**

11 **We don't know who did or didn't take notes;**  
12 **correct?**

13 A. At this point, we do not.

14 **Q. And there is nothing that you can point me to**  
15 **that says they were required to take notes?**

16 A. No, I can't point to anything that says they  
17 were required to take notes.

18 **Q. And a person's notes likely wouldn't show us**  
19 **whether they were somehow predisposed or biased against**  
20 **somebody; right?**

21 **I mean, people that are taking notes don't**  
22 **usually write something that's that revealing about the**  
23 **way that they think; correct?**

24 MS. BARDEN: Objection to form.

25 THE WITNESS: It's been my experience in

1 doing a lot of these tests and interviewing a lot of  
2 people that after you've listen to four people back to  
3 back to back to back it is going to be helpful to you to  
4 have some notes as to how well they answered the  
5 questions. Because then you are going to have a  
6 discussion with those other panelists -- which occurred  
7 at this time. They did talk about that.

8 And I agree with you. I don't know that  
9 there's anything that required them to write anything  
10 down. But I don't think you are doing a good thorough  
11 job if you don't. Because then how do you come back to  
12 the group and then say, look at the answer to Question  
13 2. And here's where I think the candidate did really  
14 well or here's where I don't think they did well. Maybe  
15 you can do it off memory. Maybe they have better  
16 memories than I do. But my experience is that by taking  
17 notes, you've helped refer yourself and others, as well  
18 as keep a record as to how well they did on the  
19 questions.

20 And were they thorough, were they accurate,  
21 or were they really lacking in their communication  
22 skills or their ability to recall information or ability  
23 to process a lot of information.

24 BY MR. KITSON:

25 Q. Okay. I'm directing to -- and this is, again,

1 **Isn't that fitting within the records retention**  
2 **schedule here related to transitory notes or transitory**  
3 **records?**

4 MS. BARDEN: Objection to form.  
5 Go ahead.

6 THE WITNESS: I would disagree with you  
7 there. Specifically because they bold this, where not  
8 covered by a more specific records series, which again,  
9 I think would refer us back to personnel selection,  
10 candidate selection, testing process that you and I  
11 discussed earlier.

12 BY MR. KITSON:

13 **Q. So -- go ahead. Sorry. Don't mean to interrupt**  
14 **you.**

15 A. That's okay. From what I remember, this  
16 training and having participated in brainstorming  
17 sessions like this, is let's say there's a problem and  
18 you want to address some different solutions as to how  
19 to solve that problem. It might be a crime problem. It  
20 might be a computer issue or something like that.

21 And so you're there with a work group and people  
22 are throwing out ideas and discussing possibilities and  
23 things. Nothing has been decided on and that's really  
24 what the section that you brought up refers to.

25 These are things that might help us move in a

1 **in Exhibit 4. This is Section 6, which relates to**  
2 **"Records with Minimal Retention Value or Transitory**  
3 **Records."**

4 **Are you familiar with the concept of transitory**  
5 **records under CORE?**

6 A. Yes, I am.

7 **Q. So these are records created or received by the**  
8 **agency which are typically of short-term or temporary**  
9 **informational value; correct?**

10 A. Correct.

11 **Q. And down here at the second section, Section 2,**  
12 **it talks about Brainstorming and Collaborating.**

13 **And it says, "Records generated as part of**  
14 **informal exchanges of ideas/brainstorming/collaboration**  
15 **processes, where not covered by a more specific records**  
16 **series."**

17 **And it "Includes, but is not limited to,**  
18 **notes..." And in that case it is retained until no**  
19 **longer needed for agency business and then destroyed.**

20 **So here, wouldn't you say that's what we have?**

21 **We have a group of people who are brainstorming and**  
22 **collaborating about how to rank a group of candidates.**  
23 **They came up with their ranking, they advised the**  
24 **undersheriff of that ranking, and then they got rid of**  
25 **the notes.**

1 direction. It's -- it's a collection of ideas and  
2 suggestions, but it's not official department records.  
3 It's not official department process, but it is  
4 something that might lead to that. It's that  
5 brainstorming session of problem solving that, you know,  
6 human beings engage in and sometimes a variety of  
7 meetings in order to arrive at a solution.

8 So I would disagree with you at that point, that  
9 especially where it says where it's not covered by  
10 something else.

11 I think it would mean that it's referring you  
12 back to that personnel section that we reviewed. In  
13 fact, that's on the screen right now.

14 **Q. And so I don't see anywhere in that section that**  
15 **you are relying upon, the recruitment section, that has**  
16 **interview notes.**

17 **Is there anywhere in here that says interview**  
18 **notes that's specifically specified in this recruitment**  
19 **section?**

20 A. I think that would be covered under the  
21 screening, scoring, ranking, and selection criteria.  
22 That bullet point seems to specifically refer back to  
23 how do you arrive at your final ranking?

24 What information did you rely on and how did you  
25 come up with that criteria? What did you rely on in

1 order to achieve the results that you and I looked at on  
2 that email.

3 **Q. If those who are taking interview -- or**  
4 **conducting interviews know that their notes are going to**  
5 **be subject to the Public Records Act and can be**  
6 **requested by anybody in the process.**

7 **So, for example, these folks know that Deputy**  
8 **Ennis or Deputy Richmond or Deputy Bitzer or Corporal**  
9 **Welton could request their interview notes at any time,**  
10 **wouldn't that have a chilling effect on their desire to**  
11 **take truthful notes?**

12 **So, for example, if I really don't think that**  
13 **Deputy Bitzer did a good job in her interview, am I**  
14 **really going to be critical of her in my notes when I**  
15 **know that my own colleague could make a records request**  
16 **for those very same notes at any point in time?**

17 MS. BARDEN: Objection to form.

18 THE WITNESS: It's an interesting question.

19 It's been my experience, largely backed up  
20 by many years of doing this in two different large  
21 organizations, the people that serve as interview  
22 panelists are there generally for the right reason,  
23 because they want to make their place of work better.  
24 And they want to get the best people to work with the  
25 most creative, the most collaborative, the most

1 went through the process?

2 I don't think so. I've never found that --  
3 I've never worried about that, nor have I found anyone  
4 else that ever worried because of a PDR that their  
5 evaluation of a coworker is now going to become  
6 available to that coworker through a disclosure request.  
7 I've not found that.

8 BY MR. KITSON:

9 **Q. Okay. Let's go back to Exhibit 1. I'm moving**  
10 **to Opinion B.**

11 **You write: "In my opinion, if Deputy Bitzer was**  
12 **provided a list of questions ahead of the ASU**  
13 **interviews, this would not uphold industry standards of**  
14 **fairness in hiring."**

15 **Correct?**

16 A. Yes.

17 **Q. Now, am I correct in understanding that you have**  
18 **not -- you're not making any finding as to -- or**  
19 **offering opinion as to whether Bitzer was provided**  
20 **questions or not. You're saying that if, in fact, she**  
21 **was, that it would be unfair or out of industry**  
22 **standards in your opinion.**

23 **Is that accurate?**

24 A. It is accurate if you combine it with the next  
25 line there. I kind of further define it. It's okay to

1 professional -- whatever criteria they are looking for.  
2 That they probably -- a lot of them probably work in  
3 that unit or they are a supervisor that might oversee  
4 that unit. And, generally, the desire is to get good  
5 quality people in there to make your unit better, to  
6 make the department better, to make the city or county  
7 better.

