

Deposition of DAVID SWEENEY taken before
CYNTHIA A. SPLAYT, CSR No. 084.003295, taken remotely
via Zoom videoconference, pursuant to the Federal
Rules of Civil Procedure for the United States
District Courts pertaining to the taking of
depositions, commencing at the hour of 10:58 a.m. CST
on the 11th day of July, A.D., 2022.

1 APPEARANCES (Via Zoom):

2 SHAMBEE LAW OFFICE, LTD.
3 By: MS. JUNEITHA SHAMBEE
4 701 Main Street, Suite 201A
5 Evanston, IL 60202
6 (773) 741-3602
7 juneitha@shambeelaw.com

8 Appeared on behalf of the Plaintiff;

9 CITY OF CHICAGO DEPARTMENT OF LAW
10 FEDERAL CIVIL RIGHTS LITIGATION DIVISION
11 By: MS. MICHELE MCGEE
12 Two North LaSalle Street, Room 420
13 Chicago, IL 60602
14 (312) 744-6776
15 michele.mcgee@cityofchicago.org

16 Appeared on behalf of the Defendants.

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23 REPORTED BY: CYNTHIA A. SPLAYT, CSR

24 CSR NO.: 084.003295

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EXHIBIT INDEX

MARKED FOR IDENTIFICATION

Sweeney Deposition Exhibit

A	David Sweeney's Expert Report and CV	17
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NOTE: Exhibits attached.

THE COURT REPORTER: Before we proceed, pursuant to FRCP 30(b)(4) regarding remote electronic means depositions, I will ask counsel to agree on the record that there is no objection to this Certified Shorthand Reporter administering a binding oath to the witness remotely.

Counsel, please state your name, the party you represent and your agreement on the record.

MS. SHAMBEE: Attorney Juneitha Shambee. I represent Aidan O'Brien in this matter.

THE COURT REPORTER: And do you agree?

MS. SHAMBEE: I agree. Yes.

MS. McGEE: Michele McGee for Defendants.
No objection.

THE COURT REPORTER: And, Mr. Sweeney,
please raise your right hand to be sworn.

(Witness sworn remotely.)

DAVID SWEENEY,
called as a witness herein, having been first duly
sworn, was examined upon oral interrogatories and
testified as follows:

DIRECT EXAMINATION

BY MS. MCGEE:

Q. All right. Let the record reflect that

1 this is the discovery deposition of David Sweeney
2 being taken pursuant to notice in the matter of
3 Aidan O'Brien versus City of Chicago, et al., 20 CV
4 2260, currently pending in the Northern District of
5 Illinois. This deposition is being taken pursuant to
6 the Federal Rules of Civil Procedure and local
7 relevant rules.

8 Sir, my name is Michele McGee. I
9 represent each of the Defendants in this matter, and
10 I'll ask Ms. Shambee to introduce herself for the
11 record.

12 MS. SHAMBEE: Again, for the record,
13 Attorney Juneitha Shambee, and I represent the
14 Plaintiff in this matter.

15 BY MS. MCGEE:

16 Q. All right. I'm going to go over a few
17 grounds rules that we're going to follow today.

18 First of all, if you have any
19 questions about what I'm asking you, if you don't
20 understand what I'm saying or if there's some type of
21 technology problem where you can't hear me or you're
22 not hearing everything I'm saying, I want you to let
23 me know. If you answer any question that I ask of
24 you today, I'm going to assume that you both heard

1 and understood that question. Does that make sense?

2 A. Yes, it does.

3 Q. Okay. Today, it's going to be important
4 that you answer out loud with words because our court
5 reporter cannot transcribe nonverbal gestures. She
6 cannot transcribe uh-uhs or uh-huhs, so I will need
7 you to answer with words today. Does that make
8 sense?

9 A. Yes, it does.

10 Q. Okay. The reporter can only transcribe one
11 of us speaking at a time, so I'm going to ask you to
12 let me finish my question in its entirety before
13 answering. Similarly, I'm going to allow you to
14 finish your answer in its entirety before asking the
15 next question. Okay?

16 A. That sounds fine.

17 Q. If at any time you need a break, just let
18 me know. The only thing I am going to ask is if
19 there is a question pending, I'm going to ask you to
20 answer that question before we take the break, but,
21 otherwise, anytime that you need a break for whatever
22 reason whatsoever, just tell me you need a break.
23 Okay?

24 A. That sounds good.

1 Q. Okay. All right. Do you have any
2 documents before you today, like, as you're seated at
3 your work space there?

4 A. Yes, I do.

5 Q. Okay. What documents do you have before
6 you today?

7 A. I have items that Ms. Shambee sent to me,
8 and those include a couple video files, the report
9 that I wrote and the police officer's report.

10 Q. Okay. So if at any time during the
11 deposition I ask you a question and you are planning
12 to refer to either a document that's on your computer
13 screen or a written document that might be printed
14 before you, I'm just going to ask that you let me
15 know that you're looking at that document as you're
16 giving the answer. Since we are not in the same
17 physical location, if you're just going to narrate
18 what you're doing, that would be helpful for
19 everyone. Okay?

20 A. That sounds fine.

21 Q. Okay. Have you given a deposition before?

22 A. Yes, I have.

23 Q. How many depositions have you given before?

24 A. Four, I believe.

1 Q. Okay. And the four depositions that you
2 gave, were these cases where you were retained as an
3 expert witness or were any of these depositions from
4 your employment as a police officer?

5 A. The four that I referenced were from my
6 work as an expert witness.

7 Q. Okay. Have you given -- sorry. Go ahead.

8 A. Yeah. There was -- there was depositions
9 that I provided as a police officer as well. I think
10 they mostly dealt with administrative traffic
11 matters, like DUIs and things like that. Most of my
12 legal testimony was on the stand, but I believe -- I
13 do remember some depositions, but nothing that really
14 stands out.

15 Q. So let's talk about the four depositions as
16 an expert witness. What type of cases were those?

17 A. I'm going to refer to my -- okay. So I
18 see, actually, three here, so this would be the
19 fourth.

20 Q. Okay.

21 A. Two of them were traffic fatality
22 collisions, and one was a sexual harassment case out
23 of Spokane. Sorry. Going back to the collisions,
24 one was Nampa, Idaho. The other one was Big Horn

1 County Montana, and then the sexual harassment case
2 was in Spokane County, Washington.

3 Q. Now, the two traffic fatality collisions,
4 were these cases involving some type of police
5 department or law enforcement?

6 A. Yes, they were.

7 Q. Okay. And were these traffic collisions as
8 a result of some type of police pursuit?

9 A. Yes. Both were a result of a police
10 pursuit.

11 Q. The sexual harassment case, was this a
12 police-involved case as well?

13 A. Yes, it was.

14 Q. And the plaintiff in that case, can you
15 describe that person's relationship to the police
16 department that was sued?

17 A. Yes. He was a former employee. He since
18 left Spokane County and went to work for the city of
19 Spokane, so he was experiencing -- you know, now that
20 I think about it, it was not sexual harassment. It
21 was racial harassment. He experienced some
22 harassment within the department that he felt led to
23 his effective dismissal from the department, so he
24 left and then brought suit against Spokane County.

1 Q. And so with respect to -- let's talk first
2 about the Spokane County case. What was the scope of
3 your expert opinion? What were the topics that you
4 were retained to give an opinion on?

5 A. When I was with the Seattle Police
6 Department as a detective sergeant, I worked for
7 several years investigating EEO, equal employment
8 opportunity cases, so I have a lot of training and
9 experience in investigating EEO matters, specifically
10 in this case, racial harassment.

11 So the individual said that because of
12 the actions of a supervisor, he felt racially
13 harassed within the department, and then he also felt
14 that the department did not adequately protect him as
15 a whistleblower by making his complaint public to the
16 department so that everyone knew he was the one that
17 complained, and this led to this -- I can't
18 remember -- I think it was a sergeant that got fired,
19 so it was -- it had a lot of notoriety within the
20 Spokane County Police Department -- I guess that's
21 the sheriff's department. Spokane County Sheriff's
22 Department.

23 Q. And then for the case that you had in Nampa
24 County -- Nampa County or Nampa, Idaho?

1 A. Nampa is a city in Idaho.

2 Q. Okay. Tell me about the scope of your
3 opinion in that case.

4 A. In that case, there was a high-speed police
5 pursuit of a subject that was wanted for a traffic
6 violation. The individual was in a truck and
7 speeding over a bridge at probably over 100 miles an
8 hour, if I remember correctly, and ran into a
9 Mustang, basically, cutting the vehicle in half, and
10 the two people inside died as a result of the
11 collision.

12 Q. And the case you had in Big Horn County,
13 Montana, what was the scope of your opinion in that
14 case?

15 A. That was a similar one where there was a
16 police pursuit of a driver. The passenger was
17 ejected from the vehicle after a collision and died
18 at the scene, and the lawsuit was against Big Horn
19 County for an improper pursuit which led to the
20 death, and in both these cases, I felt that the
21 police pursuits were excessive, that the crime that
22 the individuals were wanted for did not necessitate a
23 high-speed pursuit such as both of these.

24 Q. Okay. Have you ever testified in court?

1 A. Many times.

2 Q. Have you ever testified in court as a
3 retained expert?

4 A. No. None of my expert witness cases have
5 made it to trial, and I think COVID probably had
6 something to do with that, but, also, a lot of cases,
7 as you know, settle out of court, so I have not
8 actually testified in court as a witness, expert
9 witness.

10 Q. When you were hired as an expert witness,
11 are you normally hired by the plaintiffs' side or the
12 defense side?

13 A. I've been hired by both.

14 Q. What percentage of your work is
15 plaintiff-based?

16 A. I'm going to refer to my CV, which is at
17 the end of my expert witness report. I would say
18 it's about 70 percent plaintiff, maybe 30 percent
19 defendant.

20 Q. Have you been retained as an expert for any
21 noncivil cases? So have you ever been retained as an
22 expert for a criminal case?

23 A. Again, looking at my CV, make sure the
24 question -- you want to know if I've been retained as

1 an expert for a criminal case?

2 Q. Yeah. For any type of noncivil case, so
3 criminal would be --

4 A. Understood.

5 Q. -- one example or perhaps an administrative
6 hearing, something that's a noncivil case.

7 A. All of these look like civil cases that I
8 can see.

9 Q. Okay.

10 A. So no criminal work as an expert witness.

11 Q. When was the last time you testified in
12 court as a police officer?

13 A. The last time I remember was probably maybe
14 2014 when I was a sergeant in SPD SWAT.

15 Q. And this is in the state of Washington?

16 A. Yes, it is.

17 Q. Have you ever testified in court in the
18 state of Illinois?

19 A. No.

20 Q. And what type of case did you testify in in
21 2014?

22 A. There was an inquest jury convened in order
23 to determine the facts surrounding a police-officer
24 shooting of an armed suspect. We were dealing with

1 him on a SWAT operation, and he pointed his weapon at
2 the SWAT officer and was shot as a result and then
3 later died, so I was brought in as the sergeant who
4 was in charge of the scene to give information about
5 the facts of the case.

6 Q. Prior to that testimony, how long had it
7 been since you testified in court?

8 A. I do remember some other criminal case
9 testimonies when I was a sergeant in SWAT between
10 2010 and 2014. I don't remember what they are right
11 now, but those were probably the prior times.

12 I think after I was promoted to
13 lieutenant in 2015, I was never called to testify
14 after that because you're mostly supervising the work
15 of others rather than doing the work so to speak, so
16 you don't get called to testify as often.

17 But I do remember some criminal court
18 testimony that I gave as an SPD SWAT sergeant, but I
19 couldn't tell you what the cases are right now. They
20 were some criminal matters, I'm sure.

21 Q. Have you ever been a defendant to any
22 litigation?

23 A. Long ago, perhaps 25 to 30 years, I was
24 sued by a constitutionalist, someone that believes

1 that the laws of the state, county and the nation do
2 not apply to him, and it was after a simple traffic
3 stop for a DUI, so I was sued for that as a
4 defendant, but I believe it was dismissed in court.

5 Q. Was this in the state of Washington?

6 A. Yes, it was.

7 Q. Was it a federal or a state court case?

8 A. I think he brought federal suit, if I
9 remember correctly. I'm pretty sure it was federal.

10 Q. And was that the only time you've been a
11 party to litigation?

12 A. That's the only thing that comes to mind
13 right now. Correct.

14 Q. Have you ever sued anyone?

15 A. I don't believe -- in 1985, I was the
16 victim of a motorcycle accident, and I don't remember
17 if I sued. The attorney negotiated a settlement.
18 There might have been a lawsuit, but it could have
19 also been a threat of lawsuit. It was a long time
20 ago. I don't -- I don't remember that much about the
21 legal proceedings.

22 Q. Sure. I mean, 1985 is a couple years -- a
23 couple years back.

24 A. Yes, it was.

1 Q. I still remember 1985, if that makes you
2 feel better.

3 A. Oh, good. I'm glad.

4 Q. All right. Tell me what you did to get
5 ready for the deposition today.

6 A. Sure. Obviously, prior to working with
7 Ms. Shambee, I reviewed all of the material that she
8 sent me, and again, referring to my report, she sent
9 me the original filed Complaint, the Chicago Police
10 Department Incident Report, the Chicago Police
11 Department Arrest Report and two body-worn videos,
12 one from Officer Davis and one from Officer Brown.
13 It looks like I mistitled those in section -- line 4
14 and line 5 on my report, but one was Davis and one
15 was Brown. So in preparation for our deposition
16 today, I watched both videos, and I reviewed my
17 report that I made.

18 Q. Okay. All right. So I want to -- I'm
19 going to show a document to you on screen. Give me
20 one second. All right. Can everyone see this
21 document?

22 A. Yes.

23 MS. McGEE: Okay. So I'm going to mark
24 this as Exhibit A. Just for the record, this is a

1 17-page document, which includes what purports to be
2 your report, and then on page 12, it begins with your
3 curriculum vitae.

4 (Sweeney Exhibit A marked for
5 identification.)

6 BY MS. McGEE:

7 Q. Is this your complete CV? I'm going to
8 scroll down so you can see it.

9 A. Yes, it is.

10 Q. Is there anything that's not on the CV that
11 you wish to add to the CV at this point in time?

12 A. If it's important, I could look at my
13 current CV. I probably added a few cases, maybe one
14 or two since working with Ms. Shambee, but I'm not
15 positive of that.

16 Q. Okay. When you say "added a few cases,"
17 are you talking about adding a few cases to your
18 expert witness case list?

19 A. Correct.

20 Q. Okay.

21 A. These were not any depositions or legal
22 testimony, but I might have added a case or two since
23 then.

24 Q. Okay. And do you have access to that

1 information now?

2 A. Yes, I do.

3 Q. Okay. So why don't you take a look at that
4 information now. I'm on now on page 16 with your
5 expert witness cases, and it looks like these go
6 through May of 2022.

7 A. All right.

8 Q. So if there is anything to add, let me
9 know.

10 A. I'm comparing the two right now, and,
11 actually, they look identical, so I don't have
12 anything specific. I believe since then, I may have
13 consulted with some people, different organizations,
14 but I have not written anything or added anything of
15 note to the case, so what you see there is an
16 accurate representation of my CV.

17 Q. Okay. Got it.

18 All right. So I know in your -- your
19 report, you indicate that you've -- you've authored
20 one article, is that correct?

21 A. Yes.

22 Q. Tell me about that article.

23 A. It was an article about de-escalation,
24 about the skills that a police officer needs in order

1 to successfully negotiate their way through a
2 high-stress environment and the importance of -- it
3 was designed primarily for attorneys who might
4 represent municipal clients, and the advice that I
5 gave was to make sure that if you work with a
6 municipality, that you meet with the leaders of that
7 department, whatever it might be, city or county, and
8 make sure that they have a de-escalation policy, make
9 sure that they have a section in their manual about
10 de-escalation, make sure that they train on what
11 benefits can come from de-escalation rather than
12 resolving an incident through use of force, so that
13 was the emphasis of the article.

14 Q. And how did the article come about? Were
15 you asked to write it or did you volunteer to write
16 it?

17 A. Yes, I was.

18 Q. Okay. Who asked you to write it?

19 A. My wife happens to be the executive
20 director of the Washington Defense Trial Lawyers
21 Association.

22 Q. Okay.

23 A. So she said would you like to write an
24 article for our fall publication, and I said sure, so

1 obviously, I have a connection there, but she didn't
2 help me write the article at all. It was all my own
3 words.

4 Q. Okay. Is your wife a lawyer?

5 A. Yes, she is.

6 Q. Okay. And what type of work does she do?
7 Like what type of legal work?

8 A. As I said, she's the executive director of
9 a legal foundation, so the Washington Defense Trial
10 Lawyers Association assists defense attorneys across
11 the state of Washington. It's a legal organization
12 that provides CLEs, lunchtime -- lunch and learns and
13 annual meetings and board meetings, all those types
14 of things.

15 Q. The article that you wrote, was this
16 article peer-reviewed by anyone in your field of
17 study?

18 A. No.

19 Q. Tell me about your educational background.

20 A. Sure. It's a wide and varied tale. I
21 started at Shoreline Community College, and before I
22 finished my two year AA, Associate's of Arts degree,
23 I was hired by the Seattle Police Department, so I
24 always told myself that I could go back and finish my

1 AA, and I did about 12 years later, so I was probably
2 in my late 30s at that point.

3 Fired up with the success of my
4 educational achievements, I then was admitted to the
5 University of Washington, so I received my B.A. in
6 law, society and justice in -- I was in my 40s, so
7 this must have been early 2000s, right.

8 And since then, when I left the
9 Seattle Police Department in 2021, I retired in March
10 2021, I took a job as the number 2 in command at
11 Oregon State University. We were starting a
12 brand-new police department there, and they needed my
13 assistance, so I thought I might as well take
14 advantage of their educational incentive, and I am
15 currently very close to achieving my Master's in
16 public policy at Oregon State University.

17 I'm also a graduate of the
18 Northwestern School of Police Staff & Command, a
19 nationally recognized program which teaches police
20 leaders across the country. In fact, they liked me
21 so much that they have added me to their faculty, so
22 I'm an adjunct instructor for Northwestern
23 University.

24 Q. And what do you teach at Northwestern? Is

1 this Northwestern University or is this -- like
2 Northwestern University in Evanston in Chicago,
3 Illinois or this is a different university?

4 A. No. It's a Northwestern University in
5 Evanston, Illinois.

6 Q. Evanston, okay.

7 A. Yes.

8 Q. And what do you teach at Northwestern?

9 A. To be honest, I have not taught anything
10 for them. They have me signed up as an instructor
11 for three or four different courses on police
12 leadership, performance reviews and, I think,
13 decision-making, so those are my upcoming classes,
14 but I have not taught them yet, but I am -- I am an
15 instructor. I can call myself that.

16 Q. Okay. Got it. So you're officially an
17 instructor but have not actually implemented that
18 title, would that be a fair statement?

19 A. No, I have not.

20 Q. Okay. Have you ever taught classes at any
21 other place?

22 A. Other than with the Seattle Police
23 Department, I taught a lot of classes. I was
24 involved for many years as the trainer for the

1 Seattle Police Department. Outside of that, I have
2 not taught in an educational setting. It was
3 strictly training settings, whether classroom or in
4 the field for police officers.

5 Q. Okay. What type of topics did you teach on
6 at the Seattle Police Department?

7 A. I'm going to refer to my CV.

8 Q. Sure.

9 A. Because it has a nice list there. Minimize
10 my Zoom here, so I can see it.

11 All right. So here's some of the
12 topics that I have taught. Equal employment
13 opportunity or EEO; performance reviews for
14 employees; early intervention for police officers;
15 early intervention for police supervisors; effective
16 supervision of police personnel; tactical
17 de-escalation; care under fire; integrated tactics
18 and use of force; active shooter and rapid
19 intervention; crisis intervention training;
20 postacademy training for new officers; Taser
21 instructor; CPR instructor; emergency vehicle
22 operations course; and legal standards for police and
23 also --

24 Q. Any other -- I'm sorry. Go ahead.

1 A. The Seattle Police Department was under
2 consent decree from the Department of Justice, so I
3 also trained other local and federal police
4 departments in crisis intervention, tactical
5 de-escalation and use of force. These were similar
6 to but maybe expanded for a wider variety audience
7 because they wanted to come --

8 Basically, it was kind of interesting.
9 After Seattle became involved in the consent decree,
10 we upped our standards, so the other departments now
11 came to us and wanted to find out how are you doing
12 this or what are you doing or what are you training,
13 including the DOJ, Department of Justice. So that
14 was -- I won't say a lot of training, but I have
15 trained other members from the law enforcement
16 community.

17 Q. Okay. What other police departments have
18 you provided training for?

19 A. The only two that come to mind are,
20 obviously, Seattle Police Department, I was there for
21 34 years, and the last year at Oregon State
22 University.

23 So I was tasked with starting our
24 training program and training brand-new police

1 officers, security officers, the police department
2 there at Oregon State University, so we had a variety
3 of training classes very similar to what I listed
4 before. Maybe not as extensive because it was our
5 first year, so we have to walk before we can run, but
6 a wide variety of training that I provided there for
7 the department.

8 Q. Okay. How many police officers are at
9 Oregon State University?

10 A. I believe about 12. Yes.

11 Q. Does that include you?

12 A. That included me, and I left there in March
13 of this year, so I only worked there for a year.

14 Q. And why did you leave?

15 A. It was too far from family. My family was
16 still living here in Seattle, and I was living in
17 Corvallis at Oregon State University, so we thought
18 we might try it for a while, but it ended up being
19 too -- I left my wife with too much work around the
20 house and with our three children.

21 Q. All right. And then since you left Oregon
22 State University, have you had any other law
23 enforcement jobs?

24 A. No.

1 Q. All right. So I want to talk a little bit
2 about your time at the Seattle Police Department, so
3 you told me just a few minutes ago you worked there
4 for 34 years?

5 A. That's correct. Not quite 34. 33 and a
6 fraction. 33 1/2 or 33 3/4, but I call it around 34
7 years.

8 Q. I feel like we can round up at that point,
9 too.

10 A. I think so. Thank you.

11 Q. All right. So let's just say, to keep it
12 simple, approximately 34 years at the Seattle Police
13 Department. You indicated before that you left
14 pursuant to retirement?

15 A. That's correct.

16 Q. While you were at the Seattle Police
17 Department, were you ever the subject of any
18 disciplinary proceedings?

19 A. I remember two complaints in my 34 years.
20 One was unfounded, and one I received a memo -- I
21 think I received a memo in my file.

22 Q. When you say a memo in your file, is that
23 like a written reprimand or something like that?

24 A. I don't think it rose to the level of

1 written reprimand, if I can remember correctly.

2 There was no discipline that resulted. It was a very
3 minor complaint that didn't actually involve me, but
4 I kind of got looped into it, so that's the only
5 thing. I think I remember a memo to remind me to do
6 something, so we can go into it if you want, but it
7 was -- it was fairly minor.

8 Q. What were they claiming was the issue?

9 A. I was the administrative lieutenant for the
10 North Precinct. Actually, I was the operations
11 lieutenant for the North Precinct, which means you're
12 the acting captain in many cases. A citizen called
13 to complain about officers' lack of response, and I
14 remember discussing the issue with the citizen and
15 saying, you know, we have to prioritize. We have,
16 you know, a certain number of calls that probably
17 exceed the number of officers that we have, but, you
18 know, we'll do our best, but you might have to wait,
19 and they didn't appreciate the answer, so it was one
20 of those silly things where it's true, but, perhaps,
21 I could have phrased it better or made -- you know, I
22 don't want to make promises that I couldn't keep --

23 Q. Yeah.

24 A. -- is, essentially, the way I viewed it, so

1 the memo served to remind me to, you know -- I don't
2 know. Would I pull an officer off the street to go
3 directly to the citizen's house? I probably wouldn't
4 do it, so that was what the memo was.

5 Q. Got it.

6 A. But I have to say I disagreed with it
7 because we have -- we had many more calls than the
8 officers can handle, so our dispatch center did a
9 good job of prioritizing calls, and if it was a crime
10 in progress, especially a felony crime, you're,
11 obviously, going to get top of the list. Or a
12 property crime or old crime that has already occurred
13 and there's no suspects present, you might have to
14 wait for the police response, so that's what it was.

15 Q. Did you grieve that or file any type of
16 appeal?

17 A. No.

18 Q. Was it a grievable memo?

19 A. I believe I could have written to the chief
20 of police after a year and asked that the memo be
21 removed, but I considered it such a minor issue that
22 I don't believe I ever did that.

23 Q. Are you currently certified as a law
24 enforcement officer?

1 A. When you are certified in the state of
2 Washington, you have two years from the date of last
3 service in order to rehire. Now, as I talked about I
4 went down to Oregon State University where I was also
5 certified by the state of Oregon, so I think if I
6 wanted to work for a law enforcement agency in the
7 state of Washington right now, I believe I would
8 still be able to be hired without returning to the
9 police academy, so thinking this through in answer to
10 your question, I believe I am certified to be a
11 police officer in the state of Washington currently,
12 but at some point, that will expire.

13 Q. When was the last time you worked as a law
14 enforcement officer in the state of Washington?

15 A. March of 2021 was my last date with the
16 Seattle Police Department.

17 Q. All right. How many traffic stops would
18 you estimate you've made as a police officer, either
19 in Washington or in Oregon State?

20 A. I'm going to say around 3 to 4,000. Yeah.
21 3 to 4,000 would be my best guess.

22 Q. How many of these were in Oregon?

23 A. I did do some traffic enforcement there but
24 not much. Let's say five.

1 Q. Okay. So most of these were when you were
2 with the Seattle Police Department?

3 A. That's correct.

4 Q. Okay. And so of the 3 to 4,000 traffic
5 stops that occurred when you were with the Seattle
6 Police Department, was this when you were primarily a
7 patrol officer or was it with other positions?

8 A. The two positions that I made the most
9 traffic stops in, let's go with number 1 first. That
10 would be in the DUI squad.

11 So I served in DUI I believe -- I can
12 tell you the years. I need to look at my CV here
13 again. I was in DUI with the Seattle Police
14 Department from 1998 to 1999. During that time, I
15 made 500 DUI arrests, so if you're going to get 500
16 DUI arrests in the space of two years, you're going
17 to do a lot of traffic stops.

18 So I worked at night, and, basically,
19 I would stop any violation that I saw, and that's why
20 I say that I've had probably 3 to 4,000 traffic
21 stops. Maybe a thousand of those would be as a
22 patrol officer prior to that, but working in the DUI
23 squad, I would stop any traffic violation, and if the
24 person was sober, I would just give them a warning

1 and send them on their way.

2 So -- but if you -- but if you see
3 certain violations that might lead you to believe
4 that someone was intoxicated and/or you arrive at the
5 window of the car and you find someone that had been
6 drinking heavily -- now, it's not a crime to drink
7 and drive in the state of Washington. It's a crime
8 to be intoxicated and drive, so many people I tested,
9 roadside testing and things like that and determined
10 that they were not intoxicated. They were honest
11 with their two beers is the usual answer that I got,
12 and they were sent on their way.

13 Q. I'm sure that's the normal answer you got.

14 A. It is. It is. And they were sent on their
15 way, but of those, oh, let's say 3,000 stops, 500 of
16 them turned into DUI arrests.

17 Q. Okay. And then you were on patrol prior to
18 1998, is that my -- is my memory correct?

19 A. That's correct. From 1987 to 1997, I
20 mostly served as a patrol officer, and included in
21 that was field training officer, so training
22 brand-new police officers.

23 Q. So if we take out the handful of traffic
24 stops from the Oregon State Police, would it be a

1 fair statement that you have not made any type of
2 traffic stop in quite some time?

3 A. If we take out Oregon State University, you
4 are correct. My last traffic stops would have been
5 as a SWAT sergeant between 2010 and 2014.

6 Q. Okay. So excluding the Oregon State
7 University, you said approximately five traffic
8 stops, the last traffic stop you made in the state of
9 Washington would have been 2014?

10 A. I think that's a good estimation, yes.

11 Q. Okay. The Oregon State Police job, were
12 you a campus police? I don't know what you're
13 considered to be with that police department.

14 A. The Oregon State University had a contract
15 with the Oregon State Police, which would be their
16 highway patrol for the state of Oregon. That
17 contract ended in 2020, and the university decided
18 that they wanted to have their own police department,
19 which is allowed by state statute, and so the
20 university administrators started a brand-new police
21 department, and it just so happens, I think this was
22 somewhat random, but both the chief and I, the number
23 1 and number 2, both came from the Seattle Police
24 Department.

1 Q. Okay.

2 A. So the chief is still there. She was able
3 to move and stay in Oregon, but myself, like I said,
4 I worked there a year, and it was just too far from
5 family, so -- and I ended that in March of 2022.

6 Q. Okay. When you were at the Oregon State
7 University Police Department, was your scope of -- I
8 don't know if the word patrol, like, geographic area
9 the campus itself?

10 A. That's correct. In the state of Oregon,
11 all police officers are authorized to enforce the law
12 anywhere in the state, but, obviously, my focus was
13 the campus there, a large campus at Oregon State
14 University.

15 Q. Did you make any type of stops or arrests
16 off campus?

17 A. I remember a couple for warrant suspects,
18 possibly a theft suspect where the crime started on
19 campus but then left campus, so -- but it's still
20 within a very close geographic boundaries, so there
21 might have been a couple of arrests, I believe.

22 Q. Okay.

23 A. Most of them were on campus.

24 Q. On campus. Okay.

1 And have you ever had to forcibly
2 remove a motorist from a vehicle as part of any
3 traffic stop?

4 A. Yes, I have. Yes, I have.

5 Q. How many times?

6 A. I'm going to say ten, and that's kind of an
7 estimate. There's a couple I remember specifically.
8 Most of them, I have a very vague recollection.
9 Again, we're talking probably 30 years ago, so -- but
10 ten would be my answer at this point.

11 Q. When was the most recent time that you had
12 to forcibly remove a motorist from a vehicle?

13 A. That would have been between 2010 and 2014
14 with SPD SWAT, and it is most likely that I was the
15 supervisor and not actually forcefully removing the
16 person now that I think about it. The officers would
17 have been doing that, but I would have been
18 overseeing their forceful removal of a driver from a
19 vehicle, so I can't actually say that I have done
20 that with SPD SWAT. It would be unlikely for me to
21 remove someone from a vehicle.

