

**In the Matter of the Arbitration Between THE CITY OF PORTLAND,
Ronald Frashour and Grievance PORTLAND POLICE ASSOCIATION**

EXCERPT: Testimony of Robert King

Wednesday, Sept. 21, 2011 - Thursday, Sept. 22, 2011

BEFORE: Jane R. Wilkinson

APPEARANCES: Howard Rubin, attorney for the Employer;

William B. Aitchison, attorney for the Association

THE ARBITRATOR: Thank you very much. It's time for lunch. Come back at 25, 1:30?

MR. RUBIN: Yes.

THE ARBITRATOR: When's your next witness?

MR. RUBIN: Next witness is here. I just want to have lunch and talk to the next witness. But, yes, we're ready to go with the next witness.

(LUNCH RECESS: 12:24 p.m.)

ROBERT KING was thereupon produced as a witness in behalf of the City and, having been first duly sworn on oath, was examined and testified as follows:

DIRECT EXAMINATION BY MR. RUBIN:

Q. Lieutenant King, where do you work?

A. I work for the Portland Police Bureau.

Q. What do you do for the Portland Police Bureau?

A. I'm the public information officer.

Q. And what do you do as the public information officer?

A. We respond to media requests for events that have occurred within Portland, and we are increasingly sharing proactively more of our story. Often the media focuses on certain controversial dramatic events, whereas there's a lot of good work being done daily that the story's not being told. So really it's about sharing information about the police bureau, police work within the City of Portland.

Q. How long have you been the public information officer?

A. Since May of this year.

Q. And how long have you worked for the Portland Police Bureau?

A. I was hired in April of 1990. So just over 21 years in April.

Q. Please explain to the arbitrator your -- the other positions that you've held with the Portland Police Bureau.

A. I originally was hired as a police officer in 1987 by the Lake Oswego Police Department. As a result of that I attended the Oregon Police Academy. I worked in Lake Oswego, ultimately wanting to become a Portland police officer, for about a year and a half. The Portland bureau was not hiring at the time but the Portland Public School Police was. So I went to work for the Portland Public School Police where I worked for a year on afternoon shift, patrolling mostly in North Portland. And then ultimately was hired as a patrol officer for the Portland Police Bureau April 26, 1990. [I] served as a patrol officer in the bureau working initially in training through my training rotation. Training is -- it's an 18-month-long probation period. And at the time you would go to -- I'd already been to the basic academy, but you go to an advanced academy. Then you work in three phases with coaches, so you would spend time at each one of the precincts .

So in my first year and a half working for the police bureau I worked initially at Central Precinct, then at East Precinct, then lastly at North Precinct. And I was assigned permanently in May of 1991, I believe, to North Precinct, and worked afternoon shift there with a partner for the better part of three or four years, at least until Northeast Precinct opened up. And then I transferred there and worked as a patrol officer probably about another year. I was a neighborhood liaison officer. During my time as a patrol officer I was a coach. I worked briefly on the neighborhood response team. The police bureau in the early '90s began a community policing effort, and as a part of that the bureau put together proactive smaller units that were designed to address neighborhood problems and livability issues and put patrol officers in direct contact with the community that wasn't necessarily as a result of a 911 call, but was more part of problems that occurred in a neighborhood. So did that work as a patrol officer. And then ultimately I was transferred to the training division.

Q. Let me stop you there. When were you transferred to the training division?

A. You know, I believe it was -

Q. Approximate.

A. -- sometime in 1995.

Q. And you were still a patrol officer at this point?

A. Correct.

Q. How long were you in the training division?

A. Two years.

Q. What did you do when you were in the training division for those two years?

A. I was a firearms instructor. I taught officers at both the basic academy, at inservice, at the advanced academy, at community academy, and taught firearms, you know, from basic manipulation of the pistol and the police shotgun up to and including, you know, decision making, the law, et cetera. I was a

defensive tactics instructor. The police bureau at that time, still to this day, but they had a certain program that was a little bit different than what the state taught. And I was a defensive tactics instructor, taught a class -- I taught a variety of different classes in that assignment, but they included survival attitudes, emotional survival, suicide prevention. Those were some of the -- I also during that time was assigned, along with Sergeant Larry Baird, the responsibility of the development of the police bureau's less-lethal program.

You know, it was in the -- it was in the mid '90s, really, that there had been a number of shootings, both here locally and around the country, where police officers didn't have intermediate-range tools that were available to them to help resolve confrontations, where people were armed with nontraditional weapons, bricks or bats or bottles, and many occasions officers were shooting and killing suspects, when having an extended-range impact weapon, a less-lethal shotgun, could have played a role as an option in the resolution of the confrontation. So went to a number of schools to be certified as an instructor in less lethal, defense technologies, MK Ballistics. I was also certified as a master instructor in the Sage 37 millimeter launcher. We went to Las Angeles and studied PD and sheriff's office, what they were doing with less-lethal weapons, how they were, you know, training them, how they were deploying them, what circumstances they were being used. So we established basically a less-lethal training program where officers would come in, they'd go through a day of classroom, they would go through a day of practical exercises, and at the end of that time they would be certified as a less-lethal operator. And --

Q. Let me stop you there. You mentioned something about a class relating to survival attitudes?

A. Yes.

Q. What was that class about?

A. As a patrol officer I had been involved -- I was involved in a shooting, a fatal shooting, where back in December of 1991 I stopped a car on Interstate Avenue on a Sunday night at about ten p.m. for what I thought was a traffic violation. And when I made contact with the vehicle occupants, one of the -- prior to cover arriving one of the people in the car got out of the car and attacked me and stabbed me. And I subsequently shot him, fatally wounding him.

And so really, that particular shooting early in my career played a role in shaping, really, the course of my career. I mean there was two sort of distinct paths that it took, and one was wanting to learn everything I could to physically survive encounters, like becoming a firearms instructor and a defensive tactics instructor and teaching classes to other officers on survival attitudes. And it took another track, it -- I wanted to make sure that, emotionally, that -- You know, shootings by their nature are oftentimes critical incidents, or what, in the, you know, the vernacular is referred to as traumatic incidents. Typically when you experience vulnerability awareness and loss of control, that can be very traumatizing to people. I mean we see that in our officers, we see it, obviously, in people that are involved in military service. So when people are close to death, when they think someone's going to kill them or they may die, you know, they often have a very heightened reaction to all of that. So I became a member of the police bureau's TIC team, the peer support team, the traumatic incident committee. And so really wanted to do -- to kind of follow my career along those two tracks, one, to help officers be as ready as they could be for encounters that were -- required skill and technique and managing.

And also, because of the inherent, you know, risk, as well as sort of danger, that's a part of police work, and stress, I wanted to be able to be helpful and supportive to officers because, you know, very often officers will develop coping techniques in response to the work that is -- you know, that is -- it's

oftentimes not healthy and particularly helpful to them in managing the experience or in being able to be effective in their roll as a police officer.

Q. So after you spent the two years in the training division, what other positions did you hold between 1997 and becoming the PIO in May 2011?

A. Well, I didn't mention, but during the time -- while I was still a patrol officer, in, I believe, January, February of 1994, I tested for and I was selected as a member of the SERT team, the police bureau's special emergency reaction team. It's a detached team, and meaning --

Q. What do you mean a detached team?

A. Some of agencies have full-time teams that do high-risk search warrants, they do dignitary protection, on call-ups, they'll do barricaded felon call-ups or hostage rescue situations. The police bureau has had officers assigned throughout the organization that are in what we refer to as detached positions. And so it means, essentially, that you're assigned to SERT for purposes of training and for activations when either there's a high-risk search warrant to be served or when there's, you know, some sort of a high-risk call. And so I served on that team for just under four years. I was trained -- When you're on SERT you're trained both as an entry team member and oftentimes you're given another assignment of police marksman. And so I received --

Q. Let me stop you there for a minute. So the SERT team then was approximately from what period of time?

A. About four years, from 1994 until 1998.

Q. And in that assignment as a detached member of the SERT team, the entry unit -- What is the entry unit?

A. Well, if -

Q. The entry assignment.

A. The entry assignment, the entry team -- Basically the team is divided into two elements, one is the entry and the other is the outer perimeter, also known as snipers or police sharpshooters. So you're cross-trained in both disciplines. But essentially you're trained with a H&K 9 millimeter full auto machine guns, and doing entry work that is designed to, like on a high-risk search warrant, to, for example, breach an entry, to deploy flash bangs to go in, to clear the residence.

Q. What are flash bangs?

A. It's a distraction device. They're bright in light and loud in sound. So we rely on, in circumstances like that, we rely on, among all the tactics we have, suddenness, unexpectedness, violence of action in the entry. And so using a distraction technique like that, when you make an entry into a residence on a high-risk drug search warrant, can reduce the likelihood that a suspect can pick up a weapon and acquire you as a target and fire on you. So giving you opportunities to come in and take control of situations, subdue suspects, arrest suspects; to make it safe, essentially, for investigators to come in and conduct the

investigation, say, the drug investigation of possession or delivery or manufacture of controlled substances. That's just one example.

Q. And in that entry team, are you dealing with people who may be armed or reported to be armed?

A. The SERT team is called in cases where people are believed to be armed. And very often in the analysis, in the evaluation of the risk or the threat that the occupants of the residence present, it's whether they're armed or not, what they're armed with, what crimes have been engaged in, the criminal history. All sorts of things are taken into account in making the decision to use SERT and all factors SERT uses in their evaluation of whether or not to enter, or if to enter, how to go about doing that.

Q. You also mentioned that there is a sharpshooter or a sniper assignment. Did you have that assignment during this four-year period?

A. Yes, I was assigned to the, essentially, the outer perimeter. So that would mean that on call-ups, especially barricades and hostage situations, sometimes suspects would take a hostage, for example, would be a life-threatening situation to the hostage. Negotiations were unsuccessful, and the only way to resolve a confrontation in that particular case is potentially to shoot the person who is the hostage taker. So we had officers -- I essentially was -- essentially was trained in the use of the M 16-style machine gun, H&K .33. They're .223 caliber, they're basically -- ,

Q. Rifle? Shotgun? Automatic weapons?

A. It's an assault rifle. It's a .223 caliber semi-automatic or full automatic rifle. Not a shotgun, not a bolt gun. We also were provided with and trained extensively on bolt guns. It's a rifle, essentially. Like the standard police rifle's a Remington 700. .308 caliber bolt gun fires, you know, a round that the weight of it and its velocity is designed to cause serious injury and death to suspects that are engaged in life-threatening actions.

Q. Let me stop you there for a minute because I don't want to forget a couple of pieces. You mentioned that you were involved -- you were stabbed and shot somebody in December 1991. Was that situation investigated, your conduct in connection with that incident investigated?

A. Yes, it was.

Q. And what was the result of that investigation?

A. That -- well, I mean it's interesting, because at that time, in 1991, we really didn't have the structures in the police bureau and the review process that we do today. As a matter of fact, I was exonerated, and my use of deadly , force was determined to be appropriate or in policy. I don't know how I was notified of that.

Q. And you mentioned that you were, when you were acting as a sniper or sharpshooter, you were on the perimeter. And what's your role when you have that perimeter assignment? What was your role? What was your responsibility?

A. Well, there are various roles. I mean one of them was in the event of breakout. You know, say that the entry team's approaching the residence to breach the entry, go inside, effect the search warrant, to clear the house so that the house could be searched. If somebody were to break out, for example, and try to run away, the perimeter units would be armed with less-lethal and lethal ammunition, and our job would be to stop anybody, notify everybody there was a breakout on whatever side of the house. And our job would be to stop them, to address them as a potential threat, to decide if they were, you know, engaged in a life-threatening action or not.

And on hostage situations, barricaded felon situations, taking dangerous suspects into custody, for example, it was ultimately to decide whether or not to shoot a person, to use deadly force to stop them from their life-threatening action or not.

It was -- it's a capability that the team has available to it in the resolution of high-risk confrontations, with suspects who are violent or been engaged in felonies or demonstrating -- you know, have committed crimes or demonstrating a danger both to themselves and us and maybe the public.

Q. And let me stop you there. Following the assignment to SERT and member in SERT, were you promoted at some point from patrol officer to sergeant?

A. After my SERT assignment in July of 1999, I believe.

Q. And what did you do as a sergeant?

A. At the time the rank was a combined rank, meaning you were promoted to the rank of sergeant but you were either assigned investigative duties or supervisory duties. I was assigned as a detective, received training and, you know, went to a detective academy, and worked through training on the detective division floor. , I was a -- As a trainee detective I investigated robberies, sex assaults, and fraud. And then ultimately I was assigned to the gang enforcement team where I was a detective investigating violent gang crime, where I worked for about a year.

Q. How long were you a sergeant doing detective work?

A. I believe about a year and a half prior to my next assignment, my next job.

Q. What was your next assignment in the Portland Police Bureau?

A. In November of 2000 I was elected as the Portland Police Association president, and served in that capacity for eight years.

Q. Following 2008 what positions did you hold with the Portland Police Bureau?

A. I returned to the police bureau and worked as a patrol sergeant in North Precinct, Northeast Precinct, and worked on both afternoon shift and day shift. And then -- and I think it was July or August of 2008 I was a sergeant of the -- I was the sergeant in charge of detectives. Detectives in the precinct at the time conducted all property crimes investigations. And I was the sergeant in charge of the neighborhood response team.

Q. As the patrol sergeant beginning in approximately 2008, were you still out doing patrols?

A. I was.

Q. How often were you doing patrols?

A. Every day.

Q. And how long were you a sergeant?

A. I worked in the precinct after leaving the union for about one year prior to being promoted to rank of lieutenant.

Q. In approximately 2009 you become promoted to lieutenant?

A. Correct. I was assigned to the training division.

Q. What was your assignment when you were promoted to lieutenant? And what were your responsibilities as lieutenant in the training division?

A. I was responsible for the advanced academy. After officers go through the basic academy and they return, they go through a multi-week, I mean it's like a 12-week now, advanced academy where they are exposed to firearms training, patrol tactics training, defensive tactics training, the law. I mean there's a whole host of both skills that we seek to develop and information that we provide officers in that setting that's designed to help prepare them to begin their work as a patrol officer in Portland. So -- And I had a sergeant and a coordinator and officers working for me in that, overseeing the advanced academy. I also was responsible for the field training and evaluation program.

We have -- In the training division there is a sergeant and there were two coordinators. Coordinators essentially are in daily contact with officers who are on probation. They evaluated their progression through their training.

And there's now -- During the time I was assigned there we added a position, there's a third position.

So I was -- I had a sergeant and three officers that worked for me, that essentially managed however many trainees we had at the time. We hire a Portland police officer. If they don't have previous experience, they go to the basic academy; if they have previous experience, then they just go to our advanced academy. But nevertheless, they have an 18-month-long probation period, all new employees do. And they have to meet the standard evaluation guidelines that are spelled out in the field training and evaluation program. So I oversaw that.

And then in addition to that I was also, at a certain point in my time in training, I was assigned to oversee our patrol rifle program, our less-lethal program, our Taser program, as well as the research and development, research development function that we have in the training division where at the time one officer, now two officers are assigned to conduct research into, you know, either techniques or tools or whatever it is that could help us be more effective in our service.

Q. And in early 2010 - in 2010, entire year of 2010, were you then lieutenant in the training division performing the duties you just described?

A. Yes.

Q. And you mentioned that you're a sniper onSERT. Do you have other certifications? We've heard about certifications with respect to weapons that are used by the Portland Police Bureau. Do you have any certifications with respect to those weapons?

A. Well, at the time I was certified as a defensive tactics instructor, a firearms instructor. I attended the LAPD SWAT sniper school. I was certified by Defense Technologies, which at the time was the manufacturer that we used for less-lethal ammunition. I received a certificate from MK Ballistics, which was also -- it's the - it was the particular -- one of the ammunitions we were using at the time. Attended a school and a master instructor for the Sage gun and rounds. And had basic, at the time, like they had basic and intermediate certifications as a police officer through the state of Oregon.

Q. I want to talk for a few minutes about --

A. Can I mention, because I didn't mention, I was also involved in a shooting during the time I was on the SERT team.

Q. When was it?

A. It was in September of two-thousand -- or September of 1997, I believe. And essentially we were called, we were activated because an individual in a trailer park at 112th and Powell had shot rounds off with his wife inside the trailer. The wife had left, which was probably a good idea. And as a result of that our officers responded, they did an assessment of the situation. They learned there was a man inside that was armed. He wouldn't come out. And we then took our perimeter positions, and over the course of many hours attempt at negotiations were unsuccessful. And ultimately when we were attempting -- when officers on the perimeter, when SERT officers on the perimeter were attempting to deploy gas into the location, the individual began firing out at people that were in, obviously, in the line of fire of his firearm. And as a result of that myself and two other officers fired, shooting him, killing him.

Q. Was that situation evaluated by the bureau at that time?

A. It was.

Q. And what was the result of that evaluation?

A. It was determined that our use of deadly force was consistent with bureau policy and our actions were appropriate under the circumstances.

Q. I want to talk a little bit about your experience working on the streets with people that you have -- that you're dealing with, okay? Based on the experiences that you've had, how would you describe the compliance of people that you're trying to put into custody?

A. Really varied, depending upon the circumstances, you know, the reason for the contact, whether they've been engaged in committing a crime or not, whether they were drunk or high, whether they were armed. I mean it really -- and it was factually and circumstantially dependant on a whole variety of different factors. Some people in dangerous, difficult situations would cooperate and comply, others would not. Some people in low-risk situations would be completely volatile, violent, uncooperative. So really, ultimately the, you know, the behavior of the individuals that I contacted during the time I worked on the street really varied depending upon a whole variety of different circumstances.

Q. People ever yell at you as a police officer?

A. Routinely. Recognizing it varies based on the circumstances, how do you respond? How do you respond when people are yelling at you because you're a police officer and you're trying to interact with them or taking them into custody? I think, you know, again, it would depend on the situation, but I genuinely felt that my job on the street was to do my best to respond to the situation that I was in, using the training that I had to, you know, take control of the situation, to resolve the situation.

Q. Have you ever had people yell at you or say to you, go ahead and shoot me?

A. Many, many times.

Q. Again, recognizing that it varies from situation to situation, but can you give us examples, tell the arbitrator examples of how you respond to some of those?

A. For example, if we have somebody at gunpoint and they're telling us go ahead and shoot me, you know, very often they know we can't shoot them. They're just standing there. It's -- especially, you know, in the early '90s, encounter gangsters on the street, people dealing dope on the street, you have them at gunpoint, they run away. They know you're not going to shoot them, you know you're not going to shoot them. My partner and I, one of my partners on the street, Mike Lee and I, when we had people -- we'd have people at gunpoint for whatever purpose, and when we would hear this, in the course of hearing this we would sometimes say, "Well, we have a consent form."

Q. What do you mean? Somebody would yell at you, "Go a head and shoot me"?

A. We'd have somebody at gunpoint and they'd say, "What do you mean?" They'd say, "Go ahead and shoot me." And we'd say, "Well, hold on a minute, we have to go to the car to get a consent form." They would say, "What do you mean a consent form?" We say, "Yeah, you want us to shoot you, so we have a form for that." So it was routine enough or it occurred often enough that -- And very often, you know, that could be ice breaking and could have an impact on the situation that we were in; not always. But, you know, one of the things we wanted to communicate to people, while staying safe, was we weren't a threat to them, we weren't intending on hurting them, we wanted them to cooperate and comply and do what we're asking them to do. You know, we have to get through this, please just do what you're told, that kind of thing. So, yes, it was very common to experience people who were either defiant or were all-out uncooperative. Sometimes they would yell, sometimes they would say shoot me. And, you know, no one ever said shoot me that I ultimately shot.

Q. Okay. Now, I want to -- You're familiar with the shooting of Aaron Campbell?

A. Yes.

Q. And I want to talk a little bit about the training division review, which is -- should be in front of you, Joint Exhibit 11, beginning at Page 88, just so you have it for a reference. And we'll talk about that in a little bit. But I have some background questions I want to ask. And let me, before we do that, let me also ask you another question, which is during the course of your career have you received any sort of medals or recognition for performance as a police officer?

A. I received a meritorious service medal for valor for the shooting I was in in 1991, and a distinguished service medal for my work as the employee -- I don't think I mentioned the employee assistance coordinator. I was assigned there for about a year and a half between the time I was in the training

division and the time I was promoted to the rank of sergeant. And then a couple of unit accommodations, one for when I worked in North and one for when I worked for the gang enforcement team.

Q. Okay. Now, in terms of the training division review that's involved in this case, how did you come to be assigned to prepare this document?

A. David Virtue was the sergeant in the training division whose job it was to do these shooting reviews. Some years ago the police bureau, the City auditor, Gary Blackmer, and the City Council authorized a contract for an organization called the Police Assessment Resource Center, PARC. And they essentially go around the country auditing police organizations, and review and evaluate the procedures that they have in place for investigating and evaluating the use of deadly force, the review of officer actions. They made upwards of a hundred recommendations for change and improvement in the police bureau related to investigations having to do with the use of deadly force and other serious uses of force. And a part of their recommendation was that a training review or analysis be conducted, or that there be tactical debriefings following shootings, because at the time it was more -- previous to PARC it was more done on a case-by-case basis. And so since that time --

Q. Let me ask you, approximately when is that time that PARC --

A. I think it's 2003, 2002, something like that.

Q. Okay.

A. In the early part of the 2000s that the review was done.

Q. And you mentioned that Dave Virtue was the lieutenant in the training division who had responsibility for doing training reviews?

A. He was a sergeant at the time, and his job was to conduct reviews of shootings. And so as a result of this shooting and how voluminous it was, that there were so many people involved, that the record was so extensive, both of the detectives interviews, the grand jury testimony, as well as all the internal affairs investigation material, he asked me to help him.

Q. And let me stop you there for a minute. Can you explain just sort of in a general way the overall purpose -- I mean what's the overall purpose of the training division review?

A. To evaluate the facts of the case against the training that the police bureau provides to determine if they acted consistent with their training.

Q. And in what circumstances are reviews performed? What triggers a training division review?

A. When there's a shooting or other significant use of force. You know, one of the other -- one of the other reviews that I worked on with now Lieutenant Virtue was the shooting -- the beanbag shooting of the girl involving Chris Humphreys, the girl on the MAX platform. So in cases where, you know, commanders asked that those be sent to the review board or where they wanted an analysis done, in addition to shootings, then the training division would accommodate their request and do an analysis or a review after those incidents as well.

Q. So is there a review done if there's an officer-involved shooting that leads to the death of a citizen?

A. Yes.

Q. And at the time that you were asked by Lieutenant Virtue to help prepare the training review, what was your understanding of what your role in this review was going to be?

A. To review the use of deadly force as well as the use of a beanbag.

Q. And what were Lieutenant Virtue's responsibilities with respect to preparing the training division review?

A. He was responsible for the writing of the timeline, as well as the supervisory response, the initial officer response.

Q. So by timeline, you're referring to the chronology?

A. Chronology, yes.

Q. Maybe if you could just take a look at Joint Exhibit 11, the training review. It begins on Page 89. So the chronology, the timeline that's there was performed by Lieutenant Virtue?

A. Correct. Yes.

Q. And then the initial officer response section, the supervisor response section, those were performed - or those were completed, prepared by Lieutenant Virtue? And then the less lethal and the use of the canine, did you do those sections?

A. I did, yes.

Q. Then you did the deadly force section?

A. Yes. Then there is a post-shooting section. And I believe Lieutenant Virtue wrote tha section.

Q. As part of -- In order to prepare this review --

A. Yes.

Q. -- please tell the arbitrator what materials you reviewed.

A. I listened to the audio interviews of the criminal investigation, as well as read the verbatim transcriptions and the detective case file. I also read all of the grand jury testimony. Obviously there was a verbatim transcription of the grand jury testimony. And I listened to and I read the internal affairs division interviews of Ron Frashour and of Ryan Lewton, and maybe of others as well. But it was really all of those materials. In addition to that I reviewed certain other materials related to suicide by cop, a study done by Ron McCarthy some years before on the analysis of our response to critical incidents. There was some other materials that were like that that I reviewed: The lesson plans for the patrol rifle

program, for the less-lethal program, a review of all training received, generally speaking, firearms patrol tactics, defense tactics training, lesson plans of courses taken by Officer Frashour and Officer Lewton in the relevant areas.

Q. Let me stop you there for a minute. So you said you read an article about suicide by cop?

A. Yes.

Q. Do you recall in a summary way what information you learned from that article about suicide by cop?

A. That many of the suicide by cops happen in the early stages of the call. There's an article -- I don't have it handy. You know, there's a certain volatility risk associated with suicide by cop in that, you know, a person may be armed and try to hurt us because they want to be killed, or they may act as if they have a weapon so that we kill them. I just tried to better inform myself about that particular dimension of this call.

Q. Do you recall learning information with respect to whether people who are looking at suicide by cop are doing it, for example, facing towards police officers or running away from police officers? Do you remember anything about that?

A. I don't know that it was that specific.

Q. You said that you also reviewed some materials with respect to response to critical incidents?

A. Yes.

Q. What were those materials? What did they tell you?

A. Well, one of the documents was -- it was a report written by Ron McCarthy.

Q. Who's Ron McCarthy?

A. Ron McCarthy, he was the -- he began really -- he was one of the forefathers of LAPD SWAT in the early '70s. And he's 70 some years old, and he was a consultant in the country that advises on a whole host of police operations. And so reviewed material related to -- We had a shooting, Ray Gwerder was shot by Leo Besner. And as a result of that there was a sense that the communication on scene between the hostage negotiation team and the police -- and the SWAT team wasn't adequate to keep everybody on scene informed. And so as a result of that -- Ray Gwerder was shot when he was going back inside the apartment when officers -- when investigators or negotiators were talking with him.

And so there was some concern about what information the perimeter units had, whether they had adequate information, whether there was a shared situational awareness, whether they understood what the goals or objectives for the call were.

And so the police bureau did a, basically a study of -- At the time precinct commanders would be incident commanders within their precinct's geographical boundaries if there was some incident that would arise that would require a SERT ponse. And one of the recommendations that he made was to train and establish a cadre of command officers who would be trained and would be on call to respond; that it wouldn't be on the basis of where your precinct existed, but rather it would be those people who indicated a propensity to know and to understand the elements and the dynamics that are present in

encounters, and to be able to apply police tactics in response to it to resolve confrontation. So that one of the reports that I reviewed.

Q. Okay. You mentioned lesson plans, you mentioned a variety of lesson plans. How did you get a hold of those lesson plans?

A. They're available in the training division.

Q. Did you have any conversations with any officers in the training division about any lesson plans?

A. Yes.

Q. Who did you talk to?

A. I talked to Todd Engstrom, I talked to Tracy Chamberlain, I talked to Scott Elliott, talked to Tasha Hager, I talked to Paul Meyer, talked to Scott Reasor. I believe I talked to Bob Pippen.

Q. And let me stop you there just for a minute in terms of the record. Do you know how Officer Reasor's name is spelled?

A. R E A S O R, I believe.

Well, I believe as -- not too long after

Q. And let's just talk about each of those people for a minute. In terms of -- Let me go back for a second. During what period of time are you performing the -- what time are you working on the training review, approximately?

A. The incident occurred. In the beginning of February through March there were meetings with investigators and with internal affairs, in addition to with trainers. And part of that discussion was helping in shaping questions for the internal affairs investigation and the next -- that particular phase of the process. So we began, you know, very quickly after the incident happened. And --

Q. And then it appears that -- This has a date at the top of Page 887 -14-10.

A. Yes.

Q. Does that appear to be the approximate time that you completed the review?

A. Correct.

Q. And then just in terms of the sequence, whose investigation occurred first? I understand detectives investigation occurred first.

A. Yes.

Q. And then grand jury?

A. And then the grand jury convened.

Q. And then the IAD process?

A. Correct.

Q. And again, just so the sequence is clear, in terms of your work in preparing this training review, are you doing that at the same time as some of those investigations or are you waiting until those other investigations are completed? Can you explain sort of how you're gathering this information and over what time period?

A. Well, we have the -- in cases where there are officer-involved shootings, we -- the detective division provides the, what they call the shooting book or the homicide book. And so that information is available, you know, however long after the incident occurs it takes to compile it. Within a couple of weeks I believe we have access to the criminal interviews, the verbatim -- everything, virtually every -- from the beginning of the case all the way through to the physical evidence, everything about what happened out there. So we have that available to us and review it.

The grand jury, of course, convened following that. Following the public published grand jury record or verbatim transcription, we had that available to us. And then we would -- we -- as IA interviews occurred, we would receive the electronic audio file, essentially, and have that available. And then as verbatim transcriptions became available, we would receive those from the internal affairs division. I think at the time they transitioned away, for budget reasons, from one of their own office staff doing the transcripts to hiring a service. So it took a little longer to get those.

Q. Now, just in a general sense, can you tell us sort of during what period of time you had conversations with Engstrom, Chamberlain, Elliott, Hager, Reasor, Meyer and Pippen?

A. It would have been after we completed a draft, as we went along. I mean there were discussions that occurred, but essentially after reading the -- for me, after reading and listening to the detectives interview, and I believe the grand jury testimony, and writing a draft, then we would provide the draft to them and meet with them and talk with them.

Q. What do you remember discussing with Engstrom?

A. That the defensive tactics training -- You know, one of the things he mentioned in particular is, one of the things that Officer Frashour mentioned, that weapons routinely were kept in the 60th percentile of the body. And that, you know, as a result of that, and the move that is described by Officer Frashour that Campbell -- Mr. Campbell engaged in, that that would be consistent with his defensive tactics training.

Q. Do you remember anything else in terms of discussion you had with Engstrom?

A. You know, I don't -- we talked at some length about the incident, but I don't remember the details of those conversations, necessarily.

Q. What about Officer Meyer, what do you recall discussing with Officer Meyer as you're preparing this training analysis, training review?

A. What the rifle program training was, both -- you know, what the classroom portion was, as well as what the practical training that officers receive was.

Q. So it sounds like gathering factual information about the training from Officer Meyer.

A. Exactly, with respect to the patrol rifle. You know, the -- the patrol rifle is, you know, not unlike the beanbag program, was a program that developed in particular as a result of a violent shooting that occurred in North Hollywood, California, where LAPD officers did not have the weaponry that was necessary to confront what were armed, violent bank robbers that had machine guns. And so all across - here locally and then across the country many organizations, in addition to having SWAT teams, have developed patrol rifle programs so that officers have access to an accuratized precision rifle, accurate out to, say, 300 meters that they could use in confrontations with people where they needed distance, or where there was standoff distance because of the terrain, or where, because of the nature of the encounter, maybe somebody who's in a residence, who's armed, who's shooting, or maybe somebody who's outside is shooting, be able to get on scene, and to be able to get into a position to take a shot to stop the person from their life-threatening action. It provided us with a capability that was in addition to the basic tool of handgun and shotgun that officers up to that point had only had access to.

Q. And just so that we're clear on terminology, when you mention patrol rifle, is that the same or different than the AR-15?

A. AR-15, yes.

Q. What do you recall discussing with Officer Chamberlain in connection with your preparation of the training review?

A. The facts of the case, and Campbell's behavior and Frashour's response, you know, the dynamics that had to do with action/reaction. And, you know, whether or not we have to wait to see a gun.

Q. What do you recall learning, first, with respect to action/reaction?

A. Well, that as a result of the action/ reaction principle that we could shoot Campbell because he could -- this is Chamberlain's point of view, that we could shoot Campbell because of his behavior and because of the action/reaction principle.

The principle itself is -- it's something that has been taught in our defensive tactics program and in our patrol tactics program for many years. And it basically states that the initiator of an action has an advantage over someone who is reacting. And that the reactor will always be behind the reactionary curve; in other words, you know, when someone draws a gun, that we are always reacting and responding, and therefore behind the reactionary curve.

So he said, essentially, I think, that as a result of action/reaction, that it was consistent with training that Officer Frashour would shoot and kill Mr. Campbell for the behaviors that he described both in the detectives interview and in the grand jury testimony.

Q. Let me stop you there for a few pieces. In this case, and we'll talk about this some more, did you learn whether or not in fact there was any gun present or drawn or seen?

A. There was no gun present, there was no gun drawn or seen throughout the course of the call.

Q. In terms of action/reaction, based, again, on your training, experience as a police officer, is action/reaction the determining factor, the only factor, if there's action/reaction, you have to respond first before you get shot?

A. You know, we're very, you know, as you would expect, we're very -- we make it abundantly clear to officers that the use of deadly force, for example, is one of the most serious actions that we can engage in as police officers. And that there's a constitutional standard and there's a policy, concern criteria, there's a state law, there's training, there's your own conscience, kind of the man in the mirror, and that in most cases, in most encounters no one factor is ultimately determinatant.

So the action/reaction principle is a principle that's real and it's a principle that's in play in our encounters with the public, but doesn't necessarily -- it doesn't require the use of deadly force and it cannot be the only factor relied upon. All action occurs in a context, in the specific factual context that officers encounter. And that it's a dynamic that is present in our encounters with the public that we make officers aware of so that they can mitigate its harmful impacts in the event a suspect becomes a threat, a serious threat of , death or serious physical injury. So, no, if all that we needed to shoot people was action/reaction, then I know that I could have shot more, I mean I know other officers could have as well. So, no, it is not a determining factor, but an important principle, essentially, in -- that exists and it's real in our encounters with the public.

Q. I think you also said that Officer Chamberlain believed that Ron Frashour's shooting of Aaron Campbell was consistent with training.

A. (Nodding head).

Q. And again -

A. Yes.

Q. -- we'll be talking about this for a while, but I don't want to forget that piece. Did you agree with that conclusion or that assessment?

A. I did not.

Q. Why not?

A. I don't think any of the training -- I think all the trainers think that it's consistent with his training. And do you agree with all the trainers?

A. I did not.

Q. Why not?

A. You know, there were three ultimate sources of information about what happened out there that day. And when you just read the detectives interview, for example, you have some information about -- it's extensive, but you have some of the information about what happened and what the thought process was and why the officer did what he did when he did it. But the detectives interview is an interview that is designed to provide information so that the matter can be reviewed for whether or not the officer engaged in any criminally culpable action, whether or not -- you know, essentially the District

Attorney's Office, the grand jury proceedings, whether they think that it was against the law or not, whether they were engaged in criminal conduct.

So the grand jury testimony I think provides -- again, it's a statement of what happened, and it's relevant and it bears on the review and the information and it is pretty extensive. But, you know, it's really in the internal affairs investigation that you begin to see the mindset and the thought process that Officer Frashour engaged in from the beginning all the way through to the end of the call. And I think that trainers, by and large, are, while very competent and professional and perhaps even experts in their own field, many of them, that they are co-workers, and that it is -- they're not supervisors. And there is an inherent -- I think there is a -- I think there is a built-in -- or there is an inherent reluctance on the part of officers to weigh in or comment negatively or critically about the actions of another officer.

And one of the things that I realized, because I experienced that, you know, I worked for eight years as an advocate for officers and was supportive of them through a whole variety of different processes, and so -- you know, and I certainly recognize and understand the complexity and dangers of the work that we do. But I really felt that they were -- they were not -- they were not going to be able to -- it was not their job, they were not going to be able to make their way through the voluminous material, help sort through complicated -- the complicated nature of what occurred out there and what he said about it. And so I took that information and was aware of it, and I know -- and happy to share it, and I'm sure they'll come and testify on their own.

But when I listened -- ultimately when I listened to the grand -- when I listened to the IA interview, knowing what had happened out there on the scene from the review of the material that was available, and listening to what Officer Frashour said about why he did what he did, I arrived at the conclusion that, after the review of the material and looking at the lesson plan and talking to people, that, you know, essentially that the action/reaction principle in this case was not -- it wasn't consistent with training. And that his mental mindset, as I'll talk about in more detail here in a minute, was not consistent with the training that he had received, specific training and in general.

Q. Now -- And just, again, before I go back to some of these communications you had with , training officers, the information that these various people provided to you, both in terms of sort of factual information, such as Officer Meyers providing information with respect to the AR-15 training and the AR-15 program, did you then sort of consider, take that all into account as you were going through the process of preparing this review?

A. Yes.

Q. Do you remember what, if anything, you learned from Officer Elliott, what the discussion was?

A. Well, one of the things, after providing the draft, one of the things that Officer Shour said was from the time that Mr. Campbell reached until the time that he fired, prior to him getting to the front of the car, that he believed that he could have shot him as soon as his hand went in the waistband. And that he watched him as he ran, took his eyes off the sights of the rifle, looked back, saw his hand was still on the waistband. And basically he says, I believe it was his criminal interview, that he exhibited or demonstrated some restraint in not shooting when he first put his hand on the waistband, and not shooting when he ran, not shooting prior to him getting to the front of the car.

And in the course of the discussion with Officer Elliott, he thought that having the words "restraint" in there, that he was demonstrating restraint, that that was somehow -- that particular phrase ought to be taken out or shouldn't be a part of -- that was his suggestion on the review of the material. And I thought --

Q. Taken out of what?

A. Taken out of the draft, the draft training analysis. So I realized -- I thought then that when an officer says that he's demonstrating restraint, and for whatever reason, the way that sounds or the way it read, that it should be taken out, that when we can't say that they demonstrated restraint in a document, that it was going to be, you know, even more difficult to address some of the tougher issues that we were going to encounter in the IA interview. So, you know, I guess at that time I realized that I have to take all this information into account, and write this review, , write what I believe based on all the information that I've reviewed, my experience in the training division, et cetera, and arrive at these conclusions.

Q. Let me stop you there and go to Officer Hager. How do you spell Hager's last name?

A. HAGER.

Q. Thank you. What was your discussion with Officer Hager with respect to your preparation of the training division review?

A. Well, she was the sergeant in charge of the advanced academy, so we talked often. I think that the general sense was that, you know, that she would not have shot, but that she didn't know that it wasn't reasonable for him to conclude that he was going for a gun and going to cover and fire on them. Yeah, I mean that's -- that essentially was her -- I think that was her conclusion.

Q. And then what about Office Pippen, what do you recall discussing with Officer Pippen?

A. You know, I don't remember the details. I mean, I know that I spoke with him. I talked with him on a couple of different -- I talked with him on one review, and -- There was an incident, there was an incident where an officer used force and where the commander wanted a training analysis done.

Q. This is another --

A. This is another matter, this is not on this case.

Q. Okay.

A. I talked with Pippen about it, and he provided me with information about what was trained in the patrol tactics program and his opinion about whether or not the officer in this particular review acted consistent with the patrol tactics program. And he said initially that he did, but he -- he did think that the officer -- no, excuse me, he said that he thought the officer did not act in a way that was consistent with the patrol tactics program, but then later I think reversed himself and said that, no, I think it may have been.

And one of the things I sort of routinely encountered was these training analyses, these reviews, the format for them, the structure of them, it's been kind of in development. And there has not been, at least at this time, which I think was problematic to , some extent, was not a standardized SOP that was written.

You know, there are certain things that -- I mean I think perhaps what going forward would work would be to have the trainers write a memo about it.

Q. Let me just stop you there for a second. So was this discussion that you're describing with Officer Pippen, did it come up during the course of your preparing the training review?

A. No. It just -- it reminded me that the trainers know the officers, and they -- I think it makes it more difficult for them to render an opinion, especially an opinion in cases where they're going to be told that they're not acting in a way that's consistent with their training, and that that could have some disciplinary consequence. And I think that they, by and large, unless the actions of the officer were so profoundly egregious, I don't think that ultimately it's their job, but I also don't think that they are willing to take it on and say, no, this is not consistent. And they may argue with that, they might say, no, we're objective, we're neutral, we're fair, you know, we're more than willing to review the material, and whether or not we know the person or work with them or they're friends or not, we're willing to call it what we think it is. But that just ultimately has not been my experience. And I don't know that they should be put in that role.

I think that, you know, at the time that Sergeant Virtue began the review of this particular case he was a sergeant, it was a sergeant position in the training division. We actually -- At some point along the way we interviewed Don Livingston, who is a sergeant in the police bureau, for that position and selected him, but for whatever budget reasons he didn't actually ultimately come to the division or he would have been doing that. But then as a result of this review, and the fact that Commander Day was the captain at the time that the Campbell incident happened, it was determined that he could not, because of his involvement in the case, he could not lead the review itself. And so Chief O'Dea led the view, and both Lieutenant Virtue and I then were doing the review as lieutenants, and reporting to Chief O'Dea.

Q. Let me stop you there for a minute. What, if any, instructions did you get from Chief O'Dea about the review you were doing and the preparation of the review and your findings, descriptions, conclusions?

A. Well, we met with some regularity and discussed the progress of our review. And one of the things that he told me and he told Lieutenant Virtue as well was that he didn't want either one of us to write anything that we personally did not believe to be the case. We weren't writing an analysis or a review for him, by him, that it was our review, and that he was assisting and advising and guiding, but that it was essentially our conclusions to arrive at.

Q. I want to go back also to something else that you said a little bit earlier. You said that you had some communications with detectives.

A. Yes.

Q. And what were those communications about? What did you talk to detectives about?

A. Well, there were meetings -- there was at least a meeting, and maybe more, with the detectives who investigated the criminal case with the IA investigators. And that was designed to help provide the IA investigators with information from the people who knew the most about the case at the time. And it would help -- it would be an opportunity for discussion about what the -- what the scope of the questions ought to be, what facts ought to be asked about, what the IA investigation ought to be looking like or thinking about based on being informed by the information provided by investigators.

Q. One of the officers who you mentioned was Officer Meyer. And was there a discussion with respect to the conclusion that we'll be discussing here in a bit that Officer Frashour did not de-escalate his mindset?

A. I think, yes, that was his -- He told me that, following a meeting that we had, a training division staff meeting where we discussed the review, that he told me that he believed that that particular portion of the analysis was true, that it was not consistent with his training, that he didn't de-escalate, his mindset on the basis of some counterbalancing information that he received at the scene.

Q. During the course of your contact with some of these training division officers -- You've already described some materials you received from Officer Meyer. Did you also receive any lesson plans with respect to defensive tactics?

A. I believe so.

Q. I think you mentioned, for example, you got lesson plans from less lethal -- for the less lethal?

A. Right.

Q. The patrol tactics?

A. Yes.

Q. The AR-15 --

A. Yes.

Q. -- lesson plans? Defensive tactics, and patrol tactics, which I already mentioned.

A. And as a result of my assignment and training, for the advanced academy, we were in the process of updating all lesson plans. So I had access to the lesson plans because we were in the process of updating them.

Q. Okay. Did you also -- That's okay. Let me stop there for a second. Okay. I want to take a look at the training review that is Joint 11, beginning at Page 89, okay? The very first paragraph at the top of Page 90, in the very first sentence where it says, "This report was based upon."

A. Yeah.

Q. Okay.

A. Page 89.

Q. Yes. And the first sentence does not refer to the detectives investigation.

A. Oh, right.

Q. Did you review --

A. That's an omission. Yeah, we did review the detectives interviews, yes.

Q. The next sentence refers to the report -- the review being a collaborative effort made by members of the training division utilizing the PPB training division's tactical guidelines elements and the PPB supervisors' critical incident management training, which are attached. I want to stop there for a second. What do you mean it was a collaborative effort by members of the training division?

A. That we discussed with them the event, that they reviewed the materials, that they reviewed some of the drafts.

Q. Okay. And the next piece of that sentence refers to the PPB training division's tactical guidelines elements. What are those? And those are found at Page 143, beginning at Page 143.

A. Right.

Q. What are those?

A. These are some of the basic tactics or concepts that are taught in our patrol tactics program, that are taught to officers early in their career, are taught in the defensive tactics program. Basically, I mean, things like have a leader, have a plan, be adaptable, don't assume, communicate, correct mistakes. I want to stop there for a second. How long have these tactical guidelines elements been in place, as far as you know, since you've been an employee of the Portland Police Bureau? Many of them for -- you know, some for as much as ten years, and others for the 20 plus years that I've been in the police bureau.

Q. And I want to sort of talk about a few of these elements before we go back to the training review itself. So the third bullet of the - under fundamental concepts of tactics, which is Page 143, Joint Exhibit 11, refers to being adaptable.

A. Yeah.

Q. What are -- what have you and other officers been told with respect to being adaptable? Why does that matter? Why is that a fundamental concept?

A. Most of the encounters with the public are fluid, they're dynamic, they're changing, they're evolving. You really can't get locked into thinking about anything in any one particular way because things can change, they can change quickly, and you have to be able to respond to it. So we tell officers to be, you know, be aware, be flexible, be adaptable.

Q. The next bullet, again, is another fundamental concept that says don't assume. Again, what have you and other officers been trained with respect to don't assume? What does that mean?

A. You know, you might pull over alongside the road and you have your lights on, and you assume that people see your lights and that they're not going to run into the back of you, when in fact, you know, on the highway, especially people that are intoxicated, they'll drive right into the back of your police car. So don't make assumptions. Rely on the information that you have available to you, that you can see, that

you're told, that you're able to cultivate and develop on your own. Assumptions can be problematic for us because if we start to assume something's happening, it may not be happening at all.

Q. The next fundamental concept as summarized here is communicate. What, again, are you and other officers, what have you been trained and directed and told about communicating before, during and after an event?

A. You know, whenever you go on a call, if you're with another officer, you have to, you know, have a common understanding of what you're going there for, what the nature of the call is, what's happening there, how you want to approach the situation, you know, who's going to do what tasks, what you want to -- what's your goal that you envision in this particular case. You know, having a conversation, even a short one, with another officer about what's going on so that both of you are informed, you're both essentially in the same kind of frame of mind. And that you're aware, you know, you have a shared awareness or understanding of what's going on in front of you.

Q. And as an officer on a scene, let's say with multiple officers, is it a fundamental concept and need for communication between those officers at the scene?

A. Probably more than -- probably more than any other situation. You know, when we -- when one officer responds and takes a stolen report on a car, for example, I mean there's -- obviously you talk with the person making the complaint. But the more officers that arrive on scene, typically, either the more serious or the more complicated the call is. And that there has to be communication on scene about what's going on; otherwise, people have different assessments of the situation, different situational awareness. And that that can be problematic because, you know, people have a different idea what's happening on a particular call. So especially and importantly to coordinate the effort, to coordinate the resources that are available on scene to ensure that they're all working towards the same goal, and that, you know, they have a mission or they have an understanding what their job is and what they're to do, and sort of the when to do it and how to do it. Yeah. So communication's really critical.

Q. Now, if you are an officer on the scene with a lot of other officers, and you are the AR-15 person, you are the lethal cover person -- Have you been in that position before?

A. Yes.

Q. Is it critical, fundamental to have communications, again, with other officers, wherever they may be, on that scene?

A. You know, we -- I don't think we could take the position that you can't communicate, we don't want you to communicate, we don't want people to communicate with you. Because if we were to say that, then there would be information that you wouldn't have, there's questions you wouldn't ask. So in your role as a police officer, wherever you're at on the call, whatever your assignment, you know, your basic responsibility is essentially the same.

And so, yeah, communication's important to know kind of what's happening, what's he look like, what's he doing, what's he done, what are you going to do, what am I going to do. So you cannot be so focused on what you're doing that you don't have any awareness or understanding of what other people around you are going to do, because then you're just acting independently and at risk because it's not a coordinated effort, there may not be a shared situational awareness. And that that, you know, can be problematic for me, especially in a case where I'm lethal cover, because I'm going to have to make a

critical decision, say, about ending another person's life. And so I would like to have information so that I'm well informed so that I make the best possible decision in the situation.

Q. Looking back at the tactical guidelines elements that you referred to in your training review, there also is a section called tactical advantages. And one of the parts of tactical advantage -- a tactical advantage is cover. Talk a little bit about what cover provides, how cover provides tactical advantages for officers, and what you and other officers are trained with respect to cover.