8 So I think that's the general purpose that  
9 people volunteer -- it is generally volunteers. You can  
10 be voluntold, but generally volunteer to work in these  
11 environments. And they want to do the right thing and  
12 they want to do a good job.

13 It's been -- I can't think of a single time  
14 where I came out of an interview panel -- whether I'm  
15 the hiring manager or just an interview panelist --  
16 where I felt why was so and so here? They don't care  
17 about this process. They didn't do any rankings. They  
18 didn't ask good questions. They appeared to be dozing  
19 off or not paying attention.

20 I've never found that. I found that people  
21 generally want to be there and they want their workplace  
22 a better place to work.

23 So now to your question: Are they concerned  
24 that their coworker will come and see the results of  
25 their rankings, their scorings, their -- the way they

1 provide it as long as everyone is provided the same  
2 information. But if you are giving one candidate an  
3 advantage and denying that opportunity to the others,  
4 that would be improper.

5 **Q. Do you have any understanding one way or another**  
6 **as to whether or not Deputy Bitzer was actually provided**  
7 **a list of questions ahead of her interview for the unit?**

8 A. No, I don't. And that's why I put the if in  
9 there. In the review of the materials that I had there  
10 wasn't enough information at that time for me to render  
11 a credible opinion to -- as to whether she was or was  
12 not provided a list of questions ahead of time. That's  
13 why I couched it a bit. I did put the if in there, and  
14 then I further clarified.

15 If it was under this guideline where everyone  
16 gets the questions, that's fine. You know, some  
17 interviews happen that way.

18 But if ahead of time someone has an unfair  
19 advantage over others, that would be -- that would be  
20 unfair.

21 **Q. Do you have any specific recollection of**  
22 **reviewing Deputy Bitzer's interview transcript from her**  
23 **interview -- either of her interviews with Sergeant**  
24 **Hines?**

25 A. I do have a general recollection of that.

1 **Q. Do you have a recollection of what Bitzer said**  
2 **is that she spoke with another Deputy who she identified**  
3 **as Deputy Acosta before her interview about what to**  
4 **expect during the ASU selection process?**

5 MS. BARDEN: I'm going to object to form.  
6 That's not what it says.

7 BY MR. KITSON:

8 **Q. Go ahead, if you can.**

9 A. I don't remember that name specifically at this  
10 point. I remember -- and this is kind of a general  
11 description.

12 To get more specific, we might want to get and  
13 find that actual interview. But I do remember her  
14 mentioning something about talking with the process with  
15 someone and finding out some information about how the  
16 interview would go.

17 Kind of -- kind of what you were talking about.  
18 But I don't remember if that's the person that she  
19 talked to or not.

20 And based on what I read, I couldn't come to an  
21 absolute determination that she was given an advantage  
22 or not, based on the information that I had.

23 **Q. Do you have any recollection of reviewing an**  
24 **interview of a Deputy Acosta at this part of the**  
25 **process?**

1 Hey, how was your interview process when you applied  
2 for -- let's say the ASU. And, again, a bit  
3 hypothetical here -- because I don't remember this  
4 interview specifically -- but if she did that with this  
5 deputy, I don't necessarily have a problem with that,  
6 unless Acosta had private information that only the  
7 panelists knew. If he knew -- he or she. If he or she  
8 knew the questions ahead of time or that the unit had  
9 discussed what questions they want to see asked by the  
10 panel, there you could get into a gray area or even  
11 possibly a misconduct issue. But I didn't -- and let's  
12 get back to the short answer. I didn't see that in this  
13 case.

14 So that's why I couched it -- my answer with an  
15 if. I don't think it was up to me to decide whether she  
16 was or not at that point. I didn't have enough  
17 information to make that opinion. But if she was given  
18 an advantage that the others were not, it -- it could be  
19 problematic.

20 **Q. So would it be an unfair advantage if she had**  
21 **gone to Deputy Acosta who wasn't one of the people who**  
22 **was conducting the interviews, and said, Hey, let me --**  
23 **what should I expect?**

24 **And he said, Look, you should be able to answer**  
25 **questions about why you want to be on the unit or about,**

1 A. At this point, I do not remember that interview.

2 **Q. Okay. If Deputy Bitzer had gone to another**  
3 **deputy who was already on the unit and said, hey, what**  
4 **can I expect during the process as I try to get this**  
5 **position, would there be anything improper about that?**  
6 **For her to go to somebody and ask that question.**

7 A. I have a short answer and a long answer to that.

8 The short answer is no, unless -- and here's the  
9 longer answer. Unless that person has somehow -- that  
10 they have information to give to them that others don't  
11 have.

12 In other words, I'm not going to fault Deputy  
13 Bitzer for using some initiative. And you want to  
14 know -- this is very common, especially in police  
15 departments when people want to get into specialty  
16 units, there's -- there's usually an interview process.  
17 And there's going to be recommendations made, quite  
18 often, by the people that work there.

19 Because they sometimes work in very close  
20 quarters and they might see more of these people than  
21 they do sometimes their own families.

22 So there's going to be that -- I don't have a  
23 problem if someone wants to go and get some background  
24 information.

25 In fact, I think this is a legitimate question:

1 **you know, your commitment to callouts and be able to**  
2 **explain, like, what types of things you've done to**  
3 **prepare yourself for the position.**

4 **Would that type of, I guess, information -- or**  
5 **provision of that type of information by Deputy Acosta**  
6 **be inappropriate or unfair in any way?**

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

8 **Q. I'm going to go back to Exhibit 2. And looking**  
9 **back at Exhibit 2, pages 2 and 3, which are the Tactical**  
10 **Flight Officer oral examination questions.**

11 **If I remember correctly, you testified earlier**  
12 **that you weren't sure that you'd -- you'd reviewed this**  
13 **specific list of questions; is that accurate?**

14 A. My best recollection is that I might have  
15 skimmed these questions, but I didn't really commit them  
16 to memory or write anything down about them. So I kind  
17 of remember looking at this but, again, that might be  
18 one of the documents that I scanned more than actually  
19 read.