22 MS. SHAMBEE: I apologize. I apologize. I
23 was on mute. I tried to object to this answer, but I
24 didn't -- I didn't realize I was still on mute. I'm,

1 like, wait, they're still talking.

2 MS. MCGEE: Sorry. Sorry, Juneitha. We
3 did not hear you.

4 MS. SHAMBEE: Yeah. Objection to form.

5 BY MS. MCGEE:

6 Q. Okay. All right. So from 2010 to 2014
7 when you were SPD SWAT, you would have supervised or
8 been the supervisor on scene when other people
9 removed a motorist from a vehicle involuntarily. Am
10 I describing your experience correctly?

11 MS. SHAMBEE: Same objection.

12 THE WITNESS: I believe that is probably
13 the most accurate representation. I can't
14 remember -- there's nothing that jumps to mind, and
15 it's most likely that I did the supervising and not
16 the hands on; however, as SWAT sergeant with Seattle
17 Police Department, you're expected to do everything
18 that the officers do, so there might have been a time
19 when I -- when I went hands-on with someone, but
20 nothing is coming to mind, which means most likely
21 that I was supervising rather than actually doing.

22 BY MS. MCGEE:

23 Q. So of the estimated two times that you
24 believe that you've been on scene for the forcible

1 removal of a motorist from a vehicle, are all of
2 these times as a SWAT supervisor or did you ever go
3 hands-on?

4 MS. SHAMBEE: Same objection.

5 THE WITNESS: The -- most of the times that
6 I actually went hands-on with someone would have been
7 as a patrol officer or as a DUI officer, which is
8 also a version of patrol officer. You're still in
9 uniform with a marked police car, but let's just say
10 those two would probably be the bulk of my having to
11 forcefully remove someone out of a police -- out of a
12 citizen's car.

13 BY MS. McGEE:

14 Q. And so when, approximately, would have been
15 the last time that you -- you personally went
16 hands-on to remove someone from a police car?

17 MS. SHAMBEE: Same objection.

18 THE WITNESS: So I guess we should
19 differentiate, because you kind of picked up on
20 something I said, too. Are we saying removed from a
21 police car or removed from their own car or does it
22 matter?

23 BY MS. McGEE:

24 Q. Well, I guess let's talk about them

1 separately. When was the most recent time that you
2 removed a motorist from their vehicle when they were
3 refusing to get out?

4 MS. SHAMBEE: Same objection.

5 THE WITNESS: That would have to be in the
6 '80s and '90s, and there's very little that is
7 personally coming to mind.

8 BY MS. MCGEE:

9 Q. And when was the most recent time that you
10 had to forcibly remove someone from a police vehicle
11 when they were refusing to get out?

12 MS. SHAMBEE: Same objection.

13 THE WITNESS: I remember -- okay. Sorry,
14 Juneitha.

15 MS. SHAMBEE: That's okay.

16 THE WITNESS: I remember a couple times
17 being called to a scene where officers had instances
18 where either -- someone under arrest, and I remember
19 sometimes where they're trying to get someone under
20 arrest into a police car, which is a very difficult
21 thing to do if someone doesn't want to go, and I've
22 also been present a couple times when officers were
23 trying to remove someone out of a police car that
24 doesn't want to come out, so I remember a couple of

1 those.

2 Again, as a supervisor, I try to stand
3 away from the situation so that I can observe what's
4 going on and give direction and give orders, but I do
5 remember not being afraid to jump in myself, and if
6 someone -- if the legal standard required it, apply
7 force and mostly pulling motions, obviously, to pull
8 someone out of a police car, and I remember trying to
9 put some people in a police car, too, so I guess
10 that's the best answer I can give.

11 BY MS. McGEE:

12 Q. Okay. So let me ask you this. Like when
13 you were with the Seattle Police Department or the
14 Oregon State University Police Department and you
15 were trying to put what would be an arrestee into a
16 police car --

17 A. Sure.

18 Q. -- was it your protocol to have that
19 arrestee handcuff and protective pat down done before
20 they're put into the car?

21 A. Yes.

22 Q. So all of the times that you just described
23 to me where you had difficulty getting a suspect
24 either into or out of a police vehicle, these are

1 times when the suspect is restrained by handcuffs?

2 A. Yes. Particularly when talking about a
3 police car into or out of, it seems like it was
4 always someone in handcuffs.

5 Q. I mean, I assume that the Seattle Police
6 Department and the Oregon State University Police
7 Department had a protocol that before you put an
8 arrestee into a police vehicle, they would be
9 handcuffed and a protective pat down for
10 officer-safety reasons would occur, is that a correct
11 statement?

12 A. Yes, it is.

13 Q. Okay. All right. So have you ever given
14 any type of trainings on techniques or procedures to
15 remove a motorist from a vehicle when the motorist is
16 refusing?

17 A. Yes, I have.

18 Q. Okay. And when was the most recent time
19 you gave that training?

20 A. That would have been between -- I would say
21 2005 and 2021 is most of the time when I did adjunct
22 training for the Seattle Police Department where I
23 would train officers in using force, constitutional
24 standards for the use of force as well as physical

1 standards on how best to safely remove someone from a
2 car when they do not want to get out.

3 Q. And was this at the academy or --

4 A. Most of my training -- some of it was for
5 new academy recruits. Most of it was for experienced
6 police officers who have graduated from the academy,
7 and I might teach street skills, which would mean the
8 training required for a police officer in order to
9 perform the job on the street, so that's why I would
10 call it street skills, so yes, experienced officers.

11 Q. Was this training in person or virtual or
12 how was it conducted?

13 A. The training would be in person.

14 Q. Was this a lecture or hands-on training?

15 A. Hands-on training.

16 Q. All right. So you never worked as a police
17 officer in Chicago, Illinois, fair statement?

18 A. That is a fair statement.

19 Q. Have you ever attended any training at the
20 Chicago Police Academy?

21 A. I have not.

22 Q. Have you ever given any trainings for the
23 Chicago Police Department?

24 A. No.

1 Q. Would it be a fair statement that as you
2 sit at your work space today, you're not familiar
3 with each and every training, policy or procedure
4 that's in place at the Chicago Police Department?

5 A. I think that's a fair statement. Most of
6 my knowledge would come from reading through the
7 Chicago Police Department manual online. I don't
8 recall any specific training with Chicago Police or
9 being trained by Chicago Police, that's correct.

10 Q. Okay. Have you ever been fired from any
11 job?

12 A. I have not.

13 Q. Have you ever been asked to leave a job?

14 A. No, I have not.

15 Q. Now, in your experience as a police
16 officer, has it been your observation that citizens
17 can make a complaint against any police officer as
18 they believe is important to them?

19 A. That is true. I worked for two years as a
20 detective sergeant in the Office of Professional
21 Accountability, so I took a lot of complaints from
22 citizens.

23 Q. Now, tell me about your company D.T.
24 Sweeney Consulting, Limited. When did you start

1 this?

2 A. I started that in 2017 I believe was my
3 first case. I didn't do too much with it in the
4 intervening time. I had a lot of other work
5 responsibilities, so this is something that I've more
6 pursued in the last couple years. As I moved to and
7 beyond retirement age for the state of Washington and
8 considered my opportunities postpolice career, it
9 seemed like something that I could do to help with
10 police standards for whether defense or plaintiff. I
11 think that was my main goal.

12 And then, obviously, to provide
13 something for me to do. So I'm retired, but I didn't
14 feel it was right to just be sitting around and let
15 my wife do all the work.

16 Q. Okay. Do you have any employees that work
17 for you?

18 A. I do not.

19 Q. Okay. And then when we looked at earlier
20 today page 16 of 17 of Exhibit A, this is a complete
21 and full list of the cases that you've consulted on
22 since you established your company in 2017?

23 A. Yes, it is.

24 Q. Okay. Now, for the cases that you've

1 consulted on that are on your expert witness cases
2 list, did you ask for the advice or thoughts of any
3 other person in forming any opinion that you gave in
4 any of those cases?

5 A. The only person that comes to mind would be
6 my wife, Maggie Sweeney, as an attorney, but by and
7 large, it would be just more chitchat and talking. I
8 formed my own opinions, but sometimes we would talk
9 about interesting constitutional questions or things
10 like that as, you know, a couple both involved in the
11 law might do, but I don't see any of these opinions
12 that she helped me write or that she had an opinion
13 on. I might just talk about it more in general
14 terms, so that's the only person that comes to mind.
15 I will say without a doubt that these opinions were
16 my own and that I arrived at my own conclusions and
17 did my own writing.

18 Q. Did you talk to your wife about the O'Brien
19 opinion in any way, shape or form?

20 A. I do not recall discussing this case with
21 her other than we both visit and enjoy the city of
22 Chicago, so I think she might have found it
23 interesting that I was helping out an attorney from
24 Chicago.

1 Q. Okay. And then you told me before that
2 sometimes you've had chitchat with other individuals
3 about the cases you've consulted on. Did you have
4 any chitchat with anyone about this case?

5 A. No. The only chitchat would be my wife.

6 Q. Okay. How much money did D.T. Sweeney
7 Consulting make in 2020?

8 MS. SHAMBEE: Objection. Form.

9 BY MS. MCGEE:

10 Q. You can answer.

11 A. In 2020, it looks like I only had one case
12 that year. That would have been -- well, that was an
13 interesting case because the plaintiff, plaintiff's
14 counsel contacted me for that case, and I did not
15 find any fault on the actions of the officers from
16 the city of Kent, and so I was not retained, so it
17 would have been an initial four-hour retainer, which
18 would have been \$1,000, I believe.

19 Q. And how much money did you make in 2021 --

20 MS. SHAMBEE: Objection. Form.

21 BY MS. MCGEE:

22 Q. -- at D.T. Sweeney Consulting?

23 MS. SHAMBEE: Same objection.

24 THE WITNESS: So I just did my taxes

1 earlier this year, and I think for 2021, my total was
2 somewhere around \$20,000, if I remember correctly.

3 BY MS. MCGEE:

4 Q. So let me ask you. The list that you
5 provided, which includes your testimony, have you
6 consulted on other cases that are not included in
7 this list?

8 A. No. I'm fairly consistent in making
9 sure -- well, let me take that back. I'm consistent
10 where I write opinions or engage in a deposition or I
11 provide a written declaration, you're going to see it
12 on this list here. Most Courts want to know when
13 you've actually testified or given a deposition, but
14 I keep track myself on just cases I've helped out
15 with.

16 I believe that there might have been a
17 couple things where I consulted with different
18 attorneys, whether plaintiff or defense, and maybe we
19 didn't proceed through full case review. I might
20 have -- I'm sure there are some cases where I've
21 talked over a case with an attorney, and they either
22 didn't hire me or I couldn't help them or things like
23 that.

24 But by and large, if I did some

1 consistent work for a plaintiff or for a defense
2 counsel, then you'll see it listed here on this list.

3 Q. Okay. How much money did you make at
4 D.T. Sweeney Consulting in 2021?

5 MS. SHAMBEE: Objection. Form.

6 THE WITNESS: I think I just answered.
7 That was around 20,000

8 BY MS. McGEE:

9 Q. So the \$20,000 was for 2020 or 2021?

10 A. 2021.

11 Q. Okay.

12 A. The 2020 was only the one case.

13 MS. McGEE: Got it. All right. So I'm
14 going to show you Exhibit B.

15 (Sweeney Exhibit B marked for
16 identification.)

17 BY MS. McGEE:

18 Q. I have on the screen Exhibit B. Can you
19 see this?

20 A. Yes, I can.

21 Q. All right. Are these the rates that you're
22 charging for this case?

23 A. That looks correct.

24 Q. Okay. How many hours have you billed so

1 far for this case prior to today?

2 MS. SHAMBEE: Objection. Form.

3 THE WITNESS: Let me go back. It looks
4 like \$2,670.

5 BY MS. MCGEE:

6 Q. Have you issued invoices to Plaintiff yet?

7 MS. SHAMBEE: Objection. Form.

8 THE WITNESS: Yes.

9 BY MS. MCGEE:

10 Q. Have you been paid?

11 A. I've issued -- yes, I have.

12 MS. SHAMBEE: Objection. Relevancy.

13 THE WITNESS: Sorry.

14 BY MS. MCGEE:

15 Q. I'm sorry. Yes, you've been paid?

16 A. Yes, I have.

17 MS. SHAMBEE: Same objection.

18 BY MS. MCGEE:

19 Q. And were you paid in the full amount that
20 you were billed?

21 MS. SHAMBEE: Objection. Relevancy.

22 BY MS. MCGEE:

23 Q. You can answer.

24 A. Yes, I was.

1 Q. All right. Have you ever worked with
2 Ms. Shambee before?

3 A. No, I had not met her before.

4 Q. Does she contact you or did you contact
5 her?

6 A. She contacted me.

7 Q. And how many times did you have
8 communication with Ms. Shambee prior to issuing your
9 opinion?

10 A. We exchanged e-mails and a couple phone
11 calls.

12 Q. Anything else besides e-mails and a couple
13 phone calls?

14 A. No. We discussed deadlines and my
15 qualifications and if I had any conflicts of
16 interest, so it didn't take too long. Like I say, a
17 couple -- a couple phone calls, maybe even one or
18 two, and a couple of e-mails.

19 Q. Now, when you were retained to give an
20 opinion in this case, did you ask for documents and
21 records?

22 A. Yes, I did.

23 Q. Okay. And what specifically did you ask
24 for?

1 A. When I speak with an attorney and we talk
2 about a case that has occurred, I generally ask for
3 any of the relevant police documents, so I'm very
4 familiar reading a police report, so I want to see
5 any police reports. I want to see any arrest
6 records. I would like to see any statements that the
7 officer wrote, and nowadays, it's very common to have
8 body-worn video and in-car video, so those might be
9 something that I would request as well.

10 Q. So prior to forming -- I'm sorry. Go
11 ahead.

12 A. In this case, it appears that I looked
13 up -- oh, and, by the way, I'm looking at my report.
14 In this case, it looks like I looked up on my own
15 sections of the online Chicago Police Manual, but
16 it's very common for an attorney to send me their own
17 copy of a police manual that they've received in
18 discovery.

19 Q. So when you're retained as an expert
20 witness and you ask for police reports and statements
21 by the officers, is this because you think it's
22 important to review all police reports and all
23 statements of the officers prior to issuing an
24 opinion?

1 A. Not necessarily all reports and statements,
2 but the statements and reports that pertain to the
3 case at hand are certainly going to be very
4 important.

5 Q. So it's important to you to look at any
6 police report or officer statement related to the
7 case that you're retained for?

8 A. Yes, it is.

9 Q. And you mentioned before that you also ask
10 for video of the incident?

11 A. Yes. That is a common request.

12 Q. And is it important to review all video of
13 the incident prior to making your opinion and forming
14 your opinion?

15 A. Video is interesting because, as you know,
16 it's become more and more popular for police
17 departments and sheriff's departments across the
18 United States now to have video of an incident.

19 By and large, the bulk of my career, I
20 reviewed police use of force without the advantage of
21 video.

22 But, now, when the officers have the
23 body-worn video, the in-car video and then, of
24 course, a lot of citizens will record police activity

1 on their cell phones -- everyone's got a camera in
2 their pocket -- it's definitely become more prevalent
3 that you might have a video of an incident that took
4 place.

5 Also, the other video that you'll
6 often see is security video, let's say, from a
7 building or from a grocery store or gas station,
8 things like that.

9 So if an attorney has video of an
10 incident, I think it's important to look at that
11 video in order to help reach an opinion, yes.

12 Q. And in this case, you wanted to look at all
13 of the video, all of the police reports related to
14 the incident and all of the statements of the
15 officers before forming your opinion?

16 A. I remember discussing with Ms. Shambee what
17 information she had received in discovery, and I said
18 something along the lines of yes, you know, send me
19 what you have in this case, and it can help me with
20 my review, yes.

21 Q. Okay. Have you ever had a case where your
22 opinion, you've read a police report and you're
23 starting to form an opinion but then you watch the
24 video and then your opinion changes?

1 A. I can't think of any case that comes to
2 mind that meets those qualifications.

3 Q. Okay. You would agree that reviewing
4 either the body-worn or a car camera video or even a
5 bystander or security video could change your opinion
6 depending on what's on that video?

7 A. Well, it's an interesting thing. I'm going
8 to refer back to the hundreds, if not thousands of
9 hours of video that I've watched with the Seattle
10 Police Department when it comes to reviewing force.
11 There are times when you will find that what an
12 officer perceived or what they saw or what they
13 heard, they might write down in a written statement,
14 and then later, you might look at a video and say
15 this doesn't quite match up, but there's any number
16 of reasons why it might not match up. It could be
17 misperception on the part of the officer. Also, the
18 camera does not see everything that the human eye
19 sees, and it doesn't see it with the same quality.
20 Sometimes the human eyes are inferior, and they don't
21 see the same things the same way, so
22 it's -- it's -- it's a long-winded answer to your
23 question that there are times when what you read on
24 the written report might not match up to what you see

1 on the video.

2 Now, let's move ahead to my consulting
3 work. I do not recall at this time any cases where I
4 read a police report -- and that's usually what I do
5 first. I usually read before I watch video. I don't
6 recall any cases at this point where I read something
7 and then looked at the video and it was in conflict
8 with what I read. Does that answer your question?

9 MS. McGEE: Yes. It does.

10 All right. So we've been going about
11 an hour. Does anyone need a break or do you want me
12 to continue on? I'm going to -- it's a good place to
13 break now if someone needs a short break. Keep
14 going?

15 MS. SHAMBEE: It's up to you, Mr. Sweeney.

16 THE WITNESS: I think I'm doing fine. I
17 have my water here, so I'm good.

18 BY MS. McGEE:

19 Q. Okay.

20 A. Thanks.

21 Q. All right. So I want to talk about your
22 opinion in this case. So according to your report,
23 you indicate that you reviewed Plaintiff's Complaint,
24 the Incident Report for the case, the Arrest Report

1 for the case and two videos, a 12-minute video and a
2 36-minute video?

3 A. That is correct.

4 Q. Okay. And then you also looked at nine
5 different either general or special orders from the
6 Chicago Police Department's website?

7 A. That is correct.

8 Q. Okay. So in the five documents, the
9 Complaint, the Incident Report, the Arrest Report,
10 the 12-minute video and the 36-minute video, these
11 documents were provided to you by Ms. Shambee?

12 A. Yes, they were.

13 Q. And the general and special orders that you
14 reviewed, these were located by you, not provided to
15 you by Ms. Shambee?

16 A. That is correct.

17 Q. Okay. All right. And then we talked about
18 this briefly. I just want to clarify. So for the
19 12-minute and the 36-minute video, you have both of
20 these videos attributed to Officer Davis. Is
21 that -- is that accurate or is one of those a typo?

22 A. That is a typo. I believe -- and I'm going
23 to look at my online files here. I believe the
24 longer video -- well, let me look and then I'll tell

1 you for sure.

2 Q. Sure.

3 A. It looks like the longer video, the
4 36-minute video, if I actually look at the title of
5 the video, it has redacted BWC, which is body-worn
6 camera, for Brown, and the shorter video is
7 Officer Davis, and that one is 12 minutes. So Davis
8 has the short one. Brown has the longer one.

9 Q. Got it.

10 And so the listing both of them as
11 Davis in your report is just a typo?

12 A. Yes, it is.

13 Q. Okay. Now, what was your date of the
14 online search of the Chicago police directives'
15 website where you looked at the general and the
16 special orders?

17 A. Looking at my invoice that I sent to
18 Ms. Shambee, that was June 8th of 2022 where I
19 studied relevant Chicago PD Manual sections for an
20 hour.

21 Q. Were there any documents that you asked
22 Ms. Shambee for that you did not receive?

23 A. I never heard definitively if there was an
24 in-car video of the stop, so that could have been

1 helpful in reaching a decision, and I don't know if
2 it was not available in discovery or if it was just
3 not turned on at all, so I'm not sure on that case.

4 Q. So did you specifically ask for in-car
5 camera video?

6 A. I don't recall if I specifically asked her
7 for that. I could -- if you want to, I could go back
8 and look at our e-mails, but I actually don't recall
9 asking for in-car video. I believe that I wrote that
10 in my -- sorry. I believe I wrote that in my expert
11 opinion that if the in-car video exists, it might be
12 good to review because it provides that distant
13 perspective of the whole traffic stop, and you can
14 see more of the street and that idea.

15 Q. Okay. So aside from wanting to see the
16 in-car camera video, are there any other documents or
17 videos that you either asked for or would have liked
18 to have seen prior to issuing your opinion that you
19 did not have access to?

20 A. I don't believe anything else.

21 Q. Did you ever talk to Aidan O'Brien or
22 interview Aidan O'Brien prior to issuing your
23 opinion?

24 A. I did not speak to Mr. O'Brien.

1 Q. Okay. All right. So prior to giving your
2 opinion in this case, have you ever given any expert
3 opinions about the force needed to remove a
4 noncompliant motorist from a motor vehicle?

5 A. Let me make sure I understand your
6 question. Are you saying as an expert witness, have
7 I ever reviewed a case with a motorist being removed
8 from a car?

9 Q. My word wasn't "reviewed." Let me ask it a
10 different way.

11 So I'm asking if prior to giving an
12 opinion in this case, have you ever given an expert
13 opinion about the use or type of force needed to
14 remove a noncompliant motorist from a motor vehicle?

15 A. One case comes to mind, and I'm going to
16 refer to my CV here. I'll tell you which case it is.
17 April of 2022, Sanchez versus City of Eugene. In
18 that case, I offered an opinion about removing -- I
19 think also inserting and removing the handcuffed
20 prisoner from the police car.

21 Q. Okay. So this is Sanchez you said?

22 A. Yes. April of 2022, Sanchez versus City of
23 Eugene.

24 Q. Okay. And so the Sanchez case involved

1 someone that was in custody?

2 A. That is correct.

3 Q. And that person was handcuffed?

4 A. Yes, they were.

5 Q. Have you ever given an expert opinion about
6 the use or type of force required to remove a
7 nonhandcuffed suspect from their particular motor
8 vehicle?

9 A. I can't think of anything else other than
10 that case, so no.

11 Q. Okay. All right. So let's -- let's talk
12 about your opinion in this matter. So in your
13 opinions, one of your first opinions is that the
14 Chicago police officers involved here are responsible
15 for enforcing the traffic codes. Is that a fair
16 description of your opinion?

17 A. Yes, it is.

18 Q. Okay. And so you would agree with me that
19 the Defendant officers in this case were responsible
20 for enforcing the traffic code?

21 A. I would agree with that, yes.

22 Q. Okay. All right. Your second opinion is
23 you talk about the Defendant police officers
24 instructed the Plaintiff to move his vehicle,

1 correct?

2 A. That is correct.

3 Q. And as part of this instruction, you make a
4 point to say that the officers blew their air horn
5 two times?

6 A. I did not see that on the video, but I got
7 it from their police report, yes.

8 Q. Okay. And so I mean, you have no reason to
9 doubt that they blew the air horn two times, right?

10 A. That's correct. I have no reason to doubt
11 that.

12 Q. And you have no information from any source
13 that says that anything about blowing the air horn
14 two times is incorrect?

15 A. No, I have no other information to say
16 that's incorrect.

17 Q. Okay. So you would agree with me that when
18 the officers were instructing Mr. O'Brien to move his
19 vehicle and then they blew the air horn two times,
20 they were enforcing the Rules of the Road?

21 MS. SHAMBEE: Objection to form.

22 THE WITNESS: Well, if we move down
23 farther, I offer a discussion of the law that they
24 were trying to enforce, and if you'll see my opinion

1 there in section D, we don't have enough information
2 to tell for sure because they didn't list it in their
3 police report, and as far as I know, we don't have an
4 in-car video to see the traffic stop.

5 BY MS. MCGEE:

6 Q. So I guess my question is -- let me ask it
7 a different way.

8 If Mr. O'Brien's car was blocking the
9 roadway, the Defendant officers had every right to
10 ask him to move his vehicle, correct?

11 MS. SHAMBEE: Objection to form.

12 THE WITNESS: Well, it's interesting. Like
13 I said, if you -- if you look at that time -- and I
14 don't know if you want to get into this right yet,
15 but according to the way the law is written, I'm not
16 sure that they had that right or not. I can't tell
17 is my eventual answer. Because it talks about
18 whether there is vehicles on the side of the road or
19 not and then it also talks about distance required
20 for other vehicles to come around, so there's some
21 information there that I don't have, so I couldn't
22 offer a definitive opinion as to whether they had
23 legal grounds to stop Mr. O'Brien.

24 BY MS. MCGEE:

1 Q. Sure. And I understand -- I understand
2 that part, but my question to you is a little bit
3 different, so if you could just pay attention. My
4 question is: Assuming that Mr. O'Brien was blocking
5 the roadway, the officers have the right to tell him
6 to move along, right?

7 MS. SHAMBEE: Objection. Form.
8 Speculation.

9 THE WITNESS: Again, I'm listening
10 carefully to what you are saying. If the officers
11 are going to enforce the law as it's written, there
12 are some exceptions and there are some cases where it
13 looks like, in my reading of this law, that
14 Mr. O'Brien might not have been breaking the law, so
15 I can't tell at this point.

16 BY MS. McGEE:

17 Q. So you're saying that if Mr. O'Brien had
18 been completely blocking the roadway, that the
19 officers don't have the right to tell him to simply
20 move along?

21 MS. SHAMBEE: Objection. Asked and
22 answered. Badgering.

23 BY MS. McGEE:

24 Q. You can answer.

1 A. Understood. All I can do at this point is
2 read the law, and as I do this, you'll notice that
3 there are some things that I don't know and possibly
4 the officers don't know and none of us might know.

5 It says, "Outside a business or
6 residence district, no person shall stop, park or
7 leave standing any vehicle, whether attended or
8 unattended, upon the roadway when it is practicable
9 to stop, park or so leave such vehicle off the
10 roadway, but..." -- so let me just stop right there
11 in the halfway reading of that statute.

12 So I don't know if it was practicable
13 to stop, park or leave the vehicle off the roadway.
14 I can't tell at this point.

15 So moving on. "But in every event, an
16 unobstructed width of the highway opposite a standing
17 vehicle shall be left for the free passage of other
18 vehicles and a clear view of such stopped vehicle
19 shall be available from a distance of 200 feet in
20 each direction upon such highway."

21 So, again, now, the statute -- and I'm
22 reading Section 11-1301, "Stopping, standing or
23 parking outside of business or residence district,"
24 so that Section A there gives some very specific

1 requirements in order to enforce that law.

2 So in my reading of it, there's some
3 information missing that I can't -- I can't insert
4 without other information, so that's why I say I need
5 either -- if there's an in-car video, I could look at
6 that or if the officers were very specific in their
7 report about the distance for other vehicles to pass
8 or if there was -- if there was room on the side of
9 the road for Mr. O'Brien to pull over. We don't know
10 that at this point, so I can't offer an opinion for
11 sure.

12 BY MS. MCGEE:

13 Q. I understand that you are missing
14 information, but my question to you is: If there is
15 not free passage for other vehicles to move, the
16 Chicago police officers have the right to tell
17 Mr. O'Brien to move along?

18 MS. SHAMBEE: Objection. Speculation.

19 BY MS. MCGEE:

20 Q. Do you agree with that?

21 MS. SHAMBEE: Objection. Speculation.

22 THE WITNESS: Let me make sure I understand
23 your question correctly here. If there's no room for
24 vehicles to get by, is that what you are saying? If

1 there's no room for that oncoming lane to get by, is
2 that -- is that the -- what you are saying?

3 BY MS. MCGEE:

4 Q. Correct, correct.

5 A. Now, according to the law that I'm reading
6 here, if there was no room for oncoming vehicles to
7 get by Mr. O'Brien, if that were the case, I would
8 say that then he is breaking the law that we've
9 identified here, yes.

10 Q. Okay. And if officers believed that
11 Mr. O'Brien is breaking the law, they have the right
12 to just simply tell him to move his vehicle?

13 MS. SHAMBEE: Objection. Calls for
14 speculation.

15 THE WITNESS: I would say yes, if an
16 officer is attempting to apply the law and they tell
17 someone to move their car, that they should move it.

18 BY MS. MCGEE:

19 Q. And the -- I mean, we would agree that just
20 telling a motorist to move out of the way or move
21 their vehicle is a pretty modest intervention?

22 MS. SHAMBEE: Objection. Form.

23 THE WITNESS: Yes. That is a low-level
24 infraction, parking infraction possibly, and I think

1 the word you used was "modest," yes, I would agree.

2 BY MS. MCGEE:

3 Q. And just telling someone to move ahead,
4 move their vehicle, get out of the way, you're not
5 arresting someone; you're just instructing them to
6 move out of the way, right?

7 MS. SHAMBEE: Objection. Form.

8 THE WITNESS: Correct. The telling of
9 someone to move their car does not mean they're under
10 arrest.

11 BY MS. MCGEE:

12 Q. So, now, in the Arrest Report that you
13 reviewed, the Defendant officers were clear that
14 Mr. O'Brien was obstructing the flow of traffic. Do
15 you recall reading that?

16 A. I recall some language to that effect. To
17 know more specifically, I should probably go back and
18 look at the actual report, and we can discuss the
19 language that they used.

20 Q. And do you recall --

21 A. But in general, in general, answer to your
22 question, yes, they talked about him blocking
23 traffic.

24 Q. And, in fact, in the Arrest Report later,

1 they talk about him moving his vehicle directly into
2 the middle of traffic. Do you recall reading that?

3 A. I do recall reading that.

4 Q. Okay. All right. So, then, your
5 understanding is that according to the reports, that
6 Mr. O'Brien moved his vehicle into the middle of
7 traffic, was obstructing the flow of traffic, and
8 then officers used their air horn and instructed him
9 to move out of the way?

10 A. Correct.

11 Q. Are you aware that after using the air horn
12 twice and instructing Mr. O'Brien to move away, that
13 they also activated their light bar or their Mars
14 lights?

15 MS. SHAMBEE: Objection to form.

16 THE WITNESS: I don't recall that
17 specifically. It's been a month or so since I've
18 read the report, and I did not read their police
19 report this morning, so I couldn't really say for
20 sure. It certainly seems possible.

21 BY MS. McGEE:

22 Q. All right. Well, if a police report says
23 that officers activated emergency equipment, as an
24 experienced police officer, you would interpret that

1 to mean police lights, correct?

