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1 In the Matter of the)

2 Arbitration Between)

3 THE CITY OF PORTLAND)Ronald Frashour

4 and)Grievance

5 PORTLAND POLICE ASSOCIATION)

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12 PERPETUATION DEPOSITION OF W. KEN KATSARIS

13 Taken in behalf of the Association

14

15 December 19, 2011

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1 BE IT REMEMBERED THAT the deposition of
2 W. KEN KATSARIS was taken pursuant to the Oregon
3 Rules of Civil Procedure before Chris Villano
4 Iba, Registered Professional Reporter and
5 Certified Shorthand Reporter of the State of
6 Oregon, on Monday, December 19, 2011, commencing
7 at the hour of 11:00 a.m., in the law offices of
8 Littler Mendelson, 121 SW Morrison, Suite 900,
9 in the City of Portland, County of Multnomah,
10 State of Oregon.

11 :-:

12 APPEARANCES:

13 Littler Mendelson

14 By Howard Rubin

15 Attorney at Law

16 Appearing in behalf of the Employer

17

18 Tedesco Law Group

19 By Anil S. Karia

20 Attorney at Law

21 Appearing in behalf of the Association

22

23 Also present: Ronald Frashour; Daryl Turner;

24 Jennifer Nelson, Esq.; Stephanie Harper, Esq.;

25 Larry O'Dea

1 EXHIBIT DESCRIPTION

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3 A-124 Curriculum Vitae

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6 CROSS-EXAMINATION Page 75

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1 W. KEN KATSARIS

2 was thereupon produced as a witness in behalf of

3 the Association and, having been first duly

4 sworn on oath, was examined and testified as

5 follows:

6

7 DIRECT EXAMINATION

8 BY MR. KARIA:

9 Q. Good morning, Mr. Katsaris. How are you

10 employed?

11 A. I'm independent as a consultant trainer.

12 Q. In what field?

13 A. Law enforcement.

14 Q. What's your educational background?

15 A. Completed all the secondary schools in the

16 City of St. Petersburg, Florida; attended and

17 graduated with a police administration degree

18 from St. Petersburg Junior College in St.

19 Petersburg, Florida.

20 Moved to Tallahassee to complete a

21 Bachelor's degree. I entered the criminology

22 program at Florida State University in

23 Tallahassee, and received a Bachelor of Science

24 in criminology with an emphasis in law

25 enforcement. Continued my education at Florida

1 State University, received a Master of Science
2 degree in criminology.

3 I continued my education at Nova
4 University, Fort Lauderdale, with courses that
5 they brought in conjunction with and approval of
6 Florida State University. And attended classes.

7 It wasn't one of those distant learning courses.
8 Attended classes for five years for a doctorate
9 in public administration. Did not complete the
10 dissertation because of the interruption of one
11 of the nation's biggest murder cases that I
12 directed.

13 Q. Which murder case are you referring to?

14 A. Ted Bundy, the serial murder
15 investigation. Started off here in your area of
16 the country and found his way eventually to
17 Tallahassee, where he'd never committed any more
18 crimes after that. We executed him.

19 Q. When did you receive your Bachelor's
20 degree?

21 A. 1967.

22 Q. And your Master's?

23 A. 1971.

24 Q. When did you begin your law enforcement
25 career?

1 A. 1962.

2 Q. Where?

3 A. At St. Petersburg, Florida. I was a St.

4 Petersburg police officer.

5 Q. Briefly walk us that your subsequent

6 experience as a law enforcement officer.

7 A. I entered law enforcement in 1962, which

8 obviously is still shocking to me, but next year

9 or this upcoming here is my 50th year in law

10 enforcement. But I left the police department

11 to continue my education. There were only three

12 universities in the country offering criminology

13 at the time. The closest to me was Florida

14 State. I moved to Tallahassee for that purpose.

15 I spent time as a Tallahassee police

16 officer. I was elected the constitutional and

17 chief law enforcement officer of the county as

18 sheriff. I have been a deputy sheriff and a

19 state trooper as well over a period of time,

20 serving in a part-time capacity. The county I

21 served was 700 square miles, and encompassed the

22 City of Tallahassee, the capital of the state of

23 Florida.

24 Q. Are you still a certified law enforcement

25 officer?

1 A. I am. I have maintained my certification
2 either as a deputy or a state trooper at
3 different times. And I'm currently and have
4 been consistently a deputy sheriff over the last
5 15 years, I guess.

6 Q. What law enforcement certifications do you
7 hold?

8 A. I'm not sure what you mean. You mean in
9 terms of training certifications? I'm certified
10 as a law enforcement officer first by the state
11 of Florida, which doesn't exempt you from any of
12 the requirements; in other words, what I hold is
13 not honorary. I'm a regular officer, which
14 means I have to be compliant with the law, which
15 requires that I take all of the annual
16 certification programs. So I have to do the
17 driving, firearms, defensive tactics, CPR, AED
18 just like any other police officer. So the only
19 difference is there's an age difference, but I
20 manage.

21 And the other certifications I hold
22 are all instructor or user certifications. I'm
23 certified in just about everything that police
24 officers use. I'm an -- I'm a firearms
25 instructor at the regional police academy, I am

1 a driving instructor at the regional police
2 academy, I'm a force instructor at the regional
3 academy. I'm certified to teach the areas of
4 dealing with the mentally disturbed and/or
5 emotionally disturbed or mentally ill. I am
6 also certified in the area of high-risk
7 encounters for law enforcement officers, dealing
8 with both defensive tactics and/or firearms for
9 purposes of encounters and cuffing, approaching,
10 handling the individuals, as well as traffic
11 stops, high-risk traffic stops.

12 Q. Tell us briefly about your instruction to
13 police officers on use of force.

14 A. Well, I've been teaching use of force now,
15 and I've been an instructor for 45 years
16 consistently. I have taught every - possibly
17 I've missed one or two recruit classes somewhere
18 in the 45 years, I can't recall - but I have
19 been and I'm currently a use of force instructor
20 for the regional academy. It services the
21 entire state of Florida. We have over 2,000
22 acres, which encompasses a state-of-the-art
23 firearms, driving range, and a little bit of
24 everything, including a prison that we use for
25 teaching with real inmates.

1 Q. Does your --

2 A. I'm sorry.

3 Q. Go ahead.

4 A. I was just going over, you know, the

5 instruction.

6 Q. Does your instruction on use of force also

7 include instruction on use of deadly physical

8 force?

9 A. Well, deadly force, which can be physical,

10 may come as a result of a tool or implement, but

11 largely we connect it with firearms more than

12 anything else. But there are other aspects of

13 deadly force.

14 Q. Sure. Do you also train police officers

15 on the Graham versus Connor constitutional

16 standard on the use of force?

17 A. Yes. In fact, the state has certified me

18 to teach the legal subjects, and I do. I'm the

19 instructor for the legal subjects on use of

20 force, probable cause, dealing with juveniles,

21 and a host of other areas dealing with the law.

22 Q. Have you instructed police officers on

23 defensive and patrol tactics?

24 A. Yes.

25 Q. What about the use of canine in patrol

1 tactics situations?

2 A. Yes, because canines are a tool. The

3 canines do what the officers tell them to do.

4 It's no different than pulling the trigger or

5 applying a Taser or something that you have to

6 actually manipulate. The dog is given commands,

7 not -- it's not tethered, sometimes, like, for

8 example, firing a Taser would have wires

9 attached. But the dog does what the officer

10 tells it to do, so it comes under the use of

11 force issue. I don't train dogs but I train in

12 the application of all the tools of law

13 enforcement.

14 Q. To include canines?

15 A. To include canines as a tool.

16 Q. Do you also instruct police officers on

17 critical incidents and critical incident stress?

18 A. Yes. In fact, I was the course director

19 of a national course on critical incident

20 involvement. I do teach nationally as well as

21 at the police academy. I've been a national

22 instructor on a number of different seminars.

23 That was one of the specific courses that I

24 directed as well as taught in. But I also teach

25 that for police officers regionally and locally

1 as well.

2 Q. Have you instructed police officers on the

3 action/reaction principle?

4 A. Yes. In fact, I just finished two

5 programs, one for national attendance and the

6 other for international attendance. I was

7 teaching the concepts of action/reaction as have

8 been presented to me on numerous occasions by

9 the researchers that did the actual research. I

10 actually replaced one of the researchers as the

11 course presenter. So I just did that in Las

12 Vegas this October. And then I presented

13 another in November as well.

14 Q. How many law enforcement officers have you

15 trained, in your estimation?

16 A. Well, when I was the Calibre Press street

17 survival instructor for a number of years,

18 touring the country, including here, by the way,

19 in Portland, for the Portland Police Bureau, as

20 well as hundreds of others, because we had about

21 a thousand officers attend, I think that venue

22 alone was probably 26 to 27,000 officers

23 throughout the country. I have trained tens of

24 thousands of officers in my academy that I'm

25 currently in.

1 I spent 29 years as the state patrol
2 instructor at the state highway patrol academy,
3 and I taught every officer there. And they have
4 1700 strong. And I trained every one of them
5 every academy for 29 years.

6 And I've been touring the country now
7 for many years. I'm senior instructor with
8 AELE, the -- I guess it's a very well-recognized
9 defense organization for attorneys that
10 represent the city, county, and states. I'm
11 senior instructor on use of force. I've trained
12 I think about 12,000 there.

13 I would have to say I'm well beyond
14 the hundred thousands mark. I don't know how
15 many.

16 Q. What academic teaching experience do you
17 have?

18 A. Well, I was adjunct professor at Florida
19 State University in criminology for
20 undergraduates, and I was graduate professor of
21 social work. An unusual blend, but it was -- it
22 is what it is. And I was department chair at
23 Tallahassee Community College for ten years,
24 directing the inservice training for all
25 commanders of law enforcement agencies

1 statewide, all supervisors. And I directed and
2 taught in the academic two-year degree program
3 for ten years.

4 Q. Tell us briefly about your work in
5 nonlitigation consulting in the field of law
6 enforcement.

7 A. Well, I travel the country at the request
8 of law enforcement agencies to review and
9 analyze policy issues, sometimes both developing
10 or assisting in the development of a policy and
11 then training the entire department.

12 I've done that in Honolulu, for
13 example. I was just made to stay there for over
14 a month where they gave me very nice
15 accommodations. But over that month period I
16 trained the majority of the Honolulu police.
17 There are about 2200 members. I trained them on
18 all the aspects of use of force. And convinced
19 the administrative review board there to allow
20 batons to be issued because they weren't issuing
21 batons. So I got into a lot of the aspects of
22 physical force, on up to deadly force there in
23 training the whole department.

24 I have been as far away as Barrow,
25 Alaska assisting with consulting on issues.

1 There I was retained by the North Slope. So
2 I've been throughout the country, largely as a
3 result of my involvement in AELE, because of the
4 wide breadth of individuals attending from
5 around the world.

6 Q. Tell us a bit about your work in
7 litigation consulting in the field of law
8 enforcement.

9 A. Well, I've been consulting and involved in
10 litigation with law enforcement for 28 years
11 now. I have been retained by both plaintiffs
12 and defendants in lawsuits involving the police
13 over those many years.

14 Q. Have you testified on behalf of plaintiffs
15 bringing claims against police officers?

16 A. Yes. I think an analysis of my cases for
17 the last five to seven years will reveal quite
18 easily that I've been involved 50 percent of the
19 time for the plaintiffs bringing a case against
20 the law enforcement agency.

21 Q. Then I take it the other 50 percent of the
22 time in defense of the officer.

23 A. That's correct. My depositions break out
24 about 65 percent for the plaintiffs because of
25 choice of who takes my deposition and who

1 doesn't in terms of the litigation. My
2 retentions are about 70 percent for the defense.
3 Q. Tell us a bit about your prior experience
4 with the City of Portland in terms of litigation
5 consulting.

6 A. Well, it goes back many years. And I
7 don't know where -- I mean, excuse me, I don't
8 know when the first year was. But I have
9 evaluated case files for the City of Portland
10 for many years now, and have testified on behalf
11 of the City of Portland on a number of occasions
12 for the City.

13 Q. And to include deadly force and nondeadly
14 force cases?

15 A. I think most of them were deadly force
16 cases, I think all that went to trial, as I
17 recall. One was an officer involved in a
18 shooting in a vehicle-related matter. I recall
19 another one where the officer was involved in
20 shooting someone from the front door of the
21 house, holding a shotgun inside the home.
22 Actually, another was an individual that jumped
23 from a second story window, broke through the
24 window, and the officers encountered him high on
25 drugs. It wasn't a shooting. That was a use of

1 force attempt to control a person under the
2 influence of drugs. I can't recall all the --
3 Those are a few of the ones I
4 remember going to trial on, but there were
5 others.

6 Q. Over the course of your time consulting on
7 behalf of the City of Portland, have you become
8 familiar with their training practices here in
9 Portland?

10 A. Yes. I have reviewed their training on
11 numerous occasions. I would say that each of
12 the files I received would be in the
13 neighborhood of a hundred thousand pages, which
14 each time was a complete set of the entire
15 training materials for the City of Portland. I
16 think I've gotten it down pretty well over the
17 years I've looked at it.

18 I've had comments to make about the
19 training. In fact, I have not been bashful
20 about saying it in other locations. I don't
21 know any agency that's trained any better.

22 Q. Than Portland?

23 A. Than Portland.

24 Q. And are you familiar with the deadly force
25 in Graham versus Connor training provided to

1 Portland police officers?

2 A. Yes, I am. I've reviewed that each time,
3 because each time I think that the cases,
4 certainly that I mentioned, I've had to review
5 the training that was provided.

6 Q. And are you also familiar with the
7 bureau's use of deadly force Directive 1010.10?

8 A. Yes, 1010.10. And then 1010.20, the
9 general use of force, and deadly force, 1010.10.

10 Q. I'll hand to you a copy of your CV --
11 excuse me, a copy of a document that's been
12 labelled as Association Exhibit 124. This is a
13 copy of your current CV?

14 A. Well, it needs updating but it is probably
15 current enough. But there are entries that need
16 to be made. It's more of the same. I've been
17 recertified, and I still teach all of it at the
18 venues that are listed in there. So I just have
19 to say, again, some dittos, I think.

20 I've certainly been to other
21 certification. For example, I've recertified in
22 homicide investigation, the medical aspects of
23 that. I went to Wayne State University, to the
24 medical school for certification there, offered
25 by Dr. Baden and Dr. Spitz. B A D E N,

1 S P I T Z.

2 Q. Let's turn our attention to the incident
3 that occurred at the Sandy Terrace Apartments on
4 January 29, 2010. And before delving into the
5 actual incident, I just want to get a better
6 understanding of the materials you've reviewed
7 in preparation for your testimony today. Have
8 you reviewed the detectives file from the
9 Portland Police Bureau?

10 A. Yes.

11 Q. The grand jury transcripts?

12 A. I have.

13 Q. The internal affairs files?

14 A. Yes.

15 Q. Depositions in the civil lawsuit brought
16 by the estate of Mr. Campbell?

17 A. Yes.

18 Q. Have you looked back over the use of force
19 and use of deadly force directives from the
20 bureau?

21 A. I have.

22 Q. Have you reviewed the City's termination
23 letter of Officer Ron Frashour?

24 A. Yes.

25 Q. Have you reviewed the training division

1 analysis?

2 A. Yes.

3 Q. And other training materials regarding the

4 use of force?

5 A. Yes.

6 Q. And the use of deadly force?

7 A. Quite a large file, a lot of material.

8 Q. So let's start with your overall

9 assessment of the incident. In your opinion, in

10 his conduct and decision making on January 29th,

11 2010, did Officer Frashour comply with his

12 training and the bureau rules?

13 A. Yes. I did a very careful analysis of his

14 actions and perceptions and decisions,

15 ultimately made, of course, in split seconds

16 given that officers do have to do that under

17 circumstances that are tense and rapidly

18 evolving. And I looked at how he comported

19 with -- Officer Frashour comported with the

20 training that was offered in terms of the

21 reasonableness of his decision and what it was

22 based on.

23 And I concluded that it was

24 reasonable, and objectively, because it is an

25 objective rather than a subjective analysis.

1 Obviously it's not his decision to make if it
2 doesn't fit or comport within the objective
3 analysis of what other similarly-situated
4 officers would have done given their training,
5 education and experience to assess.