A. Well, officers, you know, in our role come in contact with people that are oftentimes armed or violent or dangerous in some way. And they -- in certain circumstances people arm themselves and they shoot us. And so one of the, you know, one of the things that we tell officers is that one of the tools that's available to you, one of the things that you can do to keep yourself safe or increase your safety or optimize your safety in a dangerous situation is to put yourself and others behind cover. Now, cover, we tell officers, it's something that bullets basically can't go through. So, yeah, cover is -- you know, there's a number of things in addition to the concepts that -- fundamental concepts of tactics that we tell officers that help put us -- The overall goal and objective in a situation like the one we're talking about, or just in general, is for officers to arrive on scene and take and maintain the advantage in the , situation, so -- and cover is one of the things that's used to do that.

Q. What about numerical support -- numerical superiority? Explain a little bit about how and why that gives officers tactical advantages at a scene. I mean if there's 15 officers and one person that you're trying to take into custody, how is that an advantage?

A. Well, you know, sometimes having a number of people on scene can, you know, thwart the plan, say, of a violent suspect. Having the right number of people on there, on the scene is, you know, is important for us being able to accomplish our task, if it's a complicated task and there's lots of roles and lots of functions. And basically, you know, our experience has been that we're at the greatest risk when we're in a situation and we're alone. And then we are in a competitive role, very often, with the suspect. So the more officers that are on scene, the more that are there to do all of the work that needs to be done on a particular call.

Q. At the very top of the next page, which is Page 144 of Joint Exhibit 11, there is a second bullet. It says, "Greater distance equals time equals more options for the officer." What have you and other officers been told with respect to greater distance equals time equals more options for the officer?

A. You know, most -- after being involved in a shooting I focused a lot of my energy in obtaining information about officers who were killed in the line of duty. And, you know, one of the common characteristics is it's within ten feet, many of the -- many of the serious assaults and shootings of officers occur within a short distance. Usually it happens in a short period of time. It's a surprise, it's sudden and unexpected to the officer.

Q. Short period of time after what?

A. After you're making contact with them. Usually the officer's the second one to know that they're going to be involved in some sort of encounter or gunfight. So distance, you know, very often distance can provide us with an advantage. Distance and time can, depending upon the situation, give us access to more options as opposed to the urgency and the immediacy of , being arm's length away from someone that we're talking with. These are all things we want officers to be aware of, we train them in,

we want them to consider. It's important that you have the numbers on scene. If it's dangerous, you use cover to the extent that it's available. Yeah.

Q. I want to go back now to the beginning of the training review, okay? Now, still in the first paragraph. And you mentioned the PPB supervisor's critical incident management training.

A. Yes.

Q. It does not appear to be attached to this exhibit. Can you explain briefly what it is?

A. It is a, basically a critical incident management course training that is taught by the police bureau to police bureau supervisors for their management of critical incidents, you know, all of the things that they need to know, that they need to be aware of, that they need to do. And it was, you know, written and initially taught by Chief O'Dea. And then now, through the years, has become a part of what information sergeants are given, training that they receive in how to manage, you know, basically critical incidents that occur.

Q. And are those tactical guideline elements things that apply more directly to Sergeant Reyna and Sergeant Birkinbine in connection with this review?

A. Yes.

Q. Towards the -- excuse me. The very last sentence of that first paragraph talks about timelines are approximate and included to provide the general outline of the sequence of events. Why are the timelines necessarily approximate?

A. You know, we use the radio tapes or the digital recording. They may not be precise. All officers -- We cannot capture the actions of every officer on the scene at exactly the time that they're doing it. So we gather information from what we hear on the radio, from what the CAD printout says, because officers can, with the computer in the car, they can go on scene or they can take an action on the computer that tells dispatch what they're doing, but doesn't necessarily inform everybody else on the scene of what they're doing. And so we just rely on the information that's available to construct a timeline that we think is as accurate as is possible given the records that are available.

Q. And does a timeline also rely in part -- Did you review the chronology and --

A. Yes.

Q. Even though it sounds like Lieutenant Virtue was primarily responsible for it.

A. Yes.

Q. Did you also consider statements, interviews that were made --

A. Yes.

Q. -- by various witnesses in putting together this timeline?

A. Yeah, from listening to the audiotapes of the 911 call, of interviews done by the detective division, hearing what people were saying in grand jury testimony or even in their IA interview. Yes, we tried to draw information out of those sources to construct a timeline of what happened on scene that was as accurate as possible.

Q. At the very bottom of the first page --

THE ARBITRATOR: Can I call a time out?

MR. RUBIN: Yes.

THE ARBITRATOR: Are you going to be going much longer?

MR. RUBIN: I was actually thinking the same thing.

THE ARBITRATOR: I could use a break.

MR. RUBIN: It's a perfect time.

(RECESS: 2:44-3:02)

BY MR. RUBIN: Back to the training review itself. And looking at the bottom of Page 89, Joint Exhibit 11. There is information there with respect to training background.

A. Yes.

Q. And can you explain, what is that training background information with respect to Officer Frashour?

A. We listed the date hired, the total number of training hours since hire, and the AR-15 certification, and what date that was issued, February 2006.

Q. And did you obtain that information from training review records? Do you have training histories for officers?

A. Yes, we do, for each officer, yes.

Q. As I hand that to you, if you'd look at Joint Exhibit 9 for a minute.

A. Which is what?

Q. Should be one of the notebooks in front of you or next to you. It's the detectives investigation binder.

A. Which one, I'm sorry?

Q. It is Joint Exhibit 9 .

A. Yeah, okay.

Q. And looking at Joint Exhibit 9 , specifically Pages 286 through 291.

A. Yes.

Q. And does that appear to be a training record for Officer Frashour?

A. Yes, it is.

Q. And the grand total at the bottom is 1393?

A. Yes.

Q. The review refers to 1421 hours. Any idea for the discrepancy?

A. I do not know, no.

Q. Do you have an understanding about whether -- Okay, that's fine. But at this point Mr. Frashour had somewhere in the range of 1400 hours of training?

A. Yes, roughly.

Q. If you could turn for a minute to Page 41.

A. Page 41 of the review?

Q. Yes.

A. Okay.

Q. Which is Page 128 of Joint Exhibit 11. In the middle of that page there is a quotation from Frashour with respect to "The entire time he's digging for something in the back of his waistband, I thought about the fact that the silver Volvo gives him cover. I remember thinking I cannot let him get to hard cover because he's going to shoot at us and he's protected if he shoots at us. I knew there was a gun coming out of the back of his waistband. And before he got to the corner of the Volvo, I shot him." Do you see that answer, middle of the page? In quotes?

A. Yes.

Q. Why did you include this quote in this training review?

A. Well, in this particular section, prior to the analysis, I wanted to explain and describe from the three sources of information about the facts, what had happened there on the scene, and with respect to what action he took, why he took it. And so the best way to do that, I thought, was to capture what it was that he said about why he did what he did.

Q. And as you -- and it appears that this is footnoted at 151, Frashour detective transcript, Page 32.

A. Yeah, we began doing, on these reviews, the footnotes just to indicate the source of the information that we included. And I don't know that that had been done -- to what extent it had been done previously. But it was just important to us to be able to, for the reader, to be able to see where it is that information came from.

Q. Now, in terms -- Going back for a minute to this quote that's in the middle of the page. What, if anything, did you think with respect to Mr. Frashour's answer that "I knew there was a gun coming out of the back of his waistband, and I remember thinking" - two statements - "I cannot let him get to hard cover because he's going to shoot at us"?

A. Well, he didn't know.

Q. What do you mean he didn't know?

A. He says, "I knew, entire time left hand's digging for something in the back of his waistband, I knew." He didn't know. I mean the lights are on. I know the lights are on. You know, he arrived at a series of conclusions that he states. And then he assumes that he's going to -- that the direction that he's running, that he's going to cover, the car, the brick, the lcover, and that he's going there for the purpose of retrieving it, drawing it, turning, being behind cover, and then shooting.

Q. At that time did anybody know there was a gun coming out of the back of his waistband, as far as you know, based on your review of the materials and information that you saw?

A. No.

Q. The next paragraph refers to grand jury testimony. And the cite at the bottom of the page, footnote 152, is 436 to 437. And there's again a quote that you include where Frashour thought to himself, "Don't do that, don't pull your gun, don't reach for your gun." I knew he was grabbing his gun." What, if any, reaction did you have when you read that?

A. Well, he hadn't seen a gun, and he didn't -- There was a gun, obviously, mentioned in the call, there was a statement to the effect "I ain't playing, don't make me get my gun," but he didn't know. He hadn't seen a gun, he didn't know that his hand was reaching. He may have believed. But I think there's a difference between that and I knew, I definitely knew.

Q. Now, the text message that you're referring to, "Don't make me get my gun, I ain't playing," and we've heard about it already during the course of this hearing.

A. Sure. I did, yes.

Q. How did you consider that text message when you read that? Did you read that text message? What did you think about that text message when you read it? As a police officer, based on your experience and training, what would you have thought? What did you think?

A. That it was threatening. It was a text message from Aaron Campbell to Angie Jones in the context of "They want you to come out." He doesn't -- Frashour doesn't know any of this. But that they want to you come out. "Who? I ain't playing, don't make me get my gun." So it could be viewed differently. That

there's a gun, that he has it; that he may have it, he may acquire it, he doesn't have it now. I think it's a factor you have to be aware of and consider, among a series of other factors.

Q. Do you also remember when that text was sent during the course of this call? Do you recall approximately what--

A. About 5:30, 5:20.

Q. So some period of time before --

A. About a half hour, I think, before the shot was taken.

Q. And do you recall whether or not there were other texts that were sent by Campbell to Quackenbush with respect to whether or not Campbell would hurt himself?

A. Campbell responded by saying, you know, "No, I wouldn't do that, I wouldn't hurt myself."

Q. And just so that we're clear, if you want to look at Joint Exhibit 9 . Did you review the text messages as part of your training review?

A. Yes.

Q. And Joint Exhibit 9 , Page 177.

A. Yes.

Q. And in particular, the message -- do you remember reading the message at 5:56 from Aaron, "Never. Wow, you guys text too, you get kudos"?

A. Yes.

Q. And as a police officer, based on training and experience, what would you -- how would you assess that information? What would you think about that information?

A. I think it's, you know, a positive response, affirmative, positive. You know, it's not threatening, it's not aggressive, it's just -- it was like encouraging. You know, you guys get text messages too, that's cool.

Q. Do you recall learning whether or not officer -- Sergeant Reyna had broadcast to other officers that they were in text communication with Campbell and they were getting positive feedback?

A. Yes, she did. Yeah, she did. And other officers on scene indicated that they were aware of that by radio.

Q. And how, as a police officer, would you consider and factor that information into this picture?

A. I think you have to contextualize all the information that's available, you have to weigh it, all information. So, you know, it's just like the "I ain't playing, don't make me get my gun." That's something that I know, something that I'm aware of in that same way. So that's encouraging, to me it's encouraging

that, you know, given the nature of the call and the information that I have so far, that the sergeant is reporting that things are proceeding well.

Q. Do you recall learning any information about whether or not -- We'll talk a little bit about the call for a minute. Do you recall learning any information with respect to whether or not Angie Jones had come out of the apartment?

A. She did, yes. Just shortly after officers had arrived Angie Jones comes out of the apartment, yes.

Q. And at that point, from your perspective, , how would you view that as a police officer on the scene?

A. Well, the nature of the call was a welfare check for Angie Jones and her children. So it was good that she was out and that she was able to provide us with information about what was going on inside. And so, you know, that she came out and was unharmed was positive.

Q. Did you also know that the three kids had come out as well?

A. Yes.

Q. And what was your understanding about the circumstances under which they came out; in other words, had there been any context prior to that that resulted in the kids coming out?

A. Yeah, that Officer Quackenbush had been in contact with Aaron Campbell by phone and text, and that he inquired about the welfare of the children, and that in response to that inquiry the children came out.

Q. And do you recall learning any information with respect to whether or not those children were safe and secure once they came out of the apartment?

A. They were. I mean eventually all the children made their way out of the apartment, across the lot, to the safety of the officers that were there on the scene.

Q. How as an officer do you view that information that they're coming out?

A. Well, the purpose of the call was essentially a welfare check, both of Angie Jones and the children. Angie Jones and the children are now both safe. So, you know, given the information available in the call, Angie Jones was not hurt or killed, the children were not hurt or killed, and they're out. And so ultimately I think that's -- I think that's encouraging and positive.

Q. And did you learn whether or not, in fact, the officers on the custody team, including Officer Frashour, knew that there had been that communication between Quackenbush and Aaron Campbell?

A. Not until later, yeah. They didn't know at the time that there was communication between Quackenbush and Campbell regarding the children, no.

Q. Now, towards the bottom of Page 42 of the review, which is Page 129 of Joint Exhibit 11, you quote question and answer from Mr. Frashour's IA interview during which investigator Renner asked Frashour, "Would it have made a difference if you knew he was coming out at the request of one of the officers at

the scene as opposed to just walking out of the apartment?" And then Frashour then answers the question, "I guess it would have shown some compliance. It wouldn't have affected the result, I can tell you that, I know that's not," et cetera. And it continues, then, onto Page 43, and that's the IA transcript at Page 31. Why did you include that information as part of your sort of background description of factually what's happened at the scene, what's happening at the scene?

A. You know, it goes to how an officer on scene could view what's happening in front of him. In situations like this, when we have officers that are on the perimeter and we have a canine, we have a beanbag, we have a patrol rifle, we have a negotiator, we have supervisors, there's this unified effort to resolve this confrontation short of a fatal resolution. That's -- I think that's the goal and objective that's inherent in each one of these calls. So, you know, our job ultimately is to weigh and evaluate all of the information that's available to us. And so would it have mattered that the kids came out in response to a request from us? And his response was nothing would have changed the outcome, when I think what the investigator was asking is would that have mattered, would that have showed -- And he says a little later on, "Well, it would have showed some willingness." Well, I'm saying it's a factor that could be viewed that is more positive than negative.

Q. And this is only -- the question's really related to Campbell coming out, this is not related to the children.

A. Okay, yeah.

Q. So why don't you read it for a second.

A. This is him coming out, I'm sorry.

Q. Yes, yes.

A. Yeah, I think that, in large measure, you know, my response is the same. We have information that he, you know, is potentially , armed, that he wanted suicide or suicide by cop. That implies a, certainly, potential risk. And that he was coming out, cooperating with our request is different than him just appearing on his own.

Q. And this answer by Mr. Frashour, did it cause you any concern or problem at all where he said, "It wouldn't have affected the end result, I can tell you that"?

A. Yes, it did cause concern.

Q. Why?

A. Because if somebody's coming out in response to a police request, I would want that to shape the way that the officer viewed what was happening in front of him. It wouldn't mean that the threat was resolved, it wouldn't mean that the suspect or that the individual, in this case, was resolved or he was handcuffed in the back of a police car and searched. But it would have been a factor to take into account that indicated a level of cooperation, or that there was, at a minimum, there was a request and an affirmative cooperative response. So is he cooperating with us? If he is, I would want to know that, and that that could influence the way that I think about what's happening in front of me.

Q. And in terms of this statement, "It wouldn't have affected the end result, I can tell you that," as you were reviewing the material and the information, and listening and reading the various pieces of information he described, when you got to this quote, this quote in particular, is this the way that officers at Portland Police Bureau are, one, trained, is that it wouldn't have mattered if I had additional pieces of information?

A. I don't think so.

MR. AITCHISON: Objection. That completely misstates the testimony of Officer Frashour. He in fact says in the quote that Mr. Rubin just read, "I guess it would have showed some compliance. It wouldn't have affected the end decision, but I guess it would have showed some compliance." That shows that, when asked this hypothetical question, he said, yes, it would have showed something.

THE ARBITRATOR: Perhaps you can amend your question to state the entire --

MR. RUBIN: That's fine. And I think I did before, but that's fine. So in terms of this answer by Mr. Frashour, as you read it, as you listened to it -- Did you listen to this part of the IA?

A. Yes, I did.

Q. And I think you've already said it caused you some concern. Is his, in your mind, the way that Portland police officers are trained in terms of considering information?

A. You know, in making a deadly force decision, in making the decision to take someone's life, taking into account all available information is, you know, I think is -- it's our responsibility under the law and the policy. And to say wouldn't have affected the result, wouldn't have affected the outcome, I found to be troubling, that it was -- it indicated that it was a factor that would not have changed the outcome when, ideally, along the way, you would hope, especially having been involved in deadly force encounters, looking back on them, you can identify what those factors are that could have played a role in avoiding the use of deadly force. So I just found it to be, yeah, a statement that was concerning.

Q. Now, if you go to the training analysis portion, which is Page 43 of the report, which is Page 130 of Joint Exhibit 11. At the very end of that paragraph, can you read the last sentence?

A. Page 43?

Q. Yes, of the first full paragraph under training analysis.

A. In the supervisory response section? Which part are you --

MR. AITCHISON: Page 130, Exhibit 13 Page 130.

A. Exhibit Page 130?

Q. Yes.

A. 43?

Q. Yes.

A. The first sentence of the first paragraph?

Q. Last sentence.

A. Last sentence of the paragraph. "Frashour was at a very high threat level the entire call and did not adapt and got caught in the thought process that did not change."

Q. Now, why did you believe that Frashour was at a very high threat level the entire call?

A. Because he said so. I mean he articulated facts -- essentially he articulated all of the facts that showed -- that were the most threatening regarding essentially everything that Aaron Campbell did from the time he came out until -- up to and including after the time that he took the shot.

Q. Can you give us examples?

A. He came back hostile, threatening, aggressive, resolved when he came out. His hands were on his head, he was walking back, he responded to officer commands, he stopped, walked back slowly, stopped, walked back again, stopped ten feet in front of them, had his hands on his head. But he describes him as aggressive, loud, hostile. Yeah.

Q. Okay. Okay. Any other example that you can think of as you're sitting here right now?

A. I think, you know, obviously after he was beanbagged, believed that he was reaching for a gun, believed that he was running to cover, said that he knew he was running to cover, said that he told me he had a gun, Aaron Campbell, when Aaron Campbell never told him anything.

You know, when he was asked later in the interview if he thought he was unarmed, officers say in different parts of their interviews, yeah, it was that possible he was unarmed. It's not that I'm going to proceed on the assumption that he's unarmed, but acknowledge it. I don't know, once he said that -- Let's see, he said -- you know, when he was asked specifically about -- the beanbag question about whether or not it hurt him or not, whether or not it caused him any pain, he said he wouldn't be able to say whether -- he couldn't guess whether or not it caused him any pain. And that he was going to cover, and that he was going to cover to draw a gun and fire. And that at one point in the interview when he's asked by Renna about, you know, whether or not he had a gun or not, he said something to the effect of "Not only nothing would have changed the outcome in this case, but that I thought that -- now, given the information that I have now, that I know what he was doing, I know now that he was reaching for a gun so that he would be killed."

And, you know, in doing the review of the materials and in reviewing the transcripts, you know, one of the things that was really obvious that he didn't weigh in or comment on was the fact that Aaron Campbell was hit with a beanbag gun six times right in front of him; you know, Aaron Campbell, who's despondent over his brother dying, who had been suicidal the night before, who had given up the kids because we asked about their welfare, and who came out because we asked him to, and came out cooperating, with his hands on his head, and at every step along the way did what we asked him to do, you know, he comes out and he's asked to -- he's told to put his hands in the air when his hands were on his head. And --

Q. Are those factors, are those pieces of information -- How would you take those pieces of information as a police officer on the scene?

A. Which ones?

Q. What you just described, that the kids come out, Angie Jones is out, he comes out walking backwards, hands are on his head, slows down after officers ask him to slow down, stops when officers tell him -- stops when officers tell him to stop, is hit with six beanbags. How do you process that if you're an officer at the scene?

A. Well, I think you take into account all of the information that's available to you, and don't overstate factors just to conclude that he's a threat. I mean, the information that we have indicates that, yes, he is a potential threat to us, but he doesn't come out shooting at us, and he hasn't come out with a gun in view, and he's come out with his hands on his head. So when we say to him do what you're told or you'll be shot, our officers -- our officers are in effect saying to a suspect, who we know is suicidal and despondent, do what you're told or you'll be shot, his response to that is, "Go ahead and fucking shoot me." He doesn't hear that. He can't really interpret that other than that it's loud and it's aggressive and it's hostile, when we're talking to a guy who's standing right in front of us, who's suicidal. We just told him we were going to shoot him. And he said, like a lot of people have said through the years, "Go ahead and fucking shoot me." He didn't say, "Fuck you, I'm going to kill you." He didn't jam his hand into his waistband and turn around and start shooting at us you. He said, "Go ahead and fucking shoot me." And then we proceed to shoot him six times.

So what does he think -- This is a question I would have. I mean at the time you take the action, you take it for all the reasons -- all of the information you have available to you, you make the decision that you make. But later when you find out, you know, that all the information that's happening, everything you thought was happening in front of you isn't what was happening at all, that -- it just troubled me that we would say, go ahead -- that his response to us was, "Go ahead and fucking shoot me," we shoot him six times, and then he can't even say that I could acknowledge -- "I'd be guessing if I thought that he was in any pain." So it just seemed that throughout the course of his IA interview, that he made statements that were supportive of the deadly force decision but that didn't recognize or acknowledge counterbalancing information that he could have taken into consideration. And when asked questions, he would say, you know, nothing would have changed the outcome. So just concerned about essentially the rigidity, you know, the inflexibility in the decision making.

Q. And you've described a number of different pieces of this event. And are those some of the pieces, for example, that led you to say Frashour was at a very high threat level the entire call, did not adapt and got caught in the thought process that did not change?

A. Yes. Yes.

Q. At the bottom of the page, after that statement, is footnote 157. And refers to "Tactical thinking and planning: Six basic fundamentals of patrol tactics. Communication, good communication. Puts officers at risk," et cetera. What is tactical thinking and planning?

A. It's a patrol tactics course. In particular, it's a patrol tactics inservice course that all officers receive.

Q. And did you in fact review the tactical thinking and planning -

A. Yes.

Q. -- six basic fundamentals of patrol tactics?

A. Yes.

Q. What is Employer Exhibit 14?

A. Yes.

Q. Does this appear to be the patrol tactics tactical thinking and planning that occurred between October 18, 2004 and June 2, 2005, that was the inservice of 2005?

A. Yes. Yes. Yes, they are.

Q. And is this, then, a document that you reviewed in preparing this analysis? And again, without repeating some things you already stated, some of the pieces that you already referred to in the tactical guidelines elements, are they also contained in this training again? If you could look at the fifth page of the document, capital letter D, under be adaptable.

A. Yes.

Q. In the second paragraph there is a reference, a sentence that says, "Make allowance for personnel and equipment that may or may not be at your disposal. Stay fluid and flexible. Know what personnel you have and plan accordingly." Again, what are you and other officers instructed with respect to personnel, equipment, resources available to deal with any particular situation or incident?

A. Well, ideally it's to have the resources on scene that are necessary to resolve it. You know, each situation's a little bit different. Like in this case, to have a rifle available on scene, to have a police canine, to have a beanbag gun, to have a communications team. All of those things are consistent with being adaptable in this situation -- are those things that, again, as the call evolves, whether it's this call or another call, but let's stay with this call, as things evolve, as any officer involved in this incident, are you responsible, expected, taught to be aware of who else is there, what are the resources available, how can we resolve this situation, all those things throughout the entire call? You know, as an officer who is in possession of a rifle or a long gun, you have a responsibility, you have a task. But you have a responsibility to make sure that you're informed; that if there are other people that are present, that there's some communication between you and them; and that there's some general understanding of what we're going to do in the event, you know, one thing over another happens. Otherwise, if there isn't some discussion, if there isn't some kind of communication or coordination of our resources among officers, then officers are left to develop both independent mindsets and to act independently. And so I think it's, you know, every officer's -- every officer on scene, you know, has the same essential or fundamental goal of working together with other people that are on the call to make sure that it's resolved safely and effectively.

Q. And does that also apply, then, for example, if you're the AR-15 or lethal cover person?

A. Yeah. I think you're at risk if you, you know, if you're not taking in all available information, if you're not engaged in some sort of discussion or conversation with other people that are present there on the

scene, if you're not checking out information, suspect description, why do we believe he's suicide by cop, where did that information come from. You know, the dog is here on scene, when would we use the dog. Obviously it's a resource that's available to us. There has to be some discussion among the officers that are on scene that are in these various roles about what each one of them is going to do, even if it's a very short discussion, about what each one of them is going to do in the event certain things were to occur.

Q. And in your review of this incident, did you believe that there was time, for example, to have these kinds of discussions, to have the kind of awareness you're describing?

A. Well, the call started, you know, at 4:20 or so in the afternoon, and it lasted until, you know, well after six o'clock. So there was, you know, there was time as officers arrived to have, yeah, to have some -- I mean, otherwise -- I mean it wouldn't be appropriate for us to tell all officers when you get on the scene don't talk to each other, don't communicate with one another about what's going on on the scene or what you're going to do. So, yes, I think there was time. And I think the expectation is that, to the extent that it's possible in the situation, that there's communication among the different tools.

Q. And, again, if Officer Frashour arrives at 5:31 and Mr. Campbell exits at approximately 6:07, does that allow time for discussions with other officers, other resources, what's happening, what's available, what I should consider, who's next to me, behind me, in front of me, all that? I mean is there time to do that?

A. Yes, I mean to some extent, yes. I think there has to be some communication; otherwise, officers would just be in these positions and not really talk with one another. And then I don't think we're better prepared or suited to respond to whatever's going to happen in front of us.

Q. Looking at the next paragraph, okay? And , particularly the second half of the paragraph, where you make some statements with respect to facts that were known. "Campbell was emotionally despondent over the recent death of his brother, he was in need of psychological care, not wanted on any criminal charges," et cetera. Can you read that just to yourself for a minute?

A. Sure.

MR. RUBIN: While you're reading that, the employer officers Employer Exhibit 14.

MR. AITCHISON: Just as --

MR. RUBIN: No, the --

MR. AITCHISON: Do we have two 14s?

MR. RUBIN: That's already in Joint Exhibit 9 , so I did not offer --

MR. AITCHISON: Can we just have a standing understanding that unless one of us says something, everything's in?

MR. RUBIN: That's fine.

BY MR. RUBIN: So after you mention a couple points, you then have the concluding statement that Frashour did not consider that these factors mitigated the potential of the threat. Why do you believe that? Why did you believe that?

A. Because of the way that he talked about Aaron Campbell, the way that he described what he knew and everything Campbell did, that the counterbalancing information, you know, that things were going well, or that he came out with his hands on his head, that he didn't come out shooting at us, that none of those things seemed to have impacted his mindset or his thought process about what was happening in front of him.

Q. Based on your experience as a police officer, and after looking at the information in this case, would you believe as an officer on the scene that Aaron Campbell was complying when he came out walking backwards to the police, they've asked him to walk slowly, has his hands on his head? Is he complying, in your experience?

A. Yes. He's coming out backwards, not coming out facing us. He has his hands on his head.

Q. Let me stop you there. Is that significant that he's walking out backwards, not facing you, from officers' perspective on the scene, based on everything that you're hearing and know on that call? What do you think?

A. I think it's indicative -- it may be indicative of surrender, yeah. I mean it's a -- We're not being shot at, we haven't seen a gun. We certainly have concerns about the potential of that threat. But when we tell him to, he stops, his hands remain on his head. He continues to walk back towards us. Tell him to stop again, his hands remain on his head. We tell him to walk back slowly again. He's standing, and eventually he stops, standing in front of us, 10 or 15 feet away, his hands were on his head. So he's cooperating with everything that we have asked him to do.

Q. And what do you think he's doing at that point as he's walking backwards? As an officer, again, on the scene, given your training and experience, you see that, you know everything that's happening on the call because you've reviewed all the information. As that's happening, what do you think he's doing? As Aaron Campbell's walking out backwards, slowing down when officers ask him to slowly down, stops when officers ask him to stop, his hands on his head, what do you think he's doing?

MR. AITCHISON: Excuse me, Madam Arbitrator, I'm just trying to understand this, are you asking Lieutenant King to testify as to what Aaron Campbell thinks he is doing?

MR. RUBIN: No, I'm asking it -- I can restate the question. I'm asking him based on what he saw as a police officer, how he would interpret Aaron Campbell's conduct walking backwards.

MR. AITCHISON: I see. Okay.

MR. RUBIN: Not asking him to guess as to Aaron Campbell's state of mind. And I apologize for an inartfully asked question. Do you understand the question?

A. I do. And he's cooperating, and I interpret it as such. It's not that he or any person, given these set of facts, couldn't launch an attack at some point. The dog's there, the beanbag's there, I'm there with a

rifle. But his hands are on his head, walking back. He's cooperating with us, he is complying with police commands.

Q. Now, to be really simplistic, what does this mean to you as an officer? If I'm looking away and I'm standing here like this, does this mean I'm looking for -- What? What does this mean to you?

A. Well, what you're doing right there --

Q. Yeah.

A. -- is you're just standing there with your hands on your head. That's what it means to me. But, you know, the concerns that I have about the information that I have about this situation is mitigated to some extent by virtue of the fact that he is standing -- doing what we're telling him to do, and he's standing in front of us with his hands on his head.

Q. Now, when he is stopped with his hands on his head, as you know, Officer Lewton commands him to put his hands up in the air, and he doesn't. As a police officer, how, again, given everything that you know, how are you viewing that situation right there when he is asked to put his hands in the air as opposed to on his head?

A. Well, I think we --

Q. And he says -- and he turns around and says, "Go ahead and fucking shoot me," after being told "Put them up in the air or you'll be shot."

A. You know, sometimes suspects, despondent or not, you know, cooperate only to a certain degree, that we don't -- we don't always get full cooperation in situations out of individuals. I mean in this case he's not wanted for a crime. You know, this is a welfare check. Angie's out, the kids are out. He's doing what we've told him to do, he's standing in front of us. "Fuck you, go ahead and shoot me." I mean that statement -- he didn't say -- again, he didn't threaten us and say, "I'm going to shoot you," it's more a statement of resignation. It's a suicidal guy saying, "Go ahead and shoot me." Now, can we shoot him in that situation? I mean he's standing there with his hands on his head, he says, "Go ahead and shoot me." You know, this is -- we're in the process of taking somebody into custody, and we've got substantial cooperation out of him; not complete, but that's not unheard of. Our suspects don't always cooperate with us. And sometimes they're verbally resistant or defiant. And that's okay. I mean he's standing there and he's doing most of what I want him to do. And if he's not attacking us, it's okay if he says that.

Q. Now, I want to direct you to Page 44 of the report, which is Joint Exhibit 11, Page 131.

A. Okay.

Q. You have included statements with respect to the pace, Campbell's pace. This is the second full paragraph. You can read that second full paragraph for a minute.

A. Okay.

Q. Now, was this important to you? Did this cause a concern for you? Why is this in here as part of the analysis?

A. Well, I think at that time it's an example of how he interprets Campbell's actions, and that he doesn't give him credit for -- he says, "I'm shocked, alarmed, you know, I think he has a plan, I think he has a resolve, seemed determined." You know, he's walking back with his hands on his head and stopping and doing everything we're asking him to do. So, you know, there is a potential threat that exists in Campbell at that moment, given all the information we have in the call, but he's substantially cooperating with him. I wanted him to be willing to acknowledge that while you may have these thoughts, that, on the other hand, he may also be substantially complying.

Q. And why, again, based on your training, experience as a police officer, why do officers have to take -- consider both sides of the picture? In other words, if I think that somebody's walking out determined, why do I have to consider the fact that he's also walking backwards, essentially doing what we're telling him to do?

A. I think you have to take into account all the available information, and be careful, you know, not to fall into the trap of assuming that one thing is going on over another. You know, we have to, in a situation like this, with the resources that are available to us, you know, take an action to defend ourselves should he, as he's standing there with his hands on his head, turn around and fire on us, for example.

But I wanted to hear him acknowledge that, you know, rather than loud, threatening, hostile, aggressive, determined, resolved, that in addition to that he's also cooperating with what we're asking him to do, which is, given everything we know, substantial cooperation, is positive. And he hasn't attacked us. And I wanted him to recognize that or acknowledge that. And I don't think that he did. And I think this was the beginning of the way that he interprets Campbell's actions, where there are other -- there's counterbalancing information that is available to him that could help inform his thought process or decision making about what's happening in front of him, but gets locked into the perspective or the perception that only something negative is happening, only something threatening or hostile is happening. You know, him saying, "Go ahead and fucking shoot me," I couldn't really tell what he was saying, so I'm right there, I'm ten feet away from him, I don't know what he said.

Q. 15 feet.

A. 15 feet. I don't know what he said, but I'm there with a rifle, and he's right in front of me. You know, I have to be able to hear what he's saying. Maybe there's ambient noise, but I want to hear what he's saying, because what he's saying and how he's saying it, all of that helps inform me about what's going on in front of me. You know, he's loud and hostile and aggressive. What if he's saying don't shoot me or I want to give up? So the substance of what he says I think is important. And, again, it's characterized in a certain way. It's not uncommon for us to encounter those kind of behaviors from people we're taking into custody, especially in situations like this. Is he coming out to give up to us or is he coming out to kill us? It could be either. But it appears, I think, affirmatively, positively, that just to a certain extent he's coming out cooperating.

Q. The next paragraph includes a statement, for example, Frashour talked about switching his aperture sight for closer range shooting and quicker target acquisition when Campbell came , within about 15 feet.

A. Yeah.

Q. Why is it in there and what does it mean to you?

A. I was concerned that there was a, you know, maybe an overemphasis or articulation of the mechanics of the rifle. And that's relevant, I think, to some extent. But, you know, really, I guess I was hoping to hear him talk more about, you know, thought process and deadly force decision making, whereas there seems to be more of an emphasis on the mechanics of the tool over the thought process and the decision making.

Q. Now, on Page 45 of the report, which is Page 132 of Joint Exhibit 11, you include a portion of Frashour's interview with the internal affairs Investigator Morgan. Can you read that to yourself?

A. Sure. Okay.

Q. Why did you include this in here with respect to his final answer of "He got hit in the butt or right below, and took a very short step forward. I'd be guessing if I said it was because it hurt him, because I don't know"?

A. You know, up to that point he's described everything about Campbell in a -- in a light that is the most hostile and the least favorable to Campbell. And it's here that we see that he says, "I would be guessing if I thought that it caused him pain."

And what was problematic about that is he's a beanbag operator, so he's been through the beanbag course. The beanbag is a tool that is -- it is designed specifically to cause pain. It is a pain compliance tool. It's referred to as an extended-range impact weapon. The round that's fired out of it is, you know, basically it's lead shot in what was once a canvas and is now a Kevlar bag. It has a certain velocity and a certain kinetic energy. And they hurt, and they hurt a lot. Now, they have -- they are more or less effective depending upon a variety of circumstances.

But up to this point, you know, he is explaining and describing everything that's negative about, hostile, aggressive, threatening, about Campbell. And here, "Do you think it would hurt him if he was hit?" I mean, basically he's asked - "I don't know how to describe it. It was very basic. He got hit in the butt or right below, he took a very short step. I'd be guessing if I said it hurt him because I don't know."

So he can't acknowledge that it would hurt him, because he doesn't know. Subjectively, I'd be guessing. But on the other hand, both before this and after this he's willing to guess about other things that are negative as it relates to Campbell.

So I thought, you know, when you shoot and kill somebody and you later find -- you later find out that they're unarmed, you know, the justification for your actions is on the basis of what you did at the moment and why you did it, but you have to demonstrate that you've evenhandedly weighed all the information available to you.

Here he says, "I'd be guessing if I said it hurt him." I just found that -- I found that -- I was incredulous. I thought, here is an opportunity to say, you know, yeah, I understand that it can hurt him. But he wouldn't and couldn't say that. So I just found that -- I was very concerned about that.

Q. And you said that there were places where Officer Frashour had guessed or speculated with respect to Aaron Campbell's activities or mindset. Can you give us an example or two?

A. I mean he's hostile, he's, you know, he's aggressive, he's coming back determined, he's resolved, he has a plan, he has a mission, right? I mean there's all of these attributions to -- There's information that's

available in the call, there's certain things that we know that he said or said through text messages or said in front of him.

Q. Meaning being armed and being --

A. Yeah, "I ain't playing, don't make me get my gun." And then there are all these other things that are -- amount to I'd be guessing. I'm willing to guess about things that are in the light that is the least favorable to Campbell. But when we shoot somebody, you know, two times or six times or whatever with a beanbag gun in the back, "I would be guessing if I said it caused him any pain."

So I just thought from a human standpoint, you know, when we hit somebody, is it likely to hurt them? I mean we all kind of know that's what it's designed to do. So I thought that was -- I still don't understand that.

Q. At the top of Page 46, which is Page 133 of Joint Exhibit 11, this is a portion of the IA interview during which Officer Frashour was asked, "At any point in the event, I guess specifically once he emerges from the apartment, did you consider the possibility that he was unarmed?" Can you read this question and answer exchange?

A. Sure. Okay.

Q. I want to talk about the portion between Morgan and Frashour, okay?

A. Okay.

Q. And what I'm wondering is what, if anything, how did this inform you with respect to your analysis and review regarding Officer Frashour's conduct at the scene, as well as his decision making? What did this say to you?

A. Other officers acknowledged that he might be unarmed. And given what we knew, I mean given the fact that he came out with his hands on his head and we hadn't seen a gun, it was a possibility that he was unarmed. I wanted him to acknowledge it, that it was a possibility. And in the course of this answer, it was largely unresponsive. I mean you might be thinking he's coming out to do something, but on the other hand, he might be coming out to cooperate and he's unarmed. We believe that he's got a gun in a sock in a pocket, or there's information to that effect. So I wanted him to say, yeah, I acknowledge that that was a possibility. And I don't think he does in this answer.

Q. Let me ask you, in the beginning of the answer he says, "There's always that possibility." And then he goes on and continues with his answer. So what was the --

A. "Ultimately, at the end of it, I believed him to be armed. I wouldn't have been reasonable to believe otherwise." He was just standing there with his hands on his head in front of you. Can you acknowledge that he might be unarmed? Would that shape or influence or affect the way you think about the situation that you're facing to some extent, to just acknowledge that he might be unarmed?

Q. And based, again, on your experience and training as a police officer, if you're there at the scene, and if he has come out, he's walking backwards, his hands are on his head, he has slowed down in response to police officers, he has stopped in response to police officers, he's standing 15 feet in front of the vehicle, his hands are on his head, would you think it's a possibility he could be unarmed, given the fact

that you got the information earlier in the call that he may be armed or was armed, and then you got information about the text also early in the call, the girlfriend? What do you think as a police officer when you're in that situation?

A. Well, you know, we may be facing kind of one of three possibilities, that -- maybe four. He's coming out because he's unarmed and he's giving up. I want to make sure that I give room for that, because I don't want to get stuck in thinking something that's going to lead me to a conclusion that's not accurate. He may be coming out to attack me, that's a possibility. He -- And that may be he's coming out to do suicide by cop, or maybe he's going to act or behave as if he has a weapon. So it's just among the two or three possibilities of what's happening in front of me. I just think officers have to be able to acknowledge that, you know, he might be unarmed, among all the different things that I'm going to consider.

Q. We'll skip over the bottom of Page 46 because you already talked about the answer by Mr. Frashour with respect to whether it would have made a difference if he knew that Campbell was coming out at the request of one of the officers. But I want to look at Page 47. And Page 47 is another exchange, actually answers -- exchange between Officer Frashour and IA Investigator Renna.. R E N N

A. And can you read that exchange?

A. Sure.

Q. And then I'll have some questions for you.

A. Okay.

Q. I want to talk first about sort of the first half of this question and answer in response to Renna's question, "Isn't he in the process of giving up?" And then in particular sort of what happens thereafter, until you get down to sort of the middle of the page where -- up to the point of not raising and yelling. "I would say the appearance -- up to the point of the yelling, would say -- I know I want to say it's hard. The outward appearance, absolutely he was doing as directed, yes. I don't think that was his mindset," and he continues. What, if anything, with respect to Officer Frashour's conduct and decision making, what did you take from this exchange and the information that Officer Frashour provided to Investigator Renna about both conduct at the scene, as well as his thought process, his decision-making process?

A. Well, yes, he's cooperating with our commands, yes, he's doing what we're asking him to do, but I don't think compliance is his mindset.

So where -- you know, if you're watching someone back up, and you tell them to stop and they do, and then you tell them to walk back slowly and their hands remain on their heads, and you give them other commands, and they do what you ask them to do, and they stand in front of you with their hands on their head, how does he project, guess that his mindset is noncompliance?

And then to say, you know, "Go ahead and fucking shoot me," you know, that kind of a statement, I guess, is not contextualized in this kind of an encounter. It's not seen as a despondent guy saying, "Go ahead and shoot me." It's hostile, it's aggressive, it's loud, it's --

So I guess I was concerned that -- You know, he's asking him, you know, isn't he giving up? Isn't he cooperating? Isn't he doing what we want him to do? He's coming out, hands are on his head, he's walking back, he stops, stops, stops. Isn't that what he was doing?

"Well, the outward appearance, just based on my observations, the outward appearance is he is, but that really wasn't what was going on here, that wasn't what his mindset was." And so I don't know how he arrives at that sort of conclusion. And let's give Campbell some credit for doing what he's doing.

Q. I think you also said that you listened to, among other things, Ron Frashour's IAD interview.

A. Yes.

Q. And I want to talk about that in a bit, but I also don't want to forget. What, if any, impact did listening to that IAD interview have on you as you were preparing this training review?

A. You know, it was -- Listening to that interview was probably what was one of the most impactful things that I did in the course of reviewing all the materials, because you don't just read the word on the printed page. You actually hear, you know, the thought process and the tone of voice and the -- you get to know the person who's, to some extent, who's providing the information.

So hearing some of the things that he said in his IA interview really was the basis for me of influencing my view about his mindset as it relates to everything he knew, everything he saw, and everything he did, for the reasons he did it.

Q. And did that significantly impact your evaluation under this review about whether or , not what he had done at the scene, as well as how he was explaining it during the process, whether or not it did or didn't comply with the training as you understand it?

A. It did, yeah.

Q. Now, I want to go back to the second half of the answer on Page 47, which -- towards the bottom, where Renna asks, "Just tell me or describe for us, if you will, how his -- you described the tone of his voice, and when he turned, how was that not compliant?" And Frashour answers, "That's showing the intent to engage in resistance, aggressive or physical resistance. He's verbalizing the intent to not comply, mixed with, right about in there somewhere, he's not putting his hands up when told."

What -- First of all, in terms of not putting his hands up in the air, Campbell not putting his hands up in the air, turning around and saying, "Go ahead and fucking shoot me," even if he's saying it loudly, let's assume he's saying it loudly, does that indicate to you an intent to engage in resistance, aggressive or physical resistance, as a police officer for 20 years?

A. Well, I just think he's talking smack. I mean he's -- You know, we have had a levels of control model in force decision making historically. You know, if they do this, you do this. Here's the description of the suspect's behavior. If they engage in aggressive, for example, they engage in aggressive physical resistance, they ball up their fist, then that's impact weapon. And that model -- those descriptors are a part of the way the policy was viewed before it was changed in '08. And so here we have, you know, instead of -- instead of just describing what he's doing, he's yelling at me or he's being loud or whatever, he's characterizing his behavior in a way that indicates he's not doing what we're telling him to do.

Well, okay, yeah, fine, but what's going on here? He's standing with his hands on his head, "Go ahead and fucking shoot me." What's he doing? And so for him to draw those conclusions and characterize it in that way, again, it's another example of how I view what he's doing that doesn't allow me to see other alternative explanations.

And that's kind of the, you know, the, I guess the concern, having him there, having him in front of you, you know, you have him at rifle point, he's saying all these things. Okay, he's saying these things. So what?

Q. Again, as a police officer, under the circumstances, totality of everything that you know that's out there, what you've heard, what you've read, everything that you've been learning about this situation, being whether it does or doesn't comply with training, even under the levels of control model, under the circumstances, turning around, looking through the angle created by your bent arm, is that an intent to engage in aggressive physical resistance?

A. I don't think it is. I just think you're talking -- I just think you're talking through your arm. "Go ahead and fucking shoot me." It's a -- more of a resignation than he is intending to -- He's not putting his hands in the air. Okay, but he's standing there saying whatever he's saying. He's got his hands on his head. So I just don't see it as intent to engage in --

Q. Aggressive or physical resistance?

A. I mean at some level, as a description, he's not putting his hands in the air, and he's telling us to shoot him. You know, what is he doing? He's just standing there. He's just saying, "Go ahead and shoot me." It's just -- It's interesting to try to characterize it in that way, because what is he doing? He's intending to engage in. This is what his intention is. Well, his intention is to stand there with his hands on his head and say, "Go ahead and shoot me." That's his intention. You know, what do I make of that? Well, I construe this in a way that it tells me he's about to do something; he's going to engage -- he's intending to engage in aggressive physical resistance.

First of all, it's a level of control model description; secondly, I don't think it's an accurate description of what he's doing in front of him; and, third, I think it's ascribing an explanation of what he's doing in front of me in the light that's the least favorable to him.

Q. Looking at Page 48 of your report, which is Page 135 of Joint Exhibit 11. Towards the bottom of that page, the paragraph that starts "Frashour was trained that he must reasonably believe that a person is an immediate threat," et cetera. Can you read that paragraph to yourself for a minute?

Now, the second half of that paragraph you say, "In this case it is clear that a reasonable officer on scene could conclude that Campbell was reaching for a part of his body just hit by a beanbag round. In fact, there were some witnesses who made that conclusion."

Why is that -- why did you include that in your review? Why does that matter?

A. If he was just standing there and we didn't do anything to him, and he reached his hand in his waistband and he ran towards cover, that action can be viewed in a certain context. But we just hit him, and then when we hit him, he ran. Could our hitting him be the cause for his reaching or the proximate cause of his running?

I mean earlier he says, "I'd be guessing if I said it caused him any pain." So I think there were other people that were there that concluded that, you know, once we shoot somebody with a beanbag gun in the back two or three times, six times, whatever the number is, it's not unreasonable that they could be reaching for an area of the body that was just beanbagged.

Q. Now, let me stay with that for a minute. You've reviewed lots of information in preparing this report. You've obviously listened to a variety of tapes and recordings, including Mr. Frashour's interviews with internal affairs. And it appears from the beginning of this paragraph -- Let me ask you. Do you, based on

everything that you know from this situation, from this case, from this incident, based on your review, based on your training and experience as a police officer, did you believe that Campbell was an immediate threat of death or serious physical injury that justified the use of deadly force?

A. No.

Q. Why don't you think he was an immediate threat of death or serious physical injury?

A. Well, because of the -- Essentially, because he's hit with the beanbag rounds, because I know that those can cause him pain, I know that it's a common human reaction to grab a part of the body that's recently injured or hurt. You know, kids do it, you stub your toe. It's not uncommon to reach for where you're shot. We take a despondent guy who we tell we're going to shoot, and we shoot him six times. What does he think? He doesn't know he's being -- I mean he comes back with his hands on his head. He's walking backwards. So does he know there's a beanbag gun on scene? Does he know that he's just shot with a beanbag gun?

One way or another he knows, because he heard the report, the sound that the weapon made, he felt the rounds impact his back, his butt, whatever part of the body was hit one time, two times, whatever the number is. And then he, believing he was shot by the police, he reaches for where he was just shot. And when you're being shot -- say you're being shot. What does a person do? What does a human body do when you're being shot? You know --

Q. I don't know.

A. And when you're hit, when you're shot, you know, in a case like this, could you reasonably think to want to get away? They're shooting me, I want to get away. I mean that is another possible explanation on the basis of what we're observing happened right in front of us. So --

Q. Were there other factors before he takes off running that weigh in the belief, the opinion, from your experience and training, about whether or not Campbell was or was not an immediate threat?

A. Well, the information that, you know, that we asked the kids to come out, that we asked him to come out, that he's come out with his hands on his head, that he's cooperated with commands, you know, that we tell him, you know, in this really rigid way you have to put your hands up in the air exactly the way we want him to, and we only give him a couple seconds to comply and then we hit him, you know, all of those things to me are indication that isn't it possible that he's come out to give up? And then when he's hit and he reaches and he runs, isn't it also --

I mean he hasn't made his way to the car. The immediacy is he's got his back towards us, he's reached. Nothing's come out, we haven't seen a gun, he hasn't gotten to cover. We don't even know that he's running to cover. He could just be running away to get back in the apartment. It's okay for him to run away to get back in the apartment. We don't really care about that. I mean if he's in there, he's contained. So -- and we certainly don't -- So I just don't think that he presents an immediate threat of death or serious physical injury at the moment the shot's fired.