20 **Q. Okay. I'm going to give you a second just to**  
21 **review this because I want to ask you questions about**  
22 **it, so I'm going to let you read it. You can either**  
23 **read it here on your screen or you can pull it up**  
24 **yourself.**

25 **I'm happy to let you read it on this screen and**

1 **then you can let me know when to move down.**  
 2 A. Yeah. Let's just leave it up right here.  
 3 You can move down to six. Okay. Stop there.  
 4 Okay. Let's go down to nine. And that looks  
 5 like all. Okay. All right, Mike.  
 6 BY MR. KITSON:  
 7 **Q. So would you agree that other than Questions 6**  
 8 **and 7, which are very specific type of hypothetical**  
 9 **questions, that the remaining questions are all the**  
 10 **types of questions that an applicant could have**  
 11 **reasonably expected to be asked in this type of oral**  
 12 **board?**  
 13 A. Let me just see the second page, quickly.  
 14 Yeah. I agree with you. Those two are very  
 15 specific tactical exercises to think on your feet. And  
 16 the others, I would say, are of a more general nature of  
 17 your suitability for the position. How have you  
 18 prepared yourself? And then how are you going to  
 19 respond to some of the conflicts, let's say, that could  
 20 occur as an ASU member? Whether it is with your pilot  
 21 or officers on the ground. Or it looked like there was  
 22 a question about a county official and your suitability  
 23 of being called out.  
 24 So yes, I would say those are actually very good  
 25 questions and some that most any officer could be

1 small department, there are going to be some positions  
 2 that -- that are very desirable that you're going to get  
 3 a large number of candidates applying to.  
 4 Even in a small department at -- let's say you  
 5 might be the only detective in that department, that  
 6 might -- that's probably a pretty desirable position.  
 7 You are going to get daytime hours. You get to work in  
 8 plain clothes. You get your own car. Those are very  
 9 desirable.  
 10 In this case, I would think that the Air Support  
 11 Unit would be a very desirable position within the  
 12 Sheriff's Office there.  
 13 You're going to get those callouts, which means  
 14 the overtime pay. So you're going to be responding to  
 15 important incidents. And you get to get -- let's say a  
 16 bird's eye view, for lack of a better term, of what's  
 17 going on. And you're going to get a lot of great  
 18 training that comes with that.  
 19 And from there you might be able to parlay that  
 20 experience into other positions. In other words, when  
 21 an interview is taking place, you want to see that  
 22 someone has tried some different things in the  
 23 department, that they have specialized, that they have  
 24 applied themselves, and that they have a good wealth of  
 25 experience.

1 expected to answer if you were trying to get into an Air  
 2 Support Unit.  
 3 **Q. Would you agree that if Deputy Bitzer had gone**  
 4 **to somebody like Deputy Acosta, who was not part of the**  
 5 **process, and he said, you know, Look, you'll be asked to**  
 6 **provide -- you will probably be asked to provide some of**  
 7 **this general type of information; that, again, wouldn't**  
 8 **be tipping her off or giving her unfair advantage over**  
 9 **other applicants?**  
 10 A. I would agree with you.  
 11 MS. BARDEN: I'm going to object to form.  
 12 Give me a moment to object.  
 13 THE WITNESS: Sorry.  
 14 BY MR. KITSON:  
 15 **Q. Okay. Let's go back to document -- oops. I**  
 16 **think I just accidently got rid of my Document A. Hold**  
 17 **on.**  
 18 **Okay. Let's go back to Exhibit 1, again.**  
 19 **Opinion C.**  
 20 **You say that the Air Support Unit is a desirable**  
 21 **position.**  
 22 **What do you mean when you say that?**  
 23 A. Some police officers spend their whole career  
 24 working the street and they are very happy with it.  
 25 Within most midsized to larger-sized -- even a

1 And everyone comes from different positions.  
 2 But now you're -- you bring in a -- a list of candidates  
 3 and one person has only done one job their whole career  
 4 and someone else has, you know, every two, three, or  
 5 five years. They have moved around. They have tried  
 6 something different. They have volunteered. They have  
 7 put themselves out there. And they picked up new skills  
 8 and abilities that came with that. So I would think  
 9 that this ASU position would be a very desirable  
 10 position to have for those reasons.  
 11 **Q. Okay. I know you were an FTO or Field Training**  
 12 **Officer; correct?**  
 13 A. Yes, I was.  
 14 **Q. Would you agree that being a Field Training**  
 15 **Officer is a desirable position within an agency like**  
 16 **the Spokane County Sheriff's Office?**  
 17 A. That's a difficult question to answer, because  
 18 I'm basing that on my experience in Seattle.  
 19 And, actually, we have a hard time recruiting  
 20 Field Training Officers. And we had to entice people  
 21 with overtime in order to get them to sign up. I was  
 22 never in charge with the unit, but having served as an  
 23 FTO and supervised a large number of FTOs when I was  
 24 either a Sergeant or Lieutenant.  
 25 At least in Seattle it was not a desirable

1 position. So I can't really say whether it is for the  
 2 Sheriff's Office or not. I think there are some things  
 3 that we could have improved in our FTO program in  
 4 Seattle that would have made it more desirable.  
 5 I think most people that wanted to do it, were  
 6 there for the right reasons. But we definitely needed  
 7 more people -- there was good people that worked in SPD  
 8 that did not put themselves out there as Field Training  
 9 Officers. So I can't really say whether it is for the  
 10 Sheriff's Office or not.

11 **Q. Are you aware within the Spokane County**  
 12 **Sheriff's Office, at least when Andrew Richmond was**  
 13 **there, that if you were an FTO, as a deputy, you would**  
 14 **not have to serve or work as a detective or a corporal**  
 15 **in order to become a sergeant within the patrol unit.**  
 16 **You could essentially kind of skip that step in the**  
 17 **rankings as a result of having served as an FTO?**

18 A. I was not aware of that.

19 **Q. Would that be a significant benefit to, you**  
 20 **know, folks who -- or deputies who wanted to advance, to**  
 21 **be able to work as an FTO and skip that, I guess that**  
 22 **training -- or that ranking, if they wanted to become a**  
 23 **patrol sergeant?**

24 A. I could see that being an advantage for some  
 25 people, yes.

1 different support from different units. You're getting,  
 2 you know, additional funding and oversight. And rather  
 3 than working on one small problem, you might take that  
 4 and work it into a large operation. Maybe what is just  
 5 viewed as a burglary is actually now a whole crime ring  
 6 of burglars operating under, you know, centralized  
 7 leadership that now go out into the neighbors. And it  
 8 might lead to a pawn operation and a sting.

9 Yeah, I'm very familiar with things like this.  
 10 And there's -- there's a lot of advantages to having  
 11 these types of multi-agency responses.

12 **Q. Is selection to a task force like that generally**  
 13 **viewed as desirable?**

14 A. I would say, yes. Because, again, you're going  
 15 to have some advantages. You're going to get some  
 16 specialized training. You might get your own car. You  
 17 might feel like you're making a bigger difference than  
 18 just being a patrol officer; that you now respond with  
 19 other agents from all those different agencies that you  
 20 mentioned and it's gonna give you some notoriety and  
 21 some credibility within the department.