2 A. I'm going to refer to the police report so
3 we can look at that.

4 Q. Well, my question is, like, your
5 perception.

6 A. Yes.

7 Q. So without looking at the police report,
8 like, you've been doing this -- you've been doing
9 this for a long time. You were a police officer for,
10 if you include Oregon, we're looking at 35 years.

11 A. Right.

12 Q. I mean, you've used these terms, right?
13 Activated emergency equipment probably hundreds of
14 times --

15 A. Yes, I have.

16 Q. -- right?

17 A. Yes, I have.

18 Q. And by activated emergency equipment, you
19 mean activating a light bar or a Mars lights?

20 A. I've seen that refer to three different
21 things. Emergency equipment could be the siren, it
22 could be the lights or it could be a combination of
23 lights and siren.

24 Q. Got it.

1 A. Yes, but yes, it's a very common police
2 term and used every day in police lingo, yes.

3 Q. All right. So the officers in this case,
4 we know that they're in a marked Chicago Police
5 Department patrol car, right?

6 A. Yes.

7 Q. And you saw the video, so you know these
8 officers are wearing police-issued, like, uniforms,
9 correct?

10 A. That's correct.

11 Q. And the two officers, the two patrol
12 officers are wearing the blue-shirted uniforms,
13 correct?

14 A. Yes, they are.

15 Q. Okay. And then in addition to the
16 uniforms, the Chicago police officers are also
17 wearing a tactical vest that has the word "police"
18 across it, correct?

19 A. I do recall that.

20 Q. Okay.

21 A. I can't say for sure it was a tactical
22 vest, but that makes sense.

23 Q. Were they wearing some type of dark-colored
24 vest that says "police" across the back, right?

1 A. That is correct.

2 Q. Okay. So it's pretty clear from visual
3 observation of both the marked police car and the
4 uniformed individuals that these are Chicago police
5 officers?

6 A. That is correct.

7 Q. Okay. Now, opinions that you have that
8 Officer Davis goes to the driver and Officer Brown
9 goes to the passenger side, why did you write this in
10 your opinion?

11 A. It's important when two officers are
12 conducting a traffic stop to note who is the primary
13 contact officer. In this case, Officer Davis. So he
14 moves up to contact Mr. O'Brien at the driver's door,
15 and Officer Brown kind of flexed between the two but
16 primarily stayed on the passenger side of the
17 vehicle.

18 Why is it important? Just for
19 accuracy's sake and to put together their statements
20 and make sure that everything works out the way they
21 wrote it.

22 Q. Well, in your experience as a police
23 officer, it's actually pretty common for -- in a
24 two-person car, for one officer to approach the

1 passenger and one to approach the driver, correct?

2 A. That is very common. Yes.

3 Q. And, usually, it's the driver of the police
4 vehicle that will go to the driver of the motorist
5 and the passenger in the police vehicle will go to
6 the passenger side of the car, is that correct?

7 A. That's the most common. Yes.

8 Q. Yeah. Okay. And there's nothing wrong
9 with what Officer Davis and Officer Brown did by one
10 going to the driver's side and one going to the
11 passenger side?

12 A. Correct.

13 Q. Okay. There's also nothing wrong with what
14 Officer Brown did by, as you describe it, flexing
15 between the passenger side and the driver side and
16 then back to the passenger side?

17 A. That is correct.

18 Q. All right. So in opinion D, we talked a
19 little bit about this a couple minutes ago, but I
20 just want to clarify, like, while you indicate that
21 the officers may have misapplied the law, you've seen
22 no report or video that would indicate to you that
23 the officers' assessment that Mr. O'Brien was
24 blocking the flow of traffic was incorrect?

1 A. Correct. I have not seen anything that
2 definitively told me that it was an improper or
3 illegal traffic stop. You are correct.

4 Q. And all of the reports that you read were
5 very clear that Mr. O'Brien was obstructing the flow
6 of traffic at the time he was told to move along, is
7 that correct?

8 MS. SHAMBEE: Objection to the word "all."
9 Well, the statement all the reports.

10 BY MS. McGEE:

11 Q. Well, I can rephrase.
12 The reports that -- all the reports
13 that you reviewed indicate that Mr. O'Brien was
14 obstructing the flow of traffic at the time he was
15 told to move along?

16 A. Yes. That was what the officers wrote.

17 Q. Well, and you have seen nothing that would
18 dispute that?

19 A. No. I can't think of anything that
20 disputes that.

21 Q. Okay. So if Mr. O'Brien is blocking the
22 flow of traffic, he's told to move along, officers
23 blow their air horn twice and then activate emergency
24 equipment and Mr. O'Brien still doesn't move along,

1 officers have the legal right to initiate a traffic
2 stop, correct?

3 A. That is correct. Yes.

4 Q. And so when initiating the traffic stop,
5 you know, in your experience as a police officer,
6 often officers continue -- consider the beginning of
7 the traffic stop to be when the emergency equipment
8 is activated. Would that be a fair statement?

9 A. Somewhat. I would say most officers
10 consider the traffic stop also their visual
11 observation even prior to activating emergency
12 equipment.

13 Q. Sure.

14 A. So it might start with you see a violation,
15 and then you engage your equipment in order to signal
16 the driver to pull over.

17 Q. Right. So as an officer, in your
18 experience, you would see the violation, but when you
19 activate the emergency equipment, you are notifying
20 the motorist, like, this is a traffic stop, I'm the
21 police, correct?

22 A. That is correct.

23 Q. Okay. All right. And so we -- you can
24 agree that we can now agree the officers had the

1 right to initiate the traffic stop, correct?

2 A. Well, with that caveat that I don't have
3 all the information to tell if it was legal or not.

4 Q. Well, you have no information to say that
5 the traffic stop was illegal, correct?

6 A. I believe I agreed with you before that I
7 don't have any information that tells me definitively
8 it was incorrect, so yes, based on the information I
9 have, I do not have anything definitively that tells
10 me the stop was incorrect, but there is some missing
11 information in order to make the full determination.

12 Q. And so making the traffic stop, we've now
13 also established that Officers Brown and Davis had
14 the right to approach Mr. O'Brien and his passenger
15 in their vehicle, correct?

16 A. Correct.

17 Q. Okay. From watching the video, it's clear
18 that when Officer Davis approaches the car, one of
19 the first things that he says to the Plaintiff is he
20 instructs Plaintiff to move the car again. Do you
21 remember hearing that?

22 MS. SHAMBEE: I'm going to object to form.
23 That's testimony given by counsel. I'm going to
24 object to form.

1 BY MS. MCGEE:

2 Q. So what that means is that if officers
3 instruct Plaintiff to move his vehicle twice, blow
4 the air horn twice and then Officer Davis approaches
5 and one of the first things he says to him is move
6 your vehicle, Officer Davis is giving Mr. O'Brien
7 multiple chances to move his vehicle, is that
8 correct?

9 MS. SHAMBEE: Objection, again, to form of
10 officer's statement, the first statement officer
11 made.

12 BY MS. MCGEE:

13 Q. You can answer the question.

14 A. I think the first thing he said is
15 something about -- he asked O'Brien if he's high or
16 something like that.

17 Q. Right. And then he tells him to move his
18 car, right?

19 A. And then --

20 MS. SHAMBEE: Same objection.

21 THE WITNESS: Sorry. And then after that,
22 the next thing he talks about is move the car, yes.

23 BY MS. MCGEE:

24 Q. And it's clear that Mr. O'Brien did not

1 move his vehicle after being instructed to move his
2 vehicle as part of the traffic stop?

3 A. That is correct.

4 Q. So the -- we already established that when
5 the police are in their vehicle instructing
6 Mr. O'Brien to move along and get out of the roadway,
7 that that was a low level of intervention, correct?

8 A. Yes. That is a low-level intervention.

9 MS. SHAMBEE: Object. I'm just going
10 to -- I'm just going to object. I'm going to object
11 to facts entered -- uncorroborated facts entered into
12 this deposition.

13 BY MS. McGEE:

14 Q. And then when Officer Davis and
15 Officer Brown approached the police vehicle (sic) and
16 Officer Davis tells Mr. O'Brien to move his vehicle,
17 this is also a low level of intervention, correct?

18 A. Just listening to your question, you said
19 approach the police vehicle. I assume you mean
20 approach the --

21 Q. Oh, sorry about that. Let me -- let me
22 reask it so it's clear. I apologize and thank you.

23 A. Sure.

24 Q. So after Officer Davis and Officer Brown

1 approach Mr. O'Brien's vehicle and Officer Davis
2 tells Mr. O'Brien to move along, this is a low level
3 of intervention, correct?

4 A. Yes, it is.

5 Q. And they gave -- instead of
6 moving -- strike that.

7 Instead of moving along, Mr. O'Brien
8 refused to move, is that right?

9 A. Correct. He tried to explain that he's
10 waiting for a parking spot.

11 Q. Okay. At no point in time, did you, when
12 you were watching the body-worn camera video, see
13 Mr. O'Brien make any attempts to move his vehicle
14 when instructed, is that correct?

15 A. That is correct. I never saw him put the
16 car back in gear or turn the steering wheel, if I
17 remember correctly.

18 Q. And so by refusing the police directive to
19 move the vehicle, Mr. O'Brien has now violated a
20 lawful police directive?

21 MS. SHAMBEE: Objection to the word
22 "refused."

23 THE WITNESS: Sorry. I'm focusing on the
24 objection, refused. Can you say -- state the

1 question one more time?

2 MS. McGEE: Sure. Ms. Reporter, can you
3 read it back for me, please.

4 (Whereupon, the Court Reporter read from the
5 record as follows:

6 Q. And so by refusing the police directive
7 to move the vehicle, Mr. O'Brien has now
8 violated a lawful police directive?)

9 MS. SHAMBEE: I'm sorry. And on the same,
10 on the same, objection to lawful directive.

11 BY MS. McGEE:

12 Q. You can answer, sir.

13 A. All right. It's complicated by the fact
14 that -- and we've gone over this several times -- I
15 don't know definitively if they were applying the law
16 correctly in this case.

17 If we assume that they are applying
18 the law correctly, then they have legal grounds in
19 order to certainly make the traffic stop and ask
20 O'Brien to move or to even order or tell him that he
21 needs to move his vehicle.

22 If they misapply the law and they're
23 incorrect in their application, then, therefore, any
24 order given after that is telling someone an

1 incorrect interpretation of the law, so in that case,
2 they would not have the right to tell someone to
3 move.

4 So it's a long-winded answer to say I
5 don't know definitively, so -- but to your question,
6 if it's correct that he was blocking traffic, and the
7 officers state that he was, we might be missing some
8 information the way the law there is written, but if
9 we assume that he is blocking traffic -- again, I
10 emphasize the word "assume." If we assume that he is
11 blocking traffic, they have the right to order him to
12 not break the law, in other words, to say move your
13 vehicle.

14 And I think that answers your question
15 or that's my best answer at this time.

16 Q. And from reading the reports that you were
17 provided, the Case Report and the Arrest Report, it's
18 pretty clear that the Officers Brown and Davis
19 believe that Mr. O'Brien was blocking the flow of
20 traffic?

21 A. That is correct. They definitely feel that
22 he is blocking the flow of traffic.

23 Q. And you can tell that from the body-worn
24 camera video, too, that it's their belief that he's

1 blocking the flow of traffic?

2 A. Yes. I can definitely tell that from the
3 body-worn camera.

4 Q. Okay.

5 A. And what they state to Mr. O'Brien.

6 Q. Okay. All right. And we -- we know that
7 the body-worn camera footage starts after the air
8 horn is blown twice and after Mr. O'Brien is told to
9 move twice, is that right?

10 MS. SHAMBEE: Objection to assumption of
11 facts.

12 THE WITNESS: Based on what I read, the
13 officers attempted to -- I won't call it a traffic
14 stop, but like you said, they've got the lights on
15 and they're blowing the air horn, which is a lot
16 louder than a standard car horn, so they're trying to
17 state to Mr. O'Brien, hey, we're the police and you
18 need to move your vehicle. So yes, they're trying to
19 get him to move, and that's my best answer at that
20 point.

21 BY MS. McGEE:

22 Q. Sure. My question, though, is: Your
23 understanding is the initial encounter with the air
24 horn and being told to move, this is not captured on

1 the body-worn camera video?

2 A. Correct. A lot of that initial first
3 attempt at the stop is not captured on the body-worn
4 camera.

5 Q. Okay. And so based upon that fact, you
6 don't know the nature of that initial encounter, is
7 that correct?

8 A. Only what I read and that we discussed
9 before that the officers wrote in their statement,
10 and they kind of corroborate that as they go up to
11 Mr. O'Brien and they explain to him, hey, we're
12 trying to get you to move, did you not -- did you not
13 see us back there, did you not hear us back there,
14 something along those lines.

15 Q. And when you watched the video when they're
16 talking to Mr. O'Brien, it's pretty clear that
17 Mr. O'Brien understood them to be police, is that
18 right?

19 A. Correct. I did not see anything that
20 Mr. O'Brien ever mistook their identity. He seemed
21 to know that these were the police officers that were
22 approaching him.

23 Q. All right. So after Officer Davis
24 approaches the car, he instructs Mr. O'Brien to move

1 again. Mr. O'Brien does not move the vehicle. He
2 then asks for a driver's license and insurance. You
3 saw that on the video, right?

4 A. That is correct.

5 Q. So you told me before I believe you said
6 that you had made 3 to 4,000 traffic stops in your
7 career, is that a fair statement?

8 You have to answer out loud.

9 A. Yes, it is.

10 If I pause at all, I'm allowing
11 Ms. Shambee the opportunity for any objection, so I
12 will --

13 Q. Ms. Shambee is doing a --

14 A. I will answer the question, but if you see
15 a slight pause there, I'm either pondering the
16 question or I'm allowing her the opportunity to
17 object.

18 Q. So what I saw is when you were pausing you
19 were nodding your head, so I just want to make sure
20 that you are going to answer out loud with your words
21 like we talked about.

22 A. I understand.

23 Q. So my question is --

24 A. If I'm nodding, it's probably only for my

1 own benefit. I know that the court reporter can't
2 put that down in the report.

3 Q. All right. So let's start over again. So
4 in the -- in your 3 to 4,000 traffic stops that
5 you've made as a police officer, in each of those
6 traffic stops, I assume that you asked for a driver's
7 license and some other documentation, is that a fair
8 statement?

9 A. Yes, it is.

10 Q. Okay. And often, the other documentation
11 would be insurance if an insurance -- insured
12 motorist is a requirement in the state where you're
13 working, is that fair?

14 A. Yes, it is.

15 Q. Okay. So there's nothing unusual about a
16 police officer making a traffic stop asking the
17 driver for a driver's license and proof of insurance,
18 correct?

19 A. That's correct. It's a very common police
20 citizen encounter at a traffic stop.

21 Q. And you've done this, we've already talked
22 about, 3 to 4,000 times in your career?

23 A. That's correct.

24 Q. So, now, here, Mr. O'Brien refuses to

1 provide his driver's license and proof of insurance
2 to Officer Davis. You saw that on the video, right?

3 MS. SHAMBEE: Objection to form.

4 BY MS. MCGEE:

5 Q. You can answer.

6 A. Yes, I did. He objected to providing his
7 license and insurance. He stated that he had the
8 documents but was not going to provide them.

9 Q. Okay. So at the point that Officer Davis
10 is initiating the traffic stop, asking Mr. O'Brien
11 for his driver's license and proof of insurance and
12 Mr. O'Brien is refusing to provide his driver's
13 license and his proof of insurance, Mr. O'Brien is
14 refusing a lawful police directive?

15 MS. SHAMBEE: Objection to form.

16 THE WITNESS: Yes. When an officer is
17 conducting a traffic stop, and in all the states that
18 I'm aware of, drivers certainly have to have at least
19 a minimum of a license and then, most likely, also a
20 registration or proof of insurance. Often, all three
21 documents are required by the state.

22 BY MS. MCGEE:

23 Q. Got it.

24 A. So yes, the officer has a legal request

1 there. You need to provide me your information.

2 Q. And when you watched both the 12-minute and
3 the 35-minute videos, at no point did you see
4 Mr. O'Brien give his driver's license to either
5 police officer, correct?

6 A. No. He was quite clear about that that he
7 would not.

8 Q. Okay. And during your watching of the
9 12-minute and the 36-minute videos, Mr. O'Brien also
10 refused to provide proof of insurance to the police
11 officers, is that correct?

12 A. That is correct.

13 Q. All right. Give me one second. All right.
14 So I want to talk about your opinion F about General
15 Order 03-02-01.

16 A. Yes.

17 Q. So this general order that you're talking
18 about, this is what you found on the Chicago police
19 directives website, is that correct?

20 A. Yes, it is.

21 Q. Okay. And this is not something that you
22 received from Plaintiff as part of the packet of
23 information prior to giving your opinion?

24 A. That is correct.

1 Q. Have you reviewed any other versions of
2 General Order 03-02-01 aside from the version you
3 found online in 2022?

4 A. No, I have not reviewed any other versions
5 of that document.

6 Q. Okay. All right. So I want to talk about
7 your opinion that the traffic stop could have been
8 handled reasonably with a warning about blocking the
9 street and asking O'Brien to park his vehicle when a
10 spot opened up. Okay. Do you remember making that
11 opinion?

12 A. I do.

13 Q. How many warnings do you believe that the
14 police officers should have given Mr. O'Brien?

15 A. There's no definitive answer to that
16 because it's always a give and take between the
17 person that's being stopped and the police officer,
18 and there's 100 different ways that a traffic stop
19 could go and a variety of words and exchanges between
20 these two parties, so I don't have -- there is no
21 definitive number of warnings that the officer is
22 required to give.

23 Q. Well, you know in this case that at the
24 point that Officer Davis had asked Mr. O'Brien for

1 his driver's license and insurance, there had been at
2 least three warnings to move the vehicle prior to
3 that, correct?

4 MS. SHAMBEE: Objection to form.

5 THE WITNESS: That number seems accurate.

6 BY MS. McGEE:

7 Q. So in this --

8 A. You know, like I said in the report, I
9 didn't write -- they have a lot of words back and
10 forth as we all know, so I didn't write down exactly
11 how many times he told him, but I would agree with
12 you he told him to move the vehicle.

13 Q. And so my question is: In this particular
14 instance, how many more times do you believe that
15 Officers Davis and Brown should have told Mr. O'Brien
16 to move the vehicle?

17 MS. SHAMBEE: Objection to form.

18 THE WITNESS: I don't have an answer for
19 that, and there really is no way to arrive at that
20 answer because it's not -- it's never codified, and
21 it's never stated in any police training in the
22 thousands of hours I've had that you must warn a
23 specific number of times. It's totally situational.

24 In other words, what I'm stating is

1 that you have different people involved in every
2 single traffic stop that occurs, and there's a
3 variety of words and exchanges that are going on back
4 and forth there. Most, what, 98 percent of them
5 probably end without any incident at all other than
6 possibly an issue of a warning or a traffic citation,
7 but when they go wrong, you can never state, well, if
8 you had only stated this one more time, I'm sure that
9 the traffic stop would have ended successfully. It's
10 impossible to state that, so based on that, I can't
11 answer your question to state that there's a
12 definitive number of warnings that should be given.

13 BY MS. MCGEE:

14 Q. Let me ask you this. We talked about a
15 traffic -- you talked about a traffic citation, and
16 then you also talked about a warning, and we've used
17 the word "warning" a couple of times today. As a
18 police officer, sometimes you do give a warning to
19 motorists that's like a written warning. You've
20 given some of those, right?

21 A. Seattle Police Department instituted a
22 written warning citation, in other words, something
23 that's written down but does not go in your driving
24 record. At the time that we instituted that policy,

1 I was probably more in my role as a supervisor, and
2 so I reviewed those documents, but I don't believe
3 I've ever written a warning ticket per se.

4 Q. A written warning?

5 A. No. I have given thousands of warnings, in
6 other words, just oral, but I have not ever written
7 one.

8 Q. So when you're talking about in opinion F
9 like giving a warning about blocking traffic, are you
10 talking about a written warning or a verbal warning?

11 A. I think it could apply to either. In this
12 case where, as we talked about, this is a low-level
13 offense and a low-level incident as far as police
14 officers are concerned. It is definitely an
15 interaction between the government and the citizenry.
16 It's a very small microcosm of that, but in this
17 case, I do not know if the Chicago Police Department
18 actually has a written warning ticket that they
19 issue. I don't have any information on that, so
20 warning could apply to a verbal warning. Hey, you
21 need to move your car. Or an actual warning ticket
22 where you're required to note the driver's license
23 and the address. Essentially, it's the same
24 information that's on a ticket, but it's a warning,

1 so it doesn't go on your record, so in this case, I
2 can only apply it to either situation.

3 Q. So when you say the word "handled
4 reasonably with a warning," are you talking about a
5 verbal warning or a written warning or either?

6 A. Most likely at that point, I would think
7 that this would rise to the level of a verbal
8 warning. I think that's what the officers were
9 trying to do with their police car in the first case.
10 In other words, move your car, and I don't want to
11 take the time to exit my vehicle to go up and tell
12 you to move the car, and usually, it works. If you
13 put lights on and blip your siren a couple times,
14 most people move their car. It's very common. There
15 are those that do not, and in this case is one of
16 those examples.

17 So the language that you're reading
18 there, and I'm looking at it myself in section F,
19 what I'm talking about there is probably the elements
20 of just a verbal warning. Hey, can you move your
21 car? If you move your car -- and here's the velvet
22 hammer. If you move your car, I don't have to write
23 you a ticket, and most people think, well, I don't
24 like tickets. Those are no fun. Yeah, I think I'll

1 go ahead and move my car.

2 Q. So in this case, are you working under the
3 impression that prior to activating the body-worn
4 camera, that the orders to move along occurred while
5 the officers were in their vehicle?

6 A. Yes. As we talked about, the lights and
7 siren, being that request to move or that order to
8 move without actually exiting your vehicle and going
9 up to the driver and speaking to them face-to-face,
10 so yes, in essence, those are shortcuts to a full
11 traffic stop, if you want to put it that way. It's
12 quick, easy way to get people to move if they're in
13 the street.

14 Q. Okay. So I guess my question is: If
15 Officer Brown or Officer Davis had previously
16 approached the vehicle on foot prior to activating
17 the light bar and initiating the traffic stop and
18 told Mr. O'Brien to move his vehicle, would that
19 change your opinion in any way?

20 A. That was a fairly lengthy question.

21 Q. Sure. It sure was. I can have it -- we
22 can have it read back for you. I understand it was
23 long.

24 A. Yeah. One more time. That would be great.

1 MS. McGEE: Sure. Ms. Reporter, can you
2 read it back, please.

3 (Whereupon, the Court Reporter read from the
4 record as follows:

5 Q. Okay. So I guess my question is: If
6 Officer Brown or Officer Davis had
7 previously approached the vehicle on foot
8 prior to activating the light bar and
9 initiating the traffic stop and told
10 Mr. O'Brien to move his vehicle, would that
11 change your opinion in any way?)

12 THE WITNESS: Okay. So we're talking about
13 a hypothetical here that if they had gone up to the
14 car and spoken to him without lights and siren, would
15 that change my opinion?

16 MS. SHAMBEE: I'm going to object to that
17 form of the question.

18 THE WITNESS: I don't think it would change
19 my opinion. I mean, we altered the facts there that
20 they tried a traffic stop without lights and sirens
21 is what I'm hearing, would that alter my opinion?
22 Well, with the end result, certainly not. We can
23 look at what happened, and, you know, it certainly
24 turned negative for all parties involved, so no, but

1 I don't see it changing my opinion, no.

2 BY MS. MCGEE:

3 Q. I think you -- I think you misunderstand my
4 question, so let me ask it a little bit differently.

5 I want you to assume that either
6 Officer Davis or Officer Brown exited their vehicle,
7 walked up to Mr. O'Brien's vehicle, told him to move
8 along, got back into their car, at some point, blow
9 their air horn and then initiate the traffic stop by
10 activating their emergency equipment, would that
11 change your opinion?

12 MS. SHAMBEE: Same objection.

13 THE WITNESS: No. I don't think it would
14 change it. We're moving facts around there and
15 trying to reorder things. Assuming that it still
16 ended up the way that it did, no, it wouldn't change
17 my opinion.

18 BY MS. MCGEE:

19 Q. Well, how do you know that the officers did
20 not get out of the vehicle to give the first verbal
21 warning to move along?

22 MS. SHAMBEE: Objection. Form.

23 THE WITNESS: Their first warning that they
24 gave that I was aware of was the lights and the air

1 horn as they said, and then -- so, you know, we
2 discussed is that a warning or not? I think for most
3 people, like, yeah, the police warned me to move, so
4 let's call it a warning; and then they go up to the
5 car, and we have the encounter there and trying to
6 get the license and insurance. I don't see that
7 changing my opinion because we know how the case
8 ended up, so moving -- moving things around a little
9 bit, I don't see that that changes anything
10 drastically in this case.

11 MS. McGEE: All right. So we've been
12 going -- I actually am going to take a break now.
13 We've been going for two hours, and I am in a good
14 transition point for the break, so does everyone want
15 to take, like, 15 minutes?

16 MS. SHAMBEE: Please.

17 MS. McGEE: Okay.

18 THE WITNESS: Yeah. That sounds great for
19 me.

20 MS. McGEE: Is 15 minutes enough time or do
21 people want to take a little bit longer break?

22 THE WITNESS: That sounds fine. In my
23 time, Pacific time at 1:00 o'clock, I have a
24 contractor coming by the house here, so I might

1 take -- if we're still going at that point in two
2 hours --

3 MS. McGEE: Sure.

4 THE WITNESS: -- I might take five minutes.
5 I don't need to do a lot with them. I just need to
6 show them something in the house, and they
7 can -- they can tend to it after that, so that's my
8 only other time requirement. Oh, and I have
9 something at 2:00 p.m. Pacific time, which I believe
10 is 4:00 p.m. your time, so if --

11 MS. McGEE: Okay. I would hope -- I would
12 hope that we're done by then.

13 THE WITNESS: Great.

14 MS. McGEE: So it's 1:00 o'clock our time.
15 Do we -- I'm asking people in Chicago. Do we need a
16 little longer than 15 minutes for, like, a short
17 lunch break or how do we want -- or do we want to do
18 15 minutes?

19 MS. SHAMBEE: 15 is fine for me. You know,
20 the sooner we get this done with, the better,
21 obviously.

22 MS. McGEE: Okay.

23 MS. SHAMBEE: But it's up to the court
24 reporter as well whether or not she needs extra time.

1 THE COURT REPORTER: 15 is fine.

2 MS. McGEE: All right. I'll see everyone
3 about 1:10, 1:15.

4 (Whereupon, a recess was taken
5 from 12:55 until 1:14 p.m.)

6 BY MS. McGEE:

7 Q. So back on the record.

8 All right. I want to turn to your
9 opinion G. So in your opinion G, you describe what
10 you call a heated confrontation. Do you recall using
11 those words?

12 A. Yes, I do.

13 Q. Okay. And by "heated confrontation," are
14 you talking about a verbal confrontation or something
15 else?

16 A. The heated confrontation initially starts
17 as a verbal conversation between the two people most
18 involved here, Officer Davis and Mr. O'Brien.

19 Q. Okay. And so this heated confrontation,
20 which are your words, occurred after Mr. O'Brien was
21 told to move the car, after he was asked for a
22 driver's license and insurance and after he refused
23 to do both of those things, is that correct?

24 A. Somewhat. I mean, essentially, yes. I

1 would say there was a lack of discussion and
2 thoughtfulness on both parties even at the very
3 start. You know, it really went downhill fast just
4 based on the officer's first question of Mr. O'Brien,
5 and then Mr. O'Brien kept calling him bro, and the
6 officer objected to that and kept telling him I'm not
7 your bro, I'm not your bro and trying to, you know,
8 get back to the license and insurance thing. So I
9 would say the conversation started as a series of
10 disagreements and then grew heated, more heated from
11 there.

12 Q. So I understand that Plaintiff referred to
13 Officer Davis as bro and Officer Davis said on the
14 video I'm not your bro, like you saw that, right?

15 A. Yes.

16 Q. And then he said provide me your driver's
17 license and insurance. He asked that repeatedly,
18 correct?

19 A. Yes, he did.

20 Q. And repeatedly, Mr. O'Brien refused to
21 provide his driver's license and insurance?

22 A. That is correct.

23 Q. And, then, at some point, Officer Davis
24 instructs Mr. O'Brien to get out of the vehicle?

1 A. That is correct.

2 Q. And so at that point, now that Mr. O'Brien
3 has refused a lawful order to move and the lawful
4 order to provide his driver's license and insurance,
5 as a police officer, you have the right to order a
6 motorist out of the vehicle?

7 A. I kind of talked about that later that I
8 don't know the motivation of the officer in asking
9 him to get out of the vehicle. I think I listed four
10 possibilities, but in any case, the officer
11 definitely is ordering him out of the vehicle at that
12 point.

13 Q. I assume in your 35-year career, you've
14 ordered motorists out of vehicles many times, right?

15 MS. SHAMBEE: Objection to form.

16 THE WITNESS: That is correct. Sorry.
17 Yes. That is correct.

18 BY MS. McGEE:

19 Q. And Officer Davis has a right to order
20 someone out of the vehicle as part of the traffic
21 stop, correct?

22 MS. SHAMBEE: Objection to form.

23 THE WITNESS: Yes. I believe my
24 understanding is that he has the right to order him

1 to get out of the vehicle.

2 BY MS. MCGEE:

3 Q. Okay. So if Officer Davis has the lawful
4 right to order Mr. O'Brien out of the vehicle as part
5 of the traffic stop and then Mr. O'Brien refuses,
6 what is your expectation of what Officer Davis should
7 have done?

8 A. That was a great opportunity for
9 Officer Davis to explain, number one 1, who he is,
10 identify himself; number 2, explain the reason for
11 the stop; number 3, that you're required to provide
12 me the documents, the license and insurance that we
13 talked about; number 4, because of your inability or
14 refusal to provide me those documents, I'm now
15 placing you under arrest, and then he needs to
16 explain what law he is using in order to place him
17 under arrest, and he never states that in so many
18 words. Mr. O'Brien keeps yelling repeatedly what am
19 I under arrest for, what am I under arrest for. In
20 fact, he's yelling that even prior to being placed
21 under arrest. He started yelling that even while it
22 was during the traffic stop situation.