6 Q. When we are assessing the conduct of an
7 officer such as Officer Frashour at the scene,
8 upon what basis do we make that assessment?

9 A. We make the assessment specifically based
10 on Officer Frashour's information that he has
11 and the perceptions of that officer at that
12 time, in the shoes of that officer, given the
13 totality of the circumstances that are presented
14 to him at the moment that he makes that
15 decision.

16 Q. Given the opinion, Mr. Katsaris, that
17 Officer Frashour was part of the plan but not
18 the planner, can you explain what you mean by
19 this?

20 A. Well, he was part of the plan; in other
21 words, he was an officer. The only formulation
22 of any plan he had was in this case as lethal
23 cover. He covered and was assigned one basic
24 task, and that was lethal cover. He had an
25 AR-15, was required by supervisors, at least, to

1 attend. They were looking for a backup for
2 lethal cover, and he was able to respond and did
3 so. That was his task.

4 He was not the planner of the scene;
5 in other words, he wasn't to determine who would
6 be less lethal, involved in the using the
7 beanbag rounds, for example. He didn't
8 determine where officers would be, what other
9 resources would be committed. He had one focus
10 as lethal cover, which is what is trained.

11 Q. And what was that focus?

12 A. That was to observe the Apartment 37, to
13 keep his eye -- eyes and ears focused in that
14 direction, as well as for any movement that may
15 come from that unit, and in the event that there
16 was the need specifically for the requirement he
17 was posted for.

18 Q. The initial call that evening comes out as
19 a welfare check on Angie Jones and her children.
20 The call also includes additional information
21 regarding Mr. Campbell having -- possibly having
22 a gun, being suicidal, possibly wanting suicide
23 by cop. What is your assessment of that call
24 based on that information that initially comes
25 out over the CAD report?

1 A. Well, certainly there was a call for a
2 check. The fact that in this case the uncle was
3 calling, a Mr. Stewart, that his I think niece,
4 Angie, had not been heard from, and that the
5 last call was she would call the police if she
6 felt any more threatened. But that her
7 boyfriend, Aaron Campbell in this case, had
8 armed himself or had a gun and was threatening
9 suicide. There was mentioning of suicide
10 perhaps by the police as well. That he was
11 emotionally distraught over the loss of his
12 brother.

13 So the call went out for him to --
14 the call went out to check on her; however, it
15 involved much more than that. It involved a
16 high level of threat.

17 Q. So taking apart the elements of the
18 original call, how would a reasonable police
19 officer take into account the information that
20 Mr. Campbell is suicidal and has tried to kill
21 himself previously?

22 A. Well, that's a high level of potential
23 threat because it involves a firearm, reasonably
24 believing that a firearm is indeed on the scene
25 and available, displayed. I think that it's

1 more reasonable than not to believe that
2 obviously a firearm was involved. He's
3 emotionally distraught, discussing suicide.
4 And it is trained universally
5 throughout the country, and I have been training
6 it since my very earliest years, that suicide
7 can easily turn to homicide. And very often --
8 maybe the word very often is maybe more than it
9 should be. But often it does turn to homicide.
10 They're willing to shoot in the event that
11 anybody interrupts their plans if they want to
12 die, when they're serious. Certainly some are
13 just threats, but they're not going to carry it
14 out.

15 Q. You mentioned --

16 MR. RUBIN: Let me stop you there
17 just for a minute.

18 (Discussion had off the record)

19 BY MR. KARIA:

20 Q. You mentioned emotionally distraught,
21 Mr. Katsaris. How would a reasonable police
22 officer take that piece of information that
23 Mr. Campbell was said to be emotionally
24 distraught into a threat assessment?

25 A. High level of caution; the potential for

1 action on the threats, that those actions can be
2 taken against others as easily against himself.
3 Irrational thinking involves irrational acts.
4 Judgment is compromised. So it is considered at
5 the very highest of threat level, especially
6 when a gun is reasonably believed to be present
7 as well.

8 Q. How would a reasonable police officer take
9 the information that there are small children
10 potentially in the apartment into account when
11 making a threat assessment?

12 A. Well, again, the threat increases by
13 virtue of others that are present. The children
14 certainly are utilized in many cases as a
15 bargaining chip or sometimes are actually taken
16 with the individual. There's a lot of thought
17 processes that go into whether children are
18 involved or not. Many times, and we don't have
19 to go far back in the news to see that people
20 very close to children have been willing to
21 execute them in the process of their own
22 decisions to end their own life. So you have to
23 take that as a very high threat assessment that
24 there were children potentially involved, at
25 least initially.

1 Q. And likewise, how would a reasonable
2 police officer take into account information
3 that Ms. Jones, Mr. Campbell's girlfriend, is
4 potentially still in the apartment?

5 A. Well, obviously one of the higher levels
6 of risk assessments that we make is when there's
7 hostages involved. And certainly, as I've
8 already commented on children, but that applies
9 to adults as well. Hostage, barricaded
10 situations always are high threats. And if that
11 is indeed what we're dealing with, then there is
12 a very high threat assessment that an officer
13 would ascribe very reasonably to what this
14 incident involves.

15 Q. How would a reasonable police officer
16 factor in the information that Mr. Campbell is
17 possibly threatening suicide by police into a
18 threat assessment?

19 A. Well, it just -- it continues the high
20 level of threat because, again, if he is armed,
21 and reasonably I think it can be concluded in
22 that file that it was reasonable to believe that
23 he was armed, and that that would involve a
24 potential confrontation with the police. That
25 confrontation could come after he takes somebody

1 else's life, meaning that the police are really
2 put in a position of no other decision because
3 that person's already made a decision to harm
4 someone else. And the fact that --

5 I lost my train of thought there for
6 a minute.

7 But it certainly has to be factored
8 in that this could be and is a hostage
9 situation, even after it's only determined,
10 let's say, that he's by himself and it's a
11 suicide by police situation, which was your
12 question. I'm sorry, I come back to it now.
13 But that is a high threat assessment.

14 Q. How would a reasonable police officer take
15 into account the information from the CAD report
16 that Mr. Campbell is armed with a gun?

17 A. Well, that is, of course, the high end of
18 threat assessment. We have an individual who's
19 distraught, initially there were children and an
20 adult involved in the apartment, that he's
21 talking about suicide by police and he has a
22 gun. I mean, all of those mean that -- you
23 can't get a higher threat analysis than that.

24 Q. Once the police arrive on scene Officer
25 Frashour learns some additional information.

1 How would a reasonable police officer take into
2 account the information he learns from Officer
3 Bocchino at the back of the apartment building
4 where Officer Bocchino describes Mr. Campbell as
5 a potentially violent individual who was, again,
6 referring to suicide by police?

7 A. Well, it doesn't change anything, it just
8 reinforces that initial assessment that we are
9 dealing with a high level of threat. Again,
10 reinforcing that reasonably believes there's a
11 gun, he's very charged in his emotions, that,
12 you know, has been speaking of violence. Again,
13 the very highest of on-guard status for threat.

14 Q. How would a reasonable police officer take
15 into account the information that Ms. Jones has
16 now left the apartment?

17 A. Well, that goes two ways. Obviously
18 there's some relief that one of the people that
19 has been believed to have been potentially a
20 hostage is now out. But we know from experience
21 and law enforcement trains that that also can be
22 an indicator that a decision has been made by
23 the individual. I don't want that person to be
24 harmed so I'm going to release her or them;
25 however, I haven't changed my mind about wanting

1 to have a confrontation. So, therefore, while
2 it's a relief that there's one less to worry
3 about, it can also mean that a decision was made
4 to actively engage and just didn't want that
5 person as part of the engagement.

6 Q. We've heard a lot of testimony in this
7 hearing about a text message that Mr. Campbell
8 sends to the effect of "Don't make me get my
9 gun, I ain't playing." In your judgment, how
10 would a reasonable police officer take that text
11 message into account when making a threat
12 assessment?

13 A. I believe, and I don't mean to correct
14 you, "I am not playing." I think you said, "I
15 am playing." If I misheard it, I don't want it
16 on the record that that's what I'm reacting to.
17 I think he said, "I'm not playing."

18 And certainly, again, confirmation
19 for the potential for violence, the potential
20 for utilization of the firearm, the
21 reconfirmation that a firearm is involved, and
22 he's actually bringing it into play now as, you
23 know, the worst fear, that he's talking about
24 the gun now and potentially using it.

25 Q. How would a reasonable police officer take

1 into account when making a threat assessment the
2 information that Ms. Jones has reported that
3 Mr. Campbell keeps a gun in a sock in his
4 jacket?

5 A. Well, of course it's good intelligence
6 information to begin with. At least you are
7 aware, again, that there is a firearm, that the
8 firearm may be in a sock or may be in a jacket
9 or both. It confirms, again, the fact that a
10 firearm is present. But more importantly, you
11 know, if a jacket ends up part of the scenario
12 that you're confronting, you have some
13 intelligence about the potential for that
14 firearm to be accessible from the jacket.

15 Q. By the way, what would the fact that a gun
16 could be kept in a sock tell a reasonable police
17 officer?

18 A. Well, it could be a very small gun. Could
19 be. I guess there are large socks. But, you
20 know, it could very well be a small gun. We're
21 certainly not talking about a long gun. Talking
22 about a pistol.

23 Q. What does the size of the gun and the fact
24 the gun is more likely than not a small gun tell
25 the reasonable police officer? Does it tell a

1 police officer it's not a deadly weapon?
2 A. Oh, no. I mean, the smallest of weapons
3 are deadly under any circumstances, from a .22,
4 which is the smallest. Extremely deadly. Very
5 small, can be palmed, in fact, completely in the
6 hand where you cannot see it.

7 I was part of a plan on a hostage
8 situation, for example, to go in and provide
9 cigarettes to an individual holding a woman with
10 a knife to her throat. And we made the decision
11 to send an officer in who palmed one of those
12 .22s, and indicated that -- you know, he came in
13 and kept his hands from being seen, at least
14 from the palm side. And as soon as he got into
15 the room, shot and killed the hostage taker. So
16 those weapons are obviously lethal even in the
17 smallest that you can put in the palm of your
18 hand and not be seen.

19 Q. Reading together the text message
20 regarding -- sent by Mr. Campbell regarding his
21 gun and the information from Ms. Jones regarding
22 the gun, in your judgment is it reasonable for a
23 police officer to conclude or to believe that
24 the gun is actually on Mr. Campbell's person?

25 A. Well, you have to reasonably believe that

1 with a gun and the level of indications, the
2 text message that said, "Don't make me get my
3 gun, I'm not playing," obviously the gun is a
4 part of this equation. And where it is, of
5 course, you don't know. You have some
6 information that possibly it involves a sock or
7 the jacket, but that is -- that's not the
8 information that is key. The key information is
9 that a gun is a part of this equation.

10 Q. How would a reasonable police officer take
11 into account when making a threat assessment the
12 information that the children leave the
13 apartment but Officer Frashour wasn't told that
14 the children are coming out?

15 A. Well, I'll go back to my answer that I
16 gave when it was indicated he had released the
17 female, the girlfriend, from the home where
18 apparently she -- At least she left, whatever
19 that may have been described as. The children
20 is the same thing. Allowing the children to
21 leave obviously is a relief factor, and it's
22 certainly something that is a positive. But on
23 the other hand, we also know that it can be a
24 high negative. It can also mean that the
25 activation of the plan is put into place, and I

1 don't want the children involved. I'm going to
2 the let the children go, I don't want them to
3 see what's going to happen.

4 So you have to make a decision that,
5 you know, I don't know. This doesn't tell me
6 that it's very good and it doesn't tell me it's
7 very bad. It just can be either, and we have to
8 keep assessing.

9 Q. In your judgment, is it reasonable for a
10 police officer when seeing the children come out
11 to believe that is a point of escalation?

12 A. It would be reasonable to believe that it
13 can be. There's relief, but on the other hand,
14 you may know that anytime now there may be
15 activation on a plan that would involve a
16 confrontation.

17 Q. Is it then also reasonable for a police
18 officer to believe when the children are
19 released that it could be a point of
20 de-escalation?

21 A. Yes, it could be either way. It could be
22 either way. And certainly we can point to cases
23 in the past where the release of the children
24 was the first step in resolving the situation,
25 and we also can say releasing the children was

1 the first step in the escalation to the
2 confrontation. So in experience and in
3 training, it would be considered either, and you
4 can't let your vigilance down. You've got to
5 keep the threat assessment high.

6 Q. When judging an officer's conduct on this
7 reasonableness standard that you've been
8 discussing, is an officer charged with deciding
9 whether one or the other assessment is more
10 reasonable than the other?

11 A. No. That's not the standard that an
12 officer would be trained by or make the
13 assessment. What's more reasonable is -- It's
14 what is reasonable. The assessment is it's
15 reasonable to believe that it could be either.
16 And you're reasonably believing you have a high
17 threat. And whether you're looking at the
18 release of an adult or the fact that an adult
19 leaves, or the release of -- or the fact that
20 children are let out of the apartment, those are
21 factors, but they don't give you any clear
22 indication. So it's only reasonable to keep up
23 the assessment of the high level of potential
24 threat.

25 Q. And that's because the threat assessment

1 is an ongoing activity?

2 A. It's a complete ongoing assessment step by
3 step, moment by moment, action by action. And
4 so far we don't have, in my mind, as the
5 activities go on, anything that is clearly
6 de-escalation. It all also carries high
7 escalation as a part of it.

8 Q. How would a reasonable police officer take
9 into account when making a threat assessment
10 that there are -- the police are said to be in
11 positive text communication with Mr. Campbell?

12 A. Well, obviously any communication is good.

13 Q. Does that positive text -- positive
14 communication erase any of the other prior
15 pieces of information learned at the scene?

16 A. No. Communication is good. A goal is
17 communication. So any communication is good,
18 but what is said is not reliable. I think that
19 we could go back, and I know that I've analyzed
20 files and cases that I have personally known
21 where they gave bad information, information
22 that they would never harm somebody, but did;
23 information they would never harm themselves,
24 but did; information that they will come out,
25 and they'll come out without a gun, but they

1 didn't, they came out with a gun. Just general
2 information. It's all communication, but you
3 can't take it as being valid. It's simply
4 information. Ascribing positive or negative to
5 it is very difficult because it's just
6 information.

7 Q. What about the information that
8 Mr. Campbell had looked out the back blinds, how
9 would a reasonable police officer take that into
10 account when making a threat assessment?

11 A. In general, anytime an officer sees an
12 individual that we're dealing with who is in a
13 high emotional state, with a firearm,
14 threatening harm to himself and/or others, or
15 harm to himself through officers' contact or
16 conduct through suicide by cop, any glances out
17 or at the officers, any specific movements that
18 indicate I'm trying to track or find out where
19 the officers are is more likely, reasonably, an
20 escalation and not something positive.

21 Curiosity obviously could be at play,
22 but we also have to know that a person
23 formulating a plan wants to know what he or she,
24 in this case he, Aaron Campbell, is going to
25 confront, so looking to see positioning, if he

1 can see where the officers are, how many, where
2 he might have to go when he goes out the door.

3 I would have to say that a glance
4 under most circumstances by a person that the
5 police are in contact with, whether directly,
6 one on one, in a confrontation, any looking back
7 at or attempting to look up and down the
8 officer, which we call target glances, those are
9 all on the negative side and a higher degree of
10 threat, an escalation.

11 Q. Let's talk about what happens when
12 Mr. Campbell emerges from the apartment. And
13 first of all, you'll recall Officer Frashour's
14 testimony that when Mr. Campbell in fact
15 emerged, Officer Frashour initially was alarmed.
16 Was that a response of a reasonable police
17 officer?

18 A. Yes.

19 Q. Why?

20 A. Well, Officer Frashour in this situation
21 is assigned lethal cover, and was focusing to,
22 it appeared to the best of his ability, to be
23 free of distractions and watching. The custody
24 team in this case, the whole custody team was
25 not aware of any reason to believe that he was

1 coming out. So it was, when he shows up, it's
2 kind of like, okay. I mean, he's putting all
3 this into play. It's a high threat time.

4 Q. Incidentally, after Mr. Campbell emerges
5 from the apartment, is it reasonable for police
6 officers, including Officer Frashour, to believe
7 that Mr. Campbell is armed with a gun?