22 **Q. Were you aware that Andrew Richmond was offered**  
 23 **a position on the Safe Streets Task Force in July of**  
 24 **2019?**

25 A. I did read that. And I'm trying to remember --

1 **Q. Did you know that Andrew Richmond was selected**  
 2 **to be a Field Training Officer?**

3 A. I was aware of that. I saw that in the  
 4 materials I reviewed.

5 **Q. Okay. And not just -- I should say, he was**  
 6 **selected and served as an FTO.**

7 A. Correct.

8 **Q. Okay. Are you familiar with the Spokane**  
 9 **Regional Safe Streets Task Force?**

10 A. Not specifically. I remember reading it in the  
 11 documents here. And I can guess what it is, but I don't  
 12 have any independent knowledge of it.

13 **Q. Sure. So I'll represent that it's -- it's a**  
 14 **multi-agency task force with members of the FBI, the**  
 15 **Spokane Police Department, the Sheriff's Office, the**  
 16 **Spokane Valley Police Department, Border Patrol, the**  
 17 **Department of Corrections, with the -- essentially,**  
 18 **the -- tasked with working together to address gang**  
 19 **activity and drug trafficking in the Spokane County**  
 20 **area.**

21 **Is that type of task force something that is**  
 22 **commonplace in -- in law enforcement agencies?**

23 A. Yes, it is. Putting a large number of agencies  
 24 together with one task force kind of multiplies your  
 25 efforts at crime fighting, because you're getting

1 let's just say I read that and I can't remember exactly  
 2 where. But I did read that, yes.

3 **Q. Let's look at Opinion D in your report, in**  
 4 **Exhibit 1.**

5 **And in this section you've essentially rendered**  
 6 **an opinion that the three sergeants to whom Deputy**  
 7 **Richmond reported Sergeant Thurman's conduct to --**  
 8 **should have reported it up through the chain of command;**  
 9 **correct?**

10 A. Yes.

11 **Q. And are you aware from the documentation that**  
 12 **you reviewed that Andrew Richmond, in fact, asked each**  
 13 **of these three sergeants not to report it up the chain**  
 14 **of command?**

15 A. There was discussion about that in the interview  
 16 that I read -- I'm seeming to remember the internal  
 17 affairs investigation -- that he had requested some  
 18 anonymity for his report, yes.

19 **Q. Given Mr. Richmond's reticence, status, and**  
 20 **information shared, and in light of the fact he was one**  
 21 **of only two black officers at the time, is it**  
 22 **understandable for you that these sergeants would not**  
 23 **have reported up the chain of command?**

24 MS. BARDEN: Objection to form.

25 THE WITNESS: No, it is not understandable.



1 They failed in their duties as supervisors and they  
2 failed the County and they failed the Sheriff.  
3 BY MR. KITSON:

4 **Q. Are you aware that the sergeants received**  
5 **sheriff's level counseling due to their failure to**  
6 **disclose up the chain of command?**

7 A. I was not aware of that outcome. Through the  
8 article that I mentioned earlier, I saw that the Sheriff  
9 mentioned that they should have reported it up the chain  
10 of command and they didn't.

11 So I could only guess at that point whether  
12 there was an outcome. But the information just related  
13 to me, I was not aware of.

14 **Q. Would you agree that sheriff's level counseling**  
15 **was an appropriate corrective action by the Sheriff**  
16 **towards these three sergeants?**

17 A. That's hard to offer an opinion on, because I --  
18 I don't know how serious that relates within the  
19 Sheriff's Office.

20 In other words, what weight does that carry with  
21 Spokane County? I -- I guess I can't really say at  
22 this -- at this point in time.

23 I can tell you this, from what you're telling  
24 me, they didn't receive any time off. So that tells me  
25 that it's at the lower end of discipline. Which

1 **Is Document E -- which we're going to mark as**  
2 **Exhibit 5 to your deposition -- is this the memorandum**  
3 **that you were referencing in your opinions?**

4 **And let me know if you want me to scroll through**  
5 **it.**

6 A. I think I've read enough. I do recognize that  
7 document and that's the one I'm talking about, yes.

8 **Q. Okay. And this is a memo that's dated June 13rd**  
9 **from the Sheriff to leadership within the Sheriff's**  
10 **Office regarding, you know, the outcome of the**  
11 **investigation and Sergeant Thurman's discharge**  
12 **generally; correct?**

13 A. Yes, it is.

14 **Q. Okay. I'm going to open Document F, which will**  
15 **be Exhibit 6 to your deposition.**

16 **(Exhibit 6 was marked.)**

17 BY MR. KITSON:

18 **Q. This is Policy 340, the Standards of Conduct**  
19 **policy.**

20 **It outlines, essentially, the Sheriff's Office**  
21 **disciplinary policy as well as, you know, identifying**  
22 **conduct that can result in discipline.**

23 **It talks about discrimination as grounds for**  
24 **discipline and outlines, essentially, the disciplinary**  
25 **process. I know I'm scrolling through this quickly.**

1 counseling is generally considered -- in fact, some  
2 agencies don't even consider counseling to be  
3 discipline.

4 So I can't say for sure. But from what you're  
5 telling me, this looks like the lighter end -- in fact,  
6 I'm gonna -- the more I think about it, I'm going to say  
7 that this is not discipline. However, it is something  
8 that's going to be reflected in those employee's  
9 personnel files and could potentially affect them in --  
10 as far as, you know, future promotions or transfers,  
11 assignment, that type of thing.

12 Was it appropriate or not? I can't really say.

13 I guess it depends on how it's used, and I can't  
14 really say. I'm back to my very first original answer  
15 to your question. Not knowing enough about the internal  
16 workings of the Sheriff's Office and -- and how these  
17 types of things are viewed.

18 **(Exhibit 5 was marked.)**

19 BY MR. KITSON:

20 **Q. I'm moving now to -- I guess, I'm going to go**  
21 **back here. I'm going to talk to you here about your**  
22 **Opinion E.**

23 **And here you discuss a June 13th memo that was**  
24 **read at roll call and you say it "was not a proper**  
25 **release of information."**

1 **I'm happy to let you look at any portion of it that you**  
2 **want, but I'm going to ask you about a specific section**  
3 **at the end.**

4 **My first question, though, is this a policy that**  
5 **you recall reviewing?**

6 A. I don't recall reviewing many, if any, policies  
7 and procedures on this case.

8 **Q. Okay. This -- on the last page, page 12 of**  
9 **Exhibit 6, is a Section 340.10, Posting of Disciplinary**  
10 **Action.**

11 **And it says, "Internal disclosure of**  
12 **administrative disciplinary action will occur only when**  
13 **there has been a sustained finding and the discipline**  
14 **imposed is equal to or greater than 40 hours without**  
15 **pay."**

16 **And, well, let me -- let me stop there.**

17 **Obviously, Sergeant Thurman was discharged, so**  
18 **his discipline was greater than 40 hours; correct?**

19 A. Yes.

20 **Q. So would you agree that based on this policy,**  
21 **there was some kind of internal disclosure, a notice of**  
22 **disciplinary action that under the Sheriff's Office**  
23 **policies was required to occur following Sergeant**  
24 **Thurman's dismissal?**

25 MS. BARDEN: Objection to form.

1 THE WITNESS: I'm focusing in on "will  
2 occur" in the first line there. So when I read will  
3 occur, it means an affirmative action. It means  
4 something that will happen.