Q. So in what you just described, you were assuming, even, that he is in fact reaching down his back either in pain -- let's assume either in pain or he's reaching for a weapon. Let's assume that for a minute.

A. Yeah.

Q. Does that make that an immediate threat, in your mind?

A. Not at that moment, no.

Q. You mean at the moment that he was shot?

A. What is your question?

Q. Whether -- If you assume that he is running away, and all the things you described, and if you assume for a minute that he's actually reaching back there and you believe that he is reaching for a weapon of some sort, and he's running away and he's doing all the things you've described, and you have the information from the call up to that point.

A. I've had situations where I have suspects at gunpoint that I know to be armed, who had hands in pockets, who ran away, that I tracked, and that I did not shoot. So I would not -- No, I don't think that at that moment that I would shoot, because there were -- there are other possible explanations, because I personally am not experiencing the threat, because he may be running to get away. Yeah, there are other -- I mean he may be pitching the gun. Yeah.

Q. You also mentioned that it was okay if he ran back to the apartment and he'd be contained.

A. Yeah.

Q. Can you explain that a little bit more?

A. You know, one of the basic principles in our tactical operations is we isolate and contain, isolate, contain, evacuate, but that we isolate and contain a person. And when they're in a residence, in a confined location, we can negotiate with them, we can bring to bear a whole variety of different tools. And it's preferable over them being out, exposed. So, yeah, that he's running back in his apartment wouldn't ultimately be problematic, because we can respond to that. Okay, he's back inside.

Q. Let's talk for a minute about running in the direction, towards, back to his apartment. And again, let's even assume for a minute that he is running to get behind that Volvo. What, if any, impact does that have on the immediacy?

A. That he is running to get behind it?

Q. Yes. If you're predicting that he's running -- that that's what he's doing.

A. Well, you know, one of the things we have, one of the advantages we have in this situation is we have resources that are available on scene. You know, we have obviously the less lethal that's been deployed, we have the dog that's available. We have other officers that are on scene that can see the front door of the location, who are in a position on the perimeter.

Q. Officers Andersen and McAllister, for example?

A. Yes. So there are tools that are available on scene, again, to help us in our effort to pursue a nonfatal resolution to the call.

Q. Okay. Let me stop there for a second. You -- Again, I want to go back to the recordings. So it sounds like listening to the recording of Ron Frashour had an impact on you in terms of preparing your review and reaching your conclusion this was out of training. And what I want to do is play a few of those clips, with the arbitrator's permission.

THE ARBITRATOR: Okay. Have these been transcribed?

MR. RUBIN: Yes, they have been transcribed. But, again, as I think Lieutenant King has described, there is a different, I believe, evidentiary value with respect to listening to them versus just reading.

THE ARBITRATOR: Do you want the court reporter to try to --

MR. RUBIN: No, I will make a reference to where these are located.

THE ARBITRATOR: Do you want her to transcribe the recording as it's played again?

MR. RUBIN: No.

THE ARBITRATOR: Give her a break?

MR. RUBIN: Yes. And actually, if we can take a break for five minutes, that would be great as well.

(RECESS:4:19-4:32)

BY MR. RUBIN: Now, again, what I'm going to do is play some of the audio recording of Mr. Frashour's interview with the IAD investigators. Okay?

A. Sounds great.

MR. RUBIN: I'm going to identify where they're at. And we'll have disks of the excerpts, as well as the entire transcript and audio as exhibits, the entire audio.

THE ARBITRATOR: Pardon me?

MR. RUBIN: The entire audio, as well as the excerpts. The first excerpt is Joint Exhibit 11, Page 24.

MR. AITCHISON: No.

MR. RUBIN: And it starts at Line 1073, continues down to 1097.

MR. AITCHISON: It can't be Page 24.

MR. RUBIN: I'm sorry, Page 245. It's Page 24 of the transcript. It's Page 245 of Joint Exhibit 11. I'm sorry.

MR. AITCHISON: What lines?

MR. RUBIN: 1073 to 1097.

MR. AITCHISON: Okay.

(Audio playing)

By MR. RUBIN: I want to ask you a few questions. And maybe as we go through this clip and the questions, if you could look at Joint Exhibit 11, Page 245.

A. Okay.

Q. Are you at Joint Exhibit 11?

A. Is that No. 9 ? Okay, I'm sorry. 245, okay.

Q. I want that available to you as a reference. Now, as you listened to that recording -- Do you remember listening to that part of the IA interview?

A. Yes. Well, I thought that -- I mean he omitted What did you think when you listened to that part of the IA interview? the fact that he was beanbagged, he made no reference to it whatsoever. And then at the end he says, "And he's running at the car, and he's going to pull the gun because he told us he was going to pull a gun out. I'm going to take him at his word. I'm going to assume that he's making a threat, he's serious about it, and I shot him."

So we know that Campbell said, "I ain't playing, don't make me get my gun." And we know that he said, "Go ahead and fucking shoot me." But this is untrue. It's an exaggeration, or whatever it is. "I'm going to take him at his word at that point, I'm going to assume. He told us he was going to pull a gun out."

Q. Did you ever find that anywhere?

A. It's nowhere in any transcript.

Q. And going back up towards the top where Mr. Frashour in that recording says that "The plan he appeared to have when he walked out, it looked like he had a plan, he knew what he was doing." Did that cause you any -- you know, what did you think when you heard that the first time?

A. I think when a person comes out, based on these circumstances, you know, they're a potential threat and you have to watch them carefully, and -- But, again, the counterbalancing information is that he -- you know, his hands are on his head, he's walking back and complying. He's cooperating, he's -- and he stops, and he stands still and his hands remain on his head.

Q. During the course of your review of the material, did you ever identify a plan that he appeared to have, or looked like he had a plan, he knew what he was doing? Did you find any plan, any evidence of a plan?

A. No.

Q. Then a little bit further down where it is explained by Mr. Frashour that he's digging for a gun. "I believe he was running to hard cover to shoot that gun to kill some cops before he gets killed. Maybe

he's not so subtle, he just wants to kill some cops." Do you remember hearing that during the IA interview?

A. Yes.

Q. And you remember hearing it again today as well?

A. Yes.

Q. What did you think about that portion of the IA interview when you were performing your review with respect to the conduct at the scene, as well as the decision-making process? What did you think about that? What did that say to you?

A. Well, I think it assumed that something was happening. "I ain't playing, don't make me get my gun. Go ahead and fucking shoot me." And now he's running to hard cover to kill some cops before he gets killed. He's being hit by a beanbag gun, reaching for where it hurts, and he's running away to get away from being shot. Is that a possibility? You know, sure, but he's running away to kill some cops before he gets killed. Now he's saying, well, maybe he's not suicidal anymore, now he's just homicidal, he just wants to kill us.

There isn't anything in what we've observed of his behavior that indicates that. Doesn't really matter, going to take him at his word. "I ain't playing, don't make me get my gun." Again, the inference that I have access to it, or I don't have it now, but I'm going to go get it.

Q. Let me ask you this, during the course of your review did you learn that there was some information, some comments about possible suicide by cop or those sorts of things?

A. Yes.

Q. Again, as a police officer, knowing that information, hearing the information, hearing the interview, did you find anything that said that you knew, that you could say as a police officer, based on training, experience, out at that scene, that he was going to kill some cops?

A. No.

MR. RUBIN: Let's play the second clip. And the second clip, before we play it, just so we can give the reference, the reference is Joint Exhibit 11, Page 247, Lines 1163 to 1172.

MR. AITCHISON: Not 1173?

MR. RUBIN: Could be 1173. (Playing audio)

BY MR. RUBIN: Do you recall listening to that recording during the course of preparation of your training review?

A. Yes.

Q. And when you listened to it and heard it, what did you think when you heard it?

A. Well, you know, that he's fulfilling a mission and a plan. We don't have any information other than what we've heard from Officer Frashour that he has a mission and a plan. So just troubling that he's assuming or ascribing this mission and plan. He's hit six times with a beanbag gun, he runs, running to cover, he has a mission and a plan. He may be just running to get away from being hit by us.

MR. RUBIN: Let's go to the third clip, which is Page 248 of Joint Exhibit 11, Line 1199 to 1209.

(Playing audio) BY MR. RUBIN: Do you recall listening to that portion of the interview with Mr. Frashour during the course of your preparation of the training review?

A. Yes.

Q. And what did you think when you heard that part of the recording?

A. Well, I was -- you know, in situations like this we want officers to be able to acknowledge that in this situation, given what we're observing, that we haven't seen a gun, that he might be unarmed, that he might be coming out to give up.

Q. And is that part of the reasonable evaluation of the totality of the circumstances, and reasonable evaluation and reasonable belief there's an immediate threat or not?

A. You know, I think it's about taking into account all available information, and at least being willing to consider it. It would have been unreasonable to believe otherwise, it would have been unreasonable. Well, I think it's appropriate for officers to be at least willing to consider, even in this situation, suicidal, suicide by cop, "I ain't playing, don't make me get my gun," he's got his hands on his head and he's walking out and stopping, he's cooperating with us, yeah, maybe he's unarmed. You know what, it would be great he was unarmed. I'm hoping he's unarmed and he's coming out to cooperate and to give up. That would be ideal here.

Q. And is that part of what should be happening out on the scene prior to making a decision to shoot?

A. The discussion among the other officers that are on scene there, yeah, with the officer with the rifle, with the dog, with the beanbag gun, this discussion about what are we going to do if he does this, what are we going to do if he does that, yeah.

Q. And in terms of the possibility, though, of whether or not he is or isn't armed, is that something that Officer Frashour is expected to be doing, trained to be doing when he's out there at the scene?

A. To do what, I'm sorry?

Q. To go through the process of considering --

A. Yeah, thinking through the options, yeah. You have to consider what might happen in front of you. And consider the possibility he's unarmed, given the fact he's standing there with his hands on his head, you don't see anything, he doesn't come out showing anything, all the things you've mentioned, even though you heard -- Yeah, I think you have to acknowledge it. I don't think he does that here.

Q. Did the statements about "Allowing Campbell, allowing him the opportunity to give up, allowing him the opportunity to give up, he could have stopped and proven he was unarmed and complied at any point," did those statements have any impact on you as you were listening to this recording?

A. Just the tone of them. I allowed him, I allowed him, I allowed him. You know, he's walking back, stopping, hands are on his head. I just don't understand the tone of that, the "I allowed him."

I mean this, you know, could resolve itself in a couple of different ways, you know, one that he turns and shoots at us, one, that he gives up, cooperates. So I just didn't understand the tone of the "I allowed him. He could have stopped, he could have proven he was unarmed." So --

MR. RUBIN: Okay. Let's go to the fourth clip, which is also, before we go there, on Page 248 of Joint Exhibit 11, and it is Line 1212 to 1218.

(Audio playing)

BY MR. RUBIN: Do you recall hearing -- listening to that during the course of the preparation of the training review?

A. Yes.

Q. And what impact did it have on you as you listened to that?

A. When you're in a situation where someone may want suicide by cop, they might act or behave in a way that indicates that they're armed or that they're attacking you, but that they're unarmed. They're doing it knowing that it would provoke a violent response, or they could be armed and attack you. But, you know, here, did you ever think that he was unarmed and maybe just bating? One of the possibilities, he's coming out to cooperate, he's giving up. He's coming out to kill us, you know, he's coming out to provoke us into suicide by cop. This is one of the very few possibilities that we're facing in this situation.

And then -- and then in the second part, "To clarify, to look back, I understand he had no gun on him. I totally think he did what he did so he could -- to get shot deliberately in order to die."

So there's like a series of interpretations that Officer Frashour's making about his motives or about his plan or about what he's doing. And most of them -- or all of them, that I can tell, ascribe something negative to Campbell.

So here, the last thing that Campbell does on earth is reaching motion and running. His interpretation is that he did it to get shot so that he would -- did that deliberately so that he would get shot so that he would die, when there's also counterbalancing information that indicates we called about -- we asked about the kids and he sent them out. We asked him to come out so we could check on him, and he came out. He walked backwards with his hands on his head, doing basically what we told him to do until we said him we were going to shoot him. Then we shot him six times and then he ran away.

So all I'm saying is isn't it also possible that he was just coming out to cooperate with us and give up? Isn't that also possible? And so his interpretation is, you know, even given all that information, he still interprets the last thing he does in the light that's the least favorable to Campbell. So all I'm saying is there are other ways to interpret that. But he doesn't articulate that or express that; whereas, you know, we would want our officers to be aware that there are different possible options here, and to be able to consider them.

Q. Is it reasonable to believe, based on everything that you know, given your review, that Campbell in fact up to the point that he was standing in front of the car, asked to put his hands up in the air, said,

"Fucking shoot me," reasonable to believe that he was cooperating, doing what it is the officers want him to do?

A. Yes.

Q. And as he's running away, did you -- did you learn any information from your review that said, yup, I totally know, I totally think that what he was doing was to get shot deliberately in order to die?

A. You know, that's -- I mean it's among the realm of what's possible, but when you look at what happened, you know, "Go ahead and fucking shoot me," he gets shot six times, now he's formed the intent in his mind, here -- now I know what to do. Now I, Campbell, need to reach my hand into my waistband as I run away so that they will perceive a deadly threat from me and they kill me. I mean that's one possibility.

Q. Did anybody know that?

A. I don't think anybody knew that, and I don't know how we -- It's not the only conclusion that's available in this situation.

Q. And did anybody know that, some plan to get police to shoot me?

A. There was no indication that there was any plan, there was any mission, or that he did what he did deliberately so that he was shot. Now, is that possible? Sure, that's a possibility. Is it also possible that he came out to give up and cooperated with us? Yes, that's possible also.

Q. And in terms of when he's running away, what are reasonable possibilities in terms of what he's doing?

A. Well, if you hit somebody hard six times, you know, maybe they're going to try to get away from that. They're not -- Could they just stand there and absorb it, all six rounds? Sure. But is it also possible that when hit they could run? Yeah, it wouldn't -- he -- It wouldn't be uncommon, it certainly wouldn't be the first time that we've hit somebody and they've tried to get away from us, from being hit, sure.

Q. And is it also reasonable to believe if somebody has their back to officers, with their hands on their head, told to put their hands up in the air or they will be shot, or words to that effect, is it reasonable to believe that if they hear a noise, if they -- Does the less-lethal weapon make a noise?

A. Yes, it has a report that's -- it's less than a lethal round, but still, it's substantial.

Q. Reasonable to think the sound -- Is it reasonable, based on your experience, training that under those circumstances, not knowing what the heck's just happened, hearing that sound, somebody runs?

A. Aaron Campbell could have thought, they told me they were going to shoot me, and they shot me, and I was just hit by beanbag rounds, because I know what the beanbag gun looks like, I know what the rounds look like, I know what they sound like, I know the report's less than a lethal round. He could have come to that conclusion for whatever reason. I mean he didn't look back, he didn't see, necessarily, that it was a beanbag gun. He may be -- I mean, we can construct a scenario where, okay, he thought he was being hit by the beanbag gun. But isn't it also possible that he thought he was being shot by the police?

What do you do when you're being shot? What does it feel like, what do you think, what do you do when you're being shot? In a case like this, I mean I don't think it would be unreasonable for him to grab where he's being shot multiple times and run to get away.

MR. RUBIN: Let's go to the fifth , clip. Before we go there, it is Page 250 of Joint Exhibit 11, and it is Line 1292 to 1298.

MR. AITCHISON: Howard, before we play the clip, and just for your benefit, you said you'd be a half hour, and you had a problem at five o'clock. And I notice you're only on clip five of nine, and it's been a half hour. So--

MR. RUBIN: I talk slowly.

MR. AITCHISON: I just want to coordinate this in terms of where both of you two are.

THE ARBITRATOR: I don't mind you going. I need a break in maybe 15 minutes. We had some dinner plans with houseguests, and just to let them know when I am coming in.

MR. RUBIN: Okay. That's fine. And off the record.

(Discussion held off the record)

MR. RUBIN: Play the fifth clip. (Audio playing)

BY MR. RUBIN: Do you recall this?

MR. AITCHISON: You're not going to play the whole clip, the whole paragraph?

MR. RUBIN: No.

MR. AITCHISON: Okay. That's fine.

Q. Do you recall listening to that portion of the IA interview?

A. Yes.

Q. And what did you think when you heard that portion of the interview?

A. Well, the dog is available on scene as a tool, you know, to pursue a nonfatal resolution to the call. And in cases where people run, it is a -- it is available to be used. So it's unfortunate. It could be used, even if somebody is armed, the dog can be used in a case like that.

Q. Now, did you have any -- give any thought to -- or have any impact when Mr. Frashour says, "Even if I had seen the dog running I would have shot him anyway. It wouldn't have mattered, because he was pulling a gun out"?

A. You know, even in that circumstance the dog can be used, so it's unfortunate. The dog I think could be sent. And if he's aware of it and had thought about it and had planned for it, then when the dog went, he could have given it some time to see if it would have worked.

Q. Looking back at the last phrase there, "because he was pulling a gun out." Did you find information that said he was pulling a gun out?

A.No.

Q. And in terms of the statement that it wouldn't have mattered, even if he saw the dog, it wouldn't have mattered, I would have shot him anyway, did that cause you any concern?

A. You know, I think the dog is available for us to use as a tool in a situation like this. And, you know, it's an option that's available for us to use that could have had an impact on this and could have resulted in maybe not having to use deadly force. So, yeah.

Q. Is that something that should have mattered, been part of the thought process?

A. I think just being aware of it, knowing that it's there, knowing that it's going to be sent, having it be a part of the thought process, yes.

MR. RUBIN: The sixth clip, which is at Page 252 of Joint Exhibit 11, and it is Lines 1416 through 1422.

(Audio playing)

BY MR. RUBIN: Do you recall listening to that question and answer during your review?

A. Yes.

Q. And what, if any, response, reaction did you have at the time in terms of Mr. Frashour's answer to whether it would have made a difference if he knew that Campbell was coming out at the request of one of the officers?

A. More information, more information about him cooperating would not have changed the end result. And so --What does that mean to you as you're going through the review? Is that how you're training officers? "That would not have -- I mean that would not have impact on the end result, I can tell you that." If we have more information available to us that indicates cooperation, and we ask -- We asked him to come out, we asked for the kids to come out, we asked him to come out. He's coming out in response to our request. He's walking out backwards, with his hands on his head, in what can be viewed as the universal sign of surrender. But "It would have showed a little more compliance but wouldn't have changed the result or the outcome."

You know, we would hope that as you become more aware of information at the scene, as you become more aware of information, that it could influence -- I would liked to have heard him say here, I would like to have had that information, I would have taken that information into account. And we would tell officers in training and in the course of the scenarios and calls that they would go on, you should take advantage of all available information to you so that you can be confident that you're not making assumptions, and that you're arriving at what --

I mean generally speaking, especially in training, more information is better. The more information you have, hopefully the better decision you're going to be able to make. But at the end of the day, it wouldn't have changed the end result, it wouldn't have mattered.

Q. So let me ask you this, as a police officer, again, out at the scene, if you know that somebody's coming out -- that Aaron Campbell was coming out in response to communication with Officer Quackenbush, and that occurs before Aaron Campbell is shot with beanbags, Aaron Campbell is running in the direction of his apartment, why does that matter once he takes off running? In other words, is that something that still needs to be considered if it happened earlier, if it happened before he takes off running? Does that still matter?

A. I think that if you have the information -- You know, he characterizes him coming out as hostile, threatening, aggressive, determined, resolved. If you know that he's coming out at our request, is he doing all those things? Does it cause you some pause? Wouldn't it influence or impact or affect the way that you're thinking about the situation? And maybe then impact the way that you're viewing what's happening in front of you? Sure.

MR. RUBIN: Clip No. 7 is at Page 253 of Joint Exhibit 11, and it is Lines 1433 to 1455.

(Audio playing)

BY MR. RUBIN: I believe that you already addressed that issue in connection with your written report. Do you remember that earlier?

A. Yes.

MR. RUBIN: Let's go to clip No. 8, which, before we get there, is Page 255 of Joint Exhibit 11, and it is Lines 1542 to 1544, and then 1552 to 1553. And I will tell you that there's the gap because there is a beeping noise on the recording that you'll hear. They're not sure what it means, so they stopped.

THE ARBITRATOR: Mysterious.

MR. RUBIN: It's just like Watergate. They stop and they restart again. And it's in the transcript, and they will -- you will also hear it in the recording.

(Audio playing)

BY MR. RUBIN: Do you recall listening to that part of the interview?

A. Yes.

Q. What did you think when you heard that answer? "What would happen had you waited one or two seconds?" "Shots would have been fired by him at the police."

A. Well, I think it's a projection of something that's going to happen in the future. I don't think that there was -- I mean he's predicting it. He's predicting that something is going to happen.

Q. And is that the way that officers are trained in terms of determining whether or not there's a reasonable threat of immediate death or serious physical injuries is shots would have been fired, predicting something based on --

A. I don't think so, because he didn't know that.

MR. RUBIN: And let's go to clip 9, which is at Page 255 of Joint Exhibit 11. I'm sorry. I believe Page 256 of Joint Exhibit 11, beginning at 1566 to 1571.

(Audio playing)

BY MR. RUBIN: Do you recall listening to that answer by Mr. Frashour in terms of whether it was surprising? "Yeah, it was a surprise. It was disappointing because I realized how that would look to the media and to people." Do you remember hearing that?

A. Yes.

Q. What did you think in terms of that answer?

A. You know, on the two occasions when I used deadly force, being stabbed and then when the suspect was shooting at us, he was -- they were immediate threats to us. Had we not acted, I not acted, I could have suffered serious physical injury or death, or others on scene could have.

If I shot somebody because I believed one thing was happening and it wasn't what was happening at all, they were not the threat to me that I thought they were at all, despite what I thought at the time, I later learned -- This is an administrative interview, investigation conducted by the police bureau of one of its employees who has used deadly physical force, and he says -- his response is, "I'd be disappointed because the way the media would view it."

And so what was troubling about that was he doesn't indicate in the course of any of the interview how he personally thinks of it, how he views it. And there's no -- there's no apparent reflection of the scale and the magnitude of the event, the impact on everybody that's involved, the actual events that were occurring on scene as they were unfolding, and no -- and no apparent personal reflection whatsoever about what's happened.

And at the end of the interview he's asked, "Anything at all related to the call you feel we haven't gone over today?" This is his opportunity to tell his employer what he thinks about all of this. And that's the most we hear from him, and that's troubling.

Q. As you listened to that answer, when you were preparing the review, in your mind did it have any relationship at all to the decision making that you observed or you learned during the course of your review that Mr. Frashour had demonstrated at Sandy Terrace Apartments on January 29, 2010?

A. Ultimately, through the review of the information and comparing it to training, he was at a very high threat level throughout the course of the call, and remained so; interpreted virtually everything about what was happening in a light that was the least favorable to Campbell. And that this statement is consistent with that, and what makes it also troubling.

Q. I want to go back for a minute to your report, the actual review. How are we doing on time?

MR. RUBIN: Okay.

MR. AITCHISON: Exhibit page?

THE ARBITRATOR: Couple more minutes and we'll break. And down towards the bottom of Page 49 of your report.

MR. RUBIN: It is Joint Exhibit 11, and it is Page 136, Page 49 of the report. Towards the bottom of the page where you state, "The training division teaches officers to be aware of the totality of facts and circumstances at a scene, to be flexible and adaptive, and avoid assumptions or overreliance on any mechanical decision-making model."

As you reviewed all the information that you've described today, did you believe that Officer Frashour's behavior on January 29, 2010 complied or did not comply with the training that you've described here at the bottom of Page 49?

A. I did not believe that he was flexible and adaptive. He did not avoid assumptions. And I think he did, given some of the language that he used in the IA interview, relied on descriptions that are consistent with a decision-making model, a mechanical decision-making model.

Q. You also then talk about the importance that the division trains officers to develop an objective situational awareness based on current accurate information so they can make informed and balanced decisions. "We emphasize the need for communication, and strive to instill desire for information and coordination of officers to reduce the likelihood of confusion, uncoordinated or conflicting action." Again, based on all the information that you considered, and it sounds like a substantial amount of information, did you believe that Officer Frashour's conduct and behavior and decision making on January 29, 2010 complied with the training that he's been provided with?

A. No.

THE ARBITRATOR: Okay. Let's break for five minutes.

MR. RUBIN: Okay.

(RECESS: 5:15-5:23)

MR. RUBIN: I don't have any other questions at this time.

(ARBITRATION ADJOURNED: 5:25 p.m.)

(ARBITRATION RESUMES)

BY MR. RUBIN: So we talked a little bit yesterday about immediacy and whether or not Mr. Campbell was an immediate threat of death or serious physical injury. Can you explain, what does immediate mean? What is immediate, what is immediate threat?

A. Well, somebody that is immediately a threat, something that's happening right now.

Q. And in terms of Mr. Campbell, and in terms of the facts that you know, what -- give the arbitrator an idea of what kinds of things would have to have happened for it to be reasonable for Mr. Campbell to have been an immediate threat.

A. Well, in this case, Madam Arbitrator, the information that we had was that he had a gun in a sock in a pocket. In this case, as he was running away, if you ignore the obvious, that he was hit six times in the back with a beanbag gun, he's -- at the moment that he is shot, Officer Frashour indicates that his hand was in the pants, and stayed and remained inside the pant waistband, and that the -- upon firing the hand came out. He was not behind a position of cover, he had not drawn the weapon, he had not fired the weapon. And in order for him to be an immediate threat -- He's predicting that certain things would have to occur in the future, assuming that he in fact is going to pull out a gun, and that he is going to go to cover, and that he is going to turn, and he is going to draw the weapon and aim it at the officers and fire at the officers. In a situation where we have a tactical advantage, we have a team of officers that are deployed around the location, we have officers who are -- who have a view of the front door on the perimeter, who can actually watch him when he is behind the car, who can see him and who can deploy deadly force from their location -- There is a light on Mr. Campbell.

In a situation like this, light gives us an advantage in that it's harder for suspects to see where we are to acquire us as a target. Even recently, we have -- all officers have available to them the ability to carry a handgun that has a light on it. And one of the things that -- one of the advantages that that provides us is it blinds suspects. And when they look back at us, it's hard to see exactly where we're at because there's a light shining in their eyes or in their face or there's a light emanating, and they can't see, necessarily, in a dark setting what's behind the light.

So we all have a position of cover, we have what is -- what could be construed as relatively hard cover, the engine block of a car. We are all basically in hard cover positions.

And we have a highly accuratized rifle. We have a -- it's a, you know, a .223 caliber semi-automatic rifle that is very easy to shoot. It has a very light trigger pull. It is very accurate out to 300 yards. Just to give you some idea, you know, this is around 55, maybe, to 60 feet or so. So this range for us is well within the range of our training and of our skill and our ability to deploy deadly force accurately and effectively on a man-sized target.

At this distance, it's -- we certainly can put rounds on a silhouette, on a man-size target, on a human body, perhaps even be able to shoot from a, you know, from a supported position over the top of the car. Shooting supported with a rifle, you shoot more accurately than you do in a standing position. So we have the ability to shoot from a supported position. And from a supported position we can deploy deadly force very accurately and at a relatively high rate in a situation like this, potentially even taking head shots, depending upon the circumstances. But being able to shoot, in other words, a very small target with a very accurate rifle at a very short distance.

So, you know, all of these -- The question is whether or not he was an immediate threat at the moment that he fired. And, you know, the hand is in the waistband, and he would have to do these other things, which are both assumptions and predictions, in order to be an immediate threat. And it is all taking place in the context of this both tactical and trained police response where we have a tactical advantage and superiority from a number of different standpoints.

So I'm saying all of that to say if we were standing directly in front of somebody, and there was nothing between us, and we were arm's length from one another, it would be a very different kind of encounter than if we were at distance and had cover and had a dog and had other officers who could deploy deadly force. And we have an accuratized rifle that would allow us to deliver deadly force from this position. So we have certain advantages that give us the flexibility of being clear about what we're seeing and what we're doing before we have to act, before there's an -- after there is an immediate threat.

Q. Okay. I want to talk for a few minutes about action/reaction, which you also mentioned, and which we've heard about in this case. Are there factors that mitigate, impact, influence action/reaction?

A. We tell officers -- we train officers about action/reaction as a principle in training, in our patrol tactics training and in our defensive tactics training, A, so that they're aware of it, that the initiator of an action has advantage over a person who's reacting. There's a reactionary curve. But we , tell them that so that they're aware of it, and so that they can take steps to mitigate the impact of that.

And so, again, it's -- the effects of action/reaction are mitigated by a variety of different factors.

Q. Give us an example of factors.

A. If I'm standing right in front of somebody and, you know, they're coming at me with a knife and they're going to stab me, they've already begun their action. They're probably going to be able to stab me before I can stop them. I'm reacting to that.

But if I'm 50 or 60 feet away from them, if I have hard cover, if I have a rifle, it mitigates, it influences, it impacts the degree to which it is a factor that requires a response. In other words, when I'm being stabbed, I have to react to that immediately or die, whereas in a situation like this I have other options available to me because there's time, there's distance. And the time and the distance, in a case like this, provides me with more options than I would have if action/reaction were in full force and very close proximity to me.

Q. With time and distance, does cover and resources play any part in sort of the action/reaction concept and mitigation of action/reaction?

A. You know, it all does. I mean we're -- we provide officers with this training, really extensive training in all these areas to help inform them about the dynamics of encounters, and what they can do to mitigate the impacts or the effects of things like action/reaction, and that -- the end that they ought to, where possible, take an action that would mitigate its effects.

Q. I think you've referred to the AR-15 as an extremely accurate and/or high position weapon. Does that have any impact on action/reaction --

A. Yeah, it does.

Q. -- as somebody's running away, 50 to 60 feet away?

A. You know, yes, it does. We have the ability to deliver different than -- very different than a handgun. You know, a handgun is designed primarily as a personal defense tool for close-in encounters. And it has a range, you know. We train to shoot the handgun out to 25 yards. So the handgun can be easily and pretty accurately fired out to that range. But the rifle, one of the reasons we went to the rifle, and one of the reasons we've adopted the rifle, and we provide it to officers and we train them in it and we deploy it out in the field is because of the advantage it provides us in being able to deliver accurate deadly force in situations that are just like this.

Q. Maybe one more question, which is you talked about immediate and what -- immediate is happening now, it's happening now, the threat is now. How would you compare that to potential threat? What's a potential threat?

A. Well, potential threat is where we have information available to us to suggest, say, a higher threat level of an individual, you know, either their past behavior, maybe the presence of a weapon. So there's a very -- Is there a real -- is there a potential threat? Yes. Is it immediate? I distinguish the two between it's possible that some thing or some things could happen that could cause a person to be an immediate threat, but that they have not -- those behaviors haven't occurred and so, therefore, they remain a potential threat, but not necessarily an immediate threat of death or serious physical injury to me or to other officers on the scene.

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

CROSS-EXAMINATION BY MR. AITCHISON: Lieutenant, I'm trying to understand those last answers that you gave to --

A. Sure. Yes.

Q. Please let me finish the questions. I'm trying to understand the last answers that you gave to Mr. Rubin's questions, and I'm afraid I don't. He was asking you what would it take for the threat posed by Mr. Campbell to be immediate. Do you remember that question? In your judgment, for the Campbell -- for Mr. Campbell's actions to pose an immediate threat, would at least one of these three things have to have happened: Mr. Campbell got behind the Volvo, Mr. Campbell drew his weapon, or Mr. Campbell fired his weapon. Would it take one of those three things, in your judgment, for this threat to be immediate?

A. I think I'd have to see a combination of behaviors, him get behind the Volvo -- Well, it's possible that as I'm watching him -- ignoring the obvious, that he's been beanbagged six times and reaching for where he was just beanbagged, as he's running away from me, my assessment of the threat is that it is -- it's reducing, that he is fleeing and moving away from me.

MR. AITCHISON: Madam Arbitrator, I know this is going to go on very long, but it's going to go on much longer unless the witness answers my questions. I understand he may have an explanation, and that he may want to offer that after he answers the questions, but that's Mr. Rubin's job.

MR. RUBIN: I think the witness is entitled to answer the question that he's been asked to the best of his ability. That's what Lieutenant King's doing. And we can go back and forth on this the whole time.

THE ARBITRATOR: I understand either way. And, you know, you asked three very precise alternatives. And he's saying that that's not possible to give you that kind of answer.

MR. AITCHISON: I understood him to say it took more than one of them.

THE ARBITRATOR: Well, yes.

Q. Let me just rephrase the question. Would it take more than one of those three actions by Mr. Campbell, getting behind the Volvo, drawing his weapon, and firing at officers -- Not firing -- Excuse me. Please let me finish. For you to conclude that there would be an immediate threat?

THE WITNESS: What were the previous two, I'm sorry?

(Reporter read as requested)

A. He would have to get behind the Volvo and turn -- appear as if he were drawing and turn towards me in some fashion. So in your judgment, a suspect who is facing away from police officers cannot pose an immediate threat?

MR. RUBIN: Objection; he wasn't a suspect.

Q. In your judgment, an individual who was pointed away from officers cannot pose an immediate threat, correct?

A. I suppose he could.

Q. It's a possibility.

A. It's a possibility, yes.

Q. And Mr. Campbell could have posed an immediate threat facing away from the officers, could he not? In fact, doesn't the training division train its employees that officers can be fired at by suspects firing over their shoulder?

A. No. Don't you know that the training division trains its employees in that fashion, that suspects can fire over their shoulder? We do train officers that, yes, suspects can fire from a variety of different positions, yes.

Q. Including over their shoulder, correct?

A. Yes.

Q. Including under their arms, correct?

A. It's a possibility, sure.

Q. And doesn't the training division train its officers that because of the action/reaction principles, an individual facing away from an officer can pull a weapon and fire at the officer in less than a second?

A. It's a possibility.

Q. Doesn't the training division train its officers that that can happen?

A. Yes.

Q. In fact, doesn't the training division break it down by hundredths of a second how long it would take an officer observing a threat to react by pulling a trigger to respond to that threat?

A. Do we teach them -- Do we break it down to a hundredths of a second?

Q. Yes.

A. I believe so.

Q. You just testified we are all in hard cover positions. Were you referring to all of the officers on the scene?

A. At least the four behind the car there. And I believe Officers McAllister and Andersen were -- I don't know that they were behind hard cover at the time.

Q. So you don't know whether all the officers at the scene were behind hard cover, correct?

A. All the officers here behind the car were.

Q. Officer Frashour is behind hard cover?

A. I believe so.

Q. What's his position?

A. He's standing there, standing up from the car.

Q. You're familiar with how high the front of a police car is, aren't you?

A. Yes.

MR. AITCHISON: Officer Frashour, will you stand? Lieutenant, tell me how high the front of a police car is. I'm going to move my hand up, and tell me --

A. Right about there, waist level.

Q. Is the top of Officer Frashour's body behind hard cover? Why do you say it is that Officer Lewton is behind hard cover? Hard cover is there and available for all of them. Is the entire car hard cover?

A. Probably more so just the engine block.

Q. The windshield of a car is not hard cover, is it?

A. It's not. Yes.

Q. And in fact, isn't Officer Lewton standing behind the windshield of the car, using the top of the car to brace his shotgun? And so now we know that neither Officer Frashour nor Officer Lewton are behind hard cover, correct?

A. At that time, that's correct.

Q. At the time Officer Frashour uses deadly force, correct?

A. Correct.

Q. Okay. What about Officer Boylan, where is he?

A. He's just there at the car with them.

Q. Do you know if he is behind hard cover or you just assuming?

A. Behind the car.

Q. Just behind the car?

A. Yeah.

Q. But you don't know if he's behind that portion of the car that is hard cover?

A. I do not.

Q. What about Officer Willard?

A. The same.

Q. Officer Kemple?

A. The same. They're at the light.

Q. So when you said in your testimony just a few minutes ago, and I'm quoting, "We are all in hard cover positions," in fact, you do not know whether any of the five officers behind the car were in hard cover positions, do you?

A. Well, as you've described it, they are not, but they have it all available to them there at the car.

Q. Do you think, for example, that if Mr. Campbell draws his firearm and fires in one of those rapid motions that the training division teaches, do you think Officer Frashour, understanding action/reaction principles the way you do --

A. Yeah.

Q. -- can duck behind hard cover before Mr. Campbell can shoot him? You also said, asking this -- in trying to answer Mr. Rubin's question, you said when Mr. Campbell gets behind this car, we've got a, you used this twice, man-size target.

A. Yeah.

Q. Do you remember saying that?

A. Yes.

Q. If he's behind the car is he a man-size target? If he's crouched down behind it?

A. Yes.

Q. Even if he stands up behind the car is he a man-size target?

A. Yes, he is.

Q. He's the same size target Officer Frashour is, isn't is?

A. You asked me if he's a man-size target. He is a man-size target, sir.

Q. If he stands up. And my question is if he stands up, is he the same size target Officer Frashour is? Is he the same size target.

A. Yes, he is.

Q. That Officer Frashour is when he's standing in front of the police car?. Police officers aren't taught by the training division to assume that a suspect is a bad shot, are they?

A. No.

Q. They're trained to assume that if a suspect has a weapon, that that suspect is fully capable of using that weapon, correct?

A. No, I wouldn't say that. I mean officers are trained that weapons and people that are in possession of them can use them, and that those weapons, when used, can have deadly effects, and the range of those weapons. We don't attribute a skill set or not to an individual.

Q. Well, simply because Mr. Campbell is thought to be in possession of a small firearm -- You'd agree with those are the facts here?

A. Small firearm, yes.

Q. Correct, yes.

A. Officers should not be assuming that that firearm is not dangerous, should they? They should be assuming that that firearm is deadly, shouldn't they?

Q. Now, you also testified in answer to Mr. Rubin's questions that when Mr. Campbell, in the hypothetical example of getting around the car, when he gets around the car, you mentioned we have other officers who have guns who could shoot him.

A. Correct.

Q. Who are you talking about?

A. Officer Andersen and Officer McAllister. Excuse me, officer -- yeah, Officer Andersen and Officer McAllister, correct.

Q. They can shoot him because they have a clear shot at him, correct?

A. Correct.

Q. There's no obstructions between them and him?

A. There's a fence, there's trees there, yeah.

Q. Fence and trees. But in your judgment, they could see him well enough to get a clear shot at him?

A. Yes. Not given the obstructions.

Q. And doesn't that, by definition, mean Mr. Campbell can see them well enough to get a clear shot at them? So the obstructions only go one way, they only prevent -- they only prevent Mr. Campbell from seeing, not Officers McAllister and Andersen from seeing Mr. Campbell?

A. I'm sorry, I don't understand your question.

Q. I'm trying to understand how it is that obstructions could exist out here that could prevent Mr. Campbell from getting a, your phrase, clear shot at Officers Andersen and McAllister?

A. He could shoot at them from there.

Q. Wait a minute. And yet the same obstructions would not prevent Officers Andersen and McAllister from getting a clear shot at Mr. Campbell?

A. I don't know why I don't understand your question. They have the ability to shoot at Mr. Campbell from where they are, given -- despite the obstructions, whatever obstructions are there.

Q. And he has the ability to shoot at them where they are despite the obstructions --

A. Correct.

Q. -- whatever obstructions there are?

A. That's true.

Q. You also said, in answer to Mr. Rubin's question, we have time and distance in this case. Do you remember saying that?

A. Yes.

Q. You'd agree, wouldn't you, that at the time Officer Frashour uses deadly force Mr. Campbell is out a foot or two from the front of the Volvo?

A. Yes.

Q. So the distance we have is a foot or two before he gets behind hard cover, correct?

A. When I say that we have distance, you know, we have -- we have the distance that he has to travel from the time that he starts running until he makes his way around the front of the vehicle or into the alcove or just running away.

Q. Well, yes, Lieutenant, but if you'll recall, Officer Frashour did not shoot Mr. Campbell when he started running, even though Mr. Campbell's hand was diving towards his waistband, did he?

A. After being beanbagged, correct.

Q. Without regard to being beanbagged, Mr. Campbell's hand was diving towards his waistband when he was out in the middle of the parking lot before he started running. And Officer Frashour did not shoot him at that point, did he?

A. Correct, that's correct.

Q. So that's Officer Frashour taking advantage of distance, isn't it?

A. It's him taking advantage of distance? I'm not sure I understand what that means.

Q. Okay. That's fine. And so the distance you're talking about is the distance before -- that Mr. Campbell travels before Officer Frashour uses deadly force, correct?

A. I think before and after. I mean the distance, the distance between the front of the car where he is and, yeah, the front of the Volvo or the alcove, there's obviously distance there.

Q. Yeah. The alcove's hard cover too, isn't it?

A. It could be, sure.

Q. What do you mean it could be? It has a brick facing. Isn't that hard cover?

A. I mean you walk in and out of it every day. It's not hard cover. It's just a wall. I mean it could be.

Q. I see.

A. See what I mean?

Q. We don't define a car as hard cover.

A. It's just a car.

Q. I wouldn't go out to my car today and say that's hard cover.

A. Right. That's what I'm saying about the alcove. Right. It's a brick wall. Could it be cover in a certain set of circumstance? Yes. Is it cover? It's just a wall.

Q. Right.

A. Yeah.

Q. It's a wall that would stop a bullet, correct?

A. It could.

Q. And from a standpoint of a reasonable police officer, you should treat a brick-lined wall as providing hard cover for a suspect, shouldn't you?

A. It certainly can be.

Q. That would be reasonable for an officer to believe that, wouldn't it?

A. Depending upon the context. I mean all action occurs in a context.

Q. What context would it require for brick either to be or not be hard cover?

A. Let's say hypothetically somebody's beanbagged and running away from us. They're not running to hard cover, they're trying to get away from where we're beanbagging them.

Q. I'm not talking about that. I'm talking solely about the issue of whether or not the brick serves as hard cover. Is it reasonable for a police officer to believe that a brick wall serves as hard cover?

A. Depending upon the circumstance.

Q. Okay. And under what circumstances would it not be reasonable for a police officer to believe that brick walls provide hard cover?

A. Under what circumstances would it be reasonable to believe --?

Q. Would it not be reasonable for a police officer to believe that a brick wall serves as hard cover.

A. I think it's something you're aware of. I don't think it necessarily is hard cover.

Q. My question's a little bit different. You have said that this brick wall, depending upon the circumstances, could be hard cover.

A. Correct.

Q. And I am asking you, what are -- that a police officer could reasonably believe that, depending upon the circumstances, this brick wall could be hard cover. I am asking you under what circumstances would it be unreasonable for a police officer to believe that a brick wall would serve as hard cover?

A. Would it be unreasonable.

Q. Yes.

THE ARBITRATOR: He's asking you a hypothetical, as I understand it.

Q. You've said there's some circumstances where a reasonable police officer wouldn't believe a brick wall is hard cover. When is it unreasonable to believe that a brick wall is hard cover. I mean it's always potentially hard cover.

THE ARBITRATOR: In a way we're getting into some of the sphere of obviousness.

MR. AITCHISON: Yeah, I think so.

MR. AITCHISON: Right.

THE ARBITRATOR: I mean, actually, a brick wall would not be hard cover if a person weren't behind it, if they were to the side of it and somebody were in front of them.

Q. But, Lieutenant, Mr. Campbell is running, he's running towards two things. We don't know in his mind where he's running, do we?

A. We don't.

Q. But we know the direction he is running, don't we?

A. Wedo.

Q. And we know he is running towards the Volvo, correct?

A. Yes.

Q. Can be, certainly.

A. Correct.

Q. And we know from your testimony the Volvo can be hard cover. And we know he's running towards the alcove, correct? And we know from your testimony the alcove could be hard cover, correct? I assume the apartment is hard cover too, isn't it?

A. It certainly can be. You're concealed in it. Rounds could, I suppose, go through walls and windows. Hard cover is defined as that which a bullet can't go through.

Q. In addition to saying we have distance on our side here, in answering Mr. Rubin's question, you also said we have time on our side. When Officer Frashour uses deadly force when Mr. Campbell is this foot or two, in your judgment, from the front of the Volvo, knowing what you know about Mr. Campbell's pace out at the scene from everything you've read, how much time do you think would elapse before Mr. Campbell could get behind the Volvo?

A. Probably a couple seconds.

Q. Or less, correct?

A. Perhaps.

Q. All right. Let me go over a little bit about your background.

A. Sure.

Q. You were a patrol officer, so in a patrol function in the City --

A. Yes.

Q. -- of Portland?

A. Yes.

Q. For how many years?

A. From when I was hired in 1990 until I believe around '95 or '6, somewhere in there.

Q. So five to six years.

A. Yes.

Q. And when you were a sergeant, I understood you to testify there was some period of time when you were a patrol sergeant, correct?

A. Correct, yes.

Q. It was about a year?

A. Correct.

Q. So your total patrol time is somewhere around six to seven years?

A. If you -- yeah, if you -- correct, unless you count time at Lake Oswego and time at the school police.

Q. I'm talking about in the Portland Police Bureau.

A. Yes.

Q. Six to seven years, all right. And what day were you promoted to lieutenant?

A. I think it was December the -- it was December of '09. I'm sorry, I don't remember the date.

Q. December '09?

A. Yes.

Q. What's the probationary period for lieutenants?

A. One year.

Q. What was your first assignment as a lieutenant?

A. In the training division.

Q. And who was your supervisor?

A. Initially it was John Tellis was the commander of the training division.

Q. How long did that last?

A. A few months, and then he retired.

Q. It was Captain Tellis, correct?

A. Captain, yes.

Q. Was Captain Tellis still your supervisor when you began the review of the Aaron Campbell shooting?

A. No.

Q. And you testified that you began your review shortly after the incident, correct?

A. I believe so.

Q. And the incident was January 29th --

A. Right.

Q.--2010?

A. Correct.

Q. So would Captain Tellis have been gone sometime around that time period?

A. I believe so. I think Commander Day began in the training division in, say, February, March, somewhere in there.

Q. And then you transferred out of the training division in May 2011?

A. Yes.

Q. So your total time there was about 18 months?

A. Yes.

Q. Now, prior to your service as a lieutenant in the training division, had you ever served as a patrol tactics instructor for the training division?

A. Yes.

Q. Probably 1997, '96.

A. Correct.

Q. And when did you last serve as a patrol tactics instructor? And you testified you served as a defensive tactics instructor? When did you last serve as a defensive tactics instructor?

A. About that same time.

Q. Firearms instructor?

A. Yes.

Q. 1996, 1997?

A. I continued to do firearms instruction through the years. I just recently have been decertified as I no longer do it.

Q. So that was done periodically?

A. Yes.

Q. What about an AR instructor, were you certified as an AR instructor?

A. I was not, no.

Q. How did you receive the assignment to work on the Sandy Terrace Apartment training division review?

A. My friend David Virtue asked for my help.

Q. And he's a fellow lieutenant, correct?

A. He was a sergeant at the time whose job it was to investigate officer-involved shootings for the training division.

Q. He's promoted during this review, then.

A. Correct.

Q. So you would have been his supervisor at the time he asked you for his help -- for your help?

A. Not necessarily. We were working on this together.

Q. Don't sergeants in the training division report to the lieutenant?

A. He didn't really report to me. We were working under Assistant Chief O'Dea.

Q. All right. Prior to this review of Officer Frashour's officer-involved shooting, tell us all of the reviews of officer-involved shootings you have performed for the training division.

A. I assisted Sergeant Corno in the shooting review -- excuse me, Sergeant Virtue, Lieutenant Virtue in the shooting that involved Russ Corno.