8 A. It would be a reasonable belief based on
9 all of the other prior information that I've
10 attested to today through my testimony in that
11 the call included the belief of a firearm being
12 present. There was, then, the text message
13 about, you know, "Don't make me get my gun, I'm
14 not playing," confirmation that there's a gun.
15 There was further confirmation that there indeed
16 was a gun on scene when she came out of the
17 apartment.

18 So it absolutely is reasonable to
19 believe a gun is a part of this whole equation
20 of this particular incident and a confrontation
21 that may take place.

22 Q. Officer Frashour has described concern
23 with Mr. Campbell's movement and his pace. Can
24 you speak to the quality of Officer Frashour's
25 threat assessment regarding that subject?

1 A. Movement is a very important assessment
2 for officers to make. Officers are given very
3 little, generally speaking, to assess.
4 Everything is important, every movement.
5 Obviously the hands are more important than
6 other movements. But other movements tell you
7 about the level of aggressiveness, aggression on
8 the part of the person, the level of compliance
9 that the individual is giving to the commands.
10 And by and large, experience of police officers,
11 training of police officers indicates that when
12 someone moves quickly towards you, that that is
13 on the negative side. It's a high threat
14 assessment.

15 Individuals are asked and then
16 commanded to either stop or slow down, not to
17 move quickly. And by and large, from all of the
18 movements that we can catalog of previous
19 histories of incidents, individuals do move
20 rather slowly because they are indeed themselves
21 frightened. They are covered by police officers
22 holding long guns in this case, as well as, you
23 know, the potential for all the others who are
24 armed. So subject movement, the person
25 encountered generally is slow.

1 I am the instructor for high-risk
2 encounters with individuals, and this is a
3 specific training focus throughout the country,
4 it's rather uniform to all police officers,
5 about assessing the specific movements and how
6 quickly the individual acts on them. The faster
7 the person moves, the more dangerous. The less
8 compliance, of course, the more dangerous, and
9 especially when it involves anything to do with
10 the hands.

11 Q. Notwithstanding that pace that
12 Mr. Campbell is moving when he emerges from the
13 apartment, Officer Frashour has testified that
14 he thought it was very possible that
15 Mr. Campbell was giving up. How does that
16 factor into a reasonable police officer's threat
17 assessment at that point in time?

18 A. Well, I am confident, having been there
19 myself, that that's what you hope for, because
20 that means you go home and no one's shot and you
21 rejoin your family that night, and you hope for
22 another night that's not going to involve
23 anything like this. So you hope for that.

24 The fact that a person comes out
25 might give you that first degree of hope that,

1 okay, they're giving up, especially if the hands
2 are up, visible, behind the head, as in this
3 case. That would be a, at least a first thought
4 process.

5 Q. How would a police officer in Officer
6 Frashour's position factor into his threat
7 assessment the fact that Mr. Campbell, when he
8 comes to a stop, turns and looks back at the
9 police officers, turns his head and looks back
10 at the police officers? How does that factor
11 into an officer's threat assessment?

12 A. A moment ago I addressed target glancing,
13 and that's specifically what I'm referring to.
14 It is a specific subject matter for police
15 officers to assess movements. That is one of
16 the movement areas that becomes rather troubling
17 and worrisome to officers because the person
18 then is capable of assessing specifically where
19 you are, specifically what you have in terms of
20 abilities. And generally when they do that
21 they're showing a level of aggressiveness that
22 they are willing to do something contrary to
23 what they're being told to do. So all of that
24 is at the high negative threat assessment level.
25 It is a high threat.

1 Q. Officer Frashour's also testified that as
2 Mr. Campbell is standing in front of the custody
3 team, and after Mr. Campbell turns his head and
4 looks back at the officers, he says something in
5 a loud, hostile and aggressive tone. How does
6 that piece of information play into a reasonable
7 police officer's threat assessment at the scene?

8 A. Well, again, tone is assessed by an
9 officer. Tone can be compliant, tone can be
10 resistant. High level of tone, hostile,
11 aggressive, commenting, wild turning or looking
12 certainly all is an indicator, again, of the
13 continuation of the high threat that is
14 involved. So tone, demeanor, the interpretation
15 of that tone, in conjunction with the looking
16 back, continues the threat and is somewhat
17 escalating in terms of the willingness to be
18 resistive and aggressive when in contact with -
19 when I say contact, I don't mean physical
20 contact - but in similar positioning to
21 officers.

22 Q. But Officer Frashour today can't recall
23 the words that Mr. Campbell used. Does that
24 cause you concern in making your judgment about
25 this scene?

1 A. Well, not to be dismissive of everything
2 or anything, it's just simply the training and
3 experience, research and understanding says that
4 that happens. Police officers do go through and
5 experience auditory exclusion where they don't
6 hear. They're at such a threshold of threat
7 assessment that there are some things they don't
8 hear.

9 It is also, you know, recognized that
10 under this critical incident moment of
11 assessment, that there's perceptual distortions
12 to some degree. Your mind is racing, and you're
13 seeing, you're hearing, but you're not seeing
14 and you're not hearing all together. Sometimes
15 the perceptions are distorted.

16 So you have time distortion that
17 kicks in with that as well. Many officers have
18 said I know that it was two or three minutes
19 when actually it was two or three seconds.

20 We don't have to go very far back to
21 look at the very localized study that was done
22 by Dr. Alexis Artwohl. Dr. Artwohl did some of
23 the preeminent studies on the psychological,
24 physiological effects on the body while she was
25 working with the Portland Police Bureau, and has

1 published that in terms of what we know about
2 these interactions. And she has published in
3 the FBI Law Enforcement Journal. She is
4 recognized throughout the country as certainly
5 one of the experts in this field of recognition
6 of auditory exclusion, perceptual distortion and
7 time distortion, and has archived many
8 instances. You don't have to go, in this case,
9 beyond the Portland Police Bureau, because she
10 has archived and studied previous Portland
11 police studies for these same indicators that
12 have -- that are present in this particular
13 assessment.

14 Q. While Mr. Campbell is standing with his
15 back to police officers, in front of the custody
16 team, hands behind his head, Officer Frashour
17 observes that when Mr. -- excuse me, when
18 Officer Lewton instructs Mr. Campbell to raise
19 his hands above his head, that Mr. Campbell does
20 not do so. First of all, what's the importance
21 of getting hands from behind head to above head?

22 A. Well, there are two important issues here,
23 again, all things that are, one, taught at the
24 Portland Police Bureau, and, two, taught
25 universally throughout the country. I train

1 those precepts as a trainer on deadly force and
2 threat assessment for regional and statewide
3 officers, and I also teach that as a part of
4 national seminars that I'm involved in. And
5 that is, the two things are, one, we always in
6 law enforcement give commands that we're looking
7 for compliance, and that that compliance is
8 important. So even though the hands may be
9 visible, we want the -- we want to give an
10 instruction to do one more thing, because
11 everything we instruct someone to do tells us
12 whether or not they're resistant or not. So No.
13 1 is an assessment of the compliance of that
14 officer.

15 No. 2 goes back to something else I
16 mentioned earlier about palming a weapon. It is
17 recognized, in fact I teach it in the gang
18 courses that I teach -- I'm the certified gang
19 instructor as well for the state, and have
20 taught throughout the country. Certainly I was
21 the gang instructor for street survival for
22 police officers, taught to thousands of officers
23 in this region. And I taught gang intervention
24 throughout the country as well. And we know
25 just from that alone, not that Mr. Campbell's a

1 gang member, but just the recognition, okay,
2 that this is a potential, and that is palming a
3 small weapon.

4 Because when they come out with their
5 hands up to their head, you cannot see what is
6 in their hand. And if they come racing back
7 toward you or quickly back towards you or moving
8 back towards you and they don't appear to be
9 complying with your command, it is even a
10 further and higher escalating threat assessment.
11 Because it doesn't take but a tenth of a second
12 to take from this position to this position and
13 fire from a concealed weapon. And as I already
14 testified to, there are weapons, even at the .22
15 caliber level, Magnums, as a matter of fact .22
16 Magnums, that are completely palmable.

17 So we know there's a small weapon
18 involved, we reasonably believe there's a weapon
19 involved, we have reason to believe it's a
20 smaller weapon. And certainly the noncompliance
21 of taking the hands off of the head, putting the
22 hands in the air is two problems, one is lack of
23 compliance and two is the potential for palming
24 a weapon.

25 Q. After Mr. Campbell does not put his hands

1 up in the air, would it be reasonable for a
2 police officer to conclude that's a point of
3 noncompliance?

4 A. That is a point of noncompliance,
5 absolutely. A high assessment for continued
6 threat.

7 Q. Officer Frashour then observes Officer
8 Lewton firing a beanbag round at the
9 Mr. Campbell. What would a reasonable police
10 officer draw from that information?

11 A. Well, first let me just state that each
12 officer is given an assignment. It is my belief
13 from traveling the country that the Portland
14 Police Bureau does an outstanding job in
15 training for specific assignments and for plan
16 for operation implementation. I see it in other
17 places. I'm not saying it's the only place, by
18 any means. But certainly the equivalent of some
19 of the best in the country for operationalizing
20 plans under circumstances like this.

21 So in a department like Portland
22 where you have this high recognition that I can
23 count on the other officer and his or her
24 assignment is important. And certainly Officer
25 Frashour would have every reason to believe that

1 Officer Lewton is watching for the indicators
2 for his particular assignment. His particular
3 assignment is in the position of less lethal,
4 when he believes the noncompliance or the
5 indicators for less lethal are there. Officer
6 Frashour is concentrating on when deadly force
7 would be objectively reasonable. Officer Lewton
8 is looking at something less.

9 So he would have every reason to
10 reasonably believe -- rely on Officer Lewton's
11 decision to impose the beanbag rounds, and
12 further, would give him reason to believe that
13 it comports with his assessment that there isn't
14 compliance.

15 Q. You read Chief Reese's termination letter
16 of Officer Frashour, correct?

17 A. I did.

18 Q. And in that letter Chief Reese makes the
19 observation that Officer Frashour should have
20 known that Officer Lewton's use of the beanbag
21 was out of policy or at least problematic. In
22 your judgment, would a reasonable police officer
23 in Officer Frashour's position as lethal cover
24 have known that?

25 A. Well, that sounds like it's premised on

1 the fact that it was out of policy. I'm not
2 here to testify for Officer Lewton or what
3 Officer Lewton did. But I will have to say that
4 collaterally to assessing Officer Frashour, I
5 did not see that that was out of policy to start
6 with, No. 1. And No. 2, Officer Frashour's
7 concentration is on the application of lethal.
8 So I -- I believe that we have -- we have an
9 action that was taken that comported with
10 policy, in my opinion.

11 Q. Well, are lethal cover officers trained to
12 judge other police officer's use of force in a
13 tactical situation?

14 A. Not unless it's so egregious that to not
15 do so would be a crime in and of itself.

16 Q. Officer Frashour next observes that the
17 beanbag round fired by Officer Lewton appears to
18 have no effect on Mr. Campbell. What conclusion
19 would a reasonable police officer draw from that
20 piece of information?

21 A. Well, obviously the only conclusion you
22 can draw if you don't believe it had any effect
23 was that it wasn't effective. It is highly
24 recognized, and I've looked at hundreds of
25 beanbag, you know, issues in terms of the

1 applications of them, and it's fairly recognized
2 that beanbags, unless the person struck is
3 struck in such a manner that they know they're
4 struck, and sometimes they are hit and don't
5 know it, unless the person recognizes it, it has
6 no effect, or it might not have struck the
7 person but struck the clothing.

8 Beanbag rounds are moving rather
9 slowly, although quick, certainly. Slowly in
10 comparison to firearms, any other ballistics of
11 projectiles. It's a large projectile, it's
12 expanding, it's getting a lot of drag factor,
13 and it slows down rather rapidly. If it hits
14 anything, even loose clothing, it tends to lose
15 its complete kinetic energy and drop.

16 So to conclude that it didn't take
17 effect would not be outrageous by any means. It
18 may have just been that it didn't take effect.
19 Also, like I said, sometimes individuals don't
20 know that they actually were hit. Sometimes
21 there's drugs involved, alcohol, they don't even
22 realize they have been. Other times they get
23 hit and barely feel it but think they've been
24 shot, and that psychological recognition brings
25 them to their knees immediately. There are

1 varying reactions.

2 I did not see from the description in
3 this case that there was any such reaction to
4 the beanbag.

5 Q. I'm going to paraphrase a bit here, but
6 what Officer Frashour sees is after the first
7 beanbag round strikes Mr. Campbell he takes a
8 step forward, pauses, stands back up, rights
9 himself; second beanbag round is fired, appears
10 to strike Mr. Campbell, there's a brief pause
11 and then there is a deliberate reach into his
12 waistband by Mr. Campbell with his left arm --
13 left hand, and simultaneously Mr. Campbell
14 begins to run generally in this direction of
15 Apartment 37. Would it be reasonable for a
16 police officer to conclude that Mr. Campbell's
17 reach is not a pain reaction but, in fact, a
18 more furtive reach for a weapon?

19 A. Yes, it would. I very carefully reviewed
20 the testimony of the cause/effect, so to speak,
21 beanbag, and what was indicated and what others
22 said and how it was viewed. And the reaction
23 and the movement did not appear to be a pain
24 reaction, at least not as was indicated,
25 certainly not from the perception of Officer

1 Frashour. The stumble, the hands on the head,
2 the stumble movement, the turn, the hand down
3 back towards the waist was not. And I think
4 physical evidence, medical evidence certainly
5 supports that.

6 Q. What do you mean by the physical and
7 medical evidence?

8 A. Well, there's only one indication from
9 medical evidence that a beanbag round struck
10 Mr. Campbell. That doesn't mean that some
11 didn't catch the loose clothing and have lost
12 enough energy that it wouldn't be felt. It
13 certainly did not leave any marks except for one
14 just above the knee on the left leg was the only
15 one, which is quite low, not indicative of the
16 movement that was indicated in this file.

17 Q. I'd like to ask for your evaluation of
18 what occurs over the next three seconds as
19 Mr. Campbell runs. First of all, you're aware,
20 are you not, that this vehicle here - I'm
21 pointing to the vehicle that is next to placard
22 12 on the map here - is a silver Volvo parked
23 face in? You're aware of that, right?

24 A. Yes.

25 Q. In your review of the file, did you become

1 aware of the fact that the alcove and the
2 apartment building, it's brick on the apartment
3 building?

4 A. Yes.

5 Q. Tell us what your judgment is with respect
6 to the car and that brick facing being hard
7 cover.

8 A. Well, in law enforcement we recognize hard
9 cover to mean something that would stop
10 trajectory, or at least slow them down or
11 inhibit them or cause them to go off course, to
12 fragment. And metal of the automobile, as well
13 as the brick wall, would do just that. So,
14 therefore, if given the opportunity to get
15 behind either of those types of objects, a
16 person would be far more secure from any fired
17 rounds in that direction.

18 Q. And is it reasonable for a police officer
19 to conclude that Mr. Campbell's heading in the
20 direction of hard cover?

21 A. Yes, it would be. That's where
22 Mr. Campbell was moving towards, certainly at
23 that time. Obviously that's all in conjunction
24 with other information: The resistance, the
25 lack of comports with the commands, the

1 knowledge of, reasonably, that a gun was
2 involved, the movement away from the officers
3 when compliance is not only commanded but then
4 the application of less-lethal rounds, which
5 would be a higher escalation of force,
6 indicating a very, very substantial command to
7 stop and do what we tell you to do, which
8 obviously was resisted at the highest level of
9 moving away from the officers instead of
10 complying.

11 Q. Officer Frashour has described that in a
12 split-second decision to fire his lethal weapon
13 his primary motivation was Mr. Campbell reaching
14 into his pants and running for hard cover. In
15 your estimation, is it reasonable for a police
16 officer to believe that those facts had
17 escalated this to a deadly force encounter?

18 A. Yes.

19 Q. And why?

20 A. Well, because at that time there is -- You
21 can call it immediate or imminent. I'll let the
22 courts battle that one out. Substantially no
23 difference for law enforcement training.
24 Something is either imminent or immediate. But
25 there is at that time an immediate threat to the

1 officer and others.