5 So this policy outlines something -- it  
6 almost sounds like a must. It almost sounds like this  
7 is an absolute.

8 But I think there is also the possibility  
9 that the way this is written, if -- if the sheriff  
10 chooses to -- I think there is a bit of a choice here.  
11 And it is specifying, I may or may not release this, but  
12 the only time it will occur is if it's sustained and  
13 it's more than 40 hours without pay. That's kind of the  
14 way I read this.

15 BY MR. KITSON:

16 **Q. It goes on to say, "Any disclosure will include  
17 the name of the deputy or employee being disciplined. A  
18 summary of all violations that the employee is being  
19 disciplined for." And "The discipline imposed."**

20 **Correct?**

21 A. Yes.

22 **Q. And then it states: "The method of notification  
23 will consist of a memorandum of disciplinary action  
24 issued by the Office of Professional Standards to each  
25 department head and Lieutenant. Each Lieutenant will**

1 **that he made inappropriate comments at an ASU meeting  
2 relating to Deputy Krystal Bitzer; correct?**

3 A. That is correct.

4 **Q. And it also indicates that the level of  
5 discipline imposed -- so demotion from sergeant to  
6 ranking deputy and then termination effective 6/13/19.**

7 **And then it directs Division Commanders and  
8 Lieutenants and Supervisors to inform employees of their  
9 findings and conclusions of the internal investigation  
10 so that unnecessary and inappropriate rumors may be  
11 avoided.**

12 **The contents of this notice shall be deemed as  
13 confidential for internal use only, and any release of  
14 the information contained herein shall be made through  
15 the Sheriff; correct?**

16 A. That is correct.

17 **Q. So my question for you is in light of this  
18 policy that we've looked at in Exhibit 6 that talks  
19 about posting a disciplinary action, what about this  
20 posting is improper or inconsistent with the Sheriff's  
21 Office's own policies?**

22 A. The problem with it is that it names the  
23 complainant and a witness and now everyone in the  
24 department knows who came forward and who talked and who  
25 gave this information to, ostensibly, internal affairs.

1 **make a reasonable effort to read the memorandum to each  
2 member under their command and return it to the Office  
3 of Professional Standards within the listed time  
4 parameter."**

5 **Did I read that correctly?**

6 A. Yes, you did.

7 **Q. So if we go back to Document E -- which is  
8 exhibit -- again, Exhibit 5. This is a posting of  
9 disciplinary action that describes what happened.**

10 **So it says an internal investigation occurred  
11 and it was sustained. And then it goes on to report  
12 essentially the bases for the sustained allegations.**

13 **So one, the first paragraph is related to the  
14 December 22nd, 2016, issue that Richmond reported  
15 related to Thurman's use of extremely improper language;  
16 correct?**

17 A. Correct.

18 **Q. And the second one is related to Jeff Thurman's  
19 use of another -- another time when he used the N-word  
20 in front of another deputy; correct? And I'm talking --**

21 A. Yeah.

22 **Q. -- about the paragraph referring to Deputy  
23 VanPatten.**

24 A. That is correct.

25 **Q. And the next one is concerning an allegation**

1 That's the biggest problem with this memo.

2 **Q. You would agree that it doesn't actually  
3 identify anyone as a complainant; correct?**

4 A. As we talked about earlier, there's only two  
5 black employees -- at the time there were only two black  
6 employees in the Spokane County Sheriff's Office.

7 And then we have the offensive language that is  
8 listed here in the memo. I think it's a -- a pretty  
9 easy question for anyone who -- who hears this memo and  
10 then if the names are read, whether right or wrong, I  
11 think they know where that complaint came from.

12 **Q. If you look at Deputy Richmond, he's only  
13 referred to once in this memo and it's in the paragraph  
14 regarding the 12/22/16 comment from Sergeant Thurman  
15 that he heard; correct?**

16 A. It is.

17 **Q. It also says that Deputy Kullman observed that  
18 same comment; correct?**

19 A. That is correct.

20 **Q. I mean, either Deputy Kullman or Deputy Richmond  
21 could have been the person who reported this; correct?**

22 A. Both of those people, given the seriousness of  
23 the allegation, are going to be interviewed. And it  
24 leaves it up to the imaginations of all the people  
25 hearing this memo, I wonder who made the complaint in

1 the first place? Or I wonder who talked to internal  
2 affairs about this? Because it was quite obvious it was  
3 only -- let me read this again to make sure.

4 Yeah, there's only two -- well, there's actually  
5 three people. There's also Thurman. But there's two  
6 people that are still in the department at this time  
7 that know about this conversation. And it's really  
8 problematic to me that you are going to name these two  
9 employees rather than just state what Thurman did,  
10 rather than just by stating he made offensive racist  
11 comments and I fired him because of these, that the  
12 Sheriff's memo was so much more explicit. It gets into  
13 the language and names the people who overheard the  
14 language. I --

15 **Q. Wouldn't --**

16 A. I don't think that's -- I think that's a -- a  
17 very misguided way to proceed in order to tell the  
18 members of the department why someone is being fired in  
19 order to reduce rumors. This almost makes it worse.

20 **Q. Wouldn't you agree that members of the**  
21 **department needed to know specifically what Thurman was**  
22 **found to have done?**

23 **And I'm not talking about the names of the**  
24 **people who were witnesses.**

25 **But -- I mean, wouldn't you say that they needed**

1 lieutenants to read this.

2 So, first off, they have to state the offensive  
3 language. They are going to read this document. Why  
4 you would make your lieutenants read this word -- this  
5 offensive word in front of -- let's say a roll call room  
6 or something is -- is beyond the norm. That is the  
7 wrong way to dispel rumors, let's say.

8 And then the second part of this is naming --  
9 and whether they are a victim or whether they are a  
10 witness or a complainant, whatever role that Kullman and  
11 Richmond played in this, you basically named them in  
12 front of the whole department. That every lieutenant is  
13 going to read this and let's say -- let's say by  
14 chance -- I'm sure the whole department knew about this.

15 But let's say by some chance that there actually  
16 is an employee out there that goes, oh, wow. I never  
17 heard about this. And then you, therefore, say and the  
18 people that know about this, their names are Deputy  
19 Tyler Kullman and Deputy Andrew Richmond. They are the  
20 ones that gave this information. Because of their  
21 testimony we now understand what exactly Corporal  
22 Thurman said.