23 So at this point, again, I don't know
24 if Davis, if Officer Davis is getting him out of the

1 vehicle for officer safety. That's a valid reason.
2 You might see something in the car that concerned you
3 or worries you and you are saying get out of the car.
4 Let's talk back here where I feel safer. It might be
5 for a seizure. It might be a temporary hold or a
6 permanent. It could be an arrest or it might be that
7 he feels he has legal grounds to search the car. He
8 never explains any of those situations.

9 So in my opinion, if he would make a
10 logical progression about the reasons for the stop
11 and how Mr. O'Brien can avoid a lot of difficulty,
12 look, I don't want to have to resort to an arrest
13 here. We can get through this quickly, but you do
14 have to provide me your license and insurance, and if
15 you can do that, we can avoid this very negative
16 situation, which is a result. It means I have to
17 handcuff you. So are you sure you want to go this
18 way? It's a great time to ask that question.

19 Another excellent question I love to
20 ask: Is there anything I can say or do to get you to
21 comply? And that really allows the person to think
22 about, okay, what am I trying to do here and why am I
23 objecting to the officer's actions, and yeah, you
24 know, if you just tell me a little bit more about X,

1 Y or Z, then we can proceed forward.

2 So those are a lot of the things that
3 I would have liked to see Officer Davis do in that
4 circumstance.

5 Q. So I want to talk about some of -- some of
6 what you just talked about.

7 A. Uh-huh.

8 Q. So you told me that one possible reason for
9 ordering Mr. O'Brien out of the car was for
10 officer-safety reasons, is that correct?

11 A. Correct. Yes, it is.

12 Q. And as a police officer, you have the right
13 to order a motorist out of the car for officer-safety
14 reasons, is that correct?

15 A. That is correct.

16 Q. And the failure to comply with a directive
17 to exit the vehicle is a violation of a police order,
18 is that correct?

19 A. Yes, it is. As I understand the law there,
20 that would be breaking the law, refusing to obey the
21 lawful order of the police officer.

22 Q. Similarly, an officer can order a motorist
23 out of the vehicle as part of the traffic stop or the
24 Terry stop, is that right?

1 A. Yes, depending on circumstances,
2 absolutely, there could be -- this could be part of a
3 Terry stop, and you're temporarily seized while they
4 investigate the possibility of a crime.

5 Q. And the failure to exit the vehicle when
6 instructed by the police officer in making a Terry
7 stop or a temporary stop is a violation of a police
8 order? It's a crime, is that right?

9 A. Yes, it is. As far as I understand the law
10 there, that is, but -- I'll leave it at that. As far
11 as I understand, that is a violation of the law.

12 Q. So similarly, if Mr. O'Brien is under
13 arrest and he's ordered to exit the vehicle and he
14 refuses to do so, his failure to comply with that
15 directive is a violation of a police order, is that
16 correct?

17 A. Yes, it is.

18 Q. So how long do you expect the officers to
19 allow Mr. O'Brien to remain in the vehicle after
20 being directed lawfully to exit?

21 A. This is similar to a question you asked
22 earlier about how many warnings should they give, and
23 there is no definitive answer to that question. Each
24 situation is different with different players,

1 different actors, different words exchanged,
2 different crimes involved or is it just a violation
3 or is it just a parking violation, so there is no
4 definitive answer to that question of how many times
5 they have to tell him he's under arrest before making
6 the arrest.

7 Q. Well, it's a fair statement that if a
8 motorist continues to refuse to get out of the
9 vehicle, at some point, the officers are going to
10 have to forcibly remove him in order to effectuate
11 the arrest?

12 A. That is correct.

13 MS. SHAMBEE: Objection. Form.

14 THE WITNESS: Sorry. That is correct.

15 BY MS. McGEE:

16 Q. Now, in your opinion, you indicate that
17 Officer Davis's actions were an attempt to exert his
18 authority over O'Brien and to force him to comply
19 with -- to comply or face arrest. On what facts did
20 you rely upon to form this opinion?

21 THE WITNESS: Madam Reporter, I'm going to
22 need that question one more time.

23 (Whereupon, the Court Reporter read from the
24 record as follows:

1 Q. Now, in your opinion, you indicate that
2 Officer Davis's actions were an attempt to
3 exert his authority over O'Brien and to
4 force him to compel (sic) with -- to compel
5 (sic) or face arrest. On what facts did you
6 rely upon to form this opinion?)

7 MS. McGEE: Just so the record is clear, I
8 may have said the word "compel," but I meant to say
9 the word "comply."

10 MS. SHAMBEE: Just for the record, you're
11 referring to the report G?

12 BY MS. McGEE:

13 Q. Yeah. I can read the whole question.
14 Would you like me to read the question back so it's
15 clear for everyone?

16 A. Sure. Since we've gone back and forth with
17 it, yes.

18 Q. Sure. Let me -- let me -- let me try
19 again.

20 All right. In your report, you
21 indicate Officer Davis's actions were an attempt to
22 exert his authority over O'Brien and to force him to
23 comply or face arrest. On what facts do you rely
24 upon to form this opinion?

1 A. The progression through the traffic stop
2 that we've discussed today. Again, using the lights
3 and siren, that didn't work. Let's now move up to
4 the driver's door and ask Mr. O'Brien to move his
5 car, that didn't work. To then turn it into a
6 traffic stop at that point. It probably already was,
7 but I think by the officer saying you now need to
8 give me your license and insurance, so at that point,
9 Davis has moved to probably, like we talked about, it
10 might be for a citation, it might be a forewarning or
11 he just wants to identify him, whatever the case
12 might be. When that is unsuccessful, he now tells
13 him to get out of the car, get out of the car. He
14 never says what he's under arrest for, but it seems
15 quite clear to me that based on Davis's actions, he
16 wants O'Brien out of the car, and he wants him out so
17 badly that he eventually resorts to handcuffing and
18 force in order to try to get him out of the car.

19 So I moved ahead there a little bit,
20 but at the point where we're writing G -- where I'm
21 writing G, we're looking at those facts, basically,
22 the two most compelling things to me are: 1, give me
23 your license and insurance and then O'Brien's refusal
24 to give those documents; and then 2, get out of the

1 car. So those are the most compelling things to me
2 that he was trying to exert his authority over
3 O'Brien.

4 Q. And you would agree that the failure to get
5 out of the car is an arrestable offense?

6 A. Yes, it is.

7 Q. All right. So in your report under G, you
8 talk about that Mr. O'Brien was told that he was
9 under arrest after only one minute's worth of
10 conversation, so my question for you on this: Is
11 this opinion based solely on your review of the
12 body-worn camera footage?

13 A. Yes, it is. It's looking at the time stamp
14 from the first arrival at the door when he asked him
15 if he's high to the point where he's now, you know,
16 he's, basically, trying to form an arrest there, so
17 he's saying step out of the car. Clearly becomes a
18 seizure at that point. I think actually the seizure
19 probably occurs when the lights and sirens are
20 on -- no, that's probably not a seizure. Most
21 citizens probably think they have the right to leave.
22 In fact, they probably think the officer is
23 encouraging them to leave, so I won't say that's a
24 seizure, but at the time that Davis arrives at the

1 door and begins to ask for the license and insurance,
2 I think most citizens would realize they do not have
3 the opportunity to leave at that point and that they
4 should comply with the officer's orders.

5 Q. And you have no idea how long the officers
6 were engaging with Mr. O'Brien prior to activation of
7 the body-worn camera?

8 A. Based on the police report -- and it
9 seems -- I have no reason to doubt it. It seems very
10 quickly that that probably took 30 seconds or a
11 minute to pull up behind and see the vehicle in the
12 road there and use the lights and siren like we
13 talked about. In fact, a minute probably seems
14 excessively long. It might mean 15 or 30 seconds,
15 but I don't know honestly in answer to your question.
16 You're right. I can only go by what I saw in the
17 report. The officers didn't list a whole lot of
18 interaction at that point, so there was nothing that
19 I saw that would take very long, so I would say
20 around 30 seconds possibly, but that's just an
21 estimate.

22 Q. And this is your -- this is your guess?

23 A. Yes. It's a guess based on what I -- what
24 I read from the officer.

1 Q. Okay. But you have no actual idea of how
2 long it was that the officers were in their vehicle
3 asking him to move, how long it took to blow the air
4 horn, how long after they activated the light bar it
5 was before the officers approached the vehicle?

6 A. I can say in my experience of doing those
7 things hundreds of times, it doesn't take that long.
8 Like I say, I think a very good estimate is around 30
9 seconds. That's -- I didn't see anything else in the
10 officer's report that would make it extend beyond
11 that. That's -- that's -- that would be a lot of
12 siren going for 30 seconds, and I can't see an
13 officer doing that unless they were trying to make a
14 felony arrest or something like that, which they
15 weren't.

16 Q. So if the officers had told Mr. O'Brien to
17 leave, used their air horn to instruct him to leave,
18 activated the light bar and then waited a minute, do
19 you think that's reasonable?

20 MS. SHAMBEE: Objection to form.

21 THE WITNESS: It could be reasonable.
22 Yeah, I certainly think there's a possibility. So if
23 they had done the exact things that we talked about
24 in the report, if they pulled up behind him, used the

1 light bar and the air horn and then approached the
2 vehicle, I think those are all reasonable.

3 One minute. You're under arrest in
4 one minute, I would -- that seems unreasonable to me.

5 Again, I think that there was so many
6 opportunities to have a simple conversation with him
7 and that could end it successfully, but those
8 opportunities were ignored, and they -- and
9 Officer Davis just jumped so quickly to all right;
10 I'm tired of this; I'm done discussing this with you;
11 you're under arrest. In fact, he didn't even say
12 that. He just said step out of the vehicle, step out
13 of the vehicle, you know, and we never hear what he's
14 under arrest for.

15 BY MS. McGEE:

16 Q. So when you keep -- when you talk about
17 Officer Davis being tired of this, you are under
18 arrest, he never said those words, correct?

19 A. I think that's correct. I don't remember
20 him -- I mean, at one point, he says step out or I'm
21 going to take your ass to jail, so, you know, I think
22 to most people, that indicates you're under arrest,
23 but he doesn't say it. It's a -- he's using that as
24 a warning, but he's not actually saying it, and he

1 doesn't list the crime, but I think most people would
2 realize I'm under arrest now. I think it's very
3 clear.

4 Q. Well, we already said -- talked about that.
5 There are at least two other reasons that you can be
6 asked to step out of your vehicle without being under
7 arrest, the officer-safety reason and the Terry stop,
8 right?

9 A. Yes.

10 Q. And, actually, you added a third. The
11 possible search of a vehicle, so there's three of the
12 four reasons that you list for ordering a motorist
13 out do not involve an arrest, is that correct?

14 A. That's correct. I mean, there's many
15 reasons why someone might be asked out of a vehicle,
16 and that's why I wrote it that way. That we don't
17 know at that point. We've not heard on the video
18 what the officer's intention was.

19 Q. So let me ask you, though, about the one
20 minute's worth of conversation. The one minute that
21 you're getting is solely based on the body-worn
22 camera footage?

23 A. That's correct. From time of initial
24 contact to time of attempted arrest, it's a little

1 over a minute.

2 Q. And by time of initial contact, do you mean
3 from the time that Officer Davis activated his
4 body-worn camera as he approached the vehicle?

5 A. Correct. From the time of the physical
6 contact, let's say, the face-to-face or the verbal
7 contact.

8 Q. And that's because you have no idea how
9 long the officer spent trying to get him to move his
10 vehicle before the moment of the body-worn camera
11 activation?

12 A. Well, that's not exactly true as I
13 discussed before. Based on what I read in the
14 officer's report, 30 seconds seems like a very
15 healthy, a very good estimate of amount of time. It
16 could be a little less. It could be a little bit
17 more, but it's certainly not going to be more than a
18 minute, but, again, unless there's things they put in
19 the report that I don't know about, but from what I
20 read, I would say that that took a matter of seconds.

21 Q. Nowhere in the report did the officers ever
22 describe how long they interacted with O'Brien prior
23 to activation of the body-worn camera, fair?

24 A. That's correct. That is true.

1 Q. And nowhere on the body-worn camera did the
2 officers talk to O'Brien and say we've been
3 interacting with you for X number of seconds prior to
4 activating our body-worn camera, is that correct?

5 A. That is correct.

6 Q. So when you say 30 seconds, this is your
7 speculation based on your experience and knowledge of
8 the facts?

9 A. It's based on that and what I read in the
10 report, so you put those two together is what it's
11 based on.

12 Q. Now, when you -- when you talk about
13 Mr. O'Brien being told he's under arrest after only
14 one minute's worth of conversation, in that one
15 minute of conversation, you actually heard
16 Officer Davis issue police directives to Mr. O'Brien,
17 is that correct?

18 MS. SHAMBEE: Objection to form.

19 THE WITNESS: That is correct.

20 BY MS. McGEE:

21 Q. And you heard in that one minute of
22 conversation Officer Davis tell Mr. O'Brien to move
23 his vehicle?

24 MS. SHAMBEE: Objection. Form.

1 THE WITNESS: That is correct.

2 BY MS. MCGEE:

3 Q. To provide driver's license and proof of
4 insurance?

5 MS. SHAMBEE: Objection. Form.

6 THE WITNESS: Correct.

7 BY MS. MCGEE:

8 Q. And then he -- and then Mr. O'Brien refused
9 both of those directives in that one minute, is that
10 correct?

11 MS. SHAMBEE: Objection to form. Sorry.
12 Objection to form.

13 THE WITNESS: That is correct.

14 BY MS. MCGEE:

15 Q. And then Mr. O'Brien is told to step out of
16 his vehicle in that one minute, is that correct?

17 A. That is correct.

18 Q. And Mr. O'Brien refuses that directive as
19 well?

20 MS. SHAMBEE: Objection to form.

21 THE WITNESS: Yes. He refuses that as
22 well.

23 BY MS. MCGEE:

24 Q. All right. So, then, at this point,

1 Officer Davis attempts to remove Mr. O'Brien from the
2 vehicle. You saw that on the body-worn camera,
3 right?

4 A. Correct. Are we moving into the section H?

5 Q. So I want to talk about your statement that
6 Davis took ahold of O'Brien's left arm and tried to
7 extract him out of the car. O'Brien physically
8 refused to exit by pulling his arm away from
9 Officer Davis and remained seated in the vehicle. Do
10 you remember writing that?

11 A. I do remember that.

12 Q. Okay. So O'Brien's refusal to exit and his
13 actions to avoid the extraction are resisting, acts
14 of resistance, correct?

15 A. Yes, they are.

16 Q. So he's resisting the police at this moment
17 that he is moving away from Officer Davis?

18 A. He mostly moves his arm. I did see his
19 body move somewhat, too, you know, more into the
20 interior of the vehicle, especially when he's
21 interacting with Officer Brown on the other side. So
22 is he trying to move away? I would say mostly he's
23 trying to move his arm away.

24 Q. Okay. And whether he's trying to move his

1 arm or whether he's trying to move his body or both,
2 this is resisting arrest, correct?

3 A. I would say yes. That he knew at that
4 point that Officer Davis intended to make an arrest
5 and that he was refusing to be arrested.

6 Q. And so in addition to the other crimes that
7 Mr. O'Brien had committed, at the moment he is
8 pulling away from Officer Davis, he is committing the
9 crime of resisting arrest?

10 MS. SHAMBEE: Objection. Form.

11 BY MS. McGEE:

12 Q. You can answer.

13 A. Yes. I would say that that met the
14 guidelines for resisting.

15 Q. And let's talk about Davis's attempt to
16 remove O'Brien from the car. Would it be a fair
17 statement of your opinion that you think
18 Officer Davis should have used more force to pull
19 O'Brien out of the car at that point?

20 MS. SHAMBEE: Objection. Form.

21 THE WITNESS: It's a difficult question to
22 answer, and here's the reason. Officers are under
23 incredible scrutiny these days. When anyone sees a
24 physical interaction between an officer and a

1 citizen, sometimes they assume the worse, and
2 everyone gets their cameras out, and they're
3 recording the officers. Consequently -- and this is
4 not referring specifically to the O'Brien case, but
5 in general, I've seen a lot of officers reluctant to
6 use the force that would be required in that
7 situation in order to make the arrest.

8 So, now, let's get back to the
9 specifics of your question and specifics of
10 Mr. O'Brien. At that point, what I would have liked
11 to see Officer Davis say, you are under arrest for
12 refusing the lawful order of a police officer at a
13 traffic stop. In addition, you are now resisting me.
14 Stop that or I'm taking you down to the ground, and
15 then there's a variety of techniques.

16 I'm not specifically a physical force
17 instructor, so I don't have a great expertise there
18 other than being trained in physical force for many
19 years, and then seeing -- both using it in my force,
20 using it myself and seeing officers use force,
21 whether in person or on camera.

22 So I come to this more from just my
23 experience that there's a variety of techniques
24 Officer Davis might have used which could result in

1 an arrest of the subject hopefully without hurting
2 him and, also, getting him in custody in a -- you
3 don't want a lengthy arrest situation. You don't
4 want a longer -- you don't want to draw that out,
5 right? It doesn't mean use excessive force. It
6 means use the force that's appropriate, necessary and
7 proportional, but at that point, if he's making the
8 arrest, and he states he is, at least I think he is,
9 he says, you know, get out of the car, there are
10 techniques that he could have used to quickly get
11 Mr. O'Brien out of the car.

12 Now, I can't say that they would be
13 successful because I don't know his physical
14 capabilities, and I don't know O'Brien's physical
15 capabilities. As we all saw in the video, it turned
16 out that they struggled at that car door for several
17 minutes.

18 So I'm coming to the close of the
19 answer to your question. I would have liked to see
20 him do this a little bit faster and, therefore,
21 increasing officer safety by limiting the ability of
22 someone to resist arrest, to produce a weapon, to
23 gain assistance from passersby or to formulate a plan
24 of escape.

1 So sometimes you want to act with
2 enough speed. You use appropriate force, but you do
3 it with enough speed that I'm going to make this
4 arrest, and we're going to do it quickly because
5 that's going to keep me safe and that's going to keep
6 the citizen safe, and it didn't turn out that way.

7 Q. So what techniques should Officer Davis had
8 used at the moment he is -- we have him reaching for
9 Mr. O'Brien's arm and Mr. O'Brien is pulling away
10 from him, what should Officer Davis have done to
11 extract Mr. O'Brien from the car?

12 A. At that point --

13 MS. SHAMBEE: Objection. Form.

14 THE WITNESS: Ideally, you have two
15 officers at the -- at the scene. Call Brown over,
16 and we're going to extract this person out of the --
17 sorry. Alexa, off. Sorry about that.

18 At that point, calling the other
19 officer over and using two-partner techniques. I'm
20 sure that the Chicago Police Department has a variety
21 of techniques that they've trained people in how to
22 remove people from the car.

23 One of my favorites is the underhook
24 where you take your right arm, you put it under the

1 arm of the person, in this case, Mr. O'Brien, and you
2 put the back of your hand on the neck. If you can
3 control him safely and you then use that hooking
4 motion to pull him out of the car while Officer Brown
5 then attempts to control the other hand, in this
6 case, the right hand, and then move him from the car
7 to the side of the car would be a great place for
8 either standing handcuffing or if you felt that it
9 was -- he had resisted too much and you felt that the
10 danger factor warranted it, to then take him down for
11 prone handcuffing, which means placing him on the
12 ground; therefore, limiting the subject's ability to
13 move, to react, to fight, to defend, to run or
14 anything, and then do the handcuffing there, so I
15 found that to be a very effective technique.

16 But as to whether Davis and Brown
17 could do this, I don't know. I don't know their
18 training and their abilities.

19 BY MS. MCGEE:

20 Q. So with respect to Officer Davis's attempt
21 to pull Mr. O'Brien from the car by grabbing his left
22 arm, is it your opinion that he used too little force
23 to effectuate the extraction at that point?

24 MS. SHAMBEE: Objection. Form.

1 THE WITNESS: Now, see, that's what's so
2 hard for officers these days. If you use too little
3 force, you don't make the arrest and you end up in a
4 long back-and-forth struggle like we saw here, too,
5 but if you use quick, rapid force, some people say
6 you used too much force. Why were you so quick with
7 that guy? Why were you so fast, you know? So
8 it's -- it's almost an impossible question to answer,
9 again, not knowing the capabilities and things like
10 that. Did he use too little force?

11 Let's just say that the struggle went
12 on longer than I would have liked to have seen it go
13 on, and as we'll probably get to, created possibly an
14 officer-safety situation because of the length of the
15 struggle. So yeah, at that point, in answer to your
16 question, I think he could have used a little more
17 force. I think having Officer Brown there at his
18 side with the two of them, they would have a much
19 greater chance of extracting Mr. O'Brien from the
20 car.

21 BY MS. McGEE:

22 Q. So a couple moments ago, you told me that
23 you're unaware of the techniques that the Chicago
24 Police Department trains their officers on for

1 removing a resisting motorist from the vehicle, is
2 that true?

3 A. Yes, it is.

4 Q. So you have no idea what either the police
5 protocols or training are for a situation like this?

6 A. No, I don't. I can try to explain that
7 further, but that's -- that's -- the best simple
8 answer is no, I don't.

9 Q. Okay. And you told me before that you
10 taught a lot for the Seattle Police Department and
11 for some other places. Have you ever been a
12 use-of-force instructor?

13 A. As I stated previously, that has not been
14 my specialty. I've received, you know, 100 or 200
15 hours of physical force training, but I've never
16 been -- no, I can't -- I can't say I was a physical
17 force instructor. No.

18 Q. Okay. So -- all right. In opinion I, you
19 seem to have a problem with the fact that the
20 officers are either handcuffing or partially
21 handcuffing Mr. O'Brien in the vehicle, is that
22 right?

23 A. Yes.

24 Q. And so this CREST model, the C-R-E-S-T

1 model, where are you getting that from?

2 A. That comes from the Seattle Police
3 Department, and I don't know if Chicago follows that
4 model, but what I can state is that the ideas that
5 you see here are very common for police training and
6 police officers across the country that if you get
7 out of order, let's say you start searching before
8 someone is handcuffed, what are you doing? You're
9 allowing yourself the opportunity to be assaulted
10 because you don't have control of the hands, so
11 you're out of order there. Or let's say you
12 transport someone without searching them and, now,
13 they produce a weapon and injure or kill you.

14 So these are very common knowledge
15 that, again, Chicago might not use CREST, that
16 particular framing device, but these are very common
17 that you need to have control of the prisoner to then
18 restrain them. So you want to go in order there.
19 It's very important that we, first off, physical
20 control, and then, 2, the handcuffs are very
21 important. Every police officer from academy day one
22 trains in the use of handcuffs and how they can help
23 keep you safe while you then do the other things,
24 whether it's to look at your situation, to evaluate,

1 whether you're going to do a search, you're going to
2 do the transport, you're going to have hand off to
3 someone else, you're going to interview a victim.
4 Whatever you're going to do. If you have a suspect
5 that's under arrest, don't let them roam about freely
6 and escape. Don't let them assault you. Don't let
7 them gain weapons. Don't let them gain people to
8 assist them.

9 So, again, they might not have that
10 CREST model, but the ideas that you see presented
11 there are very common to all police departments, and
12 I would not be surprised at all to see that Chicago
13 has a similar training mechanism.

14 Q. The CREST model is designed to promote
15 officer safety, is that right?

16 A. Yes, it is.

17 Q. To make sure that during the course of the
18 arrest, that the officer is not injured by an
19 out-of-control subject?

20 A. Yes. That is definitely one of the
21 benefits from moving in that pattern.

22 Q. So when the officers get Mr. O'Brien's left
23 hand handcuffed but not the right hand, the danger at
24 this point is to the police?

1 A. Okay. When they handcuff his left hand but
2 not his right, the danger is to the police? There's
3 also a danger -- yes. In answer to your question,
4 yes, there is a danger factor for the police because
5 Mr. O'Brien's right hand is free, but there's also a
6 danger factor for Mr. O'Brien, too, because I saw his
7 left arm pinned with the elbow against the door frame
8 of the car, and it doesn't take much force to
9 dislocate an elbow, so it's also for his safety as
10 well.

11 Q. Well, do you have any information that
12 Mr. O'Brien was injured in the elbow region?

13 A. No, I do not.

14 Q. Okay. So there was no injury that was
15 caused to Mr. O'Brien from handcuffing with only the
16 left hand at this point, is that correct?

17 A. That is correct.

18 MS. SHAMBEE: Objection. Objection. Form.
19 Calls for a legal conclusion.

20 BY MS. McGEE:

21 Q. Well, did you receive any information from
22 any source whatsoever that would indicate Mr. O'Brien
23 suffered any type of left elbow injury from being
24 handcuffed on just the left side?

1 A. No. I was trying to answer your question
2 that the danger factor was only for the police there,
3 and I was offering information that there's also a
4 danger factor for the citizen being placed under
5 arrest, in this case, Mr. O'Brien, so I tried to
6 answer the question in that way, but you are correct,
7 I do not have any information that he received an
8 elbow injury as a result of the arrest.

9 Q. And at any point in time, Mr. O'Brien could
10 have stopped resisting and submitted to the arrest,
11 is that correct?

12 A. Yes. He could have stopped his resistance
13 and submitted, yes.

14 Q. All right. So, then, I want to talk about
15 the reaching. So at some point in time, it's pretty
16 clear from the video camera of both officers that
17 they believed that Mr. O'Brien was reaching towards
18 the center console area of the vehicle, correct?

19 A. I heard --

20 MS. SHAMBEE: Objection.

21 THE WITNESS: Sorry. Go ahead.

22 MS. SHAMBEE: Objection. Form.

23 THE WITNESS: I heard about reaching. I
24 never heard that it was definitively the center

1 console or the floor boards or behind the back seat
2 or where, so I don't know specifically in the
3 vehicle, but I did hear several warnings about
4 reaching and stop reaching.

5 BY MS. McGEE:

6 Q. You heard them say stop reaching, right,
7 multiple times?

8 A. Yes, I did.

9 MS. SHAMBEE: Objection. Form.

10 BY MS. McGEE:

11 Q. And in your experience as a police officer,
12 when you're -- when you have a suspect that's
13 resisting arrest and the suspect starts reaching into
14 the vehicle, what is that -- what does that cause
15 concern for for you?

16 A. There's a lot of concern that people will
17 keep weapons in a car, and whether that be knife or
18 baseball bat, a gun, anything like that that could
19 injure the officer, so if someone is reaching around
20 in the car, on the traffic stop itself, it might
21 indicate I'm looking for my wallet or my license, but
22 in this case where someone is -- they got one
23 handcuff on and the officers are ordering them out of
24 the car, if they're reaching into the car, I think

1 there's definitely a heightened sense of security for
2 the officers that they did believe that there
3 potentially is an officer-safety situation as a
4 result of the reaching.

5 Q. Now, you as a police officer, I'm sure, are
6 aware that sometimes suspects will hide weapons or
7 firearms in the center console area? Has that been
8 your experience?

9 A. It's very common. Most cars have a decent
10 size center console, and you can hide a variety of
11 items in there, yes.

12 Q. And so if someone is reaching into the
13 center console area of the car, it's reasonable for
14 the officers to be concerned for officer safety at
15 that point?

16 A. Yes, it is.

17 MS. SHAMBEE: Objection. Form.

18 BY MS. MCGEE:

19 Q. And when you -- in your opinion, you talk
20 about both the language used by the officers, their
21 demeanor, the pitch of their voice, that it's your
22 opinion that they perceived a threat from Mr. O'Brien
23 when he started reaching in the vehicle, is that
24 fair?

1 A. Yes, it is.

2 MS. SHAMBEE: I'm going to ask if you can
3 say where are you referencing?

4 MS. McGEE: I'm asking him his opinion.

5 BY MS. McGEE:

6 Q. So I want to talk about, then, the officers
7 after instructing Mr. O'Brien to stop reaching, they
8 do at some point in time unholster their firearm, is
9 that correct?

10 A. Yes, they do.

11 Q. Okay. And upon the moment that the
12 officers unholster their firearm, at least one of the
13 officers tells Mr. O'Brien to stop or they're going
14 to shoot, is that right?

15 A. Yes. That was Officer Davis.

16 Q. Yeah. Do you have any problem with an
17 officer say stop reaching or I'm going to shoot?

18 MS. SHAMBEE: Objection. Form. Also,
19 misinterpretation of the facts.

20 THE WITNESS: It's -- it's a difficult
21 question to answer. That's not how I would have done
22 it.

23 It seemed that Officer Davis was a bit
24 reactionary and possibly too excited for the moment,

1 and it's been my experience working with a lot of
2 different police officers -- and, again, I'm assuming
3 that, in general, Chicago police officers are like
4 Seattle police officers -- that there are
5 circumstances that have resulted in unnecessary
6 shootings. I'm not saying this is one of those, but
7 they're -- when I watched Officer Davis, it almost
8 seemed like he was too caught up in the moment. He
9 started saying things like I'm going to shoot, I'm
10 going to shoot. It's been my experience in my
11 training that if you lose your cool and you start
12 swearing and yelling, you've lost some of that mental
13 ability to discern what is happening in the moment
14 and to react appropriately. I'm not saying that he
15 could not have pointed his weapon at Mr. O'Brien, and
16 I also cannot see clearly as clearly as he
17 can -- again, we talked about earlier the difference
18 in a camera and the human eye. Obviously,
19 Officer Davis could see things that the camera view
20 eye had did not show me, so I'm not going to doubt
21 him that he felt that there was a threat there.

22 But I will say that he rather
23 than -- the quickest way to negate that threat would
24 have been to use as much force as is necessary to

1 swiftly get him out of that car. If he really felt
2 that O'Brien was grabbing a weapon at that point,
3 that's going to be the quickest way to negate the
4 ability to get that weapon.

5 That being said, if O'Brien is too
6 fast for him and he grabs the weapon, the firearm is
7 going to be appropriate. So he's going to have to
8 make that decision for himself as to, you know,
9 whether that met the idea of being necessary in order
10 to handle that situation.

11 So it's a long-winded question -- I'm
12 sorry, a long-winded answer to a short question. Do
13 I have problems with it? I think he was overly
14 reactionary and resorted to the firearm too quickly.

15 BY MS. McGEE:

16 Q. So here's my question, though. We now have
17 O'Brien who we've already agreed is resisting arrest.
18 He's now reaching somewhere in the car, and it's your
19 opinion that the officers perceived a threat by his
20 resistance and now his reaching. So if they're
21 concerned for their safety, they have the right to
22 unholster their firearm in order to protect
23 themselves, right?