2 Officer Frashour had seen other
3 civilians in the area, there were other officers
4 exposed. Mr. Campbell had now been known to
5 have briefly potentially held four people
6 against their will. Potentially. At least that
7 was the information that appeared to be
8 reasonably known. Released them, which then
9 brings a, both a relief and a, reasonably a
10 belief in escalation as well that there may be
11 an impending confrontation. And then the
12 appearance of Mr. Campbell, as well as the
13 movements of Mr. Campbell towards the officers
14 in the fashion that was described. The fact
15 that he did not comply with his hands, that he
16 then had less lethal applied, but even though
17 moved quickly away from the officers, and then
18 was reaching.

19 At the point when he starts reaching
20 is when Officer Frashour has the split-second
21 decision, which certainly this is a tense and
22 rapidly-evolving situation, to determine that he
23 has become an imminent, immediate threat to he
24 or others if he should make that further
25 movement behind hard cover. So at that moment

1 it was objectively reasonable to make a deadly
2 force decision based on all of the information,
3 which we characterize as totality of the
4 information.

5 Q. And the Portland Police Bureau has
6 selected the word "immediate." In your
7 judgment, at the point that Officer Frashour
8 uses force, was it reasonable for him to believe
9 that Mr. Campbell was an immediate threat of
10 death or serious physical injury?

11 A. Given the totality of the circumstances,
12 and given those particular circumstances at that
13 time, building upon all of the other
14 information, and as he is showing for all
15 reasons a reasonable belief by Officer Frashour
16 that he is activating to go for, reach for and
17 obtain a firearm that was reasonably believed by
18 him to be in his possession, that was a
19 reasonable, an objectively reasonable decision
20 to apply deadly force at that moment.

21 Q. So in your judgment he's an immediate
22 threat, Mr. Campbell is, at the point --

23 A. At that moment, yes.

24 Q. -- Officer Frashour uses force.

25 We've heard testimony at this hearing

1 that for Mr. Campbell to pose an immediate
2 threat Officer Frashour would have had to wait
3 for Mr. Campbell to get around the front of the
4 Volvo which serves as hard cover, that Officer
5 Frashour would have needed to see Mr. Campbell
6 draw his weapon and take some sort of offensive
7 action. Is that consistent with your
8 understanding of the police bureau's training
9 here in Portland?

10 A. No. As I've indicated earlier, in 50
11 years of law enforcement coming up, marking that
12 time coming soon, and in 45 years of training
13 law enforcement officers, including the Portland
14 Police Bureau officers, and having evaluated the
15 policy of the Portland Police Bureau as many
16 times as I have, having testified for the
17 Portland Police Bureau, and having even had
18 opinions contrary to the case I was hired on at
19 times, and in evaluating police policies and
20 procedures throughout the country as I have, I
21 have never heard of the fact that you have to
22 see a gun or some action such as presenting the
23 firearm first. I have never seen a court
24 decision that ever required that. And I have
25 never seen a policy or a directive or another

1 police chief or sheriff in the country that has
2 indicated that, in my experience.

3 Q. We've also heard testimony in this hearing
4 that the police officers at the scene had the
5 advantage of numerical superiority. How does
6 numerical superiority play into Officer
7 Frashour's threat assessment and decision to use
8 deadly force?

9 A. Well, I'm going to say something and then
10 kind of clean it up. It's irrelevant, but it's
11 not. In other words, certainly it's always
12 relevant to know what's going on around the
13 area. But to the decision by an individual
14 officer making a deadly force decision, it is
15 from the officer's perception, and from the
16 perception of that officer in his or her shoes
17 at that second that the decision is made, given
18 the totality of circumstances that the decision
19 is made, not from perceptions of other officers
20 or the fact that there are other officers.

21 If we ever go there in law
22 enforcement training to allow an officer to not
23 make that decision based on the officer's
24 reasonable perception because there are other
25 officers that will make that decision, we will

1 start entering into a time frame where officers
2 may be killed or injured as a result of the lack
3 of making a decision because somebody else may
4 make that decision.

5 So the fact that there's 15, 10, 20,
6 50, wherever they are, it's not how many
7 officers, it's the totality of circumstances and
8 the objective belief of that officer at that
9 moment, from his or her perception of the
10 totality of circumstances. And we could never
11 allow it to be, well, I wonder if the other
12 officer's going to shoot.

13 It takes a split second for someone
14 to be killed. So that decision is the
15 officer's. And as the Graham versus Connor
16 decision said, it's from the perspective of the
17 officer making the decision, from the shoes of
18 that officer at the moment that officer made the
19 decision, based on the totality of
20 circumstances.

21 Q. We've heard testimony in this hearing
22 about a concept called mass reflexive response.

23 Have you ever heard of that concept?

24 A. No. I'm not sure what it is.

25 Q. In your 45 years of experience training

1 police officers, have you trained police
2 officers on something called mass reflective
3 response?
4 A. No. Since I haven't heard of it, I
5 couldn't really say I've ever trained anybody on
6 it. I'm not sure what a mass reflexive response
7 is unless it's a response that requires
8 everybody in the vicinity to make the same
9 decision at the same moment, and everybody make
10 the same decision to, say, shoot. That, of
11 course, is not the, either the law or the
12 training. And it's, I will tell you from my
13 real intense studies of these areas and
14 evaluations, it's not even what happens.

15 Q. Why not?

16 A. Because each officer has a different
17 perspective, and not all are going to make the
18 same decision based on what they know or see at
19 that moment. It has to be an objectively
20 reasonable decision by that officer given that
21 officer's knowledge and perspective.

22 But you can't -- you can't expect
23 that everyone at the same moment sees the same
24 thing, because they're in different
25 perspectives. Not only that, but in this

1 situation it's even different because you have a
2 team that is deployed that are trained that
3 there are officers with specific assignments.
4 There is less-lethal assignment, there are cover
5 assignments, there are lethal cover assignments.

6 And as I indicated earlier in my
7 testimony, the Portland Police Bureau activates
8 this as well as anybody I've seen in the country
9 because of the intensity of the training that's
10 required of these officers. And I'm not saying
11 that casually. I have been retained by the
12 largest agencies in the country to review their
13 files, and have been involved in shootings
14 around the country, and I've evaluated the team
15 efforts and the individual policies and actions
16 taken. And I can say that these officers know
17 when to rely on each other. And this was a
18 lethal cover decision made by the lethal cover
19 officer, Officer Ron Frashour.

20 Q. Does the fact that only Frashour fired his
21 weapon mean that, in other words, the fact that
22 only one and not five police officers fired
23 their lethal weapon, mean Mr. Campbell wasn't an
24 immediate threat?

25 A. Absolutely not. First of all, the

1 officers are in different positions. You've got
2 an officer there with a canine who is
3 controlling an animal. You've got an officer
4 there with a less lethal, in control of a long
5 gun, applying beanbag rounds. You have other
6 officers that are in different perspectives.

7 And you've got to be mindful in these
8 situations that, hey, we have a lethal cover
9 officer with the ability to deliver a precise
10 round precisely, who's focused completely on
11 this lethal cover. And I'm in a position where
12 if I shoot, I'm shooting towards perhaps either
13 crossfire situations or I'm firing in the
14 direction of other people.

15 So the lethal cover officer is the
16 one at that moment that is assigned and
17 specifically deployed and specifically trained
18 to know that my responsibility is applying a
19 lethal round, which means I have to know the
20 backdrop and my ability to deliver the round in
21 perspective of where I am, where the subject is.
22 That's his responsibility. The other officers
23 are compromised to some degree.

24 Q. We've heard testimony to the effect that
25 officers have superior firepower over

1 Mr. Campbell. Does that factor into the deadly
2 force threat assessment of a reasonable police
3 officer?

4 A. No. Superior firepower is the ability to
5 deliver a round from anything from a .22 to a
6 .50 caliber that you may have in the right
7 place. And that's superior firepower. It's
8 when you're now doing an after analysis.
9 Superior firepower means you may have a bigger
10 gun or you have more of them. It matters not if
11 the round that actually takes effect is the
12 smaller one.

13 We universally in law enforcement use
14 officer deaths as training tools. Families have
15 authorized videos of police officers being
16 gunned down to show officers the reality of the
17 misconception that their gun is supposedly
18 superior firepower. We've got circumstances
19 where officers have been shot 15 times with 9
20 millimeters, for example, and the person still
21 attacked the officer, took the officer's gun
22 away and killed the officer, okay?

23 You don't have to go much further
24 than New Orleans, female officer, where that
25 happened. She shot the man 15 times and he

1 simply approached her and took her gun away,
2 after having been shot 15 times.

3 We have Officer Coates, who
4 confronted a man carrying a superior firepower
5 weapon. He was shot with a small Derringer,
6 which you would think wouldn't have done
7 anything. And Coates returns five rounds, and
8 the man lives and Coates dies.

9 So superior is the shot that takes
10 effect, not the gun that delivers it.

11 Q. Well, shouldn't Officer Frashour assume
12 that it will be difficult for Mr. Campbell to
13 get a shot off with that gun that Mr. Campbell
14 has?

15 A. Not at all. We realize, of course, in
16 action/reaction issues that police officers have
17 to react. We know that we can get an officer's
18 reaction down to about .58 to an assessment of
19 what's happening, even if concentrating on an
20 individual, where an individual can get a shot
21 off in a tenth of a second. The difference is
22 the person has already thought about what
23 they're going to do, so they only have to
24 implement. An officer has to evaluate and then
25 make the decision, and then send the signal to

1 pull the trigger. That all takes more time.

2 We know for a fact, and I have done

3 this for years now, showing that my action, as a

4 subject, in confrontation with a police officer

5 always beats the officer's reaction by drawing

6 and shooting before the officer can fire.

7 Sometimes it gets as good as simultaneous after

8 they practiced it a few times, but that's about

9 as good as it gets.

10 Q. I'd like to talk with you about the

11 presence of the police dog. Shouldn't Officer

12 Frashour simply have waited to see if Officer

13 Elias's canine could attack or distract

14 Mr. Campbell?

15 A. No.

16 Q. Why not?

17 A. Well, first of all, this isn't -- this

18 isn't a dog case in terms of applying a canine.

19 And even if the K-9 officer decides that he's

20 going to deploy, the decision about whether or

21 not it's reasonable to apply deadly force is

22 Officer Frashour's decision, not the K-9

23 officer's decision.

24 Law enforcement officers don't deploy

25 dogs in deadly force encounters. Now, when a

1 dog gets deployed and the K-9 officer is in a
2 different position, has different information or
3 just believes that it may be support, that's
4 fine. But we do not attempt to apply a canine
5 in a situation where a deadly force decision is
6 objectively reasonable.

7 Dogs have been ruled forever in the
8 courts as not deadly force. They certainly have
9 the ability to bite and hold. But we know that
10 there have been many failures of dogs, under
11 many different situations, some almost
12 laughable, funny, comic, in terms of what the
13 dogs do. That doesn't diminish the value of a
14 canine. I'm not trying to take it away from the
15 handler. But you cannot say that a canine is
16 the appropriate tool in a deadly force decision.

17 Q. From your understanding of the Portland
18 Police Bureau's training and the training that
19 you've seen elsewhere around the country, are
20 police officers taught to wait to see if a
21 canine is effective before resorting to lethal
22 force?

23 A. Not when it's a deadly force decision, no,
24 because that results in the high potential for
25 injury or death. The canine may not take effect

1 at all. Sometimes the canines are diverted. As
2 I've indicated, some of it's comical. I have
3 reviewed the files of canine intervention where
4 the dogs have actually been deployed, and
5 because another dog was in the vicinity took off
6 after the other dog. I have seen situations
7 where the canine was released and did not
8 discriminate between the person you're releasing
9 the dog to attack and the officer that's
10 covering the subject and the officer gets
11 attacked. That's not -- it's not unreasonable.
12 After all, they are highly trained, skilled
13 canines, but we must remember they're still
14 canines. And they don't see uniforms, and they
15 don't really know one from the other. So things
16 happen.

17 I've seen situations where they've
18 rushed the individual, and for whatever reason,
19 the smell, the scent, something reminiscent of
20 something, the dog stops and starts licking the
21 subject. Those are -- they're almost laughable.

22 But on the other hand, you cannot
23 deploy a dog when it's a deadly force decision.
24 You can deploy the dog, but that doesn't stop
25 the deadly force decision.

1 Q. Mr. Katsaris, I would like to talk with
2 you a little bit about your understanding of the
3 Portland Police Bureau's Directive 1010.20. I'm
4 going to hand to you what's been marked as Joint
5 Exhibit 14, and draw your attention to the
6 bottom of Page 2 to the top of Page 3. And can
7 you take a moment just to review that portion of
8 that exhibit.

9 MR. RUBIN: Anil, let's take a break.

10 MR. KARIA: Let's take five.

11 (RECESS: 12:25-12:33)

12 BY MR. KARIA:

13 Q. Mr. Katsaris, before we went on break I
14 was asking you to review the bureau Directive
15 1010.20 at Joint Exhibit 14, starting at the
16 bottom of Page 2 where it states, "When
17 determining," and then carrying over to the next
18 page. And I'll have you stop reading once
19 you're through the list A through G.

20 A. Yes.

21 Q. The statement, "When determining if a
22 member has used only the force reasonably
23 necessary to perform their duties and resolve
24 confrontations effectively and safely, the
25 bureau will consider the totality of the

1 circumstance faced by the member," and then it
2 goes on to list A through G. Is that the Graham
3 versus Connor standard or the police bureau's
4 enumeration of the Graham versus Connor
5 standard?

6 A. It's the police bureau's enumeration.
7 It's a bit more than what Graham versus Connor
8 has enumerated. It's added at least maybe a
9 comment from another court.

10 Q. So it's Graham plus, if you will?

11 A. Okay. Yes. Graham on steroids.

12 Q. I'd like to now draw your attention to a
13 different sentence in the policy. And the
14 sentence I'd like to draw your attention to is
15 in the second full paragraph, on Page 2 of Joint
16 Exhibit 14, where it starts, "The bureau places
17 a high value on resolving confrontations when
18 practical with less force than the maximum that
19 may be allowed by law." Do you see that
20 sentence there?

21 A. Uh-huh (affirmative response).

22 Q. We've heard testimony about that sentence
23 in this case. What is your opinion of what that
24 sentence means in terms of training and
25 performing law enforcement duties?

1 A. Well, I think it's a value statement, not
2 a policy statement.

3 Q. What do you mean by that?

4 A. Well, it's a, kind of a hope for,
5 anticipation, alike to it's an introduction to
6 policy statements, as opposed to a policy, in my
7 opinion. Because it doesn't say that this is a
8 directive, it says the bureau places. Obviously
9 that means that, you know, it's a value, it's a
10 value statement, it's an introduction to policy
11 statements.

12 Q. What is the notion that resolving
13 confrontations when practical with less force
14 than the maximum that may be allowed by law,
15 what is the import of that statement when it
16 comes to training police officers?

17 A. Well, this is very difficult for me
18 because I'm trying not to be negative about it,
19 but it's not a statement that should appear in
20 policy because it's an attempt to set a
21 different level of standard, meaning that an
22 officer now is placed in the compromising
23 position of realizing I can be lawful, I can be
24 constitutional, but somehow that's not good
25 enough, and what is the other standard.

1 Q. What about the standard that's at the
2 bottom of the page there?

3 A. It's in conflict with the actual policy
4 statement.

5 Q. What do you mean it's in conflict with
6 the -- First of all, let me ask you this, the
7 actual policy statement, is that the statement
8 at the bottom of Page 2 that you described
9 earlier as Graham on steroids?

10 A. Right. Take the first three paragraphs,
11 "The Portland Police Bureau recognizes," okay?
12 The second, "The Portland Police Bureau places."
13 To be more accurate, it just says the bureau.
14 "The bureau places a high value." The third
15 paragraph, "The bureau is dedicated to
16 providing." And then we get into the policy.
17 "It is the policy of the bureau that members use
18 only the force reasonably necessary under the
19 totality of the circumstances." Now we've
20 gotten to policy.