Q. That preceded this?

A. Correct.

Q. Okay.

A. And assisted in two other training reviews that were nonfatal.

Q. So you only had one prior experience with a deadly force incident review done by the training division, correct?

A. Correct. He shot him, but the suspect did not die.

Q. And in Officer Corno's case, he did not actually shoot and kill the suspect, did he? So when you take on this assignment, then, I'm just doing the math here, you come into this with one prior incident of assisting somebody else doing -

A. Yes.

Q. -- an officer-involved shooting review, and you have about two months on the job as a probationary lieutenant in training, correct?

A. Correct.

Q. And you testified that you began this process by gathering all the documents relevant to this, correct? So you looked at the full criminal investigation?

A. I did, yes.

Q. And the complete grand jury testimony?

A. Yes.

Q. Did you read all of the interviews?

A. Yes.

Q. So you read all of the interviews of every officer who was out at the scene, correct?

A. Yes.

Q. And you listened to tapes of the IA interviews, correct?

A. Correct, yes.

Q. And the IA investigation is going on at the same time --

A. Correct.

Q. -- I think you testified. And you're actually suggesting questions to the IA investigators as they go through this process, aren't you?

A. Correct.

Q. What sort of questions are you suggesting?

A. Whether or not we should have said -- what was the thinking behind saying -- giving the verbal warning around the shooting of the beanbag, the "do what you're told or you'll be shot," whether or not he's trained to say that or not, whether that's a good idea to say that kind of question to somebody who's suicidal. Ask if he thought that he was unarmed, I remember was a question. I don't have a list of the questions, so -- it was some time ago, so it was just in the course of meetings we would suggest questions.

Q. All right. So you'd be meeting with the IA investigators and talk about witnesses, I assume, who were coming in, and you say, hey, I want this, I want that, that sort of thing?

A. Right, things relative to training.

Q. And then the IA investigators would do their interviews?

A. Yes.

Q. And as I understand it, you'd have access to the audio recordings right away?

A. They would e-mail them when those were available, yes, so that we could listen to them prior to the verbatim transcription being completed.

Q. I assume that would be the same day, right?

A. Not necessarily. I mean, you know, it would depend. They could send them to us that day or a day after. We would get them shortly after the interviews occurred.

Q. And then the transcripts would take longer to prepare, I think you said.

A. Yes. I believe so, yes.

A. And you testified yesterday that you actually listened to Officer Lewton's IA interview, correct? And did you do that within a day or two of Officer Lewton's interview?

A. I don't recall when I would have listened to it.

Q. What about Officer Frashour's interview, you listened to that relatively quickly after he gave the interview?

A. I don't recall when I listened to them. I mean certainly after receiving them listened to them at some point. I don't remember exactly when.

Q. I'm trying to place it in time, though. You're getting these interviews, or the recordings, you say relatively quickly, within a few days.

A. Right.

Q. Are you listening to them within a few days?

MR. RUBIN: Objection. He just said he didn't know when he listened.

THE ARBITRATOR: Why is this important, even?

MR. AITCHISON: I will connect it up. If you know, are you listening to them within a few days?

MR. RUBIN: I think he just said.

A. I don't know when I was listening to them.

THE ARBITRATOR: I agree with Howard.

Q. Would you -- all right. You testified that, yesterday, that one of the most impactful things you did in the course of reviewing the materials was to listen to Officer Frashour's IA--

A. Correct.

Q. -- recording, correct?

A. Yes.

Q. And you said something like "Hearing some of the things he said was the basis for influencing my view about his mindset as it relates to everything he knew, everything he saw, and everything he did for the reasons he did it." Do you remember that?

A. It played a role, yes.

Q. Okay. And you testified that this listening to this tape significantly impacted your decision as to whether or not Officer Frashour was in or out of policy. Do you remember using that phrase?

A. I certainly may have. It was very impactful.

Q. And you concluded, after listening to that tape, you concluded Officer Frashour was out of policy, correct?

A. I wouldn't go so far as to say that. As you mentioned, I reviewed all the criminal interviews, both reading them and listening to them; read the, you know, the entirety of the grand jury testimony; talked with trainers in the training division; reviewed lesson plans and all relevant training he would have had during the course of his career; talked generally with trainers about how we train officers, and train them toward what goal; and at some point listened to the internal affairs investigation; listened to his --

I mean we really only have a couple things to go by, ultimately. One is what we can construct we know happened at the scene on the basis of all the information available to us. And there's eyewitnesses and there's obviously physical evidence and there's sketches and photographs. And we -- so we construct sort of a sense of what happened on the basis of all the information that's available.

And then individual officers have to tell us what they did and why they did it and what they thought. And we train officers, you know, from the beginning of their training that they're responsible and accountable for each round that they fire, and that they have to be able to articulate why they do what they do.

And that, ultimately, under the law and the policy, that their articulation, their explanation of what they've done and why they've done it plays a significant role in shaping the view that people have of what they did and whether or not that comports with the constitutional standard, the state law, the policy, and/or, in this case, the training.

So it did play a significant role because I got an opportunity to hear directly from him kind of what he thought and what he did and why he did it. And that it was the first time that I had the opportunity to really hear in clear terms why he -- what led up to him taking the action that he did.

I actually had been very reluctant throughout the course of this review to arrive at a conclusion around whether or not he was in or out of policy. My job was to conduct a review of the information available and compare it to relevant training, and decide whether or not he acted consistent with his training. And as you know, that's the report that I wrote and the conclusion, however it's viewed, that I have arrived at. And it's on the basis of a whole variety of different factors, not the least of which was his IA interview.

Q. I'm just trying to understand your testimony yesterday. I asked you slightly a different question than you answered. Your testimony yesterday was that you decided after listening to his interview that he did not act in accordance with his training. Is that still accurate?

A. I think that, in conjunction with other things, yes.

Q. Okay. Now, let's try to place this a little bit in time. Officer Frashour's IA interview was held on April 1st, 2010, correct?

A. Yes.

Q. And as I understand it from your testimony yesterday, sometime after that you prepare a draft of your report and run the report by your trainers. Is that correct? And if I understand it, you're saying in the draft report Frashour didn't comport with his training, and the trainers are saying we think differently; is that right?

A. No, that's not correct.

Q. What is correct?

A. I prepared, on the basis -- I don't know when I listened to the IA interview. I have absolutely no idea, on the basis of what I read in his detectives interview, and what he said, and the grand jury testimony, I provided a draft to a variety of different people that basically concluded that he acted appropriately.

Q. Acted appropriately.

A. Well, I didn't -- the draft was -- I mean I don't have those drafts, but basically I listened to the detectives interviews, I read the grand jury testimony. I'm in the process of drafting -- You know, these are drafts, it's a draft of whether or not he comported with training. And I don't know what conclusions I arrived at in them, but I would share those drafts with trainers as we would discuss them. Yeah, that's what happened.

Q. I totally misunderstood yesterday. I thought you said you provided a draft to the trainers that found Officer Frashour out of policy, and that they disagreed with you. Do you remember that testimony?

A. Well, I -- I don't know about that testimony. I provided a draft to trainers that basically concluded that -- I wish I had the draft with me. But I guess I have to say that I wrote a draft and I gave it to trainers and we talked about it extensively.

This is a subject of significant discussion in the training division among trainers and the Portland Police Bureau. Sergeant Virtue and I are talking about it extensively; Assistant Chief O'Dea we're meeting with with some regularity. And this is occurring, obviously, after the event, over a period of months prior to the time that the actual document is finalized.

And in reading his criminal interviews and listening to the grand jury -- or reading the grand jury testimony, I was more -- I wrote out basically what the facts were, and talked with trainers about it.

But there were certain areas that I was fundamentally struggling with in this case. And what I found in sharing the drafts with them was that they couldn't, wouldn't, struggle kind of alongside me with the issues that I had around the 60 percentile.

In other words, if I talked to Todd Engstrom or even Tracy Chamberlain and say, you know, he's reaching into his waistband; well, that's consistent with his training, it's consistent with his training that he's reaching into his waistband. Well, help me understand how being hit multiple times with a beanbag gun right in front of you mitigates that. Because we don't provide training, we didn't provide it when I was in training before and we don't provide -- we don't train for every single situation. We don't do this scenario.

So I'm asking them on the basis of how they train people whether or not it's consistent with his training that he arrived at this kind of ultimate set of conclusions based on his thought process. And what I found was they were inclined to say yes, and I'm sure they'll come here and say that, that it's from the 60 percentile, that he was reaching in a way or in an area of his body that is consistent with where we train them weapons are kept.

But, really, I didn't feel like they were willing or able to help me struggle through the complexities of the fact that he had just been hit with a beanbag numerous times. How do you weigh that in a situation like this to determine whether or not he's acting in a way that's consistent with his training?

And the reason that -- One of the problems that we have in this situation is the trainers historically have not wanted to -- I don't think that they've wanted to write reviews that conclude that officers are out of training, for different reasons. I don't think they -- I mean the genesis of these reviews was, initially it was supposed to be a tactical debriefing, it's supposed to be something you learn from. And over time what's happened, I think, is they're designed to provide more information and more of a critique about what happened that sometimes can be -- sometimes it can be contrary to the officer. It can have harmful effects in, say, a disciplinary proceeding like this one. And I don't think as a matter of fact they want to be a part of that, and offer information that's going to be adverse to an officer in a situation like this. I just, don't think they do. That was my experience in this case.

So I write drafts, I talked with them about it. I realized at a certain point, I understand what you're saying, I understand your points about the time and the reaction time, but that ultimately I didn't think that they were willing or able, whichever, one or the other or both, to help me kind of struggle through the complexities of this case to arrive at a conclusion about whether or not he acted in a way that was consistent with his training.

Q. The complexities of this case all take place from the standpoint of Officer Frashour's decision making to use deadly force in three seconds.

A. In a relatively short period of time, that's true.

Q. What's your estimate of the amount of time Mr. Campbell was running?

A. I don't know that -- You know, two or three seconds.

Q. And the first -- and you just testified, I think you said that the first draft that you wrote after reading all of the grand jury testimony, after reading all of the detectives testimony -- interviews, the first draft found Officer Frashour to have acted in compliance with his training, correct?

A. It was more supportive. I don't know that I -- I wrote a factual analysis of what he said, and took his, in the early days of the review, took his interpretation of the facts as what -- as the basis for -- as what happened. Just took his point of view, not looking at what anybody else said, not looking at what we know about what happened out there, not knowing -- not looking at how we train officers, not looking at any other factors, just going by what he says, very narrowly what he says about this situation, that, yeah, that it was more supportive of what he did.

Q. More supportive or did you explicitly find him to have acted in accordance with his training?

A. I don't know that -- I mean it wasn't -- it was a draft for purposes of a discussion as this review or this report was being written. I don't know that I arrived at the conclusion that he acted appropriately. I was,

early in the investigation, because of the information that he provided and that I reviewed, I was more sort of taking on his point of view and sympathetic to his point of view.

But as the investigation went on and as more materials were reviewed, and as more information became available to me, especially the IA interview, I learned more about his thought process about why he did what he did, which was relevant to whether or not, ultimately, he acted in a way that was consistent with his training, in my view.

Q. Let me ask a question, because this seems to be a core issue. When we are judging whether or not Mr. Campbell poses an immediate threat of death or serious physical injury, don't we judge that only from the standpoint of what Officer Frashour perceives at the time? Only an officer's subjective point of view is considered? I'm asking you the question.

A. If that were the case, any officer could do anything they wanted as long as they subjectively believed it. We would have to accept it?

Q. Okay. So is your point, then, that in addition to the requirement that an officer reasonably believes that somebody is engaged in conduct that poses an immediate threat of death or serious physical injury, that all of the officer's factual observations and conclusions have to be reasonable? Is that what you're saying?

A. I don't really understand your question.

Q. Okay. That's fine. That's fine. I'll withdraw it. Now, so you take this first draft that is, I think your phrase is more supportive of Officer Frashour. And do you give this to your trainers?

A. Yes.

Q. Okay. Do you give it to Officer Engstrom?

A. Officer Engstrom, Officer Chamberlain, Officer Elliott, Mary Otto in the training division, one of our curriculum developers, to Sergeant Engstrom -- excuse me, Sergeant Hager, yes.

Q. Officer Pippen?

A. I don't know. I think so.

Q. Paul Meyer?

A. I don't know if I provided -- I may have. I'm sorry, I don't know.

Q. So we know for sure Engstrom, Reasor, Chamberlain, Elliott, Otto, correct?

A. Hager.

Q. And Hager. We don't know on Meyer and Pippen, though you think so?

A. Correct.

Q. What about Sergeant Livingston?

A. No, he was not in the training division at the time.

Q. Did you consult with him on this at all?

A. I don't think so.

Q. And what were the specialties of these trainers? Engstrom?

A. Defensive tactics.

Q. Reasor?

A. I don't know that I gave him a draft. So you might take his name off the list. It's Engstrom, Chamberlain. Chamberlain is one of the bureau's patrol tactics instructors. Phippen, of course, is a patrol tactics instructor. Elliott is a firearms instructor. Sergeant Hager is in charge of the advanced academy, so she oversees all the curriculum in the advanced academy.

Q. What's the range of tenure in the training division of these various people?

A. Oh, you know, in excess of 10 or 15 years, on average. Many of them have been police officers for some time, and then in their disciplines for some period of time, considerable period of time as well. Some of them, for example Officer Phippen, have trained hundreds of Portland police officers in defensive tactics? Patrol tactics. I think he's one of the best instructors the bureau's ever had in that category, yeah.

Q. The bureau obviously trusts these trainers to instruct officers on the standards for the use of force, correct?

A. Absolutely.

Q. You trust them not only to instruct on the standards but also the bureau's values with respect to the use of force, correct?

A. I don't know how much they'd say that, but, generally speaking, they have their curriculum and they instruct it, yes, and they do a very good job at it, all of them.

Q. And one of them, Paul Meyer, was instrumental in the development of the AR program, wasn't he?

A. He was previously a patrol tactics instructor and helped to develop much of the curriculum that we used to review this, and is, yeah, probably one of the single-most competent people I know.

Q. Has he trained, to the best of your knowledge, every AR certified --

A. He has.

Q. -- employee in the Portland Police Bureau?

A. Yes, he has.

Q. And he washes out plenty of applicants in the process, doesn't he?

A. He does.

Q. All right. In your judgment, is Officer Meyer a reasonable police officer with respect to his --

A. He is, yes.

Q. -- with respect to his analysis of use of force issues?

A. You know, by and large, I think so, yes.

Q. Officer Engstrom?

A. Generally speaking.

Q. Officer Reazor?

A. I don't know that I -- I don't know that I -- the extent to which I talked to him. But, yeah, I think so.

Q. Chamberlain?

A. Yeah.

Q. Elliott?

A. I think they're all reasonable people.

Q. All of them. You think they're all reasonable police officers, correct?

A. Yeah, I do, yes. Right.

Q. Who are the bureau's subject matter experts --

A. -- in the training provided to Portland police officers, correct?

Q. Yes. And you've now mentioned nine of them.

A. I'm sure there are more.

Q. And all nine believed that Officer Frashour's actions were consistent with his training, correct?

A. I think that it's likely that they will all say that, yes, although they did not review the case in its entirety.

Q. Did you ask any of them to review the case in its entirety?

A. I did not.

Q. Let me ask you, you're a new lieutenant, it's been 14 years since you've instructed in defensive tactics or patrol tactics, you're only two months in the training division, you've only assisted in one review of a deadly force incident in the past. You made the decision not to ask one of these subject matter experts to review the investigation and give you his or her opinion. Why?

MR. RUBIN: Objection; it's argumentative.

Q. Why did you -- Okay. I'll rephrase it. Why did you make the decision not to have one of these subject matter experts review this file?

A. It's not their job. The file itself is voluminous. They, I think, are fundamentally unwilling, when someone's career hangs in the balance, to say something in a complicated situation like this that's adverse to the individual. And, you know, that -- it's not their job, ultimately.

Q. Lieutenant, isn't it true that prior to the training division's review of Officer Frashour's shootings, in fact the very trainers that we are talking about here had been asked by the bureau to review deadly force incidents and give their opinion as to whether or not the officer's conduct complied with training?

A. That's one of the reasons that I did not ask them more than I did. The reviews of all the other officer-involved shootings that have happened over the last handful of years, they're all available in the training division. And when you look at them, you find that, by and large, they're summaries of what happened. And that it's very infrequent that they're more than that. And so up to this point, the product that's been produced, the conclusions that have been arrived at are all, you know, relatively generic.

And so I think we're at a point in the organization where we're being -- we're looking harder at incidents, and writing reports not by trainers that are co-workers, but by policy makers in the organization. And that, as a matter of fact, I think that's a better, ultimately, when that process is finalized, I think it's a better product for the Portland Police Bureau, given the magnitude of cases that are like this, than -- I don't think that we shouldn't consider their view or even have them write it in memo form, and consider it and have it be a part of the discussion. But, you know, at the end of the day, whether or not an officer acts in a way that's consistent with the training or policy, I think that has to be left to the commander of the precinct, the review level committee, the chief of police, and the commissioner.

MR. AITCHISON: Chris, could you read back the last question? (Reporter read as requested)

Q. Yes. Sorry. I could have saved us all a little time.

On which of these prior occasions did the bureau find that any of the recommendations made or findings made by these trainers was biased towards employees?

A. I don't know that they've ever found they're biased in any way. I'm not saying that.

Q. Can you point to one officer-involved shooting review done by any of these trainers that was anything less than objective and fair?

A. I don't know that I can say that.

Q. Some of these trainers are not just experts in the bureau, they're national experts, aren't they?

A. Who are you thinking of?

Q. Do you know that one way or the other?

A. Well, I don't know what you mean by national experts.

Q. Do some of these trainers train other agencies beyond just the bureau?

A. Probably all the -- many of the trainers in the training division at one time or another helped train other police officers in other agencies in this area, or maybe around the country, sure.

Q. You said something today that repeated what you said yesterday, that one of the reasons that you didn't ask the trainers to review this file was because the file was voluminous.

A. It's huge. Yes.

Q. Which of the trainers do you think could not handle reviewing a voluminous file?

A. I think any one of them could. I don't think it's their fundamental responsibility or job as a trainer.

Q. It used to be, though, is that your testimony?

A. It has been in the past, yes.

Q. But you changed that when you came into training?

A. It was done -- it was done by -- you know, there was a position, it was the officer-involved shooting sergeant, and then that was the person who reviewed the material and wrote the report and consulted with the various trainers. It's been a process that's been evolving since it was implemented on us by PARC some years ago.

Q. I want you to take a look at Joint Exhibit 11. I think it's in front of you. And please take a look at Page 88, which is the training division review.

A. Sure.

Q. You'll not find that in here. I want you to point to where in this review you relate to those who are reading it the opinion of, for example, Officer Chamberlain -- Let me finish my question.

A. Sure.

Q. That Officer Frashour complied with his training.

A. I did not write that in this review.

Q. Where do we find in this review any reference to the opinion of Officer Meyer?

A. Nowhere will you find in this document reflected any opinion by any trainer other than my conclusions as a result of this review.

Q. You knew that the training division review was going to go to the commander, correct?

A. Correct, yes.

Q. Didn't you think it was important for the commander to know that every single one of your trainers believed that Officer Frashour's conduct complied with his training?

A. First of all, I don't know that every one of the trainers would say that. I mean you're making a sweeping generalization that all trainers supported everything that he did, and I don't think that's accurate or true.

Q. I'm sorry, I'm just repeating your testimony. You said yesterday and you said today that all of the trainers believed that Officer Frashour's conduct complied with his training. Is that not accurate?

A. I don't know that.

Q. You said it twice.

A. The trainers that I talked to believed that, for example, for example Engstrom, believed that the 60 percentile is in fact an area -- is what we train officers for where weapons are kept, in the waistband, or sergeant -- Tracy Chamberlain would say that action/reaction was in play and was a determining factor that concludes that Officer Frashour acted in the shooting in a way that was consistent with his training.

And so they weighed in, those two in particular, weighed in in that limited way on those topics. But, no, I did not include that in here because it's mitigated by the fact that he was beanbagged right in front of him, and there are other factors that are here, that are present to mitigate the action/reaction principle. So I did not conclude on the basis of the review and discussions with trainers that in fact he acted consistent with his training.

Q. All right. You're being told, if I understand this, by your trainers when you show them these drafts, you're being told we think Frashour acted in accordance with his training, right?

A. Correct.

Q. Isn't that important information to you, the opinions --

A. It is, sure.

Q. -- the opinion of your trainers?

A. Sure.

Q. I regret not having included it, yeah.

MR. RUBIN: Objection.

Q. Why don't you include it in -- why don't you include it in the training division review? Is there any way, to the best of your knowledge, that Commander Ferraris knows what your trainers felt about this situation, what their opinion was?

THE ARBITRATOR: I guess I'll allow him to answer if he knows. Don't speculate, though.

A. I don't know.

Q. Chief Reese?

MR. RUBIN: Same objection.

THE ARBITRATOR: Answer if you can.

A. I'm sorry, did I know that Chief Reese knew that the trainers were in support of this?

Q. Yes.

A. What was the basis for your assumption?

Q. I assume that both Commander Ferraris and Chief Reese believed the trainers were in support of his action.

A. We met and talked with -- David Virtue and I met and talked with Commander Ferraris on a number of different occasions and relayed discussions that we had had, information we'd come by, information we revealed -- or reviewed, rather. I think they both knew.

Q. You spent five months on this review, correct?

A. Correct.

Q. Hundreds of hours?

A. Yes.

Q. Isn't one of the bureau's central principles in assessing deadly force incidents that we don't judge the use of force by using the 20/20 vision of hindsight, but rather we look at the officer's decision making at the time?

A. I think I capture that in here --

Q. Do you agree --

A. -- looking at the decision making.

Q. Do you agree with that principle?

A. Yes.

Q. So what this does, if I understand it, this principle does is to require you, in assessing Officer Frashour's conduct, to put yourself in his shoes out there at the Sandy Terrace Apartment, knowing what he knows, seeing what he sees, correct?

A. Well, sure, among other things, of course.

Q. What do you mean among other things?

A. Isn't there -- I'm in possession of other information from the investigation.

Q. Do you think it's appropriate to assess Officer Frashour's conduct on the basis of information he does not have? Is it appropriate to assess his -- What is it again, I'm sorry? Do you believe it is appropriate to assess Officer Frashour's conduct on the basis of information he does not have?

A. It should be on the basis of -- a part of it, certainly, is on the basis of what he knows.

Q. Okay. Let me try again with the question.

A. Sure.

Q. Do you believe it is appropriate to assess the propriety of Officer Frashour's actions on the basis of information he does not have?

A. On the basis of -- No, I don't think we should on the basis of information he doesn't have.

Q. So we shouldn't be looking at facts about this scene that are learned after the fact, right, in assessing the reasonableness of his conduct?

A. I don't know that I -- I arrived at a conclusion about whether he acted consistent with his training. I didn't arrive at a conclusion about the reasonableness of his conduct as it relates to the policy.

Q. All right. I thought you testified yesterday that Officer Frashour did not reasonably believe that Mr. Campbell posed an immediate threat of death or serious physical injury. Didn't you testify to that?

A. I believe so, yes.

Q. So in fact, you did judge whether or not Officer Frashour complied with the bureau's standard on deadly force, didn't you?

A. Yes.

MR. RUBIN: In his testimony or in the report?

MR. AITCHISON: He does it in both places. He does it all over the place. You did make that judgment, correct?

A. In this report I say that he did not act -- well, you can read it. That his actions weren't consistent with his training, yeah, that he didn't de-escalate his mindset on the basis of counterbalancing information that was available to him at the scene. That was available to him at the scene. So that he knew, correct? Yeah, that he knew, correct.

Q. So he can't be held, do you think, to counterbalancing decision making with information at the scene that he doesn't know, can he?

A. Correct, it's on the basis of his training, his education, his experience, his knowledge, what he's seeing, what he's observing, yes, at the time, at the time that he makes the decision to fire.

Q. All right.

Howard, Madam Arbitrator, this might be a decent time for a break.

(RECESS: 10:20-10:50)

BY MR. AITCHISON: Lieutenant, we just had a half hour break. Were you discussing the substance of your testimony with the City attorneys?

MR. RUBIN: Objection.

THE ARBITRATOR: On what basis are you objecting?

MR. RUBIN: Objecting to the extent it's attorney-client privilege in terms of communications that I had with him with respect to substantive testimony that I may have, not with respect -

MR. AITCHISON: First of all, I think consulting with the witness during the middle of cross-examination about the witness's testimony is out of bounds, and I would --

THE ARBITRATOR: Well, it is highly irregular. I'm going to allow the question and answer. Go ahead and answer.

A. Yes, we did

Q. Were you talking about the questions that I was asking on cross-examination?

MR. RUBIN: Same objection. I'm going to instruct him not to answer.

THE ARBITRATOR: You can answer that as a yes or no. I don't think that invades the attorney-client privilege.

MR. RUBIN: To ask about the substance of the discussion? I think it's exactly what he's asking --

THE ARBITRATOR: No.

MR. RUBIN: -- you know, if we were discussing questions that were asked during cross-examination.

MR. AITCHISON: Let me withdraw the question. Madam Arbitrator, I'd just like an instruction from you to both of us that this won't happen again.

THE ARBITRATOR: Okay. I will give that instruction. I would like -- I understand you can prepare your witness, both sides can prepare witnesses, but I would prefer that you not consult with them during the testimony.

MR. AITCHISON: Madam Arbitrator, Howard, we're going to have a series of paper exhibits for you. At the end of the day Anil will give you electronic versions of all the paper exhibits, so to the extent we want to throw them away at the end of the day. And you will see our exhibits are all numbered on the lower right-hand side. And we've also tried to number page numbers as well as exhibit numbers.

THE ARBITRATOR: [Exhibit] A 21.

MR. AITCHISON: Just by way of introduction.

BY MR. AITCHISON: Lieutenant King, I've shown you an e-mail that is dated March 2nd, 2010 to you, Arnold Warren, David Virtue, carbon copies to a lot of other individuals, from Craig Morgan. Sergeant Morgan was in charge of the internal affairs investigation, wasn't he?

A. Correct, yes.

Q. And is it accurate to describe this document as Sergeant Morgan is telling you and the other addressees that they are starting their interviews of witness officers that week? So the witness officers in the IA investigation, the witness officer interviews started the week of March 2nd, correct?

A. That's what this indicates.

Q. Yes.

A. Yes.

Q. Okay. And at the bottom of the page Sergeant Morgan also lays out for you the plan, the tentative interview schedule for other officers. Do you see that? And do you see the plan is to interview Officer Frashour later in the week -- excuse me, later in the month, and the week of March 22nd? And in this message, doesn't Sergeant Morgan say to you, "If you have any specific questions you would like incorporated into our interviews to help with your training review, let me know," correct?

A. Correct.

MR. AITCHISON: Howard, we'll be providing a binder at the end of the day for the witnesses. Lieutenant, I'm showing you Exhibit A 23, which is an e-mail from Sergeant Morgan to you and Lieutenant -- or Sergeant, whatever he was then, Virtue, attaching a witness chart.

A. Yes.

Q. And if you look at the following pages of the witness chart, do you recognize this document? I do.

A. Yes.

Q. And let me direct your attention -- And, Lieutenant, I have excerpts from this chart up on the screen. Let me direct your attention to these excerpts. I know we can look at the whole chart, but these excerpts. First of all, I want you to take a look at Column B-- -- and Column A. Column A lists on this chart the various police officer witnesses, and then lists the various civilian witnesses, correct? And on Column B we have a listing of various things that Sergeant Morgan had extracted from the grand jury and detective interviews. He puts them in the categories, correct? So, for example, Column B here is SB, that means suspect to you, doesn't it?

A. Yes, subject behavior.

Q. The suspect's initial behavior, correct?

A. Yes.

Q. So what you're summarizing is Officer Frashour describes that Mr. Campbell's walking backwards quickly and determined, hands on back of the head, correct? Is that an accurate summary of Officer Frashour's testimony to this point?

A. Correct.

Q. Correct?

A. It is.

Q. That's an accurate summary of his testimony in internal affairs eventually, correct?

A. Yes, correct. Yes, yes.

Q. He's saying Officer Lewton describes Mr. Campbell as almost jogging backwards, hands on back of head. Do you remember Officer Lewton's testimony to that effect? And then Officer Elias, our K-9 officer, he testifies that Mr. Campbell is walking back slow with hands on the back of his neck, and at the grand jury he's saying following directions and fingers interlaced.

A. Yes.

Q. You see all of that testimony, correct?

A. Correct.

Q. So here we have the testimony of three officers, two of them say that Mr. Campbell walked back quickly, and one of them says that Mr. Campbell walked back slowly, correct?

A. Correct.

Q. And all of these officers are within 20, 25 feet of Mr. Campbell, right?

A. Correct, yes.

Q. And as we go down this Column B in the actual exhibit itself, and we look at Page 2, don't we see all sorts of inconsistent descriptions given by the police officers at the scene as to Mr. Campbell's pace?

A. Some say he's moving slowly, others say he's moving quickly, yes.

Q. All right. And then look at Page 3 of this exhibit. Do you see the civilian witnesses listed on Page 3?

A. Yes.

Q. And once again, if we just stay in Column B, and we look through these various civilian witnesses, we see everything, again, from walking -- Tyler Camp, for example, very quickly, with both hands on his head; Jenna Peterson, walk backwards, fairly quickly, with hands on head, coming faster and faster; to Kenneth Boyer saying at the grand jury he walked at a normal pace.

A. Right. That's true. That's correct.

Q. So we find the same inconsistent descriptions of Mr. Campbell's pace, correct? That's not unusual, is it, to find witnesses to a critical incident that is unfolding in a very quick period of time to give honestly-held differing opinions as to recollections as to what occurred, correct? And why is it, in your judgment, that the accounts from all of these witnesses, some of whom are trained police officers, why is it that those accounts were different?

A. Well, they have a different point of view or they perceive it differently. Yeah, people interpret things maybe differently when -- Yes.

Q. Now, let's return to Page 1 of this. I'm sorry, it's Page 2, the first officer page. Are you with me?

A. The first officer page, yes.

Q. It has Ron Frashour as the first column on the page.

A. Yes.

Q. And you see Column C where it says commands given?

A. Yes.

Q. We find, for example, Officer Frashour being summarized as saying he heard the commands being yelled but does not remember specifically what commands were given.

A. Correct.

Q. Do you remember that?

A. Yes.

Q. In fact, that's inaccurate, isn't it? Officer Frashour testified he remembered two different commands being given, the stop and put your hands up commands. Isn't that your understanding?

A. That what again, I'm sorry?

Q. That Officer Frashour testified he remembered two specific commands being given, the stop command and the put your hands up command. Isn't that your understanding?

A. I believe so, yes.

Q. We see with Sergeant Lewton, that Sergeant Lewton remembers some fairly specific commands, that he is saying, "Slow, slow, slow. Put your hands up in the air. Do exactly as I say or you will be shot." Do you remember Officer Lewton's testimony to that effect?

A. Yes, he's giving the commands.

Q. And incidentally, you talked about this a little bit on direct examination today, beanbag operators are taught to say words to the effect of "Do as I say or you will be shot" prior to deploying the less lethal, aren't they?

A. Yes.

Q. And Officer Elias remembers, "Get your hands up. Put your hands up or you're going to get shot," but says nothing about slow down, correct?

A. That's what's listed here, yes.

Q. Is that your recollection as well?

A. I don't have a specific recollection, but -- of what Elias said.

Q. And some of the officers on the scene don't remember any of the specific commands Officer Lewton gave, don't they?

A. All the officers listed give some description of commands that were given, get on your knees, walk backward, walk back to the sound of my voice, told to put his hands up, walk backwards, slow. All the ones listed here heard something, heard commands given.

Q. Okay. Now let's look at Column D. The heading on Column D is subject's response to commands, correct?

A. Correct.

Q. Correct.

A. Yes.

Q. So we find for Officer Frashour again, yelling back at officers after stopping, aggressive and hostile and defiant and loud, correct? And we find, you know, a variety of other accounts as to what Mr. Campbell's response was to Officer Lewton's commands, correct? Would you agree with me that every single witness who was a police officer who heard commands given by Officer Lewton to Mr. Campbell testified that Mr. Campbell did not comply with all of those commands?

A. I believe so. He did not comply with all the commands.

Q. Right. Every single police officer said that, though, correct?

A. Andersen says assumed he wasn't complying, not specifically addressed. So of the ones that are listed here, it looks like most of them are saying that he did not comply with commands.

Q. Everyone who's asked the question says he's not complying with commands, right?

A. Apparently, yes.

Q. And when we turn to Page 3 -- excuse me, Page 4, which is the civilian witnesses -- Let me just shortcut this. Would you agree with me that every single civilian witness who was asked that question testifies that Mr. Campbell's not completely complying with commands?

A. I don't know that they were asked specifically whether or not they thought that Mr. Campbell was complying with commands. It's not clear from the answer that's given in the -- and the answers vary.

Q. Well, let's look at them. Let's look at Courtney Jones, whose answer is that Mr. Campbell's -- and this is -- all I can do is look at Sergeant Morgan's titles here. "Subject's response to commands was 'You guys are going to have to shoot me,' and the subject reached into a pocket with his right hand." That's not complying with commands, is it?

A. It's not.

Q. And then Kenneth Boyer, "Shoot me, then, just shoot me," at grand jury said that, "while continuing," said, "while continuing to walk backwards." Never stopped moving, moving backwards until less lethal deployed. That's not completely complying with commands, is it?

A. Correct.

Q. Robert Montgomery, "If you're going to shoot me, shoot me. Let's get this over with." That's not completely complying with commands, is it?

A. No.

Q. Do we have to do all of these?

A. No.

Q. They all say, don't they, that. Mr. Campbell was not completely complying with commands?

A. I believe so, yes.

Q. So that's your understanding as of the grand jury and the detectives investigation, then, that every single eyewitness said that Mr. Campbell was not completely complying with commands, correct?

A. Correct.

Q. Now let's look at Column E, back to Page 2. And this one says subject's hands after LL. You take that to be less lethal? Do you see Column E?

A. I see Column E. Which page?

Q. Page 2.

A. Okay, yes. Okay. "Shoved his left hand in the back of his waistband." Is that what you're referring to?

Q. Right. What's your understanding of what subject's hands after LL meant?

A. Subject's hands after less lethal, yes.

Q. What did Mr. Campbell do with his hands after the less lethal, correct? Let me shortcut this again. Would you agree that as of the time the grand jury and the detectives investigation have concluded, every single eyewitness who saw Mr. Campbell's hands after the deployment of less lethal described his hands coming down? "Couldn't see his hands after he started running, came down off his head."

A. Yes, I believe so.

Q. Lieutenant, I'm showing you Exhibit A 24, which is an e-mail dated March 30 from Sergeant Morgan to you. Looking over this e-mail, is this your -- is your understanding of this that this is a cover e-mail where Sergeant Morgan is e-mailing you transcripts of the internal affairs interviews as occurring?

A. Well, he says "interviews" in the subject line. "Here you go. Let me know if this doesn't work for some reason." And then I say, "Can you just e-mail me the transcripts?" So I don't know if this is an audio interview. I'm assuming that's what this is.

Q. I think you've read them in reverse order. If you look at the time stamps on the e-mail, we move from the bottom of the page up.

A. Oh, I see, sure. Okay. Yeah, I ask him to e-mail me the transcripts. Apparently he does.

Q. So you say you can just e-mail the transcripts, and then Sergeant Morgan says here you go. We haven't reproduced the attachments. There were attachments with this. Next --

Howard, I haven't said this, and Madam Arbitrator, you see the word "redacted" on here? That was done by the City Attorney's Office. So whatever --

MS. HARPER: The attorneys that are handling the civil litigation.

MR. AITCHISON: I don't know who did it. I just know the City Attorney's Office -- when we got these from the City Attorney's Office, this is what was on here.

MS. HARPER: The paralegal handling the civil litigation did this.

MR. AITCHISON: I don't know. I'm just saying we didn't do it. We're not altering these.

BY MR. AITCHISON: Okay. Now, Lieutenant, I showed you Exhibit A 25, which is dated March 31st, 2010, which is - appears to be a draft of the training division's findings, correct?

A. It's one of the initial drafts. This was done by Sergeant Virtue, and he began to construct the timeline of events as this was going through the drafting phase.

Q. We asked for -- You're aware of the fact we asked for all the documents in the training division pertaining to this case, correct?

A. Yes.

Q. And this is the first draft that we were -- the earliest draft we were provided. Do you know if there's an earlier draft than this?

A. I don't know. I don't think there would be.

Q. And just so we're talking the same way, for our purposes here at the hearing I'll just call this Draft 1.

A. Okay.

Q. Sure. Correct. It may or may not actually be Draft 1, but in terms of time, we'll call it Draft 1. So if we look at this draft and page through it, we don't see any discussion at all of Officer Lewton's use of the beanbag, correct? And no discussion at all of Officer Frashour's use of deadly force, correct?

A. Correct.

Q. Instead what we have is the timeline you testified that Sergeant Virtue worked on, correct?

A. Correct.

Q. And then at the end we have Page 12 of 15, we have something called PPB training division tactical guideline elements, correct? This attachment, if you will, or the last four pages, the tactical guideline elements, they remain a feature of this report through the final draft, don't they? They've been, over time, the basis, to a significant degree, of the evaluation of officer action based on their training. And by March 31st, I assume you've had the opportunity to review the tactical guideline elements, correct?

A. Yes.

Q. In fact, by March 31st, by this time you've looked at the grand jury and detectives investigations, correct?

A. In the process of. I'm not sure along the timeline exactly when, but, yeah.

Q. Lieutenant, I've handed you Exhibit A 27, which is dated April 22, 2010.

A. Yes.

Q. Correct. Correct. So just placing this in time again, we know this is almost three weeks after Officer Frashour's internal affairs interview, correct? And this -- I'll call this Draft 2, because I have nothing else to call it. Draft 2--

A. Okay.

Q. -- of the training division's review.

A. Okay.

Q. Once again, there's no discussion in here of Officer Lewton's use of beanbag, is there?

A. No.

Q. Or Officer Frashour's use of deadly force, correct?

A. Correct.

Q. And that's because you hadn't written those sections yet, correct?

A. I don't know when I wrote those sections. may have written them at that time, I'm not sure.

THE ARBITRATOR: Off the record. (Discussion had off the record)

BY MR. AITCHISON: I've now handed you Exhibit A 28, Lieutenant. It is -- and I'm going to call this Draft 3.

A. Okay.

Q. This is -- this draft appears to have been e-mailed from Dave Virtue to you and Danny Adamson on April 22nd, 2010, correct?

A. Yes.

Q. And so this is a couple days after Draft 2, then, correct?

A. No idea.

Q. We can go to [Exhibit] A 30. This is a name we have not heard before, Danny Adamson. Who's that? And once again, there's no analysis of the conduct of Officer Lewton or Officer Frashour in this draft, correct? I want you to look at Page 6 of this draft. On Page 6 of this draft, Lieutenant -- I'm sorry. I

believe I have the wrong page. So once again, then, by the time we get to A 28, April 22, still no conclusions as to Frashour and Lewton, correct?

A. Correct.

Q. Now, I want to hand you Exhibit A 30.

A. Yes.

Q. And let's call this Draft 4, Lieutenant.

A. Okay.

Q. And I want to talk about several things with respect to this draft. This is a draft -- First of all, when you look at the cover sheet, you're e-mailing it to yourself, correct?

A. Yes.

Q. So are you sending these drafts to your personal e-mail --

A. Yes.

Q. -- and then working on things at home?

A. Correct.

Q. If you don't wait until the end of my questions, you're going to get beamed with a stenograph machine.

A. Sorry.

Q. Turn to Page 6 of this draft. I'm sorry, Page 4 of the draft. Actually, Page 5 of 34. This is the page that starts, the first words are "Phase 1." Do you see that, Lieutenant?

A. Phase 1, yes.

Q. So we're on Page 5 of 34. I want you to look towards the bottom of the page. And here we have text that is in bold face.

A. Yes.

Q. And bold-faced text is used even in the final version of the training division report, correct? And why do you and Sergeant Virtue or Lieutenant Virtue use bold-faced text?

A. Well, in this case, in the draft, just to set it apart from the narrative as a discussion point, something to draw your attention to.

Q. Now, this is language that says, and it's in parenthesis, "I am surprised this call is viewed as a welfare check in light of all the other information in the call. I'm also surprised that several people, even early in the call, are thinking about leaving, treating this as a more general suicide call as opposed to the suicide by cop call this really was. No one identified the fact that Campbell may be committing the crime of felon in possession of a firearm. There was no awareness of this crime and no discussion of it." Who wrote this language?

A. I believe I did.

Q. So in your judgment, then, this call wasn't just a welfare check. This call, I think the words were, really was a suicide by cop call, correct?

A. You know, this was the way that I viewed this at May, at this point in the review of the material. And ultimately, you know, in the analysis I thought of this in terms of what they knew at the time. And, you know, through our discussions, like, for example, the fact that he may have committed a crime, I don't think anybody indicates that they knew that. So I was inserting that, you know, having read information that I was available of, but not what they thought at the time. So my view of it changed over time as I became more aware of other information.

Q. Okay. So you're now more than two months into your review, correct --

A. Correct.

MR. RUBIN: Objection; argumentative.

Q. -- as of May 2nd? And two months into your review you still believe this call really was a suicide by cop call, correct?

THE ARBITRATOR: I'll allow it.

A. Well, I knew, of course, that there was a suicide by cop component piece to the call, yes.

Q. Did you know as of May 2nd that this was not just a simple routine welfare check?

A. Did I know then that it was more than a welfare check?

Q. Yes.

A. I mean there was information in it that indicated that it could be more, it could be viewed as more than a welfare check.

Q. There was information in the call that could be viewed by a reasonable officer as threatening, wasn't there?

A. Yes.

Q. The language up here, sergeant -- And, Howard, this is from Joint Exhibit 11, Page 288. This is Sergeant Reyna's internal affairs interview. Do you recall Sergeant Reyna saying what was initially put

out on the CAD printout which said we were doing a welfare check on Angie Jones with her three kid, she had a suicidal boyfriend who tried to kill himself, they weren't hearing from Angie, they were concerned because the man was armed with a gun and lost a family member, et cetera, including the guy's PPDS record, she viewed this as, this call, this initial call information, as indicating a potentially violent person, the highest threat level that you can consider? Do you remember that testimony?

A. I see it there, yes.

Q. I'm just asking do you remember her giving that testimony?

A. I don't remember it specifically.

Q. Howard, this is Joint 9 at Page 489. Okay. And she's the incident commander, correct? I want to next show you testimony, this is from Officer Quackenbush's detectives interview. And do you recall Officer Quackenbush saying, "This is a pretty serious call, pretty dire circumstances from my experience, my 11 plus years as a police officer"?

A. Yes.

Q. Do you agree with that assessment?

A. It has the potential to be, yes.

Q. Today you agree with that assessment?

A. That what?

Q. This is a serious call, pretty dire circumstances?

A. Yes.

MR. AITCHISON: Howard, this is joint 11, Page 488. This is Officer Andersen testifying to internal affairs.

Q. Do you recall Officer Andersen saying that from the initial information on the call he thought that Mr. Campbell was a deadly threat to officers on the scene, especially with the statements given, the history of assault with a handgun, and his mental state? Do you remember that testimony?

A. Yep.

Q. Do you agree with that assessment?

A. There is a potential threat there, yes.

Q. Potential deadly threat to officers, correct?

A. Potential, sure.

Q. Now, let's turn to Page 15 of 34. That's the one that has on the bottom of the page the deployment of less lethal.

A. Yes.

Q. Do you see that?

A. Yes.

Q. And, Lieutenant, you're more than welcome to leaf through this, but this goes on, this discussion appears to go on all the way through Page 25 of 34.

A. Okay.

Q. Is that where it ends?

A. 24, is that what you said?

Q. Page 25 of 34.

A. Yeah, Page 25 of 34.

Q. So that's where it ends, correct?

A. Yes. Correct.

Q. Is it also correct to say that in this draft on May 2nd you don't reach any conclusions as to whether Officer Lewton's use of the beanbag comported with his training or did not?

A. Correct. Yes.

Q. And then starting on Page 25 of 34 where it says the AR shot in the middle of the page, and continuing through page -- the bottom of Page 28 of 34. We have the first analysis by you of Officer Frashour's use of deadly force, correct? And you do not in this draft, on May 2nd, reach a conclusion as to Officer Frashour's use of deadly force, do you?

A. True.

Q. Yes.

A. Yes.

Q. Yes.

A. Okay. You do have a series of recommendations, though -- -- that appear on the bottom of Page 29 of 34-- -- carrying over to Page 30 of 34. You do, you see those? Would you also agree with me that these -- there's ten recommendations here? But not one of the ten suggests anything improper about Officer Frashour's use of the AR, correct? Lieutenant, I'm showing you Exhibit A 31, which is an e-mail from

Sergeant Morgan to you and to -- I don't know what to call him. Dave Virtue, I'll call him Dave Virtue. The subject is Birkinbine transcript, and this is Sergeant Morgan saying hot off the presses.

A. Yes.

Q. And do you recall this being the -- this is the vehicle by which you received Sergeant Birkinbine's transcript?

A. Yes.

Q. Do you also recall that the last eyewitness on the scene of any of the officers or sergeants to be interviewed was Sergeant Birkinbine because he had some leave conflicts and --

A. I do recall that.

Q. He was the last one up, correct?

A. I believe so.

Q. So we know that by May 4th, 2010 all the IA interviews of the on-scene witnesses are done, correct?

A. I believe so.

Q. And we're now more than a month after Officer Frashour gave his internal affairs interview on April 1, correct?

A. Correct.

Q. Have you listened to his interview in that month?

A. I don't believe so.

Q. You hadn't?

A. I don't believe so.

Q. Okay. Lieutenant, I'm showing you Exhibit A 32, dated May 12th, 2010. Let's call this Draft 5 --

A. Okay.

Q. -- for want of anything else to do. This is an e-mail from Dave Virtue to Larry O'Dea --I cannot tell -- correct? So this is going from the training division to the chief's office, correct? And you are sent a carbon copy of this, correct? And in this cover sheet, this e-mail, Virtue says, "Here's an updated draft. I've made extensive edit in my section, and although it's still rough, it's a little smoother than the --" I can't tell if that's first or last with the letter A omitted. Can you tell? -- Okay. "I see our time has switched to next Monday." Our time, does that mean for a meeting?

A. Yes.

Q. "I am in Baltimore Sunday through Wednesday with the Casey Foundation. I'm sure Robert will represent us both in more than adequate fashion. I'll be available by Blackberry." So this is Virtue telling O'Dea, I know you're going to have a meeting next Monday, and I won't be there, but here's the latest draft of the training division recommendations; is that correct?

A. Yes, that's correct. I assume so.

Q. And at this point in time have you been providing your drafts to Chief O'Dea? This suggests -- that second sentence suggests that, when he says this is a little smoother than the first draft or the last draft, that suggests a prior draft had been provided, correct?

A. Yes.

Q. And you knew, by the way, that Commander Ferraris was also going to play a role in this process, correct?

A. He's Officer Frashour's commander. Yes.

Q. No, he wasn't, was he?

A. No, excuse me, he was not. I knew that he was going to play a role.

Q. Normally the officer's commander is the one who makes the recommendations that go to the Use of Force Review Board or Disciplinary Review Board, correct?

A. That's correct.

Q. But this wasn't the case here, was it?

A. This incident occurred in North Precinct, so Commander Ferraris had the responsibility of making -- doing the review, conducting -- making a recommendation on the firing for all of the officer actions out on the scene.

Q. You knew that whoever the commander was, the commander was going to base his opinion, in part, on the training division recommendations, correct?

A. In part, yes.

Q. And so he has a role, then, that's independent from that of the training commission -- training division, correct?

A. Yes.

Q. And I'm assuming because of that independent role you weren't speaking with Commander Ferraris substantively about this matter as you were doing your review.

A. I think we were. I think we talked about it at different times.

Q. Really?

A. Yeah, I think so.

Q. You talked about the substance of your findings?

A. I don't recall what we spoke of or when, but, you know, we will see each other from time to time, and I know this is something we would discuss.