24 MS. SHAMBEE: Objection. Form.

1 THE WITNESS: I agree with you. Yes.

2 BY MS. MCGEE:

3 Q. And we know from the video that the
4 officers had their firearms unholstered for a pretty
5 short period of time, correct?

6 MS. SHAMBEE: Objection. Form. That's a
7 matter of opinion.

8 BY MS. MCGEE:

9 Q. You can answer.

10 A. I didn't specifically time the amount of
11 time that the firearm was out, but based on my
12 general recollection of watching the video last
13 night, I would say he probably had his gun out for
14 one to two minutes.

15 Q. If I told you it was less than a minute,
16 would you say that that was reasonable or
17 unreasonable?

18 MS. SHAMBEE: Objection to form.
19 Speculation.

20 THE WITNESS: I would not have an opinion
21 on that.

22 BY MS. MCGEE:

23 Q. Okay.

24 A. That wouldn't -- that wouldn't sway me one

1 way or the other.

2 Q. Okay. So in this case, we know that when
3 O'Brien stops reaching, the officers immediately
4 reholster their firearms, correct?

5 MS. SHAMBEE: Objection. Form.

6 THE WITNESS: I would disagree with that.
7 Officer Davis has his firearm out as he reapproaches
8 Mr. O'Brien, so he keeps his firearm out and kind of
9 pointed at him for a while as he reengages verbally
10 at the window. At some point, Mr. O'Brien says, hey,
11 I've got my hands up on the wheel. You can see my
12 hands and everything, and then he feels calm enough
13 to then holster.

14 BY MS. McGEE:

15 Q. Right. So I guess my question is like
16 this. Mr. O'Brien is reaching somewhere in the
17 vehicle. The officers perceive a threat, and they
18 are now pointing a firearm and issuing directives to
19 stop reaching or they're going to shoot. When
20 Mr. O'Brien stops reaching, puts his hands where the
21 officer can see, they reholster their firearms?

22 A. Not right away.

23 MS. SHAMBEE: Objection. Form.

24 THE WITNESS: Sorry. Not right away. I

1 couldn't tell for Brown, but for Davis, he does not
2 holster right away. He moves in closer than I would
3 have liked and reengages possibly verbally with him.
4 I think he holsters then when he reacquires the
5 handcuff, so there are -- there are some time that
6 passes there. It's not long, but it does -- he does
7 not holster right away.

8 BY MS. MCGEE:

9 Q. So you keep talking about Officer Davis's
10 feelings. You have actually no idea what
11 Officer Davis was feeling in the moment, fair?

12 MS. SHAMBEE: Objection. Form.

13 THE WITNESS: Not entirely fair.

14 Certainly, I think you and I both said that he -- his
15 actions seemed to be that he perceived a threat.
16 Now, what feeling he gets from that, some people get
17 mad; some people get angry; some people get scared.
18 I can't state that, but I can certainly state that he
19 felt that he had a threat, so I think I could
20 probably leave it at that and say I don't know his
21 actual personal feelings.

22 BY MS. MCGEE:

23 Q. So let's just be clear. You've never
24 spoken with any of the Defendant officers, correct?

1 A. That is correct. Yes.

2 Q. And you have not -- aside from the Arrest
3 Report and the Original Case Incident Report, you
4 have no other statements from these officers?

5 A. That is correct.

6 Q. And the Arrest Report and the Original Case
7 Incident Report provide no information about what the
8 officers were feeling, is that correct?

9 A. Correct. I don't even think the police
10 report mentions drawing the firearm, if I remember
11 correctly.

12 Q. When you say "police report," are you
13 talking about the Arrest Report, the Original Case
14 Incident Report or something else?

15 A. The Original Incident Report, and I
16 can't -- I didn't review the Arrest Report, so I
17 can't state for sure.

18 Q. You didn't review the Arrest Report ever?

19 A. No. This morning or last night.

20 Q. All right. So tell me about your concerns
21 about when Officer Davis moves closer to the vehicle
22 with his firearm drawn.

23 MS. SHAMBEE: Objection. Form. Is that a
24 question?

1 BY MS. McGEE:

2 Q. You can answer.

3 A. Well, just tell you more about it? I
4 mean --

5 Q. Well, tell me why you think it's a problem.

6 A. I could read what I wrote here.

7 Q. Well, I can read what you wrote. I want
8 you to tell me why you wrote that.

9 A. Well, why I wrote that is because that's
10 how I felt in reviewing this -- in reviewing hundreds
11 of police officers', you know, videos and things on
12 when they have the firearms out as well as my SWAT
13 training and experience and general police training
14 that when you approach someone closely with a
15 handgun, you're now enabling them to possibly grab
16 that handgun from you and use it against you, so if
17 it can be avoided, it's generally recommended police
18 practice in all the training I've ever received that
19 unless you have to advance close, if you're going to
20 have your firearm out, a bit of distance is a good
21 thing because it enables you to see more clearly. It
22 gives you a bit more reaction time. It gives you
23 possibly more cover and concealment that you might be
24 able to find for yourself, and by advancing closely

1 to someone, you're now giving them the ability to
2 grab that weapon.

3 You're also -- there's
4 sometimes -- there have been cases of sympathetic
5 firearms, fire. Someone pulling the trigger
6 accidentally or, also, they've confused do I have a
7 Taser in my hand or do I have a handgun in my hand?
8 And we've seen some of the aftereffects of that where
9 someone gets shot when someone actually only intended
10 to use a Taser.

11 So if he's going to engage with
12 Mr. O'Brien closely at the window there, he
13 reengages. We talked about how O'Brien says, hey, I
14 am not a threat. My hands are up here or they're on
15 the steering wheel. Good thing for him to do would
16 have been to holster at that point. Because, now, he
17 also places Officer Brown in the line of fire because
18 his firearm is pointed straight towards O'Brien, and
19 Brown at this point has -- I don't know if he's
20 reholstered or not, but he has moved. From the rear
21 of the car, he has now moved back to the passenger
22 side of the car, so, now, the officer ends up
23 pointing his firearm at two people, including his
24 partner, which is a bad idea. It's extremely unsafe.

1 Q. All right. So let's talk about the
2 direction of the firearm. You actually don't have
3 the same line of vision on that firearm that
4 Officer Davis has, is that a fair statement?

5 A. That is a fair statement.

6 Q. Okay.

7 A. Because of the placement of the body camera
8 and sometimes it has a fish-eye lens that you cannot
9 tell exactly where that firearm is pointed. That's a
10 true statement.

11 Q. Okay. So, then, you just gave me an
12 example of like a Taser, a firearm mix up. That's
13 not the situation in this case, right?

14 A. If you listen to the video, there is some
15 mention of Taser and not even at the arrest on the
16 ground later with the sergeant. There's some mention
17 of Taser earlier, and I don't know why -- I believe
18 it's Mr. O'Brien that says it, and so I don't know
19 much more than that. No one talks about drawing a
20 Taser. I don't even know if the officers were
21 equipped with a Taser. I don't know if he's just
22 stating that because -- I don't know why he's stating
23 that.

24 Q. Who is stating that?

1 A. Mr. O'Brien mentions something about Taser
2 in the video.

3 Q. Right, right, but you're telling -- you
4 told me earlier that approaching a vehicle with your
5 firearm drawn is a problem because officers sometimes
6 get mixed up between their Taser and their firearm.
7 Do you remember telling me that?

8 A. That has happened, yes.

9 Q. I understand that has happened, but that
10 didn't happen here. We would agree?

11 A. That did not happen there. I would agree.

12 Q. And the officers were pretty clear that
13 they were pulling out their firearms after
14 Mr. O'Brien started reaching into the vehicle?

15 A. That is correct.

16 Q. And they start by screaming stop reaching
17 and then they pull out their firearm after
18 Mr. O'Brien refuses the command to stop reaching?

19 A. I couldn't tell definitively if he stopped
20 reaching or not. I think I wrote in there that I
21 could not see with the camera view I had all of the
22 movements of his hands or where his hands are, but I
23 will also acknowledge that the officers clearly state
24 stop reaching, stop reaching. He's reaching. He's

1 reaching. I'm going to shoot. I'm going to shoot.
2 So clearly, whether right or wrong, Officer Davis
3 perceives that there is a threat that Mr. O'Brien
4 poses at that time.

5 Q. And let's be clear, neither officer
6 discharged their firearm that night?

7 A. That is correct.

8 Q. So when you -- how many times have you
9 drawn your firearm in a traffic stop?

10 A. I would say as a patrol officer, maybe 3,
11 but as a SWAT sergeant, it was -- we had rifles in
12 our hands quite often or we drew firearms because we
13 were dealing with -- our arrests were dealing with
14 very dangerous individuals, so it was much more
15 common then, so I'll say 3 as a patrol officer, and
16 20 in SWAT possibly.

17 Q. And it would be a fair statement that your
18 experience as a patrol officer is more like what
19 Officers Davis and O'Brien (sic) experienced with
20 this traffic stop?

21 A. I agree with that.

22 Q. So let's just talk about the three times
23 that you've drawn your firearm in a traffic stop.
24 When you drew your firearm, did you draw your firearm

1 because you perceived a threat to you as an officer?

2 A. Yes, I did.

3 Q. And upon drawing your firearm, did you give
4 a command to the motorist?

5 A. Yes. As far as I can remember each time, a
6 warning was given.

7 Q. And would you consider stop reaching or I'm
8 going to shoot to be a warning given to Mr. O'Brien?

9 A. Absolutely.

10 Q. All right. So I want to talk about after
11 the firearms are reholstered, there's another attempt
12 to gain control of Mr. O'Brien. Would that be a fair
13 description of what you saw on the video?

14 A. Yes.

15 Q. And so, eventually, the officers are able
16 to handcuff the right arm?

17 A. Correct. The --

18 Q. So you have a timestamp of --

19 A. We can stop there if you want.

20 Q. Yeah. Let's stop there. You have a time
21 stamp in your report of 5:45. Are you time stamping
22 this off of Davis's video or Brown's video?

23 A. Off of Davis's video.

24 Q. And so prior to the handcuffing, when

1 O'Brien is reaching in the car and the officers are
2 telling him to stop reaching and he keeps reaching,
3 you would agree that this is also another act of
4 resisting?

5 A. It's certainly not what the officers wanted
6 him to do, but under the definition of resisting I
7 believe there in Illinois, I term that resisting more
8 when they have hands-on with him and he's handcuffed
9 or not handcuffed and he's pulling from them and he's
10 trying to pull away and you can see the tension
11 between the officer and the subject, I think that's
12 clearly resisting.

13 When he's reaching, Davis moves away
14 from him and steps back. I don't know if it meets
15 the legal definition of resisting at that point.
16 Clearly, he's not doing what they asked him to do.
17 He eventually does, and I believe he puts his hands
18 back up on the wheel, but there is a time period
19 where he's not doing what they told him to do.

20 Q. You also saw on the video that there are
21 times where O'Brien is resisting by grabbing ahold of
22 the steering wheel to brace himself to prevent the
23 officers from removing him from the vehicle?

24 A. I believe I did see that on the video, yes.

1 Q. And you saw Mr. O'Brien engage in the act
2 of resisting by holding on to his car keys and
3 refusing to give them to the police officers. Did
4 you see that?

5 A. No, I would not call that active resisting.
6 Generally, I think of active resisting where you are
7 now actively trying to injure, push, grab, assault
8 the police officer who is trying to arrest you.

9 Passive resister is someone that grabs
10 onto the steering wheel or holds their hands or uses
11 muscular tension to avoid their arms being pulled, so
12 I would definitely describe him as a passive
13 resister, not an active resister.

14 Q. Where are you getting these definitions of
15 active and passive from?

16 A. From my training and experience, and
17 definitely the way we train in Seattle, it's a very
18 clear line who is a passive resister. We have a
19 number -- we have a lot of protests here in Seattle.
20 It's very important that I train officers and also
21 that I'm trained in what a passive resister is. This
22 is not someone that's actively trying to injure you.
23 They are not hurting you. They are not grabbing you.
24 They are not poking you. They are not pushing you.

1 What they are doing is they are using
2 whatever -- whether it's a physical object to hang on
3 to, like a steering wheel, or it's just muscular
4 tension where I'm just keeping my hands right here on
5 my chest and I'm refusing to allow the officer to
6 pull my arm, let's say, behind my back or something
7 like that, that is a passive resister. There is
8 nothing there that tells the officer, hey, I'm being
9 assaulted right now. You're assaulting me or you're
10 hitting me or you're punching me, you're kicking me.
11 So that's a passive resister.

12 So we train very exclusively that an
13 active resister -- because in Seattle -- again, I
14 don't know exactly the Chicago training methods, but
15 in Seattle, we are trained that an active resister is
16 someone that's actually trying to hurt you, to injure
17 you, taking an aggressive stance. Let's say they are
18 drawing their fist back like they are going to punch
19 you, that's an active resister. They're going to
20 engage in something that's going to hurt you; and,
21 therefore, because they're actively resisting, you
22 now have a variety of force options open to you to
23 use for the active resister as opposed to the
24 passive.

1 Q. So you would agree that you saw in the
2 video Mr. O'Brien resisting the police by bracing on
3 the steering wheel?

4 A. I would say that is definitely a form of
5 passive resistance, yes.

6 Q. And you saw him bracing with his feet to
7 prevent the officers from removing him from the
8 vehicle?

9 A. I can't state that I saw enough of his foot
10 action to agree with that. I don't have enough
11 information on that.

12 Q. And you saw Mr. O'Brien refusing to give up
13 his keys when the police were trying to get the keys
14 from him?

15 A. As it stands right now, I do not remember
16 anything about the keys. I don't remember seeing
17 them in his hand, and I don't remember the officers
18 mentioning the keys, so I don't have enough
19 information on that right now.

20 Q. And we saw him resisting when he was
21 fighting with the officers and refusing to get out of
22 the vehicle, right?

23 MS. SHAMBEE: Objection to form.

24 THE WITNESS: I would not term what he did

1 as fighting. I would term it as passively resisting
2 the officer. He tried to keep his arms close to his
3 body and refused to give them up to be handcuffed.

4 BY MS. MCGEE:

5 Q. And so you're using for passive resistance
6 the Seattle definition, which means not assaulting
7 the police officer?

8 MS. SHAMBEE: Objection. Form.

9 THE WITNESS: I think I did a pretty
10 thorough job of describing what a passive resister
11 and an active resister is as far as the Seattle
12 Police Department goes, and then I also relied on --

13 Not my dog. Sorry.

14 I also relied on some of the
15 definitions, wordage, verbiage that I saw within the
16 online Chicago Police Department Manual.

17 BY MS. MCGEE:

18 Q. You've never been trained on what
19 constitutes a passive versus an active resister
20 according to the Chicago Police Department, fair?

21 A. No. I can't say I've had their training,
22 no. That's correct.

23 Q. Now, how long should the officers have let
24 Mr. O'Brien sit in the car before they physically

1 pulled him out?

2 A. Well, I think we've kind of gone over
3 that --

4 MS. SHAMBEE: Objection. Form.

5 THE WITNESS: Okay. I think we've kind of
6 gone over that. When it's phrased in that manner,
7 there is no definitive answer to that question, and
8 it can't be answered. That being said, again, try
9 not to repeat myself here, but we talked about, you
10 know, the idea of if you're going to make an arrest,
11 don't stand there all day and do it. You're
12 increasing the opportunities for injury. You're
13 increasing the opportunities for yourself getting
14 hurt or the subject getting hurt. You're increasing
15 the opportunities for people, passersby to come and
16 join in. You are increasing the opportunity for
17 someone to grab a weapon, so that's the best answer I
18 can give that question. There is no definitive time;
19 however, do what's necessary. Use the necessary
20 force in order to make the arrest and don't use
21 excessive force, obviously, but do it within a time
22 frame that gets the subject under control that keeps
23 you safe and him safe.

24 BY MS. MCGEE:

1 Q. Do you feel like the officers in this case
2 waited too long to pull him out of the car?

3 A. As I said, I think they -- I think Davis
4 stood at the side of the car for a long time, longer
5 than I would have liked to have seen. If, in his
6 mind, when he decided that O'Brien is under arrest
7 and O'Brien refuses to get out of the car, tell him
8 he is under arrest, tell him why he's under arrest
9 and if he doesn't step from the car, here's the
10 consequence. The consequence is I'm going to pull
11 you from that car. I'm going to call my partner
12 over. In fact, Brown come over here right now.
13 Brown and I are going to pull you from that car, and
14 we're going to put you up against the car, we're
15 going to put you down on the ground, whatever the
16 case might be.

17 And I'm actually taking probably
18 longer to explain this than they could. In realtime,
19 it would say get out of the car right now or Brown
20 and I are going to pull you out and handcuff you. Do
21 you understand? And if he at that point does not
22 agree to be arrested and still is resisting arrest,
23 pull him out of the car, and that avoids that
24 potential lethal force situation that we talked about

1 where now we have the officer perceiving that O'Brien
2 is reaching, and he's got guns pointed at him, and it
3 just avoids a lot, and if you can -- go ahead.

4 Q. The officers in this case did not use
5 lethal force? No officer used a firearm, correct?

6 A. That is correct.

7 MS. McGEE: Okay. All right. I just need
8 a short restroom break, so can we just take five,
9 everyone?

10 MS. SHAMBEE: Sure.

11 THE WITNESS: That sounds great.

12 (Whereupon, a recess was taken
13 from 2:21 until 2:29 p.m.)

14 BY MS. McGEE:

15 Q. Back on the record.

16 So I want to ask you like the actions
17 that you saw in the video of Mr. O'Brien bracing
18 himself on the steering wheel with his hands, you
19 would agree that these are actions to resist the
20 police officers' attempts to arrest him?

21 A. Yes, I would.

22 Q. Okay. And he was -- some people would talk
23 about it in terms of Mr. O'Brien was trying to defeat
24 the arrest. Have you heard that term before?

1 A. I can understand that term. It's not a
2 term I'm used to.

3 Q. Okay. You would agree that by bracing on
4 the steering wheel, Mr. O'Brien was trying to avoid
5 the police from physically controlling him?

6 A. I agree with that.

7 Q. Okay. And also, like, when Officer Davis
8 at the beginning of the encounter is attempting to
9 remove Mr. O'Brien from the vehicle, Mr. O'Brien
10 pulls his left arm away and moves his body away from
11 Officer Davis, that this is an action that is
12 intending to avoid Officer Davis's physical control
13 over him?

14 A. We talked before about is he actually
15 moving, like is he moving his body. There's no way
16 he can really go, but his body does move, but I would
17 say most of the action, most of the resistance seems
18 to come from the arms, particularly the left arm, so
19 I would somewhat agree with your statement or your
20 question, but I --

21 Q. Well, let me -- let me ask it differently
22 then. You would agree that by pulling away the left
23 arm and some of the other arm movements, Mr. O'Brien
24 is acting in a way that he's intending to avoid

1 Officer Davis from controlling him?

2 A. He's trying to stop him from placing
3 handcuffs on him and arresting him, yes.

4 Q. Okay. Okay. All right. So I want to talk
5 about not the Seattle definitions but the Chicago
6 definitions of active versus passive resister, so I'm
7 talking about General Order 03-02-01.

8 A. Yes.

9 Q. So you're aware that in Chicago, so not in
10 Seattle but in Chicago, we define an active resister
11 as a person who attempts to create distance between
12 himself or herself and the member's reach with the
13 intent to avoid physical control and defeat the
14 arrest. You understand that that's our definition in
15 Chicago of active resister?

16 MS. SHAMBEE: I'm going to object to the
17 form.

18 THE WITNESS: Okay. What I wrote down and
19 I'm looking at N, subsection F, I said that the
20 Chicago manual defines an active resister as a person
21 who attempts to create distance between himself or
22 herself and the member's reach with the intent to
23 avoid physical control and/or defeat the arrest.

24 BY MS. MCGEE:

1 Q. Sure. That's just what I asked you. Do
2 you agree that --

3 A. Did that answer your question? I would
4 agree with that.

5 Q. You would agree that that's how we define
6 an active resister?

7 A. Yes.

8 Q. Okay. And so we agree that Mr. O'Brien was
9 attempting to avoid physical control of himself,
10 correct?

11 A. I think he was trying to avoid the
12 handcuffs getting on him. Let me rephrase that.
13 He's trying to avoid being handcuffed, and he does
14 that by pulling his arm and trying to keep it close
15 to his body, so you're stronger when you keep your
16 arm closer to your body. You are weaker when the arm
17 is extended out, so that's when they have greatest
18 control of him, but he wants to definitely keep the
19 arms close and is trying to avoid being arrested.

20 Q. Well, when he is bracing himself on the
21 steering wheel, he's trying to prevent the officers
22 from removing him from the car?

23 A. Yes. He definitely does not want to get
24 out of that car. He wants to stay in the driver's

1 seat and avoid being handcuffed and avoid being
2 arrested.

3 Q. Yeah. All right. So in Chicago, when a
4 suspect is physically attempting to avoid being
5 arrested, that makes them an active resister. Do you
6 agree with that?

7 A. No, I would not.

8 Q. Okay. Why do you disagree with that?

9 A. As I wrote in section F, "...an active
10 resister as a person who attempts to create distance
11 between himself or herself and the member's reach
12 with the intent to avoid physical control and/or
13 defeat the arrest," and what I also wrote is, "I did
14 not see anything like this with O'Brien's actions.
15 He never assaulted, grabbed, poked or injured any
16 officer on the scene. He never tried to get away.
17 He never tried to create distance." He just wanted
18 to sit in that seat and not be handcuffed. He's
19 saying I'm staying right here. I'm not moving. I'm
20 not trying to run, but I'm going to stay right here,
21 and you're not going to arrest me. That's what he
22 was absolutely a passive resister. Not an active
23 resister.

24 Q. So here's the thing, though. He actually

1 did move in the car, right?

2 A. No. He stayed right there.

3 Q. Well, he was reaching in the vehicle,
4 right? That's movement?

5 A. Yeah.

6 MS. SHAMBEE: Objection. Argumentative.

7 BY MS. MCGEE:

8 Q. He pulled his left arm away from
9 Officer Davis. Also movement, correct?

10 A. It's movement, but he's not trying to get
11 away.

12 Q. So the Chicago definition doesn't describe
13 someone trying to get away. It actually describes
14 somebody trying to avoid physical control and defeat
15 the arrest. Do you understand that, right?

16 A. No, I do not. It says a person who
17 attempts to create distance between himself or
18 herself. That's a person that's trying to get away
19 from an officer. They're trying to run. They're
20 trying to move. They're trying to hide. You know,
21 let's say he's crawling under the car. I'm trying to
22 think of anything else that might happen there.
23 That's -- that's the creating the distance.

24 Q. And you don't think the action of pulling

1 away from Officer Davis is an action attempting to
2 avoid his arrest?

3 A. Oh, yes. I agreed with you on that. He is
4 definitely trying to avoid arrest.

5 Q. Okay. Now, did you reach out to anybody at
6 the Chicago Police Department for any assistance in
7 describing passive versus active resister?

8 A. No, I did not.

9 Q. Are you aware that in Chicago, that a
10 passive resister is someone who fails to comply
11 without movement?

12 A. I can't say I am aware of that, no.

13 Q. So we would agree that Officer Davis and
14 Brown utilized holding techniques when effectuating
15 the arrest of Mr. O'Brien, would that be fair?

16 A. Yes, they did.

17 Q. Okay. And so, then, in your opinion, you
18 talk about the use of pressure points and joint
19 manipulation. What do you mean by that?

20 A. It was something that I read in their
21 manual. If you have a passive resister, the manual
22 allows you to use the holding techniques. We talked
23 about taking hold of someone, basically, and
24 compliance techniques such as joint manipulation, so

1 I'm going to demonstrate, and I know that we
2 can't -- the court reporter can't see this, so I'll
3 describe it. But if someone, if you take your arm
4 and you bend the wrist down, the farther you bend it,
5 the more pain is created, and that is a joint
6 manipulation technique.

7 Pressure points I was never that fond
8 of, but there are certain pressure points on the body
9 that if you press on them, you can create an extra
10 sense of pain without the extra injury that might
11 come with it, so you might use a pressure point in
12 order to have that pain compliance that creates the
13 pain sensation but does not cause a physical injury.

14 And so those are the techniques that I
15 read that Chicago officers can use for a passive
16 resister.

17 Q. So you're -- you would agree that you are
18 not an expert in the use of pressure points?

19 A. I would agree with that.

20 Q. And would you agree that you're not an
21 expert in the use of joint manipulation as Chicago
22 Police Department trains their officers?

23 MS. SHAMBEE: Objection to form.

24 THE WITNESS: Yeah. Having never been

1 through a Chicago police physical training course,
2 absolutely. I do not know what they train and how
3 they train it.

4 BY MS. MCGEE:

5 Q. Okay. Now, Chicago police could have also
6 used on Mr. O'Brien a long-range acoustic device.
7 Are you familiar with this device?

8 A. I am familiar with that device. We never
9 had it in Seattle, but I've heard about it, and I
10 read about it in the police manual there.

11 Q. So you are not an expert, then, in a
12 long-range acoustic device?

13 A. I am not.

14 Q. Okay. All right. Chicago police can also
15 have used control instruments to gain control of
16 Mr. O'Brien, is that correct?

17 A. I can't state definitively on that subject.
18 I don't know at this point.

19 Q. All right. When I say "control
20 instruments," you understand that I mean instruments
21 such as a baton, correct?

22 A. Correct. I know what a control instrument
23 is, but there's a variety of techniques that might be
24 described in how you're using it. Are you using it

1 to strike or are you using it to pry? So I've been
2 trained that you can use, let's say, a baton under an
3 arm and it can add extra leverage and extra force
4 when making an arrest. I assume that's what they're
5 talking about.

6 Q. But you do not know what control
7 instruments are permitted under the Chicago police
8 guidelines for a passive resister?

9 A. I can't say that I do at this point.

10 Q. So you were not an expert as it comes to
11 control instruments that could have been used on
12 Mr. O'Brien?

13 A. I think if I were to read about the control
14 instruments, again, even -- even the shock wave
15 instrument or sound wave, although we don't have it
16 in Seattle, being fairly well read on police
17 techniques and tactics and training issues and trying
18 to stay abreast of the latest in law enforcement
19 equipment, again, am I an expert in it? No. Just
20 from reading something, I can't call myself an
21 expert, but if we used it in Seattle and we trained
22 with it, even if I didn't train others in
23 particular -- and we talked about this. I'm not a
24 physical trainer for the officers, but I know what

1 all those things are, and either I have used themself
2 or seen others use them, so --

3 But let's get back to Chicago. I
4 think that was your question, and no, I can't state
5 that I know definitively the equipment that they use
6 and how they're trained to use it. I think that's
7 the best answer I can give.

8 Q. But we do know that the officers did not
9 deploy a long-range acoustic device nor did they use
10 control instruments on Mr. O'Brien, is that correct?

11 A. That is correct. There was mention of a
12 Taser, but it was never used, so correct.

13 Q. You consider a Taser a control instrument?

14 A. Yes.

15 Q. Okay. And do you believe that a Taser can
16 be used on a passive resister?

17 A. Some departments allow it, and some do not.
18 We did not in Seattle, and from what I can tell,
19 Chicago does not either.

20 Q. So, now, in addition to holding techniques,
21 the officers could have also deployed OC spray onto
22 Mr. O'Brien, is that correct?

23 A. I don't believe that's correct.

24 Q. Okay. Why do you say that?

1 A. Again, talking about -- well, just reading
2 what they're supposed to do with the passive
3 resisters, I think we talked about that. They can
4 use control holds, pain compliance and joint
5 manipulation, so no, I did not -- I don't see Pepper
6 spray referenced here, and when I -- when I'm saying
7 here, I'm looking at my own report. I'm not looking
8 at the online Chicago stuff right now.

9 Q. Sure. Give me one second. All right. Can
10 you see the police directive that I have on screen?

11 A. Yes. Can you make it any larger?

12 Q. Good question.

13 A. Maybe control --

14 Q. Is that larger?

15 A. No. That didn't help. Sorry.

16 Q. Okay. Let me try --

17 A. Let's leave it there.

18 Q. No. Hold on. I can make it bigger before
19 I share it, I think.

20 A. Okay.

21 Q. Give me one second.

22 A. Like control plus possibly.

23 Q. All right. Can you see the directive now?

24 A. That's still smaller.

1 Q. Still -- it's -- okay.

2 A. Yeah. The way you had it first was
3 probably the best I thought.

4 Q. Was better?

5 A. Yeah.

6 Q. All right. Give me one second.

7 A. Yeah.

8 MS. McGEE: Actually, I think -- give
9 me -- let's go off record briefly.

10 (Whereupon, a recess was taken
11 from 2:44 until 2:46 p.m.)

12 MS. McGEE: All right. So I have on the
13 screen what I'm going to mark as Exhibit C.

14 (Sweeney Exhibit C marked for
15 identification.)

16 BY MS. McGEE:

17 Q. This is a Chicago police directive. It's
18 entitled General Order 03-02-01. So we're going down
19 to the section on passive resister. So you see where
20 it says passive resister where I have my cursor?

21 A. Yes, I do.

22 Q. Okay. All right. And so we talked about
23 some of the compliance techniques. So we talked
24 about the holding techniques, the compliance

1 techniques, which is Section B. Section C is control
2 instruments, and then Section D says that the
3 officers can deploy OC spray on a passive resister.
4 Do you see that?

5 A. I do see that.

6 Q. Okay. So OC spray is something that was
7 available to the officers, and they did not deploy on
8 Mr. O'Brien?

9 A. I can't -- is that a question? I'm not
10 sure.

11 Q. Yeah. You would agree with that, right?

12 A. I don't know if they had it.

13 MS. SHAMBEE: Objection to form.

14 BY MS. MCGEE:

15 Q. Okay. All right. Fair enough.

16 You did not see them deploy OC spray
17 onto Mr. O'Brien in either of the videos that you
18 watched, correct?

19 A. That's correct.

20 Q. All right. So if Mr. O'Brien was
21 designated as an active resister under the Chicago
22 police guidelines, the officers could have used
23 stunning techniques on Mr. O'Brien, is that correct?

24 A. Yes. I believe against an active resister,

1 those techniques, stunning techniques are allowed.

2 Q. Okay. And describe what you understand to
3 be stunning techniques?

4 A. Well, it's widely misunderstood with the
5 general public, but it's a quick strike in order to
6 distract someone from the action that they're taking.
7 Let's say they are an active resister.