23 And, again, I think probably most people knew  
24 about this. The officers -- this is going to be a very  
25 newsworthy and noteworthy event. And everyone is going

1 **to know that he made these horrible statements?**

2 A. I can see the Sheriff's motivation in saying,  
3 yes, here's -- as a result of this action. It was a  
4 result of saying these offensive words. This behavior,  
5 you've misrepresented the department and you have no  
6 position left here and, therefore, you are demoted and  
7 fired.

8 So I -- I think it is clear what the Sheriff's  
9 intention here -- is here. To -- to relay the  
10 seriousness of this allegation and to explain why this  
11 corporal no longer works here because of this behavior.

12 So it serves as a warning to others, hey, don't  
13 engage in racist behavior, particularly while you're  
14 working here. And it also serves to -- I think the  
15 goal, as written in the policy, is to reduce rumors.

16 So in answer to your question he's putting this  
17 information out there in order to reduce rumors.

18 I think that this goes overboard in its effort  
19 to reduce rumors. This almost -- this makes it worse.

20 **Q. And what makes it worse? The -- I guess I'm not**  
21 **understanding what makes it worse in terms of reducing**  
22 **rumors.**

23 A. Two things, specifically. One, you are  
24 writing -- you are writing down and -- in an official  
25 policy and an official memorandum you are directing

1 to know about it. I'm making a guess there, but it is  
2 based on a lot of training and experience. This just  
3 really becomes problematic.

4 Again, we're -- I'm using a hypothetical.  
5 Hypothetically, is there an employee or a group of  
6 employees that have never heard this before and now all  
7 of a sudden you are going to hear this offensive racist  
8 language and you are also going to hear the names of the  
9 people that reported. It's not best practices. And it  
10 really hurts those employees, because everyone knows who  
11 came forward.

12 **Q. But the report, again, doesn't -- the letter**  
13 **doesn't say who reported it; correct? It says who**  
14 **witnessed it.**

15 A. It does. In -- it does. It says, here's the  
16 two people. And it doesn't talk about that this was in  
17 roll call with a large group of officers present and  
18 everyone goes, who -- I wonder who came forward or I  
19 wonder who heard this? I wonder who reported this? I  
20 wonder if anyone was offended?

21 No, it names one of the two black officers on  
22 the department and the other -- the other officer,  
23 Deputy Kullman. So it names these two employees as the  
24 ones that they have the knowledge -- other than Thurman,  
25 they are the ones with the intimate knowledge of this --

1 these racist comments and -- and -- and then, you know,  
2 later on, it names Deputy VanPatten, too. Deputy  
3 VanPatten, apparently, you have some information that  
4 you related to internal affairs and you also came  
5 forward.

6 That's not how you encourage employees to report  
7 incidents like this. The Department has a  
8 responsibility to investigate this racist behavior and  
9 to react appropriately if they determine a sustained  
10 finding. Naming now three employees that heard -- you  
11 know, that can really stop people from coming forward.

12 They think, wow. The next time I hear something  
13 offensive -- or I have something that should be  
14 reported; right? We all have what we view as standards  
15 that police officers must follow these days,  
16 particularly with increased scrutiny that we've faced  
17 within the past couple years. And then someone reads  
18 this memo or they hear a lieutenant read this at roll  
19 call, that's going to really discourage anyone from  
20 coming forward and saying, you know, there is no way I'm  
21 getting my name read in front of roll call and everyone.  
22 I'm keeping quiet about this. I'm not going to say  
23 anything.

24 It really hurts the department by doing this.  
25 It really hurts these officers that came forward. They

1 don't anticipate changing any of the information that  
2 I've given, nor adding to it.

3 **Q. And if I understand you correctly, the**  
4 **additional materials that you reviewed, the depositions**  
5 **of Andrew Richmond, as well as of the Sheriff and the HR**  
6 **director for the County did not in any way alter or**  
7 **change these opinions that you identify in your report**  
8 **that we've gone over today; correct?**

9 A. I don't remember changing any of my opinions.

10 I think we had a -- a good-natured debate on  
11 some of them and went back and forth and tried to get to  
12 the heart of the matter. But I don't remember changing  
13 any of the opinions, no.

14 MR. KITSON: All right. Those are all the  
15 questions that I have for you today. I appreciate your  
16 time in working through this with me.

17 THE WITNESS: Thank you.

18 MR. KITSON: If your counsel has any  
19 questions or if we're --

20 MS. BARDEN: Yeah. I do need screen-sharing  
21 ability. I do have questions. I need screen-sharing  
22 ability.

23 C R O S S - E X A M I N A T I O N  
24 BY MS. BARDEN:

25 **Q. Mr. Sweeney, earlier there was discussion**

1 shouldn't be named because they did the right thing.  
2 They shouldn't have their reputations -- yeah, they were  
3 honest and they did come forward. But still, there's  
4 going to be a large group of officers that are going to  
5 look at them sideways, particularly on a veteran K9  
6 handler who, from what I read, appeared to be quite  
7 popular and well-known in the Spokane area. And these  
8 officers came out and put their reputations on the line  
9 to tell others, yeah, this is what he said. And -- and  
10 now you're named in front of your co-workers. It's  
11 really improper.

12 **Q. So I'm almost done.**

13 **You would agree, though, that the witnesses to**  
14 **each of the problematic statements were identified. It**  
15 **wasn't as though Deputy Richmond was the only person**  
16 **identified. Each of the other three witnesses --**  
17 **Kullman, Bitzer, and VanPatten -- were all also**  
18 **identified by name; correct?**

19 A. Yes, they were.

20 **Q. So we've gone through, we've talked about each**  
21 **of your opinions today in your report. Are there any --**  
22 **do you have any opinions that you've formulated related**  
23 **to this case that you expect to offer at trial that we**  
24 **haven't discussed at all today?**

25 A. Unless new information was presented to me, I

1 **regarding -- can you see the document that I pulled up,**  
2 **Mr. Sweeney?**

3 A. Yes, I can.

4 **Q. So this is from the Exhibit B -- I'm not sure**  
5 **what it was marked as -- that Mr. Kitson had brought to**  
6 **your attention that the first page is the notification;**  
7 **the second pages are these alleged questions that were**  
8 **asked during your examination. So that looks like -- in**  
9 **2018.**

10 **So my question for you is No. 6. There was no**  
11 **specific -- sorry. There was -- my apologies.**

12 **So No. 6, you know, I want to ask you, is this a**  
13 **basic question or is this more specific?**

14 A. Well, what the question is judging is your  
15 ability to do two things: One, either multitask or to,  
16 two, prioritize.

17 So the candidate gets the question and they  
18 probably can't do both; right? They have only got one  
19 air unit. So they have to pick the one that's more  
20 priority, as well as determine, you know, how close they  
21 are and where can they do the greatest help.

22 There might not be a right answer to this  
23 question. It might just be more of the ability of the  
24 candidate to specify and stick to a position. That I --  
25 I would go to the robbery or I would go to the burglary.