Q. Did you provide him with drafts?

A. I believe so.

Q. Even though he has an independent role?

A. At some point I know that I sent him a draft. I don't know when.

Q. Did in fact this meeting occur that was scheduled for May 17th?

A. I don't recall.

Q. You don't remember being present in a meeting with Chief O'Dea to discuss this date with Chief O'Dea or not. Now, for the first time in any of these drafts, in Draft 5 we have a training division assessment as to whether the conduct of sergeants and officers on the scene, up to the uses of force, whether that conduct was consistent with training, correct?

A. Yes.

MR. AITCHISON: And can we have [Page] 415.

A. Yes.

Q. I want to show you Page -- this is Page 17 of Exhibit A 32. And this is Virtue writing this, correct? You agreed with it? Did you agree with it?

A. I'm sorry, I'm reading it.

Q. Oh, I'm sorry.

A. I agree with it, yes.

Q. All right. So Virtue is writing here, given the -- I'm reading from the middle of this paragraph, "Given the dynamic nature of the incident and the inability to verify the exact nature of the threat, officers proceeded with caution, slowed the incident down, and made a safe tactical approach." You agreed with that, correct?

A. I'm not sure what he means by "made a safe tactical approach."

Q. So you don't know if you agree with that because you don't know what he means; is that right?

A. Well, I don't know exactly what he's referring to there. I don't know if he means putting the cars in the middle of the lot, taking a position behind the cars. I'm just not sure exactly what he means in this context by that statement.

Q. Okay. He writes in bold face "The patrol response to this point is consistent with training: Have a plan, correct mistakes, be adaptable, communication, have a leader." Those are -- the last words are all in capitals. Where does that come from?

A. The tactical guidelines, yeah, and elements.

Q. This is Sergeant Virtue saying, look, the patrol response to this incident reflected what we wanted from training, they had a plan, they corrected mistakes, they were adaptable, they communicated, they had a leader, correct?

A. In this draft, yes. I don't know the extent to which that -- I didn't write that piece, if that ultimately changed. You know, again, this is in process, this is -- we're writing these drafts, we're discussing it, we're meeting with Chief O'Dea. So inevitably, you know, these drafts are making their way into the final version. So some of these things may change based on new information we receive or -- Yeah.

MR. AITCHISON: All right. Now, let's -- I'm sorry, [Page] 416. I want you to turn to Page 31 of Exhibit A 32. You see that paragraph in the middle that reads, "The lack of communicating and coordinating the plan ultimately made it less effective. PPB trains that ineffective planning and communication breed confusion and may create situations that cause officers to act independently and hazardously. Without a proper plan, officers tend to be reactive instead of proactive. Lack of communication and coordination regarding this plan is not consistent with PPB training."

A. Yes. That's correct.

Q. This is in the section of the report dealing with the supervisory response to the incident, correct? And so in the first draft that ever addresses this issue, Sergeant Virtue is coming to the conclusion that the lack of communication and coordination from the supervisors on the scene was not consistent with PPB training, correct?

A. Correct.

Q. Did you agree with that?

A. Yes.

MR. AITCHISON: [Page] 417. Now, turn to Page 40 of Exhibit A 32. This is the first time we see you weighing in on Officer Lewton's use of the beanbag, Lieutenant. And the language here is, "As Campbell came out of No. 37, Lewton said he wanted to slow Campbell down. The custody team had the additional advantage of being behind cover, and verbally confronted Campbell. Campbell stopped as a result of commands. He was told to get his hands straight up in the air. Lewton told Campbell to do as commanded or he would be shot, which is consistent with training."

A. Yes.

Q. Is this you writing this now?

A. I believe so, yes.

Q. Did Lieutenant Virtue agree with you on this point?

A. I can't say. I don't recall.

Q. "Campbell responded by saying, 'Go ahead and shoot me.' Lewton told Campbell again to 'Put your hands straight up in the air.' Lewton said two seconds passed and Campbell did not comply so Lewton shot him with the beanbag gun. This is not consistent with training."

So this is the first occasion on which you are weighing in on whether Officer Lewton's use of the beanbag is in compliance with his training, correct?

A. Correct.

Q. And why? And you find it's not consistent with his training.

A. Because only -- because he was standing still with his hands on his head, because he gave him what amounted to one or two commands, very short period of time passed. He was standing passively, and he gave him -- he made no other attempts at communication. He had other resources that were available there on scene, canine, a patrol rifle to help in the event that Campbell would take some threatening action. And that we train our officers in situations like this, essentially, to, you know, to utilize the advantages that they have in the situation, using talk and time and tactics. Given the behavior that Campbell was currently engaged in, that he's standing still with his hands on his head, that it's not appropriate to hit him with the special -- or less-lethal impact weapon at that point.

Q. All right. Lieutenant, I'd like you to look at the second paragraph on this page. This is Page 40 of Exhibit A 32. Do you find this --

A. Yes.

Q. -- Lieutenant?

A. Yes.

Q. And in this paragraph you write, "Situations that may call for the use of specialty ammunition, beanbag specialty ammunition," correct?

A. Sure. Yes.

Q. "Violent subject who is armed with nontraditional weapons like a baseball bat, crowbar, garden shovel; suspect who's armed with a knife or similar weapon; lastly, an armed suicidal person who may force officers into a shooting to achieve suicide by cop."

A. Yeah.

Q. Lieutenant, you wrote this, right?

A. Correct.

Q. And in fact, you derived this from the bureau's training, didn't you?

A. Correct.

Q. And in fact, the bureau trains its less-lethal operators that they can use a beanbag on an armed suicidal person who may force officers into a shooting to achieve suicide by cop, correct? Who may face officers. In this particular case, this training that we have provided does not authorize our officers to shoot someone who's standing still, who has his hands on his head.

A. Yes, there's information that they have that indicates that he may be armed, that he was suicidal, that he may want suicide by cop. But the observations that are made by officers on the scene is that he emerges, he walks back, and characterized in these different ways, stops in response to commands, comes back, stops again, stops a third time, hands remain on the head continuously. He stops where officers tell him to, and his hands remain on his head. This is not a, at the moment that he fires the beanbag round, this is not a suicide by cop. This is a cooperating man whose hands are on his head.

Q. Does Mr. Campbell's threat of suicide by cop ever disappear from this call?

A. You know, it's a part of all of the information that officers have to be aware of, that has to be counterbalanced against the behaviors that they are observing. And it could be viewed -- it's possible to view this situation as an individual who is cooperating with our commands up to this point. And that we know that suicidal people, while on the one hand, you know, are despondent, might be unpredictable, that we can't give up on some effort at communicating with them to try to get them, in a situation like this, the help that they need.

Q. You said a couple of things I'd like to follow up on. You said -- you used this phrase several times yesterday, that Campbell stopped three times.

A. Yeah.

Q. Can you point to the testimony of one witness that Mr. Campbell stopped three times?

A. I believe it's Officer Lewton. It's not -- it's not clear. In different accounts, he stops a different number of times.

Q. Most of the witnesses say that Mr. Campbell stops once, don't they?

A. No, not that I recall.

Q. Okay. You also said that one way of looking at this is that Mr. Campbell is suicidal, he's despondent, he's coming out, he's got his hands behind his head. And this is -- you know, that counterbalances, I think is your word, suicide by cop. It's another way of looking at this situation, correct?

A. There are many different ways of looking at this situation, yes.

Q. And that's true of any tactical situation that multiple police officers see, isn't it? That often people will have, obviously, from their point of view a different perspective, yes, about what's happening. Yes, they'll have a different perspective in part based upon seeing and hearing different things, correct?

A. Sure.

Q. They'll have a different perspective based upon their training and experience, correct?

A. Well, hopefully that everybody -- hopefully they'll make, generally speaking, the same observations if a person is doing something physically in front of them.

Q. And you'd agree with me that simply because the perspective of one officer in a tactical situation is this, let's call it A, and that's reasonable, doesn't mean there can't be another reasonable perspective on that same tactical incident?

A. Sure, there can be different reasonable perspectives on a tactical incident, of course.

Q. Lieutenant, this is from Page 40 of Exhibit A 32. We're still with Lewton here. And here you write, "In this case, when Campbell came out it was a surprise to the officers on the custody team." No one communicated to the custody team Campbell was asked to come out?

A. Correct.

Q. You still believe that, don't you?

A. That's true.

Q. Nobody on the custody team knew what Sergeant Birkinbine and Officer Quackenbush had suggested?

A. No one provided information to anybody on the custody team that Mr. Campbell was asked to come out.

Q. You then continue, "Lewton stated in the detectives interview and grand jury and IA he believed Campbell was armed, suicidal, had talked about suicide by cop, and had texted earlier in the call, 'Don't make me get my gun, I ain't playing.'" Do you remember writing that?

A. I do.

Q. All of those beliefs by Officer Lewton were reasonable, weren't they?

A. These are the critical kind of fundamental underlying facts that many of the officers articulated that they knew about this call. This was what many people knew, obviously including Lewton, about the call, yes.

Q. I asked you a different question. Let me break it up, then. Is it reasonable, based upon what Officer Lewton knew at the time he fired the beanbag, and we can find all that --

A. Sure.

Q. -- in the interviews, is it reasonable for him to believe that Mr. Campbell's armed? Is it reasonable for him to believe that Mr. Campbell's suicidal?

A. Given the information that they were provided, yes.

Q. Is it reasonable for him to believe that Campbell had talked about suicide by cop?

A. Yes.

Q. And is it reasonable for him to believe that Campbell had texted earlier in the call "Don't make me get my gun, I ain't playing"?

A. Yes.

Q. And your answers are exactly the same for Officer Frashour, aren't they?

A. Yes.

Q. I'd like you to turn to Page 40. We're still on it. [Page] 420. I'm sorry, this is Page 41 of Exhibit A 32.

A. Okay.

Q. Do you see this phrase at the top of the page, "Larry, just so you know, I have had long and extensive conversations with Paul Meyer about this case, and it is his opinion that while this particular use of force was on the high end, that is in the range of what is trained." Do you remember writing that?

A. Yes, I do.

Q. And Paul Meyer is the lead beanbag trainer for the police bureau, correct? And the Larry that you're referring to is Chief O'Dea, correct? So is what you're doing here saying, look, chief, I just want to let you know I have found Lewton out of policy, but Paul Meyer doesn't think he's out of policy? Is that what you're doing?

A. That he says that it was on the high end. He doesn't -- Let me read this. Is the high end of what is trained. Meyer doesn't make any comment about whether it's in policy or not.

Q. Okay. Just tell us, didn't Officer Meyer tell you he thought Officer Lewton's use of the beanbag was within policy?

A. No, he didn't.

Q. He did not say that?

A. That's not what this says.

Q. I'm not asking you what that says. I'm asking you to go back on your recollection. You were having conversations with Paul Meyer about this. Didn't he tell you that he found Officer Lewton's use of the beanbag to be within policy?

A. I don't recall that. I don't know that he said that. That's not what's indicated here. That's not what I remember from our conversations.

Q. Now, on Page 40, you also start your review of Officer Frashour's use of deadly force, correct?

A. Correct.

Q. And let's look at the first part of it. And this is on Page 52. You have a lot of recitation of evidence, basically, that goes on for many pages. Correct?

A. Yes, I do.

Q. But I think the substantive discussion starts on Page 52. See where it says training analysis? Okay. Let's look at this first paragraph. "Frashour was trained to recognize, identify and respond to threat of death or serious physical injury. Frashour was aware he was responding to a call where a boyfriend of Angie Jones was at her apartment with her." You say "here" there, but that should be her, right?

A. Yes.

Q. Yes. "Her and her children. And Campbell was suicidal, armed, and had talked of suicide by police. Frashour believed he was going to a call that was high in its risk, and he was specifically sent there to provide less lethal with the AR he was specifically trained to operate." Lieutenant, today don't you believe that all of those beliefs that you ascribed to Officer Frashour are reasonable?

A. Yes, but I will say that this first sentence, this -- that Frashour was trained to recognize, identify and respond to the threat of death or serious physical injury. At this point in the review, as you say, not having done many reviews previous to this, I didn't really have a format in my mind for how I would articulate the training analysis portion different than the articulation of the facts that you find earlier.

This first part, trained to recognize, identify and respond to threat of death or serious physical injury, this was a sentence that I cut and pasted out of another review, one of the other reviews that I talked about that I thought were more of a summary kind in their format.

So this is -- that particular phrase and this way of phrasing this was, you know, basically my first attempts to try to articulate, on the basis of the information I had at that point, what I thought about, what my sense was of his compliance with training on the basis of the information that I had reviewed.

Q. All right. And you know this is going to Chief O'Dea, right?

A. I do.

Q. So you're providing him with your assessment of whether Officer Frashour's beliefs are reasonable, correct?

A. Well, in the early drafts I'm attempting to capture the facts of what happened as best I can so that we have a clear idea of what happened out there from the record. And then in the early drafts attempting to articulate in the training analysis, you know, sort of the component pieces of what he did and why he did it.

Q. All right. We're now two and a half months after you started on this project, correct?

A. Yes.

Q. Is it longer than that? Two and a half months. You've had a lot of time to think about this by this point, haven't you? You've read thousands of pages by this point?

A. I've read, you know, most of or all of the record, yes.

Q. And we're about to see you pass your first judgment on what happened to Officer Frashour over the course of three seconds, correct?

A. On the basis of the information that I had reviewed to this point, yes.

Q. All right. Incidentally, all of the officers at the scene assumed that Mr. Campbell was armed and potentially dangerous, didn't they?

A. I don't know that they all assumed. We teach officers not to assume. You know, they were aware of information in the call that, you know, you've pointed out.

Q. Let's look at Officer Kemple. This is Joint 11 at Page 477. Officer Kemple, who, you may not know this, we met yesterday. And this is in his internal affairs interview. He's saying, "At this point, regardless of what any information they're getting for us, he's coming out." He's talking about -- he's thinking through the threat here. "He's coming out. For all we know he's got a gun."

So regardless if he tells them he has a gun or not, "We're under the assumption that he's still armed, that he's a threat to us, he's a threat to anybody south of us on Prescott, he's a threat to anybody that's north of Sandy. He's a threat. He's still somebody who's potentially armed, somebody who we know is suicide by cop, possibly suicide by cop."

This is Officer Kemple's, you recall, his assessment of the situation, correct?

A. Yes.

Q. That's reasonable, isn't it?

A. What's your question?

Q. Officer Kemple's testimony that before Mr. Campbell comes out of the apartment they're under the assumption he's still armed, he's a threat to us, he's a threat to people south on Prescott, north on Sandy, someone who's potentially armed, we know is suicide by cop, potentially -- or possibly suicide by cop, those beliefs are all reasonable, in your judgment, aren't they?

And Officer Kemple says, "We're not going to go to him, he's going to come to us. And he will do everything that we do because we're calling the shots, not him. He needs to do everything we tell him to

do, and any deviation, we have to deal with that accordingly." The bureau trains its officers in a high-risk custody situation that they should be the ones giving commands, correct?

A. The officers.

Q. Right.

A. Correct.

Q. And that they should be insisting on strict compliance with their commands, correct?

A. I mean they certainly should comply with what we're commanding them to do, yes.

Q. That wasn't my question. My question was does the bureau train its officers that in a high-risk custody situation officers should be insisting on strict compliance with their commands?

A. You know, we teach our officers to be flexible and adaptive in the situation that they're in, not to be rigid and inflexible. They have the flexibility in the situation that they're in, on the basis of all of the information that they're aware of, what you've articulated here, the concerns they have of him being a potential threat, and to counterbalance that with the behaviors they're seeing him engaged in, and recognizing that he is suicidal or may want suicide by cop. Seeing him comply and cooperate and have his hands on his head. That he doesn't narrowly, strictly have to do exactly what we say, exactly when we say it. We should be willing to give at least some degree of flexibility so long as they're not demonstrating a behavior that we view as threatening at the time. We have --

Q. A behavior like reaching into your waistband?

A. A behavior like standing still with your hands on your head. That's what I'm talking about.

Q. Let me ask you a question. Does a suspect who is known to be armed and suicidal by cop, reaching into his waistband, is that threatening behavior?

A. Not after he's been beanbagged six times right in front of me.

Q. So because Mr. Campbell had been beanbagged by Officer Lewton, Officer Frashour was wrong to conclude that Mr. Campbell posed a threat when he reached into his waistband, is that your testimony?

A. I think he has to consider it.

Q. No, no. Could you read back the previous question and answer. (Reporter read as requested) My question, Lieutenant, is it your testimony that Officer Lewton firing a beanbag at Mr. Campbell makes Mr. Campbell's reach into his waistband nonthreatening? Does it make it nonthreatening, not a threat? think that's what you just said. Do you mean that?

A. In light of the fact that he's hit six times with the beanbag right in front of me, and he reaches for where he was just hit, that I could contextualize that he's reaching for a part of the body that was just struck by beanbag rounds.

Q. So it makes it unreasonable for Officer Frashour to believe that reaching into his waistband is a threat, correct?

A. He could be. It doesn't necessarily make it unreasonable.

Q. So it is reasonable for Officer Frashour to believe that reaching into his waistband, Mr. Campbell is a threat, correct?

A. It could be viewed as a threat, yes.

Q. It's reasonable to view it as a threat, correct?

A. I'm not sure. What is the question again, I'm sorry?

Q. That's okay. I'll withdraw it. I'd like you to look at a little bit of Officer Quackenbush's testimony. This is from his detectives interview. Howard, Joint 9 , [Pages] 482 to 483. This is where Officer Quackenbush says, "Somewhere in the midst of all this too came information from Officer Boylan that the gentleman had a firearm. He was in fact seen with a firearm the night before, and he kept it -- it was seen in his sock and then also in a jacket. And the woman told Officer Boylan that he was wearing the jacket." You're aware that the information that Mr. Campbell kept his firearm in a sock in his jacket was given to Officer Frashour, correct?

A. I believe he had that information, yes.

Q. And a reasonable police officer would believe that that escalates the threat posed by Mr. Campbell, wouldn't he?

A. That he has a gun in a sock in a pocket?

Q. Yes.

A. It certainly is cause for concern, yes.

Q. Do you believe it escalates the threat posed by Mr. Campbell?

A. Not so long as his hands remain on his head and he's doing what we're telling him to do.

Q. Now let's go to Page 51 of Exhibit A 32. We're still in your -- the May 14th -- we're still on Draft 5 here. And No. 421 -- I'm sorry, it's Page 52. I had the wrong page number. This continues the -- this is the paragraph we were, looking back, looking at a little bit earlier. And I think you testified that all the officers reasonably believed that Mr. Campbell is suicidal, correct?

A. Yes.

Q. And doesn't the bureau teach its officers that suicide can mean homicide?

A. I don't know that we teach that. In hearing Officer Frashour say that in his interviews, we discussed it and looked for it throughout the training material and couldn't locate it anywhere. It seems to be more anecdotal. There --

In talking with the CIT coordinator, Liesbeth Gerritsen, she was surprised by that, having done all of our CIT training, because it's not a necessary connection that because you're suicidal you're homicidal. That can be the case. But that many people are just simply despondent and hopeless and suicidal and want to take their own lives. That's why they just harm themselves.

So I'm not aware of where we train that. I couldn't locate that anywhere in the course of doing the review.

Q. Aren't you mistaken? Wasn't it Officer Willard who referred to suicide as homicide, not Officer Frashour?

A. No, it's in Officer Frashour's statements.

MR. AITCHISON: Let's take a look at 221, Joint Exhibit 9 , 533, Howard. This is Officer Willard's detectives interview. And he's walking through, what he says, the various scenarios that he's been given , by his coach. These scenarios can be what are sometimes called shoot/don't shoot scenarios. Do you understand what I mean by that?

A. Sure.

Q. And he's saying, "I'm asking myself, what would you do in training?" He says, "The guy's running away, reaching for a weapon. Suicidal, homicidal, they go hand in hand." Do you remember that testimony? And do you remember that Officer Willard is saying that this is part of what he received as his training as a police officer was this information? That if somebody was suicidal and homicidal, they go hand in hand?

A. Yes. This apparently was a discussion that he had with a coach. I don't know that it was something that the training division actually taught him.

Q. Coaches are entrusted with the training of new police officers, are they not?

A. Yes, they are.

Q. And a trainee, a young police officer, not necessarily young, but a new police officer has a right to rely on the advice given by a coach?

A. Some of it, certainly.

Q. Just some of it?

A. Well, you're in the learning process, you're in discussions with people, you take what you think will be helpful and useful. There are certain things you discard. That's why there's an exposure to many different coaches, because each has different experience and background, personalities, attributes. So the idea is to give the trainee exposure to a cross section of people. You'd be wise to discard some of the things they say to you and wise to remember certain others. So -- and I don't know if Willard is saying -- maybe he's saying that --

Does he say it's a coach? Is that what you said?

Q. Yes. He says, "Scenarios given to me by coaches, what would you do in this scenario."

A. Okay.

Q. Lieutenant, you'd agree with me, would you not, probably every day in this country individuals who are suicidal murder others before they kill themselves?

MR. RUBIN: Objection.

MR. AITCHISON: I shouldn't have asked it. Okay. Now, let's turn back to Page 51 of Exhibit A 32, 422. I'm sorry, Page 52. Here you write, and this is you writing, "Frashour was specifically concerned with the possibility that Campbell could, because of his mental state, take an action, possibly even shoot at police to get police to shoot at him."

A. Yes, that's a possibility.

Q. That belief by Officer Frashour, that too was a reasonable belief, wasn't it? And 423. On the third page -- or excuse me, also on Page 52, you write that "During the time Frashour was on scene the children came out. You knew Campbell had sent a text message saying, 'Don't make me get my gun, I ain't playing.' Frashour said Campbell suddenly came out quickly and determined. Frashour said that when he came back toward them he was hostile and did not seem to be coming out to give up. Said he knew Campbell was being given commands but was not responding. He heard a beanbag gun and saw a round hit Campbell. He" - I think you mean to say said - "Campbell was hit a second time, and began to run."

Now, there's a lot in there, and let's take it apart a little bit. You'd agree, would you not, that Mr. Campbell's text message increases the threat level of this call?

A. Yes.

Q. And members of the custody team all thought the same thing, didn't they, that the text message increased the threat level of the call?

A. It certainly can be viewed in that way, yes.

Q. It's reasonable to believe that, isn't it?

A. Yes.

Q. You mentioned -- You neglected to mention in this paragraph one other thing Officer Frashour knew, and that was he knew that Mr. Campbell kept his gun in a sock in his jacket. Why did you omit that?

A. I don't know. Because this is largely -- I wrote largely what he was saying. So I don't know why I didn't put that in there.

Q. Now, the concealment --

A. Because he didn't make mention of it. He says earlier that he knows there's a gun in a sock in a pocket. There's a gun in a sock in a pocket. But then he reaches deep into his waistband, not into his pocket, not -- So there was a difference for where he reached, and he never connected the dots between those two things.

THE ARBITRATOR: Can I interject here? You're dealing with a draft.

MR. AITCHISON: Right.

THE ARBITRATOR: Right? And not the final --

MR. AITCHISON: Right.

THE ARBITRATOR: -- version. I guess if you took my drafts of opinions and say why did you omit this, I might say, well -- That's why I'm a little uncomfortable with this line of questioning.

MR. AITCHISON: I'm not going to do that much of what I just did. I'm much more interested in other things in the draft.

THE ARBITRATOR: Okay. I guess it would be better if you took his final and asked him about that.

MR. AITCHISON: Well, actually, let's go -- cut right to the quick.

THE ARBITRATOR: Okay.

MR. AITCHISON: This is Page 53. It's the first time you've weighed in on Officer Frashour's use of deadly force. "Frashour said he's trained as a DT instructor, he knows from experience that the waistband is where weapons are routinely kept." That belief's reasonable on his part, isn't it?

A. Yes.

Q. "Frashour said when he saw Campbell reaching for his waistband he was not reaching for a wallet, not pulling his pants up so he could run, and he was not reaching to where he had been shot by the beanbag based on how Campbell's body was reacting." Frashour also said the shot was an intentional shot, not an accidental shot. Said he used restraint by not shooting as soon as Campbell's hand went onto his waistband, and he *[missing]*
You wrote this, correct?

A. I did.

Q. You wrote this after two and a half months of reviewing this case, correct?

A. I wrote it. I parroted what he said.

Q. Did Officer Frashour --

A. Can I finish answering, please?

Q. Go ahead. Sure.

A. This was -- This report, going through this process, was the single-most difficult thing that I've done in my police career. And at the time that I began this review I took on his point of view, and -- because I had done that throughout the course of my career. As I became more aware of more information, I became very concerned about what he did and why he did it.

I was a probationary lieutenant at the time, and I contemplated demoting. I thought that I should revert to being a sergeant because I didn't want to take a position against an officer that would be harmful to him and his career, that could result in his termination. I'd been with officers throughout the course of my career who have made those difficult decisions, and I've been with them, and didn't want to see them harmed.

So up to a certain point I was just constitutionally reluctant to articulate the facts that I thought were particularly relevant to whether or not what he did was consistent with his training or not. He's saying all these sorts of things that I would expect to hear him and other officers in a situation like this to say. But it's incumbent upon us as a police bureau to look very carefully and very thoughtfully, without regard to what anyone else will think or feel, to look very carefully and thoughtfully at what they did and why they did it, and, if necessary, arrive at conclusions that are not what trainers or other officers or the officer himself or the union would like.

And that's what I feel like I did in this process. And so you see me writing really what he said, and saying, yes, this was consistent. But through these continued discussions and reviewing more of this material, I could not continue to hold this position. I could not continue to conclude that he acted in a way that was consistent with his training, despite what I was hearing from other trainers. So this, again, is a draft of a document that I took no pleasure in writing but that I believe in.

Q. Lieutenant, did Officer Frashour ever write the words "this was consistent with training"?

A. No.

Q. You made this judgment yourself as of two and a half months of reviewing this record, correct?

A. Again, sir, this is a draft.

THE ARBITRATOR: Can I interject one more time? I'm wondering where you're going with this. I mean he explained to me that this evolved into a final draft. And we've all, at least I have, done drafts that have gone one way and drafts that have gone another way and sometimes I've done both. And where are you going with this? That he was pressured into changing it or -- I guess you're going to hear me say that looking at drafts doesn't make me real comfortable just because I write things too, and I put myself in his shoes.

MR. AITCHISON: I want to be very careful in choosing my words about all of this.

A. As these drafts are being written, and as Lieutenant King changes his mind, the police chief is fired, we get a new police chief, appointed by a mayor who has already passed judgment on Officer Frashour. The timing of this I think is significant.

But beyond that, I can't -- I will not tell you I have any direct evidence that Chief O'Dea told Lieutenant King you need to change how you write your report.

THE ARBITRATOR: You're basing this on timing.

MR. AITCHISON: But I have something else that's more important. And what I have that is more important is that Lieutenant King has been involved in shootings, spent hundreds of hours investigating this before coming up with his first judgment, that his first judgment was, for whatever reason, whether he's motivated by wanting to please Ron Frashour, whatever it might be, his first judgment is that Officer Frashour acts in accordance with policy. That is the judgment of all of the trainers in the training division. We'll later prove to you it's the judgment of every single officer out on the scene who watched this. That seems to me the end of the City's case as to reasonableness. If Lieutenant King cannot come up with his conclusion after two and a half months of evaluating what Ron Frashour had to evaluate in three seconds, the City cannot prove that Ron Frashour acted unreasonably, definitionally. That's where I'm going with this.

And just so you know, Lieutenant King reaches this conclusion four more times, that he was out of policy. And then in a fifth draft, entirely changes his rationale and reaches no conclusion as to whether or not Officer Frashour was within policy. And in a sixth draft -- Actually, it's really Draft 11.

THE ARBITRATOR: This is the fifth one, isn't it?

MR. AITCHISON: Yeah. It's only by the time we get to, I believe it's Draft 11, that there is a finding of out of policy. And that is only after more than four months of looking at this.

THE ARBITRATOR: I'm going to paraphrase you here. Okay.

MR. RUBIN: Can I be heard briefly? In part, I think the more important piece that was just described really is a timing piece, is what it sounds like. In other words, you already recognize, and certainly Lieutenant King has already explained, that this is an evolutionary process, whether it's one month, two months or four months.

During the course of this evolutionary process he's going through these materials, he's considering these materials seriously, he is considering all of the universe, of information thoroughly and carefully. He's weighing all the information. He listens to the audio. And as you've heard him testify already, the listening of that audio, frankly, changed some of his thinking.

And you will also hear, I think, some slightly different evidence with respect to whether every single officer in the training division agreed or disagreed with Lieutenant King's conclusion. In fact, I think Lieutenant King has already said this morning that in fact Officer Meyer didn't disagree with respect to statements that Lieutenant King made in his report.

The audio is critical, the careful consideration is critical, and, frankly, I think as Lieutenant King just explained, overcoming the reluctance from years of being an officer, from years of being a union president, I believe he said it was for an eight-year period of time, when his job was defending officers in these kind of situations, I think he just explained convincingly and clearly that, frankly, there was reluctance that he himself had to overcome as he's hearing all this information, as he's reading all this information, to come to the final decision.

And as you say, I write drafts, you write drafts and decisions, judges write drafts, government agencies write drafts, and those drafts can be very different from where they ultimately end up based on all the information they considered. That's not a criticism, whether it's one month, two months or four months.

And I think that it is not his job, as he said, to determine whether or not Officer Frashour was in or out of policy. His job was looking at the training piece. That's his job. It's not a policy decision making. It is training, was it consistent with training. I think it bottom line comes down to an argument with respect to timing, that somehow the decision by Lieutenant King is suspect for some reason because it

took a long time, because it changed -- he changed his mind during the course of the process, because there were e-mails with Assistant Chief O'Dea.

There's nothing improper, inappropriate, unreasonable or not to be expected in a situation, frankly, as large and as complicated as this one. I don't think there's much to be drawn other than timing.

THE ARBITRATOR: This is all argument, and I didn't want to get -- you know, spend a lot of time on this without understanding where you're going with it.

MR. AITCHISON: Thank you.

MR. RUBIN: Could we take a break?

THE ARBITRATOR: Do you have quite a bit more cross-examination?

MR. AITCHISON: Yeah. I don't think I'll finish today.

THE ARBITRATOR: You're not going to finish today?

MR. AITCHISON: I do not believe so.

THE ARBITRATOR: Okay. Let's take lunch.

MR. RUBIN: I will tell you, I will not talk about -- but will I talk to him about questions that I will ask him on redirect? I mean I can wait until you're done for the day, that's fine.

MR. AITCHISON: That's probably better.

MR. RUBIN: That's fine.

THE ARBITRATOR: Okay.

(LUNCH RECESS: 12:23-1:30)

MR. AITCHISON: Madam Arbitrator, Mr. Rubin, I reevaluated and there are like Xs through pages and pages of this, but not through entire pages, so this may be more disorganized than I usually am. But it's all in a good cause, I want you to know, to shorten things up.

BY MR. AITCHISON: Lieutenant, I want to talk about the waistband for a moment.

A. Sure.

Q. The 60th percentile. What does the bureau teach its officers about the 60th percentile?

A. That weapons are routinely or can be found in that area on the body, that that's -- that's commonly a place where people will carry a firearm, in the waistband area.

Q. What does 60th refer to?

A. One of the two.

Q. 60 percent of the --

A. 60 percent of the body, I think.

Q. 60 percentile, 60 percent of the time guns are found in that location. I'm not exactly --

A. Yeah. They certainly can be, sure.

Q. And weapons can be found or are found in the front of waistbands of suspects, correct? In the back of waistbands of suspects, correct?

A. Yes.

Q. They can be found in underwear, correct?

A. I mean I suppose you could have a gun in your underwear. They're not routinely, commonly found there. The point of the waistband is that a gun is concealed there or is placed there so they can be retrieved from that location, but also because the belt or the pants provide some way for the weapon to stay in place so that it can be retrievable. So the idea they're found in the underwear, people -- we don't typically find them loosely in people's underwear.

Q. The smaller the gun, the more likely it's going to work in the underwear, right?

A. What do you mean going to work in the underwear?

Q. Never mind. Can we see [Exhibit] A 33. Lieutenant, Exhibit A 33, which is dated May 25th, 2010. I'm going to shortcut a lot of this. This is the first draft of your conclusions with respect to the propriety of Officer Elias' conduct, correct?

A. Yes.

Q. And in this, in the bold-faced type at the bottom of Page A 33 you say that Officer Elias knew he faced a fleeing, uncooperative, armed and suicidal suspect, correct?

A. Yes.

Q. And you still believe that, right?

A. Potentially armed.

Q. Yes. He reasonably believes he's armed. We're there, aren't we

A. Fleeing, uncooperative, potentially armed. Yeah, given the information that they had, there was certainly a possibility he was armed.

Q. A 34. Lieutenant, this is an e-mail dated -- Exhibit A 34 is an e-mail dated May 27, 2010 from Dave Virtue to you.

A. Yes.

Q. This appears to be the sixth draft of the training division analysis, correct?

A. Yeah. We didn't keep track of them, but as you've showed them to us today, it is No. 6.

Q. And as of this draft, just shortcutting all this, you're still finding Officer Frashour in policy, correct?

A. Page 54.

Q. Thank you.

A. Consistent with training.

Q. Consistent with training.

A. Yes.

Q. I'm going to show you A 36. Lieutenant, Exhibit A 36 appears to be an e-mail from Dave Virtue to you enclosing his draft of the post-shooting response, correct?

A. Yes.

Q. A 37. Exhibit A 37, Lieutenant, is an e-mail from Craig Morgan to you containing his final summary report of the internal affairs investigation, correct?

A. That is correct, yes.

Q. So as of June 4th, 2010, you now have Sergeant Morgan's 64-page -- 63-page findings that are being circulated, correct?

A. Findings? This is a -- not a findings memo, necessarily. It certainly is Sergeant Morgan's summary of the IAD investigation.

Q. And the purpose of the IAD investigation is to investigate as to whether or not -- to determine the facts as to whether or not an individual had violated bureau policy, correct?

A. Correct.

Q. And you think Sergeant Morgan's a competent investigator, don't you?

A. I thought he -- he was relatively inexperienced in conducting the IAD investigations, particularly the officer-involved shooting investigations. I thought there were certain areas in the IAD investigation where he -- where he could have followed up in greater degree of detail. Overall, I think he did a good

job. But I felt like there were areas where he could have asked additional questions on follow-up to get more information on certain topics.

Q. You had the ability to ask him to propound those additional questions, didn't you?

A. Well, you know, when you do an interview with somebody, you certainly go in prepared with a list of questions. You can't prepare for every conceivable question. You can't anticipate the responses that you're going to receive. And so there's, as an investigator, inevitably, there has to be a certain amount of flexibility in these investigations in asking the appropriate follow-up questions to be sure, especially in key areas, that you're getting at kind of the underlying information and details and facts. So, again, I think there were a couple areas I think it fell short. But overall, I think he did a pretty good job.

Q. Sergeant Morgan is a law school graduate, isn't he?

A. He is.

Q. I think he thought that he did it. And you believe he has good understanding of the directives that apply to this situation?

MR. RUBIN: Objection.

MR. AITCHISON: Okay, I'll withdraw. Lieutenant, did you ask Sergeant Morgan for his conclusions as to whether or not Officer Frashour reasonably believed that Aaron Campbell constituted an immediate threat of death or serious physical injury? Okay. So now at this point, as of June 4th, we have all of the trainers and the IA investigator believing that, and you, I guess, at this point still, believing that Officer Frashour acted reasonably under the circumstances and in accordance with his training, correct?

A. The trainers, I think many of them believed he acted consistent with his training, certain specific things having to do with certain specific parts of his training. I remember talking with Craig Morgan generally, speaking about the case, and I think he struggled with the immediacy. But I think in general terms he thought that it was reasonable to believe that he was going for a weapon.

Q. I'm sorry, I skipped over one. Lieutenant, I'm showing you Exhibit A 35. Lieutenant, this appears to be the May 31st, 2010 draft of the training division's report --

A. Yes.

Q. -- correct? And just drawing your attention to Page 56, your conclusion was that Officer Frashour was acting in compliance with his training, correct?

A. Yes.

Q. All right. I show you Exhibit A 38. Lieutenant, is this a memo or e-mail from Dave Virtue to you on June 15th, 2010 indicating that he has done work on the project while you were gone, finalized his version and enhanced the timeline. Is that what this is?

A. Yes.

Q. 56?

A. 57. Yes.

Q. And would you also agree with me, looking at Pages 57 and 58, once again, the conclusion, Officer Frashour is acting consistent with his training, correct? Then we have Exhibit A 39. Lieutenant, is this another one of the e-mails you are sending to yourself that contains a draft of language that is to replace the language that found Officer Frashour to be in policy?

THE ARBITRATOR: Is this an excerpt from a longer document or is this --

MR. AITCHISON: This is the entire document we were provided.

THE ARBITRATOR: I'm not sure what to call it.

MR. AITCHISON: I think it's meant to be an insert into the next draft, I think.

A. What was your question, I'm sorry?

Q. My question was is this exhibit that we're looking at, Exhibit A 39, was this intended to be an insert to replace that section of the analysis that had in the past found Officer Frashour in compliance with training?

A. This is really where I began to, I think, differentiate between, really, ultimately what he says, sort of restate what he says and began to struggle with the complexity of this particular encounter. And there are certain examples in this draft that I think demonstrate that. And I say, in closing, something to the effect of I do actually think Frashour did act consistent with his training, but the training he received did not emphasize flexibility, de-escalation or adaptation. The ultimate question is a thought here that's not completed. I really feel like in this document I lay out really literally all of the facts that are available and begin to try to look methodically and thoughtfully at all the information he had, how he was trained, what he thought, what he did. I think this is where I actually really sort of begin to struggle with what he did as it relates to his training. And by struggle, I don't mean arrive at a conclusion, one way or another, I'm just saying that I think it's lengthier and it's more detail and it provides, I think, a really thorough, a really thorough look at what happened without really coming to a conclusion.

Q. All right. The previous draft that found Officer Frashour in policy was dated June 15th. This is dated June 20th. So the struggle is between June 15th and June 20, correct?

A. I believe so, yes.

Q. Okay. And I want to look at a couple of features of this draft for a moment. In particular, I'd like you to look at the top of Page 5 of 9, the paragraph that says, "Frashour indicated." Do you see that?

A. Yes.

Q. Frashour was asked in his IA was his understanding -- what was his understanding of immediate. "Frashour said it's going to happen right now, right now, in a couple of seconds, not 30 minutes.

Frashour said he believed Campbell was in the act of doing that and the making good on the threat of pulling the gun out and moving to cover." You saw Officer Frashour's definition of immediate, correct?

A. Yes.

Q. You agree with that definition in terms of the interpretation of the bureau's rules, don't you?

A. Occurring now. And I also -- I have concerns about "Frashour said that he believed he was in the act of doing that, in the act of making good on a threat by pulling out a gun." You know, he never -- He said, "I ain't playing, don't make me get my gun." So, yeah, ultimately, in this particular factual pattern, I don't think that it's immediate.

Q. Okay. My question was a very simple one, which was Officer Frashour's definition that he provides here of immediate, that is your understanding of the bureau's definition, isn't it?

A. Occurring now.

Q. Now or within two seconds.

A. Immediate is occurring now.

Q. Okay. So because Mr. Campbell doesn't have his gun out now, for you it can't be an immediate threat, correct?

A. It's not, given the information we have in this particular case, immediate.

Q. Do you know who Dave Woboril is?

A. I do.

Q. Do you know that Mr. Woboril is of the opinion that the word "immediate" can mean that an individual is going to pull out a gun an hour later and shoot somebody?

A. Immediate is an hour later?

Q. Yes.

MR. RUBIN: I'll object to the extent I think it mischaracterizes.

MR. AITCHISON: That's exactly what he said. He used that example twice.

MR. RUBIN: I know the example. I still disagree with the characterization.

Q. Do you disagree with that interpretation that immediate could --

A. Immediate is occurring now.

Q. Okay. Not two seconds later, not an hour later, in your judgment?

A. It can -- it can -- I think that in cases like this, that the facts play a role in determining the extent to which a situation is immediate.

Q. All right. You said you interpreted this language "in the act of making good on a threat," you said -- you harkened back to the "Don't make me get my gun." You didn't understand Officer Frashour to be saying here that the threat was the threat of suicide by cop?

A. Campbell made -- other than "I ain't playing, don't make me get my gun," and "Go ahead and fucking shoot me," Campbell never made any other communication or statements with officers on the scene that day.

Q. Okay. You testified, though, that you agree that Officer Frashour reasonably believes that Mr. Campbell has threatened suicide by cop. Do you still agree with that testimony? That he has threatened suicide by cop?

Q. Yes. That Officer Frashour reasonably believes that Mr. Campbell has threatened suicide by cop.

A. I know suicide by cop was a part of the information that they had. I don't know that I'd characterize it as Mr. Campbell threatened suicide by cop.

Q. Now, the last sentence in this paragraph says, "Frashour went on to say it's immediate even if he did not see the gun and even if he were not actually being shot at." A threat, your understanding of the bureau's policies, a threat doesn't have to involve the officer seeing a gun for the threat to be immediate, does it?

A. Not necessarily.

Q. An officer can reasonably believe that an individual is going to pull a gun, correct?

A. Yes.

Q. Without ever seeing a gun, correct?

A. That's true.

Q. Without ever being shot at, correct?

A. Correct.

Q. I'd like you to look at the bottom of Page 6. There's a large paragraph that starts "Frashour was also taught the action/reaction principle." You talked a little bit about this --

A. Yes.

Q. -- in your direct examination. How do you think the action/reaction principle applies to this situation when Mr. Campbell is a foot or two away from the front of the Volvo?

A. A foot or two away from the Volvo?

Q. Yes. That's the point at which we've all agreed Officer Frashour uses deadly force.

A. Correct.

Q. So when he's there, how does the action/reaction principle apply?

A. Well, in general, obviously, as it's stated here, the initiator of an action has some advantage over others that have to perceive the action to respond to it. Now, in this particular case, that's mitigated by the fact that they are some distance away, they are behind a police car, and they have access to a variety of different tools, including an accurate rifle.

Q. Is that how you believe the action/reaction principle applies to Mr. Campbell getting within a foot or two of the front of the Volvo?

A. I'm not sure I understand what you mean. I just explained or described the action/reaction principle.

Q. Okay. Doesn't the action/reaction principle here that has been taught to Officer Frashour tell him if he waits until after Mr. Campbell gets behind the Volvo, Mr. Campbell can get off a shot or shots before Officer Frashour can fire his weapon?

A. No officer is ever taught that the action/reaction principle is a determining factor that requires you to shoot, to use deadly force. It is a factor that is present in this dynamic, like lots of others, and may play a role. But doesn't have to be the governing principle. There are other factors that are available, other information that is available to play a role in shaping the decision making of the officer in a case like this.

Q. Okay. Would you agree that it's an important principle in the bureau's training, that what the bureau's basically asking its officers in this situation is to act in good faith and to act with no malice and do what they believe in the moment is reasonable and necessary based on the information that they have in front of them?

MR. RUBIN: Objection to the extent that it sounds like a legal conclusion or sounds like it's a document that you're referring to.

MR. AITCHISON: I'm not referring to a document, and I'm just asking him. Is that what the bureau expects of its officers?

A. Yes.

Q. Now, you participated in a police bureau media training session on February 19th, 2010, didn't you?

A. I'm sorry, I don't recall that. February of 2010?

Q. Yes. About three weeks after this incident.

A. I don't recall that. I certainly may have.

Q. Do you recall such a session?

A. I do not.

Q. Okay. What I'd like to do is to show you a couple of videos - And we'll provide these electronically for you. - a couple of videos from such a training session, and I'm going to ask you to comment on those videos. Anil, if you could bring up the first one.

A. I know what you're referring to. Out at Camp Whitycombe?

Q. Yes.

A. Okay, yes.

(Video playing)

Q. Lieutenant, while Anil is doing that, will you please identify who these police officers are? Tracy Chamberlain is the officer who has the gun, Don Livingston is the sergeant that's there talking about the incident. And one of the reporters from one of the papers is there with a handgun. And this is a demonstration of action/reaction, isn't it?

A. Yes, it is.

Q. And let's go back and see --

(Video playing)

Q. Lieutenant, that is a demonstration of how fast an individual can pull and fire a weapon, correct, point and fire a weapon?

A. Obviously in this situation no one has just been beanbagged, no one in this case, as I stated earlier, is behind cover. This officer does not have a rifle. There are not other officers on the scene that are helping to manage this confrontation. So this is -- this is an example of the action/reaction principle when there's no cover, and you're directly in front of somebody else, and a firearm is involved.

Q. Right. My point is just simply this, all of those factors that you've just described don't necessarily make it any slower for Mr. Campbell to pull out a weapon, do they?

A. All of them that I mentioned, in addition to him coming out, stopping when told to, and standing with his hands on his head, are all factors that can mitigate the effects of action/ reaction. Our officers are told about it so they're aware of it, and given information that helps them in not only in identifying it, but in mitigating it as well.

Q. Okay. And will you play the next clip.

(Video playing)

Q. Lieutenant, that's you speaking, of course.

A. Yes.

Q. Do you believe today that Officer Frashour acted in good faith?

A. I do.

Q. Do you believe he acted without malice?

A. Yes.

Q. Do you believe he acted on the basis of what he believed in the moment was reasonable and necessary?

A. I don't believe he took into account all available information, or counterbalancing information.

Q. I'm just asking you in terms of the standard you just described. Do you believe that -- I'm sorry, do you believe that Officer Frashour did what, I'm quoting here, he believed in the moment was reasonable and necessary?

A. This is taken out of context. This is a conversation with the media on a media training day. Certainly there's a review of these incidents that occur within the police bureau, and that there can be a variety of different conclusions on the basis of a thorough investigation. This is obviously very early on in the investigation process itself. And this is -- it's a general commentary on the United States Graham V Connor standard as it relates to the constitutional standard.

Q. Lieutenant, do you remember before I showed you the videotape I asked you whether or not you believed the standard for the bureau was, and I included the phrase whether officers believe in the moment is reasonable and necessary, and you agreed that was the standard? Do you remember that?

A. Well, the bureau policy is what it is.

Q. Okay. I'd like to get to your conclusion in Exhibit A 39, Page 7 of 8. So this is the result of your rethinking of this process, correct?

A. I'm sorry, I don't know what you mean, rethinking of this process.

Q. Rethinking of your conclusion, correct?

A. I think at this point I'm in the process of -- in possession of more information, am writing more about it and thinking more about it. It's making its way through the process, yes.

Q. And at this point you're saying, "The ultimate question for the board, chief and commissioner hinges on whether it was objectively reasonable for Frashour to conclude that Campbell was armed, going for a gun, moving to cover, and was intending to shoot police, because these things are the basis for his decision." Do you remember writing that?

A. I do remember writing that.

Q. Okay. Let me, before you just --

A. Sure.

Q. Let me just ask you a question about it. Do you believe still today that's the ultimate answer, the finding of fact that gives to us the ultimate answer?

A. I think that -- and I -- you know, I'm writing this in general terms. I don't presume to know what the commander, board, chief or commissioner are ultimately going to decide. Now, it's objective reasonableness in terms of the Graham standard. What I didn't write here was they would review and consider the facts against all relevant training and policies.

Q. All right. But you believe the four most important facts were whether it was reasonable for Frashour to conclude that Campbell was armed, going for a gun, moving to cover, and intending to shoot police, correct? Those are the four most important facts? Do you believe that today?

A. I believe so, yes.

Q. Okay. And you've already testified earlier this morning that it was objectively reasonable for Frashour to believe that Campbell was armed, correct?

A. I think it's reasonable for officers on the scene, based on the information they have, to conclude that he may be armed.