8 Now, obviously, if someone wants to
9 punch an officer, you're allowed to defend yourself
10 and punch back, right.

11 But sometimes against an active
12 resister, you want to give that quick strike possibly
13 to the sides are very effective because it causes
14 that quick jolt of pain and distracts the person from
15 what they're doing and might allow the officer that
16 time in order to reposition that arm or to get that
17 handcuff on or to extract from the car, whatever the
18 case might be, so that's what the striking technique
19 is.

20 Some people might misinterpret it as a
21 beating. It's not that, you know. Like you might
22 have seen in, obviously, the Rodney King video.

23 But the quick strike can be used as a
24 distraction technique in order to achieve your

1 objective.

2 Q. Would you agree you're not an expert in
3 stunning techniques?

4 A. Yeah. You know, I've never tried to pass
5 myself off as a defensive tactics expert. I am not,
6 so -- but I know enough about them. I've used them a
7 couple times. They're not that common. I've seen
8 them used, and I've reviewed a lot of video of police
9 officers using the stunning technique in order to
10 gain the advantage to make the arrest or defend
11 themselves, whatever the case might be.

12 So would I sit down and try to
13 instruct an officer in how to use a stunning
14 technique? I probably wouldn't. I would probably
15 defer to someone that really has some expertise
16 there, like where do you use it and how hard do you
17 use it and things like that.

18 But I certainly know what it is. I've
19 used it, and I've seen others use it, and I've
20 reviewed a lot of people using it. So does that make
21 me an expert? You know, like I say, I think I
22 answered the question. I am not going to claim I am,
23 but I'm really quite familiar with it.

24 Q. Would you agree that you're not an expert

1 in the deploying of OC spray into a motor vehicle
2 when the suspect is resisting arrest?

3 A. You know, I don't ever remember giving any
4 OC spray instruction classes, so same answer as
5 before. Very familiar with it, used it, seen it,
6 reviewed it, but am I an expert in it? You know, I'm
7 actually more confident in my ability to instruct,
8 let's say, a police officer in how to properly use OC
9 spray than I am in how to use a stunning technique.
10 You know, now, that I think about it, I have
11 instructed Pepper spray. All right. Here's my final
12 answer. I'm going to call myself an expert in the
13 deployment of Pepper spray.

14 Q. Would you agree that you are not an expert
15 in the deployment of OC spray as pursuant to the
16 Chicago police guidelines?

17 MS. SHAMBEE: Objection to form.

18 THE WITNESS: I think I would be -- it
19 would be problematic for me to say that I know about
20 Chicago training. I certainly know some of the
21 Chicago tools. Everyone -- most all police officers
22 across the country know what OC spray is. Most have
23 that ability, but I don't know the training
24 techniques that they use. I don't know how they say

1 to best use it as well as the first aid required once
2 you've used, so no, I'm not going to say I'm an
3 expert in how Chicago does it, no.

4 BY MS. MCGEE:

5 Q. Okay. All right. So I believe in your
6 report, you indicate that Mr. O'Brien was handcuffed
7 with both hands at approximately the 5:45 mark, and
8 we decided that was Officer Davis's video, the
9 12-minute video, correct?

10 A. That is correct.

11 Q. Okay. So from 5:45 until approximately
12 8:50 on Officer Davis's video, Mr. O'Brien is still
13 in the vehicle, correct?

14 A. That is correct.

15 Q. Okay. And would you agree with me that
16 from when up until the 8:50 mark that the officer's
17 use of force was either -- strike that.

18 Let's just say from 0, the 0 minute
19 mark to the 8:50 mark, would you agree that the
20 officer's use of force was appropriate?

21 MS. SHAMBEE: Objection. Form.

22 THE WITNESS: I will certainly say that
23 they did not use excessive force.

24 Now, appropriateness, though, if

1 you're asking that question, I'm trying not to get
2 into old answers, but we talked about the idea that
3 you don't want to stand out there for this many
4 minutes --

5 BY MS. MCGEE:

6 Q. Yeah.

7 A. -- struggling with someone to try to get
8 them out of the car. So is that appropriate or not?
9 I would say in that case, they probably did not use
10 the proper force technique in order to achieve their
11 lawful objective, which was the arrest of
12 Mr. O'Brien.

13 Q. So from 0 to 8:50 on Officer Davis's video,
14 you saw no excessive force?

15 MS. SHAMBEE: Objection. Form.

16 THE WITNESS: I did not see any excessive
17 force. That's true.

18 BY MS. MCGEE:

19 Q. Okay. All right. So, then, at the 8:50
20 mark of the video, you see the officers begin to
21 extract Plaintiff physically out of the video. Do
22 you recall that?

23 A. Yes, I do.

24 Q. Okay. So I want to be clear. From the 0

1 minute mark on Officer Davis's video until the 8:50
2 mark of Officer Davis's video, your observations have
3 only been of Officer Davis and Officer Brown?

4 A. That is correct.

5 Q. No other -- let me clarify. No other
6 police? You saw no other police?

7 A. Right. That's what I was thinking, too,
8 that you meant.

9 Q. Yeah. That's what I meant.

10 A. I didn't see any other officers there.
11 Correct.

12 Q. All right. And so, then, at the 8:50
13 point, Mr. O'Brien is pulled out of the passenger
14 side of the vehicle?

15 A. That is correct.

16 Q. Passenger side of the vehicle. Okay. And
17 tell me what your concerns are about that extraction.

18 A. There's the knock at the door I warned
19 everyone about, so I think I need about -- let's see.
20 About five minutes maybe.

21 Q. Okay.

22 A. And I'll check back in in five minutes if
23 it's going to take me longer.

24 MS. McGEE: Okay. So what I'm going to

1 ask, since there's a question pending, that you just
2 not speak to Ms. Shambee or review any documents.
3 Like I know I said you had to answer before we break.
4 We can take the break for your contractor, but please
5 don't review anything or talk to anyone about it.

6 THE WITNESS: I understand.

7 (Whereupon, a recess was taken
8 from 2:55 until 3:03 p.m.)

9 MS. McGEE: Ms. Reporter, I'm going to ask
10 you to read back the questions just because I've
11 completely forgot what it was.

12 THE WITNESS: I did, too.

13 (Whereupon, the Court Reporter read from the
14 record as follows:

15 Q. Okay. And tell me what your concerns
16 are about that extraction.)

17 THE WITNESS: My concerns about the
18 extraction. I think as I detailed in the report, if
19 you're going to remove someone from a vehicle and you
20 want to either -- and you want to arrest them, and,
21 like I say, the couple most common would be up
22 against the car or down on the ground, so if you're
23 going to remove someone from the car and make that
24 arrest in whatever fashion, they ended up with prone,

1 so let's just go with prone. Let's say they wanted
2 to do a prone arrest of that, of Mr. O'Brien, what's
3 the quickest, easiest way to take him out of the car
4 and down to the ground? Right beside the car is the
5 quickest, easiest way because the door is open.

6 Officer Davis has been standing there for several
7 minutes as we discussed, and there's very little
8 reportable force potentially that could be required.

9 I described one method that I've used,
10 the double underhook and to bring them out that way,
11 and I'm not saying he had to use that, but that's one
12 method. And, generally, I found it to be very
13 successful and doesn't take that long. If I were
14 going to do that maneuver, I can't do it if I'm going
15 across the center console and out the passenger door.

16 Definitely the quickest, easiest way,
17 the safest way for everyone involved is to utilize
18 the open driver's door and to remove him that way,
19 and, certainly, that had been the method that they
20 used during the bulk of the encounter.

21 So I was confused as to why suddenly
22 when I believe it's Officer Brown, from what I can
23 tell, uses the most force to pull him out. If that
24 was the time that they eventually decided now we are

1 going to use more force -- like I say, I think they
2 probably should have done it earlier, but they
3 decided that's when we will use more force. We will
4 use -- I don't know if they're at their maximum, but
5 we're going to use a large amount of force. We're
6 going to pull you out. And why not do that from the
7 driver's side? So much easier. You have less
8 distance to cover. You have less obstacles in the
9 way, and it's just safest for everyone.

10 BY MS. McGEE:

11 Q. Well, do you have any information that
12 Mr. O'Brien was injured in the removal from the
13 passenger side?

14 A. As I wrote in the report, from what I
15 understand -- and, again, I've not reviewed the
16 medical records, but neither am I medical doctor, but
17 from what I understand, he broke his thumb in three
18 places, so I don't know where that occurred.

19 That's another thing I wrote in the
20 report. It could have occurred in the way the
21 officer grabbed him. It could have occurred in the
22 dragging across the center console out the passenger
23 door and down to the ground or it could have occurred
24 during the arrest portion on the ground. We don't

1 know. I don't know. I'm not sure if anyone does.
2 I'm not even sure Mr. O'Brien knows, but from what I
3 understand, an injury occurred, and that seems to be
4 the most likely, but I can't state when it was. That
5 would be beyond my ability.

6 Q. Okay. So your expertise would not be when
7 the fracture actually occurred?

8 A. That's correct.

9 Q. Okay. Now, did you have any issue with the
10 actual form of -- aside from the passenger versus
11 driver side, the actual form of the extraction, which
12 was pulling on the arm to remove Mr. O'Brien from the
13 car?

14 A. I think it's an appropriate use of force
15 except for the part that in order to do this
16 extraction, we're now -- I mean, think of anyone in
17 the driver's seat of a car and how hard it is to get
18 over the passenger side. Why? Because there's a
19 center console there. There's a gearshift. There's
20 the dash. It's a difficult thing to do. Likewise,
21 it's very difficult to pull someone out through the
22 passenger door. Now, there's a lot of obstacles and
23 greater force that will be required to pull someone
24 out of the passenger side from the driver's side.

1 You have that nice, easy, open car door there. Why
2 not do it right there? So in actuality, I did not
3 have a problem with the amount of force. It's how it
4 was applied and the right timing. That's more the
5 issue.

6 Q. Okay. So let's talk about those two
7 things, how the force is applied and the right
8 timing. I believe you said before with respect to
9 the right timing, you mean that they waited too long
10 to pull him out?

11 A. Yeah. I think there was time earlier, and
12 I can't define exactly for you when that was, and we
13 also talked there's a few things that I'd like to see
14 the officers do first before using that force, and a
15 good solid warning, if you don't do A, I will do B is
16 very appropriate and works really well with a lot of
17 people. It's telling them, hey, I'm not in danger of
18 right now, but if you keep me standing out here and
19 you continue to disobey my orders, here is what will
20 happen, and to explain it to the person, be very
21 clear, be very direct and then to act upon that, and
22 I did not have a problem with that if it had been the
23 proper location. Out the driver's door is just so
24 much easier. I can't imagine the strength and force

1 required to pull someone from the driver's side all
2 the way across the center hump and out the passenger
3 side. It must have been quite extraordinary.

4 Q. Okay. So your concern about the technique,
5 then, is solely the side of the car he was pulled out
6 of?

7 A. Yeah. I think that's -- that's the main
8 issue. I think if -- again, if you use the
9 appropriate level of force, that's half the battle.
10 In fact, maybe it's even three-quarters of the
11 battle, but then if you determined you're going to
12 use that force, how do you, then, make it work for
13 you? And we evaluate driver's side or all the way
14 through to the passenger side. It seems clear that
15 there is a safer alternative that would require less
16 force to do, and that's the driver's side of the car.

17 Q. So at some point prior to the extraction,
18 there's a point in time where Mr. O'Brien is
19 handcuffed, both hands together, in front of his
20 body, is that right?

21 A. Yes, it is.

22 Q. And after he's handcuffed, the police
23 actually give him directives to get out of the car
24 which he refuses, is that right?

1 A. I do remember that. They had a lot of back
2 and forth on that, both with and without handcuffs,
3 yes, to get out of the car.

4 Q. For several minutes, they were telling him
5 to comply, get out of the car, giving him chances, is
6 that right?

7 A. That is correct.

8 Q. Okay. And from the time that he's
9 handcuffed in both hands in front of him until the
10 8:50 mark, Mr. O'Brien does not comply with any of
11 those directives?

12 A. No. I can't think of anything -- if we go
13 back to the -- let's list those general orders. Make
14 sure I've got all this. It was move your car,
15 produce license and insurance and get out of the car.
16 I didn't see him complying with any of those, no.

17 Q. Well, the officers told him to stop
18 fighting, step out of the car. You remember hearing
19 that, right?

20 MS. SHAMBEE: Objection. Form.

21 THE WITNESS: The only time I remember stop
22 fighting, and I can't -- it was either stop fighting
23 or stop resisting. I think it was stop resisting.
24 It was actually when he was out on the ground. I

1 don't remember any warning about fighting while he
2 was sitting in the car.

3 BY MS. MCGEE:

4 Q. You recall the officers giving him the
5 opportunity to step out of the vehicle after he's
6 handcuffed and prior to extraction?

7 MS. SHAMBEE: Objection. Form.

8 THE WITNESS: Yes. Oh, sorry. Yes. That
9 was one of Davis's probably the primary thing that he
10 said 70 percent of the time is step out of the car;
11 get out of the car; step out of the car; get out of
12 the car; get out of the car; why don't you please get
13 out of the car; get out of the car; and it
14 was -- that was -- that was his primary focus is get
15 out of the car.

16 BY MS. MCGEE:

17 Q. Okay. And O'Brien was resisting those
18 directives, correct?

19 A. He refused to get out of the car, yes.

20 Q. So once O'Brien is out of the vehicle and
21 is on the ground, did you have any concerns about the
22 amount of force that was used on him at that point?

23 A. No. It seemed a fairly standard arrest at
24 that point. He was prone. He had his hands out in

1 front of him above his head while he's laying on the
2 ground. The sergeant checked in with him. He said,
3 hey, we're going to rehandcuff you behind your back.
4 Are you going to fight against us? And I think he
5 said he would not, and yeah, they pulled his arms
6 back and handcuffed him. I don't remember seeing
7 anything excessive there. It seemed fairly standard
8 once he was on the ground.

9 Q. Did you at any point in time on any video
10 that you observed see Sergeant Shrake, the sergeant,
11 engage in any active excessive force towards
12 Aidan O'Brien?

13 MS. SHAMBEE: Objection. Form.

14 THE WITNESS: I did not see anything
15 excessive from Sergeant Shrake, no.

16 BY MS. McGEE:

17 Q. Now, you're aware that there was a
18 passenger in the car?

19 A. Yes. I saw the passenger. Mostly, I could
20 see it from Officer Brown's body-worn. You can see
21 him step away from the car, and he's got a camera,
22 and I think at one point, Officer Brown tells him you
23 can film, but -- and this is a valid officer-safety
24 concern. Go over to the sidewalk and film. Don't

1 stand behind me, in other words, so he was concerned
2 for his safety, and that's quite valid.

3 It's also a good idea to let someone,
4 you know, film you as long as they are not
5 interfering, and I didn't see any interference from
6 him.

7 At one point, I think O'Brien says,
8 you know, hey, you got to film me, film what's going
9 on, and I think the guy was trying to help his friend
10 out.

11 Q. So it would be a fair statement that the
12 passenger of the vehicle was compliant with the
13 police officers' instructions?

14 MS. SHAMBEE: Objection. Form.

15 THE WITNESS: Yes, I would say so.

16 BY MS. McGEE:

17 Q. And based on the videos that you watched,
18 the passenger was not arrested, correct?

19 A. Correct. No arrest there.

20 Q. And, in fact, the passenger at one point is
21 captured on body-worn camera telling Mr. O'Brien to
22 comply with police directives before he gets out of
23 the car, right?

24 MS. SHAMBEE: Objection. Form.

1 THE WITNESS: Sorry. I mostly remember
2 Officer Davis trying to enlist the passenger's help.
3 Hey, tell your boy he has got to do what I say here,
4 he has got to listen or something, so I mostly
5 remember that. I can't state for sure that I heard
6 this passenger giving O'Brien advice.

7 BY MS. MCGEE:

8 Q. So from what you can see on body-worn,
9 Officer Davis is black?

10 A. That is correct.

11 MS. SHAMBEE: Objection. Irrelevant.

12 BY MS. MCGEE:

13 Q. And Officer Brown appears to be black as
14 well?

15 MS. SHAMBEE: Objection. Irrelevant.

16 THE WITNESS: Correct.

17 BY MS. MCGEE:

18 Q. Have you ever been to the area where
19 Mr. O'Brien was arrested?

20 A. I visited Chicago three or four times. I
21 was not familiar with this area, so being such a big
22 city, I doubt I've been there, but I don't know for
23 sure. It's possible, but I don't think so.

24 Q. Okay. Do you know what part of town

1 Mr. O'Brien was arrested in?

2 A. No. I couldn't even tell you on a map
3 where exactly that entertainment district is.

4 Q. Did you look at any photos, images,
5 satellite photographs of the area of arrest?

6 A. I do remember bringing up Google Maps and
7 doing a street view, and I could see from what I
8 remember is a possibly kind of a U-shaped or curved
9 street, but I didn't find anything worthy of noting,
10 so I didn't really pay that close attention. I think
11 I brought it up once on Google Maps and just took a
12 peek at it. That was it.

13 Q. Okay. All right. So I'm going to share
14 with you, again, this is Exhibit C. We had it up on
15 screen. It's that general order. Do you see the
16 document, everyone?

17 A. Yes, I do.

18 Q. Okay. I just want to confirm that this
19 Exhibit C is what you found online when you did your
20 own research? This is one of the documents that you
21 looked at, correct?

22 A. You know, looking back at my research,
23 probably a best practice and something I'm noting for
24 myself for future reference is to make note of the

1 actual web address where I'm pulling the document
2 from as well as active dates, and I'm not sure I put
3 active dates in my report.

4 Q. Well, you told me that you did your -- you
5 did your search in 2022, correct?

6 A. Yes, I did.

7 Q. Okay. And so -- and you looked at General
8 Order 03-02-01, is that right?

9 A. That is correct.

10 Q. Okay. So is Exhibit C the General
11 Order 03-02-01 that you looked at? Do you want me to
12 scroll down slowly or go to a particular area for you
13 to review?

14 A. Here's how I'll answer that, and I was
15 about to kind of finish that answer before. Because
16 I didn't note the exact web page or the effective
17 dates, I'm going to assume that it's the same
18 document, but I honestly don't know. There are
19 certainly the ability for a department to put a
20 variety of documents online on the Internet, and so
21 is this the exact one? I can't tell you for sure.
22 I'll bet that it is. I think there's a high
23 likelihood that it is, that you are looking at the
24 same thing that I looked at, but I don't know for

1 sure.

2 Q. Did you save the document that you looked
3 at?

4 A. Let's take a look. I don't know if I did.
5 No, I do not see that I downloaded -- there's another
6 thing that I'm going to keep in mind. I don't see
7 that I have that download either from the exact
8 document.

9 Q. Okay.

10 A. But I have no reason to doubt that we're
11 looking at the same document, but sometimes
12 departments do change wording or they might add new
13 sections or take sections away, so I can't state for
14 sure, but I wouldn't be surprised at all. It would
15 not surprise me that the document that you are
16 looking at is the same one that I looked at.

17 Q. Okay. Give me one second. I think I'm
18 about done. I just want to take a quick look at my
19 notes.

20 So because Mr. O'Brien had been so
21 resistant to police directives, once he was
22 handcuffed, would you agree that it was important
23 that the officers maintained control of his hands,
24 while they were in front of him?

1 MS. SHAMBEE: Objection. Form.

2 THE WITNESS: Let me make sure I
3 understand. Are you talking about when he's on the
4 ground or when they're just -- when the officer is
5 standing by him in the car?

6 BY MS. McGEE:

7 Q. In the car after Mr. O'Brien is handcuffed
8 with both hands in front of him --

9 A. Okay. Got it.

10 Q. -- based on his prior resistance, do you
11 believe it's important for the officers to maintain
12 control of Mr. O'Brien by maintaining control of his
13 hands?

14 MS. SHAMBEE: Same objection.

15 THE WITNESS: I would agree with that.
16 Sorry. I would agree with that, especially because
17 he's handcuffed in front. There's a lot more that
18 someone can do when they're handcuffed in front as
19 opposed to behind the body.

20 BY MS. McGEE:

21 Q. So it's your opinion, then, that the
22 officer, either Davis or Brown, should at all times
23 be holding on to like the arm or the wrist area to
24 maintain control of the hands in front of the -- in

1 front of him while he's in the vehicle?

2 A. I would say that would be advised just
3 because like I talked about, when the hands are in
4 front, even though -- even though the handcuffs are
5 around the wrists -- obviously, I know the court
6 reporter can't write this, so I'm describing it. If
7 someone's hands are in front of them with the
8 handcuffs around the wrists, there's still a lot of
9 movement that they have, and there's still a lot you
10 can grasp things with your fingers. You can see
11 where your hands are going, and there's a lot more
12 mobility that you have handcuffed in front, so with
13 that in mind, it would be very important for the
14 officers to keep hold of that arm, keep hold of those
15 hands and ideally get them behind him at some point,
16 which they eventually do.

17 Q. That's after he gets out of the car?

18 A. After he's on the ground is when they then
19 move the hands behind, yes.

20 Q. And you would agree it would be pretty
21 challenging for the officers to have moved the
22 handcuffs from the front of Mr. O'Brien to the back
23 of Mr. O'Brien while he was in the vehicle?

24 A. It would provide some challenges. Yes, it

1 would.

2 MS. McGEE: All right. At this time, I
3 have no more questions.

4 CROSS EXAMINATION

5 BY MS. SHAMBEE:

6 Q. Thank you. Mr. Sweeney, I'm going to ask
7 you a few questions.

8 When was the last time that you viewed
9 the video?

10 A. I looked at it last night around 11:00
11 o'clock at night, so I watched -- I watched all of
12 Davis's video, and I kind of skimmed through Brown's
13 video. I watched primarily the beginning of Brown's
14 video.

15 Q. Okay. And when looking at those videos,
16 were they pretty similar in nature?

17 A. Yes. They show the same event but from
18 different perspectives, so, again, we talked about
19 the perspective of the camera versus the perspective
20 of the eyes, but it seems apparent that both
21 body-worn cameras are placed on the front of the
22 officer's uniform in order to get the best
23 representation as possible to the events that
24 transpired. So yes, they record the same incident

1 from different perspectives, shall we say.

2 Q. Okay. And what's your understanding of how
3 the body-worn cameras work once you turn them on?

4 A. Well --

5 MS. McGEE: I'll object to basis of
6 knowledge. Foundation.

7 BY MS. SHAMBEE:

8 Q. You can still answer.

9 A. Okay. I'm pretty familiar with body-worn
10 cameras. We used them both in Seattle and in Oregon
11 State University, so fairly common nowadays with
12 police agencies around the country.

13 So you wear them on the front of your
14 body, and you can do it with sound or without sound.
15 You can also temporarily mute the camera so that you
16 can't hear what is being said, and you can also take
17 the camera off your uniform and, let's say, put it
18 down somewhere and then you walk around the corner.
19 Obviously, the camera is not going to pick you up, so
20 it only sees and hears what you are seeing and
21 hearing when it's attached to you, but you can mute
22 it, and you can turn it off and on.

23 And then when you're done with the
24 recording, it stores it on an internal hard drive,

1 and then you take the camera, put it in the docking
2 station, which then downloads the video, usually over
3 the Internet to a server, so that the department now
4 has access to the video that was recorded on the
5 incident in question.

6 Q. Okay. And when you turn the camera on,
7 does it start to record from the point that you
8 physically turn it on or does it record prior to
9 that?

10 A. It depends how you set it up. From the
11 manufacturer or with someone that has the
12 technological training, you can do it where there's a
13 30-second delay or a minute delay, if I remember
14 right, meaning that the camera is always recording on
15 a never-ending loop, and so when you hit the record
16 button, the camera backs up that amount of time.
17 Let's say 30 seconds. That's the most common, so
18 what the camera does is it backs up 30 seconds.
19 Generally, you will not have sound for that first 30
20 seconds, and then you can always see it around 30
21 seconds, the sound pops in, and whatever you've been
22 seeing now, the sound syncs up so that audio and
23 video are synced, so anyway, there's a delay that can
24 be built in; although I've seen departments where it

1 doesn't, and it automatically starts recording as
2 soon as you press the record button, both audio and
3 video.

4 Q. Okay. Now, you've stated that in
5 your -- in your career, with your experience, you've
6 had 3 to 4,000 traffic stops, correct?

7 A. That is correct.

8 Q. Okay. When conducting those stops, do you
9 tell -- do you inform the person why they're being
10 stopped?

11 A. In my experience, it is very important to
12 tell the person why they're being stopped because
13 it's a very common human reaction, even myself, when
14 I've either got an officer behind me or I'm getting
15 pulled over, I'm always very curious myself. I
16 wonder why the officer is stopping me, what did I do
17 wrong. That's a very common human emotion.

18 And so you can alleviate a lot of that
19 concern by arriving at the window, introducing
20 yourself. Hi. I'm Lieutenant Sweeney, and the
21 reason I stopped you today is let's say that stop
22 sign back there or speeding or expired tabs or
23 whatever it is, and then because of this, the person
24 goes, okay, the officer is checking something out,

1 and then you can then move to there's some documents
2 that I'm required to ask you for. This is very
3 formal language. I wouldn't say it this way, but
4 that's what you're saying. Now, again, we can talk
5 back and forth about whether you ran the stop sign or
6 not, but I still need to see your license and
7 insurance and registration. Could you provide those
8 for me, please?

9 And by and large, most people will
10 comply. They might still disagree with you. They
11 might still believe that the officer didn't see what
12 they saw, but 99 percent of the people hand over
13 their documents and give them to you and then you can
14 proceed with the stop from there. Again, is it going
15 to be a warning or are you going to give a citation?
16 And then escort them on their way.

17 Q. Okay. During your -- in your career, in
18 your experience, approximately how many arrests have
19 you made?

20 A. I'm going to say 1,000 roughly. 500 DUI
21 arrests, and I'm going to say another 500 of a
22 variety of different crimes, whatever those might be.

23 Q. Okay. And in your expertise, when
24 arresting a person, should you inform them of why

1 they are being arrested?

2 MS. McGEE: Objection. Incomplete
3 hypothetical.

4 THE WITNESS: Similar to the traffic stop,
5 if you talk with someone and communicate with them
6 and let them know what's happening, I have found that
7 you'll get a greater cooperation from the person if
8 they know what you're doing and why you need to do
9 it, and I found that to be a very effective
10 technique.

11 Hey, I understand you disagree with
12 this, but for right now, I have to investigate this,
13 so we're putting these handcuffs on and you are going
14 to wait in my car while I talk to this person, right?
15 Totally hypothetical there, but if I can at least
16 explain to them what I'm going to do and why I'm
17 going to do that.

18 Now, they might object. Why do I have
19 to sit in the police car? That's for your safety and
20 mine. I know that you're safe back there. I've
21 already padded you down. You don't have any weapons,
22 and I know there's nothing in the back of my car, so
23 why don't you wait right over here. This officer is
24 going to watch you, but I need to go talk to -- let's

1 say it's domestic violence. I need to go talk to
2 your wife and get her version, and then I'll be back
3 to get your version, right.

4 And then, you know, because they
5 immediately say, oh, she's going to lie or she's not
6 telling the truth. Okay. That's fine. I
7 understand. But my job is to get the facts, so I'm
8 going to get her version, and I'll be right back with
9 you to get your version. Can you just wait here for
10 me, you know?

11 Now, will every single person comply
12 with that? No, but what I've done is I've laid a
13 foundation of who I am, what I'm there for and what
14 I'm required to do, and it's been my experience that
15 with a little bit of communication and a little bit
16 of explanation and treating people with a little bit
17 of decency, you will get a lot more with sugar than
18 with vinegar.

19 What does that mean? That being
20 explanatory and talking to people as human beings,
21 you can get a lot more cooperation than just forcing
22 them to do what you want, especially when you are not
23 telling them why and what's going on. That really
24 limits the ability of the person that's being stopped

1 to cooperate with you because they can't get past the
2 part of I didn't do anything wrong and what you're
3 doing, officer, you're wrong, and if you can get past
4 that point and go, hey, I understand we're -- even if
5 you are in disagreement, I understand we have a
6 disagreement here, but if you can just wait here, I
7 will deal with you fairly and justly, and I'll
8 explain what I'm doing, and you need to cooperate
9 with me now.

10 It doesn't always work, but I have
11 found that it's been very effective in my career, and
12 I have seen that for the officers that I've trained
13 as well.

14 Q. Okay. In the scenario where you gave
15 earlier, would that be an arrest or would that just
16 be a temporary detainment?

17 A. My domestic violence hypothetical?

18 Q. Correct.

19 A. Most likely an arrest, but sometimes
20 detainment. If you go into a situation and you don't
21 know what's happened, you don't know who has been
22 injured and you don't know who the primary aggressor
23 is, it might just be a detainment, so effectively,
24 you're operating as a Terry stop. Hey, I need you to

1 talk to my partner over here. You are not free to
2 leave, and you can tell them what happened over here.
3 I'm going to go talk to this person or vice versa.
4 Hey, you and I can talk about this incident, and I'm
5 going to have my partner here go talk to your
6 partner. Does that sound good to you? That way, we
7 can get both sides of the story. We can get to the
8 bottom of it.

9 Q. Okay. At what point should a person be
10 informed of why they are being placed under arrest?

11 MS. McGEE: Objection. Incomplete
12 hypothetical.

13 THE WITNESS: The best point to tell
14 someone why they're under arrest is either right
15 beforehand cuffs or right after.

16 There are times when I have found it
17 is advantageous to say -- I might be in a position of
18 advantage, and they might be in a position of
19 disadvantage, and it might be best to say I'm placing
20 handcuffs on you right now for my safety and then
21 just go from there, and I'll tell you -- we'll talk
22 about this in just a minute, but here's what I'm
23 doing right now. Sometimes that's the way I operate,
24 and it depends on the situation.

1 Other times, I might -- if I feel that
2 the danger level is low and I'm not losing any skin
3 in the game by giving a bit of explanation first,
4 let's go back to that domestic violence hypothetical.
5 Hey, sir, I understand you don't agree with what I'm
6 doing here, and you believe that she's lying.
7 Nevertheless, the law requires me to investigate at
8 this point, and from what I'm being told, you have
9 broken the law here, and I'm required to make an
10 arrest, so what I need you to do right now is to turn
11 around and put your hands behind your back, and I
12 need you to be safe when doing this, and I'm going to
13 place these handcuffs on. We can talk about it more,
14 but -- so in general, usually, either right before or
15 right after handcuffing.