1 For me, I'm going to the robbery. That's a more  
 2 serious crime than the burglary. So I would rather  
 3 catch a robber and a more serious crime than the  
 4 burglar. And I would explain that to the panel.  
 5 So I think that's what it's trying to get them  
 6 to stick to a position and why they would make the  
 7 choice that they did.  
 8 **Q. Sure. So I guess my question to you is, is**  
 9 **would you agree that if you had this question before you**  
 10 **went into the interview that you would have more of an**  
 11 **advantage than another interviewee?**  
 12 A. Absolutely. Because it allows you to process,  
 13 as I just did in realtime, what's the best answer. And  
 14 then to formulate your answer and then to practice  
 15 stating it confidently so that you come off as competent  
 16 and confident when you answer.  
 17 **Q. So would you agree it was unfair if one**  
 18 **interviewee got this question ahead of time and another**  
 19 **interviewee did not?**  
 20 A. That would definitely provide an advantage,  
 21 specifically because it is a specific question. Yes.  
 22 **Q. So I'm going to switch over to this specific**  
 23 **document. This is from another deposition.**  
 24 **So this is kind of what you discussed with**  
 25 **Mr. Kitson, but he did not bring it in front of you.**

1 **Q. I want you to understand that this is the**  
 2 **context of this conversation and questioning is.**  
 3 A. Oh, yes, definitely.  
 4 **Q. So this is the highlighted portion. This is on**  
 5 **page 7.**  
 6 A. Okay.  
 7 **Q. All right.**  
 8 A. Do you want me to read all this? Or are you  
 9 going to ask me specific questions about it?  
 10 **Q. Yeah, I'll get to the specific part of it.**  
 11 A. Okay. I can see that the interviewer is still  
 12 asking her about the oral board.  
 13 **Q. Okay. So we'll go down here. Sorry about that.**  
 14 **Okay. So this is where she -- Tim Hines said,**  
 15 **"How did you already know what the questions were going**  
 16 **to be?"**  
 17 **"Some of the guys from the ASU Unit, I went to**  
 18 **them and I asked. What do I need to do to prepare for**  
 19 **it? And they kind of gave me a heads-up."**  
 20 **Then Tim Hines says, "Okay. So, can you be a**  
 21 **little more specific about what kind of gave you a**  
 22 **heads-up? Did they give you the questions?**  
 23 **"Not all of them. No."**  
 24 **"Any of them?"**  
 25 **"One of them was the robbery one. But they said**

1 **And this is the recorded interview of Deputy Krystal**  
 2 **Bitzer and it was, I think, marked as -- I could tell**  
 3 **you real quick.**  
 4 **But it is in the exhibit that's the 30(b)(6)**  
 5 **deposition of the Sheriff. And it's been provided by**  
 6 **Spokane. This is SC Richmond 048209 through SC**  
 7 **Richmond 048228.**  
 8 **Sorry I'm scrolling really fast. I just want to**  
 9 **bring you to the attention of the part of -- KB is**  
 10 **Krystal Bitzer. TH is Tim Hines. He's the**  
 11 **interviewee -- or the interviewer of the interviewee**  
 12 **regarding this investigation of 20 -- 2019-0014.**  
 13 **So I'll have you kind of read over this for just**  
 14 **a moment, and then I will go over the highlighted**  
 15 **portions with you as we go down.**  
 16 A. All right. You can go down. And you can  
 17 scroll.  
 18 Okay. So she's describing going on flights,  
 19 which I would expect that.  
 20 All right. You can scroll down.  
 21 And I'm just going to the yellow.  
 22 **Q. Yeah. We'll get to the -- you understand that**  
 23 **she's getting questions about the ASU unit in her**  
 24 **interview?**  
 25 A. All right.

1 **it is pretty much like a normal oral board interview."**  
 2 **So I will stop there. So she did get one of**  
 3 **the -- the robbery one? The one I highlighted in the**  
 4 **previous document, Exhibit B, where it was the robbery**  
 5 **question.**  
 6 **So Mr. Kitson was conveying to you that she only**  
 7 **got a heads-up. But is this more than a heads-up,**  
 8 **giving a specific question?**  
 9 MR. KITSON: Objection to form.  
 10 THE WITNESS: It appears from what Bitzer is  
 11 saying here that the heads-up -- and I would have liked  
 12 the interviewer to have honed in on this a little bit  
 13 more.  
 14 But she says, "Not all of them, no."  
 15 And -- and Tim says, "Any of them."  
 16 And she says, "One of them was the robbery  
 17 one. And they said it's pretty much like a normal oral  
 18 board interview."  
 19 So what she's not stating is -- is she's  
 20 telling about the robbery question, but the follow-up  
 21 question that I would have liked to have seen is, oh,  
 22 tell me about the robbery question. What did he say  
 23 about it? You know, and then did -- this was Thurman  
 24 she said she was talking to; is that right?  
 25 **Q. No. Acosta.**

1 A. Okay. Oh, this is Acosta.  
 2 **Q. Yeah. This is -- down here she talks about**  
 3 **Acosta.**  
 4 A. Yeah. So I would -- I would love -- no.  
 5 Let's -- let's back up on that.  
 6 I would have liked to hear a more thorough  
 7 question there so we could actually get into did Acosta  
 8 provide one of the questions on the interview panel to  
 9 an interviewee and was that improper or not? I mean,  
 10 that's the big question here.  
 11 And I would have liked Tim to expand on that a  
 12 little bit and -- and really hone in on was she given  
 13 confidential information that she should not have been  
 14 given? Or is this to be expected that if you are  
 15 inquisitive and curious and you get to know people in  
 16 the unit that they basically tell you all the questions  
 17 that are there.  
 18 It's -- it's a hard line to define. And I'm not  
 19 sure that I have enough information right now to render  
 20 an opinion on it.  
 21 But based on what she says, she knew there would  
 22 be a robbery question.  
 23 And it -- it requires me to then do a bit of  
 24 guesswork. Does she really know the specifics --  
 25 specifics of the question? And that she's going to

1 **deposition.**  
 2 **(Exhibit 7 was marked.)**  
 3 BY MR. KITSON:  
 4 **Q. This is the recorded interview of Deputy Acosta**  
 5 **conducted by Sergeant Hines on May 27th, 2019.**  
 6 **I'm going to scroll down here to page 10. Let's**  
 7 **see. So just to give you a little context here,**  
 8 **deputy --**  
 9 MS. BARDEN: I don't have -- I'm sorry to  
 10 interrupt you, but I don't see any Bates numbers on  
 11 there.  
 12 Can you give me the Bates numbers for this?  
 13 MR. KITSON: I'm not sure I can at the  
 14 moment, because I'm not sure I have my Bates -- I know  
 15 you have it. I'll give you a second to look for it and  
 16 find it. And I'll look for a Bates version now as well  
 17 if you would like.  
 18 MS. BARDEN: I got it.  
 19 MR. KITSON: Okay. Just for record --  
 20 sorry, Heather. I didn't mean to pull up a non-Bates  
 21 version.  
 22 What is the Bates on page 10?  
 23 MS. BARDEN: SC Richmond 047873.  
 24 MR. KITSON: Okay. I will make sure that  
 25 the copy I provide the court reporter to make part of