21 If an agency ever decides that these
22 three paragraphs are somehow policy, we're
23 conflicting with training, we're conflicting
24 with the law, we're confusing police officers,
25 and in the end we could cost lives because an

1 officer would realize if this is any more than
2 value statement, which of course you can't
3 disagree with, but if it's policy, then an
4 officer would have no way of knowing what the
5 policy is because somehow elusively, in the
6 minds of one or two or three or whoever does
7 some kind of value assessment of an officer's
8 conduct, can retreat from the law, can retreat
9 from the constitution and say we have value
10 statements that we apply as the law and the
11 constitution as far as our department is
12 concerned.

13 And that can't take place, because if
14 it does, then police officers won't be able to
15 make a split-second decision that police
16 officers have to make, because if disciplined
17 under value statements, then you don't know
18 what's going to happen to you and your career if
19 you follow the law but somehow conflict with a
20 value statement. It's just not appropriate.

21 Q. What do you mean it's not appropriate?

22 A. It's untrainable, it's untenable, it's
23 unreasonable, it's wrong. It doesn't espouse
24 the law, it doesn't espouse the constitution,
25 and it's left up for an interpretation by

1 someone that puts a standard out there that is
2 not trained in the Portland Police Bureau. It's
3 not trained in Oregon, it's not according to
4 public safety posed standards, it's not
5 according to anything in the country. And I've
6 never seen a court ruling ever resolved around
7 those kinds of value statements.

8 Q. And again, it doesn't comport with your
9 reading of the rest of the policy, is that what
10 you're saying?

11 A. No. It's in conflict. They're value
12 statements; in other words, this is -- we place
13 a high value on life. There's nothing wrong
14 with that. But sometimes we have to take a
15 life. That's the position of a police officer
16 who is upholding his or her responsibility.

17 Q. I'd like you to assume that a police
18 officer's use of deadly force is reasonably
19 necessary under the totality of the
20 circumstances as it requires under the rest of
21 the policy there at 1010.20. How would you then
22 go on and apply the value statement of resolving
23 confrontations when practical with less force
24 than the maximum that may be allowed by law?

25 A. Well, it's two words. You cannot.

1 Q. Why?

2 A. Because it's a different standard that is
3 not elucidated, it's not trained, and it's not
4 policy. It's not the law, and it's not the
5 constitution. It's so unreasonable to assert
6 that as a policy that I can't -- I don't know
7 what else to say. It's not policy. It's in the
8 policy, but it's a value statement.

9 Q. Why isn't it trained? Or why is it not
10 trainable, I should ask.

11 A. Because it doesn't espouse a standard that
12 is recognized by law enforcement other than it's
13 a value we recognize. I certainly -- you just
14 can't train -- When practical to me means when
15 reasonable. In other words, I would assert that
16 the word "practical" has to be resolved as when
17 reasonable; otherwise, we're saying that
18 something less than reasonable is where the
19 ceiling bumps, and you've got to do something
20 less than reasonable. And I don't think you can
21 train to do something less than is reasonable.

22 That's the reason why the Supreme
23 Court hassled with this so long in May of 1989.
24 And Justice Rehnquist, who wrote the opinion for
25 the majority, grappled with the Johnson v

1 Glick - G L I C K - standard that they had where
2 they were evaluating it from the mindset of the
3 officer to something that was otherwise a
4 standard. And they realized -- Just like when
5 they were trying to grapple with probable cause,
6 which is another one of those reasonableness
7 standards, in a more recent case in Pringle.

8 P R I N G L E. In Pringle the court is trying
9 to determine is there a bright line we can make
10 so that officers will know what probable cause
11 is in more terms than facts and circumstances
12 when taken together by what a reasonable and
13 prudent officer believes. And they couldn't.

14 So the Supreme Court couldn't come up
15 with something less than reasonable for arrest
16 or detention or Fourth Amendment seizure. I
17 surely don't want a police officer, you know,
18 trying to apply something less. It's not the
19 law, it's not trained, and it's unreasonable to
20 try to define what's practical unless practical
21 is reasonable.

22 Q. At the point that a subject, such as
23 Mr. Campbell, becomes an immediate threat of
24 death or serious physical injury, based on the
25 training that Portland police officers receive

1 from this bureau, should they -- actually,
2 strike the question.

3 In your overall assessment of this
4 scene, did Officer Frashour do anything, in your
5 judgment, that was contrary to his training or
6 the bureau's rules?

7 A. Absolutely not.

8 MR. KARIA: That's all I have.

9

10 CROSS-EXAMINATION

11 BY MR. RUBIN:

12 Q. We've met briefly this morning. My name
13 is Howard Rubin, and I'm representing the City
14 of Portland in connection with this case. Do
15 you understand that?

16 A. Yes.

17 Q. And if for some reason you don't
18 understand my questions, just ask me to repeat
19 the question to make sure you understand them.

20 Okay?

21 A. Thank you. Yes.

22 Q. Haven't you given your opinion that, in
23 fact, Ron Frashour could be found in violation
24 of the City of Portland Police Bureau directives
25 in this case?

1 A. Not exactly. I gave a couple of
2 statements that I said if one were to state that
3 those were the items to be considered, then I
4 guess you could be. I think I elucidated on it
5 a little bit more extensively today.

6 Q. What you said in the statement was that
7 Mr. Frashour could be found in violation of
8 policy but that wouldn't be consistent with
9 training. Correct?

10 A. May I reflect on what it is that you're
11 referring to so that I can have the words? Do
12 you want to direct me to where you are?

13 Q. You bet.

14 A. Sure.

15 Q. Looking at page -- First of all, let me
16 sort of ask a few foundational questions.

17 A. Sure.

18 Q. You've been retained by Ron Frashour in
19 the federal litigation that's still going on?

20 A. Ultimately I was, yes.

21 Q. What do you mean ultimately you were?

22 A. I was retained by the City.

23 Q. In the federal litigation?

24 A. That's correct.

25 Q. And did you give this affidavit in

1 connection with your work with the City of
2 Portland?

3 A. Only at this moment, at this time was
4 Officer Frashour. But I initially was hired by
5 the City of Portland.

6 Q. To provide this affidavit --

7 A. No.

8 Q. -- of your -- okay. Explain to me how the
9 affidavit came to be.

10 A. I was retained by the City. And I suspect
11 that that's somewhere revolving around in the
12 background. And then I was asked to review
13 specifically the actions of Officer Frashour,
14 which I did for this affidavit.

15 Q. And who asked you to review specifically
16 the actions of Ron Frashour in your preparation
17 of this affidavit?

18 A. This was done on behalf of the actions of
19 Ron Frashour as an officer of the Portland
20 Police Bureau for the City by counsel for
21 Officer Ron Frashour, Bob Wagner.

22 Q. Okay. So Bob Wagner, lawyer, who is the
23 lawyer for Ron Frashour in the federal
24 litigation, asked you to prepare the affidavit?

25 A. Correct.

1 Q. And if you could look at Page 14.

2 A. Okay.

3 Q. Okay. So first of all, I want to make
4 sure that you agree that, in fact, the Portland
5 Police Bureau can establish a higher standard
6 than the Graham standard for what it expects of
7 its police officers.

8 A. Well, that's not exactly what I said.

9 Q. Well, let me stop you there. At Page 14,
10 isn't it true that you said, "Furthermore, the
11 PPB can and does require more than is generally
12 recognized for assessing the application of
13 force"? So isn't it true that the PPB can
14 require more than is generally recognized for
15 assessing the application of force as its
16 standard for its officers?

17 A. As is delineated, and with my criticisms
18 of it, along with a reading of Page 13, which is
19 a part of that total opinion where I assessed
20 application of deadly force in terms of Ron
21 Frashour. However, I went on to say that the
22 letter of termination sent to Officer Frashour
23 by Chief Reese imposed the below policy
24 considerations.

25 Now, I did say that because those are

1 the policy considerations which I've already
2 indicated. I did not say it was the policy, if
3 you'll read my words carefully. I said they
4 were policy considerations.

5 Q. I'm not even to that sentence. And I
6 apologize, because my question's really easy.
7 Whether it's this document or whether just
8 standing alone, isn't it true that a police
9 agency can say here are the standards that we
10 want our officers to follow?

11 A. Yes.

12 Q. Okay. And isn't it true that, in fact,
13 the Portland Police Bureau can say here's what
14 we expect of our officers? Whether it's more
15 restrictive than the US Supreme Court case of
16 Graham versus Connor or not, they can say here's
17 what we expect of our officers when it comes to
18 the use of force?

19 A. They don't say that.

20 Q. That's not my question. Isn't it true
21 that the Portland Police Bureau, like any other
22 police agency, law enforcement agency, can say
23 to its police officers, here's what we expect,
24 here's how we expect you to conduct yourselves
25 when it comes to the use of force, even if it's

1 a higher standard or more restrictive than what
2 the US Supreme Court allows in Graham versus
3 Connor?

4 A. I'll answer that, and I'll say it again,
5 yes.

6 Q. And have you, in order to prepare for this
7 testimony today, have you reviewed the Oregon
8 state statute with respect to use of force?

9 A. Not on this particular review. I have a
10 number of times.

11 Q. Okay. And isn't it true also that the
12 Portland Police Bureau can expect, frankly, a
13 different -- a higher standard, a more
14 restrictive standard of its behavior for its
15 officers when it comes to use of force than what
16 the Oregon law might allow?

17 A. Only under certain circumstances.

18 Q. What do you mean?

19 A. Well, first, it has to be a reasonable
20 restriction; second, it has to be articulated in
21 an understandable fashion; and third, it has to
22 be trained. And then it has to be universally
23 applied to all officers consistently for the
24 application of the similar issue.

25 These are not policy statements and,

1 therefore, not trainable, not reasonable, not in
2 accordance with the law, not in accordance with
3 the constitution, and therefore unreasonable to
4 apply.

5 But I did indicate they can, and did,
6 in this case, these two statements.

7 Q. And let me stop you there for a minute.

8 In preparing to testify today, as I understand
9 it you reviewed a variety of materials.

10 A. Well, I have over a course of time, yes.

11 Q. Over what period of time did you review
12 those materials?

13 A. I was hired by the City June 10th of 2010,
14 and I was sent materials at that time.

15 Q. Okay. And in order to prepare for this
16 testimony, when was the last time you reviewed
17 the materials that you described earlier today?

18 A. I have looked at them and reviewed them,
19 digested them over a number of different times.
20 I looked at a few things specifically for today.

21 Q. And what few things did you specifically
22 review for today?

23 A. The termination letter, the affidavit I
24 presented for the civil case, the Policies
25 1010.10 and 20, the deposition of Officer

1 Willard, I believe, and a few other things that
2 were different.

3 Q. And when was the last time that you read
4 all of the interviews in the detectives binder?

5 A. It's been a while. I couldn't tell you
6 exactly when. I don't keep track of it that
7 way.

8 Q. And did you read all the interviews that
9 were conducted by the internal affairs
10 investigator?

11 A. Yes. In fact, some were sent on -- you
12 know, I listened to sporadic sections and
13 portions to get a feel for them. I believe they
14 were archived as well.

15 Q. So did you read the transcripts
16 themselves?

17 A. Both.

18 Q. Okay. And when was the last time that you
19 read the internal affairs interviews?

20 A. Again, I couldn't tell you. I did, but I
21 couldn't tell you when.

22 Q. And from your description today, if I
23 understand correctly, for example, you did not
24 review patrol tactics that was -- patrol tactics
25 training materials that were provided and given

1 and delivered to Ron Frashour.

2 A. Specifically for this, no.

3 Q. Okay.

4 A. I know what -- I've been through them.

5 Q. Let me stop you there again. You didn't

6 review, for example, patrol tactics training

7 materials from 2005 or 2006.

8 A. Specifically, no.

9 Q. Okay. And isn't it also true that you

10 didn't review any inservice training given to

11 Officer Frashour and other officers by the City

12 Attorney's Office with respect to these very

13 issues that we're talking about today?

14 A. Specifically, no.

15 Q. So in 2007, inservice delivered by City

16 attorneys, you don't know what they trained the

17 officers with respect to use of force, Graham

18 versus Connor, as well as the City of Portland

19 Police Bureau directives?

20 A. Other than there was some testimony and

21 review of what those materials included, I

22 believe. I recall the inservice training

23 provided by an attorney. Now, whether that was

24 actually the materials or review of those

25 materials, I don't specifically recall.

1 Q. So you haven't reviewed those materials.

2 A. Not for today, no. I believe in the file

3 I reviewed the updates on the legal training

4 that they had in, I think it was 2007.

5 Q. Okay. So you're aware, then, that, in

6 fact, a City attorney provided training to

7 officers, including Officer Frashour, about the

8 use of force, about Graham versus Connor, about

9 the police directives and how they all work

10 together.

11 A. Yes.

12 Q. And, in fact, it's also true that in 2008,

13 are you aware that, in fact, City attorney again

14 provided training to officers, including Ron

15 Frashour, with respect to Graham versus Connor,

16 use of force, Portland Police Bureau Directives

17 1010.10 and 1010.20?

18 A. Yes. I understand there was a review of

19 those, yes.

20 Q. And are you also aware that similar

21 training has been provided, you know, again in

22 2009 by the City Attorney's Office?

23 A. Yes. As I indicated, they're well

24 trained.

25 Q. And they're trained specifically, among

1 other things, on the use of force, the fact that
2 the Portland Police Bureau Directive 1010.20 is
3 more restrictive and set as higher standard than
4 Graham versus Connor? You're aware of that
5 training?

6 A. No. I did not see that it was specific to
7 beyond or more restrictive than, because there
8 was no explanation that I saw of what is
9 practical or nonpractical. No.

10 Q. What materials did you review?

11 A. I don't recall now. I don't have them
12 with me. But I do recall looking at some legal
13 training materials that were provided that were
14 updates, I remember that. But I don't recall
15 specifically. But there -- it was reflective of
16 the training that the Portland Police Bureau
17 comported with the Graham versus Connor
18 standard. And that was indeed trained.

19 Q. Do you know who Dave Woboril is?

20 A. Yes, I have worked for him. I've had
21 civil litigation with him, yes.

22 Q. And have you talked to Mr. Woboril about
23 the training that he provided to officers with
24 respect to the Portland Police Bureau Directive
25 1010.20 aimed at expecting officers to manage

1 what he calls below the constitutional limit?

2 A. I read his testimony, I believe, from the

3 hearing. It was provided to me. And I really

4 didn't make that sense out of what he said. It

5 was confusing, it was not specific, it was not

6 direct, in my opinion. And after I finished

7 reading it, I didn't believe that he articulated

8 that, particularly.

9 Q. Okay. So essentially, if I understand

10 correctly, whatever it is that Dave Woboril

11 said, you just disagree with.

12 A. I didn't say that. I said it was

13 confusing after having read his testimony about

14 specifically -- I think he got into a

15 disagreement or some issue about immediacy and

16 immediate and what all that somewhat means. And

17 I believe that it's not what you're

18 characterizing it as, in my opinion.

19 Q. I understand. In terms of training of

20 officers, you would agree that, based on the

21 training experience that you've described, that

22 law enforcement agencies cannot train officers

23 for every scenario.

24 A. That's why we train to the constitutional

25 standard and the legal standard. That's

1 correct. I think I addressed that earlier when
2 I said that the Supreme Court in all of its
3 wisdom has come up with a standard that does
4 take into consideration certain factors, which
5 the officers are trained on. And obviously we
6 have a justice system that determines whether or
7 not those things were a part of the decision.

8 Q. So are you aware that, in fact, Portland
9 Police Bureau officers are trained on
10 de-escalating incidents to avoid using the
11 maximum allowed force? Are you aware of that
12 training?

13 A. They are trained to escalate and
14 de-escalate, obviously. But when a decision is
15 made based on the totality of circumstances,
16 that is a decision that does not -- and they do
17 not train to de-escalate from that decision when
18 it's reasonably reached. I think to say that
19 the Portland Police Bureau requires in their
20 training that a police officer make a decision
21 that's less than reasonable would be less than
22 genuine. It would be disingenuous to say the
23 training does that.

24 I believe the training, like all
25 training, we talk to officers about escalating

1 and de-escalating. And certainly anytime you
2 can reach a resolution reasonably, then that's
3 the standard. And it's not, oh, but it should
4 be less than reasonable where practical. That
5 is where I come into disagreement with the
6 application of the policy value statements by
7 Chief Reese.