16 Do you guys need a minute? Can we
17 pause for a minute, maybe two?

18 MS. SHAMBEE: Let's take a five minute.

19 (Whereupon, a recess was taken
20 from 3:36 until 3:40 p.m.)

21 BY MS. SHAMBEE:

22 Q. Okay. In this case, you stated that
23 Officer Davis was confrontational from initial
24 contact with Mr. O'Brien when he approached his

1 vehicle, correct?

2 A. Yes, I did.

3 Q. Did -- from your review of all the
4 documents and videos that you looked at in order to
5 come up with your report on this matter, did at any
6 time you hear Officer Brown identify himself?

7 A. I don't recall Davis or Brown, either of
8 them, ever identifying themselves, at least by name.
9 I think he knew they were the police, but they never
10 identified themselves.

11 Q. Did you -- as the officers approached
12 Mr. O'Brien's vehicle, did you hear them inform him
13 why they were approaching his vehicle?

14 A. They mentioned -- and this is primarily
15 Davis. Davis mentioned a couple times you need to
16 move your vehicle, and O'Brien didn't want to move
17 because he was waiting for a parking spot to open up.

18 Q. And how do you know he was waiting for a
19 parking spot to open up?

20 A. He told them.

21 Q. Okay. And when he told the officers that,
22 did the officers respond with -- respond with care, I
23 guess is what I want to say?

24 MS. McGEE: Objection. Form.

1 THE WITNESS: No. It was almost the exact
2 opposite. Because of the inability to communicate or
3 just the plain lack of communication, it started
4 with, you know, claiming that he's high and -- or
5 asking if he's high, and then he didn't like being
6 called bro, and it's you need to move the car, and
7 then he gave an explanation, and then, now, you need
8 license and insurance, and the answer is no. Now,
9 you're under arrest. Well, he actually didn't say
10 that. You need to step out of the car. He keeps
11 saying you need to step out of the car, so it's all
12 so short and perfunctory. There's no sense of
13 explanation. There's no sense of communication.
14 There's no sense of understanding what it's like to
15 live in a big city and to search for a parking spot.
16 That might be a difficult thing to do in Chicago, and
17 just a simple understanding or simple dialogue, oh,
18 okay, I get it. Hey, I don't want you hanging out
19 here all day. If they are not moving the car, can
20 you pull it around the corner or something like that?
21 You know, simple things like that just really go a
22 long way, and it's just that sense of understanding
23 that they never provided to Mr. O'Brien.

24 Now, he was somewhat difficult with

1 them, too, but you got to be better than that, and
2 you got to redirect and refocus them in order to get
3 the person to do what you want them to do, which is
4 to clear the street.

5 And if all they have to do is wait a
6 minute for a parking spot to open up, now, you've
7 achieved your goal, and you left with a good
8 police-citizen interaction. You got them to do what
9 you want. They got their parking spot. Everyone is
10 happy, and let's go on to bigger and better things.

11 BY MS. SHAMBEE:

12 Q. Okay. And based on what you just said
13 earlier, that they could -- that the officers could
14 have done this, would you say that that would -- that
15 would be using de-escalation tactics?

16 MS. McGEE: Objection. Form. Foundation.

17 THE WITNESS: Absolutely. De-escalation by
18 its very nature is the sense of communicating and
19 getting people to do what you want without resorting
20 to the use of force, and it's just better for
21 everyone all around.

22 If you -- and I wrote this in my
23 report. It's easy to escalate a situation. It's
24 very hard to de-escalate something that's risen to

1 the level of antagonism from one person toward the
2 other. How do you get that -- that takes an expert
3 communicator to calm that situation down and just
4 say, hey, let's start over here. We got off on a bad
5 foot. All I need you to do is move your car. Can
6 you either park it here or can you go around the
7 corner? And engage in some dialogue.

8 The dialogue never happened, and
9 O'Brien is left with a lack of understanding of
10 what's going on, and he even misunderstands. He
11 thinks he is under arrest. He's not under arrest,
12 but they wouldn't explain it to him. Maybe he
13 doesn't know the law, and that's a perfect
14 opportunity to say, look, hey, you are not under
15 arrest. I'm sorry if I gave you that interpretation.
16 I'm just conducting a traffic stop right now, and the
17 reason I'm doing this is because you wouldn't move
18 your car, so see how your actions dictate my actions.
19 If you will move your car or at least get into that
20 parking spot that's opening up, I'm going to sit back
21 in my car for a minute, let's say, as long as that
22 parking spot opens up and you move into it, hey, I'm
23 happy, right?

24 There's so many opportunities for just

1 basic human communication between the two that never
2 take place.

3 BY MS. SHAMBEE:

4 Q. Okay. And would you say de-escalation
5 tactics are generally taught within a police force?

6 MS. McGEE: Objection. Form. Foundation.
7 Basis of knowledge.

8 THE WITNESS: Yes. It's been my experience
9 in Seattle and Oregon State University that modern
10 police training has to include some elements of
11 de-escalation. It's so important. You can get so
12 much further asking and talking to people what you
13 need them to do than forcing them to do what you need
14 them to do. You can still gain the same objective,
15 but you can do it without force. That's a win for
16 the citizens. It's a win for the police and leads to
17 better police-community relations.

18 BY MS. SHAMBEE:

19 Q. Okay. Would you say those --

20 A. It should be --

21 Q. Sorry.

22 A. Sorry. It should be the background of any
23 police-citizen interactions. We need to start with
24 that discussion of de-escalation.

1 Q. And would you say those tactics are also
2 taught in the police academy?

3 MS. McGEE: Objection. Form. Foundation.
4 Basis of knowledge.

5 THE WITNESS: It has been my experience
6 that a lot of departments focus on de-escalation in
7 the academy these days, so that's one of the things
8 that's changed for the better in police-community
9 relations.

10 I don't know Chicago training, but I
11 do see de-escalation mentioned in their police
12 manual; therefore, it would make sense that if
13 they're going to train their officers in sections of
14 the manual that are important, if you are going to go
15 to the effort of writing down elements of
16 de-escalation, you better train the officers in what
17 that means.

18 BY MS. SHAMBEE:

19 Q. And would you say that Officer Davis or
20 Officer Brown used de-escalation tactics here?

21 MS. McGEE: Objection. Form. Foundation.

22 THE WITNESS: No. Exactly the opposite.
23 They used the opposite of de-escalation. All they
24 did was say -- this is, essentially, the way it went.

1 I'm the police. You must do what I say or I'm going
2 to arrest you, and that doesn't leave room for
3 explanation. It doesn't leave room for
4 understanding. It leaves people confused.

5 You can certainly see the confusion
6 for Mr. O'Brien, especially the number of times he
7 asked why am I under arrest. Even when he wasn't
8 under arrest, and then later when he was, both times
9 offer an opportunity for Officer Davis to explain the
10 circumstances to him, and it never comes.

11 And, in fact, he even asks
12 Sergeant Shrake why am I under arrest? And
13 Sergeant Shrake says it's for not listening, which is
14 not a crime, so why the sergeant couldn't take the
15 time to explain to him then at that point, I'm not
16 sure. It's puzzling.

17 BY MS. SHAMBEE:

18 Q. Okay. And based on -- based on your view
19 of the video and Officer Davis's behavior on the
20 video, would you say that the arrest -- the arrest
21 may have been made as a result of frustration upon
22 Officer Davis?

23 MS. McGEE: Objection. Foundation. Form.
24 Basis of knowledge. Speculation.

1 THE WITNESS: I think we've talked a lot
2 today about how Officer Davis was very impatient with
3 Mr. O'Brien, and this is why I say if someone's
4 arrest -- if someone is under arrest within a minute
5 of you arriving at their window, something went
6 drastically wrong. They must have done something
7 extremely bad or they've tried to assault you or they
8 tried to run away. Nothing like that happened. This
9 is just a common, everyday traffic stop, and within a
10 minute, to tell someone they are under arrest and
11 then to go hands-on with them, it just lacks a common
12 sense of decency and the ability to talk to someone
13 and communicate with them. Whether you're a police
14 officer or whether you're not, it's just you're using
15 your authority in order to force someone what you
16 need to do, and you don't even have the decency to
17 tell them why. That's -- that's the problem with
18 that.

19 BY MS. SHAMBEE:

20 Q. Okay. And as this continued to go
21 on -- well, let me strike that.

22 Later on in this video, you saw both
23 officers unholster their guns and point it at
24 Mr. O'Brien's head, is that correct?

1 A. As we talked about before, I can't state
2 for sure where the firearm was pointed. We see that
3 perspective from the front camera. I believe it was
4 pointed at O'Brien, but I can't state that it was his
5 head.

6 Q. Okay. Do you recall Officer Davis saying
7 to Mr. O'Brien I will blow your mother fucking head
8 off?

9 A. I believe he left out the word "mother,"
10 but other than that, yes, I believe that's accurate.

11 Q. Okay.

12 A. And you might be right. I'd have to go
13 back and look at it to be sure or consult my notes,
14 but yes, some various expletives in order to force
15 compliance.

16 Q. Okay. And do you remember the gun actually
17 be trained on Mr. O'Brien for a minute or in excess
18 of?

19 A. My best estimate, yeah, it was somewhere
20 around a minute, maybe a little bit longer than a
21 minute, and, again, from what I could tell where the
22 camera was pointed, it certainly wasn't pointed at
23 the car tire or the engine. It was pointed at the
24 guy in the driver's seat, which was Mr. O'Brien.

1 Again, I can't tell specifically where, but yeah, it
2 was pointed at him for quite some time.

3 Q. And at the time, according to the video,
4 there was a passenger in the video -- I mean, in the
5 vehicle as well, correct?

6 MS. McGEE: Objection. Form.

7 THE WITNESS: It seems to me that the
8 passenger was out of the vehicle when the firearm was
9 being pointed because I remember seeing Brown's
10 camera, his perspective, and at that point, I think
11 the passenger was out of the car. I could go back
12 and look and tell you definitively, but my best
13 recollection right now is that the passenger had
14 exited the car at this point.

15 BY MS. SHAMBEE:

16 Q. Did the passenger -- from your
17 recollection, did the passenger exit the car before
18 the guns were unholstered?

19 A. I'm pretty sure that he was out by then,
20 but I need to look at it to be sure, but my
21 best -- my best recollection and from what I remember
22 is that he was out of the car at that point.

23 Q. Okay. Let's say -- let's assume that he
24 wasn't out of the vehicle until the guns were

1 holstered. Would that have been reasonable to put a
2 passenger in the zone of danger by pointing your
3 vehicle -- pointing your gun at the vehicle?

4 MS. McGEE: Objection. Incomplete
5 hypothetical. Speculation.

6 THE WITNESS: Any time you pull a firearm
7 on someone, there's a lot going on, obviously, but it
8 behooves the officer to be aware of the back drop, in
9 other words, what is behind. Now, sometimes you
10 don't have the ability to discern that.

11 Let's say -- we've all seen videos
12 where officer walks up to the car, and a gun is
13 produced, and a gunfight ensues right then and there.
14 The officer is going to do their best to protect
15 themselves against the gunman. Let's say it's in the
16 driver's seat, and at that point, most officers are
17 probably going to be returning fire in order to
18 protect themselves, save their life.

19 If you have time and the ability to
20 slow down things just a little bit and maybe it's not
21 so life or death as the situation hypothetical I just
22 described, you might have the ability to slow things
23 down and still use your firearm and the threat of the
24 firearm in response to the action.

1 So let's now move into the real thing.
2 Let's not move -- let's move away from hypothetical
3 into this traffic stop. It seems to me that clearly
4 Officer Davis had the ability to think enough because
5 I hear him saying stop reaching, stop reaching. I'm
6 going to shoot. I'm going to shoot. So if you have
7 the ability to think and to say those words, he
8 slowed it down enough where he's not actually
9 shooting, and then from here, it's guesswork. Does
10 he actually -- does he actually realize if anyone is
11 across the car in the passenger seat? I don't know.
12 Does he know where his partner is? I don't know that
13 either. I do know that at one point, the gun is
14 still pointed at Mr. O'Brien, and I can see
15 Officer Brown has resumed his position in the
16 passenger side, so, now, you've got your gun pointed
17 at the subject, and your partner is right behind him,
18 so that's a very dangerous situation.

19 BY MS. SHAMBEE:

20 Q. Okay. When initially asked for his license
21 and registration, do you recall Mr. O'Brien saying
22 no, I'm not going to give you that or do you recall
23 him asking why?

24 A. Yes, I do recall him asking why. He wants

1 to know why he's being stopped and why he has to give
2 those documents, so I do remember those questions,
3 yes.

4 Q. And at that time, were those -- was that
5 question ever answered by either officer?

6 MS. McGEE: Objection. Form.

7 THE WITNESS: No. The question was not
8 answered. The only answer was when Davis realized
9 that O'Brien is not going to give up the documents,
10 it then became the struggle we talked about of get
11 out of the car, get out of the car, get out of the
12 car, get out of the car. Why am I under arrest? Why
13 am I under arrest? Why am I under arrest? These
14 statements go back and forth between those two
15 excessively, it might be said. It's the primary form
16 that each choose to communicate with the other. Get
17 out of the car was the officer's communication
18 method. Why am I under arrest? Why? Why? Why was
19 O'Brien's chosen communication method, and it never
20 got much beyond that.

21 I did see Officer Brown start to use
22 some de-escalation. I heard some words like please.
23 I heard a bit of an explanation as he's at the
24 passenger side trying to explain a few things, but

1 they didn't continue with that vain. They didn't
2 continue with that line of statements and
3 communication, and then it became is he cuffed in
4 front? All right. Pull him out. So they
5 didn't -- Brown could have continued in that vain,
6 and they might have -- they might have been
7 successful. No one can say for sure whether they
8 would have or would not, but it certainly would have
9 given him a better chance at concluding this traffic
10 stop without the use of force if they had tried more
11 communication. I would have liked to have seen that.

12 BY MS. SHAMBEE:

13 Q. Okay. And that was going to led into my
14 next question. Do you believe that had they informed
15 Mr. O'Brien why he was being stopped or even further
16 on why he was being arrested, that this could have
17 resulted differently in the way it did?

18 MS. McGEE: Objection. Speculation.
19 Foundation. Form.

20 THE WITNESS: Well, we talked about that
21 before, too. The idea that people don't know why
22 they're being stopped and the simple act of
23 communication and trying to explain something to
24 people doesn't mean you're letting them off. It

1 doesn't mean you are letting them go. It doesn't
2 mean you're not fulfilling your law enforcement
3 objective, but if it's safe to do so, talking your
4 way through a situation as long as it's safe, it has
5 definitely been my experience and the training I've
6 been provided as well as the training I've given to
7 others, that you can work your way through a
8 situation much more safely for yourself and the
9 public by choosing to communicate rather than moving
10 to authority and force.

11 BY MS. SHAMBEE:

12 Q. Okay. Now, you were asked a question
13 earlier of whether or not you were trained by the
14 Chicago Police Department. Do you remember that
15 question?

16 A. I do remember that.

17 MS. McGEE: I'm sorry. Can I have
18 that -- can I have that read back, please? I didn't
19 quite understand everything you said.

20 MS. SHAMBEE: What part?

21 MS. McGEE: Can you just restate the
22 question or have it read back? Either is fine for
23 me. I just didn't hear everything that you were
24 saying.

1 BY MS. SHAMBEE:

2 Q. Sure. I asked: You were asked earlier if
3 you were trained by the Chicago Police Department, is
4 that correct?

5 A. I do remember that question.

6 Q. Okay. And -- but you did have an
7 opportunity to look at the Chicago Police Department
8 manual or directives, is that correct?

9 A. I looked at some that I felt were most
10 germane to the discussion we're having today.
11 Specifically, the traffic stop and the use of force
12 and de-escalation.

13 Q. Okay. And you've done training yourself
14 with the Seattle Police Department as well as the
15 Oregon Police Department regarding those same tactics
16 or subjects, correct?

17 A. That is correct.

18 Q. And based on your experience, from the
19 training that you've conducted as well as the reading
20 of the Chicago police directives, would you say that
21 they are similar in nature?

22 MS. McGEE: Objection. Form. Foundation.
23 Speculation.

24 THE WITNESS: I found the -- I found the

1 sections on de-escalation very similar. I think they
2 were more thorough in Seattle with a bit more
3 exposition, but the basic ideas of doing what you can
4 do when safe and while still completing the law
5 enforcement objective, I found to be very similar.
6 The idea of communicating and identifying yourself
7 and explain to people why they're being stopped or
8 explain to the people why they're being arrested or
9 calling additional people to the scene or
10 taking -- using time and distance as your ally, all
11 of those topics are very similar in law enforcement
12 between Chicago, Seattle, Oregon State University and
13 other departments that I've studied or looked at
14 their police manuals. I found that the more
15 progressive police departments are emphasizing the
16 ability to communicate in order to ask for what you
17 want and what you need people to do rather than
18 demanding and forcing them to do what you need them
19 to do.

20 It doesn't mean it removed those
21 elements. As I talked about here, I think at some
22 point, force was appropriate to remove Mr. O'Brien
23 from the car, but they missed so many elements when
24 it didn't need to come to that. It could have worked

1 out much easier for everyone involved.

2 BY MS. SHAMBEE:

3 Q. Okay. You were also asked a question of
4 whether or not the police report dispute -- disputed
5 whether or not what the officers wrote in the report
6 can be verified. Do you remember that?

7 MS. McGEE: So I object to form and
8 misstates the record.

9 THE WITNESS: I kind of remember what
10 you're talking about. Ms. McGee and I had a
11 discussion about the police report and it's accuracy,
12 and I, basically, said I had no reason to dispute
13 anything that the officers wrote there. There was
14 nothing that I saw that -- they might not have been
15 as thorough as I would have been. I think I would
16 have included some more detail, specifically about
17 the laws I was trying to enforce, but overall, I did
18 not see anything that led me to disbelieve the police
19 report.

20 BY MS. SHAMBEE:

21 Q. Did you find anything that corroborated
22 their statements?

23 A. Yes. Just the discussion that Davis has
24 when he arrives at the window. He says, hey, we were

1 back there in our car trying to get you to move, and
2 then he tells him, I need you to move, and O'Brien
3 doesn't want to move, so there certainly seems to be
4 that element in the police report, so I don't doubt
5 at all that they tried to use some lights and siren
6 to get him to move.

7 And -- and then as the officer is
8 describing their interaction between the two, I found
9 that what was written fairly well matched up to what
10 I saw on the video. Again, it wasn't as thorough as
11 I would have liked to see.

12 If one of my officers turned that
13 report in to me, I might -- and I was there to
14 witness the whole thing, I have to add in that
15 caveat, I would say wait, what about this or what
16 about that? You didn't include the discussion of
17 this. You didn't talk about how much room was on the
18 other side of the car. You know, I might have asked
19 them for more detail.

20 But that aside, yeah, the police
21 report seemed to corroborate what I saw in the video
22 I think is the best answer to your question.

23 Q. Okay. Would you have the same opinion if
24 you learned that the reasons the officers blew their

1 horn initially at Mr. O'Brien was because he was
2 double parked and after blowing their horn,
3 Mr. O'Brien then proceeded to move out of the double
4 parked area and then saw the parking spot, so,
5 actually, the officers' actions caused him to be
6 where he was at the time of the video?

7 MS. McGEE: Objection. Incomplete
8 hypothetical. Misstates the evidence.

9 THE WITNESS: That's a bit of a stretch. I
10 can't state that for sure. Again, I have no reason
11 to disbelieve the officers' report.

12 So there is mention of him being in
13 one spot and then moving to another spot. I have no
14 reason to doubt that, but I also can't make a lot
15 of -- I can't make much more of that than what the
16 officer wrote to state that they caused him to be
17 where he ended up. Yes and no. I mean, clearly,
18 they wanted him to move, and he did move, apparently,
19 but then he stops at a parking spot or what he thinks
20 is going to be a parking spot. I can't state much
21 more than that. You know, that's what I read, and I
22 hear the officers talking about it as they arrive at
23 the car, and that's about as far as I can take that.

24 BY MS. SHAMBEE:

1 Q. Okay. Now, you were asked a question
2 earlier if an officer has a right to ask a person to
3 get out of their vehicle on a traffic stop. Do you
4 remember that question?

5 A. Yes.

6 Q. Okay. And you answered -- you
7 initially -- I mean, you subsequently answered yes.
8 Do you remember that?

9 A. I do.

10 Q. Now, is there -- sorry. Is there an
11 absolute right for an officer to demand a person out
12 of their vehicle for any reason?

13 MS. McGEE: Objection. Incomplete
14 hypothetical.

15 THE WITNESS: No, there's not an absolute
16 right. In order to order someone out of the vehicle,
17 the officer is going to have to detail the facts in
18 their statement or in their report as to why it was
19 required for that person to get out of the vehicle,
20 and I gave the four most likely reasons.

21 One, it could be an officer safety. I
22 need you to step out for officer safety, but it's not
23 enough to just say officer safety. You need to
24 explain what the dangerous situation you saw when you

1 arrived at the vehicle and why moving them out of the
2 car might be the better choice.

3 Or because you're going to do a Terry
4 stop, and you're investigating a crime, and I can't
5 do that with you sitting in the vehicle right here,
6 you know, and you might have to explain why.

7 Or it might be because you want to
8 search the car. Again, rules of search and seizure
9 vary. The Courts sway back and forth as it were, but
10 there might be legal reasons why you are able to
11 remove someone from a vehicle in order to search it.

12 And then lastly, it might be because
13 you're going to make an arrest, and I think that's
14 what we came to -- it's probably the closest
15 conclusion to what was happening here in this scene,
16 that Officer Davis did decide to make an arrest.

17 Yes, I would have liked to see him
18 explain a little bit better, but I think his
19 intentions were clear or at least, let's say, when he
20 wanted him out of the car, it seems clear he wants
21 him out of the car, and then when he puts the
22 handcuffs on, that seems very clear that it's an
23 arrest situation because he's not getting the
24 information that he wanted. So in answer to your

1 question -- so I gave those four possibilities.

2 In answer to your question, there is
3 no absolute right of an officer just to order someone
4 out of a car. You need to have a legal reason and a
5 justification for doing so.

6 BY MS. SHAMBEE:

7 Q. Okay. You were also asked earlier about
8 your use of force training. Do you remember that
9 question?

10 A. Yes, I do.

11 Q. In your CV, you've stated that you've had
12 some use of force training within your career, is
13 that true?

14 A. Yes, it is.

15 Q. Okay. And as a -- let's see. And in
16 20 -- as a lieutenant for the Oregon State University
17 Police Department, you stated that you've trained
18 employees on use of -- force and procedures, is that
19 correct?

20 A. That is correct.

21 Q. And when you say "force," do you mean use
22 of force?

23 A. We had a sergeant that did actual physical
24 training. Again, not trying to overstate my

1 qualifications. That's not my specialty.

2 But when I sit down more in a
3 classroom setting -- or I also conducted firearms
4 training simulators for the officers that worked
5 under me, so in that case, I took a more hands-on
6 role, and it's more to guide them and direct them as
7 to why are you using force? Do you have any
8 alternatives to the use of force? And if not, what
9 levels of force can you use? So, then, I would get
10 into what's reasonable, necessary and proportional.
11 Those would be my focus when we talk about use of
12 force.

13 So I leave the physical training to
14 other officers and sergeants, but it's great to have
15 a commander explain to you or for me to explain to
16 the officers my expectations of how I want them to
17 use force and what's appropriate to use force and
18 when and then how to document your actions and then
19 the necessity for those actions in later reports, so
20 that would be my focus on use of force.

21 Both with Seattle Police Department,
22 and that's a great question that you asked as we move
23 into Oregon State University Police Department,
24 again, being the number 2 at who was reviewing all of

1 their actions, it's great for me to be able to set my
2 expectations for them as well as to give them the
3 legal guidelines as to why I'm stating it this way.
4 I'm not just making things up. I'm relying on court
5 decisions. I'm relying on Supreme Court Graham v.
6 Connor and, you know, Tennessee versus Garner, so I'm
7 giving those legal guidelines, my expectations, and
8 then what the chief wrote in the manual, so you
9 combine all these things together, and that's to me
10 what forms an effective training section.

11 But my specialty would not be how to
12 necessarily apply a wrist lock but why do you apply
13 the wrist lock and what are you trying to accomplish
14 in that use of force.

15 Q. Okay. And would that be the same for the
16 force investigation lieutenant in 2016 and 2017 when
17 you were responsible for the analysis of officers'
18 use of force during arrests?

19 MS. McGEE: Objection. Form.

20 THE WITNESS: Not exactly. So when I held
21 that position, again, I reviewed -- there's five
22 precincts in the city of Seattle, and I was the force
23 lieutenant for the East Precinct, so let's say
24 one-fifth of the patrol officers in the department,

1 and my job in that was to review their use of force
2 and then to make recommendations about where to go
3 next with their use of force, so I wouldn't call an
4 officer aside usually. 99 percent of the time, I'm
5 not going to call them in one-on-one and discuss
6 their use of force, but I'm going to write a report
7 that details why their use of force was appropriate
8 and how it accomplished it was reasonable, necessary
9 and proportional. I want to know did the officer
10 have legal authority to be where they were and did
11 they have lawful purpose, what are they trying to
12 accomplish as a law enforcement officer, so those are
13 the things I would review.

14 And, now, when I found mistakes or
15 errors or even excessive force, then I have -- that
16 opens up a variety of other responsibilities, so in
17 one case, I found an officer had used excessive
18 force, so I go to the precinct captain. I show him
19 the video, explain why this is excessive force and
20 that it needs to be sent to our Office of
21 Professional Accountability, and the officer
22 needs -- we need to investigate this fully, right.
23 So that's one option.

24 Another option, I might seek training.

1 This is a brand-new officer. They have, obviously,
2 misapplied the tactic. They weren't malicious in
3 doing it, but they don't know why they did it or how
4 to do it. Let's send them back to training to get
5 some of those experts that I mentioned before in how
6 to use a certain tactic.

7 Or I might say we need to document
8 this by memo, and I might have their sergeant tell
9 them, hey, instruct your officer here's what
10 department expectations are. Here is my expectation
11 and the captain's expectation. Give them as
12 instruction, give them as training, document it in
13 their performance review and be aware of it for
14 future in case the problem crops up again, but if
15 they -- it was just a simple mistake and they
16 understand why, then maybe we can monitor their
17 performance and make sure it doesn't happen again.

18 So sorry for the long-winded answer,
19 but that's a very microcosm of what I did as the
20 force investigation lieutenant when I'm reviewing all
21 the officers' use of force and then how to handle
22 those uses of force.

23 BY MS. SHAMBEE:

24 Q. Okay. And would that -- what you just

1 explained now, would that be similar to what you did
2 as the watch commander for the Seattle Police
3 Department in 2019 and 2021 when you stated that I
4 conduct the use of force, collision complaint and
5 pursuit reviews for my staff?

6 A. Yes. It's similar but different. There's
7 slightly different responsibilities that occur there.
8 Overall, I -- at that point, I'm taking a more
9 hands-on approach than as the force investigation
10 lieutenant, so the roles are similar. The
11 responsibilities are slightly different, but the end
12 result is the same. We're making sure that those
13 officers in the Seattle Police Department are using
14 constitutionally approved uses of force and that they
15 have the proper training, guidance and, if necessary,
16 discipline in order to make sure that we're upholding
17 constitutional standards and that we're not using
18 force inappropriately.

19 Q. Okay. And, then, again, also -- is it a
20 training cadre for the Seattle Police Department?

21 A. Cadre.

22 Q. Okay. 2005 to 2021 where you stated,
23 amongst other things, that you've done training and
24 integrated tactics and use of force.

1 A. That's correct. So in the training cadre,
2 what you are doing is you're taking those elements of
3 the manual, the Seattle Police Department Manual, and
4 you are now applying them to real-world training
5 environment. What you're trying to do is re-create
6 in possibly an outdoor/indoor setting, you're trying
7 to re-create those situations that might occur
8 actually out in the street.

9 One of those, let's say, might be a
10 traffic stop, and what to do when someone refuses to
11 provide their information or refuses to cooperate.
12 It might be what to do when you're faced with lethal
13 threat. It might be what to do when you come across
14 a suicidal person. What level of force can you use
15 there, so what you're doing is applying those
16 theoretical concepts, those -- with the backing of
17 the court and the police department manual, you're
18 now combining that in a training environment in order
19 to have the officers have the experience of actually
20 working through these problems in a training
21 environment. That's where we learn, and then they
22 can hopefully use those tactics when they're in the
23 real-world environment, and they think -- and their
24 body and mind says, oh, yeah, I've been through this

1 before, and here's how I can be successful and do it
2 again.

3 So that's what the training cadre is
4 all about is designing those elements to simulate
5 real-world environments so that the officers keep
6 themselves and the public safe while still completing
7 their law enforcement objectives.

8 Q. Okay. In your past, have you ever served
9 on a jury for an excessive force case?

10 A. No, I have not.

11 Q. Have you ever worked as a judge in any
12 capacity on an excessive force case?

13 A. No, I have not.

14 Q. Okay. Have you testified before on an
15 excessive force case?

16 A. I have never testified in a court of law or
17 by deposition in an excessive force case.

18 The only statements or investigation I
19 can remember in excessive force would be internal
20 investigations to the Seattle Police Department based
21 on an officer's use of force, but, again, those are
22 not judiciary bodies. They're from within the police
23 department.

24 Q. Have you ever had to make a determination

1 of any sort of -- I'm just trying to think of the
2 right word -- consequence of an officer using
3 excessive force?

4 MS. McGEE: Objection. Form.

5 THE WITNESS: I got the second half of
6 that. Have I ever done -- but I missed the first
7 half. Have I ever judged?

8 BY MS. SHAMBEE:

9 Q. No, no, no. Have you ever had to give a
10 consequence of an -- to an officer that has
11 been -- strike that. I think I'm saying that wrong.

12 Have you ever had to make the
13 determination of what the consequences will be if an
14 officer used excessive force?

15 MS. McGEE: Objection. Form.

16 THE WITNESS: I understand. No, I have
17 not. I have not been in the position of recommending
18 discipline or consequences. No, I can't think of
19 anything like that.

20 The only thing I can think of was that
21 I might have advised, let's say, a precinct captain
22 that might come to me and say, hey, I've read your
23 report, what do you think should happen here, so I'm
24 not -- but I'm still not the decision-maker there. I

1 might give -- I might give a recommendation. I might
2 say, hey, the officer overstepped here, but it's due
3 to lack of training. Or this officer overstepped
4 and, clearly, this is a problem for them, and -- and
5 I would recommend some form of discipline and/or
6 training.