1 ask -- she's going to be asked to debate whether to go  
 2 on a burglary call or a robbery call.  
 3 So I think that's why I put an if in my report.  
 4 I need more information to really get to the  
 5 bottom of this and -- and, unfortunately, the  
 6 interviewer didn't ask the required questions for me to  
 7 answer that fully.  
 8 I will say this, it does appear, based on what  
 9 you just showed me, that she knew there would be a  
 10 robbery question.  
 11 Potentially, that is unfair to the other  
 12 candidates. And potentially, that Deputy revealed more  
 13 information than he or she should have.  
 14 MS. BARDEN: Thank you.  
 15 I don't think I have any other questions at  
 16 this time.  
 17 MR. KITSON: I just have -- I just have a  
 18 follow-up.  
 19 R E D I R E C T E X A M I N A T I O N  
 20 BY MR. KITSON:  
 21 **Q. Give me a second here, please.**  
 22 **All right. So I'm going to share my screen.**  
 23 **And this is not a document that is in your box,**  
 24 **but I can -- I will send this to our court reporter,**  
 25 **because I'm going to mark it as Exhibit 7 to the**

1 the record is the Bates version.  
 2 BY MR. KITSON:  
 3 **Q. Okay. So going back to Acosta's interview here,**  
 4 **he's talking about how -- at the top, he says, "I know**  
 5 **that Bitzer came and asked questions about the unit."**  
 6 **And Tim Hines -- who is TH -- asks, "So did you**  
 7 **give her any advice or anything about what to expect**  
 8 **for, after applying for the unit prior --"**  
 9 **And then Acosta says, "Just like, just the stuff**  
 10 **to know like a F.L.I.R. and a spotlight, you know,**  
 11 **pre-flight stuff. Have an idea of it, your**  
 12 **availability, and we'll be called out and kind of like**  
 13 **things you have to go through and whatnot of a unit."**  
 14 **And Hines says, "Okay. Did you provide her any**  
 15 **advance notice as to what some of the questions she**  
 16 **could expect to be asked might be?"**  
 17 **And Acosta says, "No."**  
 18 **And Hines says, "So, if Deputy Bitzer told me**  
 19 **that the two of you actually talked about quite a few of**  
 20 **the questions that she was subsequently asked on her**  
 21 **oral board, that wouldn't be true?"**  
 22 **And then Acosta says, "I don't recall telling**  
 23 **her any of the questions on there."**  
 24 **Hines says, "You don't recall discussing any of**  
 25 **the questions that she might expect to be asked during**

1 the oral board?"  
 2 Acosta says, "I --  
 3 "I'm telling you --" and he goes on to say --  
 4 and Hines says, "She told me that you did."  
 5 Acosta goes, "Okay. Well, I would recall like  
 6 yeah just you know our mission statement, and probably  
 7 like hours that we'd go up and fly, and stuff just  
 8 regarding the unit. Just have an idea what you'll know  
 9 about."  
 10 And Hines says, "Do you know if she talked to  
 11 anybody else that she may be confusing you with?"  
 12 Acosta goes, "I'm not sure. I know she might  
 13 have spoke to Knight or other guys on the unit. I don't  
 14 recall."  
 15 And I'm just going to scroll down.  
 16 Here it says, "Do you have any recollection of  
 17 sharing questions with her?"  
 18 And he says, "I don't, yeah, I don't recall  
 19 doing that, no."  
 20 So apologies for a long reading here.  
 21 But according to Deputy Acosta, he didn't recall  
 22 sharing specific questions with Deputy Bitzer; correct?  
 23 A. That's what it sounds like.  
 24 Scroll up just a little bit more there.  
 25 Q. Sure. Yeah.

1 on your view that it would give her an unfair advantage  
 2 over others?  
 3 A. Absolutely. If you know that question ahead of  
 4 time, you could prepare your answer. Whereas someone is  
 5 speaking extemporaneously off the top of their head is  
 6 going to have a much more difficult time processing and  
 7 then giving that answer.  
 8 It doesn't mean they wouldn't give a fine  
 9 answer. In fact, they might be able to give the best  
 10 answer. But it certainly is an advantage if you have  
 11 thought about the question ahead of time so that you can  
 12 then give the best answer possible that gives yourself  
 13 an unfair advantage over the other candidates.  
 14 MR. KITSON: I don't have any further  
 15 questions.  
 16 MS. BARDEN: Neither do I. Thank you.  
 17 THE VIDEOGRAPHER: This concludes the  
 18 deposition. We are going off the record. The time now  
 19 is 12:32 p.m.  
 20  
 21 (Deposition concluded at 12:32 p.m.)  
 22  
 23 (Signature was reserved.)  
 24  
 25 -o0o-

1 A. Let's get his answer there.  
 2 Q. Yeah.  
 3 A. Up further. Oh.  
 4 "She told me that you did."  
 5 "Okay. Well, I would recall like yeah just know  
 6 our mission statement, and probably like hours that we'd  
 7 go up and fly and stuff just" --  
 8 I think in answer to your question, it sounds  
 9 like Acosta denies providing any questions ahead of time  
 10 to Bitzer.  
 11 Q. Right. So I guess based on Bitzer's testimony  
 12 and Acosta's testimony, would you stand by your, I  
 13 guess, stated opinion that -- I think you said earlier  
 14 that you can't make a conclusion that one way or another  
 15 as to specifically whether or not Bitzer received notice  
 16 of specific questions as they pertain to her interview?  
 17 A. Yeah, we've got conflicting information here,  
 18 which hampers my ability to say absolutely yes or no  
 19 that Bitzer was provided questions ahead of time which  
 20 provided her an advantage over the other candidates. I  
 21 can't really say.  
 22 If she was, it -- it definitely is problematic,  
 23 but I can't say for sure based on this conflicting  
 24 information.  
 25 Q. And your opinion that it's problematic is based

1  
 2 CERTIFICATE  
 3 STATE OF WASHINGTON )  
 4 ) ss.  
 5 COUNTY OF KITSAP )  
 6  
 7 I, CRYSTAL R. McAULIFFE, a Certified Court  
 8 Reporter in and for the State of Washington, do hereby  
 9 certify that the foregoing transcript of the videotaped  
 10 videoconference deposition of DAVID T. SWEENEY, having  
 11 been duly sworn on FEBRUARY 15, 2022, is true and  
 12 accurate to the best of my knowledge, skill and ability.  
 13 IN WITNESS WHEREOF, I have hereunto set my hand  
 14 and seal this 24th day of February, 2022.  
 15  
 16   
 17 CRYSTAL R. McAULIFFE, RPR, CCR #2121  
 18  
 19  
 20  
 21  
 22  
 23  
 24  
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