8 Q. So let me go back. You agree that you
9 cannot train police officers on every scenario
10 that they may face.

11 A. That's correct.

12 Q. And no agency can do that.

13 A. Not on every scenario because they'll
14 surprise you, certainly.

15 Q. And you also agree that, as I think you
16 described it, even the US Supreme Court Justice
17 Rehnquist wrestled with what the heck's
18 reasonable, right?

19 A. Yes.

20 Q. Okay. And in fact, people on the street,
21 I mean everyone in this room, if you can
22 identify a reasonable person, you'd be able to
23 mint that and be pretty successful, wouldn't
24 you? You don't know what a reasonable person is
25 or what a reasonable person looks like, do you?

1 A. Do I?

2 Q. Well, just in general. I mean --

3 A. Well, I know what I'm directed to do as a

4 police officer. And that training, which I

5 provide and have to take from another

6 instructor - by the way, they don't allow me to

7 teach myself - equates to what the reasonable

8 conduct is given the totality of the

9 circumstances. And that's how an officer is

10 judged.

11 And I could not sit here and look at

12 you and say that I would know a reasonable

13 person when I see them. Obviously you have to

14 take it in consideration of the totality of the

15 circumstances and what you specifically perceive

16 reasonably given that moment in time.

17 There is no way to deploy a police

18 officer to make the ultimate decision in life

19 that no one else in the whole country is given

20 the authority to do but a police officer. So,

21 you know, you can't do that. You have to have a

22 specific training that is authorized and that

23 has one level of decision making for reasonable.

24 Q. Before an officer makes that decision, and

25 even when an officer makes that decision,

1 neither you nor me can say to the officer in
2 that moment this is what reasonable looks like
3 in that situation, can you?
4 A. No one should be talking to the officer
5 when he's making that decision at that moment.
6 That's the reason why the training has to be as
7 close to the recognized standard as we can get
8 it to be consistent. When you start saying
9 something like when practical, that takes and
10 demolishes the standard so that it is not
11 attainable, and it's left for the discretion of
12 a person who may want to say, well, I think it
13 was practical under that situation to do this.

14 Let me refer you to Plakus versus
15 Drinski. P L A K U S, versus Drinski,
16 D R I N S K I. And the court said in Plakus,
17 and it has been cited throughout the nation,
18 including here, that an officer is not required
19 to use any particular alternative, only - and
20 then they cite Graham versus Connor - only to
21 make an objectively reasonable decision.

22 For example, in that case a police
23 officer was using chemicals restraint, OC spray,
24 on an individual that had a poker in his hand,
25 but then escalated because of the fear of -- It

1 was a fireplace poker, one of those for logs.
2 And then took and shot the individual. It was
3 determined or thought to be that perhaps a lower
4 level of force would have been more appropriate.

5 And the appeals court, not certed to the
6 US Supreme Court for a ruling, but the appeals
7 court, and cited throughout the land, indicated
8 that a police officer does not have to make a
9 decision to use any particular alternative but
10 simply make an objectively reasonable decision.

11 I think there's been a lot of discussion
12 about what the standard is. And they never have
13 said that an officer should use less force than
14 practical or use practical levels or what have
15 you. It's never been cited, in my opinion.

16 Q. But the bureau certainly can say that it
17 expects its police officers, okay? it expects
18 its police officers to resolve confrontations,
19 regularly resolve confrontations without
20 resorting to the higher levels of allowable
21 force. That's a different statement, isn't it?

22 A. That's not policy, but it's a feel good,
23 it's a value statement. And I don't disagree
24 with the value that we put on human life. That
25 you should, whenever practical, that's fine for

1 a value statement. The problem comes when you
2 use the value statement as a judgment of the
3 officer's conduct. That is when it breaches the
4 reasonableness standard of the judgment.

5 Q. So let me do it differently. In this case
6 you're aware there's an arbitrator who will be
7 making the ultimate decision in this case.

8 A. Right. I realize I'm not the one making
9 decisions. I'm rendering opinions.

10 Q. I understand. And the arbitrator will be
11 applying the policy in this case. If the
12 arbitrator decides that the language that you've
13 been discussing, both in the second paragraph
14 and the first paragraph of 1010.20, is policy,
15 is what the bureau expects, okay? So let's just
16 assume for a minute that she says, yes, this is
17 policy. Okay?

18 A. Okay.

19 Q. You would agree, then, that Officer
20 Frashour and every other officer of the Portland
21 Police Bureau has to follow that.

22 A. Then they need to make it policy. It's an
23 introduction before it says, in the third
24 paragraph, "After considering these value
25 statements, it is the policy of the bureau that

1 members use only the force reasonably necessary
2 under the totality of the circumstances."

3 I am not about to take issue with any
4 hearing examiner or judge, but I will say this,
5 that they certainly need to understand
6 introductions to policy versus policy
7 statements. And I think that's what perhaps an
8 expert like myself might focus on. And that's
9 what I'm doing.

10 Q. What I'm saying, though, is I am -- I'm
11 asking you to assume, assume that the arbitrator
12 in this case says this is policy. Okay? That
13 it's not introduction, that it's not statement
14 of what everybody would agree is, you know, a
15 good thing, but she says this is policy. This
16 is what the Portland police officers have to
17 follow, correct? Let's say that she says that.
18 You agree with that, don't you, if she says that
19 - and I understand that you disagree that it's
20 policy - but if she says it's policy, you would
21 agree that officers have to follow it.

22 A. That is not an expert opinion because I do
23 not have any more than the input I have today
24 with the hearing examiner. I do not take issue
25 with hearing examiners or judges. I understand

1 that they will make a decision independently,
2 respectfully, professionally, in their best
3 judgment of what is.

4 I do believe that I have the specific
5 knowledge to interpret policy. I have reviewed
6 more policies than anybody in this room. I have
7 reviewed policies more than anybody in this room
8 more widely in this country. And I have
9 probably drafted more policies than anybody in
10 this room over the course and history of my
11 life. And, therefore, I think that does qualify
12 me as an expert to render an opinion for which
13 I'm here for.

14 Whatever the hearing examiner may
15 wish to ultimately opine and render a judgment
16 on is for the hearing examiner.

17 Q. So if the arbitrator in this case decides
18 this is policy and this is what's expected of
19 Portland police officers, are you saying that
20 Officer Frashour and others don't have to follow
21 it?

22 A. I am --

23 MR. KARIA: Just for the record, I'm
24 going to object to this as being widely
25 speculative.

1 MR. RUBIN: He hasn't answered the
2 question once. He hasn't answered any question
3 once.

4 MR. KARIA: Perhaps it's the function
5 of the nature of the question.

6 You can go ahead.

7 A. I cannot answer the question because I am
8 never asked to render opinion about the opinion
9 of judges or hearing examiners.

10 Q. That's not what I'm asking.

11 A. You said if the hearing examiner should
12 find that's policy, I don't disagree with that.

13 Q. That's not my question. If she finds that
14 it's policy, Officer Frashour and others have to
15 follow that, correct? If she finds that it is.

16 A. I won't be involved in the implications of
17 that ultimate conclusion. It may be that after
18 the course of this entire discussion the
19 Portland Police Bureau comes to its senses and
20 says, you know what, we're confusing in the
21 policy value statements with policy, and maybe
22 we ought to recognize that when we get down to
23 what we really want. It says it is the policy
24 of, and these others are indeed value
25 statements, and maybe they ought to either take

1 them out completely or call them what they are.

2 We do value life, however, it is the policy of.

3 Q. So let me go back and ask a few questions

4 with respect to your history and background a

5 little bit.

6 A. Yes, sir.

7 Q. If I understand correctly, you were a

8 police officer on a full-time basis for St.

9 Petersburg from 1962 to 1966.

10 A. Right.

11 Q. And then you were a part-time sheriff,

12 deputy sheriff, patrol trooper, primarily doing

13 training, correct?

14 A. Primarily training, but I carried the

15 authority and interacted on a time-to-time basis

16 in the field. That's correct.

17 Q. So you weren't day-to-day patrolling out

18 in the field.

19 A. Now? No. I was.

20 Q. When was the last time that you did that?

21 A. Actual day-to-day patrolling, over five

22 years ago.

23 Q. For which agency was that?

24 A. The Leon County Sheriff's Office where I

25 was sheriff and where I remain a sworn member.

1 Q. You were doing regularly-scheduled,
2 40-hour-a-week patrol assignments?

3 A. No. I would go out and work on an
4 irregular basis.

5 Q. How irregular?

6 A. Gosh. I couldn't tell you. It's been a
7 while. I went every now and then. As a
8 trainer, I would work in the field as an
9 officer.

10 Q. So it's safe to say that the last time
11 that you were a full-time, on the street,
12 assigned on a schedule patrol officer on a full-
13 time basis was 1966?

14 A. '81. I was the sheriff full time.

15 Q. And full-time sheriff, you were out on the
16 schedule, patrol, full time?

17 A. I was always out there with my men, yeah.

18 Q. So the last time was 1981.

19 A. As a full time, that's correct.

20 Absolutely.

21 Q. And then the last, if I understand it, for
22 the last approximately 25 to 30 years you've
23 essentially been working as a consultant.

24 A. I'm a trainer. I train more than I
25 consult. I train at the academy, I trained at

1 the state academy, I train at the regional
2 academy, I train throughout the country. I'm a
3 national seminar presenter for law enforcement
4 commanders and attorneys. So I'm a trainer. I
5 probably just outlast the rest of them in terms
6 of years. There's a lot of people 25 years
7 younger than me who have already retired.

8 Q. So for the last 25 to 30 years you have
9 spent your full-time career primarily training
10 and consulting.

11 A. Correct.

12 Q. And I want to make sure that I understand
13 this. You said that you've trained lots and
14 lots of officers, including Portland Police
15 Bureau officers.

16 A. Yes.

17 Q. When did you train them?

18 A. In the '90s when I was here doing street
19 survival training for the Portland police. They
20 hosted the training. I was the -- one of two
21 instructors that delivered the presentation, and
22 I was the force instructor.

23 Q. Fair to say that's around 20 years ago?

24 A. Yes.

25 Q. And is it also fair to say that since the

1 time that you were doing the training 20 years
2 ago, that, in fact, lots of things have changed
3 at the bureau?

4 A. Yes.

5 Q. And you've also said that you have
6 evaluated case files for many years. And I'm
7 just trying to understand when you evaluated
8 case files for the City of Portland.

9 A. Have over a long period of time.

10 Q. When was the last time?

11 A. Well, this one.

12 Q. Prior to this one.

13 A. I guess it was the Chasse case.

14 C H A S S E E or just E, I can't remember.

15 Q. E.

16 A. Yeah. That may have been the last
17 deposition I gave on Portland Police Bureau
18 policies, procedures, training. And that one I
19 had about a hundred thousand pages of materials.
20 And it was a recent case. I've just been
21 through all of the training, all of the
22 directives, all of the updates on that file.
23 And then I can't recall -- I remember the Lowrey
24 case, L O W R E Y, which was one of them. I
25 think another more recent trial was the

1 McCollister case. M C C O L L I S T E R, I

2 believe.

3 Q. That was approximately ten years ago?

4 A. McCollister?

5 Q. Yes.

6 A. I don't recall. It's been a while, but I

7 don't know -- I don't think it's been ten years,

8 by any means.

9 Q. Okay.

10 A. I think it's been three or four. But time

11 does go by in a hurry.

12 Q. And I want to talk a little bit about the

13 incident of January 29th, 2010.

14 A. Yes, sir.

15 Q. Okay? And I think it also is true,

16 although you haven't said it today, that, in

17 fact, you believe that the investigation by the

18 Portland Police Bureau of Mr. Frashour's conduct

19 and what happened was, I think in your words,

20 intense, detailed and thorough.

21 A. My review of it indicated they did. I've

22 always been impressed with the ability of the

23 Portland Police Bureau to cover all of the

24 required areas. There is no standard in the

25 country on internal investigations. And they

1 certainly meet or exceed the reasonable

2 application of internal investigation.

3 Q. And, in fact, in this case didn't you say

4 that the investigation conducted by the Portland

5 Police Bureau actually met the highest

6 standards, reflected the highest standards of

7 investigations of officer conduct?

8 A. That I apply, yes. There is no standard.

9 Q. Okay. And I want to talk a little bit

10 about the CAD report. You would agree that all

11 sorts of information gets reported through a CAD

12 system on a dispatch call, correct?

13 A. Sure. Yes.

14 Q. And when you get the information as an

15 officer out on the street, you don't know if

16 that's true, not true, some truth to it or

17 anything else, do you?

18 A. I'm not sure I understand the question.

19 Q. So you have to go and investigate whatever

20 the information is that you received on the

21 call, correct?

22 A. I didn't understand the first question.

23 You're building on my misunderstanding of the

24 first question. Go back to the first question.

25 Q. You get a dispatch call.

1 A. Okay.

2 Q. It's on the CAD report that you've
3 mentioned earlier that you've reviewed, correct?

4 A. Yes.

5 Q. And when you get information on a dispatch
6 call on a CAD report, as an officer, reasonable
7 officer, you don't necessarily rely on that as
8 the truth or the gospel, do you?

9 A. Well, now, that's a whole different
10 situation. The computer-assisted dispatch
11 system obviously is and has been tested in the
12 past in the courts as a reliable source of
13 information for an officer, because if an
14 officer can't rely on the information at least
15 for making reasonable decisions about his or her
16 actions, then we've got a systemic failure. So
17 whether or not it is absolute or not, there have
18 been resolutions throughout the land that it is
19 a reasonable source of information for a police
20 officer.

21 What they have found unreasonable is
22 when somebody makes a telephone call and won't
23 give their name and simply says, for example,
24 there's a person on the street corner and he's
25 got a gun. Now, that has been tested in the

1 court, and that is unreasonable. They said you
2 cannot intrude into a person's life because of
3 an anonymous call and you go and stop someone,
4 which is a seizure under the Fourth Amendment,
5 and then frisk them because somebody said.

6 That's not the same thing as a CAD
7 report. The system has been tested through the
8 courts, and the only thing we can rely on is the
9 fact that it has been tested and said to be
10 reasonable.

11 Q. My question is different.

12 A. I don't -- I didn't take it as different.

13 Maybe that's why I asked you to repeat it,
14 because I didn't understand it.

15 Q. Okay. So are you saying that the
16 information reported through the CAD system and
17 over the air, somebody calls up 911, that call's
18 broadcast by 911 dispatch or that call is
19 communicated via CAD report, that that
20 information is a hundred percent reliable?

21 A. I never said that.

22 Q. Okay. That's what I want to know.

23 A. No. I think I gave a very detailed
24 description of what I believe was the reasonable
25 standard that has been tested. In other words,

1 an officer can't say I don't believe that so I'm
2 not going. Now, an officer has to test that
3 information against anything else as time goes
4 on.

5 Q. Thank you.

6 A. Which I believe Ron Frashour, in this
7 case, Officer Frashour did very well.

8 Q. I understand. But I think you finally got
9 to the answer to the question, which is you
10 don't know if the information's a hundred
11 percent accurate, you have to test it, I think
12 is the phrase you used. Correct?

13 A. Well, when you go to a hundred percent you
14 lose everybody on most everything, because I was
15 taught in first grade, when trying to answer
16 true and false questions, look out for always
17 and never. And I was told, "Kenny, if it says
18 always or if it says never, those are the times
19 you really have got to be careful." So I'm
20 going to apply that right now. When you go to a
21 hundred percent, you always have difficulties.

22 Q. You agree that officers have to test
23 information that they receive at the beginning
24 of a call?

25 A. No. Reasonably test it. In other words,

1 you can't be testing everything. Absolutes.

2 Again, you're back to always and never. You

3 have to act reasonably. That is what officers

4 do, yes.

5 Q. And under that standard, in your view,

6 they have to test the information?

7 A. Reasonably test it, if they can. Yeah.

8 Q. So the information, if it were reliable,

9 they wouldn't have to test it, would they?

10 A. Well, no, because reliable has been tested

11 by the court. For example, in using informants,

12 there's a guide as to what's reliable and what

13 isn't. And even if you think it's reliable, you

14 have to apply that reasonably. So we're back to

15 the same standard.

16 Q. Okay. The call comes across, and there's

17 certain information in the call, okay? in this

18 case. Correct?