Q. Does that mean the answer to my question is yes?

A. That he reasonably believed that he was armed.

Q. Yes.

A. You know, I think they could think different things at different times in the course of the call.

Q. At the moment Officer Frashour uses deadly force, is it reasonable for him to believe that Mr. Campbell is armed?

A. Ignoring the fact that he's shot six times in the back with a beanbag round right in front of him?

Q. Okay. Let's talk about that. You've said that, by my count you've said that over 20 times. Mr. Campbell wasn't shot six times in the back right in front of Officer Frashour, was he?

A. Well, he was 10 or 15 feet away from him.

Q. He was shot -- He says he knows that he was shot twice in the back. In fact, Lewton continued to fire, shooting -- shooting a total of six rounds. What evidence is there that Mr. Campbell was hit by six rounds from the beanbag?

A. I don't know that there's -- I don't know. I know that he fired six rounds.

Q. But you have said repeatedly to this arbitrator that Mr. Campbell was hit in the back six times by a beanbag -- by beanbag rounds. And your phrase has been "right in front of Officer Frashour." Are you saying now you don't know whether Mr. Campbell was hit by six rounds?

A. Well, I know that -- I know that Officer Frashour said that he saw him hit with two rounds, saw the rounds hit him, saw them bounce off of him. This is prior to him taking his hands off his head, moving his hands down toward his waistband, and then beginning to run. This is what Officer Frashour said that he saw. Officer Lewton said he continued to fire and believed that the rounds were hitting Mr. Campbell. So I believe that six rounds hit Mr. Campbell as he was running away, two of which while he was standing still and the other four as he began to run.

Q. Aren't you aware of the fact that the detectives concluded that at least one of the rounds completely missed Mr. Campbell?

A. I'm sorry, I'm not aware of that.

Q. Okay. So let's go back to this. And I don't think you answered my question. I want to hone in on this. At the moment Officer Frashour uses deadly force, does he reasonably believe Mr. Campbell is armed?

A. That he has reached for a gun?

Q. That is not what my question is, Lieutenant. My question is very clear. At the moment that Officer Frashour uses deadly force, does he reasonably believe that Mr. Campbell is armed?

A. Well, I mean he certainly may be armed; he, on the other hand, may be unarmed. I mean he hasn't seen the gun, he hasn't come out shooting. The gun is supposed to be in a sock in the pocket. No one has seen the gun.

Q. Okay. Would you mind reading back the last question. (Reporter read as requested) Please answer that question, Lieutenant.

A. I don't know.

Q. Okay. That's fine. And at the moment that Officer Frashour uses deadly force, does he reasonably believe that Mr. Campbell is going for a gun?

A. Not in light of the beanbag rounds hitting him.

Q. Okay. And at the moment that Officer Frashour uses deadly force, does he reasonably believe Mr. Campbell is moving to cover?

A. He knows that he is running and running in that direction. I don't know that he knows that he's moving to cover.

Q. Does he reasonably believe that he is moving to cover?

A. I mean he's moving to an area that certainly could be cover.

Q. All right. You last write up here that "The question is whether it's reasonable for Frashour to believe that Mr. Campbell was intending to shoot police." You'd agree with me, wouldn't you, that that's not the bureau's standard for the use of deadly force, whether or not an officer believes that someone is intending to do something? Let me put that another way. I asked that question badly. The question is whether or not the facts as perceived by an officer give that officer a reasonable belief that an individual is an immediate threat of death or serious physical injury, correct?

A. I'm not sure I understand what you're asking.

Q. Okay. That's fine. 450. The next part of your conclusion goes from Page 6 to the top of Page 7. And here you say, "If the board." You're talking about the Use of Force Review Board here, right?

A. Correct.

Q. "If the board, chief and commissioner conclude it was objectively reasonable for Frashour to conclude, based on what he knew and what he saw happening in front of him, that Campbell was armed, he was going for a gun, moving to cover, and intending to shoot at police, then Frashour acted consistent with his training. If the board, chief and commissioner conclude that Campbell was only reaching for a part of the body that had just been shot by beanbag rounds, and that in that moment Frashour should have been able to distinguish between the two actions, one life-threatening and the other simply reflexive or defensive, then Frashour did not act consistent with his training because it was not objectively reasonable." Today, Lieutenant, it's your judgment, is it not, that Mr. Campbell was reaching for the part of his body that had just been struck by beanbag rounds and was reaching in that fashion reflexively and defensively?

A. Yes.

Q. And what medical evidence do you cite in support of that conclusion?

A. I have none. I have no medical evidence to conclude that. I mean he, of course, is deceased so we can't ask him.

Q. Did you look at the autopsy photos?

A. Yes, I've seen them.

Q. Did you see the description of the bruises on Mr. Campbell's body?

A. Yes.

Q. Would you agree with me, Lieutenant, that there are no beanbag bruises on his back?

A. That may be the case. I mean --

Q. That may be the case?

A. It doesn't -- He was hit twice in the back, right? Frashour said he saw that. He knows that. Other officers on scene saw him hit there. So he was hit there, right?

Q. We'll come back to that. All right. Here, though, you say basically it's somebody else's job, the board, chief and commissioner, to make this final decision of fact. And then you conclude by saying, on the last page, Page 8, you conclude by saying that you do think Officer Frashour was acting consistent with his training, correct?

A. At this draft, at this point, yes.

Q. Okay. So here we are, we're now June 20th, and you are believing that Frashour is consistent with training. Now I want to get into this reach and pain situation. And I want to show you a little bit of the testimony that you reviewed. Could we take a look at 48. Howard, this is Joint Exhibit 11, Page 381. This is the internal affairs investigation, and question of -- questions were being asked here of Officer Elias. And, Lieutenant, in this testimony the investigator says, "The reason I ask is that sometimes somebody gets hit with a beanbag and he might reach back where they were hit with the round." And Elias says, "No, it wasn't like, oh, I got shot. It was just like --" "And he crouched down a little bit?" "Yeah, took a step and started to go over and hunched down." Are you aware of the fact that Officer Elias watching this thought that Mr. Campbell did not have a pain reaction to being struck with the beanbag?

A. That's what he says here, yes.

Q. You were aware of that?

A. Yes.

Q. And he watched it.

A. Yes.

Q. And you did not.

A. Correct.

Q. Next. Do you know who Tyler Camp is?

A. I do.

Q. And he's in a position -- he's as close as any of the officers to Mr. Campbell, isn't he?

A. Yes.

Q. And do you remember --And this is Joint Exhibit 10, Page 197. Do you remember Mr. Camp being asked in the grand jury, when he's asked to describe the reach by Mr. Campbell, Mr. Rees, who was the district attorney, says, "Did it ever appear he was reaching back in pain?" And the grand jury reiterates the same question. And Mr. Camp says, "No."

MR. AITCHISON: Show us the next one, Anil.

Do you remember that testimony?

A. Yes.

Q. And do you recall in the detectives interview Mr. Camp is being asked questions by Detective Andrew, who asked, "Could his back hand have been going -- his left hand being dropped and going to his back, could that have been in reaction to being shot?" And Mr. Camp says, "I don't think so, because it was a continuation. He was going either to pull his pants up or to grab something." Continues on, "I remember that very vividly because I was wondering what he was doing. It was just weird to see him run with his left hand behind his back for so long." Do you remember Mr. Camp saying that?

A. Yes.

Q. So Mr. Camp doesn't believe that Mr. Campbell was reaching back in pain, does he?

A. He does not.

MR. AITCHISON: Show us 208. Do you know who Will Snow is?

A. Yes.

Q. All right. And he too is as close as any of the officers to Mr. Campbell, correct?

A. As close as --

Q. Yes.

A. -- there at the car with them?

Q. What?

A. There at the car with them? Where do you mean?

Q. Mr. Snow and Mr. Camp --

A. Yes.

Q. -- that we've just been talking about.

A. Right.

Q. When Mr. Campbell is beanbagged, he's beanbagged we think about evidence 8, evidence marker 8.

A. Yes.

Q. Is that your understanding?

A. About 10, 15 feet away from the police car, initially.

Q. Have you been out to the scene?

A. Yes, I have.

Q. Would you agree with me this apartment is just about as close to where Mr. Campbell was as the police car?

A. Just about.

Q. Okay.

And this is Joint Exhibit 9 , Howard, Page 611. Do you remember Mr. Snow saying, "You know, do as they were asking. And he proceeded to go for cover, and what appeared to be he was reaching back for a weapon. Like I said, it was an object. I'm not sure if it was a gun or not."

Do you remember Mr. Snow testifying explicitly that he did not think that Mr. Campbell was reaching back in pain?

A. Yes.

MR. AITCHISON: 99, please. Officer Andersen is also very close to Mr. Campbell, is he not?

A. Yes, he is.

Q. And I'm showing you Joint Exhibit 11, Page 488. Would you agree with me Officer Andersen said, "Beanbag rounds didn't seem to have any effect on Mr. Campbell"?

A. That's what he says, yes.

Q. Would you agree with me that Officer Andersen doesn't think that -- or did not think that Mr. Campbell was reaching back in a pain reaction?

A. He didn't -- Andersen didn't comment on that. That's not the question he was asked.

Q. But he did not believe the beanbags had any effect on Mr. Campbell, did he?

A. Right, it says it did not appear to have any effect.

MR. AITCHISON: 258, please.

Officer Lewton testifying - Joint Exhibit 9 , Page 325 - in the detectives interview. Would you agree that Officer Lewton believed that the beanbag rounds didn't have any effect, correct?

A. Correct.

Q. And I guess I could keep going here, but didn't Officer Boylan say exactly the same thing?

A. I believe so.

Q. Okay. And didn't Sergeant Birkinbine say the same thing?

A. I don't have his testimony in front of me.

MR. AITCHISON: Would you please show us 136. This is in the internal affairs investigation. "Did you see him move his hands to any place the beanbag may have struck him?" "No." Do you remember that testimony?

A. Yes.

Q. So, Lieutenant, would you agree with me that not one of the police officers at the scene in any of their detectives, grand jury, or IA testimony indicated that Mr. Campbell reached behind his back in a pain reaction to being beanbagged?

A. I don't know that. We don't have all the testimony here in front of us.

Q. Can you cite today one witness who's a police officer -- I know we've got civilians out there.

A. Right.

Q. One witness who's a police officer who said Mr. Campbell's hand moved in a pain reaction to being beanbagged?

A. I can't recall at this time.

Q. So we know from what we've just seen, Camp, Snow, Elias, Andersen, Lewton, Boylan, and Birkinbine all believe the beanbag rounds had no effect on Mr. Camp, correct?

A. Correct.

Q. And yet you believe that on the crucial factual question of why Mr. Campbell was reaching behind his back, you believe, contrary to what they saw, that Mr. Campbell was reaching behind his back in a pain reaction to being beanbagged, correct?

MR. RUBIN: Objection to the form of the question, argumentative.

THE ARBITRATOR: Your question is what?

MR. RUBIN: Argumentative, his question is very argumentative.

THE ARBITRATOR: I think you're getting very argumentative.

MR. AITCHISON: Okay. If we could see 7 71. I want to talk to you -- This is one of these things that's a little bit unrelated. I want to talk to you about a little bit of your testimony yesterday. And you isolated two pieces of testimony given by Officer Frashour, and you criticized him for -- criticized Officer Frashour for this testimony, displaying a rigid mindset focused on the threat. Do you remember that testimony?

A. I don't recall, necessarily.

Q. Okay. I'll point out to you what you focused on. And what you focused on was this phrase, "I knew there was a gun coming out of the back of his waistband." Do you remember looking at that and saying, well, he didn't know there was a gun, and saying that was a -- that was one of the reasons that you found him so focused and rigid?

A. That what? I focused on what, I'm sorry? This particular testimony or --

Q. Yes, you did.

A. This right here? Yes, I recall listening to the audio. I recall that, yes.

Q. All right.

A. Yes.

Q. In fact, we even listened to the audiotape of it at the end of the day yesterday. Do you remember that? And do you remember testifying, "Well, hadn't seen gun, there was a gun obviously mentioned, he may have believed it, but I think there's a difference between that and I knew"? And that troubled you, that testimony, Officer Frashour's use of "I knew," correct?

And will you show us 742. And this is from Joint Exhibit 11, Page 128. And the phrase you focused on yesterday was in grand jury testimony Frashour said he saw Campbell reach his hand straight down the middle of his back, straight into the back of his pants, was not grabbing his

waistband. Frashour said, "I knew exactly what he was doing. He thought to himself, don't do that, don't pull your gun, don't reach for your gun. I knew he was grabbing for the gun."

Do you remember focusing on that same "I knew" phrase?

A. Yes.

Q. Would you agree with me, Lieutenant, some individuals, when they use phrasing like that, what they're describing is what they believed?

MR. RUBIN: Objection. He's now asking him to testify about the linguistics of what they say or what they mean or people in general or --

MR. AITCHISON: You fired him for his grammar.

MR. RUBIN: We didn't fire him for his grammar.

THE ARBITRATOR: I think it's self-evident, and I don't think he was fired for his grammar.

MR. AITCHISON: Okay. You also testified yesterday, and this was a third piece of testimony that you isolated, that Officer Frashour said he was disappointed when he learned that Mr. Campbell was not armed, and that he realized how it would look in the media. I think you said that didn't show any personal reflection on the scale of the magnitude of the event of everybody that was involved. Do you remember that testimony?

A. Yep.

Q. And that was indicative to you of a rigid mindset on Officer Frashour's part?

A. I don't know that it was a rigid mindset. It's a commentary, you know, something that he -- he learned later, that there was no gun, somebody was killed that was not ultimately an immediate threat to him. I think officers who have killed people, you know, take that, obviously, very seriously. Officers who have killed people when people were not immediate threats to them at all, they have some reflection about that, some thought about that. He didn't seem to demonstrate any of that. He simply said disappointed in how the media would feel about it.

Q. Do you know, Lieutenant, that Officer Frashour has said repeatedly that he deeply, deeply wishes this event had not happened, both for himself, his family, and Mr. Campbell's family and Mr. Campbell?

A. I'm unaware of that.

Q. You know that was not asked him in the IA interview, was it?

MR. RUBIN: Objection. Objection.

MR. AITCHISON: Here's -- I realize I'm pushing here, but let me tell you why I'm doing this. The thrust of this witness's testimony yesterday was that Officer Frashour didn't consider this, this, this. You know, we all heard it, didn't consider the call was a welfare check, didn't consider this, this, and this. None of those questions were asked him in detectives, internal affairs or the grand jury. And yet this witness testified that because he didn't read it in those interviews, he assumed that Officer Frashour didn't consider those things. And it's a theme that is throughout what we heard yesterday.

Here, for example, Officer Frashour has said he deeply regrets what happens, has expressed regret, deep regret over the fact Mr. Campbell was not armed. He has done that. It wasn't in the IA interview, but that doesn't mean it didn't happen. And it wasn't asked. And the City controls what's asked in the IA. That's what I'm getting into.

THE ARBITRATOR: Okay. Go ahead, Howard.

MR. RUBIN: I disagree, because he absolutely was asked every one of these questions related to every one of these topics. And it's the opportunity, obviously, to provide answers to those questions. We disagree. And sounds like argument, and sounds like it's argument based on evidence that's already in the record or can be put in the record.

THE ARBITRATOR: Well, it is argumentative. And I don't know, if you want to establish what was or wasn't asked at the IA interview, I wonder if there's some way we could shortcut it, too, like I could take some time to read it and you could ask me to look at particular pages.

MR. AITCHISON: Maybe that's the solution. Maybe the solution here is -- I know you've asked us to isolate things that we think are important in the record. Howard and I have agreed all this stuff is in, and it's all substantive evidence. But you've told us you want us to point out what you should pay attention to. I think probably from both of our standpoints we should just say read the IA interview.

THE ARBITRATOR: And pay attention to-- Yes.

MR. AITCHISON: Okay. Because it is hours long.

MR. RUBIN: I also think from those interviews and from the material that's already in evidence, the arguments could be made about whether, from their perspective, obviously, it was not asked, our perspective, obviously, was asked. We could point you to it. And again, I think not only in written materials but I do think it's important to listen to actually the interview of Officer Frashour as well.

MR. AITCHISON: Well, I think this is an easy solution. The IA interview speaks for itself, what was asked and wasn't asked, so that's fine.

MR. RUBIN: Not to beat the horse -- not to kill a horse that's already dead, but there's already been testimony with respect to the impact that recording had. So I think it's something that needs to be listened to as well.

THE ARBITRATOR: I'm not sure I can read the IA interview tonight, but I could try, or read it at some point pretty soon --

MR. AITCHISON: I don't think you have to do it tonight.

THE ARBITRATOR: -- before the end of the week, and you can ask the questions if I haven't.

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

MR. AITCHISON: Sure.

(RECESS: 2:35-2:41)

BY MR. AITCHISON: Lieutenant, I'm showing you Exhibit A 42, which is an e-mail from Dave Virtue to you. We're now up to June 21st, so the day after the last report. And this is Virtue sending you the latest draft of the training commission conclusions. If you look at Page 57 and 58, we find still consistent with training, correct?

A. Correct.

THE ARBITRATOR: What number did you call that draft?

MR. AITCHISON: This is Draft 9 -- I'm sorry, 8.

THE ARBITRATOR: I have 9 .

MR. AITCHISON: Sorry, Draft 9 .And, Lieutenant, I'm showing you Exhibit A 40. This is also dated June 21st, 2010, another draft of the training commission -- or training division review. This was provided to us after the previous document in sequence from the City. We don't know, obviously, when these two documents were created. I'm just telling you it's the next one, in order in terms of the computer file.

A. Okay.

Q. Lieutenant, if we look at this, and we look at Page 54 --

A. Yes.

Q. -- this was the first draft where you find Officer Frashour to have acted inconsistent with his training, correct?

A. Yes.

Q. All right. So we go from June 20th, finding Officer Frashour in policy -- or excuse me, acting consistent with his training, to the next day finding Officer Frashour inconsistent with his training. Is that right?

A. Apparently, on the basis of the dates on the e-mails.

Q. Now, I want to talk to you a little bit about a portion of this encounter we haven't discussed yet. And that portion of the encounter is when Officer Lewton is telling Mr. Campbell to put his hands above his head.

A. Yes.

Q. And your understanding of the events is Officer Lewton is actually shouting at Mr. Campbell, isn't he? He's giving him verbal commands; some say shouting, some say he's not. Officer Lewton himself says he's screaming at Mr. Campbell, doesn't he?

A. I don't have that testimony in front of me.

Q. You don't recall it?

A. I don't recall.

Q. And in your judgment, was Officer Lewton clearly communicating that he wanted Mr. Campbell's hands above his head?

A. Yes.

Q. Is there a reason from a training standpoint why Officer Lewton would want Mr. Campbell's hands above his head rather than behind his neck?

A. It's a part -- it's a step in a custody procedure. We hope people will put their hands in the air, that they'll cooperate with commands, turn around. Ultimately we train officers to take people into custody in a prone position, where we can gain the most advantage in effecting the arrest, taking someone into custody.

Q. And if their hands are above their head, it's easier to put them in a prone position, correct?

A. Yes.

Q. That's a possibility.

A. Yes.

Q. And also, don't you train your officers that if someone's hands are behind their head rather than above their head, they can actually - and I'm going to make a gesture towards you, Lieutenant - they can actually have palmed a small weapon and point it and fire at you? Don't you train officers that?

And all the officers at the scene, you recall them testifying they were concerned from an officer safety standpoint that Mr. Campbell would not put his hands above his head, correct?

You used a word yesterday that I'm curious about. You said Mr. Campbell was surrendering.

A. Yes.

Q. And you draw that conclusion from the fact he was coming out voluntarily?

A. The fact that he had his hands on the back of his head, that he walked backwards, that he stopped when told to do so.

Q. Are you aware of the fact that witnesses at the scene specifically testified they did not think Mr. Campbell was surrendering?

A. Yes.

Q. Are you aware of the fact that there's not one witness who testified in any of these three forums that they believe Mr. Campbell was surrendering?

MR. RUBIN: Objection; mischaracterizes testimony.

THE ARBITRATOR: I believe it does. I believe it does. Or it's --

MR. RUBIN: We've already heard testimony here that isn't that.

MR. AITCHISON: That what? No one has used the word "surrender".

THE ARBITRATOR: They haven't used the word "surrender," but I don't want to be misleading about this. They thought he was compliant.

MR. RUBIN: And giving up.

THE ARBITRATOR: And giving up, yes.

MR. AITCHISON: Everyone has said partially compliant. Giving up, yes.

THE ARBITRATOR: I don't know that everyone has said partially compliant. Let me just see. I've been keeping some notes here. I don't want to get in an argument over it.

MR. AITCHISON: No, let's argue.

THE ARBITRATOR: Off the record. Our arguments will go on off the record. (Discussion held off the record)

BY MR. AITCHISON: I think there's an easy way to get at this, Lieutenant. Lieutenant, do you believe Mr. Campbell was complying with the police commands?

A. He complied with the police commands, yes.

Q. Up to a point?

A. Up to a point, yes.

Q. And the point was when he came to a stop, correct?

A. The point was putting his hands in the air.

Q. Okay. The last command that he complied with of the police was stop, correct?

A. Yes.

Q. And from that point forward he was noncompliant, wasn't he?

A. He didn't put his hands in the air, correct.

Q. And he ran, correct?

A. Correct, yes.

Q. That was not compliant, was it?

A. It is not compliant, no.

Q. Did he do anything after he came to a stop that in your judgment was compliant?

A. Yeah, he stood there with his hands on his head. Pretty compliant. Substantially compliant.

Q. So standing with his hands behind his head, not complying with requests to put his hands above his head, in your judgment that's substantially compliant?

A. I think that's huge.

Q. I'm going to get into this point that you have testified to, that Mr. Campbell -- excuse me, Officer Frashour was focused on the possibility of officer -- suicide by officer to the exclusion of other possibilities. You remember saying that, don't you?

A. Yes.

Q. You believe that today, don't you?

A. Yes.

MR. AITCHISON: Anil, can we call up 343.

And you think, do you not, that Officer Frashour, because of that focus, was interpreting everything in the most negative light possible for Mr. Campbell, correct?

A. Because of what?

Q. Not just that.

A. That what? What was my testimony? Because of his focus on the suicide by officer.

A. Oh, there were other reasons he was interpreting everything in the most negative light possible? That was your testimony yesterday. That Officer Frashour was interpreting everything in the most negative light possible to Mr. Campbell.

A. Throughout the course of the call, yes.

Q. Yes.

A. Correct.

Q. And in your judgment, that was because he was so focused on suicide by officer, correct?

A. Among other things, among all the available information in the call, yeah.

Q. I want to point you to the internal affairs interview. And this is a point where Sergeant Morgan asked Officer Frashour how he assessed the threat level of Mr. Campbell throughout the call, did it move, was it high or was it lower. And this is a lengthy explanation of Officer Frashour of his thought process at the scene. Do you remember this?

A. Yes.

Q. Do you remember him testifying to that? Do you remember Officer Frashour saying, "I'm not going to comment on the call before I got there, and there may have been some ups and downs," says, "You know, the kids being released was bold, it was, oh, good, it was a relief, these kids aren't going to be hurt today, and they're safe, and this is not a hostage situation."

A. Yes, I remember that, yes.

Q. Does that indicate he is evaluating the children coming out and looking at this at this point in time in a positive way to Mr. Campbell?

A. I think this is one of the few things that he says, and this is where he begins to talk about -- mean here he characterizes it as bold, which begins the characterizations.

Q. And he continues to say, "At the same time it's like, well, they're way too young to be released in the parking lot by themselves, why doesn't an adult come out, why is he releasing the kids. Well, maybe he's ready to make good on suicide by cop and he cares enough about the children to not have them be hurt. I was aware of both of those things." Isn't this evidence to you that Officer Frashour is evaluating the

scene, evaluating possible upside, possible downside of an event -- a significant event to you involving Mr. Campbell?

A. I think so, yes.

Q. Okay. And when Officer Frashour describes Mr. Campbell coming out of the apartment, he tells internal affairs he thought that Mr. Campbell was compliant, doesn't he?

A. Not until the end of the IA interview.

Q. But he does say this in the IA interview, doesn't he?

A. He initially characterizes him as purposeful, determined, resolved. It's not until the end of the IA interview that he says, in answer to a question around what Mr. Campbell was doing, wasn't he substantially compliant, "Yes, I thought he was complying, but I don't think compliance was his mindset." Yes.

Q. Okay. And yesterday you criticized the first portion of that testimony as you did not believe that, you, Lieutenant King, did not believe Mr. Campbell was coming out in a manner that was purposeful and resolved, correct?

A. Well, he may have been. But he was also coming out cooperating with commands, standing with his back to us, with his hands on his head, doing what we were asking him to do.

MR. AITCHISON: 227, Anil.

Lieutenant, I want you to look for a moment at what the other officers on the scene thought about the emergence of Mr. Campbell.

Officer Willard testified that he was alarmed by Mr. Campbell coming out. "His actions coming out, the speed at which he's walking, his demeanor, the angry, mumbly sound, talk he was doing. It seemed like he wanted to run the show or was in control." Do you remember that testimony?

A. Yes.

Q. That perception, in your judgment, bears similar to Officer Frashour's, isn't it?

A. Similar, yes.

Q. Okay. Next. So here is Officer Willard, we're still in his internal affairs interview, and Officer Willard is saying, Line 319, Page 448, he's saying, "Lewton was yelling those kind of things. He was kind of ignoring it, walking fast toward us. And that right again upped the severity of the thing. His body language and his actions were clearly stating he was in control and not the police." Do you remember that testimony?

A. Yes. It is.

Q. And that too is similar to Officer Frashour's perception, is it not?

Next, this is Officer Lewton testifying, this is his internal affairs interview, Page 270. "So he starts taking these giant steps" - Line 453 - "and almost starts running backward, back towards the sound of

my voice. I'm telling him, 'Slow, slow down,' and he's not doing it, he's not slowing down. He's still coming back fast at me." Do you recall that testimony?

A. Yes.

Q. And do you recall Officer Lewton also testifying that he thought that Mr. Campbell was coming out at a determined and fast pace?

A. He says something similar to that.

Q. So, Lieutenant, you would agree with me that all the officers on the custody team see Mr. Campbell come out with this -- I think the phrase you used, came out determined, looking as if he had a plan?

A. That they all thought that?

Q. Yes.

A. Apparently.

THE ARBITRATOR: You say all the officers?

MR. AITCHISON: I just asked him. I'm shortcutting this. I don't want to go through all the officers on the custody team.

THE ARBITRATOR: Kemple didn't say that.

MR. AITCHISON: Huh?

THE ARBITRATOR: Kemple didn't say that.

THE WITNESS: And neither did Birkinbine.

MR. AITCHISON: But he wasn't on the custody team.

THE ARBITRATOR: Boylan didn't either.

THE WITNESS: Birkinbine said on the air he's cooperating so far.

MR. AITCHISON: Elias says it. Sorry.

BY MR. AITCHISON: But at least some of the officers at the scene see and react to Mr. Campbell's approach the same way as Officer Frashour, correct?

A. You know, you have to contextualize the actions of the individual that you're dealing with. You have to be prepared for a threat from them, but on the other hand, be open to the possibility that they're coming out surrendering and giving up. People's view of what Campbell was doing, their interpretation of it, their depiction of it, it varies to some degree. Ultimately, Aaron Campbell came out with his hands

on his head, they remained on his head. He stopped when we told him to, his hands remained on his head. And he didn't do anything until we shot him with a beanbag gun.

Q. You don't hold Officer Frashour responsible for shooting Aaron Campbell with a beanbag gun?

A. No, I don't. I'm just making the point. You're characterizing, obviously, what everybody is saying about the way they're experiencing Aaron Campbell. You know, when we deal with suspects that are drunk or that are high or that are gangsters or violent criminals or they're mentally ill, we have to be able to provide some -- This is police work. This is what we encounter on the street. People do not, you know, always comply completely, they don't always do everything we want them to do. You know, we're there with all of the tools and the training and the experience available to us.

And, no, Aaron Campbell was not dictating the situation. We're telling him what to do. And what's he doing? He is doing exactly what we tell him to do.

Q. He's doing exactly what the police are telling him to do?

A. Stop, come out, stop. He came out in response to our request. He comes out, they tell him stop, his hands were already on his head. This is by and large -- This is better than being shot at. This a sign of good faith on his part when he comes out. They tell him walk back, slow, slow, slow. He stops. Tell him to come back again, he stops. He stands there with his hands on his head.

So he ultimately is cooperating and complying with commands. And I just want to see him be able to acknowledge, yes, maybe he was behaving in this way. But on the other hand, what we're seeing out of him is substantial cooperation, which we appreciate and value given the situation.

Q. Lieutenant, you're describing Mr. Campbell up to the point and including the point where he stops, correct?

A. Correct.

Q. Change how? You're aware of the fact that witnesses testified things change when he stops, aren't you? I want to look at when we're out here on the scene and Officer Frashour is watching Mr. Campbell approach. I want you to look at it through this lens you've described of Officer Frashour being focused on a threat of suicide by cop. Okay? Will you do that for me? When officer -- when Mr. Campbell leaves the apartment and comes out with his hands behind his head, you believe Officer Frashour was still overfocused on the suicide by police threat?

A. I don't know that he was overfocused on it.

Q. Focused to the exclusion of considering mitigating circumstances?

A. I don't know that I -- that he was so focused on the suicide by cop. I'm not sure I understand what you're saying.

Q. Focused on the possibility of a lethal threat from Mr. Campbell.

A. I think my generic -- In the review, it's that from the beginning he is focused on only negative things, to the exclusion of other interpretations, not specific, necessarily, to suicide by cop by itself.

Q. Okay. And you understand Officer Frashour's testimony to be, do you not, that after Mr. Campbell was beanbagged, that Mr. Campbell drops his left hand towards his waistband?

A. Yes.

Q. You don't have any reason to question that testimony, do you?

A. Other people on the scene didn't see that. They saw him running, they saw his hands come down.

Q. You know as well that other people at the scene saw his left hand go to his waistband even before he was shot, do you not?

A. Some did, yes; others did not.

Q. Do you -- In your conclusion that Officer Frashour acted outside of his training, is that based on the notion that Mr. Campbell's hand did not come down to his waistband? So you're willing to accept Officer Frashour's recounting of that, are you not, for the purposes of your analysis?

A. Yes.

Q. Okay. And you'd also agree with me that at that point in time Officer Frashour knows all the things about Mr. Campbell being a threat, reasonably believes he's armed, is suicidal, threatened suicide by cop, carrying a gun in his jacket, sent the text message, looked out the blinds. He knows all those things at that point in time. In addition to, of course, and importantly, in addition to the fact he sees him come out, that his hands are on his head, that he's walking back, that ultimately he stops, that he's standing in front of us with his hands on his head, yes. He knows all of those things, correct?

A. Yes.

Q. And when Mr. Campbell brings his left hand down towards his waistband, you've already agreed reasonable officer believes that Mr. Campbell could be going for a gun at that point?

A. Again, not in light of the beanbag rounds being deployed.

Q. Okay. But you'd agree, would you not, that at that point Officer Frashour doesn't fire?

A. He does not.

Q. He makes the conscious decision not to fire, doesn't he?

MR. RUBIN: Objection.

Q. Doesn't he testify that he makes the conscious decision not to fire?

A. Is there an objection?

Q. There's no objection.

A. That he what?

Q. Doesn't Officer Frashour testify that when Mr. Campbell's hands -- left hand was going to his waistband, he made the conscious decision not to fire? He said that he thought that he would have been justified in shooting at that point. And that he decided not to do so, correct?

MR. RUBIN: Objection.

Q. In any case, he does not fire then. And he does not fire. And he testifies he believes he would have been justified in firing, correct?

A. Yes.

Q. When Mr. Campbell starts to run, Officer Frashour does not fire, does he? In fact, how much distance do you think Mr. Campbell travels before Officer Frashour fires?

A. It says it's 64 feet, but minus the front of the police car and -- You know, 50, 50 or so feet, 50 or 60 feet, perhaps.

Q. And Officer Frashour waits until Mr. Campbell is within a foot or two of the front of the Volvo, correct?

A. Correct.

Q. He is, he is evaluating, yes.

A. No.

Q. That doesn't indicate to you an officer that is evaluating and re-evaluating the threat on a second-by-second basis in this encounter?

I want to go back to the process of you putting together this report. As you're sending drafts to the chief's office, are they rewriting portions of your report?

MR. AITCHISON: Could we have Exhibit A 41. This is, I think, our next document. Lieutenant, this appears to be dated June 21, the same date as our last report. This is from you to you, but with a carbon copy to Jim Ferraris.

A. Yes.

Q. Do you see that?

A. Yes.

Q. And this is the version of your report finding Officer Frashour out of policy for the first time, correct?

MR. RUBIN: Objection. I think you've already introduced and identified documents.

MR. AITCHISON: I'm sorry?

MR. RUBIN: You've already introduced, I thought, reviews --

MR. AITCHISON: This is the same day. I think this is the same document, that's what I was asking.

MR. RUBIN: Okay.

THE ARBITRATOR: Same document as 40

MR. AITCHISON: I think what he's doing is sending it to Commander Ferraris.

A. Did I send it to Ferraris, you mean?

MR. AITCHISON: Yes.

A. Yes. Yes.

Q. The same day that you wrote it, correct?

A. I don't know how you're concluding it's the same day I wrote it.

Q. Well, we know that on June 20th you wrote a--

A. I see. Right.

Q. -- a report finding Officer Frashour in policy. We know that on June 21st you wrote a report finding him out of policy, and now you're sending on the same day that report to --

A. That document, oh, that draft.

Q. Yes.

A. Yes.

MR. AITCHISON: Could we see Exhibit A64. Who is Kristy Galvan?

A. She's a sergeant in the chief's office, works for Director Kuykendall.

Q. This is Exhibit A 64. Lieutenant, this appears to be an e-mail dated June 23rd, 2010, from Sergeant Galvan to you and to Sergeant Virtue --

A. Yes.

Q. -- enclosing a draft of the report, and the subject is --

A. Changes I've made.

Q. -- the copy I changed.

A. Yes.

Q. What changes did Sergeant Galvan in the chief's office make in your report?

A. I don't know that she made any substantive changes. I think she reviewed it and made grammatical and formatting changes, I believe. There were -- We ultimately hadn't decided how, you know, certain things would look in the document or how it would be formatted. She didn't review any of the material. So I think it was limited to observations about the draft. But I don't see any indications where she would have made any changes. I don't think she made any substantive changes to it.

Q. All right. And we could tell, could we not, by reviewing this draft --

A. Sure. Right. Of course. Yeah.

Q. Okay. -- the draft that you prepared two days earlier, right?

Now, let's look at the final analysis here, which is Joint Exhibit 11, Page 89. And you start this analysis with the phrase that "The purpose of the analysis is to review Officer Frashour's actions for consistency with the training that Officer Frashour received from the bureau," correct?

A. Correct. Yes.

Q. And Officer Frashour would have received this training where? In the basic academy?

A. Police Corps, advanced academy, inservice.

Q. FTO?

A. FTO, yes.

Q. Roll call training?

A. Yes.

Q. AR-15 training?

A. Yes.

Q. Which of Officer Frashour's instructors from the advanced academy did you have review the investigatory materials to see if his actions complied with training?

A. Other than the ones that I've already mentioned?

Q. Other than the ones you've mentioned. We know how they feel about it. Any others?

A.No.

Q. Did you have Officer Frashour's FTO review the investigatory materials to determine whether his actions were consistent with training?

A. You know, in the training division, and in the process of reviews like this, the coaches don't conduct these reviews or analyses, so, no.

Q. Let me ask you a broader question, because we know about those nine people, maybe eight, in training and their point of views. Did you speak with any of Officer Frashour's trainers other than the individuals you have so far identified, Chamberlain and Meyer and the like?

A. No.

Q. And, Anil, this is 474.

I'd like you to turn to Page 130 of Joint 11. You see the paragraph that starts "Frashour saw Campbell as a threat the entire call, to the exclusion of any other interpretation of Campbell's actions"?

A. Yes.

Q. There's a few pieces of this that I don't think we've talked about. We've talked about most of this at this point in time, but we have not talked about the fact that Frashour was aware that Mr. Campbell was known to be emotionally despondent over the recent death of his brother. And would you agree with me individuals who are emotionally despondent have the potential to be a threat to police officers?

A. They do.

Q. And you also say that Frashour was aware that Mr. Campbell was in need of psychological care. I don't see that anywhere in the record that we have. Where did you get that fact from?

A. I extrapolated it from the facts that were available. Anybody that's -- Well, in a case, of course, where a close family member has died and where there's been suicidal behavior in relation to that, when someone is a threat to themselves or others, our, you know, our training, our experience is that we provide them with the help they need. And what that ultimately means is they're provided with a psychological evaluation and they're under a care from a doctor and often receive some medication and some other treatment.

Q. So you just -- This is an extrapolation?

A. Yes.

Q. This isn't something anybody asked Officer Frashour and he answered, correct?

A. Well, on a welfare check call, on the basis of the information they have at this time, no other crime has been committed, certainly not a violent crime, and in the context of why we're there, in addition to checking on Angie Jones and the kids, in this case, then the next logical focus would be on Campbell. And given everything we know about him based on what we have in the call, in all likelihood it will mean a hold and transportation to a hospital and care in some medical facility.

Q. You list here that Campbell was not wanted on any criminal charges. Do you believe Officer Frashour knew that?

A. You know, given what he said, that he said he just doesn't know whether or not he looked at anything related to Campbell's history, he just doesn't know. So, you know, I proceeded on the assumption that he had indicated that he didn't know, and that ultimately that that information did not inform his thought process or judgment or his decision making with respect to the use of the deadly force.

Q. All right. And the only thing Officer Frashour knew about Mr. Campbell's history was that he was flagged for resisting arrest and domestic violence, correct?

MR. RUBIN: Objection. You just asked him to testify about what Officer Frashour knew or didn't know.

THE ARBITRATOR: I'm sorry?

MR. RUBIN: He's asking this witness to testify about what Officer Frashour did or didn't know.

THE ARBITRATOR: It's obvious from the record. He can answer.

MR. AITCHISON: It's in the record. It doesn't really matter.

Now, Officer Frashour -- I want to -- I want to focus on the crucial moment that's out here, the moment when Mr. Campbell's about to turn the corner of the Volvo.

A. Right.

Q. You've listed a number of things that you consider to be mitigating circumstances here, and also Mr. Campbell's hand behind his head, the fact that he complies up until the point when he's asked to put his hands above the head, and his actions before. You've listed a number of what you consider to be mitigating circumstances.

A. Right.

Q. You'll also agree, wouldn't you, that at this point in time, this moment in time when Officer Frashour makes the decision to use deadly force, he believes Mr. Campbell is armed, correct?

A. Yes. May be armed, yes.

Q. From his testimony and IA and every place, he believes Mr. Campbell has threatened suicide by cop, correct? He believes Mr. Campbell is suicidal, correct? He believes Mr. Campbell carries a gun in his jacket, correct? May be armed, correct? But not only that, there's more specific information than armed relating to the jacket, correct?

A. The last information we had was that the gun was in a sock in the pocket of a jacket.

Q. And he knows Mr. Campbell is wearing a jacket, correct?

A. Yes.

Q. And he believes that Mr. Campbell has not been compliant with police commands since the point at which he was told to put his hands above the head, correct?

A. Correct.

Q. He believes that Mr. Campbell has started a reach towards his waistband as Mr. Campbell is -- has pulled himself up from the initial reaction to the beanbag, correct?

A. The initial reaction to the beanbag, correct.

Q. Right. He describes the initial reaction as a half step forward, and then a deliberate movement up. Do you recall that?

A. Yes.

Q. And that Mr. Campbell has started a reach with his left hand to his waistband and then begins running, correct?

A. Yes, correct.

Q. And he believes that Mr. Campbell is running quickly to the front of the Volvo, correct?

A. Yes.

Q. And that the beanbags don't appear to be having any effect as he is running to the Volvo, correct?

A. Well, he's asked to describe, you know, what do you think's happening with the beanbag gun. He says, basically, he -- he's asked, "Do you think he's reacting in pain?" Well, it was very basic. He got hit, he took a half a shutter step forward, righted himself, then began to run. "Well, do you think that those beanbag rounds would have caused him any pain?" One of the things that troubled me in his assessment in that situation, in that moment was -- And this again goes to interpreting all facts in the light that's the least favorable to Mr. Campbell. Ron -- Mr. Frashour is a beanbag operator. He is an officer that's trained in the use of the beanbag, and the beanbags are specifically designed to cause pain.

And so rather than saying, you know, the beanbags are a tool that we have, that's available to us, that we deploy in situations like this that can cause pain and they often are very painful, and I am seeing some response to him -- from him, rather, he has moved, he's righted himself, he's moving again, now he's reaching, he said, "I'd be guessing if I thought it caused him any pain. And I thought a more evenhanded answer would have been it could have caused him pain.

He could be reacting in pain. He certainly could be reaching in pain. But rather than give a more evenhanded explanation that he considered that as an option at that time, he decides -- he said, "I'd be guessing if I thought that it hurt him" or "I'd be guessing if I thought it caused him any pain."

So that's what's troubled me about this all along. I mean, you see somebody that's hit twice. Is it possible that he's reaching for an area of the body just hit with a beanbag round? Yes, because we saw it. Could it be painful? Could he be reaching for that area? Yes, he could. And is that mitigating? Does that have an impact on the way you view what he's doing in front you? It certainly could. And if it did, you know, it could influence the way you think about the situation, and whether or not the fact he's running -- going for a gun, running to cover to kill us.

Q. I mean we're right back to your belief that Mr. Campbell is reaching behind his back in pain, correct?

A. That Officer Frashour did not acknowledge in his IA interview that that could be the possibility -- that that could be what is happening in front of him, and by saying, you know, I think he's -- I think it's bold, I think it's determined, I think it's purposeful, even though we're seeing him cooperate. And then when asked, "Do you think he's reaching in pain?" "I'd be guessing, I'd be guessing if I thought that he was experiencing any pain."

Well, he's willing to guess these other items, and later on willing to guess and infer other things, but he's not willing to guess that maybe Mr. Campbell being struck multiple times in the back with a beanbag round has caused him pain, which I found in the course of this review, especially in listening to him in the IA interview, particularly troubling, because I wanted to hear him in this situation, even though it's potentially -- even though it's dangerous, and obviously where Mr. Campbell was a potential threat, I wanted him to -- hear him give more weight to or at least provide some greater degree of an explanation around the use of the beanbag gun as a possibility for why he's reaching. But it doesn't seem that he did that, which was what concerned me, and a part of what led me to conclude that throughout the course of this interview and others, that he only stated those facts that were in most support of what he did.

Q. Lieutenant, unfortunately I'm unable to put my finger on the quote to which you're referring. Isn't your recollection of Officer Frashour's testimony with respect to the beanbag was that he knew Mr. Campbell was hit with the beanbag, and that in his judgment Mr. Campbell did not have a pain reaction to the beanbag?

A. Well, he certainly --

Q. No, excuse me, wasn't that his testimony?

A. I don't recall that. You would have to show me that.

Q. You don't recall him testifying "I did not see his back arch in response to the pain"? You don't remember that?

A. He did say that, yes.

Q. Isn't that Officer Frashour testifying to you, in your judgment, I did not see a pain reaction?

A. I think that that certainly is, to some degree. But he also says, "I'd be guessing if I thought it caused him any pain." I'd be guessing about Campbell's subjective point of view at this point, even though we've just hit him a couple of times. But I'm willing to guess his subjective view on some of these other matters.

Q. You know, don't you, Lieutenant, that less lethal -- Officer Frashour is certified as a less lethal officer?

A. Yes.

Q. You know that less lethal -- in part of the less-lethal training is that beanbags can have, and I'm quoting, little or no effect on an individual who's wearing heavy clothing, such as a jacket? Do you know that?

A. It's also called lethal because it kills people.

Q. No. My question is, do you know that police officers are trained in the less-lethal course that a beanbag can have, and I'm quoting, little or no effect on an individual wearing a jacket?

A. It didn't hit him in the jacket. Clothing --

Q. Lieutenant, my question is this, do you know -- Excuse me. Do you know that the police bureau trains its less-lethal operators that a beanbag can have little or no effect if it strikes an individual in heavy clothing such as a jacket?

A. Well, not that that's what happened here, but, yes, clothing can have an impact or can be a factor and the extent to which somebody feels the round hitting them, yes.

Q. And in fact, a beanbag round, depending upon the clothing, can have no effect, correct?

A. You know, that's -- Bullets we use sometimes don't stop people. That's true, we know that's the case. My point is when asked, "Do you think it caused him any pain," he said, "I'd be guessing if I thought it caused him any pain."

Q. And so if I understand this right, Officer Frashour is trained that beanbags can have little or no effect depending upon clothing. You believe he should have recognized, in spite of that training, that Mr. Campbell was reaching behind him in a pain reaction, correct?

A. I think he should have articulated what you just said about what his training was, about what the capabilities of the round are, and done a better job of saying what he knew about beanbag rounds and how we're trained.

Q. Okay. I am showing you Joint Exhibit 11. The page number is 244. Do you recall this question from Sergeant Morgan in internal affairs: "Just to be clear, describe the motion of that hand, how it was different than someone grabbing or reaching for a spot in pain." "Okay. Well, it just seemed too methodical if he was doing it on purpose. A sharp quick pain that you're not waiting for, I would think someone would -- their whole body would move in response, violently arch over, you know, arch your back, grab your feet or move, and it wasn't. He made a conscious motion with his hand down into his pants."

Do you remember that testimony?

A. Yes, yes, I do.

Q. So that's Officer Frashour telling Sergeant Morgan Mr. Campbell did not have, in my judgment, a pain reaction to the beanbag, correct?

A. "Did it appear to be somebody who was surprised by sudden pain? How would you describe -- or was it --"

Q. Where are you reading? You're not reading from the quote that's on the screen, are you?

A. No, I'm not.

Q. Tell us where you're reading from.

A. Sure.

Q. Before you do that, will you answer my question?

A. Sure.

Q. Doesn't this description tell you that Officer Frashour made the determination in his mind that Mr. Campbell was not reaching behind his back?

A. Which line are you referring to, I'm sorry?

Q. I am referring to Line 1035. "It seemed too methodical if he was doing it on purpose." There's some transcription issue there. "A sharp quick pain that you're not waiting for, I would think someone would -- their whole body would move in response, violently arch, arch your back, grab your feet, your feet will move, and it wasn't. He made a conscious motion with his hand down into his pants."

A. Yes. That's what he says there, yes.

Q. Your judgment is that's Officer Frashour saying I saw the reaction, and in my opinion that was not a pain reaction, that's --

Now, you said something yesterday about when Mr. Campbell came to this corner that I'd like to explore with you. You said one of the things Officer Frashour should have considered allowing Mr. Campbell to do was to go back into the apartment. Do you remember that?

A. Yes.

Q. And do you remember testifying, "It's okay for him to run away, to get back into the apartment. We don't really care about that. I mean, if he's in there, he's contained"? Do you remember that testimony?

A. Yes.

Q. And the apartment gives Mr. Campbell a place of concealment, does it not?

A. It does.

Q. And gives him a place of hard cover, does it not?

A. Can be, yes.

Q. It gives him a platform from which he could fire his gun both front and back at civilians and officers, correct?

A. You know, one of the fundamental underlying principles in these tactical operations is to contain individuals. And we, as a matter of principle, would like to have them contained in a location. So there are obviously advantages and disadvantages to that. But it's preferable to having them open, out in an open area.

Q. Lieutenant, you're familiar with the shooting by officer, now sergeant, Leo Besner of Raymond Gwerder, are you not?

A. I am.

Q. This happened fairly recently, November 2005?

A. Yes.

Q. Gwerder I believe is G W E R D E R.

A. Yes.

Q. Mr. Gwerder was in his backyard, was he not?

A. He was.

Q. And he had an apartment that was empty, correct?

A. Yes.

Q. And he had a rifle, correct?

A. He had a handgun.

Q. Handgun. And he fired one round from his handgun in the backyard, correct?

A. Correct.

Q. Not at anybody, correct?

A. Not that we know of.

Q. Okay. And his backyard was fenced, was it not?

A. Yes.

Q. And Leo Besner was an officer on the SERT team, was he not?

A. Yes, he was.

Q. And he had a long rifle, did he not?

A. Yes, he did.

Q. And at the time Mr. Gwerder was actually talking on the telephone with the hostage negotiator, was he not?

A. Correct.

Q. And Mr. Gwerder moved to go back into the apartment, and either had his hand on the door or was close to the door when Officer Besner shot him in the back, correct?