7 I don't think I -- yeah. I don't
8 think I've ever recommended anyone be fired, so
9 that's the closest in answer to your question. It's
10 possibly advising someone who did have that final say
11 in the discipline to be imposed, and even then, the
12 precinct captain wouldn't -- it would, ultimately, be
13 the chief of police after a Loudermill hearing to
14 determine ultimate discipline for the officer.

15 BY MS. SHAMBEE:

16 Q. Would it -- have you ever made a
17 determination of whether or not an officer used
18 excessive force?

19 MS. MCGEE: Objection. Form.

20 THE WITNESS: Yes. I can think of a few
21 times where I felt clearly the officer used excessive
22 force and --

23 BY MS. SHAMBEE:

24 Q. And what would --

1 A. Go ahead. That's it.

2 Q. I'm sorry.

3 A. I can think of a few times like that, yes.

4 Q. And what helped you in determining whether
5 or not an officer used excessive force? Like what
6 from your investigation helped you come to that
7 conclusion?

8 MS. McGEE: Objection. Form.

9 THE WITNESS: Certainly, my training as
10 someone who has been trained in constitutional use of
11 force. Certainly, my experience. 14 years as an
12 officer, 21 years as a supervisor or commander for
13 other police officers, I definitely rely on my
14 experience in policing. Also, the training that I've
15 been provided at whatever rank as well as the
16 training I provided to others.

17 I am a believer in department policy.
18 I'm a believer in constitutional policing, and I try
19 to combine those with real-world situations in order
20 to guide and train officers in the best way to keep
21 themselves safe and keep the public safe and have
22 their case stand up in courts and not be subjective
23 to excessive force complaints.

24 So there's a lot that I'm looking at

1 and using in order to make a determination, and,
2 again, it might be my own determination, but then
3 realizing and seeing it and knowing what it is, and
4 then making the correct notification generally to the
5 Office of Professional Accountability, the cops that
6 police the cops, and to say here we have a problem,
7 and let them take it from there, and sometimes I
8 might provide a statement or I might provide an
9 interview and talk about what I saw and why that was
10 a problem, but in general, then, the chief and the
11 precinct captain pretty much would take over at that
12 point.

13 BY MS. SHAMBEE:

14 Q. Okay. Using all of that, would you make
15 that determination based on the actions of the
16 officers at the time or what would you base it on? I
17 think that's more direct to what I meant to ask.

18 MS. McGEE: Objection. Incomplete
19 hypothetical. Form.

20 THE WITNESS: It is often said -- and this
21 is in our police manual and I've seen it in other
22 manuals, too, and I've seen it from the courts, that
23 the review of use of force needs to be from the
24 standpoint of a reasonable officer, and it shouldn't

1 be from those who have the benefit of 20/20
2 hindsight.

3 What does that mean? When I'm sitting
4 down at a desk and I push play on the video and I'm
5 reading that police report and following along with
6 what happened, it's very easy -- it might not be very
7 easy, but let's say it's easier for me than the
8 officer who is on the street in the heated moment
9 trying to figure out the right thing to do and the
10 best thing to do in order to accomplish their
11 objective, remain constitutionally sound and keep
12 themselves and the public safe.

13 So having been in those situations
14 myself, I think it's very important that I remember
15 what it's like to be an officer in a situation and to
16 make decisions about how to handle something, and
17 then it becomes doubly important for me as a police
18 commander, a trainer or a watch commander or a force
19 review lieutenant to communicate that to the officers
20 that I work with in order to keep themselves safe, both
21 politically, civilly and criminally.

22 BY MS. SHAMBEE:

23 Q. Okay. I don't think that my question was
24 answered.

1 A. Oh, I'm sorry.

2 Q. That's okay.

3 But would you -- when making the
4 determination whether an officer used excessive
5 force, would you look at the situation itself or the
6 procedures that were used and the officers' action at
7 the time in order to make that determination when you
8 did make it?

9 MS. McGEE: Objection. Incomplete
10 hypothetical. Form.

11 THE WITNESS: Yes. What you said makes
12 sense. You're going to rely on your training,
13 experience. You are going to look at the police
14 reports, the statements, the Arrest Report, and if
15 you have video, you are going to use that, too, and,
16 hopefully, this answers your question. You are going
17 to take all those elements as well as your own
18 training and experience and knowledge in order to
19 make recommendations about the best way to handle
20 what it was that happened.

21 BY MS. SHAMBEE:

22 Q. Turning to this case here, did you see any
23 de-escalation tactics employed?

24 MS. McGEE: Objection. Form. Foundation.

1 THE WITNESS: I'm going to look back at my
2 report on that because I talked about that, so let's
3 make sure we're all on the same page here as what I
4 want to talk about. Okay. In section N, g,
5 subsection g, I wrote -- I won't read this whole
6 thing, but "The Chicago Police Manual requires
7 de-escalation in order to prevent or minimize the use
8 of force." That is very common. That's the same
9 with Seattle, Oregon State University, obviously,
10 Chicago and darn near any other reasonably
11 professional police department that I've ever seen,
12 that's exactly why you put that section of
13 de-escalation in there.

14 So some of the things that they
15 suggest is using time, and we talked about how
16 O'Brien is, basically, told he's under arrest a
17 minute into the stop, and he's going to be forcefully
18 removed, so time, the officers definitely did not use
19 time to their advantage.

20 Distance, I talked about distance when
21 the firearm was being drawn. That's not necessarily
22 what distance in de-escalation talks about. It's
23 really -- let's say there's a suicidal subject in a
24 room. Do I need to be right next to them in order to

1 communicate with them? No. Distance is your friend
2 there. So back around the corner, communicate with
3 them. It keeps yourself safe and keeps the subject
4 safe. That's really what it's talking about there.
5 So on a traffic stop, I didn't see much element of
6 distance that was gained or that could be gained by
7 the officer.

8 I talked about some officer-safety
9 things, but that's not really -- really here.

10 Number 3, positioning, and this plays
11 into the idea of when we're going to use enough force
12 to get him out of the car. The positioning is
13 clearly important, and Brown seemed to be applying
14 the main level of force to get him out of the car,
15 and he pulled from the passenger side to pull him
16 over the center -- the center console of the car and
17 out the passenger side, so positioning could have
18 been very important here, and, again, you're
19 accomplishing your law enforcement objective and
20 still trying to do it safely, so positioning as far
21 as de-escalation goes would have helped.

22 In this case, if Brown and Davis are
23 both on the same side of the car and they take that
24 nice, easy step out of the driver's side, that

1 positioning is a form of de-escalation because
2 your -- it's the actions you take in order to avoid
3 hurting someone while still accomplishing your
4 objective.

5 Now, we get to warnings, and this is
6 what I wrote. "In my opinion, this is the category
7 of de-escalation that was almost completely missed
8 during this contact. There were numerous
9 opportunities to discuss the situation with O'Brien
10 in a calm but professional manner." I rarely ever
11 saw that. I talked earlier I saw a little bit from
12 Brown. He started to talk in a more conversational
13 tone, in a more persuasive tone, but they decided not
14 to use that anymore, and they moved away from it, and
15 they went back to force. Okay. Well, then, we're
16 going to force you out of the car.

17 In number 5 here, I talk about
18 additional personnel. If you call the right
19 personnel to the scene, it is definitely an element
20 of de-escalation. Again, what tactics are we using
21 in order to accomplish our law enforcement objective
22 without the use of force? In my experience, it's
23 very helpful to have a supervisor on the scene,
24 particularly one who is not emotionally involved in

1 the scene. We talked about the emotions that existed
2 between primarily Davis and O'Brien and how they
3 butted heads, which led to the use of force and the
4 arrest and the broken finger. If Sergeant Shrake had
5 been called to the scene earlier, possibly -- again,
6 we don't know this, but possibly there exists an
7 element of a supervisor coming to the scene to calm
8 things down because they can remain detached from it,
9 and it helps to explain to the citizen, hey, I'm the
10 supervisor. I'm going to make sure things are done
11 correctly here. I just got here, so I don't know the
12 story what's going on. From what I understand, the
13 officers are trying to arrest you. I know you
14 disagree with that, but right now, I need you to have
15 cooperation with the officers so that they can place
16 the handcuffs on you. There is no other option at
17 this point, so what I need you to do is do that, and
18 then you and I can stand here and calmly discuss
19 this, and I will listen to you, and I will hear your
20 side of this. You would be surprised how far that
21 goes with a citizen who is uncooperative with the
22 police to have them feel, okay, here's someone that
23 understands. Yes, they're a police officer, but at
24 least they're the supervisor, and they're going to

1 make sure things happen correctly, and they missed
2 that opportunity. It would have been great. In
3 fact, they call Shrake to the scene, and all he says
4 is you're under arrest for not listening, and that
5 didn't really work.

6 My headphones just went dead. Can you
7 still hear me okay?

8 BY MS. SHAMBEE:

9 Q. Yes.

10 MS. McGEE: Yes.

11 THE WITNESS: Okay. All right. And I
12 think that -- effectively that -- that pretty much
13 ended it as far as de-escalation efforts that might
14 have been successful.

15 BY MS. SHAMBEE:

16 Q. Okay. Would you -- you stated earlier --

17 A. Now, I'm not hearing. Just a minute.

18 Okay. Can I get a voice check?

19 Q. Can you hear me?

20 A. Yep. I gotcha. Thank you.

21 Q. Okay. Sorry. We can strike that from the
22 record.

23 Do you think had Officer Brown and
24 Officer Davis attempted to extract Mr. O'Brien from

1 the vehicle from the -- I'm sorry, from the driver's
2 side, there's a possibility that Mr. O'Brien may not
3 have obtained a broken thumb?

4 MS. McGEE: Objection. Incomplete
5 hypothetical. Speculation. Foundation.

6 THE WITNESS: Absolutely. And the best way
7 to think about this is -- I'm assuming all of us have
8 driven a car at one point in our lives, and what's
9 the easiest way in and out of that car? If you are
10 going to be the driver of the car, clearly, it's to
11 open the driver's door and step in. And when you
12 want to get out of the car, what's the easiest way
13 out of that car? It's to reopen the driver's door
14 and step back out. It's the quickest, easiest way to
15 get in and out of that car.

16 Now, if we examine if you're the
17 driver of the car and you have decided to enter and
18 exit from the passenger side, you just created a much
19 greater difficulty for yourself.

20 One, there's distance, so the driver's
21 side is three to four feet, five feet possibly even
22 away from the passenger side, so, now, you've got
23 greater distance that you have to cover.

24 You have to get over that transmission

1 hump. You have to get around that gearshift. You
2 have to move your body over that center console and
3 somehow you have to get your legs and body out from
4 under the steering -- in and out from under the
5 steering wheel. Much more difficult situation.

6 So, hopefully, I'm answering your
7 question. The reason the driver side is so
8 convenient for the arrest is because that's where
9 he's sitting, and to me, it seems quite likely
10 unless -- unless a big struggled ensued outside that
11 if you pull him out of the car, the ability for both
12 officers to each have an arm under control, whether
13 handcuffed or not, again, if each officer has an arm,
14 you've accomplished several things there. You've
15 limited the ability of the person to move and to
16 assault you. You've limited their ability to grab a
17 weapon, and you have limited their ability to resist
18 you further. He might still be able to resist. I'm
19 sure that's a great possibility, but at least you've
20 increased your advantage by having both officers on
21 the driver's side that quick, easy exit from the
22 vehicle.

23 And who knows? O'Brien might have
24 made it very difficult for them. We don't know at

1 this point because that didn't happen, but,
2 certainly, the way you described it, Ms. Shambee, is
3 correct. There's much greater possibility being
4 injured going out the passenger side than there is
5 the driver's side. We don't know what would have
6 happened on that driver's side, but at least you
7 didn't have to drag someone the width of a car,
8 across the center console, across the transmission,
9 the gearshift, out the passenger side, out the door
10 and then down to the ground. That's a much harder
11 way to travel and much more likely to injure someone.

12 BY MS. SHAMBEE:

13 Q. Would you agree that extracting a person
14 out of the vehicle -- out of the vehicle from the
15 driver's side, out the passenger side may require
16 more force than if you would have just taken them out
17 of the driver's side?

18 MS. McGEE: Objection. Incomplete
19 hypothetical.

20 THE WITNESS: Absolutely. If --

21 BY MS. SHAMBEE:

22 Q. I'm sorry.

23 A. I was just thinking -- thinking to myself.
24 So in answer to your question, yes, absolutely.

1 And why do I say that? Because the
2 distance from the driver's seat to the ground is only
3 a matter of a few feet. If someone is cooperative,
4 all you have to do is step down. If someone is
5 uncooperative, what you have to do is get their hands
6 off the steering wheel. Again, we talked about
7 handcuff, not handcuffed. There was opportunities
8 for both in this case, but then to use that force to
9 pull them out of the vehicle and down to the ground.

10 Now, it could be that they stay on
11 their feet, but if it looks like they're still
12 resisting and/or they want to run or they want to
13 assault the officer, perhaps down to the ground, that
14 might be the safest place to accomplish your
15 objective there.

16 To go out the passenger side just
17 presents so much -- and this gets to your question.
18 There's so much more force that's required to -- just
19 the laws of physics. To move out of the driver's
20 seat down to the ground, very easy to do. I talk
21 about how difficult it is to move from the driver's
22 seat across that center console, across the passenger
23 seat and out the door and down to the ground,
24 so -- and think of the position that the body, the

1 human body, in this case, Mr. O'Brien's body, was in
2 as he's extracted from the car. The first thing that
3 is grabbed on to appears to be his arms, possibly the
4 handcuffs. I'm not sure, but he's pulled, and then
5 come the arms across. Now, the body comes across,
6 and then finally, the bottom and the legs, and
7 to -- I don't know how tall Mr. O'Brien is. Let's
8 say he's 5-6 or 6 foot, whatever the case might be,
9 but to then -- you are going to have to require much
10 greater force to pull him out of that driver's seat
11 across those obstacles through the passenger seat and
12 down to the ground. The force required must have
13 been quite great.

14 Q. And would you say a reasonable officer
15 would have employed that tactic in order to extract
16 him from the vehicle as opposed to taking him out of
17 the driver's side?

18 MS. McGEE: Objection. Incomplete
19 hypothetical. Form.

20 THE WITNESS: When -- when the U.S. Supreme
21 Court gave guidelines to police departments across
22 the country under Graham, they said what you want to
23 look at in order to determine the legality of the use
24 of force is you look at it from the standpoint of the

1 reasonable officer, and the reasonable officer
2 considers how severe is the crime that I'm
3 investigating here. Number 2, am I in danger? Is
4 anyone else in danger by the actions that the suspect
5 is doing here? And then number 3, are they trying to
6 escape or are they actively resisting me? In other
7 words, are they assaulting me in order to make their
8 escape? So the reasonable officer takes all these
9 factors into consideration and then comes up with an
10 appropriate level of force, and that's for the trier
11 of fact to then determine to say yes, that was
12 reasonable to do what you did.

13 I think it was very reasonable if the
14 officers decided to both be on the driver's side and
15 to extract Mr. O'Brien out of that driver's side and
16 to then complete their arrest.

17 I find it very unreasonable to say
18 we're going to get you out of the car and here's how
19 we're going to do it. We're going to pull with great
20 strength and force, and we're going to -- not going
21 to take you out the driver's door. We're going to go
22 across that center console and across the passenger
23 seat, and we're dragging you, basically, head first
24 by your arms out of this vehicle and then down to the

1 ground.

2 So was that necessary? That's one of
3 the things the law asks us to examine. Was it
4 necessary to do what you did? I would say in this
5 case, it was unnecessary, especially when there was
6 such an easy -- I won't say easy. Let me take that
7 back. If Mr. O'Brien was resisting, it is still hard
8 to get someone out of a car, but I can tell you this.
9 It's definitely easier to do it out of the driver's
10 door and safer, so, therefore, this would be the more
11 proportional use of force based on the amount of
12 resistance that Mr. O'Brien was offering, so that's
13 what I would say.

14 MS. SHAMBEE: I have nothing further.

15 REDIRECT EXAMINATION

16 BY MS. McGEE:

17 Q. I have a couple of follow up.

18 A. Sure.

19 Q. A couple minutes ago, you said something
20 about the law of physics. Would it be a fair
21 statement you're not an expert in physics?

22 A. That would be a fair statement. I am no
23 physics expert.

24 Q. All right. Got it.

1 All right. When you were talking
2 about the body-worn cameras, that's -- you were
3 talking about your personal experiences with
4 body-worn cameras, right, in Washington and Oregon?

5 A. As well as what I've read from other
6 departments, and I've seen body-worn cameras from
7 other departments across the United States, and some
8 of those cases that you see on my CV there, and,
9 again, I probably -- let me also say this. I
10 probably will not know the technical knowledge that I
11 do know from SPD and Oregon State University. There
12 are different body camera systems. There are
13 different manufacturers, and there might be different
14 methods of activating or using them, so what I've
15 talked about before was I'd say probably most germane
16 to Seattle and Oregon State University, although I
17 saw very similar things from the cameras that the
18 officers were wearing there at the -- in the city of
19 Chicago. There was that activation. There's moments
20 of silence, and then, finally, the audio kicks in, so
21 that seemed very similar to what I'm familiar with.

22 Q. So you've not been trained on how the
23 Chicago body-worn cameras work, fair statement?

24 A. That is a fair statement.

1 Q. Okay. And not -- so you do not know the
2 specific model of camera that the officers had,
3 correct?

4 A. That's correct. I do not know what camera
5 they had.

6 Q. And you don't know about any of the Chicago
7 Police Department policies for the body-worn cameras?

8 A. It seems to me that I did read about the
9 requirement to use the cameras because I was looking
10 for the in-car camera, and that's when I came across
11 the section. I believe they might be in the same
12 section of the police manual where it talks about
13 in-car and body-worn, so I couldn't quote it to you.
14 I don't have a great handle on it, but I do remember
15 the requirement for body-worn and in-car.

16 Q. Everything that you read from the Chicago
17 police directive website you put in your report, is
18 that right?

19 A. No, I didn't put everything in there
20 because it takes a while to find the sections that
21 you're looking for, so sometimes I might have read
22 sections that I didn't find applicable to our
23 discussions today.

24 Q. Okay. Well, everything applicable to our

1 discussions today, you put in your report, is that a
2 fair statement?

3 A. I would say the things that I found most
4 applicable. I think that leaves some room for things
5 that, you know, possibly I didn't consider at the
6 time or that upon later discussion or later review,
7 oh, you know, it is important to discuss whatever it
8 is, insert hypothetical here.

9 Q. So if the special order for use of
10 body-worn cameras is not listed on your report, it's
11 probably likely that you never reviewed that?

12 MS. SHAMBEE: Objection. Form.

13 THE WITNESS: I'm fairly sure that I read
14 that section on body-worn cameras, and --

15 BY MS. MCGEE:

16 Q. Why didn't you put that special order in
17 your report, then, as a document that you read?

18 MS. SHAMBEE: Objection. Argumentative.
19 I'm sorry. Objection. Argumentative. Form.

20 THE WITNESS: As I talked about, when
21 you're reviewing different sections of the manual,
22 you might come across things that you don't think are
23 germane to the case.

24 From what I saw, both officers in

1 conducting this traffic stop activated their
2 body-worn cameras, and there's probably not much more
3 benefit that I'm going to get from learning about
4 those cameras or finding the brand or, you know -- I
5 could already see that there was a delay for the
6 sound activation. I'm not going to determine how
7 they dock those or what they do with the video
8 afterwards.

9 What I know is that the videos were
10 reported. They were uploaded to the department
11 website and then provided to Plaintiff's counsel who
12 then provided them to me, so -- and it wasn't really
13 germane to the questions that I posed and that I
14 understood from this case that we're talking about.

15 So in answer to your question -- I'm
16 getting back there -- there might be things that I
17 review as part of this case, and to me, they weren't
18 the most relevant or the most necessary to get into.

19 I'll give you another example --

20 BY MS. MCGEE:

21 Q. I don't actually need another example.

22 A. Okay. All right. That's fine.

23 Q. I'm going to ask you another question.

24 So you have no information about how

1 the police department in Chicago stores their videos?

2 A. That is correct.

3 Q. And when you were talking about how the
4 cameras work about whether you could mute them or how
5 long the rollback is, this is all information that
6 you have from your personal experience but not
7 necessarily from any information you know about the
8 Chicago Police Department?

9 A. I'll say yes and no to that. Primarily
10 you're right. Most of my knowledge comes from using
11 and being trained in the cameras in Seattle and at
12 OSU, but there are certain elements that I recognize
13 as I'm watching the body-worn camera. You know, I
14 know what the timer is. I know what the delay
15 activation is and things like that, so there's some
16 elements that are similar, but most of it, you are
17 right, comes from Seattle and OSU.

18 Q. All right. So when you were talking about
19 your review of use of force when you were at the
20 Seattle Police Department, you were talking about how
21 for your use of force, you reviewed reports and video
22 and then formed some type of opinions about the use
23 of force. Am I summarizing your experience
24 correctly?

1 A. It depends on the responsibilities of the
2 position. Some required more definitive
3 decision-making on my part, and others -- other
4 times, when I was reviewing force, I was reviewing it
5 for others, in other words, to give them a background
6 of what happened and let them decide best way to
7 handle it, so it depends on the exact job we're
8 talking about.

9 Q. When you were reviewing force in Seattle in
10 your various positions, did you believe it was
11 important to watch the video of the incident?

12 A. Absolutely.

13 Q. Did you believe it was important to watch
14 all the video that you could obtain from that
15 incident?

16 A. That's an interesting question. Because
17 when we first started the video review lieutenant at
18 the direction of the Department of Justice, they
19 wanted every second of video reviewed from every
20 situation where force was used, at least higher
21 levels of force, and it became extremely cumbersome,
22 but I did what I was told, and I got through it, and
23 you can imagine seeing the same incident nine times
24 in a row because there was nine officers there can

1 get tiresome and burdensome after a while. What
2 about the video of the officer on traffic control who
3 was blocks away and I have to sit there and watch
4 their video? So --

5 Q. I mean, I'm not talking about -- I'm not
6 talking about an officer that's just securing the
7 scene from a couple --

8 A. Okay.

9 Q. -- blocks away. I'm talking about the
10 actual video from the force incident. Would you
11 agree that best practice would be to review all of
12 the available video from the use of force incident?

13 A. In answer to your question, exactly. To be
14 more specific, when you -- especially looking at the
15 officers that used force, those would be the best
16 videos to watch in order to determine appropriate
17 levels of force as well as -- let me just give a
18 slight caveat here. If you have outside video that
19 gives an overall view, I mean, there's
20 some -- there's some difficulties arising with
21 body-worn. It's great in some ways, and other ways,
22 not so great.

23 But let's say something happened in
24 front of a 7-Eleven and you have that security camera

1 that looks at the whole parking lot, it gives you a
2 totally different perspective of what happened there
3 than what the body-worn cameras might show, so if
4 there's that outside video I just gave you a
5 hypothetical, that can be very important, too.

6 In this case, I am unaware of any
7 other video, including in-car video of this incident,
8 so certainly, the best things to look at were the two
9 body-worn cameras from Davis and Brown.

10 Q. And I guess my question to you was about
11 your use of force experience when you were reviewing
12 use of force, not about this incident. My question
13 is: You found it important to review all of the
14 video of the use of force incident whether it was
15 from the force officers, assisting officers,
16 surveillance cameras, in-car cameras, all of that
17 video was something that was important for you to
18 review?

19 MS. SHAMBEE: Objection. Form.

20 THE WITNESS: Well, that's a bit of a
21 complicated question, and let me see if I can
22 summarize it correctly. I was ordered to watch all
23 video, so my job required me to watch all video, and
24 I'll be honest with you. There was a lot of video I

1 did not find necessary. It showed nothing of the use
2 of force and was not germane to the investigation,
3 yet I watched it anyway.

4 So that's kind of my answer. Yes, I
5 find it important to watch all the video. There's
6 going to be some video that's more important to watch
7 than others, and I tried to give you a sense of some
8 of the videos and why something might be more
9 important than others.

10 But, certainly, watching video in
11 Seattle, it would be most important to watch the
12 video involving the officers using force or a video
13 from overall that shows the use of force incident in
14 maybe a different perspective. Let's say a parking
15 lot or an in-car video or something like that. Does
16 that answer?

17 BY MS. MCGEE:

18 Q. When you were reviewing force in Seattle,
19 you would never see that there was body-worn camera
20 video from a responding officer and choose not to
21 watch it? You would watch it and then decide whether
22 or not it was helpful to your analysis?

23 A. I guess we have to define responding
24 officer. So let's say a hot call comes out and ten

1 officers respond but only five of them make it to the
2 scene, so we have ten responding officers, but only
3 five that actually end up on the arrest, so --

4 Q. I thought I was clear.

5 A. -- I'm going to look at those five and not
6 the whole ten.

7 Q. Yeah. I just want to talk about, like,
8 people that are on the scene in the proximity of the
9 use of force incident. Let's exclude all of the
10 people that are controlling the perimeter. People
11 that don't make it there. Like, people that are just
12 on scene for the use of force incident. It's a fair
13 statement that when you were in Seattle, you would
14 review all of those officers' videos, in-car camera,
15 whatever was available and then determine which of
16 those videos were important or not important to your
17 analysis?

18 A. Absolutely. I would identify those and
19 highlight the sections so that, let's say, the
20 precinct captain could get right to the heart of the
21 matter. I would say look at this officer's video
22 from here to here, and that's going to be one of the
23 best views of the incident.

24 MS. McGEE: Got it. All right. I have no

1 additional questions.

2 MS. SHAMBEE: I have nothing based on that.

3 THE COURT REPORTER: And signature on this?

4 MS. MCGEE: So --

5 MS. SHAMBEE: I'm sorry. Mr. Sweeney,
6 would you want to review the deposition or would you
7 waive signature?

8 THE WITNESS: It has been my experience
9 that sometimes there's small things that are not
10 captured correctly, but I don't really want to spend
11 that much time reviewing every word of this
12 transcript, so I would say this. If you or I or
13 defense counsel find something that seems out of the
14 ordinary or seems unusual --

15 MS. MCGEE: So, sir, I'm just going to tell
16 you you have two options. One option is to waive
17 signature, which means that you trust the court
18 reporter to properly transcribe it. The second
19 option is you reserve signature, which means that the
20 court reporting agency will coordinate with you and
21 Ms. Shambee about the transcript, and you'll review
22 at that point. Those are your two options. You
23 reserve or you waive.

24 THE WITNESS: Understood. I guess I would

1 like to review it for accuracy then.

2 MS. McGEE: Okay. All right. Cynthia,
3 we're going to order. I'm going to send you the
4 exhibits. Where should I send the exhibits to?

5 THE COURT REPORTER: Can you send them to
6 Bridges?

7 (Discussion had off the
8 record.)

9 THE COURT REPORTER: Did you want E-tran or
10 PDF?

11 MS. McGEE: PDF.

12 THE COURT REPORTER: And then, Ms. Shambee,
13 did you want a copy?

14 MS. SHAMBEE: Yes. Same way.

15 FURTHER DEPONENT SAITH NOT AT 4:56 P.M.
16
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24

1 IN THE UNITED STATES DISTRICT COURT
2 FOR THE NORTHERN DISTRICT OF ILLINOIS
3 EASTERN DIVISION

4 AIDAN O'BRIEN,

5 Plaintiff,

6 -vs-

) No. 20 CV 2260
)
)

7 THE CITY OF CHICAGO,
8 OFFICER BROWN STAR #6158,
9 OFFICER DAVIS STAR #15630,
10 OFFICER SHRAKE STAR #1553,
11 AND AS-YET-UNKNOWN CHICAGO)
12 POLICE OFFICERS,
13)

14 Defendants.)
15
16

17 I, DAVID SWEENEY, hereby certify that I
18 have read the foregoing transcript of my deposition
19 taken on July 11, 2022, consisting of Page 1 through
20 254, and that to the best of my knowledge it is a
21 true and correct transcript of said deposition,
22 except as I have changed it on the attached sheets in
23 accordance with the rules provided by the said court.
24

17 DAVID SWEENEY

18 No errata sheets submitted (Please initial)_____.

19 Number of errata sheets submitted _____(pgs.)

20 SUBSCRIBED AND SWORN TO
21 before me this _____ day of
22 _____, 20____.

24 Notary Public

1 COURT REPORTER CERTIFICATE

2 * * * * *

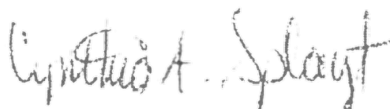
3 I, Cynthia A. Splayt, CSR, do hereby
4 certify that the witness was by me first duly sworn
5 to testify to the truth and that the preceding
6 deposition was recorded stenographically by me and
7 reduced to typewriting by computer transcription.

8 I FURTHER CERTIFY that the foregoing
9 transcript is a true and correct transcript of the
10 testimony given by the said witness at the time and
11 place specified hereinbefore.

12 I FURTHER CERTIFY that the signature was
13 not waived by agreement.

14 I FURTHER CERTIFY that I am not a relative
15 or employee or attorney or counsel of any of the
16 parties, nor a relative or employee of such attorney
17 or counsel, nor financially interested directly or
18 indirectly in this action.

19 IN WITNESS WHEREOF, I have hereunto set my
20 hand this 18th day of July, 2022.

21
22
23 

24 _____
CYNTHIA A. SPLAYT, CSR
License No. 084.003295

July 22, 2022

ATTN: Juneitha Shambee
Shambee Law Office, LTD

Date Taken: July 11, 2022
Case Name: O'Brien v. City of Chicago
Deponent: David Sweeney

Dear Juneitha Shambee,

Please make arrangements for the deponent to read his or her transcript. If there are any transcription errors, please have the deponent note them on the enclosed errata sheet.

When this process has been completed, the deponent must sign the signature page and each errata sheet at the bottom, and his/her signature must be notarized. Please make a copy for your own records and send a copy to my office and all respective counsel.

As provided by Rule 207(A) of the Supreme Court Rules, as amended, if after 28 days the deponent has not read and signed the deposition transcript, it will be understood that the signature is waived and the transcript may be used as though signed.

Sincerely,



Stephanie Silva
Bridges Court Reporting
120 W. Madison St., Ste. 1310
Chicago, IL 60602
(312) 332-6345

CC: Michele McGee

ERRATA SHEET

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