19 A. Yes.

20 Q. And I think you testified previously today

21 that the call involved a, quote, high level of

22 threat. Do you remember that testimony?

23 A. Yes.

24 Q. And when that call comes in, at that point

25 it's a potential threat, right? You don't know

1 what it is until you get out there.

2 A. Oh, absolutely. Yes.

3 Q. And you also said, again, that with

4 respect to Mr. Campbell being distraught, that

5 it was a high level of threat. And again, until

6 that information is assessed, until there's some

7 continuing threat assessment throughout the

8 course of the call, from beginning to the end of

9 the call, it's a potential threat.

10 A. Yes.

11 Q. And suicide by police information that

12 came across that CAD report, and perhaps

13 otherwise, again, makes it a potential threat.

14 A. Yes.

15 Q. And when Bocchino makes -- Officer

16 Bocchino makes some comments to Officer Frashour

17 behind the apartment, on the opposite side, on

18 the west side of the apartment building, again,

19 that information is regarding a potential

20 threat. At that point there's no immediate

21 threat.

22 A. Yes. But if you'll listen to your own

23 questions, you're building upon potential,

24 potential, potential, and all of it is

25 confirming and confirming and confirming. So

1 you've got quite a bit of information coming at
2 an officer that keeps the high level of threat
3 constant.

4 Q. The high level of potential threat.

5 There's no immediate threat yet at that point,
6 is there?

7 A. No; otherwise, you just start shooting
8 when you arrive, obviously, and you don't do
9 that.

10 Q. And in terms of Angie Jones and the kids
11 being out, okay?

12 A. Yes.

13 Q. And you recall testifying today that, of
14 course, in your opinion that can be interpreted
15 two ways. And you said that, and I want to be
16 clear I understand this, you said that officers
17 are trained that that's an indicator that a
18 decision has been made by the individual not to
19 harm the person who is now out of the apartment
20 or the house.

21 A. I indicated that that's one of the
22 possibilities, yes, that's correct.

23 Q. And what I'm wondering, can you point to
24 specific training of the Portland Police Bureau
25 that communicates that that's an indicator?

1 A. I believe that it's in the hostage and
2 barricaded subject advanced training and
3 possibly in the crisis intervention training
4 that is offered to most of the officers. It's a
5 40-hour course taken from the Memphis Police
6 Department crisis intervention team training
7 program that was --

8 Q. You're thinking of the CIT training?

9 A. Yeah, it's in there and/or the training
10 offered by -- the advanced training on hostage
11 intervention issues. It's all about -- The FBI,
12 for example, has established a standard. I'm
13 certified both as a negotiator and as an
14 instructor for negotiations, and took the FBI
15 course where we discussed the various meanings
16 of different aspects of a barricade or a hostage
17 situation. And it's recognized throughout law
18 enforcement that releasing a subject doesn't
19 necessarily mean it's over. It may mean that
20 the plan is being implemented.

21 Q. Do you know, this training that you're
22 describing, as you sit here today, do you know
23 for certain that Ron Frashour received the
24 training that you're describing?

25 A. Well, not specifically, no. But it's

1 recognized training throughout the country on
2 these kinds of concepts. The Portland Police
3 Bureau certainly recognizes that, otherwise, I'm
4 going to have to take back everything I've said
5 about the Portland Police Bureau's training over
6 the many years. Because I know that they are
7 aware of the fact that when subjects are
8 released, that, yes, that's a good indicator for
9 the subjects that are released, but it may be
10 that the person has begun to implement a plan
11 either to confront or to harm themselves.

12 MR. RUBIN: Can we take a break for
13 around five minutes?

14 MR. KARIA: Sure.

15 (RECESS: 1:28-1:35)

16 BY MR. RUBIN:

17 Q. I want to go back to a piece of training
18 you described. And you referred to survival
19 training.

20 A. Yes.

21 Q. And the survival training, was that
22 training that was provided to some of the
23 officers but not all the officers of the
24 Portland Police Bureau?

25 A. That's correct.

1 Q. And that was not something sponsored by
2 the Portland Police Bureau, as I understand it.

3 A. I think they hosted it, yes. We needed a
4 very large venue, so it was at the Red Lion
5 Hotel out by the airport, if I remember. Or is
6 that -- maybe I'm not thinking of the right --
7 let's see. No, that may have been in Seattle.
8 I'm trying to remember where it was in Portland.

9 I don't remember. We had a very big venue for
10 it, and it may not have been -- I think I'm
11 thinking of Sea-Tac now instead of Portland.

12 Q. I want to sort of ask, sort of following
13 up, going back to where we ended, which is about
14 the children and Angie Jones, the girlfriend,
15 being out of the apartment --

16 A. Okay.

17 Q. -- and Campbell being the only person
18 there. You're aware at that point Sergeant
19 Reyna, who was at the scene and directing the
20 scene and sort of -- one of the two sergeants at
21 the scene, she was actually -- she had thought
22 that it de-escalated sufficiently that she was
23 ready to walk away. Do you remember that?

24 A. I remember some testimony about that, yes.

25 Q. And are you aware that there were also

1 other officers who thought that the scene had
2 de-escalated at that point?

3 A. Yes, I believe there were.

4 Q. And in terms of looking -- in terms of the
5 report in the CAD, the actual reference was back
6 blinds opening up. Okay?

7 A. Yes.

8 Q. And are you aware that, in fact, Ron
9 Frashour in this hearing has said that that
10 isn't a bad thing?

11 A. That he said it was --

12 Q. Not a bad thing.

13 A. Not a bad thing? Yeah. I would have to
14 look at the specific testimony, but I don't
15 think he ascribed it as a bad thing.

16 Q. So you agree it's not a bad thing.

17 A. No, I think that his testimony at the time
18 was that. I think it could go either way,
19 personally. I'm rendering my opinions about it.

20 Q. So if Mr. Frashour said that Campbell's
21 looking -- that report in the text, that report
22 that was broadcast, wasn't necessarily a bad
23 thing, would you agree with that?

24 A. Well, I think you've got Officer
25 Frashour's deposition and testimony, and I

1 believe it's blurring right now. But I don't
2 believe it was quite always just -- That's the
3 way you're characterizing it. I'd have to go
4 back to the testimony for certain.

5 Q. So let me ask you the question again. If
6 Mr. Frashour said that he didn't think that
7 Mr. Campbell looking out the back blinds was a
8 bad thing, would you agree with that?

9 A. Well, I can't disagree with something he
10 said if he said it. So I'm just saying that I
11 read a lot of testimony, and there were several
12 different offerings of information by Officer
13 Frashour. And the exact words I would prefer --
14 unless you're giving me a hypothetical to
15 assume, I would have to look at his testimony.
16 I can't recall it specifically.

17 Q. Then let me ask you another question. Are
18 you aware that officers, including Ron Frashour,
19 had testified, have given information previously
20 that given the fact that they were aware that
21 there were communications going on with
22 Mr. Campbell, that one of the possibilities was
23 that Campbell would be coming out?

24 A. Oh, I think that's always a possibility.
25 Officer Frashour was, of course, focused on

1 lethal cover. Some other officers were involved
2 in some texting.

3 Q. So if Mr. Frashour thought it was
4 reasonable to believe that one of the
5 possibilities was Mr. Campbell would be coming
6 out, would you agree with that?

7 A. Well, I think that's got to be one of the
8 possibilities, yes.

9 Q. And you said, again, that it was a high
10 threat when Mr. Campbell came out. And I just
11 want to be clear. When Mr. Campbell first
12 emerges from Apartment 37, at that point it's
13 still a potential threat, he hasn't done
14 anything yet to make it an immediate threat.

15 A. No. You're putting the word "potential"
16 in front of when I say those are high threat
17 times. I'm using the word "threat" as threat
18 assessment. And assessment is the same thing as
19 potential. So you're putting the word in front
20 of threat and I'm using the word after. You're
21 saying potential threat and I'm saying threat
22 assessment. The word of art in law enforcement
23 is threat assessment. And that means you're
24 assessing, and it's a potential. So I don't
25 disagree. I just -- I use a term of art.

1 Q. And regarding Mr. Campbell's pace when
2 he's coming out of the apartment, are you aware
3 that some officers have given information and
4 testified that Mr. Campbell was walking out
5 slowly?

6 A. Yes, there was some differences about how.
7 There were witnesses also, but they indicated
8 quickly. There were differences of opinion,
9 yes.

10 Q. And you're aware that some officers
11 testified that they were not concerned about the
12 pace at which Mr. Campbell came out?

13 A. I don't recall specifically. Again, if
14 I'm going to confirm, you know, testimony, I'd
15 prefer to look at it. And I don't have that
16 with me. There were some differences of
17 opinion, that's true.

18 Q. And isn't it also true that officers
19 thought that, in fact, Mr. Campbell was
20 complying up until the time that he was 15 feet
21 in front of the police car, with his hands on
22 his head, standing with his back to the police
23 officers?

24 A. Well, there were officers who weren't --
25 Let me answer yes, but there were officers who

1 weren't challenged with the specific assessment
2 of his threat and of his compliance because
3 there was a less-lethal officer specifically
4 assessing that. That's Officer Lewton. And
5 there was the lethal cover, Officer Frashour,
6 who was specifically challenged and charged with
7 that type of threat assessment. There were
8 other officers who obviously were in different
9 positions.

10 Q. And as I understand your testimony,
11 whether or not somebody is or is not complying
12 is one of the important pieces of the threat
13 assessment, correct?

14 A. Sure.

15 Q. And whether or not somebody is or is not
16 complying is an important piece of the totality
17 of the circumstances, correct?

18 A. Yes.

19 Q. And are you aware that during the internal
20 affairs process Mr. Frashour said that other
21 than Mr. Campbell moving his hands from the back
22 of his head to straight up in the air, he did
23 not see Mr. Campbell fail to comply with any
24 commands?

25 A. I don't recall the specific testimony;

1 however, he was focused on when it becomes a
2 lethal encounter, because of his focus on the
3 lethality of the decision that has to be made.
4 Obviously he can also rely on less lethal,
5 Officer Lewton, who made a decision as to
6 compliance. The application of the beanbags is
7 certainly evidence of lack of compliance. And
8 he is certainly in a position to also realize
9 that is happening.

10 Q. But you would agree that if Mr. Frashour
11 said that other than Mr. Campbell not moving his
12 hands up in the air, that he did not see
13 Mr. Campbell fail to comply in any other way,
14 that that would be important as part of the
15 thought process, decision-making process?

16 A. Sure.

17 Q. And you also talked a little bit about
18 Mr. Campbell's tone. Do you recall that?

19 A. Yes.

20 Q. And that was from Mr. Frashour's
21 perspective, as I understand your testimony.

22 A. Other officers too. Officer Lewton,
23 Officer Willard.

24 Q. You would also agree that the substance of
25 what is said by a subject is important as part

1 of a threat assessment?

2 A. Sure.

3 Q. And it's important as part of the totality

4 of the circumstances?

5 A. It certainly can be, yes, sir.

6 Q. And just so that I'm clear, so we don't

7 have to go through this some more, so when you

8 said that as part of the threat assessment,

9 which we've had lots of testimony up to date

10 on --

11 A. Right.

12 Q. -- that Mr. Campbell was a high threat,

13 you're still talking about potential threat?

14 A. In terms of threat assessment, that's

15 correct, because of everything that was known

16 and the actions that took place. And obviously

17 deadly force wasn't applied until a certain

18 point. So no force had taken place by Officer

19 Frashour until the force took place. Officer

20 Lewton made force decisions, for which I'm not

21 here to critique one way or the other, but I

22 gave an opinion.

23 Q. So in your opinion, the time at which

24 Mr. Campbell, in Mr. Frashour's viewpoint, posed

25 an immediate threat of death or serious physical

1 injury was as he was getting to the front of

2 that silver Volvo?

3 A. Moving in that direction was one; the

4 other, the hand movements towards the waist,

5 yes, that becomes an immediate threat.

6 Q. In terms of the Port -- I apologize for

7 continuing to mention the Port.

8 In terms of the Portland Police

9 Bureau's training, are you aware that one of the

10 points of emphasis during the patrol tactics

11 training in various years, various inservice is

12 on officers' communication?

13 A. I don't understand the question.

14 Q. Are you aware that part of the training in

15 patrol tactics for police officers for the

16 Portland Police Bureau includes an emphasis on

17 communication, communicating at a scene?

18 A. Well, I'm going to, again, tell you I

19 don't know what you mean by communications,

20 because we talk about several levels of

21 communications. For example, police officers

22 are taught to communicate by eye, hand, voice,

23 and simply by body language. So there's a lot

24 of communicating that goes on that is not always

25 voice, especially where there's a team and

1 specific assignments. So that's why I'm -- for
2 you to cure the question. I'm not certain what
3 you mean by communications.

4 Q. But assuming what you just said, let's
5 assume that what you just said is accurate,
6 that, in fact, those are the various ways in
7 which Portland police officers are taught to
8 communicate. They're also taught and the
9 expectation is that that kind of communication,
10 in whatever means you just described, is
11 something that all officers will be engaging in
12 during the course of an incident, correct?

13 A. To a lesser or greater degree depending on
14 the circumstances, yes.

15 Q. And are you aware that, in this case,
16 that, in fact -- That's okay. Let me strike
17 that.

18 Are you also aware that, in this
19 case, that Ron Frashour in fact said he was
20 surprised by the beanbag being shot?

21 A. Yes.

22 Q. And are you also aware that Ron Frashour
23 said that not only did he see the first beanbag
24 round hit Mr. Campbell, but in fact Mr. Campbell
25 stumbled as a result of that beanbag hitting

1 him?

2 A. I think that that's not exactly a

3 summation of his testimony. With that caveat,

4 I'll say there was some testimony surrounding

5 his surprise. He did not really see it connect

6 or know what it did. And he did not believe

7 that the movement was in concert with an

8 evaluation of pain. But other than that, I

9 think there was some testimony regarding that

10 issue.

11 Q. That Mr. Frashour, in fact, thought that

12 the first beanbag was effective in that it

13 caused Mr. Campbell to stumble forward.

14 A. I don't believe that's exactly the

15 testimony. I would need to look at it

16 specifically. I think that that's a summary

17 that may be just a slight bit off, but -- as I

18 recall it. I think that he did see -- hear and

19 see a beanbag round, but was surprised as to the

20 reaction. There was a stumble, he kept his

21 hands up behind his head. That it was not a

22 direct connect in the manner that he thought it

23 would be, that it -- he thought that the beanbag

24 would have done more if it had. That's what I'm

25 remembering. And I'm sorry, but I really

1 believe that that summary of his testimony may
2 be misleading a little bit.

3 Q. And you're also aware that following the
4 time that Mr. Campbell was hit with the first
5 beanbag, between the time that he's hit with the
6 first beanbag until the time that he's shot, at
7 no point does any officer, including Officer
8 Frashour or Officer Lewton or anybody else, yell
9 a command at Mr. Campbell to stop, do they?

10 A. I believe that -- Well, I don't know that.
11 There were three seconds that was a time -- I
12 think some agreement from -- for his movement
13 toward the vehicle, that there was a
14 three-second interval time. There were commands
15 shouted. And, of course, beanbag rounds applied
16 are commands. They are the loudest of commands,
17 they are the hardest of commands, they are the
18 most difficult of commands to override, because
19 not only is it a command, it's loud, obviously,
20 shotgun blast, and then it's the application of
21 a tool that is telling you to stop and we want
22 compliance. So it is believed that less-lethal
23 application each and every time is a command.
24 It's not a verbal command. It's a command by
25 law enforcement because it's an intervention.

1 Q. Are you also familiar with a method for
2 taking people into custody in high-risk stops
3 when officers, in fact, ask somebody to go to
4 their knees before they take them into custody?

5 A. That is part of the procedure once you get
6 compliance while they're standing. You want
7 their hands in the air first because that
8 stretches the clothing. If the hands are behind
9 the head, for example, they can be palming a
10 small weapon. So you want to see the palms.

11 The next thing you do, if I may
12 stand, I can hold my hands here and, of course,
13 you can't see anything. And I'm standing now
14 with my hands behind my back. If I ask for the
15 hands to go up, if you'll notice, my jacket goes
16 up with it. And what it does is it stretches
17 the clothing, and allows an officer to see, and
18 stretch, if there's a bulge.