A. Correct.

Q. And Mr. Gwerder died, correct?

A. Yes, he did.

Q. And as a result of that, the bureau found that Officer Besner's use of deadly force was within policy, did it not?

A. Yes, yes, they did.

Q. Found that Officer Besner reasonably believed that if Mr. Gwerder got back into the apartment, he could pose an immediate threat of death or serious physical injury, correct?

A. I don't know that that was -- I don't know the details of that, that degree of a detail around that case. I know that they found that his use of deadly force was in policy.

Q. Directive 1010 hasn't changed since 2005, has it, at least the portion of it that says that you can use deadly force if you reasonably believe someone is an immediate threat of death or serious physical injury?

A. It's remained the same, but there's obviously fundamental facts that are different in that case. Gwerder has a gun, Gwerder fires that gun, Gwerder goes into the backyard and hunts in a very methodical way officer positions. Campbell does nothing remotely like that in this case. I assume you're using these two cases to compare one another. Campbell doesn't ever -- we never see a gun, he never fires a gun. That would have changed the dynamics of the Campbell call dramatically.

Q. Let me ask you that. If as the SERT team approaches Mr. Campbell there's a gun in his waistband, in your judgment this shooting is in policy, isn't it?

MR. RUBIN: Objection, speculative. It's not what we have. It's beyond hypothetical, it's speculative.

THE ARBITRATOR: Repeat the question.

MR. AITCHISON: The question is that if when SERT approaches Mr. Campbell after he's down, and they find a gun in his waistband, whether in Lieutenant King's judgment this shooting is now in policy.

THE ARBITRATOR: I'll allow the question.

A. I don't know, because my concerns remain the same. And there have been other examples where officers have engaged in the use of deadly force and later it was determined that a gun was present, but they were still found to be out of policy and fired. So I think it's dependent on a whole variety of different factors that I really can't speculate on.

Q. Okay. You don't know, in this case, you don't know what your opinion would be if a gun was there, correct?

A. Correct.

Q. By the way, whose responsibility was it to call SERT on this scene, the Campbell scene? If SERT was to be called, whose responsibility?

A. It would be a supervisor's.

Q. In terms of mitigating circumstances, you talked yesterday about one of Mr. Campbell's text messages, the one where Mr. Campbell answers Officer Quackenbush's question about whether he's going to hurt himself, and he says, "Never."

A. Yeah.

Q. "Kudos to you --"

A. For texting, yeah.

Q. "-- for texting." Do you recall saying that a reasonable police officer should have interpreted that as, quote, positive, affirmative and encouraging?

A. I think it is.

Q. You think a reasonable police officer should have interpreted it that way?

A. Yes.

Q. You think Officer Frashour should have?

A. He didn't know about it.

Q. If he doesn't know about it, why is it relevant to an assessment of Officer Frashour's decision making?

A. I don't know that it is.

Q. You testified yesterday when you were asked by Mr. Rubin to list other factors that weighed on whether Mr. Campbell was an immediate threat, you said, "Well, we had the information that we asked the kids to come out, and we asked him to come out, and that should have weighed on whether Mr. Campbell was an immediate threat." Do you recall that testimony?

A. I do.

Q. You don't think Officer Frashour should have considered that, do you?

A. He did not know it.

Q. So he should not -- This is not relevant to his decision making, is it?

A. It is not, no.

Q. And you remember Officer Frashour's testimony that he did not know how to take the kids coming out, it could have been a good thing, it could have been a bad thing, correct? That's reasonable in your judgment, correct?

A. I thought he characterized it as bold when it could have just been positive. He could take it either way. Characterized it as bold, he thought it was bold.

Q. In your judgment, was his description of this being an event that could have been a good thing or could have been threatening, was that description reasonable?

A. Yes, I think it was.

Q. You recall Officer Frashour being concerned about Mr. Campbell looking out of the blinds, correct?

A. Yes.

Q. Are you critical of him for being concerned about that?

A.No.

Q. You also - and this is actually on Page 131 of Joint Exhibit 11 - and you testified to this yesterday, and what you write is, and I'm looking at the middle of the page, "Frashour was so focused on perceiving a threat from Campbell and on the mechanics of the AR-15 --"

MR. RUBIN: Where are you at?

MR. AITCHISON: Why don't we put it up. It is 477. This is Joint Exhibit 11, Page 131, in the middle of the page. "Frashour was so focused on perceiving a threat from Campbell and the mechanics of the AR-15 that he did not properly focus on the decision-making process regarding the use of deadly force." And then you give an example. "For example, Frashour talked about switching his aperture sight for closer range shooting and quicker target acquisition when Campbell came within about 15 feet."

What evidence do you have that Officer Frashour was so focused on the mechanics of the AR-15 that he didn't properly focus on the decision-making process regarding deadly force?

A. You know, he just talked more about the mechanics of the rifle than he did about the deadly force decision making.

Q. You believe in his internal affairs interview he talked more about the mechanics of the rifle than his deadly force decision making?

A. I'm not sure that's accurate. He talked extensively about the decision making. I think in writing that that I was focused on the -- on his answer in response to the question whether it caused him pain or not, how he viewed the deadly force -- or how he viewed the use of the beanbag, whether or not it could have had an effect on him or not.

Q. Well, tell us today what you think. Do you think Officer Frashour was so focused on the mechanics of the AR-15 that he didn't properly focus on the decision-making process regarding deadly force?

A. That was my -- that is my impression, yes.

Q. Just the flipping of the aperture.

A. Yeah.

Q. And what mechanics of the AR-15 was he so focused on? And we've seen this described by Officer Meyer, he describes it as simply flicking something with your thumb. And you think that distracted Officer Frashour from decision making on deadly force, correct?

A. I guess we heard more from him about the manipulation of the rifle than -- Well, I don't know. I don't have too much more to say about that, Will.

Q. You still believe that, though, correct?

A. I do.

Q. Okay.

MR. RUBIN: Can we take a break for a few minutes?

THE ARBITRATOR: Okay.

(RECESS: 3:41-3:53)

BY MR. AITCHISON: Lieutenant, will you turn, still in Joint Exhibit 11, your report, at the bottom of Page 131. Okay. And the text up here that you wrote, that "Frashour was so focused on a threat from Campbell he did not know what specific commands were being given. Frashour only recalled one command, when Campbell was told put his hands in the air, and Frashour recalled thinking his hands were already on his head." First of all, we know from your testimony that's wrong, correct? He remembered two commands, not one.

A. Correct.

Q. "Frashour also did not know what Campbell said in response to commands, even though Campbell was estimated to be only 15 feet from him. And while he didn't hear what he said, he characterized the

tone as loud, hostile and aggressive." You remember, of course, testifying to the same thing yesterday, correct?

A. Yes.

Q. That Officer Frashour was so focused on the threat that he didn't hear the commands, correct?

A. Yes.

Q. Or Mr. Campbell's response, correct?

A. Yes.

Q. You're familiar with the principle of critical incident stress, are you not?

A. Yes, I am.

Q. And you've responded in your role as union president to a number of officer-involved shootings and other critical incidents, correct?

A. Yes. Yes. Yes, I have.

Q. You've received training on critical incident stress -- -- correct? You've read journals on critical incident stress, journals and books, correct? Would you agree that the majority of officers who have been involved in a critical incident such as this suffer, to one degree or another, from a stress reaction to the incident?

A. Yes.

Q. And would you also agree that a common stress reaction to a critical incident is the inability of officers to recall precisely what they saw or heard at a scene?

A. Yes. That's true. Yes. Yes.

Q. And you've experienced, for example, officers standing right next to another officer who fired shots who could not tell you that the other officer fired shots right next to them, correct? And there are other sensory recall issues arising out of critical incidents, such as tunnel vision, are there not? And would you also agree that simply because a police officer who's involved in a critical incident cannot articulate what he or she heard during the critical incident, that that fact does not mean that that officer didn't hear that at the time? Would you agree? And would you agree with me as well that the fact that an officer cannot now presently articulate what was said during a critical incident does not mean that the officer didn't at the time actually process that information? Would you agree?

A. Well, in this case he said he didn't hear it, and that he just heard that it was loud, hostile and that it was aggressive.

Q. So is it possible that because of critical incident stress that he processed it and heard it?

A. That's not what he articulates. I suppose it's possible.

Q. Well, for example, you're familiar with the shooting involving Officer Doug Erickson, are you not?

A. I am. Yes. Yes. True.

Q. And you recall that the suspect in Officer Erickson's shooting was pointing his firearm over his shoulder at Officer Erickson, correct? And you recall that Officer Erickson fired his weapon a number of times, 22 times, in response to that, correct? And yet Officer Erickson could not articulate, could not say that he remembered seeing that gun, could he? So officers' inability to articulate what they say or hear can even extend to very important aspects of a critical incident, correct?

A. That's true.

Q. Would you agree with me that other officers at the scene beyond Officer Frashour could not recall Officer Lewton's precise commands?

A. Well, others did say they recalled the commands.

MR. AITCHISON: Could we call up 67. This is Officer Kemple saying, "As Lewton's giving commands, I basically -- I guess you could say I checked out audibly. I didn't hear all of Lewton's commands for a short period of time. I work with him, I know the commands he's giving, I've heard them a million times." Do you remember this testimony that he checked out audibly?

A. Yes.

Q. And you also remember Officer Lewton -- excuse me, Officer Kemple testifying he doesn't remember all the commands Officer Lewton gave, correct?

A. True.

Q. And let's go to No. 26. Officer Quackenbush, Joint Exhibit 11, Page 403, in his internal affairs investigation says -- is asked, "Do you remember what those commands were?" And he answers, "No, not specifically. When you hear it, your mind sort of kicks in."

A. Okay.

Q. And he's saying what the normal commands would be. Do you remember that testimony?

A. Yes.

Q. "I don't recall that. Lewton, "I don't recall." And Officer Lewton himself did not know whether other officers were giving commands, did he? 264. This is from Officer Lewton's internal affairs interview. "As far as you know, were other officers giving commands when he first appeared?" Do you remember that?

A. Well, yes, I mean there it is. But I mean Lewton was giving commands, so he's saying he doesn't remember if other officers were giving commands

Q. That was what my question was.

A. Yeah.

Q. No. 94. Officer Andersen. Do you recall this testimony to detectives? "I wasn't totally listening to exactly what they were saying. I just knew they were giving commands, and trying to pay attention to what the subject was doing." Do you remember that testimony?

A. Yes.

Q. So we have a wide variety of officers out at the scene who don't remember what commands Officer Lewton was giving, correct?

A. Correct.

Q. And do you think that that means that they were -- they do not remember those because they were so focused on the threat?

A. No.

Q. Just Officer Frashour?

A. Yes.

Q. And we talked - this is the hazard of my skipping around - we talked a little bit about Officer Frashour's testimony on the pain reaction. Do you remember his testimony to the grand jury to that effect? Not now, probably. Let's look at No. 498. Howard, this is Exhibit 10 at 439. And Officer Frashour's testifying before the grand jury, and he's saying, what -- the question is, "What is Mr. Campbell doing? Is he just reacting, grabbing for his butt that had just been hit by a beanbag, for example?" Answer, "No, no, that's not what he was doing. The way I remember the beanbagging was when he was beanbagged he righted himself. He got his footing. It also seemed determined. It was deliberate the way he reached down. He didn't arch his back as if that was hurt and in reaction, to me. That's not how it seemed to me. It seemed that he had a purpose he was doing in his reaching that he did." Do you remember him testifying to the grand jury to that effect?

A. Yes.

Q. And once again, you'd agree with me that this is Officer Frashour testifying that he observed Mr. Campbell's reaction and concluded that it was not a pain reaction to reach, correct?

A. That is what he says there.

Q. Could we have Exhibit A 60. Lieutenant, I'm showing you Exhibit A 60. Do you recognize this document? The less-lethal operator's course?

A. Yes. Yes.

MR. RUBIN: Page 7 of 125? These are Officer Frashour's training materials, correct? Could you turn to the seventh slide -- seventh page of slides, excuse me. This is No. --

MR. AITCHISON: I'm sorry, Page 10.

A. Yeah.

Q. Do you see the slide that is entitled levels of effectiveness --

A. Yes.

Q. -- Lieutenant? And this is where the attendees at training are instructed that the beanbag can have little or no effect if the suspect is wearing heavy clothing, correct? In your judgment, was Mr. Campbell wearing heavy clothing?

A. Not apparently where he was struck with the beanbag rounds, given the testimony that's in the record.

Q. Isn't the testimony in the record -- doesn't it vary as to where the beanbag rounds struck? Officer Frashour indicated that he saw it hit him in the butt. Other witnesses testified that they saw the beanbag hit Mr. Campbell in the jacket, did they not?

A. Well, this has to do with what Officer Frashour did and why he did what he did.

Q. Precisely.

A. Okay.

Q. And do you know whether or not Mr. Campbell was wearing heavy pants?

A. Jeans, pants.

Q. Do you know what kind of pants?

A. I don't know what kind of pants.

Q. All right. So anyway, we talked about the issue of clothing. We haven't talked about the issue of the suspect's state of mind. Why is it that the bureau trains its officers that the suspect's state of mind can result in the beanbag having little or no effect? It's important to know what the range of reactions might be. What state of mind in a suspect could cause a beanbag to have little or no effect?

A. It could vary, you know, depending upon a variety of different circumstances. They're drunk or they're high, they're mentally ill. So people in varying states could, you know, be more or less oblivious to pain.

Q. In beanbag training -- Have you been through beanbag training?

A. I actually developed, started the beanbag program at the police bureau.

Q. And are officers shown videos or pictures of individuals who have been beanbagged? Yes. Yes. And they're taught beanbags hurt when they strike properly, are they not? In fact, they're taught that beanbags cause a great deal of pain, correct?

A. They certainly can.

Q. They can cause a great deal of pain?

A. Yes.

Q. Or they can cause no pain, correct?

A. Depending upon the circumstances, sure.

Q. And let's go back to Page 481. I'm sorry, No. 481. And this is Page 135, Lieutenant. The Frashour did have information paragraph.

A. Yes.

Q. Do you see that?

A. Yes. I want to point your attention to the middle of this, where you write - and you testified to this today and yesterday - "When Campbell reached into the waistband after beanbag in his back twice, Frashour could not acknowledge that those beanbags were painful." Do you see that? Yes. How was Officer Frashour to know that those beanbags were painful or whether they had little or no effect because of Mr. Campbell's clothing or mental condition?

MR. RUBIN: Objection. You have a couple questions in there.

MR. AITCHISON: I think there's only one question.

MR. RUBIN: I think there were two.

A. What are they? What is the question?

MR. RUBIN: Well, I think it's a compound question. I have to object. Sounds like it was packed with a couple of questions.

THE ARBITRATOR: Break it down.

MR. AITCHISON: Okay. So there's two possibilities here, when Mr. Campbell is struck with a beanbag, either it causes pain or it has little or no effect, correct?

A. Yes. That's what he says, yes.

Q. And Officer Frashour makes the judgment it has little or no effect, correct? And you think he should know that it caused -- that the reaction was in pain, correct? I'm focusing on the answer to the question where he said, "I'd be guessing if I thought it caused him any pain." Can Officer Frashour know whether

or not the beanbag actually causes Aaron Campbell pain? He said, "I know he's going for a gun, I know he's going to cover to fire on us. I know." In your judgment, can Officer Frashour know whether or not Mr. Campbell is reaching behind his back in pain?

A. I expected him to articulate some of the information that you have provided here, because what -- I didn't want him to say it necessarily caused him pain, but in answer to that question, I wanted him to talk a little bit more about what he knew about what beanbag rounds can do from the training that he has had. And instead he said, "I'd be guessing if I thought it caused him any pain," when he knows a number of the things that you're articulating, up to and including the fact that there are times when people experience pain as a result of being beanbagged.

Q. All right. So what you're objecting to is his way of articulating what it was he saw, correct?

A. Well, I mean to some extent we have to rely on what he says about why he does what he does.

Q. Incidentally, if you're wrong, Mr. Campbell is not reaching behind his back in pain, does that change your assessment as to whether or not Officer Frashour's use of deadly force complied with his training?

MR. RUBIN: Objection; form; speculation.

THE ARBITRATOR: Didn't you ask him that?

MR. AITCHISON: No. I asked him about if a gun was found.

MR. RUBIN: Same objection. It's speculative, it's not here.

THE ARBITRATOR: Go ahead and answer it.

A. What's the question? (Reporter read as requested) . I'm not sure I understand that.

THE ARBITRATOR: I guess I don't either.

A. I'm trying to.

MR. AITCHISON: I'll just explain it and then ask it. This witness has testified that for him the crucial fact was the fact that Mr. Campbell was reaching behind his back and Officer Frashour should have recognized that being a pain reaction to the beanbag rather than as going for the gun, as this witness said repeatedly yesterday, he said it today as well. And I'm just saying let's say he's wrong, factually he's wrong.

THE ARBITRATOR: I guess I don't see how that differs from your question.

MR. AITCHISON: About the gun.

THE ARBITRATOR: About the gun.

MR. AITCHISON: Except he hasn't answered this one. But that's okay.

THE ARBITRATOR: Let's move on. I get the drift. Let's turn to our No. 484. I do want to spend a little time on this one, Lieutenant. And this is the middle of Page 135. Okay. You testified about this at some length yesterday, we even heard part of the audio on this. "Frashour is asked in IA if he considered that Campbell may be unarmed, and his answer indicated that he never considered the possibility that he may be unarmed."

A. Correct.

Q. You still agree with that, do you not?

A. Yes.

Q. And in fact, you've read the termination letter, haven't you?

A. I have not.

Q. Do you know that this sentence makes it verbatim into the chief's termination letter?

A. I did not know that.

Q. Let's look at the quotation that you rely upon for this conclusion, Page 485. This is the one we spent some time on. Excuse me, this is Page 133. And this is the quotation that you isolated and said this is how I conclude that Ron Frashour never considered the possibility that Mr. Campbell was unarmed. And Sergeant Morgan said, "Did you consider the possibility that he was unarmed?" And Officer Frashour says, "Well, there's always that possibility. I didn't -- you know, there's always that possibility. And, you know, I allowed him the opportunity to give up while he was walking out." And he says some other things. "I'm always aware of the possibility that somebody's unarmed or armed." Officer Frashour says three times in that paragraph that he's aware of the possibility that Mr. Campbell is unarmed, doesn't he?

A. I think it's unresponsive.

And I think at the end of the sentence he says, "It would be unreasonable to think of him as being unarmed." One of the things that could happen in a situation like this is that we shoot and kill somebody, misinterpreting what they're doing and they are unarmed. You have to, in this situation, be willing to consider the possibility that he doesn't have a gun on him. You haven't seen a gun, he's not shooting at you. And he doesn't acknowledge that, yes, I thought at the time maybe he's unarmed. I had hoped that he was unarmed. I didn't see a gun. I had reason to believe that he had one. I have heard that it was supposed to be in a sock in a pocket. I didn't see a sock in a pocket. Did I consider the possibility he was unarmed? Yes, I did. Did I discount that because of these counterbalancing facts? Yes, I did. Here's what leads me.

So he is unresponsive to this question, did you think about the possibility that he was unarmed. And you may interpret from that he says, yes, I thought maybe he was, but I do not conclude that from reading that.

Q. You do not conclude from him saying I considered -- "I'm always aware of the possibility that someone's unarmed or armed," you did not consider that to be Officer Frashour being responsive to the question whether he considered the possibility that Mr. Campbell was unarmed?

A. Correct.

Q. There's nine other officers out at the scene here who see this incident, aren't there?

A. Yes.

Q. Officers and sergeants. Officer Andersen, McAllister, Elias, Lewton, Willard, Kemple, Birkinbine, Quackenbush and Boylan. Those are the ones that see this incident, correct?

A. Yes. Yes. They were.

Q. They've all received the same bureau training on use of deadly force as Officer Frashour, have they not? And they all were in a position to witness part or all of this incident, were they not? Did you request that internal affairs ask any of these nine officers whether or not they believed that Officer Frashour reasonably perceived Mr. Campbell as posing an immediate threat of death or serious physical injury?

A. Well, my first observation about your question is that not one of these other nine officers fired. And secondly --

Q. Did any of the other officers have an AR?

A. All officers on the scene, all police officers have guns and all police officers will respond to a threat of death or serious physical injury.

Q. You'd agree with me, would you not, that in this custody team Officer Frashour has a specific role? Correct?

A. Yes, he does. Correct. Yes. Yes.

Q. And he has a role because of the weapon that he has, correct? And it is, of all the weapons that are on the scene, the most accurate weapon that is out there, correct? And it is a weapon that is specifically designed for this sort of situation, correct? And all officers at the scene know that Officer Frashour is in that role, do they not?

A. Every police officer on a scene like this has first and foremost in their mind self-preservation.

Q. My question was all officers on scene know that Officer Frashour is in that role, correct?

A. They do. They do.

Q. And officers on a custody team, they rely on each other to fulfill their roles, do they not? Now, let's get back to my question. The other nine officers at the scene, why didn't you ask internal affairs to ask them their opinion on Officer Frashour's use of deadly force?

A. It just seems odd to me that we would ask the other officers if they thought his use of deadly force was reasonable or immediate. I didn't think of that to ask the IA investigators or I guess I would have.

Q. It just seems to me we have on one hand subject matter experts, the trainers, and we have fact witnesses, the officers out on the scene, they've all received the same basic training on deadly force, and yet none of their opinions are communicated through either your report or anywhere through this disciplinary process to the chief. Why is that?

MR. RUBIN: Objection. Objection to the form of the question; it's argumentative.

MR. AITCHISON: Okay. It is. That's right.

THE ARBITRATOR: Sustained.

A. We do know from the testimony from some of the officers on the scene that they did view Mr. Campbell's actions as he approached hard cover as life-threatening. Many said that they didn't think he was an immediate threat.

MR. AITCHISON: Can we look at No. 43. This is Officer Elias's testimony. And this is in the criminal investigation. He's asked whether he's surprised that lethal force is used, and he said, "No. I mean I knew it was used. You just do what you do. I did not question it. It was ultimately done for the protection of us and the community. Like I said, I didn't want him to get to a position of concealment and cover." Do you remember that testimony?

A. Yes. Yes.

Q. And let's take a look at 244. This is Officer Willard. This is the officer who's closest proximately to Officer Frashour, correct? And Officer Willard testifies - and I'm looking at Line 575 - "If it was me holding the rifle I would have shot, absolutely. That's why said prior to this interview I was not surprised when I heard that gun go off. I was expected it -- I was expecting it based on his deliberate digging in his pants." Do you remember that testimony?

A. Yes.

Q. So other officers at the scene did in fact perceive the same threat that Officer Frashour perceived, correct?

A. These two did, yes.

Q. The officers at the scene, we've talked about this, they have a tactical advantage over Mr. Campbell when he's out in the open, do they not?

A. They have, yes, when he's in the open they do, yes.

Q. If he gets behind the car they lose that tactical advantage, do they not?

A. Well, Officer McAllister and Andersen are just -- they're direct line of sight to where the front of the Volvo is and the front of the alcove.

Q. Right. Beyond Officer Andersen and McAllister -- We talked earlier about what they can see and what Mr. Campbell can see. Beyond that, when Mr. Campbell gets behind the Volvo, the officers lose their tactical advantage of cover?

A. Ignore the fact these two officers are present to deploy deadly force? We have maintained tactical advantage because of the position of the two other officers in this position, because of the presence of the rifle, because of the presence of the dog.

Q. Well, we talked about this a little bit earlier. Your testimony is that Officer Andersen and McAllister have a clear picture of Mr. Campbell if he gets around the Volvo, but not vice versa.

MR. RUBIN: Objection. That mischaracterized what he said.

MR. AITCHISON: I thought that's what he said this morning.

THE ARBITRATOR: No, he did not say that.

Q. Well, let me ask --

THE ARBITRATOR: I think the whole discussion gets argumentative. I think it's obvious to me that they have a line of sight to wherever he might emerge from behind the car, and Campbell also could shoot back. Now --

MR. AITCHISON: I agree.

THE ARBITRATOR: -- the question that has not been asked, or asked or answered, is concerning the lighting. We should talk about lighting. You've testified on your direct examination that Mr. Campbell back here was, your phrase was lit. What was he lit by if he gets behind this Volvo?

A. Both a spotlight by Officer Kemple, by the light from Officer Frashour's rifle, and the ambient light from the lights that are on in the parking lot.

Q. Okay. And this is dark, correct?

A. It's described differently by different people. You know, it's six o'clock in the evening, so the beginning of dusk, dusk, dark. It depends on who you ask.

Q. Okay. When Mr. Campbell gets behind the Volvo, is Officer Kemple's spotlight still able to shine on him?

A. I'm sure it is. It's a short distance, relatively short distance.

Q. And Officer Frashour's light on the gun, is it able to shine on him?

A. It must provide some, in addition to the light that's there, it must provide some level of illumination, yes.

Q. Are you aware of the fact that there actually is a light that illuminates over Officer Elias?

A. You know, I seem to recall that, but -- There is a light pole there in the lot, but I'm not exactly sure where it is.

Q. In fact, aren't the officers on the custody team concerned about that light and they talk about shooting the light out with the beanbag?

A. I don't recall that.

Q. Aren't you aware of the fact that Officers Andersen and McAllister are backlit by the lights in the parking lot and the carport in Darrin's Place?

A. Maybe to -- Yeah, I think to some extent, sure.

Q. And being backlit is not a good tactical position for an officer, correct?

A. It depends upon how much obstruction the various, you know, shrubs, trees there provide.

Q. I'd like you to turn to Page 137 of your letter. The paragraph at the top that says, "PPB understands that in certain circumstances officers are faced with threats to which they must respond immediately or face serious injury or worse. However, when there's sergeants on the scene, an inner perimeter and an outer perimeter, a communications team and a custody team, as in this incident, there are considerable resources and tactics available to vigorously pursue a nonfatal resolution of the confrontation, while limiting risk to an acceptable level." And you testified to this yesterday as well, correct?

A. (Nodding head).

Q. As Mr. Campbell was within a foot or two of the front of the Volvo, are the sergeants able to prevent him from reaching the front of the Volvo?

A. The sergeants?

Q. Yes.

A. No.

Q. When he's within a foot or two of the front of the Volvo, is the inner perimeter able to prevent him from reaching the cover of the Volvo?

A. Well, you mean the dog?

Q. We'll talk about the dog in a moment. Other than the dog.

A. No.

Q. When he's within a foot or two of the front of the Volvo, is the outer perimeter able to stop him from reaching the cover of the Volvo?

A. No.

Q. The communications team?

A. No.

Q. The custody team?

A. No.

Q. So we're down to the dog, aren't we?

A. Yes.

THE ARBITRATOR: I don't understand that. When he's within a foot or two of the front of the Volvo --

MR. AITCHISON: When Officer Frashour makes the decision to use deadly force.

THE ARBITRATOR: The custody team -- I don't see why the custody team can't prevent him from reaching the front of the Volvo. Why is it the custody team can't prevent him from reaching the front of the Volvo?

A. They could if they --

THE ARBITRATOR: If they shoot him.

MR. AITCHISON: If they shoot him.

THE WITNESS: They can't reach out and grab him.

THE ARBITRATOR: I see where you're going.

MR. AITCHISON: No teleporting allowed here. So let's now talk about the dog. Sure. Where do you think -- Why don't you come up here and point. Where do you think the dog was when Officer Frashour made his decision to use deadly force?

A. Well, I think it was -- When he made the decision, it was being released. It was probably somewhere in here.

Q. So the dog can't prevent Mr. Campbell from turning the corner, can it?

A. Well, if it gets to him it certainly can.

Q. But you've testified earlier Mr. Campbell is second seconds away from turning a corner.

A. I don't know where -- I don't know -- Of course as time is, you know, elapsing, as he's running and as the dog is being released, I do not know the relative positions to one another here in the parking lot. I don't know how close the dog was on him. I know eventually the dog got to him and bit him.

Q. Could the dog have stopped him?

A. Yes, the dog was a viable, legitimate tool, an option that was available to be used in a situation like this to stop Mr. Campbell, evidenced by the fact that Officer Elias, as the K-9 officer, released it to do so.

Q. You can return. My question to you, though, Lieutenant, is if you don't know where the dog was, how do you know if the dog could have prevented Mr. Campbell from turning the corner of the Volvo?

A. Part of what I'm saying here is we obviously don't just go there as lone officers in situations like this. We apply organizationally an approach, resources, training, you know, various people with various tools in a situation like this who act in concert under the authority of the supervisor, and who work together to accomplish and pursue -- I think we'll all agree that it's the goal to pursue a nonfatal resolution, not the goal to pursue a fatal resolution, in general terms. So Officer Frashour has little to no conversation, he says, with other officers that are present at the custody team about what's going to happen in the event Campbell comes out or if he runs. There's no plan that's among them.

So the tools that are there are acting, in effect, they're acting individually, they're acting in silos. There's no coordination. And so, yeah, as a result of that you're right, Officer Frashour doesn't know that the dog is being released, doesn't talk with Officer Elias ahead of time about the role of the dog, when the dog could be used or how the dog could be used.

So there's a tool that's there that is designed in this effort, in this concerted effort to reduce the likelihood of serious physical injury or death to us, limit risk to an acceptable level. We're police officers, we accept risk and tolerate risk, but only to an acceptable level. And that we work hard together vigorously as a group using all our training and experience and our tactics, which is considerable, to pursue a nonfatal resolution. So I think the dog, in a -- I'm sorry.

THE ARBITRATOR: Go ahead and finish. I want to interrupt Will.

A. The dog, the dog I think is a viable and a legitimate option that is available to the officers, especially in a case where he's beanbagged and reaches, where the man runs, and where he could easily have been stopped by the dog, or at least the dog could have provided an intermediary intervention that could have prevented the use of deadly force in a case like this.

THE ARBITRATOR: Why do you say prevent the dog from reaching the front of the Volvo? I think you said that several times. Even if Campbell went around the Volvo, the dog can turn a corner.

MR. AITCHISON: Right. But when Mr. Campbell gets around the corner, he has hard cover.

THE ARBITRATOR: He has what?

MR. AITCHISON: Hard cover.

THE ARBITRATOR: But the dog can go around.

MR. AITCHISON: He can go around but can't get him by the time he can draw and fire.

THE ARBITRATOR: Maybe, maybe not.

MR. AITCHISON: It's what a reasonable police officers believes.

THE ARBITRATOR: Also he can chase him into the alcove, too.

MR. AITCHISON: That's right. He could chase him into the alcove, yeah, exactly. But what my point is here is at the time Mr. Campbell is about to round this corner, all the evidence is the dog is -- that's where Officer Kemple put him.

THE ARBITRATOR: So your theory is that Campbell could have reached the front of the car, fired at police, not at the dog.

MR. AITCHISON: Right.

THE ARBITRATOR: Because my thinking was that you see a big dog coming at you, you'd be more apt to fire at the dog.

MR. AITCHISON: Yeah. I mean I don't -- I don't know.

THE ARBITRATOR: Okay.

MR. AITCHISON: I mean to me, this is almost kind of an irrelevant issue because the question is when he reaches into his waistband and he's going to hard cover.

THE ARBITRATOR: No, I think it's real relevant.

THE WITNESS: I think it is too.

THE ARBITRATOR: The dog is --

THE WITNESS: Critical.

THE ARBITRATOR: -- a significant consideration to me in that if the dog can bring him down, if the dog can intervene even momentarily to distract him --

MR. AITCHISON: But we know --

THE ARBITRATOR: -- you may know by that time whether or not he's going to pull a weapon. If he doesn't do anything, and the dog's on him.

MR. AITCHISON: But we know already, we know from the testimony of this witness, Mr. Campbell can pull the weapon in less than a second. We heard that this morning from this witness.

THE ARBITRATOR: But we haven't heard how long the dog takes. Dogs are pretty fast.

MR. AITCHISON: Right. We don't know. We'll obviously hear from Officer Elias and, you know, have his judgment. He'll testify about the dog and where it was and everything like that.

THE ARBITRATOR: Okay.

MR. AITCHISON: This witness has said he doesn't know where the dog was, so --

MR. RUBIN: Well --

MR. AITCHISON: I understand.

THE ARBITRATOR: But we know the dog was released.

MR. AITCHISON: We know he was released, and we know he was released about the time Officer Frashour fired the shot. I think we're all agreed on that.

MR. RUBIN: There's been different accounts, there's different evidence about where the dog is or isn't.

MR. AITCHISON: Let me take a short break. I think I may be done.

THE ARBITRATOR: Okay.

(RECESS: 4:31-4:41)

BY MR. AITCHISON: I just have one more question. Lieutenant King, would you agree with me that when Officer Elias releases the dog he does not announce that he is releasing the dog?

A. I don't recall that, that he did not announce it. Okay. We'll have him testify. That's fine. I don't have anything further.

MR. RUBIN: We've obviously been at it all day. I need some time to organize some redirect questions. And can I talk to you for a minute?

MR. AITCHISON: Sure.

(RECESS: 4:44-5:00) (ARBITRATION ADJOURNED: 5:00 p.m.)

REDIRECT EXAMINATION BY MR. RUBIN: Lieutenant King, we've been at this for a while, and I do have some more questions that I want to ask you.

A. Okay.

Q. Based on your training, your experience, your understanding of the facts, you reviewed all the information, do you believe that in fact it's necessary to stop Aaron Campbell before he gets to that Volvo?

A. You know, I've fundamentally struggled with that in light of all the facts that are available in this situation, because of the resources that are available on scene, because of the presence of a custody team, of a lethal cover, of a canine, of a beanbag gun, of other officers, McAllister and Andersen, who are there and available on the perimeter. And, you know, especially in light of the fact that -- you know, the whole question of "If I don't act now, cops die." That the dog is available, that we don't --

You know, we're predicting. There's some degree of assumption in there. We're predicting he's going to cover, that the car is cover, that he's thought of it as cover, he's going to cover to watch and attack from the car, especially knowing that the dog is available there. And that the dog, inevitably, is released, it will have an effect, he will have to contend with the dog. So even if he gets behind cover of the car, there would have to be some motion, he'll have to turn back around, there will be some other indicators that he in fact intends to launch an attack. And he'll have to contend with the dog, either fight the dog or shoot the dog, or there will have to be something else that will happen there. And if he makes his way behind the car, that Officers Andersen and McAllister are there and can see what's happening, and have a view of him in that location.

So he's not just behind a location that could be used as cover and not seen by other officers on the scene. If he has -- In this case the gun's been described as a gun in a sock in a pocket. So it has to do with weapon superiority, in a sense, of, you know, if there's -- or a gun in the underwear. You know, if there's a gun in the underwear, it's likely a small caliber handgun. We have the advantage of cover, the car. I mean Officer Frashour was, and other officers at the scene were behind the car, and kind of crouched down behind prior to his coming out for some period of time, utilizing it as something that could obviously play a role in stopping any rounds that would come back at him. We have a light on him. He would have to, you know, contend with the dog, turn back around, draw the pistol, locate an officer on the perimeter prior to us being able to deliver deadly force with, in this case, obviously, a very easily-operated, accurate rifle.

So that's -- with respect to the immediacy, that's -- all of those factors together are what I've struggled with. Because I've heard him say, "He's going to cover, he's going for a gun, he's going to cover so he can kill some cops." And while there's the potential with the gun and suicide and suicide by cop, that -- you know, so far he's come out, hands are on his head, he's cooperated, and he , didn't run until we hit him.

And the other factor that I considered in the review and in my mind, just from my own experience and the experience officers have, there are many times -- there are occasions where I've had, other officers have had people in situations like this that are suicidal and armed with guns, and the guns are in plain view. And you have to make decisions, you know, about -- use the tactics and the resources that are available to you. You have to make decisions about whether or not that person is an immediate threat.

I had one experience where a guy was in a park and he was suicidal and he had a revolver, and we -- we saw a gun. We knew he was suicidal from the call. He had the gun in his mouth. And we had to determine if -- whether or not he was an immediate threat at that time. So all of those factors together just have caused me to struggle sort of all along with whether or not there's that immediacy. And that, given everything that we know about our deployment in this situation, that I wasn't , convinced that it's consistent with the training that we've provided Officer Frashour or other officers that were on the scene.

Q. So let me stop you there for a minute. I have some follow-up questions. So when you say you struggled with it, does that mean it -- What does that mean when you say struggled with it? Do you think he did or he did not have to stop -- Is it reasonable to think he had to stop or not stop him?

A. I felt there was a review process in a case like this that has to do with whether or not he reasonably believed he was going for a gun or whether or not there was an immediate threat. And I'm not that decision maker. Ultimately, the police of chief and commissioner is. And in this process, obviously the arbitrator is. So I focused on training. So I didn't really -- I didn't want to address that. I didn't feel like it was my job to address that. I wanted to flesh out what I thought were kind of critical components of training of officers in a situation like this, and what expectations we have on them with respect to their

training. And so my ultimate conclusion was that I did not think his actions were consistent with his training based on his mindset, that he didn't take into account counterbalancing information, and that his mindset didn't de-escalate on the basis of any of the information that was available to him on the scene.

Q. Now, I want to also have you explain a little bit. So I think you said that you would have to see or observe something. What kinds of things, as he's running away, as Aaron Campbell is running away, and running in the direction of the car and the apartment, what kinds of things are you going to have to see?

A. Well, Officer Frashour indicated that the hand went in the waistband and remained so until shot. Some motion -- You know, Mr. Aitchison talked yesterday about being able to pull guns out and shoot from whatever positions. And there are certain circumstances where that's -- it's always a possibility, but where it's more likely or probable. And in a case like this, where Officer Frashour articulates he saw the hand go in the pants and remain in the pants, which is where he thought the gun was, that in a situation where we have, you know, 50 or 60 feet, where we have officers that have a rifle, where we have some cover, where we have a dog present, other officers on the perimeter that they can both make observations, and may be in positions to deploy deadly force themselves, all of those factors together really weigh on what else you have to see. You know, giving him some -- maybe more time to do something else. You know, he'd have to contend with the dog in some way, to turn back towards us. You know, so if I thought that the only -- the only thing that can happen in this case is he has to be shot at exactly that moment or people would die, I would -- I mean I took that point of view, obviously, early in the review, and I would say that.

But given the set of circumstances, you know, and the fact that he may be running away from where he was just hit, he was previously cooperative or compliant, at least to some degree, that he may be going back inside the apartment, I mean all of those factors together, and the training that we provide officers in situations like this, and limiting -- You know, again, it's that limiting risk to a tolerable level. And some would say, you know, we're completely risk adverse and we can't tolerate any risk. But in situations like this where we have additional training, we have additional tools, we have some greater time and distance, I just think that it gives more time for us to see what else he is going to do to give some greater indication of the immediacy of the deadly threat.

Q. You talked about cover, we've talked about cover a lot. And I think there's been testimony that in fact when the shot was fired by Mr. Frashour, that he was standing up. Can you explain to the arbitrator what equipment Officer Frashour and every officer on the scene is required to be wearing?

A. Well, they're all wearing body armor.

Q. From the waist up?

A. From the waist up. They have the car that's available that provides -- You know, we've talked about the difference between kind of hard cover. I mean, inevitably -- There's kind of cover and concealment. Cover means that in all likelihood the bullets won't go through it. Concealment means the suspect can't see you but you can perhaps see him. And in this case, the car does provide, you know, especially to a small handgun round, some amount of protection, obvious by the fact that many of them were behind it.

Q. So if an officer is standing up behind a car -- And the body armor, can you be more specific about what officers are wearing?

A. Each officer wears body armor that is designed to stop handgun rounds. And most officers have a plate. And this is not -- This is designed as a trauma plate. So it's designed to stop certain rounds, handgun rounds, maybe up to a rifle round, a Russian Tokarev 7 .62. Mostly, though, possible .30 caliber. So this is handgun protection. It's not --

Q. The body armor?

A. The body armor itself. This provides an additional layer of protection. So there is some level of protection by virtue of the body armor. But it's really, in a situation like this, I think the car, you know, that you would want to rely on as cover.

Q. And if you are standing up, what does it take to get behind that car?

A. To squat down, I mean consistent with what he was doing earlier in the call.

Q. You said that the cover is really critical, especially with a small handgun round. What did you mean, especially with a small handgun round?

A. You know, weapons -- like, for example, we used to carry revolvers, and we upgraded to a superior weapon system, semi-automatic. We train officers with their pistols to shoot out to the 25-yard line.

Q. What does that mean?

A. We provide a course of qualification that they're required to go through three times a year with the handgun that -- where they have to -- they have to score a certain score in the qualification. They shoot different numbers of rounds in different ways at different distances. So at a distance -- out at 25 yards you have to shoot -- in that stage of fire you fire eight rounds of ammunition, and you're supposed to hit the center of the mass, of the body or the target that you're presented with. So--and you have to--and you have to, through the course of fire, have enough hits on the target to score a minimum score in order to be qualified to carry a firearm.

So -- but then when we train officers in the use of their secondary weapons, like a lot of officers will carry either a Glock 26, a smaller frame 9 millimeter pistol, or they'll carry a five-shot revolver, those weapons are -- they're smaller, they're -- you know, so -- they're smaller in your hand. The qualification is only out to, I think, 15 yards. So we only require them to shoot out to -- it's a shorter distance because those -- In terms of that, the role of that secondary weapon, we imagine it's for close-in encounters, when the primary weapon fails in some way. So, you know, weapons, by their nature, whatever their caliber and the range of weapon, there is a risk associated with being hit with them.

But the, you know, accuracy, and firearms training, et cetera -- , You know, he'd have to get the gun out, he'd have to turn and find us with the light on him, he'd have to shoot at us. So, you know, that's why not having seen the gun I think impacts -- and that the gun is smaller and may be kept in a part of the body like the waistband or whatever, I think all of those things together raise questions about -- you know, maybe give us more of an opportunity to pause and to take into account information.

Q. If Mr. Campbell gets behind the Volvo, can you talk a little bit about what, if any, time that creates?

A. Well, with the dog, with him running -- I mean he has to physically go behind the car, which takes some period of time, a second or two or three, depending on how fast he's moving. And with the dog

present, you know, the dog's coming right alongside him. So, yeah, I mean there's a period of time there for him to get behind the car in some way, if in fact he's going to the car for cover.

Q. Let me then go to sort of the next question, which is with respect to the possibility that maybe he runs to the apartment. Again, based on training, experience, knowledge of the situation, reasonable to think you have to shoot him before he gets to that apartment?

A.No.

Q. Why not?

A. You know, the -- First all, that's how we started this.

Q. What do you mean? Okay.

A. I mean at some point in the call he was inside, you know, potentially armed with a gun, suicidal, suicide by cop, he's inside. So that's how we started it. It would take us back to that place. Now, we fundamentally believe that isolating and containing and evacuating on tactical calls like this are principles that we expect officers to follow. In fact, many of those happened in this particular case. And so, you know, going back inside, as a rule, is preferable to him being outside and uncontained.

Q. So you say it sort of is, in a way, how this got started. When it got started, the report -- when the incident got started there was a report, and in fact, Angie Jones, girlfriend, was inside with the kids. Angie Jones is out of the apartment. How does that compare, then, in terms of sort of the risk or the concerns if he were to run back into the apartment with the girlfriend gone?

A. That he'd be alone in the apartment. I mean for all that we know, based on all the information available in the call, obviously Angie Jones is out, the kids are out, and so it is, by all accounts, it's an empty apartment. So in that case, and he goes back inside, say he does, you know, we're at a point where we have to weigh and evaluate what we have. Sergeants have to talk about what information's available, what's happened, what we're going to do. You know, we could stay there and try to recontact him by phone or loud hail, we could activate the SERT team to respond, we could leave. I mean there are options, and you'd have to weigh and evaluate which one was appropriate based on all the information you had available to you at that time. But I don't think that there is a fundamental downside to him going back in the apartment.

Q. You also mentioned that, a little bit ago, that you've had situations where -- and police officers have situations where they deal with subjects who are suicidal, who are reported to be armed or who in fact are armed, face-to-face situations. Can you give us examples of, you know, those kinds of instances? I think you mentioned one in the park. Can you give us a little more information about the park situation?

A. Well, in the case of the park, it was a gentleman who was in his 60s who was suffering from, I believe, a terminal disease and wanted to die. And we got information from some source that he was suicidal. And we located him in Peninsula Park, and established a perimeter, took positions behind cover, utilized the tools we had available to us, communicated with him, and ultimately he did not shoot himself. And he did not behave with a weapon in a way that constituted an immediate threat to any of the officers that were on the perimeter or any of the other officers in the area.

A. So he put his gun down and we took him into custody and resolved the incident without having to use deadly force.

Q. During your career with the Portland Police Bureau, including the time you were a patrol officer, including your membership on the SERT team, have you had situations -- is it unusual to have situations where you run into people or you have interactions with people who are reported to be armed, suicidal, face to face or running away - and we can break it up - face to face, let's say, who are armed?

MR. AITCHISON: Howard, I'm just thinking about where we're going in the hearing. We can have all sorts of witnesses, including Officer Frashour, testify as to their experience facing armed suspects who they have not shot. And I'm just wondering where that gets us. Or suicidal people. They have not used -- Ron's going to testify, every witness could say that. That's policing. I mean, I don't know.

MR. RUBIN: That's fine.

MR. AITCHISON: Just thought I'd bring that issue up.

THE ARBITRATOR: Well, I was thinking a little bit about what do you do with a person who has a gun besides shoot him. I'd like to hear a couple examples. Let's not get carried away. Two, three examples on each side, something like that.

MR. RUBIN: Okay.

A. Well, there was one when I was working as a patrol sergeant, I assisted alcohol, tobacco and firearms in conducting a traffic stop with an individual who was wanted -- who was believed to be armed, and who was wanted on multiple gun charges. And in the course of making the stop we followed him some distance. And he went out Highway 26 and ultimately was -- It was early morning traffic, so we ultimately stopped him at Exit 31 there at Sylvan.

And it wasn't really conducive to conducting a high-risk traffic stop, getting multiple cars there, shutting down the freeway. And so I approached with my gun at my side, knowing that we intended to take him into custody. He had his hands where I could see them. I asked him to turn his car off. And he reached his hand down towards the center of the console. And I drew my weapon up and gave him commands to put his hand back up where I could see it. And he complied, and was not shot. He was reaching for -- It was a Saab vehicle, and in Saabs, the keys are in the center console.

Q. The ignition?

A. The ignition, excuse me, are in the center console. And he was armed with a weapon. He had a weapon on him, I believe, at the time we arrested him. So there are occasions where we encounter people we know to be armed.

Another example was the SERT shooting that occurred that I was involved in in 1997. This was a call where a man -- he was inside of a trailer, he had shot rounds, I believe, into the floor when his wife was still there. And the police arrived, and we established a perimeter. And we negotiated with him for hours. And when he ultimately was unresponsive to-- And we could see him inside with the gun. We had evacuated the area, there were officers on the perimeter, there were some -- there were probably some media folks that were exposed not far from the location. And when we attempted to resolve it by introducing gas -- In a situation like that, where they've committed a crime, negotiations have failed, we'll introduce gas as a way to try to gain his cooperation, to get him to come out or to, you know,

overcome him so that we can take him into custody. But when we deployed gas into the location, that's when he raised his gun up and started to fire out at perimeter positions, firing out at the media. That's when three of us at that moment, perceiving that immediate threat, fired at him, shooting him and killing him.

Q. Have you had an instance where, for example, you were a rifle operator, lethal rifle operator, and you had somebody who was fleeing and you were tracking that person?