19 So the fact is there were commands of
20 that nature, and he did not comply.

21 Q. And you also testified that Mr. Campbell
22 held four people against his will.

23 A. I didn't say that. I said conceivably
24 against their will, because they did not know at
25 the time.

1 Q. There was no information at the scene that
2 anybody was held against their will, is there?

3 A. Hold on. When they got the call they said
4 there were -- the woman had not been heard from,
5 Angie had not been heard from, and that they
6 believed the children might be with her. That
7 is an immediate potential of a hostage
8 situation. I do believe that it was a
9 consideration.

10 And if you'll read back my testimony,
11 I was very precise, in fact, I corrected myself
12 when I first said it, and then I said
13 conceivably it was, because I wasn't saying that
14 they were acting on a hostage situation. I said
15 conceivably. And I even remember while I was
16 testifying that I corrected myself and said
17 conceivably.

18 Q. Are you aware that there's nobody in this
19 case who has ever said that Angie Jones or those
20 three children were held against their will?

21 A. They did not know under what circumstances
22 they were in the apartment. That's all I recall
23 from the entire digesting of the file. And I
24 said that when you get a call that somebody is
25 in an apartment, that has indicated that there's

1 a man with a gun -- Mr. Steward in his 911 call
2 very clearly said, "I think he even fired the
3 gun one time," and said that "She said she
4 called the police but we never heard from her
5 again."

6 All of that, I mean, I don't believe
7 it takes a whole lot to connect dots and say,
8 you know, this conceivably is a situation where
9 they may be. Whether that assessment was actual
10 or real doesn't make any difference. It's my
11 opinion that when you get that kind of call, and
12 you've got a person and three children, and
13 they're in there, and you don't know what's
14 going on, that has to be at least a thought
15 process. Nothing more but a thought process.

16 Q. Would it be reasonable for officers at the
17 scene to believe and to testify and to provide
18 information that there's never been any
19 indication in this case from any of the officers
20 that those people were held against their will?

21 A. They really didn't know. I mean, they let
22 them go. Why did they have such a relief when
23 they walked out? I mean, everybody thought,
24 wow, this is really -- you know, this is good.
25 I mean, if you think that's good because they

1 came out, why would it be bad because they were
2 in? It's because they were worried about them.
3 And if they're worried about them, what are they
4 worried about? They're worried about their
5 harm. If they're worried about their harm, from
6 who? Well, from Aaron Campbell. Why? Well,
7 maybe because they're being held against their
8 will. And I do believe there was some thought
9 process in there that I recall.

10 Q. I want to talk a little bit more about
11 totality of the circumstances.

12 A. Sure.

13 Q. And you would agree that resources are a
14 part of the totality of the circumstances,
15 resources at the scene?

16 A. For what?

17 Q. For evaluating the totality of the
18 circumstances.

19 A. For what?

20 Q. What do you mean by for what?

21 A. I don't understand the question. Because
22 totality of the circumstances for what? That we
23 have a dangerous situation that has a high
24 probability of a risk? Is it part of the
25 evaluation of totality of circumstances for the

1 planning? The totality of the circumstances for
2 the application of the beanbag? The totality of
3 the circumstances for deadly force?

4 The resources at the scene, as in
5 Plakus versus Drinski, don't make any difference
6 because the totality of the circumstances for
7 the application of deadly force are the specific
8 totality of circumstances at the moment the
9 decision was made given what the officer
10 reasonably believed.

11 Q. So you are compressing the totality of the
12 circumstances with respect to the decision
13 making to use deadly force to exactly what?
14 What are the totality of the circumstances in
15 your mind?

16 A. Well, see, that's where the question is
17 confusing, because totality of the circumstances
18 is an evaluation that is done given a particular
19 situation. For example, Officer Lewton will be
20 judged on the basis of the totality of the
21 circumstances that he faced at the moment he
22 applied the force that he did. Otherwise, the
23 totality of the circumstances, generally
24 speaking, is only whether or not deployment was
25 made, whether officers were there.

1 There was no Graham V Connor decision
2 at that scene except for Lewton and Frashour.
3 So when you're applying the specifics of the
4 totality of circumstances, it's about the use of
5 force.

6 Now, if you're evaluating planning
7 and management of the scene, you would take into
8 consideration what a sergeant knew and whether
9 or not she or he did certain things. So
10 totality of the circumstances applies, in my
11 opinion, to the evaluation that you're making
12 about a specific application.

13 Q. So would you agree that, in fact, the
14 time, tactics and resources available are a
15 factor to be considered as part of the totality
16 of the circumstances when deciding to use force?

17 A. No.

18 Q. Okay. And you also mentioned that the
19 officer's perception is the basis for that
20 officer's decision.

21 A. Reasonable objective perception.

22 Q. I want to talk a little bit about the
23 canine, okay?

24 A. Yes, sir.

25 Q. In terms of the canine, what, if anything,

1 do you know about the specific dog that was at
2 the scene?

3 A. Bono was considered a good dog. He had
4 had some misses in the past; was trained to, I
5 believe, a recognized standard; and that they
6 considered Bono aggressive. And probably
7 considering it took him a while to finally get
8 traction when he took off, I'd say that probably
9 comports with it.

10 Q. And you're also aware that all the tools
11 that Portland police officers and officers in
12 general use, they all fail, right? They
13 sometimes don't work, do they?

14 A. They all what?

15 Q. Fail.

16 A. Fail. Gosh, that's a pretty big
17 statement. I think you have to look at a
18 specific situation. Does any tool have the
19 ability of failing? Yes, every -- everything
20 has the potential for not failing, but perhaps
21 not being effective. It's possible, yes.

22 Q. Okay. So just to be clear, and I'll break
23 it down, you taught control holds?

24 A. Yes.

25 Q. And you're aware officers, of course, use

1 control holds?

2 A. Of?

3 Q. Use control holds, you're aware of that?

4 A. Of used?

5 Q. Officers use control holds.

6 A. Yeah, I was just kind of shocked because

7 this wasn't a control hold issue. But, yes,

8 they can use, not in this case, but they can use

9 control holds.

10 Q. And they don't always work, right?

11 They're not always effective.

12 A. Well, that's true. I mean, sometimes

13 skill, size, whether the person feels pain. You

14 know, if you're not feeling pain, it's really

15 hard to get control of somebody.

16 Q. And I think you also mentioned a little

17 bit earlier Tasers.

18 A. Yes.

19 Q. And you're aware that Tasers don't always

20 work.

21 A. Yes.

22 Q. They don't always have the effect that's

23 desired.

24 A. Well, for various reasons, but --

25 Q. Correct.

1 A. We could go -- that's a whole --

2 Q. Correct.

3 A. -- eight-hour discussion, probably, or

4 more. But, yes.

5 Q. And handguns used by police officers don't

6 always work.

7 A. I testified to that earlier, you know,

8 giving one case. I could go into many more.

9 Q. That they don't always work.

10 A. That's correct.

11 Q. And in this case, AR-15 --

12 A. Wait a minute. Don't always work. The

13 bullets don't always have the effect desired.

14 There are times when the handgun actually fails.

15 There are times when the ammunition fails. I

16 want to make clear there's a whole lot of

17 different intricacies in terms of an evaluation

18 of not being effective or failing. But given

19 that, yes.

20 Q. And the person shooting the weapon may not

21 be accurate with the shot.

22 A. Unfortunately, under the stress of

23 circumstances, very often it's a very low

24 effective rate compared to training, but that's

25 correct.

1 Q. How low is the accuracy rate on handguns
2 for police officers when they use a handgun?

3 A. When? At the range or in the field?

4 Q. No, in the field.

5 A. About 33 percent.

6 Q. And I want to talk about the AR-15 also.

7 Isn't the AR-15 another weapon that, in fact,
8 can fail?

9 A. Tell me what you mean by that. There's --

10 Q. The gun doesn't operate properly.

11 A. The gun doesn't operate properly?

12 Q. Yes.

13 A. Could happen.

14 Q. And the person shooting the weapon might
15 not hit the target.

16 A. Does happen.

17 Q. And for whatever reason, the AR-15 being
18 shot isn't effective to get the control that
19 you're looking at, looking for.

20 A. Yeah, that's a lot less when the -- when
21 the round hits as intended, given the objective
22 reasonable belief to apply it, with an AR-15,
23 that has a lot less failure in terms of the
24 stopping than, say, a handgun would because of
25 the speed and particular ballistics information

1 of the bullet. It has, as is described in the
2 medical record in this file, a tremendous shock
3 to the system effect that a 9 millimeter, for
4 example, would not have.

5 Q. And isn't it also true that officers,
6 people, sometimes don't do what is expected of
7 them to do, other police officers at a scene?

8 A. Well, I don't see how anybody could say
9 that -- I mean, there's only one way to answer
10 that. Certainly sometimes people under
11 circumstances don't do, sure, what's expected.
12 We're at that hundred percent. Remember my
13 first grade lesson, always and never, be
14 careful.

15 MR. RUBIN: Let's take five minutes.

16 (RECESS: 2:04-2:13)

17 BY MR. RUBIN:

18 Q. I just have a few more questions with
19 respect to training.

20 A. Yes.

21 Q. I think you said you do training of
22 officers concerning people who are either
23 emotionally distraught, have mental illnesses or
24 emotional crisis. Do you remember that
25 testimony?

1 A. Yes. I'm the assigned instructor for
2 both - even though it's not the contemporary
3 term, it's in the curriculum - mentally
4 retarded, and I am the instructor for the
5 mentally ill, emotionally disturbed, drug
6 induced or alcohol. And I do that training not
7 only regionally but on a national basis as well.

8 Q. And what, if anything, do you tell
9 officers with respect to tactics when dealing
10 with somebody who is emotionally distraught,
11 emotionally upset, in emotional crisis?

12 A. Well, basically it's assess carefully
13 actions, that they're irrational, or can be, and
14 irrational and irresponsible, not seeing the
15 actions that they or others are doing or
16 involved in in the light of the circumstances
17 they're in, and, therefore, they can become
18 dangerous. Now, that's when, you know, you have
19 a person on the street, for example.

20 If they're in an apartment and not
21 coming out, obviously it ratchets the threat
22 assessment up further. If you've got
23 information that they're armed, then that's a
24 further assessment. And, you know, it just
25 keeps going. In other words, you have all this

1 information.

2 What you do, you try to communicate.

3 And then it's a matter of an evaluation of if

4 they've got a gun and they have a desire to die,

5 we talk about suicide by cop, and what all of

6 that means.

7 It's an interesting theory, but

8 obviously when an officer's making a decision as

9 to deadly force, it's an after evaluation as

10 opposed to a during evaluation, because if the

11 person falls into the objectively reasonable

12 analysis that deadly force needs to be applied

13 at that moment, whether they want to be shot or

14 not doesn't impact your decision. And that's

15 what we discuss.

16 And then we discuss the phenomena,

17 the statistics, the data. I give them case

18 histories of individuals that do that or have

19 done that.

20 Q. And are you aware of decisions, in fact,

21 where the courts have said that a subject's

22 state of mind, mental health status --

23 A. I didn't hear the question.

24 Q. Court decisions where the courts have said

25 that somebody's mental state, somebody's mental

1 condition, emotional condition is something

2 officers need to take into account --

3 A. Sure.

4 Q. -- when deciding to use force?

5 A. Sure.

6 MR. RUBIN: I don't have any other

7 questions.

8

9 REDIRECT EXAMINATION

10 BY MR. KARIA:

11 Q. I'm going to direct your attention back to

12 Joint Exhibit 14, and specifically Page 3.

13 Mr. Rubin asked you a question about the

14 totality of the circumstances, and time, tactics

15 and resources that are available. Under the

16 police bureau policy, you see Paragraph F as

17 being one of the factors of the totality of the

18 circumstances, right?

19 A. Yes.

20 Q. In your opinion, at the time that Officer

21 Frashour used deadly force, were there any time,

22 tactics or resources available that Frashour

23 should have waited for before using deadly

24 force?

25 A. Absolutely not.

1 Q. Do you recall, Mr. Katsaris, that when
2 Officer Frashour sees Mr. Campbell standing
3 approximately 15 feet away from the custody
4 team, and after Mr. Campbell appears to be
5 nonreactive to the beanbag rounds, and
6 Mr. Campbell then subsequently reaches furtively
7 to his waistband, that Officer Frashour thought
8 at that moment he was facing a deadly force
9 encounter? Do you recall his testimony to that
10 effect?

11 A. Yes.

12 Q. And do you recall Officer Frashour
13 subsequently stating that as Mr. Campbell began
14 to run, he was waiting -- something to the
15 effect of "I was waiting to see Mr. Campbell's
16 hand come out," something to that effect?

17 A. He was obviously in the process of making
18 the decision that nobody wants to make, and that
19 is to shoot an individual with an AR-15, which
20 will have a pretty precise delivery to the
21 stopping area that they're trained to deliver
22 the projectile to, and take, conceivably take a
23 life. It certainly is going to do a lot of
24 injury.

25 Q. You recall, do you not, Officer Frashour's

1 testimony that -- to the effect of "I can't let
2 Mr. Campbell get to the front of that Volvo
3 because then he'll have cover and we'll have a
4 shootout"?

5 A. Right.

6 Q. Do you recall that?

7 A. Yes.

8 Q. During the three seconds that Officer
9 Frashour doesn't fire his AR-15, in your
10 estimation is that a police officer who is
11 trying to resolve a confrontation with less than
12 deadly force?

13 A. Yes. Or certainly hoping for a resolution
14 with less. But when he made the decision, it
15 was in the split-second time to make it.

16 Q. At the moment that Officer Frashour uses
17 deadly force when Mr. Campbell is a step or two
18 away from hard cover, you've already testified
19 that in your judgment Mr. Campbell in fact posed
20 an immediate threat of death or serious physical
21 injury, right?

22 A. Given the totality of the circumstances
23 and the actions of Mr. Campbell at the moment,
24 yes.

25 Q. And in your judgment, is it practical for

1 a police officer at that moment to resolve a
2 deadly force incident with less than deadly
3 force?

4 A. First of all, you don't -- there is no
5 application of practical. And I've already
6 testified to that, so I don't want to, you know,
7 reinforce that by answering that question in
8 that way. I'd have to say if you substitute
9 reasonable, which is an objective reasonableness
10 standard, I would say that it was reasonable at
11 that moment to do that, yes.

12 Q. So let me rephrase the question, then. I
13 understand your concern with the word
14 "practical." And I'm right, your concern with
15 the word "practical" is that's not the standard,
16 am I right?

17 A. It can't be taught, that's correct,
18 because it doesn't fit into the law or the
19 training.

20 Q. In your judgment, at the moment that
21 Officer Frashour used deadly force, was it
22 reasonable to expect him to resolve that
23 confrontation with anything less than deadly
24 force?

25 A. Not at that moment, no.

1 Q. And why not?

2 A. Because to do so would have the

3 consequences, at least reasonably believed at

4 the time of injury or death, given the totality

5 of the circumstances of what he believed he knew

6 about Mr. Campbell, knew about the weapon, and

7 what actions he was perceiving in terms of his

8 activating on the possession of a firearm.

9 MR. KARIA: Nothing further.

10 MR. RUBIN: I don't have any other

11 questions.

12 (DEPOSITION CONCLUDED: 2:22 p.m.)

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1 CERTIFICATE

2 I, Chris Villano Iba, a Certified
3 Shorthand Reporter of the State of Oregon, do
4 hereby certify that W. KEN KATSARIS personally
5 appeared before me at the time and place
6 mentioned in the caption herein; that the
7 witness was by me first duly sworn on oath, and
8 examined upon oral interrogatories propounded by
9 counsel; that said examination, together with
10 the testimony of said witness, was taken down by
11 me in stenotype and thereafter reduced to
12 typewriting; and that the foregoing transcript,
13 Pages 1 to 139, both inclusive, constitutes a
14 full, true and accurate record of said
15 examination of and testimony by said witness,
16 and of all other oral proceedings had during the
17 taking of said deposition, and of the whole
18 thereof.

19 Witness my hand and seal as Certified
20 Shorthand Reporter at Portland, Oregon, this
21 29th day of December, 2011.

22

23 Chris Villano
24 Certified Shorthand Reporter
25 Certificate No. 90-0062