A. You know, I have one example I can think of when I was working patrol. We got information -- I was working day shift at North, and we got information that there was an armed subject, described in some detail, supposed to have a gun in his pocket. And when I encountered him his hands were on his pocket. And I exited my car, and I had a shotgun, and I charged the shotgun and I pointed it at him. And I gave him verbal commands as cover was arriving. And he began to run away. And he ran away, and I tracked him laterally as he ran. And I watched for his hands to come out, thinking he's supposed to be armed, I believed him to have a gun. I'm looking for something from him that's indicative that he's, you know, intending to deploy deadly force in that situation. And he eventually was located. And then, in fact, there was a small caliber handgun in one of his jacket pockets.

Q. As you were tracking this person as he was running away, what was the greatest distance that you were -- what was the closest distance and the greatest distance, how far were you tracking him?

A. Probably 20 feet as he continued to run away, until I couldn't see him anymore around the corner of a building.

Q. You also mentioned and described the incident in the park. What steps were taken with the resources that were available at that time?

A. We established a perimeter. We ensured that the park itself was evacuated so no other people were at any risk of injury. We -- you know, different roles were assigned to the teams that were in place. There were people that were responsible for negotiating, people that were responsible for custody. And through the course of some negotiations he eventually agreed, you know, being despondent, wanting suicide, agreed to cooperate, I mean put his gun down and cooperate.

Q. You also mentioned that there had been negotiations going on for hours with the person inside the trailer.

A. Yes. Yes, it was, yeah. Yeah.

Q. In this situation, if Mr. Campbell had run back into the apartment, were negotiations for hours one of the possible approaches? Now, you mentioned that you were waiting, in that situation where the person who was armed with a weapon in his pocket, was running away, and you were watching and waiting for that gun to come out. Did you know at that time, for example, based on the training that you had received, that people can shoot weapons from all sorts of places?

A. Yes.

Q. Did that make it an immediate threat for you because you knew that he could pull that gun out and shoot from all sorts of different angles or locations?

A. No, it didn't. And I think, just generally speaking, you know, there were, I think, six fatal shootings last year, there had been two each year the previous year. We have over 400,000 citizen contacts a year, we arrest 30,000 people annually. We use force on people when we arrest them, of the 30,000, about 1200 times. Of the 1200 times when we use force on people in the course of arrests, in the previous two years there had been two shootings.

So officers can shoot people. We have the capability, or we -- There are circumstances where we could deploy deadly force where we do not, multiple times, evidenced by the fact that -- not that the encounters aren't dangerous, not that people aren't armed or potentially armed, or that they haven't committed crimes or they aren't fleeing. I mean, all of those things happen. But, you know, I think most officers, in most cases, want to have some indication that leads them to the conclusion that the person is in fact an immediate threat and intends to hurt them.

I think that -- I hear that often, and I certainly have heard it in other shooting reviews, where we want to be confident from a moral standpoint, just from our own thought process and decision making, that if we're shooting somebody and killing them, that we're doing it because they are in fact an immediate threat to us at the time we kill them.

Q. So going back now for a minute to the shooting of Aaron Campbell. So even though you were trained -- I think you testified yesterday that in fact people can shoot from various locations. And even though you know that information from your training, did that turn Aaron Campbell into an immediate threat, that he had to be shot before he got to that corner of that Volvo?

A. Well, that's, again, that's what, in doing the review, I struggled with. I mean, Officer Frashour's statements were "He's going to cover, you know, he's pulling out a gun, he's going to cover, I have to shoot him now or he's going to kill some cops." And ultimately, A, I wondered if that was how we train officers in terms of their mindset given the circumstances that we were in, meaning given the resources that were available. In the video that you saw yesterday with an officer standing with a gun down at his side --

Q. And I want to get to the video in a minute. But keep going.

A. Then you're in immediate proximity to the person you know to be armed. And in that case, obviously, action/reaction principle dictates that they can shoot you, as evidenced by the video, they can shoot you before you can shoot them. But in a situation like this where we have some amount of distance, 50 or 60 feet, we have the cover of the car that's available, we have an accurate rifle, we have a dog, we have other people on the perimeter, it's just -- the overall goal and objective in our training is to utilize available resources to vigorously pursue a nonfatal resolution to encounters that are like this.

Q. So given, again, that piece of information, the information related to the incident itself, do you have to shoot him before he gets to that Volvo or people are going to die?

A. Well, I think it has to, essentially, has to assume a couple of things. And, you know, that -- that's, I guess, again, what I really have struggled with, especially in light of the fact that the dog is there and has been released. And, you know, Officer Frashour, in his statements, indicated that he knew the dog was there. And the dog's purpose or point in being there was it could stop somebody if they were to run. So that's the whole issue around immediacy.

I mean, even if you ignore the beanbags and you just focus on that he's going for a small handgun, given the totality of the circumstances and all the available resources, is it -- if we don't shoot him right

now, prior to getting around the front of that car, does he kill us? And I just don't know, given the -- I mean is it possible that he could come up with a gun and he could shoot and it could hit one of us? I mean, that is in the range of possibilities. But given everything that we know in the situation, it seems that it's not that likely, and that there may be an opportunity to take in more information, let other resources that are on the scene do the work that they can do, and -- you know, meaning that ultimately he doesn't have to be shot at that moment for that reason.

Q. Now, you mentioned the videos. I want to talk to you a little bit about the videos. So the first video that we saw was a video of a media person and an officer. I forget who the officer was. Who was the officer?

A. Officer Chamberlain, and Sergeant Livingston was talking.

Q. And that was a demonstration. What was the purpose of the demonstration? You were there for that demonstration?

A. It was designed to inform the media about dynamics, like action/reaction, that are present in encounters. Many of the people that are in the public, they aren't aware of the training or the extent of the training that we provide officers. They don't necessarily know about action/reaction. You can hear about it, but obviously seeing a demonstration like that helps to make a particular point. And so it was designed to inform people in the media about both training that we provide and what the dynamics are in encounters like this. And in that video --

Q. Were you present during that?

A. Yes.

Q. And first of all, who was playing the police officer and who was playing the subject with the gun?

A. It was -- Tracy Chamberlain was the police officer, and -- or excuse me, Tracy Chamberlain was the suspect, and -- with the gun, and I believe it was Sarah Mirk from The Mercury who -- Might have been Behr, I think is the name that I recall. Was it? Okay, yeah.

Q. Yes.

A. There were different reporters who did it at different times.

Q. So it was reporters?

A. It was a reporter. We put the reporter in the role of the police officer. And approximately how far away were they?

A. 15, 20 feet, something like that.

Q. And were they facing each other?

A. They were.

Q. Did Tracy Chamberlain, who was playing the suspect or the subject, did he have a weapon out?

A. He did.

Q. In plain view?

A. Yes.

Q. Now, in terms of the second video, second video was you apparently talking to media.

A. Yeah.

Q. Okay. Again, what were you -- what was the purpose of the conversation you were having with the media?

A. We were trying to convey both sort of the constitutional standard and some of the things that we train officers in, you know. The Graham standard for us, in terms of objective reasonableness, is -- ultimately is the criteria that's used to judge and evaluate the reasonableness, the objective reasonableness for us under the constitution. So it was in a certain context there in a training day for the media, helping to inform them about, you know, both training, certain principles that are present in these dynamics, as well as fundamental underlying concepts of the law that pertain to sort of the overarching guiding principles in place in our role as police officers in the community.

Q. Were you having any discussion with them with respect to, for example, Port (sic) of Portland Police Bureau directives?

A. I don't believe so.

Q. Any discussion with them about Port of Portland expectations -- City of Portland Police Bureau expectations?

A. No, I don't believe so. We weren't talking about policy or the review of any particular incident, necessarily. I think it was more general in its nature.

Q. I want to ask a few other sort of discrete little pieces that may not necessarily be connected in any logical sequence. But there was a variety of references yesterday to Aaron Campbell as a suspect. Was Aaron Campbell a suspect in any way, shape or form?

A. Not as indicated by Officer Frashour. The information was that it was essentially a welfare check having to do with Angie Jones and the kids.

Q. At any point was he a suspect of anything?

A. Well, in his statement he said that he was asked if a crime had been committed, and he said that he was sure that there was, but that he didn't know what it was. So, you know, by and large, I think officers believed that, as they were on the call, that it was a welfare check, and it had to do with this potentially armed, suicidal, suicide by cop person.

Q. You also testified about reviews, other training reviews that you had done. So if I understand correctly, you moved into the training division as lieutenant in December 2009.

A. Yes.

Q. And you testified that you did three other reviews in addition to this review.

A. Actually, I believe four, yes.

Q. One was a fatal shooting.

A. It was, yes, it was Russ Corno, I assisted with the Russ Corno shooting.

Q. Can you tell us about the other three that you did?

A. One was the -- Chris Humphreys beanbagged what he later found out was a 12-year-old girl on the MAX platform. And because of -- you know, because it was Chris Humphreys and it was use of a beanbag on a girl that was 12, later to be determined to be 12, the commander, who was ultimately doing the review on the case and wanted to do -- was going to do the findings, wanted a training division analysis whether or not the officers in that particular case, Officer Dauchy and Officer Humphreys, acted consistent with training. That was that review.

Q. Let me stop you there for a minute. Was this a high profile sort of situation?

A. Yes.

Q. You said because it was Chris Humphreys, because it was a 12-year-old girl and a beanbag was involved the review was done?

A. I think, yes.

Q. What were the other two or three?

A. One was an officer who -- he'd had multiple complaints, force allegations brought against him. And he used -- he responded to a call, got on a perimeter, encountered the suspect, engaged with him physically, took him into custody when other officers were arriving to assist. So we were asked to evaluate the actions that he engaged in against the training that he received to determine whether he acted consistent with his training.

Q. One or two more?

A. One more, it was the Keaton Otis shooting. I was assigned to conduct that review with another lieutenant, Lieutenant McGranahan. And basically in that case the four or five of our officers then assigned to the HEAT team, hotspot enforcement team, they went to certain geographical areas. They mostly dealt with youth gang violence. And they made a traffic stop of Keaton Otis in a vehicle in Northeast Portland near the Lloyd Center. And in the course of that stop he acquired a weapon, shot Officer Burley. Shrapnel likely hit Officer DeFrain. And three or four Portland police officers fired at Keaton Otis, fatally wounding him.

Q. The incident with the 12-year-old girl being shot with the beanbag, that girl, was she killed or no?

A. No, she was not.

Q. What about the situation where the suspect was taken into custody after some physical confront --

A. He was physically injured but he wasn't -- he had nonlife-threatening injuries.

Q. The reviews that you did in all of -- What was the result in the Humphreys case?

A. That it was consistent with training. Yeah.

Q. And again, by result I mean your conclusion after your training review. What about what conclusion did you reach with respect to Keaton Otis's case?

A. That officers acted consistent with their training.

Q. Was Keaton Otis a case that was a highly visible, publicized case?

A. Yes, it was.

Q. And what about the situation where there was the physical confrontation with the suspect who was taken into custody, what was the conclusion?

A. The result or conclusion was he was not consistent with his training.

Q. And the reviews that you performed in those three situations, as well as this review, performed the same way? Differently? Did you do the same things? Differently?

A. Very much the same thing. Reviewed the materials, looked at the training, ultimately arrived at a conclusion about whether or not they acted consistent with their training.

Q. You also testified about training officers agreeing or disagreeing. Did Paul Meyer indicate anything with respect to whether or not Frashour de-escalated his mindset, your conclusion that he did not de-escalate his mindset?

A. He told me after a training division staff meeting that he did not -- he agreed with me that he didn't think Officer Frashour de-escalated his mindset.

Q. In terms of the information that officers are trained to consider at the scene --

A. Yes.

A. -- do they have to consider information that they should be knowing? In other words, can they ignore information? Do they have to be aware of what's going on?

A. Well, if you ignore information you do so at great risk. We train officers to take into account all available information that's at the scene. If it's there and it's available to them, or they can ask about it or inquire about it to help them, you know, form their understanding or situational awareness of what's going on, then in a tactical situation that's dynamic and fluid, it's, you know, it's important to their mindset and to their situational awareness. And they must take steps to get and be and stay informed to the extent that it's possible given the situation.

Q. In connection with this incident, did you discover any information that Aaron Campbell, at any point when he comes out, demonstrated behavior, showed behavior that was homicidal, he was going to kill cops or somebody else?

A. No.

Q. Did you discover any information with respect to Aaron Campbell demonstrating behavior, showing something that he was going to commit suicide by cop?

A. No.

Q. I want to talk for a minute, since this was discussed at length yesterday, about your final conclusion and the fact that you changed your mind during the course of your review, okay? And you've already explained that. Did you change your mind because of any discussions with Assistant Chief O'Dea?

A. No.

Q. Did O'Dea give you any directions at all with respect to your conclusion or your preparation of that review that you completed?

A. He told Lieutenant Virtue and I both that he didn't expect us to write anything that we personally didn't believe.

Q. Did Assistant Chief O'Dea in any way, shape or form directly or indirectly influence you to reach your conclusion and to come to the ultimate decision that you reached?

A. No, he did not.

Q. Did Chief Reese -- Did you change your opinion with respect to this situation based on any communications you had with Chief Reese?

A. No.

Q. Did Chief Reese in any way, shape or form tell you, direct you, imply directly, indirectly that, by golly, you need to reach this conclusion with respect to this situation?

A. No one at any point along the way did anything like that. And I don't think in the review of it, in talking with investigators, that anyone knew what the conclusion was going to be. That it was - the review hadn't been completed, the IA investigation hadn't been done. The information wasn't available to arrive at a conclusion about what the findings were going to be, and if there were going to be sustained findings, whether there was going to be any discipline recommended. So, no. I think it had to

work its way through the process. And at least from the standpoint of the training division analysis, as I said yesterday, I came to the conclusions that I did on the basis of the information that was available.

Q. And again, I want to make sure we're clear, and I want to focus just on your training review piece. Anybody from Assistant Chief O'Dea, to Commander Ferraris, to Chief Reese in any way influence your change of thought that you had in connection with this case?

A.No.

Q. Did anybody, again, change your mind, force you, lead you to making the conclusion that you made with respect to your training review?

A. No. I came to the conclusion through deliberating at great length, and ultimately arriving at the conclusion that I did on the basis of everything that I had reviewed, all of the information that I had about training, and what I knew happened out at the scene, and on the basis, as I said yesterday, my own volition, not having any desire whatsoever to have written a single word in it.

Q. You also referred to and you mentioned CIT training briefly. Can you explain, what is CIT training?

A. We have had in the police bureau officers who have received some specialty training around identifying mental illness or how to respond to people that are in crisis, and what options are available to assist them in terms of treatment, what the law is regarding when they can be held or hospitalized. And so the CIT training initially was a group of officers who volunteered to receive the training and play that role. They would respond to the scene where a person was emotionally despondent or mentally ill or in emotional crisis.

And then following the death of -- following the Chasse incident, Tom Potter and a group of other people recommended that all Portland police officers receive the CIT training.

So the training is done by Dr. Liesbeth Gerritsen and members of -- who's the police bureau CIT coordinator, as well as members of Project Respond. They're clinicians, Master's level social workers who assist people in their -- when they're in mental health crisis, in resolving the crisis and getting them the help that they need. So there was, I believe, either a 32- or 40-hour class that was taught to every Portland police officer. After having been away from the street for a period of time, I went through the last class in December, I think, of 2008.

So all officers up to that point had received the training. And then in the advanced academy, now going forward, all officers receive that training. And what it's designed to do is to help people, officers, understand, given the fact that we're more and more in contact with people that are in mental health crisis -- We're not doctors, we're not clinicians, we don't diagnose mental illness. But those that are in some sort of a mental health crisis, we -- the training is designed to help give us some insight into, you know, why they might be behaving the way they are, that it's not necessarily intentional and willful misconduct on their part, and that they are in need of some kind of -- typically, they are in need of some kind of care, and how to access that, what services are available in Multnomah County to get people the help that they need.

Q. Does the training also -- did it also talk about, not necessarily only people who were in mental health crisis, did it also talk about people who were emotionally upset and sort of having difficulties in their lives even though there may not be some diagnosis attached to it?

A. Yeah, could be. I think that's why we're more and more staying away from people that are mentally ill, you know, because people can be in crisis for a whole host of reasons. So, yeah, people that are in some sort of emotional crisis or in crisis of some kind, that, yeah, that's ultimately why I think that training was provided.

Q. Was that part of the training as well?

A. Yes. I think you also talked about which officers and when.

Q. You mentioned the Chasse incident.

A. Yes.

Q. Can you just briefly describe the Chasse incident so it's in the record?

A. Officers encountered, back, I think, four years ago, five years ago, a man downtown that they thought was either urinating in public or was doing something. They gave chase. There was some kind of a struggle. He was taken into custody, he was transported to jail. And once at jail, jail refused him for medical reasons, apparently. Officers placed Mr. Chasse back in a police car, and intending to take him to an area hospital. And once in the back of the police car he -- officers noticed that he wasn't breathing. They pulled over. They performed CPR just off I-84 at 33rd, I think it was 33rd and Clackamas. And then he subsequently died. And then there's been, you know, obviously a significant internal review, external review, lawsuits. And, you know, just even as recently as a month or two ago Mr. Chasse was on TV as a result of the DOJ investigation that was occurring, talking about that on national television. So it's a dramatic, tragic case of a man who died in Portland, and who -- and we've been -- in the police bureau, we're well aware of it and have done training as a result of it since.

Q. You mentioned also the person -- Ms. Gerritsen, who actually provided that training --

A. Yes.

Q. -- coordinates that training.

A. Yes.

Q. Do you know how to spell her name?

A. Liesbeth, L E I S B E T H; Gerritsen, G E R R I T T S E N, Gerritsen, I believe.

Q. And I think you said you took the last class in late 2008, December 2008. How long -- over what period of time was that training provided?

A. It was either four or five days in length.

Q. But in other words, was there just one class or a series of classes?

A. Just the one class, yes.

Q. Now I want to change subjects a little bit to talk about Officer Elias --

A. Yes.

Q. -- and your conclusion that Officer Elias was consistent with training.

A. Yes.

Q. Can you just explain briefly your thought with respect to Officer Elias being within -- consistent with training, from your perspective?

A. Well, given the information that was available, and the fact that, you know, Mr. Campbell began to flee, it's an appropriate apprehension strategy or tool to gain control of a situation like this. It's an intermediary tool given all of the behaviors that we're observing at that time that make it an option to , help resolve the confrontation and bring it to a conclusion.

Q. In a nonfatal way?

A. Yes.

Q. You said it's an intermediary tool. What do you mean it's an intermediary tool?

A. Among all of the tools that are out there, it's a tool that's -- it's a tool that's available to us. I don't really -- I don't have a specific meaning behind intermediary. It's obviously -- It's in a range of options between talking and using deadly force. And, you know, like specialty impact munitions, ASP batons, Tasers, pepper spray, it's, you know, it's one of the tools that's available to us to use in a situation like this.

Q. And Officer Elias did not use deadly force.

A. No.

Q. With respect to the IAD review, you talked at length about the IAD review and how that all was done. Were you overseeing or responsible for overseeing that IAD review?

A. No.

Q. Were you present during any of those IAD interviews?

A. No.

Q. Did you prepare every single question that every single IAD investigator asked of every single witness?

A. No. That was their responsibility in the internal affairs division.

Q. Is the IAD process, does that review make any actual conclusions or findings or recommendations as to whether or not an officer's conduct is in policy? Out of policy?

A. They cannot. That begins with the commander.

Q. And your role doing the training review, are you making any determination with respect to in or out of policy or in or out of training, consistent or inconsistent with training?

A. No, I never felt that was my job to reach any conclusion about policy violations.

MR. RUBIN: If I can have around five minutes. Can I have around five minutes?

THE ARBITRATOR: Yes. Actually, can I just ask a question for clarification? I thought that -- You said the IAD does not make any recommendation?

THE WITNESS: They gather the data, the information.

THE ARBITRATOR: I thought I was looking at the report here and they did make a recommendation.

MR. RUBIN: Did not?

THE ARBITRATOR: I thought they did up here.

MR. RUBIN: At the very top --

THE ARBITRATOR: I excerpted it. I thought it was at Page 13. I have to find it. Go ahead and take your break. If I can find it, we can quarrel over it. But maybe I'm misinterpreting it.

(RECESS: 10:06-10:16)

MR. RUBIN: I don't have any other questions at this time.

RE-CROSS-EXAMINATION BY MR. AITCHISON: Lieutenant, the first thing I wanted to talk about is the issue you brought up with respect to body armor.

A. Yes.

Q. Officer Frashour would have been wearing body armor similar to what you have on today?

A. Correct.

Q. And body armor, of course, doesn't provide any protection at all for the head, does it?

A. It does not.

Q. It doesn't provide any protection for anything other than the torso, does it?

A. Correct.

Q. You recall the incident in Portland when Officer Tom Jeffries was shot and killed by a suspect, don't you?

A. I do. He was. Correct.

Q. And that suspect was using a handgun, wasn't he? And Officer Jeffries was wearing body armor, wasn't he? And the suspect pulled the weapon and shot Officer Jeffries in a matter of a second?

A. Well, in that particular case the suspect was wanted for a violent felony. Officer Jeffries gave chase by foot, lost sight of him as he made his way into a backyard, and then in the backyard by himself the suspect, yes, acquired the weapon, shot and killed the officer, that's true.

Q. And you mentioned the Keaton Otis incident. We had one -- And this occurs, actually, after the Campbell incident, doesn't it?

A. Yes. Correct. Oh, yes, it does. Correct.

Q. And your involvement in the review post-dates the Campbell issue, correct? This occurred down by the Lloyd Center area, correct? And Keaton Otis was a mentally-troubled individual, correct?

A. At the time that they encountered him it was a traffic stop for observed infractions. And when they encountered him and spoke with him and gave him commands he was hostile, threatening, aggressive. He was described by officers who were involved in the stop as somebody that they thought must have just committed a murder and was more agitated and aggressive and hostile and threatening than anybody they'd ever seen.

Q. And Keaton Otis was actually sitting in a vehicle -- If you are the police officers on the driver's side of the car, Mr. Otis would be sitting in a fashion --

A. Yes. -- oriented as we are right here.

Q. And the officers were actually closer than you are to me, correct?

A. Yes.

Q. And they were right outside the car. And isn't what Mr. Keaton -- what Mr. Otis did was to, in an extremely fast motion, he reached over to the right side of the car, pulled a Crown Royal bag -- You know the Crown Royal bags that enclose bottles --

A. Yes. Yes. -- of Crown Royal, they're kind of felt bags? You have to go to the OLCC to see these, but --

THE ARBITRATOR: Okay.

Q. They're actually a common place some gangsters keep guns, aren't they?

A. In this case Mr. Otis had a gun in a Crown Royal bag.

Q. He actually pulled the weapon quickly, turned, fired at Officer Burley, hit Officer Burley before any of the officers could return fire, didn't he?

A. True.

Q. And Officer Burley was shot where?

A. In the -- in the legs, in the inner side of his thigh, essentially, one in each thigh.

Q. And do you recall the doctors, since you were involved in this training review, describing this as a matter of centimeters as to where that bullet went in as to whether Officer Burley would have died?

A. I haven't reviewed that case for today, but I don't recall that specifically. I mean certainly it's very serious anytime you're shot.

Q. Officer Burley was wearing body armor as well?

A. He was.

Q. You remember the shooting, not now of a Portland police officer, but Clackamas County Deputy Damon Coates?

A. Yes.

Q. He too was shot by a mentally-disturbed individual, correct?

A. He was.

Q. And he was shot even though he was wearing body armor, wasn't he?

A. True.

Q. And where was he shot?

A. In the head.

Q. So the fact that Officer Frashour is standing up out there, wearing body armor, that doesn't make a 22 Beretta a nondeadly weapon, does it?

A. No.

Q. I also want to talk a little bit about the scene. This is in light of the arbitrator's questions yesterday. I want to talk to you a little bit about this. First of all, based on your understanding of the scene, this drawing is incorrect with respect to the positioning of the dumpsters, isn't it?

A. I think the dumpsters were back behind the car a little bit.

Q. So you think the dumpsters actually were further to the north than they are depicted here?

A. I think they may be. I'm sorry, I don't know.

Q. And the reason I'm asking is obviously this is important because of the dog. The dog's released from behind the dumpsters, correct?

A. Yes.

Q. And how far the dog has to travel to get to Mr. Campbell, that's going to depend, obviously, on where the dumpsters are, correct?

A. It will depend on a variety of factors, how fast the dog runs, how fast Campbell runs, where the dog is when it's released, sure.

Q. Sure. But you think, first of all, you think this drawing is incorrect, and in your judgment the dumpsters actually are a little north?

MR. RUBIN: Objection.

A. Actually, you said that.

MR. RUBIN: He said he didn't know.

Q. I didn't mean to put words in your mouth. Do you think this drawing is correct?

A. I don't recall where exactly Officer Elias was.

Q. Okay. We also talked about Officers Andersen and McAllister, and you said they're present basically to shoot it out with Mr. Campbell if he gets around the corner?

A. That's not their only responsibility. They're performing a function, they're gathering intelligence, they're watching him, they're there to provide more details to people that are on the call. They have cover that's available to them, concealment that's available to them. So they provide, you know, in this role as police officers, in attempting to resolve this confrontation, they have a variety of different roles, but up to and including, yes, in certain circumstances using deadly force to defend themselves or others.

Q. I want to talk about their placement on this drawing. Basically I'm just trying to understand what your decision is based on. So for purposes of your decisions relating to whether this complied with training, where did you think Andersen and McAllister were with respect to this placement on the drawing?

A. Well, they were in line of sight of the front door of the alcove, and somewhere on the other side of a cyclone fence in what is a covered parking area for an adjacent apartment complex.

Q. In your judgment, are they correctly located on this drawing?

A. I believe in that general vicinity.

Q. And what cover does Officer Andersen have, in your judgment?

A. You know, if he -- if he is behind a car, he has the cover of the car available to him. But it's actually pretty sparse right there. I think once they're -- once it gets dark they, you know, they make an effort to take a position so that they can see what's happening. And they have maybe a tree there, maybe -- so these one, two, three, four, five, six, whatever those are that depict the trees there, I don't know that they're an accurate depiction of the foliage that's there. There's some there, there's a tree that's there that could provide them some protection, but they also may be -- they also may be exposed and not have cover. They may be concealed by virtue of the light, the darkness, but --

Q. Okay. So I'm guessing -- Is it correct your answer is you don't know what cover Andersen and McAllister have?

A. I don't believe they have hard cover where they're at.

Q. Okay. And we've talked a little bit about the Volvo, and the Volvo being hard cover. And I find myself guilty of misstating what Officer Frashour has said throughout this. It's accurate, isn't it, that what Officer Frashour says he's concerned about with respect to the hard cover of the Volvo is not - and I'm going to choose my words very carefully here because they're quite important - not Mr. Campbell rounding the Volvo and taking up a position behind the Volvo, but rather what Officer Frashour has said consistently is he is worried about Mr. Campbell getting to the front of the Volvo. Did I just accurately say that? Did I accurately summarize what you believe Ron Frashour was worried about?

A. I believe so.

Q. Okay. And that's really my fault for saying this many times, get around the corner of the Volvo. From the front of the Volvo, what Officer Frashour was concerned about, would Mr. Campbell have hard cover from every police officer on the scene, including Andersen and McAllister?

A. That's possible.

Q. Okay. Now --

A. From the angle -- I mean from the angle of the vehicle from where he's at, I don't know that -- I mean he's -- when he falls down after he's shot they can see him there. And so I don't know that being right in front of the Volvo, between the Volvo, if -- and the front of the apartment, that that provides -- that Campbell is impervious to bullets. I don't know that that's the case.

Q. I'm not suggesting that.

A. He's saying --

Q. I'm not suggesting anybody here is impervious to bullets.

A. I'm just saying you're saying that he said his concern was he didn't want him to get to the front of the Volvo, and isn't it true that that keeps Campbell from being shot by anybody on the scene. And I don't think that, given the -- what I know about the scene, what it looks like, as it's depicted there, even to the extent that that's not completely accurate, that that provides Campbell with what we call hard cover. I think he can still be shot there.

Q. Okay. You think he can be shot right at the front -- if he is -- if he rounds this corner, ducks down in front of the Volvo while he's pulling out his handgun, you think he can be shot when he's behind the engine block?

A. Yes, I think he can be.

Q. Okay. Which of the weapons on the scene here carry ammunition that will penetrate an engine block?

A. Well, that's -- I mean, given your assumptions or scenario that he's there and impervious to bullets behind the engine block, part of my point is I don't think being directly in front of the Volvo, that Campbell ran to that place, crouched down so that he knew that he couldn't be shot by these other officers on the scene, he could deploy deadly force in these various locations. I mean it assumes he had that sort of thought process when he's being hit and he's running. You know, the answer to your question is none of the bullets that are on scene can penetrate an engine block. But I don't know that it's -- Part of my point is I don't know that it provides the level or the degree of cover that you say that it does given this scenario.

Q. I'm actually not saying anything, I'm just asking questions.

A. Okay.

Q. And we'll have other witnesses testify to that. I do want to go back to Andersen and McAllister for a moment. You talked about the fact that you thought Andersen and McAllister were resources on the scene because of their -- because of their firearms. They were resources on the scene that could have stopped Mr. Campbell from using his firearm if he got around the corner of the Volvo. Do you remember that testimony?

A. Yes. Sure.

Q. And actually, I want you to think about this in terms of the training division's thought process. Really the decision the arbitrator has to make here. That fact -- Let's assume you're right, let's assume that they in fact can see and shoot at Mr. Campbell, okay?

A. Okay, sure.

Q. I want you to assume that.

A. Okay.

Q. For the purposes of our decision making, isn't it true that that only matters if Officer Frashour knows that they are on the scene?

A. I think that's part of my point in my review. He doesn't know that they're there, so when he shoots, who's he shooting in defense of? He doesn't know that the dog is being deployed. There are other critical facts going on all around him that he says he's utterly unaware of, which is inconsistent with what we train officers.

Q. There's the rub, isn't it? Officer Frashour does not know that officers -- where Officers Andersen and McAllister are positioned, correct?

A. Correct. Sure.

Q. Correct. All right. And Officers Andersen and McAllister, we went out to this scene, we saw that where their names are on this drawing is at the end of a long driveway that goes through Darrin's Place Apartments, correct? And Officers Andersen and McAllister come to the scene using that driveway, don't they?

A. Correct, yes.

Q. Correct?

A. Yes. I believe so.

Q. So in other words, when Officers Andersen and McAllister are coming to the scene, Officer Frashour in his position can't see them approach? You've read, of course, the radio transmissions, correct? And you know that Officers Andersen and McAllister are the last officers on this scene, aren't they? You'd also agree with me that when Officers Andersen and McAllister arrive on the scene, they don't tell anybody where they are positioned, do they?

A. I don't know about that.

Q. Isn't that important, though?

A. Well, it is important. I also think it's important that when they got into position, that they drew their guns.

Q. And when Campbell came out they holstered their weapons and they never drew them again. You believe that?

A. Yes.

Q. You believe that when Campbell came -- They had their guns drawn to begin with --

A. At some point.

Q. Excuse me, let me finish my question. This is, again, part of your assumption in making your recommendations. You believe they had their guns out, and when Mr. Campbell came out they holstered them?

A. At some point they holstered them, yes. Yes.

Q. Just answer the question I asked. You believe that when Campbell came out they had their guns out, and -- excuse me, before he came out they had their guns out, and when he came out they holstered their guns? Is that what you believe?

A. Okay.

Q. So if I'm understanding your testimony right now, Officer Frashour does not know Andersen and McAllister's location, and they have not broadcast their location, correct?

A. That's what I believe.

Q. Okay. While we're on the scene, let's take a look at some pictures, and we'll identify these as we bring them up. These are pictures of the scene that are in the detectives investigation. Did you look at those pictures of the scene?

A. Yes.

Q. And these were taken the night of the incident?

A. Yes. Yes. I believe so.

Q. Okay. And, Lieutenant, I don't think we've actually heard any testimony on this, so why don't you explain it. In fact, from the presence of these two paper documents here -- -- we know this police car actually was in a different position at the time this incident occurred, don't we? And that's because Officer Frashour, he was out there kneeling on the asphalt for a half hour, you recall that?

A. Yes.

Q. And that's uncomfortable for officers, right?

A. Yes, it is.

Q. That's a distraction an AR officer does not need, correct?

A. Correct.

Q. And so another officer takes out, these are citation books, and puts them under Officer Frashour's knees.

A. Yes.

Q. And at the time Officer Frashour's kneeling on these citation books, actually he has the gun braced over the hood of the car, doesn't he?

A. Yes. Correct, yes.

Q. So we know the hood of the car was somewhere very proximate to the citation books; is that correct? So, actually, what we're looking at here is we're looking at the scene roughly as Officer Frashour would have looked at it, correct?

A. Right, right.

Q. We're looking at the angle of Mr. -- I'm sorry. Anil, which exhibit is this?

MR. KARIA: Joint 9 , 1010.

Q. Joint Exhibit 9 , No. 1010, or Page 1010. So the arbitrator asked some questions about lighting yesterday. This would have been, but for - and we'll talk about these in a moment -- but for the AR lighting and the spotlight, this would have been the lighting Officer Frashour was looking at, correct? In addition to some lights that were on the left-hand side of the car that were in the lot at the dumpster, one towards the front of the lot and I believe one towards the back of the lot. I'll show you those in just a moment.

A. Okay.

Q. But beyond those lights which are on the other side of the parking lot, correct?

A. Yes.

Q. This is the lighting Officer Frashour would have seen?

A. These photos were taken some hours later. So people say different things about the degree of lighting on the scene at the time. It's obviously a little after six in the evening. So given this time of year and this location, all I'm saying is that, obviously, this is taken well after it's happened, in the middle of the night. So I'm not sure this is an exact replication of the light that he faced. But nevertheless, whatever the light would have been at six o'clock in the evening. Some say dark, others describe it in different ways. Did you check when sunset was that day?

Q. I did not. I'll just tell you that meteorological tables report sunset at about 5:13, 5:13 in the afternoon. And given that, assuming that is correct, do you believe this would have been, if not completely accurate, fairly close representation of the lighting Officer Frashour would be looking at?

A. Yes. Yes.

Q. And so what we see when we see this lighting, what we see is a backlit or toplit alcove, correct? And then lots of shadow that is around the Volvo, correct?

A. Correct.

MR. AITCHISON: Can we look at the next picture, Anil? I promised you the dumpster lights. Here they are.

A. Yes.

Q. Lieutenant, these are the dumpsters, Officer Elias's dumpsters. And we can see, over here we can see the citation books, and so we get a relative idea where the dumpster is compared to --

A. Sure. Okay. Yes. Well, it's above the dumpster, behind it. -- the car.

Q. But I just want to look now at the lighting. And in particular, I want you to look at the shadow that is cast by the dumpster. Does that tell you anything about where the lighting is here?

A. Above it and behind it.

Q. So Officer Elias, from Mr. Campbell's perspective, Officer Elias would have been toplit and backlit, correct?

A. To some extent, depending on how much of him is exposed behind the dumpster, but, sure.

Q. And would you expect this light -- We've been out there. I don't know that we actually pointed up at the light. But to the extent that this light casts a -- casts a - casts light - I can't help using that twice in the same sentence there - beyond just the dumpsters, it's going to have the same sort of effect of lighting up the custody team, doesn't it, given where the citation book is?

A. Yes, likely, yes.

Q. All right. Now, let's look at the last picture. Or was that it? That was it. Okay. Oh, while we're on this picture, do you know where Officer Elias is with respect to these dumpsters?

A. In the vicinity of the dumpsters there in the parking lot, adjacent to the custody team.

Q. And let's call up the testimony. Yesterday, Lieutenant, you testified you didn't know whether or not Officer Elias announced the release of the dog. And I want to show you this. This is --

MR. KARIA: Joint 11, Page 382.

Q. So this will be the internal affairs investigation.

A. Okay.

Q. This is where Elias is asked questions. And Investigator Courtney says, "At the time you released your dog, did Lewton or the other officers know that you'd released your dog?" And Elias's answer is, "Not that I know of. I just gave him the take command." What's the take command?

A. What it implies, to send the dog to bite and hold.

Q. Okay. And then Investigator Courtney said, "Just gave him the take command. Is that something you yell loud or just --" And Elias says, "I just said it to the dog." Does that help refresh your recollection on whether Officer Elias announced the sending of the dog in a way that anybody at the scene other than he and the dog could have heard it?

A. Yes.

Q. And he didn't, did he?

A. He did not.

Q. We've had a little bit of a discussion this morning about, I think the phrase was weapon superiority. And of course the police officers at the scene who have handguns have handguns that are a superior weapon to the Beretta, correct?

A. Arguably, yes. Yes.

Q. And Officer Frashour has a weapon that's superior, at least in this use of the weapon? Does that weapon superiority, in your judgment, make the Beretta any less of a deadly threat?

A. It is not less of a deadly threat. It's a relative comparison.

Q. Okay. Thank you, Lieutenant. Nothing further.

MR. RUBIN: Can I have five minutes?

THE ARBITRATOR: Sure.

(RECESS: 10:41-10:57)

REDIRECT EXAMINATION BY MR. RUBIN:

Q. With respect to getting to the front of the Volvo --

A. Yes.

Q. -- as opposed to the side of the Volvo, does the front of the Volvo give what I'll call partial cover or complete cover if that's where Campbell goes?

A. I think given the photos we've seen and what we know about the scene and how it's described by the officers of him being positioned just immediately in front of it provides him a partial cover, not a complete cover.

Q. And why do you say that?

A. Here being the front of the -- South side. Well, you know, arguably, if Aaron Campbell was reaching for a gun, running to cover, first of all, it seems unlikely he'd stop. Why would a suspect who's fleeing stop right here when he could go the additional distance around? But stopping right here -- Here being the front of the vehicle. Then there's an exposure by the angle to the rifle fire, at least to some extent, versus he's on this -- he's on this side of the Volvo right here. Providing him with a greater amount of ballistic protection from rounds that could come, at him, notwithstanding what Andersen and McAllister could do. So right here, it's pretty clear that, yeah, they could fire and likely hit him. And, you know, Birkinbine, who says -- gets on the air and says he's coming out, he's being cooperative so far, that he certainly is in a position -- he potentially is in a position to deploy deadly force in this location. And if they are in this position, in whatever configuration they're in --

Q. They being who?

A. Andersen and McAllister. I think it's -- think that it provides, again, I think it's just partial, essentially partial cover.

Q. And you mentioned Birkinbine. What about Quackenbush? Does Quackenbush have an avenue by which he can engage Mr. Campbell?

A. Yes, I think the same is true for him, that's possible.

Q. You mentioned a couple of shootings. One was Jeffries, Officer Jeffries.

A. Yes.

Q. Do you know how to spell his last name?

A. J E F F R I E S, I believe.

Q. And I think you described that incident as ultimately occurring in the backyard, and it was just between Jeffries and the suspect?

A. Correct.

Q. And can you explain a little more about the suspect that you recall?

A. You know, I remember that he'd shot somebody, and that they were pursuing him, as I recall. And Officer Jeffries observed him in a vehicle, and I believe there was some short pursuit, and that the suspect dumped the vehicle and ran into a backyard. And Officer Jeffries, seeing him, pursuing him, I believe followed him on foot, pursued him on foot as a violent felon. And it was at night, and the suspect was in the backyard. And ultimately Officer Jeffries came out and around basically cover of the building, of the corner of the house, and made his way, I believe, into the backyard. And so he was in the direct line of sight, line of fire from the suspect. And the suspect fired and struck him, I believe above the vest, killing him.

Q. And when they were in the backyard, approximately -- do you recall how far apart they were, how far apart they were?

A. You know, 20 or so feet. It's a residential backyard. As I recall, some distance, not too terribly long, not too terribly close up.

Q. Now, at that scene was there a canine available?

A. It always is available, or may be available.

Q. On scene, was it on scene?

A. Not immediately available, no, it was not on scene at the time.

Q. Any perimeter on scene at the time in that backyard?

A. No.

Q. Any AR-15 operator on scene?

A. No.

Q. Any less-lethal weapon on scene?

A. No.

Q. Any other officers on scene who had weapons?

A. I believe at the time that he was shot and killed that he was alone in the backyard. Other officers arrived shortly after. But at the time he was killed, I think he was alone.

Q. Now, with respect to, I think, Keaton Otis.

A. Yes.

Q. Again, can you describe that a little bit in terms of there was Keaton Otis. How many officers were involved in that situation?

A. Well, there were around six or so that were immediately present. More arrived as it unfolded.

Q. And why don't you describe in a little detail about the incident that resulted in the shooting.

A. They made a car stop on the basis of a traffic infraction. They observed him drive on Grand Avenue northbound, crossing all lanes. It's a three- or four-lane northbound street. And they followed him some distance. They activated their lights, he wouldn't pull over. They, I believe, at some point activated their siren. They got on the air, they said he's not stopping. Very unique to the HEAT team. The HEAT team is a group of officers who work together on the same shift, I believe, with the same days off, doing the same kind of high-risk work together. And made -- and stopped him and got out and encountered, talked to him.

And as soon as they got out he immediately was verbally confrontive, "What the fuck do you want, fuck the police, fuck you," repeatedly. In the course of the encounter he focused on one of the officer's guns. "Put that fucking gun away, put that fucking gun away. What are you doing with that gun." And sort of absolute out of control kind of a rant.

And that they, you know, called -- they blocked him in, called for additional resources to come to the scene to assist them in taking him into custody. They intended to, you know, arrest him at that point for the crime of failure to present, carry a driver's license, or elude or whatever the -- And it was as more resources arrived and they communicated with one another about what they intended to do, they began the process of opening the door. Burley and DeFrain were going to effect the custody by taking physical control of Keaton Otis. And in the course of that he violently pulled away from Chris Burley, who's, you know, very strong, physically capable person. And acquired, as Mr. Aitchison said, acquired a weapon. Got into the glove box, got out what was a cloth bag, Crown Royal bag, gun inside it, and turned and fired on officers who were physically immediately present at the door, hitting Burley and hitting -- and we believe shrapnel likely hit Officer DeFrain.

And then they, in close proximity, within arm's length of the vehicle, then several returned fire into the car, shooting him, until he crawled out the other side of the car, and ultimately died of his injuries there on the sidewalk.

Q. So throughout the course of this incident, when the officers first made contact with Mr. Otis, what's the distance between them, between Mr. Otis and the officers?

A. They were just outside the car door. They were either at the front of Mr. Otis's vehicle or they were, you know, just arm's length away from the car door, or they were just behind the, you know, the back of the car. So they were all within five or so -- ten feet, at the most, of the vehicle.

Q. And if I understand correctly, was there -- had Mr. Otis committed some traffic violations and/or crimes?

A. Yes. Right.

Q. You also said that he violently pulled away from officers. Was that something that would be considered aggressive physical resistance?

A. Yes.

Q. And Mr. Otis wasn't running away at any point, he was just crawling out?

A. No. He was contained in the vehicle and then ultimately opened the door and crawled out onto the sidewalk.

Q. Now, if you have in front of you Joint Exhibit 11.

A. Okay.

Q. And I want you to take a look at Page 250.

A. Okay.

Q. And particularly Lines 1293 through 1297.

A. Okay.

Q. And I want to ask you some questions, if you can read that for a minute.

A. Yes.

Q. So did Mr. Frashour say that he was very aware that a canine was on the scene?

A. Yes.

Q. Did he also say that he had talked to Elias about the positioning of the dog?

A. Yes.

Q. And is this material information that you reviewed during the course of your, process of your training review?

A. Yes.

Q. And he said earlier in the interview that --

A. Yes, it is.

Q. Did he also say that he had talked to Elias and worked with Elias a lot?

A. I believe so.

Q. And "I knew the dog was on the scene."

A. Yes.

Q. Even if he had seen the dog running, "I would have shot him anyway, it wouldn't have mattered." Do you remember reading that as well, and listening to that as well?

A. Yes.

Q. Do you also recall him saying, Mr. Frashour, that is, saying it wouldn't have mattered because he was pulling a gun out?

A. Yes.

Q. Did you learn any information of Mr. Campbell pulling a gun out?

A. No.

Q. Do you recall any information with respect to whether or not Ron Frashour knew not only that he was very aware the dog was on the scene and the fact that he had talked to Elias about positioning the dog, but about the purpose of the dog or the dog's abilities?

A. Well, he indicates earlier in the interview that he knew the dog -- I mean one of the points of having a canine on scene is so that if a person runs, the dog can be used. But that wouldn't have weighed on his decision is what he says later. Correct.

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

RE-CROSS-EXAMINATION BY MR. AITCHISON: The officers who were shot by Keaton Otis, they never saw the gun, did they?

A. DeFrain, I believe, yelled, "He's going for something, he's going for something, he's going for something." And I believe one of them said something to the effect of "He's got a gun, he's going for a

gun," something like that. I'm not -- they may have said -- one of them on scene may have said that "I saw a gun." I'm not -- although it also was supposed to be fired from inside the Crown Royal bag. So I don't know.

Q. Okay. Keaton Otis drew and fired that handgun at the police in what, your judgment. Less than a second?

A. Very quickly, yes.

MR. AITCHISON: That's all.

THE ARBITRATOR: I have a question. Do you know - only if you can answer - do you know anything about the speed of a canine, a German Shepherd -- This was a German Shepherd, wasn't it?

THE WITNESS: I do not know. Sorry.

MR. RUBIN: Yes.

MR. AITCHISON: Yes.

THE ARBITRATOR: Relative to the speed of a 24-year-old man, who's probably in good physical shape, running?

A. Three to one or two to one?

THE ARBITRATOR: Okay.

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

MR. AITCHISON: Nothing further.

THE ARBITRATOR: Break time?

MR. RUBIN: Yes, please.

(RECESS: 11:09-11:40)

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EXHIBITS

- Exhibit A-21 E-mail from C. Morgan to R. King, A. Warren and D. Virtue, March 2, 2010
- Exhibit A-23 E-mail from C. Morgan to R. King and D. Virtue, March 3, 2010, with witness chart
- Exhibit A-24 E-mail string (C. Morgan, R. King and D. Virtue), March 30, 2010
- Exhibit A-25 Draft Training Division Review, March 31, 2010 (designated Draft Review, sent April 22, 2010 Review, sent April 22, 2010 1)
- Exhibit A-27 R. King, Draft Training Division (designated Draft 2)
- Exhibit A-28 R. King, Draft Training Division (designated Draft 3)
- Exhibit A-30 R. King, Draft Training Division Review, sent May 2, 2010 (designated Draft 4)
- Exhibit A-31 E-mail (Birkinbine transcript) from C. Morgan to D. Virtue and Review, sent May 12, 2010 Division Review, sent May 27, R. King, May 4, 2010
- Exhibit A-32 R. King, Draft Training Division (designated Draft 5)
- Exhibit A-30 D. Virtue, Draft Training 2010 (designated Draft 6)
- Exhibit A-33 R. King evaluation of Officer Elias's action, May 25, 2010
- Exhibit A-35 Draft Training Division Review, May 27, 2010 (designated Draft King, June 1, 2010 with Postand D. Virtue, June 4, 2010 with Division Review, sent May 27, draft Training Division Review)
- Exhibit A-36 E-mail from D. Virtue to R. Shooting Response
- Exhibit A-37 E-mail from C. Morgan to R. King Summary Report
- Exhibit A-38 D. Virtue, Draft Training 2010 (designated Draft 8)
- Exhibit A-39 R. King, Insert into upcoming sent June 20, 2010
- Exhibit A-40 R. King, Draft Training Division Review, sent June 21, 2010 (3:48 p.m.) (designated Draft 10)
- Exhibit A-41 Same as Exhibit A-40, but with a c.c. to Jim Ferraris Exhibit A-42 D. Virtue, Draft Training Division Review, sent June 21, 2010 (2:30 p.m.) (designated Draft 9)
- Exhibit A-60 Less Lethal Operator's Course, February 16-17, 2006, Ron Frashour Exhibit A-64 Draft Training Division Review, from K. Galvan to R. King designated "The Copy I Changed," sent June 23, 2010